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13
 14 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

15
 16 NICHE MEDIA HOLDINGS, LLC,
 a Nevada limited liability company,

17 Plaintiff,

18 vs.

19 JASON BINN, an individual,

20 Defendants

CASE NO. 2:14-cv-01635-JAD-PAL

**[PROPOSED] PROTECTIVE ORDER
 FOR CONFIDENTIAL INFORMATION**

21 JASON BINN, an individual,

22 Counterclaimant,

23 vs.

24 NICHE MEDIA HOLDINGS, LLC, a Nevada
 25 limited liability company,

26 Counterdefendant.

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1 WHEREAS Plaintiff/Counterclaim Defendant Niche Media Holdings, LLC (“Niche
2 Media”) and Defendant/Counterclaimant Jason Binn (“Binn”) recognize that certain information
3 related to the subject matter of this action is sensitive and confidential, the Parties stipulate and
4 agree to the following Protective Order:

5 This Protective Order does not and will not govern any trial proceedings in this action but
6 is instead entered solely for the purpose of facilitating the exchange of documents and information
7 among the parties to this action without involving the Court unnecessarily in the process. Nothing
8 in this Protective Order, nor the production of any information or document under the terms of this
9 Protective Order, nor any proceedings pursuant to this Protective Order shall be deemed to be a
10 waiver of any rights or objections to challenge the authenticity or admissibility of any document,
11 testimony or other evidence at trial. Additionally, this Protective Order will not prejudice the right
12 of any party or nonparty to oppose production of any information on the ground of attorney-client
13 privilege; work product doctrine or any other privilege or protection provided under the law.

14 **Definitions.**

15 1. “Material” shall mean all documents, materials, testimony, items, and/or other
16 information regardless of the medium or manner generated, stored, or maintained that are
17 produced or generated in disclosures or discovery either by a party or by a non-party. The
18 protections conferred by this Protective Order cover not only Material designated as
19 “Confidential” as described below but also any Material copied or extracted therefrom, as well as
20 all copies, excerpts, summaries, or compilations thereof, plus testimony or presentations by parties
21 or counsel that might reveal Confidential Material.

22 2. “Receiving Party” shall mean a party that receives Material from a Producing
23 Party.

24 3. “Producing Party” shall mean a party or non-party that produces Material in this
25 Action.

26 **Designation of Materials.**

27 4. Any party or non-party may designate as “Confidential” any Material that such
28 party or non-party in good faith believes contains non-public information, including any copy or

1 other reproductions, excerpts, summaries, abstracts, or other documents that paraphrase, quote, or
2 contain Confidential Information. Each Producing Party that designates information or items for
3 protection under this Protective Order must take care to limit any such designation to specific
4 material that qualifies under the appropriate standards. Indiscriminate designations are prohibited.

5 5. Any party or non-party may designate as “Highly Confidential” any Material that
6 such party or non-party in good faith believes contains any proprietary information, trade secrets,
7 or other highly sensitive commercial or competitive information whose disclosure would raise a
8 material risk of (i) present or future competitive or commercial injury to the designating party, or
9 (ii) present or future competitive or commercial advantage to the receiving party or non-parties.

10 Highly Confidential Material shall include any copy or other reproductions, excerpts, summaries,
11 abstracts, or other documents that paraphrase, quote, or contain Highly Confidential Material.

12 6. A Producing Party may designate Material it produced as Confidential or Highly
13 Confidential by notation on the document on each page that contains Confidential or Highly
14 Confidential Material. If only a portion or portions of the Material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s).

16 7. A Receiving Party or non-party may designate Material produced by another party
17 or non-party as Confidential or Highly Confidential by written notice to all parties and/or the
18 producing non-party of such designation. After any such designation, such Material shall be
19 fully subject to this Protective Order and treated thereafter according to the terms of this
20 Protective Order as Confidential or Highly Confidential Material.

21 8. A party or third party may designate information disclosed during a deposition as
22 Confidential or Highly Confidential by so indicating on the record at the deposition. A party or
23 third party may also designate such information as Confidential or Highly Confidential in writing,
24 within thirty (30) days of the receipt of the transcript (“the designation period”), that specific
25 pages of the transcript be treated as Confidential or Highly Confidential.

26 Until the designation period has elapsed for a given deposition transcript, all information
27 contained or incorporated in that transcript shall be treated as Highly Confidential information.

28 When information contained or incorporated in a deposition transcript is designated

1 as Confidential or Highly Confidential, the party making the designation shall make
2 arrangements with the court reporter to label the relevant pages Confidential or Highly
3 Confidential.

4 9. The inadvertent failure to designate Material as Confidential or Highly Confidential
5 shall not be deemed, by itself, to be a waiver of the right to so designate the Material and may be
6 remedied by supplemental written notice within a reasonable time after such failure to designate is
7 known. If such notice is given, all Material so designated shall be fully subject to this Protective
8 Order as if it had been initially designated as Confidential or Highly Confidential. After any
9 designation is made in accordance with this paragraph, counsel for all parties shall be responsible
10 for marking all previously unmarked copies of the designated Material within their possession or
11 control as Confidential. Disclosure of Material to any other person prior to a later designation of
12 the Material as Confidential or Highly Confidential in accordance with this Section shall not
13 violate the terms of this Protective Order. However, immediately upon being notified of an
14 inadvertent failure to designate, counsel for the parties and/or non-parties shall upon discovery of
15 the inadvertent disclosure cooperate to restore the confidentiality of the Material that was
16 inadvertently disclosed.

17 **Access to Protected Materials.**

18 10. Material designated as Confidential shall not be furnished, shown, or disclosed to
19 any person or entity except to:

- 20 a. A party, or officers, directors, and employees of a party deemed necessary by
21 counsel to aid in this action;
- 22 b. Counsel for a party (including in-house attorneys, outside attorneys, and legal
23 assistants, clerical personnel, and paralegals employed by such counsel);
- 24 c. Court personnel, stenographic reporters, and litigation support vendors engaged
25 in activities incidental to discovery or preparation for trial;
- 26 d. Expert witnesses or consultants retained by the parties or their counsel to
27 furnish technical or expert services in connection with this Action or to give
28 testimony with respect to the subject matter of this Action at the trial of this

1 Action or other proceeding herein, provided that such an expert or consultant is
2 not a current employee of a direct competitor of any party named in this action
3 or any party's affiliated media businesses;

4 e. Trial and deposition witnesses;

5 f. Any other person as to whom the parties in writing agree or that the Court in
6 these proceedings designate.

7 11. Material designated as Highly Confidential shall not be furnished, shown, or
8 disclosed to any person or entity except to:

9 a. Counsel for a party (including in-house attorneys, outside attorneys, and legal
10 assistants, clerical personnel, and paralegals employed by such counsel);

11 b. Court personnel, stenographic reporters, and litigation support vendors engaged
12 in activities incidental to discovery or preparation for trial;

13 c. Expert witnesses or consultants retained by the parties or their counsel to
14 furnish technical or expert services in connection with this Action or to give
15 testimony with respect to the subject matter of this Action at the trial of this
16 Action or other proceeding herein, provided that such an expert or consultant is
17 not a current employee of a direct competitor of any party named in this action
18 or any party's affiliated media businesses;

19 d. Trial and deposition witnesses;

20 e. Any other person as to whom the parties in writing agree or that the Court in
21 these proceedings designate.

22 12. Each person described in Paragraphs 10(d), 10(e), 10(f), 11(c), 11(d) or 11(e) above
23 to whom Confidential or Highly Confidential Materials is furnished, shown, or disclosed shall be
24 required to execute a copy of the "Acknowledgement" attached as Exhibit A. The persons shall
25 agree in writing to be bound by the terms of this Protective Order by executing a copy of Exhibit
26 A (which shall be maintained by the counsel of record for the party seeking to reveal the
27 Confidential Information) in advance of being shown the Confidential or Highly Confidential
28 Materials. No party (or its counsel) shall discourage any persons from signing a copy of Exhibit

1 A. If a person refuses to execute a copy of Exhibit A, the party seeking to reveal the Confidential
2 or Highly Confidential Materials shall seek an order from the Court directing that the person be
3 bound by this Protective Order. In the event of the filing of such a motion, Confidential of Highly
4 Confidential Materials may not be disclosed to such person until the Court resolves the issue.
5 Proof of each written agreement provided for under this Section shall be maintained by each of the
6 parties while this action is pending and disclosed to the other parties upon good cause shown and
7 upon order of the Court.

8 13. All persons described in Paragraphs 10 and 11 shall be bound by the terms of this
9 Protective Order, and shall not permit disclosure of the Confidential Material afforded protection,
10 other than pursuant to this Protective Order. All persons to whom Confidential Material is
11 disclosed are hereby enjoined from disclosing same to any other person except as provided in this
12 Protective Order, and are further enjoined from using same except in the preparation for and trial
13 of this Action.

14 **Use of Confidential Information.**

15 ~~14. All pages or parts of court papers, discovery responses, production documents or~~
16 ~~things, or deposition transcripts filed with the Court in this Action which have been designated as~~
17 ~~containing Confidential or Highly Confidential Material or any court papers purporting to~~
18 ~~reproduce or paraphrase such Confidential or Highly Confidential Material, shall be maintained in~~
19 ~~camera by filing the same in a sealed envelope or other appropriate sealed container on which~~
20 ~~shall be endorsed the title and docket number of this Action, an indication of the nature of the~~
21 ~~contents of such sealed envelope or other container, the words "CONFIDENTIAL PURSUANT~~
22 ~~TO COURT ORDER," and a statement substantially in the following form: "This envelope~~
23 ~~contains Confidential Material filed in this case by [name of party] and is not to be opened nor the~~
24 ~~contents thereof to be displayed or revealed, except by order of the Court."~~

25 15. If any Material designated to be Confidential or Highly Confidential pursuant to
26 this Protective Order is used during the course of a deposition herein, that portion of the deposition
27 record reflecting such Confidential or Highly Confidential Material shall be sealed and stamped as
28 described herein, and access thereto shall be limited pursuant to the other terms of this Protective

Paragraph
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by the
court.

1 Order.

2 16. The designation of any Material as Confidential or Highly Confidential under this
3 Protective Order may be challenged by any other party by first writing a letter to the attorney of
4 record of the party who designated such Material as Confidential or Highly Confidential within
5 thirty (30) days of the date such Material was designated, specifically identifying the Material so
6 challenged. The parties shall then attempt in good faith to resolve any disputes regarding the
7 designated Material. If the parties are unable to resolve their dispute, following a good faith effort
8 to do so, the challenging party may then move for a Court order vacating the designation within
9 ten (10) business days from the date of the unsuccessful meet and confer session. This Protective
10 Order will not affect the burden of proof on any such motion, or impose any burdens upon any
11 party that would not exist had the Protective Order not been entered; as a general matter, the
12 burden shall be on the person making the designation to establish the propriety of the designation.
13 Any contested Material shall be treated as Confidential or Highly Confidential until such time as
14 the challenger's motion has been ruled upon.

15 **Other Provisions.**

16 17. A party's compliance with the terms of this Protective Order shall not operate as an
17 admission that any particular testimony, document, or other Material provided or produced by any
18 other party or non-party is or is not (a) confidential or (b) privileged. The inadvertent production
19 or disclosure of any documents or other Material protected by the attorney-client privilege, the
20 attorney work product doctrine, a joint defense privilege, or any other applicable privilege shall
21 not constitute, or be considered as a factor suggesting, a waiver of or estoppel as to any claim of
22 privilege, protection or immunity as to the specific Material disclosed or any other Material
23 relating thereto or on the same or related subject matter.

24 Consistent with Federal Rule of Civil Procedure 26(b)(5)(B), in the event of inadvertent
25 production or disclosure of any Material that the Producing Party believes is subject to a claim of
26 privilege or protection, the Producing Party may provide written notice that privileged or protected
27 Material has been inadvertently produced or disclosed. Within five (5) business days of receipt of
28 such notice, any individual or entity that has received such privileged Material shall destroy or

1 return to the Producing Party all such privileged or protected Material and all copies thereof,
2 including any other document or Materials solely derived from the inadvertently produced or
3 disclosed Material, in its possession, custody or control and shall certify in writing that it has done
4 so. The parties recognize that this protection may be stricter than that provided for under Federal
5 Rule of Civil Procedure 26(b)(5)(B) and Federal Rule of Evidence 502(b). After the inadvertently
6 produced Material is destroyed or returned pursuant to this Section, a party may move the Court
7 for an order compelling production of the inadvertently produced Material, but said party may not
8 assert as a ground for compelling production the fact or circumstance that the inadvertently
9 produced Material had already been produced.

10 18. If a party is served with a subpoena or an order issued in other proceedings that
11 would compel disclosure of any Material designated as Confidential or Highly Confidential by any
12 other party or non-party in this Action, the Receiving Party must so notify the designating party or
13 non-party in writing immediately and no later than seven (7) days prior to the date upon which
14 disclosure is required. Such notification must include a copy of the subpoena or court order. The
15 Receiving Party also must immediately inform in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all the Material covered by the subpoena or order
17 is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this
18 Protective Order promptly to the party in the other action that caused the subpoena or order to
19 issue. The purpose of imposing these duties is to alert the interested parties to the existence of this
20 Protective Order and to afford the party who designated the Material as Confidential or Highly
21 Confidential in this case an opportunity to try to protect its confidentiality interests in the court
22 from which the subpoena or order issued. The party who designated the Material as Confidential
23 or Highly Confidential shall bear the burdens and the expenses of seeking protection in that court
24 of its confidential Material, and nothing in these provisions should be construed as authorizing or
25 encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

26 19. Nothing in this Protective Order shall preclude any party from seeking judicial
27 relief, upon proper notice, with regard to any provision hereof.

28 20. Nothing in this Protective Order shall bar or otherwise restrict any counsel from

1 rendering advice to his or her client with respect to this litigation and, in the course thereof,
2 referring to or relying generally upon his or her examination of Confidential or Highly
3 Confidential Materials, provided that in rendering such advice and in otherwise communicating
4 with his or her client, the counsel shall not disclose the content or the source of any Confidential
5 or Highly Confidential information contrary to the terms of this Protective Order. Nothing in this
6 Protective Order shall govern or restrict a Producing Party's use of its own Confidential or Highly
7 Confidential Materials in any way.

8 21. This Protective Order may be signed in counterparts, and a facsimile or "PDF"
9 signature shall have the same force and effect as an original ink signature.

10 22. Within ninety (90) calendar days after the later of the final disposition of this
11 action, all Confidential and/or Highly Confidential information produced by an opposing party or
12 non-party (including, without limitation, any copies, extracts or summaries thereof) as part of
13 discovery in this action shall be destroyed by the parties to whom the Confidential and/or Highly
14 Confidential information was produced and each counsel shall, by declaration delivered to all
15 counsel for the Producing Party, affirm that all such Confidential and/or Highly Confidential
16 information (including, without limitation, any copies, extracts or summaries thereof) has been
17 destroyed; provided, however, that each counsel shall be entitled to retain pleadings, motions and
18 memoranda in support thereof, declarations or affidavits, deposition transcripts and videotapes, or
19 documents reflecting attorney work product or consultant or expert work product, even if such
20 material contains or refers to Confidential and/or Highly Confidential information, but only to the
21 extent necessary to preserve a litigation file with respect to this action.

22 23. The provisions of this Protective Order shall, absent further order of the Court,
23 continue to be binding throughout and after the conclusion of this Action.

24 24. This Protective Order shall be effective upon execution, and the parties agree to
25 comply with and abide by its terms prior to the Court's approval.

26 25. The restrictions set forth in this Protective Order shall not be construed to apply to
27 any information or materials that:

28 (a) Were lawfully in the Receiving Party's possession prior to such

1 information being designated as Confidential or Highly Confidential in this action, and that the
2 Receiving Party is not otherwise obligated to treat as confidential;

3 (b) Were obtained without any benefit or use of Confidential or Highly
4 Confidential Material from a third party having the right to disclose such information to the
5 Receiving Party without restriction or obligation of confidentiality;

6 (c) Were independently developed after the time of disclosure by persons who
7 did not have access to the Producing Party's Confidential or Highly Confidential Material;

8 (d) Have been or become part of the public domain by publication or
9 otherwise and not due to any unauthorized act or omission on the part of a Receiving Party; or
10 Under law, have been declared to be in the public domain.

11 **IT IS SO AGREED AND STIPULATED:**

12 By: /s/ Jonathan W. Fountain
13 Michael J. McCue
Jonathan W. Fountain
14 LEWIS ROCA ROTHGERBER LLP
3993 Howard Hughes Parkway, Suite 600
15 Las Vegas, NV 89169-5996
(702) 949-8200 (tel.)
16 (702) 949-8398 (fax.)

17 *Attorneys for Plaintiff/Counterdefendant*
18 *Niche Media*

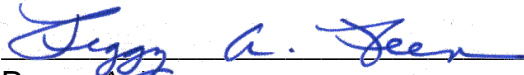
By: /s/ J. Colby Williams
Donald J. Campbell
J. Colby Williams
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101
(702) 382-5222 (tel.)
(702) 382-0540 (fax.)

Attorneys for Defendant/Counterclaimant
Jason Binn

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20 **IT IS SO ORDERED.**

21 **IT IS FURTHER ORDERED** that the parties shall comply with the requirements of
22 LR 6-2 governing the required form of order for stipulations in any future application for
relief from this court.

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24 DATED this 9th day of February, 2015.

25 
26 Peggy A. Leen
United States Magistrate Judge

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EXHIBIT A
CONFIDENTIALITY AGREEMENT

I, _____ do hereby acknowledge and agree, under penalty of perjury, as follows:

1. I have read the Protective Order for Confidential Information ("the Protective Order") entered in *Niche Media Holdings, LLC v. Binn*, Case No. 2:14-cv-01635-JAD-PAL on February ____, 2015, and I fully understand its contents.

2. I hereby agree and consent to be bound by the terms of the Protective Order and to comply with it in all respects, and to that end, I hereby knowingly and voluntarily submit and subject myself to the personal jurisdiction of the United States District Court for the District of Nevada so that the said court shall have the power and authority to enforce the Protective Order and to impose appropriate sanctions upon me for knowingly violating the Protective Order, including punishment for contempt of court for a knowing violation of the Protective Order.

3. I understand that by signing this instrument, I will be eligible to receive "Confidential Information" and/or "Highly Confidential Information" under the terms and conditions of the Protective Order. I further understand and agree that I must treat any "Confidential Information" and/or "Highly Confidential Information" in accordance with the terms and conditions of the Protective Order, and that, if I should knowingly make a disclosure of any such information in a manner unauthorized by the Protective Order, I will have violated a court order, will be in contempt of court, and will be subject to punishment by the court for such conduct.

DATED: _____, _____.

(Signature)

(Printed Name)

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that, pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, on
3 February 2, 2015, I filed a true and accurate copy of the foregoing document entitled, with the
4 Clerk of the Court via the Court's CM?ECF system, which sent electronic notice to the following
5 counsel of record:

6 Donald J. Campbell, Esq.
7 J. Colby Williams, Esq.
8 Campbell & Williams
9 700 South Seventh Street
10 Las Vegas, NV 89101

11 Dated this 2nd day of February, 2015.

12 /s/ Jonathan W. Fountain
13 An Employee of Lewis Roca Rothgerber LLP
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