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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

The National Federation of the Blind, The
American Counsel of the Blind, and Darrell
Shandrow,

Plaintiffs,

vs.

The Arizona Board of Regents and Arizona
State University,

Defendants.

Case No. 2:09-cv-01359 PHX-GMS

**[PROPOSED] PROTECTIVE ORDER
REGARDING CONFIDENTIAL
INFORMATION**

In order to preserve the confidentiality of trade secret, personal financial information, and confidential information concerning the activities of the parties and non-parties, based on the stipulation of the parties to this action, and good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

This Order shall govern the discovery in this proceeding of trade secrets, personal financial information, and confidential information concerning the activities of the parties and any non-parties. As used in this Order, the term “party” shall mean all named parties in the above-styled action, including any named party added or joined to this action. As used in this Order, the term “non-party” shall mean any individual, corporation, association, or other natural person or entity other than a party. The term “documents” as used herein is intended to be comprehensive and includes any and all materials in the broadest sense contemplated by Rule 34 of the Federal Rules of Civil Procedure. For

[PROPOSED] PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION

1 purposes of this Order, the party or non-party designating information, documents,
2 materials or items as confidential bears the burden of establishing the confidentiality of
3 all such information, documents, materials or items.

4 1. For the purposes of this Order, “Confidential” information means the
5 following types of documents and information:

6 (a) information that constitutes a trade secret under applicable law;

7 (b) non-public proprietary information that, if disclosed, would cause
8 competitive harm;

9 (c) personal financial information;

10 (d) confidential information concerning the activities of The National
11 Federation of the Blind and The American Counsel of the Blind;

12 2. Any party may seek an amendment to this Order to designate confidential
13 documents and information in addition to the categories described in Paragraph 1 before
14 production of any such documents and information. The parties agree to meet and confer
15 in good faith and attempt to reach agreement on any request by a party to designate such
16 additional categories of confidential documents or information.

17 3. Confidential documents shall be designated “Confidential” pursuant to this
18 Order by stamping copies of the document produced to a party with the following legend:

19 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER,”

20 Any such stamp or designation shall not cover up, obscure or otherwise conceal
21 any text, picture, drawing, graph or other communication or depiction in the document.
22 If such designation is not feasible (e.g. in the case of certain electronic documents), then
23 such designation may be made by informing the other parties in writing.

24 4. The designation of any material as “Confidential” pursuant to this Order
25 shall constitute the verification of counsel for the producing party or non-party that the
26 material constitutes “Confidential” information as defined in Paragraph 1 of this Order.

27 5. Documents produced by a party or non-party or their counsel (“Designating
28 Party”) and as Confidential under this Order (hereinafter “Confidential Material”) may be

1 disclosed or made available only to the following persons (hereinafter “Qualified
2 Persons”):

3 (a) The parties to this action or an officer, director, or employee of a
4 party deemed reasonably necessary by counsel to aid in the prosecution, defense, or
5 settlement of this action;

6 (b) Counsel for the parties to this action (“Counsel”), including all
7 partners and associate attorneys of such Counsel’s law firms and all clerks, employees,
8 independent contractors, investigators, paralegals, assistants, secretaries, staff and
9 stenographic, computer, audio-visual and clerical employees and agents thereof when
10 operating under the direct supervision of such partners or associate attorneys and who are
11 actually working on this action, all of whom shall be bound by this Order;

12 (c) The Court and any person employed or retained by the Court whose
13 duties require access to confidential material;

14 (d) Stenographic reporters or audio-visual personnel engaged in
15 connection with this action including deposition reporters, video operators and
16 transcribers;

17 (e) Any person who created, authored, received or reviewed such
18 Confidential Material and those persons identified on such Confidential Material as
19 creators, authors or recipients of the Confidential Material;

20 (f) Actual and/or potential trial or deposition witnesses, where Counsel
21 believes, in good faith, that disclosure is necessary to prepare for or develop the
22 testimony of such witnesses;

23 (g) Experts or consultants retained by such counsel to assist in the
24 prosecution, defense, or settlement of this action and their respective employees,
25 associates or colleagues;

26 (h) Employees of firms engaged by the parties for purposes of
27 photocopying, electronic imaging or computer litigation support in connection with this
28 litigation; or

1 (i) Such other persons as may be designated by written agreement of
2 Counsel or by order of the Court.

3 6. Prior to receiving any Confidential Material, each Qualified Person
4 described in Paragraph 5(e) through 5(g) shall be provided with a copy of this Order and
5 shall execute an Agreement to Maintain Confidentiality (hereinafter “Confidentiality
6 Agreement”) in the form of Attachment “A.” Each such person signing a Confidentiality
7 Agreement shall be subject to and bound by this Order. Counsel for the party seeking to
8 disclose Confidential Material to any Qualified Person pursuant to Paragraph 5(e)
9 through 5(g) shall be responsible for retaining the executed originals of all such
10 Confidentiality Agreements and certifying that such individuals have complied with the
11 requirements of Paragraph 14.

12 7. Any motion, pleading or other submission that contains or attaches
13 Confidential Material shall be filed in accordance with the requirements of the local rules
14 of the Court, in a sealed envelope that: (a) is endorsed with the caption for the matter; (b)
15 sets forth a general description of the contents of the sealed envelope; and (c) contains the
16 following legend:

17 “CONFIDENTIAL: THIS ENVELOPE IS SEALED PURSUANT
18 TO ORDER OF THE COURT, CONTAINS CONFIDENTIAL
19 INFORMATION, AND IS NOT TO BE OPENED NOR THE
20 CONTENTS REVEALED EXCEPT BY ORDER OF THE
21 COURT.”

22 All papers that refer to or rely upon Confidential Material shall specify the
23 particular aspects of the documents or materials that are Confidential.

24 8. If a person receiving Confidential Material learns that, by inadvertence or
25 otherwise, it has disclosed Confidential Material to any person or in any circumstance not
26 authorized under this Order, that person shall request the recipient to return the
27 Confidential Material including all copies thereof, and notify the Designating Party that
28 produced the Confidential Material of the disclosure.

1 9. Nothing in this Order shall prohibit disclosure of Confidential Material in
2 response to compulsory process or the process of any governmental regulatory agency. If
3 any person subject to this Order, including a person subject to a Confidentiality
4 Agreement under this Order, is served with such process or receives notice of any
5 subpoena or other discovery request seeking Confidential Material, such person shall
6 promptly (not more than three (3) working days after receipt of such process or notice)
7 notify the Designating Party of such process or request, shall take all reasonable steps to
8 refrain from producing Confidential Material in response to such process, and shall afford
9 a reasonable opportunity for the Designating Party to oppose the process or to seek a
10 protective order.

11 10. Counsel for any deponent, party or non-party may designate specific
12 portions of deposition testimony or exhibits as Confidential Material by indicating on the
13 record at the deposition that the testimony of the deponent or any exhibits to his
14 testimony are to be treated as confidential. The Court reporter shall separately bind such
15 testimony and exhibits in a transcript bearing the legend “Confidential- Subject To
16 Protective Order” on the cover page. Failure of Counsel to designate testimony or
17 exhibits as confidential at deposition, however, shall not constitute a waiver of the
18 confidentiality of the testimony or exhibits. Upon receipt of the transcript of the
19 deposition, Counsel shall be entitled to designate specific pages and lines of the transcript
20 or the exhibits as confidential within thirty (30) calendar days after receipt of the
21 transcript. The entire transcript of any deposition shall be treated as Confidential
22 Material until thirty (30) calendar days after the receipt of the final transcript of the
23 deposition.

24 11. No one may attend the portions of depositions or review the transcripts of
25 the portions of any depositions at which Confidential Material is shown or discussed
26 other than those persons designated in Paragraph 5 and outside counsel for any non-party
27 deponent (who shall first sign the Confidentiality Agreement).

1 12. Unless a prompt challenge to a designating party's confidentiality
2 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
3 economic burdens, or a later significant disruption or delay of the litigation, a party does
4 not waive its right to challenge a confidentiality designation by electing not to mount a
5 challenge promptly after the original designation is disclosed. A party that elects to
6 initiate a challenge to a Designating Party's confidentiality designation must do so in
7 good faith and must begin the process by conferring directly with counsel for the
8 Designating Party. In conferring, the challenging party must explain the basis for its
9 belief that the confidentiality designation was not proper and must give the Designating
10 Party an opportunity to review the designated material, to reconsider the circumstances,
11 and, if no change in designation is offered, to explain the basis for the chosen
12 designation. If the Designating Party declines to withdraw the "Confidential"
13 designation, the Designating Party must within 30 days of the initial challenge file and
14 serve a motion that identifies the challenged material and sets forth in detail the basis for
15 the challenge. Each such motion must be accompanied by a competent declaration that
16 affirms that the parties have complied with the meet and confer requirements imposed in
17 this Paragraph and that sets forth with specificity the justification for the confidentiality
18 designation that was given by the Designating Party in the meet and confer dialogue. The
19 burden of persuasion in any such challenge proceeding shall be on the Designating Party.
20 Until the Court rules on the challenge, all parties shall continue to afford the material in
21 question the level of protection to which it is entitled under the producing party's
22 designation.

23 13. If any Confidential Material is inadvertently provided to a discovering party
24 without being marked as confidential in accordance with this Order, the producing party
25 may thereafter designate such materials as confidential and the initial failure to so mark
26 the material shall not be deemed a waiver of its confidentiality. Until the material is
27 designated as confidential by the Designating Party, however, the discovering party shall
28 be entitled to treat the material as non-confidential.

1 14. Within sixty (60) calendar days of final termination of this lawsuit,
2 including all appeals, (whether by judgment, settlement or otherwise) all materials
3 produced by a party that contain Confidential Material, including all abstracts and
4 summaries of such material, shall be destroyed or returned to Counsel for the Designating
5 Party. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
6 all pleadings, motion papers, transcripts, notes, legal memoranda, correspondence or
7 work product materials of counsel for the parties, expert witnesses or consultants or
8 investigators or agents thereof even if such materials contain Confidential Material. Any
9 such archival copies that contain or constitute Protected Material remain subject to this
10 Protective Order.

11 Counsel for each such party shall certify that the provisions of this paragraph have been
12 satisfied by sending opposing counsel a letter confirming compliance. Reasonable out-
13 of-pocket costs associated with returning or destroying Confidential Materials will be
14 borne by the party in possession of the Confidential Material at the time of the final
15 termination of this lawsuit.

16 15. No party receiving documents or materials designated as “Confidential
17 Material” shall have any obligation to object to the designation at the time the designation
18 is made or at any time thereafter. No party shall, by failure to object, be found to have
19 acquiesced or agreed to such designation or be barred from objecting to such designation
20 at any time.

21 16. Nothing contained in this Order shall be a waiver of any objection to the
22 admissibility of any evidence at trial, in any pretrial proceeding or on appeal.

23
24 Dated: _____

G. Murray Snow
U.S. District Court Judge

1 EXHIBIT A

2 AGREEMENT TO MAINTAIN CONFIDENTIALITY

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Protective Order Regarding Confidentiality Information (“Protective Order”) that was
7 entered by the United States District Court for the District of Arizona on _____
8 [date] in the case of *The National Federation for the Blind, et al. v. The Arizona Board of*
9 *Regents, et al.*, 2:09-cv-01359 PHX-GMS. I agree to comply with and to be bound by all
10 the terms of this Protective Order and I understand and acknowledge that failure to do so
11 could expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is subject to
13 this Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the District of Arizona for the purpose of enforcing the terms of this Protective Order,
17 even if such enforcement proceedings occur after termination of this action.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____