

10-4591 cv

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

ANDERSON NEWS, L.L.C. and ANDERSON SERVICES, L.L.C.,
Plaintiffs – Appellants,

v.

AMERICAN MEDIA, INC., BAUER PUBLISHING CO., L.P., CURTIS
CIRCULATION COMPANY, DISTRIBUTION SERVICES, INC., HACHETTE
FILIPACCHI MEDIA, U.S., HUDSON NEWS DISTRIBUTORS LLC, KABLE
DISTRIBUTION SERVICES, INC., THE NEWS GROUP, LP, RODALE, INC.,
TIME, INC., and TIME WARNER RETAIL SALES & MARKETING, INC.,
Defendants – Appellees,

On Appeal from a Judgment of the United States District Court
for the Southern District of New York (Case No. 09-cv-2227 (PAC))

**APPENDIX OF PLAINTIFFS-APPELLANTS ANDERSON NEWS, L.L.C.
AND ANDERSON SERVICES, L.L.C.**

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January 21, 2011

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CLOSED, APPEAL, ECF, RELATED

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:09-cv-02227-PAC**

Anderson News, L.L.C. et al v. American Media, Inc. et al
Assigned to: Judge Paul A. Crotty
Related Case: 1:09-cv-01152-PAC
Cause: 15:1 Antitrust Litigation

Date Filed: 03/10/2009
Date Terminated: 08/02/2010
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

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V.

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TERMINATED: 03/12/2009

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Margaret Emma Lynaugh
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/10/2009	<u>1</u>	COMPLAINT against American Media, Inc., Bauer Publishing Co., LP., Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Hudson News Distributors LLC, Kable Distribution Services, Inc., The News Group, LP, Rodale, Inc., Time Inc., Time/Warner Retail Sales &Marketing, Inc. (Filing Fee \$ 350.00, Receipt Number 680893)Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.(ama) (Entered: 03/12/2009)
03/10/2009		SUMMONS ISSUED as to American Media, Inc., Bauer Publishing Co., LP., Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Hudson News Distributors LLC, Kable Distribution Services, Inc., The News Group, LP, Rodale, Inc., Time Inc., Time/Warner Retail Sales &Marketing, Inc. (ama) (Entered: 03/12/2009)
03/10/2009		CASE REFERRED TO Judge Paul A. Crotty as possibly Related to 1:09-cv1152. (ama) (Entered: 03/12/2009)
03/10/2009		Case Designated ECF. (ama) (Entered: 03/12/2009)
03/10/2009	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Brookvale Holdings, LLC as Corporate Parent. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.(ama) (Entered: 03/12/2009)
03/12/2009	<u>3</u>	NOTICE OF VOLUNTARY DISMISSAL Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, the plaintiff(s) and or their counsel(s), hereby give notice that the above-captioned action is voluntarily dismissed, against the defendant(s) The News Group, LP. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Benson, Daniel) (Entered: 03/12/2009)
03/18/2009	<u>4</u>	NOTICE OF APPEARANCE by Isaac M. Bayda on behalf of Kable Distribution Services, Inc. (Bayda, Isaac) (Entered: 03/18/2009)
03/18/2009		CASE ACCEPTED AS RELATED. Create association to 1:09-cv-01152-PAC. Notice of Assignment to follow. (mbe) (Entered: 03/20/2009)
03/18/2009	<u>5</u>	NOTICE OF CASE ASSIGNMENT to Judge Paul A. Crotty. (mbe) (Entered: 03/20/2009)
03/18/2009		Magistrate Judge Michael H. Dolinger is so designated. (mbe) (Entered: 03/20/2009)
03/24/2009	<u>6</u>	MOTION for Cynthia Richman to Appear Pro Hac Vice. Document filed by Hudson News Distributors LLC.(dle) (Entered: 03/25/2009)
03/24/2009	<u>7</u>	MOTION for Daniel W. Nelson to Appear Pro Hac Vice. Document filed by Hudson News Distributors LLC.(dle) (Entered: 03/25/2009)
03/24/2009	<u>8</u>	MOTION for D. Jarrett Arp to Appear Pro Hac Vice. Document filed by Hudson News Distributors LLC.(dle) (Entered: 03/25/2009)

03/25/2009	<u>9</u>	AFFIDAVIT OF SERVICE. Hachette Filipacchi Media, U.S. served on 3/11/2009, answer due 3/31/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>10</u>	AFFIDAVIT OF SERVICE. Bauer Publishing Co., LP. served on 3/13/2009, answer due 4/2/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>11</u>	AFFIDAVIT OF SERVICE. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>12</u>	AFFIDAVIT OF SERVICE. Rodale, Inc. served on 3/11/2009, answer due 3/31/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>13</u>	AFFIDAVIT OF SERVICE. Time Inc. served on 3/11/2009, answer due 3/31/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>14</u>	AFFIDAVIT OF SERVICE. Time/Warner Retail Sales &Marketing, Inc. served on 3/11/2009, answer due 3/31/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>15</u>	AFFIDAVIT OF SERVICE. Hudson News Distributors LLC served on 3/13/2009, answer due 4/2/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>16</u>	AFFIDAVIT OF SERVICE. Curtis Circulation Company served on 3/12/2009, answer due 4/1/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>17</u>	AFFIDAVIT OF SERVICE. Distribution Services, Inc. served on 3/16/2009, answer due 4/6/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/25/2009	<u>18</u>	AFFIDAVIT OF SERVICE. American Media, Inc. served on 3/12/2009, answer due 4/1/2009. Document filed by Anderson News, L.L.C.; Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 03/25/2009)
03/26/2009	<u>19</u>	NOTICE OF APPEARANCE by Jay A. Katz on behalf of Kable Distribution Services, Inc. (Katz, Jay) (Entered: 03/26/2009)
03/27/2009	<u>20</u>	ORDER granting <u>6</u> Motion for Cynthia E. Richman to Appear Pro Hac Vice. (Signed by Judge Paul A. Crotty on 3/27/09) (js) (Entered: 03/27/2009)
03/27/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>20</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (js) (Entered: 03/27/2009)
03/27/2009	<u>21</u>	ORDER granting <u>8</u> Motion for D. Jarrett Arp to Appear Pro Hac Vice. (Signed by Judge Paul A. Crotty on 3/27/09) (js) (Entered: 03/27/2009)
03/27/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>21</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (js) (Entered: 03/27/2009)
03/27/2009	<u>22</u>	ORDER granting <u>7</u> Motion for Daniel W. Nelson to Appear Pro Hac Vice. (Signed by Judge Paul A. Crotty on 3/27/09) (js) (Entered: 03/27/2009)
03/27/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>22</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (js) (Entered: 03/27/2009)
03/27/2009		Calendar Entry as to CASE # 09cv1152 and 09cv2227: Pre-Motion Conference set for 3/31/2009 at 02:30 PM in Courtroom 20C, 500 Pearl Street, New York, NY 10007 before Judge Paul A. Crotty, U.S.D.J ad to (By: Marlon Ovalles – Courtroom Deputy). (mov) (Entered: 03/29/2009)
03/30/2009	<u>23</u>	NOTICE OF APPEARANCE by Meir Feder on behalf of Hachette Filipacchi Media, U.S. (Feder, Meir) (Entered: 03/30/2009)

03/30/2009	<u>24</u>	NOTICE OF APPEARANCE by Rowan Dudley Wilson on behalf of Time Inc., Time/Warner Retail Sales &Marketing, Inc. (Wilson, Rowan) (Entered: 03/30/2009)
03/30/2009	<u>25</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Time Inc. and Time Warner Inc. as Corporate Parent. Document filed by Time Inc., Time/Warner Retail Sales &Marketing, Inc..(Wilson, Rowan) (Entered: 03/30/2009)
03/31/2009	<u>26</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Hudson Media, Inc. as Corporate Parent. Document filed by Hudson News Distributors LLC.(Offenhartz, Adam) (Entered: 03/31/2009)
03/31/2009	<u>27</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Kable Media Services, Inc. a wholly-owned subsidiary of American Republic Investment Co. a wholly-owned subsidiary of AMREP Corporation as Corporate Parent. Document filed by Kable Distribution Services, Inc..(Bayda, Isaac) (Entered: 03/31/2009)
03/31/2009	<u>28</u>	CERTIFICATE OF SERVICE of Notice of Appearance Corporate Disclosure Statement served on Hudson News Distributors LLC on 3/30/09. Service was made by Federal Express. Document filed by Time Inc., Time/Warner Retail Sales &Marketing, Inc.. (Wilson, Rowan) (Entered: 03/31/2009)
03/31/2009		Minute Entry for proceedings held before Judge Paul A. Crotty: Pre-Motion Conference held on 3/31/2009. See transcript for complete details. (Court Reporter Sonya Huggins) (mov) (Entered: 03/31/2009)
04/06/2009	<u>29</u>	SCHEDULING ORDER: IT IS ORDERED that any motion to disqualify Kasowitz, Benson, Torres &Friedman LLP is to be served on or before Friday, April 17, 2009. Opposition papers are to be served on or before Monday, May 11, 2009. Reply papers, if any, are to be served on or before. Thursday, May 21, 2009. IT IS FURTHER ORDERED that Defendants' time to answer or otherwise respond to the complaint in this action is stayed pending resolution of the motion to disqualify. After the motion to disqualify is decided, this Court will hold a conference to set a schedule for Defendants to answer or otherwise respond to the complaint. So Ordered (Signed by Judge Paul A. Crotty on 4/6/09) (js) (Entered: 04/06/2009)
04/06/2009	<u>30</u>	NOTICE OF APPEARANCE by Joseph Francis Donley on behalf of Curtis Circulation Company (Donley, Joseph) (Entered: 04/06/2009)
04/06/2009	<u>31</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Lagardere Services, which is a wholly-owned subsidiary of Lagardere Group North America, a wholly-owned subsidiary of Lagardere SCA as Corporate Parent. Document filed by Curtis Circulation Company.(Donley, Joseph) (Entered: 04/06/2009)
04/17/2009	<u>32</u>	MOTION to Seal <i>portions of the Defendants' Memorandum in Support of Their Motion to Disqualify Kasowitz, Benson, Torres &Friedman LLP together with Memorandum and Affirmation submitted herewith.</i> Document filed by American Media, Inc., Distribution Services, Inc..(Keyko, David) (Entered: 04/17/2009)
04/17/2009	<u>33</u>	DECLARATION of David G. Keyko in Support re: <u>32</u> MOTION to Seal <i>portions of the Defendants' Memorandum in Support of Their Motion to Disqualify Kasowitz, Benson, Torres &Friedman LLP together with Memorandum and Affirmation submitted herewith..</i> Document filed by American Media, Inc., Distribution Services, Inc.. (Keyko, David) (Entered: 04/17/2009)
04/17/2009	<u>34</u>	MEMORANDUM OF LAW in Support re: <u>32</u> MOTION to Seal <i>portions of the Defendants' Memorandum in Support of Their Motion to Disqualify Kasowitz, Benson, Torres &Friedman LLP together with Memorandum and Affirmation submitted herewith..</i> Document filed by American Media, Inc., Distribution Services, Inc.. (Keyko, David) (Entered: 04/17/2009)
04/17/2009	<u>35</u>	MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres &Friedman LLP.</i> Document filed by American Media, Inc., Distribution Services, Inc..(Keyko, David) (Entered: 04/17/2009)

04/17/2009	<u>36</u>	AFFIRMATION of David G. Keyko in Support re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres & Friedman LLP.</i> . Document filed by American Media, Inc., Distribution Services, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Keyko, David) (Entered: 04/17/2009)
04/17/2009	<u>37</u>	MEMORANDUM OF LAW in Support re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres & Friedman LLP.</i> . Document filed by American Media, Inc., Distribution Services, Inc.. (Keyko, David) (Entered: 04/17/2009)
04/17/2009	<u>40</u>	MOTION for Paul Howard Friedman to Appear Pro Hac Vice. Document filed by Curtis Circulation Company.(dle) (Entered: 04/21/2009)
04/20/2009	<u>38</u>	AFFIDAVIT OF SERVICE of Unredacted copies of Defendants' Notice of Motion to Disqualify; Defendants' Memorandum of Law in Support of Motion to Disqualify; Affirmation of David G. Keyko; Defendants' Notice of Motion to File Under Seal; Defendants' Memorandum of Law in Support of Motion to File Under Seal; Declaration of David G. Keyko; American Media Inc.'s and Distribution Services, Inc's Arbitration Demand; Commercial Arbitration Rules Demand for Arbitration; and Selections from the Settlement Agreement, dated February 27, 2009 served on Kasowitz, Benson, Torres & Friedman, LLP on April 17, 2009. Service was accepted by Gavin Shryver, Attorney. Document filed by American Media, Inc., Distribution Services, Inc.. (Keyko, David) (Entered: 04/20/2009)
04/20/2009	<u>39</u>	NOTICE OF APPEARANCE by David Jarrett Arp on behalf of Hudson News Distributors LLC (Arp, David) (Entered: 04/20/2009)
04/23/2009		CASHIERS OFFICE REMARK on <u>8</u> Motion to Appear Pro Hac Vice, <u>7</u> Motion to Appear Pro Hac Vice, <u>6</u> Motion to Appear Pro Hac Vice in the amount of \$75.00, paid on 03/24/2009, Receipt Number 682470. (jd) (Entered: 04/23/2009)
04/23/2009	<u>41</u>	NOTICE OF APPEARANCE by John M. Hadlock on behalf of Rodale, Inc. (Hadlock, John) (Entered: 04/23/2009)
04/23/2009	<u>42</u>	FIRST RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Rodale, Inc..(Hadlock, John) (Entered: 04/23/2009)
04/23/2009	<u>43</u>	ORDER TO ADMIT COUNSEL PRO HAC VICE ON WRITTEN MOTION, granting <u>40</u> Motion for Paul H. Friedman to Appear Pro Hac Vice for defendant Curtis Circulation Company. (Signed by Judge Paul A. Crotty on 4/23/09) (cd) (Entered: 04/23/2009)
04/23/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>43</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (cd) (Entered: 04/23/2009)
04/28/2009		CASHIERS OFFICE REMARK on <u>40</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 04/17/2009, Receipt Number 684600. (jd) (Entered: 04/28/2009)
05/01/2009	<u>44</u>	AFFIRMATION of David G. Keyko in Support re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres & Friedman LLP.</i> . Document filed by American Media, Inc., Bauer Publishing Co., LP., Curtis Circulation Company, Hachette Filipacchi Media, U.S., Hudson News Distributors LLC, Rodale, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Keyko, David) (Entered: 05/01/2009)
05/01/2009	<u>45</u>	AMENDED MEMORANDUM OF LAW in Support re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres & Friedman LLP.</i> . Document filed by American Media, Inc., Bauer Publishing Co., LP., Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Hudson News Distributors LLC, Rodale, Inc.. (Keyko, David) (Entered: 05/01/2009)
05/11/2009	46	***STRICKEN DOCUMENT. Deleted document number 46 from the case record. The document was stricken from this case pursuant to <u>49</u> Endorsed Letter and instructions from Chambers on 5/19/09. MEMORANDUM OF LAW in Opposition re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres</i>

		&Friedman LLP. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C. (Gorecki, Maria) Modified on 5/19/2009 (tro). (Entered: 05/11/2009)
05/11/2009	<u>47</u>	DECLARATION of Marc E. Kasowitz in Opposition re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres &Friedman LLP.</i> . Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Gorecki, Maria) (Entered: 05/11/2009)
05/12/2009	<u>48</u>	MEMORANDUM OF LAW in Opposition re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres &Friedman LLP.</i> (<i>CORRECTED</i>). Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Gorecki, Maria) (Entered: 05/12/2009)
05/19/2009	<u>49</u>	ENDORSED LETTER addressed to Judge Paul A. Crotty from Daniel R. Benson dated 5/12/09 re: Counsel for Plaintiffs respectfully request that Your Honor instruct the Clerk to remove the memorandum (Document No. 46) from the Court's electronic filing system. ENDORSEMENT: SO ORDERED. (Signed by Judge Paul A. Crotty on 5/18/09) (tro) (Entered: 05/19/2009)
05/19/2009		***STRICKEN DOCUMENT. Deleted document number 46 from the case record. The document was stricken from this case pursuant to <u>49</u> Endorsed Letter and instructions from Chambers on 5/19/09. (tro) (Entered: 05/19/2009)
05/21/2009	<u>50</u>	REPLY MEMORANDUM OF LAW in Support re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres &Friedman LLP.</i> . Document filed by American Media, Inc., Distribution Services, Inc.. (Fishman, Eric) (Entered: 05/21/2009)
05/21/2009	<u>51</u>	REPLY AFFIRMATION of Eric Fishman in Support re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres &Friedman LLP.</i> . Document filed by American Media, Inc., Distribution Services, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Fishman, Eric) (Entered: 05/21/2009)
05/22/2009	<u>52</u>	AFFIRMATION of Ryan Kriger in Support re: <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres &Friedman LLP.</i> . Document filed by American Media, Inc., Distribution Services, Inc.. (Kriger, Ryan) (Entered: 05/22/2009)
10/20/2009		Calendar Entry: Oral Argument set for 11/3/2009 at 03:45 PM in Courtroom 9B, 500 Pearl Street, New York, NY 10007 before Judge Paul A. Crotty. Requests for adjournment will be considered only if made in writing by October 28, 2009, and otherwise in accordance with Judge Crotty's Individual Practices (By: Marlon Ovalles Courtroom Deputy). (mov) (Entered: 10/20/2009)
10/30/2009		Calendar Entry **Courtroom &Time Change**: Oral Argument set for Tuesday, November 3, 2009 at 04:00 PM (*NOT 03:45 PM) in Courtroom 6A (*NOT 9B or 20C), before Judge Paul A. Crotty, U.S.D.J (By: Marlon Ovalles – Courtroom Deputy). (mov) (Entered: 11/01/2009)
11/03/2009		Minute Entry for proceedings held before Judge Paul A. Crotty: Oral Argument held on 11/3/2009. REMARK: Oral argument held on the pending motion to Disqualify Counsel <i>Kasowitz, Benson, Torres &Friedman LLP.</i> The Court denied the motion on the record. The agreed upon schedule on the defendants motions to dismiss is as follows: Motion by: 12/14/09; Response by: 01/19/10; and Reply by: 02/02/10. See transcript for complete details of this proceeding. (Court Reporter Vincent Bologna) (mov) (Entered: 11/03/2009)
11/10/2009	<u>55</u>	TRANSCRIPT of proceedings held on November 3, 2009 before Judge Paul A. Crotty. (mro) (Entered: 11/12/2009)
11/11/2009	<u>53</u>	NOTICE OF APPEARANCE by Barry J. Brett on behalf of Bauer Publishing Co., LP. (Brett, Barry) (Entered: 11/11/2009)
11/11/2009	<u>54</u>	NOTICE OF APPEARANCE by Daniel Nathan Anziska on behalf of Bauer Publishing Co., LP. (Anziska, Daniel) (Entered: 11/11/2009)
12/14/2009	<u>56</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – FIRST MOTION to Dismiss <i>Complaint.</i> Document filed by Hachette Filipacchi Media, U.S. Responses

		due by 1/19/2010(Feder, Meir) Modified on 12/15/2009 (db). (Entered: 12/14/2009)
12/14/2009	<u>57</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – MEMORANDUM OF LAW in Support re: <u>56</u> FIRST MOTION to Dismiss <i>Complaint</i> . Document filed by Hachette Filipacchi Media, U.S. (Feder, Meir) Modified on 12/15/2009 (db). (Entered: 12/14/2009)
12/14/2009	<u>58</u>	MOTION to Dismiss – <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distribution Services, Inc. and Rodale, Inc.</i> Document filed by Bauer Publishing Co., LP..(Anziska, Daniel) (Entered: 12/14/2009)
12/14/2009	<u>59</u>	DECLARATION of Daniel N. Anziska, Esq. in Support re: <u>58</u> MOTION to Dismiss – <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distributi.</i> Document filed by Bauer Publishing Co., LP.. (Attachments: # <u>1</u> Exhibit A – Part 1, # <u>2</u> Exhibit A – Part 2, # <u>3</u> Exhibit A – Part 3, # <u>4</u> Exhibit B)(Anziska, Daniel) (Entered: 12/14/2009)
12/14/2009	<u>60</u>	MEMORANDUM OF LAW in Support re: <u>58</u> MOTION to Dismiss – <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distributi.</i> Document filed by Bauer Publishing Co., LP.. (Anziska, Daniel) (Entered: 12/14/2009)
12/14/2009	<u>61</u>	MOTION to Dismiss. Document filed by Distribution Services, Inc.. Responses due by 1/19/2010(Keyko, David) (Entered: 12/14/2009)
12/14/2009	<u>62</u>	MEMORANDUM OF LAW in Support re: <u>61</u> MOTION to Dismiss.. Document filed by Distribution Services, Inc.. (Keyko, David) (Entered: 12/14/2009)
12/14/2009	<u>63</u>	MOTION to Dismiss <i>the Complaint</i> . Document filed by Hudson News Distributors LLC. Responses due by 1/19/2010(Richman, Cynthia) (Entered: 12/14/2009)
12/14/2009	<u>64</u>	MEMORANDUM OF LAW in Support re: <u>63</u> MOTION to Dismiss <i>the Complaint</i> .. Document filed by Hudson News Distributors LLC. (Richman, Cynthia) (Entered: 12/14/2009)
12/14/2009	<u>65</u>	MOTION to Dismiss (" <i>Notice of Motion</i> "). Document filed by Time Inc., Time/Warner Retail Sales &Marketing, Inc.. (Attachments: # <u>1</u> Complaint)(Wilson, Rowan) (Entered: 12/14/2009)
12/14/2009	<u>66</u>	MEMORANDUM OF LAW in Support re: <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> "). (" <i>Memorandum of Law in Support of the Motion of Time Inc. and Time/Warner Retail Sales &Marketing, Inc. to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6)</i> "). Document filed by Time Inc., Time/Warner Retail Sales &Marketing, Inc.. (Wilson, Rowan) (Entered: 12/14/2009)
12/14/2009	<u>67</u>	DECLARATION of Margaret E. Lynaugh in Support re: <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> "). Document filed by Time Inc., Time/Warner Retail Sales &Marketing, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C – Part 1, # <u>4</u> Exhibit C – Part 2, # <u>5</u> Exhibit C – Part 3, # <u>6</u> Exhibit D)(Wilson, Rowan) (Entered: 12/14/2009)
12/14/2009		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT – DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Meir Feder to RE-FILE Document <u>56</u> FIRST MOTION to Dismiss <i>Complaint</i> . ERROR(S): No Signature or s/. (db) (Entered: 12/15/2009)
12/14/2009		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT – DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Meir Feder to RE-FILE Document <u>57</u> Memorandum of Law in Support of Motion. ERROR(S): Supporting Documents must be linked to Corrected Motion. (db) (Entered: 12/15/2009)

12/15/2009	<u>68</u>	MOTION to Dismiss. Document filed by Hachette Filipacchi Media, U.S.. Responses due by 1/19/2010(Feder, Meir) (Entered: 12/15/2009)
12/15/2009	<u>69</u>	MEMORANDUM OF LAW in Support re: <u>68</u> MOTION to Dismiss.. Document filed by Hachette Filipacchi Media, U.S.. (Feder, Meir) (Entered: 12/15/2009)
01/14/2010	<u>70</u>	ENDORSED LETTER: addressed to Judge Paul A. Crotty from Hector Torres dated 1/13/2010 re: Counsel for plaintiff request permission to file a single brief of no more than 35 pages will be allowed. ENDORSEMENT: Brief up to 35 pages. So Ordered. (Signed by Judge Paul A. Crotty on 1/14/2010) (js) Modified on 1/14/2010 (mov). (Entered: 01/14/2010)
01/19/2010	<u>71</u>	DECLARATION of Maria Gorecki in Opposition re: <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> ")., <u>58</u> MOTION to Dismiss – <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distributi</i> , <u>68</u> MOTION to Dismiss., <u>61</u> MOTION to Dismiss., <u>63</u> MOTION to Dismiss the Complaint.. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Attachments: # <u>1</u> Exhibit A)(Kasowitz, Marc) (Entered: 01/19/2010)
01/19/2010	<u>72</u>	MEMORANDUM OF LAW in Opposition re: <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> ")., <u>58</u> MOTION to Dismiss – <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distributi</i> , <u>68</u> MOTION to Dismiss., <u>61</u> MOTION to Dismiss., <u>63</u> MOTION to Dismiss the Complaint.. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Kasowitz, Marc) (Entered: 01/19/2010)
02/02/2010	<u>73</u>	REPLY MEMORANDUM OF LAW in Support re: <u>61</u> MOTION to Dismiss.. Document filed by Distribution Services, Inc.. (Keyko, David) (Entered: 02/02/2010)
02/02/2010	<u>74</u>	REPLY MEMORANDUM OF LAW in Support re: <u>58</u> MOTION to Dismiss – <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distributi</i> . Document filed by Bauer Publishing Co., LP.. (Anziska, Daniel) (Entered: 02/02/2010)
02/02/2010	<u>75</u>	REPLY AFFIRMATION of Daniel N. Anziska in Support re: <u>58</u> MOTION to Dismiss – <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distributi</i> . Document filed by Bauer Publishing Co., LP.. (Attachments: # <u>1</u> Exhibit C, # <u>2</u> Exhibit D, # <u>3</u> Exhibit E)(Anziska, Daniel) (Entered: 02/02/2010)
02/02/2010	<u>76</u>	REPLY MEMORANDUM OF LAW in Support re: <u>68</u> MOTION to Dismiss.. Document filed by Hachette Filipacchi Media, U.S.. (Feder, Meir) (Entered: 02/02/2010)
02/02/2010	<u>77</u>	REPLY MEMORANDUM OF LAW in Support re: <u>63</u> MOTION to Dismiss the <i>Complaint</i> .. Document filed by Hudson News Distributors LLC. (Arp, David) (Entered: 02/02/2010)
02/02/2010	<u>78</u>	REPLY MEMORANDUM OF LAW in Support re: <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> "). (<i>Reply Memorandum of Law in Further Support of the Motion of Time Inc. and Time/Warner Retail Sales &Marketing, Inc. to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6)</i> "). Document filed by Time Inc., Time/Warner Retail Sales &Marketing, Inc.. (Wilson, Rowan) (Entered: 02/02/2010)
02/02/2010	<u>79</u>	DECLARATION of Margaret E. Lynaugh (" <i>Supplemental Declaration of Margaret E. Lynaugh in Further Support of the Motion of Defendants Time Inc. and Time/Warner Retail Sales &Marketing, Inc. to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6)</i> ") in Support re: <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> ")... Document filed by Time Inc., Time/Warner Retail Sales &Marketing, Inc.. (Attachments: # <u>1</u> Exhibit A)(Wilson, Rowan) (Entered: 02/02/2010)

02/09/2010	<u>80</u>	NOTICE of Substitution of Attorney. Old Attorney: Hector Torres, New Attorney: Thomas P. Lynch, Address: Lynch Rowin LLP, 630 Third Avenue, New York, New York, 10017, (212)682-4001, ext. 211. Document filed by Anderson Services, L.L.C.. (Perez, Jennifer) (Entered: 02/09/2010)
02/10/2010	<u>81</u>	STIPULATION AND ORDER FOR SUBSTITUTION OF COUNSEL: Plaintiff Anderson Services, L.L.C. substitute as their attorneys of record, Lynch Rowin, LLP, in place and stead of Kasowitz, Benson, Torres & Friedman LLP. (Signed by Judge Paul A. Crotty on 2/10/10) (dle) (Entered: 02/11/2010)
03/03/2010	<u>82</u>	NOTICE OF APPEARANCE by Thomas Patrick Lynch on behalf of Anderson News, L.L.C. (Lynch, Thomas) (Entered: 03/03/2010)
04/19/2010		Calendar Entry: Oral Argument set for Tuesday, June 15, 2010 at 3:30 PM in Courtroom 20-C, 500 Pearl Street, New York, NY 10007 before Judge Paul A. Crotty. Requests for adjournment will be considered only if made in writing by Monday, May 3, 2010 and otherwise in accordance with Judge Crotty's Individual Practices (By: Marlon Ovalles Courtroom Deputy). (mov) (Entered: 04/19/2010)
06/11/2010		Calendar Entry *COURTROOM CHANGE*: The Oral Argument scheduled to go forward on Tuesday, June 15, 2010 at 3:30 PM before Judge Paul A. Crotty, U.S.D.J will take place in Courtroom 18B not 20C (By: Marlon Ovalles - Courtroom Deputy). (mov) (Entered: 06/13/2010)
06/14/2010	<u>84</u>	MOTION for George G. Gordon to Appear Pro Hac Vice. Document filed by Curtis Circulation Company.(mro) (Entered: 06/21/2010)
06/15/2010		Minute Entry for proceedings held before Judge Paul A. Crotty: Oral Argument on pending motions held on 6/15/2010. REMARK: The Court will issue its ruling shortly. (Court Reporter Andrew Walker) (mov) (Entered: 06/16/2010)
06/18/2010	<u>83</u>	NOTICE OF APPEARANCE by Margaret Emma Lynaugh on behalf of Time Inc., Time/Warner Retail Sales & Marketing, Inc. (Lynaugh, Margaret) (Entered: 06/18/2010)
06/24/2010		CASHIERS OFFICE REMARK on <u>84</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 06/14/2010, Receipt Number 906166. (jd) (Entered: 06/24/2010)
06/24/2010	<u>85</u>	ORDER ADMITTING COUNSEL PRO HAC VICE: granting <u>84</u> Motion for George G. Gordon to Appear Pro Hac Vice. (Signed by Judge Paul A. Crotty on 6/24/2010) (jfe) (Entered: 06/24/2010)
07/07/2010	86	TRANSCRIPT of proceedings held on June 15, 2010 before Judge Paul A. Crotty. (mro) (Entered: 07/07/2010)
07/07/2010	87	TRANSCRIPT of proceedings held on June 15, 2010 before Judge Paul A. Crotty. (mro) (Entered: 07/08/2010)
07/07/2010	88	TRANSCRIPT of proceedings held on June 15, 2010 3:30 p.m. before Judge Paul A. Crotty. (ajc) (Entered: 07/16/2010)
08/02/2010	<u>89</u>	OPINION & ORDER #99244 re: <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> ") filed by Time Inc., Time/Warner Retail Sales & Marketing, Inc., <u>58</u> MOTION to Dismiss - <i>Notice of Motion to Dismiss the Plaintiffs' Complaint by Defendants American Media, Inc., Bauer Publishing Co., LP, Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distributi</i> filed by Bauer Publishing Co., LP., <u>68</u> MOTION to Dismiss filed by Hachette Filipacchi Media, U.S., <u>61</u> MOTION to Dismiss filed by Distribution Services, Inc., <u>63</u> MOTION to Dismiss the Complaint filed by Hudson News Distributors LLC. For the reasons set forth in this Opinion and Order, the Court GRANTS the Defendants' motions to dismiss (docket entries #58, #61, #63, #65, #68) in their entirety and with prejudice. The Clerk of the Court is directed to enter judgment accordingly and close this case. (Signed by Judge Paul A. Crotty on 8/2/2010) (tro) Modified on 8/3/2010 (ajc). (Entered: 08/02/2010)
08/02/2010		Transmission to Judgments and Orders Clerk. Transmitted re: <u>89</u> Memorandum & Opinion, to the Judgments and Orders Clerk. (tro) (Entered: 08/02/2010)

08/02/2010	<u>90</u>	CLERK'S JUDGMENT That for the reasons stated in the Court's Opinion and Order dated August 2, 2010, defendants motions to dismiss is granted in their entirety with prejudice; accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on 8/2/10) (Attachments: # <u>1</u> Notice of Right to Appeal)(dt) (Entered: 08/02/2010)
08/16/2010	<u>91</u>	MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave to Amend the Complaint, (a) Vacating the August 2, 2010 Judgment and (b) Denying the Motions to Dismiss or, at a Minimum, Granting Anderson Leave to File Its Proposed Amended Complaint.</i> Document filed by Anderson News, L.L.C., Anderson Services, L.L.C..(Kasowitz, Marc) (Entered: 08/16/2010)
08/16/2010	<u>92</u>	MEMORANDUM OF LAW in Support re: <u>91</u> MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t /Plaintiffs' Memorandum of Law in Support of Their Motion for Reconsideration of the Court's August 2, 2010 Order Dismissing the Complaint with Prejudice and Denying Plaintiffs Leave to Amend. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Attachments: # <u>1</u> Exhibit A)(Kasowitz, Marc) (Entered: 08/16/2010)</i>
09/02/2010	<u>93</u>	MEMORANDUM OF LAW in Opposition re: <u>91</u> MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t ("Memorandum of Law in Opposition to Plaintiffs' Motion for Reconsideration of the Court's August 2, 2010, Order Dismissing the Complaint with Prejudice and Denying Plaintiffs Leave to Amend"). Document filed by Time Inc., Time/Warner Retail Sales & Marketing, Inc.. (Wilson, Rowan) (Entered: 09/02/2010)</i>
09/02/2010	<u>94</u>	MEMORANDUM OF LAW in Opposition re: <u>91</u> MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t. Document filed by Hudson News Distributors LLC. (Richman, Cynthia) (Entered: 09/02/2010)</i>
09/03/2010	<u>95</u>	JOINT MEMORANDUM OF LAW in Opposition re: <u>91</u> MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t. Document filed by</i>

		<i>American Media, Inc., Bauer Publishing Co., LP., Curtis Circulation Company, Distribution Services, Inc., Hachette Filipacchi Media, U.S., Kable Distribution Services, Inc., Rodale, Inc.. (Keyko, David) (Entered: 09/03/2010)</i>
09/13/2010	<u>96</u>	ENDORSED LETTER addressed to Judge Paul A. Crotty from Maria Gorecki dated 9/13/2010 re: request a one-day extension of Anderson's time to submit its reply brief in further support of its motion for reconsideration from 9/13/2010 to 9/14/2010. ENDORSEMENT: So Ordered. (Replies due by 9/14/2010.) (Signed by Judge Paul A. Crotty on 9/13/2010) (jar) (Entered: 09/14/2010)
09/14/2010	<u>97</u>	REPLY MEMORANDUM OF LAW in Support re: <u>91</u> MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t</i> MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t</i> MOTION for Reconsideration re; <u>89</u> Memorandum & Opinion,,, <u>90</u> Clerk's Judgment, <i>Plaintiffs' Motion for Reconsideration of this Court's August 2, 2010 Opinion and Order Granting Defendants' Motion to Dismiss and Denying Leave t /Plaintiffs' Reply Memorandum of Law in Further Support of Their Motion for Reconsideration. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.. (Attachments: # <u>1</u> Exhibit A)(Kasowitz, Marc) (Entered: 09/14/2010)</i>
10/25/2010	<u>98</u>	ORDER denying <u>91</u> Motion for Reconsideration. (Signed by Judge Paul A. Crotty on October 25, 2010) (mov) (Entered: 10/25/2010)
11/08/2010	<u>99</u>	NOTICE OF APPEAL from <u>89</u> Opinion and Order, <u>98</u> Order on Motion for Reconsideration, <u>90</u> Clerk's Judgment,. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C. Filing fee \$ 455.00, receipt number E 920535. (nd) (Entered: 11/09/2010)
11/09/2010		Transmission of Notice of Appeal to the District Judge re: <u>99</u> Notice of Appeal. (nd) (Entered: 11/09/2010)
11/09/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>99</u> Notice of Appeal. (nd) (Entered: 11/09/2010)
11/09/2010		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>35</u> MOTION to Disqualify Counsel <i>Kasowitz, Benson, Torres & Friedman LLP.</i> filed by Distribution Services, Inc., American Media, Inc., <u>65</u> MOTION to Dismiss (" <i>Notice of Motion</i> "). filed by Time Inc., Time/Warner Retail Sales & Marketing, Inc., <u>80</u> Notice of Substitution of Attorney, filed by Anderson Services, L.L.C., <u>99</u> Notice of Appeal filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>42</u> Rule 7.1 Corporate Disclosure Statement filed by Rodale, Inc., <u>76</u> Reply Memorandum of Law in Support of Motion filed by Hachette Filipacchi Media, U.S., <u>10</u> Affidavit of Service Complaints filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>47</u> Declaration in Opposition to Motion, filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>68</u> MOTION to Dismiss. filed by Hachette Filipacchi Media, U.S., <u>83</u> Notice of Appearance filed by Time Inc., Time/Warner Retail Sales & Marketing, Inc., <u>17</u> Affidavit of Service Complaints filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>32</u> MOTION to Seal <i>portions of the Defendants' Memorandum in Support of Their Motion to Disqualify Kasowitz, Benson, Torres & Friedman LLP together with Memorandum and Affirmation submitted herewith.</i> filed by Distribution Services, Inc., American Media, Inc., <u>14</u> Affidavit of Service Complaints filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>71</u> Declaration in Opposition to Motion,, filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>13</u> Affidavit of Service Complaints filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>29</u> Scheduling Order,, <u>92</u> Memorandum of Law in Support of Motion,,, filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>53</u> Notice of Appearance filed by Bauer Publishing Co., LP., <u>98</u> Order on Motion for Reconsideration, <u>1</u> Complaint, filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>43</u> Order on Motion to Appear Pro Hac Vice, <u>85</u> Order on Motion to Appear Pro Hac Vice, <u>3</u> Notice of Voluntary Dismissal, filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>27</u> Rule 7.1 Corporate

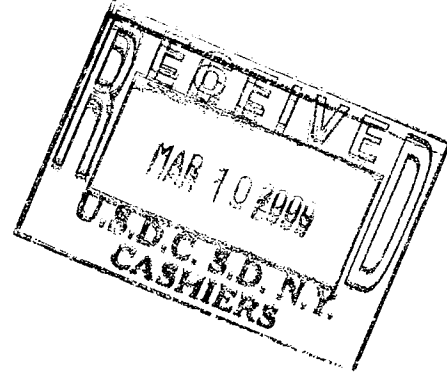
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12/14/2010	<u>100</u>	<p>Letter addressed to Judge Paul A. Crotty from Hector Torres dated 10/4/10 re: If granted leave to serve the PAC, Anderson would make the following changes, as further listed in this letter. Document filed by Anderson News, L.L.C., Anderson Services, L.L.C.(cd) (Entered: 12/14/2010)</p>
12/14/2010	<u>101</u>	<p>Letter addressed to Judge Paul A. Crotty from David Keyko dated 10/8/10 re: Request that the letter dated 10/4 (previous entry) and this letter be made part of the record on the Plaintiffs' Motion for Reconsideration of the 8/2/10 Order. Document filed by American Media, Inc., Distribution Services, Inc.(cd) (Entered: 12/14/2010)</p>
12/14/2010	<u>102</u>	<p>Letter addressed to Judge Paul A. Crotty from David Keyko dated 12/14/10 re: Request that the two prior letters be filed as part of the record in this case. Document filed by American Media, Inc., Distribution Services, Inc.(cd) (Entered: 12/14/2010)</p>
12/15/2010		<p>First Supplemental ROA Sent to USCA (Electronic File). Certified Supplemental Indexed record on Appeal Electronic Files for <u>100</u> Letter, filed by Anderson Services, L.L.C., Anderson News, L.L.C., <u>101</u> Letter, filed by Distribution Services, Inc., American Media, Inc., <u>102</u> Letter filed by Distribution Services, Inc., American Media, Inc. USCA Case Number 10-4591, were transmitted to the U.S. Court of Appeals. (nd) (Entered: 12/15/2010)</p>

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and Anderson Services, L.L.C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ANDERSON NEWS, L.L.C., and
ANDERSON SERVICES, L.L.C.

Plaintiffs,

- against -

AMERICAN MEDIA, INC., BAUER PUBLISHING CO.,
LP., CURTIS CIRCULATION COMPANY,
DISTRIBUTION SERVICES, INC., HACHETTE
FILIPACCHI MEDIA, U.S., HUDSON NEWS
DISTRIBUTORS LLC, KABLE DISTRIBUTION
SERVICES, INC., THE NEWS GROUP, LP, RODALE,
INC., TIME INC. and TIME/WARNER RETAIL SALES
& MARKETING, INC.,

Defendants.
----- X

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JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Anderson News, L.L.C. and Anderson Services, L.L.C. (collectively, “Anderson”), for its complaint against defendants Bauer Publishing Co., L.P. (“Bauer”), American Media, Inc. (“AMI”), Hachette Filipacchi Media, U.S. (“Hachette”), Rodale, Inc. (“Rodale”), Time Inc. (“Time”), Time/Warner Retail Sales & Marketing Inc. (“TWR”), Curtis Circulation Company (“Curtis”), Kable Distribution Services, Inc. (“Kable”), Distribution Services, Inc. (“DSI”), Hudson News Distributors LLC (“Hudson”) and The News Group, L.P. (“News Group”), upon knowledge as to Anderson and otherwise upon information and belief, allege as follows:

Preliminary Statement

1. In this action, Anderson, a wholesaler of magazines to leading mass-merchandise retailers, bookstore chains, grocery stores and other retail outlets, seeks monetary damages as a result of defendants collusive anti-competitive scheme -- in clear violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and common law -- to attack, disparage and destroy Anderson’s business.

2. In an attempt to monopolize the United States wholesale magazine distribution market, defendants -- magazine publishers, their national distributors and two wholesalers -- have conspired to purge, and through coordinated action have purged, Anderson from the magazine industry and have destroyed Anderson’s business

3. As described below, defendants, in furtherance of their scheme, have, among other things, cut Anderson off from *People*, *Sports Illustrated*, *Entertainment Weekly*, *Time* and other major magazines; encouraged Anderson’s customers to cease doing business with it through, among other things, spreading false rumors concerning Anderson and its financial

stability; coerced Anderson into selling its distribution facilities to the defendant wholesalers at fire sale prices; and raided Anderson's employees and sought to steal the intellectual property that those employees used to run its business.

4. Defendants' indisputable goal throughout the conspiracy was to destroy Anderson's business and that of another wholesaler, non-party Source Interlink Distribution, L.L.C. ("Source"), so that defendants -- through Hudson and News Group, the two remaining wholesalers -- could monopolize the wholesale market and use that monopoly power to shift to retailers and consumers -- and away from publishers -- the entire financial burden resulting from worsening market conditions and publisher-induced inefficiencies in the magazine distribution system.

5. Through their unlawful coordinated boycott of Anderson, defendants have achieved their anti-competitive goal of eliminating Anderson as a magazine wholesaler. On February 7, 2009, Anderson announced that it had no recourse but to cease normal business activities effective immediately. Anderson was forced to shut down its national distribution system, and Anderson's entire business, including its good will, reputation, employee work force and customer base, has been destroyed.

6. At the same time, defendants have also succeeded in achieving their ultimate and anti-competitive goal of raising the prices paid by magazine retailers, and forcing those retailers to abandon their efforts to introduce efficiencies into the market. Defendants' illegal efforts also have alleviated any pressure on the publisher and national distributor defendants to bear any of the increased costs of distributing their magazines, and correspondingly have severely injured retailers and consumers.

7. Anderson therefore seeks compensatory damages in an amount to be determined at trial, as well as treble and punitive damages, arising from the extraordinary harm caused by defendants' collusive, anti-competitive and tortious conduct.

THE PARTIES

A. Publishers

8. Defendant AMI, a Delaware corporation with its principal place of business in Boca Raton, Florida, is the fourth largest consumer magazine publisher, and the second largest publisher in retail magazine sales, in the United States. It publishes 16 titles, including 6 of the top 15 best selling weekly newsstand magazines. Its publications include *Country Weekly*, *FLEX*, *GLOBE*, *Men's Fitness*, *MUSCLE & FITNESS*, *National Enquirer*, *SHAPE*, and *Star*.

9. Defendant Bauer, a Delaware partnership with its principal place of business in Englewood Cliffs, New Jersey, is the largest publisher of newsstand magazines in the United States. It publishes magazines such as *In Touch Weekly*, *Life & Style Weekly*, *Woman's World*, *First For Women* and *Soaps In Depth*.

10. Defendant Hachette, a Delaware corporation with its principal place of business in New York, New York, is the publisher of *Car and Driver*, *Road & Track*, *ELLE*, *ELLEGirl*, *ELLE Décor*, *HOME*, *Metropolitan Home*, *Woman's Day*, *American Photo*, *Boating*, *Cycle World*, *Popular Photography* and *Sound & Vision*.

11. Defendant Rodale, a Pennsylvania corporation with its principal place of business in Emmaus, Pennsylvania, is the publisher of *Men's Health*, *Prevention*, *Women's Health*, *Runner's World*, *Best Life*, *Bicycling*, *Running Times*, *Organic Gardening*, and *Mountain Bike*.

12. Defendant Time, a Delaware corporation with its principal place of business in New York, New York, the parent corporation of defendant TWR, is the largest magazine publisher. in the United States and publishes more than 120 magazines, including *Time*, *People*, *Entertainment Weekly*, *Sports Illustrated*, *Essence*, *Fortune*, *Gold*, *In Style*, *Money*, *People en Espanol*, *Real Simple*, *Sports Illustrated for Kids*, *This Old House*, *Coastal Living*, *Cooking Light*, *Health*, *Southern Accents*, *Business 2.0*, and *Southern Living*.

B. National Distributors

13. National magazine distributors are retained by magazine publishers to, among other things, broker and manage their relationships with their wholesalers.

14. Defendant Curtis, a Delaware corporation with its principal place of business in Pennsauken, New Jersey, is the leading distributor of magazines in the United States, distributing hundreds of national titles for at least 400 publishers, including its affiliate, defendant Hachette, as well as defendant publishers Rodale and AMI, and publishers The Economist Group, Forbes, Newsweek, The Atlantic Monthly, Timeout, and US News & World Report, among others. Publications distributed by Curtis include *Woman's Day*, *Car & Driver*, *Newsweek*, *Men's Health*, *Maxim*, *Elle*, and *The Economist*.

15. Defendant Kable, a Delaware corporation with its executive offices in New York, New York, is a national magazine distributor that distributes more than 650 magazines, annuals and digests for over 250 different publishers, including defendant publisher Bauer, as well as All American Crafts, Inc., Amos Publications, Archie Comics, Bowtie Incorporated, Niche Media Holdings LLC, and Nielsen Business Media. Publications distributed by Kable include *In Touch*, *Woman World*, *First for Women*, *Tiger Beat*, and *WWE Magazine*.

16. Defendant DSI, a Delaware corporation with its principal place of business in Delray Beach, Florida, is a subsidiary of defendant AMI and a provider of marketing services to publishers, including AMI, Bauer, Hachette, and Rodale.

17. Defendant TWR, a New York corporation with its principal place of business in Parsippany, New Jersey, and an office in New York, New York, is a national magazine distributor, whose publishing clients include its affiliate defendant publisher Time.

C. Magazine Wholesalers

18. Before Anderson was driven out of the business, there were four major wholesalers selling magazines to retail outlets for single-copy sales at such outlets.

19. Plaintiff Anderson News, L.L.C., is a Delaware corporation with its principal place of business in Knoxville, Tennessee. Before February 7, 2009, when it was forced to shut down its operations, Anderson News, L.L.C., along with its affiliate, plaintiff Anderson Services, L.L.C., comprised the second largest magazine wholesaler in the United States, servicing 30,000 retail customers in 37 states. Anderson News, L.L.C. was the sales and marketing company for the combined Anderson venture.

20. Plaintiff Anderson Services, L.L.C., is a Delaware limited liability corporation with its principal place of business in Knoxville, Tennessee. Before February 7, 2009, when it was forced to shut down its operations, Anderson Services, L.L.C. provided warehousing, delivery and merchandising services for the combined Anderson venture.

21. Defendant Hudson, a New Jersey limited liability company with its principal place of business in North Bergen, New Jersey, is a major magazine wholesaler.

22. Defendant News Group, a Delaware limited partnership with its principal place of business in Texas, is a major magazine wholesaler.

23. Non-party Source, a Delaware corporation with its principal place of business in Bonita Springs, Florida, is a major magazine wholesaler.

JURISDICTION AND VENUE

24. This action is brought to recover damages caused by defendants' violation of, among other things, Section 1 of the Sherman Act, 15 U.S.C. § 1.

25. The Court has subject matter jurisdiction over this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4; Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26; 28 U.S.C. § 1337, and principles of supplemental jurisdiction, 28 U.S.C. § 1367.

26. Venue is proper in this district under Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 28 U.S.C. § 1391, inasmuch as defendants transact business and are found within this district, and a substantial part of the events giving rise to plaintiffs' claims occurred within this district.

BACKGROUND

A. Overview: Single-Copy Magazine Sales

27. The major United States magazine publishers, including defendants AMI, Bauer, Hachette, Rodale, and Time, publish the magazines and set their cover prices. To effectuate single-copy magazine sales (*i.e.*, non-subscription sales), each publisher retains a national distributor, which serves as a broker to manage the publisher's relationship with its

wholesalers, provides marketing and accounting services to the vast majority of publishers and guarantees the wholesaler's payment obligations to the publisher.

28. The four U.S. national distributors are defendants TWR, Kable and Curtis, as well as non-party Comag Marketing Group LLC ("CMG"). The national distributors are compensated with a percentage, typically two to five percent of the retail sales value of the magazines they handle. Defendant DSI, a subsidiary of AMI, provides sales and marketing services to publishers.

29. Pursuant to allotment orders provided by the national distributors (which typically greatly exceed the number ultimately purchased by consumers), the publishers' magazines are shipped to wholesalers, who in turn, ship the magazines to retailers, including traditional mass merchandisers and grocery store chains, such as Wal-Mart and Kroger, as well as newsstands, convenience stores, airport terminals and other retail outlets, and specialty retailers like Barnes & Noble and Borders.

30. Wholesalers are responsible for picking up, tabulating and destroying copies of magazines that remain unsold. Wholesalers buy the magazines from the publishers at a price of 50 to 60 percent of the cover price and sell to the retailers at a price of 70 to 80 percent of the cover price. Before defendants' conspiracy drove Anderson out of business, the market shares of the four wholesalers broke down as follows: Anderson 27%, Source 31%, Hudson 11% and News Group 21%.

B. Inefficiencies in Traditional Distribution System

31. The distribution system is plagued by gross publisher-induced inefficiencies that have imposed onerous and unnecessary costs on wholesalers. For example, publishers and

national distributors customarily ship to wholesalers quantities of magazines that far exceed the number of magazines sold by the retailers. Wholesalers are forced to absorb the full cost of tabulating the unsold copies and transporting them back to their own facilities for disposal or destruction.

32. In addition to shipping excessive magazine copies, publishers and national distributors ship large numbers of unprofitable magazine titles, forcing the wholesaler to bear unnecessary costs of handling and returns. Publishers and national distributors have resisted efforts to curtail their ability to ship unprofitable titles.

33. A different system for distribution has been proposed, under which the retailers automatically would report sales of magazines through electronic checkout scanners and then dispose of unsold copies (known as “scan-based trading,” or “SBT”).

34. The publishers, however, adamantly oppose the proposed system, because they supposedly would not be paid for, nor would their circulation numbers reflect, “shrinkage” -- *i.e.*, sales that are not scanned as a result of machine error, estimated to be approximately five percent of all sales.

35. The defendants’ scheme was a reaction to growing requests by retailers, for larger discounts on magazines and the implementation of scan-based trading. Anderson agreed that scan-based trading was a highly cost-effective and efficient measure for addressing the inefficiencies inherent in the traditional distribution system. Accordingly, Anderson and Source, supported the retailers’ requests.

36. In response, the defendants conspired, in clear violation of antitrust laws, to eliminate the two wholesalers supporting those efficiency measures and to obtain effective control over the two remaining wholesalers, News Group and Hudson. By thus gaining control over the distribution system, defendant publishers and national distributors, along with their wholesaler co-conspirators, would be able to exercise their market power to increase the prices charged to retailers and to avoid -- or impose on retailers rather than publishers -- the costs of scan-based trading and other measures to improve efficiencies.

C. Anderson and Its Efforts to Remain Competitive

37. Until defendants' conspiracy eliminated it from them market, Anderson had been a retailer and wholesaler of periodicals since 1917 and had approximately 6,000 employees. In the traditional single-issue magazine distribution market, Anderson conducted business throughout the United States, with the exception of certain areas in Mid Atlantic, New England, Southern California, Alaska, Michigan, and North Dakota. Anderson and its predecessors have done business with the defendant national distributors since their formation.

38. During the past 15 years, Anderson has invested heavily in distribution equipment, wholesaling centers, technology, logistics and software. The company also has sought to address with publishers and national distributors the unnecessary and burdensome costs caused by excessive supply and unprofitable titles. Among other things, Anderson has sought to increase the use of scan-based trading among retailers, and has sought the acceptance of the practice by national distributors and publishers.

39. In early January 2009, Anderson instituted measures to make the magazine distribution system less burdensome and more efficient, goals that had been hampered by the

refusal of the national distributors and publishers to adopt the efficiency-oriented measures that were being requested by Anderson and many of its retailer-customers. Anderson decided that, as a temporary, stop-gap measure, it would announce an additional \$.07 per copy distribution surcharge for all magazine copies it received, and would pass on to the publishers the carrying costs of inventory in retail chains where it had negotiated scan-based trading terms. The surcharge would be applied to all magazines distributed on or after February 1, 2009.

40. Anderson's proposed \$.07 per copy surcharge was designed to increase the overall efficiency of the magazine distribution industry. One of the primary aims of the increase was to create an incentive to eliminate the waste and inefficiency caused by the insistence by the publishers and distributors on shipping excessive copies of their magazines to wholesalers, and requiring that the wholesalers physically collect unsold copies.

41. To this end, on January 12 and 13, 2009, Charles Anderson ("Mr. Anderson"), the CEO of Anderson flew to New York and met with some of Anderson's largest publisher clients, including: Ann Moore, Chief Executive Officer of Time (Anderson's largest publisher client); Cathie Black, Chief Executive Officer of Hearst Magazines; David Pecker, President of AMI; and Hubert Boehle, President and Chief Executive Officer of Bauer. At these meetings, Mr. Anderson informed the publishers of Anderson's decision to impose the \$.07 per copy surcharge. These meetings were cordial, and the publishers appeared -- at least on the surface - - to respond amicably.

42. The next day, January 14, 2009, Mr. Anderson had a call-in interview with the representative of an industry publication, *The New Single Copy*, during which he publicly announced the surcharge and explained the industry constraints compelling that measure.

43. National distributor CMG did not agree to the proposed surcharge and proposed to Anderson a modified arrangement. The other national distributors, however, stated that they would not accept the surcharge.

44. As set forth below, defendants saw Anderson's proposed fee as nothing short of an opportunity to eliminate Anderson as a wholesaler.

D. The Conspiracy to Destroy Anderson and Steal Anderson's Business

45. In 2008, defendant Curtis, the nation's largest magazine distributor by volume, had attempted unilaterally to cut off Anderson from Curtis's supply of magazines -- which include some of the most popular titles in the industry -- by informing Wal-Mart, one of Anderson's primary retail clients, that Curtis would no longer supply magazines to Anderson. When Wal-Mart supported Anderson by simply accepting the proposed supply stoppage, Curtis immediately reversed course and resumed supply. Curtis's unilateral decision to cut off Anderson's supply of magazines from Curtis thus was ineffective. The only way that Curtis successfully, and ultimately profitably, could cut off Anderson's supply -- that is, the only way Curtis would be able to force Wal-Mart and other retailers to abandon their long-term relationships with Anderson -- was through concerted action with Curtis's competitors.

46. Such concerted action is exactly what happened, as the defendants seized on Anderson's \$.07 surcharge -- which was motivated by a desire to introduce necessary efficiencies into the market -- as the pretext for effecting a massive conspiracy to destroy Anderson.

47. Thus, in late January, national distributor defendants Curtis, Kable, and TWR, and publisher defendants AMI, Bauer, Hachette, Rodale, and Time -- acting in concert -- cut off Anderson from its supply of magazines -- including the most popular titles, like *People* and *Sports Illustrated*.

48. At the same time, the defendants launched a campaign in which they spread false rumors to Anderson's customers and others that Anderson was in critical financial trouble and had ceased operations or was exiting the magazine wholesale business. Defendants' goal in that coordinated campaign was to be a self-fulfilled prophecy -- cause Anderson to go out of business. At the same time that all the defendants had cut Anderson off and defendants were spreading those false rumors, defendants were seeking to acquire Anderson's distribution facilities and defendants were poaching Anderson's employees and the proprietary intellectual property that those employees had used to run Anderson's business. Simply stated, defendants engaged in a concerted and effective campaign to destroy Anderson.

49. During and after the week of January 21, 2009 Mr. Anderson met or had phone calls with executives of many of the defendants and he began to hear their common objections to Anderson's surcharge. On or about January 21, 2009, after talking with representatives of TWR and Kable, Mr. Anderson spoke with Bob Castardi, President and Chief Operating Officer of defendant Curtis. Castardi, acting on behalf of Curtis as well as all the publishers represented by Curtis -- including publisher defendants AMI, Hachette, and Rodale -- told Mr. Anderson, in words or substance, that "I [Castardi] don't want a problem. I would like to get this worked out. But I'm going to have to go with whatever Rich [Jacobsen, CEO of defendant TWR] does."

50. In at least two instances in late January, after Source had joined Anderson in proposing a \$.07 surcharge, defendants indicated that Anderson could profit by joining the conspiracy. Castardi of Curtis told Mr. Anderson, in words or substance, that “you need to let Source go out first.” In certain areas -- Arizona, for example -- Anderson and Source were the only wholesalers. Once Source was excluded from the market and its business destroyed, Castardi told Mr. Anderson, in words or substance, that Anderson could use its regional market power to “get all your [Anderson’s] profits from the retailers.” And in a phone call with Frank Stockard, President of Anderson, Michael Duloc, President and CEO of Kable, discussed the idea of offering Anderson exclusivity in certain territories in exchange for Anderson dropping the surcharge. According to Duloc, Anderson could obtain the profits it desired by using its exclusivity arrangement to increase the prices to retailers. Anderson refused to participate in this blatantly unlawful market allocation, and Kable responded by reaffirming its participation in defendants' boycott of Anderson, thereby refusing to supply Anderson with the magazines it distributes, including those published by defendant Bauer.

51. During this time, Anderson had received the explicit support of Wal-Mart. Anderson’s long-term relationship with Wal-Mart, as alleged above, previously had saved Anderson from Curtis’s unilateral attack against the company. Mr. Anderson hoped that the Wal-Mart support also would save Anderson from the defendants’ collusive boycott. Also during this time, Anderson had commenced to work with CMG toward a mutually-acceptable resolution of the issue concerning the costly publisher-imposed inefficiencies in the distribution system. Unfortunately, Mr. Anderson underestimated the effectiveness of defendants’ unlawful collusive conduct.

52. On Friday, January 30, 2009, Wal-Mart representatives asked Mr. Anderson, to try again to convince Rich Jacobsen of TWR to reach an agreement. The next day, Mr. Anderson met Jacobsen at his office in New York. The first thing Jacobsen said, in words or substance, was that he “ha[d] Greg Mays [the CEO of Source] flying in at 1:00 pm to meet with me. And I’m going to deliver the message that, as long as I’m at TWR or Ann Moore is at Time, we will never, ever do business with Source again.” And when Mr. Anderson told Jacobsen what Castardi had told him -- that “[Castardi’s] going whatever way you [Jacobsen] go, and I [Mr. Castardi] have to go with you” -- Jacobsen did not deny it, but indicated that he realized that Anderson knew that there had been collusion.

53. Nevertheless, by the end of the meeting, Mr. Anderson was led by Jacobsen to believe that TWR and Anderson had an agreement for an increase in the discount to Anderson of the magazines’ cover prices of 2.00% for all Time weeklies, or 2.75% for all *People* weeklies, and an agreement that TWR and Anderson would have a call on Monday, February 2, to discuss scan-based trading. Further, Mr. Anderson agreed to make a \$13 million payment to TWR on Monday, February 2, after the call.

54. On February 2, TWR and Anderson engaged in an apparently cordial call regarding scan-based trading. Within a few hours, however, TWR revealed its true intentions. Jacobsen informed Anderson in words or substance that TWR and Time executives had decided “to change the channel,” that “they were going to have to use two wholesalers,” and that “that was the way it was going to be.”

55. TWR never had any intention of honoring its commitment to continue to work with Anderson. Indeed, throughout the latter part of January and the early days of February,

defendants -- ostensibly each others' competitors -- held numerous meetings during which they discussed dividing the U.S. distribution territory into two regions -- one controlled by Hudson and the other controlled by News Group. For example, in furtherance of their conspiracy to cut off supply to Anderson and Source, defendants Curtis and Hudson met with their respective competitors, TWR and News Group, in January 2009 at Hudson's offices in North Bergen, New Jersey.

56. Moreover, Jacobsen made clear in a conversation with Source's CEO, Greg Mays, at a February 2 dinner meeting in New York, why Source and Anderson were being terminated. When Jacobsen told Mays that TWR would not be supplying any magazines to Source, Mays asserted to Jacobsen that with the distribution system being created by defendants, there would be no scan-based trading, the two remaining wholesalers would force reduced margins down to the retailers rather than to the publishers, and there would be absolute control over the market. Jacobsen's response, in words or substance, was: "Exactly -- we now control this space."

57. At the same time TWR was renegeing on its agreement with Anderson, the wholesaler defendants had been poaching Anderson's employees. For example, Frank Stockard received numerous reports that News Group associates -- or the associates of one or more of its affiliates -- were inducing Anderson associates to leave the employ of Anderson and work for News Group, notwithstanding that News Group knew they had signed covenants not to compete with Anderson. In at least several of these cases, News Group's solicitations were based on false statements about Anderson's financial situation and future prospects.

58. The ultimate goal of the conspiracy was to ensure that the publishers and national distributors gained control over the single-copy magazine distribution channel. To achieve that goal, defendants needed to eliminate Source and Anderson. To eliminate Anderson, the conspirators cut off the life blood of Anderson's business -- 80% of its magazine supply. Defendants also intended that, as a result of the conspiracy, Anderson would be forced to sell at a "fire sale" its business infrastructure -- including its trucking fleet, distribution equipment and distribution centers -- to its wholesaler competitors, Hudson and News Group.

59. Defendants' scheme already has succeeded in enabling them to charge retailers higher prices, and at the same time impose their will regarding scan-based trading. Hudson and News Group, which have begun to serve retailers previously served by Anderson, have demanded and obtained from them reduced discounts for approximately 80% of the new business. Such increases have ranged as high as 12% or more over the prior rates.

60. Defendants were acting in concert and not unilaterally. Indeed, unilateral action would make no economic sense because, unless the other defendants joined in the boycott, the national distributor and publisher defendants' magazines would not be distributed to retailers in the areas where Anderson was the only viable wholesaler. As Curtis learned in 2008, it would not be economically feasible for a single distributor or publisher unilaterally to cut off supply to a major wholesaler. Unless the individual distributor or publisher had reached an agreement with Hudson and News Group, and competitor distributors or publishers with substantial capacity, the individual distributor or publisher would have no assurances that the infrastructure necessary to distribute magazines in areas served by Anderson would be developed. Indeed, for Hudson or News Group to do so based on the opportunity to distribute

the product of any individual publisher or distributor would be highly unprofitable for them -- and there would thus be no assurances that any wholesaler would be available for that product.

61. Moreover, to obtain cost efficiencies, retailers generally obtain all of their magazines from one wholesaler. If a single distributor or publisher threatened to cut off supply to Anderson, the retailer would still have no incentive to switch to another wholesaler, as the retailer would still be able to obtain substantially all magazines from Anderson. In other words, by unilaterally cutting off supply to Anderson, an individual distributor or publisher would be cutting itself off from the very retailers that sell its magazines and generate revenue. Thus, any such unilateral action would be against the publisher's business interest.

62. This is not the case, however, if -- as occurred here -- the publishers and their national distributors agreed in advance and acted in concert to cut off supply to Anderson at the same time and to replace Anderson with the two remaining wholesalers. Retailers, confronted with the group boycott by publishers and national distributors, would have no choice but to rely on Hudson and News Group for their supply of magazines necessary for sale to their customers. Only through such collusive action could defendants eliminate competition from Anderson and replace Anderson with one of the two remaining wholesalers, whom the publishers and wholesalers would be able to control and who, in furtherance of the conspiracy, would force upon retailers -- and away from publishers -- the costs of the publisher-imposed inefficiencies.

63. The result of defendants' collusive conduct against Anderson is the creation of an anti-competitive monopoly in the magazine distribution business. Curtis, to its publisher-

clients, has admitted that the destruction of Source and Anderson will create a “monopolistic wholesaler” with the power to dominate the market.

E. The Destruction of Anderson’s Business

64. Defendants’ conspiracy was ruthlessly effective. Defendants, acting in concert, cut off Anderson from 80% of the magazines Anderson had for years delivered regularly to its retail customers. Faced with the loss of 80% of the nation’s magazine titles -- including some of the most popular publications -- from their shelves, retailers like Wal-Mart could no longer support Anderson’s efforts to introduce efficiencies in the market, and began seeking sources of product from other wholesalers. At the same time, the defendants were preying on the fears of Anderson’s employees, relieving Anderson of some of its most experienced workers.

65. Anderson’s financial picture became dire. Without 80% of its product to distribute, the remaining 20% was insufficient to cover Anderson’s high fixed costs, including payroll for thousands of employees, maintenance and fuel for multiple fleets of vehicles, and various other costs associated with running 47 separate distribution centers throughout the country. Anderson began to hemorrhage money, at a rate of between millions of dollars per week.

66. With no end in sight to the defendants’ collusive boycott -- and thus no end in sight to the string of weekly million-dollar losses caused thereby -- Anderson had no choice but to suspend its magazine wholesale business on February 7, 2009. Ultimately, the suspension of operations became permanent.

67. As a result, Anderson has suffered substantial damages, including millions of dollars in lost revenues before the company shut down its operations. Moreover, defendants’

boycott has left Anderson in a position in which it will not be able to re-enter the market in the future, and it therefore stands to suffer \$800 million in future lost revenue per annum.

Anderson has lost relationships with its retailers that took years to develop, and the goodwill that disappeared with these relationships may never be recovered. Because of its exit from the marketplace, Anderson was forced to lay off thousands of its employees -- many with years of experience in the industry. Indeed, nearly a thousand of Anderson's former employees have yet to find new work in the industry, with the remainder employed by Anderson's competitors, including defendants News Group and Hudson. And just as it was conceived by the defendants' conspiracy, Anderson's distribution-related assets have been sold to defendant News Group for well below market value -- at what can only be termed as "fire-sale" prices.

68. Anderson's finances have continued to deteriorate. On March 2, 2009, certain creditors of Anderson filed an involuntary bankruptcy petition, seeking to have the company liquidated under Chapter 7 of the United States Bankruptcy Code. That action is pending in the United States Bankruptcy Court for the District of Delaware (No. 09-10695-CSS).

F. The Relevant Market

69. The relevant product market for the purposes of this action is the national market for the wholesale distribution of single-issue magazines. Prior to the boycott, the four major wholesale distributors of single issue magazines in the United States -- Anderson, Source, Hudson and News Group -- sold hundreds of magazine titles to thousands of retailers across the country. These wholesalers have introduced great efficiencies into the market. By purchasing from wholesalers, retailers receive an enormous savings of time and expense by allowing them to purchase from a single source with an established distribution network.

70. To obtain these savings, retailers obtain all of their product from the wholesale network, comprised of the four wholesale distributors, and do not deal directly with publishers or national distributors. Because of the sheer number of publishers and their publications, it would be prohibitively expensive for retailers to obtain their magazines outside of the wholesale market, as it would require them to: contact each individual publisher; negotiate prices for and order each individual publication; and physically transfer those magazines to their retail outlets -- that is, take over the functions performed by the wholesalers and national distributors. Because of these costs, retailers are unable to substitute the magazines obtained through the wholesale network with magazines obtained from some other source.

71. Because of the costs involved in developing and maintaining the distribution network necessary to transport millions of magazines to thousands of different retail outlets -- including distribution centers, freight depots, fleets of trucks, and thousands of employees -- the wholesale distribution market is characterized by high barriers to entry. These entry barriers are reinforced through the exclusive distribution agreements involving wholesalers, national distributors and publishers.

G. Competition Has Been Injured By The Conspiracy

72. Defendants' actions unduly restrain, hinder and suppress competition among wholesalers in the national market for the wholesale distribution of single-copy magazines. Defendants, directly and proximately, have caused antitrust injury because their actions have resulted in the elimination of Anderson as a wholesale distributor, thereby directly and substantially reducing the output of magazines and directly and substantially reducing the ability of retailers to obtain those magazines. Defendants' conduct also has allowed them to

force retailers to pay higher prices (in the form of reduced discounts) as already has been experienced with certain of the new agreements negotiated by Hudson and News Group. The purposeful and wrongful destruction of Anderson's business by defendants directly has harmed both competition in the relevant market as well as Anderson.

73. Defendants' conduct has reduced the output of magazines through the wholesale market. Anderson and Source, combined, distributed 50 percent of all U.S. single-copy magazines, and in many instances were or are the only wholesale distributors operating in a numerous geographic regions. Because of defendants' unlawful boycott, wholesale distributors are unavailable to serve retailers in those areas, and those retailers have been denied access to defendants' magazines -- which means, in turn, that the retailers' customers have access to fewer magazines as well.

74. Moreover, as a direct result of Anderson leaving the market, many of the smaller publishers who depended on Anderson for regular nationwide distribution, may be forced to shut down. These smaller publishers could not survive the disruption in sales that Anderson's collapse caused. This permanently reduced the choices available to retailers and their customers, and correspondingly benefited the remaining large publishers in the marketplace -- including defendants AMI, Bauer, Hachette, Rodale and Time.

75. Defendants already have begun charging retailers higher prices for the same products, and defendants will continue to raise the prices paid by retailers. For example, as a result of the defendants' boycott, News Group has begun to distribute to retailers previously served by Anderson. As it has done so, it has been "re-signing" those retailers at discounts lower than what they received from Anderson, forcing the retailers to pay a higher portion of

each magazine's cover price. News Group's ability to charge these higher prices is not the result of any inherent or earned competitive advantage, but has instead arisen solely as a result of the increased market power it has obtained by participating in the collusive boycott of Anderson and Source.

76. Indeed, News Group and Hudson stand to acquire monopolistic market power. With Anderson's exit from the business, more than a quarter of the market has been re-distributed to the remaining wholesalers, including defendants News Group and Hudson. As a result, News Group and Hudson together now control more than 50% of the U.S. wholesale magazine distribution market. If their conspiracy had succeeded in eliminating Source as well, the two defendants would have controlled more than 90% of the market. Perhaps more importantly, each will control more than 90% of the market in its allocated territories. In light of defendants' anti-competitive conduct in obtaining this market power, there are substantial grounds to believe that defendants' acquisition of market power will harm competition market-wide.

FIRST CLAIM

(Unlawful Restraint of Trade -- Sherman Act)

77. Anderson hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 76 as if fully set forth herein.

78. Defendants have engaged in a conspiracy in unreasonable restraint of trade in violation of section 1 of the Sherman Act (15 U.S.C. § 1) and section 4 of the Clayton Act (15 U.S.C. § 15).

79. Defendants engaged in a conspiracy to eliminate competition in the wholesale market for single-issue magazines through the wrongful destruction of Anderson as a going concern, and the defendants did those things that they combined and conspired to do, including the following:

- (a) agreed to boycott the distribution of single-issue magazines to wholesalers Anderson and Source with the intent of destroying them as competitors;
- (b) agreed to, and did in fact, disparage Anderson's business to its retail customers for the purpose of interfering with Anderson's business relationships and contractual agreements with those customers with the intent of forcing Anderson's customers to move their business to defendants Hudson and News Group;
- (c) agreed to raid, and, in fact, did raid the employees of Anderson and Source for the purpose of stealing their trade secrets and eliminating them as competitors; and
- (d) agreed to destroy Anderson and Source as going concerns and to force those wholesalers to sell their distribution facilities and other assets -- at distressed prices -- to defendants Hudson and News Group.

80. The ongoing conspiracy has the effect of restraining trade by suppressing and eliminating competition in the U.S. market for the wholesale distribution of single-issue magazines. As a direct and proximate result of defendants' unlawful conduct, Anderson has suffered injury to its business.

81. The continuation of defendants' unlawful conduct has had the immediate effect of destroying Anderson's ability to continue as a going concern, causing substantial damages to Anderson.

SECOND CLAIM

(Tortious Interference)

82. Anderson hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 76 as if fully set forth herein.

83. Anderson maintains significant business relationships with the retail customers that are a part of its national retail distribution network.

84. The retail supply and retail service agreements between Anderson and members of its retail distribution network, are valid, binding contracts.

85. Defendants have at all relevant times been aware of the business relationships between Anderson and its retail customers of the retail supply and retail service agreements.

86. Defendants intentionally and unjustifiably have interfered with Anderson's business relationships and contractual agreements with Anderson's retail customers by making false statements regarding Anderson's financial status and continued existence as a magazine wholesaler.

87. Defendants also have intentionally and unjustifiably interfered with Anderson's business relationships and contractual agreements with Anderson's retail customers by boycotting the distribution of single-issue magazines to Anderson without a legitimate business justification with the intent of harming its business.

88. Defendants interfered with Anderson's business relationships and contractual agreements with the intent of causing harm to Anderson by destroying its business and expelling Anderson from the marketplace.

89. As a result of defendants' conduct, Anderson's retail customers have terminated their retail supply and retail service agreements and their business relationships with Anderson, and have obtained or sought to obtain magazine product from alternative sources, principally defendants Hudson and News Group.

90. By reason of the foregoing, Anderson has been damaged in an amount to be determined at trial.

THIRD CLAIM

(Defamation)

91. Anderson hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 76 as if fully set forth herein.

92. Defendants, individually and in conspiracy with each other, have published false statements to third parties about Anderson's financial status and continued existence as a magazine wholesaler, at a time when Anderson was still a viable going concern.

93. Defendants have falsely and deceitfully, both orally and in writing, told third parties false statements regarding Anderson's financial status and continued existence as a magazine wholesaler, at a time when Anderson was still a viable going concern.

94. The false and defamatory statements made by the defendants are injurious to the business reputation of Anderson and will tend to prejudice it in the conduct of its trade or business and will deter third persons from dealing with it.

95. The false and defamatory statements made by the defendants have caused damages to plaintiffs in that the false statements have caused damage to the reputation of Anderson in its trade and business activities.

96. By reason of the foregoing, Anderson has been damaged in an amount to be determined at trial.

FOURTH CLAIM

(Civil Conspiracy)

97. Anderson hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 76, 83 through 89, and 92 through 95, as if fully set forth herein.

98. The defendants conspired with one another to harm Anderson's reputation, to undermine Anderson's goodwill with its customers, to damage its business, and to destroy Anderson as a going concern.

99. Each of the defendants have committed one or more of the following acts: boycotted the distribution of single-issue magazines to wholesaler Anderson with the intent of destroying it; disparaged Anderson's business to its retail customers for the purpose of interfering with its business relationships and contractual agreements with those customers with the intent of forcing Anderson's customers to move their business to defendants Hudson and News Group; and raided Anderson's employees for the purpose of stealing its trade secrets and eliminating it as a competitor.

100. Defendants undertook their wrongful, intentional and unjustifiable acts in furtherance of their ongoing conspiracy to destroy Anderson through, among other things, tortious interference and defamation.

101. By reason of the foregoing, Anderson has been damaged in an amount to be determined at trial.

WHEREFORE, Anderson demands judgment against defendants, jointly and severally, awarding Anderson:

(a) on its First Claim, treble its damages in an amount to be determined at trial;

(b) on its Second, Third and Fourth Claims, compensatory and punitive damages in amounts to be determined at trial;

(c) its costs in the prosecution of this action, including reasonable attorneys' fees; and

(d) such other and further relief as this Court deems just and proper.

TRIAL BY JURY

Trial by jury is demanded on all issues so triable.

Dated: March 10, 2009

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANDERSON NEWS, L.L.C. and ANDERSON :
SERVICES, L.L.C. :

Plaintiffs,

-against-

AMERICAN MEDIA, INC., BAUER :
PUBLISHING CO., LP., CURTIS CIRCULATION :
COMPANY, DISTRIBUTION SERVICES, INC., :
HACHETTE FILIPACCHI MEDIA, U.S., :
HUDSON NEWS DISTRIBUTORS LLC, KABLE :
DISTRIBUTION SERVICES, INC., THE NEWS :
GROUP, LP, RODALE, INC., TIME INC. and :
TIME/WARNER RETAIL SALES & :
MARKETING, INC., :

Defendants.

-----X

: 09 Civ. 2227 (PAC)

: OPINION & ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Defendants move to dismiss plaintiffs’ Complaint that defendants, titans of the United States single-copy magazine industry,¹ engaged in an antitrust conspiracy to drive plaintiffs out of business. Prior to February 2009, four wholesalers dominated the single-copy national magazine industry, including Plaintiffs Anderson News, L.L.C. and Anderson Services, L.L.C. (together, “Anderson”). Anderson had been in the magazine wholesale business since 1917 and represented the second largest magazine wholesaler in the United States, servicing 30,000 retail customers in 37 states and operating 47 distribution centers throughout the country. Anderson supplied magazines to bookstore chains, grocery stores, retail outlets, and leading mass-merchandise retailers like Wal-Mart. Anderson ceased normal business activities on February 7, 2009; and its creditors forced it into involuntary liquidation bankruptcy proceedings on March 2, 2009.

¹ The single-copy magazine industry refers to non-subscription magazine sales in which consumers purchase magazines at retailers, such as newsstands, bookstores, and mass merchandise retailers, as opposed to the subscription sale magazine industry in which magazines are shipped directly to consumers.

The Defendants in this action are national magazine publishers, distributors, and wholesalers.² Collectively, they wield substantial power in the single-copy magazine sector. Anderson's central allegation is that the Defendants engaged in a collusive anticompetitive scheme to monopolize the United States wholesale single-copy magazine distribution market by boycotting two of the four major U.S. magazine wholesalers: plaintiff Anderson and non-parties Source Interlink Distribution L.L.C. and Source Interlink Companies, Inc. (together, "Source").³

Specifically, Anderson alleges that the Defendants colluded to drive it out of business by cutting off 80% of its magazine supply, including such popular titles as People, Sports Illustrated, Entertainment Weekly, and Time. Anderson also alleges that, concomitant with the magazine boycott, the Defendants spread false rumors that Anderson was in critical financial trouble, raided Anderson's employees along with Anderson's proprietary intellectual property, and coerced Anderson into selling its valuable distribution facilities at fire-sale prices. Cut off from its supply of magazines, Anderson lost millions of dollars and was forced to shut down its national distribution system, as well as its entire business, including its good will, reputation, employee work force, and customer base.

Anderson brought this action on March 10, 2009, alleging a violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1); common law claims for tortious interference with business relationships; and civil conspiracy.⁴ For the reasons stated below, the Court finds that Anderson's Complaint fails to meet the plausibility standard of Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and its progeny. Accordingly, the Court grants Defendants' Rule 12(b)(6) motion to dismiss.

² Defendants include: American Media, Inc. ("AMI"); Distribution Services, Inc. ("DSI"); Curtis Circulation Co. ("Curtis"); Kable Distribution Services, Inc. ("Kable"); Rodale, Inc. ("Rodale"); Hudson News Distributors LLC ("Hudson"); Bauer Publishing Co., L. ("Bauer"); Hachette Filipacchi Media U.S., Inc. ("Hachette"); Time, Inc. ("Time, Inc."); Time /Warner Retail Sales & Marketing, Inc. ("TWR"). Anderson had originally named The News Group, LP ("News Group") as a defendant. On March 12, 2009, however, Anderson dismissed the action against News Group (Dkt. #3.)

³ Source was the plaintiff in a related antitrust conspiracy action (the "Source Action") (1:09-cv-02227.) The Source Action has since settled.

⁴ Anderson originally brought a claim for defamation but has since withdrawn this claim (Pf. Mem. at 30, n 21.)

I. BACKGROUND

In the United States single-copy (i.e., non-subscription sales) magazine industry, magazine publishers, including Defendants AMI, Bauer, Hachette, Rodale, and Time, publish magazines and set their cover prices (Comp. ¶ 27.) The publishers' magazines are shipped to wholesalers, which buy the magazines at 50 to 60 percent of their cover price and sell the magazines to retailers at 70 to 80 percent of the cover price (Comp. ¶¶ 29-30.) Magazine retailers include newsstands, convenience stores, airport terminals, grocery store chains, and mass merchandisers, such as Wal-Mart and Kroger, and specialty retailers like Barnes & Noble and Borders (Comp. ¶ 29.)

After delivery, wholesalers are also responsible for picking up, tabulating, and destroying copies of unsold magazines (Comp. ¶ 30.) Prior to the alleged conspiracy, four magazine wholesalers had 90% of the U.S. market: Anderson (27% market share); Source (31% market share); Defendant Hudson (11% market share); and News Group (21% market share) (Comp. ¶ 30.)

Each publisher retains a national distributor to broker its relationship with wholesalers (Comp. ¶ 27.) National distributors provide marketing and accounting services to wholesalers and guarantee the wholesaler's payment obligations to the publisher (Comp. ¶ 27.) National distributors typically receive two to five percent of the retail sales value of the magazines they handle (Comp. ¶ 28.) The four U.S. national distributors are Defendants TWR, Kable, and Curtis, as well as non-party Comag Marketing Group LLC ("CMG") (Comp. ¶ 28.) Defendant DSI, a subsidiary of AMI, is not a national distributor but provides sales and marketing services to publishers (Comp. ¶ 28.)

According to the Complaint, publishers and national distributors have introduced inefficiencies in the U.S. single-copy magazine distribution system (Comp. ¶ 31.) These inefficiencies include the shipping of excess numbers of magazines, as well as unprofitable titles (Comp. ¶¶ 31-32.)

Magazine wholesalers bear the brunt of these publisher-induced inefficiencies. (Comp. ¶¶ 31-32.) Excess magazine shipping, for example, forces wholesalers to tabulate unsold copies and transport them back to their own facilities for disposal or destruction (Comp. ¶ 31.) Similarly, when publishers ship unprofitable titles,

they force wholesalers to bear the extraneous costs of handling and returning unsold magazines (Comp. ¶ 32.) These distribution inefficiencies have squeezed magazine wholesalers. In fact, Mr. Anderson has publicly stated that no one from the Anderson family has taken a profit from Anderson in over a decade (Dec. of Daniel N. Anziska (“Anziska Dec.”), Ex. B, at 2.)

Wholesalers have responded to these adverse market dynamics by proposing new magazine distribution ideas (Comp. ¶¶ 32-35.) Wholesalers have, for example, proposed electronic checkout scanning as a cost-effective way of reporting magazine sales and then disposing unsold magazine copies (Comp. ¶ 33.) Publishers and national distributors have resisted these efforts to introduce greater efficiency in the single-copy magazine market (Comp. ¶¶ 32-35.) For example, the Complaint alleges that the publishers have adamantly opposed introducing electronic checkout scanning (Comp. ¶ 34.)

Frustrated in its efforts to change these distribution practices, Anderson decided that it would impose a \$.07 surcharge (the “Surcharge”) on all single-copy magazines (Comp. ¶ 41.) To that end, on January 14, 2009, Mr. Anderson gave a public interview with a representative of the industry publication, The New Single Copy (“The New Single Copy Interview”). In The New Single Copy Interview, Mr. Anderson explained the current industry constraints facing magazine wholesalers and announced that, effective February 1, 2009, Anderson would implement the \$.07 Surcharge (Anziska Dec., Ex. B; Comp. ¶ 42.) Since the Surcharge applied to all magazines shipped, Mr. Anderson explained that the Surcharge created an incentive to eliminate the waste and inefficiency caused by the shipping of excessive magazine copies (Anziska Dec., Ex. B, at 2; Comp. ¶¶ 39-40.)

Mr. Anderson presented the Surcharge to magazine publishers as a non-negotiable, take-it-or-leave it demand: either sign an agreement accepting the Surcharge and pay \$.07 per magazine, or else face the consequences – no distribution of their magazines (Anziska Dec., Ex. B, at 4, 10.) In addition to the Surcharge, Mr. Anderson announced that Anderson would no longer participate in the investment of electronic checkout scanning, shifting the technology costs to manufacturers or publishers (Anziska Dec., Ex. B, at 2-3.) Mr. Anderson stated that the publishers would “be making decisions as to what they needed to do” (Anziska Dec., Ex. B, at 5.)

The major players of the U.S. magazine industry had a variety of reactions to the \$.07 Surcharge. Defendants AMI, Bauer, and Time, for example, held a cordial meeting with Mr. Anderson and responded amicably to the Surcharge (Comp. ¶ 41.) Defendant TWR agreed to a 2% discount off the cover price of all Time weeklies or a 2.75% discount off the cover price for all People weeklies (Anziska Dec., Ex. B, at 2; Comp. ¶ 53.) TWR also indicated that it would be open to discussing electronic checkout scanning (Comp. ¶ 53.) Defendant AMI continued to ship magazines to Anderson.⁵ CMG did not agree to the Surcharge, but proposed a modified arrangement (Anziska Dec., Ex. B, at 2; Comp. ¶¶ 43, 51.) Defendant Kable discussed the idea of offering Anderson exclusivity in certain territories if Anderson dropped the Surcharge (Comp. ¶ 50.) Defendant Curtis informed Mr. Anderson that he “would like to get this worked out,” but that he would “have to go with whatever Rich [Jacobsen, CEO of Defendant TWR] does.” (Comp. ¶ 49.) Curtis also supported Anderson over Anderson’s competitor Source, telling Mr. Anderson, “you need to let Source go out first” (Comp. ¶ 50.)

Notwithstanding the variety of responses to Anderson’s Surcharge, the Complaint alleges that Defendants colluded to destroy Anderson (Comp. ¶¶ 45-63.) According to the Complaint, “[D]efendants saw Anderson’s proposed fee as nothing short of an opportunity to eliminate Anderson as a wholesaler” (Comp. ¶ 44.) In fact, according to Anderson, the Defendants’ receptivity to Anderson and its proposed Surcharge was a masquerade, designed to disguise the Defendants’ choreographed antitrust conspiracy (Comp. ¶¶ 41, 53-55.)

The goal of the alleged conspiracy was to monopolize the magazine wholesale market and use that anticompetitive monopoly power to shift to retailers and consumers – and away from publishers – the entire financial burden resulting from worsening market conditions and publisher-induced inefficiencies in the magazine distribution system (Comp. ¶ 4.) According to the Complaint, in 2008, one of the Defendants, Curtis, attempted to injure Anderson by informing Wal-Mart, one of Anderson’s primary retail clients, that Curtis would no longer supply magazines to Anderson (Comp. ¶ 45.) Wal-Mart, however, frustrated Curtis’s efforts

⁵ See below, note 6.

by supporting Anderson and accepting the proposed supply stoppage (Comp. ¶ 45.) As a result, Curtis resumed its magazine supply (Comp. ¶ 45.)

Curtis's 2008 unilateral attempt to harm Anderson stands in contrast to Defendants' 2009 collusive attempt to destroy Anderson. To effect their collusive scheme, in late January 2009, national distributor Defendants Curtis, Kable, and TWR, and publisher Defendants Bauer, Hachette, Rodale, and Time cut off 80% of Anderson's magazine supply, including the most popular titles, like People and Sports Illustrated" (Comp. ¶¶ 47, 64.)⁶ The Complaint further alleges that "at the same time," Defendants spread false rumors to Anderson's customers that Anderson was in critical financial trouble; sought to acquire Anderson's distribution facilities; and poached Anderson's employees and their proprietary intellectual property" (Comp. ¶¶ 3, 48, 57, 64.) In furtherance of this alleged conspiracy, the defendants held numerous meetings throughout the latter part of January and the early days of February, including a meeting held at Hudson's offices in January 2009, attended by Curtis, TWR, News Group, and Hudson (Comp. ¶ 55.) During these meetings, Defendants allegedly discussed dividing the U.S. distribution territory into two regions, one controlled by Defendant Hudson and the other by News Group. (Comp. ¶ 55.)

The Complaint alleges that Defendants' conspiracy succeeded in destroying Anderson (Comp. ¶¶ 64-68.) Deprived of 80% of its magazine supply, Anderson was unable to cover its costs; and, on February 7, 2009, suspended its operations (Comp. ¶¶ 65-66.) Anderson was forced to lay off thousands of employees and sell its distribution-related assets to News Group at fire-sale prices (Comp. ¶ 67.) News Group has also succeeded in taking over Anderson's retail distribution business at increased rates, as high as 12% over prior rates (Comp. ¶ 59.)⁷ The Complaint also alleges, however, that the elimination of Anderson has substantially reduced the output of magazines as well as the ability of retailers to obtain magazines (Comp. ¶ 72.)

⁶ The Complaint alleges that Defendant AMI participated in the boycott of Anderson, (Comp. ¶ 47), but judicial proceedings establish the opposite. An Order of the Delaware Chancery Court determined that AMI continued to ship magazines to Anderson in February of 2009. See American Media, Inc. v. Anderson News, L.L.C., Index. No.: 4369-VCL. The doctrine of collateral estoppel allows the Court to take judicial notice of that Order since AMI and Anderson were parties to that dispute. See Jacobs v. Law Offices of Leonard N. Flamm, 2005 WL 1844642, at *3 (S.D.N.Y. 2005). As discussed below, based on the Order of the Delaware Chancery Court, the Court rejects Anderson's antitrust allegation as to AMI.

⁷ This allegation names Defendant Hudson along with non-party News Group. In a letter to the Court dated June 9, 2010, however, Anderson withdrew this allegation as to Hudson.

In the weeks following February 7, 2009 Anderson's finances continued to deteriorate (Comp. ¶ 68.) Anderson's creditors filed an involuntary bankruptcy petition on March 2, 2009, seeking to liquidate Anderson (Comp. ¶ 68.) With Anderson's liquidation, the remaining wholesalers, including News Group and Hudson, have taken over more than a quarter of the U.S. market share. (Comp. ¶ 76.) As a result, News Group and Hudson currently control over 50% of the U.S. wholesale magazine distribution market (Comp. ¶ 76.)

II. PLEADING AN ANTITRUST VIOLATION

i. Standard of Analysis

Fed. R. Civ. P. 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The pleading must state a claim which is facially plausible, not merely speculative. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Plaintiffs asserting a claim for violation of the Sherman Antitrust Act must establish a "contract, combination..., or conspiracy, in restraint of trade or commerce." Id. at 548 (quoting 15 U.S.C. § 1). The crucial question in a Section 1 case is therefore whether the challenged conduct stems from independent decision or from an agreement." Starr v. Sony BMG Music Entertainment, 592 F.3d 314, 321 (2d Cir. 2010). At the pleading stage – as opposed to summary judgment stage – an antitrust complaint does not have to tend to rule out the possibility that the defendants were acting independently. Id. Plausibility does not impose a probability requirement at the pleading stage, but demands only that the pleading contains enough facts to justify "a reasonable expectation that discovery will reveal evidence of illegal agreement"; the complaint must contain "enough factual matter (taken as true) to suggest that an agreement was made." Twombly, 550 U.S. at 556.

Parallel conduct is admissible circumstantial evidence from which the fact-finder may infer agreement. Id. Parallel conduct itself, however, does not constitute a violation of the Sherman Antitrust Act, because it is "consistent with conspiracy, but just as much in line with a wide swath of rational and competitive business strategy unilaterally prompted by common perceptions of the market." Id. A complaint alleging an antitrust claim must set forth sufficient facts to raise a plausible suggestion that the purported parallel conduct stemmed

from an agreement. Starr, 592 F.3d at 323. Thus allegations of parallel conduct coupled with bare assertions of conspiracy are not sufficient to state a claim; rather, parallel conduct allegations must be placed in a context that raises a suggestion of a preceding agreement. Twombly, at 556-57. Examples of parallel conduct allegations that would suffice under this standard include “parallel behavior that would probably not result from chance, coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties.” Id., at 556 n.4.

Antitrust allegations need not be detailed with overt acts by each defendant, but must plausibly state how each defendant was involved in the alleged conspiracy. Hinds County v. Wachovia Bank N.A., 2010 U.S. Dist. LEXIS 33270, at * 54 (S.D.N.Y. Mar. 25, 2010). Allegations connecting defendants to the conspiracy “must be viewed in light of the complaint as a whole.” Id., at *63.

ii. Analysis of the Overall Plausibility of Anderson’s Antitrust Allegations

Anderson’s antitrust allegations do not meet Twombly’s plausibility standard. The Complaint alleges that Defendants engaged in a broad industry-wide conspiracy. The ultimate goal of this alleged conspiracy was to eliminate both Anderson and non-party Source, two of the four largest magazine wholesalers (Comp. ¶¶ 4, 58.) This goal is not plausible. Publishers and national distributors have an economic self-interest in more wholesalers, not fewer; more wholesalers yields greater competition, which is good for suppliers. Destroying Anderson and Source would reduce the publisher’s wholesale outlets from four to two and would give Hudson and News Group, the two remaining major wholesalers, 90% of the market share (Comp. ¶ 76.) This is too much market power to yield to wholesalers. Indeed, the Complaint alleges that Anderson’s demise has substantially reduced the output of magazines as well as the ability of retailers to obtain magazines (Comp. ¶ 72.) It is implausible that magazine publishers would conspire to deny retailers access to their own products. Collusion to destroy Anderson and non-party Source – the ultimate goal of the alleged conspiracy – is facially implausible.

The Defendants’ had different reactions to Anderson’s unilateral Surcharge. That diversity compounds the implausibility of Anderson’s antitrust claim. Anderson predicates its antitrust claim on a theory of

conscious parallel conduct, i.e., a pattern of uniform business conduct. The Complaint's core parallel conduct allegation is that Defendants cut off 80% of Anderson's magazine supply (Comp. ¶¶ 47, 58.) The Defendants, however, reacted differently to Anderson's Surcharge: AMI, like non-party CMG, continued to supply magazines to Anderson and thus could not have participated in the parallel conduct;⁸ Bauer and Time held a cordial meeting with Anderson and responded amicably to the Surcharge (Comp. ¶ 41); TWR agreed to a 2% discount off the cover price of all Time weeklies or a 2.75% discount off the cover price for all People weeklies (Anziska Dec., Ex. B, at 2; Comp. ¶ 53); Kable offered Anderson exclusivity in certain territories if Anderson dropped the Surcharge (Comp. ¶ 50); and Curtis informed Mr. Anderson that he "would like to get this worked out," but that he would "have to go with whatever Rich [Jacobsen, CEO of Defendant TWR] does" (Comp. ¶ 49.) Conspirators hatching a concerted scheme to destroy Anderson would not have reacted so differently to the Surcharge. The dramatic differences among the Defendants' reactions undermine Anderson's theory of conscious parallel conduct.

Even if the Complaint plausibly alleges conscious parallel conduct, however, the Court would still grant Defendants' motion to dismiss because the Complaint fails to place the parallel conduct in a context plausibly suggesting collusion. The Complaint does not contain allegations of direct evidence of a conspiracy; there are, for example, no allegations of statements by an insider informant, nor are there allegations of records disclosed through a government investigation.⁹

⁸ See above, note 6.

⁹ Rather, Anderson relies on several vague statements by executives of some of the Defendants' regarding collusion (Comp. ¶¶ 49, 50, 52, 54, 56.) These statements are insufficient. See below the discussion of the sufficiency of the antitrust allegations as to the Defendants individually. Anderson also relies heavily on paragraph 55 of the Complaint, which alleges that "throughout the latter part of January and the early days of February" (i.e., the entire duration of the alleged conspiracy) certain unnamed defendants held "numerous meetings" in unspecified places; that (at some indeterminate date) Curtis, TWR, News Group, and Hudson, met at Hudson's New Jersey offices; and that during these alleged meetings, Defendants discussed dividing the U.S. distribution territory into two regions, one controlled by Defendant Hudson and the other by non-party News Group. Like the vague statements of some of the Defendants' executives, these allegations are also insufficient to plausibly suggest a prior agreement among Defendants. All Star Carts v. BFI Canada Income Fund et. al., 596, F.Supp.2d 630, 641 (E.D.N.Y. 2009) (holding allegations of conspiracy that are general in nature and allude to nothing more than participation by "defendants" in "meetings" are subject to dismissal); In re Elevator Antitrust Litig., 502 F.3d 47, 50-51 (2d Cir. 2007) (affirming district court dismissal of conspiracy claim where plaintiffs set forth nothing more than general assertions of meetings to agree on anti-competitive conduct).

Since there are no allegations of direct evidence of a conspiracy, the Complaint may state a claim only if (i) the parallel conduct itself creates an inference of collusion, or (ii) the Complaint contains circumstantial evidence plausibly suggesting that the defendants reached an agreement prior to engaging in the parallel conduct. See Starr, 592 F.3d at 321-323. These two factors demonstrate why the context in which the Defendants' parallel conduct occurred is crucial to determining the plausibility of claims brought under Section 1 of the Sherman Antitrust Act: "[W]hen allegations of parallel conduct are set out in order to make a §1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." Twombly, 550 U.S. at 557; see also Starr, 592 F.3d at 328-29 (J. Newman, concurring).

The context here is that until January 14, 2010 there is no allegation of conspiracy. On that date, Anderson initiated a \$.07 Surcharge on a take it or leave it basis. The demand was presented by a widely circulated trade magazine. Anderson's demand required a response. While the responses varied, ultimately the magazine publishers decided not to acquiesce to Anderson's demand. In this context, the Defendants' decision to stop doing business with Anderson – the key parallel conduct allegation – does not create an inference of collusion; rather, it is "in line with a wide swath of rational and competitive business strategy unilaterally prompted by common perceptions of the market." Twombly, 550 U.S. at 556.

The context of the alleged parallel conduct is Anderson's unilateral Surcharge. The Surcharge drove Defendants' interactions with Anderson, as Anderson initially desired. Anderson publicly announced the Surcharge on January 14, 2009, and the claimed conspiracy began almost immediately thereafter, unfolding rapidly and driving Anderson out of business within weeks (¶¶ 42, 47, 66.) The Complaint recognizes the centrality of the Surcharge by highlighting it in several paragraphs (¶¶ 39-44) and presenting it as the backdrop to Defendants' alleged conspiracy: "[D]efendants saw Anderson's proposed fee as nothing short of an opportunity to eliminate Anderson as a wholesaler" (Comp. ¶ 44.)

But that characterization does not describe what happened. The Defendants were not acting in a vacuum; they were reacting to Anderson's Surcharge, an added fee on all single-copy magazines. Anderson presented the Surcharge as an ultimatum: the Defendants would either have to accept the Surcharge in writing or lose Anderson's services (Anziska Dec., Ex. B, at 4, 10.) Definitive in his presentation of the Surcharge, Mr. Anderson recognized that the publishers would "be making decisions as to what they needed to do" (Anziska Dec., Ex. B, at 5.) The magazine publishers did not acquiesce to Anderson's demands and accordingly Anderson's services were no longer available. Clearly the Defendants made a business decision – and one that each of the Defendants had to, and did, make quickly because of Anderson's demand. While the decision resulted in Anderson losing 80% of its supply of magazines, this was unchoreographed behavior, a common response to a common stimulus. See Twombly., at 556 n.4. The Defendants responded to Anderson's unilateral demand, a negative stimulus, by pursuing similar but predictable policies to protect their business interests. Unilateral parallel conduct is completely plausible in this context. The parallel conduct itself does not create an inference of collusion to destroy Anderson; and the Complaint's allegations are insufficient to show that the parallel conduct was collusive.¹⁰

Anderson argues that Defendants' parallel conduct creates an inference of collusion because unilateral action against Anderson would be contrary to any publisher's individual economic self-interest. Anderson's argument is really that the Defendants had to agree to its demands; otherwise the Defendants would be in violation of the antitrust law. Anderson maintains that no Defendant would have cut off Anderson's magazine supply without knowing beforehand that another wholesaler would take Anderson's place and develop the

¹⁰ In addition to the allegations in the Complaint, the Court takes judicial notice of the contents of The New Single Copy Interview, in which Mr. Anderson describes the Surcharge as an unconditional, non-negotiable ultimatum. Context is key in evaluating the plausibility of Sherman antitrust claims, and The New Single Copy Interview, fleshes out the background to the alleged conspiracy. Mr. Anderson undeniably made the statements in The New Single Copy Interview; Anderson knew about and possessed the contents of The New Single Copy Interview; and the Complaint references The New Single Copy Interview and briefly paraphrases its contents (Comp. ¶ 42.). See Sira v. Morton, 380 F.3d 57, 67 (2d Cir. 2004) (holding that courts will incorporate a written instrument into a complaint when the complaint references it); Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002) (holding that where a complaint relies heavily on a document, courts may consider the document's contents). The Court would have reached the same decision even absent knowledge of the contents of the The New Single Copy Interview; the Complaint contains enough background information regarding the Surcharge to undermine the plausibility of Anderson's allegations. Indeed, the Complaint itself speaks of Anderson's "decision to impose" the Surcharge, which is entirely consistent with the substance of Mr. Anderson's comments in the The New Single Copy Interview (Comp. ¶ 41.)

necessary distribution infrastructure in those geographic areas where Anderson had exclusive distribution. Only a collusive scheme would allow Defendants to destroy Anderson and co-opt Anderson's business infrastructure because only a prior agreement to work collectively would ensure that the Defendants would not lose business.

Anderson similarly argues that, absent a prior agreement, no single Defendant could be certain that magazine retailers would not frustrate their anticompetitive scheme. Magazine retailers might support Anderson through the boycott by continuing to do business with Anderson despite limitations in their magazine supply. The only way to force retailers to stop doing business with Anderson would be to ensure, through prior agreement, that Anderson would be unable to deliver most of its magazines. Faced with losing most of their magazines, retailers would have no choice but to look to other wholesalers for their magazines. Indeed, this is precisely what happened in 2008, when Curtis unilaterally cut off Anderson's magazine supply: Wal-Mart supported Anderson by accepting the magazine stoppage, forcing Curtis to resume business relations with Anderson. These are legal arguments, not facts. That no one accepted the demand on threat of loss of Anderson's distribution services means only that Anderson made a substantial error in judgment.

The Sixth Circuit has recently rejected similar arguments in the antitrust context. In re Travel Agent Comm'n Antitrust Litig., 583 F.3d 896 (6th Cir. 2009). In Travel Agent, the plaintiffs, airline ticket brokers, brought an antitrust claim against the airlines under § 1 of the Sherman Antitrust Act, alleging that the defendant airlines conspired over a seven year period to cut their commissions and drive the ticket brokers out of business. Id., at 896. The Sixth Circuit dismissed the antitrust claim, holding that the ticket brokers had failed to allege sufficient facts to plausibly suggest a prior illegal agreement. Id., at 911.

The ticket brokers argued, like Anderson, that the parallel conduct – cutting their commissions – created an inference of collusion because no airline would unilaterally cut the ticket brokers' commissions and risk losing revenue to its competitors. Id., at 908. In support, the ticket brokers pointed to prior attempts by individual airlines to cut their commissions. Id. All of these prior unilateral attempts were unsuccessful, demonstrating the necessity of collusion. Id.

The Sixth Circuit rejected this argument. Id. The Court reasoned that changes in the airline market created an economic incentive to cut commission rates. Id. This incentive was greater than the economic incentives that existed in the past, when the airlines previously cut the commissions of ticket brokers unilaterally. Id. The Sixth Circuit found it plausible that each of the airlines conducted an independent cost/benefit analysis of the financial impact of payment of current commissions by market participants as opposed to the business lost if its competitors did not also institute cuts. Id. Having concluded that their business interests favor cutting commissions, the airlines did so, gambling that its competitors would institute similar cuts. Id. If that gamble was wrong, and the leading airline's competitors did not follow suit, then the leading airline could retract its commissions cut. Id. The Court found that this wait-and-see approach was a reasonable alternative explanation for the parallel conduct and thus dismissed the complaint of the ticket brokers as implausible. Id., at 908-09.

The reasoning in Travel Agent applies here. Just as the Travel Agent Court found it plausible that the airlines independently instituted commission cuts and adopted a wait-and-see approach, so too it is plausible that each of the publisher Defendants unilaterally stopped shipping magazines to Anderson rather than pay the Surcharge. Without that Surcharge, Anderson said it would not offer its distribution services. In these circumstances, Defendants conducted a cost/benefit analysis of the financial impact of payment of Anderson's Surcharge, as opposed to the business lost if their competitor publishers did not also stop shipping magazines to Anderson. Having concluded that their business interests favored rejecting Anderson's ultimatum, the magazine publishers stopped shipping magazines to Anderson, betting that their competitors would follow suit. And if that expectation was ill-founded, then the leading publisher could resume business relations with Anderson, just as Curtis did in 2008.

Indeed, the Sixth Circuit's reasoning applies here with even greater force. In Travel Agent, unlike here, the airlines were not faced with a Surcharge ultimatum. When a leading airline instituted commission cuts, no immediate market forces impelled other airlines to make a decision; the status quo could remain undisturbed. That is why the alleged antitrust conspiracy in Travel Agent took seven years to implement. Here, by contrast,

Anderson changed the status quo by demanding that the industry agree to the Surcharge. If the Defendants did not pay, Anderson would refuse to provide its services. Since they would not pay, they had no choice but to find alternative sources of distribution (or go without Anderson's services rather than pay the Surcharge). Anderson created a common economic stimulus, impelling an immediate market reaction. The Defendants realized that Anderson's Surcharge ultimatum would precipitate a reaction by their competitors, as did Anderson. Publisher and distributors each decided that, rather than accept the Surcharge, they would not do business with Anderson. Having proposed its pay-it-or-else Surcharge, Anderson can not claim collusion in the Defendants' refusal to acquiesce to its self-destructive demand.

Moreover, in Travel Agent, the leading airline instituted unilateral commission cuts across the entire airline ticket broker industry. The leading airline thus placed itself at great financial risk; the entire ticket broker industry might retaliate by booking their customers only on airlines that maintained the status quo commission rate. This is, in fact, precisely what occurred on previous occasions, forcing the leading airline to retract its cuts. Id., at 908. Here, by contrast, a publisher unilaterally cutting off its magazine supply from Anderson risked losing revenue only from retailers that Anderson served. Unilateral action by the magazine publishers is thus more plausible than unilateral action by the airlines. Therefore, if the Travel Agent Court rejected the ticket brokers' economic motive argument, then, a fortiori, the Court rejects Anderson's economic motive argument.

In arguing for the plausibility of its antitrust allegations, Anderson relies heavily on the Second Circuit's recent Starr decision. In Starr, the Court reversed the dismissal of an antitrust claim against major record labels. 592 F.3d, at 327. Starr was in fact the first appellate decision to reinstate an antitrust complaint that had been dismissed under the Twombly plausibility standard. Anderson analogizes its antitrust allegations to the Starr antitrust allegations.

Anderson's analogy to Starr is unfounded; the allegations in Starr are more robust than Anderson's allegations. The Starr plaintiffs alleged a conspiracy predicated on defendants' highly unusual parallel conduct: joint ventures to sell music directly to consumers over the Internet for a large fee and with restrictions limiting

the right to download and transfer music. Id., at 318-20. The Second Circuit cataloged six different non-conclusory factual allegations, making the alleged parallel conduct plausible. Id., at 323. This array of allegations included parallel pricing at unreasonably high levels; mandating unpopular contract terms for music purchases; failure to respond to dramatic cost reductions with corresponding price reductions; enforcement of a wholesale price floor; and a collective boycott against the number two internet music provider. Id. The Second Circuit then proceeded to catalog seven different series of allegations placing the parallel conduct in a context raising a suggestion of a preceding agreement. Id., at 323-24. These allegations included persuasive evidence that the defendants were acting contrary to their business interests; an express inculpatory statement by the CEO of one of the defendants; the defendants' attempt to conceal their enforcement of a wholesale price floor through a secret side letter; investigations of the same alleged price fixing conduct by both the New York State Attorney General and the DOJ; and a simultaneous price increase unexplained by any increase in cost. Id.

This host of factors – robust parallel conduct allegations coupled with robust indicia of a preceding price-fixing agreement – persuaded the Starr Court that the antitrust allegations were plausible. Anderson's Complaint is distinguishable. Accepting all non-conclusory allegations as true, Anderson alleges only that Curtis, TWR, News Group, and Hudson, met at Hudson's New Jersey offices to discuss dividing the U.S. distribution territory into two regions, one controlled by Hudson and the other by News Group (Comp. ¶ 55); that Curtis, Kable, and TWR, Bauer, Hachette, Rodale, and Time cut off 80% of Anderson's magazine supply (Comp. ¶ 47); that Hudson poached several of its employees during the alleged conspiracy (Comp. ¶ 57); that Anderson was forced to lay off thousands of employees and sell its distribution-related assets to News Group at fire-sale prices (Comp. ¶ 67); and that News Group has also succeeded in taking over Anderson's retail distribution business (Comp. ¶ 59.) These conclusory allegations are less plausible than the Starr allegations. Unlike the Starr plaintiffs, Anderson claims an economically implausible antitrust conspiracy based on sparse parallel conduct allegations. And unlike the Starr plaintiffs, Anderson does not place its antitrust conspiracy in a context suggesting a preceding agreement; on the contrary, Anderson alleges facts suggesting that the Defendants merely responded to a common market stimulus created by Anderson itself.

iii. Analysis of the Plausibility of Anderson's Antitrust Allegations against the Defendants Individually

a. Curtis

Anderson seeks to implicate Curtis in the antitrust conspiracy by alleging two inculpatory statements by Bob Castardi, the CEO of Curtis (Comp. ¶¶ 49, 50.) While a court takes all factual allegations as true on a motion to dismiss, legal conclusions and factual inferences are not entitled to the same benefit. In re Travel Agent Comm'n Antitrust Litig., 583 F.3d at 903.

Castardi's comments are not inculpatory. The Complaint alleges that Castardi told Mr. Anderson, "I don't want a problem. I would like to get this worked out. But I'm going to have to go with whatever Rich [Jacobsen, CEO of TWR] does" (Comp ¶ 49.) Castardi's statement suggests only that he would wait to see what TWR did and that, in fact, he had no actual knowledge of Jacobsen's plans regarding Anderson. Absent prior agreement, waiting to see what a competitor does is legitimate parallel behavior. Similarly, Castardi's statement to Mr. Anderson, "[Y]ou need to let Source go out first" (Comp. ¶ 50) is not, as Anderson argues, an invitation to join a massive antitrust conspiracy.

b. TWR

The allegations against TWR center on the meeting at Hudson's offices as well as two statements of Rich Jacobsen, CEO of TWR (Comp. ¶¶ 52-56.) These statements are insufficient to plausibly allege a conspiratorial agreement. First, the Complaint alleges that when Mr. Anderson first told Jacobsen of Castardi's statements indicating that Curtis would follow TWR, Jacobsen "indicated he realized Anderson knew there had been collusion" (Comp. ¶ 52.) Additionally, the Complaint alleges that, at a February 2, 2009 dinner meeting with Anderson and Source, Jacobsen stated "we now control this space" (Comp. ¶ 56), and that on the same date, Jacobsen informed Anderson that TWR and Time executives had decided to "change the channel," that "they were going to have to use two wholesalers," and that "that was the way it was going to be" (Comp. ¶ 54.) The Court cannot infer a conspiracy from bald statements describing the state of the magazine industry and vague "indications" of conspiracy inferred from silence.

c. Kable

Other than alleging that Kable cut off Anderson's magazine supply (Comp. ¶ 47), the Complaint contains only one specific allegation as to Kable: President and CEO of Kable, Michael Duloc, offered Anderson exclusive distribution of its magazine in certain territories if Anderson dropped the surcharge. (Comp. ¶ 50.) Duloc's offer does not suggest a preceding agreement; it indicates only a unilateral offer of exclusive distributorship.

d. AMI

The Complaint alleges that Defendant AMI participated in the boycott of Anderson (Comp. ¶ 47.) The Court, however, takes judicial notice of an Order issued in a proceeding in Delaware Chancery Court finding that AMI continued to ship magazines to Anderson in February 2009, after the alleged boycott occurred. See American Media, Inc., Index. No.: 4369-VCL. While a court ordinarily does not take judicial notice of the contents of a Court Order, here, Anderson and AMI were parties to the Delaware proceeding, triggering the doctrine of collateral estoppel. Jacobs, 2005 WL 1844642, at *3 (granting motion to dismiss and taking judicial notice of finding from prior proceeding that involved the same parties, which finding contradicted plaintiff's statements in later proceedings). Therefore, the Court rejects Anderson's antitrust allegations as to AMI.

e. DSI

The Complaint does not allege that DSI engaged in any conspiratorial conduct; it alleges only that DSI is a subsidiary of AMI and a provider of sales and marketing services to publishers (Comp. ¶¶ 16, 28.) These allegations merely describe DSI, not its actions. They are manifestly inadequate to implicate DSI in an antitrust conspiracy.

f. Time, Bauer, Hachette, Rodale

The Complaint lacks specific allegations as to the publisher Defendants (Time; Bauer; Hachette; and Rodale) other than to allege that they collectively cut off Anderson from its magazine supply (Comp. ¶ 47.) Anderson attempts to implicate the publisher Defendants in the conspiracy through their relationship with the national distributor Defendants (Comp. ¶ 49.) The Complaint's allegation of an agency relationship, however,

is conclusory. Moreover, an agency relationship with the national distributor Defendants is insufficient where, as here, the Complaint fails as to the national distributor Defendants.

g. Hudson

The Complaint fails to allege parallel conduct as to Hudson. As the only magazine wholesaler Defendant, Hudson is uniquely situated. The Complaint does not allege that Hudson cut off Anderson's magazine supply; indeed, as a wholesaler, Hudson could not cut off Anderson's magazine supply. The Complaint alleges only that Hudson poached several of Anderson's employees during the alleged conspiracy (Comp. ¶ 57), and that Hudson took over Anderson's retail distribution business (Comp. ¶ 59.) In a letter to the Court dated June 9, 2010, however, Anderson withdrew its allegation that Hudson has taken over Anderson's retail distribution business (Comp. ¶ 59.) There is thus no conceivable role for Hudson in the alleged conspiracy. The single remaining allegation – that Hudson poached several of Anderson's employees – is plainly insufficient to plausibly allege an antitrust claim as to Hudson.

III. JUDICIAL NOTICE OF THE SOURCE AMENDED COMPLAINT

Non-party magazine wholesaler Source was the plaintiff in a related antitrust conspiracy action that has since settled. Source commenced its action on February 9, 2009 and filed an amended complaint ("Source Amended Complaint") on February 10, 2009. Anderson's counsel in this action also represented Source in the Source Action. Anderson's Complaint, however, does not incorporate the allegations in the Source Amended Complaint. On June 15, 2010, at oral argument on this motion, Anderson requested for the first time that the Court take judicial notice of the contents of the Source Amended Complaint.

The Court cannot consider the contents of the Source Complaint. Under Fed. R. Evid. 201, courts take judicial notice of facts that are "not subject to reasonable dispute" in that they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Allegations, however, are often contested – that is the very nature of litigation – and courts will take judicial notice only of the existence of other publicly-filed court documents, not of their contents. Global Network Communs., Inc. v. City of New York, 458 F.3d 150, 157 (2d Cir. 2006). Moreover, Anderson filed its Complaint after Source

filed its Amended Complaint. Anderson's counsel thus possessed the contents of the Source Amended Complaint. It is too late for Anderson (if indeed it was ever appropriate) to buttress its pleadings by asking the Court to judicially notice contested allegations in a different proceeding. The Court will not consider the allegations of the Source Complaint, and Anderson's request to do so is denied.

IV. COMMON LAW CLAIMS

i. Tortious Interference with Business Relations

The Complaint asserts claims for tortious interference with business relations. To state a claim for tortious interference with business relations under New York law, a plaintiff must show that (1) it had a business relationship with a third party; (2) the defendant knew of that relationship and intentionally interfered with it; (3) the defendant acted solely out of malice, or used dishonest, unfair, or improper means; and (4) the defendant's interference caused injury to the relationship. Carvel Corp. v. Noonan, 350 F.3d 6, 30-31 (2d Cir. 2003).¹¹

In failing to plausibly claim an antitrust violation, the Complaint also fails to adequately plead tortious interference with business relations. Since Anderson is unable to assert a conspiracy, it has not shown that the Defendants used dishonest, unfair, or improper means in interfering with the relationship between Anderson and its retailers. Nor has Anderson argued that the Defendants "acted solely out of malice" in refusing the Surcharge. Conduct undertaken to economically benefit defendants and not solely based on malice toward the plaintiff does not amount to tortious interference with business relations. MMC Energy, Inc. v. Miller, 2009 WL 2981914 (S.D.N.Y. Sept. 14, 2009).¹²

¹¹ The Court applies New York law to Anderson's common law claims because Anderson concedes that there is no conflict between New York law (the law of the forum) and the law of the other jurisdictions whose law Anderson has invoked. See Alitalia Linee Aeree Italiane, S.P.A. v. Airline Tariff Publ'g Co., 580 F. Supp. 2d 285, 290 (S.D.N.Y. 2008).

¹² Anderson's pleadings obscure the nature of its tortious interference claim. The Court construes Anderson's claim as one for tortious interference with business relations. Anderson's claim also fails if Anderson is in fact pleading a claim for tortious interference with contract. Anderson alleges that the Defendants forced Anderson to breach its contracts with single-copy magazine retailers. Under New York law, however, to state a claim for tortious interference with contract, a plaintiff must allege the procurement of a third-party breach of contract. Conf'l. Fin. Co. v. Ledwith, 2009 WL 1748875, at *6 (S.D.N.Y. June 22, 2009).

ii. Civil Conspiracy

A plaintiff alleging civil conspiracy must assert both an underlying tort and the elements of civil conspiracy. Kottler v. Deutsche Bank AG, 607 F. Supp. 2d 447, 463 (S.D.N.Y. 2009). Having failed to state a claim for any underlying tort, the Complaint fails to adequately plead a civil conspiracy under New York law.

V. LEAVE TO REPLEAD

The Court dismisses Anderson's Complaint in its entirety. Anderson has failed to plausibly allege an antitrust claim under Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1), and, consequently, it has also failed to adequately plead claims of civil conspiracy and tortious interference with business relations. Anderson has requested leave to amend its Complaint. Anderson has argued that it could amend its pleadings to include allegations, for example, that Rodale monitored the conduct of other members of the industry to determine if they posed a threat to the conspiracy (Plf. Opp. Memo, at 22 n.14.) The Court denies Anderson's request for leave to amend.

District courts have discretion in deciding whether to grant leave to amend a complaint. Hayden v. County of Nassau, 180 F.3d 42, 53 (2d Cir. 1999). Courts may deny leave to amend where a plaintiff fails to demonstrate it could remedy the complaint's deficiencies. Id. at 53.

The defects in Anderson's Complaint are not curable. The context of the alleged antitrust conspiracy – the Surcharge that Anderson tried to impose on the industry to Anderson's advantage and the disadvantage of everyone else – belies the viability of Anderson's antitrust claim. Anderson cannot deny that it decided to impose a Surcharge, and the Court must view any additional allegations of conspiratorial behavior through the lens of the Surcharge. Alleging that Rodale monitored the single-copy magazine industry cannot cure Anderson's antitrust claim, which is based on an economically implausible theory and in which the Defendants merely reacted to a common and dramatic market stimulus.

The incurability of Anderson's antitrust allegations, true as to all the Defendants, is especially true as to AMI, DSI, and Hudson. AMI continued to ship magazines to Anderson and thus did not participate in the boycott of Anderson, the heart of this action. DSI cannot be held liable merely because it is a subsidiary of

AMI, which is all Anderson alleges. Amending the Complaint's allegations as to Hudson would likewise be futile because there is no conceivable role for Hudson in the alleged conspiracy: as a wholesaler, Hudson could not cut off Anderson's magazine supply; and Anderson has withdrawn its allegation that Hudson has taken over Anderson's retail distribution business.

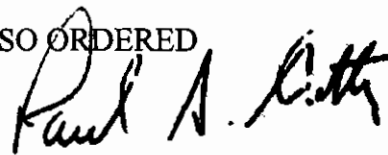
In addition to the overall implausibility of Anderson's antitrust claim, the elimination of Hudson from the alleged conspiracy necessitates dismissal of the entire Complaint with prejudice. Anderson has argued that Hudson was critical to the conspiracy (Plf. Opp. Memo, at 22 n.14.) Yet because Anderson cannot allege that Hudson participated in the conspiracy, Anderson's Complaint is incurable by its own admission.

VI. CONCLUSION

For the forgoing reasons, the Court GRANTS the Defendants' motions to dismiss (docket entries #58, #61, #63, #65, #68) in their entirety and with prejudice. The Clerk of the Court is directed to enter judgment accordingly and close this case.

Dated: New York, New York
August 2, 2010

SO ORDERED



PAUL A. CROTTY
United States District Judge

Exhibit A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDERSON NEWS, L.L.C., and	:
ANDERSON SERVICES, L.L.C.,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
AMERICAN MEDIA, INC., BAUER PUBLISHING CO.,	:
LP., CURTIS CIRCULATION COMPANY,	:
DISTRIBUTION SERVICES, INC., HACHETTE	:
FILIPACCHI MEDIA, U.S., HUDSON NEWS	:
DISTRIBUTORS LLC, KABLE DISTRIBUTION	:
SERVICES, INC., RODALE, INC., TIME INC. and	:
TIME/WARNER RETAIL SALES & MARKETING,	:
INC.,	:
	:
Defendants.	:
-----	X

09 CIV. 2227 (PAC)
JURY TRIAL DEMANDED

[PROPOSED]
AMENDED COMPLAINT

Plaintiffs ANDERSON NEWS, L.L.C. and ANDERSON SERVICES, L.L.C. (together, “ANDERSON”), for their complaint against defendants BAUER PUBLISHING CO., L.P. (“BAUER”), AMERICAN MEDIA, INC. (“AMI”), HACHETTE FILIPACCHI MEDIA, U.S. (“HACHETTE”), RODALE, INC. (“RODALE”), TIME INC. (“TIME”), TIME/WARNER RETAIL SALES & MARKETING INC. (“TWR”), CURTIS CIRCULATION COMPANY (“CURTIS”), KABLE DISTRIBUTION SERVICES, INC. (“KABLE”), DISTRIBUTION SERVICES, INC. (“DSI”), and HUDSON NEWS DISTRIBUTORS LLC (“HUDSON”), upon knowledge as to ANDERSON and otherwise upon information and belief, allege as follows:

Preliminary Statement

1. In this action, Anderson, a wholesaler of magazines to leading mass-merchandise retailers, and other retail outlets, seeks monetary damages arising from an illegal anti-competitive and collusive scheme by the defendant magazine publishers, their national distributors and two preferred and compliant wholesalers to destroy the business of Anderson and another magazine wholesaler, Source Interlink Distribution, L.L.C. (“Source”).

2. Defendants undertook their conspiracy -- which succeeded in destroying Anderson -- in a collusive effort to avoid individualized and competitive negotiations over surcharges with Anderson and Source, to maintain and increase their control over the wholesaler single-copy magazine distribution market, and to block technological and other changes sought by Anderson and Source to the publishers’ continued use of an increasingly inefficient and outmoded magazine distribution system, that unreasonably imposed increasing costs on Anderson, Source, the retailers and consumers. Indeed, after defendants succeeded in destroying Anderson, they immediately raised the prices they charged to the retailers, by as much as 12% or more.

3. Evidenced by, among other things, numerous meetings and e-mails between and among the publisher competitors and their co-conspirators during the weeks immediately after Anderson (followed by Source) had proposed a temporary, stop-gap \$.07 per copy surcharge to help offset some of the increasing publisher-induced costs, defendants illegally colluded in agreeing upon and implementing a coordinated response to the surcharge, cutting off Anderson (and Source) from their supply of magazines, agreeing on an allocation of Anderson and Source's business and within days driving Anderson out of business.

4. Defendants responded to Anderson's proposed temporary surcharge with illegal, collusive actions, instead of engaging in individual negotiations. As defendants well know, the proposed surcharge itself was negotiable. Among other things, (a) Anderson had reached a compromise with one of the defendant publishers (Time) (who acted as the leader in the conspiracy) to obviate the need for the surcharge (an agreement it never intended to honor), and (b) as defendants knew, one national distributor, Comag Marketing Group LLC ("Comag"), which refused to join the conspiracy, reached agreements with Anderson and Source and continued to supply them with magazines. As a result, one of the defendants, in an e-mail circulated between at least some of the conspiring competitors, described Comag as "dangerous" -- *i.e.*, dangerous to the defendants' conspiracy.

5. During the two weeks following Anderson's surcharge proposal, the defendants repeatedly met and communicated, including after business hours and on weekends, to plan and carry out their conspiracy. Defendants openly stated that they were working together, that they knew what the others would do, and that as a result, Anderson and Source would be destroyed and defendants would "control this space."

6. Then, within days of each other and shortly after their inter-competitor meetings and communications, the defendants acted uniformly in carrying out their common response to Anderson's surcharge and cutting off 80% of Anderson's magazine supply. At the same time, the defendants were stealing Anderson customers, poaching its employees, spreading negative rumors about its financial condition, and coercing Anderson into selling distribution facilities to one of the defendant wholesalers at fire-sale prices.

7. Defendants had a clear and powerful economic incentive to engage in their conspiracy to control the magazine distribution system. Once the two co-conspirator wholesalers, defendant Hudson and non-party The News Group, LP ("News Group"), took over the business of Anderson and Source and acquired their operations at fire-sale prices, those preferred wholesalers would acquire the market power that allowed them to increase the prices charged to the retailers. The publishers' economic interests would be advanced by shifting to retailers and consumers -- and away from publishers -- the increasing distribution costs, including those resulting from publisher-induced inefficiencies. The publishers would also benefit tremendously because their preferred wholesalers had the market power to resist measures by retailers that would have curtailed defendants' practice of compelling wholesalers and retailers to pay for and handle an excessive number of magazine copies. As the cost to publishers under the current system for shipping excess copies is negligible -- indeed, the cost is borne by the wholesalers and retailers -- the publishers habitually ship excess copies in the hope of obtaining increased sales.

8. As a direct result of their unlawful coordinated response to the proposed surcharge and boycott of Anderson, defendants achieved their anti-competitive goal of eliminating Anderson as a magazine wholesaler. On February 7, 2009, Anderson announced that

it had no recourse but to curtail normal business activities effective immediately. Anderson later was forced to shut down its national distribution system, and Anderson's entire business, including its goodwill, reputation, employee work force and customer base, was destroyed. Source was able to survive because this Court issued a temporary restraining order requiring defendants to resume supplying Source, and after a number of defendants produced documents in discovery, they agreed to settle by entering into multi-year supply agreements.

9. Defendants also succeeded in achieving their ultimate anti-competitive goal: raising the prices paid by magazine retailers, and forcing those retailers to abandon their efforts to introduce efficiencies into the market. Defendants' illegal conduct has alleviated any pressure on the publisher and national distributor defendants to bear any of the increased costs of distributing their magazines, and correspondingly has severely injured retailers and consumers. It ensured that the publishers would continue to force the wholesalers to accept excessive and wasteful copies of magazines into the retail distribution channel, bolstering publisher circulation needs, while passing along that increased cost to the retailers through their preferred wholesalers.

10. Anderson, therefore, seeks compensatory damages in an amount to be determined at trial, as well as treble and punitive damages, arising from the extraordinary harm caused by defendants' egregiously illegal conduct.

THE PARTIES

A. Publishers

11. Defendant Time, a Delaware corporation with its principal place of business in New York, New York, is the parent corporation of defendant TWR and the largest magazine publisher in the United States and publishes more than 120 magazines, including *Time*, *People*,

Entertainment Weekly, Sports Illustrated, Essence, Fortune, Golf, In Style, Money, People en Espanol, Real Simple, Sports Illustrated for Kids, This Old House, Coastal Living, Cooking Light, Health, Southern Accents, Business 2.0, and Southern Living.

12. Defendant Bauer, a Delaware partnership with its principal place of business in Englewood Cliffs, New Jersey, is the largest publisher of newsstand magazines in the United States. It publishes magazines such as *In Touch Weekly, Life & Style Weekly, Woman's World, First For Women* and *Soaps In Depth*.

13. Defendant AMI, a Delaware corporation with its principal place of business in Boca Raton, Florida, is the fourth largest consumer magazine publisher, and the second largest publisher in retail magazine sales, in the United States. It publishes 16 titles, including 6 of the top 15 best selling weekly newsstand magazines. Its publications include *Country Weekly, FLEX, GLOBE, Men's Fitness, MUSCLE & FITNESS, National Enquirer, SHAPE, and Star*.

14. Defendant Hachette, a Delaware corporation with its principal place of business in New York, New York, is the publisher of *Car and Driver, Road & Track, ELLE, ELLEGirl, ELLE Décor, HOME, Metropolitan Home, Woman's Day, American Photo, Boating, Cycle World, Popular Photography* and *Sound & Vision*.

15. Defendant Rodale, a Pennsylvania corporation with its principal place of business in Emmaus, Pennsylvania, is the publisher of *Men's Health, Prevention, Women's Health, Runner's World, Best Life, Bicycling, Running Times, Organic Gardening, and Mountain Bike*.

B. National Distributors

16. National magazine distributors are retained by magazine publishers as their agents to, among other things, broker and manage their relationships with their wholesalers. National distributors perform no physical distribution activities like warehousing, order assembly, delivery or in-store merchandising.

17. Defendant Curtis, a Delaware corporation with its principal place of business in Pennsauken, New Jersey, is the leading national distributor of magazines in the United States, distributing hundreds of national titles for at least 400 publishers, including its affiliate, defendant Hachette, and defendants Rodale and AMI, and others. Publications distributed by Curtis include *Woman's Day*, *Car & Driver*, *Newsweek*, *Men's Health*, *Maxim*, *Elle*, and *The Economist*.

18. Defendant Kable, a Delaware corporation with its executive offices in New York, New York, is a national distributor distributing more than 650 magazines, annuals and digests for over 250 different publishers, including defendant publisher Bauer, and others. Publications distributed by Kable include *In Touch*, *Woman World*, *First for Women*, *Tiger Beat*, and *WWE Magazine*.

19. Defendant TWR, a New York corporation with its principal place of business in Parsippany, New Jersey, and an office in New York, New York, is a national magazine distributor whose publishing clients include its parent Time.

20. Defendant DSI, a Delaware corporation with its principal place of business in Delray Beach, Florida, is a subsidiary of defendant AMI and a provider of marketing services to publishers, including AMI, Bauer, Hachette and Rodale.

C. Magazine Wholesalers

21. Before Anderson was driven out of the business by defendants, four major wholesalers sold magazines to retail outlets for single-copy sales at such outlets, as follows.

22. Plaintiff Anderson News, L.L.C., is a Delaware corporation with its principal place of business in Knoxville, Tennessee. Before February 7, 2009, when defendants forced it to shut down its operations, Anderson News, L.L.C., along with its affiliate, plaintiff Anderson Services, L.L.C., comprised the second largest magazine wholesaler in the United States, servicing 30,000 retail customer locations in 37 states. Anderson News, L.L.C. was the sales and marketing company for the combined Anderson venture. Until defendants' conspiracy eliminated it from the market, Anderson had been a retailer and wholesaler of periodicals since 1917 and had approximately 6,000 employees. In the traditional single-copy magazine distribution market, Anderson conducted business throughout the United States, with the exception of certain areas in the mid-Atlantic, New England, Southern California, Alaska, Michigan, and North Dakota. Anderson and its predecessors have done business with the defendant national distributors since their formation.

23. Plaintiff Anderson Services, L.L.C., is a Delaware limited liability corporation with its principal place of business in Knoxville, Tennessee. Before February 7, 2009, when defendants forced it to begin to shut down its operations, Anderson Services, L.L.C. provided warehousing, delivery and merchandising services for the combined Anderson venture.

24. Defendant Hudson, a New Jersey limited liability company with its principal place of business in North Bergen, New Jersey, is a major magazine wholesaler.

25. Non-party News Group, a Delaware limited partnership with its principal place of business in Texas, is a major magazine wholesaler. News Group was originally named as a defendant in this action, but was dismissed voluntarily in accordance with a release executed by Anderson when Anderson was forced to sell certain distribution assets to News Group in February 2009.

26. Non-party Source, a Delaware corporation with its principal place of business in Bonita Springs, Florida, is a major magazine wholesaler. Source was a target of the conspiracy and a subject of the defendants' boycott, but after this Court granted Source's motion for a temporary restraining order and defendants produced documents in discovery, they agreed to enter into settlements with Source for the multi-year supply of magazines.

JURISDICTION AND VENUE

27. This action is brought to recover damages caused by defendants' violation of, among other things, Section 1 of the Sherman Act, 15 U.S.C. § 1.

28. The Court has subject matter jurisdiction over this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4; Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26; 28 U.S.C. § 1337, and principles of supplemental jurisdiction, 28 U.S.C. § 1367.

29. Venue is proper in this District under Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 28 U.S.C. § 1391, inasmuch as defendants transact business and are found within this District, and a substantial part of the events giving rise to plaintiffs' claims occurred within this District.

BACKGROUND

A. Overview: Single-Copy Magazine Sales

30. Defendants Time, Bauer, AMI, Hachette and Rodale publish magazines and set their cover prices. To effectuate single-copy magazine sales (*i.e.*, non-subscription sales), each publisher retains a national distributor, which serves as an agent and broker to manage the publisher's relationship with its wholesalers, provides marketing and accounting services and may guaranty the wholesaler's payment obligations to the publisher.

31. Defendants TWR, Kable and Curtis, and non-party Comag, the four principal U.S. national distributors, are compensated based on a percentage, typically two to five percent of the retail sales value of the magazines they handle. Defendant DSI, a subsidiary of AMI, provides sales and marketing services to publishers.

32. Pursuant to allotment orders provided by the national distributors (which typically greatly exceed the number ultimately purchased by consumers), the publishers' magazines are shipped from printers to wholesalers, which, in turn, ship the magazines to retailers, including traditional mass merchandisers and grocery store chains, such as Wal-Mart and Kroger, as well as newsstands, convenience stores, airport terminals and other retail outlets, and specialty retailers such as chain booksellers.

33. Wholesalers are responsible for shipping to retailers, and then for picking up from the retailers and tabulating and destroying copies of unsold magazines. Wholesalers typically buy the magazines from the publishers at a price of 50 to 60 percent of the cover price and sell to the retailers at a price of 70 to 80 percent of the cover price.

34. Single-copy magazine sales constitute an integral and critical component of a publisher's economic business model because the visibility of the publisher's magazine titles at tens of thousands of locations across the country substantially enhances the ability of the publisher to launch, maintain and increase magazine circulation. Maintaining and increasing such circulation is vital to the publisher's principal income source -- advertising. Advertising rates are determined by the total number of magazine copies that are sold.

B. Historical Exclusive Agency Distribution System and Industry Consolidation

35. Until 1995, the magazine publishers -- and in particular, *TV Guide*'s publisher, which dominated the industry -- exercised substantial control over the magazine wholesale market, to the detriment of retailers. They exercised this control through wholesalers -- then known as "agencies" -- which were each granted the exclusive right to distribute within designated geographical territories and which served as the agents of the publishers and national distributors. This system was advantageous to and supported by the publishers and distributors, which exercised substantial control over the exclusive wholesalers, which were wholly dependent upon the publishers.

36. However, the system was disfavored by the retailers, which were deprived of competition at the wholesale distribution level and thus were compelled to pay higher prices and to accept fewer services than if there had been wholesaler competition.

37. In or about 1995, in response to the commencement of an antitrust investigation by the United States Department of Justice into the lack of geographic wholesaler competition in the magazine distribution business, the publisher of *TV Guide*, for the first time, allowed retailers to seek competitive bidding from wholesalers. As a result, the wholesale market underwent a

period of substantial consolidation, and by 2008, there remained four wholesalers which, combined, had substantially all of the market for single-copy magazine distribution: Anderson, with 27% of the market; Source, with 31%; Hudson, with 11%; and News Group, with 21%.

38. Retailers were beneficiaries of the elimination of the exclusive wholesaler distribution system. Because wholesalers were required to compete for retailers' business, the prices wholesalers charged to retailers were significantly lower, and the services they offered more extensive, than was the case in the absence of wholesaler competition. This also increased considerably the financial pressure on the wholesalers, which were confronted with reduced profit margins.

39. Publishers also were adversely affected by the loss of the exclusive wholesalers, and the introduction of wholesaler competition. The increased pressure on the wholesalers' profit margins caused the wholesalers to seek to recover their lost margin from the publishers. When publishers resisted pricing changes, wholesalers attempted to reduce their operating costs by eliminating or reducing waste or excess copies and by introducing changes in business practices like scan-based trading that would reduce non-value-added activities like expensive check-in and check-out routines at the retail level. Anderson lead the charge in attempting to make these productive changes, which were resisted by major publishers. Those wholesaler changes created friction in the distribution channel as the national distributors continued to ship to the wholesalers, and force wholesalers to accept, excessive copies of magazines.

40. Unlike certain other manufacturers of products, publishers have a strong economic incentive to limit, to the maximum extent possible, the number of wholesalers distributing their magazines in any given geographic region. Magazine titles -- unlike certain

other products -- are supplied only by a single publisher -- in the case of *People* and *Sports Illustrated*, Time. As a result, the large publishers, like defendants publishers here, have substantial market power, which allows them to control and influence the wholesalers -- especially where that wholesaler has exclusive distribution rights. Such a wholesaler, in turn -- operating without competition -- is effectively granted the market power to increase the prices charged to its retailers. Absent that market power (*i.e.*, in a market with more than one wholesaler), the wholesaler either would have an incentive to join a conspiracy among the publishers to restore exclusivity in its region -- just as Hudson and News Group have done -- or would seek to obtain lost margin or pass along increased costs to the publishers -- just as occurred in the industry after 1995.

41. Publisher-induced supply practices were imposing onerous and unnecessary costs on wholesalers. Because the publishers' primary revenue is provided by advertisers whose payments are based on the actual number of magazines sold, publishers are strongly incentivized to ensure that the magazine supply chain is more than adequate to meet demand to avoid any lost sales. Moreover, the marginal revenue earned by the publishers for each additional magazine sale -- both from the sale itself and from advertising -- was dramatically higher than the incremental cost of printing each magazine. Publishers, therefore, customarily ship to wholesalers quantities of magazines that far exceed the number of magazines sold by the retailers, as well as large numbers of unprofitable magazine titles. Indeed, nearly half of all newsstand magazine titles have a "sell-through" percentage as low as 80% -- meaning that, of five magazines distributed by the wholesaler, only one is actually sold to a consumer. Under this system, wholesalers -- which are paid only for copies that are sold -- are forced to absorb the full

cost of handling and tabulating unsold copies and transporting them back to their own facilities for disposal or destruction.

42. A different, more efficient system for distribution has been proposed and has been implemented by certain of the more powerful mass retailers, under which the retailers automatically would report sales of magazines through electronic check-out scanners and then dispose of unsold copies (known as “scan-based trading”). Retailers also were seeking the implementation of scan-based trading and other measures that would have increased efficiencies in the traditional distribution system and reduced the wholesalers’ increasing costs. Both Anderson and Source were proponents of scan-based trading as a highly cost-effective and efficient measure for addressing the distribution costs resulting from the excessive supply of magazines.

43. The publishers adamantly opposed scan-based trading, claiming that they would not be paid for, nor would their circulation numbers reflect, “shrinkage” -- *i.e.*, sales that are not scanned as a result of machine error, estimated to be approximately five percent of all sales. In addition, publishers opposed Anderson’s and Source’s attempts to require the publishers to assume the inventory costs associated with scan-based trading.

C. The Motivation for the Concerted Action and Conspiracy

44. The major publishers had a powerful economic incentive to collude to regain control of the single-copy magazine distribution system -- control that had been eroded substantially because of the loss of the pre-1995 exclusive wholesaler system and the development of four competitive, non-exclusive wholesalers -- to ensure that the increasing costs of magazine distribution were covered by retailers instead of publishers. The most effective way

to regain such control was to restore the wholesalers' regional exclusivity and to eliminate those wholesalers -- *i.e.*, Anderson and Source -- which had been seeking to obtain margin from the publishers and had been promoting scan-based trading and other measures that redounded to the benefit of the retailers, and by dividing the Anderson and Source business among the two remaining, compliant wholesalers, *i.e.*, Hudson and News Group. Because defendants arranged for their two remaining wholesalers to be allocated separate geographic markets that did not overlap, retailers were compelled to accept the selected, preferred wholesalers and were deprived of competition in that market.

45. Indeed, confirming that such a result is in the economic interest of the publishers and other defendants, consultants retained by defendant Time had earlier prepared an analysis of the industry, and concluded that one option for enhancing the "stability" of the single-copy magazine distribution market was precisely to establish exclusive "regional franchises" for wholesaling. They warned, however, of the likelihood that this would result in "legal challenges," and recommended a different approach. The goal of defendants' conspiracy in 2009 was to accomplish just such illegal exclusive wholesalers through a collusive agreement among the defendants, which included unlawful market allocation.

46. In 2008, defendant Curtis, the nation's largest magazine distributor by volume, attempted unilaterally to eliminate Anderson as a wholesaler of its magazines, which include some of the most popular titles. Curtis attempted to do so by informing Wal-Mart, one of Anderson's primary retail clients, that Curtis would no longer supply magazines to Anderson. Wal-Mart, however, like all or nearly all retailers, uses a single wholesaler to supply a given store. Wal-Mart responded by telling Curtis that it preferred to remain with Anderson, even if that meant it had to accept discontinuance of the supply of Curtis's magazines. Curtis promptly

reversed course and resumed supply. Curtis's failed unilateral attempt to eliminate Anderson as a wholesaler confirmed to Curtis that concerted action among the major publishers and national distributors was essential to achieve that objective. Only exclusive wholesale service areas, as existed before 1995, could neutralize retailer power -- the wholesalers had to resume their pre-1995 role as the publishers' exclusive "agencies."

47. During approximately the same time as Curtis's unilateral attack against Anderson, James Cohen, the president and CEO of Hudson, telephoned Anderson's CEO, Charles Anderson ("Mr. Anderson"), and reported that Robert Castardi ("Castardi"), the president of Curtis, had told him, in words or in substance, that Castardi was going "to get back" at Anderson and that "Anderson was done" because Curtis would find a way to put Anderson out of business.

48. Regaining control over the single-copy wholesale distribution system would require concerted action among the publishers, national distributors and Hudson and News Group. Concerted action was required because individual publishers could not risk losing circulation by cutting off the supply of its magazines to the geographic regions serviced by the wholesalers. The temporary surcharge proposals of Anderson and Source in 2009 provided defendants the opportunity to undertake precisely such concerted action under the pretext of responding to those proposals, and defendants undertook their conspiracy to seek to eliminate Anderson and Source and reassert control over the wholesale distribution system.

49. In early January 2009, Anderson proposed measures to make the magazine distribution system less burdensome and more efficient, goals that had been hampered by the refusal of the national distributors and publishers to adopt the efficiency-oriented measures that

were being requested by Anderson, Source and many retailers. Anderson announced that, as a temporary, stop-gap measure, it would apply a \$.07 per-copy distribution surcharge for all magazine copies it received, and would pass on to the publishers the carrying costs of inventory in retail chains where it had negotiated scan-based trading terms. The surcharge would be applied to all magazines distributed on or after February 1, 2009.

50. Anderson's proposed \$.07 per copy surcharge was designed to increase the overall efficiency of the magazine distribution industry. One of the primary aims of the surcharge was to create an incentive to eliminate the waste and inefficiency caused by the insistence of the publishers and distributors on shipping excessive copies of their magazines to wholesalers, and requiring that the wholesalers physically collect unsold copies. The publishers and distributors benefited from this inefficiency -- because shipping excessive magazines could increase their sales but the costs of this excessive supply were borne entirely by the wholesalers.

51. The proposed temporary surcharge was not a non-negotiable mandate imposed by Anderson, as evidenced by, among other things, the fact that Mr. Anderson, the CEO of Anderson, flew to New York on January 12 and 13, 2009 and met with some of Anderson's largest publisher clients, including: Ann Moore, CEO of Time (Anderson's largest publisher client); David Pecker, President of AMI; Hubert Boehle, the president and CEO of Bauer; and Cathie Black, CEO of Hearst Magazines. At those meetings, Mr. Anderson informed the publishers of Anderson's proposed temporary stop-gap measure. These meetings -- which clearly constituted merely the initial stages of the negotiating process -- were cordial, and the publishers appeared -- at least on the surface -- to respond amicably.

52. The next day, January 14, 2009, Mr. Anderson had a call-in interview with the representative of an industry publication, *The New Single Copy*, during which he publicly announced the surcharge and explained the industry constraints underlying that measure.

53. Anderson made clear to all publishers and national distributors that the surcharge was a temporary, stop-gap measure, and that their agreement to this temporary measure would not be irrevocable. Moreover, Anderson was willing to work with the publishers and national distributors to implement alternatives to the surcharge. Indeed, Anderson had commenced to work with Comag -- the only major national distributor not to join the group boycott of the publishers and national distributors -- toward a mutually-acceptable resolution of the issue concerning the costly publisher-imposed inefficiencies in the distribution system.

54. Five days later, on January 19, 2009, Source initiated a similar proposal, also seeking a \$.07 per-copy surcharge.

D. The Conspiracy to Eliminate Anderson and Source

55. Immediately after Anderson, and later Source, proposed the \$.07 surcharge, the major publishers and national distributors engaged in an intense series of inter-competitor communications that resulted in an agreement to formulate a coordinated response to the Anderson and Source proposals designed to force those two wholesalers out of business. Their objective was to regain greater control of the single-copy distribution market. To achieve that objective, they met, coordinated and agreed upon a common response to the proposed surcharges -- collectively they would reject the proposed surcharges and, using that as a pretext, they would cut off the magazines supplied by defendant publishers and national distributors, which comprised approximately 80% of the magazines distributed by Anderson and Source. That

decision would force Anderson and Source into fire sales of their distribution assets to the only remaining viable wholesalers, News Group and Hudson, who also met with the publishers and national distributors and had agreed collectively to allocate the Anderson and Source business and customers.

56. Thus, four days after Anderson's public announcement of the surcharge, the presidents of the two largest national distributors, Castardi, the president of Curtis, and Michael Duloc ("Duloc"), the president and CEO of Kable, attended a meeting on Sunday, January 18, 2009 to plan their collusive action. Those two competitors represent and act on behalf of all but one of the defendant publishers: Curtis represents and acts on behalf of AMI, Hachette and Rodale; and Kable represents and acts on behalf of Bauer. The only publisher not present or represented at the Sunday meetings was defendant Time and its national distributor, TWR.

57. On January 22, 2009, however, four days after the Sunday meeting, Kable, pursuant to the conspiracy, communicated with its competitor, TWR, ostensibly to "catch up on a few" unspecified "IPDA type items." The IPDA -- or International Periodical Distributors Association -- is precisely the type of trade organization that has been used perennially by competitors to attempt to mask their illegal, anti-competitive communications.

58. In at least two instances during January 2009, after Source had also proposed a \$.07 surcharge, certain defendants invited Anderson to join the conspiracy to eliminate Source as a wholesaler by pointing out that Anderson could profit by taking over Source's business and obtaining its profits through price increases imposed on the retailers. Thus, Castardi of Curtis told Mr. Anderson that "you need to let Source go out first." In certain areas -- Arizona, for example -- Anderson and Source were the only wholesalers. Once Source was excluded from

the market and its business destroyed, Castardi told Mr. Anderson, in words or substance, that Anderson could use its regional market power to “get all your [Anderson’s] profits from the retailers.” And in a phone call with Frank Stockard, President of Anderson, Duloc of Kable discussed the idea of offering Anderson exclusivity in certain territories in exchange for Anderson retracting the proposed surcharge. According to Duloc, Anderson could obtain the profits it desired by using its exclusivity arrangement to increase the prices to retailers. Anderson refused to participate in this blatantly unlawful market allocation. Kable responded by reaffirming its participation in defendants’ boycott of Anderson, thereby refusing to supply Anderson with the magazines it distributes, including those published by defendant Bauer.

59. On January 22, 2009, Duloc from Kable also contacted and attempted -- unsuccessfully -- to solicit the president and CEO of national distributor Comag to join defendants’ conspiracy. Comag refused to join in an illegal conspiracy and instead continued to ship its magazines to Anderson and Source.

60. E-mail exchanges and transmissions among defendants Rodale, DSI, AMI and Bauer, show that defendants perceived Comag’s actions as a potential threat to the cohesion and unity of their conspiracy and to defendants’ goal for 100% participation by the publishers and national distributors in the boycott of Anderson and Source. On January 29, 2009, Richard Alleger, a vice president at Rodale, sent an e-mail to Michael Porche (“Porche”), the president and CEO of DSI, stating that he had just read an e-mail from Comag to its clients: “they have reached an understanding with BOTH Anco [*i.e.*, Anderson] and Source and will continue to SHIP! Sullivan [the CEO of Comag] is dangerous.” Porche forwarded the message to the president of AMI -- Rodale’s competitor -- who in turn forwarded it to Michael Roscoe, a

consultant and former DSI employee, who was one of the conduits through which the conspiracy was effectuated.

61. Two days later, on Saturday, January 31, Rodale complained again, this time to Bauer, another of its co-conspirators and competitors, that Comag had agreed to continue to supply Source. Confirming the intent, and obviously anticipating the success, of the conspiracy, Bauer reassured Rodale, stating: “Doesn’t matter [S]ource won’t be around much longer.”

62. On or about January 25, 2009, the presidents of competitors TWR and Kable scheduled a breakfast meeting for Thursday, January 29, 2009 to discuss the conspiracy.

63. Hudson was at the heart of the conspiratorial meetings. After business hours on January 29, 2009, key employees of certain defendants -- ostensible competitors -- including Dennis Porti of Curtis and Michael Cvrlje of TWR, met at Hudson’s offices in North Bergen, New Jersey. David Parry of News Group -- a competitor of Hudson -- and John Rafferty of DSI, also were present at that January 29 meeting at Hudson’s offices. At this and the other meetings among the defendants, they discussed and planned their collusive activity, including their market allocation agreement with respect to the Anderson and Source business and customers.

1. Defendants’ Common Response to Anderson’s Proposed Surcharge

64. During and after the week of January 21, 2009 -- during the precise time of the inter-competitor meetings and communications -- Mr. Anderson met or had telephone calls with executives of many of the defendants and began to hear their common objections in response to Anderson’s proposed surcharge, which the defendants knew was negotiable.

65. On Friday, January 30, 2009, Wal-Mart representatives asked Mr. Anderson to try to reach an agreement with Rich Jacobsen (“Jacobsen”), the president and CEO of TWR, over the proposed surcharge. The next day, Mr. Anderson met Jacobsen at his office in New Jersey. By the end of the meeting, Mr. Anderson was led by Jacobsen to believe that TWR and Anderson had an agreement that would obviate the need for a surcharge, an agreement for an increase of 2.00% in the discount to Anderson of the magazines’ cover prices for all *Time* weeklies, and 2.75% for all *People* weeklies. Anderson also was led to believe by Jacobsen that TWR also agreed to discuss scan-based trading on Monday, February 2, 2009, in return for which, after the scan-based trading call, Anderson would make a \$13 million payment to TWR for amounts supposedly due. Anderson rescinded its fee proposal as a result of this compromise settlement.

66. Curtis, on behalf of publishers Hachette, Rodale and AMI, and Kable, on behalf of publisher Bauer, acting in concert with the other defendants and pursuant to and in furtherance of defendants’ conspiracy to eliminate Anderson as a wholesaler, refused to enter into any substantive negotiations with Anderson (notwithstanding the long history in the single-copy magazine industry of working out differences with respect to increased cost and other financial pressures through negotiation) and cut Anderson off from its supply of their magazines. Thus, on the morning of January 29, 2009, Curtis sent an e-mail to its publisher clients, informing them that, “effective immediately, Curtis is suspending all further shipments of magazines to all Anco [*i.e.*, Anderson] wholesaler operations.” Curtis clients AMI and Hachette cut off Anderson soon afterward, and although a limited number of monthly magazines published by AMI and Hachette, which had been shipped by the printer before the end of January -- and were thus already “in the pipeline” from the magazine printers and could not be diverted -- arrived at

Anderson's warehouses in early February, AMI and Hachette otherwise followed through on Curtis's declaration and cut off their supply of magazines to Anderson.

67. On February 2, Time and TWR -- acting in concert with the other defendants, and pursuant to and in furtherance of defendants' conspiracy to eliminate Anderson as a wholesaler -- reneged on its agreement to continue to supply Time's magazines to Anderson. Jacobsen informed Anderson that TWR and Time executives had decided "to change the channel," that "they were going to have to use two wholesalers," and that "that was the way it was going to be."

68. Jacobsen then told Mr. Anderson that he was free to appeal to Time CEO, Ann Moore, to discuss the matter. Anderson then phoned Moore. During that call, Anderson reviewed the terms of the agreement he thought he had reached with Jacobsen on January 31, 2009. Moore responded that: "Charlie, I wished we had had this conversation two weeks ago" -- precisely the two weeks during which defendants were intensively meeting and communicating in order to agree upon, plan and implement their conspiracy -- and that "we have decided to consolidate the channel" -- *i.e.*, reduce the number of wholesalers -- and that "we are moving forward and eliminating Anderson and Source." When Mr. Anderson protested that such an action would destroy Anderson and result in the loss of thousands of jobs, Moore responded that Jimmy Pattison, the owner of News Group -- precisely the co-conspiring wholesaler to which defendants had agreed to allocate Anderson's business -- "was a nice person and maybe would buy some of Anderson's assets."

69. Time and TWR never had any intention of honoring their commitment to continue to work with Anderson. Indeed, their conduct with regard to Anderson -- stringing Anderson along with sham negotiations to attempt to induce Anderson to make payments before it was cut

off entirely -- mirrors their conduct toward Source. TWR, along with certain other defendants, succeeding in inducing Source to make payments on their accounts by engaging in negotiations without ever intending to continue supplying magazines to Source.

70. Statements made by the defendants to Anderson also make clear that the defendants, as a result of their inter-competitor meetings and communications, had agreed to a coordinated boycott of Anderson and Source. On or about January 21, 2009, after talking with representatives of TWR and Kable, Mr. Anderson spoke with Castardi, the president and CEO of defendant Curtis. Castardi, acting on behalf of Curtis as well as all the publishers represented by Curtis -- including publisher defendants AMI, Hachette, and Rodale -- told Mr. Anderson, in words or substance, that "I [Castardi] don't want a problem. I would like to get this worked out. But I'm going to have to go with whatever Rich [Jacobsen, CEO of defendant TWR] does." When Mr. Anderson later told Jacobsen on January 31, 2009 what Castardi had told him -- that "[Castardi's] going whatever way you [Jacobsen] go" -- Jacobsen did not deny it, but instead crossed his arms, nodded in agreement and smiled.

71. At the January 31 meeting with Jacobsen, Jacobsen told Mr. Anderson that he "ha[d] Greg Mays [the CEO of Source] flying in at 1:00 pm to meet with me. And I'm going to deliver the message that, as long as I'm at TWR or Ann Moore is at Time, we will never, ever do business with Source again." Indeed, TWR's competitor, Curtis, was already aware of this information -- the same day, a Source executive was advised by Castardi, the president of Curtis that, on January 31, he (Castardi) knew, with "100% certainty," that TWR, Bauer and AMI would refuse to supply product to Source -- even though, by this time, Source had publicly rescinded its surcharge proposal.

**2. Defendants' Conduct Was Contrary to
Their Economic Self Interest Absent Collusion**

72. Defendants acted in concert and not unilaterally. As Curtis learned in 2008, it would not be economically feasible for a single distributor or publisher unilaterally to cut off supply to a major wholesaler. Unilateral action by any single publisher that resulted in that publisher's product not being distributed through a wholesaler would make no economic sense, unless the other publishers previously had agreed to join in the boycott of the disfavored wholesaler and jointly had agreed to secure an alternative favored wholesaler to distribute their product in the region previously served by the disfavored wholesaler. Absent such coordination and agreement, the single publisher faced the unacceptable risk that its product would not be distributed to retailers in the areas where Anderson was the only viable wholesaler. Unless the publishers and their national distributors had reached an agreement among themselves, along with the favored wholesalers, Hudson and News Group, the publisher would have no assurances that the infrastructure necessary to distribute magazines in areas served by Anderson would be developed. Indeed, for Hudson or News Group to distribute the product of any individual publisher would be highly unprofitable -- and there would thus be no assurances that any wholesaler would be available to distribute that publisher's magazines.

73. The publishers are especially sensitive to interruptions in the distribution of their magazines, because their primary source of revenue -- the sale of advertising -- is largely based on an audited circulation "rate base." If a publisher fails to meet the base circulation rate -- due to, for example, a disruption in the distribution channel -- it faces a significant drop in advertising revenue.

74. Moreover, to obtain cost efficiencies, retailers generally obtain all of their magazines from a single wholesaler. If a single publisher or distributor threatened to terminate its relationship with Anderson, there would be a substantial risk -- as was the case with Wal-Mart when Curtis had threatened unilaterally to cut off Anderson in 2008 -- that the retailer would not switch to another wholesaler, but simply forgo that publisher's magazines. As Curtis discovered in 2008, by unilaterally terminating its relationship with Anderson, an individual publisher risked depriving itself of Anderson's retail outlets that sell its magazines and generate revenue. Thus, any such unilateral action would be against any single publisher's economic self-interest.

75. This is not the case, however, if -- as occurred here -- the publishers and their national distributors, acting in concert, agreed in advance to terminate their relationships with Anderson at the same time, and also agreed to divide the Anderson business among the two remaining and favored wholesalers. Retailers, confronted with the group boycott by publishers and national distributors, would have no choice but to rely on Hudson and News Group for their supply of magazines necessary for sale to their customers. Only through such collusive action could defendants eliminate Anderson and replace Anderson with one of the two remaining wholesalers.

76. The goal of the conspiracy was straightforward: avoid individualized negotiations with Anderson, drive Anderson out of business and ensure that the publishers and national distributors gained control over the single-copy magazine distribution channel. The consequence of defendants' collusive action would be to reduce competition in magazine wholesaling, to force price increases on retailers, and to place the economic burden of preserving the existing distribution model on retailers instead of on publishers and their captive national distributors and wholesalers. To achieve that goal, defendants needed to eliminate Anderson and Source, and to

grant the remaining wholesalers -- co-conspirators Hudson and News Group -- exclusivity in the respective geographic regions serviced by the disfavored wholesalers. With that exclusivity, Hudson and News Group would have the market power to force retailers to accept higher prices. To eliminate Anderson -- and thus to eliminate competition in the market for the distribution of single-copy magazines -- the conspirators cut off the life blood of Anderson's business -- 80% of its magazine supply.

77. Defendants also intended that, as a result of the conspiracy, Anderson and Source would be forced to sell at a "fire sale" their business infrastructure -- including their trucking fleet, distribution equipment and distribution centers -- to its wholesaler competitors, Hudson and News Group.

78. Thus, at the same time TWR was renegeing on its agreement with Anderson, one of the wholesaler defendants was poaching Anderson's employees. Anderson's president, Frank Stockard received numerous reports that News Group associates -- or the associates of one or more of its affiliates -- were inducing Anderson associates to leave the employ of Anderson and work for News Group, notwithstanding that News Group knew they had signed covenants not to compete with Anderson. In at least several of these cases, News Group's solicitations were based on false statements about Anderson's financial situation and future prospects. Defendant Hudson also attempted to poach employees of Anderson, and flew one of Anderson's key employees to its headquarters in New Jersey in an attempt to convince him to leave Anderson.

79. At the same time that it was raiding Anderson's employees, News Group also was poaching key employees of Source. By Friday, February 6, News Group already had employed two Source directors and was poised to take more than 100 of Source's other employees from

various of Source's territories. News Group also reportedly was attempting to exploit Source's employees' fear of unemployment through job offers premised on the condition that the jobs be accepted immediately.

80. That the goal of the conspiracy was to drive Anderson and Source out of business and that the proposed surcharge was merely a convenient pretext for collusion, is clear from, among other things, the facts that: (a) the defendant publishers and national distributors refused to supply magazines to Source *even after* Source rescinded its surcharge in late January, and (b) TWR refused to supply magazines to Anderson *even after* Anderson negotiated a reduced surcharge with Jacobson, the president of TWR. The surcharge simply provided the pretext the defendants needed to regain control of the single-copy distribution system -- one in which the publishers and distributors granted their favored wholesalers exclusive territories effectively controlled by the publishers through their ownership and control of 80% of the nation's magazines, including some of the most popular titles in the market. Through that control, the publishers ensured that their favored wholesalers, the exclusive source of magazines to the retailers, would be able to use that exclusivity to force excessive copies into the distribution channel in the hopes of obtaining increased sales, increase the prices charged to retailers and discourage the use of scan-based trading and other similar measures.

81. During a February 2, 2009 dinner meeting in New York, TWR's Jacobsen admitted to Source's CEO, Greg Mays, the motivation for the termination and elimination of Source and Anderson. When Jacobsen told Mays that TWR would not be supplying any magazines to Source, Mays asserted to Jacobsen that with the distribution system being created by defendants, there would be no scan-based trading, the two remaining wholesalers would force reduced margins down to the retailers rather than to the publishers, and there would be absolute

control over the market. Jacobsen's response, in words or substance, was: "Exactly -- we now control this space."

82. Defendants' collusive conduct in furtherance of their conspiracy already has succeeded by enabling Hudson and News Group to charge retailers higher prices, and at the same time impose defendants' will regarding measures such as scan-based trading. News Group, which has begun to serve retailers previously served by Anderson, has demanded and obtained from those retailers reduced discounts -- *i.e.*, higher prices -- for approximately 80% of that business. Such price increases have ranged as high as 12% or more over the prior rates -- including increases of up to 12.5% in the prices charged to Kroger, one of the largest grocery retailers in the nation, and 12.7% in the prices charged to Western Supermarkets, and increases of between 2.9% and 7.1% in the prices charged to certain airport retailers, including Ayala and NewsLink. Hudson has already imposed price increases in Pennsylvania.

83. The result of defendants' collusive conduct against Anderson is the creation of an anti-competitive monopoly controlled by the publishers in the magazine distribution business. Curtis has admitted, to its publisher-clients, that the destruction of Source and Anderson will create a "monopolistic wholesaler" with the power to dominate the market.

E. The Destruction of Anderson's Business

84. Defendants' conspiracy was ruthlessly effective with respect to Anderson. Defendants, acting in concert, terminated their relationship with Anderson and deprived Anderson of 80% of the magazines Anderson had for years delivered regularly to its retail customers. Faced with the loss of 80% of the nation's magazine titles -- including some of the most popular publications -- from their shelves, retailers like Wal-Mart could no longer support

Anderson's efforts to introduce efficiencies in the market, and began seeking sources of product from other wholesalers. At the same time, the defendants were preying on the fears of Anderson's employees, poaching some of Anderson's most experienced workers.

85. Anderson's financial picture became dire as a result of defendants' collusive conduct. Without 80% of its product to distribute (with the exception of certain monthly titles, such as those of AMI and Hachette, which were already in the pipeline from the magazine printers, and which comprised only a small portion of AMI's and Hachette's titles), the remaining 20% was insufficient to cover Anderson's fixed costs, including payroll for thousands of employees, maintenance and fuel for multiple fleets of vehicles, and various other costs associated with running 47 separate distribution centers throughout the country. Anderson began to hemorrhage money, at a rate of millions of dollars a week.

86. With no end in sight to the defendants' collusive boycott -- and thus no end in sight to the resulting weekly millions of dollars in losses -- Anderson had no choice but to suspend its magazine wholesale business on February 7, 2009.

87. As a result of defendants' unlawful concerted conduct, Anderson has suffered substantial damages, including millions of dollars in lost revenues before the company shut down its operations. Anderson lost relationships with its retailers that took years to develop, and the goodwill that disappeared with these relationships can never be recovered. Because of its forced exit from the market, thousands of Anderson's employees have lost their jobs -- many with years of experience in the industry. Indeed, nearly a thousand of Anderson's former employees have yet to find new work in the industry, with the remainder employed by Anderson's competitors, including Hudson and News Group. Consistent with the goal of defendants' conspiracy,

Anderson was forced to sell its distribution-related assets to News Group at prices substantially below their fair market value -- at "fire-sale" prices. The net result is that Anderson has been damaged to the extent of the hundreds of millions of dollars that it had invested in its business, and the loss of \$800 million per annum in future lost revenue.

88. On March 2, 2009, certain creditors of Anderson filed an involuntary bankruptcy petition, seeking to have the company liquidated under Chapter 7 of the United States Bankruptcy Code. That action is pending in the United States Bankruptcy Court for the District of Delaware.

F. The Relevant Market

89. The relevant product market for the purposes of this action is the national market for the wholesale distribution of single-copy magazines. Before the boycott, the four major wholesale distributors of single issue magazines in the United States -- Anderson, Source, Hudson and News Group -- sold thousands of magazine titles to tens of thousands of retailers across the country. These wholesalers have introduced great efficiencies into the market. By purchasing from wholesalers, retailers receive an enormous savings of time and expense by allowing them to purchase from a single source with an established distribution network.

90. To obtain these savings, retailers obtain all of their product from the wholesale network, comprised of the four wholesale distributors, and do not deal directly with publishers or national distributors. Because of the sheer number of publishers and their publications, it would be prohibitively expensive for retailers to obtain their magazines outside of the wholesale market, as it would require them to: contact each individual publisher; negotiate prices for and order each individual publication; and physically transfer those magazines to their retail outlets --

that is, take over the functions performed by the wholesalers and national distributors. Because of these costs, retailers are unable to substitute the magazines obtained through the wholesale network with magazines obtained from some other source.

91. Because of the costs involved in developing and maintaining the distribution network necessary to transport millions of magazines to thousands of different retail outlets -- including distribution centers, freight depots, fleets of trucks, and thousands of employees -- the wholesale distribution market is characterized by high barriers to entry. These entry barriers are reinforced through the exclusive distribution agreements involving wholesalers, national distributors and publishers.

G. Competition Has Been Injured by the Conspiracy

92. Defendants' actions unduly restrained, hindered and suppressed competition among wholesalers in the national market for the wholesale distribution of single-copy magazines. Defendants, directly and proximately, caused antitrust injury because their actions have resulted in the elimination of Anderson as a wholesale distributor, and allowed the favored wholesalers to force retailers to pay higher prices (in the form of reduced discounts) as already has been experienced with certain of the new agreements negotiated by News Group. The purposeful and wrongful destruction of Anderson's business by defendants directly has harmed both competition in the relevant market, in addition to Anderson itself.

93. Defendants' conduct has reduced the output of magazines through the wholesale market. Anderson and Source, combined, distributed approximately 50 percent of all U.S. single-copy magazines, and in many instances were or are the only wholesale distributors operating in numerous geographic regions. Because of defendants' unlawful boycott, wholesale

distributors were temporarily unavailable to serve retailers in those areas, and those retailers were denied access to defendants' magazines -- which means, in turn, that for a significant period of time the retailers' customers had access to fewer magazines as well.

94. Moreover, as a direct result of Anderson leaving the market, many of the smaller publishers who depended on Anderson for regular nationwide distribution, may be forced to shut down. These smaller publishers could not survive the disruption in sales that Anderson's collapse caused. This permanently reduced the choices available to retailers and their customers, and correspondingly benefited the remaining large publishers in the marketplace -- including defendants AMI, Bauer, Hachette, Rodale and Time.

95. Defendants and their co-conspirators already have begun charging retailers higher prices for the same products, and defendants will continue to raise the prices paid by retailers. For example, as a result of the defendants' boycott, News Group has begun to distribute to retailers previously served by Anderson. As it has done so, it has been "re-signing" those retailers at discounts lower than what they received from Anderson, forcing the retailers to pay prices higher than those previously charged by Anderson. News Group's ability to charge those higher prices is not the result of any inherent or earned competitive advantage, but has instead arisen solely as a result of the increased market power it was granted by the publishers and national distributors in exchange for facilitating the collusive boycott of Anderson by agreeing with Hudson to allocate among themselves, and to provide distribution services to, the Anderson retailers.

96. With the elimination of Anderson, more than a quarter of the market has been reallocated to defendant News Group. As a result, News Group and Hudson together now

control more than 50% of the U.S. wholesale magazine distribution market. If Source had not obtained a TRO ordering defendant publishers and national distributors to continue supplying Source, they would have succeeded in eliminating Source, allocating its business to Hudson and News Group, and would have obtained control over more than 90% of the market through their two favored and exclusive wholesalers. In any event, Hudson and News Group each control more than 90% of the market in their respective territories. In light of defendants' anti-competitive conduct in obtaining this market power, defendants' acquisition of market power will harm competition market-wide.

FIRST CLAIM

(Unlawful Restraint of Trade -- Sherman Act)

97. Anderson hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 96 as if fully set forth herein.

98. Defendants have engaged in a conspiracy in unreasonable restraint of trade in violation of section 1 of the Sherman Act (15 U.S.C. § 1) and section 4 of the Clayton Act (15 U.S.C. § 15).

99. Defendants engaged in a conspiracy to eliminate competition in the wholesale market for single-copy magazines through the wrongful destruction of Anderson as a going concern, and the defendants did those things that they combined and conspired to do, including the following:

- (a) agreed to reject Anderson's and Source's proposed surcharges;
- (b) agreed to boycott the distribution of single-copy magazines to wholesalers Anderson and Source with the intent of destroying them as competitors;

- (c) agreed to, and did in fact, disparage Anderson's business to its retail customers for the purpose of interfering with Anderson's business relationships and contractual agreements with those customers with the intent of forcing Anderson's customers to move their business to News Group and defendant Hudson;
- (d) agreed to raid, and, in fact, did raid the employees of Anderson and Source for the purpose of stealing their trade secrets and eliminating them as competitors; and
- (e) agreed to destroy Anderson and Source as going concerns and to force those wholesalers to sell their distribution facilities and other assets -- at distressed prices -- to News Group and defendant Hudson.

100. The ongoing conspiracy has had the effect of restraining trade by suppressing and eliminating competition in the U.S. market for the wholesale distribution of single-copy magazines. As a direct and proximate result of defendants' unlawful conduct, Anderson has suffered injury to its business.

101. The continuation of defendants' unlawful conduct has had the immediate effect of destroying Anderson's ability to continue as a going concern, causing substantial damages to Anderson.

SECOND CLAIM

(Tortious Interference)

102. Anderson hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 96 as if fully set forth herein.

103. Anderson maintains significant business relationships with the retail customers that are a part of its national retail distribution network.

104. The retail supply and retail service agreements between Anderson and members of its retail distribution network are valid, binding contracts.

105. Defendants have at all relevant times been aware of the business relationships between Anderson and its retail customers of the retail supply and retail service agreements.

106. Defendants intentionally and unjustifiably have interfered with Anderson's business relationships and contractual agreements with Anderson's retail customers by making false statements regarding Anderson's financial status and continued existence as a magazine wholesaler.

107. Defendants also have intentionally and unjustifiably interfered with Anderson's business relationships and contractual agreements with Anderson's retail customers by boycotting the distribution of single-copy magazines to Anderson without a legitimate business justification with the intent of harming its business.

108. Defendants interfered with Anderson's business relationships and contractual agreements with the intent of causing harm to Anderson by destroying its business and expelling Anderson from the marketplace.

109. As a result of defendants' conduct, Anderson's retail customers have terminated their retail supply and retail service agreements and their business relationships with Anderson, and have obtained or sought to obtain magazine product from alternative sources, principally News Group and defendant Hudson.

110. By reason of the foregoing, Anderson has been damaged in an amount to be determined at trial.

THIRD CLAIM

(Civil Conspiracy)

111. Anderson hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 96, 98 through 101, and 103 through 110, as if fully set forth herein.

112. The defendants conspired with one another to harm Anderson's reputation, to undermine Anderson's goodwill with its customers, to damage its business, and to destroy Anderson as a going concern.

113. Each of the defendants have committed one or more of the following acts: boycotted the distribution of single-copy magazines to wholesaler Anderson with the intent of destroying it; disparaged Anderson's business to its retail customers for the purpose of interfering with its business relationships and contractual agreements with those customers with the intent of forcing Anderson's customers to move their business to News Group and defendant Hudson; and raided Anderson's employees for the purpose of stealing its trade secrets and eliminating it as a competitor.

114. Defendants undertook their wrongful, intentional and unjustifiable acts in furtherance of their ongoing conspiracy to destroy Anderson through, among other things, tortious interference.

115. By reason of the foregoing, Anderson has been damaged in an amount to be determined at trial.

WHEREFORE, Anderson demands judgment against defendants, jointly and severally, awarding Anderson:

- (a) on its First Claim, treble its damages in an amount to be determined at trial;
- (b) on its Second and Third Claims, compensatory and punitive damages in amounts to be determined at trial;
- (c) its costs in the prosecution of this action, including reasonable attorneys' fees; and
- (d) such other and further relief as this Court deems just and proper.

TRIAL BY JURY

Trial by jury is demanded on all issues so triable.

Dated: August __, 2010

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& FRIEDMAN LLP

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Attorneys for Plaintiff Anderson Services, L.L.C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: October 25, 2010

-----X
ANDERSON NEWS, L.L.C. and ANDERSON
SERVICES, L.L.C. :

Plaintiffs, :

-against- :

AMERICAN MEDIA, INC., BAUER
PUBLISHING CO., LP., CURTIS CIRCULATION :
COMPANY, DISTRIBUTION SERVICES, INC.,
HACHETTE FILIPACCHI MEDIA, U.S., :
HUDSON NEWS DISTRIBUTORS LLC, KABLE
DISTRIBUTION SERVICES, INC., THE NEWS :
GROUP, LP, RODALE, INC., TIME INC. and
TIME/WARNER RETAIL SALES & :
MARKETING, INC., :

Defendants. :

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09 Civ. 2227 (PAC)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Plaintiffs Anderson News, L.L.C. and Anderson Services, L.L.C. (together, “Anderson”) move for reconsideration of the Court’s opinion of August 2, 2010, granting Defendants’ Rule 12(b)(6) motion to dismiss Anderson’s claims. Specifically, the Court held that Anderson’s Complaint failed to meet the plausibility standard of Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and that Anderson could not cure this inadequacy by amending its Complaint.¹

¹ Plaintiffs’ motion was timely filed on August 16, 2010. Defendants Time and Time/Warner responded on September 2, 2010; Defendants AMI, DSI, Bauer, Curtis, Rodale, Hachette Filipacchi, and Kable filed a separate response on the same day. Anderson replied on September 14, 2010. Counsel for Anderson wrote on October 4, 2010 to make corrections in certain factual allegations in its Proposed Amended Complaint with respect to AMI and DSI. Counsel for AMI and DSI responded on October 8, 2010, arguing that the allegations were false.

LEGAL STANDARD

“Reconsideration of a previous order by the court is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.” Hinds County, Miss. v. Wachovia Bank N.A., 700 F.Supp.2d 378, 407 (S.D.N.Y. 2010) (citation and quotation marks omitted). “The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked” Shrader v. CSX Transp., 70 F.3d 255, 257 (2d Cir. 1995). “The major grounds justifying reconsideration are ‘an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.’” Hinds County, 700 F.Supp.2d at 407 (quoting Virgin Atl. Airways, Ltd. v. National Mediation Bd., 956 F.2d 1245, 1255 (2d Cir.1992)).

ANALYSIS

Anderson does not allege any “intervening change in controlling law” or “availability of new evidence,” and does not suggest that the Court’s ruling will cause “manifest injustice.” See Virgin 956 F.2d at 1255. As a result, Anderson impliedly asserts that the Court committed “clear error.” Id.

Anderson argues that the Court erred in concluding that the alleged antitrust conspiracy was not plausible. Although Anderson argues that Defendants had a compelling economic incentive to eliminate Anderson — doing so would allegedly give the Defendants “control” of the single-copy magazine distribution system — a motion for reconsideration “should not be granted where the moving party seeks solely to relitigate an issue that is already decided.” See Shrader, 70 F.3d at 257. In its Opinion, the Court

found that the alleged antitrust conspiracy was not plausible because “publishers and national distributors have an economic self-interest in more wholesalers, not fewer; more wholesalers yields greater competition, which is good for suppliers.” (Op. 8.) Specifically, the Court held that “it is implausible that magazine publishers would conspire to deny retailers access to their own products,” (*Id.*), and noted that, in the Complaint, Anderson itself pointed out that its elimination as a wholesaler has “substantially reduc[ed] the output of magazines . . . and the ability of retailers to obtain those magazines.” (Compl. ¶ 72.) Because “determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense,” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1940 (2009), the Court’s conclusion was neither impermissible, nor “clear error.”

Anderson also argues that the Court’s determination that the 7-cent surcharge was a “non-negotiable take-it-or-leave-it” demand was “mistaken” and “overlooks the fact, recognized in another part of the Court’s Opinion, that neither Anderson nor Defendants treated it as such and that Anderson was entirely flexible and willing to compromise” (Pl. Mem. 4.) This argument is unavailing. Anderson impliedly admits that the Court did not “overlook” this information because, as Anderson points out, the Court recognized in another part of its Opinion that the Defendants had varied reactions to the surcharge. Additionally, the fact that the Defendants had several different reactions to the surcharge — whether the surcharge was negotiable or not — clearly suggests the absence of an antitrust conspiracy. Plaintiffs impliedly ask the Court to assume that either (1) the wholesalers first had several different reactions to the announced surcharge and then abruptly changed course, deciding to engage in unlawful collective action; or (2)

the original non-parallel conduct was nothing more than a ruse. The most plausible scenario, however, is that the Defendants each separately came to a similar conclusion — that they did not want to pay a 7-cent surcharge. Thus, the Court permissibly determined that the Defendants’ rejection of the surcharge was not plausibly the product of collective action and was simply “a common response to a common stimulus.” (Op. 11.)

There is no basis for reconsideration. Accordingly, extended discussion regarding Anderson’s additional defendant-specific arguments is unnecessary. As to Plaintiffs’ request for leave to amend its Complaint, there is no basis for it. The addition of numerous conclusory allegations does not cure the deficiencies of the Complaint the Court dismissed on August 2, 2010.

For the foregoing reasons, Anderson’s motion for reconsideration is DENIED.

Dated: New York, New York
October 25, 2010

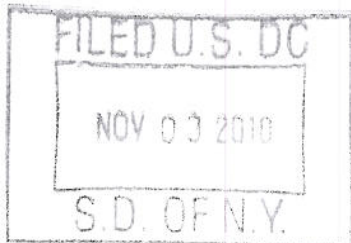
SO ORDERED



PAUL A. CROTTY
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDERSON NEWS, L.L.C., and	:	
ANDERSON SERVICES, L.L.C.,	:	
	:	
Plaintiffs,	:	09 CIV. 2227 (PAC)
	:	
- against -	:	
	:	
AMERICAN MEDIA, INC., BAUER PUBLISHING CO.,	:	<u>NOTICE OF APPEAL</u>
LP., CURTIS CIRCULATION COMPANY,	:	
DISTRIBUTION SERVICES, INC., HACHETTE	:	
FILIPACCHI MEDIA, U.S., HUDSON NEWS	:	
DISTRIBUTORS LLC, KABLE DISTRIBUTION	:	
SERVICES, INC., THE NEWS GROUP, LP, RODALE,	:	
INC., TIME INC. and TIME/WARNER RETAIL SALES	:	
& MARKETING, INC.,	:	
	:	
Defendants.	:	
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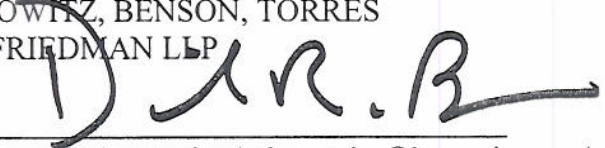


PLEASE TAKE NOTICE that plaintiffs Anderson News, L.L.C. and Anderson Services, L.L.C. (together, “Anderson”) appeal to the United States Court of Appeals for the Second Circuit from this Court’s order entered in this action on August 2, 2010, dismissing Anderson’s complaint with prejudice, from the final judgment entered in this action on August 2, 2010, and from this Court’s order entered in this action on October 25, 2010, denying Anderson’s timely motion for reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and Local Rule 6.3.

Dated: November 8, 2010
New York, New York

Respectfully submitted,

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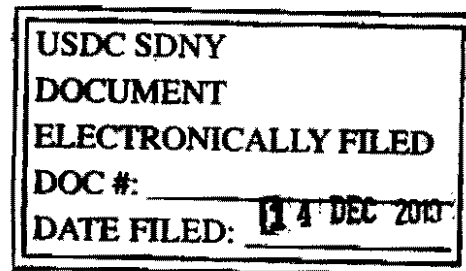
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ATLANTA
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SAN FRANCISCO

October 4, 2010

BY E-MAIL (CrottyNYSDCchambers@nysd.uscourts.gov)

Honorable Paul A. Crotty
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
Chambers 735
New York, New York 10007



**Re: *Anderson News, LLC, et al. v. American Media, Inc., et al.,*
No. 09 Civ. 2227 (PAC)**

Dear Judge Crotty:

We write on behalf of plaintiffs Anderson News, LLC and Anderson Services, LLC (together "Anderson") in the above-referenced action. After the submission of Anderson's proposed amended complaint (the "PAC"), which is an exhibit to Anderson's motion for reconsideration (Docket Entry 92), counsel for defendants American Media, Inc. ("AMI") and Distribution Services, Inc. ("DSI") challenged certain of the allegations in the PAC. Having revisited and investigated further the bases for the challenged factual allegations, we have determined that, if granted leave to serve the PAC, Anderson would make the following changes (which are not material to Anderson's claims)¹:

- The underscored language should be inserted in the second sentence of paragraph 41: "Because a substantial if not primary source of the publishers' ~~primary~~ revenue is provided by advertisers . . ."
- In the second sentence of paragraph 63, the underscored language should be inserted: "After business hours on or about January 29, 2009, key employees of certain defendants -- ostensible competitors -- including Dennis Porti of Curtis and Michael Cvrlje of TWR, met at Hudson's offices in North Bergen, New Jersey."

¹ We have undertaken a further investigation of one other allegation challenged by AMI and DSI and we continue to believe that Anderson has a factual basis for that allegation.

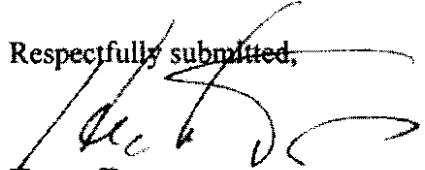
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

Hon. Paul A. Crotty
October 4, 2010
Page 2

- The underscored language should be inserted and the struck-through language should be deleted from the third sentence of paragraph 66: “Curtis clients AMI and Hachette cut off Anderson soon afterward, and although a limited number of monthly magazines published by AMI and Hachette, ~~which had been shipped by the printer before the end of January—and that~~ were thus already ‘in the pipeline’ from the magazine printers and could not be diverted —arrived at Anderson’s warehouses in early February, AMI and Hachette otherwise followed through on Curtis’s declaration and cut off their supply of magazines to Anderson.”
- The underscored language should be inserted and the struck-through language should be deleted from the first sentence of paragraph 73: “The publishers are especially sensitive to interruptions in the distribution of their magazines, because a substantial if not the ~~their~~ primary source of their revenue -- the sale of advertising -- is largely based on an audited circulation ‘rate base.’”

Thank you for your attention to this matter.

Respectfully submitted,


Hector Torres

cc: All Counsel of Record (via e-mail)

PROOF OF SERVICE

I, Michael K. Kellogg, hereby declare as follows:

I am a partner at Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., 1615 M Street, N.W., Suite 400, Washington, D.C. 20036. I am over the age of eighteen years and am not a party to this action.

On January 21, 2011, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document upon confirmation of e-filing. In addition, I certify that I caused three true and correct copies of the Appendix of Plaintiffs-Appellants Anderson News, L.L.C. and Anderson Services, L.L.C. to be served to the United States Court of Appeals for the Second Circuit.

I also certify that I caused the foregoing to be served via e-mail on the following:

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I declare under penalty of perjury under the laws of the District of Columbia that the above is true and correct, executed January 21, 2011, at Washington, D.C.

/s/ Michael K. Kellogg
Michael K. Kellogg