

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

PATRICK OTIS NELSON,

Plaintiff,

vs.

CIV S-09-0308 KJM CKD P

MURPHY,

Defendant.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel in an action under 42 U.S.C. § 1983. He has filed a motion to reschedule discovery, effectively seeking an extension of the discovery period. Defendant has filed a motion seeking an extension of time in which to file a pretrial statement.

Plaintiff states that additional time for discovery is necessary because he has not received defendant's responses to his discovery requests. Defendant opposes the motion on the ground that the discovery requests were untimely. Defendant points out that the court's discovery and scheduling order required that all discovery requests would be served no later than sixty days before the discovery deadline, which in this case was February 4, 2010. See Scheduling Order at 5 (Docket No. 26). Although it is not entirely clear from the motion, it appears plaintiff served his requests sometime in January 2011. See Motion at 3 (Docket No. 38). Defendants refused to respond to the requests because they were served well after the sixty-

1 day cut-off set by the scheduling order. Id. He served his request to extend the discovery period  
2 on February 10, 2011, but it was not filed until March 1.

3           Given the nature of plaintiff's request and defendants' reason for refusing to  
4 answer them, the court construes plaintiff's motion as one to compel defendants to respond to his  
5 discovery requests. Fed. R. Civ. P. 37(a). Under the current scheduling order, any motion to  
6 compel discovery should have been filed by February 4, 2011.

7           Plaintiff has not given the court good cause to compel defendant to respond to his  
8 discovery requests. The court accepts plaintiff's explanation that plaintiff's assignment to  
9 administrative segregation restricted his access to his legal materials and the prison law library.  
10 However, by plaintiff's own account, he could have sought an extension of the discovery  
11 deadline well before it expired. His motion makes it clear that by mid-December 2010, he was  
12 out of administrative segregation and had enough access to his materials to prosecute this case.  
13 See Motion at 3. In fact, on December 27, 2010, plaintiff filed a motion for an extension of time  
14 in which to answer defendant's discovery requests, which the court granted. See Docket Nos. 33  
15 and 36. Plaintiff has made no showing why he could not have requested an extension for  
16 propounding his own requests at the same time. Therefore his motion will be denied.<sup>1</sup>

17           The scheduling order also requires plaintiff to have filed his pretrial statement no  
18 later than July 29, 2011. He has not yet done so. On that basis, defendant seeks leave to file her  
19 pretrial statement fourteen days after plaintiff files his, and not on or before August 12, as  
20 required in the scheduling order.

21           Good cause appearing, defendant's motion will be granted. Plaintiff will have an  
22 additional thirty days in which to file his pretrial statement. Once plaintiff serves his pretrial  
23 statement, defendant will have fourteen days to file hers.

---

24  
25 <sup>1</sup> Fed. R. Civ. P 37(a)(5)(B) allows for the imposition of sanctions, in the form of  
26 reasonable expenses, against a party for bringing an unsuccessful motion to compel. Here,  
though, the court finds that plaintiff was substantially justified in bringing his motion, such that  
no award of expenses is warranted under the Rule.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to reschedule discovery (Docket No. 38) is denied.
2. Defendant's motion for an extension of time in which to file her pretrial statement (Docket No. 42) is granted.
3. Plaintiff has thirty days from the date of this order in which to file a pretrial statement. Defendant shall file her pretrial statement no later than fourteen days after plaintiff serves his pretrial statement.

Dated: August 11, 2011

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

<sup>3</sup>  
murp0308.ord