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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILBUR ATCHERLEY,

Plaintiff,

v.

DR. EDGAR CLARK, et al.,

Defendants.

Case No. 1:12-cv-00225 DLB PC

**ORDER DENYING PLAINTIFF'S
REQUEST FOR BLANK SUBPOENAS
DUCES TECUM**

(Document 13)

Plaintiff Wilbur Atcherley ("Plaintiff") is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed a First Amended Complaint on March 14, 2013. The First Amended Complaint is awaiting screening.

On July 31, 2013, Plaintiff filed a request for blank subpoenas duces tecum in each of his three pending civil actions, including this action.

As Plaintiff's First Amended Complaint has not yet been screened, discovery has not yet opened in this action. If and when the Court determines that Plaintiff's First Amended Complaint states a cognizable claim for relief and Defendants file an answer, the Court will issue an order opening discovery. Plaintiff's motion is therefore premature.

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).

1 However, the Court will consider granting such a request only if the documents sought from the non-
2 party are not equally available to Plaintiff and are not obtainable from Defendant through a request
3 for the production of documents. Fed. R. Civ. P. 34. If Plaintiff wishes to make a request for the
4 issuance of a records subpoena, he may file a motion requesting the issuance of a subpoena duces
5 tecum that (1) identifies with specificity the documents sought and from whom, and (2) makes a
6 showing in the motion that the records are only obtainable through that third party.

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

9
10 IT IS SO ORDERED.

11 Dated: August 7, 2013

/s/ Dennis L. Beck
12 UNITED STATES MAGISTRATE JUDGE