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 10 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
 11 a public trust corporation, on behalf of the University of
 12 California, Irvine Medical Center

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

15 THE REGENTS OF THE
 16 UNIVERSITY OF CALIFORNIA, a
 17 public trust corporation, on behalf of the
 18 University of California, Irvine Medical
 19 Center,

Case No.: SA CV 16-1408-DOC (FFM)

**STIPULATED PROTECTIVE
 ORDER**

19 Plaintiff,

20 vs.

21 TRIPLE S STEEL HOLDINGS, INC., a
 22 Texas For Profit Corporation; and DOES
 23 1 THROUGH 25, INCLUSIVE,
 24 Defendants.

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1 **I. PURPOSE**

2 To expedite the flow of discovery materials, to facilitate the prompt resolution
3 of disputes over confidentiality of discovery materials, to adequately protect the
4 information the parties are entitled or obligated to keep confidential, to ensure that
5 only materials the parties are entitled or obligated to keep confidential are subject to
6 such treatment, and to ensure that the parties are permitted reasonably necessary uses
7 of such materials in preparation for and in the conduct of trial pursuant to Fed. R. Civ.
8 P. 26(c), the parties hereby stipulate to and petition the court to enter the following
9 Protective Order.

10 **II. DEFINITIONS**

11 2.1 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that are not disclosed to
13 third parties unless pursuant to obligations to maintain confidentiality and which
14 contain trade secrets or other confidential research, development, technical, financial,
15 or commercial information, or protected health information (as that term is defined by
16 45 C.F.R. 160.103), whether embodied in physical objects, documents, or the factual
17 knowledge of persons; and that has been so designated by the producing party, unless
18 a Court declares such information to not properly meet said descriptions.

19 2.2 “Counsel”: Outside Counsel of Record.

20 2.3 “Disclosure or Discovery Material”: All items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.4 “Expert”: A person with specialized knowledge or experience in a matter
25 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
26 as an expert witness or as a consultant in this action, (2) is not a past or current
27 employee or a Party or of a Party’s competitor, and (3) at the time of retention, is not
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1 anticipated to become an employee of a Party or a Party's competitor.

2 2.5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
3 Information or Items: Extremely sensitive "Confidential Information or Items,"
4 disclosure of which to another Party or Non-Party would create a substantial risk of
5 serious harm that could not be avoided by less restrictive means.

6 2.6 "Non-Party": Any natural person, partnership, corporation, associations,
7 or other legal entity not named as a party in this action.

8 2.7 "Outside Counsel of Record": Attorneys who are not employees of a
9 party to this action but are retained to represent or advise a party to this action and
10 have appeared in this action on behalf of that party or are affiliated with a law firm
11 which has appeared on behalf of that party.

12 2.8 "Party": Any party to this action, including all of its officers,
13 directors, employees, consultants, retained experts, and Outside Counsel of Record
14 (and their support staffs).

15 2.9 "Professional Vendors": Persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.10 "Protected Material": Any Disclosure or Discovery Material that is
20 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –
21 ATTORNEYS' EYES ONLY."

22 **III. DESIGNATION OF PROTECTED INFORMATION**

23 3.1 Exercise of Restraint and Care in Designating Material for Protection.
24 Each Party or Non-Party that designates information or items for protection under this
25 Order must take care to limit any such designation to specific material that qualifies
26 under the appropriate standards. To the extent it is practical to do so, a producing
27 Party must designate for protection only those parts of material, documents, items or
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1 communications that qualify – so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order. Nothing in this order shall prevent a
4 receiving Party from contending that any or all documents or information designated
5 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” should not be so designated.

7 If it comes to a producing Party’s attention that information or items that it
8 designated for protection do not qualify for protection at all or do not qualify for the
9 level of protection initially asserted, that Party must promptly notify all other parties
10 that it is withdrawing the mistaken designation.

11 3.2 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 the legend “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” 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) and must specify, for
24 each portion, the level of protection being asserted.

25 (b) for testimony given in deposition that the designating Party identify on
26 the record, before the close of the deposition all protected testimony and specify the
27 level of protection being asserted. When it is impractical to identify separately each
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1 portion of testimony that is entitled to protection and it appears that substantial
2 portions of the testimony may qualify for protection, the designating Party may invoke
3 on the record (before the deposition, hearing, or other proceeding is concluded) a right
4 to have up to 30 days to identify the specific portions of the testimony as to which
5 protection is sought and to specify the level of protection being asserted. Only those
6 portions of the testimony that are appropriately designated for protection within the 30
7 days shall be covered by the provisions of this Protective Order. Alternatively, a
8 designating Party may specify, at the deposition or up to 30 days afterwards if that
9 period is properly invoked, that the entire transcript shall be treated as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY.”

12 Parties shall give the other parties notice if they reasonably expect a deposition
13 to include Protected Material so that the other parties can ensure that only authorized
14 individuals who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
16 deposition shall not in any way affect its designation as “CONFIDENTIAL” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 Transcripts containing Protected Material shall have an obvious legend on the
19 title page that the transcript contains Protected Material, and the title page shall be
20 followed by a list of all pages (including line numbers as appropriate) that have been
21 designated as Protected Material and the level of protection being asserted by the
22 designating Party. The designating Party shall inform the court reporter of these
23 requirements. Any transcript that is prepared before the expiration of a 21-day period
24 for designation shall be treated during that period as if it had been designated
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
26 otherwise agreed. After the expiration of that period, the transcript shall be treated
27 only as actually designated.
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1 (c) for information produced in some form other than documentary and for
2 any other tangible items, that the producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information or item is stored the
4 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY”. If only a portion or portions of the information or item warrant protection,
6 the producing Party, to the extent practicable, shall identify the protected portion(s)
7 and specify the level of protection being asserted.

8 3.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive the
10 designating Party’s right to secure protection under this Order for such material.
11 Upon timely correction of a designation, the receiving Party must make reasonable
12 efforts to assure that the material is treated in accordance with the provisions of this
13 Order.

14 **IV. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 4.1 Basic Principles: A Party may use Protected Materials that is disclosed
16 or produced by another Party or Non-Party in connection with this case only for
17 prosecuting, defending or attempting to settle this litigation. Such Protected Material
18 may be disclosed only to the categories of persons and under the conditions described
19 in this Order. When the litigation has been terminated, the Parties must comply with
20 the provisions of section 8 below (Final Disposition).

21 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
22 otherwise ordered by court or permitted in writing by the designating Party, a
23 receiving Party may disclose any information or item designated “CONFIDENTIAL”
24 only to:

25 (a) the receiving Party’s Outside Counsel of Record in this action, as well as
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to
27 disclose the information for this litigation and who have signed the “Acknowledgment
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1 and Agreement to Be Bound” that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees of the receiving Party to whom
3 disclosure is reasonably necessary for this litigation and who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (c) Experts (as defined in this Order) of the receiving Party to whom
6 disclosure is reasonably necessary for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the Court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, and
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation
11 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
12 A);

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the “Acknowledgment and Agreement to
15 Be Bound” (Exhibit A), unless otherwise agreed by the designating Party or ordered
16 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
17 reveal Protected Material may not be disclosed to anyone except as permitted under
18 this Stipulated Protective Order;

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

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22 4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
24 writing by the designating Party, a receiving Party may disclose any information
25 or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
26 only to:

27 (a) the receiving Party’s Outside Counsel of Record in this action, as well as
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1 employees of said Outside Counsel of Record to whom it is reasonably necessary to
2 disclose the information for this litigation and who have signed the “Acknowledgment
3 and Agreement to Be Bound” (Exhibit A);

4 (b) Experts of the receiving Party (1) to whom disclosure is reasonably
5 necessary for this litigation, and (2) who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A);

7 (c) the court and its personnel;

8 (d) court reporters and their staff and Professional Vendors to whom
9 disclosure is reasonably necessary for this litigation and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (e) during their depositions, witnesses in the action who (i) are otherwise
12 permitted to see HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
13 Information or Items under the provisions of this section, (ii) to whom disclosure is
14 reasonably necessary and (iii) who have signed the “Acknowledgment and Agreement
15 to Be Bound” (Exhibit A), unless otherwise agreed by the designating Party or ordered
16 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
17 reveal Protected Material may not be disclosed to anyone except as permitted under
18 this Stipulated Protective Order; and

19 (f) The author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

21 **V. CHALLENGES TO PROTECTED INFORMATION DESIGNATIONS**

22 5.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time. Unless a prompt challenge to a designating
24 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
25 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
26 litigation, a Party does not waive its right to challenge a confidentiality designation by
27 electing not to mount a challenge promptly after the original designation is disclosed.

1 5.2 Meet and Confer. The challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging
3 and describing the basis for each challenge. To avoid ambiguity as to whether a
4 challenge has been made, the written notice must recite that the challenge to
5 confidentiality is being made in accordance with this specific paragraph of the
6 Protective Order. The Parties shall attempt to resolve each challenge in good faith and
7 must begin the process by conferring directly (Pursuant to Local Rule 37) within 14
8 days of the date of service of notice. In conferring, the challenging Party must explain
9 the basis for its belief that the confidentiality designation was not proper and must
10 give the designating Party an opportunity to review the designated material, to
11 reconsider the circumstances, and, if no change in designation is offered, to explain
12 the basis for the chosen designation. A challenging Party may proceed to the next
13 stage of the challenge process only if it has engaged in this meet and confer process
14 first or establishes that the designating Party is unwilling to participate in the meet and
15 confer process in a timely manner.

16 5.3 Judicial Intervention. If the Parties cannot resolve a challenge without
17 court intervention, the designating Party shall file and serve a motion to retain
18 confidentiality in compliance with Local Civil Local Rule 37 within 21 days of the
19 initial notice of challenge or within 14 days of the parties agreeing that the meet and
20 confer process will not resolve their dispute, whichever is earlier. Each such motion
21 must be accompanied by a competent declaration affirming that the movant has
22 complied with the meet and confer requirements imposed in the preceding paragraph.
23 Failure by the designating Party to make such a motion including the required
24 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
25 confidentiality designation for each challenged designation. In addition, the
26 challenging Party may file a motion challenging a confidentiality designation at any
27 time if there is good cause for doing so, including a challenge to the designation of a
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1 deposition transcript or any portions thereof. Any motion brought pursuant to this
2 provision must be accompanied by a competent declaration affirming that the movant
3 has complied with the meet and confer requirements imposed by the preceding
4 paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the
6 designating Party.

7 Unless the designating Party has waived the confidentiality designation by
8 failing to file a motion to retain confidentiality as described above, all parties shall
9 continue to afford the material in question the level of protection to which it is entitled
10 under the producing Party's designation until the court rules on the challenge.

11 **VI. SCOPE**

12 The protections conferred by this Protective Order cover not only Protected
13 Material, but also (1) any information copied or extracted from Protected Material; (2)
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
15 testimony, conversations, or presentations by Parties or their Counsel that might
16 reveal Protected Material. However, the protections conferred by this Protective
17 Order do not cover the following information: (a) any information that is in the public
18 domain at the time of disclosure or becomes part of the public domain after its
19 disclosure to a receiving Party as a result of publication not involving a violation of
20 this Order, including becoming part of the public record through trial or otherwise;
21 and (b) any information known to the receiving Party prior to the disclosure or
22 obtained by the receiving Party after the disclosure from a source who obtained the
23 information lawfully and under no obligation of confidentiality to the designating
24 Party. Any use of Protected Material at trial shall be governed by a separate
25 agreement or order.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
27 OTHER LITIGATION

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

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

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

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14 3. (c) cooperate with respect to all reasonable procedures sought to
15 be pursued by the Designating Party whose Protected Material may
16 be affected.

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

26 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
27 LITIGATION

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1. (a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.
 2. (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:
 - a. (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
 - b. (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
 - c. (3) make the information requested available for inspection by the Non-Party, if requested.
 3. (c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s

1 confidential information responsive to the discovery request. If the
2 Non-Party timely seeks a protective order, the Receiving Party
3 shall not produce any information in its possession or control that
4 is subject to the confidentiality agreement with the Non-Party
5 before a determination by the court. Absent a court order to the
6 contrary, the Non-Party shall bear the burden and expense of
7 seeking protection in this court of its Protected Material.

8 **VII. MISCELLANEOUS PROVISIONS**

9 7.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the court in the future.

11 7.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 7.3 Filing Protected Material. Without written permission from the
17 designating Party or a court order secured after appropriate notice to all interested
18 persons, a Party may not file in the public record in this action any Protected Material.
19 A Party that seeks to file under seal any Protected Material must comply with the
20 procedures for seeking a court order authorizing sealing as permitted by the United
21 States District Court for the Central District of California. If an application to file
22 Protected Material under seal is denied by the court, then the Receiving Party may file
23 the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless
24 otherwise instructed by the court.

25 7.4 Duration. Even after final disposition of this litigation, the
26 confidentiality obligations imposed by this Order shall remain in effect until a
27 designating Party agrees otherwise in writing or a court order otherwise directs. Final
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