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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LARRY ZUNIGA,

Plaintiff,

v.

CHRIS JORDAN, et al.,

Defendants.

CASE NO. 1:09-cv-01208-AWI-SMS PC

ORDER DENYING PLAINTIFF’S MOTION FOR
A SUBPOENA DUCES TECUM AND MOTION
TO COMPEL

(ECF Nos. 31, 32)

Plaintiff Larry Zuniga (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Discovery in this action opened on April 29, 2010. Plaintiff was granted two extensions of time to conduct discovery. On April 5, 2011, Plaintiff filed a motion for a subpoena duces tecum, and on May 11, 2011, Plaintiff filed a motion to compel further discovery. (ECF Nos. 31, 32.)

I. Motion to Compel

Plaintiff states that Defendants have failed to produce exculpatory evidence.¹ Initially, the Court notes that Plaintiff’s motion is procedurally deficient as he failed to include a copy of Plaintiff’s discovery requests that are at issue, a copy of Defendant’s responses to the discovery request, and an explanation of why Defendants objections are not justified.

Pursuant to the amended discovery and scheduling order, issued March 7, 2011, the deadline

¹Plaintiff appears to be attempting to apply criminal discovery rules to this civil action. Plaintiff is advised that this is a civil action and discovery is governed by the Federal Rules of Civil Procedure. Plaintiff is directed to the discovery and scheduling order, filed April 29, 2010. (ECF No. 21.)

1 for conducting discovery in this action was extended to April 29, 2011. In that order Plaintiff was
2 advised that no further extensions of time would be granted to conduct discovery. Plaintiff was
3 advised in the discovery and scheduling order, issued April 29, 2010, that all discovery must be
4 completed and all motions to compel must be filed by the discovery cutoff date. Plaintiff did not file
5 his motion to compel discovery until May 11, 2011, therefore, his motion to compel further
6 discovery shall be denied as untimely.

7 II. Motion for Subpoena Duces Tecum

8 As previously discussed, Plaintiff was informed that all discovery must be **completed** by the
9 discovery cutoff date. Plaintiff did not file his motion for a subpoena duces tecum with enough time
10 to allow for objections by the opposing party, the subpoenas to be served by the United States
11 Marshal, and documents to be received by Plaintiff prior to the cutoff date of April 29, 2011.
12 Plaintiff's motion for a subpoena duces tecum was untimely and shall be denied.

13 III. Order

14 Accordingly, it is HEREBY ORDERED that Plaintiff's motion for a subpoena duces tecum,
15 filed April 5, 2011, and Plaintiff's motion to compel, filed May 11, 2011, are DENIED as
16 UNTIMELY.

17
18 IT IS SO ORDERED.

19 **Dated: June 27, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE