



1 trial evidence: (1) exhibits and (2) the testimony of witnesses. It is the plaintiff's responsibility  
2 to produce all of the evidence to prove the case, whether that evidence is in the form of exhibits  
3 or witness testimony. If the plaintiff wants to call witnesses to testify, plaintiff must follow  
4 certain procedures to ensure that the witnesses will be at the trial and available to testify.

5 I. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to  
6 Testify Voluntarily

7 An incarcerated witness who agrees voluntarily to attend trial to give testimony cannot  
8 come to court unless this court orders the warden or other custodian to permit the witness to be  
9 transported to court. This court will not issue such an order unless it is satisfied that:

- 10 1. The prospective witness is willing to attend;
- 11 and
- 12 2. The prospective witness has actual knowledge of relevant facts.

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

- 17 1. State the name, CDC Identification number, and address of each such witness;
- 18 and
- 19 2. Be accompanied by affidavits showing that each witness is willing to testify  
20 and that each witness has actual knowledge of relevant facts.

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

- 22 1. The party can swear by affidavit that the prospective witness has informed the  
23 party that he or she is willing to testify voluntarily without being subpoenaed. The  
24 party must state in the affidavit when and where the prospective witness informed  
25 the party of this willingness;

26 Or

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

1 subpoenaed.

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

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

10 Or

11 2. The party can serve and file an affidavit sworn to by the prospective witness in  
12 which the witness describes the relevant facts to which the prospective witness  
13 was an eye- or ear-witness. Whether the affidavit is made by the plaintiff or by the  
14 prospective witness, it must be specific about what the incident was, when and  
15 where it occurred, who was present, and how the prospective witness happened to  
16 be in a position to see or to hear what occurred at the time it occurred.

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

20 II. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to  
21 Testify Voluntarily

22 If a party seeks to obtain the attendance of incarcerated witnesses who refuse to testify  
23 voluntarily, the party should submit with the pretrial statement a motion for the attendance of  
24 such witnesses. Such motion should be in the form described above. In addition, the party must  
25 indicate in the motion that the incarcerated witnesses are not willing to testify voluntarily.

26 III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to  
27 Testify Voluntarily

28 It is the responsibility of the party who has secured an unincarcerated witness' voluntary

1 attendance to notify the witness of the time and date of trial. No action need be sought or  
2 obtained from the court.

3 IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to  
4 Testify Voluntarily

5 If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, not  
6 earlier than four weeks and not later than two weeks before trial, the party must prepare and  
7 submit to the United States Marshal a subpoena for service by the Marshal upon the witness.  
8 (Blank subpoena forms may be obtained from the Clerk of the Court). Also, the party seeking the  
9 witness' presence must tender an appropriate sum of money to the witness through the United  
10 States Marshal. In the case of an unincarcerated witness, the appropriate sum of money is the  
11 daily witness fee of \$40.00 plus the witness' travel expenses.

12 A subpoena will not be served by the United States Marshal upon an unincarcerated  
13 witness unless the subpoena is accompanied by a money order made payable to the witness for  
14 the full amount of the witness' travel expenses plus the daily witness fee of \$40.00. As noted  
15 earlier, because no statute authorizes the use of public funds for these expenses in civil cases, the  
16 tendering of witness fees and travel expenses is required even if the party was granted leave to  
17 proceed in forma pauperis.

18 Good cause appearing, IT IS HEREBY ORDERED that:

19 1. Discovery requests shall be served by the party seeking the discovery on all parties to  
20 the action.<sup>1</sup> Discovery requests shall not be filed with the court except when required by Local  
21 Rules 250.1, 250.2, 250.3 and 250.4.

22 2. Responses to written discovery requests shall be due forty-five days after the request is  
23 served.

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

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28 <sup>1</sup> If an attorney has filed a document with the court on behalf of any defendant, then plaintiff must  
serve documents on that attorney and not on the defendant. See Fed. R. Civ. P. 5(b).

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

5           5. If disputes arise about the parties' obligations to respond to requests for discovery, the  
6 parties shall comply with all pertinent rules including Rules 5, 7, 11, 26, and 37 of the Federal  
7 Rules of Civil Procedure and Rules 134, 135, 130, 131, 110, 142, and 230(l) of the Local Rules of  
8 Practice for the United States District Court, Eastern District of California; unless otherwise  
9 ordered, Local Rule 251 shall not apply. Filing of a discovery motion that does not comply with  
10 all applicable rules may result in imposition of sanctions, including but not limited to denial of the  
11 motion.

12           6. The parties may conduct discovery until January 6, 2015. Any motions necessary to  
13 compel discovery shall be filed by that date. All requests for discovery pursuant to Fed. R. Civ.  
14 P. 31, 33, 34 or 36 shall be served not later than sixty days prior to that date (November 7, 2014).

15           7. All pretrial motions, except motions to compel discovery, shall be filed on or before  
16 April 6, 2015. Motions shall be briefed in accordance with paragraph 8 of this court's order filed  
17 March 24, 2014.

18           8. Pretrial conference and trial dates will be set, as appropriate, following adjudication of  
19 any dispositive motion, or the expiration of time for filing such a motion.

20 DATED: July 28, 2014

21   
22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
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