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

ARTHUR CARR,

Plaintiff,

No. 2:09-cv-0826 GEB KJN P

vs.

H. HER, et al.,

Defendants.

ORDER AND SUPPLEMENTAL
PRETRIAL ORDER IDENTIFYING
PLAINTIFF’S TRIAL EXHIBITS

_____ /

On November 20, 2012, the undersigned issued the pretrial order. On February 25, 2013, plaintiff filed an untimely motion for modification of the pretrial order, and a motion for reconsideration of the pretrial order, claiming that he inadvertently omitted exhibits from the exhibit list contained in the pretrial order. Defendants did not oppose the motions.

At the January 14, 2013 trial confirmation hearing, jury trial was continued to July 9, 2013. This case is presently set for settlement conference on June 13, 2013.

By order filed March 26, 2013, plaintiff was directed to submit a complete exhibit list within thirty days, and defendants were granted seven days thereafter to file an opposition, if any, to plaintiff’s motion to amend his exhibit list. On April 29, 2013, plaintiff filed his exhibit list; seven days have now passed, and defendants have not filed an opposition.

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1 A pretrial order “may be modified only for good cause.” Fed. R. Civ. P. 16(b).
2 The district court may modify the pretrial schedule “if it cannot reasonably be met despite the
3 diligence of the party seeking the extension.” Johnson v. Mammoth Recreations, Inc., 975 F.2d
4 604, 609 (9th Cir. 1992) (quoting Fed. R. Civ. P. 16, advisory committee's notes (1983
5 amendment)). The “good cause” standard set forth in Rule 16 primarily focuses upon the
6 diligence of the party requesting the amendment. Id. “Although the existence or degree of
7 prejudice to the party opposing the modification might supply additional reasons to deny a
8 motion, the focus of the inquiry is upon the moving party's reasons for seeking modification.” Id.

9 It appears that shortly after the trial confirmation hearing, plaintiff realized he had
10 inadvertently omitted key exhibits during the exhibit exchange, and that other documents were
11 not included in the court’s pretrial order. Plaintiff avers that copies of the newly submitted
12 exhibits have been provided to counsel for defendants.

13 Good cause appearing, plaintiff’s motion to amend the pretrial order is granted.
14 Plaintiff’s exhibit list and discovery documents identified in the November 20, 2012 pretrial
15 order (dkt. no. 194 at 6-8 & 9-11) are amended to reflect the list of trial exhibits submitted by
16 plaintiff on April 29, 2013 (dkt. no. 220). The Clerk of the Court is directed to attach to this
17 order the following pages from plaintiff’s April 29, 2013 filing (dkt. no. 220): pages 2, 3, 5 & 6.
18 These pages identify the exhibits and discovery documents plaintiff seeks to admit at trial.

19 Accordingly, IT IS HEREBY ORDERED that:

20 1. Plaintiff’s motions to amend the pretrial order (dkt. nos. 212 & 213) are
21 granted;

22 2. The Clerk of the Court is directed to attach to this order the following pages
23 from plaintiff’s April 29, 2013 filing (dkt. no. 220), pages 2, 3, 5 & 6; and

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3. The documents appended to this order identify the exhibits and discovery documents plaintiff seeks to admit at trial.

DATED: May 13, 2013


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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