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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

KENNETH GOSS,

Plaintiff

v.

ZIMMER HOLDINGS, INC. HEALTH  
AND WELFARE PLAN,

Defendant.

CASE NO.: 5:16-cv-02475-AB-SP

**STIPULATED PROTECTIVE  
ORDER**

Judge: Hon. Andre Birotte Jr.

Complaint filed: 12/01/2016  
[NOTE CHANGES MADE BY THE  
COURT IN ¶¶ VI, VII, VIII]

1 IT IS HEREBY STIPULATED by and between Plaintiff Kenneth Goss  
2 (“Plaintiff”) and Defendant Zimmer Holdings, Inc. Health and Welfare Plan  
3 (“Defendant”) through their respective attorneys of record, that certain documents  
4 and information have been and may be sought, produced or exhibited by and  
5 between the parties in this proceeding (the “Proceeding”). Some of these  
6 documents relate to the parties’ and non-parties’ financial information, competitive  
7 information, protected health information (“PHI”) (as defined in 45 C.F.R.  
8 § 160.103) or other types of sensitive information which the party making the  
9 production deems confidential (“Confidential Information”). To expedite the flow  
10 of discovery material and to preserve the confidentiality of certain documents and  
11 information, a Protective Order (“Protective Order”) may be entered by the Court  
12 as follows:

13 **I. SCOPE**

14 A. This Order shall govern all documents, the information contained  
15 therein, and all other information produced or disclosed during the Proceeding  
16 whether revealed in a document, deposition, other testimony, discovery response or  
17 otherwise, by any party, including any non-party, in this Proceeding (the  
18 “Supplying Party”) to any other party, including any non-party, (the “Receiving  
19 Party”), when the same is designated with the procedures set forth herein. This  
20 Order is binding upon the parties to the Proceeding, as well as their respective  
21 attorneys, agents, representatives, officers and employees and others as set forth in  
22 this Order. This Order is also binding on and applies to all non-parties who either  
23 produce or receive documents or information in connection with this Proceeding.

24 B. Under this Order, any Supplying Party shall have the right to identify  
25 and designate as “Confidential” any document or other information it produces or  
26 provides, or any testimony given in this Proceeding, which testimony or discovery  
27 material is believed in good faith by that Supplying Party, and by the Supplying  
28 Party’s counsel, to constitute, reflect or disclose trade secret or other confidential

1 research, development, or commercial information, or personal health information,  
2 contemplated under Rule 26(c) of the Federal Rules of Civil Procedure  
3 (“Designated Material”).

4 C. “Confidential Information” as used herein means any Designated  
5 Material that is designated pursuant to this Protective Order as “Confidential” by  
6 the Supplying Party, whether it is a document, information contained in a  
7 document, information revealed during a deposition or other testimony,  
8 information revealed in an interrogatory answer or information otherwise revealed.

9 D. A party may designate as “Confidential” information in the possession  
10 of and supplied by a non-party if the information was transmitted to the non-party  
11 under an agreement or an obligation that it would remain confidential and the  
12 information otherwise complies with Paragraph 1(c).

13 E. Subject to Paragraph 12(c), all documents and other materials  
14 produced in this litigation shall be used only for purposes of this litigation whether  
15 or not a Supplying Party designates such documents or materials as “Confidential.”

16 F. This protective order meets the requirements of a qualified protective  
17 order as defined in 45 C.F.R. Part 164.512(e)(1)(v) and pursuant to California Civil  
18 Code § 56 *et seq.*

## 19 **II. PROTECTED HEALTH INFORMATION.**

20 A. Protected Health Information. The current parties (and their  
21 attorneys) and any future parties (and their attorneys) to the above-captioned  
22 matter are hereby authorized to receive, subpoena, and transmit “protected health  
23 information” (“PHI”) pertaining to the health care claims at issue in this litigation  
24 to the extent and subject to the terms outlined herein, which shall be marked as  
25 “CONFIDENTIAL.”

26 1. For the purposes of this Order, “PHI” shall have the same scope  
27 and definition as set forth in 45 C.F.R. § 160.103. Without limiting the  
28 generality of the foregoing, “PHI” includes, but is not limited to health

1 information including demographic information relating to (i) the past,  
2 present, or future physical or mental condition of an individual, (ii) the  
3 provision of care to an individual, or (iii) the past, present, or future payment  
4 for health care services provided to an individual which identifies the  
5 individual or which reasonably could be expected to identify the individual  
6 involved in a health insurance claim at issue in this litigation.

7 2. All “covered entities” (as defined by 45 C.F.R. § 160.103) are  
8 hereby authorized to disclose PHI pertaining to the claims at issue in this  
9 litigation to all attorneys now of record in this matter or who may become of  
10 record in the future of this litigation.

11 3. The parties and their attorneys shall be permitted to use the PHI  
12 pertaining to the claims at issue in this litigation in any manner that is  
13 reasonably connected with the above-captioned litigation. This includes but  
14 is not limited to, disclosures to the parties, their attorneys of record, the  
15 attorneys’ firm (i.e., attorneys, support staff, agents, and consultants), the  
16 parties’ insurers, experts, consultants, court personnel, court reporters, copy  
17 services, trial consultants, jurors, venire members, and other entities  
18 involved in the litigation process.

19 4. This Order shall not control or limit the use of PHI pertaining to  
20 the claims at issue in this litigation that comes into the possession of any  
21 party or any party’s attorney from a source other than a “covered entity” (as  
22 that term is defined in 45 C.F.R. § 160.103).

23 5. Nothing in this Order authorizes any party to obtain medical  
24 records or information through means other than formal discovery requests,  
25 subpoena, or deposition.

### 26 **III. DESIGNATION OF CONFIDENTIALITY**

27 Documents or information may be designated CONFIDENTIAL within the  
28 meaning of this Order in the following ways:

1           A.     Specific documents produced by a Supplying Party shall, if  
2 appropriate, be designated as “Confidential” by marking the first page of the  
3 document and each subsequent page thereof containing Confidential Information  
4 with the legend: “CONFIDENTIAL.”

5           B.     In the case of interrogatory answers and responses to requests for  
6 admissions, if appropriate, designation of Confidential Information shall be made  
7 by means of a statement in the answers or responses specifying that the answers or  
8 responses or specific parts thereof are designated “CONFIDENTIAL.” The  
9 following legend shall be placed on each page of interrogatory answers or  
10 responses to requests for admission containing Confidential Information:  
11 “CONTAINS CONFIDENTIAL INFORMATION.”

12           C.     In the case of depositions and the information contained in depositions  
13 (including exhibits), designation of the portions of the transcript (including  
14 exhibits) which contain Confidential Information shall be made by a statement to  
15 such effect on the record in the course of the deposition by counsel for the party or  
16 witness producing such information, or by letter from such counsel within thirty  
17 (30) days of receipt of the deposition transcript or copy thereof (or written  
18 notification that the transcript is available). The entire deposition transcript  
19 (including exhibits) shall be treated as Confidential under this Order until the  
20 expiration of the above-referenced thirty-day period for designation by letter,  
21 except that the deponent may review the transcript of his or her own deposition  
22 during this thirty-day period. After the expiration of the thirty (30) day period, the  
23 following legend shall be conspicuously placed on the front and back of any  
24 original deposition transcript, and on each copy thereof, which contains  
25 Confidential Information: “CONTAINS CONFIDENTIAL INFORMATION.” If  
26 portions of a videotaped deposition are designated as “CONFIDENTIAL,” the  
27 videocassette or other videotape container shall be labeled with the same legend  
28 provided for in Paragraph 2(a).

1 D. To the extent that matter stored or recorded in the form of electronic  
2 or magnetic media (including information, files, databases, or programs stored on  
3 any digital or analog machine-readable device, computers, discs, networks or  
4 tapes) (“Computerized Material”) is produced by any party in such form, the  
5 Supplying Party may designate such matter as “CONFIDENTIAL” by cover letter  
6 referring generally to such matter or by affixing to such media a label with the  
7 legend provided for in Paragraph 2(a) above. Whenever any party to whom  
8 Computerized Material designated as “CONFIDENTIAL” is produced reduces  
9 such material to hard-copy form, such party shall mark such hard-copy form with  
10 the legend provided for in Paragraph 2(a) above.

11 E. To the extent that any party or counsel for any party creates, develops  
12 or otherwise establishes on any digital or analog machine-readable device,  
13 recording media, computer, disc, network, tape, file, database or program  
14 information designated CONFIDENTIAL, that party and/or its counsel must take  
15 all necessary steps to ensure that access to such media is properly restricted to  
16 those persons who, by the terms of this Order, may have access to Confidential  
17 Information, and will affix to any media containing such information a label with  
18 the legend provided for in Paragraph 2(a) above.

19 F. The filing of any documents and materials with the Court containing  
20 or reflecting the contents of Confidential Information shall be governed by Local  
21 Rule 79-5.1. Each party shall use its best efforts to minimize filings that necessitate  
22 the filing of documents and materials designated Confidential under seal. Without  
23 written permission from the Supplying Party or a Court order, a party may not file  
24 in the public record in this action any designated material. Filings may be made  
25 under seal only pursuant to a court order authorizing the sealing of the specific  
26 material at issue. The fact that a document has been designated under this Order is  
27 insufficient to justify filing under seal. Instead, parties must explain the basis for  
28 confidentiality of each document sought to be filed under seal. If a Receiving

1 Party's request to file designated material under seal pursuant to L.R. 79-5.1 is  
2 denied by the Court, then the Receiving Party may file the material in the public  
3 record unless (1) the Supplying Party seeks reconsideration within four days of the  
4 denial, or (2) as otherwise instructed by the Court.

5 G. Documents filed under seal may be unsealed at the Court's discretion.

#### 6 **IV. USE OF CONFIDENTIAL INFORMATION**

7 Subject to Paragraph 12(c), Confidential Information shall not be used by  
8 any person, other than the Supplying Party, for any purpose other than conducting  
9 this Proceeding, *Kenneth Goss v. Zimmer Holdings, Inc. Health and Welfare Plan*,  
10 which is pending in the United States District Court for the Central District of  
11 California, and in no event shall such information be used for any business,  
12 competitive, personal, private, public or other purpose.

#### 13 **V. DISCLOSURE OF CONFIDENTIAL INFORMATION**

14 A. The attorneys of record are responsible for employing *reasonable*  
15 measures, consistent with this Order, to control access to, and distribution of  
16 information designated "CONFIDENTIAL" pursuant to this Order.

17 B. Subject to Paragraph 6 below, access to information designated  
18 "CONFIDENTIAL" pursuant to this Order shall be limited to the following  
19 persons:

20 1. The parties, including outside and in-house counsel for the  
21 parties, as well as members and employees of their firms including but not  
22 limited to their paralegals, investigative, secretarial and clerical personnel  
23 who are employed by and engaged in assisting such counsel in this  
24 Proceeding.

25 2. Outside photocopying, data processing or graphic production  
26 services employed by the parties or their counsel to assist in this Proceeding.

27 3. Any outside expert or consultant (or any employee of such  
28 outside expert or consultant) who is retained, or sought to be retained, by

1 counsel for a party in this Proceeding, for purposes of consulting, and/or  
2 testifying in this Proceeding, and to whom counsel in good faith has deemed  
3 disclosure of such “CONFIDENTIAL” material is reasonably necessary in  
4 order to assist in the preparation or the conduct of this Proceeding. This  
5 paragraph shall not relieve, change or otherwise affect any obligations or  
6 limitations imposed on any person by contract or law regarding the  
7 disclosure or use of trade secrets or other confidential, protected health, or  
8 proprietary information.

9 4. Any fact witness, at the witness’ deposition in this Proceeding,  
10 but only if counsel who discloses “CONFIDENTIAL” information to the  
11 witness determines, in good faith, that such disclosure is reasonably  
12 necessary and appropriate to assist in the conduct of this Proceeding.

13 5. Any person (a) who was involved in the preparation of the  
14 document or other tangible medium containing the Confidential Information  
15 and/or who is shown on the face of “CONFIDENTIAL” material to have  
16 authored or received the “CONFIDENTIAL” material sought to be disclosed  
17 to that person, or (b) who is specifically referenced by name and  
18 substantively discussed in the “CONFIDENTIAL” material, but only as to  
19 the specific material the person authored or received, or in which such  
20 person is referenced and discussed.

21 6. This Court or any other Court exercising jurisdiction with  
22 respect to this litigation, Court personnel, jurors, and qualified persons  
23 (including necessary clerical personnel) recording, taking or transcribing  
24 testimony or argument at any deposition, hearing, trial or appeal in this  
25 litigation; and

26 7. Any other person to whom the Supplying Party agrees in  
27 writing or on the record in advance of the disclosure, provided that the party  
28 seeking to make the disclosure must first submit a request, in writing or on

1 the record, to the Supplying Party explaining why the disclosure is  
2 necessary. If the Supplying Party does not agree to allow the disclosure, the  
3 party seeking to make the disclosure may file a motion with the Court for  
4 approval to make the disclosure.

## 5 **VI. NOTIFICATION OF PROTECTIVE ORDER**

6 Confidential Information shall not be disclosed to a person described in  
7 Paragraphs V(B)(2), V(B)(3), V(B)(4), or V(B)(7) unless and until such person has  
8 executed an Agreement of Confidentiality in substantially the form attached hereto  
9 as Exhibit A. The originals of an executed Agreement of Confidentiality shall be  
10 maintained by counsel for the party who obtained it until the final resolution of this  
11 litigation, and shall not be subject to discovery except upon motion on notice and a  
12 showing of good cause. This prohibition includes either direct or indirect  
13 disclosure, including but not limited to, any disclosure by counsel or experts. At  
14 any deposition and absent the agreement of the parties, prior to the disclosure of  
15 any Confidential Information, the deponent shall be provided a copy of the form  
16 attached hereto as Exhibit B and shall be asked to affirmatively state on the record  
17 that he or she has received the form and consents to the restrictions contained  
18 within the Stipulated Protective Order, a copy of which shall be provided to the  
19 deponent.

## 20 **VII. USE OF CONFIDENTIAL INFORMATION AT TRIAL**

21 The rules and procedures governing the use of Confidential Information at  
22 trial shall be determined by the trial judge.

## 23 **VIII. OBJECTIONS TO DESIGNATIONS**

24 A party may, at any time, make a good faith challenge to the propriety of a  
25 Confidential Information designation. In the event a party objects to the  
26 designation of any material under this Order, the objecting party shall consult with  
27 the designating party to attempt to resolve their differences. If the parties are  
28 unable to reach an accord as to the proper designation of the material, after giving

1 notice to the designating party, the objecting party may apply to the Court for a  
2 ruling that the material shall not be so designated, in compliance with Local Rule  
3 37. If such a motion is made, the designating party has the burden of establishing  
4 that the designation is proper. If no such motion is made, the material will retain its  
5 designation. Any documents or other materials that have been designated  
6 “CONFIDENTIAL” shall be treated as Confidential until such time as the Court  
7 rules that such materials should not be treated as Confidential.

#### 8 **IX. PRESERVATION OF RIGHTS AND PRIVILEGES**

9 Nothing contained in this Order shall affect the right, if any, of any party or  
10 witness to make any other type of objection, claim, or other response to discovery  
11 requests, including, without limitation, interrogatories, requests for admissions,  
12 requests for production of documents or questions at a deposition. Nor shall this  
13 Order be construed as a waiver by any party of any legally cognizable privilege to  
14 withhold any Confidential Information other than on the basis that it has been  
15 designated Confidential, or of any right which any party may have to assert such  
16 privilege at any stage of this litigation.

#### 17 **X. RETURN OR DESTRUCTION OF MATERIALS**

18 Within sixty (60) business days after the final resolution of this litigation, all  
19 Confidential Information shall be returned to counsel for the party or non-party  
20 that produced it or shall be destroyed. As to those materials that contain or reflect  
21 Confidential Information, but that constitute or reflect counsel’s work product,  
22 counsel of record for the parties, or non-parties, shall be entitled to retain such  
23 work product in their files in accordance with the provisions of this Order, so long  
24 as it is clearly marked to reflect that it contains information subject to this Order.  
25 Such materials may not be used in connection with any other proceeding or action.  
26 Counsel shall be entitled to retain pleadings, affidavits, motions, briefs, other  
27 papers filed with the Court, deposition transcripts, and the trial record (including  
28 exhibits) even if such materials contain Confidential Information, so long as such

1 materials are clearly marked to reflect that they contain information subject to this  
2 Order and may not be used in connection with any other proceeding or action.

3 **XI. INADVERTENT OR UNINTENTIONAL DISCLOSURE**

4 A Supplying Party that inadvertently fails to designate discovery material as  
5 “Confidential” or mis-designates discovery material as “Confidential” pursuant to  
6 this Order at the time of its production shall be entitled to make a correction to its  
7 designation within a reasonable time of the discovery of the non- or mis-  
8 designation. Such correction and notice thereof shall be made in writing,  
9 accompanied by substitute copies of each item of discovery material, appropriately  
10 designated. Those individuals who received the discovery material prior to notice  
11 of non- or mis-designation by the Supplying Party shall within five (5) days of  
12 receipt of the substitute copies, take reasonable steps to destroy or return to the law  
13 firm representing the Supplying Party all copies of such mis-designated  
14 documents. The obligation to treat such material pursuant to the corrected  
15 designation shall be prospective only, and those individuals who reviewed the mis-  
16 designated discovery material prior to notice of the mis-designation by the  
17 Supplying Party shall abide by the provisions of this Order with respect to all  
18 future use and disclosure of any information contained in the mis-designated  
19 materials.

20 **XII. OTHER PROVISIONS**

21 A. The restrictions set forth in this Order shall not apply to documents or  
22 information designated Confidential that are publicly available or that are obtained  
23 independently and under rightful means by the Receiving Party, unless they  
24 became so due to a violation of this Order.

25 B. A party’s compliance with the terms of this Order shall not operate as  
26 an admission that any particular document is or is not (a) confidential, (b)  
27 privileged or (c) admissible in evidence at trial.  
28

1 C. Any party or person bound by this Order who receives a subpoena (or  
2 other process) from any person (including natural persons, corporations,  
3 partnerships, firms, governmental agencies, departments or bodies, boards or  
4 associations) who is not a party to this Order, which subpoena seeks production or  
5 other disclosure of such Confidential Information shall immediately give written  
6 notice by electronic mail to counsel for the other party or person who produced the  
7 materials designated as Confidential. The written notice shall identify the materials  
8 sought and enclose a copy of the subpoena or other process, unless ordered  
9 otherwise by a court of competent jurisdiction. Nothing herein shall be construed  
10 to obligate the person subject to service or other process to make a motion or  
11 undertake other legal process, or to appear before any court or administrative body  
12 in opposition to a motion or other legal process seeking production of any  
13 Confidential materials, provided such person invokes, to the extent reasonably  
14 possible, the highest level of confidentiality available under applicable law, rule,  
15 regulation, court order, or other compulsory process, at the time of disclosure of  
16 such Confidential materials.

17 D. This Order shall apply to non-parties who provide discovery, by  
18 deposition, production of documents or otherwise, in this litigation, if said  
19 non-party requests, in writing, the protection of this Order as to said non-party's  
20 Confidential Information and complies with the provisions of this Order.

21 E. Upon the final resolution of this litigation (including conclusion of  
22 any appeal), this Order shall remain in effect and continue to be binding, unless  
23 expressly modified, superseded, or terminated by consent of all parties or by Order  
24 of the Court. This Court expressly retains jurisdiction over this action for  
25 enforcement of the provisions of this Order following the final resolution of this  
26 litigation.

27 F. This Order shall not prevent a party from applying to the Court for  
28 relief therefrom, or from applying to the Court for further or additional protective

1 orders, or from agreeing to modifications of this Order, subject to the approval of  
2 the Court.

3 G. The Court may amend, modify or dissolve this Protective Order at any  
4 time.

5  
6 Dated: September 6, 2017

KANTOR & KANTOR, LLP

7  
8 By: /s/ Lisa S. Kantor  
9 Lisa S. Kantor  
10 Attorneys for Plaintiff  
11 Kenneth Goss

12  
13 Dated: September 6, 2017

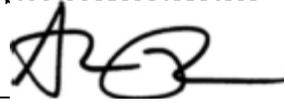
FAEGRE BAKER DANIELS LLP

14 By: /s/ Michael J. Nader  
15 Michael J. Nader  
16 Attorneys for Defendant Zimmer  
17 Holdings, Inc. Health and  
18 Welfare Plan

19 *Filer's Attestation: Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i) regarding*  
20 *signatures, Lisa S. Kantor hereby attests that concurrence in the filing of this*  
21 *document and its content has been obtained by all signatories listed.*

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

23  
24  
25  
26  
27  
28  
DATE: September 13, 2017

By: 

Sheri Pym, Magistrate Judge  
United States District Court,  
Central District of California

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the  
6 Stipulated Protective Order that was issued by the United States District Court for  
7 the Central District of California on \_\_\_\_\_ in the case of *Goss v. Zimmer*  
8 *Holdings, Inc. Health and Welfare Plan*, Case No. 5:16-cv-02475-AB (SP). I agree  
9 to comply with and to be bound by all the terms of this Stipulated Protective Order  
10 and I understand and acknowledge that failure to so comply could expose me to  
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will  
12 not disclose in any manner any information or item that is subject to this Stipulated  
13 Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

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

23  
24 Date: \_\_\_\_\_ City and State where sworn and signed: \_\_\_\_\_

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

26  
27 Signature: \_\_\_\_\_

1 **EXHIBIT B**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare  
5 under penalty of perjury that I have read in its entirety and understand the Stipulated  
6 Protective Order that was issued by the United States District Court for the Central District  
7 of California on \_\_\_\_\_ in the case of *Goss v. Zimmer Holdings, Inc. Health and*  
8 *Welfare Plan*, Case No. 5:16-cv-02475-AB (SP), in which case I am a deponent. I  
9 understand that the deposition in which I have been requested to give testimony will result  
10 in the receipt by me of documents marked as “CONFIDENTIAL” under the terms of said  
11 Stipulated Protective Order. I agree to comply with and to be bound by all the terms of  
12 this Stipulated Protective Order with regard to any and all such documents and I under-  
13 stand and acknowledge that failure to so comply could expose me to sanctions and  
14 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
15 manner any information or item that is subject to this Stipulated Protective Order to any  
16 person or entity except in strict compliance with the provisions of this Order.

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

24  
25 Date: \_\_\_\_\_ City and State where sworn and signed: \_\_\_\_\_

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

27  
28 Signature: \_\_\_\_\_