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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

WARNER LIVINGSTON,  Plaintiff,  v.  J. SANCHEZ, et al.,  Defendants.	) Case No.: 1:10-cv-01152-LJO-BAM PC ) ) <b>AMENDED ORDER GRANTING PLAINTIFF’S</b> ) <b>MOTION FOR ATTENDANCE OF</b> ) <b>UNINCARCERATED WITNESSES WHO REFUSE</b> ) <b>TO TESTIFY VOLUNTARILY</b> ) (ECF No. 67) ) ) <b>DEADLINE TO SUBMIT WITNESS FEES:</b> ) <b>July 14, 2014</b> ) )
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Plaintiff Warner Livingston (“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 proceeds on Plaintiff’s complaint, filed June 25, 2010, against Defendants Sanchez and Ayon for excessive force in violation of the Eighth Amendment. This matter is set for a jury trial on August 12, 2014.

On May 7, 2014, Plaintiff filed a motion for the attendance of the following unincarcerated witnesses: (1) J. Stoogodo, (2) Dr. P. Newtion, (3) Warden T. P. Wan, (4) Correctional Lieutenant J. Perez, (5) Correctional Sergeant C. Garza, and (6) Correctional Sergeant M. Lunes. (ECF No. 67.)

On June 3, 2014, the Court issued an order granting Plaintiff’s motion for the attendance of unincarcerated witnesses who refuse to testify voluntarily. (ECF No. 69.) Plaintiff’s witness fees were due on or before June 26, 2014. No fees have been received by the Court.

1 On June 26, 2014, the Court granted Plaintiff an extension of time to submit witness fees for J.  
2 Stoogodo. The fees for witness Stoogodo are due on or before July 14, 2014.

3 Upon further review, the Court's order containing the calculation of witness fees erroneously  
4 calculated the appropriate fees and mileage. **Accordingly, the Court issues the following amended**  
5 **order granting Plaintiff's motion for the attendance of incarcerated witnesses.**

6 **I. Motion for the Attendance of Unincarcerated Witnesses**

7 As noted above, Plaintiff seeks the attendance at trial of the following unincarcerated  
8 witnesses: (1) J. Stoogodo, (2) Dr. P. Newtion, (3) Warden T. P. Wan, (4) Correctional Lieutenant J.  
9 Perez, (5) Correctional Sergeant C. Garza, and (6) Correctional Sergeant M. Lunes. Plaintiff's motion  
10 requesting the attendance of the unincarcerated witnesses shall be granted.

11 If Plaintiff wishes to have J. Stoogodo and Dr. P. Newtion served with summonses to testify at  
12 trial, then Plaintiff must submit a money order, for *each* of these witnesses, made out to that witness in  
13 the amount of **\$502.17**.<sup>1</sup>

14 If Plaintiff wishes to have Warden T. P. Wan, Correctional Lieutenant J. Perez, Correctional  
15 Sergeant C. Garza, and Correctional Sergeant M. Lunes served with summonses to testify at trial, then  
16 Plaintiff must submit a money order, for *each* of these witnesses, made out to that witness in the  
17 amount of **\$102.26**.<sup>2</sup>

18 **II. Conclusion and Order**

19 Based on the above, IT IS HEREBY ORDERED as follows:

- 20 1. Plaintiff's motion for the attendance of unincarcerated witnesses J. Stoogodo, Dr. P.  
21 Newtion, Warden T. P. Wan, Correctional Lieutenant J. Perez, Correctional Sergeant C.  
22 Garza, and Correctional Sergeant M. Lunes is GRANTED;

23  
24  
25 <sup>1</sup> The amount for each of these witnesses is based on the daily witness fee of \$40.00, plus \$462.17 for round-trip  
26 mileage for one day. 28 U.S.C § 1821. Plaintiff reports that each of these witnesses is located at Calipatria State Prison in  
27 Calipatria, California. It is 818 miles, round trip, from Calipatria State Prison to the courthouse, and the current mileage  
reimbursement rate is \$0.565 per mile.

28 <sup>2</sup> The amount for each of these witnesses is based on the daily witness fee of \$40.00, plus \$62.26 for round-trip  
mileage for one day. 28 U.S.C. § 1821. Plaintiff reports that each of these witnesses is located at the California Substance  
Abuse Treatment Facility in Corcoran, California. It is 110.2 miles, round trip, from the California Substance Abuse  
Treatment facility to the courthouse, and the current mileage reimbursement rate is \$0.565 per mile.

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2. To have J. Stoogodo and Dr. P. Newtion served with summonses to testify at trial, Plaintiff must submit a money order made out to each witness in the amount of **\$502.17 by July 14, 2014;**
3. To have Warden T. P. Wan, Correctional Lieutenant J. Perez, Correctional Sergeant C. Garza, and Correctional Sergeant M. Lunes served with summonses to testify at trial, Plaintiff must submit a money order made out to that witness in the amount of **\$102.26 by July 14, 2014;** and
4. The Court cannot accept cash and the money order may not be made out to the Court. The money order must be made out in the witness's name.

IT IS SO ORDERED.

Dated: July 2, 2014

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE