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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MICHAEL IOANE, et al.,)	
)	Case No. 1:07-cv-00620-AWI-GSA
Plaintiffs,)	
)	ORDER DENYING PLAINTIFF’S
v.)	MOTION FOR ORDER DEEMING
)	MATTERS ADMITTED
KENT SPJUTE, et al.,)	
)	(ECF No. 212)
Defendants.)	
)	

Plaintiffs Michael and Shelly Ioane are a married couple involved in tax disputes with the United States. Current defendants are Jean Nole, Jeff Hodges, and Brian Applegate, federal agents who assisted in searching Plaintiffs’ residence in 2006 (“Defendants”). Mr. Ioane was convicted of tax fraud conspiracy on October 3, 2011 as a result, in part, of evidence that was obtained during the search. On March 10, 2014, Plaintiff Michael Ioane filed a Motion requesting the Court to deem requests for admissions admitted. (ECF No. 212.) Defendants oppose this Motion. (ECF No. 216.) The Court has reviewed the papers and determined that this matter is suitable for decision without oral argument pursuant to Local Rule 230(1). Based on a review of the pleadings, Plaintiff’s motion is DENIED.

1 Federal Rule of Civil Procedure 36 provides that “[a] party may serve on any other party
2 a written request to admit, for purposes of the pending action only, the truth of any matter within
3 the scope of Rule 26(b)(1) relating to: (A) facts, the application of law to fact, or opinions about
4 either; and (B) the genuineness of any described documents.” If the responding party fails to
5 serve a written answer or objection within thirty days “after being served,” the matter is deemed
6 admitted. Fed. R. Civ. P. 36(a)(3). A matter that is admitted is “conclusively established unless
7 the court on motion permits withdrawal or amendment of the admission.” *Switchmusic.com, Inc.*
8 *v. U.S. Music Corp.*, 416 F.Supp.2d 812, 817 (C.D. Cal. 2006) (“The 30 day time period for
9 responding to requests for admission begins to run on the date on which the requests were
10 delivered ‘to the agency designated to make delivery,’ and not on the date the answering party
11 receives them”).

12 Plaintiff served the twenty-four requests for admissions at issue on January 27, 2014 and
13 Defendants received those requests on February 3, 2014. On February 26, 2014, Defendants
14 served responses to the requests for admissions on Plaintiff. Plaintiff alleges that he did not
15 receive any response to the requests as of March 6, 2014. (Motion 2, ECF No. 212.) However, he
16 appears to have received them by March 10, 2014; the responses are attached as exhibits to a
17 different discovery motion filed shortly thereafter. (Motion to Compel Interrogatories Exhs. A-E,
18 ECF No. 213.) Moreover, Rule 36 only requires that responses be “served” within thirty days,
19 not that they be received within that period.¹ Defendants’ responses were thus timely and no
20 matters will be deemed admitted because of any failure to respond.

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22 ¹ Defendants would also have received an additional three days to respond, assuming service was accomplished via
23 U.S. mail. Fed. R. Civ. P. 6(d).

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Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Deem Admissions
Admitted (ECF No. 212) is DENIED.

IT IS SO ORDERED.

Dated: April 23, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE