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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

9 LANCE WILLIAMS,

10 Plaintiff,

11 v.

12 O. ORTEGA, et al.,

13 Defendants.

Case No.: 18-cv-00547-LAB-MDD

**ORDER RE: PLAINTIFF'S  
LETTER AND REQUEST FOR  
SUBPOENA DOCUMENTS**

[ECF No. 57]

14  
15 Plaintiff Lance Williams is a state prisoner proceeding *pro se* and *in*  
16 *forma pauperis*, with a civil rights complaint pursuant to 42 U.S.C. § 1983.  
17 (ECF No. 39). On July 17, 2020, Plaintiff filed a letter requesting the Court  
18 to stamp and certify a subpoena duces tecum to be served by the United  
19 States Marshal on a non-party. (ECF No. 57). Plaintiff's proposed subpoena,  
20 directed to the non-party Richard J. Donovan Litigation Department for the  
21 attention of "II Connie," seeks information regarding to all "D.D.P. employees  
22 working under Dr. Zudiker" between the dates of January 1, 2018 and  
23 January 1, 2019.

24 Service of a subpoena *duces tecum* is governed by Federal Rule of Civil  
25 Procedure 45. A *pro se* plaintiff who is not admitted to practice law is not  
26 authorized to sign and issue a subpoena. *See Cramer v. Target Corp.*, 2010  
27 U.S. Dist. LEXIS 53941, at \*1 (E.D. Cal. 2010). Accordingly, a *pro se in*

1 *forma pauperis* (“*IFP*”) plaintiff "is generally entitled to obtain service of a  
2 subpoena duces tecum by the United States Marshal. 28 U.S.C. § 1915(d);  
3 *See Heilman v. Lyons*, 2010 U.S. Dist. LEXIS 136449, at \*1 (E.D. Cal. 2010)  
4 (granting in part *pro se IFP* prisoner plaintiff's motion to authorize the U.S.  
5 Marshal to serve a subpoena on the CDCR).

6 However, "the expenditure of public funds [on behalf of an indigent  
7 litigant] is proper only when authorized by Congress . . . ." *Heilman v.*  
8 *Thumser*, 2014 U.S. Dist. LEXIS 2208, at \*2 (E.D. Cal. 2014) (citing *Tedder v.*  
9 *Odel*, 890 F.2d 210, 211-12 (9th Cir. 1989)). Consequently, the *in forma*  
10 *pauperis* statute does not authorize nor entitle the expenditure or waiver of  
11 public funds for service of subpoenas. *Davis v. Paramo*, 2017 U.S. Dist.  
12 LEXIS 21255, at \*8 (S.D. Cal. 2017); *See Tedder*, 890 F.2d 210 at 211-212;  
13 *See generally* 28 U.S.C. § 1915(d).

14 Subject to certain considerations, the Court may authorize the issuance  
15 of a subpoena on behalf of a *pro se IFP* litigant. The Court generally requires  
16 that Plaintiff's motion "be supported by: (1) clear identification of the  
17 documents sought and from whom, and (2) a showing that the records are  
18 obtainable only through the identified third party." *Lyons*, 2010 U.S. Dist.  
19 LEXIS 136449, \*3. Further considerations under the Federal Rules of Civil  
20 Procedure include the relevance of the information sought and the burden  
21 and expense on the non-party to provide the information. *Smith v.*  
22 *Rodriguez*, 2016 U.S. Dist. LEXIS 43991, at \*11 (E.D. Cal. 2016); *See Fed. R.*  
23 *Civ. P.* 26, 45. Non-parties are "entitled to have the benefit of the Court's  
24 vigilance" in considering these factors. *Alexander v. California Dept. of*  
25 *Corrections*, 2010 U.S. Dist. LEXIS 113197, at \*9 (E.D. Cal. 2010) (*citing*  
26 *Badman v. Stark*, 139 F.R.D. 601, 605 (M.D. Pa. 1991)).

27 Here, Plaintiff has not shown that the requested documents are not

1 available to him and not obtainable from Defendants through discovery.  
2 Thus, plaintiff has not shown that he took reasonable steps to obtain the  
3 requested documents prior to requesting service of the subpoena from a non-  
4 party. Consequently, Plaintiff's motion does not fall within the limited  
5 circumstances under which the Court might order the U.S. Marshal to serve  
6 a subpoena duces tecum. Furthermore, any documents within the  
7 possession, custody or control of Defendants may be obtained by Plaintiff  
8 through other discovery means such as a request for production of  
9 documents.

10 **IT IS SO ORDERED.**

11 Dated: August 6, 2020



12  
13 Hon. Mitchell D. Dembin  
14 United States Magistrate Judge  
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