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Case No. 2018-0593-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Tribune Media Company, a Delaware corporation, Plaintiff and Counterclaim Defendant, v. Sinclair Broadcast Group, Inc., a Maryland corporation, Defendant and Counterclaim Plaintiff.	C.A. No. 2018-0593-JTL

SINCLAIR'S ANSWER, AFFIRMATIVE DEFENSES, AND VERIFIED COUNTERCLAIM TO THE VERIFIED COMPLAINT

Defendant Sinclair Broadcast Group, Inc. ("Sinclair"), by and through its undersigned counsel, for its Answer, Affirmative Defenses, and Verified Counterclaim to the Verified Complaint (the "Complaint"), filed on August 9, 2018 by Plaintiff Tribune Media Company ("Tribune"), in the above captioned Action (the "Action"), states as follows:

OVERVIEW OF THE ACTION

1. On May 8, 2017, Sinclair and Tribune (together, the "Parties") executed an Agreement and Plan of Merger (the "Merger Agreement") providing that, subject to certain conditions, Sinclair would acquire Tribune for $35.00 in cash and 0.23 shares of Sinclair Class A common stock for each share of Tribune

common stock (the "Transaction").[1] Sinclair enthusiastically pursued the Transaction from the very outset and through the date of unilateral termination by Tribune, firmly believing that the Transaction presented substantial economic and other benefits for Sinclair and its stockholders, as well as significant public benefits to broadcast media consumers.

2. The Transaction was conditioned on, among other things, receipt of clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), by the Antitrust Division of the U.S. Department of Justice ("DOJ"), and the consent of the Federal Communications Commission (the "FCC"). The Merger Agreement provided that both Parties were required to use their "reasonable best efforts" to close the Transaction.

3. But the Merger Agreement did ***not*** make Sinclair a guarantor of the outcome of the regulatory process. Nor did the Merger Agreement preclude Sinclair from attempting to bargain with the regulators in an effort to negotiate the best terms available. Indeed, the Merger Agreement and Sinclair's disclosure letter thereto (the "Disclosure Letter") reflected a heavily negotiated and carefully calibrated set of provisions setting out what Sinclair and Tribune were required—

[1] A true and correct copy of the Merger Agreement is attached hereto as Exhibit 1.

and, just as importantly, were ***not*** required—to do in order to obtain regulatory approvals.[2]

4. Tribune omits from the Complaint any discussion of these provisions and their bargained-for limitations, several of which directly address the very features of the Transaction and the Parties' negotiations with the regulators that Tribune now protests were improper. For example, as explained more fully in Sinclair's Verified Counterclaim:

- Section 7.1(j) of the Merger Agreement and Schedule 7.1(i) of the Disclosure Letter together limited the stations that Sinclair could be required to divest in order to obtain DOJ clearance or comply with the FCC's Local Television Multiple Ownership Rule (the "Duopoly Rule") to stations located in ten designated market areas ("DMAs") specifically identified in the Disclosure Letter, specifying further that Sinclair's obligations were limited to certain "Approval Actions" regardless of any demands that might be made by the regulators.

- The Merger Agreement and the Disclosure Letter made clear that the divestitures capped by Section 7.1(j) were ***not*** automatically required but instead would be called for only "***if***" they were "***required***" by DOJ or the FCC to obtain regulatory approval. The Merger Agreement did not require the Parties to negotiate against themselves, to accept proposals from the regulators that were inconsistent with Sinclair's rights under the Merger Agreement, to accept preliminary proposals from the regulators, or to take any particular negotiating posture with DOJ or the FCC.

- Schedule 7.1(i)(3) of the Disclosure Letter specifically provided that Sinclair was not required to undertake ***any*** divestitures to comply with the FCC's National Television Multiple Ownership Rule (the "National Cap") without a "customary option" to reacquire the divested stations.

[2] A true and correct copy of Schedules 7.1(b) and 7.1(i) of the Disclosure Letter is attached hereto as Exhibit 2.

- Section 7.1(b) of the Merger Agreement and Schedule 7.1(b) of the Disclosure Letter (which Tribune did not include in the excerpt of the Disclosure Letter it attached to its Complaint) provided Sinclair with the right to "dispos[e] of the [Tribune] Station WGN, Chicago, Illinois, with such station becoming subject to a local marketing, joint sales, shared services or similar Contract with, and a customary option for the benefit of . . . [Sinclair], as reasonably determined by [Sinclair]," regardless of "whether or not such dispositions are necessary, proper or advisable to obtain the approvals, consents, registrations, permits, authorizations and other confirmations otherwise required to be obtained from any Governmental Authority to consummate and make effective the [Transaction]."
- The Merger Agreement gave Sinclair the right to direct the Parties' strategy and approach in seeking regulatory approvals, but did ***not*** make Sinclair the guarantor of that process or disclaim Tribune's own responsibilities and obligations.

5. Against this backdrop, Sinclair pushed hard to find a path to close the Transaction and fully complied with its obligations under the Merger Agreement and the Disclosure Letter. Notwithstanding Tribune's self-serving and after-the-fact attempts to distance itself from Sinclair and its own efforts to obtain approval of the Transaction, Tribune and Sinclair in fact were full partners in the DOJ approval process (albeit with a few disagreements along the way), which ultimately was on the verge of success, and full partners in the FCC approval process (with no meaningful disagreements along the way), which unfortunately was not successful. Tribune, Sinclair, and their respective counsel spent months working together to advocate for the Transaction with regulators, attending

meetings, reviewing drafts of responses, and adjusting the proffered divestitures and the Parties' negotiating positions as needed.

6. In the negotiations with DOJ, Sinclair properly exercised its reasonable best efforts, consistent with its rights and obligations under the Merger Agreement and the Disclosure Letter. The process for obtaining DOJ clearance under the HSR Act was, at times, challenging. But that process was on the verge of success prior to Tribune's termination. On or around April 17, 2018, Sinclair, Tribune, and DOJ agreed to a term sheet pursuant to which Sinclair and Tribune agreed to divest stations in all ten of the DMAs identified in the Merger Agreement and the Disclosure Letter. Tribune conspicuously omits from its narrative the inconvenient truth that Sinclair, Tribune, and DOJ ultimately reached an agreement-in-principle (for which documentation was substantially complete) in mid-July 2018, whereby DOJ would have cleared the Transaction prior to the August 8, 2018 end date in the Merger Agreement. Indeed, the Parties and DOJ expected that the agreement would be executed and filed with the court on or around July 16, 2018 and that, subject to finalizing a few aspects, DOJ approval would be secured. While the announcement by the FCC's Chairman on July 16, 2018 (as described below) delayed that filing, DOJ and the Parties continued to work through open issues and did not expect any such remaining open items to be an impediment to DOJ clearance.

7. And thus all of the protests in Tribune's Complaint about the DOJ approval process—in addition to being inaccurate and misleading—are irrelevant to why the Transaction was not consummated.

8. In tandem with their efforts to secure DOJ clearance, the Parties also sought FCC approval. Sinclair again fully complied with its obligations under the Merger Agreement and the Disclosure Letter. Tribune was a full and active partner in this process and approved of the Parties' shared strategy for seeking FCC approval. Indeed, while Tribune raised objections from time to time to the approach to the DOJ review, it did not do so with respect to the filings made in the FCC review.

9. The Parties' FCC applications were met with immediate, significant, and vocal opposition by interest groups and powerful market participants. This strong opposition persisted throughout the FCC's review.

10. On the morning of July 16, 2018, the Chairman of the FCC released a stunning and wholly unexpected announcement that he had "serious concerns" about the Transaction and had shared with his fellow commissioners a draft hearing designation order ("HDO") that would designate issues regarding the Transaction for a hearing before an administrative law judge.[3]

[3] A copy of the FCC Chairman's July 16, 2018 statement is attached to Tribune's Complaint as Exhibit B.

11. FCC staff told counsel to Sinclair and Tribune that the draft HDO related to "real party-in-interest" questions with respect to the proposed divestitures in Chicago, Dallas, and Houston. Even before the HDO was released, Sinclair acted swiftly to try to understand and resolve the FCC's apparent (and new) concerns. Sinclair immediately announced that it was willing to withdraw those applications and restructure its divestiture plan in these markets, even though it was not required to do so under the Merger Agreement and even though doing so would come at a considerable and unanticipated economic cost to Sinclair. In addition, Sinclair informed Tribune that it was prepared to extend the end date in the Merger Agreement for three months, on terms originally proposed by Tribune, to give the Parties additional time to obtain FCC consent to close the Transaction. Tribune never responded to this proposal.

12. On July 19, 2018, the FCC released the HDO, referring the matter to an administrative law judge to conduct a hearing to determine whether the Transaction should be approved.[4] The FCC did not make any final factual findings with respect to the applications or the issues raised in the HDO and, pursuant to the HDO, any assessment of the applications would need to await fact-finding by the administrative law judge.

[4] A copy of the HDO is attached to Tribune's Complaint as Exhibit C.

13. The HDO came out of nowhere and, in Sinclair's view, was unprecedented as to both substance and process. Sinclair nevertheless remained focused on exploring all potential options to address the FCC's concerns and publicly announced that it remained fully committed to closing the Transaction.

14. Unfortunately, Tribune did not share that mission. Instead, Tribune breached its obligations under the Merger Agreement to exercise its own reasonable best efforts to close the Transaction. Within hours of the issuance of the HDO, Tribune issued a press release stating that "Tribune Media has now had the opportunity to review the FCC's troubling Hearing Designation Order . . . . We will be greatly disappointed if the transaction cannot be completed." This signaled to the market and to the regulators that Tribune was distancing itself from Sinclair and the Transaction.

15. Tribune's reaction was remarkable because, while the issuance of the HDO came as a complete surprise to ***both*** Sinclair and Tribune, Tribune was well aware of the public objections to the proposed divestitures to Steven Fader and Cunningham Broadcasting Corporation ("Cunningham") upon which the HDO appeared to be based. Indeed, Tribune and Sinclair had worked shoulder-to-shoulder on the various submissions to the FCC to facilitate those divestitures and on the joint responses to the public objections to those divestitures (which objections were cited extensively in the final HDO).

16. Tribune had consented in the Merger Agreement and the Disclosure Letter for the divestiture of WGN-TV, Chicago ("WGN") with a joint sales agreement ("JSA"), a shared services agreement ("SSA"), and an option. Indeed, Tribune approved the filing of the FCC application as the licensee and assignor of WGN, something that Tribune easily could have refused to do if Tribune actually thought that divestiture to Mr. Fader was problematic. And with respect to the Dallas and Houston stations that were to be divested to Cunningham, Sinclair and Tribune had agreed in the Merger Agreement and the Disclosure Letter that Sinclair had a right to walk away from the Transaction unless it could effect such divestitures with a "customary option." Tribune never objected to the selection of Cunningham (an experienced broadcast company that had been approved by the FCC on numerous occasions as a station buyer and which Tribune knew to have an ongoing relationship with Sinclair) to buy the Dallas and Houston stations subject to the customary option that Sinclair had bargained for under the Merger Agreement and the Disclosure Letter.

17. Accordingly, Tribune and Sinclair worked together to respond to the public objections to the proposed WGN and Cunningham divestitures. For example, with respect to the public objections concerning the proposed divestitures to Cunningham, Tribune's outside regulatory counsel commented extensively on the Parties' response to the objections, even suggesting that Sinclair "[c]onsider

adding in the footnote that the [FCC] has determined Cunningham . . . is not controlled by Sinclair, citing application approvals [by the FCC]." Although Tribune now claims (without any support) that it warned Sinclair that these divestitures were problematic and unlikely to be approved, Tribune's outside regulatory counsel struck a markedly different tone when offering his thoughts on the draft submission—stating that "***I think we have the better of all the arguments on the merits***."

18. When confronted with the HDO, however, Tribune made an about-face, and its number one priority became distancing itself from the regulatory approval process and preserving and promoting a meritless litigation claim.

19. Sinclair nonetheless forged ahead in an effort to persuade the FCC to engage in settlement discussions to permit the Parties to close the Transaction. In addition to reiterating its willingness to restructure the Transaction to eliminate any concerns with respect to the proposed divestitures to Cunningham and Mr. Fader, Sinclair, among other things, (a) indicated that it was willing to engage in expedited settlement discussions with the FCC's Enforcement Bureau; (b) submitted a detailed letter to the FCC's Enforcement Bureau outlining its preliminary responses to the issues raised in the HDO in an effort to facilitate settlement; (c) raised the possibility with Tribune of extending the end date of the Merger Agreement to allow more time to resolve the HDO; and (d) engaged a

lobbying firm to reinforce the message to various stakeholders in Washington that the Transaction was and remained in the public interest and that Sinclair was committed to addressing the concerns raised in the HDO.

20. In stark contrast to the efforts of Sinclair, and in breach of the Merger Agreement, Tribune refused to engage substantively and attempted to wash its hands of the Transaction, claiming that the HDO and any delay it might cause was Sinclair's problem. Tribune declined to join Sinclair's public advocacy efforts and declined to provide comments on the substance of responses to the FCC's Enforcement Bureau, other than to remove references to Tribune.

21. In late July 2018, Sinclair raised for discussion with Tribune a potential path forward in which the Parties would extend the Merger Agreement by six months, restructure the divestitures, and re-file revised FCC applications.

22. Tribune's response was telling. Tribune's counsel informed Sinclair's counsel that Tribune's litigators were concerned about the potential impact of the discussions suggested by Sinclair on Tribune's future litigation position. Tribune went so far as to send Sinclair a draft agreement seeking to condition Tribune's obligation to use reasonable best efforts on entry into an agreement intended to preserve Tribune's litigation position in the event the Transaction did not close. Sinclair made clear that Tribune's prioritization of its litigation strategy at the expense of its cooperation with Sinclair to try to close the Transaction was contrary

to Tribune's obligations under the Merger Agreement. Tribune doubled down, stating that such an agreement was necessary to "facilitate Tribune working with Sinclair to resolve the HDO without having to be concerned that Sinclair would use that cooperation against Tribune in any potential future litigation." Simply put, Tribune breached its obligation to exercise its "reasonable best efforts" to resolve the HDO and work toward consummation of the Transaction.

23. Despite Sinclair's repeated requests, Tribune undertook no affirmative efforts in support of the Transaction. At 12:02 a.m. ET on August 9, 2018, immediately after the Merger Agreement's end date, Tribune unilaterally terminated the Merger Agreement.[5] Three minutes later, Tribune filed the Complaint that it had been busily preparing while Sinclair was exploring all potential options to resolve the HDO. Read most charitably, the Complaint reflects a revisionist history aimed at deflecting responsibility away from Tribune. More likely, it reflects a deliberate effort to exploit and capitalize on an unfavorable and unexpected reaction from the FCC to capture a windfall for Tribune.

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[5] A copy of Tribune's notice of termination of the Merger Agreement is attached to Tribune's Complaint as Exhibit L.

ANSWER[6]

Introduction

1. Tribune and Sinclair are media companies that own and operate local television stations. In May 2017, the companies entered into an Agreement and Plan of Merger (the "Merger Agreement")[1] pursuant to which Sinclair agreed to acquire Tribune for cash and stock valued at $43.50 per share, for an aggregate purchase price of approximately $3.9 billion (the "Merger").

FN 1. A true and correct copy of the Merger Agreement is attached as Exhibit A. The Merger Agreement is incorporated herein by reference. Unless defined herein, all capitalized terms in this Verified Complaint have the meanings ascribed to them in the Merger Agreement.

RESPONSE NO. 1: Sinclair admits the allegations contained in Paragraph 1, avers that the allegations regarding the consideration are as of the date of the announcement of the Transaction (and not as of the termination of the Merger Agreement) and subject to certain assumptions, and respectfully refers the Court to Sinclair's Annual Report filed with the U.S. Securities and Exchange

[6] Except as otherwise stated herein, Sinclair denies each and every allegation in the Complaint. In reproducing the allegations of the Complaint for purposes of this Answer, Sinclair has included Plaintiff's section headings solely for the Court's convenience, but to the extent the section headings contain any allegations to which a response is required, Sinclair denies any and all such allegations. Sinclair reserves the right to seek to amend and/or supplement this Answer. Sinclair further notes that any defined terms used in its responses to the Complaint refer to terms specifically defined in Sinclair's responses (or, as appropriate, the Merger Agreement) and not any defined terms used in the allegations set forth in the Complaint.

Commission (the "SEC") on Form 10-K on March 1, 2018 for a complete and accurate description of Sinclair's business and to the Merger Agreement and the Disclosure Letter for the terms and conditions of the Transaction. Sinclair apprehends that no response is required to the allegations contained in Footnote 1 in Paragraph 1. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit A a copy of the Merger Agreement.

2. Sinclair owns the largest number of local television stations of any media company in the United States, and Tribune and Sinclair were well aware that a combination of the two companies would trigger regulatory scrutiny by both the United States Department of Justice (the "DOJ") and the Federal Communications Commission (the "FCC"). Because speed and certainty were critical to Tribune, it conditioned its agreement on obtaining from Sinclair a constrictive set of deal terms obligating Sinclair to use its reasonable best efforts to obtain prompt regulatory clearance of the transaction.

RESPONSE NO. 2: Sinclair denies the allegations contained in the first sentence of Paragraph 2 except admits that the Transaction was subject to, among other things, clearance under the HSR Act, as amended, and the consent of the FCC. Sinclair lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 2 concerning what was or was not "critical to Tribune," and denies the remaining allegations contained in the second sentence of Paragraph 2 and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

3. Those terms included Sinclair's express agreement that it would divest a number of its and/or Tribune's stations in order to obtain approval of the Merger. The divestitures fell into two categories: (i) those in markets where both companies owned stations and, thus, where the Merger would increase market concentration and raise antitrust concerns for DOJ or would violate the FCC's limit on local station ownership (the "Duopoly Rule"); and (ii) those necessary to bring the combined company into compliance with the FCC's cap on national audience reach (the "National Cap").[2]

FN 2. The FCC's Local Television Multiple Ownership Rule, or Duopoly Rule, generally prohibits common ownership of more than two television stations in a local market, subject to the further requirement that common ownership of more than one top-4 rated station in a market be evaluated on an *ad hoc* basis. The National Cap, referred to officially as the National Television Multiple Ownership Rule, limits entities from owning or controlling television stations that, together, have an aggregate "national audience reach" that exceeds 39 percent of U.S. television households.

RESPONSE NO. 3: The allegations of Paragraph 3 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 3 except admits that the Merger Agreement and the Disclosure Letter contain certain rights and obligations of Sinclair and Tribune with respect to divestitures and regulatory approvals, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder. The allegations contained in Footnote 2 in Paragraph 3 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Footnote 2 and respectfully refers the Court to 47 C.F.R. § 73.3555(b) (the Duopoly Rule) and 47 C.F.R. § 73.3555(e) (the National Cap) for a complete and accurate statement of their contents.

4. Because divestitures were so central to prompt regulatory approval, Tribune bargained for Sinclair's agreement to sell stations in ten specified geographic "overlap" markets if required by the regulatory authorities and, further, to make additional divestitures as necessary to satisfy the FCC that the Merger complied with the National Cap.

RESPONSE NO. 4: The allegations contained in Paragraph 4 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 4 except admits that the Merger Agreement and the Disclosure Letter contain certain rights and obligations of Sinclair and Tribune with respect to divestitures and regulatory approvals, and respectfully refers the Court to the Merger Agreement and the

Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

5. Tribune also insisted, and Sinclair agreed, that Sinclair's reasonable best efforts would include taking "all actions" and doing "all things" necessary for the Merger to close, "prompt use" of its efforts to "avoid or eliminate each and every impediment that may be asserted by any Governmental Authority," and "obtaining ... all approvals ... required to be obtained from any Governmental Authority" in order to consummate the Merger "as promptly as reasonably practicable."

RESPONSE NO. 5: The allegations contained in Paragraph 5 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 5, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

6. To prevent Sinclair from engaging in protracted negotiations or in any other behavior that would delay the Merger's closing, the Merger Agreement required Sinclair to agree to divestures to avoid *even the threat* of any proceeding or order relating to regulatory review.

RESPONSE NO. 6: The allegations contained in Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 6, which characterize the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

7. However, from virtually the moment the Merger Agreement was signed, Sinclair repeatedly and willfully breached[3] its contractual obligations in spectacular fashion. In an effort to maintain control over stations it was obligated to sell if advisable to obtain regulatory clearance, Sinclair engaged in belligerent and unnecessarily protracted negotiations with DOJ and the FCC over regulatory requirements, refused to sell stations in the ten specified markets required to obtain approval, and proposed aggressive divestment structures and related-party sales that were either rejected outright or posed a high risk of rejection and delay – all in the service of Sinclair's self-interest and in derogation of its contractual obligations.

FN 3. Willful Breach" is defined in Section 1.1 of the Merger Agreement as a "deliberate" act or failure to act taken with "actual knowledge" that the act or failure to act would constitute, or reasonably be expected to constitute, a "material breach" of the Agreement.

RESPONSE NO. 7: Sinclair denies the allegations contained in Paragraph 7 and in Footnote 3 in Paragraph 7 except admits that the allegations contained in Footnote 3 characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

8. In exercising its authority under the Merger Agreement to lead the regulatory approval process, Sinclair repeatedly favored its own financial interests over its contractual obligations by rejecting clear paths to regulatory approval. Instead, Sinclair fought, threatened, insulted, and misled regulators in a misguided and ultimately unsuccessful attempt to retain control over stations that it was obligated to sell.

<u>RESPONSE NO. 8:</u> Sinclair denies the allegations contained in Paragraph 8.

9. Sinclair might have been free to take certain of these actions had it not agreed to the constrictive terms of the Merger Agreement, but, having done so, its conduct constituted clear and material breaches of the Merger Agreement. As a direct consequence of these breaches, the Merger failed to obtain regulatory approval from either the United States Department of Justice (the "DOJ") or the FCC, and the FCC ordered an administrative hearing that, as a practical matter, would have delayed the closing of the Merger for a very long time, probably years.

RESPONSE NO. 9: Sinclair denies the allegations contained in Paragraph 9 and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

10. Regulatory approval should not have been hard to come by. Indeed, the evidence is overwhelming that, had Sinclair simply complied with its obligations under the Merger Agreement, Merger clearance could easily have been obtained by the first quarter of 2018, if not earlier – as Sinclair itself publicly declared in SEC filings in August and November of 2017.

RESPONSE NO. 10: Sinclair denies the allegations contained in Paragraph 10. In further response to the allegations contained in the second sentence of Paragraph 10, to the extent that those allegations characterize the Form 10-Qs that Sinclair filed with the SEC on August 9, 2017 and November 8, 2017, Sinclair respectfully refers the Court to those documents for a complete and accurate statement of their contents.

11. Beginning in November 2017, DOJ repeatedly told Sinclair that it would clear the Merger if Sinclair simply agreed to sell stations in the ten markets the parties had identified in the Merger Agreement. DOJ's message to Sinclair could not have been clearer: if Sinclair agreed to sales in those ten markets, "We would be done."

RESPONSE NO. 11: Sinclair denies the allegations contained in Paragraph 11 except admits that Tribune and Sinclair engaged in discussions and negotiations with DOJ regarding the proposed divestitures of certain television stations in connection with DOJ's review of the Transaction.

12. DOJ's demand was neither unexpected nor draconian – it overlapped entirely with what Sinclair had already committed to do in the Merger Agreement. Yet Sinclair refused, deciding instead to antagonize DOJ officials, including by accusing the Assistant Attorney General of the Antitrust Division – the highest ranking official in that division – of "completely misunderstand[ing]" the broadcast industry and being "more regulatory" than any recent predecessor. In meetings with DOJ, Sinclair invited litigation over station divestitures, summarizing its position to DOJ in two words: "sue me." Indeed, Sinclair went so far as to threaten to file its own lawsuit *against* DOJ. This was the polar opposite of what Sinclair had promised under the Merger Agreement when it agreed to proffer the identified station divestitures to avoid even a threat of litigation with regulators.

RESPONSE NO. 12: Sinclair denies the allegations contained in Paragraph 12 except admits that Tribune and Sinclair engaged in discussions and negotiations with DOJ in connection with DOJ's review of the Transaction and that Sinclair and Tribune discussed with DOJ the prospects, potential impact, and timing of potential litigation over potential divestitures. In further response to the allegations contained in the first and fifth sentences of Paragraph 12, to the extent that those allegations characterize the Merger Agreement, such allegations are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies such allegations and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

13. Tribune warned Sinclair repeatedly over many months that its refusal of DOJ's demands constituted a breach of its obligations under the Merger Agreement. Sinclair repeatedly ignored Tribune's admonitions and refused even to respond substantively. When, following what was supposed to have been the parties' final front office meeting with DOJ in late January, Tribune again pressed Sinclair to agree to the divestitures identified in the Merger Agreement and demanded by DOJ, Sinclair told Tribune it would have to sue to get Sinclair to agree to those sales. It was not until mid-February 2018, when Tribune made clear that it was on the eve of filing precisely such a suit, that Sinclair finally told DOJ that it would eventually agree to divest stations in the ten markets if necessary, but that it intended to continue to negotiate over certain of those stations. Not

surprisingly given its conduct up to that point, Sinclair nevertheless kept right on haggling with DOJ over the divestiture of a subset of stations.

RESPONSE NO. 13: Sinclair denies the allegations contained in Paragraph 13 except admits that Sinclair and Tribune attended a meeting with DOJ officials on January 25, 2018 concerning the Transaction, that Tribune and Sinclair engaged in discussions and negotiations with DOJ and with each other regarding the potential divestitures of certain television stations in connection with the Transaction, that Sinclair and Tribune discussed with DOJ the prospects, potential impact, and timing of potential litigation over potential divestitures, that on a couple of occasions in late 2017, in expressing Tribune's views concerning the positions to be taken with DOJ in negotiations, Tribune accused Sinclair of not complying with its obligations under the Merger Agreement and suggested a willingness to litigate, that Sinclair believed that any such issues had been resolved satisfactorily, that Sinclair contested (and continues to contest) that it breached the Merger Agreement, that Tribune participated jointly with Sinclair in discussions and negotiations with DOJ, that Sinclair, Tribune, and DOJ ultimately reached an agreement-in-principle regarding the divestitures of certain television stations in connection with the Transaction (and the documentation of that agreement was substantially complete) prior to the end date in the Merger Agreement, which agreement was expected to be executed and filed on or around July 16, 2018, and that while the issuance of the HDO delayed that filing, DOJ and the Parties continued to work through open issues and did not expect any such remaining open items to be an impediment to DOJ clearance.

14. Sinclair's protracted refusal of DOJ's demands, in turn, caused substantial delay in the FCC's review of the Merger: during the many months Sinclair spent pushing DOJ to demand fewer divestitures, Sinclair refused to propose to the FCC the station sales needed to satisfy the Duopoly Rule and National Cap. In this way, Sinclair's contract-breaching disputation with DOJ was a double whammy: it both delayed and complicated DOJ's review while delaying for months the filing of divestiture applications that Sinclair knew were necessary to obtain FCC approval.

RESPONSE NO. 14: Sinclair denies the allegations contained in Paragraph 14.

15. In order to avoid designating specific stations for the divestitures it knew it would have to make to satisfy the FCC's rules, Sinclair proposed to use a contingent trust structure that, as Tribune had warned, stood virtually no chance of approval. Under Sinclair's highly unorthodox proposal – first raised with FCC staff more than six months after the Merger approval applications were originally filed at the FCC – Sinclair would transfer dozens of Tribune and Sinclair stations to a trust that would, prior to closing, dispose of stations selected for divestment and

then transfer back to Sinclair the stations it ultimately would be authorized to own. By proposing this structure, Sinclair hoped to be able to market more than one station in each divestiture market and then, after receiving bids, choose which station to actually divest. While that optionality might have been beneficial to Sinclair, it had the inevitable effect of necessitating the attempted use of a Rube Goldberg type divestiture trust, without regard to the resulting delay in the already much-delayed regulatory review process.

RESPONSE NO. 15: Sinclair denies the allegations contained in Paragraph 15 except admits that Sinclair, Tribune, and the FCC discussed Sinclair's desire to potentially use a divestiture trust (the use of which had very recently been approved by the FCC in another transaction) with respect to the potential divestitures of certain television stations in connection with the Transaction in order to be in a position to close the Transaction quickly, without first having to wait for DOJ approval and to find buyers and negotiate sale agreements for all of the stations, including stations for which Sinclair would need to request approval to own two top-four stations in the ten overlap DMAs identified in Schedule 7.1(i)(2) of the Disclosure Letter (the "Overlap DMAs") and in one market where Tribune owns two top-four stations that was not included in the Overlap DMAs.

16. No contingent trust like this had ever been approved by the FCC division reviewing the Merger, and the FCC staff very clearly told Sinclair they strongly disfavored it. Yet Sinclair self-servingly pursued it anyway in order to delay for as long as possible publicly identifying the stations it ultimately would divest. And, predictably, the FCC staff continued to object to the concept, forcing yet further amendments to Sinclair's applications to identify more precisely which stations were to be divested, rather than simply committing to sell the stations as Sinclair had agreed to do in order to secure regulatory approval.

RESPONSE NO. 16: Sinclair denies the allegations contained in Paragraph 16 except admits that Sinclair, Tribune, and the FCC discussed Sinclair's desire to potentially use a divestiture trust (the use of which had very recently been approved by the FCC in another transaction) with respect to the potential divestitures of certain television stations in connection with the Transaction and that Sinclair and Tribune jointly filed amendments to the FCC applications.

17. Sinclair created yet more problems, including those that ultimately defeated the transaction, when it purported to identify specific stations to be divested to comply with the National Cap. Sinclair could have readily complied with the rule in a variety of non-controversial ways, including by simply agreeing to sell certain stations to unrelated third parties in truly arm's-length transactions.

RESPONSE NO. 17: Sinclair denies the allegations contained in Paragraph 17 and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

18. But, rather than take a more certain and expeditious route to deal approval as contractually required, Sinclair decided in late February 2018 to take another high-risk approach. It decided to propose station sales to parties with significant ties to Sinclair's Executive Chairman, David Smith, and his family, coupled with joint sales and shared services agreements under which Sinclair would effectively control all aspects of station operations, including advertising sales and the negotiation of retransmission agreements with cable and satellite operators. Under these proposed arrangements, Sinclair would continue to reap the lion's share of the economic benefits of the stations it was purportedly "divesting" and would have an option to repurchase the stations in the future.

RESPONSE NO. 18: Sinclair denies the allegations contained in Paragraph 18 except admits that, in February 2018, Sinclair filed an application with the FCC proposing to divest WPIX in New York to Cunningham and that such application contemplated that the divestiture would be accompanied by a master services agreement and an option, that Tribune reviewed and approved an application to the FCC proposing to divest WGN in Chicago to WGN TV, LLC and that such application contemplated that the divestiture would be accompanied by a JSA and SSA, and an option, that such agreements were common in the industry in transactions that have been approved for years by the FCC, and that the JSA, SSA, and option for WGN and the option for WPIX were expressly provided for in the Merger Agreement and the Disclosure Letter.

19. Sinclair proposed, among other things, selling WGN-TV in Chicago to Steven Fader, a close associate of Smith's in a car dealership business who had no experience in broadcasting. Sinclair also proposed the sale of WPIX, a New York station, to Cunningham Broadcasting Corporation ("Cunningham"), a company that owns numerous television stations that are operated by Sinclair employees under joint sales and shared services agreements, has tens of millions of dollars in debt guaranteed by Sinclair, and had been controlled by the estate of Smith's late mother until January 2018.

RESPONSE NO. 19: Sinclair denies the allegations contained in Paragraph 19 except admits that Sinclair proposed selling WGN to WGN TV, LLC, an entity established by Steven Fader, that Mr. Fader owns, among other businesses, a non-media related business of which David Smith is a majority member, that on February 27, 2018, Sinclair filed an application with the FCC proposing to divest WPIX to Cunningham, which application was withdrawn on April 24, 2018, that Sinclair provides certain services and programming to certain television stations owned by Cunningham under local marketing agreements, JSAs and/or SSAs, or similar sharing agreements, that Sinclair has guaranteed approximately $53.6 million of Cunningham's debt, that the voting stock of Cunningham was owned by the estate of Carolyn C. Smith from the time of Mrs. Smith's death in 2012 until FCC approval of the sale of the voting stock to Cunningham's President, Michael Anderson, pursuant to applications that were filed with the FCC in 2013 and approved in December 2017, and that such sale to Mr. Anderson was consummated in January 2018.

20. The FCC staff expressed frustration over what they viewed as the unacceptably aggressive terms of Sinclair's proposed divestitures, making clear their position that Sinclair's relationships with the purchasers and the terms of the sales would enable Sinclair, effectively, to maintain operational control over the stations. The FCC staff advised Sinclair to instead propose "clean" divestitures, i.e., arm's-length sales to truly independent third parties.

RESPONSE NO. 20: Sinclair denies the allegations contained in Paragraph 20 except admits that Tribune and Sinclair engaged in discussions with the FCC and with each other in connection with the FCC's review of the Transaction.

21. Tribune, too, warned Sinclair that proposing these related-party "sales" was incompatible with using best efforts to obtain prompt regulatory

approval. Sinclair was, therefore, fully aware that its aggressive proposals would slow the FCC's review process and undermine the prospects for approval by subjecting the divestitures to intense regulatory scrutiny, particularly given that they involved stations in the first and third largest television markets in the United States.

RESPONSE NO. 21: Sinclair denies the allegations contained in Paragraph 21 except admits that Tribune and Sinclair engaged in discussions with the FCC and with each other in connection with the FCC's review of the Transaction.

22. In response to the FCC's negative reaction, Sinclair made certain changes to its proposals, including replacing the proposed sale of WPIX in New York with proposed sales of stations in Dallas and Houston and forgoing joint sales and shared services agreements in those two markets. Importantly, however, Sinclair ignored the FCC's and Tribune's warnings about Sinclair's relationships with Fader and Cunningham and retained them as the putative "buyers."

RESPONSE NO. 22: Sinclair denies the allegations contained in Paragraph 22 except admits that Tribune and Sinclair engaged in discussions with the FCC and with each other regarding applications to divest WGN, WPIX, KDAF in Dallas, and KIAH in Houston (including identification of the buyers) in connection with the FCC's review of the Transaction, that the application and agreement to divest WGN was amended, that the application to divest WPIX was withdrawn (and the divestiture sale agreement relating thereto was terminated), and that the divestitures of KDAF and KIAH were structured to address all of the issues raised by the FCC during those discussions.

23. As it turned out, the proposed Fader and Cunningham divestitures were even more problematic than they originally appeared to be. When Sinclair's applications were subject to public comment, opponents of the divestitures revealed facts that Sinclair had failed to disclose to the FCC and that underscored Sinclair's capacity to control the stations it was purportedly divesting. For example, Sinclair had not told the FCC, in its applications, that Smith owned the controlling interest in Fader's car dealership company, and that Cunningham's controlling shares had been sold at a suspiciously low price only months earlier to a Sinclair associate with re-purchase options held by Smith's family members.

RESPONSE NO. 23: Sinclair denies the allegations contained in Paragraph 23 except admits that, in response to the public comment period, certain third parties filed objections noting, among other things, publicly available information concerning relationships between Sinclair and Mr. Smith and certain of the counterparties to the proposed divestitures, and that Sinclair and Tribune jointly prepared and filed responses to such objections. In further response to the allegations contained in the second and third sentences of Paragraph 23, to the extent that those allegations characterize the applications that Tribune and Sinclair filed and the public comments that third parties filed with the FCC in connection with the Transaction, Sinclair respectfully refers the Court to those filings and comments for a complete and accurate statement of their contents.

24. These facts were not disclosed to Tribune and were not addressed by Sinclair in its reply to the public comments. Together with the other aspects of the proposed Fader and Cunningham divestitures, they raised a serious risk that the FCC would view the proposed divestitures as unacceptable sham sales. By proposing self-serving divestitures that raised significant regulatory questions, Sinclair yet again fell well short of its contractual obligations to take all actions to avoid every governmental impediment to achieving a prompt closing.

RESPONSE NO. 24: Sinclair denies the allegations contained in Paragraph 24. In further response to the allegations contained in the first sentence of Paragraph 24, to the extent that those allegations characterize Sinclair's and Tribune's reply to public objections that third parties filed with the FCC, Sinclair respectfully refers the Court to that filing and the public comments for a complete and accurate statement of their contents. In further response to the allegations contained in the third sentence of Paragraph 24, to the extent that those allegations characterize the Merger Agreement, Sinclair respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

25. The public comment period on Sinclair's applications ended on July 12, 2018, less than a month before the Merger Agreement's August 8, 2018 End Date. Four days later, on July 16, FCC Chairman Ajit Pai issued a statement expressing "serious concerns about the Sinclair/Tribune transaction," in particular that "certain station divestitures that have been proposed to the FCC would allow Sinclair to control those stations in practice, even if not in name, in violation of the law."[4]

FN 4. A true and correct copy of Chairman Pai's July 16, 2018 statement is attached hereto as Exhibit B.

RESPONSE NO. 25: Sinclair admits the allegations contained in the first sentence of Paragraph 25. Sinclair denies the allegations contained in the second sentence of Paragraph 25 except admits that Tribune characterizes and selectively quotes a Press Release issued by the FCC on July 16, 2018 (the "July 16 FCC Release") and respectfully refers the Court to that document for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 4 in Paragraph 25. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit B a copy of the July 16 FCC Release.

26. Later on July 16, Bloomberg, Reuters and others in the media reported – and counsel for Tribune and Sinclair independently confirmed with FCC staff – that Chairman Pai had circulated to the other Commissioners a draft order asserting that Sinclair appeared to have engaged in misconduct relating to the Fader and Cunningham divestiture applications and that a majority of the Commissioners had already voted to refer the applications to an administrative law judge for review.

RESPONSE NO. 26: Sinclair denies the allegations contained in Paragraph 26 except admits that Tribune has characterized media reports, to which Sinclair respectfully refers the Court for a complete and accurate statement of their contents, that outside counsel to Sinclair and Tribune became aware, on July 16, 2018, that FCC Chairman Ajit Pai had circulated a draft of what Sinclair understood would later become the HDO, and that it was publicly reported at that time that at least three of the FCC Commissioners had already voted to refer the FCC applications to an administrative law judge for review.

27. On July 17, 2018, the following day, Sinclair's General Counsel spoke *ex parte* to Chairman Pai, who, on information and belief, made clear that if Sinclair did not withdraw the merger applications in their entirety, it would be subjected to a protracted administrative hearing focused on whether Sinclair's representations to the FCC regarding the Fader and Cunningham arrangements had been misleading or lacking in candor.

RESPONSE NO. 27: Sinclair denies the allegations contained in Paragraph 27 except admits that Sinclair's General Counsel participated in a telephone call with Chairman Pai on July 17, 2018 and discussed Sinclair's willingness to take actions to address the FCC's new concerns and to avoid designation to an administrative hearing.

28. Rather than withdraw the merger applications in their entirety, Sinclair responded on the morning of July 18, 2018, by withdrawing only the Fader and Cunningham applications and by telling the Commission it would keep the Chicago station for itself and find an independent buyer or buyers for the Dallas and Houston stations. But any chance of obtaining regulatory approval before the August 8 End Date was dead. As Sinclair itself acknowledged at the time, its withdrawal of the three applications was not sufficient to prevent the FCC from moving forward with its administrative review.

RESPONSE NO. 28: Sinclair denies the allegations contained in Paragraph 28 except admits that, on July 18, 2018, Sinclair and Tribune submitted a letter to the FCC to withdraw the applications to divest WGN, KIAH, and KDAF and filed an amendment to the merger applications stating that Sinclair would itself acquire WGN from Tribune as part of its acquisition of Tribune, that Sinclair intended to file applications to assign KIAH and KDAF to a divestiture trust pending entering into agreements to sell such stations, and that the FCC ultimately issued the HDO.

29. On July 19, 2018, the FCC released a unanimous decision finding "substantial and material questions of fact" as to whether "Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission."[5] The FCC identified "significant questions" as to whether the proposed Fader and Cunningham divestitures were "'sham' transactions" in which "Sinclair was the real party in interest" and had "attempted to skirt the Commission's broadcast ownership rules." The FCC further stated that Sinclair "did not fully disclose facts such as the pre-existing business relationships between Fader, Smith, and Sinclair nor the full entanglements between Cunningham, Smith, and Sinclair." There thus was "a substantial and material question of fact as to whether Sinclair affirmatively misrepresented or omitted material facts with the intent to consummate this transaction without fully complying" with the FCC's rules.

FN 5. A true and correct copy of the FCC's Hearing Designation Order, adopted July 18, 2018 and released on July 19, 2018, is attached as Exhibit C.

RESPONSE NO. 29: Sinclair denies the allegations contained in Paragraph 29 except admits that Tribune characterizes and selectively quotes the HDO and respectfully refers the Court to the HDO for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 5 in Paragraph 29. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit C a copy of the HDO.

30. The FCC Order referred the "'sham' transactions" and Sinclair's misconduct to a full administrative hearing. That process can take years and was described by one of the FCC's Commissioners, in a statement released with the order, as "regulatory purgatory" that is "a de facto merger death sentence." Thus, Sinclair's insistence on proposing related-party transactions that the FCC staff explicitly had warned against and its failure to disclose material information to the FCC predictably resulted in a hearing order and proceeding of precisely the sort that Sinclair had contractually committed to use its best efforts to avoid.

RESPONSE NO. 30: Sinclair denies the allegations contained in Paragraph 30 except admits that Tribune characterizes and selectively quotes the HDO and the Statement of FCC Commissioner Michael O'Rielly, which was attached thereto, and respectfully refers the Court to the HDO and the Statement of Commissioner O'Rielly for a complete and accurate statement of their contents.

31. Thereafter, in two separate telephone conversations on July 23 and August 3, 2018, Sinclair's FCC counsel, accompanied by Tribune's counsel, spoke to officials of the FCC's Enforcement Bureau to explore whether there was any basis on which to resolve the issues raised in the Commission's Order. Both times

Sinclair was told in substance that no deal was possible. The matter was now in the hands of the administrative law judge.

RESPONSE NO. 31: Sinclair denies the allegations contained in Paragraph 31 except admits that Sinclair and Tribune's respective FCC counsel participated in telephone calls with officials of the FCC's Enforcement Bureau on July 23, 2018 and August 3, 2018, and that the FCC's Enforcement Bureau indicated that it was not then in a position to discuss a potential settlement with Tribune and Sinclair.

32. Sinclair's breaches of the Merger Agreement, the evidence of which is overwhelming, were material and willful. Tribune repeatedly reminded Sinclair of its contractual obligations and admonished Sinclair for its refusal to take actions that would secure prompt regulatory approval. Tribune did so through detailed letters as early as December 2017, and it continued thereafter to object to Sinclair's ongoing breaches.

RESPONSE NO. 32: Sinclair denies the allegations contained in Paragraph 32 except admits that on a couple of occasions in late 2017, in expressing Tribune's views concerning the positions to be taken with DOJ in negotiations, Tribune accused Sinclair of not complying with its obligations under the Merger Agreement and suggested Tribune's willingness to litigate, that Sinclair believed that any such issues had been resolved satisfactorily, that Sinclair contested (and continues to contest) that it breached the Merger Agreement, and that Tribune participated jointly with Sinclair in discussions with DOJ and the FCC.

33. DOJ and the FCC likewise communicated clearly and repeatedly that Sinclair's aggressive approach raised a substantial question whether the merger could be approved before the August 8 End Date, if at all. Sinclair utterly ignored those warnings, despite knowing that its actions constituted, and would reasonably be expected to constitute or result in, material breaches of the Merger Agreement.

RESPONSE NO. 33: Sinclair denies the allegations contained in Paragraph 33.

34. As a direct result of Sinclair's chronic breaches, the Merger has failed to receive regulatory approval and cannot be completed on its terms. The Merger Agreement's August 8 End Date has now passed, and it is impossible for Tribune to obtain the benefit of its bargain with Sinclair.

RESPONSE NO. 34: Sinclair denies the allegations contained in Paragraph 34 except admits that the end date in the Merger Agreement has now passed.

35. On August 9, 2018, on the basis of Sinclair's incurable, material, and willful breaches and the passage of the End Date without closing, Tribune terminated the Merger Agreement. Tribune now seeks, through this action, to

recover all losses incurred as a result of Sinclair's misconduct, including but not limited to approximately $1 billion of lost premium to Tribune's stockholders and additional damages in an amount to be proven at trial.

RESPONSE NO. 35: Sinclair denies the allegations contained in Paragraph 35 except admits that the Transaction did not close as of August 8, 2018 and that, on August 9, 2018, Tribune sent Sinclair a notice of termination and commenced this Action, through which it purports to seek damages.

Parties

36. Tribune is a Delaware corporation with its principal executive offices located at 515 North State Street, Chicago, Illinois. Tribune is a media company with a diverse portfolio of television and digital properties. It owns or operates 42 local television stations in 33 markets. It also owns national entertainment network WGN America, digital multicast network Antenna TV, Tribune Studios, WGN-Radio, minority stakes in the TV Food Network and CareerBuilder, and a variety of real estate assets.

RESPONSE NO. 36: Sinclair admits the allegations contained in Paragraph 36.

37. Sinclair is a Maryland corporation with its principal executive offices located at 10706 Beaver Dam Road, Hunt Valley, Maryland. Sinclair owns 192 stations in 89 markets, the largest number of local television stations of any

broadcast company in the United States. It also owns and operates Tennis Channel, Tennis Magazine, and Tennis.com, along with digital media products and technical services companies that supply and maintain broadcast transmission systems. It distributes original programming, local news, and programming provided by third-party networks and syndicators. In addition, Sinclair owns various non-media related investments across multiple asset classes, including private equity, mezzanine financing, and real estate investments.

RESPONSE NO. 37: Sinclair denies the allegations contained in Paragraph 3 and respectfully refers the Court to Sinclair's Annual Report filed with the SEC on Form 10-K on March 1, 2018 for a complete and accurate description of Sinclair's business.

Jurisdiction, Venue, and Governing Law

38. This Court has subject matter jurisdiction over this action pursuant to 8 *Del. C.* § 111.

RESPONSE NO. 38: Sinclair admits the allegations contained in Paragraph 38.

39. Under Section 10.12(b) of the Merger Agreement, Tribune and Sinclair agreed to submit to the personal jurisdiction of the Court of Chancery of the State of Delaware and not to "attempt to deny or defeat such personal jurisdiction" or "plead or claim any objection to the laying of venue" in this Court.

RESPONSE NO. 39: Sinclair admits that Tribune and Sinclair agreed to submit to the personal jurisdiction of the Court of Chancery of the State of Delaware and respectfully refers the Court to the Merger Agreement for a complete and accurate statement of its contents.

40. Under Section 10.11(a) of the Merger Agreement, the Merger Agreement is governed by, and must be construed in accordance with, the laws of the State of Delaware.

RESPONSE NO. 40: Sinclair admits the allegations contained in Paragraph 40 and respectfully refers the Court to the Merger Agreement for a complete and accurate statement of its contents.

Relevant Facts

A. The Parties Enter into the Merger Agreement

41. On May 8, 2017, Tribune and Sinclair entered into the Merger Agreement.

RESPONSE NO. 41: Sinclair admits the allegations contained in Paragraph 41.

42. The Merger Agreement provides for the acquisition by Sinclair of all of the outstanding shares of Tribune's Class A common stock and Class B common stock by means of a merger of Samson Merger Sub Inc., a wholly owned

subsidiary of Sinclair, with and into Tribune, with Tribune surviving the Merger as a wholly owned subsidiary of Sinclair.

RESPONSE NO. 42: Sinclair admits the allegations contained in Paragraph 42 and respectfully refers the Court to the Merger Agreement for a complete and accurate statement of its contents.

43. In the Merger, Tribune stockholders were to receive $35 in cash and 0.23 shares of Sinclair Class A common stock for each share of Tribune Class A common stock or Class B common stock. As of the date of the Merger Agreement, this consideration was valued at $43.50 per share of Tribune's common stock, which constituted an aggregate purchase price of approximately $3.9 billion and a premium of approximately 26% over Tribune's unaffected closing share price on February 28, 2017, the day prior to media speculation regarding a possible transaction.

RESPONSE NO. 43: Sinclair admits the allegations contained in Paragraph 43, avers that the allegations regarding the consideration are as of the date of the announcement of the Transaction (and not as of the termination of the Merger Agreement) and subject to certain assumptions, and respectfully refers the Court to the Merger Agreement for a complete and accurate statement of its contents.

44. From October 2017 to termination, regulatory approval was the only remaining impediment to completing the transaction: on September 6, 2017, Sinclair's registration statement on Form S-4 registering the Sinclair common stock to be issued in the Merger was declared effective by the Securities and Exchange Commission, and on October 19, 2017, holders of an overwhelming majority of the outstanding shares of Tribune's Class A common stock and Class B common stock, voting as a single class, voted on and approved the Merger Agreement and the transactions contemplated by the Merger Agreement at a duly called special meeting of Tribune stockholders. No vote of Sinclair's stockholders was required to close the Merger.

RESPONSE NO. 44: Sinclair denies the allegations contained in the first sentence of Paragraph 44 except admits that, on September 6, 2017, the SEC declared effective Sinclair's registration statement on Form S-4, which registered the common stock to be issued in the Transaction and that on October 19, 2017, holders of a majority of the outstanding shares of Tribune's Class A common stock and Class B common stock, voting as a single class, voted on and approved the Merger Agreement. Sinclair admits the allegations contained in the second sentence of Paragraph 44.

B. <u>Sinclair Agrees to Promptly Secure Regulatory Approval</u>

45. As is customary for the acquiring party in a merger, Sinclair was responsible for leading the process of obtaining regulatory approval of the Merger. Section 7.1(e) of the Merger Agreement provided that Sinclair was:

> entitled to direct, in consultation with [Tribune], the timing for making, and approve ... the content of, any filings with or presentations or submissions to any Governmental Authority ... and to take the lead in the scheduling of, and strategic planning for, any meetings with, and the conducting of negotiations with, Governmental Authorities[.]

<u>RESPONSE NO. 45:</u> The allegations contained in Paragraph 45 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 45, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

46. Sinclair's responsibilities concerning the regulatory process were, however, specifically limited by its contractual obligations, including its obligation to facilitate promptly consummating the Merger. In Section 7.1(a) of the Merger Agreement, Sinclair agreed to use:

> ***reasonable best efforts*** to take, or cause to be taken, ***all actions*** and to do, or cause to be done, ***all things*** necessary, proper or ***advisable*** under applicable Law to consummate and make

> effective the Merger and the other transactions contemplated by this Agreement ***as promptly as reasonably practicable***[.]

(Emphasis added).

<u>RESPONSE NO. 46:</u> The allegations contained in Paragraph 46 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 46, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

47. During the negotiation of the Merger Agreement, Tribune understood that the transaction would raise regulatory issues and thus focused on obtaining terms that would substantially mitigate the risk that the transaction would be delayed or fail due to the actions of regulators. Accordingly, Sinclair's commitment under Section 7.1(a) to use best efforts and act expeditiously to consummate the Merger expressly extended to regulatory approvals, including:

> obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority ... that are necessary, proper or advisable to consummate and make effective the Merger[.]

<u>RESPONSE NO. 47:</u> Sinclair lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 47. The allegations contained in the second sentence of Paragraph 47 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in the second sentence of Paragraph 47, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

48. Sinclair's obligation to obtain regulatory approvals as promptly as reasonably practicable was further specified in Section 7.1(i) of the Merger Agreement, in which Sinclair agreed to:

> use ***reasonable best efforts*** to take action to avoid or eliminate each and every impediment that may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement so as to enable the Closing to occur ***as soon as reasonably practicable***[.]

(Emphasis added).

RESPONSE NO. 48: The allegations contained in Paragraph 48 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 48, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

49. These obligations included the:

> ***prompt*** use of [Sinclair's] ***reasonable best efforts*** to avoid the entry of ... any ... Order that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the [Merger].

(Emphasis added).

RESPONSE NO. 49: The allegations contained in Paragraph 49 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 49, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

50. These broad commitments to obtain regulatory approvals as soon as reasonably practicable included Sinclair's express agreement to divest certain of its or Tribune's television stations. In the Merger Agreement, Sinclair not only disclaimed its right to litigate the necessity of those divestitures with regulators, but affirmatively obligated itself to proffer them even if merely "advisable" to avoid the "anticipated or threatened ... commencement" of any proceeding that would delay the Merger.

RESPONSE NO. 50: The allegations contained in Paragraph 50 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 50, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

51. In Schedule 7.1(i) of Sinclair's disclosure letter to the Merger Agreement (the "Disclosure Letter"),[6] entitled "Station Divestitures," Sinclair provided that it:

> acknowledges that obtaining regulatory consents required to consummate the transactions contemplated by the Merger Agreement, including, without limitation, the FCC Consent and clearance under the HSR Act [from DOJ], ***will require the divestiture of certain Stations***[.]

(Emphasis added).

FN 6. A true and correct copy of Schedule 7.1(i) of the Sinclair Disclosure Letter is attached as Exhibit D.

RESPONSE NO. 51: The allegations contained in Paragraph 51 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 51, which characterize and selectively quote the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder. Sinclair apprehends that no response is required to the allegations contained in Footnote 6 in Paragraph 51. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit D a copy of Schedule 7.1(i) of the Disclosure Letter.

52. To this end, in its Disclosure Letter, Sinclair "agree[d] to divest Stations" in ten specified Designated Market Areas ("DMAs") "as necessary to comply with the FCC's [Duopoly Rule] or to obtain [DOJ] clearance" and "as required by the applicable Governmental Authority in order to obtain approval of and consummate the transactions contemplated by the Merger Agreement." Sinclair also agreed to designate "divestiture DMAs and make such ... Station divestitures as may be necessary to comply with the FCC's [National Cap]." In Section 7.1(i) of the Merger Agreement, Sinclair covenanted to proffer, agree to, and effect the station divestitures agreed to in its Disclosure Letter if:

> necessary or advisable to avoid, prevent, eliminate or remove the ***actual, anticipated or threatened*** (x) commencement of any Proceeding in any forum or (y) issuance of any Order that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the [Merger].

(Emphasis added).

RESPONSE NO. 52: The allegations contained in Paragraph 52 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 52, which characterize and selectively quote the Merger Agreement and the Disclosure Letter, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

53. The ten listed DMAs (referred to as the "Overlap DMAs" or "overlap markets")[7] are markets in which Tribune and Sinclair both own television stations that are among the top four in that market. It was thus anticipated that divestitures in these ten Overlap DMAs could be required in order for the transaction to receive regulatory approval under antitrust and FCC rules.

FN 7. The DMAs listed in Sinclair's Disclosure Letter are: (i) Seattle-Tacoma, WA; (ii) St. Louis, MO; (iii) Salt Lake City, UT; (iv) Grand Rapids-Kalamazoo-Battle Creek, MI; (v) Oklahoma City, OK; (vi) Wilkes Barre-Scranton, PA; (vii) Richmond-Petersburg, VA; (viii) Des Moines-Ames, IA; (ix) Harrisburg-Lancaster-Lebanon-York, PA; and (x) Greensboro-High Point-Winston Salem, NC.

RESPONSE NO. 53: Sinclair denies the allegations contained in Paragraph 53 and Footnote 7 in Paragraph 53 except avers that the Merger Agreement and the Disclosure Letter set forth conditions on such potential divestitures, and Sinclair respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

54. In negotiating and entering into the Merger Agreement, speed and certainty of closing were crucial to Tribune. Sinclair's commitment to specific station divestitures and its agreement to use its reasonable best efforts to obtain prompt regulatory approval were fundamental concessions that, for Tribune, were nonnegotiable.[8]

FN 8. Sinclair had not made such concessions in other agreements in which it acquired stations. For example, in agreements to acquire stations owned by Four Points Media Group and Freedom Communications in 2011, Sinclair agreed only to use "commercially reasonable efforts" to take all actions necessary to consummate the transactions – not to use *reasonable best efforts* to take all actions to consummate the transactions as *promptly as reasonably practicable*, as in its agreement with Tribune – and it excluded from such actions "*the sale of any assets*."

RESPONSE NO. 54: Sinclair lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 54. Sinclair denies the allegations contained in the second sentence of Paragraph 54 and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder. Sinclair denies the allegations contained in Footnote 8 of Paragraph 53 except admits that the second sentence of Footnote 8 characterizes and selectively quotes Sinclair's agreements with Four Points Media Group and Freedom Communications and the Merger Agreement, and respectfully refers the Court to those documents for a complete and accurate statement of their contents.

C. Sinclair Breaches Its Obligation to Obtain Prompt Regulatory Approval

55. To consummate the Merger, Sinclair was required to obtain approval from DOJ and the FCC. DOJ assesses whether a merger raises antitrust concerns. The FCC determines whether a merger serves the public interest, and it enforces limitations on the total number of television stations one company can own either locally (the Duopoly Rule) or nationally (the National Cap).

RESPONSE NO. 55: Sinclair denies the allegations contained in Paragraph 55 except admits that clearance under the HSR Act and the consent of the FCC were conditions to Tribune's and Sinclair's obligations to consummate the Transaction.

56. Regulatory approval of the Merger required two types of divestitures: (i) divestitures in markets where both companies owned stations and the Merger would result in either an anticompetitive increase in market concentration or common ownership that would violate the Duopoly Rule limit on local station ownership; and (ii) additional divestitures as necessary to bring the combined company into compliance with the FCC's National Cap on audience reach.

RESPONSE NO. 56: Sinclair denies the allegations contained in Paragraph 56 except admits that regulatory approval would require a certain number and type of divestitures.

57. The Merger Agreement required Sinclair to propose to regulators terms for clearance of the Merger that were likely to be approved, and approved promptly. It also required Sinclair to consult with Tribune concerning regulatory strategy and to include Tribune in its substantive communications with regulators. Sinclair took exactly the opposite approach, repeatedly making proposals that effectively had no chance to be approved, ignoring Tribune's admonitions and advice, and squandering valuable time.

RESPONSE NO. 57: The allegations contained in the first two sentences of Paragraph 57 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in the first two sentences of Paragraph 57, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder. Sinclair denies the allegations in the third sentence of Paragraph 57.

58. Although staff members at DOJ and the FCC laid out a clear path for clearance of the Merger, Sinclair ignored their repeated statements of what was required for approval. Instead, Sinclair defiantly (and unsuccessfully) attempted to obtain clearance on better terms for itself, regardless of how long that took or whether it risked failing to obtain approval of the Merger. Throughout, Sinclair was warned by staff at DOJ and the FCC that its proposals were unacceptable, and

by Tribune that its actions were violations of the Merger Agreement. Sinclair consistently ignored or rejected those warnings and antagonized DOJ and FCC staff, thereby creating unnecessary and entirely avoidable barriers to good, constructive interactions with the regulators reviewing the Merger.

RESPONSE NO. 58: Sinclair denies the allegations contained in Paragraph 58.

59. From the moment Tribune and Sinclair negotiated and entered into the Merger Agreement, the path for a straightforward approval of the Merger by DOJ and the FCC was clear, and the Merger Agreement reflected Sinclair's promise to take that path. Had Sinclair offered to DOJ divestitures in the ten Overlap DMAs identified in the Merger Agreement and proposed to the FCC clean station sales sufficient to satisfy the Duopoly Rule and the National Cap, the Merger would have been approved long ago and closing would have occurred in the first quarter of 2018, or earlier. Indeed, Sinclair itself recognized a prompt path to regulatory approval, stating in an SEC filing from August 2017 that it "expect[ed] the transaction will close by year-end 2017." Even as late as November 8, 2017, Sinclair stated in another filing that it "expect[ed] the [Merger] transaction will close during the first quarter of 2018" after receiving "antitrust clearance and approval by the FCC."

RESPONSE NO. 59: Sinclair denies the allegations contained in the first and second sentences of Paragraph 59. In further response to the allegations contained in the first and second sentences of Paragraph 59, to the extent that those allegations characterize the Merger Agreement, Sinclair respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder. Sinclair denies the allegations contained in the third and fourth sentences of Paragraph 59, which characterize and selectively quote the Form 10-Qs that Sinclair filed with the SEC on August 9, 2017 and November 8, 2017, and respectfully refers the Court to those documents for a complete and accurate statement of their contents.

60. Notwithstanding its public statements concerning a prompt closing, Sinclair refused for months to meet DOJ's unambiguous demand for divestitures in the ten Overlap DMAs in exchange for clearance and – over warnings from FCC staff – first declined to propose *any* divestitures, later pursued an unorthodox trust mechanism that would only serve to delay the divestiture process, and finally proposed to the FCC dubious station sales at suspiciously low prices involving parties with significant ties to its executive chairman and his family without fully disclosing those connections. These willful and material breaches, which are

detailed below, directly caused a complete failure to promptly obtain the regulatory approvals required to consummate the Merger.

RESPONSE NO. 60: Sinclair denies the allegations contained in Paragraph 60.

i. Sinclair Willfully and Materially Breaches the Merger Agreement by Failing to Obtain Prompt DOJ Approval

61. From the start of DOJ's review of the Merger, DOJ staff made clear that they had serious concerns about Sinclair retaining both its and Tribune's stations in the ten Overlap DMAs. Despite numerous submissions by Sinclair asking DOJ to remove most of the Overlap DMAs from the scope of its review, in August 2017 DOJ requested information from Tribune and Sinclair on all ten Overlap DMAs, and in early October 2017 DOJ reaffirmed that it was continuing to investigate all ten of them.

RESPONSE NO. 61: Sinclair denies the allegations contained in Paragraph 61 except admits that Sinclair and Tribune engaged in discussions and negotiations with DOJ and with each other regarding the potential divestiture of certain television stations in connection with DOJ's review of the Transaction and that, on August 2, 2017, DOJ issued a Request for Information concerning, among other things, the ten Overlap DMAs.

62. At Sinclair's request, Tribune gave Sinclair latitude to wait to appeal that view to the new Assistant Attorney General ("AAG") of the Antitrust Division

who, at the time the Merger was announced, had been nominated but not yet confirmed.

<u>RESPONSE NO. 62:</u> Sinclair denies the allegations contained in Paragraph 62 except admits that Assistant Attorney General ("AAG") Makan Delrahim had been nominated, but not yet confirmed, at the time the Transaction was announced and that Sinclair and Tribune agreed to discuss the matters in Paragraph 62 with AAG Delrahim upon his confirmation, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

63. Makan Delrahim took office as the incoming AAG of Antitrust in September 2017. Shortly thereafter, he made clear that he, too, was focused on divestitures in the ten identified Overlap DMAs, and that Sinclair's agreement to divestitures in those DMAs would bring a halt to DOJ's investigation and facilitate the path to approval contemplated by the Merger Agreement. Sinclair nevertheless continued to try, without success, to persuade DOJ that divestitures in most of the ten Overlap DMAs should not be required to approve the Merger. In the process, Sinclair was, without basis, confrontational with and belittling of DOJ staff and, indeed, AAG Delrahim himself. Ultimately, Sinclair failed to persuade DOJ

against divestitures in *any* of the ten Overlap DMAs, and its actions resulted in DOJ continuing and expanding its antitrust investigation.

RESPONSE NO. 63: Sinclair admits the allegations contained in the first sentence of Paragraph 63. Sinclair denies the remaining allegations contained in Paragraph 63 except admits that Sinclair and Tribune engaged in discussions and negotiations with AAG Delrahim and other officials at DOJ regarding the potential divestitures of certain television stations in the ten Overlap DMAs in connection with DOJ's review of the Transaction.

64. On November 17, 2017, DOJ staff sent Sinclair a letter stating that none of Sinclair's arguments had persuaded them as to any of the Overlap DMAs. That same day, Principal Deputy Assistant Attorney General ("DAAG") Andrew Finch called Sinclair's antitrust counsel, William Kolasky, to convey DOJ's official position – and that of AAG Delrahim – that DOJ's concerns with the Merger could be resolved if Sinclair agreed to divest stations in eight to ten of the Overlap DMAs.

RESPONSE NO. 64: Sinclair denies the allegations contained in the first sentence of Paragraph 64, which characterize a November 17, 2017 letter from DOJ to Sinclair, and respectfully refers the Court to that letter for a complete and accurate statement of its contents. Sinclair denies the allegations contained in the second sentence of Paragraph 64 except admits that Mr. Kolasky had a telephone call with Principal Deputy Assistant Attorney General ("DAAG") Finch on November 17, 2017 regarding the potential divestitures of certain television stations in the ten Overlap DMAs in connection with DOJ's review of the Transaction.

65. On November 20, 2017, DAAG Finch rejected a request from Sinclair to pause DOJ's investigatory depositions, which were set to begin that week, unless and until Sinclair put station divestitures on the table.

RESPONSE NO. 65: Sinclair denies the allegations contained in Paragraph 65 except admits that, on November 20, 2017, DAAG Finch indicated that DOJ's investigatory depositions would move forward in connection with DOJ's review of the Transaction.

66. On December 11, 2017, Sinclair sent a written settlement offer to DOJ, proposing to divest stations in six of the Overlap DMAs, but with joint sales agreements ("JSAs") – under which Sinclair would retain control and interest – in three of them and no sales in the other four Overlap DMAs. The Sinclair proposal noted that it also intended, in separate transactions, to sell stations in other DMAs that were not among those listed in the Sinclair Disclosure Letter. Sinclair should have known that its proposal would be unacceptable to DOJ, not least because DOJ had a policy against divestitures that permitted continued entanglements (such as

through JSAs). Indeed, Tribune cautioned Sinclair that this offer would be a nonstarter for DOJ and warned Sinclair against it, but Sinclair persisted.

RESPONSE NO. 66: Sinclair denies the allegations contained in the first and second sentences of Paragraph 66, which characterize the December 11, 2017 proposal to DOJ, and respectfully refers the Court to that document for a complete and accurate statement of its contents. Sinclair denies the allegations contained in the third and fourth sentences of Paragraph 66.

67. Unsurprisingly, DOJ refused Sinclair's proposal only two days later on December 13. DOJ's response confirmed that Sinclair had a clear path toward securing regulatory approval of the Merger, but that this would require divestitures in at least seven, and perhaps all, of the ten Overlap DMAs. DOJ offered to pause its investigation, including numerous depositions, to focus on negotiations if Sinclair agreed to divest stations in at least seven of the Overlap DMAs – an offer that would have given Sinclair a clear path to quickly obtaining DOJ's clearance of the Merger. Sinclair squandered this golden opportunity. It rejected DOJ's offer out of hand, ensuring that the antitrust investigation, including active preparations by DOJ for the filing of a complaint, would continue unabated and willfully violating its obligation to use its best efforts to avoid every governmental impediment to clearance and to obtain the government's approval of the Merger as soon as reasonably practicable.

RESPONSE NO. 67: Sinclair denies the allegations contained in Paragraph 67 except admits that, on December 13, 2017, DOJ sent Sinclair a letter responding to the December 11, 2017 proposal and respectfully refers the Court to that letter for a complete and accurate statement of its contents.

68. On December 14, with express prior approval from Mr. Kolasky, and, indeed, at his suggestion, Tribune's antitrust counsel, Deborah A. Garza, spoke with DAAG Finch to request clarification of DOJ's position, in particular with respect to whether its offer of settlement was conditioned on divestitures other than in the ten Overlap DMAs. DAAG Finch reiterated that *if Sinclair would agree to divest in those ten DMAs, the investigation would terminate and the Merger would be cleared*. He further said that if Sinclair committed to sales in at least seven of the Overlap DMAs, DOJ would be willing to pause its investigation and negotiate with respect to the remaining three Overlap DMAs. DAAG Finch agreed to a call the next day to communicate his view to both parties and answer any questions they might have. Ms. Garza reported this information to Mr. Kolasky.

RESPONSE NO. 68: Sinclair denies the allegations contained in the first sentence of Paragraph 68 except admits that Sinclair understands that, on December 14, 2017, Ms. Garza had a discussion with DAAG Finch regarding the potential divestitures of certain television stations in connection with DOJ's review of the Transaction. Sinclair lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second and third sentences of Paragraph 68. Sinclair lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence of Paragraph 68 except admits that, on December 15, 2017, Sinclair and Tribune participated in a telephone call with DAAG Finch. Sinclair denies the allegations contained in the fifth sentence of Paragraph 68 except admits that Ms. Garza informed Mr. Kolasky of her December 14, 2017 discussion with DAAG Finch.

69. On December 15, Tribune's and Sinclair's general counsels and outside counsel participated in a conference call with DAAG Finch. On that call, DAAG Finch conveyed the same position he had conveyed the previous day to Ms. Garza: namely, that DOJ would pause its investigation if Sinclair agreed to divestitures in at least seven of the Overlap DMAs and that the investigation would end if Sinclair agreed to divestitures in all ten of the Overlap DMAs. DAAG Finch noted that DOJ had made this offer "since before Thanksgiving," and he was clear that divestiture of stations in the ten Overlap DMAs would yield immediate clearance: in DAAG Finch's words, "***We would be done***." DAAG Finch reiterated that "***the divestitures at issue are the ten***" Overlap DMAs.

<u>RESPONSE NO. 69:</u> Sinclair admits the allegations contained in the first sentence of Paragraph 69. Sinclair denies the remaining allegations contained in Paragraph 69 except admits that, during the December 15, 2017 call between Sinclair, Tribune, and DAAG Finch, the parties discussed the potential divestitures of certain television stations in connection with DOJ's review of the Transaction and potential circumstances pursuant to which DOJ might pause or conclude its investigation.

70. Rather than accept this unequivocal offer and end, or at least pause, DOJ's investigation, Barry Faber, Executive Vice President and General Counsel of Sinclair, insisted that DOJ agree to begin settlement discussions on the basis of sales in only *three* DMAs, barring which Sinclair was prepared to litigate. Sinclair asserted this position despite its covenant to avoid even threatened litigation with DOJ and to take all actions and to do all things advisable to consummate the Merger, and despite its full knowledge that an offer of three DMAs was unacceptable to DOJ and that DOJ would thus continue its investigation and the taking of depositions designed to support a DOJ complaint.

RESPONSE NO. 70: Sinclair denies the allegations contained in Paragraph 70 except admits that Sinclair and Tribune engaged in discussions and negotiations with DOJ regarding the potential divestitures of certain television stations in connection with DOJ's review of the Transaction and that Sinclair and Tribune discussed with DOJ the prospects, potential impact, and timing of potential litigation over potential divestitures and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

71. Between the end of November, when DOJ's depositions began, and DOJ's December 13 offer to pause its investigation, DOJ had deposed six Sinclair employees and two Tribune employees. After Sinclair bluntly rejected DOJ's offer to pause its investigation, DOJ took another *seventeen* depositions of current or former Sinclair and Tribune employees through mid-January 2018, all in preparation for the possibility of suing to block the Merger, and all of which could have been avoided had Sinclair accepted DOJ's offer.

RESPONSE NO. 71: Sinclair denies the allegations contained in Paragraph 71 except admits that, between November 21, 2017 and December 13, 2017, DOJ deposed six Sinclair employees and two Tribune employees and that, between December 14, 2017 and January 17, 2018, DOJ conducted seventeen depositions of current or former Sinclair and Tribune employees.

72. On December 18, 2017, Edward Lazarus, Tribune's Executive Vice President and General Counsel, wrote to Mr. Faber to state Tribune's "serious concern with Sinclair's approach to obtaining the Department of Justice's clearance."[9] Mr. Lazarus explained that Sinclair was required under Section 7.1(i) of the Merger Agreement to accept DOJ's offer of clearance in exchange for the ten listed divestitures but, in the spirit of compromise, Mr. Lazarus offered to

permit Sinclair to accept DOJ's other option: a pause in the investigation upon Sinclair's agreement to divest in seven of the specified DMAs, with the possibility of negotiating a more favorable outcome than divestiture in all ten listed DMAs. Mr. Lazarus was clear, though, that:

> What we are not willing to countenance ... is a continuation on your current path of refusing to accept offered divestiture terms that are clearly within the contemplation of the Merger Agreement and, further, expressing your intention to litigate. Continuing with this approach, ***which will almost certainly precipitate the Department's filing of a complaint*** in the near term, would clearly violate your duties under the Merger Agreement, which, as noted, requires Sinclair to take steps "necessary or advisable to avoid, prevent, eliminate or remove the actual, anticipated or threatened ... commencement of any Proceeding ... that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions ...."
>
> In sum, we urge you in the strongest terms to accept one or the other of the Department's offers: either to obtain clearance immediately by agreeing to divest in the ten specified DMAs or to obtain a pause by agreeing to the terms of the Department's December 13 letter. We would be happy to discuss the path forward further with you.
>
> We look forward to working with you to complete the regulatory process and bring the transaction to a prompt closing.

(Second, third, and fourth omissions in original) (internal citation and emphasis omitted and further emphasis added) (quoting Exhibit A § 7.1(i)).

FN 9. A true and correct copy of Mr. Lazarus's December 18 letter to Mr. Faber is attached hereto as Exhibit E.

<u>RESPONSE NO. 72:</u> Sinclair denies the allegations contained in Paragraph 72, which characterize and selectively quote a letter that Mr. Lazarus sent to Mr. Faber on December 18, 2017, and respectfully refers the Court to that letter for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 9 in Paragraph 72. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit E a copy of a December 18, 2017 letter from Mr. Lazarus to Mr. Faber.

73. In a response on December 18, Mr. Faber made no attempt to dispute Sinclair's obligations under Section 7.1(i) of the Merger Agreement, aside from summarily asserting, in a footnote, that Sinclair disagreed "with Tribune's interpretation of the obligations to which Sinclair would be subject under the Merger Agreement."[10] Indeed, Mr. Faber's only substantive defense of Sinclair's actions was to claim that DOJ's offer was contingent on sales in DMAs outside those specified in the Sinclair Disclosure Letter and thus purportedly beyond Sinclair's duties, because Section 7.1(j)(iii) of the Merger Agreement excludes Section 7.1's application to station divestures not listed in the Sinclair Disclosure Letter. Mr. Faber claimed that DOJ's willingness to approve the transaction upon divestitures in the ten Overlap DMAs "assumed that [Sinclair] would also sell additional big-4 stations in four large non-overlap markets."[11]

FN 10. A true and correct copy of Mr. Faber's December 18 letter to Mr. Lazarus is attached hereto as Exhibit F.

FN 11. A "Big-4 station" is one affiliated with NBC, ABC, CBS, or Fox.

RESPONSE NO. 73: Sinclair denies the allegations contained in Paragraph 73, which characterize and selectively quote a letter that Mr. Faber sent to Mr. Lazarus on December 18, 2017, and respectfully refers the Court to that letter for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 10 in Paragraph 73. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit F a copy of a December 18, 2017 letter from Mr. Faber to Mr. Lazarus. Sinclair admits the allegations contained in Footnote 11 in Paragraph 73.

74. As recounted above, Mr. Faber's excuse was patently false. Mr. Lazarus similarly detailed this history in his reply to Mr. Faber, sent on December 21, and explained that:

> Given repeated opportunities to start final settlement negotiations with the Department on terms consistent with its obligations under the merger agreement, Sinclair's strategy has led only to backward movement by the Department and a continuation of an investigation that the Department has offered to halt. With respect, there is no "misunderstanding" about this. The Department's offers to halt its investigation upon the divestiture in seven DMAs while continuing discussions with respect to the other three makes it crystal clear that the Department is prepared, at least as of now, to abandon whatever theories of harm it may be developing with respect to any other DMAs. Moreover, the entire discussion of those other DMAs arose only due to Sinclair's decision not to engage with the Department on terms contemplated by the merger agreement and, instead, to use station sales it will independently make to

> Fox (or others, as in the case of WGN9) as a bargaining chip to reduce the number of DOJ-required divestitures.
>
> In sum, Sinclair's obligations under the merger agreement, as summarized in my December 17 letter to you, are clear, and we expect you to comply with them.
>
> We stand by our offer in my letter of December 17 to permit you to pursue settlement discussions consistent with the framework delineated by the Department in its December 13 letter.

RESPONSE NO. 74: Sinclair denies the allegations contained in the first sentence of Paragraph 74. Sinclair denies the allegations contained in the second sentence of Paragraph 74, which characterize and selectively quote a letter that Mr. Lazarus sent to Mr. Faber on December 21, 2017, and respectfully refers the Court to that letter for a complete and accurate statement of its contents.

75. Mr. Faber sent a cursory response less than twenty minutes after receipt of Mr. Lazarus's December 21 letter, stating merely that Sinclair "disagree[d] with the vast majority of the statements in [Mr. Lazarus's] letter" and providing neither justification for Sinclair's actions nor any indication that it would remedy its breach by accepting DOJ's settlement offer.[12]

FN 12. A true and correct copy of Mr. Faber's December 21 email to Mr. Lazarus is attached hereto as Exhibit G.

RESPONSE NO. 75: Sinclair denies the allegations contained in Paragraph 75, which characterize and selectively quote an email that Mr. Faber sent to Mr. Lazarus on December 21, 2017, and respectfully refers the Court to that email for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 12 in Paragraph 75. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit G a copy of a December 21, 2017 email from Mr. Faber to Mr. Lazarus.

76. Sinclair's and DOJ's subsequent communications, following Mr. Faber's December letters to Mr. Lazarus, confirmed, without any ambiguity, that DOJ was and had been willing to approve the Merger and conclude its investigation solely on the basis of divestitures within the ten Overlap DMAs.

RESPONSE NO. 76: Sinclair denies the allegations contained in Paragraph 76.

77. On December 31, 2017, Mr. Kolasky sent a letter to AAG Delrahim and DAAG Finch, comparing DOJ's leadership unfavorably with that of the FCC – an approach that was as unhelpful as it is now ironic, given the FCC's referral of the Merger to an administrative hearing.[13] In pertinent part, Mr. Kolasky wrote:

> We all know that old habits die hard. That is true not just for people, but also for institutions. And that is why it was so refreshing to see the FCC, under Ajit Pai's leadership, undertake a fundamental reform of its media ownership rules to relax regulations .... Like the industry experts at the FCC, nearly everyone in the television industry understands the massive changes that have taken place over the last two decades with the shift of viewers and advertisers away from broadcast to cable and now to online video. We expected that the Division, under your leadership, would likewise see the need to re-

> evaluate how it reviews TV station mergers .... We have been surprised, therefore, by the extent to which the Division has thus far appeared unwilling to recognize how completely the world has changed.
>
> Mr. Kolasky concluded his letter by making the inflammatory assertion, without any basis, that DOJ "may be letting its judgment as to what relief to seek to be influenced, perhaps unconsciously, by the knowledge that Sinclair has certain obligations under its merger agreement with Tribune to divest stations in all ten Overlap DMAs if necessary to get regulatory clearance."

FN 13. A true and correct copy of Mr. Kolasky's December 31 letter to AAG Delrahim and DAAG Finch is attached hereto as Exhibit H.

RESPONSE NO. 77: Sinclair denies the allegations contained in Paragraph 77, which characterize and selectively quote a letter that Mr. Kolasky sent to AAG Delrahim and DAAG Finch on December 31, 2017 (following review by Tribune and its counsel), and respectfully refers the Court to that letter for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 13 in Paragraph 77. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit H a copy of a December 31, 2017 letter from Mr. Kolasky to AAG Delrahim and DAAG Finch.

78. On January 5, 2018, at a meeting with AAG Delrahim, DAAG Finch, Section Chief Owen Kendler, and Ms. Garza, Mr. Faber and Mr. Kolasky urged DOJ to accept divestitures *in just three* of the Overlap DMAs, while noting that Sinclair had already signaled its intention to sell stations for other reasons in four

DMAs not listed in the Sinclair Disclosure Letter. Mr. Faber described the ten Overlap DMAs, plus the four in which Sinclair had already-planned sales, as the only DMAs "in play." Although DOJ did not provide a formal response to Sinclair's offer at the January 5 meeting, DAAG Finch corrected Mr. Faber's statement that the four additional sales were "in play" with DOJ, indicating that divestitures in those four non-listed DMAs were irrelevant to DOJ's concerns. AAG Delrahim underscored DOJ's desire to reach a settlement that met DOJ's actual concerns. Following the meeting, Mr. Kolasky sent an email to AAG Delrahim with market share information for the Sinclair and Tribune stations "in the six overlap markets which we propose to retain." The market share data that Mr. Kolasky sent excluded certain non-Big-4 stations, a manipulation that the DOJ had already rejected as disingenuous.

RESPONSE NO. 78: Sinclair denies the allegations contained in Paragraph 78 except admits that, on January 5, 2018, Mr. Faber, Mr. Kolasky, and Ms. Garza participated in a meeting with AAG Delrahim, DAAG Finch, and Section Chief Owen Kendler where the parties discussed the potential divestitures of certain television stations in connection with DOJ's review of the Transaction. In further response to the allegations contained in the fifth and sixth sentences of Paragraph 78, which characterize and selectively quote an email that Mr. Kolasky sent to AAG Delrahim on January 5, 2018, Sinclair respectfully refers the Court to that email for a complete and accurate statement of its contents.

79. In mid-January, DOJ staff, on a call with Mr. Kolasky, again communicated that DOJ was considering divestitures only in the Overlap DMAs and not in any other markets. On January 24, in an email to AAG Delrahim and other DOJ staff, Mr. Kolasky admitted that DOJ had told Sinclair that it was "focused *just on the ten overlap markets* and that a sale of stations in non-overlap markets to Fox is not a condition to any settlement."[14] (Emphasis added.)

FN 14. A true and correct copy of Mr. Kolasky's January 24 email to DOJ (with attachment omitted) is attached as Exhibit I.

RESPONSE NO. 79: Sinclair denies the allegations contained in the first sentence of Paragraph 79 except admits that, in January 2018, Mr. Kolasky participated in a telephone call with DOJ staff regarding the potential divestitures of certain television stations in connection with DOJ's review of the Transaction. Sinclair denies the allegations contained in the second sentence of Paragraph 79, which characterize and selectively quote an email that Mr. Kolasky sent to AAG Delrahim and other DOJ staff on January 24, 2018, and respectfully refers the Court to that email for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 14 in Paragraph 79. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit I a copy of a January 24, 2018 email from Mr. Kolasky to DOJ.

80. Tribune once again urged Sinclair to comply with its obligations under the Merger Agreement in an email sent by Tribune's CEO, Peter Kern, to Sinclair's CEO, Christopher Ripley, on January 24, the day before what was intended to be Sinclair's final front office meeting with DOJ, which is typically the last official meeting with DOJ before it concludes its investigation and decides whether to sue. Mr. Kern wrote, in relevant part:

> While I know you are well aware of our position and your contractual obligations, and at the risk of belaboring the point – in the event DOJ offers to end its investigation if Sinclair agrees to divest stations within the ten overlap DMAs spelled out in the merger agreement, you are contractually bound to accept.

RESPONSE NO. 80: Sinclair denies the allegations contained in Paragraph 80, which characterize and selectively quote an email that Mr. Kern sent to Mr. Ripley on January 24, 2018, and respectfully refers the Court to that email for a complete and accurate statement of its contents.

81. Mr. Ripley responded the same day, writing only that: "Although I do not think it is productive to engage in a legal debate with you, for the record I am writing to advise you that we disagree with the legal conclusion stated in your email as to Sinclair's contractual obligations."

<u>RESPONSE NO. 81:</u> Sinclair denies the allegations contained in Paragraph 81, which characterize and selectively quote an email that Mr. Ripley sent Mr. Kern on January 24, 2018, and respectfully refers the Court to that email for a complete and accurate statement of its contents.

82. Sure enough, *DOJ offered at the January 25 meeting to end its investigation upon Sinclair's agreement to divest stations within the ten Overlap DMAs*. AAG Delrahim stated that DOJ needed divestitures of "Big-4 stations" in all ten of the Overlap DMAs and that it would approve the Merger on that basis. DOJ's offer was not conditioned on sales within any other markets. As in December, however, Sinclair refused to agree to divestitures in all ten of the Overlap DMAs. It offered sales in ***just four*** DMAs and ***declared that it intended, and indeed welcomed the opportunity, to litigate with DOJ***. Underscoring Sinclair's willful breach, Mr. Faber in fact told AAG Delrahim: "***sue me***." Before leaving DOJ's office after the meeting, Mr. Faber told Mr. Lazarus that Tribune would have to sue Sinclair to get it to divest stations in all ten Overlap DMAs.

<u>RESPONSE NO. 82:</u> Sinclair denies the allegations contained in Paragraph 82 except admits that, on January 25, 2018, Sinclair and Tribune attended a meeting with DOJ where the potential divestitures of certain television stations was discussed in connection with DOJ's review of the Transaction and that

Sinclair and Tribune discussed potential litigation relating to the potential divestitures.

83. Following the January 25 meeting, and through the following weeks, Mr. Faber, in a continuation of Sinclair's breach, persisted in trying to persuade DOJ to reverse its position and accept divestitures in only three or four of the Overlap DMAs. Many of these communications were *ex parte*, without notice to Tribune or an opportunity for Tribune to participate, in further breach of the Merger Agreement. In certain communications for which Tribune representatives were present, Sinclair was bullying and insulting in tone and offered no new or materially different information from what it had already presented to DOJ.

RESPONSE NO. 83: Sinclair denies the allegations contained in Paragraph 83 except admits that, after January 25, 2018, Mr. Faber engaged in discussions and negotiations with DOJ regarding the potential divestitures of certain television stations in connection with DOJ's review of the Transaction.

84. On February 8, DOJ organized a phone call with Sinclair and Tribune, in which DOJ staff repeated that DOJ was demanding divestitures in no fewer than all ten of the Overlap DMAs in order to clear the Merger.

RESPONSE NO. 84: Sinclair denies the allegations contained in Paragraph 84 except admits that, on February 8, 2018, Sinclair and Tribune participated in a telephone call with DOJ staff regarding the potential divestitures of certain television stations in connection with DOJ's review of the Transaction.

85. On February 9, Tribune advised Sinclair that it would sue Sinclair if it had not, by February 12, complied with its contractual obligations by offering to divest stations in all ten Overlap DMAs or otherwise reaching agreement with DOJ for clearance of the Merger.

RESPONSE NO. 85: Sinclair denies the allegations contained in Paragraph 85 except admits that, on or around February 9, 2018, Tribune advised Sinclair that it would sue Sinclair if Sinclair did not offer to divest stations in the ten Overlap DMAs or otherwise reached agreement with DOJ for clearance of the Transaction by February 12, 2018.

86. Later that same day, and following this clear warning, Sinclair doubled its offer to DOJ, from divestitures in four Overlap DMAs to divestitures in eight, but continued to refuse to agree to sell stations in all ten DMAs. In an email sent to AAG Delrahim and DAAG Finch on February 9, Mr. Faber disclosed that Tribune had expressly threatened to sue Sinclair were it to not offer sales of all ten Overlap DMAs or otherwise reach agreement with DOJ, but stated that sales in all ten Overlap DMAs "is not something that I am prepared to do at this point" and instead offered sales of Big-4 stations in seven Overlap DMAs and a sale of a non-

Big-4 station in an eighth Overlap DMA. The two overlap markets where Mr. Faber refused to agree to divest were Harrisburg and Greensboro.

RESPONSE NO. 86: Sinclair denies the allegations contained in Paragraph 86, which characterize and selectively quote an email that Mr. Faber sent to AAG Delrahim and DAAG Finch on February 9, 2018, and respectfully refers the Court to that email for a complete and accurate statement of its contents.

87. On February 12, at Sinclair's request, Tribune agreed to briefly delay filing suit in order to hear DOJ's views on a call scheduled for the following day.

RESPONSE NO. 87: Sinclair denies the allegations contained in Paragraph 87 except admits that Tribune did not file suit on February 12, 2018.

88. On February 13, DOJ (including AAG Delrahim and DAAG Finch) met with Mr. Faber and Ms. Garza to discuss Sinclair's February 9 proposal. DOJ reiterated its position that divestitures should be made in all ten Overlap DMAs and that it was not focused on any additional stations beyond those DMAs. Without presenting any new facts or arguments, Mr. Faber continued to press DOJ to accept fewer divestitures, accusing DOJ and the AAG himself of "completely misunderstand[ing] the industry," calling the AAG "more regulatory than anyone before you, under any other president for 21 years."

RESPONSE NO. 88: Sinclair denies the allegations contained in Paragraph 88 except admits that, on February 13, 2018, Mr. Faber and Ms. Garza participated in a meeting with DOJ where the potential divestitures of certain television stations was discussed in connection with DOJ's review of the Transaction, that the parties negotiated about the scope of the potential divestitures, and that Mr. Faber discussed his perspectives concerning the industry and the regulation thereof.

89. At the February 13 meeting, in response to Mr. Faber's inflammatory criticism, DOJ reminded Sinclair that DOJ had offered to pause its investigation in November to discuss whether more than seven divestitures would be required and Sinclair had rejected the offer. Nonetheless, in the apparent interest of reaching a resolution, AAG Delrahim indicated that, subject to further review, DOJ was open to letting Sinclair keep all the stations in Greensboro and, again, tentatively, allowing Sinclair to divest the CW station in St. Louis rather than a Big-4 station. As AAG Delrahim left the meeting for another appointment, and in response to Mr. Faber's continued insistence, he said Sinclair was free to make additional submissions if it wanted to do so. He also made clear, however, that there was no reasonable basis on which to believe that DOJ was likely to change its position in Sinclair's favor.

RESPONSE NO. 89: Sinclair denies the allegations contained in Paragraph 89 except admits that, on February 13, 2018, Mr. Faber and Ms. Garza participated in a meeting with DOJ where the potential divestitures of certain television stations was discussed in connection with DOJ's review of the Transaction and that the parties negotiated about the scope of the potential divestitures.

90. Not to be deterred, that evening, in an email to AAG Delrahim and Mr. Finch, Mr. Faber continued to resist DOJ's demand of a divestiture in Harrisburg.

RESPONSE NO. 90: Sinclair denies the allegations contained in Paragraph 90, which characterize an email that Mr. Faber sent to AAG Delrahim and Mr. Finch on February 13, 2018, and respectfully refers the Court to that email for a complete and accurate statement of its contents.

91. The next day, February 14, Tribune warned Sinclair that if Sinclair did not contact DOJ and agree to the Overlap DMA divestitures demanded by DOJ by the end of the day, Tribune would sue Sinclair the following morning. Just hours before midnight, Sinclair agreed. In an email to AAG Delrahim, Mr. Faber agreed to sell a station in Harrisburg if DOJ demanded it.

RESPONSE NO. 91: Sinclair denies the allegations contained in Paragraph 91 except admits that, on February 14, 2018, Tribune advised Sinclair that it would sue Sinclair if Sinclair did not contact DOJ and agree to the Overlap DMA divestitures demanded by DOJ that day. In further response to the allegations contained in the second and third sentences of Paragraph 91, to the extent that those allegations characterize an email sent by Mr. Faber to AAG Delrahim on February 14, 2018, Sinclair respectfully refers the Court to that email for a complete and accurate statement of its contents.

92. As it turned out, this did not end the disputation. On further review, DOJ concluded that Sinclair would indeed have to divest a Big-4 station in Greensboro and, later, that it would have to sell a Big-4 station, rather than the CW, in St. Louis. Sinclair twisted and turned every step of the way. For example, on February 20, Mr. Faber informed the FCC that DOJ had tentatively agreed to allow Sinclair to keep its Big-4 stations in St. Louis, even though DAAG Finch that same day had advised Tribune and Sinclair that DOJ had ***not*** agreed to permit the divestiture in St. Louis to be a non-Big-4 station. Similarly, around March 21, AAG Delrahim once again informed Mr. Kolasky that agreement by Sinclair to divest a Big-4 station in all ten Overlap DMAs – including in *both* Greensboro and St. Louis – would resolve the Merger investigation. Still, Sinclair continued to haggle over St. Louis.

RESPONSE NO. 92: Sinclair denies the allegations contained in Paragraph 92 except admits that, on or around February 20, 2018, Mr. Faber discussed the potential divestitures of certain television stations with DOJ in connection with its review of the Transaction and that, on or around March 21, 2018, AAG Delrahim and Mr. Kolasky had a discussion regarding the potential divestitures of certain television stations in connection with DOJ's review of the Transaction.

93. In the ensuing weeks, Sinclair's position at DOJ continued to worsen. Although Sinclair and DOJ agreed to a term sheet in April 2018 requiring divestitures in all ten overlap markets – including Big-4 divestitures in all markets except potentially St. Louis – they did not reach a definitive settlement and their discussions on significant provisions remained ongoing as of August 2018. By August, even putative negotiation over St. Louis had been closed off: DOJ rejected Sinclair's proposed buyer for the St. Louis CW station and demanded a Big-4 divestiture instead.

<u>RESPONSE NO. 93:</u> Sinclair denies the allegations contained in Paragraph 93 except admits that, on or around April 17, 2018, Sinclair and DOJ agreed to a term sheet pursuant to which Sinclair and Tribune agreed to divest stations in the ten Overlap DMAs, that Sinclair, Tribune, and DOJ ultimately reached an agreement-in-principle regarding the divestitures of certain television stations in connection with the Transaction (and the documentation of that agreement was substantially complete) prior to the end date in the Merger Agreement, which agreement was expected to be executed and filed on or around July 16, 2018, and that, while the issuance of the HDO delayed that filing, DOJ and the Parties continued to work through open issues and did not expect any such remaining open items to be an impediment to DOJ clearance.

94. As of August 2018, Sinclair still had not obtained DOJ's approval of the Merger. In the end, despite Sinclair's obstinancy, DOJ ultimately did not deviate from its demand for sales of a Big-4 station in all ten of the Overlap DMAs – the same position articulated to Sinclair in November 2017 and exactly what Sinclair had agreed to accept in the Merger Agreement. Sinclair's confrontational approach ultimately proved entirely counterproductive; in return for many months of needless and damaging delay, tremendous expense, and the expansion and continuation of DOJ's investigation, Sinclair gained nothing.

RESPONSE NO. 94: Sinclair denies the allegations contained in Paragraph 94 except admits that Sinclair, Tribune, and DOJ ultimately reached an agreement-in-principle regarding the divestitures of certain television stations in connection with the Transaction (and the documentation of that agreement was substantially complete) prior to the end date in the Merger Agreement, which agreement was expected to be executed and filed on or around July 16, 2018, and that, while the issuance of the HDO delayed that filing, DOJ and the Parties continued to work through open issues and did not expect any such remaining open items to be an impediment to DOJ clearance.

ii. Sinclair Willfully and Materially Breaches the Merger Agreement by Failing to Obtain Prompt FCC Approval

95. Sinclair's substantial delay in agreeing to DOJ's demanded divestitures also caused substantial delay of the FCC's review of the Merger, pushing the timeline for review at both agencies up against the wall of the August 8, 2018 End Date. In its conduct before the FCC, Sinclair compounded that delay, refusing to follow the guidance of FCC staff and initially delaying, and then repeatedly changing its divestiture proposals, making it inevitable that the FCC would not clear the Merger before August 8.

RESPONSE NO. 95: Sinclair denies the allegations contained in Paragraph 95.

96. Sinclair submitted its initial applications to the FCC for approval of the Merger on June 26, 2017. In those applications, Sinclair could have, as is typically done, sought clearance for both the Merger and any station divestitures Sinclair might need to effectuate to satisfy DOJ and comply with the FCC's rules. Instead, in order to delay for as long as possible publicly identifying the stations it ultimately would relinquish in the agreed divestiture markets – without regard to its negative impact on the regulatory timeline – Sinclair stated in its initial application only that it would submit subsequent applications for approval of any necessary divestitures. Sinclair pointedly chose not to show any of its divestiture cards at the FCC because, as subsequent events demonstrated, it intended to resist

DOJ's divestiture requests aggressively and did not want to risk signaling through its FCC filings that it would be willing to make *any* divestitures – in the apparent belief that doing so would reduce its perceived leverage at DOJ.

RESPONSE NO. 96: Sinclair denies the allegations contained in Paragraph 96 except admits that, on June 26, 2017, Sinclair and Tribune jointly filed applications for approval of the Transaction with the FCC (as amended, the "FCC Applications"). In further response to the allegations contained in Paragraph 96, to the extent that those allegations characterize the FCC Applications, Sinclair respectfully refers the Court to the FCC Applications for a complete and accurate statement of their contents.

97. This two-step approach ensured that the FCC's review was delayed while Sinclair refused DOJ's divestiture demands. The FCC's practice is to review transactions within a 180-day period, and it started this informal timeline in early July 2017 when it initiated a public comment period on Sinclair's initial applications. In early January 2018, the FCC announced that it was pausing its 180-day review clock after Sinclair advised the FCC, in an *ex parte* meeting nearly six months after the Merger applications had been filed, that it was still evaluating divestitures and amendments to its application "but that the DOJ review may impact certain divestiture choices."[15] The FCC explained in response that it "has a strong interest in ensuring a full and complete record upon which to base its

decision" and that, "[b]ased on Sinclair's statement in its *Ex Parte Notice*, it is appropriate to stop the informal 180-day clock until after the referenced amendments and divestiture applications have been filed and staff has had an opportunity to fully review them." The pause of the 180-day clock was a public statement by the FCC that Sinclair had failed to provide sufficient information to allow approval of the Merger.

FN 15. A true and correct copy of the FCC's letter, dated January 11, 2018, is attached hereto as Exhibit J.

RESPONSE NO. 97: Sinclair denies the allegations contained in Paragraph 97 except admits that, on July 6, 2017, the FCC issued a Public Notice establishing a pleading cycle for the FCC Applications and that, on January 11, 2018, the FCC sent a letter to counsel for Sinclair and counsel for Tribune advising that the FCC was pausing the informal 180-day period. In further response to the allegations contained in the third and fourth sentences of Paragraph 97, which characterize and selectively quote a letter that the FCC sent to Sinclair and Tribune on January 11, 2018, Sinclair respectfully refers the Court to that letter for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 15 in Paragraph 97. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit J a copy of a January 11, 2018 letter from the FCC to Sinclair and Tribune.

98. Only after Sinclair had belatedly and haltingly begun to accept DOJ's demanded divestitures did it even begin to attempt to satisfy the FCC's Duopoly Rule and National Cap. Yet, once again, rather than making any concrete proposals that would enable the FCC to evaluate its compliance with the rules, Sinclair chose to implement a highly contingent trust structure that kicked the divestiture can down the road and caused still further delay. Under Sinclair's original divestiture trust proposal, at least 55 stations owned by either Sinclair or Tribune in nearly three dozen markets – many more than ultimately would have to be divested to comply with either the Duopoly Rule or the National Cap – would be assigned to a trust. The specific stations to be divested would be identified at a later date, possibly only immediately prior to closing the Merger, and would be disposed of by the trustee after the Merger had closed. Although Sinclair purportedly conceived of this divestiture trust proposal as a mechanism for expediting FCC review, its true intent was to preserve Sinclair's optionality in the sales process for potential divestiture of stations. By proposing this structure, Sinclair hoped to be able to market more than one station in each divestiture market and then, after receiving bids, choose which station to actually divest. Sinclair continued to pursue this unorthodox proposal in the face of consistent FCC disapproval and without regard for the delay it inevitably would cause, and did cause.

RESPONSE NO. 98: Sinclair denies the allegations contained in Paragraph 98 except admits that Sinclair and Tribune discussed with the FCC the possibility of using a divestiture trust and that a purpose of a divestiture trust in the regulatory context is to speed clearance.

99. After the FCC staff told Sinclair that they strongly disfavored Sinclair's approach and that it was unlikely to be approved,[16] on February 20, 2018 – now nearly seven months after the Merger applications were originally filed with the FCC – Sinclair purported to respond to the staff's concerns by filing formal applications seeking to place 23 (rather than 55) Tribune and Sinclair stations in a contingent divestiture trust. As before, prior to consummation of the Merger, the trust would dispose of stations selected for divestment and then transfer *back* to Sinclair the non-divested stations.

FN 16. Sinclair's proposal relied on a single recent decision by the FCC Media Bureau's Audio Division that approved the use of a contingent divestiture trust for the limited purpose of facilitating the close of a large transaction. This precedent, however, differed significantly from Sinclair's proposal. The staff of the FCC division reviewing the Merger (the Video Division) raised their concerns with Sinclair about its trust proposal, stating that they were inclined not to follow the Audio Division's precedent here.

RESPONSE NO. 99: Sinclair denies the allegations contained in Paragraph 99 and in Footnote 16 in Paragraph 99 except admits that, on February 20, 2018, Sinclair (with Tribune's approval) filed applications with the FCC to assign licenses of certain television stations to a divestiture trust and respectfully refers the Court to those documents for a complete and accurate statement of their contents.

100. Unsurprisingly, the FCC did not receive the proposal favorably. As a result, just two weeks later, on March 6, Sinclair had to withdraw its proposal. It filed another application the same day proposing to place five fewer stations in the trust, but without changing the basic approach. Over the next month and a half, Sinclair continued to delay to give itself time to determine which station sales in the relevant markets would be in its financial interest.

RESPONSE NO. 100: Sinclair denies the allegations contained in Paragraph 100 except admits that, on March 6, 2018, some of the applications that Sinclair filed with the FCC on February 20, 2018 were withdrawn, and that, on the same day, amended applications were filed with the FCC on behalf of Sinclair and Tribune to assign the licenses of certain television stations to a divestiture trust and respectfully refers the Court to those documents for a complete and accurate statement of their contents.

101. On April 24, Sinclair withdrew the second divestiture trust application. Then, on May 14, it submitted still a third – this time proposing to place two stations in St. Louis, KPLR-TV and KDNL-TV, into the trust with a decision to be made at a later time regarding which of the two stations ultimately would be divested.

RESPONSE NO. 101: Sinclair denies the allegations contained in Paragraph 101 except admits that, on April 24, 2018, Sinclair and Tribune jointly withdrew their March 6, 2018 applications to assign the licenses of certain television stations to divestiture trusts and that, on May 14, 2018, applications were filed with the FCC on behalf of Sinclair and Tribune to assign the licenses of KDNL-TV and KPLR-TV in St. Louis to a divestiture trust. In further response to the allegations contained in Paragraph 101, to the extent that those allegations characterize the April 24, 2018 and May 14, 2018 applications, Sinclair respectfully refers the Court to those documents for a complete and accurate statement of their contents.

102. Although the purpose of a divestiture trust in the regulatory context is to speed clearance by allowing necessary station sales to be finalized after a merger closes, Sinclair's stubborn insistence on proposing its highly contingent trust proposal predictably had the opposite effect, slowing the FCC review process and requiring multiple rounds of repetitive applications, antagonizing the FCC staff, and subjecting the Merger to the higher risk accompanying protracted scrutiny at the Commission.

RESPONSE NO. 102: Sinclair denies the allegations contained in Paragraph 102 except admits that a purpose of a divestiture trust in the regulatory context is to speed clearance.

103. Separate and apart from the station sales involved in the divestiture trust, Sinclair had to propose to the FCC specific station sales in order to satisfy the National Cap. Because the National Cap limits the total number of television stations one company can own by applying a simple numeric restriction on the percentage of television households it can reach, Sinclair could have met the Cap through myriad different combinations of station divestitures. These divestiture combinations could easily have been commercially reasonable, provoked little public opposition, and been quickly approved by the FCC. But Sinclair instead once again pushed the limits of what regulators might accept, in violation of its obligation to use reasonable best efforts to obtain regulatory approval so as to enable the Merger to occur as soon as reasonably practicable.

RESPONSE NO. 103: Sinclair denies the allegations contained in Paragraph 103 and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder. In further response to the first and second sentences of Paragraph 103, which characterize the National Cap set forth in 47 C.F.R. § 73.3555(e), Sinclair respectfully refers the Court to 47 C.F.R. § 73.3555(e) for a complete and accurate statement of its contents.

104. Sinclair waited until February 27, 2018 to even begin the process of preparing such sales, and when it did so, it included sales both (i) to parties that had significant ties to Sinclair's Executive Chairman, David Smith, and his family and (ii) subject to arrangements in which Sinclair would effectively operate the divested stations.

RESPONSE NO. 104: Sinclair denies the allegations contained in Paragraph 104 and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

105. First, Sinclair submitted an application for the sale of a New York station (WPIX) at an apparently below-market price to Cunningham, which long had been owned by the estate of David Smith's late mother. Second, Sinclair submitted an application for the sale of a station in Chicago (WGN) to WGN-TV LLC, an entity established by an individual named Steven Fader, a car dealer with business ties to David Smith. Fader had no broadcast experience, which was precisely why Sinclair chose him to "purchase" WGN: under Sinclair's retransmission consent agreements with various cable and satellite providers, Sinclair would lose tens of millions of dollars annually in WGN revenue if Sinclair ever owned WGN. The most self-serving way of preserving that revenue was to sell WGN to a newcomer who could step into the shoes of Tribune's very

favorable distribution agreements while kicking back the preserved profits to Sinclair. Sinclair's proposed operating arrangements with Cunningham and Fader further suggested Sinclair employees would have responsibility for the "divested" stations' operations, including advertising sales and retransmission consent negotiations; Sinclair would reap most of the economic benefits of the stations it was "divesting," including retransmission revenues; and Sinclair would have an option to repurchase the stations in the future.

RESPONSE NO. 105: Sinclair denies the allegations contained in the first sentence of Paragraph 105 except admits that, on February 27, 2018, Sinclair filed an application with the FCC to divest WPIX to Cunningham and that the voting stock of Cunningham was owned by the estate of Carolyn C. Smith from the time of Mrs. Smith's death in 2012 until January 2018. Sinclair denies the allegations contained in the second sentence of Paragraph 105 except admits that Tribune approved an application, as the licensee and assignor, to sell WGN to WGN TV, LLC, an entity established by Mr. Fader, with an option for Sinclair's potential future purchase, and that Mr. Fader has an ownership interest in a non-media related business of which Mr. Smith is a majority member. Sinclair denies the allegations contained in the third, fourth, and fifth sentences of Paragraph 105.

106. Sinclair's proposal was so provocative that the FCC staff refused even to put Sinclair's proposed sales of WPIX to Cunningham and WGN to Fader out

for public comment. In the staff's view, Sinclair's entanglements with the buyers and the terms of the operating agreements meant that the station sales could readily be viewed as "sham" transactions. The FCC's staff warned Sinclair to avoid related-party arrangements and instead propose clean station sales. At the same time, Tribune again reminded Sinclair of its obligations under the Merger Agreement and cautioned that Sinclair's aggressive divestiture proposals were inconsistent with those requirements.

RESPONSE NO. 106: Sinclair denies the allegations contained in Paragraph 106 except admits that Tribune and Sinclair engaged in discussions with the FCC and with each other regarding the potential divestitures of certain television stations in connection with the FCC's review of the Transaction.

107. Yet Sinclair ignored these clear warnings – as it had time and again when admonished by DOJ, the FCC, and Tribune. On April 23, 2018, Sinclair withdrew the application to sell WPIX to Cunningham. The next day, Sinclair filed yet another amendment to the merger application, followed, between April 24 and May 14, 2018, by multiple divestiture applications intended to satisfy the Duopoly Rule and the National Cap. Sinclair continued to prosecute the sale of WGN to Fader; meanwhile, in place of the now-abandoned WPIX transaction, Sinclair proposed the sale of two Texas stations (KDAF in Dallas and KIAH in Houston) to Cunningham.

RESPONSE NO. 107: Sinclair denies the allegations contained in the first sentence of Paragraph 107. Sinclair denies the allegations contained in the second sentence of Paragraph 107 except admits that, on April 24, 2018, Tribune and Sinclair jointly withdrew the application to sell WPIX to Cunningham. Sinclair denies the allegations contained in the third sentence of Paragraph 107 except admits that, on April 24, 2018, amendments to the FCC Applications were filed with the FCC on behalf of Sinclair and Tribune, and that, from April 24 through May 14, 2018, applications were filed with the FCC on behalf of Sinclair and Tribune to divest certain television stations to third parties. Sinclair denies the allegations contained in the fourth sentence of Paragraph 107 except admits that Sinclair proposed the divestiture of KDAF and KIAH to Cunningham.

108. In attempting to explain these divestitures and persuade the FCC to process them, Sinclair told FCC staff that, given the addition of other newly proposed divestitures, a sale of WGN was no longer needed to meet the National Cap. (Of course, as explained above, Sinclair needed to "divest" WGN to Fader in order to preserve the station's highly favorable retransmission consent revenues – which Sinclair would capture under the terms of the arrangement with Fader.) Sinclair told the FCC that the terms of the arrangements with Cunningham with respect to KDAF and KIAH would not afford Sinclair the direct operational control that Sinclair previously had proposed with respect to the sale of WPIX in

New York because it would forgo entering into operating agreements with Cunningham in those markets (although it did retain options to repurchase both stations in the future). As soon became clear, however, Sinclair's close association with Cunningham raised the prospect that it would nevertheless be able to control KDAF and KIAH.

RESPONSE NO. 108: Sinclair denies the allegations contained in Paragraph 108 except admits that it engaged in discussions with the FCC regarding the potential divestitures of certain television stations in connection with the FCC's review of the Transaction and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

109. On May 21, 2018, the FCC solicited public comment on the amended merger application and all of the proposed divestitures. The related-party "sales" to Fader and Cunningham met broad and intense public opposition during the period for public comment, which lasted until July 12.

RESPONSE NO. 109: Sinclair denies the allegations contained in Paragraph 109 except admits that, on May 21, 2018, the FCC issued a Public Notice establishing a pleading cycle for the amended FCC Applications, which public comment period concluded on July 12, 2018, and that, during the public comment period, certain third parties filed objections, and Sinclair respectfully refers the Court to those comments for a complete and accurate statement of their contents.

110. Certain of the public comments on Sinclair's proposals brought to the FCC's attention that Sinclair had failed to disclose in its applications to the Commission certain material facts, including the full extent of Smith's business relationship with Fader, Sinclair's guarantee of Cunningham's debt, the sale in early 2018 of Cunningham's voting shares to a close Sinclair associate, and the suspiciously cheap option to buy those shares given to members of Smith's family.

RESPONSE NO. 110: Sinclair denies the allegations contained in Paragraph 110 except admits that, during the public comment period, certain third parties filed objections that, among other things, raised allegations based on publicly available information regarding relationships between Sinclair and Mr. Smith and certain of the counterparties to the proposed divestitures, and Sinclair respectfully refers the Court to those comments for a complete and accurate statement of their contents.

111. On July 16, Chairman Pai released a statement announcing the circulation to his fellow FCC commissioners of a draft order that would send review of the Merger to an administrative law judge. Chairman Pai stated that:

> Based on a thorough review of the record, I have serious concerns about the Sinclair/Tribune transaction. The evidence we've received suggests that certain station divestitures that have been proposed to the FCC would ***allow Sinclair to control***

> ***those stations in practice, even if not in name, in violation of the law***.

(Exhibit B) (emphasis added).

<u>RESPONSE NO. 111:</u> Sinclair admits that, on July 16, 2018, Chairman Pai issued the July 16 FCC Release and that the allegations contained in Paragraph 111 characterize and selectively quote the July 16 FCC Release, and Sinclair respectfully refers the Court to that document for a complete and accurate statement of its contents.

112. Later that day, there were a number of reports in the media – which counsel for Tribune and Sinclair at Sinclair's direction independently confirmed with FCC staff – that Chairman Pai had circulated a draft hearing designation order to the other Commissioners asserting that Sinclair had provided inaccurate and incomplete information to the FCC in the Fader and Cunningham divestiture applications and that a majority of the Commissioners had voted to refer the applications to an administrative law judge for review.

<u>RESPONSE NO. 112:</u> Sinclair denies the allegations contained in Paragraph 112 except admits that Tribune has characterized media reports, to which Sinclair respectfully refers the Court for a complete and accurate statement of their contents, that outside counsel to Sinclair and Tribune became aware, on July 16, 2018, that Chairman Pai had circulated a draft of what Sinclair understood would later become the HDO, and that it had been publicly reported, at that time, that at least three of the FCC Commissioners had already voted to refer the FCC Applications to an administrative law judge for review.

113. In response to these developments, Mr. Faber had an *ex parte* telephone conversation with the Chairman on July 17 and corresponded *ex parte* by email with the Chairman on July 18 regarding the FCC's draft hearing designation order. On information and belief, during the telephone conversation, Chairman Pai expressed his disapproval of Sinclair's conduct relating to the Merger and indicated that, if Sinclair did not withdraw the merger applications in their entirety, it would be subjected to a protracted administrative hearing to determine whether its representations to the FCC had been misleading or lacking in candor. The die was cast – Sinclair had run out of options for proposing an approvable transaction to the FCC, and any hope of obtaining the FCC's approval of the Merger before the August 8 End Date was dead.

RESPONSE NO. 113: Sinclair denies the allegations contained in Paragraph 113 except admits that Mr. Faber participated in a telephone call with Chairman Pai on July 17, 2018 regarding the draft HDO and Sinclair's willingness to take actions to address the FCC's new concerns and avoid designation to an administrative hearing and that Mr. Faber sent an email to Chairman Pai on July 18, 2018, and Sinclair respectfully refers the Court to that email for a complete and accurate statement of its contents.

114. Yet, on July 18, in response to (i) press reports suggesting that the draft order focused on Sinclair's proposed divestitures in Dallas (KDAF), Houston (KIAH), and Chicago (WGN) and (ii) discussions that outside counsel for Tribune and Sinclair had had with FCC staff, Sinclair caused its divestiture proposals for those three stations *only* to be withdrawn. At the same time, Sinclair informed the Commission it would keep WGN for itself and work to find an independent buyer or buyers for KDAF and KIAH. This was far too little and far too late to avoid an administrative hearing – much less secure approval of the Merger – as Sinclair well knew. Mr. Faber conceded as much in his July 18 email to the Chairman, acknowledging that "the withdrawal of these three applications would ***not*** prevent you [the FCC] moving forward with the HDO [Hearing Designation Order]" (emphasis added).[17]

FN 17. A true and correct copy of Mr. Faber's July 18 email to Chairman Pai, as filed on the FCC's docket by FCC Commissioner Jessica Rosenworcel, is attached hereto as Exhibit K.

RESPONSE NO. 114: Sinclair denies the allegations contained in the first, second, and third sentences of Paragraph 114 except admits that on July 18, 2018, Sinclair and Tribune submitted a letter to the FCC stating that they had withdrawn their applications to divest WGN, KIAH, and KDAF and filed an amendment to the FCC Applications stating that Sinclair would acquire WGN from Tribune, and that Sinclair intended to file applications to assign KIAH and

KDAF to a divestiture trust pending entering into agreements to sell such stations. Sinclair denies the allegations contained in the fourth sentence of Paragraph 114 except admits that the FCC ultimately issued the HDO. In further response to the allegations contained in the fourth sentence of Paragraph 114, which characterize and selectively quote an email that Mr. Faber sent to Chairman Pai on July 18, 2018, Sinclair respectfully refers the Court to that email for a complete and accurate statement of its contents. Sinclair apprehends that no response is required to the allegations contained in Footnote 17 in Paragraph 114. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit K a copy of a July 18, 2018 email from Mr. Faber to Chairman Pai.

115. Sinclair's defiant pursuit of related-party divestitures, both to preserve an economic windfall and ostensibly to satisfy the National Cap, over the unambiguous warnings of the FCC – combined with Sinclair's absurdly aggressive regulatory proposals, disregard of the FCC's signals, and the lengthy and avoidable delays that flowed from Sinclair's behavior – yielded the final impediment to the Merger's approval.

RESPONSE NO. 115: Sinclair denies the allegations contained in Paragraph 115.

116. On the evening of July 18, the FCC's commissioners unanimously voted to adopt the draft Hearing Designation Order, and the FCC released the

Order on July 19. The Order focused on Sinclair's Fader and Cunningham divestiture proposals, and it determined that:

> The record raises significant questions as to whether those proposed divestitures were in fact ***"sham" transactions*** ... Such facts raise questions about ***whether Sinclair was the real party in interest*** under Commission rules and precedents and ***attempted to skirt the Commission's broadcast ownership rules***. Although these three applications were withdrawn today, material questions remain because the real party-in-interest issue in this case includes a ***potential element of misrepresentation or lack of candor*** that may suggest granting other, related applications by the same party would not be in the public interest ...

(Exhibit C ¶ 2) (emphasis added).

RESPONSE NO. 116: Sinclair admits the allegations contained in the first sentence of Paragraph 116. Sinclair denies the allegations contained in the second sentence of Paragraph 116, which characterize and selectively quote the HDO, and respectfully refers the Court to the HDO for a complete and accurate statement of its contents.

117. The FCC detailed the circumstances of the proposed sales in Chicago, Dallas, and Houston to Fader and Cunningham that indicated that Sinclair would control those stations in fact, if not in name.

RESPONSE NO. 117: Sinclair denies the allegations contained in Paragraph 117, which characterize the HDO, and respectfully refers the Court to the HDO for a complete and accurate statement of its contents.

118. With respect to the sale of WGN in Chicago to Fader, the FCC noted that Fader had "no prior experience in broadcasting" and that he "currently serves as CEO of a company [Atlantic Automotive Group] in which Sinclair's executive chairman has a controlling interest" and "serves as a member of its board of directors." (Exhibit C ¶¶ 2, 11.) Under the proposed sale of WGN to Fader, Sinclair would sell advertising, provide programming and most of the personnel needed to operate the station, and capture nearly all of the station's revenue. Sinclair would also have owned most of the station's assets and had an option to acquire the station's remaining assets, including its FCC licenses.

RESPONSE NO. 118: Sinclair denies the allegations contained in Paragraph 118, which characterize and selectively quote the HDO, and respectfully refers the Court to the HDO for an accurate and complete statement of its contents.

119. The FCC elaborated that:

> The sale of WGN-TV to Fader involves ***many atypical deal terms***, as well as several agreements that ***delegate operation of many aspects of the station to Sinclair***. In particular, WGN TV, LLC, would have entered into a JSA, SSA [Shared Services Agreement], Option, and lease-back of non-license assets necessary for operation of the station. Sinclair would have sold advertising time, provided back office services, and programmed a significant portion of the station's weekly broadcast hours. Furthermore, pursuant to the proposed transaction, WGN TV, LLC, would have purchased only the station license and certain other minimal assets, primarily a transmitter. Sinclair would have purchased the station's other assets.

> In addition, Fader not only lacked any prior broadcasting experience, but also has extensive business relationships with David Smith, currently a director and controlling shareholder of Sinclair. This called into question Fader's independence from Sinclair. Specifically, ***we question the legitimacy of the proposed sale*** of ... such a highly rated and profitable station in the nation's third-largest market ***to an individual with no broadcast experience, with close business ties to Smith, and with plans to own only the license and minimal station assets*** ...
>
> The $60 million sales price for WGN-TV appears to be ***far below market value***. For instance, the 2002 sale of WPWR-TV, Chicago, IL, to Fox Television Stations, Inc., was executed at $425,000,000—over seven times the sales price for WGN-TV ...
>
> In light of the relationship between Sinclair and Fader, in addition to sale terms that are atypically favorable to the buyer, ***substantial and material questions of fact have been raised as to whether Sinclair was the real party-in-interest*** to the application to assign the license for WGN-TV to WGN TV LLC.

(Exhibit C ¶¶ 18–21) (emphasis added).

<u>RESPONSE NO. 119:</u> Sinclair admits that Paragraph 119 selectively quotes the HDO and respectfully refers the Court to the HDO for a complete and accurate statement of its contents.

120. With respect to Sinclair's proposed divestitures of stations in Texas to Cunningham, the FCC noted that it had previously examined a proposed station sale between Sinclair and Cunningham and found that Sinclair "had exercised de facto control over [Cunningham] in violation of [FCC rules]." (Exhibit C ¶ 22.) That particular sale was not designated for a hearing because "there was not a

substantial and material question of fact whether [Cunningham] would operate independently in the future." (*Id.*) But the FCC had "noted that it would give 'appropriate consideration' to any further evidence of control by Sinclair should it be provided in future proceedings." (*Id.*)

RESPONSE NO. 120: Sinclair denies the allegations contained in Paragraph 120, which characterize and selectively quote the HDO, and respectfully refers the Court to the HDO for a complete and accurate statement of its contents.

121. As explained by the FCC's Order, that time had come:

> The terms of the deal for the purchase of the Texas stations KDAF and KIAH present new questions regarding ***whether Sinclair was the undisclosed real party-in-interest*** to the KDAF and KIAH applications. In particular, we question the close relationship between Sinclair and Cunningham, an existing loan guarantee between Sinclair and Cunningham, and the proposed purchase price ...
>
> [U]ntil January 2018, the estate of Carolyn Smith, the mother of the controlling shareholders of Sinclair, owned the voting shares of Cunningham. Even when the voting shares were acquired in 2018 by ... Cunningham's former banker, the sales price for the shares – $400,000 – was far below market value, ... and the non-voting shares continue to be held by trusts for the benefit of Carolyn Smith's grandchildren. Each son (the Smith brothers) ... holds options to buy the voting shares in the future, that [are] alleged [to be at] below market prices. The ***close relationship between Sinclair and Cunningham*** could explain how Cunningham was able to execute an agreement to purchase stations KDAF and KIAH at what appear to be below-market prices ...
>
> The Cunningham subsidiaries would have purchased the assets for both stations KDAF and KIAH for $60 million, subject to

> slight adjustment, while at the same time entering into an option and temporary Transition Services Agreement. In addition to
>
> the existing relationship between Sinclair and Cunningham, there exists a $53.6 million intercompany guarantee listed in Sinclair's SEC Form 10Q. The guarantee suggests a ***layer of financial entanglement heretofore unexamined***. Moreover, the combined executed ***sales price was far below the expected market price*** for stations in markets this size, suggesting that the transaction was not arms-length. KDAF and KIAH are located in the fifth and seventh largest markets in the nation, respectively, yet the combined sales price was below the $65 million price that was agreed to by Meredith Corporation for station KPLR-TV, St. Louis, Missouri, which is located in the 21st largest market ...
>
> In light of the relationship between Sinclair and Cunningham, in addition to sales terms that are atypically favorable to the buyers, ***substantial and material questions of fact exist as to whether Sinclair was the real party-in-interest*** to the applications to assign the licenses of then-prospective assignee of KDAF and KIAH (Cunningham).

(Exhibit C ¶¶ 23–26) (emphasis added).

RESPONSE NO. 121: Sinclair denies the allegations contained in Paragraph 121, which characterize and selectively quote the HDO, and respectfully refers the Court to the HDO for a complete and accurate statement of its contents.

122. Based on the substantial entanglements between Sinclair, Smith, Fader, and Cunningham – which Sinclair had failed to fully disclose in either the merger application or the divestiture applications – the FCC's Order concluded that:

> [S]ubstantial and material questions of fact have been raised regarding whether Sinclair was the real party-in-interest to the

> WGN-TV, KDAF, and KIAH application and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission.... We note that ***Sinclair ... did not fully disclose facts such as the pre-existing business relationships between Fader, Smith, and Sinclair nor the full entanglements between Cunningham, Smith, and Sinclair***. As such there is a substantial and material question of fact as to ***whether Sinclair affirmatively misrepresented or omitted material facts*** with the intent to consummate this transaction without fully complying with our broadcast ownership rules.

(Exhibit C ¶¶ 27–28) (emphasis added).

<u>RESPONSE NO. 122:</u> Sinclair denies the allegations contained in Paragraph 122, which characterize and selectively quote the HDO, and respectfully refers the Court to the HDO for a complete and accurate statement of its contents.

123. The FCC then ordered a hearing to be held before an administrative law judge on four questions: (i) whether "Sinclair was the real party-in-interest to the WGN-TV, KDAF, and KIAH applications, and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission"; (ii) whether "consummation of the overall transaction would violate" the FCC's National Cap; (<u>iii</u>) whether grant of the Merger "would serve the public interest, convenience, and/or necessity"; and (<u>iv</u>) whether approval for the Merger should be granted or denied. (Exhibit C ¶ 29.)

<u>RESPONSE NO. 123:</u> Sinclair denies the allegations contained in Paragraph 123, which characterize and selectively quote the HDO, and respectfully refers the Court to the HDO for a complete and accurate statement of its contents.

124. Thereafter, in two separate telephone conversations – on July 23 and August 3, 2018 – Sinclair's FCC counsel, accompanied by Tribune's counsel, spoke to officials of the FCC's Enforcement Bureau to explore whether there was any basis on which to resolve the issues raised in the Commission's Order. Both times Sinclair was told in substance that in light of the fact that the matter had been referred to an administrative proceeding, no resolution was possible.

RESPONSE NO. 124: Sinclair denies the allegations contained in Paragraph 124 except admits that Sinclair's and Tribune's respective FCC counsel participated in telephone calls with officials of the FCC's Enforcement Bureau on July 23, 2018 and August 3, 2018 and that the FCC's Enforcement Bureau indicated that it was not in a position to discuss a potential settlement with Tribune and Sinclair.

D. Sinclair's Breaches Were Material and Denied Tribune the Benefit of Its Bargain in the Merger Agreement

125. The Merger Agreement's End Date is August 8, 2018. Under Section 9.1(b)(i), if the Effective Time (i.e., the consummation of the Merger) had not occurred by that date, either Party had the option to terminate the Merger Agreement; provided that this option was not available to a Party if the failure to close by the End Date was primarily due to that Party's breach.

RESPONSE NO. 125: Sinclair admits the allegations contained in the first sentence of Paragraph 125. The allegations contained in the second sentence of Paragraph 125 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in the second sentence of Paragraph 125, which characterize the Merger Agreement, and respectfully refers the Court to the Merger Agreement for a complete and accurate statement of its contents and Sinclair's and Tribune's respective rights and obligations thereunder.

126. The End Date was also the last point at which a party in breach of the Merger Agreement could cure such breach. Under Sections 9.1(c) and 9.1(d), each of Tribune and Sinclair had the right to terminate the Merger Agreement if the other had breached or failed to perform any of its representations, warranties, covenants, or agreements that were conditions to the Merger and were either incapable of being cured within 30 days or had not been cured by the earlier of 30 days or the End Date.

RESPONSE NO. 126: The allegations contained in Paragraph 126 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in Paragraph 126, which characterize the Merger Agreement, and respectfully refers the Court to the Merger Agreement for a complete and accurate statement of its contents and Sinclair's and Tribune's respective rights and obligations thereunder.

127. On August 9, 2018, Tribune terminated the Merger Agreement.[18] Although permissible on the basis of the End Date, Tribune was equally entitled to terminate the Merger Agreement on the basis of Sinclair's willful and material breach under Section 9.1(d). One of the conditions of the Merger is that Sinclair "shall have performed in all material respects its covenants and obligations under this Agreement required to be performed by them at or prior to the Closing," which includes Sinclair's obligations with respect to regulatory approval under Section 7.1(i).

FN 18. A true and correct copy of Tribune's notice of termination to Sinclair, effective August 9, 2018, is attached as Exhibit L.

RESPONSE NO. 127: Sinclair admits the allegations contained in the first sentence of Paragraph of 127. Sinclair denies the allegations contained in the second sentence of Paragraph of 127. The allegations contained in the third sentence of Paragraph 127 are legal conclusions to which no response is required. To the extent a response is required, Sinclair denies the allegations contained in the third sentence of Paragraph 127, which characterize the Merger Agreement, and respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder. Sinclair apprehends that no response is required to the allegations contained in Footnote 18 in Paragraph 127. To the extent a response is required, Sinclair admits that Tribune has attached to its Complaint as Exhibit L a copy of Tribune's notice of termination.

128. Sinclair's breaches of Section 7.1(i) with respect to both DOJ and the FCC were willful and material and, in all events, could not have been cured within 30 days or otherwise prior to the End Date. In particular and by way of example, there is nothing Sinclair can now do to avoid a protracted and contested administrative process at the FCC.

RESPONSE NO. 128: Sinclair denies the allegations contained in Paragraph 128.

129. Sinclair's breaches have denied Tribune the benefit of its bargain. Tribune negotiated with Sinclair not just for the purchase price Sinclair would provide upon consummation, but also for Sinclair's commitment to certain obligations in order to ensure prompt regulatory approval and a swift closing. By failing to abide by those commitments, and thus delaying substantially, and ultimately precluding entirely, the closing of the Merger, Sinclair materially breached its covenants under the Merger Agreement.

RESPONSE NO. 129: Sinclair denies the allegations contained in Paragraph 129.

E. Sinclair's Breaches Were Willful

130. Sinclair knew that its regulatory approach would reasonably be expected to result in and constitute material breaches of the Merger Agreement. Indeed, it is inconceivable that Sinclair lacked that knowledge.

RESPONSE NO. 130: Sinclair denies the allegations contained in Paragraph 130.

131. When Sinclair agreed to use its reasonable best efforts to promptly obtain regulatory approvals "so as to enable the Closing to occur as soon as reasonably practicable" (Exhibit A § 7.1(i)), it bargained away the ability to, *inter alia*: (i) engage in a ten-month battle with DOJ to avoid the overlap market divestitures it had explicitly agreed to make in the Merger Agreement; (ii) delay for eight months the filing of proposed divestitures at the FCC; (iii) pursue highly aggressive and predictably unacceptable divestiture structures at the FCC in order to achieve certain purely self-serving business goals, thereby delaying the regulatory process for several additional months; (iv) propose extremely risky and highly controversial divestitures to buyers that were specifically disfavored by the FCC staff; (v) compound these already controversial divestitures by omitting material facts from the accompanying FCC applications and failing to address these omissions during the comment process; and (vi) generally antagonize the regulators at both DOJ and the FCC while seeking their approval.

RESPONSE NO. 131: Sinclair denies the allegations contained in Paragraph 131. In further response to the allegations contained in Paragraph 131, to the extent that those allegations characterize and selectively quote the Merger Agreement, Sinclair respectfully refers the Court to the Merger Agreement and the Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

132. But this is precisely what Sinclair proceeded to do – deliberately, knowingly, and with complete disregard to repeated warnings from both Tribune and the regulators. As described above, DOJ and the FCC repeatedly described reasonable steps that could be taken to obtain regulatory clearance of the Merger. DOJ, for example, made clear as early as November 2017 that sales in the ten Overlap DMAs identified in the Merger Agreement would secure clearance; the FCC warned against proposing provocative, related-party divestitures, and Sinclair knew that it was taking a substantial risk by concealing from the FCC material information about its relationships with certain buyers.

RESPONSE NO. 132: Sinclair denies the allegations contained in Paragraph 132. In further response to the allegations contained in Paragraph 132, to the extent that those allegations characterize and selectively quote the Merger Agreement, Sinclair respectfully refers the Court to the Merger Agreement and the

Disclosure Letter for a complete and accurate statement of their contents and Sinclair's and Tribune's respective rights and obligations thereunder.

133. Sinclair undertook these actions despite warnings from Tribune that it was putting undue pressure on the regulatory process and putting the Merger at risk. Tribune made clear that Sinclair's decision to push the envelope as to what regulators might permit when those regulators had clearly and repeatedly indicated opposition, was irreconcilable with Sinclair's obligation to use reasonable best efforts to obtain prompt regulatory approval as soon as reasonably practicable.

RESPONSE NO. 133: Sinclair denies the allegations contained in Paragraph 133.

134. But Sinclair was impervious to appeals to its contractual obligations. It intended to pursue its own narrow self-interest regardless of its obligations until the FCC found its conduct so egregious as to merit administrative review. Tribune is now the victim of that outrageous obduracy.

RESPONSE NO. 134: Sinclair denies the allegations contained in Paragraph 134.

Count One
(Breach of Contract)

135. Plaintiff Tribune repeats and re-alleges each and every paragraph contained in this Complaint as if fully set forth herein.

RESPONSE NO. 135: Sinclair repeats and re-alleges each response contained above, as though set forth fully herein.

136. Tribune and Sinclair entered into a valid and binding contract, the Merger Agreement.

RESPONSE NO. 136: Sinclair admits the allegations contained in Paragraph 136.

137. Tribune fulfilled its obligations under the Merger Agreement.

RESPONSE NO. 137: Sinclair denies the allegations contained in Paragraph 137.

138. Sinclair materially breached its obligations under Sections 7.1(a) and 7.1(i) of the Merger Agreement, including by, among other things, failing to: (i) use reasonable best efforts to take action to avoid or eliminate each and every impediment that may be asserted by any Governmental Authority so as to enable the Merger to close as soon as reasonably practicable; (ii) promptly use its reasonable best efforts to avoid the entry of any Order that would delay, restrain, prevent, enjoin, or otherwise prohibit consummation of the Merger; and (iii) proffer, agree to, and effect the divestiture of stations as agreed to in the Sinclair Disclosure Letter, where such sales are necessary or advisable to avoid, prevent, eliminate, or remove the actual, anticipated, or threatened commencement of any

Proceeding or the issuance of any Order that would delay, restrain, prevent, enjoin, or otherwise prohibit consummation of the Merger.

RESPONSE NO. 138: Sinclair denies the allegations contained in Paragraph 138.

139. Sinclair's material breaches were willful breaches of the Merger Agreement, because they were deliberate acts and deliberate failures to act that were taken with the actual knowledge that they would or would reasonably be expected to result in or constitute a material breach.

RESPONSE NO. 139: Sinclair denies the allegations contained in Paragraph 139.

140. As a result of Sinclair's breaches, Tribune has sustained financial harm and has lost the expected benefits of the Merger Agreement.

RESPONSE NO. 140: Sinclair denies the allegations contained in Paragraph 140.

141. Tribune asks the Court to award it money damages, in an amount to be proven at trial, sufficient to compensate it for all forms of loss caused by Sinclair's material breaches of contract, including all reasonable costs and attorneys' fees.

RESPONSE NO. 141: The allegations contained in Paragraph 141 are legal conclusions to which no response is required. To the extent a response is required, Sinclair admits that, through the Complaint, Tribune purports to ask the Court to award it money damages, and Sinclair denies that Tribune is entitled to any such damages and denies that Sinclair breached the Merger Agreement.

AFFIRMATIVE DEFENSES

Sinclair asserts the following affirmative defenses, without assuming the burden of proof on such defenses that would otherwise rest with Tribune, and reserving the right to assert other defenses, claims (including, but not limited to, cross-claims and counterclaims) not asserted herein if and when they become appropriate and/or available. Sinclair incorporates herein all of the factual averments set forth in its Answer and Verified Counterclaim.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Sinclair upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Tribune's claim is barred by the Merger Agreement, in whole or in part, because Sinclair has complied in all material respects with its representations and warranties, covenants, and agreements under the Merger Agreement, including as set forth more fully in Sinclair's Verified Counterclaim.

THIRD AFFIRMATIVE DEFENSE

Tribune's claim is barred, in whole or in part, on the ground of complete performance because Sinclair performed all of its obligations under the Merger Agreement, including as set forth more fully in Sinclair's Verified Counterclaim.

FOURTH AFFIRMATIVE DEFENSE

Tribune's claim fails, in whole or in part, because of a lack of injury in fact and a lack of causation, including as set forth more fully in Sinclair's Verified Counterclaim.

FIFTH AFFIRMATIVE DEFENSE

Tribune's claim fails, in whole or in part, because Tribune has suffered no losses and is not entitled (under common law or the Merger Agreement) to recover losses suffered by third parties, including but not limited to its stockholders.

SIXTH AFFIRMATIVE DEFENSE

Tribune's claim is barred, in whole or in part, because Tribune itself is in breach of the Merger Agreement, including for the reasons set forth in Sinclair's Verified Counterclaim.

SEVENTH AFFIRMATIVE DEFENSE

Tribune's claim is barred, in whole or in part, on the ground of waiver and/or estoppel given, among other things, the terms of the Merger Agreement and Tribune's participation in, knowledge of, and consent to the decisions and actions taken in connection with the regulatory approval process, including as set forth more fully in Sinclair's Verified Counterclaim.

EIGHTH AFFIRMATIVE DEFENSE

Tribune's claim for damages is barred, in whole or in part, because such damages, if any, are speculative and uncertain.

NINTH AFFIRMATIVE DEFENSE

Tribune's claim is barred, in whole or in part, because Tribune has unclean hands given, among other things, Tribune's breaches of the Merger Agreement and Tribune's participation in, knowledge of, and consent to decisions and actions taken in connection with the regulatory approval process, including as set forth more fully in Sinclair's Verified Counterclaim.

TENTH AFFIRMATIVE DEFENSE

Tribune's claim is barred, in whole or in part, on the grounds of acquiescence, *in pari delicto*, and/or ratification given, among other things, the terms of the Merger Agreement, Tribune's breaches of the Merger Agreement, and Tribune's participation in, knowledge of, and consent to decisions and actions taken in connection with the regulatory approval process, including as set forth more fully in Sinclair's Verified Counterclaim.

ELEVENTH AFFIRMATIVE DEFENSE

Sinclair reserves the right to assert any additional defenses, cross-claims, and third-party claims not asserted herein of which it becomes aware through discovery or other investigation.

PRAYER FOR RELIEF

WHEREFORE, Sinclair respectfully requests that this Court:

a) enter an order, judgment and decree dismissing the Complaint with prejudice;

b) enter a judgment in favor of Sinclair in all respects;

c) award Sinclair all of its attorneys' and professionals' fees and expenses; and

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

VERIFIED COUNTERCLAIM[1]

Counterclaim-Plaintiff Sinclair Broadcast Group, Inc. ("Sinclair"), by and through its undersigned counsel, hereby files this Verified Counterclaim against Counterclaim-Defendant Tribune Media Company ("Tribune"), upon knowledge as to matters relating to itself and information and belief as to all other matters, and alleges as follows:

PARTIES

1. Sinclair is a Maryland corporation with its principal place of business located at 10706 Beaver Dam Road, Hunt Valley, Maryland. Sinclair owns, operates, and/or provides services to 191 television stations in 89 markets. It is a leading local news provider in the United States, operates award-winning news rooms, and is dedicated to impactful journalism with a local focus. In addition, Sinclair owns three multicast networks, three radio stations and a cable network. Sinclair's broadcast content is delivered via multiple-platforms, including over-the-air, multi-channel video program distributors, and digital platforms, and its stations are affiliated with all of the major television broadcast networks, as well as other networks.

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[1] Any defined terms used in Sinclair's Verified Counterclaim refer to terms specifically defined in Sinclair's Verified Counterclaim or, as appropriate, the Agreement and Plan of Merger by and between Sinclair and Tribune (together, the "Parties"), dated May 8, 2017 (the "Merger Agreement" or "MA"), and not any defined terms used in the allegations set forth in Tribune's Verified Complaint (the "Complaint").

2. Tribune is a Delaware corporation with its principal place of business located at 515 North State Street, Chicago, Illinois. Tribune is a media company comprised of 42 owned or operated local television stations, national entertainment cable network WGN America, and a variety of digital applications and websites. Tribune Media also owns national multicast networks Antenna TV and THIS TV, Tribune Studios, WGN-Radio, minority stakes in TV Food Network and CareerBuilder, and multiple real estate assets.

JURISDICTION AND CHOICE OF LAW

3. This Court has subject matter jurisdiction over this action pursuant to 8 *Del. C.* § 111, and 10 *Del. C.* § 6501 empowers this Court to declare the Parties' rights, status, and other legal remedies.

4. This Court has personal jurisdiction over Tribune, which is a Delaware corporation. In addition, the Merger Agreement provides that each of the Parties "consents to submit itself, and hereby submits itself, to the personal jurisdiction of the Court of Chancery of the State of Delaware . . . ." MA § 10.12(b).[2]

5. The Merger Agreement further provides that it is "governed by, and construed in accordance with, the Laws of the State of Delaware, without giving

[2] A true and correct copy of the Merger Agreement is attached hereto as Exhibit 1.

effect to conflicts of laws principles that would result in the application of the Law of any other state." MA § 10.11(a).

FACTUAL ALLEGATIONS

A. Sinclair Wins the Tribune Auction and Pursues a Transformational, Strategic Transaction

6. Between October 2016 and May 2017, Sinclair participated in a sale process conducted by Tribune. The details of that sale process and the related negotiations between Sinclair and Tribune are described in the final Prospectus/Proxy Statement (the "Proxy") filed by both Sinclair and Tribune with the U.S. Securities and Exchange Commission (the "SEC") on September 6, 2017.

7. Following the sale process and extensive negotiations, Sinclair and Tribune executed the Merger Agreement on May 8, 2017. The Merger Agreement provided that, subject to the conditions therein, Sinclair would acquire all of the issued and outstanding shares of Tribune's Class A common stock and Class B common stock by means of a merger of Samson Merger Sub Inc., a wholly owned subsidiary of Sinclair, with and into Tribune, with Tribune surviving the transaction as a wholly owned subsidiary of Sinclair.

8. The Merger Agreement further provided that, subject to certain conditions, Tribune stockholders would receive $35.00 in cash and 0.23 shares of Sinclair Class A common stock for each share of Tribune common stock (the "Transaction"). Because Tribune's stockholders were to acquire through the

Transaction shares of Sinclair stock representing approximately 16.8% of Sinclair's total equity, they had an economic interest in the future success of the combined company following the closing of the Transaction.

9. A merger of Sinclair and Tribune was and, in Sinclair's view, remains extremely attractive. Sinclair believed that the broader reach enabled by the Transaction would allow the combined company to, among other things, provide additional news, better programming and greater value to local television viewers; accelerate the roll-out of the next generation standard of television broadcasting (ATSC 3.0 and NextGenTV); diversify program offerings by improving the cost efficiency of producing original content; benefit from Tribune's established and emerging network portfolios and non-TV assets; create competition for advertising sales made by networks; and substantially increase revenue and free cash flow.

10. For these and other reasons, Sinclair believes that the Tribune Transaction would have been a "transformational acquisition" that would have "open[ed] up a myriad of opportunities" for the combined company's stockholders and been in the public's interest.[3]

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[3] *See* Press Release, Sinclair Broadcast Group, Inc., *Sinclair Broadcast Group to Acquire Tribune Media Company for Approximately $3.9 Billion* (May 8, 2018).

B. The Merger Agreement and the Parties' Obligations Relating to Regulatory Approval

11. As would be expected in any transaction of this complexity and scale, the Merger Agreement and Sinclair's disclosure letter thereto (the "Disclosure Letter" or "PDL") reflected extensive arm's-length negotiations between commercially sophisticated parties, each of which was advised by experienced external advisors.[4] Also as would be expected, the Merger Agreement and the Disclosure Letter reflected a carefully calibrated and heavily negotiated set of requirements and protections concerning the Parties' efforts to secure clearance of the Transaction from the Antitrust Division of the U.S. Department of Justice ("DOJ") and consent from the Federal Communications Commission (the "FCC").

12. The Parties understood that the FCC would have to be comfortable that the combined company would satisfy, among other things, the FCC's national and local ownership rules. The FCC's National Television Multiple Ownership Rule (the "National Cap") prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the United States. *See* 47 C.F.R. § 73.3555(e). The FCC's Local Television Multiple Ownership Rule (the "Duopoly Rule") limits the number of television stations an entity can own in a single designated market area ("DMA"). *See* 47

[4] A true and correct copy of Schedules 7.1(b) and 7.1(i) of the Disclosure Letter is attached hereto as Exhibit 2.

C.F.R. § 73.3555(b). At the time the Merger Agreement was executed, there was significant change underway with respect to the application and scope of both the National Cap[5] and the Duopoly Rule.[6]

(i) ***<u>The Closing Was Conditioned on Regulatory Approval and Neither Party Was a Guarantor of Such Approval</u>***

13. The Merger Agreement did ***not*** include a provision obligating either Party to guarantee regulatory approval.[7] Quite to the contrary, the Merger Agreement reflected the Parties' express understanding that regulatory approval of the Transaction was not a foregone conclusion, would be complicated, and was dependent on factors outside the Parties' control.

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[5] In April 2017, just weeks before the Merger Agreement was executed, the FCC reinstated the so-called "UHF discount," which allows broadcast television station owners to discount the audience reach of UHF stations by 50% when calculating their compliance with the National Cap. Litigation concerning the validity and application of the UHF discount continued throughout the pendency of the Merger Agreement.

[6] At the time the Parties executed the Merger Agreement, there were pending petitions with the FCC to amend the Duopoly Rule to permit ownership of two television stations (including two top-four rated stations) in a single DMA regardless of how many "voices" were in that DMA. In November 2017, while the Transaction was pending, the FCC ultimately voted to implement changes to the Duopoly Rule permitting ownership of up to two television stations in the same DMA regardless of the number of other "voices," and permitting, on a case-by-case basis, ownership of two top-four stations in a DMA.

[7] Indeed, in Tribune's initial draft of the Merger Agreement, Tribune sought a "hell or high water" commitment from Sinclair to be the guarantor of regulatory approval, which Sinclair firmly (and successfully) rejected.

14. The closing of the Transaction was expressly conditioned on the receipt of regulatory approvals from DOJ under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and from the FCC under the Communications Act of 1934, as amended. In particular, Section 8.1 of the Merger Agreement provides that:

> The obligations of [Sinclair], Merger Sub and [Tribune] to consummate the [Transaction] are subject to the satisfaction, at or prior to the Closing, of the following conditions (which may be waived in whole or in part, to the extent permitted by Law, by the mutual consent of [Sinclair] and [Tribune]): . . . . (i) Any waiting period (and extension thereof) under the HSR Act relating to the transactions contemplated by this Agreement shall have expired or been terminated and (ii) the FCC Consent shall have been granted by the FCC and shall be in effect as issued by the FCC or extended by the FCC.

MA § 8.1(b).

15. To that end, the very first risk factor in Tribune's most recent Annual Report filed on Form 10-K with the SEC on March 1, 2018 (the "Tribune 2017 10-K") extensively describes the risk of the Transaction not obtaining regulatory clearance and states that:

> There can be no assurance that the actions Sinclair is required to take under the [M]erger [A]greement to obtain the governmental approvals and consents necessary to complete the [Transaction] will be sufficient to obtain such approvals and consents or that the divestitures contemplated by the [M]erger [A]greement to obtain necessary governmental approvals and consents will be completed. As such, there can be no assurance these approvals and consents will be obtained. Failure to obtain the necessary governmental approvals and consents would

> prevent the parties from consummating the proposed [Transaction].

Tribune 2017 10-K at 21-23. Tribune made similar, if not identical, disclosures in other SEC filings, including the Proxy.

(ii) The Parties' Obligations to Use Their Reasonable Best Efforts

16. The Merger Agreement and the Disclosure Letter expressly set forth the various efforts and specific actions that the Parties were required—and, just as importantly, were ***not*** required—to undertake in order to obtain regulatory approvals.

17. Section 7.1(a) of the Merger Agreement generally requires both Parties to use their "reasonable best efforts" to bring about the conditions of closing:

> [E]ach of [Tribune] and [Sinclair] shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate and make effective the [Transaction] and the other transactions contemplated by this Agreement as promptly as reasonably practicable after the date of this Agreement . . . .

MA § 7.1(a). That section further requires both Parties to use their "reasonable best efforts" with respect to the process of:

> (i) preparing and filing, in consultation with the other Parties, as promptly as reasonably practicable with any Governmental Authority or other Third Party all documentation to effect all necessary, proper or advisable filings, notices, petitions, statements, registrations, submissions of information,

> applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority . . . that are necessary, proper or advisable to consummate and make effective the [Transaction] and the other transactions contemplated by this Agreement (including the Station Disposition) (whether or not such approvals, consents, registrations, permits, authorizations and other confirmations are conditions to the consummation of the [Transaction] pursuant to Article VIII).

MA § 7.1(a).

18. Section 7.1(i) of the Merger Agreement, in turn, further provides that, with respect to the regulatory approval process, Sinclair shall use its "reasonable best efforts":

> to take action to avoid or eliminate each and every impediment that may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement so as to enable the Closing to occur as soon as reasonably practicable, including (i) the prompt use of its reasonable best efforts to avoid the entry of, or to effect the dissolution of, any permanent, preliminary or temporary Order that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement, including (A) the defense through litigation on the merits of any claim asserted in any court, agency or other proceeding by any Person, including any Governmental Authority, seeking to delay, restrain, prevent, enjoin or otherwise prohibit consummation of such transactions, (B) the proffer and agreement by [Sinclair] of its willingness to sell, lease, license or otherwise dispose of, or hold separate pending such disposition, and promptly to effect the sale, lease, license, disposal and holding separate of, such assets, rights, product lines, categories of assets or businesses or other operations or interests therein of [Sinclair] or any of its Subsidiaries (including, after the Closing, [Tribune] and its Subsidiaries)

(and the entry into agreements with, and submission to orders of, the relevant Governmental Authority giving effect thereto, including the entry into hold separate arrangements, terminating, assigning or modifying Contracts (or portions thereof) or other business relationships, accepting restrictions on business operations and entering into commitments and obligations) (hereinafter referred to as the "Station Divestitures") and (C) the proffer and agreement by [Sinclair] of its willingness to take such other actions, and promptly to effect such other actions (and the entry into agreements with, and submission to orders of, the relevant Governmental Authority giving effect thereto, including the entry into hold separate arrangements, terminating, assigning or modifying Contracts (or portions thereof) or other business relationships, accepting restrictions on business operations and entering into commitments and obligations) (each an "Approval Action"), including, in the case of clause (B) and (C), the Approval Actions listed on Section 7.1(i) of the Parent Disclosure Letter, in each case if such action is necessary or advisable to avoid, prevent, eliminate or remove the actual, anticipated or threatened (x) commencement of any Proceeding in any forum or (y) issuance of any Order that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement by any Governmental Authority and (ii) the prompt use of its reasonable best efforts to take, in the event that any permanent or preliminary Order is entered or issued, or becomes reasonably foreseeable to be entered or issued, in any proceeding or inquiry of any kind that would make consummation of the transactions contemplated by this Agreement (including the Station Divestitures) in accordance with its terms unlawful or that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement (including the Station Divestitures), any and all steps (including the appeal thereof and the posting of a bond) necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate or remove such actual, anticipated or threatened Order so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement.

MA § 7.1(i).

(iii) Heavily Negotiated Protections for Sinclair and Limitations on Concessions That Could Be Required by the Regulators

19. Sinclair's obligation to use its "reasonable best efforts" ***was not limitless***, and Sinclair did not agree to be a guarantor of the regulatory approval process. As Tribune acknowledged in its public filings (but tellingly omitted from the Complaint), Sinclair and Tribune agreed to very specific parameters for what Sinclair ***would not*** be required to do in exercising its reasonable best efforts to obtain regulatory approval.

20. *First*, Section 7.1(j) of the Merger Agreement and Schedule 7.1(i) of the Disclosure Letter together limit the stations that Sinclair could have been required to divest to obtain clearance from DOJ under the HSR Act or to comply with the Duopoly Rule to the Sinclair and Tribune stations located in ten DMAs specifically identified in the Disclosure Letter (the "Overlap DMAs").[8] Section 7.1(j) of the Merger Agreement provides that:

> [N]othing set forth in [] Section 7.1(i) or otherwise in the [Merger Agreement] shall . . . require or be construed to require [Sinclair] or any of its Subsidiaries to agree to take or consent to the taking of any Approval Actions other than (x) the

[8] The Overlap DMAs were: Seattle-Tacoma, WA ("Seattle"); St. Louis, MO; Salt Lake City, UT; Grand Rapids-Kalamazoo-Battle Creek, MI ("Grand Rapids"); Oklahoma City, OK; Wilkes Barre-Scranton, PA ("Wilkes Barre"); Richmond-Petersburg, VA ("Richmond"); Des Moines-Ames, Iowa ("Des Moines"); Harrisburg-Lancaster-Lebanon-York, PA ("Harrisburg"); and Greensboro-High Point-Winston Salem, NC ("Greensboro"). PDL 7.1(i)(2).

> Approval Actions listed on Section 7.1(i) of the Parent Disclosure Letter and (y) such other Approval Actions (not involving the divestitures of [Sinclair] Stations or [Tribune] Stations or the modification or termination of Sharing Agreements or related option agreements) that would not reasonably be expected to result in an Approval Material Adverse Effect.

MA § 7.1(j)(iii).[9] Sinclair's referenced "Approval Actions" were thus limited, regardless of any demands that might be made by regulators. This reflected an allocation of risk between Sinclair and Tribune with respect to regulatory approval, particularly as it related to certain specified stations and markets.[10]

21. Tribune publicly acknowledged as much, disclosing in its 2017 10-K (and consistently in other SEC filings) that:

> the [M]erger [A]greement does not . . . require Sinclair or any of its subsidiaries to agree to take or consent to the taking of any approval action other than divestitures described in the prior paragraph and other approval actions (not involving the divestitures of stations or the modification or termination of any local marketing, joint sales, shared services or similar contract or related option agreements) that would not reasonably be expected to result in a material adverse effect on the business, financial condition or results of operations of Sinclair and its subsidiaries, taken as a whole (including, after the closing, Tribune and its subsidiaries).

[9] An "Approval Material Adverse Effect" means "a material adverse effect on the financial condition or results of operations" of Sinclair (including, after the Transaction closed, Tribune). MA § 7.1(k).

[10] Indeed, Tribune assumed risk relating to other markets where regulatory clearance was uncertain and Sinclair was not required to make a divestiture. For example, it was unclear whether the FCC would allow the combined company to retain both top-four stations owned by Tribune in the Indianapolis DMA.

Tribune 2017 10-K at 21-22.

22. *Second*, both the Merger Agreement and the Disclosure Letter made clear that the divestitures capped by Section 7.1(j) were ***not*** required in all events. Instead, such divestitures were mandated only "***if***" they were "***required***" by the applicable regulator to obtain approval of and consummate the Transaction. Moreover, for any Overlap DMA in which a station divestiture was required, the Merger Agreement gave Sinclair the flexibility to decide whether it would be a Tribune station or a Sinclair station that would be divested. PDL 7.1(i)(2). With regard to any parallel divestitures required for the combined company's compliance with the National Cap, the Merger Agreement similarly granted Sinclair substantial discretion to "designate, ***at its option***, divestiture DMAs and make such . . . [station] divestitures as may be necessary to comply with the [National Cap], ***as required*** by the FCC in order to obtain approval of and consummate the transactions contemplated by the Merger Agreement." PDL 7.1(i)(3) (emphasis added). The Merger Agreement did not, as Tribune now suggests, require the Parties to negotiate against themselves, to accept any and all proposals made by the regulators, or to take any particular negotiating posture.

23. Tribune's own public disclosures confirm as much. In describing the Parties' "reasonable best efforts" obligations, the Proxy emphasized at multiple points that the Parties had only undertaken to divest "***one or more***" stations in

specified markets, and that any such divestitures would only be made "***as necessary***" or "***as required***" to secure HSR clearance and comply with the Duopoly Rule. Proxy at 36, 40 (emphasis added). Tribune's filings similarly emphasized that any divestitures required to comply with the FCC's National Cap remained "at [Sinclair's] Option," and that "[t]he number of stations that the regulatory authorities may require be divested cannot be predicted." Proxy at 40.

24. *Third*, Schedule 7.1(i)(3) of the Disclosure Letter specifically provided that Sinclair was not required to undertake ***any*** divestitures to comply with the National Cap without a "customary option" to reacquire the divested station(s):

> The Parties further agree that, if the FCC precludes [Sinclair] or any of its Subsidiaries from holding ***a customary option*** to acquire any station to be divested to comply with the National Cap, such divestiture would be deemed to reasonably be expected to result in an Approval Material Adverse Effect, and ***neither [Sinclair] nor any of its Subsidiaries shall be required to divest or agree or consent to divest [Sinclair] Stations or [Tribune] Stations in order to comply with the National Cap***.

PDL 7.1(i)(3) (emphasis added).

25. *Fourth*, the Merger Agreement and the Disclosure Letter provided Sinclair with the right to "dispos[e] of the [Tribune] Station WGN, Chicago, Illinois, ***with such station becoming subject to a local marketing, joint sales, shared services or similar Contract with, and a customary option for the benefit*** of, [Sinclair], [Tribune] or one of their respective Subsidiaries, as reasonably

determined by [Sinclair]."[11] PDL 7.1(b) (emphasis added). Tribune further agreed that Sinclair had this right "***whether or not such dispositions [we]re necessary, proper or advisable*** to obtain the approvals, consents, registrations, permits, authorizations and other confirmations otherwise required to be obtained from any Governmental Authority to consummate and make effective the [Transaction]." MA § 7.1(b) (emphasis added). Notably, Tribune did ***not*** include this portion of the Disclosure Letter in the excerpt of that document that it filed with the Court as an exhibit to its Complaint.

26. To be clear, Tribune had specifically consented to (and fully understood the commercial justification for) the use of divestiture structures involving JSAs and SSAs, which allow a third party to deliver certain operational, advertising sales, technical, and other services to another station (together, "Sharing Agreements").[12] These are the very arrangements that Tribune now

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[11] As Tribune has conceded, its transfer of WGN-TV, Chicago ("WGN") was not required for compliance with any FCC regulation or DOJ directive. Instead, the Parties contemplated from the outset that the transfer of WGN would include, among other things, Sharing Agreements for other business reasons.

[12] The Merger Agreement specifically contemplated that Sinclair was not required to undertake any "modification or termination of Sharing Agreements or related option agreements" for any DMAs not already identified in the Disclosure Letter. MA § 7.1(j)(iii).

disingenuously protests in its Complaint are potential "kick[] back[s]," "sham[s]" or improper "entanglements."[13]

27. *Fifth*, recognizing that it was Sinclair and the surviving company's stockholders (including Tribune's former stockholders) that would bear the costs of any divestitures or other concessions, the Merger Agreement gave Sinclair the right to direct the Parties' regulatory approach. Section 7.1(e) of the Merger Agreement provides, among other things, that:

> [Sinclair] shall be entitled to direct, in consultation with [Tribune], the timing for making, and approve (such approval not to be unreasonably withheld) the content of any filings with or presentations or submissions to any Governmental Authority relating to this Agreement or the transactions contemplated hereby and to take the lead in the scheduling of, and strategic planning for, any meetings with, and the conducting of negotiations with, Governmental Authorities relating to this Agreement or the transactions contemplated hereby.

MA § 7.1(e). While the Merger Agreement conferred on Sinclair the right to direct the strategy for obtaining regulatory approval and conducting negotiations, it did not make Sinclair a guarantor of the approval process.

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[13] Sinclair further notes that Tribune used similar Sharing Agreements with Dreamcatcher Broadcasting (a newly formed company with no prior broadcast experience owned and operated by the former president of Tribune) in the Norfolk, Virginia and Wilkes Barre DMAs in connection with its acquisition of Local TV in 2013 in order to comply with the FCC's ownership rules.

C. Tribune and Sinclair Together Start Negotiating with DOJ

28. In May 2017, Sinclair and Tribune began the processes of seeking regulatory approval. Although DOJ and FCC reviews often can parallel one another, they are separate proceedings, focus on distinct legal and administrative issues, and entail different procedural rules and standards of review. From the outset, Sinclair consistently pursued DOJ and FCC approval on terms consistent with the Merger Agreement, actively engaging with DOJ and FCC personnel at all levels of seniority in an effort to bring about a favorable resolution.

29. Sinclair was fully transparent with Tribune regarding its proposed approach to the regulatory approval processes. Far from rejecting that approach, and up until the point that Tribune started to place its own anticipated litigation position ahead of its contractual obligations, Tribune actively participated in the Parties' advocacy as a full partner in the very process it now criticizes.

30. Sinclair and Tribune initially notified DOJ of the Transaction on the same day the Merger Agreement was announced, May 8, 2017. The Parties then each filed formal Notice and Report forms with DOJ seeking HSR Act clearance on May 30, 2017. Under the HSR Act, the filing of these forms triggered an initial 30-day waiting period, which DOJ could extend by issuing a formal Request for Additional Information (a "Second Request") to each Party, in which case the

waiting period would be extended until 30 days after both Parties had substantially complied with the Second Request.

31. On May 11, 2017, DOJ began its review by requesting telephonically that both Parties voluntarily provide DOJ with information regarding the Transaction. DOJ staff followed up several days later with a written letter to the Parties requesting the voluntary production of a substantial amount of information relating to the Parties and the Transaction. In these initial requests and throughout its review, DOJ's inquiries appeared to focus on two principal issues: (a) the impact on competition in the market for local advertising in DMAs where Sinclair and Tribune each owned television stations or provided services to television stations pursuant to Sharing Agreements (including the ten Overlap DMAs identified in the Merger Agreement and at least four additional DMAs for which no divestitures were contemplated by the Merger Agreement); and (b) the impact on Sinclair's bargaining power to negotiate increased retransmission fees from cable and satellite operators, both nationally and in the DMAs in which Sinclair and Tribune both owned broadcast stations.

32. Sinclair and Tribune both believed that divestures should not be necessary in all ten DMAs because of the growing competition that broadcast stations face from cable programming and digital media for both viewers and advertisers, and because of the expected relaxation of the FCC's Duopoly Rule.

33. Sinclair and Tribune worked together closely to respond fully to DOJ's broad voluntary information requests and had provided DOJ with most of the requested information by the end of the initial 30-day HSR Act waiting period on June 29, 2017. In letters accompanying its responses to these voluntary requests, Sinclair argued that any Second Request should be limited to the ten Overlap DMAs and should not include the four additional markets in which both Sinclair and Tribune owned stations (or provided services pursuant to Sharing Agreements) but only one such station was affiliated with a major network affiliate.[14] Tribune's outside regulatory counsel provided comments on those draft responses prior to filing, noting their view that "***this is a good letter***" and "***[t]he letter looks good to me***."

34. Despite these efforts to limit the scope of the Second Request to the ten Overlap DMAs, DOJ indicated to the Parties, just before the expiration of the initial waiting period, that it intended to issue a Second Request covering not only the ten Overlap DMAs, but also the four additional DMAs where no divestitures were contemplated by the Merger Agreement. Tribune and Sinclair agreed to withdraw and refile their HSR Act notifications in order to give themselves an

[14] In the following four markets, both Sinclair and Tribune own stations (or provide services pursuant to Sharing Agreements), but only one owns one of the four major network affiliates, commonly referred to as "Big-4" stations (*i.e.*, NBC, CBS, ABC, and Fox): (1) Washington, D.C.; (2) Portland, Oregon; (3) Milwaukee, Wisconsin; and (4) Norfolk, Virginia.

additional 30 days to persuade DOJ to include only the ten Overlap DMAs in its Second Request. This decision was made jointly, with Tribune fully agreeing that doing so was advisable in order to try to reduce the scope of the Second Request.

35. The Parties refiled their HSR Act notifications on July 3, 2017, and during the second 30-day waiting period in July 2017, they worked together to provide the remaining information DOJ had asked for in its initial requests. Additionally, in early July 2017, the Parties exchanged emails regarding and drafts of a letter to then Acting Assistant Attorney General for Antitrust, Andrew Finch ("DAAG Finch") regarding DOJ's review of the Transaction, which they submitted on July 14, 2017, after Tribune's outside regulatory counsel concluded that it was "***good to go***." The letter urged DOJ to take account of the growing competition broadcasters face from cable and digital media in reviewing the Transaction (as Judge Richard Leon later held that DOJ should have done when rejecting DOJ's challenge to the merger between AT&T and Time Warner) and sought a meeting with DAAG Finch to discuss this issue. Tribune's Executive Vice President and General Counsel, Edward Lazarus, in particular, provided substantive feedback on the joint submission. Mr. Lazarus offered comments to strengthen the Parties' joint position that, because of this growing competition negatively affecting broadcasters, divestitures should not be required for several of the Overlap DMAs.

36. Beginning in July 2017, Sinclair and Tribune also worked together on a series of letters to DOJ explaining why, in their view, no divestitures should be required in five of the ten Overlap DMAs, both because of their stations' relatively low Nielsen ratings and small shares of local advertising revenue and because of growing competition from cable and digital media. Tribune's regulatory counsel actively consulted with Sinclair's outside DOJ counsel regarding these letters, approved this second approach to DOJ on limiting its review, and provided substantive comments in order to advance the Parties' position that owning both Sinclair and Tribune stations in the Overlap DMAs at issue would not negatively impact competition in the market for spot advertising. Tribune's outside regulatory counsel provided positive feedback on the letters, noting, with respect to a draft letter regarding the Grand Rapids DMA, that "***[t]he letter looks great***", and with respect to a draft letter regarding the Harrisburg DMA, that "***[t]he letter looks good***."

37. On August 2, 2017, DOJ issued its Second Request to Sinclair and Tribune. DOJ limited the Second Request to the ten Overlap DMAs with respect to local advertising (agreeing, as Sinclair and Tribune had urged in their responses to DOJ's voluntary information request, not to include the four additional DMAs in which the Parties both owned stations or provided services pursuant to Sharing Agreements but only one such station was an affiliate of one of the Big-4

networks). However, the Second Request required production of documents and information regarding the negotiation of retransmission rights with cable and satellite operators with respect to all DMAs nationwide in which either Sinclair or Tribune owned stations, even if there was no overlap between the signals of those stations and therefore no direct competition between them for either viewers or advertisers. DOJ's decision to focus on the market for retransmission rights nationwide, and not just in the ten Overlap DMAs, posed a threat to consummation of the Transaction because it suggested that DOJ might require divestitures in more than just the ten Overlap DMAs in which Sinclair had agreed under the Merger Agreement to make divestitures if required for DOJ approval.

38. During August and September 2017, DOJ counsel for both Sinclair and Tribune continued to work together to try to limit the scope of the Second Request and the number of stations they would be required to divest, based largely on letters Sinclair and its counsel drafted and submitted to DOJ with input from and approval by Tribune and its in-house and outside regulatory counsel. For example, Tribune approved an August 2017 letter to DOJ advocating that the Parties should not be required to divest stations in DMAs where the combined share of Sinclair and Tribune Big-4 stations in the local market for spot advertising would be less than 40%. After reviewing a final draft of the letter, Tribune's outside regulatory counsel commented, "***good letter***."

39. In addition, DOJ counsel for Sinclair and Tribune worked together to negotiate a timing agreement with DOJ that was executed by DOJ, Sinclair, and Tribune on September 15, 2017. This agreement provided for, among other things, a schedule for the rolling production of documents (in response to the Second Request) and a series of meetings with both DOJ staff and DOJ's front office team. Recognizing that litigation might be a possibility if the Parties and DOJ were not able to reach agreement as to the stations to be divested, the timing agreement also included a commitment by both the Parties and DOJ to agree on a reasonable schedule for any such litigation and an appendix specifying the requirements for expert disclosures in the case of litigation. As part of the negotiations with DOJ during early September, Tribune's regulatory counsel marked up several iterations of the timing agreement and exchanged emails with Sinclair's outside counsel regarding individual provisions. Accordingly, when Tribune entered into the agreement, it was fully aware of these terms and freely consented to them.

40. Between late September and early October 2017, Sinclair and Tribune held a series of in-person and telephonic meetings with DOJ, during which the Parties made presentations arguing that divestitures should not be required in more than two of the ten Overlap DMAs. As they had done throughout the DOJ approval process, Tribune's general counsel and outside regulatory counsel commented extensively on these materials, offering substantive comments to

advance the Parties' advocacy. Ahead of a September 20, 2017 meeting with DOJ staff, Tribune's outside regulatory counsel even commented that the draft presentation "***looks right on (great work)***."

41. Tribune now suggests that these submissions reflected the positions of Sinclair and Sinclair alone. That is simply untrue.

D. The Parties Seek a Resolution with DOJ

42. In November 2017, Sinclair and Tribune commenced substantive negotiations with DOJ toward a potential settlement that would allow the Transaction to receive DOJ approval. These negotiations were complicated and intense, and they extended into the Summer of 2018.

43. In transactions of this type, such negotiations are customary. These negotiations were the verge of success at the time Tribune unilaterally terminated the Merger Agreement. As of July 13, 2018, Sinclair, Tribune, and DOJ had reached an agreement-in-principle (for which the documentation was substantially complete) on a proposed settlement, which they expected to execute and file with the court on or around July 16, 2018. After the FCC issued the hearing designation order ("HDO") on July 16, 2018, DOJ and the Parties continued to work through a few open items, which they did not expect to be an impediment to final DOJ clearance. Tribune's suggestion that Sinclair refused to settle with DOJ thus is flat-out false.

44. Sinclair and Tribune had engaged extensively with each other and with senior DOJ personnel in an effort to reach that agreement. The Parties met in person or spoke by phone with DOJ staff or front office officials on many occasions, actively consulted with each other regarding negotiation strategy (recognizing that, at times, there were some disagreements between the Parties regarding their strategy), and prepared joint written submissions for DOJ in a sustained effort to push the Transaction towards closing. These sustained negotiations were not easy and did not always meet with immediate DOJ acceptance. But they were professional and had a singular goal: to obtain approval of the Transaction.

45. The reality is that DOJ's final position did not begin to fully crystallize until March 2018. At various points prior to that, DOJ signaled that it might be willing to clear the Transaction with divestitures in ***fewer*** than all ten Overlap DMAs. At other times—including well into January 2018—DOJ continued to signal that it might require divestitures in ***more*** than the ten Overlap DMAs identified in the Merger Agreement and the Disclosure Letter. In this shifting landscape, Sinclair was well within its contractual rights to push for the most favorable outcome for the combined company and its stockholders. Moreover, Sinclair demonstrated its willingness to concede on all divestitures

when it finally became clear that DOJ would ***require*** those divestitures to secure a resolution.

46. At their first settlement meeting with DOJ staff on November 7, 2017, the Parties offered to divest their interests in stations in three Overlap DMAs (Seattle, Salt Lake City, and Wilkes Barre) and told the staff that Sinclair was in negotiations to sell stations in five other, non-Overlap DMAs to an independent third party, which they argued should satisfy any potential concerns about an increase in Sinclair's bargaining leverage in negotiating retransmission agreements with cable and satellite providers. DOJ staff responded by telling the Parties that its position was that divestitures should be required in all ten Overlap DMAs identified in the Merger Agreement, as well as an unspecified number of additional, non-Overlap DMAs. This initial settlement demand was well beyond Sinclair's obligations under the Merger Agreement. Such a divergence in starting positions is common in any negotiation.

47. Following these initial settlement meetings with DOJ staff, the Parties' in-house and outside regulatory counsel spent the weekend of November 11-12, 2017 in close contact, exchanging ideas on how to find a way to move the process forward with DOJ. Over the course of the weekend, the Parties arrived at a "two prong" approach—specifically approved by Mr. Lazarus—pursuant to which the Parties would continue substantive discussions with DOJ staff, while also

engaging DOJ's front office team in separate, but parallel, settlement talks. The Parties ironed out the content of a letter to then-recently appointed Assistant Attorney General for the Antitrust Division Makan Delrahim ("AAG Delrahim") and DAAG Finch, which was intended to lay out the Parties' opening position offering divestitures in three Overlap DMAs and to start a dialogue between DOJ's front office team and the Parties that could accelerate DOJ clearance. Tribune's outside regulatory counsel confirmed with respect to the letter that "***we like the current approach***."

48. In Sinclair's view, DOJ gave mixed signals regarding its view of the Parties' opening proposal. In a letter dated November 17, 2017, DOJ staff reiterated its positions that divestitures should be required in all ten Overlap DMAs and that additional divestitures in non-Overlap DMAs might be necessary because of the potential effect on retransmission fees nationwide.

49. Later that same day, AAG Delrahim and DAAG Finch, in separate calls to Sinclair's and Tribune's outside regulatory counsel, told counsel to the Parties that DOJ's "opening position" was to require divestitures in all ten Overlap DMAs as the staff had proposed. DAAG Finch cautioned, however, that DOJ might also seek divestitures that would include non-Overlap DMAs (which divestitures were ***not*** contemplated by the Merger Agreement) because of the nationwide retransmission issue. DAAG Finch then offered to "pause" their

investigation in order to allow time to negotiate a settlement, but only if the Parties negotiated against themselves and put an offer on the table that included divestitures in all but two or three of the ten Overlap DMAs.

50. In response to these calls with AAG Delrahim and DAAG Finch, Sinclair submitted a formal settlement proposal to DOJ on December 11, 2017. In this proposal, Sinclair expanded its initial offer to include divestitures in six Overlap DMAs (Seattle, Salt Lake City, Wilkes Barre, Des Moines, Oklahoma City, and Richmond), while retaining Sinclair and Tribune stations in the remaining four Overlap DMAs (Harrisburg, Grand Rapids, Greensboro, and St. Louis). DOJ rejected this proposal, but renewed its offer to pause the investigation if the Parties would offer "full divestitures" of stations in seven Overlap DMAs with certain conditions.

51. In a subsequent conference call with the Parties on December 15, 2017, DAAG Finch reiterated that it was still DOJ's position that, in order to end the investigation immediately, the Parties would have to agree to divestitures in all ten Overlap DMAs. This call, however, left open the possibility that DOJ might agree after further investigation to divestitures in fewer than all ten Overlap DMAs. In addition, it was unclear from this call whether DOJ's offer to stop its investigation and clear the Transaction if the Parties agreed to divest stations in all ten Overlap DMAs was still conditioned on additional divestitures in other non-

Overlap DMAs (which divestitures were ***not*** contemplated by the Merger Agreement).

52. Following this December 15, 2017 call with DOJ, Tribune began demanding that Sinclair relinquish its bargained-for contractual rights under the Merger Agreement and immediately capitulate to DOJ, even though it was unclear whether DOJ ultimately would require the divestiture of all ten Overlap DMAs and/or the divestiture of stations in additional, non-Overlap DMAs. In addition, Tribune began working against Sinclair. Rather than cooperating with Sinclair in what had been, up until that point, a joint effort to consummate the Transaction, Tribune appeared to focus its efforts in mid-December 2017 on manufacturing a record for litigation.

53. For example, on December 18, 2017, Mr. Lazarus wrote to Barry Faber, Sinclair's Executive Vice President and General Counsel, criticizing Sinclair's decision not to accept DOJ's latest proposal and claiming that Sinclair was contractually bound to accept any proposal that called for divestitures in the ten Overlap DMAs.[15]

54. As Mr. Faber explained in a response later that same day, however, Mr. Lazarus's letter mischaracterized both the actual state of play with DOJ and the plain language of the Merger Agreement:

[15] A copy of Mr. Lazarus's December 18, 2017 letter to Mr. Faber is attached to Tribune's Complaint as Exhibit E.

As you are aware, [DOJ]'s most recent written proposal to us, dated December 13, 2017, contemplated our being required to sell stations not only in the ten big-4 overlap markets listed on Schedule 7.1(i) to the Merger Agreement, but also (1) in a number of other markets where we are considering selling stations to a third party and (2) other stations necessary to reduce the number of subscribers we will reach served by Mediacom and Cox. [DOJ]'s letter also raised concerns relating to WGN in Chicago.

We are aware of oral comments representatives of [DOJ] made during a telephone call this past Friday which you apparently mistakenly understood to mean that they would clear the transaction if we agreed to divestitures limited to stations in the ten big-4 overlap markets. We did not understand those statements in the same way and accordingly asked [Sinclair's outside antitrust counsel at Hughes, Hubbard & Reed LLP] Bill Kolasky to reach out to [DAAG] Finch to seek clarification of those comments. In a discussion earlier today, [DAAG] Finch informed Bill that [DOJ]'s expressed willingness to approve the transaction if we agreed to divest stations in the ten big-4 overlap markets assumed that we would also sell additional big-4 stations in four large non-overlap markets.

The facts are that [DOJ] is currently seeking divestitures beyond the stations listed on Schedule 7.1(i). As you know, Section 7.1(j) (iii) (y) of the Merger Agreement is clear that we are not required to agree to such additional divestitures. Nonetheless, as you know, because we continue to be committed to the completion of the transaction, we have indicated a willingness to consider divesting stations beyond those required under the Merger Agreement. Our willingness to do so will depend on reaching a satisfactory resolution with [DOJ] on a reasonable complete divestiture package.

> We look forward to continuing to work with you in our efforts to obtain approval of this transaction before the August 8, 2018 deadline.[16]

55. In an attempt to further buttress Tribune's litigation position, Mr. Lazarus sent two additional letters to Mr. Faber repeating his earlier critique of Sinclair's (and, given its prior cooperation, Tribune's own) approach to the negotiations with DOJ, and again demanded that Sinclair accept DOJ's settlement proposal as-is (even though DOJ had not indicated that this was its final offer or that all divestitures proposed by DOJ were required).

56. As Tribune and Sinclair would soon realize, however, far from indicating that a DOJ resolution would be firmly in hand simply with the divestiture of stations in the Overlap DMAs, subsequent interactions and negotiations with DOJ in late December 2017 and early January 2018 further confirmed the uncertainty of DOJ's position.

57. For example, after Tribune's letter complaining that the Parties should immediately capitulate, DOJ staff continued to pursue DOJ's concerns with respect to retransmission fees (thus leaving open the possibility that DOJ would require Sinclair to divest additional stations beyond those in the ten Overlap DMAs specified in the Merger Agreement). This broader DOJ concern was made manifest during DOJ's then-ongoing depositions of Tribune personnel, and it

[16] A copy of Mr. Faber's December 18, 2017 letter to Mr. Lazarus is attached to Tribune's Complaint as Exhibit F.

convinced Tribune's own outside regulatory counsel that the retransmission issue threatened receipt of regulatory approval. Immediately after the deposition of Mr. Lazarus, Tribune's outside regulatory counsel told Sinclair's outside regulatory counsel that a draft letter to be sent to DOJ (which Tribune now criticizes in its Complaint) was a ***good idea*** and suggested ***strengthening*** the letter's arguments regarding retransmission fees.

58. As the Parties pushed towards settlement in early 2018, however, they had continued reason for optimism. While both Sinclair and Tribune remained concerned that DOJ might condition approval on divestitures not contemplated by the Merger Agreement, they also had reason to believe that DOJ might accept fewer than ten divestitures in order to reach a settlement. For example, in mid-January 2018, DOJ signaled that it was still examining whether divestitures were necessary in three Overlap DMAs (Harrisburg, Grand Rapids, and Greensboro). Around the same time, DOJ also stated definitively for the first time that it would not condition a settlement on Sinclair's sale of additional non-Overlap DMAs that were not covered by the Merger Agreement.

59. After further negotiations, the Parties, by mid-February 2018, succeeded in moving DOJ towards a settlement that could allow the Transaction to proceed on more favorable terms for the Parties and the combined company. As memorialized in an email prepared by Tribune's outside regulatory counsel, DOJ's

senior front office personnel, during a February 13, 2018 teleconference, tentatively agreed to a settlement requiring divestitures of Big-4 stations in only eight Overlap DMAs, thereby allowing the retention of the Sinclair and Tribune Big-4 stations in the Greensboro and St. Louis DMAs, but requiring the Parties to divest a non-Big 4 station in St. Louis. On this call and in a follow-up, Sinclair asked DOJ to take one last look at the Harrisburg DMA, but the next day, at Tribune's request, Sinclair made it clear that if DOJ concluded that a divestiture in Harrisburg was necessary, Sinclair would agree to it.

60. While the negotiations leading to this tentative settlement agreement had been challenging and, while at times Sinclair felt as though the conditions of DOJ approval were a moving target, the negotiation efforts were both professional and productive.

61. Following the progress in mid-February 2018, DOJ's review process bogged down. DOJ began focusing on issues relating to the Parties' business practices that were wholly distinct from the merger-related issues that the Parties had been negotiating. Moreover, on March 20, 2018, DOJ reversed its prior-stated position and told the Parties in a call from AAG Delrahim to Sinclair's outside regulatory counsel that it would now require divestitures of Big-4 stations in both the Greensboro and St. Louis DMAs in order to clear the Transaction. After further negotiations, AAG Delrahim agreed, later that day, to allow Sinclair and

Tribune to retain their Big-4 stations in either the Greensboro or St. Louis DMAs, but not in both. Two days later, DOJ indicated that its agreement with respect to Greensboro or St. Louis would be conditioned on Sinclair and Tribune agreeing to additional provisions, unrelated to the Transaction, with respect to DOJ's separate business practices investigation. Although this new condition had not been mentioned on the call two days earlier (underscoring the extent to which DOJ approval appeared to Sinclair, at times, to be a moving target), Sinclair accepted this new condition that same day in the interest of bringing the HSR Act review to a conclusion. The Parties had an agreement-in-principle resolving DOJ's review of the Transaction (an agreement that entailed Sinclair making concessions beyond those required under the Merger Agreement).

62. On March 30, 2018, DOJ circulated a draft term sheet setting forth the "essential terms of the settlement in principle" that the Parties had reached a week earlier. Sinclair, Tribune, and DOJ subsequently exchanged drafts of the term sheet and, on April 18, 2018, executed a final term sheet memorializing the essential terms of a settlement. The executed term sheet included the divestiture of stations in all ten Overlap DMAs identified in the Merger Agreement, as well as certain other concessions that DOJ had insisted on, but allowed the combined company to retain (i) both Tribune's Fox station and Sinclair's ABC station in St. Louis, if Sinclair could find a qualified buyer for Tribune's CW station in that

DMA; and (ii) non-Big-4 stations in three of the Overlap DMAs in which divestitures of one of the Parties' Big-4 stations would be required. These were significant concessions on DOJ's part that would have provided important benefits to the combined company following the closing of the Transaction and that were achieved only through Sinclair's negotiating efforts.

63. Between April and July 2018, Sinclair, Tribune, and DOJ worked to finalize the terms of the agreed upon divestitures and the related documentation. The Parties worked to find buyers for the stations that they had agreed to divest and to secure DOJ approval of those buyers. Sinclair originally had begun the process of identifying potential buyers for stations that it might have to divest in the ten Overlap DMAs shortly after executing the Merger Agreement.

64. On April 3, 2018, Sinclair notified DOJ of the three potential buyers to which it proposed to sell the stations it would divest to secure DOJ clearance. Tribune did not voice any objections to any of Sinclair's three proposed buyers. In mid-May 2018, DOJ notified the Parties that, while it was prepared to approve two of the three buyers subject to certain conditions, it would not approve the proposed buyer for Tribune's CW station in St. Louis because the buyer was an in-market competitor. Sinclair, Tribune and the proposed buyer all questioned that decision, which they viewed as inconsistent with what they had understood to have been DOJ's preference for an in-market buyer who would be able to continue to offer

local news on that station. Nonetheless, when DOJ declined to reconsider, Sinclair immediately began the search for another buyer for Tribune's CW station in St. Louis. Sinclair notified DOJ of its proposed new buyer in late June 2018.

65. On July 12, 2018, the Parties reached an agreement-in-principle with DOJ on the language of a proposed final judgment and consent decree setting out the terms of the settlement. The next day, Tribune's outside deal counsel at Debevoise & Plimpton LLP ("Debevoise") sent an email to Sinclair's outside deal counsel reporting that the Parties planned to sign the settlement agreement the following Monday (July 16, 2018). Under the terms of the consent decree that DOJ and the Parties had agreed to file with the court, the Parties would be free to close the Transaction as soon as the consent decree was accepted by the court, a process that typically takes only a matter of days. Although DOJ had not yet completed its review of the new proposed buyer for the CW station in St. Louis, DOJ agreed to file the consent decree with the court before it had completed its review, provided that Sinclair and Tribune agreed to divest one of their Big-4 stations in St. Louis if DOJ later disapproved of the sale of the CW station to Sinclair's proposed buyer (which they were willing to do).

66. The HDO issued by the FCC on July 16, 2018 delayed the filing of the DOJ consent decree with the court. On July 25, 2018, DOJ advised the Parties that it had completed its review of the proposed sale of the Tribune CW station in

St. Louis and would not approve the proposed buyer and therefore would instead require the sale of one of the Parties' two Big-4 stations in St. Louis. Sinclair and Tribune immediately agreed to accept DOJ's decision and to revise the language of the proposed consent decree accordingly with the understanding that the decision as to which Big-4 station to divest would be at Sinclair's option and that the proposed decree could be filed with the court without having to wait for Sinclair to find a buyer for that station.

67. And thus all of the protests and outrage in Tribune's Complaint about the DOJ approval process—in addition to being inaccurate and misleading—are wholly irrelevant as to why the Transaction was not consummated.

E. The Parties Jointly Pursue FCC Approval

68. In parallel with their efforts to secure DOJ clearance, the Parties also sought FCC approval. Immediately after the Parties entered into the Merger Agreement, their respective outside regulatory counsel began work on their joint applications for FCC consent, which were filed on June 26, 2017 (as amended, the "FCC Applications"). Tribune was a full and active partner in this process.

69. As was expected, one uncertainty associated with the FCC's review concerned the divestitures that might be required under the National Cap and the Duopoly Rule (which themselves were subject to potential changes during the pendency of the Merger Agreement). In their FCC Applications, Sinclair and

Tribune were fully transparent that they had not yet identified the specific stations they intended to divest.

70. Tribune now criticizes this approach, but the Parties coordinated closely and agreed on the FCC Applications, which were filed on behalf of both Parties. The Parties' decision to defer identifying the planned divestures in their initial submissions was neither controversial nor surprising. It is commonplace for merger parties to defer specifying their specific divestiture plans at the outset of the FCC's review, particularly where the regulatory landscape remains in flux. At that time, the Parties had only just begun the process of negotiating any divestitures required for HSR Act clearance and potential changes to the FCC's ownership rules were still pending. The approach adopted by Sinclair and Tribune allowed the FCC process to get started without having to wait for the DOJ process to be completed.

71. The FCC Applications, and the Transaction generally, were met with immediate, significant, and vocal opposition by special interest groups and powerful market participants. This strong opposition persisted throughout the FCC's review.

72. Numerous petitioners filed objections to the Transaction. Many of the objectors argued that the Transaction was not in the public interest because, among other things, it would violate the National Cap and/or the Duopoly Rule. Multiple

objectors also heavily criticized the use of JSAs, SSAs, option agreements, and other commonly-approved sharing agreements that were specifically contemplated by the Merger Agreement. Objectors specifically criticized the FCC's historical allowance of such arrangements and argued that doing so had allowed Sinclair, Tribune, and other media companies to "circumvent" the FCC's rules.

73. FCC counsel for Sinclair and Tribune worked in tandem on a response to the objections. On August 22, 2017, the Parties filed their joint opposition to the objections, in which they explained the public benefits of the Transaction and how the Transaction would comply with applicable FCC rules.

74. Sinclair and Tribune likewise collaborated on a response to the FCC's initial information request in September 2017. Sinclair filed its response to the FCC's initial information request on October 5, 2017. The response, which reflected the input of Tribune's outside regulatory counsel, indicated that the Parties would need to divest stations in at least two markets to comply with the National Cap and that Sinclair was working with a financial advisor on those divestitures. Sinclair further explained that identification of the exact divestitures necessarily was subject to various factors, including negotiations with potential buyers, negotiations with DOJ, and forthcoming FCC rulemaking proceedings relating to the National Cap.

75. The FCC's review continued into 2018. In January 2018, the FCC paused the 180-day "shot clock" to enable it to have sufficient time to review proposed divestitures.[17] In response, Sinclair proposed to Tribune the idea of speeding up the review process by filing applications to place potential divestiture stations into a trust, pending final determinations by DOJ and the FCC regarding which markets would require divestitures and which specific stations would be affected. The purpose of the trust was to streamline review and avoid the delays that might result from waiting to file divestiture applications until DOJ provided clarity on its review and the FCC resolved whether to approve ownership of two top-four stations in certain markets.[18]

76. After Sinclair proposed the trust concept (which was successfully used in the Entercom/CBS transaction just a few months earlier) to Tribune in mid-January 2018, the Parties further discussed, over a period of weeks, the relative

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[17] A copy of the FCC's January 11, 2018 letter notifying the Parties that it was pausing the 180-day "shot clock" is attached to Tribune's Complaint as Exhibit J.

[18] Tribune now criticizes the trust structure as an "unorthodox," "Rube Goldberg type divestiture trust," but it concedes that a virtually identical trust structure had been approved by the FCC's Media Bureau just months earlier. In November 2017, the FCC's Media Bureau (not just the Audio Division of the Media Bureau, as Tribune suggests in its Complaint) approved Entercom's acquisition of CBS Radio, which involved use of a trust to divest up to 19 radio stations to comply with FCC ownership rules. The trust proposal for the Transaction merely borrowed a successful strategy that had very recently resulted in FCC approval.

merits of a trust, as well as the actual steps needed to implement such a structure as part of their FCC applications. These discussions were complex and multifaceted. FCC counsel for both Parties reviewed historical precedent and prepared draft applications to the FCC outlining the proposed structure and operation of the trust. Although initially skeptical of the trust mechanism, Tribune's regulatory counsel ultimately conceded that using a trust would be a viable strategy for facilitating the required divestitures.[19]

77. The Parties and their respective FCC counsel worked extensively on amendments to the FCC Applications that were expected to pave the way for approval. The process of filing the amended FCC Applications extended over almost three months, as FCC counsel for both Parties jointly prepared hundreds of pages of application documents and attended meetings and calls with the FCC staff to arrive at a complete divestiture package.

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[19] Sinclair was responsive to the FCC's comments regarding the trust arrangement. With the exception of St. Louis, which remained subject to DOJ review, at the time of filing of the May 2018 amendments to the FCC Applications, the Parties had been able to negotiate purchase agreements for all of the divestiture stations, and at the direction of the FCC were able to make temporary waiver requests rather than use trusts to address stations in markets subject to top-four review, and thus the Parties no longer needed to place stations in trust to avoid delay. The Parties agreed to file applications to place the Parties' St. Louis stations in trust pending DOJ approval of the divestiture of one of the stations. The FCC accepted this revised trust structure for filing and put it out for public comment along with the amendments to the FCC Applications and divestiture applications that Sinclair and Tribune submitted in April and May 2018.

78. To that end, the Parties collaborated in the preparation of the application for divestiture of Tribune's WGN station in Chicago to WGN TV, LLC, an entity owned by Steven Fader, on terms fully consistent with the Merger Agreement and the Disclosure Letter. As noted above, the Merger Agreement and the Disclosure Letter expressly provided Sinclair with the right to "dispos[e] of the [Tribune] Station WGN, Chicago, Illinois, ***with such station becoming subject to a local marketing, joint sales, shared services or similar Contract with, and a customary option*** for the benefit of, [Sinclair], [Tribune] or one of their respective Subsidiaries, as reasonably determined by [Sinclair]." PDL 7.1(b) (emphasis added). Moreover, Sinclair had the right to do so "***whether or not such dispositions [we]re necessary, proper or advisable*** to obtain the approvals, consents, registrations, permits, authorizations and other confirmations otherwise required to be obtained from any Governmental Authority to consummate and make effective the Merger." MA § 7.1(b) (emphasis added).

79. The Parties began exchanging drafts of the application to approve the divestiture in late February. Following discussions with the FCC staff regarding certain aspects of the JSA, SSA and option involved in the proposed divestiture of WGN (including confirmation that the proposed divestiture of WGN was not required to comply with the National Cap), the application and Sharing Agreements were revised to address the FCC staff's stated concerns. At no point

during these discussions did the FCC ask for any changes or more information regarding the proposed buyer of WGN or the consideration the Parties would receive in the transaction. On April 24, 2018, an amended WGN divestiture application, which was approved by Tribune as licensee and assignor, was filed.

80. Indeed, each time the FCC identified an issue with respect to the FCC Applications, Sinclair and Tribune promptly amended their applications to address it. For example, when the FCC indicated that it disfavored a proposed sale of WPIX in New York, New York because the sale involved a sharing agreement in a market where Sinclair was divesting a station to comply with the National Cap, Sinclair withdrew the application on April 24, 2018, even though that transaction would not make the station attributable to Sinclair and, therefore, would not count towards the National Cap under the FCC's rules. Sinclair subsequently filed applications proposing to divest stations in Dallas and Houston to comply with the National Cap (without sharing agreements) following the closing of the Transaction.

81. On May 21, 2018, the FCC requested additional information from the Parties specific to the Sinclair and Tribune stations in the St. Louis and Indianapolis DMAs, where Sinclair was proposing to own two top-four stations.[20]

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[20] Notably, neither this FCC information request nor any other FCC information requests inquired about the specifics of any other planned divestitures, including the transfers of WGN, KDAF, or KIAH. The FCC also

The Parties again worked together on their joint response. On May 29, 2018, after several iterations of the response, reflecting comments from both Parties, Sinclair submitted the requested information to the FCC.

82. In June 2018 and into early July 2018, Sinclair and Tribune collaborated on a final submission to the FCC opposing new public objections to the Transaction. ***Tribune's outside regulatory counsel*** commented extensively on sections of the draft responding to public objections to the proposed divestitures to Mr. Fader and Cunningham Broadcasting Corporation ("Cunningham"), even ***suggesting that Sinclair "[c]onsider adding in the footnote that the [FCC] has determined Cunningham . . . is not controlled by Sinclair, citing application approvals [by the FCC]."***

83. Although Tribune now says it warned Sinclair that these divestitures were problematic and unlikely to be approved, this is nothing more than unsupported, revisionist history. Indeed, Tribune's outside regulatory counsel struck a markedly different tone when offering his thoughts on the draft submission—noting that "***I think we have the better of all the arguments on the merits***."

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did not respond to requests by various public objectors seeking additional documents and information regarding Sinclair's various Sharing Agreements with stations owned by third parties.

F. The FCC Stuns the Parties and the Market by Referring the Transaction to an Administrative Hearing

84. Throughout this process, Sinclair and Tribune reasonably believed that the Transaction was on track for FCC approval. During the period from June 2018 through early July 2018, Sinclair and Tribune also discussed potential terms under which the Parties might proactively extend the Merger Agreement (including the length of a potential extension) in the event approval required more time.

85. But on the morning of July 16, 2018, FCC Chairman Ajit Pai released an abrupt and surprising statement announcing that he had "serious concerns" about the Transaction and had "shared with [his] colleagues a draft order that would designate issues involving certain proposed divestitures for a hearing in front of an administrative law judge."[21]

86. Chairman Pai's July 16, 2018 announcement stunned Tribune, Sinclair, and the markets. Media reports consistently noted that the announcement was entirely unexpected. Indeed, the timing and substance of the announcement seemed aberrational. Nonetheless, Sinclair issued a press release that same day indicating that it was "prepared to resolve any perceived issues and look[ed] forward to finalizing [the Transaction]." And that is precisely what Sinclair set about doing.

[21] A copy of Chairman Pai's July 16, 2018 statement is attached to Tribune's Complaint as Exhibit B.

87. On July 17, 2018, Mr. Faber reached out to, and had a call with, Chairman Pai to discuss the FCC's apparent concerns and Sinclair's commitment to promptly and fully resolve those concerns. Chairman Pai suggested during that call that withdrawal of the full merger applications (not just withdrawal of the specific divestitures that were the subject of the media reports) would avoid the administrative law judge designation but did not offer any other alternatives.

88. On July 18, 2018, Sinclair issued a press release announcing that, while it had not yet seen the draft HDO, it understood that the FCC was questioning the proposed divestitures in Dallas and Houston (to Cunningham) and Chicago (to Mr. Fader). Sinclair announced that, in order to address such concerns and permit the Transaction to close, Sinclair had already withdrawn the pending divestitures of KDAF (Dallas) and KIAH (Houston) to Cunningham and the pending divestiture of WGN (Chicago) to WGN TV, LLC, the entity owned by Mr. Fader. Sinclair further indicated that it intended to request FCC permission to put the Dallas and Houston stations into a divestiture trust to be operated and sold by an independent trustee, subject to FCC approval, following the closing of the Transaction (to expedite resolution of any concerns and avoid any delay). Sinclair also indicated that it expected to have identified and entered into a purchase agreement with a third-party buyer or buyers for the Dallas and Houston stations prior to closing.

89. Sinclair further reported that, as a result of the withdrawal of the application relating to WGN, Sinclair would simply acquire that station as part of the Transaction (which Sinclair could do without affecting compliance with the National Cap). The withdrawal of the application relating to WGN, of course, was a substantial concession by Sinclair—one that was ***not required*** under the Merger Agreement (and, in fact, was expressly contrary to the structure contemplated by the Merger Agreement) and that likely would have cost Sinclair in excess of $50 million.

90. Also on July 18, 2018, Mr. Faber sent Chairman Pai a lengthy email explaining the reasons why Sinclair and Tribune did not withdraw their applications in their entirety, describing the steps Sinclair was willing to promptly take to fully address the FCC's apparent concerns and reiterating Sinclair's view that it (and Tribune) had been fully transparent and candid with the FCC throughout the review process.[22] Sinclair requested an in-person meeting with Chairman Pai and his staff to discuss the Transaction and any concerns relating thereto prior to designation of the Transaction for an administrative law hearing.

91. Also that day, Sinclair's counsel informed Tribune's counsel that Sinclair was prepared to extend the Merger Agreement's end date for three months

[22] A copy of Sinclair's July 19, 2018 *Notice of Ex Parte* filing with the FCC, which incorporates Mr. Faber's July 18, 2018 email to Chairman Pai, is attached to Tribune's Complaint as Exhibit K.

(through November 8, 2018) on terms originally proposed by Tribune. Tribune never responded to that proposal.

92. On July 19, 2018, the FCC released its final, approved HDO, thereby directing an administrative law judge to conduct a hearing to determine, among other things, whether the Transaction would be consistent with the public interest and should be approved.[23] The questions presented by the HDO focused, in particular, on whether Sinclair was the real party in interest to the WGN, KDAF, and KIAH applications, and if so, whether Sinclair had engaged in misrepresentation and/or lack of candor in the applications. The FCC did not make any final factual determinations with respect to the Transaction or the issues raised in the HDO, and, pursuant to the HDO, any assessment of the Parties' proffered divestitures would need to await fact-finding by an administrative law judge.

93. The timing and substance of the HDO were totally unexpected. Among other things:

- The FCC had not raised any questions or asked for additional information about the relationships between Sinclair and either Cunningham or Mr. Fader (and all issues the FCC raised with respect to the Sharing Agreements and options were resolved through amendments to the Parties' applications). This is notwithstanding the fact that (as later described in the HDO) several objectors and media reports had extensively focused on and publicly criticized such relationships. In fact, the FCC did not respond to several objectors' requests for more information at various points throughout the proceeding, and its own

[23] A copy of the HDO is attached to Tribune's Complaint as Exhibit C.

follow-up requests for information from May 2018 did not ask for any further information with respect to any of these divestitures.

- Sinclair and Tribune had supplied the FCC with all of the relevant transaction documents and information that typically is included and required with station assignment applications, and the Parties candidly disclosed all of the financial terms contained therein. The Parties openly discussed each of the proposed divestitures with the FCC, identifying the buyers and the associated deal structures. The FCC Applications likewise included the specific options and Sharing Agreements that would apply to the transferred stations following FCC approval. This included WGN, the divestiture of which had been expressly anticipated by Section 7.1(b) of the Merger Agreement. The FCC assignment application for that station, which was reviewed and approved by Tribune, fully disclosed the corporate ownership and management of WGN TV, LLC along with the accompanying Sharing Agreements referenced in the HDO.

- For years, FCC practice and precedent had established that similar JSAs, SSAs, and options do not create any "attributable interest" under the FCC's ownership rules, including with respect to previous applications involving Sinclair and Cunningham (including applications granted as recently as 2017). As both Parties explained in the FCC filings, the Sharing Agreements and option filed with the application for assignment of WGN were consistent with Sharing Agreements previously filed with the FCC, and the options filed with the applications for transfer of KDAF and KIAF were entirely consistent with options in transactions that have been routinely approved by the FCC for years. Moreover, Note 2(e) of Section 73.3555 of the FCC rules provide that "options or other non-voting interests with rights of conversion to voting interest shall not be attributed unless and until conversion is effected."

- With regard to the KDAF and KIAF divestitures in particular (which were *not* subject to Sharing Agreements), nothing about Cunningham's ownership structure or the non-voting Cunningham shares held in trusts for the benefit of Sinclair's controlling shareholders' descendants was new to the FCC. The FCC had been well aware of these trusts for years, having specifically reviewed the trusts previously and found them not to be attributable. The FCC also had approved Cunningham's ownership of numerous stations under terms involving options held by Sinclair (*and*

JSAs and SSAs with Sinclair), including in transactions that were approved while the Transaction was pending. In August 2012, the FCC granted a Form 316 application effecting the transfer of voting shares in Cunningham to Michael Anderson, who has been President of Cunningham since 2009, in his capacity as the trusts' successor trustee following Carolyn Smith's death in 2012, and who is not an "associate" of Sinclair. And, in 2013, applications were filed to sell those voting shares to Mr. Anderson in his individual capacity. Those applications were approved by the FCC in December 2017 and the sale was consummated in January 2018. Mr. Anderson now holds all of the voting shares of Cunningham in their entirety with no ownership or other interest by (or in) Sinclair. In these and other transfer applications and filings involving Cunningham, the FCC was informed of both the ownership structure of Cunningham and its relevant Sharing Agreements or option agreements.

- The HDO was based solely on third party objections that cited publicly available information, undermining and contradicting any suggestion that Sinclair (or Tribune) had engaged in any potential lack of candor.

- The HDO referenced concerns about the purchase price for the divestitures of the Chicago, Dallas, and Houston stations that were based on faulty assumptions derived solely from media reports and public objections to the Transaction. Tribune's outside regulatory counsel thought so little of petitioners' speculative arguments regarding the purchase price of these stations that, in comments to the Parties' draft joint opposition, they suggested moving the proposed response to those arguments to a footnote or deleting it altogether (the response was eventually moved to a footnote).

94. Sinclair does not know why the FCC issued the HDO. The HDO was accompanied by an unusual Statement by Commissioner Michael O'Rielly in which he candidly noted that neither he nor his staff "were privy to any discussion or presented any private documents used as a basis for" the HDO, voting on which had been made in an "exceptionally expedited fashion."

G. Sinclair Doubles Down to Work to Close the Transaction, While Tribune Breaches the Merger Agreement and Prepares to Litigate

95. Despite the issuance of the HDO, Sinclair remained focused on exploring all potential options to address the FCC's concerns and close the Transaction. Unfortunately, Tribune did not share that mission and instead breached its obligations under the Merger Agreement to exercise its reasonable best efforts to obtain regulatory approvals and close the Transaction.

96. Within hours of the issuance of the HDO, Tribune issued a press release stating that "Tribune Media has now had the opportunity to review the FCC's troubling [HDO]. We are currently evaluating its implications and assessing all of our options in light of today's developments." The press release also signaled that Tribune already was moving on from the Transaction: "We will be greatly disappointed if the transaction cannot be completed, but will rededicate our efforts to running our businesses and optimizing assets. Thanks to the great work of our employees, we are having a strong year despite the significant distraction caused by our work on the transaction and, thus, are well-positioned to continue maximizing value for our shareholders going forward."

97. This was an about-face by Tribune, signaling to the market and regulators that it was distancing itself from Sinclair and the Transaction. This approach was remarkable because Tribune had contracted in the Merger Agreement and the Disclosure Letter to permit the structures that were the subject

of the public objections that formed the basis for the HDO, had worked shoulder-to-shoulder with Sinclair on the various submissions to the FCC, and was actively involved in framing the Parties' joint responses to the very public objections that formed the basis of the HDO.

98. Tribune's position in its July 19, 2018 press release undermined efforts to obtain regulatory approval and raised the very real question of whether Sinclair was on its own in trying to resolve the HDO issues and close the Transaction. That question was answered definitively in the period between July 19, 2018 and August 8, 2018, when it became clear that Tribune's number one priority was manufacturing and preparing for a meritless litigation claim.

99. On Friday, July 20, 2018, Sinclair organized an all-hands call with both Parties to brainstorm potential strategies in response to the HDO. In an email to Mr. Lazarus that day, Mr. Faber noted that Sinclair's "priority remains to close this deal." Strangely, Mr. Lazarus, while agreeing to make Tribune's FCC counsel available to provide his insights, stated:

> We are committed to working with you during the pendency of the Merger Agreement to try to find a path to get the deal done. As we discussed, however, the particular allegations made in the HDO relate entirely to Sinclair's actions and arrangements with its counterparties with respect to which we have no independent knowledge. We will for that reason not be in a position to join you in making any filings or oral statements to the FCC concerning those matters.

100. Distancing itself from Sinclair and the Parties' joint efforts to obtain FCC approval was inconsistent with Tribune's obligations under the Merger Agreement.

101. Sinclair nonetheless forged ahead in an effort to persuade the FCC to engage in settlement discussions to allow the Parties to close the Transaction. Among other things, Sinclair (a) indicated that it was willing to engage in expedited settlement discussions with the FCC's Enforcement Bureau; (b) submitted a detailed letter to the FCC outlining its preliminary responses to the issues raised in the HDO; (c) raised the possibility of extending the end date of the Merger Agreement to allow more time to resolve the HDO; and (d) engaged a lobbying firm to reinforce the message to various stakeholders in Washington that the Transaction was and remained in the public interest, and that Sinclair was committed to addressing the concerns raised in the HDO.

102. By contrast, Tribune refused to engage substantively and tried to wash its hands of the Transaction, claiming that the HDO and any delay it might cause was Sinclair's problem alone. Tribune went through the perfunctory motions of joining calls and announcing its ostensible willingness to find a solution. But Tribune distanced itself from Sinclair's efforts to resolve the HDO. When Sinclair solicited comments from Tribune on various correspondence regarding the Transaction, Tribune declined, advising that it "will not be offering a view on the

substance . . . and Sinclair should proceed as it thinks best." When Sinclair prepared a preliminary response to the FCC's Enforcement Bureau addressing the issues identified in the HDO in hopes of facilitating a settlement and shared a draft with Tribune for its review and revision, the only edits that Tribune provided were to remove references to Tribune—including all references to Tribune's involvement in responding to the HDO. Sinclair incorporated those comments and sent the response to the Enforcement Bureau on July 31, 2018 solely on its own behalf, with a cover letter asking the Enforcement Bureau to reconsider its earlier position on a possible settlement.

103. On July 23, 2018, Tribune and Sinclair's respective FCC counsel participated in a call with the FCC Enforcement Bureau during which Sinclair's FCC counsel again expressed a willingness to engage in expedited settlement discussions. The representatives of the FCC Enforcement Bureau indicated that it was not then in a position to engage in such a dialogue.

104. In response, on July 25 and 26, 2018, Mr. Faber raised a potential way forward in a call with Mr. Lazarus, which he outlined in an email on July 26, 2018:

> Sinclair and Tribune would petition to withdraw our FCC application and have it dismissed without prejudice. Sinclair and Tribune would extend the merger agreement for a period of time to let the petition play out. Assuming we are able to obtain a dismissal, we would file a revised FCC application which would include a proposed sale of Tribune's Dallas and Houston stations to a third party. We think [a specific media company] would be interested in those stations and we already

> have a negotiated contract with them, so this could be done very quickly. We would also find a buyer for KDNL in St. Louis (or place that station in a divestiture trust), which should also satisfy the DOJ.

Sinclair therefore was proposing for discussion a potential way forward that Tribune and Sinclair believed would require an extension of the Merger Agreement of approximately six months.

105. Tribune's response further confirmed that it was more focused on preparing its anticipated litigation position than exploring a potential path forward with Sinclair. On July 30, 2018, Tribune's outside counsel informed Sinclair's outside counsel that their litigators were concerned about the potential impact of the discussions suggested by Sinclair on Tribune's potential, future litigation positions. Tribune then followed up by sending Sinclair a draft letter agreement seeking to condition Tribune's use of reasonable best efforts upon entry into an agreement intended to benefit Tribune's anticipated litigation position if the Transaction did not close:

> In connection with the development of a response to the Hearing Designation Order, adopted July 18, 2018 (the "HDO"), issued by the Federal Communications Commission (the "Commission"), Sinclair has requested that Tribune and its advisors participate in discussions regarding and consider joining in actions that Sinclair may take in its efforts to address the concerns raised by the Commission regarding the applications filed by Sinclair and Tribune on June 28, 2017, as amended, seeking the approval by the Commission of the transactions contemplated by the Merger Agreement. ***It is agreed and understood that neither Sinclair nor Tribune shall***

> ***use as evidence in any litigation or other adversary proceeding between Sinclair and Tribune at any time their or their advisors' participation in such discussions nor any action that the two companies or their advisors may take jointly as a result of such discussions.***

(emphasis added).

106. The next day, Sinclair's counsel sent a response letter, expressing that, among other things, Sinclair was "surprised and disappointed that Tribune now appears to be conditioning its participation . . . on how to potentially resolve the HDO and close the transaction on entry into an agreement that (as you explained on yesterday's call) is intended to preserve Tribune's litigation position in the event that the Sinclair/Tribune transaction does not close." Sinclair made clear that Tribune's prioritization of its litigation strategy at the expense of its cooperation with Sinclair to try to close the Transaction was "directly contrary to Tribune's obligations under the Merger Agreement." As Sinclair's counsel further explained:

> Yesterday, you explained to me that the Debevoise litigators have advised that Tribune's participation in discussions concerning the options Sinclair suggested on Thursday could compromise Tribune's litigation positions in the event the deal does not close. Thus the Draft Letter Agreement. Tribune's position, and the Draft Letter Agreement, are inconsistent with Eddie's July 20 email and, more importantly, Tribune's obligations under the Merger Agreement (including but not limited to Sections 7.1(a) and 7.1(e)). Tribune is required, among other things, to use its reasonable best efforts to close the transaction and to cooperate with us in resolving the HDO. Tribune cannot condition the availability of its FCC counsel and its participation in discussions to resolve the HDO on entry

> into the Draft Letter Agreement. To do so is a direct breach of the Merger Agreement.

In an effort to eliminate the barrier Tribune erected to constructive dialogue, Sinclair provided a mark-up of the draft agreement that would confirm that none of Sinclair's and Tribune's joint efforts would be deemed a waiver of Tribune's rights under the Merger Agreement.

107. Two days later, on August 2, 2018, Tribune doubled down on its litigation-focused approach. It rejected Sinclair's mark-up and claimed in a letter to Sinclair's counsel that an agreement to protect its anticipated future litigation position was necessary to "facilitate Tribune working with Sinclair to resolve the HDO without having to be concerned that Sinclair would use that cooperation against Tribune in any potential future litigation." The letter then noted, "[f]or example, Tribune disagrees with the content of the draft white paper that Sinclair filed on Tuesday, and it had to work quickly to ensure that the white paper and accompanying cover letter were appropriately presented as statements of Sinclair, not joint statements of Sinclair and Tribune." This was the first time Tribune had raised any substantive concerns with the white paper and represented a remarkable admission of Tribune's breach of its reasonable best efforts obligations in the Merger Agreement.

108. Sinclair responded just hours later, again emphasizing that "Tribune is required under the Merger Agreement to work with Sinclair to resolve the HDO

and toward closing the transaction; it cannot circumscribe its efforts around its litigation strategy." Sinclair elaborated:

> But this is not an abstract concern of ours. Indeed, your letter provides a concrete and troubling example of Tribune doing just that. We now have learned, for the first time through your letter, that Tribune "disagrees with the content of the draft white paper that Sinclair filed on Tuesday." We cannot understand why, if Tribune is working to close the transaction, Tribune would not have informed Sinclair that it disagreed and of the substance of that disagreement, particularly given that, as you note in your letter, the companies' FCC counsel spoke at length yesterday and are scheduled to speak to the FCC tomorrow. The only reason not to share such a view is, again, in an effort to try to preserve some argument for a future litigation. That is wholly inconsistent with the Merger Agreement. . . .

109. Sinclair thus requested that Tribune provide the substance and basis of Tribune's disagreement as soon as possible. Tribune declined to do so, further breaching its obligations under the Merger Agreement.

110. On August 3, 2018, Tribune and Sinclair's respective FCC counsel participated in a call with the FCC Enforcement Bureau during which FCC counsel for Sinclair again expressed a willingness to engage in expedited settlement discussions. Representatives of the FCC Enforcement Bureau indicated that they still were not in a position to engage in such a dialogue.

111. At 12:02 a.m. ET on August 9, 2018, immediately after the Merger Agreement's end date, Tribune unilaterally terminated the Merger Agreement.[24] Three minutes later, Tribune filed the Complaint that it had been busy preparing while Sinclair was exploring all potential options to resolve the issues raised in the HDO.

112. Tribune simultaneously issued a lengthy press release touting its recent financial performance. Moreover, in a carefully orchestrated (and clearly planned) conference call with analysts and members of the financial press that morning, Tribune's senior management expressly noted that "Tribune Media is in the best shape it has been for a long time" and that "in terms of the ultimate outcome for our shareholders, we have every hope that this result will in the end deliver more value even th[a]n they would have gotten in the transaction."

COUNT I
(Breach of Contract)

113. Sinclair repeats and realleges each of the foregoing allegations.

114. Tribune and Sinclair entered into a valid and binding agreement that imposed enforceable contractual obligations on Tribune.

115. Under the Merger Agreement, Tribune covenanted to use its reasonable best efforts to, among other things, obtain all government approvals

[24] A copy of Tribune's notice of termination of the Merger Agreement to Sinclair is attached to Tribune's Complaint as Exhibit L.

required to consummate the Transaction, which is a condition to closing under the Merger Agreement. Tribune also covenanted that it would use its reasonable best efforts to consummate the disposition of WGN in the specific manner addressed in PDL 7.1(b) and that it would cooperate and consult with Sinclair in connection with obtaining regulatory approval of the Transaction.

116. Tribune wholly disregarded its reasonable best efforts and other obligations to obtain regulatory approval of the Transaction and, instead of seeking to consummate the Transaction, positioned itself for litigation against Sinclair.

117. By failing to use its reasonable best efforts to obtain regulatory approval of the Transaction, Tribune has materially breached its obligations under the Merger Agreement, including but not limited to Sections 7.1(a), 7.1(b), and 7.1(e) thereof.

118. Tribune's material breach also was a willful breach because it was a deliberate act or failure to act that was taken with actual knowledge that it would or could reasonably be expected to result in or constitute a material breach.

119. Sinclair asks this Court to award it money damages, in an amount to be proven at trial, sufficient to compensate it for all forms of loss caused by Tribune's material breach of contract, including reasonable costs, attorneys' fees, and expert fees.

PRAYER FOR RELIEF

WHEREFORE, Sinclair respectfully requests that this Court:

a) Declare that Tribune breached the Merger Agreement, including but not limited to Sections 7.1(a), 7.1(b), and 7.1(e) thereof;

b) Award Sinclair money damages for Tribune's breach of the Merger Agreement in an amount to be determined at trial;

c) Award Sinclair its costs and disbursements in this action, including reasonable costs, attorneys' fees, and expert fees; and

d) Grant Sinclair such other and further relief as this Court may deem just, equitable, and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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Dated: August 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2018, the foregoing documents were caused to be served upon the following counsel of record via File & Serve*Xpress*:

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