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Proposed Counsel for Debtors and Debtors in Possession

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

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<i>In re</i>	:	Chapter 11
	:	
THE McCLATCHY COMPANY, et al.,	:	Case No. 20-10418 (MEW)
	:	
Debtors.¹	:	(Joint Administration Pending)
	:	
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¹ The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.



**DEBTORS' MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO PAY
CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS, AND
(B) SECTION 503(b)(9) CLAIMANTS, AND (II) GRANTING RELATED RELIEF**

The McClatchy Company and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**,” the “**Company**,” or “**McClatchy**”), hereby move (this “**Motion**”) this Court for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively), granting the relief described below. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Sean M. Harding in Support of Chapter 11 Petitions and First Day Papers* (the “**First Day Declaration**”),² filed contemporaneously herewith. In further support of this Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent as follows:

RELIEF REQUESTED

1. The Debtors respectfully request entry of an Interim Order and a Final Order (a) authorizing, but not directing, the Debtors to, in their sole discretion, make payments³ toward (i) Critical Vendor Claims (as defined herein) and (ii) 503(b)(9) Claims (as defined herein) (collectively, “**Prepetition Trade Claims**”) in an aggregate amount not to exceed \$2.1 million on an interim basis and not to exceed \$2.9 million on a final basis, in each case subject to the conditions set forth below; and (b) approving certain conditions on the Debtors’ payment of these prepetition obligations. For the avoidance of doubt, pursuant to this Motion, the Debtors

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

³ The Debtors also seek the authority, where applicable and consistent with the relief sought in this Motion, to “pay” certain of the Prepetition Trade Claims (as defined herein) by cancelling out certain postpetition amounts that may be owed to the Debtors (a “**Cancellation**”). Such Cancellations would merely serve to avoid the administrative burden of making payments flowing both to and from the Debtors.

seek authority to pay amounts only as they come due in the ordinary course of business or as may be necessary to secure a vendor's agreement to continue to do business with the Debtors on Customary Trade Terms (as defined herein) and shall not otherwise seek to accelerate payment of amounts that would not otherwise come due in the interim period.

2. The Debtors further request that the Interim Order and the Final Order (a) authorize all applicable banks and other financial institutions (collectively, the "**Banks**"), when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks, drafts, and other forms of payment, including fund transfers, on account of the Prepetition Trade Claims, whether such checks or other requests were submitted before, on, or after the Petition Date; (b) authorize the Banks to rely on the representations of the Debtors as to which checks and fund transfers are subject to this Motion, provided that no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors; (c) provide that the Banks shall, at the direction of the Debtors, receive, process, honor, and pay all prepetition and postpetition checks and fund transfers on account of the Prepetition Trade Claims that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments and that no such Bank shall have any liability to any party for relying on such direction by the Debtors; and (d) authorize the Debtors to issue new postpetition checks or effect new postpetition fund transfers to replace any checks, drafts, and other forms of payment which may be inadvertently dishonored or rejected.

JURISDICTION AND VENUE

3. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy**

Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

This is a core proceeding under 28 U.S.C. § 157(b).

4. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

5. The legal predicates for the relief requested herein are sections 105(a), 363, 364, 503, 506, 507, 1107 and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”).

BACKGROUND

I. The Chapter 11 Cases

6. On the date hereof (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

7. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

8. To date, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) has not appointed a creditors’ committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed therein.

9. The McClatchy Company and its direct and indirect Debtor subsidiaries are a diversified digital and print media business, focused on providing strong, independent local journalism to 30 communities across 14 states, as well as selected national news coverage through the Debtors’ Washington D.C. based bureau. The Debtors also provide a full suite of

both local and nationwide digital marketing services. The Debtors' businesses are comprised of websites and mobile applications, mobile news and advertising, video products, a digital marketing agency, daily newspapers, niche publications, other print and digital direct marketing services and community newspapers. The Company's business operations, corporate and capital structures, and restructuring efforts are described in greater detail in the First Day Declaration.

II. The Critical Vendors and Critical Vendor Claims

10. The Debtors' operations as a leading local media company serving more than 30 U.S. markets depend on, among other things, the Debtors' ability to print and deliver their newspapers and preprint advertising materials, publish their digital content, and fulfill their commitments to advertising and marketing customers in a timely manner and over a broad geographic area. As such, the seamless operation of the Debtors' businesses requires close coordination and integration among numerous parties, including certain vendors and service providers who provide essential goods and services (the "**Critical Vendors**"). The Critical Vendors generally provide the following categories of goods and services: (i) newsprint and other printing materials and supplies; (ii) ink; (iii) press plates; (iv) press blankets; (v) machine calibration and maintenance services; (vi) outsourced billing and finance services; (vii) software and related IT infrastructure; (viii) market research and data processing; (ix) outsourced solicitation and retention services; and (x) security and building maintenance services (the "**Critical Vendor Products and Services**"), without which the Debtors would be unable to meet the needs of their businesses, effectively serve their customers, and maintain their reputation within the newspaper and digital advertising industries.

11. In light of the importance of the Critical Vendor Products and Services, and due to the nature of the Debtors' businesses, the Debtors believe that many vendors will make credible and actionable threats that, unless paid on account of their prepetition debt, they will

cease to supply the Debtors with the specialized goods and services necessary to maintain the smooth operation of the Debtors' businesses during these Chapter 11 Cases, or may otherwise impair the Debtors' ability to operate their businesses. Accordingly, in order to maintain stability at the outset of these Chapter 11 Cases and to avoid jeopardizing the Debtors' ability to service their customers going forward, the Debtors seek authorization to pay the prepetition claims of such Critical Vendors (the "**Critical Vendor Claims**").

12. The Debtors believe that payment of the Critical Vendor Claims is vital to the Debtors' reorganization efforts. Many of the Debtors' trade relationships with their Critical Vendors are not generally governed by long-term contracts.⁴ Accordingly, the Debtors believe that such trade relationships may materially deteriorate, causing disruption to the Debtors' operations if the Debtors are unable to pay Critical Vendor Claims as provided herein. Furthermore, in certain cases, the Critical Vendor Products and Services are available only from one or more limited number of vendors. Even where alternative vendors exist, switching from one vendor to another often results in significant costs and may require a significant amount of time, either of which would be detrimental to the Debtors' estates. Therefore, the Debtors believe that payment of the Critical Vendor Claims is essential to avoid costly disruptions to the Debtors' businesses during these Chapter 11 Cases.

⁴ The Debtors and their advisors spent time reviewing and analyzing certain contracts and supply agreements. To the extent such agreement exists, and the Debtors can compel such vendor to continue to perform, the Debtors do not intend to treat such contract counterparties as Critical Vendors. In cases where the Debtors' contracts only provide a framework for the issuance of purchase or service orders that are limited in scope to particular projects, the Debtors' postpetition ability to use the contracts to compel the Critical Vendors to continue to provide goods and services may be limited. In addition, certain Critical Vendors who are party to long term written supply contracts may cease performance under such contracts postpetition, notwithstanding the application of the automatic stay, causing irreversible harm to the Debtors' businesses. Nothing in this Motion should be construed as a waiver of the Debtors' right to compel performance of any Critical Vendor under any agreement. The Debtors seek authority to pay such Critical Vendors as necessary, in their business judgment, to ensure continued performance.

13. The Debtors believe that jeopardizing their relationships with the Critical Vendors and attempting to procure the Critical Vendor Products and Services from replacement vendors would impose a severe strain on the Debtors' business operations, and would likely result in significant revenue loss. Even a temporary halt of the provision of Critical Vendor Products and Services would impose a severe strain on the Debtors' operations, and the cumulative impact of such events could have a significant adverse effect on the Debtors' operations and, particularly, on the ability of the Debtors to maintain business-as-usual and to serve their customers. Due to the potential for immediate and irreparable consequences if the Critical Vendors do not continue to provide uninterrupted and timely deliveries of goods and services, the Debtors have determined, in the exercise of their business judgment, that payment of the Critical Vendor Claims is essential to avoid costly disruptions to their operations.

A. The Development of the Critical Vendor Program

14. Absent payment of the Critical Vendor Claims, the Debtors' businesses would be impeded, which in turn would disrupt the Debtors' future cash flows. Accordingly, prior to the Petition Date, the Debtors and their advisors conducted a thorough review of their vendors with possible outstanding prepetition claims to determine how to minimize any disruption of the ongoing business from the commencement of the Chapter 11 Cases.

15. To identify vendors to be paid pursuant to this relief requested in this Motion, the Debtors, in consultation with their advisors, closely reviewed their accounts payable and prepetition vendor lists, and consulted with employees most familiar with the Debtors' vendors to identify those vendors that are most essential to the Debtors' operations. The criteria considered included:

- (a) which vendors are simply at risk of ceasing the provision of truly essential services or supplies;

- (b) whether a vendor is a sole- or limited-source supplier of materials or other services for use in the Debtors' businesses;
- (c) whether alternative vendors are available, including those in particular locations, that can provide requisite volumes, specifications, customization or other relevant characteristics, and expedited delivery of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operations without interruption while transitioning business thereto;
- (d) the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- (e) whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor;
- (f) the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through the use of the tools available in these Chapter 11 Cases;
- (g) whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods owned by the Debtors, or refuse to ship inventory or to provide critical services on a postpetition basis;
- (h) whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation; and
- (i) whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms.

16. Based on this analysis, the Debtors used a narrowly-tailored protocol identifying the goods and services that are absolutely essential to preserve the timely delivery of services on which the Debtors rely. Following the above-described analysis, the Debtors, in consultation with their advisors, identified the categories set forth above as critical to the Debtors continued operations, and estimated the total payments, based on accounts payable outstanding as of the Petition Date, that would be necessary to ensure the continued provision of the Critical Goods and Services to the Debtors.

17. As of the Petition Date, the Debtors estimate that they owed approximately \$1.8 million in the aggregate on account of Critical Vendor Claims. The Debtors, in their business

judgment, estimate that approximately \$1.3 million of the total amount of Critical Vendor Claims will need to be paid prior to entry of the Final Order. Accordingly, by this Motion, the Debtors request authorization, but not direction, to pay outstanding prepetition obligations on account of Critical Vendor Claims, not to exceed \$1.3 million on an interim basis and \$1.8 million on a final basis, but only as such amounts come due in the ordinary course of business or as may be necessary to secure a vendor's agreement to continue business with the Debtors on Customary Trade Terms (as defined below). The \$1.8 million of requested final relief represents approximately 9% of the Debtors' outstanding accounts payables as of the Petition Date.

18. The Debtors believe that failure to timely pay the Critical Vendor Claims would cause disproportionate harm and economic damage to the Debtors' businesses, without any corresponding benefit for other stakeholders. Conversely, the timely payment of such claims will facilitate the Debtors' reorganization.

19. Likewise, any disruption to the Critical Vendor Products and Services would compromise the Debtors' ability to continue operations in the ordinary course of business. This harm and disruption would far outweigh the cost of payment of the Critical Vendor Claims. Thus, the Debtors request authority, but not the direction, to pay, in part or in full and in their discretion, the Critical Vendor Claims.

III. The 503(b)(9) Claimants

20. As noted above, certain of the Debtors' relationships with their Critical Vendors are not governed by long-term contracts and some supplies are obtained on an order-by-order basis. Accordingly, the Debtors have received certain goods from various Critical Vendors within the 20 days before the Petition Date (collectively, the "**503(b)(9) Claimants**"), some of whom may refuse to supply new orders without payment of their prepetition claims. The Debtors also believe certain 503(b)(9) Claimants could reduce the Debtors' existing trade

credit—or demand payment in cash on delivery—further exacerbating the Debtors’ limited liquidity. For the avoidance of doubt, the 503(b)(9) Claimants represent a subset of the Critical Vendors.

21. The Debtors seek separate relief for the 503(b)(9) Claimants because those undisputed claims arising from the value of such goods received by the Debtors within 20 days before the Petition Date that have been sold to the Debtors in the ordinary course of business (each, a “**503(b)(9) Claim**”) may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.⁵

22. As of the Petition Date, the Debtors believe they owed approximately \$1.1 million in the aggregate on account of the 503(b)(9) Claims. The Debtors, in their business judgment, estimate that approximately \$0.8 million of the total amount of 503(b)(9) Claims will need to be satisfied prior to the entry of the Final Order. Accordingly, by this Motion, the Debtors seek authorization, but not direction, to pay outstanding prepetition obligations on account of 503(b)(9) Claims, not to exceed \$0.8 million in the aggregate on an interim basis and not to exceed \$1.1 million on a final basis, but only as such amounts come due in the ordinary course of business or as may be necessary to secure a vendor’s agreement to continue business with the Debtors on Customary Trade Terms, and to continue to pay the 503(b)(9) Claims as they come due in the ordinary course of business.

23. Additionally, prior to the Petition Date, and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (the “**Outstanding Orders**”). To avoid becoming general unsecured creditors of the Debtors’ estates

⁵ The Debtors do not concede that any claims described in this Motion are conclusively entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code, and the Debtors expressly reserve the right to contest the extent or validity of all such claims.

with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors' business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order: (a) granting administrative expense priority under Section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the postpetition acceptance of goods subject to Outstanding Orders; and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

IV. Proposed Terms and Conditions of Payment of the Petition Trade Claims

24. Subject to the Bankruptcy Court's approval, the Debtors intend to pay the Prepetition Trade Claims only to the extent necessary to preserve the Debtors' businesses. In order to preserve working capital and liquidity during the Chapter 11 Cases and ensure that the Debtors continue to receive vital goods and services, the Debtors propose to condition any payment on account of Prepetition Trade Claims on such Critical Vendor and 503(b)(9) Claimant (collectively, the "**Prepetition Trade Vendors**") continuing to supply goods and services to the Debtors on terms that are consistent with the historical trade terms between the parties (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, normal product mix and availability, and other applicable terms and programs), representing the most favorable trade terms to the Debtors by such Prepetition Trade Vendor within the period 180 days prior to the Petition Date (the "**Customary Trade Terms**"). The Debtors, however, reserve the right to negotiate different trade terms with any Prepetition Trade Vendor, as a condition to payment of any Prepetition Trade Claim, whether or not memorialized by a Trade Agreement (as defined herein), to the extent the Debtors determine that

such trade terms are necessary to procure essential goods or services or are otherwise in the best interests of the Debtors' estates.

25. The Debtors further propose that in the event the Debtors are making a payment pursuant to this Motion, the Debtors will make appropriate efforts to send a letter, substantially in the form attached hereto as **Exhibit C**, to each of the Prepetition Trade Vendors to which they are making such payment, along with a copy of the order granting this Motion, including, without limitation, the following terms:

- (a) The amount of such Prepetition Trade Vendor's estimated claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Prepetition Trade Vendor and the Debtors (but such amount shall be used only for purposes of the order granting this Motion and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The amount of payment toward the Prepetition Trade Vendor's estimated claim;
- (c) The Prepetition Trade Vendor's agreement to be bound by the Customary Trade Terms, or such other trade terms as mutually agreed to by the Debtors and such Prepetition Trade Vendor;
- (d) The Prepetition Trade Vendor's agreement to provide goods and services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Prepetition Trade Vendor postpetition in accordance with such terms;
- (e) The Prepetition Trade Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "**Lien**") regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Prepetition Trade Vendor by the Debtors arising from goods or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Prepetition Trade Vendor has previously obtained such a Lien, the Prepetition Trade Vendor shall immediately take all necessary action to release such Lien;
- (f) The Prepetition Trade Vendor's acknowledgement that it has reviewed the terms and provisions of the order granting this Motion and consents to be bound thereby;

- (g) The Prepetition Trade Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation or Bankruptcy Code section 503(b)(9) claims; and
- (h) If a Prepetition Trade Vendor who has received payment toward a Prepetition Trade Claim subsequently refuses to supply goods or services to the Debtors on Customary Trade Terms, any payments received by the Prepetition Trade Vendor on account of its Prepetition Trade Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Prepetition Trade Vendor, and that such Prepetition Trade Vendor shall immediately repay to the Debtors any payments received on account of its Prepetition Trade Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

26. Such a letter, once agreed to and accepted by a Prepetition Trade Vendor, shall be the agreement between the parties that governs their postpetition trade relationship, whether on Customary Trade Terms or on terms different from their Customary Trade Terms (each a "**Trade Agreement**").⁶

27. The Debtors hereby seek authority to enter into Trade Agreements with the Prepetition Trade Vendors if the Debtors determine, in their discretion, that such an agreement is necessary to their postpetition operations. Maintaining normal trade credit terms will improve the Debtors' chances of successfully reorganizing as purchasing goods on credit preserves working capital and liquidity—enabling the Debtors to maintain their competitiveness and to maximize the value of their businesses. Absent the relief requested herein, many of the Debtors' vendors may attempt to place the Debtors on cash-in-advance terms, which the Debtors estimate could drain their estates of resources that would otherwise be available for other funding needs during the critical first weeks of the Debtors' bankruptcy. The Debtors are seeking to prevent the compression of trade terms early in their Chapter 11 Cases.

⁶ The Debtors' entry into a Trade Agreement shall not change the nature or priority of the underlying Prepetition Trade Claims and shall not constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Prepetition Trade Vendor.

28. If a Prepetition Trade Vendor refuses to supply goods or services to the Debtors on Customary Trade Terms following any postpetition payment toward its Prepetition Trade Claim, or fails to comply with any Trade Agreement it entered into with the Debtors, the Debtors hereby seek authority, in their discretion and without further order of the Court but with notice to the affected Prepetition Trade Vendor and to the U.S. Trustee, counsel to the DIP Agent, counsel to the Prepetition Agents, counsel to Chatham, and counsel to Brigade, (a) to declare such Trade Agreement immediately terminated (if applicable) and (b) to declare any payments made to such Prepetition Trade Vendor on account of its Prepetition Trade Claim to have been in payment of then outstanding postpetition obligations owed to such Prepetition Trade Vendor without further order of the Court.

29. In the event that the Debtors exercise either of the rights set forth in the preceding paragraph, the Debtors request that the Prepetition Trade Vendor against which the Debtors exercise such rights be required to immediately return to the Debtors any payments made on account of its Prepetition Trade Claim, to the extent that such payments exceed the postpetition amounts then owed to such Prepetition Trade Vendor, without giving effect to any rights of setoff or reclamation. In essence, the Debtors seek to return the parties to their respective positions immediately prior to entry of this order in the event a Trade Agreement is terminated or a Prepetition Trade Vendor refuses to supply goods or services to the Debtors on Customary Trade Terms following any payment toward its Prepetition Trade Claim.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

I. Payment of the Prepetition Trade Claims Is Authorized Under Sections 363 and 364 of the Bankruptcy Code.

30. The relief requested in this Motion is appropriate under Bankruptcy Code sections 363 and 364. *See In re UAL Corp.*, Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002)

(essential trade motion relying upon Bankruptcy Code section 363 is “completely consistent with the Bankruptcy Code”; payments to critical trade vendors have further support when debtor seeks “the extension of credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation”); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (court authorized contractor under section 363 to pay prepetition claims of some suppliers who were potential lien claimants, because such payments were necessary for general contractors to release funds owed to debtors, thus benefiting estate).

31. The relief requested in this Motion contemplates payments to be made to the Prepetition Trade Vendors who agree to provide materials, goods, or services on Customary Trade Terms resulting in a benefit to the estate. As a result, the payment of such Prepetition Trade Claims is consistent with and appropriate under Bankruptcy Code sections 363 and 364. As detailed above, the goods and services provided by the Critical Vendors are vital to the continued operations of the Debtors’ businesses and the Debtors’ ability to make payments on account of the Prepetition Trade Claims is vital to the Debtors’ reorganization efforts.

32. The relief requested is commonly granted in this District. *See, e.g., In re Trident Holding Co., LLC*, No. 19-10384 (SHL) (Bankr. S.D.N.Y. Feb. 12, 2019) (authorizing payment of up to \$2 million in prepetition claims to critical vendors); *In re Synergy Pharm. Inc.*, No. 18-140140 (JLG) (Bankr. S.D.N.Y. Jan 8, 2019) (authorizing payment of up to \$3 million in prepetition claims to critical vendors); *In re Sears Holding Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. Oct. 17, 2018) (authorizing payment of up to \$50 million in prepetition claims to critical vendors); *In re Avaya Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (authorizing the payment of up to \$39.5 million in prepetition claims to critical vendors); *In re*

Aéropostale, Inc., No. 16-11275 (SHL) (Bankr. S.D.N.Y. June 3, 2016) (authorizing the payment of up to \$4 million in prepetition claims to critical vendors); *In re MPM Silicones, LLC*, No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 16, 2014) (authorizing the payment of up to \$31.1 million in prepetition claims to critical vendors); *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012) (authorizing the payment of up to \$10 million in prepetition claims to critical vendors).⁷

II. Payment of the Prepetition Trade Claims Is Appropriate Under the Doctrine of Necessity.

33. The bankruptcy court’s power to authorize the pre-plan satisfaction of prepetition claims whose payment is critical to the debtor’s business is firmly established under the “doctrine of necessity,” which “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).⁸ Although the “doctrine of necessity” pre-dates the Bankruptcy Code, *see Miltenberger v. Logansport C. & S.W. R.Co.*, 106 U.S. 286 (1882), the modern application of the doctrine of necessity is grounded in specific provisions of the Bankruptcy Code, including

⁷ Because of the voluminous nature of the orders cited herein, they are not attached to this Motion, but are available upon request.

⁸ *Accord In re Pers. Commc’ns Devices, LLC*, 588 B.R. 661, 666 (Bankr. E.D.N.Y. 2018); *see also In re Friedman’s Inc.*, No. 09-10161 (CSS), 2011 WL 5975283, at *3 (Bankr. D. Del. Nov. 30, 2011) (“Normally, a debtor only pays pre-petition, unsecured claims through a confirmed plan of reorganization . . . [h]owever, most courts will allow such payments under the ‘doctrine of necessity,’ if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor’s business.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.”); *In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996), *corrected* (Sept. 4, 1996); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit the pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

sections 105(a), 1107(a), and 1108. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (fiduciary duties implicit in Bankruptcy Code section 1107(a) justify the “preplan satisfaction of a prepetition claim” where necessary to preserve going concern value). Courts have located additional support for the pre-confirmation satisfaction of critical claims in Bankruptcy Code section 363(b), under which a court may authorize the use of property outside the ordinary course of business where a debtor “articulate[s] some business justification, other than mere appeasement of major creditors” for such relief. *See Ionosphere*, 98 B.R. at 175.

34. Satisfaction of the Prepetition Trade Claims in the ordinary course of business is critically important to the Debtors’ ongoing businesses. In turn, the maintenance of the Debtors’ businesses during these Chapter 11 Cases is crucial to the Debtors’ ability to pursue restructuring alternatives and preserve going concern value for the benefit of all of the Debtors’ stakeholders. Thus, even if the Debtors could avoid payment of certain Prepetition Trade Claims, the collateral consequences on the Debtors’ go-forward businesses would vastly exceed whatever modest short-run cost savings the Debtors might achieve.

35. Moreover, the Debtors have identified as Prepetition Trade Vendors only those suppliers and service providers that meet the stringent criteria set forth herein. The Debtors have examined other options short of payment of Prepetition Trade Claims and have determined that the Debtors must pay the Prepetition Trade Claims to avoid significant disruption of the Debtors’ operations. Accordingly, this Court should allow the payment of the Prepetition Trade Claims as requested herein.

III. The Proposed Payment Processing Procedures Are Appropriate.

36. As set forth above, the Debtors request that all Banks be authorized and directed to honor and process payments on account of the Prepetition Trade Claims as directed by the Debtors. The Debtors have sufficient liquidity to pay the amounts identified in this Motion in

the ordinary course of business and have implemented controls to ensure that prepetition claims will not be paid except as authorized by this Court. The Debtors therefore submit that the payment processing procedures described in the Motion are appropriate.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

37. The Court may grant the relief requested in this Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; see also *In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). In explaining the standards for preliminary injunctions, the Second Circuit has described irreparable harm as “a continuing harm which cannot be adequately redressed by final relief on the merits’ and for which ‘money damages cannot provide adequate compensation.’” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quoting *N.Y. Pathological & X-Ray Labs., Inc. v. INS*, 523 F.2d 79, 81 (2d Cir. 1975)). Further, the “harm must be shown to be actual and imminent, not remote or speculative.” *Id.*; see also *Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999). The Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

38. The Debtors request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

MOTION PRACTICE

39. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to the Motion. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 9013-1(a).

RESERVATION OF RIGHTS

40. Nothing in this Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim; (d) granting third-party-beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

NOTICE

41. Notice of this Motion will be given to: (a) the U.S. Trustee, (b) counsel to the DIP Agent, (c) counsel to the Prepetition Agents, (d) counsel to Chatham, (e) counsel to Brigade, (f) the PBGC, (g) the parties included on the Debtors' consolidated list of their 20 largest unsecured creditors, (h) any party that has requested notice pursuant to Bankruptcy Rule 2002, (i) the Banks, and (j) all parties entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

42. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

The Debtors respectfully request that this Court enter the Interim Order and the Final Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: New York, New York
February 13, 2020

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Van C. Durrer, II

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Bram A. Stochlic
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– and –

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Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

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

-----	x	
<i>In re</i>	:	Chapter 11
	:	
THE McCLATCHY COMPANY, et al.,	:	Case No. 20-10418 (MEW)
	:	
Debtors.¹	:	(Joint Administration Pending)
	:	
-----	x	

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF (A) CRITICAL VENDORS, AND (B) SECTION 503(b)(9)
CLAIMANTS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for an interim order (this “**Interim Order**”) and a Final Order (a) authorizing, but not directing, the Debtors to, in their sole discretion, make payments toward the prepetition claims of (i) Critical Vendors, and (ii) 503(b)(9) Claimants; and (b) approving certain conditions on the Debtors’ payment of prepetition obligations; and (c) directing banks and financial institutions at which the Debtors maintain disbursement and other accounts, at the Debtors’ instruction, to receive, honor, process, and pay, to the extent of funds on deposit, any and all checks or electronic fund transfer on account of the Prepetition Trade Claims; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that this is a core

¹ The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kcellc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby;

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are hereby authorized, but not required, to pay, in their sole discretion, without further order of this Court, the Prepetition Trade Claims in an amount not to exceed \$2.1 million in the aggregate on a postpetition basis in the ordinary course of business; *provided, however*, that any Prepetition Trade Vendor that accepts payment pursuant to the authority granted in this Interim Order agrees to supply goods and services to the Debtors postpetition on Customary Trade Terms or on such other favorable terms as are acceptable to the Debtors.
3. The form of the Trade Agreement is approved in its entirety. The Debtors are authorized, but not directed, to cause the Prepetition Trade Vendors to enter into Trade Agreements with the Debtors substantially in the form of the letter attached as **Exhibit C** to the Motion as a condition to payment of the Prepetition Trade Claims.
4. Any party who accepts payment from the Debtors of a Prepetition Trade Claim (regardless of whether a Trade Agreement has been executed) shall be deemed to have agreed to

the terms and provisions of this Interim Order and (a) shall be deemed to have waived, to the extent so paid, any and all prepetition claims, of whatever type, kind or priority, against the Debtors, their properties and estates, their directors, officers, and employees up to the amount paid; and (b) shall refrain from asserting any reclamation claim with respect to the goods, or to withdraw such goods, that are the subject of any such payment.

5. If a Prepetition Trade Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of any payment on account of its Prepetition Trade Claim (regardless of whether such Prepetition Trade Vendor has entered into a Trade Agreement), or fails to comply with any Trade Agreement entered into between such Prepetition Trade Vendor and the Debtors, then the Debtors may, with notice to the affected Prepetition Trade Vendor and on or before the date on which any plan or plans of reorganization are confirmed in the Chapter 11 Cases, declare (a) such Trade Agreement immediately terminated (if applicable), and (b) any payments made to such Prepetition Trade Vendor on account of its Prepetition Trade Claim to have been in payment of then outstanding postpetition obligations owed to such Prepetition Trade Vendor. Such Prepetition Trade Vendor shall immediately repay to the Debtors any payments received on account of its prepetition claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding to such Prepetition Trade Vendor, without the right of setoff, recoupment or reclamation, and the Prepetition Trade Vendor's prepetition claim shall be reinstated as a prepetition claim in these Chapter 11 Cases and subject to the terms of any bar date order entered in these Chapter 11 Cases. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Prepetition Trade Vendor.

6. Notwithstanding the foregoing, the Debtors may, in their sole discretion, without further order of this Court, but with notice to the U.S. Trustee, counsel to the DIP Agent, counsel to the Prepetition Agents, counsel to Chatham, and counsel to Brigade, reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Prepetition Trade Vendor not later than five business days following the Debtors' notification to the Prepetition Trade Vendor of such default or the Debtors, in their discretion, reach a favorable alternative agreement with the Prepetition Trade Vendor.

7. Prior to making payment on Prepetition Trade Vendors' prepetition claims pursuant to this Interim Order, the Debtors shall provide a list of Prepetition Trade Vendors, including the category of and contemplated payment to each Prepetition Trade Vendor, to the Court, the U.S. Trustee, counsel to Chatham, and the advisors to any official committee appointed in these Chapter 11 Cases (the "**Prepetition Trade Vendor Schedule**"). The Prepetition Trade Vendor Schedule shall not be filed publicly. The Debtors shall not pay a claim as a Prepetition Trade Claim unless such claim is set forth on the Prepetition Trade Vendor Schedule; *provided, however*, that the Debtors may update the Prepetition Trade Vendor Schedule from time to time with three business days' written notice and opportunity to object to the U.S. Trustee and any official committee.

8. All Banks are (a) authorized and directed to receive, process, honor and pay any and all prepetition and postpetition checks, drafts, electronic transfers and other forms of payment used by the Debtors to satisfy their Prepetition Trade Claims, whether presented before, on, or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of Prepetition Trade Claims. The Banks shall rely on

the direction and representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Interim Order, and no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Interim Order.

9. To the extent the Debtors have not yet sought to remit payment on account of the Prepetition Trade Claims, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment of the Prepetition Trade Claims subject to the terms of the DIP Financing Orders entered by this Court and any approved budget thereunder.

10. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Interim Order.

11. Nothing in the Motion or this Interim Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a limitation on, or in any way affecting, the Debtors' ability to dispute any Prepetition Trade Claim; (d) a promise to pay any claim or other obligation; (e) granting third-party-beneficiary status or bestowing any additional rights on any third party; or (f) being otherwise enforceable by any third party.

12. The authorization granted hereby to pay Prepetition Trade Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys, or agents to pay

the Prepetition Trade Claims, none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Prepetition Trade Claim, and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Prepetition Trade Claims to the extent they are not paid.

13. This Interim Order, and all acts taken in furtherance of or reliance upon this Interim Order, shall be effective notwithstanding the filing of an Objection, pending the entry of the Final Order by this Court.

14. Notwithstanding anything to the contrary contained in this Interim Order, (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the DIP Financing Orders approved by this Court in the Chapter 11 Cases, and (b) to the extent there is any inconsistency between the terms of such DIP Financing Orders and any action taken or proposed to be taken hereunder, the terms of such DIP Financing Orders shall control.

15. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

16. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).

17. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon entry hereof.

18. All time periods set forth in this Interim Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

19. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

20. The final hearing on the Motion shall be held on _____, 2020 at _____:____ a.m./p.m., prevailing Eastern Time. Any objections or responses to the entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020, and shall be served on: (a) the U.S. Trustee; (b) counsel to the DIP Agent, (c) counsel to the Prepetition Agents, (d) counsel to Chatham, (e) counsel to Brigade, (f) the PBGC, (g) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (h) any party that has requested notice pursuant to Bankruptcy Rule 2002, and (i) the Banks. If no objections or responses are filed and served, this Court may enter a final order without further notice or hearing.

21. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: New York, New York
February __, 2020

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

----- X
In re : **Chapter 11**
:
THE McCLATCHY COMPANY, *et al.*, : **Case No. 20-10418 (MEW)**
:
Debtors.¹ : **(Joint Administration Pending)**
:
----- X

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF (A) CRITICAL VENDORS, AND (B) SECTION 503(b)(9)
CLAIMANTS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for an Interim Order and a final order (this “**Final Order**”) (a) authorizing, but not directing, the Debtors to, in their sole discretion, make payments toward the prepetition claims of (i) Critical Vendors, and (ii) 503(b)(9) Claimants; and (b) approving certain conditions on the Debtors’ payment of prepetition obligations; and (c) directing banks and financial institutions at which the Debtors maintain disbursement and other accounts, at the Debtors’ instruction, to receive, honor, process, and pay, to the extent of funds on deposit, any and all checks or electronic fund transfer on account of the Prepetition Trade Claims; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that this is a core

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² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby;

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on an final basis as set forth herein.
2. The Debtors are hereby authorized, but not required, to pay, in their sole discretion, without further order of this Court, Prepetition Trade Claims in an amount not to exceed \$2.9 million in the aggregate, on a postpetition basis in the ordinary course of business; *provided, however*, that any Prepetition Trade Vendor that accepts payment pursuant to the authority granted in this Final Order agrees to supply goods and services to the Debtors postpetition on Customary Trade Terms or on such other favorable terms as are acceptable to the Debtors.
3. The form of the Trade Agreement is approved in its entirety. The Debtors are authorized, but not directed, to cause the Prepetition Trade Vendors to enter into Trade Agreements with the Debtors substantially in the form of the letter attached as **Exhibit C** to the Motion as a condition to payment of the Prepetition Trade Claims.
4. Any party who accepts payment from the Debtors of a Prepetition Trade Claim (regardless of whether a Trade Agreement has been executed) shall be deemed to have agreed to

the terms and provisions of this Final Order and (a) shall be deemed to have waived, to the extent so paid, any and all prepetition claims, of whatever type, kind or priority, against the Debtors, their properties and estates, their directors, officers, and employees up to the amount paid; and (b) shall refrain from asserting any reclamation claim with respect to the goods, or to withdraw such goods, that are the subject of any such payment

5. If a Prepetition Trade Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of any payment on account of its Prepetition Trade Claim (regardless of whether such Prepetition Trade Vendor has entered into a Trade Agreement), or fails to comply with any Trade Agreement entered into between such Prepetition Trade Vendor and the Debtors, then the Debtors may, with notice to the affected Prepetition Trade Vendor and on or before the date on which any plan or plans of reorganization are confirmed in the Chapter 11 Cases, declare (a) such Trade Agreement immediately terminated (if applicable), and (b) any payments made to such Prepetition Trade Vendor on account of its Prepetition Trade Claim to have been in payment of then outstanding postpetition obligations owed to such Prepetition Trade Vendor. Such Prepetition Trade Vendor shall immediately repay to the Debtors any payments received on account of its prepetition claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding to such Prepetition Trade Vendor, without the right of setoff, recoupment or reclamation, and the Prepetition Trade Vendor's prepetition claim shall be reinstated as a prepetition claim in these Chapter 11 Cases and subject to the terms of any bar date order entered in these Chapter 11 Cases. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Prepetition Trade Vendor.

6. Notwithstanding the foregoing, the Debtors may, in their sole discretion, without further order of this Court, but with notice to the U.S. Trustee, counsel to the DIP Agent, counsel to the Prepetition Agents, counsel to Chatham, and counsel to Brigade, reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Prepetition Trade Vendor not later than five business days following the Debtors' notification to the Prepetition Trade Vendor of such default or the Debtors, in their discretion, reach a favorable alternative agreement with the Prepetition Trade Vendor.

7. Prior to making payment on Prepetition Trade Vendors' prepetition claims pursuant to this Final Order, the Debtors shall provide a list of Prepetition Trade Vendors, including the category of and contemplated payment to each Prepetition Trade Vendor, to the Court, the U.S. Trustee, counsel to Chatham, and the advisors to any official committee appointed in these Chapter 11 Cases (the "**Prepetition Trade Vendor Schedule**"). The Prepetition Trade Vendor Schedule shall not be filed publicly. The Debtors shall not pay a claim as a Prepetition Trade Claim unless such claim is set forth on the Prepetition Trade Vendor Schedule; *provided, however*, that the Debtors may update the Prepetition Trade Vendor Schedule from time to time with three business days' written notice and opportunity to object to the U.S. Trustee and any official committee.

8. All Banks are (a) authorized and directed to receive, process, honor and pay any and all prepetition and postpetition checks, drafts, electronic transfers and other forms of payment used by the Debtors to satisfy their Prepetition Trade Claims, whether presented before, on, or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of Prepetition Trade Claims. The Banks shall rely on

the direction and representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Final Order, and no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Final Order.

9. To the extent the Debtors have not yet sought to remit payment on account of the Prepetition Trade Claims, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment of the Prepetition Trade Claims subject to the terms of the DIP Financing Orders entered by this Court and any approved budget thereunder.

10. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Final Order.

11. Nothing in the Motion or this Final Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a limitation on, or in any way affecting, the Debtors' ability to dispute any Prepetition Trade Claim; (d) a promise to pay any claim or other obligation; (e) granting third-party-beneficiary status or bestowing any additional rights on any third party; or (f) being otherwise enforceable by any third party.

12. The authorization granted hereby to pay Prepetition Trade Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay the Prepetition Trade Claims, none of the foregoing persons shall have any liability on account of

any decision by the Debtors not to pay a Prepetition Trade Claim, and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Prepetition Trade Claims to the extent they are not paid.

13. Notwithstanding anything to the contrary contained in this Final Order, (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the DIP Financing Orders approved by this Court in the Chapter 11 Cases, and (b) to the extent there is any inconsistency between the terms of such DIP Financing Orders and any action taken or proposed to be taken hereunder, the terms of such DIP Financing Orders shall control.

14. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).

15. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry hereof.

16. All time periods set forth in this Final Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

17. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

18. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: New York, New York
February __, 2020

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Proposed Letter

_____, 2020

TO: [Critical Vendor/Service Provider]
[Name]
[Address]

Dear Valued Supplier/Service Provider:

As you are aware, The McClatchy Company and certain of its affiliates (together, the “**Company**”) filed voluntary petitions (the “**Chapter 11 Cases**”) for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (“**Bankruptcy Court**”) on [●], 2020 (the “**Petition Date**”). On the Petition Date, in recognition of the importance of its relationship with vendors and suppliers and its desire that the Chapter 11 Cases have as little effect on such parties as possible, the Company requested the Bankruptcy Court’s approval to pay the prepetition claims of certain critical vendors and suppliers. On [●], 2020, the Bankruptcy Court entered an [interim] order (the “**Order**”) authorizing the Company, under certain conditions, to pay the prepetition claims, in accordance with the terms of the Order, of certain trade creditors that agree to the terms set forth below and agree to be bound by the terms of the Order. A copy of the Order is enclosed for your reference. [The Company has asked the Bankruptcy Court to schedule a final hearing and thereafter grant the relief provided in the Order on a final basis.]

Under the Order, to receive payment of its prepetition claim, each selected trade creditor must agree to continue to supply goods and/or services to the Company based on “Customary Trade Terms.” In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, normal product mix and availability and other applicable terms and programs), which were most favorable to the Company and in effect between such trade creditor and the Company on a historical basis for the period within 180 days of the Petition Date, or such other trade terms as mutually agreed to by the Company and such trade creditor.

For purposes of administering this trade program, as authorized by the Bankruptcy Court and in accordance with the terms of the Order, the Company and [Name of Trade Vendor] agree as follows (the “**Agreement**”):

- (a) The estimated balance of the prepetition trade claim (net of any setoffs, credits or discounts) (the “**Trade Claim**”) that the Company will pay to [Name of Trade Vendor] is \$_____. Your Trade Claim does not constitute a claim allowed by the Bankruptcy Court in the Bankruptcy Cases, and signing this Trade Agreement does not excuse you from any requirement of filing a proof of claim in the Bankruptcy Cases on account of any other claims.
- (b) The Company shall pay \$_____ towards the Trade Claim (the “**Payment**”).

- (c) **[Name of Trade Vendor]** agrees to supply goods/services to the Company in accordance with the Customary Trade Terms, and the Company agrees to pay **[Name of Trade Vendor]** in accordance with such Customary Trade Terms. [For purposes of this Agreement, Customary Trade Terms consist of those terms provided for in the agreement attached hereto as **Exhibit A** and/or the following terms and conditions.]
- (d) The open trade balance or credit line that **[Name of Trade Vendor]** will extend to the Company for shipment of postpetition goods/services is \$_____.
- (e) In consideration for the Payment, you agree not to file or otherwise assert against the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien (a “**Lien**”), claim for reclamation (“**Reclamation Claim**”), claim under Bankruptcy Code section 503(b)(9) (a “**503(b)(9) Claim**”), or any similar priority claim under the Bankruptcy Code or other statute (a “**Priority Claim**”) regardless of the statute or other legal authority upon which such Lien, Reclamation Claim, 503(b)(9) Claim, or Priority Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to you by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date and, to the extent you have already obtained or otherwise asserted such a Lien, Reclamation Claim, 503(b)(9) Claim, or Priority Claim, you shall take (at your own expense) whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim, 503(b)(9) Claim, or Priority Claim unless your participation in the trade payment program authorized by the Order (the “**Trade Payment Program**”) is terminated.

Your execution of this Agreement and return of the same to the Company constitutes an agreement by **[Name of Trade Vendor]** and the Company:

1. to be bound by the Customary Trade Terms (as modified herein) and, subject to the reservations set forth in the Order, to the amount of the Trade Claim set forth above;
2. that **[Name of Trade Vendor]** will continue to supply the Company with goods and/or services pursuant to the Customary Trade Terms (as modified herein) and that the Company will pay for such goods and/or services in accordance with the Customary Trade Terms (as modified herein);
3. that **[Name of Trade Vendor]** has reviewed the terms and provisions of the Order and that it consents to be bound by such terms, except as modified herein;
4. that **[Name of Trade Vendor]** will not separately seek payment for Liens, Reclamation Claims, 503(b)(9) Claims, Priority Claims, and similar claims outside of the terms of the Order

unless its participation in the trade payment program authorized by the Order (the “**Trade Payment Program**”) is terminated;

5. that if either the Trade Payment Program or your participation therein terminates as provided in the Order, any payments received by you on account of your Trade Claim will be deemed to have been in payment of postpetition obligations owed to you and you will immediately repay to the Debtors any payments made to you on account of your Trade Claim to the extent that the aggregate amount of such payments exceeds such postpetition obligations, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or other defense;

6. that if either the Trade Payment Program or your participation therein terminates as provided in the Order, any payments received by you on account of your Trade Claim will be deemed to have been in payment of postpetition obligations owed to you and you will immediately repay to the Debtors any payments made to you on account of your Trade Claim to the extent that the aggregate amount of such payments exceeds such postpetition obligations, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or other defense; and

7. that if the Company shall be in default under this Agreement, [**Name of Trade Vendor**] shall have no obligation to supply goods and/or services to the Company on Customary Trade Terms (as modified herein) until the Company cures such default and [**Name of Trade Vendor**] shall have the right to terminate this Agreement upon written notice to the Company detailing the Company’s defaults hereunder (which the Company shall have the right to dispute) and the Company’s failure to cure such default within [●] business days of such notice, in which event [**Name of Trade Vendor**] may retain all sums paid to it hereunder on account of its Trade Claim.

The Company and [**Name of Trade Vendor**] also hereby agree that any dispute with respect to this Agreement, the Order and/or [**Name of Trade Vendor**]’s participation in the Trade Payment Program shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call [**Contact Person**] at (____) ____-____:

Very truly yours,

The McClatchy Company

By: _____

Name: [●]

Title: [●]

Agreed and Accepted by:

[Name of Trade Vendor]

By: _____

Name: [●]

Title: [●]

Dated: _____, 2020