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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT ALEXANDER KASEBERG,
Plaintiffs,
v.
CONACO, LLC, ET AL.,
Defendants.

Case No.: 15-cv-01637-JLS (DHB)

ORDER:

(1) REGARDING JOINT MOTIONS FOR DETERMINATION OF DISCOVERY DISPUTES (ECF NOS. 36, 38); AND

(2) GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER (ECF NO. 34)

On June 3, 2016, Defendants Conaco, LLC (“Conaco”), Turner Broadcasting System, Inc. (“TBS”), Time Warner Inc. (“Time Warner”), Conan O’Brien (“Mr. O’Brien”), Jeff Ross (“Mr. Ross”), and Mike Sweeney (“Mr. Sweeney”) (collectively, “Defendants”) moved for the entry of a protective order as set forth in Exhibit A attached to their motion. (ECF No. 34.) Plaintiff filed an opposition on June 23, 2016, and Defendants filed a reply on June 30, 2016. (ECF Nos. 40, 43.)

1 Thereafter, on June 9, 2016, the parties filed a Joint Motion for Determination of
2 Discovery Dispute. (ECF No. 36.) The Joint Motion addresses disputes concerning
3 Plaintiff's responses to the First Set of Interrogatories and First Set of Requests for
4 Admission served by Conaco. (*Id.*) On June 10, 2016, the parties filed another Joint
5 Motion for Determination of Discovery Dispute. (ECF No. 38.) The second Joint Motion
6 addresses disputes concerning Defendants' responses to Plaintiff's First Set of
7 Interrogatories to all Defendants and Request for Production of Documents, Set One, to
8 Conaco. (*Id.*)

9 Having considered the arguments of the parties and the applicable law, and for the
10 reasons set forth herein, the Court **GRANTS IN PART** and **DENIES IN PART** the Joint
11 Motion addressing Plaintiff's responses to the First Set of Interrogatories and First Set of
12 Requests for Admission served by Conaco (ECF No. 36); **GRANTS IN PART** and
13 **DENIES IN PART** the Joint Motion addressing Defendants' response to Plaintiff's First
14 Set of Interrogatories to all Defendants and Request for Production of Documents, Set One,
15 to Conaco (ECF No. 38); and **GRANTS** Defendants' motion for entry of a protective
16 order.¹

17 **I. BACKGROUND**

18 Plaintiff commenced this action on July 22, 2015 by filing a complaint against
19 Defendants alleging copyright infringement. (ECF No. 1 ("Compl.")). Plaintiff alleges he
20 is a comedic writer engaged in the entertainment industry. (*Id.* at ¶ 14.) Plaintiff alleges
21 that after he wrote and published four jokes on his personal online blog and/or Twitter
22 account, each joke was subsequently featured in the monologue segment of the "Conan"
23 show. (*Id.* at ¶¶ 15-21.)

24 Plaintiff alleges that he published a joke regarding a Delta flight on or about January
25 14, 2015 on his personal online blog ("Joke #1"). (*Id.* at ¶ 15.) Defendants used a joke
26

27 ¹ The Court finds this motion suitable for determination on the papers submitted
28 and without oral argument. *See* Civ. L.R. 7.1(d)(1).

1 about a Delta flight in the Conan show monologue on January 14, 2015. (*See* ECF No. 36-
2 1 (“Huskins Decl.”) at Exh. B at Definition K.) Plaintiff further alleges that, on or about
3 February 3, 2015, he published a joke on his personal online blog and Twitter account
4 regarding Tom Brady (“Joke #2”). (Compl. at ¶ 16.) Defendants used a joke about Tom
5 Brady in the Conan show monologue on February 4, 2015. (Huskins Decl. at Exh. B at
6 Definition M.) On or about February 17, 2015, Plaintiff alleges he published a joke on his
7 personal online blog and Twitter account regarding the Washington Monument (“Joke
8 #3”). (Compl. at ¶ 18.) Defendants used a joke regarding the Washington Monument in
9 the Conan show monologue on February 17, 2015. (Huskins Decl. at Exh. B at Definition
10 O.) Lastly, on or about June 9, 2015, Plaintiff alleges he published a joke on his personal
11 online blog and Twitter account regarding Bruce Jenner (“Joke #4”). (Compl. at ¶ 19.)
12 Defendants used a joke regarding Bruce Jenner in the Conan show monologue on June 9,
13 2015. (Huskins Decl. at Exh. B at Definition Q.)

14 Plaintiff filed copyright applications for each of the jokes at issue, deeming them
15 “literary works,” with the United States Copyright Office on March 10, 2015, March 11,
16 2015, June 26, 2015, and July 8, 2015. (Compl. at ¶ 23; *see also* ECF No. 1-2.) These
17 applications are pending. (*Id.*)

18 Plaintiff seeks a permanent injunction, actual damages, statutory damages, increased
19 statutory damages for willful infringement, and profits attributable to the infringement of
20 Plaintiff’s copyrights pursuant to 17 U.S.C. §§ 502(a) and 504. (*Id.* at pp. 6-7.) Plaintiff
21 also seeks attorney’s fees and costs and punitive damages. (*Id.* at p. 7.)

22 **II. DISCUSSION**

23 **A. Joint Motions for Determination of Discovery Disputes (ECF Nos. 36, 38)**

24 1. Legal Standard

25 The threshold requirement for discoverability under the Federal Rules of Civil
26 Procedure is whether the information sought is “relevant to any party’s claim or defense
27 and proportional to the needs of the case.” Fed R. Civ. P. 26(b)(1). Factors to consider
28 include “the importance of the issues at stake in the action, the amount in controversy, the

1 parties' relative access to relevant information, the parties' resources, the importance of
2 the discovery in resolving the issues, and whether the burden or expense of the proposed
3 discovery outweighs its likely benefit." *Id.* "Information within this scope of discovery
4 need not be admissible in evidence to be discoverable." *Id.*

5 The relevance standard is commonly recognized as one that is necessarily broad in
6 scope. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (citing *Hickman*
7 *v. Taylor*, 329 U.S. 495, 501 (1947)). However broadly defined, relevancy is not without
8 "ultimate and necessary boundaries." *Hickman*, 329 U.S. at 507. Accordingly, district
9 courts have broad discretion to determine relevancy for discovery purposes. District courts
10 also have broad discretion to limit discovery. For example, a court may limit the scope of
11 any discovery method if it determines that "the discovery sought is unreasonably
12 cumulative or duplicative, or can be obtained from some other source that is more
13 convenient, less burdensome, or less expensive" or the "proposed discovery is outside the
14 scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(C)(i), (iii). "The party who
15 resists discovery has the burden to show discovery should not be allowed, and has the
16 burden of clarifying, explaining, and supporting its objections." *Duran v. Cisco Sys., Inc.*,
17 258 F.R.D. 375, 378 (C.D. Cal. 2009) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418,
18 429 (9th Cir. 1975); *Sullivan v. Prudential Ins. Co. of Am.*, 233 F.R.D. 573, 575 (C.D. Cal.
19 2005)).

20 2. Defendants' Motion to Compel (ECF No. 36)

21 Defendants seek an Order compelling Plaintiff to supplement his responses to
22 Interrogatories Nos. 11-12 in Conaco's First Set of Interrogatories, and deeming admitted
23 Requests for Admission 2-5 and 6-7 in Conaco's First Set of Requests for Admission.

24 a. *Interrogatory No. 11*

25 In Interrogatory No. 11, Conaco asks Plaintiff to identify every instance in the last
26 five years in which he sold any of his original content and to identify the original content
27 sold. (Huskins Decl. at Exh. A.) Plaintiff initially objected to this interrogatory. (*Id.* at
28 Exh. C.) However, Plaintiff later served a supplemental response which states that he will

1 “provide a separate document for Attorney’s Eyes Only.” (ECF No. 36-2 (“Lorenzo
2 Decl.”) at Exh. JJ; *see also* Exh. GG.)

3 Although Plaintiff’s counsel asserts in his declaration that he provided Defendants
4 with a supplemental response to Interrogatory No. 11, and attached an email to the motion
5 reflecting this transmission, Defendants represent they did not receive the supplemental
6 response. (*See* Lorenzo Decl. at Exh. GG; ECF No. 36 at p. 4, n. 1.) Accordingly,
7 Defendants’ position on Plaintiff’s supplemental response is unknown. However, given
8 the nature of the response and the entry of a Protective Order, as discussed below, with an
9 Attorney’s Eyes Only (“AEO”) provision, the Court will not compel a further response at
10 this time.

11 b. *Interrogatory No. 12*

12 In Interrogatory No. 12, Conaco asks Plaintiff to identify the contact information for
13 each purchaser, including name, address, phone number and email address and the amount
14 of compensation Plaintiff received, for each instance identified in Plaintiff’s response to
15 Interrogatory No. 11. (Huskins Decl. at Exh. A.) Plaintiff initially objected to this
16 interrogatory on the grounds it seeks information which is not relevant, and seeks
17 information that is private and confidential and may violate the privacy rights or trade
18 secrets of the third parties who accepted submissions. (*Id.* at Exh. C.) Plaintiff later served
19 a supplemental response, but did not change his objections. (Lorenzo Decl. at Exh. JJ.)

20 Defendants move to compel a response, arguing that information concerning the
21 purchase of Plaintiff’s content is directly relevant to the quantification of the potential
22 damages at issue. (ECF No. 36 at p. 3.) Defendants further argue that to the extent Plaintiff
23 objects on privacy grounds, the disclosure would be treated subject to the terms of the
24 Protective Order which contains an AEO provision. (*Id.* at pp. 3-4.)

25 The Court agrees with Defendants that the amount of compensation Plaintiff
26 received when he sold original content on other occasions is relevant to the issue of
27 damages. *See Oracle Corp. v. SAP AG*, 765 F.3d 1081, 1087 (9th Cir. 2014). However,
28 Defendants have not demonstrated how the address, phone number and email address of

1 each purchaser is relevant to the issue of damages. Accordingly, Plaintiff is ordered to
2 serve a supplemental response to Interrogatory No. 12 and identify the name of each
3 purchaser, as well as the amount of compensation he received. However, the Court will
4 not require Plaintiff to provide the address, phone number, and email address of each
5 purchaser.

6 c. *Requests for Admission Nos. 2-5*

7 Requests for Admission Nos. 2-5 ask Plaintiff to admit that Jokes 1-4 are “not
8 identical” to the jokes used in the monologue for the Conan show, as those jokes are defined
9 in the “Definitions” section of the Requests for Admission. (Huskins Decl. at Exh. B.)
10 Plaintiff initially objected to Requests for Admission 2-5 on the grounds they are “vague
11 and ambiguous” as to “identical” and the response calls for a legal conclusion. (*Id.* at Exh.
12 D.) Plaintiff served supplemental objections to Requests for Admission Nos. 2-5 making
13 the same objections, but then responding: “Without waiving said objections Respondent
14 Denies and is not denying on the basis of the objection.” (*Id.* at Exh. H, at pp. 5-6.)
15 Therefore, Plaintiff has specifically denied each Request for Admission without
16 qualification.

17 Defendants contend that because “it is objectively clear that the Jokes At Issue are
18 not literal, word-for-word copies of Defendants’ Monologue Jokes,” that any denial, with
19 or without qualification, is insufficient. (ECF No. 36 at pp. 5-6.) Defendants further argue
20 that Plaintiff’s supplemental responses are evasive and in bad faith, and indicate a “clear
21 disregard for the requirements and purpose of Rule 36.” (*Id.* at pp. 5-6.) Therefore,
22 Defendants request that the Court deem these requests admitted in accordance with Federal
23 Rule of Civil Procedure 36(a)(6). (*Id.* at p. 6.)

24 Federal Rule of Civil Procedure 36(a) permits a party to serve any other party with
25 a written request to admit any matters within the scope of Federal Rule of Civil Procedure
26 26(b)(1) relating to facts. Fed. R. Civ. P. 36(a)(1)(A). “The purpose of Rule 36(a) is to
27 expedite trial by establishing certain material facts as true and thus narrowing the range of
28 issues for trial.” *Asea, Inc. v. Southern Pac. Transp. Co.*, 669 F.2d 1242, 1245 (9th Cir.

1 1981). In response, a party may admit the fact, specifically deny it, or state in detail why
2 the party cannot truthfully admit or deny. Fed. R. Civ. P. 36(a)(4). “A denial must fairly
3 respond to the substance of the matter; and when good faith requires that a party qualify an
4 answer or deny only a part of a matter, the answer must specify the part admitted and
5 qualify or deny the rest.” *Id.* “[A]n evasive or incomplete . . . answer . . . must be treated
6 as a failure to . . . answer.” Fed. R. Civ. P. 37(a)(4).

7 If the requesting party contends that the response is insufficient, the party may
8 “move to determine the sufficiency of an answer or objection.” Fed. R. Civ. P. 36(a)(6).
9 If the court finds that an answer does not comply with Rule 36, “the court may order either
10 that the matter is admitted or that an amended answer be served.” *Id.* Ordinarily, the court
11 should “first order an amended answer, and deem the matter admitted only if a sufficient
12 answer is not timely filed.” *Asea, Inc.*, 669 F.2d at 1247. However, “this determination,
13 like most involved in the oversight of discovery, is left to the sound discretion of the district
14 judge.” *Id.*

15 Here, the Court does not find Plaintiff’s responses to be insufficient, nor does it find
16 them evasive or to be in bad faith. Defendants argue they made clear during the parties’
17 meet and confer and in follow-up correspondence that Plaintiff should understand
18 “identical” to mean a word-for-word copy. (ECF No. 36 at p. 5, lines 15-17.) However,
19 Conaco does not define the word “identical” in its Requests for Admissions, and the Court
20 does not find Plaintiff’s response, absent the word being defined as “word-for-word copy”
21 in the Requests for Admission, to be insufficient, evasive, or in bad faith. (*See Huskins*
22 *Decl. at Exh. B, pp. 1-5.*) Accordingly, the Court denies Defendants’ request to deem
23 admitted Plaintiff’s responses to Requests for Admission Nos. 2-5.

24 d. *Requests for Admission Nos. 6-7*

25 Request for Admission No. 6 asks Plaintiff to admit that the “only evidence” he has
26 of Defendants’ access to Jokes 1-4 prior to Defendants’ alleged infringement is his
27 publication of the jokes on his Twitter account, personal online blog, or Facebook Page.
28 (*Huskins Decl. at Exh. B, p. 6.*) Request for Admission No. 7 asks Plaintiff to admit that

1 he is not aware of any Defendant following or viewing his personal online blog, Twitter
2 account, or Facebook page prior to February 4, 2015. (*Id.*)

3 Plaintiff initially responded to Request for Admission No. 6 as follows:
4 “Respondent refers to and incorporates by reference its General Objections as though set
5 forth in full herein. Respondent further objects to this Request on the grounds that it is
6 compound, vague and ambiguous and that Respondent cannot provide an intelligible
7 response with [sic] speculation. Without waiving said objections, Respondent Denies.”
8 (*See id.* at Exh. D, at p. 6.) Plaintiff’s response to Request for Admission No. 7 similarly
9 incorporated the General Objections and then stated: “Respondent further objects to this
10 Request on the grounds that it is compound and that discovery is continuing. Without
11 waiving said objections Respondent Denies.” (*Id.* at p. 7.)

12 Plaintiff served supplemental responses to Requests for Admission Nos. 6-7 making
13 the same objections, but then responding: “Without waiving said objections Respondent
14 Denies on the basis that he has a recollection of someone on the Conan show following
15 Respondent on twitter at some point in time.” (Huskins Decl. at Exh. H, pp. 6-7.)
16 Therefore, Plaintiff has specifically denied each Request for Admission with qualification.

17 Defendants argue that Plaintiff’s supplemental response contradicts his response to
18 Interrogatory No. 6. (ECF No. 36 at p. 7.) Interrogatory No. 6 asks Plaintiff to state all
19 facts relating to Defendants’ opportunity to view or copy the jokes at issue. (Huskins Decl.
20 at Exh. C, p. 7.) Plaintiff objected to the request and then stated: “Without waiving said
21 objections, Respondent maintains a facebook, twitter and blog page that are all publicly
22 available and accessible. Discovery is continuing.” (*Id.*)

23 As an initial matter, the Court does not find these responses contradictory. Plaintiff
24 states that Defendants had an opportunity to view or copy the jokes at issue on his publicly
25 available and accessible Twitter account, and that he has a recollection of someone on the
26 Conan show following him on his public and accessible Twitter account at some point in
27 time. Although Plaintiff’s supplemental responses to Requests for Admission Nos. 6-7
28 provide additional information on which to evaluate Defendants’ access to the jokes,

1 Defendants did not have to follow Plaintiff on Twitter to have an “opportunity to view or
2 copy” the jokes.

3 Defendants further question the veracity of Plaintiff’s responses to Requests for
4 Admission Nos. 6-7, arguing that “[i]f this information were true, Plaintiff would have had
5 this information when he initially responded to the Interrogatories and RFAs.” (ECF No.
6 37 at p. 7, lines 6-8.) To the extent Defendants are asking the Court to question Plaintiff’s
7 truthfulness because he remembered additional information about events that happened
8 more than a year prior, the Court declines to do so. Plaintiff represented his response to
9 Interrogatory No. 6 was “complete” on May 23, 2016. (Huskins Decl. at Exh. F.) He
10 thereafter served his supplemental response with additional information to Conaco’s
11 Requests for Admissions on June 1, 2016. (*Id.* at ¶ 10.) It is entirely plausible that Plaintiff
12 recalled additional information during this time as he was having conversations with his
13 counsel about discovery.

14 As Defendants have not moved to compel an additional response to Interrogatory
15 No. 6, that issue is not before the Court. However, the Court will remind Plaintiff of his
16 duty to supplement his initial disclosures and discovery responses “in a timely manner if
17 the party learns that in some material respect the disclosure or response is incomplete or
18 incorrect, and if the additional or corrective information has not otherwise been made
19 known to the other parties during the discovery process or in writing.” *See* Fed. R. Civ. P.
20 26(e)(1).

21 For the foregoing reasons, the Court denies Defendants’ request to deem admitted
22 Plaintiff’s responses to Requests for Admission Nos. 6-7.

23 3. Plaintiff’s Motion to Compel (ECF No. 38)

24 Plaintiff seeks an Order compelling (1) Conaco to supplement its responses to
25 Requests Nos. 3-8 in Plaintiff’s Request for Production of Documents, (2) all Defendants
26 to supplement their responses to Interrogatory Nos. 1-3 in Plaintiff’s, and (3) Conaco to
27 supplement its response to Interrogatory Nos. 4, 5, and 7 in Plaintiff’s Interrogatories.
28 (ECF No. 38.) Defendants oppose. (*Id.*)

1 As an initial matter, Defendants argue Plaintiff’s motion is defective and untimely.
2 (*Id.* at pp. 15-16.) Defendants served their responses to Plaintiff’s Interrogatories and
3 Requests for Production of Documents on April 18, 2016. (*See* ECF No. 38-1 at Exhibits
4 N-U.) Pursuant to Judge Bartick’s Civil Chambers Rules, counsel was required to file their
5 joint motion addressing this discovery dispute within forty-five (45) days of the service of
6 the response. (*See* Judge Bartick’s Civil Chambers Rules at § IV(C), (D).) Therefore, the
7 joint motion should have been filed no later than June 2, 2016. The joint motion was not
8 filed, however, until June 10, 2016.

9 As demonstrated by the parties’ declarations and exhibits attached to the Joint
10 Motion, Plaintiff’s counsel first sent a letter to Defendants addressing alleged deficiencies
11 in their responses on May 13, 2016. (*See* ECF No. 38-1 at Exh. U.) The parties thereafter
12 met and conferred on May 18, 2016. (*See id.* at ¶ 2; ECF No. 38-2 at ¶ 2.) Following the
13 May 18, 2016 meet and confer, the parties continued to exchange emails through May 31,
14 2016. (*See id.* at ¶¶ 5-11; EF No. 38-2 at ¶¶ 18-22.) Although Plaintiff was required to
15 provide Defendants with a reasonable opportunity to contribute to any joint motion he
16 intended to file by May 26, 2016, Plaintiff’s counsel states that he “thought it was best to
17 continue to meet and confer rather than to rush to file a motion.” (ECF No. 38-1 at ¶ 11;
18 *see also* Judge Bartick’s Civil Chambers Rules at § IV(C)(3).) The parties also discussed
19 informally calling Judge Bartick to resolve their dispute without filing papers. (*See id.* at
20 ¶¶ 4, 7, 10.)

21 Based on the foregoing, the Court finds that although the Joint Motion was untimely
22 filed, because the parties were diligent in meeting and conferring, the Joint Motion was
23 filed shortly after the deadline, and resolving the disputes therein is in the interest of justice,
24 the Court, in its discretion, will consider the motion.²

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28 ² The Court also notes Plaintiff’s failure to comply with the page requirement.
(*See* Judge Bartick’s Civil Chambers Rules at § IV(C)(1).) Although the Court will

1 a. *Requests for Production No. 3-4*

2 In Requests for Production Nos. 3-4 to Conaco, Plaintiff requests any and all
3 documents, tangible things, and other items relating to Conaco’s annual gross revenues and
4 annual net profits in 2015. (ECF No. 38-1 at Exh. M.) In response, Conaco objected, in
5 part, on the basis of relevance and the fact the requests seek confidential information prior
6 to the entry of a suitable protective order. (ECF No. 38-2 at Exh. 14.) Based on its
7 objections, Conaco withheld responsive documents. (*Id.*) In the Joint Motion, Defendants
8 contend their principal objection to these requests is that they are irrelevant and not
9 reasonably related to any infringement. (ECF No. 38 at p. 17, lines 1-3.) Plaintiff argues
10 this information is relevant to prove Plaintiff’s damages. (*Id.* at pp. 7-8.)

11 Among other items, Plaintiff seeks actual damages and profits in this copyright
12 infringement action pursuant to 17 U.S.C. §§ 504(b). Section 504(b) states:

13 The copyright owner is entitled to recover the actual damages suffered by him
14 or her as a result of the infringement, and any profits of the infringer that are
15 attributable to the infringement and are not taken into account in computing
16 the actual damages. In establishing the infringer’s profits, the copyright
17 owner is required to present proof only of the infringer’s gross revenue, and
18 the infringer is required to prove his or her deductible expenses and the
19 elements of profit attributable to factors other than the copyrighted work.

20 17 U.S.C. § 504(b).

21 Section 504(b) therefore provides for two distinct monetary remedies – actual
22 damages and recovery of wrongful profits. *See Polar Bear Prods., Inc. v. Timex Corp.*,
23 384 F.3d 700, 707-08 (9th Cir. 2004). Actual damages, which focus on the copyright
24 holder’s losses, “are usually determined by the loss in the fair market value of the
25 copyright, measured by the profits lost due to the infringement or by the value of the use
26 of the copyrighted work to the infringer.” *Id.* at 708 (quoting *McRoberts Software, Inc. v.*
Media 100, Inc., 329 F.3d 557, 566 (7th Cir. 2003)). Wrongful profit damages, on the

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28 _____ consider the final page and a half of Plaintiff’s motion on this occasion, it cautions that in
the future it will only read and consider the first ten (10) pages filed.

1 other hand, which focus on the infringer’s gains, are awarded “[t]o take away incentives
2 for would-be infringers and to prevent the infringer from unfairly benefiting from a
3 wrongful act.” *Id.* (citation and internal quotations omitted). For both types of damages,
4 the plaintiff must establish a causal link between the infringement and the monetary remedy
5 sought as a predicate to recovery. *Id.* “[T]his requirement is akin to tort principles of
6 causation and damages.” *Id.*

7 Implicated in Requests for Production Nos. 3 and 4 are wrongful profit damages.
8 Wrongful profits can be direct or indirect. *Id.* Direct profits are “those that are generated
9 by selling an infringing product” and indirect profits are “revenue that has a more
10 attenuated nexus to the infringement.” *Mackie v. Rieser*, 296 F.3d 909, 914 (9th Cir. 2002).
11 In this case, Plaintiff is seeking indirect profits. A plaintiff seeking indirect profits must
12 establish the existence of a causal link before indirect profit damages can be recovered.
13 *Id.*; see also *Polar Bear Prods., Inc.*, 384 F.3d at 708. As the Ninth Circuit stated in
14 *Mackie*, determining whether there is a causal link between the infringement and
15 subsequent profits is a “threshold inquiry.” *Id.* at 915. “When an infringer’s profits are
16 only remotely and speculatively attributable to infringement, courts will deny recovery to
17 the copyright owner.” *Polar Bear Prods., Inc.*, 384 F.3d at 711 (quoting 4 NIMMER ON
18 COPYRIGHT § 14.03, 14-34).

19 The Ninth Circuit has set out the following “two-step framework for recovery of
20 indirect profits: 1) the copyright claimant must first show a causal nexus between the
21 infringement and the gross revenue; and 2) once the causal nexus is shown, the infringer
22 bears the burden of apportioning the profits that were not the result of infringement.” *Id.*
23 In order to make a showing of a causal nexus, “a copyright owner is required to do more
24 initially than toss up an undifferentiated gross revenue number; the revenue stream must
25 bear a legally significant relationship to the infringement.” *Id.* In other words, the evidence
26 of gross revenue must be “duly apportioned to relate to the infringement.” *Id.* (quoting 4
27 NIMMER ON COPYRIGHT § 14.03[B], 14-39).

1 In the Joint Motion, Plaintiff states he has agreed to narrow his Requests for
2 Production Nos. 3 and 4 to any all documents that relate to the annual gross revenues and
3 annual net profits for the Conan show in 2015. (See ECF No. 38 at p. 8.) In response,
4 Defendants contend that “[e]ven accepting Plaintiff’s proposal that the requests be limited
5 to revenues related to the ‘Conan’ show . . . , the proposed limitation does nothing to cure
6 the fact that the requests are still too attenuated and too speculative to be relevant.” (*Id.* at
7 p. 19, lines 11-14.) Defendants assert that “[a]t issue are four, one-liner jokes . . . which
8 together make up no more than 2 minutes of air time in a show that ran approximately 180
9 new episodes in 2015, each with a runtime of about 42 minutes.” (*Id.* at p. 19, lines 14-
10 17.) Moreover, Defendants argue “Conaco’s revenues related to the ‘Conan’ show stem
11 from, among other things, the licensing fee paid by the network, TBS.” (*Id.* at p. 9, lines
12 17-18.)

13 For the reasons laid out above, the Court agrees with Defendants that Plaintiff must
14 ultimately prove a causal nexus. However, this case is still at the discovery stage. In the
15 cases cited by Defendants, the parties were either at the summary judgment or trial stage
16 of the case. See *Mackie*, 296 F.3d at 911 (appeal of a summary judgment order); *On Davis*
17 *v. The Gap, Inc.*, 246 F.3d 152, 155 (2d Cir. 2001) (appeal of a summary judgment order);
18 *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 509 (9th Cir. 1985)
19 (appeal of bench trial). In each case, the plaintiff was able to at least put on evidence
20 relating to profits; evidence that was obtained through discovery. The question before the
21 Court is therefore what is relevant for purposes of discovery, not whether Plaintiff has met
22 his ultimate burden of proof on damages.

23 To the extent that Plaintiff seeks documents relating to Conaco’s annual gross
24 revenues and annual net profits in 2015, these requests are simply too broad to be relevant.
25 They do not fall within any logical parameter. As the Ninth Circuit stated in *Polar Bear*
26 *Prods. Inc.*:

27 Although the statute only references the broad term “gross revenue,” to
28 conclude that a copyright plaintiff need only provide the company’s overall

1 gross revenue, without regard to the infringement, would make little practical
2 or legal sense. Otherwise, the plaintiff in a copyright action against a
3 multidivision, multi-product company such as General Mills, would need to
4 do nothing more than offer an overall gross revenue number—like \$11.5
5 billion—and sit back. [citation]. But the causation element of the statute
6 serves as a logical parameter to the range of gross profits a copyright plaintiff
7 may seek.

8 *Id.* at 711-12 (internal citation omitted); *see also On Davis*, 246 F.3d at 160 (submitting
9 the gross revenue of a multi-book publisher when the infringement relates to one book does
10 not meet the plaintiff’s burden; the burden “would require evidence of the revenues realized
11 from the sale of the anthology containing the infringing poem”); *Taylor v. Meirick*, 712
12 F.2d 1112, 1122 (7th Cir. 1983) (“If General Motors were to steal your copyright and put
13 it in a sales brochure, you could not just put a copy of General Motors’ corporate income
14 tax return in the record and rest your case for an award of infringer’s profits.”)

15 As noted above, Plaintiff has offered to limit his requests to the Conan show for
16 2015. However, given that what is at issue are four, one-liner jokes, “which together make
17 up no more than 2 minutes of air time in a show that ran approximately 180 new episodes
18 in 2015, each with a runtime of about 42 minutes,” the Court still finds this request much
19 too broad. Plaintiff seeks the production of thousands, if not hundreds of thousands, of
20 documents that are simply not relevant to any damages calculation.

21 In his Complaint, Plaintiff alleges the jokes at issue were featured in the monologue
22 segments of the January 14, 2015, February 4, 2015, February 17, 2015, and June 9, 2015
23 Conan shows. (Compl. at ¶¶ 15, 17, 19, 21.) Therefore, although the jokes amounted to
24 less than 0.05% of each of these shows, the Court finds the gross revenue and net profits
25 of these particular shows relevant to Plaintiff’s damages claim.

26 Accordingly, the Court grants Plaintiff’s request to compel documents which
27 identify the gross revenues and net profits of the Conan show for the four dates at issue.
28 The Court stresses that Conaco need not produce *any and all* documents relating to the

1 gross revenues and net profits. A document(s) which identifies the total gross revenues
2 and net profits, and the elements comprising these numbers, is sufficient.³

3 b. *Request for Production No. 5*

4 In Request for Production No. 5 to Conaco, Plaintiff requests any and all documents,
5 tangible things, and other items relating to the amount paid to each writer, whether staff,
6 contract, or writers, for the Conan show in 2015. (ECF No. 38-1 at Exh. M.) In response,
7 Conaco objected, in part, on the basis of relevance and the fact the requests seek
8 confidential information prior to the entry of a suitable protective order. (ECF No. 38-2 at
9 Exh. 14.) Based on its objections, Conaco withheld responsive documents. (*Id.*)

10 In the Joint Motion, Plaintiff argues this information is relevant to establish his
11 wrongful profit damages. (ECF No. 38 at pp. 9-10.) Defendants respond that the individual
12 defendants are salaried employees and that the “salaries and/or bonuses of writers on the
13 ‘Conan’ show are in no way contingent upon, or tied to, the amount of jokes they write
14 which end up in the show’s monologue.” (*Id.* at p. 20.) Therefore, Defendants argue, based
15 on *MCA, Inc. v. Wilson*, 677 F.2d 180 (2d Cir. 1981), production of financial compensation
16 to its writers is not required. (*Id.*)

17 An individual defendant may be liable for profits he earned in connection with the
18 alleged copyright infringement. *Frank Music Corp.*, 772 F.2d at 519 (citing *MCA, Inc.*,
19 677 F.2d at 186). Amounts paid as salary are not to be considered as profits. *Id.*; *see also*
20 *MCA Inc.*, 677 F.2d at 186 (salaries that are not “contingent upon or fixed by the profits”
21 of the show containing infringing material are not considered “profits” recoverable as
22 damages). However, to the extent an individual defendant “did earn profits from the
23 production, such as royalties, he is liable for a proportionate amount of these.” *Id.*

24 As an initial matter, because Plaintiff is seeking production of these documents on a
25 wrongful profits theory, documents relating to the compensation of non-defendants are not
26

27 ³ As discussed below, these documents may be covered by an AEO provision
28 in the protective order.

1 relevant. For all writers who are named defendants, however, the Court finds any profits
2 earned by these defendants related to the Conan shows at issue to be relevant at this stage.
3 These profits exclude any salary not contingent upon or fixed by the profits of the Conan
4 show. Although Defendants argue the writers' bonuses are not contingent upon, or tied to,
5 "amount of jokes they write which end up in the show's monologue," that argument goes
6 to their burden of proof.

7 Accordingly, the Court grants Plaintiff's motion to compel all documents identifying
8 the profits, excluding non-contingent salary, earned by the individual writer defendants
9 relating to their work on the four Conan shows at issue.⁴ As with Requests for Production
10 Nos. 3-4, a document(s) which identifies the profits, and the elements comprising these
11 numbers, is sufficient.⁵

12 c. *Requests for Production No. 6-8*

13 In Requests for Production Nos. 6-8, Plaintiff asks Conaco to produce any and all
14 documents, including any and all emails, involving Josh Comers, Brian Kiley, and Rob
15 Kutner regarding any and all jokes these individuals submitted for use on the Conan show
16 monologue in the last three years. (ECF No. 38-2 at Exh. 14.) Conaco objected to these
17 requests, in part, as overbroad, unduly burdensome, and harassing to the extent the requests
18 seek information which is not relevant to any party's claim or defense and is not
19 proportional to the needs of the case. (*Id.*) Subject to these objections, Conaco agreed to
20 produce all relevant and non-privileged documents within its possession concerning these
21 individuals and the jokes at issue after entry of a protective order. (*Id.*)

22
23
24 ⁴ The Court acknowledges that this ruling may appear to be inconsistent with
25 the Court's previous June 22, 2016 ruling issued during the deposition of Defendant Mike
26 Sweeney. However, upon further review of the applicable case law, the Court has
27 determined that any salary or bonus of the writers which is contingent upon or fixed by the
28 profits of the Conan show is relevant and needs to be disclosed.

⁵ Again, as discussed below, these documents may be produced pursuant to an
AEO provision in the protective order.

1 Plaintiff argues that jokes other than the jokes at issue “are relevant because they
2 relate to the element of ‘access.’” (ECF No. 38 at p. 10, lines 12-13.) In other words,
3 unrelated jokes “are relevant because any link or similarity between them and any of
4 Plaintiff’s [other] jokes would tend to establish that Defendants had access to Plaintiff’s
5 jokes.” (*Id.* at p. 10, lines 13-15.) Defendants contend these requests are extremely
6 burdensome and irrelevant. Defendants specifically note that monologue writers for the
7 Conan show “submit several jokes, and several versions of each joke, for the monologue
8 each day,” and argue that “Plaintiff has inadequately demonstrated how correspondence
9 related to jokes beyond those at issue is relevant to access at all, must less sufficient to
10 justify the burden of these requests.” (*Id.* at p. 23, lines 15-19.)

11 The Court agrees with Defendants that Requests Nos. 6-8, as framed, are overly
12 broad and unnecessarily burdensome. Although Plaintiff contends these requests are
13 relevant to access, they are not specifically tailored to the issue of access, and thus are not
14 likely to lead to relevant evidence. As Plaintiff has not made a specific showing that the
15 burdens of production would be minimal, proportional to the needs of the case, and that
16 the requested documents would lead to relevant evidence, the Court denies Plaintiff’s
17 motion to compel responses to Requests Nos. 6-8 beyond what Conaco has already agreed
18 to produce. *See Sorosky v. Burroughs Corp.*, 826 F.2d 794, 805 (9th Cir. 1987) (affirming
19 district court’s denial of a motion to compel documents where the requests were
20 unnecessarily burdensome and overly broad and there was no “specific showing that the
21 burdens of production would be minimal and that the requested documents would lead to
22 relevant evidence”); *Nugget Hydroelectric, L.P. v. Pac. Gas & Elec. Co.*, 981 F.2d 429,
23 438-39 (9th Cir. 1992) (same); *see also* Fed. R. Civ. P. 26(b)(1).

24 d. *Interrogatories Nos. 1-3 to All Defendants*

25 In Interrogatories Nos. 1-3 served on all Defendants, Plaintiff asks Defendants to
26 identify their annual gross revenues in 2015, identify all persons and witnesses who
27 calculate and/or determine their gross revenues, and identify all documents that relate to
28 their annual gross revenues in 2015. (*See* ECF No. 38-1 at Exhs. G-L.) Defendants

1 objected to the Interrogatories as vague and ambiguous, irrelevant, harassing, overbroad,
2 and unduly burdensome. (ECF No. 38-2 at Exhs. 8-13.) Defendants further objected to
3 the Interrogatories served on the public companies to the extent they seek publicly
4 accessible revenue information equally available to Plaintiff, and those served on all
5 companies to the extent they seek confidential information. (*Id.* at Exhs. 8-10.) As to all
6 Interrogatories served on individuals, Defendants further objected on the grounds they seek
7 personal financial information subject to the attorney-client privilege, the attorney work
8 product doctrine, the joint defense and/or common interest privilege, the right of privacy,
9 and any other applicable privileges. (*Id.* at Exhs. 11-13.)

10 For the reasons discussed above, the Court grants Plaintiff's motion to compel
11 Defendants to respond to Interrogatories Nos. 1-3, but with the same limitations as laid out
12 above with respect to Plaintiff's Requests for Production Nos. 3-5.

13 e. *Interrogatory No. 4 to Conaco*

14 In Interrogatory No. 4, Plaintiff asks Conaco to identify the names of all persons on
15 its writing staff, including writing staff interns, for the last five years. (ECF No. 38-2 at
16 Exh. 10.) Conaco objected, arguing the Interrogatory was overbroad, unduly burdensome,
17 harassing, and sought information about the identities of individual non-parties, the
18 disclosure of which may lead to the invasion of privacy, harassment, or unnecessary
19 involvement. (*Id.*) Subject to these objections, Conaco identified the members of the
20 writing staff who wrote, created, and/or edited the jokes at issue. (*Id.*)

21 Plaintiff argues these names go to the element of access. (ECF No. 38 at p. 12.) He
22 asserts that "[t]here may be other writers working for Conaco who may have been in
23 contact with Plaintiff at some point in time in the past." (*Id.* at p. 12, lines 2-4.) In addition,
24 Plaintiff argues "there may be other writers who follow Plaintiff's twitter account and may
25 have obtained the 'jokes at issue' themselves and related them to the individuals listed as
26 being involved in the 'jokes at issue.'" (*Id.* at p. 12, lines 4-6.) Defendants argue the
27 Interrogatory seeks irrelevant information to the extent it seeks the identities of writers,
28 other than those who wrote, created, and/or edited the jokes at issue. (*Id.* at p. 22.)

1 Defendants argue that simply because a member of the writing staff followed Plaintiff’s
2 social media accounts, this “does not impute access to a completely separate individual.”
3 (*Id.* at p. 22, line 22.)

4 The Court agrees that the identity of an individual who was not on the writing staff
5 of the Conan show at the time the jokes at issue were created and/or used in the monologue
6 is not relevant. Any possible connection is far too attenuated. However, the Court finds
7 that the connection is not too remote as to the writers who were employed by the Conan
8 show on the days when the jokes at issue were created and/or used in the monologue.
9 Accordingly, the Court compels Conaco to supplement its response to Interrogatory No. 4
10 to identify the names of all writers employed by the Conan show, including writing staff
11 interns, on the days when the jokes at issue were created and/or used in the monologue.

12 f. *Interrogatory No. 5 to Conaco*

13 In Interrogatory No. 5, Plaintiff asks Conaco to provide the gross revenue or annual
14 salary for 2015 of each person listed in response to Interrogatory No. 4. (ECF No. 38-2 at
15 Exh. 10.) Conaco objected, arguing the Interrogatory was overbroad, unduly burdensome,
16 and harassing to the extent it seeks information that is not relevant, “not proportional to the
17 needs of the case,” and “not limited in scope to those writers that wrote, created or edited
18 the jokes specifically identified in the Complaint.” (*Id.*) Conaco further objected on the
19 grounds of confidentiality and privilege. (*Id.*)

20 Plaintiff argues the salaries of all Conan show writers are relevant to prove wrongful
21 profits damages. For the reasons stated above with respect to Request for Production No.
22 5, the Court denies Plaintiff’s motion to compel a further response as to individuals who
23 are not defendants. However, the Court grants Plaintiff’s motion to compel a further
24 response with respect to any revenue or salary, excluding non-contingent salary, earned by
25 the named individual writer defendants relating to their work on the four Conan shows at
26 issue.

27 ///

28 ///

1 g. *Interrogatory No. 7 to Conaco*

2 In Interrogatory No. 7, Plaintiff asks Conaco to identify the names of all persons on
3 its writing staff, including writing interns, who have submitted material or jokes for the
4 Conan show monologue in the last three years. (ECF No. 38-2 at Exh. 10.) Conaco
5 objected, arguing the Interrogatory was overbroad, unduly burdensome, and harassing to
6 the extent it seeks information that is not relevant, “not proportional to the needs of the
7 case,” and “not limited in scope to those writers that wrote, created or edited the jokes
8 specifically identified in the Complaint.” (*Id.*) Conaco further objected on the grounds of
9 invasion of privacy, duplication, and inaccessibility. (*Id.*) Subject to these objections,
10 Conaco identified the members of the writing staff who wrote, created, and/or edited the
11 jokes at issue for the Conan show monologue. (*Id.*)

12 Plaintiff argues the identity of these individuals is relevant to prove the element of
13 access. (ECF No. 38 at p. 12.) Defendants object to disclosure for the same reasons
14 discussed above with regard to Interrogatory No. 4. The Court agrees that this request is
15 largely duplicative of Interrogatory No. 4. Therefore, for the same reasons set forth above
16 in discussing Interrogatory No. 4, the Court compels Conaco to supplement its response to
17 Interrogatory No. 7 by identifying the names of all writers employed by the Conan show,
18 including writing staff interns, on the days when the jokes at issue were created and/or used
19 in the monologue.

20 **B. Defendants’ Motion for Protective Order (ECF No. 34)**

21 1. Legal Standard

22 Rule 26 of the Federal Rules of Civil Procedure provides:

23 Unless otherwise limited by court order, the scope of discovery is as follows:
24 Parties may obtain discovery regarding any nonprivileged matter that is
25 relevant to any party’s claim or defense and proportional to the needs of the
26 case, considering the importance of the issues at stake in the action, the
27 amount in controversy, the parties’ relative access to relevant information, the
28 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. Information within this scope of discovery need not be admissible in

1 evidence to be discoverable.

2 Fed. R. Civ. P. 26(b)(1).

3 Rule 26 authorizes the court, upon a showing of good cause, to issue a protective
4 order to “[a] party . . . from whom discovery is sought . . . to protect [that] party . . . from
5 annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P.
6 26(c)(1). The court’s order may, among other things, forbid the discovery; “forbid[]
7 inquiry into certain matters, or limit[] the scope of disclosure or discovery to certain
8 matters”; or “require[] that a trade secret or other confidential research, development, or
9 commercial information not be revealed, or be revealed only in a specified way.” Fed. R.
10 Civ. P. 26(c)(1)(A), (D), (G).

11 The party seeking a protective order bears the burden of establishing good cause.
12 *Rivera v. NIBCO, Inc.*, 384 F.3d 822, 827 (9th Cir. 2004). “‘Good cause’ is established
13 where it is specifically demonstrated that disclosure will cause a ‘specific prejudice or
14 harm.’” *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
15 1211 (9th Cir. 2002)). The showing of good cause under Rule 26 is a “heavy burden.” *Id.*
16 (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418 (9th Cir. 1975)). “Broad allegations of
17 harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule
18 26(c) test.” *Id.* (citing *Phillips*, 307 F.3d at 1211-12). “If a court finds particularized harm
19 will result from disclosure of information to the public, then it balances the public and
20 private interests to decide whether a protective order is necessary.” *Id.* (quoting *Rivera v.*
21 *NIBCO, Inc.* 364 F.3d 1057, 1063-64 (9th Cir. 2004)).

22 District courts have “broad discretion . . . to decide when a protective order is
23 appropriate and what degree of protection is required.” *Phillips*, 307 F.3d at 1211 (quoting
24 *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). Indeed, district courts have “broad
25 latitude to grant protective orders to prevent disclosure of materials for many types of
26 information, including, but not limited to, trade secrets or other confidential research,
27 development, or commercial information.” *Id.*

1 2. Discussion

2 The parties agree that a protective order is appropriate in this case, and that it should
3 contain an AEO provision. The only dispute is whether a party may designate non-public
4 financial information as AEO. (*See* ECF No. 43 at p. 1, lines 8-9; ECF No. 40 at p. 3, lines
5 24-25.) Defendants argue that an AEO provision must be included for non-public financial
6 information because Plaintiff is a direct competitor and the inadvertent disclosure of such
7 information would pose a material threat to Defendants. In response, Plaintiff argues that
8 he is not a direct competitor and that the inclusion of an AEO provision in the protective
9 order would impair his ability to evaluate any potential damages evaluation or settlement
10 offer. For the following reasons, the Court finds there is good cause for the inclusion of an
11 AEO provision covering non-public financial information in the protective order.

12 Both parties cite cases that address whether in-house counsel should be permitted
13 access to the trade secrets of an opposing party. However, Plaintiff is not in-house counsel,
14 or even an attorney, and therefore is not subject to the same demands during litigation as
15 in-house counsel in directing or managing litigation, nor is he subject to the State Bar’s
16 Rules of Professional Conduct. Therefore, while the Court finds cases addressing
17 attorneys, and in particular in-house counsel, to be helpful, they do not directly apply to
18 the facts of this case.

19 As the Ninth Circuit stated in *Brown Bag Software v. Symantec Corp.*, 960 F.2d
20 1465 (9th Cir. 1992), a case involving in-house counsel, in determining when protective
21 orders for trade secrets may be appropriate, “a balancing test will best resolve” such
22 disputes. *Id.* at 1470. Specifically, a court must balance the risk of “inadvertent disclosure
23 of trade secrets to competitors” against the risk that protection of trade secrets impairs the
24 prosecution of a plaintiff’s claims. *Id.* This balancing test “requires the district court to
25 examine factually all the risks and safeguards surrounding inadvertent disclosure.” *Id.* The
26 district court should factor in “the nature of the claims and of a party’s opportunity to
27 develop its case through alternative discovery procedures.” *Id.* The court should also
28 factor in whether the receiving party is “involved in ‘competitive decisionmaking’; that is,

1 advising on decisions about pricing or design ‘made in light of similar or corresponding
2 information about a competitor.’” *Id.* (citing *U.S. Steel Corp. v. United States*, 730 F.2d
3 1465, 1468 (Fed. Cir. 1984). The resulting protective order should strike a “reasonable
4 balance” between the parties’ interests. *Id.* at 1471.

5 As discussed at length above, in his discovery requests, Plaintiff requests documents
6 and information concerning Defendants’ gross revenue and profits. Defendants assert that
7 “[a]mong a tremendous amount of other sensitive, non-public information, this request
8 would also encompass licensing fees paid by TBS to Conaco to license its programming.”
9 (ECF No. 34-1 at p. 5, lines 3-5.) “The material threat posed by the inadvertent disclosure
10 of just this particular bit of information is clear – it would severely impact both Conaco’s
11 ability to negotiate future content licenses with networks and media outlets, and TBS’s
12 ability to negotiate future content licenses with production companies.” (*Id.* at p. 5, lines
13 5-8.) Based on these representations, the Court finds Defendants’ non-public financial
14 information, which it has ordered to be produced, to be commercially sensitive, and the
15 risk of inadvertent disclosure, in terms of content, to be high. This factor therefore weighs
16 heavily in favor of an AEO provision.

17 Unlike the plaintiff’s in-house counsel in *Brown Bag*, Plaintiff is clearly not involved
18 in any competitive decisionmaking for a competitor. However, as Plaintiff readily admits,
19 he “is engaged in the entertainment industry, namely as a comedic writer,” and he has
20 submitted many other jokes to businesses who are direct competitors to Defendants. (ECF
21 No. 1 at ¶ 14; ECF No. 40 at p. 5, lines 6-7; ECF No. 34-2 at Interrogatory Nos. 11, 12,
22 Exh. 6.) Therefore, the Court finds some potential for risk of inadvertent disclosure to
23 competitors, in terms of proximity and opportunity, thus weighing in favor of an AEO
24 provision.

25 On Plaintiff’s side, he argues that he must have access to the information in order to
26 evaluate any potential damages evaluation or settlement offer. Any AEO designation, he
27 claims, would impair his ability to calculate and ascertain the extent of his damages.
28 Plaintiff’s counsel further asserts that he must be able to discuss the reasonableness of any

1 settlement offer with his client. The Court does not find this argument persuasive in light
2 of the highly sensitive financial information at issue. *See Inter-Med Inc. v. ASI Med. Inc.*,
3 No. 09-cv-383, 2010 WL 2679992, at *2 (E.D. Wis. July 1, 2010). Both Plaintiff’s counsel
4 and any financial expert retained by Plaintiff will have an opportunity to review, interpret,
5 and formulate opinions as to the reasonableness of any settlement offer or damages
6 calculation. *See Lopez v. Aqui Es Texcoco*, 2013 WL 150691, at *3 (S.D. Cal. Jan. 14,
7 2013). Plaintiff does not have any specialized knowledge or technical experience that
8 would assist in this evaluation, or that would require his involvement. *See Intel Corp. v.*
9 *VIA Technologies, Inc.*, 198 F.R.D. 525, 528 (N.D. Cal. 2000) (“Where, because of the
10 technical nature of a case, the specialized knowledge of in-house counsel was necessary to
11 supervise the litigation, good cause was found to outweigh the risk of inadvertent
12 disclosure and permit access of in-house counsel to confidential information.”).

13 Moreover, Plaintiff’s counsel is not precluded from discussing any potential
14 settlement offer with his client in terms that do not reveal confidential information, and to
15 the extent Plaintiff’s counsel at the time of any settlement discussion needs to disclose
16 additional information to his client, he may request permission from Defendants. Lastly,
17 this provision covers documents and information produced discovery. To the extent the
18 information becomes relevant at a subsequent stage of this case, disclosure is subject to
19 further order of the court.

20 Given the foregoing, the Court finds Defendants have demonstrated that the risk of
21 inadvertent disclosure outweighs Plaintiff’s need to view the information to prosecute his
22 case. Accordingly, the Court finds good cause for the inclusion of an AEO provision
23 covering non-public financial information in the protective order.

24 **III. CONCLUSION**

25 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
26 the Joint Motion addressing Plaintiff’s responses to the First Set of Interrogatories and First
27 Set of Requests for Admission served by Conaco, LLC (ECF No. 36); **GRANTS IN PART**
28 and **DENIES IN PART** the Joint Motion addressing Defendants’ response to Plaintiff’s

1 First Set of Interrogatories to all Defendants and Request for Production of Documents,
2 Set One, to Conaco (ECF No. 38); and **GRANTS** Defendants' motion for entry of a
3 protective order. The Court will issue the protective order, in the form attached as Exhibit
4 A to Defendants' motion, in a subsequent order.

5 IT IS SO ORDERED.

6 Dated: July 26, 2016



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8 DAVID H. BARTICK
9 United States Magistrate Judge
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