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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE MANUEL PEREZ,

Plaintiff,

No. CIV S-06-2090 MCE GGH P

vs.

D.K. SISTO, et al.,

ORDER

Defendants.

_____ /

_____ Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. By Order, filed on 1/08/09, defendant Lozano was directed to show cause, within ten (10) days, why he should not be found to be in default in this case, having failed to file a response to the amended complaint although a waiver of service of process on this defendant’s behalf had been filed in February, 2008. In a timely response, defense counsel ascribes the omission entirely to himself, noting that the timing of the entry of this defendant’s request for representation in counsel’s case management software occurred after counsel had begun his responses on behalf of the other defendants, an oversight that occurred in part because of the large volume of cases handled by defense counsel. Attached to the show cause response is a proposed answer on behalf of defendant Lozano.

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1 The court will accept the belated answer on behalf of defendant Lozano, as it
2 appears that doing so will not significantly prejudice plaintiff, the failure was inadvertent, and no
3 scheduling order has yet issued in this case.

4 Accordingly, IT IS ORDERED that:

5 1. By a response filed on 1/20/09 (docket #31), defendant Lozano has discharged
6 the show cause order, filed on 1/08/09, included in docket # 30, and the court will not find this
7 defendant to be in default; and

8 2. Attached to defendant's response (# 31) is a proposed answer on behalf of
9 defendant Lozano which the court deems to be this defendant's answer, filed as of the date of this
10 order.

11 DATED: January 26, 2009

/s/ Gregory G. Hollows

GREGORY G. HOLLOWES
UNITED STATES MAGISTRATE JUDGE

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