

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Thao v. Lynch

Thao · No. 2:21-cv-0731 KJM AC P · Decided March 13, 2023

SUMMARY

The United States District Court for the Eastern District of California denied a defendant’s motion to quash subpoenas served on nonparty California Department of Corrections and Rehabilitation entities because the defendant lacked standing to challenge relevance, burden, or third-party privacy interests. The court also denied without prejudice the plaintiffs’ purported motion to compel and denied their request for sanctions because the motion was not properly noticed and served. The order concerns discovery related to prison housing decisions and the death of the plaintiffs’ family member.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 13, 2023
DOCKET	2:21-cv-0731 KJM AC P
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Swarthout moved to quash subpoenas served by plaintiffs on nonparties California Department of Corrections and Rehabilitation and California State Prison-Sacramento. Plaintiffs opposed the motion, sought to compel compliance, and requested sanctions.
STANDARD OF REVIEW	Not applicable; the order resolved discovery motions.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- discovery dispute
- civil procedure
- section 1983
- sanctions

PRACTICE AREAS

- civil procedure
- civil rights
- discovery

QUESTIONS PRESENTED

1. Whether a party has standing to move to quash subpoenas served on nonparties based on relevance, undue burden, or privacy and confidentiality concerns belonging to third parties.
2. Whether plaintiffs' request to compel compliance with the subpoenas was properly before the court when it was not separately noticed or identified as a cross-motion and the record did not establish proper service on the nonparties.
3. Whether sanctions should be imposed when the motion to compel was denied.

HOLDINGS

1. A party generally lacks standing to move to quash a subpoena served on a nonparty, except to assert a personal right or privilege in the information sought. Swarthout therefore lacked standing to object on relevance, undue-burden, privacy, or confidentiality grounds that belonged to the nonparties or third parties.
2. Plaintiffs' putative motion to compel was not properly before the court because it was not separately noticed or properly identified as a cross-motion, and the record did not establish that the nonparties had been properly served. The motion to compel was denied without prejudice.
3. Sanctions were denied because plaintiffs' motion to compel was denied.

KEY QUOTATIONS

“The general rule, however, is that a party has no standing to quash a subpoena served upon a third party, except as to claims of privilege relating to the documents being sought.” (at 2)

“A party cannot seek to quash a Rule 45 subpoena except to the extent that it has “a personal right or privilege in the information sought to be disclosed.”” (at 3)

“Plaintiffs’ putative motion to compel is a separate matter from the motion to quash, and therefore must be separately noticed in accordance with the applicable rules.” (at 3)

FACTUAL BACKGROUND

Plaintiffs alleged that prison officials were responsible for the death of their son or brother, who was murdered by his cellmate, Negrete. Their remaining claims were against Swarthout, a prison psychiatrist, after the claims against warden Lynch were dismissed. Plaintiffs sought documents and depositions from CDCR and CSP-Sacramento concerning housing decisions generally and the decision to house the decedent with Negrete. Swarthout objected based on privilege, privacy, relevance, burden, and plaintiffs' alleged violation of a protective order.

PROCEDURAL HISTORY

Plaintiffs filed an amended civil-rights complaint concerning the death of their son or brother, who was murdered by his cellmate. The district judge dismissed the claims against defendant Lynch, while the claims against Swarthout remained pending and no Doe defendants had been substituted. During discovery, plaintiffs served document-production subpoenas and deposition notices on CDCR and CSP-Sacramento. The magistrate

judge denied Swarthout's motion to quash for lack of standing and denied plaintiffs' motion to compel and request for sanctions without prejudice because those requests were not properly noticed and served.

DISPOSITION

other

CASES CITED

- Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)
- Cal. Sportfishing Prot. All. v. Chico Scrap Metal, Inc., 299 F.R.D. 638, 643 (E.D. Cal. 2014)
- Windsor v. Martindale, 175 F.R.D. 665, 668 (D. Colo. 1997)
- H.I.S.C., Inc. v. Franmar Int'l Imps., Ltd., No. 16-cv-480 BEN (WVG), 2018 WL 2095738, at *2-3, 2018 U.S. Dist. LEXIS 76879, at *6, 8 (S.D. Cal. May 7, 2018)
- G.K. Las Vegas Ltd. P'ship v. Simon Prop. Grp., Inc., No. 04-cv-1199 DAE GWF, 2007 WL 119148, at *3, 2007 U.S. Dist. LEXIS 97869, at *12 (D. Nev. Jan. 9, 2007)
- Freed v. Home Depot U.S.A., Inc., No. 18-cv-359 BAS (LL), 2019 WL 582346, at *2, 2019 U.S. Dist. LEXIS 23763, at *6 (S.D. Cal. Feb. 13, 2019)
- Chevron Corp. v. Donziger, No. 12-mc-80237 CRB (NC), 2013 WL 4536808, at *4, 2013 U.S. Dist. LEXIS 119622, at *14 (N.D. Cal. Aug. 22, 2013)

OPINION

Thao v. Lynch

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 CHAKONG THAO, et al., No. 2:21-cv-0731 KJM AC P 12 Plaintiffs, 13 v. ORDER 14
LYNCH, et al., 15 Defendants. 16 17 This case is before the court on defendant Swarthout's
motion to quash (ECF No. 40), 18 which plaintiffs oppose (ECF No. 44). The parties have filed a
joint discovery statement in 19 compliance with Local Rule 251 and the undersigned's standing
order.¹ ECF No. 50. 20 I. Relevant Background 21 Plaintiffs filed a first amended complaint
against Swarthout, a prison psychiatrist; Lynch, 22 warden at California State Prison (CSP)-
Sacramento; and Does 1-10, in which they alleged the 23 defendants were responsible for the
death of their son/brother, who was murdered by his cellmate, 24 Negrete. ECF No. 6. Swarthout
and Lynch moved to dismiss the complaint (ECF Nos. 8, 18), 25 and the motion was granted as to
Lynch (ECF No. 30). To date, no Doe defendants have been 26 27 1 The parties are advised that
the undersigned's standing order has been updated to reflect amendments to Local Rule 251 that
provide that joint discovery statements are to be filed at least 28 fourteen days before the
scheduled hearing date. 1 substituted with a named individual,² and this case currently proceeds

on plaintiffs' claims against 2 defendant Swarthout. 3 Plaintiffs served two subpoenas and a deposition notice on non-parties California 4 Department of Corrections and Rehabilitation (CDCR) and CSP-Sacramento seeking production 5 of five categories of documents and to depose the person(s) most knowledgeable in eleven 6 categories. ECF No. 52. All of the specified categories seek information related to housing 7 decisions generally and to the specific decision to house the decedent with Negrete. *Id.* at 5-8. 8 Defendant Swarthout seeks to quash the subpoenas on the grounds that they seek 9 disclosure of protected matters, plaintiffs have already disregarded the protective order in this 10 case, the discovery sought is irrelevant to the claims against Swarthout, the information sought 11 could be obtained through less burdensome methods, and the expenditure of time and money 12 required to attend and order transcripts for up to eleven depositions would impose a clear burden 13 on defendant. ECF No. 40; ECF No. 50 at 2-5. 14 Plaintiff opposes the motion and argues that defendant has no standing to bring a motion 15 to quash, the discovery sought is relevant to the claims against the Doe defendants, interrogatories 16 to defendant would be unlikely to yield the information sought and if provided would be hearsay 17 at best, and the requests are not burdensome as each category would require only brief 18 questioning of the deponent. ECF No. 44 at 2-6, 10-16; ECF No. 50 at 7-21. Plaintiffs also seek 19 to compel compliance with the subpoenas and sanctions against defense counsel. ECF No. 44 at 20 6-8, 15-17; ECF No. 50 at 7, 20-21. 21 //// 22 2 In ruling on the motion to dismiss, the district judge noted that 23 [i]f a defendant's identity is unknown when the complaint is filed, 24 plaintiffs have an opportunity through discovery to identify them. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). But the 25 court will dismiss such unnamed defendants if discovery clearly would not uncover their identities or if the complaint would clearly 26 be dismissed on other grounds. *Id.* The federal rules also provide for dismissing unnamed defendants that, absent good cause, are not 27 served within 90 days of the complaint. Fed. R. Civ. P. 4(m). 28 ECF No. 30 at 1 n.1. 1 II. Discussion 2 A. Motion to Quash 3 Defendant seeks to quash a Rule 45 subpoena issued by plaintiffs to non-parties CDCR 4 and CSP-Sacramento. ECF No. 40. "As provided in Rule 45, a nonparty may be compelled to 5 produce documents and tangible things or to permit an inspection." Fed. R. Civ. P. 34(c). Rule 6 45 permits a party to issue a subpoena commanding the person to whom it is directed to "attend 7 and testify; produce designated documents, electronically stored information, or tangible things in 8 that person's possession, custody, or control; or permit the inspection of premises." Fed. R. Civ. 9 P. 45(a)(1)(A)(iii). The recipient may object to a subpoena, or move to quash or modify it. Fed. 10 R. Civ. P. 45(d)(2)(b), 45(d)(3). 11 The Ninth Circuit has yet to address the question of whether a party has standing to bring a motion to quash since usually only the 12 subpoenaed non-party may move to quash. The general rule, however, is that a party has no standing to quash a subpoena served 13 upon a third party, except as to claims of privilege relating to the documents being sought. 14 15 *Cal. Sportfishing Prot. All. v. Chico Scrap Metal, Inc.*, 299 F.R.D. 638, 643 (E.D. Cal. 2014) 16 (citing *Windsor v. Martindale*, 175 F.R.D. 665, 668 (D. Colo. 1997)). Under this general rule, 17 defendant lacks standing to

object to the subpoenas on grounds of relevance or undue burden, and 18 to the extent she relies on such arguments, the motion is denied.³ See *H.I.S.C., Inc. v. Franmar 19 Int'l Imps., Ltd.*, No. 16-cv-480 BEN (WVG), 2018 WL 2095738, at *2-3, 2018 U.S. Dist. 20 LEXIS 76879, at *6, 8 (S.D. Cal. May 7, 2018) (with respect to both subpoenas duces tecum and 21 deposition subpoenas “[a] party has no standing to move to quash a subpoena on the ground that 22 it is unduly burdensome when the non-party has not objected on that basis” (citations omitted)); 23 *G.K. Las Vegas Ltd. P’ship v. Simon Prop. Grp., Inc.*, No. 04-cv-1199 DAE GWF, 2007 WL 24 119148, at *3, 2007 U.S. Dist. LEXIS 97869, at *12 (D. Nev. Jan. 9, 2007) (“A party’s objection 25 that the subpoena issued to the non-party seeks irrelevant information or imposes an undue 26 27 3 The court further notes that any argument that the number of depositions would be unduly burdensome is entirely speculative at this point, as there is no indication how many of the 28 categories identified by plaintiffs would require a separate individual to be deposed. 1 burden on the nonparty are not grounds on which a party has standing to move to quash a 2 subpoena issued to a non-party, especially where the non-party, itself, has not objected.” (citation 3 omitted)). 4 A party cannot seek to quash a Rule 45 subpoena except to the extent that it has “a 5 personal right or privilege in the information sought to be disclosed.” *Freed v. Home Depot 6 U.S.A., Inc.*, No. 18-cv-359 BAS (LL), 2019 WL 582346, at *2, 2019 U.S. Dist. LEXIS 23763, at 7 *6 (S.D. Cal. Feb. 13, 2019) (quoting *Chevron Corp. v. Donziger*, No. 12-mc-80237 CRB (NC), 8 2013 WL 4536808, at *4, 2013 U.S. Dist. LEXIS 119622, at *14 (N.D. Cal. Aug. 22, 2013)). To 9 the extent defendant makes arguments regarding privacy or confidentiality concerns related to the 10 discovery sought, it is clear that she is making an argument related to the privacy and security 11 concerns of third parties and therefore does not have standing to raise these concerns.⁴ These are, 12 of course, all objections that the CDCR and CSP-Sacramento are free to raise, but they do not 13 implicate any right or privilege belonging to defendant and her motion to quash lacks standing, 14 and therefore must be denied. 15 B. Motion to Compel 16 To the extent plaintiffs are attempting to compel compliance with the subpoenas against 17 the CDCR and CSP-Sacramento in conjunction with their opposition to the motion to quash, such 18 a motion has not been properly identified as a cross-motion or separately noticed and is therefore 19 not properly before this court. Plaintiffs’ putative motion to compel is a separate matter from the 20 motion to quash, and therefore must be separately noticed in accordance with the applicable rules. 21 The court further notes that it is not clear whether the non-parties have been properly served. 22 Although the record reflects that defendant’s counsel has represented these entities on matters 23 related to the subpoenas (ECF No. 40-1 at 1-2), he did not appear on their behalf on the record in 24 this case until filing a supplement to plaintiffs’ request to seal documents (ECF No. 53). The 25 non-parties’ appearance in this case occurred after plaintiffs filed their purported motion to 26 4 Despite defendant’s lack of standing to raise these concerns, the court is troubled by plaintiffs’ 27 apparent violation of the protective order in this case based upon their assumption that because confidential documents were produced by the CDCR and CSP-Sacramento “they are viewable by

28 anyone in CDCR and CSP-Sacramento.” ECF No. 50 at 34. 1 | compel (ECF No. 44), so they
could not have been properly served through the court’s electronic 2 || filing system and there is no
indication of any other service. For these reasons, the motion to 3 || compel will be denied without
prejudice. Because plaintiffs’ motion to compel is being denied, 4 || their request for sanctions will
also be denied. 5 Accordingly, IT IS HEREBY ORDERED that: 6 1. Defendant’s motion to quash
(ECF No. 40) is DENIED for lack of standing; and 7 2. Plaintiffs’ motion to compel and request
for sanctions (ECF No. 44) is DENIED 8 | without prejudice to a motion that is properly noticed
and served. 9 || DATED: March 13, 2023 ~ 10 ththienr—Chnp—e_

ALLISON CLAIRE

11 UNITED STATES MAGISTRATE JUDGE

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