

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

TIMOTHY HOWARD,

CASE NO. 1:11-cv-00101-AWI-SKO PC

Plaintiff,

ORDER DENYING MOTION FOR ISSUANCE  
OF SUBPOENA DUCES TECUM AS  
PREMATURE

v.

D. L. DeAZEVEDO, et al.,

(Doc. 19)

Defendants.

Plaintiff Timothy Howard, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 20, 2011. On May 3, 2012, Plaintiff filed a motion seeking the issuance of a subpoena duces tecum to non-party Kathleen Allison.

The discovery phase of this litigation is not yet open. Therefore, Plaintiff’s motion is premature and it shall be denied. Plaintiff is directed to paragraph 8 of the First Informational Order, filed on January 20, 2011.

Once discovery is open, Plaintiff is informed of the following requirements. Plaintiff may be entitled to the issuance of a subpoena commanding the production of documents from a non-party, Fed. R. Civ. P. 45, and to service of the subpoena by the United States Marshal, 28 U.S.C. 1915(d). However, the Court will consider granting such a request *only if* the documents sought from the non-party are not equally available to Plaintiff and are not obtainable from Defendant through a request for the production of documents. Fed. R. Civ. P. 34. If Plaintiff wishes to make a request for the issuance of a records subpoena, he may file a motion requesting the issuance of a subpoena duces tecum that (1) identifies with specificity the documents sought and from whom, and (2) makes a showing in the motion that the records are only obtainable through that third party.

1           As set forth above, Plaintiff's motion for the issuance of a subpoena duces tecum is  
2 premature and it is HEREBY DENIED on that ground.

3  
4 IT IS SO ORDERED.

5 **Dated:**   May 10, 2012  

                  /s/ Sheila K. Oberto                    
UNITED STATES MAGISTRATE JUDGE

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28