

1 **II. Plaintiff's Motion**

2 Plaintiff seeks to have inmate Marques Butler made available to testify at trial. He
3 attests that Butler is willing to testify voluntarily, but does not specify how he has
4 confirmed this is information. He states that Butler has first-hand knowledge of the
5 incident. In support, he cites Butler's civil rights complaint in a separate action involving
6 the same incident, Butler v. Brazelton, No. 1:14-v-01220-DAD-EPG (PC).

7 Defendant opposes the motion on the ground that it technically is not in
8 compliance with the Court's trial scheduling order, which required Plaintiff to submit a
9 declaration regarding his proposed witnesses' willingness to testify and a declaration
10 setting forth the proposed witnesses' prospective testimony and basis for personal
11 knowledge of the events. (ECF No. 120 (citing ECF No. 70).)

12 **III. Legal Standard**

13 The Court has discretion to grant a motion for the attendance of incarcerated
14 witnesses if the moving party has shown the witnesses have relevant information and
15 the Court determines the witnesses' presence will substantially further the resolution of
16 the case. Wiggins v. County of Alameda, 717 F.2d 466, 468 n.1 (9th Cir. 1983).

17 **IV. Discussion**

18 The information before the Court strongly suggests that Mr. Butler can offer
19 relevant testimony that will further resolution of the case. According to the complaint
20 submitted by Mr. Butler, he was present during the events at issue in this case, was
21 subjected to similar orders as Plaintiff, and suffered similar, although more severe
22 injuries. While it is unclear whether Mr. Butler will be able to testify to the specific
23 interactions between Plaintiff and Defendant in this case, he certainly has personal
24 knowledge of facts that have been disputed in this action, such as whether the asphalt
25 was burning hot, and whether Defendant was advised by inmates, including Mr. Butler,
26 of that fact. Furthermore, the Court notes that it already has concluded, in the context of

1 the parties' discovery disputes, that other information generated by and about Mr. Butler
2 in relation to this incident is relevant to this action. (See, e.g., ECF No. 97.)

3 Thus, despite the technical deficiencies in Plaintiff's request, the motion will be
4 granted.

5 **V. Conclusion**

6 Based on the foregoing, Plaintiff has made a sufficient showing to warrant making
7 inmate Marques Butler available to testify at trial.

8 Accordingly, his motion is HEREBY GRANTED. At the appropriate time, the Court
9 will issue a separate writ of habeas corpus ad testificandum to secure Mr. Butler's
10 attendance.

11 IT IS SO ORDERED.

12 Dated: May 5, 2017

13 /s/ Michael J. Seng
14 UNITED STATES MAGISTRATE JUDGE

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