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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICK KUNKEL,		CASE NO. 1:09-cv-00686-LJO-SMS PC
Plaintiff,		ORDER PARTIALLY GRANTING
v.		PLAINTIFF'S MOTION FOR ISSUANCE OF
N. DILL, et al.,		SUBPOENAS DUCES TECUM AND
Defendants.		DIRECTING SERVICE OF SUBPOENA
		DUCES TECUM BY UNITED STATES
		MARSHALS SERVICE WITHOUT
		PREPAYMENT OF COSTS
_____ /		(ECF No. 85)

On February 2, 2011, Plaintiff filed a motion seeking the issuance of five subpoenas duces tecum. (ECF No. 85.) Plaintiff is proceeding pro se and in forma pauperis, and is entitled to service of the subpoena by the United States Marshal. 28 U.S.C. § 1915(d). The documents sought by four of the subpoenas pertain the medial treatment of Plaintiff's knee and ankle which are at issue in this action and the motion shall be granted for these subpoenas.

The fifth subpoena requests the in and out log book of the building which contains the names of every staff member who was on duty during the time period requested. Plaintiff requests these records to prove when medical staff saw him and to retrieve the names of witnesses. Plaintiff alleges that he had surgery on November 14, 2007, and when he returned to Kern Valley State Prison he was denied medical care because no medical staff were on duty. He was seen on November 15, 2007, and told that he would not receive pain medication until the following day. On November 16, 2007, Plaintiff was seen by Defendant Araich. The Court fails to see how the records requested, the in and out log book from November 12, 2007 through November 17, 2007, will lead to the discovery of

1 admissible evidence. Fed. R. Civ. P. 26(b)(1). Plaintiff's medical records will contain the names
2 of medical personnel who treated him and Plaintiff has failed to identify how the subject matter of
3 the testimony any of the witnesses he is seeking would be relevant. Therefore Plaintiff's request for
4 a subpoena duces tecum for the in and out log book will be denied without prejudice.

5 Accordingly, it is HEREBY ORDERED that:

6 1. Plaintiff's motion for the issuance of subpoenas duces tecum, filed February 2, 2011,
7 is PARTIALLY GRANTED as follows;

- 8 a. The motion for issuance of a subpoena duces tecum to Distribute Data
9 Program System Unit for the in and out log is DENIED;
- 10 b. The motion for the issuance of a subpoena duces tecum to Corcoran District
11 Hospital, Colonial Medical Group, CHW Central California Mercy Hospital,
12 and U. C. Davis Medical Center are GRANTED;

13 2. The Clerk of the Court shall forward the following documents to the United States
14 Marshals Service for each subpoena to be served:

15 a. One (1) completed and issued subpoena duces tecum and attached letter to be
16 served on each of the following:

17 CORCORAN DISTRICT HOSPITAL
18 1310 HANNA AVENUE
CORCORAN, CALIFORNIA 93212

19 COLONIAL MEDICAL GROUP
20 (PACIFIC ORTHO MEDICAL GROUP)
1801 16TH STREET, SUITE B
21 BAKERSFIELD, CALIFORNIA 93301

22 CHW CENTRAL CALIFORNIA MERCY HOSPITAL
23 2215 TRUXTON AVENUE
BAKERSFIELD, CALIFORNIA 93301

24 U. C. DAVIS MEDICAL CENTER
25 2315 STOCKTON BLVD.
SACRAMENTO, CALIFORNIA 95817

- 26 b. One (1) completed USM-285 form; and
- 27 c. One (1) copy of this order, plus an extra copy for the Marshals Service.

28 3. Within **TWENTY (20) DAYS** from the date of this order, the Marshals Service is

1 DIRECTED to serve the subpoenas in accordance with the provisions of Rule 45 of
2 the Federal Rules of Civil Procedure.

3 4. The Marshals Service is DIRECTED to retain a copy of the subpoena in its file for
4 future use.

5 5. The Marshals Service SHALL effect **personal service** of the subpoena duces tecum,
6 along with a copy of this order, upon the entity named in the subpoena pursuant to
7 Rule 45 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).

8 6. Within **TEN (10) DAYS** after personal service is effected, the Marshals Service
9 SHALL file the return of service, along with the costs subsequently incurred in
10 effecting service. Said costs shall be enumerated on the USM-285 form.

11
12 IT IS SO ORDERED.

13 **Dated:** May 11, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE