SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57TR**

Justice

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IN THE MATTER OF THE APPLICATION OF MICHAEL BLOOMBERG, FOR AN ORDER PURSUANT TO CPLR 3119(E) FOR A PROTECTIVE ORDER PURSUANT TO CPLR 3103 SERVED BY,

Plaintiff,

- v -

TIFFANY FONTAINE, NYGEL OBANNON, WENDELL MCCOY, GREGOIRE POIRIER

Defendant.

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INDEX NO. 154307/2023

MOTION DATE 6/15/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33

were read on this motion to/for ORDER OF PROTECTION.

BACKGROUND

Petitioner was a candidate for President of the United States in 2020. Respondents were Massachusetts field organizers who worked as employees of MB2020, a Delaware non-profit corporation and the authorized campaign committee for Petitioner's presidential campaign.

Respondents brought a putative class action, currently pending in Massachusetts Superior Court, in which they allege that they were orally promised by MB2020 staff that they would be employed through the November 2020 election, regardless of whether Petitioner won the Democratic nomination. Respondents assert that thousands of campaign members across the county, including the sixty employees in Massachusetts, accepted their positions with MB2020 in reliance on the promise of guaranteed wages and benefits through November 2020, regardless of whether Petitioner won the nomination. Many employees relocated far from their homes,

turned down other work opportunities, and stopped looking for other work opportunities, in reliance on this promise.

After a poor showing on March 3, 2020, when primary elections were held in fifteen jurisdictions, Petitioner announced on March 4, 2020, that he was suspending his campaign. Campaign staff learned of Petitioner's decision during an all-staff conference call on March 4, 2020. Staff also learned that Petitioner intended to establish a political action committee ("PAC") that would seek to defeat President Donald Trump in certain electoral states, and that they would be able to continue to work for Petitioner's PAC.

On March 20, 2020, the MB2020 held another all-staff conference call during which staff members learned that they were being laid off and would receive their last paychecks on March 31, 2020. Rather than form a PAC, Petitioner would donate funds to the Democratic National Committee ("DNC"). MB2020 would submit interested staff members' information to the DNC, but they were not guaranteed employment. Respondents and other members of MB2020's staff submitted their information to be passed along to the DNC, but they received no response.[1]

Respondents assert claims for breach of contract and promissory estoppel on the basis of these promises, although they did sign a written agreement stating they were at will employees.

In July 2021, the Massachusetts Court granted, in part, the defendants' motion to dismiss, determining that it did not have personal jurisdiction over Petitioner and dismissing him as a defendant in his individual capacity. [2]

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[1] Facts alleged in the previous paragraphs are taken from the July 1, 2021 Memorandum Decision in the Massachusetts Action (NYSCEF Doc 6).

[2] Respondents have moved to add Petitioner as a party to the Massachusetts Litigation and as of June 9, 2023, that motion was still pending.

Petitioner submits this Petition, pursuant to CPLR § 402, for an Order, pursuant to CPLR §§ 3101, 3103, and 3119, issuing a protective order to Petitioner pursuant to Respondent's Subpoena dated April 6, 2023, preventing Respondents from taking the deposition of Petitioner in the Massachusetts Action.

For the reasons stated below, the motion is denied.

DISCUSSION

Under the Uniform Interstate Deposition and Discovery Act, as enacted by New York, a party to an action pending in another state may issue a subpoena for discovery to a non-party New York witness. See CPLR §§ 3102(e); 3119. The party is entitled to such discovery if (a) the party provides notice and (b) the disclosure is "material and necessary" to the litigation pending in the other state. *See Kooper v. Kooper*, 74 A.D.3d 6, 10 (2d Dep't 2010).

"A party or nonparty moving to quash a subpoena has the initial burden of establishing either that the requested disclosure 'is utterly irrelevant to the action or that the futility of the process to uncover anything legitimate is inevitable or obvious' " (*Hudson City Sav. Bank v. 59 Sands Point, LLC*, 153 A.D.3d 611, 612–613, 57 N.Y.S.3d 398, quoting *Matter of Kapon v. Koch*, 23 N.Y.3d 32, 34, 988 N.Y.S.2d 559, 11 N.E.3d 709 [internal quotation marks omitted]). " 'Should the [movant] meet this burden, the subpoenaing party must then establish that the discovery sought is material and necessary to the prosecution or defense of [the] action' " (*Hudson City Sav. Bank v. 59 Sands Point, LLC*, 153 A.D.3d at 613, 57 N.Y.S.3d 398, quoting *Matter of Kapon v. Koch*, 23 N.Y.3d at 34, 988 N.Y.S.2d 559, 11 N.E.3d 709 [internal quotation marks omitted]).

Wells Fargo Bank, N.A. v. Confino, 175 A.D.3d 533, 534–35 (2019).

Under CPLR § 3101(a), "so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty." *Matter of Kapon v. Koch*, 23 N.Y.3d 32, 38 (2014). There is "no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source." *Id.* Rather, "the words 'material and necessary' as used in section 3101 must 'be interpreted liberally to require disclosure, upon

request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.'" *Id.* (*quoting Allen v Crowell-Collier Publ. Co.*, 21 N.Y.2d 403, 406 (1968)). "An application to quash a subpoena should be granted '[o]nly where the futility of the process to uncover anything legitimate is inevitable or obvious' ... or where the information sought is 'utterly irrelevant to any proper inquiry.'" Id. (quoting *Anheuser–Busch, Inc. v. Abrams*, 525 N.Y.S.2d 816 (1988).

The court finds that Petitioner has failed to meet its initial burden of establishing the request to depose Petitioner is utterly irrelevant.

Petitioner's counsel argues that Petitioner was not an officer of MB2020, did not personally hire campaign staffers, and lacks any knowledge relevant to the Massachusetts litigation. The court notes that no affidavit has been submitted by Petitioner denying that he has any relevant knowledge to the issues in the Massachusetts Action, rather these assertions are only made by counsel.

Respondents cite transcripts of interviews with Petitioner taken during the campaign, where he made numerous representations to reporters and the public about his intentions to continue his involvement in the 2020 election cycle, regardless of whether he won the primary, including by keeping offices open and retaining his campaign workers.

Respondents should be able to question Petitioner about these statements to keep campaign staff employed through November 2020 – which is the subject of Plaintiffs' lawsuit – and any other he may have made.

Additionally, Petitioner's Campaign Manager asserted in an interview that it was Petitioner's idea to hire staff through November 2020. *See* "*We're Going to Spend Trump Out of Office*"; *Bloomberg's Campaign Manager on Why Mike is Still the Democratic Savior*", Joe

Hagan, VANITY FAIR, February 24, 2020, ("*Mike has been very clear that he's in this for the long term. That was Mike's idea. 'All those leases, sign them through November. Hire those people through November and if they're working for us, that's going to be great, and if they're not, they're still going to be working towards what I've said is the most important thing to me this year*.'").

Finally, the court notes that in recognition of Respondents' right to depose Petitioner, two courts in Massachusetts have already permitted them to serve a subpoena for his deposition on counsel for his presidential campaign (NYSCEF Doc Nos 30 & 31).

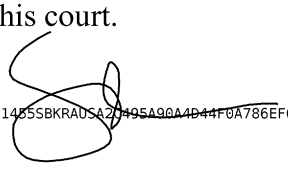
WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety and the petition is dismissed; and it is further

ORDERED that, within 20 days from entry of this order, respondents shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh);]; and it is further

ORDERED that this constitutes the decision and order of this court.



6/15/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		