

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

Conservation Law Foundation, Inc.,

Plaintiff,

v.

Shell Oil Company, Equilon Enterprises, LLC
d/b/a Shell Oil Products US, Shell Petroleum,
Inc., and Motiva Enterprises LLC,

Defendants.

No. 3:21-cv-00933- SALM

July 22, 2022

**PLAINTIFF CONSERVATION LAW FOUNDATION'S MOTION TO QUASH
THIRD PARTY SUBPOENAS**

Plaintiff Conservation Law Foundation, Inc. (“CLF”) hereby moves pursuant to Federal Rule of Civil Procedure 45(d)(3) for an order quashing Shell Oil Products US,¹ Shell Oil Company, Shell Petroleum, Inc., Motiva Enterprises LLC, Triton Terminaling LLC, and Equilon Enterprises LLC’s (collectively, “Shell” or “Defendants”) Rule 45 Subpoenas served on five third party individuals (collectively referred to herein as “Rule 45 Subpoenas”). On July 8, 2022, Defendants served Rule 45 Subpoenas issued to persons who submitted declarations in support of CLF’s standing in this matter, specifically: Anstress Farwell, Chris Ozyck, David Weinreb, Jacqueline Maisonpiere, and Tiffany Lufkin (“Declarants”). In response, the Declarants sent Defendants a letter stating their objections to the document requests contained in the Rule 45 Subpoenas. *See* Subpoena Objection Letter, attached hereto as Exhibit A. As detailed below, CLF and Defendants have met on multiple occasions and exchanged correspondence in an

¹ Effective March 1, 2022, Defendant Shell Oil Company changed its name to Shell USA, Inc.

attempt to coordinate the production of documents and avoid the necessity of serving unnecessary subpoenas for documents on third parties. Defendants have nevertheless served subpoenas upon the Declarants for documents CLF largely had already agreed to produce by July 22, 2022, which is the same deadline set forth in the Rule 45 Subpoenas. CLF thus moves for an order quashing the subpoenas as they seek to impose undue burden and expense on the subpoenaed Declarants pursuant to FRCP 45(d)(1).

I. BACKGROUND

Defendants served CLF's five Declarants with subpoenas to produce documents on or about July 8, 2022.² Declarants are not parties to this litigation, but rather have provided declarations in support of Plaintiff CLF's organizational standing to bring the claims asserted in this case.

On May 3, 2022, Defendants served their First Set of Interrogatories and First Set of Requests for Production of Documents on CLF.³ On June 9, 2022, CLF served Defendants with their Responses to these discovery requests.⁴ CLF objected to many of Defendants' Requests, but of note in this context is CLF's objection to Defendants' Request for Production No. 7:

REQUEST NO. 7: All Documents, including without limitation, all photographs, emails, text messages, calendars, itineraries, travel documents, receipts, and social media updates in the possession, custody, or control of Your members, Anstress Farwell, Chris Ozyck, David Weinreb, Jacqueline Maisonpierre, and Tiffany Lufkin, Relating to their use or enjoyment of waters that You allege are impacted by the Terminal, including the New Haven Harbor, the Quinnipiac River, and the Mill River.

RESPONSE TO REQUEST NO. 7:

CLF objects to this Request on the basis that it seeks to obligate CLF to produce documents that are not in CLF's possession, custody, or control and are,

² CLF agreed to accept service of the subpoenas but reserved all rights to challenge its contents. *See* Email Communications between CLF and Defendants, dated June 29, 2022 through July 5, 2022, attached hereto as Exhibit B. The subpoenas served upon the Declarants are attached hereto as Exhibits C (A. Farwell), D (C. Ozyck), E (D. Weinreb), F (J. Maisonpierre), and G (T. Lufkin).

³ Defendants' First Set of Requests for Production are attached hereto as Exhibit H.

⁴ CLF's Responses to Defendants' First Set of Requests for Production are attached hereto as Exhibits I.

instead, in the possession of third parties. CLF also objects to Defendants' Request to the extent that it is unduly burdensome, overbroad, and includes too broad of a time period to the extent that it seeks "All Documents" "Relating to" the listed individuals' use and enjoyment of the waters.

Without limiting or waiving any of the above objections, CLF responds as follows: CLF will not produce documents outside of CLF's possession, custody, or control. However, CLF is willing to meet and confer with Defendants and to facilitate a voluntary production of documents from Anstress Farwell, Chris Ozyck, David Weinreb, Jacqueline Maisonpierre, and Tiffany Lufkin relating to their use or enjoyment of waters that are impacted by the Terminal, including New Haven Harbor, the Quinnipiac River, and the Mill River.⁵

The Parties did meet and confer to discuss this and other Responses on June 14, 2022. As a result of this meeting, CLF agreed to "produce documents on behalf of Anstress Farwell, Chris Ozyck, David Weinreb, Jacqueline Masionpierre, and Tiffany Lufkin relating to their use or enjoyment of waters that are impacted by the Terminal, including New Haven Harbor, the Quinnipiac River, and the Mill River, identified after a reasonable search."⁶ The production of these documents is due by agreement of the parties on July 22, 2022.⁷ As noted above, this is also the compliance date set for document production on all five subpoenas.⁸

II. ARGUMENT

A. SUBPOENAS UNDER FEDERAL RULE OF CIVIL PROCEDURE, RULE 45

Under Rule 45(d)(2)(B) of the Federal Rules of Civil Procedure, "the person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises – or to producing electronically stored information in the form or forms requested." The objection must be made before the date

⁵ *Id.* at 5.

⁶ See Plaintiff CLF's Amended Response to Defendants' First Set of Requests for Production of Documents attached here to as Exhibit J.

⁷ The Parties also briefly discussed CLF's Amended Response on July 21, 2022. Defendants stated they would consider narrowing the subpoena requests to remove the identical request from the subpoenas after reviewing CLF's production on July 22, 2022.

⁸ See Exhibits C, D, E, F, and G.

of compliance or within 14 days of service of the subpoena. *Id.* The Declarants served their written objections to the subpoenas through counsel on July 22, 2022.

A third party may also move to quash a subpoena under Rule 45(d) if it subjects a person to undue burden. Some of the factors considered for undue burden include (1) whether the subpoena was issued primarily for purposes of harassment; (2) there are other viable means to obtain the same evidence (such as from a party to the case); and (3) to what extent the information sought is relevant, nonprivileged, and crucial to the moving party's case. *Bogosian v. Woloohojian Realty Corp.*, 323 F.3d 55, 66 (1st Cir. 2003) (reviewing a plaintiff's appeal of the trial court's decision quashing a subpoena as, among other things, cumulative, intended to harass, and as seeking information that was marginally relevant); *Fishon v. Peloton Interactive, Inc.*, 336 F.R.D. 67, 69 (S.D.N.Y. 2020). Rule 45 is not meant to allow a party to bypass the discovery process under Rules 26 and 24. *Fishon*, 336 F.R.D. at 69 (citing *Burns v. Bank of Am.*, 2007 WL 1589437, at *14 (S.D.N.Y. June 4, 2007)). "Once the party issuing the subpoena has demonstrated the relevance of the requested documents, the party seeking to quash the subpoena bears the burden of demonstrating the subpoena is overbroad, duplicative, or unduly burdensome." *Doe v. Town of Greenwich*, 2020 WL 3467883, at *1 (D. Conn. June 25, 2020). Under the circumstances presented here, Shell's Rule 45 Subpoenas should be quashed given their cumulative nature and evident intent to pressure and/or harass the standing Declarants.

B. DEFENDANTS' RULE 45 SUBPOENAS ARE DUPLICATIVE, BURDENSOME, AND HARASSING

Declarants have objected to the subpoenas to the extent that they seek documents and information available from another more convenient, less burdensome, and less expensive source. Further, CLF has already agreed to produce certain documents on behalf of Declarants

by the same date for compliance set out in the subpoenas.⁹ If Defendants were displeased with this date to which they previously agreed, Rule 45 Subpoenas were not the appropriate remedy. A “Rule 45 subpoena is not an alternative to the meet and confer requirements of Rule 37 and the appropriate procedures for bringing discovery disputes to the Court for resolution. If the Plaintiffs believed that the Defendants responses to its discovery requests were deficient in any regard, then the appropriate course would have been to file a motion to compel, not to serve a subpoena on [Defendants’] wholly owned subsidiary.” *Lemoine v. Mossberg Corp.*, No. 3:18-CV-01270 (KAD), 2020 WL 3316119, at *1 (D. Conn. June 18, 2020).

Therefore, Defendants’ proper avenue for redress would have been seeking to meet and confer with CLF followed by a motion to compel, not requesting documents by way of third-party subpoenas. Nevertheless, a motion to compel would also be inappropriate because CLF is still within the time to produce the sought-after documents as per the Parties’ agreement before Defendants unilaterally elected to serve the instant subpoenas.

As further evidence of Defendants’ misguided approach in prematurely and inappropriately requiring Court involvement in their demands for discovery, the subpoenas are virtually identical to Defendants’ First Requests for Production that were served on CLF on May 3, 2022.¹⁰ Subpoena Requests 1-5 are contained within Defendants’ First Set of Requests for Production of Documents to Plaintiff Nos. 7-9:

Subpoena Requests:

REQUEST 1. All Documents referenced, reviewed, or relied upon in claiming a past, present, or future harm to Your health caused by Defendants’ alleged violations as described in the Complaint in this Litigation.

⁹ The Parties agreed that Plaintiff would produce documents responsive to RFP 7 by July 22, 2022, including documents relating to and obtained from the Declarants Defendants have now elected to subpoena. However, the documents requested in the subpoenas seek information outside of RFP 7, albeit primarily duplicative of other RFP requests.

¹⁰ See Exhibit H.

REQUEST 2. All Documents referenced, reviewed, or relied upon in claiming a past, present, or future harm to Your well-being caused by Defendants' alleged violations as described in the Complaint in this Litigation.

REQUEST 3. All Documents referenced, reviewed, or relied upon in claiming a past, present, or future harm to Your quality of life caused by Defendants' alleged violations as described in the Complaint in this Litigation.

REQUEST 4. All Documents referenced, reviewed, or relied upon in claiming a past, present, or future harm to Your enjoyment of waters caused by Defendants' alleged violations as described in the Complaint in this Litigation.

REQUEST 5. All Documents, including without limitation, all photographs, emails, text messages, calendars, itineraries, travel documents, receipts, and social media updates relating to Your use or enjoyment of waters that You allege are impacted by the Terminal, including the New Haven Harbor, the Quinnipiac River, and the Mill River.

...

Requests for Production to CLF:

REQUEST 7. All Documents, including without limitation, all photographs, emails, text messages, calendars, itineraries, travel documents, receipts, and social media updates in the possession, custody, or control of Your members, Anstress Farwell, Chris Ozyck, David Weinreb, Jacqueline Maisonpierre, and Tiffany Lufkin, Relating to their use or enjoyment of waters that You allege are impacted by the Terminal, including the New Haven Harbor, the Quinnipiac River, and the Mill River.

REQUEST 8. All Documents that support Your allegations that pollutant discharges from the Terminal are harming Your members.

REQUEST 9. All Documents that support Your allegations that alleged Resource Conservation and Recovery Act violations at the Terminal are harming Your members.

Subpoena Requests 6-8 are contained within Defendants' First Set of Requests for Production of Documents to Plaintiff Nos. 11-13:

Subpoena Requests:

REQUEST 6. All Documents Relating to any observations by You of any pollutant discharges coming from the Terminal.

REQUEST 7. All Documents Relating to Your monitoring of, investigation of, and/or response to pollution that You allege to be coming from the Terminal to waters that You allege are impacted by the Terminal, including, the New Haven Harbor, the Quinnipiac River, and the Mill River.

REQUEST 8. All Documents Relating to any Communications by You with any governmental agency about the Terminal.

...

Requests for Production to CLF:

REQUEST 11. All Documents Relating to any observations by You of any pollutant discharges coming from the Terminal.

REQUEST 12. All Documents Relating to Your monitoring of, investigation of, and/or response to pollution that You allege to be coming from the Terminal to waters that You allege are impacted by the Terminal, including, the New Haven Harbor, the Quinnipiac River, and the Mill River.

REQUEST 13. All Documents Relating to any Communications by You with any governmental agency about the Terminal.

Subpoena Request 9 is identical to Request for Production to CLF No. 23:

REQUEST 9. All Documents Relating to Your efforts to evaluate risks to the Terminal posed by precipitation and/or flooding due to any cause, including storms or storm surges.

REQUEST 23. All Documents Relating to Your efforts to evaluate risks to the Terminal posed by precipitation and/or flooding due to any cause, including storms or storm surges.

Lastly, Subpoena Request 12 is identical to Request for Production to CLF No.39:

REQUEST 12. All Documents received by You in response to any request made under the Freedom of Information Act, 5 U.S.C. § 552, or any state analogue, Relating to the Terminal.

REQUEST 39. All Documents received by You in response to any request made under the Freedom of Information Act, 5 U.S.C. § 552, or any state analogue, Relating to the Terminal.

Only one subpoena request differs meaningfully from the above-noted Requests from Defendants' First Requests for Production: Subpoena Request 11, which seeks communications

between the Declarants. But even this subpoena request is flawed because Defendants should have sought this information by propounding a second set of Requests for Production on CLF because “there [were] other viable means to obtain the same evidence.” *See Bogosian* at 66 (1st Cir. 2003). Instead, Defendants chose to harass non-parties with subpoenas seeking documents CLF has already agreed to produce before the date by which the Parties agreed such production would take place. Because the subpoenas were “issued primarily for purposes of harassment,” the Court should grant CLF’s motion and quash them. *Id.*

III. CONCLUSION

In light of the extensive overlap with pending document requests and available legal remedies associated therewith; the distinction between the role of the subpoena targets from that of a typical plaintiff; and the unlikelihood that any information outside the scope of the materials CLF has voluntarily agreed to provide as part of a meet-and-confer process would be material to the case, there is simply no other conclusion other than that the subpoenas were designed to harass and/or place undue pressure on the standing declarants. As such, the subpoenas should be quashed.

DATED: July 22, 2022

Respectfully submitted,

Alexandra St. Pierre (ct31210)
Conservation Law Foundation, Inc.
62 Summer St
Boston, MA 02110
Tel: (617) 850-1732
E-mail: aestpierre@clf.org

Chris Kilian (ct31122)
Conservation Law Foundation, Inc.
15 East State Street, Suite 4
Montpelier, VT 05602
Tel: (803) 223-5992

E-mail: ckilian@clf.org

/s/ Chancey E. Raymond

Allan Kanner (ct31051)

E-mail: a.kanner@kanner-law.com

Elizabeth B. Petersen (ct31211)

E-mail: e.petersen@kanner-law.com

Allison S. Brouk (ct31204)

E-mail: a.brouk@kanner-law.com

Chancey E. Raymond (ct31311)

E-mail: c.raymond@kanner-law.com

KANNER & WHITELEY, L.L.C.

701 Camp Street

New Orleans, Louisiana 70130

Tel: (504) 542-5777

Facsimile: (504) 524-5763

Attorneys for Plaintiff

Conservation Law Foundation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2022, a copy of the foregoing Motion to Quash was filed through the ECF system, by which means a copy of the filing will be sent electronically to all parties registered with the ECF system.

/s/ Chancey E. Raymond

Chancey E. Raymond