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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,
Plaintiff,

-VS-

JON RITZHEIMER,
Defendant

Case No. 3:16-CR-00051-02-BR

DECLARATION OF COUNSEL IN SUPPORT
OF JOINT DISCOVERY OBJECTION AND
REQUEST FOR DIRECT DISCOVERY FROM
THE GOVERNMENT

Pursuant to 28 U.S.C. §1746, Terri Wood hereby declares that:

I have specialized in criminal defense for more than 30 years and have represented defendants as a CJA Panel Attorney in many multi-defendant, complex federal cases; most recently, the Desert Sun mortgage fraud case and the KPI military contract fraud case. To efficiently and cost-effectively manage discovery in complex cases, I have for many years used the services of Richard Price as a litigation support services specialist. Best practices set forth by the Defender Services Office Training Division recommend counsel employ this type

of expert in these types of cases. See, <https://www.fd.org/navigation/litigation-support/subsections/what-is-litigation-support>, last accessed 3-29-2016.

Mr. Price has the computer hardware, software, and expert skills to manage electronic discovery in complex cases, including maintaining and searching databases for information as I request it, compiling summaries of records as well as providing me with individual documents. There is no other cost-effective way for me to access the information needed to defend Mr. Ritzheimer, given the projected volume of discovery in this case. Even if the CJA Panel Office obtains a third-party vendor to cloud host the global discovery and provide a searchable database, I would use Mr. Price to conduct the searches and compile discovery summaries and excerpts specific Mr. Ritzheimer's defense, rather than undertake that task myself at the much higher hourly rate for counsel.

Mr. Price is serving on the joint defense management subcommittee for defenders, and is familiar with cloud-based eDiscovery hosting vendors. According to Mr. Price, given most attorneys' office internet download speeds, it is likely that all defense counsel would eventually need a copy of discovery on external hard drives to be able to quickly access documents during trial preparation and for use during trial. An eDiscovery vendor would make the data available pretrial through a searchable database, which would be of assistance to attorneys without litigation support specialists or the computer-tech savvy to import the data to database software of their choosing. However, the fact that some defense counsel in this case may either need or prefer to rely on

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eDiscovery vendor services should not prevent other defense counsel from working with a local expert like Mr. Price.

This is particularly true given that no eDiscovery vendor has yet been selected or retained, and there is no current estimate of when, once retained, discovery would be made available through the vendor's website. Mr. Price also employs several different search engines to produce more accurate search results than what is offered by most eDiscovery vendors. Mr. Price's hourly rate for CJA cases is far below fair market value for the type of expert services he provides, compared to eDiscovery commercial vendors. I have confirmed this in past cases through consultation with Sean Broderick, National Litigation Support Team, Defender Services Office.

The Government has never before refused to provide discovery directly to individual defense counsel in any of the mega-discovery cases I have handled. With electronically stored information (hereafter ESI), I know that duplication of data can be done from the government's ESI system via automated transfer to an external hard drive. Although the time for digital duplication depends on the amount and rate of data transfer, that process does not require staff monitoring. According to Mr. Price, making a clone copy of a hard drive takes some time, but it doesn't require much time from the operator and it is 20-40 times faster than downloading from the cloud. It would take about 48-72 hours to copy 10 terabytes with a good USB-3 connection. The government would just plug in the cables and give the computer the copy instruction. It proceeds to copy until it is finished, unlike downloading from the cloud, which requires

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constant operator intervention. There are also hard drive cloning devices which the Government may have or could obtain for several hundred dollars, that would allow multiple copies to be made at the rate of about 3 hours per terabyte of discovery data.

The Government provided volumes 1 and 2 of discovery directly to individual defense counsel as well as to the CJA Panel Office. Using Mr. Price's services allowed me to quickly access necessary information in discovery to dispute the Government's claims regarding Mr. Ritzheimer's activities in connection with his release hearing. See Defendant's Reply to Government's Response in Opposition to Pretrial Release [#311]. Judge Jones ordered Mr. Ritzheimer's release on conditions. [#320, #347].

As of this time, the Panel office has only been able to provide limited materials from volumes 3 and 4 of the global discovery to individual defense counsel. Without direct access to discovery and Mr. Price's assistance, I cannot be well prepared in a timely manner to address issues raised by the Court regarding case management, or to prepare and file necessary motions, or to prepare Mr. Ritzheimer's case for trial.

If the Government is permitted to provide discovery only to the CJA Panel

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

IN RE: CRIMINAL DISCOVERY

STANDING ORDER NO. 2015-5

Unless otherwise ordered by the Court:

- a. **Rule 16(a)(1), (b) & (c).** Upon request by the defendant, the government must provide all discovery required by Fed.R.Crim.P 16 (a)(1)(A), (B), (C), (D), and (E), no later than 14 days after arraignment. The government must provide all discovery required by Fed.R.Crim.P. 16 (a)(1)(F) and (G) as soon as reasonably practicable, but in no event shall such production occur later than fourteen days before trial. The defendant must provide all discovery as required by Fed.R.Crim.P. 16 (b)(1)(A) within 21 days of the government's request, and all discovery required by 16(b)(1)(B) and (C) no later than 14 days before trial. All parties must comply with Fed.R.Crim.P. 16(c) for discovery that comes into their possession after the deadline set forth above. The discovery schedule may be modified based on agreement of the parties or by order of the court.
- b. **Exculpatory Information.** The government must timely disclose all exculpatory information that is in its possession or known to the prosecution team. Exculpatory information is all evidence or information that tends to negate defendant's guilt or mitigate the offense, or that is favorable to defendant because it:
 - Casts doubt on any essential element of any count in the indictment or information;
 - Casts doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief;
 - Casts doubt on the credibility or accuracy of any evidence or testimony that the government anticipates offering in its case-in-chief; or
 - Supports an argument for lesser punishment at sentencing.
- c. **Rule 16(a)(2).** The government's obligation to disclose exculpatory information extends to information covered under Fed. R. Crim. P. 16(a)(2) regardless of whether that information is admissible.
- d. **Giglio Material.** The government must timely disclose any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective witnesses. *United States v. Giglio*, 405 U.S. 150 (1972).

- e. **Privileged Material.** If the government uses a filter team to segregate potentially privileged material from the prosecution team, it must disclose this to defendant in a timely manner to allow defendant the opportunity to request a court hearing on the adequacy of the procedure.
- f. **Electronic Surveillance Information.** If the defendant is an aggrieved person as defined in 18 U.S.C. § 2510(11) or as “aggrieved” is used in 18 U.S.C. § 3504, the government must so advise the defendant and set forth the detailed circumstances thereof, unless disclosure is prohibited by law, or the information is classified, or protected by court order.

IT IS SO ORDERED.

Done on behalf of the Court this 16th day of March, 2015.



ANN AIKEN

Chief United States District Judge