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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,

CASE NO. 1:10-cv-00023-BAM PC

Plaintiff,

ORDER REGARDING PLAINTIFF’S MOTION  
INFORMING THE COURT PLAINTIFF  
INDIGENT FOR MONEY FOR WITNESS

v.

R. PEREZ, et al.,

(ECF No. 76)

Defendants.

Plaintiff Lamont Shepard (“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 on Plaintiff’s complaint against Defendants L.A. Martinez, R. Perez, P. Garcia, J. Soto, E. De la Cruz and A Trevino for excessive force in violation of the Eighth Amendment. A telephonic trial confirmation hearing is set for March 15, 2013, and a jury trial is set for May 6, 2013.

On November 6, 2012, the Court issued a Second Scheduling Order. (ECF No. 65.) On January 18, 2013, the Court issued an Amended Second Scheduling Order. (ECF No. 73.) Both orders informed Plaintiff of the procedures for obtaining the attendance of witnesses at trial, including the required payment of witness fees for unincarcerated witnesses that refuse to testify voluntarily.

On January 30, 2013, Plaintiff filed the instant motion to inform the Court that he is indigent and that he cannot afford to submit money orders for unincarcerated witnesses that refuse to testify voluntarily. Plaintiff now seeks the Court’s direction. At this time, the Court reiterates that no statute authorizes the expenditure of public funds for witness fees in civil cases such as this one.

1 Thus, even if Plaintiff is proceeding in forma pauperis, he must tender witness fees and travel  
2 expenses to secure the attendance of unincarcerated witnesses that refuse to testify voluntarily.

3 As previously instructed, if Plaintiff wishes to obtain the attendance of one or more  
4 unincarcerated witnesses who refuse to testify voluntarily, Plaintiff must first notify the Court in  
5 writing of the name and location of each unincarcerated witness. The Court will calculate the travel  
6 expense for each unincarcerated witness and notify Plaintiff of the amount(s). Plaintiff must then,  
7 for each witness, submit a money order made payable to the witness for the full amount of the  
8 witness's travel expenses plus the daily witness fee of \$40.00. A subpoena will not be served upon  
9 the unincarcerated witness by the United States Marshal unless the money order is tendered to the  
10 Court. If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who refuse  
11 to testify voluntarily, Plaintiff must submit the money orders to the Court no later than March  
12 **15, 2013.** In order to ensure timely submission of the money orders, Plaintiff should notify the Court  
13 of the names and locations of his witnesses, in compliance with the Amended Second Scheduling  
14 Order, as soon as possible.

15 To the extent Plaintiff is requesting the expenditure of public funds for the payment of  
16 witness fees and travel expenses, his request is DENIED.

17 IT IS SO ORDERED.

18 **Dated: February 13, 2013**

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE