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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GEORGE E. JACOBS IV,

CASE NO. 1:06-cv-01280-AWI-GSA PC

Plaintiff,

ORDER GRANTING IN PART

AND DENYING IN PART

v.

PLAINTIFF’S MOTION TO

COMPEL FURTHER RESPONSES

ALLEN K. SCRIBNER, et al.,

TO REQUESTS FOR ADMISSION

AND DENYING SANCTIONS

Defendants.

(Doc. 45)

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**Order on Motion to Compel Responses and  
to Deem Requests Admitted and for Sanctions**

Plaintiff George E. Jacobs IV (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983 and California law. This action is proceeding on Plaintiff’s complaint, filed September 18, 2006, against Defendants Martinez, German, and Northcutt for use of excessive physical force, assault and battery, and intentional infliction of emotional distress; and against Defendant Martinez for acting with deliberate indifference to Plaintiff’s serious medical needs. The excessive force claim, which is also brought against two Doe defendants, allegedly occurred during the escort of Plaintiff from the Acute Care Hospital to the Security Housing Unit on January 26, 2005. The medical care claim against Defendant Martinez arises from Defendant’s alleged failure to obtain medical care for Plaintiff on January 27, 2005, and the medical care claims against Does 3, 4, and 6-10 arise from the failure to obtain medical care for Plaintiff between January 27, 2005, and February 3, 2005. Plaintiff alleges that he was ultimately transported to an outside hospital for emergency

1 medical care on February 2, 2005, and lost the sight in one eye as a result of his injuries.

2 **I. Motion to Compel Requests for Admission**

3 On March 20, 2008, Plaintiff filed a motion to compel further responses to his requests  
4 for admission. (Doc. 45.) Defendants filed an opposition on April 3, 2008, and Plaintiff filed a  
5 reply on April 23, 2008. (Docs. 47, 52.) Plaintiff propounded almost three-hundred requests for  
6 admission, the majority of which are at issue in his motion to compel.<sup>1</sup>

7 Facts, the application of law to fact, or opinions are subject to requests for admission.  
8 Fed. R. Civ. P. 36(a)(1)(A). “If a matter is not admitted, the answer must specifically deny it or  
9 state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly  
10 respond to the substance of the matter; and when good faith requires that a party qualify an  
11 answer or deny only a part of a matter, the answer must specify the part admitted and qualify or  
12 deny the rest. The answering party may assert lack of knowledge or information as a reason for  
13 failing to admit or deny only if the party states that it has made reasonable inquiry and that the  
14 information it knows or can readily obtain is insufficient to enable it to admit or deny.” Fed. R.  
15 Civ. P. 36(a)(4). “The grounds for objecting to a request must be stated. A party must not object  
16 solely on the ground that the request presents a genuine issue for trial.” Fed. R. Civ. P. 36(a)(5).

17 **A. Defendant Martinez’s Responses to Requests for Admission**

18 **REQUEST FOR ADMISSION NO. 6**

19 “Admit or deny that on January 26, 2005 you were the only  
sergeant apart [sic] of the escort team.”

20 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
21 ambiguous. Without waiving objections and assuming Plaintiff is referring to the escort of  
22 Plaintiff to the Security Housing Unit on January 26, 2005, after a reasonable inquiry, Defendant  
23 is unable to admit or deny the request as he does not recall. Defendant’s objections are  
24 overruled. Defendant is reminded that an inquiry of solely one’s own memory is insufficient  
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26 <sup>1</sup> Plaintiff did not move to compel further responses to all of the Requests for Admissions he propounded.  
27 Further in his Reply, Plaintiff concedes that Defendants answered a number of requests such that no further  
28 responses need be compelled -- to wit Plaintiff concedes Defendant Martinez answered requests 5, 31, and 51;  
Defendant Northcutt answered requests 3, 8, 11, 13, 18, 19, 20, 21, 22, 27, 55, 61, 62, 66, 67, 82, and 83; and  
Defendant German answered requests 12 and 60. (Doc. 52, Reply.) These requests will not be addressed herein.

1 basis upon which to claim an inability to admit or deny a request for admission; rather, a  
2 responding party must state “that it has made a reasonable inquiry and that the information it  
3 knows *or can readily obtain* is insufficient to enable it to admit or deny the request for  
4 admission.” Fed. R. Civ. P. 36(a)(4) (emphasis added); *see Asea, Inc. v. Southern Pac. Transp.*  
5 *Co.* 669 F.2d 1242, 1246 (9th Cir. 1981) *ref. City of Rome v. United States*, 450 F.Supp. 378,  
6 383-84 (D.D.C.1978), *aff’d*, 446 U.S. 156 (1980); *Alexander v. Rizzo*, 52 F.R.D. 235, 236 (E.D.  
7 Pa.1971). Thus, Defendant’s response that he is unable to admit or deny this request based solely  
8 on his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly,  
9 Plaintiff’s motion to compel is granted. Defendant is required to check all readily obtainable  
10 information and provide an amended answer to this request.

11 **REQUEST FOR ADMISSION NO. 8**

12 “Admit or deny that on January 26, 2005, Plaintiff was placed in  
his knees in front of cell #43, door area.”

13 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
14 ambiguous. Without waiving objections and assuming Plaintiff is referring to the escort of  
15 Plaintiff to the Security Housing Unit on January 26, 2005, after a reasonable inquiry, Defendant  
16 is unable to admit or deny the request as he does not recall. Defendant’s objections are  
17 overruled. Defendant’s response that he is unable to admit or deny this request based solely on  
18 his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s  
19 motion to compel is granted. Defendant is required to check all readily obtainable information  
20 and provide an amended answer to this request.

21 **REQUEST FOR ADMISSION NO. 9**

22 “Admit or deny that Plaintiff did not attempt to assault you at  
anytime, on January 26, 2005. Assault by this term means that which is  
23 defined in section 240 of the California Penal Code. (to include section  
4500 of the Penal Code).”

24 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
25 ambiguous. Without waiving objections and assuming Plaintiff is referring to the escort of  
26 Plaintiff to the Security Housing Unit on January 26, 2005, Defendant is unable to recall whether  
27 Plaintiff attempted to assault Defendant. After reasonable inquiry, Defendant is unable to admit  
28 or deny the request. Defendant’s objections are overruled. Defendant’s response that he is

1 unable to admit or deny this request based solely on his lack of recollection does not comply with  
2 Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is  
3 required to check all readily obtainable information and provide an amended answer to this  
4 request.

5 **REQUEST FOR ADMISSION NO. 10**

6 "Admit or deny that Plaintiff did not attempt to batter you at any  
7 time on January 26, 2005. Battery by this term means that which is defined  
8 in section 242 of the California Penal Code (to include section 4501.5)."

9 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
10 ambiguous. Without waiving objections and assuming Plaintiff is referring to the escort of  
11 Plaintiff to the Security Housing Unit on January 26, 2005, Defendant is unable to recall whether  
12 Plaintiff attempted to batter Defendant. After reasonable inquiry, Defendant is unable to admit or  
13 deny the request. Defendant's objections are overruled. Defendant's response that he is unable  
14 to admit or deny this request based solely on his lack of recollection does not comply with Fed.  
15 R. Civ. P. 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is required  
16 to check all readily obtainable information and provide an amended answer to this request.

17 **REQUEST FOR ADMISSION NO. 11**

18 "Admit or deny Plaintiff was placed in a spit mask, leg irons,  
19 handcuffs, and the lanyard device with the lock and triangle bar attached,  
20 prior to being escorted to 4A Yard building two (2), cell #43 of two right  
21 side."

22 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
23 ambiguous. Without waiving objections and assuming Plaintiff is referring to the escort of  
24 Plaintiff to the Security Housing Unit on January 26, 2005, Defendant does not recall all of the  
25 restraints placed on Plaintiff, but admits that it is customary to place an inmate in leg and arm  
26 restraints when escorting them to the Security Housing Unit. Plaintiff's response appears to be  
27 based solely on his lack of recollection, which does not comply with Fed. R. Civ. P. 36(a)(4), and  
28 does not address whether he was placed in a spit mask and/or lanyard. Accordingly, Plaintiff's  
29 motion to compel is granted. Defendant is required to check all readily obtainable information  
30 and provide an amended answer to this request.

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1 **REQUEST FOR ADMISSION NO. 12**

2 “Admit or deny that Plaintiff was escorted as such any  
3 time he was removed from his cell for any reason.”

4 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
5 ambiguous. Defendants objections are sustained. Plaintiff’s motion to compel is denied.

6 **REQUEST FOR ADMISSION NO. 13**

7 “Admit or deny that you placed Plaintiff in cell #43 on  
8 January 26, 2005, with no mattress, linen, clothes,  
9 toliet [sic] paper or state supplies.”

10 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
11 ambiguous. Without waiving objections, after reasonable inquiry, Defendant is unable to admit  
12 or deny the request as he does not recall Plaintiff’s personal items on January 26, 2005.

13 Defendant’s objections are overruled. Defendant’s response that he is unable to admit or deny  
14 this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
15 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is required to check  
16 all readily obtainable information and provide an amended answer to this request.

17 **REQUEST FOR ADMISSION NO. 14**

18 “Admit or deny that cell #43 in building two (2) right side is not  
19 a management cell.”

20 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. Without  
21 waiving objections, after reasonable inquiry, Defendant is unable to admit or deny the request  
22 because he does not recall whether the specified cell was placed on Management Control Status  
23 on the specified date. Defendant’s objections are overruled. Defendant’s response that he is  
24 unable to admit or deny this request based solely on his lack of recollection does not comply with  
25 Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is  
26 required to check all readily obtainable information and provide an amended answer to this  
27 request.

28 **REQUEST FOR ADMISSION NO. 15**

“Admit or deny that Plaintiff remained with a mattress, linen,  
blankets, clothes, toliet [sic] paper or state supplies until February 8, 2005 where  
doing [sic] I.C.C. Committee the Assistant Warden directed you to provide these  
items to Plaintiff.”

**Ruling:** Defendant objects to the request on the grounds that it is compound, vague and

1 ambiguous. Without waiving objections, after reasonable inquiry, Defendant is unable to admit  
2 or deny the request as he does not recall Plaintiff's personal items during the specified time  
3 period. Defendant's objections are overruled. Defendant's response that he is unable to admit or  
4 deny this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
5 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check  
6 all readily obtainable information and provide an amended answer to this request.

7 **REQUEST FOR ADMISSION NO. 17**

8 "Admit or deny that on or around January 27, 28th 2005 Plaintiff  
9 directly told you he had an medical emergency."

9 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
10 ambiguous. Without waiving objections, Defendant is unable to admit or deny the request as he  
11 does not recall, however, Defendant denies that Plaintiff told him about an emergency on January  
12 28, 2005, as that was Defendant's regular day off. Defendant's objections are overruled.  
13 Defendant's response that he is unable to admit or deny this request as to the events on January  
14 27th based solely on his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4).  
15 Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check all readily  
16 obtainable information and provide an amended answer to this request.

17 **REQUEST FOR ADMISSION NO. 18**

18 "Admit or deny that on or around January 27, 28th 2005 you  
19 approached Plaintiff cell #43 during third watch shift."

19 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
20 ambiguous. Without waiving objections, Defendant denies the request as to January 28, 2005,  
21 because that was Defendant's regular day off. Defendant's objections are overruled.  
22 Defendant's response does not comply with Fed. R. Civ. P. 36(a)(4) as he fails to admit, deny, or  
23 state an inability to do so as to the request for admission of activity on or around January 27,  
24 2005. Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check all  
25 readily obtainable information and provide an amended answer to this request.

26 **REQUEST FOR ADMISSION NO. 21**

27 "Admit or deny that Plaintiff did not have a cell mate at any time  
28 he was housed in 4A-building two (2) right cell #43."

28 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and the

1 request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
2 Defendant's objections are overruled. Further, stating that a request asked Defendant to admit or  
3 deny a statement that is not a material fact to this lawsuit is not a proper objection as Plaintiff is  
4 entitled to obtain discovery on any nonprivileged matter which need not be admissible at the trial  
5 if it appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's  
6 motion to compel is granted. Defendant is required to check all readily obtainable information  
7 and provide an amended answer to this request.

8 **REQUEST FOR ADMISSION NO. 22**

9 "Admit or deny that Plaintiff did not have a cell mate when you  
picked him up from the (ACH) unit on January 26, 2005."

10 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and the  
11 request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
12 Defendants objections are overruled. Further, stating that a request asked Defendant to admit or  
13 deny a statement that is not a material fact to this lawsuit is not a proper objection as Plaintiff is  
14 entitled to obtain discovery on any nonprivileged matter which need not be admissible at the trial  
15 if it appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's  
16 motion to compel is granted. Defendant is required to check all readily obtainable information  
17 and provide an amended answer to this request.

18 **REQUEST FOR ADMISSION NO. 24**

19 "Admit or deny that on January 26, 2005, as a result of the attack,  
Plaintiff was injured resulting in severe emotional distress."

20 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and is not a  
21 plain statement of fact. Without waiving objections, Defendant is unable to admit or deny the  
22 request because he is unaware of any attack on Plaintiff on January 26, 2005. Defendant's  
23 objections are sustained. Further, Plaintiff has not shown any basis upon which Defendant would  
24 be able and/or qualified to have ascertained whether Plaintiff suffered from sever emotional  
25 distress. Accordingly, Plaintiff's motion to compel is denied.

26 **REQUEST FOR ADMISSION NO. 26**

27 "Admit or deny that Plaintiff had no pre-existing injuries to any  
of the area of his body in controversy in this lawsuit at the time."

28 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.

1 Without waiving objections, Defendant is unable to admit or deny Plaintiff's request, but vaguely  
2 recalls that Plaintiff had some red irritation to area around his eyes. Defendant's objections are  
3 sustained. Further, Plaintiff has not shown any basis upon which Defendant would be able  
4 and/or qualified to have ascertained whether Plaintiff suffered from any pre-existing injuries.  
5 Accordingly, Plaintiff's motion to compel is denied.

6 **REQUEST FOR ADMISSION NO. 28**

7 "Admit or deny that Plaintiff complied with all orders on January  
8 26, 2005.

9 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
10 Defendant's objections are sustained. Without waiving objections and assuming Plaintiff is  
11 referring to the escort of Plaintiff to the Security Housing Unit on January 26, 2005, Defendant is  
12 unable to specifically admit or deny the request, but Defendant does not recall Plaintiff failing to  
13 comply with orders on January 26, 2005. Plaintiff fails to show any deficiency in this response.  
14 Accordingly, Plaintiff's motion to compel is denied.

15 **REQUEST FOR ADMISSION NO. 30**

16 "Admit or deny that you have moved Plaintiff back and forth to  
17 your building housing unit 4 times in the past year."

18 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
19 Defendant's objections are sustained. Further, this request is irrelevant as it does not appear that  
20 a response to this request is likely to lead to the discovery of admissible evidence. Plaintiff's  
21 motion to compel is denied.

22 **REQUEST FOR ADMISSION NO. 32**

23 "Admit or deny that you have sprayed Plaintiff with O.C. pepper  
24 spray since the filing of this complaint."

25 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and the  
26 request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
27 Defendant's objections are overruled. However, this request does not appear reasonably  
28 calculated to lead to the discovery of admissible evidence. Accordingly, Plaintiff's motion to  
compel is denied.

**REQUEST FOR ADMISSION NO. 33**

"Admit or deny that this situation took place on July 30, 2007  
while Plaintiff was housed in your unit for the fourth time,



1 in C-Section 4A-2Right cell #47.”

2 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and the  
3 request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
4 Defendant’s objection that this request is vague and ambiguous is sustained. Whether it seeks a  
5 material fact to this lawsuit is not a proper objection. However, this request does not appear  
6 reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Plaintiff’s  
7 motion to compel is denied.

8 **REQUEST FOR ADMISSION NO. 34**

9 “Admit or deny that a week prior to that incident on July 30,  
10 2007, you came in contact with Plaintiff on July 24, 2007 and  
11 threatened to spray Plaintiff.”

12 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and the  
13 request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
14 Defendant’s objection that this request is vague and ambiguous is sustained. Whether it seeks a  
15 material fact to this lawsuit is not a proper objection. However, this request does not appear  
16 reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Plaintiff’s  
17 motion to compel is denied.

18 **REQUEST FOR ADMISSION NO. 35**

19 “Admit or deny that you have had citizen’s complaints filed  
20 against you for excessive use of force/employee misconduct.”

21 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and the  
22 request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
23 Defendants objections are overruled. Further, stating that a request asked Defendant to admit or  
24 deny a statement that is not a material fact to this lawsuit is not a proper objection as Plaintiff is  
25 entitled to obtain discovery on any nonprivileged matter which need not be admissible at the trial  
26 if it appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiff’s  
27 motion to compel is granted, with the limitation that Defendant must provide a response to this  
28 request only for the time frame of January 1, 2002 to the date of this order. Defendant is required  
to check all readily obtainable information and provide an amended answer to this request.

**REQUEST FOR ADMISSION NO. 36**

“Admit or deny that you have been investigated in the past for

1 improper and/or misconduct, toward inmates housed in the Corcoran  
2 security housing unit.”

3 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and the  
4 request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.

5 Defendants objections are overruled. Further, stating that a request asked Defendant to admit or  
6 deny a statement that is not a material fact to this lawsuit is not a proper objection as Plaintiff is  
7 entitled to obtain discovery on any non-privileged matter which need not be admissible at the  
8 trial if it appears reasonably calculated to lead to the discovery of admissible evidence.

9 Plaintiff’s motion to compel is granted, with the limitation that Defendant must provide a  
10 response to this request only for the time frame of January 1, 2002 to the date of this order.

11 Defendant is required to check all readily obtainable information and provide an amended answer  
12 to this request.

13 **REQUEST FOR ADMISSION NO. 37**

14 “Admit or deny that you have had previous citizen  
15 complaints/602's filed against you for retaliatory actions.”

16 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and asks  
17 Defendant to admit or deny a statement that is not a material fact to this lawsuit. Defendant’s

18 objections that this request is vague and ambiguous is overruled. Whether a request seeks a  
19 material fact to this lawsuit is not a proper objection. However, this request does not appear  
20 reasonably calculated to lead to the discovery of admissible evidence as there are no claims of  
21 retaliation in this action. Accordingly, Plaintiff’s motion to compel is denied.

22 **REQUEST FOR ADMISSION NO. 38**

23 “Admit that you were aware Plaintiff was and still is a participant  
24 in the mental health program.”

25 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.

26 Without waiving objections, Defendant is unable to admit or deny the request because he does  
27 not know Plaintiff’s mental health status now and does not know if Plaintiff’s mental health  
28 status has ever been made known to him. Defendant’s objections are overruled. However, while  
responding solely from one’s own memory to a request for admission is ordinarily insufficient,  
this request seeks an admission or denial as to Defendant’s own knowledge. Defendant

1 responded that he does not recall, which, in this situation is sufficient. Plaintiff's motion to  
2 compel is denied.

3 **REQUEST FOR ADMISSION NO. 39**

4 "Admit or deny that you have and had access to all prisoner files  
housed in your unit, at your disposal."

5 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous as to  
6 "all prisoner files." Defendant's objection is overruled. Accordingly, Plaintiff's motion to  
7 compel is granted with the limitation that Defendant must provide a response to this request only  
8 for the time frame of October 1, 2004 through January 31, 2005.

9 **REQUEST FOR ADMISSION NO. 42**

10 "Admit or deny that Prisoner James L. Thompson C 89908 filed  
a 42 U.S.C. § 1983 complaint against you, alleging you, D. Morales, and B.  
11 David, J. Masiel and F. Reynoso brutally attacked him and beat him while  
in mechanical restraints resulting in him receiving 13 stitches in his head,  
12 two black eyes and suffering great bodily injuries. "

13 **REQUEST FOR ADMISSION NO. 43**

14 "Admit or deny that you and your co-defendants D. Morales, and  
B. David et al., filed (RUR) CDC-115 and CDC 837 incident reports of this  
15 brutal assault, attack, and beating of Prisoner James L. Thompson in June  
2003."

16 **REQUEST FOR ADMISSION NO. 44**

17 "Admit or deny that James L. Thompson filed an appeal 602-  
citizen complaint against you on this matter."

18 **REQUEST FOR ADMISSION NO. 45**

19 "Admit or deny that Prisoner Parker P-13216 was also brutally  
attacked and beaten by you D. Morales, B. David et al., while he was in  
20 mechanical restraints resulting in him receiving injuries and suffering great  
bodily injury.

21 **REQUEST FOR ADMISSION NO. 46**

22 "Admit or deny that you and your co-defendants D. Morales and  
B. David et al, filed (RUR) CDC 115 and CDC 837 incident reports of this  
brutal assault, attack and beating of Prisoner Parker in May 2006."

23 **REQUEST FOR ADMISSION NO. 47:**

24 "Admit or deny that Prisoner Kevin L. Parker E92954 was also  
brutally attacked and beaten by you D. Morales, and B. David et al., while  
25 he was in mechanical restraints resulting in him receiving injuries and  
suffering great bodily injury.

26 **REQUEST FOR ADMISSION NO. 48:**

27 "Admit or deny that you and your co-defendants D. Morales and  
B. David et al., filed (RUR) CDC 115 and CDC 837 incident reports of this  
28 brutal assault, attack and beating of Prisoner Kevin L. Havery in May/June  
2006."

1 **Ruling:** Defendant objects to the requests 42-48 on the grounds that they are compound, vague  
2 and ambiguous and ask Defendant to admit or deny a statement that is not a material fact to this  
3 lawsuit. Defendant's objection that these requests are vague and ambiguous is sustained.

4 Whether a request for admission seeks a material fact to this lawsuit is not a proper objection.  
5 However, these requests seek information regarding claims of another prisoner which do not  
6 appear reasonably calculated to lead to the discovery of admissible evidence. Further, Plaintiff  
7 has propounded alternative forms of discovery regarding these issues, which are more likely to  
8 lead to the discovery of admissible evidence than requests for admissions. Accordingly,  
9 Plaintiff's motion to compel further responses to requests 42-48 is denied.

10 **REQUEST FOR ADMISSION NO. 49:**

11 "Admit or deny that were in possession and/or aware the MEMO  
concerning Plaintiffs [sic] alleged prior acts of assault with a weapon, dated  
January 26, 2005."

12 **Ruling:** Defendant's objections to the request on the grounds that it is compound, vague and  
13 ambiguous are overruled. Plaintiff is sufficiently clear in identifying the memo and Defendant  
14 must answer. Further, Defendant's objection that this request is not a plain statement of fact is  
15 not a proper basis for objection. Plaintiff's motion to compel is granted.

16 **REQUEST FOR ADMISSION NO. 50:**

17 "Admit or deny that you read this memo prior to escorting  
Plaintiff to building two (2) security housing unit."

18 **Ruling:** Defendant's objections to the request on the grounds that it is compound, vague and  
19 ambiguous are overruled. Defendant's objection that this request is not a plain statement of fact  
20 is not a proper basis for objection. Plaintiff's motion to compel is granted.

21 **REQUEST FOR ADMISSION NO. 52:**

22 "Admit or deny that your employers and/or superiors have been  
23 aware of the length of time you have been assigned to the 4A 2 building  
security housing unit at Corcoran State Prison."

24 **Ruling:** Defendant objects to the request on the grounds that it is compound, calls for  
25 speculation, vague and ambiguous and is not a plain statement of fact. Defendant's objection  
26 that this request calls for speculation is sustained. Defendant further objects on the grounds that  
27 the request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
28 Whether a request for admission seeks a material fact to this lawsuit is not a proper objection.

1 However, this request seeks information as to Defendant's superiors' knowledge which does not  
2 appear reasonably calculated to lead to the discovery of admissible evidence as there are no  
3 claims against Defendant's superiors in this action. Plaintiff's motion to compel is denied.

4 **REQUEST FOR ADMISSION NO. 54:**

5 "Admit or deny that your employers and/or superiors have been  
6 aware of your actions, since you have been assigned to the 4A 2 building  
7 security housing unit at Corcoran State Prison."

8 **Ruling:** Defendant objects to the request on the grounds that it is compound, calls for  
9 speculation, vague and ambiguous and is not a plain statement of fact. Defendant's objection  
10 that this request calls for speculation is sustained. Defendant further objects on the grounds that  
11 the request asks Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
12 Whether a request for admission seeks a material fact to this lawsuit is not a proper objection.

13 However, this request seeks information as to Defendant's superiors' knowledge which does not  
14 appear reasonably calculated to lead to the discovery of admissible evidence as there are no  
15 claims against Defendant's superiors in this action. Plaintiff's motion to compel is denied.

16 **REQUEST FOR ADMISSION NO. 55:**

17 "Admit or deny that during the weekly I.C.C. Committee hearing  
18 held in 4A 2 building unit you are present and apart [sic] of the Committee  
19 board/hearing."

20 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
21 ambiguous, is not a plain statement of fact, and requests Defendant to admit or deny a statement  
22 that is not a material fact to this lawsuit. Defendant's objections are overruled. Whether a  
23 request for admission seeks a material fact to this lawsuit is not a proper objection. Plaintiff's  
24 motion to compel is granted with the limitation that Defendant must provide a response to this  
25 request only for the time frame of December 1, 2004 through January 31, 2005.

26 **REQUEST FOR ADMISSION NO. 56:**

27 "Admit or deny that during these weekly I.C.C Committee  
28 hearings you have communication with the 4A yard facility captain,  
Assistant Warden, Chief Deputy Warden, and (S.H.U.) Warden. Be  
specific."

**Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
ambiguous, is not a plain statement of fact, and requests Defendant to admit or deny a statement  
that is not a material fact to this lawsuit. Defendant's objections are overruled – other than that

1 the phrase “Be specific” is vague and ambiguous. Whether a request for admission seeks a  
2 material fact to this lawsuit is not a proper objection. Plaintiff’s motion to compel is granted,  
3 with the limitation that Defendant must provide a response to this request only for the time frame  
4 of December 1, 2004 through January 31, 2005.

5 **REQUEST FOR ADMISSION NO. 57:**

6 “Admit or deny that you are authorized a “Spit Mask” to be  
placed over Plaintiff’s face/head, on January 26, 2005.”

7 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. Without  
8 waiving objections, Defendant is unable to admit or deny the request as he does not recall  
9 whether he ordered that Plaintiff wear a spit mask on January 26, 2005. Defendant’s objections  
10 are overruled. Defendant’s response that he is unable to admit or deny this request based solely  
11 on his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly,  
12 Plaintiff’s motion to compel is granted. Defendant is required to check all readily obtainable  
13 information and provide an amended answer to this request.

14 **REQUEST FOR ADMISSION NO. 58:**

15 “Admit or deny that you are presently being sued by other  
inmates who were housed in the same unit as you, 4A - 2 building  
16 (S.H.U).”

17 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and is  
18 not a plain statement of fact. Defendant further objects on the grounds that the request asks  
19 Defendant to admit or deny a statement that is not a material fact to this lawsuit.  
20 lawsuit. Defendant’s objection that these requests are vague and ambiguous is overruled.  
21 Whether a request for admission seeks a material fact to this lawsuit is not a proper objection.  
22 However, this request seeks information regarding claims that other prisoners might have against  
23 Defendant which does not appear reasonably calculated to lead to the discovery of admissible  
24 evidence. Further, Plaintiff has propounded alternative forms of discovery regarding these  
25 issues, which are more likely to lead to the discovery of admissible evidence than requests for  
26 admissions. Accordingly, Plaintiff’s motion to compel is denied.

27 **REQUEST FOR ADMISSION NO. 60:**

28 “Admit or deny that you were acting under color of law on  
January 26, 2005.”

1 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and calls  
2 for a legal conclusion. Defendant’s objections are overruled as this request seeks an application  
3 of law to fact – i.e. whether Defendant was employed by the state, so as to be a state actor, so as  
4 to have been acting under the color of law on January 26, 2005. *See West v. Atkins*, 487 U.S. 42,  
5 49-50 (1988). Plaintiff’s motion to compel is granted.

6 **REQUEST FOR ADMISSION NO. 62:**

7 “Admit or deny that you are responsible for the daily operation of  
8 4A 2 building unit on, or before January 26, 2005.”

8 **REQUEST FOR ADMISSION NO. 63:**

9 “Admit or deny that you are responsible for the daily operation of  
10 4A 2 building unit after January 26, 2005.”

10 **Ruling:** Defendant objects to these request on the grounds that they are overly broad, vague and  
11 ambiguous and are not a statements of fact. Whether a request for admission is a “plain  
12 statement of fact” is not a proper basis for objection. However, Defendant’s objections that these  
13 requests are overly broad, vague and ambiguous are sustained. Accordingly, Plaintiff’s motion to  
14 compel additional responses to requests 62 and 63 is denied.

15 **REQUEST FOR ADMISSION NO. 64:**

16 “Admit or deny that Plaintiff requested medical care after he was  
17 assaulted sometime on and/or thereafter January 26, 2005.”

17 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
18 ambiguous and is not a plain statement of fact. Defendant’s objections are overruled. Plaintiff’s  
19 motion to compel is granted.

20 **REQUEST FOR ADMISSION NO. 77:**

21 “Admit or deny that you are familiar with California law, Penal  
22 Code § 129 - False Statement purportedly under oath though not sworn to.”

22 **REQUEST FOR ADMISSION NO. 78:**

23 “Admit or deny that you are familiar with California Law, Penal  
24 Code §132 - Offering forged or altered documents as genuine.”

24 **REQUEST FOR ADMISSION NO. 79:**

25 “Admit or deny that you are familiar with California law, Penal  
26 Code § 134 - Falsifying documents to be used in evidence.”

26 **REQUEST FOR ADMISSION NO. 80:**

27 “Admit or deny that you are familiar with California law, Penal  
28 Code § 135 - Destroying or concealing documentary evidence.”

28 **REQUEST FOR ADMISSION NO. 81:**

1 “Admit or deny that you are familiar with California law, Penal  
Code § 135 Destroying or concealing documentary evidence.”

2 **REQUEST FOR ADMISSION NO. 82:**

3 “Admit or deny that you are familiar with California law, Penal  
Code § 141 Planting, altering, or concealing physical evidence.”

4 **REQUEST FOR ADMISSION NO. 83:**

5 “Admit or deny that you are familiar with California law, Penal  
Code § 147 - inhumane treatment or oppression of prisoner.”

6 **REQUEST FOR ADMISSION NO. 84:**

7 “Admit or deny that you are familiar with California law, Penal  
Code § 149 Assault and Battery by a peace officer - Third Degree.”

8 **Ruling:** Defendant objects to requests 77-84 on the grounds that they are vague and ambiguous,  
9 and on the grounds that the requests ask Defendant to admit or deny a statement that is not a  
10 material fact to this lawsuit. Without waiving objections, Defendant admits that in January 2005,  
11 he was aware of the rules and regulations associated with executing his duties as a Correctional  
12 Sergeant. Defendant’s objections are overruled. However, Plaintiff has not shown any  
13 deficiency with Defendant’s response to these requests. Plaintiff’s motion to compel is denied.

14 **REQUEST FOR ADMISSION NO. 85:**

15 “Admit or deny that you have been investigated by the internal  
affairs office for acts of misconduct.”

16 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
17 ambiguous – which are sustained. Defendant also objects to this request on the basis that it  
18 requests that Defendant admit or deny a statement that is not a material fact to this lawsuit.  
19 Defendants objections are overruled. Stating that a request seeks a Defendant to admit or deny a  
20 statement that is not a material fact to this lawsuit is not a proper objection. Plaintiff is entitled  
21 to obtain discovery on any nonprivileged matter which need not be admissible at the trial if it  
22 appears reasonably calculated to lead to the discovery of admissible evidence. However, Plaintiff  
23 has propounded alternative forms of discovery regarding these issues, which are more likely to  
24 lead to the discovery of admissible evidence than requests for admissions. Accordingly,  
25 Plaintiff’s motion to compel is denied.

26 **REQUEST FOR ADMISSION NO. 86:**

27 “Admit or deny that greater force was used against Plaintiff,  
28 where no force was required at all.”



1 **Ruling:** Defendant’s objection to the request on the grounds that it is vague and ambiguous is  
2 sustained. Accordingly, Plaintiff’s motion to compel is denied. Defendant further objects to the  
3 request on the grounds that it does not contain a plain statement of fact to be admitted or denied –  
4 which is not a proper basis for objection.

5 **REQUEST FOR ADMISSION NO. 88:**

6 “Admit or deny that Plaintiff was escorted out of cell #43 to be  
interviewed by the psychologist in the 4A-2 building - 2 right side  
rotunda/sally port holding cages.”

7 **REQUEST FOR ADMISSION NO. 89:**

8 “Admit or deny that once Plaintiff was placed in the holding  
cages his restraints were not removed.”

9 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
10 Defendant further objects to the request on the grounds that the request asks Defendant to admit  
11 or deny a statement that is not a material fact to this lawsuit. Defendant’s objections are  
12 overruled. Plaintiff’s motion to compel is granted with the limitation that Defendant must  
13 provide a response to this request only for the time frame of January 1, 2005 through February  
14 28, 2005.

15 **REQUEST FOR ADMISSION NO. 90:**

16 “Admit or deny that you were the sole contributing cause of the  
subject incident.”

17 **Ruling:** Defendant’s objections to the request on the grounds that it is overly broad, vague and  
18 ambiguous are sustained. Plaintiff’s motion to compel is denied.

19 **REQUEST FOR ADMISSION NO. 91:**

20 “Admit or deny that Plaintiff had a swollen black eye after the  
incident in subject.”

21 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
22 ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
23 Without waiving objections, Defendant denies that he committed or assisted in any acts on  
24 January 26, 2005, leading to Plaintiff being physically harmed. Defendant’s objections of overly  
25 broad, vague and ambiguous are sustained. Plaintiff does not show any deficiencies in the  
26 answer Defendant provided and the Court finds none. Plaintiff’s motion to compel is denied.

27 **REQUEST FOR ADMISSION NO. 92:**

28 “Admit or deny that you were investigated by prison officials in

1 this case, of excessive force used on January 26 2005, concerning your  
actions.”

2 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
3 ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
4 Defendant’s objections are overruled. Plaintiff’s motion to compel is granted.

5 **REQUEST FOR ADMISSION NO. 93:**

6 “Admit or deny that you made threats toward Plaintiff on January  
26, 2005 about his alleged past actions not being tolerated.”

7 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and does  
8 not contain a plain statement of fact to be admitted or denied by Defendant. Without waiving  
9 objections, Defendant denies making any threatening statements to Plaintiff on January 26, 2005.  
10 Defendant’s objections are overruled. However, Plaintiff does not show any deficiencies in the  
11 answer Defendant provided and the Court finds none. Plaintiff’s motion to compel is denied.

12 **REQUEST FOR ADMISSION NO. 94:**

13 “Admit or deny that you can identify the guards who  
accompanied you to escort Plaintiff on January 26 2005.”

14 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
15 ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
16 Defendant’s objections are overruled. Plaintiff’s motion to compel is granted. Defendant is  
17 required to check all readily obtainable information and provide an amended answer to this  
18 request.

19 **REQUEST FOR ADMISSION NO. 95:**

20 “Admit or deny that you are familiar with California Law, Penal  
Code § 139 Threatening Witnesses.”

21 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
22 ambiguous and asks Defendant to admit or deny a statement that is not a material fact to this  
23 lawsuit. Defendant’s objections are overruled. However, this request seeks information that is  
24 irrelevant as it is not likely to lead to the discovery of admissible evidence and Plaintiff has not  
25 shown any deficiency with Defendant’s response to this request. Plaintiff’s motion to compel is  
26 denied.

27 **REQUEST FOR ADMISSION NO. 96:**

28 “Admit or deny that punching or striking an inmate with your fist

1 is apart [sic] of the CDCR Departmental use of force policy and options.”

2 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
3 ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
4 Defendant’s objections are overruled. Plaintiff’s motion to compel is granted.

5 **REQUEST FOR ADMISSION NO. 97:**

6 “Admit or deny that punching or striking an [sic] prisoner with your  
7 fist is in compliance with the Corcoran State Prison use of force  
8 policy and options.”

9 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
10 ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
11 Defendant’s objections are overruled. Plaintiff’s motion to compel is granted.

12 **REQUEST FOR ADMISSION NO. 98:**

13 “Admit or deny that punching and/or striking an prisoner in the  
14 facial area is apart [sic] of the CDCR Departmental use of force  
15 policy and options.”

16 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
17 ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
18 Defendant’s objections are overruled. Plaintiff’s motion to compel is granted.

19 **REQUEST FOR ADMISSION NO. 99:**

20 “Admit or deny that punching and/or striking a prisoner in the  
21 facial area is apart [sic] of the Corcoran State Prison use of force policy and  
22 options.”

23 **Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
24 ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
25 Defendant’s objections are overruled. Plaintiff’s motion to compel is granted.

26 **REQUEST FOR ADMISSION NO. 100:**

27 “Admit or deny that an interview tape was conducted of  
28 Plaintiff [sic] injuries.”

**Ruling:** Defendant objects to the request on the grounds that it is overly broad, vague and  
ambiguous and does not contain a plain statement of fact to be admitted or denied by Defendant.  
Defendant’s objections are overruled. Plaintiff’s motion to compel is granted. Defendants is  
required to check all readily obtainable information and provide an amended answer to this  
request.

1 **B. Defendant Northcutt's Responses to Requests for Admission**

2 **REQUEST FOR ADMISSION NO. 4**

3 "Admit or deny that Plaintiff did not attempt to commit battery  
4 on you at anytime on January 26, 2005. Battery by this term, means that  
5 which is defined in Section 242 of the California Penal Code, (to include  
6 section 4501.5)."

7 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. Without  
8 waiving objections and assuming battery refers to an attempt to cause bodily harm, Defendant  
9 admits that he does not recall Plaintiff attempting to assault him on January 26, 2005.

10 Defendant's objections are overruled. Defendant is reminded that an inquiry of solely one's own  
11 memory is insufficient. Plaintiff's motion to compel is granted.

12 **REQUEST FOR ADMISSION NO. 5**

13 "Admit or deny that Plaintiff's hands were secured behind his  
14 back with a pair of handcuffs and the lanyard device attached to the  
15 handcuffs with a pad lock, during the entire escort on January 26, 2005."

16 **REQUEST FOR ADMISSION NO. 6**

17 "Admit or deny that Plaintiff was also secured in leg irons during  
18 the entire escort on January 26, 2005."

19 **Ruling:** Defendant objects to theses request on the grounds that they are compound, vague and  
20 ambiguous. Without waiving objections, Defendant is unable to admit or deny the restraints used  
21 on Plaintiff on January 26, 2005, but Defendant admits that whenever an inmate is escorted to the  
22 Security Housing Unit, they are generally transported in handcuffs and leg restraints.

23 Defendant's objections are overruled. Defendant is reminded that an inquiry of solely one's own  
24 memory is insufficient. Plaintiff's motion to compel is granted.

25 **REQUEST FOR ADMISSION NO. 7**

26 "Admit or deny that Plaintiff was placed in a spit mask on  
27 January 26, 2005 during the entire escort."

28 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
Without waiving objections, after reasonable inquiry, Defendant is unable to admit or deny the  
request because he does not recall whether Plaintiff had a spit mask placed on his head while  
being transported to the Security Housing Unit on January 26, 2005. Defendant's objections are  
overruled. Defendant is reminded that an inquiry of solely one's own memory is insufficient  
basis upon which to claim an inability to admit or deny a request for admission. Plaintiff's

1 motion to compel is granted.

2 **REQUEST FOR ADMISSION NO. 9**

3 “Admit or deny that you have no facts in support of your general  
4 denial.”

5 **REQUEST FOR ADMISSION NO. 10**

6 “Admit or deny that you have no facts in support of your  
7 affirmative defense listed in your general denial.”

8 **Ruling:** Defendant objects to these request on the grounds that they are vague and ambiguous,  
9 and do not contain a plain statement of fact. Without waiving objections, Defendant denies that  
10 Plaintiff’s allegations as stated in the complaint are true. These requests are over broad.  
11 Plaintiff’s motion to compel is denied.

12 **REQUEST FOR ADMISSION NO. 12**

13 “Admit or deny that during the escort of Plaintiff from the (ACH)  
14 unit to the 4A yard, building two (2), right side, your were in control of  
15 holding the lanyard device attached to Plaintiffs handcuffs.”

16 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
17 Without waiving objections and assuming Plaintiff is referring to being transported to the  
18 Security Housing Unit on January 26, 2005, after reasonable inquiry, Defendant is unable to  
19 admit or deny the request because he does not recall what restraints were used on Plaintiff.  
20 Defendant’s objections are overruled. Defendant’s response that he is unable to admit or deny  
21 this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
22 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is required to check  
23 all readily obtainable information and provide an amended answer to this request.

24 **REQUEST FOR ADMISSION NO. 14**

25 “Admit or deny that you escorted Plaintiff to C-Section cell #43  
26 and placed Plaintiff on his knees.”

27 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
28 Without waiving objections and assuming Plaintiff is referring to being transported to the  
Security Housing Unit on January 26, 2005, Defendant admits that he assisted in transporting  
Plaintiff, but does not recall whether he placed Plaintiff on his knees. Defendant’s objections are  
overruled. Defendant’s response that he is unable to admit or deny this request based solely on  
his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s

1 motion to compel is granted. Defendant is required to check all readily obtainable information  
2 and provide an amended answer to this request.

3 **REQUEST FOR ADMISSION NO. 15**

4 “Admit or deny that you removed the leg irons from Plaintiffs  
5 legs/ankles.”

6 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.

7 Without waiving objections and assuming Plaintiff is referring to being transported to the

8 Security Housing Unit on January 26, 2005, Defendant admits that he assisted in transporting

9 Plaintiff, but does not recall if he removed the leg restraints. Defendant’s objections are

10 overruled. Defendant’s response that he is unable to admit or deny this request based solely on

11 his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s

12 motion to compel is granted. Defendant is required to check all readily obtainable information

13 and provide an amended answer to this request.

14 **REQUEST FOR ADMISSION NO. 16**

15 “Admit or deny that you removed the handcuffs and lanyard  
16 device from Plaintiffs wrist.”

17 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.

18 Without waiving objections and assuming Plaintiff is referring to being transported to the

19 Security Housing Unit on January 26, 2005, Defendant admits that he assisted in transporting

20 Plaintiff, but does not recall if he removed any restraints. Defendant’s objections are overruled.

21 Defendant’s response that he is unable to admit or deny this request based solely on his lack of

22 recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s motion to

23 compel is granted. Defendant is required to check all readily obtainable information and provide

24 an amended answer to this request.

25 **REQUEST FOR ADMISSION NO. 23**

26 “Admit or deny that you were the sole contributing cause of the  
27 subject incident.”

28 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous, and

does not contain a plain statement of fact. Without waiving objections, Defendant denies that the

facts stated in Plaintiff’s complaint are true. Whether a request for admission is a “plain

statement of fact” is not a proper basis for objection. However, Defendant’s objections that this

1 request is vague and ambiguous is sustained. Accordingly, Plaintiff’s motion to compel is  
2 denied.

3 **REQUEST FOR ADMISSION NO. 24**

4 “Admit or deny that Plaintiff complied with all orders on January  
5 26, 2005.”

6 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
7 Defendant’s objections are sustained. Plaintiff’s motion to compel is denied.

8 **REQUEST FOR ADMISSION NO. 25**

9 “Admit or deny that you are mentally capable to determine the  
10 difference between reasonable force, excessive force and  
11 unnecessary force being applied.”

12 **Ruling:** Defendant neither admits nor denies these requests, but rather objects on the grounds  
13 that they are vague and ambiguous. Defendant’s objection is sustained. Plaintiff’s motion to  
14 compel is denied.

15 **REQUEST FOR ADMISSION NO. 26**

16 “Admit or deny that you were acting under the color of the law  
17 on January 26, 2005.”

18 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous and calls  
19 for a legal conclusion. Defendant’s objections are overruled as this request seeks an application  
20 of law to fact – i.e. whether Defendant was employed by the state, so as to be a state actor, so as  
21 to have been acting under the color of law on January 26, 2005. *See West*, 487 U.S. at 49-50.  
22 Plaintiff’s motion to compel is granted.

23 **REQUEST FOR ADMISSION NO. 40**

24 “Admit or deny that you are and/or were familiar with California  
25 Law, Penal Code §129-False Statement purportedly under oath though not  
26 sworn to, on or before 1-26-05.”

27 **REQUEST FOR ADMISSION NO. 41**

28 “Admit or deny that you are and/or were familiar with California  
Law, Penal Code §132-Offering Forged or Altered Document as genuine,  
on or before 1-26-05.”

**REQUEST FOR ADMISSION NO. 42**

“Admit or deny that you are and/or were familiar with California  
Law, Penal Code § 134-Falsifying documents to be used in evidence, on or  
before 1-26-05.”

**REQUEST FOR ADMISSION NO. 43**

“Admit or deny that you are and/or were familiar with California  
Law, Penal Code § 135-Destroying or concealing documentary evidence,

1 on or before 1-26-05.”

2 **REQUEST FOR ADMISSION NO. 44**

3 “Admit or deny that you are and/or were familiar with California  
4 Law, Penal Code § 141-Planting, Altering, or concealing Physical  
5 Evidence, on or before 1-26-05.”

6 **REQUEST FOR ADMISSION NO. 45**

7 “Admit or deny that you are and/or were familiar with California  
8 Law, Penal Code § 147-Inhumane Treatment or Oppression of Prisoner, on  
9 or before 1-26-05.”

10 **REQUEST FOR ADMISSION NO. 46**

11 “Admit or deny that you are and/or were familiar with California  
12 Law, Penal Code § 149-Assault and Battery by a Peace Officer - Third  
13 Degree, on or before 1-26-05.”

14 **REQUEST FOR ADMISSION NO. 47:**

15 “Admit or deny that you are and/or were familiar with California  
16 Law, Penal Code § 653f-Solicitation to committ [sic] a felony, on or before 1-  
17 26-05.”

18 **Ruling:** Defendant objects to requests 40-47 on the grounds that they are vague and ambiguous,  
19 and on the grounds that the requests ask Defendant to admit or deny a statement that is not a  
20 material fact to this lawsuit. Without waiving objections, Defendant admits that in January 2005,  
21 he was aware of the rules and regulations associated with executing his duties as a Correctional  
22 Sergeant. Defendant’s objections are overruled. However, Plaintiff has not shown any  
23 deficiency with Defendant’s response to these requests. Plaintiff’s motion to compel is denied.

24 **REQUEST FOR ADMISSION NO. 48:**

25 “Admit or deny that Plaintiff had no pre-existing injuries to any  
26 of the areas of his body in controversay [sic], in this lawsuit, at the time of the  
27 subject incident.”

28 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.  
Without waiving objections, Defendant is unable to admit or deny the request because he does  
not recall whether Plaintiff had some pre-existing injuries on January 26, 2005. Defendant’s  
objections are sustained. Further, Plaintiff has not shown any basis upon which Defendant would  
be able and/or qualified to have ascertained whether Plaintiff suffered from any pre-existing  
injuries. Accordingly, Plaintiff’s motion to compel is denied.

**REQUEST FOR ADMISSION NO. 49:**

“Admit or deny that you have no documentary/documentation  
which would support the contention that Plaintiff had any pre-existing  
injuries to similar parts of his body that are in issue in the subject incident.”



1 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous, and  
2 does not contain a plain statement of fact. Without waiving objections, Defendant is unable to  
3 admit or deny the request because he does not recall whether Plaintiff had some pre-existing  
4 injuries on January 26, 2005. Defendant's objections are overruled. Defendant's response that  
5 he is unable to admit or deny this request based solely on his lack of recollection does not comply  
6 with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is  
7 required to check all readily obtainable information and provide an amended answer to this  
8 request.

9 **REQUEST FOR ADMISSION NO. 50:**

10 "Admit or deny that you have had prior citizens' complaints filed  
against you for excessive use of force/employee misconduct."

11 **REQUEST FOR ADMISSION NO. 52:**

12 "Admit or deny that you have had prior 602's CDC prison  
complaints filed against you for excessive use of force/employee  
misconduct."

13 **Ruling:** Defendant objects to these requests on the grounds that they are overly broad, vague and  
14 ambiguous and ask Defendant to admit or deny a statement that is not a material fact to this  
15 lawsuit. Defendants objections are overruled. Further, stating that a request asked Defendant to  
16 admit or deny a statement that is not a material fact to this lawsuit is not a proper objection as  
17 Plaintiff is entitled to obtain discovery on any nonprivileged matter which need not be admissible  
18 at the trial if it appears reasonably calculated to lead to the discovery of admissible evidence.  
19 Plaintiff's motion to compel is granted, with the limitation that Defendant must provide a  
20 response to this request only for the time frame of January 1, 2002 to the date of this order.  
21 Defendant is required to check all readily obtainable information and provide an amended answer  
22 to this request.

23 **REQUEST FOR ADMISSION NO. 51:**

24 "Admit or deny that you have had prior citizens' complaints filed  
against you for retaliation."

25 **REQUEST FOR ADMISSION NO. 53:**

26 "Admit or deny that you have had prior 602's CDC complaints  
filed against you for retaliation."

27 **Ruling:** Defendant objects to these requests on the grounds that they are overly broad, vague and  
28

1 ambiguous, and asks Defendant to admit or deny a statement that is not a material fact to this  
2 lawsuit. Defendant's objections that this request is overly broad, vague and ambiguous are  
3 overruled. Whether a request seeks a material fact to this lawsuit is not a proper objection.  
4 However, this request does not appear reasonably calculated to lead to the discovery of  
5 admissible evidence as there are no claims of retaliation in this action. Accordingly, Plaintiff's  
6 motion to compel is denied.

7 **REQUEST FOR ADMISSION NO. 54:**

8 "Admit or deny that you were investigated and/or interviewed by  
9 Corcoran State Prison officials concerning the incident subject of 1-26-05."

10 **Ruling:** Defendant objects to this request on the grounds that it is overly broad, vague and  
11 ambiguous, and is asks Defendant to admit or deny a statement that is not a material fact to this  
12 lawsuit. Without waiving objections, Defendant denies that he received any disciplinary  
13 punishment from any actions taken on January 26, 2005. Defendant's objections are overruled.  
14 Defendant's response did not answer the request such that Plaintiff's motion to compel is  
15 granted.

16 **REQUEST FOR ADMISSION NO. 57:**

17 "Admit or deny that Plaintiff suffered a swollen black eye on the  
18 right side of his face."

19 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
20 Without waiving objections, Defendant denies that he caused Plaintiff any physical injuries.  
21 Defendant's objections of overly broad, vague and ambiguous are overruled. Defendant's  
22 response did not answer the request such that Plaintiff's motion to compel is granted.

23 **REQUEST FOR ADMISSION NO. 59:**

24 "Admit or deny that you have and had access to all inmates 1140  
25 files housed in the Security Housing of 4A yard, at your disposal."

26 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.  
27 Without waiving objections, Defendant is unable to respond to the request as he is unsure of  
28 what a 1140 file is. Defendant's objections are overruled. Defendant's response that he is  
unable to admit or deny this request based solely on his lack of recollection does not comply with  
Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff's motion to compel is granted with the limitation  
that Defendant must provide a response to this request only for the time frame of October 1, 2004

1 through January 31, 2005. Defendant is required to check all readily obtainable information and  
2 provide an amended answer to this request.

3 **REQUEST FOR ADMISSION NO. 60:**

4 “Admit or deny that you have access to the Daily Movement  
5 Sheet (D.M.S.) Printout which informs you which inmates  
6 housed in the 4A units are participants in the mental health program.”

7 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous as to  
8 time. Defendant’s objection is sustained. However, Defendant’s failure to even attempt to  
9 provide a qualified response to this request by limiting his response as to his access to such  
10 records on the date of incident (January 26, 2005) as alleged in the Complaint attempts to avoid  
11 responding based on a technicality rather than attempting to meet the substance of the requested  
12 admission. Fed. R. Civ. P. 36(a). Plaintiff’s motion to compel is granted.

13 **REQUEST FOR ADMISSION NO. 63:**

14 “Admit or deny that you can identify the rest of the guards who  
15 participated and assisted in the escorting of Plaintiff on 1-26-05.”

16 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.  
17 Without waiving objections, Defendant denies the request as he does not recall any of the names  
18 of any officers that may have assisted in escorting Plaintiff to the Security Housing Unit on  
19 January 26, 2005. Defendant’s objection is overruled. Defendant’s response that he is unable to  
20 admit or deny this request based solely on his lack of recollection does not comply with Fed. R.  
21 Civ. P. 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is required to  
22 check all readily obtainable information and provide an amended answer to this request.

23 **REQUEST FOR ADMISSION NO. 64:**

24 “Admit or deny that you were in possession and/or read the  
25 MEMO concerning Plaintiffs’ arrival dated 1-26-05.”

26 **Ruling:** Defendant’s objections to the request on the grounds that it is compound, vague and  
27 ambiguous are overruled. Plaintiff is sufficiently clear in identifying the memo and Defendant  
28 must answer. Further, Defendant’s objection that this request is not a plain statement of fact is  
not a proper basis for objection. Plaintiff’s motion to compel is granted.

**REQUEST FOR ADMISSION NO. 68:**

“Admit or deny that you have a history of assaulting prisoners  
in mechanical restraints.”

1 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous and not  
2 reasonably related to the discovery of admissible evidence. Defendant's objections are sustained.  
3 Plaintiff's motion to compel is denied.

4 **REQUEST FOR ADMISSION NO. 69:**

5 "Admit or deny that you had knowledge of Plaintiffs alleged  
6 prior acts of assault on guards, at Tehachapi State Prison."

7 **REQUEST FOR ADMISSION NO. 70:**

8 "Admit or deny that you had knowledge of Plaintiff's alleged  
9 prior acts of assault on guards in general."

10 **Ruling:** Defendant objects to these requests on the grounds that they are vague and ambiguous.  
11 Defendant's objections are overruled. Without waiving objections, Defendant does not  
12 specifically recall Plaintiff, nor is he able to recall what information he had in January 2005,  
13 regarding Plaintiff's prior assaults on officers. Thus, he is unable to admit or deny the request.  
14 However, while responding solely from one's own memory to a request for admission is  
15 ordinarily insufficient, this request seeks an admission or denial as to Defendant's own  
16 knowledge. Defendant responded that he does not recall, which, in this situation is sufficient.  
17 Plaintiff's motion to compel is denied.

18 **REQUEST FOR ADMISSION NO. 71:**

19 "Admit or deny that you, H. German and John Doe entered  
20 Plaintiffs cell at the (ACH) unit on 1-26-05 and placed  
21 Plaintiff in mechanical restraints."

22 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.  
23 Without waiving objections, after reasonable inquiry, Defendant is unable to admit or deny the  
24 request because he does not recall who placed Plaintiff in restraints on January 26, 2005.  
25 Defendant's objection is overruled. Defendant's response that he is unable to admit or deny this  
26 request based solely on his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4).  
27 Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check all readily  
28 obtainable information and provide an amended answer to this request.

**REQUEST FOR ADMISSION NO. 73:**

"Admit or deny that you have been sued by other inmates at  
C.S.P. - COR for similar acts of misconduct in the form of  
excessive use of force which resulted in injury or otherwise."

**Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous and

1 does not ask Defendant to admit or deny a statement that is a material fact to this lawsuit.  
2 Defendants objections are overruled. Further, stating that a request asked Defendant to admit or  
3 deny a statement that is not a material fact to this lawsuit is not a proper objection as Plaintiff is  
4 entitled to obtain discovery on any nonprivileged matter which need not be admissible at the trial  
5 if it appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's  
6 motion to compel is granted with the limitation that Defendant must provide a response to this  
7 request only for the time frame of January 1, 2002 to the date of this order. Defendant is required  
8 to check all readily obtainable information and provide an amended answer to this request.

9 **REQUEST FOR ADMISSION NO. 74:**

10 "Admit or deny that you have been served 42 U.S.C. § 1983  
11 complaints by other inmates, thought the marshalls [sic] services, for similar act  
12 of misconduct in the form of assault and battery/excessive use of force,  
13 which resulted in injury or otherwise."

14 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous and  
15 asks Defendant to admit or deny a statement that is not a material fact to this lawsuit. Defendants  
16 objections are overruled. Further, stating that a request asked Defendant to admit or deny a  
17 statement that is not a material fact to this lawsuit is not a proper objection as Plaintiff is entitled  
18 to obtain discovery on any nonprivileged matter which need not be admissible at the trial if it  
19 appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's motion  
20 to compel is granted with the limitation that Defendant must provide a response to this request  
21 only for the time frame of January 1, 2002 to the date of this order. Defendant is required to  
22 check all readily obtainable information and provide an amended answer to this request.

23 **REQUEST FOR ADMISSION NO. 76:**

24 "Admit or deny that on 1-26-05 there were two sergeants present  
25 during the escort of Plaintiff on 1-26-05."

26 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous, and  
27 asks Defendant to admit or deny a statement that is not a material fact to this lawsuit. Without  
28 waiving objections, Defendant is unable to admit or deny the request "because he only recalls  
Sergeant Martinez as present during the escort of Plaintiff on January 26, 2005." Defendant's  
objections are overruled. Defendant's response that he is unable to admit or deny this request  
based solely on his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4).

1 Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check all readily  
2 obtainable information and provide an amended answer to this request.

3 **REQUEST FOR ADMISSION NO. 77:**

4 "Admit or deny that you have been investigated by the Internal  
5 Affairs Office for the same or similar acts of misconduct in the form of  
6 assault and battery/excessive use of force on a prisoner."

7 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.

8 Without waiving objections, Defendant is unable to admit or deny the request because he does  
9 not recall if he placed a "spitmask" on Plaintiff on January 26, 2005. Defendant's objections are  
10 overruled and the response appears completely unrelated to the request. Plaintiff's motion to  
11 compel is granted with the limitation that Defendant must provide a response to this request only  
12 for the time frame of January 1, 2002 to the date of this order. Defendant is required to check all  
13 readily obtainable information and provide an amended answer to this request.

14 **REQUEST FOR ADMISSION NO. 78:**

15 "Admit or deny that punching or striking an inmate with your fist  
16 is apart [sic] of the CDCR Departmental use of force policy and options."

17 **REQUEST FOR ADMISSION NO. 79:**

18 "Admit or deny that punching or striking an inmate with your fist  
19 is in compliance with the Corcoran State Prison use of force policy and  
20 options."

21 **REQUEST FOR ADMISSION NO. 80:**

22 "Admit or deny striking or punching an inmate in the facial area  
23 in apart [sic] of the CDCR Departmental use of force policy and options."

24 **REQUEST FOR ADMISSION NO. 81:**

25 "Admit or deny striking or punching an inmate in the facial area  
26 is apart [sic] of the Corcoran State Prison use of force policy and options."

27 **Ruling:** Defendant objects to these requests on the grounds that they are vague and ambiguous,  
28 and incomplete hypotheticals. Defendant's objections are overruled. Plaintiff's motion to  
compel is granted.

**REQUEST FOR ADMISSION NO. 86:**

"Admit or deny that cell #43 in building two (2) right, c-section,  
was not fitted as a management cell on, or before January 26 2005, or  
thereafter."

**Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. Without  
waiving objections, Defendant is unable to admit or deny the request because he does not recall

1 whether the specified cell was placed on Management Control Status on the specified date.

2 Defendant's objections are overruled. Defendant's response that he is unable to admit or deny  
3 this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.

4 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check  
5 all readily obtainable information and provide an amended answer to this request.

6 **REQUEST FOR ADMISSION NO. 87:**

7 "Admit or deny that Plaintiff did not have a cell mate at anytime,  
8 while he was housed in the 4A building two (2) right, cell #43."

8 **REQUEST FOR ADMISSION NO. 88:**

9 "Admit or deny that Plaintiff did not have a cell mate when you  
10 picked him from the (ACH) unit cell on January 26, 2005."

11 **Ruling:** Defendant is unable to admit or deny these requests because they ask Defendant to  
12 admit or deny statements that are not material facts to this lawsuit. Stating that a request asked  
13 Defendant to admit or deny a statement that is not a material fact to this lawsuit is not a proper  
14 objection as Plaintiff is entitled to obtain discovery on any nonprivileged matter which need not  
15 be admissible at the trial if it appears reasonably calculated to lead to the discovery of admissible  
16 evidence. Defendant's objections are overruled. Plaintiff's motion to compel is granted.  
17 Defendant is required to check all readily obtainable information and provide an amended answer  
18 to this request.

18 **REQUEST FOR ADMISSION NO. 89:**

19 "Admit or deny that on January 26, 2005 prior to you escorting  
20 Plaintiff from the (ACH) unit he did not have any injuries whatsoever."

21 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous as to  
22 "injuries." Defendant is unable to admit or deny the request because he cannot recall Plaintiff's  
23 physical condition when he was escorted on January 26, 2005. Defendant's objections are  
24 sustained. Plaintiff has not shown any basis upon which Defendant would be able and/or  
25 qualified to have ascertained whether Plaintiff suffered from any pre-existing injuries. Further,  
26 Plaintiff fails to show deficiencies in Defendant's response and the Court finds none in as much  
27 as Defendant would only be able to respond as to any visible injuries he recalls seeing on  
28 Plaintiff during the escort. Since Defendant does not recall Plaintiff's condition when he was  
escorted, and the request seeks information based on Defendant's memory, Plaintiff's motion to

1 compel is denied.

2 **REQUEST FOR ADMISSION NO. 90:**

3 “Admit or [sic] deny that on January 26, 2005 you were  
4 acting on instructions given to you by J.M. Martinez.”

5 **Ruling:** Defendant objects to the request on the grounds that it does not contain a plain  
6 statement of fact to be admitted or denied by Defendant – which is not a proper objection and  
7 hence is overruled. However, Defendant objects to the request on the grounds that it is vague  
8 and ambiguous as to “acting on instructions.” This objection is sustained. Plaintiff’s motion to  
9 compel is denied.

10 **REQUEST FOR ADMISSION NO. 92:**

11 “Admit or deny that you answered these admissions  
12 under sworn oath.”

13 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
14 Without waiving objections, Defendant admits that these responses are accurate as to the best of  
15 Defendant’s recollection. Defendant’s objection is overruled. However, there is no requirement  
16 that the response be verified. Defense counsel’s signature on Defendant’s responses creates a  
17 “certificate of merit.” Fed. R. Civ. P. 26(g). No further response is required, hence Plaintiff’s  
18 motion to compel is denied.

19 **C. Defendant German’s Responses to Requests for Admission**

20 **REQUEST FOR ADMISSION NO. 3:**

21 “Admit or deny that on January 26, 2005 you were apart [sic] of the  
22 escort team that escorted Plaintiff from the (ACH) unit to the 4A yard  
23 building two (2) security housing unit.”

24 **REQUEST FOR ADMISSION NO. 4**

25 “Admit or deny that on January 26, 2005 you were one of the  
26 escort guards holding on arm during the escort.”

27 **REQUEST FOR ADMISSION NO. 5**

28 “Admit or deny that on January 26, 2005 Plaintiff was escorted to  
4A right Rotunda/Sally Port area, and placed up against the wall. by  
yourself and M. Northcutt.”

**Ruling:** Defendant responded to these requests that, after reasonable inquiry, Defendant is unable  
to admit or deny the request because he does not recall whether he escorted Plaintiff on the  
specified date. Defendant does admit to working on January 26, 2005, and that escorting inmates  
to the SHU was part of his normal duties. Defendant’s response that he is unable to admit or



1 deny this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
2 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check  
3 all readily obtainable information and provide an amended answer to this request.

4 **REQUEST FOR ADMISSION NO. 6**

5 "Admit or deny that on January 26, 2005 M. Northcutt and J.M.  
6 Martinez were also apart [sic] of this escort team."

7 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
8 does not recall whether he escorted Plaintiff on the specified date. Defendant does admit to  
9 working on January 26, 2005, and that during that time period he worked with Officer Northcutt  
10 and Sergeant Martinez. Defendant's response that he is unable to admit or deny this request  
11 based solely on his lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4).

12 Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check all readily  
13 obtainable information and provide an amended answer to this request.

14 **REQUEST FOR ADMISSION NO. 7**

15 "Admit or deny that you know the identities [sic] of the other guards  
16 who participated in the escort of Plaintiff on January 26, 2005."

17 **Ruling:** Defendant is unable to admit or deny the request because he does not recall whether he  
18 escorted Plaintiff on the specified date. Defendant's response that he is unable to admit or deny  
19 this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
20 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check  
21 all readily obtainable information and provide an amended answer to this request.

22 **REQUEST FOR ADMISSION NO. 8**

23 "Admit or deny that there was two sergeants present during the  
24 escort of Plaintiff on January 26, 2005."

25 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
26 does not recall whether he escorted Plaintiff on the specified date. Defendant's response that he  
27 is unable to admit or deny this request based solely on his lack of recollection does not comply  
28 with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is  
required to check all readily obtainable information and provide an amended answer to this  
request.

**REQUEST FOR ADMISSION NO. 9**

1 “Admit or deny that on January 26, 2005 you volunteered to  
participate in the escorting of Plaintiff.”

2 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
3 does not recall whether he escorted Plaintiff on the specified date. Defendant does admit to  
4 working on January 26, 2005, and that escorting inmates to the SHU was part of his normal  
5 duties. Defendant’s response that he is unable to admit or deny this request based solely on his  
6 lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s  
7 motion to compel is granted. Defendant is required to check all readily obtainable information  
8 and provide an amended answer to this request.

9 **REQUEST FOR ADMISSION NO. 10**

10 “Admit or deny that on January 26, 2005 you escorted Plaintiff to  
cell #43 in C-Section and placed him on his knees in front [sic] of the cell  
11 door/area.”

12 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
13 does not recall whether he escorted Plaintiff on the specified date. Defendant does admit to  
14 working on January 26, 2005, and that escorting inmates to the SHU was part of his normal  
15 duties. Defendant’s response that he is unable to admit or deny this request based solely on his  
16 lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s  
17 motion to compel is granted. Defendant is required to check all readily obtainable information  
18 and provide an amended answer to this request.

19 **REQUEST FOR ADMISSION NO. 11**

20 “Admit or deny that on January 26, 2005 Plaintiff was placed in  
cell #43 in C-Section and placed him on his knees in front [sic] of the cell  
21 door/area.”

22 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
23 does not recall whether he escorted Plaintiff on the specified date. Defendant does admit to  
24 working on January 26, 2005, and that escorting inmates to the SHU was part of his normal  
25 duties. Defendant’s response that he is unable to admit or deny this request based solely on his  
26 lack of recollection does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s  
27 motion to compel is granted. Defendant is required to check all readily obtainable information  
28 and provide an amended answer to this request.

1 **REQUEST FOR ADMISSION NO. 13**

2 “Admit or deny that Plaintiff was placed in a spit mask, leg irons,  
3 handcuffs, and the lanyard chain attached to the handcuffs along with the  
4 pad lock and triangle handle, prior to being escorted from the (ACH) unit  
5 on January 26, 2005.”

6 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
7 does not recall whether he escorted Plaintiff on the specified date. Defendant’s response that he  
8 is unable to admit or deny this request based solely on his lack of recollection does not comply  
9 with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is  
10 required to check all readily obtainable information and provide an amended answer to this  
11 request.

12 **REQUEST FOR ADMISSION NO. 14**

13 “Admit or deny that Plaintiff did not attempt to assault you at  
14 anytime on January 26, 2005. Assault by this term means that which is  
15 defined in Section 240 of the California Penal Code. (to include section  
16 4800 of the Penal Code).”

17 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
18 has no recollection of Plaintiff attempting to assault him on January 26, 2005. Defendant’s  
19 response that he is unable to admit or deny this request based solely on his lack of recollection  
20 does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s motion to compel is  
21 granted. Defendant is required to check all readily obtainable information and provide an  
22 amended answer to this request.

23 **REQUEST FOR ADMISSION NO. 15**

24 “Admit or deny that Plaintiff did not attempt to commit battery  
25 on you at anytime on January 26, 2005. Battery by this term, means that  
26 which is defined in section 242 of the California Penal Code (to include  
27 Section 4501.5).”

28 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
has no recollection of Plaintiff attempting to batter him on January 26, 2005. Defendant’s  
response that he is unable to admit or deny this request based solely on his lack of recollection  
does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff’s motion to compel is  
granted. Defendant is required to check all readily obtainable information and provide an  
amended answer to this request.

**REQUEST FOR ADMISSION NO. 16**

1 “Admit or deny that Cell #43 in building two (2) right C-Section  
is not a management cell, and was not one in January 26, 2005.”

2 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.

3 Defendant’s objections are overruled. Without waiving objections, Defendant is unable to admit  
4 or deny the request because he does not recall whether the specified cell was placed on  
5 Management Control Status on the specified date. Defendant’s response that he is unable to  
6 admit or deny this request based solely on his lack of recollection does not comply with Fed. R.  
7 Civ. P. 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is required to  
8 check all readily obtainable information and provide an amended answer to this request.

9 **REQUEST FOR ADMISSION NO. 18**

10 “Admit or deny that on January 26, 2005 you removed Plaintiff’s  
mechanical restraints prior to placing him in cell #43.”

11 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. Without  
12 waiving objections and assuming Plaintiff is referring to the purported escort on January 26,  
13 2005, Defendant is unable to admit or deny the request because he does not recall whether he  
14 escorted Plaintiff on the specified date. Defendant’s response that he is unable to admit or deny  
15 this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
16 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is required to check  
17 all readily obtainable information and provide an amended answer to this request.

18 **REQUEST FOR ADMISSION NO. 19**

19 “Admit or deny that Plaintiff did not have a cell mate at any time,  
while he was housed in 4A-building (2) right cell #43.”

20 **Ruling:** Defendant is unable to admit or deny the request because he does not recall whether  
21 Plaintiff had a cell mate on January 26, 2005, however, it often varies as to whether Security  
22 Housing Unit inmates have cell mates. Defendant’s response that he is unable to admit or deny  
23 this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
24 36(a)(4). Accordingly, Plaintiff’s motion to compel is granted. Defendant is required to check  
25 all readily obtainable information and provide an amended answer to this request.

26 **REQUEST FOR ADMISSION NO. 20**

27 “Admit or deny that Plaintiff did not have a cell mate when you  
28 picked him up from the (ACH) unit cell on January 26, 2005.”

1 **Ruling:** Defendant is unable to admit or deny the request because he does not recall whether  
2 Plaintiff had a cell mate on January 26, 2005, however, it often varies as to whether Security  
3 Housing Unit inmates have cell mates. Defendant's response that he is unable to admit or deny  
4 this request based solely on his lack of recollection does not comply with Fed. R. Civ. P.  
5 36(a)(4). Accordingly, Plaintiff's motion to compel is granted. Defendant is required to check  
6 all readily obtainable information and provide an amended answer to this request.

7 **REQUEST FOR ADMISSION NO. 21**

8 "Admit or deny that on January 26, 2005 prior to you escorting  
9 Plaintiff from the (ACH) unit he did not have any injuries whatsoever."

10 **Ruling:** After reasonable inquiry, Defendant is unable to admit or deny the request because he  
11 does not recall whether he escorted Plaintiff on the specified date. Defendant's objections are  
12 sustained. Defendant's objections are sustained. Further, Plaintiff has not shown any basis upon  
13 which Defendant would be able and/or qualified to have ascertained whether Plaintiff suffered  
14 from any pre-existing injuries. Accordingly, Plaintiff's motion to compel is denied.

15 **REQUEST FOR ADMISSION NO. 22**

16 "Admit or deny that no person or entity other than these listed in  
17 the complaint contributed in any way to the subject incident."

18 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. These  
19 objections are sustained. Plaintiff's motion to compel is denied.

20 **REQUEST FOR ADMISSION NO. 23**

21 "Admit or deny that Plaintiff did not contribute in  
22 anyway to the subject incident."

23 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.  
24 Without waiving objections and assuming Plaintiff is referring to the purported escort on January  
25 26, 2005, after reasonable inquiry, Defendant is unable to admit or deny the request because he  
26 does not recall whether he escorted Plaintiff on the specified date. Defendant's objections are  
27 sustained. Accordingly, Plaintiff's motion to compel is denied.

28 **REQUEST FOR ADMISSION NO. 24**

"Admit or deny that Plaintiff complied with all orders  
on January 26, 2005."

**Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. Without  
waiving objections and assuming Plaintiff is referring to the purported escort on January 26,

1 2005, after reasonable inquiry, Defendant is unable to admit or deny the request because he does  
2 not recall whether he escorted Plaintiff on the specified date. Defendant's objections are  
3 sustained. Plaintiff's motion to compel is denied.

4 **REQUEST FOR ADMISSION NO. 26**

5 "Admit or deny that you are mentally capable to determine  
6 the difference between reasonable force, excessive force  
7 and unnecessary force being applied."

8 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
9 ambiguous. Defendant's objections are sustained. Plaintiff's motion to compel is denied.

10 **REQUEST FOR ADMISSION NO. 27**

11 "Admit or deny that you were acting under the color of law on  
12 January 26, 2005."

13 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
14 ambiguous, and calls for a legal conclusion. Defendant's objections are overruled as this request  
15 seeks an application of law to fact – i.e. whether Defendant was employed by the state, so as to  
16 be a state actor, so as to have been acting under the color of law on January 26, 2005. *See West,*  
17 487 U.S. at 49-50. Plaintiff's motion to compel is granted.

18 **REQUEST FOR ADMISSION NO. 40**

19 "Admit or deny that you are and/or were familiar with California  
20 Law, Penal Code §118-1-False Report filed by a Peace Officer, on or  
21 before 1-26-05."

22 **REQUEST FOR ADMISSION NO. 41**

23 "Admit or deny that you are and/or were familiar with California  
24 Law, Penal Code §129-False Statement Purportedly under oath though not  
25 sworn to, on or before 1-26-05."

26 **REQUEST FOR ADMISSION NO. 42**

27 "Admit or deny that you are and/or were familiar with California  
28 Law, Penal Code §132-Offering Forged or Altered Document as genuine,  
on or before 1-26-05."

**REQUEST FOR ADMISSION NO. 43**

"Admit or deny that you are and/or were familiar with California  
Law, Penal Code §134-Falsifying Documents to be used in Evidence, on or  
before 1-26-05."

**REQUEST FOR ADMISSION NO. 44**

"Admit or deny that you are and/or were familiar with California  
Law, Penal Code §135-Destroying or Concealing Documentary Evidence,  
on or before 1-26-05."

**REQUEST FOR ADMISSION NO. 45**

1 “Admit or deny that you are and/or were familiar with California  
2 Law, Penal Code §141-Planting, Altering, or Concealing Physical  
Evidence, on or before 1-26-05.”

3 **REQUEST FOR ADMISSION NO. 46**

4 “Admit or deny that you are and/or were familiar with California  
5 Law, Penal Code §147-Inhumane Treatment or Oppression of Prisoner,  
on or before 1-26-05.”

6 **REQUEST FOR ADMISSION NO. 47:**

7 “Admit or deny that you are and/or were familiar with California  
8 Law, Penal Code §149-Assault and Battery by a Peace Officer-Third  
Degree, on or before 1-26-05.”

9 **REQUEST FOR ADMISSION NO. 48:**

10 “Admit or deny that you are and/or were familiar with California  
11 Law, Penal Code § 653(f)-Solicitation to Commit [sic] a Felony,  
on or before 1-26-05.”

12 **Ruling:** Defendant objects to requests 40-48 on the grounds that they are vague and ambiguous,  
13 and on the grounds that the requests ask Defendant to admit or deny a statement that is not a  
14 material fact to this lawsuit. Without waiving objections, Defendant admits that in January 2005,  
15 he was aware of the rules and regulations associated with executing his duties as a Correctional  
16 Sergeant. Defendant’s objections are overruled. However, Plaintiff has not shown any  
17 deficiency with Defendant’s response to these requests. Plaintiff’s motion to compel is denied.

18 **REQUEST FOR ADMISSION NO. 50:**

19 “Admit or deny that you did not seek medical attention for  
20 Plaintiff’s injuries.”

21 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.  
22 Defendant’s objection is overruled. Without waiving objections, Defendant is unable to admit or  
23 deny the request because it is not specific as to time and date. This is a valid qualifying  
24 statement as the request is overly broad as to the time and date as phrased. However, Plaintiff’s  
25 motion to compel is granted, with the limitation that Defendant must provide a response to this  
26 request only for the time frame of January 1, 2005 through February 28, 2005.

27 **REQUEST FOR ADMISSION NO. 52:**

28 “Admit or deny that you were aware Plaintiff was and still is a  
participant in the mental health program.”

**Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.  
Without waiving objections, Defendant is unable to admit or deny the request because he does

1 not know Plaintiff's mental health status now and does not know if Plaintiff's mental health  
2 status has ever been made known to him. Defendant's objections are overruled. However, while  
3 responding solely from one's own memory to a request for admission is ordinarily insufficient,  
4 this request seeks an admission or denial as to Defendant's own knowledge. Defendant  
5 responded that he does not recall, which, in this situation is sufficient. Plaintiff's motion to  
6 compel is denied.

7 **REQUEST FOR ADMISSION NO. 53:**

8 "Admit or deny that you had access to all inmate files housed in  
9 the same unit that you work in."

9 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous.

10 Defendant's objections are overruled. Plaintiff's motion to compel is granted with the limitation  
11 that Defendant must provide a response to this request only for the time frame of October 1, 2004  
12 through January 31, 2005. Defendant is required to check all readily obtainable information and  
13 provide an amended answer to this request.

14 **REQUEST FOR ADMISSION NO. 55:**

15 "Admit or deny that in the past few years there has been other  
16 staff compliants [sic] filed against you by other prisoners, alleging you used  
17 excessive use of force on them here at Corcoran State Prison."

17 **Ruling:** Defendant objects to this request on the grounds that it is vague and ambiguous, and not  
18 likely to lead to the discovery of admissible evidence. Without waiving objections, Defendant is  
19 unable to admit or deny the request because he cannot possibly know the subject matter of all  
20 inmate appeals filed within the last few years. Defendants objections are overruled. Plaintiff is  
21 entitled to obtain discovery on any nonprivileged matter which need not be admissible at the trial  
22 if it appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's  
23 motion to compel is granted, with the limitation that Defendant must provide a response to this  
24 request only for the time frame of January 1, 2002 to the date of this order.

24 **REQUEST FOR ADMISSION NO. 56:**

25 "Admit or deny that you can identify M. Northcutt as one of the  
26 guards escorting Plaintiff on 1-26-05 from the (ACH) Unit to 4A building  
27 two (2)."

27 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.

28 Without waiving objections and assuming Plaintiff is referring to the purported escort on January



1 26, 2005, Defendant is unable to admit or deny the request because he does not recall whether he  
2 escorted Plaintiff on the specified date. Defendant's objections are overruled. Defendant's  
3 response that he is unable to admit or deny this request based solely on his lack of recollection  
4 does not comply with Fed. R. Civ. P. 36(a)(4). Accordingly, Plaintiff's motion to compel is  
5 granted. Defendant is required to check all readily obtainable information and provide an  
6 amended answer to this request.

7 **REQUEST FOR ADMISSION NO. 58:**

8 "Admit or deny that you were aware in possession of and/or read  
9 the MEMO dated 1-26-05, concerning Plaintiff."

10 **Ruling:** Defendant's objections to the request on the grounds that it is compound, vague and  
11 ambiguous are overruled. Plaintiff is sufficiently clear in identifying the memo and Defendant  
12 must answer. Further, Defendant's objection that this request is not a plain statement of fact is  
13 not a proper basis for objection. Plaintiff's motion to compel is granted.

14 **REQUEST FOR ADMISSION NO. 59:**

15 "Admit or deny that prison officials conducted an investigation  
16 into your actions concerning the incident on 1-26-05."

17 **Ruling:** Defendant objects to the request on the grounds that it is "vague and ambiguous as to  
18 'an investigation.'" Without waiving objections, Defendant is unable to admit or deny the  
19 request because he is unaware of any investigations conducted by prison officials into any actions  
20 he committed on January 26, 2005. Defendant denies, however, that any disciplinary action was  
21 taken against him for any actions arising out of January 26, 2005. Defendant's objections are  
22 overruled. To the extent that Defendant responded that he is unable to admit or deny this request  
23 based solely on his lack of recollection, such response does not comply with Fed. R. Civ. P.  
24 36(a)(4). While Defendant responded that he was not subjected to any disciplinary action as a  
25 result of the incident, the request sought admission as to whether an investigation into  
26 Defendant's actions was conducted, not the result thereof. Thus, Defendant's answer was not  
27 responsive to the request. Accordingly, Plaintiff's motion to compel is granted. Defendant is  
28 required to check all readily obtainable information and provide an amended answer to this  
request.

**REQUEST FOR ADMISSION NO. 61:**

1 “Admit or deny that on January 26, 2005 J.M. Martinez was your  
superior officer of the day in 4A 2 building.”

2 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. This  
3 objection is overruled. Without waiving objections, Defendant admits that J. Martinez was a  
4 Sergeant in January 2005, and if he was on duty the same time as Defendant, would have been  
5 Defendant’s supervising officer. Plaintiff does not show any deficiencies with Defendant’s  
6 response and the Court finds none. Plaintiff’s motion to compel is denied.

7 **REQUEST FOR ADMISSION NO. 62:**

8 “Admit or deny that on January 26, 2005 you were acting on  
instructions given to you by J.M. Martinez.”

9 **Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous. This  
10 objection is sustained. Plaintiff’s motion to compel is denied.

11 **REQUEST FOR ADMISSION NO. 63:**

12 “Admit or deny that you have been investigated by the  
Internals [sic] Affairs Office for prior acts of misconduct.”

13 **Ruling:** Defendant objects to the request on the grounds that it is compound, vague and  
14 ambiguous – which are sustained. Defendant also objects to this request on the basis that it  
15 requests that Defendant admit or deny a statement that is not a material fact to this lawsuit.  
16 Defendants objections are overruled. Stating that a request seeks a Defendant to admit or deny a  
17 statement that is not a material fact to this lawsuit is not a proper objection. Plaintiff is entitled  
18 to obtain discovery on any nonprivileged matter which need not be admissible at the trial if it  
19 appears reasonably calculated to lead to the discovery of admissible evidence. However, Plaintiff  
20 has propounded alternative forms of discovery regarding these issues, which are more likely to  
21 lead to the discovery of admissible evidence than requests for admissions. Accordingly,  
22 Plaintiff’s motion to compel is denied.

23 **REQUEST FOR ADMISSION NO. 64:**

24 “Admit or deny that prisoner Charles Kensey P-04-738 filed a 42  
U.S.C. §1983 complaint against you, alleging you and your co-defendants  
25 of that case, brutally attacked and beat him while he was in mechanical  
restraints, resulting in him receiving numerous stitches to his face and  
26 head, which rendered him confined to a wheel chair.”

27 **REQUEST FOR ADMISSION NO. 65:**

28 “Admit or deny that you and your co-defendants of that case,  
filed (RUR) CDC-115 and CDC 837 incidents reports of this brutal assault,

1 attack and beating of prisoner Charles Kensey P-04738.”

2 **REQUEST FOR ADMISSION NO. 66:**

3 “Admit or deny that Charles Kensey P-04738 filed an appeal 602  
4 complaint against you on this matter.”

5 **Ruling:** Defendant objects to these requests on the grounds that they are compound, vague and  
6 ambiguous – which are sustained. Defendant also asserts that these requests ask him to admit or  
7 deny a statement that is not a material fact to this lawsuit. Whether a request for admission seeks  
8 a material fact to this lawsuit is not a proper objection. However, these requests seeks  
9 information regarding claims that another prisoner had against Defendant and other prison  
10 personnel which does not appear reasonably calculated to lead to the discovery of admissible  
11 evidence. Further, Plaintiff has propounded alternative forms of discovery regarding these  
12 issues, which are more likely to lead to the discovery of admissible evidence than requests for  
13 admissions. Accordingly, Plaintiff’s motion to compel further responses is denied.

14 **REQUEST FOR ADMISSION NO. 69:**

15 “Admit or deny that punching or striking a prisoner with your fist  
16 is in compliance with the Corcoran State Prison use of force policy  
17 and options.”

18 **REQUEST FOR ADMISSION NO. 70:**

19 “Admit or deny that punching or striking [sic] a prisoner with your fist  
20 is apart [sic] of the CDCR Departmental use of force policy and options.”

21 **REQUEST FOR ADMISSION NO. 71:**

22 “Admit or deny that punching and/or striking a prisoner in the  
23 facial area is apart [sic] of the CDCR Departmental use of force  
24 policy and options.”

25 **REQUEST FOR ADMISSION NO. 72:**

26 “Admit or deny that punching and/or striking a prisoner in the  
27 facial area with your fist is in compliance with the Corcoran  
28 State Prison use of force policy and options.”

**Ruling:** Defendant objects to these requests on the grounds that it is vague and ambiguous, and  
incomplete hypotheticals. Defendant’s objections are overruled. Plaintiff’s motion to compel is  
granted.

**REQUEST FOR ADMISSION NO. 73:**

“Admit or deny that an interview tape was conducted of  
Plaintiff [sic] injuries.”

**Ruling:** Defendant objects to the request on the grounds that it is vague and ambiguous.

1 Defendant's objection is overruled. Accordingly, Plaintiff's motion to compel is granted.

2 Defendant is required to check all readily obtainable information and provide an amended answer  
3 to this request.

4 **REQUEST FOR ADMISSION NO. 90:**

5 "Admit or deny that on January 26, 2005 you were acting on  
instructions given to you by J.M. Martinez."

6 **Ruling:** Defendant objects to the request on the grounds that it does not contain a plain  
7 statement of fact to be admitted or denied by Defendant – which is overruled. However,  
8 Defendant's objection to the request on the grounds that it is vague and ambiguous as to "acting  
9 on instructions" is sustained. Plaintiff's motion to compel is denied.

10 **II. Conclusion**

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. Plaintiff's motion to compel responses from Defendant Martinez to requests and  
13 12, 24, 26, 28, 30, 32-34, 37, 38, 42-48, 52, 54, 58, 62, 63, 77-86, 90, 91, 93, and  
14 95 are DENIED;
  - 15 2. Plaintiff's motion to compel responses from Defendant Martinez to requests 6, 8-  
16 11, 13-15, 17, 18, 21, 22, 35, 36, 39, 49, 50, 55-57, 60, 64, 88, 89, 92, 94, and 96-  
17 100 are GRANTED, subject to the limitations set forth in this order;
  - 18 3. Plaintiff's motion to compel responses from Defendant Northcutt to requests 9,  
19 10, 23-25, 40-48, 51, 53, 68-70, 89, 90, and 92 are DENIED;
  - 20 4. Plaintiff's motion to compel responses from Defendant Northcutt to requests 4-7,  
21 12, 14-16, 26, 49, 50, 52, 54, 57, 59, 60, 63, 64, 71, 73, 74, 76-81, and 86-88 are  
22 GRANTED, subject to the limitations set forth in this order;
  - 23 5. Plaintiff's motion to compel responses from Defendant German to requests 21-24,  
24 26, 40-48, 52, 61-66, and 90 are DENIED; and
  - 25 6. Plaintiff's motion to compel responses from Defendant German to requests 3-11,  
26 13-16, 18-20, 27, 50, 53, 55, 56, 58, 59, and 69-73 are GRANTED, subject to the  
27 limitations set forth in this order.
- 28

IT IS SO ORDERED.

**Dated: October 27, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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