IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF TENNESSEE

IN RE: OUT-OF-DISTRICT SUBPOENA	)	
	)	
BENNETT WILLS	)	Misc. No.:_____
	)	
Petitioner,	)	
	)	
v.	)	
	)	
PAUL ALAN LEVY, individually and on behalf of PUBLIC CITIZEN LITIGATION GROUP	)	
	)	
Respondent.	)	
	)	
Original Action: Case: 1:16-cv-00144-D-LSA United States District Court for the District of Rhode Island	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH OUT-OF-STATE SUBPOEA, REQUEST FOR PROTECTIVE ORDER, AND REQUEST FOR SANCTIONS

COMES NOW, Bennett Wills, Petitioner, by and through undersigned counsel, and respectfully submits this Memorandum of Law in Support of his Motion to Quash Out-of-State Subpoena,[1] pursuant to Fed. R. Civ. P. 45 and Local Rules 7.01 and 37.01(b)(3).

ISSUE FOR THE COURT

Is the Respondent authorized by law to issue a subpoena in *Smith v. Garcia*, 1:16-cv-00144-D-LSA (D. Rhode Island) (hereinafter the "original action"), after the District

[1] The subpoena at issue is attached to this instant Motion to Quash Out-of-District Subpoena as **Exhibit A**.

Court has ruled that it does not have subject-matter jurisdiction to adjudicate the matter? Petitioner submits that it does not have such authority. Once a court determines that it does not have subject-matter jurisdiction, it no longer has the authority to issue process; so any subpoena issued by the Respondent is void and must be quashed.

INTRODUCTION AND BACKGROUND

I. The Parties.

Paul Alan Levy, through the Public Citizen Litigation Group (hereinafter the "Respondent" or "Mr. Levy"), is an attorney licensed in Washington, D.C. Mr. Levy represents the Myvesta Foundation. The Myvesta Foundation apparently owns and operates a website called getoutofdebt.org, which is a third-party defendant-intervenor in the original action.

Bennett Wills is an attorney licensed in Maryland and Tennessee. Mr. Wills currently resides in Nashville, Tennessee, and works for a law firm located in Nashville, Tennessee. Previously, Mr. Wills resided in Baltimore, Maryland, and owned a law firm located Baltimore City. Mr. Wills moved to Nashville from Baltimore in July of 2016. Mr. Wills is also admitted before this Court, the United States District Court for the Middle District of Tennessee, the United States District Court for the District of Maryland, and the Fourth Circuit Court of Appeals. (See Mr. Wills' Affidavit, Exhibit C).

II. The Original Action – Rhode Island – Procedural Background.[2]

The subpoena that is the subject matter of Petitioner's Motion to Quash was issued

[2] All of the information provided herein regarding the Rhode Island case is based solely on the review of the public record on PACER. Mr. Wills has no personal knowledge of the events of the Rhode Island case other than what is contained in the public record.

in *Bradley Smith v. Deborah Garcia*, Case Number 1:16-cv-00144-S-LDA,[3] United States District Court for the District of Rhode Island, which is the original action. The original action was filed on March 23, 2016. (See Docket #1). On April 22, 2016, the United States District Court for Rhode Island entered a judgment by consent. (See Docket #3). On September 8, 2016, Mr. Levy moved to intervene in the matter. That motion was granted on November 18, 2016. (See Docket #4, #10). Mr. Levy's client, the Myvesta Foundation, was added as a "defendant-intervenor."

On November 22, 2016, Mr. Levy moved to vacate and dismiss the consent judgment. (See Docket #13). **On January 31, 2017, the court granted the motion to vacate and the motion to dismiss based on a lack of subject-matter jurisdiction.** (See Docket #14 / Exhibit B attached hereto).

As part of the January 31, 2017, order granting the motion to dismiss (Docket #14), the court granted Mr. Levy thirty days to present evidence to the court identifying whom, if anyone, should be responsible for paying attorney's fees, pursuant to Fed. R. Civ. P. 54.

On February 10, 2017, Mr. Levy issued a subpoena to Mr. Wills – which is the subject of this instant dispute. The compliance date of that subpoena is February 24, 2017, at 10:00 am.

III. The Original Action – Rhode Island – Factual Background and Relationship of the Parties to the Case.

In the original action, an individual named Bradley Smith is the plaintiff and

[3] Petitioner requests that this Court take judicial notice of the full record in *Bradley Smith v. Deborah Garcia*, Case Number 1:16-cv-00144-S-LDA (D. Rhode Island, 2016). *See Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736 (6th Cir. 1980) (federal courts may take judicial notice of proceedings in other courts of record).

the named defendant is Deborah Garcia. Both the Plaintiff and the Defendant were *pro se*. In the complaint, the Plaintiff alleged that the Defendant made various defamatory statements on a website called getoutofdebt.org, which is the website that is apparently owed by the Myvesta Foundation, which Mr. Levy represents. Those defamatory statements were allegedly directed towards the Plaintiff and his business, Rescue One Financial, located in California.

A consent order was entered and was signed by the Defendant, which admitted that she was the one responsible for the defamatory content.

The Myvesta Foundation intervened and argued that it should have ultimately been notified and informed of the lawsuit because it was somehow involved in the matter. Mr. Levy intervened and was successful in vacating the consent judgment and getting the case dismissed.

The complaint in the Rhode Island case is replete with errors, omissions, and legal inconsistencies. No lawyer that passed first year Civil Procedure in law school would file a complaint citing diversity jurisdiction for only $15,000. As such, it appears that the complaint was filed by an individual with no legal training. (See Exhibit D). Moreover, the filing fee was paid by a company called Countrywide Process, LLC, from Valley Village, California.

Mr. Wills has no involvement or relationship with the original action beyond being the recipient of the subject subpoena. Mr. Wills is not a party to the original action, nor did he assist or represent a party to that action. (See Mr. Wills' Affidavit, Exhibit C). There is absolutely no evidence that Mr. Wills had anything to do with the original action, and he denies doing so.

ARGUMENT

I. Legal Standard: Place of Compliance and Jurisdiction.

Mr. Levy issued the subpoena that is the subject of this instant Motion to Quash on February 10, 2017. The issuing court is the United States District Court for the District of Rhode Island. The place of compliance has been designated as the law firm of Bradley Arant Boult Cummings, at 1600 Division St., Suite 1700, Nashville, Tennessee. Pursuant to Fed. R. Civ. P. 45(d)(3), a motion challenging an out-of-district subpoena must be brought in the district where compliance is required. Since compliance is required in the Middle District of Tennessee, Petitioner's Motion is properly before this Court.

As an initial matter, and for the reasons stated herein, the subpoena is void as a matter law, not subject to compliance, and must be quashed in its entirety. Additionally, pursuant to Fed. R. Civ. P. 45(d)(3)(A), this Court *must* quash a subpoena that requires disclosure of privileged or protected matters and which creates an undue burden. (emphasis added). And for the reasons that follow, this Court must also quash the subpoena as the information is not relevant, has no relationship to the original action, and is not reasonably calculated to lead to relevant information.

II. The Subpoena Must Be Quashed in Its Entirety Because the Rhode Island District Court Lacks Subject-Matter Jurisdiction Rendering the Subpoena Void.

Mr. Levy filed a motion to dismiss in the original action case in November 2016. On January 31, 2017, the Rhode Island court held that, "without any evidence to establish diversity jurisdiction, *dismissal for lack of subject matter jurisdiction is appropriate. Myvesta's Motion to Dismiss is GRANTED*." (Order at 4) (emphasis added). The Rhode Island court then stated that Mr. Levy was to "submit initial filings on the issue of

attorney's fees and sanctions within thirty (30) days. No final judgment shall enter until all matters are disposed of." (Order at 6).

In *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72 (1988), the United States Supreme Court stated:

> We hold that a nonparty witness can challenge the court's lack of subject-matter jurisdiction in defense of a civil contempt citation, notwithstanding the absence of a final judgment in the underlying action. *Federal Rule of Civil Procedure 45 grants a district court the power to issue subpoenas as to witnesses and documents, but the subpoena power of a court cannot be more extensive than its jurisdiction. It follows that if a district court does not have subject-matter jurisdiction over the underlying action, and the process was not issued in aid of determining that jurisdiction, then the process is void* and an order of civil contempt based on refusal to honor it must be reversed. (emphasis added).

The *U.S. Catholic Conference* case held that a nonparty witness could challenge a district court's lack of subject matter jurisdiction in defense of a civil contempt citation. 497 U.S. at 76. In doing so, the Supreme Court expressly stated that the subpoena power of a court cannot be more extensive than the court's jurisdiction. *Id*. And if the district court does not have subject-matter jurisdiction, it has no authority to issue a subpoena. *Id*.

While the instant case is not a challenge to contempt, it is a challenge to the authority of the jurisdiction of the Rhode Island District Court and its ability to issue process after a finding that it lacks subject-matter jurisdiction. Because the subpoena issued to Mr. Wills was not issued to aid the determination of jurisdiction in the original action, and because Mr. Wills is a non-party, the subpoena issued by Mr. Levy is void and cannot be enforced. That is particularly true where, as here, the Rhode Island District Court specifically held that it lacked subject-matter jurisdiction *prior* to Mr. Levy's issuance of the subpoena to Mr. Wills.

Additionally, as the *U.S. Catholic Conference* stated,

> The challenge in this case goes to the subject-matter jurisdiction of the court and hence its power to issue the order. The distinction between subject-matter jurisdiction and waivable defenses is not a mere nicety of legal metaphysics. It rests instead on the central principle of a free society that courts have finite bounds of authority, some of constitutional origin, which exist to protect citizens from the very wrong asserted here, the excessive use of judicial power. The courts, no less than the political branches of the government, must respect the limits of their authority.
>
> *Id*.

The same is true here. The United States Supreme Court has expressly stated that the process is void if the issuing court lacked subject-matter jurisdiction. So the subpoena is certainly void as it relates to Mr. Wills.

The Respondent is likely to argue in this matter that the court is seeking to impose sanctions pursuant to Fed. R. Civ. P. 11 and that the court maintains jurisdiction over the matter to impose such sanctions although it has already made the determination that it lacks subject-matter jurisdiction. The case of *Willy v. Coastal Corp.*, 503 U.S. 131 (1992) is instructive on that issue. In *Willy*, the United States Supreme Court held: "[a] court may impose Rule 11 sanctions in a case which the district court is *later* determined to be without subject-matter jurisdiction." 503 U.S. 131. (emphasis added). "A final determination of lack of subject-matter jurisdiction of a case in a federal court, of course, precludes further adjudication of it. But such a determination does not automatically wipe out all proceedings had in the district court at a time when the district court operated under the misapprehension that it had jurisdiction" *Willy*, 503 U.S. at 137.

In the instant matter, the Rhode Island District Court that issued the subpoena has already made a finding that it does not have subject-matter jurisdiction. Therefore, pursuant to *Willy*, it also lacks the ability and authority to enter sanctions because it no longer has the authority to do anything. This is not a situation where the sanctions were entered or

awarded prior to the court's determination that it lacked subject matter jurisdiction. Even if the Rhode Island District Court could enter sanctions in the original action, it is still without authority to issue a subpoena due to its admitted lack of subject-matter jurisdiction.

Moreover, the District Court ordered that Mr. Levy "submit argument, on what, if any, attorney's fees and sanctions are appropriate [in this case] in accordance with Rule 54 of the Federal Rules of Civil Procedure." (Order at 5). Nothing contained in Rule 54 authorizes a court, especially one lacking subject-matter jurisdiction, to issue process or discovery of any type.

Based on the Rhode Island District Court's admitted lack of subject-matter jurisdiction, the subpoena at issue is void, and this Court must can grant Petitioner's Motion to Quash on that basis alone. But in the event that this Court finds that there is authority to issue the subpoena in the matter, it still must be quashed for the reasons discussed below.

III. The Subpoena Must Be Quashed Because It Seeks Privileged, Protected and Irrelevant Information, is Vague, Overbroad, and Is Frivolous.

Mr. Wills, incorporates by reference Exhibit A, which is the subpoena containing the list of documents and other tangible items requested by Mr. Levy, which Mr. Wills seeks to quash. The subpoena was issued by the Rhode Island District Court but, the documents and materials requested in the subpoena request information pertaining to an unrelated case in Baltimore, Maryland. Those requests also seek material that is clearly privileged in nature.

A. The Rules of Discovery, Including Relevance, Apply to Rule 45 Subpoenas.

District courts in the Sixth Circuit, and other circuits, have held that relevance is a factor to be considered in determining the scope of discovery under a subpoena. "[Fed. R. Civ. P.] Rule 45 does not list irrelevance or overbreadth as reasons for quashing a

subpoena. Courts, however, have held that the scope of discovery under a subpoena is the same as the scope of discovery under Rule 26." *Hendricks v. Total Quality Logistics, LLC*, 275 F.R.D. 251 (S.D. Ohio 2011) (citing *Barrington v. Mortgage IT, Inc.*, 2007 WL 4370647 (S.D. Florida 2007)).[4]

> Rule 26(b)(1) provides in relevant part that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *See also Transcor, Inc. v. Furney Charters, Inc.*, 212 F.R.D. 588, 591 (D.Kan.2003) ("It is well settled, however, that the scope of discovery under a subpoena is the same as the scope of discovery under Rule 26(b).... Thus, the court must examine whether a request contained in a subpoena duces tecum is overly broad or seeking irrelevant information under the same standards set forth in Rule 26(b) and as applied to Rule 34 requests for production.")
>
> *Hendricks*, 275 F.R.D. 251, 253 (S.D. Ohio 2011).

In applying the above standard, this Court must determine whether the requests in the subpoena are relevant to a party's claim or defense. The Rhode Island District Court has already held that it lacks subject matter jurisdiction. As such, there are no more claims or defenses. The requested information, if available, would not be admissible at a trial, and none of the requested information would be reasonably calculated to lead to the discovery of admissible evidence unless it relates to who filed the original Complaint in the original action. It logically follows that all of the requested information that is unrelated to who commenced the original action is irrelevant and not likely to lead to relevant discovery such that the subpoena should be quashed in its entirety.

B. The Maryland Rules of Professional Conduct Govern Petitioner's Conduct in Response to the Subpoena.

[4] Pursuant to Local Rule 7.01(e), Petitioner has attached the entire text of opinions that are not Tennessee cases or are unreported opinions as Exhibit E.

The requests in the subpoena all relate to a case that was filed in Baltimore City, Maryland. Mr. Wills is licensed to practice law in Maryland and Tennessee. As such, the Maryland Rules of Professional Conduct are applicable to this instant Motion insofar as the requests relate to a closed case in Maryland. The Maryland Rules of Professional Conduct are largely adopted from the American Bar Association and codified at Maryland Rules, Title 19, Chapter 100, *et seq*. The Maryland rules are stylized and cited as "Md. R. 19-XXX."[5]

Pursuant to Md. R. 19-301.6 (ABA 1.6. Confidentiality), an attorney shall not reveal representation of a client unless the client gives informed consent. That rule is otherwise known as the attorney-client privilege. Additionally, Maryland has codified the attorney-client privilege stating, "A person may not be compelled to testify in violation of the attorney-client privilege." MARYLAND COURTS AND JUDICIAL PROCEEDINGS ARTICLE, § 9-108.

Maryland has adopted Wigmore's definition of the attorney-client privilege, as the statute does not define the privilege:

> (1) Where legal advice of [any] kind is sought (2) from a professional legal advisor in his capacity as such (3) the communications relating to that purpose (4) made in confidence (5) by the client (6) are at his insistence permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection [may] be waived.
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> *Harrison v State*, 276 Md. 122, 135, 345 A. 2d 830 (1975).

The attorney-work product privilege in Maryland is very similar to Fed. R. Civ. P. 26(b). and is codified in Maryland as Md. R. 2-402(c), which is applicable to actions filed in the Circuit Courts of Maryland. In Maryland, as in the federal system, there are two

[5] For ease of reference, Mr. Wills will cite to the general ABA/model rule of professional conduct number along side each citation to a Maryland Rule of Professional Conduct rule.

types of work-product privilege: (1) "Mental impressions, conclusions, opinions, or legal theories of an attorney" which are subject to an unqualified privilege against disclosure and (2) "Documents or other tangible things prepared in anticipation of litigation" which are subject to a qualified privilege that protects them disclosure unless a party shows "substantial need" and "undue hardship." Md. R. 2-402(c). *See also E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 718 A.2d 1129 (1998).

C. Subpoena Requests 2, 3, 5, and 6, are protected by attorney-client privilege.

Requests 2 and 3 refer to Mr. Wills' former clients and request specific communications from each. Communications between an attorney and his clients which is privileged and not subject to disclosure.

Likewise, Requests 5 and 6 request the retainer agreement(s) between Mr. Wills and his former clients. In Maryland, unless the fee in a case is based on a contingency, no formal written retainer is required. Md. R. 19-301.5 (ABA 1.5. Fees). Rather, Md. R. 19-301.5(b) states,

> The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the attorney will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

The key word in the statute is "communicated." Mr. Wills communicated with his clients regarding the representation. Thus, any "communication" regarding his representation of them is also protected by the attorney-client privilege, which includes any representation agreements. Requests 2, 3, 5, and 6, are thus protected by attorney client privilege and are not subject to disclosure.

D. Subpoena Requests 1, 4, 7, 8, and 10, are protected by the attorney word product doctrine and not subject to disclosure.

Subpoena Request 1 seeks, "all communications with or pertaining to Bryan Levin, and notes or other records of such communications." Bryan Levin was the defendant in the Maryland case. Notes and records and any communication between Mr. Levin fall squarely within the Maryland work product doctrine. Md. R. 2-402(c). Moreover, "all communications" is overly broad and not limited to the Rhode Island action, or the unrelated Maryland action.

Request 4 seeks information related to getoutofdebt.org. Any information received by Mr. Wills regarding that entity or website during the Maryland action would likewise be protected by the attorney work product doctrine. The development of any case, the investigations and impressions thereto, belong solely to the attorney. Therefore, Request 4 seeks privileged information that is not subject to disclosure.

Request 7 is likewise vague, overbroad, and not subject to disclosure. The request asks Mr. Wills to name anyone and everyone who may have been involved in the Maryland case. Not only does the request not seek information related to the Rhode Island case, it is too vague to respond to.

Request 8 is also overbroad. Not only does it seek information that could potentially be protected by the attorney-client privilege and work product doctrine, which Mr. Wills asserts, but also it seeks information from Mr. Wills that is part of the public record.

E. Subpoena Request 9 is not subject to disclosure because it is protected by the Maryland Rules regarding confidentiality.

Request 9 is not subject to disclosure pursuant to Md. R. 19-301.6. Invoices can

contain confidential and privileged information. And Md. R. 19-301.6 imposes and duty upon Mr. Wills to maintain the confidentiality of his clients' files. Thus, any communication, including a billing statement and payment, if any, thereto, is protected by privileged and confidential and is not subject to disclosure. Moreover, payment received, if any, in a case in Baltimore City, Maryland, is irrelevant to the Rhode Island matter.

F. Subpoena Requests 10 and 11 are not subject to disclosure because those requests are vague, overbroad, and are not related to the Rhode Island case.

There is no mention of a Richart Ruddie in the Rhode Island case, nor the Maryland City case. There is no mention of Google in the Rhode Island case, nor the Maryland case. Neither Ruddie nor Google are parties to either case.

Not only are the requests overbroad, but there is no way for Mr. Wills to know what enterprises in which Mr. Ruddie may be involved. Mr. Levy also does not specify a time frame for the communications, subject matter, or any other item of specificity. In short, this Request does not make sense, is overbroad, fails to state a geographic or temporal limitation, and is not related to the Rhode Island case. Thus, it is not subject to disclosure.

IV. The Subpoena Must Be Quashed in Its Entirety Because It Seeks Information That Is Not Relevant to the Rhode Island Court's Order Regardless of Any Other Protection and Creates an Undue Burden.

In addition to the arguments set forth above, the subpoena must be quashed in its Entirety, because not a single item requested is even remotely related to the Rhode Island case. Fed. R. Civ. P. 45(c) of the Federal Rules of Civil Procedure permits a party to a lawsuit to seek discovery through a subpoena to a nonparty. Fed. R. Civ. P. 45 provides that a court shall quash (or modify) a subpoena if it "subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). Whether a subpoena subjects a witness to undue burden

generally raises a question of the subpoena's reasonableness, which "requires a court to balance the interests served by demanding compliance with the subpoena against the interests furthered by quashing it." 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2463 (2d ed.1995). "[T]his balance of the subpoena's benefits and burdens calls upon the court to consider whether the information is necessary and unavailable from any other source." *Id*.

Whether a burden is undue requires weighing "the likely relevance of the requested material ... against the burden ... of producing the material." *EEOC v. Ford Motor Credit Co.*, 26 F.3d 44, 47 (6th Cir.1994). **Courts also consider one's status as a nonparty to be a significant factor in the undue-burden analysis.** *In re: Smirman*, 267 F.R.D. 221 (E.D. Michigan 2010) citing *N.C. Right to Life, Inc. v. Leake*, 231 F.R.D. 49, 51 (D.D.C.2005) (emphasis added).

In short, the Rhode Island District Court, pursuant to Fed. R. Civ. P. 54, directed Mr. Levy, to provide to the court evidence of the identity of the person who filed the Rhode Island case. Why does Mr. Levy not subpoena the Plaintiff's records? Why does Mr. Levy not subpoena Deborah Garcia, the Defendant? Certainly she communicated with someone? Why does Mr. Levy not subpoena Richart Ruddie, Annuity Sold, RIC1984, LLC, Profile Defender, or any other company in which Richart Ruddie is apparently involved? Mr. Levy's actions simply fall short of reason.

The District Court directed Mr. Levy to provide argument on who is responsible for commencing the Rhode Island case. Nothing requested in Mr. Levy's subpoena even remotely requests items or documentation from Mr. Wills regarding the Rhode Island case.

That is because Mr. Levy knows that Mr. Wills has nothing to do with the Rhode Island case.

Since Mr. Levy's subpoena improperly subjects Mr. Wills to an undue burden, this Court should quash the subpoena in its entirety.

REQUEST FOR PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 26(c), Petitioner respectfully requests a protective order. Whether this Court quashes the subpoena in its entirety or modifies the subpoena, a protective order is appropriate to protect Petitioner from the unnecessary disclosure of protected information. This Court has the power and ability to grant a protective order instructing the Respondent not to inquire into areas that are protected by privilege or work product. *Reed v. Baxter*, 134 F.3d 351 (6th Cir. 1998). Further, Fed. R. Civ. P. 26(c) allows this Court to grant a protective order forbidding disclosure or discovery in its entirety. Petitioner incorporates by reference the arguments set forth in this Memorandum in support of his request for a protective order.

The requests set forth in the subpoena at issue are irrelevant, overbroad, vague, and are protected by attorney-client and work-product privileges. Moreover, the requests create an annoyance, are unduly burdensome, oppressive, and harassing, as provided in Fed. R. Civ. P. 26(c). A protective order in this matter is appropriate and necessary to protect Petitioner.

REQUEST FOR SANCTIONS AGAINST PAUL ALAN LEVY

Fed. R. Civ. P. 45(d)(1), provides,

> A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction--which

> may include lost earnings and reasonable attorney's fees--on a party or attorney who fails to comply.

Fed. R. Civ. P. 45(d)(3), provides that a court *must* quash a motion where the requested information is privileged, protected, or otherwise subjects a person to undue burden. Moreover, Mr. Levy and the District Court for Rhode Island lack any authority to issue the subpoena.

Mr. Levy, in serving the subpoena at issue, failed to comply with his duty pursuant to Fed. R. Civ. P. 45(d)(1). Mr. Levy is a licensed attorney who, without regard for the Federal Rules of Civil Procedure, and in blatant disregard for the order of the Rhode Island District Court, has embarked on a fishing expedition of inexplicable magnitude. Rather than complying with his duty, he issued a subpoena knowing that the Rhode Island District Court lacked the authority to issue it.

Not only has Mr. Levy cost Mr. Wills a significant amount of his time in filing this Motion to Quash, but the lost time was a direct cause of Mr. Levy's disregard for the law. Mr. Levy knowingly requested attorney-client privileged information, knowingly requested information protected by the attorney-work-product privilege, and all of the information requested pertains to a case in Baltimore City, Maryland that was closed in 2015, which has nothing to do with the action pending in the Rhode Island District Court.

Moreover, the Rhode Island District Court ordered Mr. Levy to provide information regarding sanctions, if any, pursuant to Fed. R. Civ. P. 54. It did not request that he provide information regarding sanctions under Rules 11, 26, or 45. Nothing in the Rhode Island District Court's order allowed Mr. Levy to issue process.

The subpoena is void as a matter of law and imposed an undue burden on Mr. Wills, an award of attorney's fees and lost earnings is appropriate pursuant to Fed. R. Civ. P.

45(d)(1). Mr. Wills, as an attorney, not only had to spend a significant amount of time researching, drafting, and responding to the subpoena prior to engaging undersigned counsel; but that time could have also been spent on actual client matters. Mr. Wills has not only lost a significant amount of billable time generating real earnings as an attorney (income), but he is also out time regarding lost earnings, personal time, and funds spent on additional counsel for support. Mr. Wills respectfully requests an award of sanctions against Mr. Levy and Public Citizen, jointly and severally. If this Court is inclined to award sanctions, Mr. Wills respectfully requests the opportunity to submit to this Court evidence of attorney's fees, costs, and lost earning within 14 days of such an order pursuant to Fed. R. Civ. P. 45(d)(1) and 54.

CONCLUSION

For the foregoing reasons, Mr. Wills respectfully requests that this Court quash the subpoena issued by Mr. Levy and the District Court for Rhode Island in its entirety. Mr. Wills further requests that this Court grant a protective order and that appropriate sanctions be entered against Mr. Levy.

Respectfully submitted,

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