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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**The NATIONAL FEDERATION OF THE
BLIND, The AMERICAN COUNCIL OF
THE BLIND, and DARRELL SHANDROW,

Plaintiffs,

vs.

The ARIZONA BOARD OF REGENTS and
ARIZONA STATE UNIVERSITY,

Defendants

Case No: 2:09-cv-01359-MHM

**MOTION FOR EXPEDITED
DISCOVERY**

Plaintiffs National Federation of the Blind (“NFB”), the American Council of the Blind (“ACB”) and Darrell Shandrow request that the Court allow limited discovery on an expedited basis in connection with their injunctive relief claim against Defendants Arizona State University (“ASU”) and Arizona Board of Regents (“Regents”). Plaintiffs

request leave to serve a limited document request upon ASU and Regents at the earliest possible time, with Defendants' response to be due fifteen days after the date of service.

As explained below, the critical timing issues in this injunctive relief case provide good cause for expedited discovery. Beginning with the 2009 fall semester, ASU plans to implement a program through which it will provide Kindle DX electronic book readers to students taking designated courses. The Kindle DX readers are inaccessible to students who are blind. Plaintiffs seek to enjoin ASU from implementing the electronic textbook reader program because it discriminates against visually-impaired students. Time is of the essence because ASU's electronic textbook program will begin August 24, 2009, when fall semester classes begin.

The requested discovery is highly relevant and is limited to a finite set of easily-produced documents. An expedited response time will pose no undue burden on Defendants. This Motion is supported by the following Memorandum.

MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED DISCOVERY

Courts allow expedited discovery before the Fed.R.Civ.P. 26(f) conference upon a showing of good cause by the requesting party. *See Yokohama Tire Corp. v. Dealers Tire Supply, Inc.* 202 F.R.D. 612, 613 (D. Ariz. 2001) (noting that expedited discovery should be allowed upon a showing of good cause); *Semitoool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002) (allowing limited expedited discovery). Time-sensitive claims for injunctive relief present the required good cause. *See Ellsworth Associates, Inc. v. United States*, 917 F. Supp. 841, 844 (D.D.C. 1987) (“[e]xpedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings.”). Such discovery has been ordered where it would “‘better enable the court to judge the parties’ interests and respective chances for success on the merits’ at a preliminary injunction hearing.” *Yokohama Tire Corp.*, 202 F.R.D. at 613 (quoting *Eudata Corp. v. Scientific Computers, Inc.*, 599 F. Supp. 1084, 1088 (D. Minn. 1984)).

Good cause exists here. Plaintiffs seek to preliminarily enjoin ASU from implementing an electronic textbook program during its fall 2009 semester that will discriminate against students who are blind. ASU plans to provide Amazon.com's Kindle DX electronic book reader to students taking designated courses. The Kindle DX is inaccessible to blind students because it lacks audible menus and controls.

The injunctive relief claim is highly time-sensitive. The electronic textbook program, which was announced last month (May 2009), is scheduled to begin when fall semester classes begin on August 24, 2009 – approximately two months away. Plaintiffs seek a hearing and ruling on their preliminary injunction claim before that date. The requested discovery is essential to fully develop the issues that will be addressed at the preliminary injunction hearing.¹

Finally, the requested discovery and shortened response time will not impose an undue burden on Defendants. Plaintiffs' discovery is limited to those documents in ASU's possession that relate to the challenged Kindle DX electronic textbook program.² Plaintiffs believe this discovery encompasses a modest number of documents easily produced from Defendants' files.

For the foregoing reasons, Plaintiff requests that the Court order that they may immediately serve limited expedited discovery requests on Defendants, and that Defendants' response be due fifteen days from the date of service.

RESPECTFULLY SUBMITTED this ____ day of June, 2009.

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

/s/Andrew S. Friedman
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¹ Plaintiffs have filed a request for a Pretrial Conference to set a date for a preliminary injunction hearing, and to establish a discovery and briefing schedule. Plaintiffs have also written the Arizona Attorney General to propose that the parties stipulate to accelerated proceedings. A copy of the letter to Attorney General Terry Goddard is attached as Exhibit A.

² A copy of Plaintiffs' First Request for Production is attached as Exhibit B.

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COPY of the foregoing hand-delivered
this 25th day of June, 2009 to:

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/s/Nancy Varner
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