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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW KASHANI,

Plaintiff,

v.

TYLER ADAMS; PAUL PHIPPS,

Defendants.

) Civil No.08cv0268 JM (AJB)

)
) **ORDER DENYING PLAINTIFF'S EX**
) **PARTE MOTION FOR ORDER TO**
) **SHOW CAUSE AS TO WELLS FARGO**
) **AND 1SOURCE DATA; DENYING**
) **PLAINTIFF'S EX PARTE MOTION**
) **FOR ISSUANCE OF ORDER TO**
) **RELEASE DOCUMENTS AS TO**
) **VERIZON; SUA SPONTE QUASHING**
) **DOCUMENT SUBPOENA AS TO PHB,**
) **INC.**

[Doc. Nos. 19, 20, 30.]

On January 8, 2009, Plaintiff filed an *ex parte* motion for issuance of order to show cause against Third Parties Wells Fargo Bank and 1Source Data. (Doc. Nos. 19 & 20.) Third Party Wells Fargo Bank filed an opposition on February 9, 2009. Plaintiff filed a reply on February 17, 2009. On February 10, 2009, Plaintiff filed an *ex parte* motion for issuance of order to release documents as to Verizon Pennsylvania. (Doc. No. 30.) On February 24, 2009, the People filed a First Amended People's Amicus Brief in Support of Wells Fargo's Opposition to Motion for Order to Show Cause Re: Contempt. A motion hearing was held on February 27, 2009. Plaintiff Matthew Kashani appeared in *pro per*. John Mayers, Esq. appeared on behalf of Wells Fargo Bank; John Merrill appeared on behalf of 1Source Data; and Anna Winn, Esq. appeared on behalf of the People of the State of California ("People"). Based on the papers and hearing oral argument, the Court DENIES Plaintiff's *ex parte* motion for order

1 to show cause as to Wells Fargo Bank and 1Source Data. The Court DENIES Plaintiff's *ex parte*
2 motion for issuance of order to release documents from Verizon Pennsylvania. The Court also *sua*
3 *sponte* quashes the subpoena issued by the Western District of Pennsylvania on November 19, 2008
4 directed to Donald Chaffee's employer, PHB, Inc.

5 **Background**

6 On February 13, 2008, Plaintiff filed a complaint against Defendants Tyler Adams and Paul
7 Phipps for defamation. He claims that in 2007 Defendants Adams and Phipps "made false statements to
8 lenders including Wells Fargo Bank in San Diego that plaintiff had given false information to the
9 lenders to obtain credit." (Compl. ¶ 5.) Consequently, Plaintiff alleges that he suffered economic harm
10 and loss of reputation in the business and banking community. (Id. ¶ 6.) He states that Adams opened
11 and attempted to open various credit card and credit line accounts in the name of Plaintiff's corporation.
12 (Id. ¶ 4.) He also made false statements to parties that Plaintiff had been the one responsible for opening
13 these accounts. (Id.) He claims that Defendant Phipps repeated these same false statements. (Id.)

14 The People of the State of California filed an Amicus Brief which contains facts that provides a
15 better understanding of the allegations in Plaintiff's complaint. The following facts are taken from the
16 Amicus Brief. Donald Chaffee is a mechanic in Fairview, Pennsylvania who lives in a mobile home
17 with his wife, Bonnie. (People's Amicus Brief at 1.) In 2005, Donald co-signed on a loan to help his
18 stepson, Tyler Adams, buy a condo in San Diego. (Id. at 1-2.) After a suspicious phone call to his
19 employer, Donald checked his credit report in 2007 which showed credit cards he never opened,
20 commercial loans he never signed for, and a new job (President of Fissato, Inc.) he had never heard
21 about. (Id. at 2.) Bonnie's credit report was similar except she learned that she was the President of
22 Habley Medical Technology Corporation ("Habley Medical") which had a P.O. Box address in Rancho
23 Bernardo. (Id.) Bonnie worked as an office clerk in Pennsylvania. (Id.) Donald and Bonnie filed a
24 police report and began trying to prove to creditors that they were victims of identity theft. (Id.)

25 Habley Medical was an Orange County design-house for medical devices holding over a hundred
26 patents for its medical inventions. (Id.) It began in 1981 and closed its door around 2000. (Id.) At the
27 time, Clark Foster was the firm's design engineer. (Id.) Clark Foster recalls Plaintiff's uncle was
28

1 Habley's business attorney. (Id.) Plaintiff visited Habley and assisted his uncle with business there.

2 (Id.) In 2000, when Habley closed, Foster began working elsewhere. (Id.)

3 In 2007, Foster learned he was listed as a principal of Habley on applications for commercial
4 loans. (Id.) His name was used to purchase several Rolex watches. (Id.) Foster phoned the number for
5 Habley and heard a voicemail say, "Hello, this is the direct line for Clark Foster at Habley" (Id.)
6 Foster confirmed that the commercial loan documents had his forged signature. (Id.)

7 In 2007, contacted by Direct Capital lending institution, SDPD Detective Arthur Dubois began
8 an investigation into a suspected fraudulent application submitted by Habley Medical for a commercial
9 loan of \$80,000. (Id.) Other loan companies were also contacted and several had actually funded the
10 loans based on fraudulent Habley paperwork submitted. (Id.) The loans were used to buy over fifty
11 laptop computers, some of which were recovered at Plaintiff's home. (Id. at 3.) Several credit cards
12 were also obtained using fraudulent Habley documents and items purchased were shipped to Plaintiff.
13 (Id.) It was also revealed that Plaintiff is the CEO of Fissato, Inc. (Id.) On October 31, 2007, Plaintiff
14 was arrested and currently facing 14 felony charges involving identify theft, fraud, conspiracy and grand
15 theft in San Diego County case number CN 236630. (Id.)

16 **Procedural Background**

17 On January 8, 2009, Plaintiff Matthew Kashani filed an *ex parte* motion for issuance of order to
18 show cause against Third Parties Wells Fargo Bank and 1Source Data. Third Party Wells Fargo Bank
19 filed an opposition on February 9, 2009. Plaintiff filed a reply on February 17, 2009.

20 On January 21, 2009, Verizon Pennsylvania ("Verizon") sent the Court a copy of the documents
21 requested in Plaintiff's document subpoena to Verizon. On January 26, 2009, Plaintiff sent an
22 unsolicited e-mail to the Court regarding the third party subpoena to Verizon. On January 28, 2009, the
23 Court issued an Order Re Improper Communication with the Court and indicated that the third party
24 subpoena issue would be addressed at the hearing on February 27. However, on February 10, 2009,
25 Plaintiff filed an *ex parte* motion for issuance of order to release documents currently in possession by
26 the Court. On February 24, 2009, the People filed a First Amended People's Amicus Brief in Support of
27 Wells Fargo's Opposition to Motion for Order to Show Cause Re: Contempt.

28 **Discussion**

1 Federal Rule of Civil Procedure 26(b)(1) provides that “[p]arties may obtain discovery regarding
2 any nonprivileged matter that is relevant to any party’s claim or defense -- including the existence,
3 description, nature, custody, condition, and location of any documents or other tangible things and the
4 identity and location of persons who know of any discoverable matter Relevant information need
5 not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of
6 admissible evidence.” Fed. R. Civ. P. 26(b)(1).

7 **A. Third Party Wells Fargo Bank**

8 Plaintiff served a document subpoena on Wells Fargo Bank on November 7, 2008. (*Ex Parte*
9 Motion as to Wells Fargo, Ex. A.) He seeks all documents relating to nonparties Habley Medical
10 Technology Corporation, Tyler Adams, Clark Foster, Donald Chaffee, and Bonnie Chaffee. Specifically
11 he seeks:

- 12 1. All documents related to all applications for loans or credits;
- 13 2. All documents relating to any credit decision taken by the nonparty;
- 14 3. All documents reflecting communications between Wells Fargo and the non party;
- 15 4. All credit memos and other internal documents relating to the non party;
- 16 5. All account opening agreements and signature cards for any account;
- 17 6. All account statements for any account in the name, including closed accounts;
- 18 7. Front and back copies of all cancelled checks in an amount greater than \$1000 drawn on
19 any account in the name of the nonparty;
- 20 8. Records of all wire transfers or other transfers of funds greater than \$1000 drawn on any
21 account in the name of the nonparty;
- 22 9. All applications, agreements or other records relating to the opening or issuance of any
23 credit card in the name of the nonparty;
- 24 10. All account statements of any credit card in the name of the nonparty including closed
25 accounts;
- 26 11. All documents relating to or constituting any loan application;
- 27 12. The complete loan file pertaining to any loan or credit card applied for or issued to the
28 nonparty;
13. All loan statements and records of payments pertaining to any loan applied for or issued
to the non party;
14. All records of the disposition of any loan to the nonparty, including records of foreclo-
sure.

On November 10, 2008, Plaintiff agreed to waive any documents related to Clark Foster and was
told that Wells Fargo had no documents related to Donald and Bonnie Chaffee. Therefore, Plaintiff

1 seeks documents related solely to Habley Medical and Defendant Tyler Adams. He claims that Wells
2 Fargo failed to comply with the subpoena.¹

3 At the hearing, Plaintiff alleges that Defendant Tyler Adams defamed him by stating that
4 Plaintiff improperly obtained a loan under Habley Medical² to purchase items. He contends that these
5 statements were false and Adams, posing as Clark Foster, improperly obtained the loan. In opposition,
6 Wells Fargo argues that the documents he seeks to subpoena are not relevant because these documents
7 would not contain defamatory statements Plaintiff allegedly made to lenders.

8 **1. Habley Medical**

9 Plaintiff seeks a broad range of documents without demonstrating the relevance of these
10 documents to his claim of defamation. In addition, Plaintiff's request of numerous banking documents
11 raise privacy concerns of third parties. It is not clear how any loan application, account opening
12 agreements, records of payments pertaining to a loan, copies of canceled checks, wire transfers, account
13 statements and others would be relevant to show that Adams, posing as Clark Foster, improperly
14 obtained the loan. At the hearing, Wells Fargo agreed to review its loan applications by Habley Medical
15 to determine if there are any reference to Plaintiff's name in those documents. Accordingly, the Court
16 **GRANTS** Plaintiff's request to the extent the documents reference Kashani's name. If Plaintiff's name
17 appears on the document, Wells Fargo shall provide those documents to Plaintiff subject to redaction of
18 private third party information. Wells Fargo shall provide the documents, if located, to Plaintiff no later
19 than **March 13, 2009**. Wells Fargo may provide a copy of the document to the Court.

20 **2. Tyler Adams**

21 Plaintiff also seeks loan and credit information regarding Defendant Adams. Plaintiff has not
22 demonstrated in his papers or at the hearing how any credit or loan information about Adams would

24 ¹ The parties discuss at length about the failure to meet and confer. Wells Fargo argues that a
25 proper in person meet and confer was not held because Plaintiff made no attempts to arrange a face to
26 face meeting. Plaintiff presents an unpersuasive argument why the meet and confer requirement should
27 not apply to his case. He also argues Wells Fargo was responsible for the failure to meet and confer. It
28 appears both parties played a role in the failure to meet and confer and neither party should be penalized
for the failure to meet and confer. A proper meet and confer after the filing of the motion occurred on
February 16, 2009.

²Plaintiff states he is the CEO of Habley Medical.

1 demonstrate that he made false statements against Plaintiff or opened accounts in Habley's name using
2 Clark Foster's name. Accordingly, the Court **DENIES** Plaintiff request for documents as to Defendant
3 Adams.

4 **B. Third Party 1Source Data**

5 On July 10, 2008, Plaintiff served a document subpoena on 1Source Data. (*Ex Parte* Motion as
6 to 1Source Data, Ex. A.) Plaintiff seeks the following:

- 7 1. All records of any request by Tyler Adams, California Licensed Broker No.
8 01495726, or Adams Financial for credit profile or credit information provided by
9 1Source Data on any of the following:

10 Donald Chaffee
11 Bonnie Chaffee
12 Tyler Adams, aka Kevin M. Schoolcraft aka Kevin Michael aka Kevin Kennedy
13 Adams Financial LLC/Adams Financial
14 Habley Medical Technology Corp.
15 Clark Foster
16 Transcontinental Petroleum Industries, Inc.
17 Matthew Kashani
18 Hooshang Kashani
19 Kipp Berry
20 Christopher R. Priebe
21 Camilla Berry
22 Frederick A. Meiser
23 Fissato Inc.
24 Angela E. Glasgow
25 Suzanne Newman
26 Zulia Kamali
27 Irina Shavrikova aka Irina Chavrikova

- 28 2. All records of any request by Tyler Adams, California Licensed Broker No.
01495726, or Adams Financial for credit profile or credit information provided by
1 Source Data on any person or entity.

3. Documents showing the name only of any credit profile or credit report requested
by Tyler Adams, California Licensed Broker No. 01495726, or Adams Financial
and provided by 1 Source Data.

23 In his papers, Plaintiff argues that 1Source Data failed to comply with the subpoena in the
24 motion for order to show cause. However, at the hearing, Plaintiff stated that he was satisfied with what
25 has been provided and was only seeking a custodial declaration regarding the information that 1Source
26 Data provided. During the hearing, John Merrill, the custodian of records at 1Source Data, signed a
27 declaration. Therefore, the motion to compel is resolved and the Court **DENIES** the motion as MOOT.
28 The Court also **DENIES** Plaintiff's *ex parte* motion for order to show cause as to 1Source Data.

1 **C. Verizon Pennsylvania**

2 On December 1, 2008, Plaintiff served a document subpoena on Verizon Pennsylvania and seeks
3 the following:

4 Documents related to Donald Chaffee (and Bonnie Chaffee), Social Security No. __, Pennsylv
5 a driver's license # __, date of birth, __.

6 1. All telephone billing statements from January 2005 to present date for telephone lines
7 issued to Donald Chaffee (and Bonnie Chaffee) including but not limited to the following
8 telephone numbers:

8 814-474-1951
9 814-833-1158

10 2. All records showing telephone usage by Donald Chaffee (and Bonnie Chaffee), including
11 telephone numbers dialed from and calls received by the numbers listed below, during
12 the period January 2005 to present date:

12 814-474-1951
13 814-833-1158

14 3. All billing and other records pertaining to telephone numbers and accounts in the name of
15 Donald Chaffee (and Bonnie Chaffee), including but not limited to the following
16 telephone numbers, during the period January 2005 to present date:

15 814-474-1951
16 814-833-1158

17 4. All telephone billing statements from January 2005 to present date for telephone numbers
18 issued to Donald Chaffee (and Bonnie Chaffee) for landline phone numbers at the
19 address 6161 Sterrettania, Fairview, PA 16415, during the period January 2005 to present
20 date

21 5. All records showing telephone usage for telephone numbers issued to Donald Chaffee
22 (and Bonnie Chaffee) for landline phone numbers at the address 6161 Sterrettania,
23 Fairview, PA 16415, during the period January 2005 to present date.

24 6. All billing and other records pertaining to telephone numbers and accounts in the name of
25 Donald Chaffee (and Bonnie Chaffee), for phone numbers at the address 6161
26 Sterrettania Fairview, PA 16415 during the period January 2005 to present date.

27 7. All records of any long distance carrier attached to telephone numbers issued to Donald
28 Chaffee (and Bonnie Chaffee) including but not limited to the following telephone
numbers, during the period January 2005 to present date:

25 814-474-1951
26 814-833-1158

27 8. All records of any long distance carrier attached to landlines issued to Donald Chaffee
28 (and Bonnie Chaffee) for landline phone numbers at the address 6161 Sterrettania,
Fairview, PA 16415, during the period January 2005 to present date.

1 On January 21, 2009, Verizon Pennsylvania sent the documents requested in Plaintiff's subpoena
2 to the Court based upon a letter from Deputy District Attorney Anna Winn informing Verizon that
3 Plaintiff is charged with using the personal identifying information of Chaffee in order to defraud
4 numerous banks and businesses. Winn requested that Verizon withhold any information because the
5 subpoena is an attempt to intimidate and further victimize Chaffee. On February 10, 2009, Plaintiff filed
6 an *ex parte* notice of motion for issuance of order to release documents to Plaintiff that were produced
7 by Verizon to the Court.

8 The People argue that the phone records should not be turned over to Plaintiff because the
9 records are not relevant and Plaintiff is seeking to intimidate and harass the victims in his state criminal
10 case. At the hearing, contrary to what he argues in his papers³, Plaintiff believes that Defendant Adams
11 made defamatory comments about him to the Chaffees which were then relayed to the police. Based on
12 the facts before the Court and Plaintiff's comments, Plaintiff does not have a good faith basis for such an
13 allegation and it is based on speculation. The Court concludes that Plaintiff has not shown the
14 relevance of the phone records to his claim of defamation. The Court notes that the Chaffees are victims
15 in the state criminal case and Plaintiff's discovery request could amount to harassing the victims in his
16 criminal case. Therefore, the Court DENIES without prejudice Plaintiff's *ex parte* motion for the
17 release of the documents to Plaintiff. The Court shall hold the documents subject to Plaintiff making a
18 showing of relevance of these documents to his claim of defamation.

19 **D. Document Subpoena as to PHB, Inc.**

20 According to the People, a document subpoena was issued to Chaffee's employer, PHB, Inc.,
21 seeking all employment records of Donald Chaffee from 2005 to the present. (People's Amicus Brief,
22 Ex. 1.) Specifically, Plaintiff seeks copies of W-2s and other tax-related forms, payroll stubs, personnel
23 file, records of communications with banks, lenders, credit agencies, police or governmental agencies,
24 and requests for verification of employment. (Id.)

25
26 ³In his *ex parte* motion for order to show cause, Plaintiff argues that Defendants defamed him by
27 stating that Plaintiff placed calls claiming to be Donald Chaffee, Bonnie Chaffee, and/or Tyler Adams in
28 order to obtain credit. He claims the calls were placed by Donald, Bonnie and Tyler themselves from
their own phones and the phone records will show that the calls in question were placed from the phones
of Donald, Bonnie and Tyler Adams and not by Plaintiff.

1 Plaintiff's request for these confidential employment records border on harassment to Donald
2 Chaffee, a victim in Plaintiff's state criminal case. Plaintiff has not shown any relevance of these
3 confidential and private documents to his case. Therefore, the Court *sua sponte* quashes the subpoena
4 issued to PHB, Inc. Plaintiff's issuance of these overbroad and intrusive subpoenas that are not relevant
5 to his case raises questions as to relevance of the remaining subpoenas that have already been issued
6 and complied with in this case. Therefore, the Court ORDERS Plaintiff to provide the Court a list of
7 documents that has been requested in subpoenas issued in this case no later than **March 13, 2009**.
8 Plaintiff shall also provide the People a copy of the list. In addition, Plaintiff shall now seek leave of
9 Court before Plaintiff issues anymore subpoenas under the title in this case. Any violation of this order
10 will serve as the basis for contempt proceedings.

11 Conclusion


12 Based on the above, the Court DENIES Plaintiff's *ex parte* motion for order to show cause as to
13 Wells Fargo Bank, (Doc. No. 20), and 1Source Data (Doc. No. 19). The Court DENIES Plaintiff's *ex*
14 *parte* motion for issuance of order to release documents to Plaintiff as to Verizon Pennsylvania (Doc.
15 No. 30). The Court also *sua sponte* QUASHES Plaintiff's document subpoena to PHB, Inc.

16 In addition, the Court GRANTS Plaintiff's motion to compel the production of documents as to
17 Wells Fargo to the extent any loan applications for Habley Medical reference Plaintiff's name. Wells
18 Fargo shall produce the documents, if any, to Plaintiff on or before **March 13, 2009**. Wells Fargo may
19 provide the Court a copy of the document sent to Plaintiff. The Court also DENIES Plaintiff's motion to
20 compel as to Tyler Adams. The Court DENIES Plaintiff's motion to compel as to 1Source Data as
21 MOOT.

22 Plaintiff shall provide the Court a list of all the subpoenas served in this case and provide a copy
23 of the list to the People. Plaintiff shall seek leave of Court prior to filing any further subpoenas in this
24 case. Any violation of the Court's order shall subject a party to contempt of Court.

25 IT IS SO ORDERED.

26 DATED: March 4, 2009

27 
28 Hon. Anthony J. Battaglia
U.S. Magistrate Judge
United States District Court

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