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

ADONAI EL-SHADDAI,

Plaintiff,

No. CIV S-06-1898 FCD EFB P

vs.

B. WHEELER, et al.,

Defendants.

ORDER TO SHOW CAUSE

Plaintiff Adonai El-Shaddai, a.k.a. James Wilkerson, is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He is currently incarcerated in Soledad, California. Dckt. No. 65.

Plaintiff's pretrial statement includes the names of seven incarcerated witnesses. Dckt. No. 62 at 11. Defendants object to the inclusion of these witnesses in the court's pretrial order of August 31, 2010, because plaintiff has not followed the procedures ordered by the court for obtaining the testimony of incarcerated witnesses. Dckt. No. 67.

The court's April 28, 2008 discovery and scheduling order instructed plaintiff to follow these procedures to obtain trial testimony of incarcerated witnesses:

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1 I. Obtaining Attendance of an Incarcerated Witness Who Intends to Testify
2 Voluntarily

3 A witness who is willing to testify without the compulsion of a subpoena, but who
4 is imprisoned or incarcerated, cannot appear to testify without a court order
5 directing the custodian to produce him at the time of trial. The court will issue
6 such an order only upon a showing that the witness has agreed to testify
7 voluntarily and has actual knowledge of relevant facts. Therefore, a party
8 intending to introduce testimony from such a witness must file with his pretrial
9 statement a motion for an order directing the witness's custodian to produce the
10 witness for trial. The motion must:

11 1. Identify the witness by name, California Department of Corrections and
12 Rehabilitation number, and address;

13 2. Include affidavits showing that the witness intends to testify voluntarily. This
14 intention can be shown as follows:

15 A. The party can swear by affidavit that the witness has communicated to
16 him an intention to testify voluntarily. The affidavit must include a
17 statement of when and where the prospective witness informed the party
18 of this willingness; or

19 B. The witness can swear by affidavit that he is willing to testify without
20 the compulsion of subpoena.

21 3. Include affidavits showing each witness has actual knowledge of relevant
22 facts. The witness's knowledge can be shown as follows:

23 A. The party can swear that he knows the witness saw or heard relevant
24 facts. For example, if something occurred in plaintiff's cell and plaintiff
25 saw that a cell-mate was present and observed the incident, then plaintiff
26 may swear to the cell-mate's ability to testify; or,

B. The witness can swear to the relevant facts he observed.
Any such affidavit must describe the incident, state when it occurred,
where it occurred, who was present, and how the witness was in a position
to see or to hear what occurred.

II. Obtaining Attendance of an Incarcerated Witness Who Refuses to Testify
Voluntarily

If a party seeks to present testimony of an imprisoned or incarcerated witness who
does not intend to testify voluntarily, the party must with his pretrial statement
file a motion for an order directing that witness to appear. Such a motion must
comply with the requirements explained above but the movant must demonstrate
that any such witness does not intend to testify voluntarily.

Dckt. No. 27. As defendants note, plaintiff has not submitted any motions with his pretrial
statement for the purpose of procuring the testimony of his listed incarcerated witnesses.

1 Accordingly, the court hereby orders plaintiff to show cause within 21 days of the date of this
2 order why his incarcerated witnesses should not be stricken from the pretrial order or,
3 alternatively, to file a motion for an order directing production of the witnesses at trial, in
4 accordance with the requirements of the discovery and scheduling order quoted above.

5 Dated: October 27, 2010.

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7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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