

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
SOUTHERN DISTRICT OF CALIFORNIA

HOWARD YOUNG, CDCR #F-44590,
Plaintiff,
v.
LARRY SMALLS, et al.,
Defendants.

Case No. 09-CV-2545-DMS (JMA)

**ORDER DENYING PLAINTIFF'S
MOTION TO QUASH SUBPOENAS
AND MOTION FOR APPOINTMENT
OF COUNSEL [Doc. No. 157]**

Presently before the Court are Plaintiff Howard Young's motion to quash subpoenas and motion for appointment of counsel. Doc. No. 157. For the reasons set forth below, Plaintiff's motions are **DENIED**.

I. Motion to Quash Subpoenas

Defendants¹ served two subpoenas on the California Department of Corrections and Rehabilitation ("CDCR") on August 29, 2011, one for Plaintiff's medical records from January 1, 2008 to the present, and one for specified items in Plaintiff's central inmate file. Jeffery Decl., Doc. No. 152-1, at ¶ 3. Plaintiff filed a motion to quash subpoenas in this Court on September 21, 2011. Doc. No. 122. On October 27, 2011, the Court issued an order finding the subpoenas to be defective and unenforceable as

¹T. Ochoa, C. Rigney, W.J. Price, M. Tapia, Middleton, Janda, and California Department of Corrections and Rehabilitation.

1 they were incorrectly issued out of this Court instead of the United States District Court,
2 Eastern District of California (“Eastern District”), where Plaintiff’s records are located.
3 Doc. No. 134.² On October 31, 2011, Defendants served two new subpoenas upon the
4 CDCR out of the Eastern District. Jeffery Decl., Doc. No. 152-1, at ¶ 6. On November
5 9, 2011, Plaintiff served a document entitled “Plaintiff’s Motion to Quash and/or Modify
6 Subpoenas” on Defendants. *Id.* at ¶ 7. Although the document was received by the
7 Eastern District on November 28, 2011, it was not filed as Plaintiff erroneously listed the
8 case number from this Court on the caption of the document. Pl.’s Motion to Quash,
9 Doc. No. 157, at 7-10. On February 9, 2012 nunc pro tunc February 3, 2012, Plaintiff
10 filed the instant motion to quash subpoenas in this Court. Doc. No. 157.
11 Notwithstanding Plaintiff’s purported motion to quash, the CDCR produced the
12 subpoenaed documents to Defendants. Jeffery Decl., Doc. No. 152-1, at ¶ 9.
13 Defendants’ counsel, however, has not yet reviewed them due to Plaintiff’s intention to
14 seek to quash the subpoenas. *Id.*

15 Under Fed. R. Civ. P. 45(c)(3), any motion to quash subpoena must be
16 considered by the court out of which the subpoena was issued. Plaintiff seeks to quash
17 subpoenas issued by Defendants out of the Eastern District. Therefore, Plaintiff’s
18 motion is **DENIED**. Plaintiff shall file his motion to quash in the Eastern District by no
19 later than March 26, 2012. In order to avoid confusion, Plaintiff shall ensure that the
20 case number for *this* case does not appear in the caption of his motion, and shall attach
21 a copy of the subject subpoenas as an exhibit to his motion. Any reference to *this* case
22 should be in the body of the motion only. Plaintiff shall serve a copy of the motion on
23 Defendants’ counsel.

24 If Plaintiff does not file a motion to quash in the Eastern District by the deadline
25 set forth above, then counsel for Defendants shall be permitted to review the documents
26 produced pursuant to the subpoenas.

27 //

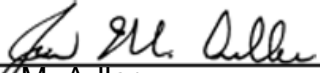
28 _____
²Plaintiff’s records are located at Kern Valley State Prison in Delano, California, where he is currently incarcerated.

1 **II. Motion for Appointment of Counsel**

2 Plaintiff also seeks the appointment of counsel. The Court denied previous
3 motions for appointment of counsel on November 1, 2010 and October 27, 2011. Doc.
4 Nos. 39, 134. Plaintiff has not demonstrated any change in circumstance that would
5 warrant the appointment of counsel under the standards set forth in the Court's prior
6 orders. Accordingly, Plaintiff's motion for appointment of counsel is again **DENIED**
7 without prejudice.

8 **IT IS SO ORDERED.**

9 DATED: March 2, 2012

10 
11 Jan M. Adler
U.S. Magistrate Judge