

SKADDEN, ARPS, SLATE, MEAGHER &
 FLOM LLP
 Shana A. Elberg
 Bram A. Strohlic
 Four Times Square
 New York, New York 10036-6522
 Telephone: (212) 735-3000
 Fax: (212) 735-2000

TOGUT, SEGAL & SEGAL LLP
 Albert Togut
 Kyle J. Ortiz
 Amy Oden
 One Penn Plaza, Suite 3335
 New York, New York 10119
 Telephone: (212) 594-5000
 Fax: (212) 967-4258

– and –

Van C. Durrer, II
 Destiny N. Almogoe (*pro hac vice* pending)
 300 South Grand Avenue, Suite 3400
 Los Angeles, California 90071-3144
 Telephone: (213) 687-5000
 Fax: (213) 687-5600

– and –

Jennifer Madden (*pro hac vice* pending)
 525 University Avenue
 Palo Alto, California 94301
 Telephone: (650) 470-4500
 Fax: (650) 470-4570

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, <i>et al.</i>,	:	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 HONOR CERTAIN PREPETITION
OBLIGATIONS TO CUSTOMERS AND CONTINUE CERTAIN CUSTOMER
PROGRAMS IN THE ORDINARY COURSE OF BUSINESS,
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 the 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 the 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 authorizing, but not directing, the Debtors to honor certain prepetition Customer Programs Obligations (defined below) in an aggregate amount not to exceed \$5.4 million on an interim basis and not to exceed \$7.8 million on a final basis, and to otherwise continue customer programs and practices (as described in greater detail below, the “**Customer Programs**”) in the ordinary course of business.

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

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

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 Customer Programs, 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 Customer Programs 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. For the avoidance of doubt, the Debtors shall not otherwise seek to accelerate payment of amounts that would not otherwise come due in the interim period.

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, 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’ business 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 Debtors' Customers

10. Nearly all of the revenue generated by the Debtors comes from one of three sources (collectively, the "**Customers**"). At least 48% of the Debtors' total annual revenue in 2019 came from the sale of advertising and marketing products to, among others, large national retail chains, small local business, and individuals (the "**Advertising Customers**"). Another approximately 45% was generated from the sale of digital and print subscriptions to consumers and single copy newspaper sales (the "**Audience Customers**"). Approximately 7% of the Debtors' revenues in 2019 were generated from the commercial printing and distribution services provided by the Debtors to third party publishers (the "**Unaffiliated Publishing Customers**"), which allow the Debtors to maximize the use of their existing printing press capacity, distribution network, and related infrastructure.

III. The Customer Programs

11. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors provided their Customers with various discounts, rebates, advertisement reruns and other make-whole services, barter and trade agreements, access to the Debtors' network of third party service partners, event sponsorship opportunities, refunds, billing adjustments, customer service programs, and print and delivery services. The Customer Programs and related practices are designed to (a) attract and retain Customers, (b) develop and sustain a positive reputation in the marketplace for the Debtors' varied print and digital products and services, (c) ensure customer satisfaction, (d) engender customer loyalty, and (e) meet competitive market pressures. As set forth in more detail below, the Customer Programs are critical to the Debtors' ongoing operations and the preservation and maximization of stakeholder value. Therefore, the Debtors

seek authority to continue to maintain and administer their Customer Programs and the cash and performance-based obligations thereunder (the “**Customer Programs Obligations**”), including certain prepetition Customer Programs Obligations.³

12. The Debtors generate goodwill through the Customer Programs and the satisfaction of their Customer Programs Obligations, thereby allowing the Debtors to not only retain their current Customers, but also to attract new ones. The revenue generated by the Customer Programs exceeds the operational and administrative cost to implement and maintain them. In addition, several of the Debtors’ prepetition Customer Programs Obligations do not require the expenditure of cash. For these, and the other reasons set forth herein, it is essential and in the best interests of the Debtors, their estates, and their creditors that the Debtors be permitted to honor their prepetition Customer Programs Obligations and to continue the Customer Programs in the ordinary course of their businesses.

13. As described in greater detail below, the Debtors’ Customer Programs are common in the digital and print newspaper industry. Indeed, the Debtors believe that most major digital and print publishers, including many of the Debtors’ competitors, employ similar or identical customer programs. Therefore, if the Debtors are to stay competitive, it is critical that the Debtors be authorized, in their business judgment, to continue the Customer Programs and to honor the prepetition Customer Programs Obligations associated therewith. The following are general descriptions and examples of the Debtors’ principal Customer Programs.

³ Throughout this Motion, the Debtors have attempted to identify which liabilities on account of the various Customer Programs are settled via cash and which are settled via invoice or other credits to Customer accounts. It should be noted that, from time to time, in the interest of administrative convenience or to comply with the requests of a specific Customer, the Debtors will settle certain liabilities that would typically be settled in cash via invoice or other account credits, or vice versa.

A. Advertising Programs

14. The Debtors' advertising and marketing-related Customer Programs (the "**Advertising Programs**"), each of which is more fully described below, include providing (a) certain promotional discounts, service credits and adjustments, rebates, allowances, and other incentives (the "**Incentive Program**") in order to solicit and retain Advertising Customers, from whom (as noted above) the Debtors derive a significant portion of their revenue, (b) complimentary reruns of advertisements to correct previous publication errors and to account for audience underdelivery (the "**Make-Good Program**"), (c) trade agreements with advertisers for the exchange of advertising and other sales and marketing services (the "**Trade Program**"), and (d) access to the Debtors' network of third party service partners (the "**Custom Package Program**").

15. The Advertising Programs are consistent with customary industry practice and allow the Debtors to provide advertising and marketing services at competitive prices. In addition, the Advertising Customers consider the Advertising Programs to be indispensable elements of their commercial relationships with the Debtors. Refusing to honor the Advertising Programs would engender significant ill will among the Debtors' Advertising Customers and ultimately would erode the Debtors' Advertising Customer base. Therefore, the Debtors hereby request the authority, but not the direction to, maintain and administer the Advertising Programs in the ordinary course in order to preserve the value of the Debtors' businesses, and ultimately their estates.

(i) Incentive Program

16. Through the Incentive Program, the Debtors provide Advertising Customers with various discounts, price adjustments and related allowances, which are custom-tailored and directly negotiated with each participating Advertising Customer to meet that Advertising

Customer's specific needs or the needs of a particular vertical segment of the marketplace (the "**Advertiser Incentive Obligations**"). The Incentive Program is designed primarily to encourage either (a) new Advertising Customers to purchase large volume print, media and digital advertising and marketing packages, or (b) existing Advertising Customers to increase their advertising "spend" with the Debtors. Specifically, in order to lock in lower advertising rates, rebates and/or allowances, Advertising Customers agree to certain minimum spend or frequency thresholds throughout the life of the governing agreement. The Incentive Program has been employed by the Debtors for several years and is consistent with customary industry practice.

17. In light of the fact that nearly all of the Advertiser Incentive Obligations are incurred in the form of custom, built-in price adjustments, additional advertisement space or a credit applied to the Advertising Customers' account, the Debtors do not believe that there is any actual cash liability with respect to the Incentive Program. By this Motion, the Debtors request the authority, but not the direction, to continue the Incentive Program and to honor any prepetition obligations outstanding in connection therewith.

(ii) Make-Good Program

18. In connection with their advertising and marketing sales, the Debtors may, from time to time, rerun advertisements to make up for audience underdelivery. Despite the Debtors' best efforts, audience underdelivery may occur if, for example, (a) a certain number of click-throughs, impressions, views, or digital other performance measures are not reached, or (b) print advertisements or marketing materials are inadvertently run with errors or otherwise not to an Advertising Customer's satisfaction. To the extent such underdelivery or printing errors occur, the Debtors will, under the Make-Good Program, either rerun the subject advertisement at no

additional charge or provide a credit to the Advertising Customer's invoice or account for future use (collectively, the "**Make-Good Obligations**").

19. For example, the Debtors often bill their digital Advertising Customers based on a certain number of online advertisement views (the "**Impressions**"). If the requisite number of Impressions is not achieved, an Advertising Customer may either elect to pay only for the Impressions actually delivered by the Debtors, or to have the Debtors rerun the subject advertisement, either for a limited additional period of time or until the requisite number of Impressions is achieved, at no additional cost to the Advertising Customer.

20. The Debtors generally allocate a reserve for Make-Good Obligations, which is included in the reserve for Refunds and Billing Adjustments described herein. Due to the fact that the Debtors' primary Make-Good Obligations are to rerun advertisements or provide related services, the Debtors do not believe that any actual cash payments are due to Advertising Customers as of the Petition Date on account of the Make-Good Program. The Debtors' ability to continue fulfilling Make-Good Obligations incurred in connection with the Make-Good Program is an essential element of the Debtors' digital and print advertising business, and a key component of the Debtors' relationships with their Advertising Customers. Should the Debtors fail to honor their Make-Good Obligations, satisfaction of Advertising Customers will be jeopardized, potentially resulting in the loss of Advertising Customers to competitors providing similar programs. Accordingly, the Debtors hereby request the authority, but not the direction, to continue to maintain and administer the Make-Good Program and to honor all prepetition obligations related thereto.

(iii) Trade Program and Together Program

21. In the ordinary course of business, the Debtors, like many of their peers, exchange advertising and marketing services in lieu of cash payments. Specifically, the Debtors sponsor

and promote certain local community, sporting, music, and other events of varying size in the markets they serve (the “**Promotional Events**”). In exchange, the Debtors receive, among other things, tickets to the Promotional Events or related merchandise. Accordingly, under the Trade Program, the Debtors incur both a non-cash performance obligation to publish the agreed upon advertisement or promotional material, and the costs associated with printing or publishing the particular advertisement or promotional material for the Promotional Event (collectively, the “**Trade Obligations**”). The Debtors also typically offset their printing and publishing costs by selling their Advertising Customers opportunities to be included in advertisements related to the Promotional Events. These bartering and sponsorship transactions are consistent with industry practice, and generally entered into on a one-off basis.

22. The Debtors have also established community outreach programs in certain of their markets (collectively, the “**Together Program**”). In each of the Together Program’s participating markets, the Debtors partner with local businesses (collectively, the “**Together Program Participants**”) from whom the Debtors receive cash sponsorships (the “**Together Program Contributions**”). In exchange for the Together Program Contributions, the Together Program Participants receive recognition on promotional materials for the Together Program. The Debtors and the Together Program Participants then plan a series of community projects to be accomplished throughout the year, funded by the Together Program Contributions (the “**Together Program Projects**”). Accordingly, the Together Program Contributions generally give rise to the Debtors’ obligation to complete future Together Program Projects and to fulfill the related promotional material obligations for the benefit of the Together Program Participants.

23. The Debtors estimate that approximately \$700,000 in accrued and unsatisfied Trade Obligations and unused Together Program Contributions exist as of the Petition Date.

24. Through each of the Trade Program and the Together Program, the Debtors generate both revenue as well as goodwill and brand recognition, which in turn helps to attract new customers and foster the Debtors' relationships with their existing Customers. By this Motion, the Debtors seek authority to continue to maintain and administer the Trade Program and the Together Program and to honor all prepetition obligations related thereto.

(iv) Custom Package Program

25. The Debtors provide their Advertising Customers with a number of full-service customized advertising and marketing sale packages (the "**Custom Package Program**"), through which Advertising Customers request or require the provision of additional products and services that the Debtors procure from various third party product and service suppliers (the "**Advertising Third Party Providers**"). The Debtors contract with the Advertising Third Party Providers to supply certain products and services, which the Debtors themselves do not manufacture or provide, to the Debtors' Advertising Customers (the "**Customized Services**"). The Customized Services include, among other things, software that enables advertisements to be placed on the Debtors' websites or the websites of the Advertising Third Party Providers, search engine marketing and optimization, and data analytics tools. Accordingly, upon the sale of advertising under the Custom Package Program, the Debtors generally incur both an obligation to their Advertising Customers as well as an obligation to one or more Advertising Third Party Providers (the "**Advertising Third Party Obligation**"), the costs of which are indirectly passed on to Advertising Customers through the Debtors' sale of advertising and marketing packages. As of the Petition Date, the Debtors estimate that they have accrued approximately \$3.4 million of unsatisfied Advertising Third Party Obligations in connection with the sale of advertising under the Custom Package Program which, by comparison, has generated approximately \$16.0 million in average monthly revenue for the Debtors. The Debtors, in their

business judgment, estimate that approximately \$1.7 million of the total amount of Advertising Third Party Obligations will need to be paid prior to the entry of the Final Order. Accordingly, by this Motion, the Debtors request authorization, but not direction, to pay outstanding Advertising Third Party Obligations in an aggregate amount not to exceed \$1.7 million on an interim basis and \$3.4 million on a final basis.

26. The Advertising Third Party Providers supply the products and services that the Debtors' Advertising Customers would otherwise need to procure directly from the Advertising Third Party Providers. By acting as an intermediary, the Debtors provide a valued service for their Advertising Customers, acting a "one-stop-shop" for existing Advertising Customers and enabling the Debtors to attract new customers, while also generating revenue and remaining competitive in the marketplace. Therefore, without the ability to compensate the Advertising Third Party Providers, the Debtors' ability to generate revenue from their Advertising Customers would be limited. The Debtors' ability to continue serving their Advertising Customers and meeting their performance expectations depends upon the Debtors' ability to offer and effectively operate the Custom Package Program in the ordinary course of their businesses. Therefore, it is of paramount importance that the Debtors be authorized to continue to maintain and administer the Custom Package Program, including partnering with and outsourcing essential products and services from the Advertising Third Party Providers, and to honor all prepetition obligations related thereto.

B. Audience Programs

27. The Debtors offer their Audience Customers several print and digital subscription products across their various markets (the "**Subscription Program**"), some of which are priced at a discount (the "**Subscriber Discounts**"). For example, the Debtors may, from time to time, offer to both new and repeat customers certain promotional rates for monthly, quarterly, semi-

annual, and annual print or digital subscriptions, or access to custom digital news packages (e.g., sports content or election coverage). The Subscriber Discounts are designed to enable the Debtors to retain existing Audience Customers and to attract new ones, thereby allowing the Debtors to remain competitive in the newsprint and digital media industry. Because the Subscriber Discounts are generally built into the subscription prices offered to the Debtors' Audience Customers under the Subscription Program, the Debtors do not incur a separate obligation on account of the Subscriber Discounts.

28. The Debtors also offer their Audience Customers the option of purchasing single copy newspapers from retail stores and standalone racks (the "**Single Copy Program**"). In order to fulfill their obligations to Audience Customers under both the Subscription Program and the Single Copy Program (the "**Audience Programs**"), the Debtors outsource certain printing and distribution services from third parties (collectively, the "**Audience Third Party Providers**"). For example, in each market, the Debtors contract with third party distributors (the "**Carriers**") to deliver their print newspapers to subscribers and other retail locations for single copy sales.⁴ In certain markets, the Debtors lease trucks from third parties (the "**Leased Trucks**"), which are then driven by the Debtors' employees to fulfill the Debtors' delivery obligations.

29. The Audience Third Party Providers are critical to the Debtors' operations. Without the outsourced printing and distribution services provided by the Audience Third Party Providers, the Debtors would be unable to publish and deliver their newspapers to Audience Customers. As noted above, the Debtors generate about 45% of their revenue from their

⁴ The Debtors require the Carriers to obtain general liability insurance coverage and to post bonds to protect the Debtors against any default of monies collected by the Carriers on behalf of the Debtors. The Debtors withhold from payments to the Carriers the amounts due for the insurance and bonds. These payments average approximately \$25,000 per month.

Audience Customers. The Debtors estimate that, as of the Petition Date, they have accrued approximately \$3.7 million of unsatisfied obligations owed to Audience Third Party Providers in connection with their Audience Programs, of which the Debtors estimate that approximately \$3.3 million will come due in the period prior to the entry of the Final Order. By comparison, the Audience Programs have generated approximately \$17.5 million in average monthly revenue for the Debtors. By this Motion, the Debtors request the authority, but not the direction, to continue the Audience Programs and to honor any prepetition obligations that may be outstanding in connection therewith, in an aggregate amount not to exceed \$3.3 million on an interim basis and \$3.7 million on a final basis.

C. Prepayments and Billing Adjustments

30. The Debtors offer many types of subscription, advertising, and marketing products and services, some of which require payment in advance by Customers (the “**Prepayments**”). For example, the Debtors offer 13-week home delivery subscriptions as well as daily, monthly, and annual digital subscriptions to the Debtors’ various newspapers and customized digital products (the “**Prepaid Subscriptions**”). Advertising Customers also prepay for certain advertising slots, media inserts, and other products and services provided in connection with both print and digital marketing packages (the “**Prepaid Advertisements**”). The Prepayments generally give rise to the Debtors’ obligation to deliver the prepaid subscriptions, advertisements and related services, as applicable. However, in certain circumstances the Debtors are obligated to return unused Prepayments (the “**Refunds**”). In other instances, such as overpayments or invoicing errors, Customers may be entitled to certain billing adjustments, generally in the form of credits for future services (the “**Billing Adjustments**”).

31. Despite the Debtors’ best efforts to issue accurate invoices to Customers, the Debtors may from time to time issue an invoice that does not properly reflect the products or

services ordered by a Customer, or the prices for such products or services (the “**Invoice Errors**”). Conversely, Customers may from time to time make a duplicate payment on account of the same order (the “**Payment Errors**”). The amounts outstanding on account of Refunds, Invoice Errors and Payment Errors at any given time are difficult to predict with certainty. The Debtors generally allocate a reserve for Refunds, Billing Adjustments, and Make-Good Obligations at the end of each fiscal quarter, calculated by dividing the total amount of Refunds, Billing Adjustments, and Make-Good Obligations incurred within the past 12 months by the revenues generated during the past 12 months, and applying the resulting percentage to revenues generated in the current period. As of the Petition Date, the Debtors believe that they are holding approximately \$57.3 million on account of Prepayments and estimate that approximately \$2.9 million is outstanding in connection with Refunds and other Billing Adjustments.

32. Through this Motion, the Debtors request authority, but not direction, to continue their ordinary course practices with respect to Prepayments, Refunds, and Billing Adjustments, each of which is essential to the maintenance of the Debtors’ ongoing business operations. As noted above, receipts from Advertising Customers and Audience Customers comprise the vast majority of the Debtors’ revenue. The Refunds and Billing Adjustments issued by the Debtors represent a comparatively small portion of the revenue generated from sales to these Customers, and are designed to avoid protracted, and potentially costly, disputes with Customers. If the Debtors are unable to honor their obligations arising from Prepayments, or unable to issue Refunds and make appropriate Billing Adjustments to Customers’ accounts, the Debtors’ goodwill could be severely undermined and the risk of losing Customers greatly increased. The resulting loss of credibility, and ultimately Customers, would have devastating effects on the Debtors’ ability to generate revenue going forward. Thus, it is crucial that the Debtors be

authorized, in their business judgment, to continue issuing Refunds, making Billing Adjustments, and honoring their obligations to Customers on account of Prepayments in the ordinary course of operating their businesses.

D. Credit Card Program

33. The Debtors are parties to certain agreements with credit and debit card processors (the “**Credit Card Processors**”) under which the Credit Card Processors accept and process credit and debit card payments made by the Debtors’ Customers for both subscription and certain advertising purchases (the “**Credit Card Program**”). Under the Credit Card Program, the Credit Card Processors disburse to the Debtors the amounts received from the Debtors’ Customers, subject to certain adjustments, including the processing fee charged to the Debtors (the “**Credit Card Processing Fee**”) for the Credit Card Processors’ services. These Credit Card Processing Fees total approximately \$50,000 on average per month. The large majority of the Debtors’ Customers pay for the products and services provided by the Debtors by credit card. Thus, the Debtors’ continued ability to utilize the services of the Credit Card Processors is essential to the Debtors’ ability to maximize the value of their estates for their creditors.

34. The Debtors pay certain Credit Card Processing Fees directly to certain Credit Card Processors and American Express (“**Amex**”) on a monthly basis.⁵ The Debtors record the gross revenue generated through credit card payments processed by these Credit Card Processors and Amex, and book a selling expense for the expected Credit Card Processing Fees incurred as a result of each credit card transaction. On a monthly basis, the Debtors remit the accrued Credit

⁵ The Debtors are also contractually obligated to make weekly payments to one of their Credit Card Processors in order to fund a reserve account to cover chargebacks and reimbursements that may be owed to a cardholder’s issuing bank by the Credit Card Processor.

Card Processing Fees payable to the applicable Credit Card Processors and Amex for the previous month's activity. As of the Petition Date, the Debtors estimate that approximately \$50,000 and \$75,000 of prepetition Credit Processing Fees will be due, respectively, to these Credit Card Processors and Amex.

35. For credit card payments processed by other Credit Card Processors and using Visa and Mastercard, the Debtors record the gross revenue generated through credit card payments, and book a selling expense for the expected Credit Card Processing Fees incurred as a result of each credit card transaction. On a daily basis, the Debtors remit the accrued Credit Card Processing Fees payable to the applicable Credit Card Processor, Visa, and/or Mastercard for the day's activity. As of the Petition Date, the Debtors estimate that approximately \$10,000 of Credit Card Processing Fees will be due to the Credit Card Processors, Visa and/or Mastercard on account of credit card payments made by the Debtors' Customers. The Debtors believe that the ability to honor their obligations with respect to Credit Card Processing Fees is critical to maintaining the loyalty and goodwill of their Customers. Accordingly, by this Motion, the Debtors request the authority, but not direction, to continue to maintain and administer the Credit Card Program, and to honor their prepetition obligations with respect thereto in order to avoid interruption of the vital services provided by the Credit Card Processors.

E. Customer Service Program

36. In order to best serve their Customers, the Debtors operate a call center and have also engaged the services of certain third party call centers (the "**Customer Service Providers**") to address inquiries and issues related to the Debtors' advertising services and publications, including, but not limited to, newspaper subscription issues, delivery issues, billing questions, advertising, customer accounting, online technical issues, and debt collection services, and to conduct certain telephone marketing activities (the "**Customer Service Program**").

37. The Customer Service Providers function as critical intermediaries between the Debtors and their Customers. Due to the direct level of contact between the Customer Service Providers and the Debtors' Customers, many Customers perceive the Customer Service Providers as direct employees of the Debtors and purchase the Debtors' products directly through the Customer Service Providers. As a result, the failure of the Customer Service Providers to adequately perform their services could severely undermine the Debtors' ability to generate revenue and customer loyalty.

38. The Customer Service Providers generally invoice the Debtors for services rendered in the previous month in an amount based on the volume of calls received. Because the Customer Service Providers generally bill in arrears, the Debtors estimate that, as of the Petition Date, approximately \$700,000 is due and owing to Customer Service Providers, of which approximately \$400,000 will need to be paid prior to the entry of the Final Order. The services provided by the Customer Service Providers are based on countless hours of planning, organization and training by both the Debtors and the Customer Service Providers. The cost to the Debtors' estates to formulate an alternative program with new providers and to train new customer service representatives would greatly outweigh the cost of paying the Customer Service Providers for their prepetition services. Thus, it is imperative that the Debtors be authorized to pay any prepetition amounts owing, and continue honoring their obligations, to the Customer Service Providers. The Debtors hereby request the authority, but not the direction, to continue to maintain and administer the Customer Service Program, to pay all prepetition amounts outstanding on account of the services provided by the Customer Service Providers in an aggregate amount not to exceed \$700,000, including \$400,000 which will come due in the interim period, and to continue utilizing such services in the ordinary course of their businesses.

F. Printing and Delivery Service Programs

39. Prior to the Petition Date, the Debtors contracted with certain non-affiliated newspaper companies (the “**Unaffiliated Publishing Customers**”) to provide printing services and/or delivery services in defined geographical areas, which may include both “home delivery” and “single copy” delivery (the “**Printing and Delivery Service Program**”). For home delivery service, the Debtors or their Carriers deliver newspapers directly to the Unaffiliated Publishing Customers’ subscribers. For single copy delivery services, the Debtors or their Carriers deliver the Unaffiliated Publishing Customers’ newspapers to newsstands, stores, or other retail locations. As part of their services to the Unaffiliated Publishing Customers, the Debtors collect the proceeds owed to the Unaffiliated Publishing Customers from certain locations, such as retail stores. In some instances, the Debtors also agree to buy newspapers from the Unaffiliated Publishing Customers at a wholesale price, which the Debtors then resell to retailers. The Debtors then retain the proceeds from such retail sales.

40. Under the Printing and Delivery Service Program, the Unaffiliated Publishing Customers generally pay a set price per copy printed and/or delivered (as applicable) and, in certain circumstances, an additional flat fee. The Debtors also purchase copies of certain Unaffiliated Publishing Customers’ products at a wholesale rate to sell through the Debtors’ single copy outlets. The Debtors drive revenue and profit through the Printing and Delivery Service Program, while strengthening their overall relationship with the Unaffiliated Publishing Customers. Accordingly, the Debtors hereby request the authority, but not direction, to honor all prepetition obligations owed to the Unaffiliated Publishing Customers, including the exercise of any setoff rights with respect to any amounts that may be owed to the Unaffiliated Publishing Customers, and to otherwise honor the Printing and Delivery Service Program.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

IV. Continuation of the Customer Programs Is Appropriate Under the Doctrine of Necessity.

41. The Debtors submit that an order authorizing them to (a) continue their Customer Programs in the ordinary course of business as they determine, in their business judgment, to be appropriate; (b) renew, modify, terminate or replace such Customer Programs or agreements that, in their discretion, are necessary and in the best interests of the Debtors' estates, creditors, and other parties in interest; and (c) make payments owing on account of prepetition Customer Programs Obligations, regardless of when the obligations were incurred, is critical to the preservation and successful reorganization of their business and should be authorized under Bankruptcy Code sections 105(a) and 363 and the "doctrine of necessity."

42. 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).⁶ Although the "doctrine of necessity" pre-dates the Bankruptcy Code, *see*

⁶ *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.").

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 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.

43. Maintaining the Customer Programs in the ordinary course of business is critically important to the Debtors’ ongoing business. The Debtors must continue to honor the Customer Programs to maximize the value of their business and their revenues. The Debtors believe that, should they fail to honor their obligations under the Customer Programs, their Customers will stop using the Debtors’ services, and may withhold payments otherwise due for services performed. If the Customers perceive that the Debtors are unable or unwilling to honor their Customer Programs obligations, including continuing to provide agreed upon discounts, rebates, rerunning advertising, refunding or offsetting overpayments or underperformance and making related billing adjustments, honoring existing, and engaging in new, barter and trade agreements and related event sponsorship agreements, providing access to the Debtors’ network of third party service partners, providing customer service, and offering print and delivery services, the Debtors’ goodwill and business relationships may erode. As such, any delay in honoring the Debtors’ obligations could severely disrupt the Debtors’ efforts to maximize value in the Chapter 11 Cases. Thus, even if the Debtors could avoid payment of or otherwise

honoring certain accrued obligations to Customers, the collateral consequences on the Debtors' go-forward business would vastly exceed whatever modest short-run cost savings the Debtors might achieve. Accordingly, the Debtors seek authorization, but not direction, to continue the Customer Programs in the ordinary course of business, including making payments with respect to the Customer Programs regardless of whether the claims arise prepetition or postpetition.

44. The relief requested is commonly granted in this and other districts. *See, e.g., In re Fusion Connect, Inc.*, No. 19-11811 (SMB) (Bankr. S.D.N.Y. July 1, 2019); *In re WindStream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019); *In re iHeartMedia, Inc.*, No. 18-31274 (MI) (Bankr. S.D. Tex. Mar. 15, 2018); *In re Cumulus Media Inc.*, No. 17-13381 (SCC) (Bankr. S.D.N.Y. Dec. 21, 2017); *In re Avaya Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017); *In re GateHouse Media, Inc.*, No. 13-12503 (MFW) (Bankr. D. Del. Sept. 30, 2013); *In re Sun-Times Media Grp., Inc.*, No. 09-11092 (CSS) (Bankr. D. Del. Apr. 1, 2009); *In re Philadelphia Newspapers, LLC*, No. 09-11204 (JKF) (Bankr. E.D. Pa. Feb. 24, 2009); *In re Star Tribune Holdings Corp.*, No. 09-10244 (RDD) (Bankr. S.D.N.Y. Jan. 16, 2009); *In re Tribune Company*, No. 08-13141 (KJC) (Bankr. D. Del. Dec. 10, 2008).⁷

V. The Proposed Payment-Processing Procedures Are Appropriate.

45. As set forth above, the Debtors request that all Banks be authorized and directed to honor and process payments on account of certain prepetition obligations to Customers in connection with the Customer Programs as directed by the Debtors. The Debtors have sufficient liquidity to pay the amounts delineated 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

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

by this Court. The Debtors therefore submit that the payment-processing procedures described in the Motion are appropriate.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

46. 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 explicating the standards governing preliminary injunctions, the Second Circuit instructed that irreparable harm “is 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.

47. The Debtors also 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

48. 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

49. 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. Furthermore, the Debtors reserve the right to contest the amount claimed to be due by any person or entity, including the Customers. The Debtors also reserve the right, in their business judgment, to renew, replace, implement, modify or terminate any Customer Program.

NOTICE

50. 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 30 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

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

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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 _____

Shana A. Elberg
Bram A. Stochlic
Four Times Square
New York, New York 10036-6522
Telephone: (212) 735-3000
Fax: (212) 735-2000

– and –

Van C. Durrer, II
Destiny N. Almogue (*pro hac vice* pending)
300 S. Grand Avenue, Suite 3400
Los Angeles, California 90071-3144
Telephone: (213) 687-5000
Fax: (213) 687-5600

– and –

Jennifer Madden (*pro hac vice* pending)
525 University Avenue
Palo Alto, California 94301
Telephone: (650) 470-4500
Fax: (650) 470-4570

– and –

TOGUT, SEGAL & SEGAL LLP
Albert Togut
Kyle J. Ortiz
Amy Oden
One Penn Plaza, Suite 3335
New York, New York 10119
Telephone: (212) 594-5000
Fax: (212) 967-4258

Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim 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

**INTERIM ORDER AUTHORIZING THE DEBTORS TO HONOR CERTAIN
PREPETITION OBLIGATIONS TO CUSTOMERS AND CONTINUE CERTAIN
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)² of the Debtors for an interim order (this “**Interim Order**”) and a Final Order under Bankruptcy Code sections 105(a), 363, 1107 and 1108 and Bankruptcy Rules 6003 and 6004, authorizing the Debtors to continue to (i) honor certain prepetition Customer Programs Obligations, and (ii) otherwise continue their customer programs and practices in the ordinary course of business; 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 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. §§

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.

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 thereon; and good 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 authorized, but not directed, to continue the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of businesses, in an amount not to exceed \$5.4 million, and in the same manner and on the same basis as if the Debtors performed and honored such obligations prior to the Petition Date.
3. 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 on account of the Customer Programs, 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 the Customer Programs; *provided that* the Debtors are authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition fund transfers, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check. 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.

4. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments and the Debtors are only authorized to pay amounts that are due and owing during the interim period.

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

6. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate such of their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without further application to the Court.

7. 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.

8. 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 promise to pay any claim or other obligation; (d) granting

third party beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

9. 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.

10. 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.

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

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

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

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

15. 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.

16. 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	
<i>In re</i>	:	Chapter 11
	:	
THE McCLATCHY COMPANY, et al.,	:	Case No. 20-10418 (MEW)
	:	
Debtors.¹	:	(Joint Administration Pending)
	:	
-----	x	

**FINAL ORDER AUTHORIZING THE DEBTORS TO HONOR CERTAIN
PREPETITION OBLIGATIONS TO CUSTOMERS AND CONTINUE CERTAIN
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)² of the Debtors for an Interim Order and a final order (this “**Final Order**”) under Bankruptcy Code sections 105(a), 363, 1107 and 1108 and Bankruptcy Rules 6003 and 6004, authorizing the Debtors to continue to (i) honor certain prepetition Customer Programs Obligations, and (ii) otherwise continue their customer programs and practices in the ordinary course of business; 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 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

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.

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 thereon; and good and sufficient cause appearing therefor; it is hereby;

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of businesses, in an amount not to exceed \$7.8 million, and in the same manner and on the same basis as if the Debtors performed and honored such obligations prior to the Petition Date.
3. 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 on account of the Customer Programs, 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 the Customer Programs; *provided that* the Debtors are authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition fund transfers, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check. 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.

4. Nothing in the Motion or this Final Order shall be deemed to authorize the Debtors to accelerate any payments.

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

6. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate such of their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without further application to the Court.

7. 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.

8. 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 promise to pay any claim or other obligation; (d) granting third party beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

9. 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.

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

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

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

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

14. 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