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2
3 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

4 UNITED STATES OF AMERICA,

No. 4:CR-14-9999-SMJ

5 Plaintiff,

6 **CASE MANAGEMENT ORDER**

7 v.

8 JOHN DOE,

***** SAMPLE *****

9 Defendant.

10 Having considered the parties' proposed case schedule and deadlines, the
11 Court now enters the following Case Management Order, which sets forth the
12 deadlines, hearings, and requirements the parties will observe in this matter. To
13 the extent this Order conflicts with any previously-entered Orders in this matter,
14 this Order shall govern. All counsel are expected to carefully read and abide by
15 this Order. The Court will grant relief from the requirements in this Order only
16 upon motion and good cause shown.

17 **IT IS HEREBY ORDERED:**

- 18 **1. Emailing the Court.** Where this Order requires counsel to email
19 documents to the Court, all documents shall be attached to the email
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1 in Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject
2 line of each email shall be formatted as follows:

3 **[Case No.]; [Case Name]; [Title of Document]**

4 (e.g.: *CR-13-9999-SMJ; USA v. Doe; Trial Brief*)

5 **2. Discovery**

6 **A.** All discovery documents must be Bates-stamped with a unique
7 identifier and must be produced digitally in a text-searchable
8 format. The Court will grant relief from this requirement only
9 in exceptional circumstances, upon motion and good cause
10 shown.

11 **B.** Pursuant to the Order Regarding Discovery and Pretrial
12 Motions previously entered by a U.S. Magistrate Judge in this
13 matter, the Court presumes a defense request for discovery
14 under Federal Rule of Criminal Procedure 16 for *documents*
15 *and objects*, Fed. R. Crim. P. 16(a)(1)(E), *reports of*
16 *examinations and tests*, Fed. R. Crim. P. 16(a)(1)(F), *AND*
17 *expert witnesses*, Fed. R. Crim. P. 16(a)(1)(G), and as such
18 these items are ordered disclosed. Therefore, the Court
19 imposes a reciprocal duty on defense counsel to provide
20 discovery under Rule 16(b)(1)(A-C) *for each of the above*

1 *categories.* Defendants who do not wish to invoke reciprocal
2 discovery obligations must file a notice with the Court and
3 with opposing counsel prior to accepting discovery from the
4 Government.

5 **C.** The Court further presumes a request for discovery and
6 disclosure under Federal Rules of Evidence 404(b), 608(b),
7 and 609, *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v.*
8 *United States*, 405 U.S. 150 (1972), *United States v. Henthorn*,
9 931 F.2d 29 (9th Cir. 1991), and their progeny, and as such
10 these items are ordered disclosed.

11 **D.** For those discovery matters ordered to be disclosed by this
12 Order, a party shall not file a motion seeking such discovery,
13 unless the disclosing party fails to timely produce such
14 discovery.

15 **E.** Any party seeking discovery or disclosure not otherwise
16 provided for in this Order, or discovery that was ordered by
17 this Order and not timely provided, shall file a motion stating
18 the specific materials sought, the legal authority for the
19 specific request, and certify that the movant has in good faith
20 conferred or attempted to confer with the opposing party in an

1 effort to obtain the discovery or disclosure without court
2 action.

3 **3. Expert-Witness Summaries**

4 **A.** Each party shall produce to opposing counsel all summaries of
5 its expert-witness testimony for which disclosure is required
6 under Federal Rule of Criminal Procedure 16, by the deadlines
7 set forth below:

8 **USAO's Experts: July 18, 2014**

9 **Defendant's Experts: July 25, 2014**

10 **USAO's Rebuttal Experts: August 1, 2014**

11 Also by the applicable deadline, counsel shall email an
12 electronic copy of the summary to the Court at
13 MendozaOrders@waed.uscourts.gov and shall simultaneously
14 file a Notice of Compliance with this requirement.

15 **B.** All summaries of expert witness testimony must conform to
16 Federal Rule of Criminal Procedure 16 and applicable case law
17 interpreting that Rule. The Court will not permit an expert
18 witness to testify about opinions which are not explicitly
19 expressed in that expert's summary. *See, e.g., United States v.*
20 *W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

1 **4. Motions Practice**

2 **A. Generally.** By no later than **August 4, 2014**, all pretrial
3 motions — including discovery motions, *Daubert* motions, and
4 motions *in limine* — must be filed and served. *See* Fed. R.
5 Crim. P. 12(c). All motions shall either be: a) noted for
6 hearing without oral argument fourteen (14) days after filing,
7 or b) noted for hearing with oral argument at the pretrial
8 conference. Responses and replies to motions must be filed in
9 accordance with Local Rule 7.1.

10 **B. Expedited Hearing.** Any party seeking an expedited hearing
11 on a time-sensitive matter must file a motion to expedite which
12 1) demonstrates good cause, 2) states the position of the
13 opposing party to the motion, and 3) sets a date of hearing that
14 is no less than **seven (7) days** after the motion’s filing. Should
15 the motion to expedite require more immediate judicial
16 attention, the motion shall establish the necessity for an
17 immediate hearing, and the filing party shall notify chambers
18 staff of the motion.

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1 **5. Trial Continuances**

2 **A. Motion Deadline.** All motions to continue the trial must be
3 heard before or at the pretrial conference. **Any motion to**
4 **continue trial made after the pretrial conference has**
5 **occurred will not be granted absent exceptional**
6 **circumstances.**

7 **B. Statement of Reasons.** If the Defendant seeks a continuance, a
8 Statement of Reasons in support of the motion to continue
9 must be filed contemporaneously with the motion.¹ The
10 Statement of Reasons must 1) be signed by the Defendant, 2)
11 be signed by a certified translator, if applicable, and 3) indicate
12 the latest date upon which Defendant is willing to proceed to
13 trial.

14 **C. Procedure.** Before filing a motion to continue, counsel shall
15 first contact the Courtroom Deputy at (509) 943-8173 to obtain
16 new pretrial conference and trial dates consistent with the
17 length of the requested trial continuance. Thereafter, counsel
18 shall confer with opposing counsel regarding new case
19 management deadlines consistent with the new pretrial

20 ¹ The Court's Statement of Reasons template can be found at the following link:
http://www.waed.uscourts.gov/sites/default/files/forms/smj_stmt_reasons_mot_to_cont.pdf.

1 conference and trial date. **All motions to continue must**
2 **include new proposed case management deadlines (either**
3 **joint or individual) to ensure the to-be-imposed deadlines**
4 **are best suited to this case.**

5 **6. Pretrial Conference**

6 A. The Pretrial Conference remains **SET** for **August 25, 2014**, at
7 **9:00 AM** in **RICHLAND**. At this hearing, the Court will hear
8 **ALL** pretrial motions.

9 **B.** All pretrial conferences are scheduled to last no more than
10 **thirty (30) minutes**, with each side allotted **fifteen (15)**
11 **minutes** to present their own motions and resist motions by
12 opposing counsel. If any party anticipates requiring longer
13 than fifteen minutes, that party must notify the Courtroom
14 Deputy at least seven (7) days prior to the hearing. **Any party**
15 **who fails to provide this notice will be limited to fifteen (15)**
16 **minutes.**

17 **7. Confidential Informants (CIs).** By no later than **September 8,**
18 **2014**, the USAO shall disclose to Defendant the identity of any CIs
19 used in the case and shall advise Defendant at that time whether any
20 CI so identified is willing to be interviewed by defense counsel.

1 **8. Grand Jury Transcripts.** The USAO shall produce copies of the
2 grand jury transcripts for any witness it intends to call at trial by the
3 deadlines set forth below:

4 **Case Agent:** **September 8, 2014**

5 **CI:** **September 8, 2014**

6 **Other Witnesses:** **September 8, 2014**

7 **9. Exhibit Lists**

8 A. By no later than **September 15, 2014**, each party shall file a
9 list of exhibits the party intends to introduce at trial. Each
10 party shall also email copies of their exhibit list to the Court at
11 MendozaOrders@waed.uscourts.gov. The parties shall
12 provide their exhibit list in the following format:

| Ex. # | Admitted | Description |
|--------------|-----------------|--|
| 1 | | Photograph of items seized |
| 2 | | Aerial video surveillance from 1/1/2011. Start Time: 01:03:23 End Time: 01:09:54 |

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14
15
16 Exhibit lists shall include a unique exhibit number and a brief
17 description of the exhibit. For all exhibits consisting of an
18 audio or video file, the exhibit list must designate the precise
19 beginning and ending time indexes of the portion of the file the
20 party intends to use at trial.

1 **B.** The USAO shall consecutively number their exhibits from **1 to**
2 **999**. In single-defendant cases, Defendant shall consecutively
3 number exhibits from **1000 to 1999**; in multi-defendant cases,
4 Defendants shall consecutively number exhibits from x000 to
5 x999, substituting “x” for each Defendant’s assigned case
6 identifier (e.g. Defendant 3 would number exhibits from 3000
7 to 3999, etc.). Exhibits shall be pre-marked for identification
8 before trial commences.

9 **10. Witness Lists.** By no later than **September 15, 2014**, each party
10 shall file and serve a list of witnesses that party intends to call to
11 testify at trial. **The witness list must identify the existence, but**
12 **need not include the name, of any CI the USAO intends to call to**
13 **testify.** Parties shall email copies of their witness list to the Court at
14 MendozaOrders@waed.uscourts.gov.

15 **11. Trial Briefs, Proposed Jury Instructions and Verdict Form, and**
16 **Requested Voir Dire.** By no later than **September 12, 2014**, each
17 party shall file a trial brief, proposed jury instructions and verdict
18 form, and requested voir dire, in accordance with the requirements
19 below. Each party shall email copies to the Court at
20 MendozaOrders@waed.uscourts.gov.

1 A. *Trial Briefs.* Trial briefs shall not exceed twenty (20) pages
2 without prior Court approval, upon motion and good cause
3 shown. LR 39.1.

4 B. *Proposed Jury Instructions and Verdict Form.* Jury
5 instructions shall 1) address issues that are unique to the case,
6 and 2) include instructions regarding the elements of each
7 charge or defense. If a Ninth Circuit Model Jury Instruction
8 exists for a particular charge or defense, the parties shall
9 provide the model instruction or shall submit argument as to
10 why the instruction is inadequate or no longer supported by
11 law. Proposed jury instructions shall be accompanied by a
12 proposed verdict form. **The parties must confer to develop**
13 **joint proposed jury instructions and the verdict form.** The
14 Court will only accept an individual party's proposed jury
15 instructions on those points/issues upon which the parties
16 could not agree, and only if the party's memoranda
17 accompanying the individually-proposed instruction(s) sets
18 forth the legal authority and justification for why the
19 instruction is necessary.

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1 *C. Requested Voir Dire.* The parties may request that the Court
2 include specific questions during the Court’s standard voir
3 dire. Requested voir dire shall not duplicate information
4 elicited in the Clerk’s Office Jury Questionnaire (“COJQ”) and
5 the Court’s Criminal Jury Trial Procedures Letter.

6 **12. Exhibit Binders.** By no later than **September 15, 2014**, each party
7 must provide to all other parties and to the Court a Bates-stamped
8 copy of all trial exhibits — or, in the case of physical exhibits, a
9 photograph or other reproduction of the exhibit — the party intends
10 to introduce at trial. All trial exhibits shall be organized sequentially
11 by exhibit number in a three-ring binder.

12 **13. JERS.**

13 **A.** The Court utilizes the Jury Evidence Recording System
14 (JERS), a system that makes electronic evidence available in
15 the jury room during deliberations. **Counsel shall promptly**
16 **consult the Court’s “JERS Instructions for Attorneys”² to**
17 **ensure they acquire, retain, and provide evidence to the**
18 **Court in the necessary format.**

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20 ² This document can be found on the Court’s public website at the following link:
<http://www.waed.uscourts.gov/content/jers-jury-evidence-recording-system-information-attorneys>.

1 **B.** By no later than **September 12, 2014**, each party who intends
2 to introduce evidence at trial must supply a CD, DVD, or USB
3 drive to the Courtroom Deputy containing all of that party's
4 exhibits in the required format. Counsel may contact the
5 Courtroom Deputy at (509) 943-8173 with any questions.

6 **14. Trial Notices.** By no later than **September 15, 2014**, each party
7 shall file a notice that indicates the amount of time requested for
8 opening statement and for voir dire. In addition, defense counsel
9 must indicate if his/her client waives presence at sidebar and jury
10 questions.

11 **15. Technology Readiness Meeting.** By no later than **September 12,**
12 **2014**, any party seeking to offer video or audio evidence at trial must
13 meet with Court staff at the location of the trial to verify
14 compatibility with the Court's presentation systems. The parties
15 shall contact the Courtroom Deputy at (509) 943-8173 to arrange this
16 meeting.

17 **16. Trial.** The jury trial remains **SET** for **September 22, 2014**, at **9:00**
18 **AM** in **RICHLAND**. Counsel and Defendant shall be prepared to
19 meet with the Court at least thirty (30) minutes prior to the
20 commencement of the trial.

17. Summary of Deadlines

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|---|--|
| Rule 16 expert summaries produced to other parties and emailed to Court: USAO’s Experts: Defendant's Experts: USAO’s Rebuttal Experts: | July 18, 2014 July 25, 2014 August 1, 2014 |
| All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions <i>in limine</i> , filed | August 4, 2014 |
| PRETRIAL CONFERENCE <i>Deadline for motions to continue trial</i> | August 25, 2014 9:00 AM - RICHLAND |
| CIs’ identities and willingness to be interviewed disclosed to Defendant (if applicable) | September 8, 2014 |
| Grand jury transcripts produced to Defendant: Case Agent: CIs: Other Witnesses: | September 8, 2014 September 8, 2014 September 8, 2014 |
| Exhibit lists filed and emailed to the Court | September 15, 2014 |
| Witness lists filed and emailed to the Court | September 15, 2014 |
| Trial briefs, jury instructions, verdict forms, and requested voir dire filed and emailed to the Court | September 12, 2014 |
| Exhibit binders delivered to all parties and to the Court | September 15, 2014 |
| Delivery of JERS-compatible digital evidence files to the Courtroom Deputy | September 12, 2014 |
| Trial notices filed with the Court | September 15, 2014 |
| Technology readiness meeting (in-person) | September 12, 2014 |
| JURY TRIAL | September 22, 2014 9:00 AM - RICHLAND |

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