

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES JOHNSON, *et al.*,

Plaintiffs,

Case No. 1:09-cv-492

vs.

Beckwith, J.
Black, M.J.

U.S. BANK NATIONAL ASSOCIATION,
et al.,

Defendants.

ORDER

This civil action is before the Court on Plaintiff's motion for leave to issue a preservation subpoena (Doc. 13). Plaintiff seeks an Order from the Court granting him leave to issue a subpoena to Integrated Check Technologies prior to the Rule 26(f) conference of the parties in order to preserve and secure documents and data pertaining to the financial transactions at issue in this litigation.

Plaintiff asserts that a non-party entity known as Integrated Check Technologies (hereinafter "ICT") is at the center of this putative class action. ICT was a payment processor for telemarketers who, Plaintiff alleges, defrauded Plaintiff and members of the proposed class. According to Plaintiff, ICT was the critical link between the telemarketers and the defendant banks in this case, who, by providing banking services to ICT, enabled the telemarketing fraud that injured Plaintiff and class members. Plaintiff seeks permission to issue a preservation subpoena on ICT to secure documents and data regarding ICT's processing of transactions on behalf of its telemarketer client base.

Because ICT operations have been dormant since February 2006, such a preservation subpoena is necessary to ensure that critical records and databases are not destroyed, lost, or otherwise despoiled.

Plaintiff asserts that the information sought to be preserved includes ICT's basic transaction data, including the names of the consumers against whose accounts ICT processed remotely created checks, the amounts taken from their accounts, and whether any refund was issued to those consumers. The proposed preservation subpoena is limited. It requires that ICT describe the responsive documents it has in its possession and preserve them. Actual production of such material can wait until after the Rule 26(f) conference and after the parties in this litigation have addressed issues of confidentiality.

Under Federal Rule of Civil Procedure 26(d)(1), no discovery from any source is generally permitted prior to a Rule 26 conference. In determining requests to engage in limited discovery prior to a Rule 26(f) conference, courts apply a "good cause standard." *See Caston v. Hoaglin*, Civ. No. 2:08-cv-200, 2009 WL 1687927, at * 2 (S.D. Ohio Jun. 12, 2009). Good cause may be found where the plaintiff's need for expedited discovery outweighs the possible prejudice or hardship to the defendant (or in this case to the third party). *Arista Records, LLC v. Does 1-4*, Civ. 1:07-cv-1115, 2007 WL 4178641, at *2 (E.D. Tenn. Nov. 20, 2007). Good cause is often found in cases where there is a concern that documents or other data will be lost or destroyed. *Caston*, 2009 WL 1687927 at *2. Good cause is also found where, in putative class actions, the information sought is relevant to the membership of the proposed class. *Whitfield v. Hochsheid*, Civ. No.

C-1-02-218, 2002 WL 1560267 at *1 (S.D. Ohio Jul. 2, 2002) and *Arista*, 2007 WL 4178641, at * 2. As part of the good cause inquiry, courts also look to see that the proposed discovery is appropriately narrow and targeted. *Caston*, 2009 WL 1687927 at * 2.

Plaintiff maintains that the subpoena sought here seeks the description and preservation of basic information regarding ICT business operations including transactional data that will be critical to accurately determining class membership and damages. The subpoena is narrowly tailored to secure data and documents against destruction or spoliation. The subpoena imposes no immediate obligation to produce responsive documents or data. The only obligation it imposes upon the third-party is to describe responsive documents and protect them for subsequent production.

Accordingly, for good cause shown, Plaintiff's motion (Doc. 13) is GRANTED. Plaintiff is therefore permitted to issue a subpoena to Integrated Check Technologies prior to the Rule 26(f) conference of the parties in order to preserve and secure documents and data pertaining to the financial transactions at issue in this litigation.

IT IS SO ORDERED.

Date: December 3, 2009

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge