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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

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Anibal Ortiz,
Plaintiff

CV-09-1048-PHX-MHM (JRI)

9

-vs-

Todd Thomas, et al.,
Defendants

ORDER

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Under consideration is Plaintiff's Motion to Correct and Motion for Sanctions, filed June 22, 2010 (Doc. 33). Defendants have responded (Doc. 39). Plaintiff has not replied.

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Plaintiff complains that the caption being used reflects now dismissed Defendant Thomas, rather than now dismissed Defendant Swenson. Plaintiff complains that it confuses the case with his other pending matter, *Ortiz v. Thomas*, CV-09-0396-PHX-MHM-JRI.

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Defendants respond, not opposing the motion, but noting Defendant Swanson's dismissal and their preference to utilize the remaining defendants. "[T]he caption of an action is only the

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handle to identify it and ordinarily the determination of whether or not a defendant is properly in the case hinges upon the allegations in the body of the complaint and not upon

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his inclusion in the caption." *Hoffman v. Halden*, 268 F.2d 280, 303 -304 (9th Cir. 1959), *overruled in part on other grounds*, *Cohen v. Norris*, 300 F.2d 24 (9th Cir.1962).

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Accordingly, "federal courts generally will allow an amendment under Rule 15 to correct technical defects in the caption when that is thought necessary." Wright & Miller, 5A *Fed.*

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Pract. Proc. Civ. 3d § 1321 . Plaintiff has another case pending in this Court by the name of *Anibal ortiz v. Todd Thomas, et al.*, CV-09-0396-PHX-MHM-JRI. To avoid confusion, the

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Court will direct the Clerk to modify the caption of this matter to "*Anibal Ortiz v. Donna Burnias, et al.*"

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Plaintiff also complains that the Joint Discovery Plan filed by Defendants on June 1,

1 2010 (Doc. 29) does not include defense counsel's actual signature and was not signed by
2 Plaintiff. Defendants properly respond (Doc. 39) that Plaintiff has failed to comply with the
3 safe harbor notice provisions and other components of Rule 11, necessary to an award of
4 sanctions.

5 Moreover, the plan submitted included Plaintiff's written proposed changes to
6 defendants' draft, and represents that those changes are incorporated in the draft. Plaintiff
7 does not suggest that the plan does not reflect the draft he reviewed or that it failed to
8 faithfully incorporate his written change requests. He does argue that it failed to incorporate
9 changes the parties had verbally discussed

10 As to Plaintiff's complaint that the draft is unsigned by defense counsel, the Court
11 directs Plaintiff's attention to section II(C)((1) of the Court's Administrative Policies and
12 Procedures Manual for Electronic Case Filing, which directs registered users of the Court's
13 electronic case filing system to "sign" documents by appending their name "preceded by a
14 "s/". Local Civil Rule 5.5(g) provides that the "log-in and password required to submit
15 documents to the ECF System constitute the Registered User's signature on all electronic
16 documents filed with the Court for purposes of Rule 11 of the Federal Rules of Civil
17 Procedure." Thus, the Joint Discovery Plan was properly signed by defense counsel.

18 However, the Court notes that Defendants have utilized a similar device for Plaintiff,
19 who is not a registered user. Defendants' attention is directed to section II(C)((2) of the
20 manual, concerning the signatures of non-registered persons (scanned signature required),
21 and section II(c)(3) concerning documents with multiple signatures ("electronic signatures
22 of non-registered signatories are not permitted").

23 Accordingly, the Court will direct Defendants to resubmit the parties' Joint Discovery
24 Plan with correct signatures.

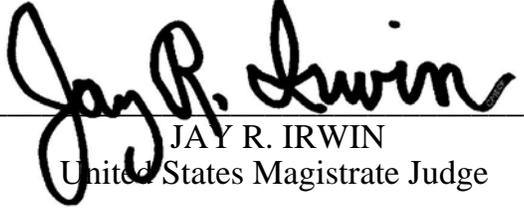
25 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Correct and Motion for
26 Sanctions, filed June 22, 2010 (Doc. 33) is **GRANTED** to the extent of the relief provided
27 herein.

28 **IT IS FURTHER ORDERED** that the Clerk of the Court shall amend the caption

1 of this case to “*Anibal Ortiz v. Donna Burnias, et al.*”

2 **IT IS FURTHER ORDERED** that within fourteen days of the filing of this Order,
3 Defendants shall submit a properly signed copy of the parties’ Joint Discovery Plan.

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5 DATED: July 20, 2010

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JAY R. IRWIN
United States Magistrate Judge

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