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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
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8 In Re

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10 MANDATORY PRETRIAL
11 DISCOVERY IN PRO SE PRISONER
12 42 U.S.C. § 1983 CASES

AMENDED GENERAL ORDER
NO. 09-16

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17 The United States District Court for the Western District of Washington (the Court) shall
18 participate in a one-year discovery pilot project, commencing December 1, 2016, in cases filed
19 by pro se prisoners alleging 42 U.S.C. § 1983 claim(s) brought against the Washington
20 Department of Corrections (DOC) or its employees, who are represented by the Washington
21 State Attorney General's Office. Because pro se prisoners are among the least likely litigants to
22 have access to material information required to properly litigate their cases, the Court, through
23 this pilot project, adopts a rule requiring mandatory initial disclosures¹ in these cases. The goal
24 of requiring mandatory initial disclosures is to help resolve pro se prisoner cases by reducing
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27 ¹ "Initial disclosure" as used in this rule applies only to the disclosures required herein. The initial disclosures set
28 forth in Rule 26(a)(1)(A)(i)-(iv) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") do not apply to cases,
like this one, that are brought by a person in custody without an attorney.

1 expenses associated with discovery disputes and discovery motions. The rule incorporates the
2 ideals that discovery should be proportional to the needs of the case, considering the importance
3 of the issues at stake, the amount in controversy, the parties' relative access to relevant
4 information, the parties' resources, the importance of the discovery in resolving the issues, and
5 whether the burden or expense of the proposed discovery outweighs its likely benefit.
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7 In consideration of the foregoing, **IT IS HEREBY ORDERED:**

- 8 1. The pilot project shall apply to (1) all prisoners who bring a 42 U.S.C. § 1983 action
9 without counsel, in which the events alleged in the complaint occurred while the
10 plaintiff was in the custody of the DOC, and (2) defendants are represented by the
11 Office of the Washington State Attorney General.
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- 13 2. The requirements of this rule shall be set forth by the Court in a pretrial scheduling
14 order, which shall be issued in the case only after the case has survived 28 U.S.C. §
15 1915 screening and any Fed. R. Civ. P. 12(b)(6) motions to dismiss.

16 **A.** The terms of the pretrial scheduling order as to the discovery are set forth as
17 follows: The parties are required to provide Initial Disclosure of
18 Documents and Other Materials, as set forth in subparagraph B., within
19 60 days after the Court issues a Mandatory Pretrial Discovery and
20 Scheduling Order.
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22 **B. Initial Disclosure of Documents and Other Materials:**

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- 24 1. Plaintiff(s) shall produce to defendant(s) copies of all documents
25 and other materials in plaintiff(s)'s care, custody, or control, which are related
26 to and support plaintiff(s)'s claims in the complaint. Plaintiff(s) shall also
27 produce:
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1 a. Correspondence, grievances, grievance appeals, and other
2 documents related to requests for administrative remedies or the inability or
3 failure to exhaust such remedies; and

4 b. Complaints and petitions filed by plaintiff(s) in any other
5 cases in any court relating to the same issues raised in the complaint in this
6 action or, if such documents are not within the possession of plaintiff(s),
7 plaintiff(s) shall provide to counsel for defendants a list of each such case,
8 state the court in which each case is filed, and include each case's caption,
9 number, and disposition.

10 2. Defendant(s) shall produce to plaintiff(s) copies of all documents
11 and other materials in the care, custody, or control of any defendant or the
12 DOC related to the claims or defenses in the case. Where applicable, the
13 documents and materials shall include those described in Attachment A
14 hereto. In the cases listed in Attachment A, production of the documents and
15 materials described shall not constitute presumptive compliance with this
16 Order.

17 If a party requires initial disclosures before the 60day deadline, the
18 party shall file a motion to obtain initial disclosures on an expedited basis.
19 The motion must identify the nature and relevance of the documents and
20 materials sought and explain why expedited disclosure is required.

21 3. **Basis for Initial Disclosures.** A party must make these initial
22 disclosures based on the information then reasonably available to it. A lack of
23 investigation of the case or insufficiency of the other party's disclosures is not
24 an excuse from making these required disclosures. Fed. R. Civ. P.
25 26(a)(1)(E).

26 4. **Notice of Compliance.** Plaintiff(s) and defendant(s) shall certify
27 that they have completed the production mandated in Paragraphs A(1) and (2)
28 above by filing a notice of compliance with the Court and serving a copy on
the opposing party.

5. **Continuing Duty.** Plaintiff(s) and defendant(s) are reminded that
they have a continuing duty to disclose to opposing parties any documents and
information within the scope of this Order which are discovered or obtained
after any initial disclosures under this Order are made. Fed. R. Civ. P. 26(e).

6. **Protective Order.** If any document, or any portion thereof,
otherwise required to be disclosed is withheld for any reason defense counsel
shall (a) obtain a complete copy of any such document and retain the
document in counsel's office until the conclusion of litigation, and (b) serve a
log in conformity with Fed. R. Civ. P. 26(b)(5) identifying any withheld
document and the grounds upon which it has been withheld. If any withheld

1 document is not subject to the attorney-client or work-product privileges, then
2 defendant(s) shall promptly move for a protective order within 30 days of
3 producing the initial disclosures. If defendant(s) fail to move for a protective
4 order within 30 days of producing the initial disclosures, the document(s) shall
5 be deemed discoverable and must be promptly disclosed to plaintiff(s).

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7 **7. Discovery Demands.** Any discovery request to be served on a
8 party, such as an interrogatory, request for admission, or request for
9 production, may not be served until 20 days after the party receives the
10 opposing party's initial disclosures. If any discovery request is served prior to
11 that time, the receiving party need not answer the discovery request because
12 the serving party is to review the received initial disclosures before serving
13 discovery requests to ensure the discovery request is not seeking documents or
14 materials already provided.

15 A party (or attorney) must sign every discovery request, response, or
16 objection. By signing, the person certifies that to the best of the person's
17 knowledge, information, and belief formed after a reasonable inquiry that he
18 has complied with Federal Rule of Civil Procedure 26(g)(1).

19 **8. Motions to Compel Discovery.** Before filing a discovery motion,
20 the parties must confer and attempt to resolve their differences. If unable to
21 resolve their differences, the party filing the discovery motion must, either
22 within the motion to compel or in a separate affidavit attached to the motion to
23 compel, list the date, manner, and participants to the conference. If the
24 moving party fails to include such a certification, the court may deny the
25 motion without addressing the merits of the dispute. See Fed. R. Civ. P. 37
26 and LCR 37(a)(1).

27 The motion to compel must: (1) list the matters on which the parties were
28 unable to agree; (2) identify the nature and relevance of the documents and
materials sought; (3) list the reason(s) why the mandatory initial disclosures
were inadequate, and (4) explain why the discovery sought is proportional to
the needs of the case, considering the importance of the issues at stake in the
action, the amount in controversy, the parties' relative access to relevant
information, the parties' resources, the importance of the discovery in
resolving the issues, and whether the burden or expense of the proposed
discovery outweighs its likely benefit.

29 **9. Filing Discovery.** The parties shall not file discovery with the
30 Court except those portions necessary to support a motion or objection.

31 **10. Cooperation.** The Court directs the attorneys and parties
32 appearing pro se to cooperate with each other to reasonably limit discovery
33 requests, to facilitate the exchange of discoverable information, and to reduce
34 the costs of discovery.

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C. Copies.

Plaintiff(s) and defendant(s) shall send the documents and materials identified in paragraphs I.(A)(1) and I.(A)(2) above to the opposing party by mail within the time specified in this Order. If plaintiff does not have the funds required to make his/her required disclosures, plaintiff shall provide the opposing party with a list of the documents in his/her possession. If the total number of copies being produced by any party exceeds 50, the producing party may make such documents available to the discovering party for inspection upon reasonable notice. If, after such inspection, the discovering party wishes to obtain copies of any such documents, copies of the first 50 pages requested shall be provided at the expense of the producing party. Any pages in excess of 50 shall be produced only upon the prepayment by the discovering party of the costs of reproduction at the rate of \$.10 per page. Copies may be double-sided to reduce costs.

D. Medical and Mental Health Records.

If the documents which defendant(s) are required to produce in paragraph I(A)(2) above include a plaintiff(s)'s "protected health information" within the scope of the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 ("HIPAA") and 45 C.F.R. §§ 160.103 and 154.512(e)(1), the custodians of such medical records are hereby authorized to release "protected health information" and "protected mental health information" without an authorization from plaintiff(s) for the purpose of providing copies to plaintiff(s). Defendant(s) may use such documents in the defense of this action. The parties are referred to the Court's local civil rules governing the sealing and redacting of court records. See LCR 5(g).

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ATTACHMENT A

The discovery ordered in paragraph I(A)(2) of the Mandatory Discovery and Pretrial Scheduling Order shall in all cases include reports of completed investigations by a defendant's employer such as the DOC or others relevant to the incident(s) alleged in the complaint. In addition, the following documents and materials relevant to the incident(s) alleged in the complaint shall be produced for the following types of claims:

1. **Excessive Force and Failure to Protect.** Photographs, incident reports, use-of-force reports, staff and inmate disciplinary charges, records (including transcripts) of staff and inmate disciplinary hearings, determinations of staff and inmate disciplinary charges and appeals, videotapes and/or audiotapes, and medical records concerning treatment for any injuries allegedly received by the plaintiff as a result of the incident(s) alleged in the complaint.

Copies of videotapes and audiotapes need not be provided to plaintiff(s) as long as defendant(s) provide plaintiff(s) with reasonable opportunities to review a videotape or audiotape and the videotape or audiotape is preserved by defense counsel for use by any party throughout the case.

Pursuant to paragraph I(C) of this Order, the DOC and its employees, agents, and representatives are hereby authorized to release a plaintiff's medical records to plaintiff without additional authorization from the plaintiff.

2. **Due Process and First Amendment/Retaliation.** Relevant staff and inmate disciplinary charges, records (including transcripts and audiotapes) of relevant disciplinary hearings, and determinations of disciplinary charges and appeals. See Paragraph 1 above regarding production of audio tapes.

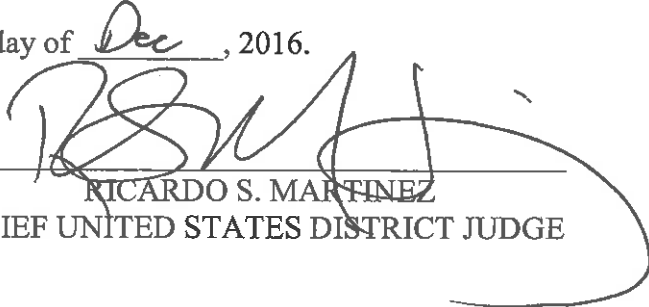
3. **Medical Indifference.** Medical records and documents related to the condition(s) alleged in the complaint or attempts to seek treatment for the condition(s). See Paragraph 1 above regarding production of medical records.

4. **Conditions of Confinement.** Documents and records regarding the condition(s) alleged in the complaint.

IT IS FURTHER ORDERED that this Standing Order shall become effective December 1, 2016, and shall remain in effect through November 30, 2017, subject to extension upon the agreement of the parties. Before November, 2017, the Court will evaluate the pilot project and determine whether it should be continued, terminated, modified, or expanded.

1 **IT IS SO ORDERED.**

2 **DATED** this 1 day of Dec, 2016.

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5 **RICARDO S. MARTINEZ**
6 **CHIEF UNITED STATES DISTRICT JUDGE**

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