

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA
8

9 DURRELL A. PUCKETT,) 1:12-cv-00948 DLB PC
10 Plaintiff,)
11 vs.) ORDER GRANTING IN PART AND
12) DENYING IN PART PLAINTIFF'S
13) MOTION FOR ATTENDANCE OF
14) INCARCERATED WITNESSES
15) [ECF No. 48]
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

15 Plaintiff Durrell A. Puckett, a state prisoner proceeding pro se and in forma pauperis,
16 filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 12, 2012. This action for
17 damages is proceeding on Plaintiff's First Amended Complaint against Defendants Zamora,
18 Rodriguez, and Acevedo for excessive force in violation of the Eighth Amendment to the United
19 States Constitution, and against Defendants Gutierrez and Six Doe Defendants for failing to
20 intervene to protect Plaintiff's safety in violation of the Eighth Amendment to the United States
21 Constitution. The events at issue occurred on January 10, 2012, while Plaintiff was housed at
22 Corcoran State Prison.
23

24 The matter is set for jury trial on June 23, 2015, at 8:30 a.m., before the undersigned.

25 On March 12, 2015, Plaintiff filed a motion seeking the attendance of five incarcerated
26 witnesses. Defendants did not oppose the motion.

27 ///
28

1

DISCUSSION

2 In determining whether to grant Plaintiff's motions for the attendance of his proposed
3 witnesses, factors to be taken into consideration include (1) whether the inmate's presence will
4 substantially further the resolution of the case, (2) the security risks presented by the inmate's
5 presence, (3) the expense of transportation and security, and (4) whether the suit can be stayed
6 until the inmate is released without prejudice to the cause asserted. Wiggins v. County of
7 Alameda, 717 F.2d 466, 468 n.1 (9th Cir. 1983); see also Walker v. Sumner, 14 F.3d 1415, 1422
8 (9th Cir. 1994) (district court did not abuse its discretion when it concluded the inconvenience
9 and expense of transporting inmate witness outweighed any benefit he could provide where the
10 importance of the witness's testimony could not be determined), *abrogated on other grounds by*
11 Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995).

13 Plaintiff seeks the attendance of five incarcerated witnesses: LaMont Shepard ("K-
14 29682), Kevin E. Fields (#P-83425), LaMonte Bencher (#D-97733), Curley John Broussard (#C-
15 78707), and Darnell Lemons (#E-49397).

16 Inmates Shepard and Fields were not eye or ear-witnesses to any of the events at issue.
17 For this reason, Plaintiff's motion for their attendance is denied.

18 Plaintiff avers that Inmates Bencher and Broussard were eye and ear-witnesses to the
19 incident. Plaintiff has submitted Inmate Bencher's declaration as an exhibit to his motion for
20 summary judgment (ECF No. 32.) According to the declaration, Inmate Bencher states he
21 witnessed officers slam Plaintiff on the ground in front of the building entrance and begin
22 punching him in the stomach. Plaintiff states that Inmate Broussard observed the incident and
23 heard Defendant Zamora's statements during the incident. Plaintiff states that Inmates Bencher
24 and Broussard have informed him that they will testify if called. Because Inmates Bencher and
25 Broussard have personal knowledge of the incident, the Court will allow their testimonies.
26

1 Plaintiff declares that Inmate Lemons observed Defendants Rodriguez and Zamora “for
2 days admitting to assaulting me, and observed them harassing and threatening me for filing a
3 complaint.” (ECF No. 48 at p. 2.) Plaintiff’s request will be denied. First, Inmate Lemons’
4 observation of Defendants harassing and threatening Plaintiff for filing a complaint is not
5 relevant to any of the claims in this matter. Second, Inmate Lemons was not an eyewitness or
6 ear-witness to the incident. His knowledge stems from statements made apart from the incident
7 itself. Plaintiff’s declaration concerning Inmate Lemons witnessing of Defendants Rodriguez’s
8 and Zamora’s admitting to assaulting Plaintiff is too vague and insufficient to show that the
9 witness has actual firsthand knowledge of the relevant facts of the incident. Plaintiff does not
10 specify what was said, when and where it occurred, who was present, and how the witness
11 happened to be in a position to see or hear what occurred. Therefore, the Court will deny
12 Plaintiff’s request for Inmate Lemons’ attendance.

14 **ORDER**

15 Plaintiff’s Motion for the Attendance of Incarcerated Witnesses is GRANTED as to
16 Inmates LaMonte Bencher (#D-97733), and Curley John Broussard (#C-78707). Plaintiff’s
17 motion is DENIED as to Inmates LaMont Shepard (“K-29682), Kevin E. Fields (#P-83425), and
18 Darnell Lemons (#E-49397).

20 IT IS SO ORDERED.

21 Dated: April 22, 2015

/s/ Dennis L. Beck

22 UNITED STATES MAGISTRATE JUDGE