

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

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

11 Plaintiffs,

12 vs.

13 The Arizona Board of Regents and Arizona
14 State University,

15 Defendants.

Case No. CV-09-1359 PHX-GMS

**PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION**

16
17 In order to preserve the confidentiality of trade secret, personal financial
18 information, and confidential information concerning the activities of the parties and non-
19 parties, based on the stipulation of the parties to this action and Notice (Dkt. # 48), and
20 good cause appearing,

21 **IT IS HEREBY ORDERED AS FOLLOWS:**

22 This Order shall govern the discovery in this proceeding of trade secrets, personal
23 financial information, and confidential information concerning the activities of the parties
24 and any non-parties. As used in this Order, the term “party” shall mean all named parties
25 in the above-styled action, including any named party added or joined to this action. As
26 used in this Order, the term “non-party” shall mean any individual, corporation,
27 association, or other natural person or entity other than a party. The term “documents” as
28 used herein is intended to be comprehensive and includes any and all materials in the

**PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION**

1 broadest sense contemplated by Rule 34 of the Federal Rules of Civil Procedure. For
2 purposes of this Order, the party or non-party designating information, documents,
3 materials or items as confidential bears the burden of establishing the confidentiality of
4 all such information, documents, materials or items.

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

- 7 (a) information that constitutes a trade secret under applicable law;
8 (b) non-public proprietary information that, if disclosed, would cause
9 competitive harm;
10 (c) personal financial information; and/or
11 (d) confidential information concerning the activities of The National
12 Federation of the Blind and The American Counsel of the Blind.

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

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

20 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.”

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

25 4. The designation of any material as “Confidential” pursuant to this Order
26 shall constitute the verification of counsel for the producing party or non-party that the
27 material constitutes “Confidential” information as defined in Paragraph 1 of this Order.
28

1 5. Documents produced by a party or non-party or their counsel (“Designating
2 Party”) and as Confidential under this Order (hereinafter “Confidential Material”) may be
3 disclosed or made available only to the following persons (hereinafter “Qualified
4 Persons”):

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

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

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

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

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

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

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

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

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

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

15 7. Any party seeking to file with the Court any Confidential Material under
16 seal or in redacted form must seek leave to do so and must show good cause for sealing
17 or redacting any documents filed in connection with non-dispositive motions or
18 compelling reasons for sealing or redacting any documents filed in connection with
19 dispositive motions. Any motion, pleading or other submission that contains or attaches
20 Confidential Material subject to a motion for leave to file under seal (“motion for leave”)
21 shall be filed simultaneously with the motion for leave and in accordance with the
22 requirements of the local rules of the Court, in a sealed envelope that: (a) is endorsed
23 with the caption for the matter; (b) sets forth a general description of the contents of the
24 sealed envelope; and (c) contains the following legend:

25 “CONFIDENTIAL: THIS ENVELOPE IS SEALED
26 PURSUANT TO ORDER OF THE COURT, CONTAINS
27 CONFIDENTIAL INFORMATION, AND IS NOT TO BE
28

1 OPENED NOR THE CONTENTS REVEALED EXCEPT BY
2 ORDER OF THE COURT.”

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

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

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

20 10. Counsel for any deponent, party or non-party may designate specific
21 portions of deposition testimony or exhibits as Confidential Material by indicating on the
22 record at the deposition that the testimony of the deponent or any exhibits to his
23 testimony are to be treated as confidential. The Court reporter shall separately bind such
24 testimony and exhibits in a transcript bearing the legend “Confidential- Subject To
25 Protective Order” on the cover page. Failure of Counsel to designate testimony or
26 exhibits as confidential at deposition, however, shall not constitute a waiver of the
27 confidentiality of the testimony or exhibits. Upon receipt of the transcript of the
28 deposition, Counsel shall be entitled to designate specific pages and lines of the transcript

1 or the exhibits as confidential within thirty (30) calendar days after receipt of the
2 transcript. The entire transcript of any deposition shall be treated as Confidential
3 Material until thirty (30) calendar days after the receipt of the final transcript of the
4 deposition.

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

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

1 question the level of protection to which it is entitled under the producing party's
2 designation.

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

9 14. Within sixty (60) calendar days of final termination of this lawsuit,
10 including all appeals, (whether by judgment, settlement or otherwise) all materials
11 produced by a party that contain Confidential Material, including all abstracts and
12 summaries of such material, shall be destroyed or returned to Counsel for the Designating
13 Party. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
14 all pleadings, motion papers, transcripts, notes, legal memoranda, correspondence or
15 work product materials of counsel for the parties, expert witnesses or consultants or
16 investigators or agents thereof even if such materials contain Confidential Material. Any
17 such archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order. Counsel for each such party shall certify that the provisions of this
19 paragraph have been satisfied by sending opposing counsel a letter confirming
20 compliance. Reasonable out-of-pocket costs associated with returning or destroying
21 Confidential Materials will be borne by the party in possession of the Confidential
22 Material at the time of the final termination of this lawsuit.

23 15. No party receiving documents or materials designated as "Confidential
24 Material" shall have any obligation to object to the designation at the time the designation
25 is made or at any time thereafter. No party shall, by failure to object, be found to have
26 acquiesced or agreed to such designation or be barred from objecting to such designation
27 at any time.

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: _____