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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANK GONZALES,

CASE NO. 1:06-cv-01420-AWI-MJS (PC)

Plaintiff,

ORDER DENYING PLAINTIFF'S REQUEST
FOR ISSUANCE OF SUBPOENA

v.

(ECF No. 83)

MATTHEW L. CATE, et al.,

Defendants.

_____ /

Plaintiff Frank Gonzales, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 13, 2006. (Complaint, ECF No. 1.) On March 29, 2012, the United States Marshal returned the summons and USM-285 form for Defendant T. Mays, unexecuted. (Summons Return, ECF No. 68.) The Marshal attempted to secure a waiver of service and then attempted personal service, but was unsuccessful.

On July 13, 2012, Plaintiff filed a request for issuance of subpoena to permit discovery of service locations for unserved Defendant T. Mays. (Request for Issuance of Subpoena, ECF No. 83.) That request is now before the Court.

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).

1 However, the Court will consider granting such a request only if the documents sought from
2 the non-party are not equally available to Plaintiff and are not obtainable from Defendants
3 through a request for the production of documents. Fed. R. Civ. P. 34.

4 In this instance, Plaintiff does not explain what documents he is seeking, if he has
5 taken other steps to obtain them, or how Defendants have responded to such other steps,
6 if at all. Accordingly, Plaintiff's motion for subpoenas duces tecum must be denied without
7 prejudice.

8 The Court and the Marshal have a statutory duty to serve process on Plaintiff's
9 behalf. The response given to the Marshal to date by the California Department of
10 Corrections and Rehabilitation (CDCR) is insufficient to allow the Court to discharge this
11 duty on the ground that Defendant T. Mays cannot be located. 28 U.S.C. 1915(d); Fed.
12 R. Civ. P. 4(c)(3). Plaintiff is advised the Court shall direct the Marshal to re-attempt service
13 on Defendant T. Mays by contacting the Legal Affairs Division of the CDCR and requesting
14 the assistance of a special investigator.

15 Accordingly, Plaintiff's Request for the issuance of a subpoena (ECF No. 83), is
16 DENIED without prejudice.

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20 IT IS SO ORDERED.

21 Dated: July 20, 2012

1st Michael J. Song
UNITED STATES MAGISTRATE JUDGE