UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:21-cv-03677-FLA (MAR) Date: November 2, 2022

Title: *Esmé Bianco v. Brian Warner et al.*

Present: The Honorable: MARGO A. ROCCONI, UNITED STATES MAGISTRATE JUDGE

Erica Bustos	n/a
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
n/a	n/a

Proceedings: (In Court) ORDER RE: MOTION TO COMPEL NONPARTY ASHLEY WALTERS TO COMPLY WITH SUBPOENA, DKT. 69

On September 29, 2022, Defendants Brian Warner et al. ("Defendants") filed a Motion to Compel ("Motion to Compel") deposition and discovery of documents of nonparty Ashley Walters ("Walters"). ECF Docket Nos. ("Dkt.") 69, 69-1. On October 19, 2022, the Court held a hearing on this Motion with counsel for Walters, Defendants, and Plaintiff present over video. Dkt. 81. For the reasons set forth below, Defendants' Motion to Compel is **GRANTED** in part and **DENIED** in part.

I. BACKGROUND

Walters is a nonparty to this action but brought a state court action in Los Angeles County Superior Court against Defendants that has since been dismissed. Joint Stipulation ("JS") at 62–94; see Ashley Walters v. Brian Warner et al., Case No. 21STCV18680. Walters has appealed that dismissal and the action is pending before the California Court of Appeal, Second Appellate District. See Walters v. Warner et al., B322189. Walters worked for Defendant Warner during the time Plaintiff Esmé Bianco ("Bianco") alleges she was abused by Warner. Id. at 66. Also of note, Walters, Bianco, Evan Rachel Wood ("Wood"), and Ashley Gore aka Illma Gore ("Gore") all participated in a support group together that was featured in a documentary about the allegations against Defendants. Id. at 14.

In July of 2022, Defendants' counsel reached out to Walters' counsel asking if they would accept a deposition subpoena on Walters' behalf and asking for Walters' counsel to propose a date for the deposition. The parties agreed on a date and on August 9, 2022, Defendants issued a subpoena to take Walters' deposition. Id. at 7–8. The subpoena also requested production of "[a]ll written communications with Esmé Bianco, Evan Rachel Wood, and/or Ashley Gore aka Illma Gore regarding Brian Warner, including but not limited to text messages, emails, social media messages, and any other direct messages." Id. at 7.[1] The parties and Walters agreed to an in-person

[1] This request is identical to the one in Defendants' subpoena to nonparty Ashley Smithline. Dkt. 52 at 5. While Smithline is not the Plaintiff in the current action, she is a plaintiff in a separate federal action against Defendants. See Ashley Lindsay Smithline v. Brian Warner et al, Case No. 2:21-cv-05289-FLA (MAR).

deposition scheduled for September 20, 2022. Id. at 4.

On August 22, 2022, counsel for Walters emailed Defendants' counsel with formal objections to the subpoena. JS at 47. Specifically, they stated the request for written communications between Walters, Wood, and Gore was not relevant to the underlying suit, invades the privacy of the third parties, and invades Walters' right to privacy. Id. at 48. Further, they objected that no timeframe had been placed on the correspondence between Walters and Bianco, rendering the subpoena overbroad, burdensome, and harassing. Id. They proposed to narrow the scope of the subpoena to communications between Walters and Bianco since 2017 that were related solely to the allegations in the operative Complaint. Id. They also objected to the defense seeking deposition testimony relating to anything other than Walters' knowledge of the allegations made in Bianco's operative Complaint. Id.

Counsel met and conferred several times telephonically and over email between August 23, 2022, and September 2, 2022, but were unable to reach an agreement as to Walters' objections. Id. at 32–46. On September 2, 2022, Walters' counsel asserted Defendants' counsel had the ability to subpoena Wood and Gore separately and did not need that discovery from Walters. Id. at 34. Additionally, they asserted Walters would not be able to produce the discovery by the time of the deposition and as such Walters would not be appearing. Id. They proposed nine (9) future dates to reschedule the deposition. Id.

Defendants' counsel responded that they would be going forward with their Motion to Compel for the original requests for documents and the original deposition date. Id. at 32. They also noted that Walters had not filed a motion for a protective order and that her new objections, that Defendants should subpoena the nonparties separately and that Walters' counsel could not produce the discovery in time for the deposition, were untimely. Id.

On September 6, 2022, Walters' counsel reached out to Defendants' counsel about a breach in confidentiality between Plaintiff Bianco and Defendants. Id. They asserted they would not confer with Defendants' counsel further until the breach had been addressed with them. Id. at 29; see Dkt. 70. Defendants' counsel responded that the breach did not implicate Walters and as the non-designating party they were not required or permitted to give them, a third party, information regarding the documents implicated in the breach. JS at 29. Walters did not attend the September 20, 2022 deposition and has not supplied Defendants' counsel with any documents. Id. at 16, 23.

The parties dispute whether the subpoena provided Walters reasonable time to comply by the date specified, whether Walters may withhold otherwise responsive communications with Wood and Gore based on a relevance objection, and whether Walters may limit her testimony to only her knowledge of the allegations made in Bianco's operative Complaint. Id. at 32.

The Court held a hearing on this Motion on October 19, 2022. Dkt. 77. Counsel for Defendants, Plaintiff, and Walters were in attendance. Dkt. 81.

II.
DISCUSSION

A. APPLICABLE LAW

Rule 45 of the Federal Rules of Civil Procedure governs the issuing and service of subpoenas on nonparties. Fed. R. Civ. P. 45. If necessary to enforce that subpoena, a party may move to compel the nonparty to comply in the court where the discovery is to be taken. Fed. R. Civ. P. 37(a)(1)–(2). Under Rule 45, a subpoena must be modified or quashed if it "requires disclosure of privileged or other protected matter, if no exception or waiver applies," or if the subpoena "subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iii), (iv); see also Fed. R. Civ. P. 45(d)(1) (party issuing a subpoena "must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena").

Whether a subpoena imposes an undue burden on a particular witness is a "case specific inquiry." Thayer v. Chiczewski, 257 F.R.D. 466, 469 (N.D. Ill. 2009) (internal quotations and citations omitted). Generally, under the Federal Rules of Civil Procedure,

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Relevancy is broadly defined to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). In deciding discovery disputes, courts must be careful not to deprive the party of discovery that is reasonably necessary to their case. Id. at 650. "Thus, a court determining the propriety of a subpoena balances the relevance of the discovery sought, the requesting party's need, and the potential hardship to the party subject to the subpoena." Heat & Control, Inc. v. Hester Industries, Inc., 785 F.2d 1017, 1024 (Fed. Cir. 1986).

However, while discovery should not be unnecessarily restricted, nonparty[2] discovery is more limited to protect nonparties from harassment, inconvenience, or disclosure of confidential documents. Dart Industries Co., Inc., 649 F.2d at 649. Accordingly, "concern for the unwanted burden thrust upon nonparties is a factor entitled to special weight in evaluating the balance of competing needs." Cusumano v. Microsoft Corp., 162 F.3d 708, 717 (1st Cir. 1998). However, "third party discovery is a time-honored device to get at the truth of a claim or defense. A party in litigation is not obligated to take the word of an opponent regarding what relevant documents do or do not exist." L.G. Philips LCD Co. v. Tatung Co., No. C 07 80073 WHA, 2007 U.S. Dist. LEXIS 24181 (N.D. Cal. March 20, 2007).

B. ANALYSIS

1. Request for documents

Here, the Court grants Defendants' Motion to Compel documents in part and denies the Motion in part.

Defendants request "[a]ll written communications with Esmé Bianco, Evan Rachel Wood, and/or Ashley Gore aka Illma Gore regarding Brian Warner, including but not limited to text messages, emails, social media messages, and any other direct messages." JS at 7. Walters argues the information sought as to Wood and Gore is an invasion of privacy, irrelevant, and an undue burden to her as a nonparty.

As an initial matter, Walters' privacy concerns are mitigated by the protective order already in place in this action. Dkt. 37; see In re Heritage Bond Litigation, 2004 WL 1970058, *5 n.12 (C.D. Cal. July 23, 2004) (finding that privacy concerns can be adequately protected by a protective order).

With respect to Walters' undue burden argument, the Court is not persuaded by Walters' argument that Defendants should request the communications from Gore and Wood instead of Walters because Gore and Wood are parties in other actions against Defendants. Walters is correct that parties should typically obtain discovery from parties before seeking it from nonparties. See Precourt v. Fairbank Reconstruction Corp., 280 F.R.D. 462, 467 (D.S.D. 2011) ("If the party seeking information can easily obtain the same information without burdening the nonparty, the court will quash the subpoena."); Brown v. City of Syracuse, 648 F.Supp.2d 461, 466 (N.D. N.Y. 2009) (when balancing hardships between requesting party and nonparty, court should consider whether there are other sources for obtaining the material). However, like Gore and Wood, Walters is also a plaintiff

[2] See Dart Indus., 649 F.2d at 649 ("One author has stated that the more appropriate nomenclature is nonparty discovery, not third-party discovery, as the word nonparty serves as a constant reminder of the reasons for the limitations that characterize third-party discovery.") (quoting Getman, R., "Federal 'Third-Party' Discovery in the Small Antitrust Case," 45 Brooklyn L.Rev. 311 (1979)).

in a separate action against Defendants regarding similar allegations. While that action was dismissed in the superior court, the appeal is still pending before the California Court of Appeal. See Walters v. Warner et al., B322189. Accordingly, although Walters is a nonparty to the instant action, the fact that she is a party in related litigation that she herself instigated greatly mitigates concerns about burdening her as a nonparty— particularly where the only alternative sources for the requested discovery that Walters identifies are other nonparties.

As to relevance, the Court notes the bar for relevance under Federal Rules of Civil Procedure Rule 26(b)(1) is very low, allowing discovery for any "nonprivileged matter that is relevant to any party's claim or defense." Defendants argue the discovery is relevant to the statute of limitations issue; though the statute of limitations on Plaintiff's claim has expired, Plaintiff advances several theories arguing that her claims should not be barred, including that Warner should be estopped from asserting a statute of limitations defense. Id. at 14.[3] Essentially, Defendants maintain the allegations against them are wholly false, and that Walters, Bianco, Wood, and Gore's communications about the allegations, including their participation in a support group which was featured in a commercially distributed documentary, "tainted the memories of people who were never abused, which explains, in part, why so many of the demonstrably false allegations repeat from complaint to complaint." Id. The Court finds Defendants' justification compelling to an extent. Conversations between nonparties who have all brought similar actions against Defendants, knew each other at the time of the alleged abuse, and were filmed for a documentary discussing the abuse allegations may certainly contain information relevant to the estoppel issue and Defendants' theory of defense—that Bianco's allegations were somehow influenced by Walters, Wood, and Gore.

However, the Court does find the request for "all communications regarding Brian Warner," without any time limitation, overbroad and thus unduly burdensome. Plaintiff's Complaint concerns events alleged to have occurred more than ten (10) years ago. Accordingly, the five-year time limitation proposed by Walters could result in the exclusion of obviously relevant material. Still, these individuals had relationships with each other, possible other third parties, and Defendant Warner himself, separate and apart from anything to do with Bianco's allegations here; requiring Walters to produce approximately ten (10) years of communications between five (5) different individuals for anything that merely mentioned Warner would be unduly burdensome. Thus, while the Court declines to modify the subpoena to include a time limitation, the scope of the subpoena shall be limited to production of communications regarding Warner that pertain to Bianco's

[3] Defendants filed a motion to dismiss on claims one (1) and two (2) claiming the statute of limitations had expired. Dkt. 14. The district court ruled Plaintiff had plausibly stated a theory for estoppel and thus the claims should survive the Motion to Dismiss; however the court also noted that estoppel generally involves questions of fact and that "the issues of when the effects of Warner's alleged unconscionable acts ceased, and whether Plaintiff filed suit within a reasonable time after the coercive effects of these acts ended, are ultimately questions of fact not to be determined by the court at this stage as a matter of law." Dkt. 26 at 12. Accordingly, though the district court declined to find that Plaintiff's claims were barred by the statute of limitations at the motion to dismiss stage, the issue of whether Defendants should be estopped from asserting a statute of limitations defense appears to remain a live controversy.

allegations in the Complaint and Defendants' potential defenses. See Fed. R. Civ. P. 26(c) (the court may issue a protective order "limiting the scope of disclosure of discovery to certain matters").

As to Walters' communications with Plaintiff Bianco, Walters has already agreed to hand over those documents. JS at 19. Therefore, the Motion to Compel is granted as to all written communication between Walters and Bianco regarding Brian Warner, as written in the subpoena. The documents shall be turned over forty-eight (48) hours before the scheduled deposition time.[4]

2. Deposition

As to Defendants' Motion to Compel Walters' deposition, the Court grants Defendants' Motion in part and denies the Motion in part.

This Court finds Walters' arguments about needing more time to prepare unpersuasive. Id. at 26–29, 54–96, 218–32. Walters' counsel has now had three months to prepare for the deposition and will have additional time to prepare from now until the date of the deposition. Walters' counsel fails to provide any legal authority or reasoning that would show this is not an adequate amount of time.

Walters also asks for the scope of the deposition to be limited to only Walters' knowledge of Bianco's allegations presented in the operative Complaint. Id. Counsel fails to justify why the deposition should be so drastically limited in scope. As noted above, Walters had knowledge of Defendants' conduct towards Plaintiff at the time of the underlying allegations and had further involvement with Plaintiff years later before, during, and after the production of the documentary, which centered around allegations against Defendants. Given Walters' relationships with both Plaintiff and Defendant Warner during relevant periods, it is reasonable to assume Walters may be able to provide testimony relevant to Plaintiff's claims and Defendants' possible defenses beyond her mere awareness of Bianco's allegations. Therefore, Walters' proposed limitations are overly restrictive and do not allow Defendants the full scope of discovery they are entitled to. See Oppenheimer Fund, Inc., 437 U.S. at 351 (discovery allows for inquiry into "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case").

However, this Court acknowledges the sensitive nature of the allegations and the potential

[4] Walters' counsel alleges Defendants' counsel is attempting to justify a second deposition by requesting the documents on the same day as the initial deposition, since Defendants' counsel would likely want to depose Walters again after they have time to review the documents. JS at 23, 32, 66, 94. However, Defendants' counsel states that they have never communicated this intention. Id. at 71–73, 220. Walters' counsel maintains that Defendants' counsel made this threat. Id. at 23. In any case, Defendants proposed that the documents be provided forty-eight (48) hours before the deposition to mitigate Walters' concerns about a second deposition. Id. at 71. Walters did not acknowledge this proposal, but this Court finds it reasonable.

for harassing questions to be made to the nonparty. As such, per Defendants' agreement at the hearing, Dkt. 81 at 23–24, this Court will limit the scope of the deposition to forbid any questions about Walters' personal sexual history. See Fed. R. Civ. P. 26(c) (the court may issue a protective order "forbidding inquiry into certain matters"); see also Fed. R. Evid. 412 (rendering evidence of an alleged victim's sexual behavior inadmissible in a civil or criminal proceeding involving sexual misconduct); Barta v. City & Cnty. of Honolulu, 169 F.R.D. 132 (D. Haw. 1996) (entering protective order forbidding discovery regarding aspects of plaintiff's sexual history, relying in part on the policy rationale for Fed. R. Evid. 412). Defendants also agreed at the hearing to provide Walters' counsel with a list of topics to be covered at the deposition, with the hope and understanding that this list would not invite more opportunity for disputes. Dkt. 81 at 26. Therefore, this Order will also limit the scope of the deposition to the topics disclosed by Defendants, to be provided at least seven (7) days prior to the date of the deposition. The Court appreciates Defendants' good faith gesture but reiterates its concern that this list could invite further dispute. Accordingly, as discussed below, any dispute brought before the Court will likely lead to an award of fees to the losing party.[5]

Finally, the Court notes that the deposition may implicate legitimate privacy concerns. As noted above, should the deposition result in testimony that is deemed confidential, the Court's protective order sets out procedures for handling such materials. Dkt. 37.

C. REQUEST FOR FEES UNDER RULE 37

Here, the parties both ask for an award of expenses under Rule 37 of the Federal Rules of Civil Procedure. However, it is unclear whether this Court has authority to award expenses under Rule 37 at this stage, given that Walters is a nonparty.

The Ninth Circuit has held that "[t]he only authority in the Federal Rules of Civil Procedure for the imposition of sanctions against a nonparty for failure to comply with a subpoena . . . is Rule 45(f). (Citation omitted)." Pennwalt Corp. v. Durand-Wayland, Inc., 708 F.2d 492, 494. In a footnote, the court noted that "Rule 37(a)(4) authorizes an award of expenses, including attorney fees, for a motion to compel discovery. It applies, however, to motions to compel parties to

[5] The parties also appear to dispute whether Walters' counsel forfeited the right to contest the subpoena by failing to move for a protective order. JS at 2; see also Balt. Line Handling Co. v. Brophy, 2011 U.S. Dist. LEXIS 9852 (D. Md. 2011) ("after first attempting in good faith to resolve dispute without court action [the person to be deposed] should have filed motion for protective order pursuant to Fed. R. Civ. P. 26(c), moved to quash subpoena pursuant to Fed. R. Civ. P. 45(c)(3), or moved to terminate or limit deposition pursuant to Fed. R. Civ. P. 30(d)(3)"). Walters's counsel argues that such a motion would have been premature, or alternatively, that it would have been duplicative of the instant Motion to Compel. JS at 29. The Court acknowledges that the issue was raised during meet and confer proceedings, and that a certain point, bringing such a motion would have been duplicative of the Motion to Compel. Indeed, it is not entirely clear at which point the parties' attempts to reach an agreement became cooperation to prepare the joint stipulation. Accordingly, the Court construes Walters' opposition to the Motion to Compel as a request for a protective order. However, going forward, counsel should note that, once it is clear an agreement will not be reached, the party seeking the limitations has the responsibility to move for a protective order.

produce documents (under Rule 34), and motions to compel nonparties to attend depositions, but not motions to compel nonparties to produce documents." Id. at n.4. However, in a subsequent case, the Ninth Circuit "affirmed that the statement regarding the applicability [of Rule 37] to compulsion to attend depositions is dictum." Foshee v. Mastec Network Sols., Inc, No. 1:20-CV-00890-AWI (SAB), 2021 WL 5529891, at * 9 (E.D. Cal. Nov. 24, 2021); see also Sali v. Corona Reg.l Med. Ctr., 884 F.3d 1218, 1223 (9th Cir. 2018) ("Pennwalt refers to Rule 37(a)(4), which was recodified as subdivision (a)(5) in 2007...[t]he rule's substance is unchanged [and] Pennwalt's statement in this regard was dictum because that case involved a nonparty's failure to comply with a subpoena duces tecum."). Accordingly, while it is clear courts may not award Rule 37 expenses for a motion to compel a nonparty's compliance with a subpoena requesting documents, it is unclear whether courts are authorized to award these expenses when the motion concerns a nonparty's failure to appear at a deposition.

Other courts in the Ninth Circuit have indicated that Rule 37 expenses may be imposed against a nonparty who fails to appear at a deposition, but have only done so after the court issues an order compelling the deposition. See Foshee, 2021 WL 5529891, at *9–11 (collecting cases); see also Dallas Buyers Club, LLC v. Doe-67.170.167.29, No. 6:15-CV-221-AC, 2015 WL 5996338, at *5–6 (D. Or. Oct. 13, 2015) (awarding Rule 37 expenses after a previous order compelled a nonparty to appear at a deposition). This mirrors Rule 45's requirement that a "nonparty must first be subject to an order compelling discovery and then fail to comply with that order before the court can invoke its contempt powers and impose a sanction of attorney's fees." In re Pham, 536 B.R. 424, 431 (B.A.P. 9th Cir. 2015) (citing In re Plise, 506 B.R. 870, 877–79 (B.A.P. 9th Cir. 2014); Pennwalt Corp., 708 F.2d at 494).

With this uncertainty in mind, the Court declines to award fees to either party at this stage, where the Court has yet to issue an order demanding compliance with the nonparty subpoena. First, the Court only grants Defendants' request for documents in part, and, in any case, Rule 37(a)(4) clearly does not apply to nonparties for failure to produce documents. Pennwalt Corp, 708 F.2d at 494, n.4.

Additionally, with respect to the Motion to Compel Walters' deposition, it is unclear whether courts have the authority to award Rule 37 fees without first issuing an order compelling the deposition. The Court further notes that Walters' counsel timely filed objections and rightly tried to meet and confer with Defendants' counsel; thus, this is not a case where the nonparty appears to be obviously evading compliance with the subpoena in its entirety. Both parties appeared to, at least initially, attempt to understand and accommodate the other side's concerns. Indeed, the Court ultimately granted the motion in part, and denied it in part, demonstrating to some degree that both

parties had valid arguments regarding the subpoena at issue.[6]

Still, in reviewing the emails submitted to the Court as exhibits, the Court notes that both parties appear to have contributed to an eventual breakdown in fruitful communication. Furthermore, this case deals with sensitive subject matter; as a result, the case already has produced and will likely continue to produce several discovery disputes. With that in mind, both parties are cautioned to remember that while "no one expects the deposition of a key witness in a hotly contested case to be a non-stop exchange of pleasantries," Freeman v. Schointuck, 192 F.R.D. 187, 189 (D. Md. 2000), both parties have a general responsibility to approach the deposition in good faith and avoid unnecessary court intervention, see Fed. R. Civ. P. 30(d)(3)(A)(authorizing limiting a deposition being conducted in bad faith), 37(a)(1) (requiring parties to make a good faith effort to resolve discovery disputes without court action).

The Court will not treat either party as graciously should these matters come before it a second time. Accordingly, both parties are admonished to work together in good faith to complete Walters' deposition and reach agreements on future discovery disputes.

D. PLAINTIFF'S REQUEST FOR STAY

At the October 19, 2022 hearing, Plaintiff asked this Court to stay its judgment on the Motion to Compel until the district court had ruled on Plaintiff's Motion for Review and Reconsideration of this Court's September 30, 2022 Order, which declined to impose sanctions on Defendants for an alleged discovery breach. Though the issue was not meaningfully covered in the briefing, the Court will address it briefly here.

Federal Rule of Civil Procedure 72(a) provides that non-dispositive pretrial matters, such as discovery motions, may be decided by a magistrate judge. Fed. R. Civ. P. 72(a). However, a magistrate judge's ruling on a non-dispositive matter is subject to reconsideration by the district judge if a party serves and files objections to the order within 14 days. Id. Upon a party's timely objection, the district judge may modify or set aside any part of the magistrate judge's order which is "found to be clearly erroneous or contrary to law." Id.; see also 28 U.S.C. § 636(b)(1)(A).

The previous orders remain in effect while Motions for Reconsideration are pending. Local Rule 72–2.2 ("Regardless of whether a motion for review has been filed, the Magistrate Judge's ruling remains in effect unless the ruling is stayed or modified by the Magistrate Judge or the District Judge."). Nonetheless, "[n]othing, of course, prevents a party in an appropriate case from seeking a stay of the effect of a magistrate judge's order." Esparza v. Bridgestone/Firestone, Inc., 200 F.R.D.

[6] In fact, when a motion to compel is granted in part and denied in part, an award of expenses is wholly discretionary under Rule 37. Compare Fed. R. Civ. P. Rule 37(a)(5)(C) ("If the motion is granted in part and denied in part, the court may…apportion sanctions") with Fed. R. Civ. P. Rule 37(a)(5)(A)–(B) (stating if the motion is granted or denied in full, the court "must" order a party to pay expenses subject to limited exceptions).

654, 656–57 (D. Colo. 2001).

In considering whether to grant a motion to stay the effect of a magistrate judge's order, courts have applied the same four-factor test that applies to the stay of a district court order pending appellate review: (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest. See Alvarez v. Larose, No. 3:20-CV-00782-DMS (AHG), 2020 WL 5632659 (S.D. Cal. Sept. 21, 2020) (collecting cases).

Here, Plaintiff has presented no new evidence that would show the Motion for Review is likely to succeed on its merits. Under the same facts and evidence presented in the parties' briefing on the Motion for Sanctions, the Court cannot find its previous ruling was "clearly erroneous" or "contrary to law." Fed. R. Civ. P. 72(a) (district judges may "modify or set aside any part of" a magistrate judge's order "that is clearly erroneous or is contrary to law."). More importantly, Plaintiff has not shown how she would be "irreparably harmed" or the other parties would be "substantially harmed" if the stay is not granted. Indeed, it is unclear what, if any, effect the dispute over sanctions between Plaintiff and Defendants would have on the instant dispute between Defendants and nonparty Walters. To the extent Walters is concerned with the security of her discovery in light of Defendants' alleged breach, the Court is sensitive to the need to protect the parties' privacy in a case that involves allegations of sexual abuse. However, as noted several times throughout this order, if best practices are used by both sides, the Court's May 7, 2022 Protective Order greatly mitigates security concerns. As such, the request for a stay is denied.

III.
ORDER

Defendants' Motion to Compel nonparty Ashley Walters to comply with subpoena is **GRANTED** in part and **DENIED** in part. The Court orders as follows:

(1) Defendants' Motion to Compel documents pertaining to "[a]ll written communications with Esmé Bianco, regarding Brian Warner, including but not limited to text messages, emails, social media messages, and any other direct messages" is **GRANTED**. The documents shall be provided at least forty-eight (48) hours before the date of the deposition.

(2) Defendants' Motion to Compel documents pertaining to "[a]ll written communications with Evan Rachel Wood, and Ashley Gore aka Illma Gore" without limitation is **DENIED**. The Court imposes a protective order limiting the scope of the production to "[a]ll written communications with Evan Rachel Wood, and Ashley Gore aka Illma Gore, regarding Brian Warner that pertain to Esmé Bianco's allegations in the operative Complaint or that implicate Defendants' potential defenses, including but not limited to

text messages, emails, social media messages, and any other direct messages." The documents shall be provided at least forty-eight (48) hours before the date of the deposition.

(3) Defendants' Motion to Compel nonparty Ashley Walters' deposition is **GRANTED** in part. Defendants' counsel and Walters' counsel should find a mutually agreeable date **within twenty-one (21) days from the date of the grant of the Motion** to take Walters' deposition.

(4) Defendants' Motion to Compel Walters' deposition without limitation is **DENIED**. The Court imposes a protective order limiting the scope of the deposition of Ashley Walters to include only the topics provided by Defendants' at least seven (7) days before the deposition, and exclude any questions about her personal sexual history.

(5) Both parties' requests for expenses are **DENIED**.

(6) Plaintiff's request for a stay pending their Motion for Reconsideration before the district court is **DENIED**.

IT IS SO ORDERED.

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