

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JACK JOHNSON III,

 Plaintiff,

 v.

PTS OF AMERICA, et al.,

 Defendants.

Case No. 1:18-cv-0434-NONE-JLT (PC)

**ORDER GRANTING PLAINTIFF’S MOTION
FOR SUBPOENA**

(Doc. 31)

Plaintiff, proceeding *in forma pauperis*, moves for a subpoena directed to the Fresno County Superior Courthouse for surveillance video of an automobile accident. (Doc. 31.) The Court’s authorization of a subpoena duces tecum requested by an *in forma pauperis* plaintiff is subject to limitations. Because personal service of a subpoena duces tecum is required, Federal Rule of Civil Procedure 45(b), “[d]irecting the Marshal’s Office to expend its resources personally serving a subpoena is not taken lightly by the court,” Austin v. Winett, 2008 WL 5213414, *1 (E.D. Cal. 2008); 28 U.S.C. § 1915(d). Limitations include the relevance of the information sought as well as the burden and expense to the non-party in providing the requested information. Fed. R. Civ. P. 26, 45. A motion for issuance of a subpoena duces tecum should be supported by clear identification of the documents sought and a showing that the records are obtainable only through the identified third party. See, e.g., Davis v. Ramen, 2010 WL 1948560, *1 (E.D. Cal. 2010); Williams v. Adams, 2010 WL 148703, *1 (E.D. Cal. 2010). The “Federal

Rules of Civil Procedure were not intended to burden a non-party with a duty to suffer excessive or unusual expenses in order to comply with a subpoena duces tecum.” Badman v. Stark, 139 F.R.D. 601, 605 (M.D. Pa. 1991). Non-parties are “entitled to have the benefit of this Court's vigilance” in considering these factors. Id.

Plaintiff's motion seeks to obtain from the Fresno County Superior Court “camera surveillance of an automobile accident that occurred in the parking structure on August 31, 2017 involving a police vehicle & and a PTS of America extradition vehicle [*sic*].” This video appears to be relevant to Plaintiff's Fourteenth Amendment medical indifference claim and state law negligence and intentional infliction of emotional distress claims. Plaintiff's motion is sufficiently specific to clearly identify the information sought. It will therefore be granted. Accordingly, the Court **ORDERS** as follows:

1. Plaintiff's motion for a subpoena (Doc. 31) is **GRANTED**;
2. The Clerk of Court shall forward the following documents to the United States Marshal (USM):

a. One completed and issued subpoena duces tecum to be served on:

Court Facilities Supervisor

Superior Court of California, County of Fresno

1100 Van Ness Avenue

Fresno, CA 93724-0002

b. One copy of the complaint (Doc. 1);

c. One completed USM-285 form; and

d. Two copies of this order, one to accompany the subpoena and one for the USM;

In completing the subpoena, the Clerk of Court shall list, as described here, the tangible item requested: Video surveillance footage of an automobile accident that occurred in the parking structure on August 31, 2017, involving a police vehicle and an extradition vehicle owned and/or operated by PTS of America.

3. Within thirty days from the date of this order, the USM is **DIRECTED** to serve the subpoena in accordance with the provisions of Rule 45 of the Federal Rules of Civil Procedure;

1 4. The USM shall effect personal service of the subpoena duces tecum, along with a copy
2 of this order and a copy of the complaint, upon the individual/entity named in the subpoena
3 pursuant to Rule 45 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c);

4 5. Within ten days after personal service is effected, the USM shall file the return of
5 service, along with the costs subsequently incurred in effecting service, and said costs shall be
6 enumerated on the USM-285 form; and

7 6. Within thirty days after service is effected, the Court Facilities Supervisor at the
8 Superior Court of California, County of Fresno, is directed to serve the responsive documents on
9 Plaintiff:

10 **Jack Johnson**

11 **Inmate # 86926**

12 **Nevada Ely State Prison**

13 **P.O. Box 1989**

14 **Ely, NV 89301**

15
16 IT IS SO ORDERED.

17 Dated: **September 14, 2020**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE