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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FILIPE NOE GARCIA,

Plaintiff,

vs.
JG GRIMM; SGT HIGHTOWER;
RHINELANDER; SETTER; SWINEY; J.
MACLEOD,

Defendants.

CASE NO. 06cv225 WQH (PCL)

ORDER

HAYES, Judge:

The matter before the Court is the Motion for Writ of Habeas Corpus Ad Testificandum (ECF No. 171) filed by Plaintiff Filipe Noe Garcia.

BACKGROUND

The Court previously ordered:

Plaintiff shall file a Third Amended Proposed Pretrial Order which lists a brief description of the facts which support each of the remaining claims listed above on which Plaintiff intends to proceed to trial and identifies witnesses in support of each claim. Plaintiff shall number each claim and allege each claim in a separate paragraph. Plaintiff shall also file a motion for a writ of habeas corpus ad testificandum for any inmate witnesses listed in the Third Amended Proposed Pretrial Order. In addition, Plaintiff shall file a sworn affidavit establishing the appropriateness of the issuance of a writ of habeas corpus ad testificandum as to each witness. The sworn affidavit shall state: (1) what each inmate witness will testify to; (2) how Plaintiff knows what the inmate witness will testify to; and (3) why the testimony is necessary. *See Greene v. Prunty*, 938 F. Supp. 637, 639 (S.D. Cal. 1996) (“In order to grant the writ of habeas corpus ad testificandum, the

1 Court must determine not only whether an inmate-witness's testimony
2 is relevant, but also, whether such testimony is necessary. This
3 determination depends ultimately upon whether the probative value of
the testimony justifies the expense and security risk associated with
transporting an inmate-witness to court from a correctional facility.”).

4 (ECF No. 169 at 19). Plaintiff submitted his Motion for Writs of Habeas Corpus Ad
5 Testificandum for himself, Julio Contreras, Rodney Brooks, Robert Marin, David Cano,
6 Francisco Flores, David Flores, Francisco Gongora, Geraldo Ojito, Michael Colon, Christopher
7 Macits, Ricardo Magana, Robert Gomez, Alberto Hernandez, Juan Torres, Ronnie Monie, and
8 Mark Winston.

9 Plaintiff states that Julio Contreras observed the altercation between Plaintiff and
10 Defendants and has provided a “voluntary affidavit and stated that he would truthfully testify.”
11 (ECF No. 171 at 5). Plaintiff states that Rodney Brooks observed the altercation between
12 Plaintiff and Defendants, observed the “placement of handcuffs and ankle restraints, the
13 dragging and clothes being ripped off, the continued assault outside the module, the fact that
14 the module door closed before plaintiff reached it, the threats by inmate Martin if anyone spoke
15 to investigators ...” and has “voluntarily stated he would truthfully testify to what he observed
16 and his knowledge about this incident.” *Id.* at 5-6. Plaintiff states that Robert Martin “will
17 testify how he was illegally used to try to persuade Plaintiff to lock up, how he was pushed in
18 when Plaintiff started to run toward the door, how all the deputy sheriffs ran out, how the door
19 closed and Plaintiff stood in front of the door..., that on advice from his attorney he did not file
20 a civil case in exchange for leniency in his criminal case sentencing, and the threats he issued
21 to all housed there and his continued involvement in prison gang activity.” *Id.* at 6. Plaintiff
22 states that David Cano who “will testify” that he was Plaintiff's cell mate, that “because of his
23 involvement and Mr. Marin's orders he was brutally assaulted, and he observed Plaintiff get
24 brutally assaulted, dragged outside the module and he was within 5 feet of the incident.” *Id.*
25 Plaintiff states that inmates Francisco Flores, David Flores, Francisco Gongora, Geraldo Ojito,
26 Michael Colon, Christopher Macits, Ricardo Magana, Robert Gomez, Alberto Hernandez, Juan
27 Torres, Ronnie Monie, and Mark Winston were all housed in cells within the module and “they
28 will testify on what they heard and saw out of their windows ... [and] the fact that Inmate

1 Marin issued threats to who would talk to investigators” *Id.* at 7.

2 Defendants “do not object to the issuance of a habeas writ for Contreras so long as
3 Garcia waives any objection to defense counsel interviewing Contreras regarding his written
4 statement and observations prior to providing in-court testimony and the Court grants
5 Defendants’ petition for a writ of habeas ad testificandum for Michael Colon, who will rebut
6 Contreras’s written statement and anticipated oral testimony.” (ECF No. 179 at 2).
7 Defendants object to the issuance of a writ of habeas ad testificandum for inmate Brooks on
8 the grounds that Plaintiff has failed to supply factual support for his request including stating
9 what Brooks will testify to and why the testimony is necessary. Defendants explain that
10 Plaintiff has previously identified Inmates Marin, Cano, F.Flores, D. Flores, Gongora, Ojito,
11 Colon, Macias, Magana, Gomez, Hernandez, Torres, Monie, and Winston as “involuntary
12 witnesses who will refuse to testify unless this Court ordered them to testify as to what they
13 observed and require them to state why they were kicking, banging and yelling out their cell
14 doors while Defendants were beating up on Plaintiff.” *Id.* (citing ECF No. 146).

15 STANDARD

16 In ruling on a Motion for Writ of Habeas Corpus Ad Testificandum, the Court must
17 balance the relevance and necessity of the testimony against the security risks involved in
18 having the witnesses transported to the Court to testify during trial. *See Greene v. K.W.*
19 *Prunty*, 938 F. Supp. 637, 639 (S.D. Cal. 1996) (holding “[i]n order to grant the writ of habeas
20 corpus ad testificandum the Court must determine not only whether an inmate-witness’
21 testimony is relevant, but also, whether such testimony is necessary. This determination
22 depends ultimately upon whether the probative value of the testimony justifies the expense and
23 security risk associated with transporting an inmate-witness to court from a correctional
24 facility.”). “‘Relevant evidence’ means evidence having any tendency to make the existence
25 of any fact that is of consequence to the determination of the action more probable or less
26 probable than it would be without the evidence.” Fed. R. Evid. 401. “All relevant evidence
27 is admissible, except as otherwise provided by the Constitution of the United States, by Act
28 of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to

1 statutory authority. Evidence which is not relevant is not admissible.” Fed. R. Evid. 402.

2 **DISCUSSION**

3 The Court finds that testimony by Julio Contreras, Rodney Brooks, Robert Marin, and
4 David Cano, who were each eye-witnesses to the incident, may be relevant to this lawsuit.
5 Plaintiff does not have access to the witnesses. The Court cannot determine on this record
6 whether the value of Julio Contreras, Rodney Brooks, Robert Marin, or David Cano’s
7 testimony justifies the expense and security risk associated with transporting the inmate-
8 witness to court from a correctional facility. *See Greene v. K.W. Prunty*, 938 F. Supp. 637, 639
9 (S.D. Cal. 1996). The Court orders Defendants to take a telephonic deposition of Julio
10 Contreras, Rodney Brooks, Robert Marin, and David Cano, if they are currently incarcerated.
11 Defendants shall pay the costs associated with the depositions. Plaintiff’s Motion for Writ of
12 Habeas Corpus Ad Testificandum is denied with leave to renew after the depositions are
13 completed.

14 Plaintiff has failed to make even a minimal showing that testimony by inmates
15 Francisco Flores, David Flores, Francisco Gongora, Geraldo Ojito, Michael Colon, Christopher
16 Macits, Ricardo Magana, Robert Gomez, Alberto Hernandez, Juan Torres, Ronnie Monie, and
17 Mark Winston is relevant and necessary in this case. During oral argument, Plaintiff requested
18 leave to submit additional information regarding inmate Geraldo Ojito. Plaintiff may file a
19 motion for writ of habeas corpus ad testificandum regarding inmate Geraldo Ojito by July 5,
20 2011. Defendants may respond by July 25, 2011.


21 **CONCLUSION**

22 The Motion for Writ of Habeas Corpus Ad Testificandum (ECF No. 171) filed by
23 Plaintiff Filipe Noe Garcia is DENIED. Defendants shall arrange for the telephonic
24 depositions of Julio Contreras, Rodney Brooks, Robert Marin, and David Cano, if they are
25 currently incarcerated, to be completed by no later than August 8, 2011. Defendants shall
26 provide transcripts of the depositions to Plaintiff by September 12, 2011. Plaintiff may file any
27 motion for writ of habeas corpus ad testificandum regarding Julio Contreras, Rodney Brooks,
28 Robert Marin, or David Cano by October 12, 2011. Plaintiff shall file a sworn affidavit

1 establishing the appropriateness of the issuance of a writ of habeas corpus ad testificandum as
2 to each witness. The sworn affidavit shall state: (1) what each inmate witness will testify to;
3 (2) how Plaintiff knows what the inmate witness will testify to; and (3) why the testimony is
4 necessary. *See Greene v. Prunty*, 938 F. Supp. 637, 639 (S.D. Cal. 1996) (“In order to grant
5 the writ of habeas corpus ad testificandum, the Court must determine not only whether an
6 inmate-witness's testimony is relevant, but also, whether such testimony is necessary. This
7 determination depends ultimately upon whether the probative value of the testimony justifies
8 the expense and security risk associated with transporting an inmate-witness to court from a
9 correctional facility.”). Defendants may respond to the motion for writ of habeas corpus ad
10 testificandum by November 7, 2011.

11 **IT IS SO ORDERED.**

12 DATED: June 21, 2011

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14 **WILLIAM Q. HAYES**
15 United States District Judge
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