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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAYMOND BALDHOSKY ,  
Plaintiff,  
v.  
SUSAN HUBBARD, et al.,  
Defendants.

CASE NO. 1:12-cv-01200-LJO-MJS (PC)  
**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO QUASH  
SUBPOENA**  
**(ECF NO. 75)**

Plaintiff is a former state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. On May 4, 2016, the Court screened Plaintiff's third amended complaint and found that it stated cognizable claims against ten defendants: Dr. Gonzalez, Dr. Nguyen, Dr. Metts, Physician's Assistant L. Peters, Physician's Assistant T. Byers, Nurse T. Grossi, Nurse Ruff, Nurse Dunn, Nurse Indindes, and Nurse Amanda Kaylor. (ECF No. 31.)

Before the Court is a motion to quash subpoena by real party in interest California Department of Corrections and Rehabilitation ("CDCR"). (ECF No. 75.) Plaintiff filed a response. (ECF Nos. 88, 89, 93.) CDCR filed a reply. (ECF No. 90.) The matter is submitted. Local Rule 230(l).

1 **I. Procedural History**

2 The subpoena at issue on this motion arises out of a lengthy and cumbersome  
3 effort to serve the Defendants in this case.

4 Defendants Gonzalez, Metts, and Kaylor waived service early in this litigation.  
5 Duc Nguyen was served on behalf of Defendant Nguyen, but service on Mr. Nguyen was  
6 quashed. (ECF No. 60.) Summons for Defendants Indides, Ruff, and Dunn were  
7 returned unexecuted. (ECF Nos. 45, 46, 67.) Waivers sent to Defendants Byers, Grossi,  
8 and Peters were not immediately returned and, for reasons that are presently unclear,  
9 the United States Marshals Service (“USM”) did not attempt personal service on these  
10 Defendants. (ECF No. 56.)

11 The Court held two status conferences to attempt to resolve service issues. (ECF  
12 Nos. 64, 66.) In the latest of these, on January 12, 2017, counsel for Defendants  
13 Gonzalez, Metts, and Kaylor represented the following: Defendants Byers, Grossi, and  
14 Peters had received service packets and were expected to seek representation from the  
15 Office of the Attorney General; address information for the correct Defendant Nguyen  
16 had been given to USM; and CDCR was unwilling to provide information for Defendants  
17 Indides, Ruff, and Dunn absent a court order. (ECF No. 66.) Accordingly, on February  
18 6, 2017, the Court granted Plaintiff’s oral motion for subpoena duces tecum and issued a  
19 subpoena directing CDCR to provide Plaintiff with certain documents regarding the  
20 unserved Defendants to assist with service of process. (ECF No. 71.) Defendants Byers,  
21 Grossi, and Peters since have appeared in the action and answered the complaint. (ECF  
22 No. 85.)

23 **II. Discussion**

24 CDCR contends that the subpoena is moot as to Defendants Byers, Grossi, and  
25 Peters because they waived service and appeared in the action. (ECF No. 75.) Plaintiff  
26 agrees, “as long as this request does not waive any rights Plaintiff may have of discovery  
27 with CDCR and defendants.” (ECF No. 93.) As this subpoena was issued solely to obtain  
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1 information necessary to serve the Defendants, the Court agrees that the subpoena is  
2 moot as to Byers, Grossi, and Peters. The subpoena will be quashed as to these  
3 Defendants.

4 CDCR contends that the subpoena is moot as to Defendant Nguyen because  
5 “[t]he name and address of the registry for whom Mr. Nguyen works were previously  
6 provided to the U.S. Marshal for the purpose of effecting service of process.” (ECF No.  
7 75.) However, the docket in this case reflects no appearance from Defendant Nguyen.  
8 Representatives of USM have informed Court staff that waivers sent to the address  
9 provided by CDCR were never returned. Additionally, the address is inappropriate for  
10 personal service because it is a P.O. Box. In light of these circumstances, CDCR’s claim  
11 that the subpoena is moot strains credulity. The motion to quash will be denied.

12 Nonetheless, CDCR asks that any confidential information associated with the  
13 subpoenas not be divulged to Plaintiff. Plaintiff states that he has no desire for the  
14 information, so long as the Defendants are served. Accordingly, in lieu of providing  
15 documents to Plaintiff, the Court will permit CDCR to submit the following information  
16 directly to the Court in camera: Defendant Nguyen’s full name, license number, registry  
17 name, registry phone number, if any, and registry address, including a physical address,  
18 if any. However, if Defendant Nguyen is not served or does not waive service within 60  
19 days of the date of this order, the Court will order the information released to Plaintiff so  
20 that he may conduct his own inquiries or seek further subpoenas to attempt to locate  
21 Defendant Nguyen for service.

22 Based on the foregoing, it is HEREBY ORDERED that:

- 23 1. CDCR’s motion to quash is GRANTED IN PART AND DENIED IN PART  
24 as set forth herein;
- 25 2. Within five (5) days of the date of this order, CDCR shall provide the  
26 following information to the Court in camera at  
27 mjsorders@caed.uscourts.gov: Defendant Nguyen’s full name, license  
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number, registry name, registry phone number, if any, and registry address, including a physical address, if any.

IT IS SO ORDERED.

Dated: May 5, 2017

*1st Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE