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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GERALD L. MILLER, JR.  
CDCR #C-92075

Plaintiff,

v.

O. RUFION; MOONGA, R.N.,

Defendants.

Civil No. 08-1233 BTM (WMc)

**ORDER DENYING PLAINTIFF'S  
EX PARTE MOTION FOR SUBPOENA  
[Doc. No. 97]**

**I. INTRODUCTION**

This case comes before the Court on Plaintiff's *ex parte* motion for subpoenas. [Doc. No. 97.] Plaintiff's motion is **DENIED** as discussed herein.

**II. STANDARD OF REVIEW**

Under Rule 45 of the Federal Rules of Civil Procedure, a plaintiff proceeding *in forma pauperis* may be entitled to the issuance of a subpoena commanding the production of documents from non-parties. *See* Fed.R.Civ.P. 45. Such a request is not automatic, however. The request must be timely. The documents which are the subject of the subpoena must be non-privileged and relevant. *See* Fed.R.Civ.P. 26(b)(1); Fed.R.Civ.P. 34.

**III.  
DISCUSSION**

Plaintiff was advised in this Court's Scheduling Order [Doc. No. 27] that "all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, so that it may be completed by the cut-off date, taking into account the times for service, notice and response as set forth in the Federal

1 Rules of Civil Procedure.” *Id.* (emphasis added). Plaintiff’s request is untimely. Discovery closed on  
2 October 6, 2010, however Plaintiff’s request was not filed in time for the subpoenas to be issued and and  
3 a response to be returned before passage of the October 6, 2010 deadline. Moreover, Plaintiff has not  
4 provided a description of the specific documents he is seeking. The Court has no way to determine if the  
5 documents Plaintiff seeks are different from the documents for which he received a subpoena in May of  
6 this year. *See* Court’s May 10, 2010 Order at Doc. No. 54. Accordingly Plaintiff’s *ex parte* motion for  
7 subpoenas is **DENIED**.

8 **IV.**

9 **CONCLUSION AND ORDER THEREON**

10 For the foregoing reasons, Plaintiff’s *ex parte* motion for subpoenas is **DENIED**.

11 **IT IS SO ORDERED.**

12 DATED: October 29, 2010



13  
14 Hon. William McCurine, Jr.  
U.S. Magistrate Judge, U.S. District Court