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28***E-FILED 9/22/2008***

NOT FOR CITATION
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

PIOTR J. GARDIAS,

No. C07-06242 HRL

Plaintiff,

v.

THE CALIFORNIA STATE UNIVERSITY,
SAN JOSE STATE UNIVERSITY,

Defendant.

**ORDER (1) GRANTING PLAINTIFF'S
 MOTION TO COMPEL DOCUMENTS;
 AND (2) TERMINATING PLAINTIFF'S
 MOTION TO COMPEL RE
 DEFENDANT'S SEPTEMBER 4, 2008
 NOTICE OF DEPOSITION**

[Docket Nos. 29, 32 and 35]

Plaintiff moves to compel documents responsive to several requests for production. The requested documents fall into two general categories: (1) Kym Bersuch's personnel documents pertaining to Bersuch's reassignment to the Facilities Project Supervisor position; and (2) certain letters from Adam Bayer. Defendant opposes the motion. At oral argument, the court also entertained discussion about the scheduling of plaintiff's deposition. Upon consideration of the moving and responding papers, as well as the arguments presented at the September 16, 2008 hearing, the court rules as follows:

Preliminarily, defendant contends that the motion is procedurally deficient because plaintiff failed to meet-and-confer with defense counsel about the requested documents beforehand. Indeed, Gardias is reminded that, before he files any motion with the court, he is obliged to discuss disputes with defense counsel to see if the parties can resolve the matter on

1 their own. See FED.R.CIV.P. 37(a)(1) (“The motion [to compel] discovery] must include a
2 certification that the movant has in good faith conferred or attempted to confer with the person
3 or party failing to make disclosure or discovery in an effort to obtain it without court action.”).
4 The court will not entertain a request or a motion to resolve a disclosure or discovery dispute
5 unless the parties have previously conferred for the purpose of attempting to resolve all
6 disputes. CIV. L.R. 37-1(a). Nevertheless, under the circumstances presented here, it appears
7 that the only requests seriously in dispute concern Kym Bersuch’s personnel files; and,
8 defendant indicates that it will not produce those documents without a court order.
9 Accordingly, this court will address the merits of the instant motion.

10 **1. Kym Bersuch’s Personnel File**

11 Plaintiff seeks documents pertaining to Kym Bersuch’s reassignment from plumber
12 supervisor to Facilities Project Supervisor, including all documents Adam Bayer used to justify
13 that reassignment. Defendant argues that Bersuch’s personnel files are private and that plaintiff
14 has not put the Facilities Project Supervisor position at issue.

15 However, this court finds that plaintiff has raised an issue as to the Facilities Supervisor
16 position in his complaint. (See Complaint at 2:19-20). Defendant says that the position is only
17 temporary and that plaintiff never applied for it. But, at the motion hearing, defense counsel
18 indicated that the Facilities Supervisor position was not posted – i.e., it was not a position for
19 which plaintiff (or anyone else) had an opportunity to apply.

20 Generally, when determining whether to permit discovery of personnel records, federal
21 courts balance the requesting party’s need for the information against the employee’s claims of
22 confidentiality or privacy. See, e.g., Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34 (9th
23 Cir. 1990). Inasmuch as the requests are limited to Bersuch’s reassignment and the reasons for
24 it, the court finds that the documents are relevant or reasonably calculated to lead to the
25 discovery of admissible evidence. See Fed.R.Civ.P. 26(b)(1). Accordingly, plaintiff’s motion
26 as to these documents is GRANTED as to all documents pertaining to Kym Bersuch’s
27 reassignment from plumber supervisor to Facilities Project Supervisor, including all documents
28 Adam Bayer used to justify that reassignment. However, to address any concerns about privacy

1 and confidentiality, Gardias (a) shall maintain the information as confidential; and (b) shall not
2 use the information for any purpose other than to prosecute this lawsuit. Additionally,
3 defendant will be permitted to redact any personal identifying information – birth dates, Social
4 Security numbers, telephone numbers, home addresses and bank account information – from its
5 production. However, defendant will not be permitted to redact names. Defendant shall
6 produce all responsive documents to plaintiff no later than **October 3, 2008**.

7 **2. Adam Bayer’s Letters**

8 Plaintiff moves to compel “Two or Four letters which Adam Bayer Director promise
9 give me and I never received them.” (Plaintiff’s Document Request No. 3). It was not apparent
10 to this court what plaintiff meant. However, based on the discussion at the motion hearing, it
11 appears that plaintiff seeks the production of certain letters written by Adam Bayer sometime
12 after April 2006 (and, possibly, in November 2006) concerning plaintiff’s work performance.
13 Bayer’s letters reportedly were directed or addressed to plaintiff, but plaintiff says that he did
14 not receive them and could not locate them in his personnel file. Defendant represented to the
15 court that all responsive documents pertaining to certain areas of plaintiff’s work performance
16 (e.g., plaintiff’s alleged refusal to speak with Bayer without a union representative) have been
17 produced to him and are in his personnel file. Defense counsel stated that there are some
18 additional documents pertaining to other performance issues. As to these documents, defense
19 counsel believes that they were handed to plaintiff directly, or are in his personnel file.
20 Otherwise, defense counsel represents that there are no other documents to produce.

21 Inasmuch as defense counsel stated that there are some additional documents pertaining
22 to performance issues other than plaintiff’s alleged refusal to speak with Bayer without a union
23 representative, those documents shall be produced to plaintiff, notwithstanding that plaintiff
24 may have already received copies of them. Defendant shall complete its production of these
25 documents by **October 3, 2008**.

26 **3. Plaintiff’s Deposition**

27 As discussed at the motion hearing, the fact discovery cutoff in this matter is extended to
28 October 31, 2008 solely for the purpose of permitting defendant to take plaintiff’s deposition.

1 Plaintiff is expected to confer and cooperate with defendant in scheduling his deposition.
2 Plaintiff is also reminded that defendant is entitled to depose him for up to seven hours
3 (excluding breaks) in this matter. See Fed.R.Civ.P. 30(d)(1). While the deposition may be
4 spread over two days, the court believes that, ideally, the deposition should take place on
5 consecutive days. Plaintiff's request to compel defendant to give him a free copy of the
6 deposition transcript is denied.¹

7 SO ORDERED.

8 Dated: September 22, 2008


9 _____
10 HOWARD R. LLOYD
11 UNITED STATES MAGISTRATE JUDGE

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27 ¹ Except as otherwise stated in this order, the court denies plaintiff's September
28 10, 2008 "Motion to Compel re Defendant's September 4, 2008 Notice of Deposition"
because (a) that motion apparently was filed before plaintiff made any effort to confer about
the issues with defense counsel; and (b) plaintiff's subsequent filings indicate that defendant
agrees to hold the deposition in San Jose and to permit plaintiff to bring his dictionary and
documents to the deposition. (See Docket #32 and #34).

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5:07-cv-6242 Notice has been electronically mailed to:

Mary Susan Cain-Simon Mary.CainSimon@doj.ca.gov, David.Moss@doj.ca.gov

Counsel is responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.

5:07-cv-6242 Notice has been delivered by other means to:

Piotr J. Gardias
72 Floyd St.
San Jose, CA 95110