

IN THE UNITED STATES DISTRICT COURT
IN THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CYNTHIA R. BRYANT, as Parent and
Guardian ad litem of C.C.B., a minor,

Plaintiff,

vs.

LOUIS C. THARP AND JOHN DOE,

Defendants.

C/A No.: 4:11-cv-02161-TLW-KDW

ORDER

This matter is before the court on the motion of defendant Louis Tharp (“Defendant”) to compel the South Carolina Department of Juvenile Justice (“DJJ”) and all departments located within DJJ to comply with his January 6, 2012 subpoena of records relating to Plaintiff. ECF No. 22. In response to the subpoena, DJJ’s General Counsel informed Defendant that DJJ was “not authorized to comply” with the subpoena “pursuant to state law and [DJJ] policy.” ECF No. 22-2 (Jan. 10, 2012 Ltr.). On January 24, 2012, Defendant filed this motion to compel. Plaintiff has not opposed this motion, nor has nonparty DJJ filed anything with the court objecting to Defendant’s motion. However, it does not appear that Defendant provided DJJ with notice of this motion. According to the certificate of service attached to the motion, Defendant only served Plaintiff’s counsel with the instant motion. *See* ECF No. 22-1 at 5.

Federal Rule of Civil Procedure 45(c)(2)(B) requires a nonparty to provide written objections to a subpoena within the earlier of 14 days after it was served or before the time specified for compliance. The letter from DJJ’s General Counsel to defense counsel (ECF No. 22-2) satisfies that requirement. After such objections are made to a subpoena, the party that served the subpoena may “at any time” seek the court’s order compelling production pursuant to

the subpoena. Fed. R. Civ. P. 45(c)(B)(i). However, the party must notify the “commanded person” that it is requesting such an order. *Id.*

Defendant seeks an order requiring DJJ, the “commanded person” to comply with his subpoena. Based on the only information available to the court at this time, Defendant has not notified DJJ of its motion. Accordingly, Defendant’s motion to compel (ECF No. 22) is denied with leave to refile. Upon compliance with Rule 45(c)(B)(i), Defendant may re-submit a similar motion. If such a motion is filed, both Plaintiff and DJJ should provide any responsive memoranda within 14 days.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Kaymani D. West". The signature is fluid and cursive, with the first name "Kaymani" being more prominent and the last name "West" following in a similar style.

March 15, 2012
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge