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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. 3:16-cr-00051-BR

Plaintiff,

**JOINT STIPULATIONS AND
SUMMARY OF UNRESOLVED
ISSUES RE: DOCKET NOS. 141
AND 144**

v.

**AMMON BUNDY,
JON RITZHEIMER,
JOSEPH O'SHAUGHNESSY,
RYAN PAYNE,
RYAN BUNDY,
BRIAN CAVALIER,
SHAWNA COX,
PETER SANTILLI,
JASON PATRICK,
DUANE LEO EHMER,
DYLAN ANDERSON,
SEAN ANDERSON,
DAVID LEE FRY,
JEFF WAYNE BANTA,
SANDRA LYNN PFEIFER ANDERSON,
and KENNETH MEDENBACH,**

Defendants.

The defendants, through FPD Lisa Hay, and the government, through AUSA Geoffrey Barrow, submit the following stipulations and summary of unresolved issues in response to the Court's minute order of February 16, 2016 (Docket No. 157).

JOINT STIPULATIONS

Defense Access to Malheur Site: Defense counsel have requested authorization to review the Malheur site after it is secure and before the site is opened to the public. The government has agreed to provide this access in accordance with a protocol designed to ensure the integrity of the investigation. By Thursday, February 25th, the defense counsel will identify how many attorneys and investigators seek to view the site and will coordinate with the government on the timing of access.

Review of Physical Evidence: The government agrees to make all evidence seized in the investigation available at the FBI Field Office in Portland, or at other government facilities where the evidence may be stored, in accordance with standard FBI protocols. Defense counsel all agree that, once the timing and documentation of seizure of evidence is resolved, the parties have no objection to reviewing evidence at the FBI facility in Portland, and will work with the government on arranging reasonable access to any items that may be stored farther away.

UNRESOLVED ISSUES

Preservation of Evidence On Site (Dockets 140, 141, 155, 158).

Defense Position: The original defense request of February 11th was to view evidence on site, before it was moved. The government began processing the scene on February 13th and therefore this request may be rendered moot if the government has moved any evidence during its scene-processing. The defendants all join in a continued motion for an immediate stay of government processing of evidence and an order requiring video-recording and documentation of

all remaining evidence in place by a defense investigator, for the reasons stated in the filed pleadings and based on the cases below. The defendants seek immediate action by the Court to avoid destruction of evidence. Defense counsel Mike Arnold and Andrew Kohlmetz are prepared to argue on behalf of all defendants on these issues if the Court grants a hearing, and remaining counsel agree to this proposal.

Relevant Law: *United States v. Zaragoza-Moreira*, 780 F.3d 971 (9th Cir. 2015) (reversing conviction after AUSA failed to take action in response to specific defense request to preserve evidence and agent at the scene failed to prevent a government videotape from being overwritten despite awareness that the evidence was “potentially useful” for the defense); *California v. Trombetta*, 467 U.S. 479 (1984); *Arizona v. Youngblood*, 488 U.S. 51, 57–58 (1988).

Government Position: It is the government’s position that the uninterrupted and immediate processing and collection of evidence from the crime scene is essential to the integrity of the investigation. Delay and the presence of third parties during the processing of the crime scene are both unprecedented and would undermine the integrity of the evidence. The government intends to separately file a memorandum in support of its position and in opposition to defendants’ motions (Docket Nos. 140, 141, 155, and 158). AUSA Geoffrey Barrow is prepared to argue this position on behalf of the government.

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Other Unresolved Discovery Issues: The pleading at Docket No. 141 refers generally to other discovery matters. The parties are working to identify discovery issues that should be raised at the February 24th conference, but these issues necessarily will depend on the outcome of the continuing investigation and charging decisions.

Respectfully submitted on February 19, 2016.

/s/ Lisa Hay

Lisa Hay

Federal Public Defender