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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TROAS V. BARNETT,

CASE NO. 1:05-cv-01022-BAM PC

Plaintiff,

ORDER REGARDING PLAINTIFF'S  
OBJECTION TO THE COURT'S ORDER  
DENYING THE PRODUCTION OF  
INCARCERATED INMATE WITNESS SVEN  
JOHNSON

v.

MARTIN GAMBOA, ANGEL DURAN,  
and MANUEL TORRES,

ORDER OVERRULING COURT'S PRIOR  
ORDER AND GRANTING PLAINTIFF'S  
MOTION FOR PRODUCTION OF  
INCARCERATED INMATE WITNESS SVEN  
JOHNSON AT TRIAL

Defendants.

(ECF Nos. 212, 239.)

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Plaintiff Troas V. Barnett ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Martin Gamboa, Angel Duran and Manuel Torres for the use of excessive force, and against Defendant Torres for failure to intervene in violation of the Eighth Amendment. The matter is set for trial on January 22, 2012, at 8:30 a.m. before the undersigned.

**I. Background**

On July 27, 2012, Plaintiff filed a motion for the attendance of incarcerated witness Sven Johnson. (ECF No. 152.) Inmate Johnson currently is housed at the California Substance Abuse Treatment Facility ("CSATF") in Corcoran and was Plaintiff's cell mate at the time of the underlying incident.

1 In support of the motion for production, Plaintiff declared that Inmate Johnson was an  
2 “eye witness/ear witness” to the following:

- 3 (1) Defendant Torres instructing Plaintiff to enter the upper tier shower with Inmate  
Johnson and Plaintiff refusing the order;
- 4 (2) Defendant Gamboa securing Inmate Johnson in the shower and asking him which  
bunk he was assigned to in cell 206;
- 5 (3) Defendants ordering Plaintiff to return to cell 206;
- 6 (4) Defendants Gamboa and Duran pulling Plaintiff inside cell 206;
- 7 (5) the duration of time that Defendants Gamboa and Duran remained inside cell 206  
and then positioning themselves in front of the cell after exiting;
- 8 (6) the severity of injury inflicted on Plaintiff;
- 9 (7) the actions of Defendants Gamboa and Duran as Plaintiff exited cell 206 and  
whether an extensive paton struggle occurred; and
- 10 (8) Defendant Torres’ “postponement of activation” of the emergency housing unit  
alarm.

11 On August 8, 2012, Defendants objected to transportation of Inmate Johnson, but  
12 submitted that he should be permitted to appear at trial by video conference or telephone. (ECF.  
13 No 156.)

14 On October 11, 2012, the Court granted Plaintiff’s request for testimony from Inmates  
15 Johnson, Conti and King. The Court also directed defense counsel to determine whether the  
16 witnesses could be transported to another facility for video appearance at trial. If defense counsel  
17 was unable to arrange for such transportation, then the witnesses would be transported to give  
18 live testimony. (ECF No. 174.)

19 On November 21, 2012, Plaintiff filed a subsequent motion for transportation of inmate  
20 witnesses, including Inmate Johnson. (ECF No. 205.) On December 11, 2012, Defendants filed  
21 a statement of non-opposition to the transportation of Inmate Johnson. Defendants reported that  
22 none of the institutions at which the inmates were housed had video-conference capabilities.<sup>1</sup>  
(ECF No. 210.)

23 On December 13, 2012, the Court denied transportation of Inmate Johnson, finding his  
24 testimony cumulative of Inmates Conti and King. (ECF No. 212.) The Court also determined  
25 that Inmate Johnson was not in a position to observe the inside of the cell during the incident.  
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27 <sup>1</sup>In August 2012, defense counsel reported that the relevant video-conference equipment failed in July 2012,  
28 but was in the process of being repaired. Defense counsel posited that Inmate Johnson possibly could appear by  
video conference at the time of trial in January 2013. (ECF No. 156-1.)

1 On January 7, 2013, Plaintiff filed objections to the Court’s order denying transportation  
2 of Inmate Johnson. (ECF No. 239.) The parties addressed Plaintiff’s objections at the motion in  
3 limine hearing on January 15, 2013.

4 **II. Discussion**

5 Plaintiff submitted his objections pursuant to Fed. R. Civ. P. 72. Rule 72 objections are  
6 inapplicable in a consent case. The Court therefore construes Plaintiff’s objections as a request  
7 for reconsideration. Fed. R. Civ. P. 60(b); Local Rule 230(j).

8 By his request, Plaintiff challenges the Court’s factual determinations. Plaintiff initially  
9 objects to the Court’s finding that Inmate Johnson was not in a position to observe the inside of  
10 the cell during the incident. Plaintiff argues that, due to the architectural design, Inmate Johnson  
11 could have seen Defendants’ actions in the reflection of the control tower glass. Inmate Johnson  
12 also could “hear better” the sounds inside the cell, including “whether Defendants ever gave any  
13 orders for Plaintiff to prone out.” Plaintiff also contends that Inmate Johnson could testify  
14 whether Defendants Gamboa and Duran, after severely injuring Plaintiff, used pepper spray and a  
15 paton to inflict further injury on Plaintiff and whether Defendant Torres fired a block gun after  
16 Plaintiff was offering no resistance.

17 Plaintiff further believes that Inmate Johnson’s testimony is important because the  
18 “incident arose due to” Defendant Torres’ ordering Plaintiff to enter an occupied shower stall  
19 (single) already in use by Inmate Johnson.

20 As discussed at the hearing, the events at issue began when Defendant Torres reportedly  
21 ordered Plaintiff to shower with his cell mate, Inmate Johnson. Testimony from Inmate Johnson  
22 regarding what transpired at the shower is relevant to Plaintiff’s claims and the underlying events  
23 in this action. There is no indication that Inmates Conti and King were present at the shower or  
24 that they would provide duplicative or cumulative testimony. Therefore, the Court overrules its  
25 prior order issued on December 13, 2012, which denied production of incarcerated witness Sven  
26 Johnson.

27 **III. Conclusion**

28 For the reasons discussed above, the Court HEREBY ORDERS as follows:

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1. Plaintiff's motion for the production of Inmate Sven Johnson, CDCR NO. H-37481, is GRANTED; and
2. The Clerk's Office is DIRECTED to serve a copy of this order on Inmate Johnson along with a writ of habeas corpus ad testificandum requiring his production at trial.

IT IS SO ORDERED.

**Dated: January 15, 2013**

**/s/ Barbara A. McAuliffe**  
UNITED STATES MAGISTRATE JUDGE