

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**FEDERAL TRADE COMMISSION,**

**Petitioner,**

v.

**Case No: 6:18-mc-27-Orl-40GJK**

**DEREK J. BARTOLI,**

**Respondent.**

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**ORDER**

This cause came on for consideration without oral argument on the following petition:

**MOTION: PETITION OF THE FEDERAL TRADE COMMISSION  
FOR AN ORDER ENFORCING CIVIL INVESTIGATIVE  
DEMAND (Doc. No. 1)**

**FILED: April 16, 2018**

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

**I. FACTUAL BACKGROUND**

Before the Court is a petition (the “Petition”) from the Federal Trade Commission (“FTC”) to enforce a Civil Investigative Demand (“CID”) served on Respondent. Doc. No. 1. The FTC is investigating a number of individuals and entities who may have been involved in a telemarketing scheme using robocalls to advertise vacations. *Id.* at 5. The FTC is pursuing the investigation under the FTC Act, 15 U.S.C. § 45(a), which empowers the FTC to prohibit “unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(2); Doc. No. 1 at 1.

On December 23, 2017, the FTC served the CID on Respondent, requiring him to respond to ten document requests and nine interrogatories by January 9, 2018. Doc. No. 1 at 7; Doc. No. 1-1 at 4-5. The CID also required Respondent to provide testimony on February 7, 2018 regarding topics relevant to the FTC's investigation. Doc. No. 1 at 7. Respondent informed the FTC that he received the CID but was not prepared to discuss it. *Id.* at 8. The FTC and Respondent agreed to speak again at a later date, but Respondent never responded to the FTC's calls or emails. *Id.*

On February 2, 2018, the FTC sent correspondence to Respondent stating that it gave him an extension of time to respond to the CID. Doc. No. 1 at 8-9. Specifically, the correspondence stated that Respondent had until February 9, 2018 to respond to the CID's discovery requests and that he is to provide testimony on February 20, 2018. *Id.* Respondent failed to provide any discovery responses or testimony. *Id.* at 9.

On April 16, 2018, the FTC filed the Petition, requesting an order directing Respondent to appear and show cause why he should not comply with the CID. Doc. No. 1 at 17. Attached thereto is a declaration from an FTC attorney detailing the facts resulting in the Petition. Doc. No. 1-1.

## **II. APPLICABLE LAW**

Under 15 U.S.C. § 57b-1(c)(1), the FTC is authorized to issue and serve CIDs on any person that “may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 57b-1(c)(1). If the person subject to a CID fails to comply with it, the FTC may file a petition for an order to enforce compliance with the CID in the district court of “any judicial district in which such person resides, is found, or transacts business ...” 15 U.S.C. § 57b-1(e). The statute allows the Court “to hear and determine the matter so presented, and to enter such order or orders as may be required ...” 15 U.S.C. § 57b-1(h).

In a proceeding to enforce an administrative subpoena, the Court's role is "sharply limited" and "inquiry is appropriate only into whether the evidence sought is material and relevant to a lawful purpose of the agency." *United States v. Fla. Azalea Specialists*, 19 F.3d 620, 623 (11th Cir. 1994) (quoting *Equal Emp't Opportunity Comm'n v. Kloster Cruise Ltd.*, 939 F.2d 920, 922 (11th Cir. 1991)). "As a general rule, an administrative subpoena should be enforced if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." *Id.* (internal quotations and citations omitted).

### III. ANALYSIS

After reviewing the CID and the Petition, they meet all of the above-referenced requirements. First, the Petition is filed in the proper judicial district because Respondent resides and transacts business in Kissimmee, Florida. Doc. No. 1 at 4. Second, the CID is within the FTC's authority. The FTC Act allows CIDs to be issued and served on any person that "may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 57b-1(c)(1). The Petition states that the FTC traced unsolicited telephone calls offering vacations to Respondent's company, making him a person of interest. Doc. No. 1 at 7; Doc. No. 1-1 at 3.

Third, the CID is not too indefinite. The CID states: 1) the conduct that is under investigation; 2) the document requests and the interrogatories; 3) the topics of inquiry for Respondent's testimony; 4) the relevant time period for the requested discovery; and 5) instructions regarding how any relevant documents should be produced. Doc. No. 1-2 at 4, 6-11. Finally, after reviewing the CID, the information sought is reasonably relevant to the FTC's investigation of Respondent's alleged involvement in the telemarketing scheme. *Id.* at 8-11.

Accordingly, the Court will grant the Petition and direct Respondent either to comply with the CID or to show cause in person why he should not do the same.

#### IV. CONCLUSION

Considering the foregoing, it is **ORDERED** that:

- 1) The Petition (Doc. No. 1) is **GRANTED**; and
- 2) **On or before June 13, 2018**, the FTC shall:
  - a) Serve a copy of the Petition, its attachments, and this Order on Derek J. Bartoli; and
  - b) File an executed return of service with the Court; and
- 3) Derek J. Bartoli shall do either of the following:
  - a) **Within fourteen days from the date he is served with the Petition, its attachments, and this Order**, Mr. Bartoli shall fully comply with the FTC's Civil Investigative Demand; or
  - b) Should Mr. Bartoli fail to fully comply with the FTC's Civil Investigative Demand, on **MONDAY, July 16, 2018 at 10:00 A.M.**, **the undersigned will hold an evidentiary hearing in Courtroom 3C, U.S. Courthouse, 401 W. Central Boulevard, Orlando, Florida 32801** for Mr. Bartoli to show cause as to why he should not fully comply with the FTC's Civil Investigative Demand; and
  - c) **Mr. Bartoli's failure to attend the July 16, 2018 show cause hearing may result in the imposition of sanctions, including monetary fines or a warrant for his arrest. See 28 U.S.C. § 636(e)(2).**

**DONE** and **ORDERED** in Orlando, Florida on May 23, 2018.

  
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GREGORY J. KELLY  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
Counsel of Record  
Unrepresented Parties