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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBIN DASENBROCK,
Plaintiff,
vs.
A. ENENMOH, et al.,
Defendants.

1:11-cv-01884-DAD-GSA-PC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUBPOENA DUCES
TECUM
(ECF No. 199.)**

**ORDER AND NOTICE
AUTHORIZING ISSUANCE OF
SUBPOENA DUCES TECUM
DIRECTING PRODUCTION OF
DOCUMENTS BY C.S.A.T.F.
DIRECTOR OF NURSING**

**ORDER DIRECTING CLERK'S
OFFICE TO SERVE COPY OF
SUBPOENA WITH ORDER**

I. BACKGROUND

Robin Dasenbrock ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on November 14, 2011. (ECF No. 1.) This case now proceeds with Plaintiff's Second Amended Complaint filed on September 8, 2015, against defendants Dr. A. Enenmoh, Correctional Officer Perez, Nurse Page, and Nurse Adair on Plaintiff's claims of violation of the Eighth Amendment and negligence. (ECF No. 140.)

1 On September 6, 2016, Plaintiff filed a motion requesting issuance of a subpoena *duces*
2 *tecum*. (ECF No. 199.) Defendants have not filed an opposition.

3 **II. MOTION FOR ISSUANCE OF SUBPOENA DUCES TECUM**

4 Plaintiff requests issuance of a subpoena *duces tecum* commanding third party Office of
5 the Director of Nursing at the California Substance Abuse Treatment Facility (“C.S.A.T.F.”) to
6 produce documents that defendant Adair did not produce pursuant to Plaintiff’s request for
7 production of documents. Plaintiff declares, “On Aug. 5, 2016 Defendant Adair responded to
8 my Production of Document request by sending no documents, stating she was no longer
9 affiliated with Corcoran Prison, and does not have access to any such records – and that the
10 requested documents were not in her possession, custody or control.” (Dasenbrock Decl., ECF
11 No. 199 at 3¶3.) Plaintiff provides a copy of defendant Adair’s August 5, 2016 responses.
12 (ECF No. 199 at 8-17.)

13 Plaintiff declares that he had this same problem obtaining documents from defendant
14 Page, and since both defendants are nurses, he believes the ODN has the documents he
15 requested from defendant Adair. (Dasenbrock Decl. at 3 ¶4.) Plaintiff also declares that the
16 Director of Nursing did provide these same documents concerning defendant Page after the
17 court issued a subpoena, (ECF No. 157), and he anticipates that the Director of Nursing will
18 provide the documents requested concerning defendant Adair if the court issues a subpoena
19 again. (Id.)

20 **III. DISCUSSION**

21 Plaintiff has demonstrated that he made a request to defendant Adair for production of
22 documents and is unable to obtain the documents from her, and it appears from Plaintiff’s
23 account of his experience with defendant Page that the records he seeks are only obtainable
24 through the Director of Nursing. Fed. R. Civ. P. 34(a), 45. Plaintiff has identified the
25 documents he seeks from the Director of Nursing, C.S.A.T.F., which are the same documents
26 Plaintiff requested from defendant Adair in Plaintiff’s request for production of documents.
27 (See ECF No. 199, Attachments.)

1 The court's order of June 24, 2016, granted Plaintiff and defendant Adair leave to file
2 motions to compel if necessary. (ECF No. 182.) In this instance, it would be futile for Plaintiff
3 to file a motion to compel as defendant Adair has responded that she is not in possession,
4 custody, or control of any of the documents requested by Plaintiff. Therefore, the Court finds it
5 in the interest of justice to authorize the issuance of a subpoena *duces tecum* commanding the
6 C.S.A.T.F. Director of Nursing to produce those documents identified by Plaintiff, if any exist.

7 Pursuant to Federal Rule of Civil Procedure 45(a)(4), this order serves as notice to the
8 parties that the United States Marshal will be directed to initiate service of the subpoena
9 following the passage of ten days from the date of service of this order, and a copy of the subpoena
10 shall be provided with this order.

11 **IV. CONCLUSION**

12 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's motion for the issuance of a subpoena *duces tecum*, filed on
14 September 6, 2016, is GRANTED;
- 15 2. The Court authorizes the issuance of a subpoena *duces tecum* directing the
16 C.S.A.T.F. Director of Nursing to produce those documents requested by
17 Plaintiff listed in Attachment 1 to this Order;
- 18 3. Pursuant to Rule 45(a)(4), the parties are placed on notice that the subpoena
19 *duces tecum* will be issued after the passage of **ten (10) days** from the date of
20 service of this order; and
- 21 4. The Clerk's Office shall serve a copy of the subpoena with this order.

22
23 IT IS SO ORDERED.

24 Dated: March 6, 2017

/s/ Gary S. Austin
25 UNITED STATES MAGISTRATE JUDGE
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