



NOW, this 19<sup>th</sup> day of November 2021,

**IT IS HEREBY ORDERED** that the emergency motion (ECF No. 8) is **GRANTED IN PART** and **DENIED IN PART** as set forth in this Pretrial Order #2;

**IT IS FURTHER ORDERED** that—until further order of this court—paragraph 13 of Pretrial Order #1 is modified on an interim basis with respect to the DreamStation 1 Devices sent to Respironics for remediation, as follows:

- (A) plaintiffs and putative class members may submit their recalled DreamStation 1 Devices to Respironics for replacement or repair pursuant to the FDA Recall Remediation;
- (B) Respironics may continue to replace or remediate and return to users their DreamStation 1 Devices as required by the FDA Recall Remediation subject to the preservation requirements set forth in Pretrial Order #1, as modified by this Pretrial Order #2;
- (C) with respect to the insect-infested DreamStation 1 Devices, if not returned to the sender, Respironics must retain a record of all insect-infested DreamStation 1 Devices of which it disposes, record and retain a list of the sender and—if reasonably possible—user of the DreamStation 1 Devices, and take a photograph of the insect-infested DreamStation 1 Devices; Respironics, however, is not required to preserve the insect-infested DreamStation 1 Devices;
- (D) with respect to all the DreamStation 1 Devices sent to Respironics as part of the FDA Recall Remediation that will be replaced rather than repaired, Respironics must preserve, store, and catalogue those DreamStation 1 Devices so that the DreamStation 1 Device can, if possible, be traced back to the specific individual who used that device; and
- (E) with respect to all the DreamStation 1 Devices sent to Respironics as part of the FDA Recall Remediation that will be remediated and returned to the sender, Respironics must preserve, store, and catalogue with the original serial number the blower box, PE-PUR foam, and SD card removed from any retrofitted

DreamStation 1 Device so that the blower box, PE-PUR foam, and SD card can be traced back to the specific individual who used that device.

**IT IS FURTHER ORDERED** that—*for the sole purpose of negotiating an interim proposed preservation order with respect to Respironics’ remediation of the DreamStation 1 Devices*—the following counsel are appointed as plaintiffs’ interim lead counsel:

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**IT IS FURTHER ORDERED** that the appointment of interim lead counsel for the limited purpose set forth in this order is not any indication this court will appoint any of the interim lead counsel to the Plaintiffs’ Steering Committee (“PSC”) or as a lead counsel for any other purpose;

**IT IS FURTHER ORDERED** that reimbursement for costs and/or fees for services of the interim lead counsel will be set at a time and in a manner established by the court after due notice to all counsel and after a hearing;

**IT IS FURTHER ORDERED** that the counsel for Respironics and the interim lead plaintiffs' counsel appointed pursuant to this order shall promptly meet and confer to negotiate a proposed interim preservation order with respect to Respironics' remediation of the DreamStation 1 Devices pursuant to the FDA Recall Remediation to be filed with this court **on or before December 10, 2021**;

**IT IS FURTHER ORDERED** that if interim lead counsel want to retain an expert for the purpose of advising them with respect to preservation issues, Respironics must provide the expert access on a reasonable basis to the DreamStation 1 Devices returned to Respironics pursuant to the FDA Recall Remediation that are in Respironics' possession as well as any materials removed from the DreamStation 1 Devices as part of the FDA Recall Remediation;

**IT IS FURTHER ORDERED** that the court will address the proposed interim preservation order at the status conference set for December 15, 2021, at 2:00 p.m., and, if adopted by the court, the interim preservation order will be subject to the appointed lead counsel, after consultation with the PSC, negotiating a final proposed preservation order with Respironics; and

**IT IS FURTHER ORDERED** that Pretrial Order #1 with respect to all other matters set forth therein remains in full force and effect.

**IT IS SO ORDERED.**

**/s/ JOY FLOWERS CONTI**

Joy Flowers Conti

Senior United States District Court Judge