



1 California.<sup>1</sup> Plaintiff declares under penalty of perjury that this witness has personal knowledge of the  
2 events described in his complaint. (ECF NO. 212, pp. 1-3.)

3 Plaintiff's motion shall be granted. If Plaintiff wishes to have Lieutenant R.L. Johnson served  
4 with a summons to testify at trial, Plaintiff must submit a money order, for this witness, made out to  
5 said witness in the amount of \$217.19.<sup>2</sup> To the extent Plaintiff is unsure where the witness is currently  
6 located, the Court and the Marshal cannot and will not conduct an investigation on Plaintiff's behalf.  
7 Ascertaining the location of Plaintiff's non-incarcerated witnesses is Plaintiff's responsibility. If  
8 Plaintiff submits the money order as required, the Court will direct the Marshal to serve the witness at  
9 the location provided by Plaintiff, which, at this time, is CCI. In addition, the fact that Plaintiff is  
10 indigent and is proceeding in forma pauperis in this action does not excuse him from paying the  
11 witness fees or travel expenses. 28 U.S.C. § 1915; Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993);  
12 Tedder v. Odel, 890 F.2d 210, 211-212 (9th Cir. 1989).

## 13 **II. Motion for Appointment of Counsel**

14 Plaintiff has also filed a motion requesting the appointment of counsel. Plaintiff has previously  
15 filed ten motions for the appointment of counsel in this case, and all of the motions have been denied  
16 because exceptional circumstances were not present to warrant the appointment of counsel. Thus, this  
17 is Plaintiff's eleventh request for appointment of counsel. Plaintiff contends that counsel is necessary  
18 to prepare and conduct examination of witnesses at trial. The Court may appoint counsel if  
19 exceptional circumstances are present. 28 U.S.C. § 1915(e)(1); Rand v. Rowland, 113 F.3d 1520,  
20 1525 (9th Cir. 1997). In determining whether "exceptional circumstances exist, the district court must  
21 evaluate both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his  
22 claims pro se in light of the complexity of the legal issues involved." Id. (internal quotation marks and  
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24 <sup>1</sup> To the extent Plaintiff seeks to subpoena a John/Jane Doe (a physician/surgeon), as a witness at trial, such request is  
25 deficient. As stated in the trial scheduling order, if Plaintiff wishes to obtain the attendance of one or more unincarcerated  
26 witnesses who refuse to testify, he must provide in writing the name and location of such witness. Plaintiff has failed to do  
27 with regard to naming a John/Jane Doe as a potential witness. The time to ascertain the identity of a witness is during the  
28 discovery process, not the service of witness process. Thus, any such request must be denied.

<sup>2</sup> The amount for the witness is based on the daily witness fee of \$40.00, plus \$177.19 for round-trip mileage for one day.  
28 U.S.C. § 1821. Plaintiff reports that this witness is located at California Correctional Institution in Tehachapi,  
California. It is 313.62 miles, round trip, from California Correctional Institution to the courthouse, and the current  
mileage reimbursement rate is \$0.565 per mile.

1 citations omitted). As with Plaintiff's prior motions, the Court does not find exceptional  
2 circumstances present to warrant the appointment of counsel. The mere fact that Plaintiff is  
3 proceeding to a jury trial pro se, does not present exceptional circumstances to justify appointment of  
4 counsel. Accordingly, Plaintiff's motion shall be denied.

5 Based on the foregoing,

6 IT IS HERE ORDERED that:

- 7 1. Plaintiff's motion for the attendance of unincarcerated witness Lieutenant R.L. Johnson  
8 is GRANTED;
- 9 2. In order for Lieutenant R.L. Johnson to testify at trial, Plaintiff must submit a money  
10 order made out to such witness in the amount of \$217.19 by January 27, 2014;
- 11 3. The Court cannot accept cash, and the money order may not be made out to the Court.  
12 The money order must be made out in the witness's name; and
- 13 4. Plaintiff's motion for the appointment of counsel is DENIED.

14  
15 IT IS SO ORDERED.

16 Dated: January 16, 2014



UNITED STATES MAGISTRATE JUDGE