

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

JOSEPH R. PULLIAM.

Plaintiff,

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M. LOZANO, et al.,

Defendants.

Case No. 1:07-cv-0964-MJS

**ORDER PARTIALLY GRANTING
PLAINTIFF'S MOTION FOR WITNESSES
AND DENYING PLAINTIFF'S MOTION
TO ADD A DEFENDANT**

(ECF Nos. 104, 106)

This action is set for jury trial on December 10, 2013, before the Honorable Michael J. Seng. Plaintiff has filed a motion regarding the attendance of incarcerated and unincarcerated witnesses. (ECF No. 104.) Defendants have filed an opposition to this motion. (ECF No. 109.) Plaintiff has also filed a motion to add an additional defendant in this action. (ECF No. 106.)

Plaintiff's motions are now before the Court.

I. PLAINTIFF'S MOTION FOR WITNESSES

A. Incarcerated Witnesses

Plaintiff has requested the attendance of the following incarcerated witnesses: 1) Inmate Ambers, CDCR # J-29540, and 2) Inmate Green, CDCR # P-54091. (ECF No. 104.)

1 Defendants oppose Plaintiff's motion on the grounds that there is insufficient
2 evidence that Inmates Ambers and Green are willing to testify or have actual knowledge
3 of the relevant facts. (ECF No. 109.) They also request that if the incarcerated
4 witnesses are allowed to testify that they appear via video-conference. (Id.)

5 As the Court discussed during the telephonic pretrial conference, Plaintiff has not
6 communicated with Inmate Green about this incident. It occurred over seven years ago.
7 There is nothing before the court to suggest he has any memory of the event. Inmate
8 Green was the individual Plaintiff believed at the time of the incident was an enemy.
9 Plaintiff offers no reason to believe he would be less hostile now. Plaintiff has not made
10 even a minimal showing necessary to cause this witness to be made a witness at
11 Plaintiff's trial.

12 At one time Inmate Ambers advised Plaintiff he would appear and testify
13 favorably to Plaintiff at trial. Recognizing the value of live, in-person testimony over
14 video testimony, the Court will allow Plaintiff to have Inmate Ambers appear as a
15 witness in person at the trial of this case.

16 B. Uncarcerated Witnesses

17 Plaintiff has also requested the attendance of W. Gomez, an unincarcerated
18 individual employed as a correctional officer at Kern Valley State Prison. (ECF No.
19 104.)

20 Pursuant to the Court's Second Scheduling Order, Plaintiff was required to notify
21 the Court of the names and location of each unincarcerated witness he intends to call at
22 trial. The Court would then inform the Plaintiff of the travel expense for each witness he
23 wishes to subpoena and require Plaintiff to submit a money order, made payable to the
24 witness. The appropriate amount is a daily fee of \$40.00 plus travel expenses. 28
25 U.S.C. § 1821. Plaintiff is required to submit these money orders prior to the issuance of
26 any subpoena and service by the United States Marshal.

27 Plaintiff lists the location of Correctional Officer Gomez as Kern Valley State
28 Prison located at 3000 West Cecil Avenue in Delano, California. The round trip mileage

1 from Delano to Fresno is 154.8 miles. The mileage rate is 55.5 cents per mile. The
2 total mileage fee is \$85.91.

3 Accordingly, to subpoena Correctional Officer Gomez as a witnesses from Kern
4 Valley State Prison, Plaintiff must submit a money order made payable to Correctional
5 Officer Gomez in the amount of \$125.91.

6 The Court will give Plaintiff until **November 5, 2013** to provide the requisite
7 money orders.

8 **II. PLAINTIFF'S MOTION TO ADD A WITNESS**

9 Plaintiff wishes to add Correctional Officer W. Gomez as a defendant in this
10 action. Correctional Officer Gomez was dismissed from the action during the screening
11 stage.

12 Plaintiff presents no basis upon which to believe the earlier orders of this Court
13 dismissing Gomez should be reconsidered or that Plaintiff has new grounds for
14 proceeding against Gomez. Even if the contrary were true, there is insufficient time
15 between now and trial to bring a new defendant into the case and give him an
16 opportunity to plead and conduct discovery.

17 Accordingly, Plaintiff's motion will be denied.

18 **III. CONCLUSION AND ORDER**

19 Accordingly, the Court hereby ORDERS the following:

- 20 1. Plaintiff's request to have Inmate Amber testify in this matter is GRANTED;
- 21 2. Plaintiff's request to have Inmate Green testify in this matter is DENIED;
- 22 3. Plaintiff's request to have Correctional Officer W. Gomez subpoenaed in this
23 matter is GRANTED;
- 24 4. Plaintiff must submit a money order made payable to Correctional Officer W.
25 Gomez in the amount of \$125.91 by **November 5, 2013**; and

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5. Plaintiff's motion to add Correctional Office W. Gomez as a defendant in this action is DENIED.

IT IS SO ORDERED.

Dated: October 30, 2013

/s/ *Michael J. Seng*
UNITED STATES MAGISTRATE JUDGE