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

BENNY FORD,)	Case No.: 1:10-cv-01024-SAB (PC)
)	
Plaintiff,)	
)	ORDER REGARDING PLAINTIFF'S MOTIONS
v.)	TO ADD WITNESSES TO BE PRESENT AT
)	TRIAL ON FEBRUARY 9, 2016
G. WILDEY, et al.,)	
)	[ECF Nos. 155, 156]
Defendants.)	
)	
)	
)	
)	

Plaintiff Benny Ford is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding against Defendants Wildey and Marshall for excessive force in violation of the Eighth Amendment, and the case is set for jury trial on February 9, 2016.

On December 28, 2015, and December 30, 2015, Plaintiff filed motions to add witnesses to his witness list to be present at trial on February 9, 2016. (ECF Nos. 155, 156.) Plaintiff seeks to add Defendant Gary Wildey, Defendant Robert Marshall, Lou Bonifasio (Licensed Vocational Nurse), Dr. Galen Church (Chief Physician Surgeon), and G.A. Magallanes (Correctional Lieutenant), as witnesses to be present at trial on February 9, 2016.

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I.

DISCUSSION

A. Defendants Wildey and Marshall

As directed in the Court’s December 18, 2015, pretrial order, Defendants Wildey and Marshall were directed to appear in person at trial to potentially be called as witnesses in Plaintiff’s case in chief. (ECF No. 152, Order at 14:4-5.) Accordingly, no further order by the Court is necessary and Plaintiff may call Defendants Wildey and Marshall as witnesses in his case in chief.

B. Lou Bonifasio and Dr. Galen Church

Plaintiff seeks to add Loui Bonifasio and Dr. Galen Church to his list of witnesses to be presented at trial. Plaintiff submits that he opposes testimony by Dr. Church as an expert witness but argues “if the court rules in the Defendants favor Plaintiff request the opportunity to cross examine and to conduct direct questioning of Dr. G. Church if the Defendants’ counsel puts this individual on the witness stand.” (ECF No. 155, Mot. at 2.)

The Court’s August 28, 2015, trial scheduling order specifically advised Plaintiff of the procedures for obtaining the attendance of incarcerated and unincarcerated witnesses who were willing and unwilling to testify at trial. (ECF No. 136, Order at 5:18-8:23.) There is no evidence that Plaintiff complied with the proper procedures for securing the attendance of either Lou Bonifasio or Dr. Galen Church to testify at trial on February 9, 2016. Accordingly, Plaintiff’s motion must be DENIED. However, Plaintiff is advised if Defendants called Lou Bonifasio and/or Dr. Galen Church to present testimony at trial Plaintiff will be afforded the opportunity to cross-examine such witnesses.

C. G.A. Magallanes

Plaintiff requests that the court issue an order for the personal attendance of G.A. Magallanes (Correctional Lieutenant) at trial on February 9, 2016, to testify “to the fact finding hearing/inquiry that he personally conducted concerning this case.” (ECF No. 156, Mot. at 3.) Plaintiff submits that Lieutenant Magallanes was the assigned reviewer for the Plaintiff’s inmate appeal/staff complaint that was filed at the California Correctional Institution on July 17, 2009, against Defendants Wildey and Marshall. Magallanes conducted the fact finding confidential inquiry on August 21, 2009. (Id. at 2, Ex. 1.)

1 As previously stated, the Court's August 28, 2015, trial scheduling order advised Plaintiff of
2 the procedural requirements for obtaining the attendance of unincarcerated witnesses who were
3 unwilling to testify at trial, which requires submission of a money order for travel and witness fees.
4 (ECF No. 136, Order at 8:4-23.) Plaintiff did not comply with such requirements and he cannot now
5 seek a court order for the attendance of Lieutenant Magallanes as a witness at trial on February 9,
6 2016. Accordingly, Plaintiff's motion must be DENIED.

7 **II.**

8 **ORDER**

9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. Plaintiff's motion to amend his witness list to include Defendants Wildey and Marshall
11 is DENIED as unnecessary; and
12 2. Plaintiff's motion to amend his witness list to include Lou Bonifasio and Dr. Galen
13 Church is DENIED; and
14 3. Plaintiff's motion for a court order for the personal appearance of Lieutenant
15 Magallanes is DENIED.
16

17 IT IS SO ORDERED.

18 Dated: January 5, 2016



19 UNITED STATES MAGISTRATE JUDGE