UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOSEPHINE BEAULIEU,

Plaintiff,

v. **Case No: 6:15-cv-2116-Orl-40GJK**

WELLS FARGO BANK, N.A.,

Defendant.

ORDER

This cause came on for consideration without oral argument on the following motion filed herein:

MOTION:	**DEFENDANT WELLS FARGO BANK, N.A.'S MOTION FOR PROTECTIVE ORDER (Doc. No. 19)**
FILED:	**April 25, 2016**

THEREON it is **ORDERED** that the motion is **GRANTED**.

On December 17, 2015, Plaintiff filed a complaint (the "Complaint") against Defendant, alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et. seq*. (the "TCPA") and the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55 *et. seq*. (the "FCCPA"). Doc. No. 1. Plaintiff alleges that beginning on or about January 15, 2015, Defendant began intentionally harassing Plaintiff by placing unsolicited telephone calls to Plaintiff's cellular telephone through an automatic telephone dialing system for the purposes of collecting a debt. Doc. No. 1 at 3-7. Plaintiff further alleges that she has orally revoked her

consent, which enabled the Defendant to contact Plaintiff by her cellular telephone, on approximately twenty (20) separate occasions. Doc. No. 1 at ¶ 27.

On April 16, 2016, Plaintiff served Defendant with her Second Amended Notice of Taking Video Deposition of Corporate Representative (the "Notice"), which scheduled a Rule 30(b)(6) corporate representative deposition of Defendant to occur on May 19, 2016, and provided Defendant with twenty-three (23) areas of inquiry upon which the corporate representative should be prepared to give testimony. Doc. No. 19-1 at 2-8. Area of Inquiry No. 18 is any lawsuits alleging violations of the TCPA and FCCPA from January 1, 2015 to the present. Doc. No. 19-1 at 8. Area of Inquiry No. 22 is any prior complaints regarding alleged violations of the TCPA and FCCPA, which relate to the collection of consumer debts relating to home loans by the Defendant during the past four years. *Id*. Area of Inquiry No. 23 is any prior complaints of telephone calls regarding the collection of consumer debts relating to home loans by the Defendant during the past four years. *Id*.

On April 25, 2016, Defendant filed a Motion for Protective Order (the "Motion"), requesting that the Court enter a protective order prohibiting Plaintiff from inquiring into Area of Inquiry Nos. 18, 22 and 23, because they overbroad, not proportional to the needs of this case, and would impose an undue burden on Defendant to prepare a corporate representative to address the same. Doc. No. 19 at 1-17. On May 6, 2016, Plaintiff filed a response (the "Response"), arguing the Motion should be denied because the areas of inquiry at issue are relevant and appropriately tailored to the issues in this case. Doc. No. 21 at 1-12. More specifically, Plaintiff argues that the areas of inquiry are relevant to Plaintiff's claim that she placed approximately twenty (20) telephone calls to Defendant orally revoking her consent for the Defendant to contact Plaintiff via her cellular telephone for the purposes of collecting a debt. Doc. No. 21 at 3-5. Plaintiff

anticipates that Defendant will have few, if any, business records reflecting Plaintiff's oral revocation. Doc. No. 21 at 5. Thus, Plaintiff argues that discovery regarding prior complaints about the Defendant's failure to document and/or maintain business records reflecting any consumer's oral revocation of consent is essential to refute the Defendant's anticipated arguments regarding the fact they have little, if any, business records supporting Plaintiff's alleged oral revocations. Doc. No. 21 at 4-5.

Counsel for the parties are very familiar with the claims at issue in this case, the discovery dispute at issue, the case law addressing the same, and each other, all of which is well-established and need not be repeated here. *See* Doc. Nos. 19 at 2-3, 15-17; 19-7; 21 at 2-3. In light of this background, the Court must consider Plaintiff's need for relevant discovery under Rule 26(a)(1), Federal Rule of Civil Produce, in the context of a Rule 30(b)(6) deposition.

Parties may obtain discovery on "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). A party is entitled to the facts relevant to the litigation. *Dunkin' Donuts, Inc. v. Mary's Donuts, Inc.*, 206 F.R.D. 518, 520 (S.D. Fla. 2002). The party seeking discovery has the threshold burden of demonstrating that the discovery requested is relevant. *Zorn v. Principal Life Ins. Co*., 2010 WL 3282982, at *2 (S.D. Ga. Aug. 18, 2010) (citing *Canada v. Hotel Development-Texas, Ltd*., 2008 WL 3171940, at *1 (N.D. Tex. July 30, 2008)). Relevant information need not be admissible at trial, but rather discovery must be "proportional to the needs of the case." Fed. R.

Civ. P. 26(b)(1).[1] "The discovery process is designed to fully inform the parties of the relevant facts involved in their case." *U.S. v. Pepper's Steel & Alloys, Inc.*, 132 F.R.D. 695, 698 (S.D. Fla. 1990) (referencing *Hickman v. Taylor*, 329 U.S. 495, 501 (1947)). "[A] party demanding discovery is required to set forth its requests simply, directly, not vaguely or ambiguously. . . ." *Treister v. PNC Bank*, 2007 WL 521935, at * 2 (S.D. Fla. Feb. 15, 2007).

When a party receives notice of a deposition under Rule 30(b)(6), it has a duty to prepare a corporate representative who is able to testify about the areas of inquiry in the notice. Fed. R. Civ. P. 30(b)(6). Thus, those areas of inquiry must be narrowly tailored and proportional to the needs of the case. Otherwise, it will be unduly burdensome, if not impossible, for a party to properly prepare its corporate representative.

In this case, both parties rely on *McCaskill v. Navient Solutions, Inc.*, No. 8:15-cv-1559-T-33TBM, Doc. No. 76 (M.D. Fla. Jan. 13, 2016), wherein the Court expressly limited the area of inquiry to consumer complaints "of the type here at issue," which the plaintiff limited to "consumer complaints and Defendant's handling of calls involving 'skip traced [ ] phone number[s] of a borrower that actually belonged to a family member of the borrower and subsequently called that family member dozens . . . of times despite not having the prior express consent of the called party.'" *Id*. at 2-3; Doc. No. 19 at 15-17; 21 at 3, 10-11. The plaintiff in *McCaskill* did exactly what the Plaintiff here did not, *i.e.*, narrowly tailor the area of inquiry to the specific subject matter at issue in the case. Here, Plaintiff seeks to inquire about: any lawsuits alleging any violation of

[1] Demonstrating relevance progresses in layers. "When the discovery sought appears relevant on its face, the party resisting it must show the lack of relevance by demonstrating that it: (1) does not come within the broad scope of relevance as defined under discovery rule; or (2) is of such marginal relevance that the potential harm the discovery may cause would outweigh the presumption in favor of broad disclosure. When relevancy of a discovery request is not apparent on the face of the request, then the party seeking discovery has the burden to show its relevancy." *Zorn*, 2010 WL 3282982, at *2 n. 3 (S.D. Ga. Aug. 18, 2010) (citing *Transcor, Inc. v. Furney Charters, Inc.*, 212 F.R.D. 588, 591 (D. Kan. 2003)).

the TCPA and FCCPA from January 15, 2015 to the present; any prior complaints of alleged violations of the TCPA and FCCPA with respect to the collection of consumer debts relating to home loans by the Defendant during the past four years; and any prior complaints relating to telephone calls with respect to the collection of consumer debts relating to home loans by the Defendant during the past four years. Doc. No. 19-1 at 8. However, Areas of Inquiry Nos. 18, 22 and 23 are not narrowly tailored to the subject matter at issue or the scope of information requested. Plaintiff tacitly concedes the same by clarifying in the Response that Plaintiff is really after information regarding prior complaints by consumers reflecting Defendant's failure to document a consumer's oral revocation of consent for the Defendant to call the consumer's cellular telephone for the purposes of collecting a debt. Doc. No. 21 at 5. Instead of providing the Defendant with that type of narrowly tailored area of inquiry, the Plaintiff cast a very broad net. Given counsel's familiarity with the subject matter, the nature of the discovery disputes that have arisen around these issues in past cases, and the case law surrounding the same, counsel clearly could have provided more appropriately tailored areas of inquiry, which are proportional to the needs of this case. Having case far too broad a net, Plaintiff has now essentially invited the Court to narrow the areas of inquiry to an appropriate scope. The Court declines to do so. Accordingly, the Court finds that good cause has been demonstrated for a protective order because the areas of inquiry are patently overbroad, not tailored to the issues in this case and not proportional to the issues in this case.

Based on the foregoing, it is hereby **ORDERED** that:

1. The Motion (Doc. No. 19) is **GRANTED**; and
2. At the Rule 30(b)(6) deposition at issue, Plaintiff is prohibited from inquiring into Area of Inquiry Nos. 18, 22 and 23.

DONE and **ORDERED** in Orlando, Florida on May 18, 2016.

GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties