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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

THORNELL BROWN,

Plaintiff,

v.

JAWAYNE FAMBROUGH, et al.,

Defendants.

CASE NO. 1:09-CV-00573-DLB PC

ORDER DENYING PLAINTIFF’S MOTIONS  
TO COMPEL

(DOCS. 38, 39)

Plaintiff Thornell Brown (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Jawayne Fambrough, Jackson Copeland, V. Yates, Stephaine Amoako, Jerome Peacock, and John Whitehead.

Pending before the Court are Plaintiff’s motions to compel, filed December 28, 2010. Docs. 38, 39. Defendants filed their opposition on January 10, 2011. Doc. 40. The matter is submitted pursuant to Local Rule 230(l).

**I. Motion To Compel - Admissions (Doc. 38)**

The purpose of a request for admission is to eliminate issues that are not in dispute between the parties. *Asea, Inc. v. Southern Pacific Transport Co.*, 669 F.2d 1242, 1245 (9th Cir. 1981). Thus, requests for admissions are not primarily discovery devices and should not be used as a substitute for other discovery processes to uncover evidence. *Safeco Ins. Co. of Am. v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal. 1998).

1 Plaintiffs moves to compel further response to Plaintiff's Requests For Admission Nos. 2,  
2 3, and 4 from Defendant Fambrough and Requests For Admission Nos. 1, 2, and 4 from  
3 Defendant Whitehead.

4 **A. Defendant Fambrough**

5 Admission No. 2: Admit that Exhibit D1 and D2 to the complaint are statements made by  
6 Inmate Youngblood and Trammel to plaintiff's investigator, Arnie Rios in  
7 Case (People v. Brown, No. DF008537A), alleging you used excessive  
8 force on them, while they were incarcerated at Kern Valley State Prison,  
9 secured in handcuffs.

10 Response: Responding party objects to this request on the grounds it lacks foundation  
11 and calls for speculation. Without waiving any objection, responding party  
12 lacks sufficient knowledge, information, or belief to admit or deny this  
13 request because he was not present when the alleged statements in  
14 Exhibits D1 and D2 were made.

15 Plaintiff does not explain how Defendant Fambrough's response was inadequate. Defendant  
16 Fambrough contends that he was not present when inmates Youngblood and Trammel made their  
17 statements to the investigator, and thus did not have sufficient knowledge to admit or deny that  
18 the statements were made.<sup>1</sup> The Court finds this response sufficient. Defendant Fambrough may  
19 only admit or deny when he has sufficient knowledge. As he was not present when either inmate  
20 made their statements to the investigator, Defendant may properly respond by stating that he has  
21 insufficient knowledge to admit or deny. *See* Fed. R. Civ. P. 36(a)(4) (answering party may  
22 assert lack of knowledge or information as a reason for failing to admit or deny).<sup>2</sup> Plaintiff's  
23 motion to compel further response from Defendant Fambrough to Request for Admission No. 2  
24 is denied.

25 Admission No. 3: Admit that Inmate Youngblood, F13392 and Trammel T59175 filed 602  
26 appeal complaints against you for excessive force and unreasonable force,  
27 while they were incarcerated at Kern Valley State Prison, according to the

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28 <sup>1</sup> Exhibits D1 and D2 of Plaintiff's complaint are letters from an investigator for the Public Defender's  
office of Kern County, which concern interviews with inmates Youngblood and Trammel, respectively, concerning  
alleged excessive force by Defendant Fambrough in January 2007.

<sup>2</sup> The rule also generally requires that a party state that it has made a reasonable inquiry and the  
information it knows or can readily obtain is insufficient to enable it to admit or deny. Fed. R. Civ. P. 36(a)(4).  
Here, there is no statement of reasonable inquiry. However, the reasons given by Defendant Fambrough indicate  
that reasonable inquiry would be moot. Defendant Fambrough was not present when inmates Youngblood and  
Trammel made their statements to the investigator, and thus he would not have knowledge as to whether they made  
such statements.

1 documents marked as Exhibits D1 and D2 to the complaint.

2 Response: Responding party objects to this request on the grounds it lacks foundation  
3 and calls for speculation. Without waiving any objection, responding party  
4 admits that inmates Youngblood and Trammel filed inmate grievances  
5 against me for alleged excessive or unreasonable force, and responding  
party lacks sufficient knowledge, information, or belief to admit or deny  
the remainder of this request because he was not present when the alleged  
statements in Exhibits D1 and D2 were made.

6 Plaintiff does not explain how Defendant Fambrough's response is inadequate.

7 Defendant Fambrough admits that inmates Youngblood and Trammel filed inmate grievances  
8 against him for alleged excessive or unreasonable force. Defendant Fambrough does not have  
9 sufficient information to admit or deny regarding the statements made in Exhibits D1 and D2.

10 Accordingly, Plaintiff's motion to compel further response from Defendant Fambrough to  
11 Request for Admission No. 3 is denied.

12 Admission No. 4: Admit that Inmate Youngblood and Trammel allegations against you were  
13 sustained by Sacramento third level of Appeal review, according to the  
documents marked as Exhibits D1 and D2 to the complaint.

14 Response: Responding party objects to this request on the grounds it is vague, lacks  
15 foundation, and calls for speculation. Without waiving any objection,  
16 responding party lacks sufficient knowledge, information, or belief to  
17 admit or deny this request because he was not present when the alleged  
statements in Exhibits D1 and D2 were made and he does not recall being  
informed of the third-level response to the inmates's appeals.

18 Plaintiff does not explain how Defendant Fambrough's response is inadequate.

19 Accordingly, Plaintiff's motion to compel further response from Defendant Fambrough to  
20 Request for Admission No. 4 is denied.

21 **B. Defendant Whitehead**

22 Admission No. 1: Admit that you was standing in the program entrance door area, when the  
23 altercation between plaintiff, Fambrough, Garcia, Copeland and Vasquez  
occurred on August 23, 2006.

24 Response: Responding party objects to this request on the grounds it is vague as to  
25 the meaning of "when the altercation . . . occurred" and lacks foundation.  
Without waiving any objection, after a reasonable inquiry and review of  
26 the Crime/Incident Report (CDCR 837) concerning the incident of August  
23, 2006, responding party lacks sufficient knowledge, information, or  
27 belief to admit or deny this request.

28 Admission No. 2: Admit that you were present when the altercation between plaintiff,  
Fambrough, Garcia, Copeland and Vazquez occurred on August 23, 2006.

1 Response: Responding party objects to this request on the grounds it is vague as to  
2 the meaning of “present when the altercation” and lacks foundation.  
3 Without waiving any objection, after a reasonable inquiry and review of  
4 the Crime/Incident Report (CDCR 837) concerning the incident of August  
23, 2006, responding party lacks sufficient knowledge, information, or  
belief to admit or deny this request.

5 Admission No. 4: Admit that on August 23, 2006, during or after your use-of-force interview  
6 with plaintiff, you never interviewed or questioned plaintiff’s requested  
7 Inmate witnesses: Broussard, C78707, Chambliss, V94319, Slade, E04858  
and Whitney, J64958.

8 Response: Responding party objects to this request on the grounds it is overbroad,  
9 lacks foundation, and is irrelevant and not reasonably calculated to lead to  
10 the discovery of admissible evidence. Without waiving any objection, after  
a reasonable inquiry and review of the Crime/Incident Report (CDCR 837)  
concerning the incident of August 23, 2006, responding party lacks  
sufficient knowledge, information, or belief to admit or deny this request.

11 Plaintiff fails to explain how Defendant Whitehead’s response is insufficient. Defendant  
12 Whitehead, after a reasonable inquiry and review of the Crime/Incident Report concerning the  
13 August 23, 2006 incident, did not have sufficient knowledge to admit or deny the request. That  
14 is a sufficient response pursuant to Rule 36(a)(4). Accordingly, Plaintiff’s motion to compel  
15 further response from Defendant Whitehead to Requests for Admission Nos. 1, 2, and 4 are  
16 denied.<sup>3</sup>

17 **II. Motion To Compel - Production of Documents (Doc. 39)**

18 Plaintiff moves to compel further response to his Requests for Production of Documents  
19 (POD) Nos. 1, 2, 3, 4, and 5 from Defendant Fambrough.

20 In responding to discovery requests, Defendants must produce documents which are in  
21 their “possession, custody or control.” Fed. R. Civ. P. 34(a). Actual possession, custody or  
22 control is not required, however. “A party may be ordered to produce a document in the  
23 possession of a non-party entity if that party has a legal right to obtain the document or has  
24 control over the entity who is in possession of the document. *Soto v. City of Concord*, 162  
25 F.R.D. 603, 620 (N.D. Cal. 1995). As this Court explained in *Allen v. Woodford*, 2007, U.S.  
26 Dist. LEXIS 11026, \*4-6, 2007 WL 309945, \*2 (E.D. Cal. Jan. 30, 2007) (internal citations and

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27  
28 <sup>3</sup> Plaintiff lists a request for admission No. 5 in his motion to compel. However, no such request was  
propounded on Defendant Whitehead. The Court presumes this is an error.

1 quotations omitted):

2 Property is deemed within a party's possession, custody, or control if the party has  
3 actual possession, custody, or control thereof or the legal right to obtain the  
4 property on demand. A party having actual possession of documents must allow  
5 discovery even if the documents belong to someone else; legal ownership of the  
6 documents is not determinative. Control need not be actual control; courts  
7 construe it broadly as the legal right to obtain documents upon demand. Legal  
8 right is evaluated in the context of the facts of each case. The determination of  
control is often fact specific. Central to each case is the relationship between the  
party and the person or entity having actual possession of the document. The  
requisite relationship is one where a party can order the person or entity in actual  
possession of the documents to release them. This position of control is usually  
the result of statute, affiliation or employment. Control may be established by the  
existence of a principal-agent relationship.

9 Such documents also include documents under the control of the party's attorney. *Meeks v.*  
10 *Parson*, 2009 U.S. Dist. LEXIS 90283, 2009 WL 3303718 (E.D. Cal. September 18, 2009)  
11 (involving a subpoena to the CDCR); *Axler v. Scientific Ecology Group, Inc.*, 196 F.R.D. 210,  
12 212 (D. Mass. 2000) (A "party must produce otherwise discoverable documents that are in his  
13 attorneys' possession, custody or control."); *Gray v. Faulkner*, 148 F.R.D. 220, 223 (N.D. Ill.  
14 1992); *see also* Cal. Code Regs. tit. 15, § 3370(e) ("No case records file, unit health records, or  
15 component thereof shall be released to any agency or person outside the department, except for  
16 private attorneys hired to represent the department, the office of the attorney general, the Board  
17 of Parole Hearings, the Inspector General, and as provided by applicable federal and state law.").

18 POD No. 1: Any and all documents if written, created since August 23, 2006, that contain,  
19 mention, construe, or refer to any inspection inquiry, or complaint against  
20 Defendant Fambrough, whether, formal or unofficial, including, but not limited to  
inmates, staff and CDCR 602 appeals and responses to such documents prepared  
by Kern Valley State Prison or their agents.

21 Response: Responding party objects to this request on the grounds it is overbroad in time and  
22 scope, is vague in its entirety, is irrelevant and not reasonably calculated to lead to  
23 the discovery of admissible evidence, violates the privacy rights of responding  
party and third parties, and calls for the production of document protected from  
disclosure by California Code of Regulations, Title 15, sections 3321 and 3450.  
24 Without waiving any objection, other than Rules Violation Report Log No.  
FD-06-08-0135, Crime/Incident Report Log No. KVP-FDP-06-08-0388, and  
25 inmate grievance Log No. KVSP-0-06-2775, produced in Attachments 1 to 3,  
26 respectively, and this lawsuit, responding party has no other documents in his  
possession, custody, or control.

27 Plaintiff fails to explain why Defendant Fambrough's response was insufficient. As  
28 stated previously, the Court does not find that inmate appeals by other inmates regarding this

1 Defendant, filed *after* the incident at issue in this action, are reasonably calculated to lead to the  
2 discovery of admissible evidence. Defendant has produced the rules violation report,  
3 crime/incident report, and inmate grievance pertaining to this incident. Thus, Defendant  
4 Fambrough's response is sufficient. Plaintiff's motion to compel further response to POD No. 1  
5 is denied.

6 POD No. 2: Any and all CDCR 602 appeals, and inmates staff complaints that refer to or  
7 describe any disciplinary review, counseling memo, or personal inquiries by  
8 CDCR or their agents concerning inmates alleging physical abuse, use of  
excessive force, discrimination and unfair treatment against them by Defendant  
Fambrough at Kern Valley State Prison between January 1, 2005 to the present.

9 Response: Responding party objects to this request on the grounds it is overbroad in time and  
10 scope, is vague in its entirety, is irrelevant and not reasonably calculated to lead to  
11 the discovery of admissible evidence, violates the privacy rights of responding  
12 party and third parties, and calls for the production of document protected from  
13 disclosure by California Code of Regulations, Title 15, sections 3321 and 3450.  
Without waiving any objection, other than inmate grievance Log No.  
KVSP-0-06-2775 produced in Attachment 3, responding party has no other  
documents in his possession, custody, or control.

14 Plaintiff fails to explain how Defendant Fambrough's response was insufficient. Plaintiff  
15 requests a broad period of time, January 1, 2005 to present. As stated previously, incidents after  
16 the events at issue in this action are not reasonably calculated to lead to the discovery of  
17 admissible evidence. Defendant produced the rules violation report, crime/incident report, and  
18 inmate grievance pertaining to this incident.<sup>4</sup> Defendant Fambrough's response is sufficient.  
19 Plaintiff's motion to compel further response to POD No. 2 is denied.

20 POD No. 3: Any and all documents, including, but not limited to, training manuals, guidelines,  
21 reports, or internal memoranda, concerning the standard operational procedures  
22 and protocols in place at Kern Valley State Prison at the time of the incident as  
related to CDCR use of force policy and policy escorting inmates in handcuffs.

23 Response: Responding party objects to this request on the grounds it is overbroad, is  
24 irrelevant and not reasonably calculated to lead to the discovery of admissible  
25 evidence, calls for the production of document protected from disclosure by the  
26 official information-records privilege and California Code of Regulations, Title  
15, section 3321. Without waiving any objection, responding party produces  
California Code Regulations, Title 15, sections 3268 and 3268.2 (current and

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27 <sup>4</sup> Defendant also denied ever being reprimanded for his behavior or attitude towards inmates. *See* Pl.'s  
28 Mot. Compel, Ex. 4, Resp. To Req. For Admis. No. 6, Doc. 38. Thus, it appears that there exists no documents  
which are responsive to Plaintiff's request. The Court reminds Defendants that they are under a continuing  
obligation to supplement their discovery responses. *See* Fed. R. Civ. P. 37(c).

1 version in effect in August 2006) in Attachment 4, and Department Operations  
2 Manual, Chapter 5, Article 3, sections 52050.10.1 to 52050.13, and 52050.23.4 in  
Attachment 5; these are the only documents in his possession, custody, or control.

3 Plaintiff again fails to explain how Defendant Fambrough's response was insufficient.

4 Defendant Fambrough produced responsive documents from the California Code of Regulations  
5 and the Department Operations Manual. Plaintiff's motion to compel further response to POD  
6 No. 3 is denied.

7 POD No. 4: Any and all documents in the possession of California Department of Corrections  
8 and Kern Valley State Prison which bear on the credibility of Defendant  
9 Fambrough, or which relate to criminal or other internal administrative or  
10 personnel investigations pertaining to him, including, but not limited to  
investigative materials, witness statements and, the disposition regarding  
complaint investigations that included sustained allegations that Defendant  
Fambrough used excessive force on inmates or unfair treatment.

11 Response: Responding party objects to this request on the grounds it is overbroad in time and  
12 scope, is vague in its entirety, lacks foundation, is irrelevant and not reasonably  
13 calculated to lead to the discovery of admissible evidence, violates the privacy  
14 rights of responding party and third parties, calls for the production of document  
15 protected from disclosure by California Code of Regulations, Title 15, sections  
16 3321 and 3450, and seeks documents in the possession of third parties rather than  
responding party. Without waiving any objection and limiting the response to  
documents in the possession, custody, or control of responding party, other than  
inmate grievance Log No. KVSP-0-06-2775 produced here in Attachment 3 and  
this lawsuit, responding party has no other documents in his possession, custody,  
or control.

17 Again, Plaintiff fails to explain how Defendant Fambrough's response was insufficient.  
18 Defendant Fambrough had denied ever being disciplined for his conduct regarding inmates,  
19 which indicates that no other responsive documents exist. Thus, Plaintiff's motion to compel  
20 further response to POD No. 4 is denied.

21 POD No. 5: Locate, furnish, and provide prison address for Inmate Broussard, C78707,  
22 Chambliss, V94319, Slade, E04858, and Whitney, J64958, in which will allow  
23 plaintiff to correspond with them for the purpose of obtaining their declarations  
for summary judgment.

24 Response: Responding party objects to this request on the grounds it fails to specify with  
25 reasonably particularity the documents sought, violates Federal Rule of Civil  
26 Procedure 34(b)(1), and is an improper request because it seeks information rather  
than documents. Without waiving any objection, responding party does not have  
any document in his possession, custody, or control that shows the current  
location of these inmates.

27 Defendant contends that Plaintiff's request should have been propounded as an interrogatory, and  
28 that Defendant does not have a document which contains the current location of the listed

1 inmates. Defendant nonetheless located the inmates in their opposition to Plaintiff's motion to  
2 compel. Broussard is at California State Prison-Corcoran; Chambliss is at Salinas Valley State  
3 Prison; Slade is at Kern Valley State Prison; and Whitney is at Centinela State Prison. Thus,  
4 Plaintiff's POD No. 5 is denied as moot.

5 **III. Conclusion And Order**

6 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motions to compel,  
7 filed December 28, 2010, are denied.

8  
9 IT IS SO ORDERED.

10 **Dated: April 18, 2011**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE