

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARGO SIMMONS, Individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	No. 1:24-cv-01602-SEB-MKK
)	
WP LIGHTHOUSE LLC,)	
)	
Defendant.)	

ORDER

This matter is before the Court on Plaintiff's Motion to Compel Defendant to Provide Discovery Responses, Dkt. [28]. Plaintiff moves to compel Defendant to provide documents and respond to interrogatories related to the telemarketing campaign at issue. (Dkt. 28 at 3–9). Defendant asserts that it exercises its Fifth Amendment right to not provide the responsive discovery to Plaintiff. (Dkt. 32 at 1). Plaintiff contends the discovery sought is relevant and not protected by Defendant's Fifth Amendment privilege assertions. (Dkt. 28 at 3–11). Additionally, Plaintiff requests an award of expenses incurred for her motion to compel, arguing that Defendant's position is not substantially justified. (Dkt. 28 at 11; Dkt. 33 at 3–4). For the foregoing reasons, Plaintiff's Motion to Compel is **GRANTED**.

I. BACKGROUND

On September 16, 2024, Plaintiff Margo Simmons filed suit against Defendant WP Lighthouse, LLC, on behalf of herself and the National Do Not Call Class, alleging violations of the Telephone Consumer Protection Act of 1991, 42

U.S.C. § 227 ("TCPA"). (Dkt. 1 at 7–8). More specifically, Plaintiff alleges that Defendant violated the TCPA by repeatedly calling and texting her even though she is on the National Do Not Call Registry and has specifically requested that Defendant stop calling her. (*Id.* at 4). According to Defendant, it contracted with third-parties, including an unidentified "BPO" provider (an acronym which the Court, during the February 14, 2025 discovery conference, was informed stands for Business Process Outsourcing) and RingCentral, to make telemarketing calls on Defendant's behalf. (Dkt. 28-1 at 3-4; *see also* Dkt. 32 at 1).

On February 24, 2025, the parties appeared for a discovery conference to discuss Defendant's responses to Plaintiff's discovery requests. (Dkt. 26). At the conclusion of the conference, the Court ordered Defendant to update its discovery responses by February 26, 2025. (*Id.*). Said updates were to "identify, with specificity, any privileges or objections that Defendant [wa]s asserting for each request or interrogatory." (*Id.*). The Court further ordered Defendant, "consistent with its obligations under Rules 26 and 34 . . . to attempt to obtain responsive documents from Ring Central." (*Id.*). Defendant supplemented its discovery responses on February 26, 2025. (Dkt. 28-1).

On March 11, 2025, the Court reconvened for a second discovery conference. (Dkt. 30). The dispute persisted, however, and the undersigned authorized Plaintiff to file a motion to compel regarding Defendant's responses to Plaintiff's Requests for Production ("RFPs") and Interrogatories. (*Id.*). Plaintiff promptly filed this Motion to Compel Defendant to Provide Discovery Responses. (Dkt. 28). Defendant

responded in opposition on March 26, 2025, (Dkt. 32), and Plaintiff replied on March 29, 2025, (Dkt. 33). Plaintiff's Motion is now ripe.

II. APPLICABLE LAW

Federal Rule of Civil Procedure 26 allows a party to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). "Requests for discovery are relevant if there is a reasonable possibility that the information sought would lead to relevant material." *Est. of Belbachir ex rel Belbachir v. United States*, No. 08 C 50193, 2010 WL 3239444, at *2 (N.D. Ill. Aug. 13, 2010). The party seeking an order to compel production must "establish[] [the] relevancy of the sought information." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 330 F.R.D. 517, 520 (S.D. Ind. 2018). Then, "the burden shifts to the objecting party to show why a particular discovery request is improper." *Id.*; see also *Equal Emp. Opportunity Comm'n v. Heart of CarDon, LLC*, 339 F.R.D. 602, 605 (S.D. Ind. 2021) (citations omitted) ("The party objecting to the discovery then bears the burden of showing the specific reasons why each particular request is improper.").

Courts have broad discretion in resolving such disputes and do so by adopting a liberal interpretation of the discovery rules. *Chicago Reg'l Council of Carpenters Pension Fund v. Celtic Floor Covering, Inc.*, 316 F. Supp. 3d 1044, 1046 (N.D. Ill. 2018). Courts construe and administer the discovery rules so as "to secure the just, speedy, and inexpensive determination" of the case, Fed. R. Civ. P. 1. *Jones v. City*

of *Elkhart*, 737 F.3d 1107, 1115–16 (7th Cir. 2013); *see also Conroy v. Select Med. Corp.*, 307 F. Supp. 3d 896, 901–02 (S.D. Ind. 2018) (collecting cases).

III. DISCUSSION

Here, Plaintiff seeks discovery relating to individuals involved in the telemarketing campaign at issue, including call records, the identity of the BPO provider, the contract between the BPO provider and Defendant, and communications between such individuals and organizations and Defendant. (Dkt. 28-1 at 3–5, 7–9). Specifically, Plaintiff moves the Court to compel Defendant to provide "fulsome responses" to Interrogatory Nos. 2, 3, 7, and 8, and RFPs Nos. 5, 8, 9, and 14. (Dkt. 28 at 2). Those requests read as follows:

Interrogatory No. 2: Identify all employees or vendors involved in making outbound calls as part of the campaign that contacted the Plaintiff. This includes, but is not limited to, (a) third parties that you contract with who make telemarketing calls to generate leads (b) the dialing system platform or provider used to make calls (c) where the phone numbers to make the calls is obtained.

Interrogatory No. 3: Identify and describe the work of each employee or vendor identified in response to Interrogatory No. 2.

Interrogatory No. 7: If you contend that a third party made the calls alleged in the complaint, identify that third party and state all facts in support of the same.

Interrogatory No. 8: Identify all communications you've had with any third party, other than your counsel, regarding this lawsuit.

Request for Production No. 5: Please produce all complaints or do-not-call requests concerning outbound calls made by you or by any vendor of yours for allowing or making allegedly unlawful or unauthorized outbound calls. This request, but is not limited to, any written complaints (litigation or pre-litigation) received by you, any response sent, and any internal correspondence about the same.

Request for Production No. 8: All contracts or documents representing agreements with any third party that dialed the calls to the Plaintiff.

Request for Production No. 9: All communications with any third party that dialed the calls to the Plaintiff.

Request for Production No. 14: Please produce all documents containing any of the following information for each outbound telemarketing call sent by you or the entity that provided you with the Plaintiff's information:

- a) the date and time;
- b) the caller ID;
- c) any recorded message used;
- d) the result;
- e) identifying information for the recipient; and
- f) any other information stored by the call detail records.

(Dkt. 28-1 at 3–5, 7–9). Plaintiff contends that the information sought is relevant.

Communications and contracts with the BPO provider inform the question of vicarious liability, Plaintiff asserts, and call records and prior complaints and do-not-call requests relate to vicarious liability and damages as well as class issues of numerosity and commonality. (Dkt. 28 at 3–9). Defendant does not respond to Plaintiff's relevancy arguments, and only argues that its Fifth Amendment protection from self-incrimination shields it from providing any additional responses. (Dkt. 32 at 1–2).

Here, Plaintiff persuasively establishes the relevance of the sought information.¹ As noted above, Defendant does not present any argument on this

¹ It bears noting that the merits of any party's particular claim or defense are not before the Court at this stage. "[A] party is entitled to seek discovery on its theory of the facts and the law, and is not limited in discovery by the opponent's theory." 8 Wright & Miller, *Fed. Practice & Proc.* § 2011 (3d ed.) (updated Apr. 2023); see also *Exec. Mgmt. Servs., Inc., et al. v. Fifth Third Bank*, No. 1:13-cv-00582, 2014 WL 5529895, at *4–6 (S.D. Ind. Nov. 3, 2014) (rejecting defendant's attempt to unilaterally dictate scope of discovery for plaintiffs' remaining claim).

point. (Dkt. 32). The burden thus shifts to Defendant to show Plaintiff's requests are improper. *Bell*, 330 F.R.D. at 520. Defendant's sole argument is that its Fifth Amendment right not to incriminate itself shields it from any obligation to provide additional responses. In support of this position, Defendant asserts that its BPO provider "is subject to ongoing criminal proceedings" and "has refused to provide information to [Defendant] that is needed to provide responsive information to Plaintiff." (Dkt. 32 at 1). Because of the BPO provider's refusal to respond to Defendant "and the potential incrimination of [Defendant] and its owner because of its business association with the BPO" provider, "[Defendant] respectfully exercised its Fifth Amendment rights to not provide responsive information to Plaintiff." (*Id.*; *see also id.* at 2 (invoking Fifth Amendment privilege to justify redaction of identity of BPO provider in service agreement produced to Plaintiff)).

It is well established that the Fifth Amendment protection from self-incrimination applies to natural individuals and not separate legal entities. *Bellis v. U.S.*, 417 U.S. 85, 89–90 (1974); *U.S. v. White*, 322 U.S. 694, 698 (1944) ("The constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals."); *id.* at 699 ("Since the privilege against self-incrimination is a purely personal one, it cannot be utilized by or on behalf of any organization, such as a corporation."); *Wachovia Secs., LLC v. Neuhauser*, No. 04 C 3082, 2011 WL 1465653, at *3 (N.D. Ill. Apr. 18, 2011) ("Under . . . the 'collective entity' rule, corporations, LLCs and other collective entities have no Fifth Amendment rights and cannot invoke the privilege against self-incrimination. []

Consequently, a custodian of corporate records cannot refuse to produce those documents, even if those documents would incriminate him or her.”) (citations omitted). As such, Defendant WP Lighthouse, LLC, cannot refuse to respond to the discovery requests based on a Fifth Amendment privilege. It has no such privilege to assert. Defendant did not offer any other reason² as to why it should not have to respond to Plaintiff's discovery requests.

In addition, nowhere in its brief did Defendant address its failure to produce records relating to its vendor, RingCentral. Federal Rule of Civil Procedure 34 permits a party to "serve on any other party a request . . . to produce . . . [certain] items in the responding party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Portions of Plaintiff's requests relate to documents that Defendant asserts are not in its actual possession, but rather believed to be in the actual possession of its vendors, *i.e.*, RingCentral or the unidentified BPO provider. (Dkt. 28-1 at 7–8). In the present context, "control" is not limited to physical or actual possession of a document; rather, it extends to the legal right to obtain a document. *Henderson v. Zurn Indus., Inc.*, 131 F.R.D. 560, 567 (S.D. Ind. 1990); *see also In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("[F]ederal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has *actual* possession, custody or control, or has the legal right to obtain the documents on demand.") (emphasis in original); *Gruss v. Zwirn*,

² Defendant asserted that Defendant's sole member, Mr. Jaguines, "is not a sophisticated businessperson" and "is currently out of the country." (Dkt. 32 at 2). Neither of these statements provides any legal justification for Defendant's failure to respond to Plaintiff's discovery requests.

296 F.R.D. 224, 230 (S.D.N.Y. 2013) ("Under [Rule 34], 'control of documents does not require legal ownership or physical possession; all that is required is that the party have the right, authority or practical ability to obtain the documents at issue.'") (citations omitted); *Menendez v. Wal-Mart Stores East L.P.*, No. 1:10-cv-00053, 2010 WL 3038440, at *5 (N.D. Ind. Aug. 4, 2010) (noting party can compel production of discoverable documents only if opposing party "physically possesses such materials or has the right to obtain such documents") (quoting *Henderson*, 131 F.R.D. at 568). Here, Defendant has made no effort to show that it lacks the legal right to obtain the requested documents. Plaintiff, on the other hand, has asserted Defendant has such a right. (Dkt. 28 at 4–9; Dkt. 33 at 2–3). Defendant must do more than throw up its hands and say, "I tried," to justify its non-response. If Defendant has legal access to documents through its contractual relationship with its vendor (or through some other means), said records should be produced. Defendant has not done so. For all of these reasons, the Court **GRANTS** Plaintiff's Motion to Compel.

Plaintiff requests the Court to order Defendant to pay fees and costs pursuant to Rule 37. (Dkt. 28 at 11; Dkt. 33 at 3). Defendant did not directly respond to this request. (*See* Dkt. 32). Rule 37 provides for fee-shifting in the aftermath of a successful motion to compel. Fed. R. Civ. P. 37(a)(5)(A). This rule mandates the Court award the prevailing party its fees and costs in filing a motion to compel unless the losing side, after being given an opportunity to be heard, was substantially justified in taking its position. Fed. R. Civ. P. 37(a)(5).

As discussed above, the Court has granted Plaintiff's Motion in full. In light of the case law discussed above as well as the numerous conferences on this issue, the Court does not find that Defendant's objections to production and the position taken in its response brief were substantially justified. For these reasons, Plaintiff is **ORDERED** to submit a motion **within fourteen (14) days of this Order** detailing its fees and costs incurred in filing her Motion. Defendant shall have until on or before **May 16, 2025**, to show cause why Defendant, Defendant's counsel, or both should not be required to pay the costs and fees incurred by Plaintiff in filing her Motion.

IV. CONCLUSION

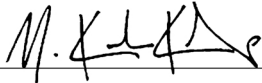
For the reasons stated, Plaintiff's Motion to Compel Defendant to Provide Discovery Responses, Dkt. [28], is **GRANTED**. On or before **May 7, 2025**, Defendant shall amend and supplement its prior written discovery responses for Interrogatory Nos. 2, 3, 7, and 8, and RFPs Nos. 5, 8, 9, and 14, (Dkt. 28-1 at 3–5, 7–9), and provide full and complete responses to said requests. Defendant shall not redact the identity of the BPO provider, although Defendant may seek to have responsive documents governed by the Protective Order, (Dkt. 22), if such protection is warranted.

Plaintiff is **ORDERED** to submit a motion for attorney fees **within fourteen (14) days of this Order**, detailing her fees and costs incurred in bringing the Motion to Compel. Defendant shall have until on or before **May 16**,

2025, to show cause why Defendant, Defendant's counsel, or both should not be required to pay the costs and fees incurred by Plaintiff.

So **ORDERED**.

Date: 04/22/2025



M. Kendra Klump
United States Magistrate Judge
Southern District of Indiana

Distribution:

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