UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	**Chapter 11**
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THE McCLATCHY COMPANY, *et al.*,	:	**Case No. 20-10418 (MEW)**
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Debtors.[1]	:	**(Jointly Administered)**
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DECLARATION OF SEAN M. HARDING IN SUPPORT OF CONFIRMATION OF THE JOINT CHAPTER 11 PLAN OF DISTRIBUTION OF THE McCLATCHY COMPANY AND ITS AFFILIATED DEBTORS AND DEBTORS IN POSSESSION

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.

[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.

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

3. I submit this declaration (the "**Declaration**") in support of confirmation of the *Joint Chapter 11 Plan of Distribution of The McClatchy Company and its Affiliated Debtors and Debtors in Possession* (as it may be further amended, supplemented, and/or modified from time to time and including all exhibits and supplements thereto, the "**Plan**")[2] pursuant to Bankruptcy Code section 1129.

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; from the Debtors' records maintained in the ordinary course of their business; or my discussion with other representatives of the Debtors, including the Debtors' counsel and investment banker, Evercore Group L.L.C. ("**Evercore**").

II. Background

5. I believe that the Debtors are poised to confirm a fully consensual chapter 11 plan that, in combination with the Sale Transaction, will maximize value for all stakeholders and efficiently wind down the Debtors' estates. The Plan (a) discharges approximately $440.4 million of funded debt, which comprises all of the Debtors' remaining prepetition funded indebtedness following the consummation of the Sale Transaction in addition to approximately $1.5 billion of other general unsecured claims, which includes claims the Debtors expect the PBGC to file relating

[2] Capitalized terms used but not otherwise defined shall have the meanings ascribed to them in the Plan or the proposed Findings of Fact, Conclusions of Law, and Order Confirming the Joint Chapter 11 Plan of Distribution of The McClatchy Company and its Affiliated Debtors and Debtors in Possession, filed contemporaneously herewith (the "**Proposed Confirmation Order**"), as applicable.

(cont'd)

to termination of the Plan, including the Plan's unfunded benefit liabilities, calculated as of August 31, 2020 (the date as of which The McClatchy Company Retirement Plan (the "**Retirement Plan**") was terminated by the PBGC),[3] (b) provides for the release of any and all potential claims that Releasing Parties may have against the Released Parties based on, arising from, or in any way relating to the Debtors as described in section 10.5 of the Plan, (c) allows the Plan Administration Trustee and Wind Down Officer to pay certain administrative expenses and to access the Plan Administration Trust Assets for distributions under the Plan through the Plan Administration Trust, and (d) establishes the GUC Recovery Trust (as defined below) for the benefit of general unsecured creditors pursuant to the Committee Settlement (as defined below), which provides valuable recoveries to the Debtors' general unsecured creditors.

6. The Plan is a product of extensive, good faith negotiations between the Debtors and their key constituents: the Brigade Parties, the Chatham Parties, and the Committee. The Plan is supported by the sole voting class of creditors as well as the Committee, and as of the date hereof, the Debtors have not received a single vote against, or any formal objections to, confirmation of their Plan. Based on my discussions with the Debtors and their advisors and my own analysis, I believe the Plan satisfies all of the confirmation requirements prescribed by the Bankruptcy Code and should be confirmed.

III. The Committee Settlement and the Plan

7. Throughout these Chapter 11 Cases, the Debtors engaged in continuous negotiations with their prepetition stakeholders in an attempt to reach a consensual deal and emerge from bankruptcy. The Debtors engaged in a Court-approved multiparty mediation with

[3] The Retirement Plan was trusteed by the PBGC effective September 4, 2020.

the PBGC, the Chatham Parties, the Brigade Parties, and the Committee with the goal of formulating a consensual deal to resolve the Chapter 11 Cases and emerge from bankruptcy.

8. While the mediation was ongoing, the Debtors also engaged in a parallel marketing process for the sale of substantially all of their assets. Such process resulted in a successful bid by the ultimate Purchaser comprised of a $262,851,000 credit bid of the First Lien Notes Claims and $49,152,903 in cash consideration, which provided sufficient value to (i) satisfy certain accrued and unpaid interest expenses, (ii) pay professional fees, and (iii) fund the wind-down of the Debtors' operations (the "**Sale Transaction**") as described in more detail below.

9. In connection with the Sale Transaction, the Debtors reached a global settlement (the "**Committee Settlement**") among the Committee, the Chatham Parties, the Brigade Parties, and the Purchaser (collectively, the "**Parties**") to, among other things, support the Sale Transaction, support confirmation of the Plan, resolve certain alleged estate claims, and establish a trust for the benefit of general unsecured creditors (the "**GUC Recovery Trust**"). The Committee Settlement, which is reflected in the Stipulation Regarding Mediated Sale and Plan Settlement and the Plan, is the product of extensive good-faith, arms'-length negotiations between the Parties and will facilitate the confirmation of the Debtors' Plan and the prompt and efficient wind down of the Debtors' estates.

IV. Solicitation and Acceptance of the Plan

10. I understand that on August 21, 2020 the Debtors caused a solicitation package comprised of the Plan, the Disclosure Statement, a ballot, and related notices to be distributed to Chatham Asset Management, LLC and certain of its managed accounts and affiliated funds (as described in the Plan, the "**Chatham Parties**")—the sole holders of the Second Lien Term Loan Claims entitled to vote on the Plan. Based upon the certificate of service executed by Kurtzman

Carson Consultants LLC ("**KCC**"), the Debtors' claims and solicitation agent, I also understand that the Debtors caused KCC to serve (i) the Plan and Disclosure Statement on the Master Service List,[4] and (ii) the *Notice of (I) Combined Hearing to Consider Approval of the Disclosure Statement and Confirmation of the Plan Confirmation and (II) Objection Deadlines Relating Thereto* the ("**Combined Hearing Notice**") on all known parties in interest.[5]

V. The Plan Satisfies the Bankruptcy Code's Requirements for Confirmation.

11. Based on my review of the Plan, the events that led to the commencement of the Debtors' Chapter 11 Cases, and consultation with the stakeholders and the Debtors' other advisors, it is my belief that, as discussed below, the Plan: (a) complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123(a)(1) of the Bankruptcy Code; (b) satisfies the six other mandatory requirements of section 1123(a) of the Bankruptcy Code; (c) is consistent with section 1123(b), 1123(c), 1123(d) of the Bankruptcy Code; (d) satisfies the other confirmation requirements of section 1129(a); and (e) complies with sections 1129(c) and 1129(d) of the Bankruptcy Code.

Section 1129(a)(1): The Plan Complies with the Applicable Provisions of the Bankruptcy Code.

12. It is my understanding that the Plan complies with section 1129(a)(1) of the Bankruptcy Code since the Debtors are eligible debtors pursuant to section 109 of the Bankruptcy Code, are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code, and comply with all applicable provisions of the Bankruptcy Code except as otherwise provided or permitted by orders of the Court, including sections 1122 and 1123 in all respects.[6]

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[4] *See* Certificate of Service of Jennifer Westwood filed on August 25, 2020 [Docket No. 793].

[5] *See* Certificate of Service of Service of Jennifer Westwood filed on August 27, 2020 [Docket No. 795].

[6] *See* Article II of the Plan.

(i) Section 1122: The Plan's Classification Structure is Proper

13. I believe that the Claims and Interests have been properly classified. I understand that the Plan divides Claims into various classes based upon their nature and that each Class of Claims and Interests differs from each other Class in either a legal or factual nature such that classification has not been used for gerrymandering purposes. I believe that valid business and factual reasons exist for separately classifying the various Classes of Claims and Interests. For example, (a) Second Lien Term Loan Claims are separately classified from General Unsecured Claims because holders in these classes are receiving different forms of payment under the Plan, and have different interests in the Debtors' assets (i.e., secured vs. unsecured), and (b) the aforementioned classes are separately classified from Existing Parent Equity Interests to account for their differing statutory priorities and different recoveries under the Plan. I understand that, to date, no party has objected to the Plan's classification of Claims and Interests, and I believe that such treatment is proper.

(ii) Section 1123(a): The Plan's Content is Appropriate

14. ***Specification of Classes, Impairment, and Treatment.*** I believe the Plan satisfies the requirements of sections 1123(a)(1)-(3) of the Bankruptcy Code. As described above, the Plan properly designates classes of Claims and Interests. Pursuant to the Plan, classes 1 and 2 are unimpaired. The Plan also specifies the treatment of each of the remaining impaired classes.[7]

15. ***Section 1123(a)(4): Equal Treatment.*** I believe the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code since Article IV of the Plan provides that, except as otherwise agreed to by a Holder of a particular Claim or Interest, all members of any given Class

[7] *See* Plan §§ 4.3–4.9.

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are receiving the same treatment on account of their Claims and Interests.[8]

16. ***Section 1123(a)(5): Implementation of the Plan.*** I believe that section 1123(a)(5) of the Bankruptcy Code has been satisfied by Article VI (and various other provisions) of the Plan and the various documents and agreements set forth in the Plan Supplement, which provide adequate and proper means for the implementation of the Plan.[9]

17. ***Section 1123(a)(6): Non-Voting Equity Securities.*** I believe that the Plan satisfies section 1123(a)(6) of the Bankruptcy Code, which requires that a plan prohibit the issuance of nonvoting equity securities. On the Effective Date, all Existing Parent Equity will be deemed automatically cancelled, released and extinguished and one share of voting common stock or the functional equivalent thereof of Wind-Down Debtor JCK Legacy Company (f/k/a The McClatchy Company) will be issued.

18. ***Section 1123(a)(7): Selection of Managers***. I believe that the Plan satisfies section 1123(a)(7) of the Bankruptcy Code. As of the Effective Date, the Debtors will not have directors and officers. Thereafter, Debtors The McClatchy Company and Herald Custom Publishing of Mexico, S. de R.L. de C.V. will continue in existence for the limited purposes specified in section 6.5 of the Plan. The Plan Administration Trustee/Wind-Down Officer and the GUC Recovery Trustee will be appointed pursuant to the Plan Administration Trust Agreement and GUC Recovery Trust Agreement, respectively. These appointments and the terms of the Plan Administration Trust Agreement and GUC Recovery Trust Agreement were negotiated among the Debtors, the Brigade Parties, the Chatham Parties, and the Committee, and I believe they are a critical component of the consensual deal reached by the parties, as embodied in the Committee

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8 *See id.*

9 *See* Plan Art. VI; Plan Supp.

Settlement.

(iii) Section 1123(b): The Plan's Content is Permitted.

19. I understand that the Plan incorporates various provisions in accordance with the discretionary authority of section 1123(b) of the Bankruptcy Code. Based on my understanding of the Plan, the events that led to the commencement of the Debtors' Chapter 11 Cases, and discussions I have had with the stakeholders and their respective professional advisors, I believe the Plan's discretionary provisions—certain of which, including provisions relating to releases, exculpations, and the assumption and rejection of executory contracts, are discussed below—are the product of arm's-length negotiations, are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors' estates. I further believe that the assumption and rejection of Executory Contracts pursuant to the Plan and the Plan Supplement constitute a sound exercise of business judgment and comply with the applicable provisions of the Bankruptcy Code.

20. ***The Debtor Releases***. As part of the consensual deal negotiated by the parties to the Committee Settlement, the Debtors, in their sound business judgment, agreed to grant the Debtor Releases and settle any potential estate claims they may hold against the Released Parties. I believe that the Debtors' or the Wind-Down Debtors' pursuit of any such claims against the Released Parties is not in the best interest of the Estates' various constituencies because the costs involved would likely outweigh any potential benefit from pursuing such claims.

21. During the early stages of these Chapter 11 Cases, the Committee alleged that certain prepetition refinancing transactions involving the Debtors gave rise to potential estate claims. The Debtors initiated court-ordered mediation at the commencement of these Chapter 11 Cases to address, among other matters, such allegations. The Togut firm and, separately, the

Committee conducted an investigation into and conducted extensive collaborative discovery regarding the transactions and other prepetition activities of the Debtors. Following the Committee's investigation, the Committee sought leave from the Court to pursue potential causes of action.

22. While the investigation was ongoing, the Debtors, the Brigade Parties, the Chatham Parties, the PBGC and the Committee continued to engage in the mediation and settlement discussions and they made significant headway towards a consensual resolution of these Chapter 11 Cases. These efforts ultimately culminated in the Committee Settlement embodied in the Plan, a key component of which is the resolution of any potential claims against the Brigade Parties and the Chatham Parties through the Debtor Releases, provided that each of such parties (a) supports (and, in the case of the Chatham Parties, votes their Class 3 Claims in favor of the Plan), acts in good faith, and takes all reasonable actions necessary to consummate the Plan and implement the terms of the Stipulation Regarding Mediated Sale and Plan Settlement, and (b) does not take any action, directly or indirectly, that could reasonably be expected to materially delay, interfere with or impede the confirmation or consummation of the Plan.

23. I believe that the consensual deal reached with the Debtors' stakeholders is clear evidence that the valuable consideration provided to stakeholders under the Plan far outweighs the costs and inevitable delays associated with the prosecution of potential estate claims. For this reason, I believe granting the Debtor Releases, including with respect to the Chatham Parties and the Brigade Parties, is a prudent exercise of business judgment and in the best interests of all parties in interest. Additional details regarding the reasonableness of the Committee Settlement is included in Section VI below.

24. ***Third Party Releases***. I understand that the Plan also provides consensual Third Party Releases to various parties who have played a critical role in these Chapter 11 Cases. As with the Debtor Release, the Third Party Releases were a material inducement for the support of the Plan and are critical to the Debtors' reorganization efforts.

25. The Released Parties include (a) the Debtors (except as may be expressly excluded in the Plan); (b) the DIP Lenders; (c) the DIP Agent; (d) the Brigade Parties (to the extent they comply with the Brigade Release Requirements); (e) the Chatham Parties (to the extent they comply with the Chatham Release Requirements); (f) the Purchaser; (g) the 2027 Debentures Trustee; (h) the 2029 Debentures Trustee; and (i) the Committee and its members (each in their capacities as such). All of these parties are also Releasing Parties.[10] However, the Debtors, the Wind-Down Debtors, the GUC Recovery Trust and the GUC Recovery Trustee will not be Releasing Parties with respect to any claims or Causes of Action against any current and former Ds&Os of any of the Debtors and any of their advisors and professionals who advised such Ds&Os with respect to prepetition transactions and the GUC Recovery Trust Causes of Action are being transferred to the GUC Recovery Trust.

26. I believe the Third Party Releases are also reasonable and appropriate. The Third Party Releases are a crucial part of the value-maximizing deal embodied in the Sale Transaction and the Committee Settlement that will enable the Debtors to efficiently wind down their estates while resolving potential litigation claims. I believe that absent the indispensable consideration provided by the Third Party Releases, the parties would not have reached this critical deal. Moreover, all of the parties providing Third Party Releases have affirmatively consented to

[10] The Brigade Parties and the Chatham Parties will only be Releasing Parties to the extent that they are also Released Parties.

providing such releases.

27. Based on the above and my discussions with the Debtors and their counsel, I believe that the Third Party Releases are consensual, consistent with the requirements of case law in the Second Circuit, reasonable, and in the best interests of the Debtors' estates.

28. ***Exculpation Provisions*.** I understand that section 10.6 of the Plan provides an exculpation and limitation of liability for the Exculpated Parties, which is intended to prevent collateral attacks against estate fiduciaries and certain parties that facilitated the Debtors' reorganization relating to acts or omissions (other than those resulting from actual fraud, gross negligence, or willful misconduct) in connection with these bankruptcy cases. I have been advised that the Plan's exculpation provision is of the type typically approved in this Circuit.

29. The Exculpation is proper because it is an integral part of the Plan. Moreover, I believe that the exculpation provisions contained in the Plan are reasonably and narrowly tailored to the facts of these Chapter 11 Cases for those parties in interest whose efforts were (and continue to be) vital to negotiating and implementing the Committee Settlement and the consensual Plan, i.e., the Released Parties described above. Like the releases, the Exculpations served as necessary consideration to induce the parties to the Committee Settlement to reach the value-maximizing deal embodied in the Sale Transaction and the Plan. In light of these circumstances, I believe the exculpation provisions contained in the Plan are necessary to the Debtors' reorganization and should be approved.

30. ***Injunction***. I understand that the Plan contains a standard Injunction provision enjoining all persons or entities from commencing or continuing any suit, action, or other proceeding related to Claims or Interests discharged by, released by, or subject to exculpation under the Plan. The Injunction is necessary to effectuate the releases and exculpations contained

in the Plan and is narrowly tailored to achieve that purpose. Further, the Injunction is a key component of the Debtors' restructuring.

(iv) The Provision on Non-Debtor Proposed Sales Is Inapplicable

31. Based on my discussions with the Debtors' counsel, I understand that section 1123(c) of the Bankruptcy Code dealing with non-Debtor sales is inapplicable since the Debtors are not "individuals" (as that term is defined in the Bankruptcy Code).

(v) The Plan Provides for the Cure of Defaults

32. I believe that the Plan complies with section 1123(d) of the Bankruptcy Code. Section 7.2 of the Plan provides for the satisfaction of any defaults associated with each Executory Contract to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. All cure amounts, as set forth in the Assumption Schedule, were determined in accordance with the underlying agreements and applicable bankruptcy and non-bankruptcy law

The Plan Satisfies the Other Confirmation Requirements Found in Section 1129(a) of the Bankruptcy Code.

(i) Section 1129(a)(2): The Debtors' Compliance with the Bankruptcy Code

33. I have been advised that the principal purpose of section 1129(a)(2) of the Bankruptcy Code is to ensure that a plan proponent has complied with sections 1125 (postpetition disclosure and solicitation) and 1126 (acceptance of the plan) of the Bankruptcy Code. To the best of my knowledge and belief, based on discussions with the Debtors' legal counsel, and as detailed in the certificates of service filed with the Court, I believe that the Debtors served the solicitation package in compliance with the terms of the Combined Hearing Order and applicable bankruptcy law, including the provisions of sections 1125 and 1126 regarding disclosure and Plan solicitation.

34. I also understand that a disclosure statement must, as a whole, provide information that is reasonably designed to permit an informed judgment by impaired creditors or equity interest

holders entitled to vote on a plan. The Chatham Parties are the only Holders of Claims or Interests entitled to vote on the Plan. Given the role of such parties in these Chapter 11 Cases and what I understand to be "adequate information" as described in Bankruptcy Code section 1125(a), I believe that the Disclosure Statement contains adequate information necessary to enable both the Chatham Parties to make an informed decision about whether to vote to accept or reject the Plan and *all* parties in interest to make an informed judgment with respect to the Plan as required by section 1125 of the Bankruptcy Code. Specifically, the Disclosure Statement contains "adequate information" including, but not limited to, a discussion of: (a) the circumstances that gave rise to the filing of these Chapter 11 Cases; (b) significant events during the course of these Chapter 11 Cases; (c) the financial condition and performance of the Debtors during these Chapter 11 Cases; (d) information regarding Claims against the Debtors; (e) information regarding Claims and Interests to be addressed under the Plan; (f) an estimation of recoveries anticipated under the plan and under possible alternatives to the plan; (g) a summary of the Plan; (h) settlements and compromises of certain Claims under the Plan, including the Committee Settlement; and (i) tax consequences of the Plan.

(ii) Section 1129(a)(3): The Plan Has Been Proposed in Good Faith

35. As described above, the Plan, the Committee Settlement, and the other agreements and documents contemplated thereby are the result of extensive arms' length negotiations between and among the Debtors, the Brigade Parties, the Chatham Parties, the PBGC, and the Committee. The Plan represents the culmination of months of intensive negotiations and discussions among the foregoing parties in interest. Each of these parties has acted in good faith. The Plan's classification, indemnification, exculpation, release, settlement, and injunction provisions have been negotiated in good faith and at arms' length. I believe that the Plan has been proposed by the

Debtors in good faith, with the legitimate and honest purpose of maximizing the value of the Estates and the recovery to the Estates' constituents.

(iii) Section 1129(a)(4): The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments

36. It is my understanding that all payments made or to be made by the Debtors for services, costs, or expenses in connection with the Chapter 11 Cases, including all claims of retained professionals, have been approved by, or are subject to the approval of, the Court as reasonable.

37. The Plan also provides for the payment of the professional fees and expenses of the Debtors, the Brigade Parties, the Chatham Parties, and the Committee, each subject to the Professional Fee Caps. I understand that payment of these fees and expenses were negotiated as a critical component of the Committee Settlement. The Proposed Confirmation Order approves the amounts set forth for the professional fees and expenses of the Brigade Parties and the Chatham Parties. The professional fees and expenses for the Debtors and the Committee will remain subject to Court approval through entry of an order under Bankruptcy Code section 330.

(iv) Section 1129(a)(5): The Debtors Have Complied with the Governance Disclosure Requirements

38. I understand that the Debtors have satisfied section 1129(a)(5) of the Bankruptcy Code because as set forth in the Plan Supplement, the Debtors have disclosed the names and affiliations of the parties selected by the Debtors and the Committee to serve as Plan Administration Trustee/Wind-Down Officer (myself) and GUC Recovery Trustee (William A. Brandt, Jr.), respectively.[11] As described above, I am a highly qualified professional with

[11] *See* Plan Supp.

extensive experience in the turnaround sector. I believe that the selection of these individuals—designated by the Debtors and the Committee, in accordance with the highly negotiated terms of the Plan Administration Trust Agreement and GUC Recovery Trust Agreement, which served as a critical component of the consensual deal reflected in the Plan—is consistent with the interests of creditors, equity holders, and public policy.

(v) Section 1129(a)(7): The Plan Satisfies the Best Interests Test

39. The Debtors have already sold substantially all of their assets through the Sale Transaction. Accordingly, I believe that converting these Chapter 11 Cases to a chapter 7 liquidation would simply create additional costs, including a percentage fee based on disbursements for professionals retained by the chapter 7 trustee. In addition, in the chapter 7 scenario, the Debtors' anticipated Tax Refund might also be impaired as a fundamental tax matter.

40. Based on my experience and involvement in these Chapter 11 Cases, I believe that it is reasonable to assume that such additional costs would be higher and more burdensome for the Debtors' estates than the Plan (which does not have such incremental costs). In addition, absent the Committee Settlement, Holders of General Unsecured Claims would receive substantially less than they stand to receive under the Plan. For these reasons, and based upon the fact that each holder of an Impaired Claim that is entitled to vote on the Plan (e.g., the Chatham Parties) will have either accepted the Plan or will receive or retain under the Plan, on account of such Claim, property of value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, I believe that a liquidation under chapter 7 of the Bankruptcy Code would result in a substantial diminution in the value of the Debtors' estates and will not increase recoveries to any creditors. Therefore, I believe that the recoveries contemplated under the Plan are at least as much as any potential

recoveries under a chapter 7 liquidation, and, therefore, the Debtors have satisfied the "best interests" test under Bankruptcy Code section 1129(a)(7).

(vi) Section 1129(a)(8): The Plan Will Be Accepted by All Impaired Classes Entitled to Vote

41. As set forth in the Plan, Classes 1 and 2 are Unimpaired by the Plan and conclusively presumed to accept the Plan. Class 3 is the only Class Impaired by the Plan entitled to vote on the Plan, and I understand that the Debtors anticipate the Chatham Parties, the only Holders of Class 3 Claims, to vote to affirmatively accept the Plan. Classes 4, 5, 6, 7, 8 and 9 are also impaired, but conclusively presumed to reject the Plan.

42. I believe that (a) the Plan does not discriminate unfairly, and (b) is "fair and equitable" with respect to each Impaired Class of Claims or Interests that is deemed to reject the plan. The Plan does not unfairly discriminate because Classes of Claims or Interests that are of equal priority are not receiving different treatment under the Plan. In addition, the Plan affords fair and equitable treatment to Classes of different priority and status (e.g., Secured Claims versus General Unsecured Claims), including each Class deemed to reject the Plan, and no Class of Claims will receive more than 100% of the amount of the Allowed Claims in such Class.

43. Further, I believe that the Plan satisfies the "fair and equitable" requirement because Holders of Class 3 Claims were entitled to bid on their own collateral as part of the Debtors' sale process, but chose not to do so. But for potential claims that the Committee believes exist against the Holders of Second Lien Term Loan Claims or the Debtors, which such parties dispute, the Holders of Second Lien Term Loan Claims would be entitled receive in the aggregate on account of their Allowed Class 3 Claims, the GUC Recovery Trust Assets. The Debtors, the Committee, the Holders of Class 3 Claims and certain other parties in interest have agreed, pursuant to the Committee Settlement, that pursuant to Bankruptcy Rule 9019 and subject to the terms and

conditions of the Committee Settlement, the GUC Recovery Trust Assets less $1.00 shall be distributed to the GUC Recovery Trust for the express benefit of the Holders of Allowed General Unsecured Claims, and the Holders of Allowed Class 3 Claims shall receive $1.00 on the Effective Date and then shall not receive any further distributions on account of their Allowed Class 3 Claims until Holders of Allowed Class 5 Claims have been satisfied in full. After Holders of Allowed Class 5 Claims have fully recovered, and in full and final satisfaction, settlement, release, and discharge of and in exchange for their Allowed Class 3 Claims, Holders of Second Lien Term Loan Claims shall receive their Pro Rata Share of GUC Recovery Trust Interests (entitling the Holders of Second Lien Term Loan Claims to their Pro Rata share of the GUC Recovery Trust Assets in accordance with the GUC Recovery Trust Agreement).

44. Similarly, I understand that because Holders of Claims in Class 4 had the opportunity to bid on their own collateral and also chose not to do so, such collateral has been sold free and clear pursuant to the Sale Transaction. Separately, there is a settlement between Class 3 and the Committee, as described above and in Section VI below.

(vii) Section 1129(a)(9): The Plan Complies with Statutorily Mandated Treatment of Administrative and Priority Tax Claims

45. I understand that the Plan provides that: (a) Allowed Administrative Claims will be paid in full in cash, (b) Allowed Priority Tax Claims will be unimpaired; and (c) Allowed Other Priority Claims will be (i) paid in cash, (ii) reinstated, or (iii) otherwise unimpaired.

(viii) Section 1129(a)(10): At Least One Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptances of Insiders

46. As described above, I understand that the Plan will be unanimously accepted by the Chatham Parties, the Holders of the only class of impaired Claims entitled to vote on the Plan, exclusive of the votes of any insiders.

(ix) Section 1129(a)(11): The Plan Satisfies the Feasibility Requirements

47. I understand that Section 1129(a)(11) of the Bankruptcy Code provides that a plan may be confirmed only if it is feasible, and I believe that the Plan satisfies the feasibility requirements of section 1129(a)(11) because confirmation of the Plan is not likely to be followed by the need for further liquidation not already anticipated in the Plan itself. The Debtors and their advisors have spent significant time analyzing the Wind-Down Debtors' anticipated post-Effective Date financial obligations, including (a) the estimated amount of Professional Claims and the sufficiency of the Plan Administration Trust Assets to cover payment of such amounts, (b) the estimated amount of Administrative Claims, Priority Tax Claims, and Other Priority Claims to sufficiently fund the Plan Administration Trust, and (c) the sufficiency of the Wind-Down Budget. The Debtors and their advisors have also discussed such analyses, including those reflected in the Admin Liability Schedule attached to the Committee Settlement, with their key constituents and the Purchaser. Although it is possible that potential claimants may submit claims for greater than they may be entitled or claims may be asserted that were not originally identified in our claims' reconciliation work, in my experience, I believe that we have adopted reasonable protocols to address such contingencies.

48. The Plan provides for the payment of priority and administrative obligations from cash on hand as well as the various escrow accounts established pursuant to the Asset Purchase Agreement and the Plan. The amounts and estimates reflected in the Debtors' Admin Liability Schedule attached to the Committee Settlement are predicated on assumptions and methodologies that I consider reasonable and reliable. Accordingly, I believe that it is more likely than not that there will be sufficient Cash to satisfy all administrative and priority claims in full upon the Effective Date. Therefore, I believe that the Plan is feasible.

(x) Section 1129(a)(12): Payment of Statutory Fees

49. All fees payable under 28 U.S.C. § 1930 are treated as Administrative Claims under the Plan and will be paid in full, thereby satisfying section 1129(a)(12) of the Bankruptcy Code.

(xi) Section 1129(a)(13): Benefit Plans

50. The Debtors are no longer providing any retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code. Such retiree benefits were assumed liabilities of the Purchaser in the Sale Transaction, which has been consummated. Therefore, I believe that section 1129(a)(13) of the Bankruptcy Code is satisfied.

(xii) Section 1129(a)(6) and Sections 1129(a)(14) through 1129(a)(16) do not Apply to the Plan

51. Based on my discussions with the Debtors' counsel, I understand that Bankruptcy Code section 1129(a)(6) and sections 1129(a)(14) through 1129(a)(16) are not applicable.

Section 1129(c): The Plan Is The Only Plan

52. The Plan is the only plan before the Court in these Chapter 11 Cases.

Section 1129(d): The Principal Purpose of the Plan is Not the Avoidance of Taxes

53. The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933.

VI. The Committee Settlement is Reasonable

54. I understand that the Committee undertook an investigation of certain financing transactions that occurred in 2018 and early 2019. Following its investigation, the Committee filed its *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**"). In its Standing Motion, the Committee challenged the 2018/2019 financing transactions and the validity of the

security interests granted in connection therewith. The Committee also asserted claims against the Debtors' current and former directors and officers in connection with the 2018/2019 financing transactions.

55. Ultimately, the winning bid in the sale process—the bid of Chatham Asset Management and its affiliated funds, as reflected in the Asset Purchase Agreement approved by the Court—did not yield proceeds that satisfy or exceed the value of the Second Lien Term Loan.

56. Ultimately, in exchange for the Committee's support of the Sale Transaction and the release of claims against the Chatham Parties and the Brigade Parties, including claims related to the 2018/2019 financing transactions, the Committee, the Debtors, and the Purchaser reached the Committee Settlement. Pursuant to the Committee Settlement, in addition to the aggregate $49,152,903 cash consideration contemplated by the Asset Purchase Agreement, Chatham and its affiliated funds—the sole holder of the Second Lien Term Loan Claims—agreed to fund the GUC Recovery Trust with $1,000,000 and to leave behind certain assets for the benefit of general unsecured creditors—namely, the proceeds of the D&O Insurance policies, certain claims, including claims against the directors and officers related to the 2018/2019 financing transactions, and 77.5% of the Net Tax Refund. I estimate the value of these assets that will be used to fund the GUC Recovery Trust to range in value from $2,000,000 to $44,650,000, with a midpoint of approximately $25,000,000. Even in the high recovery scenario, which assumes receipt of the full amount sought for the Tax Refund and recoveries from the claims and D&O Insurance policies that were substantially less than the full extent of the D&O Insurance policy coverage, the value of the assets is less than the amount of the Second Lien Term Loan Claims. Even assuming a successful challenge of the Second Lien Term Loan debt other than the $60 million of new money that the Chatham Parties provided in connection

with the 2018/2019 financing transactions, the value of the GUC Recovery Trust assets is inside the value of the Second Lien Term Loan Claims.

57. Furthermore, given the value of the assets that the Chatham Parties have agreed to leave to the GUC Recovery Trust, the challenges asserted by the Committee to the full amounts of the Second Lien Term Loan and Third Lien Notes, the significant costs and uncertainty of litigation, the Court's statements at the preliminary ruling on July 6, 2020, I believe that the settlement is well within the range of reasonableness.

VII. Cause Exists to Waive the Stay of the Proposed Confirmation Order

58. I believe that good cause exists for waiving and eliminating any stay of the Proposed Confirmation Order pursuant to the Bankruptcy Rules so that the Proposed Confirmation Order will be effective immediately upon its entry. The Plan was vigorously negotiated among sophisticated parties and is anticipated to be accepted by all voting creditors. Furthermore, the Debtors have limited remaining funds to wind-down, the amount of which were extensively negotiated with the Committee and the Purchaser based on the Admin Liability Schedule. The immediate effectiveness of the Plan will allow the Debtors to avoid significant administrative and professional costs in accordance with its post-Sale Transaction closing budget, but will not will not prejudice any parties in interest.

CONCLUSION

59. As evidenced by the foregoing, I believe that the Plan and the settlements, compromises, and agreements embodied therein have been structured to accomplish the Debtors' goal of maximizing the estates' value. I believe that the Plan is fair and reasonable, has been proposed in good faith and for proper purposes, and in combination with the Sale Transaction, will maximize value for stakeholders. Accordingly, I believe that the Plan is in the best interest of

creditors and should be confirmed by the Court.

60. I hereby reserve my right to amend the testimony set forth herein as necessary at the hearing to consider confirmation of the Plan.

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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
September 9, 2020

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