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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES LANIER,)	1:11-cv-01613-LJO-GSA
)	
Plaintiff,)	
v.)	ORDER RE. PLAINTIFF’S MOTION TO
)	COMPEL SUPPLEMENTAL RESPONSES TO
)	REQUESTS FOR PRODUCTION OF
)	DOCUMENTS
CLOVIS UNIFIED SCHOOL DISTRICT,)	
and DOES 1 to 18,)	
)	(Document 58)
Defendants.)	

Pending before the Court is Plaintiff James Lanier’s (“Plaintiff”) motion to compel Defendant Clovis Unified School District (“Defendant”) to provide further responses to his Requests for Production of Documents, Set Two (“RFP”). (Doc. 58). Specifically, Plaintiff seeks further responses to RFP “Nos. 1, 2 and 4 through 70.” (Doc. 58). The parties have filed separate statements regarding the discovery disagreement, which the Court will accept in lieu of the requisite Joint Statement, in this instance. Taking the matter under submission, the Court GRANTS Plaintiff’s motion as to RFP Nos. 1, 2, and 4, and DENIES Plaintiff’s motion as to RFP Nos. 5 through 69.¹

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¹ Plaintiff’s Motion to Compel seeks further responses to Plaintiff’s Requests for Production of Documents, Set Two, Nos. 1, 2 and 4 through 70. However, Plaintiff’s Requests for Production of Documents, Set Two only contains 69 requests.

1 **FACTUAL BACKGROUND**

2 Pro Se Plaintiff James Lanier, the African-American owner of an accredited sports
3 officiating business called SportsTime Officials Association, brings this action pursuant to Title
4 VI and VII of the Civil Rights Act of 1964.²

5 With respect to his Title VI claim, Plaintiff alleges that Defendant Clovis Unified School
6 District discriminated against him on the basis of his race, in the process of awarding contracts
7 for sports officiating services for the 2010-2011 and 2011-2012 school years. (Doc. 23). Mr.
8 Lanier sought to provide sports officiating services to Clovis Unified as an independent
9 contractor. (Doc. 23). Specifically, in May 2010, in response to an invitation from Clovis
10 Unified, Mr. Lanier submitted a proposal to provide sports officiating services for the 2010-2011
11 school year. (Doc. 23). In June 2010, he was informed that the contract was awarded to, and
12 split between, the white-owned businesses which had also submitted bids, including California
13 Sports Officials Association (CSOA) and San Joaquin Valley Officials Association (SJVOA).
14 (Doc. 23). Plaintiff alleges that Clovis Unified’s selection process foreclosed the selection of
15 businesses owned by racial minorities. Plaintiff further alleges that Clovis Unified improperly
16 renewed its contractual relationship with CSOA and SJVOA for the following school year,
17 thereby denying Plaintiff access, based on racial discrimination, to a contract for the 2011-2012
18 school year as well. (Doc. 23).

19 Plaintiff also raises Title VII employment discrimination claims against Clovis Unified,
20 specifically disparate treatment, disparate impact and retaliation claims.³ (Doc. 23). However,
21 the record indicates that Mr. Lanier was not an employee, former employee or prospective
22 employee of Clovis Unified during the time period relevant to this matter.

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24 ///

26 ²Plaintiff’s sports officiating business has been accredited by the California Interscholastic Federation since
27 2005. (Doc. 23).

28 ³The Title VII claims asserted in Plaintiff’s First Amended Complaint are not clearly identified. Plaintiff
appears to be raising disparate treatment, disparate impact and retaliation claims.

1 **PROCEDURAL HISTORY**

2 On September 23, 2011, Plaintiff filed a complaint alleging violations of Title VI, 42
3 U.S.C. § 2000d; California Education Code § 220 *et seq.*; and “the Continuous Violations
4 Doctrine 79 Cal. App. 4th 570.” (Doc. 1). After a screening of Plaintiff’s pro se complaint
5 pursuant to 28 U.S.C. 1915(e)(2), the District Court dismissed Plaintiff’s state law claims with
6 prejudice but allowed his Title VI claim to proceed. (Doc. 5). Defendant brought a motion to
7 dismiss on February 24, 2012. (Doc. 13). Plaintiff responded by filing, pro se, a First Amended
8 Complaint (FAC), on March 16, 2012, which was not screened by the Court. The FAC retains
9 Plaintiff’s Title VI claim (race-based discrimination in the awarding of sports officiating
10 contracts for the 2010-2011 and 2011-2012 school years) and adds two new Title VII claims
11 pursuant to 42 U.S.C. § 2000e-2 (disparate treatment/disparate impact discrimination in
12 employment) and § 2000e-3 (retaliation). (Doc. 23).

13 Defendant brought a motion to dismiss Plaintiff’s First Amended Complaint, challenging
14 the Title VI claim on a number of grounds, and the Title VII employment discrimination claims
15 solely on a res judicata theory, with reference to one of Plaintiff’s prior cases before this Court
16 (No. 1:09-cv-02084). (Doc. 25). Defendant’s motion to dismiss the FAC was denied in its
17 entirety by the district court on April 14, 2012. (Doc. 32).

18 On September 25, 2012, Plaintiff served on Defendant his Request for Production of
19 Documents, Set One, requesting documents pertaining to seventy categories. (Doc. 61). In
20 response, Defendant produced documents responsive to RFP Nos. 1, 3 and 4, and represented,
21 with respect to RFP No. 5, that all responsive documents had already been provided as part of
22 Defendant’s initial disclosures. (Doc. 61). On December 11, 2012, Plaintiff served his Request
23 for Production of Documents, Set Two, which was identical to Set One except that RFP No. 5 in
24 Set One was excluded from Set Two, and Set One RFP Nos. 6-70 were renumbered RFP Nos. 5-
25 69 respectively, in Set Two. (Docs. 61, 58 Exh. A and Exh. C). Defendant did not produce any
26 documents in response to Plaintiff’s Requests for Production of Documents, Set Two. Rather,
27 Defendant objected to all the requests in Set Two on multiple grounds, including that each
28 request had already been addressed in Defendant’s response to Plaintiff’s Requests for

1 Production of Documents, Set One. (Doc. 61). Thereupon, Plaintiff filed the instant motion to
2 compel further responses to his Requests for Production of Documents, Set Two.

3 DISCUSSION

4 The instant motion to compel pertains to Set Two of Plaintiff's Requests for Production
5 of Documents ("RFP"), and specifically seeks supplemental responses to RFP Nos. 1, 2 and 4
6 through 69 therein. (Doc. 58). RFP Nos. 1, 2 and 4 are relevant to Plaintiff's Title VI claim,
7 while RFP Nos. 5 - 69 appear to be related to Plaintiff's Title VII claims (see discussion below).

8 A. RFP No. 1

9 Plaintiff's RFP No. 1 seeks the minutes of all Clovis Unified board, administration and
10 athletic directors' meetings relating to the awarding of the school district's sports officiating
11 services contracts for the 2010-2011 and 2011-2012 school years. (Doc. 58, Exh. C).

12 Defendant objected to this request "on the grounds that it is compound, vague,
13 ambiguous, overbroad, overly burdensome, [and] seeks to violate the deliberative process
14 privilege, attorney-client privilege and work-product doctrine." Defendant further objected that
15 this request was identical to RFP No. 1 in Plaintiff's Requests for Production of Documents, Set
16 One, and hence had already been "asked and answered." In its response to this same request in
17 Set One, Defendant had agreed to "produce all non-privileged documents responsive to this
18 request not already produced through initial disclosures." (Doc. 58, Exh. A).

19 Given the defined scope and time-frame of this request, and its direct relevance to
20 Plaintiff's Title VI claim, Defendant's objections to this request are misplaced. Defendant is
21 hereby ordered to provide the minutes of all Clovis Unified meetings relating to the following:
22 (1) the awarding of all sports officiating services contracts for the 2010-2011 school year;
23 (2) the decision not to re-open the bidding process for sports officiating services contracts for the
24 2011-2012 school year; and
25 (3) the renewal, extension and/or reformulation of the 2010-2011 contracts to make them
26 applicable to the 2011-2012 school year.

27 To the extent that Defendant asserts a specific privilege with respect to any responsive
28 documents, Defendant shall file an itemized privilege log identifying the date of, and generally

1 describing, the withheld documents, and specifying the nature and applicability of the privilege
2 being invoked. Rule 26(b)(5)(A), Fed. R. Civ. P. Defendant’s boilerplate and blanket assertion
3 of multiple privileges in its responses to Plaintiff’s RFPs is improper. A party claiming a
4 privilege or work-product protection “must provide sufficient information to enable other parties
5 [and the court] to evaluate the applicability of the claimed privilege or protection.” *Burlington*
6 *N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1148 (9th Cir. 2005)
7 (quoting Fed. R. Civ. P. 26(b)(5) advisory committee note (1993 Amendments)). “[B]oilerplate
8 objections or blanket refusals inserted into a response to a Rule 34 request for production of
9 documents are insufficient to assert a privilege.” *Id.* at 1149. Failure to file a privilege log
10 within the 30-day time limit for responding to a request for production of documents is grounds
11 for a finding of waiver. *Id.*; Rule 34, F. R. Civ. P. Defendant is reminded, further, that “when
12 advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and
13 illuminate the issues,” the spirit of the discovery rules is violated. *Id.*

14 **B. RFP No. 2**

15 Plaintiff’s RFP No. 2 seeks all contracts and subcontracts relating to work performed by
16 SportsTime Officials Association for Clovis Unified from 2004 to the present. (Doc. 58, Exh.
17 C).

18 Defendant did not produce any documents in response to this request, noting:

19 Defendant objects to this request on the grounds that it is compound, vague,
20 ambiguous, overbroad, overly burdensome, seeks to violate the deliberative
21 process privilege, attorney-client privilege and work-product doctrine. Further,
22 any documents responsive to this request are equally available to Plaintiff as he
23 would have been provided a copy of the contract. Further this request is improper
24 as it is identical to Request No. 2 of Set One which has already been asked and
25 answered.

26 Rule 26(b)(1), F. R. Civ. P., allows a party to “obtain discovery regarding any matter, not
27 privileged, which is relevant to the claim or defense of any party.” Plaintiff’s RFP No. 2 seeks
28 documents clearly relevant to his Title VI claim, and limits the documents sought to a reasonable
time-frame. Accordingly, Defendant is ordered to produce all documents related to work
performed by SportsTime Officials Association for Clovis Unified from 2004 to the present,
including any contractual and sub-contractual documents.

1 To the extent that Defendant asserts a specific privilege with respect to any responsive
2 documents, Defendant shall file an itemized privilege log identifying the date of, and generally
3 describing, the withheld documents, and specifying the nature and applicability of the privilege
4 being invoked. Rule 26(b)(5)(A), Fed. R. Civ. P. As discussed above, Defendant's blanket
5 assertion of multiple privileges in response to RFP No. 2 is improper. "Such assertions disable
6 the court and the adversary party from testing the merits of the claim of privilege." *United States*
7 *v. El Paso Co.*, 682 F.2d 530, 541 (5th Cir. 1982); *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist.*
8 *Court for Dist. of Mont.*, 408 F.3d 1142, 1148 (9th Cir. 2005).

9 **C. RFP No. 4**

10 Plaintiff's RFP No. 4 seeks "contracts or subcontracts that identify any contract work
11 between [Clovis Unified] and San Joaquin Valley Officials Association from 2000 to the
12 present."

13 In its response to the identical request in Plaintiff's Request for Production of Documents,
14 Set One, Defendant objected on multiple grounds and made boilerplate assertions of privilege,
15 but agreed to produce "all non-privileged documents responsive to this request for the time
16 periods at issue in this case (i.e. 2010-2012) which have not already been produced." (Doc. 58,
17 Exh. A). With respect to this request in Plaintiff's Request for Production of Documents, Set
18 Two, Defendant again objected:

19 Defendant objects to this request on the grounds that it is irrelevant, compound,
20 vague, ambiguous, overbroad, overly burdensome, seeks to violate attorney-client
21 privilege and work-product doctrine, and third party privacy rights. Further this
22 request is improper as it is identical to Request No. 4 of Set One which has
23 already been asked and answered.

24 In light of Plaintiff's contention that Clovis Unified contracted with SJVOA from 1939 to
25 2008 for sports officiating services, and then again from 2010 to 2012, Plaintiff's request for
26 documents relating to contracts or sub-contracts concerning SJVOA's provision of sports
27 officiating services for Clovis Unified is warranted, however the time-frame identified by
28 Plaintiff (2000 to the present) is unreasonable. (Doc. 23). Responsive documents from 2005 to
the present would be sufficient for Plaintiff's purposes without imposing an undue burden on
Defendant. Accordingly, Defendant is ordered to produce all contracts or sub-contracts

1 concerning SJVOA’s provision of sports officiating services for Clovis Unified from 2005 to the
2 present.

3 To the extent that Defendant asserts a specific privilege with respect to any responsive
4 documents, Defendant shall file an itemized privilege log identifying the date of, and generally
5 describing, the withheld documents, and specifying the nature and applicability of the privilege
6 being invoked. Rule 26(b)(5)(A), Fed. R. Civ. P. As discussed above, Defendant’s blanket
7 assertion of multiple privileges in response to RFP No. 2 is improper.

8 **D. RFP Nos. 5 - 69**

9 RFP Nos. 5-69 are designed to obtain broad discovery to provide statistical support for a
10 disparate impact claim based on the effect of Clovis Unified’s hiring policies on racial
11 minorities. Plaintiff bases these requests on the following rationale set forth in his papers:

12 Plaintiff contends that the requested information is relevant, and that it would
13 allow him to show statistically that over time [Defendant] has discriminated
14 against African-American contractors. Racial discrimination can result from
15 individual behavior as well as the unintended and often unconscious consequences
16 of a discriminatory system. Systemic discrimination can be described as patterns
of behavior, policies or practices that are part of the structures of an organization,
and which create or perpetuate disadvantage for racialized persons. Defendants
should have been aware that their “normal way of doing things” may be having a
negative impact on racialized persons.

17 (Doc. 67). Since RFP Nos. 5-69 seek documents relating to disparate impact discrimination, as
18 clear from the foregoing excerpt from Plaintiff’s papers, these requests necessarily pertain to
19 Plaintiff’s Title VII disparate impact claim.⁴ These requests are clearly not relevant to Plaintiff’s

21 ⁴RFP Nos. 5-29 seek documents identifying all contractors and subcontractors who
22 worked on the building and completion of numerous high, middle, and elementary schools in
23 Clovis Unified, while RFP No. 30 seeks documents identifying African-American contractors
and subcontractors who have worked on all school district construction projects. (Doc. 58, Exh.
C).

24 RFP Nos. 31-55 seek documents identifying all “staff personnel” hired at numerous high,
25 middle, and elementary schools in Clovis Unified since the inception of each school. RFP No.
26 56 seeks documents identifying the hiring of all “Clovis Unified School District staff
27 administration and/or administration support personnel” since 1995. RFP No. 57 seeks
documents identifying the hiring of all African-American “Clovis Unified School District staff
administration and/or support personnel” since 1995. (Doc. 58, Exh. C).

28 RFP No. 58 seeks documents identifying the hiring of all “Clovis Unified School District
administrative personnel” since 1995. RFP No. 59 seeks documents identifying the hiring of all

1 Title VI claim as Title VI provides a private right of action only for claims of intentional
2 discrimination, not for disparate impact claims.⁵ Further, Plaintiff’s Title VI claim in the FAC
3 does not allege disparate-impact discrimination, but rather alleges that Clovis Unified
4 specifically discriminated against him, on the basis of his race, during the process of selecting an
5 independent contractor to provide sports officiating services for the district. (Doc. 23).

6 Given that RFP Nos. 5-69 pertain to Plaintiff’s Title VII claim pursuant to 42 U.S.C. §
7 2000e-2, the Court denies Plaintiff’s motion to compel further responses to these requests. As
8 Plaintiff does not qualify for Title VII relief as a matter of law, the requested discovery will not
9 assist Plaintiff in litigating his Title VII claims and is rendered irrelevant. Title VII forbids an
10 employer from discriminating against its employees on the basis of race, color, religion, sex, or
11 national origin. 42 U.S.C. § 2000e-2. Title VII also protects employees from retaliation. 42
12 U.S.C. § 2000e-3. However, “Title VII protects employees, but does not protect independent
13 contractors.” *Adcock v. Chrysler Corp.*, 166 F.3d 1290, 1292 (9th Cir. 1999). Thus, an
14 individual is “entitled to the protections of Title VII only if she is an employee.” *Murray v.*
15 *Principal Fin. Group, Inc.*, 613 F.3d 943, 944 (9th Cir. 2010). “Determining whether a
16 relationship is one of employment or independent contractual affiliation requires a fact-specific

17 such personnel, since, 1995, who are of African-American descent. (Doc. 58, Exh. C).

18 RFP Nos. 60-63 seek documents identifying the hiring, since 1995, of, respectively, all
19 Clovis Unified school principals, athletic directors, “high school and middle school varsity level
20 sports coaches,” and “high school and middle school varsity level sports athletic trainers,” who
21 are of African-American descent. (Doc. 58, Exh. C).

22 RFP Nos. 64-69 seek documents identifying, respectively, the number of all “staff
23 administration and/or administration support personnel positions,” “administrative personnel”
24 positions, school principals, “athletic director positions,” “sports coach positions,” and “athletic
25 trainer positions” employed by the school district since 1995. (Doc. 58, Exh. C).

26 ⁵See *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) (plaintiff had no private right of
27 action under Title VI for alleged national origin discrimination based on the effect of the
28 Alabama Department of Public Safety's decision to administer the state driver's license
examination only in English); see also *Colwell v. Dep't of Health & Human Servs.*, 558 F.3d
1112, 1129 (9th Cir. 2009) (physician plaintiffs were not potentially liable to their limited-
English-proficient patients, under Title VI, “for the Supreme Court has held that there is no
private right of action for disparate impact discrimination under Title VI”); *Partida v. Page*, 2012
WL 691789 (E.D. Cal. Mar. 2, 2012).

1 inquiry which depends on the economic realities of the situation.” *Adcock*, 166 F.3d at 1292
2 (internal quotation marks omitted). In his FAC, Plaintiff does not allege that he was ever
3 employed or attempted to gain employment with Clovis Unified. Nor does he allege facts that
4 demonstrate the existence of an employment relationship. Rather, Mr. Lanier alleges that Clovis
5 Unified discriminated and retaliated against him by denying his independent business a sports
6 officiating contract. Because Mr. Lanier does not does not allege an employment relationship
7 with Clovis Unified, his Title VII claims necessarily fail. *See Murray*, 613 F.3d at 944. The
8 Court therefore denies Mr. Lanier’s motion to compel further discovery related to his Title VII
9 claims.

10 **ORDER**

11 Plaintiff’s motion to compel is GRANTED IN PART. Defendants shall produce, by May
12 14, 2013, documents responsive to Plaintiff’s RFP Nos. 1, 2 and 4 as delineated above. The
13 April 15, 2013 discovery cut-off date will not apply to the production of documents in
14 accordance with this order. All other dates, deadlines and other terms specified in the Scheduling
15 Order issued on July 9, 2012, shall remain in full force and effect.

16
17 IT IS SO ORDERED.

18 Dated: May 7, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE