

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

FILED
John E. Triplett, Acting Clerk
United States District Court
By *CAshell* at 2:39 pm, Sep 21, 2020

MISTY SPEARS,

Plaintiff,

v.

WAL-MART STORES EAST, LP,

Defendant.

CIVIL ACTION NO.: 2:18-cv-152

ORDER

This matter is before the Court on Defendant’s Motion to Compel Discovery from Non-Party Cherokee Funding, LLC (“Cherokee Funding”). Doc. 36. Defendant seeks an order compelling Cherokee Funding to provide complete responses to certain document requests contained in Defendant’s subpoena. *Id.* For the reasons which follow, the Court **GRANTS in part** and **DENIES in part** Defendant’s Motion. Cherokee Funding shall provide complete responses to Defendant’s subpoena within 7 days of this Order.¹ However, the Court declines to award Defendant’s counsel attorney’s fees under Federal Rule of Civil Procedure 37(a)(5)(A)(ii).²

¹ If any party believes the contents of the produced documents necessitate additional discovery, the parties’ counsel must confer about the issue and, if there is agreement, file a joint motion describing the specific discovery tasks that need to be completed and proposing a limited additional discovery period. If there is no agreement, the party seeking additional discovery may file a unilateral motion.

² If a court grants a motion to compel, it “must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees. But the court must not order this payment if . . . the opposing party’s nondisclosure, response, or objection was substantially justified[.]” Fed. R. Civ. P. 37(a)(5)(A)(ii). Here, the Court finds there was adequate justification for Cherokee Funding’s objections.

BACKGROUND

Plaintiff filed suit in the Superior Court of Camden County, Georgia, alleging she slipped and fell on “an unknown clear substance” in Defendant’s store located in Camden County.

Doc. 1-1 at 5. Defendant removed the case to this Court on the basis of diversity jurisdiction.

Doc. 1. The Court has issued six Scheduling Orders in this case, with the most recent Order setting discovery to end on July 23, 2020, and a motions deadline of August 21, 2020. Doc. 34.

Defendant states the parties attempted to mediate this case in 2019, and during the mediation, learned Cherokee Funding bought medical receivables from one of Plaintiff’s treating healthcare providers, giving Cherokee Funding a financial interest in this case.³ Doc. 36 at 1.

Defendant then served a subpoena on Cherokee Funding, under Federal Rule of Civil Procedure 45(a)(1)(C), seeking, among other things, the following categories of documents:⁴

Request #1: “All communications relating in any way to this case, or to this Plaintiff’s medical or legal circumstances (regarding this or any other case), between any person affiliated with Cherokee Funding, LLC and all of the following: (1) [Plaintiff’s healthcare providers], (2) any member of Plaintiff’s legal team (including staffers working for Plaintiff’s past or present counsel of record).”

Request #2: “All communications of any nature whatsoever about this case or this Plaintiff’s medical or legal circumstances.”

Request #4: “All communications between anyone in your office and any physician or medical practice group regarding this Plaintiff, specifically including all referral agreements and any commentary exchanged with any provider regarding Plaintiff’s lawsuit.”

Request #6: “Any and all contracts, liens, assignments of rights, agreements to pay, or other legal instruments potentially giving [Plaintiff’s healthcare providers], Cherokee

³ Throughout the briefing, the parties discuss two healthcare providers—OrthoOne and Touchton Surgery Center—interchangeably. The record does not contain sufficient information for the Court to resolve any distinction between the two entities, and, therefore, uses the general term “Plaintiff’s healthcare providers” in this Order. The Court expects the parties will be able to resolve any distinction between the two entities through conferral.

⁴ Defendant’s subpoena directed Cherokee to produce ten enumerated categories of documents. Doc. 36 at 25–26. Defendant’s Motion to Compel concerns only the four categories listed here.

Funding, LLC, or anyone affiliated with either entity a financial interest in the outcome of this litigation.”

Id. at 1, 3–4. Cherokee Funding served a response and objection to Defendant’s subpoena. Id. at 31–45. Relevant to the Motion before the Court, Cherokee Funding raised no objections to Requests 2 and 4 and stated it would produce documents responsive to those requests, to the extent the documents existed. Id. at 32–33. Cherokee Funding did, however, object to producing documents responsive to Requests 1 and 6, though only did so by referring to six pages of general objections. Id. at 35–41. The parties conferred about the subpoena and requested documents but were unable to reach an agreement. Id. at 46–53. Notably, during conferral, Cherokee Funding affirmed it would produce all documents responsive to Requests 2 and 4. Id. at 52.

After exhausting efforts at good faith conferral, Defendant filed the instant Motion to Compel, asking the Court to order Cherokee Funding to fully and completely respond to Requests 1, 2, 4, and 6. In its Motion, Defendant contends that, as of the date of the Motion, Cherokee Funding “has failed to produce a single document to Defendant.” Doc. 36 at 3. Defendant asserts the documents it seeks are relevant and discoverable to show potential bias, intent, and motive and to show the reasonableness of Plaintiff’s medical bills. Id. at 5–9. Defendant also disputes any contention by Cherokee Funding that the requested documents are shielded from discovery by Georgia’s collateral source rule. Id. at 6. Finally, Defendant argues against Cherokee Funding’s “catchall” or “boilerplate” objections, privilege objections, and objections concerning confidentiality. Id. at 9–12.

After Defendant filed its Motion, but before Cherokee Funding responded, the Court conducted a telephonic hearing on Defendant’s Motion. Doc. 38 (Min. entry for May 19, 2020 hearing). During the telephonic hearing, the parties explained they remained at an impasse and Cherokee Funding requested time to file a response in opposition to Defendant’s Motion before

the Court issued any ruling. Id. Additionally, the Court asked counsel for Cherokee Funding if all documents responsive to Requests 2 and 4 had, in fact, been produced. Id. Counsel for Cherokee Funding stated that he believed they had but would confirm. Id. Cherokee Funding's counsel confirmed that if any documents responsive to Requests 2 and 4 had not been produced, the documents would be produced to Defendant. The Court deferred ruling Defendant's Motion and permitted Cherokee Funding time to file its response.

Cherokee Funding filed a Response in opposition to Defendant's Motion to Compel. Doc. 39. In its Response, Cherokee Funding invokes Georgia's collateral source rule and argues: (1) the documents sought in Requests 1, 2, 4, and 6 are not relevant to show bias, intent, or motive; (2) the requested documents are not relevant to the reasonableness or necessity of Plaintiff's medical expenses; and (3) the requested documents constitute proprietary, confidential business information. Id. Although Cherokee Funding raised a number of other challenges to Defendant's subpoena in its initial objections, including privilege concerns, doc. 36 at 31–45, Cherokee Funding does not raise those objections in Response to Defendant's Motion to Compel. Doc. 39. The Court deems the additional challenges in Cherokee Funding's initial objections abandoned and does not address the challenges further. Instead, the Court addresses the three arguments raised in Cherokee Funding's Response. Defendant has filed two Reply briefs. Docs. 42, 44. This matter has been fully briefed and is now ripe for review.

DISCUSSION

I. Requests 2 and 4

Defendant asks the Court to compel Cherokee Funding to produce documents responsive to Requests 1, 2, 4, and 6. As explained above, Cherokee Funding did not object to producing documents described in Requests 2 and 4, stated it would produce such documents, confirmed it would produce the documents during the parties' conferral, and assured the Court during the

May 19, 2020 hearing that all such documents had already been, or soon would be, produced to Defendant. Based on this, the Court assumes Cherokee Funding has now produced all documents responsive to Requests 2 and 4.⁵ However, to the extent Cherokee Funding has not produced all documents responsive to Requests 2 and 4, the Court **GRANTS** this portion of Defendant's Motion to Compel and **ORDERS** Cherokee Funding to produce documents responsive to Requests 2 and 4 within 7 days of this Order. Given that Cherokee Funding has now been ordered to produce all documents responsive to Requests 2 and 4, the Court turns to Defendant's remaining request for an order compelling Cherokee Funding to produce documents responsive to Requests 1 and 6.⁶

II. Relevance as to Bias, Intent, or Motive (Requests 1 and 6)

Defendant seeks an order compelling Cherokee Funding to produce documents responsive to Requests 1 and 6, arguing these requests seek documents that are potentially relevant to potential bias, intent, or motive on the part of Plaintiff's healthcare providers.

Doc. 36 at 6. Defendant argues Cherokee Funding's services, business model, and incentives to

⁵ There appears to be some disagreement (or, perhaps, confusion) as to whether Cherokee Funding produced documents responsive to Requests 2 and 4 or any documents, for that matter. Defendant states that, as of the date of filing its Motion to Compel, Cherokee Funding "has failed to produce a single document to Defendant." Doc. 36 at 3. However, Cherokee Funding states, "On January 28, 2020, Cherokee Funding produced documents responsive to requests 2 and 4", and provides an email showing Cherokee Funding's counsel produced two pages of documents to Defendant, which are described as "documents responsive to Requests 2, 4, 5, and 8." Doc. 39 at 2; Doc. 39-1 at 2-4 (producing a "Notice of Assignment & Lien" and a "Notice of Sale of Account Receivable"). It is impossible to tell from the January 28, 2020 email whether the two documents are responsive to one, some, or all of the listed requests, and it is also impossible to tell whether Cherokee Funding's counsel believes that these are all documents responsive to the four requests. Regardless, it appears two pages of documents were produced by Cherokee Funding, and those documents may have been responsive to Requests 2 and 4.

⁶ As a practical matter, it appears Request 2 would likely subsume Requests 1 and 4. Indeed, it is difficult to conceive of a document that is responsive to Requests 1 or 4 that would not also be responsive to Request 2. Regardless, Defendant has sought to compel Cherokee Funding to produce documents responsive to all requests, and Cherokee Funding has opposed that request, so the Court addresses the parties' arguments.

medical providers (as described on Cherokee Funding’s website) demonstrate Cherokee Funding’s close relationships with Plaintiff’s treating providers and Plaintiff’s counsel. Id. at 7–8. Defendant further argues “documents evidencing the relationship between treating physicians, medical funders, and plaintiff’s counsel are relevant and admissible, as this information tends to demonstrate bias, intent, and motive,” and argues Eleventh Circuit authority supports this position. Doc. 36 at 6, 7–8 (citing ML Healthcare Servs., LLC v. Publix Super Markets, Inc., 881 F.3d 1294, 1301 (11th Cir. 2018); Rangel v. Anderson, 202 F. Supp. 3d 1361, 1373 (S.D. Ga. 2016); and Houston v. Publix Supermarkets, Inc., No. 1:13-CV-206, 2015 WL 4581541, at *1 (N.D. Ga. July 29, 2015)). In anticipation that Cherokee Funding would argue discovery of these materials is barred by Georgia’s collateral source rule, Defendant notes this Court has found medical lien funding companies are not traditional collateral sources, and these companies’ “involvement” in a plaintiff’s treatment is relevant to the issue of a plaintiff’s treating physicians’ credibility and potential bias. Id. at 6–7 (citing Rangel).

Cherokee Funding disagrees, arguing the documents sought in Requests 1 and 6 are not discoverable. Cherokee Funding argues the requested materials are inadmissible under Georgia’s collateral source rule, and, therefore, are undiscoverable. Doc. 39 at 5–12. Cherokee Funding further argues the requested materials cannot be relevant to bias, intent, or motive, given the nature of Cherokee Funding’s relationship with Plaintiff. Cherokee Funding states it merely purchased medical receivables from Plaintiff’s healthcare providers arising from Plaintiff’s medical procedures, but that it did not pre-approve any of Plaintiff’s medical procedures or refer Plaintiff to any physician.⁷ Id. at 7. Accordingly, Cherokee Funding argues that the cases

⁷ Cherokee Funding insists it only purchases receivables from healthcare providers and does not provide “medical funding.” In doing so, Cherokee Funding places significant emphasis on the term “medical funding” and argues that it did not provide “medical funding” to Plaintiff. However, in describing Cherokee Funding’s relationship with healthcare providers, Defendant relies on portions of Cherokee Funding’s website captioned as “Medical Funding Frequently Asked Questions” and “Doctors”

Defendant cites—which indicate documents related to a medical funding relationship are relevant to bias, intent, or motive—are not applicable here. Id. at 6–7.

The Court notes at the outset that the scope of discovery under Federal Rule of Civil Procedure 26 is broad:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Fed. R. Civ. P. 26(b). Importantly, “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” Id.

To resolve Defendant’s Motion to Compel, the Court first addresses whether Georgia’s collateral source rule bars discovery of the materials requested in Requests 1 and 6. “In Georgia, the collateral source rule ‘bars the defendant from presenting any evidence as to payments of expenses of a tortious injury paid for by a third party and taking any credit toward the defendant’s liability and damages for such payments.’” Rangel v. Anderson, 202 F. Supp. 3d 1361, 1372 (S.D. Ga. 2016) (quoting Kelley v. Purcell, 686 S.E.2d 879, 882 (Ga. Ct. App. 2009)); in turn quoting Hoeflick v. Bradley, S.E.2d 832 (Ga. Ct. App. 2006)). “Accordingly, the rule ‘permits an injured party to recover damages from a defendant notwithstanding that the plaintiff received compensation [for his or her injuries] from other sources.’” Id. (quoting Bennett v.

(which describes Cherokee Funding’s “Medical Lien Purchase Program”). Doc. 36 at 62–69. Cherokee Funding does not address the website excerpts Defendant provided. From the Court’s review, it does not appear that Cherokee Funding makes much of a distinction between “medical funding” and the purchase of medical liens on its website. Regardless, the term “medical funding” is not, in itself, determinative. Moreover, Cherokee Funding is focused on the distinction between pre-approval of medical procedures and referrals to healthcare providers on one hand, and the mere purchase of medical liens on the other. The Court, therefore, focuses on this practical distinction and avoids giving the term “medical funding” any sort of talismanic significance.

Haley, 208 S.E.2d 302, 310 (Ga. Ct. App. 1974) (alteration in original)). “The underlying rationale for this rule is that a tortfeasor is not allowed to benefit by its wrongful conduct or to mitigate its liability by collateral sources provided by others.” Id. (cit. omitted).

Georgia’s collateral source rule does not bar discovery of the requested materials. First, it is not clear at this stage that the collateral source rule would even apply here. At least one court in this Circuit has held a medical lien funding company “is not . . . a traditional collateral source,” as that entity “serves as an investor in the lawsuit and receives no payment from the Plaintiff until after the lawsuit.” Houston v. Publix Supermkts, Inc., No. 1:13-CV-206, 2015 WL 4581541, at *2 (N.D. Ga. July 29, 2015). Thus, it is not clear, at this time, that the collateral source rule is even implicated.⁸

Second, the collateral source rule generally concerns the admissibility of certain evidence, not discoverability. Indeed, the Federal Rules of Civil Procedure expressly state that “[i]nformation within [the] scope of discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b). Therefore, the collateral source rule would not, ordinarily, serve as a shield for discoverability of information. To the extent a party seeks to challenge the admissibility of the requested information at a later time under the collateral source rule, the party may raise that challenge at the appropriate time.

However, the Court understands Cherokee Funding’s argument that if the requested information is categorically inadmissible at trial, Defendant should not be permitted to obtain the

⁸ Cherokee Funding provided the Court with an order issued in the State Court of Cobb County, Georgia, in which the presiding judge denied a motion to compel seeking similar documents from Cherokee Funding, ostensibly based on Georgia’s collateral source rule. Doc. 39-3. Defendant then provided another order, also from the State Court of Cobb County, Georgia, but in a different matter and issued by a different presiding judge, where the court granted a motion to compel seeking similar documents from Cherokee Funding, rejecting Cherokee Funding’s collateral-source-rule argument. Doc. 44-1. Obviously, these orders are not controlling authority. The orders have little persuasive weight either, given the opposite results and the limited analysis contained in both.

information through civil discovery. But the requested information is not categorically inadmissible. Indeed, even if the requested information is covered by the collateral source rule, “there may be another issue in a case to which evidence of collateral benefits is material.” Polito v. Holland, 365 S.E.2d 273, 274 (Ga. 1988). For example, “proof of bias will typically be relevant.” ML Healthcare Servs., LLC v. Publix Super Mkts., Inc., 881 F.3d 1293, 1302 (11th Cir. 2018) (quoting United States v. Abel, 469 U.S. 45, 52 (1984) (“Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.”)). Therefore, even if evidence implicates the collateral source rule, it will not necessarily be rendered irrelevant for impeachment purposes. Id. (citing Barrera v. E. I. Du Pont De Nemours & Co., Inc., 653 F.2d 915, 921 (5th Cir. Unit A 1981), holding that “evidence, properly offered and clearly relevant for impeachment purposes, was improperly excluded simply because, under the collateral source rule, it would have been inadmissible as direct evidence”).⁹

Here, the information requested in Requests 1 and 6 may be relevant to Plaintiff’s treating physicians’ bias, intent, or motive. Several courts have determined that information about the relationship between a plaintiff, a medical funding company, and treating physicians may be relevant to the treating physicians’ bias, intent, or motive. In Houston, the court explained that a medical lien funder is an investor in its client’s lawsuit and does not get payment

⁹ “In federal diversity actions, state law governs substantive issues, but federal law governs procedural issues.” ML Healthcare Servs., LLC v. Publix Super Mkts., Inc., 881 F.3d 1293, 1299 (11th Cir. 2018); see also Heath v. Suzuki Motor Corp., 126 F.3d 1391, 1396 (11th Cir. 1997) (“Under this circuit’s controlling precedent regarding diversity jurisdiction cases, the admissibility of evidence is a procedural issue, and therefore [it] is governed by the Federal Rules of Evidence.”). “However, some courts have held that where evidence implicates a substantive state law, including the collateral source rule, the federal court should apply state law.” Rangel v. Anderson, 202 F. Supp. 3d 1361, 1372 n.6 (S.D. Ga. 2016) (quoting cases). “Georgia law does not create a substantive evidentiary rule that bars the admission of collateral source payments under all circumstances.” ML Healthcare, 881 F.3d at 1300.

from the plaintiff until after resolution of a lawsuit. 2015 WL 4581541, at *2. The Houston court also noted evidence of the relationships between the medical lien funder and the plaintiff and the medical lien funder and the plaintiff's doctors goes to the credibility of any experts and "the reasonable value of medical services." Id.

In its affirmance of the trial court's ruling in Houston, the Eleventh Circuit noted, "[A] plaintiff who recovers insufficient damages to pay back [the medical lien funder] may be unable or unwilling to repay her debt, meaning that, absent a recovery . . . , [the medical lien funder] will be out not only its investment, but also any hoped-for profit." ML Healthcare, 881 F.3d at 1302. "Thus, for its business model to flourish, [a medical lien funder] needs the plaintiffs whom it subsidizes to win their lawsuits." Id. The Eleventh Circuit determined the district court did not abuse its discretion in crediting the bias argument and allowing evidence of the payment arrangement to be admitted to show bias on the part of the testifying doctors. Id. Indeed, the court determined evidence to prove bias "will typically be relevant[,] and the "fact" "this evidence also implicates the collateral source rule does not render it irrelevant for impeachment purposes." Id. (cits. omitted).

And in Rangel, this Court reached a similar conclusion and found the medical funding company in that case "is not a traditional collateral source." 202 F. Supp. 3d at 1373. Moreover, this Court found the medical funding company's "involvement" in the plaintiff's treatment was "highly relevant to the issue of [the] treating physicians' credibility and potential bias." Id. This Court stated the medical lien funder had "a near certain chance of fully and quickly recovering the money it fronted [the p]laintiff[,] if the plaintiff were to receive a "large verdict amount[.]" Id. Of course, on the other hand, if the plaintiff did not recover at trial, the medical funder's "chances of being reimbursed are doubtful at best." Id. This Court further observed the doctors involved in Rangel would have a "financial motivation to testify" favorably for the plaintiff

because, if the plaintiff were awarded a recovery, the lien funder might “be inclined to refer cases” to those doctors in the future. Id. at 1373–74. Additionally, this Court found evidence of any arrangements among the plaintiff, the medical lien funder, and the plaintiff’s doctors “is relevant to the jury’s assessment of the reasonableness of . . . medical treatment and the reasonable value of medical services provided.” Id. at 1374.

The same rationale applies here. If Plaintiff receives a verdict in her favor, then Cherokee Funding will be able to recover all or a portion of the money it used to pay Plaintiff’s treating physicians (and perhaps even more than the amount paid to the physicians). In contrast, if Plaintiff does not recover, Cherokee Funding’s chances of being reimbursed for the monies it has expended are nil. Moreover, Cherokee Funding may refer additional patients to these physicians in the future, if Plaintiff is awarded a recovery—indeed, this is one of Cherokee Funding’s primary selling points on its website. Id. at 1373. Thus, Plaintiff’s physicians might have a financial motivation to testify favorably for Plaintiff, even if that motivation would not bear out immediately.

Cherokee Funding acknowledges these cases but argues its relationships with Plaintiff, Plaintiff’s counsel, and Plaintiff’s physicians are different from the relationships described in those cases. Specifically, Cherokee Funding emphasizes it did not pre-approve any of Plaintiff’s medical procedures or expenses and did not refer Plaintiff to any care provider. Rather, Cherokee Funding contends it merely purchased receivables from Plaintiff’s medical providers. The Court does not find that the distinction renders the requested information undiscoverable.

Cherokee Funding’s website contains the following statements:

Cherokee Funding is a full-service direct funding company . . . Cherokee was founded in 2011 at the urging of several doctors and plaintiffs attorneys who wanted a better, completely reputable, option for their clients. The idea was simple—help plaintiffs by providing them funds to pay for their life needs so they can afford to wait for a fair settlement—and do it with 100% transparency, at the lowest cost and with great customer service.

From day one, our goal has been to enable the best outcome for plaintiffs by providing them with legal funding at the lowest cost possible. Since then, we have expanded our offerings to include financing options for law firms and medical practices.

<https://cherokeefunding.com/about-us/> (last visited Sept. 21, 2020).

Cherokee's Lien Purchase program provides doctors and their healthcare practices with immediate cash infusion through the purchase of its outstanding unpaid medical lien receivables. Cherokee always purchases at the highest prices to provide [t]he most cash flow to the healthcare practices. We are able to pay top dollar by leveraging data points on win/loss rates and reduction requests from thousands and thousands of personal injury cases to precisely underwrite and price the receivables. . . .

Cherokee works with thousands of attorneys who often have clients in need of a provider to get the care they need. We craft a joint marketing effort with our attorney base to increase the referrals to your site.

<https://cherokeefunding.com/doctors/> (last visited Sept. 21, 2020). Based on these statements, which are uncontested, Cherokee Funding maintains ongoing relationships with healthcare providers and plaintiffs' attorneys which extend beyond individual transactions involving particular plaintiffs. Indeed, Cherokee Funding represents that it engages in a "joint marketing effort" with plaintiffs' attorneys to "increase referrals" to healthcare providers. Thus, Cherokee Funding incentivizes healthcare providers to participate in its "Lien Purchase program" with the promise of increased patient referrals from Cherokee Funding's "attorney base." Moreover, Cherokee Funding's assurance that it purchases receivables at the "highest prices" may incentivize participating healthcare providers to provide services to plaintiffs they would not otherwise render, or at higher costs than they would otherwise charge, if they were to face a possibility of non-payment from the plaintiff. In light of the ongoing nature of the relationships and the incentives provided by Cherokee Funding, Cherokee Funding's involvement in in this case may be relevant to the issue of Plaintiff's treating physicians' potential bias, intent, or motive.

This distinction Cherokee Funding highlights may, indeed, diminish the strength of the evidence (at least relative to similar evidence concerning companies that pre-approve procedures and refer patients to healthcare providers), but the distinction does not shield the evidence from discovery altogether. Cherokee Funding has a financial interest in the outcome of this case. Cherokee Funding’s website demonstrates that it maintains an ongoing relationship with healthcare providers and plaintiffs’ attorneys, which it markets as beneficial to all involved. Indeed, the relationships are particularly beneficial to healthcare providers because the providers will receive increased future referrals and joint marketing efforts. The existence of these relationships is undisputed and the relationships demonstrate that evidence pertaining to the relationships may be relevant to show bias, intent, or motive.

Cherokee Funding further argues that, even if its pay arrangement with Plaintiff is relevant and discoverable, Defendant’s Requests “extend[] far beyond only the pay arrangement” described in relevant cases. Doc. 39 at 8. In other words, Cherokee Funding argues that, even if Defendant seeks discoverable information, Defendant’s Requests are overbroad. However, Cherokee Funding fails to explain how Requests 1 or 6 are overbroad with any degree of specificity. It does not identify any category of document that is responsive to Requests 1 or 6 that would go beyond the pay arrangement Cherokee Funding has with Plaintiff. Indeed, Cherokee Funding’s whole argument as to relevance is that it has a very narrow relationship with Plaintiff—in the form of purchasing receivables from Plaintiff’s healthcare providers—and, therefore, likely any document Cherokee Funding has in its possession, custody, or control relates to that limited relationship (meaning, all requested documents may be relevant). Moreover, the scope of discovery under Rule 26 is broad, and Defendant has sufficiently demonstrated that the documents it seeks in Requests 1 and 6 are potentially relevant to issues in this case. To the extent Cherokee Funding (or Plaintiff) seeks to challenge the admissibility of

evidence provided in response to Defendant's subpoena, the challenge can be raised at the appropriate time.

In sum, the information Defendant seeks in Requests 1 and 6 is discoverable, and discovery of that information is not barred by Georgia's collateral source rule. The requested information may be relevant to show Plaintiff's treating physicians' bias, intent, or motive. This is not to say that all information gleaned from these documents may be used at trial or for an improper purpose, such as an attempt to reduce Defendant's potential liability. Houston, 2015 WL 4581541, at *2. For these reasons, the Court **GRANTS** this portion of Defendant's Motion.

II. Relevance as to the Reasonableness and Necessity of Plaintiff's Medical Expenses (Requests 1 and 6)

Defendant states the reasonableness of Plaintiff's medical expenses, especially the cost of her surgeries, is "heavily disputed[,]" and it seeks to uncover documents through Request Number 6 to determine the reasonableness of those expenses. Doc. 36 at 9. Defendant would like to obtain documents identifying the specific amounts Cherokee Funding paid Plaintiff's providers (i.e., the amount Cherokee Funding paid to purchase the provider's accounts receivable) and compare those amounts with the amounts Plaintiff was actually billed and is seeking in this case. Id. Defendant avers it only seeks these documents to determine the reasonableness of Plaintiff's medical bills, not in an effort to get a "set off" at trial. Id.

Cherokee Funding again argues its relationships with Plaintiff, her healthcare providers, and Plaintiff's counsel are unique, in that Cherokee Funding did not pre-approve medical procedures but purchased receivables for procedures already performed. Doc. 39 at 13. Whatever procedures Plaintiff undergoes, Cherokee Funding posits, are entirely at the discretion of her healthcare providers. Id. Cherokee Funding states the reasonableness of any of Plaintiff's medical expenses can be judged by comparing the amounts charged for Plaintiff's procedures

with the amounts her healthcare providers charged other patients undergoing the same procedures.¹⁰ Id. at 14.

Defendant has the better argument. First, the difference between what a healthcare provider charged Plaintiff for a service and what Cherokee Funding paid the provider for the receivable may be relevant to the reasonableness of the original charge. For example, if a provider charged Plaintiff \$25,000 for a procedure, and Cherokee Funding purchased the receivable for that procedure for \$1,500, the purchase price of the receivable may be relevant to the reasonableness of the original charge.¹¹ Of course, the parties may have arguments regarding the relative probative value and potential for prejudice related to such evidence, which may bear on admissibility or weight of the evidence. But, for the purposes of discovery, this information is potentially relevant, and, therefore, discoverable.

Additionally, the nature of Cherokee Funding's relationship with Plaintiff's healthcare providers—as described above—underscores the relevance of the requested information to the issue of reasonableness. Indeed, Cherokee Funding (and, thereby Plaintiff's healthcare providers) may have motivation for Plaintiff's medical bills to be higher. Under its arrangement with a plaintiff, a provider charges the plaintiff one amount, Cherokee Funding pays the provider a lower amount for the receivable, but then Cherokee Funding still collects the higher, original billed amount from the plaintiff if she prevails in the case. <https://cherokeefunding.com/doctors/> (last visited Sept. 21, 2020) (“Cherokee always purchases at the highest prices to provide [t]he

¹⁰ Cherokee Funding ostensibly argues Georgia's collateral source rule bars discovery of these materials, even where the documents might be relevant to the reasonableness of medical expenses. Doc. 39. To the extent Cherokee Funding intends to assert that argument, it fails for the above-stated reasons.

¹¹ To be clear, the amounts provided in this example are purely the Court's creation. There is no information in the record regarding any actual cost of any of Plaintiff's medical procedures or the amount Cherokee Funding paid for any receivable.

most cash flow to the healthcare practices. We are able to pay top dollar by leveraging data points on win/loss rates and reduction requests from thousands and thousands of personal injury cases to precisely underwrite and price the receivables. Cherokee works with thousands of attorneys who often have clients in need of a provider to get the care they need. We craft a joint marketing effort with our attorney base to increase the referrals to your site.”). As explained above, Cherokee Funding attempts to establish ongoing relationships with healthcare providers and plaintiffs’ attorneys, and expressly states that benefits (e.g., increased referrals) will inure to providers who do business with Cherokee Funding. In light of these ongoing relationships, it is plausible, and, perhaps, likely, that healthcare providers and Cherokee Funding would seek to maximize the amount initially billed to a plaintiff for medical services as well as the number of services. In other words, Cherokee Funding and the healthcare providers benefit financially where more procedures are performed and the amount charged for those procedures is higher. There is no indication that this rationale does not apply in this case.

Consequently, the materials requested in Requests 1 and 6 are potentially relevant to the issue of the reasonableness of Plaintiff’s medical expenses, and, therefore, are discoverable. For these reasons, the Court **GRANTS** this portion of Defendant’s Motion.

III. Proprietary, Confidential Business Information Objection (Requests 1 and 6)

Defendant argues Cherokee Funding refused to produce responsive documents under the “blanket objection” that the requested documents contain proprietary or confidential business information and trade secrets, but Cherokee Funding failed to specify which subpoena Requests sought such information or how the documents are proprietary and failed to provide a privilege log. Doc. 36 at 11.

In response, Cherokee Funding identified one subpoena Request—Request 6—it contends seeks confidential, proprietary information. Doc. 39 at 15–16. Specifically, Cherokee

Funding contends agreements between Cherokee Funding and Plaintiff's healthcare providers relating to the "book purchase arrangement" are confidential and proprietary because the details of such an arrangement are "kept confidential and contain sensitive business information." Id. at 16. Cherokee Funding identified no other Requests or potential responsive documents. Alternatively, Cherokee Funding asks the Court to enter a protective order to protect such information, if the Court grants Defendant's Motion to Compel. Id.

In its Reply, Defendant states it "does not necessarily object" to a protective order but reiterates Cherokee Funding has not provided a privilege log and has not demonstrated good cause for a protective order. Doc. 42 at 7.

The Court **GRANTS** this portion of Defendant's Motion and **OVERRULES** Cherokee Funding's objections to the production of the requested documents. Cherokee Funding has not demonstrated with any specificity how its agreements with Plaintiff's healthcare providers constitute confidential and proprietary information so as to preclude discoverability of those agreements. Cherokee Funding cites no authority for its argument and points to no specific facts supporting its position. However, to the extent Cherokee Funding seeks a protective order limiting the use and disclosure of its agreements with Plaintiff's healthcare providers, it may do so, after conferring with the parties in this action, by submitting a request for a protective order demonstrating good cause, which should be accompanied by a proposed protective order for the Court's consideration.¹²

¹² Upon the filing of any potential motion upon the docket and record of this case, the Court directs the parties to provide a Word version of a proposed protective order (not a proposed order on the motion itself) to my courtroom deputy clerk at: kim_mixon@gas.uscourts.gov.

CONCLUSION

Based on the foregoing, the Court **GRANTS in part** and **DENIES in part** Defendant's Motion. Doc. 36. Cherokee Funding shall provide complete responses to Defendant's subpoena within 7 days of this Order. The Court declines to award Defendant's counsel attorney's fees.

SO ORDERED, this 21st day of September, 2020.

A handwritten signature in blue ink, appearing to read "B. Cheesbro", written over a horizontal line.

BENJAMIN W. CHEESBRO
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA