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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

M.G., et al.,

Plaintiffs,

v.

METROPOLITAN
INTERPRETERS and
TRANSLATORS, INC., et al.,

Defendants.

CASE NO. 12cv0460-JM (MDD)
13cv1891-JM (MDD)
13cv1892-JM (MDD)

ORDER ON JOINT MOTION TO
DETERMINE DISCOVERY
DISPUTE - PLAINTIFFS'
MOTION TO COMPEL

[ECF NO. 129]

Background

On May 22, 2014, the parties jointly moved the Court to determine a discovery dispute regarding Plaintiffs' discovery requests to defendant Metropolitan Interpreters and Translators, Inc., and a number of individual defendants who are or were employees of defendant Metropolitan. The dispute related to interrogatories and requests for production of documents requiring the defendants to disclose their financial condition and financial records. (ECF No. 129). On August 12, 2014, this Court deferred ruling on the dispute during the pendency of motions for summary judgment. (ECF No. 158).

On October 24, 2014, the Court granted in part and denied in part

1 the pending motions for summary judgment. (ECF No. 161). As a
2 consequence of the Court's rulings, all that remains in this case is the
3 issue of damages, including punitive damages, against defendant
4 Metropolitan and one individual defendant, "J. C." Similarly, all that
5 remains of the instant dispute are the interrogatories and requests for
6 production directed to defendant J. C. and the requests for production
7 directed at defendant Metropolitan.

8 Plaintiffs assert that the information is relevant because the
9 Plaintiffs may be awarded punitive damages. Defendant Metropolitan
10 opposes disclosure primarily on the grounds that financial discovery of
11 the individual defendant is not warranted as Metropolitan has a
12 complete indemnity agreement with defendant J. C. Defendant
13 Metropolitan also objects to the scope of the requests for production
14 directed at it.

15 Discussion

16 As a threshold matter, it should be noted that although the Ninth
17 Circuit has not defined the extent of financial discovery allowed in a case
18 alleging punitive damages, a majority of federal courts allow for such
19 discovery without requiring plaintiffs to make a prima facie showing
20 that punitive damages may be recovered. *See Salisbury v. Hickman*,
21 1:12cv01098, 2013 WL 4402789 *4-5 (E.D. Cal. August 14, 2013). To the
22 extent that California's right to privacy would impact this analysis, that
23 right is not absolute and the Protective Order issued in this case serves
24 to adequately protect against further dissemination. *Id.* *6. (ECF No.
25 51).

26 Defendant Metropolitan has stated unequivocally that it will
27 indemnify defendant J. C. for any damages assessed against him. (ECF
28 No. 129-1 at 7 (using the page numbers supplied by ECF, not the original

1 page numbering)). Accordingly, Defendants assert that discovery of the
2 financial condition of defendant J. C. is not relevant. Plaintiffs, however,
3 assert that the indemnity agreement does not control whether the
4 information can be discovered.

5 Defendants rely upon *Nowlin v. Lusk*, 11cv712S, 2014 WL 298155
6 (W.D. N. Y. Jan. 28, 2014). In *Nowlin*, police officers were sued in their
7 individual and official capacities for civil rights violations, including a
8 claim for punitive damages. Plaintiff sought the personal financial
9 information of the individual officers. The court denied the requests as
10 irrelevant because any damages assessed against the individual officers,
11 by statute, would be indemnified by their employers. *Id.* *7. Plaintiffs
12 appear to attempt to distinguish this case primarily because the plaintiff
13 in *Nowlin* was a prisoner proceeding *pro se*. If the Court has interpreted
14 the argument correctly, it is singularly unpersuasive; the notion that a
15 federal judge would give short shrift to a self-represented litigant,
16 prisoner or not, can be considered offensive.

17 Defendants also direct the Court's attention to *Platcher v. Health*
18 *Professionals, Ltd.*, 04-1442 2007 WL 2772855 *2 n.3 (C.D. Ill. Sep. 18,
19 2007), in which the court noted that if the defendants contended that any
20 damage award against them would be indemnified, then the requested
21 discovery would be irrelevant and inadmissible. Defendants also point to
22 *United States v. Autumn Ridge Condominium Ass'n, Inc.*, 265 F.R.D.
23 323, 327-28 (N.D. Ind. 2009), in which the court found the requested
24 financial discovery to be relevant because the indemnification agreement
25 would not cover the complained-of acts. By implication, therefore, the
26 discovery requested would be irrelevant if the indemnification
27 agreement was unequivocal. Plaintiffs attempt to distinguish these
28 cases because discovery actually was ordered.

1 Plaintiffs rely upon *Chasse v. Humphreys*, CV-07-189-HU, 2008 WL
2 867751 *1 (D. Ore. March 27, 2008). In *Chasse* the court ordered limited
3 financial discovery of individual defendants despite the presence of an
4 indemnity agreement. Discovery of the finances of the individual
5 defendants was limited by the court to “a simple statement of net worth,
6 under oath . . .” The statement was to be provided subject to the
7 protective order under the attorney’s eyes only provision. *Id.*

8 Plaintiffs also cite to *Clark v. Commonwealth of Pennsylvania*, Civ.
9 A. 93-1365, 1994 WL 3966478 (E.D. Pa. July 21, 1994). The plaintiff in
10 *Clark* asked for detailed financial information from the defendants,
11 including tax returns. The defendants objected generally to the
12 disclosure of such information and specifically because an indemnity
13 agreement was in place. The court only addressed the issue of
14 discoverability generally, finding that such information is discoverable,
15 and ruled specifically that the defendants’ tax returns were relevant. *Id.*
16 *2-3. The court did not address the impact of the indemnity agreement
17 and thus, by implication, rejected the notion that the indemnity
18 agreement rendered the personal financial information irrelevant, but
19 limited the disclosure of the tax returns only to the preceding year
20 (1993). The court did not address the requests for other financial
21 information. *Id.* The court did express its view that past earnings and
22 net worth is not relevant - the issue being the defendants’ net worth
23 now. *Id.* *3.

24 There are ten special interrogatories and fifteen requests for
25 production directed to defendant J. C. at issue. (ECF No. 129 at 23-42;
26 98-121). All involve production and disclosure of detailed personal
27 financial information. Considering the relevant case law, the Court will
28 take a decidedly conservative approach. The motion to compel as to

1 defendant J. C. is GRANTED IN PART. Defendant J. C. must produce a
2 simple financial statement, under oath, reflecting his current assets and
3 liabilities, to Plaintiffs no later than 30 days from the entry of this
4 Order. The financial statement will be produced pursuant to the
5 outstanding Protective Order in this case and classified as “attorneys
6 eyes only.” The Court will not be inclined to grant any motion to re-
7 depose J. C. upon the financial statement.

8 There are six requests for production directed at defendant
9 Metropolitan at issue. (ECF No. 129 at 214-231). The requests for
10 production seek detailed financial information for the period
11 commencing January 2009. Plaintiffs voluntarily limited the requests to
12 the period commencing January 2011, to coincide with the period
13 covered by the Complaint. Defendant Metropolitan objects that the
14 requests remain overbroad. Included in the information sought by
15 Plaintiffs are lists of shareholders, (RFP No. 25), general ledgers (RFP
16 No. 26), tax returns (RFP No. 27), bank accounts (RFP No. 28), gross
17 receipts of “money” (RFP No. 29), property (RFP No. 30), and current
18 contracts and projects including gross income or revenue for each (RFP
19 No. 31).

20 The Court agrees that these requests are overbroad. The issue is
21 defendant Metropolitan’s net worth now, not in the past. Consequently,
22 the motion to compel as to defendant Metropolitan is GRANTED IN
23 PART. Defendant Metropolitan must produce to Plaintiffs its most
24 recent certified financial statement and its tax return for 2013. If the
25 most recent certified financial statement only pertains to the calendar
26 year 2013, defendant Metropolitan must produce that information and a
27 pro forma (uncertified) financial statement for the year-to-date verified
28 as accurate under oath by a responsible and knowledgeable corporate

1 official. If defendant Metropolitan does not have a certified financial
2 statement for 2013, it must produce a verified financial statement for
3 that year and the year-to-date attested under oath by a responsible and
4 knowledgeable corporate officer. Such disclosures must be made no later
5 than 30 days following the entry of this Order.

6 Conclusion

7 1. Plaintiffs' Motion to Compel Further Responses from Defendant
8 J.C., as presented in the instant Joint Motion for Determination of a
9 Discovery Dispute, is GRANTED IN PART. Defendant J. C. must
10 produce a simple financial statement, under oath, reflecting his current
11 assets and liabilities, to Plaintiffs no later than 30 days from the entry of
12 this Order. The financial statement will be produced pursuant to the
13 outstanding Protective Order in this case and classified as "attorneys
14 eyes only."

15 2. Plaintiffs' Motion to Compel Further Responses from Defendant
16 Metropolitan, as presented in the instant Joint Motion for Determination
17 of a Discovery Dispute, is GRANTED IN PART. Defendant Metropolitan
18 must produce to Plaintiffs its most recent certified financial statement
19 and its tax return for 2013. If the most recent certified information only
20 pertains to the calendar year 2013, defendant Metropolitan must
21 produce that information and a pro forma (uncertified) financial
22 statement for the year-to-date verified as accurate under oath by a
23 responsible and knowledgeable corporate official. If defendant
24 Metropolitan does not have a certified financial statement for 2013, it
25 must produce a verified financial statement for that year and the year-
26 to-date attested under oath by a responsible and knowledgeable
27 corporate officer. Such disclosures must be made no later than 30 days
28 following the entry of this Order.

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3. Plaintiffs' Motion to Compel Further Responses from individual defendants, other than defendant J. C., as presented in the instant Joint Motion for Determination of a Discovery Dispute, is DENIED AS MOOT.

IT IS SO ORDERED.

DATED: October 30, 2014


Hon. Mitchell D. Dembin
U.S. Magistrate Judge