

1 With the pretrial statement, a party intending to introduce the testimony of incarcerated
2 witnesses who have agreed voluntarily to attend the trial must serve and file a
3 written motion for a court order requiring that such witnesses be brought to court at the
4 time of trial. The motion must:

5 1. State the name, CDC Identification number, and address of each such
6 witness; and

7 2. Be accompanied by affidavits showing that each witness is willing to
8 testify and that each witness has actual knowledge of relevant facts.

9 The willingness of the prospective witness can be shown in one of two ways:

10 1. The party can swear by affidavit that the prospective witness has
11 informed the party that he is willing to testify voluntarily without being subpoenaed. The
12 party must state in the affidavit when and where the prospective witness informed the
13 party of this willingness; or

14 2. The party can serve and file an affidavit sworn to by the prospective
15 witness, in which the witness states that he or she is willing to testify without being
16 subpoenaed.

17 The prospective witness' actual knowledge of relevant facts can be shown in one
18 of two ways:

19 1. The party can swear by affidavit that the prospective witness has actual
20 knowledge. However, this can be done only if the party has actual firsthand knowledge
21 that the prospective witness was an eyewitness or an ear-witness to the relevant facts. For
22 example, if an incident occurred in the plaintiff's cell and, at the time, the plaintiff saw that
23 a cellmate was present and observed the incident, the plaintiff may swear to the cellmate's
24 ability to testify.

25 2. The party can serve and file an affidavit sworn to by the prospective
26 witness in which the witness describes the relevant facts to which the prospective witness
27 was an eye- or ear-witness. Whether the affidavit is made by the plaintiff or by the

1 prospective witness, it must be specific about what the incident was, when and where it
2 occurred, who was present, and how the prospective witness happened to be in a position
3 to see or to hear what occurred at the time it occurred.

4 The court will review and rule on the motion for attendance of incarcerated
5 witnesses, specifying which prospective witnesses must be brought to court.
6 Subsequently, the court will issue the order necessary to cause the witness' custodian to
7 bring the witness to court.

8 **II. Procedures for Obtaining Attendance of Incarcerated Witnesses Who**
9 **Refuse to Testify Voluntarily**

10 If a party seeks to obtain the attendance of incarcerated witnesses who refuse to
11 testify voluntarily, the party should submit with his pretrial statement a motion for the
12 attendance of such witnesses. Such motion should be in the form described above. In
13 addition, the party must indicate in the motion that the incarcerated witnesses are not
14 willing to testify voluntarily.

15 **III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who**
16 **Agree to Testify Voluntarily**

17 It is the responsibility of the party who has secured an unincarcerated witness'
18 voluntary attendance to notify the witness of the time and date of trial. No action need be
19 sought or obtained from the court.

20 **IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses**
21 **Who Refuse to Testify Voluntarily**

22 If a prospective witness is not incarcerated, and he or she refuses to testify
23 voluntarily, not earlier than four weeks and not later than two weeks before trial, the party
24 must prepare and submit to the United States Marshal a subpoena for service by the
25 Marshal upon the witness. (Blank subpoena forms may be obtained from the Clerk of the
26 Court.) Also, the party seeking the witness' presence must tender an appropriate sum of
27 money to the witness through the United States Marshal. In the case of an unincarcerated

1 witness, the appropriate sum of money is the daily witness fee of \$40.00 plus the witness'
2 travel expenses. A subpoena will not be served by the United States Marshal upon an
3 unincarcerated witness unless the subpoena is accompanied by a money order made
4 payable to the witness for the full amount of the witness' travel expenses plus the daily
5 witness fee of \$40.00, and a copy of the court's order granting plaintiff in forma pauperis
6 status. Because no statute authorizes the use of public funds for these expenses in civil
7 cases, the tendering of witness fees and travel expenses is required even if the party was
8 granted leave to proceed in forma pauperis.

9 Good cause appearing, **IT IS HEREBY ORDERED** that:

10 1. The Court's previous minute order regarding initial deadlines (Dkt. 38) is
11 **STRICKEN.**

12 2. Discovery requests shall be served by the party seeking the discovery on all
13 parties to the action. Discovery requests shall not be filed with the court except when
14 required by Local Rules 250.1, 250.2, 250.3 and 250.4.

15 3. Responses to written discovery requests shall be due forty-five days after the
16 request is served.

17 4. The parties are cautioned that filing of discovery requests or responses, except
18 as required by rule of court, may result in an order of sanctions, including, but not limited
19 to, a recommendation that the action be dismissed or the answer stricken.

20 5. Pursuant to Federal Rule of Civil Procedure 30(a), defendants may depose
21 plaintiff and any other witness confined in a prison upon condition that, at least fourteen
22 days before such a deposition, defendants serve all parties with the notice required by
23 Fed. R. Civ. P. 30(b)(1).

24 6. If disputes arise about the parties' obligations to respond to requests for
25 discovery, the parties shall comply with all pertinent rules including Rules 5, 7, 11, 26, and
26 37 of the Federal Rules of Civil Procedure and Rules 134, 135, 130, 131, 110, 142, and
27 230(l) of the Local Rules of Practice for the United States District Court, Eastern District of

1 California; unless otherwise ordered, Local Rule 251 shall not apply. Filing of a discovery
2 motion that does not comply with all applicable rules may result in imposition of sanctions,
3 including but not limited to denial of the motion.

4 If an attorney has filed a document with the court on behalf of any defendant, then
5 plaintiff must serve documents on that attorney and not on the defendant. See Fed. R. Civ.
6 P. 5(b).

7 7. The parties may conduct discovery until **February 16, 2012**. Any motions
8 necessary to compel discovery shall be filed by that date. All requests for discovery
9 pursuant to Fed. R. Civ. P. 31, 33, 34 or 36 shall be served not later than sixty days prior
10 to that date.

11 8. All pretrial motions, except motions to compel discovery and motions in limine,
12 shall be filed on or before **March 19, 2012**.

13 If a motion for summary judgment is filed, Rule 56 tells one what one must do in
14 order to oppose a motion for summary judgment. Generally, summary judgment must
15 be granted when there is no genuine issue of material fact—that is, if there is no real
16 dispute about any fact that would affect the result of plaintiff's case, the party who
17 asked for summary judgment is entitled to judgment **as** a matter of law, which will end
18 plaintiff's case. When a defendant files a motion for summary judgment which is
19 properly supported by declarations (or sworn testimony), the plaintiff cannot simply rely
20 on what the complaint says. Instead, a plaintiff must set out specific facts in
21 declarations, depositions and answers to interrogatories, or authenticated documents,
22 as provided in Rule 53(e), that contradict the facts shown in the defendant's
23 declarations and documents and show that there is a genuine issue of material fact for
24 trial. If the plaintiff does not submit his or her own evidence in opposition, summary
25 judgment, if appropriate, may be entered against the plaintiff. If summary judgment is
26 granted, the plaintiff's case against the moving defendant will be dismissed and there
27 will be no trial as to that defendant.

1 United States District Court, Eastern District of California, Local Rule 260(b)
2 states: "Any party opposing a motion for summary judgment or summary adjudication
3 shall reproduce the itemized facts in the Statement of Undisputed Facts and admit
4 those facts that are undisputed and deny those that are disputed, including with each
5 denial a citation to the particular portions of any pleading, affidavit, deposition,
6 interrogatory answer, admission or other document relied upon in support of
7 that denial. The opposing party may also file a concise 'Statement of Disputed Facts,'
8 and the source thereof in the record, of all additional material facts as to which there is
9 a genuine issue precluding summary judgment or adjudication. The opposing party
10 shall be responsible for the filing with the Clerk of all evidentiary documents cited in the
11 opposing papers. See L.R. 5-133(j). If a need for discovery is asserted as a basis for
12 denial of the motion, the party opposing the motion shall provide a specification of the
13 particular facts on which discovery is to be had or the issues on which discovery is
14 necessary."

15 Plaintiff must include with the opposition a copy of any documents cited in his or
16 her denial of defendant's facts or in plaintiff's own statement of genuine issues.

17 Dated: 11/3/11


18 BENJAMIN H. SETTLE,
19 United States District Judge