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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAUL GARCIA,  
Plaintiff,  
v.  
F. FOLKS, et al.,  
Defendants.

No. 2:14-cv-2378 JAM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. Plaintiff moves for extensions of time to respond to discovery requests and to conduct discovery. Plaintiff explains that he is incarcerated in the security housing unit (“SHU”) and therefore has infrequent access to legal materials. In addition, plaintiff requests issuance of subpoenas duces tecum.

**BACKGROUND**

This case is proceeding on plaintiff’s original complaint filed here on October 6, 2014. (ECF No. 1.) On screening, the court found plaintiff stated the following potentially cognizable claims regarding the conditions of his confinement at High Desert State Prison (“HDSP”): (1) First Amendment retaliation claims against all defendants; (2) Eighth Amendment claims based on the mishandling of plaintiff’s food against defendants Cox, Folks, Loftin, and Riley; (3) Eighth Amendment claims based on plaintiff’s living conditions against defendants Cox, Folks, Loftin,

1 Madrigal, Riley, Witcheal, and Wung; and (4) Eighth Amendment claims regarding plaintiff's  
2 serious medical needs against Cox, Loftin, Madrigal, Riley, Witcheal, and Wung. (ECF No. 14.)  
3 On June 9, 2016, defendants Cox, Folks, Holmes, Loftin, Madrigal, Witcheal, and Wung filed an  
4 answer to the complaint. (ECF No. 30.)

5 On October 11, 2016, the court issued a discovery and scheduling order setting a  
6 discovery deadline of January 27, 2017 and a pretrial motion deadline of April 28, 2017. (ECF  
7 No. 38.)

8 On November 14, 2016, defendant Riley filed an answer to the complaint. (ECF No. 45.)

9 On December 5, 2016, plaintiff filed a request for forms to subpoena witnesses. (ECF No.  
10 47.) The court denied the request without prejudice to its renewal. (ECF No. 48.)

11 On January 3, 2017, plaintiff filed the pending motions for extensions of time and the  
12 request for subpoenas duces tecum. (ECF Nos. 53, 54, 55.)

### 13 MOTIONS FOR EXTENSIONS OF TIME

14 Plaintiff states that he received defendants' requests for production of documents and  
15 admissions and interrogatories on December 1, 2016. Pursuant to the court's discovery and  
16 scheduling order, plaintiff's responses to those requests are due 45 days after they were served.  
17 (ECF No. 38 at 4.) He explains that finding the documents and information responsive to those  
18 requests is especially time-consuming for two reasons. First, plaintiff is incarcerated in the SHU  
19 and only has access to legal materials when he goes to the law library, which he is permitted to do  
20 once a week. Second, plaintiff must request a number of documents from prison staff and staff  
21 responses can take time. (ECF Nos. 53, 54.)

22 In his motion for an extension of the discovery cut-off date, plaintiff repeats his problems  
23 with limited access to legal materials and documents. In addition, plaintiff notes that defendant  
24 Riley answered the complaint in November, giving plaintiff little time to conduct discovery  
25 regarding Riley. Finally, plaintiff explains that he intends to seek information from third parties  
26 by way of a subpoena duces tecum. (ECF No. 54.) Plaintiff filed a request for a subpoena duces  
27 tecum at the same time he filed the pending motions. (See ECF No. 55.)

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1 The court finds plaintiff has shown good cause for both extensions of time. However, he  
2 fails to specify how much additional time he seeks. The court finds thirty-day extensions of both  
3 deadlines appropriate.

#### 4 **REQUEST FOR SUBPOENAS DUCES TECUM**

5 Plaintiff seeks the issuance of three subpoenas duces tecum. (ECF No. 55.) First, he  
6 seeks Robert A. Barton, Inspector General, “as a witness” regarding a 2015 report plaintiff claims  
7 Mr. Barton issued regarding the behavior of correctional officers at HDSP towards inmates  
8 during the time period from 2008 to 2015. It also appears plaintiff is requesting a copy of that  
9 report. Second, plaintiff seeks to make Donald Specter and Ehsan Sadeghi of the Prison Law  
10 Office witnesses and to require them to produce a report the Prison Law Office issued on HDSP.  
11 Third, plaintiff seeks to make Dr. Andrew Pomazal, a doctor at HDSP, a witness because he is the  
12 doctor who detected bacteria in plaintiff’s stomach and told plaintiff it was “because someone  
13 was messing with my food.” Attached to plaintiff’s request is a copy of a letter dated November  
14 10, 2016 addressed to plaintiff from Ehsan Sadeghi, a Litigation Assistant with the Prison Law  
15 Office. (ECF No. 55 at 6.) In that letter, plaintiff is informed that in December 2015 the Office  
16 of the Inspector General issued a report on staff misconduct at HDSP and that the Prison Law  
17 Office also provided a report to prison officials about HDSP.

18 As plaintiff was informed previously, the purpose of a subpoena duces tecum is to seek  
19 documents from a person who is not a party to this action. (Order dated Dec. 12, 2016 (ECF No.  
20 48) at 1.) In plaintiff’s first two requests, he does seek documents. However, in his third request  
21 regarding Dr. Pomazal, plaintiff does not indicate what, if any, documents he seeks. Therefore,  
22 plaintiff’s request for a subpoena duces tecum regarding Dr. Pomazal is denied. To the extent  
23 plaintiff is seeking to make Dr. Pomazal a witness, the attendance of a witness by subpoena is not  
24 necessary until trial. As explained in the court’s discovery and scheduling order, plaintiff need  
25 only seek a subpoena commanding a witnesses’ attendance at trial if that witness is not willing to  
26 testify voluntarily. (ECF No. 38 at 3-4.) To the extent plaintiff wishes to obtain information  
27 from Dr. Pomazal, he may do so by communicating with Dr. Pomazal directly. A subpoena is not  
28 necessary.

1 With respect to plaintiff's requests for subpoenas duces tecum to Mr. Barton and the  
2 Prison Law Office, the court finds two reasons plaintiff's requests should not be granted. First, as  
3 plaintiff was informed previously, issuance of a subpoena duces tecum requires the Marshal's  
4 Office to expend its resources to personally serve the subpoena. (Order dated Dec. 12, 2016  
5 (ECF No. 48) at 1-2.) In addition, a subpoena places a burden on a non-party to respond. For  
6 these reasons, a request for a subpoena is not taken lightly. See Austin v. Winett, No. 1:04-cv-  
7 5104 DLB PC, 2008 WL 5213414, \*1 (E.D. Cal. Dec. 12, 2008); Badman v. Stark, 139 F.R.D.  
8 601, 605 (M.D. Pa. 1991). Plaintiff fails to show that he has attempted to obtain copies of these  
9 reports by making requests through the mail or by telephone directly to Mr. Barton and the Prison  
10 Law Office.

11 Moreover, a discovery request must seek information that is relevant to plaintiff's case.  
12 See Fed. R. Civ. P. 26(b)(1) (information sought through discovery must be "relevant to any  
13 party's claim or defense"). Plaintiff is seeking relief regarding specific actions taken by the  
14 defendants in this case against him. Plaintiff fails to show why reports regarding abuses at HDSP  
15 generally are relevant to his claims of injury.

16 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED as  
17 follows:

- 18 1. Plaintiff's request for an extension of time to answer defendants' discovery requests  
19 (ECF No. 53) is granted. Plaintiff shall have an additional thirty days to respond to  
20 those requests.
- 21 2. Plaintiff's request for an extension of the discovery cutoff (ECF No. 54) is granted.  
22 The discovery and scheduling order issued October 11, 2016 (ECF No. 38) is  
23 amended. The deadline for discovery is continued to February 27, 2017. The parties  
24 may conduct discovery until that date. In addition, any motions to compel discovery  
25 shall be filed by that date.

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3. Plaintiff's request for subpoenas duces tecum is denied.

Dated: January 9, 2017



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:9  
DLB1/prisoner-civil rights/garc2378.eots