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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 KJM GGH P

vs.

D.K. SISTO, et al.,

Defendants.

ADDENDUM TO PRETRIAL ORDER

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Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. §1983. Defendants, on September 1, 2011, filed timely objections to the August 25, 2011, Pretrial Order. The parties therein are required to exchange trial exhibits by mail twenty-one days in advance of the trial confirmation hearing (TCH) on November 30, 2011. Defendants object to the requirement that the following of their exhibits be included in the exchange by mail: Exhibit (Ex.) V - Six (6) color photographs taken of Facility 2 Yard; Ex. W. Diagram of Facility 2 Yard; Ex. BB. Video-taped interview of plaintiff on February 3, 2006. Instead of providing copies of these exhibits for plaintiff, defendants request that they be permitted to make these exhibits available for plaintiff's review prior to the TCH. Concerns about security serve as the basis for this objection. The undersigned finds that defendants' objection as to this point is legitimate, and plaintiff has filed no response to the objection. This objection will be sustained,

1 but defendants must provide plaintiff full access to these three exhibits for his review by no later  
2 than twenty-one days before the TCH, and they must provide plaintiff with full access to these  
3 exhibits at trial for his own use.

4 Defendants also object to the requirement that they produce an original exhibit at  
5 trial that is to become the court's property for purposes of the trial. Defendants appear to object  
6 to this instruction on grounds of burdensomeness, contending that compelling the use of originals  
7 at trial would necessitate numerous documents be "de-file[d]" from plaintiff's prison files by the  
8 custodian. Defendants request in the alternative that they be permitted to use certified copies of  
9 the exhibits at trial. Defendants also seek the trial judge's permission to use declarations from  
10 the custodian of records to authenticate plaintiff's prison records, averring that use of the  
11 originals would require the custodians of plaintiff's files to be present at trial. Defendants  
12 contend that plaintiff will have an ample opportunity to review any particular record in advance  
13 and raise any objection as to authenticity. Whether declarations by custodians of records are to  
14 be permitted or not, defendants would nevertheless still seek certified copies for trial purposes,  
15 asserting that plaintiff's prison files will be made available at trial should a question of  
16 authenticity arise as to a specific document.

17 The undersigned will partially sustain defendants' objection to the requirement  
18 that they produce an original exhibit that is to become the court's property for purposes of the  
19 trial. If a "duplicate" exhibit meets the requirement of Fed.R.Ev. 1003, and it is otherwise  
20 authenticated as such, it may be utilized. Defendants were informed in the Pretrial Order, that  
21 they may not proceed on the basis of a unilateral stipulation to authenticate records by way of  
22 declarations from custodians of record, but must seek the permission of the trial judge to proceed  
23 with declarations from custodians of record for purposes of authentication at trial. Defendants  
24 objection to the Pretrial Order on this point, to the extent defendants pose one, is inapposite and  
25 is hereby overruled.

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1 Plaintiff has, at docket # 97, in a filing dated September 12, 2011, filed and served  
2 a copy of Exhibits 1 through 4<sup>1</sup> which were identified as his proposed trial exhibits in the Pretrial  
3 Order; therefore, plaintiff has discharged his obligation to exchange his exhibit copies with  
4 defendants timely prior to the TCH. Plaintiff was generously permitted twenty-eight days to  
5 identify any additional witness besides the defendants, including any other inmate witness, he  
6 intended to call at trial. Plaintiff was cautioned that failure to do so would result in his being  
7 foreclosed from the testimony of other inmate witnesses. Plaintiff has failed to provide any  
8 additional witnesses so plaintiff is confined to those set forth in the Pretrial Order.

9 IT IS SO ORDERED.

10 DATED: September 28, 2011

11 /s/ Gregory G. Hollows  
12 UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> In the Pretrial Order, plaintiff's Exhibit 3 was identified as Declaration of defendant  
25 Cortez, dated October 5, 2009, and Exhibit 4, as Declaration of defendant Cantu, dated October  
26 5, 2009. Plaintiff has reversed the order of these two exhibits in his recent filing and has  
corrected the date of defendant Cantu's declaration to October 6, 2009; this modification,  
however, will not be regarded as significant.