BILL LOCKYER, Attorney General
Of the State of California
RICHARD FRANK
Chief Assistant Attorney General
KATHLEEN FOOTE,
Acting Senior Assistant Attorney General
BARBARA M. MOTZ, State Bar No. 66933
Supervising Deputy Attorney General
WINSTON H. CHEN, State Bar No. 166959
Deputy Attorney General
300 South Spring Street
Los Angeles, California 90013

STEVE COOLEY
District Attorney, Los Angeles County
THOMAS A. PAPAGEORGE, State Bar No. 77690
Head Deputy District Attorney
KATHLEEN J. TUTTLE, State Bar No. 128067
Deputy-in-Charge, Antitrust Section
201 N. Figueroa St., 16th Floor
Los Angeles, California 90012

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. VILLAGE VOICE MEDIA, LLC and NT MEDIA, LLC, Defendants.	No.__________ COMPLAINT FOR INJUNCTION, DIVESTITURE, AND OTHER RELIEF.

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through BILL LOCKYER, Attorney General of the State of California, by Barbara M. Motz, Supervising Deputy Attorney General, and Winston H. Chen, Deputy Attorney General; and by and through STEVE COOLEY, District Attorney of the County of Los Angeles, by Thomas A. Papageorge, Head Deputy District Attorney and Kathleen J. Tuttle, Deputy-in-Charge, Antitrust Section, acting on information and belief bring this civil antitrust action alleging that Defendants entered into a *per se* illegal market allocation agreement involving the alternative newsweeklies in metropolitan Cleveland, Ohio and Los Angeles, California in violation of the Cartwright Act and the Unfair Competition Law and allege as follows:.

I. JURISDICTION AND VENUE

1. Plaintiff brings this suit under the Cartwright Act (Bus. and Prof. Code §16720 et seq.) and the Unfair Competition Law (Bus. and Prof. Code § 17200 et seq.).

2. Defendants, at all times mentioned herein, have transacted business within the County of Los Angeles and elsewhere within the State of California.

II. DEFENDANTS

3. Defendant Village Voice Media, LLC (hereinafter, Village Voice Media) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. Until consummating the *per se* illegal market and customer allocation scheme, Village Voice Media owned alternative newsweeklies in New York City, Minneapolis-St. Paul, Cleveland, Seattle, Nashville, Los Angeles and Orange County, California, including the *LA Weekly*.

4. Defendant NT Media, LLC (hereinafter, New Times) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Phoenix, Arizona. Until consummating the *per se* illegal market and customer allocation scheme, New Times owned alternative newsweeklies in Phoenix, Cleveland, Los Angeles, San Francisco, Oakland-Berkeley, Palm Beach-Broward, Miami, Denver, St. Louis, Kansas City, Dallas, and Houston, including the *New Times Los Angeles* (also known as *New Times LA*).

III. NATURE OF THE ACTION AND FACTS COMMON TO EACH CAUSE OF ACTION

5. Defendants New Times and Village Voice Media are the nation's two largest publishers of alternative newsweeklies. Alternative newsweeklies are published and distributed weekly for free through street boxes and other displays located in various urban business establishments, and typically focus exclusively on local events and news. In the past ten to fifteen years, alternative newsweeklies have grown dramatically, largely because advertisers recognized their unique ability to reach a young, urban audience in a cost-effective manner. Defendants have acquired and consolidated their ownership of these independent newsweeklies over the years to the point that Defendants today account for nearly one-third of the total circulation of alternative newsweeklies in the United States.

6. Prior to the conduct and agreement giving rise to this Complaint, the only two geographic markets in which Defendants competed head-to-head in the publication of alternative newsweeklies were Cleveland, Ohio and Los Angeles, California. In Cleveland, New Times's *Cleveland Scene* fought against the evenly matched Village Voice Media's *Cleveland Free Times*. In Los Angeles, *New Times LA* sought to topple the dominant weekly, Village Voice Media's *LA Weekly*. In these two arenas, there were no other significant competitors.

7. Defendants' fierce and protracted competitive battle in these two markets yielded predictable consumer benefits. In particular, the advertising competition in both cities brought advertisers lower ad rates, more promotional opportunities, and better service. The editorial competition between Defendants' rival newsweeklies brought readers improved and varied coverage of important local events affecting social, political, esthetic, and moral issues. This editorial competition between these two diverse and antagonistic sources also fostered the dissemination of local news.

8. Defendants, on the other hand, had a different view. In markets where they faced no direct alternative newsweekly competitor, both Defendants enjoyed double-digit annual profit margins. However, in Cleveland and Los Angeles, their margins were pinched. To make matters worse (from Defendants' perspective), neither competitor appeared willing to retreat,

leaving the prospects of a prolonged competitive price war all but certain.

9. In June 2002, Village Voice Media in Cleveland redoubled its efforts to put some distance between it and its key competitor, "The Scene" published by New Times, by hiring a new editor-in-chief, completely redesigning and overhauling the *Cleveland Free Times* and broadening the editorial focus. The financial performance of the *Cleveland Free Times* improved each month after March 2002.

10. Likewise in Los Angeles, New Times hired a new publisher, advertising director, and several key *LA Weekly* employees in 2002 to revitalize the *New Times LA*, and to compete more effectively against Village Voice Media's *LA Weekly*. New Times improved its entertainment section layout, and ramped up new advertisers and promotional programs in the late summer of 2002 to attract more advertisers from the *LA Weekly*. Plans were underway to increase *New Times LA's* circulation, and to attack the *LA Weekly's* advertising strongholds.

11. In July 2002, New Times proposed to Village Voice Media to finally end the competitive war by agreeing to "swap" markets: New Times would close its *New Times LA* publication, making Village Voice Media's *LA Weekly* the only alternative weekly in LA. Likewise, Village Voice Media would close its *Cleveland Free Times* leaving New Times's *Cleveland Scene* "the only alternative weekly in Cleveland."

12. By August 12, 2002, Defendants agreed in principle to swap markets. Over the next two months, New Times's and Village Voice Media's senior executives and attorneys negotiated the terms of their contracts to effectuate their proposed market swap.

13. The proposed deal would effectively end all competition between the Defendants, and created an opportunity for the remaining alternative newsweekly in each market to raise advertising rates.

14. On October 1, 2002, Village Voice Media's and New Times's senior executives signed two written contracts (hereafter referred to as the "Written Agreements"), each expressly contingent on the other, which memorialized and effectuated their illegal market and customer allocation arrangement.

15. Under the Written Agreements, New Times would agree to shut down its

newsweekly in Los Angeles, if Village Voice Media would shut down its newsweekly in Cleveland. Since the potential revenues from the Los Angeles market were greater than from the Cleveland market, Village Voice Media agreed to pay $11 million in cash to New Times at closing, while New Times agreed to pay only $2 million to Village Voice Media. The net result of the agreement would be that each Defendant would control the sole remaining alternative newsweekly in one of the two formerly contested markets.

16. Defendants already had agreed two months earlier that each would withdraw from one of the two markets by closing their competing newsweekly. The Defendants' Written Agreements did not involve the transfer or integration of any meaningful economic assets associated with those shuttered papers.

17. The Written Agreements sought to deter any new competitive entry into each Defendant's protected market. Over the next decade, Village Voice Media agreed not to use, and to prevent anyone else from using, the name "*Cleveland Free Times*" in connection with any current or future publication in the Greater Cleveland Area. Similarly, over the next decade, New Times agreed not to use, and to prevent anyone else from using, the name "*New Times LA*" or any variant containing "*New Times*" in connection with any current or future publication in the Greater Los Angeles Area. Furthermore, both Defendants agreed not to sell or otherwise make available any of the fixed assets associated with their closed publication to any of their former employees, consultants or independent contractors in the affected markets.

18. On October 2, 2002, one day after signing the written agreements, the senior executives of both papers announced that the *Cleveland Free Times* and *New Times LA* were closed. The companies issued a joint press release justifying the agreement: "Though we regret closing newspapers, through this transaction we have been able to strengthen our respective competitive position in two important markets. As a result, both LA Weekly and Cleveland Scene will better serve the needs of the readers and advertisers in their communities."

19. Defendants immediately capitalized on their market swap by exploiting their new monopolies. In Los Angeles, Village Voice Media began implementing its plans to significantly increase advertising rates after eliminating *New Times LA* as a competitive alternative. Similarly,

in Cleveland, New Times told advertisers that their advertising rates would increase now that its newsweekly, the *Cleveland Scene,* was the only game in town.

20. Plaintiff seeks in this action to terminate Defendants' illegal agreement to enjoin future conduct in furtherance of any such agreement, and to obtain such other equitable relief necessary to restore competition for the benefit of advertisers and readers in Los Angeles and to recover civil penalties, attorneys' fees and costs..

FIRST CAUSE OF ACTION
By Plaintiff Against Defendants Village Voice Media and New Times for Violations of Business and Professions Code Section 16720 et. seq.

21. Plaintiff realleges and incorporates by reference herein all allegations contained in paragraphs 1 through 20 of this Complaint as thought set forth above.

22. Beginning at some time during the summer of 2002 and continuing thereafter up to and including the date of filing this Complaint, Defendants formed a trust which was an unreasonable restraint of trade in violation of Business and Professions Code § 16720 et seq. Defendants engaged in such wrongful conduct by entering into per se unlawful agreements to allocate markets and customers.

23. Defendants' trust consisted of an agreement, understanding, and concert of action, the substantial terms of which were to allocate territories and customers among themselves for the readership of, and advertising in, alternative newsweeklies in the seven-county Greater Cleveland Area (as defined below) and five-county Greater Los Angeles Area (as defined below).

24. For the purpose of forming and carrying out this trust, the Defendants did the following things, among others:

(a) participated in meetings and conversations to discuss allocating territories among themselves;

(b) participated in meetings and conversations to discuss allocating customers among themselves;

(c) agreed, during such meetings and conversations, to allocate to New Times the alternative newsweekly readers and advertisers in the seven-county

"Greater Cleveland Area," which the Defendants agreed shall consist of the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio;

(d) agreed to allocate to Village Voice Media the alternative newsweekly readers and advertisers in the five-county "Greater Los Angeles Area," which the Defendants agreed shall consist of the counties of Los Angeles, Orange, San Bernardino, Riverside and Ventura in the state of California;

(e) agreed not to compete in each other's allocated market for at least ten years;

(f) agreed that Village Voice Media would close its wholly-owned alternative newsweekly, the *Cleveland Free Times*, in the Greater Cleveland Area;

(g) agreed that New Times would close its wholly-owned alternative newsweekly, the *New Times Los Angeles*, in the Greater Los Angeles Area;

(h) agreed that Village Voice Media would pay approximately $9 million in cash to New Times for the difference between the Cleveland and Los Angeles markets;

(i) agreed that in the Greater Cleveland and Los Angeles Areas neither Defendant could use the name of the "*Cleveland Free Times*" or "*New Times Los Angeles*" or any variant thereof; and that Village Voice Media and New Times would prevent any other person from using those names;

(j) agreed not to sell or otherwise make available to any of their former or current employees, consultants or independent contractors in the Greater Cleveland and Los Angeles Areas any of the assets used in the operation of the closed alternative newsweeklies, and agreed to prevent others from obtaining those assets as well; and

(k) agreed to allocate advertisers and not to induce or attempt to induce any advertiser to terminate its relationship with the other Defendant or to advertise in any other print publication in the Greater Cleveland and Los

Angeles Areas.

(l) signed Written Agreements on October 1, 2002, each expressly contingent on the other, which memorialized and effectuated their illegal market and customer allocation arrangement.

25. Defendants' unlawful trust described above amounts to a per se violation of California's antitrust laws and is therefore unlawful without judicial inquiry into its purpose or effect. Further, said trust is continuing and will continue unless the relief prayed for hereinafter is granted.

26. All of these actions and effects have the further result of depriving the economy and the general public of the benefits which accrue from healthy competition.

SECOND CAUSE OF ACTION
By Plaintiff Against Defendants Village Voice Media and New Times for Violations of Business and Professions Code Section 17200 et seq.

27. Plaintiff realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 26 set forth above.

28. Beginning at some time during the summer of 2002, Defendants engaged in numerous acts of unfair competition in violation of Business and Professions Code § 17200 et seq. as alleged above. These violations are continuing and will continue contrary to the interests of the People of the State of California unless the relief prayed for hereinafter is granted.

29. Beginning at some time during the summer of 2002, Defendants engaged in numerous acts of unlawful competition in violation of Business and Professions Code § 17200 et seq. by violating Business and Professions Code Section 16720 et seq., as alleged in the First Cause of Action. These violations are continuing and will continue contrary to the interests of the People of the State of California unless the relief prayed for hereinafter is granted.

30. All of these actions and effects have the further result of depriving the economy and the general public of the benefits which accrue from healthy competition.

REQUESTED RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That pursuant to Business and Professions Code sections 16750, 16754.5 and 17203, and the court's inherent equity powers, the Court adjudge and decree that:

   (a) the Defendants' market and customer allocation agreements constitute an illegal restraint of trade and commerce in violation of the Cartwright Act;

   (b) the Defendants' market and customer allocation agreements constitute unfair business practices in violation of the Unfair Competition Law;

   (c) the Defendants' market and customer allocation agreements null and void, including the two interlocking Written Agreements which formalized that arrangement;

   (d) the Defendants promptly divest assets used in connection with the publication of *New Times LA* in the Greater Los Angeles market for the purpose of establishing a viable competitive alternative newsweekly in that geographic market;

   (e) the Defendants, their officers, directors, agents, employees and successors and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner, directly or indirectly, entering into, continuing, maintaining, or renewing the market or customer allocation agreements, or from engaging in any other trust, combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

   (f) such other prohibitory and mandatory relief as may be necessary to restore competition to the Greater Los Angeles market;

2. That the Plaintiff be awarded attorneys fees and the costs of this suit pursuant to Section 16750 of the Business and Professions Code;

3. That the Plaintiff be awarded the maximum civil penalty against the Defendants for

each of their violations of Section 17200, pursuant to Sections 17206 of the Business and Professions Code;

4. That the Plaintiff have such other relief as the Court may deem just and proper.

BILL LOCKYER, Attorney General
Of the State of California
RICHARD FRANK
Chief Assistant Attorney General
KATHLEEN FOOTE,
Acting Assistant Attorney General
BARBARA M. MOTZ
Supervising Deputy Attorney Genera
WINSTON H. CHEN,
Deputy Attorney General

DATE:

By: ______________________
WINSTON H. CHEN
Deputy Attorney General

STEVE COOLEY
District Attorney, Los Angeles County
THOMAS A. PAPAGEORGE
Head Deputy District Attorney
KATHLEEN J. TUTTLE
Deputy-in-Charge, Antitrust Section

DATE:

By: ________________________
KATHLEEN J. TUTTLE
Deputy-in-Charge, Antitrust Section

Attorneys for Plaintiff