CLERKS OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED
September, 30 2026
LAURA A. AUSTIN, CLERK
BY: s/ FELICIA CLARK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

WILLIAM THORPE, *et al.*,

***Plaintiffs*,**

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*,

***Defendants*.**

Civil Case No. 2:20-cv-00007-JPJ-PMS

JOINT PRETRIAL ORDER

Plaintiffs and Defendants, by their undersigned counsel, collectively submit this proposed Joint Pretrial Order. The parties attempted in good faith to reach consensus on the following issues. To the extent the parties have differing positions, each party's respective proposal is explained for the Court's consideration. A bench trial has been scheduled to commence before the Honorable James P. Jones on October 5, 2026. The Court has issued a Trial Management Order (ECF No. 575) as modified by ECF No. 589, as well as an Order re Proposed Pretrial Order (ECF No. 635), the contents of which are incorporated by reference.

I. AGREEMENTS REGARDING WITNESSES

A. Presentation of Live Witnesses

1. Each party reserves the right to amend or supplement its trial witness list as part of the meet and confer process leading up to trial, in response to the other party's pretrial disclosures and objections, in response to any pretrial rulings or orders from the Court, and in the event any of the individuals listed in a party's list becomes unable to attend the trial or otherwise unable to provide testimony. A party shall promptly notify the opposing party of any change to the identity of witnesses, the anticipated order of witnesses, or the mode of witness presentation (i.e., live or by deposition). Absent good cause, which shall include the need to call fact witnesses to lay foundation for the admissibility of documents cited in expert reports to which a party objects, no additional witnesses will be added to each party's witness lists after September 23, 2026. The mode of witness presentation (live or by designation) and the anticipated order of witnesses shall be governed in accordance with the provisions of this Order.

2. Except as permitted by express permission of the Court, once tendered for cross-examination no witness shall communicate with anyone else regarding the substance of the witness's testimony until such time as cross-examination is concluded. If the witness will be called

to the stand to testify at a later time during the trial, once the witness has completed his or her cross-examination, that witness can speak with counsel before taking the stand to testify at a later time during the trial. A party's cross-examination of a witness called by the opposing party shall not preclude that party from calling the witness in its own case-in-chief, subject to the Federal Rules of Evidence and the Court's authority to preclude cumulative or unduly repetitive testimony.

3. In the interest of efficiency, and consistent with Federal Rules of Evidence 611, the parties agree that leading questions will be allowed when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

B. Witness Testimony Exchanges at Trial

4. Defendants' counsel will accept trial subpoenas for Defendants and non-Defendant witnesses (other than Plaintiffs, class members or Plaintiffs' experts) with the exception of Larry Collins. Any trial subpoena shall make reasonable efforts to identify the specific date or dates on which the witness is required to appear or be available.

5. The parties shall provide written notice to each other of the witnesses they intend to call live at trial, and the order in which the witnesses will testify in accordance with the below exchange schedule:

Event	Day/Time
Disclosure of Witnesses and Order	6:00 p.m. three (3) calendar days before witness will be called
Objections to Witnesses	6:00 p.m. two (2) calendar day before witness will be called (i.e., the day after the witness is disclosed)
Parties to Meet and Confer Regarding Objections	8:00 p.m. two (2) calendar day before witness will be called (i.e., the day after the witness is disclosed)
Parties to Inform the Court of Any Unresolved Disputes	Disputes will be presented to the Court pursuant at the beginning of the next trial day

C. Presentation of Witnesses by Deposition

6. Pursuant to the Court's Order of March 4, 2026 (D.I. 524), deposition testimony that is brief and uncontested may be submitted without being read or otherwise played into the record.

7. Prior to trial, the parties have exchanged the maximum universe of deposition designations, counter-designations, and objections to admission of deposition testimony, except when a fact witness identified in their witness lists as testifying live at trial becomes unavailable under Fed. R. Evid. 804, the parties may designate specific pages and lines of transcript that they intend to read or play in lieu of the witness's appearance upon reasonable notice, and after establishing the unavailability of the witness to the Court's satisfaction to the extent another party challenges such claim. Further, the parties may supplement their respective deposition designations, counter-designations, and objections to admission of deposition testimony by agreement between the parties, or as otherwise permitted by the Court upon a showing of good cause. If applicable, a party's designation of a page and line from a particular deposition transcript shall be automatically deemed to include any errata indicated for that page and line in the attached errata sheets.

8. The parties agree that the trial testimony of Jeffery Artrip, Larry Collins, Jessica King, Greg Swiney, Everett McDuffie, and Donnie Trent may be presented by deposition designation. This agreement does not prevent Plaintiffs from calling any of these individuals live in their case-in-chief.

9. The parties agree that Dr. William Lee is unavailable for purposes of Federal Rule of Civil Procedure 32. Any other assertion that a witness is unavailable shall be governed by applicable law.

10. A party's decision not to introduce some or all of the testimony of a witness designated by that party herein shall not be commented upon by the other party at trial or in post-trial briefing.

11. Each party is entitled to offer testimony designated by any other party (whether as a designation or counter-designation), even if not separately listed on its own deposition designation list.

12. Unless otherwise agreed between the parties, the party offering deposition testimony (other than for the purpose of impeachment) shall identify the deposition testimony to be offered from previously-exchanged designations in accordance with the following schedule:

Event	Day/Time
Disclosure of deposition testimony to be offered from previously-exchanged designations by designating party	6:00 p.m. three (3) calendar days before witness will be called
Any withdrawal of previously exchanged objections or counters from party receiving designations	6:00 p.m. two (2) calendar day before witness will be called (i.e., the day after the original designations are disclosed)
Any withdrawal of previously exchanged objections to counter-designations	6:00 p.m. one (1) calendar day before witness will be called
Parties to Meet and Confer Regarding Objections	8:00 p.m. one (1) calendar day before witness will be called (i.e., the day after the original designations are disclosed)
Provision of video clips and clip report of all testimony	By 12:00 a.m. one (1) calendar day before witness will be called
Parties to Inform the Court of Any Unresolved Disputes	Disputes will be presented to the Court pursuant at the beginning of the trial day when the testimony is to be provided

13. Designated deposition testimony will be offered to the Court as designated testimony that the parties play by video or orally read into the record by the party sponsoring the witness in Court and will count against the party's trial presentation time. Specifically, any affirmative designations offered by a party will count against that party's trial presentation time whereas any counter-designations by the other party will count against the party who made the

counter-designations. After a witness is called to testify by deposition at trial, the parties shall provide the time to be charged to each party to the Court. For deposition testimony presented by video, the time will be allocated in accordance with the video clips for each sides' designations. For deposition testimony read into the record live, the parties will divide the time it takes to read the testimony into the record by the percentage of lines designated by each side (e.g., if 50 lines of testimony are read into the record, with 40 lines designated by one side, and 10 lines designated by the other side, 80% of the time will be designated to the party who designated 40 lines, with the balance to the other side).

14. All irrelevant and/or redundant material, including colloquy between counsel and objections, will be eliminated when the deposition is played or read at trial.

15. When deposition designation excerpts are introduced, all admissible deposition counter-designation excerpts, whether offered by videotape or by orally read into the record, will be introduced in the sequence in which the testimony was originally given. The specific portions of the deposition shall be played or read in page order. The party offering the deposition testimony shall also provide at the same time a short statement of introduction for the witness that includes the witness's name, current job title (if known), job title as of the deposition (if known), and date of the deposition.

16. If an exhibit is introduced in a deposition designation, the exhibit is admitted in evidence if it is included on the designating party's trial exhibit list and is not objected to. The party proffering the exhibit will move for its admission pursuant to the procedure set out below.

17. The above procedures regarding deposition designations do not apply to portions of deposition transcripts and/or video used for impeachment or cross-examination of a witness testifying live. Any deposition testimony may be used at trial for the purpose of impeachment,

regardless of whether a party specifically identified that testimony on its list of deposition designations, if the testimony is otherwise competent for such purpose.

II. AGREEMENTS REGARDING EXHIBITS AND DEMONSTRATIVES

A. Exhibits

18. Plaintiffs' list of exhibits that they may offer at trial, and Defendants' objections thereto including citations to the Federal Rules of Evidence, except demonstrative exhibits and exhibits used solely for impeachment have been exchanged by the parties prior to trial.

19. Defendants' list of exhibits that they may offer at trial, and Plaintiffs' objections thereto including citations to the Federal Rules of Evidence, except demonstrative exhibits and exhibits used solely for impeachment have been exchanged by the parties prior to trial.

20. Subject to the remaining provisions of this Order, no party may add to its exhibit list or use at trial an exhibit not present on its list absent stipulation or order of the Court. Any party may use an exhibit that is listed on the other party's exhibit list, to the same effect as though it were listed on its own exhibit list, subject to all evidentiary objections. The exhibit lists may include exhibits that may not necessarily be offered or introduced into evidence.

21. The parties agree that if either party removes or otherwise withdraws an exhibit from its exhibit list, the other party may amend its exhibit list to include that same exhibit. The parties also agree that the parties may make objections to such exhibit, other than an objection based on untimely listing.

22. The parties agree that any description of a document on an exhibit list is provided for convenience only and shall not be used as an admission or otherwise as evidence regarding the listed document or any other listed document.

23. The demonstratives the parties intend to use at trial shall not be included on their respective exhibit lists.

24. Exhibits to be used solely for impeachment do not need to be included on the lists of trial exhibits or disclosed in advance of being used at trial. Such exhibits used solely for impeachment and not included on an exhibit list may not be admitted into evidence.

25. Any request for admission response, interrogatory response, or pleading (i.e., Complaint, Answer, Counterclaim) may be read or introduced as evidence at trial and need not be included on the exhibit lists.

26. Complete legible copies of documents may be offered and received in evidence to the same extent as an original unless a genuine question is raised as to the authenticity of the original, or in the circumstances it would be unfair to admit the copy in lieu of the original.

27. All exhibits shall be pre-marked with a stamp, using the following prefix identifiers:

a. Plaintiffs' Exhibits: P (beginning with P-1)

b. Defendants' Exhibits: D (beginning with D-1)

All pages of an exhibit shall be marked consecutively, following a decimal point (i.e., P-1.1, P-1.2; D-1.1, D-1.2, etc.).

28. In the case of trial exhibits that have been previously marked as a deposition exhibit, to remove duplicates and improve legibility of the exhibits used at trial, the parties agree that the trial exhibit shall be treated as identical to the indicated deposition exhibit regardless of whether it bears a deposition exhibit sticker, unless a genuine question is raised as to whether the trial exhibit and deposition exhibit are identical. The parties also agree that two exhibits that are identical (notwithstanding different Bates numbers) shall be treated as identical, unless a genuine question is raised as to whether the exhibits are identical.

29. The parties shall provide written notice to each other of a list of trial exhibits to be used in connection with direct examination (specifically identifying the exhibit in connection with the witness) in accordance with the below exchange schedule:

Event	Day/Time
Disclosure of List of Exhibits (by witness)	6:00 p.m. three (3) calendar days before witness will be called
Objections to Exhibits	6:00 p.m. two (2) calendar day before witness will be called (i.e., the day after the witness is disclosed)
Parties to Meet and Confer Regarding Objections	8:00 p.m. two (2) calendar day before witness will be called (i.e., the day after the witness is disclosed)
Parties to Inform the Court of Any Unresolved Disputes	Disputes will be presented to the Court pursuant at the beginning of the next trial day

30. A party is not required to provide advance notice of exhibits to be used during cross-examination.

31. Prior to the start of direct examination of a particular witness, the party conducting the direct examination will provide the other party with one copy of a binder containing all exhibits that they intend to use with that witness on direct examination and will provide all required copies to the Court. With respect to cross examination, the party cross-examining a witness shall provide one copy of a binder containing all of the exhibits expected to be used during cross examination to the other party and all required copies to the Court at the start of the cross examination of that witness. The party conducting the cross-examination may collect the binder from opposing counsel if the cross-examination is not completed by the end of the trial day.

32. For all exchanges of trial exhibit identification for use with witnesses, if good faith efforts to resolve the objections fail, the party objecting to the exhibits shall bring its objections to the Court's attention at the beginning of the next day. Failure to comply with these procedures,

absent an agreement by the parties and approval by the Court, will result in waiver of the use of an exhibit or waiver of objection to the exhibit.

33. Absent agreement between the parties and approval by the Court, no exhibit will be admitted unless offered into evidence through a witness, testifying live or by deposition. Any party that has used an exhibit with the witness and wishes that exhibit to be admitted into evidence must formally move the exhibit into evidence, by exhibit number. Exhibits not objected to that are used with a witness at trial will be received into evidence without the need for additional foundation testimony. Each party is expected to move for admission of exhibits at the conclusion of the examination stage during which the exhibit was used. If a party inadvertently fails to do so, the parties may jointly agree that an exhibit can be admitted, subject to the agreement of the Court, or the party seeking to admit an exhibit may seek leave of the Court to admit the exhibit at any time before the close of all evidence, provided that: (1) the exhibit was actually used with or shown to a witness during trial; (2) the failure to formally move for admission was inadvertent and not the result of a strategic decision; and (3) late admission would not unfairly prejudice the opposing party. The opposing party shall have the right to object to any such late admission on any grounds available under the Federal Rules of Evidence or this Order. The Court may in its discretion deny any application for late admission, including where the moving party's own conduct contributed to the omission or where the opposing party demonstrates unfair prejudice. Nothing herein shall be construed as a stipulation or admission that the document is entitled to any weight in deciding the merits of this case.

34. Provided specific documents are not otherwise objected to (for example, without limitation, on the basis that they are hearsay statements not subject to any exception, or on the basis of Federal Rule of Evidence 1006, including objections to the accuracy or completeness of

any summary's representation of the underlying data and to the admissibility of the underlying records), the following categories of exhibits may be entered through expert witnesses without a further demonstration of a necessary foundation so long as the expert discussed or cited the document in his or her respective expert reports, including in exhibits or appendices.

- Publicly available literature
- VDOC Operating procedures
- VDOC Step Down Manual
- VDOC inmate review-related documents and media (for example, CORIS data, ERT review books and videos, log sheets)
- VDOC employee emails
- Expert-generated documents (for example, summaries of CORIS data, photographs)

35. Medical and mental health records, Institutional Classification Authority records, printouts from CORIS, status rating charts, and ERT books, in each instance produced by Defendants in this matter, are deemed to be records of a regularly conducted activity within the meaning of Federal Rule of Evidence 803(6).

36. Regarding authenticity, any trial exhibit that was produced in discovery by a party and that on its face appears to have been authored by an employee, officer, or agent of the party that produced such document or its predecessors, will be deemed to be a true and correct copy of a document maintained in that producing party's files as of the date of the party's document collection under Federal Rule of Evidence 901. No foundation need be laid for the authenticity of such documents at trial. Additionally, no foundation need be laid for the authenticity of exhibits entered through expert witnesses so long as the expert discussed or cited the document in his or her respective expert report(s), including in exhibits or appendices.

37. The parties agree that any exhibit that has been admitted in evidence during the course of trial can be used in any closing argument and that the parties need not disclose the intent to use any admitted exhibit prior to such closing arguments.

38. The listing of a document on a party's exhibit list is not an admission that such document is relevant or admissible when offered by the opposing side. Each party may object to the relevance or admissibility of any evidence offered by the other party, at the time such evidence is offered, in view of the specific context in which such evidence is offered.

39. On or before the first day of trial, the parties will deliver to the Courtroom Deputy a completed AO Form 187 exhibit list.

B. Demonstratives and Summary Exhibits

40. The parties agree that the demonstratives that the parties intend to use at trial do not need to be included on their respective exhibit lists that are part of this Joint Pretrial Order.

41. Plaintiffs' demonstratives will be identified with "PDX" numbers, starting with PDX 1.

42. Defendants' demonstratives will be identified with "DDX" numbers, starting at DDX 1.

43. By no later than 3 p.m. ET on the calendar day before opening statements, the parties shall exchange color copies of demonstrative exhibits they intend to use in their respective opening statements. By no later than 6 p.m. ET that same day, any objections to the demonstrative exhibits shall be served on the other side. By 8 p.m. ET that day, the parties shall meet and confer to resolve any objections, which if necessary will be raised with the Court before opening statements commence.

44. The parties shall provide color copies of demonstratives by electronic mail or FTP to be used in connection with direct examination (specifically identifying the demonstratives in

connection with the witness) including as necessary making any physical demonstrative available for inspection in accordance with the below exchange schedule:

Event	Day/Time
Provision of Demonstratives (by witness)	6:00 p.m. two (2) calendar days before witness will be called
Objections to Demonstratives	6:00 p.m. one (1) calendar day before witness will be called (i.e., the day after the witness is disclosed)
Parties to Meet and Confer Regarding Objections	8:00 p.m. one (1) calendar day before witness will be called (i.e., the day after the witness is disclosed)
Parties to Inform the Court of Any Unresolved Disputes	Disputes will be presented to the Court pursuant at the beginning of the next trial day

45. Failure to comply with these procedures, absent an agreement by the parties or approval by the Court, will result in waiver of the use of a demonstrative or waiver of objection to the demonstrative. If any of the demonstratives change after the deadline, the party intending to use the demonstrative will promptly notify the opposing party of the change(s), and the other party has the right to object to the use of the demonstrative as changed.

46. The party seeking to use a demonstrative in connection with direct examination will provide a color representation of the demonstrative to the other side in PDF or PPT form. However, for video or animations, the party seeking to use the demonstrative will provide it to the other side in an appropriate electronic format to view the video or animation. For irregularly sized physical demonstratives, the party seeking to use the demonstrative will provide by electronic means a color representation as a PDF of 8.5 x 11 copies of the demonstratives. For each demonstrative that is based on a document or documents produced or exchanged in discovery in this litigation, each party shall disclose to the other parties, either: (a) on the face of the demonstrative; or (b) in a table or other writing provided at the time the demonstrative is exchanged with the other parties, all documents that form the basis of the demonstrative.

47. Demonstratives disclosed by one party may not be used by the opposing party prior to being used by the disclosing party. However, once the demonstrative is used by the disclosing party, the opposing party may also use the demonstrative for cross-examination, impeachment, in its case, in any motion practice, or in its closing argument.

48. These provisions regarding demonstratives do not apply to demonstratives created during testimony or demonstratives to be used for cross-examination, neither of which need to be provided to the other side in advance of their use. The parties agree that notice of a party's intended use of blow-ups (enlargements) of trial exhibits and/or deposition testimony and of ballooning, excerption, highlighting, etc. of such exhibits and/or deposition testimony that are created live during testimony (as opposed to blow-ups or highlights that are pre-prepared on slides) need not be given, as long as the party has identified its intent to use the trial exhibits and/or deposition testimony according to the provisions of this Order. Notice must be given for blow-ups (enlargements) of trial exhibits and/or deposition testimony; and ballooning, excerption, highlighting, etc. of such exhibits and/or deposition testimony that is pre-prepared/prepared in a slide deck for use with a witness and must be exchanged as demonstratives.

III. PHASES OF TRIAL

49. The parties propose that the order of the presentation of evidence will follow the burden of proof as follows:

Phase I: Opening Statements: Plaintiffs, followed by Defendants.

Phase II: Plaintiffs' case-in-chief on its Eighth and Fourteenth Amendment claims, as well as damages.

Phase III: Defendants' response thereto and affirmative defenses.

Phase IV: Plaintiffs' rebuttal (intended to be limited and may occur by video testimony). Defendants' sur-rebuttal (at the Court's discretion).

Phase V: Closing Arguments: Plaintiffs, followed by Defendants (to happen after any post-trial briefing unless the Court orders or the parties request a brief summation in advance of briefing).

50. The parties will confer to update opposing counsel as to the expected day that the party intends to complete presentation of evidence.

IV. OTHER MATTERS

A. Dispute Resolution Procedures

51. If, after meeting and conferring, the parties are unable to resolve their objections to demonstratives, witnesses, or other evidence, the objecting party shall provide its position(s) promptly after the conclusion of the meet and confer and in no event later than 10:00 p.m. The responding party shall provide its responsive position by 11:00 p.m. Unless otherwise directed by the Court, counsel for the parties shall make best efforts to notify the Court by 12:00 a.m. by email of any objections to demonstratives, witnesses, or other evidence to be presented that trial day. The parties shall attach to the email a joint pleading identifying the disputes and digital copies of all relevant demonstratives, exhibits, or other evidence with the disputed passages highlighted. The parties shall state their position on each dispute in three sentences or less.

B. Confidential Information at Trial

52. The Court has entered a Protective Order (D.I. 81) to safeguard the confidentiality of certain of the parties' business, technical, and sensitive personal information, as well as that of third parties. Nonetheless, the presentation of evidence at trial shall take place in open court, unless a party specifically requests, and the Court agrees, that the Court be closed to the public during presentation of certain portions of the evidence.

53. It is agreed that any party or non-party whose information is subject to the Protective Order may request that testimony or an exhibit, subject to the Protective Order, be placed under seal and handled in accordance with the Protective Order. With the Court's

permission, the parties may request that demonstrative exhibits or evidence potentially reflecting confidential information not be made available to the public.

C. Length of Trial

54. The trial will be timed for a total of 72 hours, and the trial time will be allocated equally between the sides. Unless otherwise ordered, time will be charged to a side for its opening statement, direct and redirect examinations of witnesses it calls, cross-examination of witnesses called by the other side, and its designated or counter-designated portions of depositions. The parties will provide closing arguments after the completion of post-trial briefing, at a time to be scheduled at the convenience of the Court.

55. For clarity, time spent on questions posed by the Court during each side's opening, directs, cross-examinations, redirects and closings shall be charged to that side. Time consumed in argument by the parties and consideration and ruling by the Court on any motion or objection to trial testimony or admission of any exhibit, including demonstrative exhibits, shall be charged to the moving or objecting party, provided that if the moving or objecting party substantially prevails, the Court in its discretion may charge such time to the non-prevailing party.

56. The parties will keep a running total of trial time used by counsel, to be reconciled with court approval at the end of each trial day.

D. Exchanges

57. The parties agree to the exchange deadlines provided above. However, the parties further agree to work together in good faith to amend these deadlines, as needed.

E. Trial Transcripts

58. The parties will submit any corrections to the trial transcript to the Court Reporter within two weeks after receipt of the transcripts from the Court Reporter.

F. Modification of Provisions

59. The Court may at any time in its discretion modify any provision in this Order if such modification is appropriate under the circumstances to secure the just, speedy, and inexpensive determination of the action.

* * *

IT IS SO ORDERED.

ENTER: September 30, 2026

/s/ JAMES P. JONES
Senior United States District Judge