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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RUBY SUTACHAN, an individual,  
Plaintiff,

v.

ZIMMER, INC. a Delaware  
corporation; ZIMMER US, INC., a  
Delaware corporation; and DOES 1-  
100, inclusive,  
Defendants.

Case No. 2:16-cv-08417-R-PLA

**STIPULATED PROTECTIVE ORDER**

Complaint Filed: October 6, 2016  
Date of Removal: November 11, 2016

1     **A. PURPOSES AND LIMITATIONS**

2           Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6 enter the following Stipulated Protective Order. The parties acknowledge that this  
7 Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords from public disclosure and use extends  
9 only to the limited information or items that are entitled to confidential treatment  
10 under the applicable legal principles. The parties further acknowledge, as set forth  
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
13 procedures that must be followed and the standards that will be applied when a  
14 party seeks permission from the court to file material under seal.

15           **B. GOOD CAUSE STATEMENT**

16           This action is likely to involve trade secrets, proprietary design drawings,  
17 detailed manufacturing records and quality control measures, commercial, financial,  
18 technical and/or proprietary information for which special protection from public  
19 disclosure and from use for any purpose other than prosecution of this action is  
20 warranted. Such confidential and proprietary materials and information consist of,  
21 among other things, confidential research, development, or commercial information  
22 (including information implicating privacy rights of third parties), information  
23 otherwise generally unavailable to the public, or which may be privileged or  
24 otherwise protected from disclosure under state or federal statutes, court rules, case  
25 decisions, or common law. Accordingly, to expedite the flow of information, to  
26 facilitate the prompt resolution of disputes over confidentiality of discovery  
27 materials, to adequately protect information the parties are entitled to keep  
28 confidential, to ensure that the parties are permitted reasonable necessary uses of

1 such material in preparation for and in the conduct of trial, to address their handling  
2 at the end of the litigation, and serve the ends of justice, a protective order for such  
3 information is justified in this matter. It is the intent of the parties that information  
4 will not be designated as confidential for tactical reasons and that nothing be so  
5 designated without a good faith belief that it has been maintained in a confidential,  
6 non-public manner, and there is good cause why it should not be part of the public  
7 record of this case.

8 **2. DEFINITIONS**

9 2.1 Action: *Ruby Sutachan v. Zimmer, Inc., et al.*, Case No. 2:16-cv-  
10 08417-R-PLA

11 2.2 Challenging Party: a Party or Non-Party that challenges the  
12 designation of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
14 how it is generated, stored or maintained) or tangible things that qualify for  
15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
16 the Good Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
18 their support staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or  
20 items that it produces in disclosures or in responses to discovery as  
21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless  
23 of the medium or manner in which it is generated, stored, or maintained (including,  
24 among other things, testimony, transcripts, and tangible things), that are produced  
25 or generated in disclosures or responses to discovery in this matter.

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1           2.7 Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
3 an expert witness or as a consultant in this Action.

4           2.8 House Counsel: attorneys who are employees of a party to this Action.  
5 House Counsel does not include Outside Counsel of Record or any other outside  
6 counsel.

7           2.9 Non-Party: any natural person, partnership, corporation, association,  
8 or other legal entity not named as a Party to this action.

9           2.10 Outside Counsel of Record: attorneys who are not employees of a  
10 party to this Action but are retained to represent or advise a party to this Action and  
11 have appeared in this Action on behalf of that party or are affiliated with a law firm  
12 that has appeared on behalf of that party, including support staff.

13           2.11 Party: any party to this Action, including all of its officers, directors,  
14 employees, consultants, retained experts, and Outside Counsel of Record (and their  
15 support staffs).

16           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
17 Discovery Material in this Action.

18           2.13 Professional Vendors: persons or entities that provide litigation  
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
21 and their employees and subcontractors.

22           2.14 Protected Material: any Disclosure or Discovery Material that is  
23 designated as “CONFIDENTIAL.”

24           2.15 Receiving Party: a Party that receives Disclosure or Discovery  
25 Material from a Producing Party.

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1     **3. SCOPE**

2             The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.

7             Any use of Protected Material at trial shall be governed by the orders of the  
8 trial judge. This Order does not govern the use of Protected Material at trial.

9     **4. DURATION**

10            Once a case proceeds to trial, all of the court-filed information to be  
11 introduced that was previously designated as confidential or maintained pursuant to  
12 this protective order becomes public and will be presumptively available to all  
13 members of the public, including the press, unless compelling reasons supported by  
14 specific factual findings to proceed otherwise are made to the trial judge in advance  
15 of the trial. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-  
16 81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents  
17 produced in discovery from “compelling reasons” standard when merits-related  
18 documents are part of court record). Accordingly, the terms of this protective order  
19 do not extend beyond the commencement of the trial.

20     **5. DESIGNATING PROTECTED MATERIAL**

21            5.1     Exercise of Restraint and Care in Designating Material for Protection.

22            Each Party or Non-Party that designates information or items for protection under  
23 this Order must take care to limit any such designation to specific material that  
24 qualifies under the appropriate standards. The Designating Party must designate for  
25 protection only those parts of material, documents, items, or oral or written  
26 communications that qualify so that other portions of the material, documents,  
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1 items, or communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations  
4 that are shown to be clearly unjustified or that have been made for an improper  
5 purpose (e.g., to unnecessarily encumber the case development process or to  
6 impose unnecessary expenses and burdens on other parties) may expose the  
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it  
9 designated for protection do not qualify for protection, that Designating Party must  
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in  
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
14 under this Order must be clearly so designated before the material is disclosed or  
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic  
18 documents, but excluding transcripts of depositions or other pretrial or trial  
19 proceedings), that the Producing Party affix, at a minimum, the legend  
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
21 contains protected material. If only a portion or portions of the material on a page  
22 qualifies for protection, the Producing Party also must clearly identify the protected  
23 portion(s) (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents available for inspection  
25 need not designate them for protection until after the inspecting Party has indicated  
26 which documents it would like copied and produced. During the inspection and  
27 before the designation, all of the material made available for inspection shall be  
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1 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
2 documents it wants copied and produced, the Producing Party must determine  
3 which documents, or portions thereof, qualify for protection under this Order. Then,  
4 before producing the specified documents, the Producing Party must affix the  
5 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
6 portion or portions of the material on a page qualifies for protection, the Producing  
7 Party also must clearly identify the protected portion(s) (e.g., by making  
8 appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party identify  
10 the Disclosure or Discovery Material on the record, before the close of the  
11 deposition.

12 (c) for information produced in some form other than documentary and  
13 for any other tangible items, that the Producing Party affix in a prominent place on  
14 the exterior of the container or containers in which the information is stored the  
15 legend “CONFIDENTIAL.” If only a portion or portions of the information  
16 warrants protection, the Producing Party, to the extent practicable, shall identify the  
17 protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
19 failure to designate qualified information or items does not, standing alone, waive  
20 the Designating Party’s right to secure protection under this Order for such  
21 material. Upon timely correction of a designation, the Receiving Party must make  
22 reasonable efforts to assure that the material is treated in accordance with the  
23 provisions of this Order.

## 24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
26 designation of confidentiality at any time that is consistent with the Court’s  
27 Scheduling Order.

1           6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
2 resolution process under Local Rule 37.1, et seq. Any discovery motion must  
3 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

4           6.3 Burden. The burden of persuasion in any such challenge proceeding  
5 shall be on the Designating Party. Frivolous challenges, and those made for an  
6 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
7 other parties) may expose the Challenging Party to sanctions. Unless the  
8 Designating Party has waived or withdrawn the confidentiality designation, all  
9 parties shall continue to afford the material in question the level of protection to  
10 which it is entitled under the Producing Party’s designation until the Court rules on  
11 the challenge.

12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

13           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
14 disclosed or produced by another Party or by a Non-Party in connection with this  
15 Action only for prosecuting, defending, or attempting to settle this Action. Such  
16 Protected Material may be disclosed only to the categories of persons and under the  
17 conditions described in this Order. When the Action has been terminated, a  
18 Receiving Party must comply with the provisions of section 13 below (FINAL  
19 DISPOSITION).

20           Protected Material must be stored and maintained by a Receiving Party at a  
21 location and in a secure manner that ensures that access is limited to the persons  
22 authorized under this Order.

23           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
24 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
25 Receiving Party may disclose any information or item designated  
26 “CONFIDENTIAL” only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
2 well as employees of said Outside Counsel of Record to whom it is reasonably  
3 necessary to disclose the information for this Action;

4 (b) the officers, directors, and employees (including House Counsel) of  
5 the Receiving Party to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom  
7 disclosure is reasonably necessary for this Action and who have signed the  
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional  
12 Vendors to whom disclosure is reasonably necessary for this Action and who have  
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or a  
15 custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
17 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
18 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they  
19 will not be permitted to keep any confidential information unless they sign the  
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise  
21 agreed by the Designating Party or ordered by the Court. Pages of transcribed  
22 deposition testimony or exhibits to depositions that reveal Protected Material may  
23 be separately bound by the court reporter and may not be disclosed to anyone  
24 except as permitted under this Stipulated Protective Order; and

25 (i) any mediator or settlement officer, and their supporting personnel,  
26 mutually agreed upon by any of the parties engaged in settlement discussions.

1 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation  
4 that compels disclosure of any information or items designated in this Action as  
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification  
7 shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order  
9 to issue in the other litigation that some or all of the material covered by the  
10 subpoena or order is subject to this Protective Order. Such notification shall include  
11 a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be  
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with  
15 the subpoena or court order shall not produce any information designated in this  
16 action as “CONFIDENTIAL” before a determination by the court from which the  
17 subpoena or order issued, unless the Party has obtained the Designating Party’s  
18 permission. The Designating Party shall bear the burden and expense of seeking  
19 protection in that court of its confidential material and nothing in these provisions  
20 should be construed as authorizing or encouraging a Receiving Party in this Action  
21 to disobey a lawful directive from another court.

22 9. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a  
25 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
26 produced by Non-Parties in connection with this litigation is protected by the  
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1 remedies and relief provided by this Order. Nothing in these provisions should be  
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
4 produce a Non-Party's confidential information in its possession, and the Party is  
5 subject to an agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-  
8 Party that some or all of the information requested is subject to a confidentiality  
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated  
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
12 specific description of the information requested; and

13 (3) make the information requested available for inspection by the  
14 Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this Court within  
16 14 days of receiving the notice and accompanying information, the Receiving Party  
17 may produce the Non-Party's confidential information responsive to the discovery  
18 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
19 not produce any information in its possession or control that is subject to the  
20 confidentiality agreement with the Non-Party before a determination by the Court.  
21 Absent a court order to the contrary, the Non-Party shall bear the burden and  
22 expense of seeking protection in this Court of its Protected Material.

23 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this  
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
27 writing the Designating Party of the unauthorized disclosures, (b) use its best  
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1 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
2 person or persons to whom unauthorized disclosures were made of all the terms of  
3 this Order, and (d) request such person or persons to execute the “Acknowledgment  
4 and Agreement to Be Bound” that is attached hereto as Exhibit A.

5 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain  
8 inadvertently produced material is subject to a claim of privilege or other  
9 protection, the obligations of the Receiving Parties are those set forth in Federal  
10 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
11 whatever procedure may be established in an e-discovery order that provides for  
12 production without prior privilege review.

13 12. **MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
17 Protective Order, no Party waives any right it otherwise would have to object to  
18 disclosing or producing any information or item on any ground not addressed in  
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
20 any ground to use in evidence of any of the material covered by this Protective  
21 Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any  
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
24 may only be filed under seal pursuant to a court order authorizing the sealing of the  
25 specific Protected Material at issue; good cause must be shown in the request to file  
26 under seal. If a Party’s request to file Protected Material under seal is denied by the  
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1 Court, then the Receiving Party may file the information in the public record unless  
2 otherwise instructed by the Court.

3 13. **FINAL DISPOSITION**

4 After the final disposition of this Action, within 60 days of a written request  
5 by the Designating Party, each Receiving Party must return all Protected Material to  
6 the Producing Party or destroy such material. As used in this subdivision, “all  
7 Protected Material” includes all copies, abstracts, compilations, summaries, and any  
8 other format reproducing or capturing any of the Protected Material. Whether the  
9 Protected Material is returned or destroyed, the Receiving Party must submit a  
10 written certification to the Producing Party (and, if not the same person or entity, to  
11 the Designating Party) by the 60 day deadline that (1) identifies (by category, where  
12 appropriate) all the Protected Material that was returned or destroyed and (2)  
13 affirms that the Receiving Party has not retained any copies, abstracts,  
14 compilations, summaries or any other format reproducing or capturing any of the  
15 Protected Material. Notwithstanding this provision, counsel are entitled to retain an  
16 archival copy of all pleadings, motion papers, trial, deposition, and hearing  
17 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
18 reports, attorney work product, and consultant and expert work product, even if  
19 such materials contain Protected Material. Any such archival copies that contain or  
20 constitute Protected Material remain subject to this Protective Order as set forth in  
21 Section 4.

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1 14. Any violation of this Order may be punished by any and all appropriate  
2 measures including, without limitation, contempt proceedings and/or monetary  
3 sanctions.

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5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6  
7 DATED April 4, 2017

8  
9 /s/ Nabil Salem

10 Attorneys for Plaintiff Ruby Sutachan

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12  
13 DATED: April 4, 2017

14 /s/ Howard D. Ruddell

15 Attorneys for Defendants Zimmer, Inc. and Zimmer US, Inc.

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18 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

19  
20 DATED: April 11, 2017



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23 United States District Judge



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I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_