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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GAVIN B. DAVIS,

12 Plaintiff,

13 v.

14 SAN DIEGO DISTRICT ATTORNEY,
15 MR. LEONARD TRINH,

16 Defendants.

Case No.: 17CV654 JLS (BGS)

**ORDER DENYING REQUEST FOR
RULE 45 SUBPOENA / REQUEST
FOR RELIEF VIA DECLARATORY
DECREE**

[ECF No. 42]

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18 Plaintiff Gavin B. Davis has filed a request for a Federal Rule of Civil Procedure
19 45 subpoena / request for relief via declaratory decree. [ECF 42] He seeks issuance of a
20 “broad subpoena of all communications between any of the Defendants . . . and the Clark
21 County District Attorney’s Office.” (*Id.* at 14, Section C, Request for Relief.)

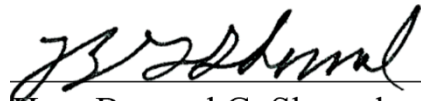
22 “[S]ubpoenas under Rule 45 are discovery, and must be utilized within the time
23 period permitted for discovery in a case.” *See Integra Lifesciences I, Ltd. V. Merck*
24 *KGaA*, 190 F.R.D. 556, 561 (S.D. Cal. 1999) (collecting cases). As the Court explained
25 in its July 14, 2017 Order denying issuance of a subpoena on a different issue, the Court
26 has not issued a case management order allowing discovery to commence because the
27 case is still at the motion to dismiss stage and the pleadings are not settled. (ECF 35.) A
28 motion to dismiss Plaintiff’s Second Amended Complaint has recently been granted.

1 (ECF 66.) If this case survives the motion to dismiss stage, the Court will set a Case
2 Management Conference and, after consulting with counsel for Defendants and Plaintiff,
3 issue an appropriate scheduling order governing, among other matters, appropriate
4 discovery.

5 Plaintiff's request for issuance of a Rule 45 subpoena is **DENIED**.

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7 **IT IS SO ORDERED.**

8 Dated: March 5, 2018

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10 Hon. Bernard G. Skomal
11 United States Magistrate Judge
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