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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Anthony L Rodrigues,
10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,
13 Defendants.
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No. CV-16-08272-PCT-DGC (ESW)

ORDER

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16 This Order sets forth the Court's rulings on a number of pending Motions (Docs.
17 89, 94, 101, 104, 108, 120, 124).

18 **I. DISCUSSION**

19 **A. Plaintiff's "Notice and Motion to Compel Answer to First Amended
20 Complaint" (Doc. 101)**

21 On January 8, 2018, Plaintiff moved for an order requiring Defendants to answer
22 Plaintiff's First Amended Complaint. (Doc. 101). The Motion will be denied as the
23 Court granted Plaintiff's request for leave to file a Second Amended Complaint (Doc.
24 99). (Doc. 98). The undersigned has screened the Second Amended Complaint in a
25 Report and Recommendation that is currently pending before the District Judge. (Doc.
26 103).
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1 **B. Plaintiff’s “Motion to Stay Defendants’ Motion for Summary Judgment**
2 **and Request for Court Order” (Doc. 104);**
3 **Plaintiff’s “Notice and Motion to Compel Production and Renewed**
4 **Request for Order of Protection” (Doc. 89); and**
5 **Defendants’ “Motion to Quash Plaintiff’s Subpoenas” (Docs. 94)**

6 On January 2, 2018, Defendants filed a Motion for Summary Judgment (Doc. 91).
7 Defendants concede that Plaintiff exhausted his administrative remedies with respect to a
8 property loss claim that the Court dismissed. (Doc. 7 at 6-7; Doc. 91 at 13). Defendants
9 argue that Plaintiff failed to exhaust his administrative remedies as to the remaining
10 threat-to-safety, negligence, and negligent training claims. (Doc. 91 at 13). The Court
11 has stayed all discovery unrelated to the exhaustion issue pending the Court’s ruling on
12 Defendants’ Motion for Summary Judgment (Doc. 91). (Doc. 109).

13 On January 11, 2018, Plaintiff moved to stay the Motion for Summary Judgment
14 on the following grounds:

15 Defendants’ [sic] have not filed a [sic] Answer to Plaintiff’s
16 First Amended Complaint and Plaintiff has not had sufficient
17 opportunity to conduct discovery of records, documents and
18 information in the possession of the Defendants’ [sic] and
19 unnamed third parties evidencing Defendants’ efforts to
20 frustrate, impede, obstruct or create unnecessary and
21 unreasonable barriers to Plaintiffs [sic] and other similarly
22 situated individuals exhaustion of ADOC administrative
23 remedies

24 (Doc. 104 at 1). Prior to filing the Motion to Stay (Doc. 104), Plaintiff filed a “Notice
25 and Motion to Compel Production and Renewed Request for Order of Protection” (Doc.
26 89). Plaintiff states that he served a subpoena duces tecum on Correctional Officer III
27 (“CO III”) T. McNamer that commanded production of documents regarding “the
28 processing and handling of ADOC inmate ASPC Kingman riot related informal/formal
 request for administrative remedies, including monthly statistical report/summary for the
 period beginning July 2015 through December 2015.” (*Id.* at 1-2). Plaintiff requests that
 the Court order CO III McNamer to show cause why CO III McNamer should not be held

1 in contempt for failure to comply with the subpoena duces tecum. (*Id.* at 3-4).¹
2 Defendants move to quash the subpoena served on CO III McNamer. (Doc. 94).
3 Defendants also move to quash the subpoenas duces tecum that Plaintiff purportedly
4 served on Arizona Department of Corrections (“ADOC”) Division Director Joe Profiri,
5 ADOC Deputy Director Jeff Hood, ADOC Inspector General Greg Lauchner, and
6 Governor Doug Ducey. (*Id.*). As recounted by Defendants:

7 The subpoena to ADC Division Director Profiri demands
8 production of “Any and all electronic/written
9 communications/correspondence, investigative reports,
10 written summaries, memoranda or other documents addressed
11 to/received from ADOC Director Charles L. Ryan, ADOC
12 Deputy Director Jeff Hood and Contract Beds Operations
13 Bureau Director Tara Diaz regarding, pertaining to or
14 involving the July 2015 Arizona State Prison Complex-
15 Kingman riots and termination of contract AD9-010-A3.”
16 [Doc. 94-2 at 1].

17 The subpoena to ADC Deputy Director Hood demands
18 production of: “Any and all electronic/written
19 communications/correspondence, investigative reports/
20 summaries or other documents, photographs, digital images
21 or video addressed/recieved [sic] from any State
22 agency/department employee/representative, private
23 entity/corporation regarding, pertaining to [sic] involving the
24 July 2015 riots at ASPC Kingman and subsequent termination
25 of ADOC correctional services contract AD9-010-A3.” [Doc.
26 94-3 at 1].

27 The subpoena to Mr. Lauchner demands production of “Any
28 and all electronic/written communications/correspondence,
investigative reports/summaries photographs/video/digital
images, addressed/received from any State agency/Dept.
employee, representative, private entity/corporation/person
regarding, pertaining to/involving the July 2015 ASPC-
Kingman riots and subsequent termination of ADOC
correctional services contract AD9-010-A3.” [Doc. 94-4 at
1].

¹ Plaintiff also states in his Motion (Doc. 89 at 2) that he is renewing previous request for a temporary restraining order. This renewed request will be referred to the District Judge.

1 (Doc. 94 at 3-4). Defendants also explain that although Plaintiff filed a document (Doc.
2 71-4) indicating that he served a subpoena on Governor Ducey, Governor Ducey's office
3 has no record of receiving a subpoena from Plaintiff. (Doc. 94 at 3; Doc. 94-1 at 3).
4 Plaintiff asserts that Defendants do not have standing to move to quash the subpoenas
5 directed to non-parties. (Doc. 110 at 1-2; Doc. 120 at 2). In the interest of judicial
6 economy, the Court does not resolve the issue because grounds exist for sua sponte
7 quashing the subpoenas duces tecum, as explained below. *Elite Lighting v. DMF, Inc.*,
8 Case No. CV 13-1920 JC, 2013 WL 12142840, at *3 (C.D. Cal. May 6, 2013)
9 (explaining that a court may sua sponte quash improperly issued subpoena even where a
10 defendant lacks standing to seek a quashal of the subpoena).

11 A subpoena issued pursuant to Federal Rule of Civil Procedure 45 is subject to the
12 permissible scope of discovery set forth in Federal Rule of Civil Procedure 26.
13 *See* Advisory Committee's Notes to Fed. R. Civ. P. 45 (1970 Amendments) ("The
14 changes make it clear that the scope of discovery through a subpoena is the same as that
15 applicable to Rule 34 and the other discovery rules."). Rule 26(b) provides for a broad
16 scope of discovery: "Parties may obtain discovery regarding any nonprivileged matter
17 that is relevant to any party's claim or defense and proportional to the needs of the case . .
18 . ." Rule 26(b)(2)(C) requires the Court, on motion or on its own, to limit discovery
19 where "the discovery sought is unreasonably cumulative or duplicative, or can be
20 obtained from some other source that is more convenient, less burdensome, or less
21 expensive." Fed. R. Civ. P. 26(b)(2)(C) (emphasis added).

22 There is no dispute that Defendants have produced the grievance documents that
23 Plaintiff submitted to prison staff during the relevant period. (Doc. 89 at 2; Doc. 118 at
24 4). The Court finds that the subpoenas duces tecum seek documents unrelated to the
25 exhaustion issue presented in Defendants' Motion for Summary Judgment. The Court
26 further finds that Plaintiff has failed to show that he is unable to adequately respond to
27 Defendants' Motion for Summary Judgment without the documents requested in the
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1 subpoenas duces tecum.² In addition, Defendants state that the subpoenas duces tecum
2 “seek information that could instead be obtained from the parties to this lawsuit.” (Doc.
3 94 at 5). *See Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007)
4 (granting motion to quash subpoena served on third party, explaining that “[t]here is
5 simply no reason to burden nonparties when the documents sought are in possession of
6 the party defendant”). The Court will: (i) deny Plaintiff’s Motion to Stay (Doc. 104); (ii)
7 deny Plaintiff’s Motion to Compel (Docs. 89, 120);³ (iii) grant Defendants’ Motion to
8 Quash (Doc. 94); and (iv) quash the subpoenas purportedly served on non-parties CO III
9 McNamer, ADOC Division Director Joe Profiri, ADOC Deputy Director Jeff Hood,
10 ADOC Inspector General Greg Lauchner, and Governor Doug Ducey.

11 **C. Defendants’ “Motion to Quash Plaintiff’s Subpoenas” (Doc. 108)**

12 On January 15, 2018, Defendants filed a second “Motion to Quash Plaintiff’s
13 Subpoenas” (Doc. 108), which seeks to quash Plaintiff’s subpoenas duces tecum that are
14 directed to Mohave County Attorney Matt Smith and ADOC “Grievance Appeals
15 Administrator.” Defendants assert that the subpoenas “likely seek information that could
16 be obtained from parties in the case, lack relevance to the issues in the case, and seek
17 security-sensitive information that ADC inmates are not permitted to possess.” (*Id.* at 4).
18 Plaintiff has not responded to the Motion (Doc. 108). *See* LRCiv 7.2(i). For good cause
19 shown, the Court will grant Defendants’ Motion (Doc. 108) and quash the subpoenas
20 purportedly served on Mohave County Attorney Matt Smith and ADOC “Grievance
21 Appeals Administrator.”

22 **D. Plaintiff’s “Motion for Extention [sic] of Time” (Doc. 124)**

23 In his January 30, 2018 Motion (Doc. 124), Plaintiff requests that the Court extend
24 the deadline for responding to Defendants’ Motion for Summary Judgment. Defendants
25 have not responded to the request. *See* LRCiv 7.2(i). For good cause shown, the Court

26 ² Plaintiff filed his Response (Doc. 127) on February 22, 2018.

27 ³ Plaintiff’s Reply (Doc. 120) in support of his “Notice and Motion to Compel
28 Production and Request for Order of Protection” (Doc. 89) is docketed as a separate
motion.

1 will grant Plaintiff's Motion (Doc. 124). Plaintiff's Response (Doc. 127) filed on
2 February 22, 2018 will be deemed timely.

3 **II. CONCLUSION**

4 **IT IS ORDERED** denying Plaintiff's "Notice and Motion to Compel Answer to
5 First Amended Complaint" (Doc. 101).

6 **IT IS FURTHER ORDERED** denying Plaintiff's "Motion to Stay Defendants'
7 Motion for Summary Judgment and Request for Court Order" (Doc. 104).

8 **IT IS FURTHER ORDERED** denying Plaintiff's Motion to Compel (Docs. 89,
9 120).

10 **IT IS FURTHER ORDERED** referring to the District Judge Plaintiff's renewed
11 request for a temporary restraining order that is set forth in Plaintiff's "Notice and Motion
12 to Compel Production and Renewed Request for Order of Protection" (Doc. 89).

13 **IT IS FURTHER ORDERED** granting Defendants' "Motion to Quash Plaintiff's
14 Subpoenas" (Doc. 94). The subpoenas duces tecum purportedly served on non-parties
15 CO III McNamer, ADOC Division Director Joe Profiri, ADOC Deputy Director Jeff
16 Hood, ADOC Inspector General Greg Lauchner, and Governor Doug Ducey are quashed.

17 **IT IS FURTHER ORDERED** granting Defendants' "Motion to Quash Plaintiff's
18 Subpoenas" (Doc. 108). The subpoenas duces tecum purportedly served on non-parties
19 Mohave County Attorney Matt Smith and ADOC "Grievance Appeals Administrator" are
20 quashed.

21 **IT IS FURTHER ORDERED** granting Plaintiff's "Motion for Extention [sic] of
22 Time" (Doc. 124). Plaintiff's Response (Doc. 127) filed on February 22, 2018 is deemed
23 timely.

24 Dated this 28th day of February, 2018.

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27 Eileen S. Willett
28 United States Magistrate Judge