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Proposed Counsel for Debtors and Debtors in Possession

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

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

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



**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO
FILE REDACTED PORTIONS OF THE PAYOFF LETTER RELATED TO PROPOSED
POSTPETITION FINANCING FACILITIES UNDER SEAL**

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

RELIEF REQUESTED

1. The Debtors respectfully request entry of an order, substantially in the form attached hereto, authorizing the Debtors to file the certain portions (the “**Redacted Portions**”) of the Payoff Letter (defined below) under seal.

JURISDICTION AND VENUE

2. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or

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

judgments in connection herewith consistent with Article III of the United States Constitution.

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

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

4. The legal predicates for the relief requested herein are sections 105(a) and 107 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rule 9018.

BACKGROUND

I. The Chapter 11 Cases

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

6. 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.

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

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 30 communities across 14 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 marketing agency, daily newspapers, niche publications, other print and digital direct marketing services and

community newspapers. The Company's business operations, corporate and capital structures, and restructuring efforts are described in greater detail in the First Day Declaration.

BASIS FOR RELIEF

II. Facts Specific to Relief Requested

9. Contemporaneously herewith, the Debtors have filed the DIP Financing Motion³ seeking authority to obtain postpetition financing (the "**DIP Facilities**") from the DIP Secured Parties in accordance with the terms, and subject to the conditions of, the DIP Credit Agreement, and the interim and final orders with respect to the DIP Financing Motion. As set forth in the DIP Financing Motion, the Debtors believe that the DIP Facilities address the Debtors' deteriorating liquidity situation by providing the Debtors' with necessary capital to preserve the value of their estates, and that they represent the best option for the Debtors for maximizing value.

10. In connection with, and as consideration for, the proposed DIP Facilities, the Debtors have agreed to pay the fees set forth in the payoff letter dated February 12, 2020, by and between Wells Fargo Bank, National Association and the McClatchy Company (the "**Payoff Letter**").

11. Due to the sensitive and confidential commercial nature of the contents of the Payoff Letter, the applicable DIP Secured Parties have required that the Redacted Portions of the Payoff Letter not be disclosed publicly, but have consented to the Debtors providing the Redacted Portions of the Payoff Letter on a confidential basis to (i) the Court, and (ii) any

³ As used herein, the term "**DIP Financing Motion**" means the Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief. Capitalized terms used but not defined in this motion have the meanings used in the DIP Financing Motion [Dkt 11].

official committee of unsecured creditors appointed in the above-captioned chapter 11 cases on a strictly confidential and “professional eyes only” basis, and the filing of the Redacted Portions of the Payoff Letter under seal.

III. Legal Basis for Relief Requested

12. Pursuant to Bankruptcy Code sections 105(a) and 107(b), the Court may authorize the Debtors to file the Redacted Portions of the Payoff Letter under seal. Pursuant to Bankruptcy Code section 105(a), bankruptcy courts have the inherent equitable power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In addition, section 107(b) gives bankruptcy courts the power to protect parties in interest from potentially harmful disclosures:

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; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

13. Bankruptcy Rule 9018 sets forth the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part:

On any motion or its own initiative, with or without notice, the court may make any order which justice requires (1) 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.

14. Once the court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, “the court 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). Courts have held that protection under section 107(b) must be granted if the information sought to be protected is commercial information, and significantly, that commercial information need not rise to the level of a trade secret to be entitled to protection. *Id.* at 28 (finding that the use of the disjunctive in section 107(b)(1) “neither equates ‘trade secret’ with ‘commercial information’ nor requires the latter to reflect the same level of confidentiality as the former”). Further, in contrast with Rule 26(c) of the Federal Rules of Civil Procedure, Bankruptcy Code section 107(b) does not require an entity seeking such protection to demonstrate “good cause.” *Orion Pictures Corp.*, 21 F.3d at 28. Nor does it require a finding of “extraordinary circumstances or compelling need.” *Id.* at 27.

15. Rather, a party seeking the protection of section 107(b) need only demonstrate that the information is “confidential” and “commercial” in nature. *Id.* at 27; *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (recognizing that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Once it is established that the subject information qualifies as “commercial information” under section 107(b)(1), the Bankruptcy Code mandates that this information be protected from disclosure. *See Global Crossing*, 295 B.R. at 725.

16. Sufficient cause exists here for the Court to grant the relief requested. The Redacted Portions of each of the Payoff Letter contain commercially sensitive information that

merits protection under Bankruptcy Code section 107(b)(1). For example, the Redacted Portions of the Payoff Letter, each of which were negotiated at arm's length between the Debtors and the applicable DIP Secured Parties, contain information about the methodologies for calculating fees with respect to the proposed DIP Facilities that are critically sensitive and should remain confidential. The DIP Secured Parties' ability to maintain the confidentiality of this pricing methodology is paramount to their ability to negotiate and provide postpetition financing to these and other chapter 11 debtors.

17. As is customary in the finance industry, the applicable DIP Secured Parties treat this information as highly sensitive and confidential. Such information is rarely disclosed to the public or made available to competitor financial institutions. Given the intense competition in the investment banking and lending industries, disclosure of the Redacted Portions of the Payoff Letter could severely constrain the ability of the DIP Secured Parties and their affiliates to negotiate their fees in future transactions, putting them at a strategic disadvantage relative to their competitors and causing them commercial injury. Further, because debtor-in-possession financings are only a small fraction of all syndicated financings arranged by the DIP Secured Parties, requiring them to disclose certain information concerning their fees in this context but not in others could have a "chilling effect" discouraging them and other competitor institutions from providing debtor-in-possession financing facilities on terms favorable to debtors.

18. In addition, disclosure of the Redacted Portions of the Payoff Letter would violate the Debtors' agreements with the applicable DIP Secured Parties, setting a discouraging precedent for the Debtors' other potential creditors and trade partners. The Debtors believe that it is critical, especially at the outset of their chapter 11 cases, that they be able to assure their contractual

counterparties that the confidential terms of their contracts will not face disclosure, so as not to further discourage such parties from contracting with the Debtors.

19. Based on the foregoing, absent protection of this information, the DIP Secured Parties would be placed at a competitive disadvantage, and the Debtors' ability to obtain postpetition financing from the DIP Secured Parties could be undermined. Accordingly, maintaining the confidentiality of the highly-sensitive commercial information set forth in the Redacted Portions of the Payoff Letter enables the DIP Secured Parties to remain competitive and willing to extend postpetition financing to these and other chapter 11 debtors.

20. Finally, the relief requested in this Motion is similar to relief granted in recent chapter 11 cases in this and other districts. *See, e.g., In re Alpha Natural Res., Inc.*, Case No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 17, 2015) (authorizing debtors to file fee letter agreements with proposed debtor in possession lenders under seal); *In re Patriot Coal Corp.*, Case No. 12-12900 (SCC) (Bankr. S.D.N.Y. July 16, 2012) (same); *In re The Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 18, 2012) (authorizing debtors to file unredacted fee letter agreements under seal); *In re Nebraska Book Co.*, Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011) (authorizing the debtors to file under seal DIP agreement Payoff Letter but requiring disclosure of the aggregate fees and expenses); *In re NewPage Corp.*, Case No. 11-12804 (KG) (Bankr. D. Del. Sept. 8, 2011) (authorizing debtors to file letter agreements with proposed debtor-in-possession lenders under seal); *In re Smurfit-Stone Container Corp.*, Case No. 09-10235 (BLS) (Bankr. D. Del. Feb. 14, 2010) (authorizing debtors to file under seal fee letter relating to exit term loan facility); *In re Champion Enterprises, Inc.*, Case No. 09-14019 (KG) (Bankr. D. Del. Nov. 17, 2009) (authorizing the filing under seal of letters regarding engagement and fees of lenders relating to DIP financing); *In re Adelpia Communications Corp.*,

Case No. 02-41729 (Bankr. S.D.N.Y. Mar. 24, 2004) (authorizing debtors to file a fee letter under seal in connection with debtors' motion for approval of an exit financing arrangement); *see also In re Coach Am Group Holdings Corp.*, Case No. 12-10010 (Bankr. D. Del. Jan. 5, 2012) (authorizing, over the U.S. Trustee's objection, debtors to file under seal the letter agreements underlying the proposed debtor-in-possession financing); *In re LandSource Communities Dev. LLC*, Case No. 08-11111 (Bankr. D. Del. Jul. 21, 2008) (authorizing debtors to keep confidential the fee letter underlying proposed debtor-in-possession financing under Bankruptcy Rule 9018); *In re WCI Communities, Inc.*, Case No. 08-11643 (Bankr. D. Del. Sept. 23, 2008) (authorizing, over the U.S. Trustee's objection, the debtors to file under seal the fee letter underlying the proposed debtor-in-possession financing facility).

21. For these reasons, the Debtors respectfully request the Court to permit the Debtors to file the Redacted Portions of the Payoff Letter under seal.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

22. The Court may grant the relief requested in this Motion immediately if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). In explicating the standards governing preliminary injunctions, the Second Circuit instructed that irreparable harm "is a continuing harm which cannot be adequately redressed by final relief on the merits' and for which 'money damages cannot provide adequate compensation.'" *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quoting *N.Y. Pathological & X-Ray Labs., Inc. v. INS*, 523 F.2d 79, 81 (2d Cir. 1975)). Further, the "harm must be shown to be actual and imminent, not remote or speculative." *Id.*; *see also Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1998). The Debtors submit that, for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

23. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

MOTION PRACTICE

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

RESERVATION OF RIGHTS

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

NOTICE

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

NO PRIOR REQUEST

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

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CONCLUSION

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

Dated: New York, New York
February 13, 2020

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/s/ Van C. Durrer, II

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Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

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

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

**ORDER AUTHORIZING DEBTORS TO FILE REDACTED PORTIONS OF THE
PAYOFF LETTER RELATED TO PROPOSED POSTPETITION FINANCIAL
FACILITIES UNDER SEAL**

Upon the motion (the “**Motion**”)² of the Debtors for an order (this “**Order**”) authorizing the Debtors to file the Redacted Portions of the Payoff Letters under seal, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances;

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

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

and 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 as set forth herein.
2. The Debtors are authorized to file the Redacted Portions of the Payoff Letter under seal.
3. The Redacted Portions of the Payoff Letter shall remain under seal and confidential and shall not be made available to anyone without the consent of the Debtors; *provided* that the Redacted Portions of the Payoff Letter shall be provided to the Court and, upon request, counsel for any official committee of unsecured creditors appointed in the above-captioned chapter 11 cases on a strictly confidential and “professional eyes only” basis. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).
5. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.
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
February __, 2020

UNITED STATES BANKRUPTCY JUDGE