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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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10 ROGER WALKER,

11 Plaintiff,

12 v.

13 TIM POOLE, et al.,

14 Defendants.

Case No. 1:16-cv-01665-AWI-EPG (PC)

ORDER DENYING PLAINTIFF'S
MOTION FOR ATTENDANCE OF
INCARCERATED WITNESSES,
WITHOUT PREJUDICE

(ECF No. 133)

15 **I. BACKGROUND**

16 Roger Walker ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma pauperis*
17 in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case proceeds "against
18 defendants Saloum, Poole, Perryman, Davis, and Nicks on Plaintiff's claim for failure to
19 protect in violation of the Fourteenth Amendment." (ECF No. 35, p. 2).¹

20 On May 4, 2020, Plaintiff filed a motion for attendance of confined witnesses. (ECF
21 No. 133). On May 6, 2020, Defendants filed their opposition to the motion. (ECF No. 134).
22 On May 27, 2020, Plaintiff filed a reply. (ECF No. 135).

23 As Plaintiff did not file the required declarations with his motion, Plaintiff's motion will
24 be denied, without prejudice.

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28 ¹ The Court recently recommended that summary judgment be granted in favor of defendants Davis,
Nicks, Perryman, and Poole. (ECF No. 137).

1 **II. DISCUSSION**

2 In the scheduling order, the Court informed Plaintiff that “[a] party intending to
3 introduce the testimony of confined witnesses who have agreed to voluntarily attend the trial
4 must serve and file a written motion for a court order requiring that such witnesses be brought
5 to court at the time of trial. The motion must: (1) state the name, address, and prison/hospital
6 identification number of each such witness; and (2) be accompanied by declarations showing
7 that each witness is willing to testify and that each witness has actual knowledge of relevant
8 facts.” (ECF No. 77, p. 6).

9 “The prospective witness’s actual knowledge of relevant facts can be shown in one of
10 two ways: (1) if the party has actual firsthand knowledge that the prospective witness was an
11 eyewitness or an ear-witness to the relevant facts (e.g., if an incident occurred in Plaintiff’s cell
12 and, at the time, Plaintiff saw that a cellmate was present and observed the incident, Plaintiff
13 may swear to the cellmate’s ability to testify), the party can swear by declaration under penalty
14 of perjury that the prospective witness has actual knowledge; or (2) the party can serve and file
15 a declaration signed under penalty of perjury by the prospective witness in which the witness
16 describes the relevant facts to which the prospective witness was an eye or ear witness.
17 Whether the declaration is made by the party or by the prospective witness, it must be specific
18 about the incident, when and where it occurred, who was present, and how the prospective
19 witness happened to be in a position to see or to hear what occurred at the time it occurred.”
20 (Id. at 7).

21 The same requirement for a declaration showing that each witness has actual knowledge
22 of relevant facts applies to motions for attendance of confined witnesses who have not agreed
23 to testify voluntarily. (Id.).

24 Here, Defendants are correct that Plaintiff did not file the required declarations. In fact,
25 Plaintiff did not even attempt to show that each prospective witness has actual knowledge of
26 relevant facts. Instead, Plaintiff listed twelve witnesses he wants brought to trial. (ECF No.
27 133, p. 2). As Plaintiff failed to include the required declarations with his motion, Plaintiff’s
28 motion will be denied, without prejudice to Plaintiff refileing it with the required declarations.

1 **III. ORDER**

2 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for
3 attendance of confined witnesses is DENIED, without prejudice. Plaintiff has thirty days² from
4 the date of service of this order to refile his motion with the required declarations.³

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6 IT IS SO ORDERED.

7 Dated: July 10, 2020

8 /s/ Eric P. Gray
9 UNITED STATES MAGISTRATE JUDGE

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27 ² If Plaintiff needs additional time to gather the required declarations, he may file a motion for an
28 extension of time.

³ The declaration must be subscribed by the declarant "as true under penalty of perjury, and dated, in substantially the following form: ... 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'" 28 U.S.C. § 1746(2).