

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 seeks the attendance Plaintiff requests the attendance of following four inmate-
11 witnesses: (1) Victor W. Cooper, CDCR #E35305; (2) Darrell E. Harris, CDCR #AH7852; (3) Albert
12 Sanchez, CDCR #F11742; and (4) Norberto Robancho, CDCR #J14091. (ECF Nos. 98-101.)
13 Plaintiff also seeks the attendance of Physician Assistant T. Byers, Health Care Appeal's Coordinator
14 L.D. Zamora, Dr. Horowitz, Dr. Rudas, Registered Nurse S. Cornell, Correctional Officer Greenwall,
15 and Correctional Officer Meyberry. (ECF No. 102.)

16 Defendant opposes the attendance of inmate-witnesses Albert Sanchez and Norberto
17 Robancho. Defendant also opposes Plaintiff's motion for attendance of unincarcerated individuals as
18 improper.

19 As an initial matter, the Court will grant Plaintiff's motions for the attendance of inmate-
20 witnesses Victor W. Cooper, CDCR #E35305 and Darrell E. Harris, CDCR #AH7852, as unopposed
21 and that Plaintiff has sufficiently demonstrated that their presence at the evidentiary hearing will
22 substantially further resolution of the case. The Court will issue the necessary writs of habeas corpus
23 ad testificandum for the witnesses to appear by video in due course.

24 **A. Inmate-Witnesses Sanchez and Robancho**

25 As stated in the September 6, 2019 Findings and Recommendations, Plaintiff willfully failed to
26 comply with a court order requiring discovery responses, and as a sanction for noncompliance, the
27 Court excluded any inmate-witnesses Albert Sanchez and Norberto Robancho in deciding whether
28 Plaintiff has exhausted his administrative remedies. (ECF No. 87 at 7-11; see also ECF No. 94 at 3-4.)

1
2 Plaintiff requests that the Court “reconsider” its previously order excluding testimony by
3 Robancho and Sanchez. (ECF Nos. 100 & 101 at 2.) Plaintiff argues “there was no unfair surprise or
4 prejudice to CDCR affiliated Defendants that inmates who witnessed the injuries, who lived in the
5 same building, would also have knowledge of the grievance process.” (ECF No. 100 at 2:14-15; ECF
6 No. 101 at 2:16-18.) However, Plaintiff has failed to set forth any “new or different facts or
7 circumstances” to justify reconsideration under Local Rule 230(j). Nor has Plaintiff identify any
8 viable grounds for reconsideration under Federal Rule of Civil Procedure 60(b). As stated in the
9 Court’s January 15, 2020 order, “imposition of an evidentiary sanction prohibiting Plaintiff from using
10 any evidence that was not disclosed by Plaintiff’s January 22, 2018 opposition to Defendant’s motion
11 for sanctions or Plaintiff’s prior discovery responses to support his opposition to Defendant’s motion
12 for summary judgment or at any Albino evidentiary hearing is appropriate in the instant action.” (ECF
13 No. 94 at 4:10-14.) Plaintiff’s argument that his failures to disclose did not cause unfair surprise or
14 prejudice to Defendant is unfounded as sanctions were imposed because Plaintiff’s conduct was
15 willful and prejudicial. Accordingly, Plaintiff’s motion for reconsideration is denied. Accordingly,
16 Plaintiff’s motions for the attendance of inmate-witnesses Robancho and Sanchez are denied.

17 **B. Attendance of Unincarcerated Witnesses**

18 Plaintiff moves for the attendance of several unincarcerated individuals including Defendant
19 Horowitz and several CDCR staff members. (ECF No. 102.) Plaintiff’s motion shall be denied.

20 The Court’s September 15, 2020 order, provided the requirements to obtain the attendance of
21 incarcerated witnesses. (ECF No. 96 at 2.) Plaintiff is advised that it is his responsibility to secure the
22 attendance of any unincarcerated individuals who wish to testify voluntarily or refuse to testify
23 voluntarily pursuant to the procedures set forth in Rule 45 of the Federal Rules of Civil Procedure.

24 **II.**

25 **ORDER**

26 Based on the foregoing, it is HEREBY ORDERED that:

- 27 1. Plaintiff’s motions for the attendance of witnesses Cooper and Harris (ECF Nos. 98,
28 99) are granted;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Plaintiff's motions for the attendance of witnesses Sanchez and Robancho (ECF Nos. 100, 101) are denied; and
3. Plaintiff's motion for the attendance of unincarcerated witnesses (ECF No. 102) is denied as improper.

IT IS SO ORDERED.

Dated: October 15, 2020



UNITED STATES MAGISTRATE JUDGE