

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

REAGAN THOMAS,  
  
                                  Plaintiff,  
  
          v.  
  
RAVERA, et al.,  
  
                                  Defendants.

No. 2:15-cv-1936 KJM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court is plaintiff’s motion for issuance of a subpoena duces tecum and service of the subpoena by the United States Marshals. ECF No. 30. Plaintiff seeks to subpoena documents from the warden of High Desert State Prison (HDSP), who is not a party to this action. Id.

A non-party may be compelled to produce documents for inspection and copying pursuant to a subpoena duces tecum. Fed. R. Civ. P. 34(c), 45(a). In order to do this, plaintiff must fill out subpoena forms and ensure that each person is served with the subpoena by a non-party. Fed. R. Civ. P. 45(b). If the person’s attendance is required, plaintiff must tender to each person “the fees for 1 day’s attendance and the mileage allowed by law.” Fed R. Civ. P. 45(b)(1). The current requisite fee for each person is forty dollars per day, 28 U.S.C. § 1821(b), and cannot be waived for a plaintiff proceeding in forma pauperis. Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993).

1           Limitations on a subpoena include the relevance of the information sought as well as the  
2 burden and expense to the non-party in providing the requested information. Fed. R. Civ. P. 26,  
3 45. A motion for issuance of a subpoena duces tecum should be supported by clear identification  
4 of the documents sought and a showing that the records are obtainable only through the identified  
5 third-party. Davis v. Ramen, No. 1:06-cv-01216-AWI-SKO PC, 2010 WL 1948560, at \*1, 2010  
6 U.S. Dist. LEXIS 115432, at \*3 (E.D. Cal. May 11, 2010); Williams v. Adams, No. 1:05-cv-  
7 00124-AWI-SMS PC, 2010 WL 148703, at \*1 (E.D. Cal. Jan. 14, 2010). “The Federal Rules of  
8 Civil Procedure were not intended to burden a non-party with a duty to suffer excessive or  
9 unusual expenses in order to comply with a subpoena *duces tecum*.” Badman v. Stark, 139  
10 F.R.D. 601, 605 (M.D. Pa. 1991) (citation omitted); see also, United States v. Columbia Broad.  
11 Sys., Inc., 666 F.2d 364, 368 (9th Cir. 1982) (court may award costs of compliance with subpoena  
12 to non-party). Non-parties are “entitled to have the benefit of this Court’s vigilance” in  
13 considering these factors. Badman, 139 F.R.D. at 605. Additionally, because Federal Rule of  
14 Civil Procedure 45(b) requires personal service of a subpoena, “[d]irecting the Marshal’s Office  
15 to expend its resources personally serving a subpoena is not taken lightly by the court.” Austin v.  
16 Winett, 1:04-cv-05104-DLB PC, 2008 WL 5213414, \*1, 2008 U.S. Dist. LEXIS 103279, at \*2  
17 (E.D. Cal. Dec. 12, 2008); 28 U.S.C. § 1915(d).

18           As an initial matter, though plaintiff has submitted a completed subpoena form, it appears  
19 that he has used a state court form and as a result the subpoena does not contain all the  
20 information required by Rule 45. ECF No. 30 at 5-7. The Clerk of the Court will be directed to  
21 send plaintiff a blank subpoena form, and the present motion will be denied for failure to comply  
22 with Rule 45. The motion will also be denied because it fails to establish that the documents  
23 sought cannot be obtained through discovery requests to defendant Rivera. Although the  
24 subpoena form states that the documents can only be obtained through the warden of HDSP, there  
25 is no indication that plaintiff has tried and failed to obtain these documents through discovery  
26 requests. Id. at 6. In order for the court to consider ordering the United States Marshals to serve  
27 a subpoena duces tecum on a non-party, plaintiff must submit to the court a completed federal  
28 subpoena form that describes the items to be produced with reasonable particularity and designate


1 a reasonable time, place, and manner for production. Plaintiff must also show that he has not or  
2 cannot receive the documents he seeks by way of discovery requests to defendant Rivera. Failure  
3 to make this showing will result in denial of the motion. Plaintiff is further advised that even  
4 though he is proceeding in forma pauperis, should the court order service of his subpoena, he may  
5 be required to pay any costs associated with complying with the subpoena in order to avoid  
6 imposing an undue burden upon a non-party.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. The Clerk of the Court is directed to provide plaintiff a signed but otherwise blank  
9 subpoena duces tecum form with this order. See Fed. R. Civ. P. 45(a)(3).

10 2. Plaintiff's motion for issuance of a subpoena and service by the United States Marshals  
11 (ECF No. 30) is denied without prejudice to a motion that contains the required information and  
12 is accompanied by a completed subpoena that uses the proper form.

13 DATED: November 29, 2017

14   
15 ALLISON CLAIRE  
16 UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28