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9 **UNITED STATES DISTRICT COURT**
 10 **EASTERN DISTRICT OF CALIFORNIA**

11 DUSTIN K. ADLER, an individual,)

Case No. 2:08-CV-01333-JAM-EFB

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Plaintiff,

STIPULATED PROTECTIVE ORDER

vs.

RELYNET, INC., a California Corporation,
 MICHAEL DICARLO, an individual,
 INTERNET BRANDS, INC., a Delaware
 Corporation, INTERMEDIA OUTDOORS,
 INC., a Delaware Corporation, VORTEX
 MEDIA GROUP, INC., a Delaware
 Corporation, and DOES 1 through 50,
 inclusively,

Defendants.

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 would be warranted. To permit the parties to produce such sensitive information while safeguarding its confidentiality, parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order, which shall apply to, and govern, all documents, things, discovery responses, and testimony designated by



1 the disclosing party in good faith as constituting or containing Confidential or Highly Confidential
2 Information or Items under the Protective Order

3 2. DEFINITIONS

4 2.1 Party: All parties to this action and anyone else acting upon their behalf or at
5 their direction or control, including, but not limited to, their officers, directors, employees,
6 consultants, retained experts, as well as House Counsel and their support staff.

7 2.2 Discovery Material: All items or information, regardless of the medium or
8 manner generated, stored, or maintained (including, but not limited to, testimony, transcripts, or
9 tangible things) that are produced or generated in disclosures or responses to discovery.

10 2.3 “Confidential” Information or Items: All information (regardless of how
11 generated, stored or maintained) or tangible things that qualify for protection under standards
12 developed under Federal Rule Of Civil Procedure 26(c).

13 2.4 “Highly Confidential Information or Items: All extremely sensitive
14 “Confidential Information or Items” whose disclosure to another Party or non-party would create a
15 substantial risk of serious injury that could not be avoided by less restrictive means.

16 2.5 Receiving Party: a Party that receives Discovery Material from a Producing
17 Party.

18 2.6 Producing Party: a Party or non-party that produces Discovery Material in
19 this action.

20 2.7 Designating Party: a Party or non-party that designates information or items
21 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
22 Confidential .”

23 2.8 Protected Material: any Discovery Material that is designated as
24 “Confidential” or as “Highly Confidential .”

25 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
26 retained to represent or advise a Party in this action.

27 2.10 House Counsel: attorneys who are employees of a Party.

28 2.11 Counsel (without qualifier): Outside Counsel and their support staffs.

1 2.12 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action and who is not a past or a current employee of a Party or of
4 a competitor of a Party's and who, at the time of retention, is not anticipated to become an
5 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
6 trial consultant retained in connection with this litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material but
13 also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or
14 compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in
15 court or in other settings that might reveal Protected Material.

16 4. DESIGNATING PROTECTED MATERIAL

17 4.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or non-party that designates information or items for protection under this Order
19 must take care to limit any such designation to specific material that qualifies under the appropriate
20 standards. A Designating Party must take care to designate for protection only those parts of
21 material, documents, items, or oral or written communications that qualify— so that other portions
22 of the material, documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
25 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
26 encumber or retard the ease development process, or to impose unnecessary expenses and burdens
27 on other parties), may expose the Designating Party to sanctions. No party will indiscriminately or
28 unreasonably stamp or maintain documents as Confidential or Highly Confidential, and in no event

1 will publicly available documents such as publications, patents, or file histories be stamped
2 Confidential or Highly Confidential.

3 This Protective Order shall not apply to information which (a) is public knowledge, (b) is
4 acquired in good faith and without subpoena from a third party having a right to disclose such
5 information, (c) was or is discovered independently by the receiving party, or (d) is possessed by the
6 receiving party prior to this action, unless that information was obtained under circumstances
7 requiring the receiving party to treat it as confidential.

8 If it comes to a Party's or a non-party's attention that information or items that it designated
9 for protection do not qualify for protection at all, or do not qualify for the level of protection initially
10 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
11 mistaken designation.

12 4.2 Manner and Timing of Designations. Except as otherwise provided in this
13 Order, or as otherwise stipulated or ordered, material that qualifies for protection under this Order
14 must be clearly so designated before the material is disclosed or produced. Designation in
15 conformity with this Order requires:

16 (a) For information in & documentary form (apart from transcripts of
17 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at the top or bottom of each page that
19 contains protected material.

20 A Party or non-party that makes original documents or materials available for inspection
21 need not designate them for protection until after the inspecting Party has indicated which material it
22 would like copied and produced. During the inspection and before the designation, all of the
23 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL." After the
24 inspecting Party has identified the documents it wants copied and produced, the Producing Party
25 must determine which documents, or portions thereof, qualify for protection under this Order, then,
26 before producing the specified documents, the Producing Party must affix the appropriate legend
27 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL") at the top or bottom of each page that
28 contains Protected Material.

1 (b) For testimony given in deposition or in other pretrial or trial
2 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,
3 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further
4 specify any portions of the testimony that qualify as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL.” When it is impractical to identify separately each portion of testimony that is
6 entitled to protection, and when it appears that substantial portions of the testimony may qualify for
7 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
8 record (before the deposition or proceeding is concluded) a right to have up to 21 days to identify the
9 specific portions of the testimony as to which protection is sought and to specify the level of
10 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”). Only those
11 portions of the testimony that are appropriately designated for protection within the 21 days shall be
12 covered by the provisions of this Stipulated Protective Order.

13 Transcript pages containing Protected Material must be separately bound by the court
14 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring the witness or
16 presenting the testimony.

17 (c) For information produced in some form other than documentary, and
18 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
19 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL.” If only portions of the information or item warrant protection, the
21 Producing Party, to the extent practicable, shall identify the protected portions, specifying whether
22 they qualify as “Confidential” or as “Highly Confidential.” In the event document or information
23 are produced in an electronic form, the Producing Party may affix the legend “CONFIDENTIAL” or
24 “HIGHLY CONFIDENTIAL” to the top or bottom of each page electronically, or, if that method is
25 impractical or unreasonable under the circumstances, to the disk, drive, or other medium on which
26 the electronic documents or information are stored.

27 4.3 Inadvertent Failures to Designate. Inadvertent failure of counsel to
28 designate or mark any document, thing, or testimony as Confidential or Highly Confidential

1 Information as provided above shall not preclude the disclosing party from thereafter in good faith
2 making such a designation and requesting the receiving party to so mark and treat such documents
3 and things so designated. The receiving party, however, shall incur no liability for disclosures made
4 prior to notice of such designations.

5 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 5.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
7 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
8 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
9 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
10 after the original designation is disclosed.

11 5.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
12 Party's confidentiality designation must do so in good faith and must begin the process by
13 conferring in writing with counsel for the Designating Party. In conferring, the challenging Party
14 must explain the basis for its belief that the confidentiality designation was not proper and must
15 give the Designating Party an opportunity to review the designated material, to reconsider the
16 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
17 designation. A challenging Party may proceed to the next stage of the challenge process only if it
18 has engaged in this meet and confer process first.

19 5.3 Judicial Intervention. A Party that elects to press a challenge to a
20 confidentiality designation after considering the justification offered by the Designating Party may
21 file and serve a motion that identifies the challenged material and sets forth in detail the basis for the
22 challenge. Each such motion must be accompanied by a competent declaration that affirms that the
23 movant has complied with the meet and confer requirements imposed in the preceding paragraph and
24 that sets forth with specificity the justification for the confidentiality designation that was given by
25 the Designating Party in the meet and confer dialogue.

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

1 6. ACCESS TO AND USE OF PROTECTED MATERIAL

2 6.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a non-party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order. When
6 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
7 below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a location and in a
9 secure manner that ensures that access is limited to the persons authorized under this Order.
10 Notwithstanding any other provision of this Order, no Highly Confidential Information of the other
11 party shall be brought onto or maintained on any premises owned or leased by, or otherwise under
12 the control of the receiving party, whether such Highly Confidential Information is intangible,
13 magnetic, electronic, or other machine-readable form.

14 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
15 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
16 disclose any information or item designated CONFIDENTIAL only to:

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

21 (b) The officers, directors, House Counsel, and no more than three (3)
22 non-officer employees of the Receiving Party to whom disclosure is reasonably necessary for this
23 litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

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

27 (d) The Court and its personnel;
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1 (e) Court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation;

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

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

9 6.3 Disclosure of “HIGHLY CONFIDENTIAL Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party
11 may disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

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

16 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
17 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective
18 Order” (Exhibit A);

19 (c) The Court and its personnel;

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

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

23 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION.

25 If a Receiving Party is served with a subpoena or an order issued in other litigation that
26 would compel disclosure of any information or items designated in this action as
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the Receiving Party must so notify the
28 Designating Party, in writing (by e-mail, if possible) immediately and in no event more than five

1 court days after receiving the subpoena or order. Such notification must include a copy of the
2 subpoena or court order.

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

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

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

22 9. FILING PROTECTED MATERIAL

23 No information designated Confidential or Highly Confidential, nor any documents
24 disclosing, reproducing, or paraphrasing, in whole or part, Confidential or Highly Confidential
25 Information may be filed or submitted to the Court unless the submission complies with the
26 procedures set forth in Local Rule 39-141 for filing documents under seal.
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1 10. TRIAL

2 If a Receiving Party wishes to use or disclose Protected Material of the Producing Party, as
3 evidence at trial without the restrictions set forth in Sections 6 and 9 of this order, the Receiving
4 Party shall seek to challenge the confidentiality designation pursuant to Section 5 of this order.
5 Nothing in this order shall be construed to prohibit any Party from seeking further relief from the
6 Court regarding the communication, use or disclosure of Protected Material during courtroom
7 proceedings.

8 11. FINAL DISPOSITION

9 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
10 the final termination of this action, each Receiving Party must return all Protected Material to the
11 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
12 compilations, summaries or any other form of reproducing or capturing any of the Protected
13 Material. With permission in writing from the Designating Party, the Receiving Party may destroy
14 some or all of the Protected Material instead of returning it. Whether the Protected Material is
15 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party
16 (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that
17 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed
18 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or other forms of reproducing or capturing any of the Protected Material.
20 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
21 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
22 materials contain Protected Material. Any such archival copies that contain or constitute Protected
23 Material remain subject to this Protective Order.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to disclosing or

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producing any information or item on any ground not addressed in this Stipulated Protective Order.
Similarly, no Party waives any right to object on any ground to use in evidence of any of the
material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: June ____, 2009

COSTELLO LAW CORPORATION

By: _____
PAMELA WINSTON BERTANI
Attorney for Plaintiff
Dustin K. Adler

DATED: June ____, 2009

DICKINSON WRIGHT PLLC

By: _____
Daniel D. Quick (pro hac vice)
Attorney for Defendant
Intermedia Outdoors, Inc.

PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

DATED: July 2, 2009

/s/ John A. Mendez
JUDGE OF THE UNITED STATES
DISTRICT COURT

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Exhibit A

Confidentiality Undertaking

1. I have read and understand the attached Agreed Protective Order concerning confidential information that has been entered in Dustin K. Adler v. RelyNet, Inc., Michael DiCarlo, Internet Brands, Inc., Intermedia Outdoors, Inc., Vortex Media Group, Inc., Case No. 2:08-CV-01333 in the U.S. District Court for the Eastern District of California in Sacramento.

2. I understand that I may be given access to Confidential or Highly Confidential Information, and in consideration of that access, I agree that I shall be bound by all the terms of the Protective Order.

3. I understand that I am to retain all originals and copies of the Confidential or Highly Confidential Information in a secure manner and that all copies will be destroyed or returned to the counsel who provided me with it within 60 days after termination of this action.

4. I understand that I will not disclose or discuss Confidential or Highly Confidential Information with any persons other than counsel for any party and paralegal and clerical personnel assisting such counsel and other persons who have signed a Confidentiality undertakings.

5. I understand that all Confidential or Highly Confidential Information shall be used solely for the purposes of this action and shall not, directly or indirectly, be used for any other purpose and that any use of Confidential or Highly Confidential Information, or any information obtained therefrom, in any manner contrary to the provisions of the Protective Order will subject me to the sanctions of the Court.

Date: _____ Signature: _____

Position: _____ Name (print): _____

Firm Address: _____