

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	Civil Action No. 1:03CV0164
)	
v.)	Judge Polster
)	
)	Filed: 01/27/03
)	
VILLAGE VOICE MEDIA, LLC, and)	
NT MEDIA, LLC,)	
)	
<i>Defendants.</i>)	

HOLD SEPARATE STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned Parties,
subject to approval and entry by this Court, that:

I.
DEFINITIONS

As used in this Hold Separate Stipulation and Order:

(A) “Acquirer” or “Acquirers” means the entity or entities to which Defendants divest the Divestiture Assets.

(B) “Alternative Newsweekly” means a publication (such as the *Cleveland Scene* or *LA Weekly*) that possesses more than one of the following attributes: (i) it is published in a geographic area served by one or more daily newspapers to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing

company; and (v) it is a general interest publication that does not focus exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) “*Cleveland Free Times Assets*” means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the *Cleveland Free Times* Alternative Newsweekly in the Greater Cleveland Area by Village Voice Media before October 1, 2002, including, but not limited to:

- (1) all rights to the *Cleveland Free Times* name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the *Cleveland Free Times*, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);
- (2) except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the *Cleveland Free Times* stored on the computer hardware, including all design templates and databases;
- (3) all office furniture, telephone systems, T-1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the *Cleveland Free Times*;
- (4) all rights to the *Cleveland Free Times* website and URL (www.freetimes.com);
- (5) all rights to the print and electronic archives of the *Cleveland Free Times* publications and articles on a non-exclusive basis;
- (6) all assets used in the publication of the *Cleveland Free Times*, including all

distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which Village Voice Media published the *Cleveland Free Times*; and

- (7) all other tangible and intangible assets used in the publication of the *Cleveland Free Times*, including, but not limited to: all other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating to the *Cleveland Free Times*; all other records stored in the offices of, or generated by or for, the *Cleveland Free Times*; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the *Cleveland Free Times*; all research, packaging, sales, marketing, advertising and distribution know-how, information, data, and documentation, including marketing and sales data, and layout designs; all manuals and technical information Village Voice Media provided to any of its *Cleveland Free Times* employees, customers, suppliers, agents or licensees; and all specifications for materials.

(D) “Divestiture Assets” means the *Cleveland Free Times* Assets and the *New Times LA* Assets.

(E) “Greater Cleveland Area” means the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio.

(F) “Greater Los Angeles Area” means the counties of Los Angeles, Orange, San Bernardino, Riverside and Ventura in the state of California.

(G) “New Times” means Defendant NT Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in Phoenix, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation Cleveland Scene, LLC, and New Times Los

Angeles, LP, and their directors, officers, managers, agents, and employees.

(H) “*New Times LA Assets*” means all assets within the possession, custody or control of New Times and Village Voice Media that were formerly employed in the publication of the *New Times LA Alternative Newsweekly* in the Greater Los Angeles Area by New Times before October 1, 2002, including, but not limited to:

- (1) subject to the provisions of Section V(K) of the proposed Final Judgment, all rights to the *New Times LA*, *LA Reader* and *LA View* names (including any derivations thereof), logos, layout and design, including all legal rights, including intellectual property rights associated with the *New Times LA*, *LA Reader* and *LA View*, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);
- (2) all computer hardware, software, and licensing agreements connected with that software to the fullest extent sublicensable, which are associated primarily with the publication of the *New Times LA*, including all rights to the *New Times LA* website and URL (www.newtimesla.com); all information relating to the *New Times LA* stored on the computer hardware, including all design templates and databases; New Times shall provide in the original format to the Acquirer (if such format is not readable or usable by commercially available software, then New Times shall provide such data in such format the Acquirer may reasonably specify) all other information relating to the publication of *New Times LA* stored on New Times’s computer hardware (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);
- (3) all office furniture, telephone systems, T-1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the *New Times LA*;
- (4) all rights to the print and electronic archives of *New Times LA* publications

and articles on a non-exclusive basis;

- (5) all graphics and artworks used in the publication of the *New Times LA* and New Times's other Alternative Newsweeklies as of October 1, 2002, on a non-exclusive basis;
- (6) all assets used in the publication of the *New Times LA*, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which New Times published the *New Times LA*; and
- (7) all other tangible and intangible assets used in the publication of the *New Times LA*, including, but not limited to: all other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating exclusively to the *New Times LA*; all other records stored in the offices of, or generated by or for, the *New Times LA*; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the *New Times LA*; all research, packaging, sales, marketing, advertising, and distribution know-how, information, data and documentation, including marketing and sales data, and layout designs used exclusively in, or which relate exclusively to, the publication of the *New Times LA* (and copies of such know-how, information, data and documentation which relates to the publication of the *New Times LA*); all manuals and technical information New Times provided to any of its *New Times LA* employees, customers, suppliers, agents or licensees; and all specifications for materials.

(I) "Publication" means all activities associated with the business of offering an Alternative Newsweekly to the public as a commercial endeavor, including, but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such Alternative Newsweeklies, and selling advertisements and promotions therein.

(J) "State Attorneys General" means the Office of the Attorney General of the State of

Ohio and the Office of the Attorney General of the State of California, who may share information and consult with the Office of the Los Angeles County District Attorney on any matters arising under this Hold Separate Stipulation and Order.

(K) “Village Voice Media” means Defendant Village Voice Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation LA Weekly Media, Inc. and Cleveland Free Times Media, Inc., and their directors, officers, managers, agents, and employees.

(L) The terms “and” and “or” have both conjunctive and disjunctive meanings.

II. OBJECTIVES

The Final Judgment filed in this civil action is meant to ensure prompt divestitures for the purpose of establishing viable competitors in the Alternative Newsweekly industry in order to remedy the effects that the United States alleges have resulted, and would otherwise continue to result, from the Defendants’ agreement that the United States alleges to have violated Section One of the Sherman Act. The Hold Separate Stipulation and Order ensure, prior to such divestitures, that the *Cleveland Free Times* Assets and *New Times LA* Assets remain economically viable, and that the Divestiture Assets be maintained and not be diminished during the pendency of the ordered divestitures.

III.
JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the Parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Ohio.

IV.
COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

(A) The Parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by this Court, upon the motion of any party or upon this Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with this Court.

(B) Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by this Court, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment. Defendants, from the date of the signing of this Hold Separate Stipulation and Order by the Parties, shall comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of this Court.

(C) This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the Parties and submitted to this

Court.

(D) In the event that (1) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and this Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, or (2) the United States has withdrawn its consent, as provided in Section IV(A) above, then the Parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without evidentiary prejudice to any party in this or any other proceeding.

(E) Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking this Court to modify any of the provisions contained therein.

V.
HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

(A) Defendants shall preserve and maintain the value and goodwill of the Divestiture Assets. Defendants shall not, except as part of a divestiture approved by the United States, after consultation with the State Attorneys General, in accordance with the terms of the proposed Final Judgment, remove, sell, lease or sublease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

(B) Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as

the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income, if any, of the Divestiture Assets.

Cleveland Free Times Assets

(C) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the *Cleveland Free Times Assets* in its possession, custody or control, New Times shall hold them entirely separate, distinct and apart from those of New Times's other operations. Until such time that the *Cleveland Free Times Assets* are divested, the *Cleveland Free Times Assets* in New Times's possession, custody or control shall be managed by a person, not employed by New Times's Alternative Newsweekly, the *Cleveland Scene* (the "New Times Designated Person").

(D) The New Times Designated Person shall have complete managerial responsibility for the *Cleveland Free Times Assets* in the possession, custody, and control of New Times, subject to the provisions of this Order, and will be responsible for overseeing New Times's compliance with this Section.

(E) In the event that the New Times Designated Person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, New Times shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five (5) calendar days. Should Defendant New Times fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five (5) calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(F) Defendant New Times shall take no action that would interfere with the ability of the New Times Designated Person or any later appointed persons to oversee the *Cleveland Free Times* Assets in New Times's possession, custody or control. The New Times Designated Person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the Final Judgment and this Hold Separate Stipulation and Order.

(G) Within ten (10) calendar days after either the filing of the Complaint or the entry of the Hold Separate Stipulation and Order, whichever is earlier, New Times shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) each *Cleveland Free Times* Asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the New Times Designated Person, and (iii) all actions New Times has taken and all steps New Times has implemented on an ongoing basis to comply with this Hold Separate Stipulation and Order.

New Times LA Assets

(H) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the *New Times LA* Assets in its possession, custody or control, Village Voice Media shall hold them entirely separate, distinct and apart from those of Village Voice Media's other operations. Until such time that the *New Times LA* Assets are divested, the *New Times LA* Assets shall be managed by a person, not employed by Village Voice Media's Alternative Newsweekly, the *LA Weekly* (the "VVM Designated Person").

(I) The VVM Designated Person shall have complete managerial responsibility for the *New Times LA* Assets in the possession, custody, and control of Village Voice Media, subject to the

provisions of this Order, and will be responsible for overseeing Village Voice Media's compliance with this Section.

(J) In the event that the VVM Designated Person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, Village Voice Media shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five (5) calendar days. Should Village Voice Media fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five (5) calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(K) Defendant Village Voice Media shall take no action that would interfere with the ability of the VVM Designated Person or any later appointed persons to oversee the *New Times LA* Assets in Village Voice Media's possession, custody or control. The VVM Designated Person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the Final Judgment and this Hold Separate Stipulation and Order.

(L) Within ten (10) calendar days after either the filing of the Complaint or the entry of the Hold Separate Stipulation and Order, whichever is earlier, Village Voice Media shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) each *New Times LA* Asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the VVM Designated Person, and (iii) all actions Village Voice Media has taken and all steps Village Voice Media has implemented on an ongoing basis to comply with this Hold Separate Stipulation and Order.

(M) Defendants shall take all steps necessary to ensure that preservation of the assets will be conducted by the Designated Persons and not be influenced by New Times or Village Voice Media. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition, and shall maintain and adhere to normal repair, product improvement and upgrade, and maintenance schedules for the Divestiture Assets.

(N) Defendants shall use their best efforts to assist, and shall take no action to interfere with or to impede, the trustee (if applicable) in accomplishing the required divestiture pursuant to the Final Judgment.

(O) This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of this Court.

Dated: 25 January 2003
Washington, D.C.

Respectfully submitted,

FOR DEFENDANT VILLAGE VOICE MEDIA, LLC:

FOR DEFENDANT NT MEDIA, LLC:

_____/s/
Melanie Sabo
(Florida Bar No. 0875287)
Preston Gates Ellis & Rouvelas Meeds, LLP
1735 New York Avenue N.W., Suite 500
Washington, D.C. 20006-5209
(202) 628-1700 (telephone)
(202) 331-1024 (facsimile)
melanies@prestongates.com

_____/s/
Joseph Kattan, P.C.
(D.C. Bar No. 335422)
Gibson Dunn & Crutcher, LLP
1050 Connecticut Avenue N.W.
Washington, D.C. 20036
(202) 955-8500 (telephone)
(202) 530-9558 (facsimile)
Jkattan@gibsondunn.com

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/

Maurice E. Stucke
(New York -- no bar number assigned)
U.S. Department of Justice
Antitrust Division
Litigation III Section
325 7th Street, N.W.
Suite 300
Washington, D.C. 20530
(202) 305-1489 (telephone)
(202) 514-7308 (facsimile)
Maurice.Stucke@usdoj.gov

O R D E R

IT IS SO ORDERED by this Court, this ____ day of _____, 2003.

United States District Judge