

1 LAW OFFICES OF STEPHENSON,  
2 ACQUISTO & COLMAN, INC.  
3 MELANIE JOY STEPHENSON-LAWS, ESQ.  
4 (SBN 113755)  
5 RICHARD A. LOVICH, ESQ. (SBN 113472)  
6 KARLENE J. ROGERS-ABERMAN, ESQ.  
7 (SBN 237883)

8 303 N. Glenoaks Blvd., Suite 700  
9 Burbank, CA 91502

10 Telephone: (818) 559-4477  
11 Facsimile: (818) 559-5484

12 Attorneys for Plaintiff  
13 LODI MEMORIAL HOSPITAL ASSOCIATION, a  
14 California non-profit public benefit corporation

15  
16 **UNITED STATES DISTRICT COURT**  
17 **EASTERN DISTRICT OF CALIFORNIA**  
18 **SACRAMENTO DIVISION**

19 LODI MEMORIAL HOSPITAL  
20 ASSOCIATION, a California non-profit  
21 public benefit corporation,

22 Plaintiff,

23 vs.

24 TIGER LINES, LLC., a California  
25 limited liability company; GROUP &  
26 PENSION ADMINISTRATORS, INC.,  
27 a Texas corporation; and DOES 1  
28 THROUGH 25, INCLUSIVE,

Defendants.

Case No.: 2:15-cv-00319-MCE-KJN

**STIPULATED PROTECTIVE  
ORDER**

//

//

1 **I. PURPOSE**

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

10  
11 **II. DEFINITIONS**

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

20 2.2 “Counsel”: Outside Counsel of Record.

21  
22 2.3 “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 or  
25 generated in disclosures or responses to discovery in this matter.

26 2.4 “Expert”: A person with specialized knowledge or experience in a matter  
27 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as  
28 an expert witness or as a consultant in this action, (2) is not a past or current employee

1 or a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated  
2 to become an employee of a Party or a Party's competitor.

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

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

9           2.7    "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 have  
11 appeared in this action on behalf of that party or are affiliated with a law firm which has  
12 appeared on behalf of that party.

13           2.8    "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           2.9    "Professional Vendors": Persons or entities that provide litigation support  
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
18 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
19 their employees and subcontractors.

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

23  
24  
25 **III.   DESIGNATION OF PROTECTED INFORMATION**

26           3.1    Exercise of Restraint and Care in Designating Material for Protection.  
27 Each Party or Non-Party that designates information or items for protection under this  
28 Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. To the extent it is practical to do so, a producing Party  
2 must designate for protection only those parts of material, documents, items or  
3 communications that qualify – so that other portions of the material, documents, items,  
4 or communications for which protection is not warranted are not swept unjustifiably  
5 within the ambit of this Order. Nothing in this Order shall prevent a receiving Party  
6 from contending that any or all documents or information designated as  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
8 should not be so designated.

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

13 3.2 Manner and Timing of Designations. Except as otherwise provided in this  
14 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated  
15 or ordered, Disclosure or Discovery Material that qualifies for protection under this  
16 Order must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents,  
19 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
20 producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
21 – ATTORNEYS’ EYES ONLY” to each page that contains protected material. If only  
22 a portion or portions of the material on a page qualifies for protection, the producing  
23 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
24 markings in the margins) and must specify, for each portion, the level of protection  
25 being asserted.  
26

27 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
28

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

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

21 Transcripts containing Protected Material shall have an obvious legend on the  
22 title page that the transcript contains Protected Material, and the title page shall be  
23 followed by a list of all pages (including line numbers as appropriate) that have been  
24 designated as Protected Material and the level of protection being asserted by the  
25 designating Party. The designating Party shall inform the court reporter of these  
26 requirements. Any transcript that is prepared before the expiration of a 30-day period  
27 for designation shall be treated during that period as if it had been designated “HIGHLY  
28

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise  
2 agreed. After the expiration of that period, the transcript shall be treated only as actually  
3 designated.

4 (c) for information produced in some form other than documentary and for  
5 any other tangible items, that the producing Party affix in a prominent place on the  
6 exterior of the container or containers in which the information or item is stored the  
7 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
8 ONLY”. If only a portion or portions of the information or item warrant protection,  
9 the producing Party, to the extent practicable, shall identify the protected portion(s) and  
10 specify the level of protection being asserted.

11 3.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
12 failure to designate qualified information or items does not, standing alone, waive the  
13 designating Party’s right to secure protection under this Order for such material. Upon  
14 timely correction of a designation, the receiving Party must make reasonable efforts to  
15 assure that the material is treated in accordance with the provisions of this Order.  
16

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

18 4.1 Basic Principles: A Party may use Protected Materials that is disclosed  
19 or produced by another Party or Non-Party in connection with this case only for  
20 prosecuting, defending or attempting to settle this litigation. Such Protected Material  
21 may be disclosed only to the categories of persons and under the conditions described  
22 in this Order. When the litigation has been terminated, the Parties must comply with  
23 the provisions of section 8 below (Final Disposition).  
24

25 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
26 otherwise ordered by court or permitted in writing by the designating Party, a receiving  
27 Party may disclose any information or item designated “CONFIDENTIAL” only to:

28 (a) the receiving Party’s Outside Counsel of Record in this action, as well as

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” that is attached hereto as Exhibit A;

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

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

10 (d) the Court and its personnel;

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

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

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

22 4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
23 Information or Items. Unless otherwise ordered by the court or permitted in writing by  
24 the designating Party, a receiving Party may disclose any information  
25 or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only  
26 to:  
27  
28

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

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

8 (c) the court and its personnel;

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

13 (e) pages of transcribed deposition testimony or exhibits to depositions that  
14 reveal Protected Material may not be disclosed to anyone except as permitted under this  
15 Stipulated Protective Order; and

16 (f) The author or recipient of a document containing the information or a  
17 custodian or other person who otherwise possessed or knew the information.  
18

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

20 5.1 Timing of Challenges. Any Party or Non-Party may challenge a  
21 designation of confidentiality at any time. Unless a prompt challenge to a designating  
22 Party’s confidentiality designation is necessary to avoid foreseeable, substantial  
23 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
24 litigation, a Party does not waive its right to challenge a confidentiality designation by  
25 electing not to mount a challenge promptly after the original designation is disclosed.

26 5.2 Meet and Confer. The challenging Party shall initiate the dispute  
27 resolution process by providing written notice of each designation it is challenging and  
28



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

13           5.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
14 court intervention, the designating Party shall file and serve a motion to retain  
15 confidentiality in compliance with the Local Civil Rules within 21 days of the initial  
16 notice of challenge or within 14 days of the parties agreeing that the meet and confer  
17 process will not resolve their dispute, whichever is earlier. Each such motion must be  
18 accompanied by a competent declaration affirming that the movant has complied with  
19 the meet and confer requirements imposed in the preceding paragraph. Failure by the  
20 designating Party to make such a motion including the required declaration within 21  
21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation  
22 for each challenged designation. In addition, the challenging Party may file a motion  
23 challenging a confidentiality designation at any time if there is good cause for doing so,  
24 including a challenge to the designation of a deposition transcript or any portions  
25 thereof. Any motion brought pursuant to this provision must be accompanied by a  
26 competent declaration affirming that the movant has complied with the meet and confer  
27 requirements imposed by the preceding paragraph.  
28

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

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

## 8 **VI. SCOPE**

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

## 24 **VII. MISCELLANEOUS PROVISIONS**

25 7.1 Right to Further Relief. Nothing in this Order abridges the right of any  
26 person to seek its modification by the court in the future.

27 7.2 Right to Assert Other Objections. By stipulating to the entry of this  
28

1 Protective Order no Party waives any right it otherwise would have to object to  
2 disclosing or producing any information or item on any ground not addressed in this  
3 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
4 ground to use in evidence of any of the material covered by this Protective Order.

5       7.3 Filing Protected Material. Without written permission from the  
6 designating Party or a court order secured after appropriate notice to all interested  
7 persons, a Party may not file in the public record in this action any Protected Material.  
8 A Party that seeks to file under seal any Protected Material must comply with the  
9 procedures for seeking a court order authorizing sealing as permitted by the United  
10 States District Court for the Eastern District of California. If an application to file  
11 Protected Material under seal is denied by the court, then the Receiving Party may file  
12 the Protected Material in the public record pursuant to Local Civil Rules unless  
13 otherwise instructed by the court.

14       7.4 Duration. Even after final disposition of this litigation, the  
15 confidentiality obligations imposed by this Order shall remain in effect until a  
16 designating Party agrees otherwise in writing or a court order otherwise directs. Final  
17 disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in  
18 this action, with or without prejudice; and (2) final judgment herein after the completion  
19 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
20 including the time limits for filing any motions or applications for extension of time  
21 pursuant to applicable law.  
22

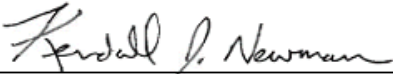
23  
24 **VIII. FINAL DISPOSITION**

25       Within 60 days after the entry of a final non-appealable judgment or order, or the  
26 complete settlement of all claims asserted between the parties in this action, each party  
27 shall, at its option, either return to the producing party or destroy all physical objects  
28

1 and documents which embody PROTECTED INFORMATION, and shall destroy in  
2 whatever form stored or reproduced, all other physical objects and documents and  
3 copies thereof, including but not limited to, correspondence, memoranda, notes and  
4 other work product materials, which contain or refer to PROTECTED  
5 INFORMATION; provided that all PROTECTED INFORMATION, not embodied in  
6 physical objects and documents, shall remain subject to this Order. Notwithstanding  
7 the foregoing, Counsel shall be entitled to maintain an archival copy of all pleadings,  
8 motions, and trial briefs (including all supporting and opposing papers thereto), written  
9 discovery requests and responses (and exhibits thereto), deposition transcripts (and  
10 exhibits thereto), trial transcripts, and exhibits offered or introduced into evidence at  
11 trial.

12  
13  
14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15 Dated: March 21, 2019

16   
17 KENDALL J. NEWMAN  
18 UNITED STATES MAGISTRATE JUDGE  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 **ATTACHMENT A**  
3 **Confidentiality Agreement**  
4

5 I, \_\_\_\_\_, state:

6 1. I reside at \_\_\_\_\_.

7 2. My present employer is \_\_\_\_\_.

8 3. My present occupation or job description is \_\_\_\_\_.

9 4. I have read the Stipulated Protective Order dated \_\_\_\_\_, and have been  
10 engaged as a \_\_\_\_\_ on behalf of  
11 \_\_\_\_\_ in the preparation and conduct of litigation  
12 between Plaintiff Lodi Memorial Hospital Association and Defendants Tiger Lines,  
13 LLC and Group & Pension Administrators, Inc..

14 5. I am fully familiar with and agree to comply with and be bound by the provisions  
15 of said Order. I understand that I am to retain all material designated as  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
17 in a secure manner, and that all copies are to remain in my personal custody until I have  
18 completed my assigned duties, whereupon the copies and any writings prepared by me  
19 containing PROTECTED INFORMATION are to be returned to counsel who provided  
20 me with such material.

21 6. I will not divulge to persons other than those specifically authorized by said  
22 Order, and will not copy or use, any information obtained pursuant to said Order except  
23 solely for purposes of this action, except as provided in said Order. I also agree to notify  
24 any stenographic or clerical personnel who are required to assist me of the terms of said  
25 Order.

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

///

7. I hereby consent to personal jurisdiction and venue in the United States District Court for the Eastern District of California for the purposes of enforcing said Order.

8. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_, 201\_.

\_\_\_\_\_