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Proposed Counsel for Debtors and Debtors in Possession

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

-----	x	
<i>In re</i>	:	Chapter 11
	:	
THE McCLATCHY COMPANY, <i>et al.</i>,	:	Case No. 20-10418 (MEW)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
-----	x	Related Docket No. 17

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 jointly administered chapter 11 cases, 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.



**CERTIFICATE OF NO OBJECTION WITH RESPECT TO 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**

Pursuant to 28 U.S.C. § 1746 and Rule 9075-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), the undersigned hereby certifies as follows:

1. On February 13, 2020, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed the *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) Claimants, and (II) Granting Related Relief* [ECF No. 17] (the “**Motion**”).

2. The deadline for receipt of objections to the Motion (the “**Objection Deadline**”) has passed, and, to the best of my knowledge, no objection with respect to the Motion has been (a) filed with the Court on the docket of the above-captioned cases or (b) served on counsel to the Debtors in accordance with the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* [ECF No. 106].

3. In accordance with Local Rule 9075-2, this certificate is being filed at least forty-eight (48) hours after expiration of the Objection Deadline.

4. The Debtors respectfully request that the Court enter the proposed form of order, a copy of which order is attached hereto as **Exhibit 1**, which includes certain minor modifications from the Creditors Committee (the “**Revised Proposed Order**”).

5. A redline version of the Revised Proposed Order marked against the order filed with the Motion is attached hereto as **Exhibit 2**.

Dated: New York, New York
March 5, 2020

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Van C. Durrer, II

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Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT 1

Revised Proposed 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 : **(Jointly Administered)**
:
----- 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, if the Debtors determine that (i) in the absence of making such payment, the Debtors would suffer a loss of value in excess of such payment amount, or (ii) failure to make such payment poses a threat to health and public safety; *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, counsel to Brigade, and counsel to the Official Committee of Unsecured Creditors (the "**Committee**") appointed in these Chapter 11 Cases, 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 the Committee (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, in consultation with Chatham and the Committee, the Prepetition Trade Vendor Schedule from time to time with three business days' written notice and opportunity to object to the U.S. Trustee.

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
March __, 2020

Honorable Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 2

Redline Revised Proposed Order

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

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

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

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 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, if the Debtors determine that (i) in the absence of making such payment, the Debtors would suffer a loss of value in excess of such payment amount, or (ii) failure to make such payment poses a threat to health and public safety; 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, and counsel to the Official Committee of Unsecured Creditors (the "Committee") appointed in these Chapter 11 Cases, 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 Committee (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, in consultation with Chatham and the Committee, 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~~March __, 2020

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[Honorable Michael E. Wiles](#)
• UNITED STATES BANKRUPTCY JUDGE

Summary report:	
Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 3/5/2020 10:08:32 AM	
Style name: #Skadden (Strikethrough, Double Score, No Moves)	
Intelligent Table Comparison: Active	
Original DMS: dm://WILSR01A/862189/5	
Description: [MNI] Critical Vendor Final Order	
Modified DMS: dm://WILSR01A/862189/7A	
Description: [MNI] Critical Vendor Final Order	
Changes:	
Add	9
Delete	7
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	16