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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LANARD KITCHENS,

12 Plaintiff,

13 v.
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15 TORDSEN, et al.,

16 Defendants.
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CASE NO. 1:12-cv-0105-AWI-MJS (PC)

**ORDER REGARDING PLAINTIFF'S
MOTION TO SUBPOENA
UNINCARCERATED WITNESSES**

(ECF No. 90)

**AUGUST 31, 2015 DEADLINE FOR
SUBMISSION OF STATUTORY FEES**

18 Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil
19 rights action brought pursuant to 42 U.S.C. § 1983. (ECF Nos. 1, 10.) This matter
20 proceeds against Defendant Tordsen on Plaintiff's First Amendment retaliation claim,
21 and against Defendants Tordsen, Coker, Leach and Day on Plaintiff's Fourteenth
22 Amendment claim for subjecting Plaintiff to conditions of confinement that amounted to
23 punishment. (ECF No. 28.) Trial is set for October 27, 2015. (ECF No. 85.)

24 **I. REQUEST TO SUBPOENA UNINCARCERATED WITNESSES**

25 Plaintiff seeks to subpoena the following staff of California Forensic Medical
26 Group (CFMG) at the Kings County Jail to testify at trial on October 27, 2015: Minetta
27 Costa, Medical Program Manager; Nurses Maryanne Tordsen, Shannon Irish, Frank
28

1 and Ononaba; Psychiatric Nurse Linda V.; and Doctors Ewing and Wilson. (ECF No.
2 90.) Plaintiff asserts that he will call each witness for the purpose of authenticating
3 medical records which he or she has authored or signed.

4 The Court's May 29, 2015 scheduling order advised Plaintiff of the procedures
5 for subpoenaing unincarcerated witnesses for trial. (ECF No. 85.) Plaintiff was advised
6 to notify the Court in writing of the names and location of such witnesses by July 27,
7 2015. He has done so.

8 Accordingly, the Court will advise Plaintiff of the travel expenses for each
9 witness so that Plaintiff may meet his obligation of submitting, not later than August 31,
10 2015, a money order to cover the travel expenses for each witness. Without the money
11 orders, no subpoena will issue and no witness will be served by the United States
12 Marshal.

13 Plaintiff lists the location of these witnesses as California Forensic Medical
14 Group, Kings County Jail, 1570 Kings County Drive, Hanford, CA 93230. The Court
15 takes judicial notice that this is the physical location of the Kings County Jail. It is not
16 clear that this address is appropriate for service or mileage costs for employees of
17 CFMG, which contracts with the jail.

18 If the witnesses are to travel from the Kings County Jail to the United States
19 District Court in Fresno, California,¹ the round trip mileage is 68 miles. The mileage
20 rate is 57.5 cents per mile. Accordingly, the total mileage fee for each of these
21 witnesses is \$39.10. Each also is entitled to a \$40.00 daily witness fee. Therefore,
22 Plaintiff must submit a money order in the amount of \$79.10 payable to each of these
23 individuals he wants subpoenaed to trial.

24 The deadline for submitting money orders to subpoena witnesses is August 31,
25 2015. The Court will take and keep Plaintiff's motion for the attendance of these
26 witnesses under submission pending receipt of the money orders.

27 ¹ If the witnesses are in fact required to travel from some other, more distant, location, the travel expense
28 calculated here will be inadequate and not in compliance with this Court's Orders.

1 Plaintiff's efforts to subpoena these witnesses may be misguided. Often, a
2 facility's records custodian may authenticate all medical records from that facility. More
3 often, the parties will stipulate to the authenticity of medical records. Either alternative
4 would obviate the need to subpoena seven individuals and pay their witness fees.

5 **II. CONCLUSION AND ORDER**

6 Plaintiff's motion for the attendance of unincarcerated witnesses (ECF No. 90) is
7 taken under submission pending receipt of money orders covering the statutorily
8 mandated witness fees.

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10 IT IS SO ORDERED.

11 Dated: July 27, 2015

/s/ Michael J. Seng
12 UNITED STATES MAGISTRATE JUDGE
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