

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CARETOLIVE, a not for profit corporation,	:	
	:	
Plaintiff	:	Case No. 2:07-CV-729
	:	
vs.	:	District Judge Gregory Frost
	:	
ANDREW VON ESCHENBACH,	:	Magistrate Judge Norah McCann King
Commissioner of the FDA, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**MOTION OF NON-PARTY PAUL GOLDBERG FOR SANCTIONS AGAINST
PLAINTIFF CARETOLIVE, PURSUANT TO CIVIL RULE 45(c)(1)**

Non-party movant Paul Goldberg is a journalist who, together with his wife Kristen Goldberg, edits and publishes *The Cancer Letter*. The Goldbergs, who live in Washington, D.C., received subpoenas issued by Plaintiff in this case (while discovery was stayed) seeking certain confidential source materials, and a physical inspection of their home by Plaintiff's counsel. The issues raised by Mr. Goldberg via this motion were originally raised in the Goldbergs' Opposition to a Petition to Enforce Subpoena filed by Plaintiff CareToLive in the United States District Court for the District of Columbia (the "D.C. Court"). The D.C. Court, on November 6, 2007, observed that while it believed that CareToLive's actions in connection with the subpoena to the Goldbergs "should be sanctionable," only this Court would have subject matter jurisdiction to issue such sanctions. It is for that reason that Mr. Goldberg brings this motion in this Court at this time.

On August 8, 2007, Plaintiff CareToLive filed a "Petition to Enforce Subpoena" in the D.C. Court against Mr. Goldberg and his wife. The subpoenas which CareToLive sought to enforce were not properly issued and improperly sought discovery from a journalist without complying with the established standards for doing so. The multiple deficiencies in the

subpoenas were pointed out to CareToLive's counsel by the Goldbergs' Washington, D.C. counsel before CareToLive's counsel filed the Petition. Copies of CareToLive's Petition to Enforce Subpoena and the Goldbergs' Opposition thereto are attached as Exhibits A and B, together with all exhibits thereto (with slip sheets identifying the exhibits within each filing added for the Court's reference). In the interest of avoiding unnecessary duplication, Mr. Goldberg incorporates herein all of the facts and argument included in his D.C. Court Opposition.

The D.C. Court denied CareToLive's Petition to Enforce, holding that it lacked jurisdiction to consider any matters associated with the subpoena. The D.C. Court noted that "the subpoena petitioner seeks to enforce is facially invalid, since it was issued not by this Court, but by the United States District Court for the Northern [sic: Southern] District of Ohio." (*See Order, CareToLive v. Von Eschenbach*, Civ. Action No. 07-mc-316 (RCL) (D.D.C. Nov. 5, 2007) (copy attached at Ex. C).) The D.C. Court then held that "it appears that petitioner's conduct herein should be sanctionable," but concluded that under Rule 45(c)(1), only this Court could impose such sanctions. (*Id.*)

As a result of CareToLive's filings, Mr. Goldberg was forced to incur significant legal expense to prepare objections to the multiple "facially invalid" subpoenas issued by CareToLive (at a time when this Court had stayed all discovery), and to respond to CareToLive's Petition—the conduct surrounding which subpoenas the D.C. Court believes "should be sanctionable." The specific circumstances of CareToLive's counsel's conduct and the grounds for Mr. Goldberg's request for sanctions pursuant to Rule 45(c)(1) are set forth in more detail in Exhibit B. The amount of the legal fees and expenses incurred to date by Mr. Goldberg in this matter is \$12,200.00.

For the reasons set forth in the Opposition to the Petition to Enforce Subpoena, third party Paul Goldberg asks that this Court impose sanctions against Plaintiff under Fed. R. Civ. P. 45(c)(1).

Respectfully submitted,

/s/ Scott A. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2007, I filed the foregoing, *Motion Of Non-Party Paul Goldberg For Sanctions Against Plaintiff CareToLive, Pursuant To Civil Rule 45(c)(1)*, using the Court's CM/ECF system, which will send notification of such filing to registered counsel electronically.

s/Scott A. Campbell

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