

1 On March 25, 2024, Defendants filed their brief, identifying 71 requests for admission
2 they believed improper. (Dkt. No. 353.) It did not appear that Plaintiff had filed a response to
3 Defendants' brief.

4 On May 9, 2024, the Court found Plaintiff's requests for admission would not be
5 admitted, in part because it did not appear Plaintiff had filed any response to Defendants'
6 briefing. (Dkt. No. 356.) On May 13, 2024, Plaintiff filed a motion for reconsideration, arguing
7 that a pleading filed several days before Defendants submitted their briefing should be construed
8 as a response. (Dkt. No. 357.) Plaintiff pointed out that Dkt. No. 351 was his response to the
9 proposed brief Defendants had filed on March 14, 2024 (Dkt. No. 350), and which was formally
10 filed on March 25, 2024 (Dkt. No. 353).

11 "Motions for reconsideration are disfavored" and "will ordinarily [be] den[ied]" absent "a
12 showing of manifest error in the prior ruling or . . . new facts or legal authority which could not
13 have been brought to [the Court's] attention earlier with reasonable diligence." LCR 7(h)(1). A
14 motion for reconsideration must identify "with specificity the matters which the movant believes
15 were overlooked or misapprehended by the court." LCR 7(h)(2).

16 Although it does appear Plaintiff filed a response to Defendants' proposed brief (which
17 subsequently was filed with the Court), the Court does not believe its prior decision is incorrect.
18 Having reviewed Plaintiff's response to the requests for admissions challenged by Defendants,
19 the Court is convinced the challenged requests for admission are deficient.

20 Most of the challenged requests for admission are improper substitutes for discovery
21 processes. *See Byard v. City & Cnty. of San Francisco*, 2017 WL 988497, at *1 (N.D. Cal. Mar.
22 15, 2017) ("RFAs should 'not . . . be treated as substitutes for discovery processes to uncover
23 evidence[.]"). For example, request for admission No. 53 of Dkt. No. 299 asked Defendant
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1 Delfgauw to admit “some person or entity was paid or given something of value by you or an
2 entity under your control.” This is simply too vague, fails to “separately set forth” each matter
3 sought to be admitted, and otherwise seeks to improperly substitute discovery processes. Fed. R.
4 Civ. P. 36(a)(2).¹ Similarly, request for admission No. 71 of Dkt. No. 299 asks Defendant to
5 admit that Dialer data was deleted “to deprive [Plaintiff] of the evidence.” Requests for
6 admission are not the proper mechanism for resolving disputes concerning the spoliation of
7 evidence.

8 Other requests for admission appear to be outside the scope of the issues presented in this
9 lawsuit. For example, requests for admission related to a website called Validform.com. This
10 website appears to have been created after the communications at issue in this lawsuit and
11 admissions sought about this website would not be “for purposes of the pending action.” Fed. R.
12 Civ. P. 36(a)(1). Although Plaintiff asserts information related to Validform.com “is for use in
13 this lawsuit” (Dkt. No. 351 at 25), Plaintiff offers no explanation as to why this website is
14 relevant to the present claims. Similarly, several requests for admission are related to text
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17 ¹ Also, as a general matter, Plaintiff’s requests for admission are confusing when considering the
18 definitions Plaintiff incorporated into his requests for admission. For example, in each of his
19 requests for admission to Defendant Delfgauw, “you”, “your” or “yourself” included Defendant
20 Delfgauw and “any and all its agents, representatives, employees, servants, consultants,
21 contractors, subcontractors, investigators, attorneys, and any other persons or entities acting or
22 purporting to act on behalf of Joe Delfgauw.” (*See, e.g.*, Dkt. No. 299-1 at 2.) Thus, it is unclear
23 to whom a request for admission is directed when “you” is used or when the phrase “under your
24 control” is used—“you” may mean Defendant Delfgauw or it may mean someone else and “under
your control” may mean under Defendant Delfgauw’s control or under the control of someone
else. Again, this supports the conclusion that the challenged requests for admission are improper
substitutes for normal discovery process.

The Court notes Plaintiff’s requests for admission to the other Defendants also broadly define each
Defendant in their definitions section making it unclear at times to whom a particular request is
directed to. (*See, e.g.*, Dkt. No. 301-1 at 2.)

1 messages that were allegedly sent in November 2021, even though Plaintiff's amended
2 complaint only discusses communications between April and August 2021.


3 Other requests for admission seek positions on what appear to be hypothetical scenarios.
4 For example, request for admission No. 52 of Dkt. No. 299 asked to admit that "if a person
5 'opted in' by providing a telephone number and email address to the website
6 educationschoolmatching.com between the period of March 29, 2021 and May 1, 2021 and that
7 person clicked on a link in an email resulting from the 'opt in', it would be considered a new 'opt
8 in' of the telephone number associated with that email address on the date the person clicked that
9 link." Similarly, request for admission No. 142 of Dkt. No. 301 asked to admit that "you could
10 have verified that [Plaintiff] was the person 'opting in' on EducationSchoolMatching.com by
11 texting a code to the phone that had to be entered into the website to complete the 'opt in'.
12 These requests do not ask to admit the truth of any matters relating to facts, the application of
13 law to fact, or opinions about either. Fed. R. Civ. P. 36(a)(1). Rather, Plaintiff asks to offer
14 comment on an incomplete hypothetical sequence of events, which is beyond the scope of what
15 can be admitted under the rules.

16 Yet other requests combine several queries into a single request for admission or
17 reference multiple incidents, each of which may require a different response. When making
18 requests for admission, "each matter must be separately stated," and a single request "may not
19 contain compound, conjunctive, or disjunctive (e.g., 'and/or') statements." Fed. R. Civ. P.
20 36(a)(2); *United States ex rel. Englund v. Los Angeles County*, 235 F.R.D. 675, 684 (E.D. Cal.
21 2006). "Each request for admissions must be direct, simple and 'limited to singular relevant
22 facts.'" *United States v. Consolidated Edison Co.*, 1988 WL 138275 (E.D.N.Y. Jan. 11, 1989),
23 quoting *S.E.C. v. Micro-Moisture Controls*, 21 F.R.D. 164, 166 (S.D.N.Y.1957)).
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1 For example, request for admission No. 40 of Dkt. No. 299 asks Defendant to admit that
2 “the first day an entity or entities under your control texted (360) 910-1019, those entities texted
3 that phone number 7 times.” This request seeks information about multiple incidents and entities
4 and is improper because it is effectively a compound question, fails to separately state each
5 matter as required by Rule 36(a)(2), and is not phrased in a manner such that it “can be admitted
6 or denied without explanation.” *Dubin v. E.F. Hutton Grp. Inc.*, 125 F.R.D. 372, 375 (S.D.N.Y.
7 1989) (internal citation omitted).²

8 Accordingly, the Court finds there is no showing of manifest error in the prior ruling.
9 Plaintiff’s motion for reconsideration (Dkt. No. 357) is DENIED.

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11 Dated this 20th day of May, 2024.

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15 David G. Estudillo
16 United States District Judge
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24 ² And, as previously pointed out, the phrase “under your control” makes the request vague
considering how Plaintiff chose to define this phrase.