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

JOHN R. MARTINEZ,  
Plaintiff,

CASE NO. 1:04-cv-6469 LJO DLB PC

vs.

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, AND DENYING IN  
PART AND GRANTING IN PART  
DEFENDANTS' MOTION TO DISMISS ACTION  
AS SANCTION, OR IN THE ALTERNATIVE,  
MOTION TO COMPEL PLAINTIFF'S  
DEPOSITION

M. D. LUNES et al.,  
Defendants.

(Doc. 42)

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Plaintiff John R. Martinez, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On November 24, 2008, the Magistrate Judge filed a [Findings and Recommendations](#) herein which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within twenty days. The parties have not filed timely objections to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The [Findings and Recommendations](#), filed November 24, 2008, is adopted in full;
2. Defendants' motion for dismissal of this action pursuant to F.R.C.P. 37(d) is DENIED without prejudice. Rather, Plaintiff is compelled to appear at a deposition and be deposed, at a date noticed by defense counsel, provided that notice is served in compliance with this Court's Discovery Order and Scheduling Order;
3. The discovery deadline is EXTENDED to thirty (30) days from the date of service of this Order to allow for plaintiff's deposition; and
4. Plaintiff is ordered to pay sanctions in the amount \$301.35, representing the reasonable expenses incurred by defendants as a result of plaintiff's failure to take a deposition. This payment shall be deducted from plaintiff's damages award if he prevails at trial, or assessed as part of defendants' costs if they prevail at trial.

IT IS SO ORDERED.

**Dated: January 7, 2009**

**/s/ Lawrence J. O'Neill**  
**UNITED STATES DISTRICT JUDGE**