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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARMON WARREN,

CASE NO. 1:03-cv-06336-SKO PC

Plaintiff,

ORDER DENYING MOTION FOR ISSUANCE
OF SUBPOENA DUCES TECUM AS
PREMATURE

v.

S. SHAWNEGO,

(Doc. 42)

Defendant.

Plaintiff Carmon Warren, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 29, 2003. This action is proceeding against Defendant Shawnego on Plaintiff's due process claim.

Subject to certain requirements set forth herein, Plaintiff is entitled to the issuance of a subpoena commanding the production of documents from a non-party, Fed. R. Civ. P. 45, and to service of the subpoena by the United States Marshal, 28 U.S.C. 1915(d). However, the Court will consider granting such a request *only if* the documents sought from the non-party are not equally available to Plaintiff and are not obtainable from Defendant through a request for the production of documents. Fed. R. Civ. P. 34. If Plaintiff wishes to make a request for the issuance of a records subpoena, he may file a motion requesting the issuance of a subpoena duces tecum that (1) identifies with specificity the documents sought and from whom, and (2) makes a showing in the motion that the records are only obtainable through that third party.

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1 In this instance, discovery just opened on April 18, 2011, making it impossible for Plaintiff
2 to have already sought the documents directly from Defendant.¹ Plaintiff's motion for a subpoena
3 shall be denied. Plaintiff may renew his motion only if he is unsuccessful in obtaining the
4 documents directly from Defendant in compliance with Rule 34 and the Court's discovery order.²

5 Accordingly, Plaintiff's motion for the issuance of a subpoena duces tecum, filed April 29,
6 2011, is HEREBY DENIED as premature.

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8 IT IS SO ORDERED.

9 **Dated: May 3, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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26 ¹ The deadline for the completion of all discovery is December 18, 2011, not June 18, 2011, as stated by
Plaintiff in his request.

27 ² If Defendant objects to Plaintiff's document production request, a motion to compel is the next required
28 step. If the Court rules that the documents are discoverable but Defendant does not have care, custody, and control
of them, Plaintiff may then seek a records subpoena. If the Court rules that the documents are not discoverable, the
inquiry ends.