

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

ASHLEY DIAMOND,

Plaintiff,

v.

TIMOTHY WARD, *et al.*,

Defendants.

CASE NO. 5:20-CV-00453-MTT

PLAINTIFF ASHLEY DIAMOND’S MOTION FOR LEAVE TO REDACT MOTION IN LIMINE TO EXCLUDE PREJUDICIAL AND IRRELEVANT EVIDENCE

In advance of the trial in this matter currently set for the Court’s January 17, 2023 trial term, Plaintiff Ashley Diamond intends to file a Motion in Limine seeking the exclusion of highly prejudicial evidence at trial. Plaintiff hereby seeks leave to redact her Motion in Limine (“the Motion”) as pertains to allegations of criminal conduct against Ms. Diamond and unrepresented third parties, along with the Parties’ subsequent briefing, and to file unredacted versions of briefing on the Motion under seal.¹

The Court may seal a motion for good cause found after balancing the public’s right of access with the interest in keeping the information confidential. *See Romero v. Drummond Co.*, 480 F.3d 1234, 1246 (11th Cir. 2007) (citing *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1309 (11th Cir. 2001)). Privacy interests can “overcome[] the interest of the public

¹ Ms. Diamond’s counsel confirmed with opposing counsel that Defendants could not consent to this Motion without first previewing Ms. Diamond’s Motion in Limine, which Ms. Diamond’s counsel could not accommodate.

in accessing the information.” *Id.* (citations omitted); *see also, e.g., Holcombe v. Credit Prot. Ass’n, LP*, No. 3:14-cv-14 (CAR), 2014 WL 12585659, at *1 (M.D. Ga. Nov. 7, 2014) (granting motion to permit filing under seal “because Plaintiff’s privacy interest in the information contained in the report overcomes the presumption in favor of public access.”).

Here, a portion of the evidence addressed by the Motion—allegations of criminal conduct against Ms. Diamond and others, and discussion thereof—is of such a personal, sensitive, and highly prejudicial nature that public knowledge of it could taint the jury pool. Potential jurors and media outlets can access public filings in this matter, and disclosure of the allegations and information at issue in Ms. Diamond’s Motion in advance of trial and the Court’s decision on the Motion risks denying Ms. Diamond her right to a fair and impartial jury. Media interest in this case is not speculative; it has garnered regional and national media attention since its filing and as recently as a few months ago.²

Additionally, public disclosure of the information could harm Ms. Diamond and third parties financially and reputationally, further justifying redactions. *See United States v. Corces*, No. 92-28-CR-T17B, 1997 WL 447979, at *11 (M.D. Fla. July 28, 1997) (citations omitted), *aff’d*, 152 F.3d 934 (11th Cir. 1998); *Luzzi v. ATP Tour, Inc.*, No. 3:09-CV-1155-J-32MCR, 2011 WL 2693542, at *3 (M.D. Fla. July 12, 2011) (same); *accord In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987) (“[T]he privacy interests of innocent third parties as well as those of [parties that may be harmed by disclosure] . . . should weigh heavily in a court’s balancing equation.”).

² *See, e.g.,* James Factora, *For Years, Ashley Diamond Advocated From Inside a Men's Prison. She's Finally Free*, Them (Aug. 15, 2022), <https://www.them.us/story/ashley-diamond-trans-prisoner-released-parole-advocacy>; Elinor Aspegren, *Justice Department weighs in on Ashley Diamond lawsuit: Prison officials obligated to protect transgender prisoners from harm*, USA Today (Apr. 25, 2021), <https://www.usatoday.com/story/news/nation/2021/04/25/ashley-diamond-transgender-georgia-justice-department/7376437002/>.

Courts routinely seal motions regarding evidence of and inquiry into such sensitive matters. *See, e.g., Rossbach v. Rundle*, 128 F. Supp. 2d 1348, 1353 (S.D. Fla. 2000) (finding that “protecting the privacy of the individuals named in the requests and shielding them from potentially embarrassing publicity warrant maintaining [documents related to discovery requests seeking information about extramarital affairs, drinking problems, and personal phone calls made at work] under seal at this time”); *Cleveland v. KFC Nat’l Mgmt. Co.*, 948 F. Supp. 62, 64 (N.D. Ga. 1996) (ruling on sealed motion to preclude plaintiff “from entering any evidence or allegations of prior sexual misconduct perpetrated by plaintiff’s former manager”).

Ms. Diamond’s privacy interests, the interests of unrepresented third parties, and the Court’s and the Parties’ interests in being able to bring this case to trial before a fair and impartial jury far outweigh the public’s interest in accessing the information. *See Romero*, 480 F.3d at 1246 (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). Further, the impact on public records access will be minimal as Ms. Diamond is only requesting permission to redact limited portions of briefing on the Motion, specifically portions addressing possible evidence of allegations of criminal conduct that is likely inadmissible under the Federal Rules of Evidence in any event. *See Romero*, 480 F.3d at 1246 (citations omitted) (noting that courts should consider the availability of “a less onerous alternative to sealing the documents” when “balancing the public interest in accessing court documents against a party’s interest in keeping the information confidential”); *Curry v. McNeil*, No. 3:08-cv-539/LAC/EMT, 2009 WL 395247, at *2 (N.D. Fla. Feb. 17, 2009) (approving of redactions that “seal[] or redact[] only those records or portions thereof that contain sensitive information.”).

For good cause shown, Ms. Diamond respectfully requests leave to redact portions of her Motion in Limine, along with the Parties’ subsequent briefing on the Motion, and to file an

unredacted version of the Motion and subsequent briefing under seal.

This 14th day of December, 2022.

Respectfully submitted,

/s/ Caitlin J. Sandley

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**(PROPOSED) ORDER GRANTING PLAINTIFF ASHLEY DIAMOND'S MOTION FOR
LEAVE TO REDACT MOTION IN LIMINE**

For good cause shown, the Court **GRANTS** Plaintiff Ashley Diamond's Motion for Leave to Redact Motion in Limine. Ms. Diamond shall be permitted to file the motion in limine under seal and to file a redacted version of the motion in limine publicly.

SO ORDERED, this ___ day of _____, 2022.

MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT