

**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 AN ORDER PURSUANT TO
11 U.S.C. §§ 105, 327, 328, AND 330 FOR AUTHORITY TO EMPLOY AND
COMPENSATE PROFESSIONALS UTILIZED IN THE ORDINARY
COURSE OF BUSINESS *NUNC PRO TUNC* TO THE PETITION DATE**

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 order pursuant to sections 105, 327, 328, and 330 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 2014-1 of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtor to employ and compensate professionals utilized in the ordinary course of business *nunc pro tunc* to the Petition Date (as defined below). In support of the Motion, the Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion 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 12, 2012 (Sleet, C.J.). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1.

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.



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

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").

6. The Debtor continues to operate its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in the Chapter 11 Case.

7. Detailed information regarding the Debtor's business and the events leading to the Chapter 11 Case is set forth in the *Declaration of Richard T. Allorto, Jr. in Support of Chapter 11 Petition and First Day Pleadings (the "First Day Declaration")*, filed contemporaneously herewith.

RELIEF REQUESTED

8. By this Motion, the Debtor respectfully seeks entry of an order, pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1, authorizing the retention of those professionals, identified on **Exhibit A** to this Motion, that are utilized by the Debtor in the ordinary course of business (the "Ordinary Course Professionals"), *nunc pro tunc* to the Petition Date, without the submission of affidavits and the filing of separate retention applications and orders for each such individual professional. The Debtor also seeks authority to employ additional Ordinary Course Professionals, not listed on **Exhibit A**, pursuant to the procedures described below.

9. The Debtor seeks to continue to employ the Ordinary Course Professionals to render services to the Debtor's estate similar to those services rendered by such professionals prior to the Petition Date. These professionals perform a range of services, including, among others, legal and audit work, that impact, and are very important to, the Debtor's day-to-day

operations. It is essential that the employment of the Ordinary Course Professionals be continued on an ongoing basis so as to avoid disruption of the Debtor's day-to-day business operations.

10. Accordingly, the Debtor requests this Court's authorization to pay each Ordinary Course Professional, upon the submission to, and approval by, the Debtor of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and disbursements actually incurred, without a prior Motion to the Court, 100% of the fees and disbursements requested, but no more than \$25,000 per month based on a rolling three-month average, for each Ordinary Course Professional (the "Ordinary Course Professional Fee Cap"). The Debtor reserves the right, however, to seek authority to increase the Ordinary Course Professional Cap if necessary under the circumstances upon appropriate notice.

11. In the event that an Ordinary Course Professional's fees and disbursements exceed the Ordinary Court Professional Fee Cap, such professional will be required to comply with the *Order Pursuant to 11 U.S.C. §§ 105(a) and 331, Fed. R. Bankr. P. 2016(a) and Local Rule 2016-2 Establishing Procedures for (I) Allowance of Interim Compensation and Reimbursement of Expenses of Professionals Retained By Order of This Court and (II) Reimbursement of Expenses Incurred By Statutory Committee Members* entered in the Chapter 11 Case (the "Interim Compensation Order").

12. In addition, within 30 days of the later of the entry of an order granting this Motion or the engagement of such professional by the Debtor, the Debtor will file with the Court: (i) a declaration from each Ordinary Course Professional, substantially in the form annexed to this Motion as **Exhibit B**, certifying that such professional does not represent or hold any interest adverse to the Debtor or its estate with respect to the matter on which such professional is to be employed; and (ii) a completed retention questionnaire by each Ordinary Course Professional substantially in the form annexed to this Motion as **Exhibit C**, and serve the foregoing declaration and retention questionnaire upon: (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) the holders of the twenty largest unsecured claims against the Debtor; and (m) pursuant to Local Rule 2002-1(e), counsel to any of the foregoing, if known.

13. The Debtor reserves the right to supplement the list of Ordinary Course Professionals from time to time, as necessary, in its business judgment. In such event, the Debtor proposes to file a notice with the Court stating that the Debtor intends to employ additional Ordinary Course Professionals and to serve that notice upon: (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) the holders of the twenty largest unsecured claims against the Debtor; and (m) pursuant to Local Rule 2002-1(e), counsel to any of the foregoing, if known.

14. Although certain of the Ordinary Course Professionals may hold prepetition unsecured claims against the Debtor, the Debtor does not believe that any of the Ordinary Course Professionals holds or represents an interest adverse to the Debtor, its creditors, or other parties-in-interest on the matters for which they are proposed to be employed. Thus, all of the Ordinary

Course Professionals proposed to be retained meet the requirements of section 327(e) of the Bankruptcy Code.

15. All non-Ordinary Course Professionals sought to be retained by the Debtor in connection with the Chapter 11 Case will file and serve separate retention applications pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1. Such professionals shall be retained, employed and compensated in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, any relevant Local Bankruptcy Rules, the *Guidelines for Reviewing Applications for Compensation* filed under 11 U.S.C. § 330, and any orders of the Court.

16. The Debtor submits that the employment of the Ordinary Course Professionals, and the payment of monthly compensation on the basis set forth above are in the best interest of its chapter 11 estate and creditors. The relief requested will save the estate the substantial expenses associated with applying separately for the employment of each professional. Further, the requested relief will avoid additional fees for the preparation and prosecution of interim and final fee applications. Likewise, the procedure outlined above will relieve the Court and the U.S. Trustee of the burden of reviewing numerous fee applications involving relatively small amounts of fees and expenses, while ensuring the appropriate oversight of the Debtor's use of the Ordinary Course Professionals.

17. Section 327(a) of the Bankruptcy Code provides that a debtor may employ certain professionals that do not hold any interests adverse to the estate and are disinterested. Section 327(e) of the Bankruptcy Code permits a debtor to employ an attorney who has represented the debtor to represent the debtor for a purpose "other than to represent [the debtor] in conducting the case," provided that attorney does not hold an interest adverse to the estate with respect to its proposed representation of the debtor. The Court may authorize the employment of a professional person on "reasonable terms and conditions." 11 U.S.C. § 328(a). The Court may award reasonable fees and expenses to a professional subject to the foregoing sections of the Bankruptcy Code, upon notice and a hearing. 11 U.S.C. § 330.

18. The Debtor submits that the retention of the Ordinary Course Professionals and the payment of compensation and reimbursement amounts to them on the basis set forth herein is in the best interest of its estate and other parties in interest. Courts in this District have routinely granted similar relief in other Chapter 11 cases. *See, e.g., In re Francesca's Holdings Corporation*, Case No. 20-13076 (BLS) (Bankr. D. Del. Jan. 4, 2021); *In re Exide Holdings, Inc.*, Case No. 20-11157 (CSS) (Bankr. D. Del. June 26, 2020); *In re The Hertz Corp.*, Case No. 20-11218 (MFW) (Bankr. D. Del. June 24, 2020); *In re Akorn, Inc.*, Case No. 20-11177 (KBO) (Bankr. D. Del. June 23, 2020); and *In re Forever 21, Inc.*, Case No. 19-12122 (KG) (Bankr. D. Del. Dec. 3, 2019).

NOTICE

19. 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) the holders of the twenty largest unsecured claims against the Debtor; and (m) pursuant to Local Rule 2002-1(e), counsel to any of the foregoing, if known.

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

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form submitted herewith, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: March 7, 2021

MORRIS JAMES LLP

/s/ Brya M. Keilson

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-and-

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E-mail: pkhezri@lowenstein.com

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

EXHIBIT A

Ordinary Course Professionals

Ordinary Course Professional / Mailing Address	Description
Gibson Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306	Legal Services
RSM US LLP Attn: Michael Strype 333 Thornall Street, Sixth Floor Edison, NJ 08837	Audit Services

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

DECLARATION AND DISCLOSURE STATEMENT OF _____, ON BEHALF OF _____

_____, pursuant to 28 U.S.C. section 1746, deposes and says:

1. I am a [INSERT TITLE] of _____, located at _____ (the "**Firm**").

2. The Debtor has requested that the Firm provide _____ services to the Debtor, and the Firm has consented to provide such services. [If legal services, please specify the area of law].

3. The Firm may have performed services in the past and may perform services in the future, in matters unrelated to the Chapter 11 Case, for persons that are parties in interest in the Debtor's Chapter 11 Case. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be claimants or other parties in interest in the Chapter 11 Case. The Firm does not and will not perform services for any such persons in connection with the Chapter 11 Case. In addition, the Firm does not have any relationship with any such persons, their attorneys, or accountants that would be adverse to the Debtor or its estate.

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.

4. Neither I nor any principal of or professional employed by the Firm has agreed to share or will share any portion of the compensation to be received from the Debtor with any other person other than the principals and regular employees of the Firm.

5. Neither I nor any principal of or professional employed by the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtor or its estate with respect to the matters on which the Firm is to be employed.

6. The Firm [did/did not] provide services to the Debtor prior to the March 7, 2021 petition date.

7. If the Firm is not a law firm, or a law firm that did not represent the Debtor prior to the Petition Date, it has agreed to waive any claim for pre-petition amounts owed.

8. [The Debtor owes the Firm \$ _____ for prepetition services.]

9. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtor, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this declaration if necessary.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2021

Name:
Title:

Exhibit C

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:

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RETENTION QUESTIONNAIRE

TO BE COMPLETED BY PROFESSIONALS EMPLOYED BY DEBTOR

Do not file this Questionnaire with the Court. Please remit it to the following:

LOWENSTEIN SANDLER LLP

Attn: Robert M. Hirsh, Esq.

Eric Chafetz, Esq.

Phillip Khezri, Esq.

1251 Sixth Avenue, 17th Floor

New York, New York 10020

(973) 597-2500 (Telephone)

(973) 597-2400 (Facsimile)

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.

If more space is needed, please complete on a separate page and attach.

1. Name and address of firm:

2. Date of retention:

3. Type of services provided (accounting, legal, etc.):

4. Brief description of services to be provided:

5. Arrangements for compensation (hourly, contingent, etc.)

(a) Average hourly rate (if applicable):

(b) Estimated average monthly compensation based on prepetition retention (if firm was employed prepetition):

6. Prepetition claims against the Debtor held by the firm:

Amount of claim: _____

Date claim arose: _____

Source of claim: _____

7. Prepetition claims against the Debtor held individually by any member, associate, or professional employee of the firm:

Name: _____

Status: _____

Amount of claim: _____

Date claim arose: _____

Source of claim: _____

8. Disclose the nature and provide a brief description of any interest adverse to the Debtor or to its estate with respect to the matters on which the above-named Firm is to be employed:

9. Disclose whether the Firm provided prepetition services:

10. If the Firm is not a law firm, disclose whether it has agreed to waive any claim for prepetition amounts owed:

11. Name and title of individual completing this Retention Questionnaire:

Dated: _____, 2021

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

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

ORDER PURSUANT TO 11 U.S.C. §§ 105, 327, 328, AND 330 AUTHORIZING THE DEBTOR TO EMPLOY AND COMPENSATE PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS *NUNC PRO TUNC* TO THE PETITION DATE

Upon consideration of the motion (the “Motion”)² of the Debtor for entry of an order pursuant to sections 105, 327, 328, and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1 of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtor to employ and compensate Ordinary Course Professionals utilized in the ordinary course of business *nunc pro tunc* to the Petition Date; 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)(2); 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, as set forth herein.
2. To the extent deemed necessary or appropriate by the Debtor, the Debtor is authorized to employ the Ordinary Course Professionals identified in **Exhibit A** to the Motion, in the ordinary course of its business, *nunc pro tunc* to the Petition Date.

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.

3. The Debtor is authorized and empowered to pay compensation and reimburse expenses to each of the Ordinary Course Professionals retained pursuant to this Order in the customary manner in the full amount billed by each Ordinary Course Professional upon receipt of reasonably detailed invoices indicating the nature of the services rendered and calculated in accordance with such professional's standard billing practices, up to the Ordinary Course Professional Fee Cap (as defined herein) without further order of the Court.

4. In the event that an Ordinary Course Professional's fees and disbursements exceed \$25,000 per month for each Ordinary Course Professional (the "Ordinary Course Professional Fee Cap"), and the excess amount is not waived, then such Ordinary Course Professional must file a fee application with this Court for approval of such fees and expenses in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Fee Guidelines promulgated by the Executive Office of the United States Trustee, and any order of the Court establishing procedures for monthly compensation and reimbursement of expenses of estate professionals. If the fees owed to an Ordinary Course Professional exceeds the Ordinary Course Professional Fee Cap for more than one three month period, the Debtor will file a retention application for such Ordinary Course Professional.

5. The Debtor's right to dispute any invoices submitted by an Ordinary Course Professional shall not be affected or prejudiced in any manner by the foregoing paragraph.

6. Within 30 days of the later of the entry of this Order or the engagement of such professional by the Debtor, the Debtor shall file with the Court (i) a declaration from each Ordinary Course Professional, substantially in the form annexed to the Motion as **Exhibit B**, certifying that such professional does not represent or hold any interest adverse to the Debtor or its estate with respect to the matter on which such professional is to be employed and (ii) a completed retention questionnaire by each Ordinary Course Professional substantially in the form annexed to the Motion as **Exhibit C** and serve the foregoing declaration and questionnaire upon: (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) the holders of the twenty largest unsecured claims against the Debtor; and (m) pursuant to Local Rule 2002-1(e), counsel to any of the foregoing, if known (collectively, the “Notice Parties”).

7. The Notice Parties shall have twenty (20) days from the receipt of such professional’s declaration and completed retention questionnaire in which to object to the retention of such professional (the “Objection Deadline”).

8. The Debtor is authorized to supplement the list of Ordinary Course Professionals from time to time as the need arises, by filing a notice with the Court and serving such notice upon the Notice Parties, along with completed declarations of disinterestedness (the “Declaration”). Upon receipt of the same, the Notice Parties shall have twenty (20) days to object to the retention of such professional.

9. If a timely objection is filed to the proposed retention of an Ordinary Course Professional hereunder, and any such objection cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court.

10. If no objection is submitted by the Objection Deadline, the Debtor is hereby authorized to employ and to retain the Ordinary Course Professional without further order by this Court.

11. The Debtor shall not pay an Ordinary Course Professional any amounts for invoiced fees and expense reimbursement until its Declaration has been filed with the Court and the Objection Deadline has passed and, if an objection is filed within the Objection Deadline, after the Court signs an order overruling such objection, or such objection is withdrawn or otherwise resolved.

12. All Ordinary Course Professionals who are not law firms and law firm Ordinary Course Professionals who did not represent the Debtor prior to the Petition Date who are employed pursuant to this Order shall, once their employment is effective pursuant to this Order, be deemed to have waived any and all pre-petition claims they may have against the Debtor. Such Ordinary Course Professionals shall also include a statement of disinterestedness in their Declaration.

13. Every 90 days (commencing on the first day of the month following the ninetieth day after entry of this Order), the Debtor shall file with the Court a report summarizing payments to Ordinary Course Professionals (an "Ordinary Course Professionals Report"), and serve the Ordinary Course Professionals Report on the Notice Parties.

14. The Ordinary Course Professionals Report shall include the following information for each Ordinary Course Professional receiving payment from the Debtor during the applicable Reporting Period (as defined below): (i) the name of such Ordinary Course Professional; (ii) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional for each month during the preceding 90 day period ending at the conclusion of the prior calendar month (the "Reporting Period"); and (iii) a general description of the services rendered by such Ordinary Course Professional.

15. This Order shall not apply to any professional retained by the Debtor pursuant to a separate order of the Court.

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