

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT BRUCE,  
  
                                Plaintiff,  
  
                v.  
  
SHAMA CHAIKEN, et al.,  
  
                                Defendants.

No. 2: 15-cv-960 TLN KJN P

ORDER

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is set for jury trial before the Honorable Troy L. Nunley on February 10, 2020. Pending before the court is plaintiff’s motion for incarcerated witnesses to be brought to trial. (ECF No. 110.) Defendants oppose this motion, in part. (ECF No. 112.) For the reasons stated herein, plaintiff’s motion is granted in part and denied in part.

II. Legal Standard

In determining whether to grant plaintiff’s motions for the attendance of incarcerated witnesses, the court considers the following factors: (1) whether the inmate’s presence will substantially further the resolution of the case, (2) the security risks presented by the inmate’s presence, (3) the expense of transportation and security, and (4) whether the suit can be stayed until the inmate is released without prejudice to the cause asserted. Wiggins v. County of

1 Alameda, 717 F.2d 466, 468 n.1 (9th Cir. 1983); see also Walker v. Sumner, 14 F.3d 1415, 1422  
2 (9th Cir. 1994) (district court did not abuse its discretion when it concluded the inconvenience  
3 and expense of transporting inmate witness outweighed any benefit he could provide where the  
4 importance of the witness’s testimony could not be determined), abrogated on other grounds by  
5 Sandin v. Conner, 515 U.S. 472 (1995).

### 6 III. Discussion

7 Plaintiff requests that inmates Perez and Harvey be brought to trial to testify on his behalf.  
8 Plaintiff alleges that inmates Perez and Harvey informed plaintiff that they would testify  
9 voluntarily.

#### 10 A. Background

11 The proposed testimony of inmates Perez and Harvey is relevant to some of plaintiff’s  
12 claims against defendants Clingman, Bobbala, Nangalama and Ikegbu.

13 Plaintiff alleges that defendant Clingman acted negligently and with the intent to inflict  
14 emotional distress when she denied his request to see a doctor on September 4, 2013. Plaintiff  
15 alleges that defendant Clingman acted negligently and with the intent to inflict emotional distress  
16 when she disregarded his claims of rectal tears made in his sick call request when she permitted  
17 him to be transferred to Pelican Bay State Prison (“PBSP”) on September 10, 2013.

18 Plaintiff alleges that on September 5, 2015, defendant Bobbala acted negligently and with  
19 the intent to inflict emotional distress when he prescribed Colace and Milk of Magnesia for  
20 plaintiff. Plaintiff also alleges that defendant Bobbala acted negligently and with the intent to  
21 inflict emotional distress when he conditioned the prescription for Colace and Milk of Magnesia  
22 on plaintiff’s agreement to resume eating.

23 Plaintiff alleges that defendant Nangalama violated the Eighth Amendment and state law,  
24 i.e., negligence and intentional infliction of emotional distress, when he prescribed a self-  
25 administered enema for plaintiff on September 7, 2013 because plaintiff was physically incapable  
26 of performing the enema. Plaintiff also claims that defendant Nangalama acted negligently and  
27 with the intent to inflict emotional distress when he prescribed the self-administered enema  
28 because plaintiff had fecal impaction. Plaintiff also alleges that defendant Nangalama acted

1 negligently and/or with the intent to inflict emotional distress when he failed to perform  
2 additional tests and failed to order adequate monitoring of plaintiff while he attempted to self-  
3 administer the enema. Plaintiff also alleges that defendant Nangalama violated the Eighth  
4 Amendment and state law, i.e., negligence and intentional infliction of emotional distress, when  
5 he approved plaintiff's transfer back to PBSP.

6 Plaintiff alleges that defendants Clingman, Bobbala and Nangalama denied him medical  
7 care in retaliation for his participation in a hunger strike and for complaints he made regarding  
8 medical care.

9 In relevant part, plaintiff alleges that defendant Ikegbu acted negligently and with the  
10 intent to inflict emotional distress when she failed to treat plaintiff's torn rectum on September  
11 11, 2013 and September 24, 2013.

12 B. Inmate Perez

13 The declarations of inmates Perez and Harvey are attached to the pending motion. In his  
14 declaration, inmate Perez states,

15 2. From approximately August 23, 2013 until September 10, 2013, I  
16 was incarcerated at California State Prison at Sacramento. This  
17 prison is referred to as "New Folsom" by most inmates and CDCR  
staff. During the above dates, I was housed in the cell (#119) next  
door to Vincent Bruce, who was housed in cell # 118.

18 3. While in cell # 119, I was in a position to see or hear many of  
19 Bruce's interactions with medical staff when they came to the cell.

20 4. Most if not all of the inmates in our housing unit were  
21 participating in a mass hunger strike that began on approximately  
22 July 8, 2013, that at one point involved up to 30,000 inmates. Bruce  
and I were two of the participants. The hunger strike was a peaceful  
protest of CDCR's inhumane solitary confinement conditions and  
practices.

23 5. On or about September 4, 2013, the hunger strike concluded.  
24 However, Bruce indicated that he could not resume eating until he  
25 was treated for severe constipation. Bruce told a nurse named "Nurse  
26 Judy," who I believe was a supervising nurse, this information. The  
27 nurse expressed disbelief, and appeared angry Bruce would not eat.  
Bruce explained that he had a history of getting severely constipated  
on hunger strikes, and that he was sure he could not pass the stool  
without damaging his insides. The nurse said she would tell a doctor.

28 6. On September 5, 2013, Bruce was escorted to the makeshift clinic  
in the housing unit Bruce and I resided in for "Doctor's line." Bruce

1 was escorted to the doctor's line in waist chains, with handcuffs  
2 attached at the side.

3 7. Bruce told me upon his return that the doctor refused to treat him  
4 unless he resumed eating.

5 8. Nurse Judy came by after Bruce returned trying to talk him into  
6 eating. She told him she would make sure he received treatment if  
7 he started eating. She said that there was another doctor she would  
8 talk to about his requested treatment.

9 9. Sometime after Nurse Judy came by, two men came by in suits,  
10 and told Bruce that if he did not begin eating he would be moved to  
11 ASU. ASU is the most severe sensory deprivation unit at New  
12 Folsom.

13 10. Bruce spoke to Nurse Judge again and agreed to resume eating.  
14 Nurse Judge had Bruce brought out to a standing-room-only cage in  
15 our building so she could make sure he ate in front of her.

16 11. The next day Bruce complained to nurses that he was  
17 experiencing severe pain because of the severe constipation he  
18 suffered. He said the stool was too big and hard to pass. And  
19 pressure was building up in his abdomen and bowels.

20 12. Bruce was taken to see a doctor that day. When he returned  
21 Bruce told me they just wanted to give him pills and some self-enema  
22 bottles. He said they were not treating his condition as an emergency.

23 13. The next morning, September 7th, Bruce told he was in a lot of  
24 pain as he had to force the stool out which he said was twice as big  
25 as usual and hard like wood. He asked me about my stool after the  
26 hunger strike, which I told him was very hard too but in small  
27 pebbles. He said he was bleeding real bad from his backside.

28 14. That same morning, Bruce told one or two nurses that his rectum  
was torn and that he needed to see the doctor because he was bleeding  
"down there."

15 15. Bruce again requested to see the doctor the next day, on  
16 September 8th, asking the nurses who came by. Bruce also asked for  
17 medical requests, but the nurses would not bring him one to my  
18 knowledge.

19 16. On September 10, 2013, Bruce was put on a bus which staff told  
20 him was going back to Pelican Bay.

21 17. It is my understanding that a claim is being made that Bruce  
22 refused medical care. I did not see Bruce refuse medical care. I did  
23 see and hear him request that medical staff conduct his vitals at the  
24 makeshift clinic instead of standing in front of his cell. The nurses  
25 would tell him he would be brought to the makeshift clinic to have  
26 his vitals checked, but would not bring him. This occurred several  
27 times to Bruce. In my experience, correctional staff, including  
28 medical staff, who did not escort someone to a medical appointment

1 would always blame the inmate, falsely claiming the inmate refused.

2 18. The medical treatment at New Folsom was poor at best compared  
3 to other prisons. The nurses who were supposed to be observing us  
4 and taking notes would often walk quickly by without taking notes.  
5 They would never ask us questions about how we were feeling. They  
6 would sometimes not even walk at their scheduled times. They  
7 would get annoyed or angry when an inmate requested to have his  
8 vitals checked at the makeshift clinic, because they were lazy and  
9 wanted to do the vitals quickly at the front of the cell while the inmate  
10 was handcuffed and standing.

11 19. It appeared to me that the medical staff were in particular  
12 annoyed or angry with Bruce. Bruce had filed multiple complaints  
13 on behalf of us inmates, complaining about the medical care and  
14 conditions at New Folsom that we hunger strikers were subjected to.

15 (Id. at 4-7.)

16 At the outset, the undersigned clarifies that “Nurse Judy,” referred to in inmate Perez’s  
17 declaration appears to be defendant Clingman.

18 A statement made out of court, which is offered for the truth of the matter asserted in the  
19 statement is hearsay. Fed. R. Evid. 801. Hearsay is not admissible, Fed. R. Evid. 802, unless it  
20 meets an exception. Fed. R. Evid. 803.

21 Much of the information in inmate Perez’s declaration is hearsay. For example, inmate  
22 Perez’s statement that on September 4, 2013 he heard plaintiff tell defendant Clingman that he  
23 could not resume eating until he was treated for constipation is hearsay.

24 In the pending motion, plaintiff admits that some of Perez’s proposed testimony “may  
25 raise hearsay concerns,” but argues that the proposed hearsay is admissible pursuant to one of the  
26 exceptions to the hearsay rule, such as the exception for a prior consistent statement.

27 The undersigned finds that inmate Perez’s hearsay statements do not meet any hearsay  
28 exceptions. Regarding the exception for prior consistent statements, Federal Rule of Evidence  
801(d)(1)(B) provides,

(d) Statements That Are Not Hearsay.

(1) A Declarant-Witness’s Prior Statement: The declarant testifies  
and is subject to cross-examination about a prior statement, and the  
statement,

\*\*\*\*

1 (B) is consistent with the declarant's testimony...

2 Fed. R. Evid. 801(d)(1)(B).

3 Inmate Perez's testimony regarding statements he heard plaintiff make is not admissible  
4 pursuant to Rule 801(d)(1)(B). Rule 801(d)(1)(B) applies to prior consistent statements made by  
5 the witness him or herself.

6 The undersigned cannot determine the relevance of inmate Perez's general statement that  
7 the medical treatment at New Folsom was poor because the nurses were not attentive. Inmate  
8 Perez does not identify the nurses or the inmates who allegedly received inadequate medical care.  
9 Inmate Perez also does not describe the allegedly poor medical care. The undersigned also  
10 cannot determine the relevance of inmate Perez's statement that the medical staff appeared  
11 annoyed or angry with plaintiff because inmate Perez does not identify the medical staff who  
12 appeared angry or annoyed.

13 Plaintiff argues that inmate Perez's statement that he did not see plaintiff refuse an exam  
14 is relevant to defendants' claim that plaintiff refused treatment. (ECF No. 110 at 2.) In support  
15 of this argument, plaintiff cites the findings and recommendations addressing defendants'  
16 summary judgment motion. (Id.) At the page of the findings and recommendations cited by  
17 plaintiff, the undersigned cited defendant Bobbala's records from September 5, 2013, stating that  
18 plaintiff refused a physical examination. (ECF No. 91 at 18.)

19 In his declaration, inmate Perez states that defendant Bobbala examined plaintiff in the  
20 medical clinic on September 5, 2013. Defendant Bobbala's records from September 5, 2013, also  
21 indicate that he examined plaintiff in the medical clinic. (ECF No. 37-6 at 5.) It is unclear how  
22 inmate Perez could have any personal knowledge regarding what occurred between plaintiff and  
23 defendant Bobbala in the medical clinic on September 5, 2013. See Fed. R. Evid. 602 (a witness  
24 may testify to a matter only if evidence is introduced sufficient to support a finding that the  
25 witness has personal knowledge of the matter). Accordingly, inmate Perez's testimony that  
26 plaintiff did not refuse an exam from defendant Bobbala on September 5, 2013, is not admissible.

27 Inmate Perez states that defendant Clingman appeared angry with plaintiff for not eating  
28 on September 4, 2013. Evidence that defendant Clingman was angry with plaintiff may support

1 plaintiff's state law claim that defendant Clingman denied his request to see a doctor on that date  
2 and his related retaliation claim. However, the value of this testimony to these claims is low. For  
3 this reason, and because plaintiff may testify regarding defendant Clingman's demeanor that day,  
4 inmate Perez's testimony that defendant Clingman was angry with plaintiff on September 4,  
5 2013, does not substantially further the resolution of this case. Fed. R. Evid. 403 (court may  
6 exclude cumulative testimony); Lutz v. Glendale Union High School, 403 F.3d 1061, 1071 (9th  
7 Cir. 2005) (district courts have authority to limit the number of witnesses testifying about a  
8 particular fact).

9 For the reasons discussed above, plaintiff's request to call inmate Perez as a witness at  
10 trial is denied.

11 C. Inmate Harvey

12 Inmate Harvey's declaration states, in relevant part,

13 2. In the latter part of August 2013, I was transferred from Pelican  
14 Bay State Prison to California State Prison at Sacramento (New  
15 Folsom). I was placed on a bus with dozens of other inmates on a  
16 hunger strike, including prisoner Vincent Bruce. Bruce, myself and  
17 others had been on a hunger strike for at least six weeks when the  
18 transfer occurred. No medical staff accompanied us for the ten hour  
19 ride. Bruce and at least two other inmates became violently ill.  
20 Bruce began dry heaving and have severe dizzy spells. Another  
21 inmate passed out. No medical attention was provided.

22 3. Upon arrival we were placed in filthy cells without cleaning  
23 materials and denied personal property, and adequate clothing.  
24 Inmates were forced to use blankets as clothing (wrapped around  
25 them Indian style).

26 4. Bruce was placed in a cell below me and to my right. I was in cell  
27 220 in the housing unit B8.

28 5. I am familiar with Doctor Nangalama. He was one of the senior  
or supervising doctors at New Folsom. He treated me on at least two  
occasions. Dr. Nangalama refused to order any tests or examine me  
for cardiac problems while treating me at New Folsom. Due to his  
inadequate medical care I suffered permanent heart damage during  
the three weeks I was under his care.

6. When the hunger strike ended on September 4, 2013, Mr. Bruce  
indicated to me he was not going to end his fast until he was provided  
treatment for his severe constipation. He said it was so big and hard  
he could feel it in his abdomen. As a designated representative of  
the hunger strike it was my responsibility to communicate with Mr.  
Bruce and staff let me speak to him.

1 7. Bruce told me the next day that the medical staff were refusing to  
2 provide any exams to confirm the severity of his condition. I passed  
3 this information on to some attorneys representing the hunger  
4 strikers.

5 8. At some point Bruce began eating again.

6 9. On or around September 10, 2013, Bruce, myself and other  
7 inmates were put on a bus that was returning to Pelican Bay State  
8 Prison. Bruce was in serious pain and discomfort for the ride back.  
9 Frequently wincing when the bus hit a rough part of the road. Bruce  
10 also was very tired and looked like he had not slept well for several  
11 days. Before we were put on the bus none of us were examined by  
12 any medical staff.

13 (ECF No. 110 at 8-9.)

14 The statements in inmate Harvey's declaration regarding the conditions of the bus ride  
15 from PBSP to CSP-Sac are not relevant to this action. The statements in inmate Harvey's  
16 declaration regarding the conditions of the cells upon their arrival at CSP-Sac are not relevant to  
17 this action. The statements in inmate Harvey's declaration regarding the alleged inadequate  
18 medical care he received from defendant Nangalama are not relevant to this action. Evidence of  
19 defendant Nangalama's alleged prior bad acts is also inadmissible pursuant to Federal Rule of  
20 Evidence 404(b)(1) (evidence of a "crime, wrong or other act is not admissible to prove a  
21 person's character in order to show that on a particular occasion the person acted in accordance  
22 with their character).

23 Inmate Harvey's statement that plaintiff told him that medical staff were refusing to  
24 provide him with medical exams is hearsay. In addition, it is unclear how inmate Harvey has  
25 personal knowledge that medical staff were refusing to provide medical exams to plaintiff. Fed.  
26 R. Evid. 602 (witness must have personal knowledge of subject testimony). It is also unclear  
27 Inmate Harvey has personal knowledge that none of the inmates transferred back to PBSP were  
28 examined by medical staff. Id.

29 In their opposition, defendants state that they do not object to the presence of inmate  
30 Harvey at trial to the extent he proposes to testify regarding plaintiff's condition during the bus  
31 transport to PBSP on September 10, 2013. (ECF No. 112 at 7.) Inmate Harvey's testimony  
32 regarding his observations of plaintiff's condition is relevant to his claims that defendants




1 Clingman and Nangalama violated state and federal law by permitting him to be transferred to  
2 PBSP on that date. This testimony may also be relevant to plaintiff's claims that defendant  
3 Ikegbu failed to treat plaintiff's torn rectum.

4 The undersigned finds that inmate Harvey's testimony regarding his observations of  
5 plaintiff's condition on the bus to PBSP on September 10, 2013 would substantially further the  
6 resolution of plaintiff's claims. The security risks and expense of inmate Harvey's transportation  
7 do not outweigh the value of his testimony. The undersigned will later determine whether inmate  
8 Harvey may testify via video conference, which would reduce, if not eliminate, the security risks  
9 and expense of transporting him to court to testify.

10 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for an order to have  
11 incarcerated witnesses brought to trial (ECF No. 110) is granted with respect to inmate Harvey  
12 and his testimony concerning plaintiff's condition during the bus transport to PBSP on September  
13 10, 2013; plaintiff's motion is denied in all other respects.

14 Dated: August 21, 2019

15   
16 \_\_\_\_\_  
17 KENDALL J. NEWMAN  
18 UNITED STATES MAGISTRATE JUDGE

19 Br960.wit  
20  
21  
22  
23  
24  
25  
26  
27  
28