



1           **I.       PLAINTIFF’S MOTION TO COMPEL**

2           Pursuant to Civil Local Rule 37-2 Plaintiff was required to discuss each specific discovery  
3 request in dispute and explain why she contends she is entitled to the requested discovery. Plaintiff  
4 failed to do so in her briefs.<sup>1</sup> Although courts construe the pleadings of *pro se* litigants liberally, *pro*  
5 *se* litigants “must follow the same rules of procedure that govern other litigants.” *See King v. Atiyeh*,  
6 814 F.2d 565, 567 (9<sup>th</sup> Cir. 1987). Thus, if Plaintiff wishes to move for an order compelling  
7 Defendant to supplement its responses to interrogatories and/or produce further documents  
8 responsive to her requests, she must file a motion that complies with the mandates of Civ. L.R. 37-2.

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10           **II.       PLAINTIFF’S MOTION FOR CONTEMPT**

11           Plaintiff argues that an order holding Defendant in contempt is warranted because Defendant  
12 purportedly served its discovery responses late and because Defendant purportedly violates a court  
13 order by failing to respond adequately to Plaintiff’s discovery requests.

14           Plaintiff’s first argument fails because Defendant’s discovery responses were timely.  
15 Pursuant to Federal Rules of Civil Procedure 6(d), a party responding to discovery that is served on it  
16 by mail is allotted an additional 3 days to serve responses. Plaintiff represents that she served the  
17 discovery on August 2, 2010 and that Defendant served its responses on September 3, 2010. The  
18 proofs of service attached to her discovery requests show that they were served by mail. Thus,

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21           <sup>1</sup>       The only document request Plaintiff specifically discusses is her request for a diagram  
22 of the Milpitas Walmart (Request for Production No. 10). Plaintiff complains that the floor plan  
23 Defendant produced was not labeled as she had requested, but does not explain why she would be  
24 entitled to an order requiring Defendant to label the floor plan. Rule 34 only requires a party to produce  
25 documents that already exist. *See Alexander v. FBI*, 194 F.R.D. 305, 310 (D.D.C.2000). A party  
26 responding to a Rule 34 document request cannot be compelled to prepare or create new documents.  
*Ibid.*; *see also Paramount Pictures Corp. v. Replay TV*, No. CV 01-9358 FMC (Ex), 2002 WL  
32151632, at \*2 (C.D.Cal.2002) (citing *Alexander*, 194 F.R.D. at 310). Defendant has supplemented  
its responses to state that it has no diagram labeled with the departments as they existed in 2007.  
Because the court has no authority to require Defendant to create a document that it does not have in its  
possession, custody or control, the court denies Plaintiff’s motion on the merits as to Request for  
Production No. 10.

27           With regard to the interrogatories, Plaintiff states that “Defendant did not identify each individual  
28 witness/security guard of the two security guards in the surveillance tape.” Defendant represents in its  
opposition that after receiving Plaintiff’s motion it supplemented its responses to identify previously  
disclosed security guards as well as their precise location on the surveillance video. Thus, aside from  
the non-compliance with Civ. L.R. 37-2, Plaintiff’s motion appears to be moot as to this issue.

1 Defendant had 33 days to respond to Plaintiff’s discovery requests. Because the 33<sup>rd</sup> day fell on a  
2 Saturday (September 4, 2010) the time for Defendant to serve its responses ran until Monday,  
3 September 6, 2010. *See* FED.R.CIV.PRO. 6(a)(1)(C).

4 With regard to Plaintiff’s argument that Defendant responses and production were  
5 incomplete and in violation of an order of this court, this motion is premature because there has not  
6 yet been any finding by the court that Defendant’s responses were deficient.

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8 **III. DEFENDANT’S MOTION FOR A PROTECTIVE ORDER**

9 **A. DEFENDANT’S REQUEST FOR ENTRY OF A “BLANKET” PROTECTIVE ORDER**

10 Defendant’s motion for entry of a “blanket” protective order that tracks the wording of this  
11 court’s Stipulated Protective Order for Standard Litigation is GRANTED. No later than January 14,  
12 2010 Defendant shall submit such a protective order to the court for signature, revised to reflect the  
13 fact that it the result of a motion rather than a stipulation by the parties.

14 Although documents exchanged in discovery are presumptively public in the absence of a  
15 court order to the contrary,<sup>2</sup> blanket protective orders routinely are approved by courts in civil cases.  
16 *See, e.g., Gillard v. Boulder Valley School Dist.*, 196 F.R.D. 382, 386 (D.Colo. 2000). The very first  
17 rule set out in the Federal Rules of Civil Procedure mandates that courts construe and administer the  
18 rules of civil procedure “to secure the just, speedy, and inexpensive determination of every action  
19 and proceeding.” *See* FED.R.CIV.PRO 1. Blanket protective orders serve the interests of a “just,  
20 speedy, and inexpensive” determination of cases by avoiding the undue cost and delay that would  
21 ensue if courts had to make a good cause determination on a document-by-document basis for all  
22 documents exchanged in discovery that a party wished to protect. As the Ninth Circuit has implicitly  
23 acknowledged, the use of blanket protective orders conserves judicial resources—and taxpayer  
24 money—by eliminating the requirement that a party move for a protective order every time that party  
25 produces documents they contend are confidential. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331  
26 F.3d 1122, 1131 (9<sup>th</sup> Cir. 2003) (noting that use of a blanket protective order was “understandable for

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<sup>2</sup> *See San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1103 (9<sup>th</sup> Cir. 1999).

1 the unfiled documents given the onerous burden document review entails.”).

2 While blanket protective orders are usually based on a joint request of the parties—and courts  
3 generally expect such cooperation among litigants—the agreement of all parties is not required so  
4 long as certain conditions are met. *See, e.g., Parkway Gallery Furniture, Inc. v. Kittinger/  
5 Pennsylvania House Group, Inc.*, 121 F.R.D. 264, 268 (M.D.N.C. 1988). Those conditions include  
6 the following:

7 “First, a party must make some threshold showing of good cause to believe that  
8 discovery will involve confidential or protected information. This may be done on a  
9 generalized as opposed to a document-by-document basis. Moreover, even though a  
10 blanket protective order permits all documents to be designated as confidential, a  
11 party must agree to only invoke the designation in good faith. After receiving  
12 documents, the opposing party has the right to contest those documents which it  
13 believes not to be confidential. At this stage, the party seeking the protection  
14 shoulders the burden of proof in justifying retaining the confidentiality designation.  
15 Thus, the burden of proving confidentiality never shifts from the party asserting that  
16 claim-only the burden of raising that issue.” *Ibid.*

17 By requiring that a party seeking a protective order meet such conditions, courts avoid  
18 situations like that which was rebuked in *Citizens First National Bank of Princeton v. Cincinnati Ins.  
19 Co.*, 178 F.3d 943 (7<sup>th</sup> Cir. 1999). The blanket protective order at issue in *Citizens First National  
20 Bank* was worded so broadly that it gave each party “carte blanche to decide what portions of the  
21 record shall be kept secret.” *See Citizens First National Bank*, 178 F.3d at 946. By contrast, the  
22 form of order proposed by Defendant, which is based on this court’s model form of protective order,  
23 only allows confidentiality designations for information or tangible things that “qualify for protection  
24 under the standards developed under F.R.Civ.P. 26(c).” Moreover, Section 5.1 of the proposed form  
25 of protective order (“Exercise of Restraint and Care in Designating Material for Protection) requires  
26 that:

27 “Each Party or Non-Party that designates information or items for protection  
28 under this Order must take care to limit any such designation to specific material that  
29 qualifies under the appropriate standards. The Designating Party must designate for  
30 protection only those parts of material, documents, items, or oral or written  
31 communications that qualify – so that other portions of the material, documents,  
32 items, or communications for which protection is not warranted are not swept  
33 unjustifiably within the ambit of this Order.

34 “Mass, indiscriminate, or routinized designations are prohibited. Designations  
35 that are shown to be clearly unjustified or that have been made for an improper  
36 purpose (e.g., to unnecessarily encumber or retard the case development process or to

1 impose unnecessary expenses and burdens on other parties) expose the Designating  
2 Party to sanctions.

3 “If it comes to a Designating Party’s attention that information or items that it  
4 designated for protection do not qualify for protection, that Designating Party must  
5 promptly notify all other Parties that it is withdrawing the mistaken designation..”

6 Thus, the form of protective order proposed by Defendants ensures that the parties are not  
7 given “carte blanche” to designate as “Confidential” information that is not entitled to protection  
8 under Rule 26(c).

9 Defendant has shown that entry of the proposed blanket protective order is warranted in the  
10 present case. Plaintiff is seeking discovery of personnel records, as well as Defendant’s policies and  
11 procedures. Many if not all of these documents may well warrant protection under a blanket  
12 protective order. This is a sufficient showing to warrant entry of the proposed blanket protective  
13 order. Whether specific documents may be designated “Confidential” under the provision of the  
14 protective order is left initially to a good faith determination by the responding party. If any such  
15 documents are ever filed with the court, the designating party will need to make an appropriate  
16 showing under Federal Rules of Civil Procedure 26(c) at that time. *See* CIVIL L.R. 79-5.

17 **B. SOCIAL SECURITY NUMBERS**

18 Defendant’s motion is GRANTED as to any discovery requests that seek disclosure of the  
19 Social Security numbers of the security guards who dealt with Plaintiff or any other witnesses based  
20 on Plaintiff’s representation in her reply brief that she changed her request to allow the Social  
21 Security numbers to be redacted.

22 **C. PERSONNEL DOCUMENTS AND ASSET PROTECTION POLICIES AND PROCEDURES**

23 Defendant’s motion is GRANTED as to the personnel records. Defendant need only produce  
24 any portions of the personnel records that are relevant to Plaintiff’s remaining state law claims.<sup>3</sup> To  
25 the extent Defendant seeks an order protecting the personnel files and Defendant’s asset protection  
26 policies and procedures from public disclosure, the motion is moot in light of the grant of a blanket  
27 protective order. Defendant is free to designate as “Confidential” any such documents that warrant

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28 <sup>3</sup> By separate order, the court has dismissed Plaintiff’s federal claims and her claim under  
California Civil Code § 52.1.

1 protection under Rule 26(c).

2 Dated: *January 6, 2011*

*Paul S. Grewal*

PAUL S. GREWAL

United States Magistrate Judge

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*Counsel automatically notified of this filing via the court's Electronic Case Filing system.*

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