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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORNELL BROWN,
Plaintiff,
vs.
C/O R. HARRIS, et al.,
Defendants.

1:12-cv-01472-GSA-PC
ORDER DENYING MOTION FOR
ISSUANCE OF SUBPOENA, WITHOUT
PREJUDICE
(Doc. 24.)

Cornell Brown (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction in this action. (Doc. 5.) This case now proceeds on Plaintiff’s initial Complaint filed on September 10, 2012, against defendant Harris for excessive force in violation of the Eighth Amendment, and defendant Nelson for failure to protect Plaintiff in violation of the Eighth Amendment. (Doc. 1.)

On December 18, 2013, Plaintiff filed a motion for issuance of a subpoena duces tecum upon a non-party to this action. (Doc. 24.) Discovery is not yet open in this action. Plaintiff is advised that the court will issue a scheduling order setting a schedule for discovery after one of the defendants has filed an Answer to the Complaint. At this stage of the proceedings, Defendants have filed a motion to dismiss, but no defendant has filed an Answer to the Complaint. Therefore, it is not time for discovery in this action, and Plaintiff’s motion for

1 issuance of a subpoena shall be denied, without prejudice to renewal of the motion at a later
2 stage of the proceedings.

3 Plaintiff is entitled to the issuance of a subpoena commanding the production of
4 documents from non-parties, and to service of the subpoena by the United States Marshal. Fed.
5 R. Civ. P. 45; 28 U.S.C. 1915(d). However, the Court will consider granting such a request
6 *only if* the documents sought from the non-party are not equally available to Plaintiff and are
7 not obtainable from Defendants through a request for production of documents. Fed. R. Civ. P.
8 34. Therefore, if Plaintiff decides to renew his motion after discovery has been opened, he may
9 file another motion that (1) identifies with specificity the documents sought and from whom,
10 and (2) makes a showing in the motion that the records are only obtainable through that third
11 party.

12 For the reasons set forth above, IT IS HEREBY ORDERED that Plaintiff's motion for
13 the issuance of a subpoena, filed on December 18, 2013, is DENIED without prejudice.

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17 IT IS SO ORDERED.

18 Dated: December 19, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE