

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DWAYNE MEREDITH,
Plaintiff,
v.
D. OVERLEY, et al.,
Defendants.

Case No. 1:12-cv-00455-MJS (PC)

ORDER:

- 1. REGARDING PLAINTIFF'S REQUEST TO SUBPOENA UNINCARCERATED WITNESS (ECF No. 103)**
- 2. GRANTING PLAINTIFF'S MOTION FOR CLARIFICATION (ECF No. 106)**

AUGUST 21, 2015 DEADLINE FOR SUBMISSION OF STATUTORY FEES

Plaintiff is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. The action proceeds on Plaintiff's Eighth Amendment conditions of confinement claim against Defendants Overley, Benevidez, and Gamboa. (ECF No. 9.)

Before the Court are (1) Plaintiff's July 30, 2015 request to subpoena Correctional Officer Gaulden, who is unincarcerated and apparently not willing to testify voluntarily (ECF No. 103); and (2) Plaintiff's August 5, 2015 request for clarification (ECF No. 106) regarding the procedures for obtaining subpoenas.

I. REQUEST TO SUBPOENA UNINCARCERATED WITNESS

The Court's January 16, 2015 scheduling order advised Plaintiff of the procedures for subpoenaing unincarcerated witnesses who are unwilling to testify voluntarily at trial.

1 (ECF No. 76.) Plaintiff was advised to notify the Court in writing of the names and
2 location of such witnesses by April 23, 2015. He did not do so, and instead filed his
3 request to subpoena Officer Gaulden over three months late. (ECF No. 103.) However,
4 given Plaintiff's *pro se* status, his stated confusion over procedures, and his previous,
5 albeit prematurely-filed, notice of intent to subpoena Officer Gaulden (ECF Nos. 57 and
6 74), the Court will consider issuing a subpoena for Officer Gaulden if Plaintiff complies
7 with appropriate procedures to accomplish same, including submitting, **not later than**
8 **August 21, 2015**, a money order to cover Gaulden's travel expenses and witness fees.
9

10 Plaintiff lists the location of Officer Gaulden as California State Prison - Corcoran.
11 The Court takes judicial notice that the physical location of CSP-Corcoran is 4001 King
12 Avenue, Corcoran, CA 93212. The round trip mileage between CSP-Corcoran and the
13 United States District Court in Fresno, California is 107 miles. The mileage rate is 57.5
14 cents per mile. Accordingly, the total mileage fee for Officer Gaulden is \$61.53. Officer
15 Gaulden is entitled to a \$40.00 daily witness fee. Therefore, Plaintiff must submit to the
16 Court **by August 21, 2015**, a money order in the amount of \$101.53 made payable to
17 Gaulden in order to subpoena him for trial. The Court will keep Plaintiff's request for the
18 attendance of Officer Gaulden under submission pending receipt of the money order.
19

20 **II. REQUEST FOR CLARIFICATION REGARDING SUBPOENA PROCEDURES**

21 Plaintiff's request for clarification (ECF No. 106) states that he is "flummoxed" by
22 the procedure for obtaining subpoenas for his witnesses. The Court refers Plaintiff to the
23 scheduling order in this case (ECF No. 76) and its description of the general procedures
24 for obtaining the attendance of witnesses at trial, as well as the additional specific
25 information below.
26

27 Plaintiff's pretrial statement (ECF No. 86) indicates he wants to call three people
28

1 besides himself to testify at trial: Paul Sanders, an inmate who is willing to testify
2 voluntarily; Howard Johnson, a parolee who is willing to testify voluntarily; and Officer
3 Gaulden, a correctional officer who is not willing to testify voluntarily.

4 Officer Gaulden is the only one who needs to be subpoenaed. If Plaintiff complies
5 with the procedures in Section I, above, the Court will consider issuing a subpoena for
6 Gaulden.
7

8 As for Paul Sanders, the Court has issued an order for him to be transported for
9 trial. (ECF No. 109.) Plaintiff does not need to do anything further to secure Mr. Sanders'
10 presence at trial.

11 According to Plaintiff, Howard Johnson will come voluntarily and thus does not
12 need to be subpoenaed. (ECF Nos. 55, 85, & 101.) Plaintiff himself must ensure that Mr.
13 Johnson is aware of the trial, able to attend, and actually attends. Plaintiff must comply
14 with Cal. Code Regs. tit. 15, § 3139, which governs inmate communications with
15 parolees, in locating and contacting Mr. Johnson.
16

17 **III. CONCLUSION & ORDER**

18 Accordingly, it is HEREBY ORDERED that:

- 19 1) Plaintiff's request to subpoena Officer Gaulden (ECF No. 103) is taken under
20 submission; and
21 2) Plaintiff's motion for clarification (ECF No. 106) is GRANTED.
22

23
24 IT IS SO ORDERED.

25 Dated: August 12, 2015

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
28