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

BRIAN DARNELL EDWARDS,

Plaintiff,

No. 2: 10-cv-3461 WBS KJN P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

ORDER

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Pending before the court are plaintiff's motions to compel. (Dkt. Nos. 40, 41.)

For the following reasons, plaintiff's motions are denied as untimely.

In their opposition, defendants argue that plaintiff's motions to compel are untimely. The September 15, 2011 scheduling order provides that all motions to compel are to be filed by December 30, 2011. (Dkt. No. 29 at 6.)

As a prisoner proceeding without counsel, petitioner receives the benefit of the prisoner mailbox rule, which deems the motions to compel filed when he gives them to prison officials to mail to the court. See Stillman v. LaMarque, 319 F.3d 1199, 1201 (9th Cir. 2003.) One of plaintiff's motions to compel contains a proof of service indicating that plaintiff gave this

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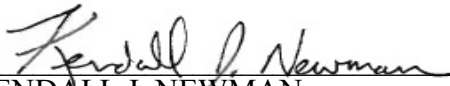
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1 motion to compel to prison officials to mail to the court on January 2, 2012.<sup>1</sup> (Dkt. No. 40 at 36.)  
2 Plaintiff's other motion to compel does not contain a proof of service. However, both motions  
3 were signed by plaintiff on December 30, 2011. Based on these circumstances, the undersigned  
4 finds that plaintiff's motion to compel that does not contain a proof of service must also have  
5 been given to prison officials for mailing on January 2, 2012. Plaintiff did not file a reply to  
6 defendants' opposition arguing otherwise.

7 Plaintiff's motions to compel are untimely because they were not filed before the  
8 discovery cut-off date.

9 Accordingly, IT IS HEREBY ORDERED that plaintiff's motions to compel (Dkt.  
10 Nos. 40 and 41) are denied.

11 DATED: March 6, 2012

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14 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> The motions to compel are court stamp filed January 9, 2012.