

1 sexual harassment, that uncovered a pattern of inappropriate conduct by Plaintiff towards
2 female employees. Plaintiff contends that the sexual harassment claims were only a pretext
3 for his termination.

4 Plaintiff propounded requests for production of documents on Defendant, seeking
5 among other things, the personnel files for nine of Defendant's employees who gave witness
6 statements during the investigation of the sexual harassment complaint. (ECF No. 21-2 at
7 27-31, Requests Numbers 35-43.) Defendant objected to the requests on grounds that they
8 are overly broad, unduly burdensome, and call for information that is irrelevant, protected
9 by the right to privacy, and protected by the attorney client privilege and/or attorney work
10 product doctrine.¹ (*Id.*) On November 22, 2013, the Court granted the parties' joint request
11 to extend time to file a Joint Motion for Determination of Discovery Dispute concerning the
12 disputed document requests. (ECF No. 18.) After exhausting their efforts to resolve the
13 dispute informally, the parties filed the instant motion on December 27, 2013.

14 Plaintiff requests the Court to compel Defendant to produce all documents responsive
15 to Requests Numbers 35 through 43. Alternatively, Plaintiff proposes the Court should
16 compel production, but order any information regarding the employees' health issues, bank
17 accounts, or social security information be redacted from the responsive documents.
18 Plaintiff argues the personnel files are relevant to test the credibility of the witnesses, to
19 uncover the witnesses' potential bias against Plaintiff, and to reveal any relationships
20 between the witnesses. Plaintiff states the personnel files may also lead to the names of other
21 potential witnesses. Defendant urges the Court to decline to order production of the files.
22 Defendant contends that the employee personnel files are protected by the constitutional
23 right of privacy and Plaintiff has not shown a compelling need for the personnel files, or
24 shown that the information could not be obtained through less intrusive means.

25 II. DISCUSSION

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28 ¹ It appears Defendant has abandoned its objections regarding overbreadth, burden,
and the attorney client privilege/attorney work product doctrine. In the instant motion,
Defendant has only argued that the documents are protected by the constitutional right of
privacy. (*See* ECF No. 21 at 9-12.)

1 **1. Legal Standard**

2 Under Rule 26(b)(1), parties may obtain discovery of “any non privileged matter that
3 is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). “Relevant information
4 need not be admissible at the trial if the discovery appears reasonably calculated to lead to
5 the discovery of admissible evidence.” *Id.* However, the Court must limit discovery if it
6 determines that “the burden or expense of the proposed discovery outweighs its likely
7 benefit, considering the needs of the case, the amount in controversy, the parties’ resources,
8 the importance of the issues at stake in the action, and the importance of the discovery in
9 resolving the issues.” Fed. R. Civ. P. 26(b)(2)(C)(iii). “The party who resists discovery has
10 the burden to show discovery should not be allowed, and has the burden of clarifying,
11 explaining, and supporting its objections.” *Duran v. Cisco Sys., Inc.*, 258 F.R.D. 375, 378
12 (C.D. Cal. 2009) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975);
13 *Sullivan v. Prudential Ins. Co. of Am.*, 233 F.R.D. 573, 575 (C.D. Cal. 2005)).

14 Privacy is a valid objection that can be raised in response to discovery requests.
15 *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35, n. 21 (1984). Because jurisdiction in this
16 action is based upon diversity, state law governs Defendant’s privacy claims. Fed. R. Evid.
17 501; *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 284 (C.D. Cal. 1998). Under
18 California law, personnel records of employees are protected by California’s constitutional
19 right of privacy. Cal. Const., art. I, § 1; *El Dorado Savings & Loan Assn. v. Superior Court*,
20 190 Cal.App.3d 342, 345 (Cal. Ct. App. 1987); *Board of Trustees v. Superior Court*, 119
21 Cal.App.3d 516, 525-26 (Cal. Ct. App. 1981). However, “[t]he constitutional right of
22 privacy is ‘not absolute,’ it may be abridged when, but only when, there is a ‘compelling’
23 and opposing state interest.” *Board of Trustees*, 119 Cal.App.3d at 525.

24 A finding of relevancy, alone, is not enough to justify compelled disclosure of private
25 information. *Board of Trustees*, 119 Cal.App.3d at 525. When private information, such as
26 personnel files, is shown to be relevant, the court must then balance the need for the
27 discovery against the fundamental right of privacy. *Id.*; *Harding Lawson Assoc. v. Superior*
28 *Court*, 10 Cal.App.4th 7,10 (Cal. Ct. App. 1992). “[T]he balance will favor privacy for

1 confidential information in third party personnel files unless the litigant can show a
2 compelling need for the particular documents and that the information cannot reasonably be
3 obtained through depositions or from nonconfidential sources.” *Harding Lawson Assoc.*, 10
4 Cal. App.4th at 10. Even if the balance weighs in favor of disclosure, “the scope of
5 disclosure must be narrowly circumscribed.” *Id.*

6 **2. Requests for Production Numbers 35 Through 43**

7 Here, the Court finds that Requests Numbers 35 through 43 seek information that may
8 be relevant to witness credibility. *See Oakes v. Halvorsen Marine, Ltd.*, 179 F.R.D. 281, 283
9 (C.D. Cal. 1998) (stating that Rule 26 “permits the discovery of information which may
10 simply relate to the credibility of a witnesses or other evidence in the case”). However,
11 because relevance alone is not a sufficient basis invade a non-party’s privacy rights, the
12 Court must consider whether Plaintiff has shown a compelling need for the information. The
13 Court concludes that he has not. Plaintiff’s arguments that the personnel files may contain
14 information that will show witness bias or be useful to test credibility are speculative. *See*
15 *Board of Trustees*, 119 Cal.App.3d at 525 (stating inquiry into one’s private affairs will not
16 be allowed simply because it might lead to relevant evidence). In addition, the Court has
17 reviewed the partial transcript from Theresa Castrejon’s deposition and finds that it does not
18 justify Plaintiff’s request for the personnel files. Therefore, because disclosure of the
19 personnel files would invade the third party employees’ right to privacy under the California
20 Constitution, and because the information is sought to pursue a speculative argument, the
21 Court believes that the employees’ interest in maintaining the privacy of these records
22 outweighs Plaintiff’s need for them. *See Harding Lawson Associates*, 10 Cal.App.4th at 10
23 (finding Plaintiff failed to show a compelling need for confidential documents in third party
24 personnel files).

25 Moreover, Plaintiff is not left without alternative, less intrusive means to inquire into
26 the credibility or potential bias of the third party employees. Plaintiff has the ability to
27 depose the employees who gave witness statements during the sexual harassment
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1 investigation.² Indeed, Plaintiff has already deposed at least one of the witnesses, Theresa
2 Castrejon, and has plans to depose Warden Lawrence, who handled the investigation. (*See*
3 ECF No. 21 at 6; 21-2 at 39-48.) Accordingly, the Court denies Plaintiff's request to compel
4 Defendant to produce the personnel files.

5 **III. CONCLUSION**

6 For the foregoing reasons, Plaintiff's motion to compel is **DENIED**.

7 **IT IS SO ORDERED.**

8 DATED: January 17, 2014

9 
10 **DAVID H. BARTICK**
11 United States Magistrate Judge

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² If Plaintiff determines that he needs to take more than 10 depositions, and the parties are unable to reach a stipulation, the Court is willing to entertain a motion to expand the number of depositions allowed.