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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EUGENE FORTE,

 Plaintiff,

 v.

PATTERSON POLICE
SERVICES/STANISLAUS COUNTY
SHERIFF’S DEPUTY CHIEF
TORI HUGES, et al.,

 Defendants.

Case No. 1:13-cv-01980-LJO-SMS

ORDER GRANTING PLAINTIFF’S
EX PARTE APPLICATION REQUESTING
ISSUANCE OF SUBPOENA DUCES TECUM
TO DOCTORS MEDICAL CENTER OF
MODESTO

(Doc. 62)

Plaintiff Eugene Forte, proceeding pro se and in forma pauperis (IFP), filed this suit alleging violations of his federal constitutional rights under 42 U.S.C. § 1983 and various state law claims. The Court has since dismissed all of the Defendants with the exception of Timothy Schwartz. Docs. 16, 42, 46. On September 17, 2015, Plaintiff filed an ex parte motion, captioned: “Ex Parte Application Requesting Issuance of Subpoena for Production of Documents/Objects and Request for Clarification of Procedure for Issuance of Subpoenas.” Doc. 62. Defendant Schwartz does not oppose Plaintiff’s ex parte motion. Doc. 64.

Specifically, Plaintiff seeks to obtain video surveillance tapes/CDs or other media containing images of the back parking lot and ambulance area to the Doctors Medical Center of Modesto on December 3, 2012, between the hours of 8:30 p.m. and 1:30 a.m., the date and time of his arrest. Doc. 62 at 1. Plaintiff requests that the tapes/CDs or other media be sent to him for the preparation

1 of his case at trial. As stated in the Court’s March 6, 2015, “Scheduling Conference Order,”
2 discovery in this matter is governed by Federal Rule of Civil Procedure 26(b).¹ Doc 58. In his
3 declaration, Plaintiff states the tapes/CDs or other media which he seeks contain images of him
4 “being escorted into Doctors Medical Center by defendant Schwartz on the Evening of December
5 3rd, 2012.” Doc. 62 at 3. Further, Plaintiff has “communicat[ed] with the head safety officer of
6 Doctor’s Hospital and confirmed the existence of such videos and made Doctor[]s Hospital aware of
7 the pending litigation and informed them to preserve such video.” Doc. 62 at 3. Because the
8 information Plaintiff seeks falls within the broad scope of discovery under Rule 26(b)(1) and is not
9 unduly burdensome or intended to harass, the Court shall grant Plaintiff’s ex parte motion. *Ollier v.*
10 *Sweetwater Union High School Dist.*, 768 F.3d 843, 862 (9th Cir. 2014) (noting district courts have
11 “wide discretion in controlling discovery”) (internal quotation marks omitted).

12
13 Where a plaintiff proceeds IFP, “officers of the court shall issue and serve all process, and
14 perform all duties in such case[.]” 28 U.S.C. § 1915(d) (2015). Plaintiff is thus entitled to the
15 service of the United States Marshal in serving the requested subpoena duces tecum. Nevertheless,
16 Plaintiff must seek the Court’s authorization with regard to future subpoenas.

17
18 Under Federal Rule of Civil Procedure 45(a)(4), this order serves as notice to the parties that
19 the United States Marshal will be directed to initiate service of the subpoena duces tecum after ten
20 days from the date of service of this order, and a copy of the subpoena duces tecum shall be provided
21 with this order.

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

23
24 1. Plaintiff’s request for a subpoena duces tecum as set forth in the ex parte motion, filed
25 September 17, 2015, is **GRANTED**;

26
27 ¹ “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s
28 claim or defense--including the existence, description, nature, custody, condition, and location of
any documents or other tangible things and the identity and location of persons who know of any
discoverable matter. For good cause, the court may order discovery of any matter relevant to the
subject matter involved in the action.” Fed. R. Civ. P. 26(b)(1) (2015).

1 2. The issuance of a subpoena duces tecum directing Doctors Medical Center of
2 Modesto to produce video surveillance tapes/CDs or other media containing images of the back
3 parking lot and ambulance area on December 3, 2012, between the hours of 8:30 p.m. and 1:30 a.m.
4 is authorized;

5 3. Doctors Medical Center of Modesto shall make available, for pick up by Plaintiff, the
6 video surveillance tapes/CDs or other media at the following address on December 15, 2015 at 10
7 a.m.: Doctors Medical Center of Modesto, 1441 Florida Avenue, Modesto, CA 95350; and
8

9 4. Under Rule 45(a)(4), the parties are placed on notice that the subpoena duces tecum
10 will be issued **ten (10) days** from the date of service of this order.
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12 IT IS SO ORDERED.

13 Dated: October 14, 2015

/s/ Sandra M. Snyder
14 UNITED STATES MAGISTRATE JUDGE
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