

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-80185-CV-MIDDLEBROOKS/BRANNON

ANTECH DIAGNOSTICS, INC.,

Plaintiff,

v.

MICHAEL POSNER,

Defendant.

ORDER GRANTING NON-PARTY PATRICIA PASCUCCI'S MOTION TO QUASH

This CAUSE comes before the Court on Non-Party Patricia Pascucci's Motion to Quash (DE 46), filed November 13, 2017. In light of the November 15, 2017 trial date, I have not waited for a response from Plaintiff or Defendant.

On November 6, 2017, Ms. Pascucci was served a subpoena duces tecum (which was issued November 3, 2017) to appear and give testimony and to bring responsive documents for the two-week trial period beginning November 13, 2017. She was not deposed during discovery. Ms. Pascucci contends that the subpoena was not served within a reasonable time to allow compliance and that it imposes an undue burden on her as she must find child care to allow for her attendance at trial.

Rule 45(d)(3)(A) provides that a court must quash or modify a subpoena that

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

Fed. R. Civ. P. 45(d)(3)(A). “Reasonable time” is not defined in this section of Rule 45, but other courts have found that 14 days is presumptively reasonable. *See Lauderhill Mall Investment, LLC v. Arch Specialty Ins. Co.*, No. 14-cv-21003, 2014 WL 11906637 (S.D. Fla. July 29, 2014).¹ This subpoena was served only 7 days prior to the November 13, 2017 trial period and 9 days prior to the actual November 15, 2017 trial date. There is no apparent basis for such delay as the Parties had listed Ms. Pascucci in their Joint Pretrial Stipulation filed on October 18, 2017. In light of the service date of the subpoena duces tecum, I find that Ms. Pascucci was not provided a reasonable time to comply with it.

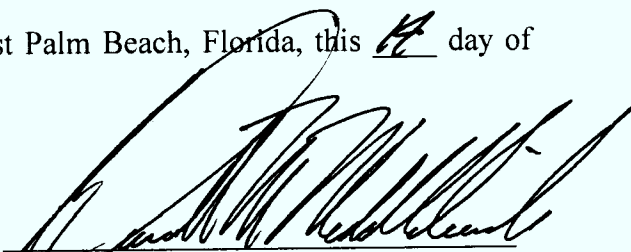
Also, to the extent that the subpoena required Ms. Pascucci to produce documents that have never been produced in discovery, that is inappropriate. A Rule 45 subpoena duces tecum cannot be used as a form of discovery to circumvent deadlines, but may be used to secure the production at trial of original documents previously disclosed during discovery. *Puritan Inv. Corp. v. ASLL Corp.*, No. Civ. A. 97-1580, 1997 WL 793569, at *1 (E.D. Pa. Dec. 9, 1997); 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2459 (3d ed. 1998, updated 2013). It is unclear whether the documents requested in the subpoena were documents previously disclosed during discovery.

Accordingly, for the reasons stated above, it is

¹ Local Rule 26.1(h) requires at least seven days’ notice to take a deposition within the state where the deponent resides. If a deponent is provided less than seven days’ notice, no protective order is required to prevent that deposition. Under Federal Rule of Civil Procedure 32(a)(5)(A), entitled “Deposition Taken on Short Notice,” “[a] deposition must not be used against a party who, having received less than 14 days’ notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.” These time periods also provide some guidance as to the reasonable time provided in Rule 45(d)(3)(A).

ORDERED AND ADJUDGED that Non-Party Patricia Pascucci's Motion to Quash (DE 46) is **GRANTED**.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 14 day of November, 2017.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record