

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-00911-WYD-MJW

MICHAEL MILLIGAN,

Plaintiff,

v.

BILL REED, et al.,

Defendants.

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**ORDER REGARDING  
PLAINTIFF'S MOTION REQUESTING ISSUANCE OF SUBPOENAS  
(Docket No. 121)**

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**Entered by Magistrate Judge Watanabe**

In an Order issued on June 3, 2009 (Docket No. 184), Chief Judge Daniel recommitted to this court the Plaintiff's Motion Requesting Issuance of Subpoenas (Docket No. 121). In that motion, plaintiff seeks discovery from a non-party, namely Warden Hoyt Brill at the CCA/Kit Carson Correctional Center in Burlington, Colorado. The documents plaintiff seeks are "the Intel/Investigation files on an incident that occurred at the CCA/Kit Carson Correctional Center in March 2006 involving the Plaintiff and white supremacist prisoners, including an individual named Justin Pottberg, DOC No. 112872, which are involved in the claims before this Court and evidence to be presented in support of the Plaintiff's claims against Defendants John Doe and Endre Samu." (Docket No. 121 at 1). Plaintiff asks the court to "issue the requested subpoena on behalf of the Plaintiff and to have it served by the U.S. Marshall's [sic] Service as the Plaintiff has been granted leave to proceed in forma pauperis in this

action by the Court.” (Docket No. 121 at 2).

“A civil litigant in a federal court action may subpoena documents from third parties, of course. To do so, however, the litigant must comply with the federal rules of civil procedure and with federal law.” Hawkinson v. Montoya, 2006 WL 1215397, \*2 (D. Colo. May 4, 2006). The plaintiff “has no right to obtain documents through discovery free of charge, however, his status as an *in forma pauperis* litigant notwithstanding. For example, in Windsor v. Martindale, 175 F.R.D. 665 (D. Colo. 1997), the court held that a state inmate bringing a federal court action *pro se* and *in forma pauperis* “is not entitled to a copy of any document without payment of an appropriate copy cost, if required.” Id. Therefore, while the documents plaintiff seeks may very well be relevant to his remaining claims, this court will not order the Clerk of the Court to issue a subpoena commanding the production of documents from a third party until the plaintiff provides proof that he has made arrangements for the payment of any costs associated with the preparation or copying of those documents or has obtained the agreement of the third party to waive the payment of those costs. See Mauchlin v. Bier, 2009 WL 1384136, \*2 (D. Colo. May 12, 2009); Hawkinson v. Montoya, 2006 WL 1215397, \*2 (D. Colo. May 4, 2006). .

It is thus hereby **ORDERED** that the Plaintiff’s Motion Requesting Issuance of Subpoenas (Docket No. 121) is denied without prejudice.

BY THE COURT:

Done this 11<sup>th</sup> day of June, 2009

s/ Michael J. Watanabe  
Michael J. Watanabe  
United States Magistrate Judge