

David Karl Gross  
Mara E. Michaletz  
Birch Horton Bittner & Cherot  
1127 West Seventh Avenue  
Anchorage, AK 99501  
dgross@bhb.com  
mmichaletz@bhb.com  
Telephone: 907.276.1550  
Facsimile: 907.276.3680

2016 MAY -5 PM 2:55

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA DISPATCH PUBLISHING, LLC,

Plaintiff,

v.

MCCLATCHY NEWSPAPERS, INC.,

Defendant.

Case No. 3AN-16-6390 CI

**COMPLAINT**

COMES NOW Plaintiff, Alaska Dispatch Publishing, LLC ("ADP"), by and through undersigned counsel, Birch Horton Bittner & Cherot, and hereby complains and alleges as follows:

**PARTIES AND JURISDICTION**

1. ADP is a limited liability company formed under the laws of the State of Alaska, with its principal place of business in the State of Alaska.

2. McClatchy Newspapers, Inc. ("McClatchy") is a corporation organized under the laws of the State of Delaware, with its principle place of business in a state other than Alaska.

3. Jurisdiction is proper in the Third Judicial District. Venue is proper under AS 22.10.020.

### **GENERAL ALLEGATIONS**

4. Plaintiff incorporates by reference paragraphs 1-3 of this Complaint as if fully set forth herein.

5. ADP and McClatchy entered into a Stock Purchase Agreement ("SPA"), a true and correct copy of which is attached hereto as Exhibit 1.

6. The SPA involved the sale of the Anchorage Daily News ("ADN") from McClatchy to ADP and set forth a number of obligations that McClatchy was to perform after the closing.

7. McClatchy failed to perform many of these obligations, which was a breach of the SPA and a violation of the implied-in-law covenant of good faith and fair dealing, which is implied in all contracts.

### **COUNT I** **BREACH OF CONTRACT** **PAYMENT OF WORKER'S COMPENSATION COSTS**

8. ADP incorporates by reference paragraphs 1-7 of this Complaint as if fully set forth herein.

9. Pursuant to the SPA, McClatchy was required to pay for the costs associated with all open worker's compensation claims, including the costs associated with the use of a third-party administrator.

10. For its part, ADP agreed to reimburse McClatchy for all such payments, up to \$250,000.

11. McClatchy has claimed that since the date of closing, the costs related to these worker's compensation claims have exceeded the cap of \$250,000.

12. Thus, pursuant to the SPA, ADP would be required to reimburse McClatchy the entire \$250,000 amount.

13. To date, ADP has paid McClatchy the sum of \$165,536, leaving a balance due of \$84,464.

14. However, the SPA states that ADP is only obligated to reimburse McClatchy for the claim payments that were made pursuant to the "proper performance of [McClatchy's] legal obligations" and was only required to reimburse the administrative costs that were "reasonable."

15. On a number of occasions, ADP has requested information that would substantiate the payment of the claims and administrative costs, but McClatchy has refused to provide all of the documents requested.

16. Without the requested information, ADP cannot determine if the payment of over \$250,000 related to these worker's compensation claims was proper and reasonable.

17. Because McClatchy is obligated to provide "reasonable documentation" related to these expenses, and because it has failed to do so, it has breached the ADP.

18. This breach has caused damages, the exact amount to be proven at time of trial, but including a reimbursement of the amount already paid.

**COUNT II**  
**BREACH OF CONTRACT**  
**SECURITY DEPOSIT PAID BY SUPERIOR ENERGY**

19. ADP realleges and incorporates by reference the allegations of paragraphs 1-18 as though fully restated herein.

20. When Superior Energy ("Superior") moved into the building owned by McClatchy on Northway Drive, it paid a security deposit of \$24,677, which McClatchy agreed to reimburse when Superior moved out.

21. Because this deposit was a long-term liability that existed at the time of closing, McClatchy was obligated to pay for the deposit, to the extent it was not disclosed as an "assumed liability" as a part of the SPA. However, this liability was neither disclosed nor paid.

22. When ADP sold the building to General Communications, Inc. ("GCI"), it was required to pay GCI the amount of the security deposit, transferring the obligation to reimburse Superior.

23. Because this obligation should have been paid by McClatchy, and was paid by ADP, McClatchy breached the SPA.

24. This breach has caused damages, the exact amount to be proven at time of trial, but including the \$24,677 security deposit paid by ADP.

**COUNT III**  
**BREACH OF CONTRACT**  
**COMMITMENT TO THE ASSOCIATED PRESS**

25. ADP realleges and incorporates by reference the allegations of paragraphs 1-24 as though fully restated herein.

26. Pursuant to the SPA, ADP agreed to assume all of the liabilities of ADN that were properly disclosed prior to the sale.

27. Initially, McClatchy failed to disclose the existence of an onerous and costly two-year contract with the Associated Press ("AP").

28. McClatchy tried to cure this omission just prior to the signing of the SPA, but ADP timely objected to assuming this obligation.

29. In addition, while McClatchy did disclose this obligation, it did so in a manner that would suggest that the value of the contract with AP was less than \$50,000, when in fact the obligation was in excess of \$340,000.

30. Because McClatchy failed to properly disclose the AP contract, McClatchy breached the SPA.

31. This breach has caused damages, the exact amount to be proven at time of trial, but includes an amount that is in excess of \$340,000, which was ultimately paid to AP.

**COUNT IV**  
**BREACH OF CONTRACT**  
**PROVISION OF ACCOUNTING SUPPORT**

32. ADP incorporates by reference paragraphs 1-31 of this Complaint as if fully set forth herein.

33. Pursuant to the Transition Services Agreement, which is a part of the SPA, McClatchy promised to provide accounting assistance for ninety (90) days after the sale was finalized.

34. As it turned out, the financial data delivered with the sale was incomplete and outdated. Also, ADP did not have access to the software used to store the accounting information.

35. Based on the incomplete nature of the accounting information, ADP had to retain the services of two accountants who worked for about nine months to get the finances updated and the books closed.

36. The increased cost of these two accountants was around \$100,000 and ADP also suffered financial loss as a result of not being able to properly function from a financial standpoint.

37. Because McClatchy failed to provide adequate accounting support and its failure to provide updated and accessible financial data, McClatchy breached the SPA.

38. This breach has caused damages, the exact amount to be proven at time of trial, but includes around \$100,000 for the additional accountants.

**COUNT V**  
**BREACH OF CONTRACT**  
**INABILITY TO USE LINE OF CREDIT**

39. ADP incorporates by reference paragraphs 1-38 of this Complaint as if fully set forth herein.

40. Directly after the sale, ADP sought to secure a one-year line of credit ("LOC") to assist in the payment of costs associated with the transition.

41. To acquire this LOC, ADP was required to pay various fees, totaling \$20,258.

42. However, because ADP was unable to secure financial statements due to the condition of the books, the proceeds associated with this LOC were never released and the one-year period expired without ever having used the LOC.

43. Because the inability to use the LOC was caused by the poor condition of the financials, McClatchy breached the SPA.

44. This breach has caused damages, the exact amount to be proven at time of trial, but includes \$20,258 for the fees associated with the LOC.

**COUNT VI**  
**BREACH OF CONTRACT**  
**PAYMENT OF UNEMPLOYMENT TAXES**

45. ADP incorporates by reference paragraphs 1-44 of this Complaint as if fully set forth herein.

46. Pursuant to the SPA, McClatchy agreed to pay for all of the taxes that were due and owing for the period of time prior to the closing date, which would include unemployment taxes.

47. In July, ADP paid the unemployment taxes for the second quarter, which included the month of April.

48. Because April was prior to the closing date, McClatchy is obligated to pay this amount.

49. It is calculated that these taxes would be around \$29,243, which is the pro-rata share of the taxes for the month of April.

50. Because McClatchy failed to pay these taxes, it breached the SPA.

51. This breach has caused damages, the exact amount to be proven at time of trial, but includes \$29,243 for unemployment taxes.

**COUNT VI**  
**BREACH OF IMPLIED-IN-LAW COVENANT OF GOOD FAITH AND FAIR DEALING**

52. ADP incorporates by reference paragraphs 1-51 of this Complaint as if fully set forth herein.

53. Pursuant to the implied-in-law covenant of good faith and fair dealing implied in all contracts, including the SPA, McClatchy had an obligation to act fairly in the manner in which it complied with relevant contractual terms.

54. By failing to comply with its contractual obligations, as set forth in greater detail above, McClatchy has acted in violation of the implied-in-law covenant of good faith and fair dealing.

55. This breach has caused damages, the exact amount to be proven at time of trial, but is in excess of \$100,000.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, ADP, prays for the following relief against Defendant, McClatchy:

1. Compensatory, consequential, punitive and exemplary damages in an amount to exceed \$100,000, the exact amount to be proven at trial;
2. Costs and attorneys' fees allowed by Alaska Rules of Civil Procedure 79 and 82;
3. Pre-judgment and post-judgment interest at the highest allowable rate; and
4. Such other and further relief as this Court deems just and equitable.



DATED this 5<sup>th</sup> day of May, 2016.

BIRCH HORTON BITTNER & CHEROT  
Attorneys for Plaintiff

By: 

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David K. Gross, ABA #9611065  
Mara E. Michaletz, ABA #0203007