IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ALLEGIS GROUP, INC., and
ASTON CARTER, INC.,

Plaintiffs,

v.

CHRISTOPHER J. BERO,

Defendant/Counter-Plaintiff,

v.

ALLEGIS GROUP, INC.,

Counter-Defendant,

and

AEROTEK AFFILIATED
SERVICES, INC., F/K/A AEROTEK,
INC.

Additional Counterclaim Defendant.

Case No.

(D. Md. Case No. 1:22-cv-00686)

NONPARTY RUBY VOIGHT'S
TIME-SENSITIVE MOTION FOR PROTECTIVE ORDER

Pursuant to Federal Rules of Civil Procedure 26(c)(1) and 45, Nonparty Ruby Voight moves for a protective order forbidding Plaintiffs Allegis Group, Inc. ("Allegis") and Aston Carter, Inc. ("Aston Carter") and Additional Counterclaim Defendant Aerotek Affiliated Services, Inc. ("Aerotek") (collectively, the "Allegis Companies") from inquiring into certain matters at

her upcoming deposition in Tampa, Florida on August 25, 2022 in the case of *Allegis Group, Inc. et al. v. Christopher J. Bero* pending in the District of Maryland. Specifically, as discussed in further detail *infra*, Voight seeks a protective order forbidding inquiry regarding her own conduct or other co-workers' conduct that do not involve Defendant Christopher J. Bero. Voight further moves for an award of her reasonable expenses incurred in making this motion, including attorneys' fees.

Prefatory Statement on Time Sensitivity

Voight seeks a protective order in connection with a deposition scheduled in this district for Thursday, August 25. Counsel for Voight has been conferring with Plaintiffs' counsel since August 9 in an effort to avoid the necessity of filing this motion. After conferrals in person, by email, and by phone, it has now become apparent that this motion is necessary. A ruling is requested by August 25 at 9:30 a.m., which is when the deposition is scheduled to begin.[1]

INTRODUCTION

Nonparty Ruby Voight is justifiably concerned that Plaintiffs will attempt to use her deposition in their case against Bero as a vehicle for obtaining information to build a case against her or her other coworkers rather

[1] To avoid the time-sensitive nature of this motion, Voight's counsel has also requested that the Allegis Companies postpone the deposition pending a ruling from this Court. The Allegis Companies have not yet responded, but Voight will advise the Court of their response when it is received as well as whether such response removes the time sensitivity of this issue.

than for discovery relevant to the claims and defenses in this particular case.

Many former employees of the Allegis Companies, including Bero and Voight, have left the Allegis Companies for better opportunities at Jobot, LLC ("Jobot"), a competitor in the staffing industry. To indirectly punish Jobot for offering their former employees better opportunities, the Allegis Companies have engaged in a two-pronged campaign of (1) suing as many former employees who left to work for Jobot as they can and (2) refusing to pay the former employees (including Voight) moneys they earned in an Allegis incentive plan that became payable upon their separation from service regardless of whether they engaged in any conduct that could constitute a forfeiture under the plan.

This particular case concerns issues only between Bero and the Allegis Companies, which include whether Bero has breached his noncompete, solicited the Allegis Companies' employees or customers while at Jobot, or violated confidentiality provisions in his agreements with Allegis. Mrs. Voight does not dispute that she is a relevant witness because she is Bero's direct supervisor at Jobot and therefore may have knowledge regarding whether he has or has not engaged in conduct potentially relevant to this action. But it would be extremely improper for the Allegis Companies to use her deposition as a fishing expedition regarding whether her own conduct gives rise to claims against her or justifies their refusal to pay her the monies she is owed under

the same plan, particularly if that conduct has nothing to do with Bero or the allegations against him. And it would be equally improper for them to use the deposition as a tool to discover whether other former Allegis Company employees now at Jobot—other than Bero—may have engaged in conduct that would expose them to liability or impact their entitlement to monies due under the plan. The scope of the deposition must be limited to facts related to Bero. The Allegis Companies' refusal to agree to so limit their questioning of Voight necessitates the entry of a protective order.

FACTUAL BACKGROUND

A. The Allegis Companies sue Bero.

This case is the first of several lawsuits between the Allegis Companies and a former employee. The Allegis Companies are sore over the fact that "Jobot is a growing competitor that has hired in excess of 30 Aerotek's [sic] (or its affiliates) employees, generally providing substantial compensation increases." Allegis's Am. Compl., *Allegis Grp., et al. v. Nosky*, Case No. 8:22-cv-01516-PX (D. Md. Aug. 9, 2022) (ECF No. 23). Of course, offering higher compensation to attract talent is a perfectly legitimate business practice, both in the recruiting and staffing industry and in general. In an effort to stifle this legitimate and fair competition, and to coerce and intimidate other employees to keep them from leaving for better opportunities, the Allegis Companies are punishing their former employees who have chosen to leave them to work for

Jobot. They have done so by filing lawsuits against them and by refusing to pay them funds earned under an employee incentive plan called the Allegis Group Investment Growth Plan for Key Employees ("IGP").

In this case, Allegis and Aston Carter sued Bero shortly after he left to work for Jobot and refused to pay him approximately $100,000 that he earned under the IGP. [Doc. 1, Compl.][2] The complaint contains three counts. First, Aston Carter asserts a claim that Bero allegedly breached provisions of his employment agreement "regarding the non-disclosure of Plaintiffs' confidential and proprietary information, as contractually defined, and the return of Plaintiffs' documents and property upon his departure from Aston Carter." [*Id.* ¶ 48.] Second, Allegis and Aston Carter jointly assert a claim that Bero allegedly "breached his obligations under the IGP by engaging in Confidentiality Violations and Competitive Activity, as defined by the IGP."[3] [*Id.* ¶ 55.] Third, Allegis and Aston Carter jointly assert a claim for a declaratory judgment "declaring that they are not liable to Bero for any monetary amounts under the IGP." [*Id.* ¶ 61.]

Bero filed a counterclaim against Allegis and Aerotek (as a Rule 13

[2] Unless otherwise indicated by the citation, all docket entries refer to the docket in this action in the District of Maryland.

[3] It is undisputed that merely working for a competitor is not "Competitive Activity" nor otherwise a violation of the IGP or Bero's employment agreement. Rather, the relevant contractual provisions prohibit engaging in only certain activities while working for a competitor, such as competing within a certain radius of a particular Allegis Company office or soliciting customers of an Allegis Company with whom the employee worked.

additional counterclaim defendant).[4] In his operative amended counterclaim, Bero asserts a counterclaim against Aerotek for breach of the IGP and related counterclaims for violations of Maryland and Tennessee wage statutes. [Doc. 39, Am. Countercl. ¶¶ 39–43, 55–65.]

Bero also asserts a counterclaim for declaratory judgment against Allegis—which administers but does not make payment under the IGP—"declaring that his Investment Units were earned and became payable upon his separation from service at Aerotek or Aston Carter, that all such funds are owed to Bero under the IGP, and that Allegis is required under the IGP (i) determine for Aerotek that Aerotek must pay Bero the value of his Investment Funds (approximately $100,000) under the IGP that was required to be paid to him within 60 days of his separation from service at Aerotek or Aston Carter and (ii) direct Aerotek to pay Bero all such moneys under the IGP." [*Id.* ¶ 54.] While they have not yet asserted affirmative defenses, it is anticipated based on communications with their counsel that Allegis and Aerotek's primary defense to the counterclaims will be that Bero forfeited his funds under the IGP by allegedly disclosing confidential information to Jobot, soliciting customers or employees of the Allegis Companies, or engaging in competitive business in a prohibited geographic area.

[4] The basis for bringing in Aerotek is Bero's contention that Aerotek is the entity liable to make payments to him under the terms of the IGP.

B. The Allegis Companies sue other former employees who left to work for Jobot.

The lawsuit against Bero is not a one-off. It is part of the Allegis Companies' larger corporate strategy of indirectly attacking Jobot, and trying to deter additional employees from leaving, by punishing employees who left to work there. So far, the Allegis Companies have recently filed at least two more lawsuits against former employees who left to work for Jobot: (1) *Allegis Grp., et al. v. Nosky*, Case No. 8:22-cv-01516-PX (D. Md.) and (2) *Aerotek, Inc., et al. v. Jobot LLC and Corey Dalton*, Case No. 22-599 (M.D.N.C.). And they have asserted counterclaims against employees who have sued for nonpayment of their IGP funds. *See Moore v. Aerotek Affiliated Servs., Inc.*, Case No. 1:22-cv-02522 (N.D. Ga.); *O'Bryan v. Aerotek Affiliated Servs., Inc.*, Case No. 1:22-cv-02523 (N.D. Ga.). They have refused to pay IGP funds to many more employees who left to work for Jobot who they have not (yet) sued.

C. The Allegis Companies indicate their intent to sue Voight and use this action to build that separate case.

Voight is one of many Allegis Company employees who left for a better opportunity at Jobot. After not being paid the funds owed to her under the IGP, she submitted a claim to Allegis's Board of Directors, which is the "committee" that administers the IGP. On July 14, 2022, Allegis sent Voight a letter stating that she forfeited her rights to payment under the IGP. *See* Ex. A, Ltr. from Allegis Grp. to R. Voight (July 14, 2022). The letter lacked any specifics

regarding the basis for not paying Voight. Instead, Allegis cryptically stated that it had "[e]vidence of an act that would have given rise to a termination for Cause, Competitive Activity and Confidentiality Violation" and "[e]vidence of Competitive Activity." *Id.* (internal citations to IGP provisions omitted).

The accusations in Allegis's letter suggest that a lawsuit is forthcoming; the lack of any specifics suggests a lack of evidence or current basis to file such a lawsuit. Voight is reasonably concerned that the Allegis Companies are attempting to use this case—which is related only to Bero—to fish for such a basis. This concern is amplified by the Allegis Companies' conduct.

On August 3, 2022, the Allegis Companies served a subpoena on Voight (a nonparty) for a deposition in this case. *See* Ex. B, Subpoena. On August 9, 2022, Voight's counsel (who also represents Bero) emailed counsel for the Allegis Companies asking that he confirm "that the deposition will be limited to questions relevant to the claims and defenses in Mr. Bero's case" and that it will not be used as an opportunity to try to obtain information relevant only to Voight or other former Allegis Company employees. *See* Ex. C, Email Chain Between B. Fink, Esq. and T. Rybacki, Esq.

The next day was the Allegis Companies' deposition of Bero. At certain points, the questioning improperly veered from anything having to do with Bero and instead focused on *other* Jobot employees, which has no bearing on this case. For example, counsel for the Allegis Companies asked Bero

- how many employees Jobot has hired away from the Allegis Companies;
- the names of all such employees Bero was aware of
- questions about Voight's job duties;
- whether former Allegis Company customers are doing business with *anyone else* at Jobot besides Bero; and
- whether other Jobot employees, besides Bero are doing business with Allegis Company customers.

During the deposition, Bero's counsel objected to such lines of inquiry as a fishing expedition for claims unrelated to Bero, but counsel for the Allegis Companies continued to press forward on such questioning.[5]

Following Bero's deposition, counsel for the parties briefly conferred regarding the scope of Voight's deposition and counsel for the Allegis Companies stated they would discuss the issue further. The Allegis Companies did not provide a substantive response until the following week, on August 15, 2022, in which they refused to confirm that they would not inquire as to matters not relevant to Bero nor any other limitation on the deposition. *See* Ex. C, Email Chain Between B. Fink, Esq. and T. Rybacki, Esq. This response was alarming. Counsel conferred again by phone on August 17, 2022, but they

[5] The deposition transcript has been ordered and the relevant portion will be filed once it is available.

were unable to reach an agreement. It became apparent that it was necessary for Voight to move for a protective order.

ARGUMENT

The purpose of a deposition is to obtain discovery relevant for the case in which the deposition is being taken, not to investigate potential bases for claims against others in a separate suit. Whether Voight—or *anyone* other than Bero—has engaged in conduct that would be a breach of her employment agreement with an Allegis Company or a violation of the IGP is irrelevant to the claims and defenses in this case. As Voight is Bero's direct report at Jobot, the Allegis Companies have every right to inquire about Bero's work at Jobot or any communications between Bero and Allegis Company customers or employees that Voight is aware of. They also have the right to inquire as to whether Bero has asked anyone else at Jobot to solicit customers or employees who he may be prohibited from soliciting. But possible violations by Voight or others are simply out of bounds. It would be a gross abuse of Voight's deposition to use it as a vehicle for obtaining information to build a case against her, other coworkers, or Jobot.

Under Rule 26(c)(1), the Court "may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters."

Furthermore, under Rule 26(b)(2)(C)(iii), the Court "*must* limit the frequency or extent of discovery" if it determines that "the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Accordingly, "a court has the authority to enter a protective order prohibiting deposition questions regarding irrelevant issues." *Rudd v. Branch Banking & Tr. Co.*, No. 2:13-CV-02016-SGC, 2020 WL 13348115, at *6 (N.D. Ala. Oct. 15, 2020); *see also Desert Valley Painting & Drywall v. United States*, 829 F. Supp. 2d 931, 939-40 (D. Nev. 2011) (granting protective order precluding deposition questions regarding irrelevant issues); *Nguyen v. LVNV Funding, LLC*, 2017 WL 951026, at *11 (S.D. Cal. Mar. 10, 2017) (same). Indeed, "[a] threshold question under Rule 26 is whether the requested discovery is relevant to any party's claim or defense." *Edmondson v. Caliente Resorts, LLC*, No. 8:15-CV-2672-T-23TBM, 2016 WL 7206111, at *2 (M.D. Fla. June 9, 2016).

Here, it would be outside the scope permitted by Rule 26(b)(1) as well as oppressive and unduly burdensome—and highly prejudicial—for the Allegis Companies to ask Voight questions having nothing to do with Bero and that could only be relevant to a forthcoming lawsuit against her, Jobot, or others. For example, while it would be appropriate to ask whether *Bero* has been involved either directly or indirectly in recruiting or hiring other employees from Allegis Companies (which he has not), questions about whether Voight has been involved in recruiting or hiring other employees from the Allegis

Companies are utterly irrelevant to whether Bero has or has not engaged in any conduct in breach of his agreement. Likewise, questions regarding customers Voight is working with or has solicited, and that Bero has not been involved in soliciting or servicing, either directly or indirectly, are also completely irrelevant to the issues in dispute in this case. And questions regarding whether Voight possesses or has used any confidential or proprietary information of the Allegis Companies are irrelevant. When examples such as these were provided to counsel for the Allegis Companies during conferral, he refused to acknowledge that such lines of inquiry are irrelevant and out of bounds for this deposition.[6]

The Court should therefore enter a protective order limiting the scope of the deposition to issues relevant to Bero and prohibiting inquiry into any conduct of Voight, Jobot, or others that does not involve Bero.

CONCLUSION

For the foregoing reasons, the Court should enter a protective order limiting the scope of the deposition to issues relevant to Bero and prohibiting inquiry into any conduct of Voight, Jobot, or others that does not involve Bero. The Court should also award Nonparty Voight her reasonable expenses incurred in making this motion, including attorneys' fees. *See* Fed. R. Civ. P.

[6] Equally irrelevant and off limits would be similar lines of inquiry regarding other Jobot employees or Jobot in general, or regarding any alleged strategy of Jobot to recruit Allegis Company employees. All that matters in this case is what *Bero* has or has not done.

26(c)(3); Fed. R. Civ. P. 37(a)(5).

LOCAL RULE 3.01(G) CERTIFICATION

I certify that counsel for Nonparty Voight has conferred in good faith with counsel for the Allegis Companies in an effort to resolve the dispute without court action, but no agreement was able to be reached. Conferral occurred in person, by email, and by phone as described above.

Dated: August 18, 2022

Respectfully submitted,

BERMAN FINK VAN HORN P.C.

/s/ Jeremy L. Kahn

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CERTIFICATE OF SERVICE

I certify that, on August 18, 2022, I served a copy of this motion by email on:

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