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Attorneys for Defendants  
 19 Michael Weiner aka Michael Savage, and  
 20 Original Talk Radio Network, Inc.

21 UNITED STATES DISTRICT COURT

22 NORTHERN DISTRICT OF CALIFORNIA

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

24 Plaintiff,

25 v.

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

27 Defendants.  
 28

No. CV 08-04703 SI

**SUPPLEMENTAL JOINT CASE  
 MANAGEMENT STATEMENT**

Civil L.R. 16-10(d)

Date: June 12, 2009

Time: 3:00 p.m.

Place: Courtroom 10, 19th Floor

Judge: Honorable Susan Illston

1 Pursuant to Civil Local Rule 16-10(d), Plaintiff Brave New Films 501(c)(4)  
 2 (“Brave New Films”), and Defendants The Original Talk Radio Network, Inc. (“OTRN”) and  
 3 Michael Weiner aka Michael Savage (“Savage”) (collectively “the Parties”) jointly submit the  
 4 following Supplemental Joint Case Management Statement in advance of the June 12, 2009 Case  
 5 Management Conference.

## 6 DESCRIPTION OF SUBSEQUENT DEVELOPMENTS

7 An initial Case Management Conference was held on January 23, 2009.  
 8 Subsequently, the Court ordered a further Case Management Conference for April 3, 2009. In  
 9 light of the hearing for Savage’s Motion to Dismiss being continued to April 17, 2009, the  
 10 Parties stipulated to continue the April 3 Conference to April 17. The Parties filed a  
 11 Supplemental Joint Case Management Statement on April 7, 2009. Docket No. 60. The Court  
 12 denied Savage’s Motion to Dismiss on April 15, 2009 and at that time continued the April 17  
 13 Case Management Conference to June 12, 2009.

14 **1. Since the last case management statement was filed by the Parties, the**  
 15 **following progress or changes have occurred:**

### 16 A. Pending Motions

17 The only motion currently on calendar is Brave New Films’ Motion for Partial  
 18 Summary Judgment. Opposition and Reply briefs have been filed and served and the hearing is  
 19 scheduled for June 12, 2009. *See* Docket Nos. 83, 87 and 89.

20 OTRN and Savage have filed Motions for Summary Judgment (“Motions”).  
 21 Docket Nos. 43 and 74. In light of comments concerning continuance of the Motions in Judge  
 22 Illston’s May 18, 2009 Order denying OTRN’s Motion For Supplemental Protective Order, the  
 23 Parties stipulated to take the Motions off calendar and reset them at a later date pursuant to all  
 24 applicable rules. Docket Nos. 81 and 82.

### 25 B. Anticipated Motions

26 To date, Brave New Films has only moved for summary judgment on its  
 27 declaratory relief claim. It may file a dispositive motion on its 17 U.S.C. § 512(f)  
 28 misrepresentation claim once adequate discovery has occurred. Brave New Films also

1 anticipates that motions to compel may be necessary. As implied above, OTRN and Savage  
2 anticipate resetting the Motions.

### 3 C. Discovery

4 On February 10, 2009, Brave New Films served its first set of Requests for  
5 Admissions, Requests for Production of Documents, and Interrogatories on both Defendants.

6 The Parties stipulated to a general protective order on March 30, 2009. Docket  
7 No. 57. OTRN subsequently filed a Motion for Supplemental Protective Order on April 10,  
8 2009, which Savage joined on May 8, 2009. Docket Nos. 63 and 78. The Court denied  
9 Defendants' Motion for Supplemental Protective Order on May 18, 2009, subject to certain  
10 limitations (the "Court's SPO Order") and ordered responsive documents to be produced in  
11 accordance with the Court's SPO Order within fourteen days of the Order. Docket No. 81.

12 Following the Court's SPO Order, the Parties met and conferred on May 19, 2009  
13 to discuss Brave New Films' outstanding discovery issues. The Parties had met and conferred on  
14 March 17 and April 24 for the same purpose. On May 21, 2009, Brave New Films' counsel  
15 wrote OTRN and Savage detailing all the outstanding discovery issues and requesting complete  
16 and adequate supplemental responses no later than June 1, 2009, the date set by the Court for  
17 response to Request For Production No. 1.

18 On June 1, 2009, counsel for Savage called and advised Brave New Films that  
19 Defendants would be sending documents by Federal Express that day for a June 2, 2009  
20 delivery. On June 2, 2009, Brave New Films received a document, the document that  
21 Defendants felt was the principal document at issue in the motion for a supplemental protective  
22 order, along with a letter from counsel for OTRN stating that the full document production was  
23 delayed, at least in part, because Mr. Severaid's mother had been hospitalized, but that additional  
24 documents were forthcoming. Counsel also advised that they would be addressing Brave New  
25 Films' May 21 letter regarding outstanding discovery issues after the additional documents were  
26 sent pursuant to the Court's SPO Order.

27 Defendants subsequently sent three additional packages of documents via Federal  
28 Express to Brave New Films, producing, in the aggregate, substantial numbers of documents.

1 Defendants represent that additional documents will be sent by Federal Express today, the date  
2 of this filing. Defendants further advise that their responses to the May 21 letter will be  
3 impacted by the extent of the documents produced pursuant to the Court's SPO Order.

4 Brave New Films requested privilege logs from Defendants on April 24, 28 and  
5 30, 2009. Defendants responded on April 30, 2009, that they would provide them the following  
6 week. In its May 21, 2009 letter, Brave New Films requested that detailed privilege logs be  
7 produced by June 1, 2009. Defendants note that they have elected to waive privilege as to  
8 various documents in the course of producing documents in response to the Court's SPO Order  
9 and that upon completing any further responses in response to Brave New Films' May 21, 2009  
10 letter, Defendants will produce privilege logs with respect to any documents as to which they  
11 still claim privilege.

12 Brave New Films has requested deposition dates for Savage, Shapiro, Severaid  
13 and Glahn. Shapiro has provided Brave New Films with dates. Severaid advised that dates for  
14 himself and Glahn are forthcoming. Brave New Films also intends to issue deposition subpoenas  
15 to one or more third parties.

16 Defendants, at present, continue to reserve at least the majority of their discovery  
17 until their dispositive motions are heard and determined, but may commence some discovery  
18 before that time given additional time will pass prior to that point. Brave New Films disagrees  
19 with this approach. The Parties have scheduled a meet and confer for June 10, 2009 to further  
20 discuss discovery issues.

#### 21 **D. Trial**

22 Because the Court's ruling on the pending motions may affect the disposition of  
23 the case, the Parties propose postponing the setting of binding dates for trial and related pretrial  
24 dates until the next Case Management Conference.

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1                   **2. The Parties jointly request the Court to make the following**  
2 **Supplemental Case Management Order:**

3                   The Parties request a further Case Management Conference be held in eight to ten  
4 weeks.

5  
6 Dated: June 5, 2009

By:                   /s/ William F. Abrams                    
                  William F. Abrams  
                  Attorney for Plaintiff  
                  Brave New Films 501(c)(4)

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8  
9 Dated: June 5, 2009

By:                   /s/ Benjamin Aaron Shapiro                    
                  Benjamin Aaron Shapiro  
                  Attorney for Defendant  
                  The Original Talk Radio Network, Inc. and  
                  Defendant Michael Weiner

10  
11  
12 Dated: June 5, 2009

By:                   /s/ Ronald H. Severaid                    
                  Ronald H. Severaid  
                  Attorney for Defendant  
                  The Original Talk Radio Network, Inc.

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