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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LARRY D. THOMAS,

Plaintiff,

v.

HECTOR ROBLES, et al.,

Defendants.

CASE NO. 1:09-cv-00443-LJO-BAM PC

ORDER NOTIFYING PLAINTIFF OF
WITNESS FEES AND COSTS DUE TO
SUBPOENA UNINCARCERATED
WITNESSES WHO REFUSE TO TESTIFY
VOLUNTARILY

Plaintiff Larry D. Thomas (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is set for trial on December 13, 2011, before the Honorable Lawrence J. O’Neill. Pursuant to the Court’s scheduling order filed on January 11, 2011, Plaintiff was informed that if he wishes to have the Marshal serve any unincarcerated witnesses who refuse to testify voluntarily, he must submit money orders for the witnesses to the Court no later than March 31, 2011. (Doc. 45, 4:3-24.) On January 28, 2011, Plaintiff filed a pretrial statement with the names and locations of sixteen unincarcerated witnesses he wishes to have testify at trial.

Plaintiff is notified that for each witness, he must submit a money order, made payable to the witness, to the Court. Since Plaintiff was not notified of the amount of the witness fees prior to the date in the scheduling order, the Court will extend time and the witness fees must be submitted to the Court by November 25, 2011. To obtain the attendance of a witness, Plaintiff will need to submit

1 a money order, for each witness, in the amount of \$118.95.¹ No witness will be served with a
2 subpoena absent the timely submission of a money order.

3 Finally, to the extent Plaintiff is unsure where the witness is currently located, the Court and
4 the Marshal cannot and will not conduct an investigation on Plaintiff's behalf. Ascertaining the
5 location of Plaintiff's non-incarcerated witnesses is Plaintiff's responsibility. If Plaintiff submits the
6 money orders as required, the Court will direct the Marshal to serve the witnesses at the location
7 provided by Plaintiff.

8 **Accordingly, pursuant to the Second Scheduling Order, for each unincarcerated**
9 **witness that Plaintiff wishes to have served with summonses to testify at trial, he must submit,**
10 **for *each* witness, a money order made out to that witness in the amount of \$118.95 by**
11 **November 25, 2011. The Court cannot accept cash, and the money orders may not be made**
12 **out to the Court. The money orders must be made out in the witness's name.**

13 IT IS SO ORDERED.

14 **Dated: November 3, 2011**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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27 ¹The daily witness fee of \$40.00, plus \$78.95 for round trip mileage for one day. 28 U.S.C. § 1821. It is
28 154.8 miles, round trip, from Kern Valley State Prison to the courthouse, and the current mileage reimbursement rate
is 51 cents per mile.