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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAUL BASHKIN,)	Civil No. 08-CV-1450-WQH(WVG)
)	
Plaintiff,)	ORDER ON PLAINTIFF'S EX PARTE
)	STATEMENT REGARDING CONTINUING
v.)	DISCOVERY DISPUTES
)	
SAN DIEGO COUNTY, HOWARD KLUGE,)	(DOC. NO. 80)
BRET GARRETT, & DOES 1-100,)	
)	
Defendants.)	
_____)	

Before the Court is Plaintiff's *ex parte* statement (Doc. No. 80) on the status of continuing discovery disputes, as well as Defendants' response (Doc. No. 82). Having carefully considered all of the discovery disputes presently before the Court, as well as the disputes on which the Court reserved judgment in its November 3, 2010, Order (Doc. No. 77), the Court hereby rules on the disputes and orders the parties to proceed consistently with this Order.

I. BACKGROUND

On October 12, 2010, The Honorable William Q. Hayes granted Plaintiff's motion for leave to amend his Complaint. Specifically, Plaintiff was allowed to make additional allegations to cure a pleading deficiency in his second cause of action ("Conspiracy to

1 Interfere with Civil Rights" pursuant to 42 U.S.C. § 1985).
2 Plaintiff filed his First Amended Complaint on October 22, 2010.
3 Defendants responded by Motion to Dismiss, which is currently
4 pending before Judge Hayes.

5 Over the course of the past year, the parties have been
6 embroiled in a series of continuing and increasingly contentious
7 discovery disputes. On September 10, 2010, the Court convened yet
8 another discovery conference to address the state of discovery and
9 to resolve any continuing disputes. Plaintiff, Paul Bashkin,
10 appeared on his own behalf, and James M. Chapin appeared on behalf
11 of the defendants, San Diego County, Howard Kluge, and Bret Garrett
12 (collectively, "Defendants"). Based on the parties' inability to
13 interact without the Court's oversight, the Court supervised the
14 parties as they met and conferred. The Court then ordered the
15 parties to further meet and confer and submit a joint statement on
16 continuing and resolved disputes. The parties' ensuing joint
17 statement (Doc. No. 74) indicated that Defendants agreed to provide
18 responses to sixteen (16) disputed topics, but indicated that
19 eighteen (18) disputed items remained.

20 On November 3, 2010, the undersigned issued an Order that
21 required Defendants to respond to the discovery requests to which
22 they had agreed to respond. (Doc. No. 78.) The Court reserved
23 judgment on the 18 remaining disputed items so that they could be
24 considered together with Plaintiff's objections, if any, to
25 Defendants' responses to the 16 undisputed items. On December 10,
26 2010, Plaintiff filed an *ex parte* statement that contained his
27 objections to Defendants' supplemental responses. (Doc. No. 78.)
28 Plaintiff apparently attempted to meet and confer with Defendants,

1 who did not respond. Defendants filed their response to Plaintiff's
2 statement on December 16, 2010. (Doc. No. 82.) Rather than address
3 the objections in Plaintiff's *ex parte* statement, Defendants tersely
4 stated that they have fully answered all interrogatories and no
5 additional information exists. The Court now rules on all of the
6 continuing and reserved disputes.

7 **II. RULINGS**

8 **A. Source of the Dispute: The Parties' Inability to Cooperate**

9 The source of the parties' continuing dispute is two-fold.
10 First, Plaintiff over-analyzes Defendants' responses and continually
11 complains that Defendants' responses are evasive, incomplete, vague,
12 "obstreperous," and lack sufficient detail. He seeks narrative
13 recitations of each and every possible detail and even narrative re-
14 creations of information that is contained in books and other
15 printed materials. For their part, Defendants provide guarded
16 responses that are devoid of much detail, while simultaneously
17 protesting that Plaintiff seeks every possible minute detail.
18 Defendants then provide minimal additional details, but only when
19 ordered by the Court - and even then their responses remain vague
20 and devoid of much detail. After carefully reviewing Plaintiff's
21 interrogatories, Defendants' initial responses, Plaintiff's initial
22 objections, Defendants' amended responses, and Plaintiff's current
23 objections, the Court finds that several of Defendants' responses
24 appear adequate given the wording of the requests, while some of
25 Plaintiff's objections have merit. Ultimately, both sides are
26 simultaneously in the right and in the wrong.

27 In the written discovery process, parties are not entitled to
28 each and every detail that could possibly exist in the universe of

1 facts. IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 321 (D. Kan.
2 1998) ("To require specifically each and every fact and application
3 of law to fact, however, would too often require a laborious,
4 time-consuming analysis, search, and description of incidental,
5 secondary, and perhaps irrelevant and trivial details. The burden
6 to answer then outweighs the benefit to be gained."). Nor is
7 Plaintiff entitled to a narrative account of Defendants' case. See
8 Lucero v. Valdez, 240 F.R.D. 591, 594 (D. N.M. 2007) ("Contention
9 interrogatories should not require a party to provide the equivalent
10 of a narrative account of its case, including every evidentiary
11 fact, details of testimony of supporting witnesses, and the contents
12 of supporting documents."); see also Gregg v. Local 305 IBEW, 2009
13 U.S. Dist. LEXIS 40761 (N.D. Ind. May 13, 2009) ("To respond would
14 be an unduly burdensome task, since it would require the Defendants
15 to produce veritable narratives of their entire case.") (citing IBP,
16 Inc.).

17 Further, to the extent Plaintiff seeks every minute detail
18 and narratives about the subject incident and every possible
19 surrounding circumstance, written discovery is not the proper
20 vehicle to obtain such detail. Johnson v. Couturier, 261 F.R.D.
21 188, 192 (E.D. Cal. 2009) ("[I]t is not the purpose of early
22 interrogatory discovery to have one side or the other give a
23 complete rendition of each and every minute, factual detail which
24 will surface at trial."); IBP, Inc., 179 F.R.D. at 321 ("Other
25 discovery procedures, such as depositions and production of
26 documents, better address whatever need there be for that kind of
27 secondary detail."). Plaintiff often uses the written interrogatory
28 process essentially as a substitute for depositions, engages in

1 hyper-critical word-play, and strenuously objects whenever the
2 responses are not worded as he wishes. However, interrogatories and
3 depositions serve different functions:

4 Written interrogatories are rarely, if ever, an adequate
5 substitute for a deposition when the goal is discovery of
6 a witness' recollection of conversations. . . . Only by
7 examining a witness live can a lawyer use the skills of
8 his trade to plumb the depths of a witness' recollection,
9 using to advantage not only what a witness may have
10 admitted in answering interrogatories, but also any new
11 tidbits that usually come out in the course of answering
12 carefully framed and pin-pointed deposition questions.
13 Written interrogatories are not designed for that pur-
14 pose; pointed questions at deposition are the only
15 effective way to discover facts bottled up in a witness'
16 recollection.

17 Shoen v. Shoen, 5 F.3d 1289, 1297 (9th Cir. 1993).

18 The nature of Plaintiff's requests notwithstanding, Defen-
19 dants have engaged in dilatory tactics. While simultaneously
20 accusing Plaintiff of hyper-sensitive word-play, Defendants engage
21 in improper tactics on several instances, as the Court will
22 elaborate below. As just one example, Defendants keep several of
23 their responses general, lacking in any useful detail, and only
24 provide more detail when ordered to do so by the Court--and
25 sometimes not even then. Further, at times, Defendants fail to
26 address the call of Plaintiff's question and answer a question not
27 asked.

28 The parties' behavior in this case is neither acceptable nor
productive. Therefore, while the Court generally refrains from
shaping the substance of discovery responses or providing such
guidance, IBP, Inc., 179 F.R.D. at 319, the Court must do so in this
case in light of the entrenched positions the parties have taken and
Defendants' sometimes evasive and dilatory responses. The Court
expects that this Order will be its final word on the disputes

1 before it, and the Court will consider sanctions if the parties
2 engage in further deliberate failures to obey the Court's Order or
3 engage in further dilatory tactics.

4 **A. The Continuing Disputes**

5 Because the disputed interrogatories are currently scattered
6 among various entries on the Court's docket, the Court methodically
7 consolidates and rules on each disputed item below.

8 **1. Kluge, Special Interrogatory No. 1**

9 **Plaintiff propounded the following interrogatory:** "Describe
10 in detail any and all training that YOU had received as a San Diego
11 [S]heriff's [D]eputy as of August 8, 2006, with regard to investi-
12 gating an individual suspected of violating California Penal Code
13 § 602(o)." (Doc. No. 64-3 at 2.)

14 **Defendant Kluge's first response:** "All my training with
15 regards to investigating an individual suspected of violating
16 California Penal Code [Section] 602(o), was obtained during training
17 scenarios and material given out to all cadets during my attendance
18 at the San Diego Regional Law Enforcement Academy training course,
19 during patrol phase training with a San Diego Sheriff's Department
20 Corporal or Filed [sic] Training Officer, and by reviewing the
21 trespassing sections of the California Penal Code book." (Id.)

22 **Plaintiff's objection:** "This response is non-responsive and
23 frivolous. The interrogatory sought a detailed description of all
24 of the training Kluge received, yet nowhere in the response does
25 Kluge describe any of his training, etc., much less with any
26 specificity. This is exactly the type of response to which the
27 Court ordered defendants Garrett and San Diego County to provide
28 amended responses. Moreover, the 'material' referenced in Kluge's

1 response is so general that Bashkin cannot determine if it was
2 included in Kludge's response to Bashkin's Request for Production of
3 Documents, so as to render those responses deficient, as well."
4 (Id. at 2-3.)

5 **Kluge's second response:** "All my training with regards to
6 investigating an individual suspected of violating California Penal
7 Code [Section] 602(o), was obtained during training scenarios and
8 material given out to all cadets during my attendance at the San
9 Diego Regional Law Enforcement Academy training course, during
10 patrol phase training with a San Diego Sheriff's Department Corporal
11 or Filed [sic] Training Officer, and by reviewing the trespassing
12 section of the California Penal Code book. I can't restate any
13 specifics about such training without identifying a specific
14 scenario." (Doc. No. 80, Ex. C at 1-2 (emphasis added to highlight
15 new response).)

16 **Plaintiff's second objection:** "Kluge's Supplemental Response
17 is obstreperous. Kluge agreed, through his counsel, to correct the
18 deficiencies articulated by Bashkin in [his first objection];
19 otherwise, this would have remained a disputed response left for the
20 Court to resolve. The interrogatory sought a detailed description
21 of all of the training Kluge received, yet nowhere in the response
22 does Kluge describe any of his training, etc., much less with any
23 specificity. The only change made in Kluge's supplemental response
24 was the addition of the final sentence: 'I can't restate any
25 specifics about such training without identifying a specific
26 scenario.' This is pure nonsense [sic]. In fact, Kluge can and
27 must provide specifics about his training because: (a) that is what
28 he agreed to provide; and (b) Bashkin has identified the 'specific

1 scenario': Kluge's alleged probable cause to arrest Bashkin for
2 trespassing, which comprises the defense in this case! Therefore,
3 Kluge must describe his training in detail, as agreed upon,
4 especially as it correlates to the unspecified 'training scenarios
5 and material' referenced in both his original and amended re-
6 sponses." (Doc. No. 80 at 3 (citations and bold emphasis omitted;
7 underling in original).)

8 **The Court's ruling:** This interrogatory is a more specific
9 version of Special Interrogatory No. 4, below, which asks for the
10 same information on "trespassing" in general rather than Section
11 602(o) specifically. Since "trespassing" includes various Penal
12 Code sections, including Section 602(o), this interrogatory is
13 redundant. Defendants shall not be required to further respond to
14 Interrogatory No. 1, but must respond to Interrogatory No. 4 as
15 ordered below.

16 **2. Kluge, Special Interrogatory No. 4**

17 **Plaintiff propounded the following interrogatory:** "Describe
18 in detail any and all training YOU received as a San Diego County
19 [S]heriff's [D]eputy as of August 8, 2006, with regard to investi-
20 gating an individual suspected of trespassing." (Doc. No. 64-3 at
21 4.)

22 **Defendant Kluge's first response:** "See response to [Special
23 Interrogatory] #1 above." (Id.)

24 **Plaintiff's objection:** "See [objection to Special Interroga-
25 tory No. 1]. Additionally, this is not the same as No. 1." (Id.)

26 **Kluge's second response:** "See response to [Special Interrog-
27 atory] #1 above." (Doc. No. 80, Ex. C at 3.)

28

1 **Plaintiff's second objection:** "Kluge's Supplemental Response
2 is obstreperous. Kluge agreed, through his counsel, to correct the
3 deficiencies articulated by Bashkin in [his first objection] and to
4 provide a separate response (from his response to #1), since these
5 were not identical interrogatories. However, the supplemental
6 response still only references his response to #1, with the only
7 change therein being the addition of the final sentence: 'I can't
8 restate any specifics about such training without identifying a
9 specific scenario.' This is pure nonsense [sic]. In fact, Kluge
10 can and must provide specifics about his training because: (a) that
11 is what he agreed to provide; and (b) Bashkin has identified th
12 'specific scenario': Kluge's alleged probable cause to arrest
13 Bashkin for trespassing, which comprises the defense in this case!
14 Therefore, Kluge must describe his training in detail, as agreed
15 upon, especially as it correlates to the unspecified 'training
16 scenarios and material' referenced in both his original and amended
17 responses." (Doc. No. 80 at 4 (citations and bold emphasis omitted;
18 underling in original).)"

19 **The Court's ruling:** KLUGE IS ORDERED TO RESPOND TO THE
20 INTERROGATORY IN GOOD FAITH. This interrogatory is a prime example
21 of a question that is more suitable as a deposition question than
22 one propounded in writing due to the amount of information it
23 requests. However, it is also a prime example of where Kluge could
24 provide a substantive answer but refuses to do so. On the one hand,
25 Plaintiff is asking for a narrative of all of Kluge's training. On
26 the other hand, Defendant indicates that he received training on
27 trespass crimes in the academy and through field training, but
28

1 provides no detail whatsoever of any of the training. As has been
2 the practice, his response remains general.

3 Moreover, the indication that he cannot describe any of his
4 training without Plaintiff's identification of specific scenarios is
5 dilatory and evasive. That representation is suspect since the
6 interrogatory's subject matter, "investigating an individual
7 suspected of trespassing," is sufficiently narrow and Defendants
8 have provided specific academy training materials in other interrog-
9 atory responses that address trespassing investigations.

10 To the extent that Kluge received specific training during
11 field training (e.g., received a radio call to investigate a
12 trespass with his field training officer), he should indicate as
13 much and describe the specific radio call or incident that provided
14 him the training opportunity. In other words, Kluge shall identify
15 the training he received during field training since he is the one
16 with that knowledge. However, because by its very nature field
17 training is experience-based and dependent on whatever radio call
18 the training unit receives, it is entirely possible that Kluge may
19 not have received a trespass call for the duration of his field
20 training. If that is the case, Kluge should state so. If he cannot
21 remember whether he received such a call (or received such a call
22 but cannot remember the details) because field training occurred
23 long ago, he should state so. What he may not do is state generally
24 that he received field training on trespass investigations and leave
25 Plaintiff without any details.

26 To the extent that Kluge received any training on trespass
27 investigation in the academy, although Plaintiff is not entitled to
28 a narrative response, he is entitled to know what that training

1 consisted of. If all of the training was contained in books or
2 other printed materials, Defendant is ORDERED to produce these to
3 Plaintiff in paper format. If Kluge received additional academy
4 training that is not contained in books or other printed materials,
5 he is ORDERED to describe that training as his memory permits.

6 **3. Kluge, Special Interrogatory No. 9**

7 **Plaintiff propounded the following interrogatory:** "Describe
8 in detail each and every policy or procedure of the San Diego
9 Sheriff's Department as of August 8, 2006, with regard to how its
10 deputies were supposed to document suspected crimes." (Doc. No. 64-
11 3 at 5.)

12 **Defendant Kluge's first response:** "The question is too broad
13 in order for me to properly respond. However if Mr. Bashkin had
14 been placed under citizen's arrest or arrest by me for violating any
15 section of the California Penal [C]ode trespassing laws [sic] an
16 arrest report and a citation would have been completed/issued to Mr.
17 Bashkin for the misdemeanor offense. Mr. Bashkin was not placed
18 under arrest at any point, but was repeatedly advised that he risked
19 being placed under arrest if he did not comply with the lawful order
20 to leave the Barona Casino property at once." (Id. at 6.)

21 **Plaintiff's objection:** "This response is evasive, incom-
22 plete, and non-responsive. On its face, the interrogatory is not
23 'too broad'; there is no explanation as to why it is 'too broad';
24 and no proper objection was posited in support of that position. It
25 is a perfectly legitimate and relevant question that requires a
26 response on the merits; either there are policies and/or procedures
27 for documenting suspected crimes or there are not. Moreover, the
28 question did not ask about documenting a 'crime'; it sought

1 information about documenting a 'suspected' crime.' If there are no
2 policies or procedures for 'documenting a suspected crime,' then
3 Kluge must state so. Conversely, if there are, then he must answer
4 the interrogatory and 'describe' those policies and procedures 'in
5 detail.'" (Id.)

6 **Kluge's second response:** "The question is too broad in order
7 for me to properly respond. However if Mr. Bashkin had been placed
8 under citizen's arrest or arrest by me for violating any section of
9 the California Penal [C]ode trespassing laws [sic] an arrest report
10 and a citation would have been completed/issued to Mr. Bashkin for
11 the misdemeanor offense. Mr. Bashkin was not placed under arrest at
12 any point, but was repeatedly advised that he risked being placed
13 under arrest if he did not comply with the lawful order to leave the
14 Barona Casino property at once. No policies exist for documenting
15 potential crimes, only actual crimes and arrests." (Doc. No. 80, Ex.
16 C at 3 (emphasis added to highlight new response).)

17 **Plaintiff's second objection:** "Kluge's Supplemental Response
18 is obstreperous. Kluge agreed, through his counsel, to correct the
19 defects articulated by Bashkin in [his first objection]; otherwise,
20 this would have remained a disputed response left for the Court to
21 resolve. Specifically, he agreed to provide an amended response
22 that deleted all of the irrelevant verbiage and simply states that:
23 'There were no policies in effect at that time for documenting
24 **suspected** crimes.' Instead, his supplemental response incorporated
25 the original irrelevancies and added the following non-responsive
26 sentence: 'No policies exist for documenting **potential** crimes, only
27 actual crimes and arrests.' Kluge must respond pursuant to the
28

1 parties' agreement." (Doc. No. 80 at 4-5 (some emphasis omitted;
2 remaining emphasis in original).)

3 **The Court's ruling:** This interrogatory is an example of one
4 that is unsuitable as a written interrogatory and should have been
5 a request for document production instead. Quite simply, Plaintiff
6 is not entitled to Kluge's re-creation of the Sheriff's written
7 policies and procedures ("P&Ps"). Written P&Ps speak for themselves
8 and their production is sufficient. Requiring Kluge to summarize in
9 narrative form what Plaintiff can read himself is unduly burdensome
10 and unreasonable. Moreover, Plaintiff's second objection demon-
11 strates his practice of hyper-critical dissection of Defendants'
12 responses.

13 In any event, Kluge directly responded to this interrogatory:
14 No such policy exists. That response is clear and directly
15 responsive to the interrogatory. Kluge shall not be compelled to
16 further respond.

17 **4. Kluge, Special Interrogatory No. 10**

18 **Plaintiff propounded the following interrogatory:** "Identify
19 with particularity any limitations placed on the amount of informa-
20 tion (e.g., the number of words, characters or letters) that YOU
21 could include in the August 8, 2006 'Unit History' ([a.k.a.] 'CAD')
22 disposition YOU made of the INCIDENT." (Doc. No. 64-3 at 6.)

23 **Defendant Kluge's first response:** "There are 'character'
24 limitations placed on the amount of information that can be written
25 down when making a disposition in regards to an event on a San Diego
26 Sheriff's Department Mobile Data Computer in patrol vehicles. The
27 'Unit History' or 'CAD' disposition requires some documentation as
28 to the action(s) taken while at the scene of a call or observed

1 activity. The information should include the person(s) contacted,
2 where contacted and why." (Id.)

3 **Plaintiff's objection:** "The response is frivolous, evasive
4 and non-responsive. The request did not ask 'if' there were
5 character limitations placed on the amount of information included
6 in the CAD; it asked what were those limitations. In his
7 deposition . . . , Kluge testified that '[y]ou're limited as far as
8 what you can put in there because it will only accept so many
9 characters or words or letters, so you have to be extremely brief.'
10 Thus, this interrogatory seeks information as to those specific
11 limitations. Respondent stated there were 'character' limitations;
12 so, what are those limitations? Where are those limitations
13 documented (in a policy manual, regulation, etc.)? Moreover,
14 regarding that portion of Kluge's response referencing the 'Unit
15 History' or 'CAD' documentation or information required, what is the
16 specific information required and where are those requirements
17 documented?" (Id. at 7 (emphasis in original).)

18 **Kluge's second response:** "There are 'character' limitations
19 placed on the amount of information that can be written down when
20 making a disposition in regards to an event on a San Diego Sheriff's
21 Department Mobile Data Computer in patrol vehicles. I don't know
22 the exact limit, but at that time it wasn't much. The 'Unit
23 History' or 'CAD' disposition requires some documentation as to the
24 action(s) taken while at the scene of a call or observed activity.
25 The information should include the person(s) contacted, where
26 contacted and why." (Doc. No. 80, Ex. C at 3-4 (emphasis added to
27 highlight new response).)

28

1 **Plaintiff's second objection:** "Kluge's Supplemental Response
2 is obstreperous. Kluge agreed, through his counsel, to correct the
3 deficiencies articulated by Bashkin in [his first objection],
4 including to: (a) specify the exact limitations placed on the amount
5 and type of information that could be contained in Kluge's 'Unit
6 History' or 'CAD' disposition; (b) identify the origin of those
7 limitations; i.e., whether they are set forth in some policy or are
8 purely a function of the 'CAD' device itself; and (c) identify the
9 specific policy that supports the last two sentences of his
10 response: 'The "Unit History" or "CAD" disposition *requires* some
11 documentation as to the action(s) taken while at the scene of a call
12 or observed activity. The information *should* include the person(s)
13 contacted, where contacted and why.'

14 Instead, the only change Kluge made in his response was to
15 add the representation that '**I don't know the exact limit, but at
16 that time it wasn't much.**' This supplementation not only breaches
17 the parties' agreement, but is equivocal and, most likely, fraudu-
18 lent. On the one hand, Kluge asserts that there is a 'character'
19 limit; yet on the other hand, he now represents that he does not
20 know what that limit is, thus begging the question: then how does
21 he know that there is a limit and that the limit 'wasn't much'?!
22

23 In his deposition, Kluge claimed that he did not contempora-
24 neously document key elements of the defense; e.g., Bashkin's
25 alleged refusal to leave Barona and Kluge's alleged non-forceful
26 'arm guiding' of Bashkin, because of the character limitations
27 placed on his CAD disposition. It is undisputed that Bashkin is
28 entitled to discover exactly what those limitations were and decide
how best to process that information. If, in fact, Kluge is lying,

1 and that the CAD either had no limitations or there were many more
2 characters that Kluge could have used, then Bashkin is entitled to
3 utilize this information to his advantage at trial.

4 The bottom line is that Kluge either knows the exact
5 character limitations placed on his CAD disposition or could have
6 easily obtained that information through defendant San Diego County,
7 Kluge's employer and a co-defendant in this lawsuit. Regardless,
8 Kluge agreed to provide this information in his supplemental
9 response to this interrogatory, yet failed to do so. The informa-
10 tion sought by Bashkin in this interrogatory is vital to the
11 prosecution of this lawsuit, going directly to defendants' credibil-
12 ity and the impeachment thereof, regarding a material issue in this
13 lawsuit." (Doc. No. 80 at 5-6 (all emphasis in original).)

14 **The Court's ruling:** Kluge shall not be compelled to further
15 respond. Kluge, as a user of the CAD (not the inventor, programmer,
16 or IT professional), has stated that he knows there is some sort of
17 character limit but does not know what the specific limit is. His
18 knowledge of some form of limit is presumably based on his past
19 experience as he has tried to input an entry that exceeded the
20 character limit. Plaintiff insists that Kluge must know what the
21 CAD character limit is and demands a specific number. However,
22 given that Kluge is merely a user of the CAD system and has
23 represented that he does not know the exact character limit, his
24 second answer is responsive. Ultimately, Kluge is not the correct
25 party to whom this interrogatory should be directed, as Plaintiff
26 himself seems to recognize ("[Kluge] could have easily obtained
27 that information through defendant San Diego County, Kluge's
28 employer and a co-defendant in this lawsuit").

1 **5. Kluge, Special Interrogatory No. 23**

2 **Plaintiff propounded the following interrogatory:** "Identify
3 with particularity any money or things of value that the San Diego
4 County Sheriff's Department has ever received from BARONA or any of
5 its representatives." (Doc. No. 64-3 at 15.)

6 **Defendant Kluge's first response:** "I can't answer this
7 question since it requests personal knowledge and information
8 regarding any possible money or things of value exchanged between the
9 San Diego Sheriff's Department, the Barona Casino, or its representa-
10 tives. I am a Detective with the San Diego Sheriff's Department and
11 the question is not something I would know in my current or past job
12 position(s) with the County of San Diego." (Id.)

13 **Plaintiff's objection:** "The response is purposely evasive.
14 Respondent must answer the question, if he is knowledgeable of 'any
15 money or things of value that the San Diego County Sheriff's
16 Department has ever received from BARONA or any of its representa-
17 tives.' As to the last sentence of the response, the question is not
18 seeking information about something that respondent 'might' know
19 about his 'current or past job position(s) with the County of San
20 Diego.' It seeks information regarding respondent's actual knowl-
21 edge, irrespective of what is 'generally' known by an employee in his
22 job capacity." (Id. (emphasis in original).)

23 **Kluge's second response:** "I do not know. I am a Detective
24 with the San Diego Sheriff's Department and the question is not
25 something I would know in my current or past job position(s) with the
26 County of San Diego." (Doc. No. 80, Ex. C at 5.)

27 **Plaintiff's second objection:** "Kluge's Supplemental Response
28 is obstreperous. Kluge agreed, through his counsel, to either:

1 (a) identify any money or things of value that the San Diego County
2 Sheriff's Department has ever received from BARONA or any of its
3 representatives; or (b) simply state that 'I do not know of any money
4 or things of value that the San Diego County Sheriff's Department has
5 ever received from BARONA or any of its representatives.' Instead,
6 Kluge now responds by stating only that '**I do not know.**' Without
7 more (e.g., I do not know of any . . .), the response remains evasive
8 and ambiguous; e.g., it could mean that 'I do not know the specif-
9 ics,' or 'I do not know how much the San Diego County Sheriff's
10 Department has received.'" (Doc. No. 80 at 6 (emphasis in origi-
11 nal).)

12 **The Court's ruling:** Kluge shall not be compelled to further
13 respond. Plaintiff's continued hyper-critical analysis of Kluge's
14 second response is a clear example of his pattern of conduct in this
15 case. He is not satisfied with, "I do not know," and demands that
16 Kluge state, "I do not know of any money or things of value that the
17 San Diego County Sheriff's Department has ever received from BARONA
18 or any of its representatives." However, the response Plaintiff
19 demands requires Kluge to have actual knowledge that the Sheriff's
20 Department either did or did not receive money or goods from Barona.
21 Kluge states he has insufficient knowledge to answer this question
22 either way. His answer is responsive to the interrogatory.
23 Plaintiff may not dictate the exact wording of Kluge's response.

24 **6. Garrett, Special Interrogatory No. 12**

25 **Plaintiff propounded the following interrogatory:** "Please
26 DESCRIBE what YOU were doing at all times during the INCIDENT."
27 (Doc. No. 64-4 at 8.)

28

1 **Defendant Garrett's first response:** "See response to
2 Interrogatory No. 1" (Id.)

3 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
4 PROVIDE A FURTHER RESPONSE. Defendant must provide more detail
5 regarding his actions at the time of the incident. However, to the
6 extent that the response to Interrogatory 9 or 11 is sufficiently
7 detailed, the response need not overlap." (Doc. No. 59 at 5.)

8 **Garrett's second response after the Court's order:** "I was
9 observing Deputy Kluge assess Plaintiff for 5150 and listened as the
10 casino security staff and Deputy Kluge requested Plaintiff to leave
11 the premises. I walked outside with Plaintiff and Deputy Kluge to
12 the patrol car. My complete statement to Internal Affairs and the
13 IA Report have been provided to Plaintiff and my statement is
14 summarized in the report at pp. 24-27." (Id.)

15 **Plaintiff's objection:** "First, the response is in violation
16 of the court order that '[d]efendant must provide more detail. . . .'
17 The few details actually provided are sketchy and conclusory at best.
18 Second, respondent cannot incorporate by reference his 'complete
19 statement to Internal Affairs,' given that: (a) the IA Report only
20 contains a summary of that statement; (b) it has not been authenti-
21 cated or properly incorporated into his response; and (c) the court
22 order did not allow him to do so." (Id.)

23 **Garrett's third response:** "I was observing Deputy Kluge
24 assess Plaintiff for 5150 and listened as the casino security staff
25 and Deputy Kluge requested Plaintiff to leave the premises. I left
26 the room several times to ask Barona staff about Plaintiff's
27 statements regarding suicide. I walked outside with Plaintiff and
28

1 Deputy Kluge to the patrol car. My complete statement to Internal
2 Affairs and the IA Report have been provided to Plaintiff and my
3 statement is summarized in the report at pp. 24-27." (Doc. No. 80,
4 Ex. D at 2 (emphasis added to highlight new response).)

5 **Plaintiff's second objection:** "Garrett's Second Supplemental
6 Response is obstreperous and in direct violation of the prior court
7 order. The only change is the addition of the following sentence:
8 'I left the room several times to ask Barona Staff about Plaintiff's
9 statements regarding suicide.' Garrett agreed, but has failed, to
10 cure the defects addressed in the court order and set forth in
11 Bashkin's [first objection]. The added information only exacerbates
12 the defect, because this new 'fact' is even more sketchy than the
13 existing ones.

14 Garrett was ordered and agreed to answer the interrogatory as
15 written, which is to 'describe' in detail (as defined by Bashkin in
16 the set of interrogatories served on Garrett) what he was doing 'at
17 all times' [sic] during the incident.' Since none of Garrett's
18 responses to this interrogatory claim an impaired recollection, and
19 since Garrett's liability in this lawsuit is dependent upon his
20 failure to 'intercede' when Kluge violated Bashkin's constitutional
21 rights, if Garrett 'had an opportunity to intercede,' then his
22 response remains woefully inadequate.

23 Moreover, if Garrett is going to rely upon his 'complete
24 statement to Internal Affairs,' despite the court order, then he must
25 set forth that 'complete statement to Internal Affairs,' in his
26 verified response (e.g., as an attachment), not simply reference a
27 summary of that statement." (Doc. No. 80 at 7 (footnote, emphasis,
28 and citations omitted).)

1 **The Court's ruling:** Garrett's third response adds that he
2 left the detention room several times but does not indicate when and
3 for how long. This interrogatory is yet another example of a subject
4 matter that is better suited for a deposition because Plaintiff could
5 ask a series of questions about Garrett's whereabouts during the
6 times he was absent as well as the duration of his absence each time.
7 The deposition process allows for a back-and-forth question and
8 answer process, whereas written discovery does not.

9 Nonetheless, Garrett's response is impermissibly general.
10 Garrett is therefore ORDERED TO RESPOND IN GOOD FAITH. Specifically,
11 Garrett is to set forth the following to the best of his ability:
12 (a) Whether he was present with Kluge and Plaintiff at all times from
13 the beginning to the end of the contact with Plaintiff; (b) if he was
14 not present with Kluge at all times, how many times he left Kluge's
15 side; (c) for each time he left Kluge's presence, when during the
16 contact his absence occurred; (d) how long he was absent each time;
17 and (e) what he was doing when he was absent. If Garrett does not
18 have the present ability to remember each and every instance he was
19 away from Kluge, or for how long he was absent, he should state so
20 but nonetheless address the above as his memory permits. As
21 Garrett's third response to this interrogatory and the Court's
22 guidance demonstrate, Defendants' exasperated representation that
23 there simply is no further information they can provide, see Doc. No.
24 82 at 2, is disingenuous and not well taken.

25 **7. San Diego County, Special Interrogatory No. 21**

26 **Plaintiff propounded the following interrogatory:** "As of
27 August 8, 2006, DESCRIBE all of the training the DEFENDANT DEPUTIES
28 had received from the San Diego County Sheriff's Department with

1 regard to investigating a suspected trespass, specifically including
2 those situations wherein an individual fails to leave a property at
3 the request of either the property owner or a law-enforcement [sic]
4 officer." (Doc. No. 64-5 at 11.)

5 **Defendant San Diego County's first response:** "Objection:
6 vague and ambiguous, indefinite as to time; seeks information not
7 relevant to the subject matter of this action nor reasonably
8 calculated to lead to the discovery of admissible evidence; requests
9 material not in the custody or control of this responding party;
10 seeks privileged information in a manner in violation of California
11 Penal Code § 832.7 and Evidence Code § 1043; seeks disclosure of
12 official information acquired in confidence; seeks information
13 protected from disclosure under the provision of the Federal Privacy
14 Act; disclosure of personnel, medical and similar files is an
15 unwarranted invasion of personal privacy impermissible under the
16 Freedom of Information Act and Government Code § 6254(c); seeks
17 records and information compiled for law enforcement purposes which
18 are exempt from disclosure because production could constitute an
19 unwarranted invasion of privacy. Without waiving the objections,
20 academy and in-service training." (Id.)

21 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
22 PROVIDE A FURTHER RESPONSE. The request is limited in scope so that
23 Defendant shall provide Plaintiff with a list of deputy training
24 encompassing the issues of excessive force and unlawful search."
25 (Doc. No. 59 at 4.)

26 **San Diego County's second response after the Court's order:**
27 "Objection: vague and ambiguous, indefinite as to time; seeks
28 information not relevant to the subject matter of this action nor

1 reasonably calculated to lead to the discovery of admissible
2 evidence; requests material not in the custody or control of this
3 responding party; seeks privileged information in a manner in
4 violation of California Penal Code § 832.7 and Evidence Code § 1043;
5 seeks disclosure of official information acquired in confidence;
6 seeks information protected from disclosure under the provision of
7 the Federal Privacy Act; disclosure of personnel, medical and similar
8 files is an unwarranted invasion of personal privacy impermissible
9 under the Freedom of Information Act and Government Code § 6254(c);
10 seeks records and information compiled for law enforcement purposes
11 which are exempt from disclosure because production could constitute
12 and unwarranted invasion of privacy. Without waiving the objections,
13 academy and in-service training.

- 14 (1) California Commission on Peace Officer Standards and
15 Training (POST)
16 Basic Course Workbook Series Student Materials
17 Learning Domain 20 Use of Force Version Two
- 18 (2) California Commission on Peace Officer Standards and
19 Training (POST)
20 Basic Course Workbook Series Student Materials
21 Learning Domain 16 Search and Seizure Version Four
- 22 (3) San Diego County Sheriff Training Bulletin
23 William D. Gore, Sheriff December 2009
24 'Back to Basics' Training Bulletin Series
- 25 (4) San Diego County Sheriff Training Bulletin
26 William D. Gore, Sheriff September 2009 #2
27 Contacts, Detentions, Handcuffing & Pat Downs
- 28 (5) Field Training - SEARCHES

1 (6) Field Training - USE OF FORCE

2 (Doc. No. 64-5 at 11-12.)

3 **Plaintiff's first objection:** "The objections are frivolous
4 and must be stricken; the Court has ordered defendant to respond on
5 the merits. In terms of 'describing' the training of the 'defendant
6 deputies,' it is woefully inadequate, as it only describes a portion
7 of the 'identity of the material' referencing or relating to the
8 training. It does not describe, e.g., the dates, place and partici-
9 pant of the training, or even what the training consisted of.
10 Moreover, the list of documents included in the supplemental response
11 directly contradict, and are inexplicably omitted from, the corre-
12 sponding list of documents set forth in defendant Kluge's supplemen-
13 tal response to Request for Production No. 16 (as well as this
14 defendant's Supplemental Amended Response to Special Interrogatory
15 No. 22)." (Doc. No. 64-5 at 12-13.)

16 **San Diego County's's third response:** "Objection: vague and
17 ambiguous, indefinite as to time; seeks information not relevant to
18 the subject matter of this action nor reasonably calculated to lead
19 to the discovery of admissible evidence; requests material not in the
20 custody or control of this responding party; seeks privileged
21 information in a manner in violation of California Penal Code § 832.7
22 and Evidence Code § 1043; seeks disclosure of official information
23 acquired in confidence; seeks information protected from disclosure
24 under the provision of the Federal Privacy Act; disclosure of
25 personnel, medical and similar files is an unwarranted invasion of
26 personal privacy impermissible under the Freedom of Information Act
27 and Government Code § 6254(c); seeks records and information compiled
28 for law enforcement purposes which are exempt from disclosure because

1 production could constitute and unwarranted invasion of privacy.
2 Without waiving the objections, academy and in-service training.

3 (1) California Commission on Peace Officer Standards and
4 Training (POST)

5 Basic Course Workbook Series Student Materials

6 Learning Domain 20 Use of Force Version Two

7 **Table of Contents**

8 **Chapter 1: Introduction to the Use of Force**

9 Overview

Reasonable Force

Authority to Use Force

Chapter Synopsis

10 Workbook Learning Activities

11 **Chapter 2: Force Options**

12 Overview

Force Options

Resistance

Communication

Chapter Synopsis

13 Workbook Learning Activities

14 **Chapter 3: Use of Deadly Force**

15 Overview

Considerations Regarding the Use of Deadly Force

Justifiable Homicide by Public Officer

Chapter Synopsis

16 Workbook Learning Activities

17 **Chapter 4: Documenting Use of Force**

18 Overview

Documenting the Use of Force

Report Writing Tip

Chapter Synopsis

19 Workbook Learning Activities

20 **Chapter 5: Concept of Control in Use of Force**

21 Overview

The Concept of Control in Use of Force

Self Control

22 Role of Initial and Ongoing Training

Chapter Synopsis

23 Workbook Learning Activities

24 **Chapter 6: Consequences of Unreasonable Force**

25 Overview

Peace Officer and Agency Liability

Failure to Intervene

Intervention Techniques

26 Factors Affecting Intervention

Chapter Synopsis

27 Workbook Learning Activities

28

1 (2) California Commission on Peace Officer Standards and
2 Training (POST)

3 Learning Domain 16 Search and Seizure Version Four

4 **Table of Contents**

5 **Chapter 1: Basic Principles of Search and Seizure**

6 Overview

7 Fourth Amendment Protections

8 Reasonable Exercise of Privacy

9 Probably Cause to Search

10 Chapter Synopsis

11 Workbook Learning Activities

12 **Chapter 2: Warrant Searches and Seizures**

13 Overview

14 Introduction to Warrant Searches

15 Probable Cause to Search

16 Execution of a Search Warrant

17 Chapter Synopsis

18 Workbook Learning Activities

19 **Chapter 3: Warrantless Searches and Seizures**

20 Overview

21 Plain View Searches

22 Warrantless Searches in General

23 Cursory/Frisk/Pat Searches

24 Consent Searches

25 Exigent Circumstances Searches

26 Searches Incident to Arrest

27 Probation/Parole Searches

28 Chapter Synopsis

29 Workbook Learning Activities

30 **Chapter 4: Searches and Seizures Involving Motor
31 Vehicles**

32 Overview

33 Probable Cause Searches of Vehicles

34 Plain View Seizures from Vehicles

35 Protective Searches of Vehicles

36 Consent Searches of Vehicles

37 Searches of Vehicles Incident to Custodial Arrests

38 Searches of Vehicles as Instrumentalities

39 Vehicle Inventories

40 Chapter Synopsis

41 Workbook Learning Activities

42 (3) San Diego County Sheriff Training Bulletin

43 William D. Gore, Sheriff December 2009

44 Back to Basics Training Bulletin Series

45 "The Basics" include:

- 46 • Maintaining situational awareness
- 47 • Recognize and respond to danger signs
- 48 • Recognize and use cover

- Use clear and accurate radio communications
- Request backup, wait for backup, and utilize backup as a resource
- Pre-plan and work together as a team when additional backup arrives

(4) San Diego County Sheriff Training Bulletin

William D. Gore, Sheriff September 2009 #2

Contacts, Detentions, Handcuffing & Pat Downs

- Consensual encounters
- Detentions:
- Pat Downs or Frisks
- Handcuffing During a Detention

(5) Field Training - SEARCHES

(6) Field Training - USE OF FORCE

(Doc. No. 80, Ex. E at 3-5.)

Plaintiff's second objection: "Defendant San Diego County's Second Supplemental Amended Response is obstreperous. Defendant agreed, but has failed, to cure the defects set forth in [Plaintiff's objection]. As set forth therein, the objections are frivolous and must be stricken; the Court has ordered defendant to respond on the merits. Defendant agreed, through its counsel[,] to 'describe' (as defined by Bashkin in the set of interrogatories served on it) the training of the 'defendant deputies.' Defendant has reneged on that agreement. Its response only describes a portion of the 'identity of the material' referencing or relating to the training. It does not describe, e.g., the dates, place and participant of the training, or even what the training consisted of. The deficiencies are magnified by defendants' failure to produce the documents listed in the response." (Doc. No. 80 at 8.)

The Court's ruling: This disputed interrogatory is yet another clear example of both the nature of Plaintiff's demanding requests and Defendants' dilatory behavior. On the one hand,

1 Plaintiff demands that the County provide a detailed narrative
2 response that includes the deputies' training, including the date,
3 place of training, and persons who attended the training. This
4 undertaking will require the County to expend a considerable amount
5 of time and effort, and its response may be voluminous. Keeping in
6 mind the nature of the discovery tool employed here--*i.e.*, written
7 discovery--Plaintiff is not entitled to such a minutely-detailed
8 response. Requiring the County to set forth all of the responsive
9 training in a written discovery response is an overly burdensome and
10 unreasonable mandate. That same information is available in the
11 books and other printed materials the County has identified, and it
12 makes no sense to require the County to re-write those books and
13 materials in its discovery responses. Moreover, a deposition of a
14 defensive tactic instructor or field training officer is a more
15 appropriate method to explore use of force training because of the
16 amount of time allotted and the real-time ability to mine the depths
17 of the deponents' knowledge. If Plaintiff has not deposed such a
18 person, he cannot use written discovery as a deposition substitute
19 now.

20 For its part, the County's responses demonstrate its failure
21 to cooperatively participate in good faith in the discovery process
22 at times. The deputies' training is a relevant subject matter in
23 this case. After a court order and 3 responses, all the County can
24 muster is to provide table of contents entries without much in the
25 way of substance. Importantly, unlike the interrogatories that
26 address policies and procedures, the County has not stated that it
27 has produced the materials it identifies in this interrogatory.

28

1 Thus, all Plaintiff is left with is a table of contents for books
2 that have not been produced to him.

3 Having reviewed what the County has identified in its third
4 response, the Court finds that the information contained in the books
5 and materials identified is responsive so long as the materials are
6 produced to Plaintiff, who can then review the training materials
7 himself. The County is not required to prepare another written
8 response. Therefore, the County is ORDERED to produce to Plaintiff
9 hard copies of all of the books and printed materials identified in
10 its third response. Further, the County may not continue its
11 practice of providing piecemeal responses. The County is further
12 ORDERED to produce any other books or materials that bear on use of
13 force and search and seizure and which have not been identified to
14 date. The County's production shall be complete and include all
15 relevant documents presently within its knowledge. Withholding or
16 failing to produce relevant documents may result in appropriate
17 sanctions, as this is now the second court order compelling a
18 response to this interrogatory.

19 **B. Disputes on Which the Court Previously Reserved Judgment**

20 **1. San Diego County, Special Interrogatory No. 4**

21 **Plaintiff propounded the following interrogatory:** "Please
22 set forth each and every fact that supports YOUR denial of the
23 allegations contained in Paragraph 18 of the COMPLAINT" (Doc. No.
24 64-5 at 3.)

25 **Defendant San Diego County's first response:** "Objection.

26 The interrogatory is vague and ambiguous. Without waiving the
27 objection, no such policies exist and all deputies are thoroughly
28 trained." (Id.)

1 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
2 PROVIDE A FURTHER RESPONSE. Defendant shall provide facts that
3 support its denial of Plaintiff's remaining claims. If the previ-
4 ously produced Internal Affairs file contains the responsive
5 information, Defendant shall identify the responsive portions by
6 Bates stamp number." (Doc. No. 59 at 3.)

7 **San Diego County's second response:** "Objection. The
8 interrogatory is vague and ambiguous. Without waiving the objection,
9 no such policies exist. All deputies are thoroughly trained with
10 respect to the use of force and searches and seizures in academy
11 training, during patrol field training[,] and with regular in-service
12 training bulletins." (Doc. No. 64-5 at 3.)

13 **Plaintiff's objection:** "Defendant supplied inadequate facts.
14 Paragraph 18 of the Complaint set [sic] forth as follows:

15 18. Defendant SAN DIEGO COUNTY either maintained a
16 policy that allowed its [S]heriff's [D]eputies, including
17 KLUGE and GARRETT, to engage in the lawlessness set forth
18 [in the Complaint], or acted recklessly, intentionally or
with gross negligence in failing to adequately train its
[S]heriff's [D]eputies, including KLUGE and GARRETT, with
regard to the aforementioned unlawful acts.

19 The objection is frivolous and must be stricken; the Court
20 has Ordered defendant to respond on the merits. The response does
21 not supply facts, but only conclusions, i.e., 'all deputies are
22 thoroughly trained.' Incorporating Response No. 21 does not solve
23 the problem because that interrogatory is materially different than
24 No. 4[.] No. 21 involves 'suspected trespass,' while No. 4 involves
25 'the use of force and searches and seizure.' Plaintiff is entitled
26 to know exactly how the defendant deputies were specifically trained
27 with regard to 'the use of force and searches and seizures.'" (Id.
28 at 4.)

1 **The Court's ruling:** The County shall not be compelled to
2 further respond. The County's answer is responsive. First, the
3 County responds to Paragraph 18's allegation that a policy of
4 lawlessness existed as follows: No such policy existed. Based on
5 the non-existence of such a policy, there simply is no further
6 information to extract from the County on this topic. Second, in
7 response to Paragraph 18's allegation that the deputies were not
8 sufficiently trained, the County simply states that they were
9 adequately trained. This is yet another general response which the
10 County certainly could have elaborated. However, given that other
11 interrogatories address this training issue, the County need not
12 respond to this interrogatory so long as it complies with the Court's
13 Order as to the others. Specifically, Defendants' compliance with
14 the Court's Order with respect to Interrogatory No. 21 to San Diego
15 County and Interrogatory No. 4 to Kluge will be deemed responsive to
16 the instant interrogatory since the training materials support the
17 County's denial that the deputies were insufficiently trained.

18 **2. San Diego County, Special Interrogatory No. 12**

19 **Plaintiff propounded the following interrogatory:** "DESCRIBE
20 the reasons for the use of force against BASHKIN, as alleged in the
21 COMPLAINT, and include the following:

- 22 (a) The type of force used;
- 23 (b) DESCRIBE the reason(s) for each use of force;
- 24 (c) The circumstances that led the DEFENDANT DEPUTIES to
25 believe there was probable cause to use force against
26 BASHKIN;
- 27 (d) All details involving the use of force; and
- 28 (e) Whether BASHKIN was charged with anything as a result

1 and, if so, the specific charge.

2 (Doc. No. 64-5 at 6.)

3 **Defendant San Diego County's first response:** "Not applica-
4 ble." (Id.)

5 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
6 PROVIDE A FURTHER RESPONSE. Defendant's current response of not
7 applicable is non responsive to the question asked." (Doc. No. 59
8 at 3.)

9 **San Diego County's second response:** "Deputy Kluge handcuffed
10 Bashkin in order to escort him out of the casino after he had been
11 expelled. He was handcuffed for officer safety and because he
12 threatened suicide and had refused to leave the casino after being
13 expelled. No charges resulted." (Doc. No. 64-5 at 7.)

14 **Plaintiff's objection:** "The response is non-responsive as to
15 the use of force identified in paragraph 10 of the Complaint (and
16 referenced by Kluge in his Internal Affairs Statement): 'pinning
17 PLAINTIFF's wrists behind his back.' As to the response to the one
18 type of force identified - handcuffing - respondent failed to respond
19 to subsection (d); i.e., defendant failed to provide '[a]ll details
20 involving the uses of force.'" (Id.)

21 **The Court's ruling:** The County shall not be compelled to
22 further respond. By this interrogatory, Plaintiff apparently
23 attempts to force the County to admit that Kluge pinned Plaintiff's
24 wrists behind his back. The County apparently denies this occurred
25 because it identifies "handcuffing" as the only use of force employed
26 against Plaintiff. Again, this is a topic more aptly explored in
27 Kluge's deposition than through written interrogatories. In any
28 event, the County has sufficiently responded to the interrogatory as

1 drafted. The pinning of Plaintiff's wrists behind his back was not
2 included in the interrogatory's verbiage; the subject matter was "use
3 of force" in general. In response, San Diego County stated that
4 Plaintiff was handcuffed. Although this response is not one that
5 pleases Plaintiff, the Court will not compel the County to further
6 respond as Plaintiff sees fit to dictate. If the County avers Kluge
7 did not pin Plaintiff's wrists behind his back, the Court declines
8 to force it to state otherwise.

9 **3. San Diego County, Special Interrogatory No. 13**

10 **Plaintiff propounded the following interrogatory:** "DESCRIBE
11 the reasons for the use of restraint against BASHKIN, as alleged in
12 the COMPLAINT, and include the following:

13 (a) The type of restraint used;

14 (b) DESCRIBE the reason(s) for each restraint;

15 (c) The circumstances that led the DEFENDANT DEPUTIES to
16 believe there was probable cause to use restraint against
17 BASHKIN;

18 (d) All details involving the use of those restraints;
19 and

20 (e) Whether BASHKIN was charged with anything as a result
21 and, if so, the specific charge.

22 (Doc. No. 64-5 at 7.)

23 **Defendant San Diego County's first response:** "Objection.
24 The interrogatory is vague and ambiguous. Without waiving the
25 objection, Plaintiff was briefly handcuffed because he was angry and
26 [sic] agitated and had threatened suicide. Deputies were concerned
27 for their safety and his safety. No charges were involved." (Id.)

28

1 **The Court ordered:** "GRANTED IN PART AND DENIED IN PART.
2 Defendant shall provide a further response only to portion (d) of
3 the interrogatory that requests details involving any restraints
4 used against Plaintiff. Defendant may cite portions of Defendant
5 Kluge's deposition if responsive and sufficient to describe details
6 regarding use of restraint in the incident." (Doc. No. 59 at 4.)

7 **San Diego County's second response:** "Objection. The
8 interrogatory is vague and ambiguous. Without waiving the objec-
9 tion, Plaintiff was briefly handcuffed because he was angry and
10 [sic] agitated and had threatened suicide. Deputies were concerned
11 for their safety and his safety. No charges were involved. See
12 Deposition of Kluge at pp. 174-207." (Doc. No. 64-5 at 8 (emphasis
13 added to highlight new response).)

14 **Plaintiff's objection:** "The objection is frivolous and must
15 be stricken; the Court has ordered defendant to respond on the
16 merits. Furthermore, large portions of the deposition cited (pp
17 174-207) are non-responsive and far too broad. Defendant must
18 specify the relevant, responsive portions." (Id.)

19 **The Court's ruling:** The Court will not compel the County to
20 engage in the rote exercise of further identifying the exact portion
21 of Kluge's deposition. Plaintiff has equal access to the deposition
22 transcript. Moreover, the nature of this interrogatory's subject
23 matter makes it much more suited for exploration during a deposition,
24 which Plaintiff has taken.

25 **4. San Diego County, Special Interrogatory No. 19**

26 **Plaintiff propounded the following interrogatory:** "State all
27 facts concerning YOUR knowledge or understanding of whether BARONA
28

1 (including its management or employees) made audio or visual tapes
2 or recordings of any aspect of the INCIDENT and what became of them.

3 Include the following:

4 (a) IDENTIFY each tape or recording made (including who
5 or what was being taped or recorded);

6 (b) State how and when YOU became knowledgeable of each
7 tape or recording;

8 (c) State whether and when YOU heard or saw each tape or
9 recording;

10 (d) State whether and when YOU obtained a copy of each
11 tape or recording;

12 (e) IDENTIFY each PERSON who has knowledge of each tape
13 or recording;

14 (f) State the current location of each tape or recording;
15 and

16 (g) State whether each tape or recording has been
17 destroyed and, if so: (1) the date of its destruction;
18 (2) the reason for its destruction; (3) the IDENTITY of
19 the PERSON who destroyed it; and (4) DESCRIBE any
20 retention policy directing its destruction."

21 (Doc. No. 64-5 at 7-8.)

22 **Defendant San Diego County's first response:** "Objection.
23 This interrogatory seeks information not in the custody of or
24 control of this responding party." (Id.)

25 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
26 PROVIDE A FURTHER RESPONSE. Defendant shall provide an amended
27 response so that Plaintiff may ascertain Defendant's knowledge of
28 any videotapes or recordings of the incident." (Doc. No. 59 at 4.)

1 **San Diego County's second response:** "The department never
2 had any tapes. Sgt. Robert Haley contacted the casino to inquire
3 about tapes on March 9, 2007 and was advised by Security Supervisor
4 Joe Martin that they did not save the tapes." (Doc. No. 64-5 at 9.)

5 **Plaintiff's objection:** "The response is way too narrow and
6 intentionally evasive; i.e., it does not come close to 'stat[ing]
7 all facts' of which the defendant is knowledgeable, as required.
8 For instance, there is a witness identified in the Internal Affairs
9 File who was interviewed at length by defendant representative Sgt.
10 Haley on this very issue! The response establishes that [D]efendant
11 is attempting to coverup [sic] its full knowledge of the
12 tapes/recordings of the INCIDENT. The ability to respond fully and
13 properly to each subsection of the interrogatory is well within the
14 control of defendant." (Id.)

15 **The Court's ruling:** San Diego County shall not be compelled
16 to further respond. Its response is neither evasive nor non-
17 responsive. The County represents that it never had custody of any
18 video tapes and was told that Barona, an entity not affiliated with
19 the County, does not save the tapes. Nonetheless, Plaintiff
20 essentially accuses the County of lying, covering up evidence, and
21 demands that the County provide a truthful response. The Court, of
22 course, has no way of knowing whether the County is lying. All the
23 Court has is the County's verified response pursuant to Rule 11,
24 coupled with Plaintiff's implication, based on his personal belief,
25 that the County is lying. The Court finds that the County's
26 representations are acceptable and responsive given that it was not
27 responsible for creation of any alleged tape *ab initio*.

28

1 Moreover, the County is not the correct entity to which
2 inquiry into this subject matter should be directed. As just one
3 demonstrative example, Plaintiff demands that the County provide
4 Barona's retention policy. Barona Casino, an autonomous entity that
5 is separate and distinct from the County, controlled the premises,
6 all videographic equipment, all technical knowledge, and any alleged
7 tapes used to surveil Plaintiff during the subject incident. As a
8 result, Barona, not the County, is the entity with the most knowledge
9 on this interrogatory's subject matter.

10 **5. San Diego County, Special Interrogatory No. 22**

11 **Plaintiff propounded the following interrogatory:** "As of
12 August 8, 2006, DESCRIBE all of the policies and procedures of the
13 San Diego County Sheriff's Department with regard to its deputies'
14 investigation of a suspected trespass, including those situations
15 wherein an individual fails to leave a property at the request of
16 either the property owner or a law-enforcement [sic] officer."
17 (Doc. No. 64-5 at 13.)

18 **Defendant San Diego County's first response:** "Objection:
19 vague and ambiguous; overbroad; calls for information not relevant
20 to the subject matter of this action nor reasonably calculated to
21 lead to the discovery of admissible evidence." (Id.)

22 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
23 PROVIDE A FURTHER RESPONSE. Defendant shall provide Plaintiff with
24 information encompassed in various correspondence regarding the
25 existence of policies regarding suspected trespass." (Doc. No. 59
26 at 4.)

27 **San Diego County's second response:** "Objection: vague and
28 ambiguous; overbroad; calls for information not relevant to the

1 subject matter of this action nor reasonably calculated to lead to
2 the discovery of admissible evidence. Such policies and procedures
3 have already been provided to Plaintiff by letter dated January 10,
4 2010, as set forth below:

5 This is a summary of Plaintiff's requests and documents
6 produced.

7 (1) Use of force: 2.49 and 6.48; Use of Force Addendum
8 'F' dated 1/5/06

9 (2) Use of restraint: 2.49 and 6.48; Use of Force
10 Addendum 'F' dated 1/5/06

11 (3) Use of handcuffs: 2.49 and 6.48; Use of Force
12 Addendum 'F'

13 (4) Detaining an individual: 2.48 and 2.51

14 (5) Search & seizure: 2.51

15 (6) Handling/investigating a citizen's arrest: 6.110

16 (7) Penal Code § 602 suspects and investigations: No
17 policy exists

18 (8) Penal Code § 602 letters: No policy exists

19 (9) Handling/investigating a suspect/individual who
20 refuses to leave a property/premises when asked by its
21 owner/employees/[S]heriff's [D]eputies to leave: No
22 policy exists

23 (10) Use and preparation of 'CAD' printout ([a.k.a.]
24 'Unit History') dispositions ([a.k.a.] 'comments'),
25 including: (a) when, why and how a deputy is supposed to
26 provide a CAD disposition; and (b) what information is
27 supposed to be included in a CAD disposition: No policy
28 exists

1 (11) Requirements re the preparation of written reports
2 (other than a CAD disposition) by a [S]heriff's [D]eputy
3 (e.g., when an incident report is required, etc.): 2.41
4 and 6.71

5 (12) Taping a suspect or detainee (including but not
6 limited to (a) the rights of the individual; (b) the use
7 of the tape; and (c) the preservation of the tape): 6.105

8 (13) Documenting the following: 2.41, 6.71

9 (a) Investigations/evaluations that result in
10 arrest: 6.71

11 (b) Investigations/evaluations that do not result
12 in arrest: 6.71

13 (c) [C]riminal activity: 6.71

14 (d) [S]uspected criminal activity: No policy exists

15 (e) [U]se of force: 2.49 and 6.48; Use of Force
16 Addendum 'F' dated 1/5/06

17 (f) [U]se of physical contact: 2.49 and 6.48; Use
18 of Force Addendum 'F' dated 1/5/06

19 (g) [U]se of handcuffs: 2.49 and 6.48; Use of
20 Force Addendum 'F' dated 1/5/06

21 (h) [U]se of restraint [sic]: 2.49 and 6.48; Use
22 of Force Addendum 'F' dated 1/5/06

23 (i) [C]itizen's arrests: 6.110

24 (j) [D]etaining an individual: 2.48 and 2.51

25 (k) [S]earches and/or seizures: 2.51

26 (l) W&I Code § 5150 investigations/evaluations:
27 6.32, 6.113

28 (m) Penal Code § 602 investigations/evaluations:

1 6.32, 6.113

2 (n) [S]uspected trespassing: No policy exists

3 (o) [D]uties of deputy in training: 10.1-10.4,
4 10.6, 10.9

5 (p) [T]he taping of a suspect or detainee: 6.105

6 (Doc. No. 64-5 at 13-15.)

7 **Plaintiff's objection:** "The objections are frivolous and
8 must be stricken; the Court has ordered defendant to respond on the
9 merits. Furthermore, pursuant to the Order, respondent was to
10 provide 'information' regarding the specific training encompassed in
11 the various referenced policies and procedures, not just a verified
12 summary of the documents produced." (Id. at 15.)

13 **The Court's ruling:** The County shall not be compelled to
14 further respond. The County has represented that it has produced a
15 long list of documents that evidence the relevant policies and
16 procedures. The County is not required to re-write those materials
17 in narrative format simply because Plaintiff mandates so. The
18 information exists in written form, and it would be unreasonable and
19 unduly burdensome to require the County to re-write it. The Court
20 accepts the County's representation that it has produced these
21 documents to Plaintiff. No further response to this interrogatory
22 is necessary.

23 **6. Garrett, Special Interrogatory No. 6**

24 **Plaintiff propounded the following interrogatory:** "Do YOU
25 contend that on August 8, 2006, PAUL BASHKIN refused to leave BARONA
26 at the request of either its owner(s) or law-enforcement [sic]
27 officer? If so, state each and every fact that supports YOUR
28 contention." (Doc. No. 64-4 at 4.)

1 **Defendant Garrett's first response:** "Yes. We were advised
2 that he had refused to leave the casino after a request by casino
3 security and he had threatened suicide." (Id.)

4 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
5 PROVIDE A FURTHER RESPONSE. Defendant must provide a more detailed
6 response to allow Plaintiff to ascertain specific details surround-
7 ing the incident." (Doc. No. 59 at 5.)

8 **Garrett's second response:** "Yes. He was given an expulsion
9 letter by a casino employee and became more upset. Deputy Kluge
10 told him if he remained on the property he could be arrested for
11 trespass. Plaintiff continued to make demands for return of his
12 money and for free food. Kluge spent some time persuading him to
13 leave voluntarily." (Doc. No. 64-4 at 4.)

14 **Plaintiff's objection:** "The response does not state 'each
15 and every fact' that supports respondent's contentions; i.e., it is
16 in violation of the court order that '[d]efendant must provide a
17 more detailed response." For instance: how does the respondent
18 know that BASHKIN was 'given an expulsion letter by a casino
19 employee'; who was the 'casino' employee'; what were the specific
20 'demands' that BASHKIN allegedly made; how did Kluge 'persuade'
21 BASHKIN to leave voluntarily? Further, respondent states that
22 BASHKIN 'became **more** upset' - 'became **more** upset' than what?
23 Respondent has not set forth any fact establishing that BASHKIN was
24 upset in the first place. Moreover, a portion of this response -
25 regarding BASHKIN leaving 'voluntarily' - contradicts respondent's
26 Response to Interrogatory No. 9, wherein respondent states BASHKIN
27 'refused to leave the premises after being requested numerous times
28 to leave.'" (Id. at 4-5.)

1 **The Court's ruling:** No further responses shall be ordered.
2 While Plaintiff attempts to spin the Court's own words in his favor,
3 the "failure" to provide "each and every fact" is not a violation of
4 the Court's order to provide a "more detailed" response. Given that
5 Plaintiff has now had an opportunity to take depositions, which
6 afforded him the opportunity to explore this subject in depth,
7 Garrett's second response is sufficiently responsive and Plaintiff's
8 interrogatory is effectively redundant. See Johnson v. Couturier,
9 261 F.R.D. 188, 192 (E.D. Cal. 2009). Moreover, since Plaintiff
10 seeks Garrett's recollection of events, this question is more
11 appropriately posed during deposition than through written discovery.
12 See Shoen v. Shoen, 5 F.3d 1289, 1297 (9th Cir. 1993).

13 **7. Garrett, Special Interrogatory No. 9**

14 **Plaintiff propounded the following interrogatory:** "Did YOU
15 WITNESS PAUL BASHKIN violate any laws on August 8, 2006. If so,
16 respond as follows:

- 17 (a) State the specific law(s) that he violated;
18 (b) DESCRIBE how he violated the law; and
19 (c) IDENTIFY all MATERIAL that supports this contention."

20 (Doc. No. 64-4 at 5.)

21 **Defendant Garrett's first response:** "(a) Penal Code section
22 602.1. (b) He interfered with the casino by obstructing or
23 intimidating the staff and refused to leave the premises after being
24 requested to leave by casino staff. (c) Casino incident report."
25 (Id.)

26 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
27 PROVIDE A FURTHER RESPONSE. The request is limited in scope to
28 Defendant's reasonable suspicion to believe that he observed

1 Plaintiff violate a law on August 8, 2006, and what facts he
2 observed that lead to this belief, if any." (Doc. No. 59 at 4.)

3 **Garrett's second response:** "(a) Trespass (b) Deputy Kluge
4 and I were advised by casino staff that Plaintiff had interfered
5 with the casino by threatening suicide. He was given an expulsion
6 letter by security after which he refused to leave the premises
7 after being requested numerous times to leave. (c) Casino incident
8 report, expulsion letter." (Doc. No. 64-4 at 5-6.)

9 **Plaintiff's objection:** "The interrogatory is solely
10 concerned with what respondent WITNESSED; e.g., what he 'observed.'
11 In the Special Interrogatories propounded on Garrett, 'WITNESSED' is
12 defined as follows: "'WITNESSED" means, see and hear or saw or
13 heard.' The first sentence of respondent's response to subsection
14 (b) refers to events not WITNESSED by respondent. If respondent
15 WITNESSED the events set forth in the second sentence of his
16 response to subsection (b), then he must properly 'DESCRIBE' them,
17 as that term is defined in the Special Interrogatories propounded on
18 Garrett:

19 'DESCRIBE' means, provide the following information, to
20 the extent known, with respect to the act, transaction
21 or tangible thing: (a) the date it occurred; (b) the
22 place where it occurred; (c) the IDENTITY of each
23 participant and on whose behalf the participant was
24 acting; (d) the nature and substance of all communica-
25 tions that occurred in connection with it; and (e) the
26 IDENTITY of all MATERIAL referring to or reflecting it.

24 Finally, respondent has failed to respond properly to
25 subsection (c), by failing to properly IDENTIFY the purported
26 'expulsion letter,' relied upon in his response. In the Special
27
28

1 Interrogatories propounded on Garrett, 'IDENTIFY' is defined as
2 follows:

3 'IDENTIFY' OR 'IDENTITY' means, with respect to a
4 PERSON: (a) the PERSON's full name; (b) present or last
5 known address; (c) telephone number; and (d) the present
6 or last known place of employment and job title refer-
7 ring to a natural person. With respect to a MATERIAL:
8 (a) the type of MATERIAL; (b) the general subject matter
9 of the MATERIAL; (c) the date of the MATERIAL; (d) the
10 name and addresses of the authors and recipients of the
11 MATERIAL; (e) the location of the MATERIAL; (f) the
12 IDENTITY of the PERSON who has possession or control of
13 the MATERIAL; and (g) whether the MATERIAL has been
14 destroyed and, if so, (1) the date of its destruction,
15 (2) the reason for its destruction, (3) the IDENTITY of
16 the PERSONS who destroyed it, and (4) any retention
17 policy directing its destruction."

18 (Id. at 6 (emphasis omitted).)

19 **The Court's ruling:** No further response shall be ordered.
20 Garrett has identified a criminal statute in response to whether he
21 witnessed Plaintiff commit a crime. To the extent that Plaintiff
22 seeks a narrative of Garrett's recollection of what he witnessed,
23 Plaintiff has had the opportunity to take depositions to thoroughly
24 explore this topic.

25 **8. Garrett, Special Interrogatory No. 11**

26 **Plaintiff propounded the following interrogatory:** "Based on
27 what you WITNESSED, DESCRIBE how the INCIDENT occurred." (Doc. No.
28 64-4 at 7.)

Defendant Garrett's first response: "See response to
Interrogatory No. 1." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO
PROVIDE A FURTHER RESPONSE. Defendant must provide more details
regarding his observation of the incident. If the answer to
Interrogatory 9 is sufficiently detailed, Defendant may reference
that response in his answer." (Doc. No. 59 at 5.)

1 **Garrett's second response:** "Deputy Kluge and I were advised
2 by casino staff that Plaintiff had interfered with the casino by
3 threatening suicide. He refused to leave the premises after he was
4 given an expulsion letter by security after being requested to leave
5 numerous times. My complete statement to Internal Affairs and the
6 Report have been provided to Plaintiff and my statement is summa-
7 rized in the report at pp. 24-27." (Doc. No. 64-4 at 7.)

8 **Plaintiff's objection:** "First, the response is in violation
9 of the court order that '[d]efendant must provide more de-
10 tails. . . .' The few details actually provided are sketchy and
11 conclusory at best. Second, only the description of what respondent
12 actually WITNESSED is relevant; i.e., 'his observation of the
13 INCIDENT.' Everything else is non-responsive and must be
14 stricken/deleted. Third respondent cannot incorporate by reference
15 his 'complete statement to Internal Affairs,' given that: (a) the
16 Internal Affairs File only contains a summary of that statement; (b)
17 it has not been authenticated or properly incorporated into his
18 response; and (c) the court order did not allow him to do this.
19 Finally, what 'Report' is being referenced by Garrett?" (Id.)

20 **The Court's ruling:** No further response shall be ordered.
21 As previously explained in this Order, Plaintiff again seeks a
22 narrative account of the entire incident, which is an exercise more
23 suited for depositions, which Plaintiff has conducted.

24 **9. Garrett, Special Interrogatory No. 15**

25 **Plaintiff propounded the following interrogatory:** "Please
26 DESCRIBE each and every policy or procedure of the San Diego County
27 Sheriff's Department, with regard to how one of its deputies is
28 supposed to handle a situation wherein an individual fails to leave

1 a property at the request of either the property owner or law-
2 enforcement [sic] officer." (Doc. No. 64-4 at 9.)

3 **Defendant Garrett's first response:** "Objection. The request
4 is vague and ambiguous, overbroad and unlimited in scope. Without
5 waiving the objection, a law enforcement officer may arrest an
6 individual who fails to leave after a request by the property owner
7 and a law enforcement officer." (Id.)

8 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
9 PROVIDE A FURTHER RESPONSE. Defendant shall provide a response that
10 details his knowledge of the requested policies and procedures."
11 (Doc. No. 59 at 5.)

12 **Garrett's second response:** "Objection: vague and ambiguous;
13 overbroad; calls for information not relevant to the subject matter
14 of this action nor reasonably calculated to lead to the discovery of
15 admissible evidence. Such policies and procedures have already been
16 provided to Plaintiff by letter dated January 10, 2010, as set forth
17 below:

18 This is a summary of Plaintiff's requests and documents
19 produced.

20 (1) Use of force: 2.49 and 6.48; Use of Force Addendum
21 'F' dated 1/5/06

22 (2) Use of restraint: 2.49 and 6.48; Use of Force
23 Addendum 'F' dated 1/5/06

24 (3) Use of handcuffs: 2.49 and 6.48; Use of Force
25 Addendum 'F'

26 (4) Detaining and individual: 2.48 and 2.51

27 (5) Search & seizure: 2.51

28 (6) Handling/investigating a citizen's arrest: 6.110

- 1 (7) Penal Code § 602 suspects and investigations: No
2 policy exists
- 3 (8) Penal Code § 602 letters: No policy exists
- 4 (9) Handling/investigating a suspect/individual who
5 refuses to leave a property/premises when asked by its
6 owner/employees/[S]heriff's [D]eputies to leave: No
7 policy exists
- 8 (10) Use and preparation of 'CAD' printout ([a.k.a.]
9 'Unit History') dispositions ([a.k.a.] 'comments'),
10 including: (a) when, why and how a deputy is supposed to
11 provide a CAD disposition; and (b) what information is
12 supposed to be included in a CAD disposition: No policy
13 exists
- 14 (11) Requirements re the preparation of written reports
15 (other than a CAD disposition) by a [S]heriff's [D]eputy
16 (e.g., when an incident report is required, etc.): 2.41
17 and 6.71
- 18 (12) Taping a suspect or detainee (including but not
19 limited to (a) the rights of the individual; (b) the use
20 of the tape; and (c) the preservation of the tape):
21 6.105
- 22 (13) Documenting the following: 2.41, 6.71
- 23 (a) Investigations/evaluations that result in
24 arrest: 6.71
- 25 (b) Investigations/evaluations that do not result
26 in arrest: 6.71
- 27 (c) [C]riminal activity: 6.71
- 28

- 1 (d) [S]uspected criminal activity: No policy exists
2 (e) [U]se of force: 2.49 and 6.48; Use of Force
3 Addendum 'F' dated 1/5/06
4 (f) [U]se of physical contact: 2.49 and 6.48; Use
5 of Force Addendum 'F' dated 1/5/06
6 (g) [U]se of handcuffs: 2.49 and 6.48; Use of
7 Force Addendum 'F' dated 1/5/06
8 (h) [U]se of restraint [sic]: 2.49 and 6.48; Use
9 of Force Addendum 'F' dated 1/5/06
10 (i) [C]itizen's arrests: 6.110
11 (j) [D]etaining an individual: 2.48 and 2.51
12 (k) [S]earches and/or seizures: 2.51
13 (l) W&I Code § 5150 investigations/evaluations:
14 6.32, 6.113
15 (m) Penal Code § 602 investigations/evaluations:
16 6.32, 6.113
17 (n) [S]uspected trespassing: No policy exists
18 (o) [D]uties of deputy in training: 10.1-10.4,
19 10.6, 10.9
20 (p) [T]he taping of a suspect or detainee: 6.105

21 (Doc. No. 64-4 at 9-10.)

22 **Plaintiff's objection:** "The objection is frivolous and must
23 be stricken; the Court has ordered [D]efendant to respond on the
24 merits. Furthermore, pursuant to the Order, respondent was to
25 provide 'a response that details his knowledge of the requested
26 policies and procedures,' not a summary of the documents produced."
27 (Id. at 11.)

28

1 **The Court's ruling:** No further response shall be ordered.
2 As previously explained, this interrogatory again seeks a narrative
3 re-creation of policies and procedures that exist in print format.

4 Moreover, buried within Garrett's response is his representa-
5 tion that such policies do not exist. (See Garrett's second response
6 at subsections (7), (8), and (9).) This representation is responsive
7 to Plaintiff's interrogatory.

8 **10. Garrett, Special Interrogatory No. 21**

9 **Plaintiff propounded the following interrogatory:** "Please
10 state if YOU WITNESSED HOWARD KLUGE detain PAUL BASHKIN on August 8,
11 2006? [sic] If so, DESCRIBE what YOU witnessed in conjunction with
12 each act." (Doc. No. 64-4 at 12.)

13 **Defendant Garrett's first response:** "I observed a 5150
14 evaluation and Mr. Bashkin being escorted out of the casino where he
15 elected to leave on a bus." (Id.)

16 **The Court previously ordered:** "DEFENDANT IS COMPELLED TO
17 PROVIDE A FURTHER RESPONSE. Defendant must provide the specific
18 details he witnessed, as far as his memory permits." (Doc. No. 59
19 at 6.)

20 **Garrett's second response:** "I observed a 5150 evaluation and
21 Mr. Bashkin being escorted out of the casino where he elected to
22 leave on a bus. Everything I witnessed is contained in the
23 statement I gave to Internal Affairs which has been provided to
24 Plaintiff. My complete statement to Internal Affairs and the IA
25 Report have been provided to Plaintiff and my statement is summa-
26 rized at pp. 24-27." (Doc. No. 64-4 at 12.)

27 **Plaintiff's objection:** "First, the response is non-respon-
28 sive to the first critical part of the interrogatory; it fails to

1 state whether respondent 'WITNESSED HOWARD KLUGE detain PAUL BASHKIN
2 on August, 8, 2006.'" Second, the response is in violation of the
3 court order that '[D]efendant must provide the specific details he
4 witnessed[, as far as his memory permits].' The few details
5 actually provided are sketchy and conclusory at best. Third,
6 respondent cannot incorporate by reference his 'complete statement
7 to Internal Affairs,' given that: (a) the IA Report only contains a
8 summary of that statement; (b) it has not been authenticated or
9 properly incorporated in his response; and (c) the court order did
10 not permit him to do this." (Id.)

11 **The Court's ruling:** No further response shall be ordered.
12 Although the Court agrees with Plaintiff that Garrett's second
13 response lacks detail, Plaintiff nonetheless again seeks a narrative
14 account of what someone witnessed, which written discovery is ill-
15 suited to elicit. Plaintiff has had the opportunity to take
16 depositions and has in fact done so.

17 **11. Garrett, Special Interrogatory No. 24**

18 **Plaintiff propounded the following interrogatory:** "IDENTIFY
19 all previous complaints or lawsuits that have been made or filed
20 against YOU in the last ten years. Include the following:

- 21 (a) IDENTIFY the parties to those complaints or lawsuits;
22 (b) Set forth the court, case number, date and caption;
23 (c) Whether the complaint or lawsuit was based on facts
24 leading to an arrest;
25 (d) The name, address, and telephone number of any attorney
26 representing any of the parties to those complaints or
27 lawsuits;
28 (e) Whether the claim or action has been resolved or is

1 pending, and if resolved, its outcome; and

2 (f) A description of the claimed injuries.

3 (Doc. No. 64-4 at 14.)

4 **Defendant Garrett's first response:** "Objection: The requests
5 [sic] seeks inadmissible evidence of complaints involving incidents
6 after the subject incident involving the plaintiff; seeks privileged
7 information pertaining to personnel and internal affairs matters in
8 a manner in violation of California Penal Code § 832.7 and Evidence
9 Code § 1043; seeks disclosure of official information acquired in
10 confidence per Evidence Code § 1040; disclosure of personnel,
11 medical and similar files is an unwarranted invasion of personal
12 privacy impermissible under the Freedom of Information act;
13 information sought is protected from the disclosure under the
14 provisions of the Federal Privacy Act; seeks records and information
15 compiled for law enforcement purposes which are exempt from
16 disclosure because production could constitute an unwarranted
17 invasion of privacy; seeks non-discoverable and inadmissible
18 information pertaining to disciplinary recommendations; seeks
19 information reflecting advisory opinions, consultations, recommenda-
20 tions and deliberations from disclosure by the deliberative process
21 privilege; seeks information not relevant to the subject matter of
22 this action nor reasonably calculated to lead to the discovery
23 admissible evidence. Without waiving these objection, and to the
24 extent this request seeks the identity of lawsuits in which
25 propounding party is a named defendant, that information is equally
26 available to all parties." (Id.)

27 **The Court previously ordered:** "Plaintiff's interrogatory as
28 posed is over broad. Defendant shall provide an amended response

1 regarding any lawsuit involving excessive force, unlawful search and
2 seizure, or trespass, from the date of his first employment as a
3 deputy to the present date." (Doc. No. 59 at 6.)

4 **Garrett's second response:** "Objection: The requests [sic]
5 seeks inadmissible evidence of complaints involving incidents after
6 the subject incident involving the plaintiff; seeks privileged
7 information pertaining to personnel and internal affairs matters in
8 a manner in violation of California Penal Code § 832.7 and Evidence
9 Code § 1043; seeks disclosure of official information acquired in
10 confidence per Evidence Code § 1040; disclosure of personnel,
11 medical and similar files is an unwarranted invasion of personal
12 privacy impermissible under the Freedom of Information act;
13 information sought is protected from the disclosure under the
14 provisions of the Federal Privacy Act; seeks records and information
15 compiled for law enforcement purposes which are exempt from
16 disclosure because production could constitute an unwarranted
17 invasion of privacy; seeks non-discoverable and inadmissible
18 information pertaining to disciplinary recommendations; seeks
19 information reflecting advisory opinions, consultations, recommenda-
20 tions and deliberations from disclosure by the deliberative process
21 privilege; seeks information not relevant to the subject matter of
22 this action nor reasonably calculated to lead to the discovery
23 admissible evidence. Without waiving these objection, none
24 involving excessive force[,] unlawful search and seizure[,] or
25 trespass." (Doc. No. 64-4 at 15 (emphasis added to highlight new
26 response).)

27
28

1 **Plaintiff's objection:** "The objections are frivolous,
2 invalid and must be deleted; the Court has ordered [D]efendant to
3 respond on the merits." (Id.)

4 **The Court's ruling:** No further response shall be ordered.
5 Garrett's second response ("[N]one involving excessive force[,]
6 unlawful search and seizure[,]
7 or trespass." (emphasis added)) is
8 responsive and complies with the Court's prior Order ("Defendant
9 shall provide an amended response regarding any lawsuit involving
10 excessive force, unlawful search and seizure, or trespass . . .").

11 **12. Kluge, Interrogatory No. 6**

12 **Plaintiff propounded the following interrogatory:** "In
13 response to Category No. 6 of BASHKIN's request for production of
14 documents, YOU produced a photographic copy of a wall containing a
15 sign or notice stating that: 'THIS ROOM IS BEING MONITORED BY AUDIO
16 SURVEILLANCE'. State whether that sign or notice was on the wall of
17 the BARONA holding room in which BASHKIN was detained during the
18 INCIDENT." (Doc. No. 64-4 at 5.)

19 **Defendant Kluge's response:** "I provided no photographic copy
20 of a wall containing a sign or notice stating: 'THIS ROOM IS BEING
21 MONITORED BY AUDIO SURVEILLANCE.' If such a photographic copy was
22 produced, it was provided to Mr. Bashkin by Mr. James Chapin who is
23 my attorney in this matter. I have no knowledge of this sign or if
24 it's even located on the Barona Casino property." (Id.)

25 **Plaintiff's objection:** "The response is frivolous, evasive
26 and non-responsive on multiple counts. First, 'YOU' was defined in
27 the interrogatories as including 'YOUR attorney.' Second, discovery
28 is answered or responded to by party, not their attorney. Third,
 the knowledge of the attorney is imputed to and/or controlled by his

1 client. Bashkin is in receipt of 'Defendant Howard Kluge's
2 Responses to Requests to Production Attached to the Notice of
3 Deposition,' wherein Kluge responded that he 'produced' that
4 photographic copy. Thus, Kluge's testimony denying having provided
5 the 'photographic copy' is a misrepresentation of a material fact;
6 i.e., perjury. Kluge, through his attorney, produced a 'photo-
7 graphic copy' being sought in the interrogatory and, therefore, he
8 must respond on the merits with the information that he controls
9 through his attorney and is in the possession of either he or his
10 attorney." (Id. (emphasis in original).)

11 **The Court's ruling:** KLUGE IS ORDERED TO RESPOND TO THIS
12 INTERROGATORY IN GOOD FAITH. Whether Kluge produced the sign, or his
13 attorney produced it on his behalf, is immaterial. The essence of
14 the interrogatory is whether Kluge recalls such a sign being present
15 in the holding room. If Kluge did not produce the photograph and
16 another party did, he should state so, but should nonetheless state,
17 as his memory permits, whether he recalls the sign's presence in the
18 holding room on the day in question.

19 **13. Kluge, Interrogatory No. 13**

20 **Plaintiff propounded the following interrogatory:** "State all
21 facts regarding how YOU came into possession of the copy of the
22 'casino expulsion letter' that YOU produced to BASHKIN in response
23 to BASHKIN's request for production of documents." (Doc. No. 64-3
24 at 9.)

25 **Defendant Kluge's response:** "I did not produce a 'Casino
26 Expulsion Letter' to Mr. Bashkin. The item was produced by Mr.
27 James Chapin[,] my attorney in this matter. I have no knowledge as
28 to how the item came into the possession of Mr. Chapin." (Id.)

1 **Plaintiff's objection:** "The response is frivolous, evasive
2 and non-responsive on multiple counts. First, 'YOU' was defined in
3 the interrogatories as including 'YOUR attorney.' Second, discovery
4 is answered or responded to by party, not their attorney. Third,
5 the knowledge of the attorney is imputed to and/or controlled by his
6 client. Bashkin is in receipt of Kluge's responses to his requests
7 to production of documents wherein Kluge responded that 'the Casino
8 Expulsion Letter will be produced.' He subsequently produced it.
9 Thus, Kluge's testimony denying having provided the 'Casino
10 Expulsion Letter' is a misrepresentation of a material fact; i.e.,
11 perjury. Kluge, through his attorney, produced a 'Casino Expulsion
12 Letter' being sought in the interrogatory and, therefore, he must
13 respond on the merits with the information that he controls through
14 his attorney and is in the possession of either he or his attorney."
15 (Id. (emphasis in original).)

16 **The Court's ruling:** For the same reasons articulated in the
17 Court's ruling on Kluge Interrogatory No. 6, immediately above, KLUGE
18 IS ORDERED TO RESPOND TO THIS INTERROGATORY IN GOOD FAITH. If he has
19 no knowledge of the expulsion letter, he should state so.

20 **14. Kluge, Interrogatory No. 14**

21 **Plaintiff propounded the following interrogatory:** "State all
22 facts supporting YOUR suspicion or belief that BASHKIN was trespass-
23 ing when he did not immediately leave BARONA upon his receipt of the
24 BARONA 'expulsion letter.'" (Doc. No. 64-3 at 9.)

25 **Defendant Kluge's response:** "Mr. Bashkin was given both
26 written and verbal notification that he was no longer allowed on the
27 Barona Casino property by Mr. George Denny and myself, therefore Mr.
28 Bashkin was clearly informed that if he remained at the location or

1 came back to the property in the future he would be violating
2 trespassing laws in the California Penal Code book. Based on the
3 fact Mr. Bashkin was given these very clear and lawful orders to
4 vacate the casino property[,] I believed Mr. Bashkin would have been
5 violating the trespassing laws in the California Penal Code if he
6 didn't leave the casino property during the incident." (Id. at 10.)

7 **Plaintiff's objection:** "Respondent did not state 'all' of
8 the facts, and those facts provided were conclusory. If the
9 'orders' Bashkin was given were 'very clear,' certainly the
10 responsive facts in support thereof are not. What was the 'verbal
11 and written' notification that Bashkin was allegedly given? Was
12 Bashkin actually 'informed that if he remained at the location or
13 came back to the property in the future he would be violating the
14 trespassing laws in the California Penal Code book,' or is that
15 merely respondent's conclusion?" (Id.)

16 **The Court's ruling:** For reasons explained in detail herein,
17 no further response shall be ordered.

18 **15. Kluge, Interrogatory No. 15**

19 **Plaintiff propounded the following interrogatory:** "Was the
20 copy of the 'casino expulsion letter' that YOU produced to BASHKIN
21 in response to BASHKIN's request for production of documents[] a
22 true and correct copy of the 'expulsion letter' that George Denny
23 gave BASHKIN at BARONA on August 8, 2006?" (Doc. No. 64-3 at 10.)

24 **Defendant Kluge's response:** "I did not produce a 'Casino
25 Expulsion Letter' to Mr. Bashkin. The item was produced by Mr.
26 James Chapin[,] my attorney in this matter. However, I read the
27 letter and it appeared to be the same letter that was given to Mr.

28

1 Baskin [sic] on August 8, 2005 [sic], but I can't say for sure that
2 is the case." (Id.)

3 **Plaintiff's objection:** "The first two sentences should be
4 stricken." (Id. at 11.)

5 **The Court's ruling:** The Court declines Plaintiff's request
6 to "strike" the first two lines of Kluge's response.

7 **16. Kluge, Interrogatory No. 16**

8 **Plaintiff propounded the following interrogatory:** "Describe
9 with specificity each and every incident wherein YOU have been
10 accused of using excessive force against an individual in YOUR
11 capacity as a law-enforcement [sic] officer." (Doc. No. 64-3 at
12 11.)

13 **Defendant Kluge's response:** "Objection: The requests [sic]
14 seeks inadmissible evidence of complaints involving incidents after
15 the subject incident involving the plaintiff; seeks privileged
16 information pertaining to personnel and internal affairs matters in
17 a manner in violation of California Penal Code § 832.7 and Evidence
18 Code § 1043; seeks disclosure of official information acquired in
19 confidence per Evidence Code § 1040; disclosure of personnel,
20 medical and similar files is an unwarranted invasion of personal
21 privacy impermissible under the Freedom of Information act;
22 information sought is protected from the disclosure under the
23 provisions of the Federal Privacy Act; seeks records and information
24 compiled for law enforcement purposes which are exempt from
25 disclosure because production could constitute an unwarranted
26 invasion of privacy; seeks non-discoverable and inadmissible
27 information pertaining to disciplinary recommendations; seeks

28

1 information reflecting advisory opinions, consultations, recommenda-
2 tions and deliberations from disclosure by the deliberative process
3 privilege; seeks information not relevant to the subject matter of
4 this action nor reasonably calculated to lead to the discovery
5 admissible evidence. Without waiving these objection, a lawsuit
6 alleging excessive force entitled *Kenneth E. Lewis v. County of San*
7 *Diego, Deputy Kluge, Deputy Burke*, Southern District of California,
8 Case No. 04-CV-2592-IEG(RBB), is public record." (Id.)

9 **Plaintiff's objection:** "The response is non-responsive as to
10 the relevance of the *Lewis* lawsuit. The request seeks a
11 'descri[ption] with specificity' of each '**incident**' wherein YOU have
12 been accused of using excessive force. Therefore, Kluge must
13 'describe with specificity' each and every 'incident' involving an
14 accusation of his 'use of excessive force, exclusive of the
15 accusations contained in the instant action." (Id. at 11-12
16 (emphasis in original).)

17 **The Court's ruling:** KLUGE IS ORDERED TO FULLY RESPOND AND DO
18 SO IN GOOD FAITH. As Plaintiff correctly points out, the interroga-
19 tory requests each "incident," not "lawsuit." This information is
20 relevant to this action, yet Kluge continues to provide incomplete
21 responses. Kluge shall set for the following for each incident or
22 occasion he was accused of excessive force as a law enforcement
23 officer: (1) date of accusation; (2) entity to which accusation was
24 made; (3) detailed description of the accusation; and (4) the outcome
25 of investigation, if any.

26 **17. Kluge, Interrogatory No. 17**

27 **Plaintiff propounded the following interrogatory:** "Was the
28 copy of the 'expulsion letter' that YOU lodged in support of YOUR

1 motion for summary judgment in this action[] a true and correct copy
2 of the 'expulsion letter' that George Denny gave Bashkin at Barona
3 on August 8, 2006?" (Doc. No. 64-3 at 12.)

4 **Defendant Kluge's response:** "This question was asked and
5 answered in my response to question #15 above." (Id.)

6 **Plaintiff's objection:** "The response is frivolous, eva-
7 sive[,] and non-responsive. Special Interrogatory Nos. 15 and 17
8 are materially different. According to the face page of Exhibit A
9 of Docket #39-3 [Notice of Lodgment of Exhibits in Support of Motion
10 for Summary Judgment], Kluge lodged a copy of the 'expulsion letter'
11 in support of his 'motion for summary judgment in this action.'
12 Therefore, he must disclose whether the copy of that letter that he
13 lodged with his Motion was 'a true and correct copy of the 'expul-
14 sion letter' that George Denny gave BASHKIN at BARONA on August 8,
15 2006." (Id. (emphasis in original).)

16 **The Court's ruling:** No further response shall be ordered.
17 Kluge Interrogatory Nos. 15 and 17 are nearly identical. In response
18 to Interrogatory No. 15, Kluge responded that he reviewed the
19 expulsion letter, and it appeared to be the one provided to Plaintiff
20 but he could not be sure if it was the same one. Kluge's response
21 is essentially, "Maybe. I do not know for certain," which is an
22 acceptable response if Kluge in fact does not recall.

23 **18. Kluge, Interrogatory No. 22**

24 **Plaintiff propounded the following interrogatory:** "Identify
25 with particularity each time YOU documented (e.g., in a report,
26 statement or disposition, etc.) any suspicion or belief YOU had that
27 BASHKIN had violated a trespassing law at BARONA on August 8, 2006."
28 (Doc. No. 64-3 at 14.)

1 **Kluge's response:** "Mr. Bashkin was given both written and
2 verbal notification[s] that he was no longer allowed on the Barona
3 Casino property by Mr. George Denny and me. Therefore, Mr. Bashkin
4 was clearly informed that he remained at the location or came back
5 to the property in the future he would be violating the trespassing
6 law(s) in the California Penal Code book. Based on the fact Mr.
7 Bashkin was given these very clear and lawful orders to vacate the
8 casino property[,] I believed that Mr. Bashkin would have been
9 violating the trespassing law(s) in the California Penal Code if he
10 didn't leave the casino property during this incident. Mr. Bashkin
11 left the casino property, thus he didn't complete the act of
12 violating any trespassing law(s) at Barona on August 8, 2006."
13 (Id.)

14 **Plaintiff's objection:** "The response is **frivolous, evasive**
15 **and completely non-responsive!** At best, it provides 'conclusory'
16 facts regarding Bashkin's alleged potential trespassing, which has
17 nothing to do with the information being sought. The interrogatory
18 seeks any and all '**documentation**' of Kluge's suspicions or beliefs
19 that Bashkin had 'violated a trespassing law at BARONA on August 8,
20 2006.' The response even provides examples of what is meant by
21 'document,' yet Kluge still evaded responding on point! The
22 interrogatory is clear, straightforward and relevant, and Kluge must
23 answer it." (Id. at 15 (emphasis in original).)

24 **The Court's ruling:** KLUGE IS ORDERED TO RESPOND IN GOOD
25 FAITH. Kluge's response is completely non-responsive. As Plaintiff
26 correctly points out, the interrogatory asked about documentation of
27 Kluge's suspicion or belief of Plaintiff's alleged trespass.
28 However, Kluge completely disregards the call of the question and

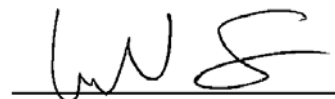
1 provides a generic account of the incident without mentioning any
2 documentation whatsoever. If Kluge did not document the alleged
3 trespass, he should state so. If he did document the alleged
4 trespass in any way, he should set forth how he documented his
5 suspicion or belief, whether it be on a Field Interview Report, CAD
6 entry, *et cetera*. However, in no event may Kluge again ignore the
7 actual question Plaintiff poses.

8 **III. CONCLUSION**

9 The parties are ORDERED to proceed consistently with this
10 Order as set forth above. For those interrogatories which the Court
11 has ordered further responses, Defendants are hereby on notice that
12 further incomplete, partially responsive, evasive, or dilatory
13 responses will be unacceptable. This is now the second Order on
14 certain interrogatories, and Defendants have the benefit of the
15 Court's guidance above. The Court has observed Defendants withhold
16 information until compelled to reveal it by the Court, and even then
17 do so without much detail. This practice is unacceptable. The
18 Court will deem further improper responses as a direct and inten-
19 tional violation of the Court's Order and appropriate sanctions may
20 issue.

21 IT IS SO ORDERED

22 DATED: January 13, 2011

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24 

25 Hon. William V. Gallo
26 U.S. Magistrate Judge
27
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