

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

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|-------------------------------------|---|------------------------------------------|
| ----- | x | |
| In re: | : | Chapter 11 |
| | : | |
| JCK LEGACY COMPANY, <i>et al.</i> , | : | Case No. 20-10418 (MEW) |
| | : | |
| Debtors. | : | (Jointly Administered) |
| | : | |
| ----- | x | Related Docket Nos. 1569 and 1570 |

DECISION DENYING MOTION BY ALBERTO COLT-SARMIENTO FOR APPOINTMENT OF COUNSEL

Before me is the motion by Alberto Colt-Sarmiento for the appointment of counsel to assist him in pursuing his claim against one of the debtors in this case. Mr. Colt-Sarmiento is currently a prisoner and seeks the appointment of counsel under section 1915(e)(1) of Title 28 of the United States Code. In support of his application, Mr. Colt-Sarmiento has cited to the decision in *Allen v. Daigger (In re Allen)*, No. 06-1252, 2007 Bankr. LEXIS 313 (W.D. Tex. Jan. 25, 2007). In *Allen*, the court correctly held that it had the authority to ask counsel to represent indigent litigants pursuant to section 1915(e). However, the court also correctly held that a court is not obligated to ask counsel to do so. In fact, in *Allen* the court declined to make such a request.

Before discussing the underlying facts it is necessary to identify the standards must be applied in this Circuit in ruling on a motion under section 1915(e). Some courts in other Circuits have suggested that the power to request that counsel represent an indigent should only be exercised under exceptional circumstances, but the Second Circuit has rejected that standard. *See Hodge v. Police Officers*, 802 F.2d 58, 61 (2d Cir. 1986). In *Hodge*, the Second Circuit endorsed the factors that were first established by the Seventh Circuit in *Maclin v. Freake*, 650 F.2d 885 (7th Cir. 1981). Under the *Hodge* decision, a court that considers a request for the appointment of counsel under section 1915(e)(1) should first consider the merits of the litigant's claim, since counsel is normally unwarranted if a claim is frivolous or if the chance of success is extremely

slim. *Hodge*, 802 F.2d at 60. If the claim is a colorable one, then the court should consider whether the facts are complicated and require investigation of a kind that an indigent is not in a position to do; whether the evidence consists of conflicting testimonies such that the assistance of trained counsel is warranted; the capability of the indigent litigants to present the case; the complexity of the legal issues; and any other special reason why appointment of counsel would be more likely to lead to a just determination. *Id.* at 61.

There have already been significant proceedings in this court regarding Mr. Colt-Sarmiento's claim, and it is useful to review the history of those proceedings in order to explain my application of the *Hodge* factors and my ruling on Mr. Colt-Sarmiento's request.

Mr. Colt-Sarmiento's claim is based on allegations that one of the debtors, the Tacoma News Tribune, defamed him in an article that was published in March 2018. He took issue with portions of the article that described the testimony and other evidence in Mr. Colt-Sarmiento's criminal trial and the underlying facts that led to that criminal trial.

Mr. Colt-Sarmiento filed a handwritten proof of claim that was dated July 19, 2020 and filed August 7, 2020. [ECF No. 754.] He made additional filings asking that his claim be treated as a secured claim. [ECF No. 930.] He also filed objections to other motions; I have listed those other objections in a prior decision [ECF No. 1415], but they are not relevant to the pending motion and it is not necessary to summarize them here.

The Debtors objected to Mr. Colt-Sarmiento's original claim and to his request to be treated as a secured creditor. [ECF No. 1216.] I granted Mr. Colt-Sarmiento's request for additional time to respond to those objections. [ECF No. 1284.] Mr. Colt-Sarmiento then filed an amended claim in October 2021. [ECF No. 1323.] In addition, one of the objections that had been posed was that Mr. Colt-Sarmiento's claim had been filed after the deadline that I had set for the submission of

claims. I directed the Debtors to make an additional submission as to whether Mr. Colt-Sarmiento was a known creditor who was entitled to direct notice by mail of the deadline for the filing of claims, and whether Mr. Colt-Sarmiento had received such direct notice. [ECF No. 1407.]

Subsequently, I issued a decision on March 3, 2022 [ECF No. 1415], and an order that same day [ECF No. 1416]. I first held that Mr. Colt-Sarmiento's claim would be treated as having been timely filed. I noted that he had not formally asked that he be granted relief from my order setting a deadline for the filing of claims, but I also noted that he had clearly asked that his claim be regarded as a valid one, and as I said then, "[t]here are only so many niceties of legal practice that can reasonably be expected, given Mr. Colt-Sarmiento's position." I then reviewed the factors that are relevant in deciding whether to grant relief from a bar date order under Rule 9006, and I found that those factors had been satisfied.

The Debtors had also objected to Mr. Colt-Sarmiento's claim on the ground that he had not used the official form for the submission of a claim. I denied that objection. I did, however, sustain the objection to Mr. Colt-Sarmiento's request that his claim be treated as a secured claim, as I found that there was no basis on which to do so. Finally, I denied Mr. Colt-Sarmiento's objections to some other motions that are not relevant here.

My March 2022 decision did not resolve the merits of Mr. Colt-Sarmiento's claim. The GUC Recovery Trustee (an entity entitled to file objections under the terms of the confirmed plan) filed further objections on March 22, 2022. [ECF No. 1436.] Mr. Colt-Sarmiento filed responses on May 12, 2022 and July 15, 2022. [ECF Nos. 1460 and 1491.] Among other things, Mr. Colt-Sarmiento asked the Court to grant him a further extension of time in light of his limited access to a computer and to a law library. The GUC recovery trustee filed a further response on July 15, 2022. [ECF No. 1494.]

On September 7, 2022, I issued a decision and an order denying Mr. Colt-Sarmiento's claim. [ECF Nos. 1521 and 1522.] I said then that I was sympathetic with Mr. Colt-Sarmiento's contention that he had limited ability to do legal research, but I noted that, for that reason, we had carefully reviewed the applicable law regarding his asserted claims, so as to be sure that we were aware of and could evaluate any arguments that might support his claims or that might warrant any further proceedings. After doing that research, however, we concluded that there was merit to the trustee's legal objections and that the claim should be disallowed. In my decision, I then reviewed the requirements of Washington law regarding claims of defamation, false light, invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence, each of which Mr. Colt-Sarmiento had identified as a theoretical basis for his claim. I noted a variety of reasons why his claim was legally deficient, and accordingly, I disallowed the claim.

The order disallowing the claim was entered on September 7, 2022, and no appeal was filed. Since that time, Mr. Colt-Sarmiento has filed other objections to other matters and has made other requests for information, all of which I have addressed. His motion for the appointment of counsel was filed on November 27, 2023, more than a year after the entry of the Decision and the Order that denied his claim.

Under these circumstances, the November 27, 2023, request for the appointment of counsel is unfounded. Mr. Colt-Sarmiento acted on his own behalf in litigating his claim, as he was entitled to do. The Court fully considered all of his prior submissions before ruling on his claim in September 2022. The motion seeking the appointment of counsel was filed more than a year after the issuance of the order that disallowed Mr. Colt-Sarmiento's claim. No appeal was filed, and there is nothing that a lawyer could do to alter that fact. Nor am I aware of any ground on which

relief from the Court's Order could be sought under Bankruptcy Rule 9024, which incorporates the provisions of Rule 60(b) of the Federal Rules of Civil Procedure.

I understand Mr. Colt-Sarmiento's frustration, like that of any other claimant whose claim has been denied, and his unhappiness with the outcome. I note, however, that we made every effort to afford him additional time to submit papers and that we spent significant time doing our own legal research to make certain that the legal merits of his claim were being evaluated fairly.

In any event, at this stage of the proceedings (where the underlying claim has already been resolved) there just is no basis to request that counsel represent Mr. Colt-Sarmiento with respect to the claim. For that reason, I will deny Mr. Colt-Sarmiento's request.

Dated: New York, New York
January 19, 2024

s/Michael E. Wiles
Hon. Michael E. Wiles
United States Bankruptcy Judge

In re:
JCK Legacy Company et, al.
Debtor

Case No. 20-10418-mew
Chapter 11

CERTIFICATE OF NOTICE

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The following symbols are used throughout this certificate:

| Symbol | Definition |
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| + | Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP. |

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jan 24, 2024:

| Recip ID | Recipient Name and Address |
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| unk | Alberto Colt-Sarmiento, Doc. No. 406372, Cedar Hall - F-09, Washington Corrections Center, Shelton, WA 98584 |
| unk | + Alberto Colt-Sarmiento, Doc. No. 406372, Cedar Hall - F-09, Washington Corrections Center, P.O. Box 900 Shelton, WA 98584-0974 |
| unk | Alberto Colt-Sarmiento, No. 406372 E-06, Washington Corrections Center, P.O. Box No. 900, Shelton, WA 98584 |
| unk | Alberto Colt-Sarmiento, Doc No. 406372, Washington Corrections Center, P.O.Box No. 900, Shelton, WA 98584 |
| 7862721 | Alberto Colt-Sarmiento, No. 406372 E-06, Washington Correction Center, PO Box No. 900, Shelton, VA 98584 |

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Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
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NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jan 24, 2024

Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on January 19, 2024 at the address(es) listed below:

| Name | Email Address |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aaron C. Smith | on behalf of Unknown The Dallas Morning News Inc. asmith@lockelord.com, autodocket@lockelord.com;jcataldo@lockelord.com;jmedina@lockelord.com;autodocketdev@lockelord.com |
| Albert Togut | on behalf of Other Prof. Togut Segal & Segal LLP altogut@teamtogut.com, altogut@teamtogut.com;dperson@teamtogut.com;jcohen@teamtogut.com;astolp@teamtogut.com;kortiz@teamtogut.com |
| Albert Togut | on behalf of Debtor JCK Legacy Company et al. altogut@teamtogut.com, altogut@teamtogut.com;dperson@teamtogut.com;jcohen@teamtogut.com;astolp@teamtogut.com;kortiz@teamtogut.com |

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Total Noticed: 5

Amish R. Doshi
on behalf of Creditor Oracle America Inc. amish@doshilegal.com

Benjamin J. Higgins
on behalf of U.S. Trustee United States Trustee benjamin.j.higgins@usdoj.gov

Blake Lisenby
on behalf of Creditor Macon-Bibb County Tax Commissioner blakelisenby@lisenbylaw.com

Casey B. Howard
on behalf of Unknown The Dallas Morning News Inc. choward@lockelord.com

Chester R. Ostrowski
on behalf of Creditor Joanna Culley as Guardian of the Estate of Dennis Leroy Williams, Disabled
costrowski@mclaughlinstern.com

Cullen D. Speckhart
on behalf of Interested Party Endava Inc. cspeckhart@cooley.com,
rkanowitz@cooley.com;elazerowitz@cooley.com;efiling-notice@ecf.pacerpro.com;efilingnotice@cooley.com

Daniel A. Fliman
on behalf of Creditor Committee Official Committee of Unsecured Creditors of The McClatchy Company et al.
danfliman@paulhastings.com,
mataskowski@paulhastings.com;davidmohamed@paulhastings.com;michaelmagzamen@paulhastings.com

Daniel J. Weiner
on behalf of Creditor Pension Benefit Guaranty Corporation dweiner@schaferandweiner.com

David I. Swan
on behalf of Creditor Sprint Spectrum Realty Company LP ndysart@hirschlerlaw.com

David I. Swan
on behalf of Creditor T-Mobile West LLC ndysart@hirschlerlaw.com

David I. Swan
on behalf of Creditor Clear Wireless LLC ndysart@hirschlerlaw.com

David I. Swan
on behalf of Creditor MetroPCS California LLC ndysart@hirschlerlaw.com

David N. Levine
on behalf of Debtor JCK Legacy Company et al. dnl@groom.com

David N. Levine
on behalf of Spec. Counsel Groom Law Group Chartered dnl@groom.com

Douglas Mannal
on behalf of Creditor Brigade Capital Management LP dmannal@dechert.com,
brett.stone@dechert.com;corporate-reorg-1449@ecf.pacerpro.com

Eboney Cobb
on behalf of Creditor Crowley ISD ecobb@pbfc.com

Eboney Cobb
on behalf of Creditor GRAPEVINE-COLLEYVILLE ISD ecobb@pbfc.com

Eboney Cobb
on behalf of Creditor Arlington ISD ecobb@pbfc.com

Eboney Cobb
on behalf of Creditor City of Grapevine ecobb@pbfc.com

Edward J. Meehan
on behalf of Debtor JCK Legacy Company et al. emeehan@groom.com, ashahinllari@groom.com

Elizabeth Weller
on behalf of Creditor Tarrant County Dora.Casiano-Perez@lgbs.com
Houston_Bankruptcy@lgbs.com;dallas.bankruptcy@lgbs.com

Elizabeth Weller
on behalf of Creditor Lewisville ISD Dora.Casiano-Perez@lgbs.com
Houston_Bankruptcy@lgbs.com;dallas.bankruptcy@lgbs.com

Elizabeth Weller
on behalf of Creditor City of Roanoke Dora.Casiano-Perez@lgbs.com
Houston_Bankruptcy@lgbs.com;dallas.bankruptcy@lgbs.com

Elizabeth Weller
on behalf of Unknown Northwest ISD Dora.Casiano-Perez@lgbs.com
Houston_Bankruptcy@lgbs.com;dallas.bankruptcy@lgbs.com

Emily Elisabeth Manbeck
on behalf of Creditor Pension Benefit Guaranty Corporation manbeck.emily@pbgc.gov

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Total Noticed: 5

Eric A Schaffer
on behalf of Creditor BOKF N.A. eschaffer@stonecipherlaw.com, slucas@reedsmith.com

Eric J. Monzo
on behalf of Creditor Tickets for Less LLC emonzo@morrisjames.com,
bkeilson@morrisjames.com;ddepta@morrisjames.com;slisko@morrisjames.com

Erika E. Barnes
on behalf of Creditor Pension Benefit Guaranty Corporation barnes.erika@pbgc.gov efile@pbgc.gov

Erin C. Kim
on behalf of Creditor Pension Benefit Guaranty Corporation kim.erin@pbgc.gov efile@pbgc.gov

Frank A. Oswald
on behalf of Other Prof. Plan Administration Trustee frankoswald@teamtogut.com
dperson@teamtogut.com;jcohen@teamtogut.com;jgallego@teamtogut.com;jmclain@teamtogut.com;astolp@teamtogut.com;msi
ngh@teamtogut.com

Gary Daniel Ticoll
on behalf of Unknown John S. and James L. Knight Foundation gticoll@zirinskylaw.com

Hanan B Kolko
on behalf of Creditor CWA Local 3108 hkolko@cwsny.com

Hanan B Kolko
on behalf of Creditor TNG-CWA Local 39521 hkolko@cwsny.com

Hanan B Kolko
on behalf of Creditor TNG-CWA Local 33229 hkolko@cwsny.com

Hanan B Kolko
on behalf of Creditor The News Guild-CWA hkolko@cwsny.com

Howard Steel
on behalf of Creditor Brightcove Inc. HSteel@goodwinlaw.com

Howard P. Magaliff
on behalf of Other Prof. GUC Recovery Trustee hmagaliff@r3mlaw.com hcolon@r3mlaw.com

Howard P. Magaliff
on behalf of Other Prof. Rich Michaelson Magaliff LLP hmagaliff@r3mlaw.com, hcolon@r3mlaw.com

Ian S Landsberg
on behalf of Unknown SCF-2100 Q Street Owner LLC ilandsberg@sklarkirsh.com, dcohen@landsberg-law.com

Israel Goldowitz, I
on behalf of Creditor P. Anthony Ridder igoldowitz@wagnerlawgroup.com

Israel Goldowitz, I
on behalf of Creditor George Riggs igoldowitz@wagnerlawgroup.com

Israel Goldowitz, I
on behalf of Creditor Former Knight Ridder and McClatchy Salaried Employees Association igoldowitz@wagnerlawgroup.com

James A. Sarna
on behalf of Creditor Blake Development Company a Washington, DC General Partnership jasarna@sarnalaw.com

James C Tecce
on behalf of Interested Party Chatham Asset Management LLC jamestecce@quinnemanuel.com

James Christopher Vandermark
on behalf of Creditor OWS CF V SPV LLC as assignee of OWS BCA Funding, LLC vandermarkj@whiteandwilliams.com

James S. Carr
on behalf of Creditor Infosys Limited KDWBankruptcyDepartment@kelleydrye.com;MVicinanza@ecf.inforuptcy.com

Jeffrey C. Wisler
on behalf of Creditor Cigna Health and Life Insurance Company jwisler@connollygallagher.com

Jennifer Feldsher
on behalf of Creditor WELLS FARGO BANK N.A. jennifer.feldsher@morganlewis.com

Jennifer L. Pruski
on behalf of Creditor Berry Avenue Inc. jpruski@trainorfairbrook.com

Joel A Kunin
on behalf of Creditor Joanna Culley as Guardian of the Estate of Dennis Leroy Williams, Disabled jkunin@ghalaw.com

John J. Stockdale, Jr
on behalf of Creditor Pension Benefit Guaranty Corporation jstockdale@schaferandweiner.com

John R Stoelker
on behalf of Creditor Aetna and its Affiliates jstoelker@mccarter.com

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John R. Ashmead

on behalf of Creditor Wilmington Savings Fund Society FSB ashmead@sewkis.com, managingclerkoffice@sewkis.com

John Samuel Broude

on behalf of Creditor RYLBFW Properties LP jsb@bsjpc.com

Jonathan D Grunberg

on behalf of Unknown Mashhur Zarif Haque jgrunberg@whetrialaw.com khart@whetrialaw.com

Jonathan D Grunberg

on behalf of Unknown Driverdo LLC DBA Draiver jgrunberg@whetrialaw.com khart@whetrialaw.com

Jonathan D. Marshall

on behalf of Creditor Encina Business Credit LLC jmarshall@choate.com,jonathan-marshall-4638@ecf.pacerpro.com

Jordan D Mamorsky

on behalf of Creditor George Riggs jmamorsky@wagnerlawgroup.com

Jordan D Mamorsky

on behalf of Creditor Former Knight Ridder and McClatchy Salaried Employees Association jmamorsky@wagnerlawgroup.com

Jordan D Mamorsky

on behalf of Creditor P. Anthony Ridder jmamorsky@wagnerlawgroup.com

Joseph K. Grekin

on behalf of Creditor Pension Benefit Guaranty Corporation jgrekin@schaferandweiner.com pjozwiak@schaferandweiner.com

Joshua S. Bauchner

on behalf of Unknown Northwest ISD jbauchner@mblawfirm.com hneumann@mblawfirm.com

Joshua S. Bauchner

on behalf of Creditor Tarrant County jbauchner@mblawfirm.com hneumann@mblawfirm.com

Joshua S. Bauchner

on behalf of Creditor Lewisville ISD jbauchner@mblawfirm.com hneumann@mblawfirm.com

Joshua S. Bauchner

on behalf of Creditor Harris County jbauchner@mblawfirm.com hneumann@mblawfirm.com

Joshua S. Bauchner

on behalf of Creditor Roanoke jbauchner@mblawfirm.com hneumann@mblawfirm.com

Kartar S. Khalsa

on behalf of Creditor Pension Benefit Guaranty Corporation khalsa.kartar@PBGC.GOV efile@pbgc.gov

Katherine B Kohn

on behalf of Debtor JCK Legacy Company et al. katherine.kohn@thompsonhine.com, ashahinllari@groom.com

Kevin J. Simard

on behalf of Creditor Encina Business Credit LLC ksimard@choate.com, kevin-simard-1324@ecf.pacerpro.com

Kim Hillary

on behalf of Creditor Pension Benefit Guaranty Corporation khillary@schaferandweiner.com

Kimberly E. Neureiter

on behalf of Creditor Pension Benefit Guaranty Corporation neureiter.kimberly@pbgc.gov efile@pbgc.gov

Kris Hansen

on behalf of Creditor Committee Official Committee of Unsecured Creditors of The McClatchy Company et al. matlaskowski@paulhastings.com;davidmohamed@paulhastings.com;michaelmagzamen@paulhastings.com

Kris Hansen

on behalf of Unknown Stroock & Stroock & Lavan LLP matlaskowski@paulhastings.com;davidmohamed@paulhastings.com;michaelmagzamen@paulhastings.com

Kyle J. Ortiz

on behalf of Debtor JCK Legacy Company et al. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor The Sun Publishing Company Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Nittany Printing and Publishing Company kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Cypress Media Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com

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p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor San Luis Obispo Tribune LLC kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Star-Telegram Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Other Prof. Togut Segal & Segal LLP kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Wingate Paper Company kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Oak Street Redevelopment Corporation kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Other Prof. Plan Administration Trustee kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor The Bradenton Herald Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Olympian Publishing LLC kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Macon Telegraph Publishing Company kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Tru Measure LLC kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Pacific Northwest Publishing Company Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy Interactive LLC kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy Newspapers Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor The News & Observer Publishing Co. kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Biscayne Bay Publishing Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Tacoma News Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

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User: admin
Form ID: pdf001

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on behalf of Debtor The Charlotte Observer Publishing Company kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy U.S.A. Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor JCK Legacy Shared Services Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy Property Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Aboard Publishing Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Gulf Publishing Company Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy Interactive West kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Miami Herald Media Company kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Quad County Publishing Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Columbus-Ledger Enquirer Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Tribune Newsprint Company kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Lee's Summit Journal Incorporated kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy News Services Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy International Inc. kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Cypress Media LLC kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Newsprint Ventures Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy Investment Company kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

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User: admin

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Kyle J. Ortiz

on behalf of Debtor McClatchy Big Valley Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Keynoter Publishing Company Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor HLB Newspapers Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Belton Publishing Company Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy Management Services Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor N & O Holdings Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Cass County Publishing Company kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Herald Custom Publishing of Mexico S. de R.L. de C.V. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Idaho Statesman Publishing LLC kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Wichita Eagle and Beacon Publishing Company Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Bellingham Herald Publishing LLC kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Keltatim Publishing Company Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Mail Advertising Corporation kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor El Dorado Newspapers kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Nor-Tex Publishing Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor East Coast Newspapers Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Olympic-Cascade Publishing Inc. kortiz@teamtogut.com, dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astolp@teamtogut.com

District/off: 0208-1

User: admin

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Form ID: pdf001

Total Noticed: 5

p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor The State Media Company kortiz@teamtogut.com
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor McClatchy Resources Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Kyle J. Ortiz

on behalf of Debtor Lexington H-L Services Inc. kortiz@teamtogut.com,
dperson@teamtogut.com;aoden@teamtogut.com;eblander@teamtogut.com;bkotliar@teamtogut.com;gquist@teamtogut.com;astol
p@teamtogut.com;lebrahimi@teamtogut.com;jgallego@teamtogut.com

Leo T. Crowley

on behalf of Other Prof. GUC Recovery Trustee leo.crowley@pillsburylaw.com nydocket@pillsburylaw.com

Leslie Ann Berkoff

on behalf of Creditor Leroy Barnes lberkoff@moritthock.com

Leslie Ann Berkoff

on behalf of Creditor Kevin McClatchy lberkoff@moritthock.com

Leslie Ann Berkoff

on behalf of Creditor William B. McClatchy lberkoff@moritthock.com

Leslie Ann Berkoff

on behalf of Creditor Theodore R Mitchell lberkoff@moritthock.com

Lindsay Weber

on behalf of Interested Party Chatham Asset Management LLC lindsayweber@quinnemanuel.com

Lisa G. Beckerman

on behalf of Interested Party Alden Global Capital LLC and its affiliates lbeckerman@akingump.com,
dkrasa-berstell@akingump.com;AGSearch-Lit@akingump.com;jrubin@akingump.com;sdaddese@akingump.com;tsouthwell@ak
ingump.com;elisovicz@akingump.com;nymco@akingump.com

Lynn Rowe Larsen

on behalf of Interested Party Gannett Publishing Services LLC llarsen@taftlaw.com LLAUREN@TAFTLAW.COM

Lynn Rowe Larsen

on behalf of Interested Party Gannett Supply Corporation llarsen@taftlaw.com LLAUREN@TAFTLAW.COM

Martin A. Mooney

on behalf of Creditor Ford Motor Credit Company LLC Martin.Mooney@ag.ny.gov
lgadomski@schillerknapp.com;lmilas@schillerknapp.com;TJohnson@schillerknapp.com

Marvin E. Clements, Jr.

on behalf of Creditor TN Dept of Revenue agbanknewyork@ag.tn.gov

Michael Kwiatkowski

on behalf of Creditor Evergy Inc. mkwiatkowski@cullenllp.com

Michael Kwiatkowski

on behalf of Creditor Florida Power & Light Company mkwiatkowski@cullenllp.com

Michael Kwiatkowski

on behalf of Creditor West Penn Power Company mkwiatkowski@cullenllp.com

Michael Wilhelm

on behalf of Unknown BLDG Services LLC mwilhelm@wjhattorneys.com

Michelle E. Shriro

on behalf of Creditor Albany Road-Corporate Drive LLC mshriro@singerlevick.com scotton@singerlevick.com

Patrick Fitzmaurice

on behalf of Other Prof. GUC Recovery Trustee patrick.fitzmaurice@pillsburylaw.com

Paul J. Pascuzzi

on behalf of Unknown Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP ppascuzzi@ffwplaw.com docket@ffwplaw.com

Paul J. Pascuzzi

on behalf of Creditor Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP ppascuzzi@ffwplaw.com docket@ffwplaw.com

Paula Maxine Weber

on behalf of Other Prof. GUC Recovery Trustee paula.weber@pillsburylaw.com

Richard M. Seltzer

on behalf of Creditor The News Guild-CWA rseltzer@cwsny.com ecf@cwsny.com

District/off: 0208-1

User: admin

Page 9 of 13

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Form ID: pdf001

Total Noticed: 5

Richard M. Seltzer

on behalf of Creditor CWA Local 3108 rseltzer@cwsny.com ecf@cwsny.com

Richard M. Seltzer

on behalf of Creditor TNG-CWA Local 39521 rseltzer@cwsny.com ecf@cwsny.com

Richard M. Seltzer

on behalf of Creditor TNG-CWA Local 33229 rseltzer@cwsny.com ecf@cwsny.com

Shana A. Elberg

on behalf of Debtor The Bradenton Herald Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Tru Measure LLC Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Quad County Publishing Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Tribune Newsprint Company Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Columbus-Ledger Enquirer Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Biscayne Bay Publishing Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy Interactive West Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor The Sun Publishing Company Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy News Services Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor The News & Observer Publishing Co. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Olympic-Cascade Publishing Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy International Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Cypress Media Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Lee's Summit Journal Incorporated Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy Management Services Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

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User: admin

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Total Noticed: 5

Shana A. Elberg

on behalf of Debtor McClatchy Property Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Olympian Publishing LLC Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Newsprint Ventures Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor El Dorado Newspapers Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Cypress Media LLC Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Oak Street Redevelopment Corporation Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Star-Telegram Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor JCK Legacy Company et al. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy Investment Company Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy U.S.A. Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Mail Advertising Corporation Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy Big Valley Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Nor-Tex Publishing Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor The State Media Company Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Idaho Statesman Publishing LLC Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Aboard Publishing Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor East Coast Newspapers Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.com

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m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor N & O Holdings Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy Interactive LLC Shana.Elberg@skadden.com
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Bellingham Herald Publishing LLC Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy Newspapers Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor San Luis Obispo Tribune LLC Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Lexington H-L Services Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor HLB Newspapers Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Cass County Publishing Company Shana.Elberg@skadden.com
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Pacific Northwest Publishing Company Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Nittany Printing and Publishing Company Shana.Elberg@skadden.com
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Miami Herald Media Company Shana.Elberg@skadden.com
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor JCK Legacy Shared Services Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Keltatim Publishing Company Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Belton Publishing Company Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Macon Telegraph Publishing Company Shana.Elberg@skadden.com
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Wingate Paper Company Shana.Elberg@skadden.com
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

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User: admin

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on behalf of Debtor Herald Custom Publishing of Mexico S. de R.L. de C.V. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Wichita Eagle and Beacon Publishing Company Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Tacoma News Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor The Charlotte Observer Publishing Company Shana.Elberg@skadden.com
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Keynoter Publishing Company Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor Gulf Publishing Company Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shana A. Elberg

on behalf of Debtor McClatchy Resources Inc. Shana.Elberg@skadden.com,
andrea.bates@skadden.com;shana-elberg-3892@ecf.pacerpro.com;christopher.heaney@skadden.com;jaclyn.kleban@skadden.co
m;jamie.brumberger@skadden.com

Shawn M. Christianson

on behalf of Creditor Oracle America Inc. schristianson@buchalter.com, cmcintire@buchalter.com

Steven A. Ginther

on behalf of Creditor Missouri department of revenue sdneyecf@dor.mo.gov

Tara LeDay

on behalf of Creditor The County of Denton Texas tleday@mvbalaw.com,
tleday@ecf.courtdrive.com;bankruptcy@mvbalaw.com;alocklin@mvbalaw.com;aging@mvbalaw.com;pbowers@mvbalaw.com

Thomas A. Pitta

on behalf of Creditor The Bank Of New York Mellon Trust Company N.A. tpitta@emmetmarvin.com,
pdelrio@emmetmarvin.com

Thomas Moers Mayer

on behalf of Creditor Brigade Capital Management LP tmayer@kramerlevin.com,
docketing@kramerlevin.com;corporate-reorg-1449@ecf.pacerpro.com;wkane@kramerlevin.com

Thomas R. Slome

on behalf of Creditor Evergy Inc. tslome@cullenllp.com, crodriguez@cullenllp.com

Thomas R. Slome

on behalf of Creditor Florida Power & Light Company tslome@cullenllp.com crodriguez@cullenllp.com

Thomas R. Slome

on behalf of Creditor West Penn Power Company tslome@cullenllp.com crodriguez@cullenllp.com

United States Trustee

USTPRegion02.NYECF@USDOJ.GOV

Van C. Durrer, II

on behalf of Debtor JCK Legacy Shared Services Inc. van.durrer@skadden.com,
andrea.bates@skadden.com;wendy.lamanna@skadden.com;bram.strochlic@skadden.com;jennifer.madden@skadden.com;destiny
.almogue@skadden.com;jacqueline.dakin@skadden.com;catherine.yuh@skadden.com;moshe.jacob@skadden.com

Van C. Durrer, II

on behalf of Debtor JCK Legacy Company et al. van.durrer@skadden.com,
andrea.bates@skadden.com;wendy.lamanna@skadden.com;bram.strochlic@skadden.com;jennifer.madden@skadden.com;destiny
.almogue@skadden.com;jacqueline.dakin@skadden.com;catherine.yuh@skadden.com;moshe.jacob@skadden.com

Van C. Durrer, II

on behalf of Attorney Skadden Arps, Slate, Meagher & Flom LLP van.durrer@skadden.com,
andrea.bates@skadden.com;wendy.lamanna@skadden.com;bram.strochlic@skadden.com;jennifer.madden@skadden.com;destiny
.almogue@skadden.com;jacqueline.dakin@skadden.com;catherine.yuh@skadden.com;moshe.jacob@skadden.com

Victoria Christine Geary

on behalf of Interested Party California Department of Tax and Fee Administration victoria.geary@cdtfa.ca.gov

Wendy M. Simkulak

District/off: 0208-1

User: admin

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Total Noticed: 5

on behalf of Creditor The Chubb Companies wmsimkulak@duanemorris.com

William J. Barrett

on behalf of Creditor Seagis CPK 1 LLC william.barrett@bfkn.com mark.mackowiak@bfkn.com

William P. Weintraub

on behalf of Creditor Brightcove Inc. wwaintraub@goodwinlaw.com gfox@goodwinprocter.com

TOTAL: 228