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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. On December 5, 2016, plaintiff filed a document in which he seeks forms for “duces tecum” from the court in order to “supena [sic] witnesses.” (ECF No. 47.) The court is not sure what plaintiff requests.


If plaintiff seeks to obtain documents from a person who is not a party to this action, he must request the court issue a “subpoena duces tecum.” Because plaintiff is proceeding in forma pauperis, the court’s authorization of a subpoena duces tecum is subject to limitations. “Directing the Marshal’s Office to expend its resources to personally serve a subpoena is not taken lightly by the court.” Austin v. Winett, No. 1:04-cv-5104 DLB PC, 2008 WL 5213414, * 1 (E.D. Cal. Dec. 12, 2008). In addition, the “Federal Rules of Civil Procedure were not intended to burden a non-party with a duty to suffer excessive or unusual expenses in order to comply with a subpoena duces tecum.” Badman v. Stark, 139 F.R.D. 601, 605 (M.D. Pa. 1991); see also United States v.

1 Columbia Broad. Sys., Inc., 666 F.2d 364 (9th Cir. 1982) (court may award costs of compliance
2 with subpoena to non-party). Therefore, in a request for issuance of a subpoena duces tecum,
3 plaintiff must explain clearly who he seeks documents from, what documents he seeks, and why
4 he can only obtain them from this person. See, e.g., Davis v. Ramen, No. 1:06-cv-1216 AWI-
5 SKO PC, 2010 WL 1948560, *1 (E.D. Cal. May 11, 2010).

6 The purpose of a “subpoena” is to require the attendance of a person at a trial. See Fed. R.
7 Civ. P. 45(a), (c). In the Discovery and Scheduling Order issued on October 11, 2016, the court
8 described the procedures for obtaining the attendance of a witness at trial. (ECF No. 38 at 2-4.)
9 Because no trial has been set in this matter, plaintiff has no basis for the issuance of a subpoena at
10 this point.

11 Accordingly, plaintiff’s unclear request for forms (ECF No. 47) filed on December 5,
12 2016 is denied without prejudice.

13 Dated: December 12, 2016

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16 DEBORAH BARNES
17 UNITED STATES MAGISTRATE JUDGE
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20 DLB:9
21 DLB1/prisoner-civil rights/garc2378.subp
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