

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PNY TECHNOLOGIES, INC.,

Plaintiff,

v.

MILLER, KAPLAN, ARASE & CO, LLP,

Defendant.

Case No. 15-cv-01728-MMC (EDL)

**ORDER REGARDING DKT. NOS. 96,
100**

On May 23, PNY submitted a letter requesting that the Court compel responses to Requests for Production Nos. 87 and 88 which demand financial information from Miller Kaplan sufficient to establish its net worth and financial condition, including balance sheets, statements of income, statements of cash flow, and state and federal tax returns from 2013 to present. Dkt. No. 96. Miller Kaplan did not join in the discovery letter, but filed a response on May 25 in which it argues that state law allows discovery of a defendant's wealth only after the plaintiff has shown a substantial probability of recovering damages. Dkt. No. 100 (citing W. Schwarzer et al., Cal. Practice Guide: Fed Civil Procedure Before Trial § 1:1062 (Rutter Group 2014); Cal. Civ. Code § 3295(c)). The Court declines to apply this state law, and hereby Orders Miller Kaplan to respond to Requests for Production Nos. 87 and 88. PNY has stated claims for intentional torts including fraud, intentional misrepresentation and tortious interference and it is demanding punitive damages, and financial information is relevant to a jury's determination of the amount of punitive damages, if any, to award.

More persuasively, Miller Kaplan argues that it has a right to privacy in its financial information. However, that right is not absolute. To protect its interests and in the interest of time, Miller Kaplan may initially produce its financial information under an "Attorneys Eyes

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Only” designation within one week from the date of this Order. Upon production, the parties shall meet and confer to determine whether this designation is warranted or whether a “Confidential” designation for some or all of the documents is appropriate.

IT IS SO ORDERED.

Dated: May 25, 2016


ELIZABETH D. LAPORTE
United States Magistrate Judge