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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GREGORY ELL SHEHEE,)	Case No.: 1:16-cv-00354-DAD-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTIONS
v.)	TO QUASH SUBPOENAS
)	
COSBY, et al.,)	[ECF Nos. 18, 25]
)	
Defendants.)	
)	
)	

Plaintiff Gregory Ell Shehee is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff declined United States Magistrate Judge jurisdiction; therefore, this action was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Currently before the Court is Plaintiff’s motion to quash subpoenas served by Defendants, filed on August 8, 2016. (ECF No. 18.) Defendants filed an opposition on September 2, 2016. Plaintiff did not file a reply within seven days, and the motion is therefore deemed submitted for review. Local Rule 230(l). On September 14, 2016, Plaintiff filed an amended motion to quash the subpoenas served by Defendants, which is essentially the same motion as previously filed. (ECF No. 25.)

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1 **I.**

2 **BACKGROUND**

3 On March 10, 2016, the Court severed Plaintiff’s claim of excessive force against Defendants
4 Cosby and S. Valley arising from an incident that took place on January 16, 2009, from his claims of
5 excessive force against Defendants Redding and Blanco in case number 1:14-cv-00706-DAD-SAB
6 (PC), Gregory Ell Shehee v. K. Trumbly, et.al. (ECF No. 4.)

7 On August 4, 2016, Defendants filed a motion to dismiss the complaint as barred by the statute
8 of limitations. (ECF No. 17.) Plaintiff filed an opposition on August 17, 2016, and Defendants filed a
9 reply on September 2, 2016. (ECF Nos. 19, 21.)

10 As previously stated, on August 8, 2016, Plaintiff filed a motion to quash the subpoenas served
11 by Defendants, and Defendants filed an opposition on September 2, 2016. (ECF Nos. 18, 22.)
12 Plaintiff filed an amended motion to quash on September 14, 2016. (ECF No. 25.)

13 **II.**

14 **DISCUSSION**

15 Pursuant to Federal Rule of Civil Procedure 45 allows a party to command in a subpoena to
16 produce documents, electronically stored information, or tangible things [that] requires the responding
17 person to permit inspection, copying, testing, or sampling of the materials.” Fed. R. Civ. P.
18 45(a)(1)(D). “A party cannot object to a subpoena duces tecum served on a nonparty, but rather, must
19 seek a protective order or file a motion to quash” pursuant to Federal Rule of Civil Procedure
20 45(c)(3)(A). Moon v. SCP Pool Corp., 232 F.R.D. 633, 636 (C.D. Cal. 2005); see also Cal.
21 Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc., 299 F.R.D. 638, 643 (E.D. Cal. 2014).

22 Rule 45(d)(3)(A) sets forth the bases for a court to quash or modify a subpoena, which
23 provides, in pertinent part:

24 [o]n timely motion, the court by which a subpoena was issued shall quash or modify the
25 subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires a person who is not
26 a party ... to travel to a place more than 100 miles from the place where that person resides, is
27 employed or regularly transacts business...., or (iii) requires disclosure of privileged or other
28 protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden.

1 Fed. R. Civ. P. 3(d)(3)(A). “Although irrelevance is not among the litany of enumerated reasons for
2 quashing a subpoena found in Rule 45, courts have incorporated relevance as a factor when
3 determining motions to quash a subpoena.” Moon, 232 F.R.D. at 637 (citing Goodyear Tire & Rubber
4 Co. v. Kirk’s Tire & Auto Servicer, 211 F.R.D. 658, 662 (D. Kan. 2003)). Thus, in determining
5 undue burden, the Court should weigh the burden of the subpoenaed party against the requested
6 information’s relevance, need of the serving party for the information, the breadth of the information
7 requested, the time period covered by the request, and the particularity with which the request is made.
8 Moon, 232 F.R.D. at 637.

9 In the operative complaint, Plaintiff contends that Defendants used excessive force on two
10 separate occasions. Plaintiff contends that he suffered serious spinal injuries, nerve damage and
11 broken ribs. Defense counsel, James C. Phillips, declares that on August 8, 2016, he caused to be
12 issued two identical subpoenas in each of these cases (instant case and companion case 1:14-cv-
13 00706-DAD-SAB (PC), Shehee v. Trumbly, et.al.), seeking essentially the same records. (Declaration
14 of James C. Phillips (“Phillips Decl.”) ¶ 2, ECF No. 22.) The subpoenas were served on Coalinga
15 State Hospital and the Fresno County Jail on August 22 and 23, 2016. (Id.) Counsel’s intent was to
16 obtain one set of the subpoenaed records for use in both cases. (Id.) The subpoenas requested
17 Plaintiff’s medical records from Coalinga State Hospital and the Fresno County Jail (where Plaintiff is
18 presently housed) and the Hospital police department records pertaining to the two incidents of use of
19 force. (Id.) Although counsel did not submit a copy of the actual subpoenas, the Court accepts
20 counsel’s representation in his declaration signed under penalty of perjury and as an officer of the
21 Court, as to the validity of such requests. See Fed. R. Civ. P. 11(b), (c). Counsel reasons that
22 “[b]ecause the subpoenaed records in this matter would be duplicative of the subpoenaed records in
23 the companion case from which these defendants were severed, defendants have subpoenaed the
24 records now, before answering and before the issuance of a discovery order simply as matter of
25 convenience to the personnel charged with copying the records.” (Opp’n at 2:16-20, ECF No. 22.)

26 In his motion to quash, Plaintiff merely contends that the subpoenas invade his privacy rights
27 and create an “undue burden.” (Mot. at 1, ECF No. 18.) The Court finds that Defendants’ subpoenas
28 for Plaintiff’s medical records from Coalinga State Hospital and the Fresno County Jail, and the

1 corresponding police reports relating to the incidents of the use of force, are reasonably limited in
2 scope and relevant to the claims and defenses in this matter. Accordingly, Plaintiff's motions to quash
3 the subpoenas shall be denied.

4 **III.**

5 **ORDER**

6 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motions to quash the
7 subpoenas issued by Defendants are DENIED.

8
9 IT IS SO ORDERED.

10 Dated: September 16, 2016



11 UNITED STATES MAGISTRATE JUDGE