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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY HOWARD,

Plaintiff,

v.

D. L. DeAZEVEDO, et al.,

Defendants.

CASE NO. 1:11-cv-00101-AWI-SKO PC

ORDER DENYING SECOND MOTION FOR
ISSUANCE OF SUBPOENAS DUCES
TECUM, WITHOUT PREJUDICE

(Doc. 42)

Plaintiff Timothy Howard, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 20, 2011. The discovery phase of this litigation is now open, and on March 4, 2013, Plaintiff filed his second motion seeking the issuance of subpoenas duces tecum. Fed. R. Civ. P. 45.

Subject to certain requirements, Plaintiff is entitled to the issuance of subpoenas commanding the production of documents or tangible things from nonparties, Fed. R. Civ. P. 45, and to service of the subpoenas by the United States Marshal, 28 U.S.C. 1915(d). However, the Court will consider granting such a request only if the documents or tangible things sought from the nonparty are not equally available to Plaintiff and are not obtainable from Defendants through a request for the production of documents or tangible things. Fed. R. Civ. P. 34. Once Defendants have objected to Plaintiff's request for the production of documents, as is the situation here, a motion to compel is the next required step. If the Court rules that the documents or tangible things are discoverable but Defendants do not have possession, custody, and control of them, Plaintiff may then seek a subpoena. Alternatively, if the Court rules that the documents are not discoverable, the inquiry ends.

1 Accordingly, Plaintiff's second motion for the issuance of subpoenas duces tecum, filed on
2 March 4, 2013, is HEREBY DENIED, without prejudice.

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4 IT IS SO ORDERED.

5 **Dated:** March 7, 2013

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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