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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
6

7 JORGE CORENA,

8 Plaintiff,

9 v.

10 RODRIGUEZ, et al.,

11 Defendants.
12

Case No. 1:16-cv-01025-LJO-EPG (PC)

ORDER DENYING PLAINTIFF'S
MOTION FOR ATTENDANCE OF
WITNESSES

(ECF NOS. 77 & 79)

13 **I. BACKGROUND**

14 Jorge Corena ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in
15 this civil rights action filed pursuant to 42 U.S.C. § 1983. On October 26, 2018, defendant
16 Rodriguez filed a motion for summary judgment on the ground that Plaintiff failed to properly
17 exhaust his available administrative remedies. (ECF No. 51). Plaintiff filed an opposition (ECF
18 No. 57), defendant Rodriguez filed a reply (ECF No. 61), and Plaintiff (without requesting
19 permission) filed a surreply (ECF No. 63). An Albino evidentiary hearing is currently set for
20 March 27, 2019, at 11:00 a.m. (ECF No. 72).

21 On February 4, 2019, Plaintiff filed a motion for attendance of witnesses ("the
22 Motion"). (ECF No. 77). On February 14, 2019, Plaintiff filed a supplement to the Motion.
23 (ECF No. 79). On February 22, 2019, defendant Rodriguez filed an opposition to the Motion.
24 (ECF No. 81).

25 For the reasons described below, the Motion will be denied.

26 **II. ATTENDANCE OF INMATE WITNESSES**

27 On January 9, 2019, the Court issued an order regarding the procedures related to the
28 evidentiary hearing. (ECF No. 72). Plaintiff was informed that if he wanted the Court to

1 compel witnesses to attend or to arrange for attendance of witnesses via the issuance of writs of
2 habeas corpus ad testificandum, he would need to file a motion for attendance of witnesses.
3 (Id. at pgs. 1-2). Plaintiff was told that “[t]he motion must: (1) state the name, address, and
4 prison identification number (if any) of each witness Plaintiff wants to call; (2) explain what
5 relevant information each witness has, and how that witness has personal knowledge of the
6 relevant information; and (3) state whether each such witness is willing to voluntarily testify.”
7 (Id.) (footnotes omitted).

8 **III. PLAINTIFF’S MOTION**

9 Plaintiff seeks to bring four inmate witnesses to the evidentiary hearing: (1) Mario
10 Molina; (2) Peter Mercado; (3) Miguel Ruiz; and (4) Michael Hernandez. (ECF No. 77).

11 For all four witnesses, Plaintiff states that the relevant information the witness has is
12 “due to ‘administrative exhaustion the physical abuse/excessive use of force’ the prison
13 officials use on inmates.” (Id.).

14 Defendant Rodriguez opposes the motion on the ground that Plaintiff failed to identify
15 any witness that has personal knowledge of Plaintiff’s attempts to exhaust his administrative
16 remedies. (ECF No. 81).

17 **IV. DISCUSSION**

18 “The determination whether to issue a writ of habeas corpus ad testificandum rests
19 within the sound discretion of the district court.” Cummings v. Adams, 2006 U.S. Dist. LEXIS
20 9381, *6, 2006 WL 449095 (E.D. Cal. Feb. 17, 2006). Accord Walker v. Sumner, 14 F.3d
21 1415, 1422 (9th Cir. 1994).

22 As the Court noted in its order issued on December 21, 2018, the Court set the Albino
23 hearing because “there are disputes of fact regarding whether Plaintiff ever received the second
24 level response and whether he took efforts to obtain the response in order to pursue an appeal to
25 the third level. These disputes of fact appear material to the legal issues presented.” (ECF No.
26 69, p. 2). Based on the summary Plaintiff provided of each potential witnesses’ testimony,
27 defendant Rodriguez is correct that none of Plaintiff’s witnesses have personal knowledge
28 regarding Plaintiff’s alleged attempts to exhaust administrative remedies.

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Accordingly, after conducting a “cost-benefit analysis regarding whether the inmate[s] should come to court,” Cummings, 2006 U.S. Dist. LEXIS 9381 at *7, the Court has determined that none of Plaintiff’s witnesses should be brought to Court, and that the Motion should be denied in its entirety.¹

V. ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that the Motion is DENIED.

IT IS SO ORDERED.

Dated: March 1, 2019

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

¹ 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, he does not need the Court’s approval.