

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 TROY STARR; TANA STARR; and
12 BRANDON STARR,

13 Plaintiffs,

14 v.

15 CHRISTOPHER LASH,

16 Defendant.

Case No.: 16CV2064-L(JMA)

**ORDER RE: JOINT MOTION
FOR DETERMINATION OF
DISCOVERY DISPUTE
[DOC. NO. 79]**

17
18 Pursuant to the undersigned's Chambers Rules, on March 21, 2017, the
19 parties filed a Joint Motion for Determination of Discovery Dispute that arises
20 from Plaintiffs Troy and Tana Starr's assertions of a right to privacy with respect
21 to four subpoenas Defendant Christopher Lash served on CIF San Diego, CIF
22 Los Angeles and Taft High School, in Woodland Hills, California. [Doc. No. 79.]

23 **I. BACKGROUND**

24 This case arises from a verbal altercation that took place on October 15,
25 2015, between Mr. Starr and Mr. Lash, at Mr. and Ms. Starr's residence. Prior to,
26 and at the time of, the altercation, Mr. Starr was employed as the football coach
27 for Helix High School, in La Mesa, California. Mr. Lash was a parent volunteer
28 who served as an assistant coach for the team. Mr. Starr and Mr. Lash's

1 relationship was cordial at times, and rocky at others, with the two occasionally
2 disagreeing about the other's tactics and treatment of team members. In October
3 2015, Mr. Lash accused Mr. Starr of a CIF rule violation in which Mr. Lash
4 believed he had unintentionally involved himself. The tension between the two
5 culminated on October 15, 2015, when Mr. Lash went to the Starr residence to
6 confront Mr. Starr. The two had a brief but heated conversation in front of the
7 home, during which Mr. Lash is alleged to have verbally threatened physical
8 harm to Mr. Starr. Ms. Starr, who at the time was a teacher at Helix High School,
9 was inside the home and overheard, but did not see, the dispute. Plaintiffs
10 contend this verbal altercation caused severe emotional distress to both Mr. and
11 Ms. Starr, necessitating her hospitalization and admission to a psychiatric unit on
12 October 23, 2015, and both Mr. and Ms. Starr's resignation from their positions
13 with Helix High School. The Starrs contend he can no longer coach football and
14 she can no longer teach due to the severe emotional distress inflicted by Mr.
15 Lash.

16 Mr. Lash's defense, on the other hand, is that Mr. Starr's resignation was
17 not caused by the verbal altercation. Mr. Starr, he contends, had a troubled
18 pattern of conduct that caused him to be the subject of investigations by CIF San
19 Diego with respect to his time at Helix High School, and also by CIF Los Angeles,
20 with respect to Mr. Starr's prior employment as a football coach at Taft High
21 School from 1992 to 2007. Mr. Lash posits Mr. Starr's voluntary mid-season
22 resignation from Helix High School for the stated reason of wanting to spend
23 more time with his family is questionable, and was more likely intended to
24 forestall any further CIF investigation and possibly disciplinary action against the
25 Helix High School football program. Mr. Lash further contends Mr. Starr's
26 voluntary resignation from Taft High School, which was subjected to discipline by
27 CIF Los Angeles during Mr. Starr's tenure there, may have also been related to
28 misconduct and rule violations by Mr. Starr, as opposed to his stated reason of

1 wanting to spend time with family.

2 **II. JURISDICTION**

3 Fed. R. Civ. P. 45(c)(3) specifically directs motions to quash or modify a
4 subpoena must be filed in the court for the district where compliance is required.
5 CIF Los Angeles is located in Granada Hills, California, and Taft High School is
6 located in Los Angeles, California, so jurisdiction over a motion related to the
7 three subpoenas that were served on these entities properly lies with the Central
8 District of California unless transferred to this Court, pursuant to Fed. R. Civ. P.
9 45(f), which has not occurred here. Under Fed. R. Civ. P. 26(c)(1)(D), however,
10 upon a showing of good cause, the Court may issue a protective order to limit the
11 scope of discovery to certain matters in order to protect the party from
12 "annoyance, embarrassment, oppression, or undue burden or expense."
13 Although the Court is loath to consider issues that may impinge on another
14 court's jurisdiction, because this dispute is limited to the parties, both of whom
15 have sought this Court's intervention in the matter, and in the interest of
16 economy, the Court will consider the Starrs' arguments with regard to these three
17 subpoenas under Fed. R. Civ. P. 26(c)(1)(D). The Court's determination under
18 Fed. R. Civ. P. 26(c)(1)(D) regarding whether the Starrs have demonstrated good
19 cause for the Court to prohibit discovery of CIF Los Angeles and Taft High
20 School records is without prejudice to any objections these third-parties may
21 independently have with respect to the subpoenas.

22 **III. PLAINTIFF'S OBJECTIONS RE: PRIVACY & RELEVANCY**

23 Under federal law, discovery is purposefully broad. Fed. R. Civ. P. 26(b)(1).
24 Each party generally has the right to discover "any nonprivileged matter that is
25 relevant to any party's claim or defense and proportional to the needs of the
26 case." *Id.* Information within the scope of discovery need not be admissible at
27 trial in order to be discoverable. *Id.* Because the Starrs contend their
28 employment records are protected by a constitutional right to privacy under

1 California law, additional factors come into play. *Board of Trustees v. Superior*
2 *Court*, 119 Cal. App. 3d. 516 (1981). Mr. Lash, they argue, must do more than
3 satisfy the general relevancy standard, and instead must establish the
4 information sought is “directly relevant to Plaintiff’s claim and essential to the fair
5 resolution of the case.” *citing Vinson v. Superior Court*, 43 Cal.3d 833, 842
6 (1987).

7 Because this is a diversity jurisdiction case, assertions based on privacy
8 rights are determined under applicable California state law. Fed. R. Ev. 501;
9 *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 284 (C.D. Cal. 1998). Under
10 the California Constitution, an individual’s right to privacy is inalienable. Cal.
11 Const. art. I, §1. The right to privacy is not absolute, however, but rather a right
12 subject to invasion where a compelling public interest is involved. *Hill v. Nat’l*
13 *Collegiate Athletic Ass’n.*, 7 Cal. 4th 1, 37-38 (1994); *See also Ragge v.*
14 *MCA/Universal Studios*, 165 F.R.D. 601, 604 (C.D. Cal. 1995). When evidence is
15 particularly important to a claim or defense, a party’s right to discovery of that
16 evidence is more likely to outweigh competing privacy claims. *Denari v. Superior*
17 *Ct. (Kern County)*, 215 Cal. App. 3d 1488, 1501 (1989).

18 **A. Taft High School Employment Records**

19 The Starrs argue under California state law, a party’s private employment
20 records are available only upon a showing the records are directly relevant and
21 that the right to privacy is outweighed by a compelling need for the records, citing
22 *Board of Trustees*, 119 Cal. App. 3d. 516. In *Board of Trustees*, the personnel
23 records sought were those of a non-party to the case and were found to be not
24 discoverable. *Id.* at 524. In this case, however, the records sought are those of
25 the plaintiffs. As opposed to the situation involving non-parties, who do not
26 voluntarily involve themselves in litigation and whose employment records are
27 not at issue, the Starrs’ own employment records, both current and former, do
28 have a bearing on the claims and defenses asserted in this lawsuit.

1 In determining whether a plaintiff has waived the right of privacy by bringing
2 suit, the California Supreme Court has noted that although there may be an
3 implicit partial waiver, the scope of such waiver must be narrowly, rather than
4 expansively, construed so that plaintiffs will not be unduly deterred from
5 instituting lawsuits by fear of exposure of private activities. *Davis v. Superior*
6 *Court (Kern County)*, 7 Cal. App. 4th 1008, 1014 (1992) *citing Vinson*, 43 Cal.3d
7 at 842. An implicit waiver of a party's constitutional rights encompasses only
8 discovery directly relevant to the plaintiff's claim and essential to the fair
9 resolution of the lawsuit. There must be a compelling and opposing state interest
10 in justifying the discovery. Even when discovery of private information is found
11 directly relevant to the issues of the ongoing litigation, it will not be automatically
12 allowed. There must be a careful balancing of the compelling public need for
13 discovery against the fundamental right of privacy. The scope of any disclosure
14 must be narrowly circumscribed, drawn with narrow specificity, and must proceed
15 by the least intrusive manner. *Id.*

16 *1. Mr. Starr's Personnel Records*

17 The Court is persuaded of the direct relevance of Mr. Starr's personnel
18 records from Taft High School. Mr. Starr seeks to recover damages for lost
19 income, contending he can no longer coach football due to Mr. Lash's conduct.
20 The Taft High School personnel records are relevant to determine the scope and
21 nature of Mr. Starr's prior employment, his performance, including whether there
22 were complaints about it, and why Mr. Starr stopped coaching at that school.
23 Furthermore, Mr. Lash informs the Court that the Taft High School football
24 program was subjected to discipline as a result of misconduct and rule violations
25 by Mr. Starr. His personnel file may contain information that could demonstrate a
26 pattern and history of improper conduct, akin to the behavior Mr. Lash claims he
27 witnessed and which precipitated the complaints about Mr. Starr to CIF San
28 Diego.

1 2. *Ms. Starr's Personnel Records*

2 Like her husband, Ms. Starr also alleges she is unable to work due to Mr.
3 Lash's conduct. Similarly, her personnel records from Taft High School are
4 directly relevant to determine the scope and nature of her prior employment, as
5 well as her performance.

6 3. *Compelling Need*

7 Discovery of the Starrs' personnel records with Taft High School is
8 essential to the fair resolution of the lawsuit, and Mr. Lash's need thereof is
9 compelling, as this information is unlikely to be available from any other source.
10 Although the two subpoenas to Taft High School request the Starrs' employment
11 records from June 1, 1992 through December 31, 2007, Mr. Lash has since
12 agreed to narrow the time period for the requested documents to five years.¹
13 Limiting production of the Starrs' prior employment records to the five-year period
14 preceding their departure from Taft High School sufficiently narrows the scope of
15 disclosure. The Starrs' privacy interests, which are not absolute under California
16 law, can be adequately protected by means of a protective order. The Court,
17 therefore, finds the Starrs have not demonstrated good cause for the Court to
18 restrict discovery of these records.

19 ***B. CIF San Diego and CIF Los Angeles Records***

20 The documents requested of CIF San Diego and CIF Los Angeles relate to
21 any investigations, hearings, discipline or any charges or complaints of any
22 violation by Mr. Starr of any CIF rule, regulation, code or requirement. These are
23 not "employment records," which is defined by Cal. Code Civ. P. § 1985.6 as
24 records "pertaining to the employment of any employee maintained by the
25

26
27 ¹ Mr. Lash describes the five-year period as 2002-2007, which is actually a six-year time period. The Court,
28 therefore, construes Mr. Lash's narrowing of his requests for the Starrs' Taft High School personnel records to
apply to January 1, 2003 to December 31, 2007, which is the most recent five-year time period covered by the
subpoenas.

1 current or former employer of the employee, or by any labor organization that has
2 represented or currently represents the employee.” Mr. Starr was not employed
3 by either CIF San Diego or CIF Los Angeles and neither entity is a labor
4 organization that represented him. Mr. Starr, thus, does not have a constitutional
5 right to privacy as to these documents and their discoverability is subject to the
6 general relevancy standard of Fed. R. Civ. P. 26(b)(1).

7 *1. CIF San Diego Records*

8 Mr. Starr seeks lost income, contending he is unable to work as a football
9 coach because of Mr. Lash’s statements to him. Discovery regarding whether
10 other circumstances, i.e., complaints to or investigations by CIF San Diego, may
11 have been a contributing factor to Mr. Starr’s voluntary resignation is clearly
12 relevant to the defenses asserted by Mr. Lash, and is proportional to the needs of
13 the case.

14 *2. CIF Los Angeles Records*

15 The CIF Los Angeles records are relevant for reasons similar to why Mr.
16 Starr’s Taft High School records are relevant.² As discussed above in relation to
17 his employment records, Mr. Lash contends Mr. Starr has a history of CIF
18 regulation violations and resulting investigations and disciplinary actions. The CIF
19 records from his tenure as football coach at Taft High School are, thus, relevant
20 and discoverable in order for Mr. Lash to determine whether a pattern of conduct
21 exists with regard to Mr. Starr’s coaching practices and subsequent resignations.

22 Although the CIF San Diego and Los Angeles records are not subject to the
23 privacy protections afforded employment records, and Mr. Lash, therefore, need
24 not demonstrate he has a compelling interest in these records, a compelling
25 need does exist. Discovery of the CIF records is essential to the fair resolution of
26

27 ² Like the two subpoenas to Taft High School, Mr. Lash’s subpoena to CIF Los Angeles also requests records
28 from June 1, 1992 through December 31, 2007, however, Mr. Lash has since agreed to narrow the time period for
the requested documents to the same five-year period that pertains to the Taft High School personnel records.

1 the lawsuit, and Mr. Lash's need thereof is compelling, as this information is
2 directly relevant to the claims and defenses and is unlikely to be available from
3 any other source. Furthermore, Mr. Starr can be adequately protected from
4 dissemination of these records to outside parties, by means of a protective order.
5 The Court, therefore, finds Mr. Starr has not demonstrated good cause for the
6 Court to restrict discovery of the CIF San Diego or CIF Los Angeles records.

7 **IV. CONCLUSION**

8 Based on the foregoing, the Court finds Mr. and Mrs. Starr have not
9 demonstrated good cause to prohibit Mr. Lash from subpoenaing the CIF San
10 Diego records from June 1, 2008 to December 31, 2015, or the Starrs'
11 employment records from Taft High School or the CIF Los Angeles records for
12 the time period January 1, 2003 to December 31, 2007. The parties are to
13 promptly meet and confer and prepare a joint motion for a proposed protective
14 order.

15 Dated: April 19, 2017

16 
17 Honorable Jan M. Adler
United States Magistrate Judge