

overbroad and seek information that is privileged, private, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiff also issued a subpoena to Verizon for all phone call, text and data history to and from AT&T phone numbers (205) 913-9174 and or associated with Cooper's address at 3 Stonehurst Grm, Mountain Brook, AL 35213 from November 1, 2012 – January 31, 2013; April 1, 2013 – May 31, 2013; January 1, 2015 – January 31, 2015.²

4. Cooper objects to Plaintiff's request for these records on the grounds that the requests are overbroad and seek information that is privileged, private, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence and are by description in association with AT&T, which is not Verizon. Additionally, Cooper objects because it has already produced certain all documents in Cooper's possession that are relevant to this action.

Cooper's Cell Phone Records are Irrelevant

5. Although discovery is broad, it is not unlimited. "Rule 26(c), Ala. R. Civ. P., recognizes that the right to discovery is not unlimited, and the trial court has broad powers to prevent its abuse by any party." *See Ex parte Alapati*, 826 So. 2d 792, 798 n.2 (Ala. 2002) (denying writ of mandamus to compel the production of information because the discovery sought information regarding the defendant's dealings with third-parties that was irrelevant to the issue of the defendant's liability to the plaintiff). Accordingly, in order for a subpoena to be enforced against a non-party, the information sought must be relevant because "[e]vidence that is not relevant is not discoverable." *Ex parte Crawford Broadcasting Co.*, 904 So. 2d 221, 224 (Ala. 2004) (issuing writ of mandamus and finding that trial court improperly allowed the

² A true and correct copy of the subpoena is attached at Exhibit A.

issuance of a subpoena that sought patently irrelevant information from a third-party). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* at 225 (quoting Ala. R. Evid. 401).

6. In cases such as this where phone records sought are not only irrelevant but also potentially harmful to privacy interests, courts have limited the right of discovery. *See e.g. Loubser v. Pala*, No. 4:04CV75, 2007 WL 3232136, at *6 (N.D. Ind. Oct. 29, 2007) (quashing subpoena for three years of phone records on grounds that the proposed discovery has “the ability to show nothing with respect to the content of any relevant communication and instead shows only communication between parties who, it can be freely admitted, had multiple legitimate reasons to communicate”); *Martinez v. Rycars Constr.*, No. CV410-049, 2010 WL 4117668, at *2 (S.D. Ga. Oct. 18, 2010) (quashing a subpoena for two years of phone records on grounds that it was overbroad and would result in the provider handing over “a mass of telephone numbers to Rycar’s counsel, who would then be free to ‘cold call’ each and every number for go-fish discovery”); *Nunn v. State Farm Mut. Ins. Co.*, No. 3:08-CV-1486-D, 2010 WL 2044477, at *4 (N.D. Tex. May 24, 2010) (affirming trial court order to redact any call on phone record not specifically mentioned in deposition testimony to avoid fishing expedition).

7. Plaintiff has not alleged any fact of consequence in this action that could be made more or less probable with the subpoenaed cell phone record evidence from Clark Cooper’s personal cell phone number. In addition, Cooper has submitted an affidavit to the Court stating that the sole communication he had with any banking personnel regarding Newsome’s arrest was the email containing Newsome’s mugshot. *See* Do. 189, Tab 1. Plaintiff has not introduced any evidence to suggest that communications regarding Newsome or Newsome’s arrest took place

via Cooper's cell phone and has no basis for issuing a subpoena to Verizon for this information. Plaintiff continues to harass Cooper by attempting to obtain all of Cooper's personal and professional communications via now what is the third, third party subpoena from the Plaintiff, which would implicate privileged attorney client communications and the privacy interests of many individuals that are unconnected to this case.

WHEREFORE, Balch and Bingham objects to Plaintiff's subpoena for Cooper's cell phone records corresponding with (205) 913-8224.

Respectfully submitted this 26th day of February, 2016.

/s/ Allen Baker Jr.
One of the Attorneys for Clark Cooper and Balch & Bingham LLP

OF COUNSEL:

S. Allen Baker Jr.
Katherine R. Clements
BALCH & BINGHAM LLP
1901 Sixth Avenue North
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E-mail: abaker@balch.com
E-mail: kclements@balch.com

CERTIFICATE OF SERVICE

I hereby certify that on February 26th, 2016 I filed a copy of the foregoing with the Clerk of the Court using the Alafire/E-File System which will automatically generate service on all parties to this action.

s/ S. Allen Baker Jr.
Of Counsel

EXHIBIT A

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and
NEWSOME LAW, LLC,

Plaintiffs,

vs.

CLARK ANDREW COOPER, *et al.*,

Defendants.

CASE NO. CV-2015-900190

FILED IN OFFICE
CIRCUIT CIVIL DIVISION

FEB 19 2016

ANNE-MARIE ADAMS

CLERK

NOTICE OF INTENT TO SERVE SUBPOENAS ON NON-PARTY

Take notice, pursuant to Rule 34(b)(2) of the Alabama Rules of Civil Procedure, that upon the expiration of fifteen (15) days from the date of service of this notice, Plaintiff, Burton Wheeler Newsome, will apply to the Clerk of this Court for issuance of the attached subpoenas directed to ~~Verizon Wireless Services, LLC~~ who is not a party and whose address is C T Corporation System, 2 North Jackson Street, Suite 605, Montgomery, AL 36104 for the production of documents and things at the time and place specified in the subpoenas.

Respectfully submitted this the 19th day of February, 2016.



CHARLES I. BROOKS
Attorney for Plaintiffs
THE BROOKS LAW FIRM, P.C.
275 Forest Road, Suite 100
Hueytown, Alabama 35023
Telephone: (205) 744-0058
E-mail: thebrooksfirm2@yahoo.com

State of Alabama Unified Judicial System Form C-13 (front) Rev. 6/07	ORDER TO APPEAR (SUBPOENA)	Case Number CV-2015-900190
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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
(Circuit, District, or Municipal) (Name of County or Municipality)

State of Alabama
 Municipality of _____ v. _____ Defendant
 Plaintiff Newsome Law, LLC & Burton W. Newsome v. John Bullock, Jr., Clark Andrew Cooper, et al. Defendant

(For Juvenile cases only):
 In the Matter of: _____, a child

Verizon Wireless Service, LLC
 c/o C T Corporation System
 2 North Jackson Street, Suite 605
 Montgomery, AL 36104

- A. Issued at the request of:
1. Plaintiff/State
 2. Defendant
 3. Grand jury
- B. Special Instructions
 You are ordered to:
1. Appear at trial
 2. Produce records or documents. See attached schedule(s)
 3. Appear at deposition
 4. Other _____

You may contact: Burt Newsome, 194 Narrows Drive, Suite 103, Birmingham, AL 35242 (205) 747-1970

YOU ARE ORDERED TO APPEAR to give testimony before the court or by deposition; and/or produce and permit inspection and copying of books, documents, or tangible things; and /or permit inspection of premises as stated below until otherwise excused. Failure to obey this subpoena may be deemed a contempt of court from which the subpoena was issued.

DATE: March 22, 2016
 TIME: 9:00 a.m.
 ROOM: _____
 ADDRESS: Newsome Law, LLC
194 Narrows Drive, Suite 103
Birmingham, AL 35242
 Date issued _____
 Signature of Court Clerk _____
Deputy Clerk initials

- ADDITIONAL INSTRUCTIONS
 Any inspection or production of documents or records must be completed within 15 days.
1. All phone call, text and data history to and from Verizon Wireless phone number of (205) 913-8224 during the time frame of:
 - *November 1, 2012 ~ January 31, 2013
 - *April 1, 2013 ~ May 31, 2013
 - *January 1, 2015 ~ January 31, 2015
 2. All subscriber information, including but not limited to name, address, etc.

TO ANY SHERIFF OF THE STATE OF ALABAMA OR ANY AUTHORIZED PERSON: You are ordered to serve this Order on the above-named person and make return to this court.

RETURN ON SERVICE

I certify that I personally delivered a copy of this order to _____ on _____

Signature and Title of Server _____

(For Criminal cases only)
 Served by mail
 Date mailed _____

Sheriff _____ Deputy Sheriff _____

COPY OF SUBPOENA TO BE ISSUED
 CLERK ON 3/17/2016

Form C-13 (back)	Rev. 6/07	ORDER TO APPEAR (SUBPOENA)
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NOTICE

With respect to a subpoena which seeks only a production of documents or tangible things or an inspection of premises, as provided in Ala.R.Civ.P. 45(a) (3) (C), the production of documents or tangible things or the inspection of premises pursuant to this subpoena shall take place where the documents or tangible things are regularly kept or at some other reasonable place designated by the recipient of this subpoena. As recipient of this subpoena, you have the option to deliver or mail legible copies of the documents or things to the party causing issuance of this subpoena, and the preparation of copies may be conditioned on the payment in advance of the reasonable cost of making such copies. Other parties involved in this lawsuit have the right to be present at the time of the production or inspection. The recipient of this subpoena has the right to object to the production or inspection at any time prior to the date of production or inspection set forth in this subpoena. See Ala. R.Civ.P. 45(c) (2) (B), which is set out below.

Rule 45, Ala.R.Civ.P., subdivisions (c) & (d)

(c) Protection of person subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court from which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying at any time before the time specified for compliance may serve upon the party or attorney designed in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. "Serve" as used herein means mailing to the party or attorney. If objection is made, the party causing the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expenses resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if

- fails to allow reasonable time for compliance;
- requires a resident of this state who is not a party or an officer of a party to travel to place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, or requires a nonresident of this state who is not a party or an officer of a party to travel to a place within this state more than one hundred (100) miles from the place of service or, where separate from the place of service, more than one hundred (100) miles from the place where that person is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- subjects a person to undue burden.

(B) If a subpoena

- requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- requires disclosure of an unrelaxed expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- requires a person who is not a party or an officer of a party to incur substantial expenses to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena.

- A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

State of Alabama Unified Judicial System Form C-13 (front) Rev. 6/07	ORDER TO APPEAR (SUBPOENA)	Case Number CV-2015-900190
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IN THE CIRCUIT _____ COURT OF JEFFERSON COUNTY, ALABAMA
(Circuit, District, or Municipal) (Name of County or Municipality)

State of Alabama
 Municipality of _____ v. John Bullock, Jr., Clark Andrew Cooper, et al. Defendant
 Plaintiff Newsome Law, LLC & Burton W. Newsome v. _____ Defendant

(For Juvenile cases only):
 In the Matter of: _____, a child

Verizon Wireless Service, LLC
 c/o C T Corporation System
 2 North Jackson Street, Suite 605
 Montgomery, AL 36104

- A. Issued at the request of:
1. Plaintiff/State
 2. Defendant
 3. Grand Jury
- B. Special Instructions
 You are ordered to:
1. Appear at trial
 2. Produce records or documents-See attached schedule(s)
 3. Appear at deposition
 4. Other _____

You may contact: Burt Newsome, 194 Narrows Drive, Suite 103, Birmingham, AL 35242 (205) 747-1970

YOU ARE ORDERED TO APPEAR to give testimony before the court or by deposition; and/or produce and permit inspection and copying of books, documents, or tangible things; and /or permit inspection of premises as stated below until otherwise excused. Failure to obey this subpoena may be deemed a contempt of court from which this subpoena was issued.

DATE: March 22, 2016
 TIME: 9:00 a.m.
 ROOM: _____
 ADDRESS: Newsome Law, LLC
194 Narrows Drive, Suite 103
Birmingham, AL 35242
 Date Issued _____
 Signature of Court Clerk _____ Deputy Clerk Initials _____

- ADDITIONAL INSTRUCTIONS**
 Any inspection or production of documents or records must be completed within 15 days.
1. All phone call, text and data history to and from AT&T phone numbers (205) 913-1374 and/or any AT&T phone numbers associated with Clark Cooper (SSN of XXX-XX-2737, birth year of 1967) and/or associated with his following addresses:
 *3 Stonehurst Gm, Mountain Brook, AL 35213
 during the time frame of:
 *November 1, 2012 ~ January 31, 2013
 *April 1, 2013 ~ May 31, 2013
 *January 1, 2015 ~ January 31, 2015

TO ANY SHERIFF OF THE STATE OF ALABAMA OR ANY AUTHORIZED PERSON: You are ordered to serve this Order on the above-named person and make return to this court.

RETURN ON SERVICE

I certify that I personally delivered a copy of this order to _____ on _____ Signature and Title of Server _____	(For Criminal cases only) <input type="checkbox"/> Served by mail Date mailed _____ _____ Sheriff Deputy Sheriff
---	--

COPY OF SUBPOENA TO BE ISSUED TO THE CLERK ON 3/17/2016

Form C-13 (back)	Rev. 6/07	ORDER TO APPEAR (SUBPOENA)
<p>NOTICE</p> <p>With respect to a subpoena which seeks only a production of documents or tangible things or an inspection of premises, as provided in Ala.R.Civ.P. 45(a) (3) (C), the production of documents or tangible things or the inspection of premises pursuant to this subpoena shall take place where the documents or tangible things are regularly kept or at some other reasonable place designated by the recipient of this subpoena. As recipient of this subpoena, you have the option to deliver or mail legible copies of the documents or things to the party causing issuance of this subpoena, and the preparation of copies may be conditioned on the payment in advance of the reasonable cost of making such copies. Other parties involved in this lawsuit have the right to be present at the time of the production or inspection. The recipient of this subpoena has the right to object to the production or inspection at any time prior to the date of production or inspection set forth in this subpoena. See Ala. R.Civ.P. 45(c) (2) (B), which is set out below.</p>		
<p>Rule 45, Ala.R.Civ.P., subdivisions (c) & (d)</p>		
<p>(c) Protection of person subject to subpoenas.</p>		
<p>(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court from which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.</p>		
<p>(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.</p>		
<p>(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying at any time before the time specified for compliance may serve upon the party or attorney designed in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. "Serve" as used herein means mailing to the party or attorney. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expenses resulting from the inspection and copying commanded.</p>		
<p>(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if:</p>		
<p>(i) fails to allow reasonable time for compliance;</p> <p>(ii) requires a resident of this state who is not a party or an officer of a party to travel to place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, or requires a nonresident of this state who is not a party or an officer of a party to travel to a place within this state more than one hundred (100) miles from the place of service or, where separate from the place of service, more than one hundred (100) miles from the place where that person is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or</p> <p>(iii) requires disclosure of privileged or other protected matter, and no exception or waiver applies, or</p> <p>(iv) subjects a person to undue burden.</p>		
<p>(B) If a subpoena</p>		
<p>(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or</p> <p>(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or</p> <p>(iii) requires a person who is not a party or an officer of a party to incur substantial expenses to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.</p>		
<p>(d) Duties in responding to subpoena.</p>		
<p>(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.</p> <p>(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.</p>		



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and NEWSOME)
LAW, LLC)
)
Plaintiffs,)
)
v.)
)
CLARK ANDREW COOPER ET AL.,)
)
Defendants.)
)
)
)

CASE NO.: 01-CV-2015-900190.00

OBJECTION TO THIRD PARTY SUBPOENA

Defendant Clark Cooper (“Cooper”) objects to the subpoena issued by Plaintiff Newsome Law, LLC (“Plaintiff”) to TW Telecom LP (“TW Telecom”) and offers the following objection:

1. Plaintiff issued a subpoena to TW Telecom for all phone call, text, and data history for phone number (601) 961-9900 from November 2015 – January 2015. The phone number corresponds to Balch and Bingham, LLP’s Jackson Mississippi office, where Balch and Bingham regularly uses this phone number for business purposes which includes privileged attorney client communications. Further, the number itself is entirely unrelated to Clark Cooper and/or the allegations in this matter. Balch and Bingham objects to Plaintiff’s request for these records on the grounds that the requests are overbroad and seek information that is privileged, private, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

Balch and Bingham’s Jackson MS Phone Records are Irrelevant

2. Although discovery is broad, it is not unlimited. “Rule 26(c), Ala. R. Civ. P., recognizes that the right to discovery is not unlimited, and the trial court has broad powers to

prevent its abuse by any party.” See *Ex parte Alapati*, 826 So. 2d 792, 798 n.2 (Ala. 2002) (denying writ of mandamus to compel the production of information because the discovery sought information regarding the defendant’s dealings with third-parties that was irrelevant to the issue of the defendant’s liability to the plaintiff). Accordingly, in order for a subpoena to be enforced against a non-party, the information sought must be relevant because “[e]vidence that is not relevant is not discoverable.” *Ex parte Crawford Broadcasting Co.*, 904 So. 2d 221, 224 (Ala. 2004) (issuing writ of mandamus and finding that trial court improperly allowed the issuance of a subpoena that sought patently irrelevant information from a third-party). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* at 225 (quoting Ala. R. Evid. 401).

3. In cases such as this where phone records sought are not only irrelevant but also potentially harmful to privacy interests, courts have limited the right of discovery. See e.g. *Loubser v. Pala*, No. 4:04CV75, 2007 WL 3232136, at *6 (N.D. Ind. Oct. 29, 2007) (quashing subpoena for three years of phone records on grounds that the proposed discovery has “the ability to show nothing with respect to the content of any relevant communication and instead shows only communication between parties who, it can be freely admitted, had multiple legitimate reasons to communicate”); *Martinez v. Rycars Constr.*, No. CV410-049, 2010 WL 4117668, at *2 (S.D. Ga. Oct. 18, 2010) (quashing a subpoena for two years of phone records on grounds that it was overbroad and would result in the provider handing over “a mass of telephone numbers to Rycar’s counsel, who would then be free to ‘cold call’ each and every number for go-fish discovery”); *Nunn v. State Farm Mut. Ins. Co.*, No. 3:08-CV-1486-D, 2010

WL 2044477, at *4 (N.D. Tex. May 24, 2010) (affirming trial court order to redact any call on phone record not specifically mentioned in deposition testimony to avoid fishing expedition).

4. Plaintiff has not alleged any fact of consequence in this action that could be made more or less probable with the subpoenaed phone record evidence from Balch and Bingham's Jackson MS phone number. In addition, Cooper has submitted an affidavit to the Court stating that the sole communication he had with any banking personnel regarding Newsome's arrest was the email containing Newsome's mugshot. *See Do. 189, Tab 1.* Plaintiff has not introduced any evidence to suggest that communications regarding Newsome or Newsome's arrest took place from Balch and Bingham's Jackson, MS office and has no basis for issuing a subpoena to TW Telecom for this information. Plaintiff's demand is merely another fishing expedition and the phone history requested would implicate privileged attorney client communications and the privacy interests of many individuals that are unconnected to this case.

WHEREFORE, Balch and Bingham objects to Plaintiff's subpoena for Balch and Bingham's phone records corresponding with (601) 961-9900.

Respectfully submitted this 10th day of February, 2016.

/s/ Allen Baker Jr.

One of the Attorneys for Clark Cooper and Balch & Bingham LLP

OF COUNSEL:

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 Telephone: (205) 226-8734

Facsimile: (205) 488-5880

Facsimile: (205) 488-5711

E-mail: abaker@balch.com

E-mail: kclements@balch.com

CERTIFICATE OF SERVICE

I hereby certify that on February 10th, 2016 I filed a copy of the foregoing with the Clerk of the Court using the Alafire/E-File System which will automatically generate service on all parties to this action.

s/ S. Allen Baker Jr.
Of Counsel



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and NEWSOME)
LAW, LLC)

Plaintiffs,)

v.)

CLARK ANDREW COOPER ET AL.,)

Defendants.)

)

CASE NO.: 01-CV-2015-900190.00

OBJECTION TO THIRD PARTY SUBPOENA

Defendant Clark Cooper (“Cooper”) objects to the subpoena issued by Plaintiff Newsome Law, LLC (“Plaintiff”) to AT&T Billing Southeast, LLC (“AT&T”) and offers the following objection:

1. On January 28, 2016, Plaintiff issued a subpoena to AT&T for (1) phone call, text, and data history of phone numbers related to Cooper or Cooper’s residence from November 1, 2012 – January, 31, 2013; April 1, 2013 – May 31, 2013; and January 1, 2015 – January 31, 2015.¹ Mr. Cooper is an attorney at Balch and Bingham, LLP and regularly uses these phone numbers for business purposes and other personal purposes. Cooper objects to Plaintiff’s request for these records on the grounds that the requests are overbroad and seek information that is privileged, private, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Cooper objects because it has already produced certain all documents in Cooper’s possession that are relevant to this action.

¹ Exhibit A is a copy of the subpoena to AT&T Billing Southeast, LLC.

Mr. Cooper's Phone Records Not Relevant

2. Although discovery is broad, it is not unlimited. “Rule 26(c), Ala. R. Civ. P., recognizes that the right to discovery is not unlimited, and the trial court has broad powers to prevent its abuse by any party.” *See Ex parte Alapati*, 826 So. 2d 792, 798 n.2 (Ala. 2002) (denying writ of mandamus to compel the production of information because the discovery sought information regarding the defendant’s dealings with third-parties that was irrelevant to the issue of the defendant’s liability to the plaintiff). Accordingly, in order for a subpoena to be enforced against a non-party, the information sought must be relevant because “[e]vidence that is not relevant is not discoverable.” *Ex parte Crawford Broadcasting Co.*, 904 So. 2d 221, 224 (Ala. 2004) (issuing writ of mandamus and finding that trial court improperly allowed the issuance of a subpoena that sought patently irrelevant information from a third-party). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* at 225 (quoting Ala. R. Evid. 401).

3. In cases such as this where phone records sought are not only irrelevant but also potentially harmful to privacy interests, courts have limited the right of discovery. *See e.g. Loubser v. Pala*, No. 4:04CV75, 2007 WL 3232136, at *6 (N.D. Ind. Oct. 29, 2007) (quashing subpoena for three years of phone records on grounds that the proposed discovery has “the ability to show nothing with respect to the content of any relevant communication and instead shows only communication between parties who, it can be freely admitted, had multiple legitimate reasons to communicate”); *Martinez v. Rycars Constr.*, No. CV410-049, 2010 WL 4117668, at *2 (S.D. Ga. Oct. 18, 2010) (quashing a subpoena for two years of phone records on grounds that it was overbroad and would result in the provider handing over “a mass of

telephone numbers to Rycar's counsel, who would then be free to 'cold call' each and every number for go-fish discovery"); *Nunn v. State Farm Mut. Ins. Co.*, No. 3:08-CV-1486-D, 2010 WL 2044477, at *4 (N.D. Tex. May 24, 2010) (affirming trial court order to redact any call on phone record not specifically mentioned in deposition testimony to avoid fishing expedition).

4. Plaintiff has not alleged any fact of consequence in this action that could be made more or less probable with the subpoenaed phone record evidence. Plaintiff has not introduced any evidence to suggest that any relevant information will be obtained from Cooper's phone call, text, or data history. Plaintiff's demand is merely another fishing expedition and pure harassment. The phone call, text, and data history requested would implicate privileged attorney client communications and the privacy interests of many individuals that are unconnected to this case. Thus, the exposure of this information would violate the trial court's mandate to "exercise its broad discretion in a manner that will implement the policy of full disclosure of relevant information and at the same time afford a party, or others, maximum protection against harmful side effects which would result from unnecessary disclosure." *Plitt v. Griggs*, 585 So. 2d 1317, 1321 (Ala. 1991).

WHEREFORE, Cooper objects to Plaintiff's subpoena for Mr. Cooper's phone call, text, and data history.

Respectfully submitted this 4th day of February, 2016.

/s/ Allen Baker Jr.

One of the Attorneys for Clark Cooper and Balch & Bingham LLP

OF COUNSEL:

S. Allen Baker Jr.
Katherine R. Clements

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Facsimile: (205) 488-5880

Facsimile: (205) 488-5711

E-mail: abaker@balch.com

E-mail: kclements@balch.com

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2016 I filed a copy of the foregoing with the Clerk of the Court using the Alafire/E-File System which will automatically generate service on all parties to this action.

s/ S. Allen Baker Jr.
Of Counsel



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and)
NEWSOME LAW, LLC,)
)
Plaintiffs,)
)
v.)
)
JOHN F. BULLOCK, JR., et al.)
)
Defendant.)
)

CASE NO. CV-2015-900190.00

OBJECTION TO ISSUANCE OF NON-PARTY SUBPOENA

Comes now Defendant, John F. Bullock, Jr., and objects to the issuance of a subpoena to non-party Diane S. Bullock and in support thereof states the following:

1. Upon information and belief, Diane S. Bullock is a resident and citizen of New Orleans, Louisiana, and is therefore beyond the subpoena power of the Court.
2. Diane S. Bullock has no information relevant to the subject matter of the pending action.
3. Diane S. Bullock has no discoverable information which would be reasonably calculated to lead to the discovery of admissible evidence in this matter.
4. Plaintiffs have failed entirely to comply with their obligations under rule 30(b)(4) for taking a video deposition in that Plaintiffs had not designated the person before whom the deposition shall be taken, Plaintiffs have stated no reason in their notice why a video recording is necessary or desirable, and Plaintiffs have not included in their notice provisions to assure that the recorded testimony will be accurate and trustworthy and that the witness will be treated fairly. Plaintiffs have thus failed to

comply with their obligations under Rule 30(b)(4) and the subpoena should not issue.

5. The purpose for taking the video deposition of Defendant's ex-wife is to harass, annoy, and inflict vexation upon Defendant.
6. Defendant's attorney was not consulted prior to being served with the notice of intent to serve subpoena on Non-party and has a conflict at the date and time in the proposed subpoena.

Respectfully Submitted,

/s James E. Hill, Jr
James E. Hill (HIL005)
Attorney for Defendant

/s Joel P. Watson
Joel P. Watson (WAT098)
Attorney for Defendant

Of Counsel:
Hill, Hill & Gossett, P.C.
2603 Moody Parkway
P.O. Box 310
Moody, AL 35004

CERTIFICATE OF SERVICE

I hereby certify that on February 13th, 2016, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to all parties, and I hereby certify that, to the best of my knowledge and belief, there are no non-AlaFile participants to whom the foregoing is due to be mailed by way of the United States Postal Service.

Charles Brooks
The Brooks Law Firm, P.C.
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S. Allen Cooper
Amelia K. Steindorff

Balch & Bingham LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642

Robert Ronnlund
P.O. Box 380548
Birmingham, AL 35238

/s James E. Hill, Jr.
OF COUNSEL



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and)
NEWSOME LAW, LLC,)
)
Plaintiffs,)
)
v.)
)
JOHN F. BULLOCK, JR., et al.)
)
Defendant.)
)

CASE NO. CV-2015-900190.00

OBJECTION TO ISSUANCE OF NON-PARTY SUBPOENA

Comes now Defendant, John F. Bullock, Jr., and objects to the issuance of a subpoena to non-party John Bullock, Sr. and in support thereof states the following:

1. John Bullock, Sr. has no information relevant to the subject matter of the pending action.
2. John Bullock, Sr. has no discoverable information which would be reasonably calculated to lead to the discovery of admissible evidence in this matter.
3. Plaintiffs have failed entirely to comply with their obligations under rule 30(b)(4) for taking a video deposition in that Plaintiffs had not designated the person before whom the deposition shall be taken, Plaintiffs have stated no reason in their notice why a video recording is necessary or desirable, and Plaintiffs have not included in their notice provisions to assure that the recorded testimony will be accurate and trustworthy and that the witness will be treated fairly. Plaintiffs have thus failed to comply with their obligations under Rule 30(b)(4) and the subpoena should not issue.
4. The purpose for taking the video deposition of Defendant's father is to harass,

annoy, and inflict vexation upon Defendant and his family.

5. Defendant's attorney was not consulted prior to being served with the notice of intent to serve subpoena on Non-party and has a conflict at the date and time in the proposed subpoena.

Respectfully Submitted,

/s James E. Hill, Jr
James E. Hill (HIL005)
Attorney for Defendant

/s Joel P. Watson
Joel P. Watson (WAT098)
Attorney for Defendant

Of Counsel:
Hill, Hill & Gossett, P.C.
2603 Moody Parkway
P.O. Box 310
Moody, AL 35004

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/s James E. Hill, Jr.
OF COUNSEL



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01-CV-2015-900190.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

BURT NEWSOME, ET. AL.,

Plaintiffs,

vs.

Case No.: CV-2015-900190

CLARK ANDREW COOPER, ET AL

Defendants

**SUPPLEMENT TO PLAINTIFFS' RESPONSE TO
DEFENDANT BULLOCK'S MOTION TO QUASH SUBPOENAS**

Come now the plaintiffs and supplements their response to Co-Defendant John Bullock, Jr.'s Objection To Issuance of Non-Party Subpoena to Diane S. Bullock as follows:

See attached affidavit of former Federal Law Enforcement Agent Dan Herrin attached as Exhibit "A".

This the 30th day of June, 2016.

/s/Charles I. Brooks

Charles I. Brooks

Attorney for Plaintiffs

THE BROOKS LAW FIRM, P.C.

275 Forest Road, Suite 100

Hueytown, Alabama 35023

Telephone: (205) 744-0058

E-mail: thebrooksfirm2@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this document on the following counsel of record by electronic filing and by placing a copy in the U.S. Mail first class postage prepaid to the following:

S. Allen Baker
Balch & Bingham
1901 Sixth Avenue North
Birmingham, AL 35203

James E. Hill, Jr.
Hill, Weisskopf & Hill
Moody Professional Building
2603 Moody Parkway, Suite 200
Moody, AL 35004

Robert Ronnlund
P. O. Box 380548
Birmingham, AL 35238

and by mailing a copy first-class U.S mail, postage prepaid to the following:

Diane S. Bullock
2122 Cogswell Avenue
Pell City, Alabama 35125

John Bullock, Sr.
3800 River Ranch Road
Ragland, AL 35131

on this the 30th day of June 2016.


/s/ Charles I. Brooks
Charles I. Brooks

STATE OF ALABAMA)
SHELBY COUNTY)

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Dan Herrin, who being known to me and being first duly sworn, deposes and says as follows:

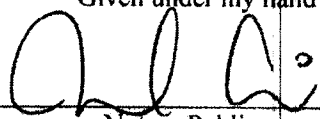
"My name is Dan Herrin and I am the President of The Herrin Group Investigations Service and a former Federal Law Enforcement Officer. I have spoken with Diane S. Bullock, ex-wife of John Bullock who is one of the Co-Defendants in the underlying action known as Case Number CV15-900190 which is presently pending in the Circuit Court of Jefferson County, Alabama. Diane S. Bullock told me that Co-Defendant John Bullock had discussed the events which are part of the subject of this lawsuit with her. All of the above statements are true and correct and stated as facts."


Dan Herrin

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Dan Herrin, whose name is signed to the foregoing affidavit, and who is known to me, acknowledged before me on this day, that being informed of the contents of said affidavit, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 10th day of June, 2016.


Notary Public

My commission expires: 10/4/2016

Jennifer Choi
Notary Public Alabama State at Large
My Commission Expires October 4, 2016

CERTIFICATE OF SERVICE


I hereby certify that I have served a copy of the foregoing document by U.S. First Class Mail on this the 14th day of April 2015:

Burt Newsome, Newsome Law, LLC
c/o Robert E. Lusk, Jr.
P.O. Box 1315
Fairhope, AL 36533

Clark Andrew Cooper, Balch & Bingham, LLP
c/o Allen Baker, Jr.
Amelia Steindorff
Balch & Bingham, LLP
1901 6th Ave. N, Ste 1500
Birmingham, AL 35203

John W. Bullock
c/o James E. Hill, Jr.
2603 Moody Pkwy, Ste 200
P.O. Box 310
Moody, AL 35004

Clairborne P. Seir
c/o Robert M. Ronlund
Scott, Sullivan, Streetman & Fox, P.C.
2450 Valleydale Road
P.O. Box 380548
Birmingham, Alabama 35244



Lora Gaxiola, DMD



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01-CV-2015-900190.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BURT W. NEWSOME; and)
NEWSOME LAW, LLC,)
)
Plaintiffs,)
vs.)
)
CLARK ANDREW COOPER, et al.,)
)
Defendants.)

CASE NO. CV-2015-900190

MOTION TO COMPEL

COMES NOW the Plaintiffs, Burt W. Newsome and Newsome Law LLC (“Newsome”) and files the following:

1. The objection is not specific as to which provisions of Rule 45, A.R.C.P. Newsome’s subpoena violates, although there is nothing on the face of the subpoena that is in violation of the rule. It is not, therefore, “void on its face.”

2. Newsome has filed a motion requesting this Court enter a Qualified Protective Order in compliance with the federal Health Insurance Portability and Accountability Act (HIPAA) and the privacy regulations thereunder, which satisfies the burden that “reasonable assurances” be made to a provider before it may disclose protected information under 45 CFR 164.512(e)(1)(ii).

3. Gaxiola objects to the subpoena on the grounds that it is “overly broad and unduly burdensome, seeking information not relevant or admissible in this matter and appearance at ‘trial/hearing.’” These objections are not available to a person subject to a request to inspect/copy documents under subpoena. Newsome has requested records pertaining to John Bullock, including dates of appointments. The objections available to Gaxiola under the Alabama Rules of Civil Procedure are if the subpoena (i) fails to allow reasonable time for compliance; (ii) requires a resident of this state who is not a party or an officer of a party to travel more than 100 miles from his residence or place of employment; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden.

4. The requested information was deliverable within 15 days of service, as is required by A.R.C.P. 45. Newsome allowed the respondent sufficient time to comply.

5. The subpoena seeks that the respondent "appear at trial/hearing," however certified records are requested. It is unlikely that she would be required to actually appear. Regardless, the court is located within 100 miles of respondent's office. Objection (ii) does not apply.

6. Objection (iii) is treated by Newsome's motion for a Qualified Protective Order in compliance with HIPAA regulations, as noted above.

7. The only relevant objection is that the request is unduly burdensome to respondent. However, Newsome only requests records concerning a single patient, John Bullock, a party to this litigation, going back a maximum of five (5) years. The materials requested do focus on dates and times of appointments and information regarding who made the appointments. These documents should be readily available and it is unclear how retrieving these documents would be unduly burdensome to the respondent.

WHEREFORE, premises considered, Newsome requests this Court enter an order compelling Lora Gaxiola to respond to his subpoena dated 3/31/2015.

Respectfully submitted this 6th day of May, 2015

/s/ Robert E. Lusk, Jr.
ROBERT E. LUSK, JR. (LUS005)
Attorney For Plaintiffs BURT W. NEWSOME
and NEWSOME LAW, LLC.

LUSK LAW FIRM, LLC
P. O. Box 1315
Fairhope, AL 36533
251-471-8017
251-478-9601 Fax
rlusk@lusklawfirmllc.com

Certificate of Service

I hereby certify that I have this 6th day of May, 2015, filed the foregoing with the Clerk of the Court and that I have served a copy of the foregoing on the following:

S. Allen Baker
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194 Narrows Drive, #105
Birmingham, AL 35242

/s/ Robert E. Lusk, Jr.
ROBERT E. LUSK, JR. (LUS005)
Attorney For Plaintiffs