

**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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**FINAL ORDER AUTHORIZING DEBTORS TO PAY PREPETITION WAGES,
COMPENSATION, AND EMPLOYEE BENEFITS**

Upon the motion (the “**Motion**”)² of the Debtors for an Interim Order and a final order (this “**Final Order**”) under Bankruptcy Code sections 105(a), 363(b), 507(a), 541, 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004 (i) authorizing, but not directing, the Debtors, *inter alia*, to pay prepetition wages, salaries, employee benefits, and amounts to or on account of independent contractors or temporary employees; (ii) authorizing, but not directing, the Debtors to continue the maintenance of all employee benefit programs in the ordinary course; (iii) authorizing, but not directing, the Debtors to honor employee expense obligations and payment of the Corporate Credit Cards; (iv) authorizing the Debtors to pay over to appropriate parties prepetition withholdings; (v) authorizing the Debtors to honor certain retiree benefit obligations; (vi) authorizing financial institutions to receive, process, honor and pay all checks, drafts and other forms of payment, including fund transfers, used by the Debtors relating to the

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.



foregoing; and (vii) granting related relief as further described herein; 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 this 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 Debtors are authorized, but not directed, to pay and/or honor, the Prepetition Employee Obligations as and when such obligations are due; *provided, however*, that nothing in this Order shall permit the Debtors to make any payments on account of the 2019 Non-Executive Retention Plan, the Executive Retention Plan, the Key Employee Incentive Plan, the 2020 KERP, the Supplemental Income Plans, Special Arrangements, or Quarterly Contributions.
3. The hearings on the Debtors' authority to continue to maintain, administer, and honor prepetition obligations under the 2019 Non-Executive Retention Plan and the Corporate Incentive Plan are adjourned to March 25, 2020 at 11:00 a.m. Prevailing Eastern Time and April 29, 2020 at 11:00 a.m. Prevailing Eastern Time, respectively.

4. The Debtors are authorized, but not directed, to honor the Employee Benefit Obligations and Employee Expense Obligations that were in effect as of the Petition Date, including, but not limited to, Vacation Time, Holiday Time, Sick Time, Reimbursable Expenses, Medical Plans, Dental Plan, Vision Plan, Life Insurance Plans, Disability Plans, 401(k) Plan, Workers' Compensation Programs, and the Severance Plan, and to continue such programs as such were in effect as of the commencement of these Chapter 11 Cases and as such may be modified or supplemented from time to time in the ordinary course of business; *provided, however,* that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Obligations, including, policies, plans, programs, practices, and procedures, under Bankruptcy Code section 365(a).

5. The Debtors are authorized, but not required, to continue to honor all obligations to the Union Employees under the relevant CBAs.

6. The Debtors are authorized to maintain and administer the Incentive Plans (with the exception of those identified in paragraphs 2 and 3 above) in the ordinary course of business and to pay all amounts due thereunder in the ordinary course of business irrespective of whether such amounts (a) relate to the prepetition period and/or (b) exceed the limits provided for by Bankruptcy Code sections 507(a)(4) or 507(a)(5).

7. The Debtors are authorized, but not directed, to pay all Employee Withholdings as and when such obligations are due. The Debtors may remit any and all amounts withheld from Employees, including social security, FICA, federal and state income taxes, garnishments, health care payments, other insurance premiums, retirement fund withholding, and other types of withholding, whether these amounts relate to the period prior to the date of the Debtors' chapter 11 filings or subsequent thereto.

8. The Debtors are authorized, but not directed, to honor the Former Employee Obligations; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Former Employee Obligations, including, policies, plans, programs, practices, and procedures, under section 365(a) of the Bankruptcy Code.

9. Subject to the authority granted in the *Interim Order (I) Authorizing Continued Use of Existing Cash Management System, Bank Accounts, and Business Forms and Payment of Related Prepetition Obligations; (II) Modifying Certain Deposit Requirements and (III) Authorizing Continuance of Intercompany Transactions and Honoring Certain Related Prepetition Obligations* (the “Cash Management Order”) and the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Use Cash Collateral, (II) Granting (A) Liens and Providing Superpriority Administrative Expense Status and (B) Adequate Protection to Certain Prepetition Lenders, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “DIP Order”), the Debtors are authorized to continue to use the commercial card program under the WellsOne Commercial Card Agreement, dated on or around May 3, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “Card Agreement”), between the Debtors and Wells Fargo Bank, N.A. (“Wells Fargo”) subject to the terms and conditions thereof. Wells Fargo is authorized to make advances from time to time to the Debtors with a maximum exposure at any time up to \$5 million. All prepetition charges and fees are authorized and required to be paid. The indebtedness owed by the Debtors to Wells Fargo in respect of the Card Agreement was secured by certain collateral pursuant to the terms of the Prepetition ABL Credit Documents (as defined in the DIP Order). To satisfy the requirement that Wells Fargo continue to have a valid and perfected, non-avoidable first-priority lien pursuant to the Card Agreement, the Debtors, in

accordance with the DIP Order, grant Wells Fargo a priming lien and security interest in the Bank Product Cash Collateral (as defined in the DIP Order) pursuant to Bankruptcy Code section 364(d)(1) with respect to the indebtedness owed by the Debtors to Wells Fargo in respect of the Card Agreement. Such lien shall not be primed by any lien granted to any post-petition lender or other person.

10. Wells Fargo may rely on the representation of the Debtors with respect to its use of the commercial card program pursuant to the Card Agreement, and Wells Fargo shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

11. In accordance with section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business.

12. All Banks are (a) authorized and directed to receive, process, honor and pay any and all prepetition and postpetition checks, drafts, electronic transfers and other forms of payment used by the Debtors to satisfy their Prepetition Employee Obligations, whether presented before, on, or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of Prepetition Employee Obligations. The Banks shall rely on the direction and representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Final Order, and no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Final Order.

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

14. The Debtors are authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition electronic transfers on account of the Prepetition Employee Obligations, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claims, including any claim held by any Employee or any third party. For the avoidance of doubt, nothing contained in the Motion or this Final Order is intended or should be construed to create an administrative priority claim on account of any Employee.

16. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Final Order.

17. 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' 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 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.

18. Nothing in this order should be construed as approving any transfer pursuant to 11 U.S.C. § 503(c), and a separate motion will be filed for any request that could fall within Section 503(c). No payment to any employee may be made to the extent that it is a transfer in derogation of section 503(c) of the Bankruptcy Code. This Order does not implicitly or explicitly approve any bonus plan, incentive plan, severance plan or other plan covered by Section 503(c) of the Bankruptcy Code.

19. 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.

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

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

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

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

24. 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 12, 2020

s/Michael E. Wiles

Honorable Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE