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28**\*E-FILED 12/8/2008\***

NOT FOR CITATION  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,

**ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL DOCUMENTS**

v.

THE CALIFORNIA STATE UNIVERSITY,  
SAN JOSE STATE UNIVERSITY,**[Docket Nos. 38 and 39]**Defendant.  

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Presently before the court is plaintiff's motion to compel documents. Defendant opposes the motion. No reply was filed and the time for filing one has passed. Pursuant to Civil Local Rule 7-1(b), the court now deems the matter appropriate for determination without oral argument, and the December 16, 2008 hearing is vacated. Upon consideration of the moving and responding papers, this court denies the motion.<sup>1</sup>

On September 22, 2008, the court granted plaintiff's motion to compel defendant to produce (a) all documents pertaining to Kym Bersuch's reassignment from plumber supervisor to Facilities Project Supervisor, including all documents Adam Bayer used to justify that

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<sup>1</sup> With the sole exception for the completion of plaintiff's deposition, fact discovery closed on October 1, 2008. The instant discovery motion was filed after the deadline for filing any motions to compel. See Civ. L.R. 26-2. The court has nevertheless accepted and considered the motion. At the September 16, 2008 hearing on plaintiff's prior discovery motion, the court indicated that it would entertain disputes as to defendant's production of the Bersuch documents and Bayer letters that the parties could not resolve on their own.

1 reassignment; and (b) documents pertaining to plaintiff's performance issues (other than  
2 plaintiff's alleged refusal to speak with Bayer without a union representative).

3 With respect to the Bersuch documents, Gardias now contends that defendant failed to  
4 produce Bersuch's original resume and application for employment with the University.  
5 Defendant represents that it has produced all of the documents ordered by the court.  
6 Additionally, defendant says that, in an effort to avoid the necessity of the instant motion, it also  
7 produced a copy of Bersuch's resume. Indeed, plaintiff now seems to be seeking documents  
8 that go beyond the scope of his document requests and this court's prior discovery order.

9 As for the "two or four letters" from Adam Bayer that plaintiff previously moved to  
10 compel, it was not clear what the referenced "two or four letters" were, and plaintiff's  
11 description of them was exceedingly vague. Based on the discussion at the previous motion  
12 hearing, the court could discern only that Gardias sought certain letters written by Adam Bayer  
13 sometime after April 2006 (and, possibly, in November 2006) concerning plaintiff's work  
14 performance. At the hearing on plaintiff's previous motion to compel, defendant represented to  
15 the court that (a) all responsive documents pertaining to certain areas of plaintiff's work  
16 performance (e.g., plaintiff's alleged refusal to speak with Bayer without a union representative)  
17 had been produced; and (b) there were some additional documents pertaining to other  
18 performance issues that defendant believed plaintiff had either received or which were located  
19 in his personnel file. This court ordered defendant to produce the additional documents  
20 pertaining to performance issues other than plaintiff's alleged refusal to speak with Bayer  
21 without a union representative, notwithstanding that plaintiff may have already received copies  
22 of them. Defendant represents that it has produced all of those documents. Although plaintiff  
23 complains that the "two or four letters" from 2006 have not been produced, it is not apparent to  
24 this court that there are any further documents that can be ordered produced.

25 Finally, this court finds no basis for plaintiff's contention that defendant has redacted  
26 names from its document production. Instead, it appears that defendant's copies of the  
27 documents are rather dark, and signatures are therefore somewhat hard to see. Although  
28 plaintiff requests that defendant be ordered to produce better copies, his own motion papers

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reveal that he already has a clear copy of the document about which he complains (e.g. AGO 2008).

Based on the foregoing, plaintiff's motion to compel is denied.

SO ORDERED.

Dated: December 8, 2008

  
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HOWARD R. LOYD  
UNITED STATES MAGISTRATE JUDGE

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

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**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:**

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