

Response Deadline: July 13, 2022 at 4:00 p.m. (Prevailing Eastern Time)
Hearing Date and Time: July 20, 2022 at 11:00 a.m. (Prevailing Eastern Time)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

.....X	
In re:	:
	:
JCK LEGACY COMPANY, <i>et al.</i> ,	:
	:
Debtors. ¹	:
	:
.....X	

Chapter 11
Case No. 20-10418 (MEW)
(Jointly Administered)

**GUC RECOVERY TRUSTEE’S OBJECTION TO
PROOF OF CLAIM NO. 2729 FILED BY NIRVA BOURSICQUOT**

**THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE PROOF OF CLAIM
NO. 2729 FILED BY NIRVA BOURSICQUOT.**

William A. Brandt, Jr. in his capacity as trustee (the “**GUC Recovery Trustee**”) of the JCK Legacy GUC Recovery Trust created under the GUC Recovery Trust Agreement (the “**Trust Agreement**”) 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 and through undersigned counsel, files this objection (the “**Objection**”), and pursuant to section 502 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rule**”), seeks entry of an order (the “**Proposed Order**”) in the form attached as **Exhibit A**, disallowing and expunging Proof of Claim No. 2729 (the “**Claim**”) filed by Nirva Boursiquot (“**Ms. Boursiquot**”).

¹ The Debtors in these chapter 11 cases and the last four characters of each Debtor’s tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (SUZ1). The location of the GUC Recovery Trustee’s service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.



In support of the Objection, the GUC Recovery Trustee submits the *Declaration of Patrick E. Fitzmaurice* (“**Fitzmaurice Decl.**”) attached as **Exhibit B** and states as follows.

I. INTRODUCTION

1. The Claim should be disallowed and expunged because it is untimely and Ms. Boursiquot cannot establish excusable neglect as required under Bankruptcy Rule 9006. While Ms. Boursiquot claims to have not received service of the Bar Date Order because it was served on an old address, since at least October 19, 2020, Ms. Boursiquot has been on notice of her obligation to file a claim, but did not do so until June 6, 2022. That claim is untimely.

2. On October 19, 2020, the Debtors’ in-house counsel advised Ms. Boursiquot’s attorney of the Debtors’ bankruptcy filing and gave her a link to the claims agent’s website for Ms. Boursiquot to file a proof of claim. Rather than file a claim, Ms. Boursiquot chose to file an employment discrimination lawsuit (the “**Florida Action**”) against JCK Legacy Shared Services f/k/a McClatchy Shared Services, Inc. (“**Defendant**”) in the United States District Court for the Southern District of Florida (the “**Florida Court**”). On June 17, 2021, two months after the lawsuit was filed, counsel for the GUC Recovery Trustee (“**Counsel**”) advised Ms. Boursiquot’s attorney of the need to file a claim in order for Ms. Boursiquot to receive anything based on her discrimination claims.

3. From July 28, 2021 to May 24, 2022, Defendant made certain filings in the Florida Court that also made plain Ms. Boursiquot’s obligation to file a claim here. But, no claim was filed until June 6, 2022, almost two years after Ms. Boursiquot was first told of the need to file a claim. Delay in filing the Claim was entirely within Ms. Boursiquot’s control, and her refusal to promptly file a proof of claim when advised to do so was – deliberate - and inexcusable.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.
5. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).
6. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.
7. The predicates for the relief sought herein are section 502 of the Bankruptcy Code and Bankruptcy Rule 3007.

III. BACKGROUND

A. The Debtors' Bankruptcy Case

8. On February 13, 2020, The McClatchy Company, a corporation organized under the laws of the state of Delaware, and certain of its affiliates, including McClatchy Shared Services, Inc. ("**MSSI**") (collectively, 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.

9. 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.) ("**Bar Date**"), as the deadline for creditors to file proofs of claim against the Debtors. Notice of the Bar Date Order was mailed and also published in *The New York Times* as required by the Bar Date Order. *See* Docket Nos. 485, 513. 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**").

10. The Plan and the 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; Trust Agreement, § 2.1; Plan, § 6.20. 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.

11. 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, the 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).

12. The Confirmation Order provides that "all assets of the Debtors shall be applied to the payment of claims and expenses only in the manner and in the order set forth in the Plan, and creditors shall be enjoined from interfering with the distributions and payments contemplated by the Plan." Confirmation Order at 3 (I.1.(c)).

B. Proof of Claim No. 2729

13. On May 29, 2020, Ms. Boursiquot was served notice of the Bar Date at 5413 SW 126th Terrace, Miramar, Florida 33027 (the "**Miramar Address**"), the address on file with the Debtors. *See* Docket No. 503. On June 6, 2022, Ms. Boursiquot untimely filed the Claim in the amount of \$1.1 million based on employment discrimination. A copy of Proof of Claim No. 2729 is attached as **Exhibit C**.

C. Factual and Procedural Background

a. Florida Court Proceedings

i. *Complaint*

14. On April 7, 2021, Ms. Boursiquot filed a complaint (the “**Complaint**”) in the Florida Court, alleging employment discrimination based on race (the “**Florida Action**”). A copy of the Complaint is attached as **Exhibit D**. The Complaint alleges that on or about March 15, 2019, Ms. Boursiquot was terminated from her employment with MSSI because of her race and in retaliation to her complaints of discriminatory practices at MSSI. Compl. ¶ 51. On January 17, 2020, Ms. Boursiquot filed a charge of discrimination with the Equal Employment Opportunity Commission (the “**EEOC**”) and the Florida Commission on Human Relations (“**FCHR**”). *Id.* ¶ 16.

15. On or about August 24, 2020, the EEOC issued a notice of right-to-sue letter to Ms. Boursiquot. Compl. ¶ 17. FCHR did not issue a letter or determination regarding the charge of discrimination. *Id.* The Complaint asserts three claims under 42 U.S.C. § 1981 based on discrete act/unlawful termination, hostile work environment, and retaliation, and three claims under Florida Civil Rights Act of 1992, §760.01, *et seq.*, Florida Statutes, based on discrete act, hostile work environment, and retaliation. *Id.* ¶¶ 59-115.

ii. *Default, Default Judgement and Report and Recommendation*

16. On June 15, 2021, a clerk’s default was entered in the Florida Action against Defendant for failure to appear. *See* Dist. Ct. Dkt. No. 7. On July 14, 2021, Ms. Boursiquot filed a motion for default judgment, which was referred to Magistrate Judge Chris M. McAliley. *See* Dist. Ct. Dkt. No. 8. In the motion, Ms. Boursiquot sought damages totaling \$1,071,081.31 for back pay, front pay, compensatory damages, and punitive damages. *See id.*

17. On July 28, 2021, Defendant filed an opposition to the motion, arguing that the default should be set aside and that the motion should be denied because Defendant has a meritorious defense. *See* Dist. Ct. Dkt. No. 10. According to the GUC Recovery Trustee, Defendant had a meritorious defense because Ms. Boursiquot was served notice of the Bar Date at the Miramar Address and had not filed a proof of claim and thus cannot recover on her employment discrimination claims. *See id.*

18. On January 26, 2022, Magistrate Judge McAliley issued a report and recommendation, recommending that the default be set aside and that the default judgment motion be denied because Defendant did not willfully fail to file an answer and had a meritorious defense that under the Plan and Confirmation Order, Ms. Boursiquot can recover on her claims only if she files a claim with this Court, which she had not done. *See* Dist. Ct. Dkt. No. 12.

19. On February 9, 2022, Ms. Boursiquot filed an objection to the report and recommendation, arguing, among other things, that she did not receive notice of the Bar Date because, on or around February of 2018, she moved from the Miramar Address to 244 Biscayne Boulevard, Apt. No. 2606, Miami, Florida 33132 (the “Miami Address”). *See* Dist. Ct. Dkt. No. 13. According to Ms. Boursiquot, she notified the Debtors of the Miami Address, yet the Debtors failed to update their records to reflect the new address. *See id.* On March 1, 2022, the Florida Court adopted and affirmed Magistrate Judge McAliley’s report and recommendation, denying the default judgment motion and vacating the entry of default against Defendant. *See* Dist. Ct. Dkt. No. 14. The Florida Court then directed Defendant to respond to the Complaint. *See id.*

iii. Defendant’s Motion to Dismiss

20. On March 31, 2022, Defendant filed a motion to dismiss, or in the alternative, motion to transfer venue. *See* Dist. Ct. Dkt. No. 16. Defendant argued that dismissal was

appropriate because the Confirmation Order provides that all of the Debtors' assets are to be paid to creditors in accordance with the Plan's provisions, that Ms. Boursiquot cannot recover on her claims because she had not filed a proof of claim when advised to do so, that she cannot satisfy the excusable neglect standard under Bankruptcy Rule 9006, or in the alternative, that the Florida Action should be transferred to this Court because it has "related to" jurisdiction over the discrimination claims and convenience and justice required transfer. *See id.*

21. On April 12, 2022, Ms. Boursiquot filed a motion for extension of time to respond to Defendant's motion to dismiss. *See* Dist. Ct. Dkt. No. 17. On April 21, 2022 Ms. Boursiquot filed an opposition to the motion to dismiss, arguing, among other things, that the Plan and Confirmation Order do not apply to her, that she can continue with her discrimination claims in the Florida Action because the Florida Court's role is to determine liability regarding her alleged claims, and that whether such claims are recoverable is an issue reserved for this Court. *See* Dist. Ct. Dkt. No. 19. On April 28, 2022, Defendant filed a reply. *See* Dist. Ct. Dkt. No. 20. Defendant's motion to dismiss is still pending.

iv. Defendant's Motion to Stay Discovery Pending Resolution of Motion to Dismiss or Modify Scheduling Order

22. On May 9, 2022, the Florida Court issued a scheduling order that established certain pretrial deadlines (including discovery) and set the trial date for February 13, 2023, although the parties proposed a trial date for June 7, 2023. *See* Dist. Ct. Dkt. Nos. 28, 31. On May 24, 2022, Defendant filed a motion to stay discovery pending resolution of its motion to dismiss or modify the scheduling order to extend the pretrial deadlines set forth therein. *See* Dist. Ct. Dkt. No. 32. On May 27, 2022, the Florida Court granted the request to stay discovery pending ruling on the motion to dismiss, and denied the request to modify the scheduling order. *See* Dist. Ct. Dkt. No. 33.

D. Notice of Obligation to File Proof of Claim

a. October 19, 2020 Email Correspondence

23. On October 19, 2020, the Debtors' in-house counsel advised Ms. Boursiquot's attorney of the expired Bar Date and provided her a link to the claims agent's website for Ms. Boursiquot to file a proof of claim. Fitzmaurice Decl. ¶ 2, Exhibit 1. The Debtors' in-house counsel also advised that Ms. Boursiquot's sole recourse was with this Court if she wished to pursue her claims against Defendant. *Id.*

b. June 17, 2021 Email Correspondence

24. On June 17, 2021, the GUC Recovery Trustee's Counsel emailed Mr. Boursiquot's attorney, stating that "Please also note that regardless of the status of the proceedings, no recovery is possible from the debtors on account of Ms. Bourisquot's claim absent her filing a proof of claim. As of today, I understand that no claim has been filed." Fitzmaurice Decl. ¶ 3, Exhibit 2. Thereafter, Counsel and Ms. Boursiquot's attorney discussed the details of the June 17 email on a call. *Id.*

c. August 18, 2021 Email Correspondence

25. On August 18, 2021, Counsel emailed a copy of the Bar Date Order service list to Ms. Boursiquot's attorney, showing that Ms. Boursiquot was served at the Miramar Address. Fitzmaurice Decl. ¶ 4, Exhibit 3. Counsel did not hear back from Ms. Boursiquot's attorney and was unaware of Ms. Boursiquot's position on service until she filed an objection to Magistrate Judge McAliley's report and recommendation, arguing that she did not receive notice of the Bar Date and had notified the Debtors of her move in February of 2018 to the Miami Address. *Id.*

IV. RELIEF REQUESTED

26. Pursuant to Bankruptcy Code section 502 and Bankruptcy Rule 3007, the GUC Recovery Trustee seeks entry of the Proposed Order disallowing and expunging the Claim because Ms. Boursiquot's untimely claim was deliberate and is undoubtedly inexcusable.

V. BASIS FOR RELIEF

A. Applicable Standard for Claim Objection

27. Section 502 of the Bankruptcy Code governs the allowance and disallowance of claims. 11 U.S.C. § 502. Generally, a filed claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). If an objection is filed, section 502(b) requires the Court to determine the amount of the claim and allow it, unless the claim falls in one of the enumerated categories under sections 502(b)(1)-(9). *See* 11 U.S.C. § 502(b).

28. The objecting party has the initial "burden of putting forth evidence sufficient to refute the validity of the claim." *In re Metex Mfg. Corp.*, 510 B.R. 735, 740 (Bankr. S.D.N.Y. 2014) (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.*, No. 12 Civ. 6074 (RJS), 2013 WL 5549643, at *3 (S.D.N.Y. Sep. 26, 2013)).

B. Creditors Must Establish Excusable Neglect To File Untimely Claims

29. Rule 3003 of the Federal Rules of Bankruptcy Procedure requires a bankruptcy court to fix the time for filing proofs of claim in chapter 11 cases. *See* Fed. R. Bankr. P. 3003(c)(3). After the bar date is fixed, a claimant who files an untimely proof of claim is

ineligible to receive a distribution from the bankruptcy estate, absent a showing of excusable neglect. *In re Best Products Co.*, 140 B.R. 353, 359 (Bankr. S.D.N.Y. 1992).

30. Bankruptcy Rule 9006 provides that “when an act is required or allowed to be done within a specified period by these rules or by a notice given thereunder or by order of the court, the court for cause shown may at any time in its discretion . . . on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b)(2). To determine whether a late-filing is attributable to excusable neglect, the Bankruptcy Court will consider all relevant circumstances surrounding a party’s omission and address: “(1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith.” *In re BGI, Inc.*, 476 B.R. 812, 824 (Bankr. S.D.N.Y. 2012) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship.*, 507 U.S. 380, 395 (1993)).

31. “The Second Circuit strictly observes bar dates and has adopted what has been characterized as a ‘hard line’ in applying the *Pioneer* test,” meaning that courts should focus their analysis “primarily on the reason for the delay, and specifically whether the delay was in the reasonable control of the movant.” *In re Lehman Bros. Holdings Inc.*, 433 B.R. 113, 119-20 (Bankr. S.D.N.Y. 2010) (citing *In re Enron Corp.*, 419 F.3d 115, 122 (2d Cir. 2005). *See also Williams v. KFC Nat. Management Co.*, 391 F.3d 411, 415 (2d Cir. 2004) (“We have emphasized . . . that it is the third factor-the reason for the delay-that predominates, and the other three are significant only in close cases.”). Accordingly, “[a] creditor seeking to file a late claim ‘must explain the circumstances surrounding the delay in order to supply the [c]ourt with sufficient context to fully and adequately address the reason for delay factor and the ultimate

determination of whether equities support the conclusion of excusable neglect.” *Lehman Bros.*, 433 B.R. at 120 (quoting *In re Enron Creditors Recovery Corp.*, 370 B.R. 90, 103 (Bankr. S.D.N.Y. 2007)).

32. Applying the *Pioneer* test, the Court ruled that it was inexcusable for a creditor to file a late proof of claim three months after it was notified of the requirement to do so. *See In re Pacific Drilling SA*, 616 B.R. 634 (Bankr. S.D.N.Y. 2020). The Court stated that “a party who misses a deadline must act with reasonable promptness after its neglect becomes clear to it, and must act promptly to take the action that should have been taken earlier.” *Id.* at 645 (citation omitted). In *Pacific Drilling*, the creditor knew in early September of 2018 that it must file a proof of claim, yet it waited fifteen weeks to do so even after that the original bar date had expired. *Id.* According to the Court, “[t]hat is not acting with reasonable promptness; it is exactly the opposite of reasonable promptness.” *Id.*

33. Recently, this Court applied the *Pioneer* test to a claim objection in this case. *See* Docket No. 1363. On January 19, 2022, the Court held a hearing to address the untimeliness of a claim filed by John C. Bolliger more than a year after the Bar Date, and five months after he learned of the bankruptcy case and was given a link to the claims agent’s website to file a claim. Mr. Bolliger did not “have a good answer” when asked why he waited five months to file a claim after learning of the Bar Date. Transcript of Hr’g Held on Jan. 19, 2022, at 10:17. According to the Court, “[f]ive months is a long time to wait. It’s probably longer than the original bar date was” *Id.* at 10:9-10. In disallowing Mr. Bolliger’s untimely claim, the Court stated:

Excusable neglect requires a reason why the bar date was missed, but also some demonstration of diligence on the part of the creditor to act once learning of the bar date, and that didn’t happen here. By Mr. Bolliger’s own words, he doesn’t have a good answer as to why he waited five months. . . .

Id. at 12:11-15.²

34. As in *Pacific Drilling* and Mr. Bolliger’s case, other courts have ruled that claims filed more than three months after the bar date are untimely and that such a delay is not excusable. *See, e.g., Enron Corp.*, 419 F.3d at 130 (finding that lower court did not abuse its discretion in finding that “six months constituted an unacceptable delay”); *In re AMR Corp.*, 492 B.R. 660, 667 (Bankr. S.D.N.Y. 2013) (concluding that three-month delay was an unreasonable).

35. The decisions discussed above demonstrate that, absent a reasonable excuse for filing an untimely claim, bar dates must be strictly observed “to facilitate the equitable and orderly intake of [individual] claims.” *Enron Corp.*, 419 F.3d at 130 (quoting *In re Am. Classic Voyages Co.*, 405 F.3d 127, 133 (3d Cir. 2005)). Otherwise, arbitrary filing of claims would pose formidable challenge to a debtor’s reorganization efforts, impact the administration of the debtor’s estate, and affect recoveries and timely distributions to creditors.

C. The Claim Should Be Disallowed Because Ms. Boursiquot Cannot Establish Excusable Neglect

36. Even assuming that Ms. Boursiquot was not served notice of the Bar Date, the Claim should be disallowed because Ms. Boursiquot cannot establish that her untimely proof of claim was the result of excusable neglect.

37. Beginning with the third and most important *Pioneer* factor, the untimeliness of the Claim was entirely in Ms. Boursiquot’s control and she has no valid reason for the delay. For one year and seven months, Ms. Boursiquot refused to file a proof of claim despite being repeatedly told of her obligation to do so. Among other things, Defendant included a copy of the

² A copy of the January 19, 2022 transcript is attached as **Exhibit E**. The Court should take judicial notice of its ruling. *See In re Tessier*, 333 B.R. 174, 175 n.1 (Bankr. D. Conn. 2005) (“It is generally accepted that a bankruptcy judge may take judicial notice of the bankruptcy court’s records” under FRE 201 (quoting Barry Russell, Bankruptcy Evidence Manual § 201.5 (2005 ed.))).

January 19 transcript with its motion to dismiss, which should have highlighted for Ms. Boursiquot her need to act promptly. That motion was itself made seventeen months after Ms. Boursiquot was first notified of the need to file a claim. Yet, the Claim was not filed for an additional few months.

38. The other *Pioneer* factors also weigh in favor of disallowing the Claim. *First*, the Debtors would be prejudiced if the Court allows Ms. Boursiquot's untimely claim. As noted, bar dates are designed to identify all claims against a debtor and address them in a centralized forum. Absent strict observance of the bar date or diligence by a creditor to file a claim after learning of the bar date, any creditor could file a late claim, which would impose an administrative burden on the estate to object to such claims and potentially dilute recoveries to and delay distributions to creditors. *Second*, the Claim was filed a year and seven months after Ms. Boursiquot (through her attorney) first learned of the bankruptcy case and her obligation to file a proof of claim. If the Claim is allowed, it would impose an administrative burden on the estate given that Defendant's motion to dismiss is still pending in the Florida Action and the GUC Recovery Trustee would be required to engage in further proceedings in the Florida Court if the motion to dismiss is denied.

39. Finally, Ms. Boursiquot has not acted in good faith. As stated (and assuming no service of the Bar Date Order), Ms. Boursiquot first learned of her need to file a claim in October of 2020. That direction was repeated in June of 2021 and August of 2021 and was also the subject of several filings in the Florida Action: (a) Defendant's opposition to her default judgment motion, (b) Magistrate Judge McAliley's report and recommendation, (c) Defendant's motion to dismiss, (d) Defendant's reply, and (e) Defendant's motion to stay discovery pending resolution of the motion to dismiss or modify the scheduling order.

40. In sum, given the long passage time and the repeated disclosure of her filing obligation, Ms. Boursiquot's refusal to file the Claim until now appears deliberate and not the result excusable neglect. Accordingly, the GUC Recovery Trustee respectfully requests that the Claim be disallowed and expunged in its entirety.

NOTICE

41. Notice of the Objection has been given to parties on the master service list who have agreed to accept service by email and by regular mail to Nirva Boursiquot and Ms. Boursiquot's attorney in the Florida Action. The GUC Recovery Trustee submits that such notice is sufficient and no other or further notice need be provided.

CONCLUSION

WHEREFORE, the GUC Recovery Trustee respectfully requests that the Court enter the Proposed Order attached as **Exhibit A**: (a) disallowing and expunging Proof of Claim No. 2729; (b) granting such other and further relief as the Court deems just and proper.

Dated: June 17, 2022
New York, New York

/s/ Leo T. Crowley
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Counsel for GUC Recovery Trustee

Response Deadline: July 13, 2022 at 4:00 p.m. (Prevailing Eastern Time)
Hearing Date and Time: July 20, 2022 at 11:00 a.m. (Prevailing Eastern Time)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

NOTICE OF OBJECTION AND HEARING

THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE PROOF OF CLAIM NO. 2729 FILED BY NIRVA BOURSICQUOT.

PLEASE TAKE NOTICE that William A. Brandt, Jr., in his capacity as trustee of the JCK Legacy GUC Recovery Trust, filed the *GUC Recovery Trustee's Objection to Proof of Claim No. 2729 Filed By Nirva Boursiquot* (the "**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 Objection must be filed on or before **July 13, 2022 at 4:00 p.m. (ET)** (the "**Response Deadline**") with the Bankruptcy Court, Courtroom 617, One Bowling Green, New York, New York 10004. At the same time, you must serve a copy of any response by the Response Deadline upon the undersigned counsel to the movant and to:

- (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);

¹ The Debtors in these chapter 11 cases and the last four characters of each Debtor's tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (SUZ1). The location of the GUC Recovery Trustee's service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

- (b) Counsel for the Plan Administration Trustee, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attn.: Shana A. Elberg (shana.elberg@skadden.com) and Bram A. Stochlic (bram.stochlic@skadden.com), 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071, Attn.: Van C. Durrer, II (van.durrer@skadden.com), and Destiny N. Almogue (destiny.almogue@skadden.com) and 525 University Avenue, Palo Alto, California 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, New York 10119, Attn.: Albert Togut (altogut@teamtogut.com) and Kyle J. Ortiz (kortiz@teamtogut.com);
- (d) The GUC Recovery Trust, c/o DSI Consulting, Inc., 110 East 42nd Street, Suite 1818, New York, New York 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, New York. 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, New York 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 Objection shall be held **telephonically via Court Solutions LLC on July 20, 2022 at 11:00 a.m. (ET)** before the Honorable Michael E. Wiles in the Bankruptcy Court,

Courtroom 617, One Bowling Green, New York, New York 10004. Instructions to register for Court Solutions LLC are attached to Gen. Ord. M-543.

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 Objection without further notice or a hearing.

Dated: June 17, 2022
New York, New York

/s/ Leo T. Crowley
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Counsel for GUC Recovery Trustee

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**ORDER GRANTING GUC RECOVERY TRUSTEE'S OBJECTION
TO PROOF OF CLAIM NO. 2729 FILED BY NIRVA BOURSQUOT**

Upon consideration of the *GUC Recovery Trustee's Objection to Proof of Claim No. 2729 Filed By Nirva Boursiquot* (the "**Objection**") to disallow and expunge Proof of Claim No. 2729; and the Court having jurisdiction under 28 U.S.C. §§ 157 and 1334 to consider the Objection and relief requested; and the Objection and relief requested 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 Objection having been provided; and it appearing that no other notice is needed; and such relief being in the best interest of the Debtors' estates and their creditors, and the GUC Recovery Trust; and the Court having considered all papers submitted; and for good cause shown:

It is hereby **ORDERED** that:

1. The Objection is **SUSTAINED** to the extent set forth herein.
2. Proof of Claim No. 2729 is disallowed and expunged in its entirety.
3. The GUC Recovery Trustee² or the claims agent is authorized and directed to modify the claims register in accordance with the terms of this Order.

¹ The Debtors in these chapter 11 cases and the last four characters of each Debtor's tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (SUZ1). The location of the GUC Recovery Trustee's service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

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

Dated: July __, 2022
New York, NY

Michael E. Wiles
United States Bankruptcy Judge

² Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Objection.

Exhibit B

Declaration of Patrick E. Fitzmaurice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

DECLARATION OF PATRICK E. FITZMAURICE IN SUPPORT OF OBJECTION

Pursuant to 28 U.S.C. § 1746, I, Patrick E. Fitzmaurice, submit this declaration (the “**Declaration**”) under penalty of perjury and state that the following is true to the best of my knowledge, information, and belief:

1. I am a partner in the law firm of Pillsbury Winthrop Shaw Pittman LLP, attorneys for William A. Brandt Jr., in his capacity as the trustee of the GUC Recovery Trust.² I submit this Declaration in support of the *GUC Recovery Trustee’s Objection to Proof of Claim No. 2729 Filed By Nirva Boursiquot*. I am fully competent to make this Declaration, am over the age of eighteen, and all statements herein are true and correct and are within my personal knowledge.

2. On June 16, 2021, I received an email chain from the Plan Administration Trustee’s counsel dated October 19, 2020, in which the Debtor’s in-house counsel advised Ms. Boursiquot’s attorney of the expired Bar Date and provided her a link to the claims agent’s website for Ms. Boursiquot to file a proof of claim. The Debtors’ in-house counsel also advised that Ms. Boursiquot’s sole recourse was with this Court if she wished to pursue her employment discrimination claims against Defendant.

¹ The Debtors in these chapter 11 cases and the last four characters of each 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: 110 East 42 Street, Suite 1818 New York, NY 10017.

² Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Objection.

3. On June 17, 2021, I sent an email to Ms. Boursiquot's attorney, stating, among other things, that "Please also note that regardless of the status of the proceedings, no recovery is possible from the debtors on account of [Ms. Boursiquot's] claim absent her filing a proof of claim. As of today, I understand that no claim has been filed." Shortly thereafter, I had a phone call with Ms. Boursiquot's attorney regarding the details in my June 17, 2021 email. In the almost 12 months since then, I have repeatedly discussed with Ms. Boursiquot's attorney the need for her client to file a claim in these cases.

4. On August 18, 2021, I emailed a copy of the service list of the Notice of the Bar Date to Ms. Boursiquot's attorney, which showed that Ms. Boursiquot was served at 5413 SW 126th Terrace, Miramar, Florida 33027. Ms. Boursiquot's attorney did not respond to my email, and I was not aware of Ms. Boursiquot's position on service of the Bar Date until Ms. Boursiquot filed an objection to the report and recommendation issued by Magistrate Judge McAliley on January 26, 2022.

5. Attached as **Exhibit 1** is a true and correct copy of correspondence between Ms. Boursiquot's attorney and in-house counsel for the Debtor that occurred on October 19, 2020. The correspondence was redacted for confidential and privileged information

6. Attached as **Exhibit 2** is a true and correct copy of my June 17, 2021 email.

7. Attached as **Exhibit 3** is a true and correct copy of my August 18, 2021 email.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 17, 2022

/s/ Patrick E. Fitzmaurice
Patrick E. Fitzmaurice

Exhibit 1

October 19, 2020 Email

From: **Cornejo, Juan** <jcornejo@mcclatchy.com>

Date: Mon, Oct 19, 2020 at 4:36 PM

Subject: Fwd: Nirva Boursiquot v. McClatchy. - [Notice of Representation]

To: <tiffani@dereksmithlaw.com>

Cc: <cassie@dereksmithlaw.com>

Dear Ms. Brooks,

I am legal counsel for The McClatchy Company, LLC. Your below email was forwarded to me for a response.

It is my understanding that your client Nirva Boursiquot was an employee of The McClatchy Company and was terminated in 2019. You might not be aware but The McClatchy Company and all of its subsidiaries filed for bankruptcy on February 13, 2020. See <http://www.kccllc.net/mcclatchy> The deadline to file a bankruptcy claim expired on July 10, 2020. However, if you still wish to pursue this matter, your client's only remedy is to proceed under the bankruptcy process.

To avoid any confusion, The McClatchy Company sold all of its assets as part of the bankruptcy process to a newly formed company named The McClatchy Company, LLC

effective September 4, 2020. The McClatchy Company, LLC has not taken on nor is it responsible for any of the liabilities held by The McClatchy Company.

Please act accordingly.

regards,

Juan Cornejo

----- Forwarded message -----

From: **Cassie Cisneros** <cassie@dereksmithlaw.com>

Date: Mon, Oct 19, 2020 at 12:47 PM

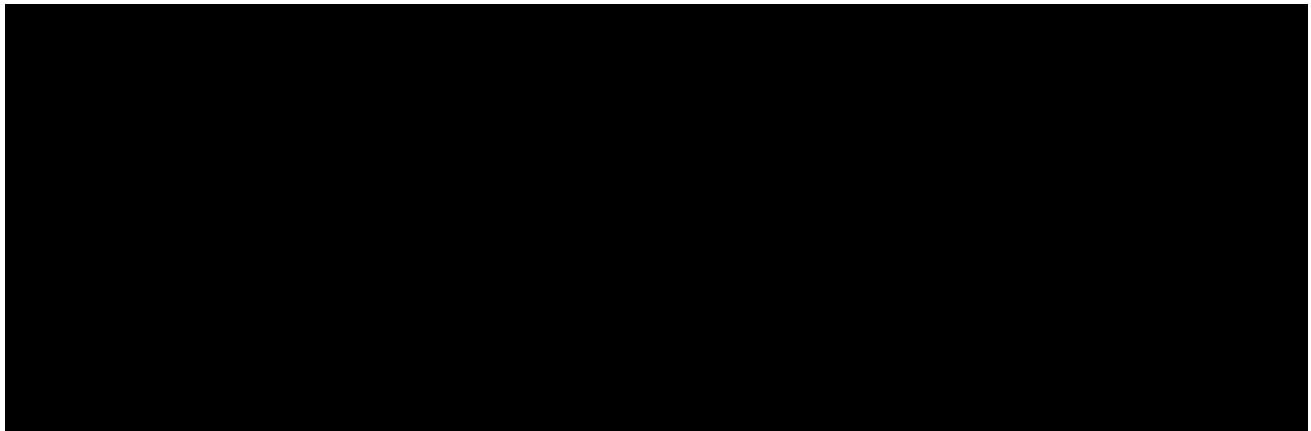
Subject: Nirva Boursiquot v. McClatchy. - [Notice of Representation]

To: cramirez@Mcclatchy.com <cramirez@mcclatchy.com>

Cc: Tiffani-Ruth Brooks <tiffani@dereksmithlaw.com>

Good Afternoon Ms. Ramirez,

Ms. Tiffani-Ruth I. Brooks of the Derek Smith Law Group represents Ms. Nirva Boursiquot in connection with multiple claims to her employment with McClatchy for racial discrimination, retaliation, hostile work environment and unlawful termination. As you are aware; a notice of rights was provided by the EEOC wherein our client was advised of her right to proceed in civil court.



Sincerely,

CASSIE CISNEROS

Managing Paralegal of Miami

DEREK SMITH LAW GROUP, PLLC

Attorneys at Law

Employment Lawyers Representing Employees Exclusively

Toll Free No. (800) 807-2209

DiscriminationAndSexualHarassmentLawyers.com (website)

Miami Office: 701 Brickell Ave., Suite 1310, Miami, FL 33131 | (305) 946-1884

NYC Office: One Penn Plaza, Suite 4905, New York, NY 10119 | (212) 587-0760

Philadelphia Office: 1835 Market Street, Suite 2950, Philadelphia, PA 19103 | (215) 391-4790

NJ Office: 73 Forest Lake Drive, West Milford, NJ 07421 | (973) 388-8625

Los Angeles Office: 633 West 5th Street, Suite 3250, Los Angeles, California 90071 | (310)-602-6050

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--

Juan Cornejo
Assistant General Counsel
McClatchy
2100 Q Street
Sacramento, CA 95816-6899
tel: (916) 321-1848
jcornejo@mcclatchy.com

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--

Juan Cornejo
Assistant General Counsel
McClatchy
2100 Q Street
Sacramento, CA 95816-6899
tel: (916) 321-1848
jcornejo@mcclatchy.com

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Exhibit 2

June 17, 2021 Email

From: Fitzmaurice, Patrick E.
To: [Caroline Miller](#); [Katharine Scott](#)
Cc: [Kyle Ortiz](#); [Marino D'Alessandro](#); [Minta Nester](#)
Subject: RE: JCK Legacy Company Case No. 20-10418 - Nirva Boursiquot
Date: Thursday, June 17, 2021 2:00:31 PM
Attachments: [image002.png](#)
[image003.png](#)

Good afternoon,

I think there is some confusion here and that a call may be helpful. I understand that you view obtaining a copy of any applicable insurance policy as 'imperative' for your client's claims but at this point there is simply no way for us to do that. We do not have access to the debtors' historical books and records and so cannot 'find' any applicable policy. Please also note that regardless of the status of the proceedings, no recovery is possible from the debtors on account of Ms. Bourisquot's claim absent her filing a proof of claim. As of today, I understand that no claim has been filed. In my view a call would be helpful for us to discuss these issues. Please advise as to your availability next week.

From: Caroline Miller <caroline@dereksmithlaw.com>
Sent: Thursday, June 17, 2021 12:32 PM
To: Katharine Scott <kscott@teamtogut.com>
Cc: Fitzmaurice, Patrick E. <patrick.fitzmaurice@pillsburylaw.com>; Kyle Ortiz <kortiz@teamtogut.com>; Marino D'Alessandro <mdalessandro@teamtogut.com>; Minta Nester <mnester@teamtogut.com>
Subject: RE: JCK Legacy Company Case No. 20-10418 - Nirva Boursiquot



Good afternoon Katharine,

In order for us to have a productive dialogue, it is imperative that you find the "historical" insurance information. Any policy, namely an EPLI policy, that was in effect at the time of my client's employment and the incidents contained within our complaint, would still cover the claim even if the policy is no longer in existence. I do think that a call would be helpful once we have this information.

Please note, since our last conversation, the court has entered default against JCK and set a deadline for our office to file a formal Default Motion no later than July 14, 2021. I would prefer to have reviewed the policy in advance of that motion.

Thank you,

Exhibit 3

August 18, 2021 Email

From: Fitzmaurice, Patrick E.
To: [Caroline Miller](#); [Katharine Scott](#)
Cc: [Kyle Ortiz](#); [Marino D'Alessandro](#); [Minta Nester](#); [Cassie Cisneros](#)
Subject: RE: JCK Legacy Company Case No. 20-10418 - Nirva Boursiquot
Date: Wednesday, August 18, 2021 9:57:14 AM
Attachments: [image001.png](#)
[Boursiquot Service List Exhibit 4833-9103-6406 v.2.pdf](#)

Copy attached.

From: Caroline Miller <caroline@dereksmithlaw.com>
Sent: Tuesday, August 17, 2021 2:59 PM
To: Fitzmaurice, Patrick E. <patrick.fitzmaurice@pillsburylaw.com>; Katharine Scott <kscott@teamtogut.com>
Cc: Kyle Ortiz <kortiz@teamtogut.com>; Marino D'Alessandro <mdalessandro@teamtogut.com>; Minta Nester <mnester@teamtogut.com>; Cassie Cisneros <cassie@dereksmithlaw.com>
Subject: RE: JCK Legacy Company Case No. 20-10418 - Nirva Boursiquot

Thank you Patrick. I will keep an eye out for the extract.

Best,

Caroline H. Miller, Esq.

*Admitted NY,PA,NJ,FL

DEREK SMITH LAW GROUP, PLLC

Sexual Harassment and Discrimination Lawyers

701 Brickell Avenue, Suite 1310 | Miami, Florida 33131

Tel: (305) 946-1884 | Direct: (786) 292-7605 | Toll Free: (800) 807-2209 | Fax: (305) 503-6741

Email: caroline@dereksmithlaw.com

www.discriminationandsexualharassmentlawyers.com

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From: Fitzmaurice, Patrick E. <patrick.fitzmaurice@pillsburylaw.com>
Sent: Tuesday, August 17, 2021 2:58 PM
To: Caroline Miller <caroline@dereksmithlaw.com>; Katharine Scott <kscott@teamtogut.com>

Cc: Kyle Ortiz <kortiz@teamtogut.com>; Marino D'Alessandro <mdalessandro@teamtogut.com>;
Minta Nester <mvester@teamtogut.com>; Cassie Cisneros <cassie@dereksmithlaw.com>

Subject: RE: JCK Legacy Company Case No. 20-10418 - Nirva Boursiquot

Caroline,

I am working on getting you an extract of the exhibit that shows your client's address information but keeps the redactions for the other individual addresses. I can confirm that the mailing was made to 5413 SW 126th Terrace, Miramar, FL 33027

Patrick E. Fitzmaurice | Partner

Pillsbury Winthrop Shaw Pittman LLP

31 West 52nd Street | New York, NY 10019-6131

t +1.212.858.1171 | m +1.917.608.8497

patrick.fitzmaurice@pillsburylaw.com | [website bio](#)

From: Caroline Miller <caroline@dereksmithlaw.com>

Sent: Tuesday, August 17, 2021 9:15 AM

To: Fitzmaurice, Patrick E. <patrick.fitzmaurice@pillsburylaw.com>; Katharine Scott <kscott@teamtogut.com>

Cc: Kyle Ortiz <kortiz@teamtogut.com>; Marino D'Alessandro <mdalessandro@teamtogut.com>;
Minta Nester <mvester@teamtogut.com>; Cassie Cisneros <cassie@dereksmithlaw.com>

Subject: RE: JCK Legacy Company Case No. 20-10418 - Nirva Boursiquot

Good morning Patrick,

We are in receipt of the motion opposition filed late last month. I was curious if you could provide a copy of Exhibit B with my clients address unredacted.

Thank you,

Caroline H. Miller, Esq.

*Admitted NY,PA,NJ,FL

DEREK SMITH LAW GROUP, PLLC

Sexual Harassment and Discrimination Lawyers

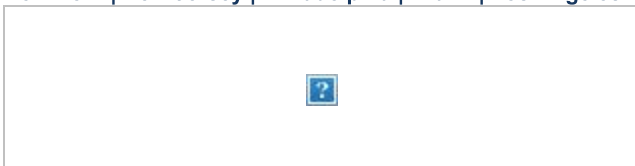
701 Brickell Avenue, Suite 1310 | Miami, Florida 33131

Tel: (305) 946-1884 | Direct: (786) 292-7605 | Toll Free: (800) 807-2209 | Fax: (305) 503-6741

Email: caroline@dereksmithlaw.com

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Exhibit C

Proof of Claim No. 2729

Fill in this information to identify the case:

Debtor The McClatchy Company

United States Bankruptcy Court for the: Southern District of New York
 (State)

Case number 20-10418

Official Form 410 Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

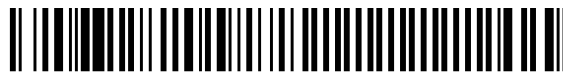
Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Nirva Boursiquot</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Nirva Boursiquot</u> <u>244 Biscayne Blvd #2606</u> <u>Miami, FL 33132, USA</u>	Where should payments to the creditor be sent? (if different) <u>Nirva Boursiquot</u> <u>150 SE 2nd Avenue, Ste 300</u> <u>Miami, FL 33131, USA</u>
	Contact phone _____	Contact phone _____
	Contact email <u>nirvaboursiquot@gmail.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>0478</u> <u> </u> <u> </u>
7. How much is the claim? \$ <u>1100000</u>	Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Employment Discrimination</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ No

☒ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☒ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ 150,499.24

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/06/2022
MM / DD / YYYY

/s/Nirva Boursiquot
Signature

Print the name of the person who is completing and signing this claim:

Name Nirva Boursiquot
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



For phone assistance: Domestic (877) 634-7166 | International 001-310-823-9000

Debtor: 20-10418 - The McClatchy Company District: Southern District of New York, New York Division		
Creditor: Nirva Boursiquot 244 Biscayne Blvd #2606 Miami, FL, 33132 USA Phone: Phone 2: Fax: Email: nirvaboursiquot@gmail.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Disbursement/Notice Parties: Nirva Boursiquot 150 SE 2nd Avenue, Ste 300 Miami, FL, 33131 USA Phone: Phone 2: Fax: E-mail: DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Employment Discrimination	Last 4 Digits: Yes - 0478	Uniform Claim Identifier:
Total Amount of Claim: 1100000	Includes Interest or Charges: No	
Has Priority Claim: Yes	Priority Under: 11 U.S.C. §507(a)(4): 150,499.24	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Nirva Boursiquot on 06-Jun-2022 2:04:06 p.m. Eastern Time Title: Company:		

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

NIRVA BOURSQUOT,

Plaintiff,

Case No.: 1:21-CV-21346T-KMW

v.

JCK LEGACY SHARED SERVICES, INC.,
formerly doing business as MCCLATCHY
SHARED SERVICES, INC.,

Defendant.

_____ /

PROPOSED FINAL JUDGEMENT

Plaintiff Nirva Boursiquot (“Plaintiff” or “Ms. Boursiquot”), commenced this civil action against the Defendant JCK Legacy Shared Services, Inc., *formerly doing business as* McClatchy Shared Services, Inc. (“Defendant” or “JCK”) On April 7, 2021, asserting claims of harassment, discrimination and retaliation, in violation of 42 U.S.C. § 1981 (“1981”), and the Florida Civil Rights Act of 1992, §760.01, *et seq.*, Florida Statutes (“FCRA”) [DE 1].

Plaintiff served the herein summons and Complaint upon the Defendant JCK on April 26, 2021, and despite service, the Defendant failed to answer or otherwise defend in this action, and the Clerk entered default against them on June 15, 2021 [DE 7].

The court may enter default judgment when a defendant fails to respond to a complaint and court orders and fails to participate in the litigation or cooperate in good faith with the plaintiff. *Tara Prods., Inc. v. Hollywood Gadgets, Inc.*, 449 F. App’x 908, 910–12 (11th Cir. 2011); *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987).

Pursuant to Fed. R. Civ. P. 55(b)(2), upon application by Plaintiff, the Court now enters a

default judgment against Defendants JCK for violations of 42 U.S.C. § 1981, and the Florida Civil Rights Act of 1992, §760.01, *et seq.*, Florida Statutes.

THIS CAUSE HAVING come to be heard before this Honorable Court upon Plaintiff's Motion for Entry of Default Judgement and Application for Attorney's Fees and Costs, (hereinafter referred to as the "Motion"), it is **ORDERED, ADJUDGED AND DECREED:**

- A. Back Pay in the Amount of \$149,332.45.
- B. Front Pay reflecting a future loss of \$171,748.86.
- C. Compensatory Damages in the amount to be set by this Court following a hearing, or, in the alternative a fixed sum of \$250,000.00
- D. Punitive Damages in the amount to be set by this Court following a hearing, or, in the alternative a fixed sum of \$500,000.00.
- E. Post Judgement interest to accrue.

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this order.

IT IS FURTHER ORDERED that this Order may be served upon the Defendant by Priority mail or United Parcel Service, either by the United States Marshal, the Clerk of Court, or any representative or agent of the Bureau.

IT IS SO ORDERED, on _____, 2021.

The Honorable Kathleen M. Williams
United States District Judge

Exhibit D

Nirva Boursiquot Complaint

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

NIRVA BOURSQUOT,

Plaintiff,

Case No.:

v.

JURY TRIAL DEMANDED

JCK LEGACY SHARED SERVICES, INC.,
formerly doing business as MCCLATCHY
SHARED SERVICES, INC.,

Defendant.

_____ /

COMPLAINT FOR DAMAGES AND JURY DEMAND

Plaintiff Nirva Boursiquot (“**Plaintiff**” or “**Ms. Boursiquot**”), by her undersigned counsel, Derek Smith Law Group, PLLC, hereby complains of Defendant JCK Legacy Shared Services, Inc. formerly doing business as McClatchy Shared Services, Inc. (referred to herein as “**Defendant**” or the “**Company**”), and alleges as follows:

INTRODUCTION

1. This employment discrimination case is about an employer who subjected its employee to relentless harassment, discrimination and retaliation, all culminating in the unlawful termination of the employee.

2. Plaintiff Nirva Boursiquot brings this action pursuant to 42 U.S.C. § 1981 (“**1981**”), and the Florida Civil Rights Act of 1992, §760.01, *et seq.*, Florida Statutes (“**FCRA**”).

3. Ms. Boursiquot seeks monetary relief to redress Defendant’s unlawful employment practices in violation of 1981 and the FCRA. Additionally, this action seeks to redress Defendant’s deprivation of Ms. Boursiquot’s personal dignity and her civil right to pursue equal employment opportunities.

4. After almost ninety day of employment in a workplace largely free of discrimination, Ms. Boursiquot found herself at the center of a hostile work environment without possibility of resolution of remedy.

5. Ms. Boursiquot's supervisor incessantly humiliated Plaintiff in the presence of staff regarding innate characteristics otherwise associated with her race, slowly cultivating an environment where her colleagues felt comfortable doing the same. Defendants' unrelenting discrimination against Plaintiff culminated with her unlawful termination.

6. At bottom, Defendant is liable for subjecting Ms. Boursiquot to a work environment infested with relentless race discrimination and for wrongfully terminating her because of her race/national origin and in retaliation for her lawful complaints of discrimination.

PARTIES

7. Plaintiff Nirva Boursiquot is a Black/Haitian American woman residing in Miami-Dade County, Florida.

8. Defendant JCK Legacy Shared Services, Inc. is a Florida for-profit corporation, and operates its principal place of business at 3511 N.W. 91st Ave., Miami, FL, 33172-1216.

9. At the time of her employment, Plaintiff Boursiquot was employed by and received payment from McClatchy Shared Services, Inc.

10. In or around August 2020, Defendant Company legally changed and/or amended its registered business entity name with the State of Florida from McClatchy Shared Services, Inc. to JCK Legacy Shared Services, Inc.

11. At all times material, Defendant Company was Ms. Boursiquot's employer.

12. At all relevant times, Defendant Company, have been continuously doing business in the State of Florida and Miami-Dade County and has continuously held at least 15 employees for all relevant calendar years. *42 U.S.C. § 12111(5)(A); § 760.*

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367. This action is authorized and instituted pursuant to 42 U.S.C. § 1981.

14. Venue is proper in this Court under 28 U.S.C. §1391 because the unlawful employment practices alleged below were committed within the jurisdiction of the United States District Court for the Southern District of Florida, Miami Division.

ADMINISTRATIVE PREREQUISITES

15. Ms. Boursiquot has complied with all administrative prerequisites.

16. On January 17, 2020, Plaintiff timely dual filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) (Charge No. 510-2019-06739) and the Florida Commission on Human Relations (“FCHR”) against Defendant Company for unlawful employment practices.

17. On or about August 24, 2020, the EEOC issued Plaintiff a Right to Sue.

18. This action is being commenced within 90 days of the EEOC’s issuance of Plaintiff’s right to sue.

19. Furthermore, this action is being commenced more than one hundred eighty (180) days since the inception of Plaintiff’s admirative action against the Defendants. To date no determination has been made by the FCHR relating to the below complaint.

STATEMENT OF FACTS

20. Ms. Boursiquot is a thirty-five (35) year old Black/Haitian American woman.

21. In or around February 2017, Defendant JCK Legacy Shared Services, Inc. formerly known as McClatchy Shared Services, Inc. hired Plaintiff Boursiquot as a “Strategic Sourcing Manager” based in their Doral Location.

22. Dan Dowis (“**Mr. Dowis**”) is a White/Caucasian man, who at all material times was employed by Defendant as its “Director of Shared Services.” Mr. Dowis hired Plaintiff and held direct supervisory authority over Ms. Boursiquot, controlling various terms and conditions of Ms. Boursiquot’s employment.

23. Carmelita Ramirez (“**Ms. Ramirez**”) is believed to be a Hispanic woman, and at all relevant times was employed by Defendant’s as its H.R. Generalist.

24. At all relevant times, Ms. Boursiquot was the only employee who identified as Black/Haitian American working within her department.

25. Prior to the outset of her employment, Ms. Boursiquot was interviewed by multiple management level employees employed by Defendant Company.

26. At the time of her interview, and throughout approximately the first ninety (90) days of her employment, Ms. Boursiquot took additional steps to ensure she exuded the best presentation in order to conform to societal expectations. This included hiding her natural hair as history had shown intolerance towards such in the past.

27. After working for Defendant Company for approximately ninety (90) days and having established herself as a high performing employee, Ms. Boursiquot felt she would be safe opening up to her colleagues and presenting her natural hair style.

28. As such, in the Summer of 2017, Plaintiff met with her hair stylist and changed her reverted back to a more natural style.

29. Upon arriving to work with her new hair style, Mr. Dowis began to target Plaintiff, repeatedly asking in a derogatory tone, “Oh. You switched your hair style.” Mr. Dowis’ line of questioning was unique to Plaintiff as, despite the constant change in hair styles by Plaintiff white/Caucasian colleague, Mr. Dowis only targeted Ms. Boursiquot for questioning.

30. At all times, Ms. Boursiquot would engage politely and, in an effort, to engage with her supervisor, but the line of questioning was never ending and became increasingly humiliating.

31. Ms. Boursiquot as a Black/Haitian American would have her hair styled approximately every two-month to ensure she was always professional and presenting appropriately but that did not satisfy Mr. Dowis.

32. In fact, on at least one occasion, Mr. Dowis berated Ms. Boursiquot, reprimanding her for the change and stating, “That is not the hair we hired you with.” Mr. Dowis’ line of questioning and attack made it clear that Ms. Boursiquot would not have been hired if it were not for her efforts to conform with societal expectation unfairly, inequitably and unjustifiably placed on Black woman.

33. After Ms. Boursiquot would change her hair, Mr. Dowis would make a point of highlighting the change publicly during team meetings, encouraging her colleagues to join in the banter and engage in a line of invasive and humiliating questions.

34. By means of example, following an appointment wherein Ms. Boursiquot changed her hair, she joined her team for a previously scheduled team meeting. Present during the meeting were Mr. Dowis, Ms. Lydia Lopez, Mr. Philip Kane, and Mr. Hilton Aguilar.

35. Without hesitation, upon entering the room Mr. Dowis eyed Ms. Boursiquot and announced to the team, “Look! Nirva changed her hair again” and proceeded to egg on her colleagues.

36. While Mr. Aguilar and Ms. Lopez seemed to uncomfortably laugh along with their supervisor, Mr. Kane took the bait and proceeding down his own line of questioning about the change in style.

37. At all times Ms. Boursiquot would attempt to respectfully deviate back to the purpose of the meeting but was met with resistance until Mr. Dowis decided he had ridiculed her sufficiently for that day.

38. At all times Ms. Boursiquot would politely ask her colleagues and Mr. Dowis to refrain from commenting on her hair but these requests fell on deaf ears. Instead, the comments continued to escalate as those around her became more emboldened.

39. On or around March 11, 2019, after months of these incessant attacks, Ms. Boursiquot decided she was left with no other alternative and contact Defendant Company's Human Resources Generalist, Ms. Carmelita Ramirez.

40. Ms. Boursiquot advised Ms. Ramirez of the events which had transpired over the preceding months and the efforts she took on her own to end the harassment. Ms. Boursiquot explained to Ms. Ramirez the cultural significance of her hair style and that she felt she had no alternative but to escalate the matter further as she could no longer tolerate the discriminatory comments.

41. Ms. Ramirez advised Ms. Boursiquot that she would call to further investigate the matter. Despite these assurances, Defendant Company failed to timely investigate Ms. Boursiquot's complaints of discrimination and harassment and failed to take any corrective action as towards the unlawful conduct.

42. On or around March 13, 2019, Plaintiff Boursiquot was met with an impasse as she attempted to login into her work account at the outset of the workday. Receiving prompts that her

login access was cutoff, Plaintiff contacted Defendant Company's IT department anticipating this was a glitch that could easily be remedied.

43. To her surprise, Plaintiff was advised that her access had been intentional and expressly suspended by Mr. Dowis, stating Ms. Boursiquot was to be "Locked Out" immediately and denied access.

44. As Plaintiff Boursiquot became concerned, she called Mr. Dowis to inquire directly as to the change. Mr. Dowis explained he was on his way to the office and requested Ms. Boursiquot meet with him upon his arrival.

45. At approximately 10AM, Plaintiff entered Mr. Dowis' office. Present in his office at the time was the East Region Director, Natalie Piner. Mr. Dowis proceeded to falsely accuse Plaintiff of being on vacation without his knowledge and approval, despite his having clear knowledge of her absence both in advance of the time off and throughout the course of her vacation.

46. In fact, during her vacation, Ms. Boursiquot has assisted Mr. Dowis, taking calls and assignments from him. Mr. Dowis had even so much as notified a Company Supplier that Ms. Boursiquot was out of contact because she was on vacation and would follow up upon her return.

47. When Ms. Boursiquot attempted to point out these facts, Ms. Piner appeared shocked, as though Mr. Dowis had seemingly withheld this information from her.

48. Ms. Boursiquot was asked to temporarily step out of the room so that Mr. Dowis and Ms. Piner could presumably discuss.

49. Approximately thirty minutes later, Ms. Boursiquot was called back into the meeting at which she was instructed to turn over any Company property including her badge and laptop and sent home. She was advised Human Resources would "be in touch."

50. Upon returning home, Plaintiff contacted Ms. Ramiez to inquire as to the status of the discrimination complaint she had previously made. Ms. Ramirez advised she was aware of the events from that morning and would follow up shortly.

51. On or around March 15, 2019, Defendant wrongfully terminated Ms. Boursiquot. Defendant Company unlawfully terminated Ms. Boursiquot because of her race and in retaliation for her complaints of unlawful discriminatory practices by Mr. Dowis.

52. The aforementioned allegations are just some of the examples of the discrimination Ms. Boursiquot suffered. Additionally, Ms. Boursiquot claims a continuous practice of discrimination and continuing violations and makes all claims herein under the continuing violations doctrine.

53. As a result of the acts and conduct complained of, Ms. Boursiquot has suffered and will continue to suffer loss of income, loss of salary, bonuses, benefits, and other compensation which such employment entails. Ms. Boursiquot also suffered future pecuniary losses, emotional pain, humiliation, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

54. Ms. Boursiquot suffers from increased stress and anxiety. Similarly, Ms. Boursiquot has trouble sleeping as a result of Defendants' conduct.

55. Further, as a result of Defendant's unlawful employment practices, Ms. Boursiquot felt extremely humiliated, degraded, victimized, embarrassed and emotionally distressed.

56. As Defendants' conduct has been malicious, willful, extreme and outrageous, and with full knowledge of the law, Ms. Boursiquot seeks punitive damages. Ms. Boursiquot has presented factual allegations that would permit any reasonable jury to award damages.

57. At bottom, Defendant is liable for their reckless disregard for Ms. Boursiquot's personal dignity and her civil right to pursue equal employment opportunity.

58. Ms. Boursiquot has suffered damages as a result of Defendant's unlawful employment practices.

COUNT ONE
Race Discrimination (Discrete Act/Unlawful Termination)
in Violation of § 1981

59. Plaintiff realleges and incorporates herein the allegations contained at length in paragraphs 21 paragraphs 51 above.

60. This is an action for discrimination and harassment because of Plaintiff's race in violation of Section 1981. 42 USC Section 1981 states in relevant part as follows:

- (a) Statement of equal rights All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
- (b) "Make and enforce contracts" defined For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. 42 U.S.C.A. § 1981.

63. Plaintiff, as a member of the Black and/or Haitian-American race, was discriminated against by Defendant because of her race as provided under 42 USC Section 1981 and has suffered damages as set forth herein.

64. Defendant constantly enforced a purposefully discriminatory pattern and practice of Black employees of the equal rights described therein, in further violation of 42 U.S.C. §1981.

65. Plaintiff is a Black/Haitian American woman and is protected under Section 1981.

66. Plaintiff was the only Black woman working within her Department.

67. At all times relevant, Plaintiff was treated differently because of her race.

68. Defendant subjected Plaintiff to a hostile work environment because of her race.

69. Defendant unlawful and wrongfully terminated Plaintiff because of her race.

70. As a result of Defendant's discrimination in violation of Section 1981, Plaintiff has been denied the enjoyment of all benefits, privileges, terms, and conditions of Plaintiff's contractual relationship which provided substantial compensation and benefits, thereby entitling her to injunctive and equitable monetary relief; and having suffered such anguish, humiliation, distress, inconvenience and loss of enjoyment of life because of Defendant's actions, thereby entitling Plaintiff to compensatory damages.

71. As alleged above, Defendant acted with malice or reckless indifference to the rights of the Plaintiff and copious other individuals named herein, thereby entitling Plaintiff to an award of punitive damages.

72. Defendant violated the above and Plaintiff suffered numerous damages as a result.

73. Plaintiff makes a claim against Defendant under all of the applicable paragraphs of 42 U.S. Code § 1981.

74. Plaintiff claims Defendant both unlawfully discriminated against Plaintiff and unlawfully retaliated against Plaintiff in violation of 42 USC 1981.

COUNT TWO
Race Discrimination (Hostile Work Environment)
in Violation of § 1981

75. Plaintiff realleges and incorporates herein the allegations contained at length in paragraphs 21 paragraphs 51 above.

76. This is an action for discrimination and harassment because of Plaintiff's race in violation of Section 1981. 42 USC Section 1981 states in relevant part as follows:

(a) Statement of equal rights All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. 42 U.S.C.A. § 1981.

77. Here, Defendant's conduct occurred because of Plaintiff's legally protected characteristic; and (2) was severe or pervasive enough to make a reasonable person of the same legally protected class believe that the conditions of employment were altered, and that the working environment was intimidating, hostile or abusive.

78. The harassing conduct was directly connected to Plaintiff race.

79. Defendant's employees regularly harassed Plaintiff because of her race and her complaints of discrimination.

80. Defendant's employees regularly made discriminatory comments about Plaintiff on account of her race.

81. Defendant's discriminatory conduct was not welcomed by Plaintiff.

82. As a result of the hostile work environment, Plaintiff suffered a "tangible employment action" defined as a significant change in employment status, failure to promote, reassignment with significantly different responsibilities, and/or a decision causing a significant change in benefits.

83. Defendant failed to exercise reasonable care to prevent racial harassment in the workplace by failing to establish an explicit policy against harassment in the workplace on the basis of race, failing to fully communicate the policy to its employees, and/ or failing to provide a reasonable way for Plaintiffs to make a claim of harassment to higher management, and failing to take reasonable steps to promptly correct the harassing behavior raised by Plaintiff.

84. As a result of Defendant's violations of § 1981, Plaintiff has suffered damages, including, but not limited to: past and future lost wages, mental pain and suffering; humiliation; emotional distress; diminishment of career opportunities; harm to business reputation; loss of self-esteem; disruption to her family life; and other harm, pain and suffering, both tangible and intangible.

COUNT THREE
Race Discrimination (Retaliation)
in Violation of § 1981

85. Plaintiff realleges and incorporates herein the allegations contained at length in paragraphs 21 paragraphs 51 above.

86. This is an action for retaliation by Defendant against Plaintiff in violation of Section 1981.

87. Defendant discriminated against Plaintiff because her race.

88. Plaintiff complained about the discriminatory treatment she received based on her race.

89. The retaliatory actions taken against Plaintiff would deter a reasonable person from making or maintaining a complaint of discrimination and/or harassment against Defendant.

90. Plaintiff has been damaged as a direct and proximate result of Defendant's illegal employment practices, including suffering economic damages, compensatory damages, emotional pain and suffering, inconvenience, mental anguish, outrage, loss of enjoyment of life, loss of dignity, and other non-pecuniary losses and tangible injuries.

COUNT FOUR
Race Discrimination (Discrete Act)
in Violation of the FCRA §760.10(1)(a)

91. Plaintiff realleges and incorporates herein the allegations contained at length in paragraphs 21 paragraphs 51 above.

92. Plaintiff is a Black/Haitian American woman and is protected under Section 1981.

93. Plaintiff was the only Black woman working within her Department.

94. At all times relevant, Plaintiff was treated differently because of her race.

95. Defendant subjected Plaintiff to a hostile work environment because of her race.

96. Defendant discriminated against Plaintiff by wrongfully terminating her because of her race.

97. Plaintiff was otherwise qualified to perform the essential functions of her job. Additionally, Defendant has no history of discipline for inadequate performance up and until Plaintiff complained of discrimination.

98. Defendant intentionally discriminated against Plaintiff by discharging Plaintiff because of her race.

99. Accordingly, Plaintiff's termination occurred under circumstances giving rise to an inference of discrimination.

100. As a result of Defendant's unlawful employment practices in violation of the FCRA, Plaintiff has suffered damages.

COUNT FIVE
Race Discrimination (Hostile Work Environment)
in Violation of the FCRA §760.10(1)(a)

101. Plaintiff realleges and incorporates herein the allegations contained at length in paragraphs 21 paragraphs 51 above.

102. Florida courts recognize race based hostile work environment claims under the FCRA.

103. Defendant's Supervisor, Mr. Dowis subjected Plaintiff to unwelcome harassment, which Plaintiff opposed. Plaintiff asked Mr. Dowis to stop making comments and drawing attention to her hair. Plaintiff further complained and opposed Mr. Dowis' conduct by reporting his mistreatment to Ms. Ramirez.

104. Defendant's conduct was sufficiently severe or pervasive to alter the terms and conditions of Plaintiff's work environment. Mr. Dowis insisted on publicly humiliating Plaintiff and commenting on her hair in the presence of her colleagues. Plaintiff's opposition to this base discrimination evinces the unwelcome quality of Defendants' harassment.

105. Defendant's conduct was the but for cause of the aforementioned harassment. Indeed, following Plaintiff's requests to refrain from commenting on her hair, Mr. Dowis continued to openly berate, belittle and humiliate Plaintiff.

106. Accordingly, Plaintiff was subjected to severe and/or pervasive discrimination from all levels of corporate management purely on the basis of her race.

107. Defendant is strictly and/or vicariously liable for subjecting Plaintiff to a race based hostile work environment.

108. As a direct and proximate result of the unlawful discrimination facilitated by Defendant, Plaintiff has suffered damages.

109. Defendant is liable for unlawful race discrimination under the FCRA.

COUNT SIX
Race Discrimination (Retaliation)
in Violation of the FCRA §760.10(7)

110. Plaintiff realleges and incorporates herein the allegations contained at length in paragraphs 21 paragraphs 51 above.

111. The FCRA prohibits discrimination against an individual for opposing unlawful acts under the FCRA or for opposing or complaining about race discrimination. § 760.10(7), Fla. Stat. (2020).

112. Plaintiff made multiple requests to Mr. Dowis that he refrain from commenting on Plaintiff's hair. Additionally, Plaintiff filed a formal complaint of discrimination with Defendant on March 11, 2019 requesting multiple accommodations to ameliorate the adverse effects of her disabilities. Plaintiff engaged in protected activity.

113. Defendant took materially adverse actions against Plaintiff by wrongfully terminating Plaintiff following her discrimination complaints. Any reasonable person in Plaintiff's position would be dissuaded from complaining about ongoing harassment if she knew that such action would result in more, not less harassment.

114. Accordingly, Defendant retaliated against Plaintiff for opposing unlawful employment practices.

115. As a result of Defendant's willful violation of the FCRA, Plaintiff has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at the time of trial plus interest, including but not limited to all emotional distress, back pay and front pay, punitive damages, liquidated damages, statutory damages, attorneys' fees, costs, and disbursements of action; and for such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury for the claims set forth in the complaint.

Dated: Miami, Florida
April 7, 2021

DEREK SMITH LAW GROUP, PLLC



Caroline H. Miller, Esq.

701 Brickell Ave., Suite 1310

Miami, Florida 33131

P: (305) 946-1884

caroline@dereksmithlaw.com

Attorneys for Plaintiff Nirva Boursiquot

Exhibit E

January 19, 2022 Transcript

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:
JCK LEGACY COMPANY, et al., Main Case No.
Debtors. 20-10418-mew

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United States Bankruptcy Court
One Bowling Green
New York, New York

January 19, 2022
12:01 PM

B E F O R E:
HON. MICHAEL E. WILES
U.S. BANKRUPTCY JUDGE

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Verified motion by Hernando Sandoval to set aside order entered
on April 29, 2021 as to the supported unliquidated claim
involving Hernando Sandoval (claim no. 2047)

Eleventh Omnibus Objection to Late-Filed Claims (State of
Connecticut's Claims)

CERTIFICATE OF NO OBJECTION FILED

Objection to Proof of Claim No. 2717

CERTIFICATE OF NO OBJECTION FILED

Objection to proof of claim no. 2719 filed by John C. Bolliger
Response filed

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A P P E A R A N C E S (All present by video or telephone):

PILLSBURY WINTHROP SHAW PITTMAN LLP

Attorneys for GUC Recovery Trustee

31 West 52nd Street

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BY: LEO T. CROWLEY, ESQ.

KWAME O. AKUFFO, ESQ.

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BY: AMY ODEN, ESQ.

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THE LAW OFFICES OF BRAM J. GECHTMAN

Attorneys for Hernando Sandoval

175 SW 7th Street

Miami, FL, 33130

BY: BRAM J. GECHTMAN, ESQ.

ALSO PRESENT:

JOHN BOLLIGER

WILLIAM A. BRANDT JR, Plan Administrator

1 P R O C E E D I N G S

2 THE COURT: How about the JCK Legacy case? Are the
3 parties ready?

4 MR. CROWLEY: Your Honor, good morning. Leo Crowley
5 for William Brandt in his capacity as trustee of the JCK GUC
6 Recovery Trust. We're ready.

7 Just to set the stage, Your Honor, in the past my team
8 has all been gathered in a conference room in my office. But
9 we've got new and enhanced COVID protocol, so I'm sitting in my
10 office by myself. Mr. Akuffo, who's been active in the case,
11 is down the hall in his office. And Mr. Fitzmaurice is, I
12 think, at home in his home office. But we're ready to proceed.

13 And I know Your Honor has been on the bench for a
14 while, but I think we can move with reasonable dispatch through
15 a relatively short agenda, if that's okay.

16 THE COURT: All right. Well, thank you for your
17 patience. And we scheduled you for 11, but as other matters
18 ran over, we haven't gotten to you until after 12.

19 So I think on motion to set aside the April 29th, 2021
20 order as to Mr. Sandoval, you haven't opposed that relief; is
21 that correct?

22 MR. CROWLEY: Correct.

23 MR. FITZMAURICE: Good afternoon, Your Honor. Patrick
24 Fitzmaurice from Pillsbury. That's correct.

25 THE COURT: Okay. So somebody should submit an order

1 to me, an agreed upon order that accomplishes that.

2 As to the objection to claim 2717, there was no
3 response, I believe, and so the order, kind of, striking that
4 claim should be submitted.

5 Then as to claim 2719 by Mr. Bolliger, I do have a
6 response on that one, which I'll get to in a minute.

7 MR. CROWLEY: Yes.

8 THE COURT: And then as to Connecticut and the late-
9 filed claims, as I understand it, there was no response. And
10 so that order should be submitted, okay?

11 MR. CROWLEY: Correct. That leaves Mr. Bolliger.
12 Would you like me to proceed, Your Honor, on that?

13 THE COURT: I've read the papers. And is counsel on
14 the line for Mr. Bolliger?

15 MR. BOLLIGER: Your Honor, Mr. Bolliger, I am Mr.
16 Bolliger. I am here in a pro se capacity.

17 THE COURT: Okay. Mr. Bolliger, in part your argument
18 is that you were defamed because the article says that you were
19 suspended due to financial exploitation of a client. But the
20 trustee cites to the stipulated decision, paragraph 55 of which
21 says that you were found in another proceeding to have engaged
22 in financial exploitation. So why wasn't the article sound in
23 referring to that particular paragraph? You seem to think that
24 the decision somehow was wrong in characterizing it that way,
25 but the article quoted the decision, and that is the language

1 in the decision.

2 MR. BOLLIGER: Yes. Thank you for that question, Your
3 Honor. The stipulation that I entered into with the state bar,
4 the stipulation to misconduct that led to my three-year
5 suspension from the practice of law in Washington State, was
6 based on the five paragraphs that ensued immediately after the
7 one you referred to. In other words, I was suspended for five
8 reasons that the parties stipulated to, very express reasons,
9 very clear reasons. I'm not saying they are correct, but I'm
10 not even -- don't want to raise an issue about that in this
11 hearing, of course. But they were very clear. They're very
12 express. It had nothing to do with financial exploitation.
13 The words financial exploitation or any, you know, reasonable
14 facsimile of the same do not appear in any of those five
15 paragraphs. The five paragraphs --

16 THE COURT: But in paragraph 55 you stipulated that in
17 another matter, okay, the court found you to have engaged in
18 the financial exploitation, and it's paragraph 55 that was
19 quoted in the article, even with reference to the fact that
20 there was one order that had held that.

21 The article seemed to say exactly what the stipulated
22 decision says. So how is that defamation?

23 MR. BOLLIGER: My position, Your Honor, is that the
24 article was about two things. Number one, informing the public
25 that I had been suspended from the practice of law. That's

1 fine. I understand the public need for that kind of
2 information. Also, the reason why I was suspended, and my
3 point is that the reasons that I was suspended have nothing to
4 do with financial exploitation.

5 The paragraph 55, the decision that's referenced in
6 paragraph 55, was a state court decision. It wasn't dealing --
7 that's anything to do with attorney misconduct. It was based
8 on the substantial evidence rule, which, as Your Honor knows,
9 requires that any evidence in support of the trial court
10 decision of -- the attorney misconduct that's the subject of
11 the Tri-City Herald newspaper article requires proof higher
12 than a clear, cogent and convincing evidence, but lower than
13 the reasonable doubt standard in a criminal case. It's a very
14 high standard of proof.

15 And so the state bar and I got down to five reasons
16 why they wanted to suspend me that we stipulated to. And
17 again, the financial exploitation that's the subject of a state
18 court ruling that's mentioned in paragraph 55 was not one of
19 those reasons why I was suspended.

20 And so the Tri-City Herald article is incorrect and
21 misleading and indeed defamatory for that reason.

22 THE COURT: Mr. Crowley, remind me. Under the current
23 plan of reorganization, do unsecured creditors get anything in
24 this case?

25 MR. CROWLEY: Hopefully, Your Honor. We're awaiting a

1 tax refund, so it could be a little while yet, but if we
2 receive the tax refund, which has been applied for, there would
3 be a distribution to unsecured creditors on, as I'm fond of
4 saying, on a good day with a strong tailwind, in the four to
5 five cent range.

6 THE COURT: And Mr. Bolliger, your suit was filed in
7 Washington on what date?

8 MR. BOLLIGER: I don't have that before me, but it was
9 within the statute of limitations, if you're asking for that
10 reason.

11 THE COURT: No. And when was your proof of claim
12 filed?

13 MR. BOLLIGER: Well, I don't have that in front of me
14 either.

15 MR. CROWLEY: Your Honor, I wonder if I could speak to
16 that for a moment?

17 THE COURT: Yes.

18 MR. CROWLEY: I'm sorry.

19 THE COURT: Go ahead.

20 MR. CROWLEY: Because I do have that in front of me,
21 and I think Your Honor is going in a good direction. It was
22 filed October 5th. And just while I'm monopolizing the podium
23 for a minute, he was not served with notice of the bar date,
24 but he was advised by Juan Cornejo, who was then an inside
25 lawyer at both old McClatchy and new McClatchy, he was advised

1 on May 5th of this year of the bankruptcy circumstances. He
2 was given a link to the KCC website. So he waited five months
3 from when he had notice of the bankruptcy situation to when he
4 filed the proof of claim.

5 THE COURT: Do you dispute any of that, Mr. Bolliger?

6 MR. BOLLIGER: We were in communication with Mr.
7 Cornejo. I don't have any recollection of this specific
8 representation, but I do not dispute counsel's representation.

9 THE COURT: Five months is a long time to wait. It's
10 probably longer than the original bar date was.

11 MR. CROWLEY: The Mr. Cornejo email is at page 60, 61
12 to 62 of Mr. Bolliger's answering papers. And the five months
13 is also longer than was the case in the Pacific Drilling case
14 that was alluded to earlier this morning.

15 THE COURT: All right. Why did you wait so long, Mr.
16 Bolliger?

17 MR. BOLLIGER: Your Honor, I don't have a good answer
18 for that. We were dealing with the state court issues with the
19 follow-on entity, the debtors' follow-on entity, and by the
20 time we got to it, apparently five months went by from Mr.
21 Cornejo's original communication.

22 THE COURT: There's some suggestion in your papers
23 that the claim should be permitted as to insurance proceeds.
24 Is there insurance for this?

25 MR. BOLLIGER: Your Honor, Mr. Bolliger here. If

1 you're asking me, I don't know that presently. We did want to
2 preserve the claim and pursue insurance coverage that would
3 apply to this defamation claim and pursue that in discovery.

4 THE COURT: Mr. Crowley, is there insurance?

5 MR. CROWLEY: I don't know, Your Honor, but we're
6 looking to have the claim completely expunged. And frankly, it
7 takes us time and effort even to manage an insurance situation.
8 And in the case of the Sandoval claim, where it appears that
9 the claim was potentially meritorious and where it was filed,
10 the lawsuit was filed years pre-petition, we are trying to
11 facilitate access to an insurance policy. In this case, where
12 given the untimeliness of the claim, as well as, we think, the
13 utter and complete lack of merit of the claim, we're trying to
14 just get this off our desk once and for all.

15 THE COURT: Okay. Do either of you have anything else
16 you want to add?

17 MR. BOLLIGER: Nothing further from me, Your Honor.

18 THE COURT: All right. The request is for permission
19 to file a late proof of claim. The criteria that I should
20 consider in connection with that are well established under the
21 Supreme Court's Pioneer decision.

22 There are a number of factors, including the danger of
23 prejudice, the reason for the delay, the length of delay, and
24 whether the parties acted in good faith. Under the applicable
25 Second Circuit precedent, the most important of those factors

1 is the reason for the delay, and often the decisive factor,
2 without even need to consider the others, is the reason for
3 delay.

4 Here I have fairly uncontroverted and incontrovertible
5 evidence that not only was there publication notice of the
6 original bar date, but there was actual notice, subsequent to
7 the bar date, of the existence of the bar date on May 5th, and
8 no action by Mr. Bolliger until October 5th, which is a five-
9 month delay, which is longer than the amount of time allowed by
10 the original bar date for the filing of claims.

11 Excusable neglect requires a reason why the bar date
12 was missed, but also some demonstration of diligence on the
13 part of the creditor to act once learning of the bar date, and
14 that didn't happen here. By Mr. Bolliger's own words, he
15 doesn't have a good answer as to why he waited five months.

16 It also appears to me that there's merit to the
17 trustee's objection on the merits of the claim, because the
18 defamation claim alleges, essentially, that the reasons, or
19 that Bolliger suspension and the reasons for it were
20 misrepresented, but what the article actually says is that
21 there was a decision that found that Mr. Bolliger had engaged
22 in financial exploitation. And the stipulated decision that
23 Mr. Bolliger entered into says, in paragraph 55, that there was
24 another court decision that found that he had engaged in
25 financial exploitation. So it appears there's no merit to that

1 particular allegation. The article just quoted what the
2 underlying stipulated decision said.

3 So primarily on the grounds that -- well, primarily on
4 the grounds that there's no decent excuse for the late claim,
5 but also on the ground that there doesn't appear to be any good
6 faith argument as to the merit of the claim in light of what
7 the article said, I'll grant the trustee's objection.

8 And an agreed order should be submitted. Okay?

9 MR. BOLLIGER: Thank you, Your Honor, for your time.

10 THE COURT: All right.

11 MR. CROWLEY: Thank you, Your Honor.

12 THE COURT: All right. Is there anything else for
13 today?

14 MR. CROWLEY: Nothing else for today. I guess we'll
15 see you at the next omnibus hearing. I'm not even sure if we
16 have anything on the next hearing date. We might.

17 THE COURT: Okay. All right. In that case, we are
18 adjourned. Thank you very much.

19 (Whereupon these proceedings were concluded at 12:16 PM)

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I N D E X

RULINGS:	PAGE	LINE
Motion by Hernando Sandoval to set	6	1
aside order entered 4/29/21 is granted		
Motion to strike claim no. 2717 is	6	4
granted		
Motion to strike claim no. 2719 is	6	10
granted		
Objection to proof of claim no. 2719	13	7
filed by John C. Bolliger is granted		

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Hana Copperman

Hana Copperman (CET-487)
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Date: January 20, 2022