

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES FREDRICK MENEFIELD,	CASE NO. 1:10-cv-2406-MJS (PC)
Plaintiff,	ORDER DENYING MOTION FOR ISSUANCE
v.	OF SUBPOENA DUCES TECUM AS
	PREMATURE
JAMES A. YATES, et al.,	(ECF Nos. 33 & 38)
Defendants.	

_____ /

Plaintiff James Fredrick Menefield (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The action is proceeding against Defendants based on a number of alleged violations under the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act. Plaintiff has filed two Motions for Subpoenas. (ECF No. 33 & 38.)

Subject to certain requirements set forth herein, Plaintiff is entitled to the issuance of a subpoena commanding the production of documents from a non-party, Fed. R. Civ. P. 45, and to service of the subpoena by the United States Marshal, 28 U.S.C. 1915(d). However, the Court will consider granting such a request *only if* the documents sought from the non-party are not equally available to Plaintiff and are not obtainable from Defendants through a request for the production of documents. Fed. R. Civ. P. 34. If Plaintiff wishes to make a request for the issuance of a records subpoena, he may file a motion requesting

1 the issuance of a subpoena duces tecum that (1) identifies with specificity the documents
2 sought and from whom, and (2) makes a showing in the motion that the records are only
3 obtainable through that third party.

4 Accordingly, Plaintiff's Motions for Subpoenas are DENIED.

5
6 IT IS SO ORDERED.

7 Dated: January 13, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28