IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

R. L. MLAZGAR ASSOCIATES, INC., Plaintiff, v. HLI SOLUTIONS, INC.; LITECONTROL CORPORATION; PROGRESS LIGHTING, INC.; AND HUBBELL INCORPORATED, Defendants. In Re: Subpoena to Cooper Lighting, LLC	)	Misc. Action No: 1:25-mi-00012-MHC-LTW HLI SOLUTIONS, INC. AND LITECONTROL CORPORATION'S MEMORANDUM IN OPPOSITION TO MLAZGAR'S MOTION TO QUASH SUBPOENA

This motion arises out of a subpoena HLI Solutions, Inc., and Litecontrol Corporation (collectively, "HLI") served on Cooper Lighting, LLC, for materials relevant to a case pending before Judge Jacquelyn Austin in the District of South Carolina, Case No. 6:22-cv-04729-JDA (D.S.C.). The Court should deny R.L. Mlazgar Associates, Inc.'s ("Mlazgar") motion, as it is both procedurally improper and substantively incorrect.

BACKGROUND

1. The Parties. HLI is a leading manufacturer of commercial and industrial lighting products and architectural lighting system, and it engages with exclusive sales agents in territories throughout the United States to sell those products. HLI is known in the Lighting industry as a "conglomerate manufacturer,"

along with approximately three other such manufacturers: Acuity Brands Lighting, Signify Lighting, and Cooper Lighting.

For a period of time, HLI had an Exclusive Sales Representative Agreement ("ESRA") with Mlazgar to sell HLI's products in parts of Minnesota, Wisconsin, Michigan, and the Dakotas in exchange for substantial commissions and other incentives specific to Mlazgar. Through the ESRA, Mlazgar agreed to sell only HLI's products as a conglomerate manufacturer anchor, and the niche products of other competitive manufacturers only upon HLI's consent, as some commercial or industrial projects occasionally required specialty lighting that HLI did not manufacture. Copies of the ESRA are available at Docket Numbers 22-1 and 22-2 in the District of South Carolina proceedings.

Despite the agreed-upon exclusivity between HLI and Mlazgar, Mlazgar agreed to begin sell lighting products and controls manufactured by Cooper Lighting—an immediate and direct conglomerate manufacturer competitor of HLI in each of the territories covered by the ERSA. Once apprised of Mlazgar's action, HLI provided Mlazgar a 90-day period to rescind its agreement with Cooper Lighting and comply with the ERSA; however, Mlazgar elected to continue its representation of HLI's direct competitor. This, in turn, forced HLI to find, train, and on-board a new sales agent to serve the territories for which Mlazgar had been HLI's exclusive representative.

2. Litigation in the District of South Carolina. On December 30, 2022, Mlazgar filed suit in the District of South Carolina, in which it alleged ***sixteen*** causes of action against HLI and Progress Lighting, Inc., a residential lighting manufacturer for which Mlazgar also had been a sales agent. Mlazgar's claims stem from HLI's and Progress Lighting's efforts to mitigate the substantial damage inflicted by Mlazgar's turncoat behavior in agreeing to represent HLI's direct competitor. (Dkt. No. 1 in D.S.C.) That number has since metastasized to ***eighteen*** causes of action. (Dkt. No. 183 in D.S.C.)

In response, HLI filed a single-count counterclaim for breach of contract to recover its considerable losses resulting from Mlazgar's decision to begin selling the products of a competitor conglomerate manufacturer. (Dkt. No. 22 in D.S.C.)

3. Discovery in the District of South Carolina. Judge Austin is very actively and carefully managing discovery and the litigation process in the District of South Carolina, including holding discovery hearings and directing the parties to file periodic discovery status reports. (*E.g.*, Dkt. No. 134 in D.S.C. (hearing); Dkt. No. 137 in D.S.C. (directing status reports); Dkt. No. 159 in D.S.C. (further discovery instructions); Dkt. No. 173 in D.S.C. (status conference).)

Judge Austin's oversight is necessitated by Mlazgar's aggressive litigation tactics, which include serving hundreds of written discovery requests, repeatedly noticing Rule 30(b)(6) depositions with an unreasonable number of topics, and filing

serial discovery motions (including Docket Numbers 64, 96, 122, 165, 179, 231, 247, 248, 249, and 250).

Judge Austin has repeatedly attempted to rein in Mlazgar's litigation overreach. (*E.g.*, Dkt. No. 134 in D.S.C. (denying Mlazgar's motion to compel against Progress Lighting); Dkt. No. 142 in D.S.C. (awarding Mlazgar less than ten percent of its requested fees for a motion to compel because of "the Defendants' substantial compliance" with Mlazgar's overwhelming written discovery requests); Dkt. No. in D.S.C. 182 (denying Mlazgar's motion to take 20 depositions); Dkt. No. 190 in D.S.C. (ordering Mlazgar to comply with a local rule requiring disclosure of exhibits in advance of depositions); Dkt. No. 246 in D.S.C. (denying Mlazgar's motion to compel against Progress Lighting); Dkt. No. 253 (granting HLI's motion for protective order against Mlazgar's 66-topic Rule 30(b)(6) deposition notice).)

Nevertheless, Mlazgar currently has at least four discovery motions pending in the District of South Carolina, all of which were filed on the very same day. (Dkt. Nos. 247, 248, 249, and 250 in D.S.C. (all filed Feb. 24, 2025).)

4. <u>Subpoena to Cooper Lighting.</u> As part of discovery in the District of South Carolina case, HLI served a subpoena on Cooper Lighting that sought documents surrounding the Mlazgar–Cooper Lighting engagement. In particular, HLI sought production of (1) Cooper Lighting's documents related to Mlazgar's acquisition of Elan Lighting Systems; (2) contracts between Cooper Lighting and

Mlazgar or Elan; (3) documents related to Mlazgar's contractual obligations to HLI; (4) documents related to HLI's products or contracts that Mlazgar or Elan provided to Cooper Lighting; and (5) documents related to any incentives that Cooper Lighting proposed to Mlazgar or Elan to become an agent of Cooper Lighting (and, in turn, breach its contract with HLI). (*See* Dkt. No. 1-3 (copy of subpoena).)

HLI served notice of the subpoena on the parties on January 22, 2025, via email. (Dkt. No. 1-3, at 1.) It served the subpoena on Cooper Lighting via Federal Express courier service the next day, January 23, 2025. (Ex. A.) The subpoena directed compliance by February 6, 2025—fourteen days following service on Cooper Lighting.

On February 6, Cooper Lighting first contacted HLI about the subpoena. (Ex. B.) That same day, HLI supplied Cooper Lighting with a copy of the confidentiality order for the District of South Carolina matter to ensure that Cooper Lighting could take steps it deemed appropriate, if any, to secure the confidentiality of its records. (*Id.*) The next day—February 7—counsel for Cooper Lighting relayed that she spoke to her client, and she further reported: "They've said that they can produce the documents by February 21." (*Id.*) The following week, counsel for Cooper Lighting indicated that one of her South Carolina colleagues "is taking over this matter since the federal case is pending in South Carolina and I'm based in Georgia." (*Id.*)

Cooper Lighting did not produce anything on February 21, 2025, nor did it ever serve any objections. Accordingly, HLI filed a motion to compel compliance with the subpoena in the District of South Carolina the next business day, February 24, 2025. (Dkt. No. 245 in D.S.C.) That motion remains pending before Judge Austin.

Meanwhile, Mlazgar filed a motion to quash the subpoena before this Court. The Court should transfer this motion to the District of South Carolina pursuant to Rule 45(f) of the Federal Rules of Civil Procedure, as the subpoena issued from the District of South Carolina, the crux of the ongoing litigation is pending in the District of South Carolina, and the presiding judge in the District of South Carolina is carefully managing the litigation tactics in this matter—to include potential conflicting positions taken by Mlazgar in the several jurisdiction in which it has elected to conduct litigation in this and related cases. That stated, if this Court chooses to resolve this motion, it should deny the motion to quash and order compliance with the subpoena in full, as more fully explained below.

ARGUMENT

I. Mlazgar lacks standing to object to a subpoena issued to Cooper Lighting.

The Court should deny Mlazgar's motion to quash because Mlazgar has no standing to challenge a subpoena issued to a different entity. That is the law in both

this Court and in the District of South Carolina. *See, e.g.*, *Mobilitie Mgmt., LLC v. Harkness*, Case No. 1:16-cv-04396, 2018 U.S. Dist. LEXIS 244819, at *2–3 (N.D. Ga. Mar. 12, 2018) (denying a party's motion to quash a subpoena issued to a non-party due to lack of standing, and holding that such standing only exists in "very limited circumstances" where the requested materials include things like attorney-client communications or personal bank records); *Watty v. Sheriff of Clarendon County*, Case No. 4:10-cv-2056-JMC-TER, 2012 U.S. Dist. LEXIS 37067, at *7 (D.S.C. Jan. 30, 2012) (rejecting an argument from a party that subpoenaed records were "irrelevant" because "a party does not have standing to challenge a subpoena issued to a non-party unless the party claims some privilege in the information sought by the subpoena").

The subpoenaed documents are not privileged; they are standard business records held by Cooper Lighting, and the subpoena is aimed at identifying documents that will reveal when Mlazgar began its endeavor to serve two conglomerate manufacturers without first obtaining HLI's consent to do so in contravention of a key term of the ERSA. As a matter of settled law in both federal jurisdictions at issue, Mlazgar has no standing to object, and its motion fails.

II. Cooper Lighting waived its objections.

HLI served Cooper Lighting with the subpoena on January 23, 2025. (Ex. A.) The subpoena directed Cooper Lighting to respond by February 6, 2025. (Dkt. No.

1-3.) Accordingly, Cooper Lighting's deadline to serve objections to the subpoena was February 6, 2025—which was both 14 days after service and the deadline for compliance stated on the subpoena itself. *See* Fed. R. Civ. P. 45(d)(2)(B) ("The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served.").

Cooper Lighting did not serve any objections and has therefore waived any potential objections. This, too, is the law in both this Court and in the District of South Carolina. *See, e.g.*, *City of Sandy Springs v. Granite Re, Inc.*, Case No. 1:22-cv-173-SCJ, 2022 U.S. Dist. LEXIS 232640, at * (N.D. Ga. Sept. 8, 2022) ("AI failed to timely respond to Plaintiff with objections, comply with the subpoena, or move to quash or modify the subpoena. Therefore, AI has waived all objections." (collecting cases)); *CresCom v. Terry*, Case No. 2:12-cv-63-PMD, 2017 U.S. Dist. LEXIS 103980, at *15–16 (D.S.C. July 6, 2017) (holding that a subpoena recipient waived all objections to the subpoena because she had not served those objections within the time period prescribed by Rule 45).

Mlazgar, in turn, cannot resurrect potential (and unavailing) objections that Cooper Lighting itself has waived. *See EEOC v. Sirdah Enters.*, Case No. 1:13-cv-03657-RWS-RGV, 2015 U.S. Dist. LEXIS 181962, at *13 (N.D. Ga. Feb. 25, 2015) ("Further, a party lacks standing to challenge subpoenas served on another 'on grounds of oppression and undue burden placed upon the third parties where the

non-parties have not objected on those grounds.'" (quoting *Armor Screen Corp. v. Storm Catcher, Inc.*, Case No. 07-81091-CIV, 2008 U.S. Dist. LEXIS 106370, at *9 (S.D. Fla. Nov. 25, 2008))). Accordingly, Mlazgar's motion should be denied for this additional threshold reason.

III. HLI properly noticed the subpoena.

Mlazgar's opening argument is that HLI did not give Mlazgar proper notice of the subpoena. This is simply not true.

Rule 45(a)(4) provides that notice and a copy of the subpoena must be served on each party "before it is served on" the non-party. Here, HLI served Mlazgar and the other parties with electronic notice of the subpoena on January 22, 2025. (Dkt. No. 1-3, at 1.) It served Cooper Lighting with the subpoena the next day, on January 23, 2025. (Ex. A.) This argument fails as a matter of law and presents no basis for not enforcing the subpoena as written.

IV. The documents at issue in the subpoena are relevant to the underlying litigation in the District of South Carolina.

The bulk of Mlazgar's motion is devoted to arguing about the relevancy of the materials sought by HLI's subpoena. In Mlazgar's view, there's apparently no dispute that it made a secret agreement to sell Cooper Lighting products (effectively admitting Mlazgar's breach of the ERSA), so HLI shouldn't be entitled to discovery on the circumstances surrounding that breach. But, as noted above, Cooper Lighting

did not timely raise any objection that Mlazgar's admission of a breach nullifies HLI's right to inquire into the Mlazgar–Cooper Lighting agreement, and Mlazgar certainly has no standing to make this argument on behalf of Cooper Lighting. And there are several legitimate reasons why the documents sought by HLI are relevant despite Mlazgar's apparent concession that it breached the ERSA, including:

In its counterclaim, HLI alleges that Mlazgar breached the ERSA, and HLI—as well as a jury—are entitled to know when and how the negotiations that ultimately led to that breach began.

HLI—and a jury—are entitled to know whether Mlazgar or Cooper Lighting acknowledged between themselves that Mlazgar's conduct was a breach of the ERSA.

HLI—and a jury—are entitled to know if Mlazgar provided HLI's confidential and propriety information to Cooper Lighting while simultaneously leading HLI to believe that Mlazgar was remaining faithful to the confidentiality and exclusivity required by the ERSA.

HLI—and a jury—are entitled to know exactly when Mlazgar stopped giving the "best efforts" required of the ERSA to sell HLI products and, instead, began serving two competing conglomerate manufacturers. Knowledge of this aspect of the breach is key to establishing HLI's damages.

And HLI—and a jury—are entitled to know whether and to what extent Cooper Lighting financially induced Mlazgar to breach the ERSA and provided Mlazgar incentives.

These are representative examples of the information to be discovered by the subpoena to Cooper Lighting. This information is undoubtedly relevant and within the broad scope of discovery permitted by the Federal Rules of Civil Procedure. Mlazgar cannot unilaterally push the circumstances of its breach beyond the scope of discovery (especially discovery that is not even aimed at Mlazgar) by admitting it entered a contract to sell Cooper Lighting products in violation of the ERSA.

HLI is entitled to discover the contemporaneous records associated with Mlazgar's breach to prove its breach-of-contract counterclaim and accompanying damages, and Cooper Lighting failed to timely offer any objection to the scope or substance of the subpoena. Mlazgar's motion fails on the merits accordingly.

V. HLI timely served the subpoena, and Mlazgar is "gaming" this Court.

Finally, Mlazgar peppers its motion with remarks about the timing of HLI's subpoena and the fact that many of the subpoenaed materials could have been produced by Mlazgar. Plainly put, these statements are disingenuous at best.

HLI timely served its subpoena during the period for discovery in the District of South Carolina proceedings, and Cooper Lighting's deadline to comply and

produce the requested documents fell within the discovery period as well. There's simply nothing objectionable about the timing of the subpoena.

Moreover, the fact that Mlazgar has access to some of these same records does not somehow render the subpoena improper. The challenges of fairly and fully engaging in the discovery process with Mlazgar have been well-documented in the District of South Carolina proceedings and are summarized in the Background section above. And, significantly, when HLI sought to secure some of these records through document requests served on Mlazgar, Mlazgar predictably refused to produce a single one. (Dkt. No. 1-2.)

It is disingenuous for Mlazgar to tell this Court it should not enforce HLI's subpoena to Cooper Lighting because the same records are available from Mlazgar itself, while—at the same time in the District of South Carolina—it asserts illusory objections and refuses to produce those records in response to legitimate requests for production.[1] Like Mlazgar's other arguments, this provides no basis for the Court to set aside HLI's subpoena.

[1] This is not the first time in this litigation that Mlazgar has taken diametrically opposing positions on the same issue before two different courts. *Compare* Dkt. No. 232-1 in D.S.C. (Mlazgar's motion for protective order from excessive Rule 30(b)(6) deposition topics, filed in the District of Minnesota in September 2024), *with* Dkt. Nos. 200-1 and 218 in D.S.C. (Mlazgar's excessive Rule 30(b)(6) notice to HLI in the District of South Carolina and its arguments for enforcing same). Notably, Judge Austin granted HLI's motion for protection from Mlazgar's overreaching deposition notice. Dkt. No. 253 in D.S.C.

CONCLUSION

The Court should reject Mlazgar's discovery posturing. The Court should either transfer this motion to the District of South Carolina for Judge Austin to address, as permitted by Rule 45(f); or, alternatively, it should deny Mlazgar's improper motion to quash HLI's subpoena and, instead, fully enforce the subpoena to compel production of the subpoenaed documents by Cooper Lighting.

Respectfully submitted, this 10th day of March, 2025.

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CERTIFICATE OF SERVICE AND TYPE SIZE COMPLIANCE

Pursuant to Local Rule 5.1 and Standing Order No. 19-01, the foregoing **HLI SOLUTIONS, INC. AND LITECONTROL CORPORATION'S MEMORANDUM IN OPPOSITION TO MLAZGAR'S MOTION TO QUASH SUBPOENA** is prepared in Times New Roman, 14-point font, and was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically provide notice of this filing to all attorneys of record by electronic means.

This 10th day of March, 2025.

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