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

ASHLEY DIAMOND, Plaintiff,)
 vs.) Case No. 5:20-CV-453
 TIMOTHY WARD, ET AL., Defendants.) Macon, Georgia

STATUS CONFERENCE
(Conducted via Zoom)

October 29, 2021

BEFORE THE HONORABLE MARC T. TREADWELL
UNITED STATES DISTRICT JUDGE

Proceedings reported stenographically

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1 Macon, Georgia

2 Friday, October 29, 2021

3 10:01 a.m.

4 P R O C E E D I N G S

5 THE COURT: Good morning, everybody. Let's begin by
6 having Plaintiff's counsel give their appearances for the
7 record.

8 MS. EZIE: Chinyere Ezie for the Center for
9 Constitutional Rights.

10 MS. LITTRELL: Good morning, Your Honor, Beth
11 Littrell with the Southern Poverty Law Center on behalf of the
12 plaintiff.

13 MR. McCOY: Good morning, Your Honor, Scott McCoy
14 with Southern Poverty Law Center on behalf of Plaintiff.

15 MS. RAJARATNAM: Morning. Maya Rajaratnam from the
16 Southern Poverty Law Center for Plaintiff.

17 THE COURT: And Mr. Chalmers?

18 MR. CHALMERS: Yes, Your Honor, good morning.

19 THE COURT: Good morning. And Ms. McGovern is with
20 us --

21 MS. McGOVERN: Yes, Your Honor, I represent Arneika
22 Smith, yes.

23 THE COURT: -- for the defendants.

24 All right. Who will take the lead for the plaintiff?
25 And we'll hear from the plaintiff first.

1 MS. EZIE: Thank you, Your Honor. I'll be speaking
2 for the plaintiffs today. Chinyere Ezie, Center for
3 Constitutional Rights. We're -- so, we appreciate this
4 opportunity to be heard, Your Honor.

5 As we shared with, um, Ms. Tavalero, Plaintiffs
6 requested this status conference to address three topics. The
7 first topic is ongoing issues related to Ms. Diamond's health
8 and safety at Coastal State Prison. The second topic is the
9 parties' co-sharing briefing and some logistics attached. And
10 the third is the parties' progress on discovery and the
11 anticipated need for discovery extension.

12 And just to confirm, Your Honor, are you able to hear
13 me? I'm getting a lot of background noise on my end.

14 THE COURT: Yes. I can hear you fine. Can you hear
15 us?

16 MS. EZIE: Yes, I can. Okay. Um, and, um, Plaintiff
17 would be happy to address these matters in whichever order the
18 Court prefers or we could just begin.

19 THE COURT: You can address them in the order that
20 you put them. That's fine.

21 MS. EZIE: Okay. Thank you, Your Honor. So, since
22 the hearing, Ashley Diamond has remained at Coastal State
23 Prison where she has continued to experience all of the
24 pernicious forms of sexual abuse and harassment that we
25 described in our motion papers. And this includes being

1 sexually assaulted by male inmates yet again, abused, preyed
2 upon, grabbed, groped, touched, propositioned, threatened, and
3 sexually harassed. There have been incidents where male
4 inmates have entered her cell without authorization, climbed in
5 her bed when she's asleep. Ms. Diamond has also been
6 threatened by gang members with lethal violence.

7 And she has reported these incidents to the prison
8 and participated in PREA interviews, despite her ongoing
9 concerns about retaliation. I will note that, um, when
10 Ms. Diamond has provided the names of witnesses to these
11 incidents, they have not been, um, contacted for follow-up by
12 GDC. Instead, we're aware of some instances where they have
13 been transferred out of her dormitory and put into situations
14 that they feel are dangerous, much like John Doe, the
15 confidential witness that spoke at the hearing.

16 And, you know, to date there's been no reevaluation
17 by Defendants of Ms. Diamond's housing or placement, which
18 Defendant Holt acknowledged in a recent interrogatory response
19 where he described his response to Ms. Diamond's safety
20 concerns as merely what he had indicated at the time of the
21 hearing and in his accompanying declaration.

22 Defendants have also terminated most of Ms. Diamond's
23 security escorts. That happened shortly after the parties' May
24 hearing. So since that time, she's been unable to leave her
25 cell safely for meals, pill call, or programming.

1 On occasion she has left her cell and dormitory
2 without an escort, she has been attacked, threatened, harassed.
3 One of the sexual assaults that Ms. Diamond experienced and
4 reported to staff at GDC actually occurred while she was
5 walking between prison buildings without an escort.

6 And, um, as you can imagine, this is all taking quite
7 a toll on Ms. Diamond's mental health. It has worsened PTSD
8 and depression, and she is still struggling with suicide
9 ideation. And, Your Honor, candidly, Plaintiff's hope and
10 expectations following the May hearing was that the parties
11 would be participating in discussions that were aimed at
12 resolving some of Ms. Diamond's urgent health and safety
13 concerns. That, of course, was based both on the Court's own
14 recommendation that we participate in such discussions;
15 Defendant Holt's acknowledgment that placement decisions at GDC
16 are supposed to be dynamic; and to take into account new
17 information, such as the two days of testimony that we
18 presented at the hearing about sexual assaults and safety risks
19 that Ms. Diamond has experienced at Coastal State Prison.

20 Unfortunately, that's just simply not what has
21 transpired. Defendants have not made any adjustments to
22 Ms. Diamond's housing and placement. And when we've asked on
23 repeated occasions for an opportunity to meet and confer about
24 a safety plan for Ms. Diamond or to otherwise, um, participate
25 in discussions around her health and safety needs, as this

1 litigation remains pending, Defendants have declined the
2 request and stated most recently that they do not want to
3 participate in any, quote, unquote, settlement discussions, you
4 know, which, again, is unfortunate and disappointing to
5 Plaintiff, particularly given Your Honor's recommendation that
6 the parties engage in discussions about Ms. Diamond's safety
7 going forward.

8 At the end of the day, counsel, we just want
9 Ms. Diamond to be able to serve out her time in GDC in a safe
10 environment, without recurrent rape and sexual abuse as part of
11 her punishment.

12 And, you know, while we do believe that discussions
13 between the parties aimed at safety planning could go a great
14 deal to resolving both the pending motions as well as, um, the
15 issues that were the impetus for this lawsuit, you know --
16 again, we haven't gotten clear indication that Defendants are
17 open, although Plaintiffs would be willing to attempt
18 court-ordered mediation if you view that as helpful. Perhaps
19 with a mediator that was familiar both with the concerns of
20 prison administrators as well as incarcerated, transgender
21 women.

22 Otherwise, since the issues underlying Plaintiff's
23 motions have not yet been mooted, we would just want to proceed
24 to a discussion about how we get the post-hearing briefing back
25 on track, as it has encountered some unanticipated delays that

1 require additional guidance from the Court.

2 THE COURT: All right. Well, first, Mr. Chalmers,
3 tell me your understanding of the situation at Coastal since
4 our hearing.

5 MR. CHALMERS: Yes, thank you, Your Honor. I'll say
6 at the outset that what -- what we have this morning
7 essentially -- and I don't know specifically what relief
8 Ms. Ezie or Plaintiff's counsel in general are seeking from
9 this hearing based on the information that was just relayed.
10 But the -- what I'd like to say at the outset is we have a
11 statement from counsel. We don't have a motion, and we don't
12 have evidence, and we don't have any kind of sworn statement
13 from Ms. Diamond or any other evidence that there's been
14 ongoing sexual harassment.

15 And I will say that, um, the two reports that I got,
16 which came from -- one from Scott McCoy and one from Beth
17 Littrell, came late on a Friday evening, and they were -- I
18 don't have them in front of me, but they were within the last
19 month or month and a half. I can -- I may be corrected on
20 that. But it has not been the case that I have received
21 continuing or constant reports, either from Ms. Ezie or from
22 her co-counsel, of ongoing sexual harassment or sexual
23 incidents.

24 On both of those occasions that I mentioned, I
25 immediately responded first to Ms. Littrell, because I think

1 her email was the first of those two, and then to Mr. McCoy,
2 and I asked, "Can you share details?" And I asked secondly,
3 "Has your client reported the incident and is she free to speak
4 with the individuals in the (inaudible)?"

5 It was my understanding at that time that she still
6 was not free from her counsel's advice to speak with the PREA
7 folks on the -- on the prison grounds. That may be wrong, but
8 I asked (inaudible) this question, and I did not get a response
9 saying that, "Yes, she's talking to PREA personnel on site."
10 So, I will say I don't have an ability to respond to what
11 Ms. Ezie has just said. There were -- there were no specific
12 details. She said there's ongoing sexual harassment, but
13 there's no specific details given, and so I cannot respond
14 without information.

15 But on those occasions (inaudible) contacted -- and
16 as I said, it was two Friday evenings, late in the day -- but I
17 nonetheless responded right away saying, "Can you provide
18 details and I will pass them on." And the first one I did
19 immediately pass on information, although it wasn't much
20 detail. The second one I didn't get any detail, and I didn't
21 have any information to pass along, either to GDC Legal or to
22 the facility.

23 So I -- I would say just at the outset, Mr. Holt did
24 clearly say that security is an ongoing issue, not only for
25 Ms. Diamond but for all inmates in any secure facility. It is

1 a constant evaluation and reevaluation process by the people on
2 the ground and through their various reporting processes --
3 incident reports and PREA reports by the people who are
4 responsible for reviewing those reports -- and making an
5 assessment of is our security being followed and is appropriate
6 security in place.

7 So, Mr. Holt is willing to constantly reevaluate, and
8 they do that, to my knowledge, at the facility, and at the
9 higher levels, those folks who review incident reports and PREA
10 reports. (inaudible) I don't know that I can respond further
11 other than to say that when there is information relayed to me,
12 I relay it on.

13 And, um, I hope and I expect that Ms. Diamond is
14 participating fully, if she reports an incident and she
15 provides all the information (inaudible) that is needed to
16 respond to it. And I will give an example. I don't have an
17 example of a specific occasion, but as far as the details, the
18 facility needs to know when an incident occurred, who the
19 people involved were, what the incident was, and generally they
20 will ask, and they will try to get the circumstances.

21 The reason they do that is not to pry and not to
22 retaliate, but to figure out do they need to move somebody to a
23 different location, do they need to take a -- some other kind
24 of security step. So it is critical. You know, it is true
25 that at the hearing Mr. Holt said, "We are open to constantly

1 evaluating the security situation." But the flip side of that
2 is we need information and details, and we need it timely when
3 Ms. Diamond believes an incident occurs so that responses can
4 be taken on the ground.

5 THE COURT: Well, it sounds to me like the first
6 thing to do is this. Ms. Ezie says that Ms. Diamond is
7 reporting the incident -- incidents and that she is now
8 cooperating in the investigations. So, if that is accurate,
9 then there will be documentation at the prison. If it's not,
10 there likely won't be. So, Mr. Chalmers, contact the people at
11 Coastal, tell them to provide you with all documents concerning
12 any reports that Ms. Diamond has made, and we will see what we
13 have.

14 I gather that hasn't been done. Is that correct,
15 Mr. Chalmers?

16 MR. CHALMERS: Your Honor, we -- I mean -- the
17 other -- I'm getting a little bit ahead because I know that
18 Ms. Ezie wants to address the need for additional time in
19 discovery. It is -- there are two things I want to respond to.
20 One, it is not the case that we have said we're not willing to
21 discuss. In fact, what we have been doing since the hearing is
22 work on discovery. We have been producing written responses to
23 discovery. We have been producing documents. And part of that
24 process, as you know, if we get a document request or an
25 interrogatory and later it turns out there are additional

1 documents responsive, we will go back and collect those and
2 produce those.

3 So, if there -- I have, as I said, recently been
4 informed that there are sexual incidents or sexual harassment
5 events ongoing that have been reported in the PREA process.
6 But we have produced PREA documentation for those complaints
7 that were made before the lawsuit was filed and, yes, we will
8 absolutely go back and collect anything that has occurred since
9 the hearing.

10 This has been an ongoing process. We have produced
11 more than 30,000 pages of documents so far. We're still in the
12 process of collecting documents that were responsive to a set
13 of discovery served before the hearing. That's because the set
14 was very broad.

15 We worked with Plaintiff's counsel to try to narrow
16 it by the use of search terms. When they first served their
17 requests, we told them it's going to produce 6- or 7,000 pages.
18 That's a lot. We can't do it in the short time before the
19 hearing. They were sort of disbelieving that it would. But,
20 in fact, after the hearing, when we went to work and applied
21 the search terms and starting producing materials, it produced
22 far more than that -- 30,000 pages.

23 We are working, in other words, extremely hard to try
24 to get through discovery in the case. And what has occurred,
25 really, is we keep getting these requests for immediate relief

1 when, in fact, the discovery that is being -- been conducted is
2 not discovery targeted to a quick resolution of the case.
3 Instead, it's been mountainous requests for production that
4 take a long time to slog through and then produce, and then a
5 request for a large number of depositions, and now presumably a
6 request for additional time to complete all that work.

7 THE COURT: Well, we'll talk about all that. But
8 that doesn't address the question I asked. So let me be
9 specific. What I want you to do, Mr. Chalmers, is to contact
10 Coastal and retrieve from them any documents concerning reports
11 by Ms. Diamond of assaults, misconduct, whatever they may be,
12 including the investigation into -- the documents concerning
13 the investigation into those assaults. So, it's very narrow.
14 You say you've only been told of two such incidents, so I don't
15 think we're talking about much.

16 But, again, the specific point on the table now --
17 we'll talk about discovery -- is that Ms. Diamond is claiming
18 that there is ongoing assaults and inappropriate conduct, that
19 she is reporting it, and that now -- I am glad to hear this --
20 -- now -- if it's the case -- she is participating in the
21 investigations. So, it's a very narrow point.

22 Get those documents if they exist. Send them to me
23 and to the Plaintiff. And at least on this point we will know
24 more than we do now.

25 Any questions?

1 MS. EZIE: Thank you, Your Honor. If I may just
2 briefly be heard. I do want to just clarify on the record
3 that, um, there have been more than one or two incidents that
4 we have reported, these ongoing safety concerns, to defense
5 counsel.

6 On July 21st of this year, we had a telephone call
7 where, um, I, you know, personally explained to Mr. Chalmers
8 and Mr. Shapiro--who's since departed the team--that all of the
9 safety issues that Ms. Diamond had complained about at the
10 hearing were persisting, including that people were entering
11 her cell without authorization.

12 At that time, we indicated that Ashley Diamond was
13 willing to sit for a PREA interview concerning all of her past
14 assaults if they wanted to arrange that. There was no
15 follow-up on that point. We reiterated in October that
16 Ms. Diamond, you know, is and was -- and remains willing to
17 speak to PREA investigators, you know, just assuming that GDC
18 can take some steps to protect her from retaliation, which has
19 been a theme.

20 And, you know, um, as far as who she's notified of
21 these assaults, it's been, um, staff in her dormitory. It is
22 not clear to me whether they escalated those reports
23 appropriately, because, um, it is the case that Ms. Diamond has
24 only been approached for interviews on two occasions and that
25 was, um, much more recently. Um, and when Ms. Diamond has

1 notified PREA investigators that she was willing to answer
2 questions about the assaults that we described at the hearing
3 and via the third party PREA process, um, she was actually told
4 this month that, um, GDC did not wish to speak to her about
5 those incidents. So, I do just want to put that on the record.

6 THE COURT: Well, it doesn't mean much. If I have
7 learned anything in this case, if I am going to find out what
8 really happened, I've got to get on the ground, so to speak. I
9 am going to hear one version from one side and another version
10 from the other side. I want to see what -- first step, see
11 what the documents show. You know, it wasn't until I put -- we
12 put people on the stand that I had a fair understanding of what
13 was going on here.

14 And of course we resolved some pretty significant
15 issues once we got people under oath on the stand. They didn't
16 always tell the truth, but at least we got enough truth to get
17 some issues resolved. So, us going back and forth doesn't
18 accomplish anything. Mr. Chalmers is going to get those
19 documents, if there are any, and from there we will see where
20 we need to go.

21 So, now, let's talk about discovery.

22 MR. CHALMERS: Your Honor?

23 THE COURT: Yes.

24 MR. CHALMERS: Your Honor, I would like to ask
25 counsel when was it that Ms. Diamond was informed that she

1 should speak with the PREA investigators? When did you give
2 that direction?

3 MS. EZIE: I'm sorry? I am confused. By your
4 question.

5 MR. CHALMERS: When exactly was Ms. Diamond informed
6 that she really should speak with the PREA investigators and
7 that it was no longer your advice that she not speak with them?

8 THE COURT: That's a good question. Let's get that
9 clarification. Is it true that counsel is now allowing
10 Ms. Diamond to speak to PREA investigators?

11 MS. EZIE: So, Your Honor -- um.

12 THE COURT: That's a yes or no. That's a yes or no.

13 MS. EZIE: Well, there's an implicit assumption that
14 I do want to just clarify, which is that we have never
15 instructed our client that, um, she should not participate in
16 the PREA process. You know, that's just not accurate. I will
17 acknowledge that this is also a bit intruding into
18 attorney-client discussions.

19 But that said, the question that was posed to GDC
20 that was not answered clearly for much of the period where
21 Ms. Diamond was making PREA reports was whether counsel would
22 be allowed to join her. And while that question was still
23 pending to GDC, you know, there's records that reflect that
24 Ms. Diamond said I'm awaiting a response, I'm awaiting a
25 response.

1 THE COURT: I understand -- I understand --

2 MS. EZIE: There is and has been no instruction.

3 THE COURT: Ms. Ezie, I consider that to be quibbling
4 with me. Will she talk with PREA investigators? And to follow
5 up on your point, or will she only talk to PREA investigators
6 if counsel are present?

7 MS. EZIE: Ms. Diamond has already spoken to PREA
8 investigators. That's something that discovery has shown. And
9 she will continue to, Your Honor. And that -- those interviews
10 may take place without counsel being present.

11 THE COURT: Thank you.

12 MR. CHALMERS: And so that I know, if I could please
13 get an answer, when was she instructed? When was that change
14 made?

15 THE COURT: Well, let's see what the documents --

16 MS. EZIE: Well, again, Mr. Chalmers --

17 THE COURT: I'm sorry, go ahead.

18 MR. CHALMERS: Your Honor, you understand where I'm
19 coming from? In July when we spoke, just as right now, we had
20 no details. No information on a specific assault. All we have
21 is reports from counsel that there are constant assaults. And
22 then without details, we -- I said, "Well, at the very least,
23 is your client speaking with folks on the ground?" "Are they
24 having those conversations?" "And is she free to have those
25 conversations?"

1 So it is pertinent to know when that occurred,
2 because there -- the suggestion here is that she's been
3 constantly subjected to harassment since we met in person in
4 May and nothing's been done about it, when that's contrary to
5 my understanding that there is a PREA process in place and
6 there are people -- there's a team in place there to look into
7 instances of assault.

8 THE COURT: Well, it may become pertinent to know
9 when that happened, if that happened, Mr. Chalmers. But for
10 now, let's get the documents. For now, I understand that
11 Ms. Diamond, at least recently, and for how long we may see,
12 has been cooperating with PREA investigators. Let's see what
13 the documents show.

14 I think I've made it clear, I think it was a
15 significant mistake for Ms. Diamond not to talk to PREA
16 investigators. And I don't think that it was reasonable for
17 counsel to take the position that she could only participate in
18 an investigation if counsel were present. That's just my
19 thoughts on that. But I'm glad to hear that she now is
20 talking, so we'll see what the documents show.

21 I will say this, Mr. Chalmers. I mean, I don't know
22 if you're getting regular updates from Coastal, but you
23 probably should be. But -- so let's get those documents and
24 we'll see what's going on.

25 MR. CHALMERS: Your Honor, if I could make another

1 request, and this bears directly on Ms. Diamond's safety. The
2 information I have received from Coastal is that she allows
3 other offenders into her cell. And she enters other offenders'
4 cells. There was a comment a moment ago about an offender
5 entering her cell. Well, she is allowing, contrary to Warden
6 Benton's instruction, other offenders to enter her cell for --
7 whatever purpose, socializing or whatever. And then she also
8 enters other offenders' cells when she should be given a clear
9 direction -- and this could come from her counsel as well --
10 not to do (inaudible) compromise the efforts of the facility to
11 actually keep her secure.

12 THE COURT: Well, I'll take that as an observation.
13 By the way, has the camera situation been addressed,
14 Mr. Chalmers?

15 MR. CHALMERS: And by that -- what do you mean?

16 THE COURT: Well, you heard the testimony. We had at
17 best sporadic coverage, particularly of her cell. At least as
18 far as I heard, the only time we had camera footage available
19 was when it favored the Coastal Defendants. Do we have better
20 camera coverage of her cell?

21 MR. CHALMERS: There is camera coverage in the
22 dormitory and on her cell.

23 THE COURT: Okay.

24 MR. CHALMERS: Before she was placed there and since
25 then, it's been constant. There has been a camera trained on

1 her cell area. When Ms. Diamond says an assault occurs or
2 something occurred, and nothing occurred, there's not going to
3 be camera footage showing anything. It's going to be camera
4 footage showing nothing.

5 THE COURT: Well, that is not entirely consistent
6 with the testimony as I recall it. But nonetheless, I'll take
7 what you say as assurances that if we have to reconvene, we
8 will have pretty pervasive camera footage documenting what
9 happened or what didn't happen.

10 MR. CHALMERS: Your Honor, now, just to be clear on
11 that. There -- this is the -- this is the point that there
12 isn't camera footage preserved when nothing occurs. What
13 occurs is when a report is made, then as part of the reporting
14 process and the collection of documentation, the cameras are
15 checked to see is there footage of what's described in the
16 incident. If there's not --

17 THE COURT: Yeah. And as I recall, when she made
18 previous reports, the footage wasn't available. The only
19 footage that was available was the footage that the Coastal
20 authorities were relying upon to support their allegations.
21 And I am speaking specifically of John Doe being in the cell.
22 And -- it's a -- it was a concern. I talked about it at the
23 hearing. And I -- I do hope that's been addressed, so that if
24 we have to drill down again on what's going on there, we will
25 have a better documented record of what's been happening.

1 Let me just make this observation. For what it's
2 worth. And it's certainly not a finding. It is just an
3 observation. My sense from the hearing was that the
4 administration at the Department -- and I am speaking
5 specifically of Mr. Holt and people at that level -- very much
6 want to demonstrate that Ms. Diamond can be safely housed at
7 Coastal.

8 What I gathered from the testimony from the Coastal
9 officials, they weren't always on the same page to this extent.
10 They weren't doing -- making their best effort to ensure that
11 they could establish that Ms. Diamond was being safely housed;
12 rather, for whatever reason, it was a much more antagonistic
13 relationship. We did clear up the PREA aggressor issue, which
14 concerned me greatly. I don't have to remind you of some of
15 the testimony we heard about some of the -- and some of my
16 questions and the testimony we heard in response to my
17 questions, which illustrated my concern about what was going on
18 at Coastal.

19 Now, I have some concerns about Ms. Diamond as well
20 that I won't get into right now. One, of course, is that she
21 wouldn't cooperate with the PREA investigations, which I think
22 played into the Defendants' hands, you could argue. But,
23 still, Mr. Chalmers, I -- I hope the staff at Coastal are
24 making their best efforts, not just to ensure Ms. Diamond's
25 safety, but to also be able to come into court and prove that

1 that's exactly what they have been doing. Because it fell
2 short of that a little bit, I thought, in some respects from
3 the hearing. But let's get more information about what's going
4 on down there now and we'll see where we have to go. We are
5 not going to resolve anything by back and forth among counsel.
6 Let's find out what's going on.

7 All right. What about discovery?

8 MS. EZIE: Thank you, Your Honor. I think the next
9 item, um, on our list, at least, was that the parties'
10 post-hearing briefing, but it certainly does implicate
11 discovery, so I'm happy to start with discovery if you prefer.
12 I will assume that maybe that is your preference.

13 So, as you might recall, um, the parties entered a
14 scheduling order that contemplated that discovery would be
15 completed by January 3rd, 2022. But, um, in July, um, by
16 agreement, portions of that scheduling order were adjourned to
17 allow Defendants to make rolling productions of discovery that
18 was responsive to, um, Plaintiff's expedited requests for
19 discovery served ahead of the preliminary injunction hearing.
20 That was also responsive to the Motion to Compel that was
21 resolved just short of a hearing in June.

22 So, um, pursuant that agreement, which I believe is
23 docketed as 109, I believe, um, there had been a determination
24 that -- um, that once Defendants filed that certificate of
25 completion that this discovery would be completed, that that

1 would reset, um, both the deadlines for the post-hearing
2 briefing that the parties are endeavoring to complete as well
3 as expert discovery and, um, the deadline for complaint
4 amendment, among other things.

5 Um, the issue, Your Honor, put simply and without
6 any, um, inferences to be drawn about Defendants' efforts with
7 respect to discovery, is just that four months have now elapsed
8 and they have not been able to file the certificate of
9 completion. So, that means that for the past four months the
10 parties have, to some extent, um, not been making progress with
11 respect to the litigation. We have not, um, scheduled
12 depositions with respect to any parties. Um, the post-hearing
13 brief, um, deadlines have not yet come due. And, um, expert
14 discovery has been paused. So, um, we both anticipate a need
15 to add some time on the back end of the discovery schedule to
16 account for that.

17 And, um, more pointedly for today, Plaintiffs are
18 hoping that -- that the Court can give some guidance to both
19 parties and set a firm deadline about when this initial
20 certificate of completion discovery can be completed since so
21 many case deadlines are now hinging on the completion of that
22 discovery.

23 Your Honor, are you familiar enough with this
24 certificate of completion that I'm referencing --

25 THE COURT: Yeah.

1 MS. EZIE: -- that you don't need additional
2 background?

3 THE COURT: I am. It is in Document -- it's
4 referenced -- I don't have it in front of me. Yes, I know
5 about the process that you have. And that's what -- how you
6 all decided to handle it. We normally just put a deadline on
7 discovery and don't leave it to a party to -- to decide when
8 discovery is over.

9 But, Mr. Chalmers, what's your view on when we're
10 going to finish discovery?

11 MR. CHALMERS: Well, I had a conversation with
12 Ms. Littrell and Mr. McCoy yesterday, and I don't know if they
13 updated Ms. Ezie on that conversation. But I told them that we
14 have been working to produce documents responsive to what they
15 have served in discovery, and that includes what was served
16 before the hearing and what's been served since then.

17 As I mentioned, we've produced -- we have collected
18 and reviewed and worked to redact where we had to -- but we
19 collected and reviewed and produced more than 30,000 pages of
20 discovery in this time period. We've also provided
21 substantive, verified responses to interrogatories when we've
22 gotten written discovery responses.

23 And most recently, I produced a more -- a set of
24 discovery responses, a week or a couple of weeks ago, with an
25 additional 2,500 pages. I have a paralegal working to produce

1 personnel files. To give you an idea, we had witnesses testify
2 who were not parties at the hearing; for example, to the
3 October incident with Ms. Diamond and the John Doe in her cell.
4 They want the personnel file to the officers who testified in
5 court. So that gives you an idea of the volume and the extent
6 of discovery.

7 We have been working hard to produce and finish
8 discovery, and I will say we agreed to resolve the discovery
9 dispute with that rather unusual certificate of completion.
10 That was not our request; that was Plaintiff's counsel's
11 request. And I simply cannot certify complete before we've
12 actually finished production.

13 It has been difficult. It has been time-consuming.
14 It has been burdensome. Although, we have not moved -- we
15 figured we wanted to put our limited resources to actually
16 working on discovery production rather than fighting about what
17 we should have to produce. And that's what we've been trying
18 to do.

19 I will say that I have a set of discovery
20 outstanding, um, responses will be due in November.
21 Ms. McGovern has served discovery and received responses, and I
22 will say -- I don't know what the status is of the resolution
23 of that matter, but she got essentially nothing in response
24 from Plaintiffs to the interrogatories that they served. The
25 responses were essentially, "Sorry, we'll tell you later,

1 discovery is ongoing." Ms. McGovern can address that if she
2 likes.

3 But discovery is two ways here. And I feel as though
4 we've been pressed to do discovery in a case that is made to be
5 complex and enormous, and the plaintiffs keep coming back to
6 the Court asking for emergency relief. Those two don't go
7 together very well.

8 So, I -- we -- I started out by saying I am not sure
9 if Ms. Ezie talked to Mr. McCoy and Ms. Littrell. We spoke
10 about these issues on the phone last night. I informed them
11 that I am not opposed to an additional time period for
12 discovery, and a 3-month time period is I think what they had
13 in mind, and I think that would be fine. I am hoping that that
14 time is not used to produce yet more discovery requests and
15 demands on us, and instead we can just try to finish up the
16 production we have ongoing and then move to depositions.

17 But I -- I am not in a place where I can say, um, I
18 have a date certain by which I know I can complete the rest of
19 the document production. I have told Ms. Littrell and
20 Mr. McCoy that what is remaining is a relatively small set.
21 It's materials that we, um, need to review for redaction, it is
22 materials that are potentially attorney-client privileged, and
23 materials that may be responsive but not clearly responsive.
24 They are relatively small sets of discovery.

25 We don't have good review platforms. We are doing

1 the best we can to try to work through those with relatively
2 limited staff and then make that production. And I'm -- I -- I
3 told them and I have been telling them I am working to get that
4 done.

5 And while I've been telling them that, we have done
6 other things; as I mentioned, produced a lot of documents,
7 produced substantive responses to discovery, and produced an
8 additional set of documents most recently.

9 But, all that is to say I feel as though if the
10 request here is simply can we have a bit more time, the answer
11 from me is yes. We will get more time and we will (inaudible)
12 on scheduling depositions and producing the documents. But I
13 don't think it's fair to put upon -- push out and suggest that
14 Defendants have not been responsive here when we've been
15 working for the past several months to try to get this
16 information and discovery responses to them.

17 THE COURT: Well, Mr. McCoy, since you apparently
18 talked with Mr. Chalmers, what is your understanding of the
19 situation?

20 MR. McCOY: Yes, Your Honor. We did speak with
21 Mr. Chalmers, and we did talk about the three months, which I
22 don't think is the issue. I think that the difficulty is, is
23 that, um, regardless of whose idea it was, the defendants'
24 counsel and we agreed that we would use this certificate of
25 completion process so that we could get Your Honor the

1 post-hearing briefing. And we did that back, you know, in
2 July, thinking that it would take, you know, a month or so to
3 have that -- that done, and instead we're at four months, and
4 it is what it is.

5 But the problem is, is that without knowing when
6 we're going to, you know, get that last bit of discovery and
7 the certificate of completion, we're unable to, you know,
8 complete the briefing that Your Honor would like us to give you
9 on the, you know, post-hearing issues. So, that's really
10 the -- kind of the rub. That we're just at a loss here to try
11 to figure out how to deal with it.

12 THE COURT: All right. Here. Let's do this.

13 MR. CHALMERS: Your Honor, if I could -- if I could
14 respond very briefly on that. Because that is something I
15 neglected to address, that post-hearing briefing. We agreed to
16 complete a certificate of completion, but really it gives
17 Plaintiffs protection so that they -- if they want to, they can
18 wait until all of (inaudible) is done. But, on the other hand,
19 if they believe that they have the information they need to
20 support the relief they are seeking, they can go ahead and file
21 their brief. They have now all the discovery that we've served
22 in response before the hearing. They have the transcripts of
23 the hearing. They have 30,000 additional pages, plus 2,500
24 additional, plus my discovery responses served. And
25 essentially what they are saying is they don't have what they

1 need to come forward and put a brief before you to get the
2 relief that they're seeking.

3 What I'm saying is they -- this case -- at some point
4 we've got to get on a regular track. The normal course would
5 be we finish discovery and then the parties get a chance to
6 (inaudible) motions. All of this is something different from
7 that. They have thrown us off track by the Motion for
8 Preliminary Injunction. That set us back several months. They
9 are throwing us off track again by this certificate of need and
10 suggestion that they need to file this brief. They can file
11 their brief; they just don't have to. They don't have to until
12 after that is done. But they could file it now if they wanted
13 to.

14 MR. McCOY: Well, Your Honor, I mean, in response to
15 that, again, you know, um, the defendants, um, agreed that the
16 materials that we'd asked for were relevant to the preliminary
17 injunction hearing and that it was relevant to the briefing.
18 And they agreed to the certificate of completion idea. They
19 agreed that they would give us this discovery before we filed
20 the post-hearing briefing because it was relevant to what Your
21 Honor needed to decide with respect to the preliminary
22 injunction hearing.

23 And so basically, you know, while they're saying that
24 this material is relevant, but then they're saying, well, you
25 could have filed your brief without relevant information that

1 we haven't given to you yet. So, I mean, it's not quite how it
2 works. And -- and they agreed to proceed in this fashion.
3 They agreed to give us relevant discovery, and that's all we're
4 asking for.

5 And, in fact, the materials that they have given us
6 has yielded very interesting information and documentation that
7 we will provide to you in the post-hearing brief. And it's --
8 it seems unreasonable for us to expect that, you know, we have
9 to file the brief and then have them give us another dump of
10 documents which might be relevant, and we won't have the
11 benefit of being able to provide that to the Court. So --
12 anyway, that's all that we're looking for.

13 I mean, as soon as we get the last bit of documents,
14 we are ready to expeditiously file our brief. We haven't been
15 sitting around. We have been looking at what they've given us,
16 and we have been incorporating it in preparing to file a brief.
17 But we are, you know, just trying to make sure that we get all
18 the relevant information that they promised they were going to
19 give us.

20 THE COURT: Well, I understand in addition to
21 getting, as you call it, this last little bit of documents,
22 depositions need to be taken. Is that right?

23 MR. McCOY: Agreed. Yes, sir.

24 THE COURT: All right. Well, here's what we're going
25 to do. We're going to put this on a different track. First, I

1 want each side to send us--just email it to us--their discovery
2 requests, and the other side send us their responses to any
3 discovery requests. I don't mean the documents, I just mean
4 the -- you know, the interrogatories and responses, requests
5 for production of documents and the pleading in response. Not
6 the documents. I assume that's a fairly limited set of
7 documents. But I want to see what discovery is being passed
8 back and forth.

9 Get me a list of the witnesses you want to depose.
10 Again, I want to have some idea about what needs to be done.
11 And then we're going to set a deadline for discovery. We're
12 going to do it the traditional way. And from what I've heard
13 from the back-and-forth today, it sounds like an appropriate
14 discovery deadline would be about the end of January.

15 Am I correct in that regard?

16 MR. McCOY: Actually, Your Honor, the current
17 discovery -- end of discovery deadline is January 3rd. I think
18 what we were talking about -- I don't think there's any
19 disagreement among the parties about -- would be extending that
20 January 3rd deadline by three months, which would allow us to
21 complete the document discovery and then schedule depositions
22 in that time. We also have the experts, which is also in that
23 mix.

24 THE COURT: Is that acceptable to you, Mr. Chalmers
25 and Ms. McGovern?

1 MR. CHALMERS: Your Honor, I don't have the -- I'm
2 sorry, I don't have the schedule in front of me, but that
3 sounds consistent, yes, with what I recall. And that the
4 3-month time period extension is what I had discussed with
5 Ms. Littrell and Mr. McCoy.

6 THE COURT: Ms. McGovern?

7 MR. CHALMERS: That is to say, we kind of got on the
8 phone quickly yesterday and, um --

9 I'm sorry, Annarita, we didn't grab you into that
10 phone call.

11 So I don't want to speak for Arneika Smith or for
12 Ms. McGovern, and she should weigh in here.

13 THE COURT: We are now talking right around the first
14 of March. Ms. McGovern, is that acceptable to you?

15 MS. MCGOVERN: Your Honor, I think it is acceptable.
16 I know that Roger Chalmers and I are both specially set for
17 trial in May in Statesboro, so we do need to wrap this up in
18 advance of that. A lot of this has dragged on irregardless of
19 our client, so we will follow whatever directive the Court
20 gives. I just wanted to advise you that we do have -- we do
21 have that upcoming trial coming up in May.

22 THE COURT: Well, I've got some of those as well.
23 All right. Well, the discovery deadline will be extended. I
24 will get a precise date. So it will be early in March.

25 You will give me that information so I can get an

1 idea about what the discovery process has been.

2 It sounds to me like you need to go ahead and start
3 talking about scheduling these depositions, but I will leave
4 that to you.

5 But let me turn to the plaintiffs. Does that
6 address -- does that give you what you want in the way of
7 deadlines?

8 MS. EZIE: Yes and no, Your Honor. Um, I think it --
9 there's an additional -- I guess two additional issues I did
10 want to, um, just confer about. One is, um -- I will begin
11 with what's probably the easiest. Um, right now, the deadline
12 for dispositive motions is March, um -- March 4th, 2022. So,
13 to the extent we are extending discovery until the beginning of
14 March, I would also ask that the deadline for dispositive
15 motions and *Daubert* motions be adjusted by three months
16 accordingly. By my count, that would, um, terminate, um,
17 dispositive motions as of about June 1st, 2022. So, that would
18 be an additional change that Plaintiffs would request, that I
19 am assuming counsel would also be amenable to.

20 THE COURT: Well, we will adjust those deadlines as
21 well, yes.

22 MS. EZIE: Okay, thank you, Your Honor. Um, the
23 second is I -- I do want to clarify that, um, you know -- and I
24 sort of said this at the outset -- we are not necessarily
25 quibbling about or asserting that Defendants have acted in bad

1 faith with respect to discovery, but I do want to just point
2 out that the certificate of completion that we're describing
3 here is not about the entire universe of discovery documents.

4 It is specifically about discovery requests that were
5 produced prior to the hearing in contemplation that we would be
6 able to rely on the documents as part of the preliminary
7 injunction hearing. That concerned specifically Defendants'
8 correspondence about, um, Ms. Diamond's housing and safety
9 within GDC and their consideration of safety requests.

10 It does seem as though, at least according to
11 Defendants, that this had been a very voluminous task, you
12 know, but there was an agreement that the parties could rely on
13 that discovery as part of their motions. As, um, Mr. McCoy
14 alluded to, that information has been very relevant. It has
15 indicated--and I think Your Honor will be very interested in
16 this--that Ms. Diamond has participated in the PREA interview
17 process to a much greater extent than Defendants have, um, let
18 on. Um, it has indicated that there were numerous attempts by
19 GDC personnel to arrange for Ms. Diamond to receive a safety --

20 MR. CHALMERS: Your Honor, can I just interrupt here?
21 This is unusual, and I --

22 THE COURT: You don't have to, Mr. Chalmers. Let's
23 talk about what we need to get done here. I don't want any
24 more back-and-forth about -- that I can't resolve today.

25 MS. EZIE: Understood.

1 THE COURT: What you started out saying was of
2 interest. You say there's -- if I understood correctly,
3 there's two categories of documents in particular that you feel
4 you don't yet have complete responses to, and you need those.
5 The first one was the placement process.

6 Mr. Chalmers, have those documents been produced?

7 MR. CHALMERS: I'm sorry, I -- I did not catch that,
8 and I am not sure what is -- what documents or set of documents
9 we're talking about.

10 MS. EZIE: I am speaking about the document request
11 that we served on April 16th to Defendants. In there we
12 requested correspondence related to Ms. Diamond's safety and
13 housing within GDC. Those are the documents that Defendants
14 agreed to produce and to certify when they had completed that
15 production by filing the certificate of discovery. That is the
16 only set of documents that we are, you know, asking the Court
17 to set a deadline for because, again, right now, our completion
18 of expert discovery as well as the post-hearing briefing is
19 pegged to those deadlines.

20 MR. CHALMERS: Yeah. Your Honor, we have produced
21 documents, yes. The answer is yes. We have produced documents
22 responsive to all of the requests. The way -- the mechanism
23 that documents were searched for and collected, by agreement of
24 the parties, to try to narrow down the requests -- and "narrow"
25 is a relative term -- but the mechanism we use is to apply

1 search terms. So, we applied search terms which yielded a set
2 of documents that was quite voluminous. That is the 30,000
3 that I mentioned. So, we have responded, yes, absolutely we
4 responded.

5 There is an additional relatively small subset of
6 documents that were harvested by use of the search terms that
7 we have to finish reviewing and then produce. And I -- I think
8 what I would say here is -- and what I thought Mr. McCoy and
9 Ms. Littrell and I had agreed to yesterday is that we are
10 agreeable to a 3-month extension of time, but I -- I don't have
11 the ability to say on a date specific. And I'd ask, because we
12 don't have briefing and argument and a chance for me to respond
13 here, that the Court not set a date specific for me to file a
14 certificate of completion. What I'm trying to do is respond to
15 all the discovery and get the document (inaudible).

16 THE COURT: Well, to be specific, Mr. Chalmers, have
17 you fully responded to this April 16th discovery request?

18 MR. CHALMERS: Yes. That -- well, yes. We've -- by
19 that, what do you mean? As I'm saying, we have collected --
20 the discovery requests include a set of requests for production
21 of documents. We believe they were overbroad. As part of
22 (inaudible) process, the Plaintiff's counsel sent a letter
23 saying, "Here are search terms. Apply these and we can be
24 satisfied with what you get when you apply the search terms."
25 So, yes, we have responded.

1 We haven't made a production of every one of those
2 documents that were captured by the search terms. We have
3 produced 30,000 of them, and I think there's a relatively small
4 set left to do. But it is unfortunately a difficult set to
5 finish reviewing because it requires (inaudible) page review
6 and we have limited resources.

7 THE COURT: Well, when you say "small set," what does
8 that mean?

9 MR. CHALMERS: There are, I believe, three
10 categories. One is -- and I mentioned them earlier -- one of
11 them is flagged as "likely needs redaction." That, for
12 example, we know for personnel files. I don't know how this
13 set was specifically flagged as needing redaction. But those
14 redactions would be for personnel -- personal information.

15 There's another relatively small set of potentially
16 attorney-client privileged material, and then a small set of
17 "may be responsive" material.

18 But the -- we've -- we've produced -- yes, the answer
19 is yes, we absolutely have produced documents and we've
20 written -- and we have served responses to the discovery that
21 was served long ago. And we've -- we've provided our responses
22 to that. We have a limited number of additional documents to
23 produce.

24 THE COURT: Well, now, again, are you talking about
25 documents responsive to the April 16 request?

1 MR. CHALMERS: Yes. I accelerated -- the discovery
2 that was served after the hearing, as I said, I accelerated our
3 response to that. And I worked on collecting and trying to
4 make that production. That was the 2,500 pages that were
5 produced in October. And we've got additional pages to produce
6 from that. But, yes, the -- largely speaking, what we have
7 been working to respond to are the discovery that's responsive
8 to those requests served in April.

9 THE COURT: When will you complete your response to
10 the April 16 request?

11 MR. CHALMERS: Your Honor, that -- I don't -- I don't
12 know when. I have -- I am doing my best to complete this
13 review with limited resources. Mr. Shapiro, who was primary
14 counsel in this case, is not on the case, not with my office
15 currently. So I have -- I am doing the best I can to -- to
16 make a production.

17 We are asking -- Plaintiff's counsel specifically
18 asked for an additional three months so that we could complete
19 all the discovery tasks we have remaining to do. I would
20 simply ask that, as part of a good faith effort to try to
21 resolve this, to try to allow them to do the work they need to
22 do and allow me to finish my work, to not put a date on this
23 for me. I am trying to get the document production done.

24 As I told Mr. McCoy and Ms. Littrell last night,
25 there is nothing I want more than to finish this document

1 production, but we do have to get through the materials and
2 work to get it done.

3 THE COURT: Well, I understand the limitations you
4 have to work with generally. But here's what we're going to
5 do. I am going to put a deadline of November 30 for you to
6 respond -- to complete your response to that April 16 document
7 request. If you run into problems with that deadline, let me
8 know, and we can address it, and I will be again understanding.

9 But it sounds like it's a relatively small set of
10 documents. I understand that there's some review that needs to
11 be done. I think another 30 days, at this point, is
12 reasonable. If that proves to be inadequate, we will reexamine
13 that.

14 All right. Anything else we need to talk about this
15 morning from the plaintiff's standpoint?

16 MS. EZIE: Um, just briefly, Your Honor. Um, so, as
17 we shared, you know, our concern about this particular tranche
18 of discovery--the April 16th discovery related to safety and
19 housing--is that it is tied to the post-hearing brief. So, I
20 just wanted to confirm that, um, by setting the deadline for
21 production by November 30th, we will then proceed under the
22 already-agreed-upon schedule that Plaintiff's opening
23 post-hearing brief will be due within 30 days of the
24 certificate of completion being filed, um, with Defendants'
25 brief to follow. In essence, adhering to the same agreement

1 that we had devised, but just having now a bit more of a time
2 frame. Is that -- is that, um, permissible to Your Honor?

3 THE COURT: And you're talking about briefing on the
4 preliminary injunction?

5 MS. EZIE: Yes, Your Honor. Specifically, the
6 failure-to-protect issues that you requested additional
7 briefing on. And that Defendants had agreed that this
8 particular tranche of documents, you know, was relevant and
9 could be cited as support by either side, um, for those
10 motions.

11 THE COURT: Well, you know, frankly, that doesn't
12 make much difference to me. I would suggest that when you feel
13 it's appropriate to file additional briefing on that issue, you
14 do so. If by agreement among yourselves you have set that
15 schedule, that's fine with me. But Ms. Diamond is your client.
16 You know the situation better than I do. I would just suggest
17 when you think circumstances warrant you pursuing that issue,
18 pursue it.

19 MS. EZIE: Understood. Certainly, I think we feel a
20 level of urgency to present a completed briefing to the Court
21 because, as we indicated, unfortunately the parties have not
22 been able to, without Court assistance, um, reach a better
23 resolution of Ms. Diamond's safety issues.

24 I think the issue has just been that, um, we would
25 like to have the opportunity to supplement the record with --

1 with this discovery. So, is the Court amenable to an
2 arrangement whereby we file our briefing perhaps before
3 Defendants' deadline of November 30th, but have an opportunity
4 to identify additional records that we'd like the Court to
5 consider when resolving these motions?

6 THE COURT: It is your motion. I mean, you can file
7 a brief whenever -- it's a pending motion. I understand you
8 wanted to get some more information. When you're ready to
9 provide supplemental briefing, provide it.

10 MS. EZIE: Thank you, Your Honor. I think, um, the
11 other issue that I just wanted to quickly address with the
12 Court, um, you know, as -- as we discussed at the beginning of
13 the hearing, you know, counsel -- statements from counsel is no
14 substitute for hearing from the parties directly.

15 Um, Mr. Chalmers indicated that he's looking for
16 sworn statements from Ms. Diamond. Again, she has provided
17 many, um, within the prison about the current conditions at
18 Coastal, but we do feel, given the passage of time and the
19 ongoing safety concerns that she's experienced, that it would
20 be appropriate to submit a supplemental declaration that just
21 explains what's happened since the hearing to present day.
22 Does the Court have any objections to us filing such a
23 declaration when we are going -- proceeding to file our
24 post-hearing brief?

25 THE COURT: No. I don't. That's not unusual. Has

1 she been deposed?

2 MS. EZIE: No, Your Honor. No depositions have taken
3 place since the hearing. Um, as a result of some of these
4 delays.

5 THE COURT: If she files a supplemental declaration,
6 I suspect the defendants are going to want to depose her. Bear
7 that in mind.

8 MS. EZIE: Understood.

9 THE COURT: And they certainly should be allowed to.
10 I will allow them to.

11 MR. CHALMERS: Your Honor, if I could --

12 MS. EZIE: We expect depositions to proceed in any
13 event.

14 MR. CHALMERS: Your Honor, I think on that the -- a
15 supplemental declaration, I think what you have mentioned, that
16 we -- Defendants likely would want to depose Ms. Diamond
17 because we haven't seen this information and we haven't seen
18 her declaration or affidavit that would be forthcoming.

19 This, to me, is not a piece of the Motion for
20 Preliminary Injunction. Per the Plaintiff's (inaudible) going
21 to file that motion, they filed it in April of that year, and
22 it's based on a belief that she was in -- in danger -- with
23 respect to the security and protection piece, in danger at that
24 time. What -- what occurred since then could relate -- if she
25 can bring a claim in this action for it or if it's appropriate

1 to do that, and that would be material to be addressed in
2 discovery and in a summary judgment motion.

3 MS. EZIE: Respectfully, Your Honor, if I may be
4 heard, *Farmer v Brennan* states really quite unequivocally that
5 courts can consider incidents and information that post-date
6 the parties' pleadings and pretrial motions when assessing the
7 need for an injunction. You know, that's just part and parcel
8 of the standard, which is asking whether an individual faces an
9 ongoing risk of -- substantial risk of severe harm. If you
10 would that citation, it is *Farmer v Brennan*, 511 U.S. 825 at
11 846.

12 Um, you know, the Court is expressly authorized to
13 consider information, and, um, it's also, as you might agree,
14 Your Honor, relevant to the preliminary injunction standard
15 itself, which also asks whether a plaintiff stands an imminent
16 risk of harm in the event that relief is not granted.

17 THE COURT: Well, I mean, we're talking about what
18 might happen. And we're not -- certainly not going to resolve
19 today anything with regard to what might or might not happen.
20 You know, I am certainly not going to say in advance that you
21 cannot file a declaration to provide additional facts that you
22 think are necessary to resolve issues related to your Motion
23 for Preliminary Injunction. I am just saying that to the
24 extent new facts are injected, obviously the defendants are
25 entitled to address those new facts if they feel it necessary.

1 MS. EZIE: Of course, Your Honor. We understand
2 that, certainly.

3 THE COURT: Now, understand this. What it sounds
4 like you're doing is just continuing that there's been more of
5 the same as you alleged at the time of the hearing that we had
6 back in May. And, you know, that may open things up
7 considerably.

8 I do think it is relevant, can be relevant, with
9 regard to the issue of safety, what has happened since -- for
10 example, this is the first I've heard that there have been any
11 allegations of continued problems. If there haven't been any
12 problems since the May hearing, then I think that's relevant
13 to -- at least to part of the injunctive relief requested. If
14 there have been ongoing problems, it seems to me that's
15 relevant as well.

16 That's one reason why I want to see these documents
17 of what has happened since then. But, again, these are all
18 things that until we know what -- until I know what I've got in
19 front of me, there's really not much I can say about what I'm
20 going to do.

21 MS. EZIE: Understood, Your Honor. I think the final
22 issue that we wanted to just very briefly touch on, you know,
23 as you've heard today, um, the parties do intend to, um, put
24 some additional evidence to the Court for consideration in the
25 form of, um, discovery material. And we just wanted to confirm

1 that we're able to post those, um (inaudible) -- sorry, through
2 the same kind of process of sequentially numbering them as
3 exhibits and, where they are medical records, just filing them
4 under seal under the procedure the Court previously approved.

5 THE COURT: Yes. Those are all certainly details
6 that can be worked out. I don't -- do we have a protective
7 order in place now dealing with that?

8 MS. EZIE: We do, Your Honor.

9 THE COURT: Okay.

10 MS. EZIE: It's --

11 THE COURT: If there's any questions about that, I'm
12 sure we can answer those.

13 MS. EZIE: I think that's all that, um, Plaintiff has
14 at this time, Your Honor.

15 THE COURT: Anything further from the defendants?

16 MS. McGOVERN: Yes. Yes, Your Honor, I realize I
17 have not been -- obviously, paper discovery has expanded and
18 expanded over the course of this. And I have not been involved
19 in the discussions in terms of the discovery extension and so
20 forth. And that's no fault of anyone, it's just the roll of
21 our case.

22 But I realize I am committing to something without
23 any idea of whether Plaintiff wants 10, 20, 30 or 40
24 depositions in this case. And I currently am under a
25 scheduling order to complete 41 depositions by February 1 in

1 another matter.

2 And due to resources, I wanted to seek some
3 clarification of the scope. Because, um, that's going to be
4 pretty tight to get it done by the beginning of March,
5 depending on how many depositions they want. If they want 10
6 or 20, we should be fine. But if it's 30, 40 or more, that's
7 going to really push the envelope in terms of getting that done
8 and coordinating with all counsel in the case. We are a small
9 law firm, and our resources aren't as large as the Plaintiff's
10 counsel.

11 THE COURT: Well, I'd asked all of you to give me
12 a -- your list of people who you think will need to be deposed.
13 But remind me, Ms. McGovern, your client is or was an officer
14 at Jackson? Is that right?

15 MS. McGOVERN: Correct. And there is just the
16 allegations surrounding her there. So, we need to have someone
17 present for those depos, but, yes, our scope is very, very,
18 very limited compared to the other defendants.

19 THE COURT: Do you think you would have to be present
20 for depositions that concerned things only at Coastal?

21 MS. McGOVERN: I would -- I don't feel very
22 comfortable not at least having -- I do have someone working
23 for me that we can coordinate and do Zoom depositions and
24 accommodate. Otherwise, I just am -- knowing -- walking
25 through 41 depositions and knowing how long that's taken and

1 what a drain it is, I just want to know if we're looking at
2 something like that. But ballpark.

3 You know, are the plaintiffs, um, looking at 10 or 15
4 or 20? Or are we looking at more than 25? Of course, in the
5 federal court, you know, I would expect they would seek
6 approval to get more than 25. But I haven't been in on the
7 discussions and I don't have any sense, um, of how many and how
8 many would be involved in claims against my client. But I
9 don't feel comfortable with depositions in many claims being
10 made generally without some representative for my client being
11 present by Zoom or otherwise.

12 MR. McCOY: Your Honor, the current scheduling order
13 I think sets a limit -- I'm sorry, I don't have it at my
14 fingertips -- but I am almost positive we already did this when
15 we did the first scheduling order at the very beginning of this
16 case.

17 MS. McGOVERN: What is that number?

18 MR. McCOY: I am trying to put my hands on the
19 scheduling order.

20 MS. McGOVERN: I mean, typically anything more than
21 25 seeks leave of Court. So if that's the case, we're fine.

22 MR. McCOY: It's 10 per party, I believe -- I think,
23 which is pursuant to the regular rules or at least this
24 District or this Court's limits, so --

25 MS. McGOVERN: And if we agree that it's less than

1 25, then we shouldn't have any problem within that time frame.
2 But I don't want to commit to a time frame if we might suddenly
3 be in the middle of discovery and we're looking at 30 or 40
4 depositions.

5 MR. McCOY: Well, I guess my point is, is that all of
6 the parties already agreed to the scheduling order that is
7 currently entered. This discussion has already been had, so I
8 don't know why we're having it again.

9 MS. McGOVERN: Because there have been subsequent
10 discussions I have not been a party to, and I have no idea what
11 was discussed.

12 THE COURT: All right. Here's --

13 MR. McCOY: Okay, but we didn't discuss expanding the
14 number of depositions.

15 THE COURT: Here is what I'm thinking I need to do
16 given this latest point. Why don't I just sever Ms. McGovern's
17 client?

18 MS. McGOVERN: Okay.

19 MR. McCOY: Well, Your Honor, I don't -- I don't
20 understand why this -- this all of a sudden was a -- a mole
21 hill that turned into a mountain that I don't understand why we
22 even need to have that conversation. Because, really, I mean,
23 I think -- I think each party gets 10 depositions, so I
24 don't -- this isn't a weird, unusual thing, I don't think.

25 MS. McGOVERN: Because if --

1 THE COURT: Well, why not -- yeah. But, again, you
2 know the facts better than I do. But the -- as I recall, the
3 case involving or the claim against Ms. McGovern's client
4 involves a discrete event; namely, an alleged assault. It's
5 got nothing to do with Ms. McGovern's client being involved
6 certainly in anything at Coastal. I don't see how there's any
7 allegations that Ms. McGovern's client was involved in any
8 placement issues.

9 Again, from what I recall--and it's been a long time
10 since I've looked at that part of the case--it's just not --
11 not "just," I don't mean it in that way -- but it is only an
12 alleged assault by her client. It seems to me that severance
13 makes sense. Think about it.

14 MS. McGOVERN: Your Honor, we may be able to --

15 THE COURT: It could save Ms. McGovern from going to
16 all these depositions which it seems for certain will not
17 concern her client in any way.

18 MS. McGOVERN: And even if we don't formally sever
19 it, Your Honor, if we have a stipulation in fact there won't be
20 any discussion about my client or any reference to her in
21 depositions Coastal took, that may limit the need for us to be
22 present for any of those depositions without any concern.

23 THE COURT: No, I am not going to do that.

24 MS. McGOVERN: Okay.

25 THE COURT: They will have to -- if we sever, you

1 will certainly know if something comes up, and then you might
2 be looking at having to redepose a witness briefly. But, I
3 mean, again --

4 Let me ask the plaintiffs. I mean, is there any
5 conceivable way that the claim against Ms. McGovern's client
6 could involve anything at Coastal?

7 MS. EZIE: No, Your Honor. None whatsoever.

8 THE COURT: I mean, that seems about as obvious as
9 anything in this case.

10 MS. EZIE: We would not be opposed to severance if
11 that is what Your Honor recommends.

12 THE COURT: Okay. Well, I'll give that some thought.
13 But that would certainly make scheduling easier, it seems to
14 me. All right.

15 Well, give me the information I've asked for. We
16 will memorialize these extensions. And if Mr. Chalmers runs
17 into some issues with regard to the November 30 deadline, we
18 can address that. Anything further?

19 MR. CHALMERS: Just the timing on what we have to get
20 to you, Your Honor. I am traveling this coming week, and I
21 need to get word--which I'll do today--to collect the documents
22 you've asked us to collect.

23 THE COURT: Two weeks. Will two weeks work on that?

24 MR. CHALMERS: I think so.

25 THE COURT: Again, I am not looking for all the

1 underlying documents; just the actual requests and the pleading
2 in response to the request.

3 MR. CHALMERS: Right. Okay. Thank you.

4 MS. EZIE: Um, Your Honor, um, I will just note --
5 and I think this was, um, pertinent to two things.

6 One, Mr. Chalmers, just so you're aware, there is,
7 um, video that was taken of some of, um, Ms. Diamond's recent
8 PREA interviews, so, um, I would just be sure not to confine
9 your search for records only.

10 And then, um -- and otherwise, um, Your Honor, each
11 side should mail you both the discovery requests they have
12 served and received back? Or how -- what was the procedure you
13 had identified?

14 THE COURT: Well, you may think of a better way to do
15 it. What came to my mind was if each side sent me all of their
16 discovery requests, and then the other side sent all of their
17 discovery responses, the pleadings in response, that would give
18 me a full set. If y'all can come up with a better way to give
19 me a full set, that's fine. I just want to get a full set.

20 MS. EZIE: Understood.

21 MR. McCOY: Basically, we will just send you the
22 things that we have authored with respect to that, whether it
23 was a request or a response.

24 THE COURT: Well, again, I think that's what I said.
25 But, I mean, no, what I was -- you can do it -- well, maybe

1 that's not -- I will let you all decide. I think what you
2 said, Mr. McCoy, was a little bit different, that you would
3 give me your request and the responses you've received. I was
4 just going to say --

5 MR. McCOY: No, I'm sorry, Your Honor, no, I was
6 saying, like, we would send the requests that we authored to
7 Defendants, and then our responses to the requests that they
8 sent to us. Right. Those are the documents that we
9 authored -- each authored, right. And that way you would have
10 the full set. Your Honor, we will work out with everybody how
11 best to do that. We don't have to concern you with the
12 logistics. You will get a full set.

13 THE COURT: Yeah, I think you know what I want.

14 MR. McCOY: Yes.

15 THE COURT: All right. Well, thank you, all.

16 COUNSEL COLLECTIVELY: Thank you, Your Honor.

17 (Proceedings concluded at 11:18 a.m.)

18 END OF RECORD
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1 CERTIFICATE OF OFFICIAL REPORTER
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5 I, Darlene D. Fuller, Federal Official Realtime Court
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7 Middle District of Georgia, do hereby certify that pursuant to
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16 *Darlene D. Fuller*

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