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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Brian A. Wilkins,

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No. CV-09-1380-PHX-LOA

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Plaintiff,

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**ORDER**

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vs.

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Maricopa County; Joseph M. Arpaio, in  
his individual and official capacity as)  
Maricopa County Sheriff; X-ray)  
Technician of Maricopa County Jail, in)  
her individual and official capacity,

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Defendants.

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This case arises on *pro se* Plaintiff Brian A. Wilkins' Request for Defendants to Produce Electronically Stored Information and Other Tangible Items, filed on January 19, 2010. (docket # 45) The Court deems Plaintiff's Request a motion to compel discovery pursuant to Rule 37(a), FED.R.CIV.P. Relying on the Court's December 21, 2009 order authorizing early but limited discovery,<sup>1</sup> Plaintiff seeks an order compelling Defendants to

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<sup>1</sup> The Court's December 21, 2009 order directed as follows:

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**IT IS FURTHER ORDERED** that Plaintiff may engage in discovery to determine the identify of the unknown Defendant Jail Guard and that on or before February 15, 2010, Plaintiff shall provide the full name and address of the unknown Jail Guard identified in Count Four to the USMS for service. If Plaintiff fails to provide a full name and address for the unknown Jail Guard by February 20, 2010, his claims against unknown Jail Guard may be

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1 produce a broad scope of information well beyond the limited discovery authorized by the  
2 Court to identify the unknown Jail Guard identified in Count Four of the Amended  
3 Complaint for purposes of service of process. The Court will summarily deny Plaintiff's  
4 motion on both substantive and procedural grounds.

5 **FEDERAL RULE OF CIVIL PROCEDURE 26(d)**

6 Federal Rule of Civil Procedure 26(d)<sup>2</sup> provides that "a party may not seek  
7 discovery from any source before the parties have conferred as required by Rule 26(f)."  
8 Fed.R.Civ.P. 26(d). "The rule makes clear, however, that this limitation can be overridden  
9 by court order." *Best Western Intern., Inc. v. Doe*, 2006 WL 2091695, \* 1 (D.Ariz. 2006)  
10 (citing Rule 26(d)). "An order permitting discovery before a Rule 26(f) conference may be  
11 issued for "good cause." *Id.* (citing *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202  
12 F.R.D. 612, 614 (D.Ariz. 2001).

13 The Court's December 21, 2009 order implicitly found that good cause existed  
14 to allow Plaintiff limited discovery before the Rule 26(f), FED.R.CIV.P., conference and Rule  
15 16 scheduling conference are held to eliminate further delay in this case which has been  
16 pending for nearly seven months. (docket # 1) While the Rule 16 scheduling conference will  
17 be scheduled by court order in the near future, Plaintiff's Request to seek and compel  
18 discovery on information beyond the full name and address of the unknown Jail Guard

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21 dismissed without prejudice.

22 (docket # 41 at 16)

23 <sup>2</sup> The full text of Rule 26(d) provides as follows:

24 (d) Timing and Sequence of Discovery.

25 (1) Timing. A party may not seek discovery from any source before the  
26 parties have conferred as required by Rule 26(f), except in a proceeding  
27 exempted from initial disclosure under Rule 26(a)(1)(B), or when  
authorized by these rules, by stipulation, or by court order.

28 Rule 26(d), FED.R.CIV.P.

1 identified in Count Four is premature. This is the second time Plaintiff has attempted to  
2 engage in premature discovery. (docket ## 8, 9) Additionally, Plaintiff's Request fails to set  
3 forth any reason, much less good cause, for the Court to order broad discovery before the  
4 Rule 26(f) conference. The Court will deny Plaintiff's motion to compel discovery without  
5 prejudice.

#### 6 LOCAL RULES

7 Plaintiff's Request fails to comply with LRCiv 7.2(j), Rules of Practice for the  
8 United States District Court of the District of Arizona ("Local Rules"), which states: "No  
9 discovery motion will be considered or decided unless a statement of moving counsel is  
10 attached thereto *certifying that after personal consultation* and sincere efforts to do so,  
11 counsel [or *pro se* litigant] have been unable to satisfactorily resolve the matter." LRCiv  
12 7.2(j) (emphasis added). "Personal consultation" means face-to-face or telephonic  
13 communications between counsel, not an exchange of letters or emails. The Court has  
14 previously ordered Plaintiff to comply with the Local Rules. (docket # 3 at 3) "*Pro se*  
15 litigants must follow the same rules of procedure that govern other litigants." *King v. Atiyeh*,  
16 814 F.2d 565, 567 (9th Cir. 1986); *In re Scharf*, 2006 WL 1127182, \* 1 (D.Ariz. 2006).  
17 Plaintiff failed to attach or incorporate the appropriate certification is an independent basis  
18 to deny his discovery motion.

#### 19 PRO SE LITIGANTS

20 Since Plaintiff is *pro se*, the Court expressly advises him that the United States  
21 Supreme Court has made clear that federal "judges have no obligation to act as counsel or  
22 paralegal to *pro se* litigants" because requiring trial judges to explain the details of federal  
23 procedure or act as the *pro se's* counsel "would undermine [federal] judges' role as impartial  
24 decisionmakers." *Pliler v. Ford*, 542 U.S. 225, 226-227 (2004). A *pro se* litigant "does not  
25 have a constitutional right to receive personal instruction from the trial judge on courtroom  
26 procedure" and that "the Constitution [does not] require judges to take over chores for a *pro*  
27 *se* [litigant] that would normally be attended to by trained counsel as a matter of course." *Id.*  
28 (citing *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 162

1 (2000)). The Court also advises Plaintiff and counsel that although *pro se* pleadings may be  
2 held to less stringent standards than those prepared by attorneys, *Rand v. Rowland*, 154 F.3d  
3 952, 957 (9th Cir.1998) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)), *pro se*  
4 litigants must “abide by the rules of the court in which he litigates.” *Carter v. Commissioner*  
5 *of Internal Revenue*, 784 F.2d 1006, 1008 (9<sup>th</sup> Cir. 1986); *Oliver v. Long*, 2007 WL 623783,  
6 \* 1 (D.Ariz. 2007).

### 7 DISCOVERY REQUESTS

8 Plaintiff’s Request for Defendants to Produce Electronically Stored  
9 Information and Other Tangible Items, docket # 45, appears to be more than a motion to  
10 compel, but also an original Rule 34 request for production of documents and other things.  
11 Other than filing a Notice of Service of the particular discovery request, Rule 5(d)(1),  
12 FED.R.CIV.P., makes clear that

13 [d]isclosures under Rule 26(a)(1) or (2) and the following discovery requests  
14 and responses *must not be filed* until they are used in the proceeding or the  
15 court orders filing: depositions, interrogatories, requests for documents or  
tangible things or to permit entry onto land, and requests for admission.

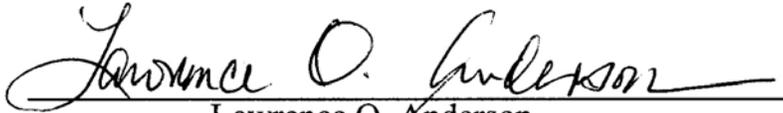
16 Rule 5(d)(1), Fed.R.Civ.P. (emphasis added). Also see, LRCiv 5.2 (“A ‘Notice of Service’  
17 of the disclosures and discovery requests and responses listed in Rule 5(d) of the Federal  
18 Rules of Civil Procedure must be filed within a reasonable time after service of such  
19 papers.”)

20 *Pro se* Plaintiff shall comply with all the Court’s procedural rules, including,  
21 but not limited to, Rule 5(d)(1), Fed.R.Civ.P., LRCiv 7.2(j) and 37.1, in seeking an order  
22 compelling discovery or sanctions may be imposed against him. If Defendants fail to  
23 informally sign a waiver of service pursuant to Rule 4(d) for the unknown Jail Guard or fail  
24 to timely answer discovery requests reasonably designed but limited to the identity and  
25 address of unknown Jail Guard identified in Count Four of the Amended Complaint, Plaintiff  
26 may timely move for an extension of the service deadline provided, of course, Plaintiff  
27 demonstrates due diligence in this regard.

28 **IT IS ORDERED** that Plaintiff’s Request for Defendants to Produce

1 Electronically Stored Information and Other Tangible Items, docket # 45, deemed a motion  
2 to compel is **DENIED** without prejudice.

3 DATED this 25<sup>th</sup> day of January, 2010.

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6 Lawrence O. Anderson  
7 United States Magistrate Judge  
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