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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 MOTION FOR
ISSUANCE OF SUBPOENAS DUCES
TECUM, WITH PREJUDICE, AS
UNTIMELY
(Doc. 71)

I. Introduction

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. On January 24, 2014, Plaintiff filed a motion seeking the issuance of six subpoenas duces tecum. Fed. R. Civ. P. 45. Defendants did not file a response, and the motion has been submitted upon the record without oral argument. Local Rule 230(l).

II. Discussion

The deadline for the completion of all discovery was August 11, 2013, with the exception of the limited discovery at issue in Plaintiff's motion to compel, which was timely filed on March 21, 2013. (Docs. 30, 44.) The Court resolved that motion to compel on November 26, 2013, and it was denied with the exception of seven discovery requests. (Doc. 63.) Of the seven discovery requests, only three – James interrogatories 3 and 8 and document production request 2 – were subject to further substantive responses. (*Id.*) With respect to the other four, Defendants were only

1 required to serve supplemental responses incorporating the information they provided in opposing
2 the motion to compel. (*Id.*)

3 Pursuant to the order of November 26, 2013, if a motion to compel was necessitated by
4 Defendants' responses to James interrogatories 3 and 8 and document production request 2,
5 Plaintiff was required to file the motion within eighty days. (*Id.*, 20:7-8.)

6 Plaintiff did not file a motion to compel in compliance with the order, thereby bringing the
7 discovery phase to a close.

8 With respect to Plaintiff's motion for the issuance of six subpoenas duces tecum, the
9 motion is untimely under the scheduling order and it does not even arguably relate to the sole POD
10 left at issue following the Court's order of November 26, 2013.¹ Fed. R. Civ. P. 16(b). To the
11 contrary, Plaintiff is seeking to engage in third party discovery in direct contravention of the
12 Court's scheduling order and in contravention of the order denying Plaintiff's motion to modify
13 the scheduling order to allow for further discovery, filed on November 26, 2013. Fed. R. Civ. P.
14 16(b). (Doc. 30; Doc. 65, 1:24-2:5.)

15 **III. Order**

16 Based on the foregoing, Plaintiff's motion for the issuance of six subpoenas duces tecum,
17 filed on January 24, 2014, is HEREBY DENIED, with prejudice, as untimely. Fed. R. Civ. P.
18 16(b).

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21 IT IS SO ORDERED.

22 Dated: June 23, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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27 ¹ Document production request 2 sought the isolation log books for E-1 Ad-Seg and the ASU for March 8, 9, 10, and
28 19, 2010. (Doc. 63, 15:11-12.) Plaintiff was already in possession of the log book record for March 19, 2010, and
Defendants were only ordered to produce log book records for March 8, 9, and 10, 2010. (*Id.*, 15:27-16:3.)