

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARMON WARREN,

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

Plaintiff,

ORDER DENYING SECOND MOTION FOR
ISSUANCE OF SUBPOENA DUCES TECUM
AS PREMATURE

v.

S. SHAWNEGO,

(Doc. 45)

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. On June 10, 2011, Plaintiff filed his second motion seeking the issuance of a subpoena duces tecum.

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 Plaintiff has not demonstrated that he attempted to obtain the documents sought via a request
2 for the production of documents on Defendant.¹ Accordingly, Plaintiff's motion for the issuance of
3 a subpoena duces tecum, filed June 10, 2011, is HEREBY DENIED as premature.

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5 IT IS SO ORDERED.

6 **Dated: June 15, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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27 ¹ 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.