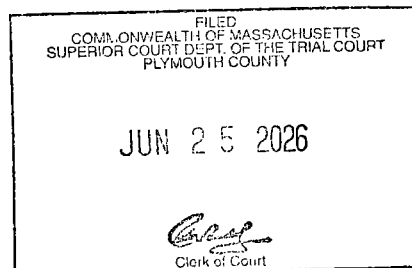


PLYMOUTH, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2483CV00692

PAUL O'KEEFE, as Personal Representative of
the Estate of JOHN JOSEPH O'KEEFE III,
PAUL O'KEEFE, Individually, JOHN O'KEEFE II,
MARGARET O'KEEFE, and MARGARET O'KEEFE
as Grandparent/Guardian of KAYLEY FURBUSH,
Plaintiffs,



v.

C&C HOSPITALITY, LLC d/b/a C.F. McCARTHY'S,
G&S HOSPITALITY, LLC d/b/a C.F. McCARTHY'S,
WATERFALL BAR & GRILL, LTD d/b/a
WATERFALL BAR & GRILL, and KAREN READ,
Defendants.

**REPLY OF NON-PARTY WITNESS LIEUTENANT BRIAN TULLY (RET.)
IN FURTHER SUPPORT OF HIS MOTION TO QUASH SUBPOENA
AND/OR FOR PROTECTIVE ORDER**

INTRODUCTION

Defendant Karen Read's Opposition does not seriously engage with the central ground of Lt. Tully's motion. Lt. Tully is a named defendant in Karen Read's own federal civil rights lawsuit. Judge Casper has scheduled a hearing on the motions to dismiss in that case — including Lt. Tully's — for July 14, 2026, six days after the deposition Read seeks to compel. Read's Opposition devotes a single conclusory paragraph to this issue, asserting without citation to any case that no "rule or practice" permits a non-party to seek a stay in a case to which he is not a party. That is not the argument Lt. Tully made, and it does not answer the argument he did make: that this Court has inherent authority under Rule 26(c) to protect a non-party witness from discovery whose evident purpose is to circumvent the case management framework of a parallel federal proceeding in which

that witness is a named party. Read's Opposition cites no authority for the proposition that such authority does not exist, because none exists to cite.

On the question of timeliness, Lt. Tully does not dispute that his written objections were served after the ten-day period prescribed by Rule 45(c). He addresses that issue directly below. But the remedy for a procedural lapse in objecting to document requests is not to ignore the substance of those objections, and it has no bearing whatsoever on this Court's independent and free-standing authority under Rule 26(c) to stay or limit a deposition — separate from the document requests — where good cause exists. Read's Opposition conflates the two and asks this Court to treat a procedural argument about document requests as if it disposed of the entirely separate question of whether her deposition subpoena should proceed in advance of the federal court's ruling on whether she may maintain claims against Lt. Tully at all.

ARGUMENT

I. THE LATE SERVICE OF WRITTEN OBJECTIONS TO THE DOCUMENT REQUESTS DOES NOT WAIVE LT. TULLY'S INDEPENDENT GROUNDS FOR A PROTECTIVE ORDER UNDER RULE 26(c), AND THIS COURT RETAINS DISCRETION TO CONSIDER THE OBJECTIONS ON THE MERITS.

Lt. Tully acknowledges that his written objections to the document requests in Schedule A were served after the ten-day period specified in Rule 45(c). Counsel takes responsibility for that delay and does not ask this Court to excuse it lightly. But that delay does not require denial of this motion, for two independent reasons.

A. The Deposition Stay Argument Does Not Depend on Rule 45's Document-Objection Deadline.

Read's Opposition treats this motion as though it were solely an objection to document requests under Rule 45(c). It is not. The principal relief Lt. Tully seeks — a stay of his deposition

pending the July 14, 2026 hearing on the motions to dismiss in the Federal Action — is sought under Rule 26(c), which contains no ten-day deadline and which this Court may invoke at any time “for good cause shown” to protect a person from “annoyance, embarrassment, oppression, or undue burden.” Read’s Opposition does not identify any procedural bar to a Rule 26(c) motion brought at this stage, because there is none. Whatever view this Court takes of the document-request objections, it retains full authority to stay the deposition itself pending the federal court’s imminent ruling on whether Read may maintain any claim against Lt. Tully whatsoever.

B. This Court Retains Discretion to Consider the Document Request Objections Notwithstanding the Delay, Particularly Where Read Has Suffered No Prejudice.

Even as to the document requests, the ten-day period in Rule 45(c) is not jurisdictional, and courts retain discretion to consider objections served outside that window where the requesting party has suffered no meaningful prejudice and where the objections raise substantial issues going to the propriety of the requests themselves. Here, Read cannot identify any prejudice flowing from the timing of Lt. Tully’s objections. The deposition was rescheduled by agreement of counsel from June 11 to July 8 — a fact Read’s own Opposition concedes. That rescheduling necessarily extended the practical timeline within which the scope of discovery could be addressed, and Read has known since at least June 18 — three full weeks before the rescheduled deposition date — precisely what objections Lt. Tully raises and why.

Nor are these close or frivolous objections. Schedule A contains fifteen categories of document requests, several of which seek, without any temporal or subject-matter limitation, every communication a retired supervisory officer has had with two entire police departments over a period exceeding four years; his own confidential personnel and disciplinary records, protected from compelled third-party disclosure under G.L. c. 149, § 52C; and records concerning the very federal litigation in which Read is suing Lt. Tully personally. These are not technical or

insubstantial objections. They go to the heart of whether a non-party witness may be compelled to produce his entire professional life's communications touching the most heavily litigated criminal matter in the Commonwealth in recent memory. This Court should not decline to consider these objections on their merits based solely on the timing of their service, particularly where Read identifies no prejudice and the underlying requests are as sweeping as they are.

II. READ'S OPPOSITION DOES NOT MEANINGFULLY ADDRESS THE PARALLEL FEDERAL PROCEEDING, AND ITS TIMING RELATIVE TO THE JULY 14, 2026 HEARING REMAINS UNREBUTTED.

Read's Opposition does not dispute any of the following facts, each of which is independently sufficient to warrant a stay of the deposition: that Lt. Tully is a named defendant in Read's own federal civil rights lawsuit; that Read has asserted seven causes of action against him personally in that lawsuit; that Lt. Tully's Motion to Dismiss the Amended Complaint in that action remains pending; that Judge Casper has scheduled a hearing on that motion for July 14, 2026; and that this subpoena commands Lt. Tully's deposition on July 8, 2026 — six days before that hearing.

Read's only response is the assertion that there is no "rule or practice" allowing a non-party witness to "dictate the discovery schedule" of a case to which he is not a party. This mischaracterizes the relief sought. Lt. Tully does not ask this Court to manage the Federal Action's discovery schedule. He asks this Court to manage discovery in this action — the only action over which this Court has jurisdiction — in a manner that does not allow Read to use this Court's subpoena power as a substitute for the discovery she has not yet been permitted to take against her own federal defendant. That is precisely the type of relief Rule 26(c) and this Court's inherent authority over its own process are designed to provide, regardless of whether Lt. Tully is a party to the Federal Action.

Nor does Read's Opposition address the fact that co-defendant Michael Proctor sought, and was denied, leave to conduct pre-conference third-party discovery in the Federal Action for the express purpose of preparing for his own deposition in this very Plymouth Superior Court proceeding. Read opposed that motion and prevailed. Having obtained a ruling from the federal court that pre-conference third-party discovery touching this litigation is not appropriate, Read cannot now credibly contend that this Court should compel exactly that kind of discovery from Lt. Tully — a named federal defendant — simply because the request comes through a state court subpoena rather than a federal motion.

III. LT. TULLY IS WILLING TO CONFER PURSUANT TO SUPERIOR COURT RULE 9C AND REMAINS OPEN TO A NEGOTIATED RESOLUTION.

Read's Opposition criticizes Lt. Tully's counsel for not having conducted a Rule 9C conference prior to filing this motion. Lt. Tully's counsel did not believe a conference would be productive in light of the imminence of the July 8 deposition date and the need to bring the parallel-proceeding issue to this Court's attention without delay, particularly given that the federal hearing date of July 14 was only recently scheduled. That said, Lt. Tully's counsel remains, and has at all times been, willing to confer in good faith regarding the scope of the document requests and the timing of the deposition, and renews that offer now. To the extent this Court would find it useful, Lt. Tully's counsel is available to confer with Read's counsel under Rule 9C on an expedited basis in advance of any hearing on this motion.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in his original Motion, Lt. Tully respectfully requests that this Court quash the Subpoena in its entirety, or, in the alternative, enter

a protective order staying his deposition until after the July 14, 2026 hearing on the motions to dismiss in the Federal Action and substantially narrowing the document requests as set forth in his original Motion.

Respectfully submitted,

For the Non-Party Witness, Lieutenant Brian Tully (Ret.),
By his attorneys,

Dated: June 24, 2026

/s/ Timothy M. Burke

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2026, this document is being sent via email to the Plymouth Superior Court Clerk's at plymouth.clerksoffice@jud.state.ma.us. Email copies will be sent to counsel for Defendant Karen Read by electronic mail, directed to:

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