

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

GEORGE E. JACOBS IV,

1:05-cv-01625-LJO-GSA-PC

Plaintiff,

ORDER GRANTING IN PART PLAINTIFF'S
MOTION TO COMPEL FURTHER
RESPONSES TO REQUEST FOR
ADMISSIONS SET ONE, AND DENYING
PLAINTIFF'S MOTION FOR SANCTIONS
(Doc. 84.)

W. J. SULLIVAN, et al.,

Defendants.

ORDER FOR DEFENDANTS TO SERVE
AMENDED RESPONSES TO PLAINTIFF'S
REQUEST FOR ADMISSIONS SET ONE, AS
INSTRUCTED BY THIS ORDER, WITHIN
FORTY-FIVE DAYS

I. BACKGROUND

Plaintiff George E. Jacobs IV (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now proceeds with the Third Amended Complaint filed by Plaintiff on May 5, 2010, on Plaintiff’s Eighth Amendment claims, against defendants D. Watson (correctional sergeant), P. Chan (correctional officer), S. McGregor (correctional officer), D. Blankenship (correctional officer), M. Crotty¹ (correctional officer), E. Granillo (correctional officer), C. Nelson (correctional officer), M. Carrasco (correctional officer).

¹On June 23, 2011, Plaintiff's case against defendant Crotty was stayed pursuant to 11 U.S.C. §362(a) because defendant Crotty filed bankruptcy. (Doc. 58.) To date, the stay has not been lifted.

1 captain), R. Johnson (correctional lieutenant), and D. Jobb (correctional officer) for use of excessive
2 force; and against defendants J. Adams aka Salazar (medical technical assistant), Ms. Alexander
3 (registered nurse), Watson, and Granillo for failure to provide adequate medical care.² (Doc. 29.)

4 On January 23, 2012, the Court issued a scheduling order in this action, extending the
5 discovery deadline to March 5, 2012, for the limited purpose of allowing Plaintiff to file a motion
6 to compel. (Doc. 83.) On February 17, 2012, Plaintiff filed a motion to compel further responses
7 by defendants Alexander, Blankenship, Carrasco, Chan, Granillo, Jobb, Johnson, McGregor, Nelson,
8 Adams aka Salazar, and Watson (“Defendants”) to Plaintiff’s Request for Admissions Set One
9 (“RFA”), and for sanctions. (Doc. 84.) On March 15, 2012, Defendants filed an opposition. (Doc.
10 94.) On June 8, 2012, Plaintiff filed a reply. (Doc. 102.) Plaintiff’s motion to compel and for
11 sanctions is now before the Court.

12 **II. PLAINTIFF’S ALLEGATIONS³**

13 Plaintiff alleges that he was transferred to CCI-Tehachapi from Lancaster State Prison.
14 Plaintiff complains that the staff at CCI-Tehachapi immediately acted hostile toward Plaintiff
15 because the staff at Lancaster State Prison informed them that Plaintiff was a “staff assaulter” and
16 filed administrative grievances. (Third Amended Complaint (“3ACP”), Doc. 29 ¶ 22.)

17 Plaintiff claims that defendant D. Watson withheld Plaintiff’s personal and legal property
18 because of Plaintiff’s reputation as a staff assaulter and grievance filer. Plaintiff filed a grievance
19 about his property, but did not receive his property. Plaintiff told defendant D. Blankenship that he
20 wanted to speak with higher authorities. Blankenship told Plaintiff that “today is not a good day to
21 be doing this because the sergeant (defendant D. Watson) is not to be messed with!” (3ACP ¶ 25.)
22 Later, Watson approached Plaintiff and berated him. Plaintiff asked to speak with a higher authority
23 again, but Watson began making comments about Plaintiff “wanting to hurt himself” and began
24 spraying Plaintiff with pepper spray. (3ACP ¶ 27.) Defendant P. Chan also joined in and sprayed

25
26 ²On October 20, 2010, the Court dismissed all other claims from this action, based on Plaintiff’s failure to
27 state a claim. (Doc. 31.)

28 ³This summary includes Plaintiff’s allegations against Defendants in the Third Amended Complaint, upon
which the Court based its finding that Plaintiff stated the cognizable claims upon which this case now proceeds. (See
Court’s Screening Order, Doc. 31.)

1 Plaintiff. Watson asked Plaintiff if he wanted to come out of the cell, but when Plaintiff approached
2 the door, he was bombarded with more pepper spray. Defendant S. McGregor then opened the door
3 from the control tower to allow Watson to directly spray Plaintiff. Watson asked Plaintiff if he was
4 ready to exit and the cell door suddenly opened completely and a crowd of guards rushed in and
5 attacked Plaintiff. Plaintiff claims that defendants Carrasco, Johnson, Jobb, Watson, and Chan were
6 standing at the entrance of Plaintiff's cell watching defendants Blankenship, Crotty, Granillo, and
7 Nelson "assault and batter Plaintiff in the form of using unnecessary use of force excessively."
8 (3ACP ¶ 33.) Plaintiff was then shackled and taken to a cell outside the building. Plaintiff's clothes
9 were cut off and he was sprayed with cold water. Plaintiff claims that the weather was particularly
10 cold because it was in the middle of winter. Plaintiff was verbally abused by Watson while he was
11 being hosed down.

12 Watson and Granillo then escorted Plaintiff to the dining hall and placed him in a holding
13 cage and strip searched him, leaving him naked. Watson took out his pepper spray and shook it up
14 while making sexually harassing remarks. Watson left and returned later to tell Plaintiff that his
15 officers were injured and weapons were found in Plaintiff's cell. Plaintiff was then sprayed with
16 pepper spray again. Watson then falsely reported that Plaintiff spat on Watson's face, to justify the
17 use of pepper spray. Plaintiff claims that Granillo was present during the entire sequence of events
18 but failed to intervene. Plaintiff alleges that Watson refused to summon medical attention unless
19 Plaintiff agreed to exit the holding cage and allow Watson to wash off all the pepper spray to
20 eliminate any evidence of misconduct. When Plaintiff pled for medical assistance, Watson went
21 outside to get the hose and sprayed Plaintiff with water again. Plaintiff claims that D. Abarquez (not
22 named as a defendant) then took photos of Plaintiff.

23 Plaintiff complains that Abarquez was responsible for collecting evidence of the incident but
24 allowed Plaintiff's cell to remain unsecured for over an hour, thereby allowing the other defendants
25 to enter and exit and plant false evidence in the cell. Plaintiff was later seen by defendant J. Adams
26 and a "psych doctor." (3ACP ¶ 46.) Plaintiff complains that neither person did anything to have
27 Plaintiff transported to the medical health care unit for treatment. Plaintiff complained about the
28 burning sensation in his eyes and on his body, and told J. Adams that he was on eye medication and

1 needed his medication to alleviate the pain. Adams ignored Plaintiff and walked away. Plaintiff also
2 complains that defendant Alexander came by, but refused to offer any medical treatment. Hours
3 later, Watson told Plaintiff that he was being moved to the infirmary to be examined by a physician.
4 However, Plaintiff alleges that he was tricked and was not seen by a physician. Plaintiff alleges that
5 he was placed on suicide watch “in direct violation of his civil liberties.” (3ACP ¶ 50.) Plaintiff
6 complains that while he was on suicide watch, he was “not provided with any of life’s bare minimum
7 necessities” because he was fed via “two plastic bags filled with loose food.” (3ACP ¶ 51.) Later,
8 D. Abarquez transferred Plaintiff to CSP-Corcoran. Plaintiff was told that he was being transferred
9 to receive medical care, but was instead placed on suicide watch at CSP-Corcoran. Plaintiff claims
10 that the entire incident was a conspiracy to place Plaintiff on suicide watch in response to Plaintiff’s
11 exercise of his right to file administrative grievances complaining about the conduct of prison
12 guards. Plaintiff claims that Defendant John Doe #1 is a senior hearing official who served as the
13 adjudicator for the rules violation report that Plaintiff received as a result of the pepper spray
14 incident. John Doe #1 found Plaintiff guilty of battery on a peace officer with a deadly weapon.
15 Plaintiff claims that he was denied the right to call the defendants and all other pertinent eye
16 witnesses. Plaintiff also claims he was denied the right to present physical and documentary
17 evidence. Plaintiff was told that he would be found guilty regardless of any evidence that Plaintiff
18 presented in his defense.

19 **III. PLAINTIFF’S CLAIMS**

20 **A. Eighth Amendment Excessive Force Claim**

21 The Court found that Plaintiff states a cognizable claim for excessive force under the Eighth
22 Amendment, against defendants Watson, Chan, McGregor, Blankenship, Crotty, Granillo, Nelson,
23 Carrasco, Johnson, and Jobb, for attacking Plaintiff and maliciously pepper-spraying Plaintiff.
24 Plaintiff claims that defendants Watson and Chan pepper sprayed Plaintiff in a malicious manner.
25 Plaintiff alleges that defendant McGregor participated in the first pepper spray incident by opening
26 the door for Watson so he could administer the pepper spray directly at Plaintiff. Plaintiff alleges
27 that defendants Blankenship, Crotty, Granillo, and Nelson attacked Plaintiff while defendants
28 Carrasco, Johnson, Jobb, Watson, and Chan stood nearby and observed without making any effort

1 to intervene. Plaintiff was later hosed down in the cold and pepper sprayed again by Watson in a
2 malicious manner. Plaintiff alleges that defendant Granillo stood by and observed without making
3 any effort to intervene.

4 “What is necessary to show sufficient harm for purposes of the Cruel and Unusual
5 Punishments Clause [of the Eighth Amendment] depends upon the claim at issue” Hudson v.
6 McMillian, 503 U.S. 1, 8 (1992). “The objective component of an Eighth Amendment claim is . .
7 . contextual and responsive to contemporary standards of decency.” Id. (internal quotation marks
8 and citations omitted). The malicious and sadistic use of force to cause harm always violates
9 contemporary standards of decency, regardless of whether or not significant injury is evident. Id.
10 at 9; see also Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002) (Eighth Amendment excessive force
11 standard examines de minimis uses of force, not de minimis injuries)). However, not “every
12 malevolent touch by a prison guard gives rise to a federal cause of action.” Id. at 9. “The Eighth
13 Amendment’s prohibition of cruel and unusual punishments necessarily excludes from constitutional
14 recognition de minimis uses of physical force, provided that the use of force is not of a sort
15 ‘repugnant to the conscience of mankind.’” Id. at 9-10 (internal quotations marks and citations
16 omitted).

17 “[W]henever prison officials stand accused of using excessive physical force in violation of
18 the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was applied
19 in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”
20 Id. at 7. “In determining whether the use of force was wanton and unnecessary, it may also be proper
21 to evaluate the need for application of force, the relationship between that need and the amount of
22 force used, the threat reasonably perceived by the responsible officials, and any efforts made to
23 temper the severity of a forceful response.” Id. (internal quotation marks and citations omitted).
24 “The absence of serious injury is . . . relevant to the Eighth Amendment inquiry, but does not end
25 it.” Id.

26 **B. Eighth Amendment Medical Care Claim**

27 The Court found that Plaintiff states cognizable claims against defendants Adams aka
28 Salazar, Alexander, Watson, and Granillo for failure to provide adequate medical care in violation

1 of the Eighth Amendment, for ignoring Plaintiff's requests for decontamination from the effects of
2 the pepper spray and Plaintiff's requests for access to his eye medication to alleviate the pain from
3 pepper spray.

4 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
5 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
6 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part
7 test for deliberate indifference requires the plaintiff to show (1) “a serious medical need” by
8 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or
9 the unnecessary and wanton infliction of pain,’ and (2) “the defendant’s response to the need was
10 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059
11 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th
12 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a
13 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused
14 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Deliberate indifference may be
15 manifested “when prison officials deny, delay or intentionally interfere with medical treatment, or
16 it may be shown by the way in which prison physicians provide medical care.” Id. (citing McGuckin
17 at 1060 (internal quotations omitted)). Where a prisoner is alleging a delay in receiving medical
18 treatment, the delay must have led to further harm in order for the prisoner to make a claim of
19 deliberate indifference to serious medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd.
20 of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)). The failure to decontaminate prisoners
21 or otherwise provide medical treatment for prisoners exposed to pepper spray can support a claim
22 for the violation of the Eighth Amendment. Clement v. Gomez, 298 F.3d 898, 905 (9th Cir. 2002).

23 **IV. MOTION TO COMPEL**

24 **A. Federal Rules of Civil Procedure 26(b), 36(a), and 37**

25 Under Rule 26(b), “[U]nless otherwise limited by court order, the scope of discovery is as
26 follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
27 party's claim or defense — including the existence, description, nature, custody, condition, and
28 location of any documents or other tangible things and the identity and location of persons who know

1 of any discoverable matter. For good cause, the court may order discovery of any matter relevant
2 to the subject matter involved in the action. Relevant information need not be admissible at the trial
3 if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed.
4 R. Civ. P. 26(b)(1).

5 Rule 36 provides for requests for admissions as follows: “A party may serve on any other
6 party a written request to admit, for purposes of the pending action only, the truth of any matters
7 within the scope of Rule 26(b)(1) relating to facts, the application of law to fact, or the opinions
8 about either; and the genuineness of any described documents. Fed. R. Civ. P. 36(a)(1). Generally,
9 Federal Rule of Civil Procedure 36(a) requires one of three answers to a request for admission: (1)
10 an admission; (2) a denial; or (3) a statement detailing why the answering party is unable to admit
11 or deny the matter. Fed. R. Civ. P. 36(a)(3); Asea, Inc. v. Southern Pac. Transp. Co., 669 F.2d 1242
12 (9th Cir.1981). “The grounds for objecting to a request must be stated . . . [¶] The requesting party
13 may move to determine the sufficiency of an answer or objection. Unless the court finds an
14 objection justified, it must order that an answer be served.” Fed R. Civ. P. 36(a)(5),(6).

15 Pursuant to Rule 37(a), a party propounding discovery may seek an order compelling
16 disclosure when an opposing party has failed to respond or has provided evasive or incomplete
17 responses. Fed. R. Civ. P. 37(a)(3)(B). “[A]n evasive or incomplete disclosure, answer, or response
18 must be treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4). “It is well
19 established that a failure to object to discovery requests within the time required constitutes a waiver
20 of any objection.” Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th
21 Cir.1992) (citing Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir.1981)). The moving party bears
22 the burden of demonstrating “actual and substantial prejudice” from the denial of discovery. See
23 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations omitted.).

24 “The Advisory Committee Notes to the 1970 amendment to Rule 36 explain the purposes
25 of Rule 36: ‘Rule 36 serves two vital purposes, both of which are designed to reduce trial time.
26 Admissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from
27 the case, and secondly, to narrow the issues by eliminating those that can be.’ In short, ‘[t]he
28 purpose of Rule 36(a) is to expedite trial by establishing certain material facts as true and thus

1 narrowing the range of issues for trial.”” A. Farber & Partners, Inc. v. Garber, 237 F.R.D. 250, 254
2 (C.D.Ca. July 5, 2006) (quoting Asea, 669 F.2d at 1245). ““Parties may not view requests for
3 admission as a mere procedural exercise requiring minimally acceptable conduct. They should focus
4 on the goal of the Rules, full and efficient discovery, not evasion and word play.”” A. Farber &
5 Partners, Inc., 237 F.R.D. at 254 (quoting Marchand v. Mercy Med. Ctr., 22 F.3d 933, 936-37 (9th
6 Cir.1994)).

7 “As the Ninth Circuit has further held, [Rule 36] was amended in 1970 to adopt the majority
8 view that a party may not refuse to admit or deny a request for admission based upon a lack of
9 personal knowledge if the information relevant to the request is reasonably available to him. 8 C.
10 Wright & A. Miller, Federal Practice and Procedure § 2261, at 731 (1970).” A. Farber & Partners,
11 Inc., 237 F.R.D. at 254 (quoting Asea, 669 F.2d at 1245 (citation omitted)). “As the Advisory
12 Committee's Note explains, the Rule is ‘in keeping with a basic principle of the discovery rules that
13 a reasonable burden may be imposed on the parties when its discharge will facilitate preparation for
14 trial and ease the trial process.’” Id.

15 “Thus, Rule 36 requires the responding party to make a reasonable inquiry, a reasonable
16 effort, to secure information that is readily obtainable from persons and documents within the
17 responding party's relative control and to state fully those efforts.” A. Farber & Partners, Inc., 237
18 F.R.D. at 254. “Such reasonable inquiry includes an investigation and inquiry of employees, agents,
19 and others, who conceivably, but in realistic terms, may have information which may lead to or
20 furnish the necessary and appropriate response.” Id. “The inquiry may require venturing beyond the
21 parties to the litigation and include, under certain limited circumstances, non-parties . . . The
22 operative words then are ‘reasonable’ and ‘due diligence.’” Id. (citing Henry v. Champlain Enter,
23 Inc., 212 F.R.D. 73, 78 (N.D.N.Y.2003) (citations omitted); T. Rowe Price Small-Cap Fund, Inc. v.
24 Oppenheimer & Co., Inc., 174 F.R.D. 38, 43 (S.D.N.Y.1997); Herrera v. Scully, 143 F.R.D. 545, 548
25 (S.D.N.Y.1992)). “At a minimum, ‘a party must make inquiry of a third party when there is some
26 identity of interest manifested, such as by both being parties to the litigation, a present or prior
27 relationship of mutual concerns, or their active cooperation in the litigation, and when there is no
28 manifest or potential conflict between the party and the third party.’” A. Farber & Partners, Inc., 237

1 F.R.D. at 254 (quoting Uniden America Corp. v. Ericsson Inc., 181 F.R.D. 302, 304
2 (M.D.N.C.1998)).

3 In Asea, *supra*, the Ninth Circuit held that a response which fails to admit or deny a proper
4 request for admission does not comply with the requirements of Rule 36(a) if the answering party
5 has not, in fact, made ‘reasonable inquiry,’ or if information ‘readily obtainable’ is sufficient to
6 enable him to admit or deny the matter . . . Although the district court should ordinarily first order
7 an amended answer, and deem the matter admitted only if a sufficient answer is not timely filed, this
8 determination, like most involved in the oversight of discovery, is left to the sound discretion of the
9 district judge.” Asea, 669 F.2d at 1247.

10 **B. Plaintiff's Motion**

11 **1. Defendant Alexander**

12 Plaintiff seeks a court order compelling defendant Alexander to make further responses to
13 Plaintiff's RFA 8-13, 15-17, 19, 21, 23, and 34, as follows.

14

15 > **REQUEST FOR ADMISSION 8:**

16 Admit or deny on January 24, 2005 you came in contact with the Plaintiff on the 4A-yard
17 SHU, for medical purposes.

18 **RESPONSE TO REQUEST FOR ADMISSION 8:**

19 Responding party cannot admit or deny this request because she does not recall
20 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
21 diligent search, she has no documents to refresh her recollection.

22

23 > **REQUEST FOR ADMISSION 9:**

24 Admit or deny on January 24, 2005 you witnessed Plaintiff in a holding cage naked.

25 **RESPONSE TO REQUEST FOR ADMISSION 9:**

26 Responding party cannot admit or deny this request because she does not recall
27 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
28 diligent search, she has no documents to refresh her recollection.

1

2 > **REQUEST FOR ADMISSION 10:**

3 Admit or deny on January 24, 2005 you reported to the 4A-yard S.H.U. kitchen location
4 dinning hall #4.

5 **RESPONSE TO REQUEST FOR ADMISSION 10:**

6 Responding party cannot admit or deny this request because she does not recall
7 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
8 diligent search, she has no documents to refresh her recollection.

9

10 > **REQUEST FOR ADMISSION 11:**

11 Admit or deny on January 24, 2005 when you reported and/or arrived to dinning hall #4, you
12 witnessed Plaintiff sitting or standing in some sort of liquids.

13 **RESPONSE TO REQUEST FOR ADMISSION 11:**

14 Responding party cannot admit or deny this request because she does not recall
15 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
16 diligent search, she has no documents to refresh her recollection.

17

18 > **REQUEST FOR ADMISSION 12:**

19 Admit or deny on January 24, 2005 when you arrived to dinning hall #4 you observed oc
20 pepper spray on Plaintiff and/or the interior of the holding cage.

21

22 **RESPONSE TO REQUEST FOR ADMISSION 12:**

23 Responding party cannot admit or deny this request because she does not recall
24 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
25 diligent search, she has no documents to refresh her recollection.

1 > **REQUEST FOR ADMISSION 13:**

2 Admit or deny on January 24, 2005 when you arrived to dinning hall #4 you observed
3 custody staff present in the vicinity.

4 **RESPONSE TO REQUEST FOR ADMISSION 13:**

5 Responding party cannot admit or deny this request because she does not recall
6 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
7 diligent search, she has no documents to refresh her recollection.

8
9 > **REQUEST FOR ADMISSION 15:**

10 Admit or deny January 24, 2005, you administered any medical treatment to Plaintiff.

11 **RESPONSE TO REQUEST FOR ADMISSION 15:**

12 Responding party cannot admit or deny this request because she does not recall
13 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
14 diligent search, she has no documents to refresh her recollection.

15
16 > **REQUEST FOR ADMISSION 16:**

17 Admit or deny on January 24, 2005, Plaintiff was verbally requesting for medical treatment,
18 specifically his eye drops.

19 **RESPONSE TO REQUEST FOR ADMISSION 16:**

20 Responding party cannot admit or deny this request because she does not recall
21 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
22 diligent search, she has no documents to refresh her recollection.

23
24 > **REQUEST FOR ADMISSION 17:**

25 Admit or deny that on or after January 24, 2005, you provided Plaintiff with his medical eye
26 drops.

1 **RESPONSE TO REQUEST FOR ADMISSION 17:**

2 Responding party cannot admit or deny this request because she does not recall
3 seeing or treating Plaintiff on January 24, 2005, and after a reasonable inquiry and
4 diligent search, she has no documents to refresh her recollection.

5
6 > **REQUEST FOR ADMISSION 19:**

7 Admit or deny on or before January 24, 2005 you had previous 602/citizen complaints filed
8 against you for denying injured or medically ill prisoners medical treatment.

9 **RESPONSE TO REQUEST FOR ADMISSION 19:**

10 Responding party cannot admit or deny this request because she does not recall
11 receiving or being informed that an inmate filed a complaint against her.

12
13 > **REQUEST FOR ADMISSION 21:**

14 Admit or deny you have been sued by other prisoners for medical related issues.

15 **RESPONSE TO REQUEST FOR ADMISSION 21:**

16 Responding party objects to this request on the grounds it is overbroad, vague in its
17 entirety, and is irrelevant and not reasonably calculated to lead to the discovery of
18 admissible evidence. Without waiving any objection, responding party cannot admit
19 or deny this request because she is not aware of any other prisoner lawsuit filed
20 against her.

21
22 > **REQUEST FOR ADMISSION 23:**

23 Admit or deny you were interviewed and/or investigated by your superiors concerning this
24 incident that occurred on January 24, 2005 with Plaintiff.

25
26 **RESPONSE TO REQUEST FOR ADMISSION 23:**

27 Responding party objects to this request on the ground it is vague as to the meaning
28 of "this incident." Without waiving any objection, responding party cannot admit or

1 deny this request because she does not recall seeing or treating Plaintiff on January
2 24, 2005, and after a reasonable inquiry and diligent search, she has no documents
3 to refresh her recollection.

4

5 > **REQUEST FOR ADMISSION 34:**

6 Admit or deny that you answered these admissions under sworn oath.

7 **RESPONSE TO REQUEST FOR ADMISSION 34:**

8 Responding party objects to this request on the grounds it lacks foundation and is
9 vague in its entirety. Without waiving any objection, denied. Responding party
10 responded to this set of admission requests in accordance with and as required under
11 Federal Rule of Civil Procedure 36 (a)(4).

12

13 a. **RFA 8-13, 15-17, and 23**

14 Plaintiff argues that defendant Alexander's responses to RFA 8-13, 15-17, and 23 are
15 inadequate because Alexander did not sufficiently search the documents available to her to help
16 recall her memory or knowledge of events on January 24, 2005 before making her responses.
17 Plaintiff argues that Alexander's statements that she does not recall seeing or treating Plaintiff on
18 January 24, 2005, and has no documents to refresh her recollection, are not true because the crime
19 incident report of January 24, 2005, to which Alexander has access, shows that Alexander was
20 present after the incident at issue occurred and saw Plaintiff's condition. (Doc. 84, Exh. B.) Plaintiff
21 also argues that defendant Adams admitted, in Adams' response to RFA 25, that Adams reported
22 Plaintiff's condition to her immediate supervisor, who was Alexander.

23 Defendant Alexander responds that her responses to RFA 8-13, 15-17, and 23 are complete
24 and accurate based on the information known and available to her, and she is not required to admit
25 or deny facts of which she has no knowledge or recollection. Alexander declares that she reviewed
26 the report by defendant Adams to which Plaintiff refers, and all relevant medical records from
27 January 24 to January 30, 2005, in preparation for her responses to Plaintiff's RFA in December
28 2011. (Declaration of J. Alexander, Doc. 94 at 11.) Despite reviewing those documents, Alexander

1 declares she has no recollection of seeing or treating Plaintiff or the events of January 24, 2005, and
2 if she had, she would have prepared a Medical Report of Injury or Unusual Occurrence (Form 7219)
3 or a Progress Note (Form 7230). (Id.) Alexander argues that Plaintiff misrepresents the contents
4 of Adams' report and of Adams' response to RFA 25, because there is no evidence in Adams'
5 response that Alexander was Adams' supervisor or that Adams reported Plaintiff's condition to
6 Alexander.

7 Plaintiff argues that Alexander did not diligently search the records available to her, and did
8 not specify which documents she reviewed to refresh her recollection. Plaintiff contends that
9 Alexander should have searched CDCR records which track the movement and whereabouts of
10 medical staff. Plaintiff cites CDCR regulations that would have required Alexander to be present
11 after the incident at issue, due to her assignment, and record and document Plaintiff's treatment, if
12 any. Plaintiff also reiterates that Alexander has access to records documenting her presence at the
13 scene of the incident on January 24, 2005.

14 **Discussion**

15 Defendant Alexander's responses to Requests 8-13, 15-17, and 23 are inadequate. Alexander
16 fails to describe in her responses any of her efforts to search for information, or describe any of the
17 documents she reviewed to refresh her recollection. While Alexander declares in her opposition to
18 Plaintiff's motion that she "reviewed the Crime/Incident Report (CDCR 837), specifically the report
19 prepared by J. Adams[,... and] Plaintiff's relevant medical records from January 24 to January 30,
20 2005," she does not indicate that she made any effort to inquire of persons within her relative
21 control. (Declaration of J. Alexander, Doc. 94 at 11 ¶2.) Considering the employment and litigation
22 relationship between the defendants in this action, "a reasonable inquiry [] includes, at a minimum,
23 an inquiry of other defendants represented by the same counsel" who "have a common interest
24 against Plaintiff." A. Farber & Partners, Inc., 237 F.R.D. at 253-55. Alexander shall be required to
25 make amended responses to Requests 8-13, 15-17, and 23, either making admissions or denials, or
26 explaining in detail her efforts to search for information, with a listing of the documents she
27 reviewed and the persons she contacted to refresh her memory. No objections are allowed. With
28 respect to Alexander's objection to RFA 23 on the ground that Plaintiff's reference to "the incident"

is vague, the objection is overruled, and Alexander shall answer RFA 23 assuming that “the incident” refers to the events at issue in the complaint for this action, which allegedly occurred on January 24, 2005. While Alexander is not required to admit or deny facts of which she has no knowledge or recollection, she is required by Asea to indicate that she made reasonable inquiries or reviewed readily obtainable information that would have aided her in determining the truth of the matters at issue. Asea, 669 F.2d at 1247.

b. RFA 19 and 21

Plaintiff did not address the deficiencies of Defendant Alexander's responses to RFA 19 and 21 in his motion to compel. Alexander objects to RFA 21 as overbroad and argues that her responses to RFA 19 and 21 are consistent with how inmates' appeals and prisoner lawsuits are processed. Plaintiff responds that CDCR utilizes an automated appeals tracking system. Plaintiff submits evidence that staff are notified by memorandum each time a complaint is filed against them, and that copies of the appeals are kept for at least five years. (Doc. 102, Exhs. D & E.)

Discussion

Defendant Alexander's responses to RFA 19 and 21 are clearly inadequate, as she does not describe any effort to search for information before responding. Alexander's objections to RFA 21 are overruled. For the reasons set forth above, Alexander shall be required to make amended responses to RFA 19 and 21, either making an admission or denial, or explaining in detail her efforts to search for information, with a listing of the documents she reviewed and the persons she contacted to refresh her memory. Alexander shall only be required to search for evidence of 602 complaints and prisoner lawsuits against her that were filed or pending during the five-year time period prior to and including January 24, 2005, in preparation for her amended responses to RFA 19 and 21. No objections are allowed.

c. RFA 34

Plaintiff argues that defendant Alexander's responses are insufficient because they were not given under oath, as required by Rule 36. Defendant Alexander responds that there is no such legal requirement. In his reply, Plaintiff cites three cases to support his argument that the responses must be signed under oath.

1 Discussion

2 Defendant Alexander has adequately responded to RFA 34. Sworn responses are no longer
3 required by Rule 36. The cases cited by Plaintiff are outdated. “The requirement that the answer
4 to a request for admission be sworn [was] deleted, in favor of a provision that the answer be signed
5 by the party or by his attorney.” (Fed. R. Civ. P. 36 advisory committee notes to 1970 amendment.)
6 Therefore, defendant Alexander shall not be required to submit any further response to RFA 34, and
7 none of the Defendants is required to submit sworn responses to any of Plaintiff’s RFAs.

8

9 2. Defendant Blankenship – RFA 48, 49, 51-55,⁴ 87 and 104

10 Plaintiff seeks a court order compelling defendant Blankenship to make further responses to
11 Plaintiff’s RFA 48, 49, 51-55, 87 and 104 , as follows.

12 > **REQUEST FOR ADMISSION 48:**

13 Admit or deny on or about January 24, 2005 that the toothbrushes found under the cell door
14 were the actual weapons used in the extraction.

15

16 **RESPONSE TO REQUEST FOR ADMISSION 48:**

17 Defendant objects to this request on the grounds that it is vague, ambiguous and is
18 not a plain statement of fact. Notwithstanding these objections, and if plaintiff is
19 referring to the toothbrushes that were found in his cell after the extraction,
20 responding party admits that staff believe that Plaintiff used those toothbrushes to
21 assault staff.

22 > **REQUEST FOR ADMISSION 49:**

23 Admit or deny on or about January 24, 2005, that the toothbrushes found under the cell door
24 were actual weapons at all.

25

26

27 ⁴In his motion, Plaintiff seeks to compel further responses to RFA 50 from defendants Blankenship,
28 Carrasco, Chan, Johnson, McGregor, and Nelson. However, these defendants assert that Plaintiff misnumbered his
requests to them and there was no RFA 50 for them to answer. (Opp’n, Doc. 94 at 6 n.2, 7 ¶¶3,4, 8 ¶¶7,8, 9 ¶9..)
Plaintiff has not disagreed.

RESPONSE TO REQUEST FOR ADMISSION 49:

Defendant objects to this request on the grounds that it is vague, ambiguous and is not a plain statement of fact. Notwithstanding these objections, and if plaintiff is referring to the toothbrushes that were found in his cell after the extraction, responding party admits that staff believe that Plaintiff used those toothbrushes to assault staff.

REQUEST FOR ADMISSION 51:

Admit or deny on or before January 24, 2005 you have previous 602/citizen complaints filed against you for denying injured or medically ill prisoners medical treatment.

RESPONSE TO REQUEST FOR ADMISSION 51:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Besides interaction with the Plaintiff, Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 52:

Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's filed against you for employee misconduct by other prisoners housed at Tehachapi State Prison and/or other CDCR institutions.

111

111

RESPONSE TO REQUEST FOR ADMISSION 52:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Besides the interaction with Plaintiff, Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 53:

Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's filed against you for retaliatory conduct by other prisoners housed at Tehachapi State Prison and/or other CDCR institutions.

RESPONSE TO REQUEST FOR ADMISSION 53:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Besides his interaction with the Plaintiff, Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

1 > **REQUEST FOR ADMISSION 54:**

2 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
3 filed against you for excessive use of force by other prisoners housed at Tehachapi State
4 Prison and/or other CDCR institutions.

5
6 **RESPONSE TO REQUEST FOR ADMISSION 54:**

7 Defendant objects to this request because it is overbroad and not relevant to this
8 action. Without waiving and subject to these objections, Defendant responds as
9 follows: Besides his interaction with the Plaintiff, Defendant may have some
10 grievance filed against him for various reasons, but has no independent recollection
11 of any specific grievance or complaint being filed against him by an inmate.
12 Generally, when an inmate files a complaint of an appeal, those documents are kept
13 within that individual inmate's central file, and not kept by the employee. Based
14 upon insufficient information and knowledge, this Defendant does [not] have enough
15 information to admit or deny the request, and therefore denies the request on that
16 basis.

17
18 > **REQUEST FOR ADMISSION 55:**

19 Admit or deny you have had prior citizen complaints/602's filed against you for withholding
20 prisoners property from them, by other prisoners housed at Tehachapi State Prison and/or
21 other CDCR institutions.

22 **RESPONSE TO REQUEST FOR ADMISSION 55:**

23 Defendant objects to this request because it is overbroad and not relevant to this
24 action. Besides his interaction with the Plaintiff, Defendant may have some
25 grievance filed against him for various reasons, but has no independent recollection
26 of any specific grievance or complaint being filed against him by an inmate.
27 Generally, when an inmate files a complaint or an appeal, those documents are kept
28 within that individual inmate's central file, and not kept by the employee. Based

upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 87:

Admit or deny on or about January 24, 2005 you participated in the cell extraction of Plaintiff from cell 103L.

RESPONSE TO REQUEST FOR ADMISSION 87:

Admit I participated in the extraction up until the point that Plaintiff assaulted me.

REQUEST FOR ADMISSION 104:

Admit or deny on or about January 24, 2005 you can say for sure Plaintiff stabbed you directly in the back of your head during the extraction.

RESPONSE TO REQUEST FOR ADMISSION 104:

Admit.

AMENDED RESPONSE TO REQUEST FOR ADMISSION 104:

Responding party objects to this request on the ground it is vague as to the meaning of “for sure.” Without waiving any objection, responding party admits that a reasonable inference exists that Plaintiff stabbed responding party in the back of the head during the cell extraction.

a. **RFA 48 and 49**

Plaintiff takes issue with defendant Blankenship's objections to RFA 48 and 49 on the grounds that RFA 48 and 49 are vague, ambiguous and not plain statements of fact, and argues that Blankenship's responses are hearsay based on speculation. Plaintiff maintains that the requests clearly asked Blankenship "if the toothbrushes found under the cell door 'were' actual weapons used in the extraction, not if the toothbrushes were used to stabb (*sic*) or assault staff." (Motion, Doc. 84 at 7 ¶B.) Blankenship responds that it is unclear what Plaintiff meant by "the actual weapons used

1 in the extraction," and asserts that he responded to RFA 48 and 49 based on his interpretation of
2 them. Plaintiff replies that RFA 48 and 49 clearly requested Blankenship to admit or deny that the
3 toothbrushes found under the cell door were the actual weapons used in the extraction.

4 **Discussion**

5 Defendant Blankenship's responses to RFA 48 and 49 are adequate. Blankenship has
6 reasonably stated his belief with respect to the toothbrushes and shall not be required to make any
7 further responses to RFA 48 and 49.

8 **b. RFA 51-55**

9 Plaintiff argues that Blankenship's responses to RFA 51-55 are inadequate because
10 Blankenship did not search all of the documents available to him before providing the responses.
11 Blankenship argues that because he denied each of these requests after giving an explanation, he has
12 complied with Rule 36(a)(4) and nothing more is required. Plaintiff replies that Blankenship is
13 incorrect in his explanation that appeal documents are only kept in inmate files, because CDCR
14 utilizes an automated appeals tracking system. Plaintiff submits evidence that staff are notified by
15 memorandum each time a complaint is filed against them, and that copies of the appeals are kept for
16 at least five years. (Doc. 102, Exhs. D & E.)

17 **Discussion**

18 Plaintiff has not shown how RFA 51, 53, and 55 are relevant to his claims against
19 Blankenship. Plaintiff is proceeding against Blankenship only on a claim for excessive force, and
20 RFA 51, 53, and 55 concern complaints filed against Blankenship for denial of medical treatment,
21 retaliation, and withholding property. The moving party bears the burden of demonstrating "actual
22 and substantial prejudice" from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751
23 (9th Cir. 2002) (citations omitted.). Blankenship shall not be required to make any further responses
24 to RFA 51, 53, or 55.

25 Blankenship's objection to RFA 52 as overbroad is sustained. Blankenship shall not be
26 required to make any further response to RFA 52.

27 Blankenship's objections to RFA 54 are overruled. RFA 54, concerning whether appeals
28 were filed against Blankenship based on excessive force, is relevant to Plaintiff's excessive force

1 claim against Blankenship. Blankenship's denial, based upon insufficient information and
2 knowledge, is inadequate, as he does not describe any effort to search for information before
3 responding. Blankenship shall be required to make an amended response to RFA 54, either making
4 an unqualified admission or denial, or explaining in detail his efforts to search for information, with
5 a listing of any documents he reviewed. Blankenship shall only be required to search for evidence
6 of 602 complaints against him that were filed or pending during the five-year time period prior to
7 and including January 24, 2005, in preparation for his amended response to RFA 54. No objections
8 are allowed.

9 **c. RFA 87 and 104**

10 Plaintiff seeks to compel defendant Blankenship to make unequivocal admissions to RFA
11 87 and 104. Blankenship maintains that he has admitted to the extent possible and is permitted,
12 under Rule 36(a)(4) to admit a portion of a request or explain the basis for the response. Plaintiff
13 argues that Blankenship has improperly broadened the requests and does not answer them.

14 Blankenship has adequately responded to RFA 87 and 104. Plaintiff may not compel a
15 different response based merely on his disagreement with the response. Blankenship shall not be
16 required to make any further responses to RFA 87 or 104.

17 **3. Defendant Carrasco - RFA 48, 49, 51-55, 118, and 132**

18 Plaintiff seeks a court order compelling defendant Carrasco to make further responses to
19 Plaintiff's RFA 48-49, 51-55, 118, and 132, as follows.

20 > **REQUEST FOR ADMISSION 48:**

21 Admit or deny on or about January 24, 2005, that the toothbrushes found under the cell door
22 were the actual weapons used in the extraction.

23 **RESPONSE TO REQUEST FOR ADMISSION 48:**

24 Defendant objects to this request on the grounds that it is vague, ambiguous and is
25 not a plain statement of fact. Notwithstanding these objections, responding party was

26 ///

1 able to see into the cell and cannot admit or deny the request. On that basis,
2 responding party denies the request.

3

4 > **REQUEST FOR ADMISSION 49:**

5 Admit or deny on or about January 24, 2005, that the toothbrushes found under the cell door
6 were actual weapons at all.

7

8 **RESPONSE TO REQUEST FOR ADMISSION 49:**

9 Defendant objects to this request on the grounds that it is vague, ambiguous and is
10 not a plain statement of fact. Notwithstanding these objections, responding party was
11 unable to see into the cell and cannot admit or deny the request. On that basis,
responding party denies the request.

12

13 > **REQUEST FOR ADMISSION 51:**

14 Admit or Deny on or before January 24, 2005 you have had previous 602/Citizen complaints
15 filed against you for denying injured or medically ill prisoners medical treatment.

16

17 **RESPONSE TO REQUEST FOR ADMISSION 51:**

18 Defendant objects to this request because it is overbroad and not relevant to this
action. Without waiving and subject to these objections, Defendant responds as
19 follows: Defendant is currently retired and over her career most likely did have some
20 grievance filed against her for various reasons, but has no independent recollection
21 of any specific grievance or complaint being filed against her by an inmate.
22 Generally, when an inmate files a complaint or an appeal, those documents are kept
23 within that individual inmate's central file, and not kept by the employee. Based
24 upon insufficient information and knowledge, this Defendant does [not] have enough
25 information to admit or deny the request, and therefore denies the request on that
basis.

1 > **REQUEST FOR ADMISSION 52:**

2 Admit or Deny on or before January 24, 2005 you have had prior citizen complaints/602's
3 filed against you for employee misconduct by other prisoners housed at Tehacapi State
4 Prison and/or other CDCR institutions.

5 **RESPONSE TO REQUEST FOR ADMISSION 52:**

6 Defendant objects to this request because it is overbroad and not relevant to this
7 action. Without waiving and subject to these objections, Defendant responds as
8 follows: Defendant is currently retired and over her career most likely did have some
9 grievance filed against her for various reasons, but has no independent recollection
10 of any specific grievance or complaint being filed against her by an inmate.
11 Generally, when an inmate files a complaint or an appeal, those documents are kept
12 within that individual inmate's central file, and not kept by the employee. Based
13 upon insufficient information and knowledge, this Defendant does [not] have enough
14 information to admit or deny the request, and therefore denies the request on that
15 basis.

16 > **REQUEST FOR ADMISSION 53:**

17 Admit or Deny on or before January 24, 2005 you have had prior citizen complaints/602's
18 filed against you for retaliatory conduct by other prisoners housed at Tehacapi State Prison
19 and/or other CDCR institutions.

20 **RESPONSE TO REQUEST FOR ADMISSION 53:**

21 Defendant objects to this request because it is overbroad and not relevant to this
22 action. Without waiving and subject to these objections, Defendant responds as
23 follows: Defendant is currently retired and over her career most likely did have some
24 grievance filed against her for various reasons, but has no independent recollection
25 of any specific grievance or complaint being filed against her by an inmate.
26 Generally, when an inmate files a complaint or an appeal, those documents are kept
27 within that individual inmate's central file, and not kept by the employee. Based
28

upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 54:

Admit or Deny on or before January 24, 2005 you have had prior citizen complaints/602's filed against you for excessive use of force by other prisoners housed at Tehacapi State Prison and/or other CDCR institutions.

RESPONSE TO REQUEST FOR ADMISSION 54:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant is currently retired and over her career most likely did have some grievance filed against her for various reasons, but has no independent recollection of any specific grievance or complaint being filed against her by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 55:

Admit or Deny you have had prior citizen complaints/602's filed against you for withholding prisoners property from them, by other prisoners housed at Tehacapi State Prison and/or other CDCR institutions.

RESPONSE TO REQUEST FOR ADMISSION 55:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant is currently retired and over her career most likely did have some

1 grievance filed against her for various reasons, but has no independent recollection
2 of any specific grievance or complaint being filed against her by an inmate.
3 Generally, when an inmate files a complaint or an appeal, those documents are kept
4 within that individual inmate's central file, and not kept by the employee. Based
5 upon insufficient information and knowledge, this Defendant does [not] have enough
6 information to admit or deny the request, and therefore denies the request on that
7 basis.

8 > **REQUEST FOR ADMISSION 118:**

9 Admit or Deny on or before January 24, 2005 Plaintiff was escorted and placed in the unit
10 section shower after his removal from the cell.

11 > **RESPONSE TO REQUEST FOR ADMISSION 118:**

12 Admit plaintiff was placed in a holding cell within the unit.

13 > **REQUEST FOR ADMISSION 132:**

14 Admit or deny that you answered these admissions under sworn oath.

15 > **RESPONSE TO REQUEST FOR ADMISSION 132:**

16 Responding party admit these questions were answered under penalty of perjury.

17 a. **RFA 48 and 49**

18 Plaintiff argues that defendant Carrasco has not adequately responded to RFA 48 and 49
19 because he "tries to side step the question by giving a round about answer." (Motion, Doc. 84 at 8
20 ¶C.) Plaintiff asserts that he "concisely and specifically asked Carrasco were these so called
21 toothbrush pieces found under the cell door 'after' the extraction weapons and/or the same so called
22 weapons used to 'allegedly' stab Blankenship in the back of the head." Id. Plaintiff argues that
23 Carrasco did not have to see inside the cell during the cell extraction to answer this question, because
24 it is an undisputed fact that the toothbrush pieces were sighted after the cell was clear, where
25 Carrasco and others were standing, right in front of the cell door the entire time.
26
27
28

1 Carrasco states that "[f]or all the reasons stated above with respect to Blankenship's responses
2 to Requests 48 to 55, Carrasco's responses to those same requests are proper and no further responses
3 are warranted." (Opp'n, Doc. 94 at 7:6-8.)

4 Plaintiff replies that he "re-alleges and incorporates as stated above in Section I-II, his
5 response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

6 **Discussion**

7 Defendant Carrasco's objections to RFA 48 and 49 are sustained. Plaintiff's assertion that
8 he "concisely and specifically asked Carrasco were these so called toothbrush pieces found under
9 the cell door 'after' the extraction weapons and/or the same so called weapons used to 'allegedly' stab
10 Blankenship in the back of the head" is incorrect. Carrasco shall not be required to make any further
11 responses to RFA 48 and 49.

12 **b. RFA 51-55**

13 Plaintiff argues that defendant Carrasco's responses to RFA 51-55 are inadequate because
14 Carrasco did not search all of the documents available to him before providing the responses.
15 Carrasco states that "[f]or all the reasons stated above with respect to Blankenship's responses to
16 Requests 48 to 55, Carrasco's responses to those same requests are proper and no further responses
17 are warranted." (Opp'n, Doc. 94 at 7:6-8.) Plaintiff replies that he "re-alleges and incorporates as
18 stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

19 **Discussion**

20 Plaintiff has not shown how RFA 51, 53, and 55 are relevant to his claims against Carrasco.
21 Plaintiff is proceeding against Carrasco only on a claim for excessive force, and RFA 51, 53, and 55
22 concern complaints filed against Carrasco for denial of medical treatment, retaliation, and
23 withholding property. The moving party bears the burden of demonstrating "actual and substantial
24 prejudice" from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)
25 (citations omitted.). Carrasco shall not be required to make any further responses to RFA 51, 53, or
26 55.

27 Carrasco's objection to RFA 52 as overbroad is sustained. Carrasco shall not be required to
28 make any further response to RFA 52.

1 Carrasco's objections to RFA 54 are overruled. RFA 54, concerning whether appeals were
2 filed against Carrasco based on excessive force, is relevant to Plaintiff's excessive force claim
3 against Carrasco. Carrasco's denial, based upon insufficient information and knowledge, is
4 inadequate, as he does not describe any effort to search for information before responding. Carrasco
5 shall be required to make an amended response to RFA 54, either making an unqualified admission
6 or denial, or explaining in detail his efforts to search for information, with a listing of any documents
7 he reviewed. Carrasco shall only be required to search for evidence of 602 complaints against him
8 that were filed or pending during the five-year time period prior to and including January 24, 2005,
9 in preparation for his amended response to RFA 54. No objections are allowed.

10 **c. RFA 118**

11 Plaintiff argues that defendant Carrasco did not respond appropriately to RFA 118 when he
12 admitted that Plaintiff was placed in the unit holding cage, because Plaintiff specifically asked if he
13 was escorted and placed into the unit shower.

14 Defendant Carrasco responds that he does not oppose Plaintiff's motion and will provide a
15 further or amended response to RFA 118. Carrasco shall be required to provide an amended
16 response to RFA 118, explaining in detail his efforts to search for information, with a listing of any
17 documents he reviewed.

18 **d. RFA 132**

19 Plaintiff requests that defendant Carrasco be compelled to make further responses under
20 sworn oath. The issue in RFA 132, whether responses under oath are required by Rule 36, was
21 addressed above. Sworn responses are no longer required by Rule 36. The cases cited by Plaintiff
22 are outdated. "The requirement that the answer to a request for admission be sworn [was] deleted,
23 in favor of a provision that the answer be signed by the party or by his attorney." (Fed. R. Civ. P.
24 36 advisory committee notes to 1970 amendment.) Therefore, defendant Carrasco shall not be
25 required to submit any further response to RFA 132, and none of the Defendants is required to
26 submit sworn responses to any of Plaintiff's RFAs.

27 ///

28 ///

1 3. Defendant Chan - RFA 48-54

2 Plaintiff seeks a court order compelling defendant Chan to make further responses to
3 Plaintiff's RFA 48-54, as follows.

4
5 > **REQUEST FOR ADMISSION 48:**

6 Admit or deny on or about January 24, 2005, that the tooth brushes found under the cell door
7 were the actual weapons used in the extraction.

8 **RESPONSE TO REQUEST FOR ADMISSION 48:**

9 Defendant objects to this request on the grounds that it is vague, ambiguous and is
10 not a plain statement of fact. Notwithstanding these objections, and if plaintiff is
11 referring to the toothbrushes that were found in his cell after the extraction,
12 responding party admits that staff believe that Plaintiff used those toothbrushes to
13 assault staff.

14
15 > **REQUEST FOR ADMISSION 49:**

16 Admit or deny on or about January 24, 2005, that the toothbrushes found under the cell door
17 were actual weapons at all.

18 **RESPONSE TO REQUEST FOR ADMISSION 49:**

19 Defendant objects to this request on the grounds that it is vague, ambiguous and is
20 not a plain statement of fact. Notwithstanding these objections, and if plaintiff is
21 referring to the toothbrushes that were found in his cell after the extraction,
22 responding party admits that staff believe that Plaintiff used those toothbrushes to
23 assault staff.

24
25 > **REQUEST FOR ADMISSION 50:**

26 Admit or deny on or before January 24, 2005 you have had previous 602/citizen complaint
27 filed against you for denying injured or medically ill prisoners medical treatment.

RESPONSE TO REQUEST FOR ADMISSION 50:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 51:

Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's filed against you for employee misconduct by other prisoners housed at Tehacapi State Prison and/or other CDCR institutions.

RESPONSE TO REQUEST FOR ADMISSION 51:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

1 > **REQUEST FOR ADMISSION 52:**

2 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
3 filed against you for retaliatory conduct by other prisoners housed at Tehacapi State Prison
4 and/or other CDCR institutions.

5 **RESPONSE TO REQUEST FOR ADMISSION 52:**

6 Defendant objects to this request because it is overbroad and not relevant to this
7 action. Without waiving and subject to these objections, Defendant responds as
8 follows: Defendant may have some grievance filed against him for various reasons,
9 but has no independent recollection of any specific grievance or complaint being filed
10 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
11 those documents are kept within that individual inmate's central file, and not kept by
12 the employee. Based upon insufficient information and knowledge, this Defendant
13 does [not] have enough information to admit or deny the request, and therefore
14 denies the request on that basis.

15 > **REQUEST FOR ADMISSION 53:**

16 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
17 filed against you for excessive use of force by other prisoners housed at Tehacapi State
18 Prison and/or other CDCR institutions.

19 **RESPONSE TO REQUEST FOR ADMISSION 53:**

20 Defendant objects to this request because it is overbroad and not relevant to this
21 action. Without waiving and subject to these objections, Defendant responds as
22 follows: Defendant may have some grievance filed against him for various reasons,
23 but has no independent recollection of any specific grievance or complaint being filed
24 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
25 those documents are kept within that individual inmate's central file, and not kept by
26 the employee. Based upon insufficient information and knowledge, this Defendant
27
28 ///

1 does [not] have enough information to admit or deny the request, and therefore
2 denies the request on that basis.

3

4 > **REQUEST FOR ADMISSION 54:**

5 Admit or deny you have had prior citizen complaints/602's filed against you for withholding
6 prisoners property from them, by other prisoners housed at Tehacapi State Prison and/or
7 other CDCR institutions.

8

9 **RESPONSE TO REQUEST FOR ADMISSION 54:**

10 Defendant objects to this request because it is overbroad and not relevant to this
11 action. Without waiving and subject to these objections, Defendant responds as
12 follows: Defendant may have some grievance filed against him for various reasons,
13 but has no independent recollection of any specific grievance or complaint being filed
14 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
15 those documents are kept within that individual inmate's central file, and not kept by
16 the employee. Based upon insufficient information and knowledge, this Defendant
17 does [not] have enough information to admit or deny the request, and therefore
18 denies the request on that basis.

19

20 a. **RFA 48 & 49**

21 Plaintiff argues that defendant Chan has not adequately responded to RFA 48 and 49 because
22 he has provided hearsay responses based on speculation. Plaintiff maintains that the requests clearly
23 asked Chan "if the toothbrushes found under the cell door 'were' actual weapons used in the
24 extraction, not if the toothbrushes were used to stabb (*sic*) or assault staff." (Motion, Doc. 84 at 9
25 ¶D.) Plaintiff also asserts that he also asked "if these toothbrushes were actual weapons period."
26 Id., Chan responds that it is unclear what Plaintiff meant by "the actual weapons used in the
27 extraction," and asserts that he responded to the RFA 48 and 49 based on his interpretation of them.

28 ///

1 Plaintiff replies that RFA 48 and 49 clearly requested Chan to admit or deny that the toothbrushes
2 found under the cell door were the actual weapons used in the extraction.

3 Chan responds that "[f]or all the reasons stated above with respect to Blankenship's responses
4 to Requests 48 to 55, Chan's responses to those same requests (numbered 48 to 54 because of the
5 inclusion of No. 50 which was missing from Blankenship's set) are proper and no further responses
6 are warranted." (Opp'n, Doc. 94 at 7 ¶IV.)

7 Plaintiff replies that he "re-alleges and incorporates as stated above in Section I-II, his
8 response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

9 **Discussion**

10 Defendant Chan's objections to RFA 48 and 49 are sustained. Plaintiff's assertion that RFA
11 48 and 49 were clearly stated is incorrect. Chan shall not be required to make any further responses
12 to RFA 48 and 49.

13 **b. RFA 50-54**

14 Plaintiff argues that defendant Chan's responses to RFA 50-54 are inadequate because Chan
15 did not search all of the documents available to him before providing the responses. Chan states that
16 "[f]or all the reasons stated above with respect to Blankenship's responses to Requests 48 to 55,
17 Chan's responses to those same requests (numbered 48 to 54 because of the inclusion of No. 50
18 which was missing from Blankenship's set) are proper and no further responses are warranted."
19 (Opp'n, Doc. 94 at 7 ¶IV.) Plaintiff replies that he "re-alleges and incorporates as stated above in
20 Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

21 **Discussion**

22 Plaintiff has not shown how RFA 50, 52, and 54 are relevant to his claims against Chan.
23 Plaintiff is proceeding against Chan only on a claim for excessive force, and RFA 50, 52, and 54
24 concern complaints filed against Chan for denial of medical treatment, retaliation, and withholding
25 property. The moving party bears the burden of demonstrating "actual and substantial prejudice"
26 from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations
27 omitted.). Chan shall not be required to make any further responses to RFA 50, 52, or 54.

28 ///

1 Chan's objection to RFA 51 as overbroad is sustained. Chan shall not be required to make
2 any further response to RFA 51.

3 Chan's objections to RFA 53 are overruled. RFA 53, concerning whether appeals were filed
4 against Chan based on excessive force, is relevant to Plaintiff's excessive force claim against Chan.
5 Chan's denial, based upon insufficient information and knowledge, is inadequate, as he does not
6 describe any effort to search for information before responding. Chan shall be required to make an
7 amended response to RFA 53, either making an unqualified admission or denial, or explaining in
8 detail his efforts to search for information, with a listing of any documents he reviewed. Chan shall
9 only be required to search for evidence of 602 complaints against him that were filed or pending
10 during the five-year time period prior to and including January 24, 2005, in preparation for his
11 amended response to RFA 53. No objections are allowed.

12

13 **4. Defendant Granillo - RFA 50-54**

14 Plaintiff seeks a court order compelling defendant Granillo to make further responses to
15 Plaintiff's RFA 50-54, as follows.

16

17 > **REQUEST FOR ADMISSION 50:**

18 Admit or deny on or before January 24, 2005 you have had previous 602/citizen complaint
19 filed against you for denying injured or medically ill prisoners medical treatment.

20 **RESPONSE TO REQUEST FOR ADMISSION 50:**

21 Defendant objects to this request because it is overbroad and not relevant to this
22 action. Without waiving and subject to these objections, Defendant responds as
23 follows: Defendant may have some grievance filed against him for various reasons,
24 but has no independent recollection of any specific grievance or complaint being filed
25 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
26 those documents are kept within that individual inmate's central file, and not kept by
27 the employee. Based upon insufficient information and knowledge, this Defendant

28 ///

1 does [not] have enough information to admit or deny the request, and therefore
2 denies the request on that basis.

3

4 > **REQUEST FOR ADMISSION 51:**

5 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
6 filed against you for employee misconduct by other prisoners housed at Tehacapi State
7 Prison and/or other CDCR institutions.

8

9 **RESPONSE TO REQUEST FOR ADMISSION 51:**

10 Defendant objects to this request because it is overbroad and not relevant to this
11 action. Without waiving and subject to these objections, Defendant responds as
12 follows: Defendant may have some grievance filed against him for various reasons,
13 but has no independent recollection of any specific grievance or complaint being filed
14 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
15 those documents are kept within that individual inmate's central file, and not kept by
16 the employee. Based upon insufficient information and knowledge, this Defendant
17 does [not] have enough information to admit or deny the request, and therefore
denies the request on that basis.

18

19 > **REQUEST FOR ADMISSION 52:**

20 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
21 filed against you for retaliatory conduct by other prisoners housed at Tehacapi State Prison
22 and/or other CDCR institutions.

23

24 **RESPONSE TO REQUEST FOR ADMISSION 52:**

25 Defendant objects to this request because it is overbroad and not relevant to this
26 action. Without waiving and subject to these objections, Defendant responds as
27 follows: Defendant may have some grievance filed against him for various reasons,
28 but has no independent recollection of any specific grievance or complaint being filed
against him by an inmate. Generally, when an inmate files a complaint or an appeal,

1 those documents are kept within that individual inmate's central file, and not kept by
2 the employee. Based upon insufficient information and knowledge, this Defendant
3 does [not] have enough information to admit or deny the request, and therefore
4 denies the request on that basis.

5 > **REQUEST FOR ADMISSION 53:**

6 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
7 filed against you for excessive use of force by other prisoners housed at Tehacapi State
8 Prison and/or other CDCR institutions.

9
10 > **RESPONSE TO REQUEST FOR ADMISSION 53:**

11 Defendant objects to this request because it is overbroad and not relevant to this
12 action. Without waiving and subject to these objections, Defendant responds as
13 follows: Defendant may have some grievance filed against him for various reasons,
14 but has no independent recollection of any specific grievance or complaint being filed
15 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
16 those documents are kept within that individual inmate's central file, and not kept by
17 the employee. Based upon insufficient information and knowledge, this Defendant
18 does [not] have enough information to admit or deny the request, and therefore
19 denies the request on that basis.

20
21 > **REQUEST FOR ADMISSION 54:**

22 Admit or deny you have had prior citizen complaints/602's filed against you for withholding
23 prisoners property from them, by other prisoners housed at Tehacapi State Prison and/or
24 other CDCR institutions.

25
26 > **RESPONSE TO REQUEST FOR ADMISSION 54:**

27 Defendant objects to this request because it is overbroad and not relevant to this
28 action. Without waiving and subject to these objections, Defendant responds as

1 follows: Defendant may have some grievance filed against him for various reasons,
2 but has no independent recollection of any specific grievance or complaint being filed
3 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
4 those documents are kept within that individual inmate's central file, and not kept by
5 the employee. Based upon insufficient information and knowledge, this Defendant
6 does [not] have enough information to admit or deny the request, and therefore
7 denies the request on that basis.

8

9 **a. RFA 50-54**

10 Plaintiff argues that defendant Granillo's responses to RFA 50-54 are inadequate because
11 Granillo did not search all of the documents available to him before providing the responses.
12 Granillo states that "[f]or all the reasons stated above with respect to Blankenship's responses to
13 Requests 48 to 55, Granillo's responses to those same requests (numbered 48 to 54 because of the
14 inclusion of No. 50 which was missing from Blankenship's set) are proper and no further responses
15 are warranted." (Opp'n, Doc. 94 at 7 ¶IV.) Plaintiff replies that he "re-alleges and incorporates as
16 stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

17 **Discussion**

18 Plaintiff has not shown how RFA 52 and 54 are relevant to his claims against Granillo.
19 Plaintiff is proceeding against Granillo on claim for excessive force and denial of medical care, and
20 RFA 52 and 54 concern complaints filed against Granillo for retaliation and withholding property.
21 The moving party bears the burden of demonstrating "actual and substantial prejudice" from the
22 denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations omitted.).
23 Granillo shall not be required to make any further responses to RFA 52 or 54.

24 Granillo's objection to RFA 51 as overbroad is sustained. Granillo shall not be required to
25 make any further response to RFA 51.

26 Granillo's objections to RFA 50 and 53 are overruled. RFA 50 and 53, concerning whether
27 appeals were filed against Granillo based on excessive force or denial of medical care, are relevant
28 to Plaintiff's claims against Granillo. Granillo's denial, based upon insufficient information and

knowledge, is inadequate, as he does not describe any effort to search for information before responding. Granillo shall be required to make amended responses to RFA 50 and 53, either making unqualified admissions or denials, or explaining in detail his efforts to search for information, with a listing of any documents he reviewed. Granillo shall only be required to search for evidence of 602 complaints against him that were filed or pending during the five-year time period prior to and including January 24, 2005, in preparation for his amended responses to RFA 50 and 53. No objections are allowed.

5. Defendant Jobb - RFA 50-54 and 116

Plaintiff seeks a court order compelling defendant Jobb to make further responses to Plaintiff's RFA 50-54 and 116, as follows.

> **REQUEST FOR ADMISSION 50:**

Admit or Deny on or before January 24, 2005 you have had previous 602/Citizen complaints filed against you for denying injured or medically ill prisoners medical treatment.

RESPONSE TO REQUEST FOR ADMISSION 50:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

1 > **REQUEST FOR ADMISSION 51:**

2 Admit or Deny on or before January 24, 2005 you have had prior citizen complaints/602's
3 filed against you for employee misconduct by other prisoners housed at Tehacapi State
4 Prison and/or other CDCR institutions.

5 **RESPONSE TO REQUEST FOR ADMISSION 51:**

6 Defendant objects to this request because it is overbroad and not relevant to this
7 action. Without waiving and subject to these objections, Defendant responds as
8 follows: Defendant may have some grievance filed against him for various reasons,
9 but has no independent recollection of any specific grievance or complaint being filed
10 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
11 those documents are kept within that individual inmate's central file, and not kept by
12 the employee. Based upon insufficient information and knowledge, this Defendant
13 does [not] have enough information to admit or deny the request, and therefore
14 denies the request on that basis.

15 > **REQUEST FOR ADMISSION 52:**

16 Admit or Deny on or before January 24, 2005 you have had prior citizen complaints/602's
17 filed against you for retaliatory conduct by other prisoners housed at Tehacapi State Prison
18 and/or other CDCR institutions.

19 **RESPONSE TO REQUEST FOR ADMISSION 52:**

20 Defendant objects to this request because it is overbroad and not relevant to this
21 action. Without waiving and subject to these objections, Defendant responds as
22 follows: Defendant may have some grievance filed against him for various reasons,
23 but has no independent recollection of any specific grievance or complaint being filed
24 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
25 those documents are kept within that individual inmate's central file, and not kept by
26 the employee. Based upon insufficient information and knowledge, this Defendant
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1 does [not] have enough information to admit or deny the request, and therefore
2 denies the request on that basis.

3

4 > **REQUEST FOR ADMISSION 53:**

5 Admit or Deny on or before January 24, 2005 you have had prior citizen complaints/602's
6 filed against you for excessive use of force by other prisoners housed at Tehacapi State
7 Prison and/or other CDCR institutions.

8 **RESPONSE TO REQUEST FOR ADMISSION 53:**

9 Defendant objects to this request because it is overbroad and not relevant to this
10 action. Without waiving and subject to these objections, Defendant responds as
11 follows: Defendant may have some grievance filed against him for various reasons,
12 but has no independent recollection of any specific grievance or complaint being filed
13 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
14 those documents are kept within that individual inmate's central file, and not kept by
15 the employee. Based upon insufficient information and knowledge, this Defendant
16 does [not] have enough information to admit or deny the request, and therefore
17 denies the request on that basis.

18

19 > **REQUEST FOR ADMISSION 54:**

20 Admit or Deny you have had prior citizen complaints/602's filed against you for withholding
21 prisoners property from them, by other prisoners housed at Tehacapi State Prison and/or
22 other CDCR institutions.

23 **RESPONSE TO REQUEST FOR ADMISSION 54:**

24 Defendant objects to this request because it is overbroad and not relevant to this
25 action. Without waiving and subject to these objections, Defendant responds as
26 follows: Defendant may have some grievance filed against him for various reasons,
27 but has no independent recollection of any specific grievance or complaint being filed
28 against him by an inmate. Generally, when an inmate files a complaint or an appeal,

those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 116:

Admit or Deny that you answered these admissions under oath.

RESPONSE TO REQUEST FOR ADMISSION 116:

Responding party admits that he answered the admissions under penalty of perjury.

a. RFA 50-54

Plaintiff argues that defendant Jobb's responses to RFA 50-54 are inadequate because Jobb did not search all of the documents available to him before providing the responses. Jobb states that "[f]or all the reasons stated above with respect to Blankenship's responses to Requests 48 to 55, Jobb's responses to those same requests (numbered 48 to 54 because of the inclusion of No. 50 which was missing from Blankenship's set) are proper and no further responses are warranted." (Opp'n, Doc. 94 at 7 ¶IV.) Plaintiff replies that he "re-alleges and incorporates as stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

Discussion

Plaintiff has not shown how RFA 50, 52 and 54 are relevant to his claims against Jobb. Plaintiff is proceeding against Jobb on a claim for excessive force, and RFA 50, 52 and 54 concern complaints filed against Jobb for denial of medical care, retaliation and withholding property. The moving party bears the burden of demonstrating “actual and substantial prejudice” from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations omitted.). Jobb shall not be required to make any further responses to RFA 50, 52 or 54.

Jobb objection to RFA 51 as overbroad is sustained. Jobb shall not be required to make any further response to RFA 51.

111

Jobb's objections to RFA 53 are overruled. RFA 53, concerning whether appeals were filed against Jobb based on excessive force, is relevant to Plaintiff's claims against Jobb. Jobb's denial, based upon insufficient information and knowledge, is inadequate, as he does not describe any effort to search for information before responding. Jobb shall be required to make an amended response to RFA 53, either making unqualified admissions or denials, or explaining in detail his efforts to search for information, with a listing of any documents he reviewed. Jobb shall only be required to search for evidence of 602 complaints against him that were filed or pending during the five-year time period prior to and including January 24, 2005, in preparation for his amended response to RFA 53. No objections are allowed.

d. RFA 116

Plaintiff requests that defendant Jobb be compelled to make further responses under sworn oath. However, the issue in RFA 116, whether responses under oath are required by Rule 36, was addressed above. Sworn responses are no longer required by Rule 36. The cases cited by Plaintiff are outdated. “The requirement that the answer to a request for admission be sworn [was] deleted, in favor of a provision that the answer be signed by the party or by his attorney.” (Fed. R. Civ. P. 36 advisory committee notes to 1970 amendment.) Therefore, defendant Jobb shall not be required to submit any further response to RFA 116, and none of the Defendants is required to submit sworn responses.

6. Defendant Johnson - RFA 51-55

Plaintiff seeks a court order compelling defendant Johnson to make further responses to Plaintiff's RFA 51-55, as follows.

> REQUEST FOR ADMISSION 51:

Admit or deny on January 24, 2005 you have had previous 602/citizen complaints filed against you for denying injured or medically ill prisoners medical treatment.

RESPONSE TO REQUEST FOR ADMISSION 51:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

REQUEST FOR ADMISSION 52:

Admit or deny on January 24, 2005 you have had prior citizen complaints/602's filed against you for employee misconduct by other prisoners housed at Tehachapi State Prison and/or other CDCR institutions.

RESPONSE TO REQUEST FOR ADMISSION 52:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

1 > **REQUEST FOR ADMISSION 53:**

2 Admit or deny on January 24, 2005 you have had prior citizen complaints/602's filed against
3 you for retaliatory conduct by other prisoners housed at Tehachapi State Prison and/or other
4 CDCR institutions.

5 **RESPONSE TO REQUEST FOR ADMISSION 53:**

6 Defendant objects to this request because it is overbroad and not relevant to this
7 action. Without waiving and subject to these objections, Defendant responds as
8 follows: Defendant may have some grievance filed against him for various reasons,
9 but has no independent recollection of any specific grievance or complaint being filed
10 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
11 those documents are kept within that individual inmate's central file, and not kept by
12 the employee. Based upon insufficient information and knowledge, this Defendant
13 does [not] have enough information to admit or deny the request, and therefore
14 denies the request on that basis.

15 > **REQUEST FOR ADMISSION 54:**

16 Admit or deny on January 24, 2005 you have had prior citizen complaints/602's filed against
17 you for excessive use of force by other prisoners housed at Tehacapi State Prison and/or
18 other CDCR institutions.

19 **RESPONSE TO REQUEST FOR ADMISSION 54:**

20 Defendant objects to this request because it is overbroad and not relevant to this
21 action. Without waiving and subject to these objections, Defendant responds as
22 follows: Defendant may have some grievance filed against him for various reasons,
23 but has no independent recollection of any specific grievance or complaint being filed
24 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
25 those documents are kept within that individual inmate's central file, and not kept by
26 the employee. Based upon insufficient information and knowledge, this Defendant
27
28 ///

1 does [not] have enough information to admit or deny the request, and therefore
2 denies the request on that basis.

3

4 > **REQUEST FOR ADMISSION 55:**

5 Admit or deny on January 24, 2005 you have had prior citizen complaints/602's filed against
6 you for withholding prisoners property from them, by other prisoners housed at Techapi
7 STATE Prison and/or other CDCR institutions.

8 **RESPONSE TO REQUEST FOR ADMISSION 55:**

9 Defendant objects to this request because it is overbroad and not relevant to this
10 action. Without waiving and subject to these objections, Defendant responds as
11 follows: Defendant may have some grievance filed against him for various reasons,
12 but has no independent recollection of any specific grievance or complaint being filed
13 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
14 those documents are kept within that individual inmate's central file, and not kept by
15 the employee. Based upon insufficient information and knowledge, this Defendant
16 does [not] have enough information to admit or deny the request, and therefore
17 denies the request on that basis.

18

19 a. **RFA 51-55**

20 Plaintiff argues that defendant Johnson's responses to RFA 51-55 are inadequate because
21 Johnson did not search all of the documents available to him before providing the responses.
22 Johnson states that "[f]or all the reasons stated above with respect to Blankenship's responses to
23 Requests 51 to 55, Johnson's responses to those same requests are proper and no further responses
24 are warranted." (Opp'n, Doc. 94 at 8 ¶VII.) Plaintiff replies that he "re-alleges and incorporates as
25 stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

26 **Discussion**

27 Plaintiff has not shown how RFA 51, 53 and 55 are relevant to his claims against Johnson.
28 Plaintiff is proceeding against Johnson on a claim for excessive force, and RFA 51, 53 and 55

1 concern complaints filed against Johnson for denial of medical care, retaliation and withholding
2 property. The moving party bears the burden of demonstrating "actual and substantial prejudice"
3 from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations
4 omitted.). Johnson shall not be required to make any further responses to RFA 51, 53 or 55.

5 Johnson objection to RFA 52 as overbroad is sustained. Johnson shall not be required to
6 make any further response to RFA 52.

7 Johnson's objections to RFA 54 are overruled. RFA 54, concerning whether appeals were
8 filed against Johnson based on excessive force, is relevant to Plaintiff's excessive force claim against
9 Johnson. Johnson's denial, based upon insufficient information and knowledge, is inadequate, as
10 he does not describe any effort to search for information before responding. Johnson shall be
11 required to make an amended response to RFA 54, either making unqualified admissions or denials,
12 or explaining in detail his efforts to search for information, with a listing of any documents he
13 reviewed. Johnson shall only be required to search for evidence of 602 complaints against him that
14 were filed or pending during the five-year time period prior to and including January 24, 2005, in
15 preparation for his amended response to RFA 54. No objections are allowed.

16

17 **6. Defendant McGregor - RFA 51-55, 98, 105, 118, and 120**

18 Plaintiff seeks a court order compelling defendant McGregor to make further responses to
19 Plaintiff's RFA 51-55, 98, 105, 118, and 120, as follows.

20

21 > **REQUEST FOR ADMISSION 51:**

22 Admit or deny on or before January 24, 2005 you have had previous 602/citizen complaints
23 filed against you for denying injured or medically ill prisoners medical treatment.

24

25 **RESPONSE TO REQUEST FOR ADMISSION 51:**

26 Defendant objects to this request because it is overly broad and irrelevant to this
27 action. It is possible that a third party inmate has filed a grievance for their perceived
28 belief that they were denied medical care, but I have no independent recollection of
any such incident, and I therefore Deny.

1 > **REQUEST FOR ADMISSION 52:**

2 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
3 filed against you for employee misconduct by other prisoners housed at Tehachapi State
4 Prison and/or other CDCR institutions.

5 **RESPONSE TO REQUEST FOR ADMISSION 52:**

6 Defendant objects to this request because it is overly broad and irrelevant to this
7 action. It is possible that a third party inmate has filed a grievance for their perceived
8 belief of misconduct, but I have no independent recollection of any such incident, and
9 I therefore Deny.

10 > **REQUEST FOR ADMISSION 53:**

11 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
12 filed against you for retaliatory conduct by other prisoners housed at Tehachapi State Prison
13 and/or other CDCR institutions.

14 **RESPONSE TO REQUEST FOR ADMISSION 53:**

15 Defendant objects to this request because it is overly broad and irrelevant to this
16 action. It is possible that a third party inmate has filed a grievance for their perceived
17 belief of retaliation, but I have no independent recollection of any such incident, and
18 I therefore Deny.

19 > **REQUEST FOR ADMISSION 54:**

20 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
21 filed against you for excessive use of force by other prisoners housed at Tehachapi State
22 Prison and/or other CDCR institutions.

23 **RESPONSE TO REQUEST FOR ADMISSION 54:**

24 Defendant objects to this request because it is overly broad and irrelevant to this
25 action. It is possible that a third party inmate has filed a grievance for their perceived
26

27 ///

1 belief of excessive force, but I have no independent recollection of any such incident,
2 and I therefore Deny.

3

4 > **REQUEST FOR ADMISSION 55:**

5 Admit or deny you have had prior citizen complaints/602's filed against you for withholding
6 prisoners property from them, by other prisoners housed at Tehachapi State Prison and/or
7 other CDCR institutions.

8

9 **RESPONSE TO REQUEST FOR ADMISSION 55:**

10 Defendant objects to this request because it is overly broad and irrelevant to this
11 action. It is possible that a third party inmate has filed a grievance for their perceived
12 belief of withholding an inmate's property, but I have no independent recollection of
any such incident, and I therefore Deny.

13

14 > **REQUEST FOR ADMISSION 98:**

15 Admit or deny on or about January 24, 2005 Plaintiff was sprayed with O.C. pepper spray
16 more than five (5) times before the cell extraction team entered the cell.

17

18 **RESPONSE TO REQUEST FOR ADMISSION 98:**

19 Defendant does not have sufficient knowledge or memory of the event to form a
20 belief as to the truth of the request. Based on lack of sufficient information,
21 Defendant denies the request on that basis.

22

23 > **REQUEST FOR ADMISSION 105:**

24 Admit or deny on or about January 24, 2005, Plaintiff was escorted and placed in the unit
25 section shower after his removal from the cell.

26

27 **RESPONSE TO REQUEST FOR ADMISSION 105:**

28 Responding party admits Plaintiff was placed in a holding cell, no. 8.

1 > **REQUEST FOR ADMISSION 118:**

2 Admit or deny on or about January 24, 2005, during the extraction and before it was
3 completed M. Crotty exited the cell 103L.

4 **RESPONSE TO REQUEST FOR ADMISSION 118:**

5 Responding party is unable to admit or deny this request based upon lack of
6 information and memory and on that basis denies the request.

7 > **REQUEST FOR ADMISSION 120:**

8 Admit or deny that you answered these admissions under sworn oath.

9 **RESPONSE TO REQUEST FOR ADMISSION 120:**

10 Responding party admits that these responses are under penalty of perjury.

11 a. **RFA 51-55**

12 Plaintiff argues that defendant McGregor's responses to RFA 51-55 are inadequate because
13 McGregor did not search all of the documents available to him before providing the responses.
14 McGregor states that "[f]or all the reasons stated above with respect to Blankenship's responses to
15 Requests 51 to 55, McGregor's responses to those same requests are proper and no further responses
16 are warranted." (Opp'n, Doc. 94 at 7 ¶VII.) Plaintiff replies that he "re-alleges and incorporates as
17 stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

18 **Discussion**

19 Plaintiff has not shown how RFA 51, 53 and 55 are relevant to his claims against McGregor.
20 Plaintiff is proceeding against McGregor on a claim for excessive force, and RFA 51, 53 and 55
21 concern complaints filed against McGregor for denial of medical care, retaliation and withholding
22 property. The moving party bears the burden of demonstrating "actual and substantial prejudice"
23 from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations
24 omitted.). McGregor shall not be required to make any further responses to RFA 51, 53 or 55.

25 McGregor objection to RFA 52 as overbroad is sustained. McGregor shall not be required
26 to make any further response to RFA 52.

27 ///

1 McGregor's objections to RFA 54 are overruled. RFA 54, concerning whether appeals were
2 filed against McGregor based on excessive force, is relevant to Plaintiff's claims against McGregor.
3 McGregor's denial, based upon insufficient information and knowledge, is inadequate, as he does
4 not describe any effort to search for information before responding. McGregor shall be required to
5 make an amended response to RFA 54, either making unqualified admissions or denials, or
6 explaining in detail his efforts to search for information, with a listing of any documents he
7 reviewed. McGregor shall only be required to search for evidence of 602 complaints against him
8 that were filed or pending during the five-year time period prior to and including January 24, 2005,
9 in preparation for his amended response to RFA 54. No objections are allowed.

10 **b. RFA 98 and 118**

11 Plaintiff argues that defendant McGregor's responses to RFA 98 and 118 do not provide the
12 requisite detail explaining why he is unable to admit or deny these requests based upon lack of
13 knowledge, information, and memory. McGregor responds that although he believes his responses
14 to these requests are sufficient as stated, he will nonetheless provide amended responses confirming
15 that he conducted a reasonable inquiry as required under Rule 36(a)(4), and that after such inquiry,
16 he is still unable to admit or deny the request because he has no recollection. McGregor shall be
17 required to make an amended response to RFA 98 and 115, explaining in detail his efforts to search
18 for information, with a listing of any documents he reviewed.

19 **c. RFA 105**

20 Plaintiff argues that defendant McGregor did not respond appropriately to RFA 105 when
21 he admitted that Plaintiff was placed in the unit holding cage, because Plaintiff specifically asked
22 if he was escorted and placed into the unit shower.

23 Defendant McGregor responds that he does not oppose Plaintiff's motion and will provide
24 a further or amended response to RFA 105. McGregor shall be required to make an amended
25 response to RFA 105, explaining in detail his efforts to search for information, with a listing of any
26 documents he reviewed.

27 ///

28 ///

d. RFA 120

Plaintiff requests that defendant McGregor be compelled to make further responses under sworn oath. The issue in RFA 120, whether responses under oath are required by Rule 36, was addressed above. Sworn responses are no longer required by Rule 36. The cases cited by Plaintiff are outdated. “The requirement that the answer to a request for admission be sworn [was] deleted, in favor of a provision that the answer be signed by the party or by his attorney.” (Fed. R. Civ. P. 36 advisory committee notes to 1970 amendment.) Therefore, defendant McGregor shall not be required to submit any further response to RFA 120, and none of the Defendants is required to submit sworn responses to any of Plaintiff’s RFAs.

7. Defendant Nelson - RFA 50-54

Plaintiff seeks a court order compelling defendant Nelson to make further responses to Plaintiff's RFA 50-54, as follows.

REQUEST FOR ADMISSION 50:

Admit or deny on or before January 24, 2005 you have had previous 602/citizen complaints filed against you for denying injured or medically ill prisoners medical treatment.

RESPONSE TO REQUEST FOR ADMISSION 50:

Defendant objects to this request because it is overbroad and not relevant to this action. Without waiving and subject to these objections, Defendant responds as follows: Defendant may have some grievance filed against him for various reasons, but has no independent recollection of any specific grievance or complaint being filed against him by an inmate. Generally, when an inmate files a complaint or an appeal, those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

1 > **REQUEST FOR ADMISSION 51:**

2 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
3 filed against you for employee misconduct by other prisoners housed at Tehachapi State
4 Prison and/or other CDCR institutions.

5 **RESPONSE TO REQUEST FOR ADMISSION 51:**

6 Defendant objects to this request because it is overbroad and not relevant to this
7 action. Without waiving and subject to these objections, Defendant responds as
8 follows: Defendant may have some grievance filed against him for various reasons,
9 but has no independent recollection of any specific grievance or complaint being filed
10 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
11 those documents are kept within that individual inmate's central file, and not kept by
12 the employee. Based upon insufficient information and knowledge, this Defendant
13 does [not] have enough information to admit or deny the request, and therefore
14 denies the request on that basis.

15 > **REQUEST FOR ADMISSION 52:**

16 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
17 filed against you for retaliatory conduct by other prisoners housed at Tehachapi State Prison
18 and/or other CDCR institutions.

19 **RESPONSE TO REQUEST FOR ADMISSION 52:**

20 Defendant objects to this request because it is overbroad and not relevant to this
21 action. Without waiving and subject to these objections, Defendant responds as
22 follows: Defendant may have some grievance filed against him for various reasons,
23 but has no independent recollection of any specific grievance or complaint being filed
24 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
25 those documents are kept within that individual inmate's central file, and not kept by
26 the employee. Based upon insufficient information and knowledge, this Defendant
27
28 ///

1 does [not] have enough information to admit or deny the request, and therefore
2 denies the request on that basis.

3

4 > **REQUEST FOR ADMISSION 53:**

5 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
6 filed against you for excessive use of force by other prisoners housed at Tehacapi State
7 Prison and/or other CDCR institutions.

8 **RESPONSE TO REQUEST FOR ADMISSION 53:**

9 Defendant objects to this request because it is overbroad and not relevant to this
10 action. Without waiving and subject to these objections, Defendant responds as
11 follows: Defendant may have some grievance filed against him for various reasons,
12 but has no independent recollection of any specific grievance or complaint being filed
13 against him by an inmate. Generally, when an inmate files a complaint or an appeal,
14 those documents are kept within that individual inmate's central file, and not kept by
15 the employee. Based upon insufficient information and knowledge, this Defendant
16 does [not] have enough information to admit or deny the request, and therefore
17 denies the request on that basis.

18

19 > **REQUEST FOR ADMISSION 54:**

20 Admit or deny you have had prior citizen complaints/602's filed against you for withholding
21 prisoners property from them, by other prisoners housed at Tehacapi State Prison and/or
22 other CDCR institutions.

23 **RESPONSE TO REQUEST FOR ADMISSION 54:**

24 Defendant objects to this request because it is overbroad and not relevant to this
25 action. Without waiving and subject to these objections, Defendant responds as
26 follows: Defendant may have some grievance filed against him for various reasons,
27 but has no independent recollection of any specific grievance or complaint being filed
28 against him by an inmate. Generally, when an inmate files a complaint or an appeal,

those documents are kept within that individual inmate's central file, and not kept by the employee. Based upon insufficient information and knowledge, this Defendant does [not] have enough information to admit or deny the request, and therefore denies the request on that basis.

a. **RFA 50-54**

Plaintiff argues that defendant Nelson's responses to RFA 50-54 are inadequate because Nelson did not search all of the documents available to him before providing the responses. Nelson states that "[f]or all the reasons stated above with respect to Blankenship's responses to Requests 48 to 55, Nelson's responses to those same requests (numbered 48 to 54 because of the inclusion of No. 50 which was missing from Blankenship's set) are proper and no further responses are warranted." (Opp'n, Doc. 94 at 7 ¶IV.) Plaintiff replies that he "re-alleges and incorporates as stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

Discussion

Plaintiff has not shown how RFA 50, 52, and 54 are relevant to his claims against Nelson. Plaintiff is proceeding against Nelson only on a claim for excessive force, and RFA 50, 52, and 54 concern complaints filed against Nelson for denial of medical treatment, retaliation, and withholding property. The moving party bears the burden of demonstrating “actual and substantial prejudice” from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations omitted.). Nelson shall not be required to make any further responses to RFA 50, 52, or 54.

Nelson's objection to RFA 51 as overbroad is sustained. Nelson shall not be required to make any further response to RFA 51.

Nelson's objections to RFA 53 are overruled. RFA 53, concerning whether appeals were filed against Nelson based on excessive force, is relevant to Plaintiff's excessive force claim against Nelson. Nelson's denial, based upon insufficient information and knowledge, is inadequate, as he does not describe any effort to search for information before responding. Nelson shall be required to make an amended response to RFA 53, either making an unqualified admission or denial, or explaining in detail his efforts to search for information, with a listing of any documents he

1 reviewed. Nelson shall only be required to search for evidence of 602 complaints against him that
2 were filed or pending during the five-year time period prior to and including January 24, 2005, in
3 preparation for his amended response to RFA 53. No objections are allowed.

4

5 **8. Defendant Adams aka Salazar - RFA 23, 24, 28, 29, 33(37), and 37(41)**

6 Plaintiff seeks a court order compelling defendant Adams aka Salazar to make further
7 responses to Plaintiff's RFA 23, 24, 28, 29, 33(37), and 37(41), as follows.

8

9 > **REQUEST FOR ADMISSION 23:**

10 Admit or deny on or before January 24, 2005 you had previous 602/citizen complaints filed
11 against you for denying injured or medically ill prisoners medical treatment.

12

13 **RESPONSE TO REQUEST FOR ADMISSION 23:**

14 Responding party cannot admit or deny this request because she does not know
15 whether inmates filed complaints (602) against her.

16

17 > **REQUEST FOR ADMISSION 24:**

18 Admit or deny on January 24th 2005 you had pending 602's/citizen complaints for denying
19 injured or medically ill prisoners medical treatment.

20 **RESPONSE TO REQUEST FOR ADMISSION 24:**

21 Responding party cannot admit or deny this request because she does not know
22 whether inmates filed complaints (602) against her.

23

24 > **REQUEST FOR ADMISSION 28:**

25 Admit or deny you have been sued by other prisoners for medical related issues.

26 **RESPONSE TO REQUEST FOR ADMISSION 28:**

27 Responding party objects to this request on the grounds it is overbroad, vague in its
28 entirety, and is irrelevant and not reasonably calculated to lead to the discovery of

1 admissible evidence. Without waiving any objection, responding party cannot admit
2 or deny this request because she does not know whether she has been sued by other
3 prisoners for medical related issues.

4 > **REQUEST FOR ADMISSION 29:**

5 Admit or deny you had pending suits against you on January 24, 2005 for the denial of
6 medical treatment and/or failure to protect.

7 > **RESPONSE TO REQUEST FOR ADMISSION 29:**

8 Responding party objects to this request on the grounds it is overbroad, vague in its
9 entirety, and is irrelevant and not reasonably calculated to lead to the discovery of
10 admissible evidence. Without waiving any objection, responding party cannot admit
11 or deny this request because she does not know whether she had lawsuit pending
12 against her for denial of medical treatment or failure to protect.

13 > **REQUEST FOR ADMISSION 33(37):**

14 Admit or deny on January 24th 2005 you had pending 602's/citizen complaints for denying
15 injured or medically ill prisons medical treatment.

16 > **RESPONSE TO REQUEST FOR ADMISSION 33(37):**

17 Responding party objects to this request on the grounds it is oppressive and harassing
18 because she has already responded to a request seeking the same admission. Without
19 waiving any objection, responding party cannot admit or deny this request because
20 she does not know whether inmates filed complaints (602) against her.

21 > **REQUEST FOR ADMISSION 37(41):**

22 Admit or deny that you answered these admissions under sworn oath.

23 ///

24 ///

25 ///

a. RFA 23, 24, 28, 29, and 33(37)

Plaintiff argues that defendant Adams aka Salazar's responses to RFA 23, 24, 28, 29, and 33(37) are inadequate because Adams did not search all of the documents available to him before providing the responses. Plaintiff "realleges and incorporates [his] argument in Section B (Blankenship's Responses)" as to these requests. (Motion, Doc. 84 at 12 ¶J.) Adams asserts that these requests are the same five requests Plaintiff propounded to defendant Blankenship at Requests 51 to 55, and "[f]or all the reasons stated above with respect to Blankenship's responses to Requests 51 to 55, Adams' responses to the same requests are proper and no further responses are warranted." (Opp'n, Doc. 94 at 9 ¶X.) Plaintiff replies that he "re-alleges and incorporates as stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

Discussion

The Court finds RFA 33(37) to be duplicative of other RFAs. Adams shall not be required to make any further response to RFA 33(37).

Adams shall be required to make further responses to RFA 23, 24, 28, and 29. These RFAs are relevant to Plaintiff's medical care claim against Adams. Adams' responses that she cannot admit or deny the requests because she does not know whether inmates filed complaints (602) or lawsuits against her, is inadequate, as she does not describe any effort to search for information before responding. Adams shall be required to make amended responses to RFA 23, 24, 28, and 29, either making unqualified admissions or denials, or explaining in detail her efforts to search for information, with a listing of any documents she reviewed. Adams shall only be required to search for evidence of lawsuits and 602 complaints against her that were filed or pending during the five-year time period prior to and including January 24, 2005, in preparation for her amended responses to RFA 23, 24, 28, and 29. No objections are allowed.

B. RFA 37(41)

Plaintiff argues that defendant Adams aka Salazar has not given her responses under oath as required. Sworn responses are no longer required by Rule 36. “The requirement that the answer to a request for admission be sworn [was] deleted, in favor of a provision that the answer be signed by the party or by his attorney.” (Fed. R. Civ. P. 36 advisory committee notes to 1970 amendment.)

1 Therefore, defendant Adams shall not be required to submit any further response to RFA 37(41), and
2 none of the Defendants is required to submit sworn responses to any of Plaintiff's RFAs.

3

4 **9. Defendant Watson - RFA 48-54 and 130**

5 Plaintiff seeks a court order compelling defendant Watson to make further responses to
6 Plaintiff's RFA 48-54 and 130, as follows.

7

8 > **REQUEST FOR ADMISSION 48:⁵**

9 Admit or deny on or about January 24, 2005 that the toothbrushes found under the cell door
10 were the actual weapons used in the extraction.

11 **RESPONSE TO REQUEST FOR ADMISSION 48:**

12 Defendant objects to this request on the grounds that it is vague, ambiguous and is
13 not a plain statement of fact. Notwithstanding these objections, and if plaintiff is
14 referring to the toothbrushes that were found in his cell after the extraction,
15 responding party admits that staff believe that Plaintiff used those toothbrushes to
16 assault staff.

17

18 > **REQUEST FOR ADMISSION 49:**

19 Admit or deny on or about January 24, 2005, that the toothbrushes found under the cell door
20 were actual weapons at all.

21 **RESPONSE TO REQUEST FOR ADMISSION 49:**

22 Defendant objects to this request on the grounds that it is vague, ambiguous and is
23 not a plain statement of fact. Notwithstanding these objections, and if plaintiff is
24 referring to the toothbrushes that were found in his cell after the extraction,

25 ///

26

27 ⁵Plaintiff did not provide the court with a copy of RFA 48 to defendant Watson. The court presumes,
28 because RFA 49-54 for defendant Watson are identical to those propounded upon defendants Blankenship, Carrasco,
and Chan, that RFA 48 is also identical.

1 responding party admits that staff believe that Plaintiff used those toothbrushes to
2 assault staff.

3

4 > **REQUEST FOR ADMISSION 50:**

5 Admit or deny on or before January 24, 2005 you have had previous 602/citizen complaints
6 filed against you for denying injured or medically ill prisoners medical treatment.

7

8 **RESPONSE TO REQUEST FOR ADMISSION 50:**

9 Defendant objects to this request as overly broad, violates third party rights to
10 privacy, and is in violation of Rule 26(b)(2)(c). It is very possible that a grievance
11 has been filed for some various reason, against this Defendant over the course of their
12 career, but the grievances are kept in the inmate's central file, and not possessed by
13 the Defendant. This Defendant does not have any independent recollection of an
14 appeal or the reasons for such a hypothetical appeal, to be able to sufficiently admit
15 or deny this request. Based upon lack of information and belief, this Defendant
denies the request on that basis.

16

17 > **REQUEST FOR ADMISSION 51:**

18 Admit or deny on January 24, 2005 you have had prior citizen complaints/602's filed against
19 you for employee misconduct by other prisoners housed at Tehacapi State Prison and/or other
20 CDCR institutions.

21

22 **RESPONSE TO REQUEST FOR ADMISSION 51:**

23 Defendant objects to this request as overly broad, violates third party rights to
24 privacy, and is in violation of Rule 26(b)(2)(c). It is very possible that a grievance
25 has been filed for some various reason, against this Defendant over the course of their
26 career, but the grievances are kept in the inmate's central file, and not possessed by
27 the Defendant. This Defendant does not have any independent recollection of an
28 appeal or the reasons for such a hypothetical appeal, to be able to sufficiently admit

///

1 or deny this request. Based upon lack of information and belief, this Defendant
2 denies the request on that basis.

3

4 > **REQUEST FOR ADMISSION 52:**

5 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
6 filed against you for retaliatory conduct by other prisoners housed at Tehacapi State Prison
7 and/or other CDCR institutions.

8 **RESPONSE TO REQUEST FOR ADMISSION 52:**

9 Defendant objects to this request as overly broad, violates third party rights to
10 privacy, and is in violation of Rule 26(b)(2)(c). It is very possible that a grievance
11 has been filed for some various reason, against this Defendant over the course of their
12 career, but the grievances are kept in the inmate's central file, and not possessed by
13 the Defendant. This Defendant does not have any independent recollection of an
14 appeal or the reasons for such a hypothetical appeal, to be able to sufficiently admit
15 or deny this request. Based upon lack of information and belief, this Defendant
16 denies the request on that basis.

17

18 > **REQUEST FOR ADMISSION 53:**

19 Admit or deny on or before January 24, 2005 you have had prior citizen complaints/602's
20 filed against you for excessive use of force by other prisoners housed at Tehacapi State
21 Prison and/or other CDCR institutions.

22 **RESPONSE TO REQUEST FOR ADMISSION 53:**

23 Defendant objects to this request as overly broad, violates third party rights to
24 privacy, and is in violation of Rule 26(b)(2)(c). It is very possible that a grievance
25 has been filed for some various reason, against this Defendant over the course of their
26 career, but the grievances are kept in the inmate's central file, and not possessed by
27 the Defendant. This Defendant does not have any independent recollection of an
28 appeal or the reasons for such a hypothetical appeal, to be able to sufficiently admit

1 or deny this request. Based upon lack of information and belief, this Defendant
2 denies the request on that basis.

3

4 > **REQUEST FOR ADMISSION 54:**

5 Admit or deny you have had prior citizen complaints/602's filed against you for withholding
6 prisoners property from them, by other prisoners housed at Tehacapi State Prison and/or
7 other CDCR institutions.

8

9 **RESPONSE TO REQUEST FOR ADMISSION 54:**

10 Defendant objects to this request as overly broad, violates third party rights to
11 privacy, and is in violation of Rule 26(b)(2)(c). It is very possible that a grievance
12 has been filed for some various reason, against this Defendant over the course of their
13 career, but the grievances are kept in the inmate's central file, and not possessed by
14 the Defendant. This Defendant does not have any independent recollection of an
15 appeal or the reasons for such a hypothetical appeal, to be able to sufficiently admit
16 or deny this request. Based upon lack of information and belief, this Defendant
denies the request on that basis.

17

18 > **REQUEST FOR ADMISSION 130:**

19 Admit or deny on or about January 24, 2005 you transferred from dinning hall #4, holding
20 cage #8 to the 4B yard psychiatric (ACH) unit.

21

22 **RESPONSE TO REQUEST FOR ADMISSION 130:**

23 Responding party admits Plaintiff was re-housed in the IVB Infirmary.

24

25 **AMENDED RESPONSE TO REQUEST FOR ADMISSION 130:**

26 Responding party admits Plaintiff was re-housed in the IVB Infirmary, and he denies
27 the remainder of this request.

28 ///

///

///

a. RFA 48 and 49

Plaintiff argues that defendant Watson has not adequately responded to RFA 48 and 49 because he has provided hearsay responses based on speculation. Plaintiff maintains that the requests clearly asked Watson "if the toothbrushes found under the cell door 'were' actual weapons used in the extraction, not if the toothbrushes were used to stabb (*sic*) or assault staff." (Motion, Doc. 84 at 9 ¶D.) Plaintiff also asserts that he also asked "if these toothbrushes were actual weapons period." Id., Watson responds that it is unclear what Plaintiff meant by "the actual weapons used in the extraction," and asserts that he responded to the requests based on his interpretation of them. Plaintiff replies that RFA 48 and 49 clearly requested Watson to admit or deny that the toothbrushes found under the cell door were the actual weapons used in the extraction.

Watson responds that "[f]or all the reasons stated above with respect to Blankenship's responses to Requests 48 to 55, Watson's responses to those same requests (numbered 48 to 54 because of the inclusion of No. 50 which was missing from Blankenship's set) are proper and no further responses are warranted." (Opp'n, Doc. 94 at 7 ¶IV.)

Plaintiff replies that he "re-alleges and incorporates as stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

Discussion

Defendant Watson's objections to RFA 48 and 49 are sustained. Plaintiff's assertion that RFA 48 and 49 were clearly stated is incorrect. Watson shall not be required to make any further responses to RFA 48 and 49.

b. RFA 50-54

Plaintiff argues that defendant Watson's responses to RFA 50-54 are inadequate because Watson did not search all of the documents available to him before providing the responses. Watson states that "[f]or all the reasons stated above with respect to Blankenship's responses to Requests 48 to 55, Watson's responses to those same requests (numbered 48 to 54 because of the inclusion of No. 50 which was missing from Blankenship's set) are proper and no further responses are warranted." (Opp'n, Doc. 94 at 7 ¶IV.) Plaintiff replies that he "re-alleges and incorporates as stated above in Section I-II, his response to the Defendants' arguments." (Reply, Doc. 102 at 10.)

1 **Discussion**

2 Plaintiff has not shown how RFA 52 and 54 are relevant to his claims against Watson.
3 Plaintiff is proceeding against Watson on claim for excessive force and denial of medical care, and
4 RFA 52 and 54 concern complaints filed against Watson for retaliation and withholding property.
5 The moving party bears the burden of demonstrating “actual and substantial prejudice” from the
6 denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations omitted.).
7 Watson shall not be required to make any further responses to RFA 52 or 54.

8 Watson's objection to RFA 51 as overbroad is sustained. Watson shall not be required to
9 make any further response to RFA 51.

10 Watson's objections to RFA 50 and 53 are overruled. RFA 50 and 53, concerning whether
11 appeals were filed against Watson based on excessive force and denial of medical care, are relevant
12 to Plaintiff's claims against Watson. Watson's denial, based upon insufficient information and
13 knowledge, is inadequate, as he does not describe any effort to search for information before
14 responding. Watson shall be required to make an amended response to RFA 50 and 53, either
15 making unqualified admissions or denials, or explaining in detail his efforts to search for
16 information, with a listing of any documents he reviewed. Watson shall only be required to search
17 for evidence of 602 complaints against him that were filed or pending during the five-year time
18 period prior to and including January 24, 2005, in preparation for his amended responses to RFA 50
19 and 53. No objections are allowed.

20 **c. RFA 130**

21 Plaintiff argues that defendant Watson did not properly respond to RFA 130 because Watson
22 sidestepped the question. Plaintiff asserts that he specifically asked Watson to admit or deny if “he”
23 transferred Plaintiff to the 4B yard psychiatric unit, not if Plaintiff was rehoused at the 4B yard
24 infirmary.

25 Defendant Watson argues that his Amended Response to RFA 130 clarified his answer by
26 admitting that Plaintiff was transferred to the IVB infirmary (psychiatric unit) and denied the
27 remainder of the request, thus necessarily denying that Watson was the person who escorted or
28 transferred Plaintiff to the infirmary.

1 By his Amended Response, Defendant Watson has adequately responded to RFA 130.
2 Defendant Watson is not required to make any further response to RFA 130.

3 **V. MOTION FOR SANCTIONS**

4 Plaintiff seeks the imposition of sanctions upon Defendants, based on Plaintiff's motion to
5 compel. As discussed above, Plaintiff's motion to compel shall be granted in part, and Defendants
6 shall be required to serve amended responses. The Court declines at this stage of the proceedings
7 to impose sanctions. Asea, 669 F.2d at 1247 ("the district court should ordinarily first order an
8 amended answer"). However, Defendants are warned that if their amended responses are subject to
9 a future motion and the Court again finds noncompliance with Rule 36 and/or a lack of good faith
10 in responding, the consequence will most likely be the imposition of sanctions, which may include
11 an order that the matters are admitted. Id.; Fed. R. Civ. P. 36(a)(6).

12 **VI. CONCLUSION**

13 Based on the foregoing, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's motion to compel further responses to Plaintiff's Request for Admissions
15 Set One, filed on February 17, 2012, is GRANTED in part and DENIED in part;
- 16 2. Within forty-five days from the date of service of this order, Defendants are required
17 to make further responses to Plaintiff's Request for Admissions Set One, pursuant
18 to this order, as follows:
 - 19 (1) Defendant Alexander shall serve Plaintiff with amended responses to RFA
20 8-13, 15-17, 19, 21, and 23, as instructed by this order;
 - 21 (2) Defendant Blankenship shall serve Plaintiff with an amended response to
22 RFA 54, as instructed by this order;
 - 23 (3) Defendant Carrasco shall serve Plaintiff with amended responses to RFA 54
24 and 118, as instructed by this order;
 - 25 (4) Defendant Chan shall serve Plaintiff with an amended response to RFA 53,
26 as instructed by this order;
 - 27 (5) Defendant Granillo shall serve Plaintiff with amended responses to RFA 50
28 and 53, as instructed by this order;

- (6) Defendant Jobb shall serve Plaintiff with an amended response to RFA 53, as instructed by this order;
- (7) Defendant Johnson shall serve Plaintiff with an amended response to RFA 54, as instructed by this order;
- (8) Defendant McGregor shall serve Plaintiff with amended responses to RFA 54, 98, 105, and 118, as instructed by this order;
- (9) Defendant Nelson shall serve Plaintiff with an amended response to RFA 53, as instructed by this order;
- (10) Defendant Adams aka Salazar shall serve Plaintiff with amended responses to RFA 23, 24, 28, and 29, as instructed by this order;
- (11) Defendant Watson shall serve Plaintiff with amended responses to RFA 50 and 54, as instructed by this order; and

3. Plaintiff's motion for sanctions is DENIED.

IT IS SO ORDERED.

Dated: July 20, 2012

/s/ **Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE