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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

NICOLAS MORAN,

Plaintiff,

v.

JOHN DOVEY, et al.,

Defendants.

CASE NO. 1:08-cv-00016-GBC (PC)

ORDER REGARDING PLAINTIFF’S  
OBJECTIONS TO PRETRIAL ORDER

PLAINTIFF’S REQUEST FOR  
APPOINTMENT OF AN EXPERT WITNESS  
IS DENIED (Doc. 129)

PLAINTIFF’S REQUEST FOR THE COURT  
TO RECOGNIZE A DIFFERENT “PEREZ”  
DEFENDANT IS DENIED (Doc. 129)

PLAINTIFF’S REQUEST TO ADD H. TYSON  
AS A DEFENDANT IS DENIED (Doc. 129)

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**I. Factual and Procedural Background**

Plaintiff Nicolas Moran ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's second amended complaint, filed on November 18, 2008. Doc. 20; Doc. 29; Doc. 30. On May 15, 2012, the Court issued a pretrial order. Doc. 123. On May 17, 2012, Defendants filed objections to the pretrial order. Doc. 124. On May 23, 2012, Plaintiff filed objections to the pretrial order. Doc. 129.

**II. Objections**

**a. Plaintiff’s Objection #1**

**1. Objection to denial of appointed expert witness**

Without further elaboration, Plaintiff states that he believes there are “extenuating

1 circumstances to justify appointment of an impartial expert witness.” Doc. 129 at 1.

2 **2. Court’s Ruling**

3 Plaintiff seeks the appointment of an expert witness to help him present his case. The Court  
4 has the discretion to appoint an expert and to apportion costs, including the apportionment of costs  
5 to one side. Fed. R. Evid. 706; *Ford ex rel. Ford v. Long Beach Unified School Dist.*, 291 F.3d  
6 1086, 1090 (9th Cir. 2002); *Walker v. American Home Shield Long Term Disability Plan*, 180 F.3d  
7 1065, 1071 (9th Cir. 1999).

8 In this case, the Court requires no special assistance in deciding the issues. *Ford ex rel. Ford*,  
9 291 F.3d at 1090; *Walker*, 180 F.3d at 1071. Further, where, as here, the cost would likely be  
10 apportioned to the government, the Court should exercise caution. The Court has a burgeoning  
11 docket of civil rights cases filed by prisoners proceeding pro se and in forma pauperis. The facts of  
12 this case are no more extraordinary and the legal issues involved no more complex than those found  
13 in the majority of the cases now pending before the Court. Accordingly, Plaintiff’s request for the  
14 appointment of an expert witness is denied.

15 **b. Plaintiff’s Objection #2**

16 **1. Objection to substituting “T. Perez” instead of “J. Perez”**

17 Without further argument, Plaintiff simply states that he “did not [request] for Defendant  
18 Perez’s name to be amended. Doc. 129 at 2.

19 **2. Court’s Ruling**

20 The Court interprets Plaintiff’s objection to refer to the fact that Plaintiff’s second amended  
21 complaint named “J. Perez” as a defendant and the Court found a cognizable claim against “J.  
22 Perez.” Doc. 20; Doc. 29; Doc. 30. However, after multiple attempts to identify and serve “J.  
23 Perez,” “T. Perez” answered the complaint on September 2, 2010. Doc. 85. Defendant T. Perez’s  
24 answer states: “Please note that the Answering Defendant, originally identified by Plaintiff as ‘J.  
25 Perez,’ was only recently identified by CDCR Officials after diligent efforts to identify this  
26 individual pursuant to the Court’s order.” Doc. 85 at 1 n.1. More than a year and a half has passed  
27 since Plaintiff was on notice of the name change in efforts to locate the correct defendant.

28 Plaintiff had ample opportunity during discovery to object to “T. Perez” being identified as

1 the correct “Perez” in this lawsuit, however, Plaintiff did not exercise due diligence in finding  
2 additional information during discovery that would support a amending the complaint and serving  
3 a different “Perez” pursuant to Rule 4(m) or Rule 15(c)(1)(C) of the Federal Rules of Civil  
4 Procedure.

5 Based on the foregoing, to the extent that Plaintiff is requesting that a different defendant be  
6 added to the case, such request for relief is DENIED. Further, if Plaintiff wishes to dismiss “T.  
7 Perez” from the action, such dismissal will apply for both “T. Perez” and “J. Perez” and the  
8 dismissal will be with prejudice.

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10 **c. Plaintiff’s Objection #3**

11 **1. Request to add Captain H. Tyson as a named defendant**

12 Plaintiff requests to add Captain H. Tyson as a defendant because Plaintiff had accidentally  
13 omitted this defendant from his second amended complaint. Doc. 129 at 2. Plaintiff proceeds to  
14 submit allegations in an attempt to state a claim against H. Tyson. Doc. 129 at 2.

15 **2. Court’s Ruling**

16 Plaintiff had ample opportunity to motion the Court to further amend his complaint to add  
17 an additional defendant. On February 5, 2009, the Court screened his second amended complaint  
18 and informed Plaintiff of what claims and defendants were listed. Plaintiff has had over three years  
19 to discover that he had mistakenly omitted a defendant from the second amended complaint.  
20 Plaintiff did not exercise due diligence in seeking permission from the Court to add H. Tyson to the  
21 complaint, nor did Plaintiff follow Rule 4(m) of the Federal Rules of Civil Procedure to ensure  
22 proper service on H. Tyson. Based on the foregoing, the Court DENIES Plaintiff’s request to add  
23 H. Tyson as a defendant to the case at this late stage of the proceedings.

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1 **III. Conclusion and Order**

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Plaintiff's request for the appointment of an expert witness is DENIED;
- 4 2. Plaintiff's request for "J. Perez" to be identified as different from "T. Perez" is
- 5 DENIED; and
- 6 3. Plaintiff's request to add H. Tyson as a defendant to the case is DENIED.

7

8 IT IS SO ORDERED.

9 Dated: May 31, 2012

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UNITED STATES MAGISTRATE JUDGE