

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOSHUA DUNN, <i>et al.</i> ,)	
)	
Plaintiffs)	
)	
v.)	CIV. ACT. NO. 1:14cv601-MHT-TFM
)	
RUTH NAGLICH, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

On March 13, 2015, Plaintiffs filed a Motion to Compel Production of Documents Relating to Non-Plaintiffs. Doc. 109. The court held oral argument on the Motion on March 31, 2015. In their Complaint, Plaintiffs assert the defendants acted with deliberate indifference to the serious medical needs of prisoners in their custody by “routinely and systemically fail[ing] to provide adequate numbers of health care professionals,” by “routinely deny[ing] medical care to prisoners with serious medical conditions,” by “routinely and systemically delay[ing] diagnosis and treatment of serious medical needs,” by “routinely and systemically fail[ing] to provide adequate emergency care, ” by “fail[ing] to adequately provide and manage medications and medical supplies and devices,” by “having inadequate procedures for preventing and responding to outbreaks of infectious diseases in ADOC prisons,” by “deny[ing] care to terminally ill prisoners, issuing ‘do not resuscitate’ or ‘allow natural death’ orders against the patient’s wishes,” and by “allow[ing] correctional officers to interfere with prisoners’ access to

medical care” in violation of the Eighth and Fourteenth Amendments. *Id.*, pp. 26-57, 109.

Plaintiffs also contend that the defendants acted with deliberate indifference to their health by failing to provide adequate mental health care to prisoners by “fail[ing] to identify mentally ill prisoners and understat[ing] the acuity of mental illness even in those identified,” by “deny[ing] mentally ill prisoners access to necessary psychotropic medications and medication management,” by “fail[ing] to provide mentally ill patients with adequate care,” by “plac[ing] the mentally ill in segregation without regard for their mental health,” and “fail[ing] to adequately protect its most seriously mentally ill who exhibit self-injurious and suicidal actions” in violation of the Eighth and Fourteenth Amendments. *Id.*, pp. 57-82, 115. In addition, Plaintiffs assert that the defendants violated the Due Process Clause of the Fourteenth Amendment by “routinely and systematically involuntarily medicat[ing] mentally ill prisoners without due process.” *Id.*, pp. 3, 83-85, 115. Finally, Plaintiffs assert that the defendants violated the Americans with Disabilities Act and § 504 of the Rehabilitation Act by subjecting them to regular and systemic discrimination based on their disabilities. *Id.*, pp. 85-105, 116.

In their Motion to Compel, Plaintiffs request the court to compel a series of discovery requests. *See* Doc. 109, List of Disputed Requests, pp. 7-8. Specifically, Plaintiffs seek documents indicating a systemic failure of ADOC officials to provide adequate healthcare and reasonable accommodations to prisoners. Defendants, however, argue that the documents requested are either irrelevant, burdensome, and/or invade the privacy interests of non-plaintiffs.

Discovery is not limited to that information which is admissible in court, but rather discoverable information is “relevant information” which “appears reasonably calculated to lead to the discovery of admissible evidence.” FED.R.CIV.P. 26(b)(1). The court recognizes its duty to balance production of “relevant information” which is reasonably calculated to lead to the discovery of admissible evidence” with concerns that the discovery sought is “unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.” FED.R.CIV.P. 26(b)(1) and 26(b)(2)(C)(i).

It is important to note that the case is currently in the class certification stage with four separate proposed classes. The defendants argue that they have produced all documents relevant to class certification and that the plaintiffs are merely requesting the information in order to discover names of potential members to add to the class. The plaintiffs, however, maintain that the names of the individuals are unnecessary and that the purpose of each request is relevant to the merits of their claims. The defendants contend that discovery related to the merits of the case is not appropriate at this pre-certification stage of the proceedings.

For Plaintiffs to certify a class in a class action lawsuit, they must prove that as a class representative, they are “part of the class and ‘possess the same interest and suffer the same injury’ as the class members.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2550 (2011)(citations omitted). Rule 23(a) of the Federal Rules of Civil procedure provides four requirements that Plaintiffs must meet to ensure that they “are appropriate

representatives of the class whose claims they wish to litigate.” *Wal-Mart Stores, Inc.*, *supra*. Pursuant to Rule 23(a), Plaintiffs must effectively “limit the class claims to those fairly encompassed by the named plaintiff’s claims” by proving “numerosity, commonality, typicality, and adequate representation.” *Id.* (citations omitted).

Defendants argue that courts routinely limit pre-certification discovery to issues related to whether the class should be certified. They contend that the documents relating solely to individuals who are not named as plaintiffs “are only potentially relevant to the merits of the class action if the class is certified.” Doc. 126, p. 11. This court recognizes that parties routinely bifurcate discovery in class-action lawsuits. During oral argument, plaintiffs’ counsel represented that the parties met and determined that both discovery concerning class certification and the merits of their claims would begin during the pre-certification stage of the case. The Defense protests that the parties did not agree to begin discovery in this manner. In their Rule 26(f) Report of Planning Meeting, however, the parties agreed to “conduct discovery on the following subjects: All claims and allegations contained in the Plaintiffs’ First Amended Complaint and matters incidental thereto; All defenses, responses, and averments contained in the Answers of the State and matters incidental thereto.” Doc. 60, pp. 3-4. On September 16, 2014, the Court adopted and incorporated the terms of the discovery plan in its entirety. Doc. 61. This court therefore finds that, based on the specific terms of the Planning Report and the Order, Plaintiffs may proceed with discovery on the merits at this stage of the proceedings.

Nonetheless, the defendants' argument that production of certain requested documents relating to non-plaintiffs is unduly burdensome is persuasive. The plaintiffs request a random sampling of 20 medical records of prisoners with HIV, diabetes, epilepsy or seizure disorders, asthma, hypertension, schizophrenia, bipolar disorder, cancer, and any condition treated with anticoagulation therapy.¹ There is no dispute that the individual medical records of prisoners are not computerized. The defendants argue that the only way to obtain the medical information requested by the plaintiffs is to review each medical file by hand. The plaintiffs, however, argue that the information is relevant to their claims against the defendants because repeated examples of delayed or denied medical care may indicate a pattern of conduct amounting to deliberate indifference to the health of prisoners by prison authorities.

Upon considering the arguments of the parties, the court concludes that a less burdensome form of discovery should be imposed at this pre-certification stage of the proceedings. The defendants shall obtain from Corizon the computerized pharmaceutical records of every twentieth prisoner incarcerated in an ADOC facility between July 8, 2012 and July 8, 2014. At this time, the names of the individuals may be redacted. The defendants shall provide these pharmaceutical records to the plaintiffs. From these pharmaceutical records, the plaintiffs should be able to determine whether a person is provided medicine which is routinely prescribed for the treatment of a particular

¹ The plaintiffs also request the records of pregnant prisoners. None of the plaintiffs, however, is pregnant or of child-bearing age. To the extent Plaintiffs seek to discover the records of pregnant prisoners, the Motion to Compel is due to be DENIED.

condition. After the plaintiffs determine whether a particular individual was prescribed medication which is routinely prescribed for the treatment of any of the aforementioned conditions, they may request the name of that individual. At that time, Corizon and/or the ADOC shall provide the names of these individuals to plaintiffs. Upon receiving the names, it is the responsibility of the plaintiffs to obtain HIPAA releases from each individual in order to review his or her medical records.

Accordingly, it is

ORDERED as follows:

(1) Both pre-class certification discovery and discovery on the merits of the claims shall proceed as previously scheduled.

(2) To the extent the plaintiffs seek records relating to pregnancy, the Motion to Compel is DENIED.

(3) To the extent the parties seek to discover medical and mental health records of non-plaintiffs, the Motion to Compel is GRANTED with the aforementioned limitations. The defendants and/or entity in possession of the pharmaceutical records shall produce such information to the plaintiffs on or before June 9, 2015.

Done this 8th day of April, 2015.

/s/Terry F. Moorer

TERRY F. MOORER
UNITED STATES MAGISTRATE JUDGE