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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERIC MATUTE CASTRO, ET AL.,
Plaintiffs,
v.
UNITED STATES,
Defendant.

Case No.: 23-cv-00629-RBM-BGS

**ORDER GRANTING PLAINTIFFS’
MOTIONS TO SEAL AND MOTION
TO COMPEL**

**(RELATED ACTION CIV. NO. 1:20-
CV-23598-KMW (S.D. FLA.))**

[ECF 1, 3, and 8]

This case is part of an underlying action pending in the United States District Court for the Southern District of Florida, *R.Y.M.R. v. United States*, No. 1:20-CV-23598-KMW (filed Aug. 28, 2020).¹ On April 6, 2023, Plaintiff filed a Motion to Compel a non-party, Gladys Martinez,² to appear for deposition under Federal Rule of Civil Procedure 45. (ECF

¹ Plaintiffs’ claims are based on allegations of an approximate two-month separation of Plaintiffs—R.Y.M.R., then three years old, and his father—beginning in November 2017. (Am. Compl.; ECF 24.)

² Ms. Martinez is a former Supervisory Detention and Deportation Officer in the San Diego Field Office of Immigration and Customs Enforcement. (ECF 5 at 5.) Plaintiffs’ pending Florida case asserts claims for battery, assault, negligence, and intentional infliction of emotional distress under the Federal Tort Claims Act. (Am. Compl.; ECF 24.) Plaintiffs’

1 1 at 2.) Plaintiff then filed a Motion to Seal an unredacted version of the motion. (ECF 3.)
2 According to Plaintiff, the unredacted brief describes certain documents that Defendant
3 produced in discovery and that may be designated as confidential pursuant to the parties'
4 protective order. (*Id.* at 3.)

5 On April 13, 2023, the Court entered a briefing schedule ordering that Defendant
6 respond to the motion to compel on or before April 21, 2023, and that Plaintiff reply on or
7 before April 25, 2023. (ECF 7.) On April 19, 2023, Plaintiff filed an unopposed Motion
8 to File Documents Under Seal (ECF 8), which includes three letters from Ms. Martinez's
9 doctor that were sent to Plaintiffs' counsel from the United States Attorney's Office for the
10 Southern District of Florida (ECF 8 at 3). On April 20, 2023, Plaintiff filed a Notice of
11 Subpoena for the deposition of Gladys Martinez, scheduling the deposition for May 2,
12 2023, in San Diego, California. (ECF 10.) On April 21, 2023, Defendant filed its response
13 to the motion to compel. (ECF 12.) On April 25, 2023, Plaintiff filed his reply. (ECF 13.)
14 For the following reasons, the Court **GRANTS** the motions to seal (ECF 3, 8) and the
15 motion to compel (ECF 1).

16 **I. RELEVANT LEGAL STANDARDS**

17 **A. Motions to Seal**

18 Judicial records attached to non-dispositive motions “are often unrelated, or only
19 tangentially related, to the underlying cause of action,’ and, as a result, the public’s
20 interest in accessing dispositive materials does ‘not apply with equal force’ to non-
21 dispositive materials.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)
22 (quoting *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).
23 “A ‘good cause’ showing will suffice to seal documents produced in discovery.”
24

25 _____
26 allege that “[a]ll federal officers referenced in this Complaint were at all relevant times
27 employees of the United States, working within the scope and course of their employment
28 with federal agencies,” and that “high-level officials publicly admitted that family
separation was the express policy” (*Id.* ¶¶ 4, 8.)

1 *Kamakana*, 447 F.3d at 1180 (citing Fed. R. Civ. P. 26(c)). “For good cause to exist, the
2 party seeking protection bears the burden of showing specific prejudice or harm will
3 result if no protective order is granted.” *Phillips ex rel. Estates of Byrd v. Gen. Motors*
4 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002).

5 Plaintiffs’ first motion to seal (ECF 3) requests that Plaintiffs be permitted to file a
6 redacted version of their motion to compel so that excerpts from a deposition and an
7 email among Defendant’s officers concerning Plaintiffs’ separation may be sealed. (ECF
8 3 at 3.) Defendant intends to designate both as confidential under the parties’ protective
9 order in their underlying Florida case. Plaintiffs’ second motion to seal (ECF 8) seeks to
10 file Exhibits 16, 20, and 23 to Plaintiffs’ motion to compel under seal. (ECF 8 at 3.) The
11 exhibits contain information about Ms. Martinez’s medical condition. (*Id.*) Defendant
12 does not oppose the motion.

13 Plaintiffs’ first motion to seal contains information Plaintiff argues falls within the
14 definition of “confidential information” in the parties’ protective order. Defendant does
15 not object. (ECF 3 at 3.) The Court concludes there is good cause to grant Plaintiffs’
16 first motion to seal. Because Plaintiffs’ second motion to seal contains medical
17 information, the Court concludes there is good cause to grant that motion as well. *See*
18 *Anderson v. Amazon.com, Inc.*, No. 1:21-cv-00127-NONE-BAM, 2021 WL 3077562, *1
19 (E.D. Cal. July 21, 2021).

20 **B. Federal Rule of Civil Procedure 45**

21 The subpoena was issued under Rule 45, which allows a party to subpoena a non-
22 party. Fed. R. Civ. P. 45. Information sought by a Rule 45 subpoena must comply with
23 discovery standards in Federal Rule of Civil Procedure 26, including that the information
24 must be relevant to a claim or defense. *See Intermarine, LLC v. Spliethoff*
25 *Bevrachtingskantoor, B.V.*, No. 15-mc-80211-MEJ, 123 F. Supp. 3d 1215, 1217 (S.D. Tex.
26 Aug. 20, 2015) (“The scope of discovery through a subpoena under Rule 45 is the same as
27 the scope of discovery permitted under Rule 26(b).”); *Everflow Tech. Corp. v. Millennium*
28 *Elecs., Inc.*, No. 07-05795 JF (HRL), 2008 WL 4962688, *1 (N.D. Cal. Nov. 19, 2008)

1 (“Subpoenas, like all discovery devices, are also subject to the scope and limits set forth
2 in” Federal Rule of Civil Procedure 26(b)(1)). A party is entitled to seek discovery from a
3 non-party of “any nonprivileged matter that is relevant to any party’s claim or defense and
4 proportional to the needs of the case.” Fed. R. 26(b)(1); *HI.Q, Inc. v. ZeetoGroup, LLC*,
5 No. 22cv1440-LL-MDD, 2022 WL 17345784, at *13 (S.D. Cal. Nov. 29, 2022) (“Rule
6 26(b)(1) . . . defines the proper scope of discovery from a non-party under Rule 45.”).

7 Rule 26(b)(1) provides that “[p]arties may obtain discovery regarding any non-
8 privileged matter that is relevant to any party’s claim or defense and proportional to the
9 needs of the case considering the importance of the issues at stake in the action, the amount
10 in controversy, the parties’ relative access to relevant information, the parties’ resources,
11 the importance of the discovery in resolving the issues, and whether the burden or expense
12 of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).
13 “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than
14 it would be without the evidence; and (b) the fact is of consequence in determining the
15 action.” Fed. R. Evid. 401. “District courts have broad discretion in controlling discovery”
16 and “in determining relevancy.” *Laub v. Horbaczewski*, 331 F.R.D. 516, 521 (C.D. Cal.
17 2019) (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) and *Survivor Media,*
18 *Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005)). “A party seeking to prevent a
19 deposition carries a heavy burden to show why discovery should be denied.” *Life Techs.*
20 *Corp. v. Illumina, Inc.*, No. 11-cv-703-JAH (POR), 2011 WL 13101728, at *2 (S.D. Cal.
21 June 17, 2011).

22 II. ANALYSIS

23 A. Motion to Compel

24 As this Court noted, Plaintiffs’ complaint alleges claims for battery, assault,
25 negligence, and intentional infliction of emotional distress under the Federal Tort Claims
26 Act. (Compl. ¶¶ 81-109; ECF 24.) Plaintiff argues that the central question in its case is
27 why R.Y.M.R. was taken from his father, whether the government conducted a reasonable
28 investigation, and whether the government followed its purported policies. (ECF 5 at 7.)

1 Plaintiff references Defendant’s responses to Interrogatories 12 and 13, that the separation
2 of R.Y.M.R. and his father was done according to “local guidance”; that Ms. Martinez had
3 “drafted” local guidance; and that “family separations must be approved by an [Assistant
4 Field Office Director.]” (ECF 5 at 12-13.) According to Defendant, Ms. Martinez
5 “reviewed the facts of the case and made the separation recommendation” with respect to
6 R.Y.M.R. and his father. (*Id.*)

7 Notably, Defendant does not actually respond to Plaintiffs’ argument that relevant
8 information would be produced by deposing Ms. Martinez. Defendant points out that
9 Plaintiffs’ two prior deposition notices were served less than 14 days from the date
10 scheduled for the deposition, and were, therefore, untimely under the 14-day reasonable
11 notice requirement for out-of-state witnesses under the Southern District of Florida’s Local
12 Rule 26.1(h). Defendant then argues that Plaintiffs’ motion to compel is moot because at
13 the time it was filed, the dates for the two prior subpoenas had expired and there was no
14 pending deposition subpoena. Defendant also points out that the new notice includes no
15 accommodations for Ms. Martinez’s restrictions and states that “[t]he deposition will
16 continue from day to day until completed, Saturdays, Sundays, and holidays excepted.”
17 Defendant notes that Plaintiffs have previously stated their intent to subject Ms. Martinez
18 to a “full-day, in-person” deposition. (ECF 5, Ex. 1.)

19 First, Plaintiffs served a Notice of Deposition on April 18, 2023, that Plaintiffs would
20 depose Ms. Martinez on May 2, 2023. (ECF 10-1.) Although prior notices were untimely,
21 Defendant has timely notice of the deposition that is the subject of the notice filed with this
22 Court.

23 Second, information sought by deposing Ms. Martinez is relevant to Plaintiffs’
24 claims. The acts forming the basis for Plaintiffs’ claims stem from government officials’
25 acts. Plaintiffs’ brief includes several statements by Defendant in response to
26 interrogatories, referenced above, that directly tie Ms. Martinez to the official acts
27 underlying Plaintiffs’ claims. In fact, Defendant’s only substantive concern in response is
28 that Ms. Martinez be properly accommodated during deposition. Accordingly, the Court

1 GRANTS the motion to compel. The parties are to meet and confer as to how to implement
2 the restrictions set forth by Ms. Martinez’s doctor as described in Exhibits 16, 20, and 23
3 to Plaintiffs’ motion to compel. The Court expects counsel to make reasonable
4 accommodations for Ms. Martinez’s health concerns.

5 **B. Exceptional Circumstances**

6 Finally, this Court has requested briefing on whether this motion should be
7 transferred pursuant to Federal Rule of Civil Procedure 45(f) based on consent or
8 exceptional circumstances. (ECF 7 at 2.)

9 Rule 45(f), “Transferring a Subpoena-Related Motion,” provides the following, in
10 relevant part:

11 When the court where compliance is required did not issue the
12 subpoena, it may transfer a motion under this rule to the issuing
13 court . . . if the court finds exceptional circumstances. . . . To
14 enforce its order, the issuing court may transfer the order to the
15 court where the motion was made.

16 Fed. R. Civ. P. 45(f). “The proponent of transfer bears the burden of showing that
17 exceptional circumstances are present.” *See* Fed. R. Civ. P. 45(f) advisory committee’s
18 note to 2013 amendment. Transfer is appropriate if the exceptional circumstances
19 “outweigh the interests of the nonparty served with the subpoena in obtaining local
20 resolution of the motion.” *Id.*

21 Given the geographic distance between this district and the district where this case
22 is pending and Ms. Martinez’s medical restrictions, the Court cannot conclude that
23 Defendant has satisfied its burden by showing that exceptional circumstances are present
24 that outweigh the interests of the nonparty. *See id.*

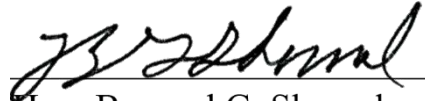
25 **III. CONCLUSION**

26 The Court GRANTS Plaintiffs’ Motions to Seal and Plaintiffs’ Motion to Compel.
27 The parties are to meet and confer as to how to implement the restrictions set forth by Ms.
28 Martinez’s doctor as described in Exhibits 16, 20, and 23 to Plaintiffs’ motion to compel.

1 The Court expects counsel to make reasonable accommodations for Ms. Martinez’s health
2 concerns.

3 **IT IS SO ORDERED.**

4 Dated: May 1, 2023


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6 Hon. Bernard G. Skomal
7 United States Magistrate Judge
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