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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHNATHAN HILL,  
Plaintiff,  
vs.  
J. CLARK, et al.,  
Defendants.

1:13-cv-00386-LJO-GSA-PC  
ORDER DENYING REQUEST FOR  
ISSUANCE OF SUBPOENA, WITHOUT  
PREJUDICE  
(Doc. 27.)

Johnathan Hill (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on the original Complaint filed by Plaintiff on March 18, 2013, against defendant C/O J. Clark for use of excessive force in violation of the Eighth Amendment, and defendant C/O A. Rivas for failure to protect Plaintiff in violation of the Eighth Amendment.<sup>1</sup> (Doc. 1.)

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<sup>1</sup> On January 24, 2014, the court dismissed all other claims and defendants from this action based on Plaintiff’s failure to state a claim under § 1983. (Doc. 17.)

1 On June 3, 2014, the court issued a Scheduling Order setting out pretrial deadlines in  
2 this action, including a deadline of February 2, 2015, for the completion of discovery, including  
3 the filing of motions to compel. (Doc. 25.)

4 On June 26, 2014, Plaintiff submitted a proposed subpoena duces tecum for issuance by  
5 the court. (Doc. 27.) The subpoena commands non-parties Warden Connie Gipson and the  
6 Litigation Coordinator at Corcoran State Prison to produce:

7 “any document or electronically stored information, within your  
8 possession, custody or control, including investigators’ notes and  
9 reports, pertaining to Third Level Appeal Case No. 111-3723;  
10 Corcoran Appeal Log No. 1201099; Corcoran Health Care  
Appeal Log No. 12-49495, including the 7219; and the Ad-Seg  
records that were in existence on January 29th, 2012, for  
Johnathan Hill, CDC No. P86443.”

11 (Doc. 27 at 1.)

12 For the reasons set forth below, Plaintiff’s request is denied, without prejudice to  
13 renewal of the request.

14 Subject to certain requirements set forth herein, Plaintiff is entitled to the issuance of a  
15 subpoena commanding the production of documents from a non-party, and to service of the  
16 subpoena by the United States Marshal. Fed. R. Civ. P. 45; 28 U.S.C. 1915(d). However, the  
17 Court will consider granting such a request *only if* the documents sought from the non-party are  
18 not equally available to Plaintiff and are not obtainable from Defendants through a request for  
19 production of documents. Fed. R. Civ. P. 34. It appears to the Court that the documents sought  
20 by Plaintiff may be available to Plaintiff through a request for production of documents to  
21 Defendants. Fed. R. Civ. P. 34. Plaintiff has not demonstrated that he made a request to  
22 Defendants for production of these documents, nor has Plaintiff filed a motion to compel  
23 Defendants to produce the requested documents. Moreover, Plaintiff’s request is overbroad,  
24 requesting “*any document* or electronically stored information, within [the non-parties’]  
25 possession, custody or control . . .” (Doc. 27 at 1) (emphasis added.)

26 Should Plaintiff choose to file another request for the issuance of a subpoena duces  
27 tecum, Plaintiff must (1) identify with specificity the documents sought and from whom, and  
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1 (2) make a showing in the request that the records are only obtainable through that third party.  
2 Also, documents requested must fall within the scope of discovery allowed in this action.<sup>2</sup>

3 The time for conducting discovery in this action, including motions to compel, expires  
4 on February 3, 2015. Therefore, Plaintiff should proceed as soon as possible with his discovery  
5 requests.

6 For the reasons set forth above, IT IS HEREBY ORDERED that Plaintiff's request for  
7 the issuance of a subpoena, filed on June 26, 2014, is DENIED, without prejudice to renewal of  
8 the request at a later stage of the proceedings, as instructed by this order.

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10 IT IS SO ORDERED.

11 Dated: July 3, 2014

/s/ Gary S. Austin  
12 UNITED STATES MAGISTRATE JUDGE

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24 <sup>2</sup>Under Rule 26(b) of the Federal Rules of Civil Procedure, “[u]nless otherwise limited by court order, the  
25 scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant  
26 to any party's claim or defense — including the existence, description, nature, custody, condition, and location of  
27 any documents or other tangible things and the identity and location of persons who know of any discoverable  
28 matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the  
action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to  
lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1).