IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CRAIG CUNNINGHAM, Plaintiff, v. YAKIN JORDAN, MJ MINISTRIES SPREADING THE GOSPEL, INC., MJ MINISTRIES, LLC, STEVEN SLEDGE, AARON JORDAN, NAOMI COOK, LUTHER MCKINSTY, FRANK JULIANO, JONATHAN FOREMAN, JESSE SPENCER, WARREN TAYLOR, SERVING HANDS COMMUNITY DEVELOPMENT CORPORATION, and JOHN/JANE DOES 1-5, Defendants.	CIVIL ACTION NO. 1:22-cv-1419-WMR

ORDER

Before the Court is Defendants' Emergency Motion to Quash Plaintiff's Third-Party Subpoenas and for Contempt and Sanctions [Doc. 58]. Also before the Court is Defendants' Motion for Reconsideration of the Court's Order of November 30, 2023 [Doc. 56]. For the reasons discussed below, the Emergency Motion to Quash Plaintiff's Third-Party Subpoenas and for Contempt and Sanctions [Doc. 58] is **GRANTED IN PART**, and the Motion for Reconsideration [Doc. 56] is **DENIED**. The Court **STAYS CONSIDERATION** of Defendants' requests to

sanction Plaintiff and to hold him in contempt [Doc. 58 at 7–10] until the Court holds a hearing on these matters.

I. Background

In August 2023, the Court granted Defendants' Motion for Summary Judgment, dismissing all Defendants from the case besides MJ Ministries, LLC. [Doc. 48]. Then, in November 2023, the Court considered Plaintiff's Motion for Extension of Time to Complete Discovery. *See* [Doc. 45]. Plaintiff's Motion requested that the Court order the Clerk to issue Plaintiff ten subpoenas so that he could obtain evidence from third-party phone service providers. [*Id.* at 1–6]. Plaintiff explained that pursuant to Federal Rule of Civil Procedure 45's method for obtaining documents from non-parties, he could not obtain necessary phone records from the third-party providers without subpoenas. [*Id.* at 3]. The Court granted Plaintiff's Motion and directed the Clerk to make available ten subpoenas for Plaintiff to serve on the third-party phone service providers. [Doc. 55]. The Court's Order gave Plaintiff 90 days to issue his subpoenas and, if he developed evidence indicating that Defendants made the phone calls he alleges, to file a motion asking the Court to set aside its entry of summary judgment in Defendants' favor. [*Id.* at 2].

Defendants thereafter filed the pending Motion for Reconsideration, which requests that the Court reconsider its Order granting Plaintiff's requests for subpoenas. [Doc. 56]. Defendants argue that the Court should vacate its Order on

two grounds. First, Defendants claim that newly discovered evidence shows that Plaintiff already issued the subpoenas he requested in another lawsuit in the Eastern District of Texas, and those subpoenas apparently failed to link Defendants to the calls that are at issue in this case. [*Id.* at 5–7]. Second, Defendants argue that the Court made a clear error of fact by relying on Plaintiff's representation that he did not have a reasonable opportunity to conduct discovery in this case because Plaintiff failed to pursue any discovery during this case's eleven-month discovery period. [*Id.* at 7–8].

Most recently, Defendants filed the pending Emergency Motion to Quash Plaintiff's Third-Party Subpoenas and for Contempt and Sanctions. [Doc. 58]. Defendants claim that, rather than serving his subpoenas on third-party phone service providers to access phone records, Plaintiff instead served his subpoenas on financial institutions and sought Defendants' private banking records. [*Id.* at 2–3]. Moreover, because Plaintiff failed to provide Defendants with notice of his intent to serve subpoenas as required by Federal Rule of Civil Procedure 45(a)(4), Defendants did not discover that Plaintiff had served a subpoena on Bank of America until after Bank of America had already produced Defendant MJ Ministries Spreading the Gospel, Inc.'s bank records. [*Id.* at 5–6]. Defendants are concerned that Plaintiff may now have access to information about Defendants' religious congregants and other confidential information. [*Id.* at 6]. Accordingly, Defendants ask the Court to quash

any remaining subpoenas and require Plaintiff to delete the banking information that he obtained from Bank of America and other financial institutions. [*Id.*]. Defendants also ask the Court to sanction Plaintiff and to hold him in contempt for intentionally violating Rule 45(a)(4) and the Court's Order that issued the subpoenas. [*Id.* at 7–10].

II. Analysis

A. Emergency Motion to Quash Plaintiff's Third-Party Subpoenas and for Contempt and Sanctions

Federal Rule of Civil Procedure 45(a)(4) provides that if a "subpoena commands the production of documents, electronically stored information, or tangible things. . . before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party." The purpose of Rule 45's prior notice requirement is "to give an opposing party the opportunity to object to the subpoena prior to the date set forth in the subpoena." *Swanson v. Universal Prot. Serv., LLC*, 2017 WL 10087887, at *4 (N.D. Ga. June 5, 2017) (quoting *Bledsoe v. Remington Arms Co.*, 2010 WL 147052, at *2 (M.D. Ga. Jan. 11, 2010)). The general rule is that a party does not have standing to quash a subpoena served on a non-party unless the party claims a "personal right" or "privilege" with regard to the information subpoenaed. *Cellairis Franchise, Inc. v. Duarte*, 193 F. Supp. 3d 1379, 1381 (N.D. Ga. June 21, 2016).

Here, the Court finds that Defendants have standing to quash the subpoenas at issue because Plaintiff's noncompliance with Rule 45's prior notice requirement has deprived them of a personal right—"the opportunity to object to the subpoena prior to the date set forth in the subpoena." *Swanson*, 2017 WL 10087887, at *4; *see also In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 2021 WL 111743, at *2 (N.D. Fla. Jan. 12, 2021) (finding that plaintiffs had standing when the defendant failed to comply with Rule 45's prior notice requirement). Defendants also have standing because they have a personal right to their banking records. *See Cellairis Franchise, Inc.*, 193 F. Supp. 3d at 1381 ("Courts have found a 'personal right' to subpoenaed materials in limited circumstances, including personal bank records . . . ."). The Court further finds that Plaintiff's noncompliance with Rule 45(a)(4) justifies quashing any remaining subpoenas that have been, or will be, served on companies that are not phone service providers. *See Warren v. Delvista Towers Condo. Ass'n, Inc.*, 2014 WL 1608369, at *1 (S.D. Fla. Apr. 22, 2014) (quoting *Steel Works Rebar Fabricators, LLC v. Alterra Am. Ins. Co.*, 2012 WL 1918704, at *2 (S.D. Fla. May 25, 2012)) ("A subpoena may be quashed due to a party's failure to comply with Rule 45."); *see also Florida Media, Inc. v. World Publ'ns, LLC*, 236 F.R.D. 693, 695 (M.D. Fla. 2006) (quashing subpoenas for failure to comply with Rule 45's prior notice requirement).

Accordingly, the Court **GRANTS IN PART** the Emergency Motion to Quash. [Doc. 58]. The Court **QUASHES** any remaining subpoenas that Plaintiff has already served on companies that are not phone service providers. [Doc. 58 at 7]. To the extent that Plaintiff has any remaining subpoenas that he has not yet served, Plaintiff is hereby **ORDERED** that he may serve those remaining subpoenas only on third-party phone service providers, and he must comply with Federal Rule of Civil Procedure 45(a)(4)'s notice requirement. In other words, Plaintiff may not serve any remaining subpoenas on financial institutions or any other person or business unless such person or business is or has been a phone service provider. The Court further **ORDERS** Plaintiff to immediately and permanently delete and destroy any and all private banking information that he has or will acquire by serving subpoenas on non-parties in this case.

The Court will **STAY CONSIDERATION** of Defendants' requests to sanction Plaintiff and to hold him in contempt [Doc. 58 at 7–10] until the Court holds a hearing on these matters. The Court will schedule the hearing on a date to be announced by the Court. The Court cautions Plaintiff that if he does not attend the scheduled hearing, he risks being sanctioned and held in contempt. Plaintiff is also hereby **ORDERED** to file a response to Defendants' Emergency Motion to Quash Plaintiff's Third-Party Subpoenas and for Contempt and Sanctions [Doc. 58] in *all respects*, addressing every issue raised in Defendants' Motion. In accordance with

Local Rule 7.1(B), Plaintiff's response is due no later than 14 days after he is or was served with Defendants' Emergency Motion to Quash Plaintiff's Third-Party Subpoenas and for Contempt and Sanctions [Doc. 58].

B. Motion for Reconsideration

A motion for reconsideration should only be filed when "absolutely necessary" and "cannot be used to relitigate old matters." N.D. Ga. Local Rule 7.2(E); *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (quotation marks omitted). "Reconsideration is only 'absolutely necessary' where there is (1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1258–59 (N.D. Ga. 2003). The decision to grant a motion for reconsideration is committed to this Court's "sound discretion." *Wilchombe*, 555 F.3d at 957.

In this case, the relief requested in Defendants' Motion for Reconsideration is, for the most part, moot. Plaintiff has already served at least some of the subpoenas that he was issued, and the Court doubts that Plaintiff will have time to serve any more subpoenas if he is to comply with Rule 45(a)(4)'s notice requirement and the 90-day deadline to file a motion to set aside the Court's entry of summary judgment. *See* [Doc. 55 at 2]. Moreover, the Court does not find Defendants' "newly discovered evidence" to warrant the extraordinary relief that they request. *Bryan v. Murphy*, 246

F. Supp. 2d 1256, 1258–59 (N.D. Ga. 2003). The Court does not find Defendants' argument persuasive that Plaintiff's request to serve subpoenas is now moot because Plaintiff has not identified Defendants in this case as the unnamed telemarketers in another case in the Eastern District of Texas. [Doc. 56 at 6–7]. And, contrary to Defendants' suggestion, the Court was mindful that Plaintiff had failed to meaningfully engage in discovery during the eleven-month discovery period in this case. [*Id.* at 7]. However, the Court's predominant concern in issuing its Order was that Plaintiff be given the opportunity to request documents from third parties, which he had not had the opportunity to do when the Court issued its Order. For these reasons, Defendants' Motion for Reconsideration [Doc. 56] is **DENIED**.

III. Conclusion

For the reasons discussed herein, Defendants' Emergency Motion to Quash Plaintiff's Third-Party Subpoenas and for Contempt and Sanctions [Doc. 58] is **GRANTED IN PART**, and the Motion for Reconsideration [Doc. 56] is **DENIED**. The Court **STAYS CONSIDERATION** of Defendants' requests to sanction Plaintiff and to hold him in contempt [Doc. 58 at 7–10] until the Court holds a hearing on these matters. Plaintiff must comply with the specific terms of this Order, which are set forth in detail above.

IT IS SO ORDERED, this 20th day of February, 2024.

William M. Ray II

WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE