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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENNIE RAY BROWN

Plaintiff,

v.

OFFICER JESS BEAGLEY, et al.,

Defendants.

Case No.: 1:10-cv-01460 JLT

ORDER DENYING REQUEST FOR  
SUBPOENAS

(Doc. 40).

On August 13, 2010, Plaintiff initiated this civil rights action against two individuals. (Doc. 1). On April 17, 2012, Plaintiff filed a motion requesting subpoenas “pursuant to Fed. R. Civ. P. 45(c)(1).”<sup>1</sup>

Plaintiff acknowledges that non-expert discovery in this matter closed on March 30, 2012. (Doc. 40 at 3 and Doc. 38). Despite this, Plaintiff requests the Court issue five (5) subpoenas to him—one of which is to require Defendant’s “Risk Management” agent to appear at a settlement hearing and another is for evidence in the property room of the Bakersfield Police Department. (Doc. 40 at 2). Plaintiff requests the Court grant his request “due to the fact defendants and their

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<sup>1</sup> Contrary to Plaintiff’s pleading Rule 45(c)(1) does not entitle Plaintiff to the relief he requests; it merely explains that any party issuing a subpoena must not unduly burden the party being subpoenaed. Fed. R. Civ. P. 45(c)(1).

1 Attorney [sic] have acted in bad faith throughout the beginning of the complaint with delay tactics  
2 and frivolous [sic] defense . . . .” (Id. at 3). Plaintiff further asks the Court to “preserve a right to  
3 a hearing” on this issue. For the foregoing reasons, Plaintiff’s request for subpoenas is DENIED.

#### 4 **Settlement Conference**

5 As the Court noted in its Order Disregarding Plaintiff’s Demand for Acceptance of Offer  
6 of Judgment, settlement negotiations are conducted among the parties, unless otherwise ordered  
7 by the Court. The Court has not set a Settlement Conference in this matter and does not intend to  
8 do so at this time. (Doc. 38). Thus, Plaintiff’s request to subpoena Defendants’ Risk Manager to  
9 appear at a settlement hearing that has not been scheduled by this Court is DENIED.

#### 10 **Property Room Evidence**

11 Plaintiff’s request for a subpoena to obtain property room evidence clearly seeks evidence  
12 that Plaintiff should have requested prior to the March 30, 2102 discovery deadline. Plaintiff  
13 essentially seeks to extend the discovery deadline that has already expired, but has failed to show  
14 the Court good cause for doing so.

15 Scheduling orders are “not a frivolous piece of paper, idly entered, which can be  
16 cavalierly disregarded by counsel without peril.” Johnson v. Mammoth Recreations, Inc., 975  
17 F.2d 604, 610 (9th Cir. 1992) quoting (Gestetner Corp. v. Case Equip. Co., 108 F.R.D. 138, 141  
18 (D. Maine 1985). Good cause must be shown for modification of the scheduling order. Fed. R.  
19 Civ. P. 16(b)(4). The Ninth Circuit explained:

20 Rule 16(b)’s “good cause” standard primarily considers the diligence of the party  
21 seeking the amendment. The district court may modify the pretrial schedule if it  
22 cannot reasonably be met despite the diligence of the party seeking the extension.  
23 Moreover, carelessness is not compatible with a finding of diligence and offers no  
24 reason for a grant of relief. Although the existence of a degree of prejudice to the  
25 party opposing the modification might supply additional reasons to deny a motion,  
26 the focus of the inquiry is upon the moving party’s reasons for modification. If that  
27 party was not diligent, the inquiry should end.

28 Plaintiff has not provided the Court with any facts to show that despite his diligent effort to obtain  
the requested discovery before the March 30, 2102, he was unable to do so. The Court cannot  
discern from the pleading why a hearing on this matter is necessary and Plaintiff fails to explain

1 how any action by Defendants created the need to extend the discovery deadline or hold a  
2 hearing. *See* Fed. R. Civ. P. 8(a) (requiring a short and plain statement showing the pleader is  
3 entitled to relief).

4 For the reasons set forth above, Plaintiff's Request for Subpoenas is DENIED. (Doc. 40.)  
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7 IT IS SO ORDERED.

8 Dated: April 18, 2012

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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