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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOHN DOE,

11 Plaintiff,

12 v.

13 AMHERST COLLEGE, et al.,

14 Defendants.

CASE NO. C16-1296JLR

ORDER GRANTING
MOTION TO QUASH

15 **I. INTRODUCTION**

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

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21 ¹ Both John Doe and Sandra Jones are pseudonyms that have been used in the underlying
22 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.

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

4 **II. BACKGROUND**

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

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

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 21 ² Ms. Jones requested oral argument, and Mr. Doe requested a telephonic hearing. (Mot.
 22 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.").

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

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

- 19 1. All documents and communications concerning your interactions
20 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.
- 21 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.

- 1 3. All documents and communications concerning the Investigation or
2 the Kurker Report.
- 3 4. All documents and communications concerning John Doe from
4 January 1, 2010 to the present, including but not limited to, all emails, text
5 messages, posts on social media, articles, and blogs.
- 6 5. All documents you supplied to or received from and all
7 communications between any member(s) of the Hearing Board concerning
8 the John Doe Disciplinary Process, you, the Student Handbook, the Sexual
9 Misconduct Policy, the Sexual Misconduct Procedure, and/or any of the
10 witnesses or evidence presented at the Hearing.
- 11 6. All documents you supplied to or received from and all
12 communications between you and Amherst concerning the John Doe
13 Disciplinary Process, the Student Handbook, the Sexual Misconduct Policy,
14 the Sexual Misconduct Procedure, and/or any of the witnesses or evidence
15 presented at the Hearing.
- 16 7. All documents concerning the operation, interpretation, or
17 application of and/or training on sexual misconduct disciplinary proceeding
18 at Amherst.
- 19 8. Any and all documents regarding or communications with Liya
20 Rechtman concerning the topic of sexual misconduct, the John Doe
21 Disciplinary Process, Your Complaint, and John Doe.
- 22 9. Any and all communications with witnesses in the John Doe
23 Disciplinary Process concerning the topic of sexual misconduct, the John
24 Doe Disciplinary Process, Your Complaint, John Doe, and/or your
25 interactions with John Doe on February 4-5, 2012.
- 26 10. All notes, journal/diary entries, recordings, transcripts, or other
27 memoranda by you relating to Your Complaint, the Investigation, John
28 Doe, the John Doe Disciplinary Process, and/or the issues of sexual
29 misconduct, rape, or rape culture.
- 30 11. All communications between you and the College, including any of
31 the Individual Defendants and your advisor, Professor Rhonda
32 Cobham-Sander, relating to Your Complaint, the Investigation, John Doe,
33 the John Doe Disciplinary Process, and/or the Sexual Misconduct Policy or
34 Procedure.
- 35 12. All communications between you and David Ressler, Michael
36 LaHogue, and/or Emily Belanger concerning John Doe from January 1,
37 2010 to present.
- 38 13. All communications, including text messages or emails, between
39 you and anyone else on February 5, 2012.

40 21 (*Id.*, Sched. A at 3-5.) On July 20, 2016, Ms. Jones moved this court to quash or limit the
41 subpoena. She asks the court to quash the subpoena in its entirety or, in the alternative, to

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

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

4 **III. ANALYSIS**

5 **A. Legal Standard**

6 Federal Rule of Civil Procedure 45 governs subpoenas. “[T]he scope of discovery
7 through a subpoena is the same as that applicable to Rule 34 and the other discovery
8 rules.” Fed. R. Civ. P. 45 advisory committee’s notes to 1970 amendment. The scope of
9 discovery under Rule 34 is coextensive with the scope of discovery under Rule 26. *See*
10 Fed. R. Civ. P. 34(a); *see also ATS Prods., Inc. v. Champion Fiberglass, Inc.*, 309 F.R.D.
11 527, 531 (N.D. Cal. 2015). Rule 26(b)(1) permits discovery of “any nonprivileged matter
12 that is relevant to any party’s claim or defense and proportional to the needs of the case.”
13 Fed. R. Civ. P. 26(b)(1).

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

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1 **B. Deposition**

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

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

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

3 Furthermore, much of the arguably relevant information that Mr. Doe seeks
4 appears to be available from other sources. For instance, Mr. Doe indicates that he seeks
5 to question Ms. Jones regarding communications between Ms. Jones and Amherst
6 administrators. (Resp. at 6-7; *see also* Reply (Dkt. # 5) at 3 (conceding that
7 "communications between Ms. Jones and Amherst" administrators "may have some
8 arguable relevance").) These communications are arguably relevant to Mr. Doe's claims,
9 but he has failed to show why he cannot obtain those communications through Amherst
10 and its administrators rather than by deposing Ms. Jones. (*Id.*) Furthermore, it is unclear
11 the extent to which Mr. Doe's claims will survive the pending motion for judgment on
12 the pleadings. *See MJOP; Memo re MJOP;* (*see also* Mot. at 8-9 (arguing that filing a
13 civil lawsuit challenging a school's disciplinary proceedings does not entitle a litigant to
14 relitigate the disciplinary board's decision).) The court thus concludes that Mr. Doe's
15 need for an in-person deposition of Ms. Jones is minimal. *See Gonzales*, 234 F.R.D. at
16 680.

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

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

4 **C. Requests for Production**

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

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

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

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

9 **IV. CONCLUSION**

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

12 Dated this 16th day of November, 2016.

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14 
15 JAMES L. ROBART
16 United States District Judge
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19 ³ To be clear, the court's decision to quash requests for production 5, 6, 7, 8, and 11 is
20 specific to the stage of the underlying litigation and the record before this court. This conclusion
21 does not foreclose the possibility that a change in circumstances, such as subsequent
22 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.

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