

1 counsel issued a subpoena for Plaintiff's mental health records in the custody of CDCR.
2 The motion further states that, pursuant to California Welfare and Institutions Code §
3 5328(f), CDCR may not release mental health records without a Court order stating that
4 such release is necessary to the administration of justice. The stipulation states that the
5 records are necessary to the administration of justice because Plaintiff put his mental
6 health in issue. The stipulation also sets forth various restrictions on the use and
7 distribution of the documents.

8 After filing the stipulation, defense counsel filed a declaration stating that Plaintiff
9 had written to defense counsel objecting to the release of mental health records.
10 However, because Plaintiff had not filed a motion to quash, defense counsel "invite[d]
11 the Court to set a motion to quash the subpoena sua sponte." Defense counsel also
12 noted that the discovery deadline in this action is January 12, 2016, and requested time
13 beyond that deadline to resolve this issue.

14 **II. DISCUSSION**

15 The stipulated protective order purports to serve as a judicial finding that the
16 records at issue are necessary for the administration of justice. For the reasons set forth
17 below, the Court is unable to make such a finding.

18 First, the protective order specifies that only those mental health records identified
19 in the December 3, 2015 subpoena will be produced. However, no such subpoena has
20 been presented to the Court. Without the ability to examine the proposed subpoena
21 language, the Court cannot determine if the request is properly limited to protect
22 Plaintiff's interest in the confidentiality of such records.

23 Second, the Court is unable to determine that such disclosure is necessary to the
24 administration of justice, California Welfare and Institutions Code § 5328(f), or supported
25 by good cause, 42 U.S.C. § 290dd-2(b).² The instant matter involves a single claim of
26 excessive force. Plaintiff's allegation that he suffered "mental anguish" as a result does

27
28 ² Actually, due to the lack of information provided regarding the records sought, it is difficult to determine whether either of the cited provisions applies.

1 not support a wholesale disclosure of all of Plaintiff's mental health records. Again,
2 without the ability to review the subpoena or the records, the Court cannot determine
3 whether or to what extent disclosure may be necessary. A stipulation between defense
4 counsel and a non-party cannot alone support a finding of necessity or good cause
5 particularly where, as here, Plaintiff writes to defense counsel to object that the
6 subpoena is overbroad and offers to provide copies of relevant records.

7 CDCR has been subpoenaed to provide Plaintiff's mental health records. If CDCR
8 cannot comply with the subpoena without a court order, it may file a motion to quash.
9 See Fed. R. Civ. P. 45(d)(3)(A)(iii). If CDCR does not file such a motion but nonetheless
10 refuses to provide the records, defense counsel may seek an Order of the Court
11 compelling compliance with the subpoena. Fed. R. Civ. P. 45(c)(2)(B)(i). Alternatively,
12 defense counsel may attempt to resolve the matter by filing further briefing with
13 competent support addressing the concerns outlined above.

14 Plaintiff is advised that if he wishes to object to the subpoena, he may file with the
15 Court a motion to quash subpoena pursuant to Federal Rule of Civil Procedure 45. He
16 should in all events advise the Court as well of the opposing party of his objections.

17 **III. CONCLUSION**

18 Based on the information provided, the Court cannot presently approve the
19 stipulation between defense counsel and CDCR for release of Plaintiff's mental health
20 records. The Court will afford the parties to and including February 8, 2016 to file any
21 further briefing or motions in relation to this issue.

22 IT IS SO ORDERED.

23
24 Dated: January 7, 2016

/s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE
26
27
28