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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DERRICK J. THOMAS,

Plaintiff,

v.

STANISLAUS COUNTY, et al.,

Defendants.

CASE NO. 1:09-cv-02015-AWI-SKO PC

ORDER DENYING PLAINTIFF’S MOTION
FOR THE ATTENDANCE OF INMATE
WITNESS KEVIN TUBBS

(Doc. 42)

Plaintiff Derrick J. Thomas, a prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 17, 2009. On April 29, 2013, Plaintiff filed a motion seeking the attendance of inmate witness Kevin Tubbs. Defendants filed an opposition on May 6, 2013.

Pursuant to the scheduling order, the deadline to file a motion for the attendance of incarcerated witnesses was April 1, 2013, and Defendants oppose the motion on the grounds that it is untimely and it fails to demonstrate that Mr. Tubbs possesses firsthand knowledge of relevant facts.

With respect to the issue of timeliness, Plaintiff was ordered to show cause why sanctions should not be imposed against him for failing to comply with the scheduling order and he filed a response. While Plaintiff’s excuse for failing to comply with the scheduling order was thin at best, the Court declined to impose sanctions and it discharged the order to show cause. Based on that determination, the Court declines to deny Plaintiff’s motion as untimely.

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1 With respect to the merits of the motion, Plaintiff states in his motion that Mr. Tubbs has
2 relevant, firsthand knowledge of the case and is willing to testify voluntarily, but this statement
3 merely repeats the showing Plaintiff is required to make without demonstrating that Mr. Tubbs in
4 fact saw or heard anything relevant to Plaintiff's legal claim. As a result, there is no support for a
5 finding that Mr. Tubbs has actual knowledge of relevant facts and his presence will substantially
6 further resolution of the case. *Wiggins v. County of Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983).

7 Accordingly, Plaintiff's motion for the attendance of inmate witness Kevin Tubbs is
8 HEREBY DENIED.

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10 IT IS SO ORDERED.

11 Dated: May 8, 2013



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13 SENIOR DISTRICT JUDGE
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