

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

INNERCITY RECYCLING SERVICE :  
LLC, et al. :  
 :  
v. : C.A. No. 13-648ML  
 :  
SMM NEW ENGLAND CORP. :

**MEMORANDUM AND ORDER**

Pending before the Court for determination (28 U.S.C. § 636(b)(1)(A)) is a Motion to Quash Plaintiffs’ Subpoenas filed pursuant to Rule 45(d)(3), Fed. R. Civ. P., on behalf of several non-party subpoena recipients. (Document No. 72). Plaintiffs object. (Document No. 78). A hearing was held on May 21, 2014. For the following reasons, the Motion to Quash is GRANTED.

Plaintiffs are a group of scrap metal suppliers. Defendant is a metal recycler that purchased scrap metal from Plaintiffs. Plaintiffs allege that Defendant “short changed” them on the weights of scrap deliveries in several ways, and claim, inter alia, breach of contract, fraud and racketeering due to the alleged failure by Defendant to pay Plaintiffs the full value of their scrap deliveries. Two of the Plaintiffs (Innercity Recycling Service and its principal Kenneth A. Serapiglia) make additional allegations that certain supplier/financing agreements between Innercity and Defendant are void due to fraud because of alleged misrepresentations made by agents of Defendant as to the scope of revisions made to a second version of the contract signed by Mr. Serapiglia.

The non-party movants are scrap metal suppliers who have chosen not to join this purported class action and who compete, to some degree, with some or all of the named Plaintiffs in the

acquisition and sale of scrap metal to recyclers such as Defendant.<sup>1</sup> The non-party movants argue that the thirty-one topic document subpoenas served on them by Plaintiffs should be quashed because they seek protected trade secrets, contain overly-broad and burdensome requests for irrelevant documents, and seek documents that should be obtained directly from Defendant. Plaintiffs counter that the documents sought are relevant and narrowly tailored to the claims and defenses in this case and that any concerns about the disclosure of proprietary information can be adequately addressed by the Confidentiality Order entered in this case. Plaintiffs also argue that it is not known if Defendant possesses the requested documents and that, in any event, Defendant has refused to produce them.<sup>2</sup> Finally, Plaintiffs contend that the non-party movants have moved to quash “without crediting attempts by Plaintiffs’ counsel to limit the scope of the subpoenas.” (Document No. 78-1 at p. 1).

Rule 45(d)(1), Fed. R. Civ. P., requires a party serving a subpoena to take reasonable steps to avoid imposing undue burden or expense on the person or entity subject to the subpoena. The Rule also places a responsibility on the Court to enforce these duties and to impose appropriate sanctions for the misuse of a subpoena. Rule 45(d)(3)(A), Fed. R. Civ. P., requires the Court, on timely motion, to quash or modify a subpoena that requires disclosure of privileged or other protected matter or subjects a person to undue burden.

The question of whether a subpoena subjects a non-party to undue burden within the meaning of Rule 45(d)(3)(A)(iv) is a “highly case specific inquiry” and one “of the reasonableness

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<sup>1</sup> The movants assert that they “directly compete” with Plaintiffs, have no desire to be involved in this matter and purposefully have not joined the Plaintiff class. (Document No. 72-1 at p. 18).

<sup>2</sup> Plaintiffs have several pending motions to compel discovery responses from Defendant. (See Document Nos. 84, 89, 90, 91 and 92).

of the subpoena.” 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2463.1 at pp. 501-506 (3d ed. 2008). “[T]his process of weighing a subpoena’s benefits and burdens calls upon the trial court to consider whether the information is necessary and whether it is available from any other source.” Id.

Here, of the original thirty-one requests, the non-party movants have represented that they have no responsive documents as to twelve of them, and Plaintiffs are no longer seeking production as to an additional six of them. (See Document No. 78-1 at p. 2). Plaintiffs have also narrowed their requests in time to the period January 1, 2011 to present. Id.<sup>3</sup> Plaintiffs categorize the remaining requests into three groups: (1) records of transactions between Defendant and the non-parties (Items 1-4, 6, 8, 12-13, 26, 28-29); (2) records of contracts and/or financing agreements between Defendant and the non-parties (Items 2-3); and (3) records reflecting communications between Defendant and the non-parties (Items 21 and 27). Id.

First, and foremost, these documents, if relevant, should be available directly from Defendant, and Plaintiffs have made no showing at this time that they are not so available. Second, Plaintiffs have not presently made an adequate showing that the bulk of the documents sought are necessary or even relevant to the claims and defenses in this litigation.

The sale of scrap metal is a high-volume business and subject to multiple variables including the weight of each load, the type(s) of metal delivered, the market price for each type of metal delivered and the presence of any non-conforming materials subject to deduction. In other words, each individual delivery is a separate business transaction and presumably subject to some level of documentation. Plaintiffs seek, inter alia, documents regarding over three years of these

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<sup>3</sup> The original requests generally sought documents for either an unlimited period of time or back to 2008.

individual transactions but have not persuasively shown the relevance of these transactions between Defendant and non-parties to this case. The Second Amended Class Action Complaint was filed on behalf of five scrap metal suppliers and asserts that their claims are typical of the claims of the proposed class. (Document No. 29, ¶ 17). It also asserts that each of the named Plaintiffs sold scrap to Defendant and had their loads of scrap “adjusted” to their detriment pursuant to the wrongful policies, practices and procedures of Defendant. Id. In Count IV, Plaintiffs allege breach of contract based on Defendant’s alleged failure to pay them “the full value of the scrap by recording manual weights, making adjustments for alleged non-conforming materials, making deductions and/or reallocating, falsely identifying or rejecting the types of materials within the loads.” Id., ¶ 61. The evidence to support these allegations, if it exists, would presumably be found in the business records of the parties to these transactions.<sup>4</sup> Plaintiffs have not shown that the requested business records of non-parties, who have chosen not to join this litigation, regarding their transactions, agreements and communications with Defendant are relevant or necessary to the prosecution of this case and justify imposing the burden of production on such non-parties.

On balance, the Court concludes that Plaintiffs’ subpoena places an “undue burden” on the non-party movants and should be quashed because (1) the documents sought do not reasonably appear to be relevant to this case; and (2) if ultimately found to be relevant, the documents would presumably be available directly from Defendant if they exist. Accordingly, the non-parties’

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<sup>4</sup> According to Plaintiffs’ recent Motion for Protective Order, they have “taken the position since the beginning [of] the case that much significant information supporting their allegations was in the possession of [Defendant], including data respecting [Defendant’s] scales and its ‘paper’ records and electronic database of transactions (the so-called ‘SAI’ database).” (Document No. 94-1 at p. 2).

Motion to Quash Plaintiffs' Subpoenas (Document No. 72) is GRANTED pursuant to Rule 45(d)(3)(A)(iv), Fed. R. Civ. P.

SO ORDERED

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
June 19, 2014