

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Misc. Case No. _____

In re: *JNL Management LLC and Jonathan Lasko v. Drinker Biddle & Reath LLP and Antonio Pozos*, No. 2:18-CV-05221-ES-SCM (D.N.J.)

DRINKER BIDDLE & REATH LLP AND
ANTONIO POZOS,

Movants,

v.

ATLAS LEASING INC., NORMAN
GINSPARG, JACOB BENGIO, MAHAIR
INVESTMENTS, LLC, 931121 NORTH
SHORE LLC, AND OMI FLORIDA LLC

Respondents.

MOVANTS' PETITION TO ENFORCE NON-PARTY SUBPOENAS

Pursuant to Fed. R. Civ. P. 45(c)(2)(A), movants Antonio M. Pozos, Esq. ("Mr. Pozos") and Drinker Biddle & Reath LLP ("DBR") (collectively, "Movants") seek to enforce third party subpoenas for the production of documents relevant to an action pending in the District of New Jersey, *JNL Management LLC and Jonathan Lasko v. Hackensack University Medical Center, Carrier Clinic Inc., Drinker Biddle & Reath LLP, and Antonio M. Pozos*, No. 2:18-CV-05221-ES-SCM (D.N.J.) (the "Underlying Action"). In support thereof, the Movants state as follows:

PRELIMINARY STATEMENT

In the Underlying Action, JNL Management LLC ("JNL") and Jonathan Lasko ("Lasko") (collectively, "Plaintiffs") have asserted claims for defamation and false light against the Movants based upon statements Mr. Pozos allegedly made on a conference call with his own

client regarding the connections between Plaintiffs and now-convicted felon Philip Esformes (“Esformes”).

This petition to enforce (“Petition to Enforce”) pertains to third party subpoenas issued to individuals and entities with established connections to Esformes’ criminal network. Information obtained from these parties is likely to prove the truth of Mr. Pozos’ alleged and actual statements—an absolute defense to Plaintiffs’ claims of defamation and false light. To that end, Movants served Mahair Investments LLC (“Mahair”), Atlas Leasing Inc. (“Atlas”), Norman Ginsparg (“Ginsparg”), Jacob Bengio (“Bengio”), OMI Florida LLC (“OMI”), and 931121 North Shore LLC (“North Shore”) (collectively, “Respondents”) with document subpoenas (the “Subpoenas”).

Movants selected each individual and entity for subpoena based upon a careful review of due diligence reports, the public documents referenced therein, documents produced by Plaintiffs in their initial disclosures, and pleadings and transcripts in the criminal prosecution of Esformes and related civil forfeiture proceeding. Based on these sources, each nonparty is likely to have information regarding the truth of Mr. Pozos’ alleged statements and has been subpoenaed for relevant documents within the scope of Fed. R. Civ. P. 26(b). However, to date, all of the Respondents have failed to comply with the Subpoenas served on them or raise timely objections. Accordingly, the Court should enter an order compelling Respondents to comply with the Subpoenas and immediately produce all requested documents.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Underlying Action Against Mr. Pozos and DBR

In 2016, Plaintiffs and Hackensack University Medical Center (“HUMC”) began negotiating a joint venture to establish a residential substance abuse and rehabilitation center in Mahwah, New Jersey (the “Facility”). See Declaration of Lance J. Kalik (“Kalik Dec.”), Exhibit

A at ¶¶ 1, 11, 14. Carrier later joined the project with HUMC, and in mid-2017, hired DBR as outside counsel. Id. ¶¶ 25–26.

While negotiations were ongoing, HUMC hired a company named Marathon Strategies to investigate Lasko and JNL as part of its due diligence. This investigation resulted in a 201-page report dated January 2018 (the “Marathon Report”), which lays out, in extensive detail, Lasko’s personal and business ties to Esformes. See Kalik Dec., Exhibit B. These connections included overlapping business addresses and ownership interests in entities such as Mahair, businesses co-managed with Esformes associates Norman Ginsparg and Jacob Bengio, and several addiction recovery centers co-owned by Lasko and various Esformes family members. Id.

HUMC shared the Marathon Report with Carrier and DBR. Carrier asked DBR to review the Marathon Report and comment on it. See Kalik Dec., Exhibit C, ¶ 1. Mr. Pozos, a former Trial Attorney with the United States Department of Justice (“DOJ”), was tasked with reviewing the Marathon Report and advising Carrier and HUMC on its contents. Id. As requested by the client, Mr. Pozos examined the Marathon Report and documents referenced therein, as well as other documents that he retrieved from publicly accessible sources, including transcripts, pleadings and corporate records. Id. Mr. Pozos advised Carrier and HUMC of his findings during a call on February 14, 2018. Id.

On February 16, 2018, HUMC advised JNL that HUMC was no longer going to proceed with the joint venture. See Kalik Dec., Exhibit A, ¶ 38. Plaintiffs assert that HUMC informed Plaintiffs’ attorney for the transaction and Lasko that HUMC and Carrier decided not to proceed because Mr. Pozos allegedly told HUMC and Carrier the following¹:

- Mr. Lasko is a “person of interest” in connection with the prosecution of

¹ The facts set forth herein are derived from Plaintiffs’ Complaint. Movants deny that the allegations accurately reflect the advice given by Mr. Pozos to his client.

Philip Esformes and the Department of Justice “is not done with” Mr. Lasko;

- Mr. Esformes maintains a financial interest in JNL;
- Mr. Lasko had, or has, a business relationship with a “Mr. Delgado,” a person involved in the Esformes matter; and
- Mr. Lasko is being investigated for possibly referring patients to facilities in which Mr. Esformes had or has an interest.

Id. ¶ 38. On April 3, 2018, Plaintiffs filed the Underlying Action against the Movants, alleging that the four statements described above (i) defamed Mr. Lasko and (ii) portrayed him in a false light.² Id. ¶ 50. The Movants deny making any defamatory statements, and discovery in the Underlying Action is ongoing.

B. Service of Third Party Subpoenas

On February 26, 2019, Movants served Plaintiffs’ counsel, Kenneth Rubinstein, with a Notice of Subpoenas that included the six subpoenas at issue here. See Kalik Dec., Exhibit D. The following day, February 27, 2019, Mr. Rubinstein submitted correspondence opposing service. See Kalik Dec., Exhibit E. Movants responded to Mr. Rubinstein’s objections that same day via email, disagreeing with his position and confirming Movants’ intent to serve the subpoenas. See Kalik Dec., Exhibit F. Movants subsequently served the six subpoenas subject to this motion in accordance with Fed. R. Civ. P. 45. See Kalik Dec., Exhibits G, H, I, J, K, L. The Subpoenas seek various categories of documents that pertain to Respondents’ overlapping connections with Lasko and Esformes, including financial records, corporate organizational documents, and communications with the United States Department of Justice. Id.

² The Complaint also includes a claim for tortious interference with prospective economic advantage, but this count was recently dismissed by the United States District Court for the District of New Jersey on a motion for judgment on the pleadings pursuant to Rule 12(c). See Underlying Action, Dkt. No. 77.

On March 15, 2019, the parties submitted a “joint dispute letter” regarding the Subpoenas to the Hon. Steven C. Mannion, U.S.M.J. in the Underlying Action. Kalik Dec., Exhibit M. Judge Mannion held a telephonic conference on April 4, 2019. At the conference, Judge Mannion directed the parties to file motions concerning the Subpoenas in the districts of residency.

To date, Respondents Mahair, Atlas, OMI, and North Shore have failed to respond or object to the Subpoenas. On March 25, 2019, Ginsparg and Bengio submitted a joint letter to Movants, raising untimely objections to the subpoenas issued to each of them and simultaneously requesting an extension of the production deadline. See Kalik Dec., Exhibit N. On March 26, 2019, Movants responded to Ginsparg and Bengio, offering to extend the deadline only if both parties intended to fully comply with the subpoenas. See Kalik Dec., Exhibit O. Neither Mr. Ginsparg nor Mr. Bengio responded to that offer. Instead, on April 15, 2019, Ginsparg and Bengio submitted separate letters to Movants via email, objecting to the subpoenas. See Kalik Dec., Exhibits P, Q. None of the Respondents have produced any documents.

LEGAL STANDARD

“The proper scope of discovery is not limited to information admissible at trial, but can also include information ‘reasonably calculated to lead to the discovery of admissible evidence.’” Panola Land Buyers Ass’n v. Shuman, 762 F.2d 1550, 1559 (11th Cir. 1985) (citing Fed R. Civ. P. 26(b)(1)); see also Milinazzo v. State Farm Ins. Co., 247 F.R.D. 691, 695 (S.D. Fla. 2007) (“courts must employ a liberal discovery standard in keeping with the spirit and purpose of the discovery rules”).

In the context of nonparty subpoenas served pursuant to Fed. R. Civ. P. 45, “the Court also has the discretion to determine whether the request was relevant and proportional to the case

under Federal Rule of Civil Procedure 26(b)(1).” United States v. Esformes, 16-23148-CV-KMW, 2018 WL 3617311, at *4 (S.D. Fla. July 20, 2018).

ARGUMENT

I. THE SUBPOENAS SEEK INFORMATION RELEVANT TO THE UNDERLYING ACTION AND SHOULD BE ENFORCED.

In New Jersey, where the Underlying Action is pending, truth is a “complete defense” to defamation and related tort claims. Arista Records, Inc. v. Flea World, Inc., 356 F. Supp. 2d 411, 425 (D.N.J. 2005); see also Ward v. Zelikovsky, 136 N.J. 516, 528 (1994).

Accordingly, in responding to a defamation action, defendants are entitled to broad discovery of information relevant to the truth of the alleged defamatory statements. See e.g., Blasi v. Simonetti, No. 05- 80231-CIV, 2005 WL 8156013, at *2 (S.D. Fla. Nov. 10, 2005); see also Matter of Application of O’Keeffe, 184 F. Supp. 3d 1362, 1371 (S.D. Fla. 2016), aff’d sub nom. In re O’Keeffe, 660 Fed. Appx. 871 (11th Cir. 2016) (internal citation omitted) (A plaintiff should not be permitted to place a statement in issue and then thwart discovery on the ground that it is unduly offensive.) As set forth below, each of the Subpoenas seeks evidence related to the truth of Mr. Pozos’ alleged defamatory statements to Carrier and HUMC.

A. Mahair and Atlas

Esformes’ use of Mahair as a shell company to illegally launder healthcare proceeds was a central feature in Esformes’ recent criminal trial. See Kalik Dec., Exhibits R, at Count 27. Specifically, at trial, forensic accountant Michael Petron testified that Esformes laundered Florida Medicaid funds through one of his assisted living facilities, then into personal bank accounts, and then ultimately into the bank account of Mahair. See Kalik Dec., Exhibit U at 134-142. From Mahair, the funds were used to lease a \$1.6 million Ferrari Aperta from Atlas for Esformes’ personal leisure. Id. Although the proceeds to fund the lease came from Esformes,

Esformes' name was not on Mahair's bank account. Rather, Lasko and Norman Ginsparg, one of the original managers of plaintiff JNL, were the signers on the Mahair account. Id. at 139:11-17.

During the trial, U.S. Trial Attorney Elizabeth Young explained how Mahair and Lasko played a role in concealing fraud proceeds:

Here, Judge, the important point is ... the actual flow of funds could be used to show concealment because it is so circuitous and moving through multiple accounts, we also have the added level here where Mahair Investments –the signature card for Mahair Investments does not bear Philip Esformes' name. It's in Jonathan Lasko, and it's in the name of Norman Ginsparg.

So here we have a company not in Philip Esformes' name purchasing a car for Philip Esformes funded by money from Philip Esformes. And so here it's classic money laundering, concealment money laundering, the use of a shell company to purchase something with fraud proceeds.

Kalik Dec., Exhibit T, at 128:22-25, 129:1-8. A trial jury unanimously convicted Esformes of money laundering using this scheme. Compare Verdict Sheet, Kalik Dec., Exhibit S, at Count 27 with Third Superseding Indictment, Exhibit R, at Count 27. Critically, Lasko personally signed the check at issue in Count 27. See Kalik Dec., Exhibit V.

On May 18, 2017, Mahair intervened in the Esformes civil forfeiture case, seeking to hold Atlas in contempt for its sale of the Ferrari Aperta. See U.S. v. Philip Esformes, Case No. 16-cv-23148-W (S.D. Fla.) (“Esformes Civil Forfeiture Case”), Dkt No. 119. In that motion, Mahair asserted a property interest in the Ferrari, and requested that Atlas be compelled to “promptly place in the registry of the Court funds equivalent to the value of the Aperta.” Id. Lasko personally submitted a sworn declaration in support of Mahair's motion, identifying himself as the “Manager” of the company and recounting his discussions with Atlas regarding

the status of the vehicle. Id. Atlas responded with its own affidavit, claiming Mahair had no valid claim to the Ferrari. Esformes Civil Forfeiture Case, Dkt. Nos. 127, 128.³

The subpoenas to Mahair and Atlas seek documents and information related to the lease of the Ferrari Aperta that was central to Count 27 of the Esformes indictment. The Mahair subpoena further seeks documents related to Mahair's formation, management, finances, and connections to other Lasko or Esformes-owned companies. These documents relate to Mahair's role in the money laundering scheme and, more importantly, the basis for the government's interest in Lasko, who personally signed the check at issue in Count 27 related to Esformes' money laundering. This information is undeniably relevant to the truth of Mr. Pozos' alleged statement that the government was interested in Lasko in connection with the Esformes Criminal Case.

The documents requested from Mahair are also relevant because Mahair shares a registered address with plaintiff JNL and Eden Gardens. Eden Gardens is a facility previously owned and operated by Esformes that the government characterized as the "command center for the extensive criminal enterprise directed by [Esformes]." See U.S. v. Philip Esformes, Case No. 1:16-cv-20549 ("Esformes Criminal Case"), Dkt. No. 312, at 11. Critical testimony in the Esformes criminal trial established that Eden Gardens was used to illegally launder money that was, in turn, used to bribe a collegiate basketball coach, Jerome Allen, to recruit Esformes' son. See Kalik Dec., Exhibit U, at 143-145, 6-27. The fact that JNL shares the same business address as at least two entities used by Esformes to launder money, as well as the overlapping business interests and addresses between Mahair, Eden Gardens, and JNL, suggest that Esformes holds an

³ According to the Esformes Civil Forfeiture Case docket, Mahair did not file a reply to Atlas's opposition and no Order has been posted resolving the motion.

undisclosed interest in JNL, another alleged statement by Mr. Pozos. Movants are entitled to discovery of these documents.

B. Ginsparg and Bengio

Movants are entitled to the documents subpoenaed from Ginsparg and Bengio because Ginsparg and Bengio were involved in the creation of plaintiff JNL, as well as dozens of other entities owned by Lasko and multiple entities owned by Esformes or his family members. See Kalik Dec., Exhibit B, at 24-25, 53-162; Kalik Dec., Exhibit W. The subpoenas served on Ginsparg and Bengio are virtually identical and seek information regarding their finances, communications, lawsuits, business relationships, ties to money laundering proceeds, and communications with law enforcement. Kalik Dec., Exhibits I, J. In light of Ginsparg's and Bengio's close ties with Plaintiffs, Esformes and their shared businesses, these requests are reasonably tailored to result in the production of admissible evidence.

In response to the subpoenas, Ginsparg and Bengio have asserted repetitive generalized objections that the subpoenas seek irrelevant information, are unduly burdensome and/or harassing, and seek confidential information. See Kalik Dec., Exhibits N, P, Q. These objections are without merit.

First, the documents sought by the subpoenas are clearly relevant to the truthfulness of the alleged defamatory statements at issue in the Underlying Action. Both Ginsparg and Bengio were original officers for plaintiff JNL. Ginsparg was a manager of JNL and Bengio was its registered agent. See Kalik Dec., Exhibit W. Ginsparg and Bengio are also managers or agents of companies in which Lasko and Esformes have a known shared interest, including Mahair and TGWC Associates, LLC ("TGWC") d/b/a The Garden Wellness Center. Kalik Dec., Exhibit X. The Esformes trial jury found that Esformes used Mahair to illegally launder Medicaid proceeds,

and the DOJ characterized TGWC as employing the very “same scheme” for which Esformes was indicted. See Kalik Dec., Exhibit Y, at 14:6-15:17.

Moreover, Ginsparg and Bengio were both directly implicated in the Esformes criminal prosecution. In several court documents, the Government identified Ginsparg as a co-conspirator with Esformes, and numerous Government officials testified about a “reverse proffer” with Ginsparg in which the government tried to convince Ginsparg to plead guilty and cooperate. Esformes Criminal Case, Dkt. No. 601, at 8:6-10; 8:19-21; 9:13-14; 17:9-25, 18:1-2; Dkt. No. 625, at 8:22-9-3; 25:2-7; 28:9-16; Dkt. No. 626, at 4:4-7; 6:10-13, 19:17-21, 37:20-38:1; see also Dkt. No. 275, at 10; 749, at 11-16; 20-21; Dkt. No. 776, at 6. DOJ Trial Attorney Elizabeth Young argued at an evidentiary hearing that Bengio “was a bookkeeper for Mr. Esformes”, and that Bengio was “on a number of shell companies that were used as part of this money laundering scheme.” Esformes Criminal Case, Dkt. No. 626, at 180:4-13. Bengio also was interviewed and debriefed by the Government and the information obtained from him was used at Ginsparg’s reverse proffer. Esformes Criminal Case, Dkt. No. 601, at 8:22-9:5; 625, at 176:7-13; 626, at 39:13-25. Nelson Salazar, an admitted Esformes co-conspirator, testified at trial that Ginsparg was deeply involved in Esformes’ fraud, and facilitated that fraud through other co-conspirators including Gabriel and Guillermo Delgado. See Kalik Dec., Exhibit Z. Importantly, Ginsparg and Bengio both worked out of Esformes’ Eden Gardens facility, which shares the exact same corporate address as JNL. Compare Kalik Dec., Exhibit W, with Exhibit AA.

Simply put, not only do Ginsparg and Bengio have overlapping business interests with Lasko and Esformes, but those overlapping interests involve companies with both proven and suspected involvement in criminal activity. Given the plethora of known connections between Ginsparg, Bengio, Esformes and Plaintiffs, the documents requested from Ginsparg and Bengio

will undoubtedly produce information relevant to the truth of the alleged defamatory statements made by Mr. Pozos, including the government's interest in Lasko and his businesses, Esformes' potential financial interest in JNL, and business connections between Lasko and the Delgado Brothers.

Ginsparg and Bengio's objections based on undue burden are similarly without merit. As an initial matter, objections based on undue burden "should be supported by a statement (generally an affidavit) with specific information demonstrating how the request is overly burdensome." Sallah v. Worldwide Clearing LLC, 855 F. Supp. 2d 1364, 1376 (S.D. Fla. 2012) (citations omitted). In their letters, Ginsparg and Bengio do not offer any details explaining how responding to the subpoenas would be unduly burdensome. Kalik Dec., Exhibits N, P, Q. At the same time, the broad scope of documents requested in the subpoenas is warranted under the particular facts of the Underlying Action given that Ginsparg and Bengio were both heavily involved in Esformes' massive and highly intricate network of healthcare facilities. Supra, at pp. 8-10. It is also indisputable that Ginsparg and Bengio were involved with dozens of Lasko companies, including JNL, the plaintiff company at issue in the Underlying Action, and Mahair, which the jury found was used by Esformes to launder Medicare proceeds. Compare Kalik Dec., Exhibit S, with Exhibit R. In short, Ginsparg's and Bengio's direct involvement in companies utilized by Esformes as part of his criminal enterprise, combined with their involvement in Lasko's businesses, more than justifies the scope of the information sought by the subpoenas. Because the Drinker Defendants are fully within their rights to seek this discovery, they are not "harassing" Ginsparg and Bengio by doing so.

Lastly, Ginsparg and Bengio object on the basis that the information sought by the subpoenas is "confidential." However, merely claiming that a document is confidential or

private without an accompanying privilege is generally insufficient to prevent discovery of the document. See Adelman v. Boy Scouts of Am., 276 F.R.D. 681, 692-93 (S.D. Fla. 2011). Notably, Ginsparg and Bengio do not assert a privilege among their generalized objections. To the extent that they believe a privilege may apply, Ginsparg and Bengio have failed to provide a privilege log, identifying the documents that they claim are privileged or the factual and legal basis for the privilege assertion. See Guzman v. Irmadan, Inc., 249 F.R.D. 399, 401 (S.D. Fla. 2008) (“Generalized objections asserting ‘confidentiality,’ attorney-client privilege or work product doctrine [] do not comply with local rules.”). To the extent that they possess non-privileged documents that are relevant but confidential, Ginsparg and Bengio should be compelled to produce these documents, if necessary subject to an appropriate confidentiality agreement or order.

C. North Shore and OMI

Movants are entitled to documents subpoenaed from North Shore and OMI because these entities appear to be shell companies designed to conceal Esformes’ interest in addiction treatment facilities jointly owned with Lasko. The requested documents are directly relevant to Mr. Pozos’ alleged statements that (1) Esformes holds an undisclosed financial interest in plaintiff JNL and (2) the DOJ was interested in Lasko during its investigation of Esformes.

In the Esformes Criminal Case, the DOJ theorized that Esformes used a series of shell companies in the names of family and friends to perpetuate his wide-spanning criminal enterprise. Kalik Dec., Exhibit BB. North Shore and OMI are two entities where Esformes appears to have employed that model. Serenity Recovery Center at North Shore Medical is an addiction treatment center owned by PAJ Health Partners LLC, which is owned by (1) LJNF Partners LLC (controlled by Lasko), (2) 931121 North Shore LLC (controlled by Renegade

Enterprises, which is controlled by Esformes' children) and (3) OMI Florida LLC (controlled by Esformes' uncle). See Kalik Dec., Exhibit B at 16; see also Esformes Civil Forfeiture Case, Dkt. No. 142, ¶ 1. Serenity Recovery Center at Encino Hospital Medical Center is another addiction recovery center, owned by LJNE Partners (controlled by Lasko), 931121 North Shore LLC (controlled by Esformes' children) and OMI Florida LLC (controlled by Esformes' uncle). Id. This web of ownership interests between Lasko and Esformes' family members suggests Esformes' use of family members to conceal his business interests, just as the Government posited and proved at trial in the Esformes Criminal Case.

Further, upon information and belief, JNL was the management entity for each of Lasko's Serenity treatment centers in Florida and California. According to an insurance fraud complaint filed by the California Department of Insurance against Plaintiffs, Esformes was directly involved in the management of the Encino treatment center (owned by SRCC). Kalik Dec., Exhibit CC, ¶¶ 29, 170, 496-497, 512-513. The Complaint alleges that Lasko attempted to conceal Esformes' role in the operation of the facility due to Esformes' notoriously unethical healthcare practices. Id. ¶ 497. Further, Plaintiffs have admitted in response to Plaintiffs' interrogatories in the Underlying Action that, "[i]n 2016, JNL paid Esformes a fee for services rendered in connection with the facilities managed by JNL." Kalik Dec., Exhibit DD. This information is significant because it provides a direct link between the subpoenaed treatment entities, JNL, and Esformes. The Subpoenas seek additional information concerning the deeply intertwined nature of Lasko and Esformes' addiction treatment businesses across the country, which is highly relevant to the truth of the alleged statements that Esformes has a "financial interest" in JNL, that Lasko had a business relationship with the Delgado Brothers, and that the government was investigating potential patient referrals between the various treatment centers.

II. RESPONDENTS HAVE WAIVED OBJECTION TO THE SUBPOENAS

The Respondents have failed to make timely objections to the Subpoenas, and therefore, have waived their right to object to them. Pursuant to Fed. R. Civ. P. 45(d)(2)(B), “[a] person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested.” Importantly, that objection “must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served.” *Id.* (emphasis added).

Here, Respondents have failed to make timely objections to their respective subpoenas as required by the Rule and have thus waived their rights to do so now. See Ctr. for Individual Rights v. Chevaldina, 16-20905-CIV, 2017 WL 5905191, at *4 (S.D. Fla. Nov. 29, 2017); Noel-Wagstaffe v. Metro. Cas. Ins. Co., 17-CIV-61039, 2017 WL 6047679, at *1 (S.D. Fla. Dec. 7, 2017); see also McCabe v. Ernst & Young, LLP, 221 F.R.D. 423, 426 (D.N.J. 2004) (noting that failure to timely file an objection within 14 days will result in waiver of right to object to enforcement). The subpoenas to Respondents Mahair, Ginsparg, Bengio and North Shore were served on February 27, 2019. Subpoenas to Atlas Leasing and OMI Florida was served on February 28, 2019 and March 4, 2019, respectively. All of the subpoenas were returnable on March 27, 2019.

Respondents Mahair, North Shore, OMI Florida and Atlas Leasing have, despite the passage of time, neither objected to the subpoenas nor produced documents. They have therefore waived any objections, and should be compelled to comply with their respective subpoenas. On March 25, 2019 Ginsparg and Bengio submitted a joint letter perfunctorily objecting to the subpoenas while simultaneously requesting an extension of the production deadline. See Kalik

Dec., Exhibit N. To the extent this letter could be construed as a formal objection to the subpoenas, it was too late, as Ginsparg and Bengio emailed their letter 26 days after service and a mere 2 days prior to the production deadline.

The Movants responded on March 26, 2019, and offered to extend the production deadline to April 14, 2019 if Ginsparg and Bengio intended to comply with the subpoena. See Kalik Dec., Exhibit O. Ginsparg and Bengio never accepted that offer. Instead, on April 15, 2019, one day after the proposed extension date, Ginsparg and Bengio submitted nearly identical letters again objecting to the subpoenas they received. See Kalik Dec., Exhibits P, Q. Ginsparg and Bengio provided those letters 47 days after the subpoenas were served, 32 days after the 14-day objection deadline, and 20 days after the production deadline. Accordingly, Ginsparg and Bengio failed to make timely objections and should be compelled to comply.

III. PLAINTIFFS LACK STANDING TO OBJECT TO THE SUBPOENAS

Finally, in anticipation of opposition by JNL and Lasko, we note that Plaintiffs lack standing to object to the Subpoenas.⁴ In the Eleventh Circuit, a party does not have standing to object to a subpoena issued to a nonparty unless the party can show a “personal right or privilege” to the subpoenaed information. See, e.g., Westernbank Puerto Rico v. Kachkar, No. 07-23272-MC, 2008 WL 564614, at *1 (S.D. Fla. Feb. 28, 2008); Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc., 231 F.R.D. 426, 429 (M.D. Fla. 2005). Here, Plaintiffs have not

⁴On February 26, 2019, prior to serving the Subpoenas, the Drinker Defendants sent a Notice of Subpoena along with a copy of each Subpoena to Plaintiffs’ counsel pursuant to Rule 45(a)(4). See Exhibit D. After receiving notice of Plaintiffs’ objection to the subpoenas, counsel for the Drinker Defendants attempted to meet and confer. When Plaintiffs’ counsel did not seek to further confer, counsel for the Drinker Defendants notified Plaintiffs’ counsel that the Subpoenas had been served.

asserted that they have a personal privilege in the documents sought by the Subpoenas, which are each directed at nonparties. Thus, Lasko and JNL lack standing to object to the Subpoenas.

CONCLUSION

For the foregoing reasons, Movants respectfully request that this Court grant the Petition to Enforce and compel Respondents to comply with the respective subpoenas.

Respectfully submitted,

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