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 11 BRAVE NEW FILMS 501(c)(4)

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION
 15

16 BRAVE NEW FILMS 501(C)(4),

17 Plaintiff,

18 v.

19 MICHAEL WEINER aka MICHAEL SAVAGE,
 and ORIGINAL TALK RADIO NETWORK,
 20 INC.,

21 Defendants.

No. CV 08-04703 SI

**JOINT STIPULATION AND
 PROTECTIVE ORDER RE
 CONFIDENTIAL INFORMATION**

22 Plaintiff Brave New Films 501(c)(4) and Defendant Original Talk Radio

23 Network, Inc. by and through their respective counsel of record, hereby STIPULATE AND

24 AGREE that the Court may enter the following order:

25 **1. PURPOSES AND LIMITATIONS**

26 Disclosure and discovery activity in this action are likely to involve production
 27 of confidential, proprietary, or private information for which special protection from public
 28 disclosure and from use for any purpose other than prosecuting this litigation would be

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JOINT STIPULATION AND PROTECTIVE ORDER RE CONFIDENTIAL INFORMATION

1 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
2 following Stipulated Protective Order. The parties acknowledge that this Order does not
3 confer blanket protections on all disclosures or responses to discovery and that the protection
4 it affords extends only to the limited information or items that are entitled under the applicable
5 legal principles to treatment as confidential. The parties further acknowledge, as set forth in
6 Section 10, below, that this Stipulated Protective Order creates no entitlement to file
7 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must
8 be followed and reflects the standards that will be applied when a party seeks permission from
9 the court to file material under seal.

10 **2. DEFINITIONS**

11 2.1 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and outside counsel (and their support staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless of
14 the medium or manner generated, stored, or maintained (including, among other things,
15 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
16 responses to discovery in this matter.

17 2.3 “Confidential” Information or Items: information (regardless of how
18 generated, stored or maintained) or tangible things that qualify for protection under standards
19 developed under F. R. Civ. P. 26(c).

20 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
21 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
22 nonparty would create a substantial risk of serious injury that could not be avoided by less
23 restrictive means.

24 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 2.6 Producing Party: a Party or non-party that produces Disclosure or
27 Discovery Material in this action.

28

1 2.7 Designating Party: a Party or non-party that designates information or
2 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
3 Confidential – Attorneys’ Eyes Only.”

4 2.8 Protected Material: any Disclosure or Discovery Material that is
5 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

6 2.9 Outside Counsel: attorneys who are not employees of a Party but who
7 are attorneys of record retained to represent or advise a Party in this action.

8 2.10 In-House Counsel: attorneys who are employees of a Party.

9 2.11 Counsel (without qualifier): Outside Counsel and In-House Counsel (as
10 well as their support staffs).

11 2.12 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
13 witness or as a consultant in this action and who is not a past or a current employee of a Party
14 or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become
15 an employee of a Party or a competitor of a Party’s. This definition includes a professional
16 jury or trial consultant retained in connection with this litigation.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
19 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
20 subcontractors.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected
23 Material (as defined above), but also any information copied or extracted therefrom, as well as
24 all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
25 presentations by parties or counsel to or in court or in other settings that might reveal
26 Protected Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
4 writing or a court order otherwise directs.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or non-party that designates information or items for protection under this Order
8 must take care to limit any such designation to specific material that qualifies under the
9 appropriate standards. A Designating Party must take care to designate for protection only
10 those parts of material, documents, items, or oral or written communications that qualify – so
11 that other portions of the material, documents, items, or communications for which protection
12 is not warranted are not swept unjustifiably within the ambit of this Order.

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

17 If it comes to a Party’s or a non-party’s attention that information or items that it
18 designated for protection do not qualify for protection at all, or do not qualify for the level of
19 protection initially asserted, that Party or non-party must promptly notify all other parties that
20 it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in

22 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
23 ordered, material that qualifies for protection under this Order must be clearly so designated
24 before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the

1 top of each page that contains protected material. If only a portion or portions of the material
2 on a page qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
4 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

6 A Party or non-party that makes original documents or materials available for
7 inspection need not designate them for protection until after the inspecting Party has indicated
8 which material it would like copied and produced. During the inspection and before the
9 designation, all of the material made available for inspection shall be deemed “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
11 the documents it wants copied and produced, the Producing Party must determine which
12 documents, or portions thereof, qualify for protection under this Order, then, before producing
13 the specified documents, the Producing Party must affix the appropriate legend
14 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on
15 each page that contains Protected Material. If only a portion or portions of the material on a
16 page qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
18 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

20 (b) for testimony given in deposition or in other pretrial or trial proceedings,
21 that the Party or non-party offering or sponsoring the testimony identify on the record, before
22 the close of the deposition, hearing, or other proceeding, all protected testimony, and further
23 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
25 testimony that is entitled to protection, and when it appears that substantial portions of the
26 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
27 testimony may invoke on the record (before the deposition or proceeding is concluded) a right
28 to have up to 20 days to identify the specific portions of the testimony as to which protection

1 is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the
3 testimony that are appropriately designated for protection within the 20 days shall be covered
4 by the provisions of this Stipulated Protective Order.

5 Transcript pages containing Protected Material must be separately bound by the
6 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
8 nonparty offering or sponsoring the witness or presenting the testimony.

9 (c) for information produced in some form other than documentary, and for
10 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
11 the container or containers in which the information or item is stored the legend
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If
13 only portions of the information or item warrant protection, the Producing Party, to the extent
14 practicable, shall identify the protected portions, specifying whether they qualify as
15 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
19 Designating Party’s right to secure protection under this Order for such material. If material is
20 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party,
22 on timely notification of the designation, must make reasonable efforts to assure that the
23 material is treated in accordance with the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
26 Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,
27 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a
28

1 Party does not waive its right to challenge a confidentiality designation by electing not to
2 mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
4 Designating Party’s confidentiality designation must do so in good faith and must begin the
5 process by conferring directly (in voice to voice dialogue; other forms of communication are
6 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
7 must explain the basis for its belief that the confidentiality designation was not proper and
8 must give the Designating Party an opportunity to review the designated material, to
9 reconsider the circumstances, and, if no change in designation is offered, to explain the basis
10 for the chosen designation. A challenging Party may proceed to the next stage of the
11 challenge process only if it has engaged in this meet and confer process first.

12 6.3 Judicial Intervention. A Party that elects to press a challenge to a
13 confidentiality designation after considering the justification offered by the Designating Party
14 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local
15 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis
16 for the challenge. Each such motion must be accompanied by a competent declaration that
17 affirms that the movant has complied with the meet and confer requirements imposed in the
18 preceding paragraph and that sets forth with specificity the justification for the confidentiality
19 designation that was given by the Designating Party in the meet and confer dialogue.

20 The burden of persuasion in any such challenge proceeding shall be on the
21 Designating Party. Until the court rules on the challenge, all parties shall continue to afford
22 the material in question the level of protection to which it is entitled under the Producing
23 Party’s designation.

24 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a non-party in connection with this case only for
27 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
28 disclosed only to the categories of persons and under the conditions described in this Order.

1 When the litigation has been terminated, a Receiving Party must comply with the provisions of
2 section 11, below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons authorized
5 under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
8 Party may disclose any information or item designated CONFIDENTIAL only to:

9 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
10 employees of said Outside Counsel to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed this “Agreement to Be Bound by
12 Protective Order” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including In-House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
15 have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

16 (c) experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to
18 Be Bound by Protective Order” (Exhibit A);

19 (d) the Court and its personnel;

20 (e) court reporters, their staffs, and professional vendors to whom disclosure
21 is reasonably necessary for this litigation;

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
24 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
25 Protected Material must be separately bound by the court reporter and may not be disclosed to
26 anyone except as permitted under this Stipulated Protective Order;

27 (g) the author of the document or the original source of the information.
28

1 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing
3 by the Designating Party, a Receiving Party may disclose any information or item designated
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

5 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
6 employees of said Counsel to whom it is reasonably necessary to disclose the information for
7 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
8 attached hereto as Exhibit A;

9 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
10 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective
11 Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have
12 been followed;

13 (c) the Court and its personnel;

14 (d) court reporters, their staffs, and professional vendors to whom disclosure
15 is reasonably necessary for this litigation; and

16 (e) the author of the document or the original source of the information.

17 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” Information or Items to “Experts.”

19 (a) Unless otherwise ordered by the court or agreed in writing by the
20 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any
21 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” first must identify to the Designating Party the full name of the Expert and
23 provide a current copy of the Expert’s curriculum vitae (“CV”) and a copy of the Agreement to
24 Be Bound by Protective Order” (Exhibit A) signed by the Expert.

25 (b) A Party that makes a request and provides the information specified in
26 the preceding paragraph must refrain from providing such material to the Expert for a period
27 of five (5) business days to permit the Designating Party to make a written objection to the
28 disclosure. Any such objection must set forth in detail the grounds on which it is based. If the

1 Designating Party fails to make a written objection within five business days, the Receiving
2 Party may disclose “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
3 information or item to its Expert.

4 (c) A Party that receives a timely written objection must meet and confer
5 with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter
6 by agreement. If no agreement is reached, the Party opposing disclosure to the Expert may
7 file a motion, within three business days after the conclusion of the meet and confer, as
8 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
9 seeking an order from the court barring such disclosure. Any such motion must describe the
10 circumstances with specificity, set forth in detail the reasons for which the disclosure to the
11 Expert is not reasonably necessary, assess the risk of harm that the disclosure would entail and
12 suggest any additional means that might be used to reduce that risk. In addition, any such
13 motion must be accompanied by a competent declaration in which the movant describes the
14 parties’ efforts to resolve the matter by agreement (i.e., the extent and the content of the meet
15 and confer discussions) and sets forth the reasons advanced by the Designating Party for its
16 refusal to approve the disclosure.

17 In any such proceeding the Party opposing disclosure to the Expert shall bear
18 the burden of proving that the risk of harm that the disclosure would entail (under the
19 safeguards proposed) outweighs the Receiving Party’s need to disclose the Protected Material
20 to its Expert.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a Receiving Party is served with a subpoena or an order issued in other
24 litigation that would compel disclosure of any information or items designated in this action as
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
26 Receiving Party must so notify the Designating Party, in writing (email is permissible)
27 immediately and in no event more than three court days after receiving the subpoena or order.
28 Such notification must include a copy of the subpoena or court order.

1 The Receiving Party also must immediately inform in writing the Party who
2 caused the subpoena or order to issue in the other litigation that some or all the material
3 covered by the subpoena or order is the subject of this Protective Order. In addition, the
4 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party
5 in the other action that caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the
7 existence of this Protective Order and to afford the Designating Party in this case an
8 opportunity to try to protect its confidentiality interests in the court from which the subpoena
9 or order issued. The Designating Party shall bear the burdens and the expenses of seeking
10 protection in that court of its confidential material – and nothing in these provisions should be
11 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
12 directive from another court.

13 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

21 **10. FILING PROTECTED MATERIAL**

22 Without written permission from the Designating Party or a court order secured
23 after appropriate notice to all interested persons, a Party may not file in the public record in
24 this action any Protected Material. A Party that seeks to file under seal any Protected Material
25 must comply with Civil Local Rule 79-5.

26 **11. FINAL DISPOSITION**

27 Unless otherwise ordered or agreed in writing by the Producing Party, within
28 sixty (60) days after the final termination of this action, each Receiving Party must destroy or

1 return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
2 Material” includes all copies, abstracts, compilations, summaries or any other form of
3 reproducing or capturing any of the Protected Material. With permission in writing from the
4 Designating Party, the Receiving Party may destroy some or all of the Protected Material
5 instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving
6 Party must submit a written certification to the Producing Party (and, if not the same person or
7 entity, to the Designating Party) by the sixty day deadline that identifies (by category, where
8 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
9 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms
10 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,
11 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts,
12 legal memoranda, correspondence or attorney work product, even if such materials contain
13 Protected Material. Any such archival copies that contain or constitute Protected Material
14 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

15 **12. MISCELLANEOUS**

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to disclosing or
20 producing any information or item on any ground not addressed in this Stipulated Protective
21 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any
22 of the material covered by this Protective Order.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of Brave New Films 501(c)(4) v. Michael Weiner, et al., Case No. 07-4703 SI. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

