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Counsel for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	**Chapter 11**
	:	
JCK LEGACY COMPANY, *et al.*,	:	**Case No. 20-10418 (MEW)**
	:	
Debtors.[1]	:	**(Jointly Administered)**
	:	
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[1] The last four digits of Debtor JCK Legacy 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.

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DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE JOINT CHAPTER 11 PLAN OF DISTRIBUTION OF JCK LEGACY COMPANY AND ITS AFFILIATED DEBTORS AND DEBTORS IN POSSESSION

JCK Legacy Company and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**"), hereby submit this reply (this "**Reply**")[2] to (a) *Oracle's Limited Objection and Opt-Out of Third-Party Release of the Joint Chapter 11 Plan of Distribution of The McClatchy Company and its Affiliated Debtors and Debtors in Possession* [ECF No. 850] (the "**Oracle Objection**"), (b) the *Objection of Beth Desmond to Confirmation of the Debtors' Joint Plan of Distribution and Approval of the Debtors' Disclosure Statement* [ECF No. 852] (the "**Desmond Objection**"), and (c) the Objection of the United States Trustee to Confirmation of the Joint Chapter 11 Plan of Distribution of The McClatchy Company and its Affiliated Debtors and Debtors in Possession [ECF No. 855] (the "**UST Objection**" and, together with the Oracle Objection and the Desmond Objection, the "**Objections**"). In support of this Reply, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

PRELIMINARY STATEMENT

1. As set forth in further detail below, the Objections by and large have been resolved consensually or effectively through revisions made to the Plan and proposed Confirmation Order. The Debtors recently filed revised versions of the Plan and proposed Confirmation Order reflecting such changes, which are also outlined in this Reply. Of note, the third-party releases in the Plan are fully consensual, which resolves the Oracle Objection in its

[2] Capitalized terms not otherwise defined herein have the meanings given to them in the *Joint Chapter 11 Plan of Distribution of The McClatchy Company and its Affiliated Debtors and Debtors in Possession* [ECF No. 780] (as amended from time to time and including all exhibits thereto, the "**Plan**") or the disclosure statement filed with respect thereto [ECF No. 781] (the "**Disclosure Statement**"), as applicable.

entirety and addresses similar objections raised by the U.S. Trustee and Beth Desmond ("**Desmond**"), and the Debtors have removed the provision granting the Debtors a discharge under Bankruptcy Code section 1141, resolving certain objections by the U.S. Trustee and Desmond. The remainder of the U.S. Trustee's issues have also been addressed, as reflected in the chart below. Finally, the remaining issues raised by Desmond do not render the Plan unconfirmable, because they primarily relate to the Bond securing her claim, which, as explained below, is not property of the Debtors' estates. Accordingly, all barriers to approval of the Disclosure Statement and confirmation of the Plan have been removed. Thus, each of the Objections should be overruled and the Plan should be confirmed.

REPLY

I. The Oracle Objection is Moot Given That the Plan No Longer Includes "Holders of Claims" Within the Definition of "Releasing Parties"

2. The Oracle Objection relates solely to the formulation of the defined term "Releasing Parties" in the Plan. Specifically, Oracle America, Inc., successor in interest to PeopleSoft, Inc. ("**Oracle**"), objected to the inclusion of "Holders of Claims" in the definition of "Releasing Parties," and filed the Oracle Objection in order to affirmatively elect to opt-out of the Plan's third-party release provision. As noted above, the Debtors filed a revised version of the Plan and the definition of "Releasing Parties" in the Plan no longer includes "all other Holders of Claims to the fullest extent permitted by law." *See* Notice of Implementation of D&O Settlement [ECF No. 856] (the "**D&O Settlement Notice**"), Ex. A-1 ("**Plan Redline**") at 112[3] (reflecting showing deletion in § 1.141).

[3] References to page numbers in the Plan Redline used herein correspond to the page count reflected at the top of the D&O Settlement Notice filing.

3. As currently contemplated by the Plan, the only parties who are included within the definition of "Releasing Parties" are those certain parties who worked closely with the Debtors in order to resolve various issues related to the Debtors' restructuring in these Chapter 11 Cases, each of whom specifically consented to provide releases under the Plan. Such fully consensual releases are entirely appropriate, permitted under the Bankruptcy Code, and consistent with the requirements of case law in the Second Circuit.[4] Accordingly, the Oracle Objection has effectively been resolved as there is now no third-party release provision from which Oracle can opt-out. Therefore, the Debtors submit that the Oracle Objection is moot and should be overruled.

II. The Debtors Have Made Revisions to the Plan and Proposed Confirmation Order Which Either Consensually or Effectively Resolve the UST Objection

4. As noted by the U.S. Trustee, the Debtors have worked with the U.S. Trustee to consensually or effectively resolve all of the U.S. Trustee's concerns regarding confirmation of the Plan. *See* UST Objection at 2, n. 2. The below chart contains a summary of the concerns outlined in the UST Objection and the Debtors' resolution of such concerns, together with references to the applicable sections of the revised Plan and revised proposed Confirmation Order, which have been modified to address such issues as reflected in the Plan Redline and redline of the previously filed version of the proposed Confirmation Order against the revised proposed Confirmation Order filed at Ex. B-1 to the D&O Settlement Notice (the "**Confirmation Order Redline**").

[4] *See e.g.*, *In re New Cotai Holdings, LLC*, Case No. 19-22911 (RDD) (Bankr. S.D.N.Y. Aug. 25, 2020); *In re Windstream Holdings*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Jun. 26, 2020); *In re Pacific Drilling VIII Limited*, Case No. 17-13203 (MEW) (Bankr. S.D.N.Y. Jan. 30, 2019); *In re Tops Holding II Corporation*, Case No. 18-22279 (RDD) (Bankr. S.D.N.Y. Nov. 9, 2018); *In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Aug. 21, 2018); *In re Westinghouse Electric Company, LLC*, Case No. 17-10751 (MEW) (Bankr. S.D.N.Y. Mar. 28, 2018); *In re TGHI, Inc.*, Case No. 16-10300 (MEW).

Concerns in UST Objection	Summary of Plan Revisions Resolving Concerns in UST Objection
Discharge and Injunction *Liquidating corporate debtors are not entitled to discharge. Injunction should be limited to interference with the Plan or property to be distributed thereunder.*	The section of the Plan providing for discharge of the Debtors pursuant to section 1141 of the Bankruptcy Code (formerly § 10.2) has been deleted. *See* Plan Redline at 156–57. Additional sections of the Plan which included language providing for discharge of the Debtors, including in the current injunction provision § 10.6, have also been removed. *See* Plan Redline at 124–27 (reflecting deletions of "discharge" in §§ 4.1–4.9); 136 (reflecting deletion in § 6.11); 146 (reflecting deletion in § 7.2); 153 (reflecting deletion in § 9.6(e)); 161–63 (reflecting deletions in §§ 10.6, 10.7 and 10.9); 166–67 (reflecting deletion of Art. XII(r) and in § 13.1).
Third-Party Releases *The definition of "Releasing Parties" included language that was ambiguous and overly broad.*	The definition of "Releasing Parties" no longer includes "all other Holders of Claims to the fullest extent permitted by law." *See* Plan Redline at 112. The only parties who are providing releases under the Plan are the parties who have affirmatively consented to granting releases. *See* Plan § 1.141.
Prospective Releases *The Plan's release provisions provided releases for entities that will not exist until the Plan's Effective Date.*	References to the Wind-Down Debtors, the Plan Administration Trust, and the GUC Recovery Trust have been deleted from the Plan's release provisions. *See* Plan Redline at 157–60 (deleting the aforementioned parties from current debtor and third-party release provisions in §§ 10.3 and 10.4)
Exculpation *The definition of "Exculpated Claim" was overly broad in that it limited liability in connection with out-of-court restructuring efforts and should contain an express carveout for malpractice claims.*	The Debtors have removed the reference to "out-of-court" restructuring efforts from the definition of "Exculpated Claim." *See* Plan Redline at 103 (definition of Exculpated Claim under § 1.78 of the Plan). The Plan's exculpation and limitation of liability provision (now § 10.5) specifically includes a carveout for attorney malpractice pursuant to rule 1.8(h) of the New York Rules of Professional Conduct, as requested by the U.S. Trustee. *See* Plan Redline at 161.
Administrative Expenses *The Plan afforced certain non-estate professional fees and expenses Administrative Claim treatment without establishing that the requirements of Bankruptcy Code section 503(b) had been met.*	The Plan provides for payment of the professional fees and expenses, other than the Deferred Amounts Claims, of the following non-estate professionals: (a) the Chatham Parties; (b) the Brigade Parties, (c) the 2027 Debentures Trustee; (d) the 2029 Debentures Trustee; and (e) counsel for the 2027 Debentures Trustee and 2029 Debentures Trustee, but only in accordance with certain orders already entered by the Bankruptcy Court (e.g., the DIP Order and the Sale Order, including the Committee Settlement described therein and the Stipulation Regarding Mediated Sale and Plan Settlement) and no longer deems such claims "Administrative Claims" under the Plan itself. *See* Plan Redline at 120–21 (removing Allowed Administrative Claim treatment from §§ 2.2 and 2.4). Moreover, the Debtors added language that claims paid pursuant to other Bankruptcy Court orders would be paid in accordance with such orders. *See* Plan Redline at 122 (new § 2.7).

Concerns in UST Objection	Summary of Plan Revisions Resolving Concerns in UST Objection
Post-Confirmation Reporting *The Plan did not provide for the filing of post-confirmation operating reports until the cases are closed, dismissed, or converted.*	As noted in the UST Objection, the Debtors have also resolved this issue consensually with the U.S. Trustee and have included in the revised Plan the U.S. Trustee's proposed standard language regarding the filing of post-confirmation operating reports and the payment of statutory fees and any applicable statutory interest thereon. *See* Plan Redline p. 167 (language added to § 13.2(a) and the addition of subsection (b)); Confirmation Order Redline at 260 (language added to paragraph 111, bullet 5 regarding Post-confirmation Status Reports).

5. As outlined in the chart above, the Debtors have made changes to the Plan and proposed Confirmation Order that address all of the concerns raised in the UST Objection, with the exception of the payment of the professional fees and expenses of the 2027 Debentures Trustee, the 2029 Debentures Trustee, and their counsel. Therefore, the Debtors submit that the balance of the UST Objection is effectively moot and should be overruled.

6. With respect to the payments of the professional fees and expenses of the 2027 Debentures Trustee, the 2029 Debentures Trustee, and their counsel (collectively, the "**Indenture Trustee Payments**"), the Debtors also submit that the UST Objection should be overruled. The terms of the Committee Settlement, including amounts the Chatham Parties agreed to fund, were negotiated extensively and at arms' length. Ultimately, the payment of the Indenture Trustee Payments was an essential part of the overall settlement described in the Stipulation Regarding Mediated Sale and Plan Settlement, which has already been approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. *See* Sale Order ⁋ 37; Annex A ⁋ 15. To reflect the terms of the Committee Settlement, the Plan merely recites that the Indenture Trustee Payments shall be paid in full on the Effective date.

7. As the Debtors demonstrated to the Bankruptcy Court in order to obtain approval of the Stipulation Regarding Mediated Sale and Plan Settlement, agreeing to the Chatham Parties' funding of the Indenture Trustee Payments as part of the overall settlement was well

within the Debtors' business judgment. "[T]he business judgment of the debtor in recommending the settlement should be factored into the court's analysis." *In re Residential Capital, LLC*, 497 B.R. 720, 750 (Bankr. S.D.N.Y. 2013) (citations omitted); *see also In re MF Global Inc.*, No. 11-2790, 2012 WL 3242533, at *5 (Bankr. S.D.N.Y. Aug. 10, 2012) (citing *In re Charter Commc'ns*, 419 B.R. 221, 252 (Bankr. S.D.N.Y. 2009)) and *In re Delphi Corp.*, No. 05-44481, 2009 WL 973130, at *2 (Bankr. S.D.N.Y. Apr. 2, 2009).

8. Where, as here, the Indenture Trustee Payments are reasonable, the Bankruptcy Court should authorize them. *See In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 225 (Bankr. S.D.N.Y. 2007) ("A bankruptcy court need not conduct an independent investigation into the reasonableness of the settlement but must only 'canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.'") (citing *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d. Cir. 1983) (internal quotation marks omitted). Finally, courts within this district have authorized such payments pursuant to chapter 11 plans. *See, e.g., In re Aegean Marine Petroleum Network, Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Mar. 29, 2019) (approving "the payment, in cash, of all reasonable and documented unpaid Unsecured Notes Indenture Trustee Fees and Expenses that are required to be paid under the Unsecured Notes Indentures through the Effective Date" under the debtors' chapter 11 plan). Therefore, the UST Objection should be overruled and the Indenture Trustee Payments approved according to the Stipulation Regarding Mediated Sale and Plan Settlement under the Plan to the extent they were not already approved under the Sale Order.

III. The Desmond Objection Should Be Overruled Because, as Desmond Concedes, the Bond is Not Property of the Debtors' Estates

9. The Debtors have made revisions to address the bulk of Desmond's issues with the Plan. As set forth in detail above, the Debtors have removed (a) "Holders of Claims" from

the definition of "Releasing Parties," (b) former section 10.2 (Discharge of the Debtors), and (c) all references to discharge of the Debtors pursuant to the Plan. *See* chart *supra* section II. In addition to limiting third-party releases to be provided only by parties who have affirmatively consented to granting such releases, the Debtors have also narrowly tailored the injunction and exculpation provisions appropriately under the Plan. *See id.* Therefore, the objections set forth in sections A(iii) and (iv) of the Desmond Objection should be overruled.

10. The remaining issues in the Desmond Objection should also be overruled as they primarily relate to property that is not property of the Debtors' estates. Quite ironically, Desmond complains that the Plan cannot be confirmed because it does not specifically categorize her claim to the bond issued by the Westchester Fire Insurance Company (the "**Insurance Company**") in the original principal amount of $8,109,539.41 (the "**Bond**") and the proceeds therefrom, which, in her own words "are not property of the estate that [ ] can be transferred pursuant to the Plan." *See* Desmond Objection ¶ 12. The Debtors agree that the Bond and the Bond proceeds are not property of their estates. For that very reason, the Bond and distribution of the Bond proceeds are not and cannot be addressed under the Plan. For the avoidance of doubt and in order to alleviate any concerns Desmond may have about her rights to the Bond, the Debtors have added language to the proposed Confirmation Order acknowledging that nothing in the Plan or the Confirmation Order impairs Desmond's rights to the Bond or to any insurance policy applicable to the Desmond Lawsuit (as will be defined in the revised proposed Confirmation Order the Debtors will be filing substantially contemporaneously herewith).

11. Moreover, Desmond is keenly aware of the mechanics of the Bond and distribution of proceeds therefrom. If the NC Supreme Court (as defined in the *Stipulation and Agreed Order Further Modifying the Automatic Stay to Permit Certain Proceedings in*

Connection with the Desmond Lawsuit [ECF No. 854] (the "**Second Stipulated Order**") adjudicates the Rehearing Petitions in favor of The N&O (each as defined in the Second Stipulated Order), the Bond will be released, and any remaining liability of The N&O as a result of the prepetition Desmond Lawsuit will then become a general unsecured claim. If the NC Supreme Court adjudicates the Rehearing Petitions in favor of Desmond, the Debtors' liability will remain insured by the Bond, subject to further proceedings. If such further proceedings result in less liability than the amount of the Bond, the Insurance Company will be entitled to a return of the remainder of the Bond. If such further proceedings result in liability greater than the Bond, such amount would be a general unsecured claim. Nothing in the Plan contravenes Desmond's rights to the Bond nor alters the mechanics of the distribution of the Bond's proceeds because the Debtors do not have authority to alter rights and obligations with respect to non-estate property. To the extent Desmond's claim is secured by the Bond, the Plan does not alter that status. However, vis-à-vis the Debtors, Desmond's claim is not secured by any interest in the Debtors' property. Accordingly, to the extent Desmond is entitled to a general unsecured claim based on the outcome of the proceedings, the Plan provides appropriate treatment and the Disclosure Statement contains adequate information regarding such treatment.

12. Desmond's apparent confusion over the treatment of her claim is also not a valid objection approval of the Disclosure Statement. As noted above, the Plan does not and cannot address the treatment of the Bond because the Bond is not property of the Debtors' estates. Accordingly, no information about Desmond's claim is contained within the Disclosure Statement.

13. Bankruptcy Code section 1125 requires the Bankruptcy Court to approve a written disclosure statement prior to allowing a party to solicit acceptances for a chapter 11 plan.

11 U.S.C. § 1125(b). To approve a disclosure statement, a court must find that the disclosure statement, as a whole, contains "adequate information," which is defined as "information of a kind, and in sufficient detail, as far as is reasonably practicable. . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan." *Id.* § 1125(a)(1); *see also In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994); *In re Adelphia Commc'ns Corp*., 352 B.R. 592, 600 (Bankr. S.D.N.Y. 2006). "The purpose of a disclosure statement is to provide 'adequate information' to creditors to enable them to decide whether to accept or reject the proposed plan." *In re Ferretti*, 128 B.R. 16, 18 (Bankr. D.N.H. 1991). General Unsecured Creditors, including Desmond, are not entitled to vote on and are deemed to reject the Plan. Nevertheless, the Disclosure Statement provides more than sufficient information regarding the treatment of General Unsecured Claims. *See e.g.*, Disclosure Statement, Art. III.C (summarizing treatment of General Unsecured Claims) and Art. III.E (describing means for implementation of the Plan, including the GUC Recovery Trust). Accordingly, no reasonable basis exists for Desmond to object to the adequacy of the Disclosure Statement.

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CONCLUSION

For the reasons articulated above, the Debtors respectfully request that this Court overrule each of the Objections, approve the Disclosure Statement, confirm the Plan, and grant such other and further relief as may be just and proper.

Dated: New York, New York
September 21, 2020

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