



1 subpoena out of the wrong district. Pursuant to Federal Rule of Civil Procedure 45(a)(2)(C),  
2 “a subpoena must issue . . . for production or inspection, if separate from a subpoena  
3 commanding a person’s attendance, *from the court for the district where the production or*  
4 *inspection is to be made.*” Plaintiff identifies the place of inspection on the subpoena form as  
5 Pleasant Valley State Prison. (Doc. No. 72 at 7.) Pleasant Valley State Prison is located in  
6 Coalinga, California. (*Id.* at 2.) Coalinga is located in Fresno County, California, which is  
7 part of the Eastern District of California. 28 U.S.C. §84(b). Therefore, if Plaintiff wishes to  
8 serve a subpoena upon the custodian of medical records at Pleasant Valley State Prison, he  
9 must request a subpoena from the Eastern District of California. Accordingly, the Court denies  
10 Plaintiff’s request for a subpoena pursuant to Rule 45 as it appears this Court is not the proper  
11 issuing court.

12 Although Plaintiff’s motion seeks a subpoena to obtain the medical records from a non-  
13 party, Plaintiff indicates that he has requested these documents from Defendants, who have  
14 objected to Plaintiff’s request by stating that Plaintiff can obtain these records “through the  
15 institution.”<sup>2</sup> (Doc. No. 72 at 3.) Plaintiff is seeking records that are likely to be in the  
16 possession, custody and/or control of Defendants, as he seeks his Pleasant Valley State Prison  
17 unit health record<sup>3</sup> (Volumes I and II) in this §1983 action based upon inadequate medical care.  
18 As the Eastern District of California has stated, “it is highly unlikely that Defendants do not  
19 have possession, custody, or control of these documents, assuming that the documents exist  
20 somewhere within the California Department of Corrections and Rehabilitation.”<sup>4</sup> Carter v.  
21 Dawson, 2010 WL 1796798 \*2 (E.D. Cal. May 4, 2010). “A party may be ordered to produce  
22 a document in the possession of a non-party entity if that party has a legal right to obtain the

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24 <sup>2</sup>15 C.C.R. §3370(c) provides that an inmate “may review their own case records file and unit  
25 health records.” Plaintiff states that he has attempted to review his health records by requesting to  
26 review them through the prison procedures, but was told that the “records could not be found.”

26 <sup>3</sup>“Unit health records means a patient’s health record that includes all records of care and  
27 treatment rendered to an inmate-patient.” 15 C.C.R. §3370(a).

27 <sup>4</sup>Plaintiff’s health record should be at Pleasant Valley State Prison, as Title 15 of the California  
28 Code of Regulations, section 3355(b) requires that, “[t]he health record of each new arrival shall be  
reviewed to determine the need for previously prescribed medications or continuing treatment for  
unusual or chronic health problems.”

1 document or has control over the entity who is in possession of the document.” Soto v. City  
2 of Concord, 162 F.R.D. 603, 619 (N.D.Cal.1995) (citing Buckley v. Vidal, 50 F.R.D. 271, 274  
3 (S.D.N.Y.1970)).

4 Although the California Department of Corrections and Rehabilitation (“CDCR”) is not  
5 a party to this action, Defendants Paulette Finander and K. Ball, who are employed by CDCR  
6 as Chief Medical Officers, “can generally obtain documents such as the ones at issue here by  
7 simply requesting them from CDCR.” Carter, 2010 WL 1796798 \*2; see also Johnson v.  
8 Vord, 2008 WL 3892106 \*2 (E.D. Cal. Aug. 21, 2008) (requesting defense counsel contact the  
9 prison litigation office to facilitate a review of Plaintiff’s medical file for him). As such,  
10 Defendants Finander and Ball, as employees of CDCR, are to respond to Plaintiff’s request for  
11 a subpoena on or before **October 15, 2010**. Defendants shall set forth facts that persuasively  
12 demonstrate why they do not have access to these documents. If Defendants do have access,  
13 Defendants shall address any reasons why they object to supplying Plaintiff with the  
14 documents in response to his request or why they object to facilitating a review of the records  
15 for Plaintiff, as resolving this matter informally would avoid unnecessary expenditure of  
16 resources.

17 **IT IS SO ORDERED.**

18 DATED: October 1, 2010

19   
20 **BERNARD G. SKOMAL**  
United States Magistrate Judge

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