

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO



In Re:	)	Case No.: 01-44007
	)	
Phar-Mor, Inc.,	)	Chapter 11
	)	
Debtor.	)	Adv. Pro. No. 03-4069
	)	
Phar-Mor, Inc.,	)	Hon. Mary Ann Whipple
	)	
Plaintiff,	)	
v.	)	
	)	
McKesson Corporation,	)	
	)	
Defendant.	)	

**MEMORANDUM OF DECISION AND ORDER REGARDING  
PLAINTIFF'S FIRST MOTION TO QUASH SUBPOENAS**

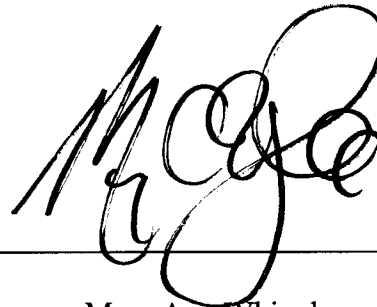
Plaintiff Phar-Mor, Inc. ("Phar-Mor"), is before the court on the Motion to Quash Subpoenas that it filed in this adversary proceeding on August 5, 2005 [Doc. #75] (the "Motion"). The Motion seeks to quash 18 subpoenas issued to entities that are not parties to this litigation. The subpoenas were issued by the United States District Courts for the Northern and Central Districts of California, the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania, and the Southern District of Ohio. Each of the subpoenas requires the production of documents at a location within the district in which it was issued. After reviewing the Motion and the response thereto filed by defendant McKesson Corporation ("McKesson"), the court will deny the Motion.

Motions to quash subpoenas are governed by Rule 45(c)(3) of the Federal Rules of Civil Procedure, applicable in bankruptcy matters by virtue of Rule 9016 of the Federal Rules of Bankruptcy Procedure. The rule provides that only "the court by which a subpoena was issued" may quash or modify the subpoena. Fed. R. Civ. P. 45(c)(3)(A); *e.g.*, *In re Sealed Case*, 141 F.3d 337, 341 (D.C. Cir. 1998); *Kearney v. Jandernoa*, 172 F.R.D. 381, 383 n.4 (N.D. Ill. 1997). While a protective order may be issued by "the court in which the action is pending," Fed. R. Bankr. P. 7026; Fed. R. Civ. P. 26(c); *e.g.*, *Kearney*, 172 F.R.D. at 383 n.4, Phar-Mor is seeking an order quashing the subpoenas, not a protective order. In addition, the Motion does not even attempt to make a

showing of the grounds for a protective order (“to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense”) and does not include the required “certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.” Fed. R. Bankr. P. 7026; Fed. R. Civ. P. 26(c). Accordingly, the Motion must be denied as having been addressed to the wrong court.

Moreover, “[t]he law is clear, absent a claim of privilege, a party has no standing to challenge a subpoena to a nonparty.” *O’Neal v. Johns-Manville Int’l*, No. 3:04 CV 7255, 2005 U.S. Dist. LEXIS 10881, at \*2 (N.D. Ohio May 20, 2005) (quoting *Donahoo v. Ohio Dep’t of Youth Servs.*, 211 F.R.D. 303, 306 (N.D. Ohio 2002)); accord, e.g., *Green v. Sauder Mouldings, Inc.*, 223 F.R.D. 304, 306 (E.D. Va. 2004) (citing *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979); *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975)). The Motion does not assert a claim of privilege with respect to the subpoenaed documents, but only that they are not relevant to this adversary proceeding. Accordingly, the Motion must also be denied for lack of standing.

**THEREFORE**, for the foregoing reasons,  
**IT IS ORDERED** that the Motion is denied.

A handwritten signature in black ink, appearing to read 'Mary Ann Whipple', written over a horizontal line.

Mary Ann Whipple  
United States Bankruptcy Judge