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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,  
Plaintiff,  
v.  
UGWUEZE, et al.,  
Defendants.

Case No. 1:19-cv-01350-JLT-CDB (PC)

**ORDER REGARDING PLAINTIFF’S  
MOTION FOR THE ATTENDANCE OF  
WITNESSES**

(Doc. 70)

**I. INTRODUCTION**

In the Order Setting Pretrial Conference and Jury Trial and Associated Deadlines issued June 5, 2023, the Court provided procedures for obtaining the attendance of incarcerated witnesses and a deadline for filing a motion for the attendance of incarcerated witnesses of May 16, 2024. (Doc. 68 at 2-4.) Any opposition was to be filed by June 14, 2024. (*Id.* at 4.) That same order also provided procedures for obtaining the attendance of unincarcerated witnesses. (*Id.* at 4-5.)

On May 16, 2024, Plaintiff<sup>1</sup> filed a motion seeking the attendance of four witnesses at trial: Daniel Heath Woodward, Jose Ibanez, Inmate Hochstrasser, and Matthew J. Hall. (Doc.

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<sup>1</sup> Plaintiff filed a “Notice of New Name/Address” on May 16, 2024, indicating she has legally changed her name to Aerith Natalia Asora. (Doc. 71.) A search of the California Incarcerated Records and Information Search (CIRIS) tool reveals Aerith Natalia Asora, CDCR No. G64542, is housed at the California Institution for Men. (<https://apps.cdcr.ca.gov/ciris/results?lastName=asora>, as of May 31, 2024.)

1 70.) On May 20, 2024, Defendants filed a response to Plaintiff’s motion. (Doc. 73.)

2 **II. DISCUSSION**

3 This action proceeds on the following claims: (a) deliberate indifference to serious  
4 medical needs against Defendants Arietta, Hashemi, Igbinsosa, Kokor, and Ugwueze; (b) medical  
5 negligence against the aforementioned individuals plus Defendant Pacheco; and (c) battery  
6 against Defendant Ugwueze.

7 ***Plaintiff’s Motion***

8 Plaintiff states that “due to restrictions placed upon plaintiff who is no longer housed with  
9 the witnesses, she cannot obtain declarations with the specific written text as asked for in the  
10 order.” (Doc. 70 at 1.) Regarding Daniel Heath Woodward, Plaintiff states Woodward was  
11 housed with her, was also cared for by Defendant Kokor, and was “personally present for several  
12 of the seizures that plaintiff suffered, and carried plaintiff to medical when injury resulted.” (*Id.*)  
13 Plaintiff states Woodward has personal knowledge of Defendant Ugwueze’s medical practice.  
14 (*Id.*) She asserts that Woodward has not signed a statement, “but at the time of the incidents 2015-  
15 2016 stated flatly that he would voluntarily testify.” (*Id.*) As to Jose Ibanez, Plaintiff states he was  
16 present when Plaintiff suffered the seizure that injured her spine, and during several seizures that  
17 occurred on the facility yard. (*Id.* at 1-2.) Plaintiff states Ibanez “signed a declaration that is  
18 currently in plaintiff’s legal paperwork storage (unavailable at this time, see below) and agreed to  
19 testify when asked in 2021.” (*Id.* at 2.) Regarding Inmate Hochstrasser, Plaintiff maintains  
20 Hochstrasser was present “for the spinal surgeries and the aftermath of said surgeries,” inferring  
21 Hochstrasser observed “the physical limitations that plaintiff continues to endure and the  
22 suffering when trying to do simple [tasks.]” (*Id.*) Plaintiff states Hochstrasser worked with her  
23 “in VSP visiting also able to see over an extended period of time plaintiffs permanent injuries.”  
24 (*Id.*) Plaintiff asserts Hochstrasser signed a declaration and stated a willingness to testify but  
25 notes she “(...was unaware that would be necessary in the declaration).” (*Id.*) As concerns  
26 Matthew J. Hall, Plaintiff states Hall is currently on parole in San Diego, and she is unable to  
27 communicate with Hall due to his parole restrictions regarding other prisoner contact. (*Id.*) She  
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1 asserts Hall signed a declaration and stated he wished to testify. (*Id.*) Plaintiff further asserts Hall  
2 is aware of her “physical stature prior to the injury,” is aware of Defendant Kokor’s medical  
3 practices, was present during several of her seizures and denial of medical care and has  
4 knowledge of “the affect effects of surgery and the permanent physical limitations” she suffered.  
5 (*Id.*) She maintains Hall was present when Plaintiff was carried to medical and denied treatment  
6 by Defendants “Arietta, Kokor, etc.” (*Id.*)

7 Further, Plaintiff advises “most of her paperwork is in long term storage with CDCR” due  
8 to property limitations, “exasperated [*sic*] by living in a dormitory at CIM.” (Doc. 70 at 2.)  
9 Further, Plaintiff states that within the past twelve months, the locations where the documents  
10 were or are stored have suffered flooding or were “targeted for arson.” (*Id.*) Plaintiff states she  
11 does not know where the property is stored now. (*Id.* at 3.) Plaintiff asserts she has been placed in  
12 isolation “on another facility for weeks” on three occasions: twice due to COVID isolation  
13 protocols and once for shingles. (*Id.*) That “movement has left plaintiff with a difficult time  
14 locating her property.” (*Id.*) Plaintiff states she has undergone gender affirming surgery and is  
15 “pending transfer to CCWF,” having been approved for the transfer on May 3, 2024, and is  
16 expecting to “move within the month if not next week.” (*Id.*) Lastly, Plaintiff asserts she has  
17 established good cause and “requests the court grant leniency in the content of this motion and  
18 give her the ability to revise it at a later date.” (*Id.*)

### 19 ***Defendants’ Response***

20 Defendants provide a response to each of the witnesses identified by Plaintiff. (Doc. 73.)  
21 As to Daniel Heath Woodward, Defendants state they cannot find a witness by this name in the  
22 California Incarcerated Records and Information Search (CIRIS) database. (*Id.* at 1.) Although  
23 several inmates bearing the surname Woodward appear in the database, none appear to have been  
24 incarcerated in 2015 or 2016 as asserted by Plaintiff. (*Id.* at 1-2.) Thus, Defendants “must object  
25 to any subpoena” for this witness as the individual does not appear to be incarcerated in a  
26 California Department of Corrections and Rehabilitation (CDCR) facility. (*Id.* at 2.) Concerning  
27 Jose Ibanez, Defendants states Ibanez is currently incarcerated at Valley State Prison. (*Id.*) They  
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1 state they have not reviewed the declaration Ibanez purportedly signed and, therefore, cannot  
2 comment on whether he could offer admissible testimony. (*Id.*) They acknowledge that if  
3 Ibanez’s testimony is limited to personal observations, it could be admissible. (*Id.*) Next,  
4 regarding Inmate Hochstrasser, Defendants state they cannot locate anyone by that name in the  
5 CIRIS database, having attempted several variations of the surname spelling without success.  
6 (*Id.*) Defendants object to the issuance of a subpoena for the same reason given for Woodward.  
7 (*Id.*) Concerning Matthew J. Hall, Defendants assert they cannot find an individual by that name  
8 in the CIRIS database. (*Id.*) Defendants state they do not know where Hall lives and thus object to  
9 any subpoena directed to CDCR because they are unable to produce a witness by that name on the  
10 grounds Hall does not appear to be incarcerated in a CDCR facility. (*Id.*) Defendants state general  
11 objections of relevance, lack of personal knowledge, improper foundation, and improper  
12 character evidence, concerning Plaintiff’s claims that multiple witnesses have knowledge of  
13 treatment by numerous medical providers and that multiple witnesses may be called to offer  
14 testimony on medical issues, should any witness attempt to testify “on issues similar to a doctor’s  
15 general practice, or medical issues.” (*Id.*) Defendants state they cannot be more specific without  
16 reviewing declarations from potential witnesses. (*Id.* at 2-3.)

### 17 *Analysis*

18 In the Court’s Order Setting Pretrial Conference and Jury Trial and Associated Deadlines,  
19 obtaining the attendance of incarcerated witnesses requires the following:

20 A party intending to introduce the testimony of incarcerated  
21 witnesses who have agreed to voluntarily attend the trial must serve  
22 and file a written motion for a court order requiring that such  
23 witnesses be brought to court at the time of trial. The motion must:  
24 (1) state the name, address, and prison identification number of each  
such witness; and (2) be accompanied by declarations showing that  
each witness is willing to testify and that each witness has actual  
knowledge of relevant facts. The motion should be entitled “Motion  
for Attendance of Incarcerated Witnesses.”

25 The willingness of the prospective witness can be shown in one of  
26 two ways: (1) the party him or herself can swear by declaration under  
27 penalty of perjury that the prospective witness has informed the party  
28 that he or she is willing to testify voluntarily without being  
subpoenaed, in which declaration the party must state when and  
where the prospective witness informed the party of this willingness;

1 or (2) the party can serve and file a declaration, signed under penalty  
2 of perjury by the prospective witness, in which the witness states that  
3 he or she is willing to testify without being subpoenaed.

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

20 (Doc. 68 at 2-3.)

21 "The determination whether to issue a writ of habeas corpus *ad testificandum* rests within  
22 the sound discretion of the district court." *Cummings v. Adams*, No. CV F 03 5294 DLB, 2006  
23 WL 449095, at \*3 (E.D. Cal. Feb. 21, 2006). In determining whether to grant a motion for the  
24 attendance of incarcerated witnesses, the Court considers the following factors: (1) whether the  
25 inmate's presence will substantially further the resolution of the case, (2) the security risks  
26 presented by the inmate's presence, (3) the expense of transportation and security, and (4)  
27 whether the suit can be stayed until the inmate is released without prejudice to the cause asserted.  
28 *Wiggins v. County of Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983). *See Lopez v. Cate*, No.  
1:10-cv-1773-DAD-SKO (PC), 2016 WL 3940341, at \*2, 4 (E.D. Cal. July 20, 2016)  
(acknowledging *Wiggins* factors and applying them to require Plaintiff to offer details "specific  
enough to warrant transporting" the inmate-witness to testify).

Daniel Heath Woodward

Plaintiff has not provided a CDCR number for Daniel Heath Woodward and a search of  
the CIRIS tool reveals no individual bearing that name is incarcerated in a CDCR facility.  
Defendants indicate in their response that none of the individuals bearing the surname Woodward  
incarcerated in a CDCR facility appear to have been incarcerated in 2015 or 2016 as asserted by

1 Plaintiff. The Court’s search of CIRIS reveals five individuals with the Woodward surname are  
2 presently housed in a CDCR facility.<sup>2</sup> One individual has been incarcerated since December  
3 1999—Sean Andrew Woodward, CDCR No. D26156—and is presently housed at Folsom State  
4 Prison, and a second individual has been incarcerated since February 2016—Raymond  
5 Woodward, CDCR No. AY9718—and is presently housed at California State Prison, Los  
6 Angeles County. Therefore, it is possible that either Sean Andrew Woodward or Raymond  
7 Woodward, the former having been incarcerated during the entirety of the relevant time period  
8 and the latter having been incarcerated for a portion of it, could have been housed with Plaintiff.

9 Nonetheless, to the extent “Daniel Heath Woodward” is in fact the inmate housed with  
10 Plaintiff during the period when her claims arose, he is not presently incarcerated in any CDCR  
11 facility. In any event, because Plaintiff has indicated Woodward has not signed a declaration, the  
12 Court is unable to balance the applicable factors. *See Wiggins*, 717 F.2d at 468 n.1.

13 Jose Ibanez

14 Jose Manuel Ibanez, CDCR No. F94768, is presently housed at Valley State Prison and  
15 has been incarcerated since November 2007. Plaintiff contends Ibanez is an eyewitness to her  
16 seizures and “signed a declaration that is currently in plaintiff’s legal paperwork storage ... and  
17 agreed to testify when asked in 2021.” Defendants state they have not reviewed Ibanez’s  
18 declaration but acknowledge that testimony offered based on personal knowledge could be  
19 admissible.

20 Plaintiff explains she cannot offer Ibanez’s declaration as a part of her pending motion  
21 because she does not have access to her legal property. It is presently stored elsewhere, and  
22 according to Plaintiff, has been stored in facilities that sustained flooding or possible fire damage.  
23 Defendants offer no response to Plaintiff’s assertions in this regard. The Court will permit  
24 Plaintiff to renew her motion to include Ibanez’s declaration. The Court is aware that Plaintiff is  
25 pending transfer to another facility and, as a result, may continue to encounter difficulty in  
26 obtaining her legal property. Nevertheless, with trial set to commence on November 13, 2024,

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28 <sup>2</sup> (<https://apps.cdcr.ca.gov/ciris/results?lastName=Woodward>, as of 5/31/2024.)

1 Plaintiff shall make every effort to obtain her legal property prior to the pretrial conference set for  
2 July 15, 2024, before District Judge Jennifer L. Thurston. Plaintiff shall be required to file a status  
3 report prior to the pretrial conference and must be prepared to address whether she is in  
4 possession of her legal property and if not, where it is presently stored and when she anticipates  
5 gaining access to it. If, in the interim, Plaintiff gains access to her legal property, she shall  
6 immediately renew her motion by providing Defendants and the Court with a copy of Ibanez's  
7 declaration. The Court will consider the *Wiggins* factors at that time. *Wiggins*, 717 F.2d at 468  
8 n.1.

9 Inmate Hochstrasser

10 Plaintiff has not provided a CDCR number for "Inmate Hochstrasser" and a search of the  
11 CIRIS tool reveals no individual bearing that specific surname is incarcerated in a CDCR facility.  
12 Defendants indicate in their response that their search for this individual was unsuccessful despite  
13 employing several variations of the surname spelling. Nevertheless, the Court has identified  
14 "Alexandre Laurent Hochstraser," CDCR No. G10505, who is presently incarcerated at Valley  
15 State Prison, by entering "Hoch" as a last name in the CIRIS tool search bar. Hochstraser was  
16 admitted to CDCR in April 2008 and thus may be the individual identified by Plaintiff.

17 Presuming so, it appears Hochstraser may have relevant testimony to offer as he  
18 apparently is an eyewitness to Plaintiff's physical state following surgeries and related physical  
19 limitations. Further, Plaintiff asserts he signed a declaration and is willing to testify. For the same  
20 reasons discussed above regarding Ibanez, Plaintiff will be afforded the opportunity to renew her  
21 motion by providing Defendants and the Court with Hochstraser's declaration once available.

22 Matthew J. Hall

23 Plaintiff provides Hall's CDCR number and states he is "on parole" in San Diego.  
24 Defendants state a CIRIS search reveals no individual by this name is incarcerated in a CDCR  
25 facility, and that they do not know where Hall lives and cannot produce him because he is not  
26 incarcerated in a CDCR facility. The Court's review of the CIRIS tool confirms no individual  
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1 named Matthew Hall, assigned CDCR No. F95739, is incarcerated in any CDCR facility.<sup>3</sup>

2 For these reasons, the Court presumes Matthew J. Hall is an unincarcerated witness.  
3 Plaintiff was previously provided information concerning obtaining the attendance of an  
4 unincarcerated witness. (Doc. 68 at 4-5.) In short, if the unincarcerated witness agrees to testify  
5 voluntarily, it is Plaintiff's responsibility to notify the witness of the time and date of trial, and no  
6 further action is required of the Court. (*Id.*) If, however, the unincarcerated witness refuses to  
7 testify voluntarily, the witness must be served with a subpoena and witness fees. (*Id.*) The  
8 specific procedures for obtaining a subpoena are also outlined in the Court's order. (*Id.*)

9 It appears Hall may have relevant testimony to offer as he apparently is an eyewitness as  
10 concerns Plaintiff's physical state following surgeries and related physical limitations. To the  
11 extent Plaintiff believes Hall will testify voluntarily, it is her responsibility to locate Hall and  
12 notify him of the time and date of trial. Further, if Hall will not testify voluntarily, Plaintiff is  
13 required to comply with the procedures previously outlined.

### 14 III. CONCLUSION AND ORDER

15 Based on the above, **IT IS HEREBY ORDERED** that:

- 16 1. Plaintiff's motion for the attendance of witnesses (Doc. 70) is denied without  
17 prejudice; and

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26 <sup>3</sup> A Matthew Robert Hall, CDCR No. BX0325, is incarcerated at Kern Valley State Prison, but was only admitted in  
27 February 2024. (<https://apps.cdcr.ca.gov/ciris/results?lastName=hall&firstName=m>, as of 5/31/2024.) Further, no  
28 other individual with the surname Hall and a first name starting with the letter "M" has a CDCR number matching  
that provided by Plaintiff.



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2. Plaintiff **SHALL** file a status report **no later than June 28, 2024**. The status report shall detail Plaintiff's efforts to obtain access to her legal documentation and its whereabouts. Alternatively, by that same date, Plaintiff may renew her motion for the attendance of witnesses to include the declarations of Ibanez and Hochstraser and may move for the attendance of the remaining witnesses pursuant to the appropriate procedure, i.e., for an incarcerated witness (Woodward) or for an unincarcerated witness (Hall), if needed and/or necessary.

IT IS SO ORDERED.

Dated: May 31, 2024

  
UNITED STATES MAGISTRATE JUDGE