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*Counsel for Debtors and Debtors in Possession*

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

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<b><i>In re</i></b>	: <b>Chapter 11</b>
	:
<b>THE McCLATCHY COMPANY, <i>et al.</i>,</b>	: <b>Case No. 20-10418 (MEW)</b>
	:
<b>Debtors.<sup>1</sup></b>	: <b>(Jointly Administered)</b>
	:
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**EX PARTE MOTION TO FILE UNDER SEAL CERTAIN PORTIONS OF THE  
UPDATED PRELIMINARY REPORT ON 2018 REFINANCING TRANSACTIONS**

<sup>1</sup> 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' 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.



The McClatchy Company, on behalf of itself and certain of its affiliates as debtors and debtors in possession (collectively, the “**Debtors**” or the “**Company**”), hereby submit this motion (the “**Motion**”), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9018-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), authorizing the Debtors to file under seal redacted portions of the *Updated Preliminary Report on 2018 Refinancing Transactions*, filed substantially contemporaneously herewith (the “**Updated Preliminary Report**” or the “**Sealed Document**”) for the reasons described herein. The Debtors request that, pursuant to Bankruptcy Rule 9018, the Court grant this Motion without the need for a hearing.

In support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider 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 (the “**Amended Standing Order**”).

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of an order by the Court in connection with this Motion to the extent 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.

4. The legal predicates for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Bankruptcy Rule 9018-1.

### **BACKGROUND**

5. On February 13, 2020 (the “**Petition Date**”),<sup>2</sup> 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’ cases are jointly administered.

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

7. On February 26, 2020, the United States Trustee for Region 2 (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors in these Chapter 11 Cases (the “**Committee**”) [Docket No. 114]. No trustee or examiner was appointed in these Chapter 11 Cases.

8. 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 thirty communities across fourteen states, as well as national news coverage through the Debtors’ Washington D.C.-based bureau. The Debtors also provide a full suite of both local and nationwide digital marketing services. The Debtors’ businesses are comprised of websites and mobile applications, mobile news and advertising, video products, a digital

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<sup>2</sup> On March 24, 2020 (the “**Additional Petition Date**”), Debtor Oak Street Redevelopment Corporation (“**Oak Street**”) also commenced a case by filing a chapter 11 petition. As used herein, the term “Petition Date” encompasses the Additional Petition Date, and the term “Chapter 11 Cases” includes the Oak Street chapter 11 case, which is being jointly administered with the Debtors’ chapter 11 cases commenced on February 13, 2020. See *Order (I) Directing Joint Administration of Cases and (II) Waiving Requirements of Bankruptcy Code Section 342(c)(1) and Bankruptcy Rules 1005 and 2002(n)* [Docket No. 265].

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 *Declaration of Sean M. Harding in Support of Chapter 11 Petitions and First Day Papers*, filed on the Petition Date [Docket No. 23] (the "**First Day Declaration**").<sup>3</sup>

9. Togut, Segal & Segal LLP ("**Togut**"), co-counsel to the Debtors, was tasked with conducting an investigation into the Company's 2018 and 2019 refinancing transactions as they relate to affiliates of Chatham Asset Management, LLC ("**Chatham**") to determine if any such transactions give rise to potential avoidance claims under chapter 5 of the Bankruptcy Code (the "**Investigation**"). As of the date hereof, the Investigation is not complete.

10. On February 25, 2020, the Court entered the *Order Establishing Terms for Plan Mediation* [Docket No. 107] (the "**Mediation Order**"). Pursuant to the Mediation Order, the Court (a) scheduled mandatory mediation (the "**Mediation**") among the Debtors, the managed funds and accounts of Chatham (the "**Chatham Parties**"), the Pension Benefit Guaranty Corporation (the "**PBGC**," and collectively with the Debtors and the Chatham Parties, the "**Mediation Parties**") and (b) appointed Judge Kevin Carey (ret.) to act as the mediator in the Chapter 11 Cases to oversee Chapter 11 plan negotiations (the "**Mediator**"). Mediation Order ¶¶ 1 & 6.

11. The Mediation Order designates any materials classified as "Mediation Material" as strictly confidential and precludes any person or Mediation Party from disclosing such Mediation Material to any non-party or to any court, including in the context of a pleading

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<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

or other court submission.

12. On April 26, 2020, Togut provided the *Preliminary Report on 2018 Refinancing Transactions* in unredacted form to the Mediator.

13. On June 25, 2020, Togut provided the Updated Preliminary Report in unredacted form to the Mediator, and on June 26, 2020, the Mediator provided the Updated Preliminary Report in unredacted form to the Mediation Parties. Also on June 26, 2020, the Debtors filed a redacted version of the Updated Preliminary Report on the docket of these Chapter 11 Cases. *See Notice of Filing of Redacted Version of Updated Preliminary Report on 2018 Refinancing Transactions* [Docket No. 577].

### **RELIEF REQUESTED**

14. By this Motion, and pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Bankruptcy Rule 9018-1, the Debtors seek entry of the Proposed Order authorizing the Debtors to file under seal redacted portions of the Updated Preliminary Report to protect: (a) information that is subject to confidentiality restrictions under the Mediation Order between the Mediation Parties; (b) certain non-public information reflecting confidential communications between the Company's board and its advisors, including in connection with various potential strategic transactions which were ultimately not consummated; and (c) commercially sensitive information that may impact the Debtors' ongoing sale process. The Debtors request that, pursuant to Bankruptcy Rule 9018, the Court grant this Motion without the need for a hearing.

15. In accordance with Local Bankruptcy Rule 9018-1(b), the Debtors will publicly file a redacted version of the Sealed Document on the Court's docket and will serve the redacted version 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*, entered on February 25, 2020 [Docket No. 106]. The Debtors will serve the complete and unredacted versions of the Sealed Document on: (i) counsel to the Committee; (ii) counsel to Brigade Capital Management, LP; (iii) counsel to Chatham; (iv) counsel to the PBGC; (v) counsel to the U.S. Trustee, and (vi) counsel to the DIP Agent.<sup>4</sup>

### **BASIS FOR RELIEF**

16. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, the Court may authorize the Debtors to redact certain portions of the Sealed Document. Section 107(a) of the Bankruptcy Code authorizes courts to issue orders that will protect entities from the potential harm that may result from the disclosure of confidential information. This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b)(1).

17. In addition, pursuant to Bankruptcy Rule 9018:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

Fed. R. Bankr. P. 9018; *see also Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (courts are required to protect information upon request of a party in interest to the extent such information fits within any of the specified categories).

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<sup>4</sup> In addition, as stated above, Togut has provided an unredacted copy to the Mediator.

18. Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 are designed to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003). In granting relief under section 107(b) of the Bankruptcy Code, “[t]he court determines whether the subject documents fall within the provisions § 107(b) and the appropriate protective remedy if they do.” *In re Barney’s, Inc.*, 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). Once a Court determines that a party in interest is seeking protection of information that falls within section 107(b), it “is *required* to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp.* (*In re Orion Pictures Corp.*), 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original).

19. Courts have recognized that the term “commercial information” is broad, including information that could have a “chilling effect on [business] negotiations, ultimately affecting the viability of the Debtors.” *In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (quoting *In re Lomas Fin. Corp.*, No. 90 Civ. 7827 (LLS), 1991 WL 21231, at \*2 (S.D.N.Y. Feb. 11, 1991)). The Second Circuit has held that section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Orion*, 21 F.3d at 28. Indeed, the Second Circuit has stated that an interested party need only show that the information it wishes to seal is “confidential” and “commercial” in nature, and no showing of “good cause” is necessary. *Id.*

20. Thus, a bankruptcy court may enter a seal order under the broad confidentiality protections in bankruptcy proceedings where necessary to protect commercial information. *See Global Crossing*, 295 B.R. at 725 (finding that the “whole point of

[Bankruptcy Rule 9018] is to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”).

21. The Debtors submit that cause exists to authorize the filing under seal of unredacted copies of the Sealed Document because the Sealed Document contains (a) Mediation Material subject to the confidentiality provisions of the Mediation Order, (b) certain non-public information reflecting confidential communications between the Company’s board and its advisors, including in connection with various potential strategic transactions which were ultimately not consummated, and (c) commercially sensitive information that may impact the Debtors’ ongoing sale process (collectively, the “**Confidential Information**”). The Debtors submit that the Confidential Information is entitled to protection pursuant to section 107(b) of the Bankruptcy Code. Disclosure of the Confidential Information would contravene the provisions of the Mediation Order and also potentially interfere with the Debtors’ ongoing sale process.

22. Accordingly, the Debtors respectfully submit that cause exists under section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 for the Debtors to file the Confidential Information under seal.

### **NOTICE**

23. Notice of this Motion will be given to: (a) the U.S Trustee, (b) counsel for the Committee, (c) counsel for the DIP Agent, (d) counsel to the Prepetition Agents, (e) counsel to Chatham, (f) counsel to Brigade, (g) the PBGC, (h) the parties included on the Debtors’ consolidated list of their 30 largest unsecured creditors, (i) any party that has requested notice pursuant to Bankruptcy Rule 2002, and (j) all parties entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b). In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.



**NO PRIOR REQUEST**

24. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

***[Remainder of Page Intentionally Left Blank]***

**CONCLUSION**

**WHEREFORE**, the Debtors respectfully request that this Court enter the Proposed Order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: June 26, 2020  
New York, New York

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*Counsel to Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

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

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

**ORDER AUTHORIZING *EX PARTE* MOTION  
TO FILE UNDER SEAL CERTAIN PORTIONS OF THE UPDATED  
PRELIMINARY REPORT ON 2018 REFINANCING TRANSACTIONS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an order (this “**Order**”) authorizing the Debtors to file under seal certain portions of the Updated Preliminary Report; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; 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 an 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 thereon; and good and sufficient cause appearing therefor; it is hereby;

<sup>1</sup> 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’ 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.

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

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized (a) to file under seal certain confidential portions of the Sealed Document, by providing them to the Clerk's Office at 1 Bowling Green, New York, NY 10004 along with a copy of this Order, and (b) to file redacted versions thereof on the public docket of these cases.
3. Except upon further order of the Court after notice to the Debtors, the Sealed Document shall remain under seal, and shall not be made available to anyone without the consent of the Debtors, with the exception that unredacted copies of the Sealed Document shall be provided to (a) counsel to the Committee; (b) counsel to Brigade Capital Management, LP; (c) counsel to Chatham; (d) counsel to the PBGC; (e) counsel to the U.S. Trustee; and (f) counsel to the DIP Agent.
4. The Debtors are authorized to take all actions necessary to effectuate the ruling set forth in this Order.
5. This Order is without prejudice to the rights of any party in interest, or the U.S. Trustee, to seek to unseal the Sealed Document or any part thereof.
6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
7. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: New York, New York  
June \_\_, 2020

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE