

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

WEST VIRGINIA RADIO CORPORATION,

Plaintiff,

CIVIL ACTION NO. 13-C-468

HON. THOMAS C. EVANS, III

v.

WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., WEST VIRGINIA MEDIA
HOLDINGS, LLC, ANDREW A. PAYNE, III,
DAVID B. ALVAREZ, ALBERT BRAY CARY, JR.,
RALPH BALLARD, RICHARD BALLARD,
OLIVER LUCK, JAMES P. CLEMENTS, and
IMG COLLEGE, LLC,

Defendants.

STIPULATED E-DISCOVERY PROTOCOL ORDER

In accordance with Rule 29 of the West Virginia Rules of Civil Procedure, Plaintiff West Virginia Radio Corporation ("Plaintiff" or "WV Radio") and Defendants West Virginia University Board of Governors ("WVU BOG"), West Virginia University Foundation, Inc. (the "Foundation"), Andrew A. Payne, III ("Payne"), David B. Alvarez ("Alvarez"), Albert Bray Cary, Jr. ("Cary"), West Virginia Media Holdings, LLC ("WV Media"), Ralph Ballard, Richard Ballard, Oliver Luck ("Luck"), James P. Clements ("Clements") and IMG College, LLC ("IMG") (each, a "Party," and collectively, the "Parties"), by and through the undersigned counsel, having expressed their mutual intent to seek the discovery of electronically stored information ("ESI"), hereby stipulate and agree that the following terms and conditions shall govern the search, retrieval and production of ESI in this matter (hereinafter, the "Protocol").

IT IS HEREBY ORDERED:

A. General Provisions

1. The Parties will identify, collect, review for responsiveness, and produce as required pursuant to this Protocol certain Electronically Stored Information ("ESI") that includes, but is not limited to, electronically stored documents, images, diagrams, e-mails, spreadsheets, databases, and attachments to any of the foregoing, which may be stored on electronic media.

2. Each party has served or will serve initial document requests pursuant to Rule 34 of the West Virginia Rules of Civil Procedure on the other party as well as interrogatories served pursuant to Rule 33 of the West Virginia Rules of Civil Procedure to the extent that a Party intends to respond to such interrogatories through the production of documents and/or ESI ("Document Requests"). For purposes of this Agreement, the party serving Document Requests is known as the "Requesting Party" and the party producing documents is known as the "Producing Party."

3. This Protocol will in no way limit each party's responsibility to search for physical paper files or tangible items in their possession, custody, or control that may be responsive or that may contain information responsive to Document Requests and any future discovery requests, regardless of who possesses those files or items. Furthermore, this Protocol will in no way extend or alter the time for responding in writing to Document Requests or for producing physical paper files or tangible items in response to Document Requests.

4. Nothing in this Protocol alters, amends, modifies, supersedes, or replaces any party's rights or obligations to seek a protective order or cost-sharing under Rule 26 of the West Virginia Rules of Civil Procedure. Nothing in this Protocol shall be construed to waive any

party's rights to assert any form of privilege or other discovery objection permitted by law. Nothing in this Protocol alters or replaces any provision of any Protective Order in this case.

5. The Parties may alter this Protocol by mutual agreement in writing between the Parties or by Court approval. Any Party may choose to opt out of this Protocol. If a Party opts out of this Protocol, that Party shall produce all non-privileged responsive documents to which no other objection is made, including Electronically Stored Information, in its possession, custody, or control and shall not benefit from the limitations of discovery stated herein.

B. Custodians

6. For the purpose of containing the costs of electronic discovery, the Parties hereby agree, as set forth herein, to limit the number of custodians whose ESI must be identified, collected, and reviewed for responsiveness (as well as for confidentiality and privilege) in response to Document Requests. Compliance with the terms of this Protocol eliminates a Party's obligation to identify, collect, apply search terms to, and review the ESI of custodians other than those identified herein (*i.e.* compliance eliminates any further obligation, absent court Order or agreement of the Parties, to collect all potentially discoverable ESI of other individuals who have or are likely to have discoverable information).

7. Upon receipt of Document Requests, the Producing Party shall conduct a reasonable investigation to determine which custodians under its control are most likely to have information responsive to the Document Requests ("Custodians"). For purposes of this Protocol, and all paragraphs contained herein, Custodians include individuals, such as current and former board members, directors, officers, employees, volunteers, agents and/or other representatives, for whom responsive ESI is housed on hardware or contained within software that is owned or controlled by a Responding Party, and ESI repositories housed on hardware or contained within

software owned or controlled by a Responding Party if the repositories have no designated individual custodian but otherwise contain responsive ESI. The Responding Party shall not be responsible for seeking or searching ESI that is maintained on hardware or contained within software that it does not own or control.

8. Within seven (7) days¹ from either the date of this Protocol, the lifting of any stay of discovery, or upon its receipt of Document Requests, whichever date is later, each Producing Party shall provide each Requesting Party with (i) a list of the Custodians that the Producing Party reasonably determines in good faith are most likely to possess, control, or have custody of any non-privileged and non-work product ESI responsive to the Document Requests along with each Custodian's relationship to or title(s) within the Producing Party and a short description of the Custodian's relevance to the facts and circumstances alleged in the Complaint. To satisfy its obligations pursuant to section (i) of this paragraph, the West Virginia University Board of Governors shall identify twenty-five (25) Custodians, and WVRC and each remaining defendant shall identify either twenty (20) Custodians or all of its Custodians, whichever is fewer, to serve as that party's Custodians; and (ii) a list of key Custodians ("Initial Custodians") that the Producing Party reasonably determines in good faith are most likely to possess, control, or have custody of non-privileged and non-work product ESI responsive to the Document Requests. To satisfy its obligations pursuant to section (ii) of this paragraph, the West Virginia University Board of Governors shall identify twenty (20) Initial Custodians, and WVRC and each remaining defendant shall identify either ten (10) Custodians or all of its Custodians, whichever is fewer, to serve as that party's Initial Custodians. Subject to Paragraph 5 above and the following

¹ If the last day of any period established by this Protocol is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. For purposes of computation of time, Rule 6(e) of the West Virginia Rules of Civil Procedure shall not apply. "Receipt" may include any customary form of physical or electronic delivery to counsel for the Parties,

paragraphs of this Section B, the Producing Party may limit its initial search of ESI to the Initial Custodians.

9. At its sole discretion, and no later than five (5) days after receipt of the information about the Custodians and the proposed list of Initial Custodians, the Requesting Party may substitute any other potential Custodian's name ("Substitute Custodian(s)") for any name of an Initial Custodian by serving a list of substitutions on the Producing Party, in which case the Producing Party will be obligated to search the ESI of the Substitute Custodians in place of the Initial Custodian who was proposed and rejected unless the Producing Party believes in good faith that a search of that Substitute Custodian's ESI will be unduly burdensome, unlikely to lead to the discovery of relevant information, or otherwise inappropriate under the West Virginia Rules of Civil Procedure. The Producing Party must notify the Requesting Party of any such objection within five (5) days of receipt of the proposed Substitute Custodian(s), and the Parties shall thereafter confer in good faith in an effort to resolve the objection. If the objection is not resolved within five (5) days from the receipt of the objection, then the Producing Party has six (6) additional days to file a Motion with the Court and shall bear the burden to prove why the ESI of the Substitute Custodian(s) should not be searched. If no such Motion is filed, then the Producing Party must search ESI of the Substitute Custodian(s). If the Requesting Party raises an objection or files a Motion pursuant to this paragraph, the Producing Party is nonetheless obligated to proceed with identifying, collecting, reviewing for responsiveness and, if appropriate, producing responsive ESI of any agreed-upon Initial Custodians and Substitute Custodian(s) pursuant to this Protocol.

10. No later than fourteen (14) days from receipt of the last ESI of the Initial Custodians and/or Substitute Custodian(s) produced in response to Discovery Requests, each

Requesting Party may further designate four (4) more additional Custodians ("Additional Custodians") pursuant to this Protocol. The Producing Party will be obligated to search these Additional Custodians in the same manner as it searched the Initial Custodians unless the Producing Party believes in good faith that a search of that Additional Custodian's ESI will be unduly burdensome, unlikely to lead to the discovery of relevant information, or otherwise inappropriate under the West Virginia Rules of Civil Procedure. The Producing Party must notify the Requesting Party of any such objection within three (3) days of receipt of the proposed Additional Custodian(s), and the Parties shall thereafter confer in good faith in an effort to resolve the objection. If the objection is not resolved within five (5) days from the receipt of the objection, then the Producing Party has six (6) additional days to file a Motion with the Court and shall bear the burden to prove why the ESI of the Additional Custodian(s) should not be searched. If no such Motion is filed, then the Producing Party must search ESI of the Additional Custodian(s). If the Requesting Party raises an objection or files a Motion pursuant to this paragraph, the Producing Party is nonetheless obligated to proceed with identifying, collecting, reviewing for responsiveness and, if appropriate, producing responsive ESI of any agreed-upon Additional Custodian(s) pursuant to this Protocol.

11. Any Requesting Party wishing to require the Producing Party to search for ESI of any number of Custodians beyond the above limits for Initial Custodians, Substitute Custodians, and/or Additional Custodians shall either obtain the agreement of the Producing Party or an Order from this Court for good cause shown.

12. Any search under this section will necessarily include, without limitation, any and all email of a Custodian, personal and network folders, network and non-network drives, and files or file locations that an Initial Custodian, Substitute Custodian, and/or Additional Custodian

may share with other non-identified Custodians, so long as said email, folders, drives, and files are housed on hardware or contained within software that is owned or controlled by the Producing Party. The fact that a file was created or edited by an non-identified custodian will not preclude its production if it is found in the possession (constructive or otherwise) of an Initial Custodian, Substitute Custodian, or Additional Custodian, or if it is found in a repository that a custodian shares with one or more non-identified Custodians.

C. ESI Repositories

13. Within seven (7) days from the date of this Protocol, each Party shall prepare and maintain a list, map or inventory ("Map") of specific ESI repositories, including, without limitation, email servers, document servers, smartphones, internal storage drives and external storage devices and media, that such Party believes may contain ESI relevant to this litigation (the "ESI Repositories"), so long as said ESI Repositories are housed on hardware or contained within software that is owned or controlled by the Producing Party. The list, map or inventory shall include the following information:

- a. The computer systems used by any of the Party's employees or representatives, including hardware, operating systems, media devices, software, storage locations for backup data and networking and connections used by the Custodians from remote locations;
- b. Computer systems used by the Custodians outside the Party's network, such as laptops, tablets, and smart phones;
- c. The Party's email system, including the location of the Custodians' email files;
- d. The Party's backup and document retention processes and schedules, as well as contact information for individuals responsible for each step;
- e. The Party's corporate policies regarding e-mail and internet usage, monitoring and document retention and litigation hold policies;

- f. Any third parties that have modified or have access to modify any Custodians' data housed on hardware or contained within software that is owned or controlled by the Producing Party; and
- g. A person knowledgeable about the information set forth in Paragraph 12(a)-(f), above.

14. The Parties agree that the Map of ESI Repositories is attorney work product and shall not be discoverable or admissible by any Party. However, should a dispute arise between any Producing Party and any Requesting Party over the production of ESI that cannot be resolved without Court intervention, the Court may request, and the Producing Party must produce, the Map of ESI Repositories to the Court for *in camera* review as part of resolving the ESI dispute.

D. Search Terms

15. The Parties agree that search terms shall be used to identify the ESI of the Initial Custodians, Substitute Custodian(s), and Additional Custodians identified pursuant to Section B that is to be reviewed for responsiveness (as well as for confidentiality and privilege).

16. No later than seven (7) days after the later of receipt of any Document Request, the lifting of any stay of discovery, or the date this Protocol is entered by Order, each Producing Party shall propose to the Requesting Party the search terms/combinations² ("Initial Search Terms") that the Producing Party reasonably believes will uncover all information that is in the possession of the Initial Custodians and that is responsive to the Document Requests. The Requesting Party may, within five (5) days of receipt of the search terms, augment those Initial Search Terms with up to ten (10) additional search terms ("Additional Search Terms") it

² In developing the search terms/combinations, the * in the terms is a wildcard indicator in which all derivatives of the root word is captured in all ESI that contains the root word. The + in the terms is a symbol for the word "and" that is typically used in a Boolean search and will link words together to ensure that relevant/responsive documents are captured in all ESI containing the root word and any other word(s) contained in the parentheses following the + sign.

reasonably believes are necessary to uncover all information responsive to its Document Requests. Any Producing Party objecting to any Additional Search Term shall be required to conduct the search using the Additional Search Terms unless it obtains the agreement of the Requesting Party or an Order from the Court. In lieu of doing so, the Producing Party may seek agreement of the Requesting Party or an Order from the Court that the costs related to the Additional Search Terms be shared in whole or in part by the Requesting Party.

17. The Parties further agree that if search terms beyond the Additional Search Terms appear to be necessary to obtain discoverable information, the Parties will discuss the running of further search terms ("Supplemental Search Terms"). The Parties agree to work in good faith to negotiate and agree on appropriate Supplemental Search Terms, if any. To the extent the Parties reach agreement on or the Court enters an order requiring Supplemental Search Terms, if any, ESI containing one or more of these agreed upon Supplemental Search Terms will be captured, preserved, reviewed for responsiveness (as well as confidentiality and privilege) and produced, if appropriate, pursuant to this Protocol.

18. Notwithstanding the preceding paragraphs, nothing in this Protocol shall require any party to produce ESI not otherwise responsive to Document Requests simply because ESI was identified by the application of the Initial Search Terms, Additional Search Terms, or Supplemental Search Terms. However, a Producing Party may, at its election, produce ESI identified by the application of the Initial Search Terms, Additional Search Terms, or Supplemental Search Terms without a further review for responsiveness. With regard to ESI repositories identified as Custodians and to be searched pursuant to this Protocol, the parties agree to produce responsive ESI from those repository Custodians regardless of whether or not

responsive ESI may be identified by the application of Initial Search Terms, Additional Search Terms, or Supplemental Search Terms.

F. **Hit Count and Document Count Report**

19. In connection with identifying Custodians and identifying Initial Custodians and Initial Search Terms as described in above Sections B and D, respectively, each Producing Party shall prepare and maintain a hit and document count report (the "Hit and Count Report") that identifies the number of hits and documents identified by each Initial Search Term, segregated by each Custodian and Initial Custodian.

20. The Parties agree that the Hit and Count Report is attorney work product and shall not be discoverable or admissible by any Party. However, should a dispute arise between any Producing Party and any Requesting Party over the production of ESI that cannot be resolved without Court intervention, the Court may request, and the Producing Party must produce, the Hit and Count Report to the Court for *in camera* review as part of resolving the ESI dispute.

F. **Production**

21. Each Producing Party agrees to produce to the Requesting Party in a timely fashion any and all responsive, non-privileged or otherwise objectionable ESI, to begin, with respect to Initial Custodians, no later than nineteen (19) days after the Initial Custodians of ESI are first identified and, with respect to Substitute Custodians, no later than sixteen (16) days after the time for objecting to any named Substitute Custodian of ESI, assuming no objections are made to the Substitute Custodian(s). The production for Initial Custodians and Substitute Custodians is to be completed on a rolling basis within thirty-five (35) days of the date when such Initial Custodians are first identified, unless the Parties otherwise agree that additional time is necessary. Production of ESI for Additional Custodians shall begin no later than fourteen (14)

days after receipt of the identity of the Additional Custodians and shall be completed on a rolling basis within twenty-five (25) days of the date when such Additional Custodians are first identified, unless the Parties otherwise agree that additional time is necessary. This paragraph expressly contemplates a rolling production.

22. If after a Producing Party has fully searched all ESI associated with its custodians using the Additional Search Terms and Supplemental Search Terms, if any, and the majority of the data identified is largely irrelevant and unrelated to the Document Requests, and the review of such would be unduly burdensome and costly, the Producing Party shall so advise the Requesting Party. The Parties will then negotiate in good faith to further limit the identified ESI. The Producing Party retains the right to seek to require the Requesting Party to narrow the Additional Search Terms and/or Supplemental Search Terms in order to reduce the amount of data generated or to require the costs of review and production resulting from not narrowing the Additional Search Terms and/or Supplemental Search Terms to be shared.

23. The Parties will make reasonable efforts to de-duplicate ESI across all custodians.

24. The Parties will produce all ESI in Group IV compressed single-page TIFF image format, with associated Opticon and Ipro or Concordance load files, which shall include a .dat file for native documents and metadata, and a .opt file for images. The Parties will also produce full extracted text (as available) in document-level text files that are appropriately identified with the TIFF images, or for those documents that do not have extracted text, OCR will be produced. The Parties may make reasonable requests for documents, such as spreadsheets, databases, or text files larger than 500 pages in size, to be produced in native format. To the best of their ability and within reason, the Parties will exchange with their document productions the following fields of information or metadata, or substantially the equivalent fields or metadata,

within each such load file (as applicable to the type of document), and reserve the right to make reasonable requests for additional metadata or the production of native copies of ESI in the future:

- Production BegBates
- Production EndBates
- Attachment Range
- Custodian
- Sent Date
- Author or From
- Recipient or To
- Copyee (CC or BCC)
- Title or Email Subject
- Application Create Date
- Application Date Modified
- Confidentiality
- File Path for the native file
- File Path for the document-level text file

25. The Parties agree to exchange with their document productions information electronically identifying the confidentiality designation given to, and the custodians of, the ESI pursuant to any Protective Order entered in this case.

G. Disputes

26. The Parties shall attempt to resolve all of their disputes arising out of this Protocol promptly and without the need for Court intervention. Except as otherwise provided in this Protocol, a Party who has a dispute with another Party or Parties shall so inform the other Party (or Parties) promptly and in writing. If the Parties are unable to resolve the dispute within fourteen (14) days after receipt of such notice, the Party that has given notice of the dispute may, by letter (copying all counsel), motion, or request for a status conference, seek the Court's intervention or guidance.

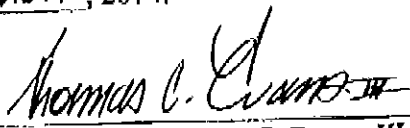
H. Costs

27. Notwithstanding anything to the contrary contained in this Protocol, no Producing Party shall be permitted to seek cost-shifting unless the costs at issue were incurred by that Party only after it (i) gave notice to the Requesting Party of its intent to seek cost-shifting and (ii) provided the Requesting Party with a reasonable opportunity to modify its demands or to utilize the dispute resolution procedures set forth in Paragraph 26 of this Protocol to resolve any dispute at issue.

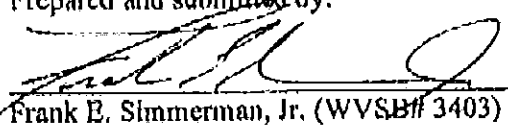
I. Subsequent Document Requests

28. Subject to any limitations imposed by the Court or any other applicable rule, the Parties may serve additional document requests and/or interrogatories ("Subsequent Document Requests") subsequent to the initial Documents Requests described in Paragraph 2 above. Unless the Parties mutually agree to dispense with these provisions, ESI shall be searched, collected, and produced in response to the Subsequent Document Requests in accordance with Sections A through H above except that the applicable deadlines related to identification of custodians, search terms, and production of ESI shall be negotiated by the Parties with consideration given to all the facts and circumstances then existing, including the scope of the Subsequent Document Requests and the timing of discovery. To effectuate the intent of this Protocol and to further contain the costs of discovery, any Subsequent Documents Requests served by a party shall not overlap in scope (whether by subject matter or date range) with initial Document Requests of that party.

Entered this 6th day of March, 2014.

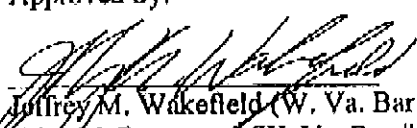

The Honorable Thomas C. Evans, III

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