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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SAMUEL KENNETH PORTER,

Plaintiff,

v.

JENNINGS, et al.,

Defendants.

CASE NO. 1:10-cv-01811-AWI-DLB PC

ORDER GRANTING PLAINTIFF’S MOTION
FOR SERVICE OF SUBPOENAS DUCES
TECUM

(DOCS. 42, 43, 51)

Plaintiff Samuel Kenneth Porter (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding on his first amended complaint against Defendants Jennings and Lowe.¹ Pending before the Court are Plaintiff’s motions for subpoena duces tecum, filed February 1, 2012, February 10, 2012, and April 23, 2012. Docs. 42, 43, 51. The Court construes the motions as motions for service of the subpoenas.

The Court will direct the United States Marshal to effect service of process of the subpoenas duces tecum only if the documents requested are in compliance with the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 34(c) (“As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things”).

In the February 1, 2012 subpoena, Plaintiff requests from the Custodian of Records of

¹ Defendant Darlene Austin has not been served or appeared in this action.

1 CDCR: 1) “1 copy of training manual for specialized training of sexual assault as per P.C.
2 13516(c) see D.O.M. 54040.4. All training and instruction manuals given to all employee [sic]
3 related to prevention, detection, response, and investigation of offender sexual assault. See
4 D.O.M. 54040.4;” and 2) “1 copy of all supplemental, confidential, or other copies related to
5 crime incident report # CAL-FDP-09-07-0349, please delet [sic], with black marker all phone
6 numbers + address of employee. [sic] 1 copy of all audio + videotapes concerning crime incident
7 report # [CAL-]FDP-09-07-0349.” Doc. 42. Plaintiff’s subpoenas submitted on February 10,
8 2012 and April 23, 2012 are copies of the February 1, 2012 subpoena.

9 Plaintiff’s first subpoena duces tecum concerns instruction for all employees relating to
10 prevention, detection, response, and investigation of offender sexual assault. . Plaintiff contends
11 that Defendants were aware that Plaintiff was being sexually assaulted and failed to act to
12 prevent it. Thus, employee training concerning sexual assault is relevant under Rule 26(b), and
13 is reasonably calculated to lead to the discovery of admissible evidence in this action.

14 Plaintiff further requests the manual for specialized training pursuant to California Penal
15 Code section 13516(c), which states,

16 The commission [on peace officer standards and training] shall prepare and
17 implement a course for the training of specialists in the investigation of sexual
18 assault cases, child sexual exploitation cases, and child sexual abuse cases.
19 Officers assigned to investigation duties which include the handling of cases
20 involving the sexual exploitation or sexual abuse of children, shall successfully
21 complete that training within six months of the date the assignment was made.

22 Plaintiff does not explain how the production of this specific document is reasonably calculated
23 to lead to the discovery of admissible evidence. It is unclear if any Defendants were assigned to
24 investigate sexual assault at Corcoran State Prison in 2008.

25 Thus, the Court will modify subpoena request No. 1 as follows: “All training and
26 instruction manuals given to employees at Corcoran State Prison in 2008, who were employed as
27 facility captains, secretaries, or correctional officers for 3A Yard, related to prevention, detection,
28 response, and investigation of offender sexual assault, pursuant to Department Operations
Manual section 54040.4.”

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1 Plaintiff's second subpoena duces tecum concerns crime incident report No. CAL-FDP-
2 09-07-0349, including all audio and video tape pertaining to the report. Plaintiff requests
3 redaction of any employees' personal information. Plaintiff includes a copy of the crime/incident
4 report as an exhibit in his First Amended Complaint. First Am. Compl. at pp. 25-34, Doc. 12.

5 This crime/incident report was created at Calipatria State Prison in July of 2009, after the
6 events alleged in this action. It appears to concern Plaintiff's allegations regarding sexual assault
7 at Corcoran State Prison in 2008, and such documents would be relevant. A review of the
8 crime/incident report indicates that Plaintiff complained of two incidents, one at Centinela State
9 Prison in 2007, and the incident at Corcoran State Prison in 2008, which is at issue in this action.
10 Thus, the Court will modify subpoena request No. 2 as follows: "A copy of all supplemental,
11 confidential, or other copies related to crime incident report # CAL-FDP-09-07-0349 and a copy
12 of all audio and videotapes concerning crime incident report # CAL-FDP-09-07-0349, regarding
13 the alleged incident at Corcoran State Prison in 2008."

14 The Court notes that the requested documents, if produced, may contain information that
15 is subject to privilege. If necessary, the responding person may move for a protective order, or
16 redact privileged information.

17 **II. Conclusion And Order**

18 Based on the foregoing, it is HEREBY ORDERED that

- 19 1. Plaintiff's request for service of subpoena duces tecum, filed February 1, 2012,
20 February 10, 2012, and April 23, 2012, are granted as modified herein; and
- 21 2. Pursuant to Federal Rule of Civil Procedure 45(b)(1), the parties are placed on
22 notice that a subpoena duces tecum to the Custodian of Records at the California
23 Department of Corrections and Rehabilitation will be issued after ten (10) days
24 from the date of service of this order.

25 IT IS SO ORDERED.

26 **Dated: April 25, 2012**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE