

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

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<i>In re</i>	:	Chapter 11
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THE McCLATCHY COMPANY, et al.,	:	Case No. 20-10418 (MEW)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
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FINAL ORDER (I) APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT; (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES; AND (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE

Upon the motion (the “**Motion**”)² of the Debtors for an Interim Order and a final order (this “**Final Order**”) (i) approving the Debtors’ proposed form of adequate assurance of postpetition payment to the Utility Companies; (ii) establishing procedures for resolving any objection by the Utility Companies relating to the Proposed Adequate Assurance; and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors solely on the basis of the commencement of these cases, a debt that is owed by the Debtors for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance, all as more fully described 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*

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.kccllc.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.



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; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby;

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Proposed Adequate Assurance constitutes “adequate assurance of payment” for purposes of Bankruptcy Code section 366.
3. Except as the amount may be reduced by application of the provisions of this Final Order, Utility Deposits in the aggregate amount of \$371,000 deposited in the Utility Deposit Account shall be held for the purpose of providing adequate assurance of payment to each Utility Company for its postpetition Utility Services to the Debtors. The Utility Deposit Account shall be segregated from other funds and shall be available only for the purposes set forth in this Final Order, shall not be subject to any liens or security interests of any lender or any other party other than the Utility Companies, and shall not be released except upon further order of this Court.

4. Absent compliance with the below, the Utility Companies identified on the Utility Company List, including Subsequently Identified Utility Companies, are prohibited from (a) discriminating against the Debtors; (b) altering, refusing, or discontinuing service to the Debtors; or (c) requiring payment of a deposit or receipt or any other security for continued service other than the Utility Deposit, as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices:

- a. Within three business days after the date of entry of this Final Order, the Debtors will mail a copy of this Final Order to the Utility Companies on the Utility Company List.
- b. If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional adequate assurance of payment, it must serve a request for additional adequate assurance (an "**Additional Assurance Request**") upon (i) The McClatchy Company, 2100 Q Street, Sacramento, California, 95816-6899, Attn: Richard Reinhart; (ii) proposed counsel to Debtors, (A) Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071-3144, Attn: Van C. Durrer II and Destiny Almogue, and (B) Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York, 10119-3335, Attn: Kyle J. Ortiz and Amy Oden; (iii) counsel to the administrative agent under the Debtors' DIP Facility, Choate, Hall & Steward LLP, Two International Place, Boston, MA 02110, Attn: Jonathan D. Marshall and Keven Simard; (iv) counsel to Chatham Asset Management, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn.: Andrew Rosenberg, Elizabeth McColm, John Weber; and (v) proposed counsel to the official committee of unsecured creditors (the "**Committee**") appointed in these Chapter 11 Cases, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038; Attn: Kristopher M. Hansen, Frank A. Merola, Gabriel E. Sasson (collectively, the "**Adequate Assurance Notice Parties**").
- c. Each Additional Assurance Request must (i) be made in writing; (ii) set forth the amount and form of additional assurance of payment requested; (iii) set forth the type of Utility Services, any account numbers, and the location for which Utility Services are provided; (iv) include a summary of the Debtors' payment history to such Utility Company, including whether the Utility Company holds any deposits or other security, and if so, in what amount; and (v) set forth why the Utility Company believes the Proposed Adequate Assurance is insufficient.
- d. Upon the Debtors' receipt of an Additional Assurance Request, the Debtors will have 30 days from the entry of this Final Order (the "**Resolution Period**") to negotiate with the requesting Utility Company and resolve its Additional

Assurance Request. The Debtors and any Utility Company may, without notice to any party in interest or further order of the Court, extend the Resolution Period by such additional period as they shall mutually agree.

- e. The Debtors may, with the consent of Chatham Asset Management and the Committee (which consent shall not be unreasonably withheld or conditioned) and without further order from this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, payments of prepetition balances, prepayments, or other forms of security if the Debtors believe such additional assurance is reasonable.
- f. Should the Debtors be unable to reach a mutual resolution with respect to an Additional Assurance Request within the Resolution Period, the Debtors shall file a motion to determine the adequacy of assurance of payment with respect to a particular Utility Company (the “**Determination Motion**”), and, if the Determination Motion is not withdrawn, the Court will determine the adequacy of the Proposed Adequate Assurance with respect to that Utility Company.
- g. Any Utility Company that makes an Additional Assurance Request is prohibited from altering, refusing, or discontinuing service, including as a result of unpaid charges for prepetition services, pending resolution of such Additional Assurance Request by agreement or order of this Court.
- h. Any Utility Company that believes that the foregoing procedures do not provide a sufficiently prompt procedure for or resolution of an Adequate Assurance Request may file a motion for a hearing on shortened notice to resolve the issue.
- i. Nothing herein shall be interpreted as imposing any time limit on the making of an Adequate Assurance Request or as imposing any restriction on a Utility Company’s ability to make a modified Adequate Assurance Request if it believes the circumstances warrant such modified Adequate Assurance Request.

5. If an amount relating to postpetition Utility Services provided by a Utility Company is unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Utility Deposit Account (a “**Disbursement Request**”), in no case to exceed the amount of the Utility Deposit contributed to the Utility Deposit Account for the benefit of such Utility Company, by giving notice to (i) The McClatchy Company, 2100 Q Street, Sacramento, California, 95816-6899, Attn: Richard Reinhart; (ii) proposed counsel to Debtors, (A) Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400,

Los Angeles, California 90071-3144, Attn: Van C. Durrer II and Destiny Almogue, and
(B) Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York, 10119-3335,
Attn: Kyle J. Ortiz and Amy Oden; (iii) counsel to the administrative agent under the Debtors'
DIP Facility, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110, Attn:
Jonathan D. Marshall and Kevin Simard; (iv) counsel to Chatham Asset Management, Paul,
Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York
10019, Attn.: Andrew Rosenberg, Elizabeth McColm, John Weber; (v) counsel to Brigade
Capital Management, LP, 399 Park Avenue, New York, New York 10022, Kramer Levin
Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn:
Thomas M. Mayer, Douglas Mannal, David Braun; and (vi) proposed counsel to the Committee
appointed in the Chapter 11 Cases, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New
York, New York 10038, Attn: Kristopher M. Hansen, Frank A. Merola, Gabriel E. Sasson. A
Disbursement Request shall only be honored on the date that is five business days after the date
of the Disbursement Request.

6. Any Utility Company that fails to submit an Additional Assurance Request as set forth in this Final Order shall be deemed to have adequate assurance of payment that is satisfactory to it within the meaning of Bankruptcy Code section 366 and shall be forbidden from altering, refusing, or discontinuing service to the Debtors on account of any prepetition charges, subject to the Utility Company's right to seek a modification of adequate assurance under Bankruptcy Code section 366(c)(3).

7. The Debtors are authorized, in consultation with the Committee, to amend the Utility Company List attached hereto as **Schedule 1** to add or delete any Utility Company, and this Final Order shall apply to any such Subsequently Identified Utility Company that is added to

such schedule. Such amendment shall be accomplished by filing with this Court a notice and serving the same on the affected Utility Company. Any Utility Company added to the Utility Company List subsequent to the date of the Motion shall have the right to make an Additional Assurance Request in compliance with the Adequate Assurance Procedures.

8. This Final Order shall be binding on all Utility Companies, regardless of when such Utility Company was added to the Utility Company List; *provided, however*, that if additional parties are added, the Debtors may increase the amount of the Utility Deposit by an amount equal to the cost of two weeks of Utility Services provided by such Subsequently Identified Utility Company to the Debtors.

9. For the avoidance of doubt, the terms of this Final Order, including the Adequate Assurance Procedures, shall apply in accordance with its terms to each Utility Company, notwithstanding any customary business practices, policies, internal operating procedures, or state or local laws or regulations to the contrary. Any Utility Company that believes its customary business practices, policies, internal operating procedures, or state or local laws or regulations forbid it from accepting the Proposed Adequate Assurance or entitle it to additional adequate assurance shall make an Additional Assurance Request in accordance with this Final Order.

10. To the extent the Debtors have not yet sought to remit payment on account of the Utility Obligations, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment of the Utility Obligations.

11. Any party receiving payment from the Debtors in connection with a Disbursement Request is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Final Order.

12. Nothing herein constitutes a finding that any entity is or is not a Utility Company hereunder or under Bankruptcy Code section 366, whether or not such entity is listed on Schedule 1 attached hereto.

13. This Final Order is without prejudice to the Debtors' or any other party in interest's rights to contest any amounts owed to a Utility Company.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

15. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to subsequently dispute such obligation on any ground that applicable law permits.

16. 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' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim or other obligation; (d) granting third-party-beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

17. 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.

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

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

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

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

22. 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 11, 2020

s/Michael E. Wiles

HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE