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U.S. DISTRICT COURT  
DISTRICT OF COLORADO

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GREGORY C. LANGHAM  
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UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

\_\_\_\_\_  
Johnny Wells, )  
Donald J. Brookins, and )  
Riley Andrew Schaeffer, )  
on behalf of themselves and )  
all others similarly situated )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
Gannett Retirement Plan and )  
Gannett Co., Inc., )  
 )  
Defendants. )  
\_\_\_\_\_

Civil Action No. 03-M-2671 (OES)

**AMENDED CLASS ACTION COMPLAINT**

Parties, Jurisdiction, and Venue

1. Plaintiff, Johnny Wells is a citizen of the United States and resides in Denver, Colorado.
2. Plaintiff Donald J. Brookins is a citizen of the United States and resides in Broomfield, Colorado.
3. Plaintiff Riley Andrew Schaeffer is a citizen of the United States and resides in Centennial, Colorado.
4. Defendant Gannett Retirement Plan (the "Plan") is a "defined benefit plan" within the meaning of Section 3(35) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(35).

5. Defendant Gannett Co., Inc., (“Gannett”) is a Delaware Corporation with its principal place of business in Virginia. Gannett is the “administrator” and “plan sponsor” of the Plan, within the meaning of ERISA §§ 3(16) and 3(17), 29 U.S.C. §§ 1002(16) and (17).

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

7. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2) in that the breach upon which the suit is based occurred in this District and because Gannett and/or the Plan may be found in this District.

#### Allegations of Fact

8. Mr. Wells began full time employment with Gannet on September 20, 1981, at the age of 35 and remains so employed today.

9. Mr. Wells commenced participation in the Plan effective as of October 1, 1981, and he continues to participate in the Plan as of today. Mr. Wells is a “participant” in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

10. Mr. Brookins began full time employment with Gannet in May 1977.

11. Mr. Brookins commenced participation in the Plan effective as of July 1, 1978 and he continues to participate in the Plan as of today. Mr. Brookins is a “Participant” in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002.

12. Mr. Schaeffer commenced employment with Gannett on April 3, 1989 at the age of 35 and remains so employed today.

13. Mr. Schaeffer commenced participation in the Plan effective as of May 1, 1990 and he continues to participate in the Plan as of today. Mr. Schaeffer is a "Participant" in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002

14. Mr. Wells Mr. Brookins, and Mr. Schaeffer have obtained several statements from the Plan that purport to calculate their benefits accrued under the Plan .

15. The benefit statements provided to Mr. Wells Mr. Brookins, and Mr. Schaeffer do not properly calculate or disclose the "accrued benefit," as defined by ERISA § 3(23)(a), 29 U.S.C. § 1002(23)(a), earned by thrm as of the date of the statements or as of any projected termination date

16. Mr. Wells, Mr. Brookins, and Mr. Schaeffer have not filed a claim for benefits under the Plan's claims procedures because they seeks relief with regard to the Plan's failure to comply, by its terms, with ERISA statutory provisions, which issues do not involve the exercise of discretion by a plan's fiduciary. In addition, Mr. Wells, Mr. Brookins, and Mr. Shafer have not attempted to pursue administrative remedies because to do so would be futile.

#### Class Action Allegations

17. Mr. Wells, Mr. Brookins, and Mr. Schaeffer seek certification of this action as a class action, pursuant to Fed.R.Civ.P, Rule 23(b)(2) in that: (a) the conduct complained of is widespread, affecting as many as 32,000 active participants in the Plan, making individual joinder of all claims impracticable; (b) Mr. Wells', Mr. Brookins', and Mr. Schaeffer's claims are typical of those of the class; and (c) there are common questions of law and fact that predominate. The common questions of law and fact include, among others, (i) whether the

benefits provided under the terms of the plan accrue at a rate or rates that are reduced because of age; (ii) whether the accrual of benefits under the terms of the Plan is ceased because of age; and (iii) whether benefits accrue and vest under the terms of the plan in a manner that complies with the accrual and vesting rules of ERISA.

18. Gannett and the Plan have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

19. Mr. Wells, Mr. Brookins, and Mr. Schaeffer will fairly and adequately represent the interests of the members of the class and their interests are the same as, and not in conflict with, the other members of the class. Plaintiffs' counsel is experienced in class action and complex litigation involving pension benefits.

20. Plaintiffs request that this Court certify the following class pursuant to Fed.R.Civ.P 23(b)(2): "All individuals who have participated in the Gannett Retirement Plan at any time after January 1, 1998."

#### First Claim for Relief

21. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 – 20 above.

22. The Plan was amended effective January 1, 1998, to adopt a formula, referred to as the "Pension Equity Formula", for the accrual of benefits by participants.

23. Under the Pension Equity Formula, the accrual of additional benefits ceased as of January 1, 1998 for many participants, including Mr. Wells, Mr. Brookins, and Mr. Shaffer. The

incidence with which the accrual of benefits ceased and/or the length of time over which the accrual of additional benefits ceased increased in relation to the participant's age. Because of this cessation of benefit accruals on the basis of a Participant's age, the Plan violates the accrual rules of ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H).

24. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs and the class are entitled to a judgment declaring that the Plan does not comply with the accrual rules of ERISA and providing other appropriate relief to redress the Plan's violations of ERISA and to ensure that benefits are determined and paid pursuant to a formula that complies with the accrual rules of ERISA.

#### Second Claim for Relief

25. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 – 24 above.

26. Under the Pension Equity Formula, benefits provided to participants, including Mr. Wells, Mr. Brookins, and Mr. Shaffer, for service after January 1, 1998 accrue at rates, and/or in amounts, that are reduced because of age. Because of these reductions in the rate of benefit accrual on account of a Participant's age, the Plan violates the accrual rules of ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H).

27. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs and the class are entitled to a judgment declaring that the Plan does not comply with the accrual rules of ERISA and providing other appropriate relief to redress the Plan's violations of ERISA and to

ensure that benefits are determined and paid pursuant to a formula that complies with the accrual rules of ERISA.

Third Claim for Relief

28. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 – 27 above.

29. From January 1, 1998 to date the Plan has purported to require participants to accept lump-sum distributions of certain minimum accrued benefits and has not disclosed to them the substantial detriment imposed on participants who elect to receive their benefit in the form of a lump sum rather than the annuity at normal retirement age, to which they are entitled. The Plan also has not adequately disclosed to participants the relative values of various distribution options. Therefore the Plan does not comply with the consent rules of ERISA § 205(c) 29 U.S.C. § 1055(c) or Treas. Reg. 1.411(a)-11.

30. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs and the class are entitled to a judgment declaring that the Plan does not comply with the disclosure and consent rules of ERISA and providing other appropriate relief to redress the Plan's violations of ERISA and to ensure that Participants are afforded proper disclosures regarding benefit payment options and that they receive benefits that are determined and paid pursuant to disclosure and consents that comply with ERISA.

WHEREFORE, Plaintiffs pray that the Court:

1. Certify this action as a class action, on behalf of the above-defined class, and appoint Mr. Wells, Mr. Brookins, and Mr. Schaeffer as class representatives;

2. Enter judgment on behalf of Plaintiffs and the class against defendants on all claims asserted herein;

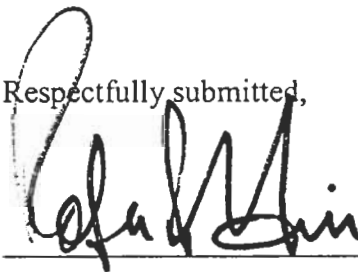
3. Order Defendants to pay all benefits due to participants from January 1, 1998, forward in the amounts required to comply with ERISA, including pre- and post-judgment interest on any amounts that should have been paid prior to the date actually paid;

4. Award attorneys' fees and costs pursuant to the common fund/benefit doctrine or other applicable law; and

5. Award any other and further relief the Court deems appropriate under the circumstances.

Dated: March 17, 2004.

Respectfully submitted,



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