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SOUTHERN DISTRICT OF CALIFORNIA

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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
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10 ROBERT SCOFIELD,

11 Plaintiff,

12 vs.

13 BALL, et al.,

14 Defendants.  
15  
16

CASE NO. 11cv378-BEN  
(WMc)

**ORDER DENYING  
PLAINTIFF'S MOTION FOR  
SUBPOENA DUCES TECUM  
AND GRANTING  
DEFENDANTS' EX PARTE  
MOTION TO CONTINUE  
EXPERT WITNESS  
DEADLINES**

**(ECF Nos. 94, 97)**

17 ***Introduction***

18 Plaintiff, Robert Scofield, proceeds *pro se* in this civil rights action under 42  
19 U.S.C. § 1983.<sup>1</sup> Plaintiff's claims concern the conditions of his confinement at R.J.  
20 Donovan Correctional Facility ("RJD"), Centinela State Prison ("CEN"), New  
21 Folsom State Prison ("NFSP"), High Desert State Prison ("HDSP"), Salinas Valley  
22 State Prison ("SVSP"), and Calipatria State Prison ("CSP"). Plaintiff alleges  
23 members of the medical staff at the various institutions listed above, as well as  
24 California Department of Corrections and Rehabilitation ("CDCR") inmate appeals  
25 employees, violated his Eighth Amendment rights because they failed to inform him  
26 he tested positive for hepatitis C and failed to treat him for hepatitis C.  
27

28 <sup>1</sup> The Court permitted Plaintiff to proceed *in forma pauperis* ("IFP") under  
Federal Rule of Civil Procedure 4(c)(3) for purposes of service only. (ECF No. 28).

1 Presently before the Court is Plaintiff's motion for three subpoena duces  
2 tecum (ECF No. 94) and Defendants' *ex parte* motion to continue expert witness  
3 deadlines (ECF No. 97). Both motions are unopposed.

4 ***Plaintiff's Motion***

5 Plaintiff requests the Court issue three subpoena duces tecum to be served by  
6 the U.S. Marshal service on: (1) Foundation Laboratory, 620 S. Glendora Avenue,  
7 Glendora, California, 91740; (2) Unilab, 3714 Northgate Boulevard, Sacramento,  
8 California, 95834; and, (3) Pioneers Memorial Healthcare District ("Pioneers"), 207  
9 West Legion Road, Brawley, California, 92227. (ECF No. 94). Specifically,  
10 Plaintiff's requests are as follows:

11 (A) Foundation Laboratory:

12 Request No. 1) Identify and produce any and all blood lab test results  
13 and diagnosis conducted in my name and I.D. No. Robert Scofield,  
14 P14570, pertaining to hepatitis C blood test. Submitted 08/10/05.  
15 Request No. 2) Identify and produce the names of any and all parties  
16 whom were responsible for the medical testing and/or diagnosis of  
17 blood lab test for hepatitis C conducted in my name and I.D. No.  
18 Robert Scofield, P14570, submitted to the lab on 08/10/05. Request  
19 No. 3) Identify and produce the names of any and all parties who  
20 received copies of or were made aware of any blood lab test results and  
21 or diagnosis pertaining to hepatitis C blood tests submitted in my name  
22 and I.D. No. Robert Scofield, P14570, on 08/10/05. Request No. 4)  
23 Identify and produce the names of any/all parties at Salinas Valley  
24 State Prison whom Foundation Laboratory provided or returned any  
25 blood lab test results for hepatitis C conducted in my name and I.D.  
26 No. Robert Scofield, P14570, on 08/10/05 and reported 08/13/05.

21 (B) Unilab:

22 Request No. 1) Identify any and all blood lab test results and/or  
23 diagnosis results conducted in my name and I.D. No. (Robert Scofield  
24 P14570), pertaining to hepatitis C and produced said results. (Time  
25 frame November 2001). Request No. 2) Identify and produce the names  
26 of any and all parties who were responsible for the medical testing of  
27 any and all blood samples submitted in my name and I.D. No. (Robert  
28 Scofield, P14570) for testing of hepatitis C viral infection. Request No.  
3) Identify and produce the names of any and all parties who received  
copies of or were made aware of any blood lab test results and or  
diagnosis pertaining to hepatitis C, submitted in my name and I.D. No.  
(Robert Scofield, P14570), in November 2001. Request No. 4) Identify  
and produce the policies and procedures for returning results of  
diagnostic blood lab test results to the prison, when one of the prisons  
submits an inmate's blood samples for testing of diseases to the lab.  
Request No. 5) Identify and produce the names of any and all

1 persons/medical personnel at New Folsom Prison who received, signed  
2 for, or were faxed to any diagnostic blood lab test results for viral  
3 hepatitis C conducted in my name or prison I.D. No. (Robert Scofield,  
4 P14570), in November 2001.

4 (C) Pioneers Memorial Healthcare District:

5 Request No. 1) Identify and produce any and all test results, x-rays,  
6 diagnosis results, conducted in my name and CDCR# P14570 Cal  
7 (Patient II) Pertaining to hepatitis C liver biopsy. Request No. 2)  
8 Identify and produce any and all admission records showing the time  
9 and date patient number CDC P14570CAL was received for CT guided  
10 liver biopsy. Request No. 3) Identify and produce any and all medical  
11 images of patient CDC P14570CAL's injury and/or infected/diseased  
12 are of his liver. Request No. 4) Identify and produce any and all  
13 documents relating to Pioneers Memorial Healthcare District's policies  
14 and procedures concerning the testing, admittance and/or treating of  
15 prison patients. Request No. 5) Identify and produce any and all  
16 documents relating to the type of treatment, testing, or observation  
17 patient number CDC P14570CAL received on 06/02/08 at Pioneers  
18 Memorial Healthcare District. Request No. 6) Identify and produce the  
19 names and job descriptions of any parties who were responsible for the  
20 medical treatment, testing, diagnosis, and admittance of patient number  
21 CDC P14570CAL on 06/02/08.  
22 (ECF No. 94)

15 ***Applicable Law***

16 A subpoena duces tecum is a discovery tool used for the production of  
17 specified documents or other tangible objects for inspection. Fed. R. Civ. P.  
18 45(a)(2)(c). The Clerk of Court is obliged to issue blank subpoenas duces tecum  
19 upon the request of a party. *See* Fed. R. Civ. P. 45(a)(3) (“[t]he clerk must issue a  
20 subpoena, signed but otherwise blank, to a party who requests it”). *However*, the  
21 court's authorization of a subpoena duces tecum requested by an *in forma pauperis*  
22 plaintiff is subject to limitations.<sup>2</sup> Limitations include the relevance of the  
23 information sought as well as the burden and expense to the non-party in providing  
24 the requested information. Fed. R. Civ. P. 26, 45. A motion for issuance of a  
25 subpoena duces tecum should be supported by clear identification of the documents  
26

27 <sup>2</sup> Because personal service of a subpoena duces tecum is required, Federal Rule  
28 of Civil Procedure 45(b), “[d]irecting the Marshal's Office to expend its resources  
personally serving a subpoena is not taken lightly by the court.” *Austin v. Winett*, 2008  
WL 5213414, \*1 (E.D.Cal. 2008); 28 U.S.C. § 1915(d).

1 sought and a showing that the records are obtainable only through the identified  
2 third party. *See, e.g., Davis v. Ramen*, 2010 WL 1948560, \*1 (E.D. Cal. 2010);  
3 *Williams v. Adams*, 2010 WL 148703, \*1 (E.D. Cal. 2010). The “Federal Rules of  
4 Civil Procedure were not intended to burden a non-party with a duty to suffer  
5 excessive or unusual expenses in order to comply with a subpoena duces tecum.”  
6 *Badman v. Stark*, 139 F.R.D. 601, 605 (M.D. Pa.1991); *see also, United States v.*  
7 *Columbia Broadcasting Sys., Inc.*, 666 F.2d 364 (9th Cir. 1982) (court may award  
8 costs of compliance with subpoena to non-party). Non-parties are “entitled to have  
9 the benefit of this Court's vigilance” in considering these factors. *Badman*, 139  
10 F.R.D. at 605.

### 11 ***Analysis***

12 The Court denies Plaintiff's requests for blood lab results and other test  
13 results provided by Foundation Laboratory, Unilab, and Pioneers because Plaintiff  
14 already possesses the test results. Plaintiff attached to his Second Amended  
15 Complaint (“SAC”) what appear to be the same blood lab test and test results he  
16 requests in the present motion. (ECF No. 73 at 52-87). Specifically, Plaintiff's SAC  
17 includes the blood lab test results from Foundation Laboratory and Unilab  
18 performed on the dates identified by Plaintiff in his request for production, as well  
19 as pathology and radiology reports prepared by Pioneers. Furthermore, Plaintiff  
20 admits in the SAC his “liver biopsy” was present in his prison health record. (ECF  
21 No. 73 at 35). Plaintiff does not argue the blood lab test or test results he possesses  
22 are insufficient, inadequate, or incomplete, nor does Plaintiff argue these third-  
23 parties have documentation of other testing which he does not possess or which he  
24 cannot obtain from the named Defendants. Therefore, to the extent Plaintiff's  
25 anticipated subpoenas seek blood lab test results or other test results, Plaintiff fails  
26 to show the records are obtainable only through the identified third party. *See, e.g.,*  
27 *Davis v. Ramen*, 2010 WL 1948560, \*1 (E.D. Cal. 2010); *Williams v. Adams*, 2010  
28 WL 148703, \*1 (E.D. Cal. 2010). Accordingly, Plaintiff's requests for blood lab test

1 results from Foundation Laboratory and Unilab are denied, and Plaintiff's request  
2 for "all test results, x-rays, diagnosis results" from Pioneers Memorial Healthcare  
3 District are also denied.

4 The Court also denies Plaintiff's requests for Foundation Laboratory, Unilab,  
5 and Pioneers to identify and produce the names of any party that conducted the test  
6 or received a copy of the test. The Court denies these requests because (1) the  
7 requests fail to clearly identify the documents sought, (2) some of this information  
8 is already contained in the blood lab test results Plaintiff possesses, and (3) Plaintiff  
9 fails to articulate why the identity of persons who received the blood lab test results  
10 at SVSP of NFSP cannot be revealed through discovery targeted at named parties  
11 who work at SVSP or NFSP. Fed. R. Civ. P. 33. Accordingly, Plaintiff's requests for  
12 Foundation Laboratory, Unilab, and Pioneers to identify and produce the names of  
13 any party that conducted the test or received a copy of the test are denied.

14 In addition, the Court denies Plaintiff's request for Unilab's policies and  
15 procedures for returning results of diagnostic blood lab tests to the prison. The  
16 Court denies this request because Plaintiff does not articulate, nor can the Court  
17 find, any relevance of Unilab's policies to the allegations in Plaintiff's complaint.  
18 Under Rule 26 of the Federal Rules of Civil Procedure, "[p]arties may obtain  
19 discovery regarding any non-privileged matter that is relevant to any party's claim  
20 or defense." Fed. R. Civ. P. 26(b). Here, there is no dispute Unilab received  
21 Plaintiff's blood and a request for testing and returned the blood test results to the  
22 prison. Defendants do not dispute the results or contend they never received the  
23 results. Rather, the parties dispute whether or not Defendants disclosed the results to  
24 Plaintiff after receiving them, and whether Defendants failed to treat Plaintiff for  
25 hepatitis C despite knowing he was diagnosed with hepatitis C. Therefore, non-  
26 party Unilab's policies and procedures for returning a prisoner's lab results to the  
27 prison are not relevant to the claims in this action.

28 Similarly, the Court denies Plaintiff's request for Pioneers' policies and

1 procedures “concerning the testing, admittance and/or treating of prison patients.”  
2 Pioneers is not a party to this action and Plaintiff does not articulate, nor can the  
3 Court find, the relevance of Pioneers’ testing, admittance, or treating policies  
4 regarding prisoners generally to the specific allegations in Plaintiff’s complaint. For  
5 these same reasons, the Court also denies Plaintiff’s request for the job descriptions  
6 of the individuals who treated him at Pioneers. The requested information is not  
7 relevant to the claims in this action.

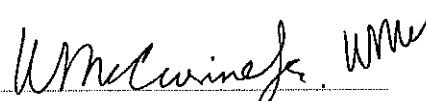
8 In short, Plaintiff seeks information he either already has or could obtain from  
9 the named Defendants, or information irrelevant to the claims and defenses in this  
10 action. Accordingly, Plaintiff’s motion is denied.

11 ***Defendants’ Ex Parte Motion***

12 Defendants move *ex parte* to continue the deadline to exchange expert reports  
13 from November 1, 2013 to November 14, 2013, with any rebuttal reports or  
14 designations to be served on November 21, 2013. Defendants note Plaintiff does not  
15 object to their request. Defendants contend their expert will not be able to complete  
16 her report by the November 1, 2013 deadline. Defendants note the two week  
17 extension will not impact any other deadlines. Having considered Defendants’  
18 motion, the Court finds good cause to grant Defendants’ request. The deadline to  
19 exchange expert reports is now November 29, 2013; rebuttal reports must be served  
20 no later than December 6, 2013.

21 IT IS SO ORDERED.

22 DATED: November 15, 2013

23  
24   
25 Hon. William McCurine, Jr.  
26 U.S. Magistrate Judge  
27 United States District Court  
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