

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

10 Plaintiff requests the attendance of inmate witness Gilbert Lawson, #F-66049, who is currently
11 incarcerated at Kern Valley State Prison (KVSP). Plaintiff submits a declaration signed under penalty
12 of perjury and contends that inmate Gilbert Lawson witnessed the entire incident involving Plaintiff's
13 retaliation claim against Defendant Samuels on January 17, 2011, at KVSP. Plaintiff submits inmate
14 Lawson is competent to testify to all the alleged facts pertaining to Plaintiff's account and has
15 firsthand knowledge as his prior cellmate of the facts relevant to his claim. Plaintiff specifically
16 declares:

17 That on January 17, 2011, while Plaintiff and witness (I/M Lawson #F-66049 did share a cell,
18 living quarter Facility "B" Building #7, cell 109 (FBB#7-109), Plaintiff wa[s] summoned to
19 the unit Medical Office due to injuries Plaintiff had sustained to his foot, knee, hip, and arm on
the rightside of body.

20 Due to Plaintiff's several sprai[n]ed right ankle, witness (I/M) Lawson had to assisted [sic] the
21 Plaintiff with walking to the unit medical office, Plaintiff's arm around his shoulder.

22 Neither Plaintiff nor (I/M) Lawson #F-66049 were in any kinds or forms of restraints [sic], nor
23 was there any staff assisting with the efforts of Plaintiff and (I/M) Lawson #F-66049.

24 That (I/M) Lawson #F-66049 did not witnessed Plaintiff make threats against Defendant
Samuels person nor any other staff on the evening of January 17, 2011.

25 Further that (I/M) Lawson #F-66049 did witnessed Defendant Samuels harassed the Plaintiff
26 during the medical interview with Registered Nurse (RN), statement Plaintiff made to
27 Defendant Samuels regarding the harassment of Plaintiff by requesting a CDCR-602 Appeal
Form while Plaintiff passed his enrout[e] to living quarter, cell 109.

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Upon Plaintiff and (I/M) Lawson #F-66049 returned and secured into cell 109, shortly thereafter, the cell door 109 re-opened and Defendant Samuels instructed Plaintiff not (I/M) Lawson #F-66049 to come retrieve the 602 Appeal Form. Plaintiff then told (I/M) Lawson #F-66049 to come retrieve the 602 Appeal Form. Plaintiff then told (I/M) Lawson #F-66049 to shut the cell door because Defendant Samuels was trying to set up Plaintiff.

(ECF No. 96, Pl. Decl. ¶¶ 4-9.)

The Court is satisfied that the statement provided by Plaintiff that inmate Lawson witnessed the incident at issue. The Court has no information before it that inmate Lawson would pose any exceptional security risk, or that transport and security are unduly burdensome, and inmate Lawson is currently incarcerated at KVSP. Accordingly, the Court will grant Plaintiff's motion for the attendance of incarcerated witness Gilbert Lawson. Plaintiff is advised that the Court will issue a Writ of Habeas Corpus Ad Testificandum for Plaintiff's attendance at the trial in due course, and a motion for such order is not necessary.

II.
ORDER

Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff's motion for the attendance of inmate witness Gilbert Lawson is GRANTED;
- and
2. The Court will issue the necessary transportation orders for Plaintiff and inmate Lawson in due course.

IT IS SO ORDERED.

Dated: May 16, 2016



 UNITED STATES MAGISTRATE JUDGE