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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMISI J. CALLOWAY,
Plaintiff,
vs.
C/O HAYWARD and
C/O OAKS,
Defendants.

1:08-cv-01896-LJO-GSA-PC
ORDER DENYING PLAINTIFF'S
REQUEST FOR ISSUANCE OF WITNESS
SUBPOENAS AS UNTIMELY
(ECF No. 204.)

I. BACKGROUND

Jamisi J. Calloway ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action under 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on December 10, 2008. (ECF No. 1.) This action now proceeds with Plaintiff's Third Amended Complaint filed on October 5, 2009, against defendants C/O Hayward and C/O Oaks, for use of excessive force in violation of the Eighth Amendment to the U.S. Constitution. (ECF No. 20.)

This case is scheduled for jury trial to commence on January 31, 2017 at 8:30 a.m. before District Judge Lawrence J. O'Neill. On January 9, 2017, Plaintiff filed a request for

1 issuance of subpoenas commanding witnesses to appear at the trial to testify. (ECF No. 204.)
2 Plaintiff submitted 18 witness subpoenas to the Court, each addressed to one or more
3 prospective witnesses. Plaintiff requests the Court to “return file stamped subpoenas A.S.A.P.”
4 (Id.)

5 **II. WITNESS SUBPOENAS**

6 On August 1, 2016, the Court issued the Second Scheduling Order, in which Plaintiff
7 was instructed as follows:

8 4. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who
9 Refuse to Testify Voluntarily - If a prospective witness is not incarcerated, and
10 he or she refuses to testify voluntarily, the witness must be served with a
11 subpoena. Fed. R. Civ. P. 45. In addition, the party seeking the witness’s
12 presence must tender an appropriate sum of money for the witness. Id. In the
13 case of an unincarcerated witness, the appropriate sum of money is the daily
14 witness fee of \$40.00 plus the witness’s travel expenses. 28 U.S.C. § 1821.

15 If Plaintiff wishes to obtain the attendance of one or more unincarcerated
16 witnesses who refuse to testify voluntarily, Plaintiff must first notify the Court
17 in writing of the name and location of each unincarcerated witness. The Court
18 will calculate the travel expense for each unincarcerated witness and notify
19 Plaintiff of the amount(s). Plaintiff must then, for each witness, submit a money
20 order made payable to the witness for the full amount of the witness’s travel
21 expenses plus the daily witness fee of \$40.00. The subpoena will not be served
22 upon the unincarcerated witness by the United States Marshal unless the money
23 order is tendered to the Court. Because no statute authorizes the use of public
24 funds for these expenses in civil cases, the tendering of witness fees and travel
25 expenses is required even if the party was granted leave to proceed *in forma*
26 *pauperis*. **If Plaintiff wishes to have the Marshal serve any unincarcerated**
27 **witnesses who refuse to testify voluntarily, Plaintiff must submit the money**
28 **orders to the Court no later than November 18, 2016.** In order to ensure
timely submission of the money orders, Plaintiff should notify the Court of the
names and locations of his witnesses, in compliance with subsection 4, **no later**
than October 18, 2016.

21 (ECF No. 164 at 4-5.)

22 Plaintiff filed his request for subpoenas more than two months after the Court’s October
23 18, 2016 deadline. With such late notice, there is not enough time to collect witness fees from
24 Plaintiff and issue the subpoenas, with time for the U. S. Marshal to serve the subpoenas before
25 trial.¹ Therefore, Plaintiff’s request shall be denied as untimely.

26
27 ¹ Moreover, Plaintiff has not indicated that he has funds available to pay the witness fees. The
28 fees required for only one witness residing in Sacramento would cost Plaintiff more than \$300.00, and Plaintiff has
listed nineteen witnesses.

1 **III. CONCLUSION**

2 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's
3 request for subpoenas, filed on January 9, 2017, is DENIED as untimely.

4
5 IT IS SO ORDERED.

6 Dated: January 11, 2017

/s/ Lawrence J. O'Neill
7 UNITED STATES CHIEF DISTRICT JUDGE