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Co-Counsel for the GUC Recovery Trustee

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

Hearing Date and Time: 10/20/21 @ 11:00 AM
 Response Deadline: 10/15/21 @ 4:00 PM

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In re:	:
	:
JCK LEGACY COMPANY, <i>et al.</i> ,	:
	:
Wind-Down Debtors. ¹	:
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Chapter 11
 Case No. 20-10418 (MEW)
 (Jointly Administered)

**NOTICE OF GUC RECOVERY TRUSTEE’S FOURTH OMNIBUS
 OBJECTION TO LATE FILED CLAIMS OF FEDEX CORPORATE
 SERVICES, INC. AND ADVANCE LOCAL MEDIA, AND HEARING**

PLEASE TAKE NOTICE that William A. Brandt, Jr., in his capacity as trustee of the GUC Recovery Trust, filed the *GUC Recovery Trustee’s Fourth Omnibus Objection to Late-Filed Claims of FedEx Corporate Services, Inc. and Advance Local Media* (the “Fourth Omnibus Objection”) with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any response to the GUC Recovery Trustee’s Objection must be filed on or before **October 15, 2021 at 4:00 p.m. (ET)** (the “Response Deadline”) with the Bankruptcy Court, One Bowling Green, New York, NY 10004. At the same time, you must serve a copy of any response by the Response Deadline upon the undersigned counsel and to:

¹ The Wind-Down Debtors in these chapter 11 cases and the last four characters of each Wind-Down Debtor’s tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (5UZ1). The location of the GUC Recovery Trustee’s service address for purposes of these chapter 11 cases is % Development Specialists, Inc., 110 East 42nd Street, Suite 1818, New York, NY 10017.



- (a) The Debtors, JCK Legacy Company, c/o FTI Consulting, Inc., 1201 W. Peachtree Street, NW, Suite 500, Atlanta, GA 30309, Attn.: Sean M. Harding (*sean.harding@fticonsulting.com*);
- (b) Counsel for the Plan Administration Trustee, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, NY 10001, Attn.: Shana A. Elberg (*shana.elberg@skadden.com*) and Bram A. Strohlic (*bram.strohlic@skadden.com*), 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071, Attn.: Van C. Durrer, II (*van.durrer@skadden.com*), and Destiny N. Almogue (*destiny.almogue@skadden.com*) and 525 University Avenue, Palo Alto, CA 94301 Attn.: Jennifer Madden (*jennifer.madden@skadden.com*);
- (c) Co-counsel for the Plan Administration Trustee, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn.: Albert Togut (*altogut@teamtogut.com*) and Kyle J. Ortiz (*kortiz@teamtogut.com*);
- (d) The GUC Recovery Trust, % DSI Consulting, Inc., 110 East 42nd Street, Suite 1818, New York, NY 10017, Attn.: William A. Brandt., Jr. (*bbrandt@dsiconsulting.com*);
- (e) Counsel for the GUC Recovery Trustee, Pillsbury Winthrop Shaw Pittman LLP, 31 West 52nd Street, New York, NY 10019, Attn.: Leo T. Crowley (*leo.crowley@pillsburylaw.com*), Patrick Fitzmaurice (*patrick.fitzmaurice@pillsburylaw.com*), and Kwame O. Akuffo (*kwame.akuffo@pillsburylaw.com*);
- (f) The Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014, Attn.: Benjamin J. Higgins and Brian S. Masumoto; and
- (g) Any party that has requested notice pursuant to Bankruptcy Rule 2002.

Only those responses made in writing and timely filed in accordance with the above procedures will be considered by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE THAT, unless the telephonic hearing procedures set forth in General Order M-543 (Morris, C.J.) are amended, the hearing to consider the Fourth Omnibus Objection shall be held **telephonically via Court Solutions LLC on October 20, 2021 at 11:00 AM (ET)** before the Hon. Michael E. Wiles. Instructions to register for Court Solutions LLC can be found at *www.court-solutions.com*.

PLEASE TAKE FURTHER NOTICE THAT if you fail to respond in accordance with this Notice and by the Response Deadline, the Bankruptcy Court may grant the relief requested in the GUC Recovery Trustee's Objection without further notice or a hearing.

Dated: New York, New York
August 20, 2021

RICH MICHAELSON MAGALIFF, LLP
Co-counsel for the GUC Recovery Trustee
By:

/s/ Howard P. Magaliff
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Co-Counsel for the GUC Recovery Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date and Time: 10/20/21 @ 11:00 AM
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JCK LEGACY COMPANY, <i>et al.</i> ,	:
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Wind-Down Debtors. ¹	:
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Chapter 11
Case No. 20-10418 (MEW)
(Jointly Administered)

**GUC RECOVERY TRUSTEE’S FOURTH OMNIBUS
OBJECTION TO LATE FILED CLAIMS OF FEDEX
CORPORATE SERVICES, INC. AND ADVANCE LOCAL MEDIA**

William A. Brandt, Jr. in his capacity as trustee (the “GUC Recovery Trustee”) of the GUC Recovery Trust created under the GUC Recovery Trust Agreement (the “Trust Agree-ment”) and the confirmed *First Amended Joint Chapter 11 Plan of Distribution of JCK Legacy Company and its affiliated Debtors and Debtors in Possession* (the “Plan”) [Docket No. 879], by his attorneys Rich Michaelson Magaliff, LLP, respectfully submits this fourth omnibus objection (the “Fourth Omnibus Objection”) seeking the disallowance and expungement of the late filed claims of FedEx Corporate Services, Inc. (“FedEx”) and Advance Local Media (“ALM”) pursuant to sections 105(a) and 502 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support

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of the Fourth Omnibus Objection, the GUC Recovery Trustee submits the *Declaration of William A. Brandt, Jr.* (the “Brandt Declaration”) attached as Exhibit 1 and states:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. The predicates for the relief sought are sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 3007.

BACKGROUND

4. On February 13, 2020 (the “Petition Date”), The McClatchy Company, a corporation organized under the laws of the state of Delaware, and certain of its affiliates (the “Debtors”), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The chapter 11 cases have been jointly administered for procedural purposes, and some cases remain pending.

5. On May 21, 2020, the Bankruptcy Court entered an *Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* (the “Bar Date Order”) [Docket No. 485], and set July 10, 2020, at 5:00 p.m. (E.T.) (the “General Bar Date”), as the deadline for creditors to file proofs of claim against the Debtors.

6. Notice of the General Bar Date Order was mailed to all known creditors of the Debtors, including FedEx and ALM, and published in *The New York Times* as required by the Bar Date Order. *See* Docket Nos. 485, 513.

7. On September 25, 2020, the Bankruptcy Court entered an order (the “Confirmation Order”) confirming the Plan, which became effective on September 30, 2020 (the “Effective Date”).

8. The Plan and Confirmation Order provide for the establishment of the GUC Recovery Trust pursuant to the Trust Agreement on the Effective Date, at which time the GUC Recovery Trustee was appointed to administer the GUC Recovery Trust. Confirmation Order at 11, 42; Trust Agreement, § 2.1; Plan, § 6.20.

9. Under the Trust Agreement, the GUC Recovery Trustee is authorized to review, object to, settle and resolve all general unsecured claims filed against the Debtors’ estates. Trust Agreement, § 6.1. The GUC Recovery Trustee is also authorized to represent the Debtors’ estate before any court of competent jurisdiction on matters concerning the GUC Recovery Trust, *id.* at § 2.2(m), to enter into any agreement that is consistent with the Plan, Confirmation Order and the GUC Recovery Trust, *id.* at § 2.2(u), and to take any action that is reasonably necessary to administer the GUC Recovery Trust and the Plan. *Id.* at § 2.2(aa).

RELIEF REQUESTED

10. Pursuant to sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 3007, the GUC Recovery Trustee seeks entry of the proposed order in the form attached as Exhibit 2 disallowing and expunging the following late filed claims of FedEx and ALM:

FedEx claim # 2685 and claim # 2686² (the “FedEx Claims”) filed against Cypress Media Inc. d/b/a The McClatchy Company. The claim was filed by mail

² Claim 2686 is identical in every way, including KCC’s “Received” stamp. It appears that KCC inadvertently filed the same claim twice.

and received on November 25, 2020 by Kurtzman Carson Consultants, LLC (“KCC”), the Court-appointed claims and noticing agent.

ALM claim # 2664 (the “ALM Claim”) filed against The McClatchy Company. The claim was filed electronically on October 20, 2020 and has the date and KCC’s electronic bar code imprinted on the claim.

BASIS FOR RELIEF

11. Section 502 of the Bankruptcy Code governs the allowance and disallowance of claims. 11 U.S.C. § 502. Generally, a proof of claim filed is deemed allowed, unless a party in interest objects. 11 U.S.C. § 502(a). Absent an objection, a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim. *In re Metex Mfg. Corp.*, 510 B.R. 735, 740 (Bankr. S.D.N.Y. 2014) (citing Fed. R. Bankr. P. 3001(f)). If an objection is filed, however, the objecting party has the initial “burden of putting forth evidence sufficient to refute the validity of the claim.” *Metex*, 510 B.R. at 740 (citation omitted). “By producing ‘evidence equal in force to the prima facie case,’ an objector can negate a claim’s presumptive legal validity, thereby shifting the burden back to the claimant to ‘prove by a preponderance of the evidence that under applicable law the claim should be allowed.’” *In re Residential Capital, LLC*, 518 B.R. 720, 731 (Bankr. S.D.N.Y. 2014) (quoting *In re Motors Liquidation Co.*, 2013 WL 5549643, at *3 (S.D.N.Y. 2013)).

12. Bankruptcy Rule 3007, which governs objections to claims, further provides that “objections to more than one claim may be joined in an omnibus objection” if “the objections are based solely on the grounds that claims should be disallowed.” Fed. R. Bankr. P. 3007(a). An omnibus objection may include: (a) untimely claims and (b) claims the objector is

unable to determine the validity of due to noncompliance with the Bankruptcy Rules governing proofs of claim. Fed R. Bankr. P. 3007(d)(4) and (6).

13. The Bar Date Order and notice attached thereto mandated that each proof of claim must be timely filed, include any supporting documentation and conform to Official Bankruptcy Form No. 410. Failure to comply with these requirements negates the *prima facie* validity of such claim. *See, e.g., In re Motors Liquidation Co.*, Case No. 09-50026 (REG) (Bankr. S.D.N.Y. Feb. 8, 2012) (Dkt. No. 11394) (disallowing and expunging late-filed claims). Upon review of the claims register, the GUC Recovery Trustee has decided to object to the FedEx Claims and the ALM Claim.

14. Bankruptcy Rule 3003(c) permits the Court to set a bar date for creditors to file a proof of claim. Fed. R. Bankr. P. 3003(c). Bar dates are “critically important to the administration of a successful chapter 11 case.” *In re Musicland Holdings Corp.*, 356 B.R. 603, 607 (Bankr. S.D.N.Y. 2006). The Court entered the Bar Date Order, which set July 10, 2020 as deadline for creditors to file a proof of claim, or forever be barred in asserting a claim against the Debtors. Section 8.4 of the Plan provides that “all proofs of claim filed after the applicable deadline for filing such proofs of claim shall be deemed disallowed and expunged as of the Effective Date without any further notice to, or action, order, or approval of the Bankruptcy Court.” Plan, § 8.4.

15. The GUC Recovery Trustee has determined that the FedEx Claims and the ALM Claim should be disallowed and expunged because they arose prior to the Petition Date and were filed after the General Bar Date. None of the Late-Filed Claims are subject to any exception that may render such claims timely under the Bar Date Order, including: (a) claims arising from the rejection of an executory contract or unexpired lease; (b) claims filed by an entity

subject to the Governmental Bar Date (as defined in the Bar Date Order); or (c) the filing of claims extended beyond the General Bar Date by court order or agreement. *See* Bar Date Order at ¶¶ 12, 14. The GUC Recovery Trustee reserves the right to object to the Late-Filed Claims on any other available grounds.³

RESPONSES TO GUC RECOVERY TRUSTEE’S FOURTH OMNIBUS OBJECTION

16. To contest an objection, a claimant must file and serve a written response to this Fourth Omnibus Objection so that it is received no later than October 15, 2021 at 4:00 p.m. (Eastern Time) (the “Response Deadline”). Each response must be filed and served upon counsel for the GUC Trustee, each counsel to the Plan Administration Trustee, the United States Trustee, the Debtors, and all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

17. Any response must: (a) be in writing; (a) conform to the applicable Bankruptcy Rules and Local Bankruptcy Rules; (c) state the name and address of the claimant and description of the basis for the amount of the claim; (d) include a concise statement for the reason why the claim should not be disallowed and expunged for the reasons set forth in the Fourth Omnibus Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the objection; (d) include all documentation or other evidence of the claim, to the extent not included with the proof of claim previously filed with the Bankruptcy Court, upon which the claimant will rely in opposing the objection at any hearing; and (e) the name, address, and telephone number of the person (which may be the claimant or the

³ If the Court does not sustain the objection to the FedEx Claims as untimely, the GUC Recovery Trustee submits that claim # 2686 should nonetheless be disallowed and expunged as duplicative of claim # 2685. *See* Bankruptcy Rule 3007(d); *see also In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 160 B.R. 882, 894 (Bankr. S.D.N.Y. 1993); *In re Chateaugay Corp.*, 115 B.R. 760, 782-84 (Bankr. S.D.N.Y. 1990), *aff’d*, 130 B.R. 690 (S.D.N.Y. 1991). This Court has previously disallowed and expunged duplicate claims in this case. *See In re JCK Legacy Co. et al.*, Case No. 20-10418 (MEW), Dkt. No. 1129.

claimant's legal representative) possessing ultimate authority to reconcile, settle, or otherwise resolve the claim on behalf of the claimant.

18. Failure to file and serve a timely response by the Response Deadline will result in the relevant claims being disallowed and expunged, without further notice to the claimant.

SEPARATE CONTESTED MATTER

19. If a response is filed regarding either the FedEx Claims or the ALM Claim, and if the GUC Recovery Trustee is unable to resolve the response, each claim and the Fourth Omnibus Objection as it pertains to such claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014, if applicable. Further, the GUC Recovery Trustee requests that any order entered by the Court regarding an objection asserted in this Fourth Omnibus Objection be deemed a separate order with respect to each proof of claim.

NOTICE

20. Pursuant to Article 8.3 of the Plan, notice of this Fourth Omnibus Objection has been given to: (a) parties on the master service list who have agreed to accept service by email; and (b) FedEx and ALM. The GUC Recovery Trustee submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

[concluded on next page]

WHEREFORE, the GUC Recovery Trustee respectfully requests that the Court enter the proposed order attached as Exhibit 2 disallowing and expunging the FedEx Claims and the ALM Claim, and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 20, 2021

RICH MICHAELSON MAGALIFF, LLP
Co-counsel for the GUC Recovery Trustee
By:

/s/ Howard P. Magaliff
HOWARD P. MAGALIFF
335 Madison Avenue, 9th Floor
New York, NY 10017
646.453.7851
hmagaliff@r3mlaw.com

Exhibit 1

Declaration of William A. Brandt, Jr.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

JCK LEGACY COMPANY, *et al.*,

Wind-Down Debtors.¹

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-X

Chapter 11

Case No. 20-10418 (MEW)

(Jointly Administered)

**DECLARATION OF WILLIAM A. BRANDT, JR. IN SUPPORT OF
GUC RECOVERY TRUSTEE'S FOURTH OMNIBUS OBJECTION²**

I, William A. Brandt, Jr., submit this declaration (the “Declaration”) under the penalty of perjury pursuant to 28 U.S.C. § 1746 and state that the following is true to the best of my knowledge, information, and belief:

1. I am the Executive Chairman of the consulting firm Development Specialists, Inc., better known in the restructuring industry as DSI, and am the GUC Recovery Trustee for the GUC Recovery Trust created under the Trust Agreement and the Plan.

2. I submit this Declaration in support of the *GUC Recovery Trustee's Fourth Omnibus Objection to Late-Filed Claims of FedEx Corporate Services, Inc. and Advance Local Media*.

3. In my capacity as GUC Recovery Trustee, I or those working under my supervision, reviewed certain remaining claims listed on the claims register prepared and maintained by the claims agent in these chapter 11 cases, Kurtzman Carson Consultants LLC, and

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² Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the GUC Recovery Trustee's Fourth Omnibus Objection.

concluded that the FedEx Claims and ALM Claim should be disallowed and expunged in their entirety.

4. Both FedEx and ALM failed to file a proof of claim by the General Bar Date, i.e., July 10, 2020, for claims arising before the Petition Date. Upon review of the claims, none qualified for any exception that may render such claims timely, including: (a) claims related to the rejection of an executory contract or unexpired lease; (b) claims subject to the Governmental Bar Date (as defined in the Bar Date Order); or (c) claims extended beyond the General Bar Date by court order or by agreement.

I declare under penalty of perjury that the foregoing is the true and correct to the best of my knowledge and belief.

Dated: August 20, 2021

/s/ William A. Brandt, Jr.
William A. Brandt., Jr.

Exhibit 2

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :
: Chapter 11
JCK LEGACY COMPANY, *et al.*, : Case No. 20-10418 (MEW)
:
Wind-Down Debtors.¹ : (Jointly Administered)
-----X

**ORDER GRANTING GUC RECOVERY TRUSTEE’S FOURTH
OMNIBUS OBJECTION TO LATE FILED CLAIMS OF FEDEX
CORPORATE SERVICES, INC. AND ADVANCE LOCAL MEDIA**

Upon consideration of the *GUC Recovery Trustee’s Fourth Omnibus Objection to Late Filed Claims of FedEx Corporate Services, Inc. and Advance Local Media* dated August 20, 2021 (the “Fourth Omnibus Objection”) to disallow and expunge the late filed proofs of claim of FedEx Corporate Services, Inc. (“FedEx”) and Advance Local Media (“ALM”); and the Court having jurisdiction to consider the Fourth Omnibus Objection and relief requested under 28 U.S.C. §§ 157 and 1334; and the GUC Recovery Trustee’s Fourth Omnibus Objection being a core proceeding under 28 U.S.C. § 157(b)(2); and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the GUC Recovery Trustee’s Fourth Omnibus Objection having been given as evidenced by the Certificate of Service filed at Dkt. No. __; and no other notice being required; and such relief being in the best interest of the Debtors’ estates and its creditors, and the GUC Recovery Trust²; and the Court having considered all

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² Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the GUC Recovery Trustee’s Fourth Omnibus Objection.

papers submitted, and a hearing having been held on October 20, 2021; and for good cause shown, it is

ORDERED that the GUC Recovery Trustee's Fourth Omnibus Objection is SUSTAINED to the extent set forth herein; and it is further

ORDERED that, pursuant to 11 U.S.C. §§ 105 and 502 and Bankruptcy Rule 3007, the FedEx Claims, identified on the claims register maintained by Kurtzman Carson Consultants, LLC ("KCC") as claim # 2685 and claim # 2686 filed against Cypress Media Inc. d/b/a The McClatchy Company be, and hereby are disallowed and expunged; and it is further

ORDERED that, pursuant to 11 U.S.C. §§ 105 and 502 and Bankruptcy Rule 3007, the ALM Claim, identified on the claims register maintained by KCC as claim # 2664 filed against The McClatchy Company be, and hereby is disallowed and expunged; and it is further

ORDERED that The GUC Recovery Trustee's rights to object to the FedEx Claims and the ALM Claim on any and all grounds and/or for any other purposes is expressly reserved; and it is further

ORDERED that the GUC Recovery Trustee or KCC is authorized and directed to modify the claims register in accordance with the terms of this Order; and it is further

ORDERED that the Court shall retain jurisdiction over any matter arising from or related to the implementation of this Order.

Dated: New York, New York
October __, 2021

Michael E. Wiles
United States Bankruptcy Judge