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

12 DUSTIN K. ADLER, an individual,)

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

13)
 14 Plaintiff,)

**STIPULATED PROTECTIVE ORDER
 AND ORDER THEREON**

15 vs.)
 16)

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

21 Defendants.)
 22)

23 1. PURPOSES AND LIMITATIONS.

24 Disclosure and discovery activity in this action are likely to involve production of
 25 confidential, proprietary, or private information for which special protection from public disclosure
 26 and from use for any purpose other than prosecuting this litigation would be warranted. To permit
 27 the parties to produce such sensitive information while safeguarding its confidentiality, parties
 28 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order, which



1 shall apply to, and govern, all documents, things, discovery responses, and testimony designated by
2 the disclosing party in good faith as constituting or containing Confidential or Highly Confidential
3 Information or Items under the Protective Order

4 2. DEFINITIONS.

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

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

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

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

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

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

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

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

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

28 2.10 House Counsel: Attorneys who are employees of a Party.

1 2.11 Counsel (without qualifier): Outside Counsel and their support staffs.

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

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

12 3. SCOPE.

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

17 4. DESIGNATING PROTECTED MATERIAL.

18 4.1 Exercise of Restraint and Care in Designating Material for Protection.

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

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
26 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
27 encumber or retard the discovery process, or to impose unnecessary expenses and burdens on other
28 parties), may expose the Designating Party to sanctions. No party will indiscriminately or

1 unreasonably stamp or maintain documents as Confidential or Highly Confidential, and in no event
2 will publicly available documents such as publications, patents, or file histories be stamped
3 Confidential or Highly Confidential.

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

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

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

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

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

1 contains Protected Material.

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

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

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

1 4.3 Inadvertent Failures to Designate. Inadvertent failure of counsel to
2 designate or mark any document, thing, or testimony as Confidential or Highly Confidential
3 Information as provided above shall not preclude the disclosing party from thereafter in good faith
4 making such a designation and requesting the receiving party to so mark and treat such documents
5 and things so designated. The receiving party, however, shall incur no liability for disclosures made
6 prior to notice of such designations.

7 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

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

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

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

28 The burden of persuasion in any such challenge proceeding shall be on the Designating

1 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party's designation.

3 6. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

19 (a) The Receiving Party's Outside Counsel of record in this action, as well
20 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
21 litigation;

22 (b) The officers, directors, House Counsel, and non-officer employees of
23 the Receiving Party to whom disclosure is reasonably necessary;

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;

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

18 (c) The Court and its personnel;

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

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

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

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

1 subpoena or court order.

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

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

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

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

21 9. FILING PROTECTED MATERIAL.

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

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: July ____, 2009

COSTELLO LAW CORPORATION

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

DATED: July ____, 2009

ERVIN, COHEN & JESSUP LLP

By: _____
Lauren Katunich
Attorney for Defendant
Internet Brands, Inc.

PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

DATED: July 8, 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: _____