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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 L.S.,

12 Plaintiff,

13 v.

14 WILLIAM ASHLEY OLIVER III, et al.

15 Defendants.
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Case No.: 19cv746-JLS-LL

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL PRETRIAL
DISCOVERY ON DEFENDANT'S
CURRENT FINANCIAL
CONDITION**

[ECF No. 14]

18
19 Currently before the Court is Plaintiff L.S.'s Motion to Compel Pretrial Discovery
20 on Defendant's Current Financial Condition [ECF No. 14] ("Mot.") and Defendant
21 William A. Oliver III's Opposition to Plaintiff's Motion [ECF No. 16] ("Opp."). For the
22 reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's
23 Motion to Compel.

24 **RELEVANT DISCOVERY BACKGROUND**

25 The instant motion arises from: (1) Plaintiff's Requests for Production Nos. 11-13
26 and (2) Plaintiff's deposition of Defendant regarding Defendant's net worth.

27 Plaintiff seeks to compel Defendant to produce information on Defendant's "current
28 net worth." Mot. 6. Specifically, Plaintiff seeks documents responsive to Plaintiff's RFP

1 Nos. 11-13, which Plaintiff alleges “seek two to three years’ worth of [D]efendant’s
2 financial information relevant to his net worth[.]” Id. at 4.

3 RFP No. 11 requests:

4 Documents sufficient to determine Defendants’ current financial
5 condition, including but not limited to the following:

- 6 a) Bank statements;
- 7 b) Net worth statements;
- 8 c) Investment account statements;
- 9 d) Federal Tax Returns for the year 2017 through and
10 including 2019;
- 11 e) Income statements; and
- 12 f) Balance sheets.

13 Id. at 14-15.

14 RFP No. 12 requests:

15 With respect to any corporation, partnership, or other business
16 entity in which Defendant presently holds, or previously held, a
17 substantial financial interest during the period January 1, 2016
18 through the present, (including, without limitations, the entities
19 known or doing business as Private Label Skin, Inc., and
20 PrivateLabelSupplements.com):

- 21 a) Documents sufficient to identify the entity;
- 22 b) Balance Sheets for the period January 1, 2016 through the
23 present;
- 24 c) Income Statements for the period January 1, 2016 through
25 the present;
- 26 d) Federal Tax Returns for the years 2016 through the
27 present;
- 28 e) Profit and Loss Statements for the period January 1, 2016
through the present; and
- f) Statements of Cash Flow for the period January 1, 2016
through the present.

Id. at 15.

RFP No. 13 requests:

With respect to any corporation, partnership, or other business
entity in which Defendant sold or otherwise disposed of a
substantial financial interest that he held in said entity during

1 the period January 1, 2016 through the present, either in whole
2 or in part (including, without limitations, the entities known or
3 doing business as Private Label Skin, Inc., and
PrivateLabelSupplementals.com):

- 4 a) Documents sufficient to identify the entity;
- 5 b) All contracts or other agreements governing the terms of
sale or disposition; and
- 6 c) Documents concerning or reflecting the proceeds to
Defendant as the result of any such sale or disposition.

7 Id. at 16.

8 Defendant objected to each RFP on the grounds that it:

9 [I]nvides the right to privacy, seeks information that does not
10 have a tendency to make a fact more or less probable than it
11 would be without the evidence, otherwise seeks irrelevant
12 information, is vague as to the term “substantial financial
interest,” invades the right to privacy, and is temporally
13 overbroad.

14 Id. at 15-16.

15 Plaintiff also alleges during Plaintiff’s August 14, 2019 deposition of Defendant,
16 Defendant refused to answer “questions regarding his net worth and financial condition”
17 citing his “right to privacy.” Id. at 5. As a result, Plaintiff left Defendant’s examination
18 open and seeks to resume Defendant’s deposition on these issues. Id. at 10.

19 **LEGAL STANDARD**

20 Federal courts hearing diversity cases apply federal procedural law and state
21 substantive law. Hanna v. Plumer, 380 U.S. 460, 465 (1965); Erie R. Co. v. Tompkins, 304
22 U.S. 64, 78 (1938). The Federal Rules of Civil Procedure authorize parties to obtain
23 discovery regarding any unprivileged matter that is relevant to any claim or defense and
24 proportional to the needs of the case, “considering the importance of the issues at stake in
25 the action, the amount in controversy, the parties’ relative access to relevant information,
26 the parties’ resources, the importance of the discovery in resolving the issues, and whether
27 the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ.
28

1 P. 26(b)(1). Per the Federal Rules, “[i]nformation within this scope of discovery need not
2 be admissible in evidence to be discoverable.” Id.

3 A party may request the production of any document within the scope of Rule 26(b).
4 Fed. R. Civ. P. 34(a). “For each item or category, the response must either state that
5 inspection and related activities will be permitted as requested or state with specificity the
6 grounds for objecting to the request, including the reasons. The responding party may state
7 that it will produce copies of documents or of electronically stored information instead of
8 permitting inspection.” Id. at 34(b)(2)(B).

9 Pursuant to Federal Rule of Civil Procedure 37, “a party may move for an order
10 compelling disclosure of discovery.” Fed. R. Civ. P. 37(a)(1). “The party seeking to compel
11 discovery has the burden of establishing that its request satisfies the relevancy requirements
12 of Rule 26.” Bryant v. Ochoa, No. 07cv200 JM (PCL), 2009 U.S. Dist. LEXIS 42339, at
13 *3 (S.D. Cal. May 14, 2009) (internal citations omitted). Thereafter, “the party opposing
14 discovery has the burden of showing that the discovery should be prohibited, and the
15 burden of clarifying, explaining or supporting its objections.” Id. (internal citations
16 omitted).

17 ANALYSIS

18 **I. Plaintiff’s Request for Production Nos. 11-13**

19 **a. Timeliness of Plaintiff’s Request**

20 Plaintiff argues the Court should compel responses to Plaintiff’s RFP Nos. 11-13
21 because: (1) Plaintiff is not required to make a *prima facie* case on the issue of punitive
22 damages prior to obtaining pretrial discovery on Defendant’s net worth; (2) even if Plaintiff
23 was required to make a *prima facie* case, she has made the requisite showing here; and (3)
24 Defendant’s privacy interests are adequately protected by the Protective Order in this case.
25 Mot. at 7-10.

26 In his Response, Defendant argues the Court should either deny or defer Plaintiff’s
27 motion to compel because liability in this case “does not turn on Defendant’s financial
28 information.” Opp. at 5. Instead, Defendant argues there are “unresolved legal and

1 evidentiary issues that preclude a determination at this stage that Plaintiff will prevail on
2 the merits of her claims.” Id. For these reasons, Defendant argues Plaintiff’s motion should
3 be denied or alternatively deferred pending a finding of liability.

4 The Court finds pretrial discovery of Plaintiff’s net worth appropriate in this case.
5 As Courts in this District have held:

6 When a punitive damages claim is asserted, the majority of
7 federal courts permit pretrial discovery of financial information
8 without requiring the Plaintiff to establish a prima facie case on
9 the issue of punitive damages. The Court notes that the
10 requirement that Plaintiffs establish a prima facie case applies to
11 the admissibility of evidence about financial status, not its
12 discoverability. To require a prima facie showing of entitlement
13 to punitive damages before the completion of discovery would
14 be to ignore one purpose of discovery, to locate evidence to
15 support a claim before trial. Additionally, knowledge of
16 Defendant’s net worth may be of value to both sides in making a
17 realistic appraisal of the case, and may lead to settlement and
18 avoid protracted litigation. Furthermore, to deny discovery of net
19 worth until Plaintiffs can make a showing of a prima facie case
20 at trial would only lead to delay and confusion while Plaintiffs
21 digest the information.

18 Echostar Satellite LLC et al. v. Viewtech, Inc., No. 7cv1273-W (AJB), ECF No. 93 at 4-5
19 (July 11, 2009) (citations omitted); see also Toranto v. Jaffurs, No. 16cv1709-JAH (NLS),
20 2018 U.S. Dist. LEXIS 198050, at *9 (S.D. Cal. Nov. 20, 2018) (collecting cases).

21 To the extent Defendant’s objections are based on his right to privacy, the Court
22 finds Defendant’s privacy concerns in this case are mitigated by the Parties’ stipulated
23 protective order [ECF No. 10]. See Toranto, 2018 U.S. Dist. LEXIS 198050, at *10
24 (“Courts have routinely found that such information can be adequately protected by the
25 protective order.”); Textron Fin. Corp. v. Gallegos, No. 15CV1678-LAB (DHB), 2016
26 U.S. Dist. LEXIS 100407, at *12-13 (S.D. Cal. Aug. 1, 2016) (finding a party’s concerns
27 about financial privacy can be addressed through an appropriate protective order).

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1 Defendant cites to Brooks v. Motsenbocker Advanced Devs., Inc., No. 07cv773
2 BTM-NLS, 2008 U.S. Dist. LEXIS 46447, at *12 (S.D. Cal. June 13, 2008) in support of
3 his argument that Plaintiff’s Motion should be denied. Opp. at 3-4. Contrary to Defendant’s
4 representation however, the Brooks Court did not outright deny a plaintiff’s request to
5 compel responses to RFPs on a defendant’s net worth. Instead, the Brooks Court found that
6 while plaintiff was “entitled to discovery on [d]efendants’ financial information,” an
7 “extensive production” would be inefficient before defendants’ pending summary
8 judgment motion had been ruled on. Brooks, 2008 U.S. Dist. LEXIS 46447, at *12-13. The
9 Brooks Court held it was “unlikely that the parties will be able to seriously address
10 settlement until the summary judgment motion [was] adjudicated[.]” Id. at *13. Given these
11 facts, the Brooks Court therefore ordered defendants to respond to the RFPs on punitive
12 damages within thirty days of the summary judgment ruling if punitive damages were still
13 at issue. Id.

14 In this case however, there is no pending motion for summary judgment. Thus, the
15 Court declines to apply Brooks to the instant case. Toranto, 2018 U.S. Dist. LEXIS 198050,
16 at *10-11 (declining to apply Brooks to defer pretrial discovery on net worth where there
17 was no pending motion for summary judgment “suggesting that the punitive damages issue
18 may be decided.”).

19 **b. Scope of Plaintiff’s Request**

20 The Court now turns to the scope of Plaintiff’s RFPs. Plaintiff argues Plaintiff’s
21 RFPs Nos. 11-13 are “narrowly tailored to obtain information relevant only to defendant’s
22 current net worth.” Mot. at 6. Specifically, Plaintiff argues RFP No. 11 requests documents
23 “sufficient to determine Defendant’s current financial condition” while RFP Nos. 12-13
24 seek “limited information concerning [D]efendant’s business holdings necessary to verify
25 his current net worth.” Id.

26 Defendant argues that even if the Court orders the production of documents relating
27 to Defendant’s net worth, the production should be limited to balance sheets, statements of
28 income and statements of cash flow in Defendant’s possession from September 2017

1 through the present. Opp. at 8. Defendant argues that “[i]n no event should Defendant be
2 compelled to produce records of non-party entities.” Id.

3 As an initial matter, the Court notes that “[g]enerally, information about a
4 defendant's past financial information is not relevant to the claim of punitive damages.”
5 Toranto, 2018 U.S. Dist. LEXIS 198050, at *11. Instead, Courts have typically held two
6 years worth of financial information to be sufficient. Id.

7 Apart from this date restriction, the Court finds the types of documents Plaintiff has
8 requested in RFPs Nos. 11-13 to be excessive. See EEOC v. Cal. Psychiatric Transitions,
9 258 F.R.D. 391, 395 (E.D. Cal. 2009) (“Plaintiff can obtain a picture of Defendant’s
10 financial condition adequately without all of the requested information.”). The Court does
11 not find any reason (and Plaintiff has not provided one) as to why the documents identified
12 by Defendant would not provide a reliable indication of Defendant’s current net worth,
13 including Defendant’s current assets and liabilities.

14 For these reasons, Defendant’s Motion to Compel responses to RFP Nos. 11-13 is
15 **GRANTED IN PART** and **DENIED IN PART**. Defendant is **ORDERED** to produce
16 balance sheets, statements of income, and statements of cash flow from 2017 to 2019 by
17 **October 7, 2019**. This financial information will be produced pursuant to the Protective
18 Order in this case.

19 **II. Plaintiff’s Request to Continue Defendant’s Deposition**

20 Plaintiff also requests that the Court enter an Order “permitting Plaintiff’s counsel
21 to resume its deposition of Defendant” to respond to Plaintiff’s questions regarding
22 Defendant’s financial condition. Mot. at 10.

23 Defendant argues that “if Defendant is ordered to produce pretrial financial records”
24 those documents “will necessarily contain all ‘relevant’ information about [Defendant’s]
25 net worth for purposes of punitive damages” making a continued deposition redundant.
26 Opp. at 8. Defendant has also stated that to the extent necessary, it will “provide an affidavit
27 attesting to the authenticity of the documents.” Id.

28 The Court agrees with Defendant. Taking into account the document production

1 already ordered by the Court, the relevant excerpt of Defendant's deposition [Mot. at 44-
2 47], and Defendant's proffer to provide an affidavit attesting to authenticity, the Court finds
3 requiring Defendant to appear for a second deposition at this juncture to answer questions
4 about his net worth would be duplicative of Defendant's document production and not
5 proportional to the needs of this case. See Todd v. AT&T Corp., No. 16-cv-03357-HSG
6 (MEJ), 2017 U.S. Dist. LEXIS 60000, at *7-8 (N.D. Cal. Apr. 19, 2017) (denying request
7 for corporate representatives to appear for second deposition as redundant of document
8 production and therefore not proportional).

9 For these reasons, Plaintiff's Motion to Compel Defendant to appear for a second
10 deposition on Defendant's net worth is **DENIED**.

11 **CONCLUSION**

12 For the reasons set forth above, the Court **GRANTS IN PART** and **DENIES IN**
13 **PART** Defendant's Motion to Compel.

14 Specifically, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's
15 Motion to Compel responses to Plaintiff's RFPs Nos. 11-13. Defendant is **ORDERED** to
16 produce balance sheets, statements of income, and statements of cash flow from 2017 to
17 2019 by **October 7, 2019**. This financial information will be produced pursuant to the
18 Protective Order in this case.

19 The Court **DENIES** Plaintiff's Motion to Compel Defendant to appear for a second
20 deposition on Defendant's net worth.

21 **IT IS SO ORDERED.**

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23 Dated: October 1, 2019

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26 _____
27 Honorable Linda Lopez
28 United States Magistrate Judge