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

SOUTHERN CALIFORNIA
INSTITUTE OF LAW, a California
corporation,

Plaintiff,

vs.

TCS EDUCATION SYSTEM, an
Illinois corporation; DAVID J.
FIGULI, an individual; and GLOBAL
EQUITIES, LLC d/b/a HIGHER
EDUCATION GROUP, a Colorado
limited liability company,

Defendants.

CASE NO.: CV10-8026 JAK (AJWx)

[Assigned to Hon. John A. Kronstadt]

**[PROPOSED] PROTECTIVE ORDER
GOVERNING THE PRODUCTION
AND USE OF INFORMATION**

Action Filed: Oct. 25, 2010

[PROPOSED] PROTECTIVE ORDER GOVERNING THE PRODUCTION AND USE OF INFORMATION

1 On August 22, 2011, the parties filed a Stipulation requesting that the Court
2 enter a Protective Order in this action pursuant to Rule 26(c) of the Federal Rules of
3 Civil Procedure to limit the use of their confidential, proprietary, business, financial,
4 technical, engineering and other private information;

5 The Court, having reviewed the parties' Stipulation, and for good cause
6 shown, **ORDERS** as follows:

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8 **1. RECITALS OF GOOD CAUSE**

9 1.1 Preparation and trial of this action may require the discovery of certain
10 business records and other materials that contain trade secrets or confidential
11 information including, but not limited to, tax and financial information, strategic
12 planning documents, personnel information, self-evaluation materials, confidential
13 regulatory submissions and other competitively sensitive and proprietary
14 information.

15 1.2. Public dissemination of trade secrets or the parties' confidential or
16 proprietary information may harm the parties and their respective businesses.

17 1.3 Disclosure of confidential information to persons designated in this
18 Stipulated Protective Order may be necessary to enable the parties to fairly prepare
19 this case for trial and other proceedings.

20 **2. DEFINITIONS**

21 2.1 Party: Any party to this action, including all of its officers, directors,
22 trustees, employees, consultants, retained experts, outside counsel (and their support
23 staff), members, parents, subsidiaries and affiliates.

24 2.2 Discovery Material: All items or information, regardless of the medium
25 or manner generated, stored, or maintained (including, among other things,
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1 documents, electronically stored information, testimony, and tangible things), that
2 are produced in this matter.

3 2.3 CONFIDENTIAL INFORMATION: Information that is sensitive
4 and/or proprietary and that warrants protection under this Order, specifically: (1)
5 trade secrets as defined under California Civil Code Section 3426.1(d) and
6 applicable case law; (2) other confidential and proprietary technical, engineering,
7 research or development information; (3) personal or commercial financial,
8 budgeting, cost, pricing, and/or accounting information; (4) information about
9 existing and potential clients, faculty and students; (5) marketing and branding
10 studies, performance and projections, business strategies, decisions and/or
11 negotiations; (6) personnel compensation, evaluations and other employment
12 information; (7) attorney-client or work product information; and (8) confidential
13 and proprietary information about affiliates, parents, subsidiaries, and third parties
14 with whom a Party has had business relationships. Confidential Information
15 includes the Confidential Information itself, any information derived therefrom, and
16 all copies, photographs, excerpts, and summaries thereof, as well as testimony and
17 oral conversations derived therefrom or related thereto. Confidential Information
18 does not include any information that is or becomes publicly available provided that
19 this Order was not violated when the information was disclosed.

20 2.4 Producing Party: A Party that produces Discovery Material in this
21 action.

22 2.5 Receiving Party: A Party that receives Discovery Material from a
23 Producing Party.

24 2.6 Designating Party: A Party that designates Discovery Material as
25 CONFIDENTIAL pursuant to this Order.
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1 **3. SCOPE OF PROTECTIVE ORDER**

2 3.1 The protections of this Protective Order may be invoked with respect to
3 any Discovery Material produced or created in this action that contains
4 CONFIDENTIAL INFORMATION of any Party or non-party witness, or that the
5 Producing Party is otherwise required or entitled by law to maintain in confidence,
6 and with respect to any deposition, court filing, correspondence, exhibits or
7 discovery request or response containing or referring to such materials. Said
8 Discovery Material may be designated CONFIDENTIAL INFORMATION by any
9 Party or by any non-party producing materials in this action. The terms "Producing
10 Party" or "Designating Party" as used herein shall be deemed to include a non-party
11 that produces materials in this action.

12 3.2 This Protective Order does not in any way deprive any Party or non-
13 party of its right to contest another Party's claims to protection for confidential or
14 privileged information. A Party's decision not to contest another party's designation
15 of Discovery Material as "CONFIDENTIAL" is not to be construed as an admission
16 that such material is a trade secret or otherwise deserving of protection under this
17 Protective Order. No Party shall be deemed to be in violation of this Protective
18 Order with respect to disclosures of any Discovery Materials to any other persons
19 prior to the designation of that Discovery Material as "CONFIDENTIAL" pursuant
20 to this Protective Order.

21 **4. LIMITATIONS ON USE OF DISCOVERY MATERIAL**

22 Except as set forth herein, the Parties agree that all Discovery Material shall
23 be used solely for the purpose of prosecuting or defending this action or any other
24 proceeding between the Parties and may not be used for any other purpose. The
25 Parties shall cooperate in maintaining the confidentiality of Discovery Material in
26 any other action or proceeding, including seeking entry of an order similar in scope
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1 to this one. If the Parties cannot agree on a form of order, then any Party may apply
2 for one.

3 **5. DESIGNATION OF CONFIDENTIAL INFORMATION**

4 5.1 A Party may designate as CONFIDENTIAL any Discovery Material
5 which it reasonably believes contains CONFIDENTIAL INFORMATION, and shall
6 do so in the following manner:

7 (a) Written discovery responses may be designated as
8 CONFIDENTIAL by marking the document CONFIDENTIAL in the caption
9 and in the header/footer appearing on each page, or by marking individual
10 responses within the document as CONFIDENTIAL.

11 (b) Hard copy documents may be designated as CONFIDENTIAL
12 by marking each page containing Confidential Material as CONFIDENTIAL.

13 (c) Electronic, magnetic or optical media (such as diskettes,
14 CD-ROMs, tapes, or digital devices) may be designated as CONFIDENTIAL
15 by marking the outside of the device as CONFIDENTIAL or by affixing a
16 CONFIDENTIAL label to the device. The Receiving Party shall apply the
17 same marking to any printouts from any electronic, magnetic or optical media
18 designated as CONFIDENTIAL.

19 (d) Deposition transcripts, or any portions thereof, may be designated as
20 CONFIDENTIAL by making a statement to that effect on the record at the
21 deposition. The Court Reporter or other person recording the proceedings
22 shall segregate and separately bind any portion of the transcript which has
23 been designated as CONFIDENTIAL. In the alternative, the transcripts or
24 portions thereof may be designated as CONFIDENTIAL by written notice to
25 counsel for the parties given within 20 days of the Designating Party's receipt
26 of the transcript from the Court Reporter.

1 5.2 A Party that inadvertently fails to designate Discovery Material as
2 CONFIDENTIAL does not waive its right to designate that material as
3 CONFIDENTIAL. The Designating Party shall, upon discovery of the inadvertent
4 failure to designate, promptly notify in writing the Receiving Party and provide it
5 with substitute copies of the affected documents, marked as CONFIDENTIAL, at
6 the expense of the Designating Party. The Receiving Party shall retrieve and destroy
7 all copies of the undesignated materials, including copies previously provided to any
8 persons in addition to the Receiving Party itself.

9 **6. ACCESS TO CONFIDENTIAL INFORMATION**

10 6.1 No disclosure or dissemination of CONFIDENTIAL INFORMATION
11 shall be made to anyone other than the following:

- 12 (a) This Court and any other court, jury, arbitrator or tribunal that is
13 adjudicating claims between the Parties, including the staff of this Court
14 and any other court, arbitrator or tribunal;
- 15 (b) Court reporters and videographers, and members of their staff,
16 during the taking of testimony and to the extent necessary to provide a
17 transcript or copy of the testimony taken;
- 18 (c) Any Party, including any present employee thereof to whom it is
19 necessary that the designated material be shown for purposes of the
20 litigation;
- 21 (d) Outside counsel for the Parties charged with the responsibility for
22 supervising and/or actively engaged in the preparation of the case and
23 their legal assistants and office personnel;
- 24 (e) In-house counsel for the Parties and any parent companies
25 charged with the responsibility for supervising and/or actively engaged
26 in the preparation of the case and their legal assistants and office
27 personnel;

1 (f) Any person called to testify as a witness either at a deposition,
2 trial or other proceeding, if such person is informed of the terms of this
3 Protective Order and provided with a copy of it. The witness shall be
4 bound by the terms of this Order whether or not he or she complies with
5 paragraph 6.2, below. The failure of a witness to comply with
6 paragraph 6.2 shall not prevent the witness from being examined about
7 the CONFIDENTIAL INFORMATION and/or Discovery Material;

8 (g) Outside experts or consultants retained by the Parties (or their
9 counsel of record) to provide services in connection with this litigation,
10 but only to the extent necessary for the expert or consultant to perform
11 his or her work in connection with this litigation;

12 (h) Persons who authored the document or to whom the document or
13 a copy thereof was previously provided by the Designating Party, or
14 who received it in the ordinary course of business;

15 (i) Former directors, officers, employees and consultants of a Party
16 if such person was an author, source or recipient of the material;

17 (j) Employees of outside copying services or other vendors engaged
18 by counsel to assist in the copying, imaging, handling or
19 computerization of documents containing the material; and

20 (k) Such other persons as hereafter may be authorized by the Court
21 upon motion of either Party, or upon stipulation of all Parties in writing.

22 6.2 Each individual who receives CONFIDENTIAL INFORMATION
23 hereby agrees to subject himself or herself to the jurisdiction of this Court for
24 purposes of any proceedings relating to the performance under, compliance with or
25 violation of this Protective Order. In addition, each individual falling within the
26 definitions of Paragraphs 6.1(c), (e), (f), (g), (h) and (k) above who is permitted by
27 the Parties or their counsel to have access to CONFIDENTIAL INFORMATION

1 shall be provided with a copy of this Protective Order for review prior to being given
2 such access. Upon receiving the same, such person shall sign a Disclosure
3 Agreement in the form attached hereto as Exhibit A indicating that he or she has
4 read the Protective Order and agrees to comply with its terms.

5 6.3 The signed Disclosure Agreements and Protective Orders provided for
6 in Section 6.2 shall be retained by the counsel of record for the Party disclosing the
7 CONFIDENTIAL INFORMATION to the person(s) signing the Disclosure
8 Agreements. Copies of the executed Disclosure Agreements shall be preserved by
9 said counsel and shall be provided to the Producing Party if the Court so orders.

10 7. **SUBMISSION OF CONFIDENTIAL MATERIAL TO COURT**

11 7.1 If a Party that designated Discovery Material as CONFIDENTIAL
12 wishes to include such material in any filing with the Court, the document
13 containing or attaching the CONFIDENTIAL Discovery Material shall be lodged
14 with the Court with an application for filing under seal in accordance with Local
15 Rule 79-5.1. If a Party wishes to include Discovery Material that another Party
16 designated as CONFIDENTIAL in any filing with the Court, the filing Party shall
17 notify the designating Party at least 7 days in advance of the filing date. The
18 designating Party shall prepare an application for filing the CONFIDENTIAL
19 Discovery Material under seal in accordance with Local Rule 79-5.1, which the
20 filing Party shall file with its other filing, while lodging the CONFIDENTIAL
21 Discovery material with the Court. The Party submitting the CONFIDENTIAL
22 Discovery Material shall mark on the outside of the envelope containing the
23 document the title of the action and a statement substantially in the following form:

24 "CONFIDENTIAL, FILED UNDER SEAL

25 By order of the United States District Court for the Central District of California,
26 this envelope is not to be opened and its contents are not to be displayed or revealed
27 except by further order of the Court."
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1 7.2 In the event a Party files a document containing CONFIDENTIAL
2 Discovery Material other than in accordance with this paragraph, any Party may
3 apply to the Court that such materials be placed under seal.

4 7.3 All pleadings and other court filings that contain CONFIDENTIAL
5 Discovery Materials shall include on the first page of such document, and all copies
6 thereof, a statement substantially to the effect that "This Document Contains
7 CONFIDENTIAL Materials."

8 **8. CHALLENGES TO CONFIDENTIAL DESIGNATIONS**

9 If, at any time, any Party claims that certain Discovery Material was
10 improperly designated as CONFIDENTIAL, or believes that it is necessary to
11 disclose such Material to persons other than those permitted by this Protective
12 Order, said Party shall notify the Designating Party in writing and the Parties shall
13 try to resolve their dispute in good faith on an informal basis. If the Parties are
14 unable to do so, the objecting Party may make an appropriate application to the
15 Court requesting that the specifically identified CONFIDENTIAL Discovery
16 Material be excluded from the provisions of this Protective Order or that they be
17 made available to specified other persons. The application shall be filed in
18 accordance with Local Rule 37. It shall be the burden of the Designating Party to
19 establish that the contested material is CONFIDENTIAL Discovery Material and
20 therefore properly designated as such. Unless and until a Court's ruling is obtained
21 changing a designation, or the Parties agree otherwise, the Discovery Material
22 involved shall be treated according to its designation.

23 **9. RETURN OF CONFIDENTIAL DISCOVERY MATERIALS**

24 9.1 The parties acknowledge that if the case proceeds to trial, all trial
25 exhibits and other information disclosed at trial that had been designated as
26 CONFIDENTIAL during the action will become public and will be presumptively
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1 available to all members of the public, including the press, unless good cause is
2 shown to the Court in advance of the trial to proceed otherwise.

3 9.2 All other CONFIDENTIAL Discovery Material that has been disclosed
4 under this Protective Order, and all copies, summaries and excerpts thereof, shall be
5 returned to the Designating Party or destroyed, at the Receiving Party's election,
6 within ninety (90) days of the final disposition of this action, including any appeals.
7 The Receiving Party shall certify in writing that all such material has been destroyed
8 or returned at the end of said ninety (90) day period. The terms of this Protective
9 Order will survive the termination of this litigation.

10 9.3 Notwithstanding the foregoing, counsel for the parties shall be
11 permitted to retain a file copy of materials created during the course of the litigation,
12 or made part of the record, or which have been filed under seal with the Clerk of the
13 Court and a copy of all depositions, including exhibits, and deposition evaluations.

14 10. **INADVERTENT PRODUCTION OF PRIVILEGED OR WORK**
15 **PRODUCT INFORMATION**

16 10.1 This Protective Order does not prejudice or otherwise limit the right
17 of any Party to oppose production of any documents or information on the ground of
18 attorney-client privilege, work product immunity or any other privilege or protection
19 provided under law.

20 10.2 If a Party inadvertently produces information that it considers
21 privileged or protected, in whole or in part, or learns of the production of privileged
22 or protected material by a third person, the Party asserting that an inadvertent
23 production has occurred must, within 30 days of the date of discovery of the
24 inadvertent production, give notice to all Parties that the Party claims that the
25 document, in whole or in part, is privileged or protected. In addition, the notice
26 must state the nature of the privilege or protection and the factual basis for asserting
27 it. If the Parties cannot resolve the matter independently, the Parties agree to meet
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1 and confer and file a joint statement with the Judge assigned to this case of the
2 results of such meeting. Thereafter, the Judge will order a conference or set the
3 matter for briefing and hearing, after which the Judge will enter an order on the
4 dispute. If the recipient of the inadvertently produced privileged or protected
5 document elects not to voluntarily return same to the Producing Party, no use of the
6 document may be made by the recipient until the Judge rules on the matter and the
7 Court rules on any appeal from that order.

8 10.3 If the Judge rules that an inadvertently produced document is privileged
9 or protected, all Parties shall, within thirty (30) days, return or destroy the segregated
10 copy and any other copies in their possession or control, and provide written
11 assurance that a diligent search has been conducted and that all such documents have
12 either been returned or destroyed.

13 11. **INADVERTENT DISCLOSURE OF CONFIDENTIAL DISCOVERY**
14 **MATERIAL**

15 11.1 An inadvertent or unintentional disclosure of "CONFIDENTIAL"
16 Discovery Material will not be construed as a waiver, in whole or in part, of (i) any
17 Party's claims of confidentiality either as to the specific information inadvertently or
18 unintentionally disclosed or as to any other confidential material disclosed prior or
19 subsequent to that date, or (ii) any Party's right to designate said material as
20 "CONFIDENTIAL" or pursuant to this Protective Order.

21 11.2 Should any documents, testimony, or information designated as
22 "CONFIDENTIAL" be disclosed, inadvertently or otherwise, to any person or Party
23 not authorized under this Order, then the Party responsible for the disclosure shall
24 use its best efforts to (i) promptly retrieve the disclosed documents, testimony, or
25 information from such unauthorized person or party, (ii) promptly inform such
26 person or Party of all the provisions of this Protective Order, (iii) request such
27 person or Party sign the "Non-Disclosure Agreement" attached as Exhibit A, if
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1 appropriate, (iv) identify such person or party immediately in writing to the
2 Producing Party that designated the documents, testimony or information as
3 "CONFIDENTIAL" and (v) identify the "CONFIDENTIAL" material in writing
4 immediately to the producing party that designated the material as
5 "CONFIDENTIAL." If a Non-Disclosure Agreement is executed, it shall promptly
6 be served upon the party that designated the "CONFIDENTIAL" material. Nothing
7 in this paragraph shall limit the right of the party that designated the
8 "CONFIDENTIAL" material to seek relief from the Court as a result of a Party that
9 inadvertently or otherwise disclosed the material to a person or Party not authorized
10 under this Protective Order.

11 **12. ADDITIONAL PROVISIONS**

12 12.1 This Protective Order does not prevent: (a) any disclosure of
13 CONFIDENTIAL Discovery Material by the Party who has designated such
14 Material; (b) any disclosure of CONFIDENTIAL Discovery Materials to the Court
15 or any other court, jury, arbitrator or tribunal adjudicating claims between the
16 Parties, except as may be limited by this Order; or (c) any disclosure of information
17 that a Receiving Party has obtained lawfully from a source other than the
18 Designating Party, even if the Designating Party has produced the same information
19 and designated it as CONFIDENTIAL pursuant to this Protective Order.

20 12.2 This Protective Order may be modified by further order of this Court.
21 Nothing contained herein shall be deemed to preclude any Party from waiving any
22 protection afforded to it under this Protective Order, provided such waiver is in
23 writing or is recorded in a transcript during deposition testimony.

24 12.3 The Court shall retain jurisdiction over all persons bound by this
25 Protective Order during the pendency of this action and for such time thereafter as is
26 needed to carry out the terms of this Protective Order.

1 12.4 If any Party who previously received CONFIDENTIAL Discovery
2 Materials receives a subpoena or other compulsory process seeking the production
3 of all or some of those materials, that Party or its counsel shall notify counsel for the
4 Designating Party immediately in writing, via overnight mail, email or facsimile
5 transmission, of the receipt of such compulsory process. Said Party shall provide
6 counsel for the Designating Party with copies of that process and shall cooperate
7 with respect to any procedure sought to be pursued by the Party whose interest may
8 be affected. The Disclosing Party asserting the confidential treatment shall have the
9 burden of defending against such subpoena, process or order. Subject to any
10 reasonable procedure sought to be pursued by the Party whose interest may be
11 affected, the person or Party receiving the subpoena or other process or order shall
12 be entitled to comply with it except to the extent the Disclosing Party asserting the
13 confidential treatment is successful in obtaining an order modifying or quashing it.

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16 DATED: _____

Hon. John A. Kronstadt
Judge of the United States District Court

1 Respectfully submitted:

2
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26 Attorneys for Defendants David J. Figuli and Global Equities, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who have consented to electronic service are being served with a copy of the foregoing document via Central District of California CM/ECF system on August 22, 2011.

By: 
George A. Shohet

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