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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 WILLIAM SUTHERLAND,

12 Plaintiff,

13 vs.

14 CORRECTIONAL OFFICERS A.
15 FERNANDO AND J. JERICOFF,

16 Defendants.

1:09-cv-02152-LJO-GSA-PC

ORDER DENYING PLAINTIFF'S
RENEWED MOTION FOR
ATTENDANCE OF INMATE
WITNESSES AT TRIAL
(Doc. 123.)

17 **I. BACKGROUND**

18 William Sutherland ("Plaintiff") is a state prisoner proceeding pro se and in forma
19 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. This action now proceeds
20 on the First Amended Complaint filed by Plaintiff on December 6, 2010, against defendants
21 Correctional Officers (C/O) A. Fernando and M. Jericoff for use of excessive force in violation
22 of the Eighth Amendment, and related state claims.¹ (Doc. 15.) This case is scheduled for jury
23 trial on January 6, 2015.

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25 ¹ On June 16, 2011, the Court dismissed defendant Lieutenant R. Lantz from this action based on
26 Plaintiff's failure to state a claim against him under § 1983. (Doc. 20.) Plaintiff's claims for conspiracy, due
27 process violations, and violations of the Penal Code were also dismissed from this action based on Plaintiff's
28 failure to state a claim upon which relief may be granted under § 1983. (Id.) On February 20, 2014, the Court
issued an order granting in part Defendants' motion for summary judgment of August 17, 2012, granting summary
judgment in favor of Defendant Yates. (Doc. 94.) The Court declined to exercise supplemental jurisdiction over
Plaintiff's state law claim of negligent hiring. (Id. at 2 ¶4.)

1 On November 17, 2014, Plaintiff filed a renewed motion² for the attendance of inmate
2 witnesses at trial. (Doc. 123.)

3 **II. MOTION FOR ATTENDANCE OF INMATE WITNESSES**

4 In the court's Second Scheduling Order of August 26, 2014, Plaintiff was advised that
5 before the court will issue an order to transport an incarcerated witness to trial, Plaintiff must
6 file a motion stating the name, address, and prison identification number of such witness, and
7 submit a declaration showing that the witness is willing to testify and has actual knowledge of
8 relevant facts. (Doc. 101 at 3-4.) The deadline for filing the motion was September 30, 2014.
9 (Id. at 6 ¶8.)

10 Plaintiff requests the attendance at trial of several inmates. However, Plaintiff's motion
11 is untimely, and he has not submitted declarations demonstrating that the witnesses are willing
12 to testify. In fact, Plaintiff states that "none of his inmate witnesses are willing to appear and
13 testify voluntarily." (Motion, Doc. 123 at 7:26-27.) The court will not consider issuing orders
14 to transport Plaintiff's inmate witnesses to trial without a motion which complies with the
15 requirements of the Second Scheduling Order. Therefore, Plaintiff's motion for the attendance
16 of inmate witnesses shall be denied.

17 **III. CONCLUSION**

18 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's renewed motion for
19 attendance of inmate witnesses at trial is DENIED.

20 IT IS SO ORDERED.

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22 Dated: November 21, 2014

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

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² Plaintiff titles the renewed motion "amended motion." (Doc. 123.)