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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK S. MUSZYNSKI,

Plaintiff,

No. CIV S-04-0082 JAM GGH P

vs.

D.L. RUNNELS, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This matter is set for trial on March 16, 2009, before the Honorable John A. Mendez. By filing dated January 22, 2009, plaintiff asks the Clerk of the Court to provide him with six subpoenas for his anticipated witnesses. In the first place, in the addendum to the Pretrial Order wherein plaintiff identifies his witnesses and exhibits, he has listed only five witnesses. In the second place, two of the witnesses he intends to call are the defendants, whom defendants' counsel also intends to call and for whom no separate subpoena by plaintiff is necessary. Finally, plaintiff has previously been informed of the procedures for obtaining witnesses, including those who are incarcerated and unincarcerated and those who are voluntary or involuntary. See Order, filed on September 16, 2008. Subpoenas are only necessary for the purpose of obtaining involuntary unincarcerated witnesses.

1 Plaintiff was also informed that daily witness fees of \$40.00 plus travel expenses
2 for each witness must also be tendered for with a subpoena for each unincarcerated witness who
3 refuses to testify voluntarily, and that such fees and expenses must be paid even if a party has
4 been granted leave to proceed in forma pauperis. See, id. The Ninth Circuit has long found that
5 in forma pauperis status is not sufficient to waive witness fees to be tendered with a subpoena.
6 Tedder v. Odel, 890 F.2d 210, 211-212 (9th Cir. 1989).

7 Because it is unclear for whom plaintiff is legitimately seeking subpoenas and
8 plaintiff has not clarified his ability to pay the requisite fees and expenses at the time he submits
9 any such subpoenas, the court hereby grants plaintiff ten (10) days from the date of this order to
10 submit the names of the individuals for whom plaintiff requests subpoenas, an offer of proof as
11 to the relevance of any such testimony, as well to demonstrate his ability to pay the requisite fees
12 and expenses to accompany each such subpoena such that the court could order the U.S. Marshal
13 to serve any such subpoena.

14 IT IS SO ORDERED.

15 DATED: January 30, 2009

/s/ Gregory G. Hollows

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17 GREGORY G. HOLLOWES
18 UNITED STATES MAGISTRATE JUDGE

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