

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.
DEPUTY BOEHM, et al.,
Defendants.

Case No. 1:12-cv-00501-AWI-SAB
ORDER DENYING PLAINTIFF’S MOTION
FOR SUBPOENA DUCES TECUM
(ECF No. 160)

On November 20, 2014, an order issued opening discovery in this action. (ECF No. 157.)
On December 29, 2014, Plaintiff filed a motion for a subpoena duces tecum. (ECF No. 160.)

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

Plaintiff is entitled to seek discovery of any nonprivileged matter that is relevant to his claims. Fed. R. Civ. P. 26(b)(1). The discovery sought may include information that is not admissible as long as it appears reasonably calculated to lead to the discovery of admissible evidence. Id. In order to obtain a subpoena duces tecum, Plaintiff must inform the court of the purpose of the subpoena. A request for the issuance of a records subpoena requires Plaintiff to:

1 (1) identify with specificity the documents sought and from whom, and (2) make a showing that
2 the records are only obtainable through that third party.

3 This action is proceeding against Defendants Boehm, Rumfelt, Ramirez, and King who
4 are deputies at the Mariposa County jail. Plaintiff is seeking a subpoena duces tecum to obtain
5 jail guidelines, materials provided to inmates upon their booking into the jail, information on the
6 tasers used by the jail, training materials, Defendants' personnel records, video, etc. These
7 appear to be documents that are available to Defendants as employees of the jail, especially those
8 documents related to a specific defendant such as training records, etc. The Court does not take
9 the position that the documents requested are actually obtainable by Defendants as this is not a
10 matter that has been properly brought before the Court. However, Plaintiff's motion does not
11 contain any information from which the Court can determine that the documents cannot be
12 obtained from the defendants in this action. Therefore, Plaintiff must first propound a request for
13 production of documents to Defendants prior to requesting intervention from the Court in
14 obtaining them from a third party.

15 If after making a proper request for production, Defendants fail to produce them or they
16 are unable to obtain/produce the documents, Plaintiff may file a motion to compel or a motion
17 for a subpoena duces tecum. However, if Plaintiff files a motion for a subpoena duces tecum he
18 must show that the records are only obtainable through the third party.

19 As the documents requested by Plaintiff appear to be obtainable by Defendants through a
20 request for production of documents, Plaintiff's motion for a subpoena duces tecum is HEREBY
21 DENIED.

22 IT IS SO ORDERED.

23
24 Dated: December 31, 2014


UNITED STATES MAGISTRATE JUDGE