

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

ASHLEY DIAMOND,

Plaintiff,

v.

TIMOTHY WARD, *et al.*,

Defendants.

No. 5:20-cv-00453-MTT

**PLAINTIFF’S MOTION FOR LIMITED EXPEDITED DISCOVERY AND TO COMPEL
PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26(d)(1) and 34 of the Federal Rules of Civil Procedure, Plaintiff Ashley Diamond moves for an order expediting the responses to limited expedited discovery served April 16, 2021, and April 30, 2021, on Defendants Timothy Ward, Sharon Lewis, Javel Jackson, Robert Toole, Grace Atchison, Ahmed Holt, Jack Sauls, Benjamin Ford and Brooks Benton (“GDC Defendants”), and ordering production on or before May 10, 2021. The grounds for this motion are set forth in the incorporated memorandum of law.

MEMORANDUM OF LAW

Plaintiff is a transgender woman housed with men in GDC custody who alleges a pattern of sexual victimization and inadequate medical care. The underlying facts of this case are exhaustively set forth in the record. *See* ECF Nos. 36, 50, 51. This Court recognized that limited expedited discovery would likely be necessary, in a status conference held on April 5, 2021, to discuss logistics of anticipated emergency motions. On April 7, 2021, the Parties filed a joint proposed scheduling order, in which limited discovery “in connection with anticipated preliminary motions” was specifically addressed, and agreed to modify the number of discovery requests in anticipation thereof, which the Court entered as an order on April 8, 2021. ECF No. 47. On April

9, 2021, Plaintiff filed three motions with accompanying memoranda of law and supporting documentation: a motion for preliminary injunction, ECF No. 50 (“PI Mot.”); a motion for protective order, ECF No. 51 (“PO Mot.”); and a motion for miscellaneous relief, ECF No. 61. In her motions for preliminary injunction and protective order, “Plaintiff request[ed] limited expedited discovery,” “[t]o the extent the Court seeks additional evidence before issuance” of the requested orders. PI Mot. 2, ECF No. 50; PO Mot. 1, ECF No. 51. Accordingly, on April 16, 2021, Plaintiff served limited requests for expedited discovery on GDC Defendants. Littrell Decl. ¶ 2, Ex. A.

STATEMENT OF RELEVANT FACTS

On April 16, 2021, Plaintiff served GDC Defendants her first request for expedited production of documents, seeking five categories of documents in the GDC Defendants’ exclusive custody and control that are specifically relevant to the issues before the Court at the upcoming May 12 hearing:

1. Non-public Documents identified in GDC Defendants’ Initial Disclosures;
2. Non-privileged Communications sent or received by GDC Defendants from October 1, 2019 to Present concerning Plaintiff’s health and healthcare needs;
3. Non-privileged Communications sent or received by GDC Defendants from October 1, 2019 to Present concerning Plaintiff’s housing or safety;
4. Non-privileged Communications sent or received by Defendant Benton from September 29, 2020 to Present concerning Plaintiff, and/or John Doe, following the allegations against them of sexual misconduct on October 31, 2020; and
5. All Documents and Communications sent by, or on behalf of, GDC Defendants, or any administrator at Coastal, concerning Plaintiff’s eligibility for parole or transfer, including communications sent to the Georgia Board of Pardons and Paroles, since October 2020.

See Littrell Decl., Ex. B.

Concurrent with service, on April 16, 2021, Plaintiff requested that the parties stipulate to an expedited schedule in which GDC Defendants would produce the documents within fifteen days in order for her to present relevant evidence at the May 12 hearing. *Id.* Receiving no response, on April 20, 2021, Plaintiff sent an email request to counsel for GDC Defendants seeking their position on the request for expedited production. Littrell Decl. ¶ 3, Ex. C. On April 21, 2021, counsel for GDC Defendants responded that they would need additional time to assess the production requested in order to provide their position, which they anticipated being able to do by April 26, 2021. Littrell Decl. ¶ 4, Ex. D. Presuming good faith and seeking not to unduly increase litigation, Plaintiff awaited GDC Defendants' response. Littrell Decl. ¶ 5.

The parties spoke late afternoon on April 26, 2021, wherein GDC Defendants stated that they would respond to only *one* of the five requests for documents, claiming that producing communications concerning Plaintiff would be unduly burdensome given the expedited nature of the request. Littrell Decl. ¶ 6. Plaintiff offered to narrow the requests and provide specific and targeted search terms. *Id.* On April 27, 2021, Plaintiff's counsel sent counsel for GDC Defendants correspondence retracting the four document requests that GDC Defendants claimed were overbroad and replacing each with narrowed requests with targeted and limited search terms, requesting documents by May 5, 2021. Littrell Decl. ¶ 7, Exs. E–F.

On May 4, 2021, GDC Defendants filed documents in support of their consolidated opposition brief and thereafter served Plaintiff with a document production that merely replicated this filing. ECF No. 77. In addition, GDC Defendants served objections and responses to Plaintiff's expedited interrogatories and objections and responses to Plaintiff's expedited request for production of documents. Littrell Decl. ¶¶ 8-9, Ex. G. GDC Defendants ignored Plaintiff's superseding and narrowed request for documents reflecting a narrow subset of communications

about Plaintiff in its entirety, instead listing boilerplate objections to the four document requests, which unlike the production they filed with the Court, may not support their defenses.

ARGUMENT AND AUTHORITY

Courts have full authority to modify the rules regarding discovery by issuance of an order. Fed. R. Civ. P. 26(d)(1). A recent Georgia federal district court noted that, although “[t]he Eleventh Circuit has not adopted a standard for allowing expedited discovery[,] ... many district courts within the Eleventh Circuit have expressly used a general good cause standard when confronted with expedited discovery requests.” *Rivera v. Parker*, No. 1:20-CV-03210, 2020 WL 8258735, at *3 (N.D. Ga. Aug. 28, 2020) (quoting *Fed. Trade Comm’n v. On Point Global LLC*, No. 19-25046-CIV, 2020 WL 32996, at *1 (S.D. Fla. Jan. 2, 2020)). The factors to be considered in deciding whether a party has shown good cause for expedited discovery are: “(1) whether a motion for preliminary injunction is pending; (2) the breadth of the requested discovery; (3) the reason(s) for requesting expedited discovery; (4) the burden on the opponent to comply with the request for discovery; and (5) how far in advance of the typical discovery process the request is made.” *Id.* (quoting *Thyssenkrupp Elevator Corp. v. Hubbard*, No. 2:13-CV-202-FTM-29, 2013 WL 1953346, at *1 (M.D. Fla. May 10, 2013)); *see also Merial LLC v. Fidopharm, Inc.*, No. 1:13-CV-1207-SCJ, 2013 WL 12072140, at *1 (N.D. Ga. May 22, 2013) (same). Here, all factors favor granting Plaintiff’s request.

Rule 34 authorizes a party to serve on any other party a request for production of documents and electronically stored information, subject to the scope of Rule 26(b). Under Rule 26(b), 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 information sought “need not be admissible in evidence to be discoverable.” *Id.*

“The overall purpose of discovery under the Federal Rules [of Civil Procedure] is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result.” *Hunter’s Ridge Golf Co., Inc. v. Ga.-Pac. Corp.*, 233 F.R.D. 678, 680 (M.D. Fla. 2006). The Court “has inherent authority to control the discovery process.” *Citibank N.A. v. Pietranico*, No. 1:11-CV-1802-JCF, 2012 WL 12883830, at *3 (N.D. Ga. Nov. 1, 2012) (quoting *Cent. Ala. Fair Hous. Ctr. v. Magee*, No. 2:11CV982, 2012 U.S. Dist. LEXIS 28630, at *10 (M.D. Ala. Mar. 5, 2012)). When necessary, the Court may issue an order compelling a party to appropriately answer discovery requests upon motion by a party. Fed. R. Civ. P. 37(a). The Court may use its power to compel where a party fails to produce documents or otherwise fails to obey the strictures of Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iv).

As set out above, a motion for preliminary injunction is pending. Plaintiff has endeavored to carefully craft her requests narrowly to ease any burden on GDC Defendants and their counsel. Moreover, the subject matter of the discovery is narrowly tailored to answering questions that are relevant to the adjudication of the preliminary injunction motion. *See Merial LLC*, 2013 WL 12072140, at *1. In response to GDC Defendants’ initial objections, Plaintiff narrowed her requests even more. Yet, as set out above and below, GDC Defendants, in essence, have provided only what they want to present in their defense, denying Plaintiff and this Court access to relevant evidence that is in their exclusive custody and control.

I. Plaintiff’s Requests for Production of Documents Seek Relevant Information, Are Narrowly Tailored, and Do Not Impose Undue Burden

Defendants refuse to provide documents beyond those they filed that they believe support their argument. Such a position is untenable. On April 27, the day after GDC Defendants notified Plaintiff of their objections, Plaintiff served GDC Defendants a significantly narrowed request for

communications, based not on agreement with objections but rather in the interest of expediency and avoiding judicial resources. She first narrowed her requests by amending the definition of “Communication” to limit the requests only “to emails and information sent via any service or application used by Georgia Department of Corrections.” Littrell Decl. ¶ 7, Ex. F. Plaintiff further narrowed her requests for relevant documents as follows.

Request for Production No. 2:

Communications sent or received by Defendant Lewis, J. Jackson, Sauls, or Benton, concerning Ashley Diamond’s gender dysphoria, Post Traumatic Stress Disorder, suicide risk, and castration attempts.¹

Request for Production No. 3:

Communications sent or received by Defendant Lewis, J. Jackson, Sauls, Holt, Toole, Atchison, or Benton concerning Ashley Diamond’s sexual assault allegations, requests for a safety transfer, or female facility placement.²

Request for Production No. 4:

Communications sent or received by Defendant Benton concerning disciplinary reports and charges against Ashley Diamond or John Doe.³

Request for Production No. 5:

All Documents and Communications sent by, or on behalf of, GDC Defendants, or any administrator at Coastal, concerning Plaintiff’s eligibility for parole or transfer, including communications sent to the Georgia Board of Pardons and Paroles, since October 2020.

Id.

¹ Plaintiff further narrowed her request by setting out nine express search terms.

² Plaintiff further narrowed her request by setting out 18 search terms.

³ Plaintiff further narrowed her request by setting out six search terms.

In essence, Plaintiff seek two sets of documents in these four requests, all of which are germane to the issues before the Court in Plaintiff's pending motions, as well as the issues the Court indicated it wanted to hear at the May 12 hearing: (1) nonprivileged communications sent or received by GDC Defendants concerning Plaintiff's housing, safety and healthcare; and (2) communications relevant to retaliation. Although GDC Defendants provided documents, their refusal to provide *communications* is telling. Given that the documents are readily available via keyword searches in GDC Defendants' databases and electronic devices, the burden in producing is minimal. Indeed, because the Parties were unable to execute an ESI agreement prior to filing the Proposed Scheduling Order, despite Plaintiff sending a proposed ESI agreement prior to the filing of the Scheduling Order, Plaintiff excised the standard instructions on technical protocol for producing documents and things, instead seeking production in the simplest forms (that is, searchable PDFs), and otherwise eliminated boilerplate definitions and instructions to streamline the requests and ease any associated burden on GDC Defendants. Nonetheless, GDC Defendants refuse to produce these clearly relevant documents. Most strikingly, they object to Request for Production No. 5, which seeks documents identical to those this Court directed they file in its Minute Order. ECF No. 73.

Communications about Plaintiff are clearly relevant to her pending motions. For example, Defendants filed with the Court documents indicating that weekly meetings about her were happening *only* in the lead-up to the contested disciplinary hearing for the alleged sexual activity. Disciplinary Reports 16–19, ECF No. 78-7. The existence of these reports was communicated via email, with numerous addressees but without attachments, responses, or substantive messages. That these communications occurred only prior to the alleged retaliatory discipline report that most clearly impacts the litigation (that is, claims of sexual activity) indicates that the substance of the

communications are directly relevant to the hearing. In addition, these emails reflect that GDC Defendants were communicating about Plaintiff's safety and health concerns via email, which messages are not contained in her institutional file, medical and mental health records, incidents reports, or other documents that GDC Defendants chose to produce and rely on in support of their response brief. As another example, Defendant Lewis and Dr. Weinstein, both identified as witnesses who Defendants "may" call to testify at the hearing, Littrell Decl. ¶ 8, and who have provided affidavits, ECF Nos. 84-5, 84-6, contend they received no information concerning suicide ideation by Plaintiff or her ongoing need for treatment. These contentions go directly to Plaintiff's substantive claims and credibility. Not to provide their communications regarding Plaintiff on these points is blatantly prejudicial where she is entitled to test witnesses' assertions by reviewing their communications. These are but a few of the obvious illustrations of the ways in which the requests are germane, relevant, and narrowly tailored to the issues before the Court at the hearing.

II. Defendants' Objections to the Requests for Production Ignore Plaintiff's Superseding Document Requests That Reduced Any Alleged Burden, Instead Relying on Boilerplate Objections That Do Not Fit the Facts

In their May 4, 2021 production, GDC Defendants have chosen to ignore Plaintiff's good-faith effort to avoid burdening this Court with this motion and responded as if the narrowed requests sent April 27, 2021, did not exist. Instead, GDC Defendants object to each of the four requests with the same boilerplate response:

GDC Defendants object to this Document Request on the grounds that it seeks information or material that is not relevant to a claim or defense in this case, that is not proportional to the needs of the case, and/or that is overly broad, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.

GDC Defendants further object to this Document Request on the grounds that it seeks information that is not relevant to a claim or defense in this case as it is currently presented at this stage of the

case, that is not proportional to the needs of the case again as it is currently presented at this stage of the case, and/or that is overly broad, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issues raised in Plaintiff's motion for preliminary injunction and related motions.

GDC Defendants specifically object to this Document Request on the additional basis that the information sought is voluminous and burdensome to collect, review for responsiveness and privilege or other objection or need for protection, and produce in the limited time period before the Court's consideration of Plaintiff's motions. This document request is more appropriately addressed in the context of full merits discovery, not in expedited discovery the purpose of which is to address the limited asserted grounds for relief in Plaintiff's pending motions. No objection or limitation pertaining to the discovery of and/or production of electronically stored information is waived by this response.

Littrell Decl., Ex G.

Nothing could be further from the truth. Moreover, such "broad objections based on conclusory generalizations [are] insufficient." *Huff v. Huff*, No. 1:04-CV-0172-GGB, 2006 WL 2356042, at *1 (N.D. Ga. Aug. 15, 2006). GDC Defendants' effort to control the litigation by denying and limiting Plaintiff's access to information, while presenting to the Court only documents they believe will support their claims, should be rejected. The burden involved in a few keyword searches is minimal. And the burden to the attorneys hardly compares to the burdens faced by Plaintiff if she is unable to present evidence in the GDC Defendants' exclusive control, subjecting her to even more retaliation and unconstitutional treatment. Completely denying Plaintiff access to communications *about* her and any scheme to retaliate against her is simply contrary to the ends of justice and the search for truth.

MEET AND CONFER

Plaintiff's counsel sent GDC Defendant's counsel an email on May 4, 2021, requesting the courtesy of a response on the outstanding narrowed and second discovery request. Littrell Decl. ¶ 10, Ex. H. GDC Defendants' counsel did not respond. *Id.* ¶ 10. On May 5, 2021, counsel

conferred via telephone. Lead counsel for both GDC Defendants and for Plaintiff were present. Defendants relayed that the objections asserted in the original requests for production of documents apply equally to the narrowed replacement requests. *Id.* ¶ 11. The Parties having reached an impasse, Plaintiff submits the matter to the Court for resolution.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff's Motion for Limited Expedited Discovery and to Compel Production of Documents and order GDC Defendants to produce documents to Plaintiff no later than May 10, 2021.

Respectfully submitted.

May 5, 2021

/s/ Elizabeth Littrell

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document and all attachments were served on all counsel of record through the Court's CM/ECF system.

/s/ Maya Rajaratnam

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