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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY D. THOMAS,

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

Plaintiff,

ORDER ADDRESSING PLAINTIFF'S
RESPONSE TO COURT'S ORDER NOTIFYING
PLAINTIFF OF WITNESS FEES AND COSTS
DUE TO SUBPOENA OF UNINCARCERATED
WITNESSES WHO REFUSE TO TESTIFY
VOLUNTARILY

v.

HECTOR ROBLES, et al.,

Defendants.

(ECF No. 84)

_____ /

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 confirmed for trial on December 13, 2011, at 8:30 a.m. before the Honorable Lawrence J. O'Neill. On November 3, 2011, an order issued notifying Plaintiff of the witness fees and costs due to subpoena unincarcerated witnesses who refuse to testify voluntarily. (ECF No. 78.) On November 10, 2011, Plaintiff filed a response stating that he was unaware that fees and costs were not covered because he was proceeding in forma pauperis. (ECF No. 84.)

Plaintiff is referred to the second scheduling order issued January 11, 2011, in which he was informed that to obtain the attendance of unincarcerated witnesses who refused to testify voluntarily he would be required to pay witness fees and expenses. (Second Scheduling Order 4:1-20, ECF No. 45.) In the order, Plaintiff was also informed that witness fees and expenses were required even if the party is granted leave to proceed in forma pauperis.

To the extent that Plaintiff's response is requesting a waiver of witness fees and expenses,

1 the expenditure of public funds on behalf of an indigent litigant is proper only when authorized by
2 Congress. Tedder v. Odel, 890 F.2d 210, 211 (9th Cir. 1989) (citations omitted). The in forma
3 pauperis statute does not authorize the Court to waive witness fees or expenses paid to those
4 witnesses. Tedder v. Odel, 890 F.2d at 211; Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993);
5 Bussiere v. Cano, 2010 WL 5507047, 1:10-cv-00945-GBC PC, *1 (E.D. Cal. Dec. 28, 2010); see
6 28 U.S.C. § 1915.

7 Accordingly, to the extent that Plaintiff is requesting a waiver of witness fees and expenses
8 his request is DENIED.

9 IT IS SO ORDERED.

10 **Dated: November 14, 2011**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE