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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

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10 KEVIN DARNELL BRYANT,

Case No. 1:11-cv-00444-AWI-SKO (PC)

11 Plaintiff,

ORDER DENYING MOTION FOR LEAVE
TO FILE REPLY AND DENYING MOTION
TO QUASH AND FOR SANCTIONS

12 v.

13 DR. SHAEFER, et al.,

(Docs. 93 and 106)

14 Defendants.
15 _____/

16 **I. Procedural Background**

17 Plaintiff Kevin Darnell Bryant, a state prisoner proceeding pro se and in forma pauperis,
18 filed this civil rights action pursuant to 42 U.S.C. § 1983 on March 17, 2011. This action is
19 proceeding on Plaintiff's amended complaint against Defendants Schaefer, Lopez, Keldgord,
20 Harrington, and Flynn for violation of his rights under the Eighth Amendment of the United States
21 Constitution. Plaintiff's claim arises out of a prison policy and practice of crushing and floating
22 Gabapentin and Tramadol, which allegedly caused internal injury to Plaintiff, including severe
23 erosive esophagitis and esophageal hemorrhaging.

24 On April 24, 2014, Plaintiff filed a motion to quash and for sanctions, and on May 12,
25 2014, Defendants Schaefer, Lopez, Keldgord, Harrington, and Flynn filed oppositions.¹ (Docs.
26 93, 98, 100, 101.) Plaintiff filed a reply on May 23, 2014, along with a motion for leave to reply.

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28 ¹ Defendant Schaefer; Defendant Lopez; and Defendants Keldgord, Harrington, and Flynn are represented by different counsel.

1 (Docs. 102, 106.) As the moving party, Plaintiff was entitled to file a reply, and therefore, his
2 motion for leave is denied as moot. Local Rule 230(l).

3 Plaintiff's motion to quash and for sanctions has been submitted upon the record without
4 oral argument pursuant to Local Rule 230(l) and for the reasons which follow, it is denied.

5 **II. Discussion**

6 **A. Parties' Positions**

7 Plaintiff moves to quash a subpoena issued on January 8, 2013, by Defendants Keldgord,
8 Harrington, and Flynn commanding Mercy Hospital in Bakersfield, California to produce
9 Plaintiff's medical records; and a subpoena issued on April 9, 2014, by Defendant Schaefer
10 commanding the Custodian of Records at California State Prison-Corcoran to produce Plaintiff's
11 medical records, inmate appeals records, and portions of Plaintiff's non-confidential central file.
12 (Doc. 93, Motion, Exs. A, E.) Plaintiff also seeks sanctions against Defendants Keldgord,
13 Harrington, Flynn, and Schaefer for moving to subpoena his records in violation of the Court's
14 order prohibiting discovery; and he seeks sanctions against Defendant Lopez for obtaining his
15 medical records after he signed a release, also in violation of the Court's order prohibiting
16 discovery. (*Id.*, Ex. B.)

17 In response, Defendants Keldgord, Harrington, and Flynn state that although they deny any
18 discovery violation, they did not receive any documents in response to the subpoena and they have
19 withdrawn it in light of Plaintiff's motion. Defendant Schaefer argues that Plaintiff lacks standing
20 to quash the subpoena in the absence of a privilege claim and she denies any discovery violation,
21 but she withdrew the subpoena and will refrain from reviewing the records that were produced.
22 Defendant Lopez argues that there is nothing to quash because she did not issue a subpoena,
23 Plaintiff lacks standing to move to quash, she did not engage in any formal discovery, and Plaintiff
24 voluntarily signed the medical records release which led to her receipt of his records.

25 In reply, Plaintiff disputes his lack of standing to bring a motion to quash and he asserts
26 that Defendants engaged in discovery in violation of the Court's order, which did not distinguish
27 between formal and informal discovery.

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1 **B. First Informational Order**

2 Plaintiff contends that Defendants violated one of the provisions in an informational order.

3 District courts are vested with broad discretion to manage discovery and to control the
4 course of litigation. *Hunt v. Cnty. of Orange*, 672 F.3d 606, 616 (9th Cir. 2012) (citing *Avila v.*
5 *Willits Envtl. Rehab. Trust*, 633 F.3d 828, 834 (9th Cir. 2011)) (quotation marks omitted). The
6 Eastern District of California issues a standard order in civil rights case challenging conditions of
7 confinement filed by prisoners proceeding pro se. The order, entitled First Informational Order in
8 Prisoner Civil Rights Case, is issued at the time the case is opened. The intent underlying the
9 order is to place pro se prisoner litigants on notice of certain rules and procedures, both for their
10 benefit as pro se litigants and to assist the Court with the orderly administration and management
11 of cases. The order notifies litigants that no discovery is to be conducted until the Court issues a
12 discovery and scheduling order, which occurs after the defendants file their answer. The order
13 includes this specific information in particular because the procedure represents a departure from
14 otherwise applicable Federal Rules of Civil Procedure and Local Rules, and because discovery in
15 cases with pro se litigants often requires greater judicial oversight.

16 **C. Request for Voluntary Release of Records by Defendant Lopez**

17 Turning first to the records release Plaintiff signed at Defendant Lopez's request, there
18 exists nothing to quash and the Court notes that such a request is not facially extraordinary or
19 inappropriate in a case such as this where the plaintiff has put his medical condition squarely at
20 issue. *See e.g., Anderson v. Clawson*, No. C 13-0307 LHK (PR), 2014 WL 3725856, at *2
21 (N.D.Cal. 2014) (plaintiff not entitled to quash subpoena where he waived privacy right in his
22 medical records by placing his medical condition at issue in lawsuit). While the refusal of a
23 litigant to voluntarily sign a records release would likely result in the subsequent need to formally
24 subpoena the records at some point during discovery, a mere request for a records release does not
25 constitute the engagement in discovery, formal or otherwise. Plaintiff could have declined to sign
26 the release but he did not, and his assertion that he was coerced rings hollow. There is certainly no
27 basis for the Court to weigh in now, after Plaintiff voluntarily released his records and after they
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1 were produced. Accordingly, Plaintiff's motion to quash and for sanctions against Defendant
2 Lopez and/or her counsel is denied.

3 The issue raised by Plaintiff regarding his mental health records, however, bears further
4 mention. While the Court recognizes Plaintiff's position with respect to their relevancy and
5 sensitivity, the Court cannot undo what was done through Plaintiff's voluntary execution of the
6 records release, and at no time was the matter brought before the Court for a determination
7 regarding relevancy and/or the propriety of a protective order. *See* Fed. R. Civ. P. 26(c); *see also*
8 *EEOC v. Peters' Bakery*, 301 F.R.D. 482, 487 (N.D.Cal. 2014) (granting motion to quash medical
9 records subpoena where records were relevant but physical medical conditions was *not* placed at
10 issue such that right to privacy was waived). Although Plaintiff now seeks an order requiring
11 Defendant Lopez to destroy his mental health records, the Court is not in the position to weigh in
12 blindly on records it has not seen and on this undeveloped record. *Nevertheless, the Court*
13 *anticipates that Plaintiff and Defendant Lopez can resolve this issue informally and reach a*
14 *resolution regarding records which contain private and insufficiently relevant mental health*
15 *information.*²

16 **D. Subpoenas Duces Tecum Served by Defendants Keldgord, Harrington, Flynn,**
17 **and Schaefer**

18 **1. Motion to Quash**

19 Next, while Defendants argue Plaintiff that lacks standing to move to quash the subpoenas,
20 a party may seek relief related to a third-party subpoena under certain circumstances, and in this
21 instance, the subpoenas involve Plaintiff's own medical records. Fed. R. Civ. P. 26(c), 45(d)(3);
22 *California Sportfishing Protection Alliance v. Chico Scrap Metal, Inc.*, 299 F.R.D. 638, 643
23 (E.D.Cal. 2014) (motion to quash); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D.Cal.
24 2005) (motion to quash, protective order); *Springbrook Lenders v. Northwestern Nat. Ins. Co.*, 121
25 F.R.D. 679, 680 (N.D.Cal. 1988) (protective order). However, Defendants withdrew their

26 ² To that end, the Court will not entertain any motion for relief regarding these records in the absence of evidence that
27 the parties met and conferred in a good faith attempt to reach a resolution. Any motion filed in the absence of such
28 evidence will be summarily stricken from the record. As the parties created this situation, they are required to attempt
to remedy it before further involving the Court.

1 subpoenas once Plaintiff filed his motion and there is nothing left to quash, even assuming
2 *arguendo* that Plaintiff has standing and that the subpoenas constituted engagement in early
3 discovery in contravention of the informational order and without leave of court. *See Rovio*
4 *Entm't Ltd. v. Royal Plush Toys, Inc.*, 907 F.Supp.2d 1086, 1099 (N.D.Cal. 2012) (citing *Semitool,*
5 *Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D.Cal. 2002)) (good cause standard
6 applies to expedited discovery inquiry). Although Plaintiff is disinclined to believe Defendants'
7 counsel and they did not take the additional step of supporting their oppositions with declarations,
8 Defendants' counsel are officers of the court and they signed their oppositions, which is not a
9 meaningless gesture. *See* Fed. R. Civ. P. 11(b), (c). Thus, given Defendants' representation that
10 the subpoenas were withdrawn, Plaintiff's motion to quash is moot.³

11 2. Sanctions

12 With respect to sanctions, Plaintiff seeks an order requiring Defendants to disclose and/or
13 produce *all* discoverable evidence. Given that the dispute arises out of Defendants' alleged
14 violation of the Court's informational order, the motion necessarily seeks sanctions under the
15 Court's inherent authority to sanction abusive litigation conduct. *Chambers v. NASCO, Inc.*, 501
16 U.S. 32, 43-45, 111 S.Ct. 2123 (1991). However, because of their very potency, inherent powers
17 must be exercised with restraint and discretion, *Chambers*, 501 U.S. at 44 (quotation marks
18 omitted), and sanctions must be supported by a specific finding of bad faith, or conduct
19 tantamount to bad faith, *Fink v. Gomez*, 239 F.3d 989, 993-94 (9th Cir. 2001); *accord Miller v.*
20 *City of Los Angeles*, 661 F.3d 1024, 1026 (9th Cir. 2011); *Gomez v. Vernon*, 255 F.3d 1118, 1134
21 (9th Cir. 2001).

22 There is no evidence that Defendants *willfully* disobeyed the order, which was filed long
23 before they appeared in the action, *Fink*, 239 F.3d at 993-94, and even if the Court made a finding
24 that the subpoenas were served in violation of the order, neither mere negligence nor mere
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26 ³ Defendants Keldgord, Harrington, and Flynn's subpoena was issued on January 8, 2013, and it commanded the
27 production of documents on February 11, 2013. (Doc. 93, Motion, court record pp. 7-9.) Had Mercy Hospital
28 complied with the subpoena, Plaintiff's April 24, 2014, motion to quash would have been rendered moot due to its
untimeliness. (*Id.*) However, Mercy Hospital did not produce any records and Defendants withdrew the subpoena.
(Doc. 100-1, Opp., Ex. A.)

1 recklessness supports the imposition of sanctions under the Court's inherent authority, *In re*
2 *Lehtinen*, 564 F.3d 1052, 1058 (9th Cir. 2009); *Zambrano v. City of Tustin*, 885 F.2d 1473, 1478-
3 80 (9th Cir. 1989). For this reason, Plaintiff cannot prevail on his motion for sanctions and it is
4 denied.

5 **III. Order**

6 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 7 1. Plaintiff's motion for leave to file a reply, filed on May 23, 2014, is DENIED; and
- 8 2. Plaintiff's motion to quash and for sanctions, filed on April 24, 2014, is DENIED.

9
10 IT IS SO ORDERED.

11 Dated: **February 10, 2015**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE