

1 This case is presently in the discovery phase. On September 6, 2011, Plaintiff filed a
2 motion to compel production of documents. (Doc. 118.)

3 **II. PLAINTIFF’S MOTION**

4 Under Rule 45, any party may serve a subpoena commanding a non-party “to attend and
5 testify; produce designated documents, electronically stored information, or tangible things in
6 that person’s possession, custody, or control; or permit the inspection of premises.” Fed. R. Civ.
7 P. 45(a)(1).

8 Plaintiff renews his motion for the Court to compel the Stanislaus County Sheriff’s
9 Department (“Sheriff’s Department”) to produce copies of grievances he filed.³ Plaintiff seeks
10 copies of “all grievance forms filed [by Plaintiff] from the date of June 2003 through January 22,
11 2004.” (Doc. 118 at 1:5-6.) Plaintiff asserts that he has made more than one request to the
12 Sheriff’s Department for the “information in question,” without success. (Doc. 118 at ¶1)
13 Plaintiff submits as evidence a written response from the Sheriff’s Department dated July 14,
14 2011, stating, “Mr. Benyamini, I have received your request and all files have been purged after
15 three years per policy.” (Exhibit to Doc. 118 at 2.) Plaintiff requests the Court to compel the
16 Sheriff’s Department to “un purge” his case file and produce copies of the documents requested.
17 (Doc. 18 at 1:4-5.)

18 After considering Plaintiff’s evidence, the Court concludes that the Sheriff’s Department
19 cannot produce the documents requested by Plaintiff. In the context of the response received by
20 Plaintiff, “purging of files after three years per policy” would indicate that the files have been
21 disposed of, no longer exist, and therefore cannot be “un-purged.” Thus, if the requested
22 documents are no longer in the Sheriff’s Department’s “possession, custody, or control,” then
23 production cannot be compelled by subpoena. A party, or non-party, cannot be compelled to
24 produce documents that no longer exist. Therefore, Plaintiff’s motion to compel shall be denied.

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26 ³On August 11, 2011, Plaintiff brought a motion to compel the Stanislaus County Sheriff’s Department to
27 produce copies of grievance forms, “and any similar documents,” pertaining to Plaintiff, dating from August 15,
28 2002 to January 22, 2004. (Doc. 109.) On August 22, 2011, the Court issued an order denying the motion to
compel, with leave to submit a written request for issuance of a subpoena, providing pertinent information, within
thirty days. (Doc. 113.)

1 **III. CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to compel, filed on
3 September 6, 2011, is DENIED.

4
5 IT IS SO ORDERED.

6 **Dated: September 22, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE