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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

12 Robert Earle Johnson,
 13 Plaintiff,
 14 v.
 15 Steven Sager et al.,
 16 Defendants.

No. CV-11-1117 (RSM)

JOINT PRETRIAL ORDER

17 Pursuant to the Court’s Order Setting Trial Date and Related Dates,
 18 (Dkt. 86), the parties submit this Joint Pretrial Order.

19 **I. FEDERAL JURISDICTION**

20 Johnson’s causes of action arise under federal law and concern rights
 21 protected by the United States Constitution. 42 U.S.C. 1983. Consequently,
 22 the Court has jurisdiction over this matter pursuant to 28 U.S.C. 1331.

23 **II. CLAIMS AND DEFENSES**

24 The plaintiff will pursue at trial the following claims:

- 25 1. Whether Defendant Michael Silva violated Mr. Johnson’s
- 26 Fourteenth Amendment right to equal protection by treating Mr. Johnson
- 27 differently than similarly situated inmates based on Mr. Johnson’s race.
- 28 2. Whether Defendant Silva violated Mr. Johnson’s First

JOINT PRETRIAL STATEMENT

1 Amendment rights by taking adverse action against Mr. Johnson that was
2 motivated by Mr. Johnson's protected conduct and that chilled Mr. Johnson's
3 exercise of his First Amendment rights.

4 **III. ADMITTED FACTS**

5 1. Mr. Johnson is a Washington State inmate who is serving a
6 sentence in the Department of Corrections pursuant to a conviction of two
7 counts of first degree murder and one count of attempted first degree murder.
8 Mr. Johnson maintains he is innocent of the two murder charges.

9 **IV. ISSUES OF LAW**

10 None.

11 **V. LIST OF WITNESSES**

12 **A. Plaintiff's Witnesses**

13 1. Robert Earle Johnson: will testify about: how he was not
14 allowed to possess a box to hold his personal legal materials; how that
15 decision is attributable to Defendant Silva; how similarly situated inmates
16 were allowed to possess boxes to hold their personal legal materials; and how
17 the inability to possess boxes to hold his personal legal materials injured him.

18 2. Anthony Boteillho: will testify that, while he was in C-Unit
19 from November 2009 to at least September 2010, Defendant Silva allowed
20 him to possess multiple boxes without special permission.

21 3. Norm John Trapp: will testify that he has lived in C-Unit
22 since at least 2010 and that Defendant Silva let him possess multiple boxes
23 without special permission. He will also testify that less than one month after
24 the Ninth Circuit issued the mandate in the appeal in this case, Defendant
25 Silva approached him and mentioned his dissatisfaction.

26 4. Karl Tobey: will testify that during the two years he was in
27 C-Unit, Defendant Silva let him possess multiple boxes without special
28 permission.

1 5. Edgar Roy Cluff: will testify that during the 10 years he
2 was at MCC-TRU, he was housed in B-Unit, C-Unit, and D-Unit and that he
3 was never told he could not have boxes in his cell or that he needed to obtain
4 special permission. He will also testify that Defendant Silva himself let him
5 possess multiple boxes without special permission.

6 6. Terry Walker: will testify that during his entire time at
7 MCC-TRU, he possessed multiple boxes and no corrections officer ever told
8 him that he was not allowed to possess them.

9 7. Defendant Sergeant Michael Silva (Defense witness)

10 8. Corrections Officer Karen St. Clair (Defense witness)

11 **B. Defendant's Witnesses**

12 1. Defendant Sergeant Michael Silva will testify to his
13 understanding of the rule concerning inmates' possession of cardboard boxes
14 at MCC-TRU, the enforcement of this rule in C-Unit at MCC-TRU, and his
15 interactions with the Plaintiff in this case.

16 2. Corrections Officer Karen St. Clair will testify to her
17 understanding of the rule concerning inmates' possession of cardboard boxes
18 at MCC-TRU, the enforcement of this rule in D-Unit at MCC-TRU, and her
19 interactions with the Plaintiff in this case while he was housed in D-Unit.

20 3. Correctional Program Manager Lisa Howe Anderson will
21 testify to her understanding of the rule concerning inmates' possession of
22 cardboard boxes at MCC-TRU, the enforcement of this rule while she was a
23 Correctional Unit Supervisor in C-Unit of MCC-TRU, and her investigation
24 into Plaintiff's grievance regarding his cardboard boxes.

25 4. Corrections Officer John Cook will testify to his
26 understanding of the rule concerning inmates' possession of cardboard boxes
27 at MCC-TRU, the enforcement of this rule in C-Unit at MCC-TRU, and his
28 involvement in the search of Plaintiff's cell on November 14, 2009.

1 **VI. LIST OF EXHIBITS**

2 **A. Admissibility Stipulated**

3 **Plaintiff's Exhibits**

- 4 1. Operational Memorandum MCC 440.085, Cell Décor
5 (4/17/09)
- 6 2. Plaintiff's Grievance No. 09-24540, Level I (11/15/09)
- 7 3. Kite from Plaintiff to Defendant Silva (11/19/09)
- 8 4. Affidavit of James Myron Woods (12/14/10)
- 9 5. Declaration of Scott R. Frakes (5/10/12)

10 **Defendant's Exhibits**

- 11 A-1. Search report of C/O Cook and C/O McConnell (11/14/09)
- 12 A-2. Plaintiff's Grievance No. 09-24540, Level II appeal.
- 13 A-3. Investigation memo of CUS Lisa Howe re: Plaintiff's
14 Grievance No. 09-24540.
- 15 A-4. Plaintiff Grievance No. 09-24540, Level III appeal.

16 **B. Authenticity Stipulated, Admissibility Disputed**

17 **Plaintiff's Exhibits**

- 18 6. Plaintiff's Health Status Report (1/26/09)
- 19 7. Cancelled bunk transfer (11/20/09)
- 20 8. Plaintiff's Grievance, No. 09-25266 (11/20/09)
- 21 9. Mandate, 9th Cir. No. 13-35255 (3/8/16)

22 **ACTION BY THE COURT**

23 (a) This case is scheduled for trial before a jury on October 3, 2016.

24 (b) Trial briefs shall be submitted to the Court on or before
25 September 28, 2016.

26 (c) Proposed voir dire questions, jury instructions, neutral statement
27 of the case, and trial exhibits shall be submitted to the Court on or before
28 September 28, 2016.

1 (d) The Court dismissed all claims and entered judgment for all
2 defendants on March 4, 2013. Plaintiff appealed, and the Court of Appeals for
3 the Ninth Circuit reversed the grant of summary judgment on Plaintiff's
4 equal protection and retaliation claims against Defendant Silva related to
5 cardboard boxes and remanded for further proceedings.

6 This order has been approved by the parties as evidenced by the
7 signatures of their counsel. This order shall control the subsequent course of
8 the action unless modified by a subsequent order. This order shall not be
9 amended except by order of the court pursuant to agreement of the parties or
10 to prevent manifest injustice

11 DATED this 3 day of October, 2016.

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13 RICARDO S. MARTINEZ
14 CHIEF UNITED STATES DISTRICT JUDGE

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19 For Plaintiff: s/ Kent F. Davis

20 Kent F. Davis
21 Attorney for Plaintiff

For Defendant: s/Katherine J. Faber

22 Katherine J. Faber, WSBA #49726
23 Douglas W. Carr, WSBA #17378
24 Attorneys for Defendant