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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
6

7 ROBERTO M. GARCIA, JR.,

8 Plaintiff,

9 v.

10 MATTHEW M. JUAREZ, JR.,

11 Defendant.
12

Case No. 1:12-cv-00750-AWI-EPG (PC)

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTENDANCE OF
INCARCERATED WITNESSES
UNWILLING TO TESTIFY
VOLUNTARILY

(ECF NO. 130)

13 **I. BACKGROUND**

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

19 On January 11, 2017, Plaintiff filed a motion for the attendance of incarcerated
20 witnesses unwilling to testify voluntarily ("the Motion"). (ECF No. 130). No objections were
21 filed. On July 12, 2017, the Court issued an order granting the Motion. (ECF No. 180). On
22 July 28, 2017, the Court vacated the order granting the Motion because Defendant was not
23 given a deadline to respond to the Motion, and allowed Defendant to file an opposition. (ECF
24 No. 184). On August 4, 2017, Defendant filed his opposition to the Motion. (ECF No. 185).
25 On August 11, 2017, Plaintiff filed his reply. (ECF No. 193). The Motion is now before the
26 Court.

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

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

15 **III. PLAINTIFF'S MOTION**

16 Plaintiff seeks to bring two inmate witnesses to trial who are unwilling to testify
17 voluntarily: (1) Garrett Quon and (2) Eddie Nevarez. Plaintiff has provided the names, CDCR
18 numbers, and locations of both prospective witnesses. (ECF No. 130, p. 4). Plaintiff also
19 submitted statements from each prospective witness. (ECF No. 130-1, p. 2 & 4). Both Mr.
20 Quon and Mr. Nevarez state that they were present when the excessive force incident allegedly
21 occurred, and explain what they saw and heard. (Id.).

22 Defendant opposes the Motion on the ground that Plaintiff did not submit the
23 appropriate declaration(s) in support of the motion, and that the statements provided by both
24 prospective witnesses were not authenticated. (ECF No. 185, p. 2). Defendant also filed
25 several evidentiary objections. (ECF No. 185-1, pgs. 1-2).

26 **IV. DISCUSSION**

27 Plaintiff has submitted the name, address, and prison identification number of both
28 prospective witnesses. Additionally, Plaintiff has provided a statement from both prospective

1 witnesses.

2 Defendant is correct that neither of these statements satisfies the requirements of 28
3 U.S.C. § 1746(2), and that the prospective witnesses' statements do not strictly comply with the
4 requirements laid out in the Court's scheduling order. "The determination whether to issue a
5 writ of habeas corpus ad testificandum rests within the sound discretion of the district court."
6 Cummings v. Adams, 2006 U.S. Dist. LEXIS 9381, *6, 2006 WL 449095 (E.D. Cal. Feb. 17,
7 2006). Accord Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994). Here, the Court
8 believes that it has sufficient information to make a determination of the relevance of the
9 witnesses. And, after conducting a "cost-benefit analysis regarding whether the inmate[s]
10 should come to court," Cummings v. Adams, 2006 U.S. Dist. LEXIS 9381, *7, 2006 WL
11 449095 (E.D. Cal. Feb. 17, 2006), the Court has determined that both prospective witnesses
12 should be allowed to come to court. Each witness states that he was present when the alleged
13 excessive force incident occurred, and explains what he saw. For the purposes of the Motion,
14 this is enough to show that both prospective witnesses have actual knowledge of relevant facts.
15 Additionally, no argument has been made that transporting these witnesses would be too
16 dangerous or too costly. Accordingly, the Court finds that both prospective witnesses should
17 come to Court to offer testimony.¹

18 **V. ORDER**

19 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's motion for the
20 attendance of incarcerated witnesses unwilling to testify voluntarily, filed on January 11, 2017,
21 is **GRANTED**.

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28 ¹ The Court is not precluding any objections to their testimony, which will be addressed by the trial judge.

