

1 **I. BACKGROUND**

2 **A. Summary of Haines' claims against defendants**

3 Haines, who is appearing pro se, is an “unemployed transient who routinely travels and
4 sleeps in his car.” Second Am. Compl. ¶ 11, Dkt. No. 56. Defendants Daryl B. Brand, David
5 Wee, Harvey S. Tureck, and Fred Madrano are current or former employees of the City of
6 Berkeley, which operates the Berkeley Free Clinic (BFC) and also is a defendant in this case. *Id.*
7 ¶¶ 6-10.

8 Haines claims that when he went to the BFC to seek information and emotional support on
9 December 4, 2009, defendants allegedly detained him for twelve hours under California’s
10 Welfare and Institutions Code § 5150 without having probable cause to do so. *Id.* ¶¶ 11-90.
11 Haines further claims that during his detention, defendants drew blood from him, physically
12 restrained him, and conducted medical and psychiatric evaluations of him without his consent.
13 *Id.* ¶¶ 124-184.

14 Haines brings five claims against defendants in his second amended complaint: (1) count
15 one is for violations of 42 U.S.C. § 1983; (2) count two is for violations of the Due Process
16 Clause of the Fourteenth Amendment; (3) count three is for violations of the Equal Protection
17 Clause of the Fourteenth Amendment; (4) count four is for false imprisonment in violation of
18 California law; and (5) count five is for intentional infliction of emotional distress in violation of
19 California law.

20 Defendants’ motion to dismiss Haines’ second amended complaint is scheduled for a
21 hearing before District Judge Gonzalez Rogers on June 19, 2012. Dkt. Nos. 57, 59.

22 **B. The discovery disputes at issue**

23 1. Haines’ medical records

24 Defendants claim to have given notice to Haines and District Judge Chen, who was
25 previously assigned to this action, of their intent to obtain Haines’ medical records from each of
26 the medical service providers mentioned in the operative complaint. Dkt. No. 66 at 1.
27 Defendants sent proposed medical releases to Haines, but Haines refused to sign any of them
28 even though defendants narrowed the scope of the releases at Haines’ request. *Id.*

1 Defendants issued a subpoena to Alta Bates Medical Center calling for Haines’ medical
2 records from December 4 and 5, 2009. *Id.* at 1-2. The medical records requested in the
3 subpoena include “all health, medical and/or mental health records, including all electronically
4 stored information, related to any service and/or treatment of Mark Haines on or around
5 December 4, 2009 and/or December 5, 2009.” Dkt. No. 66, Ex. A at 4. The subpoena also
6 requests “all billing records reflecting services provided to Mark Haines on December 4 and 5,
7 2009.” *Id.* Alta Bates refused to produce Haines’ medical records in accordance with the
8 subpoena because it requires a medical release signed by Haines as a condition to releasing
9 Haines’ medical records. *Id.* at 2.

10 Defendants seek an order compelling Alta Bates to release Haines’ medical records in
11 accordance with the subpoena. Dkt. No. 66 at 3. Defendants argue that the records are relevant
12 to the claims in the operative complaint because such claims are based in part on Haines’
13 involuntary detention and evaluation at Alta Bates. *Id.* at 2. Defendants further argue that the
14 records are relevant to their defenses against Haines’ claims, because the records contain
15 information with respect to Haines’ demeanor, conduct, and possible intoxication at the time of
16 his involuntary detention. *Id.* Defendants also contend that Haines has waived privilege as to the
17 records because he put his detention and treatment at Alta Bates at issue in the operative
18 complaint. *Id.* at 3. Defendants add that Haines never signed a proposed protective order they
19 sent to Haines. *Id.*

20 Haines opposes the release of his medical records, arguing that any medical records
21 created after he was involuntarily detained are irrelevant to his claims against defendants, as these
22 records do not show whether defendants had probable cause to detain him under California’s
23 Welfare and Institutions Code § 5150. Dkt. No. 67 at 1. Haines further argues that defendants’
24 subpoena is abusive based on Supreme Court precedent and the discovery rules, as his records are
25 privileged and confidential. *Id.* at 2. Haines claims that he sent a proposed protective order to
26 defendants but that they “made no response.” *Id.* at 6. Haines requests that the District Court
27 enter a standard protective order that classifies any released medical records as confidential. *Id.*

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1 at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible
2 evidence.” *Id.*

3 Here, Haines’s medical records fall within the scope of discoverable information under
4 Rule 26, because the records are relevant to each of the claims that Haines brings against
5 defendants. Each of the claims in the operative complaint is based on defendants’ allegedly
6 wrongful detention, treatment, and evaluation of Haines. Second Am. Comp. ¶¶ 165-210. Haines
7 claims that defendants lacked probable cause to detain, treat, or evaluate him based on
8 California’s Welfare and Institutions Code § 5150, which allows certain persons “upon probable
9 cause” to detain, treat, and evaluate for seventy-two hours any person believed to be a danger to
10 himself as a result of a mental disorder. CAL. WELF. & INST. CODE § 5150. Whether defendants’
11 detention, treatment, or evaluation of Haines was unlawful depends on whether defendants
12 actually had probable cause to believe that Haines was a danger to himself as a result of a mental
13 disorder. The medical records requested by defendants are reasonably calculated to lead to the
14 discovery of admissible evidence on this issue.

15 2. Haines waived any privilege applicable to the medical records at issue

16 When a plaintiff puts his medical records at issue by bringing claims against his medical
17 services providers based on allegations of unlawful involuntary detention in violation of
18 California’s Welfare and Institutions Code § 5150, the plaintiff waives privilege to any medical
19 records that are relevant to his claims against the providers. *See, e.g., Rhodes v. County of*
20 *Placer*, 09-cv-00489, 2011 WL 130160, at *5 (E.D. Cal. Jan. 14, 2011) (holding that the plaintiff
21 waived privilege to her medical records by bringing claims against her medical service providers
22 based on alleged violations of § 5150, as the plaintiff’s complaint relies the plaintiffs’ privileged
23 communications with the providers).

24 Here, Haines put his medical records at issue by bringing claims against defendants based
25 on defendants’ detention, treatment, and evaluation of Haines under § 5150. Consequently,
26 Haines has waived any privilege with respect to any medical records that are relevant to these
27 claims.

28 The Court finds that the scope of the medical records that defendants seek to obtain from

1 Alta Bates is appropriate, as defendants seek records generated on December 4 and 5, 2009,
2 which are the dates during which Haines claims to have been detained by defendants.
3 Accordingly, this Court recommends that District Judge Gonzalez Rogers enter an order
4 compelling Alta Bates to release Haines' medical records in accordance with the subpoena
5 defendants served on Alta Bates. *See* CAL. CIV. CODE § 56.10(b)(1) (noting that a health care
6 provider may disclose a patient's medical information if it is compelled to do so by court order).

7 **B. Haines has not shown good cause for conducting his deposition telephonically**

8 A party noticing the deposition of another party may set the place of the deposition. FED.
9 R. CIV. P. 30(b)(1). A party noticing the deposition of another party also may set the method for
10 recording the testimony. FED. R. CIV. P. 30(b)(3)(A). "Unless the court orders otherwise,
11 testimony may be recorded by audio, audiovisual, or stenographic means." *Id.*

12 Here, Haines has not established grounds for conducting his deposition telephonically, as
13 he presents no facts showing that attending his deposition in person would cause him hardship of
14 any sort. Indeed, Haines lives in Berkeley, which is where the deposition is scheduled to take
15 place. Haines' reluctance to be deposed in person appears to be based on defendants' intent to
16 record his testimony by video. *See* Dkt. No. 67 at 1 (noting that Haines "has serious privacy
17 concerns about the taking of his deposition noticed for May 15, 2012"); *id.* at 7 (requesting that
18 his deposition "be taken by telephone rather than videotape"). Because this case is based on
19 claims arising out of an involuntary detention under § 5150, the Court finds that good cause exists
20 for allowing defendants to record Haines' deposition by video. Accordingly, the Court
21 recommends that District Judge Gonzalez Rogers require Haines to attend his deposition in
22 person and order that the deposition be recorded by video and stenographically.

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III. CONCLUSION

Because Haines' medical records are relevant to the claims and defenses in this action, and because Haines waived any privilege to the records by putting them at issue in the operative complaint, the Court recommends that District Judge Gonzalez Rogers issue an order compelling Alta Bates Medical Center to release Haines' medical records in accordance with the subpoena defendants issued to Alta Bates. *See* Subpoena, Dkt. No. 66, Ex. A at 4 (requesting "all health, medical and/or mental health records, including all electronically stored information, related to any service and/or treatment of Mark Haines on or around December 4, 2009 and/or December 5, 2009," and "all billing records reflecting services provided to Mark Haines on December 4 and 5, 2009"). The Court also recommends that District Judge Gonzalez Rogers require the parties to file in ECF a stipulated protective order that incorporates Haines' proposals with respect to the use of his medical records in this litigation. *See* Proposed Modifications to Protective Order, Nos. 1-4, Dkt. No. 67 at 6.

The Court further recommends that District Judge Gonzalez Rogers order Haines to appear in person at his deposition and order that Haines' deposition be recorded by video and stenographically.

The parties may file objections to this report and recommendation within fourteen days of the date this order is filed. *See* FED. R. CIV. P. 72(b).

IT IS SO ORDERED.

Date: May 13, 2012


Nathanael M. Cousins
United States Magistrate Judge