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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
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6
7 CENTURY ALUMINUM CO., et al.,
8 Plaintiffs,
9 v.
10 AGCS MARINE INSURANCE CO.,
11 Defendant.
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Case No. 11-cv-02514-YGR

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL LIMITED PORTIONS OF ITS
OPPOSITION TO AGCS'S MOTION FOR
PARTIAL SUMMARY JUDGMENT AND IN
SUPPORT OF PLAINTIFFS' CROSS-
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

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14 On July 31, 2012, Plaintiffs filed an Administrative Motion to File Under Seal Limited
15 Portions of Its Opposition to AGCS' Motion for Partial Summary Judgment and in Support of
16 Plaintiffs' Cross-Motion for Partial Summary Judgment ("Motion to Seal"). (Dkt. No. 142.)
17 Plaintiffs seek to file under seal: (1) deposition transcript excerpts and exhibits from the
18 deposition of Sandra Inouye, Allianz's 30(b)(6) witness ("Inouye Transcript"); (2) deposition
19 transcript excerpts and exhibits from the deposition of Allianz witness Gaute Storhaug ("Storhaug
20 Transcript"); (3) deposition transcript excerpts from the deposition of Allianz witness Olaf
21 Oppermann ("Oppermann Transcript"); and (4) a document produced by Allianz (AGCS-OC
22 0008382). *Id.* at 2.

23 Pursuant to Civ. L.R. 79-5(d), Defendant submitted the Declaration of Michael J. Carcich
24 Regarding Century's Administrative Motion to File Documents Under Seal. (Dkt. No. 170
25 ("Carcich Decl.")). Defendant maintains that certain pages of the Storhaug Transcript, namely
26 pp. 24:1–25:20 and pp. 84–85), and AGCS-OC 0008382 should be sealed. Carcich Decl. ¶ 4.
27 Mr. Carcich states that "[t]he other documents may be filed publicly." *Id.* As such, the Court
28 **DENIES** the Motion to Seal with respect to the Inouye Transcript and Oppermann Transcript.

1 As to pp. 24:1–25:20 of the Storhaug Transcript, Defendant states that Mr. Storhaug
2 “testified about work performed for another client not involved in this action” which “involved
3 another legal proceeding in which he did not testify and which ended in a settlement before trial.”
4 Carcich Decl. ¶ 5. Further, Mr. Storhaug requested that his testimony remain confidential with
5 regard to his work on this other matter. *Id.* As to pp. 84–85 of the Storhaug Transcript, Mr.
6 Storhaug “testified concerning information to be obtained in connection with his research of this
7 matter from dealings of other employees of his firm with other clients of the firm” and he
8 requested that such testimony be kept confidential. *Id.* ¶ 8.

9 As to AGCS-OC 0008382, Defendant contends that the document “contains or otherwise
10 reflects confidential information regarding the claim file of an assured of ACGS not involved in
11 this litigation” and “reflects the coverage details offered to an assured unrelated to this matter.”
12 Carcich Decl. ¶ 9. Defendant further contends that the document reflects confidential business
13 information and operations strategy and could be used by AGCS’ competitors to gain an unfair
14 advantage. *Id.*

15 A motion to seal documents attached to a dispositive motion that are part of the judicial
16 record is governed by the “compelling reasons” standard. *Pintos v. Pacific Creditors Ass’n*, 605
17 F.3d 665, 678 (9th Cir. 2010). A “party seeking to seal judicial records must show that
18 ‘compelling reasons supported by specific factual findings . . . outweigh the general history of
19 access and the public policies favoring disclosure.’” *Id.* (quoting *Kamakana v. City and County*
20 *of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006)). The trial court must weigh relevant
21 factors including the “public interest in understanding the judicial process and whether disclosure
22 of the material could result in improper use of the material for scandalous or libelous purposes or
23 infringement upon trade secrets.” *Pintos*, 605 F.3d at 679 n. 6 (quoting *Hagestad v. Tragesser*,
24 49 F.3d 1430, 1434 (9th Cir. 1995)). In effect, an order authorizing sealing of a document would
25 require the court to lock the courtroom doors as to the proffered material during trial. While the
26 decision to grant or deny a motion to seal is within the trial court’s discretion, the basis must be
27 compelling and the court must articulate its reasoning in approving such a request. *Pintos*, 605
28 F.3d at 679. Further, given the importance of the competing interests at stake, any sealing order
must be narrowly tailored. Civ. L.R. 79-5(a). “A stipulation . . . that allows a party to designate

1 documents as sealable[] will *not suffice* to allow the filing of documents under seal.” *Id.*
2 (emphasis added).

3 Having reviewed the documents at issue, the Court **DENIES** the Motion to Seal with
4 respect to the entirety of the Storhaug Transcript. Although Defendant has sought to narrowly
5 tailor its request for sealing, pp. 24:1–25:20 and pp. 84–85 do not share any trade secrets. The
6 Court finds it unlikely that this material will be improperly used for a scandalous or libelous
7 purpose. Further, Mr. Storhaug has been engaged to provide expert testimony in this case. Pages
8 24:1–25:20 relate to his qualifications and experience as an expert, and pp. 84–85 concern
9 information obtained in connection with his research. To the extent that Defendant will rely on
10 his testimony at trial, the public’s interest in the judicial process strongly favors disclosure,
11 particularly where there is a dispositive motion and no specific harm has been identified by
12 Defendant. While Mr. Storhaug may have requested that the transcript excerpts at issue be
13 deemed “confidential,” Civ. L.R. 79-5(a) states that even the stipulation of the parties to designate
14 documents as sealable will not suffice to allow the filing of the documents under seal. For these
15 reasons, the Court **ORDERS** that the Storhaug Transcript be publicly-filed.

16 On the other hand, the Court **GRANTS** the Motion to Seal the document bates-labeled
17 AGCS-OC 0008382. This document contains confidential information regarding the claim file of
18 an assured of AGCS not involved in this litigation. The Court agrees that competitive harm may
19 result to ACGS if this document is publicly-disseminated, as it will reveal confidential business
20 information and strategies that Defendant employs with respect to issuance of its insurance
21 policies.

22 As set forth above, Plaintiffs’ Motion to Seal is **GRANTED** as AGCS-OC 0008382, which
23 is Exhibit 21 to the Declaration of Amanda Schapel in Support of Plaintiffs’ Opposition to
24 AGCS’ Motion for Partial Summary Judgment and in Support of Plaintiffs’ Cross-Motion for
25 Partial Summary Judgment (Dkt. No. 159). The Motion to Seal is **DENIED** as to all other
26 documents. The parties must comply with General Order 62 with regard to the proper filing
27 procedures. In light of the briefing schedule on these Cross-Motions, all documents must be
28 either publicly-filed or e-filed under seal in compliance with this Order by Tuesday, August 14,


1 2012.

2 In light of the fact that later-filed exhibits will be intended to correspond to an earlier-filed
3 declaration, it will be the **parties' responsibility** to ensure that the Court has two complete
4 versions of **all** documents necessary to decide the motions. It is further the parties' responsibility
5 to ensure that all documents are **clearly-marked** such that the Court can easily determine where
6 the documents should be placed in existing Chambers binders. Tabs and updated indexes for the
7 binders should be provided.

8 This Order terminates Dkt. No. 142.

9 **IT IS SO ORDERED.**

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11 Dated: August 10, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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