

1 A subpoena duces tecum, served pursuant to Federal Rule of Civil Procedure 45(a)(2),
2 directs a nonparty to an action to produce documents or other tangible objects for inspection.
3 Because plaintiff is proceeding in forma pauperis, he is entitled to obtain personal service of an
4 authorized subpoena duces tecum by the United States Marshal. See 28 U.S.C. § 1915(d). A
5 subpoena must be personally served or it is null and void. Fed. R. Civ. P. 45(c); Gillam v. A.
6 Shyman, Inc., 22 F.R.D. 475 (D. Alaska 1958).

7 This court must consider the following matters before approving service of a proposed
8 subpoena duces tecum. A subpoena must comply with the relevance standards set forth in
9 Federal Rule of Civil Procedure 26(b)(1) (“[p]arties may obtain discovery regarding any
10 nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs
11 of the case”), and considerations of burden and expense set forth in Federal Rules of Civil
12 Procedure 26(b)(2)(C) and 45(d). The “Federal Rules of Civil Procedure were not intended to
13 burden a non-party with a duty to suffer excessive or unusual expenses in order to comply with a
14 subpoena duces tecum.” Badman v. Stark, 139 F.R.D. 601, 605 (M.D. Pa. 1991) (requiring
15 indigent plaintiff to demonstrate that he had “made provision for the costs of such discovery”)
16 (citing Cantaine v. Raymark Industries, Inc., 103 F.R.D. 447, 450 (S.D. Fla. 1984)); see also
17 United States v. Columbia Broadcasting System, Inc., 666 F.2d 364 (9th Cir. 1982) (court may
18 award costs of compliance with subpoena to non-party). Non-parties are “entitled to have the
19 benefit of this Court’s vigilance” in considering these factors. Badman, 139 F.R.D. at 605.

20 Additionally, courts in this district require that a motion requesting service of a subpoena
21 duces tecum be supported by: (1) clear identification of the documents sought and from whom,
22 and (2) a showing that the records are obtainable only through the identified third party. See e.g.
23 Davis v. Ramen, 2010 WL 1948560, *1 2010 U.S. Dist. LEXIS 115432 (E.D. Cal. 2010) (Oberto,
24 M.J.); Williams v. Adams, 2010 WL 148703, *1 2010 U.S. Dist. LEXIS 10248 (E.D. Cal. 2010)
25 (Snyder, M.J.).

26 The person to whom the subpoena is directed must be clearly and readily identifiable, with
27 an accurate physical address to enable personal service of the subpoena. See Fed. R. Civ. P.
28 45(a)(1)(A)(iii).

1 Finally, pursuant to Rule 45(c)(2), a subpoena duces tecum commands the recipient to
2 “produce” documents. Plaintiff is advised that he may be provided access to review documents
3 but that if he wishes to have copies of the documents, he may be required to arrange they be
4 photocopied at his own expense.

5 Subject to these considerations, the Clerk of Court will send plaintiff three blank subpoena
6 forms for his completion and submission to the court. To obtain service of the subpoenas by the
7 United States Marshal, plaintiff must complete the forms and submit them to the court with a
8 motion demonstrating entitlement to such service. The motion should address the factors
9 identified above.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff’s request for the issuance of three blank subpoena forms, ECF No. 50, is
12 granted.
- 13 2. The Clerk of Court is directed to send plaintiff, together with a copy of this order, three
14 subpoena duces tecum forms, signed but otherwise blank, pursuant to Rule 45, Federal Rules of
15 Civil Procedure.
- 16 3. Within thirty (30) days after the filing date of this order, plaintiff shall complete the
17 proposed subpoena duces tecum forms, and return these documents to the court with the attached
18 Notice of Submission, together with a motion requesting service of the proposed subpoenas by
19 the United States Marshal.
- 20 4. Plaintiff’s motion to compel discovery, ECF No. 51, is denied without prejudice.

21 DATED: April 29, 2020

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23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TED DARNELL DANIELS,
Plaintiff,
v.
ERIC ARNOLD,
Defendants.

No. 2:16-cv-0551 MCE AC P

NOTICE OF SUBMISSION

Plaintiff submits the following documents in compliance with the court's order filed

_____:

- _____ Completed subpoena duces tecum summons forms (proposed)
- _____ Support motion requesting service of subpoenas by United States Marshal

Date

Plaintiff