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2	Federal Defender ANN C. McCLINTOCK, Bar #141313 Assistant Federal Defender Designated Counsel for Service 801 I Street, 3rd Floor		
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4	Sacramento, California 95814 Telephone: (916) 498-5700		
5	Telephone: (916) 498-5700		
6	JOHN MICHAEL KIRK		
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8	IN THE UNITED STATES DISTRICT COURT		
9	FOR THE EASTERN DISTRICT OF CALIFORNIA		
10			
11	JOHN MICHAEL KIRK,	NO. CIV.S 07-2521 GGEB GGH P	
12	Petitioner,	PETITIONER'S APPLICATION FOR AUTHORITY TO SUBPOENA	
13	V	WITNESSES AND HAVE UNITED STATES MARSHAL PAY WITNESS	
14	TOM FELKER,	AND TRAVEL FEES PURSUANT TO 28 U.S.C. § 1825(b)	
15	Respondent.		

Petitioner John Michael Kirk by and through the Office of the Federal Defender, and its attorney, Ann C. McClintock, and asks this Court for an order authorizing the issuance of subpoenas and the payment of witness and travel fees by the United States Marshal as provided in Title 28 U.S.C. § 1825(b). This Court has already granted petitioner indigent status and has set an evidentiary hearing in this matter for December 1, 2009.

The following is a list of petitioner's witnesses and a brief summary of the substance of each witnesses testimony:

Rita L. Swenor

Ms. Swenor was Petitioner's attorney for the state appellate proceedings. Ms. Swenor is expected to testify concerning her communications with Mr. Kirk and regarding

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her preparation of the federal habeas petition she sent him in October 2007. Ms. Swenor's principal place of business is within 100 miles of the federal courthouse in Sacramento.

Gary McCurdy

Mr. McCurdy is the custodian of records for the Central California Appellate Project. He is expected to testify concerning correspondence CCAP received from John Michael Kirk regarding Mr. Kirk's direct criminal appeal, *People v. Kirk*, C048321, in the California Court of Appeal, Third Appellate District. Mr. McCurdy's principal place of business is within 100 miles of the federal courthouse in Sacramento.

Correctional Sergeant M. Keating

Sgt. Keating is the custodian of records for High Desert State Prison and provided the documents found at Petitioner's Exhibit 3. Petitioner does not seek subpoena power for this witness as his principal place of business is more than 100 miles from the federal courthouse in Sacramento.

Correctional Sergeant David Stone

Sgt. Stone is the custodian of records for Pleasant Valley State Prison and provided the documents found at Petitioner's Exhibit 2. Petitioner does not seek subpoena power for this witness as his principal place of business is more than 100 miles from the federal courthouse in Sacramento.

WHEREFORE, Petitioner John Michael Kirk respectfully requests this Court enter the proposed order being lodged with this application to authorize Petitioner's counsel to issue subpoenas for Rita L. Swenor, Esq. and Gary McCurdy and to direct the United States Marshal for the Eastern District of California to pay any witness and travel fees associated with the testimony of Petitioner's witnesses as provided in 18 U.S.C. § 1825(b).

1	Petitioner thus has established that these witnesses need to be present at the	
2	evidentiary hearing in order to allow petitioner to present an adequate case.	
3	DATED: November 19, 2009 Respectfully submitted,	
4	DANIEL J. BRODERICK Federal Defender	
5	rederal Defender	
6	/s/ Ann C. M ^c Clintock	
7	Assistant Federal Defender	
8	* * *	
9	Authorization for the issuance of the subpoenas and payment of the witness and	
10	travel fees is hereby granted pursuant to 28 U.S.C. § 1825(b).	
11	DATED: November 23, 2009	
12	/s/ Gregory G. Hollows	
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14	UNITED STATES MAGISTRATE JUDGE	
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