

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Joseph Gerald Eldridge,

10 Plaintiff,

11 v.

12 JD Schroeder,

13 Defendant.
14

No. CV-14-01325-PHX-DGC (ESW)

ORDER

15 Pending before the Court are (1) Objection to and Motion to Quash Subpoenas
16 (Doc. 41); (2) Motion for an Order Compelling Discovery (Doc. 46); (3) Motion to
17 Extend the Time for Service of Defendant JD Schroeder (Doc. 47); and (4) "Letter to the
18 Court" (Doc. 39). For the reasons set forth below, the Objection to and Motion to Quash
19 Subpoenas will be granted in part and denied in part. The Court will deny the Motion for
20 an Order Compelling Discovery and the Motion to Extend the Time for Service of
21 Defendant JD Schroeder. The "Letter to the Court" is deemed moot.

22 **Procedural History**

23 Plaintiff is incarcerated at the Arizona State Prison Complex-Lewis in Buckeye,
24 Arizona. He has filed a First Amended Complaint (Doc. 21) alleging a violation of his
25 civil rights pursuant to 42 U.S.C. § 1983. Defendant Schroeder has been terminated from
26 the employ of the Arizona Department of Corrections. (Doc. 22). The Attorney General
27 has filed under seal Defendant Schroeder's last known home address (Doc. 26). The U.S.
28 Marshals Service ("USMS") was unable to serve Defendant Schroeder at that address.

1 The home was vacant and had been sold as confirmed by USMS. (Doc. 33). The Court
2 authorized the issuance of subpoenas duces tecum to permit the Plaintiff to conduct
3 limited discovery for purposes of serving Defendant Schroeder (Doc. 37). Plaintiff has
4 issued subpoenas to the Arizona Department of Corrections and Governor Ducey seeking
5 “All of J.D. Schroeder employment records. Any and all documents that has J.D.
6 Schroeder name on the document and has anything to do with J.D. Schroeder in any way
7 on or in the form or document or material in any form.”

8 Discussion

9 Non-parties Arizona Department of Corrections and the Office of the Arizona
10 Governor move to quash the subpoenas duces tecum on the basis of an unreasonable time
11 to respond as set forth on the subpoenas (two days) as well as irrelevance, over-breadth,
12 and burden. Fed. R. Civ. P. 45(d)(2)(B) and (d)(3)(A)(i) and (iv). The Attorney General
13 has indicated that no additional information regarding Defendant Schroeder’s current
14 address is in the possession of the Arizona Department of Corrections or the Governor,
15 other than the home address previously provided under seal (Doc. 41 at 2). Specifically,
16 the Assistant Attorney General asserts: “Undersigned counsel is informed by the ADC’s
17 Central Office that a thorough search was conducted of the terminated employee to locate
18 a current address for Defendant Schroeder, but that none could be found. The Governor’s
19 Office has no information about the whereabouts of a former ADC employee: such
20 information, if any, would be kept by ADC.” (*Id.*) Plaintiff, therefore, moves to compel
21 disclosure of the information sought in the subpoenas duces tecum. Fed. R. Civ. P. 45
22 (d)(2)(B)(i). Plaintiff incorrectly cites the Court to Rule 37, Fed. R. Civ. P., but his intent
23 is clear.

24 The purpose of the Court’s Order (Doc. 37) allowing the issuance of the
25 subpoenas duces tecum was to “permit the Plaintiff to conduct reasonable discovery
26 limited to ascertaining the requisite service information for Defendant Schroeder,
27 specifically Defendant Schroeder’s current address.” (Doc. 37 at 2). The Court provided
28 Plaintiff with five subpoenas duces tecum and extended time for service of process for an

1 additional ninety days from September 15, 2015.

2 This case was originally filed on June 13, 2014 (Doc. 1). The Court granted
3 Plaintiff's fourth Application to Proceed in Forma Pauperis (Doc. 14). The Court
4 thereafter granted Plaintiff three extensions of time within which to serve Defendant
5 Schroeder (Docs. 17, 25, 37). The last extension of time will expire on December 14,
6 2015, and Defendant Schroeder has not been served. Plaintiff has attempted to secure a
7 current address for Defendant Schroeder through the use of the provided subpoenas duces
8 tecum. The movant non-party recipients of those subpoenas do not possess the current
9 address of Defendant Schroeder. The Court finds that the scope of the documentation
10 sought by Plaintiff is overly broad, unduly burdensome, and irrelevant to the extent that
11 the subpoenas duces tecum request information other than Defendant Schroeder's current
12 address. Fed. R. Civ. P. 45(d)(3)(A)(iv). Timeliness is not an issue as Plaintiff is willing
13 to extend time for the disclosure of the information sought. Fed. R. Civ. P.
14 45(d)(3)(A)(i). To the extent that the subpoenas duces tecum seek the production of
15 documentation reflecting Defendant Schroeder's current address, the Court finds that
16 they are relevant to the proceedings, not unduly burdensome, and not overly broad.
17 Beyond the parameters set forth by the Court, however, the subpoenas duces tecum run
18 afoul of Rule 45, Fed. R. Civ. P.

19 The Court further finds that the Plaintiff has failed to articulate in his Motion for
20 Extension of Time for Service of Defendant JD Schroeder how additional time will
21 accomplish service of process. USMS has insufficient information with which to serve
22 Defendant Schroeder. Where an *in forma pauperis* Plaintiff cannot demonstrate that he
23 has provided USMS sufficient information to effectuate service of process, the action
24 may be dismissed. *See Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994), overruled
25 on other grounds by *Sandin v. Connor*, 515 U.S. 472 (1995); *see also Boudette v.*
26 *Barnette*, 923 F.2d 754, 757 (9th Cir. 1991). The Court has afforded the Plaintiff three
27 extensions of time to serve Defendant Schroeder, all to no avail. Rule 4(m), Fed. R. Civ.
28 P., states that if a defendant cannot be served within ninety days after a complaint is filed,

1 the action must be dismissed without prejudice.¹

2 Conclusion

3 **IT IS ORDERED** denying Plaintiff's Motion to Extend the Time for Service of
4 Defendant JD Schroeder (Doc. 47).

5 **IT IS FURTHER ORDERED** that Plaintiff show cause no later than January 6,
6 2016 why his case should not be dismissed without prejudice for failure to timely serve
7 pursuant to Rule 4(m), Fed. R. Civ. P.

8 **IT IS FURTHER ORDERED** denying Motion for an Order Compelling
9 Discovery (Doc. 46).

10 **IT IS FURTHER ORDERED** granting in part Objection to and Motion to Quash
11 Subpoenas (Doc. 41). The subpoena duces tecum to the Governor of Arizona is quashed,
12 and the objection to it is sustained. The objection to the subpoena duces tecum served
13 upon the Arizona Department of Corrections is sustained in part. However, the Arizona
14 Department of Corrections is required to disclose to the Court under seal any document
15 reflecting the current location of Defendant J. D. Schroeder for purposes of service of
16 process by the USMS. Production of further documents requested is deemed unduly
17 burdensome. The additional documents are irrelevant, and the scope of the subpoena
18 duces tecum is overly broad. To the extent the subpoena duces tecum seeks records other
19 than the current location of Defendant Schroeder, it is quashed.

20 **IT IS FURTHER ORDERED** that the "Letter to the Court" (Doc. 39) is deemed
21 moot.

22 Dated this 4th day of December, 2015.

23 

24 _____
25 Honorable Eileen S. Willett
26 United States Magistrate Judge

27 _____
28 ¹ At the time the Plaintiff's Complaint was filed, Rule 4(m), Fed. R. Civ. P., allowed Plaintiff 120 days within which to serve Defendant Schroeder. The multiple extensions of time to serve the Defendant in this case obviate any need to calculate time to serve.