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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ERIC MARTIN,

Plaintiff,

v.

DAVID WINETT, et al.,

Defendants.

CASE NO. 1:04-cv-05358-LJO-BAM PC

ORDER DENYING PLAINTIFF’S MOTION TO  
COMPEL AS UNTIMELY

(ECF No. 132)

Plaintiff Eric Martin (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The discovery and scheduling order in this action issued on January 6, 2011, setting the discovery cut-off date of September 6, 2011. (ECF No. 122.) Plaintiff filed a motion to compel on September 30, 2011.<sup>1</sup> (ECF No. 132.)

Plaintiff brings this motion because Defendants “bearly [sic] responded” to his interrogatories and have notified him that they are not going to respond to his requests for admissions and production of documents. (Motion to Compel 2.) Plaintiff served his request for admissions and request for production of documents on August 28, 2011. (Id. at 3.) In the discovery and scheduling order the parties were advised that all discovery requests must be served at least forty five days before the discovery deadline. (Discovery and Scheduling Order 1:23-24.) Additionally the parties were informed that all discovery, including the filing of motions to compel, must be completed by September 6, 2011. (Id. at 2:15-16.)

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<sup>1</sup>A review of the motion to compel shows that it was prepared on September 19, 2011.

1 Although Plaintiff states that he attempted to serve the discovery requests on August 15,  
2 2011, and was unable to because the prison copy machine was unavailable, the requests were  
3 untimely on that date. On May 3 and June 16, 2011, Plaintiff filed a motion for an extension of time  
4 to serve responses to Defendants discovery requests which was granted. Plaintiff's argument that  
5 the discovery cut-off date was amended due to the granting of these motions is incorrect. Plaintiff  
6 did not make a motion to amend the scheduling order and the motions he submitted clearly dealt with  
7 his responses to Defendants' discovery requests and did not address an extension of time for Plaintiff  
8 to propound discovery. Plaintiff's request for admissions and production of documents, served less  
9 than two weeks prior to the discovery cut-off date, were untimely, and Defendants were not required  
10 to respond to these discovery requests.

11 Plaintiff moves to compel additional responses to his request for interrogatories propounded  
12 March 23, 2011.<sup>2</sup> To be timely, Plaintiff's motion to compel additional responses to the  
13 interrogatories had to be filed prior to September 6, 2011.

14 Accordingly, it is HEREBY ORDERED that Plaintiff's motion to compel, filed September  
15 30, 2011, is DENIED as untimely.

16 IT IS SO ORDERED.

17 **Dated: October 17, 2011**

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>2</sup>The Court notes that on June 8, 2011, the Court granted Defendants motion for an extension of time to file  
28 a response to Plaintiff's interrogatories. (ECF No. 129.) Defendants responses were due within thirty days giving  
Plaintiff approximately two months to bring this motion to compel.