



1 California. Plaintiff contends Defendant utilized excessive force in violation of the Eighth  
2 Amendment when he struck him with a closed fist. Defendant contends the strikes were  
3 necessary to secure safety at the institution due to Plaintiff's combativeness and refusal to comply  
4 with lawful orders.

## 5 **II. DISCUSSION AND ANALYSIS**

6 In determining whether to grant Plaintiff's motions for the attendance of his proposed  
7 witnesses, factors to be taken into consideration include (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. County of*  
11 *Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983); *see also Walker v. Sumner*, 14 F.3d 1415, 1422  
12 (9th Cir. 1994) (district court did not abuse its discretion when it concluded the inconvenience  
13 and expense of transporting inmate witness outweighed any benefit he could provide where the  
14 importance of the witness's testimony could not be determined), *abrogated on other grounds by*  
15 *Sandin v. Conner*, 515 U.S. 472 (1995).

### 16 **A. Plaintiff**

17 Defendant has not objected to and does not oppose production of Plaintiff for the trial of  
18 this action.<sup>1</sup> Thus, it appears there is no reason Plaintiff cannot be transported for trial. (Docs.  
19 51, 72). As such, the Court has previously issued an order requiring he be transported on the day  
20 the trial is to begin. While Plaintiff's counsel requested that Plaintiff be transported the day prior  
21 to the start of the trial in this matter for their conferencing, there is neither legal basis, nor means  
22 for this request to be accommodated. However, Plaintiff's counsel is to contact the Alternative  
23 Dispute Resolution ("ADR") Division for assistance in facilitating contact with Plaintiff.

### 24 **B. Inmates Bringham and Demery**

25 Plaintiff requests the transport of inmates Bringham and Demery for "rebutting the  
26 repeated and unsubstantiated allegations by Defendant [] that Mr. Emery is a white supremacist or

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28 <sup>1</sup> Defendant did not object to Mr. Emery's personal habeas writ either as filed by Plaintiff pro se or as subsequently  
filed by counsel. (See Docs. 56, 75.)

1 harbors racist views." (Doc. 72, 2:5-23.) Plaintiff has not expressed a desire to call either of  
2 these inmates in his case in chief and has not indicated that either of these inmates were percipient  
3 witnesses to the altercation at the core of this action. However, Plaintiff indicates that testimony  
4 from these inmates will be necessary only if an *in limine* motion, which he intends to file to  
5 preclude all references to Plaintiff's religion and/or allegations of Plaintiff being a racist/white  
6 supremacist, is not granted, or if such evidence is entered during trial. (*Id.*, at 2:24-3:6.)

7 Defendant opposes Plaintiff's requests to transport these two inmates arguing that they  
8 have no actual knowledge of the events in this case and that their subsequent relationships with  
9 Plaintiff are irrelevant. (*See Docs. 56, 75.*)

10 The decision whether to allow rebuttal evidence is committed to the trial court's sound  
11 discretion. *See General Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1509-  
12 1510 (9th Cir. 1995); *Antevski v. Volkswagenwerk Aktiengesellschaft*, 4 F.3d 537, 540 (7th Cir.  
13 1993).

14 *In limine* motions are not due and have yet to be filed in this action, so whether Defendant  
15 will be allowed to introduce evidence of his understanding as to Plaintiff's religion and/or  
16 racist/white supremacist views is not before the Court. However, Defendant has repeatedly  
17 indicated an intent to introduce evidence of his understanding regarding Plaintiff's religion and  
18 racist/white supremacist views. Neither party has raised any safety concerns regarding these  
19 inmates. Thus, at this stage in the litigation, Plaintiff's request that inmates Bringham and  
20 Demery be transported and allowed to testify solely as rebuttal witnesses is properly **GRANTED**.

### 21 **C. Inmate Greenshaw**

22 As of this date, the only filings indicate that Plaintiff has attempted, but been unable to  
23 contact inmate Greenshaw to ascertain whether he witnessed the incident, or has other knowledge  
24 relevant to the trial of this matter. (*See Docs. 48, 72.*) Thus, ruling as to issuing a writ for the  
25 transport of inmate Greenshaw is properly **RESERVED** pending further filings by Plaintiff to  
26 justify inmate Greenshaw's attendance at the trial of this action.

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1 **ORDER**

2 Based upon the foregoing, the Court HEREBY ORDERS that:

- 3 1. Plaintiff's motion for his attendance at the trial of this matter (Docs. 51, 72)  
4 is **GRANTED** nunc pro tunc as an order directing his transportation has  
5 already been issued (*see* Doc. 87);
- 6 2. Plaintiff's motions for attendance of inmates Leslie Bringham and Patrick  
7 Demery (Docs. 49, 50, 72) solely for rebuttal purposes are **GRANTED**,  
8 orders directing transportation of these inmates will issue closer to the date  
9 of trial;
- 10 3. ruling on Plaintiff's motion for attendance of inmate Jesse Greenshaw  
11 (Docs. 48, 72) as a rebuttal witness is **RESERVED** pending further  
12 submission by Plaintiff;
- 13 4. Plaintiff's counsel is ordered to contact Ms. Sujean Park of the ADR  
14 Division (information below) for assistance contacting Plaintiff; and
- 15 5. The Clerk of the Court is directed to send a copy of this order to:

16 ADR Division, Attention: Sujean Park  
17 U.S. District Court  
18 501 I Street, Suite 4-200  
19 Sacramento, CA 95814  
20 Fax: (916) 930-4224  
21 email: spark@caed.uscourts.gov

22 IT IS SO ORDERED.

23 Dated: January 6, 2014

24 /s/ Jennifer L. Thurston  
25 UNITED STATES MAGISTRATE JUDGE  
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