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April 30, 2018

**VIA ELECTRONIC MAIL ([mkeough@courts.ri.gov](mailto:mkeough@courts.ri.gov))**  
**FAX #401-222-2701**

The Honorable Judge Maureen Keough  
Licht Judicial Complex  
250 Benefit Street  
Providence, Rhode Island 02903

Re: *LMG Rhode Island Holdings Inc. v. Rhode Island Superior Ct., et al.*,  
No. PC-2018-2854

Dear Judge Keough:

I understand that there is a hearing scheduled in this case at 2:00 p.m. today, Monday, April 30, 2018. I am writing the Court, respectfully, to express the deep concern of two non-parties about the two court orders being challenged herein, and their intention, if the orders are not dissolved at today's hearing, to seek the opportunity to move either to intervene or to file an amicus brief or letter in this case.

This letter is simply to notify the Court of these two non-parties' grave concerns and our intent to locate and retain Rhode Island-admitted counsel to represent them in expressing those concerns to the Court.

I represent the New England First Amendment Coalition<sup>1</sup> ("NEFAC"), of which I am an officer, and the New England Newspaper and Press Association<sup>2</sup>

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<sup>1</sup> The New England First Amendment Coalition's mission is to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know, in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. It is a nonpartisan, nonprofit organization that supports the rights of New England journalists to access government records and information, including judicial records and information.

<sup>2</sup> The New England Newspaper and Press Association, Inc. is the regional association comprising more than 400 daily and weekly newspapers in the six New England states (including 26 member newspapers in Rhode Island). Its purpose is to promote the

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("NENPA"), of which I am the outside general counsel. Both organizations view the protection of First Amendment interests and open access to court proceedings to be matters at the core of their missions. I am a media lawyer admitted to practice in Massachusetts, New Hampshire, New York, and elsewhere. I am not admitted to practice in Rhode Island.

My clients have learned of two orders from the Superior Court for Providence County that are being challenged in the above-captioned case. The first, as we understand it, is a post-trial order barring the press and public from contacting and interviewing the jurors who convicted a Pawtucket father of second-degree murder of his 10-year-old daughter in the criminal case of *State of Rhode Island v. Jorge DePina*, No. P1-2014-0001A. The second, we are informed, bars *The Providence Journal* (and, presumably, other media and the public) from obtaining a copy of the jury list in the *DePina* case.

NEFAC and NENPA believe that such orders violate both the First Amendment of the United States Constitution and the common law right and First Amendment-based right of access to documents relating to judicial proceedings. The first order, a gag order purporting to apply to the press and public alike, is also an overbroad and presumptively unconstitutional prior restraint.

Post-trial access to jurors in a criminal trial is essential to the press and public's right to report to the public about the workings of the judicial system. As the U.S. Supreme Court noted in *Press Enter. Co. v. Superior Ct.*, 461 U.S. 501, 509 (1984), access to information about jurors "vindicate[s] the concerns of the victims and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected." Similarly, post-trial interviews of consenting jurors provide "for an independent non-governmental verification of the impartiality of the jury deliberation process." *United States v. Doherty*, 675 F. Supp. 719, 723 (D. Mass. 1987).

For these reasons, orders remarkably similar to those previously entered by the Superior Court in the *DePina* case have been rejected by other courts. Facing a criminal court's post-trial order purporting to proscribe the news media from contacting and interviewing jurors, the Ninth Circuit Court of Appeals vacated the order, reasoning as follows:

Since the trial had concluded, there was no possibility that allowing the jurors to speak to newsmen would deprive [the defendants] of a fair trial. Those cases dealing with the so-called "free press-fair trial" issue are not applicable here. ...

In regard to protecting the jurors from harassment, we also fail to see a

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common interests of newspapers published in New England. Consistent with its purposes, NENPA is committed to preserving and ensuring the open and free publication of news and events in an open society.

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clear and present danger. The jurors individually, perhaps, may not regard media interviews as harassing. If harassment should occur, the court might properly then act to correct the actual intrusion suffered, but this order is too broad. ...

Nothing in this opinion should be construed as requiring jurors to speak to the media or anyone else. A juror may speak or remain silent as he desires. The district court's order, by depriving the media of the opportunity to ask the jurors if they wished to be interviewed, was clearly erroneous as a matter of law.

*United States v. Sherman*, 581 F.2d 1358, 1361-62 (9<sup>th</sup> Cir. 1978).

Respectfully, NENPA and NEFAC hereby ask that the Court provide them with notice of further proceedings in this case so that they may obtain proper representation to make their interests and concerns known to this Court.

Thank you for your consideration.

Very truly yours,



Robert A. Bertsche

Counsel to New England First Amendment Coalition and  
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cc: William O'Gara, Esq. ([wogara@pldolaw.com](mailto:wogara@pldolaw.com))  
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