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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

WILLIAM B. PRUITT,

Plaintiff,

v.

CLARK, et al.,

Defendants.

CASE NO. 1:07-cv-01709-AWI-SKO PC

ORDER DENYING PLAINTIFF’S MOTION  
TO COMPEL

(Doc. 37)

Plaintiff William B. Pruitt, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 26, 2007. This action is proceeding against Defendants Swinford, Bonilla, Lara, Curtiss, and Wan on Plaintiff’s Fourth Amendment strip search claim.<sup>1</sup> On June 7, 2011, Plaintiff filed a motion to compel responses to his request for the production of documents, set one, served on Defendant Wan.

Plaintiff seeks to compel photographs of the work change area in Facility B at the California Substance Abuse Treatment Facility, the counters of the work change area, and the privacy partition which shields nude prisoners from female officers. In relevant part, Defendant Wan objected on the ground that the requests call upon him to create the photographs sought.

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P.

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<sup>1</sup> Identified as Defendants Swimford and Laura in the amended complaint.

1 26(b)(1). For document production requests, responding parties must produce documents which are  
2 in their “possession, custody or control.” Fed. R. Civ. P. 34(a)(1).

3 Plaintiff is entitled to the production of discoverable evidence, but in this instance, the  
4 evidence he seeks does not currently exist. Plaintiff may not compel Defendants to create the  
5 photographs he seeks and for that reason, his motion to compel is HEREBY DENIED.<sup>2,3</sup>

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7 IT IS SO ORDERED.

8 **Dated:** June 9, 2011

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup> Defendants are required to supplement their responses should the photographs Plaintiff seeks come into  
their possession. Fed. R. Civ. P. 26(e)(1)(A).

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28 <sup>3</sup> The deadline for Defendants to file their opposition has not expired, but given that the photographs do not  
exist, Plaintiff fails to meet his burden on his motion to compel and no response by Defendants is required. Local  
Rule 230(l).