

1 Currently before the Court is Plaintiff's motion titled as, "Motion for Leave to Issue
2 Discovery that is Reasonable and Necessary to Locate Information Relevant to Properly
3 Identifying Defendant Does 1-4," filed on January 11, 2018. (ECF No. 35.)

4 **II. Motion for Discovery**

5 Plaintiff states in his motion that he has made informal and formal requests in attempt to
6 locate information to properly identify Defendant Does 1-4, but his requests have been denied. He
7 attaches copies in support. Consequently, he seeks leave to issue discovery to that is reasonable
8 and necessary to obtain the information he seeks.

9 **A. Legal Standards**

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

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

18 Parties may obtain discovery regarding any nonprivileged matter that is relevant to
19 any party's claim or defense and proportional to the needs of the case, considering
20 the importance of the issues at stake in the action, the amount in controversy, the
21 parties' relative access to relevant information, the parties' resources, the importance
22 of the 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.

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

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1 **B. Discussion**

2 In this case, Plaintiff alleges that he was denied his basic human necessities while he was
3 housed in a management cell at CCI Tehachapi beginning on or about May 20, 2014, for a period
4 of three days. Defendant Does 1-4 were the correctional officers who were “overseeing Plaintiff
5 while he was being subjected to the management-cell.” (ECF No. 21, at p. 6.)

6 In the current motion, Plaintiff’s attachments show that he made requests for a copy of the
7 duty roster to show the correctional officers working on Facility 4B Building 8 on the dates of
8 May 20, 2014 through May 23, 2014. First, on November 29, 2017, Plaintiff requested the
9 information using a CDCR Form 22 Inmate/Parolee Request. (ECF No. 35, at p. 6.) In response
10 to that request, Plaintiff was instructed by staff to mail his request using a CDCR Form 1432 to
11 CCI Litigation, with a trust withdrawal form to cover copying costs of \$ 0.12 per copy. (*Id.*)
12 CDCR Form 1432 is used to make a California Public Records Act request. (*Id.* at 4)

13 On December 7, 2017, Plaintiff sent his request to CCI using the form instructed, and
14 checking a box that he agreed to pay postage and \$ 0.12 for each page photocopied. (*Id.*) Plaintiff
15 received a response that the requested record would not be disclosed. (*Id.*) The denial was
16 accompanied by a letter from the Public Records Act Coordinator at CCI Tehachapi explaining
17 that the record relates to pending litigation, and therefore CDCR considers the record to be
18 exempt from disclosure under the California Public Records Act. (*Id.* at 3.) The letter further
19 states that some of the records sought may be exempt from disclosure for safety or security
20 reasons or due to a privilege. (*Id.*)

21 Considering Plaintiff’s submissions and the relevant standards, the Court is satisfied that
22 Plaintiff has adequately attempted to find information to identify Doe Defendants 1-4 using the
23 resources that are available to him. He has further reasonably asserted that the duty roster for the
24 dates in question concerning the location where he was housed during the events at issue contains
25 information to identify the Doe defendants here, and has reasonably shown that CCI Tehachapi
26 has possession, custody, or control over the relevant duty roster.

27 Based upon Plaintiffs’ representations and the record, the Court finds that it is in the
28 interest of justice to authorize the issuance of a subpoena duces tecum commanding the Warden

1 of CCI Tehachapi to produce the records identified by Plaintiff, if any exist. Further, the basis of
2 any safety or security concerns or assertions of privilege in disclosing the requested records is not
3 readily apparent from the current record. The Court takes no position at this time on any
4 assertions of confidentiality or privilege which may be raised by the respondent to the subpoena.

5 **III. Conclusion and Order**

6 Accordingly, it is HEREBY ORDERED that:

- 7 1. The Court grants Plaintiff's motion to for leave to issue discovery to identify the
8 Doe defendants (ECF No. 35);
- 9 2. The Clerk of the Court shall prepare the subpoena duces tecum directing the
10 Warden of CCI Tehachapi, to produce the duty roster to show the correctional
11 officers working on Facility 4B Building 8 on the dates of May 20, 2014 through
12 May 23, 2014;
- 13 3. The Clerk of the Court shall serve a copy of the subpoena on the parties with this
14 order; and,
- 15 4. Pursuant to Rule 45(a)(4), the parties are placed on notice that the United States
16 Marshal will be directed to initiate service of the subpoena duces tecum described
17 above in ten (10) days from the date of service of this order.

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19 IT IS SO ORDERED.

20 Dated: February 7, 2018

21 /s/ Barbara A. McAuliffe
22 UNITED STATES MAGISTRATE JUDGE
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