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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **OUSSAMA SAHIBI,**

6 **Plaintiff,**

7 **v.**

8 **BORJAS GONZALES, et al.,**

9 **Defendants.**

1:15-cv-01581-LJO-MJS (PC)

**ORDER AMENDING APRIL 15, 2018
ORDER RE ATTENDANCE OF
INCARCERATED WITNESSES (ECF
NO. 147)**

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12 On April 15, 2018, the Court issued an order granting in part Plaintiff's motion for attendance of
13 incarcerated witnesses. ECF No. 147 (filed April 16, 2018). Plaintiff's request was granted as to Inmates
14 Juan Gonzales and Juan Valdez, but denied as to Inmates Lopez, Wichelman, Prado, Henry, Pugh,
15 Young, Jamie Gonzalez, Hamilton, Dewberry, and James (spelled elsewhere in the record as "Jaimes").
16 *Id.* On April 23, 2018, the Court received Plaintiffs' reply re his underlying request for attendance of
17 incarcerated witnesses. ECF No. 149. Construing this filing as a motion for reconsideration, the Court
18 hereby AMENDS its April 15, 2018 order as to Inmate Jacob Lopez.

19 It is alleged in this case that at least one Defendant directed racial/religious slurs at Plaintiff on
20 several occasions prior to the altercation that eventually led to the events that form the basis of this
21 lawsuit. ECF No. 1 at 6-7. At a preliminary hearing related to the altercation, Defendant Gonzalez
22 apparently testified that the altercation occurred when Plaintiff tried to take an extra meal tray. ECF No.
23 Doc. 149 at 3. Plaintiff indicates that inmate Jacob Lopez was his cellmate on the date of the incident
24 and that inmate Lopez will testify that Defendant Gonzalez did not give them any dinner trays, so
25 Plaintiff could not have possibly tried to take more than one dinner tray. ECF No. 140, at 2. Inmate

1 Lopez will also testify about the racial slurs Defendant Gonzalez made toward Plaintiff prior to the
2 incident. *Id.* To the extent that Defendant Gonzalez's testifies about the events leading up to the
3 incident, inmate Lopez's testimony is relevant. Inmate Lopez's testimony also is relevant as to
4 Defendant Gonzalez's motivating racial/religious animus.¹

5 Plaintiff's reply brief also added a request to call another witness (Inmate Walker) who
6 previously filed an excessive force complaint against Defendant Lozano. *See* ECF No. 149 at 5, 14. This
7 request is untimely under the case schedule, as requests for the appearance of incarcerated witnesses
8 were due in late March 2018. *See* ECF No. 137 (request for extension re Plaintiff's pretrial statement
9 and incarcerated witness requests); ECF No. 138 (granting same). Plaintiff has offered no excuse for the
10 untimeliness. Further, Plaintiff fails to show that evidence pertaining to inmate Walker's prior
11 experience with Defendant Lozano would present admissible evidence relevant to the events at issue in
12 this action or that inmate Walker otherwise has actual knowledge of relevant facts that are at issue in this
13 action. The request regarding inmate Walker is therefore DENIED.

14 **CONCLUSION AND ORDER**

15 For the reasons set forth above, the Court's April 15, 2018 Order is AMENDED to GRANT
16 Plaintiff's motion for the attendance of incarcerated witness Jacob Lopez. Plaintiff's new request for the
17 attendance of inmate Walker is DENIED.

18 IT IS SO ORDERED.

19 Dated: May 1, 2018

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE

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24 ¹ The Court does not modify its decision to deny Plaintiff's request for the appearance of Inmate Wichelman, who would add
25 little to the picture. According to Plaintiff, inmate Wichelman, as porter for their building, would testify that Plaintiff's tray
slot was not open on the day in question, so Defendant Gonzalez and could have given Plaintiff any dinner trays. Likewise,
the Court does not modify its prior ruling as to any other inmate.