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2 NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Penny Wagner,) No. CV-09-2069-PHX-GMS

10 Plaintiff,)

11 vs.) **ORDER**

12 DePuy Orthopaedics, Inc.; John Does I-)
13 X; Jane Does I-X; ABC Corporations I-)
X; and XYZ Partnerships I-X,)

14 Defendants.)

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16 The parties have submitted a stipulated protective order regarding confidentiality that
17 calls for discovery materials to be kept confidential by the parties and for confidential
18 documents to be submitted to the Court in camera (Dkt. # 23). The proposed order fails to
19 take into account Ninth Circuit law restricting the circumstances under which confidentiality
20 orders may be entered and documents in the Court’s file may be sealed.

21 Two standards are relevant. “First, a ‘compelling reasons’ standard applies to [the
22 sealing of] most judicial records.” *Pintos v. Pac. Creditors Ass’n*, 565 F.3d 1106, 1115 (9th
23 Cir. 2009) (citing *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
24 2006); *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135-36 (9th Cir. 2003)).
25 “This standard derives from the common law right ‘to inspect and copy public records and
26 documents, including judicial records and documents.’ To limit this common law right of
27 access, a party seeking to seal judicial records must show that ‘compelling reasons supported
28 by specific factual findings outweigh the general history of access and the public policies

1 favoring disclosure.” *Id.* (quoting *Kamakana*, 447 F.3d at 1178) (alteration and internal
2 citations omitted).


3 The second standard applies to discovery materials. “‘Private materials unearthed
4 during discovery’ are not part of the judicial record.” *Id.* (quoting *Kamakana*, 447 F.3d at
5 1180) (alteration omitted). The “good cause” standard set forth in Rule 26(c) of the Federal
6 Rules of Civil Procedure applies to orders rendering this category of documents confidential.
7 *See id.*; *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999)
8 (“It is well-established that the fruits of pretrial discovery are, in the absence of a court order
9 to the contrary, presumptively public. Rule 26(c) authorizes a district court to override this
10 presumption where ‘good cause’ is shown.”) (citations omitted).

11 The good cause standard also applies to the sealed filing of documents attached to
12 non-dispositive motions because those documents are often “‘unrelated, or only tangentially
13 related, to the underlying cause of action.’” *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1213 (9th
14 Cir. 2002); *see Pintos*, 565 F.3d at 1115. Documents attached to dispositive motions such
15 as motions for summary judgment, however, are governed by the compelling reasons
16 standard. *See San Jose Mercury News*, 187 F.3d at 1102; *Foltz*, 331 F.3d at 1136. The
17 parties do not establish good cause or compelling reasons merely by stipulating that
18 documents may be filed under seal

19 The parties may submit a revised proposed order that takes into account these
20 standards. The stipulation or motion seeking entry of the order should show good cause for
21 a confidentiality order governing discovery materials. The proposed order should also reflect
22 the fact that any party seeking to file documents under seal must show good cause for
23 documents attached to non-dispositive motions or compelling reasons for documents attached
24 to dispositive motions.

25 **IT IS HEREBY ORDERED** denying the Stipulation for Protective Order without
26 prejudice (Dkt. # 23).

27 DATED this 16th day of June, 2010.

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G. Murray Snow
United States District Judge