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Attorneys for Defendant Kearns-Tribune, LLC

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

UTAH NEWSPAPER PROJECT, dba
CITIZENS FOR TWO VOICES,

Plaintiff,

vs.

DESERET NEWS PUBLISHING
COMPANY and KEARNS-TRIBUNE, LLC,

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIM OF
DEFENDANT KEARNS-TRIBUNE, LLC**

Case No. 2:14-cv-00445-CW
Judge Clark Waddoups

Kearns-Tribune, LLC, (“Kearns-Tribune”), by and through counsel, hereby submits its Answer, Affirmative Defenses and Counterclaim to Plaintiff’s Amended Complaint. Kearns-Tribune denies all allegations set forth in the Amended Complaint except to the extent such allegations are specifically admitted below.

I. NATURE OF THE ACTION

1. Kearns-Tribune denies the allegations contained in Paragraph 1 of the Amended Complaint, except that it admits that in 1952 the owners of *The Salt Lake Tribune* (the “*Tribune*”) entered into a joint operating agreement (“JOA”) with the owners of *Deseret News* (the “*News*”), pursuant to which the parties combined certain financial and operational functions of their newspaper business, including their advertising, printing, circulation and distribution functions, which are presently managed by the Newspaper Agency Company, LLC (the “NAC”).

2. Kearns-Tribune denies the allegations contained in Paragraph 2 of the Amended Complaint. Kearns-Tribune specifically denies the allegation that the board charged with managing the NAC had, from 1952 until the events at issue, always been comprised of four members, two each appointed by the *Tribune* and the *News*.¹ Kearns-Tribune also specifically denies the allegation that, from 1952 until the events at issue, revenues had been allocated roughly proportional to the newspapers’ respective circulation.²

¹ See Amended Complaint ¶ 39(b), Column A, box (b), alleging: “NAC management board comprised of *five* members, two appointed by the *News*, two appointed by the *Tribune*, and one appointed by mutual agreement or by the American Newspaper Publishers Association.” (citing 1952 JOA, appended to the Amended Complaint as Exhibit A, at §2) (emphasis added).

² Compare Amended Complaint ¶ 39(b), Column A, box (c), n.12, alleging that “prior to a 1983 Amendment to the JOA, the allocation of revenues between the *Tribune* and the *News*

3. To the extent that the allegations contained in Paragraph 3 of the Amended Complaint purport to refer to public statements made by the newspapers' owners, such statements speak for themselves, and no response is required. To the extent that the allegations in Paragraph 3 purport to characterize various agreements and "provisions" allegedly entered into by Kearns-Tribune, such agreements and provisions speak for themselves, and Kearns-Tribune denies Plaintiff's characterizations thereof. To the extent that the allegations in Paragraph 3 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. Kearns-Tribune otherwise denies the allegations in Paragraph 3.

4. The allegations contained in Paragraph 4 of the Amended Complaint are conclusory and/or opinion-based and as such are not susceptible to admission or denial. To the extent that the allegations in Paragraph 4 are deemed to require a response, Kearns-Tribune denies the allegations.

5. To the extent that the allegations contained in Paragraph 5 of the Amended Complaint relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. Kearns-Tribune otherwise denies the allegations in Paragraph 5.

6. Kearns-Tribune denies the allegations contained in Paragraph 6 of the Amended Complaint.

varied in five-year increments, 50%-50% from 1952-1957, 60-40 (1958-1962), 55-45 (1963-1967), and 50/50 (1968-1983)" (citing 1952 JOA at 9, ¶ 13) *with* Amended Complaint ¶ 36(j), alleging that "throughout its history, the *Deseret News* has never been able to sustain a circulation ratio exceeding roughly 40 percent in the Salt Lake Valley market."

7. To the extent that the allegations contained in Paragraph 7 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 7 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. To the extent that the allegations in Paragraph 7 are deemed to require a response, Kearns-Tribune denies the allegations.

8. To the extent that the allegations contained in Paragraph 8 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 8 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. To the extent that the allegations in Paragraph 8 are deemed to require a response, Kearns-Tribune denies the allegations.

9. Kearns-Tribune lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9 of the Amended Complaint, and therefore denies them.

10. Kearns-Tribune lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of the Amended Complaint, and therefore denies them.

11. Kearns-Tribune lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of the Amended Complaint, and therefore denies them.

12. The allegations contained in Paragraph 12 of the Amended Complaint are conclusory and/or opinion-based and as such are not susceptible to admission or denial. To the extent that the allegations in Paragraph 12 are deemed to require a response, Kearns-Tribune denies the allegations, except that it affirmatively avers that the 2013 amendments to the JOA were publicly disclosed by and through their being publicly filed with the U.S. Department of Justice (“DOJ”).

13. To the extent that the allegations contained in Paragraph 13 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. Kearns-Tribune otherwise lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13, and therefore denies them, except that it admits that the DOJ has commenced an investigation of the 2013 amendments to the JOA.

14. The allegations contained in Paragraph 14 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent that the allegations in Paragraph 14 are deemed to require a response, Kearns-Tribune denies the allegations.

15. Kearns-Tribune denies the allegations contained in Paragraph 15 of the Amended Complaint, except that it admits that the Amended Complaint purports to bring an action seeking, *inter alia*, the forms of relief set forth in Paragraph 15. Kearns-Tribune denies that Plaintiff is entitled to any relief or that this action has any merit.

II. JURISDICTION AND VENUE

16. To the extent that the allegations contained in Paragraph 16 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent

that the allegations in Paragraph 16 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. Kearns-Tribune otherwise denies the allegations, except that it admits that it publishes advertising of, among others, national advertisers located throughout the United States; publishes news, syndicated material, and other information that is gathered from other states and nations; and communicates Utah news and information gathered by its staff to newspapers outside Utah.

17. The allegations contained in Paragraph 17 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required.

18. To the extent that the allegations contained in Paragraph 18 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 18 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. To the extent that the allegations in Paragraph 18 are deemed to require a response, Kearns-Tribune denies the allegations, except that it admits that it maintains offices, transacts business, and is otherwise found in Salt Lake City, Utah.

III. PARTIES

19. To the extent that the allegations contained in Paragraph 19 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 19 are conclusory and/or opinion-based, they are not susceptible to admission or denial. To the extent that the allegations in Paragraph 19 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief

as to their truth or falsity, and therefore denies them. Kearns-Tribune otherwise denies the allegations in Paragraph 19.

20. The allegations contained in Paragraph 20 of the Amended Complaint are not addressed to Kearns-Tribune, and therefore no response is required. To the extent that the allegations in Paragraph 20 are deemed to require a response, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them.

21. Kearns-Tribune admits the allegations contained in Paragraph 21 of the Amended Complaint.

IV. BACKGROUND

22. The allegations contained in Paragraph 22 of the Amended Complaint are not addressed to Kearns-Tribune, and therefore no response is required. To the extent that the allegations in Paragraph 22 are deemed to require a response, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them.

23. To the extent that the allegations contained in Paragraph 23 of the Amended Complaint refer to corporate formation documents, such documents speak for themselves and therefore no response is required. Kearns-Tribune otherwise admits the allegations contained in Paragraph 23 of the Amended Complaint.

24. Kearns-Tribune lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24 of the Amended Complaint, and therefore denies them, except that it admits that in 1952 the owner of the *Tribune* and the owner of the *News* entered into a JOA that combined certain financial and operational functions of their

newspaper business, including their advertising, printing, circulation and distribution functions, which are presently managed by the NAC.

25. To the extent that the allegations contained in Paragraph 25 of the Amended Complaint relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. Kearns-Tribune otherwise denies the allegations in Paragraph 25.

26. The allegations contained in Paragraph 26 of the Amended Complaint are conclusory and/or opinion-based and as such are not susceptible to admission or denial. To the extent that the allegations in Paragraph 26 are deemed to require a response, Kearns-Tribune denies the allegations.

27. To the extent that the allegations contained in Paragraph 27 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 27 are conclusory and/or opinion-based, they are not susceptible to admission or denial. To the extent that the allegations in Paragraph 27 are deemed to require a response, Kearns-Tribune denies the allegations.

28. To the extent that the allegations contained in Paragraph 28 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 28 refer to the JOA documents, which are appended as exhibits to the Amended Complaint, the documents speak for themselves, and no response is required. To the extent that the allegations in Paragraph 28 are deemed to require a response, Kearns-Tribune denies the allegations.

29. To the extent that the allegations contained in Paragraph 29 of the Amended Complaint purport to set forth the provisions of the Newspaper Preservation Act, that statute speaks for itself, and no response is required. The allegations in Paragraph 29 otherwise constitute legal contentions and/or conclusions to which no response is required.

30. To the extent that the allegations contained in Paragraph 30 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. Kearns-Tribune otherwise denies the allegations in Paragraph 30, except that it admits that the original JOA was executed prior to 1970 and that it has been amended at various times since its execution.

31. To the extent that the allegations contained in Paragraph 31 of the Amended Complaint purport to set forth the provisions of the Newspaper Preservation Act, that statute speaks for itself, and no response is required. The allegations in Paragraph 31 otherwise constitute legal contentions and/or conclusions to which no response is required.

32. To the extent that the allegations contained in Paragraph 32 of the Amended Complaint refer to the JOA documents, which are appended as exhibits to the Amended Complaint, the documents speak for themselves, and no response is required, except that Kearns-Tribune specifically denies that the effective date of the October 2013 amendments to the JOA was January 1, 2014. Kearns-Tribune otherwise lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 32, and therefore denies them.

33. The allegations contained in Paragraph 33 of the Amended Complaint refer to the JOA documents, which are appended as exhibits to the Amended Complaint; the documents speak for themselves, and therefore no response is required.

34. The allegations contained in Paragraph 34 of the Amended Complaint refer to a public statement that speaks for itself, and to which, therefore, no response is required. Kearns-Tribune otherwise denies the allegations in Paragraph 34.

35. To the extent that the allegations contained in Paragraph 35 of the Amended Complaint relate to the JOA documents, which are appended as exhibits to the Amended Complaint, the documents speak for themselves, and no response is required. Kearns-Tribune otherwise denies the allegations in Paragraph 35.

36. Kearns-Tribune denies the allegations contained in Paragraph 36 of the Amended Complaint.

37. To the extent that the allegations contained in Paragraph 37 of the Amended Complaint are conclusory and/or opinion-based, they are not susceptible to admission or denial. Kearns-Tribune otherwise denies the allegations in Paragraph 37, and specifically denies that the *Tribune* was consistently profitable prior to January 1, 2014.

38. The allegations contained in Paragraph 38 of the Amended Complaint are conclusory and/or opinion-based and as such are not susceptible to admission or denial. To the extent that the allegations in Paragraph 38 are deemed to require a response, Kearns-Tribune denies the allegations.

39. To the extent that the allegations contained in Paragraph 39 of the Amended Complaint and its subparts refer to the JOA documents, which are appended to the Amended

Complaint, the documents speak for themselves and no response is required. To the extent that the allegations in Paragraph 39 and its sub-parts constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 39 and its subparts are conclusory and/or opinion-based, they are not susceptible to admission or denial. Kearns-Tribune otherwise denies the allegations in Paragraph 39 and its subparts.

40. To the extent that the allegations contained in Paragraph 40 of the Amended Complaint are conclusory and/or opinion-based, they are not susceptible to admission or denial. To the extent that the allegations in Paragraph 40 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. Kearns-Tribune otherwise denies the allegations in Paragraph 40.

V. RELEVANT MARKETS AND EFFECT ON INTERSTATE COMMERCE

41. The allegations contained in Paragraph 41 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent that the allegations in Paragraph 41 are deemed to require a response, Kearns-Tribune denies the allegations.

42. To the extent that the allegations contained in Paragraph 42 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 42 are conclusory and/or opinion-based they are not susceptible to admission or denial. Kearns-Tribune otherwise lacks knowledge or information sufficient to form a belief as to their truth or falsity in Paragraph 42, and therefore denies them.

43. To the extent that the allegations contained in Paragraph 43 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 43 are conclusory and/or opinion-based they are not susceptible to admission or denial. Kearns-Tribune otherwise lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 43, and therefore denies them.

44. To the extent that the allegations contained in Paragraph 44 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 44 are conclusory and/or opinion-based they are not susceptible to admission or denial. Kearns-Tribune otherwise lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 44, and therefore denies them, except that it admits that the *Tribune* is produced, published and distributed to, among others, readers in the Salt Lake Valley area.

45. To the extent that the allegations contained in Paragraph 45 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 45 are conclusory and/or opinion-based they are not susceptible to admission or denial. Kearns-Tribune otherwise lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 45, and therefore denies them, except that it admits that the *Tribune* allows advertisers to reach readers in, among others, the Salt Lake Valley area.

46. The allegations contained in Paragraph 46 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent that the

allegations in Paragraph 46 are deemed to require a response, Kearns-Tribune denies the allegations.

47. The allegations contained in Paragraph 47 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent that the allegations in Paragraph 47 are deemed to require a response, Kearns-Tribune denies the allegations.

48. To the extent that the allegations contained in Paragraph 48 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 48 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them. To the extent that the allegations in Paragraph 48 are deemed to require a response, Kearns-Tribune denies the allegations.

49. To the extent that the allegations contained in Paragraph 49 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 49 are conclusory and/or opinion-based, they are not susceptible to admission or denial. To the extent that the allegations in Paragraph 49 are deemed to require a response, Kearns-Tribune denies the allegations.

VI. INJURY TO COMPETITION AND CONSUMERS

50. To the extent that the allegations contained in Paragraph 50 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 50 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity. To the

extent that the allegations in Paragraph 50 are conclusory and/or opinion-based, they are not susceptible to admission or denial. If the allegations in Paragraph 50 are deemed to require a response, Kearns-Tribune denies the allegations.

51. To the extent that the allegations contained in Paragraph 51 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 51 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity. To the extent that the allegations in Paragraph 51 are conclusory and/or opinion-based, they are not susceptible to admission or denial. If the allegations in Paragraph 51 are deemed to require a response, Kearns-Tribune denies the allegations.

52. To the extent that the allegations contained in Paragraph 52 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 52 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity. To the extent that the allegations in Paragraph 52 are conclusory and/or opinion-based, they are not susceptible to admission or denial. If the allegations in Paragraph 52 are deemed to require a response, Kearns-Tribune denies the allegations.

53. To the extent that the allegations contained in Paragraph 53 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 53 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity. To the extent that the allegations in Paragraph 53 are conclusory and/or opinion-based, they are not

susceptible to admission or denial. If the allegations in Paragraph 53 are deemed to require a response, Kearns-Tribune denies the allegations.

54. To the extent that the allegations contained in Paragraph 54 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 54 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity. To the extent that the allegations in Paragraph 54 are conclusory and/or opinion-based, they are not susceptible to admission or denial. If the allegations in Paragraph 54 are deemed to require a response, Kearns-Tribune denies the allegations.

VII. ENTRY

55. To the extent that the allegations contained in Paragraph 55 of the Amended Complaint constitute legal contentions and/or conclusions, no response is required. To the extent that the allegations in Paragraph 55 relate to entities other than Kearns-Tribune, Kearns-Tribune lacks knowledge or information sufficient to form a belief as to their truth or falsity. To the extent that the allegations in Paragraph 55 are conclusory and/or opinion-based, they are not susceptible to admission or denial. If the allegations in Paragraph 55 are deemed to require a response, Kearns-Tribune denies the allegations.

VIII. CLAIMS FOR RELIEF

COUNT ONE

(Violation of Section 1 of the Sherman Act – Defendants Deseret News Publishing Company and Kearns-Tribune, LLC)

56. Kearns-Tribune repeats and incorporates by reference its responses to Paragraphs 1 through 55 of the Amended Complaint with the same force and effect as if set forth herein.

57. The allegations contained in Paragraph 57 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent that the allegations in Paragraph 57 are deemed to require a response, Kearns-Tribune denies the allegations.

58. The allegations contained in Paragraph 58 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent that the allegations in Paragraph 58 are deemed to require a response, Kearns-Tribune denies the allegations.

59. The allegations contained in Paragraph 59 of the Amended Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent that the allegations in Paragraph 59 are deemed to require a response, Kearns-Tribune denies the allegations. Kearns-Tribune denies that Plaintiff is entitled to any relief or that any of its claims have merit.

COUNT TWO

(Violations of Section 2 of the Sherman Act –
Defendant Deseret News Publishing Company)

60. Kearns-Tribune repeats and incorporates by reference its responses to Paragraphs 1 through 59 of the Amended Complaint with the same force and effect as if set forth herein.

61. The allegations contained in Paragraph 61 of the Amended Complaint are not addressed to Kearns-Tribune, and/or constitute legal contentions and/or conclusions, therefore no response is required. If the allegations in Paragraph 61 are deemed to require a response, Kearns-Tribune denies the allegations.

62. The allegations contained in Paragraph 62 of the Amended Complaint are not addressed to Kearns-Tribune, and/or constitute legal contentions and/or conclusions, therefore no response is required. If the allegations in Paragraph 62 are deemed to require a response, Kearns-Tribune denies the allegations.

63. The allegations contained in Paragraph 63 of the Amended Complaint are not addressed to Kearns-Tribune, and/or constitute legal contentions and/or conclusions, therefore no response is required. If the allegations in Paragraph 63 are deemed to require a response, Kearns-Tribune denies the allegations. Kearns-Tribune denies that Plaintiff is entitled to any relief or that any of its claims have merit.

COUNT THREE
(Violations of Section 7 of the Clayton Act –
Deseret News Publishing Company)

64. Kearns-Tribune repeats and incorporates by reference its responses to Paragraphs 1 through 63 of the Amended Complaint with the same force and effect as if set forth herein.

65. The allegations contained in Paragraph 65 of the Amended Complaint are not addressed to Kearns-Tribune, and/or constitute legal contentions and/or conclusions, therefore no response is required. If the allegations in Paragraph 65 are deemed to require a response, Kearns-Tribune denies the allegations. Kearns-Tribune denies that Plaintiff is entitled to any relief or that any of its claims have merit.

66. The allegations contained in Paragraph 66 of the Amended Complaint are not addressed to Kearns-Tribune, and/or constitute legal contentions and/or conclusions, therefore no response is required. If the allegations in Paragraph 66 are deemed to require a response, Kearns-Tribune denies the allegations.

67. The allegations contained in Paragraph 67 of the Amended Complaint are not addressed to Kearns-Tribune, and/or constitute legal contentions and/or conclusions, therefore no response is required. If the allegations in Paragraph 67 are deemed to require a response, Kearns-Tribune denies the allegations. Kearns-Tribune denies that Plaintiff is entitled to any relief or that any of its claims have merit.

IX. REQUESTED RELIEF

Kearns-Tribune denies that Plaintiff has suffered or will suffer any injury by any act or omission of Kearns-Tribune as alleged in the Amended Complaint, and further denies that Plaintiff is entitled to any relief under any theory by means of the allegations set forth therein. All allegations of the Amended Complaint to which a response is required that have not heretofore been admitted or denied are here and now denied as though specifically denied herein.

X. AFFIRMATIVE DEFENSES

Without assuming any burden it would not otherwise bear, Kearns-Tribune asserts the following additional and/or affirmative defenses to Plaintiff's Amended Complaint:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that they are based on alleged acts, conduct or statements that are specifically permitted by law, including, but not limited to, conduct for which Kearns-Tribune enjoys an exemption from the antitrust laws under the Newspaper Preservation Act.

SECOND AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted. Plaintiff's claims are further barred, in whole or in part, because Plaintiff has failed to state a

claim for injunctive relief insofar as Plaintiff seeks to enjoin alleged events that have already transpired without the requisite showing of threatened harm or continuing harm.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed because Plaintiff and/or its members have not suffered, nor will they imminently suffer, any injury in fact as a result of the matters alleged in the Amended Complaint and as required by Article III of the United States Constitution.

FOURTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff and/or certain of its members purportedly suffer injury in fact, which Kearns-Tribune specifically denies, Kearns-Tribune further contends that any such purported injury or damage was not caused by any act or omission of Kearns-Tribune.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed to the extent that they are barred, in whole or in part, because of the absence of any injury for which Kearns-Tribune's actions, conduct, or omissions were the proximate cause. Any alleged injury Plaintiff and/or its members have suffered or may suffer were, or will be, solely and proximately caused by intervening or superseding causes.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed because Plaintiff and/or its members have not suffered and will not imminently suffer an actual, cognizable antitrust injury of the type the antitrust laws are intended to prevent.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed, in whole or in part, to the extent that Plaintiff and/or its members lack standing to sue for the injuries alleged in the Amended Complaint. Plaintiff's claims are barred by its lack of standing to prosecute the claims on behalf of its members.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed to the extent that they are barred, in whole or in part, by the equitable doctrines of laches, waiver and/or estoppel.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed to the extent that they are barred, in whole or in part, because the remedies sought are unconstitutional, contrary to public policy, or otherwise unauthorized. Plaintiff's claims are barred, in whole or in part, to the extent that they seek improper injunctive relief that would violate Kearns-Tribune's rights under the First Amendment to the United States Constitution.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because any action taken by or on behalf of Kearns-Tribune was justified, constituted bona fide business competition and/or was taken in pursuit of its own legitimate business and economic interests.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed to the extent that they are barred, in whole or in part, because Kearns-Tribune's actions did not reduce competition in any relevant market.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed to the extent that they are barred, in whole or in part, because the alleged conduct did not unreasonably restrain trade.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed because the Amended Complaint fails to allege sufficiently or otherwise properly define any market for the purpose of asserting a claim against Kearns-Tribune.

FOURTEENTH AFFIRMATIVE DEFENSE

Kearns-Tribune avers that the matters about which Plaintiff complains resulted in increased competition and lower prices in the relevant market(s).

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be dismissed for uncertainty and vagueness because its claims are ambiguous and/or unintelligible, and because Plaintiff's alleged injuries are speculative, uncertain, and cannot be practicably ascertained. Plaintiff's claims do not describe the events or legal theories with sufficient particularity to permit Kearns-Tribune to ascertain what other defenses may exist. Kearns-Tribune therefore reserves the right to amend its Answer to assert additional defenses and/or supplement, alter, or change its Answer and/or defenses upon the discovery of more definitive facts upon the completion of its investigation and discovery.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for injunctive relief should be dismissed to the extent that Plaintiff and/or its members have an adequate remedy at law.

SEVENTEENTH AFFIRMATIVE DEFENSE

Kearns-Tribune adopts and incorporates by reference any and all other affirmative defenses asserted or to be asserted by Deseret News Publishing Company in this proceeding to the extent that Kearns-Tribune may share in such affirmative defenses.

EIGHTEENTH AFFIRMATIVE DEFENSE

Kearns-Tribune has not knowingly or intentionally waived any applicable defenses and explicitly reserves the right to assert and rely on such other applicable defenses as may become available or apparent. Kearns-Tribune further reserves the right to amend its Answer and/or its defenses accordingly, and/or to delete defenses that it determines are not applicable during the course of subsequent discovery.

XI. COUNTERCLAIM

Kearns-Tribune requests that the Court enter a declaratory judgment finding the Joint Operating Arrangement entered into in 1952 between the owners of the *Tribune* and the *News*, as since amended, immune from antitrust liability pursuant to the protections of the Newspaper Preservation Act.

PARTIES

1. Counterclaim Plaintiff Kearns-Tribune LLC is a Delaware limited liability company that owns and publishes *The Salt Lake Tribune*, a daily newspaper. Its principal place of business is Salt Lake City, Utah.

2. Upon its own allegations, Counterclaim Defendant Utah Newspaper Project, dba Citizens for Two Voices, is a Utah non-profit organization. Upon its own allegation, Utah Newspaper Project promotes independent news voices in the Salt Lake Valley through education

of the public and seeking out and encouraging potential buyers of the *Tribune*. Upon its own allegation, Utah Newspaper Project's members include consumers of daily news in the Salt Lake Valley, including subscribers to, readers of, and advertisers in the *Tribune*.

JURISDICTION

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337(a), in that the action arises under the laws of the United States and more particularly the Newspaper Preservation Act, 15 U.S.C. § 1801 *et seq.* This Court has personal jurisdiction over Utah Newspaper Project because it resides in this District and has also submitted to the jurisdiction of this Court by filing the above-captioned action.

BACKGROUND

4. Newspapers once enjoyed a secure position as America's primary source of news, but as technology developed, other sources such as radio and television began to draw away their audience. Particularly in the first half of the twentieth century, newspapers around the country felt the strain on the industry presented by these alternative sources of news, and sought ways to save costs in order to survive.

5. The *Tribune* and the *News* in Salt Lake City were no exception. As of 1952, as Utah Newspaper Project concedes in its Amended Complaint, the *News* was struggling financially and was unlikely to remain or become a financially sound publication. (*See* Amended Complaint, ¶ 3.)

6. In response to this pressure, as many other pairs of newspapers in other cities had done, on August 12, 1952 the Salt Lake Tribune Publishing Company, then the publisher of the *Tribune*, and the Deseret News Publishing Company, publisher of the *News*, entered into a Joint

Operating Arrangement (the “JOA”). (1952 JOA, attached to the Amended Complaint as Exhibit A.)

7. Through the mechanism of the JOA, managed by an entity now known as the Newspaper Agency Company, LLC (the “NAC”), the two newspapers sought to save costs by combining certain printing, advertising, subscription and distribution functions.

8. The *Tribune* and the *News* did not combine their reportorial or editorial functions, however: each newspaper maintained its own newsroom, its own reporters and editors, and made independent decisions as to the content to publish. Though certain business functions were combined, the newspapers were separate, independent publications, each with its own voice and editorial identity.

9. The pressure on newspapers from other sources of news continued to increase over time. In an effort to aid the industry and preserve newspapers, in 1970, Congress passed the Newspaper Preservation Act (“NPA”), which created an exemption from antitrust liability for newspaper joint operating arrangements. (15 U.S.C. § 1801 *et seq.*)

10. In particular, the NPA contained a grandfather clause at Section 1803(a), which extended its antitrust exemption to existing joint operating arrangements that were entered into prior to July 24, 1970, including the Salt Lake JOA.

11. Since 1952, the JOA has been amended on several occasions.

12. As required under NPA Section 1803(a), those amendments to the JOA were filed with the Department of Justice, and none added a newspaper publication or publications to the arrangement.

13. These are the only criteria that must be met when the JOA is amended; no pre-approval is required.

14. The editorial and reportorial staffs of the *Tribune* and the *News* continue to be separate and independent, and editorial policies are independently determined pursuant to the terms of the JOA. (2013 Amendments to the JOA, attached to the Amended Complaint as Exhibit D, at ¶ 8.)

15. Because it has met and continues to meet all requirements for exemption, the JOA, as amended, continues to be exempt from antitrust liability under the NPA.

COUNTERCLAIM COUNT I

16. Kearns-Tribune repeats and re-alleges the allegations contained in Counterclaim Paragraphs 1 through 14 as if fully set forth herein.

17. The JOA was entered in 1952 between the Salt Lake Tribune Publishing Company, then the publisher of the *Tribune*, and the Deseret News Publishing Company, publisher of the *News*.

18. At that time, the *News* was struggling financially and was unlikely to remain or become a financially sound publication.

19. Through the JOA, the two newspapers combined certain business functions, including printing, advertising, subscription sales and distribution, but maintained independent reportorial and editorial functions, and their editorial policies were independently determined.

20. The JOA met the NPA's criteria for exemption from antitrust liability under the grandfather clause contained in the NPA at Section 1803(a).

21. Each amendment to the JOA entered since that time has been duly filed with the Department of Justice, and has not added any newspaper publications to the JOA.

22. The newspapers continue to maintain independent reportorial and editorial functions, and their editorial policies are independently determined.

23. The JOA continues to meet the NPA's criteria for exemption from antitrust liability.

WHEREFORE, Kearns-Tribune prays as follows:

1. That the Plaintiff take nothing by way of the Amended Complaint and that the Amended Complaint be dismissed with prejudice;
 2. That judgment be entered in favor of Kearns-Tribune and against Plaintiff on the cause of action asserted against Kearns-Tribune as set forth in the Amended Complaint;
 3. That declaratory judgment be entered in favor of Kearns-Tribune declaring the JOA immune from antitrust liability under the protection of the Newspaper Preservation Act;
 4. That Kearns-Tribune recover its costs of suit and attorneys' fees incurred herein;
- and
5. That Kearns-Tribune be granted such other and further relief as the Court deems just and proper.

DATED this 29th day of September, 2014.

BURBIDGE MITCHELL & GROSS

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