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

KIRKLAND OARD, on behalf of
himself and all other similarly situated,

Plaintiff,

v.

DAILY PRESS, LLC, a California
corporation, LOCAL MEDIA GROUP,
INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 5:16-cv-02039-SVW-KK
[Honorable Stephen V. Wilson]

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Action Filed: November 3, 2015
Action Removed: September 26, 2016

NOTE CHANGES MADE BY THE COURT

1 **I. STATEMENT OF GOOD CAUSE**

2 The Parties to the above-captioned case acknowledge and understand that
3 this Protective Order does not confer blanket protection on all disclosures or
4 responses to discovery, that the protection it affords from public disclosures and
5 use extends only to limited information or items that are entitled to confidential
6 treatment under the applicable legal principles, and that it does not presumptively
7 entitle parties to file confidential information under seal. In this putative class
8 action lawsuit, Kirkland Oard (“Plaintiff”), on behalf of himself and others
9 similarly situated, alleges that Local Media Group, Inc. (“Local Media”) violated
10 the law by improperly treating him and those like him as independent contractors.
11 In connection with discovery in this lawsuit, Plaintiff has sought certain
12 documents, written discovery responses, deposition testimony, and other items
13 containing confidential information, including third-party information protected by
14 privacy laws such as personal contact information of current and former
15 independent contractors for Local Media, and proprietary business policies,
16 procedures, job descriptions, personnel records, payroll records and/or timekeeping
17 records of current and former independent contractors for Local Media. The
18 Parties recognize that employers/contractors such as Local Media are obligated to
19 maintain the right to privacy guaranteed by the California Constitution, which
20 protects independent contractors’ files from improper disclosure to third parties.
21 *See Board of Trustees v. Superior Courts*, 119 Cal. App. 3d 516 (1981). The
22 Parties desire to protect the confidentiality, use, and dissemination of such
23 information, agree that good cause exists for this Protective Order, and agree that
24 such an order is in the best interest of both parties.

25 **II. TERMS OF STIPULATED PROTECTIVE ORDER**

26 IT IS HEREBY STIPULATED by and between the Parties to the above-
27 entitled case, by and through their respective counsel of record, that in order to
28 facilitate the exchange of information and documents which may be subject to

1 confidentiality limitations due to federal laws, state laws, and privacy rights, the
2 Parties stipulate as follows:

3 1. In this Protective Order, the words set forth below shall have the
4 following meanings:

5 (a) "Action" means the above-entitled case (Case No. 5:16-cv-
6 02039-SVW-KK).

7 (b) "Confidential" means information which is in the possession of
8 a Designating Party who believes in good faith that such information is entitled to
9 confidential treatment under applicable law. This includes third-party information
10 protected by privacy laws such as personal contact information of current and
11 former independent contractors for Local Media, as well as proprietary business
12 policies, procedures, job descriptions, personnel records, payroll records and/or
13 timekeeping records of current and former independent contractors for Local
14 Media.

15 (c) "Confidential – Attorneys' Eyes Only" means any Documents,
16 Testimony or Information as defined below for which the Parties consider of a
17 highly Confidential and/or proprietary nature.

18 (d) "Confidential Materials" means any Documents, Testimony or
19 Information as defined below designated as "Confidential" or "Confidential –
20 Attorneys' Eyes Only" pursuant to the provisions of this Protective Order.

21 (e) "Court" means any judge to whom this Action may be assigned,
22 including the Honorable Stephen V. Wilson (District Court Judge), the Honorable
23 Kenly K. Kato (Magistrate Judge), as well as Court staff participating in such
24 proceedings.

25 (f) "Designating Party" means the Party that designates Materials
26 as "Confidential" or "Confidential – Attorneys' Eyes Only."

1 (g) "Disclose" or "Disclosed" or "Disclosure" means to reveal,
2 divulge, give, or make available Materials, or any part thereof, or any information
3 contained therein.

4 (h) "Documents" means (i) any "Writing," "Original," and
5 "Duplicate" as those terms are defined by California Evidence Code Sections 250,
6 255, and 260, and Federal Rules of Evidence, Rule 1001, which have been
7 produced in discovery in this Action by any person, and (ii) any copies,
8 reproductions, or summaries of all or any part of the foregoing.

9 (i) "Information" means the content of Documents or Testimony.

10 (j) "Party" and "Parties" means the named party(s) in the Action.

11 (k) "Testimony" means all depositions, declarations or other
12 testimony taken or used in this Action.

13 2. This Protective Order *does not* apply to any evidence presented at trial
14 or any Court hearing or proceeding. Any use of protected material at trial or other
15 court hearings or proceedings shall be governed by the orders of the Court. This
16 Protective Order also *does not* apply to the Court and Court staff or personnel,
17 including court reporters.

18 3. The Designating Party shall have the right to designate as
19 "Confidential" any Documents, Testimony or Information that the Designating
20 Party in good faith believes to contain non-public information that is entitled to
21 confidential treatment under applicable law.

22 4. The Designating Party shall have the right to designate as
23 "Confidential – Attorneys' Eyes Only" any Documents, Testimony or Information
24 that the Designating Party in good faith believes to be of a highly Confidential
25 and/or proprietary nature.

26 5. The entry of this Protective Order does not alter, waive, modify, or
27 abridge any right, privilege or protection otherwise available to any Party with
28 respect to the discovery of matters, including but not limited to any Party's right to

1 assert the attorney-client privilege, the attorney work-product doctrine, or other
2 privileges, or any Party's right to contest any such assertion,

3 6. Any Documents, Testimony or Information to be designated as
4 "Confidential" or "Confidential – Attorneys' Eyes Only" must be clearly so
5 designated before the Document, Testimony or Information is Disclosed or
6 produced. The designation should not obscure or interfere with the legibility of the
7 designated Information.

8 (a) For Documents (apart from transcripts of depositions or other
9 pretrial or trial proceedings), the Designating Party must affix the legend
10 "Confidential" or "Confidential – Attorneys' Eyes Only" on each page of any
11 Document containing such designated Confidential Material.

12 (b) For Testimony given in depositions the Designating Party may
13 either:

14 (i) identify on the record, before the close of the deposition,
15 all "Confidential" Testimony, by specifying all portions of the Testimony that
16 qualify as "Confidential"; or

17 (ii) designate the entirety of the Testimony at the deposition
18 as "Confidential" (before the deposition is concluded) with the duty to identify
19 more specific portions of the Testimony as to which protection is sought within 30
20 days following receipt of the deposition transcript. In circumstances where
21 portions of the deposition Testimony are designated for protection, the transcript
22 pages containing "Confidential" Information may be separately bound by the court
23 reporter, who must affix to the top of each page the legend "Confidential," as
24 instructed by the Designating Party.

25 (c) For Information produced in some form other than Documents,
26 and for any other tangible items, including, without limitation, compact discs or
27 DVDs, the Designating Party must affix in a prominent place on the exterior of the
28 media (*i.e.*, Disc, Tape, Drive) which the Information or item is stored the legend

1 "Confidential" or "Confidential – Attorneys’ Eyes Only.” If only portions of the
2 Information or item warrant protection, the Designating Party, to the extent
3 practicable, shall identify the "Confidential" or "Confidential – Attorneys’ Eyes
4 Only” portions.

5 7. The inadvertent production by any of the undersigned Parties or non-
6 Parties to the Action of any Document, Testimony or Information during discovery
7 in this Action without a "Confidential" or "Confidential – Attorneys’ Eyes Only”
8 designation, shall be without prejudice to any claim that such item is
9 "Confidential" or "Confidential – Attorneys’ Eyes Only” and such Party shall not
10 be held to have waived any rights by such inadvertent production. In the event that
11 any Document, Testimony or Information that is subject to a "Confidential" or
12 "Confidential – Attorneys’ Eyes Only” designation is inadvertently produced
13 without such designation, the Party that inadvertently produced the document shall
14 give written notice of such inadvertent production within twenty (20) calendar days
15 of discovery of the inadvertent production, together with a further copy of the
16 subject Document, Testimony or Information designated as "Confidential" or
17 "Confidential - Attorneys' Eyes Only" (the "Inadvertent Production Notice"). Upon
18 receipt of the Inadvertent Production Notice, the Party that received the
19 inadvertently produced Document, Testimony or Information shall promptly
20 destroy the inadvertently produced Document, Testimony or Information and all
21 copies thereof, or, at the expense of the producing Party, return such together with
22 all copies of such Document, Testimony or Information to counsel for the
23 producing Party and shall retain only the "Confidential" or "Confidential –
24 Attorneys’ Eyes Only” designated Materials. Should the receiving Party choose to
25 destroy such inadvertently produced Document, Testimony or Information, the
26 receiving Party shall notify the producing Party in writing of such destruction or
27 need for additional time for destruction within ten (10) calendar days of receipt of
28 written notice of the inadvertent production. This provision is not intended to apply

1 to any inadvertent production of any Information protected by attorney-client or
2 work product privileges. In the event that this provision conflicts with any
3 applicable law regarding waiver of confidentiality through the inadvertent
4 production of Documents, Testimony or Information, such law shall govern.

5 8. In the event that counsel for a Party receiving Documents, Testimony
6 or Information in discovery designated as "Confidential" or "Confidential –
7 Attorneys' Eyes Only" objects to such designation with respect to any or all of
8 such items, said counsel shall advise counsel for the Designating Party, in writing,
9 of such objections, the specific Documents, Testimony or Information to which
10 each objection pertains, and the specific reasons and support for such objections
11 (the "Designation Objections"). Counsel for the Designating Party shall have thirty
12 (30) calendar days from receipt of the written, Designation Objections to either (a)
13 agree in writing to de-designate Documents, Testimony or Information pursuant to
14 any or all of the Designation Objections and/or (b) file a motion with the Court
15 seeking to uphold any or all designations on Documents, Testimony or Information
16 addressed by the Designation Objections (the "Designation Motion"). ***Any***
17 ***Designation Motion or motion challenging a designation shall be made in strict***
18 ***compliance with Civil Local Rules 37-1 and 37-2 (including the Joint Stipulation***
19 ***requirement)***. Pending a resolution of the Designation Motion by the Court, any
20 and all existing designations on the Documents, Testimony or Information at issue
21 in such Motion shall remain in place. The Designating Party shall have the burden
22 on any Designation Motion of establishing the applicability of its "Confidential" or
23 "Confidential – Attorneys' Eyes Only" designation. In the event that the
24 Designation Objections are neither timely agreed to nor timely addressed in the
25 Designation Motion, then such Documents, Testimony or Information shall be de-
26 designated in accordance with the Designation Objection applicable to such
27 material.
28

1 9. Access to and/or Disclosure of Confidential Materials designated as
2 "Confidential" shall be permitted only to the following persons:

3 (a) the Court;

4 (b) attorneys of record in the Action and their affiliated attorneys,
5 paralegals, clerical and secretarial staff employed by such attorneys who are
6 actively involved in the Action and are not employees of any Party;

7 (c) in-house counsel to the undersigned Parties and the paralegal,
8 clerical and secretarial staff employed by such counsel, provided, however, that
9 each non-lawyer given access to Confidential Materials shall be advised that such
10 Materials are being Disclosed pursuant to, and are subject to, the terms of this
11 Protective Order and that they may not be Disclosed other than pursuant to its
12 terms;

13 (d) the named Plaintiff;

14 (e) those officers, directors, partners, members, employees and
15 agents of all non-designating Parties that counsel for such Parties deems necessary
16 to aid counsel in the prosecution and defense of this Action; provided, however,
17 that prior to the Disclosure of Confidential Materials to any such officer, director,
18 partner, member, employee or agent, counsel for the Party making the Disclosure
19 shall deliver a copy of this Protective Order to such person, shall explain that such
20 person is bound to follow the terms of such Order, and shall secure the signature of
21 such person on a statement in the form attached hereto as Exhibit A;

22 (f) court reporters in this Action (whether at depositions, hearings,
23 or any other proceeding);

24 (g) any deposition, trial or hearing witness in the Action who
25 previously has had access to the Confidential Materials, or who is currently or was
26 previously an officer, director, partner, member, employee or agent of an entity
27 that has had access to the Confidential Materials;

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1 (h) any deposition, trial or hearing witness in the Action who
2 previously did not have access to the Confidential Materials; provided, however,
3 that each such witness given access to Confidential Materials shall be advised that
4 such Materials are being Disclosed pursuant to, and are subject to, the terms of this
5 Protective Order and that they may not be Disclosed other than pursuant to its
6 terms;

7 (i) mock jury participants, provided, however, that prior to the
8 Disclosure of Confidential Materials to any such mock jury participant, counsel for
9 the Party making the Disclosure shall deliver a copy of this Protective Order to
10 such person, shall explain that such person is bound to follow the terms of such
11 Order, and shall secure the signature of such person on a statement in the form
12 attached hereto as Exhibit A;

13 (j) outside experts or expert consultants consulted by the
14 undersigned Parties or their counsel in connection with the Action, whether or not
15 retained to testify at any oral hearing; provided, however, that prior to the
16 Disclosure of Confidential Materials to any such expert or expert consultant,
17 counsel for the Party making the Disclosure shall deliver a copy of this Protective
18 Order to such person, shall explain its terms to such person, and shall secure the
19 signature of such person on a statement in the form attached hereto as Exhibit A. It
20 shall be the obligation of counsel, upon learning of any breach or threatened breach
21 of this Protective Order by any such expert or expert consultant, to promptly notify
22 counsel for the Designating Party of such breach or threatened breach;

23 (k) any other person that the Designating Party agrees to in writing;
24 and

25 (l) the mediator agreed to by the Parties.

26 10. Access to and/or Disclosure of Confidential Materials designated as
27 "Confidential - Attorneys Eyes Only" shall be permitted only to such persons
28 designated in subsections a.-c. and e.-l., of paragraph 7.

1 11. Confidential Materials shall be used by the persons receiving them
2 only for the purposes of preparing for, conducting, participating in the conduct of,
3 and/or prosecuting and/or defending the Action, and not for any business or other
4 purpose whatsoever. This Protective Order is expressly intended to comply with
5 Rule 1-500(A) of the California Rules of Professional Conduct.

6 12. Any Party to the Action (or other person subject to the terms of this
7 Protective Order) may ask the Court, after appropriate notice to the other Parties to
8 the Action, to modify or grant relief from any provision of this Protective Order.
9 ***Any such motion shall be made in strict compliance with Civil Local Rules 37-1***
10 ***and 37-2 (including the Joint Stipulation requirement).***

11 13. Entering into, agreeing to, and/or complying with the terms of this
12 Protective Order shall not:

13 (a) operate as an admission by any person that any particular
14 Document, Testimony or Information marked "Confidential" or "Confidential –
15 Attorneys' Eyes Only" contains or reflects trade secrets, proprietary, confidential
16 or competitively sensitive business, commercial, financial or personal information;
17 or

18 (b) prejudice in any way the right of any Party (or any other person
19 subject to the terms of this Protective Order):

20 (i) to seek a determination by the Court of whether any
21 particular Confidential Material should be subject to protection as "Confidential"
22 or "Confidential – Attorneys' Eyes Only" under the terms of this Protective Order;
23 or

24 (ii) to seek relief from the Court on appropriate notice to all
25 other Parties to the Action from any provision(s) of this Protective Order, either
26 generally or as to any particular Document, Material or Information.

27 14. Any party to the Action who has not executed this Protective Order as
28 of the time it is presented to the Court for signature may thereafter become a party

1 to this Protective Order by its counsel's signing and dating a copy thereof and filing
2 the same with the Court, and serving copies of such signed and dated copy upon
3 the other Parties to this Protective Order.

4 15. Any Information that may be produced by a non-Party witness in
5 discovery in the Action pursuant to subpoena or otherwise may be designated by
6 such non-Party as "Confidential" or "Confidential – Attorneys' Eyes Only" under
7 the terms of this Protective Order, and any such designation by a non-Party shall
8 have the same force and effect, and create the same duties and obligations, as if
9 made by one of the undersigned Parties hereto. Any such designation shall also
10 function as consent by such producing non-Party witness to the authority of the
11 Court in the Action to resolve and such designation, or any other matter otherwise
12 arising under this Protective Order.

13 16. If any person subject to this Protective Order who has custody of any
14 Confidential Materials receives a subpoena or other process ("Subpoena") from
15 any government or other person or entity demanding production of Confidential
16 Materials, the recipient of the Subpoena shall promptly give notice of the same by
17 electronic mail transmission, followed by either express mail or overnight delivery
18 to counsel of record for the Designating Party, and shall furnish such counsel with
19 a copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in
20 its sole discretion and at its own cost, move to quash or limit the Subpoena,
21 otherwise oppose production of the Confidential Materials, and/or seek to obtain
22 confidential treatment of such Confidential Materials from the subpoenaing person
23 or entity to the fullest extent available under law. The recipient of the Subpoena
24 may not produce any Documents, Testimony or Information pursuant to the
25 Subpoena prior to the date specified for production on the Subpoena. However,
26 nothing contained in this Protective Order is intended or should be construed as
27 authorizing a party in this action to disobey a lawful subpoena issued in another
28 action.

1 17. Nothing in this Protective Order shall be construed to preclude any
2 Party from asserting in good faith that certain Confidential Materials require
3 additional protection. The Parties shall meet and confer to agree upon the terms of
4 such additional protection.

5 18. If, after execution of this Protective Order, any Confidential Materials
6 submitted by a Designating Party under the terms of this Protective Order are
7 Disclosed by a non-Designating Party to any person other than in the manner
8 authorized by this Protective Order, the non-Designating Party responsible for the
9 Disclosure shall bring all pertinent facts relating to the Disclosure of such
10 Confidential Materials to the immediate attention of the Designating Party.

11 19. This Protective Order is entered into without prejudice to the right of
12 any Party to knowingly waive the applicability of this Protective Order to any
13 Confidential Materials designated by that Party. If the Designating Party uses
14 Confidential Materials in a non-Confidential manner, then the Confidential
15 designation no longer applies.

16 20. Any Party that seeks to file under seal any information and/or
17 documents that have been designated as “Confidential” or “Confidential –
18 Attorneys’ Eyes Only,” must comply with Local Rule 79-5. Such information
19 and/or documents may only be filed under seal pursuant to a Court order
20 authorizing the sealing of the specific protected material at issue. If a Party’s
21 request to file such protected material under seal is denied by the Court, then the
22 receiving Party may file the information in the public record unless otherwise
23 instructed by the Court.

24 21. The Parties shall meet and confer regarding the procedures for use of
25 Confidential Materials at trial and shall move the Court for entry of an appropriate
26 order.

27 22. Nothing in this Protective Order shall affect the admissibility into
28 evidence of Confidential Materials, or abridge the rights of any person to seek

1 judicial review or to pursue other appropriate judicial action with respect to any
2 ruling made by the Court concerning the issue of the status of Protected Material.

3 23. This Protective Order shall continue to be binding after the conclusion
4 of this Action and all subsequent proceedings arising from this Action, except that
5 a person subject to the Protective Order may seek the written permission of the
6 Designating Party or may move the Court for relief from the provisions of this
7 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction
8 to enforce, modify, or reconsider this Protective Order, even after the Action is
9 terminated.

10 24. Upon written request made within thirty (30) calendar days after the
11 settlement or other termination of the Action, the undersigned Parties shall have
12 thirty (30) calendar days to either (a) promptly return to counsel for each
13 Designating Party all Confidential Materials and all copies thereof (except that
14 counsel for each Party may maintain in its files, in continuing compliance with the
15 terms of this Protective Order, all work product, and one copy of each pleading
16 filed with the Court), (b) agree with counsel for the Designating Party upon
17 appropriate methods and certification of destruction or other disposition of such
18 Confidential Materials, or (c) as to any Documents, Testimony or other
19 Information not addressed by sub-paragraphs (a) and (b), file a motion seeking a
20 Court order regarding proper preservation of such Materials. To the extent
21 permitted by law the Court shall retain continuing jurisdiction to review and rule
22 upon the motion referred to in sub-paragraph (c) herein. The Designating Party to
23 whom Confidential Materials are returned under this paragraph shall be obligated
24 to maintain the returned documents for no less than six (6) years after their receipt.

25 25. After this Protective Order has been signed by counsel for all Parties,
26 it shall be presented to the Court for entry. Counsel agree to be bound by the terms
27 set forth herein with regard to any Confidential Materials that have been produced
28 before the Court signs this Protective Order.

1 26. The Parties and all signatories to the Certification attached hereto as
2 Exhibit A agree to be bound by this Protective Order pending its approval and
3 entry by the Court. In the event that the Court modifies this Protective Order, or in
4 the event that the Court enters a different protective order, the Parties agree to be
5 bound by this Protective Order until such time as the Court may enter such a
6 different Order. It is the Parties' intent to be bound by the terms of this Protective
7 Order pending its entry so as to allow for immediate production of Confidential
8 Materials under the terms herein.

9 27. The Court may modify the protective order in the interests of justice
10 or for public policy reasons.

11 **IT IS SO ORDERED.**

12
13 DATED: _February 15, 2017



14 HON. KENLY KIYA KATO
15 United States Magistrate Judge

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27 **EXHIBIT A**

1 **CERTIFICATION REGARDING CONFIDENTIAL DISCOVERY**
2 **MATERIALS**

3 I hereby acknowledge that I, _____ [NAME],
4 _____ [POSITION AND EMPLOYER], am about to
5 receive Confidential Materials supplied in connection with the Action *Kirkland*
6 *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK. I certify that
7 I understand that the Confidential Materials are provided to me subject to the terms
8 and restrictions of the Protective Order filed in this Action. I have been given a
9 copy of the Protective Order, I have read it, and I agree to be bound by its terms.

10 I understand that Confidential Materials, as defined in the Protective Order,
11 including any notes or other records that may be made regarding any such
12 Materials, shall not be Disclosed to anyone except as expressly permitted by the
13 Protective Order. I will not copy or use, except solely for the purposes of this
14 Action, any Confidential Materials obtained pursuant to this Protective Order,
15 except as provided therein or otherwise ordered by the Court in the Action.

16 I further understand that I am to retain all copies of all Confidential
17 Materials provided to me in the Action in a secure manner, and that all copies of
18 such Materials are to remain in my personal custody until termination of my
19 participation in this Action, whereupon the copies of such Materials will be
20 returned to counsel who provided me with such Materials.

21 I acknowledge that, by signing this agreement, I am subjecting myself to the
22 jurisdiction of the United States District Court for the Central District of California
23 with respect to enforcement of this Protective Order.

24 I understand that violation of this Protective Order may subject me to
25 sanctions for contempt of court.

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I declare under penalty of perjury, under the laws of the State of California,
that the foregoing is true and correct. Executed this ____ day of _____
_____, 201 __, at, _____, California.

DATED: _____ BY: _____
Signature
Title
Address
Telephone Number