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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRIAN L. GREENSPUN, an individual; THE BRIAN L. GREENSPUN SEPARATE PROPERTY TRUST, DATED JULY 11, 1990; THE AMY GREENSPUN ARENSON 2010 LEGACY TRUST,

PLAINTIFFS,

VS.

STEPHENS MEDIA LLC, a Nevada limited liability company; STEPHENS HOLDING COMPANY OF ARKANSAS, an Arkansas corporation; SF HOLDING CORP., an Arkansas foreign corporation, d/b/a STEPHENS MEDIA GROUP; DR PARTNERS, a Nevada General Partnership, d/b/a STEPHENS MEDIA GROUP; STEPHENS MEDIA INTELLECTUAL PROPERTY, LLC, a Delaware limited liability company; MICHAEL FERGUSON, an individual; WARREN A. STEPHENS, an individual, DOES, I-X, inclusive,

DEFENDANTS.

Case No. 2:13-cv-01494-JCM-PAL

PLAINTIFFS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Brian L. Greenspun, an individual; Brian L. Greenspun, as trustee of The Brian L. Greenspun Separate Property Trust, dated July 11, 1990; Brian L. Greenspun, as trustee of The Amy Greenspun Arenson 2010 Legacy Trust (collectively, "Plaintiffs"), through their attorneys of record, hereby respectfully submit their Reply in Support of Emergency Motion for Preliminary Injunction (Dkt.#2).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Based upon the unlawful actions of the Defendants, Plaintiffs have been forced to file the instant lawsuit seeking injunctive relief preventing the Defendants from effectuating their plan of unlawfully putting the Las Vegas Sun out of business in violation of the Newspaper Preservation Act of 1970, the Sherman Act, the Clayton Act, and Nevada's Unfair Trade Practices Act. This Reply addresses the issues raised by the Court in its August 27, 2013, Temporary Restraining Order (Dkt.#9), as well as the arguments set forth in the Stephens Media Defendants' Opposition.

II. ARGUMENT

A. BRIAN GREENSPUN HAS STANDING AS A SUBSCRIBER AND CONSUMER TO MAINTAIN THE EXISTENCE OF THE 2005 JOA AND TWO VIABLE, EDITORIALLY INDEPENDENT NEWSPAPERS IN LAS VEGAS

Defendants' principal argument in opposition to Plaintiffs' motion is that the Plaintiffs – in particular Brian Greenspun – lack standing to bring this lawsuit under the Clayton and Sherman Acts, as well as Nevada's Unfair Trade Practices Act.[1] Importantly, Defendants concede that Plaintiff Brian Greenspun has standing as a consumer of news, in a footnote, then proceed to argue that he lacks standing under any other "hat he chooses to wear." *See* Def. Opp. at 13, n.7 (citing *Reilly v. Hearst Corp.*, 107 F.Supp.2d 1192, 1194-95 (N.D. Cal. 2000)). Defendants' standing argument is both specious and transparent. It is black letter law that Mr. Greenspun, as a newspaper subscriber and consumer of newspaper news, has standing. Lacking any substantive response to Plaintiffs' claims, the Defendants are grasping at procedural straws.

It is well-established that consumers have standing in a variety of contexts to challenge transactions that cause injury to competition pursuant to Section 16 of the Clayton Act. *Reilly*,

[1] As set forth in Plaintiffs' motion, Nevada's Unfair Trade Practice Act does not substantially differ from the Sherman Act and therefore, is construed in harmony with the federal antitrust statutes. *Boulware v. Nevada*, 960 F.2d 793, 800-01 (9th Cir. 1992).

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107 F.Supp.2d at 1195; *see also Glen Holly Entertainment, Inc. v. Tektronix, Inc.*, 352 F.3d 367, 372 (9th Cir. 2003) ("Consumers in the market where trade is allegedly restrained are presumptively the proper plaintiffs to allege antitrust injury."); *Lucas Automotive Eng'g, Inc. Bridestone/Firestone, Inc.*, 140 F.3d 1228, 1237 (9th Cir. 1998) ("[w]e conclude that . . . as a customer in a market controlled by a monopolist, has standing to assert a § 7 claim for equitable relief."). The courts' broad interpretation of standing under the Clayton Act is consistent with the broad interpretation of the Act in general, "which 'does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers . . . . The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.'" *Reilly v. Medianews Group, Inc.*, 2007 WL 1068202 (quoting *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 472 (1982)).

The holding in *Reilly v. Hearst Corp.*, is particularly instructive and dispositive of the standing issue in this case. In *Reilly*, the plaintiff Reilly was a subscriber to the San Francisco Chronicle newspaper and a purchaser of copies of the San Francisco Examiner newspaper. *Reilly*, 107 F.Supp.2d at 1193. When the owner of the Examiner, the Hearst Corporation, entered into a contract agreeing to acquire the Chronicle, Reilly brought suit for, among other things, injunctive relief under Section 7 of the Clayton Act, 15 USC§ 18, alleging that the transaction would substantially lessen competition or tend to create a monopoly. *Id.* at 1194.

In analyzing the issue of standing, the Court properly noted that its analysis was "informed, in part, by the Newspaper Preservation Act (NPA), 15 USC §§ 1801-1804." *Id.* at 1195. In particular, the Court found that the Congressional intent of the NPA was to import non-economic considerations into the antitrust statutes, which afforded standing to those injured by the elimination of a newspaper:

> Although the NPA does not confer affirmative rights on newspaper readers or advertisers or competing newspaper firms, the Sherman Act and Clayton Act should be read bearing in mind the legislative purposes that prompted enactment of the NPA; namely, encouragement of multiple sources of newspaper news, features and opinion. The NPA thus imports distinctly non-economic considerations into the antitrust statutes, which otherwise exclusively confine their scope to matters of economic consequence. ***Under this statutory framework, the elimination of a newspaper represents a cognizable injury to interests protected by the antitrust laws, and this injury supplies a ground for standing under Article III.***

Id. (emphasis added). Based on this, the Court held Reilly's assertion – that the proposed transaction would eliminate one of only two daily newspapers – stated a cognizable injury "as a consumer of newspaper news, features and opinion and to competition in the market." That, "as a

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consumer of newspaper news, features and opinions, he is entitled to attempt to prove that the challenged transactions cause ***injury to competition for readers among economically viable newspapers***." *Id.* Importantly, the Court concluded, "if proved, such a claim would entitle plaintiff to injunctive relief under Section 16 of the Clayton Act, 15 USC § 26." *Id.*

i. PLAINTIFFS PROPERLY PLED STANDING AND DEFENDANTS' RELIANCE ON PAID SUBSCRIPTIONS MISPLACES THE NONECONOMIC INJURY AT ISSUE

Buried in a footnote at the beginning of the Defendants' protracted standing argument is the concession that, under *Reilly*, "an ordinary consumer of news, features and opinions" has standing to assert the claims brought by the Plaintiffs in this action. Def. Opp. at 13, fn.7 (citing *Reilly*, 107 F.Supp.2d 1192). Recognizing that *Reilly* is controlling here, Defendants quickly try to dispense of its holding by claiming that Mr. Greenspun did not allege standing under *Reilly* and is not a paid subscriber to the LVRJ/Las Vegas Sun because he allegedly receives "a complimentary copy of the newspaper." Both of these arguments are baseless, and in reality, the Defendants' footnote negates all of their remaining arguments that the Plaintiffs somehow lack standing to bring this action.

First, the Complaint clearly asserts that "Brian Greenspun is a subscriber to the LVRJ/Las Vegas Sun and plans and expects to continue to purchase a newspaper subscription from the LVRJ/Las Vegas Sun in the future." Compl. (Dkt.#1), at ¶ 4. Similar to the plaintiff in *Reilly*, Plaintiffs' complaint also alleges that the proposed transaction to terminate the 2005 JOA will "substantially lessen competition, or tend to create a monopoly in print and online newspaper industry in Las Vegas in violation of" the Sherman Act, the Clayton Act, and the Nevada Unfair Practices Act. *Id.* at ¶ 90. Finally, Plaintiffs have argued and asserted that the transaction to terminate the 2005 JOA "would be the concomitant loss of competition for readers and creators of news, editorial, and entertainment content and online advertisers." Mot. (Dkt.#3), at p. 21; *see also* Compl. (Dkt.#1), at ¶¶ 91-92. Thus, Defendants' argument that Plaintiffs have not pled standing as a consumer of newspaper news to prove that the proposed transaction would injure competition for readers is baseless, especially in light of the liberal notice pleading standard employed by FRCP 8.

Secondly, Defendants' argument that Mr. Greenspun is not a subscriber because he receives his subscription for free is a distinction without a difference. Defendants do not cite any authority to support their claim that, if in fact Mr. Greenspun's subscription is complimentary, he somehow lacks standing as a subscriber and consumer of newspaper news. Regardless, this

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argument is specious because the threatened injury in NPA cases like this one is noneconomic. *See Reilly v. Medianews Group, Inc.*, 2007 WL 1068202 ("The NPA evidences that Congress values the existence of separate sources of newspaper content in a community, and that loss of separate sources injures consumers."). The NPA "strongly suggests that loss of diversity of content is a 'threatened loss or damage of the type the antitrust laws were designed to prevent and that flows from that which makes defendants' acts unlawful.'" *Id.* (quoting *Cargill v. Monfort*, 479 U.S. 104, 113 (1986)). Accordingly, whether Mr. Greenspun pays for his subscription or receives it complimentary is inconsequential to the issue of standing in a case concerning the NPA and a JOA where the injury is the loss of competition and editorial voice, not damages.[2]

In summary, "[t]he central purpose of the antitrust laws, state and federal, is to preserve competition. It is competition . . . that these statutes recognize as vital to the public interest." *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 988 (9th Cir. 2000). Plaintiffs have properly alleged – and the evidence will show – that Mr. Greenspun is an active participant in the newspaper market and that the Defendants' conduct in that market violates the relevant antitrust statutes. *Lucas Automotive Engineering, Inc. v. Bridgestone/Firestone, Inc.*, 140 F.3d 1228, 1237 (*prima facie* case established by showing that plaintiff was an active participant in the market and that the defendant's conduct in the market violated Section 7). Thus, Mr. Greenspun "has standing to assert a claim for injury as a consumer of newspaper news, features and opinion." *Reilly*, 107 F.Supp.2d at 1211.

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[2] It is well-established that consumer choice is a protectable interest, and that consumers have standing to seek redress when a restraint of trade impairs consumer choice. *See e.g*, *Apex Hoisery Co. v. Leader*, 310 U.S. 469, 493 (1940); *F.T.C. v. Indiana Fed'n of Dentists*, 476 U.S. 447, 459 (1986) ("[A]n agreement limiting consumer choice by impeding the 'ordinary give and take of the marketplace,' . . . cannot be sustained under the Rule of Reason."); *Glen Holly Entertainment*, 352 F.3d at 378 ("If the antitrust laws are designed to protect customers from the harm of unlawfully elevated prices, and from 'agreements between competitors at the same level of the market structure to allocate territories in order to minimize competition,' it is no stretch to conclude that these same laws protect customers from harm directly related to the unlawful removal of a competitive product from the market.") (internal citations omitted); *Pa. Dental Ass'n v. Medical Serv. Ass'n of Pa*, 815 F.2d 270, 275 (3rd Cir. 1987); *Conwood Co., L.P. v. U.S. Tobacco Co.*, 290 F.3d 768, 789 (6th Cir. 2002); *United States v. Microsoft Corp.*, 253 F.3d 34, 58-78 (D.C. Cir. 2001) (practices deemed unlawful because of non-price effects on competition, including limiting consumer choice); *Doctor's Hosp. of Jefferson County, Inc. v. Southeast Med. Alliance, Inc.*, 123 F.3d 301, 306 (5th Cir. 1997) ("Another way to explain the standing inquiry is that it is ensures that the plaintiff's demand for relief ultimately serves the purpose of antitrust law to increase consumer choice, lower prices and assist competition, not competitors."); *Z Channel Ltd. Partnership v. Home Box Office, Inc.*, 931 F.2d 1338, 1343 (9th Cir. 1991); *see also* Phillip E. Areeda& Herbert Hovenkamp, *Antitrust Law*, ¶ 357b (2d ed. 2000) ("Antitrust law addresses distribution restraints in order to protect consumers from higher prices or diminished choices that can sometimes result from limiting intraband competition.").

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B. THE BUSINESS JUDGMENT RULE IS INAPPLICABLE TO THIS ACTION AND THE PERSONS TO WHOM IT BELONGS TO ARE NOT NECESSARY PARTIES

Defendants argue that Mr. Greenspun lacks standing in his "alternative capacity as the trustee of two family trusts that are minority shareholders of Las Vegas Sun, Inc" because of Nevada's business judgment rule. Opp. (Dkt.#16), at p. 14. Specifically, Defendants argue that Plaintiffs are trying to surreptitiously unwind the Las Vegas Sun's and the Greenspun Corporation's corporate decisions to terminate the 2005 JOA and the License Agreement, respectively. *Id.*

The Defendants' assertion of the business judgment rule - on behalf of corporations who they are not affiliated with and who are not necessary parties to this lawsuit - is the quintessential red herring. Every antitrust case involves the decision of a corporation or its board of directors. The business judgment rule can in no way insulate monopolistic or anticompetitive corporate actions from liability under the Sherman or Clayton Acts. The business judgment rule similarly does not place a limitation on which plaintiffs may assert antitrust claims.

This is a case about the Defendants' illegal actions which aim to eliminate the Las Vegas Sun and monopolize the Las Vegas newspaper market. Thus, Nevada's business judgment rule has no application to this case. Regardless, the business judgment rule is not the Defendants' defense to raise as the Las Vegas Sun's and the Greenspun Corporation's board of directors decisions are not being challenged in this lawsuit. Regardless, those entities and individuals have not tried to intervene in this action and are not necessary parties, and even with they were, the business judgment rule provides no protections to anticompetitive and monopolistic decisions.

i. THE BUSINESS JUDGMENT RULE DOES NOT APPLY TO THIS CASE AND EVEN IF IT DID, THE DEFENSE BELONGS TO THE LAS VEGAS SUN AND THE GREENSPUN CORPORATION

The business judgment rule only applies when a party is "challenging the propriety of decisions made by directors"; thus, "[w]hen a shareholder plaintiff challenges something other than a board decision, '***the business judgment rule has no application***.'" *See In re Accuray, Inc.*, 757 F.Supp.2d 919 (2010) (quoting *Rales v. Blasband*, 634 A.2d 927, 932 (Del. 1993) (internal quotations omitted)). That is, '[t]he business judgment rule is '[t]he default standard' of judicial review '[w]hen directors are subjected to litigation for breach of the duties owed a corporation.'" *Mann v. GTCR Golder Rauner*, 483 F.Supp.2d 884, 901-02 (D. Ariz. 2007); *see id.* at 904 ("'[i]f the presumption of the business judgment rule is rebutted, ..., the burden shifts to the ***director defendants***.'") (internal quotations omitted) (emphasis added).

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The business judgment rule simply has no application here as Plaintiffs are seeking to enjoin the Defendants from terminating the 2005 JOA and eliminating the Las Vegas Sun newspaper. This is not a shareholder derivative action against the Las Vegas Sun and the Greenspun Corporation, and even if it were, the Stephens Media defendants would certainly lack standing to raise the business judgment rule on their behalves. The cases and authorities cited by the Defendants support this rudimentary principle of law. *See e.g, Smith v. Gray*, 50 Nev. 56, 250 P. 369, 374 (1926) (a stockholder may sue its corporation in equity on behalf of himself and other stockholders); Fletcher Cyc. Corp. § 5821 (Sept. 2012 Update) ("to warrant court interposition in favor of the minority shareholders in a corporation, ***against the contemplated action of the majority***, … a case must be made that plainly shows that such action is so far opposed to the true interests of the corporation.") (emphasis added); *In re Amerco Deriv. Litig.*, 127 Nev. Adv. Op. 17 (2011) (recognizing that the business judgment rule arises in the context of shareholder derivative actions). *see also* NRS 78.138(7) ("a director or officer is not individually liable ***to the corporation or its stockholders*** or creditors ….") (emphasis added); *Lewis v. Anderson*, 615 F.2d 778, 784 (9th Cir. 1980) (affirming dismissal of action brought by minority shareholders against corporate directors). In short, the business judgment rule only applies when "a director is charged with breach of his fiduciary obligation," and "***serves as a defense for the board members***." *Hortwitz v. Southwest Forest Industries, Inc.*, 604 F.Supp. 1130 (D. Nev. 1995) (emphasis added).

Accordingly, Defendants' argument that the Plaintiffs lack standing because of Nevada's business judgment rule is legally untenable. The business judgment rule protects directors of a corporation from personal liability in actions against them by the company's shareholders. The rule has no application to this case. Even if the rule somehow applied, the defense would belong to the Las Vegas Sun's and the Greenspun Corporation's directors, not the Stephens Media defendants. And to that end, every combination that is anticompetitive or monopolistic is made with board approval. The business judgment rule does not provide a blanket defense to antitrust claims.

ii. THE LAS VEGAS SUN, THE GREENSPUN CORPORATION, AND THEIR BOARD MEMBERS ARE NOT NECESSARY PARTIES UNDER FRCP 19

This Court raised the issue as to whether the Las Vegas Sun, the Greenspun Corporation, and their individual majority board members[3] are necessary and/or indispensable parties under FRCP 19. *See* TRO Order, dated August 27, 2013 (Dkt.#9). The Defendants acknowledge the

[3] For purposes of this discussion, reference to the Las Vegas Sun and the Greenspun Corporation shall include their individual majority board members as well.

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issue raised by this Court and, in a footnote, determine that they are necessary parties in conclusory fashion. In particular, Defendants make two spurious arguments: (1) that the Las Vegas Sun and the Greenspun Corporation have a legally protected interest in this lawsuit because they are "parties to the LOI and owners and/or licensees of the assets at issue therein;" and (2) that the Plaintiffs' lawsuit seeks to enjoin performance of the LOI/contract, and as such, both contracting parties are necessary parties under *Natural Res. Def. Council v. Kempthorne*, 539 F.Supp.2d 1155, 1186 (E.D. Cal. 2008). Both of these arguments fail when considered with the claims asserted and relief sought by the Plaintiffs.

The issue of whether a non-party is indispensable is determined by FRCP 19, which "requires joinder of persons ***whose absence would preclude the grant of complete relief***, or whose absence would impede their ability to protect their interests, or would subject any of the parties to the danger of inconsistent obligations." *Barnes & Noble, Inc. v. LSI Corp.*, 823 F.Supp.2d 980, 986 (N.D. Cal. 2011) (emphasis added). Accordingly, "the district court must first determine if an absent party is 'necessary' to the action; then, if that party cannot be joined, the court must determine whether the party is 'indispensable' so that in 'equity and good conscience' the action should be dismissed." *Confederated Tribes of Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1498 (9th Cir. 1991) (citing *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990)); *see also Salt River Project Agr. Imp. and Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012).

"A necessary party is one 'having an interest in the controversy, and who ought to be made [a] party, in order that the court may act on that rule which requires it to decide and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it.' This standard is met when failure to join will lead to separate and redundant actions." *Barnes & Noble, Inc.*, 823 F.Supp.2d at 986 (quoting *IBC Aviation Servs. v. Compania Mexicana de Aviacion*, S.A. de C.V., 125 F.Supp.2d 1008, 1011 (N.D. Cal. 2000)). The Ninth Circuit contemplates a two-part test for determining whether a party is necessary for purposes of Rule 19: "First, the court must consider if complete relief is possible among those parties already in the action. Second, the court must consider whether the absent party has a legally protected interest in the outcome of the action." *Lujan*, 928 F.2d at 1498.

In this case, complete relief is not only possible between Plaintiffs and Defendants, it is the only way complete relief can be granted vis-à-vis Plaintiffs' claims. Plaintiffs' compliant asserts three causes of action against Defendants: (1) violation of Section 7 of the Clayton Act for the

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Defendants' acquisition of assets[4] that has a tendency to lessen competition or create a monopoly; (2) violation of Section 2 of the Sherman Act for the Defendants' attempt to monopolize; and (3) violation of Nevada's Unfair Trade Practices Act for the Defendants' attempt to monopolize. *See* Complaint (Dkt.#1), at pp. 17-19. Thus, the relief sought by Plaintiffs focuses exclusively on the Defendants' actions.

Plaintiffs are not asserting claims for restraint of trade under Section 1 of the Sherman Act or for conspiracy to monopolize under Section 2 of the Sherman Act. Those claims require a contract or conspiracy with another person, in which case that other person could certainly be a necessary party.[5] *See Hawaii ex rel. Anzai v. Gannett Pacific Corp.*, 99 F.Supp.2d 1241, 1247 (D. Haw. 1999) (claims for restraint of trade under Section 1 of the Sherman Act require "the existence of an agreement, conspiracy, or combination between two or more entities;" claims for conspiracy to monopolize under Section 2 of the Sherman Act require "the existence of a combination or conspiracy."). Thus, complete relief is entirely possible between the existing parties. *See Wright v. Incline Village General Imp. Dist.*, 597 F.Supp.2d 1191, 1205 (D. Nev. 2009) ("The 'complete relief' factor 'is concerned only with relief as between the persons already parties, not as between a party and the absent person whose joinder is sought.'") (internal quotations omitted).

For these very same reasons, the absent parties do not have a legally protected interest in the outcome of Plaintiffs' lawsuit to enjoin the Defendants' from lessening competition and attempting to monopolize the newspaper market in Las Vegas. A legally protected interest "must be more than a financial stake . . . and more than speculation about a future event." *Makah Indian Tribe*, 910 F.2d at 558. Here, the Las Vegas Sun and the Greenspun Corporation have nothing more than a financial stake in the outcome of this litigation. Additionally, it is well-established that claims for violation of Section 7 of the Clayton Act need only be brought against the violators/acquiring person or entity. *See Gerlinger v. Amazon.com, Inc.*, 311 F.Supp.2d 838, 852 (N.D. Cal. 2004); *see also United States v. Coca-Cola Bottling Co.*, 575 F.2d 222, 230 (9th Cir. 1978) (sellers are not violators of the law for purposes of Section 7 cases); *Tim W. Koerner & Assocs., Inc. v. Aspen Labs., Inc.*, 492 F.Supp. 294, 300 (S.D. Tex. 1980), *aff'd*, 683 F.2d 416 (5th

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[4] *Discussed Infra*. The words "acquire" and "assets" are generic terms, which are to be given liberal interpretation for purposes of Section 7 of the Clayton Act. *See United States v. Columbia Pictures Corp.*, 189 F.Supp. 153, 181-82 (S.D. N.Y. 1960).

[5] Although, not all of the conspirators are necessary parties in a suit to enjoin a conspiracy under the federal antitrust statutes. *See State of Ga. v. Pennsylvania R. Co.*, 324 U.S. 439, 463-64 (1945).

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Cir. 1982) ("by its express terms, [S]ection 7 of the Clayton Act is directed only against the acquiring corporation.").

Defendants' reliance *Natural Res. Def. Counsel v. Kempthorne*,[6] is misplaced and readily distinguishable. *Kempthorne* involved an action to rescind or enjoin water service contracts between the Bureau of Reclamation and various unnamed and unserved third parties under the Endangered Species Act. 539 F.Supp. 2d. at 1185. There, the relief sought was "broad and encompasse[d] the Bureau's performance under water service contracts with both parties and non-parties." *Id.* In concluding that the non-parties were necessary parties the Court relied on the general rule that, where two parties enter into a contract and a third party sues one of the contracting parties to enjoin that contracting party from performing under its contract, the presence of the other party to the contract is required in the lawsuit. *Id.* at 1186 (internal citations omitted).

In the context of a lawsuit to enjoin the violation of state and federal antitrust statutes, the general rule recited in *Kempthorne* is inapplicable. *See Gerlinger*, 311 F.Supp.2d at 852 (*discussed infra*). In fact, the United States Supreme Court has held the exact opposite in a case brought by the United States to enjoin a Corporation and its officers and directors from entering into to leases containing clauses and terms that violated the Clayton Act. *See United Shoe Machinery Corporation v. U.S.*, 258 U.S. 451 (1922). In *United Shoe*, the Defendants, like the Defendants here, argued that the lawsuit should have been dismissed because the lessees were necessary parties since "their rights were necessarily adjudicated in enjoining the enforcements of the contracts involved." *Id.* at 456. The Supreme Court held that the lessees, as contracting parties, "were not indispensable or even necessary parties." *Id.* The Court reasoned that an indispensable party is one in which "no decree can be entered in the case which will do justice to the parties before the court without injuriously affecting the rights of absent parties." *Id.* Given that the clauses of the contracts enjoined had the effect of prohibiting use of a competitor's machinery, the Court found that the lessees' rights were not affected by the injunction. *Id.* at 455-58. The same is true in the instant matter.

Assuming arguendo, that the Las Vegas Sun and the Greenspun Corporation have an interest in the subject of this litigation, disposition of this matter in their absence does not impact their ability to protect that interest or subject any of the existing parties to "multiple or otherwise inconsistent obligations because of the interest." *In re Lorazepam & Clorazepate Antitrust Litig.*, 900 F.Supp.2d 8, 13-14 (D.C. 2012). In short, Defendants cannot show how a final judgment

[6] 539 F.Supp.2d 1155, 1186 (E.D. Cal. 2008).

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decreeing that the Defendants' plan to terminate the 2005 JOA violates the NPA, the Sherman Act, the Clayton Act, and Nevada's Unfair Trade Practices Act, would impair or impede the Las Vegas Sun or the Greenspun Corporation from protecting their own interests. Likewise, such a judgment would not subject the Defendants to multiple or inconsistent obligations: "'inconsistent obligations occur when a party is unable to comply with one court's order without breaching another court's order concerning the same incident.'" *Id.* (quoting *Delgado v. Plaza Las Ams.*, 139 F.3d 1, 3 (1st Cir. 1998)). Consequently, they are not necessary parties.

Finally, if this Court determines that "an absent party is 'necessary' under either of these tests, the Court then determines whether joinder is feasible." *Cundiff v. Dollar Loan Center*, LLC, 726 F.Supp.2d 1232, 1243 (D. Nev. 2010). "If joinder of the necessary party is feasible, then the party will be joined and the action will proceed." *Id.* However, "[i]f the party is indispensable yet cannot be joined, then the action must be dismissed." *Barnes & Noble, Inc.*, 823 F.Supp.2d at 986.

Here, if this Court determines that the Las Vegas Sun and the Greenspun Corporation are necessary parties, both parties can be joined and therefore, are not indispensable parties warranting dismissal under FRCP 19. It is worth noting, however, that both entities most certainly have notice and knowledge of this pending action could have sought to intervene under FRCP 20. Regardless, this is not an instance in which the joinder of non-parties would destroy personal or subject matter jurisdiction. As a result, even if the Las Vegas Sun and Greenspun Corporation are necessary parties, Plaintiffs' lawsuit should not be dismissed. *See Salt River Project Agr. Imp. and Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012) (reiterating that FRCP 19 imposes a three-step inquiry: (1) is the absent party necessary; (2) if so, is it feasible that they be joined; and (3) if it is not feasible, should the case be dismissed).

C. DEFENDANTS' ARGUMENT THAT PLAINTIFFS LACK "ANTITRUST STANDING" FAILS FOR THE SAME REASONS THAT ALL OF THEIR STANDING ARGUMENTS FAIL

Defendants' argument that Plaintiffs do not have "antitrust standing" is similarly premised on Plaintiffs' affiliation with non-parties the Las Vegas Sun and Greenspun Corporation. As set forth above, however, Plaintiffs – and Mr. Greenspun in particular – have standing to obtain injunctive relief against the Defendants under Section 16 of the Clayton Act, 15 U.S.C. § 26. For standing under Section 16, Mr. Greenspun "need only demonstrate a significant threat of injury from an impending violation of the antitrust laws or from a contemporary violation likely to continue or recur." *Zenith Radio Corp. v. Hazeltine Research*, Inc., 395 U.S. 100, 130 (1996).

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The standing requirements under Section 16 to obtain injunctive relief are different from and less stringent that those under Section 4 applicable to damage claims." *Cargill*, 479 U.S. at 111; *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 261 (1972); *Lucas Auto Eng'g*, 140 F.3d at 1234; *Cia Petrolera Caribe, Inc. v. Arco Caribbean, Inc.*, 754 F.2d 404, 407-08 (1st Cir. 1985); *Brown Shoe Co. v. United States*, 370 U.S. 294, 317-23 (1962) ("...Congress used the words 'may be substantially to lessen competition' to indicate that its concern was with probabilities, not certainties.").

Defendants further claim that it is "hornbook law that shareholders do not have standing to bring an antitrust claim." Opp. (Dkt.#16), at p.16. That, the harm to the Plaintiffs "in this capacity is derivative of the alleged harm to the Las Vegas Sun Inc., and it is that corporation, not its shareholders, that would have to bring a claim." *Id.* (citing *Vinci v Waste Management*, Inc., 80 F.3d 1372, 1375 (9th Cir. 1996)). Not only does this argument presuppose that Plaintiffs do not have standing under *Reilly*, it incorrectly assumes once again that Plaintiffs' antitrust claims are brought in their capacity as minority shareholders of the Las Vegas Sun and the Greenspun Corporation. Regardless, Defendants' claim that shareholders do not have standing to bring an antitrust claim is simply incorrect, as the exact opposite rule was announced more than a century ago in *Pennsylvania Sugar Refining Co. v. American Sugar Refining Co.*, 166 F. 254 (1908) (holding that a minority shareholder has standing to bring an antitrust action).[7]

D. PLAINTIFFS' CLAIMS ARE RIPE FOR ADJUDICATION

Defendants fail to cite any cases discussing ripeness of a claim for injunctive relief brought under Section 16 of the Clayton Act and instead rely upon irrelevant and inapplicable cases alleging unrelated, non-antitrust claims. *See Addington v. U.S. Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir. 2010) (assessing ripeness of a claim for breach of the duty of fair representation in negotiating a collective bargaining agreement); *Clinton v. Acquia, Inc.*.94 F.3d 568 (9th Cir. 1996) (addressing ripeness of a claim for an ordinary claim or breach of contract); *Westlands Water Dist. Distribution Dist. v. Nat. Resources Defense Council, Inc.*, 276 F.Supp.2d 10456 (E.D. Cal. July 9, 2003) (adjudicating ripeness of claim akin to petition for judicial review of an action of an

[7] Once again the cases cited to by the Defendants are entirely distinguishable and disposed of by the fact that this is an NPA case, not a shareholder derivative case. As previously explained, "[t]he NPA evidences that Congress values the existence of separate sources of newspaper content in a community, and that loss of separate sources injures consumers." *Reilly v. Medianews Group, Inc.*, 2007 WL 1068202. The NPA "strongly suggests that loss of diversity of content is a 'threatened loss or damage of the type the antitrust laws were designed to prevent and that flows from that which makes defendants' acts unlawful.'" *Id.* (quoting *Cargill v. Monfort*, 479 U.S. 104, 113 (1986)). Thus, Defendants' argument that Plaintiffs cannot show a threatened loss or damage is simply unfounded.

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administrative agency).

Unlike the claims addressed in the cases cited by Defendants, Plaintiffs' claims are explicitly permitted in order to prevent threatened harm, and Plaintiffs need not wait until the damage they seek to prevent comes to fruition. The Clayton Act contains two separate provisions authorizing the initiation of proceedings for violations of the anti-trust laws in their incipiency: Section 4 (15 U.S.C. § 15) and Section 16 (15 U.S.C. § 26). Section 16 states in its entirety as follows:

> Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against **threatened** loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of Title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

15 U.S.C. § 26 (emphasis added). Of notable distinction, Section 4 requires a plaintiff to show actual injury, whereas Section 16 requires a showing only of "threatened" loss or damage. *See Cargill*, 479 U.S. at 11 (internal citation omitted).

In enacting Section 16, Congress intended to encourage the grant of injunctive relief in order to prevent the threat of irreparable injury and to preserve the status quo until the final resolution of the antitrust claim. 15 U.S.C. § 26; *see also Cargill*, 479 U.S. at 112–13 & n. 8. In other words, injunctive relief under Section 16 is a remedy that is "characteristically available even though the plaintiff has not yet suffered actual injury." *Zenith Radio Corp.*, 395 U.S. at 130 (internal citation omitted). Moreover, a claim for injunctive relief under Section 16 is available and ripe whenever there exists "a significant threat of injury from an impending violation of the antitrust laws or from a contemporary violation likely to continue or recur." *Id.* (emphasis added).

That Plaintiffs' claims are ripe for adjudication is further evidenced by the very elements they need to establish in order to prevail on their claims – each claim contemplates the prevention of acts that are threatened to occur. As to Section 7 of the Clayton Act,

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> Section 7 was enacted to prevent anticompetitive mergers in their incipiency. Therefore, all that is necessary [under Section 7] is that the merger create an appreciable danger of [anticompetitive] consequences in the future. A predictive judgment, necessarily probabilistic and judgmental rather than demonstrable, is called for.

California v. Sutter Home System, 130 F.Supp.2d 1109, 1117-18 (N.D. Cal. 2001) (emphasis added) (quoting *Philadelphia Nat'l Bank*, 374 U.S. at 362 (quotations and other citation omitted)). In other words, the thrust of the statute is prospective, designed "primarily to arrest apprehended consequences of inter-corporate relationships before those relationships could work their evil...," a transaction which may have the proscribed anticompetitive effects is prohibited. *United States v. E.I. du Pont de Nemours & Co.*, 353 U.S. 586, 597 (1957) (emphasis added); *see also Brown Shoe*, 370 U.S. at 317. Thus, if there is a "reasonable probability" that the action will substantially lessen competition or tend to create a monopoly, it is prohibited under the Act. *Brown Shoe*, 370 U.S. at 323. By using these terms in Section 7, "which look not merely to the actual present effect of a merger but instead to its effect upon future competition, Congress sought to preserve competition among many small businesses by arresting a trend toward concentration in its incipiency before that trend developed to the point that a market was left in the grip of a few big companies." *United States v. Von's Grocery Co.*, 384 U.S. 270, 277 (1966); *see also United States v. Pabst Brewing Co.*, 384 U.S. 546 (1966); *United States v. Aluminum Co. of America,* 377 U.S. 271 (1964); *United States v. Falstaff Brewing Corp.,* 410 U.S. 526 (1973); *United States v. Continental Can Co.,* 378 U.S. 441 (1964).

Similarly, in order to prevail on their claim for attempt to monopolize, Plaintiffs' need to establish that Defendants have a dangerous probability of success of creating a monopoly and destroying competition. *See Movie 1 & 2 v. United Artists Communications, Inc.*, 909 F.2d 1245, 1254 (9th Cir.1990) (citing *Transamerica Computer Co., Inc. v. International Business Machines*, 698 F.2d 1377 (9th Cir.1983)). In other words, the inquiry is whether Defendants will be able to accomplish their intent at some time in the future.

Defendants assert that there is no threatened injury here as there still remain numerous contingencies that must be met before the 2005 JOA is terminated. However, the evidence presented in this case makes clear that Plaintiffs' claims are ripe. Stephens Media's threatened termination of the 2005 JOA has already been voted upon and approved by the majority of the board of directors for the Las Vegas Sun, Inc. and this decision has been ratified by a majority of its shareholders. In response to the vote, on or about August, 18, 2013, Stephens Media delivered to Vegas.com, Las Vegas Sun, Inc., and the Greenspun Media Group ("GMG"), through Province

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Advisors, a Letter of Intent, a primary provision of which is the termination of the 2005 JOA. *See* Letter of Intent dated August 19, 2013, attached to Motion as Exhibit 2. In response, on or about August 19, 2013, Paul Huygens, Principal at Province Advisors, emailed the Notice of Intent to Brian L. Greenspun with the following message:

> We were instructed in the board/shareholder meetings of August 7th to collect an LOI from Stephens Media by today. The attached was received last night. We have a few minor comments, and once adjusted we intend to sign this and commence negotiation of the transaction documents as we were directed to do.

See Email from Paul Huygens August 19, 2013, attached to Motion (Dkt.#2) as Exhibit 3. The "minor" nature of these amendments and comments was confirmed in Defendants' own Motion. *See* Motion (Dkt.#2) at 10 ("Prior to the Court's entry of the Temporary Restraining Order, the parties continued to exchange drafts of the LOI and presently appear close to signing it. There is, however, no material difference regarding the scope of the transaction set forth in the draft LOI presently before the Court as Exhibit 2 to Plaintiffs' Motion and the subsequent drafts exchanged between the parties.") (internal citations omitted).

That the Stephens Media Defendants may have a few minor terms to adjust in the LOI and then must simply convert those agreed upon terms into a binding agreement does not create the sort of contingencies that may serve to defeat the ripeness of Plaintiff's claims. The termination of the 2005 JOA is an essential term of the LOI and will certainly not be eliminated in any later draft of the LOI or the binding agreement sought to be entered into. Plaintiffs are authorized under Section 7 of the Clayton Act to challenge the illegal and anticompetitive result of this agreement in its incipiency. Thus, barring an injunction from this Court, a significant threat of injury from an impending violation of the antitrust laws exists such that injunctive relief is not only ripe for adjudication, but proper and necessary.

Finally, the fact that the Department of Justice will have to ultimately approve the termination of the JOA is not a contingency effecting the ripeness of Plaintiffs' claims and request for injunctive relief.[8] Nothing in either the Sherman or Clayton Acts indicates that Plaintiff's relief is contingent on the concurrence of state or Federal law enforcement authorities. While Plaintiffs have and will encourage state and federal authorities to intervene and participate in this lawsuit (*See* Notice of Compliance With NRS 598A.310 (Dkt.#13)), the potential for intervention

[8] In its August 27, 2013 Order (Dkt.#9), the Court similarly inquired about the impact of potential law enforcement intervention ("[i]f the letter of intent and proposed agreement do violate anti-trust laws as the plaintiffs contend, the Department of Justice or the Nevada attorney general can intervene under the law to prevent the violation."). (Dkt.#9 at 2:20-22).

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by the Department of Justice or Nevada Attorney General does not affect ripeness.

Moreover, the Department of Justice has posited that court intervention and the granting of injunctive relief to maintain the status quo is proper to enable the Department to conduct investigations into proposed JOA terminations. *See State of Hawaii v. Gannett Pac. Corp.*, Brief Amicus Curiae of the United States of America in Support of Appellee State of Hawaii and Affirmance, 1999 WL 33622940 (9th Cir Nov. 3, 1999) (noting that the United States was currently investigating the transaction at issue purporting to terminate a JOA, and that it is "concerned that a failure to preserve the status quo will, as a practical matter, make effective relief impossible should there be a violation.").

Based upon the above, it is clear that Plaintiffs' claims are ripe for adjudication and properly before this Court.

E. PLAINTIFFS HAVE A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS

In light of the plain language of the Newspaper Preservation Act, it cannot be reasonably disputed that the termination of the JOA will have anticompetitive and monopolistic results. Defendants nonetheless assert that Plaintiffs' claims lack merit because Plaintiffs have failed to adequately allege the relevant product market and that there are numerous substitutes for print and online newspapers available in the Las Vegas market. Additionally, Defendants assert that Plaintiffs' claims lack merit because Plaintiffs cannot establish harm to competition. However, for the reasons set forth below, each of these arguments must be rejected.

i. PLAINTIFFS HAVE ADEQUATELY ALLEGED THE RELEVANT MARKET AND THERE ARE NO VIABLE SUBSTITUTIONS FOR LOCAL NEWSPAPERS AND THEIR ACCOMPANYING WEBSITE

Defendants argue that Plaintiffs' claims fail because Plaintiffs have not adequately alleged the relevant product market. In support, Defendants argue that Plaintiffs cannot prove the actual product market because "Las Vegas has a robust media market place." Def. Opp. At 21:3-4. However, one need look no further than the Newspaper Preservation Act itself for the definition of both the relevant geographic and product markets at issue in this case.

The NPA is made up of four statutes, 15 U.S.C. §§ 1801, 1802, 1803 and 1804, the first three of which are applicable to this case. Section 1801 sets forth the congressional policy of the Act as follows:

> In the public interest of maintaining a **newspaper** press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the

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> United States to preserve the publication of **newspapers** in any **city, community, or metropolitan area** where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this chapter.

15 U.S.C. § 1801 (emphasis added). As to the definitions used in the NPA, Section 1802 states:

> As used in this chapter--
>
> (1) The term "antitrust law" means the Federal Trade Commission Act [15 U.S.C.A. § 41 et seq.] and each statute defined by section 4 thereof [15 U.S.C.A. § 44] as "Antitrust Acts" and all amendments to such Act and such statutes and any other Acts in pari materia.
>
> (2) The term "joint **newspaper** operating arrangement" means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into by two or more newspaper owners for the publication of two or more **newspaper publications**, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.
>
> (3) The term "newspaper owner" means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications.
>
> (4) The term "**newspaper publication**" means a publication produced on **newsprint paper** which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the **same city, community, or metropolitan area**), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.
>
> (5) The term "failing newspaper" means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure.
>
> (6) The term "person" means any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any State or possession

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> of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

15 U.S.C. § 1802 (emphasis added). Finally, Section 1803 sets forth the antitrust exemptions afforded to newspaper publication joint operating agreements, and states, in relevant part:

> (b) Written consent for future joint operating arrangements
>
> It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the Attorney General of the United States. Prior to granting such approval, the Attorney General shall determine that not more than one of the **newspaper publications** involved in the arrangement is a publication other than a failing newspaper, and that approval of such arrangement would effectuate the policy and purpose of this chapter.
>
> (c) Predatory practices not exempt
>
> Nothing contained in the chapter shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this chapter, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

15 U.S.C. § 1803 (emphasis added).

As an initial matter, Defendants do not appear to take issue with Plaintiffs' definition of the relevant geographic market as set forth in their Motion. Consistent with the NPA, which defines the relevant geographic markets as a "city, community or metropolitan area," Plaintiffs have properly defined the relevant geographic market in this case as the city, community and metropolitan area of Las Vegas, Nevada.

As to product market, as seen in the plain language of the NPA, the relevant product market consists of newspapers, and newspapers only. At the time the Act was enacted, television and radio were already in existence. Recognizing the importance of newspapers to society, however, Congress enacted the NPA to protect the viability and continuing existence of newspapers. In *Committee For An Independent P-I v. Hearst Corp.*, 704 F.2d 467 (9th Cir. 1983), the Ninth Circuit had occasion to comment on the intent of the NPA:

> [A] primary intent of the Newspaper Preservation Act was to promote the diversity of editorial voices among *newspapers*. Congress was of the opinion that unique forces operate in the

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> *newspaper* industry, forces which caused the decline and closure of numerous *newspapers* since the turn of the century. In order to maintain editorial diversity, it is beyond question that the purpose of the Act is to prevent the closure of the ailing *newspaper*. We note, however, that Congress was just as concerned with the loss of an independent editorial voice through a merger, as with an actual closure of a *newspaper*.

Id. at 480 (internal citations omitted) (emphasis in original). Importantly, the NPA has never been amended to extend its unique antitrust protections to any other industry, including, but not limited to, television, radio, or the internet.

Rather than lend a rationale for terminating the 2005 JOA and permitting the Las Vegas Sun to die, given the intent of the NPA, Defendants' reliance on the closure of newspapers in other cities cannot support the termination of the JOA here. To the contrary, that newspapers in other cities have been forced to close provides further reason to maintain the viable JOA at issue in this case in order to carry out Congress's intent of maintaining independent editorial and reportorial voices in local cities, communities and metropolitan areas. It is completely illogical and contrary to the NPA to justify the closure of yet another invaluable and irreplaceable newspaper with the failure of other invaluable and irreplaceable newspapers throughout other parts of the country.

Moreover, the important role that newspapers continue to play in society is not to be underestimated. Thomas Jefferson considered a free press so vital that he declared, "Were it left to me to decide whether we should have government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." *See* Federal Communications Commission's Working Group on Information Needs of Communities entitled "The Information Needs of Communities: The changing media landscape in a broadband age" ("FCC Report"), available at www.fcc.gov/infoneedsreport and attached to Plaintiffs' Request for Judicial Notice (Dkt.#14) as Exhibit 2, at 8. This statement is just as applicable today as it was when Thomas Jefferson made it. Defendants argue, however, that there are numerous other substitutions for the traditional newspaper, and thus the product market cannot encompass newspapers only. Additionally, in its Temporary Restraining Order and Order Setting Preliminary Injunction Hearing and Briefing Schedule this Court "took judicial notice of the fact that newspapers around the country are ceasing publication, and the public seems to prefer the Internet as its source of information." But, changing methods and means of dissemination of ideas and opinions is separate and distinct from the creation, reporting, and editing of those ideas and opinions, the latter of which the NPA is aimed at protecting. And, as recognized in the FCC Report, "because of the

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digital revolution, serious problems have arisen, as well. Most significantly among them: in many communities, we now face a shortage of local, professional, accountability reporting. . . . The independent watchdog function that the Founding Fathers envisioned for journalism - going as far as to call it crucial to a healthy democracy - is in some cases at risk at the local level." FCC Report at 5. The diminishing number of local news reporters has already been seen in Nevada. Commenting on the diminished media coverage of the 2010 Nevada legislative session, Ed Vogel of the LVRJ stated that "If you're not there, it changes how legislators look at it. The oversight, the watchdogs won't be there. It's a benefit to society that won't exist anymore." FCC Report at 45.

Focused on the dissemination of ideas, rather than their creation, Defendants argue that Las Vegas has a "robust media market" and only 29% of people read the newspaper. However, "in most communities, the number one online local news source is the local newspaper, an indication that despite their financial problems, newspaper newsrooms are still adept at providing news." FCC Report at 12-13. Consistent with this, the relevant news, editorial and reportorial market in Las Vegas are the LVRJ and Las Vegas Sun newsrooms. There are no other news gathering and distribution enterprises that are remotely equivalent. To be full and complete, media is required to originate content, not simply recycle it or link to others. In Las Vegas, only the newsrooms of the LVRJ and the Las Vegas Sun devote the energy and commitment, and endure the expenses, necessary to adequately cover the community and to do so from different perspectives.

Unfortunately, neither local television, local radio, the internet, nor nonprofit and community media is equipped to fill the reporting and editing gap left behind when a newspaper fails, and thus these mediums do not serve as a competitive substitute for newspapers. *See generally* FCC Report at Executive Summary on pages 5-7, the Overview on pages 8-31, and Chapters 1, 3-4, 21-22, 25 and 35. Even strong advocates for digital media have recognized this issue: "One function that's hard to replace is the kind of reporting that comes from someone going down to city hall again today just in case. There are some in my tribe who think the web will solve that problem on its own, but that's ridiculous." FCC Report at 24 (quoting Cay Shirky, a "highly respected advocate for digital media").

The findings of the FCC Report are consistent with the reality of the Las Vegas market. While local television stations in Las Vegas have news operations, they pale in comparison to the depth and breadth of the two major newspaper newsrooms. Television can provide valuable content origination on occasion, but television news is still an order of magnitude less than what a

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city newspaper's newsroom provides. *See* FCC Report at 13 "Unfortunately, many stations are not where they need to be if hey are going to plug the reportorial gaps left by newspapers."). Television stations in Las Vegas produce far fewer stories and less in depth analysis than a two newspapers do. And, the television news websites do not provide any more in-depth coverage than their television counterpart.

Radio stations in Las Vegas at times will repeat and rehash the news that has already been published by the local newspapers but they have no significant or meaningful newsroom operations of their own. Furthermore, no web-only enterprise exists in the entire state that has any meaningful reportorial staff. Bloggers opining from their bedrooms or someone offering a comment or two on a web site and linking to a newspaper story does not constitute full-bodied publishing. Markets are not simply defined by consumption and distribution -- there must be a producer of a product in any market and in Las Vegas when it comes to news there are only two producers of substantial news product -- the LVRJ and the Sun. To a larger or lesser extent, every other distribution channel in Las Vegas relies on the product of these two large and professional newsrooms.

Finally, citing studies concerning national news consumption trends, Defendants argue that the "traditional printed newspaper will soon be a thing of the past." However, the sources relied upon by Defendants are not focused on the relevant market of local news in the Las Vegas, Nevada community. As Plaintiffs recognized in their Motion, for many readers in Las Vegas online newspaper websites are considered adequate substitutions for printed newspapers. In fact, given consumers' increased reliance on technology in their everyday lives, the traditional printed newspaper has struggled in recent years and sales have dropped throughout the printed newspaper industry, and thus, newspaper websites will be the likely successor to the traditional printed newspaper. Importantly, however, whether the LVRJ and the Las Vegas Sun are eventually forced to disseminate their opinions and ideas online rather than in print will not impact their reportorial or editorial independence, but rather relates to the means of disseminating those ideas and opinions gathered. In other words, it will still be vital that the Las Vegas community continue to have two distinct newsrooms investigating and reporting on local issues, each offering distinct and independent editorial and reportorial voices.

Moreover, while it is likely that newspaper websites may someday replace the printed newspaper, that day has not yet arrived. Newspaper websites are not profitable by themselves, and instead require the use of revenues generated by their printed counterparts. Numerous media

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companies throughout the country are experimenting to find the proper business model to make online newspapers independently economically viable. *See, e.g.*, FCC Report at 56 (discussing whether newspapers "will be able to carry their online advantage in brand and reach into business models that can sustain substantial newsrooms."). Until then, however, online newspapers alone cannot be considered a valid substitute for their printed counterparts. However, when it does happen, online newspaper will be the in-depth, long-form chronicler of political, governmental and societal events in this city that will be indispensible to those readers who demand as much information as they can get and in a form that is most comfortable to them, on newsprint. That newspaper will give them opposing viewpoints on almost all matters of concern. To end the JOA will foreclose that opportunity from readers in Southern Nevada forever.

Finally, Defendants' reliance on articles discussing the general news consumption trends across the nation and for national, rather than local news, does not accurately depict the current reality of the Las Vegas newspaper market. In Las Vegas there is a quite specific market for print news. Both the LVRJ and the Sun enjoy a very large audience of print-only readers who do not use the website of either paper. Las Vegas' penetration of readers of local news on the web is lower than what analysts have found in other markets.

In summary, the relevant product market is explicitly defined in the Newspaper Preservation Act. Additionally, newspapers continue to play a primary role in the gathering and production of local news, and there are presently no media sources to fill the gap laps when a newspapers ceases operations. In other words, despite the existence of a robust media market place for the dissemination of news, there are no interchangeable substitutes for newspapers. Thus, elimination of the Las Vegas Sun would result in the loss of one of only two editorial and reportorial voices in the Las Vegas market.

ii. DEFENDANTS' PLAN TO TERMINATE THE 2005 JOA CONSTITUTES HARM TO COMPETITION

Defendants assert that Plaintiffs' claims lack merit because Plaintiffs cannot establish harm to competition. In support, Defendants argue that there is no economic competition between the Las Vegas Sun and LVRJ, and therefore, termination of the 2005 JOA does not violate the anti-trust laws. Defendants further assert that the Las Vegas Sun is a "failing newspaper," and thus termination of the 2005 JOA is permitted under applicable law. Finally, Defendants assert that Plaintiffs' claim for violation of Section 7 of the Clayton Act fails because that statute is not implicated by the facts of the case. However, for the reasons set forth below, each of these

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arguments must be rejected.

a. Economic Competition Exists Between the Las Vegas Sun and the LVRJ

Defendants argue that there is no economic competition between the printed Las Vegas Sun and the LVRJ. As correctly pointed out in their Opposition, the LVRJ is responsible for all business decisions and operations, including advertising and circulation sales, the determination of advertising and circulation prices, the areas of distribution, and production. All of these such functions were consolidated pursuant to the JOA entered into in accordance with the Newspaper Preservation Act. Importantly, however, the Las Vegas Sun and LVRJ, have maintained their editorial and reportorial independence, and thus, have continued to compete with one another in a variety of ways. The two newspapers often have competing political viewpoints on issues. The two newspapers also directly compete for reportorial awards, thereby competing through their analysis of breaking news stories and in-depth investigation and coverage of issues of local importance.

Citing *Texaco v. Dagher*, 547 U.S. 1 (2006), Defendants argue that the Las Vegas Sun and the LVRJ "do not compete economically with each other under the 2005 JOA, but are instead a single economic entity." Def. Opp. at 24:11-16. Given the purpose of the NPA, Defendants' recycled argument, and the very case relied upon by them, has been rejected by other courts. *See, e.g.*, *United States v. Daily Gazette Co.*, 567 F. Supp. 2d 859, 866-68 (S.D.W. Va. 2008) (examining whether two newspapers are economically integrated under *Dagher* and rejecting that case's application because the "unification of newspaper brands, or elimination of one daily newspaper in favor of another, appears to present concerns not contemplated by *Dagher*.") (citing *Reilly,* 107 F. Supp.2d at 1195 (noting "the Sherman Act and Clayton Act should be read bearing in mind the legislative purposes that prompted enactment of the NPA; namely, encouragement of multiple sources of newspaper news, features and opinion.... Under this statutory framework, the elimination of a newspaper represents a cognizable injury to interests protected by the antitrust laws...."); Maurice E. Stucke & Allen P. Grunes, *Antitrust and the Marketplace of Ideas,* 69 Antitrust L.J. 249, 271 n. 105 (2001) ("The purpose of this limited [NAP] antitrust exemption is to preserve the editorial competition between local daily newspapers when one of the newspapers might otherwise exit the market.")).

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The public policy behind the NPA of 1970 is set forth expressly therein as follows:

> In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this chapter.

15 U.S.C. § 1801. The first clause of section 1801 contemplates continued competition between editorially and reportorially distinct voices. *United States v. Daily Gazette Co.*, 567 F. Supp. 2d 859, 869 (S.D.W. Va. 2008).

That editorial and reportorial independence of the newspapers is commercial in nature and elimination of one newspaper's editorial voice constitutes harm to competition is clearly established under federal law. In *Hawaii ex rel. Anzai v. Gannett Pacific Corp.*, 99 F.Supp.2d 1241 (D.Haw. 1999), *aff'd,* No. 99–17201, 1999 WL 1039700 (9th Cir. Nov. 15, 1999), the district court aptly opined as follows:

> Defendants argue that there can be no antitrust violation because there is no economic competition at all in light of the Newspaper Preservation Act's antitrust exemptions. The Court recognizes that the Advertiser and Star–Bulletin operate to some extent as a single economic entity under the JOA. However, as discussed below, *these actions receive antitrust exemption only so long as they are taken to preserve the independent editorial and reportorial voices of competing newspapers.* In the instant case, the Termination Agreement contravenes the stated purpose of *the Newspaper Preservation Act because it will lead to the shutdown of the Star–Bulletin* ....

Id. at 1249 (emphasis supplied). Moreover, in addressing this issue the Ninth Circuit held that

> There are few, if any, things that affect a business's success which can truly be characterized as noneconomic. A good example is the political viewpoint of a publisher. That viewpoint certainly shows up in the editorial policies of a newspaper. Those policies in turn may either attract or reduce readership.... The Attorney General and Hearst tend to argue that any factors extrinsic to the newspaper operation are 'noneconomic.' That, however, is a shortsighted view, and we reject it ....

Committee for Independent P–I ,704 F.2d at 477 n.8. Given this clear and binding precedent, Defendants' argument that the termination of the 2005 JOA cannot harm competition because there is no economic competition between the Las Vegas Sun and the LVRJ is entirely

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unsupported and incorrect. Based upon the above, Defendant' argument that termination of the 2005 JOA will not violate anti-trust laws because there will be no harm to competition must be rejected.

b. Termination of the JOA is Improper as the LVRJ Cannot Satisfy Either of the Two Prongs of the "Failing Company" Defense

Defendants assert the "failing company defense" in support of its position that termination of the 2005 JOA is permitted. Specifically, Defendants appear to argue that the Las Vegas Sun is a failing newspaper, and therefore, the termination of the 2005 JOA does not negatively affect competition. In order to assert this defense, Defendant must prove that (1) one of the newspapers would be a failing company if operated outside the JOA; and (2) there are no alternative purchasers willing to operate the newspaper outside the JOA.

Fatal to their analysis, Defendants completely neglect to address the second prong of the "failing company" defense. This prong it intended to "supplement[] analysis of financial data by testing the viability of the alleged failing newspaper in the market." *Reilly*, 107 F.Supp.2d at 1205. For example, in *Citizen Publishing*, the court concluded that the defendant had satisfied this prong of the defense by showing that the owner of the "failing newspaper" had "conducted two major sales efforts of [the failing newspaper] assets through its broker." *Id.* In the case of the Las Vegas Sun, there have been no efforts made by the Las Vegas Sun, Inc. to sell the newspaper, other than, of course, the contemplated transaction with Stephens Media. Moreover, that Defendants cannot satisfy the second prong is supported by their own Opposition: "While the contemplates transactions between Stephens Media and the Greenspun entities may envision that the printed 8-12 page Las Vegas Sun insert will no longer be published and distributed with the Review-Journal, Las Vegas Sun, Inc or the Greenspuns will be free to publish the print version of the newspaper on their own or sell it to another party that may wish to do so." Def. Opp. at 27:13-18. Accordingly, Defendant cannot satisfy the second prong of the "failing newspaper" defense.

Nonetheless, even if Stephens Media could somehow meet its burden on the second prong, the Las Vegas Sun is not a "failing newspaper" under the first prong of the defense. A failing newspaper is one "whose resources are so depleted and the prospects of rehabilitation so remote that it faces grave probability of business failure." *Id.* at 1203 (citing *Citizen Publishing*, 394 U.S. at 137 (internal citation omitted)). "A grave possibility of business failure" is present where "the incremental costs of continuing that product exceed the incremental revenues it generates for the operation." *Id.* at 1204; *see also State of Hawaii v. Gannett Pac. Corp.*, Brief Amicus Curiae of

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the United States of America in Support of Appellee State of Hawaii and Affirmance, 1999 WL 33622940 (9th Cir Nov. 3, 1999) ("[A] decision to terminate a newspaper whose incremental costs exceed the incremental revenues attributable to its operation is unlikely to violate the antitrust laws.").

Here, the incremental revenues attributed to the Las Vegas Sun exceed the incremental costs associated with its operation. Nearly half of all daily LVRJ readers read the Las Vegas Sun section. In fact, the Las Vegas Sun section is one of the top LVRJ sections, second only to section one. If, for example, the LVRJ ceased producing and circulating a fundamental section of every newspaper, such as the sports section, it could hardly be doubted that the LVRJ would lose significant readership, and therefore, revenue. But, the Las Vegas Sun section is even more popular and thus its contribution to the revenues generated by the LVRJ/Sun publication cannot be questioned. Moreover, upon the execution of the 2005 JOA, the Las Vegas Sun went from an afternoon publication to an insert in the LVRJ. As a result, numerous subscribers to the Las Vegas Sun purchased new subscriptions to the LVRJ/Sun morning publication. Given these facts, the Las Vegas Sun provides more than $1 million in circulation benefit to the JOA and thus is not a failing newspaper subject to the "failing company" defense.

c. Defendants' Threatened Termination of the 2005 JOA Constitutes a Violation of Section 7 of the Clayton Act

Defendants assert that Plaintiffs' section 7 claim fails because "that section only applies to mergers and acquisitions that substantially lessen competition and tend to promote a monopoly." Def. Opp. at 26, n. 15. In so arguing, Defendants take an improperly restrictive construction of Section 7. Section 7 of the Clayton Act is the principal antitrust statute applicable to mergers and acquisitions. It provides in relevant part as follows:

> No person engaged in commerce or in any activity affecting commerce shall acquire, **directly or indirectly**, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

15 U.S.C. § 18 (emphasis added). For those subject to the jurisdiction of the Federal Trade Commission, the following transactions are within the reach of the statute: (1) both of the participants—the acquiring firm and the acquired firm—must be engaged either in interstate or foreign commerce or an activity affecting such commerce; (2) the challenged transaction must

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constitute an "acquisition" within the meaning of Section 7; (3) the acquisition must be of "stock" or "assets"; (4) the acquisition may be indirect as well as direct; and (5) the acquisition may be of all or any part of the stock or assets of the acquired person. 2 Julian O. von Kalinowski et al., Antitrust Laws and Trade Regulation, § 29.02[1][c] (2d ed.2003).

The words "acquire" and "acquisition" are not defined in Section 7 or elsewhere in the Clayton Act. In keeping with the broad mandate of antitrust laws, however, courts have generally adopted a flexible approach in determining the scope of this language. *Addamax Corp. v. Open Software Found., Inc.*, 888 F.Supp. 274, 285 (D.Mass. 1995) (citing *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 337–339 (1963)).

In *United States v. Columbia Pictures Corp.*, 189 F.Supp. 153 (S.D.N.Y. 1960), Screen Gems, Inc., a wholly owned subsidiary of Columbia, was granted the exclusive right to distribute for fourteen years approximately 600 feature films owned by Universal Pictures Company, Inc. The court held that such an agreement constituted an acquisition in light of Section 7:

> As used here, the words 'acquire' and 'assets' are not terms of art or technical legal language. In the context of this statute, they are generic, imprecise terms encompassing a broad spectrum of transactions whereby the acquiring person may accomplish the acquisition by means of purchase, assignment, lease, license or otherwise ...

Id. at 182.

In this case, the LVRJ is directly seeking to acquire the Las Vegas Sun's interest in the 2005 JOA by buying it out of the agreement. The Las Vegas Sun's principal economic asset is its interest in that JOA. By reason of the NPA, the Las Vegas Sun has already given to the LVRJ its interest in business decisions and operations, including advertising and circulation sales, the determination of advertising and circulation prices, the areas of distribution, and production. Thus, in order to create a monopoly and drive the Las Vegas Sun out of the market, the LVRJ seeks to acquire the Las Vegas Sun's interest in the 2005 JOA, and thereby leave the Las Vegas Sun with no infrastructure with which to operate. This "acquisition" of the "asset" of the Las Vegas Sun, the effect of which is to substantially lessen competition and tend to create a monopoly, is precisely the type of transaction that Section 7 aims to prevent.

F. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE DEFENDANTS ARE NOT ENJOINED

Plaintiffs will suffer irreparable harm should the termination of the 2005 JOA not be enjoined, and no amount of monetary damages can compensate for this harm. Defendants begin

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by arguing that until "certain contingencies become realities, Plaintiffs are not threatened with any harm let alone harm that is irreparable." As discussed above, in Section II(D), *supra*, however, Plaintiffs' claims are presently ripe for adjudication, and the antitrust laws are designed to prevent the type of threatened harm that Defendants seek to effectuate in this case.

The LVRJ's intent to eliminate competition is evidenced in Stephens Media's original offer to the Las Vegas Sun, Inc. – providing the rights to the lasvegas.com URL in exchange for the termination of the 2005 JOA and Stephens Media's acquisition of the lasvegassun.com URL in conjunction with each of the Greenspun siblings entering into a non-compete clause prohibiting any of them from engaging in the "local news business (either print of on-line)."

Regardless of whether the non-compete clause or transfer of the lasvegassun.com remains part of the threatened termination agreement, the effect of any termination of the 2005 JOA will be to create a monopoly. As currently contemplated, the Las Vegas Sun, Inc. will receive just $10 as consideration for the termination. Moreover, the Las Vegas Sun, Inc.'s sole remaining asset will be its masthead. The Las Vegas Sun, Inc. will not be entitled to any other assets belonging to the 2005 JOA, including, but not limited, to rights to subscription revenues, advertising revenues, and the infrastructure necessary for circulation and publication. Defendants' own declarations in support of their Opposition reflect this. *See* Decl. of Michael R. Ferguson in Support of Defendants' Opposition to Plaintiffs' Emergency Motion for Temporary Restraining Order and for Preliminary Injunction at ¶ 7 (The Review-Journal believes that if the 2005 JOA is terminated, it will suffer no loss in advertising, circulation, or other revenue."). With just $10 and its masthead, it will be impossible for the Las Vegas Sun to continue operating and no amount of monetary damage can compensate for the loss of the sun's editorial and reportorial voice. *See Gannett*, 99 F.Supp.2d at 1253-54 (no monetary amount will be able to compensate for the loss of the [Sun's] editorial and reportorial voice, the elimination of a significant forum for the airing of ideas and thoughts, the elimination of an important source of democratic expression, and the removal of a significant facet by which news is disseminated in the community.") (internal citation omitted).

As to the viability of the lasvegassun.com website, as discussed previously, newspaper websites are not profitable by themselves, and instead require the use of revenues generated by their printed counterparts. *See* Section II(E)(i), *supra*. Numerous media companies throughout the country are experimenting to find the proper business model to make online newspapers independently economically viable. *See, e.g.,* FCC Report at 56 (discussing whether newspapers "will be able to carry their online advantage in brand and reach into business models that can

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sustain substantial newsrooms."). Until then online newspapers alone cannot be considered a valid substitute for their printed counterparts. However, when it does happen, online newspaper will be the in-depth, long-form chronicler of political, governmental and societal events in this city that will be indispensable to those readers who demand as much information as they can get and in a form that is most comfortable to them, on newsprint. To end the JOA will foreclose that opportunity from readers in Southern Nevada forever. Accordingly, Defendants' specious argument that the Las Vegas Sun will not suffer irreparable harm as a result of the termination of the JOA because either it or its website will be able to compete after the termination of the 2005 JOA must be rejected.

G. THE BALANCE OF HARDSHIPS WEIGHS SHARPLY IN PLAINTIFFS' FAVOR AND THE PUBLIC INTEREST FAVORS THE GRANTING OF A PRELIMINARY INJUNCTION

Defendants fail completely to address either of these factors, simply asserting instead that the termination of the JOA will not result in the loss of the Las Vegas Suns reportorial and editorial voice because it will continue to be accessed via the Las Vegas Suns website. As discussed above, however, the termination of the 2005 JOA will silence this voice, both in print and online. Neither the Las Vegas Sun print edition or the lasvegassun.com will survive the termination of the 2005 JOA. Accordingly, as explained in Plaintiffs' Motion, the balance of hardships weighs sharply in Plaintiffs' favor, and the public interest favors the granting of injunctive relief.

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III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court enter a Preliminary Injunction, enjoining Defendants from (i) taking any steps whatsoever to terminate the Amended and Restated Agreement ("2005 JOA"); (ii) taking any steps whatsoever that are contrary to, or inconsistent with, the various provisions of the 2005 JOA, including, without limitation, the right of the Las Vegas Sun to produce and furnish features, news and editorial copy, and like material, to the Las Vegas Review Journal for publication in the Sun and the requirement that Las Vegas Review Journal produce the Las Vegas Sun as a morning newspaper and to sell advertising for, promote and circulate the Las Vegas Sun; and (iii) taking any actions whatsoever that may cause any material adverse change in the business, including loss of financial condition of the Las Vegas Sun as a viable going concern.

Dated this 4th day of September, 2013.

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CERTIFICATE OF SERVICE

Pursuant to 5(b), I certify that I am an employee of Lewis and Roca LLP and that on the 4th day of September, 2013, service of the **PLAINTIFFS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** upon Defendants was made by depositing a copy for mailing, first class mail, postage prepaid, at Reno, Nevada to the following:

Donald J. Campbell
J. Colby Williams
Campbell & Williams
700 South 7th Street
Las Vegas, Nevada 89101

Mark A. Hinueber
Stephens Media
PO Box 70
Las Vegas, Nevada 89125-0070

DATED this 4th day of September, 2013.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRIAN L. GREENSPUN, AN INDIVIDUAL; THE BRIAN L. GREENSPUN SEPARATE PROPERTY TRUST, DATED JULY 11, 1990; THE AMY GREENSPUN ARENSON 2010 LEGACY TRUST,

PLAINTIFFS,

VS.

STEPHENS MEDIA LLC, a Nevada limited liability company; STEPHENS HOLDING COMPANY OF ARKANSAS, an Arkansas corporation; SF HOLDING CORP., an Arkansas foreign corporation, d/b/a STEPHENS MEDIA GROUP; DR PARTNERS, a Nevada General Partnership, d/b/a STEPHENS MEDIA GROUP; STEPHENS MEDIA INTELLECTUAL PROPERTY, LLC, a Delaware limited liability company; MICHAEL FERGUSON, an individual; WARREN A. STEPHENS, an individual, DOES, I-X, inclusive,

DEFENDANTS.

Case No. 2:13-cv-01494-JCM-PAL

DECLARATION OF BRIAN L. GREENSPUN IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF EMERGENCY AND FOR PRELIMINARY INJUNCTION

I, BRIAN L. GREENSPUN, do hereby declare under penalty of perjury that the following assertions are true and correct to the best of my knowledge:

1. I have been the editor of the Las Vegas Sun newspaper since my father's death in 1989. I have been co-publisher since then, and publisher since my mother's death in 2010. Throughout its 63-year history, the Las Vegas Sun has been published and edited by only three people, Hank, Barbara and Brian Greenspun. As such, I have been a consistent daily consumer of local news through the Las Vegas Sun and the Review Journal since I was a teenager.

2. I am consumer of news in the Las Vegas market, and receive and read the Las Vegas Sun daily.

3. I negotiated the JOA in 1989 and I did so to give the people of Southern Nevada a competitive editorial and reportorial opportunity that few major cities are afforded. The JOA was designed to provide that news and editorial competition for a minimum of 50 years. The Newspaper Preservation Act, which made the JOA possible, was specifically designed to permit newspaper commercial monopolies within a community in exchange for the guarantee of editorial competition. As an example, the Review Journal increased its advertising rates shortly after the JOA went into effect and has increased both advertising and circulation rates since without the fear of competition from the Las Vegas Sun.

4. In 2005, Stephens Media and I amended the JOA to allow the Las Vegas Sun to be distributed together with the morning Review Journal as the third section. This amendment did two things. It gave the Review Journal an opportunity to save the increasing costs going forward of publishing and delivering a separate afternoon Las Vegas Sun, thereby adding many millions of dollars to their bottom line. It gave the Las Vegas Sun a circulation boost from approximately 26,000 afternoon readers to 180,000 morning readers, the exact same number as the Review Journal and the exact same readers. The Las Vegas Sun consistently ranks as the second, and at times, third most read section in the morning paper. It is read more than the sports and business sections of the Review Journal and is second only to the front section of then paper. To suggest that the millions of dollars of revenue that the Review Journal earns through circulation payments is not in a major way contributed to by those readers who prefer the Las Vegas Sun ignores reality

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and market research results. Any suggestion by the Review Journal that the Las Vegas Sun is a cost burden to the JOA is unsupported.

5. Additionally, the Las Vegas Sun and LVRJ, have maintained their editorial and reportorial independence, and thus, have continued to compete with one another in a variety of ways. The two newspapers often have competing political viewpoints on issues. The two newspapers also directly compete for reportorial awards, thereby competing through their analysis of breaking news stories and in-depth investigation and coverage of issues of local importance.

6. In 2008 the world-wide recession – which hit Las Vegas harder than almost any other city – also hurt the JOA. The Review Journal's revenues dropped almost in half and its profits crashed toward the bottom. This took the annual payments that the Las Vegas Sun received under the JOA from the $12 million dollar range where they had been previously, down to approximately $1.3 million dollar range.

7. Because of the quality of journalists we have employed as a result of the JOA, the people of southern Nevada were provided the best journalism available. That was reflected in the Las Vegas Sun's 2009 Pulitzer Prize for community service for its series on construction deaths at major projects on the Las Vegas Strip. In 2010, the Las Vegas Sun was also a runner up for the same award for its year-long effort to shine a light on the health-care crisis in local hospitals and the lack of government oversight. In each case, the problems described were considered to be of such urgent public concern that the Nevada legislature took steps to improve matters as a result of the Sun's efforts. All of which benefitted the people of Southern Nevada.

8. The Las Vegas Sun continues to provide a quality of journalism that would not be available if it did not exist as part of the JOA. Our columnists, investigative reporting teams, political teams and environmental teams provide coverage of our Washington delegation, the Nevada Legislature, and local government operations.

9. Our commitment to diverse and knowledgeable opinions on our editorial pages brings our readers such world-renowned writers as Tom Friedman, Maureen Dowd and David Brooks. It also provides an opportunity for state and local leaders to write every summer through the Where I Stand columns in the Las Vegas Sun.

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10. The Las Vegas Sun also provides news features from respected news services as well as enjoyable features like the NY Times crossword puzzles and Sudoku, which would not be available in print in the market without the Sun.

11. The relevant news, editorial and reportorial market in Las Vegas is the Review Journal and Las Vegas Sun (Greenspun Media Group) newsrooms. There are no other news gathering and distribution enterprises that are remotely equivalent in Las Vegas. In today's world it is easy to confuse distribution channels such as the world wide web, television, radio, mobile phones, Twitter, Facebook, etc. with full-fledged media content providers. In fact, the majority of content in most of those channels in one way or another usually was derived from the product of an American newsroom. To be full and complete, media is required to originate content, not simply recycle it or link to others. In Las Vegas, only the newsrooms of the Review Journal and the Las Vegas Sun devote the energy and commitment, and endure the expenses necessary to adequately cover the community and to do so from different perspectives. Television stations do have news operations but they pale in comparison to the depth and breadth of the two major newspaper newsrooms. Television can provide valuable content origination on occasion, but television news is still an order of magnitude less than what a city newspaper's newsroom provides. Few observers would equate the output of a television newsroom with that of a newspaper. Radio stations in Las Vegas at times will repeat the news that has already been published by the local newspapers, but they have no significant or meaningful newsroom operations of their own. Furthermore, no web-only enterprise exists in the entire state that has a meaningful reportorial staff. Bloggers opining from their bedrooms or someone offering a comment or two on a web site and linking to a newspaper story does not constitute full-bodied publishing. Markets are not simply defined by consumption and distribution – there must be a producer of a product in any market and in Las Vegas when it comes to news there are only two producers of substantial news product – the Review Journal and the Las Vegas Sun.

12. The JOA contemplates the termination of the JOA in such a manner as to provide the Las Vegas Sun the equipment necessary for an extended period of time to publish should the RJ cease publishing. That is because with the commencement of the JOA in 1990, the Las Vegas

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Sun gave up its press, its distribution lists, its sales force and its personnel capacity to publish a daily newspaper. If the Las Vegas Sun were outside of the JOA it would fail without a substantial investment in the tens of millions of dollars to put it in a position to publish on its own.

13. Because of my concern for the well-being of the Las Vegas Sun, I have been operating as its editor without any pay since 2011. It has been at great personal financial and mental hardship to do so but without my doing so, the Sun, its websites and the other print products would most likely not have survived.

14. I have been ready, willing and able to purchase the Las Vegas Sun and the JOA.

15. While it is likely that newspaper websites may someday replace the printed newspaper, that day has not yet arrived. In Las Vegas there is a quite specific market for print news. Both the LVRJ and the Sun enjoy a very large audience of print-only readers who do not use the website of either paper. Las Vegas' penetration of readers of local news on the web is lower than what analysts have found in other markets.

16. Additionally, newspaper websites are not profitable by themselves, and instead require the use of revenues generated by their printed counterparts. Numerous media companies throughout the country are experimenting to find the proper business model to make online newspapers independently economically viable. Until then online newspapers alone cannot be considered a valid substitute for their printed counterparts.

17. However, when online newspapers become profitable 24-7 products, the printed newspaper will still be the in-depth, long-form chronicler of political, governmental and societal events in this city that will be indispensable to those readers who demand as much information as they can get and in a form that is most comfortable to them, on newsprint. Importantly, however, whether the LVRJ and the Las Vegas Sun are eventually forced to disseminate their opinions and ideas online rather than in print will not impact their reportorial or editorial independence. In other words, it will still be vital that the Las Vegas community continue to have two distinct newsrooms investigating and reporting on local issues, each offering distinct and independent editorial and reportorial voices. To end the JOA will foreclose that opportunity from readers in Southern Nevada forever.

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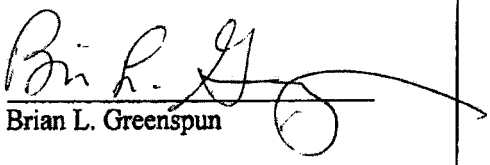
18. The Lasvegassun.com website cannot exist and grow without the combined newsroom production of the Las Vegas Sun newspaper and the at least $1.3 million dollars contributed yearly by the JOA. Ending the JOA will prevent news consumers in Southern Nevada from having the distinct editorial and reportorial content that that the JOA has ensured since 1990.

DATED this 4th of September, 2013.



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