

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

KEVIN DARNELL BRYANT	)	Case No.: 1:11-cv-00446-LJO-BAM PC
Plaintiff,	)	
v.	)	ORDER DENYING PLAINTIFF’S MOTION TO
P. GALLAGHER, et al.,	)	COMPEL PRODUCTION OF THE MEDICAL
Defendants.	)	RECORDS SUBPOENAED FROM MERCY
	)	HOSPITAL BAKERSFIELD (ECF No. 127)
	)	
	)	ORDER VACATING ORDER PROVIDING
	)	MERCY HOSPITAL WITH THE OPPORTUNITY
	)	TO SHOW CAUSE REGARDING COMPLIANCE
	)	WITH SUBPOENA DUCES TECUM (ECF No.
	)	139)
	)	
	)	ORDER DENYING PLAINTIFF’S MOTION TO
	)	ISSUE CONTEMPT CHARGES ON MERCY
	)	HOSPITAL (ECF No. 141)
	)	
	)	

---

Plaintiff Kevin Darnell Bryant (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s first amended complaint, filed on July 5, 2011, against Defendant Romero for deliberate indifference to serious medical needs in violation of the Eighth Amendment; and against Defendants Gallagher and Romero for conspiracy, retaliation in violation of the Eighth Amendment and failure to protect in violation of the Eighth Amendment.

1 On July 8, 2013, the Court granted Plaintiff's second motion for the issuance of a subpoena  
2 duces tecum on CHW Central California Mercy Hospital for the production of his medical records.  
3 (ECF No. 110.) On October 31, 2013, a proof of service was filed demonstrating execution of the  
4 subpoena duces tecum on Mercy Hospital on August 12, 2013. (ECF No. 119.)

5 On February 28, 2014, Plaintiff filed a motion to compel production of the medical records  
6 subpoenaed from Mercy Hospital. (ECF No. 127.) Defendants did not file a response. On May 23,  
7 2014, the Court issued an order providing Mercy Hospital with the opportunity to show cause  
8 regarding compliance with the subpoena duces tecum within thirty (30) days. (ECF No. 139.) Mercy  
9 Hospital did not submit a response.

10 On July 21, 2014, Plaintiff filed a motion for the Court to issue contempt charges against  
11 Mercy Hospital for failure to respond or show good cause in response to the Court's May 2014 order.  
12 (ECF No. 141.)

13 On July 28, 2014, the Court directed Defendants to file a response to Plaintiff's motion to  
14 compel production of the medical records from Mercy Hospital and to Plaintiff's motion for contempt  
15 charges against Mercy Hospital. (ECF No. 142.)

16 On September 2, 2014, Defendants filed a response and argued that Plaintiff's motion to  
17 compel should be denied as moot. Defense counsel explained that he spoke to Melanie Fowler, the  
18 Director of Health Information Management at Mercy Hospital. Ms. Fowler verified that Mercy  
19 Hospital received the subpoena on August 12, 2013, and that the records request was completed and  
20 mailed to Plaintiff on August 16, 2013. (ECF No. 150, Delgado Dec. ¶3 and Ex. B.) After speaking  
21 with Ms. Fowler, defense counsel contacted the Litigation Coordinator at CSP-Corcoran, M. Kimbrell.  
22 Ms. Kimbrell explained that any non-legal mail, such as Plaintiff's medical records, would not be  
23 logged by the prison. She also explained that if the medical records were several volumes, they likely  
24 would have exceeded the prison's mail-volume limitations and been screened out. Ms. Kimbrell  
25 informed defense counsel that if he obtained a copy of Plaintiff's medical records, then he could  
26 forward it to her at the prison and it would be delivered to Plaintiff without delay. (Id. at ¶ 4.)  
27 Defense counsel then contacted Ms. Fowler at Mercy Hospital. Ms. Fowler confirmed that a complete  
28 copy of Plaintiff's medical record would be produced and delivered to the Attorney General's Office.

1 Defense counsel made arrangements with Ms. Kimbrell to have the medical records delivered to  
2 Plaintiff when they arrived. (Id. at ¶ 5.)

3 On September 12, 2014, Plaintiff filed a reply indicating that neither Mercy Hospital nor  
4 Defendants had provided a copy of the subpoenaed medical records. (ECF No. 151.) However, on  
5 September 18, 2014, Plaintiff filed a motion to compel Mercy Hospital to produce original color  
6 photos taken of his ankle on June 10, 2010. In his moving papers, Plaintiff confirmed that he received  
7 the medical records subpoenaed from Mercy Hospital.<sup>1</sup> The records were delivered by Ms. Kimbrell.  
8 (ECF No. 153, p. 1.)

9 Based on the record before the Court, Plaintiff has received the subpoenaed records from  
10 Mercy Hospital. As a result, Plaintiff's motion to compel the production of medical records  
11 subpoenaed from Mercy Hospital Bakersfield, filed on February 28, 2014, is now moot. Further, the  
12 Court finds no basis for contempt charges against Mercy Hospital. There is no indication that Mercy  
13 Hospital failed to mail his records promptly after receiving the subpoena in August 2013 or otherwise  
14 failed to supply them in response to the inquiry from defense counsel. Accordingly, IT IS HEREBY  
15 ORDERED that:

- 16 1. Plaintiff's motion to compel production of the medical records subpoenaed from Mercy  
17 Hospital, filed on February 28, 2014, is DENIED as moot;
- 18 2. The Court's order providing Mercy Hospital with the opportunity to show cause regarding  
19 compliance with subpoena duces tecum, issued on May 23, 2014, is VACATED; and
- 20 3. Plaintiff's motion for the Court to issue contempt charges on Mercy Hospital for failure to  
21 respond or show good cause, filed on July 21, 2014, is DENIED.

22  
23 IT IS SO ORDERED.

24 Dated: September 24, 2014

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

26  
27 \_\_\_\_\_  
28 <sup>1</sup> The Court will address Plaintiff's motion to compel the production of original color photos by separate order once briefing is complete.