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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

**Jason and Devon Shuster,
Plaintiffs,
vs.
Stanford Jay Shuster,
Defendant.**

**2:16-cv-03315 JWS
ORDER AND OPINION
[Re: Motions at Dockets 31, 36 & 39]**

I. MOTIONS PRESENTED

At docket 31 plaintiffs Jason and Devon Shuster (“Plaintiffs”) move to compel defendant Stanford Jay Shuster (“Defendant”) to respond to their discovery requests. Plaintiffs filed a notice of errata at docket 32. Defendant did not respond to the motion to compel. At docket 36 Plaintiffs filed a motion for the court to rule on the motion at docket 31. At docket 38 Defendant filed a motion for an extension of time to respond to Plaintiffs’ motion to compel. Thereafter, at docket 39, Defendant filed a motion for an even larger extension of time. As a result, the court denied the motion at docket 38 as moot. At docket 41 Plaintiffs responded to the motion at docket 39. Defendant did not file a reply. At docket 42 Defendant filed an untimely response to the motion to compel before there was a ruling on the motion at docket 39. Plaintiffs filed a reply at docket 43. Oral argument was not requested and would not assist the court.

1 **II. BACKGROUND**

2 This case presents a dispute regarding whether Defendant breached certain
3 obligations he owed his son, plaintiff Jason Shuster (“Jason”), under a Settlement
4 Agreement they allegedly executed on October 17, 2014. Under the alleged
5 Agreement, Defendant sold his 50% interest in Shuster Purchasing Solutions, LLC
6 (“SPS”) to Jason in exchange for Jason’s 50% interest in Arthur Shuster, Inc. (“ASI”)
7 and Lodging Supply, Inc. (“LSI”). Plaintiffs’ complaint asserts claims for declaratory
8 relief, breach of contract, bad faith, and specific performance.

9 **III. STANDARDS OF REVIEW**

10 Rule 26(b)(1) provides that

11 [p]arties may obtain discovery regarding any nonprivileged matter that is
12 relevant to any party’s claim or defense and proportional to the needs of
13 the case, considering the importance of the issues at stake in the action,
14 the amount in controversy, the parties’ relative access to relevant
information, the parties’ resources, the importance of the discovery in
resolving the issues, and whether the burden or expense of the proposed
discovery outweighs its likely benefit.

15 “Information within this scope of discovery need not be admissible in evidence to be
16 discoverable.”¹

17 If a party fails to make disclosures or cooperate in discovery, the requesting
18 party may move to compel.² “The party who resists discovery has the burden to show
19 that discovery should not be allowed, and has the burden of clarifying, explaining, and
20 supporting its objections.”³ “Broad discretion is vested in the trial court to permit or
21 deny discovery[.]”⁴

22 If a party files a motion for an extension of time after the time has expired, as
23 Defendant has done here, the court may extend the time only for “good cause” where

24 _____
25 ¹Fed. R. Civ. P. 26(b)(1).

26 ²Fed. R. Civ. P. 37(a)(1).

27 ³*DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002).

28 ⁴*Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

1 the party's failure was due to "excusable neglect."⁵ Although "good cause" and
2 "excusable neglect" are stated as separate requirements, a showing of excusable
3 neglect also satisfies the good cause standard.⁶ "[Rule 6(b)(1)], like all the Federal
4 Rules of Civil Procedure, [is] to be liberally construed to effectuate the general purpose
5 of seeing that cases are tried on the merits."⁷ The decision to grant or deny a
6 Rule 6(b)(1) motion is committed to the district court's discretion.⁸

7 IV. DISCUSSION

8 **A. Defendant's Motion for an Extension of Time**

9 "Although inadvertence, ignorance of the rules, or mistakes construing the rules
10 do not usually constitute 'excusable' neglect, it is clear that 'excusable neglect' under
11 Rule 6(b) is a somewhat 'elastic concept' and is not limited strictly to omissions caused
12 by circumstances beyond the control of the movant."⁹ To make the equitable
13 determination whether neglect is excusable for purposes of Rule 6(b), courts should
14 consider the four factors set out by the Supreme Court in *Pioneer*.¹⁰ These factors are:
15 "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its
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20 ⁵Fed. R. Civ. P. 6(b)(1)(B).

21 ⁶*California Trout v. F.E.R.C.*, 572 F.3d 1003, 1027 n.1 (9th Cir. 2009) (Gould, J.,
22 dissenting) ("Even when the extension is sought after the time limit has expired, the good cause
23 standard is satisfied merely upon a showing of excusable neglect.").

24 ⁷*Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258–59 (9th Cir. 2010) (quoting
Rodgers v. Watt, 722 F.2d 456, 459 (9th Cir.1983)).

25 ⁸*Id.* at 1258.

26 ⁹*Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 392 (1993).

27 ¹⁰*Comm. for Idaho's High Desert, Inc. v. Yost*, 92 F.3d 814, 825 n.4 (9th Cir. 1996)
28 (citing *Pioneer*, 507 U.S. at 395).

1 potential impact on the proceedings; (3) the reason for the delay; and (4) whether the
2 movant acted in good faith.”¹¹

3 As Plaintiffs observe, Defendant’s motion addresses none of these factors.
4 Nevertheless, the court finds that all four factors favor granting the motion. Defendant’s
5 original deadline for opposing Plaintiffs’ motion to compel was June 15. His motion
6 seeks an extension of time to July 17—a delay of 32 days—because he replaced his
7 attorneys in the interim. According to Defendant, his new counsel needed the
8 extension in order to adequately “prepare and file an appropriate response.”¹² The
9 court finds that this explanation is reasonable, there is no evidence of bad faith, and the
10 delay should not prejudice Plaintiffs or negatively impact this action.

11 Plaintiffs point out that they need Defendant’s discovery responses in order to
12 prepare for Defendant’s deposition and to decide whether to retain expert witnesses.
13 This may be true, but the court is confident that counsel will be able to work together to
14 ensure that Defendant’s requested extension will not prejudice Plaintiffs or unduly
15 prolong this case. Defendant’s motion for an extension of time will be granted and his
16 response at docket 42 will be deemed timely submitted nunc pro tunc.

17 **B. Plaintiffs’ Motion to Compel**

18 Plaintiffs served 13 interrogatories and 7 requests for production of documents
19 (“RFPs”) on Defendant. The present dispute concerns Defendant’s responses to RFPs
20 1–6 and interrogatories 2–6, 8–9, and 13.

21 **1. RFPs 1–4**

22 RFP 1 seeks documents that relate to or evidence “any communications
23 regarding the Settlement Agreement, drafts of the Settlement Agreement, or
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26 ¹¹*Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th Cir. 2000) (citing *Pioneer*,
27 507 U.S. at 395).

28 ¹²Doc. 39 at 1.

1 negotiations related to settlement.”¹³ Subject to several objections, Defendant
2 responded by stating that he would “produce all responsive, non-privileged documents
3 in his possession, custody or control.”¹⁴ Plaintiffs assert that Defendant has only
4 produced 4 emails responsive to this RFP, even though dozens of responsive e-mails
5 exist.¹⁵

6 RFP 2 seeks documents “evidencing any actions taken or decisions made by
7 Jason and/or Devon on behalf of ASI or LSI, or any involvement Jason and/or Devon
8 have had in the management or operation of ASI or LSI since October 17, 2014.”¹⁶

9 RFP 3 seeks documents “evidencing any requests or attempts by Stanford to have any
10 role in the management or operation of SPS following October 17, 2014.”¹⁷ And RFP 4
11 seeks documents that Defendant believes evidence “the invalidity or ineffectiveness of
12 the Settlement Agreement.”¹⁸ Plaintiffs assert that Defendant has produced no
13 documents responsive to these requests despite Defendant’s statement that he would.

14 Defendant does not specifically refute Plaintiffs’ contention that he has failed to
15 produce documents responsive to these RFPs. Instead, he boasts of producing “over
16 2,000 pages” of unspecified documents and states that he “is compiling in excess of
17 300 pages of documents to fulfill his discovery requirements.”¹⁹ With regard to this
18 latter statement, Plaintiffs reply that Defendant has produced one supplemental set of
19 documents, totaling 165 pages, that contain “(1) approximately 100 pages of e-mails
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21 ¹³Doc. 31-1 at 29.

22 ¹⁴*Id.* at 61.

23 ¹⁵Doc. 32-1 at 2.

24 ¹⁶Doc. 31-1 at 30.

25 ¹⁷*Id.*

26 ¹⁸*Id.*

27 ¹⁹Doc. 42 at 5.

1 and correspondence, largely identical to e-mails already produced by Jason; and
2 (2) ASI's 2011 tax return."²⁰ Plaintiffs also note that Defendant did not indicate the
3 request or requests to which the documents respond.²¹

4 Rule 34(b)(2)(E) sets out the procedures a party must follow when producing
5 documents in response to an RFP. Of particular relevance here, it states that if the
6 party is not producing documents "as they are kept in the usual course of business," he
7 or she "must organize and label them to correspond to the categories in the request."²²
8 This requirement exists to prevent a party from doing what Defendant has done here:
9 the proverbial unorganized "document dump."²³ Although it appears that some of the
10 documents Defendant produced may be responsive to one or more of Plaintiffs'
11 requests, neither Plaintiffs nor the court can discern exactly which documents go to
12 which requests because Defendant has not organized and labeled his production.
13 Defendant will be ordered to remedy this problem and then respond fully to Plaintiffs'
14 RFPs.

15 **2. RFPs 5–6**

16 Together, RFPs 5 and 6 seek ASI's and LSI's bank account statements, financial
17 statements, tax returns, and loan documents that have been generated since the date
18 of the alleged Settlement Agreement.²⁴ Defendant refuses to produce documents
19 responsive to these requests, citing relevancy and confidentiality objections. These
20 objections lack merit and are overruled. The requested documents concern a matter
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22 ²⁰Doc. 43 at 3.

23 ²¹*Id.*

24 ²²Fed. R. Civ. P. 34(b)(2)(E)(i).

25 ²³*See F.D.I.C. v. Appleton*, No. CV 11-476, 2012 WL 10245383, at *3 (C.D. Cal.
26 Nov. 29, 2012); 8B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND
27 PROCEDURE § 2213 (3d ed. 2017).

28 ²⁴Doc. 31-1 at 30.

1 that is relevant to Plaintiff's claims: whether Defendant acted as the sole owner of ASI
2 and LSI after the alleged Settlement Agreement was executed. If so, that would tend to
3 show that Defendant treated the Settlement Agreement as an enforceable contract.

4 With regard to confidentially, Defendant asserts without any evidentiary support
5 that the requested financial information "could be used to gain competitive information
6 about ASI, including information regarding its customers, the management of the
7 company, and possible trade secret information."²⁵ Defendant does not provide the
8 court with copies of the documents in dispute, does not describe the content of any
9 such document with specificity, or explain how that content could be misused by
10 Plaintiffs in the manner he describes. Defendant's vague, unsupported assertion does
11 not satisfy his burden of proving that he should not be required to produce the
12 requested documents. The court will grant Plaintiffs' motion to compel with regard to
13 these RFPs.²⁶

14 **3. Interrogatory 2**

15 Interrogatory 2 asks Defendant to identify all communications between himself
16 and Plaintiffs regarding the Settlement Agreement. Subject to various objections,
17 Defendant responded with a rambling, largely non-responsive narrative.²⁷ After
18 Plaintiffs filed the present motion to compel, Defendant supplemented his answer by
19 asserting that he had "multiple conversations" with his attorneys about the proposed
20 agreement.²⁸ The court finds that Defendant's answer and supplemental answer to this
21 interrogatory are evasive at best, and will therefore treat Defendant's responses as a
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23 ²⁵Doc. 42 at 6.

24 ²⁶If Defendant continues to insist that the requested documents are confidential, the
25 court is confident that the parties can agree on a protective order that assuages Defendant's
26 concerns.

27 ²⁷Doc. 31-1 at 34–36.

28 ²⁸Doc. 43-1 at 5.

1 failure to answer.²⁹ Defendant will be ordered to again supplement his answer to
2 provide a complete, non-evasive response to the question asked.

3 **4. Interrogatories 3–4.**

4 Interrogatories 3 and 4 ask Defendant to describe: (3) “all actions” he took or
5 attempted to take on behalf of SPS since October 17, 2014; and (4) “all actions”
6 Plaintiffs took or attempted to take on behalf of ASI and SLI since October 17, 2014.³⁰

7 The court agrees with Defendant that “all actions” is vague and ambiguous.

8 Nevertheless, Defendant responded to these two interrogatories by identifying various
9 “actions” that the parties took on behalf of the respective companies. Plaintiffs have
10 identified no basis for concluding that Defendant’s responses are incomplete or
11 evasive.

12 **5. Interrogatory 5.**

13 Interrogatory 5 asks Defendant to describe each time he communicated to
14 Plaintiffs his belief that the alleged Settlement Agreement is unenforceable. Subject to
15 various objections, Defendant responded by stating that he “knows that there were such
16 communications” but does “not know the specifics of those communications.”³¹ This
17 answer is incomplete and evasive. Defendant will be ordered to supplement his answer
18 to provide a complete, non-evasive response to the question asked.

19 **6. Interrogatory 6.**

20 Interrogatory 6 asks Defendant to describe his basis for failing “to indemnify
21 Jason for the debts of LSI and ASI.”³² Subject to various objections, Defendant
22 responded by disagreeing with the premise of the question (“Responding Party *has*
23 indemnified Jason for debts of ASI and LSI”), identifying several instances where,
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25 ²⁹Fed. R. Civ. P. 37(a)(4).

26 ³⁰Doc. 31-1 at 20–21.

27 ³¹*Id.* at 38.

28 ³²*Id.* at 39.

1 according to him, he indemnified Jason, and asserting that he has no legal obligation to
2 indemnify Jason.³³ Plaintiffs contend that this response is “non-responsive and wildly
3 inaccurate.”³⁴ The court disagrees with Plaintiffs’ first argument; Defendant’s answer is
4 responsive. And Plaintiffs’ second argument amounts to a mere factual disagreement,
5 not grounds to compel a supplemental response.

6 **7. Interrogatories 8–9.**

7 Interrogatory 8 asks Defendant to “[i]dentify by customer, date of contract and
8 amount of contract, each and every job that has been awarded to ASI and/or LSI since
9 October 17, 2014”; and Interrogatory 9 asks Defendant to “[i]dentify all loans ASI and/or
10 LSI have taken out or have modified since October 17, 2014, and for each identify each
11 and every individual you disclosed as an owner of ASI and/or LSI to the lender.”³⁵

12 Defendant refused to respond to these interrogatories, citing confidentiality concerns
13 and raising relevancy objections. Plaintiffs respond that ASI’s and LSI’s post-
14 agreement contracts and loans are relevant to this matter because, if Defendant
15 entered into such contracts and loans without Jason’s approval, that would tend to
16 prove that Defendant considered himself to be the sole owner of ASI and LSI. The
17 court finds this argument persuasive; Defendant’s relevancy objection is overruled.
18 Further, Defendant’s confidentiality concerns are not an insurmountable barrier to
19 discovery; the court is confident that a protective order can be drafted that assuages
20 those concerns.

21 **8. Interrogatory 13.**

22 Interrogatory 13 asks Defendant to “[i]dentify any communications [he has] had
23 with anyone since October 17, 2014 in which [he] represented that Jason and/or Devon
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26 ³³*Id.* at 39–40.

27 ³⁴Doc. 32-1 at 10.

28 ³⁵Doc. 31-1 at 40–41.

1 [was] still an owner of either ASI or LSI.”³⁶ Defendant’s response: “Responding Party
2 has represented this a great many times to many people. There are too many
3 instances for Responding Party to be able to recollect any with any detail.”³⁷ Plaintiffs
4 object to this response because it “defies all logic and common sense.”³⁸ This objection
5 is overruled. Without addressing whether it is logical or plausible that an event can
6 become harder to remember the more frequently it occurs, that is how Defendant chose
7 to respond to the interrogatory. The Civil Rules require parties to provide complete,
8 non-evasive answers to interrogatories; the answers need not be logical or sensible.

9 **C. Expenses**

10 Rule 37(a)(5)(C) provides that if a motion to compel is granted in part and denied
11 in part the court may apportion the reasonable expenses for the motion. An award of
12 expenses is not appropriate, however, if: “(1) the movant filed the motion before
13 attempting in good faith to obtain the disclosure or discovery without court action;
14 (2) the opposing party’s nondisclosure, response, or objection was substantially
15 justified; or (3) other circumstances make an award of fees unjust.”³⁹ None of these
16 situations exists with respect to Plaintiffs’ successful challenges. Fees should be
17 apportioned.

18 Plaintiffs sought supplemental responses to 6 RFPs and 8 interrogatories. Their
19 motion will be granted as to all 6 RFPs and 4 interrogatories, and the court finds that
20 Defendant’s position was not substantially justified with regard to these deficient
21 discovery responses. On the whole, Plaintiffs prevailed on most of their challenges,
22 and the court finds that Defendant necessitated the motion by taking such
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25 ³⁶*Id.* at 56.

26 ³⁷*Id.*

27 ³⁸Doc. 32-1 at 12.

28 ³⁹Rule 37(a)(5)(A).

1 unreasonable positions. The Court in its discretion will award Plaintiffs 70% of their
2 reasonable expenses.

3 **V. CONCLUSION**

4 Based on the preceding discussion, Defendant's motion at docket 39 is
5 GRANTED; Plaintiffs' motion at docket 36 is DENIED as moot; and Plaintiffs' motion at
6 docket 31 is GRANTED IN PART and DENIED IN PART as follows: within 14 days of
7 the date of this order Defendant must supplement his responses to RFPs 1-6 and
8 interrogatories 2, 5, 8, and 9. If the parties cannot stipulate to the amount of expenses
9 that Defendant must pay Plaintiffs, then within 14 days from the date of this order
10 Plaintiffs shall file a properly supported motion for 70% of their reasonable expenses,
11 and Defendant shall respond within 7 days after the motion is filed. No reply may be
12 filed unless requested by the court.

13 DATED this 16th day of August 2017.

14
15 /s/ JOHN W. SEDWICK
16 SENIOR JUDGE, UNITED STATES DISTRICT COURT
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