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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
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6 ELAINE K. VILLAREAL,

7 Plaintiff,

8 v.

9 COUNTY OF FRESNO,

10 Defendant.
11

Case No. 1:15-cv-01410-EPG (PC)

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
ATTENDANCE OF WITNESSES

(ECF NO. 38)

ORDER DIRECTING CLERK TO SEND
PLAINTIFF A COPY OF THIS ORDER
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13 **I. BACKGROUND**

14 Elaine K. Villareal ("Plaintiff") is a prisoner proceeding *pro se*¹ and *in forma pauperis*
15 with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint
16 commencing this action on September 17, 2015. (ECF No. 1). This action now proceeds on
17 Plaintiff's original complaint (ECF No. 1) against defendant County of Fresno ("Defendant")
18 on a claim of unconstitutional conditions of confinement. (ECF No. 7). An Albino evidentiary
19 hearing is currently set for November 14, 2017, at 10:30 a.m. (ECF No. 48).

20 On July 19, 2017, Plaintiff filed a motion for attendance of witnesses ("the Motion").
21 (ECF No. 38). On July 26, 2017, Defendant objected. (ECF No. 39). Because Plaintiff
22 provided insufficient information regarding what four of her prospective witnesses would
23 testify to, the Court required Plaintiff to submit additional information. (ECF No. 40). On
24 August 16, 2017, Plaintiff submitted additional information. (ECF No. 45). On August 23,
25 2017, Defendant filed an objection. (ECF No. 50).

26 Plaintiff's motion for attendance of witnesses is now before the Court.

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¹ Counsel was appointed for the limited purpose of representing Plaintiff at the upcoming Albino
evidentiary hearing. (ECF No. 47).

1 **II. ATTENDANCE OF INMATE WITNESSES**

2 On June 30, 2017, the Court issued an order regarding the procedures related to the
3 evidentiary hearing. (ECF No. 37). Plaintiff was informed that if she wanted the Court to
4 compel witnesses to attend or to arrange for attendance of witnesses via the issuance of habeas
5 corpus ad testificandum, she would need to file a motion for attendance of witnesses. (Id. at p.
6 2). Plaintiff was told that “[t]he motion must: (1) state the name, address, and prison
7 identification number (if any) of each witness Plaintiff wants to call; (2) explain what relevant
8 information each witness has, and how that witness has personal knowledge of the relevant
9 information; and (3) state whether each such witness is willing to voluntarily testify.” (Id.)

10 **III. PLAINTIFF’S MOTION**

11 Plaintiff seeks to bring eight inmate witnesses to trial: (1) Shannon Reis; (2) Rachael
12 Vasquez; (3) Angie Padilla; (4) Kristen Thompson; (5) Kristy Flores; (6) Sylvia Perez; (7)
13 Monica Macias; and (8) Angelica Gutierrez. (ECF No. 38, pgs. 1-4).

14 Defendant objected to the Motion on the ground that allowing eight witnesses would be
15 cumulative, and costly. (ECF No. 39, p. 4). Defendant also objected to the Motion on the
16 grounds that “only ‘two’ of Plaintiff’s prospective witnesses (Padilla and perhaps Macias)
17 appears [sic] to have any alleged (or even possible) personal or actual knowledge of the Jail’s
18 grievance process during the relevant time-frame,” and that, based on what Plaintiff provided,
19 none of the eight prospective witnesses’ testimony is sufficiently relevant (Id. at 4-5).

20 After Plaintiff filed her additional evidence, Defendant objected on the grounds that
21 Plaintiff failed to file any proof regarding the testimony of her prospective witnesses by the
22 Court’s deadline, and that Plaintiff once again failed to show that her prospective witnesses’
23 testimony is sufficiently relevant. (ECF No. 50, pgs. 2-5).

24 **IV. DISCUSSION**

25 “The determination whether to issue a writ of habeas corpus ad testificandum rests
26 within the sound discretion of the district court.” Cummings v. Adams, 2006 U.S. Dist. LEXIS
27 9381, *6, 2006 WL 449095 (E.D. Cal. Feb. 17, 2006). Accord Walker v. Sumner, 14 F.3d
28 1415, 1422 (9th Cir. 1994).

1 The issues at the Albino evidentiary hearing are whether Plaintiff attempted to exhaust
2 her administrative remedies and whether the grievance procedure was available to Plaintiff
3 before September 17, 2015. Accordingly, the most relevant witnesses are ones that can testify
4 regarding the availability of the grievance procedure in the months before September 17, 2015.
5 As the Court informed the parties, “[a]lthough the Court will hear evidence regarding
6 interference with filing grievances after the filing of the complaint, [the evidence] must have
7 sufficient relevance to the issue of the availability of those procedures to Plaintiff before filing
8 the complaint.” (ECF No. 37, pgs. 1-2).

9 After conducting a “cost-benefit analysis regarding whether the inmate[s] should come
10 to court,” Cummings, 2006 U.S. Dist. LEXIS 9381 at *7, the Court has determined that Angie
11 Padilla, Monica Macias, and Kristy Flores should to come to Court. The Court will deny
12 Plaintiff’s motion as to the remaining witnesses.

13 For Ms. Padilla, Ms. Macias, and Ms. Flores, Plaintiff has provided declarations
14 regarding their testimony. (ECF No. 30, p. 6; ECF No 45, p. 3; ECF No. 45, pgs. 4-5).² Both
15 Angie Padilla and Monica Macias have stated that they witnessed Plaintiff submit grievance
16 forms prior to the filing of this complaint. (ECF No. 30, p. 6; ECF No 45, p. 3). This is
17 directly relevant to the issue of whether Plaintiff exhausted her available administrative
18 remedies prior to filing her complaint. As to Kristy Flores, while she does not appear to have
19 personal knowledge regarding whether Plaintiff’s filed or attempted to file grievances, she
20 allegedly filed grievances around the same time Plaintiff filed or attempted to file grievances,
21 as well as before and after. (ECF No. 45, p. 4). Accordingly, it appears that she has relevant
22 personal knowledge regarding the availability of the grievance procedure during the same time
23 period as Plaintiff filed or attempted to file grievances. This evidence is relevant to
24 determining whether the institution’s grievance procedures were “available” under the law.

25 As to the remaining five witnesses, after conducting a cost-benefit analysis, the Court
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27 ² The Court notes that Plaintiff timely filed her additional evidence. It appears to be undisputed that
28 Plaintiff placed her additional evidence in the mail on August 10, 2017. (ECF No. 45, p. 8). As *pro se* prisoners
are entitled to the mailbox rule, Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009), her filing was timely.

1 finds that they should not be brought to Court. Plaintiff has not shown that the testimony
2 offered by these witnesses would be sufficiently relevant to justify the cost. They do not have
3 direct knowledge of Plaintiff's attempts to file grievances prior to the complaint, nor the
4 availability of grievance procedures at that time.

5 Specifically, Plaintiff puts forth Shannon Reis to testify regarding an incident that
6 apparently happened in March of 2017, which is approximately a year and a half after Plaintiff
7 filed her case. (ECF No. 33, pgs. 6-7). As to Kristen Thompson, she was not in Fresno County
8 Jail until over a year after Plaintiff filed this case. (Id. at 18). Additionally, Plaintiff provided
9 very little detail regarding the scope of her testimony. (Id.). As to Sylvia Perez, Plaintiff
10 provided very few details regarding the incidents Sylvia Perez would testify to, and failed to
11 provide the dates of the incidents. (ECF No. 38, pg. 3-4; ECF No. 45, pgs. 1-2). As to
12 Angelica Gutierrez, she has only been in Fresno County Jail since June 22, 2017. (ECF No. 45,
13 p. 1). As to Rachael Vasquez, she appears to have no personal knowledge of whether Plaintiff
14 filed or attempted to file grievances, and only one date was provided for when the incidents she
15 discusses occurred (and it was in April of 2017). (ECF No. 33, pgs. 9-11).

16 Accordingly, the Court finds that the testimony of Shannon Reis, Kristen Thompson,
17 Sylvia Perez, Angelica Gutierrez, and Rachael Vasquez is not sufficiently relevant to justify
18 the cost of bringing them to Court.

19 Therefore, after conducting a cost-benefit analysis, the Court finds that only Angie
20 Padilla, Monica Macias, and Kristy Flores should be brought to testify at the Albino hearing, in
21 addition to Plaintiff herself.³

22 **V. ORDER**

23 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's motion for the
24 attendance of witnesses, filed on July 19, 2017, is GRANTED in part.

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28 ³ The Court is not precluding any objections to their testimony, which will be addressed at the Albino
hearing.

1 Approximately one month before the Albino hearing the Court will issue writs of
2 habeas corpus ad testificandum to have Angie Padilla, Monica Macias, and Kristy Flores
3 brought to testify at the Albino hearing.⁴

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5 IT IS SO ORDERED.

6 Dated: September 5, 2017

/s/ Eric P. Gorsj
7 UNITED STATES MAGISTRATE JUDGE

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⁴ The Court notes that to the extent that Plaintiff wishes to bring witnesses to the hearing that are not incarcerated and are willing to testify voluntarily, she does not need the Court's approval.