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

REX CHAPPELL,

Plaintiff,

No. 2:10-cv-2676 KJM AC P

vs.

DUC, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this action seeking relief pursuant to 42 U.S.C. § 1983. Before the court is “Plaintiff’s Request for Court’s Help in Serving the Attached Subpoena on those Individuals They Are Addressed...” (Doc. No. 43.) For the reasons given herein, plaintiff’s request is denied.

Plaintiff asks the court to assist with serving subpoenas directed at: (1) the warden at California State Prison, Sacramento, and (2) an unnamed supervisor at “California Department of Corrections, Information Systems Branch, Distribution Data Processing Unit.” See Doc. No. 43 at 3, 6. From Mr. Virga, the warden, plaintiff seeks a roster of inmates who may have witnessed the incident which is the subject of this lawsuit. From the unnamed supervisor, he seeks the name of another potential witness, as well as copies of rules, regulations, and policies.

Id.

1 On October 1, 2012, the court denied plaintiff's motion to reopen discovery,  
2 noting in particular that:

3 [d]iscovery began on May 3, 2012, and ended on August 31,  
4 2012....Plaintiff seeks to reopen discovery in order to ascertain the  
5 identities of various inmates who witnessed the incident in order to obtain  
6 affidavits from the witnesses. Plaintiff seeks this information to counter  
7 the evidence presented by defendant's declaration in the motion for  
8 summary judgment. However, it is not clear, nor does plaintiff provide  
9 any explanation, why he did not seek to discover this information during  
10 the nearly four month discovery period that has already occurred and  
11 closed. Simply asking to reopen discovery without any explanation why  
12 this was not done before is insufficient.

13 See Order filed October 1, 2012, Doc. No. 41 at 1-2.

14 A moving party must show good cause to modify a Scheduling Order.  
15 Fed.R.Civ.P. 16(b)(4); see Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir.2002).  
16 In determining whether good cause exists to reopen discovery, courts may consider a variety of  
17 factors. See United States ex rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1526 (9th  
18 Cir.1995), cert. granted in part, 519 U.S. 926, 117 S.Ct. 293, vacated on other grounds, 520  
19 U.S.939, 117 S.Ct. 1871 (1997), citing Smith v. United States, 834 F.2d 166, 169 (10th Cir.  
20 1987). However, a good cause determination focuses primarily on the diligence of the moving  
21 party in his attempts to complete discovery in a timely manner. Johnson v. Mammoth  
22 Recreations, Inc., 975 F.2d 604, 609 (9th Cir.1992) ("If [the moving party] was not diligent, the  
23 inquiry should end.").

24 It would appear from a review of plaintiff's subpoenas that he is again seeking to  
25 discover information which he could have obtained during the open discovery period. Plaintiff  
26 does not address the court's October 1, 2012 denial in his request, nor, again, does he provide the  
court with any explanation of why he did not seek to discover this information during the now-  
closed discovery period. Plaintiff has failed to establish that there is good cause to modify the  
court's prior scheduling order in order to allow service of the subpoenas. The motion will  
accordingly be denied.

