## 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 RICHARD CHARLES HANNA, Case No. 1:12-cv-00501-AWI-SAB 12 Plaintiff, ORDER DENYING PLAINTIFF'S MOTION FOR 13 A SUBPOENA DUCES TECUM v. 14 MARIPOSA COUNTY SHERIFF DEPT. (ECF No. 52) et al.. 15 Defendants. 16 17 Plaintiff Richard Charles Hanna is appearing pro se and in forma pauperis in this civil 18 rights action pursuant to 42 U.S.C. § 1983. Default has been entered against Defendants 19 Mariposa County Sheriff Department, and Deputies Boehm, King, Remeriz, and Rumfelt. (ECF 20 No. 39.) 21 The district court discovered that Plaintiff had filed a similar case that was dismissed with 22 prejudice against these defendants. Accordingly, on November 12, 2013, District Judge Anthony 23 W. Ishii issued an order relating the two actions and referred the matter to the undersigned to 24 determine if the prior dismissal with prejudice is valid or if it should be vacated. On November 25 14, 2013, an order issued directing Plaintiff's attorney in the related case to respond to Plaintiff's 26 allegations regarding the prior dismissal. On the same date, Plaintiff filed a motion for a 27 subpoena duces tecum.

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Plaintiff is seeking to conduct discovery on the merits of his claims in this action by subpoena duces tecum. Once default has been entered, the factual allegations in the complaint are taken as true, but the allegation regarding the amount of damages must be proven. See Fed R. Civ. P. 55(b)(2); Garamendi v. Henin, 683 F.3d 1069, 1080 (9th Cir. 2012). Since default has been entered against the defendants in this action, the only issue, assuming that this action is not dismissed on the basis of res judicata, is Plaintiff's damages. Because Plaintiff is seeking to conduct discovery on the merits of his claims, Plaintiff's motion for a subpoena duces tecum is HEREBY DENIED.

IT IS SO ORDERED.

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Dated: **November 15, 2013** 

UNITED STATES MAGISTRATE JUDGE