

**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’ RESPONSE TO PLAINTIFF’S POST-HEARING BRIEF

Defendants Timothy Ward, Sharon Lewis, Javel Jackson, Ahmed Holt, Robert Toole, Benjamin Ford, Jack Sauls, Brooks Benton, and Grace Atchison, through counsel, submit this response to Plaintiff’s Post-Hearing Brief in Support of Her Motion for Preliminary Injunction (Doc. 119).¹

Plaintiff Ashley Diamond’s motion seeks extraordinary relief in the form of a mandatory injunction,² yet the evidence that she offers – and, as important, what is missing in the evidence – belies her contention that she is entitled to such relief. Diamond argues that “sexual assaults and sexual harassment continue unabated” since the May 2021 hearing. However, when getting down to specifics, she falters. She states that she has been “physically groped by men at least a dozen times” (Doc. 119 at 10), *but*

¹ Defendants do not repeat herein the elements of the Eighth Amendment claim under consideration (Count I of the amended complaint) or the requirements for the entry of injunctive relief, and respectfully refer the Court to their response brief (Doc. 84 at 4-9) for the applicable authorities.

² The motion requests an order directing Defendants “to transfer Ms. Diamond to a female facility for safety purposes for the remainder of her time in custody.” (Doc. 50 at 1). That was one of five requests for relief in the motion (*see id.*) and it is the only remaining item at issue per the Court’s instructions.

evidently she did not report any of these “dozen” incidents through the available PREA process. (Id.).³ She also states that she was “sexually assaulted twice more,” (*id.*), and as to these two alleged assaults she states: “Ms. Diamond reported and fully participated in PREA investigations into these latest sexual assaults” (*Id.*). So, by Diamond’s own account, she has been physically assaulted 14 times since the May 2021 hearing, but she only bothered to report two of the incidents through the demonstrated available PREA process. This testimony simply is not credible (Diamond contends that she fears sexual assault yet does not report alleged incidents of sexual assault), it does not show deliberate indifference (which is a failure to act with notice), and also it is not indicative of an urgent risk of harm calling for this Court to grant extraordinary injunctive relief. If the harm or perceived harm is not significant enough to cause Diamond to take the obvious and available precautionary and preventative measures such as reporting instances of assault, then it is not so significant as to permit a mandatory injunction.

But there is more on this point that is buried in Diamond’s lengthy submissions to the Court. Diamond’s new declaration offers the following information as to the two alleged incidents for which she claims she “reported and fully participated in PREA investigations.” *First*, Diamond describes an alleged incident as having occurred in “late September 2021, at around 5:30 or 6:00 a.m.” (Doc. 121 at 3). Diamond states that “a

³ Defendants submitted evidence that there is a PREA policy and process, and also personnel at the facility and at GDC central offices who are involved in reviewing PREA complaints and conducting the PREA investigations. (Doc. 77-7) (Atchison Declaration). Plaintiff admitted at the hearing that, on the advice of her lawyers, she refused to be interviewed in facility PREA investigations including in the attempts by the prison staff to determine what, if anything, occurred with respect to the alleged July 2020 and September 2020 incidents. (Hearing Transcript at 140-143; *id.* at 144-145). The prison’s efforts in the PREA process to determine what occurred in the alleged incidents, and Diamond’s refusals to be interviewed in the PREA process, also are documented in the

man had slid into my cell and jumped into my bed. The attacker got on top of me, touched by buttocks and breasts, kissed me all over, and said, “Come on baby.” (*Id.*). Diamond goes on to state that a “man in the cell next door to mine N.B., heard me screaming for the attacker to get off of me. N.B. ran to my cell, yelled at my attacker to get out, and the attacker left.” (*Id.*). As to the claim of having “reported and fully participated in PREA investigation” for this incident, ***Diamond actually reveals that she did not report the incident***, in this way: “In the incident described above, involving the man who molested me in my cell, no staff were present to accept my complaint. The prison phones and the PREA kiosk were also down, so I couldn’t even make a report using those means.” (Doc. 121 at 20). No further information is given in all of Diamond’s lengthy submissions as to what efforts she made to report this first alleged incident of sexual assault occurring after the May 2021 hearing. And this statement simply is not credible because Diamond has many contacts with Coastal State Prison staff, and she can report alleged PREA incidents in many ways, including to her counselors and to her mental health team, which she did as to the second alleged post-hearing sexual assault, which is discussed next.

Second, Diamond describes an incident as having occurred “[o]n or about September 30, 2021.” (Doc. 121 at 3). Diamond’s new declaration describes the incident in this way:

On or about September 30, 2021, I was walking back to my dormitory after taking a lawyer call. GDC staff told me that I would not get an escort to bring me back to my dormitory. I have to pass through two locked gates when getting from 3-A, the building where I take lawyer calls, to my dormitory.

evidence before the Court. (Doc. 120-9, 120-23) (alleged July 2020 incident); (Doc. 120-13, 120-22) (alleged September 2020 incidents).

Usually there is an officer standing by each gate to let people through. That day, there was no officer, so I waited by the gate for an officer to open it where there were at least, approximately, fifty male inmates gathered.

As I was standing by the gate, a man came up from behind me and grabbed and slapped by buttocks, saying, “Whassup Diamond.” Two more men joined him and they passed me back and forth groping and grabbing my breasts and buttocks, pressing up on me, and putting their hands all over me, saying things like “you like that” and “that’s what your famous for.” This assault lasted at least 30 minutes. I tried to get away but they kept following me. Eventually, I was able to escape and ran to safety.”

(Id.).

As to the PREA reporting on this second alleged incident of sexual assault occurring after the May 2021 hearing, Diamond submits documentation indicating that she encountered a Coastal State Prison staff member, Christina Wilson, who was also on the prison grounds near the gate where this alleged incident occurred. Wilson wrote a witness statement indicating that she was in that area at approximately 4:45 p.m. and then again at approximately 5:50 p.m., and that at both times she saw Diamond but no other inmates in the area. (Doc. 120-47). According to Wilson, Diamond said she had been assaulted, and Wilson immediately took Diamond to speak with her counselor, Mr. Pannazzo. *(Id.)*.⁴ Wilson stated further: “At no time did I ever see or intervene in any altercation involving Offender Diamond and anyone. I have no idea what Offender Diamond is referring to. No altercation took place at the Flattop Gate when I was there.” *(Id.)*. Diamond later wrote a witness statement, to this effect: “while standing at the gate trying to get through I was groped and pressed by several men. I was able to escape after

⁴ Wilson’s statement indicates that she began to escort Diamond to the medical unit, but they encountered Pannazzo on the way. (Doc. 120-47). There is no indication that Diamond requested, or needed, medical treatment after this alleged incident.

about 30 minutes.” (Doc. 120-46). A memorandum reflects that the PREA allegation was determined to be unfounded. (Doc. 120-48). However, an incident report reflects that the matter was referred for investigation. (Doc. 120-49). Diamond submits no further information on this alleged incident.⁵

So in all, Diamond’s evidence, such as it is, is that she reported one alleged incident of sexual assault occurring after the May 2021 hearing, that the incident is alleged to have occurred on September 30, 2021, and that the incident was not corroborated at the facility in the PREA process but that it is under investigation. This evidence of one reported but uncorroborated incident after the May 2021 hearing does not show deliberate indifference; and, more importantly for present purposes, it does not show a need for emergency injunctive relief.

Importantly, Diamond offers no indication or suggestion, and no evidence, that she suffered a physical injury in the alleged September 30, 2021 incident. In this respect, it is notable that, while Diamond claims in this action that she has been subjected to “unabated” instances of physical and sexual assault, including “shocking assaults, such as four rapes in three days,” (Doc. 119 at 21),⁶ and that her life is in danger in a men’s prison because of her transgender status and the generally violent nature of men’s

⁵ For reasons that are not clear, Diamond’s counsel separated the documents that were produced with respect to this alleged incident of assault and did not submit all of the documents with the post-hearing brief. But the documents previously were submitted to the Court as DEF_029516-029549. (T. Reid email to K. Tavalero 11/12/2021). Among the documents that Diamond omits from her submission is a witness statement from Coastal State Prison Chief Counselor Briana Kaigler where Kaigler indicates that Diamond failed to identify witnesses to the incident because “she did not want to get anyone involved.” *See* Exhibit A hereto (DEF_029548-029549).

⁶ The “four rapes” are the alleged September 2020 incidents that Diamond refused to discuss with facility staff in the PREA process.

prisons, there is no evidence of any physical injury, and no evidence that medical attention or medical treatment ever has been required, after any claimed incident of physical or sexual assault. While a manifest physical injury is not a necessary precondition for the Court to take action – and that is not the standard that is suggested – it is a compelling fact that, by the evidence presented by Defendants, Diamond has been placed in a specific prison, in a specific dormitory, in a specific cell, all selected after consideration of her specific needs and for her physical safety, (Doc. 77-1) (Holt Declaration); (Doc. 77-2) (Benton Declaration); (Doc. 77-7) (Atchison Declaration); (Doc. 84 at 9-11) (Defendants’ response brief summarizing security steps taken to protect Diamond), and there is no documented evidence of physical harm from assault in all of Diamond’s current period of incarceration.⁷

What is missing in the evidence, then, is a clear indication that Diamond is not protected in her current place of incarceration by the steps that have been taken and that are being implemented by the Defendants. In this circumstance, Diamond has not demonstrated a substantial likelihood of success on her Eighth Amendment deliberate indifference claim. And when the evidence is in this status the Court should not enter preliminary injunctive relief, let alone a mandatory injunction as is sought here. *See* Doc. 84 at 5 (Defendants’ response brief discussing standard for preliminary injunctive relief,

⁷ GDC policy, including the PREA policy, prohibit all sexual abuse and harassment, including sexual assault, irrespective of whether it can or does cause physical injury, and Defendants work to prohibit all such conduct not merely as to Diamond but as to all offenders. The point here is that there is a significant credibility issue and a fact dispute in this case as to whether Diamond has been subjected to sexual assaults. Where there is such a fact dispute as to whether assaults have occurred as alleged, it is relevant that there is no objective documentary evidence of physical injury. Diamond’s claims of assault and fear of assault are inconsistent with her own actions as discussed in this brief, and they are also uncorroborated by other evidence such as medical records.

including that the movant must “clearly carry the burden of persuasion” on all of the four required elements, and also that the “burden on the moving party increases” when a mandatory injunction is sought).

Meanwhile, Diamond engages in behavior that is contrary to the secure and safe operation of the prison – that is, she refuses to follow basic security precautions, even beyond her admitted and documented refusal to participate in the PREA process. As a prime example, she acknowledged at the May 2021 hearing a basic security precaution which is that one inmate may not enter another inmate’s cell, as follows:

Q. You understand that that is a rule at Coastal State Prison, that an offender should not enter another offender’s room?

A. I do understand that.

Q. And you understand that it means that both you should not go into another offender’s room, but also you should not permit or another offender should not be allowed by you into your cell?

A. Um-hum.

Q. Is that a yes?

A. Yes.

(Hearing Transcript at 136). But then since the hearing, as shown in her response to requests for admission, Diamond has challenged this basic security rule that was put in place by Warden Benton, citing as support for her position “witnesses” who are actually not prison officials but instead other inmates. *See* Exhibit B hereto (Plaintiff’s Objections and Responses to Defendant Ahmed Holt’s Second Requests for Admission, Nos. 13-14 at p. 6); *and see also* Exhibit C hereto (Plaintiff’s Objections and Responses to Defendant Ahmed Holt’s First Set of Interrogatories, No. 14 at pp. 13-15) (“Plaintiff denies Request for Admission [13 and 14] because in N-B, the dorm housing those in the evidence-based

program, there is no security rule that prohibits an offender from entering another offender's cell. Witnesses include J. Blake Duckworth, Nicholas Browning, and Michael Mancil.”). Inmates do not establish prison security rules, and that Diamond would complete an about-face from her hearing testimony on this point, and that her lawyers would identify inmates as persons of authority on prison security rules, is astounding given the claims in this case.

As two other notable examples, Diamond has obtained, possessed, and used contraband drugs at Coastal State Prison including marijuana and methamphetamine. *See* Exhibit B hereto (Plaintiff's Objections and Responses to Defendant Ahmed Holt's Second Requests for Admission, No. 15 at pp. 6-7) (“Plaintiff objects to this Request as not relevant to any party's claims or defenses and based on the Fifth Amendment privilege against self-incrimination.”).⁸ And Diamond has possessed and used contraband cell phones, another security violation, and by invoking the Fifth Amendment here again in regard to this line of evidence she has effectively prevented Defendants, and the Court, from accessing and considering her communications that may shed light on whether she is being truthful in her claims and in her allegations in this case. *See* Exhibit D hereto (Plaintiff's Objections and Answers to Defendant Ahmed Holt's Second Set of Interrogatories, No. 1 at pp. 3-4) (invoking Fifth Amendment privilege when asked to “[p]rovide the number of any telephone or mobile or cellular device utilized by you from

⁸ Because Diamond invoked the Fifth Amendment in response to this inquiry, a factfinder can infer that the evidence is as stated. “The Fifth Amendment does not prohibit a court from drawing an adverse inference against parties to civil actions.” *Dean v. Douglas*, 2012 U.S. Dist. LEXIS 175006, *19 (M.D. Ga. 2012) (Royal, J.) (citing *United States v. A Single Family Residence & Real Prop. Located at 900 Rio Vista Blvd., Ft. Lauderdale*, 803 F.2d 625, 629 n. 4 (11th Cir. 1986)).

October 2019 to the present and for each such number state the provider for such communication service”).

These security violations are not trivial when considered in the context of the extraordinary mandatory injunctive relief of a transfer to a women’s facility that Diamond currently seeks. At bottom, Diamond’s lawsuit concerns prison security and safety measures and how those measures impact her as a transgender inmate. Yet, by her own conduct, including by refusing to discuss PREA allegations (as shown at the hearing), by repeatedly failing to report alleged PREA incidents (as shown for the “dozen” incidents mentioned at the outset of this brief, and also the first alleged post-hearing sexual assault incident discussed in this brief), by refusing to follow basic security precautions and by trafficking in contraband which also is a security violation (as discussed above), Diamond demonstrates a decided lack of concern for her own safety. Therefore, the extraordinary relief sought by her current motion not only is not supported by evidence, but also it is not warranted by her conduct which is inconsistent with the stated concern for her safety.

Similarly, the extraordinary relief of a mandatory injunction – transfer to a female facility – is inconsistent with how Diamond’s lawyers have litigated this case. Diamond’s lawyers at every turn have sought to expand and prolong this litigation, not push it toward a final resolution. Importantly, they delayed in seeking injunctive relief. Diamond testified at the May 2021 hearing that she provided the lawyers with the details of the alleged July 2020 and September 2020 assaults, (Hearing Transcript at 145-147), and yet the lawyers did not even file the lawsuit for almost four full months after the alleged July 2020 assault and two months after the September 2020 assaults. (Doc. 1) (complaint filed

November 23, 2020). And then, when they filed the lawsuit, they did not seek immediate injunctive relief. (*Id.*). That inaction and delay alone belies the contention of a need for immediate emergency injunctive relief. But that is not all – the lawyers then waited another four and one-half months before filing the motion for preliminary injunction. (Doc. 50) (motion filed April 9, 2021). Again, the long period of inaction and delay completely undercuts the contention, made first in the motion but then repeated ever since, that Diamond is in immediate harm and needs immediate relief. And then, even after the May 12-13, 2021 hearing, Diamond’s lawyers waited still again, this time for an additional six months, before filing their post-hearing brief. (Doc. 119) (post-hearing brief filed November 23, 2021). In that interim six-month time period, they did not limit their inquiry to information needed to file a supplemental, or post-hearing brief. Rather, they engaged in extensive and intensive document discovery on the merits, requiring Defendants and their counsel to collect and produce some 30,000 plus pages of documents, nearly all of which have not been submitted to the Court and none of which have been the subject of deposition inquiry because depositions have not yet commenced in the case.⁹ Diamond’s lawyers also have engaged and disclosed expert witnesses for the

⁹ Diamond’s post-hearing brief is accompanied by a lawyer declaration purporting to authenticate documents received in discovery after the May 2021 hearing. (Doc. 120). Putting aside whether this is proper authentication, no testimony or declaration of a witness with knowledge is offered for any of the documents. Offering up “evidence” in this shortcut manner is inconsistent with the burdens placed on the movant for preliminary injunctive relief. It is fundamental that on a motion for a preliminary injunction the movant must satisfy its burden with evidence, not unsupported or unsworn allegations or promises as to what might be proved at trial. *See, e.g., Winter v. Nat. Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008) (referring to the “scientific studies, declarations, and other evidence in the record”); *and see also All Care Nursing Serv., Inc. v. Bethesda Memorial Hosp., Inc.*, 887 F.2d 1535, 1537-39 (11th Cir. 1989). Additionally, the lawyer declaration reflects that, of the more than 30,000 pages that were collected and produced by Defendants after the May 2021 hearing, only 35 pages were submitted with the post-hearing brief. (Doc. 120 at 8) (list of 35 pages with higher level

case, producing expert reports in January 2022. But those reports also are not made a part of the instant motion, nor could they be because under the current scheduling order Defendants have not had an opportunity to depose Plaintiff's experts or to disclose Defendants' experts.

This protracted delay in relation to the alleged incidents that are the basis for the requested injunctive relief is, and should be, fatal to Diamond's motion. It is axiomatic that "[p]reliminary injunctive relief is improper in 'the absence of a substantial likelihood of irreparable injury.'" *Merial Inc. v. Ceva SantE Animale S.A.*, 2015 U.S. Dist. LEXIS 191281, *11 (M.D. Ga. Sept. 4, 2015) (Royal, J.). While delay does not preclude a finding of irreparable harm, *see Citizens Asset Fin. v. Stafford Transp. of La.*, 2021 U.S. Dist. LEXIS 250396, *15-16 (N.D. Ga. Oct. 22, 2021), it is recognized as a very strong indication that there is no irreparable harm in the circumstances. *Id.* (citing *Wreal, LLC v. Amazon.com*, 840 F.3d 1244, 1248 (11th Cir. 2016) ("A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.")); *see also Burger v. Harley*, 2011 U.S. Dist. LEXIS 148990, *7-8 (S.D. Fla. Dec. 28, 2011) ("It is well established that a pattern of delay is fundamentally inconsistent with . . . allegations of irreparable injury. Such delay is a factor that this Court may properly consider in evaluating the propriety of a TRO or preliminary injunction."); *see also id.* at n. 5 (citing numerous cases to this same effect); *and see also Ins. Co. v. Lakeshore Toltest JV, LLC*, 2015 U.S. Dist. LEXIS 165213, *7

bates numbering); *compare* Docs. 77, 78 (Defendants' pre-hearing document production). Plainly, six months of document discovery was not necessary for Diamond's lawyers to file the post-hearing brief.

(S.D.N.Y. Nov. 30, 2015). In *Lakeshore Toltest*, the court said the following which is instructive here:

“A district court should generally consider delay in assessing irreparable harm.” *Tom Doherty Assocs. v. Saban Entertainment*, 60 F.3d 27, 39 (2d Cir. 1995). That is because a preliminary injunction implies an “urgent need for speedy action to protect the plaintiffs’ rights.” *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985). Delay therefore “indicates an absence of the kind of irreparable harm required to support a preliminary injunction.” *Id.* at 276; *Tough Traveler, Ltd. v. Outbound Products*, 60 F.3d 964, 968 (2d Cir. 1995) (finding no irreparable harm where the plaintiff moved for a preliminary injunction a year after the alleged injurious conduct). “Courts have not imposed rigid deadlines by which a request for preliminary injunctive relief must be made” *Gidatex, S.r.L. v. Campaniello Imports, Ltd.*, 13 F. Supp. 2d 417, 419 (S.D.N.Y. 1998). But “even a relatively brief delay may be too long.” *Id.* (citing *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276-77 (2d Cir. 1985) (a ten-week delay undercut a finding of irreparable injury)).

2015 U.S. Dist. LEXIS 165213, *7. Diamond’s delay in bringing her motion in the first instance, and additional delay in filing her post-hearing brief, is additional reason why this Court should not grant the relief requested. The delay is completely inconsistent with the contention, which Defendants’ dispute, that Diamond is not protected and that she is at risk of irreparable harm in her current incarceration.¹⁰

Finally, Diamond has not presented any evidence from which the Court can determine that no harm will inure to the Georgia Department of Corrections and its operations, or to others (such as other offenders), or to the public, if the Court enters the

¹⁰ This is not a case where negotiations between the parties would explain Diamond’s delay in bringing her motion. See *Citizens Asset Fin.*, 2021 U.S. Dist. LEXIS 250396, *16-17. In a case involving financial obligations such actual ongoing negotiations might explain a delay in seeking injunctive relief. *Id.* But in this case where there is a professed concern for physical safety there is no good explanation for the long delay in bringing the motion and submitting the post-hearing brief, other than the obvious explanation which is the absence of a threat of imminent harm.

requested mandatory injunction. Diamond’s post-hearing brief addresses these third and fourth pre-requisites to the issuance of injunctive relief as if they are merely an afterthought, citing a few cases and no evidence at all, and suggesting without explanation that granting the requested relief would impose only “financial” or “administrative” burdens. (Doc. 119 at 35). But this last suggestion is incorrect because what is at issue is the safe and secure management and operation of state prisons, and not only Georgia’s men’s prisons where Diamond is held, but also of the state’s women’s prisons where she asks to be transferred.

Moreover, with respect to the balance of equities and the public interest, Diamond’s motion runs up against two other important considerations. *First*, the Eleventh Circuit has instructed its district courts to be even more tentative in issuing injunctions when, as here, the party to be enjoined is a state governmental entity:

[e]quitable remedies are powerful, and with power comes responsibility for its careful exercise. These remedies can affect nonparties to the litigation in which they are sought; and when, as in this case, they are sought to be applied to officials of one sovereign by the courts of another, they can impair comity, the mutual respect of sovereigns—a legitimate interest even of such constrained sovereigns as the states and the federal government . . . [T]here is not an absolute right to an injunction in a case in which it would impair or affront the sovereign powers or dignity of a state
. . . .

McKusick v. City of Melbourne, Fla., 96 F.3d 478, 487-88 (11th Cir. 1996).

Second, Congress in the PLRA has imposed further limitations on injunctive relief in the prison setting which limitations recognize the importance, and the need, for allowing prison officials to exercise their discretion and experience in the operation of secure prison facilities. Under the PLRA Congress placed limits on the scope of prospective injunctive relief that a federal court may enter in prison litigation. *See* 18

U.S.C. § 3626(a)(1). The limitations are consistent with the Supreme Court’s view that federal courts should have less involvement in state prison systems. *See Parrish v. Alabama Dep’t. of Corrections*, 156 F.3d 1128, 1129 n.2 (11th Cir. 1998) (citing *Sandin v. Conner*, 515 U.S. 372, 482, 115 S. Ct. 2293 (1995) and H.R. Conf. Rep. 104-378 (1995) (stating that Congress designed section 3626 to ensure that prospective relief is the “minimum necessary to correct the violation of a federal right”)). The PLRA limits the scope of a federal court’s authority to enter prospective relief,¹¹ as follows:

Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

18 U.S.C. § 3626(a)(1)(A).

The suggestion here is not that this Court cannot enter appropriate injunctive relief; it is instead that evidence must be presented on all of the four prerequisites to entry of such relief, and the movant must carry the burden on each one, before such relief can be entered. Diamond’s motion and evidence do not address the balance of equities and public interest factors, and it is her burden to do so. The Supreme Court has cautioned that the balance of equities and public interest components should not be addressed in such a cursory fashion as Diamond attempts here. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 26-27 (2008). Because Diamond has offered no evidence on these pre-requisites to the

¹¹ The PLRA defines prospective relief as “all relief other than compensatory monetary damages.” 18 U.S.C. § 3626(g)(7).

entry of injunctive relief, the Court must find that Diamond has failed to meet them and that they weigh in Defendants' favor. In this case where these factors are especially important, and where as stated the parties have indicated that expert testimony and evidence will be sought and presented on the merits of the claims, the Court should allow the record to be developed, and the balance of equities and public interests explained, before it considers removing from the Georgia Department of Corrections the important function of classifying and housing a state prisoner and so altering the operation of the state prison system as is requested.

Diamond has not shown a substantial likelihood of success on the merits of her Eighth Amendment failure to protect claim, a substantial risk of irreparable injury unless the requested mandatory injunctive relief is issued, and no substantial harm to others or to the public if the relief is issued. Diamond bears the burden of proof on all elements. *See Florida v. HHS*, 2021 U.S. App. LEXIS 35998 (11th Cir. Dec. 6, 2021).¹² Because she has failed to meet that burden, Defendants respectfully ask that her motion for preliminary injunction be denied.

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

¹² *Florida v. HHS* involved an injunction pending appeal, but the standards are the same.

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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
Scott D. McCoy
Maya Gyan Rajaratnam

This 5th day of February, 2022.

s/ Roger A. Chalmers
Roger A. Chalmers

WITNESS STATEMENT			
PLACE <i>Coastal State Prison</i>	DATE <i>11/4/21</i>	TIME <i>1705</i>	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME <i>Kaugler, Briana Darice</i>		EMPLOYEE ID NUMBER 	STATE ID NO.
INSTITUTION OR ADDRESS <i>200 Gulf Stream Rd., Garden City, GA 31418</i>			
SWORN STATEMENT			
I, <u><i>Briana Kaugler</i></u> , WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			
<p><i>On 11/2/21 while conducting inspection with the inspection team, offender Diamond, Ashley #1000290565 asked could she speak with me. I informed her that she could. Offender Diamond asked me why I did not interview her witnesses to her PREA allegations. I informed her that she did not inform her me of any witnesses because she did not want to get anyone involved. Offender Diamond said Oh yeah you are right. I do have my witnesses now and I will get them to write a statement. Also, once they are done with the statements I will put them in a sealed envelope and get them to you by a counselor. I ended my conversation</i></p>			
EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>BK</i>		PAGE 1 OF <u>2</u> PAGES
<small>ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____ CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE _____ OF _____ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</small>			

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STATEMENT (Continued)

with Diamond and she returned to her dorm.
Shortly after she walked in the inspection
team walked out stating that they found
a cellphone in offender Diamond's room.

End of Statement

~~BOK BOK BOK BOK~~

AFFIDAVIT

I, Briana Kayser HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 1. I FULLY UNDERSTAND THE CONDITIONS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Briana Kayser
(Signature of Person Making Statement)

WITNESS

INSTITUTION OR ADDRESS

INSTITUTION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this ___ day of _____, 20__ at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority to Administer Oath)

INITIALS OF PERSON MAKING STATEMENT

BOK

PAGE 2 OF 2 PAGES

**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 OBJECTIONS AND RESPONSES TO DEFENDANT AHMED HOLT’S
SECOND REQUESTS FOR ADMISSION**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Plaintiff Ashley Diamond submits the following answers and objections to Defendant Ahmed Holt’s Second Set of Requests for Admission (“Requests”).

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

Plaintiff expressly incorporates all the general objections and reserved rights set forth below into each and every response and objection to the Requests, although Plaintiff has not withheld any information solely on the basis of her general objections. A failure to reiterate a general objection or reserved right shall not constitute a waiver of that or any other objection.

1. These responses and objections are made without waiving or intending to waive:
(a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information produced in response to the Requests; (b) the right to object on any ground to the use of the information produced in response to the Requests at any hearing, trial, or other proceeding in this action; (c) the right to object on any ground at any time to a demand for further responses to the Requests; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the answers or objections contained herein.

2. The information supplied herein are for use in this action and for no other purpose.

3. The answers and objections made herein are based on Plaintiff's investigation into date of those sources within her control where she reasonably believes responsive information might exist.

4. Plaintiff's investigation and discovery efforts in this action are ongoing. Plaintiff reserves the right to amend or supplement these answers and objections with additional information that might become available or come to her attention, and to rely upon such information at any hearing, trial, or other point during this action consistent with the applicable Federal Rules of Civil Procedure and the local rules of this Court.

5. Plaintiff objects to Defendant's Definitions and Instructions to the extent they impose additional or greater obligations than those imposed by the Federal Rules of Civil Procedure, this Court's local rules, or the discovery schedule approved by the Court (ECF Nos. 47, 108, 109).

6. Plaintiff objects to each Request to the extent it seeks discovery that is outside the scope permitted by the Federal Rules of Civil Procedure.

7. Plaintiff objects to the Requests to the extent the discovery sought is unreasonably cumulative or duplicative, is publicly available, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.

8. Plaintiff objects to the Requests to the extent the discovery sought is available to Defendant and the burden on Defendant to obtain the discovery sought is no greater than the burden on Plaintiff.

9. Plaintiff objects to the Requests to the extent they demand the production of information that is privileged or otherwise protected against discovery pursuant to the attorney–client privilege, the work-product doctrine, the psychotherapist–patient privilege, the consulting expert rule, or any other legally recognized privilege, immunity, or exemption from discovery under any other applicable rule or statutory or common-law protection against disclosure, including the laws of the country or countries where such documents are located. To the extent that any such protected information is inadvertently produced in response to the Requests, the production of such information shall not constitute a waiver of Plaintiff’s right to assert the applicability of any privilege or immunity to the information, and any such information shall be returned to Plaintiff’s counsel immediately upon discovery thereof.

SPECIFIC RESPONSES AND OBJECTIONS

Request for Admission 1: Admit that you have never had gender confirmation surgery.

Response to Request for Admission 1: Admit.

Request for Admission 2: Admit that you have never had gender reassignment surgery.

Response to Request for Admission 2: Admit.

Request for Admission 3: Admit that you have never had breast augmentation surgery.

Response to Request for Admission 3: Admit.

Request for Admission 4: Admit that you have never had procedures to remove facial hair to alleviate symptoms of gender dysphoria, such as laser treatments, electrolysis, or medicated hair removal treatment (but not including razors or Magic Shave).

Response to Request for Admission 4: Denied.

Request for Admission 5: Admit that, of the settlement funds identified in your response to Defendant Holt’s First Interrogatory 13, you spent \$0.00 on gender confirmation surgery.

Response to Request for Admission 5: Plaintiff objects to this Request because it seeks information subject to a confidentiality agreement. Plaintiff further objects to this request as irrelevant and harassing because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, Plaintiff directs Defendant to her response to Request 1.

Request for Admission 6: Admit that, of the settlement funds identified in your response to Defendant Holt's First Interrogatory 13, you spent \$0.00 on gender reassignment surgery.

Response to Request for Admission 6: Plaintiff objects to this Request because it seeks information that is subject to a confidentiality agreement. Plaintiff further objects to this request as irrelevant and harassing because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, Plaintiff directs Defendant to her response to Request 2.

Request for Admission 7: Admit that, of the settlement funds identified in your response to Defendant Holt's First Interrogatory 13, you spent \$0.00 on breast augmentation surgery.

Response to Request for Admission 7: Plaintiff objects to this Request because it seeks information that is subject to a confidentiality agreement. Plaintiff further objects to this request as irrelevant and harassing because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, Plaintiff directs Defendant to her response to Request 3.

Request for Admission 8: Admit that, of the settlement funds identified in your response to Defendant Holt's First Interrogatory 13, you spent \$0.00 on procedures to remove facial hair to alleviate symptoms of gender dysphoria, such as laser treatments, electrolysis, or medicated hair removal treatment (but not including razors or Magic Shave).

Response to Request for Admission 8: Plaintiff objects to this Request because it seeks information that is subject to a confidentiality agreement. Plaintiff further objects to this request as irrelevant and harassing because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, Plaintiff directs Defendant to her response to Request 4.

Request for Admission 9: Admit that, of the settlement funds identified in your response to Defendant Holt's First Interrogatory 13, you spent \$0.00 on mental health counseling or mental health therapy.

Response to Request for Admission 9: Plaintiff objects to this Request because it seeks information that is subject to a confidentiality agreement. Plaintiff further objects to this request as irrelevant and harassing because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, Plaintiff denies that she has never received mental health counseling or mental health therapy.

Request for Admission 10: Admit that, of the settlement funds identified in your response to Defendant Holt's First Interrogatory 13, you spent \$0.00 to purchase health insurance.

Response to Request for Admission 10: Plaintiff objects to this Request because it seeks information that is protected by a confidentiality agreement. Plaintiff further objects to this request as irrelevant and harassing because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, Plaintiff denies that she has never held health insurance.

Request for Admission 11: Admit that, since the May 12-13, 2021 hearing in this case, you have continued on the advice of your legal counsel not to speak with prison staff at Coastal State Prison about your allegations of sexual assault.

Response to Request for Admission 11: Plaintiff objects to this Request because it improperly seeks information and communications that are protected by attorney-client privilege. Subject to and without waiving the foregoing objection, denied.

Request for Admission 12: Admit that there is no provision to which you can point of the federal PREA, 34 U.S.C. § 30301, or its implementing regulations, 28 C.F.R. Part 115, that supports the advice of your legal counsel not to speak with prison staff at Coastal State Prison about your allegations of sexual assault.

Response to Request for Admission 12: Plaintiff objects to this Request because it improperly seeks information and communications that are protected by attorney-client privilege. Subject to and without waiving the foregoing objection, denied.

Request for Admission 13: Admit that, since the May 12-13, 2021 hearing in this case, you have violated Warden Benton's security rule that prohibits an offender from entering another offender's cell.

Response to Request for Admission 13: Plaintiff objects to this Request because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, denied.

Request for Admission 14: Admit that, since the May 12-13, 2021 hearing in this case, you have violated Warden Benton's security rule that prohibits an offender from allowing another offender to enter his or her cell.

Response to Request for Admission 14: Plaintiff objects to this Request because it seeks information that is not relevant to any party's claims or defenses. Subject to and without waving the foregoing objections, denied.

Request for Admission 15: Admit that you have obtained, possessed, and used contraband

drugs at Coastal State Prison including marijuana and methamphetamine.

Response to Request for Admission 15: Plaintiff objects to this Request as not relevant to any party's claims or defenses and based on the Fifth Amendment privilege against self-incrimination.

Respectfully submitted.

November 22, 2021

/s/A. Chinyere Ezie
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Counsel for Plaintiff Ashley Diamond

** Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document and all attachments were served on counsel for Defendant Ahmed Holt via email pursuant to agreement of counsel.

November 22, 2021

/s/ A. Chinyere Ezie

A. Chinyere Ezie*

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Counsel for Plaintiff Ashley Diamond

**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 OBJECTIONS AND ANSWERS TO DEFENDANT AHMED HOLT’S
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 33.1 of the Local Rules of the Middle District of Georgia, Plaintiff Ashely Diamond submits the following answers and objections to Defendant Ahmed Holt’s first set of interrogatories (“Interrogatories”).

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

Plaintiff expressly incorporates all the general objections and reserved rights set forth below into each and every response and objection to the Interrogatories, although Plaintiff has not withheld any information solely on the basis of her general objections. A failure to reiterate a general objection or reserved right shall not constitute a waiver of that or any other objection.

1. These responses and objections are made without waiving or intending to waive:
 - (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information produced in response to the Interrogatories; (b) the right to object on any ground to the use of the information produced in response to the Interrogatories at any hearing, trial, or other proceeding in this action; (c) the right to object on any ground at any time to a demand for further responses to the interrogatories; or (d) the

right at any time to revise, correct, add to, supplement, or clarify any of the answers or objections contained herein.

2. The information supplied and any documents identified herein are for use in this action and for no other purpose.

3. The answers and objections made herein are based on Plaintiff's investigation to date of those sources within her control where she reasonably believes responsive information might exist.

4. Plaintiff's investigation and discovery efforts in this action are ongoing. Plaintiff reserves the right to amend or supplement these answers and objections with additional information that might become available or come to her attention, and to rely upon such information at any hearing, trial, or other point during this action consistent with the applicable Federal Rules of Civil Procedure and the local rules of this Court.

5. Plaintiff objects to Defendant's Definitions and Instructions to the extent they impose additional or greater obligations than those imposed by the Federal Rules of Civil Procedure, this Court's local rules, or the discovery schedule approved by the Court (ECF Nos. 47, 108, 109).

6. Plaintiff objects to each Interrogatory to the extent it seeks discovery that is outside the scope permitted by the Federal Rules of Civil Procedure.

7. Plaintiff objects to the Interrogatories to the extent the discovery sought is unreasonably cumulative or duplicative, is publicly available, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.

8. Plaintiff objects to the Interrogatories to the extent the discovery sought is available to Defendant and the burden on Defendant to obtain the discovery sought is no greater than the burden on Plaintiff.

9. Plaintiff objects to the Interrogatories to the extent they demand the production of information that is privileged or otherwise protected against discovery pursuant to the attorney–client privilege, the work-product doctrine, the psychotherapist–patient privilege, the consulting expert rule, or any other legally recognized privilege, immunity, or exemption from discovery under any other applicable rule or statutory or common-law protection against disclosure, including the laws of the country or countries where such documents are located. To the extent that any such protected information is inadvertently produced in response to the Interrogatories, the production of such information shall not constitute a waiver of Plaintiff’s right to assert the applicability of any privilege or immunity to the information, and any such information shall be returned to Plaintiff’s counsel immediately upon discovery thereof.

10. Plaintiff objects to the Interrogatories to the extent they are premature contention interrogatories. Plaintiff’s responses to contention interrogatories represent the extent of her knowledge as of the date of service of these responses. Plaintiff reserves the right to revise her responses to contention interrogatories in light of new information learned during discovery. Plaintiff will fully answer any such contention interrogatories if necessary at the conclusion of discovery.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory 1: Provide the name and, if known, the physical and email addresses and cellular or telephone numbers of each individual with knowledge or information related to your claims or the Subject Incidents, identifying for each the specific knowledge or information possessed by each such person. Without limitation, this request includes those persons listed in Attachment

“A” to your Initial Disclosures.

Response to Interrogatory 1: Plaintiff objects to this Interrogatory as overbroad insofar as it requests Plaintiff to identify any person she believes to have knowledge about her allegations against Defendant to the extent their knowledge is based on publicly available information, such as publicly filed documents or public reporting. Plaintiff further objects based on vagueness, in that the use of the term “specific” is undefined, overbreadth, and impossibility to the extent it calls for Plaintiff to identify “specific” knowledge or information as calling for information within the exclusive ambit of third parties. Plaintiff also objects to this Interrogatory as unduly burdensome to the extent it seeks information already in the possession of Defendant, namely contact information for individuals listed in Plaintiff’s Initial and Supplemental Disclosures, which will be further supplemented if or when additional information becomes available.

Subject to and without waiving the foregoing objections, Plaintiff directs Defendant to her Initial and Supplemental Disclosures and responds that she has no further information.

Interrogatory 2: Identify each statement that you have obtained, written or otherwise, related to your claims or the Subject Incidents. State the substance of each statement, and provide the name, physical and email addresses, and cellular or telephone numbers of the person giving the statement and also the person having possession, custody, or control of any written statement.

Response to Interrogatory 2: Plaintiff has obtained two statements related to the incident regarding Defendant Rodney Jackson’s dormitory-wide meetings from J. Blake Duckworth and Brendan Perry. These statements were produced as PL000420 and PL001229 and are already in the possession, custody, and control of Defendant and his attorneys. As set out in Plaintiff’s Initial Disclosures, J. Blake Duckworth’s contact information is 56 Hillwood Court, North Augusta, South Carolina 29841 and 706-836-8279. Plaintiff does not know the physical and

email address and cellular or telephone numbers of Brendan Perry.

Interrogatory 3: Describe in detail the conduct of each person named as a Defendant in the First Amended Complaint that you contend caused or contributed to a violation of your rights or to any injury or damages for which you seek to recover in this case, and identify the persons with knowledge of the conduct and the documents that evidence the conduct.

Response to Interrogatory 3: Plaintiff objects to this contention interrogatory as premature at this stage of the litigation and will, if necessary, amend her answer at the completion of discovery. Plaintiff objects to this Interrogatory as unduly burdensome to the extent it seeks detailed information that is publicly available or already in the possession of Defendant. Subject to and without waiving the foregoing objections, Plaintiff directs Defendant to the Amended Complaint, ECF 36, the witnesses identified in her Initial and Supplemental Disclosures, her Declaration, ECF 59, and her May 12, 2021 hearing testimony, ECF 105.

Interrogatory 4: Identify every item or category of damages that you claim in this action, including for each item or category: (i) the amount of damages claimed; (ii) the manner of calculating the amount claimed; (iii) the documents that support the damages claimed and the calculation thereof; (iv) the conduct of each person named as a Defendant in the First Amended Complaint that you contend caused the damages claimed.

Response to Interrogatory 4: Plaintiff objects to this Interrogatory as premature at this stage of the litigation to the extent it requests a computation of damages that is decided by a jury. Plaintiff further objects to subpart (iv) as duplicative of Interrogatory 3 and as a premature contention interrogatory and will, if necessary, amend her answer at the completion of discovery. Subject to and without waiving the forgoing objections, Plaintiff responds as follows:

As to subsection (i) and (ii), Plaintiff responds that Defendants are jointly and severally liable for

the harm resulting from 18 sexual assaults and years of pervasive sexual harassment, including post-traumatic stress disorder, suicidal ideation, suicide attempts, self-injuries, depression, anxiety, nightmares, anguish, and life-long suffering. Plaintiff requests damages in an amount to be determined by the jury. As to subsection (iii) and (iv), Plaintiff directs Defendant Holt to medical, mental health, and PREA records already in the custody of GDC Defendants. Plaintiff also directs Defendant to PL000975–PL001228, produced on May 11, 2021, and to Plaintiff’s response to Interrogatory 3.

Interrogatory 5: Describe in detail each injury that you contend resulted from or was caused by each person named as a Defendant in the First Amended Complaint. For each injury, state the symptoms experienced, the frequency of their occurrence, whether the injury or symptoms are continuing, the date when you last experienced the symptoms described, and the date that you last sought or received treatment from a Health Care Provider for same.

Response to Interrogatory 5: Plaintiff objects to this contention interrogatory as premature at this stage of the litigation and will, if necessary, amend her answer at the completion of discovery. Plaintiff objects to this Interrogatory as unduly burdensome to the extent it seeks information already in the possession of Defendant and requests that Plaintiff reiterate the injuries denominated against each Defendant in her Amended Complaint, ECF 36 at ¶¶ 10–11, 71–73, 78, 86, 90, 92, 95–109, 114–119, 131, 133, 136, 138, 140–144, 148–151, 153–155, 158, 174, 182, 202–207, 212–220, 222, 225–226, 243, 261, 264, 275, 277, 279, 285, 290–292, 298, 300–303, 309–310, 312, 323, 340, 346, 352, 354, 358, 368, 373, 376, 379, 383–384.

Defendants’ actions have caused Plaintiff’s physical injury and emotional harm, including sexual assaults, sexual abuse, severe depression, worsening post-traumatic stress disorder, suicidal ideation, suicide attempts, damage to her genitalia resulting from repeated

attempts at self-castration, impairments to her kidney function and ability to urinate, and cuts and injuries related to self-harm. Plaintiff has attempted to take her life numerous times as a result of Defendants' actions. She experiences triggers to her post-traumatic stress disorder, as well as anxiety and depression, as a result of being a transgender woman in a men's prison who is in constant fear for her safety. Plaintiff's injuries began on November 3, 2019, during her first sexual assault and have not abated.

Interrogatory 6: Identify each Health Care Provider that you have consulted or that has provided you with any evaluation, treatment or therapy for any condition, including without limitation the condition of gender dysphoria, that is the subject of any of your claims in this case, including: (i) the name, physical and email addresses, and cellular or telephone number of the provider; (ii) the date or dates of service; (iii) the condition evaluated or treated; (iv) the evaluation or treatment provided, and, if you so contend, the evaluation or treatment, including without limitation any "medically necessary gender dysphoria care" as referenced in the First Amended Complaint, recommended by the provider that was not provided; and (v) the documents that show the foregoing information.

Response to Interrogatory 6: Plaintiff objects to this Interrogatory insofar as the term "condition" is vague and overbroad. Plaintiff also objects to this Interrogatory insofar as it seeks information that is irrelevant to Defendant's claim or defense by requesting medical and mental health providers outside of the time Plaintiff was incarcerated by the Georgia Department of Correction. Plaintiff's medical and mental health treatment for gender dysphoria outside of GDC custody is not relevant to GDC's constitutional obligation to provide adequate healthcare while Plaintiff remains in GDC custody. Plaintiff additionally objects to this Interrogatory to the extent that it requests information equally available to Defendant regarding treatment Plaintiff has

received while incarcerated within the Georgia Department of Corrections.

Subject to and without waiving the forgoing objection, Plaintiff limits her response to the gender dysphoria treatment she has received within GDC and directs Defendant Holt to medical and mental health records previously produced by GDC Defendants which identify Plaintiff's healthcare providers and medical information while in GDC custody and the declaration of Dr. Randi Ettner, ECF 58.

Interrogatory 7: Identify each Health Care Provider that you have consulted or that provided you with any evaluation, treatment or therapy for gender dysphoria in the time period 2015-2019, including: (i) the name, physical and email addresses, and cellular or telephone number of the provider; (ii) the date or dates of service; (iii) the evaluation or treatment provided; (iv) the amount of the provider's bill, whether the bill has been paid, and by whom; (v) whether future evaluation was scheduled or planned; and (vi) the documents that show the foregoing information.

Response to Interrogatory 7: Plaintiff objects to this Interrogatory insofar as it seeks information that is irrelevant to Defendant's claim or defense by requesting medical and mental health documents outside of the time Plaintiff was incarcerated by the Georgia Department of Corrections. Plaintiff's medical and mental health treatment for gender dysphoria outside of GDC custody is not relevant to GDC's constitutional obligation to provide adequate healthcare while Plaintiff remains in GDC custody. Plaintiff also objects to this Interrogatory as unduly burdensome to the extent it seeks information that is duplicative of Interrogatory 6. Plaintiff limits her response to the gender dysphoria treatment she has received within GDC and directs Defendant Holt to medical and mental health records previously produced by GDC Defendants which identify Plaintiff's healthcare providers and the treatment provided while in GDC custody

and the declaration of Dr. Randi Ettner, ECF 58.

Interrogatory 8: State all facts that support the allegations in paragraphs 198-200 and 203 of the First Amended Complaint, identify the witnesses with knowledge of such facts, and identify all documents that support the allegations.

Response to Interrogatory 8: Plaintiff objects to this premature contention interrogatory and will, if necessary, amend her answer at the completion of discovery. Plaintiff also objects to the request for a description of “all facts” by Defendant as overbroad and unduly burdensome and will respond with principal or material facts. Subject to and without waiving the forgoing objections, Plaintiff responds as follows:

The mental health team at Coastal State Prison, including Dr. Daniel Fass and Dr. David Roth, have repeatedly noted Ms. Plaintiff’s deteriorating mental health condition, including her repeated attempts at self-castration, suicidality, and triggered post-traumatic stress disorder in the general population setting. Dr. Fass, Dr. Roth, and Dr. Ausborn have indicated that accommodations for gender expression would help alleviate Plaintiff’s gender dysphoria symptoms. Further, Plaintiff’s mental health team have repeatedly recommended that Plaintiff be classified as Mental Health Level III and transferred to a Supportive Living Unit better situated to address Plaintiff’s mental health needs.

The recommendations that Plaintiff be transferred out of Coastal State Prison and classified as Mental Health Level III were overruled twice by those in Central Office, including Defendants Sharon Lewis and Javel Jackson. Defendants Lewis and J. Jackson also denied Plaintiff’s request for Vaniqa, a medicated hair removal cream, after discussing with Jennifer Ammons.

Witnesses with knowledge of such facts include Dr. David Roth, Dr. Daniel Fass, Tia

Fletcher, Tamara Cantera, Gerilyn Peppin, Dr. Ausborn, Dr. Olatunji Awe, and Jennifer Ammons. Supportive documents include the depositions of Dr. David Roth, Dr. Daniel Fass, Tia Fletcher, Tamara Cantera, and medical and mental health records produced by GDC Defendants, including DEF289, DEF462, DEF005435, DEF005433, DEF005439, DEF005466, DEF005540, DEF005542, DEF005551, DEF027096.

Interrogatory 9: State all facts that support the allegations in paragraph 206 of the First Amended Complaint, identify the witnesses with knowledge of such facts, and identify all documents that support the allegations.

Response to Interrogatory 9: Plaintiff objects to this premature contention interrogatory and will, if necessary, amend her answer at the completion of discovery. Plaintiff also objects to the request for a description of “all facts” by Defendant Holt as overbroad and unduly burdensome and will respond with principal or material facts. Subject to and without waiving the forgoing objections, Plaintiff responds as follows:

Plaintiff has repeatedly attempted self-castration while in GDC custody as a result of her gender dysphoria. These attempts have caused damage to Plaintiff’s urinary system and resulted in Plaintiff’s severe pain and difficulty urinating for days at a time. Plaintiff was informed in July 2020 by GDC doctors that these conditions put Plaintiff at risk for kidney failure and possible death.

Witnesses include Dr. Olatunji Awe, Dr. Mulloy, Dr. Daniel Fass, Dr. David Roth, Tamara Cantera, William Agyemang, and a nurse who did a culture exam in July 2020. Supportive documents include the deposition of Dr. Daniel Fass, and medical records previously produced by the GDC Defendants, including DEF117, DEF118, DEF146, DEF148, DEF150, DEF152-DEF154, DEF157, DEF192-DEF196, DEF289, DEF1653, DEF1649, DEF1651–

DEF1652, DEF1090, DEF1775, DEF1821, DEF1833, DEF5431.

Interrogatory 10: State all facts that support the allegations in paragraphs 241-245 of the First Amended Complaint, identify the witnesses with knowledge of such facts, and identify all documents that support the allegations.

Response to Interrogatory 10: Plaintiff objects to this premature contention interrogatory and will, if necessary, amend her answer at the completion of discovery. Plaintiff also objects to the request for a description of “all facts” by Defendant Holt as overbroad and unduly burdensome and will respond with principal or material facts. Subject to and without waiving the forgoing objections, Plaintiff responds as follows:

Plaintiff’s medical providers have repeatedly recommended that she be transferred out of Coastal State Prison based on her deteriorating mental health condition and her safety risk, including based on her repeated sexual assaults at Coastal. One two occasions, Plaintiff’s mental health team recommended that Plaintiff be classified as a Mental Health Level III and therefore transferred to a Supportive Living Unit to accommodate her mental health needs, but were overruled both times. Dr. Daniel Fass, a psychologist at Coastal, also indicated that Plaintiff required a transfer to a safer facility on numerous occasions. Dr. David Roth, a psychiatrist at Coastal, noted in his records that “although [Plaintiff] is making every effort to remain in population, she is chronically stressed, fearful, and anxious [at Coastal], and this setting actively triggers her PTSD.” Dr. Roth indicated that a GDC transition center or a Supportive Living Unit would be more suitable for Plaintiff because they would be “more therapeutic than general population in a given prison” and safer than the environment at Coastal.

Following Plaintiff’s reports of sexual assaults, Tamara Cantera, a mental health counselor at Coastal, repeatedly recommended that Plaintiff be placed in safe housing. Plaintiff

has not been moved from N-B dorm or Coastal State Prison since her arrival.

Witnesses include Dr. Danial Fass, Dr. David Roth, Tia Fletcher, Tamara Cantera, and Gerilyn Peppin. Supportive documents include the depositions of Dr. Daniel Fass, Dr. David Roth, Tia Fletcher, and Tamara Cantera, as well as PREA documentation and medical records produced by GDC Defendants, including DEF260, DEF283, DEF329, DEF351, DEF421–DEF425, DEF433–435, DEF446, DEF 461, DEF469–471, DEF1000, DEF1040–DEF1044, DEF1048, DEF1054–1058, DEF1116–DEF1118, DEF1735–DEF1737, DEF7002–03.

Interrogatory 11: Identify the specific documents that constitute the “medical records and the consensus recommendations” that are referenced in paragraph 351 of the First Amended Complaint.

Response to Interrogatory 11: Documents responsive to this Interrogatory include emails and records written by Dr. Fass, Dr. Hunter, Dr. Cleary, and Dr. Ausborn, including without limitation, DEF328, DEF331, DEF350, DEF361, DEF367, DEF398, DEF453, DEF1000, and DEF8045.

Interrogatory 12: Identify each and every fact upon which you have based your claim for punitive damages against each person named as a Defendant in the First Amended Complaint.

Response to Interrogatory 12: Plaintiff objects to this contention interrogatory as premature at this stage of the litigation and will, if necessary, amend her answer at the completion of discovery. Plaintiff also objects to the request for a description of “each and every” fact regarding damages against each Defendant as overbroad and unduly burdensome and will respond with principal or material facts. Plaintiff also objects to this Interrogatory as unduly burdensome to the extent it seeks information that is duplicative of Interrogatory 5.

Interrogatory 13: State the dollar amount of the money that you received as part of the

resolution, compromise, or settlement of Diamond I.

Response to Interrogatory 13: Plaintiff objects to this Interrogatory as irrelevant, improper, and harassing because it seeks information that is not relevant to any party's claims or defenses.

Plaintiff also objects to this Interrogatory as it seeks information protected by a confidentiality agreement and Defendant has not satisfied any of the exceptions outlined in such agreement that would permit disclosure of the requested information.

Interrogatory 14: For any denial in your responses to Defendant Ahmed Holt's Second Requests for Admission to Plaintiff, which are being served on the same date as these Interrogatories, state the basis for the denial, identify the witness or witnesses with knowledge of same, and identify all documents that support or relate to the denial.

Response to Interrogatory 14: Plaintiff objects to this Interrogatory insofar as it seeks information that is irrelevant to Defendant's claim or defense by requesting medical and mental health information and documents outside of the time Plaintiff was incarcerated by the Georgia Department of Correction. Plaintiff's medical and mental health treatment for gender dysphoria outside of GDC custody is not relevant to GDC's constitutional obligation to provide adequate healthcare while Plaintiff remains in GDC custody. Plaintiff further objects to the extent it seeks information about communications between Plaintiff and her legal counsel. Subject to and without waving the foregoing objections, Plaintiff responds as follows:

Plaintiff denies Request for Admission 4 because she has used Vaniqa, a medicated hair removal treatment, in the past. Dr. Jackson at Rome Dermatology is a witness.

Plaintiff denies Request for Admission 9 because she has accessed mental health counseling or mental health therapy in the past. Ms. Diamond's providers at Three Rivers Mental Health in Rome, Georgia, and Inspire Recovery in West Palm, Florida are witnesses.

Plaintiff denies Request for Admission 10 because she has held health insurance services in the past.

Plaintiff denies Request for Admission 11 because it mischaracterizes privileged communications between Ms. Diamond and her legal counsel and because she has spoken with prison staff at Coastal State Prisons about her allegations of sexual assault since the May 12-13, 2021. Witnesses include Gerilyn Peppin, Dr. Daniel Fass, Dr. David Roth, Tia Fletcher, Willesha Warren, Brandi Moore, Rojure Furlow, Briana Kaigler, and Lasenna Rivers. Plaintiff directs Defendant Holt to DEF29516–DEF29549, which were produced by GDC Defendants on November 12, 2021.

Plaintiff denies Request for Admission 12 because it mischaracterizes privileged communications between Ms. Diamond and her legal counsel and because PREA allows sexual assault victims to request that outside advocates to accompany them during the PREA interview process. Plaintiff directs Defendant to PREA 28 C.F.R § 115.21(d) and (e), and *Jacoby v. PREA Coordinator*, No. 517CV00053MHHTMP, 2017 WL 2962858, at *10 (N.D. Ala. Apr. 4, 2017), *report and recommendation adopted*, No. 517CV00053MHHTMP, 2017 WL 2957825 (N.D. Ala. July 11, 2017) (noting that incarcerated person was informed of “the right to have counsel present during [a] PREA interview”).

Plaintiff denies Request for Admission 13 because in N-B, the dorm housing those in the evidence-based program, there is no security rule that prohibits an offender from entering another offender’s cell. Witnesses include J. Blake Duckworth, Nicholas Browning, and Michael Mancil.

Plaintiff denies Request for Admission 14 because in N-B, the dorm housing those in the evidence-based program, there is no security rule that prohibits an offender from allowing

another offender to enter his or her cell. Witnesses include J. Blake Duckworth, Nicholas Browning, and Michael Mancil.

Respectfully submitted.

November 22, 2021

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Counsel for Plaintiff Ashley Diamond

** Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document and all attachments were served on counsel for Defendant Ahmed Holt via email pursuant to agreement of counsel.

November 22, 2021

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Counsel for Plaintiff Ashley Diamond

**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 OBJECTIONS AND ANSWERS TO DEFENDANT AHMED HOLT’S
SECOND SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 33.1 of the Local Rules of the Middle District of Georgia, Plaintiff Ashely Diamond submits the following answers and objections to Defendant Ahmed Holt’s second set of interrogatories (“Interrogatories”).

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

Plaintiff expressly incorporates all the general objections and reserved rights set forth below into each and every response and objection to the Interrogatories, although Plaintiff has not withheld any information solely on the basis of her general objections. A failure to reiterate a general objection or reserved right shall not constitute a waiver of that or any other objection.

1. These responses and objections are made without waiving or intending to waive:
(a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information produced in response to the Interrogatories; (b) the right to object on any ground to the use of the information produced in response to the Interrogatories at any hearing, trial, or other proceeding in this action; (c) the right to object on any ground at any time to a demand for further responses to the interrogatories; or (d) the

right at any time to revise, correct, add to, supplement, or clarify any of the answers or objections contained herein.

2. The information supplied and any documents identified herein are for use in this action and for no other purpose.

3. The answers and objections made herein are based on Plaintiff's investigation to date of those sources within her control where she reasonably believes responsive information might exist.

4. Plaintiff's investigation and discovery efforts in this action are ongoing. Plaintiff reserves the right to amend or supplement these answers and objections with additional information that might become available or come to her attention, and to rely upon such information at any hearing, trial, or other point during this action consistent with the applicable Federal Rules of Civil Procedure and the local rules of this Court.

5. Plaintiff objects to Defendant's Definitions and Instructions to the extent they impose additional or greater obligations than those imposed by the Federal Rules of Civil Procedure, this Court's local rules, or the discovery schedule approved by the Court (ECF Nos. 47, 108, 109).

6. Plaintiff objects to each Interrogatory to the extent it seeks discovery that is outside the scope permitted by the Federal Rules of Civil Procedure.

7. Plaintiff objects to the Interrogatories to the extent the discovery sought is unreasonably cumulative or duplicative, is publicly available, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.

8. Plaintiff objects to the Interrogatories to the extent the discovery sought is available to Defendant and the burden on Defendant to obtain the discovery sought is no greater than the burden on Plaintiff.

9. Plaintiff objects to the Interrogatories to the extent they demand the production of information that is privileged or otherwise protected against discovery pursuant to the attorney–client privilege, the work-product doctrine, the psychotherapist–patient privilege, the consulting expert rule, or any other legally recognized privilege, immunity, or exemption from discovery under any other applicable rule or statutory or common-law protection against disclosure, including the laws of the country or countries where such documents are located. To the extent that any such protected information is inadvertently produced in response to the Interrogatories, the production of such information shall not constitute a waiver of Plaintiff’s right to assert the applicability of any privilege or immunity to the information, and any such information shall be returned to Plaintiff’s counsel immediately upon discovery thereof.

10. Plaintiff objects to the Interrogatories to the extent they are premature contention interrogatories. Plaintiff’s responses to contention interrogatories represent the extent of her knowledge as of the date of service of these responses. Plaintiff reserves the right to revise her responses to contention interrogatories in light of new information learned during discovery. Plaintiff will fully answer any such contention interrogatories if necessary at the conclusion of discovery.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory 1: Provide the number of any telephone or mobile or cellular device utilized by you from October 2019 to the present and for each such number state the provider for such communication service.

Response to Interrogatory 1: Plaintiff objects to this Interrogatory based on her Fifth

Amendment privilege against self-incrimination. Subject to and without waiving the foregoing objection, Plaintiff has used telephones operated by the Georgia Diagnostic & Classification Prison and Coastal State Prison. Plaintiff does not know the number or provider for the telephones used.

Respectfully submitted.

December 16, 2021

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