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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MICHAEL KLEIN,

12 Plaintiff,

13 vs.

14 DR. CONANAN,

15 Defendant.
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1:13-cv-00600-GSA-PC

ORDER DENYING MOTION, WITHOUT
PREJUDICE
(Doc. 43.)

19 **I. BACKGROUND**

20 Michael Klein (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
21 in this civil rights action pursuant to 42 U.S.C. ' 1983. This case now proceeds on the original
22 Complaint filed by Plaintiff on April 25, 2013, against defendant Dr. Conanán for failure to
23 provide adequate medical care in violation of the Eighth Amendment. (Doc. 1.)

24 On October 8, 2014, the court issued a Scheduling Order setting out pretrial deadlines in
25 this action, including a deadline of June 8, 2015, for the completion of discovery, including the
26 filing of motions to compel. (Doc. 28.) Thus, this case is now in the discovery phase.

27 On February 9, 2015, Plaintiff filed a motion for reconsideration of the court’s order
28 issued on January 29, 2015. (Doc. 43.)

1 **II. PLAINTIFF’S MOTION**

2 Plaintiff brings a motion for reconsideration of the court’s order denying Plaintiff’s
3 request for the issuance of subpoenas for the attendance of witnesses at trial. However,
4 Plaintiff indicates in the motion that he now seeks the issuance of “10 certified subpoenas
5 duces (*sic*) tecum so I can compel prison officials to produce documents and other tangible
6 items.” (Motion, Doc. 43 at 1.) Based on this language, the court construes Plaintiff’s motion
7 for reconsideration as a motion for the issuance of subpoenas duces tecum. For the reasons set
8 forth below, Plaintiff’s motion shall be denied, without prejudice to renewal of the motion.

9 Subject to certain requirements set forth herein, Plaintiff is entitled to the issuance of
10 subpoenas commanding the production of documents from non-parties, and to service of the
11 subpoenas by the United States Marshal. Fed. R. Civ. P. 45; 28 U.S.C. 1915(d). However, the
12 Court will consider granting such a request *only if* the documents sought from the non-parties
13 are not equally available to Plaintiff and are not obtainable from Defendants through a request
14 for production of documents. Fed. R. Civ. P. 34. Plaintiff has not described the documents he
15 seeks. Therefore, the Court cannot determine whether any of the documents sought by Plaintiff
16 may be available to Plaintiff through a request for production of documents to Defendants.
17 Fed. R. Civ. P. 34. Plaintiff has not demonstrated that he made a request to Defendants for
18 production of these documents, nor has Plaintiff filed a motion to compel Defendants to
19 produce the requested documents.

20 Should Plaintiff choose to file another motion for the issuance of subpoenas duces
21 tecum, Plaintiff must (1) identify with specificity the documents sought and from whom, and
22 (2) make a showing in the request that the records are only obtainable through that third party.
23 Also, documents requested must fall within the scope of discovery allowed in this action.¹

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25 ¹Under Rule 26(b) of the Federal Rules of Civil Procedure, “[u]nless otherwise limited by court order, the
26 scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant
27 to any party’s claim or defense — including the existence, description, nature, custody, condition, and location of
28 any documents or other tangible things and the identity and location of persons who know of any discoverable
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).

1 **III. CONCLUSION**

2 For the reasons set forth above, IT IS HEREBY ORDERED that Plaintiff's motion filed
3 on February 9, 2015 is DENIED, without prejudice to renewal of the motion as instructed by
4 this order.

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6 IT IS SO ORDERED.

7 Dated: February 10, 2015

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