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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SAN FERNANDO VALLEY DIVISION**

11 In re:
12 KSL MEDIA, INC., T.V. 10'S, LLC, and
13 FULCRUM 5, INC.,
14 Debtors.

Chapter 11
Case No.: 1:13-bk-15929-AA
Jointly Administered with Case Nos.:
1:13-bk-15930-AA and 1:13-bk-15931-AA

- 15 Affects KSL Media, Inc.
16 Affects T.V. 10's, LLC
17 Affects Fulcrum 5, Inc.
18 Affects All Debtors

**NOTICE OF MOTION AND MOTION
OF THE CHAPTER 7 TRUSTEE FOR
ORDER AUTHORIZING THE
EXAMINATIONS OF IDENTIFIED
MEDIA VENDORS PURSUANT TO FED.
R. BANKR. P. 2004; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF PAUL HUYGENS
IN SUPPORT THEREOF**

**[FED.R.BANKR.P. 2004 AND L.B.R.
2004-1]**

[No Hearing Required]

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23 **TO THE HONORABLE ALAN M. AHART, UNITED STATES BANKRUPTCY JUDGE;**
24 **THE OFFICE OF THE UNITED STATES TRUSTEE; THE DEBTORS; THE PROPOSED**
25 **EXAMINEES; AND PARTIES WHO HAVE FILED A REQUEST FOR SPECIAL NOTICE**
26 **PURSUANT TO BANKRUPTCY RULE 2002:**

27 **PLEASE TAKE NOTICE THAT** David K. Gottlieb, in his capacity as the duly appointed,
28 authorized and acting chapter 7 trustee of the above captioned Debtors' estates (the "Trustee"),

1 pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”) and Local
2 Bankruptcy Rule 2004-1 (“LBR 2004-1”), hereby moves the Court (the “Motion”) for an Order
3 requiring that certain media vendors (the “Subject Media Vendors” or the “Proposed Examinees”)
4 produce documentation relating to certain obligations reflected in the Debtors’ books and records as
5 “open,” but which may have been paid, which information is necessary for the Trustee to complete
6 the reconciliation of the bankruptcy estates’ accounts receivable, accounts payable, and both pre-
7 and post-petition claims against the estates.

8 **The Subject Media Vendors to whom this Motion is directed are the following:**

- 9 (a) **CBS Broadcasting, Inc.**
- 10 (b) **Google, Inc.**
- 11 (c) **Madavor Media, LLC (Diabetics Self Management)**
- 12 (d) **Midwest Communications, Inc. (WNWN-FM)**
- 13 (e) **Nextmedia Group, Inc. (WRNN-FM)**
- 14 (f) **Three Eagles Communications, Inc. (KAUS-AM)**
- 15 (g) **Trifecta Entertainment, LLC.**

16 The Subject Media Vendors are in possession of documents and information showing
17 whether they have been paid for media advertising provided by them on behalf of the Debtors’
18 advertiser clients which information is not otherwise available to the Trustee.

19 The examinations cannot proceed under Federal Rules of Bankruptcy Procedure 7030 and
20 9014 because no adversary proceeding or contested matter is currently pending through which the
21 information sought can be obtained, and the Trustee has attempted, without success, to obtain the
22 requested documents and information from Subject Media Vendors on a consensual basis, to no
23 avail.

24 Nothing in the Motion or Order shall impair the right of the Trustee to seek additional
25 productions or examinations in the future.

26 This Motion is based on this Notice and the attached Memorandum of Points and Authorities,
27 Declaration of Paul Huygens, the exhibit attached hereto and the proposed order lodged concurrently
28 herewith.

1 WHEREFORE, the Trustee respectfully requests that the Court grant the Motion and such
2 other and further relief as it deems necessary, just and proper.

3
4 Dated: April Y, 2014

PACHULSKI STANG ZIEHL & JONES LLP

5
6 By: /s/ Jeffrey W. Dulberg

Jeffrey W. Dulberg

7 Steven J. Kahn

8 Attorneys for Chapter 7 Trustee
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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

MEMORANDUM OF POINTS AND AUTHORITIES

I.

BACKGROUND

A. General Background and Filing of the Cases

On September 11, 2013 (the "Petition Date"), the Debtors commenced chapter 11 cases as Debtors and Debtors in Possession. As explained in the first day declaration of Miller-Allen [Docket No. 2] (the "Miller-Allen Declaration"), the Debtors abruptly ceased operations, and entered into a wind-down/liquidation process.

On October 9, 2013, the U.S. Trustee formed the Official Committee of Unsecured Creditors (the "Committee"), comprised of the following members: (i) Fox Cable Network Services, LLC, (ii) MacDonald Media LLC, (iii) NBC Universal LLC, (iv) Telebrands Corp., (v) TV Guide Networks, LLC, (vi) Valassis, and (vii) Viacom Media Networks.

Citing an absence of capable fiduciaries in control of the Debtors in Possession controlling direction of the bankruptcy cases or the Debtors' professionals, a lack of accurate information forthcoming from the Debtors in Possession and continuing disputes between counsel for the Debtors in Possession and the then extant Committee, hindering progress of the bankruptcy cases and driving up administrative expenses, on December 27, 2013, the United States Trustee filed its Motion of the United States Trustee to Appoint a Chapter 11 Trustee [Docket No. 416].

Three days later, on December 30, 2013, Debtors filed the Debtors' Motion to Convert Case from Chapter 11 to 7 [Docket No. 427] and on the same date, the Court entered its Order converting the cases to chapter 7 [Docket No. 430].

On December 30, 2013, David K. Gottlieb was appointed the Chapter 7 Trustee [Docket No. 433].

B. The Debtors' Business

The Debtors provided media planning and purchasing services for their advertiser clients. Upon the presentment or development of a media plan and budget for a client, the Debtors would place orders for advertising with media vendors on various media platforms, including television,

1 radio, print, digital, or out-of-home advertising (i.e. billboards, events, etc.).

2 After providing ordered advertising, the media vendors would issue invoices for the ordered
3 advertising, which invoices would be reconciled (or verified) by the Debtors to assure that the
4 advertising ordered was actually provided, prior to issuing payment to the media vendors.

5 As of the Petition Date, the Debtors' books and records reflected that a number of media
6 vendors had not received payment for advertising provided by them for the Debtors' advertiser
7 clients.

8 **C. The Trustee's Reconciliation Efforts**

9 Following his appointment, the Chapter 7 Trustee sought and obtained an order authorizing
10 and approving the employment of Province, Inc. ("Province") as financial advisor to the Trustee
11 *nunc pro tunc* to December 30, 2013, which application was approved by the Court on February 10,
12 2014 [Docket No. 533].

13 Under the direction of the Trustee, Province has undertaken completion of the reconciliation
14 of the Debtors' business records in relation to the placement and payment of advertising in an effort
15 to determine an accurate amount of the estates' liabilities to both their advertiser clients and media
16 vendors.

17 In the process of such reconciliation, Province determined that a number of obligations
18 reflected on the Debtors' records as unpaid for advertising ordered for August 2013 and September
19 2013 (the month in which the within bankruptcy cases were filed) were, in fact, paid post-petition,
20 either directly by the Debtors' advertiser clients or "replacement" advertising agencies or buyers on
21 their behalf (the "Pay-Around Payments").

22 While most media vendors have been forthcoming regarding the dates, amounts, and sources
23 of the Pay Around Payments received by them for advertising placed by the Debtors on behalf of
24 their advertiser clients, the Subject Media Vendors have failed or refused to provide such
25 information to the Trustee, thereby preventing the Trustee from finalizing the reconciliation of the
26 Debtors' accounts. A list setting forth (1) the name of the Debtors' advertising clients, (2) the
27 Subject Media Vendors, (3) the advertising description, (4) the advertising media ordered, (5) the
28

1 advertising run or insertion dates, and (5) the net amount reflected as owed, is attached hereto and
2 incorporated herein as **Exhibit "A."**

3 Specifically, the Trustee seeks permission to issue subpoenas to the Subject Media Vendors
4 to obtain documents reflecting:

- 5 (a) The actual net amount of advertising ordered by the Debtors for the specified clients
6 for the advertising run or insertion dates;
- 7 (b) The net cost of the actual advertising placement provided by the Subject Media
8 Vendor for the specified run or insertion dates;
- 9 (c) Invoice(s) issued by the Subject Media Vendor for such advertising placement
10 provided; and
- 11 (d) The date, amount and source of any payments received by the Subject Media Vendors
12 for the specified advertising runs or insertions.

13 The Trustee therefore requests that the Court issue an order permitting the Trustee to issue
14 subpoenas to the Subject Media Vendors to obtain the information required to ascertain whether any
15 of the obligations are actually still owed and the amount and source of payments therefore, which is
16 relevant to the amounts of claims of the Debtors' advertising clients.

17 **II.**

18 **THE TRUSTEE IS ENTITLED TO A**

19 **RULE 2004 ORDER UNDER APPLICABLE LAW**

20 Bankruptcy Rule 2004 provides that "[o]n motion of any party in interest, the court may
21 order the examination of any entity." Fed. R. Bankr. P. 2004(a). Examinations under Bankruptcy
22 Rule 2004 include within their scope, inter alia, any matter that may related to the property and
23 assets of the estate; the financial condition of the debtor; and any matter that may affect the
24 administration of a debtor's estate. See Fed. R. Bankr. P. 2004(b). In addition, the attendance of a
25 person at an examination may be ordered by the Court "at any time or place it designates, whether
26 within or without the district court wherein the case is pending." Fed. R. Bankr. P. 2004(d).

27 The purpose of a Bankruptcy Rule 2004 examination is "to allow inquiry in the debtor's acts,
28 conduct or financial affairs so as to discover the existence or location of assets of the estate." *In re*

1 *Dinbilo*, 177 B.R. 932, 940 (E.D. Cal. 1993); see also *In re N. Plaza LLC*, 395 B.R. 113, 122 n. 9
2 (S.D. Cal. 2008) (purpose of Bankruptcy Rule 2004 examination is “discovery assets and unearthing
3 frauds”) (internal citations omitted); *In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) (rule’s
4 primary purpose is to ascertain “the extent and location of the estate’s assets [and] examination is not
5 limited to the debtor or his agents, but may properly extend to creditors and third parties who have
6 had dealings with the debtor.”) (internal citations omitted). In addition, Bankruptcy Rule 2004 is a
7 discovery tool that can be used as a pre-litigation device to determine whether there are grounds to
8 bring an action to determine a debtor’s right to discharge a particular debt. See *In re Corso*, 328
9 B.R. 375, 383 (E.D.N.Y. 2005).

10 The scope of an examination permitted under Bankruptcy Rule 2004 is “exceptionally
11 broad.” *In re N. Plaza LLC*, 395 B.R. at 122 n. 9; see also *In re W&S Investments, Inc.* 1993 U.S.
12 App. LEXIS 2231 at *6 (9th Cir. Jan. 28, 1993) (“The scope of inquiry permitted under a Rule 2004
13 examination is generally very broad and can legitimately be in the nature of a ‘fishing expedition.’”) (internal citations omitted). This broad inquiry extends to third parties as well: “Because the
14 purpose of the Rule 2004 investigation is to aid in the discovery of assets, any third party who can be
15 shown to have a relationship with the debtor can be made subject to a Rule 2004 investigation.” *In*
16 *re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993); see also *In re Mittco, Inc.*, 44 B.R.
17 35, 36 (Bankr. D. Wis. 1984) (“When there is a showing that the purpose of the examination is to
18 enable a party to probe into matters which may lead to the discovery of assets by examining not only
19 the debtor, but also other witnesses, such inquiry is allowed.”). This is because “[t]he clear intent of
20 Rule 2004 . . . is to give parties in interest an opportunity to examine individuals having knowledge
21 of the financial affairs of the debtor in order to preserve the rights of creditors.” *In re GHR*
22 *Companies, Inc.*, 41 B.R. 655, 660 (Bankr. D. Mass. 1984).

24 Each of the Subject Media Vendors possesses or has access to information that the Trustee
25 requires to complete the reconciliation of the Debtors’ accounts payable, accounts receivable and
26 both pre- and post-petition claims against the estates. The list of Subject Media Vendors who are the
27 Proposed Examinees is specifically tailored to the Trustee’s immediate needs, and the Trustee is
28 willing to work with the Subject Media Vendors so that the necessary documents and information

1 are obtained as efficiently as possible.¹

2 The proposed examinations cannot proceed at this time under Bankruptcy Rule 7030 or 9014
3 because the Trustee is not a party to any pending adversary proceeding or contested matter that
4 includes the scope of inquiry sought herein.

5 **III.**

6 **CONCLUSION**

7 For the reasons set forth above, the Trustee respectfully requests that this Court enter an
8 order substantially in the form lodged concurrently herewith granting this Motion in its entirety and
9 (a) authorizing the Trustee, pursuant to Bankruptcy Rules 2004 and 9016, to issue subpoenas to the
10 Subject Media Vendors without further order of the Court; and (b) granting such other and further
11 relief as this Court deems just and proper.

12
13 Dated: April 8, 2014

PACHULSKI STANG ZIEHL & JONES LLP

14
15 By: /s/ Jeffrey W. Dulberg
Jeffrey W. Dulberg
16 Steven J. Kahn

17 Attorneys for Chapter 7 Trustee
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25 ¹ Bankruptcy Courts have authorized examination of multiple parties pursuant to a single motion so as to minimize
26 burden and expense to the requesting party. See Amended Order on Ex Parte Application for Order Directing
27 Examination and Production of Documents Pursuant to Rule 2004, *In re North Plaza, LLC*, No. 04-00769 (PWB)
28 (Bankr. S.D. Cal. Sep. 19, 2006) (Docket No. 512); Order Authorizing the Trustee to Issue Subpoenas for the Production
of Documents and Authorizing the Trustee to Examine Persons and Entities, *In re MF Global Holdings LTD.*, No. 11-
15059 (MG) (Bankr. S.D.N.Y. Apr. 25, 2012) (Docket No. 653); Order Authorizing the Chapter 11 Trustee to Issue
Subpoenas For the Production of Documents and to Examine Persons and Entities, *In re GGW Brands, LLC*, Case No.
13-bk-15130-SK (Bankr. C.D. Cal. May 2, 2013) (Docket No. 105).

DECLARATION OF PAUL HUYGENS

I, PAUL HUYGENS, declare:

1. I am a principal of Province, Inc. ("Province") and a Certified Public Accountant.

2. Except as otherwise stated herein, all facts set forth herein are of my own personal knowledge or gathered from those individuals that work under my supervision, and my review of relevant documents. If called upon to testify as to the facts set forth herein, I could and would competently testify thereto.

3. Following his appointment, the Chapter 7 Trustee sought and obtained an order authorizing and approving the employment of Province as financial advisor to the Trustee *nunc pro tunc* to December 30, 2013, which motion was approved by the Court on February 10, 2014 [Docket No. 533].

4. Under the direction of the Trustee, Province has undertaken the process of reconciling the Debtors' books and records in relation to the placement and payment of advertising in an effort to determine an accurate amount of the estate's liabilities to both its advertiser clients and media vendors.

5. As of the Petition Date, the Debtors' books and records reflected that a number of media vendors had not received payment for advertising provided by them for the Debtors' advertiser clients.

6. In the process of performing its reconciliation, Province determined that a number of obligations reflected on the Debtors' books and records as unpaid for advertising ordered for August 2013 and September 2013 (the month in which the within bankruptcy cases were filed) were, in fact, paid post-petition, either directly by the Debtors' advertiser clients or "replacement" advertising agencies or buyers on their behalf (the "Pay-Around Payments").

7. While most media vendors have been forthcoming regarding the dates, amounts, and sources of the Pay Around Payments received by them for advertising placed by the Debtors on behalf of their advertiser clients during August and September 2013, the Subject Media Vendors have failed or refused to provide such information to the Trustee, despite numerous requests, thereby preventing Province from finalizing the reconciliation of the Debtors' accounts with the Subject

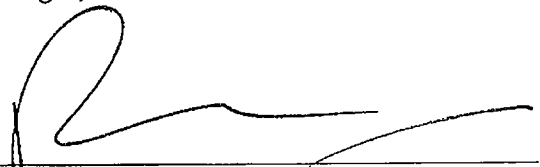
1 Media Vendors. A list setting forth (1) the name of the Debtors' advertising clients, (2) the Subject
2 Media Vendors, (3) the advertising description, (4) the advertising media ordered, (5) the advertising
3 run or insertion dates, and (5) the net amount reflected as owed, is attached hereto and incorporated
4 herein as Exhibit "A."

5 8. In order for Province to complete the account reconciliation for the Trustee, it
6 requires documents reflecting:

- 7 (a) The actual net amount of advertising ordered by the Debtors for the specified clients
8 for the advertising run or insertion dates;
- 9 (b) The net cost of the actual advertising placement provided by the Subject Media
10 Vendor for the specified run or insertion dates;
- 11 (c) Invoice(s) issued by the Subject Media Vendor for such advertising placement
12 provided; and
- 13 (d) The date, amount and source of any payments received by the Subject Media Vendors
14 for the specified advertising runs or insertions.

15 I declare under penalty of perjury pursuant to the laws of the United States that the foregoing
16 is true and correct.

17 Executed this 8th day of April, 2014, at Las Vegas, Nevada.

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PAUL HUYGENS

EXHIBIT A

2004 MOTION
EXHIBIT "A"

KSL MEDIA ET AL
Ch. 7 Liquidation
Schedule of Missing Invoice Information
 As of April 2, 2014

<u>Debtor/Client</u>	<u>Vendor</u>	<u>Estimate #</u>	<u>Description</u>	<u>Media</u>	<u>Station</u>	<u>Run/Insertion E</u>	<u>SchNet</u>
PetSmart	CBS	379	PetSmart Promo/Diff Network Prime Upfront 12/13	Network TV		9/13	\$ 705,415.00
PetSmart	CBS	380	PetSmart Promo/Diff Networ LN Upfront 12/13	Network TV		9/13	26,231.00
PetSmart	CBS	405	PS Charitie Promo/Diff Network Prime 12/13 Scatter	Network TV		9/13	212,500.00
Decker's Outdoor Corporation	Google	808	UGG Classics Fall 2013 Digital - Womens	Interactive	You Tube	8/13	10,619.00
Decker's Outdoor Corporation	Google	808	UGG Classics Fall 2013 Digital - Womens	Interactive	You Tube	9/13	4,248.00
Decker's Outdoor Corporation	Google	828	UGG for Men Fall 2013 Digital	Interactive	You Tube	9/13	23,276.00
Roche Diagnostics Corp	R A RAPAPORT	832	Roche 2013 Consumer Print - Nano	Magazine		9/1/13	18,205.00
Roche Diagnostics Corp	DIABETES SELF-MANAGEMENT						
Roche Diagnostics Corp	R A RAPAPORT	673	Roche 2013 Digital	Interactive		9/13	20,821.43
Roche Diagnostics Corp	DIABETES SELF-MANAGEMENT						
Frontier Communications	Midwest Communications	CR/001		Radio	WNWN-FM	9/13	1,526.00
Frontier Communications	Three Eagles Communications	CR/001		Radio	KAUS-AM	9/13	714.00
Frontier Communications	Nextmedia Group	NR/001		Radio	WRNN-FM	9/13	600.00
Telebrands	Trifecta Entertainment		FST	Cable	PCHM	9/13	900.00
Telebrands	Trifecta "		Instabulb	Cable	PARPR	9/13	1,730.00
Telebrands	Trifecta "		Instabulb	Cable	PCHM	9/13	720.00
Telebrands	Trifecta "		Rabbit TV	Cable	PARPR	9/13	3,065.00
Telebrands	Trifecta "		Rabbit TV	Cable	PCHM	9/13	720.00

\$ 1,031,290.43

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION OF THE CHAPTER 7 TRUSTEE FOR ORDER AUTHORIZING THE EXAMINATION OF IDENTIFIED MEDIA VENDORS PURSUANT TO FED. R. BANKR. P. 2004; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PAUL HUYGENS IN SUPPORT THEREOF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* April 8, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On *(date)* April 8, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL *(state method for each person or entity served)*: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* April 8, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

By Personal Delivery
Honorable Alan M. Ahart
United States Bankruptcy Court
San Fernando Valley Division
21041 Burbank Blvd., Suite 342
Woodland Hills, CA 91367-6606

Service information continued on attached page

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

April 8, 2014
Date

Sherry Ploussard
Printed Name

/s/ Sherry Ploussard
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**Mailing Information for Case 1:13-bk-15929-AA**

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- Monica Rieder mrieder@lgbfirm.com, martin-patterson@lgbfirm.com
- Christopher O Rivas crivas@reedsmith.com

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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2. SERVED BY UNITED STATES MAIL

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Los Angeles, CA 90067

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210 Elizabeth St 4th FL
New York, NY 10012

Nexstar Broadcasting Inc.
545 E. John Carpenter Frwy., #700
Irving, TX 75062

Candace Schiffman
3010 Briarpark Dr
PWC 08.8206
Houston, TX 77042

Attys for First Tennessee Bank
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c/o CBS Law Department
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Albany, NY 12207-2543

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