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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Paul E White, et al.,

10 Plaintiffs,

11 v.

12 Home Depot USA Incorporated,

13 Defendant.  
14

No. CV-16-01185-PHX-JAT

**ORDER**

15 The parties previously moved for a protective order and the Court issued the  
16 following Order:  
17

18 Pending before the Court is the parties' joint motion for a protective  
19 order. Global protective orders are not appropriate. *See AGA Shareholders,*  
20 *LLC v. CSK Auto, Inc.*, 2007 WL 4225450, at \*1 (D. Ariz. Nov. 28, 2007).  
21 Rule 26(c) requires a party seeking a protective order to show good cause  
22 for issuance of such an order. Fed. R. Civ. P. 26(c)(1). "For good cause to  
23 exist under Rule 26(c), 'the party seeking protection bears the **burden of**  
24 **showing specific prejudice or harm will result if no protective order is**  
25 **granted.**'" *AGA Shareholders*, 2007 WL 4225450, at \*1 (emphasis added)  
26 (quoting *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002)).  
27 The party seeking protection "**must make a 'particularized showing of**  
28 **good cause with respect to [each] individual document.**" *Id.* (emphasis  
added) (quoting *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d  
1096, 1102 (9th Cir. 1999)).

Thus, "[t]he burden is on the party to requesting a protective order to  
demonstrate that (1) the material in question is a trade secret or other  
confidential information within the scope of Rule 26(c), and (2) disclosure  
would cause an identifiable, significant harm." *Foltz v. State Farm Mut.*  
*Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th Cir. 2003) (quoting *Deford v.*  
*Schmid Prods. Co.*, 120 F.R.D. 648, 653 (D. Md. 1987)).

Here, the proposed protective order states that the information will  
be designated confidential, "...if counsel determines, in good faith, that  
such designation is necessary to protect the interests of the client." Doc.

1 20-1 at 1. Such a standard is far too broad under Federal Rule of Civil  
2 Procedure 26(c).

3 Accordingly,  
4 **IT IS ORDERED** that the joint motion for protective order (Doc.  
5 20) is denied, without prejudice.

6 Doc. 24.

7 The parties have filed a second motion for a protective order. The Court questions  
8 whether the parties read the cases cited in this Court's prior order. Specifically, the  
9 parties have now sought to designate everything confidential when "counsel determines,  
10 in good faith, that such designation is necessary to protect the interests of the client and  
11 the document is (a) a trade secret or other confidential information within the scope of  
12 Fed. R. Civ. P. 26(c), (b) information that is confidential regarding the Plaintiffs and may  
13 cause embarrassment or annoyance upon disclosure, and/or (c) information that may  
14 cause embarrassment regarding a third-party." Doc. 25-1 at 1-2.

15 As the prior order states, in bold, documents or depositions to be designated  
16 confidential must be specifically identified and the harm resulting from their disclosure  
17 must be identified. Instead of attempting to comply with this law, the parties sought to  
18 designate confidential anything that might cause embarrassment or annoyance upon  
19 disclosure. While these are words found in Rule 26 as a basis for seeking a protective  
20 order, the protective order could include the Court disallowing discovery targeted as such  
21 an improper goal. Those words were not intended to give counsel leave to conduct all  
22 discovery in a case subject to a protective order, which appears to be what counsel in this  
23 case really wants to accomplish.

24 Because the parties have now tried twice to get this Court to approve an over  
25 broad protective order, the Court will deny any advance protective order. If a particular  
26 document (or category of documents) is sought in discovery, and counsel can show good  
27 cause for either not disclosing those documents or disclosing them subject to a protective  
28 order, counsel may seek a protective order on a document by document basis prior to  
disclosure. If the parties seek to protect a topic that may arise in a deposition, they must  
seek protection in advance of that deposition. In so moving, counsel must avow that the

1 information has been maintained confidential by the parties up to this point (i.e. not  
2 shared with friends, posted on social media, or otherwise not maintained in confidence).

3 Based on the foregoing,

4 **IT IS ORDERED** that the motion for a prospective protective order (Doc. 25) is  
5 denied.

6 Dated this 23rd day of September, 2016.

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