



1 **DISCUSSION**

2 In determining whether to grant Plaintiff’s motions for the attendance of his proposed  
3 witnesses, factors to be taken into consideration include (1) whether the inmate’s presence will  
4 substantially further the resolution of the case, (2) the security risks presented by the inmate’s  
5 presence, (3) the expense of transportation and security, and (4) whether the suit can be stayed  
6 until the inmate is released without prejudice to the cause asserted. *Wiggins v. County of*  
7 *Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983); *see also Walker v. Sumner*, 14 F.3d 1415, 1422  
8 (9th Cir. 1994) (district court did not abuse its discretion when it concluded the inconvenience  
9 and expense of transporting inmate witness outweighed any benefit he could provide where the  
10 importance of the witness’s testimony could not be determined), *abrogated on other grounds by*  
11 *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293 (1995).  
12

13 Plaintiff seeks the attendance of four incarcerated witnesses. Defendants oppose the  
14 attendance of each witness for various reasons. Insofar as they contend that Plaintiff’s failure to  
15 identify the correct place of incarceration “casts doubt upon his claim that they are all willing to  
16 testify at trial,” their argument is without merit. Opp’n 2. The reality of incarceration sometimes  
17 makes it difficult to locate an inmate who has been relocated since the incident, and the Court  
18 and/or Defendants’ counsel often assists in locating the inmate. Plaintiff’s failure does not, as  
19 Defendants suggest, cast doubt on his statements.  
20

21 Defendants also fault Plaintiff for failing to attach declarations for each of the prospective  
22 witnesses and contend, without explanation, that Plaintiff’s own declaration addressing the  
23 necessary issues is “insufficient. . .” Opp’n 2. To the contrary, pursuant to the Second  
24 Scheduling Order, the party’s own declaration can support a request for the attendance of an  
25 incarcerated witness.  
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28

1 Defendants admit that Inmates Hwang and Ryoo have personal knowledge of the  
2 incidents at issue, and the Court agrees. The Court will allow the testimony of Inmates Hwang  
3 and Ryoo.

4 As for Inmate Howard, it does appear that his testimony may overlap a portion of Inmate  
5 Hwang's testimony. Both inmates witnessed Defendant Meza's interaction with Plaintiff,  
6 including Plaintiff's complaints of pain. Both inmates also told Defendant Meza that Plaintiff's  
7 arm appeared to be broken. In the context of a deliberate indifference claim, however, their  
8 testimony is not cumulative. The Court will allow Inmate Howard's testimony.

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10 Finally, Defendants argue that Inmate Carillo's foundation to testify is limited, in part,  
11 because he only "saw Plaintiff dragged through the rotunda." Opp'n 3. Certainly, Inmate  
12 Carillo's testimony will be limited to facts of which he has personal knowledge, and it appears  
13 that he has personal knowledge of a portion of the incident. Moreover, Inmate Carillo's  
14 declaration is slightly more detailed than Defendants contend. He states that he "noticed a  
15 couple correctional officers dragging Tafilele through the building rotunda by his feet," and that  
16 "while the officers were dragging him, several other officers were kicking him in the head and  
17 body." Opp'n, Ex. A. The Court will allow Inmate Carillo's testimony.

18 **ORDER**

19 Plaintiff's Motion for the Attendance of Incarcerated Witnesses is GRANTED as to  
20 Inmates Ronald Hwang, CDCR# V-07990, Mark Howard, CDCR# K-66087, Joshua Carillo,  
21 CDCR# P-96744 and Pyung Ryoo, CDCR #F-88924.

22  
23 IT IS SO ORDERED.

24  
25 Dated: January 7, 2014

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