

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 9982

JOHN T. HARRIOTT, M.D.,
Plaintiff,

v.

CENTRAL CAROLINA SURGICAL EYE
ASSOCIATES, P.A., C. RICHARD EPES,
M.D., J. MARK McDANIEL, JR., JOHN
D. MATTHEWS, M.D., BESSIE K. EPES
and SOUTHEASTERN CATARACT
LASER CENTER, PLLC,
Defendants.

**ORDER ON OBJECTIONS TO
SUBPOENAS DUCES TECUM**

THIS MATTER is before Court on HUTA Leasing Company, The Greensboro Ophthalmology ASC, LLC (“ASC”), and EMS Partners, LLC’s (“EMS Partners”) (collectively the “Objecting Non-Parties”) objections to the subpoenas duces tecum issued and served upon them by Plaintiff John T. Harriott, M.D. (“Plaintiff”) on January 21, 2015 and the Objecting Non-Parties’ request that Plaintiff pay their reasonable expenses incurred in this Objection in the above-captioned matter. After reviewing the Court file and the Objection and Supporting Documents, the Court **FINDS, CONCLUDES** and **ORDERS** as follows:

The Objecting Non-Parties base their primary objection to Plaintiff’s subpoenas duces tecum on their contention that a subpoena duces tecum must be issued in conjunction with a proceeding in which testimony is to be received. The Court agrees that a subpoena duces tecum may be used to compel a party to produce “records, books, papers, documents, or tangible things, patently material to the inquiry, in the context of a discovery deposition, hearing, trial or other [testimonial] proceeding.” *Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644, 648, 531 S.E.2d 883, 887 (2000) (citations and quotations omitted). A subpoena duces tecum, however, can also

be used to compel a nonparty to produce documents without a concurrent request to testify. G. Gray Wilson, *North Carolina Civil Procedure* § 45-3 (3rd ed.) (“A subpoena duces tecum may be used in conjunction with a discovery deposition, hearing, trial or other proceeding in which testimony is to be received, *or may be issued separately.*”) (citing N.C. R. Civ. P. 45(a)(2)) (emphasis added). See *Kelley v. Agnoli*, 205 N.C. App. 84, 695 S.E.2d 137 (2010) (requiring non-party attorney to comply with subpoena duces tecum by producing a privilege log even though the attorney was not also scheduled to provide testimony); *AARP v. Am. Family Prepaid Legal Corp.*, 2007 NCBC 4 ¶ 15 (N.C. Super. Ct. Feb. 23, 2007), <http://www.ncbusinesscourt.net/2007%20NCBC%204.pdf> (explaining that a subpoena duces tecum can be issued on a non-party to produce documents). See generally *Blue Ridge Pediatric & Adolescent Med., Inc. v. First Colony Healthcare, LLC*, 2012 NCBC 45 ¶¶ 42 (N.C. Super. Ct. Aug. 9, 2012), http://www.ncbusinesscourt.net/opinions/2012_NCBC_45.pdf, (“[T]he use of [a subpoena duces tecum] for purposes of compelling production of documents from [a non-party is] a proper tool for obtaining discoverable material.”); *Kilgo*, 138 N.C. App. at 648, 531 S.E.2d at 887 n.5 (2000) (“A subpoena duces tecum is appropriate to make discovery of documentary evidence held by a non-party.”).

In this instance, the Objecting Non-Parties are not parties to this litigation, so Plaintiff was not required to issue concurrent requests for testimony with the subpoenas duces tecum. Consequently, Plaintiff’s subpoenas duces tecum are appropriate to compel the Objecting Non-Parties to produce documents, even though Plaintiff did not issue contemporaneous discovery requests requiring the Objecting Non-Parties to also provide testimony. See *id.*

The Objecting Non-Parties further contend that Plaintiff’s subpoenas duces tecum are unreasonable and overly oppressive because the subpoenas require them to produce documents

not relevant and material to the underlying litigation and not reasonably calculated to lead to the discovery of admissible evidence. Based on its review of the requests and the information of record in this matter, the Court disagrees with the Objecting Non-Parties' contentions and finds that Plaintiff's subpoenas duces tecum seek relevant and material information that is reasonably calculated to lead to the discovery of admissible evidence.

WHEREFORE, the Objecting Non-Parties' objections to Plaintiff John T. Harriott, M.D.'s subpoenas duces tecum are **OVERRULED** and the Objecting Non-Parties' request that Plaintiff pay their reasonable expenses incurred in this Objection is **DENIED**. Each Objecting Non-Party is hereby **ORDERED** to produce all non-privileged documents responsive to the subpoena duces tecum Plaintiff served upon that Objecting Non-Party.

SO ORDERED, this the 12th day of February, 2015.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases