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2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5

6 THOMAS A. SMITH, et al.,

7 Plaintiff,

No. C 14-0651 PJH

8 v.

**ORDER RE PROTECTIVE ORDER
FOR SEALED AND CONFIDENTIAL
DOCUMENTS**

9 ZIMMER U.S., INC.. et al.,

10 Defendants.
11 _____/

12 The parties have submitted for the court's approval, a stipulation and order for
13 protective order to protect confidential information that may be produced during discovery.
14 Included in this proposed order is a provision permitting the parties to file under seal any
15 pleading, motion paper, deposition transcript or other filed document that includes material
16 designated by the filing party as confidential. The court approves the protective order
17 insofar as it sets forth how the parties shall treat confidential information.

18 However, the court will not approve a broad protective order that essentially gives
19 each party carte blanche to decide which portions of the record will be sealed and,
20 therefore, not made part of the public record. See Civil L. R. 79-5 and Citizens First Nat'l
21 Bank v. Cincinnati Ins. Co., 178 F.3d 943 (7th Cir. 1999). Nor will the court approve a
22 protective order containing a provision for how confidential documents will be treated by the
23 court when used in conjunction with dispositive motions or at trial. See Kamakana v. City
24 of Honolulu, 447 F.3d 1172 (9th Cir. 2006). See also Judge Hamilton's Standing Order For
25 Cases Involving Sealed or Confidential Documents, which is available on the court's
26 website.

27 Federal Rule of Civil Procedure 26(c) requires the court to determine whether good
28 cause exists to seal any part of the record of a case. Additionally, if the sealing is sought in

1 connection with a dispositive motion or trial, the showing required is "the most compelling
2 of reasons." Accordingly, no document shall be filed under seal, without a court order,
3 narrowly tailored to cover only the document, the particular portion of the document, or
4 category of documents for which good cause exists for filing under seal. To that end, if a
5 party wishes to file a document under seal, that party shall first file a written request for a
6 sealing order setting forth the good cause and accompanied by a proposed order that is
7 narrowly tailored as specified above. In making any such request, parties shall comply with
8 the procedures set forth in Civil L. R. 79-5 and in this court's standing order referred to
9 above, which also sets forth the requirements for maintaining the confidentiality of
10 documents used in motion practice and at trial.

11 Paragraph 7 of the proposed order submitted by the parties includes two alternatives
12 – one allowing any "Confidential" material to be filed under seal, without limitations, and
13 one requiring that "Confidential" material be filed according to Civil Local Rule 7-9.
14 Paragraph 7 is not acceptable because it improperly suggests that compliance with Civil
15 Local Rule 7-9 is optional.

16 The parties shall revise ¶ 7 of the proposed order in accordance with this order and
17 resubmit the proposed order to the court. Court-approved model protective orders are also
18 available on the court's website. In particular, the court advises the parties to review the
19 model Stipulated Protective Order for Standard Litigation, ¶ 12.3.

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21 **IT IS SO ORDERED.**

22 Dated: February 5, 2015



PHYLLIS J. HAMILTON
United States District Judge