

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

JCK LEGACY COMPANY, et al.,

Debtors.

Chapter 11

Case No. 20-10418

(MEW)

Hearing Date: July 20, 2022 at 11:00 am
(Prevailing Eastern Time)

**NIRVA BOURSQUOT'S RESPONSE TO DEBTOR'S OBJECTION
TO NIRVA BOURSQUOT PROOF OF CLAIM**

Nirva Boursiquot ("Claimant"), hereby responds to the Debtor's Objection *pro se* (the "Objection") to *GUC RECOVERY TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 2729 FILED BY NIRVA BOURSQUOT* filed by Claimant (the "Proof of Claim"). In support hereof, Claimant respectfully states as follows:

1. On or about June 17, 2022, Claimant filed her Proof of Claim with the Debtor's claims agent, a copy of which is attached hereto as Exhibit 1. Claimant filed the Proof of Claim *pro se*.
2. In the Proof of Claim, Claimant asserts a claim against the Debtor in the sum of \$1,100,000 as a result of non-payment by the Debtor of fees due to her for multiple claims to her employment with McClatchy for racial discrimination, retaliation, hostile work environment and unlawful termination for employment terms, entered into prior to the Debtor's bankruptcy filing. Claimant attached to the Proof of Claim a letter explaining the basis for her claim Exhibit 1.
3. In the Objection, the Debtor seeks to disallow and expunge Proof of Claim No. 2729.
4. For the reasons set forth in detail below, Claimant requests that the Court overrule the Objection to her claim and to allow the claim in the amount set forth in her Proof of Claim.



Factual Background

5. On January 17, 2020, prior to the initiation of this lawsuit, Claimant 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 Debtor Company for unlawful employment practices.

6. In or around August 2020, Debtor 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.

7. Claimant filed her Federal Complaint on April 7, 2021 [DE 1]. The aforementioned Complaint asserts that that the Debtor JCK, by and through its representatives, subjected its employee, the Claimant, to relentless harassment, discrimination and retaliation, all culminating in the unlawful termination of the Claimant in violation of 42 U.S.C. § 1981 (“1981”), and the Florida Civil Rights Act of 1992, §760.01, et seq., Florida Statutes (“FCRA”). Compl. 1, 1-3.

8. The Complaint asserts three claims under 42 U.S.C. § 1981: Count One - (Race Discrimination (Discrete Act/Unlawful Termination)); Count Two - Race Discrimination (Hostile Work Environment); and Count Three - (Race Discrimination (Retaliation) (together, the “Federal Claims”). The Complaint also asserts three claims under Florida Civil Rights Act of 1992, §760.01, et seq., Florida Statutes (“FCRA”): Count Four - Race Discrimination (Discrete Act) in violation of the FCRA § 760.10(1)(a); Count Five - Race Discrimination (Hostile Work Environment) in violation of the FCRA § 760.10(1)(a); and Count Six - Race Discrimination (Retaliation) in violation of the FCRA § 760.10(7) (together, the “State Claims”).

9. This is an action for discrimination and harassment because of race under Section 1981.

10. Claimant is a Black woman and is protected under Section 1981.

11. Debtor 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.

12. As a result of Debtor’s violations of § 1981, Claimant 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, thereby entitling Claimant to compensatory damages.

13. As a result of Debtor's unlawful and discriminatory actions, Claimant has endured financial hardships and irreparable damage to Claimant's professional reputation.

14. Claimant seeks monetary relief to redress Debtor's unlawful employment practices in violation of 1981 and the FCRA. Additionally, this action seeks to redress Debtor's deprivation of Claimant personal dignity and her civil right to pursue equal employment opportunities.

15. The *PLAINTIFF NIRVA BOURSQUOT'S MOTION FOR JUDGEMENT UPON DEFAULT AGAINST THE DEFENDANT JCK LEGACY SHARED SERVICES, INC., formerly doing business as MCCLATCHY SHARED SERVICES, INC.*, a copy of which is attached hereto as Exhibit 2 offers an ongoing lawsuit between Debtor and Claimant prior to Debtor's bankruptcy filing.

16. This matter has been set for trial during the Court's two-week trial calendar beginning on February 13, 2023 before the Honorable Kathleen M. Williams in Courtroom 11-3 of the Wilkie D. Ferguson, Jr. United States Courthouse, located at 400 North Miami Avenue in Miami, Florida. Calendar call will be held at 11:00 a.m. on February 7, 2023.

17. One simple fact remains true: Claimant never received the notice regarding her deadline to file a proof of claim. This was not a fault of her own but in fact a result of the Debtor's own willful conduct in mailing notice to an antiquated address and name on file. Claimant was never served notice because Defendants served notice via certified mail at 5413 SW 126th Terrace, Miramar, Florida 33027. Admittedly, this address was Plaintiff's address at the outset of her employment and through early 2018. In or around February 2018, Claimant moved to 244 Biscayne Boulevard, Apartment 2606, Miami, Florida 33132. Following her move, Plaintiff notified Debtor, via Carmelia Ramirez, of her new residence to ensure proper tax paperwork and insurance documentation existed. Despite advising them of her updated address and that address being reflected in her personnel records, Defendants' failed to take adequate

steps to ensure Ms. Boursiquot was on notice of the bankruptcy proceeding, depriving her of her right to file a claim.

18. As such, Debtor's failure in acting reasonably, let alone arguably recklessly, should not be permitted to serve as justification for objection to Proof Claim No. 2729.

Response to Objection

19. The Response to the Objection is grounded on Rule 9006(b) of the Federal Rules of Bankruptcy Procedure. Neither section provides a basis to disallow and expunge Claimant's claim.

20. The reason for the delay was outside Claimant's control.

21. Claimant's counsel never "advised of the expired Bar Date" nor "provided a link to the claims agent's website" as stated by Mr. Fitzmaurice.

22. Because Claimant had inquired of counsel whether there were any impending filing deadlines and been told that none existed, the Claimant should not be inappropriately penalized for the errors of her counsel. *In re Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993).

23. Therefore, Claimant's claim for payment of lost wages and damages listed therein under the previous employment terms is enforceable and thus, allowable against the Debtor.

24. Under these circumstances, it would be inappropriate to disallow and expunge Claimant's Proof of Claim as argued in the Objection. To the extent that the Court believes Claimant's claim should not be allowed in the amount provided for in the parties' agreement, but should be limited to the concept of value or reasonable value, Claimant respectfully requests that the Court set a further hearing to consider such issue and take any necessary evidence.

25. Claimant further respectfully requests the opportunity to conduct discovery with respect to the issues raised in the Response of the Objection. In this regard, Claimant respectfully requests that the hearing scheduled for Wednesday, July 20, 2022 go forward as a status conference to enter a scheduling order permitting discovery and a further hearing with

respect to Response of the Objection.

WHEREFORE, for all of the foregoing reasons, Claimant, Nirva Boursiquot respectfully requests that the Court overrule the Objection to Claimant's Proof of Claim and allow such claims in full in the amounts provided in Claimant's Proof of Claim No. 2729, and grant such other relief as the Court deems just and equitable.

Date: June 30, 2022
Miami, Florida

Respectfully submitted,

NIRVA BOURSIQUOT

By: /s/ Nirva Boursiquot
Email: nirvaboursiquot@gmail.com

EXHIBIT 1

June 27, 2022

To: Honorable Michael E. Wiles
U.S. Bankruptcy Court – Southern District of New York

From: Nirva Boursiquot

RE:


Dear Judge Wiles,

My name is Nirva Boursiquot. I am a creditor in the JCK Legacy Company case and have been trying to receive payment from them. Enclosed is my Proof of Claim Form and supporting documentation.

In summary, I was wrongfully terminated by the Debtor and filed my lawsuit before the bankruptcy filing announcement. I sought counsel with an employment law firm not knowing this case would take a turn into bankruptcy matters. The simple fact is I was unaware the Debtor had filed for bankruptcy nor received notice. I have shown good faith in doing my due diligence since this lawsuit started.

In summary, I am respectfully requesting payment from Debtor.

Sincerely

DocuSigned by:

7BAF13A3EFAD43C...

Nirva Boursiquot
244 Biscayne Blvd. #2606
Miami, Florida 33132

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

JCK LEGACY COMPANY, et al.,

Debtors.

Chapter 11

Case No. 20-10418

(MEW)

**Hearing Date: July 20, 2022 at 11:00 am
(Prevailing Eastern Time)**

**DECLARATION OF NIRVA
BOURSIQUOT**

I, Nirva Boursiquot, hereby declare under the penalty of perjury as follows:

1. I am adult individual, and am the claimant who filed the Proof of Claim that is at issue in the Debtor’s Objection to Proof of Claim No. 2729

2. I make this declaration based upon my personal knowledge.

3. The facts set forth in the foregoing *NIRVA BOURSIQUOT’S RESPONSE TO DEBTOR’S OBJECTION TO NIRVA BOURSIQUOT PROOF OF CLAIM* (the “Response”) are true and correct.

4. The documents attached as exhibits to the foregoing Response, as well as to the filed proof of claim, are true and correct copies of the documents attached thereto.

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

DocuSigned by:
Nirva Boursiquot
7BAF13A3EFAD43C...

NIRVA BOURSIQUOT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

JCK LEGACY COMPANY, et al.,

Debtors.

Chapter 11

Case No. 20-10418

(MEW)

Hearing Date: July 20, 2022 at 11:00 am
(Prevailing Eastern Time)

CERTIFICATE OF SERVICE

I, Nirva Boursiquot, hereby certify that on this 30th day of June, 2022, I caused a true and correct copy of *NIRVA BOURSQUOT'S RESPONSE TO DEBTOR'S OBJECTION TO NIRVA BOURSQUOT PROOF OF CLAIM* to be served via hand delivery upon the following:

Sean M. Harding, Esquire
Shana A. Elberg, Esquire
Bram A. Stochlic, Esquire
Van C. Durrer II, Esquire
Destiny N. Almogue, Esquire
Jennifer Madden, Esquire
Albert Togut, Esquire
Kyle J. Ortiz, Esquire
William A. Brandt, Jr.
Leo T. Crowley , Esquire
Benjamin J. Higgins , Esquire
Brian S. Masumoto, Esquire
Patrick E. Fitzmaurice , Esquire
Kwame O. Akuffo, Esquire
31 West 52nd Street
New York, New York
10019

/s/ Nirva Boursiquot

Nirva Boursiquot

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**

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

- Who is the current creditor?

Nirva Boursiquot
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor: _____
- Has this claim been acquired from someone else?

No
 Yes. From whom? _____
- Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent? _____

Where should payments to the creditor be sent? (if different)

Nirva Boursiquot
244 Biscayne Blvd #2606
Miami, FL 33132, USA

Nirva Boursiquot
150 SE 2nd Avenue, Ste 300
Miami, FL 33131, USA

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone: _____

Contact email: nirvaboursiquot@gmail.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
- Does this claim amend one already filed?

No
 Yes. Claim number on court claims registry (if known) _____

Filed on: _____ MM / DD / YYYY
- Do you know if anyone else has filed a proof of claim for this claim?

No
 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? Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 0478 No

7. How much is the claim? \$ 110000 Does this amount include interest or other charges? Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A). No

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. Employment Discrimination

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property. **Nature or property:** Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*. Motor vehicle 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.)

Annual Interest Rate (when case was filed) _____% Fixed Variable

Amount necessary to cure any default as of the date of the petition: \$ _____

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

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.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment 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

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: _____

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.

Signature: /s/Nirva Boursiquot

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

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. _____

* 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.

Amount entitled to priority: \$150,499.24

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. _____

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	Phone 2: Phone:
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 Nature of Secured Amount:	Has Secured Claim: No Value of Property:
Amount of 503(b)(9): No Annual Interest Rate:	Based on Lease: No Arrearage Amount:
Subject to Right of Setoff: No Basis for Perfection:	Amount Unsecured:
Submitted By: Nirva Boursiquot on 06-Jun-2022 2:04:06 p.m. Eastern Time Title: Company:	

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



**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.

**PLAINTIFF NIRVA BOURSQUOT'S MOTION FOR JUDGEMENT UPON DEFAULT
AGAINST THE DEFENDANT JCK LEGACY SHARED SERVICES, INC., *formerly*
doing business as MCCLATCHY SHARED SERVICES, INC.**

DEREK T. SMITH LAW GROUP, PLLC
Caroline H. Miller, Esquire
701 Brickell Avenue, Suite 13101
Miami, Florida 33131
P: (305) 946-1884
F: (305) 503-6741
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Pursuant to Federal Rule 55(b)(2) and Local Rule 7.1, Plaintiff Nirva Boursiquot (“Plaintiff” or “Ms. Boursiquot”), seeks default judgment as against the Defendant JCK Legacy Shared Services, Inc., *formerly doing business as* McClatchy Shared Services, Inc. (“Defendant” or “JCK”). The Defendant was served with the summons and Complaint but has since failed to file an answer or otherwise defend, resulting in the Clerk’s entry of default on June 15, 2021 [DE 7]. Plaintiff Boursiquot now respectfully requests that the Court enter the attached proposed order for Final Judgement (“Default Judgment”), seeking compensatory damages, in addition to the imposition of punitive damages, and reasonable attorneys’ fees and costs, be imposed against the Defendant JCK.

Plaintiff Boursiquot has annexed hereto this filing her affidavit as “Exhibit A” outlining damages owed. Furthermore, the undersigned counsel has attached a summary of the hours spent litigating this matter as well as the costs associated in this matter, marked as “Exhibit D” and “Exhibit E.”

STATEMENT OF FACTS

Plaintiff filed the herein Complaint on April 7, 2021, alleging that the Defendant JCK, by and through its representatives, subjected its employee, Plaintiff Boursiquot, to relentless harassment, discrimination and retaliation, all culminating in the unlawful termination of the employee in violation of 42 U.S.C. § 1981 (“**1981**”), and the Florida Civil Rights Act of 1992, §760.01, *et seq.*, Florida Statutes (“**FCRA**”). Compl. ¶¶ 1, 1-3.

The Complaint alleges that, throughout the course of her employment, 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. Compl. ¶ 5. Plaintiff further incorporates by reference Plaintiff's sworn Declaration annexed hereto as Exhibit A.

In or around February 2017, Defendant JCK Legacy Shared Services, Inc. formerly known as McClatchy Shared Services, Inc. hired Plaintiff Boursiquot, a Black/Haitian American woman, as a "Strategic Sourcing Manager" based in their Doral Location. Compl. ¶ 21. At all relevant times, Ms. Boursiquot was the only employee who identified as Black/Haitian American working within her department.

Prior to the outset of her employment, Ms. Boursiquot was interviewed by multiple management level employees employed by Defendant Company. 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. Compl. ¶ 25-26.

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. As such, in the Summer of 2017, Plaintiff met with her hair stylist and changed her reverted back to a more natural style. Compl. ¶ 27-28. Upon arriving to work with her new hair style, Mr. Dan Dowis, a white/Caucasian male, 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. Compl. ¶ 29. 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. Compl. ¶ 30.

Ms. Boursiquot 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. 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. Compl. ¶ 31-32.

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. 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. Compl. ¶ 33-34. 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. 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. Compl. ¶ 35-36.

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. 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. Compl. ¶ 37-38.

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. Compl. ¶ 39. 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. 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. Compl. ¶ 40-41.

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. 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. Compl. ¶ 42-43. 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. Compl. ¶ 44.

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. Compl. ¶ 45. 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. When Ms. Boursiquot attempted to point out these facts, Ms. Piner appeared shocked, as though Mr. Dowis had seemingly withheld this information from her. Ms. Boursiquot was asked to temporarily step out of the room so that Mr. Dowis and Ms. Piner could presumably discuss. Compl. ¶ 46-48.

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.” Compl. ¶ 49.

Upon returning home, Plaintiff contacted Ms. Ramirez 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. Compl. ¶ 50. 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. Compl. ¶ 51.

ADMINISTRATIVE PREREQUISITES PROCEDURAL HISTORY

On January 17, 2020, prior to the initiation of this lawsuit, 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. Plaintiff initiations

her lawsuit more than one hundred eighty (180) days since the inception of Plaintiff's admirative action against the Defendant. As of the date of her filing her Complaint, no determination had been made by the FCHR relating to her claims.

Plaintiff filed the herein Complaint on April 7, 2021 [DE 1]. The herein summons and Complaint was subsequently served upon the Defendant JCK on April 26, 2021 [DE 5]. On June 14, 2021, the Court issued an Order directing the Clerk to issue a Default [DE 6]. On June 15, 2021, a Clerk's Default was in fact entered against the Defendant JCK [7]. Pursuant to the Court Order, Plaintiff now comes before this Honorable Court for determination of an entry of Default Judgement against the Defendant JCK, pursuant to the claims brought by Plaintiff Boursiquot for harassment, discrimination and retaliation under 1981 and the FCRA, punitive damages and reasonable attorneys' fees and costs.

LEGAL ARGUMENT

I. STANDARD FOR DEFAULT JUDGEMENT

Pursuant to Federal Rule 55(b)(2) it is within the discretion of the Court to enter a default judgment where it is established that The Defendant has failed to appear and defend. Where it is shown that liability it well plead within the complaint and the defendant has failed to participate in litigation in good faith, an entry of default judgement is deemed appropriate. *Eagle Hosp. Physicians v. SRG Consulting*, 561 F.3d 1298, 1307 (11th Cir. 2009); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987).

II. COUNT 1 AND 4: RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C.A. § 1981 AND FCRA §760.10(1)(A)

42 U.S.C.A. § 1981 provides in part that:

“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”

As a primary point, it should be noted that in employment discrimination cases, Section 1981 claims are subject to the same analysis as discrimination claims under Title VII of the Civil Rights Act of 1964. *Castleberry v. STI Group*, 863 F.3d 259, 263 (3d Cir. 2017). The Complaint, as filed, contained well-pleaded factual allegations supporting a finding of liability for intentional discrimination against the Defendant. It is not the responsibility of the Plaintiff to plead “facts sufficient to make out a classic McDonnell Douglas prima facie case.” *Id.* (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511, 122 S.Ct. 992, 997, 152 L.Ed.2d 1 (2002)). This is because McDonnell Douglas's burden-shifting framework is an evidentiary standard, not a pleading requirement. *Swierkiewicz*, 534 U.S. at 510, 122 S.Ct. at 997.

As such, a court may properly enter default judgement on a claim of intentional discrimination when the well pleaded factual allegations contained within the complaint create a plausible suggestion that the Plaintiff was subjected to an adverse employment action due to the intentional discrimination.

III. COUNTS 2 AND 5 – HOSTILE WORK ENVIRONMENT IN VIOLATION OF 42 U.S.C.A. § 1981 AND FCRA §760.10(1)(A)

As with the above analysis, it is well settled that the same test that applies to a Title VII hostile work environment claims applies to a hostile work environment claim asserted under § 1981. *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015). A hostile work environment has been shown to exist where a plaintiff, as a member of a protected class, was subjected to unwelcome harassment based on her race, and said racial harassment had the purpose and/or effect of altering or affecting the terms, conditions, or privileges of her employment. *Short*

v. Immokalee Water & Sewer Dist., 165 F. Supp. 3d 1129 (M.D. Fla. 2016) (quoting *Pa. State Police v. Suders*, 542 U.S. 129, 133 (2004)). A hostile work environment exists where the conduct alleged does not impact the employee’s economic benefits, but instead create an environment that is offensive to them.

The test is both subjective and objective, establishing that both the plaintiff and a reasonable person would find the asserted conduct to be hostile or abusive. *WC & M Enterprises*, 496 F.3d at 399, citing *Harris*, 510 U.S. at 21–22, 114 S.Ct. 367. Whether the environment is objectively hostile or abusive is “judged from the perspective of a reasonable person in the plaintiff’s position.” *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015) (quoting *Oncala v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81, (1998)). That determination is made “by looking at all the circumstances,” which “may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Id.* (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)).

Ultimately, Plaintiff has plead facts which on its face are more than sufficient to established that the workplace was “permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993).

IV. COUNTS 3 AND 6 – RETALIATION IN VIOLATION OF 42 U.S.C.A. § 1981 AND FCRA §760.10(7)

Retaliation pursuant to 42 U.S.C.A. § 1981 arises where (1) she engaged in statutorily protected expression; (2) she suffered a materially adverse action; and (3) there is some causal relation between the two events. *McCann v. Tillman*, 526 F.3d 1370, 1375 (11 Cir. 2008); *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1277 (11 Cir. 2008)(elements required to

establish retaliation claim under Section 1981 are same as those required under Title VII). Retaliation is shown to exist where the retaliatory motive plays at minimum a part in the Defendant's decision to discharge Plaintiff's employment and/or when the employer is motivated by retaliatory animus. The court has been granted broad discretion in its ability to evaluate the causality link, in so much as "a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated." *Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001).

V. DAMAGES

Where a review of the motion established that the plaintiff is entitled to default judgement, the court must in turn consider whether the Plaintiff is entitled to the specific relief contained within the motion for default. *See Hernandez v. Peckett's, Inc.*, 2017 WL 11084355 (M.D. Fla. Aug. 16, 2017). "A court has an obligation to assure that there is a legitimate basis for any damage award it enters[.]" *Anheuser Busch, Inc. v. Philpot*, 317 F.3d 1264, 1266 (11th Cir. 2003); see also *Adolph Coors Co. v. Movement Against Racism and the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985). It is the role of the Court to determine both the amount and the character of damages sought. *Wallace v. The Kiwi Grp., Inc.*, 247 F.R.D. 679, 681 (M.D. Fla. 2008) (citing *Miller v. Paradise of Port Richey, Inc.*, 75 F.Supp.2d 1342, 1346 (M.D. Fla. 1999)).

Where the record shows that no liquidated sum or single mathematical equation exists by which to calculate damages, the law requires the district court to hold an evidentiary hearing to determine the fixed damages amount owed. *S.E.C. v. Smyth*, 420 F.3d 1225, 1231 (11th Cir. 2005).

a. Compensatory Damages

It is well maintained that 42 U.S.C. §1981, does *not* place a cap on compensatory damage. As a result, federal courts have routinely refused to reduced compensatory damages awards under

the statute. *E.g.*, *Bogle v. McClure*, 332 F.3d 1347 (11th Cir. 2003) (affirming compensatory damages awards of \$500,000 to each librarian based upon their uncorroborated testimony concerning emotional distress suffered due to being transferred with no loss in pay); *Dixon v. Int'l Brotherhood of Police Officers*, 504 F.3d 73, 83-84 (1st Cir. 2007) (affirming \$1,200,000 in compensatory damages based upon union president's retaliatory statements).

Furthermore, §760.11(5) states, "In any civil action brought under this section, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages." As with §1981, the FCRA places no dollar cap on the availability of compensatory damages.

Plaintiff has suffered significant emotional distress and trauma as a result of the Defendant's conduct. *See Ex. A*, ¶ 35-36.

b. Lost Wages

As a result of the Defendant's actions, Plaintiff has suffered lost wages in the form of both front pay and back pay. Front pay is considered the money owed as a result of lost compensation between the period of judgement and reinstatement, or where no reinstatement is awarded, in lieu of such. *Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 846 (2001), citing, *Walsdorf v. Board of Comm'rs*, 857 F.2d 1047, 1053–1054 (C.A.5 1988); *King v. Staley*, 849 F.2d 1143, 1145 (C.A.8 1988). Where reinstatement is not practical, whether because of continuous hostility or because of psychological injuries, courts have awarded front pay as a substituted. *Id.*

Similarly, backpay is that which is "the difference between the actual wages earned and the wages the individual would have earned in the position that, but for the discrimination, the

individual would have attained.” *Akouri v. State of Florida Dep’t of Transp.*, 408 F.3d 1338, 1343 (11th Cir. 2005) (quotation omitted). “Unrealistic exactitude is not required as the back pay calculation may be based on just and reasonable inference of the missing or imprecise figure.” *Id.* (quotation omitted). It is the responsibility of the Plaintiff to show a reasonable effort to mitigate her damages. *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 1527 (11th Cir. 1991)).

At the time of her termination, Plaintiff’s most recent annual compensation, as reflected in her W-2 Statement of 2018 was \$75,249.62. *See Ex. 3*. Since the time of her employment with Defendant JCK, Plaintiff has had substantial difficulty, despite her best efforts, to secure consistent permanent employment. In February of 2020, Plaintiff began freelance work as a consultant earning on average \$1,500 per month. As of the filing of this motion, Plaintiff’s has lost back wages of \$149,332.45, calculated as follows:

- Plaintiff has not been employed by Defendant JCK since her termination on March 15, 2019 (28 months): \$175,582.45.
- As a result of her consulting work since February of 2020, Plaintiff has been able to mitigate \$1,500 per month for a period of 17.5 months: \$26,250.

Taking into consideration Plaintiff’s effort to mitigate, her age, and qualifications, Plaintiff anticipates a possible three additional years before she can fully mitigate her loses. At an ongoing loss of \$57,249.62 per/year, Plaintiff claims an additional \$171,748.86 in future lost earnings.

c. Punitive Damages

In a discrimination case, an award of punitive damages will be upheld where a defendant has acted “with malice or reckless indifference to the [] rights of an aggrieved individual.” 42 U.S.C. § 1981a(b)(1). *Kolstad v. American Dental Ass’n*, 527 U.S. 526 (1999). While egregious or outrageous conduct may be evidence supporting an inference of the requisite state of mind, Title

VII “does not require a showing of egregious or outrageous discrimination independent of the employer’s state of mind.” Id. at 535; see also Farias, 259 F.2d at 101; Zimmerman v. Associates First Capital Corp., 251 F.3d 376, 384 (2d Cir. 2001). Evidence that the employer was generally familiar with Title VII’s proscription against discrimination when it committed the discrimination is sufficient to infer that it acted with the requisite state of mind to justify an award of punitive damages under Title VII. See Zimmerman, 251 F.3d at 385 (finding that supervisor’s training in equal employment opportunity permitted the jury to infer the requisite state of mind); Parrish v. Sollecito, 280 F. Supp.2d 145, 152-53; Hill v. Airborne Freight Corp., 212 F. Supp.2d 59, 76 (holding jury could reasonably infer that Airborne's managers knew their actions violated federal law by virtue of well-established Supreme Court case law on discrimination and retaliation, long standing statutory prohibition against such conduct, the company’s size, and “the common knowledge in today's society that employment discrimination is impermissible.”).

d. Post Judgement Interest

Similarly, post judgement interest will accrue on the Final Judgement pursuant to 28 U.S.C. § 1961(a).

e. Attorneys’ Fees, Costs and Litigation Expenses

In an effort to protect her interests, Plaintiff sought and retained the below signed legal counsel for the filing and litigation of this action, and, as a result, has incurred attorneys’ fees, including costs and litigation expenses. Upon granting of the default motion, Plaintiff is deemed the prevailing party pursuant to Buckhannon Bd. & Care Home, Inc. v. W.Va. Dep’t of Health & Human Res., 532 U.S. 598 (2001). Plaintiff is entitled to recover those attorneys’ fees, costs and litigation expenses pursuant to 42 U.S.C. §12205.

Attorneys' fees are calculated by determining the reasonable hourly rate for the legal services involved and multiply that by the number of hours expended. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Numerous factors should be considered in evaluating the reasonableness including (1) the results obtained, (2) the time and labor required, (3) the difficulty of the issues presented, (4) the skill required to provide effective counsel, (5) whether the fee was contingent or fixed, (6) time limitations imposed by the client or circumstances, (7) the experience, skill and reputation of counsel involved, (8) case desirability, (9) length of the professional relationship, and (10) similar awards. *Id.* at 429-430.

This circuit has maintained that "successful civil rights actions vindicate a public interest... a court must account for that distinct measure of success when calculating an award of fees and costs." *Villano v. Boynton Beach*, 254 F.3d 1302, 1306 (11th Cir. 2001). As a result of this lawsuit, Plaintiff shall obtain not only significant benefit but further benefit the public interest in ensuring the Defendant is culpable for similar future bad acts.

Plaintiff's counsel, both personally and through the undersigned firm, has a history of extensive litigation experience both in the Federal Court and State Court system, and has significant experience representing Plaintiff's in similar civil rights cases including those brought pursuant to Section 1981 and the FCRA. Caroline Miller has practiced for nearly six (6) years exclusive in employment law and civil rights litigation. Ms. Miller is admitted to practice and continues to practice in the State Courts of Pennsylvania, New Jersey, New York and Pennsylvania, and is similarly admitted to Practice before the United States District Court for the Eastern District of Pennsylvania, the United States District Court for the Middle District of Pennsylvania, the United States District Court for the State of New Jersey, United States District Court for the Eastern District of New York, the United States District Court for the Southern

District of New York, the United States District Court for the Southern District of Florida, the United States District Court for the Middle District of Florida, and the United States District Court for the Northern District of Florida. Lastly, Ms. Miller, in addition to her own clients, was made Partner at the Derek Smith Law Group, and currently oversees the case loads of four associates at her firm’s Florida practice.

The fee in the instant case is contingent. Plaintiff’s Counsel has annexed hereto as “Exhibit D” a copy of the time records of Plaintiff’s counsel documenting the time and effort which was required to obtain the resolution herein. Additionally, time incurred by Plaintiff’s counsel in filing, preparing and litigating this fee application and any fee hearings thereon is compensable. *See Martin v. University of South Alabama*, 911 F.2d 604, 610 (11th Cir. 1990). Exhibit D reflects a combined 29.9 hours spent by the Partner, Associates and Paralegal on this file. Plaintiff has also annexed hereto as Exhibit E Plaintiff invoices for out-of-pocket costs incurred through court filing and process of service to date. A prevailing party is entitled to costs pursuant to Rule 54(d) of the Federal Rules of Civil Procedure. *See also Dowdell v. City of Apopka*, 698 F. 2d 1181, 1189-92 (11th Cir 1983).

CONCLUSION

In conclusion, Plaintiff Nirva Boursiquot respectfully requests that the Court enter the proposed Final Judgement against the Defendant JCK Legacy Shared Services, Inc., *formerly doing business as* McClatchy Shared Services, Inc., and award the Plaintiff’s reasonable attorneys’ fees and costs. Plaintiff hereby moves this Honorable Court to order:

- 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.

Dated: Miami, Florida
July 14, 2021

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

NIRVA BOURSIQUOT,

Plaintiff,

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

v.

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

Defendant.

_____ /

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Priority U.S. Mail on July 14, 2021, to Defendant JCK LEGACY SHARED SERVICES, INC., *formerly doing business as MCCLATCHY SHARED SERVICES, INC.* via the Defendant's registered agent in accordance with the Defendant's corporate filing with the State of Florida.

Dated: Miami, Florida
July 14, 2021

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