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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JAMES W. MILLNER,)	Case No.: 1:13-cv-02029-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING, WITHOUT PREJUDICE,
v.)	PLAINTIFF’S MOTION FOR SUBPOENAS
)	
MARTIN BITER, et al.,)	[ECF No. 66]
)	
Defendants.)	
)	
)	

Plaintiff James W. Millner is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

Now pending before the Court is Plaintiff’s motion for issuance of subpoena duces tecum. (ECF No. 66.) Defendants filed an answer to Plaintiff’s complaint on May 5, 2015, and on this same date the Court issued the discovery and scheduling order.

Subject to certain requirements, Plaintiff is entitled to the issuance of a subpoena commanding the production of documents, electronically stored information, and/or tangible things from a nonparty, Fed. R. Civ. P. 45, and to service of the subpoena by the United States Marshal, 28 U.S.C. 1915(d). However, the Court will consider granting such a request only if the documents or items sought from the nonparty are not equally available to Plaintiff and are not obtainable from Defendants through a request for the production of documents, electronically stored information, and/or tangible things. Fed. R. Civ. P. 34. If Defendants object to Plaintiff’s discovery request, a motion to compel is

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the next required step. If the Court rules that the documents, electronically stored information, and/or tangible things are discoverable but Defendants do not have care, custody, and control of them, Plaintiff may then seek a subpoena. Fed. R. Civ. P. 26(b), 34(a)(1). Alternatively, if the Court rules that the documents or items are not discoverable, the inquiry ends. Fed. R. Civ. P. 26(b).

In this instance, Plaintiff does not indicate what documents are sought or that he sought such documents from Defendants through a request for the production of documents, and, if he has done so, he has not filed a motion to compel the production of such documents. Therefore, Plaintiff's motion for the issuance of a subpoena duces tecum is **HEREBY DENIED**, without prejudice.

IT IS SO ORDERED.

Dated: June 15, 2015



UNITED STATES MAGISTRATE JUDGE