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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8
9 LEONARD RANSOM, JR.,

10 Plaintiff,

11 v.

12 DANNY HERRERA and RICKY
BRANNUM,

13 Defendants.

Case No. 1:11-cv-01709-LJO-EPG (PC)

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
ATTENDANCE OF INCARCERATED
WITNESSES VIA VIDEO CONFERENCE

(ECF NO. 254)

14
15 **I. BACKGROUND**

16 This action is proceeding against defendants Brannum and Herrera on "Plaintiff's
17 Devereaux substantive due process claim, retaliation claim, and conspiracy claim." (ECF No.
18 265, p. 3).

19 On July 11, 2019, Plaintiff filed motion for attendance of incarcerated witnesses via
20 video conference, a supporting declaration, and declarations from the prospective witnesses.
21 (ECF No. 254). On July 17, 2019, Defendants filed their opposition to the motion. (ECF No.
22 260). On July 23, 2019, Plaintiff (through counsel) filed a reply. (ECF No. 264).

23 Plaintiff seeks to bring two inmate witnesses to trial: (1) Andre Johnson; and (2) George
24 Reed III. (ECF No. 254, p. 1). Defendants object to the attendance of both witnesses. (ECF
25 No. 260).

26 For the reasons described below, the Court finds that Andre Johnson and George Reed
27 III should be brought to testify at the upcoming trial.

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1 **II. DISCUSSION**

2 “The determination whether to issue a writ of habeas corpus ad testificandum rests
3 within the sound discretion of the district court.” Cummings v. Adams, 2006 U.S. Dist. LEXIS
4 9381, *6, 2006 WL 449095 (E.D. Cal. Feb. 17, 2006). Accord Walker v. Sumner, 14 F.3d
5 1415, 1422 (9th Cir. 1994).

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. County of
11 Alameda, 717 F.2d 466, 468 n.1 (9th Cir. 1983). See also Lopez v. Cate, 2016 WL 3940341, at
12 *2 (E.D. Cal. July 20, 2016).

13 After conducting a “cost-benefit analysis regarding whether the inmate[s] should come
14 to court,” Cummings, 2006 U.S. Dist. LEXIS 9381 at *7, the Court has determined that Andre
15 Johnson and George Reed III should to come to court to testify.

16 Both witnesses will allegedly testify that they witnessed the incident on March 4, 2009,
17 and that no assault took place. (ECF No. 254, pgs. 11 & 13).

18 Defendants object to the attendance of these witnesses on three grounds. First,
19 Defendants object because Plaintiff failed to establish whether either witness is willing to
20 testify voluntarily, which was required by the Court’s scheduling order.

21 Second, Defendants object because, in April of 2018, defense counsel reached out to
22 Andre Johnson regarding Plaintiff’s claims in this case, and Andre Johnson “did not recall the
23 events described within his declaration, but ultimately had a completely different recollection
24 than the events described by Plaintiff and described by Mr. Johnson, within the 2009
25 declaration Plaintiff included within his motion. Mr. Johnson described Plaintiff being
26 handcuffed and removed from his cell and being assaulted by two unidentified officer[s] by
27 being thrown against a wall. Further, Mr. Johnson within his declaration or in his conversation
28 to Defense counsel, could not identify Defendants.” (ECF No. 260, pgs. 3-4) (citations

1 omitted). Thus, having Andre Johnson testify at trial would not substantially further the
2 resolution of this case.

3 Finally, Defendants argue that, given the cell configuration at Kern Valley State Prison,
4 neither Andre Johnson nor George Reed III could “have seen whether Plaintiff grabbed Herrera
5 through the food port, as they would not have been able to see the front of Plaintiff’s cell door
6 out of their own cell door.” (Id. at 3). “Further, neither Mr. Reed nor Mr. Johnson name the
7 Defendants as the two witnesses they claim to have observed on March 4, 2009.” (Id.).

8 As to Defendants’ first objection, Defendants are correct that Plaintiff failed to comply
9 with the Court’s order, which he did have an obligation to do. However, the Court does not
10 need to know whether the witnesses will testify voluntarily in order to resolve this motion.
11 Accordingly, the Court will not deny Plaintiff’s motion on this ground, and Defendants’ first
12 objection is overruled.

13 As to Defendants’ second objection, it is overruled because, even if Andre Johnson
14 recalled a different version of events than what is listed in his declaration when he spoke with
15 defense counsel in April of 2008, he is an alleged eye witness. At trial both parties will have
16 the opportunity to refresh Andre Johnson’s recollection, or impeach his testimony, including
17 with his declaration.

18 As to Defendants’ third objection, it is overruled because, in ruling on this motion, the
19 Court is not making factual findings or evidentiary rulings. The Court is only conducting a
20 cost-benefit analysis to determine whether these witnesses should be brought to court. Plaintiff
21 has submitted declarations from two witnesses stating that they saw the incident occur. As
22 what occurred on March 4, 2009, is central to the resolution of this action, testimony from these
23 witnesses will substantially further the resolution of the case. While Defendants have
24 submitted evidence that impeaches the witnesses’ testimony, such evidence does not indicate
25 that the witnesses are no longer relevant.

26 After balancing the factors, the Court finds that Andre Johnson and George Reed III
27 should be brought to testify at the upcoming trial. Both witnesses will allegedly testify about
28 what they witnessed on March 4, 2009. As what occurred on March 4, 2009, is central to the

1 resolution of this action, testimony from these witnesses will substantially further the resolution
2 of the case, and their testimony at trial is worth the expense of transportation and security.

3 As to the remaining factors, given the security precautions that will be taken, it does not
4 appear that the presence of either witness at trial will pose a security risk. And, given the age
5 of this case, and that memories already appear to be fading, staying the case would be
6 prejudicial.

7 As to Plaintiff's request for the Court to order Andre Johnson and George Reed III's
8 institutions of confinement to produce Andre Johnson and George Reed to testify via video
9 conference, this request was denied by Chief Judge Lawrence J. O'Neill on the record at the
10 telephonic pretrial confirmation hearing. As was stated on the record at the hearing, the Court
11 declines to make such an order to require the Institutions to make witnesses available by
12 videoconference, absent the Institutions' consent. As Judge O'Neill explained, the parties may
13 jointly arrange for the participation of these witnesses at trial via video conference if the
14 inmates' Institutions are willing to do so.

15 If any party arranges for the attendance of either of these witnesses via video
16 conference, that party shall promptly file and serve a notice stating that the witness will be
17 appearing via video conference. The notice shall also include the name and contact
18 information of the individual at the witness's institution of confinement who is responsible for
19 arranging the appearance via video conference.

20 **III. ORDER**

21 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for
22 attendance of incarcerated witnesses via video conference is granted in part.

23 Approximately one month before the trial the Court will issue writs of habeas corpus ad
24 testificandum to have Andre Johnson and George Reed III brought to the court to testify at trial.
25 IT IS SO ORDERED.

26 Dated: July 25, 2019

27 /s/ Eric P. Groj
28 UNITED STATES MAGISTRATE JUDGE