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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES COLE,

Plaintiff,

v.

LIEUTENANT MUNOZ, et al.,

Defendants.

CASE NO. 1:09-cv-00476-SAB (PC)

ORDER DENYING DEFENDANTS' MOTION
IN LIMINE TO EXCLUDE INCARCERATED
WITNESS, PATRICK BRADY

ORDER REOPENING DISCOVERY FOR
THE LIMITED PURPOSE OF DEPOSING
PATRICK BRADY

(ECF No. 64.)

This civil rights action proceeds on Plaintiff James Cole's complaint filed on March 13, 2009. Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR), brings this action pursuant to 42 U.S.C. § 1983 against correctional officials for the violation of his federal constitutional rights.

On January 25, 2013, Defendants brought a motion in limine to exclude incarcerated witness, Patrick Brady. (ECF No. 64.) On February 11, 2013, Plaintiff filed an opposition to the motion in limine. (ECF No. 76.) On February 25, 2013, Defendants filed a reply. (ECF No. 82.) On March 4, 2013, the Court held an advanced telephonic hearing on the issue of whether to allow incarcerated witness Patrick Brady to testify at trial, despite not having been disclosed by the Plaintiff to Defendants during discovery.

The Court, having considered the filings and having heard the arguments of the parties, finds that based upon the record presently established and the interest of justice that Patrick Brady should be allowed to testify at trial on behalf of Plaintiff.

1 IT IS HEREBY ORDERED that

- 2 1. Defendants' motion in limine to exclude incarcerated witness, Patrick Brady, is
3 DENIED;
- 4 2. Discovery is REOPENED for the limited purpose of allowing the Defendants to
5 depose incarcerated witness, Patrick Brady;
- 6 3. The Clerk's office shall issue an order and writ of habeas corpus ad testificandum
7 to transport incarcerated witness, Patrick Brady #J89194, to Courtroom 9 on April
8 2, 2013, by 8:00 a.m.;
- 9 4. The Clerk's office shall issue an order and writ of habeas corpus ad testificandum
10 to transport incarcerated Plaintiff, James Cole #T64763, to Courtroom 9 on April
11 2, 2013, by 8:00 a.m.; and
- 12 5. To the extent that Defendants find that after conducting the deposition of Patrick
13 Brady that Mr. Brady's testimony would be irrelevant or otherwise inadmissible,
14 Defendants may bring a motion to the Court on shortened time to reconsider the
15 matter of whether the testimony should be excluded at trial.

16 IT IS SO ORDERED.

17 Dated: March 4, 2013


UNITED STATES MAGISTRATE JUDGE