



1 2021, counsel for defendant’s office issued a subpoena duces tecum for plaintiff Robert  
2 Washington’s medical and treatment related records from the California Correctional Institution –  
3 Tehachapi / California Department of Corrections and Rehabilitation.” (Id. at 2) (citation  
4 omitted).

5 Specifically, defense counsel sought:

6 Any and all writings (used herein as defined in California Evidence Code section  
7 250), including hospital and/or medical records and documents whether stored  
8 digitally and/or electronically, including doctor’s entries, nurses’ notes, medical  
9 reports, progress reports, X-ray report, radiology reports, MRI reports, lab reports,  
10 myelogram reports, physical therapy records, case history, emergency records,  
11 diagnoses, prognoses, condition, admit and discharge records from first date of  
12 treatment to the present for ROBERT WASHINGTON (DOB: 01/12/1966). Any  
13 and all itemized statements of charges pertaining to the care, treatment, and  
14 examination of the individual named herein regardless of treatment date including  
15 but not limited to all billing, invoices, statements, and insurance claims for  
16 ROBERT WASHINGTON. Any and all medical bills, medical billing records,  
17 liens, explanation of benefits statements, correspondence relating to billing,  
18 records showing write-offs or adjustments to amounts billed, and records or  
19 payment by insurance carriers, government entities, and/or any other person or  
20 entity for amounts owed by ROBERT WASHINGTON. Any and all sign in sheets  
or other documents or writings that would evidence ROBERT WASHINGTON's  
attendance to this location on a specific date. Any and all reports [] or summaries  
prepared of the care and treatment rendered to ROBERT WASHINGTON from  
the first date of treatment to the present. Any and all documents that were given to  
the patient upon their initial presentation to this location to fill out, including any  
patient questionnaires; pain diagrams, intake documents, patient registrations,  
history documents, or any other writings that were completed by the patient at any  
time during their presentation for care and treatment. Any and all writings that  
describe, discuss, or evidence a referral source who referred the patient to care and  
treatment at this location.

21 (Id.) (citation and internal quotation marks omitted).

22 “The production date for the records sought was June 29, 2021. However, responsive  
23 records were not produced in response to the validly issued subpoena duces tecum, and no  
24 records whatsoever have been produced by the CDCR to date in response to the SDT.” (Id.)  
25 (citation omitted).

26 “Counsel for defendant Dr. Yaplee specifically used broad subpoena language in the  
27 request to the California Correctional Institution – Tehachapi / California Department of  
28 Corrections and Rehabilitation given that defendant Dr. Yaplee had suspicions that the patient’s

1 left eye inflammation that he was seeing in September and October of 2016 may have been  
2 explained by an underlying autoimmune systemic disorder. Dr. Yaplee never was able to find out  
3 the answer to that question, and the scope of the subpoena to California Correctional Institution –  
4 Tehachapi / California Department of Corrections and Rehabilitation was intended, in part, to  
5 provide the defense with information about potential causes of the patient’s current left eye  
6 status.” (Id. at 3-4) (citations omitted).

7 Additionally, “[t]he defense requests that this Court issue an order stating that the CDCR  
8 must respond to the subpoena as currently constituted.” (Id. at 6).

### 9 **III. Analysis**

10 The Court has reviewed the filings, and will grant Plaintiff’s motion in part.

11 The Court finds that while Defendant is seeking relevant documents, the request, which  
12 appears to be for all of Plaintiff’s medical records (with no limitations), is overboard.

13 Accordingly, the Court will limit the request as follows: 1) The CDCR shall only produce  
14 medical records from June 13, 2013 (approximately three years before the incidents alleged in the  
15 complaint), through November 18, 2021; and 2) The CDCR shall not produce mental health  
16 records.

17 Additionally, Defendant will not be allowed to disclose any documents he receives from  
18 the subpoena request to anyone, except to the parties; the Court and Court staff; counsel and  
19 counsel’s staff; Defendant’s experts; and court reporters and their staff.<sup>1</sup>

20 As to Defendant’s request that the Court issue an order stating that the CDCR must  
21 respond to the subpoena, it will be denied at this time, without prejudice.<sup>2</sup> The Court does,  
22 however, note that the CDCR may produce the documents, subject to the limitations in this order.

### 23 **IV. Order**

24 Accordingly, based on the foregoing, IT IS ORDERED that:

- 25 1. The CDCR shall only produce medical records from June 13, 2013, through

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26 <sup>1</sup> The Court is not ordering that the documents must be filed under seal if they are filed with the Court. The  
27 Court refers the parties to Local Rule 141, which explains the procedures for requesting that documents be sealed.

28 <sup>2</sup> Defendant has not filed a motion to compel compliance with the subpoena or a motion for sanctions. If the  
CDCR refuses to produce the documents following the issuance of this order, Defendant has thirty days from the date  
of service of this order to file a motion to compel compliance with the subpoena and/or a motion for sanctions.

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November 18, 2021;

- 2. The CDCR shall not produce mental health records;
- 3. Defendant’s counsel shall not disclose the documents he receives from the subpoena to the CDCR with anyone, except the parties; the Court and Court staff; counsel and counsel’s staff; Defendant’s experts; and court reporters and their staff; and
- 4. The CDCR may produce the documents requested in Defendant’s subpoena, subject to the limitations in this order.

IT IS SO ORDERED.

Dated: November 18, 2021

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE