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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM SUTHERLAND,)	1:09-cv-02152-LJO-GSA-PC
)	
Plaintiff,)	ORDER DENYING PLAINTIFF’S MOTION
)	FOR SUBPOENAS AS UNTIMELY
vs.)	(Doc. 58.)
)	
JAMES A. YATES, et al.,)	
)	
Defendants.)	

I. RELEVANT PROCEDURAL HISTORY

William Sutherland (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on December 11, 2009. (Doc. 1.) This case now proceeds on the First Amended Complaint, filed on December 6, 2010, against defendants Correctional Officer (“C/O”) A. Fernando and C/O M. Jericoff for use of excessive force in violation of the Eighth Amendment; against Warden James A. Yates (“Defendants”) for failure to protect Plaintiff in violation of the Eighth Amendment; and on Plaintiff’s related state tort claims. (Doc. 15.)

On September 8, 2011, the Court issued a scheduling order establishing a deadline of May 8, 2012 for the completion of discovery, including the filing of motions to compel, and a deadline of July 19, 2012 for the filing of pretrial dispositive motions. (Doc. 27.)

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1 On December 10, 2012, Plaintiff filed a motion for issuance of subpoenas duces tecum. (Doc.
2 58.) On December 13, 2012, Defendants file an opposition. (Doc. 59.) On January 3, 2013, Plaintiff
3 filed a reply to the opposition. (Doc. 65.)

4 **II. PLAINTIFF'S MOTION**

5 Plaintiff requests the Court to issue five subpoenas duces tecum compelling five nonparties
6 to produce documents. Plaintiff asserts that the May 8, 2012 deadline for completion of discovery
7 in this action is not applicable to this motion, because he is not requesting new discovery, but instead
8 is requesting documents that Defendants failed to provide him pursuant to the Court's order of
9 September 14, 2012.

10 However, procedurally it makes no difference whether Plaintiff seeks new discovery or seeks
11 to obtain documents previously requested. The May 8, 2012 deadline for completion of discovery
12 is applicable to all discovery in this action, including the filing of motions to compel. (Doc. 27 at 2
13 ¶8.) The May 8, 2012 deadline has not been extended. (Doc. 54.) Therefore, Plaintiff's motion for
14 subpoenas, filed on December 10, 2012, is untimely and shall be denied as such.

15 **III. CONCLUSION**

16 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for subpoenas,
17 filed on December 10, 2012, is DENIED as untimely.

18
19 IT IS SO ORDERED.

20 **Dated: January 15, 2013**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE