UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES HENRY FLOURNOY,

Plaintiff,

v.

ERIC MANESS, et al.,

Defendants.

No. 2:11-cv-2844-KJM-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed a motion for extension of time to submit subpoena and discovery request (ECF No. 125) and a motion for subpoena duces tecum (ECF No. 126). His motion for extension of time is granted in part and his motion for subpoena is denied.

The court previously advised plaintiff that no subpoena would issue without a showing that he had taken steps to avoid imposing undue burden or expense on the person or entity subject to the subpoena. ECF No. 81. Federal Rule of Civil Procedure 45(b) requires personal service of a subpoena and "[d]irecting the Marshal's Office to expend its resources personally serving a subpoena is not taken lightly by the court." *Austin v. Winett*, 1:04-cv-05104-DLB PC, 2008 U.S. Dist. LEXIS 103279, at *2 (E.D. Cal. Dec. 11, 2008); 28 U.S.C. § 1915(d). Plaintiff was warned that a subpoena would not be served by the U.S. Marshal unless he could demonstrate that the requested documents were not equally available to him and not obtainable from the defendant

through a properly served request for production. ECF No. 81. He has not made that showing and the motion for subpoena is denied.

Based on the foregoing, the court will deny as moot any extension of time related to the submission of his subpoena. Plaintiff's request to serve his Rule 36 requests for admission, however, is granted nunc pro tunc.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for extension of time (ECF No. 125) is granted nunc pro tunc to the extent that, if he has not already done so, he shall serve his requests for admission by August 15, 2016, and denied in all other respects.

2. Plaintiff's motion for subpoena duces tecum (ECF No. 126) is denied.

Dated: August 1, 2016.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE