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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEN JOHANSEN, on behalf of himself and)
others similarly situated,)
)
Plaintiff,)
)
vs.)
)
MUTUAL OF OMAHA INSURANCE)
COMPANY, AMERIQUE, INC.,)
)
Defendants.)

3:18-cv-00325-MMD-WGC

ORDER

Re: ECF No. 1

Before the court is the Motion of AmeriQuote, Inc., (AmeriQuote) to compel compliance “with Rule 45 subpoenas.” (ECF No. 1.) The subpoenas were issued to and served upon Matthew S. Jones and Anna L. Jones. (*Id.* at 27-52.) No objection to either subpoena was received by AmeriQuote. (*Id.* at 7.) No response to the motion to compel has been filed with the court.

BACKGROUND

AmeriQuote is a party (defendant) in a putative class action against it and Mutual of Omaha Insurance Company (Mutual of Omaha) filed in the United States District Court for the Northern District of Georgia (1:16-cv-04108-RWS). The Plaintiff in the underlying litigation alleges Defendants made unsolicited calls to the telephones of Plaintiff and others on the National Do Not Call Registry in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227. (ECF No. 1 at 2-3.)

On October 13, 2017, the District Court for the Northern District of Georgia issued an order requiring AmeriQuote to obtain records from third party vendors. AmeriQuote initially served a subpoena on an entity called Insurance Marketing Innovations, Inc. (IMI). (*Id.* at 3.) When AmeriQuote

1 received no response to its subpoenas from IMI, AmeriQuote then served deposition subpoenas to
2 Matthew Jones and Anna Jones who were officers of IMI. (*Id.* at 3, pp. 15-22, 25-26, 27-34 and 35-42.)
3 Matthew Jones and Anna Jones were directed by their subpoenas to appear for their depositions on
4 March 8, 2018, at Bonanza Reporting Services, Reno, Nevada. (*Id.* at 28, 36.) The Joneses appear to
5 be residents of Washoe County, Nevada. (ECF No. 1 at pp. 12, 26.) The subpoenas were personally
6 served on February 24, 2018. (*Id.* at 12.)

7 After service of the subpoenas, counsel for AmeriQuote was initially contacted by Anna Jones
8 and thereafter by John Collier, Esq., who indicated he was representing Matthew and Anna Jones. (*Id.*
9 at 12-13, 43-49.) Counsel for AmeriQuote agreed, at Mr. Collier's request, to vacate the depositions to
10 be reset at a mutually convenient date. (*Id.* at 13, 44.) AmeriQuote's counsel has heard nothing further
11 from Mr. Collier subsequent to April 23, 2018, despite several follow-up attempts with Mr. Collier. (*Id.*)

12 This motion to compel compliance with Rule 45 subpoenas followed. It was initially filed in the
13 unofficial Southern Division of the District of Nevada. (ECF No. 1.) Because the deponents and their
14 putative attorney are located in Reno, the Honorable Andrew P. Gordon, United States District Judge,
15 ordered the case transferred to the unofficial Northern Division of the District of Nevada. (ECF No. 3.)

16 DISCUSSION

17 AmeriQuote properly served deposition subpoenas on Matthew and Anna Jones. The time and
18 place of the depositions as set forth in the subpoenas was vacated at the request of counsel for the Jones.
19 Counsel for AmeriQuote attempted to resolve the matter of rescheduling the depositions, as is required
20 by Fed. R. Civ. P. 37(a)(ii) and LR 26-7(c), to no avail. AmeriQuote's motion to compel is properly
21 filed in the district where compliance is required. Fed. R. Civ. P. 45(d)(2)(B)(I) and 45(c)(2)(A).
22 Matthew and Anna Jones have waived any objections to the subpoenas by failed to make timely
23 objections. *See WideVoice Communications, Inc. v. Qwest Communications Company, LLC*, No. 2:12-
24 cv-00467-GMN-VCF, 2012 WL 1439071, at *3 (D. Nev. April 26, 2012) (quoting *Moon v. SCP Pool*
25 *Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005)); *Forsythe v. Brown*, 281 F.R.D. 577, 587 (D. Nev. 2012)
26 (quoting *McCoy v. Southwest Airlines Co., Inc.*, 211 F.R.D. 381, 385 (C.D. Cal. 2002); citing *In Re DG*
27 *Acquisition Corp.*, 151 F.3d 75, 81 (2nd Cir. 1998). Despite service on attorney Collier (and others;
28 ECF No. 1 at 9), no response to the AmeriQuote motion to compel was received by the U.S. District

1 Court for the District of Nevada.

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CONCLUSION

IT IS HEREBY ORDERED that the motion of AmeriQuote (ECF No. 1) is **GRANTED**. Matthew S. Jones and Anna L. Jones are ordered to attend the revised time and place for their depositions as may be noticed by counsel for AmeriQuote. Matthew S. Jones and Anna L. Jones are advised that their failure to attend their depositions, and/or to produce the identified documents, may result in a contempt of court order of this court. Fed. R. Civ. P. 45(g).

IT IS FURTHER ORDERED that the Clerk shall send a copy of this order to the names and addresses listed on AmeriQuote’s Certificate of Service (ECF No. 1 at 9).

DATED: July 11, 2018.

William G. Cobb

WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE