



1 to the issuance of subpoenas pursuant to Rule 45 of the Federal Rules of Civil Procedure. Plaintiff was  
2 further permitted forty-five (45) days from the issuance of this order to either file a motion to  
3 substitute the identity of LVN Jane Doe in this action, or to file any request for a Rule 45 subpoena to  
4 obtain the information necessary to identify LVN Jane Doe.

5 Currently before the Court is Plaintiff's motion for the Court to issue a Rule 45 subpoena, filed  
6 on July 17, 2017. (ECF No. 30.)

7 **II. Motion for Issuance of Subpoena Duces Tecum**

8 **A. Plaintiff's Attempts to Identify LVN Jane Doe**

9 In Plaintiff's January 3, 2017 status report signed under penalty of perjury, Plaintiff declared  
10 that he initially attempted to discover the identity of LVN Jane Doe by requesting his medical records,  
11 and sending requests for information to a health records supervisor and a registered nurse who  
12 supervised LVN Jane Doe.

13 In the currently motion, also supported by a declaration, Plaintiff declares that he did not  
14 receive a response from his correspondence to the health records supervisor or registered nurse.  
15 However, Plaintiff received copies of relevant medical records for his review. Only one document had  
16 LVN Jane Doe's name on it. This document, the Medication Administration Record ("MAR") shows  
17 each nurse who passed medication out for the month of May 2014, and LVN Jane Doe's name and  
18 initials were to be printed on the MAR. Although the relevant MAR shows LVN Jane Doe issued  
19 Plaintiff's medication, according to Plaintiff the LVN's handwriting is indecipherable. The MAR was  
20 not provided for the Court's review, but the Court accepts Plaintiff's representation.

21 Based on the foregoing, the Court is satisfied that Plaintiff has adequately attempted to find  
22 information to identify LVN Jane Doe using the information that is available to him. The Court turns  
23 to Plaintiff's Rule 45 subpoena request.

24 **B. Issuance of Subpoena**

25 Rule 45 of the Federal Rules of Civil Procedure permits issuance of subpoenas to obtain  
26 discovery from non-parties equivalent to discovery from parties under Rule 34. See Adv. Comm. Note  
27 to 1991 Amendment to FRCP 45. Rule 34 governs discovery of designated documents, electronically  
28 stored information, and designated tangible things subject to the provisions of Federal Rule of Civil

1 Procedure 26(b). Meeks v. Parsons, No. 1:03-cv-6700-LJO-GSA, 2009 WL 3003718, at \*2 (E.D. Cal.  
2 Sept. 18, 2009) (citing Fahey v. United States, 18 F. R. D. 231, 233 (S.D.N.Y. 1955)).

3 Rule 26(b)(1) establishes the scope of discovery, stating in pertinent part:

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

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

15 Here, Plaintiff declares that the pages of the 4B4R housing log book for second watch on May  
16 7, 2014 and May 8, 2014, where he was housed at the time of the events at issue, contains information  
17 necessary and sufficient to identify LVN Jane Doe. Plaintiff declares that LVN Jane Doe was required  
18 to identify herself in the log, and that by referencing the dates and times with the MAR, he will be able  
19 to identify her. Plaintiff further declares that the Warden of California State Prison, Corcoran has  
20 possession, custody or control over the relevant log books.

21 Based upon Plaintiffs' representations and the record at this time, the Court finds that it is in  
22 the interest of justice to authorize the issuance of a subpoena duces tecum commanding the Warden of  
23 Corcoran State Prison to produce the documents identified by Plaintiff, if any exist.

24 Pursuant to Federal Rule of Civil Procedure 45(a)(4), this order serves as notice to the parties  
25 that the United States Marshal will be directed to initiate service of the subpoena in ten (10) days from  
26 the date of service of this order.

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1 **III. Conclusion and Order**

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. The Court grants Plaintiff's motion to issue a Rule 45 subpoena duces tecum (ECF No.  
4 30);
- 5 2. The Clerk of the Court shall prepare the subpoena duces tecum directing the Warden of  
6 California State Prison, Corcoran, to produce the pages of the 4B4R housing log book  
7 for second watch on May 7, 2014 and May 8, 2014;
- 8 3. The Clerk of the Court shall serve a copy of the subpoena on the parties with this order;  
9 and,
- 10 4. Pursuant to Rule 45(a)(4), the parties are placed on notice that the United States  
11 Marshal will be directed to initiate service of the subpoena subpoena duces tecum  
12 described above in ten (10) days from the date of service of this order.

13  
14 IT IS SO ORDERED.

15 Dated: October 5, 2017

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