

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LARRY D. THOMAS,

Plaintiff,

v.

HECTOR ROBLES, et al.,

Defendants.

CASE NO. 1:09-cv-00443-LJO-SMS

ORDER SETTING SETTLEMENT
CONFERENCE FOR APRIL 20, 2011, AT 1:30
P.M. BEFORE THE HON. SANDRA M.
SNYDER IN COURTROOM 7

ORDER GRANTING PLAINTIFF'S MOTIONS
FOR ATTENDANCE OF INCARCERATED
WITNESSES O'CONNELL AND MEDINA

(ECF Nos. 47, 48)

ORDER DENYING PLAINTIFF'S MOTIONS
FOR ATTENDANCE OF INCARCERATED
WITNESSES FOSTER AND RANSOM

(ECF Nos. 49, 50)

I. Settlement Conference

This matter is proceeding on the complaint, filed March 10, 2009, against Defendants Hector Robles, J. Negrete, H. Smith, J. Garza, L. Lozano, C. Horton, M. Alvarez, S. Wilson, B. Teesdale,¹ and T. Reyna for excessive force in violation of the Eighth Amendment; Defendants Hector Robles, J. Negrete, H. Smith, J. Garza, L. Lozano, and T. Reyna for assault and battery; and Defendants C.

¹The Court notes that the order directing service neglected to include the Eighth Amendment claim against Defendants C. Horton, M. Alvarez, S. Wilson, B. Teesdale and T. Reyna for excessive force in violation of the Eighth Amendment. However, in the screening order issued July 2, 2009, the Court found a cognizable claim and the action is also proceeding on the Eighth Amendment excessive force claim against Defendants C. Horton, M. Alvarez, S. Wilson, B. Teesdale and T. Reyna.

1 Horton, M. Alvarez, S. Wilson, B. Teesdale, and T. Reyna for negligence. A trial is currently set for
2 May 9, 2011. At the telephonic trial confirmation hearing held on March 31, 2011, the parties
3 indicated that they are agreeable to settlement discussions. Therefore, a settlement conference shall
4 be set for April 20, 2011, at 1:30 p.m. before the Honorable Sandra M. Snyder.

5 **II. Motions for Attendance of Incarcerated Witnesses**

6 On January 28, 2011, Plaintiff filed motions for the attendance of four incarcerated witnesses.
7 Defendants did not file an opposition. In determining whether to grant Plaintiff's motion for the
8 attendance of inmate witnesses factors to be taken into consideration include (1) whether the
9 inmate's presence will substantially further the resolution of the case, (2) the security risks presented
10 by the inmate's presence, (3) the expense of transportation and security, and (4) whether the suit can
11 be stayed until the inmate is released without prejudice to the cause asserted. Wiggins v. County of
12 Alameda, 717 F.2d 466, 468 n.1 (9th Cir. 1983); see also Walker v. Sumner, 14 F.3d 1415, 1422 (9th
13 Cir. 1994) (district court did not abuse its discretion when it concluded the inconvenience and
14 expense of transporting inmate witness outweighed any benefit he could provide where the
15 importance of the witness's testimony could not be determined), *abrogated on other grounds by*
16 Sandin v. Conner, 515 U.S. 472 (1995).

17 **A. Inmates Kevin O'Connell and Rudolfo Medina**

18 Plaintiff requests the attendance of Kevin P. O'Connell (K-89321) and Rudolfo A. Medina
19 (E-98588). Plaintiff claims that on November 9, 2007, Defendants used excessive force against him
20 in violation of the Eighth Amendment. In their declarations, Inmates O'Connell and Medina state
21 that they were present on the yard and had an unobstructed view of the incident that occurred on
22 November 9, 2007. Both declarations state specific facts that demonstrate that the inmates have
23 personal knowledge of the events at issue in this matter. The testimony of Inmates O'Connell and
24 Medina is relevant to the issues that will be adjudicated at trial.

25 The transportation of Inmate O'Connell should not be a problem as he is housed at Kern
26 Valley State Prison, several hours away from the courthouse. However, Inmate Medina is currently
27 incarcerated at High Desert State Prison so ordering his production for trial will require his transfer
28 to a prison closer to the courthouse.

1 The Court has no information before it that Inmates O'Connell or Medina pose any
2 exceptional security risk and this does not appear to be an issue above and beyond normal security
3 concerns in handling convicted prisoners. Further, there is no information available on whether
4 Inmates O'Connell and Medina will be released from custody soon, so delaying the trial is not an
5 option. Based on the proposed testimony of Inmates O'Connell and Medina, both of whom allegedly
6 witnessed events relevant to Plaintiff's claims, the motions for their attendance will be granted.

7 **B. Inmates Foster and Ransom**

8 Additionally Plaintiff requests the attendance of Inmates Marcus L. Foster (D-12023) and
9 Leonard Ransom, Jr. (D-13702). The declarations submitted by Inmates Foster and Ransom fail to
10 show that they have personal knowledge or information that is relevant in this case to necessitate
11 their attendance at trial in this matter. Neither Foster or Ransom were present and did not witness
12 any of the events that occurred on November 9, 2007. Since proposed witnesses Foster and Ransom
13 were not ear or eye witnesses to the incident, Plaintiff's motion for their attendance will be denied.

14 **III. Order**

15 Accordingly, it is HEREBY ORDERED that:

- 16 1. A settlement conference shall be held on April 20, 2011, at 1:30 p.m. before the
17 Honorable Sandra M. Snyder in Courtroom 7;
- 18 2. Plaintiff's motion for attendance of incarcerated witness Kevin P. O'Connell is
19 GRANTED;
- 20 3. Plaintiff's motion for attendance of incarcerated witness Rudolfo A. Medina is
21 GRANTED;
- 22 4. Plaintiff's motion for attendance of incarcerated witness Marcus L. Foster is
23 DENIED; and
- 24 5. Plaintiff's motion for attendance of incarcerated witness Leonard Ransom, Jr. is
25 DENIED.

26 IT IS SO ORDERED.

27 **Dated: March 31, 2011**

28 **/s/ Lawrence J. O'Neill**
UNITED STATES DISTRICT JUDGE