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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 GREGORY ROSE and CATHERINE

No. 2:16-cv-00122-SAB

10 ROSE, and the marital community

11 composed thereof,

**ORDER DENYING MOTION
FOR PROTECTIVE ORDER**

12 Plaintiffs,

13 v.

14 BANK OF AMERICA, N.A., aka BANK

15 OF AMERICA CORPORATION, a North

16 Carolina Company; MTC FINANCIAL

17 INC. dba TRUSTEE CORPS., a

18 Washington licensed Corporation; and

19 EQUIFAX INFORMATION SERVICES,

20 LLC, a Georgia Limited Liability

21 Company,

22 Defendants.
23

24 Before the Court is Defendant's Stipulated Proposed Protective Order, ECF
25 No. 61. The parties jointly seek a protective order on confidential or personal
26 materials filed in this case. However, the parties have neglected to file an actual
27 motion and have failed to make any substantive arguments as to the necessity of a
28 protective order.

ORDER DENYING MOTION FOR PROTECTIVE ORDER ^ 1

1 The product of pretrial discovery is presumptively public, though Federal
2 Rule of Civil Procedure Rule 26(c) permits a district court to override this
3 presumption upon a showing of good cause. *San Jose Mercury News, Inc. v. U.S.*
4 *District Court—Northern Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999).
5 Rule 26(c) provides that a “court may, for good cause, issue an order to protect a
6 party or person from annoyance, embarrassment, oppression, or undue burden or
7 expense.” Prior to the grant of a protective order, the moving party must certify it
8 has “conferred or attempted to confer with other affected parties in an effort to
9 resolve the dispute *without court action*.” Fed. R. Civ. P. 26(c) (emphasis added).

10 Where the parties agree, as here, that certain information should remain
11 confidential, it may be prudent to enter into an agreement setting forth in writing
12 what information shall remain private. It is unnecessary, however, for such an
13 agreement to have this Court’s imprimatur. A court issued protective order is less
14 necessary since Rule 5(d) was amended to only require filing discovery material
15 actually used in support of an action. Because not all discovery material need be
16 filed, most discovery material is not readily accessible to the public. Therefore, the
17 primary concern regarding confidential materials is how the parties themselves
18 handle such material. The Court will not hesitate to issue a protective order when
19 it is necessary; however, the moving party or parties must demonstrate good cause
20 exists and must bear the “burden of showing specific prejudice or harm” that
21 would result if no protective order is granted. *Phillips v. G.M. Corp.*, 307 F.3d
22 1206, 1210-11 (9th Cir. 2002). In other words, the moving party must demonstrate
23 why the parties cannot resolve the issue without court action—a standard that will
24 generally not be met when the parties agree to the terms of a proposed protective
25 order.

26 The motion at hand fails to demonstrate specific harm or prejudice that will
27 result if no protective order is granted. Additionally, the parties appear to be in
28 agreement on what material is appropriate for discovery and how it should be

1 handled. Accordingly, the Court **denies** the stipulated request for a protective
2 order.

3 The Court encourages the parties to continue cooperating with respect to the
4 handling of potentially sensitive discovery material. The parties may, upon proper
5 showing tied to specific discovery material, move the Court to seal certain
6 discovery filings. However, given that the parties have not shown good cause, the
7 Court encourages the parties to file a subsequent motion for a protective order
8 only if they can show the specific harm that would follow were the Court to deny
9 entry of a protective order, and only if the status quo were to change and the
10 parties were unable to resolve the conflict without the intervention of the Court.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Defendant's Stipulated Motion for a Protective Order, ECF No. 61, is
13 **DENIED.**

14 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
15 and forward copies to counsel.

16 **DATED** this 14th day of June, 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

22 Stanley A. Bastian
23 United States District Judge
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