IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VONDELL WILBOURN, individually and for others similarly situated,	)	
Plaintiff,	)	
	)	Case No. 23-cv-1782
-vs-	)	
	)	Honorable Manish S. Shah
SHERIFF OF COOK COUNTY and COOK COUNTY, ILLINOIS,	)	Magistrate Judge Young B. Kim
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL

Defendants, SHERIFF OF COOK COUNTY and COOK COUNTY, ILLINOIS, by their attorney, KIMBERLY M. FOXX, State's Attorney of Cook County, through her Special Assistant State's Attorneys, JOHNSON & BELL, LTD., respond to Plaintiff's motion to compel as follows:

1. Defendants produced the reincarceration incident reports after redacting the names and personal identifiers of the electronic monitoring participants who are not a party to this case.

2. Courts have held that non-party "inmates have valid privacy interests in their records." *Lymon v. Chamberlain*, No. 17 CV 50093, 2020 U.S. Dist. LEXIS 221117, at *14 (N.D. Ill. Nov. 24, 2020). As such, the producing party "should redact the non-party inmates' personal identifiers from the documents produced." *Id.* (citing *Doe v. MacLeod*, No. 3:18-CV-3191, 2019 U.S. Dist. LEXIS 105805, 2019 WL 2601338, at *3 (C.D. Ill. June 25, 2019) (C.D. Ill. June 25, 2019) (finding error by not ordering IDOC to redact the personal identifiers of the non-party offenders when producing documents)).

3. When "the privacy interests of non-parties" are at stake, it is also appropriate to produce documents under the protection of a confidentiality order. *Gordon v. Countryside Nursing*

& Rehab. Ctr., LLC, No. 11 C 2433, 2012 U.S. Dist. LEXIS 98085, at *8 (N.D. Ill. July 16, 2012); *see also McGee v. City of Chicago*, No. 04 C 6352, 2005 U.S. Dist. LEXIS 31060, at *3 (N.D. Ill. June 23, 2005) (pointing out that although Rule 26(c) does not contain a specific reference to privacy, it is "implicit in the broad purpose and language of the Rule").

4. Plaintiff purports to seek unredacted versions of 79 reincarceration incident reports because he must marshal evidence of the individual experiences of others to prove his claim. (Pl.'s Mot. ¶ 1e.)

5. Plaintiff argues that producing the unredacted incident reports will not violate the privacy interests of individuals because Plaintiff "will accept the identifying information subject to a confidentiality order." (*Id.* ¶ 13.)

6. Plaintiff's position is disingenuous and omits important details. Plaintiff will accept the identifying information subject to a confidentiality order *only if he is permitted to use the information to file new lawsuits*. (Ex. A, Email, June 27, 2024, at 1.)

7. During the meet-and-confer process, Defendants agreed to produce the requested information subject to a confidentiality order so long as Plaintiff agreed not to use this information to file other lawsuits. (*Id.* at 3; Ex. B, Proposed Confidentiality Order.)

8. Plaintiff, however, would not agree to add the following provision to this Court's model confidentiality order:

> Nothing in this order is intended to limit plaintiff's counsel from seeking to identify and to communicate with members of the putative class solely for the purposes of the present action, *Wilbourn v. Sheriff of Cook County*, 23-cv-1782. Nor is anything in this order intended to prevent plaintiff's counsel from discussing the contents of an individual's incident report with the individual who is the subject of that report. Plaintiff's counsel may not use information in any incident report (or communications with individuals identified in any incident report) as the basis for filing a lawsuit.

(Ex. B, Proposed Confidentiality Order ¶ 5a.)

9. Plaintiff would not agree to this provision because he would not be permitted to use this information to file new lawsuits in the event "the court does not allow the case to proceed as a class action." (Ex. A, Email, at 1.)

10. Plaintiff's insistence on leaving the door open to file new lawsuits in the event the Court does not grant class certification demonstrates that his true purpose for seeking the unredacted incident reports is to have an "insurance policy" in the event class certification is denied.

11. By seeking the names and booking numbers of the 79 individuals *without agreeing to use the information solely for this lawsuit*, Plaintiff impermissibly seeks discovery in this case to use in other cases.

12. Discovery is properly denied "when the purpose of a discovery request is to gather information for use in proceedings other than the pending suit." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 n.17 (1978); *see also* Fed. R. Civ. P. 26(b), 2000 Amendment Committee's Notes (stating that parties "have no entitlement to discovery to develop new claims").

13. Plaintiff does not have a "right to use pretrial discovery in one case for the prosecution of another case." *Sasu v. Yoshimura*, 147 F.R.D. 173, 176 (N.D. Ill. 1993) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32–34 (1984)); *see also Craigville Tel. Co. v. T-Mobile United USA, Inc.*, No. 19 CV 7190, 2022 U.S. Dist. LEXIS 226705, at *7 (N.D. Ill. Dec. 16, 2022) (stating that courts should exercise its extremely broad discretion in managing discovery when "the purpose of a discovery request is to gather information for use in proceedings other than the pending suit"); *Acuna v. Rudzinski*, No. 00 C 5635, No. 00 C 6033, 2001 U.S. Dist. LEXIS 18848, at *13 (N.D. Ill. Nov. 15, 2001) (stating that Rule 26(b)(1) of the Federal Rules of Civil Procedure

"says nothing about discovery for the purpose of assisting attorneys or parties in other pending cases or for the purpose of collecting information for possible use in cases that might arise in the future")

14. Although Plaintiff objects to a "prior restraint" from filing new lawsuits (Ex. A, Email, at 1), Plaintiff has no First Amendment right to use confidential information in one lawsuit to file new lawsuits. *See Sasu*, 147 F.R.D. at 176. Plaintiff's "First Amendment rights are not impinged when [a] protective order precludes [him] from disseminating or *putting to other uses* the confidential information that [he has] obtained in discovery." *Id.* (emphasis added) (ordering that the plaintiffs could not use the confidential information they obtained in the case "for other cases").

15. This Court should deny Plaintiff's motion to compel the 79 unredacted incident reports because Plaintiff seeks this information to obtain a client list to file new lawsuits should the Court deny class certification. (Ex. A, Email, at 1.) It is impermissible for Plaintiff to seek discovery in this case to use in other cases. *See Sasu*, 147 F.R.D. at 176.

16. Defendants, however, do not object to production of the 79 unredacted incident reports pursuant to a confidentiality order, similar to Exhibit B, that would allow Plaintiff to obtain evidence of each individual's experiences to use for this case but that would bar Plaintiff from impermissibly using this information to file other lawsuits.

17. Good cause exists to enter a confidentiality order to protect the privacy interests of non-parties, *see Gordon*, 2012 U.S. Dist. LEXIS 98085, at *8, and to prohibit Plaintiff from using discovery obtained in this case for other cases. *See Oppenheimer*, 437 U.S. at 352 n.17; *Sasu*, 147 F.R.D. at 176.

WHEREFORE, Defendants respectfully request that the Court deny Plaintiff's motion to compel unless an appropriate confidentiality order is entered to bar Plaintiff from using the information obtained in this case for other cases.

Respectfully submitted,

KIMBERLY M. FOXX
State's Attorney of Cook County

Dated: August 19, 2024

/s/ *Samuel D. Branum*
Special Assistant State's Attorney

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