

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FRANK BACA .

**Plaintiff.**

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MARTIN BITER, et al.,

## Defendants.

CASE NO. 1:15-cv-01916-LJO-MJS (PC)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR ISSUANCE OF  
SUBPOENAS DUCES TECUM**

(ECF No. 13)

**ORDER DIRECTING PERSONAL  
SERVICE OF SUBPOENA DUCES  
TECUM BY UNITED STATES MARSHALS  
SERVICE WITHOUT PREPAYMENT OF  
COSTS**

## **RESPONSE DUE WITHIN THIRTY DAYS OF SERVICE**

## I. Procedural History

Plaintiff is a state prisoner proceeding in forma pauperis with appointed counsel in this civil rights action brought pursuant to 42 U.S.C. § 1983. On November 15, 2016, the Court screened Plaintiff's first amended complaint and found that it stated cognizable claims against Defendant Does 1-3, medical professionals at Kern Valley State Prison ("KVSP"), and Does 4-18, members of the Headquarters Utilization Management

1 ("HUM") Committee employed by the California Department of Corrections and  
2 Rehabilitation ("CDCR") for failing to treat Plaintiff's Hepatitis C in violation of the Eighth  
3 Amendment. (ECF No. 10.)

4 The Court opened discovery for the limited purpose of identifying the names of  
5 the Doe Defendants. (Id.) Plaintiff was directed to inform the court of the documents  
6 which needed to be produced by the CDCR or the prison to identify the Doe Defendants.  
7 (Id.)

8 On March 3, 2017, Plaintiff, through his counsel, filed a motion seeking the  
9 issuance of a subpoena duces tecum to Plaintiff's current institution, High Desert State  
10 Prison ("HDSP"), for portions of Plaintiff's medical record, and to CDCR for a complete  
11 roster of HUM Committee members from January 1, 2010 to January 7, 2015. Plaintiff  
12 reports that he requested his complete medical record from HDSP in the hopes of  
13 identifying the Doe Defendants responsible for treating Plaintiff's Hepatitis C, but has not  
14 received a response.

15 With regard to Plaintiff's medical records, he specifically seeks any Requests for  
16 Services (CDCR Forms 7243) and Physician's Orders (CDCR Forms 7221) with printed  
17 names and/or legible signatures of medical professionals involved in Plaintiff's treatment  
18 for Hepatitis C. (ECF No. 13 at 1-2.) According to Plaintiff, pursuant to Chapter 8 of the  
19 CDCR Guide to Specialty Services for Inmates, these forms should have been signed by  
20 Doe Defendants 1-3. (Decl. of W. Schmidt in Supp. of Req. for Subpoena (ECF No. 13-1  
21 ¶ 5.))

22 With regard to the HUM Committee members, Plaintiff reports that the California  
23 Correctional Health Care Services ("CCHCS") Inmate Medical Services Policies and  
24 Procedures, Volume 4, Chapter 34.2, lists members of the HUM Committee by position  
25 but not by name. According to the manual, the Committee is to be composed of the  
26 following professionals: 1) the Assistant Statewide Medical Examiner or designee; 2) the  
27 Deputy Medical Executive, Utilization Management, or designee; 3) three physician  
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1 representatives; and 4) the Executive or Managerial representation from Medical,  
2 Nursing, Mental Health, Dental, and Quality Management, if appropriate. The HUM  
3 Committee may have been referred to as the Health Care Review Subcommittee  
4 (“HCRS”) at some point prior to 2015. It operates from the CDCR Headquarters, located  
5 at 1515 S Street, Sacramento, California 95811.

6 On April 14, 2017, Plaintiff, through his counsel, filed an updated declaration  
7 reflecting his efforts to obtain the names of the HUM committee members from the  
8 CCHCS Public Records Act (“PRA”) office. (ECF No. 14.) Plaintiff’s counsel was  
9 informed that the names of the HUM Committee members were “not releasable under  
10 the PRA . . . .” (Response to PRA Request (ECF No. 14-1.))

11 **II. Legal Standard**

12 The court’s authorization of a subpoena duces tecum requested by an in forma  
13 pauperis plaintiff is subject to limitations. Because personal service of a subpoena duces  
14 tecum is required, Federal Rule of Civil Procedure 45(b), “[d]irecting the Marshal’s Office  
15 to expend its resources personally serving a subpoena is not taken lightly by the court,”  
16 Austin v. Winett, 2008 WL 5213414, \*1 (E.D.Cal.2008); 28 U.S.C. § 1915(d). Limitations  
17 include the relevance of the information sought as well as the burden and expense to the  
18 non-party in providing the requested information. Fed. R. Civ. P. 26, 45. A motion for  
19 issuance of a subpoena duces tecum should be supported by clear identification of the  
20 documents sought and a showing that the records are obtainable only through the  
21 identified third party. See, e.g., Davis v. Ramen, 2010 WL 1948560, \*1 (E.D.Cal.2010);  
22 Williams v. Adams, 2010 WL 148703, \*1 (E.D.Cal.2010). The “Federal Rules of Civil  
23 Procedure were not intended to burden a non-party with a duty to suffer excessive or  
24 unusual expenses in order to comply with a subpoena duces tecum.” Badman v. Stark,  
25 139 F.R.D. 601, 605 (M.D.Pa.1991). Non-parties are “entitled to have the benefit of this  
26 Court’s vigilance” in considering these factors. Id.

27 **III. Discussion**

1        It appears that the only option for Plaintiff to identify Defendants is to obtain  
2 further information by way of subpoena.

3        Plaintiff is of course entitled to view his own medical records. Nonetheless, HDSP  
4 failed to timely respond to counsel's request for these records. For the limited purpose of  
5 determining the identities of the Doe Defendants for service, the Court will authorize the  
6 subpoena of any and all CDCR Forms 7243 and 7221 in Plaintiff's medical records  
7 containing the names of the health care professionals at KVSP responsible for treating  
8 or otherwise addressing Plaintiff's Hepatitis C, without prejudice to Plaintiff later seeking  
9 his entire medical record in discovery. The Litigation Coordinator or any other  
10 appropriate authority within HDSP will therefore be directed to disclose said documents  
11 to Plaintiff.

12       Furthermore, Plaintiff only has access to the positions comprising the HUM  
13 Committee, and not the committee members themselves. As Plaintiff can most  
14 expeditiously serve a person, rather than a position, he is also entitled to a roster of the  
15 members of the HUM Committee. However, since these Defendants are sued in their  
16 official capacity only, Plaintiff need only obtain the names of the individuals currently  
17 filling the positions listed above.

18       As Plaintiff is represented by counsel, the Court finds it appropriate that the HUM  
19 Committee roster be made available for viewing to Plaintiff's attorney, William L.  
20 Schmidt, and his agents only, without prejudice to Plaintiff later seeking the same  
21 documents in discovery. Plaintiff's own medical records are not confidential, therefore  
22 they should be freely shared with Plaintiff.

23 **III. Conclusion and Order**

24       Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motion for  
25 subpoena duces tecum is GRANTED consistent with this order:

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1. The issuance of subpoenas duces tecum directing High Desert State Prison's Litigation Coordinator, or any other appropriate authority, to produce responsive documents to the request as set forth above is hereby authorized;
2. The issuance of subpoenas duces tecum directing the Secretary of the California Department of Corrections and Rehabilitation to produce responsive documents to the request as set forth above is hereby authorized;
3. The Clerk of Court shall forward the following documents to the United States Marshal (USM):
  - a. One (1) completed and issued subpoena duces tecum to be served on:  
**High Desert State Prison  
Litigation Coordinator  
P.O. Box 750 Susanville, CA  
Susanville, CA 96127-0750**
  - b. One (1) completed and issued subpoena duces tecum to be served on:  
**California Department of Corrections and Rehabilitation  
Office of the Secretary  
1515 S Street  
Sacramento, CA 95811**
  - c. Two (2) completed USM-285 forms; and
  - d. Three (3) copies of this order, one to accompany each subpoena and one for the USM:

In completing each subpoena, the Clerk of Court shall list, as described in the order and below, the documents requested:

- To the Litigation Coordinator at High Desert State Prison: Any and all CDCR Forms 7243 and 7221 in Plaintiff's medical records containing the names of the health care professionals at KVSP responsible for treating or otherwise addressing Plaintiff's Hepatitis C; and
- To the CDCR Office of the Secretary: The names of the current members of the HUM Committee, including the individuals filling the positions of: 1) the Assistant Statewide Medical Examiner or

designee; 2) the Deputy Medical Executive, Utilization Management, or designee; 3) the three physician representatives; and 4) the Executive or Managerial representation from Medical, Nursing, Mental Health, Dental, and Quality Management, if applicable;

4. Within **twenty (20) days** from the date of this order, the USM is DIRECTED to serve the subpoenas in accordance with the provisions of Rule 45 of the Federal Rules of Civil Procedure;
5. The USM shall effect personal service of the subpoena duces tecum, along with a copy of this order, upon the individual/entity named in the subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure and 28 U.S.C. §566(c);
6. Within **ten (10) days** after personal service is effected, the USM shall file the return of service, along with the costs subsequently incurred in effecting service, and said costs shall be enumerated on the USM-285 form; and
7. Within **thirty (30) days** after service is effected, the Litigation Coordinator of HDSP and the Secretary of the CDCR are directed to serve the responsive

**William L. Schmidt, Esq.  
P.O. Box 25001  
Fresno, CA 93729**

IT IS SO ORDERED.

Dated: April 25, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE