

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

RICHARD CHARLES HANNA,

Plaintiff,

v.

MARIPOSA COUNTY SHERIFF DEPT., et
al.,

Defendants.

Case No. 1:12-cv-00501-AWI-SAB

ORDER DENYING PLAINTIFF’S MOTION
FOR SUBPOENA DUCES TECUM

(ECF No. 114)

On September 10, 2013, default was entered against Defendants Mariposa County Sheriff Department, and Deputies Boehm, King, Remeriz, and Rumfelt. (ECF No. 39.) On September 30, 2013, Plaintiff filed a motion for a subpoena duces tecum for his use in moving for default judgment against the defendants in this action. (ECF No. 42.) The Court granted Plaintiff’s motion, however prior to an order being issued to have the subpoena served, the Court discovered that there was an issue of res judicata due to a similar suit being filed and the order granting Plaintiff’s motion was vacated. Subsequently on January 23, 2014, the default was set aside. (ECF No. 96.) On July 7, 2014, Plaintiff filed a motion to have the court serve the subpoena duces tecum. (ECF No. 114.)

As Plaintiff has been informed, discovery has not opened in this action. Once the district judge issues a final order on Defendants’ motion to dismiss, a mandatory scheduling conference

1 will take place. After the scheduling conference, a scheduling order will issue setting the dates
2 during which the parties will conduct discovery. At that time, Plaintiff will have the opportunity
3 to request the sought after discovery from Defendants.

4 Subject to certain requirements set forth herein, Plaintiff may be entitled to the issuance
5 of a subpoena commanding the production of documents from non-parties. Fed. R. Civ. P. 45.
6 However, the Court will consider granting such a request only if the documents sought from the
7 non-party are discoverable, are not equally available to Plaintiff, and are not obtainable from
8 Defendants through a request for production of documents. Fed. R. Civ. P. 45(c); Fed. R. Civ. P.
9 34.

10 Plaintiff is entitled to seek discovery of any nonprivileged matter that is relevant to his
11 claims. Fed. R. Civ. P. 26(b)(1). The discovery sought may include information that is not
12 admissible as long as it appears reasonably calculated to lead to the discovery of admissible
13 evidence. Id. In order to obtain a subpoena duces tecum, Plaintiff must inform the court of the
14 purpose of the subpoena. A request for the issuance of a records subpoena requires Plaintiff to:
15 (1) identify with specificity the documents sought and from whom, and (2) make a showing that
16 the records are only obtainable through that third party.

17 Accordingly, Plaintiff's motion for a subpoena duces tecum is HEREBY DENIED.

18
19 IT IS SO ORDERED.

20 Dated: July 7, 2014

21
22
23
24
25
26
27
28

UNITED STATES MAGISTRATE JUDGE