



1 The Court will also address the two additional witnesses listed in Plaintiff's pretrial  
2 statement: Francisco Diaz, Catholic Chaplain at Kern Valley State Prison, and Maurice Howard,  
3 Muslim Chaplain at Kern Valley State Prison. (ECF No. 162, p. 9.) The Court heard arguments  
4 on this matter at the telephonic trial confirmation hearing on July 11, 2017.

5 **I. Motion for Attendance of Incarcerated Witnesses**

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

16 For reasons stated on the record, Plaintiff's motion for incarcerated witnesses is denied.

17 **II. Motion for Attendance of Unincarcerated Witnesses**

18 As discussed on the record, Plaintiff has failed to include declarations showing that each  
19 unincarcerated witness is willing to testify and that each witness has actual knowledge of relevant  
20 facts.

21 **A. Voluntary Unincarcerated Witnesses**

22 Plaintiff stated during the trial confirmation hearing that Denice Porter, Ellis Porter, and  
23 Lisa Turner have agreed to testify voluntarily, and do not require subpoenas. As stated on the  
24 record, Plaintiff may also call Francisco Diaz and Maurice Howard to appear voluntarily, but the  
25 Court will not compel these witnesses to appear by subpoena.

26 Plaintiff is advised that any unincarcerated witnesses who may voluntarily appear will not  
27 be precluded at this time, but an offer of proof must be made before they will be permitted to  
28 testify. Plaintiff's offer of proof must show the willingness of the prospective witness to testify

1 and that each witness has actual knowledge of relevant facts. (See ECF No. 152, pp. 2–3.)

2 **B. Involuntary Unincarcerated Witness**

3 For reasons stated on the record, Plaintiff will be permitted to call Rabbi Paul Shleffar to  
4 testify. Pursuant to the Court’s April 17, 2017 Amended Scheduling Order, Plaintiff must notify  
5 the Court in writing of the location of Rabbi Paul Shleffar. The Court will calculate the travel  
6 expense for the witness and notify Plaintiff of the amount. Plaintiff must then submit a money  
7 order made payable to the witness for the full amount of the witness’s travel expenses plus the  
8 daily witness fee of \$40.00. The subpoena will not be served upon the incarcerated witness by  
9 the United States Marshal unless the money order is tendered to the Court.

10 **III. Conclusion and Order**

11 Accordingly, it is HEREBY ORDERED that Plaintiff’s motion for the attendance of  
12 incarcerated and incarcerated witnesses (ECF No. 157) is GRANTED IN PART and DENIED  
13 IN PART:

- 14 1. Plaintiff’s motion for the attendance of incarcerated witnesses Donald Ray Perry  
15 (CDCR #P92110, Correctional Training Facility (“Soledad State Prison”)); George  
16 Hamilton (CDCR #K54885, Pelican Bay State Prison); Allen B. Williams (CDCR  
17 #C09851, Ironwood State Prison); and Jimmy Serna (CDCR #AK2741, Kern Valley  
18 State Prison), is DENIED;
- 19 2. Plaintiff’s motion for the attendance of voluntary incarcerated witnesses Denice  
20 Porter, Ellis Porter, Lisa Turner, Francisco Diaz (Catholic Chaplain at Kern Valley  
21 State Prison), and Maurice Howard (Muslim Chaplain at Kern Valley State Prison) is  
22 GRANTED, subject to Plaintiff’s offer of proof for each witness;
- 23 3. Plaintiff’s motion for the attendance of involuntary incarcerated witness Paul  
24 Shleffar (Jewish Chaplain of CDCR) is GRANTED, subject to:

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- a. Plaintiff's submission of the location of Rabbi Shleffar, due on or before **July 17, 2017**; and
- b. Plaintiff's submission of the money order with applicable witness fees, due on or before **August 4, 2017**.

IT IS SO ORDERED.

Dated: July 11, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE