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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE E. FORTE,  
Plaintiff,

v.

COUNTY OF MERCED, et al.,  
Defendants.

Case No. 1:11-cv-00318-AWI-BAM

**ORDER RE REQUESTS FOR  
SUBPOENAS PURSUANT TO RULE 45**

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On August 21, 2014, plaintiff, proceeding pro se, requested the Clerk of this Court issue numerous subpoenas. Three subpoenas were provided to plaintiff; plaintiff requested fifteen. Any further requests for subpoenas must be submitted to the Court in writing.

Federal Rule of Civil Procedure 26(b) provides for the scope of discovery as follows: “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense ... and appears reasonably calculated to lead to the discovery of admissible evidence.” Fed.R.Civ.P. 26(b)(1). “All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).” Id. Under Rule 26(b)(2)(C) the court, on motion or on its own, must limit the frequency or extent of discovery if it determines any of the following: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely

1 benefit, considering the needs of the case, the amount in controversy, the parties' resources, the  
2 importance of the issues at stake in the action, and the importance of the discovery in resolving the  
3 issues. Fed.R.Civ.P. 26(b)(2)(C).

4         The Court is vested with broad discretion to manage discovery. *Dichter-Mad Family Partners,*  
5 *LLP v. U.S.*, 709 F.3d 749, 751 (9th Cir. 2013), cert. denied, 134 S.Ct. 117; *Hunt*, 672 F.3d at 616;  
6 *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005); *Hallett v. Morgan*, 296  
7 F.3d 732, 751 (9th Cir. 2002). Pursuant to Rule 26(c)(1), the Court may, for good cause, issue a  
8 protective order forbidding or limiting discovery. The avoidance of undue burden or expense is  
9 grounds for the issuance of a protective order. Fed. R. Civ. P. 26(c).

11         Further, pursuant to Rule 45(d), the Court has the obligation to take reasonable steps to avoid  
12 imposing undue burden or expense on a nonparty. The Court is required to ensure that the party  
13 serving the subpoena takes reasonable steps to avoiding imposing an undue burden or expense on the  
14 third party subject to the subpoena. Fed. R. Civ. P. 45(d)(1). District courts have broad discretion to  
15 determine whether a subpoena is unduly burdensome. *Exxon Shipping Co. v. U.S. Dep't of Interior*, 34  
16 F.3d 774, 779 (9th Cir.1994). For instance, a subpoena is unduly burdensome where it seeks to  
17 compel production of documents regarding topics unrelated to or beyond the scope of the litigation.  
18 See *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813–14 (9th Cir.2003) (district court did  
19 not abuse its discretion by quashing overbroad subpoena it found was “served for the purpose of  
20 annoying and harassment and not really for the purpose of getting information.”).

22         In addition, advance notice to the parties is required. All parties to the action must be served  
23 and be given reasonable notice of the subpoena well in advance of the production date or deposition  
24 date. See Fed.R. Civ. P. 45(a)(4), (b)(1).

25         Moreover, subpoenas require personal service, and a non-party is under no legal obligation to  
26 respond to a subpoena received in the mail. Fed. R. Civ. P. 45(b)(1); *Prescott v. Cnty. of Stanislaus*,  
27 No. 1:10-cv-00592 JLT, 2012 WL 10617, at \*3 (E.D. Cal. Jan. 3, 2012) (“[T]he longstanding  
28

1 interpretation of Rule 45 has been that personal service of subpoenas is required.”) (internal quotation  
2 marks and citation omitted); accord *Alexander v. California Dep’t of Corr. & Rehab.*, 2:08-cv-2773  
3 MCE KJN P, 2011 WL 1047647, at \*6-7 (E. D. Cal. Mar. 18, 2011). Plaintiff is advised he must  
4 comply with Rule 45 which requires nonparty witnesses to be personally served with subpoenas that  
5 are accompanied by money orders for witness fees and if applicable, travel expenses. Fed R. Civ. P  
6 45(b)(1); 28 U.S.C. § 1821.  
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8 Plaintiff is further advised that he may be required to pay for compliance with document  
9 requests. The “Federal Rules of Civil Procedure were not intended to burden a non-party with a duty  
10 to suffer excessive or unusual expenses in order to comply with a subpoena duces tecum.” See e.g.,  
11 *Frazier v. Redding Police Dept*, 2012 WL 5868573, \*9 (E.D. Cal. 2012); see also, *United States v.*  
12 *Columbia Broadcasting Sys., Inc.*, 666 F.2d 364 (9th Cir.1982) (court may award costs of compliance  
13 with subpoena to non-party). Non-parties are “entitled to have the benefit of this Court's vigilance” in  
14 considering these factors. *Badman*, 139 F.R.D. at 605.  
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16 As plaintiff has been provided with three subpoenas, any further requests for subpoenas must  
17 be submitted to the Court in writing. Plaintiff’s request for each additional subpoena must identify  
18 who is the subject of the subpoena, describe what documents/information is sought, whether testimony  
19 or documents or both are sought, and provide a brief statement of how the information sought is  
20 relevant to the case. If documents are requested, the request must designate and specify, with some  
21 reasonable degree of certainty and particularity, the documents sought to be produced.  
22

23 IT IS SO ORDERED.

24 Dated: August 22, 2014

/s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE