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

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Dalrick Henry,

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No. 1:07-cv-00336-DGC

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Plaintiff,

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ORDER

11

vs.

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Eliud Chapa,

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Defendant.

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A Final Pretrial Conference was held on January 15, 2010. The Court stated that it will direct the United States Marshal’s Service to serve Plaintiff’s trial subpoenas. The Court further stated that it will issue a separate order addressing this subject and explaining the steps Plaintiff must take in order to have the subpoenas served. This is that order.

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The issuance and service of subpoenas is governed by Rule 45 of the Federal Rules of Civil Procedure. That rule provides that the clerk must issue a subpoena, signed but otherwise blank, to a party who requests it and that party must complete the subpoena before service. Fed. R. Civ. P. 45(a)(3). Service of a subpoena “requires delivering a copy to the named person and, if the subpoena requires that person’s attendance, tendering the fees for 1 day’s attendance and the mileage allowed by law.” Fed. R. Civ. P. 45(b)(1). The daily witness attendance fee for unincarcerated witnesses is \$40.00. 28 U.S.C. § 1821(b). Mileage is payable based on distances and rates set by the United States General Services Administration (“GSA”). 28 U.S.C. § 1821(c)(2). A review of the GSA’s website indicates that the current mileage rate is \$0.50 per mile. See <http://www.gsa.gov> (POV mileage

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1 reimbursement).

2 Plaintiff is proceeding pro se and in forma pauperis, and therefore is entitled to service
3 of trial subpoenas by the United States Marshal's Service. See 28 U.S.C. § 1915(d).
4 "Although the plain language of section 1915 provides for service of process for an
5 indigent's witnesses, it does not waive payment of fees or expenses for those witnesses."
6 *Tedder v. Odel*, 890 F.2d 210, 211 (9th Cir. 1989); see *Tolbert v. Peeler*, No. 1:03-cv-05254-
7 LJO-SMS PC., 2007 WL 2994771, at *1 (E.D. Cal. Oct. 12, 2007) ("in forma pauperis status
8 does not provide for the payment of witness fees or travel expenses").

9 The Court will direct the Clerk of Court to send 15 signed but otherwise blank
10 subpoena forms to Plaintiff. Plaintiff must fully complete each subpoena he wishes to have
11 served on unincarcerated witnesses and shall return the completed subpoenas to the Clerk for
12 delivery to the United States Marshal's Service. For each unincarcerated witness, Plaintiff
13 must provide the \$40.00 daily witness fee plus the witness' travel expenses. See *CF & I Steel*
14 *Corp. v. Mitsui & Co. (U.S.A.), Inc.*, 713 F.2d 494, 496 (9th Cir. 1983) ("[W]e hold the plain
15 meaning of Rule 45[] requires simultaneous tendering of witness fees and the reasonably
16 estimated mileage allowed by law with service of a subpoena."). Plaintiff is advised that
17 "[a] subpoena will not be served by the United States Marshal upon an unincarcerated
18 witness unless the subpoena is accompanied by a money order made payable to the witness
19 for the full amount of the witness' travel expenses plus the daily witness fee of \$40.00[.]"
20 See *Bjorlin v. Crow*, No. CIV S-06-1837 LKK DAD P., 2009 WL 2777282, at *3 (E.D. Cal.
21 Aug. 27, 2009); see *Harnden v. Key*, No. 1:02-cv-06529-LJO-GSA-PC., 2008 WL 4793273,
22 at *4 (E.D. Cal. Oct. 31, 2008).

23 Subpoenas are not required for incarcerated witnesses. On or before **April 12, 2010**,
24 Plaintiff shall file a list of incarcerated witnesses he intends to call at trial. The Court will
25 then prepare appropriate writs for each such witness.

26 **IT IS ORDERED:**

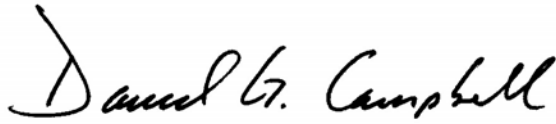
- 27 1. The Clerk is directed to issue 15 subpoenas to Plaintiff.
28 2. Plaintiff must complete each subpoena he wishes to have served on

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unincarcerated witnesses and shall provide the completed subpoenas to the Clerk of Court for delivery to the United States Marshal's Service. For each unincarcerated witness, Plaintiff must provide the \$40.00 daily witness fee plus the witness' travel expenses.

- 3. The United States Marshal Service is directed to serve all appropriate subpoenas on behalf of Plaintiff.
- 4. Plaintiff shall, on or before **April 12, 2010**, file with the Court a list of incarcerated witnesses he intends to call at trial.

DATED this 27th day of January, 2010.



David G. Campbell
United States District Judge

cc: USMS