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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

FAIR HOUSING COUNCIL )  
OF CENTRAL CALIFORNIA, INC., et al., )

1:10cv02073 LJO DLB

Plaintiffs,

) ORDER REGARDING PLAINTIFFS’ MOTION  
) TO COMPEL PRODUCTION OF  
) DOCUMENTS

v.

) (Documents 17, 18, 19 and 22)

HENRY D. NUNEZ, et al., )

Defendants. )

Plaintiffs Fair Housing Council of Central California, Inc., Nelida Mendiola, Martha Lemos and Maria Nava (“Plaintiffs”) filed the instant motion to compel responses to document requests served on Defendant Henry Nunez. The matter was heard on June 24, 2011, before the Honorable Dennis L. Beck, United States Magistrate Judge. Elizabeth Brancart appeared telephonically on behalf of Plaintiffs. Daniel Harralson appeared on behalf of Defendant Henry Nunez. Mr. Nunez appeared on behalf of Defendant Minnie Avila.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs Nelida Mendiola, Martha Lemos and Maria Nava are current or former tenants of the Cypress Estates apartment complex (“Cypress Estates”). These tenants complained of discrimination at Cypress Estates to Plaintiff Fair Housing Council of Central California, a nonprofit corporation ensuring compliance with fair housing laws throughout the Central Valley. Complaint, ¶¶ 4-7.

1 Defendant Henry Nunez controls the management of Cypress Estates and its onsite  
2 manager, Defendant Minnie Avila. Complaint, ¶¶ 8-9. Cypress Estates claims to be a housing  
3 complex for older persons under the Housing for Older Persons Act (“HOPA”), 42 U.S.C. §  
4 3607(b)(2).

5 Plaintiffs allege that Defendants enforced unreasonable and discriminatory rules against  
6 them and their children, served them with eviction notices because of their protected familial  
7 status, and made derogatory statements about their national origin that interfered with the  
8 enjoyment of their tenancy. Complaint, ¶¶ 12-22. Plaintiffs assert violations of the Fair Housing  
9 Act (42 U.S.C. §§ 3601, et seq.), the California Fair Employment and Housing Act (Government  
10 Code §§ 12955, et seq.), the California Civil Code § 1714, Civil Code §§ 1927 and 1940.2, Civil  
11 Code §§ 44 through 46, and California Code of Civil Procedure §§ 1159 and 1160. Plaintiffs  
12 seek monetary damages, including punitive damages, along with declaratory and injunctive relief.

13 Plaintiffs filed the instant motion to compel on April 21, 2011, but continued the hearing  
14 several times. Plaintiffs seek to compel Defendant Nunez to provide responses to specific  
15 document requests served on February 18, 2011. The parties filed a Joint Statement of Discovery  
16 Dispute on June 10, 2011. Subsequently, on June 22 and 23, 2011, Defendants filed an  
17 additional opposition and supporting declarations regarding the motion to compel.

### 18 DISCUSSION

19 Rule 26(b)(1) of the Federal Rules of Civil Procedure provides:

20 Parties may obtain discovery regarding any nonprivileged matter that is relevant to  
21 any party’s claim or defense including the existence, description, nature, custody,  
22 condition and location of any documents or other tangible things and the identify  
23 and location of person who know of any discoverable matter. For good cause, the  
24 court may order discovery of any matter relevant to the subject matter involved in  
25 the action. Relevant information need not be admissible at the trial if the  
26 discovery appears reasonably calculated to lead to the discovery of admissible  
27 evidence.

28 Fed. R. Civ. P. 26(b)(1).

The document requests at issue concern three categories: (1) tenant records; (2)  
compliance with Housing for Older Persons Act (“HOPA”), 42 U.S.C. § 3607(b)(2); and (3)  
financial information.

1  
2 **A. Tenant Records**

3 1. Plaintiffs' Requests 1, 2, 4 and 19

4 Request Number 1: A complete copy of all files regarding tenants or  
5 residents, including the file covers, as kept in the ordinary course of business that  
6 are or were maintained regarding each tenant or resident who has resided at the  
7 Cypress Estates apartment complex at any time since January 1, 2006, including a  
8 copy of all leases or rental agreements, applications, notices, rent receipts, security  
9 deposit refunds, eviction documents, complaints, notes, and communications.

10 Request Number 2: A complete copy of all files regarding past tenants or  
11 residents, including the file covers, as kept in the ordinary course of business,  
12 regarding every tenant who has vacated a dwelling unit at the Cypress Estates  
13 apartment complex at any time since January 1, 2006, including documents that  
14 reflect the last known address of past tenants such as security deposit refunds.

15 Request Number 4: A complete copy of all rental applications or applicant  
16 files, including the file covers, as kept in the ordinary course of business,  
17 including all rental applications and supporting documentation submitted by  
18 persons seeking to rent a dwelling at the Cypress Estates apartment complex at  
19 any time since January 1, 2006.

20 Request Number 19: All documents that constitute, describe, reflect,  
21 record, mention, comment upon or otherwise refer to the family status or minor  
22 children residing with any tenant, former tenant, or prospective tenant who rented  
23 or sought to rent a dwelling unit from one or more defendants at any time since  
24 January 1, 2006, including but not limited to, applications, leases, notes,  
25 memoranda, correspondence, diaries, appointment books, calendars, or email  
26 messages.

27 2. Defendants' Responses

28 Defendants submitted the following response to each request:

**Response:** OBJECTION. Responding party objects to this request on the grounds that it is unduly burdensome, oppressive and over broad. Responding party further objects to this request on the grounds that it seeks third party information that responding party cannot provide without said third party's knowledge and consent, as it would violate their right of inalienable privacy. Any documents would be in the possession of Cypress Estates, Inc., (4478 W. Spatz Ave. Fresno, CA 93722), and will not be produced without a court order. The plaintiff files will be produced.

3. Analysis

These objections are overruled. At the hearing, Defendant Nunez objected to production, arguing that he does not have care, custody or control of the requested documents, which are

1 “owned” by Cypress Estates, Inc. On questioning by the Court, Defendant Nunez reported that  
2 he is both the sole owner and the sole officer of Cypress Estates, Inc. He further admitted that he  
3 has produced the tenant lease agreements requested by Plaintiffs, which would be subject to the  
4 same objection regarding custody and control. Given these representations, it is clear that the  
5 requested tenant documents are within Defendant Nunez’ custody and control.

6 To distinguish the lease agreements from the remaining tenant files, Defendant Nunez  
7 claims that the tenant files contain third-party personal financial information. Defendant Nunez  
8 believes that production of such private information will expose him to potential liability from  
9 third-party tenants for privacy rights violations.

10 In response, Plaintiffs explain that they are not interested in the personal financial  
11 information of third-party tenants. Instead, they primarily seek information regarding tenant  
12 ages, the number and ages of any tenant’s children, and any complaints in the tenant files.

13 The Court finds that any concerns regarding third-party personal financial information  
14 can be resolved by redaction of third-party personal financial information from the relevant  
15 records. Plaintiffs’ motion to compel responses to Requests for Production 1, 2, 4 and 19 is  
16 GRANTED. As discussed at the hearing, Defendant Nunez shall redact Social Security numbers  
17 and third-party personal financial information from the responsive tenant records. Thereafter,  
18 Defendant Nunez shall produce the redacted records to Plaintiffs within thirty (30) days of the  
19 date of this order.

20 **B. HOPA Compliance**

21 1. Background Information

22 According to the joint statement, Cypress Estates is a senior living complex in which a  
23 maximum of 20% of tenants under age 55 are allowed. The individual plaintiffs claim that they  
24 were never asked for age verification and no member of their families is age 55 or older.

25 Defendant asserts that the individual plaintiffs were sent to Cypress Estates by the City of  
26 Reedley because their apartment building was condemned. Defendants reportedly accepted  
27 Plaintiffs at the request of the City.

1           2.     Plaintiffs' Request 25

2                     Request Number 25: All occupancy surveys, affidavits or other documents  
3 prepared or obtained by defendants with the purpose of verifying the ages of  
4 residents at the Cypress Estates apartment complex.

5           3.     Defendants' Response

6                     Response: OBJECTION. The documents include the application; the lease  
7 agreement; and verification of the information, by the manager. Responding party objects  
8 to this request on the grounds that it is unduly burdensome, oppressive and over broad.  
9 Responding party further objects to this request on the grounds that it seeks third party  
10 information that responding party cannot provide without said third party's knowledge  
11 and consent, as it would violate their right of inalienable privacy. Any documents would  
12 be in the possession of Cypress Estates, Inc., (4478 W. Spaatz Ave. Fresno, CA 93722),  
13 and will not be produced without a court order. The plaintiff files will be produced.

14           4.     Analysis

15                     As with the previous requests for production, Defendant Nunez' objections are overruled.  
16 Plaintiffs' motion to compel a response to Request for Production 25 is GRANTED. Defendant  
17 Nunez shall redact Social Security numbers and third-party personal financial information from  
18 the requested records. Thereafter, Defendant Nunez shall produce the redacted records to  
19 Plaintiffs within thirty (30) days of the date of this order

20     **C.     Defendants' Financial Records**

21           1.     Plaintiffs' Requests 14-18

22                     Request Number 14: A copy of any net worth statement prepared by or on behalf  
23 of each defendant at any time since January 1, 2006, including but not limited to any loan  
24 or credit applications.

25                     Request Number 15: A copy of any appraisal conducted at any time since January  
26 1, 2006 of any business or personal or real property owned by each defendant.

27                     Request Number 16: A copy of all 2009 or 2010 year-end statements reflecting  
28 the account number and balance of any accounts controlled by or accessible to each  
defendant, including savings, checking, annuities, or mutual, stock or bond funds.

Request Number 17: A copy of all 2009 or 2010 year-end statements reflecting  
the account number and balance of any loans or indebtedness of each defendant,  
including but not limited to mortgages, vehicle or boat loans, or tax liens.

Request Number 18: A copy of schedule C to each individual defendants' most  
recent IRS income tax return, as filed by the defendant, and a copy of the most recent IRS  
income tax return for Cypress Estates, Inc.

