UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CASSIE M., et al.	:	
	:	
v.	:	C.A. No. 07-241ML
	:	
LINCOLN D. CHAFEE,	:	
et al.	:	

MEMORANDUM AND ORDER

Pending before the Court for determination (28 U.S.C. § 636(b)(1)(A)) is Defendants' Motion for Protective Order regarding the scope and timing of fact discovery. (Document No. 177). Plaintiffs oppose the Motion. (Document No. 195). A hearing was held on November 20, 2012.

It is apparent from the parties' arguments and submissions that they have a fundamental disagreement as to the present posture of this case and the appropriate scope of discovery. On March 20, 2012, Chief Judge Lisi advised the parties that she would not take up the issue of class certification[1] until after she decided dispositive motions on the individual substantive claims of the named Plaintiffs. (Document No. 124 at p. 4). I am also informed that Chief Judge Lisi has made clear to the parties that these dispositive motions are intended to address whether the named Plaintiffs can present sufficient evidence, applying the standards applicable to Rule 56 motions, to establish a trial-worthy issue that their constitutional and/or statutory rights have been violated, and, if so, whether they have suffered any harm proximately caused by such violation(s).

Defendants contend that discovery at this stage of the case should be focused on the named

[1] Plaintiffs argue that they are required by the Court's Scheduling Order to complete all discovery, including class certification discovery, at this stage. However, it is clear that Chief Judge Lisi's intent in deferring consideration of class certification until after ruling on dispositive motions was to bring order and efficiency to the processing of this complex case and only to proceed to the class certification issues if necessary. Thus, discovery on class certification issues is stayed until after the Court rules on dispositive motions.

Plaintiffs and, in particular, whether they have sustained an injury while in the State's care which has been proximately caused by some violation of their constitutional and/or statutory rights by Defendants. (Document No. 217 at p. 3). They assert that the fundamental problem with this case is that "[t]here are broad sweeping allegations that are untethered to the children at this point." Id. at p. 11. Plaintiffs counter that this focus would prohibit them from proving their claims at the summary judgment stage. Specifically, Plaintiffs argue that broader discovery is necessary to show that the challenged practices and policies expose the named Plaintiffs to an unreasonable risk of harm, as well as causing actual harm. Plaintiffs' counsel indicated at the hearing that discovery extending to every child in the system would be "required" to prove such risk of harm claims. Plaintiffs contend that "[a]n unreasonable risk of harm can only be proved by looking at evidence beyond what has already happened to the named plaintiffs." Id. at p. 19. At the hearing, I asked Plaintiff's counsel whether the "unreasonable risk" argument would "open up discovery to every single child who's in the system" and her response was "[w]e believe that's what's required here in order for us to prove our claims." Id. at p. 20.

After weighing the parties' arguments, considering Judge Lisi's intent in entertaining dispositive motions on the individual claims of the named Plaintiffs and applying the principles embodied in Rule 26(b)(2)(C), I find that Defendants have sufficiently shown good cause under Rule 26(c) to focus discovery at this stage of the case to nonprivileged information that is relevant to the substantive claims of the individual named Plaintiffs and Defendants' defenses to such claims. I also reject Plaintiffs' argument at this stage that their "risk of harm" claims justify wide-ranging discovery of all children who have been in the legal custody of the Rhode Island child welfare system due to allegations of abuse or neglect. Plaintiffs have simply not shown that such limitless

and burdensome discovery is necessary to pursue the claims of the named Plaintiffs at this stage, or that a reasonable range of discovery focused on the named Plaintiffs and the various "system failures" alleged in this case (see Document No. 195 at p. 8) would not be sufficient to allow the Court to evaluate the evidence pursuant to Rule 56. Further, if, after reviewing Defendants' summary judgment arguments, Plaintiffs contend that they have been denied access to discovery "essential to justify [their] opposition," they would not be without remedy and could move for relief under Rule 56(d).

Thus, for the foregoing reasons, Defendants' Motion for Protective Order (Document No. 177) is GRANTED and the scope of discovery is limited as provided herein. Further, in light of this ruling, Defendants' additional request for document review cost shifting is DENIED as unwarranted. In addition, Defendants have not made a sufficient showing to warrant a blanket protective order prohibiting the production of any electronically stored information ("ESI").[2] If Defendants have a particular issue regarding the scope of a request for ESI, accessibility of ESI, or undue burden or cost in production of ESI, they may seek further relief under Rule 26(c) after conferring with Plaintiff's counsel in a good faith effort to resolve the dispute without the necessity of court action.

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States District Court
December 17, 2012

[2] Defendants have also not presently made a sufficient showing to limit discovery to the RICHIST data system and have not established that any reasonable search for responsive emails and other ESI related to the fifty-four caseworker/supervisor custodians who have had involvement with the named Plaintiffs would be "unreasonably cumulative or duplicative" within the meaning of Rule 26(b)(2)(C)(i).