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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

**CHRISTOPHER HARBRIDGE,**  
**Plaintiff,**  
**v.**  
**YATES, et al.,**  
**Defendants.**

**Case No. 1:10-cv-00473-AWI-JLT (PC)**  
**ORDER DENYING PLAINTIFF’S**  
**MOTION FOR ATTENDANCE OF**  
**INCARCERATED WITNESSES**  
**(Doc. 146)**

This case is scheduled for trial on Plaintiff’s claim against Defendants Hall, Lee, and Tucker for deliberate indifference to his medical condition. (*See* Docs. 122, 128, 137.) Plaintiff’s motion for attendance of incarcerated witnesses at trial is before the Court. (Doc. 146.) Plaintiff requests that the CDCR transport fifty-eight inmates to testify at trial. *Id.* As discussed in greater detail below, Plaintiff’s motion for attendance of those inmates is **DENIED** because he fails to show that they have actual knowledge of relevant facts and, per the Federal Rules of Evidence, the testimony Plaintiff desires from the witnesses is not admissible.

**I. Factual Background**

Plaintiff is proceeding to trial on his claim against Defendants Hall, Lee, and Tucker for deliberate indifference to his medical condition on allegations stated in the Second Amended Complaint. (*See* Docs. 22, SAC; 122, F&R on MSJ; 128, O adopt F&R.)

In this claim, Plaintiff alleges that he was not given medical attention for two days after

1 his ankle was fractured by another correctional officer. (Doc. 22, SAC at 29-30.) Plaintiff  
2 alleges that LVN Hall examined Plaintiff from a few feet away within minutes of the incident  
3 (while he was in the holding cage), but did not provide any treatment. (*Id.*, at 29.) Also, Plaintiff  
4 alleges that, in the presence of Lt. Herrera, LVN Hall stated that his ankle may be broken which  
5 required x-rays and medical treatment; instead, Plaintiff was placed in a cell and left there for two  
6 days. (*Id.*) During this time, Plaintiff was provided neither bandages to cover a laceration on the  
7 back of his leg, nor a cane or crutches, nor supplies to allow him to elevate his ankle. (*Id.*)  
8 Plaintiff alleges that, because he was forced to walk on the ankle, the swelling became  
9 “excessive” and grew to the size of a “football.” (*Id.* at 31.)

10 During this time, Plaintiff alleges C/O Lee came to his cell and Plaintiff asked him for  
11 medical attention and showed him his ankle which had grown to be the size of a “football.” (Doc.  
12 22 at 31.) C/O Lee allegedly failed to summon medical staff. (*Id.*) The next day, C/O Tucker  
13 came to Plaintiff’s cell and Plaintiff showed C/O Tucker his hugely swollen ankle and requested  
14 medical attention. (*Id.*) C/O Tucker disparaged Plaintiff and refused to summon medical care.  
15 (*Id.*) Plaintiff alleges that the delay in receiving medical treatment caused complications with the  
16 healing of his ankle and resulted in chronic heel pain. (*Id.* at 35-36.)

17 Plaintiff alleges that LVN Hall believed that Plaintiff’s ankle was broken but failed to  
18 treat him or to ensure he received immediate treatment for his broken ankle. (Doc. 22 at 32.)  
19 Plaintiff claims that this resulted in his suffering complications such as long-term heel pain  
20 because of the resultant excessive swelling. (*Id.* at 36.) In addition, Plaintiff claims that LVN  
21 Hall failed to properly complete forms, to provide him a cane or crutches, and to bandage the  
22 wound on his thigh. (*Id.*) Plaintiff alleges that LVN Hall had the ability to provide a cane or  
23 crutches, but did not do so despite knowing that Plaintiff needed to keep weight off the ankle and  
24 would not be able to do so in their absence. (*Id.*, p. 30.)

## 25 **II. Discussion and Analysis**

26 In determining whether to grant Plaintiff’s motions for the attendance of his proposed  
27 witnesses, factors to be taken into consideration include (1) whether the inmate’s presence will  
28 substantially further resolution of the case, (2) the security risks presented by the inmate’s

1 presence, (3) the expense of transportation and security, and (4) whether the suit can be stayed  
2 until the inmate is released without prejudice to the cause asserted. *Wiggins v. County of*  
3 *Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983); *see also Walker v. Sumner*, 14 F.3d 1415, 1422  
4 (9th Cir. 1994) (district court did not abuse its discretion when it concluded the inconvenience  
5 and expense of transporting inmate witness outweighed any benefit he could provide where the  
6 importance of the witness's testimony could not be determined), *abrogated on other grounds by*  
7 *Sandin v. Conner*, 515 U.S. 472 (1995).

8 Plaintiff must show that the anticipated testimony of each inmate he desires to call as a  
9 witness will substantially further resolution of the case, which as stated in the Second Scheduling  
10 Order, requires showing the inmate is willing to testify and has actual knowledge of relevant  
11 facts. (Doc. 137, pp. 2-4.) This can be shown by filing a declaration, either by Plaintiff or the  
12 prospective witness, that is “specific about the incident, when and where it occurred, who was  
13 present, and how the prospective witness happened to be in a position to see or hear what  
14 occurred at the time it occurred.” (*Id.*, pp. 3-4.) Though Plaintiff submitted a declaration with his  
15 motion, it does not comply with the above requirements and fails to show any of his desired  
16 witnesses have first-hand knowledge of the events at issue in this case. (Doc. 146, pp. 2-8.)

17 In his declaration, Plaintiff states generally that he believes that all fifty-eight “witnesses  
18 have actual first-hand knowledge of relevant facts” and that if asked, “they would testify  
19 voluntarily.” (*Id.*, p. 2.)<sup>1</sup> However, Plaintiff then indicates that he has not spoken to them to  
20 ascertain whether they are willing to testify voluntarily. (*Id.*) Plaintiff indicates that the first six  
21 inmates he lists have sued Hall, Lee, and/or Tucker in prior actions and Plaintiff gives the case  
22 name, number, and a brief description of the allegations in those inmates’ prior lawsuits. (*Id.*, pp.  
23 2-4.) Plaintiff desires to call one of the inmates to testify that DAG Diana Esquivel was  
24 sanctioned in another action for “submitting a declaration which the judge said was  
25 ‘demonstrably false.’” (*Id.*, p. 4.) Plaintiff desires to call the remaining fifty-one inmates as  
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27 <sup>1</sup> It is noted that Plaintiff identified inmate William Sutherland, CDCR #T-59697, in his Pretrial Statement list of  
28 witnesses. (Doc. 145, p. 11.) Plaintiff did not list IM Sutherland in this motion, (Doc. 146), and thus failed to make  
the requisite showing to obtain IM Sutherland’s appearance at the trial in this matter.

1 witnesses based on their having filed prior actions in which DAG Diana Esquivel represented  
2 prison personnel which gave DAG Esquivel “opportunity to present perjured declarations to the  
3 court” and “opportunity to suborn perjured testimony in open court” when a number of those  
4 cases went to trial. (*Id.*, pp. 5-8.) Plaintiff desires to call these inmates as witnesses to support  
5 his “argument to the jury that Esquivel knowingly suborned perjurious (sic) testimony from  
6 Defendant Hall (and perhaps the other Defendants), as the declaration Hall submitted proves she  
7 intends to win this case by coaching Hall to lie.” (*Id.*, p. 5.) None of this shows that Plaintiff’s  
8 desired witnesses saw him suffer his injuries, saw his injuries or saw his interactions with any of  
9 the three remaining Defendants. Thus, Plaintiff’s motion must be denied because he fails to show  
10 that any of his prospective witnesses have actual knowledge of relevant facts (i.e. the events  
11 which Plaintiff alleged that stated a cognizable claim for deliberate indifference to his serious  
12 medical needs) to be allowed to attend and testify at the trial of this action.

13 Further, Plaintiff seeks to call the above witnesses to prove Defendants’ and/or defense  
14 counsel’s nefarious motive or character. As correctly stated in Defendants’ opposition,<sup>2</sup> the  
15 Federal Rules of Evidence prohibit testimony for these purposes as inadmissible, irrelevant, a  
16 waste of time, and unduly prejudicial. Fed.R.Evd. 401, 403, 404. Rule 404(b) specifically  
17 prohibits evidence of other wrongs or acts to prove “the character of a person in order to show  
18 action in conformity therewith,” but allows admission for other purposes, such as “proof of  
19 motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or  
20 accident.” To be probative of something other than character, such evidence must: (1) prove a  
21 material element of the misconduct alleged; (2) show similarity between the prior and alleged  
22 conduct; (3) suffice to support a finding that the defendant committed the other act; and (4) not be  
23 too remote in time. *United States v. Johnson*, 132 F.3d 1279, 1282 (9th Cir. 1997). Plaintiff fails  
24 to show a basis for calling his desired witnesses other than to prove their conforming acts (i.e.  
25 character), which Rule 404(b) expressly prohibits. Thus, Plaintiff’s motion must also be denied  
26 since the testimony he desires to illicit from the fifty-eight witnesses he identifies is not  
27 admissible under the Federal Rules of Evidence.

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28 <sup>2</sup> Though more than sufficient time has lapsed, Plaintiff did not file a reply to Defendants’ opposition. L.R. 230(1).

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**III. Order**

Based on the foregoing, the Court **ORDERS** that Plaintiff's motion for attendance of incarcerated witnesses at the trial of this matter, filed on March 2, 2017 (Doc. 146), is **DENIED**.

IT IS SO ORDERED.

Dated: March 30, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE