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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JAMISI J. CALLOWAY,

12 Plaintiff,

13 vs.

14 C/O HAYWARD and

15 C/O OAKS,

16 Defendants.  
17

1:08-cv-01896-LJO-GSA-PC

ORDER DENYING PLAINTIFF'S  
MOTION FOR ATTENDANCE OF  
INCARCERATED WITNESSES  
(ECF No. 172.)

18 **I. BACKGROUND**

19 Jamisi J. Calloway ("Plaintiff") is a state prisoner proceeding pro se and in forma  
20 pauperis with this civil rights action under 42 U.S.C. § 1983. Plaintiff filed the Complaint  
21 commencing this action on December 10, 2008. (ECF No. 1.) This action now proceeds with  
22 Plaintiff's Third Amended Complaint filed on October 4, 2009, against defendants C/O  
23 Hayward and C/O Oaks, for excessive force in violation of the Eighth Amendment during  
24 events occurring on May 7, 2008, at Corcoran State Prison. (ECF No. 20.)

25 This case is scheduled for jury trial to commence on January 31, 2017, before District  
26 Judge Lawrence J. O'Neill. A telephonic trial confirmation hearing is scheduled for December  
27 15, 2016 at 8:30 a.m., before District Judge Lawrence J. O'Neill. A settlement conference is  
28 scheduled on December 21, 2016, before Magistrate Judge Gary S. Austin.

1 On September 6, 2016, Plaintiff filed a motion for attendance of incarcerated witnesses.  
2 (ECF No. 172.) On November 17, 2016, Defendants filed an opposition to the motion. (ECF  
3 No. 186.) Plaintiff has not filed a reply to the opposition. Plaintiff's motion is now before the  
4 Court. Local Rule 230(l).

## 5 **II. ATTENDANCE OF INMATE WITNESSES AT TRIAL**

6 On August 1, 2016, the Court issued the Second Scheduling Order advising Plaintiff of  
7 the requirements for bringing inmate witnesses to trial who voluntarily agree to testify. (ECF  
8 No. 164 ¶1.) Plaintiff was informed that the Court must issue an order before Plaintiff's  
9 incarcerated witnesses can come to court to testify. (Id.) The Court will not issue such an  
10 order unless it is satisfied that: (a) the prospective witness is willing to attend, and (b) the  
11 prospective witness has actual knowledge of relevant facts. (Id.) Plaintiff was advised that he  
12 must file a Motion for Attendance of Incarcerated Witnesses, stating the name, address, and  
13 prison identification number of each such Witness, accompanied by a declaration by Plaintiff or  
14 each Witness, showing that each Witness is willing to testify and has actual knowledge of  
15 relevant facts. (Id.) The declaration must show that the prospective Witness was an eyewitness  
16 or ear-witness to relevant facts, and must be specific about the incident at issue in this case,  
17 including when and where it occurred, who was present, and how the prospective Witness  
18 happened to be in a position to see or hear what occurred at the time it occurred. (Id.)

## 19 **III. PLAINTIFF'S MOTION**

20 Plaintiff seeks to bring nine inmate witnesses to trial: (1) Alton R. Garrett; (2) Saune  
21 Livas; (3) Relaun Deadman; (4) Roderick Daniel; (5) Archuleta Orlando; (6) Troy D. Mayban,  
22 Jr.; (7) Roy Bonner; (8) Michael Webb; and (9) William Brown. Plaintiff has provided the  
23 names, CDCR numbers, and locations of all nine of the prospective witnesses. (ECF No. 172  
24 at 3-5.) Plaintiff also submitted his own declaration, in which he states that “[e]ach [of the]  
25 named witnesses agreed and swore (*sic*) through declaration under penalty of perjury if  
26 called they would testify of the willingness to appear if called to testify about Oaks and  
27 Howard[’s] conduct as correctional officers.” (Id. at 6.) In addition, Plaintiff filed the  
28 declaration of Alton R. Garrett, one of his prospective witnesses. (ECF No. 178.)

1 Defendants argue that Plaintiff has not shown how the presence of any of his nine  
2 incarcerated witnesses at trial will substantially further the resolution of this case. Defendants  
3 assert that Plaintiff's declaration fails to describe where any of the witnesses were located that  
4 would have placed them in a position to see or hear what transpired in the hospital. Defendants  
5 argue that the subject matter of the nine witnesses' expected testimony is not relevant to the  
6 excessive force claim at issue in this case. Defendants also argue that Alton R. Garrett's  
7 declaration fails to provide the detailed information required under the Second Scheduling  
8 Order, such as where Garrett was located and what, if anything, he saw on May 7, 2008.

9 **IV. DISCUSSION**

10 In his declaration, Plaintiff represents that each of the nine Witnesses will testify to  
11 first-hand abuse, corruption, racial discrimination and excessive force. However, Plaintiff only  
12 indicates that they will testify about their own experiences, not their personal knowledge of  
13 incidents concerning Plaintiff or specific acts against Plaintiff by Defendants in this action. For  
14 example, Plaintiff states that Alton Garrett "will testify to the first hand abuse, corruption,  
15 racial discrimination and excessive force after he demanded adequate housing and medical care  
16 at Corcoran State Prison #1." (Plaintiff's Decl., ECF No. 172 at 3 ¶1.) Such testimony is not  
17 relevant to Plaintiff's claims.<sup>1</sup>

18 Plaintiff submitted Alton Garrett's declaration, but submitted no declarations by any of  
19 the other prospective Witnesses. In his declaration, Garrett states his intention to appear as a  
20 witness against defendants Oaks and Hayward, and "to give relevant testimony of both  
21 Defendants' prior assaults on Plaintiff and myself." (Garrett Decl., ECF No. 178 at 1:20-11.)  
22 However, Garrett does not specify that he was an eyewitness or ear-witness to the assaults at  
23 issue in this case. Garrett has not given the specific information required to show that his  
24 testimony will support Plaintiff's claims against defendants Oaks and Hayward. To the extent  
25 that Garrett knows of assaults by Defendants that occurred prior to the assaults at issue, such  
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27 <sup>1</sup>"Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it  
28 would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401.

1 evidence is inadmissible as character evidence under Federal Rule of Evidence 404, which  
2 provides that “[e]vidence of a person’s character or character trait is not admissible to prove  
3 that on a particular occasion the person acted in accordance with the character or trait” and  
4 “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in  
5 order to show that on a particular occasion the person acted in accordance with the character.”  
6 Fed. R. Evid. 404(a)(1), (b)(1).

7 Based on the foregoing, the Court finds that Plaintiff has not met the requirements of  
8 the Court’s Second Scheduling Order for the Court to bring any of his incarcerated witnesses to  
9 testify at trial. Plaintiff has not shown that any of his prospective witnesses have actual  
10 knowledge of relevant facts in this case. Therefore, Plaintiff’s motion shall be denied.

11 **V. CONCLUSION**

12 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff’s motion for  
13 attendance of incarcerated witnesses, filed on September 6, 2016, is DENIED.

14  
15 IT IS SO ORDERED.

16 Dated: December 8, 2016

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE