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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOSEPH R. PULLIAM,

Plaintiff,

v.

M. LOZANO, et al.,

Defendants.

CASE NO. 1:07-cv-964-LJO-MJS (PC)

ORDER DENYING PLAINTIFF'S MOTION  
TO COMPEL PRODUCTION OF  
DOCUMENTS WITHOUT PREJUDICE

(ECF No. 40)

ORDER GRANTING PLAINTIFF LEAVE  
TO FILE MOTION FOR SUBPOENA  
DUCES TECUM

PLAINTIFF'S MOTION DUE WITHIN  
TWENTY-ONE DAYS

Plaintiff Joseph R. Pulliam ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's First Amended Complaint, filed December February 2, 2009, against Defendants Lozano and Mason for violation of the Eighth Amendment. On December 20, 2010, Plaintiff filed a motion to compel. (ECF No. 40.) On January 31, 2010, the Court granted Plaintiff's motion and ordered Defendants to submit a further response. (ECF No. 46.)

On February 9, 2011, Defendants filed a further response regarding Plaintiff's request to produce certain documents. (ECF No. 47.) Plaintiff filed his response to Defendants' response on March 2, 2011. (ECF No. 48.)

1 **I. Defendants' Response**

2 Defendants object to producing any additional documents on the grounds that they  
3 do not have possession, custody, or control of such documents. Defendants contend that  
4 it is overly burdensome to require Defendants' counsel to obtain documents for Plaintiff as  
5 this would require Defendants' counsel to act as Plaintiff's litigation assistant. Defendants  
6 contend that Plaintiff should move for a subpoena duces tecum to obtain these documents.

7 Having considered the parties' arguments, the Court finds that Defendants' further  
8 response is sufficient. Defendants' counsel contends that Defendant correctional officers  
9 do not have ready access to the requested documents, and that he, counsel for  
10 Defendants, has made inquiry regarding the documents, but does not have possession,  
11 custody, or control of them. Accordingly, the Court will reconsider its prior ruling and will  
12 deny Plaintiff's motion to compel without prejudice to Plaintiff filing a motion for subpoena  
13 duces tecum pursuant to Federal Rules of Civil Procedure 34(c) and 45.

14 Plaintiff will be granted twenty-one (21) days from the date of service of this order  
15 in which to file his motion for subpoena duces tecum. Failure to file a timely motion will  
16 result in Plaintiff waiving further discovery. In his motion, Plaintiff should list the specific  
17 documents he seeks and explain why he believes that they are relevant to this action. The  
18 Court will not permit Plaintiff to use this litigation as a fishing expedition for other pending  
19 or contemplated legal action. All requests must be reasonably calculated to lead to  
20 evidence that would be admissible and relevant to this action.

21 The Court will adjudicate Plaintiff's motion and, if warranted, issue a subsequent  
22 order for the United States Marshal to serve a subpoena upon the individual in possession  
23 of these documents. Because it appears that most of the documents sought will be in the  
24 custody and control of the California Department of Corrections at Kern Valley State  
25 Prison, the designated individual in this instance will be the Warden of Kern Valley State  
26 Prison or his designee.

1 **II. Conclusion And Order**

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Plaintiff's motion to compel production of documents (ECF No. 40) is denied  
4 without prejudice;
- 5 2. Plaintiff is GRANTED leave to file a motion for subpoena duces tecum as to  
6 Plaintiff's motion to compel production of documents, as stated herein;
- 7 3. Plaintiff's motion is to be filed within twenty-one (21) days from the date of  
8 service of this order; and
- 9 4. Failure to file a timely motion for subpoena duces tecum will be construed as  
10 a waiver of further discovery in this action.

11  
12 IT IS SO ORDERED.

13 Dated: March 9, 2011

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE