

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

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

**DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFF’S
EXPEDITED MOTION TO AMEND SCHEDULING ORDER
AND TO SUPPLEMENT EXPERT DISCLOSURES**

Defendants Timothy Ward, Sharon Lewis, Ahmed Holt, Robert Toole, Benjamin Ford, Jack Sauls, Brooks Benton, Grace Atchison, Lachesha Smith, and Rodney Jackson, through counsel, submit this response in opposition to Plaintiff’s Expedited Motion to Amend Scheduling Order and to Supplement Expert Disclosures (Doc. 152).

Plaintiff’s request for a further extension of the discovery period, the expert disclosure and reporting deadline, and the deadline for filing dispositive and *Daubert* motions should be denied. Defendants oppose the motion for three reasons, as follows.

First, Plaintiff’s motion represents that 200,000 pages of documents have been “exchanged” and 111,000 of those “were not accessible to Plaintiff’s counsel to review until the first week of June 2022.” These are incomplete and inaccurate representations. Defendants have produced the vast majority of the documents in this case – 150,024 in total. Plaintiff has produced roughly 1,800 pages. Defendants’ document production bears the bates stamp range DEF 1 – DEF 150,024. Pages 1 - 38,651 were produced prior to the March 23, 2022 status conference, most of them substantially prior to that

date. Pages 38,652-149,463 were produced after the March 23, 2022 status conference but within the 30 days of that conference as directed by the Court. *See* ECF 145 at 53.¹ **Notably, of that April document production which totals more than 110,000 pages, all but 4 pages were the data extracted from Plaintiff’s confiscated contraband cell phone.** The representation in Plaintiff’s motion that the 111,000 pages “were not accessible” until June is therefore wrong on two fronts: (1) **it was Plaintiff’s cell phone data**; and (2) the data was in fact accessible to Plaintiff’s lawyers as and when it was first produced on April 25, but several weeks after the production Plaintiff’s counsel asked for a load file to assist with their review of the data, and that load file also was provided to them within days of their request. In short, Plaintiff is asking for an extension of discovery and expert disclosure deadlines based largely on the 110,000 plus produced pages when those pages are her own materials, when she and her legal counsel failed to identify, preserve, and produce the materials in discovery in the first instance, and when, in any event, they had access to the data nearly four months prior to the August 15 discovery close.

Second, the motion inaccurately states that “the parties” are “conducting 22 depositions.” Rather, Plaintiff’s counsel has elected to take an unnecessarily large number of depositions for the case, and has taken all of the depositions in the case, many of which have run to the full 7-hour limit notwithstanding the Court’s admonition that depositions should be taken in the most efficient manner.² Depositions of the Defendants

¹ There have been no “delays in the production of documents” as the motion asserts.

² A Fed. R. Civ. P. 30(b)(6) deposition of the Georgia Department of Corrections (GDC) that was taken today ran from 10:00 a.m. to 6:07 p.m. Many of the other depositions have run for a similar length of time. Plaintiff will take up to 21 hours of GDC 30(b)(6) deposition testimony alone.

and GDC officials have been set and then cancelled, then set again and postponed, to the inconvenience of Defendants, GDC and its officials, and their counsel.

At this time, all but two of the depositions that are to be taken in the case are again scheduled and are set to run through but be completed by August 15. If the schedule is kept to, discovery will be completed with limited exceptions. Specifically, at this time there is one deposition that needs to be re-scheduled, and that is the portion of the Fed. R. Civ. P. 30(b)(6) deposition of GDC for which Angela Ivester has been designated as the witness. Ms. Ivester's deposition was scheduled and noticed for July 14 but had to be cancelled because of a family emergency requiring that she travel out of the state.³ Ms. Ivester will be made available for deposition outside of the discovery period if needed. In addition, one of Plaintiff's expert witnesses has not been available for deposition because of health reasons. Defendants' counsel will seek leave to depose him prior to trial, and if necessary will request an extension of the *Daubert* motion filing deadline as to that witness. In short, Plaintiff's motion does not show that a 45-day extension is necessary, and it is not necessary if the parties keep to their efforts to complete discovery on the existing schedule.

Third, Plaintiff should not be given an extension of time to supplement the expert disclosures. Defendants' undersigned counsel has been requesting a date to take the depositions of Plaintiff's experts since early this summer. And, Plaintiff's motion fails to explain why supplementation (if it is permitted) could not have been done at an earlier time. The motion makes no reference to material or information that was not available to the experts such that they could not have supplemented their reports at an earlier time.

³ One other deposition, of non-party Carl Betterson, ran from 10:00 a.m. to 6:00 p.m. on Friday, July 15 and then had to be continued. But it is set to be continued on August 5.

The motion notes that fact witness depositions have been taken and others will be taken, all after the expert disclosures were made, but it fails to explain why the experts must review those fact witness depositions and supplement their disclosures. Also, on this point the motion again refers to the 110,000 pages, but it fails to explain that those pages are Plaintiff's cell phone data, and it fails to explain why the experts must review Plaintiff's cell phone data and supplement their disclosures based on that data.

Finally, the scheduling order did not contemplate supplementation of the expert disclosures or reports. Plaintiff's second expert witness, Dr. Randi Ettner, is scheduled to be deposed on August 15. That deposition should be allowed to proceed and should not be delayed by a late expert disclosure.

This case has not been litigated efficiently, or expeditiously, by Plaintiff and her counsel and instead the resolution of the claims in the case has been prolonged unnecessarily by the motions practice and the discovery that has been undertaken to date. For all of the foregoing reasons, Defendants respectfully oppose Plaintiff's motion and ask that it be denied such that the case can remain on its present track.

Respectfully submitted,

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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
Paul Henefeld
Elizabeth Littrell
Scott D. McCoy

This 27th day of July, 2022.

s/ Roger A. Chalmers
Roger A. Chalmers