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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SILVESTRE SOTO,) Case No.: 1:09-cv-00701 - AWI - JLT
)
Plaintiff,) ORDER GRANTING DEFENDANT’S MOTION
) FOR ENTRY OF A PROTECTIVE ORDER
v.)
)
CASTLEROCK FARMING AND)
TRANSPORT, INC, et al.,)
)
Defendants.)

Defendant Castlerock Farming and Transport, Inc. (“Castlerock”) seeks the entry of a protective order “to protect from public disclosure certain confidential or private information of (a) Castlerock’s current and former employees and (b) the current and former employees of farm labor contractors who have provided labor services to Castlerock.” (Doc. 138 at 1-2). The parties have agreed to the entry of a protective order, but are unable to agree on certain terms of the order. (Doc. 193).

Castlerock asserts it proposed to enter a protective order identical to the order entered in *Rojas v. Marko Zaninovich, Inc.*, Case No. 1:09-cv-00705-AWI-JLT, in which the plaintiffs are similarly represented by the law firm of Mallison & Martinez. (Doc. 139 at 2). According to Castlerock, Plaintiff’s counsel “refused to stipulate to entry of an identical protective order” and “[i]nstead . . . demanded that certain provisions governing the use of confidential information, the designation of confidential documents, and the scope of the order be edited or deleted.” *Id.* Specifically, the parties cannot agree regarding the extent to which third parties’ confidential or private information produced in

1 this action should be protected from public disclosure, whether putative class members should be
2 prohibited from reviewing other employees' confidential information, and whether certain documents
3 should be "presumptively confidential." *Id.* at 4-7.

4 **A. Information Produced by Non-Parties**

5 Castlerock proposes the terms of the protective order apply to documents produced by not only
6 parties in the action, but also non-parties such as J.L. Padilla & Sons Labor Service, Inc. (Doc. 139 at
7 76, citing Doc. 138 at 13, ¶ 10). Plaintiff raises no objections to this provision in the Joint Statement.
8 Accordingly, this proposed provision is **APPROVED**.

9 **B. Presumptively confidential documents**

10 Castlerock observes that it and third party J.L. Padilla & Sons Labor Service, Inc. "produced
11 approximately 25,000 pages of documents, comprising, in large part, employee timekeeping and
12 payroll records." (Doc. 139 at 2). According to Castlerock, "The vast majority of these . . . contain
13 confidential information for members of the putative class." *Id.* at 6. Castlerock asserts treating certain
14 documents as presumptively confidential would "obviate the burden of reviewing and then marking
15 tens of thousands of pages of records." *Id.* Therefore, Castlerock seeks to have "[a]ll documents
16 containing to the personal information of Defendant's employees, including, but not limited to,
17 employees' Social Security Numbers, home addresses, home telephone numbers, birth dates, wages,
18 pay roll and tax information" be presumed confidential. (Doc. 138 at 7-8, ¶5).

19 Plaintiff contends these documents should not be treated as presumptively confidential because
20 "the inclusion of an a priori category defeats the purpose of Rule 26(c), which requires that Defendant,
21 not Plaintiff, meets the burden of showing good cause." (Doc. 139 at 8). Plaintiff asserts that the
22 designation as presumptively confidential could create "an undue burden" "to challenge each (that is
23 potentially 25,000) designations individually in writing prior to challenging the designations with the
24 court." *Id.* Plaintiff argues the Court should embrace the Northern District's approach of omitting any
25 a priori categories and "permit defendant to mark the documents subject to motion practice if defendant
26 has overmarked any such documents." *Id.*

27 Significantly, Plaintiff's counsel previously agreed to the precise designation proposed here.
28 (*See Rojas*, Doc. 29 at 4-5). As a result, Plaintiff's argument against the documents being identified as

1 presumptively confidential appears disingenuous. Courts have long recognized a privacy interest in tax
2 information and personal in such as home addresses, home telephone numbers, and social security
3 numbers. *See, e.g., Stokwitz v. United States*, 831 F.2d 893, 897 (9th Cir. 1987) (“The confidentiality
4 of tax information may also be preserved in civil proceedings through protective orders”); *Pershing*
5 *Pac. West, LLC v. Marinemax, Inc.*, 2013 U.S. Dist. LEXIS 54001 at *9 (S.D. Cal. Apr. 16, 2013)
6 (identifying documents entitled to confidential treatment as including “documents that contain personal
7 information, including names, address, account numbers, social security numbers, dates of birth, or
8 other identifying information or personal information . . .”). Consequently, as Plaintiff acknowledges,
9 “none of these categories appear to be problematic.” (Doc. 139 at 8). Accordingly, Castlerock’s
10 proposed identification of the categories of documents “presumed confidential” is **APPROVED**.

11 **C. Viewing of Protected Material by Class Members**

12 Castlerock asserts putative class members should be restricted from viewing other employees’
13 personal confidential information, and that class members be required to execute a “Class Member
14 Confidentiality Acknowledgement” prior to being presented information the individual would not
15 otherwise be legally entitled to review. (Doc. 139 at 4-5). Accordingly, the proposed order provides:

16 Unless otherwise ordered by the court or permitted in writing by the
17 Designating Party, a Receiving Party may disclose any information or item
designated “CONFIDENTIAL” only to:

18 ...
19 (h) A Class Member, but only to the limited extent that his or her individual
20 personal information is the subject of the Protected Material (i.e., the Class Member
21 may view his or her own time-keeping and/or compensation data, but may not view
22 any other Class Member’s data and, to the extent the Protected Material contains
23 information regarding additional persons, the information regarding the additional
24 persons must be redacted before providing the Protected Material to the Class
Member). In the event that the Protected Material consists of information that the
Class Member would not otherwise be legally entitled to view pursuant to the
California Labor Code and/or the applicable Industrial Welfare Commission Wage
Order, then prior to receiving the Protected Material, the Class Member must have
signed the “Class Member Confidentiality Agreement”.

25 (Doc. 138 at 11-12). Castlerock asserts these proposed restrictions are “appropriate in light of the
26 privacy concerns.” (Doc. 139 at 5).

27 On the other hand, Plaintiff contends the restrictions are “unclear” and “Class Members should
28 not be prohibited from looking at documents necessary for them to provide testimony or aid to the

1 litigation.” (Doc. 139 at 12) (emphasis omitted). Plaintiff argues “it is essentially (sic) that Class
2 Members be able to review the timekeeping (not payroll) records of their crews and other crews to
3 refresh their recollection and prepare them to provide testimony by declaration and deposition about the
4 practices of the employer concerning other employees.” *Id.* Therefore, Plaintiff contends the putative
5 class members should not be restricted from viewing timekeeping records regarding other individuals.

6 Plaintiff has offered no reasonable explanation as to why class members should need to review
7 records other than those to refresh their recollection of what happened to them personally. Likewise,
8 Plaintiff does not explain why class members should be permitted to review documents regarding
9 other individuals or crews or how, once reviewed, they could possibly provide testimony as to the
10 content of these documents which concern only other workers. Accordingly, Plaintiff’s objections to
11 the proposed provision are **OVERRULED**, and the provision limiting class members’ viewing
12 documents confidential documents is **APPROVED**.

13 **D. Destruction of the Documents produced**

14 Under the proposed terms of the protective order,

15 Within 60 days after the final disposition of this action, as defined in paragraph
16 4, each Receiving Party must return all Protected Material to the Producing Party or
17 destroy such material. As used in this subdivision, “all Protected Material” includes all
18 copies, abstracts, compilations, summaries, and any other format reproducing or
19 capturing any of the Protected Material. Whether the Protected Material is returned or
20 destroyed, the Receiving Party must submit a written certification to the Producing
21 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
deadline that (1) identifies (by category, where appropriate) all the Protected Material
that was returned or destroyed and (2) affirms that the Receiving Party has not retained
any copies, abstracts, compilations, summaries or any other format reproducing or
capturing any of the Protected Material.

22 (Doc. 138 at 16). Plaintiff contends the documents produced in this action “should be permitted to be
23 used in the related Castlerock litigation.” (Doc. 139 at 8). Accordingly, Plaintiff argues the documents
24 should not be destroyed after resolution of this action, but destruction or return of the documents should
25 be delayed pending resolution of the “related litigation covering the same class relating to wage and
26 hour issues.” *Id.* at 12.

27 On April 10, 2012, Maria Moreno, Abraham Ortiz, Javier Garcia, Florencia Gutierrez, Israel
28 Lopez, Esther Lopez, and Francisco Lopez filed a complaint against Castlerock, J&L Padilla & Sons

1 Labor Service, Inc. and Melba Nunez Contract, thereby initiating *Gonzalez v. Castlerock Farming &*
2 *Transport, Inc.*, Case No. 1:12-cv-00556-AWI-JLT.¹ The Court stayed *Moreno* pending resolution of
3 the class action motion in this matter. (*Moreno*, Doc. 29). However, the plaintiffs in *Moreno* are
4 represented by attorneys with the Mexican American Legal Defense and Education Fund, not the law
5 firms of Mallison & Martinez and Milberg Weiss, LLP. As a result, Plaintiff fails to explain why his
6 attorneys should be permitted to retain confidential documents despite that they have no connection to
7 *Moreno*. On the other hand, destruction or return of the documents best serves the purpose of a
8 protective order.

9 Plaintiff's request for delay of destruction of the documents is **DENIED**, and Defendant's
10 proposed provision requiring return or production of the documents within 60 days after resolution of
11 this action is **APPROVED**.

12 **ORDER**

13 Based upon the foregoing, the Court **ORDERS**:

- 14 1. The terms of the proposed protective order proposed by Castlerock are **APPROVED**;
- 15 2. No later than **July 18, 2013**, pursuant to Local Rule 137(b), Castlerock **SHALL** lodge a
16 copy of the proposed protective order which comports with the Court's order here, to
17 JLTOorders@caed.uscourts.gov.

18
19 IT IS SO ORDERED.

20 Dated: July 12, 2013

21 /s/ Jennifer L. Thurston
22 UNITED STATES MAGISTRATE JUDGE
23
24

25 ¹ **Error! Main Document Only.** The Court may take notice of facts that are capable of accurate and ready
26 determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v.*
27 *Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993). The record of court proceeding is a source whose accuracy cannot
28 reasonably be questioned, and judicial notice may be taken of court records. *Mullis v. United States Bank. Ct.*, 828 F.2d
1385, 1388 n.9 (9th Cir. 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), *aff'd*, 645 F.2d
699 (9th Cir. 1981); *see also Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989); *Rodic v. Thistledown*
Racing Club, Inc., 615 F.2d 736, 738 (6th Cir. 1980). Therefore, judicial notice is taken of the Court's docket and
documents filed in *Moreno v. Castlerock Farming & Transport, Inc.*, Case No. 12-cv-00556-AWI-JLT.