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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT SAENZ,)	1:09-cv-00557- BAM (PC)
)	
Plaintiff,)	ORDER PARTIALLY GRANTING
)	PLAINTIFF’S MOTION FOR
v.)	ATTENDANCE OF UNINCARCERATED
)	WITNESSES
SGT. D. REEVES,)	(ECF No. 110)
)	
Defendant.)	DEADLINE TO SUBMIT WITNESS FEES:
)	April 15, 2013

I. Introduction

Plaintiff Robert Gonzales Saenz (“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 proceeding against Defendant Reeves for retaliation in violation of the First Amendment and deliberate indifference to conditions of confinement in violation of the Eighth Amendment. The matter is set for jury trial on June 18, 2013.

In the second scheduling order issued on September 14, 2012, Plaintiff was notified that in order to obtain the attendance of unincarcerated witnesses who refuse to testify voluntarily, he must notify the Court in writing of the name and location of each unincarcerated witness. On January 14, 2013, Plaintiff filed a motion for the attendance of unincarcerated witnesses. (ECF No. 110.) Defendant Reeves filed an opposition on January 29, 2013. (ECF No. 111.)

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2 **II. Motion for the Attendance of Unincarcerated Witnesses**

3 Plaintiff moves for the attendance of Defendant Reeves, Correctional Lieutenant J.
4 Brown, Correctional Officer R. Milam, Correctional Officer J. Perez and Forensic Examiner C.
5 Felix at the trial of this matter. In opposition, Defendant Reeves notes that he is the named
6 defendant in this action and is not subject to the motion. Defendant objects to the remaining
7 witnesses because Plaintiff has not provided any information regarding their purported
8 testimony. Defendant contends that Plaintiff has made no showing that these witnesses have
9 relevant and admissible testimony. Defendant further objects because Plaintiff failed to identify
10 any witnesses in discovery.

11 As Defendant correctly notes, a motion for his attendance at trial is unnecessary.
12 Accordingly, Plaintiff's motion for the attendance of Defendant Reeves is denied as moot.

13 With regard to Plaintiff's request for the attendance of the remaining unincarcerated
14 witnesses, the Court cannot make a finding at this time regarding the issue of whether these
15 witnesses possess relevant testimony. Either the witnesses must file a motion to quash any
16 subpoena to avoid appearing at trial or Defendant Reeves must file a motion in limine to exclude
17 their testimony. Accordingly, if Plaintiff wishes to have Correctional Lieutenant J. Brown,
18 Correctional Officer R. Milam, and Correctional Officer J. Perez be served at Kern Valley State
19 Prison with summonses to testify at trial, he must submit, for *each* witness, a money order made
20 out to that witness in the amount of \$131.19, by April 15, 2013.¹ If Plaintiff wishes to have C.
21 Felix, a forensic examiner, served at Fresno Community Hospital with a summons to testify at
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25 ¹ The daily witness fee of \$40.00, plus \$91.19 for round trip mileage for one day. 28 U.S.C. § 1821. It is 161.4
26 miles, round trip, from Kern Valley State Prison to the courthouse, and the current mileage reimbursement rate is 56.5 cents per mile.

1 trial, he must submit a money order made out to the witness in the amount of \$40.57, by April
2 15, 2013.²

3 No witness will be served with a subpoena absent the timely submission of a money
4 order.

5 Based on the foregoing, it is HEREBY ORDERED as follows:

- 6 1. Plaintiff's motion for the attendance of Defendant Reeves is DENIED as moot;
- 7 2. To have Correctional Lieutenant J. Brown, Correctional Officer R. Milam, and
8 Correctional Officer J. Perez served with summonses to testify at trial, Plaintiff must submit, for
9 each witness, a money order made out to that witness in the amount of \$131.19, by April 15,
10 2013;
- 11 3. To have C. Felix served with a summons to testify at trial, Plaintiff must submit a
12 money order made out to that witness in the amount of \$40.57, by April 15, 2013; and
- 13 4. The Court cannot accept cash, and the money orders may not be made out to the
14 Court. The money orders must be made out in the witness's name.

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18 IT IS SO ORDERED.

19 Dated: March 27, 2013

/s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE

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25 ² The daily witness fee of \$40.00, plus \$.57 for round trip mileage for one day. 28 U.S.C. § 1821. It is 1.0 mile,
26 round trip, from Fresno Community Hospital to the courthouse, and the current mileage reimbursement rate is 56.5
cents per mile.