

1 **II. Scope of Discovery and Requests**

2 The scope and limitations of discovery are set forth by the Federal Rules of Civil Procedure
3 and Evidence. Rule 26(b) provides:

4 Unless otherwise limited by court order, parties may obtain discovery regarding any
5 nonprivileged matter that is relevant to any party’s claim or defense – including the
6 existence, description, nature, custody, condition, and location of any documents or
7 other tangible things. . . For good cause, the court may order discovery of any matter
8 relevant to the subject matter involved in the accident. Relevant information need not
be admissible at the trial if the discovery appears reasonably calculated to lead to the
discovery of admissible evidence.

9 Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that
10 is of consequence to the determination of the action more probable or less probable than it would be
11 without the evidence.” Fed. R. Evid. 401. Further, relevancy is interpreted “broadly to encompass
12 any matter that bears on, or that reasonably could lead to other matter that could bear on any issue that
13 is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 427 U.S. 340, 351 (1978).

14 **A. Interrogatories**

15 A party may propound interrogatories relating to any matter that may be inquired to under Rule
16 26(b). Fed. R. Civ. P. 33(a). A responding party is obligated to respond to the fullest extent possible,
17 and any objections must be stated with specificity. Fed. R. Civ. P. 33(b)(3)-(4). In general, a
18 responding party is not required “to conduct extensive research in order to answer an interrogatory, but
19 a reasonable effort to respond must be made.” *Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, at *9
20 (E.D. Cal. Aug. 24, 2010) (citing *L.H. v. Schwarzenegger*, 2007 U.S. Dist. LEXIS 73753 (E.D. Cal.
21 Sep. 21, 2007)). Further, the responding party must supplement a response he later obtains the
22 information sought or discovers the previous response requires correction. Fed. R. Civ. P. 26(e)(1)(A).

23 **B. Requests for Production of Documents**

24 A party may request documents “in the responding party’s possession, custody, or control.”
25 Fed. R. Civ. P. 34(a)(1). Similarly, a party may serve a request “to permit entry onto designated land
26 or other property possessed or controlled by the responding party, so that the requesting party may
27 inspect, measure, survey, photograph, test, or sample the property . . .” Fed. R. Civ. P. 34(a)(2). A
28 request is adequate if it describes items with “reasonable particularity;” specifies a reasonable time,

1 place, and manner for the inspection; and specifies the form or forms in which electronic information
2 can be produced. Fed. R. Civ. P. 34(b). Thus, a request is sufficiently clear if it “places the party
3 upon ‘reasonable notice of what is called for and what is not.’” *Kidwiler v. Progressive Paloverde Ins.*
4 *Co.*, 192 F.R.D. 193, 202 (N.D. W. Va. 2000) (quoting *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D.
5 408, 412 (M.D.N.C. 1992)); *see also* Schwarzer, Tashima & Wagstaffe, *California Practice Guide:*
6 *Federal Civil Procedure Before Trial* (Rev. #1 2011) Discovery, para. 11:1886 (“the apparent test is
7 whether a respondent of average intelligence would know what items to produce”).

8 The responding party must respond in writing and is obliged to produce all specified relevant
9 and non-privileged documents, tangible things, or electronically stored information in its “possession,
10 custody, or control” on the date specified. Fed. R. Civ. P. 34(a). Actual possession, custody or control
11 is not required. “A party may be ordered to produce a document in the possession of a non-party entity
12 if that party has a legal right to obtain the document or has control over the entity who is in possession
13 of the document.” *Soto v. City of Concord*, 162 F.R.D. 603, 620 (N.D. Cal. 1995). Such documents
14 include documents under the control of the party’s attorney. *Meeks v. Parson*, 2009 WL 3303718 (E.D.
15 Cal. Sept. 18, 2009) (involving a subpoena to the CDCR); *Axler v. Scientific Ecology Group, Inc.*, 196
16 F.R.D. 210, 212 (D. Mass. 2000) (a “party must produce otherwise discoverable documents that are in
17 his attorneys’ possession, custody or control”). In the alternative, a party may state an objection to a
18 request, including the reasons. Fed. R. Civ. P. 34(b)(2)(A)-(B).

19 If a party “fails to respond that inspection will be permitted - or fails to permit inspection - as
20 requested under Rule 34,” the propounding party may make a motion to compel production of the
21 documents. Fed. R. Civ. P. 37(a)(3)(B)(iv). Further, “an evasive or incomplete disclosure, answer, or
22 response must be treated as a failure to disclose, answer or respond.” Fed. R. Civ. P. 37(a)(4). A
23 moving party has the burden of demonstrating “actual and substantial prejudice” from the denial of
24 discovery. *Hallet v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)).

25 **III. Discussion and Analysis**

26 In this action, the disputed discovery requests related to Nitesh Gupta’s financial information.
27 Specifically, in its Request for Production No. 1, Plaintiff requested Gupta produce “[a]ll documents
28 sufficient to show [his] net worth,” including:

- 1 a. bank statements, money market statements, bond accounts, and other investment
2 accounts as of July 31, 2015, and August 31, 2015;
- 3 b. a listing of all rental income receivable as of July 31, 2015, and August 31, 2015;
- 4 c. copies of all mortgage loan balance statements for all investment and personal real
5 estate properties as of August 31, 2015;
- 6 d. copies of home owner's insurance policies for all investment and personal real
7 estate properties as of August 31, 2015;
- 8 e. documentation and valuation of all life insurance policies and annuities that carry a
9 "cash-in" or redemption value as of July 31, 2015;
- 10 f. estimated value of all household goods, including furniture, equipment, clothing,
11 firearms, and collectibles owned and the approximate value as of August 31, 2015,
12 as to an item with a value of at least \$500;
- 13 g. listing of all personal motor vehicles required to be licensed by the Texas
14 Department of Motor Vehicles and owned or leased as of August 31, 2015,
15 including year, make, and model;
- 16 h. listing of all other personal property, including boats, ATVs, and trailers as of
17 August 31, 2015;
- 18 i. copies of individual 2014 Federal Individual Income Tax Return, including all
19 applicable attached schedules;
- 20 j. copies of all other tax returns for any entities controlled by YOU for 2014,
21 including but not limited to Eii Valve Company, Eii AVSCO FZCO, Cornerstone
22 Valve, LLC, Well Head Component, Inc. dba AVSCO, Mg Valve Company, Inc.
23 Gupta Management Co., LLC, Inc.;
- 24 k. documents demonstrating how YOU determined the amount of quarterly taxes due
25 and the documents upon which YOU relied to estimate the amount of quarterly
26 taxes due and documents demonstrating YOUR proof of payment of these taxes;
- 27 l. listing of outstanding accounts payable as of July 31, 2015, and August 31, 2015;
- 28 m. copies of all credit card balance statements as of July 31, 2015, and August 31,
2015 for each credit card which reflected a debt of at least \$500; and
- n. copies of applications for loans during the past year.

23 (Doc. 56 at 9-10) Defendant objected to the Request, asserting it was "[o]verbroad and does not seek
24 discovery that is within the realm of that which is likely to lead to the discovery of relevant evidence."

25 (*Id.* at 10) In addition, Defendant argues it invaded his "right to privacy." (*Id.*)

26 Similarly, the contested interrogatories sought information regarding Gupta's assets and
27 financial condition:

28 INTERROGATORY NO. 1:

Please describe or otherwise IDENTIFY each of YOUR assets (whether owned solely

1 by YOU or partly by YOU) with a value of \$500 or more. Describe each asset in detail,
2 including but not limited to: the type of asset; the value of the asset, including rental or
3 interest income; the physical location of the asset; and any other persons or entities
4 having an ownership interest in the assets.

5 INTERROGATORY NO. 2:

6 Please describe or otherwise IDENTIFY YOUR ordinary expenses. For each expense
7 identify: the type of expense, the name of the company or person generating the
8 expense, the amount of the expense, the frequency of the expense, and the method used
9 to pay the expense. If an ordinary expense ranges in amount, state the range of the
10 amount of the expense since January 1, 2015.

11 INTERROGATORY NO. 3:

12 Please describe or otherwise IDENTIFY any expense, other than an ordinary expense, of
13 \$500 or more that YOU incurred since January 1, 2015. For each expense, describe the
14 type of expense, IDENTIFY of the PERSON generating the expense, the amount of the
15 expense, and the method used to pay for the expense. This interrogatory calls for all
16 expenses of \$500 or more, incurred since January 1, 2015, that were not included in
17 your response to interrogatory #2

18 INTERROGATORY NO. 4:

19 Please describe or otherwise IDENTIFY all gifts or loans, including cash gifts or loans,
20 worth over \$500 that you have given any person since January 1, 2015. For each gift or
21 loan, state whether the transaction was a gift or a loan, the recipient of the gift or loan,
22 the type of gift or loan, the value of the gift or loan, the location where the gift was
23 purchased (if applicable), the method used to pay for the gift or loan, the date you gave
24 the gift or loan, any documents that relate to the gift or loan, and, if a loan, the terms of
25 the loan including the dates you received or expect to receive repayment.

26 (See Doc. 56 at 13-16) Defendant objected to each of these interrogatories, asserting the information
27 requested was “[o]verbroad,” “outside the scope of what is permitted, and invades [his] right to
28 privacy.” (*Id.*) In addition, Defendant objected the interrogatories were “[i]mmaterial and not
reasonably calculated to lead to the discovery of admissible evidence.” (*Id.*) Instead, he argued the
“discovery [was] meant for no other reason than to harass and annoy...” (*Id.*)

A. Defendant’s financial information is within the scope of discovery.

Defendant objects on relevancy grounds, arguing punitive damages may not be awarded “since
this is a breach of contract action.” (Doc. 56 at 5, emphasis omitted) However, when, as here a party
asserts a fraudulent inducement to a contract, punitive damages may be awarded if the tort is
independent of the breach of contract. *See Walker v. Signal Companies, Inc.*, 84 Cal.App.3d 982, 996
(Ct. App. 1978) (holding punitive damages may be “awarded where a defendant fraudulently induces
the plaintiff to enter into a contract); *see also Copart, Inc. v. Sparta Consulting, Inc.*, 2015 WL

1 3622618, at *12 (E.D. Cal. June 9, 2015) (finding punitive damages may be sought where the tort
2 liability is independent of the breach of contract). Consequently, punitive damages may be awarded in
3 this action.

4 Previously, this Court determined that a defendant’s “financial information is relevant” where a
5 plaintiff states a claim for punitive damages. *EEOC v. Cal. Psych. Transitions*, 258 F.R.D. 391, 394-95
6 (E.D. Cal. 2009) (citing *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 267 (1981) (observing
7 that evidence of a defendant’s financial worth is traditionally admissible under federal law to evaluate
8 the amount of punitive damages that should be awarded)); *see also Fair Hous. Council of Cent. Cal.,*
9 *Inc. v. Nunez*, 2011 U.S. Dist. LEXIS 127389, at *5-6 (E.D. Cal. Nov. 3, 2011) (“financial information
10 is relevant to [a] plaintiff’s claim for punitive damages and within the scope of permissible discovery”).

11 Although the Ninth Circuit has not established “the parameters of the dissemination of financial
12 information during discovery when punitive damages are alleged,” a majority of federal courts do not
13 require the plaintiff to demonstrate punitive damages will be recovered “to discover information
14 relating to the defendant’s financial condition in advance of trial.” *Cal. Psych. Transitions*, 258 F.R.D.
15 at 394-95. Rather, “a majority of federal courts permit discovery of financial information about the
16 defendant without requiring [the] plaintiff to establish a *prima facie* case on the issue of damages.”
17 *CEH, Inc.*, 153 F.R.D. at 498 (citing, *e.g.*, *Fretz v. Keltner*, 109 F.R.D. 303, 310-11 (D.Kan. 1986);
18 *Baker v. CNA Ins. Co.*, 123 F.R.D. 322, 329-30 (D.Mont. 1988); *In re Bergeson*, 112 F.R.D. 692, 696
19 (D.Mont. 1986); *St. Joseph Hospital v. INA Underwriters Ins. Co.*, 117 F.R.D. 24, 25-26 (D.Me. 1987);
20 *Renshaw v. Ravert*, 82 F.R.D. 361, 363 (E.D.Pa. 1979); *American Ben. Life Ins. Co. v. Ille*, 87 F.R.D.
21 540, 542 (W.D.Okla. 1978)). Because “[t]he discovery of financial information [is] relevant to a
22 putative damages claim,” it is permissible under the Federal Rules of Civil Procedure without a *prima*
23 *facie* showing by Plaintiff.¹ *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 286 (C.D. Cal. 1998).

24 **B. Defendant’s right to privacy does not preclude disclosure of financial information.**

25 Defendant argues that state law protects his right to privacy, “and federal courts have generally
26 recognized state law privacy concerns in federal cases.” (Doc. 56 at 6, citing *Johnson v. Thompson*,

27
28 ¹ Even if the Court were to require a *prima facie* showing by Plaintiff, this obligation is clearly satisfied, as Plaintiff successfully opposed summary adjudication of its claims for deceit and concealment, as well as for punitive damages. (See Doc. 78 at 24-26)

1 971 F.2d 1487, 1497 (10th Cir. 1992)). Previously, this Court found the right to privacy under
2 California law “extends to financial privacy in litigation, but...is subject to balancing the needs of the
3 litigation with the sensitivity of the information/ records sought.” *Davis v. Leal*, 43 F. Supp. 2d 1102,
4 1110 (E.D. Cal. 1999) (quoting *Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652, 657 (1975)).
5 Consequently, the right to privacy is not an “absolute bar to discovery,” and “may be subject to
6 invasion.” *Cal. Psychiatric Transitions*, 258 F.R.D. at 395. Notably, a party’s interest in the
7 confidentiality of financial information may be adequately addressed via a protective order. *Oakes*,
8 179 F.R.D. at 284; *Hill v. Nat’l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 38 (1994) (privacy concerns
9 “are assuaged if intrusion is limited and confidential information is carefully shielded from disclosure
10 except to those who have a legitimate need to know”).

11 Because Defendant’s concerns regarding privacy may be addressed by protective order, the
12 objections on privacy grounds are **OVERRULED**. See *Cal. Psychiatric Transitions*, 258 F.R.D. at 395

13 **V. Conclusion and Order**

14 Defendant Gupta’s financial information is relevant to Plaintiff’s claim for punitive damages,
15 and is within the scope of discovery pursuant to the Federal Rules of Civil Procedure.

16 Accordingly, **IT IS HEREBY ORDERED**:

- 17 1. Plaintiff’s motion to compel discovery is **GRANTED**;
- 18 2. No later than **July 1, 2016**, counsel **SHALL** file a joint, proposed protective order
19 addressing the maintaining the confidentiality of the financial records at issue;
- 20 3. Defendant **SHALL** produce any documents responsive to Request for Production, No. 1
21 and respond to Interrogatories Nos. 1 through 4 **within five court days** after the Court
22 issues the protective order.

23
24 IT IS SO ORDERED.

25 Dated: **June 28, 2016**

/s/ Jennifer L. Thurston
26 UNITED STATES MAGISTRATE JUDGE