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

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

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STATUS CONFERENCE  
(Hearing occurred via Zoom)

April 28, 2021

BEFORE THE HONORABLE MARC T. TREADWELL  
UNITED STATES DISTRICT JUDGE

NOTE: This transcript conforms with the Court's Order (Text Entry #75) granting Plaintiff's Motion to Redact Portions of April 28, 2021, Status Conference Transcript (Document #74).

Proceedings reported stenographically

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1 Macon, Georgia

2 Wednesday, April 28, 2021

3 2:01 p.m.

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

5 THE COURT: Good afternoon, everybody. Let me begin  
6 with a general question to Defense Counsel. I am assuming that  
7 the defendants deny that any of the alleged sexual assaults  
8 occurred. Is that a fair assumption?

9 MR. CHALMERS: Yes, it is, Your Honor. We're putting  
10 together our papers to file on Monday, but we deny that  
11 assaults have occurred or sexual assaults have occurred, as  
12 Ms. Diamond has claimed in her motion.

13 THE COURT: That's certainly what I assumed, as I  
14 said. And is it -- is it the case that the release date for  
15 Ms. Diamond was pushed back because of the alleged disciplinary  
16 issues?

17 MR. CHALMERS: I don't believe so, Your Honor. I  
18 believe her release date has remained the same. But, um, I  
19 will confirm that. I don't believe that is the case.

20 THE COURT: All right. Well, then, this gets to the  
21 point of my email. You know, trial lawyers--I'm sure you've  
22 heard them say this before--are fond of saying that in every  
23 case somebody's lying. I am not quite that cynical anymore.

24 But certainly if there was ever a case where somebody  
25 is lying, this is it. And I think what our initial focus needs

1 to be on is finding out as best we can who's lying and who's  
2 not. In a way, I think of the hearing we will be having next  
3 week -- or week after next, whenever it is -- as a credibility  
4 hearing. And I want to focus on witnesses who will help me to  
5 determine who's telling the truth.

6 And I've got a list that I'm going to go through,  
7 just to -- so I can get a better understanding of what we're  
8 dealing with. And who I might want to see at this hearing.  
9 It's more or less chronological, and it's based upon the  
10 Complaint and the other documents filed.

11 Beginning with the alleged March 13, 2020, assault  
12 involving Nurse Lucas. Do the defendants know who Nurse Lucas  
13 is?

14 MR. CHALMERS: I do, Your Honor. We know who that  
15 individual is. I will tell you that in our -- in our  
16 assessment of this motion, we will -- we will present to you  
17 what we believe is, um, the reasons why whatever occurred at  
18 GDCP, going back to (inaudible) the allegations regarding that  
19 nurse in March of 2020 or the subsequent allegation in May of  
20 2020, would not be a basis for granting preliminary injunctive  
21 relief in April, more than a year later.

22 What is essentially being proposed here is summary  
23 judgment without full discovery on the claims that are going to  
24 be litigated in the case. There's no urgency, in other words,  
25 in our view with what may have occurred in March of 2020.

1 I apologize for getting off track. I do have a way  
2 to contact Nurse Lucas. She would not most likely be a GDC  
3 employee, but we will be in contact with her.

4 As part of our submissions on Monday we're doing two  
5 things. We're filing with the Court our response. There will  
6 be documents included with that. We're also going to be making  
7 a document production of about 1,300 pages to the plaintiffs  
8 because they have served us with discovery. And in that there  
9 will be the documentation related to that incident from March  
10 of 2020, including the Nurse Lucas related materials. So those  
11 (inaudible) will be before the Court.

12 So I would just submit, and I apologize for the long  
13 response here, that -- that we could get really sidetracked if  
14 we go into (inaudible) every allegation that reaches back so  
15 far, and it doesn't show a present need for a transfer or a  
16 difference in approach to Ms. Diamond's (inaudible), which is  
17 really the relief they're seeking.

18 THE COURT: Well, I will tell you what I suspect the  
19 plaintiff's response to that would be: That it still could be  
20 relevant because it shows how the responsible people at GDC or  
21 at the Department of Corrections, whatever, respond to these  
22 incidents.

23 But I understand your point. But for now, we know  
24 that Nurse Lucas is available, and we'll see some more about  
25 her in the filings. I can tell you without a doubt I will want

1 to here from Arneika Smith at the hearing, unless there is a  
2 very strong reason why I shouldn't.

3 MS. McGOVERN: Your Honor, I would just add, as to  
4 the protective order that's currently before the Court, there  
5 are not allegations against Ms. Smith, and she's not presently  
6 at the facility. If you are interested in hearing from her, I  
7 of course can reach out to her. But it's not my understanding  
8 that she is an individual subject to the current motion before  
9 the Court.

10 THE COURT: Well, she's a witness to --

11 MR. CHALMERS: If I can --

12 THE COURT: Go ahead.

13 MR. CHALMERS: If I can respond, also, Your Honor,  
14 the plaintiffs themselves have said that they have only as a  
15 courtesy served Ms. Smith's counsel with the motion papers, and  
16 that the claims related -- or the claims against Ms. Smith are  
17 not at issue (inaudible) in the motion.

18 If I can say, I think what would help the Court in  
19 identifying witnesses that really ought to be heard from in  
20 addressing the motion that's before it, relating to the relief  
21 that's being sought, when you see our papers, the basic  
22 contention that you have before you is Ms. Diamond is at risk  
23 of assault and nothing is being done. That's the first part.  
24 And the second is Ms. Diamond has medical and health care needs  
25 that are not being addressed.

1           We're going to be filing the papers showing that both  
2 of those assertions are false. They are simply (inaudible).  
3 In fact, Ms. Diamond is refusing to participate in the PREA  
4 investigation process. Nonetheless, there is paperwork for  
5 each time there's an allegation or suggestion made. So the  
6 paperwork is going to show a quite different story than what is  
7 before you, and I think that will inform, we hope, the Court in  
8 deciding which witnesses need to be heard from for this motion.

9           THE COURT: Well, I'm sure it will be helpful. Let  
10 me respond to one thing you said. I agree with you, broadly  
11 speaking, we are talking about two issues, and that's failure  
12 to protect and the medical issues. I am focused more now on  
13 the failure to protect. I view that to be the primary focus of  
14 what may well be the initial evidentiary hearing.

15           I am not yet accepting that what happened at GDC is  
16 not relevant to injunctive relief for the failure to protect  
17 issues. But I will see what you file. And I doubt that the  
18 documents will conclusively answer all the questions that we  
19 may have.

20           So let me continue with my list. And this is a  
21 little out of the chronological order that I said that I was  
22 following, but I am moving on to Coastal. The orderly who  
23 witnessed allegedly the October 9, 2020, incident. Who from  
24 the plaintiffs can tell us who that is?

25           MS. EZIE: Your Honor, this is a case where, um, we

1 don't -- we have not been able to identify and defendants have  
2 not identified who that individual would be.

3 But, um, I did want to, um, just briefly state to the  
4 questions that were raised about Nurse Lucas and Arneika Smith,  
5 it is certainly true that, um, Ms. Smith is not someone who we  
6 believe can grant injunctive relief to Ms. Diamond, and that is  
7 why the motion is not directed at her.

8 But in addition to the Court's entitlement to hear  
9 from any witness it so desires, I would just add that all of  
10 the incidents at GDCP relate to deliberate difference insofar  
11 as they go to notice of Ms. Diamond's substantial risk of  
12 serious harm as well as Defendants' continuous failure to avert  
13 that harm.

14 THE COURT: Well, that was the point that I  
15 anticipated that you would make. But, to my question,  
16 Ms. Diamond does not know who the orderly is?

17 MS. EZIE: I -- um, I can try my best to confirm with  
18 Ms. Diamond, but at this time I do not believe we have any more  
19 description than we provided in the Complaint.

20 THE COURT: All right. Do you have the letters that  
21 John Doe wrote?

22 MS. EZIE: Um, yes, Your Honor, those are in  
23 Ms. Diamond's possession. We asked Ms. Diamond to send them to  
24 her (sic), and the prison opened the mail and did not  
25 ultimately allow the mail to go out. But Ms. Diamond does have

1 them in her possession.

2 THE COURT: Do you have copies of them?

3 MS. EZIE: We don't, for the reason I indicated. But  
4 assuming that no one intervenes and removes them from her  
5 possession prior to the hearing, Ms. Diamond is prepared to  
6 bring them with her.

7 THE COURT: All right. In Ms. Diamond's affidavit at  
8 Paragraph 99, she says that a GDC staffer confirmed that Benton  
9 and Betterson had hatched a plan to get criminal charges  
10 pressed against her. Who is this GDC staffer?

11 MS. EZIE: Um, we do have the name of that  
12 individual, um, Your Honor. I have a little bit of a concern  
13 about sharing it without some clarity on how Defendants are  
14 planning to treat confidential witnesses. Um, she was someone  
15 who we were hoping would be treated as a confidential witness.  
16 But that is someone who we are planning to make testimony  
17 available.

18 Um, it goes to an issue that we were hoping to  
19 address with you later today, which is our intention to use  
20 some deposition designations. Because from our reading of, um,  
21 Rule 45 and the subpoena power, there are some individuals with  
22 information relevant to this case who are unfortunately beyond  
23 the subpoena power of the Court. And for that reason, we are  
24 proceeding with early depositions ahead of -- ahead of the  
25 hearing.

1 THE COURT: Well, we can cross that bridge when we  
2 come to it. But, you know, this is a pretty important witness,  
3 at least to me. This is the criminal -- some of the potential  
4 criminal activity I'm referring to. You say you have a witness  
5 who has said that Benton and Betterson are essentially engaging  
6 in criminal activity. That witness needs to get on the stand.  
7 That's pretty important. I mean, how do we not disclose that  
8 witness, the identity of that witness?

9 MS. EZIE: So, Your Honor, again, we have no -- no  
10 discomfort sharing the identity of that witness with you, you  
11 know, the Court, attorneys of record. It's just a matter of  
12 the stalemate we seem to be at about whether Defendants can  
13 then turn and inform GDC personnel at large about some of the  
14 identities of these witnesses who are still employed or, um,  
15 you know, provide services at GDC and are concerned about their  
16 own retaliation.

17 THE COURT: Well, for now, we'll leave it that you  
18 know who this person is, and we will address how to get that  
19 testimony.

20 I assume there's no issue with Mr. Duckworth  
21 testifying? Is that correct, Ms. Ezie?

22 MS. EZIE: Yes, Your Honor, Mr. Duckworth can be  
23 present for testimony.

24 THE COURT: All right. On the alleged October 15,  
25 2020, witness. I assume the defendants know who Courtney Brown

1 is. Is that a fair assumption?

2 MR. CHALMERS: We do, Your Honor.

3 THE COURT: He can be available to testify?

4 MR. CHALMERS: She can be, yes. She can be available  
5 to testify.

6 THE COURT: It's unclear to me, was there another  
7 staff person who observed that alleged sexual encounter?

8 MR. CHALMERS: There was not as far as we know, Your  
9 Honor. There is another -- there were others involved in  
10 the -- in the immediate process after (inaudible) once  
11 Ms. Diamond was removed from her cell. And that would be  
12 Lieutenant Khalia or Lakia Reeves, R-e-e-v-e-s. And we intend  
13 to submit a declaration from both Correctional Officer Brown  
14 and Lieutenant Reeves, and we will check, but my anticipation  
15 is that they will be available at the hearing.

16 THE COURT: I'm interested -- I mean, declarations  
17 are fine as far as they go. I'm interested in testimony.  
18 Because clearly somebody is going to walk off this stand and  
19 they will have perjured themselves -- more than one somebody --  
20 when we're all through. So, yes, my next question was about  
21 Mr. Reeves.

22 And Rodney Jackson, I assume, is available? Is that  
23 correct?

24 MR. CHALMERS: I don't know Rodney Jackson.

25 THE COURT: He's the unit manager. He's mentioned

1 fairly prominently.

2 MR. CHALMERS: Okay. We will certainly -- if he's a  
3 unit manager at GDC, my anticipation is he would be available  
4 to testify if needed.

5 THE COURT: And back to the plaintiffs. With regard  
6 to Mr. Jackson, you allege that there is video recordings of  
7 these dormitory-wide meetings that Mr. Jackson convened where  
8 he made his inappropriate comments. I assume, though, the  
9 plaintiffs do not have these video recordings?

10 MS. EZIE: Yes, Your Honor, that's correct. Um, it  
11 is our understanding that there are prominent video cameras  
12 that would have captured many of the incidents relevant to  
13 these proceedings. We have asked Defendants repeatedly to  
14 ensure they are being preserved and that any automatic deletion  
15 protocols have been suspended, but we are not -- you know, we  
16 do not have those materials in our possession at this time.

17 THE COURT: Have the defendants made any effort to  
18 determine if those videos exist?

19 MR. CHALMERS: I am not aware of a video recording.  
20 If what's being -- if what we're talking about is the alleged  
21 (inaudible) announcement made by Unit Manager Jackson in the  
22 dormitory, I am not aware of there being a video recording of  
23 that incident.

24 THE COURT: Well, this allegedly happened on June 19,  
25 2020. Find out and let me know.

1 MR. CHALMERS: We will.

2 THE COURT: A question to the defendants. Is there a  
3 Department of Corrections record that identifies Ms. Diamond as  
4 a PREA sexual aggressor?

5 MR. CHALMERS: I don't believe there is a record as  
6 such. There is -- there is an identification of her, because  
7 there are risk assessments done on a periodic basis, and there  
8 have been regular risk assessments done. And so there are  
9 several of those indicating that she is a PREA victim. And the  
10 most recent of those indicate she is both a PREA victim and an  
11 aggressor. And we will check to see what documentation there  
12 is of those findings.

13 MS. EZIE: Your Honor --

14 THE COURT: Is there --

15 MS. EZIE: My apologies. Since our initial filing of  
16 the motion, Ms. Diamond was able to send us some materials that  
17 corroborate this allegation. They include printouts that show  
18 that she's now listed as a PREA aggressor as well as a security  
19 threat group member.

20 GDC uses icons to sort of indicate when that  
21 designation has been given. So we can submit those materials,  
22 either on ECF so you have the benefit of them as you are  
23 reviewing these papers, or we can plan to bring them to the  
24 hearing.

25 THE COURT: And the second point you made, is that

1 the -- what you describe or what Ms. Diamond describes in her  
2 affidavit as being classified or a part of a security threat  
3 group?

4 MS. EZIE: Yes, Your Honor. That's the designation  
5 that's reserved for gang members and affiliates. And we do  
6 have a record that indicates -- sort of shows the absence of  
7 that designation prior to the beginning of this retaliation  
8 campaign, and then it's made an appearance.

9 THE COURT: All right. And so you now have  
10 documentation of that. Why don't you file that "restricted  
11 access" so everybody can have access to it.

12 MS. EZIE: Yes, Your Honor.

13 THE COURT: The special strategy meeting addressing  
14 retaliation for Ms. Diamond's activities, which Ms. Diamond  
15 says she came to know about because of the GDC staffer, is that  
16 the same GDC staffer we were discussing earlier?

17 MS. EZIE: Yes.

18 THE COURT: All right.

19 MS. EZIE: Yes, Your Honor.

20 THE COURT: And then Ms. Diamond alleges that when  
21 she learned on March 8th, 2021, that her parole release date  
22 had been set back, a staff member showed her a file that Benton  
23 and others had sent to the Parole Board. Are we talking about  
24 the same staffer?

25 MS. EZIE: Yes, Your Honor. I believe we are.

1 THE COURT: Mr. Chalmers, since you're answering, I  
2 will address it to you. But if somebody else needs to respond,  
3 that's certainly fine.

4 Have there been documents submitted to the Parole  
5 Board?

6 MR. CHALMERS: I don't know the answer to that  
7 question, Your Honor.

8 THE COURT: Well, look into that. You will see in  
9 Paragraph 101 of Ms. Diamond's affidavit, she says these  
10 contain this information, includes falsified statements and  
11 records alleging that she was a gang member and a dangerous  
12 predator.

13 Mr. Chalmers, do the defendants allege that  
14 Ms. Diamond is a gang member?

15 MR. CHALMERS: I don't believe so, Your Honor, and I  
16 am not sure which document is being referred to. I think there  
17 is indication in the institutional file that there is a  
18 security threat. But I don't know that the reference or  
19 indication is security threat, which is the gang affiliation.  
20 I would have to go back to the documents to be certain about  
21 that. But I will say that that -- that would be indicated in  
22 the institutional file. It wouldn't be in -- in the documents  
23 that we intend to file with the Court on Monday. For  
24 classification.

25 THE COURT: Well, you also need to find out again

1 what documents have been submitted to the Parole Board, because  
2 I think that's --

3 MR. CHALMERS: Yes.

4 THE COURT: -- directly relevant to the retaliation  
5 issue, which I think is relevant to the failure to protect  
6 issue. Because the allegation is that falsified -- or false  
7 information was submitted to the Parole Board in order to block  
8 Ms. Diamond's release.

9 The PREA compliance manager, Ms. Smith, I assume  
10 she's available? If needed?

11 MR. CHALMERS: Um, the -- the PREA compliance manager  
12 is Deputy Warden of Care and Treatment, Carl Betterson. The  
13 PREA coordinator is Grace Atchison. And both of those would be  
14 available to testify.

15 Your Honor, if I could say one thing on that. We  
16 have in good faith, based on allegations of retaliation, agreed  
17 that we would not share the redacted and filed affidavit from  
18 the inmate -- sorry, her name I am failing to recall right  
19 now -- concerning the October 31 incident.

20 And we have agreed we wouldn't share that with our  
21 client, Mr. Betterson, until the Court made some kind of  
22 (inaudible) with respect to this allegation of retaliation.  
23 But I will say that we intend to file the paperwork on Monday  
24 and make a showing that this allegation, um, was -- um, we'll  
25 file the PREA paperwork. And once we file that paperwork, we

1 are going to ask for an opportunity to allow Mr. Betterson to  
2 respond to the allegations of retaliation. Because his  
3 involvement in interviewing Doe, the other offender, was as the  
4 PREA -- the local PREA compliance manager.

5 Um, and then the other -- which I -- I didn't voice  
6 this objection earlier, but the suggestion that we could get to  
7 a hearing without being informed of who this other mystery  
8 witness is, and that we would not be able to talk with our  
9 clients or other (inaudible) persons about that is -- we would  
10 object. We need to be able to have a meaningful opportunity to  
11 counter what the plaintiffs contend is their evidence. And so  
12 we absolutely would object to this idea that they can spring on  
13 us at the hearing some witness who is going to offer testimony  
14 that we haven't had a basis to look into.

15 THE COURT: Well, I understand that point. I also  
16 understand the concern. And we'll come back to that.

17 So who is Lachesha Smith?

18 MR. CHALMERS: Um, I'm sorry, Your Honor, that is  
19 the -- she is an official at Georgia Diagnostic and  
20 Classification Prison. She was involved in the initial intake  
21 process, I believe, and she may be PREA compliance manager at  
22 that facility.

23 THE COURT: All right. My understanding -- I do see  
24 that now.

25 MR. CHALMERS: (Inaudible.)

1 THE COURT: But with regard to her, allegedly  
2 Ms. Diamond gave Ms. Smith a stack of sexually harassing and  
3 threatening notes she had received from would-be male  
4 assailants during her first two weeks at GDCP. Do the  
5 defendants have those notes?

6 MR. CHALMERS: I don't believe we do, Your Honor. I  
7 have not seen them.

8 THE COURT: Has any inquiry been made as to whether  
9 Ms. Smith received such information? Or documentation?

10 MR. CHALMERS: No, Your Honor. I mean, I will say,  
11 because of the way the motion was drafted, focusing on current  
12 events, events that are represented to be a current threat to  
13 Ms. Diamond's safety, I have spent a lot of time trying to  
14 figure out is medical care being provided, is mental health  
15 care being provided, and is she at a current risk. That goes  
16 back through all of the time at Coastal.

17 But, in our view, the events that happened at GDC are  
18 very far removed from what should be at issue in the hearing  
19 from what we understood was the basis for the motion for  
20 preliminary relief. So we have not dug that far back.

21 I would -- I would respectfully submit that all of  
22 this is information that we would get to and that we would  
23 gather in the course of merits discovery in the case. We had a  
24 conversation with Plaintiff's Counsel where we agreed merits  
25 discovery would be a 9-month process and both sides would get

1 to disclose expert witnesses. And after that, then we would  
2 have briefing on summary judgment.

3 So I understand the Court's interest in all of this.  
4 I have a keen interest in getting to the bottom of all of the  
5 fact allegations as well. But for Defendants, respectfully,  
6 I'd say that we need to focus on whether there is a current,  
7 imminent threat to Ms. Diamond and who are the witnesses that  
8 would be able to show an actual threat.

9 I think the documents (inaudible) show that the  
10 prison is not turning a blind eye to her safety, and she is  
11 getting (inaudible) care, medical care and mental health care,  
12 I would venture to say far more than she got outside of prison.  
13 We are going to show all that.

14 We don't believe that we can reasonably provide all  
15 of our merits defense in the course of this one-month time  
16 period.

17 THE COURT: Well, I'm -- I understand your point. I  
18 am still not willing to concede, and I'm confident the  
19 plaintiffs are not willing to concede, that events at GDCP  
20 could not have some relevance to the failure to protect. And I  
21 think in particular if there's -- if these documents exist, we  
22 need to know about them.

23 Let me ask the -- Ms. Ezie. I mean, do you have  
24 copies of these documents that were given to Ms. Smith?

25 MS. EZIE: No, Your Honor. We do have some

1 additional threatening notes that Ms. Diamond has received  
2 since that time. But, you know, those ones she did not have  
3 duplicate copies of.

4 And to reiterate your point, you know, imminent harm  
5 is certainly something that we intend to prove at this hearing,  
6 but it is not the only consideration that goes into whether  
7 preliminary relief is proper. We still have to show the  
8 elements of deliberate indifference claims and, to that end,  
9 GDCP, you know, failures are relevant, as you've indicated.

10 THE COURT: All right. Well, the narrow point now is  
11 the defendants need to find out if they have those documents.

12 Um, now --

13 MR. CHALMERS: If I could just ask, what -- so I know  
14 that we're asking for the right documents, what reference in  
15 the papers are we referring to?

16 THE COURT: This is Paragraph 75 of the Complaint.

17 MR. CHALMERS: Thank you.

18 THE COURT: Threatening notes that Ms. Diamond says  
19 she gave to Ms. Smith.

20 Then what does concern Coastal, Ms. Diamond alleges  
21 that a maintenance worker told her that administrators like  
22 Benton and Toole had set specific protocols to prevent her cell  
23 from locking. She goes on to say elsewhere that a GDC staff  
24 member informed her that Toole and Benton had set specific  
25 protocols for her cell to prevent the door from locking as it

1 ordinarily should.

2 Ms. Ezie, who is your witness to support that?

3 MS. EZIE: Um, Your Honor, we do have a witness, um,  
4 who is a GDC employee. And for that reason we have not been  
5 able to contact him under the no contact rule. But, you know,  
6 we believe he is available to testify. And, um, his name --  
7 you know, although I have to sort of repeat that we have  
8 concerns not about identifying to counsel the names of any  
9 witnesses, certainly we have not made any requests for a  
10 surprise hearing. In fact, we initiated the conversation with  
11 them this week about exchanging witness lists, and they  
12 indicated it was premature to do so. But we are asking for --

13 MR. CHALMERS: We're ready today, Counsel.

14 MS. EZIE: All right. We're asking for a  
15 revisitation on the confidentiality agreement which we served  
16 on Defendants about three weeks, if not a month ago at this  
17 time, where we did indicate our desire for there to be witness  
18 protections. And that's -- that's where the only impasse lies.

19 But, sorry, that was a long answer to a short  
20 question, but, yes, we do have a witness on this point.

21 THE COURT: Now, Mr. Chalmers, I gather the  
22 defendants are loaded for bear on this issue of the door.  
23 Would that be correct to say?

24 MR. CHALMERS: I am not good with sayings, Your  
25 Honor. Sorry, I don't understand.

1 THE COURT: I assume you've got a good response to  
2 this allegation that the defendants intentionally prevented the  
3 cell door from being able to be locked.

4 MR. CHALMERS: (No audible response.)

5 THE COURT: You're muted.

6 MR. CHALMERS: I apologize. The cell doors at  
7 Coastal State Prison lock. Part of the DR that -- Ms. Diamond  
8 received a handful of DRs in her time at Coastal so far;  
9 actually, far fewer than the plaintiffs have indicated in their  
10 briefing papers. She received five or so, I believe, as of the  
11 time that they filed their papers.

12 But one of them was for blocking the lock.  
13 (inaudible) the same date she got the DR with respect to the  
14 sexual activity with Offender Doe. (inaudible) rag stuffed in  
15 the cell door. The cell doors don't work when a rag is stuffed  
16 in a door, and offenders know that, including Ms. Diamond.

17 We have maintenance logs showing that the cell that  
18 she was placed in had been -- the door had been fixed before  
19 she occupied that cell. We had a maintenance person come out  
20 on the day that she got the DR to remove the rag and oil the  
21 door. But it works just fine. It locks when offenders don't  
22 keep it from being locked. And we have that information.

23 MS. EZIE: And, Your Honor, I think it's fair to say  
24 this is a heavily disputed issue in this case, and we are  
25 prepared to offer testimony.

1           Um, Counsel made a reference to there being only five  
2 DRs. If I didn't state this earlier, among the materials we've  
3 received from Ms. Diamond -- who I should add is currently in  
4 solitary confinement because she received six additional DRs  
5 this weekend when news of the Department of Justice's filing in  
6 this case hit the prison -- she was given six DRs, and is now  
7 being held in a feces-covered cell with a rat infestation.

8           But we do have copies of at least, I believe, four  
9 additional DRs we received in the mail. We will be sharing  
10 those on ECF based on your prior instruction.

11           THE COURT: Well, as to your first point, I mean,  
12 it -- as I keep saying, if anything is clear in this case, it  
13 is that there's a lot of lying going on. And I don't know any  
14 better way to figure out who's telling the truth than to get  
15 them here in the courtroom and find out.

16           The documents will help. We all know how effective  
17 documents can be. But on some of these issues, it's pretty  
18 clear that we're going to have to assess credibility and, as I  
19 say, find out who's lying.

20           Speaking --

21           MR. CHALMERS: If I can say, Your Honor --

22           THE COURT: Go ahead.

23           MR. CHALMERS: I feel that we're somewhat at a  
24 disadvantage because we -- um, we haven't been able to  
25 (inaudible) before you. And so there are repeated allegations

1 of retaliation. Ms. Diamond has not received six DRs since the  
2 Department of Justice brief has been filed. She's received  
3 three. They were all on April --

4 THE COURT: Rest assured, Mr. Chalmers, right now I  
5 am as open to the proposition that Ms. Diamond is lying as I am  
6 to any defendant is lying. I just want to find out who it is.  
7 And, again, I don't know of any better way to do it than to get  
8 them in this courtroom and get to the bottom of it as best we  
9 can.

10 MR. CHALMERS: I think my -- my frustration, Your  
11 Honor, if I am showing a little frustration, is in the fact  
12 that we are -- um, we are working hard to address (inaudible)  
13 preliminary injunction. That's a motion for extraordinary  
14 relief in a case that involves fairly complex issues  
15 (inaudible) very different (inaudible) intentions.

16 And in my view that's a case that requires discovery.  
17 So I -- I -- I think you really should be focused -- I know you  
18 have identified those key issues: Is Ms. Diamond at risk of  
19 assault and is she being denied the medical and mental health  
20 treatment she needs. But we really hope to focus on those  
21 issues because that is really what should drive whether the  
22 Court should enter any kind of preliminary relief before the  
23 parties are permitted to dig into these fact, hotly contested  
24 issues and legal issues that will drive the ultimate outcome of  
25 the case.

1 I know the -- I -- this is where I'm coming from  
2 with -- with my -- my thinking on what really should be our  
3 efforts, to try to present the right information to you so that  
4 you can make a determination whether there is an immediate need  
5 for relief.

6 THE COURT: Well, I -- I don't know that I disagree  
7 with anything you said. But it doesn't change the fact that  
8 ultimately, and particularly on the failure to protect issue,  
9 which I view to be the issue at the forefront, I don't view  
10 those -- that issue to be particularly complex, other than the  
11 fact that I've got to figure out who's telling the truth.

12 And let me go ahead and speak to the medical issues.  
13 Right now, I don't see the focus of this first hearing to be  
14 the medical issues. That will involve complicated issues,  
15 expert testimony. And, quite frankly, Ms. Ezie, from what I  
16 have seen, I don't view the medical issues to be as critical as  
17 perhaps they were allegedly in Ms. Diamond's first case. And  
18 apparently Mr. Chalmers and the defendants are going to educate  
19 me even more on that in the next few days.

20 So I see our focus being on the failure to protect.  
21 And that I view to be a very -- an issue that's very manageable  
22 and can be presented in a relatively short period of time, to  
23 the extent necessary, to determine whether preliminary  
24 injunctive relief is necessary.

25 You know, I think -- I suspect, Mr. Chalmers, that

1 you would agree, in the abstract, that if what Ms. Diamond says  
2 is true about what is happening at Coastal, preliminary  
3 injunctive relief is warranted. If it's true. And you  
4 unequivocally say it's absolutely false. And I understand  
5 that. And you may be right. That's what we have to figure  
6 out.

7 But if she's right, then that's a strong case for  
8 immediate relief. So we've got to get it in a posture where we  
9 can find out where the truth is.

10 MS. EZIE: Your Honor, um -- apologies, if I may, I  
11 would -- I would just note that, you know, Ms. Diamond's health  
12 care issues really are of paramount concern to her and to the  
13 team, particularly given her recurrent castration attempts,  
14 which can only be understood as a symptom of her gender  
15 dysphoria still remaining untreated.

16 THE COURT: I am not, as I said, diminishing those.  
17 I am trying to deal with issues in order of priority. And I  
18 think that the sexual assaults need to be the focus --

19 MS. EZIE: (Inaudible) protect and medical care.

20 THE COURT: -- at this point. I don't have to tell  
21 you all, you've seen the cases out of this Circuit, the medical  
22 issues are going to require careful examination when we get to  
23 those.

24 Speaking of documentation, I notice that the DRs that  
25 I've looked at, or at least the documents finding Ms. Diamond

1 guilty, particularly with regard to the alleged sexual incident  
2 involving her and Mr. Doe, refers to supporting documentation.  
3 Is there supporting documentation that Ms. Diamond and Mr. Doe  
4 were engaged in sexual activities?

5 MR. CHALMERS: I don't -- there is no video of it,  
6 Your Honor. I believe the supporting documentation is what  
7 accompanies the DR file, which would be the witness statements.

8 THE COURT: That's what I guessed. It looks to me  
9 like something that always goes in there, "based on supporting  
10 documentation." And I suspect -- you've told me already, and I  
11 guess that -- the -- the evidence you have of that is from  
12 Courtney Brown; is that correct?

13 MR. CHALMERS: That's correct.

14 THE COURT: And as far as you know now, is that the  
15 only evidence you have?

16 MR. CHALMERS: Yeah, her -- her -- yes. What she  
17 saw, what she will say as to what she saw (inaudible)  
18 statement.

19 THE COURT: So let's talk about the -- it sounds like  
20 we have two witnesses that are in my mind critical. These GDC  
21 staffers at Coastal, who if they say what the Complaint and  
22 Ms. Diamond's affidavit says they will say will go a long way  
23 towards confirming Ms. Diamond's allegations.

24 Ms. Ezie, how do you propose we deal with your  
25 concern that there be no retaliation and the defendants' need

1 to know who the witnesses are, who will testify against them?

2 MS. EZIE: Thanks, Your Honor, for the opportunity to  
3 be heard on this matter. We, um, had a very simple request of  
4 the Attorney General's Office at -- um, prior to these motions  
5 being filed, which is that they would counsel their clients --  
6 and, you know, at Coastal in particular -- to refrain from  
7 retaliating against any individuals, people who are either on  
8 staff, contractors, or in custody, to refrain from retaliating  
9 against them based on any testimony or involvement they have in  
10 this case.

11 I am a little astonished to say that that is the  
12 subject of the current impasse. The Attorney General's Office  
13 has taken great exception to that request, and that is why we  
14 filed the motion that seeks for, um, special confidentiality  
15 protections to be handed down from the Court. It really is an  
16 area where I thought counsel could come to a professional  
17 understanding of the need for people not to be chilled with  
18 respect to the testimony that they might provide as part of  
19 these proceedings. But, unfortunately, it has not been easy to  
20 resolve.

21 THE COURT: Well --

22 MR. CHALMERS: Your Honor?

23 THE COURT: Go ahead.

24 MR. CHALMERS: Your Honor, we have -- we have emails  
25 on this. And I would have to look back on the emails, but

1 that -- that representation is not complete and it's not  
2 accurate.

3 What we were asked to do before the motion was filed  
4 is direct our client to take Doe out of segregation, if he was  
5 still there, and put him in general population. And there was  
6 also a direction or a request that we not share any information  
7 with Ms. Littrell.

8 That's exactly what was asked of us. You asked would  
9 you remove Doe from segregation and tell your clients to put  
10 him back because (inaudible) been retaliated against. We  
11 instructed -- we informed Plaintiff's Counsel in that  
12 conversation that we could not tell GDC officials where to  
13 house an inmate.

14 And we did say as part of that conversation -- and  
15 then the other is that they asked us not to investigate the  
16 allegations of retaliation. Not to take the suggestion that  
17 Doe was being retaliated against and go to anyone at GDC and  
18 find out if that was true.

19 We responded, and I have an email to this effect,  
20 that we would not do that. That that was improper. We need --  
21 if there is an assessment -- or an assertion of retaliation, we  
22 would follow up with it. This is where the impasse came from.  
23 So I think you would acknowledge that, in fact, there were  
24 those discussions as part of our communication.

25 And then as part of that, we did say, if you -- as a

1 general rule, our clients know not to engage in retaliation.  
2 Counsel, just this week in an email to us, said that her client  
3 knows the exact same thing. So we -- we've made the same  
4 representations in that respect.

5 THE COURT: Well --

6 MS. EZIE: Your Honor, respectfully, the -- we have  
7 a -- we did have conversations about all of the ways that we  
8 would -- we would consider Mr. -- Mr. Doe, our confidential  
9 witness, to be restored to the status quo, as someone who has  
10 already experienced retaliation. But, respectfully, that is  
11 not where the impasse lies. The impasse lies in Defendants'  
12 refusal to counsel their clients against retaliation.

13 And if I may, if my colleague, Ms. Littrell, could  
14 just be heard on this matter briefly, as she can recap in her  
15 own words where the dispute is.

16 MS. LITRELL: Thank you, Chinyere.

17 Thank you for the opportunity to be heard, Your  
18 Honor. I think, you know, the impasse with respect to  
19 retaliation is that while we've had some professional  
20 conversations between the Attorney General's Office and  
21 ourselves, is -- is that we seek some assurance that these  
22 witnesses won't again be retaliated against with respect to  
23 being punished. Because they are under the custody of the  
24 people who -- who, um, you know, we are suing, the defendants.  
25 And also for the employees, that they won't be retaliated

1 against. They won't lose their job. They won't have adverse  
2 employment consequences.

3 We are seeking some assurance, and we sought that  
4 assurance through the -- directly with counsel in hopes that we  
5 could get that so we could move forward. And that's what we're  
6 asking from the Court. Because we didn't feel that we --

7 If we misunderstood, Mr. Chalmers, please set us  
8 straight. But our understanding is that your clients know not  
9 to retaliate, and you are not going to tell them what to do,  
10 you are not -- we are not going to tell you what to tell them,  
11 and that becomes the end of the story.

12 And that did not satisfy our concerns that these  
13 witnesses fear providing testimony, truthful testimony, and  
14 that's really I think where we're at at this point in the -- in  
15 the impasse.

16 THE COURT: Mr. Chalmers?

17 MR. CHALMERS: Your Honor, while we are on -- while  
18 listening to Ms. Littrell, I was trying to find the email  
19 exchange that we had. There was -- there was -- as I am  
20 recalling it, there was a request that Doe be removed, that no  
21 adverse action being taken with respect to Mr. Doe, I believe.  
22 I can't remember if that request was made as to Ms. Diamond as  
23 well.

24 Um, those are, you know, the -- we're in a world here  
25 where Ms. Diamond gets a DR on April 26 and Plaintiff's Counsel

1 view that as retaliation, as an adverse action. But our GDC  
2 officials view it as she got a DR because she violated prison  
3 rules.

4 So they are seeking a commitment, essentially, that  
5 no adverse action occur with respect to a prisoner, when we  
6 cannot, as counsel for GDC, give that commitment. And we  
7 cannot, as counsel, ask for that commitment.

8 What I said consistently in our communications is our  
9 client cannot engage in retaliation. They did not -- in these  
10 discussions they made clear they didn't want us to go to the  
11 individual officials or witnesses and say, "Don't retaliate  
12 against Doe." They didn't want us to make it known who might  
13 be the possible recipient of retaliation.

14 They simply wanted some general instruction to our  
15 witness -- to our clients and potential witnesses, "Don't  
16 retaliate." The GDC officials (inaudible) a requirement. As I  
17 said in the same way that (inaudible) that Ms. Diamond  
18 (inaudible) of that requirement.

19 MS. LITRELL: Let me just interject here. We  
20 specifically counseled our client about the consequences of  
21 perjury to ensure that she understood. And that's what we're  
22 asking something similar of you, to ensure that your clients  
23 understand that they cannot take adverse action against anyone  
24 under their custody or anyone under their employ in order for  
25 these witnesses to be able to provide truthful testimony

1 without fear of being thrown into solitary, of being papered  
2 with DRs, of losing their jobs or their status. And that's --  
3 that's essentially what we're asking from you.

4 And now we're asking the Court to order something  
5 that can be done for us. And I certainly don't want to belabor  
6 this. We just want to be able to present evidence and we want  
7 to be able to assure our witnesses that -- despite actions that  
8 have been taken against them in the past, that going forward,  
9 you know, there -- there are legal eyes on them and that they  
10 have to knock off any retaliation.

11 MS. EZIE: And, Your Honor, just to put a fine point  
12 on it. We are not requesting confidentiality, a non-disclosure  
13 of these witness' identity, plus an instruction not to  
14 retaliate. We're simply saying that until such assurance is  
15 given, that we do not know how to protect these individuals but  
16 to prevent the disclosure of their identities.

17 We are not -- we understand it is unsustainable in  
18 litigation to not disclose to counsel and others the names of  
19 witnesses. But it's also unsustainable to have a record like  
20 the one we have in this case where there are very serious  
21 allegations of retaliation, and the Attorney General's Office  
22 gets to decide that GDC employees and clients are above  
23 instruction about their obligations here.

24 MR. CHALMERS: Your Honor, of course you don't have  
25 access to this and Plaintiffs' Counsel don't, either. But

1 there are unsubstantiated allegations of retaliation that will  
2 be disputed. So this is where we're coming from.

3 They are asking for a general instruction from our  
4 office to clients not to retaliate, but their ask has been so  
5 broad as to include things like "don't take adverse actions,"  
6 which we cannot ask GDC officials not to do in a prison  
7 setting. They have jobs to do. They have to enforce prison  
8 rules. They have to enforce the disciplinary process. And  
9 they -- what I'm saying is you do have before you a motion and  
10 allegations of retaliation. You don't yet have our response,  
11 and that informs our response here.

12 THE COURT: Well, I am not quite sure, from all the  
13 back-and-forth, exactly where the area of dispute is. It  
14 sounds to me like it's an inability to communicate.

15 The proposition to me is fairly simple. I will tell  
16 you this. I will ask these witnesses when they testify if  
17 anybody has made any attempt to influence their testimony. And  
18 that will include -- and I am not suggesting that this would  
19 ever happen -- but that would include any attorney attempting  
20 to influence their testimony, because I do not view that would  
21 be within the attorney-client privilege. So at that point, the  
22 issue will be addressed; that is, when they are on the stand.

23 And this was a point made earlier -- well -- well, I  
24 will return to that point later.

25 But if I am understanding what you're saying now, and

1 without regard to what may or may not be in these emails, and  
2 maybe putting a slightly different construction on what the  
3 plaintiff wants, the request is that Defense Counsel instruct  
4 their clients that they not retaliate in any way or make any  
5 attempt to influence based on anticipated testimony that these  
6 witnesses may have.

7 Now, it may be, taking Mr. Doe as an example, that he  
8 may do something that leads the defendants -- or the personnel  
9 at Coastal to believe that disciplinary action is appropriate.  
10 And that it's not in retaliation. It's because of something he  
11 did or didn't do. And quite reasonably, I can't tie their  
12 hands in that regard.

13 What I can do is when we get to the hearing, I can  
14 flesh that out and make a determination as to whether or not  
15 what happened was retaliation or a legitimate response to a  
16 disciplinary issue.

17 But prophylactically, I think all that can be done is  
18 that what lawyers do usually anyway, I think, is that they  
19 instruct their witnesses or their clients that they have to  
20 behave appropriately, and that they cannot make any effort to  
21 affect testimony or to retaliate for testimony or anticipated  
22 testimony.

23 Mr. Chalmers, do you see any reason why the  
24 defendants cannot be instructed along those lines?

25 MR. CHALMERS: We can give that instruction, Your

1 Honor, if you're directing that we do so. And just to be  
2 clear, as a (inaudible) matter, we do communicate information  
3 to our clients. This specific request comes up amidst  
4 allegations of retaliation that we (inaudible), and that's the  
5 context here.

6 But just to be -- to be clear, our general engagement  
7 and process includes that kind of warning/instruction, in the  
8 same way that counsel represented that they've discussed the  
9 issue with their client. But this is a very different kind of  
10 request that they've posed.

11 THE COURT: I don't doubt that for a moment, having  
12 worked with your office for years now. And I also am hearing  
13 that the defendants feel like they have a very strong case  
14 here, which they are going to start showing us next week what  
15 it is.

16 And I know defense lawyers are savvy enough to know  
17 that the worst thing they could do if they do have a strong  
18 case is to have one of their clients or some other Department  
19 of Corrections staff member to run around inappropriately  
20 contacting witnesses. So there's -- apart from ethical  
21 reasons, there's good tactical reasons, it sounds to me like,  
22 for the defense lawyers to be sure that the defendants stay in  
23 line on that point.

24 But I believe that's all that can be done. It sounds  
25 like that's really all that the plaintiff, at bottom, is asking

1 for, is that instruction, which I have given. And as I say, we  
2 can explore that as necessary at the hearing.

3 That done, how are you going to identify these two  
4 GDC employees? Ms. Ezie?

5 MS. EZIE: Your Honor, we'd be happy to -- um, it  
6 sounds like Defendants are coming to a place of being able to  
7 share witness lists. We could include them on a witness list  
8 or we could identify them via some other mechanism of filing,  
9 whatever the Court prefers.

10 I will just note, you know, our -- our request  
11 ideally would be both that, um, that non-party witnesses --  
12 sorry, that non-parties are not read into who these witnesses  
13 are. So, for instance, you know, yes, we understand the need  
14 for Defendants to speak to their clients potentially about some  
15 of these witnesses, but the idea that they would share that  
16 beyond kind of the scope of concern of this case within GDC is  
17 still a concern for us.

18 And we are concerned about, um, declarants being  
19 approached, and, um, grilled about the testimony that they are  
20 going to provide. That is not something that, you know, we  
21 plan to do. And we would ask that it be a reciprocal courtesy  
22 that, um, these confidential, um, employees who -- or  
23 contractors who fear retaliation would not be approached about  
24 their testimony.

25 THE COURT: Well, that raises an interesting

1 practical point that might help us draw a bright line so that  
2 we can later determine if, in fact, there has been any  
3 inappropriate contact. So let me ask you this, Mr. Chalmers.  
4 With regard to these two GDC staffers, is there any reason that  
5 anybody other than counsel would need to talk with them about  
6 their anticipated testimony? Which, we know what it is. It  
7 concerns these two events that I went over earlier.

8 MR. CHALMERS: I apologize. I don't know, Your  
9 Honor. I would say, generally speaking, if we're interviewing  
10 witnesses, it would be the lawyers doing it. So I don't know.  
11 But it -- I suppose it depends -- what I -- we may be able to  
12 agree that only lawyers talk with them. Um, as far as  
13 preparing (inaudible).

14 What would concern me more is us not being able to  
15 communicate with others about information or evidence the  
16 witness would share. And maybe I misunderstood Ms. Ezie to  
17 suggest that would be a limitation that they are asking for.  
18 Whatever evidence is offered at the hearing, we need to be able  
19 to consult with our clients and with folks at the GDC about  
20 that. Depending on who the witness is and what the information  
21 is, it may be that we can -- that only the lawyers would be  
22 needed to talk with them before the hearing as far as  
23 interviewing those.

24 THE COURT: Well, then, let me frame my instruction  
25 this way. With regard to these two GDC employees and Mr. Doe,

1 at this point, no one other than counsel for the defendants  
2 will talk with them about the subject of their testimony. And  
3 I think it's clear what the subject of their testimony is.

4 If Defense Counsel think it necessary that someone  
5 other than Defense Counsel talk with or interview these  
6 individuals, let me know, and I'm sure we can work something  
7 out. But that I think draws a bright line.

8 So, speaking hypothetically, if Mr. Betterson, for  
9 example, goes up and talks to this -- one of these employees  
10 about his or her testimony, we'll know that there was improper  
11 contact. Absent us having made some arrangement for him to do  
12 that. So let's leave it at that for now.

13 And, again, Defendants can come back if they say,  
14 well, we need to adjust for this reason. But I think that's  
15 actually good protection for the defendants, as well, so that  
16 you won't be open. It wouldn't be very smart for one of these  
17 people to go and talk to one of these witnesses right now, I  
18 wouldn't think. Certainly not if I found out about it. So.

19 MS. LITRELL: Thank you, Your Honor. This is Beth  
20 Littrell. I just wanted to inquire as to whether we could  
21 expand that to the extent that there are incarcerated  
22 individuals under the custody and control of Defendants who  
23 have information that would be helpful to the Court but who,  
24 um, have thus far not been identified in the papers because  
25 they fear -- based on the power dynamic in the prison system,

1 they fear coming forward and giving testimony.

2 To the extent the instruction would apply to any  
3 witnesses that we identify, including incarcerated individuals,  
4 that their -- um, you know, that GDC defendants and employees  
5 don't contact them about their testimony, that would -- that  
6 would be appreciated, if we could expand it in that way.

7 THE COURT: Well, I have already said this applies to  
8 Mr. Doe. Do you have other witnesses?

9 MS. LITTRELL: As to retaliation, we believe that  
10 we -- that we could identify witnesses if they have some  
11 assurance that they would not be retaliated against directly.  
12 And if that's helpful to the Court with respect to credibility  
13 determinations.

14 THE COURT: Well, let's leave that question until you  
15 reach a decision as to whether to identify any further  
16 witnesses. That sounds a little vague to me.

17 MR. CHALMERS: And, Your Honor, if I could just say,  
18 if -- if the instruction is as to the two employees and Doe, we  
19 can give very clear instructions so that that instruction will  
20 be followed. If it's a broad instruction, "anyone who might be  
21 identified," the problem with that is that prison officials  
22 have to interact with these inmates on a daily basis, and  
23 someone's going to contend that an interaction stepped over the  
24 line; whereas -- we can't control that. We can't control every  
25 interaction. We can't keep prison officials from interacting

1 with offenders because it is what they have to do on a daily  
2 basis.

3 So I would suggest limiting it to Doe or others that  
4 we specifically talk about. I mean, we're ready to tell you  
5 who our witnesses are now. We're hoping that we would have  
6 this discussion today so that we -- we can all be ready for the  
7 hearing on the 12th. And we'd like to know who the GDC (sic)  
8 witnesses are today.

9 THE COURT: Well, I'm willing to talk about that  
10 because there might be some of them that I can tell you that we  
11 don't need to hear from. As I said, I question whether we're  
12 going to be getting into the medical issues initially. Did you  
13 want to go through your witnesses?

14 MR. CHALMERS: Your Honor, we anticipate that we will  
15 show the basics of our response through the following witnesses  
16 and that they would also be witnesses, um, to testify at an  
17 evidentiary hearing. Ahmed Holt who is an assistant  
18 commissioner; and Grace Atchison, A-t-c-h-i-s-o-n, who is the  
19 PREA -- the state-wide PREA compliance coordinator.

20 THE COURT: Who was the first one?

21 MR. CHALMERS: Ahmed Holt, H-o-l-t.

22 THE COURT: All right.

23 MR. CHALMERS: We anticipate, um, filing the medical  
24 record and the mental health record under declarations from  
25 Dr. Lewis, who is the state-wide medical director, and then

1 Dr. Weinstein, who is the state-wide mental health director.  
2 We don't -- we have not anticipated other medical or mental  
3 health witnesses, but the medical records we believe will  
4 inform the Court quite substantially as to the type of care and  
5 the quantity of care that's been provided to Ms. Diamond.

6 Um, CO Courtney Brown, who we've discussed, and  
7 Lieutenant Reeves, also who we've discussed.

8 THE COURT: You broke up a little bit about the first  
9 name.

10 MR. CHALMERS: I apologize. Courtney -- Correctional  
11 Officer Courtney Brown and Lieutenant Reeves. The fact  
12 information on the October 31st, 2020, incident involving  
13 Offender Doe that we've been discussing. Those will be the  
14 witnesses that we would offer.

15 THE COURT: All right. Well, I'm pretty sure you  
16 will need to add to that list Rodney Jackson, Warden Benton,  
17 and Mr. Betterson. I'm still not decided about what happened  
18 at Jackson, with the exception of Arneika Smith. I expect  
19 Ms. Smith to be here.

20 MS. McGOVERN: Your Honor, if I may, it is my  
21 understanding that you focused this hearing on failure to  
22 protect. And Ms. Smith is a CO-I and there are not failure to  
23 protect charges against her. Um, so, I was wondering, in light  
24 of that information, and I was also advised by Plaintiff's  
25 Counsel that the hearing, the depositions, none of it would

1 involve my client. I need not even attend, was the assurance I  
2 received. So, I understand that you're asking about that, but  
3 I just wanted to inquire, since I don't believe she has any  
4 scope outside -- that will lend any information regarding a  
5 failure to protect claim or issue.

6 THE COURT: Well, let me ask you some questions,  
7 then. What was the outcome of the allegations against her?

8 MS. McGOVERN: She's been placed on administrative  
9 leave and is looking for other employment. She is no longer  
10 presently at the prison. She was a very new CO-I. She had  
11 only been there for several months.

12 She's a very young, petite woman. And, um, she had  
13 no supervisory role, she had no administrative role, and she no  
14 longer has any interaction or role with the Georgia  
15 correctional system in Georgia at this moment in time.

16 THE COURT: Was there any finding of culpability on  
17 her part?

18 MS. McGOVERN: Not since I last spoke with her.

19 THE COURT: Mr. Chalmers, can you tell me what, if  
20 anything, was done as a result of the allegations against  
21 Ms. Smith with regard to -- well, let me leave it at that.

22 MR. CHALMERS: Um, there was an investigation into  
23 the allegations.

24 THE COURT: Was there a determination whether the  
25 assault happened?

1 MR. CHALMERS: I don't think there was a -- I  
2 don't -- I don't know that there has been a final  
3 determination.

4 THE COURT: Well, Ms. Ezie, is it correct that the  
5 plaintiffs think that the -- this alleged incident with  
6 Ms. Smith is not relevant to the failure to protect issues with  
7 regard to a preliminary injunction?

8 MS. EZIE: Um, Your Honor, we would not -- we would  
9 not, um, state that it is irrelevant. I think that, um,  
10 Ms. McGovern is correct that the claims against her client  
11 concern, um, sexual abuse in violation of the Eighth Amendment  
12 and a privacy claim. But her -- the ability that she had to  
13 abuse our client sexually fits into the overall pattern of  
14 failure to protect that we allege against the GDC defendants.  
15 Including defendants such as Sharon Lewis, who -- I am not  
16 clear on whether Defendants indicated they plan to produce her  
17 for the hearing or not.

18 Javel Jackson -- I am not clear, again, whether  
19 Defendants are stating -- or the Attorney General's Office is  
20 stating she is no longer the state-wide mental health director.  
21 But these are the people who have been responsible for  
22 Ms. Diamond's placement, who received notifications of these  
23 sexual assaults and abuses, and who have failed to act in ways  
24 that reasonably protect our client from further harm. So it is  
25 relevant -- it's a relevant allegation.

1 THE COURT: But you don't intend -- you don't intend  
2 to offer any evidence at the upcoming hearing on that incident?

3 MS. EZIE: Ms. Diamond is prepared to testify both  
4 about the abuse that she experienced at GDCP as well as Coastal  
5 since they both bear on the -- you know, our likelihood of  
6 succeeding on our failure to protect claims.

7 MR. CHALMERS: And let me just say, Your Honor, the  
8 investigation materials, the incident report or materials  
9 related to that incident, are among the documents that we have  
10 collected for production to Plaintiff's Counsel on Monday. And  
11 they will be part of the documents that we file with the Court  
12 as well. So when I say the -- I am not aware of a final  
13 determination or final outcome, those materials will be  
14 included for the Court to see.

15 THE COURT: Well, I have to say, I mean, that  
16 incident has great -- or some significance to me. I understand  
17 the argument that what happened at Jackson didn't happen at  
18 Coastal. But it does two things, potentially, it seems to me.  
19 One, it is relevant to Ms. Diamond's credibility, and, two, if  
20 as a result of those allegations, particularly if there was any  
21 conclusion that her allegations had merit and yet nothing was  
22 done with regard to protection from further assaults, it seems  
23 significant to me. Maybe more to me than it does the  
24 Plaintiffs. I can't tell, quite frankly.

25 But I'll look at what you produce, and we'll see.

1 MS. McGOVERN: So, Your Honor --

2 THE COURT: I'll tell you, it sure sounds to me that  
3 there's more -- there's something to that allegation. And I  
4 have made it clear how interested I am in establishing  
5 credibility here. This case will turn on credibility.

6 MS. McGOVERN: Your Honor, of course I will leave it  
7 up to you, but if you could give some insight as to what you  
8 think you may do. But for your information, Ms. -- I do  
9 understand that my client is about five foot four, 120 pounds.  
10 She indicated that Ms. Diamond is, I believe, six feet or more.  
11 And the allegations, physically she would not even be capable  
12 of.

13 But if you wish to have her in the courtroom, if you  
14 would just please let me know so that I have the opportunity to  
15 work with her as she's seeking other employment opportunities  
16 so that I can make arrangements to do so.

17 THE COURT: I will. It sounds like we may be talking  
18 a lot about what people are physically capable of doing. When  
19 we take testimony.

20 All right. I'll reserve the decision on that until I  
21 take a look at the documents.

22 MS. EZIE: And, um, Your Honor, I am not sure why  
23 physical descriptions are suddenly relevant in this hearing,  
24 but it sounds like Ms. Smith and Ms. Diamond weigh  
25 approximately the same amount. Ms. Diamond is 130 pounds and

1 five-ten. So just putting that into the record.

2 MS. LITTRELL: For clarification, she was at the time  
3 she entered GDCP. We don't know what her weight is now, but we  
4 know what her height was, and we know what her weight was when  
5 she entered GDCP. It was in the 130s.

6 THE COURT: All right. Turning to the plaintiff,  
7 having heard Mr. Chalmers' witness list and the additions I've  
8 made to that, are there any other witnesses you think should  
9 testify on the failure to protect claim as it relates to  
10 Coastal?

11 MS. EZIE: Yes, Your Honor. I think with your  
12 additions, you know, we would note that, um, it seems anomalous  
13 if defendants are not producing any witnesses who are members  
14 of the state-wide classifications committee. We understand  
15 that to be the committee that makes final determinations  
16 regarding, um, transgender placement.

17 I guess I will note that Ms. Atchison is on that  
18 committee, but we understand Sharon Lewis to be very  
19 instrumental to those decisions, as well as Javel Jackson.  
20 That is something that even Defendants' answers acknowledge.  
21 So it was our expectation that they would be present.

22 With respect to Plaintiff herself, obviously  
23 Ms. Diamond is planning to testify. Um, we are hoping that the  
24 Court will issue a transfer order that would allow Mr. Doe to  
25 also testify. It's our understanding, speaking to the Attorney

1 General's Office, that without a transfer order from this  
2 Court, GDC would not make Mr. Doe available to testify.

3 Um, Mr. Duckworth is someone who witnessed, um,  
4 attacks and abuse against Ms. Diamond. We do believe he has  
5 relevant testimony.

6 We are also prepared to have our expert witness,  
7 Dr. Randi Ettner, provide testimony. It is, um, admittedly  
8 more germane -- most germane to health care, but she can speak  
9 to the psychological effects of, um, Ms. Diamond's current  
10 placement as well as, um, what would constitute appropriate  
11 placement.

12 Unfortunately, um, Mr. Aiken, our -- our corrections  
13 facility witness, has indicated he's not available on May 12th.  
14 If there is a desire to get his testimony by another means, we  
15 can try to arrange for a deposition. We actually did want to  
16 inquire with the Court if there is any provision that will be  
17 made for virtual witness appearances, the ability to examine a  
18 witness who is out of state for instance, via Zoom while, of  
19 course, counsel, Ms. Diamond, and others are present in your  
20 courtroom.

21 THE COURT: Well, I don't anticipate that we'll need  
22 any expert testimony at this first round. I suspect that we  
23 can come to some accommodation with regard to virtual  
24 appearances of experts and witnesses of that nature.

25 Clearly, for the witnesses that are going to have to

1 establish what did or did not happen with regard to these  
2 assaults, as I've made clear, I want them in the courtroom.  
3 And that's what I'm going to be focusing on.

4 As far as moving her -- I understand there's an  
5 issue -- putting aside the assaults for the moment, there's an  
6 issue with regard to why Ms. Diamond, as a transgender person,  
7 is where she is when apparently there are procedures and  
8 standards that would allow her to be placed in another  
9 facility, including a women's facility.

10 I don't see that to be an issue that we can resolve  
11 at Phase I, either. Except -- but I will say this. I mean, if  
12 it becomes apparent that Ms. Diamond is the victim of serial  
13 assaults at Coastal, then I am going to step in. And I  
14 don't -- I don't think the defendants would quarrel too much if  
15 that turned out to be the case.

16 As you've heard, they are, it sounds like, well  
17 prepared to demonstrate that that is not the case. But it's  
18 obvious to me that if she's the victim of the assaults she  
19 describes, then something's got to be done. And that's what  
20 we're going to decide.

21 MS. EZIE: Thank you, Your Honor.

22 THE COURT: So.

23 MS. EZIE: I -- I did want to indicate, um, because I  
24 think -- it sounds like you have given the instruction that,  
25 you know, Plaintiffs have been seeking about retaliation. So

1 if it's -- if it's germane today, I can share witnesses who we  
2 are hoping we can present whose testimony will bear on the  
3 questions you asked about failure to protect, but, um, who  
4 we're hoping to present by deposition designation for the  
5 simple fact that we understand them, based on their places of  
6 work and home locations, to be outside of our ability to serve  
7 Rule 45 subpoenas that would compel their testimony. And they  
8 are the witnesses in some cases that you were inquiring about  
9 earlier today.

10 So I'm happy to share their names if that's helpful,  
11 subject to the understanding that Defendants have been ordered  
12 to give the retaliation instruction and the instruction about  
13 contacting staff about their testimony.

14 THE COURT: All right.

15 MS. EZIE: Okay. The first such individual is  
16 Ms. Tia Fletcher, T with a T, like, I guess tomcat, Fletcher,  
17 F-l-e-t-c-h-e-r. You know, we have not contacted Ms. Fletcher,  
18 because we are, um, aware that she may be represented by  
19 counsel, but we understand that Ms. Fletcher was a witness to  
20 meetings where Ms. Diamond was being discussed, where  
21 retaliation was front and center.

22 We understand that Ms. Fletcher has familiarity with  
23 the materials that were sent to the Parole Board. Um, there is  
24 actually a letter that we can add onto the Court's docket today  
25 that confirms our allegation that it wasn't, um, Ms. Diamond's

1 alleged institutional conduct that did lead to a date change.  
2 That is, from our perspective, undisputed at this point. We  
3 can submit that record, and Ms. Fletcher has knowledge about  
4 the materials that were sent over to -- to, um, the Parole  
5 Board at that time.

6 So that's one witness. Again, you know, we would  
7 love to have her testify in person. It's just our  
8 understanding that she cannot be compelled, and we did not feel  
9 we could contact her to, um, to seek her in-court presence. If  
10 there is some procedure that the Court is aware of that can  
11 make that possible or, for instance, an accommodation that  
12 might allow her to testify virtually such that the hundred mile  
13 rule is not a consideration, that would be something we would  
14 ask.

15 THE COURT: All right. Well, I am not sure she's  
16 beyond the subpoena power. But, in any event, file -- for all  
17 of the witnesses you identify that we don't already have, or  
18 don't already know this, file under restricted access the  
19 addresses you have for them, and we can see what can be done.

20 All right. Other than Ms. Fletcher, anybody else?

21 MS. EZIE: Sure. Um, yes, Your Honor. And this  
22 whole category of folks are people right now we are seeking the  
23 depositions of for the same reason, that I think if some  
24 accommodation can be made to allow them to testify live, that  
25 sounds very appropriate given the Court's preferences.

1           But the second such person is named Tamara Cantera,  
2 Ms. Cantera is a GDC mental health counselor who conducted PREA  
3 interviews of Ms. Diamond around the time of many of these  
4 incidents. She can correspond -- or she can corroborate that  
5 sexual assault allegations were repeatedly made. She has made  
6 recommendations, um, in an official format regarding safety  
7 placements for Ms. Diamond that have not been considered. And,  
8 so, um, those are some of the subjects that she could speak to.

9           THE COURT: All right. I am familiar with her name  
10 because I've read her records. I wouldn't think there would be  
11 a problem getting her here.

12           Who else?

13           MS. EZIE: Dr. Fass and Dr. Roth are individuals that  
14 we were planning to offer up, both for the medical care claims,  
15 which, again, we, um -- we share your sense of urgency on the  
16 failure to protect, but the medical care claims are very much  
17 part of our case as well. They also have -- they also seem,  
18 based on records we have reviewed, prepared to speak to the  
19 propriety of Ms. Diamond being placed in male facilities and at  
20 Coastal. Rather, I should say, the impropriety. And it seems  
21 as though they have recommended to higher-ups on multiple  
22 occasions that a transfer would be appropriate for safety  
23 reasons.

24           So those are two additional witnesses who we think  
25 could speak to failure to protect as well as the very important

1 issue of the adequacy of medical care.

2 THE COURT: Am I to understand that for Dr. Fass -- I  
3 have F-a-s-s -- and Dr. Roth, you are attempting to set up  
4 their depositions?

5 MS. EZIE: Yes, Your Honor. For the same reason  
6 that, being residents of Savannah, we think they are just about  
7 164 miles from the courthouse, which, unfortunately, is likely  
8 too far for them to be compelled.

9 THE COURT: All right. Well, I think -- it strikes  
10 me that, in any event, presenting their testimony by deposition  
11 would probably be the best way. I understand they are fact  
12 witnesses as well as perhaps expert witnesses, but, you know,  
13 they are in a different category than these other witnesses.

14 So I would suggest that certainly for those two, that  
15 you proceed with the depositions. And I -- I -- I know you're  
16 going to have -- everybody's going to have a lot on their  
17 plate. I wouldn't say that those necessarily have to be done  
18 before our -- what I anticipate will be our first evidentiary  
19 hearing.

20 Ms. Fletcher, on the other hand, sounds like somebody  
21 who needs to be in the courtroom, and I think that can be  
22 arranged.

23 Now, what about the maintenance worker who's to  
24 testify about the door?

25 MS. EZIE: Um, Your Honor, that person's name is Sam

1 Miller. We believe he's a GDC employee, so we have not had any  
2 contact with him. He is someone who, um, if GDC will make  
3 available, um, with the same understanding -- that his  
4 testimony should not be unduly coerced or influenced -- I think  
5 it would be very appropriate for him to speak, um, at the  
6 hearing.

7 THE COURT: Yes. Well, you've already talked about  
8 him without mentioning his name. He and Ms. Fletcher both. So  
9 it's clear that what I said earlier applies to those two. So,  
10 clearly, Mr. Miller is somebody who I think we would need to  
11 hear from. That will probably be even more apparent once we  
12 get the documents that are coming from the defendants with  
13 regard to the door issue.

14 All right.

15 MR. CHALMERS: Your Honor, can I just ask a question  
16 just so I'm clear what our instruction is. I heard somebody  
17 identifying Fletcher and Cantera as GDC employees, and then a  
18 third, Sam Miller. Is the Court's instruction that -- well,  
19 I'll say that we won't be contacting Ms. Fletcher or  
20 Ms. Cantera, (inaudible) counsel on the case because they are  
21 health care providers, and we can't talk to them directly. But  
22 is your instruction, your general instruction that those three  
23 witnesses would be attorney contact only? And then I would  
24 want an instruction to GDC officials not to talk with them  
25 about their -- the subject matter of their testimony?

1 THE COURT: Well, based upon what I said earlier, and  
2 as I understand what -- now that we have names, we're talking  
3 about Mr. Doe, of course, Mr. Miller, and Ms. Fletcher. I  
4 didn't understand Ms. Fletcher to be a health care provider.  
5 Is she?

6 MR. CHALMERS: She is a mental health provider.  
7 Ms. Ezie can speak to that, I suppose, better than I can, but I  
8 believe she is a mental health counselor or provider.

9 MS. EZIE: Yes, Your Honor, she's -- her title is  
10 Director of Mental Health at Coastal State Prison.

11 THE COURT: But let me be sure I heard correctly. Is  
12 she also somebody who you say has knowledge of the retaliation  
13 efforts by personnel at Coastal?

14 MS. EZIE: Yes, Your Honor. And I think, just so you  
15 appreciate the distinction that Mr. Chalmers is trying to draw,  
16 there are individuals who work for GDC but on a third-party  
17 contract. And I believe these are such individuals. All the  
18 same, they have the same concerns about retaliation and loss of  
19 employment as a GDC employee would.

20 MR. CHALMERS: And just to be clear, I wasn't drawing  
21 a distinction. I just wanted to make sure I knew exactly who  
22 we needed to communicate with to communicate the Court's  
23 instruction to. And so it's those four witnesses, as I count  
24 them, that I want to make sure I have them correctly  
25 identified.

1 THE COURT: Ms. Cantera, Ms. Fletcher, Mr. Miller,  
2 and Mr. Doe. All right.

3 Now, Ms. Fletcher, is she a contract provider? Or an  
4 employee?

5 MS. EZIE: She is one of the contract providers, Your  
6 Honor. Along with Ms. Cantera, according to Defendants.

7 THE COURT: All right. All right. Anything else  
8 that the plaintiff wishes to discuss today?

9 MS. EZIE: Um, yes, Your Honor. Thank you for the  
10 opportunity. We, um -- you have addressed many of our open  
11 questions about -- about this hearing, but we did, um, have a  
12 few unresolved questions. Um, the first is, um, it sounds as  
13 though the Court is contemplating perhaps hearing this motion  
14 in phases. And, obviously, there are two pending motions  
15 before the Court: The motion for protective order concerning  
16 retaliation and then the motion for preliminary injunction.

17 We did want to reiterate our request to be heard on  
18 the motion for, um, retaliation -- the motion concerning  
19 retaliation, particularly in light of the six disciplinary  
20 charges that Ms. Diamond received this weekend, um, as we  
21 understand it right as, um, news of the Department of Justice's  
22 filings circulated around the prison. It's just to say that  
23 retaliation remains an ongoing issue in the case.

24 We also understand that third parties continue to be  
25 chilled and that, um, there are actually a set of inmates who

1 could potentially speak to retaliation, that Ms. Littrell was  
2 referencing earlier today, who have, um, already been punished  
3 for their association with Ms. Diamond insofar as they  
4 expressed concern about how Ms. Diamond was being retaliated  
5 against this weekend, and have since, um, many of them been  
6 transferred to either solitary or other dormitories that, um,  
7 are -- are considered even less safe than the dormitory that  
8 Ms. Diamond is in by staff.

9 So, um, just to simplify, we wanted to clarify  
10 whether, um, the May 12 hearing there will be an opportunity to  
11 be heard on our motion for protective order or if there is  
12 another such time that the Court might identify that we can  
13 present that testimony.

14 THE COURT: I think, given the scope of evidence that  
15 we've talked about at the May 12th hearing, that would be very  
16 relevant to the motion for protective order. I am hoping that  
17 the discussion we've had today will help ensure what I would  
18 expect anyway, and that is that Defendants and other Department  
19 of Corrections personnel will recognize that the worst thing  
20 they could do right now would be to get caught trying to  
21 retaliate, intimidate, or influence any potential witness in  
22 this case.

23 The short answer to your question is, yes, I will be  
24 willing to entertain that motion at the hearing, because I  
25 think it overlaps with what we're talking about.

1 MS. EZIE: Thank you, Your Honor. I think the second  
2 question, um, for Plaintiffs that, um, would merit some input  
3 from the Court is just the length of the hearing. It seems  
4 between Defendants' witness list, um, with the additions you've  
5 noted, along with our own, that we might well be up to, um, a  
6 dozen or so witnesses. And I just wanted to let -- let the  
7 Court know that Plaintiffs are available to continue the  
8 hearing onto May 13th and even May 14th, um, the Thursday and  
9 Friday, if needed. We weren't sure if that was the Court's  
10 current intention --

11 THE COURT: It is.

12 MS. EZIE: -- to set those days aside. It is?

13 THE COURT: Yes, we'll get it done. Certainly, I  
14 will do my best to move things along. But we'll take the time  
15 that it takes to give everybody an opportunity to address these  
16 issues. Which is one reason why I'm narrowing the focus, so  
17 that we can get -- hear everything we need to hear on what I  
18 consider to be the most pressing issue. Understanding that all  
19 the issues are pressing, but this one being the most pressing.

20 MS. EZIE: Thank you, Your Honor. Um, one important  
21 request that Plaintiffs have at this time is a request, um,  
22 that Ms. Diamond be allowed to appear at the hearing in court  
23 attire. Both -- just given the inherent dignity of  
24 incarcerated people, the case law that I'm sure Your Honor is  
25 well aware of that typically allows them on request to appear

1 not in prison attire but in civilian clothing when they are  
2 providing testimony. But also in this case as an accommodation  
3 for Ms. Diamond's gender dysphoria as you're aware, so much of  
4 our case concerns that she is in a male prison, being treated  
5 like a male, when quite simply that is not who she is.

6 And we would like, to that end, just to allow  
7 Ms. Diamond to appear in a manner that makes her comfortable  
8 enough that she can, you know, not be distracted by her own  
9 gender dysphoria while testifying and just be able to speak to  
10 the Court in a manner that, again, allows her to sort of show  
11 her inherent dignity as a transgender woman.

12 THE COURT: Do the defendants want to address that?

13 MR. CHALMERS: Your Honor, I can say for our clients,  
14 for our defendants, we would not object to it. But we -- I  
15 don't think we're the proper -- um, persons to respond to that  
16 question.

17 This goes to a security issue. And GDC counsel, who  
18 counsels the GDC on operations generally, including prisoner  
19 transports and security at court hearings, I think would have  
20 to weigh in on that.

21 I would just say for Mr. Shapiro and I and the  
22 clients who we represent in the case, if GDC security is fine  
23 with that, then we wouldn't have a separate objection to that  
24 request.

25 THE COURT: I don't have any objection at all to the

1 attire. But on the security issue -- and I don't view the  
2 attire to be a security issue, but somebody may differ with  
3 that. Yes, I defer to our security and the State when State  
4 prisoners are involved.

5 And this is not a jury trial. And I assume that  
6 Ms. Diamond, as any prisoner, will be restrained. I don't know  
7 what the nature of the restraints will be recommended for her.  
8 I am sure they will be appropriate.

9 So, yes, on the attire issue, I don't have a problem  
10 with that. I mean, we make those accommodations, as I say,  
11 anyway. But on the security issue, I will leave that to the  
12 experts. And I fully expect that she will be restrained.

13 MS. EZIE: Thank you, Your Honor. And, um, just for  
14 Mr. Chalmers' benefit, we wouldn't expect that Ms. Diamond  
15 would be transferred to the courthouse in anything other than,  
16 you know, a prison uniform. It's just simply whether we can,  
17 you know, provide her, you know, her courtroom attire upon  
18 arrival prior to taking the stand.

19 THE COURT: Yes. Well, Mr. Chalmers, I know you want  
20 to check with your people on that. But unless there's a  
21 reasonable reason not to, I would allow her to be provided with  
22 clothing here at the courthouse to change into. Obviously, it  
23 would have to be inspected, both by our people and by the  
24 State. Again, there may be an issue there that I'm not aware  
25 of, but it sounds like, at least among us, we don't see a

1 problem with that particular issue. But I'm sure she will be  
2 transported --

3 MR. CHALMERS: I mean, just to be clear, I would  
4 defer both on the attire and on the type of restraint to GDC  
5 officials. But I would not object -- we don't have a reason  
6 for the case to object separately to Plaintiff's Counsel's  
7 request. But I think both the attire and the method of  
8 restraint go to the security concerns.

9 And so I would just say I will -- what I will pass on  
10 is this request being made, that Ms. Diamond change into street  
11 attire at the courthouse during the hearing. And I will relate  
12 back to counsel and the Court what the -- what the response is.

13 THE COURT: All right. Fair enough. Anything else  
14 from the plaintiff?

15 MS. EZIE: Um, yes, just a few brief items. We have  
16 discussed, Your Honor, um, our intention to, um, take  
17 depositions and make use of deposition designations. We just  
18 wanted to know the Court's preference on the use of deposition  
19 designations; which is to say, can we just, um, designate  
20 portions of deposition transcripts, allow Defendants an  
21 opportunity to offer cross designations, and submit as a form  
22 of evidence as an exhibit? Or would you like there to be an  
23 attempt by the parties to read in relevant testimony into the  
24 record?

25 THE COURT: No, in a non-jury proceeding there is no

1 need to read in testimony. You may want to present some  
2 testimony. I don't know. I assume you will be videotaping  
3 these -- maybe, maybe not. But certainly I don't want to -- no  
4 need to listen to testimony being read.

5 Yes, we would need designations in any event. I  
6 mean, it sounds to me like we've only got potentially two  
7 witnesses who may testify by deposition. But if we do, yes,  
8 we'll want designations in advance. And it may even be that  
9 these depositions haven't been taken by the time of the hearing  
10 and as I said, that's fine, too.

11 MS. EZIE: Thank you, Your Honor. Um, with respect  
12 to the confidential witness, Mr. Doe, who we have referred to  
13 as "Mr. Doe" in the proceedings, we wanted to confirm whether  
14 the pseudonym convention that has already been agreed to by the  
15 Court and the parties, whether it can extend to his -- to his  
16 live testimony; which is simply to say, is it permissible for  
17 the parties to refer to him as "Mr. Doe" with the understanding  
18 that that is an unambiguous reference to Mr. Doe?

19 THE COURT: Well, that may present some issues that  
20 are really broader than our concern here. I will have to think  
21 about that.

22 Mr. Chalmers, do you have any thoughts on that off  
23 the top of your head?

24 MR. CHALMERS: I -- I don't, Your Honor. I don't  
25 have any specific thoughts on that, unfortunately. I realize

1 that's not helpful.

2 THE COURT: Yeah. If -- let's defer that question.  
3 Certainly among us, we will know exactly who we're talking  
4 about, but there could be an issue of public right of access  
5 that could come up at some point. When he actually testifies.  
6 But I will give that some thought.

7 MS. EZIE: Thank you, Your Honor. And, you know,  
8 Plaintiffs ourselves are trying to balance, you know, the  
9 privacy and confidentiality concerns Mr. Doe has that you may  
10 not, you know, be well aware of the nature of. Along, you  
11 know, with the public access considerations. And so we -- you  
12 know, we want to make him available to testify in open court.

13 We thought that the ability to continue the pseudonym  
14 convention could be an appropriate accommodation. If there are  
15 other ways that we can manage this issue, such as designating  
16 portions of the court transcript confidential, you know, maybe  
17 that's an alternative. But this is what we considered perhaps  
18 to be the narrowest way to address the confidentiality concerns  
19 and public access concerns at the same time.

20 THE COURT: Well, is your concern only his identity  
21 being publicly known?

22 MS. EZIE: That is the concern, Your Honor.

23 THE COURT: Because, I mean, it seems that he's going  
24 to be known certainly to the defendants and probably already is  
25 known to most people at Coastal. But in any event, we will

1 work on that.

2 MS. EZIE: I appreciate it. And just to clarify, you  
3 know, the identity concern is not mere embarrassment. It's  
4 that he's already been identified incorrectly as someone who,  
5 by association with Ms. Diamond, you know, has an intimate  
6 relationship with her, as someone who -- I can't even in polite  
7 company repeat the slurs that he's been called and the ways  
8 that it has been used to extort him within the prison  
9 environment for -- you know, for money and -- and the ways that  
10 it's endangered him. So that's the set of considerations that  
11 are in operation here. And the pseudonym convention provides  
12 him with a great deal of security with respect to his  
13 participation in this case.

14 THE COURT: All right. Well, we'll give that some  
15 thought. Anything else from the plaintiffs?

16 MS. EZIE: Yes, Your Honor. I believe this is the  
17 last item. We just -- we understand that Defendants have  
18 received some additional time to submit their opposition in  
19 consideration of schedules. Obviously, we have no objection to  
20 that. We just wanted to -- to affirm our intention to submit a  
21 reply brief to you on these motions in time for Your Honor's  
22 consideration ahead of the hearings.

23 That's not the typical response window that would be  
24 allowed under the local rules, which is about two weeks, but  
25 that would unfortunately be after the hearing. So unless the

1 Court objects, we will just intend to submit a brief as  
2 expeditiously as possible following the Defendants' own  
3 opposition motions -- or opposition to our motion.

4 THE COURT: That is certainly fine. They certainly  
5 suggest that you will have something that you will want to  
6 respond to. So certainly, that's fine with me.

7 MS. EZIE: Thank you. And then, um, sorry, I think I  
8 spoke too soon when I said that was my final item. This is  
9 brief. But, you know, we've had a long status conference  
10 today, and I am just wondering whether a court transcript could  
11 be made available or if -- in the alternative, if the Court  
12 would enter just a very brief text order that identifies sort  
13 of next steps for the parties so there's no ambiguity.

14 THE COURT: Well, there will be a minute sheet  
15 prepared. I would encourage you to order a transcript, and  
16 Ms. Tavalero can give you that information as soon as we  
17 finish. But, yes, I would encourage you to have a transcript.  
18 But we will memorialize in a minute sheet the key things we've  
19 discussed.

20 MS. EZIE: Thank you, Your Honor.

21 THE COURT: All right. From the defendant?

22 MR. CHALMERS: Your Honor, if I could clarify for  
23 the -- as far as depositions go, what depositions are taken,  
24 the thinking is that the testimony from those witnesses would  
25 be presented through their depositions rather than having them

1 at the hearing; is that right?

2 THE COURT: Well, I understand that we're talking  
3 about Dr. Fass and Dr. Roth. Right?

4 MS. EZIE: Your Honor, we've also noticed for  
5 deposition Ms. Fletcher and Cantera because of our concerns  
6 about -- about Rule 45 and the subpoena power for a hearing. I  
7 think that those depositions may well proceed for that reason.  
8 But if there is a way to make accommodations for virtual  
9 testimony, that is something that, um, we could offer those  
10 witnesses that might allow them to participate, um, at the  
11 hearing as well. As non-employees and non-parties.

12 MS. LITTRELL: If I may, Your Honor, I heard from  
13 Ms. Cantera today, who was served a subpoena yesterday, and  
14 informed us that she will not be in the state on May 12th. She  
15 has preexisting out-of-town plans. So I think we would need to  
16 preserve her testimony by deposition in any event.

17 THE COURT: Well, then, yes. Sounds like you need to  
18 get her deposition.

19 Now, Ms. Fletcher, I understand she's a provider now,  
20 but she is also somebody that, if at all possible, I would like  
21 to hear from, since the plaintiff believes that she has some  
22 pretty incriminating information that I need to hear. And I'll  
23 have to check with regard to the subpoena power. But do you  
24 know anything about Ms. Fletcher's intentions? The plaintiff?

25 MS. EZIE: "Intention" as in her availability to

1 appear in person --

2 THE COURT: Yes.

3 MS. EZIE: -- Your Honor? I don't believe, um, you  
4 know -- we had a process server serve these subpoenas, so I  
5 don't believe we've heard from her directly. Certainly we can  
6 inquire. It would be our preference, as well, to have her  
7 testify live. But it seems our pessimistic view is that she  
8 may not be able to be compelled.

9 THE COURT: Have you had her served?

10 MS. EZIE: Yes, Your Honor. She's been served. We  
11 have not -- she has not responded, however.

12 THE COURT: Well, let's see what her response is.

13 MS. LITTRELL: Your Honor, just to clarify, we have  
14 had her served with a subpoena for a deposition prior to the  
15 hearing testimony. And the basis for the subpoena is that she  
16 is going to be appearing virtually, so that does not implicate  
17 the hundred mile rule. She won't be a hundred miles from her  
18 home. She is not being compelled to be a hundred miles from  
19 her home.

20 We are taking her deposition by stipulation remotely,  
21 so that is the subpoena we are referencing that she was served  
22 with prior to the testimony. Our understanding of the rule  
23 would be the same for remote testimony, would still be within  
24 the hundred mile rule, the Court would have the authority to  
25 issue that subpoena as well. But to compel her to appear more

1 than a hundred miles is where we think the rule may be in our  
2 way.

3 THE COURT: What city does she live in?

4 MS. LITTRELL: Savannah. Is my understanding. I  
5 think our Google search was at 160-something miles.

6 THE COURT: Well, if you've ever driven down I-16,  
7 you know it's Mile Marker 155.

8 MS. EZIE: And, um, Your Honor, I think we've said  
9 this -- all these depositions were noticed just because our  
10 concern was these witnesses may be unavailable. We can  
11 certainly communicate Ms. Fletcher's response to our deposition  
12 subpoena. If she is available to give live testimony, you  
13 know, that everyone welcomes it. And if there are other ways  
14 that we can secure her testimony, we certainly are very  
15 amenable to that.

16 THE COURT: All right. Then, yes, for now I believe  
17 that you need to assume that you will need to preserve her  
18 testimony as well by deposition.

19 I am just taking a quick look at the rule. You could  
20 probably make an argument that she could be compelled to  
21 attend, but I -- for now, yes, I think the better course is to  
22 proceed as you have planned and get that deposition testimony  
23 taken.

24 MS. LITTRELL: Thank you, Your Honor. May I just --

25 MR. CHALMERS: Your Honor.

1 MS. LITTRELL: I didn't want to interrupt. I just  
2 wanted to clarify in terms of witnesses, that you do not want  
3 to hear testimony from Dr. Ettner. Or, by contrast, would it  
4 be allowable if she is amenable to travel and present testimony  
5 at this hearing, would that -- what's the Court's preference on  
6 Dr. Ettner?

7 THE COURT: Yeah, I -- I don't think that I need to  
8 hear from -- her? Him? What --

9 MS. LITTRELL: Yes, it's her.

10 THE COURT: Her.

11 MS. LITTRELL: Randi with an i.

12 THE COURT: And the defendants may well want to do  
13 some discovery, and as we work through these issues, the other  
14 issues, there may be discovery that you all want to engage in  
15 on matters such as the expert testimony. But I'll leave that  
16 to you for now.

17 All right. Mr. Chalmers, it appears, then, that  
18 we're talking about transporting two witnesses from Coastal. I  
19 assume there won't be any problem with that? Inmates, I mean.  
20 I know there's other people involved.

21 MR. CHALMERS: Your Honor, I think -- um, I think we  
22 have three, but we have Ms. Diamond, Mr. -- oh, is  
23 Mr. Duckworth current --

24 THE COURT: He's not incarcerated; right?

25 MR. CHALMERS: Okay. So, yes, you're right, then,

1 Mr. -- Ms. Diamond and Mr. Doe. Those two. There will not be  
2 a problem with that at all.

3 MS. EZIE: Your Honor, I did want to indicate -- and  
4 I apologize for not mentioning it initially -- but to the  
5 extent Your Honor would like to hear from additional  
6 retaliation witnesses, we do believe there are some people who  
7 could speak to the retaliatory DRs and other treatment that  
8 Ms. Diamond has received and the ways that they have,  
9 themselves, been punished for their association with  
10 Ms. Diamond.

11 I am still trying to confirm those names. But, um,  
12 if -- if it's possible to add, um, perhaps two additional seats  
13 to the transfer order or to the bus, you know, we could provide  
14 those names in due course if that is -- if that testimony is of  
15 interest to the Court.

16 THE COURT: Well, I would say you need to move  
17 quickly on that. And I am not saying it's possible. But in  
18 any event, the first step is making a decision, and then we'll  
19 find out if it's possible.

20 MR. CHALMERS: And can I just say, Your Honor, I  
21 think it's unlikely that Ms. Diamond and Ms. Doe -- or Mr. Doe  
22 would be transferred on the same vehicle. So, it's not simply  
23 a matter of putting an additional person on a transport.

24 And the other is that I would hope -- I mean, this  
25 seems to be pretty far afield of what we're trying to get at

1 here for the motion for preliminary injunction. These other  
2 witnesses who have not been identified, the information related  
3 to claimed retaliation has not been explained as to what it is,  
4 the time period is unknown at this point. I think we need to  
5 try to keep this endeavor limited to what we're trying to  
6 figure out, which is is preliminary injunctive relief needed.

7 THE COURT: I agree with that, but I disagree that  
8 that type of evidence could not be potentially relevant to the  
9 issue that I am particularly concerned about, and that is  
10 credibility. If, in fact, there's personnel down at Coastal  
11 who are concerned enough that they think they have to  
12 retaliate, that tells me something about who to believe and who  
13 not to believe. So I -- I -- I don't know that we can parse it  
14 that finely.

15 So, all right, anything else to talk about today?

16 MS. McGOVERN: Your Honor, just as a point of  
17 clarification, I gather you will sent a text order after the  
18 documents are filed, the decision as to whether or not you  
19 would like my client present?

20 THE COURT: You know, thank you, Ms. McGovern, for  
21 coming back to that. When are these documents going to be  
22 produced? About the proceeding involving Ms. Smith?

23 MR. CHALMERS: Monday.

24 THE COURT: Let me take a look at those. You will  
25 file those -- will they be filed restricted as well? Initially

1 at least?

2 MR. CHALMERS: Yes. Your Honor, if you -- I had a  
3 few other points on my list, and one was just that. Um, I am  
4 always hesitant to file, um, a lot of materials, um,  
5 restricted. But, um, realistically so that we can file our  
6 papers on time, it would be, um -- and because of the  
7 (inaudible) falling into, for example mental health, medical,  
8 you know, allegations, it could be helpful to be able to file  
9 them restricted.

10 THE COURT: What we'll do is enter an order to allow  
11 the defendants to produce these documents restricted, subject  
12 to the opportunity to determine what can be put on the public  
13 docket. I understand the press of time. But, of course, we  
14 may be getting some inquiries about the number of restricted  
15 documents we have. So -- but I don't see any reason initially  
16 not to do that so that we can go ahead and get the documents  
17 into the hands of those who need them.

18 So we'll enter that order so you can do that. And  
19 then we'll sort it out later.

20 And, yes, Ms. McGovern, I will get with you quickly  
21 after those are produced to let you know. I am beginning to  
22 lean towards not requiring that Ms. Smith testify, but let me  
23 think about that and take a look at the documents.

24 MS. MCGOVERN: Sure. Thank you very much.

25 THE COURT: All right.

1 MR. CHALMERS: Your Honor, I'm sorry to keep us. I  
2 have two other just general questions.

3 THE COURT: Certainly.

4 MR. CHALMERS: There was a request and suggestion on  
5 depositions, since we don't have a jury and it is not a jury  
6 trial, if we're taking and preserving testimony by deposition,  
7 I would suggest we simply submit the deposition transcripts  
8 rather than designate testimony so that the Court can consider  
9 the entire deposition.

10 And that would save the lawyers a lot of time and I  
11 believe -- I am hoping that the inquiry at these depositions  
12 would be limited to what is necessary and needed for this --  
13 for the Court's consideration for this motion. So, rather than  
14 designate testimony, I'm simply suggesting why don't we take  
15 these depositions and just submit the depositions to the Court  
16 for consideration.

17 THE COURT: Well, first, you know, the entire  
18 deposition would be submitted in any event. It has got to be  
19 in the record. But what we're talking about, as you know, what  
20 is usually done when a deposition is used as evidence, the  
21 parties designate the portions they want. It may be that you  
22 want the entire thing.

23 But the entire deposition will be in the record. It  
24 will need to be filed. What is in evidence will depend upon  
25 what you designate. And if you end up designating the entire

1 deposition, then that will be what will be in the evidentiary  
2 record of the hearing.

3 MS. LITTRELL: Just to clarify, while we're on the  
4 record, um, to the extent that Mr. Chalmers is, um, you know,  
5 noting the -- the urgency and with the timing concerns that we  
6 have, can we agree that these depositions -- we limit these  
7 depositions to testimony relevant to the hearing, that that  
8 won't also count against our total number of deponents and we  
9 won't have to -- we can depose these, um, defendants as needed  
10 for merits discovery?

11 THE COURT: Yes. I mean, our issue is fairly narrow  
12 at this point. These witnesses may need to be examined as the  
13 witnesses who testify at the hearing may need to be examined  
14 again. There is that possibility.

15 MS. LITTRELL: Thank you, Your Honor.

16 MR. CHALMERS: The last question, Your Honor, and I  
17 appreciate your patience, is simply about the process for the  
18 hearing and access to public, um -- for what will be occurring  
19 at the hearing. I am just wondering for COVID precautions what  
20 the lawyers should inform the witnesses who we're asking to  
21 come to court about what to expect.

22 THE COURT: All right. We are still requiring masks.  
23 I do not require the witness -- and I prefer the witness not  
24 wear a mask. The witness box has Plexiglas, and we wipe the  
25 surface down and we have microphone covers. But I think it

1 important that we all be able to see the witnesses.

2 We are at this point -- the rest of us are still  
3 wearing masks, although it's -- for -- I even wear a mask even  
4 though I'm certainly sufficiently distanced. Let's see what  
5 the CDC is doing or advising by then. That seems to be a  
6 changing process. But what you can assume most likely will be  
7 that we will be wearing masks except for the witness.

8 MS. EZIE: Your Honor, if I may ask a related  
9 question. Is the courtroom capacity or access to the courtroom  
10 going to be limited? And if so, will there be a provision for  
11 folks to participate via conference line who are not the  
12 attorneys of record?

13 THE COURT: Yes. Here's how we are handling that.  
14 If the crowd is too big, and I don't know why that would be  
15 here -- it may be -- but we may have to limit access to the  
16 courtroom. And we do have, for all of our hearings, a phone  
17 connection that people can dial into. Not participate. It's  
18 muted, of course. But they can listen to the proceedings that  
19 way.

20 MS. EZIE: Thank you, Your Honor.

21 THE COURT: If you -- I understand things are fast  
22 moving, but Kim has just handed me a note, if you -- it is  
23 always better to use -- to have your exhibits ready to go  
24 electronically, if you plan to do that. And as I say, I  
25 encourage it. I am not going to require it because things are

1 moving quickly, you know, your technology people need to be  
2 ready to go on that. And Kim can help with that as well. So  
3 take that into account.

4 COURTROOM DEPUTY: We will just need them  
5 electronically to docket if we're going to do paper in the  
6 courtroom.

7 THE COURT: Pardon?

8 COURTROOM DEPUTY: The Clerk's Office isn't going to  
9 scan everything. So they could have paper here, but in the end  
10 somebody needs to send it to me electronically.

11 THE COURT: Why don't you send the instructions that  
12 we send for trials?

13 COURTROOM DEPUTY: Okay.

14 THE COURT: Again, that may not be feasible in every  
15 respect, but we will send you our standard instructions for  
16 exhibits at trial. Because we do typically use electronic  
17 exhibits in our jury trials so that they can be accessed by the  
18 jury electronically. So she'll send that out. But I am going  
19 to be flexible. We probably will be dealing with a fair amount  
20 of paper as well. Well, we'll have paper nonetheless, but it's  
21 always better to -- in the end to have things electronically.

22 All right. Anything else?

23 (No response.)

24 THE COURT: Well, thank you all. We got a lot done I  
25 think. Kim will go ahead and send out what you need for

1 ordering the transcript and we will work on the minute sheet.

2 Have a good afternoon.

3 COUNSEL COLLECTIVELY: Thank you, Your Honor.

4 (Proceedings concluded at 4:14 p.m.)

5 END OF RECORD

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5 I, Darlene D. Fuller, Federal Official Realtime Court  
6 Reporter, in and for the United States District Court for the  
7 Middle District of Georgia, do hereby certify that pursuant to  
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9 a true and correct transcript of the stenographically reported  
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11 transcript page format is in conformance with the regulations of  
12 the Judicial Conference of the United States.

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16 *Darlene D. Fuller*

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