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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT FELIX and JACK PHELPS,
individuals,

Plaintiffs,

v.

Case No. 1:13-cv-561-SKO

**ORDER ON PLAINTIFF'S
MOTION TO COMPEL**

(Doc. No. 38)

THE STATE OF CALIFORNIA,
DEPARTMENT OF DEVELOPMENTAL
SERVICES, OFFICE OF PROTECTIVE
SERVICES,

Defendants.

_____ /

I. INTRODUCTION

Plaintiffs Robert Felix and Jack Phelps filed this action on April 17, 2013, alleging claims against the State of California, the Department of Developmental Services, and the Office of Protective Services. On July 17, 2013, the Court dismissed Plaintiff Phelps's Title VII claim for harassment based on race or national origin and struck certain allegations and arguments from the complaint. (Doc. 17.)

On November 15, 2013, the Court signed a stipulation for protective order and protective order agreed to by the parties, which comprehensively protected medical records and information and personnel files or documents. (Doc. 29, 1-2.) Under the terms of the protective order, such

1 documents would be marked “CONFIDENTIAL” and “the information contained therein, and any
2 summaries, copies, abstracts, or other documents derived in whole or in part from material
3 designated as confidential shall be used only for the purpose of this action, and for no other
4 purpose[,]” disclosed or made available only to counsel or their retained experts, and sensitive
5 personal identifying information would be redacted. (Doc. 29, 2-3.)

6 Defendant Department of Developmental Services (“Defendant” or “DDS”) filed a Motion
7 to Compel the City of Exeter / Exeter Police Department (“City of Exeter”)¹ to comply with a
8 Subpoena Duces Tecum on September 17, 2014. (Docs. 38 and 39.) Defendant contends it served
9 a valid subpoena on the City of Exeter to produce documents, and asks the Court to order the City
10 of Exeter to comply, with a proposed modification moving the location of production to the City
11 of Exeter’s personnel file storage facility.

12 Plaintiff Felix has not moved to quash or modify the subpoena, and declined to file an
13 opposition to Defendant’s Motion to Compel. On October 28, 2014, having reviewed Defendant’s
14 Motion and supporting documentation, the Court determined the matter was suitable for decision
15 without oral argument pursuant to Local Rule 230(g), vacated the hearing set for October 29,
16 2014, and the matter was taken under submission.

17 For the reasons set forth below, Defendant’s Motion to Compel the City of Exeter / Exeter
18 Police Department to Comply is GRANTED with the modified location of production.

19 II. BACKGROUND

20 A. Allegations of the Complaint

21 Plaintiff Felix (“Felix”) is a Hispanic male who is over 40 years old and at all times
22 relevant to this case was employed as a Special Investigator I by the DDS in Porterville,
23 California. He alleges that over the course of several years, DDS employees harassed and
24 retaliated against him, and that the Defendant failed to prevent or remedy this discrimination and
25 retaliation.

26 Specifically, Felix alleges that as a result of the harassment and retaliatory actions taken

27 ¹ Defendant also served a subpoena on Sue Enterline, L.C.S.W., for Felix’s mental health records. (Doc. 39.)
28 Since the Motion was filed, Ms. Enterline complied with the subpoena, and Defendant has withdrawn the Motion as
moot. (Doc. 40.)

1 against him by Defendant’s employees, he suffered and will continue to suffer mental and
2 emotional suffering and distress, (Doc. 19, ¶¶ 15, 17, 28, 34, 73, 90, 101, 112, 121-22, 128-29,
3 135-36, 143-44, 151, 157-58,) and has lost past, present, and future income and benefits. (Doc. 19,
4 ¶¶ 91, 100, 111, 121, 150, 157.)

5 **B. Defendant’s Request for Production of City of Exeter’s Personnel Records**

6 In his first amended complaint, Felix alleges that he has suffered and will suffer harm from
7 Defendant’s discrimination and retaliation in the form of lost wages and other past and future
8 benefits, as well as lack of ability to advance his career. (Doc. 19, ¶¶ 90, 111, 128, 135, 150.)
9 During the Equal Employment Opportunity Commission (“EEOC”) investigation of his
10 complaints against the Defendant, Felix claimed Defendant’s conduct had “severely affected both
11 his personal and professional life.” (Doc. 38, Horst Decl., ¶2, Exhs. A and B.) Felix went off
12 work in 2011 and filed a disability retirement application due to his sight issues (Doc. 38, Horst
13 Decl., ¶¶ 3, 4), which he attributes to the physical effects of the stress and strain he allegedly
14 suffered as a consequence of Defendant’s conduct. (Doc. 19, ¶73.) During Felix’s August 14-15,
15 2014, deposition, he confirmed that he had filed an application for and been granted a disability
16 retirement due to his reduced ability to see, and that he worked for and continues to work for the
17 City of Exeter as a uniformed police officer working on a motorcycle. (Doc. 38, Horst Decl., ¶ 4,
18 Exh. C at 6:21-7:13, 9:15-25, 19:1-17, 21:24-22:22, 23:2-24:22, 25:10-19, 25:23-26:6, 263:15-19,
19 263:25-264:3, 2653-14.)

20 Seeking to investigate Felix’s claims that discrimination and harassment by the Defendant
21 had severely adversely affected both his personal life and professional career, Defendant served
22 Plaintiff’s counsel with advance notice of a subpoena seeking the City of Exeter’s personnel
23 records on July 30, 2014, and on July 31, 2014, Defendant served a subpoena on the City of
24 Exeter seeking production of Felix’s personnel records.² (Doc. 38, Horst Decl., ¶¶ 5, 8.)

25 Prior to the August 21, 2014, response deadline, counsel for the City of Exeter objected to
26 the Request for Production, on the bases that the location for the production of documents is more

27 ² Subpoenas were sent out for both plaintiffs, but based on Plaintiff Phelps’ deposition testimony that he never
28 worked for the City of Exeter, Defendant only seeks to compel production of Plaintiff Felix’s personnel records from
the City of Exeter.

1 than 100 miles from the City of Exeter and that the personnel file for Felix is protected from
2 disclosure under 5 U.S.C. §§ 552(b)(5-7) of the Freedom of Information Act. (Doc. 38, Horst
3 Decl., Exh. E.) As of the time this Motion was filed, the City of Exeter had not complied with the
4 subpoena and had not produced a copy of the personnel records to defense counsel. (Doc. 38,
5 Horst Decl., ¶ 11.)

6 III. ANALYSIS

7 A. Legal Standard

8 The purpose of discovery is to narrow and clarify the issues in dispute, *Hickman v. Taylor*,
9 329 U.S. 495, 501 (1947), making trial “less a game of blind man’s bluff and more a fair contest
10 with the basic issues and facts disclosed to the fullest practicable extent possible.” *United States*
11 *v. Procter & Gamble*, 356 U.S. 677, 683 (1958). The scope of discovery under the Federal Rules
12 of Civil Procedure is extremely broad, and a relevant matter includes any matter that bears on, or
13 that reasonably could lead to other matters that could bear on, any issue that is or may be relevant
14 in the case. Fed. R. Civ. P. 26(b).

15 Because discovery is designed to define and clarify the issues, it is not limited to only
16 those issues raised specifically in the pleadings. *Haney v. Woods*, 2:11-CV-2196-JAM-EFB,
17 2013 WL 870665 at *1 (E.D. Cal. Mar. 7, 2013) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437
18 U.S. 340, 350-51 (1978)). “The question of relevancy should be construed liberally and with
19 common sense” and discovery should be allowed unless the information sought “has no
20 conceivable bearing on the case[.]” *Miller v. Pancucci*, 141 F.R.D. 292, 296 (C.D. Cal. 1992)
21 (citing *Oppenheimer Fund*, 437 U.S. at 351).

22 “When a party resists discovery, he ‘has the burden to show that discovery should not be
23 allowed, and has the burden of clarifying, explaining, and supporting its objections.’” *Soto v.*
24 *Castlerock Farming and Transport, Inc.*, 282 F.R.D. 492, 498 (E.D. Cal. 2012) (quoting *Oakes v.*
25 *Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal.1998)). The court has the power to quash
26 or modify any subpoena requiring disclosure of privileged or other protected matter or subjecting a
27 producing party or non-party to undue burden in production. Fed. R. Civ. P. 45(b)(1). Even
28 where, as here, the plaintiff has not opposed the Motions to Compel or moved to quash the

1 subpoenas,³ the Court retains broad discretion to determine whether a subpoena is unduly
2 burdensome, *Exxon Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d 774, 779 (9th Cir. 1994), or
3 seeks to compel production of documents regarding topics unrelated or outside the scope of the
4 litigation. *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813-14 (9th Cir. 2003). The
5 court “balances the relevance of the discovery sought, the requesting party’s need, and the
6 potential hardship to the party subject to the subpoena” in determining whether the subpoena is
7 proper. *Edwards v. Cal. Dairies, Inc.*, 1:14-MC-00007-SAB, 2014 WL 2465934 at *2 (E.D. Cal.
8 June 2, 2014), *reconsideration denied*, 1:14-MC-00007-SAB, 2014 WL 3420991 (E.D. Cal. July
9 14, 2014) (quoting *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 679-680 (N.D. Cal. 2006)).

10 **B. Defendant Is Entitled to a Copy of Plaintiff Felix’s Personnel Records, With**
11 **Production Set Within 100 Miles of the City of Exeter**

12 In its August 4, 2014, objections, the City of Exeter refused to comply with the subpoena
13 on two grounds. First, that the production of employee personnel files was prohibited under
14 5 U.S.C. §§ 552(b)(5-7) of the Freedom of Information Act. Second, that the location of the
15 production was more than 100 miles outside of the City of Exeter. Concluding that “the City
16 Attorney should not be balancing the competing privacy/discovery interests between the parties[.]”
17 the City of Exeter invited defense counsel to “request the court to do so.” (Doc. 39, Horst Decl.,
18 Exh. F.) The Court is able to resolve the City’s objections without conducting a lengthy balancing
19 test.

20 **1. The Freedom of Information Act is Inapplicable to Records Maintained by a**
21 **State Agency**

22 Put simply, the Freedom of Information Act applies only to agencies of the United States –
23 it is *not* applicable to state agencies like the City of Exeter or Exeter Police Department. 5 U.S.C.
24 § 551(1); *see St. Michael's Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373 (9th

25 ³ Plaintiff Felix also declined to object to the subpoena itself, but his failure to do so did not waive any
26 possible objections he could have raised in an Opposition. See Fed. R. Civ. P. 45(d)(2)(b) (the responsibility to make
27 objections to a Rule 45 subpoena duces tecum belongs to the nonparty serviced with the subpoena); *McCoy v.*
28 *Southwest Airlines Co.*, 211 F.R.D. 381, 384 (C.D. Cal. 2002) (“Only the nonparty can prevent disclosure by
objection. The party to whom the subpoenaed records pertain cannot simply object.”) As it is undisputed that the City
of Exeter timely served written objections to the subpoenas, it is not obligated to produce documents until Defendant
obtains an order from the Court directing compliance, irrespective of Plaintiff’s silence on the matter. *See Pennwalt*
Corp. v. Durand-Wayland, Inc., 708 F.2d 492, 494 (9th Cir. 1983).

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Accordingly, IT IS HEREBY ORDERED that:

1. Defendant's Motion to Compel Compliance With Subpeona Duces Tecum as to the City of Exeter / Exeter Police Department is GRANTED as modified with regard to the location of production.

IT IS SO ORDERED.

Dated: October 28, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE