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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

In Re: PAYLESS SHOESOURCE, INC.,
CALIFORNIA SONG-BEVERLY CREDIT CARD ACT LITIGATION, No. 09 MD-2022 FCD GGH

MICHAEL SWANEY, on behalf of himself
and others similarly situated,
Plaintiff, No. CIV S-08-2672 FCD GGH

vs.

PAYLESS SHOESOURCE, INC.,
Defendant.

_____ /

JESSICA CLARK, individually and on
behalf of all others similarly situated,
Plaintiff, No. CIV S-09-1040 FCD GGH

vs.

PAYLESS SHOESOURCE, INC., ORDER
Defendant.

_____ /

The parties have sought to have the court sign a protective order where documents
designated by the parties as “confidential,” or “highly confidential” are automatically filed under

1 seal. Some protective orders enable the parties to designate so much material as “confidential”
2 that, in essence, entire case filings are sealed. The protective order submitted by the parties has
3 the same potential problem. This court will not approve a protective order giving blanket
4 authority to the parties to designate what shall be filed under seal.¹

5 Discovery information disclosed in court filings generally is available to the
6 public. See San Jose Mercury News, Inc. v. United States Dist. Ct., 187 F.3d 1096, 1103 (9th
7 Cir.1999) (“[i]t is well-established that the fruits of pre-trial discovery are, in the absence of a
8 court order to the contrary, presumptively public”).²

9 Protective orders safeguard the parties and other persons in light of the otherwise
10 broad reach of discovery. United States v. CBS, Inc., 666 F.2d 364, 368-69 (9th Cir. 1982). The
11 court has great discretion to issue protective orders if discovery causes annoyance,
12 embarrassment, oppression, undue burden, or expense. B.R.S. Land Investors v. United States,
13 596 F.2d 353, 356 (9th Cir. 1979). Good cause, however, is required to obtain a protective order.
14 Fed. R. Civ. P. 26(c); Foltz v State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir.
15 2003); Phillips v. General Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002) (“Generally, the
16 public can gain access to litigation documents and information produced during discovery unless
17 the party opposing disclosure shows ‘good cause’ why a protective order is necessary”).

18 “Good cause” to bar the public from litigation documents must be more than
19 mere desire. The party seeking protection must show specific prejudice or harm, including, with
20 respect to individual documents, particular and specific need. Id.; San Jose Mercury News, Inc.,
21 187 F.3d at 1102; W.W. Schwarzer, A.W. Tashima & J. Wagstaffe, Federal Civil Procedure
22 Before Trial § 11:88. “If a court finds particularized harm will result from disclosure of

23 ¹ E.D. Cal. L.R. 39-140 and 39-141 deal with procedures to seal and not with the
24 substantive standards for sealing.

25 ² A party may have the right to protect from public disclosure information which has
26 been produced to the other party only because of discovery and which has not been filed with the
court. Seattle Times v. Rhinehart, 467 U.S. 20, 33, 37, 104 S. Ct. 2199, 2207, 2209 (1984).

