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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 DONALD GLASS,) Case No.: 1:09-cv-00098-AWI-BAM PC
12)
13 Plaintiff,) ORDER DENYING PLAINTIFF'S MOTION FOR
14 v.) COURT ORDER DIRECTING CLERK OF THE
15 J. S. WOODFORD, et al.,) COURT TO MAIL UNUSED WITNESS FEES
16 Defendants.) AND TRAVEL EXPENSES AS MOOT (ECF No.
) 269)
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17 Plaintiff Donald Glass, a state prisoner, proceeded pro se and in forma pauperis, in this civil
18 rights action pursuant to 42 U.S.C. § 1983. The matter proceeded to a jury trial on April 16, 2013.
19 On April 23, 2013, the jury returned special verdicts in favor of Defendants Blevins, Hamilton,
20 Robles, Bautista, Riddle and McDaniel, and judgment for Defendants was entered on May 8, 2013.
21 (ECF Nos. 246-51, 258-63.)

22 Prior to the jury trial, the Court directed the United States Marshal to serve subpoenas on the
23 following witnesses: (1) Facility Captain R. Halberg; (2) Facility Captain R. Lopez; and (3)
24 Radiologist Tsung-Yi Stephen Huo. As part of that order, the Court instructed the Clerk of the Court
25 to forward subpoenas to the United States Marshal, along with money orders submitted by Plaintiff
26 and made payable to each of the witnesses in the amount of \$100.17. (ECF No. 137.)

27 During the course of the trial, the United States Marshal returned the witness subpoenas
28 unexecuted for Facility Captain R. Lopez and Radiologist Tsung-Yi Stephen Huo. The United States

1 Marshal also indicated that there was no record of Facility Captain R. Halberg. (ECF Nos. 253, 254.)
2 The Court informed Plaintiff that the United States Marshal was unable to locate his witnesses for
3 service, with the exception of witness R. Lopez, who appeared and testified at trial. (ECF No. 241.)
4 Plaintiff requested that the unused witness fees for the two remaining witnesses be returned.

5 Currently pending is Plaintiff's motion that the Court issue an order directing the Clerk of the
6 Court to mail the unused witness fees and travel expenses back to Michelle Franklin. (ECF No. 269.)
7 As noted above, however, the Court directed the Clerk of the Court to forward the witness fees to the
8 United States Marshal. The witness fees are no longer in the possession of the Clerk of the Court, and
9 therefore the Court cannot direct the Clerk to return the fees. Accordingly, Plaintiff's motion is
10 DENIED as moot. However, the Court understands that the United States Marshals Service mails
11 unused witness fees back to the address listed on the money orders. Thus, the witness fees in question
12 should be, if they have not already been, returned by the United States Marshals Service.

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15 IT IS SO ORDERED.

16 Dated: October 3, 2013


17 SENIOR DISTRICT JUDGE
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