UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOE,

Plaintiff,

v.

AMHERST COLLEGE, et al.,

Defendants.

CASE NO. C16-1296JLR

ORDER GRANTING MOTION TO QUASH

I. INTRODUCTION

Before the court is non-party Sandra Jones's motion to quash or limit the subpoena that Plaintiff John Doe served on her in relation to an ongoing civil lawsuit in the District of Massachusetts.[1] (Mot. (Dkt. # 1).) Mr. Doe opposes the motion. (Resp. (Dkt. # 3).)

[1] Both John Doe and Sandra Jones are pseudonyms that have been used in the underlying litigation to protect the individuals' privacy. (*See* Deluhery Decl. (Dkt. # 4) ¶ 2, Ex. A ("Am. Compl.") ¶¶ 8 & n.1, 27 & n.2.) The parties have adopted that convention in their briefing on this motion. (*See* Mot. at 2 n.2; Resp. (Dkt. # 3) at 1 n.1.) The court finds that convention appropriate and adopts it for purposes of this order.

The court has reviewed the parties' submissions, the relevant portions of the record, and the applicable law. Considering itself fully advised,[2] the court GRANTS Ms. Jones's motion to quash.

II. BACKGROUND

The underlying lawsuit arises out of sexual assault allegations by Ms. Jones that led to Mr. Doe's expulsion from Amherst College. (*See generally* Am. Compl.) Mr. Doe alleges that he had a consensual sexual encounter with Ms. Jones on the evening of February 4-5, 2012. (*Id.* ¶ 27.) He asserts that on October 28, 2013, Ms. Jones filed a complaint with Amherst. (*Id.* ¶ 28.) Amherst performed an investigation, which Mr. Doe characterizes as "[g]rossly [i]nadequate." (*Id.* at 9; *see id.* ¶¶ 30-41 (describing the investigation).) After a hearing, Amherst's hearing board found, by a preponderance of the evidence, that Mr. Doe was responsible for the sexual assault. (*Id.* ¶ 58.) Amherst expelled Mr. Doe and subsequently denied his appeal. (*Id.* ¶¶ 58, 61.)

Following the hearing, Mr. Doe retained counsel and obtained text messages from the night in question between Ms. Jones and several other students. (*Id.* ¶ 63.) Mr. Doe argues these text messages undermine Ms. Jones's version of events. (*Id.* ¶¶ 63-71.) Nonetheless, when Mr. Doe presented the text messages to Amherst on April 16, 2014, Amherst declined to reopen its investigation or reinstate Mr. Doe. (*Id.* ¶¶ 72, 73.)

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[2] Ms. Jones requested oral argument, and Mr. Doe requested a telephonic hearing. (Mot. at 1; Resp. at Caption Page.) The court finds oral argument unnecessary to disposition of the motion and denies both requests. *See* Local Rules W.D. Wash. LCR 7(b)(4) ("Unless otherwise ordered by the court, all motions will be decided by the court without oral argument.").

The underlying lawsuit followed. In United States District Court for the District of Massachusetts, Mr. Doe asserts claims (1) against Amherst for breach of contract, (2) against Amherst for breach of the covenant of good faith and fair dealing, (3) against four Amherst administrators for tortious interference with contract, (4) against Amherst for violation of Title IX, 20 U.S.C. § 1681, (5) against Amherst and its administrators for violation of 42 U.S.C. § 1981, (6) against Amherst and its administrators for violation of the Massachusetts Civil Rights Act, Mass. Gen. Laws ch. 12, §§ 11H-I, (7) against Amherst and its administrators for defamation, (8) against the administrators for negligence, (9) against Amherst and its administrators for negligent infliction of emotional distress, and (10) against Amherst for specific equitable relief. (*Id.* ¶¶ 78-138.) Amherst and its administrators have moved for judgment on the pleadings, and that motion is pending. *Doe v. Amherst College, et al.*, No. 3:15-cv-30097-MGM (D. Mass.), Dkt. ## 37 ("MJOP"), 38 ("Memo re MJOP").

On June 21, 2016, Mr. Doe served Ms. Jones with a subpoena to testify at a deposition and produce certain categories of documents. (Clune Decl. (Dkt. # 1-1) ¶ 2, Ex. 2 ("Subpoena").) The subpoena does not specify the scope of the deposition. (*Id.* at 1.) However, in "Schedule A," the subpoena requests production of thirteen categories of documents:

> 1. All documents and communications concerning your interactions with John Doe on February 4-5, 2012 and/or the John Doe Disciplinary Process, including but not limited to, all emails, text messages, posts on social media, articles, and blogs.
> 2. All documents and communications concerning the issue of sexual misconduct, sexual assault, rape, or rape culture, including but not limited to, all emails, text messages, posts on social media, articles, and blogs.

3. All documents and communications concerning the Investigation or the Kurker Report.

4. All documents and communications concerning John Doe from January 1, 2010 to the present, including but not limited to, all emails, text messages, posts on social media, articles, and blogs.

5. All documents you supplied to or received from and all communications between any member(s) of the Hearing Board concerning the John Doe Disciplinary Process, you, the Student Handbook, the Sexual Misconduct Policy, the Sexual Misconduct Procedure, and/or any of the witnesses or evidence presented at the Hearing.

6. All documents you supplied to or received from and all communications between you and Amherst concerning the John Doe Disciplinary Process, the Student Handbook, the Sexual Misconduct Policy, the Sexual Misconduct Procedure, and/or any of the witnesses or evidence presented at the Hearing.

7. All documents concerning the operation, interpretation, or application of and/or training on sexual misconduct disciplinary proceeding at Amherst.

8. Any and all documents regarding or communications with Liya Rechtman concerning the topic of sexual misconduct, the John Doe Disciplinary Process, Your Complaint, and John Doe.

9. Any and all communications with witnesses in the John Doe Disciplinary Process concerning the topic of sexual misconduct, the John Doe Disciplinary Process, Your Complaint, John Doe, and/or your interactions with John Doe on February 4-5, 2012.

10. All notes, journal/diary entries, recordings, transcripts, or other memoranda by you relating to Your Complaint, the Investigation, John Doe, the John Doe Disciplinary Process, and/or the issues of sexual misconduct, rape, or rape culture.

11. All communications between you and the College, including any of the Individual Defendants and your advisor, Professor Rhonda Cobham-Sander, relating to Your Complaint, the Investigation, John Doe, the John Doe Disciplinary Process, and/or the Sexual Misconduct Policy or Procedure.

12. All communications between you and David Ressler, Michael LaHogue, and/or Emily Belanger concerning John Doe from January 1, 2010 to present.

13. All communications, including text messages or emails, between you and anyone else on February 5, 2012.

(*Id.*, Sched. A at 3-5.) On July 20, 2016, Ms. Jones moved this court to quash or limit the subpoena. She asks the court to quash the subpoena in its entirety or, in the alternative, to

issue a protective order limiting the scope and format of the deposition and the scope of the document requests. (*See generally* Mot.)

Ms. Jones's motion is now before the court.

III. ANALYSIS

A. Legal Standard

Federal Rule of Civil Procedure 45 governs subpoenas. "[T]he scope of discovery through a subpoena is the same as that applicable to Rule 34 and the other discovery rules." Fed. R. Civ. P. 45 advisory committee's notes to 1970 amendment. The scope of discovery under Rule 34 is coextensive with the scope of discovery under Rule 26. *See* Fed. R. Civ. P. 34(a); *see also ATS Prods., Inc. v. Champion Fiberglass, Inc.*, 309 F.R.D. 527, 531 (N.D. Cal. 2015). Rule 26(b)(1) permits discovery of "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1).

"[T]he court for the district where compliance is required must quash or modify a subpoena that . . . subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(iv); *see also* Fed. R. Civ. P. 26(c) (permitting the court to "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" caused by a discovery request). The court must "balance[] the relevance of the discovery sought, the requesting party's need, and the potential hardship to the party subject to the subpoena." *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 680 (N.D. Cal. 2006).

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B. Deposition

An in-person deposition of boundless scope would impose a substantial burden on Ms. Jones. (Subpoena at 1; *see also* Resp. at 7 ("Until a deposition begins, it is very difficult to know where it will lead and impossible to predict all the topics that may be explored with a witness.").) The deposition would force Ms. Jones to relive a night in which she asserts Mr. Doe sexually assaulted her. (*See, e.g.*, Clune Decl. ¶ 3, Ex. 4; Resp. at 6-7.) It would also reraise the subsequent investigation, hearing, and period of publicity that Ms. Jones has endured. (*Id.* ¶ 3, Ex. 5 at 11-12; Am. Compl. ¶¶ 54, 56.) It takes no leap of logic to reason that a live deposition would impose emotional and psychological trauma upon Ms. Jones. The court thus rejects Mr. Doe's argument that "[t]here is no evidence to support" the burden on Ms. Jones (Resp. at 10) and instead concludes that the burden of an in-person deposition would be substantial.

The heavy burden imposed on Ms. Jones may therefore be justified in a case litigating what happened on February 4-5, 2012. However, the underlying litigation does not pose that question. Instead, Mr. Doe's claims challenge the policies under which Amherst and its administrators conducted their investigation and review, whether the administrators in fact followed Amherst's policies, and whether the process or policies discriminate against men, such as Mr. Doe. (*See* Am. Compl. ¶¶ 78-138.) The majority of the topics that Mr. Doe seeks to take up in a deposition are not relevant to those claims. (*See, e.g.*, Resp. at 6 (proposing as one topic for the deposition Ms. Jones's "decision to pursue" the disciplinary process), 7 (proposing as another topic for the

deposition Ms. Jones's "text messages, including review of their content and clarification of any ambiguities").)

Furthermore, much of the arguably relevant information that Mr. Doe seeks appears to be available from other sources. For instance, Mr. Doe indicates that he seeks to question Ms. Jones regarding communications between Ms. Jones and Amherst administrators. (Resp. at 6-7; *see also* Reply (Dkt. # 5) at 3 (conceding that "communications between Ms. Jones and Amherst" administrators "may have some arguable relevance").) These communications are arguably relevant to Mr. Doe's claims, but he has failed to show why he cannot obtain those communications through Amherst and its administrators rather than by deposing Ms. Jones. (*Id.*) Furthermore, it is unclear the extent to which Mr. Doe's claims will survive the pending motion for judgment on the pleadings. *See* MJOP; Memo re MJOP; (*see also* Mot. at 8-9 (arguing that filing a civil lawsuit challenging a school's disciplinary proceedings does not entitle a litigant to relitigate the disciplinary board's decision).) The court thus concludes that Mr. Doe's need for an in-person deposition of Ms. Jones is minimal. *See Gonzales*, 234 F.R.D. at 680.

The potential relevance of some of the information that Mr. Doe might uncover during a boundless, in-person deposition of Ms. Jones does not outweigh the hardship on Ms. Jones from such a deposition. *Id.* The court has considered limiting the form and scope of the deposition rather than quashing the deposition in its entirety. *See* Fed. R. Civ. P. 45(d)(3)(A) (allowing the court to "quash or modify" an unduly burdensome subpoena). However, Mr. Doe represents that "[u]ntil a deposition begins, it is very

difficult to know where it will lead and impossible to predict all the topics that may be explored." (Resp. at 7.) Accordingly, the court finds itself incapable of principled modification and instead quashes the deposition in its entirety.

C. Requests for Production

Producing documents pertaining to the night in question would arguably impose less of a psychological burden on Ms. Jones than enduring an in-person deposition regarding the night in question. However, requests for production 1, 2, 3, 4, 7, 9, 10, 12, and 13 seek documents that are irrelevant or overbroad in relation to Mr. Doe's claims against Amherst. (Subpoena, Sched. A at 3-5.) As is true of Mr. Doe's list of potential deposition topics, these requests illustrate an effort to relitigate the merits of the disciplinary proceeding rather than to challenge the process by which Amherst conducted it. *See supra* § III.B.

In contrast, requests for production 5, 6, 7, 8, and 11 are arguably relevant to Mr. Doe's claims. (*See* Subpoena, Sched. A at 4-5.) However, those requests relate to communications that could readily be obtained from other sources. Most of those other sources are Amherst employees, and none asserts to be the victim of sexual assault. (*See, e.g.*, *id.* at 5 (requesting "[a]ll communications between you and the College").) Furthermore, Mr. Doe already possesses at least some of these communications, which he obtained from other sources. (Am. Compl. ¶¶ 63-71a.) Finally, the court again notes that it is uncertain whether and to what extent Mr. Doe has pleaded legally cognizable claims against Amherst and its administrators. *See* MJOP; Memo re MJOP. The court thus

concludes that at this juncture, the need for Ms. Jones to produce the requested documents is low. *See Gonzales*, 234 F.R.D. at 680.

In light of the marginal relevance of the requests for production, the other sources that could provide responsive information, and the pending motion for judgment on the pleadings, the court concludes that ordering Ms. Jones to respond to the requests for production would be disproportional to the needs of Mr. Doe's case as it presently stands.[3] *See* Fed. R. Civ. P. 26(b)(1). Accordingly, the court grants Ms. Jones's motion to quash the requests for production.[4]

IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS Ms. Jones's motion (Dkt. # 1) and quashes Mr. Doe's subpoena.

Dated this 16th day of November, 2016.

JAMES L. ROBART
United States District Judge

[3] To be clear, the court's decision to quash requests for production 5, 6, 7, 8, and 11 is specific to the stage of the underlying litigation and the record before this court. This conclusion does not foreclose the possibility that a change in circumstances, such as subsequent developments in the underlying case or Mr. Doe's inability to acquire the requested information through other means, would warrant a different outcome regarding those requests for production.

[4] Because the court quashes the deposition and the requests for production as unduly burdensome, the court declines to consider whether Federal Rule of Evidence 412 precludes any aspect of the subpoena. (*See* Mot. at 9-10.)