

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

ASHLEY DIAMOND,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	5:20-cv-00453-MTT
	:	
TIMOTHY WARD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DEFENDANTS’ SURREPLY IN OPPOSITION TO PLAINTIFF’S
MOTION FOR LIMITED EXPEDITED DISCOVERY AND
TO COMPEL PRODUCTION OF DOCUMENTS**

Defendants Timothy Ward, Sharon Lewis, Javel Jackson, Ahmed Holt, Robert Toole, Benjamin Ford, Jack Sauls, Brooks Benton, and Grace Atchison, through counsel, submit this surreply in opposition to Plaintiff’s Motion for Limited Expedited Discovery and to Compel Production of Documents (Doc. 87).

Plaintiff’s reply represents that Defendants either did not assert, or have waived, objections to her expedited document requests based on relevance, overbreadth, and proportionality. *See* Doc. 94 at 1, and footnote 1. This assertion is incorrect. Plaintiff served what her counsel described as “limited expedited discovery” specifically in connection with the motion hearing that was set to commence on May 12, 2021, and that was held on May 12 and 13, 2021. *See* Doc. 88-1 at 2 (“Plaintiffs seek narrowly tailored, limited discovery in anticipation of the upcoming hearing which we seek to expedite by agreement to responses within 15 days given the recently scheduled May 12 hearing. Attached please find our limited expedited discovery requests.”); *and see* Doc. 88-2 (document requests entitled “Plaintiff’s Expedited Request for Production of Documents

to Certain Georgia Department of Correction Defendants”). Defendants served responses and objections to those requests on an expedited basis before the May 12 hearing. *See* Doc. 91-1. In the responses to the document requests at issue, Defendants asserted objections based on the timing, but also asserted objections based on relevance, proportionality, and overbreadth, and those objections were not limited to the timing or the expedited nature of the requests. *See id.* at 13, 14, 15, and 16 (asserting relevance, proportionality, and overbreadth objections to each of plaintiff’s expedited requests for production 2-5).

Defendants contend that Plaintiff’s document requests 2-5 are overbroad and seek information that is not relevant to a claim or defense in the case and not proportional to the needs of the case. As previously indicated, Defendants’ counsel has explained to counsel for Plaintiff that they had obtained information from GDC that a search in the listed categories, for Plaintiff, and for all of the listed custodians, would yield in excess of 7,000 items. *See* Doc. 91 at 5. The requests are overbroad and not proportional to the needs of the case even for merits discovery. Plaintiff attempted to narrow those requests, and in her motion she sought production of the narrowed category of documents. *See* Doc. 87 at 5-8 (referring to the “narrowed” requests and “superseding document requests”). After the hearing, but just one day before the deadline for submitting the reply on the motion to compel, Plaintiff through counsel inquired of Defendants’ position on the document requests going forward in the case, and by email response Defendants’ counsel indicated they are willing to confer on the requests based on the attempted narrowing in an effort to reach a resolution. *See* Exhibit A hereto. Plaintiff’s reply fails to disclose these communications among counsel which occurred after the hearing.

Moreover, in the reply, Plaintiff attempts to expand on the relief sought in the motion and asks the Court to order production of all of the documents that are responsive to the initial document requests, not just the “narrowed” or “superseding document requests” that were the subject of the motion. And Plaintiff asks for an order requiring such production by June 14, a date that is selected without a stated reason but presumably so that additional evidence could be submitted as support for the pending motion for preliminary injunction.

Plaintiff’s motion should be denied. The document requests in issue were part of “expedited discovery” in connection with the May 12 hearing, and that hearing has been completed and the evidence (including extensive witness testimony and documentary evidence) that could most directly bear on the need for immediate relief has been submitted. The document requests in issue seek email communications going essentially to the full scope of the issues in this case, which will not bear on whether Plaintiff needs, or is entitled to, immediate injunctive relief. Plaintiff is on a fishing expedition for information that bears on her request for extraordinary, emergency injunctive relief, whereas such a motion must be supported in the first instance with colorable information, and evidence, supporting the grant of such relief.

Moreover, the documents requests are so broad that they do seek information that is not relevant to a claim or defense in the case. Most prominently, the requests appear to focus on information related to a contention of “retaliation” for which there is absolutely no evidence and which instead has been refuted by Plaintiff’s witnesses Tia Fletcher and Tamara Cantera in deposition testimony that Plaintiffs have indicated they will submit to the Court but have not yet submitted. *See* Exhibits B and C hereto (Fletcher and Cantera

deposition excerpts where the witnesses deny knowledge of retaliation). Notably, not only do these witnesses deny knowledge of retaliation, but also there is no retaliation claim in the case. And finally, as has been noted, the requests as phrased are extremely broad and are not proportional to the needs of this case, and would result in and impose on Defendants an undue burden.

Plaintiff's motion should be denied, and, to the extent that Plaintiff wishes to propound these same document requests or convert the document requests to regular merits discovery document requests, then the parties should be permitted to confer on the proper scope of this electronic discovery as Plaintiff's counsel's recent, post-hearing, emails appeared to suggest, and as Defendants' counsel's responsive emails indicated that Defendants are willing to do.

Defendants respectfully ask that Plaintiff's motion be denied for the reasons stated herein and previously.

Respectfully submitted,

Christopher M. Carr 112505
Attorney General

Kathleen M. Pacious 558555
Deputy Attorney General

s/ Roger A. Chalmers
Roger A. Chalmers 118720
Senior Assistant Attorney General

Robert B. Shapiro 932554
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Andrea Chinyere Ezie
Elizabeth Littrell
Annarita L. McGovern
Terry Lynn Long
Maya Gyan Rajaratnam

This 2nd day of June, 2021.

s/ Roger A. Chalmers

Roger A. Chalmers

EXHIBIT A

Roger Chalmers

From: Roger Chalmers
Sent: Tuesday, May 25, 2021 4:23 PM
To: 'Beth Littrell'; Annarita McGovern; 'Terry Long'
Cc: Robert Shapiro
Subject: RE: Diamond v Ward -- Sam Miller testimony redaction and attorney eyes only designation

Thank you, I will forward the highlighted Miller transcript on to Darlene.

As I mentioned, we will agree to confer on your document requests. I can't state that we withdraw our objections, because we did assert relevance and overbreadth objections and not just objections based on timing. But I think at this point we should try to resolve the issue so that the court does not have to address it. You had sent a letter suggesting narrowing the requests, and suggesting search terms. As a next step we can take that attempted narrowing up again with our client and try to work out a solution. To be clear, we're not waiving or withdrawing our objections, and at this point I see the discovery as merits discovery and counting toward merits discovery limits. I don't think that second point should be an issue but just wanted that to be clear also.



Roger Chalmers
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40 Capitol Square SW
Atlanta, Georgia, 30334

From: Beth Littrell <beth.littrell@splcenter.org>
Sent: Tuesday, May 25, 2021 4:03 PM
To: Roger Chalmers <rchalmers@law.ga.gov>; Annarita McGovern <amcgovern@satchermcgovernlaw.com>; 'Terry Long' <tlong@satchermcgovernlaw.com>
Cc: Robert Shapiro <RShapiro@LAW.GA.GOV>
Subject: RE: Diamond v Ward -- Sam Miller testimony redaction and attorney eyes only designation

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Roger:

On behalf of the Plaintiff, we consent to the redactions from the public record and designation as described. Bear in mind that at least part of the information is in the public record elsewhere (i.e., e.g., the DR asserting that a rag kept a cell door from locking) and may also be common knowledge among incarcerated people. To the extent either party seeks to rely on the testimony, we can agree to file the redacted version on the public docket and an unredacted version under seal.

Separately, with respect to Plaintiff's Motion to Compel Production of Documents, please let us know if our motion to the Court is moot (i.e. whether your clients will agree to produce the correspondence sought within a reasonable timeframe) so we can advise the court today.

Otherwise, however regrettably, we will proceed with our motion.

Thanks,
Beth



Beth Littrell she/her/hers
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From: Roger Chalmers <rchalmers@law.ga.gov>
Sent: Tuesday, May 25, 2021 9:29 AM
To: Beth Littrell <beth.littrell@splcenter.org>; Annarita McGovern <amcgovern@satchermcgovernlaw.com>; 'Terry Long' <tlong@satchermcgovernlaw.com>
Cc: Robert Shapiro <RShapiro@LAW.GA.GOV>; Roger Chalmers <rchalmers@law.ga.gov>
Subject: Diamond v Ward -- Sam Miller testimony redaction and attorney eyes only designation

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Counsel,

Highlighted in yellow here are the proposed Sam Miller testimony designated parts for redaction from the public record and for designation as attorney eyes only material not to be shared with your client. Please let me know if you will consent and I will provide this copy to Darlene. Beth—will let you please circulate to your team.

Thank you,

Roger



Roger Chalmers
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Atlanta, Georgia, 30334

Roger Chalmers

From: Roger Chalmers
Sent: Monday, May 24, 2021 5:47 PM
To: 'Beth Littrell'; Robert Shapiro; Annarita McGovern; 'Terry Long'; Elizabeth M. Crowder
Cc: Diamondlegalteamonly
Subject: RE: Diamond v. Ward: Outstanding Discovery

Beth – We are willing to confer regarding the requests. I am not able to look back at all of the requests in issue today.

Separately, we are working to get the Sam Miller transcript to you with highlighted parts for redaction and for designation as attorney eyes only material not to be shared with your client. I hope to get that completed and sent over to you tomorrow or Wednesday.



Roger Chalmers
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From: Beth Littrell <beth.littrell@splcenter.org>
Sent: Monday, May 24, 2021 3:24 PM
To: Robert Shapiro <RShapiro@LAW.GA.GOV>; Roger Chalmers <rchalmers@law.ga.gov>; Annarita McGovern <amcgovern@satchermcgovernlaw.com>; 'Terry Long' <tlong@satchermcgovernlaw.com>; Elizabeth M. Crowder <ecrowder@LAW.GA.GOV>
Cc: Diamondlegalteamonly <diamondlegalteamonly@ccrjustice.org>
Subject: Diamond v. Ward: Outstanding Discovery

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Counsel:

As you may know, our Reply Brief on Plaintiff's Motion to Compel Production of Documents and Motion for Limited Expedited Discovery is due tomorrow. We intend to notify the Court that Plaintiff recognizes that the motion for expedited discovery is moot. However, the Plaintiff's Requests for Production of Documents were properly propounded April 16, 2021 and remain outstanding. Your argument in response to Plaintiff's Motion to Compel Production of Documents and Motion for Limited Expedited Discovery primarily concerned the expedited nature of the requests "rather than in the normal course of discovery in this case," EDF 91, at 8. We believe the expedited nature of the discovery requests have been converted to requests in "the normal course of discovery" as you proposed. We seek to understand your current position on these outstanding document requests.

Given the post-hearing briefing schedule on the motions for preliminary relief and a protective order that the Court announced, the documents requested are relevant to issues that remain ripe both as to the preliminary relief and underlying claims. We recognize that the last few weeks have required an enormous amount of resources. Prior to our filing tomorrow, please let us know whether you intend to produce the originally requested documents and if so, when you anticipate doing so.

Thanks,
Beth



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EXHIBIT B

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

ASHLEY DIAMOND,

Plaintiff,

vs.

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

TIMOTHY WARD, et al.,

Defendants.

The Videoconference Deposition of TIA FLETCHER
Commencing at 1:44 p.m.
Monday, May 10, 2021
Before Renee J. Ogden, CSR-3455, RPR.

Transcript of Tia Fletcher
Conducted on May 10, 2021

142

1	Q.	Ms. Fletcher, did you tell Ashley Diamond at any time	18:01:52
2		that Warden Benton or other administrators at Coastal	18:02:02
3		State Prison had been working together to punish her	18:02:10
4		for her advocacy?	18:02:13
5	A.	No, sir.	18:02:15
6	Q.	To your knowledge, or did you have any knowledge that	18:02:15
7		Warden Benton or anyone else at Coastal State Prison	18:02:22
8		is working to punish Ashley Diamond for her advocacy?	18:02:25
9	A.	No, sir.	18:02:28
10	Q.	Do you have any information to support Ashley	18:02:29
11		Diamond's claim that Warden Benton or others at	18:02:33
12		Coastal State Prison are retaliating against her?	18:02:36
13	A.	No, sir, I don't have any. You said any	18:02:40
14		documentation?	18:02:43
15	Q.	Any information.	18:02:44
16	A.	No, no information, no, sir.	18:02:45
17	Q.	Do you have any information that DRs issued to Ashley	18:02:50
18		Diamond are retaliation for something she has done?	18:02:54
19	A.	No, sir.	18:02:57
20	Q.	Do you have any information that PIC dates issued or	18:02:59
21		changed relating to Ashley Diamond are retaliation for	18:03:03
22		something she has done?	18:03:09
23	A.	No, sir.	18:03:10
24	Q.	Do you have any information that release date, whether	18:03:11
25		it's a maximum release date or any other release date	18:03:16

Transcript of Tia Fletcher
Conducted on May 10, 2021

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1	for Ms. Diamond, is actually generated because of her	18:03:19
2	retaliation for what she's done?	18:03:22
3	A. No, sir.	18:03:24
4	Q. Did you at any point tell Ms. Diamond that	18:03:24
5	Warden Benton or others at Coastal called a special	18:03:31
6	strategy meeting to discuss retaliation or punishing	18:03:35
7	her?	18:03:40
8	A. No, sir.	18:03:40
9	Q. Did you ever learn of or were you ever present for any	18:03:44
10	kind of special strategy meeting where it was	18:03:47
11	discussed that Ms. Diamond would be punished or	18:03:52
12	retaliated against?	18:03:55
13	A. No, sir.	18:03:56
14	Q. Do you have any knowledge of any GDC staff member or	18:03:56
15	official at Coastal State Prison retaliating against	18:04:05
16	Ashley Diamond?	18:04:08
17	A. No, sir.	18:04:10
18	MR. CHALMERS: I believe I'm finished. It	18:04:26
19	can be less than a five-minute break and then I can	18:04:30
20	look through my notes and confirm that I'm done.	18:04:32
21	MS. RAJARATNAM: Sure.	18:04:40
22	VIDEO TECHNICIAN: Go off the record. The	18:04:40
23	time is 6:04.	18:04:43
24	(Off the record at 6:04 p.m.)	18:04:47
25	(Back on the record at 6:09 p.m.)	18:04:47

EXHIBIT C

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

ASHLEY DIAMOND,

Plaintiff,

vs.

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

TIMOTHY WARD, et al.,

Defendants.

The Videoconference Deposition of TAMARA CANTERA
Commencing at 9:11 a.m.
Monday, May 10, 2021
Before Renee J. Ogden, CSR-3455, RPR.

Transcript of Tamara Cantera
Conducted on May 10, 2021

89

1 A. The only involvement I have in any disciplinary report 11:35:30
2 is there are times when the DR officer will bring a 11:35:35
3 form and I just indicate if they are competent to 11:35:38
4 understand what happened or not. That is it. I don't 11:35:41
5 recall if I signed any for Ms. Diamond or not. 11:35:43
6 Q. So as you sit here today, you don't recall being 11:35:50
7 involved in any disciplinary report process involving 11:35:52
8 Ms. Diamond except perhaps maybe as doing that mental 11:35:56
9 health? 11:36:01
10 A. Correct. 11:36:01
11 Q. Check that you just described? 11:36:02
12 A. Just to make sure they understand right from wrong and 11:36:05
13 they're able to understand. 11:36:10
14 Q. Okay. 11:36:11
15 A. That's all I remember. 11:36:15
16 Q. You were asked about retaliation and you indicated 11:36:34
17 that Ms. Diamond indicated to you that she believed a 11:36:37
18 DR she received was retaliation? 11:36:43
19 A. Correct. 11:36:46
20 Q. Did you have any knowledge of DRs -- let me rephrase. 11:36:47
21 Do you have any knowledge of disciplinary reports 11:36:59
22 being issued to Ms. Diamond as retaliation for 11:37:04
23 something she may have done? 11:37:09
24 A. No. 11:37:10
25 Q. Did you tell Ashely Diamond that Warden Benton and 11:37:11

Transcript of Tamara Cantera
Conducted on May 10, 2021

90

1	other administrators have been working together to	11:37:21
2	punish her for her advocacy?	11:37:27
3	A. No, I did not.	11:37:30
4	Q. Do you have any knowledge at all of Warden Benton, or	11:37:31
5	other administrators at Coastal working to punish	11:37:34
6	Ashely Diamond for her advocacy?	11:37:39
7	A. No.	11:37:41
8	Q. Do you have any information to support Ms. Diamond's	11:37:42
9	claim that Warden Benton or others at Coastal are	11:37:50
10	retaliating against her?	11:37:54
11	A. I don't have enough information to make that decision.	11:37:55
12	I don't know.	11:38:00
13	Q. Did you tell Ms. Diamond that Warden Benton or others	11:38:00
14	at Coastal State Prison called a special strategy	11:38:07
15	meeting to discuss retaliation or to discuss punishing	11:38:10
16	Ms. Diamond?	11:38:16
17	A. I don't recall that, no.	11:38:21
18	Q. Do you know of any such meeting?	11:38:22
19	A. Not that I remember, no.	11:38:23
20	Q. Do you have any knowledge of any GDC staff member or	11:38:25
21	anyone at Coastal retaliating against Ashely Diamond?	11:38:40
22	A. No.	11:38:54
23	Q. I want to ask about your employment status. Were you	11:38:55
24	employed by Augusta University for a time or were you	11:39:00
25	employed by MHN while you were working at the Coastal	11:39:04