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

WHITTIER BUCHANAN;

Plaintiff,

v.

E. GARZA; L. FUGA; R.
BAKER; R. LIMON; A.
SALCEDO; D. HODGE,

Defendants.

CASE NO.: 3:08-cv-01290-BTM (WVG)

**ORDER DENYING PLAINTIFF'S
PETITION FOR WRIT OF HABEAS
CORPUS AD TESTIFICANDUM**

On February 12, 2015, Plaintiff Whittier Buchanan filed a Petition for Writ of Habeas Corpus Ad Testificandum regarding Francisco Vargas, an inmate at Salinas Valley State Prison (Dkt. No. 173). Defendants opposed the Petition because, inter alia, Plaintiff did not produce an affidavit stating the nature of Mr. Vargas's anticipated testimony, its necessity to the case, and the basis of his knowledge thereof. See Greene v. Prunty, 938 F. Supp. 637 (S.D. Cal. 1996). Defendants also produced Mr. Vargas's February 5, 2015 declaration stating that he does not recall the events in question, citing his ill health and medication (Dkt. No. 174, p. 5-6). Plaintiff replied with an affidavit, dated May 31, 2011, detailing Mr. Vargas's eyewitness recollection of the relevant events (Dkt. No. 176, p. 3-5).


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In light of the dispute surrounding Mr. Vargas's ability to provide relevant testimony at trial, the Court grants Plaintiff leave to take Mr. Vargas's deposition. Plaintiff's counsel's reasonable expenses incurred in taking the deposition may be reimbursed from the Court's Pro Bono Fund. After the deposition, Plaintiff may renew the Petition.

For the foregoing reasons, Plaintiff's Petition is DENIED without prejudice.

IT IS SO ORDERED.

Dated: February 19, 2015


BARRY TED MOSKOWITZ, Chief Judge
United States District Court