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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Secretary of Labor, United States Department
10 of Labor,

11 Plaintiff,

12 v.

13 Valley Wide Plastering Construction
14 Incorporated, et al.,

15 Defendants.

No. CV-18-04756-PHX-GMS

ORDER

16 Pending before the Court are Plaintiff Secretary of Labor, United States Department
17 of Labor (“Plaintiff”)’s Motion to Compel Discovery (Doc. 52), Defendants Valley Wide
18 Plastering Construction Incorporated, et al. (“Defendants”)’ Motion for Protective Order
19 (Doc. 53), and Plaintiff’s Motion for Leave to File Reply (Doc. 54). Plaintiff’s Motion to
20 Compel is granted and Defendants’ Motion for Protective Order is denied. The Motion for
21 Leave to File Reply is granted.

22 **BACKGROUND**

23 Plaintiff’s Complaint alleges that Defendants have violated and continue to violate
24 the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq., by, among other things,
25 failing to pay overtime and failing to maintain accurate and complete records. Before filing
26 this action, Plaintiff investigated Valley Wide through the Wage and Hour Division (WHD)
27 of the U.S. Department of Labor. During the investigation, Defendants provided copies of
28 Valley Wide’s general ledgers from January 2014 through September 2017 to the WHD.
Plaintiff alleges that the ledgers contain records of numerous wages paid to employees that

1 were misclassified as other business expenses, and that these payments are relevant to
2 Plaintiff's claim that Defendants violated the FLSA and to the amount of damages owed.
3 Plaintiff therefore served document requests in discovery seeking Defendants' complete
4 general ledger through the present. In response, Defendants requested a protective order.

5 On June 5, 2020, the Court met with the parties telephonically to resolve the
6 discovery dispute at issue in this matter. The Court entered an order that stated, in relevant
7 part,

8 The Court met telephonically with the parties this afternoon to resolve four
9 matters of disputed discovery. With respect to the first, the parties shall
10 confer as to the proposed protective order provided by the Defendant. The
11 Plaintiff shall explain with respect to each provision to which it objects why
12 FOIA regulations prevent it from, or why it otherwise declines to, agree to
13 that provision of the protective order. Defendant shall then identify to
14 Plaintiff all the provisions of the protective order on which it insists before
providing its updated ledger. With respect to each of those provisions the
Plaintiff will have until two weeks from today to file a motion not exceeding
ten pages seeking to compel the production of the updated ledger in which it
sets forth the reasons why the government declines to agree to such a
provision within a protective order. The Defendant shall have one week to
respond to the motion to compel.

15 (Doc. 48.) On June 19, Plaintiff filed its Motion to Compel, requesting that the Court order
16 Defendants to produce Valley Wide's updated general ledger from October 1, 2017 through
17 the present without issuing a protective order, and, in the alternative, objecting to specific
18 components of Defendants' proposed order. In their response in opposition, Defendants
19 filed a Motion for Protective Order, requesting that the Court deny Plaintiff's motion and
20 grant their proposed protective order in full. Plaintiff then filed a Motion for Leave to File
21 Reply, asserting that Defendants' Opposition to the Secretary's Motion to Compel "raised
22 additional arguments concerning the Fourth and Fifth Amendments that they failed to raise
23 during the meet-and-confer process." (Doc. 54 at 2.)¹

24 DISCUSSION

25 Defendants propose a protective order seeking two types of restrictions. "First, the
26 proposed protective order shields [Defendants'] confidential commercial and financial

27 ¹ Given that Defendants' Response to Plaintiff's Motion to Compel doubled as a Motion
28 for Protective Order and raised arguments not discussed with Plaintiff prior to its filing,
the Court will grant Plaintiff's Motion for Leave to File Reply and consider Plaintiff's
Reply.

1 information from being disclosed to the public at large. Second, it prevents [Plaintiff] from
2 using the general ledger for purposes other than this litigation.” (Doc. 53 at 5.) In their
3 definition of “confidential information,” Defendants include not only their current general
4 ledger but also their past ledgers, as well as “information from the general ledgers disclosed
5 in any materials, including documents, portions of documents, answers to interrogatories,
6 responses to requests for admissions, trial testimony, deposition testimony, and transcripts
7 of trial testimony and depositions, including data, summaries, and compilations derived
8 therefrom.” (Doc. 53-2 at 1–2.)

9 “Generally, the public can gain access to litigation documents and information
10 produced during discovery. . .” *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307
11 F.3d 1206, 1210 (9th Cir. 2002). However, Federal Rule of Civil Procedure 26(c) provides
12 that upon a showing of “good cause,” the Court may issue a protective order requiring that
13 “a trade secret or other confidential research, development, or commercial information . . .
14 be revealed only in a specified way.” Fed. R. Civ. P. 26(c)(1)(G). The party seeking a
15 protective order “bears the burden of showing, for each particular document it seeks to
16 protect, that specific prejudice or harm will result if no protective order is granted.” *Foltz*
17 *v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003). “Broad allegations
18 of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the
19 26(c) test.” *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Then,
20 if a court finds “particularized harm will result from disclosure of information to the
21 public,” it “balances the public and private interests to decide whether a protective order is
22 necessary.” *Phillips*, 307 F.3d at 1211. “Rule 26(c) confers broad discretion on the trial
23 court to decide when a protective order is appropriate and what degree of protection is
24 required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

25 After engaging in the process required by the Court, Defendants set forth a proposed
26 protective order in its motion for protective order filed in response to Plaintiff’s motion to
27 compel. The Court declines to enter or to attempt to rewrite that order for the following
28 reasons:

1 First, the only matter before the Court is a protective order as it pertains to the update
2 of the general ledger of the Defendant from October 1, 2017 through the present. Yet the
3 proposed protective order would apply as well to general ledger information already
4 provided by the Defendant. As an initial matter, the Court declines to enter a protective
5 order that applies to information and ledgers or parts of ledgers already provided by the
6 Defendant as to which no protective order was sought.

7 Second, the proposed order defines as “confidential information” any information
8 contained in the ledger. It does so based on the generalized assertion that plastering in
9 Arizona is a very “cutthroat” industry and virtually any financial information contained in
10 the general ledger is a trade secret. Thus, the proposed order makes no attempt to
11 distinguish the financial information in the ledger that truly constitutes protectable
12 information from that which does not. Rather, it defines everything in the general ledger
13 as well as data, summaries, and compilations derived from it, and trial and deposition
14 testimony and transcripts that involve it, as confidential. This is simply far too broad and
15 problematic to be workable when the government’s assertions are that Defendant has
16 mischaracterized entries in its ledgers to conceal wage payments to employees.

17 Third, when the entries in the general ledger can be expected to be a central part of
18 the government’s case, the confidentiality protection offered by the proposed order is so
19 broad that it would likely require the whole trial and all motion practice prior to it to be
20 under seal. This is inconsistent with matters that are of significant public concern and in
21 which there is particular public interest and thus a strong justification to keep such
22 information accessible.

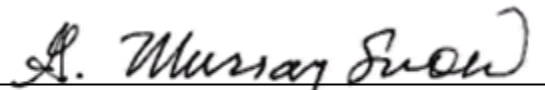
23 Fourth, the proposed protective order violates the law of this Circuit in requiring
24 that material designated as confidential under the order be redacted by the government
25 prior to its filing in Court regardless of whether the compelling interest and/or good cause
26 standards can be met. This further wrongfully seeks to impose the practical cost of
27 maintaining the confidentiality on the government. *See, e.g., Kamakana v. City and Cty.*
28 *of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

1 Nor in these circumstances is the Court inclined to restrict the Secretary of Labor
2 from sharing the information contained in the general ledger with other government law
3 enforcement agencies. A request to seal information that has already been publicly
4 disclosed involves “an inherent logical dilemma” in that “information that has already
5 entered the public domain cannot in any meaningful way be later removed from the public
6 domain.” *TriQuint Semiconductor, Inc. v. Avago Technologies Ltd.*, 2012 WL 1432519,
7 *2–7 (D. Ariz. Apr. 25, 2012). Finally, the use of past or current general ledgers outside of
8 this litigation may in some instances be warranted, such that Plaintiff need not “dispose of
9 all Confidential Information and Materials designated as ‘CONFIDENTIAL’ . . .” (Doc.
10 53-2 at 9.) “Allowing the fruits of one litigation to facilitate preparation in other cases
11 advances the interests of judicial economy by avoiding the wasteful duplication of
12 discovery.” *IceMOS Tech. Corp. v. Omron Corp.*, No. CV 17-2575-PHX-JAT, 2019 WL
13 5268872, at *2 (D. Ariz. Oct. 17, 2019).

14 **IT IS THEREFORE ORDERED** that Plaintiff’s Motion to Compel Discovery
15 (Doc. 52) is **GRANTED** and Defendants’ Motion for Protective Order (Doc. 53) is
16 **DENIED**.

17 **IT IS FURTHER ORDERED** that Plaintiff’s Motion for Leave to File Reply
18 (Doc. 54) is **GRANTED**.

19 Dated this 10th day of September, 2020.

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22 G. Murray Snow
23 Chief United States District Judge
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