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

JAMES M. MILLIKEN,

Plaintiff,

No. 2:10-cv-1412 WBS JFM (PC)

vs.

D. LIGHTFIELD, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has filed a motion for permission to communicate with two potential inmate witnesses, William Sylvester and Sergio Soto. Plaintiff seeks to obtain declarations from these inmates and to determine whether they are willing to testify for plaintiff at trial.

Defendants have filed an opposition to the motion. Defendants represent that they have no opposition to plaintiff communicating with either inmate about facts relevant to this action.

Defendants also represent that there are prison regulations which govern inmate correspondence so court permission is not necessary, and that they oppose plaintiff's request for a court order preventing initiation of a gang validation process against plaintiff, again citing to controlling prison regulations.

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1 After review of plaintiff's motion and defendants' opposition, and good cause
2 appearing, plaintiff's motion will be construed as a request to take the depositions of these
3 witnesses by written questions and, so construed, will be granted.

4 If plaintiff chooses to proceed in this manner he may submit a list of questions for
5 inmate William Sylvester and a list of questions for inmate Sergio Soto to this court, with
6 appropriate copies served on defendants, within thirty days from the date of this order.

7 Defendants will then have thirty days in which to object to any questions, and to submit
8 questions of their own. Plaintiff may object to proposed cross-examination questions within the
9 next fourteen days. When the questions have been determined, the court will forward all
10 permissible questions to the deponents. The deponents shall write out answers to the questions
11 on the forms provided by plaintiff, swear to their truthfulness by verification, and return them to
12 the court. The clerk of the court will then forward copies of the answers to the parties. Counsel
13 for defendants are ordered to provide such assistance as is required within and without the
14 prisons to effectuate this order. If redirect and recross-examination questions are desired by
15 either party under Fed. R. Civ. P. 31(a), the party shall notify the court forthwith and provision
16 will be made therefor.

17 In view of the above, IT IS HEREBY ORDERED that:

18 1. Plaintiff's August 26, 2011 motion is construed as a motion for leave to take
19 depositions by written questions and, so construed, is granted;

20 2. Plaintiff may submit written questions for direct examination of inmates
21 William Sylvester and Sergio Soto, with adequate space provided for answers, within thirty days;

22 3. Defendants may object to the proposed direct questions and submit proposed
23 written questions for cross-examination within the next thirty days;

24 4. Plaintiff may file objections to proposed cross-examination questions within
25 the next fourteen days;

26 ////

1 5. Upon determination of permissible questions by the court, the Clerk shall
2 forward copies of the questions, as appropriate, to inmates Sylvester and Soto;

3 6. Upon receipt of the questions, inmates Sylvester and Soto shall write out their
4 answers in the form provided by plaintiff and return them to the court no later than fourteen days
5 after service by the Clerk;

6 7. Upon receipt of the answers, the Clerk shall serve the parties with copies of the
7 answers; and

8 8. The parties shall inform the court forthwith whether they wish to depose
9 inmates Sylvester and Soto further by redirect and/or recross-examination questions. Upon such
10 notification the court will make provision for further questioning.

11 DATED: September 30, 2011.

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14 UNITED STATES MAGISTRATE JUDGE

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