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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MITCHELL GARRAWAY,

12 Plaintiff,

13 vs.

14 JACQUILINE CIUFO, et al.,

15 Defendants.
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1:17-cv-00533-ADA-GSA (PC)

**ORDER GRANTING MOTION FOR
UNINCARCERATED WITNESSES, IN
PART**

(ECF No. 140.)

**ORDER DENYING MOTION FOR
APPOINTMENT OF INVESTIGATOR**

**ORDER RE PLAINTIFF'S MOTION
FOR EXTENSION OF TIME**

(ECF No. 153.)

**DEADLINE TO PROVIDE NAMES
AND ADDRESSES OF
UNINCARCERATED WITNESSES:
April 7, 2023**

**DEADLINE TO SUBMIT MONEY
ORDERS FOR UNINCARCERATED
WITNESSES: May 8, 2023**

24 **I. BACKGROUND**

25 Plaintiff is a federal prisoner proceeding *pro se* and *in forma pauperis* with this civil rights
26 action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971). This case now proceeds
27 with Plaintiff's original Complaint filed on April 17, 2017, against defendants Jacqueline Ciufu
28 (Unit Manager), K. Miller (Corrections Officer), and Lieutenant J. Zaragoza (collectively,

1 “Defendants”), for failure to protect Plaintiff in violation of the Eighth Amendment. (ECF No.
2 1.)

3 This case is scheduled for a Pretrial Conference on May 22, 2023 at 1:30 p.m. and Jury
4 Trial on August 1, 2023 at 8:30 a.m., before the Honorable Ana de Alba.

5 On September 1, 2022, Plaintiff filed a motion for the attendance of unincarcerated
6 witnesses who refuse to testify voluntarily. (ECF No. 140.) On October 24, 2022, Plaintiff
7 notified the Court of names and addresses of his prospective unincarcerated witnesses. (ECF No.
8 152.) On October 28, 2022, Plaintiff filed a motion for extension of time to provide addresses
9 and money orders for service of subpoenas. (ECF No. 153.) Plaintiff also requested the
10 appointment of an investigator. (Id.)

11 **II. MOTION FOR ATTENDANCE OF UNINCARCERATED WITNESSES**

12 Plaintiff requests attendance at trial of three Bureau of Prisons personnel witnesses who
13 refuse to testify:

- 14 (1) **La Ronica Gardea**, Special Investigative Service, who was formerly employed
15 at the U.S. Penitentiary-Atwater; Gardea acted in the capacity of Special
16 Investigative Staff at USP-Atwater, charged with conducting interviews; Plaintiff
17 is unable to obtain a current address for this witness;
- 18 (2) **Corrections Officer FNU Ciprian**, who is currently employed at the U.S.
19 Penitentiary-Atwater, P.O. Box 019001, Atwater, California; C/O Ciprian made
20 attempts to move Plaintiff away from Plaintiff’s assailant but was rebuffed by
21 Defendants Miller and Zaragoza; and
- 22 (3) **Stacey Vasquez**, Expert Witness, U.S. Penitentiary-Atwater, P.O. Box 019001,
23 Atwater, California; Vasquez acted as paramedic who treated Plaintiff.

24 Plaintiff states that these three witnesses may offer testimony crucial to Plaintiff’s case.

25 **Discussion**

26 On May 28, 2021, the Court issued the Second Scheduling Order that instructed Plaintiff
27 on the procedures for obtaining the attendance of witnesses. (ECF No. 132.) Plaintiff was
28 advised that he must show the prospective witness’s actual knowledge of relevant facts by clearly

1 explaining when and where the witness was and what the witness saw, heard, or otherwise knew
2 about the events at issue in the complaint. In other words, what can each witness testify to in
3 support of Plaintiff's claims that Defendants failed to protect him from harm?

4 Plaintiff alleges in the Complaint that on March 20, 2016, his cell mate cut Plaintiff's
5 nose with a razor. Plaintiff informed Defendants Miller, Ciufu, and Zaragoza about the incident
6 and asked to be moved to another cell, but they all refused to assist him. The cell mate had a
7 long history of serious assaults in which his victims required hospitalization, and Defendants
8 Miller, Ciufu, and Zaragoza were aware of these assaults. On April 2, 2016, the same cell mate
9 struck Plaintiff on the left side of his jaw.

10 Plaintiff has not provided sufficient information for witness **La Ronica Gardea**. Plaintiff
11 must provide Gardea's current address and inform the Court of the witness's actual knowledge
12 of relevant facts. The Court shall not grant Plaintiff's motion to bring Gardea to trial unless
13 Plaintiff provides more information.

14 A party seeking to compel the attendance of a witness for trial must deposit fees for the
15 witness in advance of the Court issuing a witness subpoena. That fee encompasses the \$40.00
16 daily witness fee plus the costs of the witness's travel to and from the courthouse. 28 U.S.C. §
17 1821. The current mileage reimbursement rate is set at \$0.625 per mile.
18 <http://www.gsa.gov/mileage>.

19 It appears that **C/O Ciprian** and **Stacey Vasquez** can testify to relevant facts. For these
20 two witnesses, the round-trip distance to travel from the federal Penitentiary in Atwater,
21 California, to the federal courthouse in Fresno, California is 135 miles. At \$0.625 cents per
22 mile reimbursement rate, the cost to subpoena these prospective witnesses would be \$85.00 plus
23 the \$40.00 daily witness fee for a total of **\$125.00**. No statute authorizes the use of public funds
24 to cover these payments and plaintiff's *in forma pauperis* status does not obviate his need to pay
25 them. For each witness, Plaintiff must submit a money order made payable to the witness. The
26 subpoenas will not be issued absent payment in full.

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1 **II. MOTION FOR EXTENSION OF TIME**

2 Plaintiff filed a motion seeking an extension of time to provide names, addresses, and
3 money orders for each prospective unincarcerated witness. Due to the dates for the Pretrial
4 Conference (May 22, 2023 at 1:30 p.m.) and Jury Trial (August 1, 2023 at 8:30 a.m.) in this case,
5 the Court has set a deadline of **May 8, 2023** for Plaintiff to submit money orders to the court for
6 unincarcerated witnesses. (ECF No. 146.) Plaintiff must provide names, addresses, and
7 information about each witness’s knowledge of relevant facts on or before **April 7, 2023**. These
8 deadlines should allow Plaintiff ample time before the Pretrial Conference to provide the required
9 information and money orders.

10 **III. MOTION FOR APPOINTMENT OF INVESTIGATOR**

11 Plaintiff requests a court-appointed investigator to assist him with finding current
12 addresses for prospective witnesses. Plaintiff states that he believes La Ronica Gardea has retired
13 from the U.S. Penitentiary in Atwater, but he does not know Gardea’s current address.

14 Plaintiff has been granted leave to proceed with this action *in forma pauperis* pursuant
15 to 28 U.S.C. § 1915. (ECF No. 4.) However, the *in forma pauperis* statute does not authorize the
16 expenditure of public funds for investigators. Santos v. Baca, No. 211CV01251KJD NJK, 2014
17 WL 12910916, at *2 (D. Nev. Aug. 19, 2014) (citing see 28 U.S.C. § 1915; see also Hadsell v.
18 Internal Revenue Service, 107 F.3d 750, 752 (9th Cir. 1997); Dixon v. Ylst, 990 F.2d 478, 480
19 (9th Cir. 1993); Brown v. Johnson & Johnson, Inc., Case No. 1:17-cv-01285-AWI-EPF, 2018
20 WL 5734531, *2–3 (E.D. Cal. Oct. 31, 2018) (holding that “the Court is without authority to
21 appoint an investigator or researcher to assist Plaintiff.”)). Accordingly, Plaintiff's request to
22 appoint an investigator shall be denied.

23 Plaintiff's instant motion concerns funding, because only litigants who need funding need
24 permission to hire a private investigator. Id. The expenditure of public funds on behalf of an
25 indigent litigant is proper only when authorized by Congress. Id. (citing Tedder v. Odel, 890
26 F.2d 210, 211-12 (9th Cir. 1989) (citing United States v. MacCollom, 426 U.S. 317, 321, 96 S.Ct.
27 2086, 2089, 48 L.Ed.2d 666 (1976)). The two potential sources of Congressional authorization
28 are 28 U.S.C. § 1915 and 18 U.S.C. § 3006A. Id. First, “[t]he *in forma pauperis* statute, 28

1 U.S.C. § 1915, does not authorize the expenditure of funds for a private investigator.” Id.
2 (quoting Covarrubias v. Gower, 2014 WL 342548, *1 (N.D. Cal. Jan. 28, 2014) (citing Tedder,
3 890 F.2d at 212) (pauper statute does not waive the payment of fees or expenses for an indigent’s
4 witnesses). Second, the Criminal Justice Act, 18 U.S.C. § 3006A, does not apply because this is
5 a civil, and not a criminal, case. Id. Thus, no Congressional authorization exists for the
6 appointment of a private investigator.

7 **IV. CONCLUSION**

8 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 9 1. Plaintiff’s motion for the attendance of unincarcerated witnesses at trial, filed on
10 September 1, 2022, is **GRANTED** in part, as to witnesses **C/O Ciprian** and
11 **Stacey Vasquez**, and **DENIED** as to witness **La Ronica Gardea**;
- 12 2. Plaintiff’s motion for extension of time, filed on October 28, 2022, is resolved;
- 13 3. Plaintiff is granted **until April 7, 2023** in which to provide the Court with names
14 and addresses for prospective unincarcerated witnesses who refuse to testify
15 voluntarily, and information about their knowledge of relevant facts for trial;
- 16 4. Plaintiff is granted **until May 8, 2023** in which to submit money orders made out
17 to each unincarcerated witness for witness fees and transportation costs;
- 18 5. Plaintiff must submit separate money orders in the amount of \$125.00 made out
19 to each of the witnesses, C/O Ciprian and Stacey Vasquez, on or before May 8,
20 2023, for their witness fees and transportation from the U.S. Penitentiary in
21 Atwater, California to the courthouse in Fresno, California; and
- 22 6. Plaintiff’s motion for appointment of an interpreter, filed on October 28, 2022, is
23 **DENIED**.

24
25 **IT IS SO ORDERED.**

26 Dated: **November 8, 2022**

27 **/s/ Gary S. Austin**
28 **UNITED STATES MAGISTRATE JUDGE**