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

|                       |   |                                   |
|-----------------------|---|-----------------------------------|
| CURTIS RENEE JACKSON, | ) | Case No.: 1:11-cv-00080-BAM (PC)  |
|                       | ) |                                   |
| Plaintiff,            | ) | ORDER GRANTING DEFENDANTS’ MOTION |
|                       | ) | TO ALLOW TRIAL TESTIMONY BY       |
| v.                    | ) | VIDEOCONFERENCE                   |
|                       | ) |                                   |
| J. MENDEZ, et al.,    | ) | (ECF No. 196)                     |
|                       | ) |                                   |
| Defendants.           | ) |                                   |
|                       | ) |                                   |
|                       | ) |                                   |

Plaintiff Curtis Renee Jackson (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The parties have consented to magistrate judge jurisdiction in this case. (ECF No. 117.) This matter proceeds to trial on claims against Defendant J. Mendez for use of excessive force in violation of the Eighth Amendment and against Defendants C. Samonte, S. Daley, C. Nichols, N. Gonzales and F. Valdez for failure to intervene. A jury trial is confirmed for December 1, 2015 at 8:30 a.m. in Courtroom 8 (BAM).

On November 10, 2015, Defendants filed a motion to allow Defendant Samonte to testify at trial by videoconference. The motion was heard before the Honorable Barbara A. McAuliffe on November 13, 2015. Plaintiff appeared telephonically on his own behalf. Timothy Howard Delgado, of the California Attorney General’s Office, appeared telephonically on behalf of Defendants.

///

1 At the hearing, the Court explained the motion and the basis for the motion to Plaintiff, and  
2 offered him an opportunity to file a written opposition or other response to the motion. Plaintiff orally  
3 declined, stating that he does not oppose the motion. (ECF No. 197.) As the motion is unopposed, it is  
4 deemed submitted. Local Rule 230(l).

5 **I. Discussion**

6 In support of their motion, Defendants explain that Defendant Samonte is a former CDCR  
7 employee who moved to Texas in September 2015, and is currently the primary caretaker of two  
8 young children. (ECF No. 196-1, pp. 2-3.) She has now learned that her alternative caretaker is not  
9 available for the week of the December 1, 2015 trial in this matter. As a result, Defendant Samonte  
10 will either have to take her children with her to Fresno to attend the trial here, or have a family  
11 member fly to Texas to care for the children. Also, as a former employee, Defendant Samonte will not  
12 be reimbursed by CDCR for the travel expenses in this matter, which she estimates could exceed  
13 \$1,500. (*Id.*) Defense counsel has been in discussions with the information technology officer at the  
14 United States District Court in Texas near Defendant Samonte’s current residence, and they believe  
15 she can give her testimony via live videoconference. Defense counsel will also be able to provide  
16 Defendant Samonte access to both parties’ exhibits during her testimony. (*Id.* at 5.)

17 **A. Standard**

18 Federal Rule of Civil Procedure 43 provides that a court may, in its discretion, allow the  
19 telephonic transmission of testimony “[f]or good cause in compelling circumstances and with  
20 appropriate safeguards.” *Palmer v. Valdez*, 560 F.3d 965, 968 (9th Cir. 2009) (quoting Fed. R. Civ. P.  
21 43.) The Advisory Committee Notes to the 1996 Amendments contain the following advice:

22 Contemporaneous transmission of testimony from a different location is  
23 permitted only on showing good cause in compelling circumstances.

24 The importance of presenting live testimony in court cannot be  
25 forgotten. The very ceremony of trial and the presence of the factfinder  
26 may exert a powerful force for truth telling. The opportunity to judge  
27 the demeanor of a witness face-to-face is accorded great value in our  
28 tradition.

...

The most persuasive showings of good cause and compelling  
circumstances are likely to arise when a witness is unable to attend trial  
for unexpected reasons, such as accident or illness, but remains able to  
testify from a different place.

1                   ...  
2                   A party who could reasonably foresee the circumstances offered to  
3                   justify transmission of testimony will have special difficulty in showing  
4                   good cause and the compelling nature of the circumstances.

4                   **B.        Analysis**

5                   Defendants have shown good cause to allow Defendant Samonte to testify by videoconference  
6                   at the trial in this matter. The Ninth Circuit and other courts have found good cause to allow  
7                   videoconference or telephonic testimony when a witness will be required to travel a significant  
8                   distance, *Beltran-Tirado v. I.N.S.*, 213 F.3d 1179, 1185-86 (telephonic testimony allowed in  
9                   deportation hearing where witness was in Missouri and hearing was in San Diego), and where a  
10                  witness has responsibilities toward young children, *Humbert v. O'Malley*, 303 F.R.D. 461, 465-66 (D.  
11                  Md. 2014) (Michigan-based witness's travel to Maryland would interfere with care for her autistic,  
12                  homeschooled young child). Here, Defendant Samonte will incur a combination of significant travel  
13                  time and expenses which will not be reimbursed, and hardships with regard to finding childcare, if she  
14                  is required to travel to Fresno to give her trial testimony.

15                  More importantly, the use of a “contemporaneous transmission from a different location,” Fed.  
16                  R. Civ. P. 43—in this case the live video testimony of Defendant Samonte broadcasted from another  
17                  federal court—will not prejudice Plaintiff. He does not contest the motion, and there will be adequate  
18                  safeguards to ensure that the procedure does not interfere with his due process rights. “In assessing the  
19                  safeguards of such contemporaneous transmissions, the courts focus on whether the testimony was  
20                  made in open court, under oath, and whether the opportunity for cross examination was available.”  
21                  *F.T.C. v. Swedish Match N. Am., Inc.*, 197 F.R.D. 1, 2 (D.D.C. 2000) (citing *Official Airline Guides,*  
22                  *Inc. v. Churchfield Publications*, 756 F.Supp. 1393, 1399 n. 2, aff'd *Official Airline Guides, Inc. v.*  
23                  *Goss*, 6 F.3d 1385 (9th Cir.1993); *Beltran*, 213 F.3d at 1185–86)).

24                  At trial in this case, Plaintiff will have the opportunity to question and cross-examine  
25                  Defendant Samonte through live video feed in open court, while she is under oath, and during which  
26                  questioning she will be visible to the Court, the jury, and the parties. The trier of fact will therefore  
27                  have ample opportunity to assess her credibility and demeanor, and there is likely to be little practical  
28                  difference between live in-court testimony and a live video transmission of her testimony from another

1 court. To allow Plaintiff to call Defendant Samonte in his case-in-chief, if he chooses to do so, and to  
2 allow for the organized presentation of witnesses, Defendants are ordered to have Defendant Samonte  
3 present and prepared to give her videoconference testimony on the second day of trial in this matter,  
4 December 2, 2015, at 8:30 a.m. (Pacific Time) from the United States District Court in Texas nearest  
5 her residence. By this request, Defendant Samonte waives any right to be present for the duration of  
6 the trial and any prejudice to her from her failure to be present before the jury. The Court will also  
7 instruct the jury to consider and assess the credibility and weight of the videoconference testimony in  
8 the same manner as if the witness had been present in court to testify. To aid with this procedure,  
9 Defendants are ordered to file and serve a proposed jury instruction concerning the live  
10 videoconference trial testimony on or before November 18, 2015.

11 **II. Conclusion and Order**

12 For the foregoing reasons, it is HEREBY ORDERED that:

- 13 1. Defendants' motion to allow Defendant Samonte to give trial testimony via  
14 videoconference (ECF No. 196) is GRANTED;
- 15 2. Defendants SHALL make Defendant Samonte present and prepared to give her live  
16 videoconference testimony before this Court on December 2, 2015 at 8:30 a.m. (Pacific Standard  
17 Time) from the United States District Court in Texas nearest her residence;
- 18 3. Defendants SHALL provide a copy of both parties' exhibits to Defendant Samonte at  
19 the time of her testimony; and
- 20 4. Defendants SHALL file and serve a proposed jury instruction concerning the live  
21 videoconference trial testimony on or before November 18, 2015.

22  
23 IT IS SO ORDERED.

24 Dated: November 13, 2015

/s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE