

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

WHITEAMIRE CLINIC, P.A. INC.,	)	CASE NO.1:16CV226
	)	
Plaintiff,	)	SENIOR JUDGE
	)	CHRISTOPHER A. BOYKO
	)	
vs.	)	
	)	
CARTRIDGE WORLD NORTH	)	<u>ORDER</u>
AMERICA, LLC., AND JOHN DOES	)	
1-10	)	
	)	
Defendant.	)	

**CHRISTOPHER A. BOYKO, SR. J:**

This matter is before the Court on Plaintiff Whiteamire Clinic’s Motion to Compel Compliance with Subpoenas. (ECF # 120). For the following reasons, the Court denies Plaintiff’s Motion.

This is a Junk Fax Act case brought by Plaintiff on behalf of a class who received unsolicited faxes from Defendant. The case proceeded with Defendant being represented by counsel until September 2018 when Defendant’s counsel withdrew for lack of payment. From that point the case proceeded without Defendant providing a defense. The Court ultimately granted summary judgment on Plaintiff’s individual claim and granted class certification. On February 19, 2021, the Court granted summary judgment on Plaintiff’s class claims in the amount of \$4,293,000.00. The Court further approved Notice of Judgment to the Class and the payment of attorney fees to Plaintiffs’ counsel. Thus, all substantive claims have been resolved and the case has been closed. On May 11, 2021, Plaintiff filed a Motion to Compel Compliance

with Subpoenas issued to Cartridge World USA, LLC., a related entity to Defendant and Blackford Capital Associates II, Inc., a financial entity that negotiated a sale of Defendant's assets to Cartridge World USA, LLC., and provided funding for the sale. These non-parties filed an objection to the subpoenas as being outside the Court's territorial jurisdiction and Plaintiff filed a Reply on June 1, 2021.

According to Respondents, Blackford Capital Associates II, Inc. is a private equity fund that created Cartridge World USA, LLC. in December 2019 in order to enter into a license agreement with Cartridge World Australia Pty. Ltd. Presumably due to the similarity in names between Cartridge World USA, LLC. and Defendant, Plaintiff issued a subpoena on Respondents. However, according to Respondents, there is no relationship at all between Respondents and Defendant. They hold no assets of Defendant, received no transfer of assets from Defendant and conducted no business with Defendant. The only business remotely related was Respondent Blackford's payment to Defendant's parent company Cartridge World Australia Pty. Ltd. for the license agreement and related contracts. According to Respondents, they produced confidential documents to Plaintiff's counsel demonstrating that Respondents had no relationship to or assets of Defendant and suggested Plaintiff seek such documents from Cartridge World's parent company but Plaintiff's counsel declined the suggestion.

Respondents oppose the Motion to Compel Compliance because both places of production are outside this Court's jurisdiction. The subpoenas seek compliance in Cincinnati, Ohio and Illinois, both locations being outside the 100 mile jurisdictional limit set by Fed. R. Civ. P. 45.

Plaintiff responds that Rule 45's 100 mile jurisdictional limit does not apply when the

subpoena seeks only documents and these can be mailed without requiring the personal appearance of a representative at the place of production.

Subpoenas for production of records are governed by Federal Rule of Civil Procedure 45 which reads in relevant part:

(b) Service.

\* \* \*

(2) Service in the United States. Subject to Rule 45(c)(3)(A) (ii), a subpoena may be served at any place:

(A) within the district of the issuing court;

(B) outside the district court but within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection[.]

“Respondents bear the burden of establishing that the rule has been violated.” *United States v. Brown*, 223 F. Supp. 3d 697, 703 (N.D. Ohio 2016). “[C]ourts generally find that the rule does not apply where documents can be mailed and do not require personal appearance.” *Battle v. Chicago Cycle, Inc.*, No. 1:11MC61, 2012 WL 5500507, at \* 4 n.2 (N.D. Ohio Nov. 13, 2012); see also *Walker v. Ctr. for Food Safety*, 667 F.Supp.2d 133, 138 (D.D.C. 2009) (“ the 100 mile limit applies to travel by a subpoenaed person, but a person commanded to produce documents need not appear in person at the place of production or inspection”); Fed. R. Civ. P. 45(d)(2)(A) (“a person commanded to produce documents ... need not appear in person at the place of production ... unless also commanded to appear for a deposition, hearing, or trial.”).

Rule 45(a)(2) holds that “a subpoena must issue from the court where the action is pending.” However, Rule 45(d)(2)(i) reads: “At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.” (Emphasis added). Under similar circumstances a court within this district granted a motion to quash a subpoena. In *Battle v. Chicago Cycle, Inc.*, No.

1:11MC61, 2012 WL 5500507, at \*4 (N.D. Ohio Nov. 13, 2012), a party attempted to issue a subpoena on behalf of an Ohio District Court for production of documents in another district more than 100 miles away. The court held that this failed to comply with Rule 45 and warranted quashing the subpoena. The court noted that had issuing party issued a subpoena from the Ohio District Court compelling production within the court's 100 mile jurisdiction, the subpoena would not have violated Rule 45.

Here, the subpoena seeks production of documents in Cincinnati, Ohio and in Illinois. It is to the district courts in those regions that Plaintiff must go to seek compliance. Therefore, Plaintiff's Motion is denied.

IT IS SO ORDERED.

Date: October 27, 2021

/s/Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
Senior United States District Judge