

1 **I. Pretrial Statements**

2 The parties are required to file pretrial statements pursuant to Local Rule 281² and must
3 comply with the schedule set forth herein. Failure to comply with the provisions of this Order or
4 the Local Rules may result in the imposition of sanctions up to and including dismissal of the
5 action, or entry of default.

6 **II. Witnesses & Evidence**

7 At trial, Plaintiff must be prepared to introduce evidence to prove each of the alleged facts
8 that support the claims raised in the lawsuit. In general, there are two kinds of trial evidence: (1)
9 exhibits and (2) the testimony of witnesses. It is Plaintiff's responsibility to produce all of the
10 evidence to prove his case, whether that evidence is in the form of exhibits or witness testimony.
11 If Plaintiff desires to call witnesses to testify, he must follow certain procedures to ensure that the
12 witnesses will be at the trial and available to testify. Plaintiff is required to make a particularized
13 showing pursuant to the procedures and requirements outlined in detail below. Plaintiff is
14 advised that failure to comply with these procedures may result in the preclusion of any and all
15 witnesses named in his pretrial statement.³

16 **A. Procedures for Obtaining Attendance of Incarcerated Witnesses**

17 An incarcerated witness cannot testify at trial unless the Court orders the warden or other
18 custodian to permit the witness to be transported to court. The Court will not issue such an order
19 unless it is satisfied that the prospective witness has actual knowledge of relevant facts. Motions
20 for the attendance of incarcerated witnesses who agree to testify voluntarily, as well as for those
21 who do not agree to testify voluntarily must be served and filed **concurrent with the pretrial**
22 **statement**. Any such motion should be entitled "Motion for Attendance of Incarcerated
23 Witnesses."

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26 ² The Clerk's Office previously sent Plaintiff a copy of Local Rule 281 with the Original Second Scheduling Order.
(See Doc. 108.)

27 ³ Notwithstanding the requirements set forth herein, it is within the Court's discretion to grant a motion for the
28 attendance of incarcerated witnesses if the moving party has shown the witnesses have relevant information and the
Court determines the witnesses' presence will substantially further the resolution of the case. *Wiggins v. County of
Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983).

1 The Court will review and rule on the motion for attendance of incarcerated witnesses,
2 specifying which prospective witnesses will be brought to court. The Court will then issue the
3 order necessary to cause the witness's custodian to bring the witness to court.

4 **Motions for the attendance of incarcerated witnesses, if any, must be filed on or**
5 **before October 22, 2017. Oppositions, if any, must be filed on or before November 27, 2017.**

6 1. **Motions For Attendance of Incarcerated Witnesses Who Agree to**
7 **Testify Voluntarily**

8 A party intending to introduce the testimony of incarcerated witnesses who agree
9 voluntarily to attend the trial must serve and file a written motion for a court order requiring that
10 such witnesses be brought to court at the time of trial. The motion must: (1) state the name,
11 address, and prison identification number of each such witness; and (2) be accompanied by
12 declarations showing that each witness is willing to testify and has actual, first-hand knowledge
13 of relevant facts.

14 The willingness of the prospective witness can be shown in one of two ways: (1) Plaintiff
15 can submit a declaration under penalty of perjury, that the prospective witness has informed
16 him/her of their willingness to testify without being subpoenaed which shows when and where
17 the prospective witness so informed Plaintiff; or (2) Plaintiff can serve and file a declaration,
18 signed under penalty of perjury by the prospective witness, in which the witness states a
19 willingness to testify without being subpoenaed.

20 The prospective witness's actual knowledge of relevant facts can be shown in one of two
21 ways: (1) if Plaintiff has actual, firsthand knowledge that the prospective witness was an eye-
22 witness or an ear-witness to the relevant facts (e.g., if an incident occurred in Plaintiff's cell and,
23 at the time, Plaintiff saw that a cellmate was present and observed the incident, Plaintiff may
24 swear to the cellmate's ability to testify), Plaintiff can swear by declaration under penalty of
25 perjury that the prospective witness has actual knowledge; or (2) Plaintiff may serve and file a
26 declaration signed under penalty of perjury by the prospective witness in which the witness
27 describes the relevant facts to which the prospective witness was an eye- or ear-witness. Whether
28 the declaration is made by Plaintiff or by the prospective witness, it must be specific about the

1 incident, when and where it occurred, who was present, and how the prospective witness
2 happened to be in a position to see or to hear what occurred at the time it occurred.

3 **2. Motions for Attendance of Incarcerated Witnesses Who Refuse to**
4 **Testify Voluntarily**

5 If Plaintiff desires to obtain the attendance of incarcerated witnesses who refuse to testify
6 voluntarily, Plaintiff should submit a motion in the form described above. Plaintiff must also
7 indicate in the motion that the incarcerated witnesses are not willing to testify voluntarily.

8 **B. Procedures for Obtaining Attendance of Unincarcerated Witnesses**

9 **1. Voluntary**

10 It is the responsibility of the party who has secured an unincarcerated witness's voluntary
11 attendance to notify the witness of the time and date of trial. No action need be sought or
12 obtained from the Court.

13 **2. Involuntary**

14 If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, the
15 witness must be served with a subpoena. Fed. R. Civ. P. 45. In addition, the party seeking the
16 witness's presence must tender an appropriate sum of money for the witness. *Id.* In the case of
17 an unincarcerated witness, the appropriate sum of money is the daily witness fee of **\$40.00 plus**
18 **the witness's travel expenses.** 28 U.S.C. § 1821.

19 If Plaintiff wishes to obtain the attendance of one or more unincarcerated witnesses who
20 refuse to testify voluntarily, **Plaintiff must submit the name and location of each**
21 **unincarcerated witness on or before October 6, 2017.** The Court will calculate the travel
22 expense for each unincarcerated witness and notify Plaintiff of the amount(s). Then, for each
23 witness, **on or before November 10, 2017 Plaintiff must submit a money order made payable**
24 **to the witness for the full amount of the witness's travel expenses plus the daily witness fee.**
25 **The subpoena will not be served upon the unincarcerated witness by the United States**
26 **Marshal unless and until the money order is tendered to the Court.** Because no statute
27 authorizes the use of public funds for these expenses in civil cases, the tendering of witness fees
28 and travel expenses is required even if the party was granted leave to proceed *in forma pauperis*.

1 **III. Scheduling Order**

2 Accordingly, the Court HEREBY ORDERS as follows:

- 3 1. This matter is set for a telephonic trial confirmation hearing before United States
4 Magistrate Judge Sheila K. Oberto on **January 24, 2018, at 2:30 p.m.** in
5 Courtroom 6;
- 6 2. This matter is set for jury trial before United States Magistrate Judge Sheila K.
7 Oberto on **February 27, 2018, at 8:30 a.m.** in Courtroom 6;
- 8 3. Counsel for Defendant is required to arrange for the participation of Plaintiff in the
9 telephonic trial confirmation hearing and to initiate the telephonic hearing at **(559)**
10 **499-5790**;
- 11 4. Plaintiff shall serve and file a pretrial statement as described in this order on or
12 before **October 27, 2017**;
- 13 5. Defendant shall serve and file a pretrial statement as described in this order on or
14 before **November 27, 2017**;
- 15 6. In addition to electronically filing a pretrial statement, the defense pretrial
16 statement, in Word format, shall be emailed to: **SKOorders@caed.uscourts.gov**;
- 17 7. If Plaintiff intends to call incarcerated witnesses at time of trial, Plaintiff shall serve
18 and file a motion for attendance of incarcerated witnesses as described in this order
19 on or before **October 27, 2017**;
- 20 8. The opposition to the motion for the attendance of incarcerated witnesses, if any,
21 shall be filed on or before **November 27, 2017**;
- 22 9. If Plaintiff wishes to obtain the attendance of unincarcerated witnesses who refuse
23 to testify voluntarily, Plaintiff must notify the Court of their names and locations on
24 or before **October 6, 2017** and Plaintiff must submit the money orders, as described
25 in subsection 4 of this order, to the Court on or before **November 10, 2017**; and

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10. Failure to comply with the provisions of this Order or the Local Rules may result in the imposition of sanctions up to and including dismissal of the action, or entry of default.

IT IS SO ORDERED.

Dated: September 19, 2017

/s/ Sheila K. Olerto
UNITED STATES MAGISTRATE JUDGE