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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 KEVIN DARNELL BRYANT,

12 Plaintiff,

13 v.

14 GALLAGHER, et al.,

15 Defendants.

Case No. 11-cv-00446-BAM (PC)

ORDER DIRECTING PARTIES TO
RESPOND TO MOTION TO BE EXCLUDED
AS PLAINTIFF'S WITNESS

(ECF No. 306)

DEADLINE: December 19, 2016

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17 Plaintiff Kevin Darnell Bryant ("Plaintiff") is a state prisoner proceeding pro se and in
18 forma pauperis in this civil rights action under 42 U.S.C. § 1983. This action proceeds on
19 Plaintiff's first amended complaint against Defendants Gallagher and Romero for conspiracy,
20 retaliation in violation of the First Amendment, and failure to protect in violation of the Eighth
21 Amendment; and against Defendant A. Romero for deliberate indifference to serious medical
22 needs in violation of the Eighth Amendment.

23 On August 4, 2016, the Court granted Plaintiff's motion for the attendance of incarcerated
24 witnesses Edward A. Vargas (CDCR #J63103), Ricardo Contreras (CDCR #F56749) and Rufus
25 B. Levels (CDCR #F62510). (ECF No. 257). On September 28, 2016, the Court issued writs of
26 habeas corpus ad testificandum to transport Inmates Vargas, Contreras and Levels to testify at
27 trial scheduled on October 17, 2016. (ECF Nos. 273, 274 and 275.) Following issuance of the
28 writs, the trial was continued and the transport writs were vacated. (ECF Nos. 295, 296, and

1 297.)

2 However, on November 4, 2016, Inmate Contreras filed a motion to be excluded as
3 Plaintiff's witness. (ECF No. 306.) Mr. Contreras states in his motion that he has no material or
4 useful information for Plaintiff's case, and that he has informed both parties that he has no such
5 information. *Id.*

6 Although the trial date in this action has been vacated, but will be set again shortly, the
7 Court finds it appropriate and in the interest of judicial economy to address Inmate Contreras'
8 motion to be excluded as Plaintiff's witness before the trial date is reset and the writs of habeas
9 corpus ad testificandum are reissued. To evaluate Mr. Contreras' motion, the Court requires the
10 parties' positions on whether Mr. Contreras should be compelled to attend trial and testify in this
11 case.

12 Accordingly, IT IS HEREBY ORDERED as follows:

- 13 1. On or before **December 19, 2016**, the parties shall file a response to Mr. Contreras'
14 motion to be excluded as Plaintiff's witness;
- 15 2. The parties shall simultaneously serve a copy of their respective responses on Inmate
16 Contreras at Ironwood State Prison, F-56749, P.O. Box 2199, Blythe, CA 92226;
- 17 3. Within 21 days of the parties filing their responses, Inmate Contreras may file a
18 response with this Court;
- 19 4. The Clerk of the Court shall serve a copy of this order on Inmate Contreras at
20 Ironwood State Prison at the address noted; and
- 21 5. Any request for an extension of time to comply with this order will require a showing
22 of good cause.

23 IT IS SO ORDERED.

24 Dated: **November 29, 2016**

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