UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARRY LAMON,	*	No. 2:03-cv-00423-AK
Plaintiff,	*	
v.	*	
D. LYTLE, et al.,	*	**ORDER**
Defendants.	*	

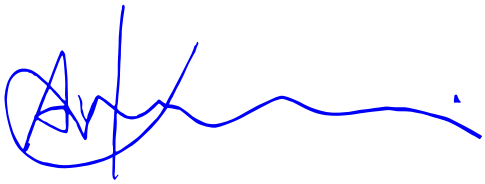
Defendants have filed a sworn affidavit by one of plaintiff's incarcerated witnesses stating that the witness does not remember the events at issue and does not wish to testify. Defendants therefore ask that I vacate the writ of habeas corpus ad testificandum issued for this witness. Defendants have known the identity of this witness, and that he would be called to testify, since at least July of 2008. Moreover, although defendants obtained the witness's affidavit on March 11, they waited to file their motion until March 17, less than two weeks before trial. This motion is therefore denied as untimely. The motion is also denied on the merits. If the witness has nothing relevant to say, he can testify to that effect under oath and

subject to cross examination.

Plaintiff's request for a subpoena is likewise denied as untimely. Plaintiff seeks documentary evidence of the type that would ordinarily be obtained through discovery, and a trial subpoena may not be used to continue discovery after the time for discovery has closed. See Integra Lifesciences I, Ltd. v. Merck KGaA, 190 F.R.D. 556, 561 (S.D. Cal. 1999).

Plaintiff's request that the court make a computer available at trial is granted. The court will consider defendants' motion concerning habit evidence at the time of trial.

March 25, 2010



ALEX KOZINSKI
Chief Circuit Judge
Sitting by designation