

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

**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]

**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  
3 of Civil Procedure to limit the use of their confidential, proprietary, business,  
4 financial, technical, engineering and other private information;

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

7 **1. RECITALS OF GOOD CAUSE**

8 1.1 Preparation and trial of this action may require the discovery of certain  
9 business records and other materials that contain trade secrets or confidential  
10 information including, but not limited to, tax and financial information, strategic  
11 planning documents, personnel information, self-evaluation materials, confidential  
12 regulatory submissions and other competitively sensitive and proprietary  
13 information.

14 1.2. Public dissemination of trade secrets or the parties' confidential or  
15 proprietary information may harm the parties and their respective businesses.

16 1.3 Disclosure of confidential information to persons designated in this  
17 Stipulated Protective Order may be necessary to enable the parties to fairly prepare  
18 this case for trial and other proceedings.

19  
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  
23 support staff), members, parents, subsidiaries and affiliates.

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

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

18           2.4 Producing Party: A Party that produces Discovery Material in this  
19 action.

20           2.5 Receiving Party: A Party that receives Discovery Material from a  
21 Producing Party.

22           2.6 Designating Party: A Party that designates Discovery Material as  
23 CONFIDENTIAL pursuant to this Order.

24 **3. SCOPE OF PROTECTIVE ORDER**

25           3.1 The protections of this Protective Order may be invoked with respect  
26 to any Discovery Material produced or created in this action that contains  
27 CONFIDENTIAL INFORMATION of any Party or non-party witness, or that the  
28 Producing Party is otherwise required or entitled by law to maintain in confidence,

1 and with respect to any deposition, court filing, correspondence, exhibits or  
2 discovery request or response containing or referring to such materials. Said  
3 Discovery Material may be designated CONFIDENTIAL INFORMATION by any  
4 Party or by any non-party producing materials in this action. The terms "Producing  
5 Party" or "Designating Party" as used herein shall be deemed to include a non-party  
6 that produces materials in this action.

7 3.2 This Protective Order does not in any way deprive any Party or non-  
8 party of its right to contest another Party's claims to protection for confidential or  
9 privileged information. A Party's decision not to contest another party's  
10 designation of Discovery Material as "CONFIDENTIAL" is not to be construed as  
11 an admission that such material is a trade secret or otherwise deserving of  
12 protection under this Protective Order. No Party shall be deemed to be in violation  
13 of this Protective Order with respect to disclosures of any Discovery Materials to  
14 any other persons prior to the designation of that Discovery Material as  
15 "CONFIDENTIAL" pursuant to this Protective Order.

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

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

24 5. **DESIGNATION OF CONFIDENTIAL INFORMATION**

25 5.1 A Party may designate as CONFIDENTIAL any Discovery Material  
26 which it reasonably believes contains CONFIDENTIAL INFORMATION, and  
27 shall do so in the following manner:  
28

1 (a) Written discovery responses may be designated as  
2 CONFIDENTIAL by marking the document CONFIDENTIAL in the  
3 caption and in the header/footer appearing on each page, or by marking  
4 individual responses within the document as CONFIDENTIAL.

5 (b) Hard copy documents may be designated as CONFIDENTIAL  
6 by marking each page containing Confidential Material as  
7 CONFIDENTIAL.

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

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

22 5.2 A Party that inadvertently fails to designate Discovery Material as  
23 CONFIDENTIAL does not waive its right to designate that material as  
24 CONFIDENTIAL. The Designating Party shall, upon discovery of the inadvertent  
25 failure to designate, promptly notify in writing the Receiving Party and provide it  
26 with substitute copies of the affected documents, marked as CONFIDENTIAL, at  
27 the expense of the Designating Party. The Receiving Party shall retrieve and  
28

1 destroy all copies of the undesignated materials, including copies previously  
2 provided to any persons in addition to the Receiving Party itself.

3 **6. ACCESS TO CONFIDENTIAL INFORMATION**

4 6.1 No disclosure or dissemination of CONFIDENTIAL INFORMATION  
5 shall be made to anyone other than the following:

6 (a) This Court and any other court, jury, arbitrator or tribunal that is  
7 adjudicating claims between the Parties, including the staff of this  
8 Court and any other court, arbitrator or tribunal;

9 (b) Court reporters and videographers, and members of their staff,  
10 during the taking of testimony and to the extent necessary to provide a  
11 transcript or copy of the testimony taken;

12 (c) Any Party, including any present employee thereof to whom it  
13 is necessary that the designated material be shown for purposes of the  
14 litigation;

15 (d) Outside counsel for the Parties charged with the responsibility  
16 for supervising and/or actively engaged in the preparation of the case  
17 and their legal assistants and office personnel;

18 (e) In-house counsel for the Parties and any parent companies  
19 charged with the responsibility for supervising and/or actively  
20 engaged in the preparation of the case and their legal assistants and  
21 office personnel;

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

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

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

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

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

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

16 6.2 Each individual who receives CONFIDENTIAL INFORMATION  
17 hereby agrees to subject himself or herself to the jurisdiction of this Court for  
18 purposes of any proceedings relating to the performance under, compliance with or  
19 violation of this Protective Order. In addition, each individual falling within the  
20 definitions of Paragraphs 6.1(c), (e), (f), (g), (h) and (k) above who is permitted by  
21 the Parties or their counsel to have access to CONFIDENTIAL INFORMATION  
22 shall be provided with a copy of this Protective Order for review prior to being  
23 given such access. Upon receiving the same, such person shall sign a Disclosure  
24 Agreement in the form attached hereto as Exhibit A indicating that he or she has  
25 read the Protective Order and agrees to comply with its terms.

26 6.3 The signed Disclosure Agreements and Protective Orders provided for  
27 in Section 6.2 shall be retained by the counsel of record for the Party disclosing the  
28 CONFIDENTIAL INFORMATION to the person(s) signing the Disclosure

1 Agreements. Copies of the executed Disclosure Agreements shall be preserved by  
2 said counsel and shall be provided to the Producing Party if the Court so orders.

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

4 7.1 If a Party that designated Discovery Material as CONFIDENTIAL  
5 wishes to include such material in any filing with the Court, the document  
6 containing or attaching the CONFIDENTIAL Discovery Material shall be lodged  
7 with the Court with an application for filing under seal in accordance with Local  
8 Rule 79-5.1. If a Party wishes to include Discovery Material that another Party  
9 designated as CONFIDENTIAL in any filing with the Court, the filing Party shall  
10 notify the designating Party at least 7 days in advance of the filing date. The  
11 designating Party shall prepare an application for filing the CONFIDENTIAL  
12 Discovery Material under seal in accordance with Local Rule 79-5.1, which the  
13 filing Party shall file with its other filing, while lodging the CONFIDENTIAL  
14 Discovery material with the Court. The Party submitting the CONFIDENTIAL  
15 Discovery Material shall mark on the outside of the envelope containing the  
16 document the title of the action and a statement substantially in the following form:

17 "CONFIDENTIAL, FILED UNDER SEAL

18 By order of the United States District Court for the Central District of California,  
19 this envelope is not to be opened and its contents are not to be displayed or  
20 revealed except by further order of the Court."

21 7.2 In the event a Party files a document containing CONFIDENTIAL  
22 Discovery Material other than in accordance with this paragraph, any Party may  
23 apply to the Court that such materials be placed under seal.

24 7.3 All pleadings and other court filings that contain CONFIDENTIAL  
25 Discovery Materials shall include on the first page of such document, and all copies  
26 thereof, a statement substantially to the effect that "This Document Contains  
27 CONFIDENTIAL Materials."  
28



1 **8. CHALLENGES TO CONFIDENTIAL DESIGNATIONS**

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

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

17 9.1 The parties acknowledge that if the case proceeds to trial, all trial  
18 exhibits and other information disclosed at trial that had been designated as  
19 CONFIDENTIAL during the action will become public and will be presumptively  
20 available to all members of the public, including the press, unless good cause is  
21 shown to the Court in advance of the trial to proceed otherwise.

22 9.2 All other CONFIDENTIAL Discovery Material that has been  
23 disclosed under this Protective Order, and all copies, summaries and excerpts  
24 thereof, shall be returned to the Designating Party or destroyed, at the Receiving  
25 Party's election, within ninety (90) days of the final disposition of this action,  
26 including any appeals. The Receiving Party shall certify in writing that all such  
27 material has been destroyed or returned at the end of said ninety (90) day period.  
28 The terms of this Protective Order will survive the termination of this litigation.

1           9.3 Notwithstanding the foregoing, counsel for the parties shall be  
2 permitted to retain a file copy of materials created during the course of the  
3 litigation, or made part of the record, or which have been filed under seal with the  
4 Clerk of the Court and a copy of all depositions, including exhibits, and deposition  
5 evaluations.

6 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR WORK**  
7 **PRODUCT INFORMATION**

8           10.1 This Protective Order does not prejudice or otherwise limit the right  
9 of any Party to oppose production of any documents or information on the ground  
10 of attorney-client privilege, work product immunity or any other privilege or  
11 protection provided under law.

12           10.2 If a Party inadvertently produces information that it considers  
13 privileged or protected, in whole or in part, or learns of the production of privileged  
14 or protected material by a third person, the Party asserting that an inadvertent  
15 production has occurred must, within 30 days of the date of discovery of the  
16 inadvertent production, give notice to all Parties that the Party claims that the  
17 document, in whole or in part, is privileged or protected. In addition, the notice  
18 must state the nature of the privilege or protection and the factual basis for  
19 asserting it. If the Parties cannot resolve the matter independently, the Parties  
20 agree to meet and confer and file a joint statement with the Judge assigned to this  
21 case of the results of such meeting. Thereafter, the Judge will order a conference  
22 or set the matter for briefing and hearing, after which the Judge will enter an order  
23 on the dispute. If the recipient of the inadvertently produced privileged or  
24 protected document elects not to voluntarily return same to the Producing Party, no  
25 use of the document may be made by the recipient until the Judge rules on the  
26 matter and the Court rules on any appeal from that order.

27           10.3 If the Judge rules that an inadvertently produced document is  
28 privileged or protected, all Parties shall, within thirty (30) days, return or destroy

1 the segregated copy and any other copies in their possession or control, and provide  
2 written assurance that a diligent search has been conducted and that all such  
3 documents have either been returned or destroyed.

4 **11. INADVERTENT DISCLOSURE OF CONFIDENTIAL DISCOVERY**  
5 **MATERIAL**

6 11.1 An inadvertent or unintentional disclosure of "CONFIDENTIAL"  
7 Discovery Material will not be construed as a waiver, in whole or in part, of (i) any  
8 Party's claims of confidentiality either as to the specific information inadvertently  
9 or unintentionally disclosed or as to any other confidential material disclosed prior  
10 or subsequent to that date, or (ii) any Party's right to designate said material as  
11 "CONFIDENTIAL" or pursuant to this Protective Order.

12 11.2 Should any documents, testimony, or information designated as  
13 "CONFIDENTIAL" be disclosed, inadvertently or otherwise, to any person or  
14 Party not authorized under this Order, then the Party responsible for the disclosure  
15 shall use its best efforts to (i) promptly retrieve the disclosed documents, testimony,  
16 or information from such unauthorized person or party, (ii) promptly inform such  
17 person or Party of all the provisions of this Protective Order, (iii) request such  
18 person or Party sign the "Non-Disclosure Agreement" attached as Exhibit A, if  
19 appropriate, (iv) identify such person or party immediately in writing to the  
20 Producing Party that designated the documents, testimony or information as  
21 "CONFIDENTIAL" and (v) identify the "CONFIDENTIAL" material in writing  
22 immediately to the producing party that designated the material as  
23 "CONFIDENTIAL." If a Non-Disclosure Agreement is executed, it shall promptly  
24 be served upon the party that designated the "CONFIDENTIAL" material. Nothing  
25 in this paragraph shall limit the right of the party that designated the  
26 "CONFIDENTIAL" material to seek relief from the Court as a result of a Party that  
27 inadvertently or otherwise disclosed the material to a person or Party not authorized  
28 under this Protective Order.

1 **12. ADDITIONAL PROVISIONS**

2 12.1 This Protective Order does not prevent: (a) any disclosure of  
3 CONFIDENTIAL Discovery Material by the Party who has designated such  
4 Material; (b) any disclosure of CONFIDENTIAL Discovery Materials to the Court  
5 or any other court, jury, arbitrator or tribunal adjudicating claims between the  
6 Parties, except as may be limited by this Order; or (c) any disclosure of information  
7 that a Receiving Party has obtained lawfully from a source other than the  
8 Designating Party, even if the Designating Party has produced the same  
9 information and designated it as CONFIDENTIAL pursuant to this Protective  
10 Order.

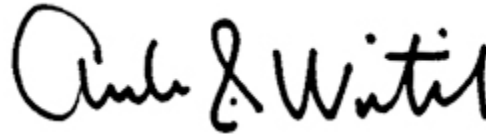
11 12.2 This Protective Order may be modified by further order of this Court.  
12 Nothing contained herein shall be deemed to preclude any Party from waiving any  
13 protection afforded to it under this Protective Order, provided such waiver is in  
14 writing or is recorded in a transcript during deposition testimony.

15 12.3 The Court shall retain jurisdiction over all persons bound by this  
16 Protective Order during the pendency of this action and for such time thereafter as  
17 is needed to carry out the terms of this Protective Order.

18 12.4 If any Party who previously received CONFIDENTIAL Discovery  
19 Materials receives a subpoena or other compulsory process seeking the production  
20 of all or some of those materials, that Party or its counsel shall notify counsel for  
21 the Designating Party immediately in writing, via overnight mail, email or  
22 facsimile transmission, of the receipt of such compulsory process. Said Party shall  
23 provide counsel for the Designating Party with copies of that process and shall  
24 cooperate with respect to any procedure sought to be pursued by the Party whose  
25 interest may be affected. The Disclosing Party asserting the confidential treatment  
26 shall have the burden of defending against such subpoena, process or order.  
27 Subject to any reasonable procedure sought to be pursued by the Party whose  
28 interest may be affected, the person or Party receiving the subpoena or other

1 process or order shall be entitled to comply with it except to the extent the  
2 Disclosing Party asserting the confidential treatment is successful in obtaining an  
3 order modifying or quashing it.  
4

5  
6 DATED: September 14, 2011



---

7  
8 Hon. Andrew J. Wistrich  
9 Magistrate Judge of the  
10 United States District Court

11 Respectfully submitted:

12 George A. Shohet SBN 112697  
13 **LAW OFFICES OF GEORGE A. SHOHEIT,**  
14 **A PROFESSIONAL CORPORATION**  
15 245 Main Street, Suite 310  
16 Venice, CA 90291-5216  
17 Tel.: (310) 452-3176  
18 Fax: (310) 452-2270

19 Gretchen M. Nelson SBN 112566  
20 **KREINDLER & KREINDLER LLP**  
21 707 Wilshire Blvd, Suite 4100  
22 Los Angeles, CA 90017  
23 Tel.: (213) 622-6469  
24 Fax: (213) 622-6019

25 Attorneys for Plaintiff Southern California Institute of Law

26 Nicholas W. Sarris, Esq.  
27 **KAUFMAN BORGEEST AND RYAN LLP**  
28 23975 Park Sorrento, Suite 370  
Calabasas, CA 91302  
Tel: 818-880-0992

1 Fax: 818-880-0993

2 Attorneys for Defendant TCS Education System

3 Maurice Fitzgerald, Esq.

4 **STRAZULO FITZGERALD LLP**

5 3991 MacArthur Blvd. Suite 400

6 Newport Beach, CA 92660

7 Tel.: 949-333-0883

8 Fax: 949-748-6146

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28