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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 VANCE UTLEY,

9 Plaintiff,

10 v.

11 C.O. ACEVEDO, et al.,

12 Defendants.

Case No. 1:15-cv-01086-DAD-SAB

**ORDER SETTING SCHEDULE FOR
MOTIONS FOR ATTENDANCE OF
INCARCERATED WITNESSES**

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14 Plaintiff is a prisoner, represented by counsel, proceeding in this action under 42 U.S.C. §
15 1983. On January 17, 2017, Defendants filed a request for attendance of an inmate witness at
16 trial. (ECF No. 83.) Since prior notice of the procedures was not provided, Defendants may
17 supplement their request to comply with this order. The parties shall comply with the following
18 procedures associated with bringing incarcerated witnesses to trial in this action. **A failure to**
19 **comply with these requirements will result in an exclusion of witnesses and will not be just**
20 **cause for continuance of the trial date.**

21 **I.**

22 **DISCUSSION**

23 Notwithstanding the requirements set forth herein, a motion for the attendance of
24 incarcerated witnesses will only be granted by the Court if the moving party has shown the
25 witnesses have relevant information and the Court determines the witnesses' presence will
26 substantially further the resolution of the case. Wiggins v. Cnty. Of Alameda, 717 F.2d 466, 468
27 n.1 (9th Cir. 1983). In order to address security concerns, expenses associated with security and
28 transportation, and to ensure that its intended witnesses who are subpoenaed do testify, the

1 decision to grant or deny the motion is within the discretion of the Court.

2 **a. Procedures for Obtaining Attendance of *Incarcerated Witnesses Who Agree to***
3 ***Testify Voluntarily***

4 An incarcerated witness who agrees voluntarily to attend trial to give testimony cannot
5 come to court unless the Court orders the warden or other custodian to permit the witness to be
6 transported to court. The Court will not issue such an order unless it is satisfied that the
7 prospective witness has actual knowledge of relevant facts.

8 A party intending to introduce the testimony of incarcerated witnesses who have agreed
9 voluntarily to attend the trial must serve and file a written motion for a court order requiring that
10 such witnesses be brought to court at the time of trial. The motion must: (1) state the name,
11 address, and prison identification number of each such witness; and (2) be accompanied by
12 declarations showing that each witness is willing to testify and that each witness has actual
13 knowledge of relevant facts. The motion should be entitled “Motion for Attendance of
14 Incarcerated Witnesses.”

15 The willingness of the prospective witness can be shown in one of two ways: (1) the
16 party by and through his counsel can swear by declaration under penalty of perjury that the
17 prospective witness has informed the party that he or she is willing to testify voluntarily without
18 being subpoenaed, in which declaration the party must state when and where the prospective
19 witness informed the party of this willingness; or (2) the party can serve and file a declaration,
20 signed under penalty of perjury by the prospective witness, in which the witness states that he or
21 she is willing to testify without being subpoenaed.

22 The prospective witness’s actual knowledge of relevant facts can be shown in one of two
23 ways: (1) if the party has actual firsthand knowledge that the prospective witness was an
24 eyewitness or an ear-witness to the relevant facts (e.g., if an incident occurred in Plaintiff’s cell
25 and, at the time, Plaintiff saw that a cellmate was present and observed the incident, Plaintiff
26 may swear to the cellmate’s ability to testify), the party by and through his counsel can swear by
27 declaration under penalty of perjury that the prospective witness has actual knowledge; or (2) the
28 party can serve and file a declaration signed under penalty of perjury by the prospective witness

1 in which the witness describes the relevant facts to which the prospective witness was an eye or
2 ear witness. Whether the declaration is made by the party or by the prospective witness, it must
3 be specific about the incident, when and where it occurred, who was present, and how the
4 prospective witness happened to be in a position to see or to hear what occurred at the time it
5 occurred.

6 The Court will review and rule on the motion for attendance of incarcerated witnesses,
7 specifying which prospective witnesses must be brought to court. Subsequently, the Court will
8 issue the order necessary to cause the witness's custodian to bring the witness to court.

9 The parties shall file any motions for the attendance of incarcerated witnesses who are
10 willing to testify, on or before January 20, 2017. Oppositions, if any, must be filed on or before
11 January 25, 2017, at noon.

12 **b. Procedures for Obtaining Attendance of *Incarcerated Witnesses Who Refuse***
13 **to Testify Voluntarily**

14 If a party seeks to obtain the attendance of incarcerated witnesses who refuse to testify
15 voluntarily, the party must submit a motion for the attendance of such witnesses. An
16 incarcerated witness cannot come to court unless the Court orders the warden or other custodian
17 to permit the witness to be transported to court. The Court will not issue an order unless it is
18 satisfied that the prospective witness has actual knowledge of relevant facts. In addition, the
19 party must indicate in the motion that the incarcerated witnesses are not willing to testify
20 voluntarily.

21 The motion must: (1) state the name, address, and prison identification number of each
22 such witness; and (2) be accompanied by a showing that each witness has actual knowledge of
23 relevant facts. The motion should be entitled "Motion for Attendance of Incarcerated
24 Witnesses."

25 The prospective witness's actual knowledge of relevant facts can be shown in one of two
26 ways: (1) if the party has actual firsthand knowledge that the prospective witness was an
27 eyewitness or an ear-witness to the relevant facts (e.g., if an incident occurred in Plaintiff's cell
28 and, at the time, Plaintiff saw that a cellmate was present and observed the incident, Plaintiff

1 may swear to the cellmate's ability to testify), the party by and through his counsel can swear by
2 declaration under penalty of perjury that the prospective witness has actual knowledge; or (2) the
3 party can serve and file a declaration signed under penalty of perjury by the prospective witness
4 in which the witness describes the relevant facts to which the prospective witness was an eye or
5 ear witness. Whether the declaration is made by the party or by the prospective witness, it must
6 be specific about the incident, when and where it occurred, who was present, and how the
7 prospective witness happened to be in a position to see or to hear what occurred at the time it
8 occurred.

9 The Court will review and rule on the motion for attendance of incarcerated witnesses,
10 specifying which prospective witnesses must be brought to court. Subsequently, the Court will
11 issue the order necessary to cause the witness's custodian to bring the witness to court.

12 The parties shall file any motions for the attendance of incarcerated witnesses who refuse
13 to testify voluntarily, on or before January 20, 2017. Oppositions, if any, must be filed on or
14 before January 25, 2017, at noon.

15 **II.**
16 **ORDER**

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. If the parties intend to call incarcerated witnesses at trial, the parties shall file
19 motions for attendance of incarcerated witnesses as described in this order on or
20 before **January 20, 2017**; and
- 21 2. Oppositions to the motions for the attendance of incarcerated witnesses, if any,
22 shall be filed on or before **January 25, 2017, at noon.**

23 IT IS SO ORDERED.

24 Dated: January 17, 2017

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26 _____
27 UNITED STATES MAGISTRATE JUDGE
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