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

ARTHUR CARR,

Plaintiff,

No. 2:09-cv-0826 GEB KJN P

vs.

H. HER, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding in forma pauperis, and without counsel. On October 10, 2012, defendants filed a request to file, under seal, their response to the court’s September 21, 2012 order, requesting information as to the location of former inmate and witness Michael Soares (“Soares”). Due to the nature of defendants’ response, the request to file under seal is granted. The Clerk of the Court shall file defendants’ counsel’s declaration, signed October 10, 2012, under seal.

Because plaintiff has not provided confirmation that Soares is willing to testify voluntarily, the appearance of witness Soares must be obtained through subpoena. Not earlier than five weeks and not later than two weeks before trial, plaintiff must prepare and submit to the undersigned a subpoena for service by the United States Marshal. Also, plaintiff must tender an appropriate sum of money to the witness through the United States Marshal. In the case of

1 witness Soares, an unincarcerated witness, the appropriate sum of money is the daily witness fee  
2 of \$40.00 plus the witness' travel expenses.<sup>1</sup> 28 U.S.C. § 1821.

3 The court will not direct service of the subpoena by the United States Marshal  
4 unless the subpoena is accompanied by a money order made payable to Michael Soares for the  
5 full amount of the witness' travel expenses plus the daily witness fee of \$40.00. Because no  
6 statute authorizes the use of public funds for these expenses in civil cases, the tendering of  
7 witness fees and travel expenses is required even if the party was granted leave to proceed in  
8 forma pauperis.

9 Accordingly, IT IS HEREBY ORDERED that:


10 1. Defendants' October 10, 2012 request to file defendants' response under seal  
11 (dkt. no. 185) is granted;

12 2. The Clerk of the Court shall file defendants' counsel's declaration, signed  
13 October 10, 2012, under seal;

14 3. Not earlier than five weeks and not later than two weeks before trial, plaintiff  
15 shall prepare and submit to the undersigned a subpoena for service on witness Michael Soares, by  
16 the United States Marshal, along with a money order made payable to Michael Soares for Soares'  
17 travel expenses plus the daily witness fee of \$40.00; and

18 4. The Clerk of the Court shall send plaintiff a subpoena form.

19 DATED: October 15, 2012

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21   
22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

24 carr0826.sea

25 <sup>1</sup> Defendants have provided the address for Soares under seal, and the court will provide  
26 this information to the United States Marshal. As plaintiff previously informed the court, Soares  
resides in the Stockton area; plaintiff should calculate the travel expenses accordingly.