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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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|-----------------------|---|---------------------------------------|
| KEVIN DARNELL BRYANT, |) | Case No. 1:11-cv-00446-BAM (PC) |
| Plaintiff, |) | |
| v. |) | ORDER REGARDING PLAINTIFF'S NOTICE OF |
| GALLAGHER, et al., |) | NAMES AND LOCATIONS OF EACH |
| Defendants. |) | UNINCARCERATED WITNESS WHO REFUSES |
| |) | TO TESTIFY AT TRIAL VOLUNTARILY |
| |) | (ECF No. 259) |
| |) | |
| |) | DEADLINE TO SUBMIT WITNESS FEES: |
| |) | September 16, 2016 |
| |) | |
| |) | |

Plaintiff Kevin Darnell Bryant ("Plaintiff") is state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. All parties have consented to magistrate judge jurisdiction. (ECF Nos. 7, 231.) This matter is set for trial on October 17, 2016.

On August 12, 2016, Plaintiff filed a written notice regarding the names and locations of the unincarcerated witnesses who refuse to testify at trial voluntarily, whom he seeks to be subpoenaed for trial. These witnesses are: (1) Lieutenant Jason Stiles; (2) Special Agent Gerald Biane; (3) Special Agent Ricardo (Richard) Christensen; (4) Lieutenant Constance Waddle; (5) Ms. B. DaVeiga; (6) Young N. Paik, M.D.; (7) Sandra Lee Schaefer, M.D.; (8) Helen Tuhin, R.N.; (9) Christine Blantz, NP-C; (10) Sandy Markman, R.N.; (11) Rose Stephens; and (12) Christopher Cruz.

R.N. Tuhin and R.N. Markman are defense witnesses, expected to provide both percipient testimony and, according to the Defendants' disclosures, (ECF No. 247, pp. 4-5), potentially also

1 expert testimony. Defendants will make such witnesses available at trial for examination, and Plaintiff
2 is not required to subpoena them.

3 Regarding Rose Stephens and Christopher Cruz, Plaintiff indicates that these witnesses are
4 former CDCR officers whom he intends to present as “rebuttal witnesses.” (ECF No. 259, pp. 2-3.)
5 These witnesses were not disclosed in Plaintiff’s pretrial statement, and are not listed in the August 4,
6 2016 pretrial order in this matter. Only those witnesses listed in section VII of the pretrial order may
7 be called to testify at trial. (ECF No. 258, p. 12-13.)

8 Regarding Christine Blantz, NP-C, Plaintiff previously indicated that she is his expert witness
9 in his case. As a voluntary witness on his behalf, no action need be sought or obtained from the Court
10 regarding her attendance. It is Plaintiff’s responsibility to notify Nurse Blantz of the time and date of
11 trial and to secure her attendance, if he wishes her to testify.

12 The witness fees for each of the other unincarcerated witnesses who refuse to testify
13 voluntarily are set forth below. The amount for each of these witnesses is based on the daily witness
14 fee of \$40.00, plus round-trip mileage at the current reimbursement rate of \$0.54 per mile. 28 U.S.C §
15 1821.

16 Also, as discussed at the telephonic trial confirmation hearing in this matter, the Court finds
17 that Lieutenant Stiles requires a witness fee for lodging expenses for one night. Lieutenant Stiles is
18 located at a distance of 386 miles from the courthouse, and thus commuting to and from the
19 courthouse in a single day is not feasible. 28 U.S.C. § 1821(d)(1) (“A subsistence allowance shall be
20 paid to a witness when an overnight stay is required at the place of attendance because such place is so
21 far removed from the residence of such witness as to prohibit return thereto from day to day.”). See
22 also Ezelle v. Bauer Corp., 154 F.R.D. 149, 154 (S.D. Miss. 1994) (subsistence payment for overnight
23 stay appropriate where court finds that witness’s residence is too far away from place of trial to render
24 commuting feasible); Kenyon v. Automatic Instrument Co., 10 F.R.D. 248, 253 (W.D. Mich. 1950)
25 (overruling objection to subsistence payment for overnight lodgings for witnesses traveling
26 approximately 175 miles to place of trial). The current reimbursement rate for overnight lodging in
27 Fresno, California is \$92.00 per night. 28 U.S.C. § 1821(d)(2).

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1 Thus, if Plaintiff wishes to have these witnesses served with summonses to testify at trial, then
2 Plaintiff must submit a separate money order, made out to *each* witness, in the amounts set forth below:

- 3 1. For Lieutenant Jason Stiles, Plaintiff must submit a money order in the amount of
4 **\$548.88;**¹
- 5 2. For Special Agent Gerald Biane, Plaintiff must submit a money order in the amount of
6 **\$158.80;**²
- 7 3. For Special Agent Ricardo (Richard) Christensen, Plaintiff must submit a money order
8 in the amount of **\$158.80;**³
- 9 4. For Lieutenant Constance Waddle, Plaintiff must submit a money order in the amount
10 of **\$127.05;**⁴
- 11 5. For Ms. B. DaVeiga, Plaintiff must submit a money order in the amount of **\$99.51;**⁵
- 12 6. For Sandra Lee Schaefer, M.D., Plaintiff must submit a money order in the amount of
13 **\$127.05;**⁶ and
- 14 7. For Young Paik, M.D., Plaintiff must submit a money order in the amount of **\$156.64;**⁷

15 As set forth in the Second Scheduling Order, to ensure the timely subpoena of these witnesses for trial,
16 Plaintiff must submit the above listed witness fees no later than September 16, 2016. (ECF No. 233, p.
17 4).

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20 ¹ Plaintiff reports that Lieutenant Stiles is located at the California Correctional Center, 711-045
Center Road, Susanville, CA 96127-0790. It is 772 miles, round-trip, from that location to the
courthouse.

21 ² Plaintiff reports that Special Agent Biane is located at the Central Region Office of the Office
22 of Internal Affairs (“OIA”), 5016 California Avenue, Suite 210, Bakersfield, CA 93309. It is 220
miles, round-trip, from that location to the courthouse.

23 ³ Plaintiff reports that Special Agent Christensen is located at the OIA. It is 220 miles, round-
trip, from that location to the courthouse.

24 ⁴ Plaintiff reports that Lieutenant Waddle is located at Kern Valley State Prison (“KVSP”), 3000
West Cecil Avenue, Delano, CA 93216. It is 161.2 miles, round-trip, from that location to the
courthouse.

25 ⁵ Plaintiff reports that Ms. DaViega is located at the California Substance Abuse Treatment
26 Facility and State Prison, 900 Quebec Avenue, Corcoran, CA 93212. It is 110.2 miles, round-trip,
from that location to the courthouse.

27 ⁶ Plaintiff reports that Dr. Schaefer is located at KVSP. It is 161.2 miles, round-trip, from that
location to the courthouse.

28 ⁷ Plaintiff reports that Dr. Paik is located at the Pacific Orthopedic Medical Group, 2619 F.
Street, Bakersfield, CA 93301. It is 216 miles, round trip, from that location to the courthouse.

1 Accordingly, it is HEREBY ORDERED that Plaintiff's deadline to submit the above-listed
2 money orders in the full amount for the unincarcerated witnesses to be served with summonses to
3 testify at trial, is **September 16, 2016**. Plaintiff is advised that the Court cannot accept cash, and
4 money orders cannot be made out to the Court, but must be made out to each individual witness in that
5 witness's name.

6
7 IT IS SO ORDERED.

8 Dated: August 15, 2016

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE