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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 ERICH ALEXANDER, JOHNETTE  
ALEXANDER, and E.A., a minor child,

10 Plaintiffs,

11 v.

12 UNITED STATES OF AMERICA,

13 Defendant.

CASE NO. 3:14-cv-01774-RJB

ORDER ON PLAINTIFFS MOTION  
TO COMPEL PRODUCTION OF  
MEDICAL RECORDS AND FOR  
SANCTIONS

14 This matter comes before the Court on Plaintiffs' Motion to Compel Production of  
15 Medical Records and For Sanctions. Dkt. 18. The Court has considered Plaintiffs' motion, the  
16 responsive briefing, and the remainder of the file herein. Dkt. 19; 22.

17 Plaintiffs seek to compel the following:

18 “. . . reasonably useable, legible, and complete screen shots or an equivalent medical  
19 record for Johnette Alexander and E.A. that comprise all of the electronically stored  
20 information created and maintained by Madigan Army Medical Center (MAMC) during  
21 Mrs. Alexander's pregnancy, her labor and delivery, the neonatal phase and post-delivery  
22 records for E.A., and further that Defendant produce the names of both computer  
23 programs used to store medical records at MAMC in February, 2012.” Dkt. 18, at 1, 2.  
24 Plaintiffs also seek to compel a certification from Defendant that Defendant has made a  
reasonable inquiry into the existence of this discovery and can attest that its production is a true,  
correct, and complete copy of all available discovery. *Id.*, at 2. Plaintiffs also request sanctions

1 for Defendant to pay costs associated with re-deposing MAMC personnel and for Plaintiffs'  
2 experts to review the newly produced discovery and revise their opinions. *Id.* Finally, Plaintiffs  
3 request a 45 day extension of the expert witness disclosures. *Id.*

4 Courts are given broad discretion to control discovery under FRCP 37, including  
5 “particularly wide latitude . . . to issue sanctions under FRCP 37(c)(1)[.]” *Ollier v. Sweetwater*  
6 *Union High Sch. Dist.*, 768 F.3d 843, 859 (9th Cir. 2014) (quoting from *Yeti by Molly, Ltd. v.*  
7 *Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.2001)).

8 Under the circumstances, Defendant should be compelled to produce all discovery in a  
9 legible format. The difference in clarity between the originally-produced discovery and the  
10 reformatted discovery is obvious. *C.f.* Dkt. 18-1, at 16; *id.* at 30. It is perhaps for this reason that  
11 Defendant appropriately reproduced some, but not all, of the discovery. Dkt. 18-1, at 18.  
12 Defendant should provide discovery by either reformatting discovery or by providing screen  
13 shots; whatever the format, it must include all discovery and must be legible.

14 To maintain the trial date and related deadlines, Defendant should provide Plaintiff with  
15 the reformatted discovery in its entirety by Friday, December 4, 2015. To afford Plaintiff an  
16 opportunity to review the discovery and modify expert witness disclosures and reports as  
17 necessary, the Fed.R.Civ.P. 26(a)(2) deadline should be delayed from December 16, 2015 to  
18 January 15, 2016. All other dates and deadlines should remain. *See* Dkt. 16.

19 Defendant should make experts and MAMC personnel available for additional  
20 depositions but should not pay for costs arising from additional depositions or expert reports.  
21 The costs to Plaintiff are mostly speculative, because Plaintiff has not yet been able to compare  
22 two full sets of discovery, and the examples of “new and additional” discovery exaggerate  
23 distinctions. *See* Dkt. 18, at 6-8. Instead, it appears that Defendant has made ongoing efforts to  
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1 provide Plaintiff with reformatted discovery, but that doing so has proven difficult, for example,  
2 due to records systems constraints. *See, e.g.*, Dkt. 20-18; 20-24. However, Defendant should  
3 have made more of an effort to provide legible records in the first place, especially when a better  
4 format may have been available. *See* Dkt. 18-1, at 26. Once Defendant learned of the illegibility  
5 problem, Defendant should have provided legible versions of all ~~not some~~ discovery, without  
6 shifting the burden to Plaintiff to narrow discovery. Dkt. 18-1, at 28; 18-1 at 52, ¶5; 19, at 5.

7 Finally, Plaintiff requests that Defendant certify that discovery provided is accurate and  
8 complete, but it appears both parties are aware of their ongoing discovery duties, so the Court  
9 need not order a duty already observed by the parties. Dkt. 20, at 2; 22, at 4.

10 The parties are encouraged to focus on the substantive merits of the case.

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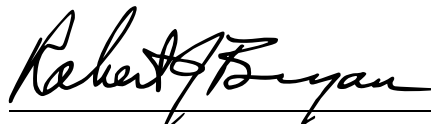
12 THEREFORE, Plaintiff's Motion to Compel Production of Medical Records and for  
13 Sanctions (Dkt. 18) is GRANTED IN PART and DENIED IN PART. The Motion is GRANTED  
14 as follows:

15 Defendant shall provide all discovery to Plaintiff in a legible format on or before  
16 December 4, 2015.

17 The Motion is otherwise DENIED.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
19 to any party appearing *pro se* at said party's last known address.

20 Dated this 24<sup>th</sup> day of November, 2015.

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22 ROBERT J. BRYAN  
23 United States District Judge  
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