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

DANIEL MASTERSON,)	Case No.: 1:11-cv-01179-SAB (PC)
)	
Plaintiff,)	ORDER REGARDING PLAINTIFF’S MOTION
)	FOR ATTENDANCE OF UNINCARCERATED
v.)	WITNESSES PURSUANT TO THE COURT’S
)	TRIAL SCHEDULING ORDER
S. KILLEN, et al.,)	
)	
Defendants.)	[ECF No. 180]
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)	
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)	

Plaintiff Daniel Masterson is appearing *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. 6, 164.) This matter is set for trial on May 1, 2018 at 8:30 a.m. in Courtroom 9.

On October 13, 2017, the Court issued a Trial Scheduling Order setting forth, among other things, the procedures for obtaining the attendance of unincarcerated witnesses who refuse to voluntarily testify. (ECF No. 170.) By February 1, 2018, Plaintiff was required to notify the Court in writing of the name and location of each unincarcerated witnesses, and the Court would calculate the travel expense for each witness and notify Plaintiff of the amount. (*Id.* at 8-9.)

Currently before the Court is Plaintiff’s timely written notice of the names and locations of the unincarcerated witnesses who refuse to voluntarily testify at trial. (ECF No. 180.) These witnesses are:

1 (1) Scott Mandel; (2) Douglas Hanson; (3) Peggy Bacher; (4) Pedro Figueroa; (5) Michael Fisher; (6)
2 Victoria Hernandez; (7) Randy Tolson; and (8) Mr. Clem.

3 Defendants have disclosed Michael Fisher, Victoria Hernandez, and Randy Tolson as potential
4 defense witnesses expected to provide percipient testimony, according to Defendants' pretrial
5 statement. (ECF No. 178 at 9). Although these witnesses have been disclosed, Defendants are not
6 required to make them available at trial. The mere fact that a witness appears on an opposing party's
7 witness list is not a guarantee that the witness will be called at trial or otherwise be available for
8 questioning by other parties. Therefore, Plaintiff must be prepared to tender witness fees to secure the
9 attendance of these witnesses at trial, unless the parties otherwise stipulate to an agreement for their
10 attendance. The parties can always agree to stipulate to the attendance of witnesses, especially if the
11 defendants intend to call some of the plaintiff's witnesses.

12 The witness fees for each of the unincarcerated witnesses that Plaintiff has provided notice of
13 are set forth below. The amount for each of these witnesses is based on the daily witness fee of \$40.00,
14 plus round-trip mileage at the current reimbursement rate of \$0.545 per mile. 28 U.S.C § 1821.

15 Further, the Court finds that witness Scott Mandel requires a witness fee for lodging expenses
16 for one night. The address that Plaintiff has provided for Mr. Mandel is located at a distance of 194
17 miles from the courthouse, and thus commuting to and from the courthouse and giving testimony in a
18 single day is not feasible for that witness. 28 U.S.C. § 1821(d)(1) ("A subsistence allowance shall be
19 paid to a witness when an overnight stay is required at the place of attendance because such place is so
20 far removed from the residence of such witness as to prohibit return thereto from day to day."). See
21 also Ezelle v. Bauer Corp., 154 F.R.D. 149, 154 (S.D. Miss. 1994) (subsistence payment for overnight
22 stay appropriate where court finds that witness's residence is too far away from place of trial to render
23 commuting feasible); Kenyon v. Automatic Instrument Co., 10 F.R.D. 248, 253 (W.D. Mich. 1950)
24 (overruling objection to subsistence payment for overnight lodgings for witnesses traveling
25 approximately 175 miles to place of trial). The current reimbursement rate for overnight lodging in
26 Fresno, California is \$103.00 per night. 28 U.S.C. § 1821(d)(2). This amount is therefore included in
27 the witness fee calculated for Mr. Mandel, below.

1 In sum, 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 these amounts:

- 3 1. For Scott Mandel, Plaintiff must submit a money order in the amount of **\$354.46**;¹
- 4 2. For Douglas Hanson, Plaintiff must submit a money order in the amount of **\$99.95**;²
- 5 3. For Peggy Bacher, Plaintiff must submit a money order in the amount of **\$99.95**;³
- 6 4. For Pedro Figueroa, Plaintiff must submit a money order in the amount of **\$99.95**;⁴
- 7 5. For Michael Fisher, Plaintiff must submit a money order in the amount of **\$99.95**;⁵
- 8 6. For Victoria Hernandez, Plaintiff must submit a money order in the amount of
9 **\$187.70**;⁶
- 10 7. For Randy Tolson, Plaintiff must submit a money order in the amount of **\$98.32**;⁷
- 11 8. For Mr. Clem, Plaintiff must submit a money order in the amount of **\$98.32**.⁸

12 Accordingly, it is HEREBY ORDERED that:

13 1. Plaintiff's motion for the attendance of unincarcerated witnesses, filed on February 1,
14 2018 (ECF No. 180) is granted, in that the Court has calculated the travel expenses for each witness on
15 Plaintiff's notice and now notifies him of the amounts that must be submitted to the Court;

16 2. Plaintiff's deadline to submit the above-listed money orders in the full amounts listed
17 above is **March 1, 2018**. Plaintiff is advised that the Court cannot accept cash, and money orders
18 cannot be made out to the Court. The money orders must be made out to each individual witness in

19 _____
20 ¹ Plaintiff reports that Scott Mandel is located at the San Quentin State Prison, in San Quentin,
California 94964. It is 388 miles, round-trip, from that location to the courthouse.

21 ² Plaintiff reports that Douglas Hanson is located at the California Substance Abuse Treatment
Facility and State Prison, 900 Quebec Avenue, Corcoran, California 93212 ("CSATF"). It is 110
22 miles, round-trip, from that location to the courthouse.

23 ³ Plaintiff reports that Peggy Bacher is located at CSATF, and as noted above, it is 110 miles,
round-trip, from that location to the courthouse.

24 ⁴ Plaintiff reports that Pedro Figueroa is located at CSATF, and as noted above, it is 110 miles,
round-trip, from that location to the courthouse.

25 ⁵ Plaintiff reports that Michael Fisher is located at CSATF, and as noted above, it is 110 miles,
round-trip, from that location to the courthouse.

26 ⁶ Plaintiff reports that Victoria Hernandez is located at the Salinas Valley State Prison, 31625
Highway 101, Soledad, CA 93212. It is 271 miles, round-trip, from that location to the courthouse.

27 ⁷ Plaintiff reports that Randy Tolson is located at the California State Prison-Corcoran, 4001
King Avenue, Corcoran, California 93212 ("CSP-Cor"). It is 107 miles, round-trip, from that location
to the courthouse

28 ⁸ Plaintiff reports that Mr. Clem is located at CSP-Cor, and as noted above, it is 107 miles,
round-trip, from that location to the courthouse.

1 that witness's name. Upon submission of the above-listed amounts, the Court will order the United
2 States Marshal to serve the unincarcerated witnesses with summonses to testify at trial.

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IT IS SO ORDERED.

Dated: February 5, 2018


UNITED STATES MAGISTRATE JUDGE