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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FANTASYLAND

SARAH CONNOR,
Plaintiff,
v.
INIGO MONTOYA,
Defendant.

Case No.: 3:24-MJ-0601-AHG
ORDER ON DISCOVERY DISPUTES
[ECF No. 10]

This matter comes before the Court on three discovery disputes between Plaintiff Connor and Defendant Montoya in this sexual harassment lawsuit. The Court rules as follows:

I. Defendant's Objection to Interrogatory Regarding Prior Accusations

Plaintiff served an interrogatory asking Defendant to “State all times in the last 4 years that you have been accused of engaging in improper sexual conduct and identify the names and contact witnesses of all persons who have made such an accusation.” Defendant objected on grounds of overbreadth, undue burden, and invasion of privacy.

The parties have since conferred and Plaintiff agreed to narrow the interrogatory to any other lawsuits or written pre-lawsuit demands accusing Defendant of sexual harassment in the last 4 years.

1 Applying the principles set forth in *Byte Fed., Inc. v. Lux Vending LLC*, 2024 WL
2 1912950 (M.D. Fla. Apr. 30, 2024) and FED. R. CIV. P. 26(b)(1), the Court finds that
3 Defendant's objection to the narrowed interrogatory is overruled. The request as narrowed
4 is proportional to the needs of the case, considering:

- 5 1. The importance of the issues at stake in the action;
- 6 2. The amount in controversy;
- 7 3. The parties' relative access to relevant information;
- 8 4. The parties' resources;
- 9 5. The importance of the discovery in resolving the issues; and
- 10 6. Whether the burden or expense of the proposed discovery outweighs its likely
11 benefit.

12 The information sought is directly relevant to Plaintiff's claims and Defendant's
13 potential pattern of conduct. While the request may touch on sensitive information,
14 Defendant's privacy interests do not outweigh the relevance and importance of the
15 information to this case.

16 Accordingly, Defendant is **ORDERED** to respond to the narrowed interrogatory
17 within 14 days of this Order. If Defendant withholds any responsive information based on
18 a claim of privilege, he must produce a privilege log identifying the withheld information.

19 **II. Plaintiff's Alleged Spoliation of Text Messages**

20 Defendant accuses Plaintiff of spoliation of evidence by failing to preserve text
21 messages relevant to this lawsuit. Specifically, Defendant obtained text messages from
22 Plaintiff's friend in which Plaintiff allegedly stated that Defendant was the "perfect target"
23 due to his wealth and that her lawyer would "make him pay." Plaintiff did not produce any
24 text messages in response to Defendant's document requests, claiming her phone
25 automatically deleted messages after 30 days.

26 Applying the principles from *Armstrong v. Holmes*, 2024 WL 1345214 (D. Nev.
27 Mar. 28, 2024), the Court finds as follows:
28

1 1. Plaintiff had a duty to preserve relevant text messages from at least the date she
2 filed this lawsuit.

3 2. Plaintiff failed to take reasonable steps to preserve the text messages by not
4 disabling the auto-delete function on her phone after filing suit.

5 3. The deleted text messages cannot be restored or replaced through additional
6 discovery.

7 4. Defendant has been prejudiced by the loss of this potentially relevant information.

8 5. While Plaintiff's conduct was negligent, there is insufficient evidence at this time
9 to conclude that Plaintiff acted with intent to deprive Defendant of the use of the
10 information in litigation.

11 Based on these findings, the Court **ORDERS** as follows:

12 1. At trial, the jury will be instructed that they may consider Plaintiff's failure to
13 preserve relevant text messages, along with all other evidence, in deciding whether to draw
14 an adverse inference that the lost information was unfavorable to Plaintiff.

15 2. Plaintiff and her counsel shall pay Defendant's reasonable expenses, including
16 attorney's fees, incurred in bringing this spoliation issue before the Court. Defendant shall
17 submit documentation of these expenses within 14 days.

18 3. Plaintiff is ordered to provide a sworn declaration detailing her efforts (or lack
19 thereof) to preserve relevant text messages after filing this lawsuit.

20 The Court declines to impose further sanctions at this time but may revisit this issue
21 if additional evidence of intentional spoliation comes to light.

22 **III. Defendant's Failure to Produce Facebook Information**

23 Defendant has failed to produce posts from his Facebook account despite a prior
24 court order requiring him to do so. Plaintiff now seeks production of all of Defendant's
25 Facebook posts and Messenger messages for the past 4 years, without redactions.

26 Applying the principles from *Doe 1 v. National Collegiate Athletic Ass'n*, 2024 WL
27 643038 (S.D. Inc. Feb. 14, 2024), the Court **ORDERS** as follows:

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1 1. Defendant shall produce an export of all information associated with his
2 Facebook account, including posts and private messages, for the past 4 years within 14
3 days of this Order.

4 2. All of Defendant's private Facebook messages may be designated as
5 confidential under the existing protective order in this case.

6 3. Any portion of Defendant's private Facebook messages that is used by either
7 party in conjunction with a court filing shall be filed under seal. The filing party shall note
8 on the sealed document or in the docket text that it is filed under seal pursuant to this Order.

9 4. The names and other identifying information of any third party shall be
10 redacted from any private message that is filed. The filing party may identify the third party
11 by initials and may identify the relationship of the third party to the Defendant if that
12 information is relevant.

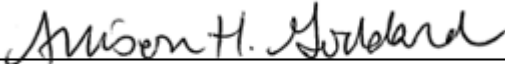
13 5. Plaintiff's counsel shall take extra care to ensure the relevancy of any private
14 message to the claims or defenses in this case before using that private message in a
15 deposition or court filing.

16 6. Defendant must pay the reasonable expenses, including attorney's fees, caused
17 by his failure to obey the Court's prior order to produce this information.

18 The Court finds these measures appropriately balance Defendant's privacy interests
19 with the relevance of the Facebook information to this litigation. Defendant's continued
20 failure to comply with discovery obligations and court orders is unacceptable. Defendant
21 is warned that any further non-compliance may result in additional sanctions, including
22 striking pleadings in whole or in part.

23 **IT IS SO ORDERED.**

24 Dated: September 21, 2024

25 
26 _____
27 Honorable Allison H. Goddard
28 United States Magistrate Judge