



1 consolidation was appropriate. The Defendants responded and are in  
2 favor of consolidation but request a continuance if the Court chooses  
3 to do so. ECF Nos. 203 & 204. Plaintiff does not oppose consolidation  
4 but requests mediation if the Court consolidates.

5 Both of these cases are now past the discovery and summary  
6 judgment stages of litigation. Plaintiff in both cases alleges Eighth  
7 Amendment violations by employees of the Washington State  
8 Penitentiary. The backgrounds in these two cases are substantially  
9 the same. Therefore, pursuant to Federal Rule of Civil Procedure  
10 42(a), the Court consolidates these two cases finding that both cases  
11 have similar questions of law and fact, and that judicial economy and  
12 the ends of justice are best served by combining these two cases. The  
13 Court sets new trial and pretrial dates, as well as additional  
14 deadlines below.

15 As to Plaintiff's request for mediation, the Court is not  
16 opposed to the idea. However, the Court will not force the parties to  
17 mediate if they do not want to participate. It is clear that the  
18 Plaintiff seeks mediation. However, the Court will order mediation  
19 only if the Defendants believe it also proper. By no later than May  
20 31, 2016, Defendants must file a notice with the Court indicating  
21 whether they support referring this case to mediation.

22 **II. Motion for Protective Order, Case No. 13-CV-5038, ECF No. 195**

23 Plaintiff seeks a protective order in *Troupe v. Suckow*, 13-CV-  
24 5038. ECF No. 195. Plaintiff appears to seek an order requiring  
25 either that 1) Ms. Amy Clemmons be forced to remain as the attorney  
26 of record in this case or 2) bar all other attorneys for the

1 Washington State Attorney General's office from accessing the records  
2 in this matter. As to Plaintiff's first request, Local Rule  
3 83.2(d)(3) states: "Where there has simply been a change (withdrawal  
4 or addition) of counsel within the same law firm, and order of  
5 substitution is not required." If two attorneys practice in the same  
6 law firm, they may substitute in on a case without permission from  
7 the Court. Therefore, the Court will not force Ms. Clemmons to remain  
8 on this case if the Attorney General's Office believes it in its best  
9 interest to substitute counsel.

10 As to Plaintiff's privacy concerns, the Court expects that the  
11 Attorney General's Office, and all the attorneys working on this  
12 case, will take reasonable measures to protect the medical and mental  
13 health records of Plaintiff. However, the Court will not bar certain  
14 individuals who work in that office from accessing those records.  
15 Therefore, Plaintiff's Motion for Protective Order, ECF No. 195, is  
16 denied.

17 **III. Motion for 25 Blank Subpoenas, Case No. 13-CV-5038, ECF No. 212**

18 Plaintiff asks for "25 blank subpoenas for witnesses in #13-CV-  
19 5038-EFS July 18, 2016 trial" without explanation or clarification.  
20 The Court assumes that this request is in response to the Court's  
21 previous Order Regarding Plaintiff's Trial Witnesses, ECF No. 202. As  
22 the Court stated in that order, if Plaintiff wants to subpoena  
23 witnesses, "he must first file a motion with the Court clearly and  
24 specifically identifying 1) the first and last name of each witness  
25 for whom he seeks the issuance of a trial subpoena, and 2) the  
26 witness's address at which service will be effected." A motion

1 requesting 25 blank subpoenas, more than is currently on his witness  
2 list, without explanation or clarification, does not suffice.

3         Additionally, Plaintiff has failed to abide by the Court's  
4 scheduling order in that his witness list, ECF No. 214, fails to  
5 "include a brief description of the witness, a brief summary of the  
6 witness' anticipated testimony, whether the witness will be called as  
7 an expert, and any known trial date/time conflicts that witness has."  
8 ECF No. 173.

9         For these reasons, Plaintiff's Motion for 25 Blank Subpoenas,  
10 ECF No. 212, is denied. If Plaintiff wants to subpoena witnesses for  
11 trial, he must file a list of witnesses with the Court clearly  
12 stating what he expects each witness to testify to and why that  
13 testimony is relevant to the narrow Eighth Amendment claims in these  
14 cases. The Court will then send the subpoenas for those witnesses and  
15 will not permit him to subpoena witnesses that have not been approved  
16 by the Court. New deadlines for witness lists are delineated below.

17 **IV. Motion to Approve a Subpoena, Case No. 13-CV-5038, ECF No. 215**

18         Plaintiff asks the Court to approve a discovery subpoena in  
19 *Troupe v. Suckow*, 13-CV-5038. ECF No. 215. The Court reminds  
20 Plaintiff that discovery in these cases has ended. All that remains  
21 for both of these cases is to prepare for trial using the discovery  
22 already obtained. No further discovery subpoenas will be approved.  
23 Only trial subpoenas will be issued and only after the requirements  
24 in the Court's orders have been met. Therefore, Plaintiff's Motion to  
25 Approve Subpoena, ECF No. 215, is denied.

26 /

1 **V. Motion for Reconsideration, Case No. 13-CV-5028, ECF No. 268**

2 Plaintiff asks the Court to reconsider its Order Granting in  
3 Part and Denying in Part Defendants' Motion for Summary Judgment. ECF  
4 No. 268. Specifically, Plaintiff argues that Mr. Christopher Bowman  
5 should not be dismissed from this case. Plaintiff, however, provides  
6 no new evidence or case law supporting his proposition. He simply  
7 argues that Mr. Bowman retaliated against him in a different way. As  
8 the Court stated in its order, Plaintiff has failed to show an  
9 essential element of his First Amendment retaliation claim against  
10 Mr. Bowman and therefore summary judgment is appropriate. Therefore,  
11 Plaintiff's Motion for Reconsideration, Case No. 13-CV-5028, ECF No.  
12 268, is denied.

13 **VI. Conclusion & Deadlines**

14 The parties must carefully read the Court's prior Scheduling  
15 Order, ECF No. 173, and abide by its requirements that are not  
16 superseded by the deadlines below. The following deadlines apply to  
17 the single consolidated remaining case:

18	Witness and Exhibit lists:	
19	Lists filed and served:	<b>September 1, 2016</b>
	Objections filed and served:	<b>September 9, 2016</b>
20	Deposition Designations:	
21	Designated Transcripts served:	<b>August 12, 2016</b>
	Cross-Designations served:	<b>August 19, 2016</b>
	Objections filed and served:	<b>August 26, 2016</b>
22	All motions <i>in limine</i> filed	<b>September 1, 2016</b>
23	Joint Proposed Pretrial Order filed and emailed to the Court	<b>September 23, 2016</b>
24	Confer with Courtroom Deputy regarding JERS	<b>1 Week Before Pretrial</b>
25	<b>PRETRIAL CONFERENCE</b>	<b>October 4, 2016</b> <b>1:30 P.M. - Richland</b>

Trial briefs, jury instructions, verdict forms, requested voir dire, and list of exhibits admitted without objection, filed and emailed to the Court	October 10, 2016
Mediation, if any, must be completed by	90 Days Before Trial
<b>JURY TRIAL</b>	October 24, 2016 9:30 A.M. - Richland

The parties do not need to refile the motions in limine they have already filed. Those will be heard at the October 4, 2016 pretrial conference. If the parties wish to file additional motions in limine, *specific to the claim against Officer Brodhead*, which are being consolidated into this case, they must do so by the deadlines listed above.

**Accordingly, IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Protective Order, **Case No. 13-CV-5038, ECF No. 195, is DENIED.**
2. Plaintiff's Motion for 25 Blank Subpoenas, **Case No. 13-CV-5038, ECF No. 212, is DENIED.**
3. Plaintiff's Motion to Approve a Subpoena, **Case No. 13-CV-5038, ECF No. 215, is DENIED.**
4. Plaintiff's Motion for Reconsideration, **Case No. 13-CV-5028, ECF No. 268, is DENIED.**
5. *Troupe v. Brodhead*, 4:13-CV-5028-EFS, and the single remaining Eighth Amendment claim against Officer Brodhead is merged into this case.
6. **All future filings in either case shall be filed under Case Number 4:13-CV-5038-EFS, unless the Court later directs**

1 otherwise. Case Number 4:13-CV-5028-EFS shall be  
2 administratively closed.

3 7. The Caption is hereby **AMENDED**. All papers filed in this  
4 action shall hereinafter use the caption "DAVID TROUPE,  
5 Plaintiff, v. KENNITH BROADHEAD, KATRINA SUCKOW, BONNIE  
6 KLAHN, and THOMAS ROE, Defendants," and shall bear the  
7 docket number, "**4:13-CV-5038-EFS**."

8 8. All parties in both cases are to file all documents  
9 pursuant to the deadlines set forth above and subject to  
10 the requirements set forth in the Court's December 8, 2015  
11 Amended Scheduling Order, ECF No. 173.

12 9. Defendants must file a notice with the Court by May 31,  
13 2016, stating whether or not they believe mediation is  
14 appropriate in this matter.

15 10. Plaintiff's Motion in Limine, **ECF No. 196**, and Defendants'  
16 Motion in Limine, **ECF No. 181**, are **RESET** to be heard at the  
17 **October 4, 2016** pretrial conference.

18 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
19 Order and provide copies to counsel and Mr. Troupe.

20 **DATED** this 17<sup>th</sup> day of May 2016.

21  
22 s/Edward F. Shea  
23 EDWARD F. SHEA  
24 Senior United States District Judge  
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