

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTAY SCRUGGS,

Plaintiff,

No. 2:06-cv-0633 KJM KJN P

vs.

S. VANCE, et al.,

Defendants.

ORDER

_____ /

By order filed October 28, 2010, plaintiff’s motion was granted for a subpoena duces tecum to be issued to the Department of Mental Health at Atascadero State Hospital to obtain medical records related to injuries sustained on May 19, 2004, his diagnosis of Post Traumatic Stress Disorder (“PTSD”), and any records by Psychiatric Technician Chase Brewster, for plaintiff’s use at trial to refresh witness Brewster’s recollection. (Dkt. No. 112.) Plaintiff was cautioned to specifically limit the subpoena duces tecum as set forth in plaintiff’s affidavit in support of this motion (dkt. No. 94 at 3). Plaintiff was directed to return the subpoena duces tecum within 21 days. Also, plaintiff was provided two subpoena forms for the attendance of witnesses Jarman and Brewster at trial.

However, on March 4, 2011, plaintiff filed a notice that he was committed to Atascadero State Hospital following an October 26, 2010 order by the San Luis County Superior

1 Court finding plaintiff mentally incompetent to stand trial. (Dkt. No. 117 at 3.) Due to
2 plaintiff's commitment and mental health status, plaintiff was unable to comply with the court's
3 October 28, 2010 order. Trial in the instant action has been continued. In light of the
4 circumstances, plaintiff will be granted an extension of time in which to submit the subpoena
5 duces tecum form, and the Clerk of the Court will be directed to re-send the subpoena forms to
6 plaintiff.

7 Plaintiff has also filed a motion for subpoena duces tecum for central file records,
8 from July 1, 2003, through September 27, 2007, and medical and mental health records, from
9 July 1, 2007, through September 27, 2007. Plaintiff states these records are related to the May
10 19, 2004 incident, and then references an "Exhibit B." (Dkt. No. 119 at 2.) However, plaintiff
11 failed to provide an "Exhibit B" with this motion, and, if plaintiff's reference is to a different
12 filing in the court record, he failed to identify the record in such a way that the court, or
13 defendants, could identify "Exhibit B." In addition, plaintiff has not identified the type of
14 document he seeks from his central file. Because plaintiff seeks documents for a four year and
15 two month period, it is likely his request will contain irrelevant material. Plaintiff's motion will
16 be denied without prejudice to its renewal. If plaintiff chooses to renew this request for
17 documents from his central file, he must specifically identify the documents in a way that makes
18 clear their relevance to the instant action.

19 Finally, plaintiff has filed a motion for subpoena for the appearance of witness Dr.
20 Paladino, plaintiff's current treating psychiatrist, who plaintiff claims will testify concerning
21 plaintiff's PTSD. (Dkt. No. 120.) Jury trial is set for September 26, 2011; thus, plaintiff has
22 provided sufficient notice to defendants concerning this witness. Fed. R. Civ. P. 26(a)(2)(D).
23 However, plaintiff has not indicated whether he intends to call Dr. Paladino solely as a fact
24 witness, or whether he intends to call Dr. Paladino as an expert witness, or both. Plaintiff is
25 cautioned that if he calls Dr. Paladino as an expert witness, he may be required to pay the doctor
26 an expert witness fee. Moreover, depending on the nature of Dr. Paladino's testimony, plaintiff

1 may be required to call him as an expert witness. In light of the referral of this case for
2 appointment of counsel, plaintiff's motion will be denied without prejudice.

3 Accordingly, IT IS HEREBY ORDERED that:

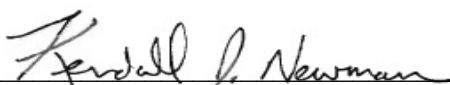
4 1. Plaintiff is granted thirty days from the date of this order to submit the
5 completed subpoena duces tecum form for the Department of Mental Health at Atascadero State
6 Hospital. Plaintiff shall complete the subpoena duces tecum form to limit the documents
7 requested as set forth in plaintiff's affidavit signed July 15, 2010.

8 2. The Clerk of the Court is directed to send plaintiff one subpoena duces tecum
9 form, two subpoena forms (for witnesses Jarman and Brewster), and a copy of plaintiff's
10 affidavit, located at page 3 of plaintiff's July 19, 2010 motion (dkt. no. 94 at 3).

11 3. Plaintiff's March 4, 2011 motion for subpoena duces tecum (dkt. no. 119) is
12 denied without prejudice.

13 4. Plaintiff's motion for subpoena of additional witness (dkt. no. 120) is denied
14 without prejudice.

15 DATED: March 11, 2011

16
17 
18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE

20 scru0633.sdt