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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MERRICK JOSE MOORE,  
Plaintiff,  
v.  
CASAS, et al,  
Defendants.

1:13-cv-01820-BAM (PC)  
ORDER GRANTING IN PART PLAINTIFF'S  
MOTION FOR RECONSIDERATION OF  
INCARCERATED WITNESSES  
(ECF No. 133)

Plaintiff Merrick Jose Moore ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's Eighth Amendment claims for excessive force against Defendants Casas, Meier, Childress, and Adams, and for failure to intervene against Defendants Ford and Thornburg. All parties have consented to the jurisdiction of a United States Magistrate Judge. (ECF Nos. 7, 74.) This matter is set for trial on April 29, 2019.

On January 31, 2019, Plaintiff filed a motion for attendance of incarcerated and unincarcerated witnesses. (ECF No. 115.) Plaintiff's motion was granted in part and denied in part on March 5, 2019. (ECF No. 122.) Specifically, Plaintiff's motion with respect to his incarcerated witnesses was denied, due to his failure to submit offers of proof regarding the content and relevance of the witnesses' expected testimony at trial. (ECF No. 122.) On March

1 20, 2019, Plaintiff filed a motion for reconsideration regarding his requested incarcerated  
2 witnesses. (ECF No. 133.) Plaintiff attached to his motion two declarations signed by Inmate  
3 Calloway (P-97743) and one declaration signed by Inmate Quezada (P-90436). (Id.)

4 At the March 22, 2019 hearing, the Court inquired whether Defendants had received the  
5 motion, and whether they intended to file a response. As discussed on the record, the Court  
6 indicated that the information submitted was not sufficient to alter the Court's prior ruling on the  
7 requested witnesses, with the exception of Inmate Calloway. The declaration dated March 13,  
8 2013, attached to Plaintiff's motion, appears to demonstrate that Inmate Calloway was a  
9 percipient witness to the February 15, 2013 events at issue in this action.

10 At the hearing, Defendants stated that if the Court is inclined to grant Plaintiff's request to  
11 call Inmate Calloway to testify, they waived any opposition to the motion with respect to Inmate  
12 Calloway.

13 Accordingly, Plaintiff's motion for reconsideration of incarcerated witnesses, (ECF No.  
14 133), is **HEREBY GRANTED IN PART**, solely with respect to Inmate Calloway. The motion is  
15 **DENIED** with respect to all other requested incarcerated witnesses. The Court will issue the  
16 necessary transportation order for Inmate Calloway in due course.

17  
18 **IT IS SO ORDERED.**

19 Dated: March 22, 2019

/s/ Barbara A. McAuliffe  
20 UNITED STATES MAGISTRATE JUDGE