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**NOT FOR PUBLICATION**

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IN THE UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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Donnie R. Phillips,

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No. 1:08-CV-1388-FJM

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Plaintiff,

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**ORDER**

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vs.

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Timothy Turmezei, et al.,

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Defendants.

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The court has before it plaintiff's "Motion for an Order Compelling Discovery" (doc. 51), and defendants' response (doc. 56).

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Plaintiff requests that we require defendant Murphy to respond to plaintiff's interrogatories, requests for admissions, and requests for production of documents made on September 19, 2010. Plaintiff also seems to request that we impose discovery sanctions on defendants for failing to respond. Defendants oppose the motion, arguing that it is untimely under the court's Rule 16 Scheduling Order and that plaintiff failed to comply with Rule 37(a)(1), Fed. R. Civ. P.

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On October 8, 2010, we granted defendants' request to modify the Scheduling Order to accommodate the late arrival of defendant Murphy (doc. 49). In our order, we stated that defendant Murphy shall have until October 30, 2010 to conduct discovery and that "all parties shall have until October 30, 2010 to comply with ¶ 6 of the Scheduling Order." Id.

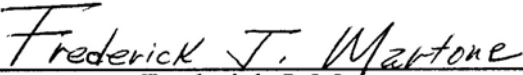
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1 Paragraph 6 of the Scheduling Order deals specifically with discovery deadlines (doc. 35).  
2 Therefore, pursuant to our order we granted an extension until October 30, 2010 to all  
3 parties, including plaintiff, to conduct discovery. Accordingly, plaintiff's requests made on  
4 September 19, 2010 were timely.

5 Defendants also cite plaintiff's failure to comply with Rule 37(a)(1), Fed. R. Civ. P.  
6 as a basis for denying this motion. Rule 37(a)(1), Fed. R. Civ. P. prohibits filing discovery  
7 motions unless parties have conferred in good faith and attempted to resolve the dispute.  
8 Defendants argue that plaintiff failed to include a certification in his motion indicating that  
9 he complied with this requirement and in fact, he has not contacted defendants to discuss  
10 discovery. However, with his motion, plaintiff submitted two emails from defendants'  
11 attorney refusing his requests (doc. 51, exs. 1 and 2). Because plaintiff is proceeding pro se,  
12 we find this sufficient.

13 Therefore, we GRANT in part plaintiff's "Motion for an Order Compelling Discovery"  
14 of certain requests made September 19, 2010 on defendant Murphy (doc. 51). It is  
15 FURTHER ORDERED DENYING in part plaintiff's request for discovery sanctions as, in  
16 our discretion, we do not find sanctions are warranted (doc. 51).

17 DATED this 20<sup>th</sup> day of December, 2010.

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21 Frederick J. Martone  
22 United States District Judge  
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