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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Kevin A Osborn,
Plaintiff
-vs-
Ivan Bartos, et al.,
Defendants

CV-08-2193-PHX-ROS (JRI)

ORDER

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Under consideration is Plaintiff's Motion to Compel Discovery, filed June 3, 2010 (Doc. 161). Plaintiff seeks an order compelling responses to a variety of discovery, alleging either that Defendants' objections to the requests were waived by failing to timely respond, the objections were baseless, or the responses inadequate.

Defendants have responded (Doc. 183) arguing that the objections were not waived by late responses, or that the lateness should be excused, or that the Court should *sua sponte* limit the discovery. Defendants also argue the merits of their various objections.

Plaintiff replies (Doc. 186) that the Defendants miscalculate which responses were delinquent, and that the objections are without merit.

1. BACKGROUND

Nature of Case - Plaintiff's original Complaint (Doc. 4) asserted eight counts, and on screening Counts 5 and 6 were dismissed. (Order 12/5/08, Doc. 9.) Plaintiff filed a Motion to Amend (Doc. 38), seeking to file his First Amended Complaint, which reasserted the surviving counts, reworked the dismissed counts, and added four new counts. The motion to amend was granted. (*See* Order 6/22/09, Doc. 67.)

Plaintiff's First Amended Complaint, filed July 2, 2009, asserts twelve claims:

- (1) Plaintiffs Eighth Amendment rights were violated when Defendant Ramos

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- refused to recommend Plaintiff for protective segregation status;
- (2) Plaintiff's Eighth Amendment rights were violated when Defendant Palossari refused to recommend Plaintiff for protective segregation status;
- (3) Plaintiff's Eighth Amendment rights were violated when Defendant Haley denied Plaintiff's request for protective segregation status;
- (4) Plaintiff's Eighth Amendment rights were violated when Defendant Bartos denied Plaintiff's appeal of the denial of protective segregation status;
- (5) Plaintiff's Eighth Amendment rights were violated through deliberate indifference to Plaintiff's safety as a result of ADOC officers telling other inmates that Plaintiff was an undercover FBI agent tasked to watch an inmate with prison gang and mafia ties, a sex offender, a rapist, a child molester, a child killer, etc.
- (6) Plaintiff's Eighth Amendment rights were violated through deliberate indifference to Plaintiff's safety, when ADOC officers Marten and Kohl identified Plaintiff as a protective custody inmate, confidential informant, undercover police officer, or the cause of various searches and yard closures.
- (7) Plaintiff's Eighth Amendment rights were violated when, over a period of three months, Defendants Does refused to provide him with medical treatment for staph infection, despite Plaintiff's numerous requests; and
- (8) Defendants Markley and Schriro formed a policy or custom of routinely denying requests for protective segregation status without regard to the risks to individual inmates.
- (9) Plaintiff's Eighth Amendment rights were violated through deliberate indifference to Plaintiff's need for basic human necessities when Defendant Kauffman and other unknown defendants denied Plaintiff warmth, laundry, recreation, showers, lighting, etc.
- (10) Plaintiff's First Amendment rights were denied because the conduct complained of in Counts I through IX was motivated by a desire to retaliate

1 against Plaintiff for making complaints.

2 (11) The actions complained of in Counts 1 through 10 constitute a denial of
3 substantive due process.

4 (12) Plaintiff's Eighth Amendment rights were violated because the actions
5 complained of in Counts 1 through 10 were conducted with the purpose of
6 causing him harm.

7 Answers have been filed by Defendants Bartos, Ramos, Palossari, Haley, Markley,
8 Schriro, Marten, Cole ("Kohl"), Kaufman, and Cardenas.

9 **Discovery Requests & Disputes** - Plaintiff has propounded a Request for Production
10 on defendants generally, and a series of discovery on Defendants Ramos, Bartos, Palossari,
11 Markley, Kaufman and Cardenas, including Requests for Production, Non-uniform
12 Interrogatories, and Requests for Admission.

13 Plaintiff provided notice of disputes among the parties that had not been resolved after
14 consultation, and the parties conducted a telephonic conference with the Court about the
15 disputed discovery on April 23, 2010. (M.E. 4/23/10, Doc. 144.) As a result of that
16 conference, Defendants were given a deadline to provide various proposed supplements, and
17 Plaintiff was given permission thereafter to file his motion to compel.

18 **Delinquent Responses** - Plaintiff asserts that a series of responses were served after
19 the deadline, and thus any objections are waived. Defendants concede that the responses to
20 eight sets of discovery were served late, and that at least four have had no response at all.¹
21 (Response, Doc. 183 at 6.)

22 Timely responses are critical to preservation of a party's objections to interrogatories
23 and requests for admissions. Federal Rule of Civil Procedure 33(b)(2) provides that a
24 "responding party must serve its answer and objections within 30 days after being served

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26 ¹ Defendants nonetheless contend that "[r]esponses have been served to *all* discovery
27 requests" (*id.* at 10). No evidence of service of responses to interrogatories to Defendan
28 Palossari has been provided. Defendants reference their Paragraph 15 for the proposition that
various responses are only "arguably late" (*id.* at 11), but the referenced paragraph simply
discusses Plaintiff's motion to supplement the complaint (*id.* at 5).

1 with the interrogatories.” Rule 33(b)(4) specifically provides that any ground for objection
2 “not stated in a timely objection is waived, unless the court, for good cause, excuses the
3 failure.” Rule 36(a)(3) provides that a “matter is admitted unless, within 30 days after being
4 served, the party to whom the request is directed served on the requesting party a written
5 answer or objection addressed to the matter.”

6 No waiver is provided for with regard to requests for production. Rather, Rule
7 34(b)(2)(A) simply requires a response, including objections, be served “within 30 days after
8 being served.”

9 Defendants argue that only two responses were late. The record reflects a vastly
10 different story.

11 1st RFP - Plaintiff’s first Request for Production was served by mail on April 3, 2009.
12 (Not. Serv. 4/5/09, Doc. 47.) Under Rules 34(b)(2) and 6(d), Defendants had a total of 33
13 days to respond, making their response due May 6, 2009. Defendants’ response was served
14 May 11, 2009. (Not.Serv. Doc. 59) Thus, Defendants’ response was some five days
15 **delinquent**.

16 Ramos RFA - Plaintiff’s first Request for Admissions on Defendant Ramos was
17 served by mail on April 27, 2009. (Not. Serv. 4/30/09, Doc. 55.) Under Rules 36(a)(3) and
18 6(d), Defendants had 30 plus an additional 3 days to serve responses, making them due by
19 June 1, 2009. Defendants did not serve their responses until June 2, 2009. (Not.Serv. 6/8/9,
20 Doc. 64.) Thus, Defendants’ response was one day **delinquent**.

21 Ramos NUIs - Plaintiff’s first set of interrogatories on Defendant Ramos was served
22 by mail on May 5, 2009. (Not. Serv. 5/07/09, Doc. 57.) Under Rules 33(b)(2), 33(b)(4), and
23 6(d), Defendants had 30 plus an additional 3 days to serve responses, making them due by
24 June 8, 2009. Defendants served their responses on June 4, 2009. (Not. Serv. 6/8/9, Doc.
25 64.) Thus, Defendants’ response was **timely**.

26 Bartos RFP, NUI, RFA - Plaintiff’s Request for Production, Interrogatories, and
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1 Request for Production on Defendant Bartos were served by mail on June 20, 2009.²
2 (Motion, Doc. 161 at 5; Response, Doc. 183 at 6.) Under the rules, Defendants had a total
3 of 33 days to respond, making their responses due July 23, 2009. According to Defendants,
4 their responses were not served until July 13, 2010 (RFP), August 11, 2009 (RFA), and
5 February 10, 2010 (NUI), respectively. (Response, Doc. 183 at 6.) Thus, Defendants'
6 responses were some 355, 19, and 202 days **delinquent**.

7 Palossari RFP, RFA NUI - Plaintiff's Request for Production, Interrogatories, and
8 Request for Production on Defendant Palossari were served by mail on August 18, 2009.³
9 (Motion, Doc. 161 at 5; Response, Doc. 183 at 6.) Under the rules, Defendants had a total
10 of 33 days to respond, making their responses due Monday, September 21, 2009.
11 Defendant's responses to the Requests for Admissions were not served until September 22,
12 2009 (Not.Serv. 9/28/09, Doc. 93). Defendant's responses to Requests for Production were
13 not served until July 21, 2010, as attachments to the response to the motion to compel.⁴
14 (Response, Doc. 183 at Exhibit L.) Defendant has yet to respond to the Interrogatories.
15 (Response, Doc. 183 at 6.) Thus, Defendants' responses were or are all **delinquent**.

16 Markley RFP, RFA, NUI - Plaintiff's Request for Production, Interrogatories, and
17 Request for Production on Defendant Markley were served by mail on September 16, 2009.⁵
18 (Motion, Doc. 161 at 5; Response, Doc. 183 at 6.) Under the rules, Defendants had a total
19 of 33 days to respond, making their responses due October 19, 2009. Defendant's responses
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21 ² The Notice of Service filed by Plaintiff reflects service on June 18, 2009. (Not.
22 Serv. 6/23/09, Doc. 69.) The Court relies upon the more liberal date agreed upon by the
23 parties.

24 ³ The Notice of Service filed by Plaintiff reflects service on August 17, 2009. (Not.
25 Serv. 8/20/09, Doc. 86.) The Court relies upon the more liberal date agreed upon by the
26 parties.

26 ⁴ No notice of service of these responses has been filed.

27 ⁵ The Notice of Service filed by Plaintiff reflects service on September 15, 2009.
28 (Not. Serv. 9/18/09, Doc. 92.) The Court relies upon the more liberal date agreed upon by
the parties.

1 to the Requests for Admissions were served September 22, 2009 (Not.Serv. 9/28/09, Doc.
2 93) and were timely. His responses to Request for Production and Interrogatories were not
3 served until July 21, 2010, as attachments to the response to the motion to compel.⁶
4 (Response, Doc. 183 at Exhibit L.) Thus, Defendants' responses to the Requests for
5 Admission were **timely** but responses to the balance are all **delinquent**.

6 Kaufman RFP, RFA, NUI - Plaintiff's Request for Production, Interrogatories, and
7 Request for Production on Defendant Kaufman were served by mail on March 4, 2010.
8 (Motion, Doc. 161 at 5; Response, Doc. 183 at 6; Not. Serv. 3/9/10, Doc. 130.) Under the
9 rules, Defendants had a total of 33 days to respond, making their responses due April 8,
10 2010. According to Defendants, their responses were not served until April 12, 2010, April
11 12, 2010, and April 13, 2010, respectively. (Response, Doc. 183 at 6.) Thus, Defendants'
12 responses were some 4 or 5 days **delinquent**.

13 Cardenas RFP, NUI - Plaintiff's Request for Production, and Interrogatories on
14 Defendant Cardenas were served by mail on March 14, 2010.⁷ (Motion, Doc. 161 at 5;
15 Response, Doc. 183 at 6; Not. Serv. 3/16/10, Doc. 132.) Under the rules, Defendants had a
16 total of 33 days to respond, making their responses due April 16, 2010. According to
17 Defendants, their responses were served April 12, 2010. (Response, Doc. 183 at 6.) Thus,
18 Defendants' responses were **timely**.

19 Summary - Thus, with the exception of the Interrogatories to Ramos, the Requests for
20 Admissions to Markley, and the discovery to Cardenas, Defendants' responses to all other
21 of these discovery requests were delinquent. Thus, under the rules, any objections asserted
22 in the delinquent responses to interrogatories and requests for admission were waived,
23 including those in the Requests for Admission to Defendants Ramos, Bartos, Palossari, and
24 Kauffman, and the Interrogatories to Defendants Bartos, Palossari, Markley, and Kaufman.

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26 ⁶ No notice of service of these responses has been filed.

27 ⁷ The Notice of Service filed by Plaintiff reflects service on June 18, 2009. (Not.
28 Serv. 6/23/09, Doc. 69.) The Court relies upon the more liberal date agreed upon by the
parties.

1 In addition, responses to the Requests for Production to Defendants generally and to
2 Defendants Bartos, Palossari, Markley and Kaufmann were or are delinquent.

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4 **2. WAIVER OF OBJECTIONS BY DELINQUENT RESPONSES**

5 Defendants argue that the matter is moot because the responses were filed prior to the
6 motion to compel. While the service of responses in relation to a motion to compel is
7 relevant to an award of expenses, *see* Fed. R. Civ. P. 37(a)(5), it does not automatically moot
8 a motion to compel, especially one based upon a failure to provide timely objections. If
9 service of responses prior to a motion to compel were all that was required to avoid a waiver,
10 then the deadlines in Rules 33, 34, and 36 would be all but meaningless.

11 **Delinquent Responses to Interrogatories** - Responses to Interrogatories to
12 Defendants Bartos, Palossari, Markley, and Kaufman were delinquent. Rule 33(b)(4)
13 authorizes the Court to excuse a delinquent objection to interrogatories “for good cause.”⁸
14 As good cause for the delinquencies, Defendants assert a number of circumstances
15 concerning the discovery requests in this case.

16 Defendants argue that the Court should simply overlook the delinquencies because
17 Plaintiff has served 22 separate discovery requests. Defendants have not shown that Plaintiff
18 has exceeded the discovery limits. (Indeed, any such objection would be delinquent and
19 waived.) This is admittedly an expansive lawsuit, as compared to other prisoner civil rights
20 suits, in terms of counts, defendants and discovery requests. But certainly not beyond the
21 capabilities of experienced litigators like defense counsel. Moreover, Defendants had
22 available to them timely motions to extend if additional time was needed in light of the
23 number of requests. Indeed, the Court has granted Defendants at least fourteen separate

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25 _____
26 ⁸ Defendants argue that the Court should apply the “excusable neglect” standard of
27 Rule 6(b)(1)(B) citing *Certain Underwriters at Lloyds v. Inlet Fisheries, Inc.*, 232 F.R.D.
28 609, 610-611 (D. Alaska 2005) (applying “excusable neglect” to avoid waivers on
interrogatories and requests for production). However, that decision proffered no
explanation for application of the more stringent standard, rather than good cause, as
specified in Rule 33(b)(4), and thus this Court does not find it persuasive on the point.

1 extensions in this case. (See Motions, Doc. 12, 26, 33, 41, 101, 105, 106, 116, 147, 153, 154,
2 163, 176, and 177; and Orders, Doc. 18, 35, 44, 104, 108, 121, 150,156, 164, and 182.)
3 While the Court might be tempted to overlook an inadvertent delinquency in light of the
4 number of requests, Defendants have not demonstrated inadvertence, but rather a persistent
5 disregard of the deadlines for discovery responses.

6 Defendants reference the date the discovery requests were actually received, and
7 comment that counsel would not personally receive them until up to a day later. The Rules
8 plainly and consistently provide that it is the service date, not the receipt date, which
9 controls. See Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A), 36(a)(3).

10 Defendants are automatically entitled to an additional three days after service by mail.
11 Fed. R. Civ. P. 6(d). Thus, absent some extraordinary delay in receipt, Defendants are not
12 entitled to count time from the receipt date, but from the service date. The largest discrepancy
13 reported by Defendants relates to requests served on Defendant Kauffman on March 4, 2010,
14 and not received until March 9, 2010, a lag of five days, including an intervening weekend.
15 (Response, Doc. 183 at 6.) That short of a delay offers no excuse for failing to serve a timely
16 response.

17 Defendants also argue that the dates provided by Plaintiff should not be relied upon
18 because there is an “uncertain lag between the time a request is handed to a prison official
19 and when it is mailed.” (Response, Doc. 183 at 11, n. 5.) The Ninth Circuit long ago
20 addressed this concern in the favor of utilizing the date the prisoner delivered the documents
21 to prison officials. “[A]n incarcerated *pro se* litigant completes ‘service’ under Fed.R.Civ.P.
22 5(b) upon submission to prison authorities for forwarding to the party to be served.” *Faile*
23 *v. Upjohn Co.*, 988 F.2d 985, 988 (9th Cir. 1993) *disapproved of on other grounds by*
24 *McDowell v. Calderon*, 197 F.3d 1253 (9th Cir. 1999).

25 Finally, Defendants argue that an intervening amendment of Plaintiff’s complaint
26 rendered any pre-existing discovery requests moot, citing an order in *Frost v. Schriro*, CIV-
27 08-1599-PHX-PGR(MHB). In that case, however, the discovery was not “applicable to his
28 First Amended Complaint” but instead “specifically related to the original complaint.” Here,

1 however, Plaintiff's First Amended Complaint did not substitute unrelated claims for his
2 original claims, but added additional claims (including some previously dismissed on
3 screening). (See Order 6/22/09, Doc. 67.) Defendants point to no authority for the
4 proposition that the filing of an amended pleading automatically vacates outstanding
5 discovery requests. If Defendants were truly confused whether the pre-amendment discovery
6 requests were terminated by the amendment, they could have timely sought clarification from
7 Plaintiff and/or the Court.

8 In sum, Defendants offer, at best, carelessness, and at worst impudence, in failing to
9 timely respond. They offer nothing not wholly within their control as justification for their
10 delay.

11 The Court does not find good cause to excuse the delinquent responses to
12 interrogatories.

13 **Delinquent Responses to Requests for Admissions** - Defendants were delinquent
14 in serving responses to Requests for Admission to Defendants Ramos, Bartos, Palossari, and
15 Kauffman. The Ninth Circuit has long recognized the authority of the District Court to
16 permit late responses to requests for admissions. See *French v. U.S.*, 416 F.2d 1149 (9th Cir.
17 1968). Rule 36(b) expressly authorizes the court to "permit withdrawal or amendment" of
18 an admission (prior to entry of a final pretrial order)"if it would promote the presentation of
19 the merits of the action and if the court is not persuaded that it would prejudice the requesting
20 party in maintaining or defending the action on the merits."

21 The Ninth Circuit has adopted a two part standard for applying this rule. "The rule
22 permits the district court to exercise its discretion to grant relief from an admission made
23 under Rule 36(a) only when (1) 'the presentation of the merits of the action will be
24 subserved,' and (2) the party who obtained the admission fails to satisfy the court that
25 withdrawal or amendment will prejudice that party in maintaining the action or defense on
26 the merits." *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007) (citations omitted).

27 "The first half of the test in Rule 36(b) is satisfied when upholding the admissions
28 would practically eliminate any presentation of the merits of the case." *Hadley v. United*

1 *States*, 45 F.3d 1345, 1348 (9th Cir. 1995). For example, in *Conlon*, the plaintiff had failed
2 to respond to requests for admissions and thereby admitted his damages were not caused by
3 wrongfully acts of the defendant. Thus, “the deemed admissions eliminated any need for a
4 presentation on the merits” and therefore satisfied the first prong of the Rule 36(b) test.
5 *Conlon*, 474 F.3d at 622.

6 Under the second half of the Rule 36(b) test, “[t]he party relying on the deemed
7 admission has the burden of proving prejudice.” *Conlon*, 474 F.3d at 622. “The prejudice
8 contemplated by Rule 36(b) is ‘not simply that the party who obtained the admission will
9 now have to convince the factfinder of its truth. Rather, it relates to the difficulty a party may
10 face in proving its case, e.g., caused by the unavailability of key witnesses, because of the
11 sudden need to obtain evidence’ with respect to the questions previously deemed admitted.
12 *Hadley*, 45 F.3d at 1348 (citations omitted).

13 Defendants do not assert that “the admissions would practically eliminate any
14 presentation of the merits of the case.” *Hadley*, 45 F.3d at 1348.

15 Rather, Defendants complain that the requests for admissions to Palossari are
16 “irrelevant to any of his claims.” (Response, Doc. 183 at 17.) Assuming Defendants are
17 correct, then the admissions would not affect the presentation of the merits of the case.

18 With respect to the requests to Defendant Kaufman, Defendants asserted that although
19 he objected to each of these admission requests, he also denied or admitted each of them.
20 (Response, Doc. 183 at 18.) Although Plaintiff continues to complain of their untimeliness,
21 Plaintiff acknowledges he has been served with revised responses from Kaufman which
22 either “admitted or clarified their prior denials.” (Reply, Doc. 186 at 7.) The fact that
23 Defendant Kaufman may have responded does not preserve his objections. Rather, “the
24 responding party waives any objections to the request for admission by answering the
25 request.” 10A Fed. Proc., L. Ed. § 26:736 at n. 10. Because the responses were untimely, the
26 requested admissions are deemed admitted.

27 Because Defendants fail to convince the Court that their deemed admissions preclude
28 any presentation of the merits of the case, the Court need not reach Plaintiff’s burden to

1 prove prejudice. The Court concludes that Defendants have waived their objections to the
2 delinquent requests for admissions.

3 **Delinquent Responses to Requests for Production** - The Court has concluded that
4 the Requests for Production to Defendants generally and to Defendants Bartos, Palossari,
5 Markley and Kaufmann were or are delinquent

6 As noted above, Rule 34 does not provide a procedure or standard for addressing
7 delinquent responses to requests for production.. With such requests, the burden is on the
8 requesting part to pursue a motion to compel under Rul 37(a)(3)(B)(iv) and/or a motion for
9 sanctions Rule 37(d)(1)(A), which Plaintiff has now done. However, objections to the
10 requests do not justify a failure to respond, unless the responding party has filed a motion for
11 protective order. Fed. R. Civ. P. 37(d)(2).

12 Defendants argue that the Court should apply the "excusable neglect" standard of Rule
13 6(b)(1)(B) citing *Certain Underwriters at Lloyds v. Inlet Fisheries, Inc.*, 232 F.R.D. 609,
14 610-611 (D. Alaska 2005) (applying "excusable neglect" to avoid waivers on interrogatories
15 and requests for production). Alternatively, Rule 6(b)(2), Federal Rules of Civil Procedure,
16 generally governs motions to extend made after the expiration of the allowed time. In such
17 instances, the court may permit a delinquent filing or action upon a showing that the failure
18 to act was the result of "excusable neglect." The Court will adopt Defendants' approach and
19 apply an excusable neglect standard to determine whether Defendants should be permitted
20 to belatedly assert objections to the request for production.

21 In *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, the Court
22 worked to define the concept of "excusable neglect" in the context of a delinquent
23 bankruptcy claim, but noted the common usage of this term throughout federal procedural
24 rules in relation to deadlines. 507 U.S. 380, 393 (1993). The Court noted that "neglect"
25 necessarily encompasses situations involving inadvertence, and "encompasses both simple,
26 faultless omissions to act and, more commonly, omissions caused by carelessness." *Id.* at
27 388. Thus, the Court found that the ameliorative part of the standard lays in the word
28 "excusable." *Id.*

1 Because Congress has provided no other guideposts for determining
2 what sorts of neglect will be considered “excusable,” we conclude that
3 the determination is at bottom an equitable one, taking account of all
4 relevant circumstances surrounding the party's omission. These include,
5 as the Court of Appeals found, the danger of prejudice to the [other
6 party], the length of the delay and its potential impact on judicial
7 proceedings, the reason for the delay, including whether it was within
8 the reasonable control of the movant, and whether the movant acted in
9 good faith.

6 *Id.* at 395. The district court has discretion in determining the weight to be given to the
7 various factors considered in making this equitable determination. *Mendez v. Knowles*, 556
8 F.3d 757, 765 (9th Cir. 2009).

9 Prejudice - Here, Defendants argue there is no prejudice to Plaintiff because all that
10 is pending is their motion for summary judgment and they will stipulate to extensions.
11 However, Defendants ignore the substantial effort required by Plaintiff to obtain responses,
12 the intervening expiration of discovery deadlines, and the general delay in the litigation.

13 Defendants argue that the discovery directed to the different defendants was often
14 seeking the same information, which had often already been provided. That ignores,
15 however, the risk that Plaintiff ran that a particular defendant would possess access to
16 documents, or would have had personal involvement different from another defendant. While
17 the parties share defense counsel, Plaintiff cannot presume that all discovery responses reflect
18 communal knowledge or information.

19 The discovery request cutoff was set for September 21, 2009. (Order 6/22/09, Doc.
20 67.) After Plaintiff's amendment of his pleading, Plaintiff was given until March 19, 2010
21 to serve discovery requests on Defendants Marten, Kohl, Cardenas, and Kaufman. (Order
22 2/9/10, Doc. 121.) After discovery of the failure of the Court and U.S. Marshals Service to
23 effect discovery on Defendant Haley, Plaintiff was given 28 days after Defendant Haley's
24 appearance to serve discovery requests on Defendant Haley. (Order 5/6/10, Doc. 146.)
25 Thus, in the interim between the due date on Plaintiff's requests and the service of responses,
26 Plaintiff's deadline for discovery requests expired as to most Defendants.

27 While Defendants proffer extensions to Plaintiff, the Court is not prepared to reset the
28 discovery and dispositive motion deadlines in this case to accommodate Defendants' failure

1 to make timely discovery responses.

2 Delay - Defendants note that the delay was often a matter of days. Indeed, with the
3 general Request for Production, and Defendant Kauffman's discovery responses, the delays
4 were 4 to 5 days. However, the responses to requests for production to Defendant Bartos
5 were 355 days delinquent. No responses have been served to the requests to Defendants
6 Palossari and Markley.

7 The Court is particularly troubled that this is not a case where Defendants have been
8 surprised by this motion to compel. As far back as October, 2009, Plaintiff had alerted
9 Defendants of their delinquencies and failures to respond by filing his original Motion to
10 Compel (Doc. 94 & 95).⁹ Despite that notice, Defendants continued to be delinquent in their
11 responses, and to fail to respond to such requests as the Palossari and Markley requests.

12 Reason for the delay - As discussed above in regard to the “good cause” for the
13 delinquent responses to interrogatories, Defendants have failed to proffer any acceptable
14 excuse for their delays.

15 Good Faith - Defendants contend that they have been acting in good faith, responding
16 to Plaintiff's discovery requests. Plaintiff counters that their “responses” have consisted of
17 little more than a string of objections and few pages of documents.

18 With regard to the short delays of 4 or 5 days, the Court is inclined to find good faith.
19 Delays that have run into weeks or months, or have simply been a complete failure to
20 respond, even after being advised by the Court in a discovery conference that they were
21 delinquent and the Court was evaluating Plaintiff's waiver claims (M.E. 4/23/10, Doc. 144),
22 shows at least an absence of good faith.

23 Weighting - The delay has ranged from the inconsequential to the incredible. The
24 impact on the proceeding, however, has been substantial, leaving Plaintiff and the Court to
25 deal with a protracted discovery dispute, and delays in dispositive motion proceedings. This
26 weighs against Defendants, from minimally to substantially. The prejudice to Plaintiff

27 ⁹ That motion was denied without prejudice because of Plaintiff's failure to pursue
28 informal resolution with Defendants and the Court. (*See* Order 10/20/2009, Doc. 97.)

1 beyond the simple delay will likely not be known until the proceeding is concluded. This is
2 an equilibrrious factor. The reasons for the delays range from negligence to callousness and
3 weigh in such a range against Defendants. The faith of defendants ranges from presumably
4 good to a complete disregard of their duties in the litigation.

5 In sum, where the delays have been five days or less, the Court finds excusable
6 neglect, and consequently good cause. As to all other delays, the Court finds an absence of
7 excusable neglect.

8 For the foregoing reasons, the Court concludes that Defendants have not shown
9 excusable neglect to permit them to belatedly serve objections to the requests for production
10 on Defendants Bartos, Palossari and Markley.

11 **Limits on Discovery** - Defendants attempt an end run around their failure to make
12 timely objections by arguing that even if they have waived objections, the Court should limit
13 the discovery because Plaintiff's requests "far exceed the permissible bounds of discovery."
14 (Response, Doc, 183 at 13.) Without identifying specific requests, Defendants argue that the
15 objections to Plaintiff's requests "involve prison security, relevancy, and wildly overbroad
16 and burdensome requests."

17 Under Fed.R.Civ.Pro. 26(b)(2)(C) the court, on its own initiative after
18 reasonable notice or pursuant to a motion under Rule 26(c), may limit
19 the discovery sought if it determines that it is unreasonably cumulative
20 or duplicative or the burden and expenses of the discovery outweighs
21 its likely benefit taking into account the needs of the case, the amount
22 in controversy, the parties resources, the importance of the issues at
23 stake in the litigation and the importance of the proposed discovery in
24 resolving the issues. Even where the court deems the party's discovery
25 objections to have been waived, it has the discretion to decline to
26 compel production where the request far exceeds the bounds of fair
27 discovery.

23 *Fifty-Six Hope Rd. Music, Ltd. v. Mayah Collections, Inc.*, 2007 WL 1726558 (D. Nev. June
24 11, 2007). The Court will exercise that discretion as to some of Plaintiff's requests, as
25 discussed hereinafter.

26 In doing so, the Court looks only to the objections urged in the Memorandum in
27 Defendants' Response (Doc. 183). The Court notes that Defendants include in their
28 Response, as Exhibit L, a table of all of the objections they posed to Plaintiff's requests.

1 Defendants do not reurge those objections, and reference the Exhibit only once as evidence
2 that “the objections interposed primarily involve prison security, relevancy, and wildly over
3 broad and burdensome requests.” (Response, Doc. 183 at 13-14.) Defendants now argue
4 only limited objections. (*See id.* at 14-19.) The Court will address only those objections
5 specifically argued in Defendants’ Memorandum..

6 7 **3. SPECIFIC DISPUTED REQUESTS**

8 At present, Plaintiff continues to seek an order compelling responses to the following
9 specific discovery requests, relying upon both his waiver argument and on the invalidity of
10 objections asserted or deficiencies in responses provided. (*See* Motion, Doc. 161 at 7, and
11 Exhibit 1.)

12 **Requests for Admissions** - Plaintiff requests that any delinquent request for
13 admission be deemed admitted. As discussed above, the Court has determined that responses
14 to Requests for Admission to Defendants Ramos, Bartos, Palossari, and Kaufman were
15 delinquent, and relief from the provisions of Rule 36(a)(3) is not justified.

16 Defendants proffer no compelling justification for the Court to *sua sponte* to limit
17 Plaintiff’s requests for admissions under Rule 26(b)(2)(C). They argue that the disputed
18 Requests for Admissions to Palossari are irrelevant. (Response, Doc. 183 at 17.) Assuming
19 so, then there is no harm to Defendant from the admissions. Defendants argue that
20 Defendant Kaufman answered his Requests for Admissions, and the Court cannot compel a
21 different answer. (*Id.* at 18.) As discussed above, Defendant’s answers were delinquent, and
22 those delinquent answers do not serve to evade the effect of the deemed admissions.

23 Accordingly, the requests for admission to Defendants Ramos, Bartos, Palossari, and
24 Kaufman are deemed admitted.

25 **Interrogatories** - Plaintiff requests that all delinquent objections to his interrogatories
26 be deemed waived. Responses to Interrogatories to Defendants Bartos, Palossari, Markley,
27 and Kaufman were delinquent, and the Court finds no basis to relieve Defendants of their
28 waiver of objections. Plaintiff lists specific complaints only about interrogatories to

1 Defendants Ramos, Bartos, and Kauffman. Given the fact that the responses by Defendant
2 Markley were served with Defendants' Response to the motion to compel, and no responses
3 by Defendant Palossari have been served, the omission of specific concerns about these
4 responses is understandable. Of all the interrogatories, Defendants address specific
5 objections only as to Defendant Bartos and Ramos. Accordingly, Defendants will be ordered
6 to answer any interrogatories to **Defendants Palossari, and Markely** to which objections
7 were asserted. And, Defendant Kaufman will be ordered to respond to Interrogatory number
8 4, the only interrogatory addressed by Plaintiff. (*See* Motion, Doc. 161, Exhibit 1 at 25.)

9 Defendants argue the Court should *sua sponte* limit the interrogatories with untimely
10 responses under Rule 26(b)(2)(C), despite any waiver.

11 Having *sua sponte* reviewed the interrogatories to Defendant Markely, the Court will
12 make a single exception concerning Interrogatory 1 to Defendant Markley, which seeks a
13 legal service address for all Defendants. The Court finds that the security risks entailed in
14 providing what may be residential addresses for ADOC employees, in the absence of any
15 specific justification from Plaintiff, takes this request beyond the bounds of "fair discovery."
16 *Fifty-Six Hope Rd. Music, Ltd.*, 2007 WL 1726558. Defendants will, however, be required
17 to provide current work addresses for service on such Defendants, and where only residential
18 addresses are available to so designate, to permit Plaintiff to seek an order for the provision
19 of such addresses under seal at such time as Plaintiff can demonstrate need.

20 Defendants failure to provide responses on the interrogatories to Defendant Palossari
21 preclude the Court from making a similar review as to Defendant Palossari.

22 The only delinquent interrogatory responses addressed by Defendants are those to
23 **Defendant Bartos**, including interrogatories 6, 7, 10, 11 and 13 . (Response, Doc. 183 at
24 17.)

25 In Interrogatory 6, Plaintiff seeks information on any recent lawsuit in which any
26 named Defendant was involved related to ADOC. (Motion, Doc. 161, Exhibit 1 at 13.)
27 Defendants contend that this is "not in [Defendant Bartos'] knowledge and is overly broad
28 – why should he have or [sic] produce information about lawsuits against other Defendants."

1 (Response, Doc. 183 at 17.) Plaintiff replies that this requests fits within the parties'
2 agreement to permit responses on behalf of all defendants by service on their common
3 defense counsel. (Reply, Doc. 186 at 6.)

4 The Court finds the latter argument unpersuasive. The request is addressed solely to
5 Defendant Bartos. The agreement described by Plaintiff related solely to requests
6 specifically served on the Defendants in general.

7 However, Defendant Bartos is identified by Plaintiff as the Northern Regional
8 Operations Director for ADOC. (First Amended Complaint, Doc. 74 at 3.) As such, there
9 is no reason to presume that Defendant Bartos does not have available to him the requested
10 information. Defendants do not argue he does not.

11 Nor is the fact that Defendant may not have the information “in his head” sufficient.
12 “The answering party cannot limit his answers to matters within his own knowledge and
13 ignore information immediately available to him or under his control.” *Essex Builders Group,*
14 *Inc. v. Amerisure Ins. Co.*, 230 F.R.D. 682, 685 (M.D. Fla. 2005). “As a general rule a party
15 in answering interrogatories must furnish information that is available to it and that can be
16 given without undue labor and expense.” 8B Fed. Prac. & Proc. Civ. § 2174 (3d ed.).

17 Defendants do not explain why the request is overly broad. Requests for such
18 information are common in civil lawsuits, and the Court discerns no reason to restrict the
19 request.

20 Defendant Bartos will be ordered to answer Interrogatory 6.

21 In Interrogatory 7, Plaintiff seeks information about pending lawsuits against ADOC
22 or its officers concerning the protective segregation program or claims of inadequate medical
23 care. (Motion, Doc. 161, Exhibit 1 at 14.) Defendants contend this request is “overly broad
24 an irrelevant – they have no relevance to Plaintiff’s particular issues.” To the contrary, the
25 requests seem directed to the nature of Plaintiff’s Complaint. On the presumption that some
26 investigation will be required by Defendant to respond, and the Court might require more
27 from Plaintiff to counter a timely objection, Defendant’s have failed to show that “the request
28 far exceeds the bounds of fair discovery.” *Fifty-Six Hope Rd. Music, Ltd.*, 2007 WL

1 1726558.

2 Defendant Bartos will be ordered to answer Interrogatory 7.

3 In Interrogatory 10, Plaintiff seeks contact information for parole or community
4 supervision officers assigned to 3 specific inmates and are most easily located through the
5 referenced officers. (Motion, Doc. 161, Exhibit 1 at 14-15.) In Interrogatory 11, Plaintiff
6 seeks the “full name and A.D.O.C. number” of a list of ten inmates, some of whom are
7 identified only by their first names and/or cell number. (Motion, Doc. 161, Exhibit 1 at 15.)
8 Plaintiff argues that the referenced inmates are either witnesses to or issuers of threats against
9 Plaintiff.

10 Defendants argue these requests seeks confidential inmate records and is irrelevant
11 because Plaintiff cannot re-argue the protective segregation decision. (Response, Doc, 183
12 at 17.) Defendants do not explain why the identity of a parole officer or an inmate and his
13 ADOC number is confidential, nor do they suggest that they are privileged.

14 Defendants proffer no authority for the proposition that Plaintiff cannot attack the
15 protective segregation decision. Moreover, even if the decision itself cannot be reviewed,
16 that does not render potential witnesses as to the existence of real threats irrelevant to
17 Plaintiff’s Eighth Amendment claims concerning his protective segregation status.

18 Defendant Bartos will be ordered to answer Interrogatories 10 and 11.

19 In Interrogatory 13, Plaintiff seeks the “name of the ‘Key Contact Nurse’ at Lewis
20 Complex in February through May, 2008.”. (Motion, Doc. 161, Exhibit 1 at 16.) Defendants
21 argue they “have not been able to identify a ‘key contact nurse’ and such nurse is also not
22 relevant to any claim.” (Response, Doc. 183 at 17.) Plaintiff argues in reply that the “key
23 contact nurse” is identified by ADOC policy as the nurse responsible for scheduling medical
24 appointments on health needs requests, and that the information is relevant to assertion that
25 he was not being provided appropriate medical care in retaliation for his complaints. That
26 claim underlies his Counts 7 (medical needs) and 10 (retaliation).

27 With the clarification that Plaintiff is referring to the persons responsible for
28 scheduling medical appointments, Defendant Bartos will be ordered to answer Interrogatory

1 13.

2 In summary, Defendant Bartos will be ordered to answer Interrogatories 6, 7, 10, 11
3 and 13.

4 As to the interrogatories to **Defendant Ramos**, Plaintiff contends the answers to
5 Interrogatories 1, 2, 3, 4, 7, 12, and 15 are deficient. Defendants timely objected to each of
6 these interrogatories. Defendant now contends that the objections to Interrogatories 7, 12
7 and 15 should be sustained. (Response, Doc. 183 at 16-17.)

8 No argument is made by Defendants in their responses as to Interrogatories 1, 2, 3,
9 or 4. (*Id.*) Accordingly, Defendant will be required to answer these interrogatories.

10 Plaintiff's Interrogatory number 7 to Defendant Ramos asked Defendant to "state the
11 name and ADOC number of the cellmate of Inmate Brent Lee Hart on 4/8/08." (Motion,
12 Doc. 161, Exhibit 1 at 9.) Defendants contend that "Defendant is not able to ascertain who
13 was this inmate's cellmate on a particular date" and that the request is irrelevant. (Response,
14 Doc. 183 at 16.)

15 With regard to the information's availability, Plaintiff contends in his motion that such
16 information is contained within daily "count sheets." (Motion, Doc. 161, Exhibit 1 at 10.)
17 Plaintiff contends in his Reply that this information can be "provided with little effort."
18 (Reply, Doc. 186 at 6.) Defendant does not establish any effort to locate the information, e.g.
19 by reviewing the daily count sheets, nor does Defendant suggest that such information is not
20 available to him. Rather, Defendant offers only the bald assertion that he can't ascertain the
21 information. The Court is not convinced.

22 With regard to the information's relevancy, Defendants contend that this information
23 only relates to "threats to open the doors and let inmates attack him" which they contend "do
24 not appear to be part of the Complaint." (Response, Doc. 183 at 16.) However, in his
25 Motion, Plaintiff contends *inter alia* that this unknown inmate was a witness to actions by
26 corrections officers which triggered Plaintiff's protective segregation request, and that
27 Plaintiff believes this inmate suffered through attacks and threats similar to those with which
28 officers threatened Plaintiff. (Motion, Doc. 161, Exhibit 1 at 10.) He describes those as

1 “allowing general population inmates to access his cell so they might assault or kill him.”
2 (*Id.*) Given Plaintiff’s Eighth Amendment claim based upon the denial of his protective
3 segregation requests and the based upon the officers’ intentional subjection of Plaintiff to
4 risk of assaults from other inmates, the Court finds that the information sought is “regarding
5 . . . the identity and location of persons who now of any discoverable matter.” Fed. R. Civ.
6 P. 26(b)(1).

7 Defendant Ramos will be ordered to respond to Interrogatory Number 7.

8 Plaintiff’s Interrogatory number 12 to Defendant Ramos asked Defendant to
9 “[i]dentify all documents created pursuant to any ‘break-in’ or attempted ‘break-in’ by
10 general population inmates into the temporary detention unit cells within Buckley Unit,
11 Building One, ‘D’-Pod that occurred in 2008.” (Motion, Doc. 161, Ex. 1 at 11.) Defendants
12 argue that these documents “are not part of Plaintiff’s claims and thus irrelevant.” (Response
13 Doc. 183 at 16.) Plaintiff’s Motion offers no explanation of the request’s relevancy, but
14 simply asserts that it “is relevant.” (Motion, Doc. 161, Ex. 1 at 11.) Plaintiff does not
15 address the request in his Reply. (Doc. 186 at 6.) Even after reviewing the generally argued
16 “theories of Plaintiff’s case” (Motion, Doc. 161 at 6), the Court finds no basis to connect this
17 request to Plaintiff’s claims. The objection will be sustained.

18 Plaintiff’s Interrogatory number 15 to Defendant Ramos asked Defendant to provide
19 “the historical Security Threat Group (STG) status, and the corresponding dates in any
20 changes to same” for a list of inmates. (Motion, Doc. 161, Ex. 1 at 12.) Plaintiff argues in
21 his Motion that these individuals are potential witnesses. (*Id.* at Exhibit 1 at 13.) Defendants
22 argue that this information is confidential, poses a security risk, is irrelevant, and can be
23 obtained from the witnesses at trial. (Response, Doc, 171 at 16-17.) In his Reply, Plaintiff
24 contends that “Defendants were on notice as to threats to Plaintiff from these men” because
25 he asserted threats from them in his protective segregation request, and that “the information
26 requested will prove that Defendants knew of the gang status and power that these men
27 held.” (Reply, Doc. 186 at 6.)

28 The Court finds the information requested relevant to Plaintiff’s claims, and within

1 the scope of discovery.

2 Defendants proffer no authority for the assertion that the information is confidential,
3 and do not suggest that any recognized privilege applies.

4 However, the Court is concerned about the security risks posed by the distribution of
5 the requested information, particularly in light of the specificity of the information requested,
6 and that as a result the discovery may be unduly burdensome. Fed. R. Civ. P. 26(b)(2)(C).
7 The Court is authorized to “prescribe] a discovery method other than the one selected by the
8 party seeking discovery” and to specify the terms for discovery. Fed. R. Civ. P. 26(c)(1). To
9 avoid the security concerns and avoid the delay of additional discovery requests, Defendants
10 will be directed to either admit that the named individuals were known to the Arizona
11 Department of Corrections to be powerful members of prison gangs, or to show cause for
12 their failure to do so, and to propose alternative means to provide Plaintiff the information
13 he seeks while minimizing the security risks.

14 In summary , Defendant Ramos will be ordered to respond to Interrogatories 1, 2, 3,
15 4, 7 and to comply with the alternate discovery as to Interrogatory 15.

16 **Requests for Production of Documents** - Plaintiff complains of inadequate
17 responses to requests for production served on Defendants generally, and Defendants
18 Kauffman, Palossari and Markley.

19 As to the requests for production served on **Defendants** generally, Plaintiff complains
20 of the responses to requests 4, 6, 8, 9,11, 12, 13, 14 and 15, to which Defendants objected.
21 (Motion, Doc. 161, Exhibit 1 at 1-6.)

22 Defendants contend that the requests for production served on “Defendants” are
23 improper, inasmuch as the rules only permit service on “a named individual party.”
24 (Response, Doc. 183 at 14 (citing Fed. R. Civ. P. 34(a)).) Moreover, Plaintiff contends that
25 Defendants expressly agreed to respond to these requests at the parties’ April 16, 2009
26 conference (20 days before responses were due) because “all defendants were represented
27 by the Attorney General.” (Motion, Doc. 161 at 4. *See also* Reply, Doc. 186 at 5.)
28 Defendants do not dispute that contention.

1 Assuming that Plaintiff’s direction of the requests to all defendants, all of whom are
2 represented by the same counsel, were improper, Defendants waived any such objection both
3 expressly and by failing to timely object. To hold otherwise would encourage parties to
4 simply ignore such objections of form, and lie in wait until the matter is pressed in a motion
5 to compel before they finally spring their objection on the proponent

6 With regard to Request 4, Defendants contend that they refused to produce
7 performance appraisals and disciplinary files of the defendants and two non-defendants,
8 arguing they are confidential under Arizona law and irrelevant. (Response, Doc. 183 at 14.)
9 Defendants cite absolutely no authority for their contentions.

10 In their objections served on Plaintiff, Defendants referenced Ariz. Rev. Stat. § 31-
11 221(D)-(E) for the proposition that they are without authority to produce the records, and that
12 Ariz.Admin.Code § R2-5-105(E) and ADOC D.O. 507.01 make personnel files confidential.
13 (Motion, Doc. 151, Exhibit 1 at 1.) However, Ariz. Rev. Stat. § 31-221 has no relationship
14 to personnel files, but relates instead to prisoner records. The referenced portion of the
15 Arizona Administrative Code authorizes access to “[t]he employee or an individual who has
16 written authorization from the employee to review the personnel file.” Ariz. Admin. Code
17 § R2-5-105(E)(1). Thus, as to the named Defendants, these documents remain in the parties’
18 control. Moreover, the regulations permit release to an “an official acting in response to a
19 court order or subpoena.” *Id.* at -105(E)(4). The term “official” is limited to an individual
20 “exercising powers and duties on behalf of the chief administrative head of a public body.”
21 Thus, a subpoena directed to an appropriate officer would be sufficient to overcome this
22 regulation. However, no such subpoena has issued.

23 Further, even assuming some state law, regulation or policy prohibited the voluntary
24 release of the requested information, that does not amount to a privilege avoiding compliance
25 with the discovery processes of a Federal court. It is true that Fed.R.Civ.P. 26(b)(1)
26 specifically provides that privileged items are excluded from the scope of discoverable
27 matters. However, Fed.R.Evid. 501 requires that as to federal claims, federal laws of
28 privilege apply. Defendants cite to no federal privileges.

1 Thus, the only valid contention raised in the objections appears to be that, as to the
2 non-Defendants, the records are, under state law, outside the control of the Defendants. As
3 such, an order directing them to produce these records would appear futile.

4 Defendants also argue that the information would not be admissible to show
5 “incidents of the same type.” (Response, Doc. 183 at 14.) Plaintiff argued in his Motion to
6 Compel that this information is sought to identify other potential defendants “who were on
7 notice as to previous misconduct.” He also argues that it would be admissible under Federal
8 Rule of Evidence 404(b) (evidence of other wrongs admissible to show motive, intent, etc.)
9 and 406 (habit, routine practice). (Motion, Doc. 161, Exhibit 1 at 1.) Defendants do not
10 respond to these arguments.

11 Defendants complain that Plaintiff seeks not just limited portions of the files, but “all
12 files.” (Response, Doc. 183 at 15.) Plaintiff’s request is limited to “performance appraisals
13 and disciplinary files,” although he then expands it to include a host of sources, including
14 incident reports, investigations, etc. (Motion, Doc. 161, Exhibit 1 at 1.) The latter would
15 conceivably require a foray into a vast sea of documents. It is reasonable to assume that any
16 matters found to be of concern or merit would become part of some record specific to the
17 employee. The Court finds that beyond such repository, “the request far exceeds the bounds
18 of fair discovery.” *Fifty-Six Hope Rd. Music, Ltd.*, 2007 WL 1726558.

19 Finally, Defendants complain that allowing Plaintiff access to any piece of a personnel
20 file “raises grave security risks.” (Response, Doc. 183 at 15.) The Court is not insensitive
21 to these risks, and they are a legitimate reason to find discovery requests unduly burdensome.
22 However, in response to a motion to compel, defending delinquent objections, Defendants
23 cannot simply throw security up as some impenetrable wall. Defendants make no effort to
24 elucidate the concern, proffer means to permit Plaintiff access to relevant information while
25 redacting of particularly sensitive information, etc. Nonetheless, the Court will permit
26 Defendants to provide redacted copies, with unredacted copies filed under seal. Redactions
27 should be limited to identifying information beyond the Defendants’ name and badge
28 number, and to redact identifying information of other officers and inmates, with the

1 provision of substitute, anonymous identifiers sufficient to make the substance of the
2 information meaningful.

3 Accordingly, Defendants will be ordered to produce, from whatever personnel or
4 similar file specifically related to the designated officer, where such records are normally
5 maintained, the performance appraisals and disciplinary records in Request 4 as to the named
6 Defendants only, in redacted form, with unredacted copies filed under seal.

7 With regard to Request 6, Plaintiff seeks the signed oaths of Defendants, Sgt. Fajardo
8 and Deputy Warden Timmons, related to ethics, and upholding the law. (Motion, Doc. 161,
9 Exhibit 1 at 2.) Defendants argue the oaths are irrelevant, Plaintiff knows the language, and
10 that Defendants have to uphold the laws. Defendants fail to convince the Court that “the
11 request far exceeds the bounds of fair discovery.” *Fifty-Six Hope Rd. Music, Ltd.*, 2007 WL
12 1726558. Plaintiff should be permitted to impeach witnesses with such oaths, should the
13 opportunity arise, and Defendants suggest no particular burdensomeness.

14 Defendants will be ordered to produce the records in Request 6.

15 With regard to Request 8, Plaintiff seeks “[a]ll reports, etc. generated by information
16 obtained from confidential informants at Lewis Complex from 1/31/08 to 5/31/08.” (Motion,
17 Doc. 161, Exhibit 1 at 2.) Plaintiff argues that this information will show that he had served
18 as a confidential informant, officers broadcast that information, resulting in threats against
19 him, and he notes that the officers to whom he provided information have denied meeting
20 with him. (*Id.* at 2-3.)

21 Defendants argue that Plaintiff’s “entire redacted protective segregation file was
22 produced,” and that any confidential information reports would be in such file. Defendants
23 also express concern about the security risks of divulging information on such a broad array
24 of confidential informants, particularly in light of Plaintiff’s dangerousness. (Response, Doc.
25 183 at 15.) Defendants argue that the reasons for wanting PS status are irrelevant, and it is
26 only the “the prison’s response that is relevant.” Plaintiff counters that the entire file was not
27 provided, and that it was heavily redacted. (Reply, Doc. 186 at 6.)

28 The Court does not find persuasive the argument that the reasons for the request is

1 irrelevant. Evaluating whether a response evidenced deliberate indifference requires
2 information about the basis for the request.

3 However, this request seeks production of a broad range of documents, potentially
4 from a vast sea of sources, all clouded by the security risks inherent in the disclosure of
5 information about confidential informants, a risk which is even the substance of a number
6 of counts in Plaintiff's Complaint. On the other hand, the Court is cognizant of the difficulty
7 Plaintiff faces in attempting to craft a narrower request - - the entire process of using
8 confidential informants is presumably kept confidential, leaving Plaintiff to guess where the
9 information he seeks may be found. However, the Court is concerned that Plaintiff proffers
10 no reason to believe the information he seeks even exists. Nor does he suggest that
11 Defendants are incorrect in their assertion that any reports related to Plaintiff would be in his
12 protective segregation file.

13 Still, the Court is concerned that the redactions adopted by Defendants may have
14 excluded the relevant information. Therefore, the Court will direct Defendants to file with
15 the Court, under seal, both the redacted and the complete and unredacted copies of Plaintiff's
16 Protective Segregation file. The Court will review these and make a further order as to
17 whether additional production will be required.

18 With regard to Request 9, Plaintiff seeks "[s]upporting document for all yard closures
19 and/or building searches that took place at Buckley Unit between 1/31/08 and 3/18/08."
20 (Motion, Doc. 161, Exhibit 1 at 3.) Plaintiff seeks not only the document justifying the
21 searches, but the results as well. (*Id.*) He argues that the documents "will show the official
22 actions taken by ADOC in response to information provided by Plaintiff." (*Id.* at 4.)

23 Defendants argue that, despite their waived objections, the Court should not require
24 a response because documents "about yard closures are not relevant to any claims and would
25 be difficult to collect and produce." (Response, Doc. 181 at 16.) Defendants do not
26 specifically address the searches issue. Plaintiff makes no pertinent reply.

27 It appears that this request is intended to corroborate Plaintiff's claim that he was
28 serving as a confidential informant, and that they acted on his information, thus lending

1 credibility to his claims of resulting threats. Thus, the information appears relevant.

2 As to the burdensomeness of the request, Defendants fail to provide any details to
3 suggest that compliance would be so difficult to as to make this request one which “far
4 exceeds the bounds of fair discovery.” *Fifty-Six Hope Rd. Music, Ltd.*, 2007 WL 1726558.
5 For example, Defendants do not suggest that the closures or searches were numerous or that
6 the documents are far flung.

7 The Court can anticipate, however, that legitimate security concerns could arise from
8 the production of these documents, *e.g.* if an inmate other than Plaintiff were the instigator,
9 specific tactical plans or procedures were revealed, etc. Therefore, Defendants will be
10 ordered to produce the documents sought in Request 9, but may redact the records as
11 necessary to avoid the disclosure of the identity of specific inmates or officers other than
12 Plaintiff, or otherwise creating a specific threat to institutional security..

13 In his Request 11, Plaintiff seeks “[a]ll sergeants’ reports, lieutenants reports and
14 captains’ reports generated at Buckley Unit (Lewis Complex) between 1/31/08 and 3/18/08.”
15 (Motion, Doc. 161, Exhibit 1 at 4.) In Request 13, Plaintiff seeks “[a]ny posting log, duty
16 log, etc. showing the position or assignment for all officers at Buckley Unit between 1/31/09
17 and 3/18/08.” (*Id.* at 5.) Plaintiff offers to limit this request to Building One, and argues he
18 “must be able to identify the ADOC officers.” (*Id.*) In his Request 14, Plaintiff seeks “[a]ll
19 journals ‘bubble’ logs, etc. generated in Building One (C and D pods) describing the daily
20 activities taking place in that location between 1/31/08 and 3/18/08.” (*Id.* at 6.) Plaintiff
21 argues that the “broadcasting” of his informant status occurred during certain activities, (*e.g.*
22 during showers), these documents will identify the responsible officers. (*Id.*) In his Request
23 15, Plaintiff seeks the “Tower log for Buckley Unit between 1/31/09 and 3/18/08.” (*Id.*)
24 Plaintiff argues that these records will show a riot on February 18, 2008, which Plaintiff
25 contends resulted from “the white inmates not ‘taking care’ of plaintiff ‘when they had the
26 chance.’” (*Id.*)

27 Defendants contend, without explanation, that these requests are irrelevant, overly
28 broad and raise serious security concerns. (Response, Doc. 183 at 16.)

1 Without elucidation, the Court will not presume irrelevance or security concerns
2 (particularly where Defendants have previously availed themselves of redactions to avoid
3 such concerns).

4 The requests do, however, appear to be overly broad. The request for officer reports
5 is not limited to reports on specific issues, or by particular persons, but simply seeks a
6 regurgitation of what would appear to be a raft of records. Plaintiff proffers nothing to
7 justify such a broad ranging request. Similarly, the assignment logs request, even reduced
8 to a single building, appears burdensome, especially with no real justification for the request
9 proffered. Likewise, the daily journal requests seeks a bevy of information without
10 connection to particular dates or incidents. The Court is especially concerned where all of
11 these requests concern events to which Plaintiff was a witness, and yet Plaintiff makes no
12 effort to target his request. Thus, the Court must conclude that these requests “far exceed[]
13 the bounds of fair discovery.” *Fifty-Six Hope Rd. Music, Ltd.*, 2007 WL 1726558.

14 Defendants will not be ordered to respond to Request 11 Request 13, or Request 14.

15 As to Request 15, the central contention, e.g. the existence of the riot, can be dealt
16 with by an admission and alternatively an interrogatory. Accordingly, Defendants will be
17 directed to either admit that a riot occurred between black inmates and white inmates on
18 Buckley Unit on February 18, 2008, or shall serve a response to the following interrogatory:
19 “Identify the date of any riots or similar disturbances occurring between black inmates and
20 white inmates occurring on Buckley Unit between the dates of January 31, 2008 and March
21 18, 2008.”

22 In his Request 12, Plaintiff seeks “[o]ne count sheet per day for each pod at Buckley
23 Unit for the period 1/31/08 through 3/18/08.” Defendants argue that “[c]ount sheets have
24 been produced,” but offer no details on their production. (Response, Doc. 183 at 16.)
25 Plaintiff counters that “not a single count sheet has been provided.” (Reply, Doc. 186 at 6.)

26 Giving Defendants the benefit of the Court’s doubts, no reason is proffered to not
27 require service of a the count sheets again.

28 Defendants will be ordered to (again) produce the documents in Request 12.

1 Plaintiff complains about **Defendant Kaufman's** responses to his Requests for
2 Production 1 through 13, excepting only number 10. (Motion, Doc. 161, Exhibit 1 at 18-22.)
3 (Although delinquent, the Court has determined hereinabove to treat the objections to these
4 requests as timely made.)

5 In Request 1, Plaintiff seeks "accountability logs" for certain dates at Buckley Unit
6 bearing the name of "Alfredo Cardenas." (Motion, Doc. 161, Exhibit 1 at 18.) In Request
7 2, he seeks the same information as to "Sgt. Kaelea B. Cole (names as Kohl)." (*Id.* at 19.)
8 In Request 3, he seeks ADOC documents showing the posting of Officer Cardenas. In
9 Request 4, he seeks the same documents for Officer Kohl. (*Id.*) Defendants respond that
10 the "[a]ll documents requested in RFPD 1-4 that have been obtained have been produced,
11 and will be continuously updated." (Response, Doc. 183 at 17.) Plaintiff argues that only
12 minimal documents have been provided in response (four days of accountability logs as to
13 Defendant Cardenas). (Reply, Doc, 186 at 7.)

14 Defendants proffer no objections to these requests. Their response suggests that the
15 search is simply ongoing. Defendants have had over six months to respond to these requests,
16 and are simply producing things as they turn up.. While certainly a duty to supplement exists,
17 a request for production is not wish list for what may eventually turn up.

18 Defendants will be ordered to produce the documents requested in Requests 1, 2, 3,
19 and 4.

20 In Request 5, Plaintiff requests any oaths taken by Defendants to uphold the law.
21 (Motion, Doc. 161, Exhibit 1 at 20.) Defendants again argue the oaths are irrelevant,
22 Plaintiff knows the language, and that Defendants have to uphold the laws. (Response, Doc.
23 183 at 17,15.) This time, the Court does not address these arguments as waived objections,
24 but as properly presented objections. Nonetheless, Defendants fail to convince the Court
25 that the request is outside the bounds of discovery. "Discovery is commonly allowed in
26 which the discovering party seeks information with which to impeach witnesses for the
27 opposition." 8 Fed. Prac. & Proc. Civ. § 2015, at n.2. This is true even if the material itself
28 may not be admissible. *Id.* at text surrounding n. 8. Plaintiff should be permitted to impeach

1 witnesses with such oaths, should the opportunity arise, and Defendants suggest no particular
2 burdensomeness. Defendants will be ordered to produce the documents requested in Request
3 5.

4 In Request 6, Plaintiff references a request for production on Defendant Ramos, and
5 requests the same information as to Defendants Cole, Cardenas and Kaufman.” (Motion,
6 Doc. 161, Exhibit 1 at 20.) Plaintiff subsequently attempted to clarify that he was
7 referencing his requests served on Defendants generally, which requested various
8 performance appraisals and disciplinary files. Defendants reassert the same objections made
9 to those requests. (Response, Doc. 183 at 17,15.)

10 As with Request 4 to the Defendants generally, the Court finds the request overly
11 broad, in many respects outside the control of defendants, and will therefore order Defendant
12 Kaufman to produce, from whatever personnel or similar file specifically related to the
13 designated officer, where such records are normally maintained, the performance appraisals
14 and disciplinary records in Request 4 as to Defendant Kaufman only, in redacted form, with
15 unredacted copies filed under seal.

16 In Request 7, Plaintiff seeks “‘issue papers’ submitted to the Direct of ADOC
17 pursuant to Dept. Order 118 (effective 9/1/96) which relate to any aspect of the protective
18 segregation program, during the period 1/1/2000 to the present.” ” (Motion, Doc. 161,
19 Exhibit 1 at 20.) In Request 8, Plaintiff seeks “[a]ny agendas, minutes, notes], etc. prepared
20 for, or which memorialize all ‘executive staff meetings’ (as the term is used in Dept. Order
21 112 - effective 4/7/09) for the period 1/1/2006 to the present.” ” (*Id.* at 21.) In Request 9,
22 Plaintiff seeks the same information as in Request 8 “for all administrative meetings.” (*Id.*)

23 Defendants object to each of these on the basis of security and confidentiality
24 concerns, and as to Request 8 and 9 on the basis of relevancy. (*Id.* at 20-21; Response, Doc.
25 183 at 17.) Plaintiff argues that the information is sought to show that “the Director (and
26 others) were on notice regarding safety and capacity problems of the P.S. program.”
27 (Motion, Doc. 161, Exhibit 1 at 21.)

28 The Court is not convinced that those records relevant to this matter would be

1 protected from production based on security and confidentiality concerns.

2 However, the only claim to which such information would conceivably relate is
3 Plaintiff's Count 8 where he alleges Defendants Markley and Schriro formed a policy or
4 custom of routinely denying requests for protective segregation status without regard to the
5 risks to individual inmates. Plaintiff makes no effort to limit his request to information
6 concerning the issues he references, and it would appear that the issue papers, executive
7 staff meeting records and administrative meeting records he references would encompass a
8 wide range of issues wholly irrelevant to Plaintiff's claims. Without any guidance, the Court
9 is unable to limit this request in a way that would result in only relevant information being
10 produced, without simply leaving it to Defendants to apply their own standards. Therefore,
11 the Court finds these requests overly broad, and no response to requests 7, 8, or 9 will be
12 required.

13 In Requests 11, 12, and 13, Plaintiff seeks various records concerning the certification
14 of various prison gangs as security threat groups. Plaintiff argues these will show the
15 dangerousness of the prison gangs. (Motion, Doc. 161, Exhibit 1 at 21-22.) Defendants
16 argue that the information is irrelevant, particularly given Defendants' concession that
17 security threat groups are dangerous.

18 The Court finds these requests overly broad. The only information directly relevant
19 to Plaintiff's claims would be risks associated with such gangs with regard to confidential
20 informants. The Court would be shocked if any Defendant attempted to argue that prison
21 gangs did not pose a very real threat to confidential informants. ADOC officials and
22 employees routinely plead with this Court to restrict access to records concerning
23 confidential informants for exactly that reason. Moreover, Plaintiff makes no effort to
24 restrict his request to such issues, and makes no effort to assist the Court in limiting his
25 request. Accordingly, no further response to Requests 11, 12 or 13 will be required.

26 With regard to the Request for Production served on Defendants Palossari and
27 Markley, the Court has concluded herein above that the responses were delinquent and any
28 objections asserted by Defendants have been waived. Defendants make no arguments to

1 assert that the materials sought “far exceeds the bounds of fair discovery.” *Fifty-Six Hope*
2 *Rd. Music, Ltd.*, 2007 WL 1726558.

3 Upon review, however, the Court is concerned that some of the requests raise
4 particular security concerns, not only as to Defendants and ADOC, but to law enforcement
5 in general or other inmates, or to be blatantly beyond the scope of discovery. Accordingly,
6 the parties will be given an opportunity to be heard as to the following requests for
7 production: Palossari requests 3, 4, 6, and 9; and Markley requests 2, 13, 14, and 15.

8 The Court notes the objection of Defendant Palossari as to Request 8, which seeks a
9 summary of yard closures, stating that Defendants are not required to produce documents.
10 In lieu of simply disposing of this request, the Court will treat it as an interrogatory, and
11 direct Defendant Palossari to respond.

12 With regard to Request Number 1 to Defendant Markley, the request will be limited
13 to communications with or concerning officers Williams and Masella, and may be redacted
14 by Defendants to avoid specific risks to institutional security.

15 The Court also notes the objections asserted by Defendant Markley as to requests 8,
16 9, 10, 11, and 12.. These requests seek various administrative meeting records and “issue
17 packages.” The Court understands these requests to be limited to summary information
18 concerning general levels of violence and related to the administration of he protective
19 segregation program as a whole, and thus to exclude matters related to particular inmates or
20 incidents. So understood, they are significantly narrower than requests 7, 8, and 9 to
21 Defendant Kaufman which the Court has found to exceed the bounds of discovery.
22 Accordingly, the Court does not include these in the requests to which further briefing will
23 be permitted.

24 Therefore, Defendant Palossari will be required to produce the documents or other
25 items for inspection requested in Request 5, and to treat Request 8 as a n interrogatory and
26 respond thereto. Defendant Markley will be required to produce the documents requested
27 in Request Number 1, limited to communications with or concerning officers Williams and
28 Masella, and may be redacted by Defendants to avoid specific risks to institutional security.

1 In addition, Defendant Markely will be required to produce the documents requested in
2 Request numbers 3, 4, 5, 8, 9, 10, 11, and 12.

3
4 **4. ADDITIONAL DISPUTES**

5 **Counsel Signatures** - Plaintiff complains that responses to interrogatories by
6 Defendant Ramos were not signed by counsel of record, but by “Michele Forney,” who
7 Plaintiff does not know to be any attorney. (Motion, Doc. 161 at 3.) Defendants do not
8 address this issue. Michele. Forney is a member of this Court’s bar, and was last reported
9 as a member of defense counsel’s firm, the Arizona Attorney General’s Office. Moreover,
10 Local Civil Rule 83.3(b)(4) explicitly authorizes counsel in a governmental law office to
11 make the “occasional . . . filing of a pleading, motion or other document as associate counsel
12 at the request of an attorney of record” without filing a notice of association of counsel.
13 Without more, the Court concludes that Ms. Forney’s execution was authorized by defense
14 counsel, and is binding upon defense counsel Gottfried as if personally signed by him. No
15 action will be taken on the basis of this complaint.

16 **Updates** - Plaintiff complains that Defendants have not fulfilled their obligation to
17 update discovery responses. (Motion, Doc. 161 at 4.) Plaintiff does not identify any specific
18 failures. Therefore the Court will not address this complaint.

19 **Verification** - Plaintiff complains that Defendant Cardenas’ response to
20 interrogatories were served without any verification. (Motion, Doc. 161 at 4.) Defendants
21 do not address the issue. Defendant Cardenas will be directed to serve on Plaintiff a
22 verification of his previously served responses to interrogatories.

23 **Discussions Concerning Defendant Haley** - Defendants assert that Plaintiff has
24 refused to communicate with them concerning remaining disputes related to discovery
25 requests to Defendant Haley. Plaintiff denies the claim. The discovery requests to
26 Defendant Haley are not a subject of the instant motion to compel, and are not addressed in
27 this Order.

1 **5. AWARD OF COSTS; SANCTIONS**

2 Plaintiff requests an award of costs and sanctions. Defendants do not respond.
3 Federal Rule of Civil Procedure 37(a)(5)(A) mandates the payment of a successful movant’s
4 “reasonable expenses incurred in making the motion, including attorney’s fees,” unless the
5 movant failed to attempt informal resolution, the failure to respond or objections were not
6 substantially justified, or other circumstances makes an award unjust. Rule 37(a)(5)(C)
7 permits an apportionment where a motion is partially successful. The Court finds that, while
8 some of Defendants objections have been sustained, that on the whole Plaintiff’s motion has
9 been justified and Defendants’ conduct has reflected a substantial and ongoing violation of
10 the spirit and letter of the rules concerning discovery. The Court therefore finds that none
11 of the exceptions in Rule 37(a)(5)(A) apply, and that an award of all of Plaintiff’s expenses
12 is appropriate.

13 Fortunately for Defendants, Plaintiff is unrepresented, and thus the award of costs is
14 not significant, being limited to only his costs of stationary, copies, postage, etc. Plaintiff has
15 had to engage in the filing of 225 pages and mail four separate packages to the Court and
16 Defendants in connection with the motion (5 copies each (Plaintiff, Court, Judge,
17 Defendants, Conformed) of Doc.s 161 (34 pages) and 171 (11 pages)). The Court estimates
18 the costs of such supplies, etc. at \$77.50 (\$0.30 per page plus \$10 in mailing and other
19 suplies), and in light of the limited amount of such costs in the face of the costs of further
20 briefing, will make a conditional award in such amount, subject to the submission of a notice
21 by either party providing a different calculation.

22 Rule 37(d) provides for an award of sanctions where a party fails to serve responses,
23 objections etc., to interrogatories or requests for production. Although it is apparently not
24 a settled matter in this circuit, authorities suggest that Rule 37(d) only applies where there
25 is a complete failure to make discovery, not merely a partial or belated response. *But see N.*
26 *Am. Watch Corp. v. Princess Ermine Jewels*, 786 F.2d 1447, 1450 (9th Cir. 1986) (belated
27 compliance with order compelling discovery ineffective to avoid sanctions).

28 Here, Defendants failed to provide any responses to interrogatories and requests for

1 production served on Defendants Palossari and Markely until after Plaintiff's motion was
2 filed, some nine months after their due date. "[O]nce a motion for sanctions under Rule 37(d)
3 has been made, the delinquent party cannot deprive the court of the authority to impose
4 sanctions by then making the response to discovery requests that should have been made
5 earlier. 8B Fed. Prac. & Proc. Civ. § 2291 at n. 20(3d ed.).

6 While Defendants have pled oversight, Plaintiff plainly alerted Defendants to their
7 failure to respond to these requests in his original Motion to Compel, filed October 15, 2009
8 (Doc. 94 at 4 (referencing lack of response to interrogatories and requests for productions
9 served 8/18/09 and 9/16/09)). Any legitimate claim to oversight terminated with that filing.
10 While the Court ultimately denied the motion on the basis of Plaintiff's failure to attempt
11 informal resolution first, the Court also specifically ordered the parties to confer "about the
12 discovery disputes raised in Plaintiff's motion to compel." (Order 10/20/09, Doc. 97 at 2.)

13 Accordingly, the Court concludes that an award of sanctions against Defendants
14 Markley and Palossari is appropriate.

15 Rule 37(d)(3) directly references the sanctions in Rule 37(b)(2)(A)(I) through (vi),
16 which includes such things as finding facts established, evidence precluded, pleadings
17 stricken, judgment entered, etc. The rule also recognizes the appropriateness of an award of
18 fees and costs, which would be duplicative of the expenses provided for above.

19 Without copies of the interrogatories to Defendant Palossari, crafting of a complete
20 sanction would be impossible. Accordingly, the Court will direct the filing of such
21 interrogatories, and will take the nature of sanctions under advisement until they are filed.

22 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Compel Discovery, filed
23 June 3, 2010 (Doc. 161) is **GRANTED** to the extent of the relief provided herein.

24 **IT IS FURTHER ORDERED** that Defendants Ramos, Bartos, Palossari, and
25 Kaufman are deemed to have admitted the allegations in the Requests for Admissions
26 previously served upon them by Plaintiff.

27 **IT IS FURTHER ORDERED** that Defendant Kaufman shall serve on Plaintiff
28 responses to Plaintiff's Interrogatory number 4 served on such Defendant.

1 **IT IS FURTHER ORDERED** that, with the exception to Interrogatory number one
2 to Defendant Markley, Defendants Palossari and Markley shall serve on Plaintiff responses
3 to any of Plaintiffs Interrogatories to such Defendant to which such Defendant objected.

4 **IT IS FURTHER ORDERED** that Defendant Markely shall respond to Plaintiff's
5 Interrogatory Number 1 by providing current work addresses for service on such Defendants,
6 and where only residential addresses are available to so designate.

7 **IT IS FURTHER ORDERED** that Defendant Bartos shall serve on Plaintiff
8 responses to Plaintiff's Interrogatory numbers 6, 7, 10, 11 and 13 served on such Defendant,
9 with the clarification that Plaintiff is referring in Interrogatory number 13 to the persons
10 responsible for scheduling medical appointments.

11 **IT IS FURTHER ORDERED** that Defendant Ramos shall serve on Plaintiff
12 responses to Plaintiff's Interrogatory numbers 1, 2, 3, 4, and 7 served on such Defendant.

13 **IT IS FURTHER ORDERED** that Defendant Ramos shall either: (1) serve upon
14 Plaintiff an admission that the named individuals were known to the Arizona Department of
15 Corrections to be powerful members of prison gangs; or (2) show cause for their failure to
16 do so, and to propose alternative means to provide Plaintiff the information he seeks while
17 minimizing the security risks.

18 **IT IS FURTHER ORDERED** that Defendants shall serve on Plaintiff copies of the
19 documents requested in Plaintiff 's Request for Production to Defendants generally, numbers
20 6, 9, and 12.

21 **IT IS FURTHER ORDERED** that as a response to Plaintiff 's Request for
22 Production to Defendants generally, number 4, Defendants shall serve on Plaintiff copies of
23 the documents from whatever personnel or similar file specifically related to the designated
24 officer, where such records are normally maintained, the performance appraisals and
25 disciplinary records identified in Request 4 as to the named Defendants only, in redacted
26 form, with unredacted copies filed under seal.

27 **IT IS FURTHER ORDERED** that as a response to Plaintiff 's Request for
28 Production to Defendants generally, number 8, Defendants shall file with the Court, under

1 seal, both the redacted and the complete and unredacted copies of Plaintiff's Protective
2 Segregation file. The Court will review these and make a further order as to whether
3 additional production will be required.

4 **IT IS FURTHER ORDERED** that as a response to Plaintiff 's Request for
5 Production to Defendants generally, number 9, Defendants shall serve on Plaintiff copies of
6 the records sought in Request 9, but may redact the records as discussed herein.

7 **IT IS FURTHER ORDERED** that as a response to Plaintiff 's Request for
8 Production to Defendants generally, number 15, Defendants shall either: (1) serve on
9 Plaintiff an admission that a riot occurred between black inmates and white inmates on
10 Buckley Unit on February 18, 2008; or (2) shall serve a response to the following
11 interrogatory: "Identify the date of any riots or similar disturbances occurring between black
12 inmates and white inmates occurring on Buckley Unit between the dates of January 31, 2008
13 and March 18, 2008."

14 **IT IS FURTHER ORDERED** that Defendant Kaufman shall serve on Plaintiff
15 copies of the documents requested in Plaintiff 's Request for Production to such defendant,
16 numbers 1, 2, 3, 4, and 5.

17 **IT IS FURTHER ORDERED** that as a response to Plaintiff 's Request for
18 Production to Defendant Kaufman number 6, Defendant Kaufman shall serve on Plaintiff
19 copies of the documents from whatever personnel or similar file specifically related to the
20 designated officer, where such records are normally maintained, the performance appraisals
21 and disciplinary records identified in Request 6 as to the named Defendants only, in redacted
22 form, with unredacted copies filed under seal.

23 **IT IS FURTHER ORDERED** that Defendant Palossari shall serve on Plaintiff
24 copies of the documents requested in Plaintiff 's Request for Production to such defendant,
25 number 5.

26 **IT IS FURTHER ORDERED** that in lieu of a response to Plaintiff's Request for
27 Production to Defendant Palossari, number 8, Defendant Palossari shall serve on Plaintiff a
28 response to the interrogatory: "Provide a summary of all yard closures for Buckley

1 Unit/”Blue” side (ie. Side with buildings one and two), stating reasons for closure, from
2 February 8, 2008 to March 15, 2008.”

3 **IT IS FURTHER ORDERED** that Defendant Markley shall serve on Plaintiff copies
4 of the documents requested in Plaintiff ‘s Request for Production to such defendant, numbers
5 3, 4, 5, 8, 9, 10, 11, and 12.

6 **IT IS FURTHER ORDERED** that Defendant Markley shall serve on Plaintiff copies
7 of the documents requested in Plaintiff ‘s Request for Production to such defendant, number
8 1, limited to communications with or concerning officers Williams and Masella, which may
9 be redacted by Defendants to avoid specific risks to institutional security.

10 **IT IS FURTHER ORDERED** that Defendants shall have fourteen days from the
11 filing of this Order to file a brief asserting any arguments that Plaintiff’s Request for
12 Production to Defendant Palossari, numbers 3, 4, 6, and 9, and to Defendant Markely,
13 numbers 2, 13, 14, and 15 should be restricted despite Defendants’ waiver of any objections.

14 **IT IS FURTHER ORDERED** that Defendant Cardenas shall serve on Plaintiff a
15 verification of his previously served responses to interrogatories.

16 **IT IS FURTHER ORDERED** that Defendants responses ordered herein above shall
17 be served on Plaintiff (or responses to orders to show cause filed) within fourteen days of the
18 filing of this Order.

19 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 37(a),
20 that within twenty-one days of the filing of this Order, Defendants shall pay to Plaintiff the
21 sum of \$77.50 as the costs of the motion to compel, unless within fourteen days of this Order
22 either party files a notice setting forth an alternative calculation of such costs. In the event
23 such a notice is filed, the other part(ies) shall have seven days from the service of such notice
24 to respond thereto.

25 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 37(d)
26 granting sanctions against Defendants Palossari and Markley, the nature of such sanctions
27 being taken under advisement.

28 **IT IS FURTHER ORDERED** that within seven days of the filing of this Order,

1 Defendants shall file with the Court a copy of Plaintiff's interrogatories to Defendant
2 Palossari.

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DATED: September 17, 2010

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JAY R. IRWIN
United States Magistrate Judge