IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES **PLAINTIFF**

VS. **CASE NO. 25CI1:22cv286-EFP**

MISSISSIPPI COMMUNITY EDUCATION CENTER, INC., et al **DEFENDANTS**

BRETT LORENZO FAVRE'S MEMORANDUM IN OPPOSITION TO MDHS'S MOTION FOR PROTECTIVE ORDER AND IN SUPPORT OF MOTION TO COMPEL DEPOSITION TESTIMONY

COMES NOW Defendant, Brett Lorenzo Favre, and respectfully submits his opposition to plaintiff Mississippi Department of Human Services ("MDHS") Motion For Protective Order (Dkt. 607, the "Motion") and in support of Favre's Cross-Motion to Compel Compliance with a Deposition Notice (the "Notice," Dkt. No. 606) pursuant to Mississippi Rule of Civil of Procedure 37(a). Favre would show unto the Court the following:

PRELIMINARY STATEMENT

MDHS's motion for a protective order seeking to limit the Rule 30(b)(6) deposition Favre has noticed is meritless. MDHS has had more than enough time to prepare to be deposed on the facts at issue in this case—factual issues that it raised in its own complaint, that it has always known are central to its claims against Favre and that Favre detailed in writing. Its disingenuous pretense that there is ambiguity about those issues supposedly hampering its ability to prepare for the deposition—even though Favre and MDHS in fact largely agreed to the list of issues before MDHS filed this wasteful motion—does not come close to establishing the good cause required to grant its motion. Equally disingenuous is MDHS's complaint that it will be

burdened by having to prepare by reviewing Favre's discovery—when that is the *very same broad discovery it demanded Favre provide to it*.

Moreover, another one of MDHS's purported objections—that there are 45 other defendants who may also want its deposition—is also misplaced. Each defendant is unquestionably entitled to take discovery of the plaintiff suing it, and undue repetition can be avoided through agreement among the parties and objections at the deposition if warranted. Most importantly, however, this is an objection entirely of MDHS's own making. MDHS chose to sue Favre and the 45 other defendants in this one lawsuit concerning an array of entirely unrelated alleged transactions—even though Favre had nothing to do with, and is not alleged to have had anything to do with, virtually all of the other defendants and virtually all of those transactions. Had MDHS sued the defendants in separate lawsuits—as it should have to avoid an unworkable trial and the necessity to sever its various claims for trial—there would have been no question that MDHS would have been required to sit for a 30(b)(6) deposition in each case. That MDHS chose to lump all these defendants and transactions together in no way justifies a different result.

By contrast with plaintiff MDHS, Favre sat for his deposition over a month ago, on December 11, 2023, and Dr. Rodney Bennett, the former President of the University of Southern Mississippi ("Southern Miss"), was deposed as a third-party witness on October 31, 2023—both of whom confirmed that there is no basis for MDHS's claims against Favre.[1] But now that the shoe is on the other foot, and it is Favre who is seeking MDHS's Rule 30(b)(6) deposition, MDHS is stonewalling.

[1] According to Dr. Bennett's testimony, for example, the necessary factual predicate for MDHS's claims against Favre—that Favre had made a binding pledge to pay for the construction of Southern Miss's volleyball center—is false.

MDHS should therefore be ordered to comply with the deposition notice served by Favre and to do so promptly at an agreed-upon date with Favre's counsel (now that this motion has rendered the original noticed date impracticable). This is especially true given that there is no time to spare under the discovery schedule MDHS itself requested and was granted—a schedule that will require, among other things, taking the deposition testimony of well over 50 fact witnesses before the June 3 discovery cutoff.

The background to this discovery dispute confirms that MDHS is seeking to delay and obstruct Favre in obtaining the discovery to which he is entitled. MDHS, on December 14, 2023, told Favre that it did not "have any specific objections" to beginning its deposition on January 24, 2024, and continuing it on non-consecutive days, and asked only that Favre provide it with deposition topics in advance so that it could determine which witness to designate. Favre provided MDHS with deposition topics on December 22, and on January 4, 2024, MDHS provided its objections and responses to Favre's topics, including a makeweight objection to the overwhelming majority of the topics—that the term "facts and circumstances" was "vague and undefined," while "factual basis" was acceptable.

On January 10, Favre advised MDHS that the parties were in agreement as to the overwhelming majority of the topics and believed agreement could be reached as to the remaining topics in advance of January 24, but that, in any event, the agreed-upon topics would require more than a day's worth of testimony such that the deposition could and should begin on January 24. In Favre's formal response to MDHS's objections—which MDHS did not wait to see before filing its premature Motion—Favre indicated that there was agreement as to 40 of the 65 topics. For the first time, however, on January 11, after Favre's counsel had arranged travel plans, MDHS raised new objections—that it wanted Favre to coordinate the topics with the other

45 defendants and that it would not proceed with testimony on non-consecutive days. Favre of course has no obligation—and MDHS cites to none—to coordinate topics for plaintiff's deposition with the 45 other defendants almost all of whom, as noted, he has nothing to do with.

MDHS now also baselessly demands in its Motion that its testimony be limited to three days. MDHS argues that this request should be granted now even though it chose to sue 46 defendants on unrelated transactions and even though it never raised this demand or sought to meet and confer with Favre (or, to Favre's knowledge, the other defendants) beforehand. MDHS justifies its demand based on absurd and unsupported speculation that its deposition would last *80 days* if each defendant took two days of testimony. But no one, besides MDHS, has suggested that each defendant would separately depose MDHS and each for multiple days. The Rules do not set forth a time limit for depositions, and it would be inappropriate to create a presumptive time limit before MDHS has even answered a single question under oath or sought other means to limit undue burden or repetition.

Lastly, MDHS demands that the Court enter a protective order sustaining its objection to the noticed topics. MDHS also failed to confer with Favre on this point before filing the Motion, and, as noted, the parties already have substantially limited the topics in dispute. Of the remaining objections, they seek meritless limitations on time and scope, and in a conclusory fashion complain of overbreadth. These objections certainly do not rise to the level of good cause for a protective order here.

MDHS's meritless Motion and last-minute reneging on its agreement to begin its deposition should be rejected, and MDHS should be ordered to sit for its deposition at an agreed-upon prompt date and answer questions on the topics that Favre designated in his notice with no arbitrary time limitation.

BACKGROUND

MDHS seeks to recover $7.1 million from Favre on the basis that he allegedly "conspired" with Mississippi officials and others to misappropriate federal Temporary Assistance for Needy Families ("TANF") funds for uses inconsistent with federal law. This is false. As discovery has confirmed, Favre had no knowledge that the source of the funds at issue were TANF funds or that they were used inappropriately. Quite the contrary, as all discovery has confirmed, Favre understood that the use of all the funds at issue here had been approved by former Governor Bryant and MDHS, and in the case of funds used in connection with the construction of the Southern Miss volleyball facility, also by the Mississippi Attorney General, Southern Miss in-house counsel and administrators, the Southern Miss Athletic Foundation and its outside counsel, and the Mississippi Institutions of Higher Learning.[2]

MDHS also alleges that Favre is liable under the Mississippi Uniform Fraudulent Transfer Act "as the person for whose benefit the transfer was made" (Dkt. 197 ¶ 370) with respect to the Southern Miss volleyball facility funds. This false theory is premised on the allegation that Favre "benefited" because the transfer relieved him of his supposed oral "handshake" agreement (*id.* ¶ 83) to personally guarantee the funds necessary for construction of the facility and because his daughter got to play volleyball in the facility. Both of these false claims have also been debunked.

Then-Southern Miss President Dr. Bennett—testified Favre never made a binding pledge. He testified that while his "understanding, from my early January [2017] meeting with Brett was that Brett was going to pay, personally, for whatever the cost of the facility was," Dr. Bennett

[2] *See* Ex. 1 ("Favre Dep. Tr.") at 144:13-145:10 ("Why would I even think for a second that it was wrong or illegal? There was no reason for me to think it, especially when the IHL Board -- I don't know who's on it -- the Attorney General, the governor's office, and the University are okay with it. Why would I think that it was wrong?").

clarified that "as with any donor that I'm working with, they have the right to change their mind," and that shortly thereafter Favre *did* change his mind (Ex. 2 ("Bennett Dep. Tr.") at 296:7–298:2, 307:7-14).[3] The allegedly fraudulent transfers, which took place at the end of 2017, thus could not have been a "benefit" to Favre because, even if Favre had said he would pay for the cost of the facility, Favre had the right to change his mind and did change his mind long before those transfers were made or even contemplated.

As to Favre's daughter, in fact, she was never going to play at the volleyball facility—she had always planned to play beach, not indoor, volleyball when that sport became available at Southern Miss (in Spring 2019) and never played in the volleyball facility. (Favre Dep. Tr. at 98:13-17.) This corroborates what was obvious long ago—that the Southern Miss volleyball facility was built for the benefit of Southern Miss, not Favre.

On November 30 and December 1, 2023, MDHS asked Favre for his availability on January 23, 2024, for the deposition of non-party Jon Gilbert, the former Athletic Director of Southern Miss, in Jackson. On December 13, 2023, MDHS filed a notice designating Mr. Gilbert's deposition for January 23. Dkt. 566. Shortly after MDHS filed this notice, Favre's counsel emailed MDHS that he also wanted to take MDHS's 30(b)(6) deposition beginning on the following day, January 24, as well as depositions of two non-party witnesses, former Governor Phil Bryant and State Auditor Shad White, on January 25 and 26. Ex. 3 at 9.[4] On December 14, MDHS emailed that it did not "have any specific objections to the dates proposed

[3] Favre submits herewith excerpts from the deposition transcripts cited herein; at the Court's request, Favre can immediately provide complete sets of the transcripts.

[4] MDHS filed an earlier version of the same email exchange as Exhibit 1 to its Motion, Dkt. 607-1, and Favre is providing an updated version as Exhibit 3 which includes correspondence that occurred after MDHS filed the Motion. Additionally, MDHS filed its Exhibit 1 under seal and although Favre does not believe that the emails contained therein meet the standards for sealing under Mississippi law, Favre will also provide this exhibit under seal. Favre has also moved for reconsideration of the Court's January 19, 2024 order granting MDHS's motion to seal, *see* Dkt. 625.

with the following caveat"—that Favre provide deposition topics in advance. *Id.* Favre agreed that same day to provide the deposition topics the following week and noted that "obviously we don't know how long the MDHS 30(b)(6) deposition will last." *Id*. at 8.

Favre provided the 30(b)(6) topics list to MDHS the following week, on December 22. *Id.* at 6-7. The topics (Dkt. 606) all pertain to MDHS's claims against Favre and his defenses, including, for example, MDHS's relationship with defendants Mississippi Community Education Center Inc. ("MCEC") and Family Resource Center ("FRC") (topics 1-2, 8-9, 12-14); communications with various Mississippi government officials concerning Favre, certain co-defendants, MDHS's allegations, and parallel government audits and investigations (topics 3-4, 15); the use of MDHS funds for the University of Southern Mississippi volleyball facility and Prevacus, Inc. (topics 7, 12, 14); Favre's defenses, including that MDHS commingled TANF funds with other funds, and that MDHS failed to mitigate damages (topics 13, 15, 17-22); and the facts and circumstances concerning the allegations in MDHS's complaint relating to Favre (topics 23-65). There is no doubt that all of these topics seek relevant testimony, and MDHS does not object on the basis of relevance.

Nearly two weeks after Favre sent the topics, on January 4, 2024, MDHS provided its objections to Favre and stated, for the first time—and before even conferring with Favre—"we will likely need to push the 30(b)(6) deposition back to allow the court time to rule on a motion for protective order." *Id.* at 6. Many of MDHS's objections were to his use of terms such as "facts and circumstances," which MDHS claimed was "vague and undefined," instead of "factual basis," which was acceptable to MHDS—and to Favre. The remainder of MDHS's objections included inappropriate limitations on Favre's proposed topics, such as only agreeing to "identify" documents and communications concerning the topic, as opposed to providing

substantive testimony, as well as claims of burden and overbreadth—but not irrelevance—based on the volume of documents produced in this action—a burden, to the extent it is one, solely due to MDHS's own extremely broad discovery requests and its decision to file this lawsuit against dozens of defendants with sweeping allegations.

MDHS, less than a week later, on January 10, again suggested that the parties "reset the MDHS 30(b)(6) for a later date," given that Favre had not responded to their objections within the intervening few days. *Id.* Favre promptly responded that he would provide his responses to MDHS's objections by the end of the week and noted that he was "confident that we'll have agreement on many topics and will be able to proceed as to those on the 24th" and that the parties likely could "work out any remaining issues on other topics before then, but because, as previously mentioned, this deposition will span multiple days, those can also wait for another day." *Id.* at 5.

On January 11, 2024, MDHS raised the following objection for the first time:

> We have not received topics from any of the other defendants. We are not going to be able to agree to a process where our deponent(s) sits on multiple occasions for multiple depositions. I think a better approach would be to coordinate with other defendants so we could get everyone's topics and then schedule the deposition for the length of time we all estimate is necessary. If that is multiple days, I would like it to be consecutive days. We are not comfortable agreeing to an open ended 30(b)(6) deposition.

Id.

Favre responded that day, explaining that MDHS's purported objections could have been raised "weeks ago," that travel plans had already been made, and that MDHS had known since at least December 13, 2023 that Favre had planned for non-consecutive days of its 30(b)(6) deposition given that, as noted, he sought to depose two other witnesses in the days following MDHS's first day of testimony. *See id.* at 4. Favre further noted that he had no obligation to coordinate topics with the other 45 defendants and that any burden MDHS might suffer was of

its "own making" because MDHS had itself brought this action against "dozens of other defendants, many of whom have nothing to do with Mr. Favre or each other," and had insisted on "a very short discovery cutoff deadline." *Id.*

Given (i) MDHS's sudden about-face, (ii) the fact that the parties were in agreement as to the overwhelming majority of topics, (iii) Favre's good-faith belief that that parties could resolve any remaining issues, and (iv) the fact that Favre's counsel had already made travel plans and arranged their schedules to attend the deposition, Favre filed a deposition notice for January 24. Dkt. 606. MDHS filed this Motion later that day.

The next day, Favre provided a good faith letter (the "Good Faith Letter", Ex. 4) containing his responses to MDHS's objections and explained to MDHS that "[r]aising this with the Court before conferring with us—which has consistently been your practice[5]—is not just unproductive but improper." Ex. 3 at 3. Favre also reiterated that it was not his "responsibility to coordinate with the other defendants" and that, in any case, this was "something [MDHS] could and should have raised with us weeks ago" but instead "MDHS is taking the same tack as the State Auditor[6]—now that the time has come for the plaintiff to testify as to its meritless allegations under oath, it instead seeks to avoid and delay for as long as possible."

The Good Faith Letter explained that the parties were in agreement on 40 of the 65 topics (topics 5, 23-60, 62-63), that many of MDHS's meritless objections were not meaningful objections but mere parsing of Favre's choice of words and that the remaining objections, mostly

[5] As the Court is aware, MDHS failed to fulfill its obligation to confer with Favre prior to filing its motion to compel Favre to produce certain documents and respond to certain interrogatories. *See* Dkt. 527; see also Dkt. 531 at 2.

[6] The State Auditor, Shad White, has enlisted three sets of attorneys and is using their conflicting schedules as grounds for why he cannot appear for a deposition. *See* Dkt. 614 at 2. Similarly, Mississippi Governor Tate Reeves has waited weeks to provide an available date for his deposition.

focused on overbreadth and the difficulties of preparing a 30(b)(6) witness, were of MDHS's own making. To avoid further delay, given the short discovery schedule, Favre nonetheless proposed numerous compromise positions for the parties to resolve these disputes.

On January 15, MDHS provided its response (the "Response Letter", Ex. 5) to Favre's Good Faith Letter "copying all counsel of record, because MDHS is proposing that it sit one time, from February 26-28, for *any* 30(b)(6) deposition noticed by any party, and that anyone intending to take a 30(b)(6) provide notice of the topics proposed by January 29, 2024." Ex. 6. Demonstrating that Favre was correct when he emailed back on January 10 that the parties would be in agreement as to the overwhelming number of topics, the Response Letter confirmed that Favre and MDHS were in agreement on 50 of the 65 topics. Yet, MDHS has continued to insist that it will not move forward until all defendants agree on the topics and that MDHS only agrees to sit for three days.

ARGUMENT

Under Miss. R. Civ. P. 30(b)(6), a party may notice a governmental agency for deposition, describing with "reasonable particularity the matters on which examination is requested." Miss. R. Civ. P. 30(b)(6). The government agency "shall designate one or more [individuals] to testify on its behalf" and "[t]he persons so designated shall testify as to matters known or reasonably available to the organization." *Id.* Favre's Notice—especially inasmuch as the topics it lists all relate to MDHS's own allegations and Favre's defenses—unquestionably describes with "reasonable particularity" the matters on which Favre seeks MDHS's testimony—they seek, for example, the facts underlying various allegations in MDHS's Amended Complaint, the ways in which MDHS worked with MCEC and FRC to distribute government

grant funds, and the government's approval, investigation, and auditing of how those funds would be or were used. These topics are all directly relevant to the claims and defenses.

On this Motion, MDHS must show that "good cause" exists, under Miss. R. Civ. P. 26(d)(1) and (2), for the protective order it seeks. MDHS offers two primary arguments: (a) "sitting multiple times over multiple days" and "for multiple 30(b)(6) depositions by multiple parties" is "oppressive," *see* Motion at 7; and (b) "MDHS has objected to the scope of Favre's deposition topics," *id.* Both arguments are meritless.

A. There is Nothing Oppressive About MDHS Sitting for Multiple, Non-Consecutive Days for its Deposition

First, MDHS's argument—that sitting multiple days solely for Favre's noticed topics is oppressive because there are numerous other defendants—represents the opposite of good cause. *MDHS chose to sue 46 defendants.* That MDHS did so is no basis for restricting Favre's right to find out the facts in MDHS's possession on topics unquestionably relevant to MDHS's claims, including topic numbers 16, 21, and 23-65, and his defenses, including topics 8, 13, and 15, relating to, among other things, the approval by the State and the Attorney General of the use of TANF funds and the State's use of TANF funds for similar purposes in other instances.

Rule 26(d)(2) sets forth the factors pertinent to MDHS's Motion:

> In determining whether to enter an order limiting the frequency or extent of discovery, the court may consider, among other things, whether 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; whether the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; and whether the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving those issues.

Miss. R. Civ. P. 26(d)(2). Here, the discovery Favre seeks—the first deposition of MDHS, the plaintiff in this lawsuit—is not cumulative or duplicative at all, and MDHS does not and cannot

show otherwise. Nor does or can MDHS show that the discovery sought can be obtained from any other source—namely, discovery concerning what the *plaintiff* here, MDHS, knew and did—which is critical to this lawsuit and cannot reasonably or more conveniently be obtained anywhere else.

There is also no question that the benefit of the discovery far outweighs any purported burden. MDHS is seeking $7.1 million in damages from Favre. Its false allegations against Favre—which Favre denies and are contradicted by the discovery to date—have enormously damaged his reputation and livelihood. Favre is entitled to a fair opportunity to obtain the discovery he seeks without a preemptive time limit. There is nothing "oppressive" about this. Favre of course does not seek to waste anyone's time or deprive other defendants of their right to examine MDHS on topics of their choosing—but Favre must be entitled to examine MDHS as to his topics.

Second, MDHS argues that "sitting for multiple 30(b)(6) depositions by multiple parties creates similar problems" and thus, Favre should be required to "coordinat[e] between the defendants on topics and dates." Nothing requires a defendant to coordinate with other parties the plaintiff chose to sue. Favre noticed the deposition; if other defendants later seek to ask MDHS duplicative questions, MDHS can object then. But there is no justification for seeking now to limit Favre's right to defend himself.

MDHS spins up hypothetical scenarios in which every defendant might ask MDHS to sit for multiple days of 30(b)(6) depositions which it argues would be oppressive. Again, if that discovery is duplicative or unduly burdensome, MDHS can object then. But if it is not objectionable, MDHS, as the plaintiff which sued all these parties, is obligated to provide

discovery to them. In any event, however, theoretical (and unsupported) speculation is no basis for a protective order.

Moreover, if MDHS were truly concerned about this possibility—rather than using it as an excuse to delay its deposition—it would not have waited a month before raising this issue (notwithstanding, at its request, the very short time available for discovery), but could and should have undertaken itself to survey the defendants to ascertain if they intended to depose MDHS and, if so, for how long.

MDHS's Response Letter further evidences that its objection was solely to delay, and was not driven by any genuine concern over whether defendants could confer and coordinate. In its Response Letter, MDHS stood by the position it first took in the Motion that its deposition only last three consecutive days and also sought to *unilaterally* determine the dates and location of the deposition (without conferring with any defendants' counsel) and imposing an arbitrary deadline (January 29) by which it required all proposed topics from all defendants. Again, MDHS has no right to determine, unilaterally, the dates, scope, and time of its deposition. It brought this omnibus action against 46 defendants alleging different theories and based on different transactions. MDHS should not be allowed to skirt its discovery obligations solely based on its own decision to combine in one proceeding what could and should have been multiple actions, and then claim burden and oppression from sitting more than three days. If anything, it is oppressive for MDHS to try to force the 46 defendants, many of whom have nothing to do with one another, to coordinate and limit their respective questioning so that MDHS, the plaintiff seeking millions of dollars for its own misuse of federal funds, can arbitrarily limit the amount of time it testifies under oath.

Third, MDHS has no basis for its contention that a multiple-day deposition must be consecutive. MDHS does not, because it cannot, cite to any rule requiring that a multiple-day deposition be for consecutive days. Nor has it established good cause under Rule 26 for why it needs consecutive dates. Its only purported justification for why a consecutive period is necessary is because "[s]preading the deposition over multiple weeks or months risks duplication of questions and unfair taxation of the representative's memory." But that supposed concern again is pure conjecture and can and should be addressed by counsel objecting if and when the concern materializes. And given the large number of defendants and the short period to conduct fact discovery (at MDHS's insistence), as a practical matter it is highly unlikely that all parties who wish to be present for the deposition can be present on consecutive days.

B. MDHS's Objections Do Not Warrant the Protective Order it Seeks

MDHS's final argument is that a protective order about the deposition's topics is warranted because "Favre's topics lack 'reasonable particularity'" and thus, "preparing an agency representative is an impossible task." *See* Motion at 8. This false and unsupported argument is both procedurally and factually improper. And for the majority of topics, MDHS's point is moot because the parties are in agreement as to *50 of the 65 topics*.

As an initial matter, MDHS failed (yet again) to confer with Favre prior to filing its Motion. To minimize burden on the court and unnecessary litigation, the Rules of Civil Procedure require certifying that the movant conferred or attempted to confer in good faith prior to making a motion under Rule 37(a). Favre explained to MDHS the day before it filed the Motion that MDHS would have his responses to its objections by the end of the week. Favre also told MDHS the day before it filed its Motion that Favre was "confident that we'll have agreement on many topics" and that the parties likely could "work out any remaining issues on other topics." Subsequent correspondence, the Good Faith Letter and Response Letter, makes

clear that Favre was correct. For topics 23-60, and 62-63, MDHS's sole objection was to the term "facts and circumstances" and the parties agreed to the term "factual basis."[7] All Favre seeks—and what Favre is entitled to—is the underlying factual basis for these allegations, and because MDHS has offered the same, the parties agree as to the scope of these topics.[8] The parties are also now in agreement on an additional 10 topics (5, 8, 9, 11, 13, 15, 21, 61, 64-65).[9]

But MDHS filed the Motion anyway and sought to litigate its objections before even receiving those responses. Given that the open issues would likely have been worked out without necessitating judicial intervention—MDHS's Motion was premature, unnecessary, and wasteful of the Court's and the parties' resources.

As to remaining topics for which MDHS stands by its objections, it has not shown good cause for a protective order "sustaining MDHS's objections to the topics as stated." Motion at 8. For many of the topics that MDHS erroneously claims are overbroad, Favre agreed in the Good Faith Letter to various compromise limitations. For example, Favre agreed to limit the first topic, the very topic MDHS cites in the Motion as overbroad, seeking testimony concerning "[a]ll Communications with or concerning MCEC or FRC" to "knowledge of [MDHS's] communications with or concerning MCEC or FRC relating to Favre, the Southern Miss volleyball facility, use of MDHS funds for buildings and leases at other public universities,

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[7] That MDHS purported to distinguish between "facts and circumstances"—which it claimed lacked particularity—and "factual basis"—which it found acceptable—itself reflects the pretextual and meritless nature of its entire Motion.

[8] In the Response Letter, MDHS noted that it still objects to these topics to the extent Favre intends "to seek the inferences MDHS draws from the facts; the way MDHS intends to use the underlying facts; the legal theories MDHS believes those facts support; or what steps MDHS or its counsel took in preparing the First Amended Complaint." Favre is not seeking testimony on anything privileged and thus this objection, to the extent it has any merit, is moot.

[9] There is agreement as to topics 5, 11, 13, 15, 61, and 64-65, because Favre seeks only information "as to matters known or reasonably available to [MDHS]," as Rule 30(b)(6) provides. As to topics 8 and 9, Favre is satisfied with the areas of inquiry and time period that MDHS committed to in the Response Letter. Lastly, as to topic 21, Favre seeks only the facts underlying the allegations, not any work product—and so the parties agree on this topic's scope.

Prevacus, former Governor Phil Bryant and State Auditor Shad White" and suggested appropriate search terms to so limit the topic and MDHS's burden of preparing its witness. *See* Ex. 4 at 5. It is utterly meritless to argue, as MDHS does, that MDHS's knowledge of its communications with MCEC and FRC concerning these limited topics would be overbroad or impossible to prepare a witness on, *when that is exactly what MDHS's own allegations center around*.

Moreover, many of MDHS's overbreadth objections are, again, of its own making. MDHS is complaining about the burden it would have to prepare its witness on all the documents and communications produced in this case. But it was MDHS itself which demanded and compelled the production of documents in this action ***regardless of relevance***. *See* Dkt. 527. MDHS cannot have it both ways: now that it has compelled the production of those documents, it cannot claim that it is too burdensome to prepare its Rule 30(b)(6) witness on the same. Favre merely sought from MDHS what is expected of every 30(b)(6) witness, that they "testify as to matters known or reasonably available to the organization." Miss. R. Civ. P. 30(b)(6).

In the Response Letter, MDHS rejected Favre's good faith suggestions to limit the topics to address MDHS's concerns, stating that Favre's proposals did not limit the scope enough and that Favre should "identify" the documents he wishes the witness to be prepared on. But this is not what the "reasonable particularity" requirement is meant to accomplish. *See Noone v. Ohio Nat'l Life Ins. Co.*, No. 320CV00461CWRLGI, 2022 WL 20539197, at *4 (S.D. Miss. Dec. 30, 2022) (denying protective order as topics were reasonably particular and the opposing party may not use the reasonable particularity requirement "as an attempt to control discovery" and "narrow[] the scope of information made available"); *Mullenix v. Univ. of Texas at Austin*, No. 1-19-CV-1203-LY, 2021 WL 1647760, at *7 (W.D. Tex. Apr. 26, 2021) (denying protective

order and finding deposition topics adequate as reasonable particularity "requirement is met if the notice enables an entity to adequately fulfill its obligations to choose and prepare a deponent"). The noticed topics are "describe[d] with reasonably particularity" as required by Rule 30(b)(6), and MDHS may not shift its burden to prepare its witness to Favre by requiring Favre to identify particular documents. Nor can Favre know in advance what documents are known or reasonably available to MDHS. MDHS's objection turns discovery on its head—instead of Favre using the deposition to learn what information MDHS has, MDHS wants Favre to guess what information it has and limit disclosure only to that.

CONCLUSION

For the foregoing reasons, Favre respectfully requests that MDHS's motion for protective order be denied, and that Favre's motion to compel be granted.

RESPECTFULLY SUBMITTED on this, the 22nd day of January, 2024.

BRETT LORENZO FAVRE, Defendant

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Counsel for Defendant Brett Lorenzo Favre

CERTIFICATE OF SERVICE

I, Eric D. Herschmann, do hereby certify that I have on this 22nd day of January, 2024, served a true and correct copy of the foregoing pleading on all counsel of record herein via the MEC filing system.

This, the 22nd day of January, 2024.

/s/ Eric D. Herschmann
ERIC D. HERSCHMANN