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

MATTHEW POWELL,)	Case No.: 1:15-cv-00089-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING, WITHOUT PREJUDICE,
v.)	PLAINTIFF’S MOTION FOR ISSUANCE OF
)	SUBPOENA DUCES TECUM
M. BARRON, et al.,)	
)	[ECF No. 43]
Defendants.)	
)	
)	

Plaintiff Matthew Powell is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for issuance of subpoena duces tecum, filed July 21, 2016.

First, Plaintiff is advised that the discovery phase of this action is not yet open. If and when Defendants are served with process and file an answer to the complaint, the Court will issue a discovery and scheduling order opening the discovery phase in this action. Second, the Clerk’s Office will issue Plaintiff a subpoena only upon order of the Court and, in this instance Plaintiff does not indicate whether he is seeking to subpoena records from Defendants or from a non-party. Plaintiff must seek documents from Defendants via a request for the production of documents, not a subpoena duces tecum. Fed. R. Civ. P. 34. Third, the Court will authorize the Clerk’s Office to issue a subpoena duces tecum commanding a third party to produce documents *only if* (1) Plaintiff is unable

1 to obtain the documents directly from Defendants and (2) he thereafter files a motion to compel which
2 results in a determination that he is entitled to the documents but Defendants lack possession, custody,
3 or control over them. See Fed. R. Civ. P. 45(d) (parties have a duty to avoid imposing undue burden
4 or expense on person subject to subpoena and courts are required to enforce this duty) (quotation
5 marks omitted); Ollier v. Sweetwater Union High School Dist., 768 F.3d 843, 862 (9th Cir. 2014)
6 (district courts have “wide discretion in controlling discovery.”) (internal quotation marks and citation
7 omitted). Accordingly, Plaintiff’s motion for issuance of subpoena duces tecum is DENIED, without
8 prejudice.

9
10 IT IS SO ORDERED.

11 Dated: August 9, 2016



UNITED STATES MAGISTRATE JUDGE