

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JARED VILLERY,)	Case No.: 1:15-cv-00936-LJO-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTION FOR
v.)	ISSUANCE OF SUBPOENAS DUCES TECUM
)	
EDWARD GARCIA, et al.,)	
)	[ECF No. 57]
Defendants.)	
)	
)	

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

On August 22, 2016, Plaintiff filed a motion for issuance and service of subpoenas duces tecum on nonparty individuals. Fed. R. Civ. P. 45. (ECF No. 57.)

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 the next required step. If the Court rules that the documents, electronically stored information, and/or

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

4 In this instance, Plaintiff has not demonstrated that he sought the information from Defendants
5 through a request for the production of documents, electronically stored information, and/or tangible
6 things, and, if he has done so, he has not filed a motion to compel the production of the documents.
7 See Fed. R. Civ. P. 45(d) (parties have a duty to avoid imposing undue burden or expense on person
8 subject to subpoena and courts are required to enforce this duty); Ollier v. Sweetwater Union High
9 School Dist., 768 F.3d 843, 862 (9th Cir. 2014) (district courts have “wide discretion in controlling
10 discovery.”) (internal quotation marks and citation omitted). Accordingly, Plaintiff’s motion for
11 issuance and service of subpoenas duces tecum is DENIED.

12
13 IT IS SO ORDERED.

14 Dated: September 27, 2016



UNITED STATES MAGISTRATE JUDGE