

**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

**REPLY BRIEF IN SUPPORT OF PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS**

In their Opposition to Plaintiff’s Motion to Compel (ECF 91) and their Objections themselves (ECF 88-7), Defendants concede that Plaintiff’s Requests for Production of Documents (“Requests”) 2-5 served on April 16, 2021 seek documents that are relevant and discoverable under the Federal Rules.<sup>1</sup> Instead, they object to Plaintiff’s request that documents be produced on an expedited basis (i.e. by May 10, 2021, ahead of the Parties’ evidentiary hearing), instead of “in the normal course.” Forty days later, these objections are now moot and Defendant’s response is past due under Rule 34(b)(2)(A). Therefore, while Plaintiff’s request for expedited discovery is moot, her Motion to Compel remains both timely and warranted and should be **GRANTED**.

**FACTUAL BACKGROUND**

Plaintiff served Defendants five Requests for Production of Documents (“Requests”) on

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<sup>1</sup> Defendants singular reference to communicating to Plaintiff’s counsel that they would be objecting on the basis of “relevance and scope” (ECF 91 at 5) in the meet and confer discussion and their raising relevance as part of boilerplate objections in their production (ECF 88-7) does not negate that their relevance arguments were either abandoned, limited to the expedited time frame or based on their unilateral determination that the Requests were irrelevant “at this stage of the case.” (ECF 88-7).

April 16, 2021 relevant and proportional to the needs of the case on April 16, 2021, “in connection with anticipated preliminary motions” (ECF 50 & 51) as contemplated in and ordered by the Court (ECF 47 at 6).<sup>2</sup> On May 3, 2021, Defendants responded to all five Requests with boilerplate objections (ECF 88-7). Defendants agreed only to produce some documents responsive to Request 1 (*i.e.*, “Documents identified in Defendants’ Initial Disclosures as being relevant to claims or defenses....”). *Id.* Defendants refused to produce *any* documents responsive to Requests 2-5. *Id.* Significantly, Defendants also produced documents responsive to Request 1 “subject to the stated objections”<sup>3</sup>—meaning Defendants produced only those documents they unilaterally determined were relevant, proportional, and otherwise “pertaining to the issues raised in Plaintiff’s motion for preliminary injunction and related motions” (ECF 88-7 at 12).

Plaintiff filed her Motions for Expedited Discovery and to Compel Production of Documents on May 6, 2021 (ECF 87). Defendants filed their Response in Opposition on May 11, 2021 (ECF 91). Under the Local Rules, Plaintiff’s reply brief is due today.

### **ARGUMENT**

It is well settled that “the purpose of discovery is to provide a mechanism for making relevant information available to the litigants.” *Lozano v. Md. Cas. Co.*, 850 F.2d 1470, 1473 (11th Cir. 1988) (citing Fed. R. Civ. P. 26 advisory committee notes). “The Federal Rules of Civil

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<sup>2</sup> On April 27, 2021, in an effort to expedite the discovery in time for the May 12 hearing, she agreed to narrow the requests. Defendants ignored the narrowed requests in their Response (ECF 91 at 2). Accordingly, Plaintiff relies on the original Requests cited by Defendants in their Response, *id.*, and shows that each is in connection with preliminary motions as contemplated in the Scheduling Order, relevant, proportional to the needs of the case, and overdue.

<sup>3</sup> See ECF 88-7 at 12 (“Defendants object to this Document Request to the extent that it seeks production of documents for the time period 2012 to present, on the grounds that the request 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.”)

Procedure strongly favor full discovery whenever that is possible.” *Odom v. Roberts*, 337 F.R.D. 359, 362 (N.D. Fla. 2020) (citing *Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1189 (11th Cir. 2013)), and see *id.* (noting that liberal discovery “leads to the speedier settlement of cases, and helps prevent miscarriages of justice in cases where evidence would otherwise be available to only one party.”). “Federal Rule of Civil Procedure 26(b)(1) establishes a broad scope of discovery in which the parties may obtain any nonprivileged and relevant matter to “allow the parties to develop fully and crystalize concise factual issues for trial, prevent prejudicial surprises, and conserve precious judicial energies.” *Bennett v. CIT Bank, N.A.*, 432 F. Supp. 3d 1370, 1375 (N.D. Ala. 2020) (citations and quotation marks omitted). See also Fed. R. Civ. P. 26(b)(1) (stating “[p]arties 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[.]”). Likewise, Rule 34 mandates that “[t]he party to whom the request is directed must respond in writing within 30 days after being served. Fed. R. Civ. P. 34(b)(2)(A).

Because Plaintiff’s Requests seek documents that are relevant and discoverable under the Federal Rules of Civil Procedure, Defendants concede that the discovery requests that Plaintiff propounded on April 16, 2021 are relevant and proportional to the claims and defenses presented in this case writ large. Opp’n, ECF No. 91 at 8 (asking the Court to “allow[] Plaintiff to seek the requested discovery in the normal course, not on an expedited basis”); see also Defs’ Objections, ECF 88-7 at 13-16 (stating that Requests 2-5 are “more appropriately addressed in the context of full merits discovery,” and objecting on grounds of relevance and proportionality only at “this stage of the case” (i.e. expedited in advance of the parties’ hearing). The relevance and proportionality of these requests is also evident on their face.

Requests 2 and 3 (ECF 88-2 at 8, ECF 91 at 2) seek nonprivileged communications sent or

received by GDC Defendants concerning Plaintiff's gender dysphoria, sexual assault allegations, and requests for a safety transfer. These documents are directly relevant to Plaintiff's arguments in the pending motion for preliminary injunctive relief and ancillary to the testimony presented at the hearing and through depositions of witnesses beyond the jurisdiction of the Court. Requests 4 and 5 (ECF 88-2 at 8, ECF 91 at 2) seek nonprivileged communications concerning the disciplinary charge against Plaintiff and John Doe that Defendants have cited as the justification for their decision to classify her as a PREA Aggressor and a STI Member and to deny her a transfer to a female facility.

Accordingly, not only is the correspondence sought by Requests 2-5 indisputably relevant to the Parties' claims and defenses as that term is defined by the Federal Rules, it pertains to topics so germane to Plaintiff's pending motion and the credibility of witnesses that these topics predominated the testimony at the Parties' evidentiary hearing held on May 12 and 13, 2021. As the Federal Rules of Civil Procedure make clear, Plaintiff is entitled to rely on more than a curated set of GDC records or the testimony of defense witnesses while trying to prove her claims. *See Hunter's Ridge Golf Co., Inc. v. Ga.-Pac. Corp.*, 233 F.R.D. 678, 680 (M.D. Fla. 2006) (explaining that "[t]he overall purpose of discovery" is to ensure 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.").<sup>4</sup>

Yet, after objecting to the Requests 2-5 principally burden based on "the limited time period before the Court's consideration of Plaintiff's motion" (ECF 88-7) and asking the Court to "allow[]

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<sup>4</sup> In addition to producing surveillance videos that were artificially truncated or only favorable to Defendants, the institutional files produced by Defendants in response to Request 1 have numerous omissions, including grievances, medical records, disciplinary records, disciplinary hearing videos, and recordings of past PREA interviews with Ms. Diamond.

Plaintiff to seek the requested discovery in the normal course, not on an expedited basis,” Opp’n, ECF No. 91 at 8, **40 days later Defendants have not produced a single responsive document** or provided Plaintiff a timeline by which they intend to do so. Defendants’ failure to produce responsive documents cannot be squared with their discovery obligations set forth under Rules 26 and 34 of the Federal Rules of Civil Procedure, the Parties’ Scheduling Order which, in addition to authorizing additional discovery “in connection with anticipated preliminary motions,” ECF 47 at 6, authorized fact discovery beginning on April 8, 2021, *id.* at 7, or the post-hearing briefing schedule which extends 75 days after receipt of the May 12 hearing transcript prior to ruling on the pending motions.

Defendants did not renew their boilerplate objections as to relevance, proportionality, overbreadth, burden or “not reasonably calculated to lead to the discovery of admissible evidence.” (*Compare* ECF 88-7 with ECF 91). These objections are also subject to waiver because they are improper boilerplate objections not ordinarily considered by courts.<sup>5</sup> “Boilerplate or general

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<sup>5</sup> Defendants’ boilerplate objections to Requests 2-5 are as follows:

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.

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.

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

objections constitute a waiver of the objections to the discovery sought.” *Zurich Am. Ins. Co. v. Hardin*, No. 8:14-CV-775-T-23AAS, 2019 WL 3082608, at \*4 (M.D. Fla. July 15, 2019) (granting motion to compel). *See also, e.g., U.S.C.F.T.C. v. Am. Derivatives Corp., Civil Action No. 1:05-CV-2492-RWS*, 2007 WL 1020838, at \*3 (N.D. Ga. Mar. 30, 2007) (finding that defendants’ boilerplate objections to discovery requests “are improper and will not be considered by the Court”); *McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir.1990) (objections that document requests were overly broad, burdensome, oppressive, and irrelevant were insufficient to meet objecting party’s burden of explaining why discovery requests were objectionable).

Therefore, because the discovery Plaintiff seeks is both relevant and proportional to the needs of this case, and Defendants’ responses are overdue, Plaintiff’s Motion to Compel should be granted pursuant to Rules 26(b)(1), 34, and 37(a)(3)(B)(iv) of the Federal Rules of Civil Procedure and Defendants should be ordered to begin producing responsive documents without further delay.

### CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff’s Motion to Compel Production of Documents and order that the GDC Defendants produce all correspondence relevant to Plaintiff’s Requests 2-5 no later than June 14, 2021, or 60 days from the date the Requests were initially served.

Dated: May 25, 2021.<sup>6</sup>

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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.

<sup>6</sup> Pursuant to a conversation with the Clerk for the Middle District of Georgia in consultation with the case manager, this brief is re-filed based on an error of inadvertent omission as to footnote 1. The only changes are the addition of the inadvertently omitted footnote, this explanatory footnote, and the signatory of the re-filer.

Respectfully submitted.

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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.

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