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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FAITH SIDLOW a.k.a. FAITH SOARES-
WILSON, and RICHARD NITIDO,

Plaintiffs,

vs.

NEXSTAR BROADCASTING, INC., a
Delaware corporation, and DOES 1 through
20, inclusive,

Defendants.

Case No. 1:14-CV-00657-TLN-SAB

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
5 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
8 (as well as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or items
10 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.5 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner in which it is generated, stored, or maintained (including, among other things,
13 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
14 responses to discovery in this matter.

15 2.6 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
17 witness or as a consultant in this action.

18 2.7 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.8 Non-Party: any natural person, partnership, corporation, association, or other
21 legal entity not named as a Party to this action.

22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
23 this action but are retained to represent or advise a party to this action and have appeared in this
24 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
25 party.

26 2.10 Party: any party to this action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

28 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2 2.12 Professional Vendors: persons or entities that provide litigation support
3 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
4 organizing, storing, or retrieving data in any form or medium) and their employees and
5 subcontractors.

6 2.13 Protected Material: any Disclosure or Discovery Material that is designated
7 as “CONFIDENTIAL.”

8 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
9 a Producing Party.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected Material
12 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
13 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
14 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
15 However, the protections conferred by this Stipulation and Order do not cover the following
16 information: (a) any information that is in the public domain at the time of disclosure to a
17 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
18 result of publication not involving a violation of this Order, including becoming part of the public
19 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
20 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
21 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
22 of Protected Material at trial shall be governed by a separate agreement or order.

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations imposed by this
25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
26 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
27 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
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1 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
2 time limits for filing any motions or applications for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
5 Party or Non-Party that designates information or items for protection under this Order must take
6 care to limit any such designation to specific material that qualifies under the appropriate standards.
7 The Designating Party must designate for protection only those parts of material, documents, items,
8 or oral or written communications that qualify – so that other portions of the material, documents,
9 items, or communications for which protection is not warranted are not swept unjustifiably within
10 the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
14 and burdens on other parties) expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must promptly notify
17 all other Parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
20 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
21 designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
25 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
26 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
27 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

28 A Party or Non-Party that makes original documents or materials available for

1 inspection need not designate them for protection until after the inspecting Party has indicated
2 which material it would like copied and produced. During the inspection and before the designation,
3 all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
4 inspecting Party has identified the documents it wants copied and produced, the Producing Party
5 must determine which documents, or portions thereof, qualify for protection under this Order. Then,
6 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”
7 legend to each page that contains Protected Material. If only a portion or portions of the material on
8 a page qualifies for protection, the Producing Party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins).

10 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
11 Designating Party identify on the record, before the close of the deposition, hearing, or other
12 proceeding, all protected testimony.

13 (c) for information produced in some form other than documentary and for any other
14 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
15 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
16 portion or portions of the information or item warrant protection, the Producing Party, to the extent
17 practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
19 to designate qualified information or items does not, standing alone, waive the Designating Party’s
20 right to secure protection under this Order for such material. Upon timely correction of a
21 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
22 in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
25 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
27 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
28 challenge a confidentiality designation by electing not to mount a challenge promptly after the

1 original designation is disclosed.

2 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
3 process by providing written notice of each designation it is challenging and describing the basis for
4 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
5 must recite that the challenge to confidentiality is being made in accordance with this specific
6 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith
7 and must begin the process by conferring directly (in voice to voice dialogue; other forms of
8 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
9 Challenging Party must explain the basis for its belief that the confidentiality designation was not
10 proper and must give the Designating Party an opportunity to review the designated material, to
11 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
12 chosen designation. A Challenging Party may proceed to the next stage of the challenge process
13 only if it has engaged in this meet and confer process first or establishes that the Designating Party
14 is unwilling to participate in the meet and confer process in a timely manner.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
16 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
17 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
18 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
19 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
20 competent declaration affirming that the movant has complied with the meet and confer
21 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
22 motion including the required declaration within 21 days (or 14 days, if applicable) shall
23 automatically waive the confidentiality designation for each challenged designation. In addition, the
24 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
25 good cause for doing so, including a challenge to the designation of a deposition transcript or any
26 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
27 competent declaration affirming that the movant has complied with the meet and confer
28 requirements imposed by the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the
2 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or
3 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to
4 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file
5 a motion to retain confidentiality as described above, all parties shall continue to afford the material
6 in question the level of protection to which it is entitled under the Producing Party’s designation
7 until the court rules on the challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order. When
13 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13
14 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving
15 Party at a location and in a secure manner that ensures that access is limited to the persons
16 authorized under this Order.

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
19 disclose any information or item designated “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
21 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
22 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
23 Bound” that is attached hereto as Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
26 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
3 to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
6 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
7 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
10 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
11 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
12 bound by the court reporter and may not be disclosed to anyone except as permitted under this
13 Stipulated Protective Order.

14 (g) the author or recipient of a document containing the information or a custodian
15 or other person who otherwise possessed or knew the information.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation that compels
19 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
20 must:

21 (a) promptly notify in writing the Designating Party. Such notification shall include
22 a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to issue in
24 the other litigation that some or all of the material covered by the subpoena or order is subject to
25 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
27 Designating Party whose Protected Material may be affected.

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1 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court
2 order shall not produce any information designated in this action as “CONFIDENTIAL” before a
3 determination by the court from which the subpoena or order issued, unless the Party has obtained
4 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
5 seeking protection in that court of its confidential material – and nothing in these provisions should
6 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
7 directive from another court.

8 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
9 THIS LITIGATION

10 (a) The terms of this Order are applicable to information produced by a Non-Party in
11 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
12 connection with this litigation is protected by the remedies and relief provided by this Order.
13 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
14 protections.

15 (b) In the event that a Party is required, by a valid discovery request, to produce a
16 Non-Party’s confidential information in its possession, and the Party is subject to an agreement with
17 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-Party that
19 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
21 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
22 the information requested; and

23 (3) make the information requested available for inspection by the Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from this court within
25 14 days of receiving the notice and accompanying information, the Receiving Party may produce
26 the Non-Party’s confidential information responsive to the discovery request. If the Non-Party
27 timely seeks a protective order, the Receiving Party shall not produce any information in its
28 possession or control that is subject to the confidentiality agreement with the Non-Party before a

1 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
2 burden and expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
5 any person or in any circumstance not authorized under this Stipulated Protective Order, the
6 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
7 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
8 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
9 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
10 Be Bound” that is attached hereto as Exhibit A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
16 is not intended to modify whatever procedure may be established in an e-discovery order that
17 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
18 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
19 information covered by the attorney-client privilege or work product protection, the parties may
20 incorporate their agreement in the stipulated protective order submitted to the court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to disclosing or
26 producing any information or item on any ground not addressed in this Stipulated Protective Order.
27 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
28 material covered by this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the Designating
2 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
3 in the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
5 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
6 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
7 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
8 to protection under the law. If a Receiving Party's request to file Protected Material under seal
9 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
10 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
11 the court.

12 13. FINAL DISPOSITION

13 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
14 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
15 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
16 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
17 the Protected Material is returned or destroyed, the Receiving Party must submit a written
18 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
19 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
20 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
21 abstracts, compilations, summaries or any other format reproducing or capturing any of the
22 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
23 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
24 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
25 and expert work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this Protective Order as set
27 forth in Section 4 (DURATION).
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: June 19, 2015

BRYANT WHITTEN LLP

By: _____

Shelley Bryant
Attorney for Plaintiffs,
FAITH SIDLOW and RICHARD NITIDO

Dated: June 18, 2015

JACKSON LEWIS P.C.

By: _____

Dylan Carp
Angel R. Sevilla
Attorneys for Defendant
NEXSTAR BROADCASTING, INC.

1 **ORDER**

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3 Pursuant to the stipulation of the parties, IT IS SO ORDERED that

- 4 1. The stipulated protective order is approved;
- 5 2. The parties are advised that pursuant to the Local Rules of the United States
6 District Court, Eastern District of California, any documents which are to be
7 filed under seal will require a written request which complies with Local
8 Rule 141; and
- 9 3. The party making a request to file documents under seal shall be required to
10 show good cause for documents attached to a nondispositive motion or
11 compelling reasons for documents attached to a dispositive motion. Pinto v.
12 Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

13 IT IS SO ORDERED.

14 Dated: June 19, 2015

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16 UNITED STATES MAGISTRATE JUDGE