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

10 JARMAAL LARONDE SMITH,

11 Plaintiff,

Case No. 2:07-cv-00964 ALA (P)

12 vs.

13 LEANN CRONES, et al.,

ORDER

14 Defendants.
15 _____/

16 Plaintiff Jarmaal Laronde Smith is a state prisoner proceeding pro se in the instant action.
17 He seeks relief pursuant to 42 U.S.C. § 1983. This matter is scheduled for a jury trial that will
18 commence on September 28, 2009. (Doc. 101).

19 Prior to the jury trial, this Court will hold a hearing to determine whether Plaintiff will
20 appear at trial in restraints, and if so, to what extent. *See Lemons v. Skidmore*, 985 F.2d 354, 358
21 (7th Cir. 1993) (holding that a judge should give individual consideration to whether a civil
22 litigant, who is a prisoner, must appear at trial in restraints). As such, this Court orders the
23 Sergeant in charge of Transportation to be present at trial to present evidence to support the
24 Department of Corrections and Rehabilitation's recommendation that Plaintiff be restrained at
25 trial. *See id.* (finding that a judge may consider recommendations made by the Department of
26 Corrections regarding the issue of shackling as evidence, but the ultimate determination resides

1 with the court and may not be delegated to another party).

2 Accordingly, **IT IS HEREBY ORDERED** that :

- 3 1. The Clerk of Court issue the attached subpoena to require the Sergeant in charge of
4 Transportation to appear before this Court on September 28, 2009, at the United States
5 District Court for the Eastern District of California, 501 "T" Street, Sacramento,
6 California in courtroom 3 on the 15th floor;
- 7 2. The Clerk of Court forward the issued subpoena and this order to the United States
8 Marshal;
- 9 3. The United States Marshal personally serve the Sergeant in charge of transportation or
10 his or her designated agent for service of process on or before September 28, 2009; and
- 11 4. The Clerk of Court fax a courtesy copy of the subpoena to the Sergeant in charge of
12 Transportation at the California Substance Abuse Treatment Facility.

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14 DATED: September 18, 2009

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16 /s/ Arthur L. Alarcón
17 UNITED STATES CIRCUIT JUDGE
18 Sitting by Designation
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