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Salaried Employees Association*

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

	X	
	:	
In re:	:	Chapter 11
	:	
The McClatchy Company, <i>et al.</i> ,	:	Case No. 20-10418(MEW)
	:	
	:	(Jointly Administered)
Debtors.	:	
	X	

**EX PARTE APPLICATION OF THE FORMER KNIGHT RIDDER AND MCCLATCHY
SALARIED EMPLOYEES ASSOCIATION FOR ENTRY OF AN ORDER PURSUANT
TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 2004 AND 9016
AUTHORIZING THE DEBTORS' PRODUCTION OF DOCUMENTS**

They say you should never argue with someone who buys ink by the barrel. But the Former Knight Ridder and McClatchy Salaried Retirees Association ("Association") has no choice.

On January 2, 2020, The McClatchy Company (the "Company") suspended supplemental retirement benefits to more than 450 retirees, without warning. In response, five retirees whose benefits were suspended, Tim Kelly, Anthony Ridder, George Riggs, Joseph "Chip" Visci, and



Frank Whittaker, formed the Association, consisting of similarly situated former Company employees. The Association now has more than 200 members.

On February 11, 2020, by counsel, Mr. Ridder and Mr. Riggs demanded that the Company reinstate these benefits. Debtors did not seek authority to do so under their first-day Wage Motion. That issue, so far as we know, remains open. But at \$640,000 per month, and thus \$1.9 million through March 2020, it is apparent that these benefits represent one of the largest unsecured claims, likely second only to the Pension Benefit Guaranty Corporation's.¹

Mr. Ridder and Mr. Riggs have also requested documents and information to identify similarly situated former employees of the Company. Counsel has reiterated the request on three occasions.

Certain documents have at last begun to flow.² Debtors' responses to the remaining requests, including responses made in reply to the Association's Response to Debtors' Wage Motion fail to meet the substance of the requests. In fact, they are non sequiturs. The Association's efforts to facilitate the production of basic plan information and data has for the most part been nonproductive, and at times it has seemed that the Association is being given the "runaround." The Association is therefore constrained to file this *ex parte* application (the "Application"), for entry of an order authorizing the examination of the Debtors pursuant to Rule 2004 ("Rule 2004") and Rule 9016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2004-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"). This is not a request for documents disconnected from the case.

¹ PBGC insures benefits under "qualified" pension plans, up to limits. The Association's members seek benefits beyond that, under "nonqualified" plans.

² Debtors have produced limited documents including some limited Plan documents and their claims procedures and have relayed to Association counsel that they are following up on whether to meet certain other requests.

The outstanding requests seek basic plan data that should be readily available to Debtors to produce without burden and include, among other things, disclosures made to plan participants and beneficiaries; documentation of the decision to suspend benefits; and a participant census, including accrued benefits and benefit forms. These documents are essential for the Association not only to identify and quantify members' claims and but to ascertain whether to proceed on a group or class basis under Fed R. Civ. 23, incorporated by reference in Fed. R. Bankr. P. 7023.

Put simply, the requests, attached hereto as Exhibit 1, are relevant and proportional to the Association's claim, non-burdensome for Debtors to produce, and could be shielded from any confidentially concerns through a protective order to protect personal or other sensitive data. For these reasons and the reasons set forth below, the Application should be granted.

BACKGROUND

On February 13, 2020 (the "Petition Date"), the Debtors commenced the Bankruptcy Cases by filing voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). 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.

According to the Company's Disclosure Statement With Respect to The Joint Chapter 11 Plan of Reorganization, beginning in September and October 2019, McClatchy commenced discussions with the Pension Benefit Guaranty Company (the "PBGC") and its largest debt holder, the Chatham Parties, for the "purpose of exploring other alternatives" that would provide a supposedly permanent solution to its qualified pension obligations, nonqualified pension obligations and capital structure. *See* Dkt. No. 27 (the "Disclosure Statement") at Article 4.) According to the Disclosure Statement the Company met with the PBGC on multiple occasions

before the Petition Date regarding its defined benefit retirement plan obligations. *Id.* There is no mention in the Disclosure Statement of any specific meetings that concerned the Company's nonqualified plans (not surprisingly, as they are outside PBCG's purview).

The only mention of how Debtors plan to proceed with the nonqualified plans is in Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Pay Prepetition Wages and Employee Benefits. *See* Dkt No. 15 (the "Wage Motion"). The Wage Motion states as follows:

The Debtors make contributions to three supplemental income plans for the benefit of select former Employees: the Executive Supplemental Retirement Plan (the "ESRP"), the Supplemental Executive Retirement Plan (the "SERP") and the Retirement Benefit Restoration Plan (the "BRP," and together with the ESRP and the SERP, the "Supplemental Income Plans"). The ESRP provides payment to plan participants in three annual installments following separation from the Company, and the SERP and BRP provide a monthly annuity payment to plan participants following separation from the Company. The Supplemental Income Plans provide such payments to plan participants upon eligible termination or death circumstances and are funded through the Debtors' payroll. The plans are maintained for the purpose of providing deferred compensation. As of the Petition Date, there were approximately 450 retired Employees participating in the Supplemental Income Plans and approximately 14 current Employees participating in the Supplemental Income Plans. The Debtors estimate that payments on account of the Supplemental Income Plans are approximately \$640,000 per month and the Debtors believe that, as of the Petition Date, they owe approximately \$1.3 million in aggregate on account of the Supplemental Income Plans.

See Id. ¶77.

The Wage Motion states that "Debtors are not seeking authority to pay any outstanding amounts on account of the Supplemental Income Plans." *Id.* ¶79.

Beyond the Wage Motion's disclosure of the plan names, the number of participants, and an estimate of payments owed, Debtors have provided no other information about the nonqualified plans. Mr. Ridder and Mr. Riggs and now the Association have therefore been forced to make repeated attempts to obtain information from the Debtors. The first document request was served on Debtors counsel on February 11, 2020. *See* Dkt. No. 134 "The

Association's Response to Wage Motion" (Exhibit A). The requests in the February 11, 2020 letter are substantially similar to the document production sought in this Application.

From February 11, 2020, to the present, counsel has made repeated attempts to meet and confer with Debtors' counsel about the requests. By email dated February 28, 2020, Debtors' counsel said:

4. Certain of these documents are being provided to the PBGC and the UCC as mediation materials. We do not intend to provide them separately to your other client.
5. We successfully obtained relief from the court regarding releasing this personal identification information despite comments from the US Trustee's office. We are happy to provide independent actuarial reports which summarize the bulk of this information to the PBGC and the UCC.³

And in their Reply to the Association's Responses to the Wage Motion (*see* Dkt. No. 144 ¶6), Debtors stated:

[O]ne of the Former Executives, P. Anthony Ridder is also a member of the Official Committee of Unsecured Creditors of the Debtors (the "Committee"). *See* Notice of Appointment of Official Committee of Unsecured Creditors (ECF No. 143] Par. 3.. The Debtors have been working diligently to respond to requests from the Committee, and have provided many documents as well as access to a virtual data room to the Committees' advisors. Furthermore, some of materials requested by the Former Executives are also materials that the Committee and the Pension Benefit Guaranty Corporation (the "PBGC") have requested in relation to the upcoming mediation among the Debtors, the Committee, the PBGC and other parties. Accordingly, in his capacity as a member of the Committee, Mr. Ridder has access to such materials.

[I]f the Former Executives provide a reasonable notice identifying the Association and its purpose, with contact information, the Debtors are willing to post such notice on the KCC website, and, at the expense of the Former Executives (paid in advance), to mail such notice to the participants of the Supplemental Income Plans and retirees with Special Arrangements. This should resolve the Former Executives' issues without unnecessarily disseminating the personal identification information of retirees.

³ *See* Email from Katherine B. Kohn to Israel Goldowitz dated February 28, 2020, attached hereto as Exhibit B.

These Responses conflate the Association and Mr. Ridder (one of seven members of the Creditors Committee) with the PBGC and with the Committee itself. Debtors assume that PBGC could and would share confidential information with the Association or that Mr. Ridder could use confidential information obtained as a Committee member for non-Committee purposes. Not so. At best, the Requests throw up unnecessary obstacles, requiring two or more steps that could be reduced to one—Debtors’ providing the Association with whatever subset of Committee or PBGC production corresponds to the Association’s requests. Finally, the offer to post notice at the Association’s expense not only fails to address the Association’s Request for participant census information but would charge for a service that the Association could perform or outsource itself. While potentially useful, it fails to meet the substance of the Request.

JURISDICTION AND VENUE

This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

Through this Application, the Association seeks entry of an Order authorizing the Association to receive a production of documents from, the Debtors (and, as necessary, to issue subpoenas in connection with same) relating to: (i) copies of all plan disclosures by letter or otherwise, of plan information; (ii) minutes of the McClatchy Retirement Committee, on the decision to suspend or otherwise effect changes to the payment of benefits under any nonqualified pension plan, including any excess benefit plan, covering Knight Ridder or McClatchy retirees; and (iii) a list of current plan participants in any Knight-Ridder or

McClatchy Company nonqualified plan (collectively, the “Rule 2004 Topics”). Attached, as Exhibits 1 to the Proposed Order (annexed hereto as Exhibit A) are the document requests and subpoena that the Association proposes to serve upon the Debtors.

THE RELIEF REQUESTED IS PROPER

A. STANDARD FOR THE REQUESTED RELIEF

An examination pursuant to Rule 2004 may be ordered “[o]n motion of any party in interest.” Fed. R. Bankr. P. 2004(a). A “party in interest” includes a creditor such as the Association. 11 U.S.C. § 1109(b). The scope of an examination permitted by Rule 2004 may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor or any matter which may affect the administration of the bankruptcy estate. See Fed. R. Bankr. P. 2004(b).

A Bankruptcy Court has the discretion to grant a request for a Rule 2004 examination. *See In re Bd. of Dirs. of Hopewell Int'l Inst. Ltd.*, 258 B.R. 580, 585 (Bankr. S.D.N.Y. 2001); *In re Enron*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002). “The object of the examination of the bankrupt and other witnesses is to show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved.” *In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991) citing *Cameron v. U.S.*, 231 U.S. 710 (1914). Thus, the scope of a 2004 examination “may relate only to the acts, conduct, or property **or to the liabilities** and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate[.]” *In re Transmar Commodity Grp., Ltd.*, 2018 WL 4006324 * at 4 (Bankr. S.D.N.Y. August 17, 2018) citing Fed. R. Bankr. P. 2004(b) (emphasis added); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 516 (Bankr. E.D.N.Y. 1991) (“The examination of a witness about matters having no relationship or no effect on the administration of an estate is improper.”).

“In granting a Rule 2004 request, the bankruptcy court is required to make a finding of good cause for the examination.” *In re Madison Williams and Co., LLC*, No. 11-15896, 2014 WL 56070, at *4 (Bankr. S.D.N.Y. Jan. 7, 2014) (citation omitted). The party seeking discovery under Rule 2004 bears the burden of showing good cause. *See SIPC v. BLMIS LLC (In re Madoff)*, Adv. Pro. No. 08-01789, 2014 WL 5486279, at *2 (Bankr. S.D.N.Y. Oct. 30, 2014). Good cause exists if the proposed examination is necessary to establish the claim of the party or if denial of discovery would cause the party undue hardship or injustice. *See In re Transmar Commodity Grp. Ltd.*, No. 16-13625-JLG, 2018 WL 4006324, at *4 (Bankr. S.D.N.Y. Aug. 17, 2018) citing *ePlus, Inc. v. Katz (In re Metiom, Inc.)*, 318 B.R. 263, 268 (S.D.N.Y. 2004).

Generally, courts follow the proportionality and relevance guideposts associated with discovery in civil litigation under Federal Rule Civ. P. 26. *Id.* citing *In re SunEdison, Inc.*, 562 B.R. 243, 250 (Bankr. S.D.N.Y. 2017)(“the spirit of proportionality is consistent with the historic concerns regarding the burden on the producing party and is relevant to the determination of cause”).

B. GOOD CAUSE EXISTS FOR THE REQUESTED RELIEF

“Generally, good cause is shown if the Rule 2004 examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice.” *In re Orion Healthcorp, Inc.*, 596 B.R. 228, 235 (Bankr. E.D.N.Y. 2019) citing *In re Metiom, Inc.*, 318 B.R. 263, 268 (S.D.N.Y. 2004) (citations omitted).

Here, the Rule 2004 examination is likewise narrowly tailored to the scope of the Association’s claim. The Association seeks documents that, *inter alia*, will demonstrate the breadth of its claim (the participant census data) and the justification if any of the decision to

suspend payments (minutes of the retirement committee, etc.). Put simply, the Association requires this data to identify and evaluate its members' claims and to understand the scope of a potential collective or class-wide claim. The Rule 2004 examination is thus proportional to the needs of this proceeding, especially considering Debtors' failure either to explain the decision to suspend benefits or to state whether it will ever seek to restore them. We need hardly mention the hardship and uncertainty experienced by Association members or the cost and delay of contending with circuitous answers to their simple requests. *See e.g., In re Transmar Commodity Grp. Ltd.*, No. 16-13625-JLG, 2018 WL 4006324, at *5 (Bankr. S.D.N.Y. Aug. 17, 2018)(use of 2004 discovery is appropriate to identify and evaluate bankruptcy claims); *In re Gawker Media LLC*, No. 16-11700 (SMB), 2017 WL 2804870, at *6 (Bankr. S.D.N.Y. June 28, 2017)(same); *see also, In re Recoton Corp.*, 307 B.R. 751, 756 (Bankr. S.D.N.Y. 2004)(Rule 2004 discovery appropriate as to whether claims exist and whether creditors committee should pursue such claims).

**C. THE CASE TIMELINE COMPELS THE COURT TO ORDER
RULE 2004 DISCOVERY**

The Bankruptcy Cases have been proceeding on an artificially fast timeline. While the formation of a Committee seems to have forced the Debtors to take a more realistic approach, the Association must move quickly if it is to serve its members effectively.

Accordingly, the Association further requests that this Court order as follows:

- The Association will serve its document requests and deposition notices on the 2004 Parties within one business day of entry of the Order--which service may be completed by email to counsel for the Debtors with a subpoena.
- Debtors must meet and confer with the Association concerning its document requests not later than two business days from service of same;
- Debtors must commence production and serve responses and objections not later than ten days from service of the document requests;

- Debtors must complete production not later than 21 days from service of the document requests;
- Debtors must produce privilege logs not later than 24 days from service of the document requests; and
- Debtors must make deponents available not later than 30 days from service of deposition notices.

NO PRIOR REQUEST

No prior request for the relief sought in this Application has been made by the Association or any other party in these proceedings.

RESERVATION OF RIGHTS

The Association reserves all rights with respect to the Application and these Bankruptcy Cases, including the right to amend and/or supplement this Application, the right to participate in additional briefing, the right to seek further discovery of individual and entities uncovered as part of the Association's investigation, and the right to be heard at any hearing related to the Application. Nothing contained herein shall constitute a waiver of any of the rights or remedies of the Association, each of which is expressly reserved.

CONCLUSION

WHEREFORE, for the reasons stated herein, the Association respectfully requests that this Court enter an Order, pursuant to Rule 2004, in the form attached hereto as Exhibit A and granting to the Association such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/Israel Goldowitz

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*Attorneys for P. Anthony Ridder, George Riggs,
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Salaried Employees Association*

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing *ex parte* application of The Former Knight Ridder and McClatchy Salaried Employees Association for an entry of an order pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9016 authorizing the debtors production of documents, supporting notice for production of documents, proposed order, and accompanying exhibits to be served up the master service list by filing it electronically with the Court's CM/ECF system, this 10th day of March, 2020.

/s/ Jordan D. Mamorsky
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EXHIBIT A

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Salaried Employees Association*

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

	X	
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In re:	:	Chapter 11
	:	
The McClatchy Company, <i>et al.</i> ,	:	Case No. 20-10418(MEW)
	:	
	:	(Jointly Administered)
Debtors.	:	
	X	

**ORDER PURSUANT TO RULES 2004 AND 9016 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE
AUTHORIZING DEBTORS PRODUCTION OF DOCUMENTS**

Upon the application, dated March 10, 2020 (the “Application”) the Former Knight Ridder and McClatchy Salaried Retirees Association (“Association”) (the “Movant”) for an order pursuant to Fed. R. Bankr. P. 2004 and 9016, without prejudice to the rights of the Debtors to object, directing the production of documents by the Debtors of the following categories of documents: (i) copies of all plan disclosures by letter or otherwise, of plan information; (ii) minutes of the McClatchy Retirement Committee, on the decision to suspend or otherwise effect changes to the payment of benefits under any nonqualified pension plan, including any excess

benefit plan, covering Knight Ridder or McClatchy retirees; and (iii) a list of current plan participants in any Knight-Ridder or McClatchy Company nonqualified plan (collectively, the “Rule 2004 Topics”); and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and sufficient notice having been provided; and the Court having found and determined that the relief sought in the Application is in the best interest of the Debtors’ estates; and the legal and factual bases set forth in the Application having established good cause for the relief granted herein; and after due deliberation and sufficient cause appearing:

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Application is GRANTED to the extent set forth herein.
2. The Movant is authorized, pursuant to Fed. R. Bankr. P. 2004 and 9016, to issue requests in the form annexed hereto as Exhibit 1 for the production of documents relevant to the Rule 2004 Topics, which the Movant is authorized to serve upon the Debtors by email to counsel of record;
3. Not later than two (2) business days after service of a Rule 2004 Examination Request, the Association and Debtors shall meet and confer concerning the Application;
4. Debtors will commence production and serve responses and objections not later than ten days from service of the document requests annexed hereto as Exhibit 1;
5. Debtors will complete production not later than 21 days from service of the document requests;
6. Debtors will produce privilege logs not later than 24 days from service of the document requests;

7. The Court authorizes the Movant and Rule 2004 Parties, upon consent, to modify any of the deadlines set forth herein without need for further Order of the Court;
8. To the extent necessary, Movant's rights are reserved to request additional examinations or documents under Bankruptcy Rule 2004 based on any information that may be revealed as a result of the discovery obtained pursuant to this Order;
9. This Order shall be served upon (a) counsel to the Debtors; (b) the Office of the United States Trustee for the Southern District of New York; and (c) those parties that have requested notice in these Bankruptcy Cases pursuant to Bankruptcy Rule 2002; and
10. This Court retains jurisdiction to resolve all matters arising under or related to this Order, and to interpret, implement, and enforce the provisions of this Order.

Dated:

HON. MICHAEL E. WILES
UNITED STATES BANKRUPTCY
JUDGE

EXHIBIT 1

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and the Former Knight Ridder and McClatchy
Salaried Employees Association*

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

	X	
	:	
In re:	:	Chapter 11
	:	
The McClatchy Company, <i>et al.</i> ,	:	Case No. 20-10418(MEW)
	:	
	:	(Jointly Administered)
Debtors.	:	
	X	

**THE FORMER KNIGHT RIDDER AND MCCLATCHY
SALARIED EMPLOYEES ASSOCIATION'S NOTICE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO RULE 2004 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

PLEASE TAKE NOTICE that pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure, P. Anthony Ridder, George Riggs, and the Former Knight Ridder and McClatchy Salaries Employees Association, requests that the Debtors produce the documents described in the Schedule 1 attached hereto by delivering such documents to its counsel, The Wagner Law Group, 800 Connecticut Ave., NW, Suite 810, Washington, DC 20006.

Dated: March 10, 2020

Respectfully submitted,

/s/Israel Goldowitz

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/s/Jordan D. Mamorsky

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Salaried Employees Association*

SCHEDULE 1

DEFINITIONS

In addition to the terms defined within the specific examination topics, the following terms shall mean the following for purposes of these topics for examination:

1. The term “Bankruptcy Cases” means the jointly administered chapter 11 cases of *In re The McClatchy Company, et al.*, Case Number 20-10418 (MEW), commenced in the Bankruptcy Court.
2. The term “Bankruptcy Code” means title 11 of the United States Code.
3. The term “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.
4. The term “Board” means boards of directors and managers of each of the Debtors, as may be reconstituted from time to time, and any sub-committees thereof, including each director or manager, individually.
5. The term “BRP” means the Retirement Benefit Restoration Plan referred to in the Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Pay Prepetition Wages and Employee Benefits. *See* Dkt No. 15.
6. The term “Chapter 11 Plan” means the Joint Chapter 11 Plan of Reorganization of The McClatchy Company and its Affiliated Debtors and Debtors In Possession, filed in the Bankruptcy Cases on the Petition Date. *See* DktNo. 25.
7. The term “concerning” means concerning, reflecting, relating to, relate to, arising out of, describing, discussing, analyzing, comprising, constituting, containing, considering, embodying, evaluating, evidencing, mentioning, memorializing, supporting, collaborating, demonstrating, identifying, referencing, discussing, indicating, providing, referring to, showing,

refuting, disputing, rebutting, controverting, contradicting, made in connection with or by reason of or arising therefrom, or otherwise pertaining in any way, in whole or in part, to the subject matter referenced.

8. The term “Debtors” means The McClatchy Company and all of its direct and indirect debtor-subsidaries, individually and collectively, including each of their Affiliates, divisions, subgroups, subsidiaries, parent entities, predecessors-in-interest, successors, assignees, officers, directors, trustees, partners, employees, counsel, financial advisors, investment bankers, agents, officials, representatives, and all persons and entities acting or purporting to act on any of their behalf.

9. The term “ESRP” means the Executive Supplemental Retirement Plan referred to in the Debtors’ Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Pay Prepetition Wages and Employee Benefits. See Dkt No. 15.

10. The term “First Day Declaration” means the *Declaration of Sean M. Harding in Support of Chapter 11 Petitions and First Day Papers*, filed in the Bankruptcy Cases on the Petition Date [Docket No. 23].

11. The term “McClatchy” means The McClatchy Company, including all of its Affiliates, divisions, subgroups, subsidiaries, parent entities, predecessors-in-interest, successors, assignees, officers, directors, trustees, partners, employees, counsel, financial advisors, investment bankers, agents, officials, representatives, and all persons and entities acting or purporting to act on any of their behalf, including the company Knight Ridder, Inc. purchased by McClatchy in 2006.

12. The term “Person” means any natural person or any legal entity, including any business or governmental entity or association.

13. The term “Petition Date” means February 13, 2020.

14. The terms “relate to” or “relating to” any given subject shall mean any information or documents that comprise, constitute, contain, embody, evidence, identify, reflect, state, refer to, deal with, or are in any way pertinent to that subject, including documents concerning the preparation of other documents.

15. The term “SERP” means the Supplemental Executive Retirement Plan The term “BRP” means the Retirement Benefit Restoration Plan referred to in the Debtors’ Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Pay Prepetition Wages and Employee Benefits. *See* Dkt No. 15.

16. The terms “You” and “Your” mean or refer to McClatchy, as well as its agents, employees, directors, officers, representatives, attorneys, advisors, auditors, or any other person or person acting, speaking, or purporting to act or speak on its behalf from time to time.

INSTRUCTIONS

1. Unless otherwise indicated, the documents hereby requested for production and inspection include all documents in your possession, custody, or control. Without limitation of the terms “possession, custody or control” as used in the preceding sentence, a document is in your possession, custody or control if you have actual possession or custody or the right to obtain the document or a copy thereof upon demand from one or more of your independent contractors, consultants, accountants, auditors or any other person or public or private entity that has actual physical possession thereof. This includes any documents contained in any computer, mobile device, server, mainframe or other storage device (including (i) documents on or in computer memory; (ii) documents on or in computer or network backup files; and (iii) documents which

have been “deleted” or “erased” but are recoverable) whether located on-site or at an off-site facility, within your possession, custody or control. For the avoidance of doubt, this also includes any documents contained on any personal computer, mobile device, server, mainframe or other storage device within your possession, regardless of whether the device is issued or owned by you.

2. As the term “possession” relates to e-mail, text messages, mobile device chats, other messaging services and any other electronically stored information, the term “possession” includes documents contained in your electronic e-mail, cloud-based and mobile device directories, including: (a) “deleted” documents that have not been permanently deleted, including all subdirectories irrespective of the title of such subdirectories; (b) “sent” documents, including all subdirectories irrespective of the title of such subdirectories; and (c) “received” documents, including all subdirectories irrespective of the title of such subdirectories.

3. The documents produced pursuant to this request are to be either (a) segregated and identified by the number of the request below to which they are responsive or (b) produced as they are maintained in the ordinary course of business.

4. Documents shall be produced with sufficient information to identify the files or repositories in which such responsive documents are maintained in the normal course of business, including, for example, an index, key, code, or other means of ascertaining the source of the produced documents.

5. All documents that are produced in electronic format should be provided with: (i) Group IV “tiff” images and IPRO-ready OPT files; (ii) a Concordance DAT delimited file with boundaries; (iii) full text OCR, with OCR text files provided on a document level; and (iv) all metadata fields associated with each electronic document. The Association also requests

that all spreadsheets created in Microsoft Excel or similar spreadsheet program be produced in their native format. The Association reserves its right to request that other documents be produced in their native format if necessary. The following metadata fields are also to be produced with all documents produced in electronic format:

Field Name	Description
BEGDOC	Auto-generated number assigned to first page of document
ENDDOC	Auto-generated number assigned to last page of document
BEGATTACH	Auto-generated number assigned to first page of the parent document in a family
ENDATTACH	Auto-generated number assigned to last page of an attachment in a document family
PARENT_ID	The beginning DOCID for a parent document
ATTACH_IDS	The beginning DOCID for all attachments
ATTCOUNT	The number of attachments to an email
DOC_TYPE	The type of file from the header (e.g., Microsoft Outlook, Excel, Word, etc.)
PARENT_CHILD	Vendor populated field where “P” denotes a parent document and “A” denotes an attachment
PAGECOUNT	The number of pages of each individual document
FROM	Name of the sender of an email from the “From” field in Outlook
TO	Recipients of an email from the “To” field in Outlook
CC	Name of persons to whom a copy of an email was sent
BCC	The name of any person blind copied on an email
SUBJECT	The text in the “Subject” line or “Re” line of an email or application file
CUSTODIAN	The name of the person from which a collection of email or application files originate
AUTHOR	The name of the author or the creator of an application file from the “Author” field

DATE_SENT	The date on which an email was sent
DATE_RCVD	The date on which an email was received
DATE_LASTMOD	The date on which an email or application file was last modified
DATE_CREATED	The date an email or application file was created
TIME_CREATED	The time at which an email or application file was created
TIME_SENT	The time at which an email was sent
TIME_RCVD	The time at which an email was received
TITLE	The text in the “Title” field of an application file
LAST_AUTHOR	The name in the “last author” field for an application file
LAST_SAVED	The date in the “last saved” field for an application file
LAST_PRINTED	The date in the “last printed” field for an application file
APPLICATION	The name of the application that generated the native file
FILEEXT	The file name extension for each email, attachment or application file
FILENAME	The name of the application file, including extension
FILESIZE	The size of a document in bytes
SOURCEFOLDER	The full path information for email, attachments and application files beginning with the original source folder name
HASHVALUE	Output of algorithm-generated value for each individual file
SEARCH_HIT	The search term or terms that “hit” on a document
NATIVE_FILE	Hyperlink to the native file

6. Documents attached to each other shall not be separated.

7. A document with handwritten, typewritten, or other recorded notes, editing marks, additions, deletions, notations, insertions, corrections, or marginal notes is not and shall not be deemed to be identical to one without such modifications, additions, or deletions.

8. Each requested document shall be produced in its entirety, without abbreviation or redaction, and shall include all attachments, appendices, exhibits, lists, schedules or other documents at any time affixed thereto. If a document responsive to any request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible.

9. Whenever you are asked to produce a document that is deemed by you to be properly withheld from production for any reason, you shall provide a privilege log that will include listing such document by title or subject heading, date, author, person who signed the document, addressee and all recipients, and a statement of the ground(s) asserted for withholding the document, including attorney-client privilege or work product privilege.

10. If you withhold any document on the claim of attorney/client privilege, work product doctrine or similar protection, identify the privilege or protection claimed as well as each document for which such privilege or protection is claimed, together with the following information with respect to each such document:

1. Date;
2. Sender;
3. Addressee;
4. Subject;
5. The basis on which the privilege or protection is claimed; and
6. The names of Persons to whom copies of any part of the document were furnished, together with an identification of their employer and their job titles.

11. If you maintain that any document requested by the Association has been destroyed, set forth the contents of the document, the date of its destruction, and the name of the Person who authorized its destruction.

12. If any requested document or other document potentially relevant to this action is subject to destruction under any document retention or destruction program, such document(s) should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this action or unless otherwise permitted by the Bankruptcy Court.

13. If you previously but no longer possess items responsive to a particular request, you must specify why you no longer possess such items and the name and address of any person or entity known or believed by you to have possession, custody or control of such items.

14. Where an objection is made to a request, you must clearly state all grounds upon which your objection is based and indicate whether any responsive materials are being withheld on the basis of that objection.

15. Terms not specifically defined herein shall be given their ordinary meanings as you understand them to be used in the trade or pursuant to ordinary usage.

16. Wherever appropriate in this request, the singular form of any word includes the plural and vice versa, and the masculine form of a word shall be interpreted as feminine and vice versa.

17. The terms “all,” “any” and “each” shall be construed as encompassing all, any and each.

18. The terms “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation.” A list following any of these terms shall be interpreted to contain illustrative examples of the types of documents responsive to the request, but does not

constitute an exclusive, all-encompassing or exhaustive listing of every type of document responsive to the request and shall not be deemed in any way to qualify, limit or restrict the scope of the request.

19. The connectives “and,” “or” and “and/or” shall be construed either disjunctively or conjunctively as necessary, in each case, to bring within the scope of these requests all responses that might otherwise be construed to be outside their scope.

20. Any ambiguity in a request shall be construed to bring within the scope of the request all responses that otherwise could be construed to be outside of its scope.

21. The relevant time period for each request is January 1, 2017 through the date of production (the “Relevant Time Period”), unless otherwise specifically indicated. Each request shall be interpreted to include all documents and electronically-stored information (“ESI”) that concern the Relevant Time Period or otherwise-specified period, even if such documents or ESI was prepared or published outside of the Relevant Time Period or otherwise specified-period. If a document or ESI prepared before or after this period is necessary for a correct or complete understanding of any document or ESI covered by a request, you must produce the earlier or subsequent document as well. If any document or ESI is undated and the date of its preparation cannot be determined, the document shall be produced if otherwise responsive to the production request.

DOCUMENT REQUESTS

1. The benefit claims procedure for the BRP, ESRP the SERP, and all other nonqualified plans offered by McClatchy.
2. Current plan documents, summary plan descriptions, and/or other governing plan documents concerning the BRP, ESRP, the SERP, and all other nonqualified plans offered by McClatchy.
3. All BRP, ESRP, and/or SERP disclosures by letter or otherwise, of plan information, including any action by the Trustees, concerning changes in plan terms and plan amendments, made to participants and beneficiaries in the above plans including summary plan descriptions, group or individual letters, and announcements.
4. The minutes of the McClatchy Retirement Committee specifically concerning the decision to suspend participant benefits of the BRP, ESRP, and/or the SERP as part of the Chapter 11 Plan.
5. The minutes of the Board specifically concerning the decision to suspend participant benefits of the BRP, ESRP, and/or the SERP as part of the Chapter 11 Plan.
6. Reports, presentations, and/or other analysis performed concerning the decision to suspend participant benefits of the BRP, ESRP, and/or the SERP as part of the Chapter 11 Plan.
7. Documents concerning any criteria for employees to participate in the BRP, ESRP and the SERP.
8. A list of participants of the BRP, ESRP, the SERP and/or other nonqualified plans offered by McClatchy as of the Petition Date including the following information:
 - a. Participant's contact information.
 - b. Participant's gender.
 - c. Participant's date of birth.

- d. Spouse's date of birth.
- e. Participant's accrued benefit payable monthly.
- f. Form of benefit elected by participant and (if applicable) participant's spouse.

Respectfully submitted,

/s/Israel Goldowitz

Israel Goldowitz
The Wagner Law Group
800 Connecticut Ave., NW, Suite 810
Washington, DC 20006
Tel.: (202) 969-2800

and

/s/Jordan D. Mamorsky

Jordan D. Mamorsky
The Wagner Law Group
200 Park Avenue, Suite 1700
New York, NY 10166
Tel: (212) 338-5159

*Attorneys for P. Anthony Ridder, George Riggs,
and the Former Knight Ridder and McClatchy
Salaried Employees Association*

EXHIBIT B

Jordan Mamorsky

From: Kohn, Katie (kkohn@groom.com) <KKohn@groom.com>
Sent: Friday, February 28, 2020 4:37 PM
To: Israel Goldowitz
Cc: Susan Rees; Jordan Mamorsky; Levine, David (dnl@groom.com); Meehan, Edward J. (EMeehan@groom.com); Durrer II, Van C (Van.Durrer@skadden.com)
Subject: RE: In re The McClatchy Company

Hi Izzy,

See our response below to your latest confirmation. However, before that, please recognize that we now have a mediation order that promotes the enhanced sharing of information as well as an official committee of unsecured creditors, of which one of your clients is a member, which membership carries with it general fiduciary duties and confidentiality responsibilities. As a consequence, we need you to clarify in which capacities you are requesting information.

With that preamble, our responses:

1. Happy to provide the plan documents to your clients and the UCC.
2. This time period seems long. Can you explain why you start 5 years ago?
3. Happy to provide these documents to your clients and the UCC.
4. Certain of these documents are being provided to the PBGC and the UCC as mediation materials. We do not intend to provide them separately to your other client.
5. We successfully obtained relief from the court regarding releasing this personal identification information despite comments from the US Trustee's office. We are happy to provide independent actuarial reports which summarize the bulk of this information to the PBGC and the UCC.

Let us know if you have any questions.

Thanks,

Katie

++++++
Katie Kohn
202-861-2607

Katie Kohn
Of Counsel
Groom Law Group, Chartered
1701 Pennsylvania Ave., NW, Suite 1200
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t: 202-861-2607 | f: 202-659-4503 | e: kkohn@groom.com
www.groom.com





From: Israel Goldowitz <IGoldowitz@wagnerlawgroup.com>
Sent: Friday, February 28, 2020 9:51 AM
To: Levine, David (dnl@groom.com) <DLevine@groom.com>; Kohn, Katie (kkohn@groom.com) <KKohn@groom.com>
Cc: Susan Rees <SRees@wagnerlawgroup.com>; Jordan Mamorsky <JMamorsky@wagnerlawgroup.com>
Subject: RE: In re The McClatchy Company

David and Katie:

I write again to follow up on these document requests.

From our call earlier this week, I understand that the Debtors responses are:

1. Will provide
2. Requires a time frame.
3. Will provide
4. Will not provide
5. Will not provide

For item 2, we specify the time frame January 1, 2015 to the present.

For item 5, we add that we and our clients and any plan professionals with a need to know (e.g., a consulting actuary) will sign or agree to be bound by an appropriate nondisclosure agreement to protect personal information.

Please advise me by close of business today whether I am correct that Debtors will provide items 1 and 3 (and please specify when they will do so), whether they will provide item 2 as clarified above, and whether they stand on their refusal to provide items 4 and 5. We are prepared to seek the Court's intervention but are making one last effort to resolve this consensually before we do so.

Sincerely,

Israel Goldowitz

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From: Israel Goldowitz
Sent: Friday, February 21, 2020 3:29 PM
To: 'Kohn, Katie (kkohn@groom.com)'
Cc: Susan Rees; Jordan Mamorsky
Subject: In re The McClatchy Company

Katie:

As counsel for Tony Ridder and George Riggs, creditors and Directors of the Former Knight Ridder and McClatchy Salaried Employees Association, I write to request that Debtors provide the following documents by February 25.

1. Copies of the plan documents, with all amendments for all nonqualified deferred compensation or excess benefit plans of the Knight-Ridder Company or the McClatchy Company, including:

The Retirement Benefit Restoration Plan of Knight Ridder, Inc.

The Knight-Ridder Annual Incentive Deferral Plan.

The McClatchy Company Supplemental Executive Retirement Plan, as amended January 1, 2009.

The McClatchy Company Executive Supplemental Retirement Plan, established January 24, 2018.

The McClatchy Company Benefit Restoration Plan.

The McClatchy Company Bonus Recognition Plan.

2. Copies of all disclosures by letter or otherwise, of plan information, including Trustees' actions, changes in plan terms and plan amendments, made to participants and beneficiaries in the above plans including summary plan descriptions, group or individual letters, and announcements.

3. Copies of the plans' procedures for making benefit claims in each of the above plans.
4. The minutes of the McClatchy Retirement Committee, or its successor, and any other documentation on the decision to suspend or otherwise effect changes to the payment of benefits under any nonqualified pension plan, including any excess benefit plan, covering Knight Ridder or McClatchy retirees.
5. A list of current plan participants in any Knight-Ridder or McClatchy Company nonqualified plan, including any excess benefit plan, in pay status as of December 2019, and
 - a. Participant's contact information.
 - b. Participant's gender.
 - c. Participant's date of birth.
 - d. Spouse's date of birth.
 - e. Participant's accrued benefit payable monthly.
 - f. Form of benefit elected by participant and (if applicable) participant's spouse.

We have previously requested some of this information. See my letter of February 11, 2020.

Please let us know of any questions or concerns.

Best regards,



Israel Goldowitz

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