



1 opposition and opposition to Plaintiff's motions. (ECF No. 142.) The Court finds a reply brief  
2 unnecessary, and Plaintiff's motions for attendance of incarcerated witnesses are deemed  
3 submitted. Local Rule 230(1).

## 4 **II. Motions for Incarcerated Witnesses**

5 In determining whether to grant Plaintiff's motions for the attendance of incarcerated  
6 witnesses, the Court considers the following factors: (1) whether the inmate's presence will  
7 substantially further the resolution of the case, (2) the security risks presented by the inmate's  
8 presence, (3) the expense of transportation and security, and (4) whether the suit can be stayed  
9 until the inmate is released without prejudice to the cause asserted. *Wiggins v. County of*  
10 *Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983); *see also Walker v. Sumner*, 14 F.3d 1415, 1422  
11 (9th Cir. 1994) (district court did not abuse its discretion when it concluded the inconvenience  
12 and expense of transporting inmate witness outweighed any benefit he could provide where the  
13 importance of the witness's testimony could not be determined), *abrogated on other grounds by*  
14 *Sandin v. Conner*, 515 U.S. 472 (1995).

### 15 **A. Inmate Michael Washington**

16 Plaintiff declares that, on or about July 2015 at Kern Valley State Prison, Inmate Michael  
17 Washington (CDCR #V39680, High Desert State Prison) agreed to testify at Plaintiff's trial if  
18 called as a witness. (ECF No. 137, p. 38.) On November 10, 2019, Plaintiff was again informed  
19 at California State Prison – Corcoran that Inmate Washington was willing to testify if called as a  
20 witness. (*Id.*)

21 Plaintiff further declares that on January 18, 2014, Inmate Washington was housed at  
22 Kern Valley State Prison Facility B Building 8, section B, and was Plaintiff's cellmate at the time  
23 of the incident. (*Id.* at 39.) If called as a witness, Inmate Washington would testify that he  
24 witnessed Defendant Garcia place Plaintiff on his back, take out his O.C. Pepper Spray from his  
25 side holster, and place the can in Plaintiff's face and begin to spray him. Inmate Washington  
26 would also testify that Defendant Garcia came back into the cell after placing Plaintiff into a  
27 choke hold and dragging him out of the cell and spraying him in the face with O.C. pepper spray,  
28 and used his O.C. pepper spray against his person by spraying him in the face while he sat on the

1 toilet in restraints. Inmate Washington will testify that he witnessed Defendant Neighbors in the  
2 section at the time of the incident. (*Id.*)

3 Defendants do not oppose Plaintiff's request to call Inmate Washington, assuming there  
4 are proper court orders allowing for his transport, and the presence of correctional officers  
5 nearby. (ECF No. 142, p. 1.)

6 Based on the presentation of the facts that will be testified to by Inmate Washington, the  
7 Court finds that this witness may be an eye and/or ear witness in this action, and that it does not  
8 appear his testimony will result in undue delay, a waste of time, or the needless presentation of  
9 cumulative evidence. Plaintiff declared that this witness informed Plaintiff of his knowledge of  
10 the events he described, and was previously willing to testify regarding his knowledge. Plaintiff's  
11 motion for the attendance of Inmate Washington is therefore granted. The Court will issue the  
12 necessary transportation order for this witness's appearance at trial in due course.

13 **B. Inmate Wallace W. Vaughn**

14 Plaintiff declares that on November 10, 2019, Plaintiff talked to Inmate Wallace W.  
15 Vaughn (CDCR #T94462, California State Prison – Calipatria) at California State Prison –  
16 Corcoran, in which he agreed to testify at Plaintiff's trial if called as a witness. (ECF No. 137, p.  
17 35.)

18 Plaintiff further declares that on January 18, 2014, Inmate Vaughn was housed at Kern  
19 Valley State Prison, Facility B Building 8 Section B, the same location where the incident took  
20 place in this case. (*Id.*) Inmate Vaughn will testify that on January 18, 2014 he witnessed  
21 Defendants Garcia and Neighbors leaving building 8 Section B after the search of the building  
22 section, and return back to the section about 10 to 20 minutes later and went to the far end cell in  
23 the section. Inmate Vaughn will testify that he witnessed Defendants Garcia and Neighbors  
24 walking behind Plaintiff and his cellmate Inmate Washington as they were being escorted out of  
25 the section. Inmate Vaughn's testimony will support Plaintiff's claim that Defendants Garcia and  
26 Neighbors were in Facility B Building 8 Section B on January 18, 2014 at the time of the  
27 incident. (*Id.* at 36.)

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1 Defendants object to the proffer of Inmate Vaughn's testimony as to the events of January  
2 18, 2014, on the basis that it will be cumulative, waste time, and potentially confuse or mislead  
3 the jury. (ECF No. 142.) Further, Defendants argue that Inmate Vaughn's testimony lacks  
4 sufficient indicia of reliability because a prior declaration by Inmate Vaughn produced by the  
5 Plaintiff evinces that Inmate Vaughn lacks sufficient personal knowledge to testify about the  
6 material facts in the matter, namely the pepper-spraying incident of which Plaintiff complains.  
7 (See ECF No. 142-2, p. 2.) As shown by Inmate Vaughn's declaration, Inmate Vaughn claims  
8 only that he was in Facility B on January 18, 2014 at Kern Valley State Prison at the time of the  
9 incident, and can testify about what he saw prior to and after the incident in question. However,  
10 Defendants argue that these portions of events are not largely in dispute, and it is unlikely that  
11 Inmate Vaughn's testimony will be helpful to the jury. (ECF No. 142, p. 2.) Finally, Defendants  
12 argue that there is an issue of safety with the prospective transportation of Inmate Vaughn, who  
13 has questionable utility to the jury, because he was recently issued and then re-issued a pending  
14 prison rule violation, and in each is accused of threatening CDCR staff. (*Id.*)

15 Based on the presentation of the facts that will be testified to by Inmate Vaughn, the Court  
16 finds that this witness is not an eye and/or ear witness to the events at issue in this action, and it  
17 appears that his testimony would result in undue delay, a waste of time, or the needless  
18 presentation of cumulative evidence. Based on Plaintiff's declaration and Inmate Vaughn's  
19 declaration, Inmate Vaughn has knowledge only of events that occurred prior to and after the  
20 pepper-spraying incident at issue, and those events are largely not in dispute. In addition, both  
21 Plaintiff and Inmate Washington can testify as to the same information at trial. Plaintiff's motion  
22 for the attendance of Inmate Vaughn is therefore denied.

### 23 **III. Order**

24 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 25 1. The November 9, 2021 order to show cause, (ECF No. 139), is DISCHARGED;
- 26 2. Plaintiff's motion for attendance of incarcerated witnesses, (ECF No. 137), is GRANTED  
27 IN PART and DENIED IN PART, as follows:

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- a. Plaintiff's motion for attendance of Inmate Michael Washington, (CDCR #T94462, California State Prison – Calipatria), is GRANTED;
  - b. Plaintiff's motion for attendance of Inmate Wallace W. Vaughn, (CDCR #T94462, California State Prison – Calipatria), is DENIED; and
3. The Court will issue the necessary writ of habeas corpus ad testificandum prior to the trial in this matter.

IT IS SO ORDERED.

Dated: November 16, 2021

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE