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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UTAH NEWSPAPER PROJECT, dba
CITIZENS FOR TWO VOICES

Plaintiff,

v.

DESERET NEWS PUBLISHING COMPANY
and KEARNS-TRIBUNE, LLC,

Defendants.

**ANSWER TO COUNTERCLAIM OF
KEARNS-TRIBUNE, LLC**

Civil No. 2:14-cv-445

Judge Clark Waddoups

Plaintiff/Counterclaim-Defendant Utah Newspaper Project, dba Citizens for Two Voices (“Citizens”) hereby answers the counterclaim filed by Defendant Kearns-Tribune, LLC:

FIRST DEFENSE

Citizens hereby responds to the numbered allegations of the counterclaim as follows:

1. Citizens admits Paragraph 1.
2. Citizens admits Paragraph 2.
3. Citizens admit that the Court has subject matter jurisdiction over this matter

because it arises under the laws of the United States, as alleged in Citizens’ Amended Complaint.

Citizens denies that this case “arises under” the Newspaper Preservation Act, which statute

merely comprises a potential affirmative defense to violations of certain of the federal laws cited in the Amended Complaint. Citizens admits that the Court has personal jurisdiction over it.

4. Citizens lacks the requisite knowledge, information or belief to respond to the allegations of Paragraph 4 and therefore denies the same.

5. Citizens admits that as of 1952 the *Deseret News* was struggling financially and denies the remainder of Paragraph 5.

6. With respect to Paragraph 6, Citizens admits that the Salt Lake Tribune Publishing Company and the Deseret News Publishing Company entered into a Joint Operating Agreement on August 12, 1952, and that a copy of the 1952 JOA is attached to the Amended Complaint. Citizens denies the remaining allegations of Paragraph 6.

7. Citizens admits Paragraph 7 in part. Citizens denies Paragraph 7 to the extent it does not mention other provisions of the 1952 JOA that, among other things, allocated markets and restricted market expansion, and other provisions referenced in the Amended Complaint.

8. Citizens admits the allegations of Paragraph 8 solely with respect to the originally adopted 1952 Joint Operating Agreement. Citizens denies the allegations of Paragraph 8 to the extent they are intended to encompass the October 2013 JOA and the veto power referenced in the Amended Complaint.

9. With respect to Paragraph 9, Citizens denies the first sentence of Paragraph 9 for lack of the requisite knowledge. Citizens admits that Congress enacted the Newspaper Preservation Act in 1970 and for the purpose of preserving newspapers. Citizens denies the assertion that the NPA “created an exemption from antitrust liability for newspaper joint

operating arrangements” as an inaccurate or materially incomplete characterization of Section 15 U.S.C. § 1801 et seq.

10. With respect to Paragraph 10, Citizens admits that the NPA contains a clause at Section 1803(a), and denies the remainder of said paragraph.

11. With respect to Paragraph 11, Citizens admits that the 1952 JOA has been amended on occasion, but denies that the October 2013 Joint Operating Agreement is such an amendment.

12. Citizens denies Paragraph 12.

13. Paragraph 13 appears to state a pure conclusion of law, which Citizens denies as inaccurate or materially incomplete. Citizens also denies Paragraph 13 because the October 2013 JOA was so materially different from the 1952 JOA as to constitute a new JOA for which preapproval was and is required.

14. Citizens denies Paragraph 14.

15. Citizens denies Paragraph 15.

16. Citizens incorporates by reference its responses to paragraphs 1-14 as if fully set forth herein.

17. With respect to Paragraph 17, Citizens admits that the owners of the two newspapers entered into a Joint Operating Agreement in 1952. Citizens denies Paragraph 17 to the extent it seeks to imply that the October 2013 JOA is the same as, or a continuing of, the 1952 JOA.

18. With respect to Paragraph 18, Citizens admits that the *Deseret News* was struggling financially in 1952, but denies the remainder of said paragraph.

19. Citizens lacks the requisite knowledge, information or belief to respond to the allegations of Paragraph 19 with respect to the 1952 JOA and therefore denies the same. To the extent that Paragraph 19 is intended to encompass the October 2013 JOA or the veto power described in the Amended Complaint, Citizens denies that the newspapers “maintained independent reportorial and editorial functions, and [that] their editorial policies were independently determined.”

20. Citizens denies Paragraph 20.

21. Citizens denies Paragraph 21.

22. Citizens denies Paragraph 22.

23. Citizens denies Paragraph 23.

RESPONSE TO KEARNS-TRIBUNE’S PRAYER FOR RELIEF

Citizens denies that Kearns-Tribune is factually, legally, or equitably entitled to any of the relief requested in Paragraphs 1 through 5 of its prayer for relief, and requests that such relief be denied.

SECOND DEFENSE

Citizens denies each and every allegation of Kearns-Tribune’s counterclaim not expressly and unconditionally admitted above.

THIRD DEFENSE

Citizens realleges and incorporates by reference the allegations of its First Amended Complaint including exhibits thereto, the allegations and arguments set forth in Citizens’ Motion and Memorandum in Support of Preliminary Injunction including exhibits thereto, the arguments

set forth in Citizens' memorandum opposing Defendants' Joint Motion to Dismiss, and Citizens' arguments set forth at the hearing on the Motion to Dismiss.

FOURTH DEFENSE

Kearns-Tribune fails to adequately plead all elements required to establish an affirmative defense under the Newspaper Preservation Act. Kearns-Tribune's counterclaim also fails to distinguish between the originally adopted 1952 JOA and subsequent JOAs, and improperly uses "JOA" generically. For these and other reasons, Kearns-Tribune's counterclaim fails in whole or in part to state a claim upon which relief may be granted.

CITIZENS' PRAYER FOR RELIEF

WHEREFORE, Citizens prays for judgment as follows:

1. That the counterclaim be dismissed with prejudice, and that Kearns-Tribune, LLC take nothing by its action;
2. That Citizens be awarded its reasonable attorney fees incurred in the defense of this counterclaim, all costs of court, and interest to the extent allowed by law; and,
3. That Citizens be awarded any and all other relief deemed appropriate or equitable by the Court.

DATED this 20th day of October, 2014.

CHRISTENSEN & JENSEN, P.C.

/s/ Karra J. Porter

Karra J. Porter

David C. Richards

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2014, a true and correct copy of the foregoing **ANSWER TO COUNTERCLAIM OF KEARNS-TRIBUNE, LLC** was delivered via the court's electronic filing system to the following:

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