

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Chavez-DeRemer v. Bensen

Chavez-DeRemer · No. CV-19-03178-PHX-ROS · Decided April 10, 2026

OPINION

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PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Lori Chavez-DeRemer, Secretary of Labor, No. CV-19-03178-PHX-ROS 10 Plaintiff, ORDER
11 v. 12 Eric Bensen, et al., 13 Defendants. 14 15 Before the Court is a Motion to Amend
Protective Order filed by Defendants Eric 16 Bensen, Randall Smalley, Robert Smalley, the
Smalley Marital Trust, the Smalley 17 Survivor's Trust, and the Smalley Family Trust
("Individual Defendants"). (Doc. 563.) 18 Plaintiff Lori Chavez-DeRemer, Secretary of Labor,
filed a Response (Doc. 567), and 19 Individual Defendants filed a Reply (Doc. 569). 20 For the
reasons that follow, the Court will deny the Motion to Amend Protective 21 Order.

22 I. BACKGROUND

23 This is an ERISA action brought by the Department of Labor ("DOL") against 24 Individual
Defendants for breaches of fiduciary duty involving a prohibited transaction 25 with Defendant
Reliance Trust Company. 26 On April 30, 2020, the parties filed a Joint Motion for Entry of
Stipulated Protective 27 Order. (Doc. 43.) The Court granted their Joint Motion on May 4, 2020,
and issued the 28 Stipulated Protective Order. (Doc. 44.) In relevant part, the Stipulated Protective
Order 1 defines "Confidential Information" to include: 2 information contained or disclosed in
any materials, including documents, portions of documents, answers to interrogatories, responses
to requests for 3 admissions, trial testimony, deposition testimony, and transcripts of trial
testimony and depositions, including data, summaries, and compilations 4 derived therefrom that
is deemed to be Confidential Information by any party to which it belongs. 5 (Id. at 2.) Paragraph
18 of the Stipulated Protective Order provides that "[t]he Court may 6 modify the terms and
conditions of this Order for good cause, or in the interest of justice, 7 or on its own order at any
time in these proceedings." (Id. at 8.) 8 Pursuant to the parties' Joint Proposed Case Management
Plan, (Doc. 42), on May 9 13, 2020, the Court bifurcated the trial "into separate liability and
remedies phases, with 10 corresponding bifurcated discovery." (Doc. 49 at 5.) The Court noted
that, should the 11 Secretary prevail in the liability phase, "there will be a discovery period
following the 12 [C]ourt's merit-based order during which the Secretary may conduct discovery
related to 13 Defendants' assets, including tracing funds in Defendants' accounts for [her] claims

to 14 equitable relief under ERISA § 502(a)(5).” (Id. at 5–6.) 15 A bench trial was held over sixteen days between January 16 and February 15, 2024. 16 On August 15, 2024, the Court issued its Findings of Fact and Conclusions of Law, 17 concluding that “Defendants breached their fiduciary duties and allowed Reliance to 18 engage in a prohibited transaction,” and “the remaining issues involve available remedies.” 19 (Doc. 492 at 44–45.) 20 The parties filed a Joint Statement of Discovery Dispute on February 9, 2026, after 21 the DOL served discovery on Individual Defendants seeking sensitive personal financial 22 materials like banking and brokerage statements. (Doc. 561 at 2.) Individual Defendants 23 argue the current Stipulated Protective Order does not sufficiently protect the requested 24 materials from possible disclosure and propose an amendment to the Protective Order 25 adding a “Highly Confidential” designation and restricting the dissemination of “Highly 26 Confidential” material to only two DOL representatives apart from counsel and essential 27 litigation personnel like expert witnesses. (Id.) The DOL opposes amending the Protective 28 Order, noting that the current protections are “more than adequate” and “counsel do not 1 plan to routinely disseminate Defendants’ materials beyond counsel themselves, [but] 2 information contained in the materials likely will be cited in briefing that DOL client 3 offices may wish to review.” (Id. at 2–3.)

4 II. LEGAL STANDARD

5 Under Rule 26(c)(1) of the Federal Rules of Civil Procedure, a district court “may, 6 for good cause, issue an order to protect a party or person from annoyance, embarrassment, 7 oppression, or undue burden or expense, including . . . designating the persons who may 8 be present while the discovery is conducted.” Fed. R. Civ. P. 26(c)(1)(E). 9 The party seeking to modify a protective order must demonstrate good cause for the 10 modification. See *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 475–76 (9th Cir. 11 1992). To establish good cause, the moving party “bears the burden of showing specific 12 prejudice or harm will result if no [modification] is granted.” *Phillips ex rel. Ests. of Byrd 13 v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002); see also *Beckman*, 966 14 F.2d at 476 (“Broad allegations of harm, unsubstantiated by specific examples or 15 articulated reasoning, do not satisfy the Rule 26(c) test.” (quoting *Cipollone v. Liggett Grp., 16 Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986))). 17 “If a court finds particularized harm will result from disclosure of information to the 18 public, then it balances the public and private interests to decide whether a protective order 19 is necessary.” *Phillips*, 307 F.3d at 1211. “When private financial information is at issue, 20 the Court is required to balance the party’s interest in maintaining the confidentiality of its 21 financial information against the interests of ascertaining the truth, addressing potentially 22 severe wrongdoing by defendants, and ensuring the enforcement of rights.” *Mardiros v. 23 City of Hope*, No. 219CV02196RMAAX, 2019 WL 13164174, at *2 (C.D. Cal. Oct. 2, 24 2019) (citing *Charles O. Bradley Tr. v. Zenith Cap. LLC*, No. C-04-2239 JSW (EMC), 25 2005 WL 1030218, at *2 (N.D. Cal. May 3, 2005)). This balancing test¹ requires a court to 26 1 The DOL quotes *Nutraceutical, Inc. v. Syntech (SSPF) Int’l, Inc.*, 242 F.R.D. 552, 555 (C.D. Cal. 2007), for the proposition that this balancing test also

“requires the district court to 27 examine factually all the risks and safeguards surrounding inadvertent disclosure.” Notably, this quote is not taken from *Nutraceuticals*, although similar language appears therein. 28 See *id.* (“Where trade secrets or other confidential commercial information is involved, the court will balance the risk of disclosure to competitors against the risk that a protective 1 “identify and discuss the factors it considered in its ‘good cause’ examination to allow 2 appellate review of the exercise of its discretion.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (quoting *Phillips*, 307 F.3d at 1212). Additionally, the 4 Ninth Circuit has “directed courts doing this balancing to consider the factors identified by 5 the Third Circuit in *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir.1995).” In 6 *re Roman Cath. Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011) 7 (citing *Phillips*, 307 F.3d at 1211). Those factors are: 8 (1) whether disclosure will violate any privacy interests; (2) whether the information is being sought for a legitimate purpose or for an 9 improper purpose; (3) whether disclosure of the information will cause a party embarrassment; 10 (4) whether confidentiality is being sought over information important to public health and safety; 11 (5) whether the sharing of information among litigants will promote fairness and efficiency; 12 (6) whether a party benefitting from the order of confidentiality is a public entity or official; and 13 (7) whether the case involves issues important to the public. 14 *Id.* at 424 n.5 (quoting *Glenmede Trust*, 56 F.3d at 483). “But even when the factors in this 15 two-part test weigh in favor of protecting the discovery material (i.e., where the court 16 determines that disclosure of information may result in “particularized harm,” and the 17 private interest in protecting the discovery material outweighs the public interest in 18 disclosure), a court must still consider whether redacting portions of the discovery material 19 will nevertheless allow disclosure.” *Id.* at 425 (citing *Foltz*, 331 F.3d at 1136–37).

20 III. ANALYSIS

21 The Court begins by noting the unique nature of Individual Defendants’ requested 22 modification. By agreeing to the Stipulated Protective Order, the parties “implicitly 23 acknowledged” that there is good cause to protect Individual Defendants’ sensitive 24 financial information from public disclosure. See *Factory Mut. Ins. Co. v. Insteel Indus., 25 Inc.*, 212 F.R.D. 301, 304 (M.D.N.C. 2002) (quoting *Bayer AG & Miles, Inc. v. Barr Labs.*, 26 order will impair prosecution or defense of the claims.”). Moreover, as evidenced by the 27 full quote from *Nutraceuticals* and similar cases that cite *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992), this standard is specifically for protective 28 orders shielding confidential commercial information like trade secrets from a party’s competitors. 1 *Inc.*, 162 F.R.D. 456, 463–64 (S.D.N.Y. 1995)). In most cases involving modification of 2 an existing protective order, the requested modification is to either permit disclosure of 3 previously protected information or to protect information not previously shielded from 4 disclosure. See, e.g., *Campos v. Ariz. Bd. of Regents*, No. CV-24-00987-PHX-JJT, 2024 5 WL 5187690 (Dec. 20, 2024). But here, the

requested modification would not change the 6 protected status of the information; rather, Individual Defendants seek to impose further 7 limits on the DOL's use and dissemination of the information. As such, the factors from 8 *Glenmede Trust* and other cases that focus on balancing the public's interest in accessing 9 information do not neatly apply to Individual Defendants' request. Because the proposed 10 modification would not affect the existing limitations on public disclosure, good cause for 11 the modification requires Individual Defendants to show particularized harm will result 12 specifically from a failure to grant their requested modification. In other words, it is 13 undisputed that public disclosure of the sensitive financial information may harm 14 Individual Defendants, so they are required to show specific harm will result if the 15 information is not limited to only two DOL representatives. 16 Individual Defendants argue that "the DOL's potential dissemination of Individual 17 Defendants' Highly Confidential and private material with an unknown number of 18 unidentified people (who then might share this information further, even inadvertently)" 19 could result in significant harm. (Doc. 563 at 9.) The Court agrees that, as a general 20 proposition, "the more people that come into contact with Individual Defendants' Highly 21 Confidential personal information (e.g. their current bank and brokerage statements), the 22 greater the likelihood that this information could be disclosed outside the parameters of 23 this litigation." (Id. at 8.) But in the absence of "specific examples or articulated reasoning" 24 regarding the dangers of the DOL's potential dissemination of confidential information 25 among DOL personnel, who are already bound by the existing Stipulated Protective Order, 26 Individual Defendants' speculation and "[b]road allegations of harm" are not sufficient to 27 establish good cause. See *Beckman*, 966 F.2d at 476. 28 Although Individual Defendants cite numerous cases where courts have found good 1 cause to issue protective orders limiting information to attorneys' eyes only ("AEO"), most 2 cases with AEO designations involve confidential business information like trade secrets 3 being protected from a direct competitor of the producing party.² See, e.g., *United States v. 4 Manpow, L.L.C.*, No.: 2:21-05418 VAP (ADSx), 2023 WL 4291806 (C.D. Cal. May 31, 5 2023); *Cabell v. Zorro Prods., Inc.*, 294 F.R.D. 604 (W.D. Wash. 2013); *Defazio v. 6 Hollister, Inc.*, No. CIV S-04-1358 DFL GGH, 2007 WL 2580633 (E.D. Cal. Sept. 5, 2007) 7 (finding "one of the plaintiffs [] has an employment relationship with one of [the 8 defendant]'s competitors," so "the mere existence of a protective order may not be enough 9 to overcome the temptation to leak some of the information"); see also *In re The City of 10 New York*, 607 F.3d 923, 935 (2d Cir. 2010) ("The disclosure of confidential information 11 on an "attorneys' eyes only" basis is a routine feature of civil litigation involving trade 12 secrets."). Other cited cases involved protective orders where the parties stipulated to AEO 13 designations. See, e.g., *Flemming v. Parnell*, No. C13-5062-BHS, 2013 WL 3270401 14 (W.D. Wash. June 26, 2013); *M.G. v. Metro. Interpreters & Translators, Inc.*, No. 15 12cv0460-JM (MDD), 2014 WL 5494910 (S.D. Cal. Oct. 30, 2014); *J.R. Simplot Co. v. 16 McCain Foods USA, Inc.*, No. 1:16-cv-00449-DCN, 2019 WL 2745730 (D. Idaho July 1, 17 2019); see also *Thomas v. Cassia Cnty.*, No. 4:17-cv-00256-DCN, 2018 WL 2224052 (D. 18 Idaho May 15, 2018)

(giving the parties leave to stipulate to a protective order “such as an 19 attorneys’ eyes only order”). But a court’s granting of a stipulated protective order with 20 AEO designations does not establish that the court found good cause for this heightened 21 level of confidentiality. See *In re Roman Cath. Archbishop*, 661 F.3d at 424 (“While courts 22 generally make a finding of good cause before issuing a protective order, a court need not 23 2 Individual Defendants also point to five sample protective orders from judges in the 24 District of Arizona that include a provision for AEO designations. (See Doc. 569 at 4.) Although the sample provisions do suggest information concerning “finances” may be a 25 proper subject for AEO designation, in context, these provisions clearly focus on protecting confidential business information from competitors: 26 Any party may designate information as “HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY” only if, in the good faith belief of such party and 27 its Counsel, the information is among that considered to be most sensitive by the party, including but not limited to trade secret or other confidential 28 data related to research, development, finances, or customers. (E.g., *id.* at 17) (emphasis added). 1 || do so where (as here) the parties stipulate to such an order.”) 2 Moreover, the risk of harm asserted by Individual Defendants can be sufficiently || mitigated by the existing protection under the Stipulated Protective Order, which includes 4|| limits on the DOL’s use and dissemination of Individual Defendants’ sensitive information. 5 || Individual Defendants repeatedly point to the DOL’s position in the Joint Statement of 6 || Discovery Dispute that “[w]hile counsel do not plan to routinely disseminate Defendants’ 7 || materials beyond counsel themselves, information contained in the materials likely will be 8 || cited in briefing that DOL client offices may wish to review.” (Doc. 561 at 2—3.) Although, 9|| from this statement, it is unclear for what purposes DOL client offices “may wish to || review” Individual Defendants’ sensitive financial information, pursuant to paragraph 5 of || the Stipulated Protective Order, the DOL is restricted to using confidential information “only for purposes of this action.” (Doc. 44 at 7.) And there is no evidence to suggest the 13 || DOL intends to violate the Stipulated Protective Order and subject itself to possible 14|| sanctions by sharing confidential information for purposes unrelated to prosecuting this 15} case or otherwise act in bad faith. Cf *Chavez-DeRemer v. Coway USA, Inc.*, No. 2:24-cv- 16}} 08156-JLS-AJR, 2025 WL 3704376, at *4 (C.D. Cal. Dec. 22, 2025) (finding good cause 17 || to issue a protective order “in light of [the DOL]’s repeated assertion of its obligation to 18 || share discovery materials with other federal agencies for general law enforcement purposes both during informal discovery conferences and in the briefing”). 20 Based on the foregoing, Individual Defendants have failed to carry their burden of demonstrating particularized harm that will result if their proposed modification is not || granted. The Court does not find good cause to modify the Stipulated Protective Order. 23 Accordingly, 24 IT IS ORDERED the Motion to Amend Protective Order (Doc. 563) is DENIED. 25 Dated this 10th day of April, 2026. fo . 26 ‘ — . an 28 Senior United States District Judge _7-

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