



1 On May 25, 2017, Plaintiff filed a notice of his intent to proceed only on his cognizable claims.  
2 (ECF No. 22.) The Court will issue an order directing Plaintiff to submit documents for service of the  
3 complaint, and findings and recommendations regarding the claims upon which this matter will  
4 proceed, in due course.

5 The Court now finds it appropriate to further advise Plaintiff regarding his duty to identify  
6 LVN Jane Doe for service.

7 **II. Discovery of Doe Defendant Identity**

8 Previously, Plaintiff asserted that he attempted to discover the identity of LVN Jane Doe by  
9 requesting his medical records, and sending requests for information to a health records supervisor and  
10 a registered nurse who supervised LVN Jane Doe. However, Plaintiff had not yet determined LVN  
11 Jane Doe's identity. Plaintiff sought leave to issue discovery to the custodian of records at Corcoran  
12 State Prison to obtain certain log books that he believes may help him identify LVN Jane Doe.

13 Rule 45 of the Federal Rules of Civil Procedure permits issuance of subpoenas to obtain  
14 discovery from non-parties equivalent to discovery from parties under Rule 34. See Adv. Comm. Note  
15 to 1991 Amendment to FRCP 45. Rule 34 governs discovery of designated documents, electronically  
16 stored information, and designated tangible things subject to the provisions of Federal Rule of Civil  
17 Procedure 26(b). Meeks v. Parsons, No. 1:03-cv-6700-LJO-GSA, 2009 WL 3003718, at \*2 (E.D. Cal.  
18 Sept. 18, 2009) (citing Fahey v. United States, 18 F. R. D. 231, 233 (S.D.N.Y. 1955)). Rule 26(b)(1)  
19 establishes the scope of discovery, stating in pertinent part:

20 Parties may obtain discovery regarding any nonprivileged matter that is relevant to any  
21 party's claim or defense and proportional to the needs of the case, considering the  
22 importance of the issues at stake in the action, the amount in controversy, the parties'  
23 relative access to relevant information, the parties' resources, the importance of the  
24 discovery in resolving the issues, and whether the burden or expense of the proposed  
discovery outweighs its likely benefit. Information within this scope of discovery need  
not be admissible in evidence to be discoverable.

25 Fed. R. Civ. P. 26(b). These standards mean that the Court may grant a request by Plaintiff to issue a  
26 Rule 45 subpoena to a properly identified non-party to discover information that is relevant to the  
27 party's claims or defenses, is not burdensome, is not within Plaintiff's reasonable access, upon a  
28 sufficient showing of the importance of the information.

1 Plaintiff shall be permitted forty-five (45) days from the issuance of this order to either file a  
2 motion to substitute the identity of LVN Jane Doe in this action, or to file any request for a Rule 45  
3 subpoena to obtain the information necessary to identify LVN Jane Doe. If he files a Rule 45 subpoena  
4 request, he must meet the standards addressed above.

5 **III. Conclusion and Order**

6 Accordingly, it is HEREBY ORDERED that:

- 7 1. Plaintiff shall, within **forty-five (45) days** of the date of service of this order, either  
8 (a) file a motion to substitute the identity of LVN Jane Doe; or  
9 (b) file any request for a Rule 45 subpoena to obtain the information necessary to

10 identify LVN Jane Doe;

11 2. **Plaintiff is warned that his failure to comply with this order will result in a**  
12 **recommendation to dismiss LVN Jane Doe from this action.**

13  
14 IT IS SO ORDERED.

15 Dated: May 31, 2017

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