

**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	:	(Jointly Administered)
	:	
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**DECLARATION OF SEAN M. HARDING
 IN SUPPORT OF ENTRY OF THE SALE ORDER**

Pursuant to 28 U.S.C. § 1746, I, Sean M. Harding, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

I. Introduction

1. I am a Senior Managing Director with FTI Consulting, Inc. (together with its wholly owned subsidiaries, agents, independent contractors, and employees, “**FTI**”), financial advisor to the above-captioned debtors (the “**Debtors**”), and I have been retained as Chief Restructuring Officer to the Debtors.

2. I have over 22 years of experience advising and executing financing and restructuring transactions. My experience includes representing companies, boards, creditors, and bondholders in a variety of situations. I graduated from the University of Virginia with a B.S. I am a Certified Turnaround Professional and a Certified Insolvency and Restructuring Advisor. Prior

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’ 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.

(cont’d)



to joining FTI, I was a Manager with the U.S. Division of PricewaterhouseCoopers' Business Recovery Services practice.

3. I submit this declaration (this "**Declaration**") in support of entry of an order, among other things, (i) approving the sale of the Acquired Assets² (the "**Sale**") pursuant to that certain Asset Purchase Agreement by and among The McClatchy Company, the subsidiary sellers parties thereto, SIJ Holdings, LLC, Chatham Asset Management, LLC ("**Chatham**"), and Chatham Asset High Yield Maser Fund, Ltd. (as may be amended, amended and restated, supplemented or otherwise modified, the "**APA**"); (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "**Assigned Contracts**") and the assumption of the Assumed Liabilities, each as more fully described in the APA; and (iii) granting related relief (the "**Sale Order**"). I am familiar with the contents of the APA and the proposed form of Sale Order attached to the *Notice of Successful Bidder Asset Purchase Agreement* [Docket No. 693] (the "**Successful Bidder Notice**") as Exhibit C. If called as a witness, I would testify competently thereto.

4. Except where specifically noted, the statements in this Declaration are based on my personal knowledge, belief, or opinion; information that I have received from the Debtors' employees or advisors and/or employees of FTI working directly with me or under my supervision, direction, or control; or from the Debtors' records maintained in the ordinary course of their business.

II. Consummation of the Sale is an Exercise of Sound Business Judgment

5. The Debtors have a sound business justification for effectuating the Sale to

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bidding Procedures Order, the APA, or the Sale Order, as applicable.

Chatham. As described in more detail herein, the Debtors value Chatham's bid at almost \$350,000,000 of gross proceeds, a value materially in excess of the next highest offer that the Debtors received.

6. The Sale transaction is the culmination of a comprehensive, months-long marketing process undertaken by the Debtors with the assistance of their advisors and in consultation with the Consultation Parties. As described in the declaration of Jonathan Knee in support of the Sale Order, as part of this process, the Debtors provided extensive diligence to potential bidders, and the Debtors' senior management team and advisors participated in numerous diligence meetings with each of the potential bidders that submitted an Initial Bid for substantially all of the Debtors' assets. The sale process was conducted in good faith, at arm's length, and in accordance with the Court-approved Bidding Procedures, which were designed to maximize the value of the Sale transaction while simultaneously providing consultation rights to the Debtors' most significant stakeholders, including the Official Committee of Unsecured Creditors (the "**Committee**"). I believe that consummation of the Sale is critical to the Debtors' efforts to maximize the value of their estates and is in the best interests of the Debtors, their stakeholders, and other parties in interest.

7. Based on my review of relevant documents and discussions with the Debtors' tax advisor and counsel, I also understand that, pursuant to the Sale, and to maximize value for the estates, all shares of capital stock or other equity interests of each Debtor other than The McClatchy Company shall be canceled for no consideration.

8. I further believe that Chatham's bid (the "**Chatham Bid**" or the "**Successful Bid**") represents the highest and best offer that was available to the Debtors as of the end of such comprehensive sale and marketing process, which concluded with an Auction held on July 10,

2020. Prior to the Auction, the Debtors, in consultation with the Consultation Parties, determined that the bids submitted by Alden Global Capital, LLC and its affiliates (collectively, “**Alden**” and Alden’s bid, the “**Alden Bid**”) and Chatham were the only Qualified Bids in accordance with the Bidding Procedures. Moreover, prior to the Auction, the Debtors, in consultation with their advisors, evaluated each of the Qualified Bids. Specifically, the Debtors considered the Bid Assessment Criteria set forth in the Bidding Procedures, including, among other factors, the value of both cash and non-cash components of each bidders’ proposed purchase price, the value of assumed liabilities, the number of employees each bidder proposed to retain, and the number of contracts each bidder proposed to assume. After evaluating the Qualified Bids, the Debtors determined that Chatham’s bid was the highest and best offer available prior to the Auction, and as such, the Debtors selected the Chatham Bid as the Starting Bid. An analysis of the valuation of each of the Qualified Bids is described in more detail below.

9. After selecting the Chatham Bid as the Starting Bid, the Starting Bid materials were circulated to Alden and the other Consultation Parties. In addition, the Debtors and their advisors met with Alden and its advisors in advance of the Auction to explain how the Company was valuing each bid in an effort to promote a competitive Auction. Although Alden had representatives present at the Auction, Alden did not submit an Overbid.

10. Accordingly, at the conclusion of the Auction, the Debtors designated Chatham as the successful bidder (the “**Successful Bidder**”) and Alden as the Backup Bidder. As described in more detail below, the Debtors’ reasonably determined that the Successful Bid was worth approximately \$100,000,000 more than the Alden Bid.

III. The Value of the Successful Bid

11. After taking into account all cash and non-cash consideration included in the

Successful Bid, the Debtors reasonably value Chatham's bid at almost \$350,000,000 of gross proceeds, which is far in excess of consideration provided by the Alden Bid, which the Debtors reasonably value at approximately \$100,000,000 less.

12. As set forth in the Successful Bidder Notice, the Successful Bid provides for the purchase of substantially all of the Debtors' assets subject to certain excluded assets specified in the APA.

13. The Successful Bid includes both a credit bid and substantial cash consideration. Specifically, the Successful Bid provides for the payment of the principal amount of the Debtors' First Lien Notes through a credit bid in the amount of \$262,851,000. The Successful Bid also includes cash consideration in the approximate amount of \$49,152,903 to be used to pay, among other claims, professional fees, wind-down costs, and any accrued and unpaid interest on the First Lien Notes, including any past-due accrued interest on the First Lien Notes.

14. The Successful Bid also provides for the assumption of certain Assumed Liabilities (as defined in the Asset Purchase Agreement), including (a) accrued and unpaid post-petition payroll and benefits for the transferred employees, (b) post-petition accounts payable and other trade obligations arising in the ordinary course of the Debtors' business, and (c) certain tax adjustments.

15. Taking into account each of these components of the Successful Bid, the Debtors have reasonably assessed the value of such bid at almost \$350,000,000 of gross proceeds.

16. The Alden Bid, on the other hand, is significantly less valuable. Such bid is comprised of (i) approximately \$40 million in cash; (ii) approximately \$10 million in unsecured debt; (iii) approximately \$160 million in new secured first lien debt; (iv) the assumption of certain accrued and unpaid post-petition payroll and benefits for the transferred employees, which the

Debtors have reasonable calculated at approximately \$4,727,000; and (v) a transaction tax refund of between \$0 to \$31,000,000. However, Alden's Bid would also result in additional liabilities to the Debtors through a negative working capital adjustment of approximately \$11,000,000 and WARN or severance claims resulting in \$10,522,000 of administrative claims. Accordingly, the Debtors reasonably value the Alden Bid as being worth approximately \$100,000,000 less.

17. In addition to the Debtors' analysis of the foregoing valuation, the Debtors also took into consideration certain other factors. For example, the Chatham Bid contemplated providing offers of employment to substantially all of the Debtors' workforce and assuming their collective bargaining agreements. On the other hand, Alden's Bid contemplated the elimination of approximately 1,000 jobs and would require the Debtors to reject their collective bargaining agreements or obtain a consensual waiver as to successorship clauses. Chatham was also willing to commit to continue providing substantially similar base salary/wage rates and incentive compensation opportunities (not including equity compensation) in the aggregate to employees for a year following the transaction, whereas Alden would not make a similar commitment. As reflected in the Assumed Liabilities described above, Chatham was also willing to assume significantly more contracts than Alden. Finally, Chatham's Bid will allow the Debtors' estates to remain administratively solvent, whereas the Alden Bid would have rendered the Debtors administratively insolvent.

IV. The Successful Bid Addresses the Debtors' Wind-Down Requirements

18. In accordance with the Bidding Procedures, the Debtors negotiated with the Qualified Bidders to address the Company's wind-down requirements, including the satisfaction of the Debtors' administrative and priority claims. In order to facilitate satisfaction of this requirement, the Debtors developed a wind-down budget in consultation with the Committee that

set forth the minimum amount of cash necessary to (a) satisfy all administrative and priority claims and (b) fund a wind-down budget. The budget that was developed has never contemplated a budget for the Committee or any other party acting on behalf of the estate to pursue the claims alleged in the *Motion of Official Committee of Unsecured Creditors for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of Debtors' Estates and (II) Exclusive Settlement Authority [Docket No. 546]* (the “**Standing Motion**”).

19. As described above, the Successful Bid includes cash consideration to address the Debtors’ wind-down budget, which the Debtors believe is sufficient, with the other consideration included in the Successful Bid, to facilitate the winding-down of the Debtors’ operations.

20. Specifically, it is contemplated that approximately \$2.0 million of the cash component of the Successful Bid will be used to fund the Debtors’ wind-down. In addition, Chatham’s Bid only contemplates the purchase of potential claims against officers who are receiving offers of employment from Chatham. Potential claims against all directors and all officers who are not receiving offers of employment will remain assets of the Debtors’ estates. In my opinion, there is not sufficient liquidity to use the \$2.0 million of cash consideration to wind-down the Debtors’ operations while continuing to pursue the potential claims asserted in the Standing Motion given that the wind-down budget was sized only to effectuate a wind-down of operations and the Committee’s incurrence of fees to date. Rather, I believe that it is more efficient and cost-effective that the claims asserted in the Standing Motion be addressed in a chapter 11 plan of liquidation to be filed by the Debtors providing for the wind-down of their estates following the consummation of the Sale.

V. Conclusion

21. Based on the circumstances described herein, I believe that the terms of the

Successful Bid reflect the highest and best available offer for the Debtors' assets, and that the sale of the Debtors' assets to the Successful Bidder pursuant to the terms set forth in the Asset Purchase Agreement is in the best interests of the Debtors' estates.

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WHEREFORE, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: New York, New York
July 24, 2020

/s/ Sean M. Harding
Sean M. Harding
Chief Restructuring Officer
The McClatchy Company