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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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BRIAN DAWE; FLAT IRON  
10 MOUNTAIN ASSOCIATES, LLC,  
formerly known as FLAT  
11 IRON MOUNTAIN ASSOCIATES,  
a Partnership,

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Plaintiffs,

NO. CIV. S-07-1790 LKK/EFB

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v.

O R D E R

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CORRECTIONS USA, a California  
Corporation; CALIFORNIA  
16 CORRECTIONAL PEACE OFFICERS'  
ASSOCIATION, a California  
17 Corporation; JAMES BAIARDI,  
an individual; DONALD JOSEPH  
18 BAUMANN, an individual,

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Defendants.

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\_\_\_\_\_  
AND CONSOLIDATED ACTIONS &  
RELATED COUNTERCLAIMS

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The court issued a tentative pretrial order in the above-  
23 captioned matter on May 17, 2010 (Dkt. No. 296). Pursuant to that  
24 order, objections were to be filed within fourteen days. Because  
25 May 31 was a federal holiday, the last day to file objections was  
26 June 1, 2010.

1 Plaintiffs filed objections on May 31, 2010 (Dkt. No. 328).  
2 These objections list minor changes, seek to add omitted  
3 affirmative defenses to defendants' counterclaims, and reflects  
4 amendments to plaintiffs' witness and exhibit lists. Each of these  
5 changes is proper.

6 On June 1, 2010, defendants also filed timely objections (Dkt.  
7 No. 329). These objections seek to amend the witness, exhibit, and  
8 evidentiary issues lists. Per defendants' request, the court will  
9 amend the pretrial order to reflect that defendants have answered  
10 Harkins' fifth counterclaim and requested attorneys fees, and the  
11 court substitutes the list of defendants' motions in limine for  
12 defendants' disputed evidentiary issues. (Defs.' Objs. 2:5 -  
13 3:20). Defendants' initial objections also request bifurcation of  
14 trial. As noted by plaintiffs' response to these objections, the  
15 request to bifurcate trial was rejected during the pretrial  
16 conference, and the court does not revisit that decision here. As  
17 to defendants' particular requests regarding privileges, to the  
18 extent that these issues turn on questions of disputed fact, those  
19 facts must be submitted to the jury. Defendants had an opportunity  
20 in their summary judgment motion to argue that these questions did  
21 not turn on disputed facts, but defendants failed to meet that  
22 burden. Indeed, the court has already held that certain statements  
23 were not privileged. Order filed Feb. 24, 2010 at 23 (citing Order  
24 filed May 20, 2009, at 37 n.14). Finally, defendants made several  
25 requests regarding jury selection. Defendants' request to submit  
26 a jury questionnaire is denied. Defendants may submit proposed

1 voir dire as normal.

2 Defendants have submitted various further amendments to their  
3 exhibit and witness lists, and these amendments are in part  
4 untimely. Roughly twenty minutes after these objections were  
5 filed, defendants filed a document labeled "amended objections" in  
6 the court's electronic filing system. (Dkt. No. 330.) This  
7 document consists of a second amended exhibit list, without  
8 explanation as to how it differs from the first. Because the  
9 deadline for filing objections had not expired at the time this  
10 amendment was filed, the court accepts this list.

11 After the June 1st deadline, defendants filed:

12 \* on June 2, a "Notice of Errata" concerning their own  
13 objections (Dkt. No. 331), asking the court to use the  
14 second of the two exhibit lists filed on June 1,  
15 docketed as number 330.

16 \* on June 3, an "Amended Notice of Errata" (Dkt. No. 332),  
17 stating that "pages 6 through 65 [of the witness list  
18 filed on June 1] were filed in error" and should be  
19 disregarded, and again asking that the court use the  
20 exhibit list at Dkt. No. 330.

21 \* on June 7, a "Reply to Objections" which apparently  
22 replies to defendants' own objections (Dkt. No. 333),  
23 which asks the court to use "second amended exhibit  
24 list" filed at Dkt. No. 334--the third exhibit list to  
25 be filed since the tentative order.

26 \* on June 8, a "Second Amended Notice of Errata"  
containing an amended witness list (Dkt. Nos. 339-40).

In none of these filings do defendants indicate that anything other  
than their own carelessness prevented them from filing proper  
documents within the time provided by the tentative pretrial order.  
Accordingly, the court disregards the witness list filed on June  
8 and the exhibit list filed on June 7. The final pretrial order

1 will use pages 1-5 of the witness list defendants filed on June 1,  
2 2010 (Dkt. No. 329-2) and the second exhibit list filed on that  
3 date (Dkt. No. 330).

4 Finally, both parties have requested additional time in which  
5 to prepare objections to the exhibits. The court grants the  
6 parties until Monday, June 21, 2010 to file objections to the  
7 exhibits.

8 IT IS SO ORDERED.

9 DATED: June 14, 2010.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT