



1 Plaintiff moved for reconsideration of the court’s order striking the amended complaint.  
2 The court construed the motion for reconsideration as a motion to amend the complaint. (ECF  
3 No. 32.) The court granted the motion and screened the second amended complaint. The court  
4 determined that the second amended complaint (ECF No. 22), filed April 1, 2019, stated a claim  
5 against the defendants.

6 The court will grant plaintiff’s motion for clarification as follows: the operative complaint  
7 in this action is the second amended complaint filed April 1, 2019 (ECF No. 22). Thus, any  
8 references to “the complaint” or “the operative complaint” shall refer to that document.

## 9 **II. Motion for Third Party Subpoenas**

10 Plaintiff states that before he filed this action, he sought records to determine the identities  
11 of the defendants. (ECF No. 52.) Plaintiff submitted a Public Records Act request and was  
12 informed that the individual who signed the first health request form submitted was W. Perez.  
13 However, in the defendants’ non-confidential settlement statement<sup>1</sup> that the identity of the nurse  
14 who signed the first 7302 form was “unclear.” He requests that the court issue an order directing  
15 the warden at Mule Creek State Prison identify the nurse or provide plaintiff with a copy of a  
16 document that would allow plaintiff to identify the nurse.

17 Defendants have filed an opposition arguing that plaintiff’s motion should be denied  
18 because he has not shown that the information sought is only obtainable through the identified  
19 third parties. (ECF No. 53.)

### 20 **A. Legal Standards**

21 A non-party may be compelled to produce documents for inspection and copying pursuant  
22 to a subpoena duces tecum. See Fed. R. Civ. P. 34(c), 45(a). Subject to certain requirements, a  
23 plaintiff is entitled to the issuance of a subpoena commanding the production of documents,  
24 electronically stored information, and/or tangible things from a nonparty, Fed. R. Civ. P. 45, and  
25 to service of the subpoena by the United States Marshal, 28 U.S.C. § 1915(d). A court may grant  
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27 <sup>1</sup> A settlement conference was conducted in this action on October 10, 2019. (ECF No. 44.) The  
28 settlement statements were not presented to the undersigned because Magistrate Judge Newman  
presided over the settlement conference.

1 such a request only after a plaintiff has shown that the documents or items sought from the  
2 nonparty are not obtainable from the defendants through a request for the production of  
3 documents, electronically stored information, and/or tangible things. Fed. R. Civ. P 34. A  
4 motion for issuance of a subpoena duces tecum should be supported by clear identification of the  
5 documents sought and a showing that the records are obtainable only through the identified third-  
6 party. See, e.g., Davis v. Ramen, 1:06-cv-1216 AWI SKO PC, 2010 WL 1948560, at \*1 (E.D.  
7 Cal. May 11, 2010); Williams v. Adams, No. 1:05-cv-0124 AWI SMS PC, 2010 WL 148703, at  
8 \*1 (E.D. Cal. Jan. 14, 2010).

### 9 **Analysis**


10 Plaintiff seeks further information regarding the identity of one of the named defendants.  
11 In making his request he lists various options for obtaining the information sought. Among those  
12 are several different documents in the possession of the defendants. Thus, this information  
13 appears to be in the possession of the defendants and plaintiff may request such materials through  
14 specific discovery requests, i.e., interrogatories, requests for production, or requests for  
15 admission, pursuant to Federal Rule of Civil Procedure 26. If such information is not available  
16 through such requests, plaintiff may file a renewed motion seeking information from a third party.

### 17 **III. Conclusion**

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's motion for clarification is granted, the operative complaint in this action is the  
20 second amended complaint filed April 1, 2019 (ECF No. 22); and
- 21 2. Plaintiff's motion for third party subpoenas (ECF No. 52) is denied without prejudice.

22 Dated: January 21, 2020

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26 DEBORAH BARNES  
27 UNITED STATES MAGISTRATE JUDGE