

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

**KINGHORN MEDICAL LLC, d/b/a
MOUNTAIN BRACE SYSTEMS,**

Plaintiff,

v.

Case No. 8:23-cv-1308-CEH-AAS

**NATIONAL DME LLC, d/b/a
BRACEFIT,**

Defendant.

_____ /

ORDER

Defendant National DME, LLC d/b/a Bracefit (Bracefit) requests this court compel responses to a subpoena duces tecum served on non-party Benchmark International CSS, LLC (Benchmark). (Doc. 54). Benchmark’s general counsel, Clinton Johnston, attempted to file a response and a motion to quash the subpoena. (Docs. 56, 57). However, the court struck Mr. Johnston’s filings due to his failure to move for temporary admission in accordance with Local Rule 2.01(d). (Doc. 66, p. 2). The court further instructed “[s]hould Benchmark wish to appear in this action, Mr. Johnston may move for temporary Admission [] or Benchmark may hire counsel who can appear[.]” (Doc. 66, p. 3). Benchmark has failed to appear or appropriately respond to Bracefit’s motion.

As the subpoena was served on January 30, 2024 (Doc. 54-4), Benchmark did not timely object to Bracefit's subpoena duces tecum. *See* Fed. R. Civ. P. Rule 45(d)(2)(B) ("The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served."). Benchmark's "objection" came in the form of an email on February 19, 2024. (Doc. 54-10). As Rule 45 specifies "service," Benchmark's objection was not only untimely, but also improper. Rule 45(d)(2)(B)(i) of the Federal Rules of Civil Procedure allows a party to move for an order compelling production or inspection after an objection is made to a subpoena.

Given Benchmark's failure to timely object to the subpoena or appropriately respond to Bracefit's motion, Bracefit's motion to compel (Doc. 54) is **GRANTED in part**. By **May 24, 2024**, Benchmark must produce documents in response to the subpoena duces tecum and produce a witness for a deposition. In line with plaintiff Kinghorn Medical, LLC d/b/a Mountain Brace Systems' (Mountain Brace's) properly served objections (Doc. 54-9), Benchmark need not produce privileged information.

Bracefit's remaining requests for the court to find Benchmark in contempt and order attorney's fees is **DENIED without prejudice** to be refiled if Benchmark does not comply with this order.

ORDERED in Tampa, Florida on May 7, 2024.

Amanda Arnold Sansone

AMANDA ARNOLD SANSONE
United States Magistrate Judge