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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

PUNAOFO TSUGITO TILEI,

1:06-cv-00776-OWW-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION  
FOR ASSISTANCE FACILITATING  
COMMUNICATION WITH INMATE  
WITNESSES, WITH PREJUDICE  
(Doc. 92.)

v.

T. WAN, et al.,

ORDER CLOSING DISCOVERY

Defendants.

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**I. RELEVANT PROCEDURAL HISTORY**

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 and California law by Punaofu Tsugito Tilei (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis. This action is proceeding on Plaintiff’s amended complaint, filed July 30, 2007, against defendants Wan, Gallagher, and Cooper (“Defendants”) for retaliation in violation of the First Amendment, and for denial of due process in violation of the Fourteenth Amendment.<sup>1</sup> (Doc. 16.) The events at issue in this action occurred at the California Substance Abuse Treatment Facility and State Prison (“SATF”) in Corcoran, California, in 2005.

On September 10, 2009, and again on January 8, 2010, Plaintiff filed motions for court orders to communicate with his inmate witnesses. (Docs. 62, 76.) On January 22, 2010, the Court issued

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<sup>1</sup>All other claims were dismissed from this action by the Court on July 8, 2008. (Doc. 26.)

1 an order denying Plaintiff's motions, without prejudice to renewal with a factual showing that the  
2 witnesses possess relevant knowledge, within forty-five days. (Doc. 89.) On March 1, 2010,  
3 Plaintiff renewed the motion, seeking a court order assisting with facilitation of communication with  
4 fifteen inmate witness. (Doc. 92.) On October 8, 2010, the Court issued an order requiring  
5 Defendants to file a response to Plaintiff's motion. (Doc. 106.) On November 24, 2010, Defendants  
6 filed a response to the motion. (Doc 110.) Plaintiff has not filed a reply.

7 **II. PLAINTIFF'S ALLEGATIONS AND CLAIMS**

8 In the amended complaint, Plaintiff claims that Defendants retaliated against him for his  
9 participation in legal activities, and violated his rights to due process, when they retained him in  
10 administrative segregation ("Ad-Seg") and transferred him to another prison. Plaintiff claims that  
11 the reason Defendants gave for placing him in Ad-Seg – that an anonymous source stated Plaintiff's  
12 life was possibly in danger from enemies – was false.

13 In their response to Plaintiff's motion for leave to correspond with inmate witnesses,  
14 Defendants summarize Plaintiff's allegations and their defense as follows:

15 "Plaintiff alleges that he was placed in administrative segregation in  
16 retaliation for sending a complaint to the Ombudsman and Internal Affairs.  
17 Plaintiff's story is that he notified Defendant Wan that an inmate had been assaulted  
18 by an officer while the inmate was in the shower. Plaintiff claims that Defendant  
19 Wan was upset when he found out that Plaintiff had notified prison officials in  
20 CDCR headquarters about the alleged assault. Plaintiff claims that Defendant Wan  
21 showed him the confidential investigatory file and berated Plaintiff for going behind  
22 his back. Plaintiff claims that he was placed in administrative segregation, on the  
23 pretext that his safety was in danger if he remained in the general population.  
24 Plaintiff claims that his removal from general population and his later transfer to  
25 another prison was in retaliation for sending the complaint about the alleged assault  
26 to [the] CDCR Ombudsman and Internal Affairs. (First Amended Complaint, CR  
27 16.)

28 Defendants contend that there was a legitimate penological reason to remove  
Plaintiff from the general population, that the information came originally from an  
unsigned note, and when other information confirmed the threat, Plaintiff had to be  
transferred for his own safety. Prison officials have a constitutional duty to take  
measures they believe are appropriate to protect the safety of every prisoner in their  
custody. Farmer v. Brennan, 511 U.S. 825, 833 (1994)."

(Response to Motion, Doc. 110 at 3-4.)

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1                   **1.     Retaliation**

2                   “Within the prison context, a viable claim of First Amendment retaliation entails five basic  
3 elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because  
4 of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his  
5 First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional  
6 goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

7                   With regard to transfer, prison inmates do not have a constitutional right to be incarcerated  
8 at a particular correctional facility or to be transferred from one facility to another. Meachum v.  
9 Fano, 427 U.S. 215, 224-25 (1976). However, prison officials may not “transfer an inmate to  
10 another prison in retaliation for the inmate’s exercise of his First Amendment rights . . . .” Pratt v.  
11 Rowland, 65 F.3d 802, 806 (9th Cir. 1995). To establish a prima facie case, plaintiff must allege and  
12 show that defendants acted to retaliate for his exercise of a protected activity, and defendants’ actions  
13 did not serve a legitimate penological purpose. See Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir.  
14 1994); Pratt, 65 F.3d at 807.

15                   To succeed on his claim for retaliation, Plaintiff must prove that Defendants retained him in  
16 Ad-Seg, and/or transferred him to another facility, because of his participation in legal activities, and  
17 Defendants’ actions did not advance a legitimate correctional goal.

18                   **2.     Due Process**

19                   In order to state a cause of action for deprivation of procedural due process, a plaintiff must  
20 first establish the existence of a liberty interest for which the protection is sought. Liberty interests  
21 may arise from the Due Process Clause itself or from state law. Hewitt v. Helms, 459 U.S. 460, 466-  
22 68 (1983). The Due Process Clause itself does not confer on inmates a liberty interest in being  
23 confined in the general prison population instead of administrative segregation. See Id. Liberty  
24 interests created by prison regulations are limited to freedom from restraint which “imposes atypical  
25 and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin  
26 v. Conner, 515 U.S. 472, 484 (1995).

27                   Plaintiff is entitled to very limited due process protections under federal law with respect to  
28 placement in Ad-Seg. See Toussaint v. McCarthy, 801 F.2d 1080, 1100-01 (9th Cir. 1986). That

1 Defendants may have failed to comply with state regulations is not grounds for relief under section  
2 1983 for deprivation of due process. Due process requires only that prison officials “hold an  
3 informal nonadversary hearing within a reasonable time after the prisoner is segregated,” that prison  
4 officials “inform the prisoner of the charges against [him] or the reasons for considering  
5 segregation,” and that the prisoner be allowed “to present his views.” Id.

6 To succeed on his claim for due process violations, Plaintiff must first prove that his retention  
7 in Ad-Seg imposed an “atypical and significant hardship in relation to the ordinary incidents of  
8 prison life.” Second, Plaintiff must prove he was not given a proper hearing before he was placed  
9 in Ad-Seg.

### 10 **III. MOTION FOR LEAVE TO CORRESPOND WITH INMATE WITNESSES**

11 Inmates may only correspond with one another if they obtain written authorization from the  
12 appropriate prison officials. Cal. Code Regs., tit. 15 § 3139 (2010). Further, the Court does not have  
13 jurisdiction in this action over anyone other than Plaintiff and Defendants, and cannot order that  
14 Plaintiff be allowed to correspond with his witnesses. E.g., City of Los Angeles v. Lyons, 461 U.S.  
15 95, 102, 103 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation  
16 of Church and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); Jones v. City of Los  
17 Angeles, 444 F.3d 1118, 1126 (9th Cir. 2006).

18 Plaintiff requests a court order facilitating Plaintiff’s communication with fifteen inmate  
19 witnesses, to enable him to undertake a legal investigation “in the manner that an attorney would.”  
20 (Motion at 1.) Plaintiff submits evidence that he has made requests to prison officials to be allowed  
21 to contact witnesses, without success. In his motion, Plaintiff identifies each witness, describes his  
22 relationship with the witness, and discusses the knowledge possessed by the witness and how he  
23 believes it is relevant to Plaintiff’s claims.

24 In their response, Defendants first argue that Plaintiff has not exhausted the procedures  
25 available to him at SVSP for approval of his correspondence requests. Plaintiff claims he sent a  
26 letter to his counselor, J. Guglielmo, but did not receive a response. (Motion, Doc. 92 at p. 3 of 18,  
27 ¶¶5-6.) Plaintiff also claims he then submitted a Request for Interview form to Guglielmo, and a  
28 letter to the Warden. (Id. at ¶¶6-7.) Plaintiff claims he received no response to any of his requests

1 and asserts that : “prison officials are not going to assist me in suing their comrades (*sic*).” (Motion,  
2 Id. at p. 3-4 of 18, ¶¶5-8.) Defendants submit evidence that Plaintiff’s counselor, J. Guglielmo,  
3 never received a letter or Request for Interview form from Plaintiff. (Decl. of Guglielmo, Doc. 110,  
4 Exh. A at ¶1.) Defendants maintain that if Plaintiff did not receive a response, he should have  
5 submitted an administrative appeal. (Id. at ¶5.) Plaintiff attended a classification hearing on  
6 December 22, 2009 and was provided an opportunity to review his prison file, supervised by  
7 Guglielmo, but Plaintiff did not mention correspondence with other inmates to Guglielmo on either  
8 occasion. (Id. at ¶4; Exh. B.)

9 Defendants also argue that Plaintiff’s motion should be denied because the claimed witnesses  
10 are cumulative or have information that is not relevant. The Court here lists each of Plaintiff’s  
11 prospective witnesses and the testimony expected by Plaintiff, together with Defendants’ responses.

12 **(1) Danny Torres, CDCR# P-02328**<sup>2</sup>

13 Danny Torres (“Torres”) was housed one cell below Plaintiff in Ad-Seg. Torres can testify  
14 that prison officials attempted to house Torres as Plaintiff’s cell mate in Ad-Seg. Torres can also  
15 testify that inmates are ordinarily allowed to sign a document releasing officials from liability,  
16 allowing the inmate to return to a facility where problems for the inmate existed, and that inmates  
17 are usually given documentation of information by confidential informants against them. Plaintiff  
18 was not allowed either of these options.

19 Defendants argue that Torres’ knowledge has no possible relevance to Plaintiff’s case.  
20 Defendants contend that the fact that a decision was made that Plaintiff could safely be celled with  
21 one individual in Ad-Seg does not mean that Plaintiff’s safety was not in danger in the general  
22 population. Defendants argue that the type of document allowing inmates to return to a problem  
23 facility is not a waiver of liability, and information about this document is irrelevant because the  
24 document requires two inmates to agree they are not enemies, and in Plaintiff’s case the information  
25 about the threat to Plaintiff’s safety was from an anonymous source.

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28 <sup>2</sup>Motion, Doc. 92 at p. 4 of 18, ¶(i).

1           **(2)     Emi Tavanuu, CDCR# Unknown**<sup>3</sup>

2           Emi Tavanuu (“Tavanuu”) is Plaintiff’s friend and relative who was also in custody at SATF  
3 in Facility C, but in another building. Tavanuu can testify that he told defendant Wan that the  
4 information about Plaintiff being in danger was false, statements that should have been documented  
5 during the investigation.

6           Defendants argue that it is irrelevant for an inmate to testify that Plaintiff was not in danger,  
7 because the question is whether or not there was a threat to Plaintiff’s safety that needed to be  
8 investigated.

9           **(3)     Vikram Sood, CDCR# P-80343**<sup>4</sup>

10          Vikram Sood (“Sood”) was Plaintiff’s neighbor at SATF in Bldg 2 C-section for a time.  
11 Sood can testify that he told defendant Wan that the information about Plaintiff being in danger was  
12 false, statements that should have been documented during the investigation.

13          Defendants argue that it is irrelevant for an inmate to testify that Plaintiff was not in danger,  
14 because the question is whether or not there was a threat to Plaintiff’s safety that needed to be  
15 investigated.

16          **(4)     Michael Ta, CDCR# T-05240**<sup>5</sup>

17          Michael Ta (“Ta”) was Plaintiff’s cell mate for several months. Ta can testify that he told  
18 defendant Wan that the information about Plaintiff being in danger was false, statements that should  
19 have been documented during the investigation.

20          Defendants argue that it is irrelevant for an inmate to testify that Plaintiff was not in danger,  
21 because the question is whether or not there was a threat to Plaintiff’s safety that needed to be  
22 investigated.

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26           <sup>3</sup>Id. at p. 5 of 18, ¶(ii).

27           <sup>4</sup>Id. at p. 6 of 18, ¶(iii).

28           <sup>5</sup>Id. at p. 7 of 18, ¶(iv).

1           **(5)    Thailee Nguon, CDCR# T-99924**<sup>6</sup>

2           Thailee Nguon (“Nguon”) was Plaintiff’s cell mate for the months just before Plaintiff was  
3 taken to Ad-Seg. Nguon can testify that he told defendant Wan that the information about Plaintiff  
4 being in danger was false, statements that should have been documented during the investigation.

5           Defendants argue that it is irrelevant for an inmate to testify that Plaintiff was not in danger,  
6 because the question is whether or not there was a threat to Plaintiff’s safety that needed to be  
7 investigated.

8           **(6) & (7)    Carlos Sosa (CDCR# J-06662) & Ludrate Burton (CDCR# J-96480)**<sup>7</sup>

9           Carlos Sosa (“Sosa”) and Ludrate Burton (“Burton”) were both housed at SATF in Facility  
10 C, Building 4. Sosa and Burton can testify about the content of Plaintiff’s administrative complaint  
11 about the assault of an officer on an inmate. Plaintiff claims their testimony will correlate with a  
12 confidential file Wan showed Plaintiff, impeaching any claim by Wan that no confidential file exists.

13           Defendants argue that neither Sosa nor Burton has any relevant evidence, because they did  
14 not witness defendant Wan showing Plaintiff a confidential file and therefore, they do not have any  
15 direct knowledge that Wan showed a confidential file to Plaintiff. Defendants also argue that  
16 Plaintiff and his witnesses could not know which of Plaintiff’s complaints about the alleged assault  
17 triggered Gallagher’s investigation, because Plaintiff acknowledges that he first submitted his  
18 complaint to Wan before sending it to the Ombudsman.

19           **(8) & (9)    Arvizu (CDCR# J-93187) & Bell (CDCR# P-29220)**<sup>8</sup>

20           Arvizu and Bell were Plaintiff’s co-workers on the Mens Advisory Council (MAC). They  
21 can testify about the MAC and how it works. They can corroborate Plaintiff’s claim that he met with  
22 defendant Wan twice on the day he was placed in Ad-Seg. They can testify that they told defendant  
23 Wan that the information about Plaintiff being in danger was false, statements that should have been  
24 documented during the investigation. They know about the incident on May 3, 2005 when defendant  
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26           <sup>6</sup>Id. at p. 7 of 18, ¶(v).

27           <sup>7</sup>Id. at p. 8 of 18, ¶(vi).

28           <sup>8</sup>Id. at p. 9 of 18, ¶(vii).

1 Wan harassed Plaintiff after Plaintiff filed the complaint about Officer Torres. They can also  
2 confirm information about the MAC Executive Body’s meeting with Wan, Gallagher and Sergeant  
3 Padilla during which Wan verbally abused Plaintiff about his jailhouse lawyer activities and told him  
4 “it will not happen anymore,” just before Plaintiff was taken to Ad-Seg.

5 Defendants argue that it is irrelevant for an inmate to testify that Plaintiff was not in danger,  
6 because the question is whether or not there was a threat to Plaintiff’s safety that needed to be  
7 investigated.

8 **(10) Jesus Rodriguez (CDCR# Unknown)**<sup>9</sup>

9 Jesus Rodriguez (“Rodriguez”) can testify about defendant Wan’s character as a corrupt  
10 individual. Plaintiff claims that Wan said Rodriguez was a sexual predator and asked Plaintiff to  
11 take Rodriguez as a cell mate and assault him, as a favor to Wan.

12 Defendants argue that this testimony would be inadmissible character evidence. Moreover,  
13 Defendants maintain that there is a security risk in allowing Plaintiff to correspond with Rodriguez.

14 **(11) P. Ly (CDCR# J-19345)**<sup>10</sup>

15 Plaintiff claims that prison officials told Plaintiff that P. Ly (“Ly”) was the informant who  
16 told prison officials Plaintiff was in danger. Ly can testify that he was not the informant.

17 Defendants argue that Ly’s testimony is not relevant, because Ly can only testify that he  
18 never provided staff with any information. Moreover, Defendants maintain there is a security risk  
19 in allowing Plaintiff to correspond with an inmate he suspects is a confidential informant.

20 **(12) Vincent Harris (CDCR# C-32773)**<sup>11</sup>

21 At one point, Vincent Harris (“Harris”) was Plaintiff’s neighbor in Cell #226 while Plaintiff  
22 was in Cell #225. Harris, an inmate of African descent, can refute claims that Plaintiff’s life was in  
23 danger due to his association with inmates of African descent. Harris can testify that Plaintiff is  
24 well-known as an active inmate advocate, litigator, jailhouse lawyer, and member of the MAC.

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26 <sup>9</sup>Id. at p. 11 of 18, ¶(viii).

27 <sup>10</sup>Id. at p. 12 of 18, ¶(ix).

28 <sup>11</sup>Id. at p. 13 of 18, ¶(x).



1 Defendants argue that it is irrelevant whether or not Plaintiff actually associated with Black  
2 inmates or with inmates in his own racial group, because the question is whether there was a credible  
3 threat to Plaintiff's safety if he remained in the general population. Defendants contend that  
4 evidence of Plaintiff's actual associations is irrelevant.

5 (13), (14), & (15) Mao Rin (CDCR# V-05023), Tran Nguyen (CDCR# Unknown),  
6 & Chinneruth Chek (CDCR# Unknown)<sup>12</sup>

7 Mao Rin ("Rin"), Tran Nguyen ("Nguyen"), and Chinneruth Chek ("Chek") all have first  
8 hand knowledge that Plaintiff associated with members of his own Pacific Islander/Asian ethnic  
9 group and not with inmates of African descent, refuting claims by Defendants that Plaintiff was in  
10 danger because he associated with inmates of African descent.

11 Defendants argue that it is irrelevant whether or not Plaintiff actually associated with Black  
12 inmates or with inmates in his own racial group, because the question is whether there was a credible  
13 threat to Plaintiff's safety if he remained in the general population. Defendants contend that  
14 evidence of Plaintiff's actual associations is irrelevant.

#### 15 IV. DISCUSSION

16 As stated above, the Court has required Plaintiff to make a showing with respect to each  
17 inmate witness that the witnesses possess relevant knowledge. "Relevant evidence" means evidence  
18 having any tendency to make the existence of any fact that is of consequence to the determination  
19 of the action more probable or less probable than it would be without the evidence." Fed. R. Evid.  
20 401. "Personal knowledge" means knowledge of a fact perceived by the senses, by one who has had  
21 an opportunity to observe, and must have actually observed the fact. Fed. R. Evid. 602. Personal  
22 knowledge is not an absolute but may consist of what the witness thinks he knows from personal  
23 perception. Id.

24 Plaintiff's motion for court assistance must be denied because he has not provided evidence  
25 that he completed the process to obtain written authorization from the appropriate prison officials.  
26 Cal. Code Regs., tit. 15 § 3139 (2010). Because the Court does not have jurisdiction in this action  
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28 <sup>12</sup>Id. at p. 13 of 18, ¶(xi).

1 over anyone other than Plaintiff and Defendants, the Court can only make a request to prison  
2 officials and cannot order them to allow Plaintiff to correspond with his witnesses. E.g., City of Los  
3 Angeles, 461 U.S. at 102; Valley Forge Christian Coll., 454 U.S. at 471; Jones, 444 F.3d at 1126.  
4 Such a request shall not be made by the Court without assurances that Plaintiff has followed  
5 procedures and used the available resources at the prison to obtain written authorization after  
6 consideration by prison officials of safety, security, and procedural priorities. The Court recognizes  
7 that prison administrators "should be accorded wide-ranging deference in the adoption and execution  
8 of policies and practices that in their judgment are needed to preserve internal order and discipline  
9 and to maintain institutional security." Whitley v. Albers, 475 U.S. 312, 321-322 (1986) (*quoting*  
10 Bell v. Wolfish, 441 U.S. 520, 547 (1970)). Plaintiff has submitted evidence of correspondence he  
11 sent to his assigned counselor and the Warden in January and February 2010, and Plaintiff claims  
12 he received no replies. Defendants have provided evidence that Plaintiff's counselor received no  
13 such correspondence. In any event, if Plaintiff received no responses to his requests, he had other  
14 remedies available at the prison level before bringing a motion to the Court. Plaintiff has not  
15 submitted any evidence that he spoke to his counselor when he had the opportunity, or that he filed  
16 an administrative complaint grieving the lack of response to his correspondence.

17 Even if Plaintiff had completed the process available at the prison to request authorization,  
18 Plaintiff has not made a showing that all of the prospective witnesses possess relevant knowledge.  
19 Plaintiff claims that Tavanuu, Sood, Ta, Nguon, Arvizu, Bell, Rin, Nguyen, and Chek can testify that  
20 Plaintiff was not in danger, because he did not have enemies and he did not associate with inmates  
21 of African descent. However, it is not relevant whether Plaintiff was actually in danger, because the  
22 issue is whether Defendants had reason to believe that Plaintiff was in danger. Plaintiff claims that  
23 Torres has first hand knowledge that officials allowed Plaintiff to have a cell mate in Ad-Seg, which  
24 Plaintiff sees as evidence that was he not in danger, but the fact that Plaintiff could be safely celled  
25 with another inmate in Ad-Seg does not tend to prove that he was not in danger if placed in the  
26 general population. Plaintiff also claims that Torres can testify that Plaintiff was not allowed to sign  
27 a document he terms a "marriage chrono," which would have allowed Plaintiff to return to the  
28 general population, but Defendants argue that the type of document Plaintiff refers to was not an

1 option for Plaintiff because of the role of the confidential informant. Ly's testimony that he never  
2 provided staff members with any information about Plaintiff is irrelevant to whether Defendants had  
3 any reason to believe Plaintiff was in danger, particularly since Defendants contend the informant's  
4 note was unsigned. Nor has Plaintiff shown that inmate Rodriguez has any knowledge that is  
5 relevant to Plaintiff's claims and admissible. Evidence of other crimes, wrongs, or acts is not  
6 admissible to prove the character of a person in order to show action in conformity therewith. Fed.  
7 R. Evid. 404(b). Moreover, Plaintiff has not provided CDC numbers to identify some of the  
8 witnesses. The Court shall not make any request for Plaintiff to correspond with unidentified inmate  
9 witnesses.

10 Plaintiff has demonstrated that three of the witnesses – Torres, Arvizu, and Bell – may have  
11 relevant knowledge. Plaintiff claims that Torres has knowledge that inmates in Plaintiff's  
12 circumstances are ordinarily given documentation of informants' notes about them, whereas Plaintiff  
13 was not given such documentation. Defendants have not argued that this fact is not relevant. The  
14 Court finds this fact may be relevant to prove that Defendants did not have any note from a  
15 confidential informant and thus no valid reason to retain Plaintiff in Ad-Seg. With regard to  
16 witnesses Arvizu and Bell, if they possess "personal knowledge" that defendant Wan's harassed  
17 Plaintiff for filing the complaint or for Plaintiff's other jailhouse lawyer activities, such information  
18 may be relevant to Plaintiff's retaliation claim.

## 19 **V. CONCLUSION AND ORDER**

20 Based on the foregoing, the Court finds that Plaintiff has made the requisite showing that  
21 three of his prospective inmate witnesses – Torres, Arvizu, and Bell – have knowledge of facts that  
22 may be relevant to Plaintiff's claims. However, Plaintiff has not completed the process under § 3139  
23 to obtain written authorization from the appropriate prison officials. Therefore, Plaintiff's motion  
24 for a court order assisting facilitation of communication with witnesses must be denied. In light of  
25 the fact that Plaintiff has had two opportunities to bring this motion, and the discovery deadline in  
26 this action expired on September 17, 2010, Plaintiff's motion shall be denied with prejudice.  
27 Plaintiff is not foreclosed by the Court from pursuing his request for authorization at the prison level.

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In accordance with the foregoing, IT IS HEREBY ORDERED that:

- 1. Plaintiff's motion for a court order assisting facilitation of communication with inmate witnesses, filed March 1, 2010, is DENIED, with prejudice; and
- 2. Discovery in this action is CLOSED.

IT IS SO ORDERED.

**Dated: January 13, 2011**

**/s/ Gary S. Austin**  
**UNITED STATES MAGISTRATE JUDGE**