

**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.	:	

**JOINT MOTION TO CONTINUE TRIAL AND
PRETRIAL SUBMISSION DEADLINES**

Plaintiff Ashley Diamond and Defendants Sharon Lewis, Ahmed Holt, Robert Toole, Brooks Benton, Grace Atchison, and Lachesha Smith, through their respective counsel, submit this joint motion to continue the jury trial and the pretrial submission deadlines that were set by the Court’s order entered on October 21, 2022 (Doc. 169).

By this joint motion the parties are requesting that the jury trial be set to commence not earlier than April 24, 2023, and further that the deadlines for pretrial submissions be modified, as more particularly set out herein.

1. Plaintiff Ashley Diamond filed her complaint in the Northern District of Georgia on November 23, 2020, and the case was transferred to the Middle District on December 1, 2020. Docs. 1, 9.

2. Defendants returned waivers of service on December 16, 2020. Docs. 13-24.

3. Between January 26, 2021 and March 9, 2021, Defendants filed their answers, Plaintiff filed the amended complaint, and Defendants filed answers to the amended complaint. Docs. 31, 35, 36, 38, 41.

4. The Court entered a scheduling order on March 8, 2021 that provided for discovery to run through January 3, 2022. Doc. 47. By later modifications to the scheduling order, discovery was extended through September 29, 2022. Docs. 109, 125, 135, 147, 155. The final modification also provided that “Dispositive and Daubert motions remain due by 10/17/2022. The trial, if there is to be one, is specially set for 4/17/2023.” Doc. 155.

5. Discovery was completed on September 29, 2022, but no dispositive motions were filed. Plaintiff has filed a motion for spoliations sanctions, and Defendants have through November 21, 2022 to file their response to that motion. Docs. 165, 170, docket entry foll. 170. No other motions are pending at this time.

6. On October 21, 2022, the Court entered its order for pretrial submissions. The order provides that a joint pretrial order is due on December 2, 2022, and that a jury trial will be set “at a date to be determined—likely the trial term beginning the week of January 17, 2023.” Doc. 169. The order also provides instructions for the pretrial submissions, including deadlines for designation of deposition testimony, if any, and responses thereto. *See id.*

7. Some of the Defendants and some of Plaintiff’s claims have been dismissed from the case. Plaintiff’s claims for declaratory and injunctive relief have been dismissed as moot based on her release from prison. Doc. 163. The parties through counsel have stipulated to the dismissal of the following additional Defendants and

claims: (i) Defendants Javel Jackson, Timothy Ward, Benjamin Ford, Jack Sauls, and Rodney Jackson, (ii) Count I, insofar as that count is asserted against Defendant Sharon Lewis, and (iii) Count IX, insofar as that count is asserted against Defendants Sharon Lewis and Brooks Benton.

8. The referenced dismissals have narrowed the issues that are to be tried to a jury. Nonetheless, document discovery and depositions in the case were extensive, with document discovery and production running from March 2021 through March 2022, and depositions being taken from March through September 2022. Twenty-six (26) depositions were taken, including 17 fact witness depositions and 9 separate designated Georgia Department of Corrections Fed. R. Civ. P. 30(b)(6) witnesses.

9. Because of the volume of the documents that were produced in the case and the number of depositions that were taken, counsel for Plaintiff and Defendants need additional time to review the record, to prepare their pretrial submissions, and to adequately prepare for trial. Throughout the pendency of this case, counsel on both sides have worked largely without interruption to complete the discovery process, and the upcoming holidays and necessary counsel, party, and witness travel and time away from work present another obstacle to completing the pretrial submissions and trial preparation on the timeline that is currently set. With respect to the previously set April 17, 2023 trial date, several of the Defendants have work commitments in other legal proceedings already scheduled during the week of April 17, 2023.

10. Finally, Plaintiff disclosed two expert witnesses in the case. Defendants deposed one expert; however, the other expert because of health reasons was not available to appear for deposition in the discovery period. Counsel agreed that, in the

event that the health condition of this expert witness improved such that he could testify at trial, then in that event he would by agreement be deposed for purpose of discovery, cross examination, and for *Daubert* factor assessment prior to trial. That deposition has not yet occurred and counsel are continuing to communicate regarding the witness and his deposition.

11. For the foregoing reasons, counsel for Plaintiffs and counsel for Defendants have conferred and have agreed to make this joint request for a continuation of the jury trial and also the pretrial submission deadlines. Counsel jointly are requesting that the jury trial be set to commence not earlier than April 24, 2023. Counsel also respectfully seek a modification of the pretrial submission deadlines so that the deadlines do not follow closely upon the winter and new year holidays. Counsel also seek this additional time so that depositions to preserve testimony for trial, if any are necessary based on the unavailability of the witness for trial, can be scheduled and taken. Finally, counsel request a modification of the pretrial submission deadlines to allow for a two-week time period for objections and responses to deposition designations, if there are any such designations.

Dated: November 10, 2022

Respectfully submitted,

FOR PLAINTIFF

/s/ Scott D. McCoy
Scott D. McCoy*
Southern Poverty Law Center
2 South Biscayne Boulevard, Suite 3750
Miami, FL 33131
Phone: (334) 224-4309
Email: scott.mccoy@splcenter.org

Elizabeth Littrell, Ga. Bar No. 454949
Southern Poverty Law Center
130 E. Ponce de Leon Ave., Ste 340
Decatur, GA 30031
Phone: (404) 221-5876
Fax: (404) 221-5857
Email: beth.littrell@splcenter.org

A. Chinyere Ezie*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Phone/Fax: (212) 614-6467
Email: cezie@ccrjustice.org

Caitlin J. Sandley, Ga. Bar No. 610130
Center for Constitutional Rights
P.O. Box 486
Birmingham, AL 35201
Phone: (212) 614-6443
Email: csandley@ccrjustice.org

*Admitted *Pro Hac Vice*

FOR DEFENDANTS

Christopher M. Carr 112505
Attorney General

Loretta L. Pinkston-Pope 580385
Deputy Attorney General

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

State Law Department
40 Capitol Square SW
Atlanta, GA 30334
Tel: (404) 458-3220
Fax: (404) 651-5304
Email: rchalmers@law.ga.gov

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
Caitlin Joy Sandley

This 10th day of November, 2022.

s/ Roger A. Chalmers
Roger A. Chalmers

**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.	:	

ORDER

Plaintiff Ashley Diamond, and Defendants Sharon Lewis, Ahmed Holt, Robert Toole, Brooks Benton, Grace Atchison, and Lachesha Smith, having jointly moved to continue the trial and pretrial submission deadlines, and for good cause shown, the motion is **GRANTED**.

The Court will enter a separate order setting the trial and pretrial submission dates.

SO ORDERED, this _____ day of November, 2022.

MARC. T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT