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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD BROOK,

Plaintiff,

No. CIV S-09-1364 GEB KJM P

vs.

J.W. HAVILAND, et al.,

Defendants.

ORDER

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Plaintiff is a state prison inmate proceeding pro se with a civil rights action under 42 U.S.C. § 1983. On September 30, 2010, plaintiff filed a request for a subpoena duces tecum and a USM-285 form to direct the Marshal to serve the subpoena. Plaintiff says he wants to serve the subpoena on someone named Sam Martin, who is not a party, but whom plaintiff identifies as an agent of the defendants. He does not otherwise identify the relationship between Martin and any of the defendants or suggest what documents he will seek from Mr. Martin.

Under Federal Rule of Civil Procedure 45(a)(2)(C), a subpoena may direct a non-party to an action to produce documents or other tangible objects for inspection. However, a party's ability to use a subpoena duces tecum is circumscribed by the relevance standards of Federal Rule of Civil Procedure 26(b)(1), Transcor, Inc. v. Furney Charters, Inc., 212 F.R.D. 588, 591 (D. Kan. 2003), and by the court's duty to ensure that a subpoena does not impose

1 "undue burden or expense on a person subject to that subpoena." United States v. Columbia  
2 Broadcasting System, Inc., 666 F.2d 364 (9th Cir. 1982) (court may award costs of compliance  
3 with subpoena to non-party); Cantaline v. Raymark Industries, Inc., 103 F.R.D. 447, 450 (S.D.  
4 Fla. 1984) (same); Fed. R. Civ. P. 45(c)(1). One court found it appropriate to require an indigent  
5 plaintiff to "demonstrate that he has made provision for the costs of such discovery" before it  
6 would direct the Clerk to provide him with the forms for subpoenas duces tecum. Badman v.  
7 Stark, 139 F.R.D. 601, 605 (M.D. Pa. 1991).

8 In this case, plaintiff has not suggested what he seeks from Mr. Martin nor why  
9 any such material is relevant to the issues in this case.

10 IT IS THEREFORE ORDERED that plaintiff's request for a subpoena (docket  
11 no. 34) is denied.

12 DATED: October 21, 2010.

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15 U.S. MAGISTRATE JUDGE

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