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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 RENA OLSON, an individual,
10 Plaintiff,
11 v.
12 AGRI-SERVICE LLC, a Washington
13 Limited Liability Company; CLINT
14 SCHNOOR, an individual; LISA
15 SCHMITZ, an individual, and TRINA
16 FLORES, an individual,
17 Defendants.
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NO. 4:17-cv-05069-SAB

**ORDER DENYING THE
PARTIES' STIPULATED
MOTION FOR ENTRY OF
LIMITED PROTECTIVE
ORDER**

19 Before the Court is the parties' Stipulated Motion for Entry of Limited
20 Protective Order Re: Plaintiff's First Set of Interrogatories and Requests for
21 Production, ECF No. 22. The parties request the Court enter a limited protective
22 order with respect to certain documents and information to be produced in
23 response to Plaintiff's Interrogatories and Requests for Production. According to
24 Defendants, this information may contain or constitute trade secrets, confidential
25 and/or privileged information, and other confidential, sensitive or proprietary
26 information. The motion was heard without oral argument.

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28 **ORDER DENYING THE PARTIES' STIPULATED MOTION FOR ENTRY
OF LIMITED 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.*
4 *U.S. Dist. Court—N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). Rule
5 26(c) provides that a “court may, for good cause, issue an order to protect a party
6 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. This 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 will
21 result if no protective order is granted. *Phillips v. G.M. Corp.*, 307 F.3d 1206,
22 1210-11 (9th Cir. 2002). In other words, the moving party must demonstrate why
23 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
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1 agreement on what material is appropriate for discovery and how it should be
2 handled. Accordingly, the Court denies the stipulated motion for protective order.

3 The proposed protective order also contained instructions for filing certain
4 materials under seal. A higher standard applies to sealing orders as they relate to
5 discovery materials in support of dispositive motions. In order for a court to seal
6 records associated with a dispositive motion, it must base its decision on a
7 compelling reason tied to an articulated factual basis without relying on
8 conjecture. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.
9 2003). The compelling basis standard is more stringent than the Rule 26(c) good
10 cause standard. See *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 679 (9th Cir.
11 2009). Because the parties have failed to demonstrate that even good cause exists
12 to support this motion, they have also failed to provide a compelling basis for
13 sealing any records that may be filed in support of any dispositive motions.

14 The Court encourages the parties to continue cooperating with respect to the
15 handling of potentially sensitive discovery material. The parties may, upon proper
16 showing tied to specific discovery material, move the Court to seal certain
17 discovery filings.

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1 Accordingly, **IT IS ORDERED:**

2 1. The parties' Stipulated Motion for Entry of Limited Protective Order RE:
3 Plaintiff's First Set of Interrogatories and Requests for Production, ECF No. 22, is
4 **DENIED.**

5 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
6 this Order and to provide copies to counsel.

7 **DATED** this 13th day of November 2017.



11 Handwritten signature of Stanley A. Bastian in blue ink, written over a horizontal line.

12 Stanley A. Bastian
13 United States District Judge
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