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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6 CARLOS HENDON,,  
7 Plaintiff,

8 v.

9 I. BAROYA, et al.,  
10 Defendants.  
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Case No. 1:05-cv-01247-SAB-PC

ORDER DENYING PLAINTIFF’S MOTION  
FOR THE ATTENDANCE OF  
INCARCERATED WITNESS AND  
FURTHER CLARIFICATOIN

(ECF NO. 150)

12 At the September 21, 2015, pretrial confirmation hearing, the Court indicated that it  
13 would consider Plaintiff’s March 9, 2105, motion for the attendance of incarcerated witness.  
14 Defendant Fam has opposed the motion.

15 In the February 17, 2015, scheduling order (ECF No. 148), Plaintiff was advised that in  
16 order to obtain the attendance of an incarcerated witness, he must show, by declaration, that the  
17 prospective witness has actual knowledge of relevant facts. Plaintiff was advised that the  
18 prospective witness’s actual knowledge could be shown in one of two ways: (1) if the party has  
19 actual knowledge that the prospective witness was an eyewitness or an ear witness to the relevant  
20 facts, the party himself can swear by declaration under penalty of perjury that the prospective  
21 witness has actual knowledge; or (2) the party can serve and file a declaration signed under  
22 penalty of perjury by the prospective witness in which the witness was an eye or ear witness.  
23 Whether the declaration is made by the party or by the prospective witness, it must be specific  
24 about the incident, when and where it occurred, who was present, and how the prospective  
25 witness happened to be in a position to see or to hear what occurred at the time it occurred.

26 Plaintiff seeks the attendance of inmate witness Billy Fells. Plaintiff supports his motion  
27 with the declaration of inmate Fells. Inmate Fells declares that he was housed at CCI (where the  
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1 events at issue in this lawsuit occurred) from January 1996 through January 1998. He was on  
2 suicide precaution at CCI “on several occasions” and was subjected to cold cell temperatures,  
3 constant lighting, and lack of showers.

4 The events at issue in this lawsuit occurred from June 2002 to January 2003. Inmate  
5 Fells indicates that he only has knowledge of his own experience. Defendant Fam correctly  
6 argues that because Plaintiff’s remaining claim is against individual defendants rather than  
7 against a public entity, Fells’ experience is irrelevant to this action and he should not be  
8 permitted to testify. Because Plaintiff has not shown that Inmate Fells was an eye or ear witness  
9 to the events at issue in this lawsuit, he is not permitted to testify.

10 In the Court’s trial scheduling order of April 20, 2015 (ECF No. 169), the Court set a  
11 deadline of September 15, 2015, to exchange exhibits. In the September 22, 2015, pretrial order  
12 (ECF No. 175), the date was extended to September 29, 2015. Defendants indicate that the  
13 parties exchanged exhibits on September 15, 2015. The date for filing and serving a final exhibit  
14 list and pre-marked exhibits is October 6, 2015.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff’s motion for the attendance of incarcerated witness Billy Fells is denied;
- 17 and
- 18 2. The deadline for filing and serving a final exhibit list and pre-marked exhibits is  
19 October 6, 2015.

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21 IT IS SO ORDERED.

22 Dated: October 1, 2015

  
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UNITED STATES MAGISTRATE JUDGE