COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

VINAY MEHRA,

Plaintiff,

v. Civil Action No. 2384CV01483

BOSTON GLOBE MEDIA PARTNERS, LLC,

Defendant.

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO QUASH SUBPOENA TO WGBH AND FOR PROTECTIVE ORDER

Plaintiff Vinay Mehra was employed by The Boston Globe, primarily as its President, from 2017 until 2020, when the Globe terminated his employment for repeated instances of expense abuse. As detailed in the Answer, among other things Mehra leased himself a car and took his wife and a friend to the Super Bowl, both at company expense. Despite reprimand for these issues, the behavior continued. The Globe terminated Mehra's employment after he ran up some $400,000 on his company credit card on an ostensibly charitable initiative to send meals to healthcare workers on the front line of the pandemic response. The meals came from a restaurant whose owner was an acquaintance of Mehra's, and the meals went predominantly to institutions with which his wife was affiliated that were not on the front lines of the pandemic.

Anticipating that explanation, Mehra's Complaint dismisses the expense issues as "trumped-up allegations" that were "unsubstantiated" and "none [of which] warranted termination." Complaint ¶ 54. The Complaint insists that Mehra "did not spend corporate funds

inappropriately." *Id.* ¶ 57. He contends instead that the Globe's objections to his repeated expense abuse were a pretext to cover an intent to deny him contingent compensation that he claims was owed.

Mehra's Complaint drew significant press attention. In addition to coverage by the Globe itself,[1] his suit was covered by Bloomberg,[2] the Boston Business Journal,[3] Universal Hub,[4] and by Media Nation, a popular media industry blog authored by Dan Kennedy, a professor at Northeastern University's School of Journalism.[5] The Globe's Answer to the Complaint also received mention in the press.[6]

After the Complaint and Answer were filed and reported on, information came to the Globe's attention from an authoritative source that Mehra engaged in startlingly similar misconduct with respect to incurring inappropriate expenses while employed at WGBH, and that those issues directly contributed to the end of his employment. Confirmation of that information would bear directly on one of the central issues in this case. Mehra contends that he did nothing wrong with respect to expenses, and had no reason to think that the Globe would have any objection to the extraordinary amounts of Globe money that he was spending on items of

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[1] *See* https://www.bostonglobe.com/2023/06/30/business/ex-boston-globe-media-president-claims-hes-owed-12-million-compensation/.

[2] *See* https://news.bloomberglaw.com/litigation/boston-globe-sued-by-former-president-over-alleged-unpaid-wages.

[3] *See* https://www.bizjournals.com/boston/news/2023/07/05/five-things-boston-globe-finances-profits.html.

[4] *See* https://www.universalhub.com/2023/former-globe-president-sues-over-way-he-charges-he.

[5] *See* https://dankennedy.net/2023/06/30/former-globe-president-vinay-mehra-sues-alleging-the-henrys-owe-him-12-million/.

[6] *See* https://www.bostonglobe.com/2023/08/03/business/boston-globe-media-says-former-president-was-fired-excessive-unauthorized-spending/; https://dankennedy.net/2023/08/05/the-globe-fires-back-against-ex-president-mehra-claiming-his-spending-was-out-of-control/.

questionable, if any, benefit to his employer. If he had been disciplined at a prior job for the same conduct, that experience would bear heavily on the merits of his attacks on the Globe's explanation of the basis for his termination.

Accordingly, the Globe served a subpoena on WGBH. The Globe served the subpoena on Mehra's counsel the same day.

Mehra's counsel contacted WGBH the following day, expressed an intent to file a motion to quash the subpoena, and requested that WGBH not respond pending that motion. Counsel for WGBH promptly responded that it would not produce any documents for ten days from the date of service, or whatever longer period the Globe agreed to.

Two weeks later, Mehra's counsel contacted Globe counsel and, describing the email as a "good faith attempt to engage in a meet and confer dialogue," demanded that the Globe "withdraw the subpoena, destroy any documents that you have received . . ., and refrain from issuing any other non-party subpoenas without prior leave from the Court." The email said that absent confirmation of those terms, Mehra would file a motion to quash and for protective order.

In subsequent emails, the Globe proposed that the motion could be served pursuant to Superior Court Rule 9A rather than on an emergency basis; that the Globe would agree to postpone the date for WGBH's compliance until the Court ruled on the motion; that the Globe would contact WGBH, with a copy to Mehra's counsel, informing WGBH of the agreement; and confirming that the Globe had received no documents in response to the subpoena. Globe counsel informed WGBH of the agreement the same day, and WGBH agreed to stand by.

The Globe's subpoena does not merely fish blindly in Mehra's background in the hopes of turning up something interesting, but rather pursues information with a direct connection to the defenses relevant to this case. Mehra's protest that his prior employment is confidential can

be addressed through a stipulated protected order, as litigants agree to routinely to limit the use of confidential information produced in litigation. (Mehra made no such request before serving this motion). And he has no standing to complain about the burden on WGBH, which has not itself objected to this subpoena. Indeed, counsel for WGBH has represented to the Globe that it *has already* completed its document-collection efforts *and that they were not burdensome*. The subpoena in any case imposes no meaningful burden. Mehra's objections to the subpoena lack merit, and the motion should be denied.

ARGUMENT

A. The Subpoena Seeks Relevant Information.

One of the Globe's central defenses in this case is that Mehra, an at-will employee, was terminated because he repeatedly spent the Globe's money on things that benefitted him personally, while providing no advantage to the Globe. Mehra denies that he did so, and insists that the Globe is trumping up insignificant matters to cover an unlawful motive. The subpoena to WGBH bears directly on these critical questions.

After the initial pleadings became the subject of some publicity, a former senior executive of WGBH indicated to the Globe that Mehra had engaged in similar expense abuse while employed there. Specifically, the Globe learned that Mehra made at least two unauthorized charitable donations; and spent WGBH's money on several Apple Watches, tickets to the Grammys, personal travel, and a concert, all without company authorization.[7] The Globe

[7] This concrete indication that relevant information exists distinguishes the several cases on which Mehra relies that condemn subpoenas based on nothing more than a hypothetical possibility of finding something relevant. E.g., *Emara v. Multicare Health Sys.*, 2012 WL 5205950 (W.D. Wash. Oct. 22, 2012) (quashing a subpoena based on "[a] mere hope"), *quoted in* Motion at 9; *Hashem v. Hunterdon Cty.*, 2017 WL 22151212, at *3 (D.N.J. May 18, 2017) (holding that "mere suspicion or speculation" is not enough), *quoted in* Motion at 9; *Smith v. Turbocomputer Tech., Inc.*, 338 F.R.D. 174, 177 (D. Mass. 2021) (quashing subpoena thar "amount[ed] to a fishing expedition"), *quoted in* Motion at 8; *see also* other cases cited in Motion at 8-9, 12-13.

also was informed that WGBH considered these expense issues significant enough that they were a significant factor in its determination that it had to part ways with Mehra.

If that information is accurate, it would be directly relevant to the issues in this case, including Mehra's credibility in claiming that his use of his corporate credit card at the Globe was beyond reproach and that the Globe is manufacturing issues out of whole cloth when he spent Globe money on charitable donations, the Super Bowl, personal travel, and event tickets, and was terminated as a result. *See, e.g.*, *Gardner v. Cape Cod Healthcare, Inc.*, 344 F.R.D. 127, 132-33 (D. Mass. 2023) (denying motion to quash subpoena to former employer where information was likely to bear on the plaintiff's credibility).

To be sure, such evidence would not be admissible at trial for the narrow purpose of showing that Mehra has a propensity to misspend his employer's money, and Mehra invokes Section 404(b) of the Massachusetts Guide to Evidence to argue that any documents WGBH might produce would be inadmissible. Mehra's argument fails both because it is premature and because it ignores the majority of the rule on which it relies.

First, it is far too early to be making judgments about what evidence will be admissible at trial, particularly when the evidence is not even before the Court nor in the possession of the parties. Further, even if the 404(b) issues that Mehra raises could be assessed now, without the documents, admissibility at trial is not the touchstone for proper discovery, of course; "It is not ground for objection that . . . information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Mass. R. Civ. P. 26(b)(1); *see, e.g.*, *Gardner*, 344 F.R.D. 127 at 132 ("The [parties]

dispute the relevancy of the information sought in the subpoena. Relevance is "broadly construed at the discovery stage.") (citation omitted).[8]

Second, as Section 404(b) of the Guide to Evidence makes clear (along with its federal counterpart, Fed. R. Evid. 404(b)), the prohibition on use of character evidence to show a propensity expressly leaves open many other purposes for which evidence of "crimes, wrongs, or other acts" may be admissible, including "knowledge," "absence of mistake," "lack of accident," and many more.[9]

If, as the Globe is informed and believes, Mehra engaged in expense fraud or abuse with his prior employer, that evidence may well be admissible to address important matters in this case. For example, he contends in the Complaint that he had no reason to believe his leasing a car for himself at company expense or spending $14,000 of the Globe's money to take his wife and acquaintance to the Super Bowl were things that the Globe might object to. If his prior employer had objected to similar expenditures – and indeed they contributed to the end of that employment – that evidence would bear significantly on his contentions in response to the Globe's defenses. *Cf. Hoffman v. Thras.io, Inc.*, 2021 WL 7369183 (D. Mass. Oct. 7, 2021)

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[8] Mehra insists that the Globe must show a "need" for the information, rather than demonstrating relevance, but the cases on which he relies involved objections by the third party to the requested discovery. The lack of any objection from WGBH distinguishes those cases. *Isola USA Corp. v. Taiwan Union Tech. Corp.*, 2015 WL 5934760 (D. Mass. June 18, 2015), *cited in* Motion at 7; *Bio-Vita, Ltd. v. Biopure Corp.*, 138 F.R.D. 13, 17 (D. Mass. 1991), *cited in* Motion at 7. *Bio-Vita* is further inapposite because it involved a litigant's request to enter onto the property of the third party, Upjohn Corporation, a competitor, and watch its testing processes. That is a far cry from the simple request for a personnel file at issue here. Other cases on which Mehra relies, moreover, hold that relevance is enough. See, e.g., *Hashem*, 2017 WL 22151212, at *3 ("Discovery sought via a subpoena issued pursuant to Rule 45 must fall within the scope of discovery permissible under Rule 26(b).") (quoting *Aetrex Worldwide, Inc. v. Burten Distribution, Inc.*, 2014 WL 7073466, at *3 (D.N.J. Dec. 15, 2014)).

[9] Mass. Guide to Evidence § 404(b)(2) ("This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.").

(denying motion to quash subpoena to former employer to the extent that the plaintiff's experience with equity grants at the former employer might bear on her dealings with the defendant employer on the same subject).

Thus, the Globe is not seeking some new basis to justify Mehra's termination that it did not know at the time, as Mehra contends. Motion at 10-11. Nor does the Globe dispute that the basis for its termination decision must be evaluated primarily on the information before it at the time of decision. None of that is the purpose of this subpoena. But that does not deprive the subpoena of relevance. The claims and defenses here raise issues about the parties' motives and good faith, and those matters bear investigation in discovery. *See, e.g.*, *Turnley v. Banc of American Inv. Securities, Inc.*, 2008 WL 5412886, at *2 (D. Mass. Dec. 8, 2008) (noting that evidence from former employers may be relevant even if unknown to the employer when the employment decision was made).

B. None of Mehra's Objections Has Merit.

Mehra bears the burden of demonstrating that there is good cause for a protective order quashing the subpoena – and, even more extreme, precluding service of any other subpoenas. *See, e.g., Alnylam Pharm., Inc. v. Dicerna Pharm., Inc.*, 2016 WL 6635935, at *1 (Mass. Super. Sept. 13, 2016); *Church of Scientology of Boston v. I.R.S.*, 138 F.R.D. 9, 10 (D. Mass. 1990); *Haemonetics Corp. v. Baxter Healthcare Corp.*, 593 F. Supp. 2d 298, 301 (D. Mass. 2009). Broad, conclusory allegations of harm do not establish good cause. Instead, the movant must show that it will suffer specific prejudice or harm without a protective order. *See, e.g., G & F Industries, Inc. v. Jeffco, Inc.*, 2006 WL 306893, at *3 (Mass. Super. Feb. 2, 2006). Mehra has failed to do so.

1. Mehra's Privacy Concerns Do Not Justify a Protective Order.

It is obviously common for litigants – both individuals and corporate entities – to have concern about maintaining confidentiality of documents and information produced in discovery. Just as commonly, those concerns are addressed by entering into an agreed protective order that ensures produced information will be used only for purposes of the litigation, and filed with the court or used in trial only pursuant to an agreed protocol. The Globe is entirely willing to enter into such a protective order here that would so limit the use of materials produced by WGBH or otherwise.

Before filing this motion and complaining about matters of confidentiality, Mehra sought no such compromise, and instead delivered an ultimatum: the Globe was to withdraw the subpoena, destroy any documents received, and agree to serve no more subpoenas in this case. When the Globe declined, Mehra served his motion without further discussion about means to protect the information sought. Such a protective order would fully address Mehra's concerns.

Mehra also argues that the subpoena threatens his employment prospects, but that threat is difficult to discern; he offers no evidence that he has applied to WGBH for any position, that any such position exists, or that he contemplates any such application. Nor is there any evidentiary basis to conclude that the subpoena will have any effect on employment prospects elsewhere; the Globe has taken no steps at all to publicize the subpoena. And now that it has been served, the question before the Court is merely whether there is some incremental reputational threat from WGBH producing responsive documents. Mehra offers no reason to believe that the production of documents should cause him any harm, particularly if documents are produced under a confidentiality stipulation as proposed above.

Some of the cases on which Mehra relies for the supposed reputational threat concern subpoenas to current, not former, employers – that is, the employer the plaintiff is working for at

the time the suit is filed. *See, e.g.*, *EEOC v. Texas Roadhouse, Inc.*, 303 F.R.D. 1 (D. Mass. 2014). Often subpoenas to employers subsequent to the defendant seek information about post-employment compensation, for purposes of arguing mitigation, and the courts balanced the legitimate interest in mitigation information against the threat to the employee in his current job. This is the source of much of Mehra's arguments about such subpoenas being "tools of harassment" and discovery methods of "last resort." *See, e.g., Texas Roadhouse*, 303 F.R.D. at 3. Such concerns are not present here, where the Globe has not served a subpoena on a current employer.

Cases Mehra cites involving subpoenas to former employers also are distinguishable. In *U.S. v. Handrup*, 2016 WL 8738943 (N.D. Ill. July 11, 2016), the employer served a broad salvo on *nine* former employers seeking dirt on the plaintiff, who asserted a False Claims Act claim and so his personal conduct was not at issue in the way Mehra's is here. The same was true in *Vuona v. Merrill Lynch & Co.*, 2011 WL 5553709 (S.D.N.Y. Nov. 15, 2011), where the plaintiff asserted a gender discrimination claim and the court held that "Plaintiffs' prior work histories have nothing to do with" whether the employer's decisionmaking was "based on valid considerations." And in *Henry v. Morgan's Hotel Grp., Inc.*, 2016 WL 303114 (S.D.N.Y. Jan. 25, 2016), which Mehra cites throughout his motion, the former employers (three of them, in this case) were owners of multiple restaurants in the city, so that the court perceived a threat to the plaintiff's ability to get a job at a wide range of businesses.

Finally, and perhaps most plainly, even if there were some identifiable threat to Mehra's reputation from WGBH's document production, which there is not, his concerns about the effect of the subpoena on his reputation are impossible to separate from his own voluntary decision to

sue his employer and to speak to the press about the Globe's response.[10, 11] This lawsuit has already received considerable publicity, and Mehra makes no argument that the subpoena somehow threatens his reputation more than this lawsuit already has. *See, e.g., Turnley*, 2008 WL 5412886, at *2 ("the very fact of bringing this lawsuit and the breadth of the complaint make groundless Plaintiffs' infringement-of-privacy claims").[12]

2. Mehra Has No Standing to Complain About Potential Burden on WGBH, and the Subpoena Is Not Burdensome In Any Case.

Mehra also complains about the burden of the subpoena on WGBH. Motion at 15-17. At the outset, he has no standing to complain about any burden on WGBH; Rule 45 permits WGBH to assert its own objection on grounds of burden, and it has not done so.

In any case, counsel for WGBH has represented to the Globe that *there is no burden on WGBH* and that they have *already completed* their document-collection efforts. The Globe has sought documents concerning a single former employee, and has not made any demands that would require extensive searching or other costs. The Globe has not, for example, demanded that WGBH run searches on emails, inquire of multiple employees about their interactions with

[10] For the avoidance of doubt, he chose to do so even though the Globe made clear, in discussions between counsel in the period after his termination, that if he filed suit the Globe would respond by explaining the true basis for his termination, including his expense abuses.

[11] After the Globe filed its answer, his counsel issued a statement to a Globe reporter that "The Boston Globe's accusations are false and a jury that will hear this case eventually will understand them to be false. . . . The hard work of the litigation begins now with discovery, and discovery will show Vinay is right." https://www.bostonglobe.com/2023/08/03/business/boston-globe-media-says-former-president-was-fired-excessive-unauthorized-spending/. The Globe newsroom operates its newsgathering and reporting independent of the Globe's business side.

[12] The *Turnley* court also noted that the existence of a confidentiality protective order was sufficient to protect the plaintiff's privacy interests with respect to information produced under a subpoena to a former employer. *See id.*

Mehra, or otherwise required production of documents beyond the personnel file that likely is in a single location. The request is entirely routine.

3. Mehra Was Not Prejudiced By Minor Procedural Matters, and Those Complaints Should Be Rejected.

Mehra further complains that the subpoena was served on his counsel on the same day that it was served on WGBH, rather than beforehand, and that, as a result of a typographical error, the subpoena requested compliance by September 12 even though it was not served until September 14.

These minor matters do not provide good cause for a protective order. There is no question that Mehra received the subpoena with sufficient time to object to it; WGBH produced no documents and promptly told Mehra's counsel that it would not do so for ten days so that Mehra could pursue a motion to quash. Mehra waited more than ten days to pursue the matter further, but neither WGBH nor the Globe pressed the issue during that time. When Mehra's counsel did contact the Globe's counsel to express concerns about the subpoena, the Globe responded by agreeing to postpone any compliance date until after this Court rules on the motion, and asking WGBH not to produce any documents in the meantime. Thus, Mehra is in the same position he would have been in had the subpoena been served on counsel in advance, and even if the subpoena had specified a different return date. Mehra's repeated arguments about these procedural matters, Motion at 1, 4, 17-19, lack substance. He has not been prejudiced, and there is no basis for a protective order.

CONCLUSION

For all of the foregoing reasons, Mehra's motion to quash the subpoena to WGBH and for a protective order should be denied.

Respectfully submitted,

BOSTON GLOBE MEDIA PARTNERS, LLC

By its attorneys,

/s/Mark W. Batten
Mark W. Batten (BBO# 566211)
PROSKAUER ROSE LLP
One International Place
Boston, MA 02110
617.526.9600
mbatten@proskauer.com

Date: October 23, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party to this action by email and first-class mail, postage prepaid, this 23rd day of October, 2023.

/s/Mark W. Batten
Mark W. Batten