

1 12), Ortiz leaving his job in July 2015 (No. 14), and Ortiz’s re-hiring in September 2015 (No. 18).
2 Plaintiff also moves to compel an answer to an interrogatory asking why Ortiz left his job in July
3 2015 (Interrogatory No. 4).

4 Plaintiff argues that the requested information is central to his case. Defendant refused to
5 produce the requested information on the grounds doing so would violate the privacy rights of
6 Leonardo and Ortiz.

7 B. Meet and Confer

8 The parties met and conferred in person on January 4, 2017, and resolved several issues,
9 but not the ones set forth above.

10 II. ANALYSIS

11 A. What Law Governs?

12 “Pursuant to Erie and its progeny, federal courts sitting in diversity apply state substantive
13 law and federal procedural law.” Feldman v. Allstate Ins. Co., 322 F.3d 660, 666 (9th Cir.), cert.
14 denied, 540 U.S. 875 (2003). Federal discovery rules apply here.

15 However, defendant is also invoking a privilege based upon privacy rights. “Most
16 evidentiary rules are procedural in nature, and the Federal Rules of Evidence ‘ordinarily govern in
17 diversity cases.’” Feldman, 322 F.3d at 666 (quoting Wray v. Gregory, 61 F.3d 1414, 1417 (9th
18 Cir. 1995)). Here, the applicable evidentiary rule provides: “in a civil case, state law governs
19 privilege regarding a claim or defense for which state law supplies the rule of decision.” Fed. R.
20 Evid. 501; Home Indem. Co. v. Lane Powell Moss & Miller, 43 F.3d 1322, 1328 (9th Cir. 1995)
21 (“[b]ecause Alaska state law supplied the rule of decision with respect to the claims in this case,
22 Alaska privilege rules had to be applied”). Accordingly, California law governs the application
23 of defendant’s privilege assertion.

24 B. Standards

25 Plaintiff is entitled to discovery of “any nonprivileged matter that is relevant” to his
26 “claim ... and proportional to the needs of the case, ... considering ... the importance of the
27 discovery in resolving the issues, and whether the burden ... of the proposed discovery outweighs
28 its likely benefit.” Fed. R. Civ. P. (“Rule”) 26(b)(1). Where, as here, the relevance of the

1 discovery sought is not disputed, defendant, as the party resisting discovery, bears the “heavy
2 burden” of showing why discovery should be denied. See Blankenship v. Hearst Corp., 519 F.2d
3 418, 429 (9th Cir.1975); DIRECTV, Inc. v. Trone, 209 F.R.D. 455, 458 (C.D. Cal. 2002)
4 (resisting party “has the burden to show that discovery should not be allowed, and has the burden
5 of clarifying, explaining, and supporting its objections”).

6 Both sides agree that Ortiz and Leonardo have a privacy interest in the documents and
7 information sought by plaintiff, since they involve personnel matters, and therefore the court must
8 balance plaintiff’s need for the information against the privacy interest:

9 “In the context of discovery of confidential information in
10 personnel files, even when such information is directly relevant to
11 litigation, discovery will not be permitted until a balancing of the
12 compelling need for discovery against the fundamental right of
13 privacy determines that disclosure is appropriate. ... And, even
14 when the balance tips in favor of disclosure, constitutional concerns
15 require a strict circumspection of the scope of the disclosure.”

16 El Dorado Savings & Loan Assn. v. Superior Court, 190 Cal. App. 3d 342, 346 (3rd Dist. 1987)
17 (quoting Cutter v. Brownbridge, 183 Cal. App. 3d 836, 843 (1st Dist. 1986)).

18 Defendant asserts that it has the right to assert the rights of its employees and former
19 employees in this regard, and plaintiff does not dispute this. See Bd. of Trustees v. Superior
20 Court, 119 Cal. App. 3d 516, 525 26 (1st Dist. 1981) (“[t]he custodian [of private information]
21 has the right, in fact the duty, to resist attempts at unauthorized disclosure and the person who is
22 the subject of [it] is entitled to expect that his right will be thus asserted”).

23 C. Resolution

24 The required balancing here is straightforward. Plaintiff’s need for the requested
25 information is clear. Plaintiff’s case is based upon his allegation that defendant fired him – a non-
26 Hispanic supervisor – because it was aware that its Hispanic line workers would not work under
27 non-Hispanic supervisors. Rather than address the workers’ demand that it engage in
28 discrimination, defendant caved in and replaced the non-Hispanic supervisors with Hispanic
supervisors.

Evidence showing that defendant knew that Leonardo – a non-Hispanic supervisor – was
being harassed by the Hispanic line workers is therefore central to plaintiff’s case. Evidence

1 showing that defendant knew that Ortiz quit because he refused to work under a non-Hispanic
2 supervisor, or that he was re-hired to placated the line workers' demands, is also central to
3 plaintiff's case. If this evidence exists, it would be clear evidence that defendant had a motive to
4 fire the non-Hispanic supervisors, and that defendant in fact fired plaintiff because he is not
5 Hispanic, in an effort to end the work slow-down by the Hispanic line workers.

6 Meanwhile it is undisputed that the non-parties' privacy interests can be accommodated
7 by requiring that the requested information be produced under the protective order that the parties
8 recently agreed to. See ECF Nos. 11, 12.

9 III. CONCLUSION

10 For the reasons stated above, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's Motion To Compel (ECF No. 8), is GRANTED in its entirety; and
- 12 2. Defendant shall comply with plaintiff's Document Requests No. 12, 14 and 18, and shall
13 answer plaintiff's Interrogatory No. 4, subject to the terms of the Protective Order.¹

14 DATED: January 26, 2017

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE

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¹ At oral argument, the parties indicated that the other discovery issues addressed in the Joint
28 Statement have been resolved.