

JUDGE RONALD B. LEIGHTON  
MAGISTRATE JUDGE DAVID W. CHRISTEL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DONALD BANGO and SCOTT  
BAILEY, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

PIERCE COUNTY, WASHINGTON,  
PIERCE COUNTY SHERIFF'S  
DEPARTMENT,

Defendants.

No. 3:17-cv-06002-RBL-DWC

PLAINTIFFS' MOTION TO COMPEL  
DISCOVERY AND FOR ORDER OF  
PROTECTION

NOTE ON MOTION CALENDAR:  
JUNE 29, 2018

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
**I. INTRODUCTION**

Plaintiffs Donald Bango (“Bango”) and Scott Bailey (“Bailey”) (collectively “Plaintiffs”) propounded three discovery requests on Defendants Pierce County and Pierce County Sheriff’s Department (collectively “Defendants”) after the parties stipulated to early discovery. Instead of providing complete and correct answers and responses as required by Fed. R. Civ. P. 26(g), Defendants provided untimely and incomplete discovery answers and responses that rely on pro forma blanket objections. Further, Defendants argued that discovery is limited to class certification, and unilaterally limited Plaintiffs’ discovery on this basis, despite neither requesting nor receiving an order to bifurcate discovery or an order of protection from this Court. Plaintiffs now move to compel Defendants to produce discovery and request fees and cost pursuant to Fed. R. Civ. P. 26 & 37.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
**II. FACTS**

**A. RELEVANT BACKGROUND FACTS**

As part of the initial investigation into this matter, Plaintiffs’ counsel filed several Public Records Act (“PRA”) requests pursuant to Wash. Rev. Code § 42.56. Plaintiffs’ counsel received responsive documents from Defendant Pierce County Sheriff’s Department, including incident and use of force reports, suicide reports, and “classification” reports, which document decisions about where inmates are detained in the Pierce County Jail. *See* Declaration of Jessica Wolfe at ¶¶ 2–4. Defendant Pierce County Sheriff’s Department redacted the names of inmates and other identifying information to comply with RCW 70.48.100(2), which mandates that “the records of a person confined in jail shall be held in confidence.” *See id.* at ¶ 4. Defendants Pierce County Sheriff’s Office did release unredacted names of people who had died in the jail as well as the cause of death. *See id.*

22  
23  
**B. PROCEDURAL BACKGROUND**

The public records revealed a pattern and practice of mistreating incarcerated people with mental illness and Plaintiffs filed a class-action complaint on December 4, 2017. *See* Dkt. #1.

1 Shortly after, Plaintiffs filed a motion for class certification and noted it for January 5, 2018. *See*  
2 Dkt. #6. At Defendants' request, on December 21, 2017, Plaintiffs re-noted the motion to January  
3 26, 2018. Dkt. #18; Declaration of Salvador A. Mungia at ¶¶ 4–5. On January 4, 2018,  
4 Defendants filed a motion to continue the class certification motion, citing the need to conduct  
5 discovery. *See* Dkt. #22. Again at Defendants' request, on January 11, 2018, Plaintiffs stipulated  
6 to re-noting the class certification motion to March 2, 2018. *See* Dkt. #26; Declaration of  
7 Salvador A. Mungia at ¶ 6. Again at Defendants' request, the parties stipulated on February 27,  
8 2018 to re-noting the class certification motion to June 8, 2018. *See* Dkt. #33; Declaration of  
9 Salvador A. Mungia at ¶¶ 13–14. Plaintiffs subsequently decided to amend the complaint. So as  
10 not to prejudice Defendants, Plaintiffs re-noted the class certification motion to August 17, 2018.  
*See* Dkt. #49.

### 11 C. DISCOVERY

12 At Defendants' request, Plaintiffs agreed on January 10, 2018 to early discovery prior to a  
13 Fed. R. Civ. P. 26(f) conference. *See* Declaration of Salvador A. Mungia at ¶ 10; *see also* Fed. R.  
14 Civ. P. 26(d)(1) (“A party may not seek discovery from any source before the parties have  
15 conferred as required by Rule 26(f), except . . . by stipulation.”). Plaintiffs' understanding was  
16 that the scope of discovery was not limited in any way. *See* Declaration of Salvador A. Mungia at ¶ 15. On  
17 January 19, 2018, Defendants propounded their only set of discovery to date, which Plaintiffs  
18 timely responded to on February 20, 2018. *See* Declaration of Jessica Wolfe at ¶ 6. Defendants  
19 deposed Plaintiffs Donald Bango on May 9, 2018 and Scott Bailey on May 22, 2018. *See*  
20 Declaration of Salvador A. Mungia at ¶¶ 9–10.

21 Plaintiffs propounded three sets of discovery, including interrogatories and requests for  
22 admission, on February 9, 2018 (“First Set”), March 9, 2018 (“Second Set”), and April 19, 2018  
23 (“Third Set”). *See* Declaration of Jessica Wolfe at ¶¶ 6–8. These discovery requests sought  
information related to Defendants' policies and practices of the treatment of individuals with  
mental illness. Additionally, many of Plaintiffs' requests sought the types of documents

1 Defendants previously provided as public records. Following receipt of Plaintiffs' First Set, it  
2 became clear the parties did not agree on the scope of discovery. Counsel conferred over the  
3 phone on February 21, 2018 and April 23, 2018, but were unable to come to any resolution. *See*  
4 Declaration of Salvador Mungia at ¶¶ 11–12, 15.

5 **1. Defendants Untimely Answers and Responses, or Lack Thereof**

6 Defendants failed to timely respond to the first two sets of discovery propounded by  
7 Plaintiffs and did so without leave of court or stipulation of the parties. Defendants did not  
8 produce complete answers and response to Plaintiffs' First Set of Discovery until April 27, 2018,  
9 approximately seven weeks past the 30-day deadline. *See* Fed. R. Civ. P. 33(b), 34(b); *see*  
10 Declaration of Jessica Wolfe at ¶ 7. Defendants did not respond to Plaintiffs' Second Set of  
11 Discovery until May 30, 2018, nearly two months past the 30-day deadline. *See id.* at ¶ 8.  
12 Defendants did timely respond to Plaintiffs' Third Set of Discovery. *See id.* at ¶ 9. In addition to  
13 being late, Defendants' responses objected to producing any substantive discovery. Specifically,  
14 Defendants objected to the following requests for production and interrogatories that are the  
15 subject of this motion:

16 **REQUEST FOR PRODUCTION NO. 8:** Provide a copy of all use of force reports  
17 from December 1, 2014 to the present.

18 **REQUEST FOR PRODUCTION NO. 9:** Provide a copy of all inmate incidence  
19 reports from December 1, 2014 to the present.

20 **REQUEST FOR PRODUCTION NO. 13:** Provide a copy of all documents within  
21 your possession, control or custody arising out of an inmate's suicide, attempted  
22 suicide, or admitted thoughts of suicide, that occurred from December 1, 2014 to the  
23 present.

**REQUEST FOR PRODUCTION NO. 14:** Provide a copy of all documents within  
your possession, control or custody arising out of an inmate's death that was not a  
suicide that occurred from December 1, 2014 to the present.

**REQUEST FOR PRODUCTION NO. 15:** Provide a copy of all documents arising out of  
any complaints you received from December 1, 2014 to the present regarding the following  
subjects:

- a. Placing or keeping an inmate in isolation;

- b. Use of force against an inmate;
- c. Failing to provide medication for a mental illness
- d. Conduct of a mental healthcare professional in their treatment of, or failing to treat, an inmate;
- e. Failing to conduct mental health screening or failing to conduct an adequate mental health screening;
- f. Failing to provide treatment, or inadequate treatment, for an inmate's mental illness;
- g. Failing to provide medications for mental illness for an inmate upon release from the jail

**INTERROGATORY NO. 4:** For each year during the "requisite timeframe" as defined herein, identify the number of "putative class members" who have been subjected to the each of the following:

- a. Eyebolts floor restraints;
- b. Eyebolts wall restraints;
- c. Restraint chairs;
- d. Handcuffs when left alone in a cell;
- e. Lateral vascular neck restraint;
- f. Pepper or other incapacitating spray;
- g. Release without psychiatric medication;
- h. Release without a written prescription for psychiatric medication; and
- i. Solitary confinement.

**REQUEST FOR PRODUCTION NO. 20:** Produce any and all documents in any way relating to the Interrogatory [No. 4] above.

**INTERROGATORY NO. 5:** For each year during the "requisite timeframe" as defined herein, identify the number of kites filed by "putative class members" regarding the following:

- a. Psychiatric medications;
- b. Mental health treatment;
- c. Mental health services;
- d. Medication upon release;
- e. Excessive or use of force;
- f. Solitary confinement;
- g. Release without psychiatric medication; and
- h. Release without prescription for psychiatric medication.

**REQUEST FOR PRODUCTION NO. 21:** Produce any and all documents in any way relating to the Interrogatory [No. 5] above.

**INTERROGATORY NO. 6:** For each year during the "requisite timeframe" as defined herein, identify the number of grievances filed by "putative class members" regarding the following:

- 1 a. Psychiatric medications;
- 2 b. Mental health treatment;
- 3 c. Mental health services;
- 4 d. Medication upon release;
- 5 e. Excessive or use force;
- 6 f. Solitary confinement;
- 7 g. Release without psychiatric medication; and
- 8 h. Release without prescription for psychiatric medication.

9 **REQUEST FOR PRODUCTION NO. 22:** Produce any and all documents in any way  
10 relating to the Interrogatory [No. 6] above.

11 **INTERROGATORY NO. 7:** For each year during the “requisite timeframe” as  
12 defined therein [four (4) years preceding the filing of the Complaint], identify each  
13 and every individual and/or entity that has provided mental health services or  
14 treatment to “putative class members” at the Pierce County Jail.

15 **REQUEST FOR PRODUCTION NO. 23:** Produce any and all documents in any  
16 way relating to the Interrogatory [No. 7] above.

17 **REQUEST FOR PRODUCTION NO. 25:** Provide a copy of all communications,  
18 including but not limited to email, sent or received by you during the requisite  
19 timeframe that include the following terms:

- 20 a. Mental health
- 21 b. Mental illness
- 22 c. Mental Health Provider (MHP)
- 23 d. Mental Health Evaluator (MHE)
- 24 e. Medication
- 25 f. Counseling
- 26 g. Use of Force
- 27 h. Eyebolts
- 28 i. Restraint Chair
- 29 j. Oleoresin Capsicum Spray (OC Spray)
- 30 k. Lateral Vascular Neck Restraints (LVNR)
- 31 l. Crisis cell
- 32 m. Suicide watch
- 33 n. Bango
- 34 o. Bailey

35 **REQUEST FOR PRODUCTION NO. 26:** Provide a copy of all classification  
36 decision documentation pertaining to inmates with mental illness or suspected mental  
37 illness, including primary, referred, and routine classifications, from January 1 to  
38 January 31, 2018. This includes, but is not limited to, documentation of mental health  
39 staff’s input into classification decisions.

1 In response to the discovery requests, Defendants made boilerplate blanket objections, asserting  
2 that each request was “overly broad and unduly burdensome” and outside the scope of class  
3 certification. *See* Declaration of Jessica Wolfe, Exhibits 7–12. For RFPs 8, 9, 13, 20, 21, 22, and  
4 26 and Interrogatories 4, 5, and 6, Defendants asserted the requests called for “private inmate  
5 information” under Wash. Rev. Code § 70.48.100 (2017). *See id.*

## 6 **2. Discovery Conferences**

7 Plaintiffs sought a discovery conference and the parties conferred by phone on May 24,  
8 2018 and June 5, 2018. Declaration of Jessica Wolfe at ¶ 10, 12. During the May 24 discovery  
9 conference, Plaintiffs’ counsel explained that Defendants’ unwillingness to produce any  
10 responsive information in response to RFP 8, 9, 13, 14, 15, 25, and 26 was perplexing because  
11 they provided the same information under the PRA. Plaintiffs also asked if Defendants would  
12 stipulate that prior public records disclosed were responsive to certain discovery requests. During  
13 the June 5 call, Defendants’ counsel admitted that he had reviewed the public records produced  
14 and that at least some of the public records documents were responsive to Plaintiffs’ discovery  
15 requests, but claimed that it would be too much of a burden to identify all of the responsive  
16 documents without specification of the purported burden. *See id.* Defendants remained  
17 uncompromising in their position that discovery was limited to class certification, and the parties  
18 were unable to come to a resolution. *See id.*

## 19 **3. Meet and Confer Certification**

20 Plaintiffs have in good faith conferred with Defendants to resolve this dispute without  
21 court action. *See* Local Civ. R. 37(a). Plaintiffs now seek intervention of this Court to compel  
22 Defendants to produce outstanding answers and responses to Plaintiffs’ discovery.

## 23 **III. ARGUMENT**

“Unless otherwise limited by a court order, the scope of discovery is as follows: Parties  
may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or  
defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). The broad scope of

1 discovery is to permit “a fair contest with the basic issues and facts disclosed to the fullest  
2 practicable extent possible.” *United States v. Procter & Gamble*, 356 U.S. 677, 683 (1958); *see*  
3 *also Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (“This broad right of discovery is based  
4 on the general principle that litigants have a right to every man’s evidence . . . and that wide  
5 access to relevant facts serves the integrity and fairness of the judicial process by promoting the  
6 search for truth.”) (internal citations omitted). The party who opposes discovery “carry a heavy  
7 burden of showing why discovery was denied.” *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429  
8 (9th Cir. 1975); *see also Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal. 1998)  
9 (“The party who resists discovery has the burden to show that discovery should not be allowed,  
and has the burden of clarifying, explaining, and supporting its objections.”)

10 The grounds for objecting to interrogatories and requests for production must be stated  
11 “with specificity.” *See* Fed. R. Civ. Pro. 33(b)(4); 34(b)(2)(B). “Boilerplate, generalized  
12 objections are inadequate and tantamount to making no objection at all.” *Prado-Guajardo v.*  
13 *Perez*, No. 2:16-cv-00546-GMN-VCF, 2017 WL 3130420 at \*2 (D. Nev. July 24, 2017) (slip  
14 copy) (citing *Burlington N. & Santa Fe Ry. Co. v. United States Dist. Court*, 408 F.3d 1142, 1147  
15 (9th Cir. 2005)). For the discovery requests at issue here, Defendants have lodged blanket  
16 objections on three grounds: (1) that the requests are overly broad or unduly burdensome, (2) that  
17 the requests are beyond the scope of the class certification question, and (3) for RFPs 8, 9, 13, 20,  
18 21, 22, and 26, that the requests called for “private inmate information” protected by under Wash.  
Rev. Code § 70.48.100. This motion will address each objection in turn.

#### 19 **A. Plaintiffs’ Requests are Not Overly Broad or Unduly Burdensome**

20 A party “resisting discovery cannot simply invoke generalized objections; rather, with  
21 respect to each of the propounding party’s discovery requests, the responding party must show  
22 specifically how, despite the broad and liberal construction afforded the federal discovery rules,  
23 each [request] is . . . overly broad, burdensome or oppressive by submitting affidavits or offering  
evidence revealing the nature of the burden.” *See MarketLinx, Inc. v. Industry Access Inc.*, No.



1 CV 12-3496 CBM (FMOx), 2013 WL 12133884 at \*3 (C.D. Cal. Jan. 2, 2013) (quoting *Roesberg*  
2 *v. Johns-Manville Corp.*, 85 F.R.D. 292, 296–97 (E.D. Pa. 1980)). Defendants have not made this  
3 showing. In fact, many of the discovery requests at issue are of the same type and nature  
4 Defendants have already produced as public records. For example, in response to a February 8,  
5 2017 PRA request for use of force and incident reports, Defendants produced three months’ worth  
6 of redacted reports by April 7, 2017. Similarly, in response to a June 6, 2017 PRA request for  
7 classification reports, Defendants produced one month of redacted classification reports by  
8 August 17, 2017. *See* Declaration of Jessica Wolfe at ¶ 3, 5. Defendants cannot make a showing  
9 that producing the same type of records now is too heavy a burden.

## 10 **B. The Scope of Discovery is Broad and is Not Limited to Class Certification**

### 11 **1. The Scope of Discovery Can Only Be Limited by Court Order**

12 Under the Federal Rules of Civil Procedure, discovery can only be limited by court order.  
13 Fed. R. Civ. P. 26(b)(1). Absent a court order, discovery is permitted into any “nonprivileged  
14 matter that is relevant to any party’s claim or defense and proportional to the needs of the case.”  
15 Fed. R. Civ. P. 26(b)(1). Defendants have consistently objected to Plaintiffs’ discovery requests  
16 as beyond the scope of class certification. *See* Jessica Wolfe Declaration, Exhibit 7-12. But  
17 Defendants have neither moved nor obtained an order from this Court to bifurcate discovery  
18 between class certification issues and the merits. *See* Dkt. Instead, Defendants have unilaterally  
19 refused to answer and respond to certain discovery requests based on scope. “[A]bsent an order  
20 from the District Judge which bifurcates (or approves bifurcation) discovery into phases . . .  
21 defendant[s] must respond fully and completely to all discovery requests.” *In re Toys R Us-*  
22 *Delaware, Inc. Fair and Accurate Credit Transactions Act (FACTA) Litigation*, 2010 WL  
23 4942645 at \*5 (C.D. Cal. July 29, 2010). Defendants’ refusal to provide substantive discovery  
responses is counter to the purpose of discovery, to permit a fair contest by disclosing the basic  
issues and facts of a case to the fullest practicable extent. *See Procter & Gamble*, 356 U.S. at  
682.

## 2. Bifurcation of Discovery is Inappropriate in this Case

Defendants' rely only on outdated Ninth Circuit and out-of-circuit caselaw to support their assertion that bifurcation of discovery is appropriate. In fact, they are unable to point to a single case post-2010 for their striking proposition that bifurcation is appropriate, much less a single case for the proposition that Defendants may unilaterally bifurcate discovery. *See* Declaration of Jessica Wolfe, Exhibits 10–12 (citing to cases from 1978 to 2010). In fact, such bifurcation is frowned upon where, as here, it would “create[] unnecessary gaps in the evidence as a defendant has a strong incentive to withhold evidence.” *Ahmed v. HSBC Bank USA, Nat’l Ass’n*, No. ED CV 15-2057 FMO (SPx), 2018 WL 501413 at \*3 (C.D. Cal. Jan. 1, 2018); *see also Tyus v. Wendy’s of Las Vegas, Inc.*, No. 214-cv-00729-GMN-VCF, 2017 WL 3026403 at \*5 (D. Nev. July 17, 2017) (“[D]efendants frequently have withheld exactly the information needed to prove plaintiffs’ case because it is common in putative class actions for defendants to seek ‘bifurcated discovery’ between class certification and merits issues, and this bifurcation results in a limited record at the class certification stage.”).

## 3. Plaintiffs’ Requests Are Relevant Even if Discovery were Bifurcated

Class certification requires satisfying “the four threshold requirements” of Fed. R. Civ. P. 23(a): “numerosity, commonality, typicality, and adequacy of representation.” *Levy v. Medline Indus.*, 716 F.3d 510, 512 (9th Cir. 2013). The Ninth Circuit has recognized that “the commonality requirement can be satisfied by proof of the existence of systemic policies and practices that allegedly expose inmates to a substantial risk of harm.” *Parsons v. Ryan*, 754 F.3d 657, 681 (9th Cir. 2014). These systemic policies and practices are “the ‘glue’” that holds together a putative class because “either each of the policies and practices is unlawful as to every [class member] or it is not.” *Id.* at 678. Here, Plaintiffs have sought discovery related to Defendants’ policies and practices that are at issue in this lawsuit, such as their policies and practices concerning uses of force and restraints (RFPs 8, 9, 20, 21, 22, 25 and interrogatories 4, 5, 6), access to mental health treatment (RFPs 13, 20, 21, 22, 23, 25 and interrogatories 4, 5, 6),

1 and solitary confinement (RFPs 20, 21, 22, 23, 25, 26 and interrogatories 4, 5, 6). Plaintiffs are  
2 entitled to the requested discovery regardless of whether discovery is bifurcated.

3 **C. Defendants Can Comply with Wash. Rev. Code § 70.48.100 by Redacting**  
4 **Production; In the Alternative, this Court May Enter an Appropriate Order for**  
5 **Disclosure of Inmate Records**

6 In response to requests for use of force reports (RFP 8), incident reports (RFP 9), suicide  
7 reports (RFP 13), other death reports (RFP 14), complaints (RFP 15), statistics on putative class  
8 members (interrogatory 4 and RCP 20), kites (interrogatory 5 and RFP 21), grievances  
9 (interrogatory 6 and RFP 22) and classification reports (RFP 26), Defendants additionally  
10 objected on the basis that the requests “call[] for private inmate information” protected by under  
11 Wash. Rev. Code § 70.48.100. Under this statute, “the records of a person confined in jail shall  
12 be held in confidence.” This qualifies as an exemption to Washington State’s Public Records Act,  
13 under Wash. Rev. Code § 42.56. However, the PRA also mandates that “[t]he exemptions of this  
14 chapter are inapplicable to the extent that information, the disclosure of which would violate  
15 personal privacy or vital government interests, can be deleted from the specific record sought.”  
16 Wash. Rev. Code § 42.56.210(1). Accordingly, in making public records disclosures, Defendant  
17 Pierce County Sheriff’s Office previously released records of incident and use of force reports,  
18 suicide reports, and classification reports by redacting the names and other identifying  
19 information of inmates—and indicated that the redacted disclosures were in part to comply with  
20 Wash. Rev. Code § 70.48.100. *See* Declaration of Jessica Wolfe at ¶¶ 3, 5. Additionally,  
21 Defendants Pierce County Sheriff’s Office released unredacted information concerning the names  
22 of individuals who had died in the jail as well as the cause of death. *See id.* at ¶ 4. Defendants  
23 have essentially conceded that many of the same type of records Plaintiffs now seek through  
discovery are public records and can be disclosed in compliance with the statute through  
redactions.

Alternatively, under Wash. Rev. Code § 70.48.100, inmate records may be disclosed  
“[f]or use in court proceedings upon the [written order of the court in which the proceedings are

1 conducted.” *See* Wash. Rev. Code § 70.48.100(c). In the event that this Court finds that  
2 redaction is insufficient to comply with Wash. Rev. Code § 70.48.100, Plaintiffs respectfully  
3 request that the Court enter the proposed order filed simultaneously with this motion. The  
4 requested records are relevant to Plaintiffs’ claims and proportional to the needs of the case, and  
5 squarely fit within the confines of the scope of discovery. *See* Fed. R. Civ. P. 26(b)(1).

6 **D. The Court Should Enter an Order to Protect Sensitive Mental Health Records**

7 Since as early as March 20, 2018, Plaintiffs have been attempting in good faith to  
8 negotiate the terms of a stipulated protective order with Defendants. *See* Exhibit 1 to Declaration  
9 of Antoinette M. Davis. The protective order is intended to proactively ensure a process for the  
10 handling and filing of sensitive and private information without discovery disputes, including the  
11 very dispute now before this Court. *Id.* Plaintiffs sought the stipulation on behalf of themselves  
12 and putative class members in order to avoid embarrassment and harassment by the disclosure of  
13 sensitive, confidential mental health related information. *Id.* The proposed stipulated protective  
14 order not only required redaction of sensitive records, but the sealing of records upon filing where  
15 appropriate. *Id.* Immediately upon receipt of the proposed stipulated protective order, Defendants  
16 objected and insisted upon using the model stipulated protective order – to which Plaintiffs  
17 conceded and did not object. *See* Exhibits 2–4 to Declaration of Antoinette M. Davis. Despite  
18 Plaintiffs’ willingness to adopt the protective order, with minor agreed upon revisions, as late as  
19 June 11, 2018, Defendants have yet to stipulate.<sup>1</sup> *See* Exhibit 5-6 to Declaration of Antoinette M.  
20 Davis. As a result, Plaintiffs now seek an Order of Protection from this Court.

21 “A party . . . may move for a protective order in the court where the action is pending.”  
22 Fed. R. Civ. P. 26(c). The court may, for good cause, issue an order to protect a party or person  
23 from annoyance, embarrassment, or oppression. *Id.* Here, Plaintiffs seek a protective order that  
will allow discovery of and dictate the use and handling of sensitive mental health and Pierce

---

<sup>1</sup> In an email of June 11, 2018, Defendants propose striking a term proposed by them.

1 County Jail records related not only to Plaintiffs but the putative class members, as well. This  
2 request comports with the standards under the Washington Health Care Disclosure Act, RCW  
3 70.02, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 C.F.R. §  
4 164.512(e):

5 HIPAA's privacy provisions allow for disclosure of medical information in judicial  
6 proceedings; however, the Act places certain requirements on both the medical  
7 professional providing the information and the party seeking it. See 45 C.F.R. §  
8 164.512(e) (2004). Under HIPAA, disclosure is permitted pursuant to a court order,  
9 subpoena, or discovery request when the healthcare provider "receives satisfactory  
10 assurance from the party seeking the information that reasonable efforts have been  
11 made by such party to secure a qualified protective order." 45 C.F.R. §  
12 164.512(1)(e)(ii)(b). The protective order must prohibit using or disclosing the  
13 protected health information for any purpose other than the litigation, and require  
14 the return to the physician or destruction of the protected health information at the  
15 end of the litigation or proceeding. 45 C.F.R. § 164.512(1)(e)(v). Neither the HCDA  
16 or HIPAA prohibit the discovery of health care information. Both authorize  
17 disclosure through judicial process.

18 *See Lloyd v. Valley Forge Life Ins. Co.*, No. C06-5325 FDB, 2007 WL 906150 at \*3-4 (W.D.  
19 Wash. Mar. 23, 2007). Plaintiffs agree with the analysis and process articulated by this Court in  
20 *Lloyd v. Valley Forge*, and respectfully requests this Court enter a protective order that will  
21 prohibit using or disclosing the protective health information for any purposes other than this  
22 litigation and require destruction or return upon conclusion of the litigation.

#### 23 IV. CONCLUSION

WHEREFORE, Plaintiffs respectfully request that the Court compel Defendants to produce  
discovery within two weeks in response to Plaintiffs' RFPs 8, 9, 13, 14, 15, 20, 21, 22 23, and 25,  
and interrogatory 4, 5, 6, and 7, and further requests that the Court enter the protective order filed  
simultaneously with this motion. Finally, Plaintiffs requests the Court assess fees and costs for  
bringing this motion against Defendants consistent with Fed. R. Civ. P. 26 & 37.

DATED this 14th day of June, 2018.

Respectfully submitted,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

By:

/s/Antoinette M. Davis

Antoinette M. Davis, WSBA No. 29821  
Jessica Wolfe, WSBA No. 52068  
tdavis@aclu-wa.org  
jwolfe@aclu-wa.org  
AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
Telephone: (206) 624-2184

/s/Salvador Mungia

Salvador Mungia, WSBA No. 14807  
SMungia@gth-law.com  
Janelle Chase Fazio, WSBA No. 51254  
jchasefazio@gth-law.com  
GORDON THOMAS HONEYWELL  
1201 Pacific Ave, #2100  
Tacoma, WA 98492  
Telephone: (206) 620-6500

*Attorneys for Plaintiffs.*

CERTIFICATE OF SERVICE

I hereby certify that on June 14th, 2018 I electronically filed the foregoing *Motion to Compel and for Protective Order* and the attached *Proposed Protective Order* and *Proposed Order to Compel* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney of record:

By /s/ Michelle Luna-Green  
Michelle Luna-Green, WSBA #27088  
Deputy Prosecuting Attorney  
Pierce County Prosecuting Attorney's  
Office  
955 Tacoma Avenue South, Suite 301  
Tacoma, WA 98402-2160  
Phone: 253-798-6380  
Fax: 253-798-6713  
Email: mluna@co.pierce.wa.us  
Attorneys for Defendants

By /s/ Frank Cornelius  
Frank Cornelius, WSBA #29590  
Deputy Prosecuting Attorney  
Pierce County Prosecuting Attorney's  
Office  
955 Tacoma Avenue South, Suite 301  
Tacoma, WA 98402-2160  
Phone: 253-798-6514  
Fax: 253-798-6713  
E-mail: fcornel@co.pierce.wa.us

DATED THIS 14<sup>th</sup> day of June, 2018 at Seattle, Washington

By: /s/ Kaya McRuer  
Kaya McRuer, Legal Assistant  
American Civil Liberties Union  
of Washington Foundation  
901 5<sup>th</sup> Ave, Suite 630  
Seattle, WA 98164  
(206)624-2184  
kmcruer@aclu-wa.org