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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 RICK HAZELTINE,

12 Plaintiff,

13 vs.

14 FRANCES HICKS, et al.,

15 Defendants.  
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1:14-cv-00056-DAD-GSA-PC

ORDER DENYING PLAINTIFF'S MOTION  
FOR ATTENDANCE OF INCARCERATED  
WITNESSES  
(ECF No. 96.)

19 **I. RELEVANT PROCEDURAL HISTORY**

20 Rick Hazeltine ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma pauperis*  
21 with this civil rights action filed pursuant to 42 U.S.C. § 1983. This case now proceeds with  
22 Plaintiff's First Amended Complaint filed on July 6, 2015, on the following claim: Excessive  
23 force in violation of the Fourteenth Amendment against defendants Ian Young, Benjamin  
24 Gamez, Rashaun Casper, Julius Oldan, Porfirio Sanchez Negrete, David Avilia, Rickey Smith,  
25 and Charles Ho (collectively "Defendants"). (ECF No. 27.)

26 This case is scheduled for trial on July 10, 2018, at 8:30 a.m. before the Honorable Dale  
27 A. Drozd. A telephonic trial confirmation hearing is scheduled for May 14, 2018, at 1:30 p.m.  
28 before the Honorable Dale A. Drozd.

1 On March 29, 2018, Plaintiff filed a Motion for Attendance of Incarcerated Witnesses at  
2 trial. (ECF No. 96.) On March 30, 2018, Defendants filed an opposition to the motion. (ECF  
3 No. 97.) On April 9, 2018, Plaintiff filed a reply to the opposition. (ECF No. 98.)

4 Plaintiff's Motion for Attendance of Incarcerated Witnesses is now before the court.  
5 Local Rule 230(l).

## 6 **II. ATTENDANCE OF INMATE WITNESSES AT TRIAL**

7 On March 8, 2018, the court issued an amended Second Scheduling Order advising  
8 Plaintiff of the requirements for bringing inmate witnesses to trial who voluntarily agree to  
9 testify. (ECF No. 91 at 3-4 ¶1.) Plaintiff was informed that the court must issue an order  
10 before Plaintiff's incarcerated witnesses can come to court to testify. (Id.) The court will not  
11 issue such an order unless it is satisfied that: (a) the prospective witness is willing to attend, and  
12 (b) the prospective witness has actual knowledge of relevant facts. (Id.) Plaintiff was advised  
13 that he must file a Motion for Attendance of Incarcerated Witnesses, stating the name, address,  
14 and prison identification number of each such Witness, accompanied by declarations by  
15 Plaintiff or the Witnesses, showing that each Witness is willing to testify and has actual  
16 knowledge of relevant facts. (Id.) Plaintiff was advised that the declaration must show that the  
17 prospective Witness was an eyewitness or ear-witness to relevant facts, and must be specific  
18 about the incident at issue in this case, including when and where it occurred, who was present,  
19 and how the prospective Witness happened to be in a position to see or hear what occurred at  
20 the time it occurred. (Id.)

## 21 **III. PLAINTIFF'S MOTION**

22 Plaintiff seeks to bring four incarcerated witnesses to trial: (1) Rodney Short; (2) John  
23 Edgington; (3) Ramiro G. Madera; and (4) Stephen Arnold. Plaintiff has provided the names  
24 and identification numbers of the four prospective witnesses. (ECF No. 96 at 1.) However,  
25 Plaintiff has not informed the court of the locations of the witnesses or submitted his own  
26 declaration, or declarations by the prospective witnesses, showing that each witness is willing  
27 to testify, and that each of the prospective witnesses was an eyewitness or ear-witness to  
28 relevant facts.

1 Defendants argue that Plaintiff has not complied with the court's order in that he only  
2 lists the names of the potential witnesses without support of declarations from anyone that these  
3 witnesses have actual knowledge of relevant facts.

4 Plaintiff replies that his pleadings should be liberally construed because he is a *pro per*  
5 litigant. Plaintiff asserts that in his Pretrial Statement, filed on March 29, 2018, he informed  
6 Defendants that his prospective witnesses were eye witnesses and declared under penalty of  
7 perjury that the witnesses are willing to testify. Plaintiff states that Defendants already have  
8 video evidence and tape recorded statements by his prospective witnesses, and that Defendants  
9 failed to use due diligence to seek out the information he was required to provide in his Motion  
10 for Attendance of Incarcerated Witnesses.

11 **IV. DISCUSSION**

12 Plaintiff has improperly referred Defendants and the court to his Pretrial Statement to  
13 find information that Plaintiff was required to provide in his Motion for Attendance of  
14 Incarcerated Witnesses. The court is not required to comb through all of Plaintiff's documents  
15 to find information that he should have provided in the Motion. Even if the court were inclined  
16 to do so, Plaintiff's has not provided the information needed in the Pretrial Statement. Plaintiff  
17 claims to have submitted a declaration under penalty of perjury asserting that his prospective  
18 witnesses agreed to testify voluntarily. However, no such declaration was filed. Here, Plaintiff  
19 has clearly failed to comply with the court's order. Therefore, Plaintiff's Motion for Attendance  
20 of Incarcerated Witnesses shall be denied.

21 **V. CONCLUSION**

22 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's Motion for  
23 Attendance of Incarcerated Witnesses, filed on March 29, 2018, is DENIED.

24 IT IS SO ORDERED.

25 Dated: April 11, 2018

26 /s/ Gary S. Austin  
27 UNITED STATES MAGISTRATE JUDGE