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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5
6 **JAGJEEVAN K. DHALIWAL AND**
7 **MOHINDER S. GILL,**

8 **Plaintiffs,**

9 **v.**

10 **KS CHANDI & SONS, INC., et. al. ,**

11 **Defendants.**

1:13-CV-484-LJO-SKO

**MEMORANDUM DECISION AND
ORDER RE PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT (DOC. 54)**

12
13 **I. PRELIMINARY STATEMENT TO PARTIES AND COUNSEL**

14 Judges in the Eastern District of California carry the heaviest caseloads in the nation, and this
15 Court is unable to devote inordinate time and resources to individual cases and matters. Given the
16 shortage of district judges and staff, this Court addresses only the arguments, evidence, and matters
17 necessary to reach the decision in this order. The parties and counsel are encouraged to contact the
18 offices of United States Senators Feinstein and Boxer to address this Court's inability to accommodate
19 the parties and this action. The parties are required to reconsider consent to conduct all further
20 proceedings before a Magistrate Judge, whose schedules are far more realistic and accommodating to
21 parties than that of U.S. District Judge Lawrence J. O'Neill, who must prioritize criminal and older civil
22 cases.

23 Civil trials set before Judge O'Neill trail until he becomes available and are subject to suspension
24 mid-trial to accommodate criminal matters. Civil trials are no longer reset to a later date if Judge O'Neill
25 is unavailable on the original date set for trial. Moreover, this Court's Fresno Division randomly and
26 without advance notice reassigns civil actions to U.S. District Judges throughout the nation to serve as

1 visiting judges. In the absence of Magistrate Judge consent, this action is subject to reassignment to a
2 U.S. District Judge from outside the Eastern District of California.

3 **II. BACKGROUND**¹

4 This case concerns a dispute between the parties' involvement in purchasing gas stations. Doc.
5 14, First Amended Complaint ("FAC") at 5. Plaintiffs Jagjeevan K. Dhaliwal and Mohinder S. Gill
6 (collectively, "Plaintiffs") allege that they loaned money to Defendant Nirmal Singh, who allegedly
7 promised to invest the money in two companies, Defendants Chandi Brothers, LLC ("Chandi Brothers")
8 and KS Chandi & Sons ("KS Chandi") (collectively, "the corporations" or "Defendants").

9 Disputes between the parties arose over the use of the money, the purchase and sale of the gas
10 stations, and the parties' respective debts and obligations to one another. Plaintiffs subsequently filed
11 this suit, alleging twelve causes of action against Defendants. Plaintiffs' tenth cause of action seeks an
12 involuntary dissolution of KS Chandi under California Corporation Code § 1800 ("§ 1800") "on the
13 ground that Defendants . . . are guilty of or have knowingly persistent and pervasive intentional fraud,
14 mismanagement or abuse of authority or persistent unfairness toward Plaintiffs who are shareholders or
15 the corporations." FAC ¶ 138.² Plaintiffs claim that "liquidation is necessary for the protection of the
16 rights or interests of Plaintiffs." *Id.* ¶ 139.

17 In conjunction with their motion for summary judgment, Plaintiffs filed a motion to exclude in
18 which they argued that Defendants "should be precluded from introducing any evidence or witnesses in
19 support of their claims and defenses." Doc. 82 (Magistrate Judge Order) at 6; *see also* Doc. 60 at 1.
20 Plaintiffs asserted that Defendants' failure to comply with the initial disclosure requirements of Fed. R.
21 Civ. P. 26(a) ("Rule 26(a)") warranted the exclusion of essentially all of Defendants' evidence from the
22 record. Doc. 82 at 6.

23 The Magistrate Judge denied Plaintiffs' motion. *Id.* at 11. The Magistrate Judge found that

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25 ¹ The following facts are undisputed unless otherwise indicated.

26 ² Plaintiffs' tenth cause of action seeks an involuntary dissolution of both Chandi Brothers and KS Chandi, *see* FAC ¶¶ 136-148, but Plaintiffs move for summary judgment on the claim as to KS Chandi only. *See* Doc. 54 at 2.

1 Defendants' failure to disclose the subject matter contained in Mr. Singh's declaration technically
2 violated Rule 26(a), but found that it caused no harm or prejudice to Plaintiffs. *Id.* The Magistrate Judge
3 noted that Plaintiffs "waited until *after discovery was closed* to raise the issue of an incomplete and
4 insufficient initial disclosure statement." *Id.* at 10 (emphasis in original). Thus, the Magistrate Judge
5 found that "[a]ny prejudice or harm accruing from the inadequate disclosures was compounded, in no
6 small part, by Plaintiffs' lack of attention to the progress of the litigation." *Id.*

7 Currently pending before the Court is Plaintiffs' motion for partial summary judgment on its
8 tenth cause of action. (Doc. 54). For the reasons discussed below, the Court DENIES the motion.

9 **III. STANDARD OF DECISION**

10 Summary judgment is appropriate when the pleadings, disclosure materials, discovery, and any
11 affidavits provided establish that "there is no genuine dispute as to any material fact and the movant is
12 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A material fact is one that may affect the
13 outcome of the case under the applicable law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
14 (1986). A dispute is genuine "if the evidence is such that a reasonable trier of fact could return a verdict
15 in favor of the nonmoving party." *Id.*

16 The party seeking summary judgment "always bears the initial responsibility of informing the
17 district court of the basis for its motion, and identifying those portions of the pleadings, depositions,
18 answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes
19 demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
20 (1986) (internal quotation marks omitted). The exact nature of this responsibility, however, varies
21 depending on whether the issue on which summary judgment is sought is one in which the movant or the
22 nonmoving party carries the ultimate burden of proof. *See Soremekun v. Thrifty Payless, Inc.*, 509 F.3d
23 978, 984 (9th Cir. 2007); *Cecala v. Newman*, 532 F. Supp. 2d 1118, 1132 (D. Ariz. 2007). If the movant
24 will have the burden of proof at trial, it must demonstrate, with affirmative evidence, that "no reasonable
25 trier of fact could find other than for the moving party." *Soremekun*, 509 F.3d at 984. In contrast, if the
26 nonmoving party will have the burden of proof at trial, "the movant can prevail merely by pointing out
that there is an absence of evidence to support the nonmoving party's case." *Id.* (citing *Celotex*, 477 U.S.
at 323).

If the movant satisfies its initial burden, the nonmoving party must go beyond the allegations in

1 its pleadings to “show a genuine issue of material fact by presenting *affirmative evidence* from which a
2 jury could find in [its] favor.” *FTC v. Stefanchik*, 559 F.3d 924, 929 (9th Cir. 2009) (emphasis in
3 original). “[B]ald assertions or a mere scintilla of evidence” will not suffice in this regard. *Id.* at 929.
4 *See also Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (“When the
5 moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that
6 there is some metaphysical doubt as to the material facts.”) (citation omitted). “Where the record as a
7 whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue
8 for trial.’” *Matsushita*, 475 U.S. at 587 (quoting *First Nat’l Bank of Arizona v. Cities Serv. Co.*, 391 U.S.
9 253, 289 (1968)).

9 In resolving a summary judgment motion, “the court does not make credibility determinations or
10 weigh conflicting evidence.” *Soremekun*, 509 F.3d at 984. That remains the province of the jury or fact
11 finder. *See Anderson*, 477 U.S. at 255. Instead, “[t]he evidence of the [nonmoving party] is to be
12 believed, and all justifiable inferences are to be drawn in [its] favor.” *Id.* Inferences, however, are not
13 drawn out of the air; the nonmoving party must produce a factual predicate from which the inference
14 may reasonably be drawn. *See Richards v. Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal.
15 1985), *aff’d*, 810 F.2d 898 (9th Cir. 1987).

15 **IV. DISCUSSION**

16 **A. Plaintiffs’ Evidentiary Objections.**

17 Plaintiffs argue that the declaration of Mr. Singh must be excluded. *See Docs. 85-2, 85-3.*
18 Further, Plaintiffs argue that, even if it is not excluded, portions of the declaration are inadmissible.³

19 **1. Exclusion of the Declaration of Mr. Singh.**

20 As noted, the Magistrate Judge denied Plaintiffs’ motion to exclude Mr. Singh’s declaration
21 because Defendants’ conduct amounted to only a “technical violation” of Fed. R. Civ. P. 26(a), which
22 caused Plaintiffs no discernible harm. Doc. 82 at 10. The Magistrate Judge left the remedy, if any, for
23 Defendants’ technical violation of Rule 26(a) for the Court’s decision. *Id.* at 11.

24 For the reasons the Magistrate Judge stated, the Court finds that, although Defendants’ conduct

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26 ³ Although the Court has considered all relevant parts of the record, this Memorandum Decision and Order will only address the arguments and evidence necessary to resolve Plaintiffs’ motion for summary judgment.

1 technically violated Rule 26(a), Plaintiffs were not harmed or prejudiced by Defendants' conduct. *See*
2 *id.* at 9-11. Thus, the Court finds no reason to grant Plaintiffs' motion to exclude on the ground
3 Defendants technically violated Rule 26(a). *See* Fed. R. Civ. P. 37(c)(1) ("If a party fails to provide
4 information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that
5 information or witness to supply evidence on a motion, at hearing, or at a trial, unless the failure was
6 substantially justified or is harmless.").

7 Plaintiffs also move to exclude Mr. Singh's declaration on the ground it is a "sham" because it
8 "directly conflict[s] with his earlier statement that he allegedly 'is the sole shareholder' of KS [Chandi]." *Id.*
9 Doc. 85-2 at 4 (emphasis omitted). Plaintiffs argue that Mr. Singh represented in a related bankruptcy
10 proceeding that he is the sole shareholder of KS Chandi, which he "disavows" in his declaration. *Id.* at 2.
11 In support, Plaintiffs cite to paragraphs 23 and 51 of Mr. Singh's declaration, which read in relevant
12 part: "The Chandis were owners of KS Inc and Chandi Bros only for a time, and then I became the sole
13 owner of both entities," Doc. 70-1 (Declaration of Nirmal Singh ("Singh Decl.")) at ¶ 23; "[t]he Chandis
14 divested themselves of their shares in KS Inc. well before October 8, 2013." *Id.* ¶ 51.

15 Notably, Plaintiffs make no reference to the first sentence of Mr. Singh's declaration, which
16 reads: "I am the sole shareholder of [KS Chandi] and sole member of [Chandi Bros]." *Id.* ¶ 1. Given this
17 testimony, the Court cannot discern how Mr. Singh's declaration "directly conflict[s] with his earlier
18 statement that he allegedly 'is the sole shareholder' of KS [Chandi]." Doc. 85-2 at 4 (emphasis omitted).
19 Thus, the Court DENIES Plaintiffs' motion to exclude Mr. Singh's declaration on the ground it is a
20 "sham."

21 **2. Evidentiary Objections.**

22 Mr. Singh testifies in his declaration that he is "the sole shareholder of [KS Chandi]." Singh
23 Decl. at ¶1. Plaintiffs object to this statement as inadmissible on the grounds it is improper opinion
24 evidence (Fed. R. Evid. 702); it is an improper legal conclusion (Fed. R. Evid. 701); it lacks foundation
25 (Fed. R. Evid. 602); it is speculative (Fed. R. Evid. 602, 701); and it is inadmissible hearsay (Fed. R.
26 Evid. 802). Doc. 85-2 at 12. Plaintiffs provide no explanation of the grounds for these objections.

1 Plaintiffs' objections have no merit. Mr. Singh's statement does not constitute improper opinion
2 evidence nor an improper legal conclusion because he is merely describing his alleged shareholder
3 status, which is acceptable and admissible lay opinion. *See* Fed. R. Evid. 701. Mr. Singh's statement
4 does not lack foundation and is not speculative because he clearly has personal knowledge of his
5 ownership of the corporations. Likewise, Mr. Singh's statement is not inadmissible hearsay because Mr.
6 Singh could testify to the extent of his ownership of the corporations at trial. *See Fraser v. Goodale*, 342
7 F.3d 1032, 1037 (9th Cir. 2003) ("Because the diary's contents could be presented in an admissible form
8 at trial, we may consider the diary's contents in the Bank's summary judgment motion. *Accord Hughes*
9 *v. United States*, 953 F.2d 531, 543 (9th Cir.1992) (litigation adviser's affidavit may be considered on
10 summary judgment despite hearsay and best evidence rule objections; the facts underlying the affidavit
11 are of the type that would be admissible as evidence even though the affidavit itself might not be
12 admissible)"). Accordingly, Plaintiffs' objections to Mr. Singh's statement are OVERRULED.

13 **B. Plaintiffs' Claim for Involuntary Dissolution.**

14 To succeed on their claim for involuntary dissolution, Plaintiffs must first demonstrate that they
15 are "shareholders who hold shares representing not less than 33 ½ percent of" KS Chandi.
16 § 1800(a)(2).⁴ Involuntary dissolution is a "drastic remedy." *Stuparich v. Harbor Furniture Mfg, Inc.*, 83
17 Cal. App. 4th 1268, 1279 (2000). The parties dispute whether Plaintiffs are 33.5% shareholders of KS
18 Chandi. *See* Doc. 70 at 4-5. In support, Defendants point to the declaration of Mr. Singh, who claims he
19 is the sole shareholder of KS Chandi. *Id.* at 5; *see also* Singh Decl. at ¶ 1.

20 The Court finds that Mr. Singh's declaration creates a triable issue of material fact as to the
21 threshold issue of whether Plaintiffs own a sufficient interest in KS Chandi to bring a claim for
22 involuntary dissolution of the corporation under § 1800(a)(2). In the absence of evidence establishing
23 that Plaintiffs are undisputed 33.5% shareholders of KS Chandi, the Court cannot find that they are

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25 ⁴ The other provisions of § 1800 that pertain to other groups of persons who may file for a voluntary dissolution are
26 inapplicable here. *See* Doc. 54 at 9 (Plaintiffs arguing that they can move for involuntary dissolution as 1/3 shareholders of
the corporations).

1 entitled to seek an involuntary dissolution of the corporation under § 1800(a)(2). Accordingly, Plaintiffs'
2 motion for partial summary judgment on their tenth cause of action is DENIED.

3 **V. CONCLUSION AND ORDER**

4 For the foregoing reasons, the Court DENIES Plaintiffs' motion for partial summary judgment
5 on their tenth claim for involuntary dissolution.

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7 IT IS SO ORDERED.

8 Dated: July 7, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE