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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ROBERTO M. GARCIA, JR.,

12 Plaintiff,

13 v.

14 MATTHEW M. JUAREZ, JR.,

15 Defendant.
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1:12-cv-00750-AWI-EPG (PC)

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTENDANCE OF
INCARCERATED WITNESSES
(ECF NO. 122)

17 **I. BACKGROUND**

18 Roberto M. Garcia, Jr. ("Plaintiff") is a former state prisoner proceeding *in forma*
19 *pauperis* with this civil rights action under 42 U.S.C. § 1983. Plaintiff filed the Complaint
20 commencing this action on May 8, 2012. (ECF No. 1.) This action now proceeds on Plaintiff's
21 First Amended Complaint (ECF No. 11) against defendant Juarez for use of excessive force in
22 violation of the Eighth Amendment (ECF No. 19).

23 This case is scheduled for jury trial before District Judge Anthony W. Ishii, which is to
24 commence on March 28, 2017, at 8:30 a.m. A pretrial conference is scheduled for January 18,
25 2017, at 2:00 p.m., before District Judge Ishii.

26 On November 30, 2016, Plaintiff filed a motion for attendance of incarcerated witnesses
27 ("the motion"). (ECF No. 122). On December 7, 2016, Plaintiff filed a supplement to the
28 motion. (ECF No. 123). On December 30, 2016, defendant Juarez filed an opposition to the

1 motion. (ECF No. 126). On January 6, 2017, Plaintiff filed a reply to the opposition. (ECF
2 No. 128). The motion is now before the Court.

3 **II. ATTENDANCE OF INMATE WITNESSES AT TRIAL**

4 On October 20, 2016, the Court issued a scheduling order which, among other things,
5 advised Plaintiff of the requirements for bringing inmate witnesses to trial who voluntarily
6 agree to testify. (ECF No. 116, pgs. 2-3). Plaintiff was informed that the Court must issue an
7 order before Plaintiff's incarcerated witnesses can come to court to testify. (Id. at p. 2). The
8 Court also informed Plaintiff that it will not issue such an order unless it is satisfied that: (a) the
9 prospective witness is willing to attend, and (b) the prospective witness has actual knowledge
10 of relevant facts. (Id.). Plaintiff was advised that he must file a motion for attendance of
11 incarcerated witnesses, stating the name, address, and prison identification number of each such
12 witness, accompanied by declarations by Plaintiff or the witnesses, showing that each witness
13 is willing to testify and has actual knowledge of relevant facts. (Id.). Plaintiff was informed
14 that the declaration must show that the prospective witness was an eyewitness or ear-witness to
15 relevant facts, and must be specific about the incident at issue in this case, including when and
16 where it occurred, who was present, and how the prospective witness happened to be in a
17 position to see or hear what occurred at the time it occurred. (Id. at pgs 2-3).

18 **III. PLAINTIFF'S MOTION**

19 Plaintiff seeks to bring four inmate witnesses to trial: (1) Jorge Salmeron; (2) Juan
20 Souza; (3) Michael Vincent Cisneros; and (4) Joseff Lebeau. Plaintiff has provided the names,
21 CDCR numbers, and locations of all four of the prospective witnesses. (ECF No. 122, pgs. 5-
22 7). Plaintiff also submitted declarations from each prospective witness. (ECF Nos. 122-1; 122-
23 2; 122-3; 122-4; and 123-1). Each declaration states that the declarant was present when the
24 excessive force incident allegedly occurred, and explains what the declarant saw.¹
25 Additionally, each witness has filed a declaration stating that he is willing to testify voluntarily.
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27 ¹ With the exception of the declaration of Michael Vincent Cisneros, which simply states that he
28 "witnessed the events underlying Roberto Garcia's claim of excessive force against Matthew Juarez because [he]
was on the yard at the Kern Valley State Prison." (ECF No. 122-3, p. 2).

1 (Id.).

2 Defendant seems to only object to the motion as to prospective witness Joseff LeBeau.
3 (ECF No. 126, p. 1). Defendant argues that it is unclear whether LeBeau's declaration "was
4 completely filled out by him when he apparently signed it and/or whether it is based on his own
5 personal knowledge. There are four lines in his Declaration, one of which has nothing written
6 above it.... The fact that the first line is blank indicates that, at some point, the Declaration was
7 written with all four lines being left blank. These blanks show that inmate LeBeau did not
8 know the name of the inmate who was allegedly kicked or the name of the officer who
9 allegedly kicked him. Thereafter, someone filled in the names of Garcia and Juarez." (Id. at
10 pgs. 1-2).

11 **IV. DISCUSSION**

12 The court will grant the motion as to all four defendants. Plaintiff has submitted the
13 name, address, and prison identification number of each prospective witness. Additionally,
14 Plaintiff has provided declarations from every prospective witness. Each declaration states that
15 the declarant was present when the excessive force incident allegedly occurred, and explains
16 what the declarant saw.² This is enough to show that all four prospective witnesses have actual
17 knowledge of relevant facts. Additionally, each witness has filed a declaration stating that he is
18 willing to testify voluntarily. Because Plaintiff has met his burden as laid out in the scheduling
19 order, the Court will grant the motion.

20 While defendant Juarez raises legitimate issues regarding whether Mr. LeBeau's
21 declaration was completed by him, these questions are not sufficient to preclude the witness
22 from testifying. Defendant Juarez may question the witness at trial regarding his memory of
23 events. The Court finds that Plaintiff has met its burden of demonstrating relevant knowledge
24 for all witnesses sufficient for an order for their attendance.

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27 ² The declaration of Cisneros does not describe what Cisneros saw. However, given that the
28 motion does, and given the fact that defendant Jaurez did not object to having Cisneros called as a witness, the
Court will grant the motion as to Cisneros as well.

1 **V. CONCLUSION**

2 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's motion for
3 attendance of incarcerated witnesses, filed on November 30, 2016, is GRANTED.
4 Approximately one month before the trial the Court will issue writs of habeas corpus ad
5 testificandum, ordering that the witnesses be transported to the court on the date(s) of the trial.

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7 IT IS SO ORDERED.

8 Dated: January 11, 2017

9 /s/ Eric P. Groj
10 UNITED STATES MAGISTRATE JUDGE
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