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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAVID MAURICE GOMEZ,
Plaintiff,

CASE NO. 1:03-cv-6290 DLB PC

ORDER PROVIDING TRAVEL
EXPENSE FOR PLAINTIFF’S PROPOSED
UNINCARCERATED WITNESSES

vs.

SADDI, et al.,
Defendants.

_____ /

Plaintiff David Maurice Gomez (“plaintiff”) is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s amended complaint, filed October 21, 2003, against defendants Saddi, Bailey and German on Plaintiff’s Eighth Amendment failure-to-protect claim.

On October 29, 2008, the Court issued a Second Scheduling Order. (Doc. 158). In the Order, the Court advised plaintiff of the procedure for obtaining the attendance of unincarcerated witnesses who refuse to testify voluntarily. The Court advised plaintiff that he must first notify the Court in writing of the name and location of each unincarcerated witness and that the Court would then calculate the travel expense for each unincarcerated witness and notify plaintiff of the amount(s). On January 6, 2009, Plaintiff submitted the names of three unincarcerated witnesses whom Plaintiff indicates will not testify voluntarily, as well as three money orders for \$40.00 each.

1 As was previously explained, Plaintiff must submit money orders covering the travel expenses
2 for each witness, in addition to the daily witness fee of \$40.00 for each witness, before any subpoenas
3 will be served.

4 **Witness Jane Kahn**

5 Plaintiff requests that a subpoena be issued for attorney Jane Kahn. The round trip mileage from
6 San Francisco to Fresno is 370 miles. The mileage rate is \$.585 per mile. The total mileage fee is
7 \$216.45. Further, the per diem rate for Fresno is \$142 per day (\$88 lodging and \$54 meals and
8 incidental expenses). Accordingly, for witness Jane Kahn, plaintiff must submit a further money order
9 made payable to the witness in the amount of **\$358.45**.

10 Plaintiff is reminded that the subpoena will not be served upon Jane Kahn by the United States
11 Marshal unless the money order is tendered to the court. Plaintiff must submit the further money orders
12 to the court no later than January 30, 2009.

13 **Witness Dr. Kim**

14 Plaintiff also requests that a subpoena be issued for Dr. Kim at Corcoran State Prison. The round
15 trip mileage from Corcoran State Prison to Fresno is 105.8 miles. The mileage rate is \$.585 per mile.
16 Accordingly, for Dr. Kim, plaintiff must submit a money order made payable to the witness in the
17 amount of **\$61.89**.

18 Plaintiff is reminded that the subpoena will not be served upon Dr. Kim by the United States
19 Marshal unless the money order is tendered to the court. Plaintiff must submit the further money orders
20 to the court no later than January 30, 2009.

21 **Witness Mari Morsell**

22 Plaintiff has requested that a subpoena be issued for attorney Mari Morsell, whom Plaintiff states
23 is now in Medford, Oregon. Plaintiff declares that Ms. Morsell has relevant information and knowledge
24 of this action, and refers the Court to exhibits C and D of his amended complaint.

25 Exhibit C is a letter apparently drafted by Ms. Morsell to Warden Scribner, dated June 23, 2003,
26 warning of threats made against Plaintiff by various inmates, as well as taunting by correctional officers.
27 (Doc. 4, Exh. C).

28 Exhibit D is an unsigned letter dated July 8, 2003, bearing Ms. Morsell's name on the letterhead,

1 inquiring into the disappearance of Plaintiff's two 602 forms. (Id., Exh. D).

2 Upon review of Plaintiff's declaration and the aforementioned exhibits, it is not clear to the Court
3 that Ms. Morsell has first hand knowledge of the events giving rise to this action. The Court welcomes
4 submissions, due within 15 days of service of this order, regarding the necessity of Ms. Morsell traveling
5 from Oregon to appear as a witness in these proceedings.¹

6 The Clerk of the Court is HEREBY DIRECTED to send to Ms. Morsell by mail a copy of this
7 order, and a copy of Plaintiff's amended complaint filed October 21, 2003.

8

9 IT IS SO ORDERED.

10 **Dated: January 20, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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¹ In the event that Ms. Morsell is required to attend in person at trial, Plaintiff is required to pay the actual expenses of her travel. 28 U.S.C. § 1821(c)(2). The Court notes that roundtrip airfare from Medford to Fresno is approximately \$450.00. Plaintiff must also pay the necessary travel to and from the airport for Ms. Morsell, as well as the per diem rate of \$142 per day.