

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

ASHLEY DIAMOND,

Plaintiff,

v.

TIMOTHY WARD, et al.,

Defendants.

Case No. 5:20-cv-00453-MTT

**PLAINTIFF’S MOTION FOR MISCELLANEOUS RELIEF**

Plaintiff Ashley Diamond hereby moves this Court for an Order directing Defendants, their agents, and their employees not to contact Confidential Witness declarant John Doe (“Doe”) about his declaration in this matter and not to retaliate against Doe for his participation in this litigation, or, in the alternative, directing that Doe’s declaration be filed designated as Attorneys’ Eyes Only.

In support of her Motion, Plaintiff submits the following incorporated Memorandum of Law.

**STATEMENT OF FACTS**

Plaintiff’s Motion for Preliminary Injunction, ECF No. 50, and Motion for Protective Order, ECF No. 51, contain a declaration in support from Doe, a prisoner in the custody of the Georgia Department of Corrections (“GDC”) who is a witness to certain events underlying this action and who alleges credible fears for his safety and ongoing retaliation and intimidation from Defendants and their agents in connection with his involvement in this matter.

In his declaration, Doe explains that, after befriending Plaintiff, helping to shield her from abuse, and even rescuing her from a suicide attempt, he was retaliated against by Defendants and their agents. *See* Decl. of John Doe, ECF Nos. 53, 59-2 (“Doe Decl.”) ¶¶ 7, 10-13, 16-18, 22. This

retaliation included being placed in solitary confinement for months. *See id.* ¶¶ 17, 29. As Doe further states, he was also asked to make false claims against Plaintiff, with the implication that he would be released from solitary confinement if he cooperated in doing so. *See id.* ¶¶ 25-27. Because he refused to participate in GDC’s campaign to smear Plaintiff, Doe was placed in a dangerous dormitory where the Deputy Warden made an announcement to the dorm about Doe that placed him in grave danger when he was finally released from solitary. *See id.* ¶ 31. There, he was threatened at knifepoint and feared for his life. *See id.* ¶¶ 33-34. Doe continues to live in fear that his participation in this matter, and his support of Plaintiff, will lead to harm or even death. *See id.* ¶ 40.

### **ARGUMENT**

Federal Rule of Civil Procedure 26(c)(1) allows a court, for good cause, to “issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Threats of violence or retaliation surely constitute good cause to justify the issuance of a protective order, let alone the lesser alternative relief requested to designate the sealed declaration as “Attorneys’ Eyes Only” in order to protect the identity of the declarant. *See Does v. Swearingen*, No. 618-cv-1731-ORL-41LRH, 2019 WL 4386936, at \*3 (M.D. Fl. Sept. 13, 2019). Although Rule 26 concerns the Court’s power to issue protective orders in the context of discovery, Fed. R. Civ. P. 26 (c), it has been invoked, along with the Court’s inherent equitable authority, to provide the jurisdictional basis for issuing the relief sought outside of the discovery context. *See, e.g., Ben David v. Trivisono*, 495 F.2d 562, 564 (1st Cir. 1974) (upholding protective order to protect inmates in prison litigation based on “court’s finding that the plaintiffs ‘fear for the harassment— that is, retaliation if they co-operate in the preparation of the substantive action’” was sufficient to support a protective order based on the inherent equitable authority of the court); *Goninan v. Wash.*

*Dept of Corrs.*, No. 3:17-cv-05714-BHS-JRC, 2018 WL 4630205 (W.D. Wash. Sept. 26, 2018) (“Though more commonly used during discovery to insulate sensitive discovery materials, a protective order may also be used to protect a party or potential party from intimidation or retaliation.”).

Moreover, it is not unusual for courts to enter protective orders concerning confidentiality, including “Attorneys’ Eyes Only” designations. *See Aging Backwards, LLC v. Esmonde-White*, No. 16-20758-civ-Lenard/Goodman, 2016 WL 11523402 at \*1 (S.D. Fla. Sept. 26, 2016) (“Courts in this district frequently enter protective orders concerning confidentiality of materials obtained in discovery. Those orders . . . often contain an “Attorneys’ Eyes Only” type of heightened, or second-tier, confidentiality.”). Such designations are not uncommon in trade disputes, where a court may find good cause for such an order because there is a concern that one party might use another party’s materials to gain a competitive advantage. *See id.* at \*4 (good cause for “Attorneys’ Eyes Only” order where defendants feared that trade secrets would be turned over and allow plaintiff to break into their industry).

Given that such designations are found justified in cases involving the risk of trade secrets being exposed, which a purely monetary harm, it is not surprising that they would be deemed necessary in situations where a person’s very safety is at risk. For example, in *Young v. California*, No. CIV. 05CV2375JLSCAB, 2007 WL 2900539, at \*1 (S.D. Cal. Oct. 1, 2007), the court, in ruling on a motion to compel documents containing inmate witness statements, recognized the legitimate concern regarding “the safety and privacy of the inmate witnesses” and ordered production of any unredacted portions of the inmate statements to be made under a protective order as “confidential, attorneys’ eyes only.” Indeed, good cause has been found for “Attorneys’ Eyes Only” designations in cases where there is a credible “fear of reprisal or harassment,” as here. *See*

*Edwards v. Edwards*, No. DKC 12-3761, 2013 WL 12246358, at \*2 (D. Md. Oct. 18, 2013); *see also Hooker v. Novo Nordisk Inc.*, No. 16-4562 (MAS)(TJB), 2019 WL 2521749, at \*4 (D. N.J. June 19, 2019) (production of certain documents under “attorneys’ eyes only designation . . . assuage[s] . . . retaliation concerns”).

Here, good cause exists to justify the issuance of an order protecting the safety of Doe, a third party who alleges that he has suffered actual retaliation, intimidation and coercion in connection with this case—including 90 days in solitary confinement, and threats to his life caused, if not orchestrated, by prison officials, Doe Decl. ¶¶17, 29, 31, and who credibly fears additional retaliation or violence within the prison environment without adequate protection. As described in his declaration, and as explained above, Doe has already been retaliated against and faced physical harm. It is not unreasonable to expect that he will be subject to more such risks if his declaration is made available to Defendants, their agents and employees—the very individuals who are responsible for his safety—without a protective order.

Plaintiff notes that the Court has already ordered that Doe may be referred to publicly by a pseudonym, and that access to an unredacted version of his declaration is restricted to the parties. ECF No. 48. Although Plaintiff appreciates this step the Court has taken to protect Doe, she respectfully argues that it is unfortunately not enough. Doe’s declaration makes clear that Defendants and their agents are among those who have retaliated against him and caused him harm, so allowing them access to his declaration does not provide him the protection he needs. Without an Order that Defendants and their agents not contact Doe about his involvement in these proceedings and not retaliate against him, Doe is at their mercy. Therefore, Plaintiff respectfully requests such an Order, or, in the alternative, an “Attorneys’ Eyes Only” designation until such

time that counsel for Defendants can provide a written assurance that Defendants and their agents will not contact Doe about his involvement in the proceedings or retaliate against him.

Finally, Plaintiff notes that prior to filing the instant motion, she reached out to GDC Defendants through counsel to get an assurance that they would not retaliate against the Doe. Unfortunately, GDC Defendants were unwilling to agree: a) to provide an assurance against retaliation (other than that they are fully aware that retaliation is not permitted); b) not to approach Doe about his statements; and c) not to share his name with non-parties to this litigation. Decl. of Elizabeth Littrell ¶¶ 6, 7. Counsel for GDC Defendants agreed not to share evidence offered from Doe with their clients or with others until the Court rules on the matter. *Id.* ¶ 8.

### CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court order Defendants, their agents, and their employees not to contact Doe about his declaration in this matter and not to retaliate in any way against Doe, or, in the alternative, direct that Doe's declaration be designated as "Attorneys' Eyes Only."

Dated: April 9, 2021

Respectfully submitted,

/s/ Elizabeth Littrell

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*Counsel for Plaintiff Ashley Diamond*

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of filing to counsel of record.

/s/ A. Chinyere Ezie

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**DECLARATION OF ELIZABETH LITRELL**

1. I am a Senior Supervising Attorney at the Southern Poverty Law Center, and one of Plaintiff Ashley Diamond's attorneys in the above-mentioned case against Defendants Ward, Lewis, J. Jackson, Holt, Toole, Ford, Benton, Atchison, Sauls, A. Smith, R. Jackson, and L. Smith.

2. On April 7, 2021, I and other lawyers for Plaintiff engaged in a discussion with attorneys from the Georgia Attorney General's office representing Defendants Ward, Lewis, J. Jackson, Holt, Toole, Ford, Benton, Atchison, Sauls, R. Jackson, and L. Smith (GDC Defendants) concerning outstanding issues raised at the Status Conference before this Court held on April 5, 2021.

3. In the April 7 conversation referenced in paragraph 2, which took place prior to the text order entered on April 8, 2021, ECF No. 48, counsel for Plaintiff discussed the need to file certain documents under seal, including the Declaration of John Doe which alleges retaliation and fears of further retaliation by GDC Defendants.

4. On April 8, 2021, I emailed counsel for all Defendants a draft motion to seal with respect to several categories of documents and the use of pseudonyms. Included in the draft motion was a paragraph, to which GDC Defendants' counsel objected, seeking to file Doe's declaration

subject to Attorneys' Eyes Only until a written assurance was in place that GDC Defendants would not retaliate against Doe for his participation in this lawsuit.

5. Thereafter, GDC Defendants' counsel and I corresponded over email in a good faith effort to clarify our positions and to identify and narrow the issues in dispute.

6. As part of that email correspondence, we requested "an assurance from your clients that they will not: a) approach declarant about his statement, b) share his name with non-parties to this litigation, and c) not retaliate against him for his involvement."

7. In their response, GDC Defendants' counsel did not provide the requested assurances. Instead, in relevant part and among other representations, counsel represented that "GDC and its officials and employees are fully aware that retaliation is not permitted"; denied that retaliation had occurred; clarified that they take allegations of retaliation seriously and invited us to send more information so that they might look into the allegations.

8. Additional communication over email on April 8 and April 9, 2021, followed in a good faith effort to further clarify and narrow the remaining issue in dispute. Plaintiff's counsel shared that a motion to resolve this contested issue was forthcoming, along with more information concerning the allegations of retaliation against Doe. GDC Defendants' counsel agreed "to present the matter to the court and to not share evidence that is offered from that witness with our clients or with others until the court rules on the matter."

Pursuant to 28 U.S.C. § 1746, I hereby declare and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: April 9, 2021

Respectfully submitted,

/s/ Elizabeth Littrell  
Elizabeth "Beth" Littrell