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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CHRISTOPHER I. SIMMONS,	)	Case No.: 1:07-cv-01058-DAD-SAB (PC)
	)	
Plaintiff,	)	
	)	<b>ORDER DENYING PLAINTIFF’S MOTION FOR</b>
v.	)	<b>ISSUANCE OF SUBPOENAS DUCES TECUM</b>
	)	
GRISSOM, et al.,	)	[ECF No. 193]
	)	
Defendants.	)	
	)	
	)	

Plaintiff Christopher I. Simmons is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for issuance of subpoena duces tecum, filed July 5, 2016. Defendants did not file a response, and the motion has been submitted upon the record without oral argument. Local Rule 230(l).

**I.  
DISCUSSION**

Discovery in this action opened in July 2014, and the parties were given eight months to conduct pretrial discovery. (ECF No. 90.) In December 2014, Plaintiff was transferred from the California Medical Facility (CMF) to the Atascadero State Hospital (ASH) for psychiatric treatment. (ECF Nos. 105, 107.) Plaintiff was retained at ASH for 49 days, from December 5, 2014, to January 23, 2015. (ECF No. 113, at 2 and n.1.) During this time, Plaintiff was without his legal materials.

1 (Id. at 2.) As a result, the Court modified the scheduling order by extending the discovery deadline  
2 and the dispositive motion deadline, each by 60 days. (ECF No. 115.)

3 Then, approximately two months later, Plaintiff was transferred from the CMF to ASH a  
4 second time. (ECF No. 120.) Plaintiff was again separated from his legal materials for just over 90  
5 days. The Court modified the scheduling order by extending the discovery deadline for an additional  
6 60 days, and the dispositive motion deadline for an extra 50 days. (ECF No. 123.) On September 28,  
7 2015, the Court denied Plaintiff's motion to stay the proceedings but extended the discovery and  
8 dispositive motion deadlines each by thirty days. (ECF No. 131.) The discovery deadline expired on  
9 October 28, 2015. (ECF No. 131.) On November 9, 2015, the Court denied Plaintiff's motion for  
10 reconsideration of the denial of his request to stay the proceedings. (ECF No. 135.) On February 29,  
11 2016, the Court denied Plaintiff's motion to further extend the discovery deadline due to the lack of a  
12 showing of due diligence and good cause. (ECF No. 165.)

13 In the present motion, Plaintiff seeks the issuance of subpoena duces tecum directed to the  
14 custodian of records at Kern Valley State Prison to obtain a copy of the institutions "heat plan"  
15 records. Plaintiff's request is untimely as the discovery phase of this action has been closed for  
16 several months. The fact that Plaintiff failed to follow and comply with the proper procedure in  
17 seeking subpoena duces tecum during the discovery phase of this action does not support a basis to re-  
18 open the discovery phase of this action. Accordingly, Plaintiff's motion for issuance of subpoena  
19 duces tecum is DENIED.

20  
21  
22 IT IS SO ORDERED.

23 Dated: August 3, 2016

  
UNITED STATES MAGISTRATE JUDGE