

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

THE STERLING GROUP, L.P.

MOVANT

v.

CIVIL ACTION NO. 3:17-MC-1-CRS

BABCOCK POWER, INC., et al.

RESPONDENTS

MEMORANDUM OPINION AND ORDER

This matter is before the court for consideration of the request for sanctions accompanying the motion of The Sterling Group, L.P. (“Sterling”) to quash a subpoena issued to it by Babcock Power, Inc. and Vogt Power International, Inc. (collectively, “Babcock”)(DN 1).

The United States Magistrate Judge ordered the March 7, 2016 subpoena to Sterling be quashed, as the issuance of it “in conjunction with [Babcock Power, Inc., et al. v. Stephen T. Kapsalis, Civil Action No. 3:13CV-717-CRS (the “Kapsalis case”)] was ‘additional discovery’ that clearly violated the March 2, 2016 scheduling order.” (DN 18, p. 5).

This motion to quash is intertwined with the issues addressed at length in the magistrate judge’s memorandum opinion and order of June 30, 2017 in the Kapsalis case. (DN 450). After conducting an evidentiary hearing, the magistrate judge detailed in a fifty-six page opinion a “win at all costs” approach taken by plaintiffs’ counsel in the case which most recently featured shifting arguments and direct disregard for the magistrate judge’s orders. After an exhaustive analysis, the magistrate judge ordered the payment of reasonable attorneys’ fees and expenses for the violations.

Sterling's argument for sanctions is unsubstantiated. Sterling relies on Fed.R.Civ.P. 45(d)(1) which serves to protect a non-party recipient from undue burden and expense resulting from compliance with a subpoena. But Sterling does not claim or show it was put to such burden or expense. It has the responsibility to do so to justify a sanctions request. In re January 4, 2008 Subpoena to Kasten, No. 08-16-KSF, 2008 WL 1908755 (E.D.Ky. April 28, 2008).

The motion of The Sterling Group, L.P., for sanctions (DN 1) is **DENIED**.

July 28, 2017

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Charles R. Simpson III", is written over a faint circular seal of the United States District Court.

**Charles R. Simpson III, Senior Judge
United States District Court**