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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

MATTHEW B. CRAMER,

CASE NO. 1:08-cv-01693-OWW-SKO

Plaintiff,

**ORDER DENYING MOTION FOR  
ISSUANCE OF A SUBPOENA DUCES  
TECUM**

v.

TARGET CORPORATION, et al.,

DOCKET NO. 105

Defendants.

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**I. INTRODUCTION**

Plaintiff Matthew Cramer is a state prisoner proceeding in forma pauperis and pro se with an action for damages and other relief concerning alleged civil rights violations pursuant to 42 U.S.C. § 1983. Plaintiff's claim arises out of a theft incident at a Target store on March 3, 2008, to which Plaintiff apparently pled "no contest." See Motion for Preliminary Injunction, Docket No. 67, at 2:23. In his complaint, Plaintiff asserts that his civil rights were violated under Section 1983 due to the conduct of the Target employees who questioned him regarding the theft and the responding officer who arrested him.

**II. DISCUSSION**

On July 6, 2010, Defendant Wheatly filed a declaration in support of his motion for summary judgment stating that he was not at the Target Store on March 3, 2008, the day that the

1 alleged events that gave rise to Plaintiff's complaint occurred. Defendant Wheatly states that he  
2 could not have participated in the conduct Plaintiff alleges. This summary judgment motion is  
3 pending before the Court.

4 On July 26, 2010, in response to Defendant Wheatly's declaration, Plaintiff filed a  
5 "Motion to Correct Defendant Known as Clebo Wheatly" and a request for an "order directing  
6 service of subpoena duces tecum." Plaintiff asserts that his complaint alleged that two Target  
7 security officers, a Target supervisor whose name Plaintiff did not know, and Police Officer Greg  
8 Barrios conspired to deliberately delay Plaintiff from receiving adequate medical care. In  
9 October 2009, Plaintiff learned the identity of the Target Store manager, Clebo Wheatly, who  
10 Plaintiff believed was the supervisor present at the time the events occurred on March 3, 2008.  
11 On October 20, 2009, the Court ordered that Defendant Wheatly, previously designated as  
12 Defendant John Doe, be served with the complaint.

13 Plaintiff has now ascertained, through Defendant Wheatly's declaration, that Defendant  
14 Wheatly may not have been the supervisor who Plaintiff alleged was present at the Target Store  
15 when the underlying events occurred on March 3, 2008. Plaintiff now requests that the Court  
16 issue a subpoena duces tecum directed at non-party Target Corporation to ascertain which  
17 supervisor was present at the Target Store on March 3, 2008.

18 On August 6, 2010, Defendant Wheatly filed a declaration in support of his opposition to  
19 Plaintiff's request for the issuance of a subpoena duces tecum stating that no "stand-in" manager  
20 was present in his place on March 3, 2008, when the alleged events occurred. Rather, Defendant  
21 Wheatly states that "[o]n March 3, 2008, Asset Protection [("AP")] Personnel [Defendants Heller  
22 and Yant] were supervised by the District Asset Protection Team Leaders who supervise all the  
23 AP personnel in the stores in our District."

24 Subject to certain requirements set forth herein, Plaintiff is entitled to the issuance of a  
25 subpoena commanding the production of documents from non-parties and to service of the  
26 subpoena by the United States Marshal. Fed. R. Civ. P. 45; 28 U.S.C. 1915(d). However, the  
27 Court will consider granting such a request only if the documents sought from the non-party are  
28 not equally available to Plaintiff and are not obtainable from Defendants through service of

1 interrogatories requesting the information. Fed. R. Civ. P. 34. If Plaintiff wishes to make a  
2 request for the issuance of a subpoena duces tecum, he may file a motion requesting the issuance  
3 of a subpoena duces tecum that (1) identifies with specificity the information sought and from  
4 whom, and (2) makes a showing that the records are only obtainable through that third party.

5 Here, discovery is open, and Plaintiff may seek information directly from Defendants  
6 about the identity of any supervisor present during the alleged events of March 3, 2008.

7 Therefore, Plaintiff's motion for a subpoena will be denied. Plaintiff may renew his motion only  
8 if he is unsuccessful in obtaining the information directly from Defendants pursuant to Rule 34  
9 and the Court's discovery order. If Defendants object to Plaintiff's interrogatories seeking this  
10 information, a motion to compel the information is the next required step. Until such time as  
11 Plaintiff ascertains the identity of the "doe" defendant present during the alleged events of March  
12 3, 2008, the request to correct the "doe" designation shall be denied. If Plaintiff wishes to  
13 dismiss Defendant Wheatly from the suit, he may file a motion requesting that the Court do so.

14 Accordingly, IT IS HEREBY ORDERED THAT:

- 15 1. Plaintiff's "Motion to correct [Doe] Defendant Known as Clebo Wheatly to Stand-  
16 In" is DENIED without prejudice; and
- 17 2. Plaintiff's "Request[ed] Order Directing Service of Subpoena Duces Tecum" is  
18 DENIED without prejudice.

19  
20 IT IS SO ORDERED.

21 **Dated:** August 13, 2010

21 /s/ Sheila K. Oberto  
22 UNITED STATES MAGISTRATE JUDGE