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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 MONICO J. QUIROGA III,

11 Plaintiff,

12 v.

13 SERGEANT GRAVES, et al.,

14 Defendants.  
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1:16-cv-00234-DAD-GSA-PC

ORDER DENYING MOTION FOR  
ISSUANCE OF SUBPOENA  
(ECF No. 38.)

17 **I. BACKGROUND**

18 Monico J. Quiroga III (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma*  
19 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On February 19, 2016,  
20 Plaintiff filed the Complaint commencing this action. (ECF No. 1.) Plaintiff’s Third Amended  
21 Complaint, filed on March 30, 2018, awaits the court’s requisite screening under 28 U.S.C. §  
22 1915A. (ECF No. 39.)

23 On March 30, 2018, Plaintiff filed a motion for issuance of a subpoena *duces tecum*.  
24 (ECF No. 38.)

25 **II. PLAINTIFF’S MOTION FOR ISSUANCE OF SUBPOENA**

26 Plaintiff requests issuance of a subpoena *duces tecum* commanding production of  
27 documents and video footage from a non-party, and service of the subpoena by the U.S.  
28 Marshal.

1 Plaintiff's motion is denied as discovery has not yet been opened in this case. When the  
2 case is ready for discovery the court will issue a scheduling order opening discovery.  
3 Discovery will not be opened until after the complaint has been served and one or more of the  
4 defendants has filed an answer to the complaint. Therefore, it is not time for discovery in this  
5 case, and Plaintiff's motion for issuance of a subpoena shall be denied.

6 Moreover, Plaintiff is advised that when discovery is opened, the court will consider  
7 granting a subpoena seeking documents from a non-party *only if* the documents sought from the  
8 non-party are not equally available to Plaintiff and are not obtainable from Defendants through  
9 a request for production of documents. Fed. R. Civ. P. 34.

10 **III. CONCLUSION**

11 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's motion for  
12 issuance of a subpoena, filed on March 30, 2018, is DENIED.

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14 IT IS SO ORDERED.

15 Dated: April 16, 2018

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE