

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING, BUT NOT DIRECTING, THE
DEBTOR TO CONTINUE AND MAINTAIN ITS EXISTING CASH
MANAGEMENT SYSTEM, BANK ACCOUNT AND BUSINESS FORMS, (II)
AUTHORIZING THE CONTINUATION OF ORDINARY-COURSE
INTERCOMPANY TRANSACTIONS, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its proposed counsel, submits this motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as Exhibit A (the “Interim Order”) and a final order, substantially in the form attached hereto as Exhibit B (the “Final Order”): (i) authorizing the Debtor to continue and maintain its existing cash management system, bank account and business forms; (ii) authorizing the continuation of ordinary-course intercompany transactions; and (iii) granting related relief. In support of this Motion, the Debtor relies upon the *Declaration of Richard T. Allorto, Jr. in Support of Chapter 11 Petition and First Day Pleadings* (the “First Day Declaration”)², filed contemporaneously with this Motion and incorporated herein by reference. In further support of this Motion, the Debtor, by and through its proposed counsel, respectfully states as follows:

¹ The last four digits of the Debtor’s taxpayer identification number are 7343. The Debtor’s principal executive office is located at 280 Park Avenue, 6th Floor East, New York, New York 10017.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.



JURISDICTION, VENUE AND STATUTORY PREDICATES

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has 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 District of Delaware, dated February 29, 2012 (Sleet, C.J.). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue of this Chapter 11 Case (as defined below) is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105(a), 345, 363, 1107, and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2015-2 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

4. Pursuant to Local Rule 9013-1(f), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

A. General Background

5. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor is operating its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the filing of this Motion, no trustee, examiner or committee has been requested or appointed in the Chapter 11 Case.

6. A detailed description of the Debtor and its business, and the facts and circumstances related to the commencement of the Chapter 11 Case are provided in the First Day Declaration, filed contemporaneously herewith. As set forth in the First Day Declaration, the Debtor is part of an alternative asset management firm offering yield solutions to retail and institutional investors (the “Company”) operated by the Debtor, its publicly-traded parent

company, Medley Management Inc. (“MDLY”), and the Debtor’s direct and indirect subsidiaries (together with MDLY, the “Non-Debtor Affiliates”).

B. The Debtor’s Bank Account and Compliance with U.S. Trustee Guidelines

7. As of the Petition Date, the Debtor has only one bank account, which is maintained with City National Bank (the “Bank”) and has an account number ending in 7483 (the “Bank Account”). As of the Petition date, the end of the day cash balance for the Bank Account is \$12,873.41.

8. The Bank Account is maintained at a bank that has executed a Uniform Depository Agreement (“UDA”) with, and is designated as an authorized depository by, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), in accordance with the Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees (the “U.S. Trustee Operating Guidelines”). In addition, the Bank Account is insured by the Federal Deposit Insurance Corporation. Accordingly, the Debtor believes that any funds deposited in the Bank Account are secure. The Debtor submits that because the Bank has been authorized by the U.S. Trustee and because the Debtor does not have any investment accounts, the Debtor has complied with section 345(b) of the Bankruptcy Code and the U.S. Trustee Operating Guidelines.

C. The Cash Management System

9. In the ordinary course of business, the Debtor maintains a cash management system utilizing the Bank Account to periodically receive and disburse funds (the “Cash Management System”) from certain of the Non-Debtor Affiliates. The chart below displays the Non-Debtor Affiliates that make periodic distributions³ to the Debtor in the ordinary course of business and the frequency to the extent foreseeable that those distributions will be made during the Chapter 11 Case.

³ Generally, funds and securities of clients advised by investment adviser affiliates of the Debtor are held in accounts in the name of such clients by qualified custodians in accordance with requirements of Section 206(4)-2 of the Investment Advisers Act of 1940, as amended. As such, client assets are not part of the Debtor’s estate, nor are they available or at risk to satisfy the debts or any obligation of the Debtor or any of its investment adviser affiliates.

Non-Debtor Affiliates	Frequency of Distributions to Debtor
SIC Advisors LLC	Periodically
Medley SMA Advisors	Periodically
MOF III Management LLC	Periodically
MOF III GP LLC	Periodically
MOF III Offshore GP LLC	Periodically
STRF Advisors LLC	Periodically
MCC Advisors	Periodically
Medley Avantor Investors LLC	Periodically
MOF II Management LLC	Periodically
MCOF Management	Semi annually
Medley Aspect Management LLC	Semi annually
Medley GP Holdings LLC	Periodically

10. The Debtor is a pass-through entity and receives the aforementioned funds throughout each year in the form of fee income and distributions. The Debtor then periodically distributes those funds in the ordinary course of business to two other Non-Debtor Affiliates: (a) MDLY (such funds, the “MDLY Funds”); and (b) Medley Capital LLC (“Medley Capital”⁴ and such funds, the “Medley Capital Funds”).

11. The distribution of these funds through the Cash Management System is directed, in part, by the Debtor’s governing documents and other agreements. Pursuant to that certain *Fourth Amended and Restated Limited Liability Company Agreement of Medley LLC* dated September 23, 2014 (the “Medley LLC Agreement”), the MDLY Funds are used to fund both MDLY’s tax and income distributions, which provide payment of MDLY’s dividends on its Class A shares and income tax payments made by MDLY.⁵ In addition, pursuant to that certain *Services*

⁴ Medley Capital is the main operating entity in the Company, referenced in the organizational chart annexed to the First Day Declaration.

⁵ The Debtor does not intend to make any income distributions to MDLY during the pendency of the Chapter 11 Case.

and Licensing Agreement dated December 12, 2017 (the “Medley Capital Agreement”), the Medley Capital Funds are used to fund payroll for the Company’s forty-eight (48) employees (all of which are employed by Medley Capital), a commercial lease obligation with Vornado Realty Trust, and other expenses—including various categories of vendor payments—in connection with the Company’s day-to-day operations.

12. The Debtor seeks to continue these arrangements post-petition in order to minimize the disruption caused by the bankruptcy filing, facilitate the reorganization of the Debtor’s business, and maximize the value of its estate and enterprise. In order to avoid disruption during this critical phase of the Chapter 11 Case, the Debtor requests authority to maintain its current Cash Management System post-petition in the ordinary course of business in a manner consistent with the Debtor’s pre-bankruptcy practices, subject to any orders of this Court.

13. The Debtor’s Cash Management System includes the necessary accounting controls to enable the Debtor to accurately and contemporaneously trace funds throughout the system and ensure that transactions are adequately documented and readily ascertainable. The Debtor currently maintains, and will continue to maintain, detailed and accurate accounting records reflecting all transfers of funds, both intercompany and otherwise. The Debtor’s cash management procedures are ordinary, usual and essential to the Debtor’s day-to-day operations. The procedures are also similar to those used by other similarly situated corporate enterprises and provide significant benefits to the Debtor, including the ability to: (i) accurately and immediately report receipts and expenditures; (ii) control corporate funds centrally; (iii) ensure the availability of funds when necessary; and (iv) reduce administrative expenses by centralizing the movement of funds. In order to lessen the disruption caused by the bankruptcy filing, and facilitate the Debtor’s reorganization, it is vital that the Debtor maintains its current system of managing cash and its existing Bank Account.

D. Intercompany Transactions

14. As described above, the Cash Management System and the Bank Account are utilized almost entirely for the Company's transfer of funds from one Non-Debtor Affiliate, through the Debtor, to another Non-Debtor Affiliate for the payment of certain Company obligations (the "Intercompany Transactions"). The Intercompany Transactions are tracked by the Debtor's accounting team and they are an essential part of the Debtor's operations.

15. More specifically, pursuant to the Medley LLC Agreement, the Debtor is contractually responsible to fund certain obligations on behalf of MDLY, including without limitation, the costs associated with a directors and officers insurance policy that also covers both the Debtor's and MDLY's officers, directors, and members,⁶ as applicable, and audit and tax services.⁷ To fund these obligations, the Debtor makes periodic transfers to MDLY and subsequently MDLY pays the aforementioned obligations. According to the Medley LLC Agreement, MDLY is not required to reimburse the Debtor for these transfers.

16. Additionally, pursuant to the Medley Capital Agreement, the Debtor may be required to make periodic transfers to Medley Capital to support the Company's continuing operations, which are provided through capital contributions that flow through the Debtor's Bank Account.

E. The Debtor's Bank Fees

17. In the ordinary course of business, the Bank charges, and the Debtor pays, honors or allows deductions from the Bank Account for, certain service charges, fees and other costs and expenses associated with maintaining the account in accordance with the applicable agreement or

⁶ Last year, MDLY's premium for the directors and officers insurance policy was \$1.435 million. The current policy is due to expire on April 29, 2021. The Debtor estimates the policy renewal will be at least \$1.435 million, and likely more, but has yet to initiate discussions with their insurance brokers.

⁷ The audit services on behalf of MDLY and the Debtor in the aggregate amount of approximately \$168,000.00 (\$134,000.00 for the Debtor and \$34,000.00 for MDLY) is due during the first few months of the Chapter 11 Case to RSM US LLP. The Debtor further pays Anderson Tax for tax services in the approximate monthly amount of \$20,000.00 on behalf of both the Debtor and MDLY.

schedule of fees applicable to the Bank Account (collectively, the “Bank Fees”), which are *de minimus* amounts. On average, the Debtor incurs approximately \$100 per month in Bank Fees.

F. The Debtor’s Business Forms

18. The Debtor uses certain business forms including, but not limited to, letterhead, purchase orders and invoices and bank check stock that existed immediately prior to the Petition Date (collectively, the “Business Forms”) in the ordinary course of business. The Debtor seeks to continue to use its existing Business Forms and checks to minimize costs in connection with the Chapter 11 Case.

RELIEF REQUESTED

19. By this Motion, the Debtor requests entry of interim and final orders: (i) authorizing the Debtor to maintain the Bank Account and Cash Management System and continue to use existing Business Forms and checks; (ii) authorizing the continuation of ordinary-course Intercompany Transactions; and (iii) granting related relief. In connection with this relief, the Debtor requests a waiver of certain of the operating guidelines established by the U.S. Trustee that require the Debtor to close its pre-petition bank account, open a new account designated as a debtor-in-possession account, and obtain new business forms and statements.

BASIS FOR RELIEF

A. Request to Maintain Bank Account and Cash Management System

20. The U.S. Trustee Operating Guidelines require chapter 11 debtors, among other things, to: (i) close all existing bank accounts and open new debtor-in-possession bank accounts; (ii) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (iii) maintain a separate debtor-in-possession account for cash collateral; and (iv) obtain checks bearing the designation “debtor-in-possession,” the bankruptcy case number, and the type of account for all debtor-in-possession checking accounts. These requirements are designed to provide a clear line of demarcation between a debtor’s pre-petition

and post-petition transactions, and operations and prevent the inadvertent post-petition payment of pre-petition claims.

21. However, because of the Cash Management System that the Debtor has in place for the transfer and distribution of funds, which ties into the Debtor's existing corporate accounting and cash forecasting reporting, enforcement of these provisions of the U.S. Trustee Operating Guidelines during the Chapter 11 Case would disrupt the Debtor's ability to efficiently administer the Chapter 11 Case. Instead, permitting the Debtor to use its existing Bank Account and Cash Management System is in the best interest of the Debtor's estate, its creditors, and other interested parties. At this early stage of the Chapter 11 Case, it is critical that the Debtor is able to centrally coordinate and consolidate management of cash to seamlessly allow for the (i) receipt of funds from the Non-Debtor Affiliates engaged in the investment activities that account for the vast majority of the Company's operating cash flows, and (ii) ordinary course Intercompany Transactions with certain Non-Debtor Affiliates. Through the Cash Management System and the Bank Account, the Debtor is able to effectively and efficiently collect, transfer, and disburse funds as needed, as well as to efficiently monitor, and control and track the movement of cash. The Debtor will work closely with its Bank to ensure that appropriate procedures are in place so that checks issued prior to the Petition Date, but presented after the Petition Date, will not be honored absent approval from the Court. The Debtor will also maintain records of all transfers—intercompany or otherwise—within the Cash Management System so that all transfers and transactions will be documented in its books and records to the same extent such information was maintained by the Debtor prior to the Petition Date.

22. To require the Debtor to establish a new bank account at the present time would be disruptive to its business and would impair its efforts to reorganize. Requiring the Debtor to adopt a new, segmented cash management system at this critical stage of this Chapter 11 Case would be expensive, create unnecessary administrative burdens, and be much more disruptive than productive. Moreover, having to open a new bank account as of the Petition Date would

unnecessarily distract the Debtor's key accounting and financial personnel whose efforts are more appropriately focused on assisting with the Debtor's restructuring.

23. Conversely, maintenance of the Bank Account and Cash Management System at the present time would avoid delays in the payment of necessary expenses and will ensure a smooth transition into chapter 11 without the inconvenience, cost, confusion and delay associated with transferring cash management operations to a new account. By allowing the continued use of its existing Bank Account and Cash Management System, the Debtor will have the unimpeded cash flow necessary to facilitate the operations of the Company and preserve the value of the Debtor's estate.

24. The Debtor also requests authority to preserve various reporting and accounting mechanisms, such as signatory authorizations and accounting systems central to the maintenance of the Bank Account. The interruption or termination of such reporting and accounting mechanisms would undermine the utility of the Bank Account. In accordance with existing practices, the Debtor will maintain strict records of all receipts and disbursements from the Bank Account during the pendency of the Chapter 11 Case and will ensure that its records properly distinguish between pre- and post-petition transactions.

25. The Debtor further requests that the Court grant relief from the U.S. Trustee Operating Guidelines to the extent they require the Debtor to make all disbursements by check. In particular, the U.S. Trustee Operating Guidelines require that all receipts and all disbursements of estate funds must be made by check with a notation representing the reason for the disbursement. If the Debtor's ability to conduct transactions by debit or wire transfer, or other similar methods is impaired, the Debtor's day-to-day activities may be unnecessarily disrupted, and their estates will incur additional costs.

26. Moreover, the Debtor requests that the Court authorize the Debtor to pay any prepetition Bank Fees on account of prepetition transactions that are charged postpetition and authorize the Bank to: (a) continue to charge the Debtor the Bank Fees; and (b) charge-back

returned items to the Bank Accounts, whether such items are dated before, on, or subsequent to the Petition Date, in the ordinary course.

27. The Debtor submits that the relief requested herein is appropriate and well within this Court's authority. Allowing the Debtor to maintain its pre-petition Bank Account and Cash Management System at the present time will minimize the negative effect of this Chapter 11 Case on the Debtor's business affairs without violating the policies underlying the Bankruptcy Code. Doing so will enable the Debtor to transition into bankruptcy in a manner that facilitates the Debtor's expeditious reorganization and maximizes the value for its estate and for the benefit of all stakeholders.

28. The Debtor's continued ordinary course use of its Cash Management System is consistent with section 363(c)(1) of the Bankruptcy Code, which allows a debtor-in-possession to "use property of the estate in the ordinary course of business." *In re Charter Co.*, 778 F.2d 617, 621 (11th Cir. 1985). The purpose of section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). Courts in this district have long recognized that strict enforcement of bank account closing requirements does not serve the purposes of chapter 11 and have approved relief similar to that requested in this Motion. *See, e.g., In re VIP Cinema Holdings, Inc.*, No. 20-10345 (MFW) (Bankr. D. Del. Feb. 20, 2020 and Mar. 9, 2020) (granting interim and final relief); *In re Earth Fare, Inc.*, No. 20-10256 (KBO) (Bankr. D. Del. Feb. 6, 2020 and Feb. 26, 2020) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Oct. 22, 2019 and Nov. 12, 2019) (same); *In re Joerns WoundCo Holdings, Inc.*, No. 19-11401 (JTD) (Bankr. D. Del. June 26, 2019 and July 25, 2019) (same); *In re Pernix Sleep, Inc.*, No. 19-10323 (CSS) (Bankr. D. Del. Feb. 21, 2019 and Mar. 22, 2019) (same); *In re J&M Sales Inc.*, No. 18-11801 (LSS) (Bankr. D. Del. August 7, 2018 and August 27, 2018) (same); *In re The Rockport Company, LLC*, No. 28-22245 (LSS) (Bankr. D. Del. May 15, 2018 and June 12, 2018) (same); and *In re Budget Grp., Inc.*, No. 02-13152 (MFW) (Bankr. D. Del. July 30, 2002 and Nov. 25, 2002) (same).

29. A similar waiver of account closing requirements is important in this Chapter 11 Case. Specifically, subject to a prohibition against honoring pre-petition checks without specific authorization from this Court, the Debtor requests that the Bank Account be deemed to be a debtor-in-possession account, and that its maintenance and continued use, in the same manner and with the same account number, styles, and document forms as those employed during the pre-petition period, be authorized. In sum, while the Debtor may seek to modify its Bank Account and Cash Management System in the future, the Cash Management System currently allows the Debtor to effectively and efficiently run its business in a streamlined manner. The Debtor believes that to facilitate the reorganization of its business, there must be minimal disruption to its administrative affairs and that the maintenance of its current Cash Management System, as provided herein, is essential to limiting disruptions to the Debtor's operations.

30. The Debtor submits that if the relief requested in this Motion is granted, the Debtor will not pay, and the Debtor's Bank will be directed not to pay, any debts incurred before the Petition Date, except as authorized by this Court.

B. Request for Authorization to Maintain Existing Business Forms

31. The U.S. Trustee Operating Guidelines and Local Rule 2015-2(a) generally require debtors in possession to obtain checks that bear the designation "debtor in possession" on such checks. To avoid disruption of the Cash Management System and unnecessary expense, pursuant to Local Rule 2015-2(a), the Debtor requests that it be authorized to continue using its existing Business Forms, substantially in the forms existing immediately before the Petition Date, without reference to its status as a debtor-in-possession. *See In re Gold Standard Baking, Inc.*, 179 B.R. 98, 105–06 (Bankr. N.D. Ill. 1995) (holding U.S. Trustee's requirement of prohibiting issuance of checks without "debtor-in-possession" designation to be unenforceable); *In re Johnson*, 106 B.R. 623, 624 (Bankr. D. Neb. 1989) (debtors not always required to obtain new checks imprinted with "Debtor-in-Possession" legend). Indeed, courts have held that while the U.S. Trustee's office is granted supervisory powers, the Bankruptcy Code does not provide the U.S. Trustee with any

power to “impose substantive or administrative requirements on debtors.” *In re Young*, 205 B.R. 894, 897 (Bankr. W.D. Tenn. 1997).

32. The Debtor submits that the authorization to use its existing Business Forms will facilitate a smooth and orderly transition into bankruptcy and minimize disruption to the Debtor’s business affairs without offending the policies underlying the Bankruptcy Code. Changing correspondence and Business Forms now would be expensive, unnecessary, and burdensome to the Debtor’s estate, disruptive to the Debtor’s business operations, and would not confer any benefit upon the Debtor, its estate, its creditors, or those conducting business with the Debtor. In accordance with Local Rule 2015-2(a), the Debtor proposes that in the event that it needs to purchase new Business Forms during the pendency of this Chapter 11 Case, such forms will include a legend referring to the Debtor’s status as a debtor-in-possession.

33. The relief requested herein is consistent with relief regularly granted by Courts in this, and other, districts. *See, e.g., In re VIP Cinema Holdings, Inc.*, No. 20-10345 (MFW) (Bankr. D. Del. Feb. 20, 2020 and Mar. 9, 2020) (granting interim and final relief); *In re Earth Fare, Inc.*, No. 20-10256 (KBO) (Bankr. D. Del. Feb. 6, 2020 and Feb. 26, 2020) (same); *In re Destination Maternity Corp.*, No. 19- 12256 (BLS) (Bankr. D. Del. Oct. 22, 2019 and Nov. 12, 2019) (same); *In re Joerns WoundCo Holdings, Inc.*, No. 19-11401 (JTD) (Bankr. D. Del. June 26, 2019 and July 25, 2019) (same); *In re Pernix Sleep, Inc.*, No. 19-10323 (CSS) (Bankr. D. Del. Feb. 21, 2019 and Mar. 22, 2019) (same); and *In re Budget Grp., Inc.*, No. 02-13152 (MFW) (Bankr. D. Del. July 30, 2002 and Nov. 25, 2002) (same).

34. For the foregoing reasons, the Debtor requests that it be authorized to use existing checks and Business Forms without being required to place the label “debtor-in-possession” on each.

C. Request for Authorization to Continue Intercompany Transactions in the Ordinary Course and Afford Administrative Expense Priority to such Intercompany Transactions

35. The Debtor's funds move through the Cash Management System as described above. Intercompany Transactions are made between and among the Debtor and the Non-Debtor Affiliates, including distributions of funds from the Debtor to MDLY and Medley Capital, in the ordinary course, as part of the Cash Management System, and pursuant to the Medley LLC Agreement and the Medley Capital Agreement. The Debtor tracks all Intercompany Transactions in its accounting system and can ascertain, trace, and account for all Intercompany Transactions.

36. Because the Debtor engages in Intercompany Transactions on a regular basis and such transactions are common among similar enterprises, the Debtor believes the Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code and, therefore, do not require the Court's approval. However, precisely because of the routine use of Intercompany Transactions by the Debtor, the Intercompany Transactions are essential to the uninterrupted operation of the Debtor's business and the preservation of the value of the Debtor's estate. Accordingly, out of an abundance of caution, the Debtor is seeking express authority to engage Intercompany Transactions postpetition consistent with its prepetition practices.

37. If the Intercompany Transactions were discontinued, the Cash Management System and related administrative controls would be materially disrupted to the Debtor's and the estate's detriment, and the Company will suffer because the Debtor's and its estate's value is directly tied to the overall performance of the Company. Accordingly, the Debtor respectfully submits that the continued performance of the Intercompany Transactions is in the best interest of the Debtor's estate and creditors, and, therefore, the Debtor should be permitted to continue undertaking such Intercompany Transactions. Since these transactions represent extensions of intercompany credit made in the ordinary course of business, the Debtor also respectfully requests the authority to continue conducting the Intercompany Transactions in the ordinary course of business. Payment

of Intercompany Transactions shall not exceed \$3.5 million on an interim basis absent further order of this Court.

38. If Intercompany Transactions are accorded administrative priority expense status, each entity utilizing funds flowing through the Cash Management System should continue to bear ultimate repayment responsibility for such ordinary course transactions, thereby ensuring that entity separateness is maintained and the Debtor only bears its actual costs of administering this Chapter 11 Case. Thus, to ensure the Debtor will not, at the expense of its creditors, fund the operations of another entity, the Debtor respectfully requests that, pursuant to sections 503(b)(1) and 364 of the Bankruptcy Code, all intercompany claims arising after the Petition Date against the Debtor by a non-debtor affiliated entity as a result of ordinary course intercompany transactions (collectively, "Intercompany Claims"), be accorded administrative priority expense status.

D. Generally the Debtor's Bank Account is in Compliance with Section 345(b) of the Bankruptcy Code

39. The Debtor's Bank Account is maintained at a banking institution that has a standing collateral agreement with the Office of the United States Trustee. Accordingly, the Debtor's Bank Account is in compliance with the requirements under section 345(b) of the Bankruptcy Code.

E. The Requirements of Bankruptcy Rule 6003(b) are Satisfied

40. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, authorizing the Debtor to: (a) continue to operate the Cash Management System; (b) honor certain prepetition obligations related thereto; (c) maintain existing Business Forms in the ordinary course of business; and (d) continue to perform Intercompany Transactions consistent with historical practice and granting the other relief requested herein is integral to the Debtor's ability to transition its operations into this Chapter 11 Case smoothly. Failure to receive such authorization and other relief during the first 21 days of this Chapter 11 Case would severely disrupt the Debtor's business at this critical juncture. For the

reasons discussed herein, the relief requested is necessary for the Debtor to maintain the going-concern value of its business for the benefit of all stakeholders. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

F. Waiver of Bankruptcy Rule 6004(h)

41. To the extent Bankruptcy Rule 6004(h) is applicable to this Motion, the Debtor also seeks a waiver of the 14-day stay under Bankruptcy Rule 6004(h).

NOTICE

42. Notice of this Motion has been given to: (a) the United States Trustee for the District of Delaware; (b) U.S. Bank National Association as indenture trustee for the Debtor’s 7.25% Senior Notes (due 2024) and 6.875% Senior Notes (due 2026); (c) the U.S. Securities and Exchange Commission; (d) the New York Stock Exchange; (e) all individuals or entities that have requested notice in this Chapter 11 Case pursuant to Bankruptcy Rule 2002; (f) the District Director of Internal Revenue for the District of Delaware and all other taxing authorities for the jurisdictions in which the Debtor conducts business; (g) all relevant state attorneys general; (h) the plan sponsor, Medley Management Inc.; (i) Strategic Capital Advisory Services; (j) MOF II GP; (k) Vornado Realty Trust; (l) City National Bank; (m) the holders of the twenty largest unsecured claims against the Debtor; and (n) pursuant to Local Rule 2002-1(e), counsel to any of the foregoing, if known.

43. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

NO PRIOR REQUEST

44. No prior request for the relief sought herein has been made to this or any other Court.

CONCLUSION

45. WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court grant the relief requested in this Motion, the Interim Order, the Final Order, and such other and further relief as the Court may deem proper.

Dated: March 7, 2021

MORRIS JAMES LLP

/s/ Brya M. Keilson

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*Proposed Counsel to the Debtor
and Debtor-in-Possession*

EXHIBIT A
Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

**INTERIM ORDER (I) AUTHORIZING, BUT
NOT DIRECTING, THE DEBTOR TO CONTINUE AND MAINTAIN ITS
EXISTING CASH MANAGEMENT SYSTEM, BANK ACCOUNT AND BUSINESS
FORMS, (II) AUTHORIZING THE CONTINUATION OF ORDINARY-COURSE
INTERCOMPANY TRANSACTIONS, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the Debtor for entry of an interim order (this “Interim Order”): (i) authorizing the Debtor to continue and maintain its existing cash management system, bank account and business forms; (ii) authorizing the continuation of ordinary-course intercompany transactions; and (iii) granting related relief; and upon consideration of the First Day Declaration; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b); and the Court having determined that granting the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors; and notice of the Motion being sufficient under the circumstances; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The Final Hearing on the Motion will be held on March __, 2021, at _____ (prevailing Eastern time). Objections or responses, if any, to the entry of a final order on the Motion shall be filed no later than 4:00 p.m. (prevailing Eastern time) on March __, 2021 (the “Objection”).

¹ The last four digits of the Debtor’s taxpayer identification number are 7343. The Debtor’s principal executive office is located at 280 Park Avenue, 6th Floor East, New York, New York 10017.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Deadline”) and served so as to be received by the Objection Deadline on proposed counsel to the Debtor, Lowenstein Sandler LLP, 1251 Sixth Avenue, 17th Floor, New York, New York 10020, Attn: Robert M. Hirsh, Eric Chafetz, and Phillip Khezri.

3. The Debtor is authorized, but not directed to continue to use the Cash Management System, including the Bank Account, in the ordinary course of business.

4. The Debtor is further authorized, but not directed to: (i) continue to use, with the same account number, the Bank Account in existence on the Petition Date, and need not comply with certain of the U.S. Trustee Operating Guidelines relating to bank accounts, including, without limitation, the requirement to establish separate accounts for cash collateral and/or tax payments; (ii) treat the Bank Account for all purposes as an account of the Debtor as debtor in possession; (iii) deposit funds in and withdraw funds from the Bank Account by all usual means, including, without limitation, by check, wire transfer and other methods; (iv) pay the Bank Fees, including, without limitation, any undisputed Bank Fees regardless of whether such Bank Fees arose before, on or after the Petition Date; and (v) otherwise perform its obligations under the documents governing the Bank Account. Within fifteen (15) days of the date of entry of this Interim Order the Debtor shall (a) contact the Bank, (b) provide the Bank with the Debtor's employer identification number and (c) identify its Bank Account as being held by a debtor in possession in a bankruptcy case.

5. The Debtor is authorized to use, in their present form, all Business Forms and other documents related to the Bank Account, without reference to its status as debtor in possession; *provided, however*, that if the Debtor exhausts its existing check stock during the pendency of this Chapter 11 Case, the Debtor will order checks with a notation indicating the designation “debtor in possession” and the case number of this Chapter 11 Case; *provided further*, that with respect to checks and other Business Forms which the Debtor or its agents print themselves, the Debtor or its agents shall begin printing “debtor in possession” or “DIP” and the case number for the Chapter 11 Case on such items within ten (10) days of the date of the entry of this Interim Order.

6. Except as otherwise expressly provided in this Interim Order, the Bank is authorized to: (i) continue to maintain, service and administer the Bank Account as an account of the Debtor as debtor in possession and provide related treasury, account and cash management services, all without interruption and in the ordinary course of business; (ii) receive, process, honor and pay, to the extent of available funds, any and all checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn on the Bank Account; *provided, however*, that any check, draft or other notification that the Debtor advises the Bank to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Bank only to the extent authorized by order of the Court; (iii) accept and honor all representations from the Debtor as to which checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items are dated before or after the Petition Date; and (iv) debit or charge the Bank Account for all undisputed Bank Fees, whether arising before, on or after the Petition Date.

7. Subject to the terms of this Interim Order, the Bank may rely upon the representations of the Debtor with respect to whether any disbursement should be honored pursuant to any order of this Court, whether or not such disbursements are dated before, on or after the Petition Date, and the Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein.

8. The relief granted in this Interim Order is extended to any new bank account opened by the Debtor after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Bank.

9. The Debtor is authorized to open any new Bank Accounts or close the existing Bank Account as it may deem necessary and appropriate; *provided* that the Debtor shall give notice within five business days to the U.S. Trustee and any statutory committee appointed in this Chapter 11 Case of the opening or closing of any Bank Account and such opening or closing shall be timely

indicated on the Debtor's monthly operating reports; *provided, further*, that the Debtor shall open any such new Bank Account at banks that have executed a UDA with the U.S. Trustee or at such banks that are willing to immediately execute such an agreement.

10. The Debtor is authorized, but not directed to continue performing Intercompany Transactions in the ordinary course of business on a postpetition basis. All Intercompany Claims arising after the Petition Date shall be identified as such and accorded administrative expense priority in accordance with sections 364(b), 503(b), and 507(a)(2) of the Bankruptcy Code. Payment of Intercompany Transactions shall not exceed \$3.5 million on an interim basis absent further order of this Court.

11. In connection with the ongoing utilization of the Cash Management System, the Debtor shall continue to maintain records with respect to all transfers of cash in the ordinary course so that all transactions (including Intercompany Transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions and shall make such records available to the U.S. Trustee upon request.

12. In the event that the Debtor opens or closes any Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases within ten (10) business days.

13. Any new domestic bank account opened by the Debtor shall be established at an institution insured by the FDIC and organized under the laws of the United States or any State therein or, in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, is a party to a UDA with the U.S. Trustee or is willing to immediately execute such an UDA.

14. As soon as practicable after entry of this Interim Order, the Debtor shall serve a copy of this Interim Order on the Bank.

15. Nothing contained herein shall permit the Bank to terminate any cash management services.

16. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

17. The Debtor is authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of this Chapter 11 Case with respect to prepetition amounts owed in connection with any Bank Fees.

18. Nothing contained in the Motion or this Interim Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of the Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

19. The Debtor is authorized to take, or cause to be taken, all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

20. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

21. The requirement of Bankruptcy Rule 6004(a) is waived.

22. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Interim Order shall be immediately effective and enforceable upon its entry.

23. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

EXHIBIT B
Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

FINAL ORDER (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CONTINUE AND MAINTAIN ITS EXISTING CASH MANAGEMENT SYSTEM, BANK ACCOUNT AND BUSINESS FORMS, (II) AUTHORIZING THE CONTINUATION OF ORDINARY-COURSE INTERCOMPANY TRANSACTIONS, AND (III) GRANTING RELATED RELIEF

Upon consideration of the motion (the “Motion”)² of the Debtor for entry of a final order (this “Final Order”): (i) authorizing the Debtor to continue and maintain its existing cash management system, bank account and business forms; (ii) authorizing the continuation of ordinary-course intercompany transactions; and (iii) granting related relief; and upon consideration of the First Day Declaration; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b); and the Court having determined that granting the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors; and notice of the Motion being sufficient under the circumstances; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.

¹ The last four digits of the Debtor’s taxpayer identification number are 7343. The Debtor’s principal executive office is located at 280 Park Avenue, 6th Floor East, New York, New York 10017.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtor is authorized, but not directed to continue to use the Cash Management System, including the Bank Account, in the ordinary course of business.

3. The Debtor is further authorized, but not directed to: (i) continue to use, with the same account number, the Bank Account in existence on the Petition Date, and need not comply with certain of the U.S. Trustee Operating Guidelines relating to bank accounts, including, without limitation, the requirement to establish separate accounts for cash collateral and/or tax payments; (ii) treat the Bank Account for all purposes as an account of the Debtor as debtor in possession; (iii) deposit funds in and withdraw funds from the Bank Account by all usual means, including, without limitation, by check, wire transfer and other methods; (iv) pay the Bank Fees, including, without limitation, any undisputed Bank Fees regardless of whether such Bank Fees arose before, on or after the Petition Date; and (v) otherwise perform its obligations under the documents governing the Bank Account.

4. The Debtor is authorized to use, in their present form, all Business Forms and other documents related to the Bank Account, without reference to its status as debtor in possession; *provided, however*, that if the Debtor exhausts its existing check stock during the pendency of this Chapter 11 Case, the Debtor will order checks with a notation indicating the designation “debtor in possession” and the case number of this Chapter 11 Case; provided further, that with respect to checks and other Business Forms which the Debtor or its agents print themselves, the Debtor or its agents shall print “debtor in possession” or “DIP” and the case number for the Chapter 11 Case on such items.

5. Except as otherwise expressly provided in this Final Order, the Bank is authorized to: (i) continue to maintain, service and administer the Bank Account as an account of the Debtor as debtor in possession and provide related treasury, account and cash management services, all without interruption and in the ordinary course of business; (ii) receive, process, honor and pay, to

the extent of available funds, any and all checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn on the Bank Account; *provided, however,* that any check, draft or other notification that the Debtor advises the Bank to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Bank only to the extent authorized by order of the Court; (iii) accept and honor all representations from the Debtor as to which checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items are dated before or after the Petition Date; and (iv) debit or charge the Bank Account for all undisputed Bank Fees, whether arising before, on or after the Petition Date.

6. Subject to the terms of this Final Order, the Bank may rely upon the representations of the Debtor with respect to whether any disbursement should be honored pursuant to any order of this Court, whether or not such disbursements are dated before, on or after the Petition Date, and the Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein.

7. The relief granted in this Final Order is extended to any new bank account opened by the Debtor after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Bank.

8. The Debtor is authorized to open any new Bank Accounts or close the existing Bank Account as it may deem necessary and appropriate; *provided* that the Debtor shall give notice within five business days to the U.S. Trustee and any statutory committee appointed in this Chapter 11 Case of the opening or closing of any Bank Account and such opening or closing shall be timely indicated on the Debtor's monthly operating reports; *provided, further,* that the Debtor shall open

any such new Bank Account at banks that have executed a UDA with the U.S. Trustee or at such banks that are willing to immediately execute such an agreement.

9. The Debtor is authorized, but not directed to continue performing Intercompany Transactions in the ordinary course of business on a postpetition basis. All Intercompany Claims arising after the Petition Date shall be identified as such and accorded administrative expense priority in accordance with sections 364(b), 503(b), and 507(a)(2) of the Bankruptcy Code.

10. In connection with the ongoing utilization of the Cash Management System, the Debtor shall continue to maintain records with respect to all transfers of cash in the ordinary course so that all transactions (including Intercompany Transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions and shall make such records available to the U.S. Trustee upon request.

11. In the event that the Debtor opens or closes any Bank Accounts, such opening or closing shall be timely indicated on the Debtor's monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases within ten (10) business days.

12. Any new domestic bank account opened by the Debtor shall be established at an institution insured by the FDIC and organized under the laws of the United States or any State therein or, in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, is a party to a UDA with the U.S. Trustee or is willing to immediately execute such an UDA.

13. As soon as practicable after entry of this Final Order, the Debtor shall serve a copy of this Final Order on the Bank.

14. Nothing contained herein shall permit the Bank to terminate any cash management services.

15. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

16. The Debtor is authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of this Chapter 11 Case with respect to prepetition amounts owed in connection with any Bank Fees.

17. Nothing contained in the Motion or this Final Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of the Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

18. The Debtor is authorized to take, or cause to be taken, all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

19. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

20. The requirement of Bankruptcy Rule 6004(a) is waived.

21. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Final Order shall be immediately effective and enforceable upon its entry.

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.