UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE CONVERGENT OUTSOURCING, INC. TELEPHONE CONSUMER PROTECTION ACT LITIGATION	Master Dkt. No. 3:13md2478 (AWT) MDL No. 2478 Pretrial Order No. 3
THIS DOCUMENT RELATES TO ALL ACTIONS	

ORDER RE MOTION TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER (VICTORIA RUTIGLIANO)

For the reasons set forth below, the Motion to Quash Subpoena and For Protective Order of Former Named Plaintiff Victoria Rutigliano (Doc. No. 32) is hereby DENIED.

"Parties 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." Fed. R. Civ. P. 26(b)(1). "The party seeking discovery bears the burden of initially showing relevance." Mandell v. The Maxon Company, Inc., No. 06 Civ. 460(RWS), 2007 WL 3022552, at *1 (S.D.N.Y. Oct. 16, 2007) (quoting Zanowic v. Reno, No. 97Civ.5292(JGK)(HBP), 2000 WL 1376251, at *6 (S.D.N.Y. Sept. 25, 2000))(brackets omitted). However, "even if a discovery request seeks relevant information

or material, a party served with that request may object on such grounds as: '(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;' '(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action;' or '(iii) the burden or expense of the proposed discovery outweighs its likely benefit[. . . .]' Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii)." Young v. McGill, No. 3:09-CV-1186 (CSH), 2013 WL 5962090, at *2 (D. Conn. Nov. 6, 2013). "To assert a proper objection on this basis, however, one must do more than 'simply intone [the] familiar litany that the [requests] are burdensome, oppressive or overly broad.'" Id. (quoting Sullivan v. StratMar Systems, Inc., 276 F.R.D. 17, 19 (D. Conn. 2011)). "Rather, 'the objecting party bears the burden of demonstrating specifically how, despite the broad and liberal construction afforded the federal discovery rules, each [request] is not relevant or how each question is overly broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden.'" Id. (quoting Sullivan, 276 F.R.D. at 19). See also Shannon v. New York City Transit Auth., No. 00 CIV. 5079(RWS), 2001 WL 286727, at *1 (S.D.N.Y. Mar. 22, 2001)("The burden is on the party resisting discovery to explain its objections and to provide support therefor[]."); Keller v. Nat'l

Farmers Union Prop. & Cas. Co., No. CV 12-72-M-DLC-JCL, 2013 WL 27731, at *1 (D. Mont. Jan. 2, 2013)("The party seeking to compel discovery bears the burden of showing that the discovery sought is relevant, while the party resisting discovery bears [] the burden of showing that the discovery should not be allowed.").

Victoria Rutigliano ("Rutigliano") argues that the subpoena should be quashed and a protective order entered because the defendant, Convergent Outsourcing, Inc. d/b/a ER Solutions ("Convergent") has not demonstrated that it seeks relevant information. The following passage from the defendant's opposition reflects that Convergent has met its burden with respect to showing relevance:

> She is a former named lead plaintiff and a percipient witness with intimate knowledge of the allegations of the Original and Amended Complaints. Consequently, she surely has information and/or documents that are relevant to this class action and the defenses applicable to a Rule 23 class certification inquiry, including consent. Ms. Rutigliano's experience with Convergent and the alleged improper calls are relevant to class certification issues, including commonality and typicality of the class representative's claims even if she has been dismissed from the case.

(Def.'s Mem. of Law in Opp. (Doc. No. 33) at 7). See, e.g., Dysthe v. Basic Research, L.L.C., 273 F.R.D. 625 (C.D. Cal 2011) ("Hall claims to have been a consumer of the products challenged by Plaintiffs in this lawsuit. . . . His testimony regarding his experience with Relacore weight-loss products is therefore

highly likely to be relevant to class certification issues, including commonality and the typicality of the class representative's claims, even if he no longer wishes to be burdened with this litigation.")

To the extent that Rutigliano argues that the subpoena should be quashed and a protective order entered because the defendant can obtain the same evidence elsewhere without questioning Rutigliano under oath, she has not met her burden of showing annoyance, embarrassment or undue burden. Given her status as the former main lead plaintiff and the fact that the defendant noticed her deposition while she was still named lead plaintiff, reference to the fact that Rutigliano's claims were dismissed "because a variety of personal reasons prevented her from continuing to participate in the litigation" does not suffice. (Mem. of Law in Supp. (Doc. No. 32-1) at 8).

To the extent that Rutigliano argues that her motion should be granted because the defendant has "resisted producing any evidence on the consent issue for any class member", that argument is not appropriate here. Id. at 4. Here, the question is whether the defendant should be permitted to take the deposition of and obtain documents from Rutigliano.

Rutigliano also argues that the subpoena should be quashed and a protective order entered because Convergent cannot satisfy the heightened standard for discovery from absent class members.

However, Rutigliano is not an absent class member. Nowhere in any of the cases Rutigliano discusses in her memorandum is there support for her position that she is an absent class member; she merely asserts that she is. As reflected in the discussion by Convergent in its opposition, Rutigliano's attempts to distinguish In re FedEx Ground Package Sys., 2007 U.S. Dist. LEXIS 16205 (N.D. Ind. Mar. 5, 2007), England v. Marriot Int'l, Inc., 2012 U.S. Dist. LEXIS 152844 (D. Colo. Oct 24, 2012) and Dysthe are unavailing. Rather, those cases support Convergent's position.

It is so ordered.

Dated this 3rd day of October, 2014, at Hartford, Connecticut.

/s/
Alvin W. Thompson
United States District Judge