

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

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

**DECLARATION OF RICHARD T. ALLORTO, JR. IN
SUPPORT OF CHAPTER 11 PETITION AND FIRST DAY PLEADINGS**

I, Richard T. Allorto, Jr., pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Chief Financial Officer of Medley LLC (the “Debtor”), the above-captioned debtor and debtor-in-possession. I have been the Debtor’s Chief Financial Officer since joining the Company (defined below) in July 2010. I am also the Chief Financial Officer of certain non-debtor affiliates of the Debtor, including MDLY and Medley Capital (each as defined and described below).

2. I submit this declaration (the “Declaration”) in support of the voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and the motions and applications (collectively, the “First Day Pleadings”) for related relief filed concurrently herewith in the above-captioned case (the “Chapter 11 Case”) on the date hereof (the “Petition Date”). If called upon, I would and could testify competently to the facts set forth herein.

3. In my capacity as Chief Financial Officer, I am generally familiar with the Debtor’s day-to-day operations, business and financial affairs, and books and records.

4. Except as otherwise indicated, the facts set forth in this Declaration are based upon

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.



my personal knowledge of the Debtor's business operations and/or the Debtor's business generally, information learned from my review of relevant documents, and/or information provided to me by the Debtor's advisors or other members of management or employees of the Company (defined below). Unless otherwise indicated, the financial information contained in this Declaration is unaudited and subject to revision.

5. I have reviewed the First Day Pleadings and am generally familiar with the relief sought in each of the First Day Pleadings. To the best of my knowledge and insofar as I have been able to ascertain after reasonable inquiry, I believe that approval of the relief requested in each of the First Day Pleadings is critical and necessary to minimize disruption to the Debtor's business, permit an effective transition into and exit from chapter 11, and preserve and maximize the value of the Debtor's estate for the benefit of all stakeholders.

6. I further believe that absent authority to make certain essential payments and otherwise continue conducting ordinary course business operations as described herein and in the First Day Pleadings, the Debtor would suffer immediate and irreparable harm to the detriment of its estate, creditors, and other stakeholders.

7. To familiarize the Court with the Debtor's business and the relief presently sought by the Debtor, this Declaration is organized into four sections. **Part I** provides background information with respect to the Debtor's business operations, corporate history, and organizational structure. **Part II** provides a summary of the Debtor's prepetition capital structure. **Part III** describes the circumstances leading to the commencement of this Chapter 11 Case and previews the Debtor's proposed chapter 11 plan confirmation process. **Part IV** summarizes the relief requested in and the facts supporting each of the First Day Pleadings.

I. BACKGROUND

A. Overview of the Debtor's Business and Organizational Structure

8. The Debtor is headquartered in New York City and incorporated in Delaware. The Debtor is the direct subsidiary of Medley Management Inc. ("MDLY"), a public company traded on the New York Stock Exchange under the symbol, "MDLY." As discussed in more detail below, MDLY owns approximately 98% of the membership interests of the Debtor and is its sole managing member.²

9. The Debtor, MDLY, and the Debtor's direct and indirect subsidiaries (collectively, the "Company"), operate an alternative asset management firm offering yield solutions to retail and institutional investors. A chart illustrating the Debtor's direct and indirect parents and subsidiaries is attached hereto as Exhibit A. The Company was founded in 2006. The Debtor was formed on October 27, 2010 in connection with a reorganization of the Company's corporate structure. The Company focuses its business on credit-related investment strategies, historically originating senior secured loans to private middle market companies in the United States that have revenues between \$50 million and \$1 billion. As of the Petition Date, the Company has approximately \$1.3 billion in Fee Earning Assets Under Management ("FEAUM").³

10. The Company provides investment management services to a permanent capital vehicle, long-dated private funds, and separately managed accounts, and serves as the general partner to the private funds. The business is currently comprised of one reportable segment, the investment management segment, through which the Company conducts substantially all of its

² MDLY was incorporated on June 13, 2014 and commenced operations on September 29, 2014 upon completion of its initial public offering ("IPO").

³ The Debtor calculates its FEAUM on a quarterly basis. The Debtor's estimated FEAUM as of the Petition Date is based on the most recent quarterly calculation as of the end of 2020.

business.

11. The Debtor conducts all of its business through its consolidated, non-debtor subsidiaries. The vast majority of the Debtor's day-to-day operations are conducted through its direct subsidiary, Medley Capital LLC ("Medley Capital"). As of the date hereof, Medley Capital employs all of the Company's 48 employees (the Debtor has no employees), is the counterparty to substantially all of the Company's vendor contracts, and is the lessee under the Company's commercial lease for its corporate headquarters.

12. The Debtor does not earn revenues directly from the Company's clients but provides advisory services to those clients through certain of its non-debtor subsidiaries (collectively, the "Advisors").⁴ The Advisors are generally organized for the purpose of providing services specific to a particular client or subset of clients. These services are typically governed by an investment management agreement (an "IMA") or other documents that describe the terms of the engagement of the Advisor by the respective client(s). The IMAs or other governing documents are typically subject to the client's right to terminate the agreement at will. Each of the Advisors is registered with the U.S. Securities and Exchange Commission and regulated under the Investment Advisers Act of 1940, as amended.

13. For the year ended December 31, 2020, the Advisors that were the largest revenue-generators for the Company were SIC Advisors, LLC ("SIC Advisors") and MCC Advisors, LLC ("MCC Advisors"). SIC Advisors and MCC Advisors generated revenues of approximately

⁴ 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.

\$12,200,000⁵ and \$6,900,000, respectively, during the year ended December 31, 2020, and respectively represented 43.8% and 14.5% of the aggregate amount of the Company's FEAUM. However, as discussed further below, effective on January 1, 2021, Medley Capital Corporation created an internalized management structure that replaced the services provided under the IMA and administration agreements with MCC Advisors.

14. The Advisors earn fees based on the terms of the IMA or other contract(s) entered into with each of their respective clients. With respect to clients that are private funds or separately managed accounts, these fees generally include management fees, administrative fees, and certain incentive fees. The management fees are calculated quarterly at an annual rate of 0.75% to 2.00% of the value of capital accounts or the value of the investments held by the client, and are paid in cash in advance or in arrears depending on each specific contract. The administrative fees that are payable by each client are set forth in the IMA or other contract(s) for each client and are payable quarterly in arrears. Finally, the incentive fees generally are in an amount equal to 15% to 20% of the realized cash derived from an investment, subject to a cumulative annualized preferred return to the client, as applicable of 6% to 8%, which is in turn subject to a 50% to 100% catch-up allocation to the Advisor. Specifically with respect to SIC Advisors' client, Sierra Income Corporation, SIC Advisors generally receives (i) a base management fee calculated quarterly at an annual rate of 1.75% of gross assets, payable quarterly in arrears, (ii) a subordinated incentive fee on income, and (iii) an incentive fee on capital gains.

15. In turn, and as described more fully in the Cash Management Motion (defined below), the Advisors provide periodic ordinary course fee income and distributions to the Debtor.

⁵ In addition to the above, SIC Advisors' client, Sierra Income Corporation, also paid administrative fees to Medley Capital in the amount of approximately \$2,300,000 in 2020.

The Debtor subsequently makes ordinary course capital contributions of those amounts throughout the Company—primarily to MDLY and Medley Capital—to fund payroll, insurance, withholding and other taxes and other operating expenses. The Debtor’s relationship with MDLY, including its funding obligations to MDLY, is governed by that certain Fourth Amended and Restated Limited Liability Company Agreement of Medley LCC, dated as of September 23, 2014. The Debtor’s relationship with Medley Capital, including its funding obligations to Medley Capital, is governed by that certain Services and Licensing Agreement, dated as of December 12, 2017.

16. The Company’s senior management team has on average over 20 years of experience in credit, including originating, underwriting, principal investing and loan structuring. The Company generated approximately \$31,700,000 in revenue in 2020. The Debtor had approximately \$5,422,369 in assets and, as discussed more fully below, approximately \$140,752,116 in liabilities as of the end of 2020.

II. DEBTOR’S PREPETITION CAPITAL STRUCTURE

17. In light of the nature of the Debtor’s corporate structure, the Debtor has a streamlined capital structure with no secured debt and minimal trade debt. The Debtor’s prepetition indebtedness consists of (i) obligations owing under certain senior unsecured notes issued by the Debtor in 2016 and 2017, as described further below (the “Notes Claims”), (ii) the Strategic Claim (defined below), and (iii) certain other claims or potential liabilities that may periodically arise in connection with the ordinary course of the Debtor’s business and its role within the Company. A summary of the Debtor’s capital structure is provided below.

i. The Notes Claims

18. On August 9, 2016 and October 18, 2016, , the Debtor issued debt consisting of \$53,600,000 in aggregate principal amount of senior unsecured notes due in 2026 at a stated coupon rate of 6.875% (the “2026 Notes”). The 2026 Notes are listed on the New York Stock

Exchange and trade thereon under the trading symbol “MDLX.” The aggregate principal amount outstanding on the 2026 Notes is approximately \$53,600,000 as of the Petition Date.

19. Further, on January 18, 2017 and February 22, 2017, the Debtor issued \$69,000,000 million in aggregate principal amount of senior unsecured notes due in 2024 at a stated coupon rate of 7.25% (the “2024 Notes,” and collectively with the 2026 Notes, the “Notes”). The 2024 Notes are also listed on the New York Stock Exchange and trade thereon under the trading symbol “MDLQ.” The aggregate principal amount outstanding on the 2024 Notes is approximately \$69,000,000 as of the Petition Date.

20. Prior to the Notes issuances, the Debtor had been indebted as borrower under a term loan facility with certain institutional lenders. The Debtor utilized the net proceeds of the Notes issuances to pay off the balance of the Company’s outstanding indebtedness under the term loan facility. The balance of the net proceeds were used for general corporate purposes.

21. The quarterly interest expense on the 2026 notes is approximately \$900,000. The quarterly interest expense on the 2024 Notes is approximately \$1,300,000. The Debtor has not paid the quarterly interest payment that came due on the 2024 Notes on February 1, 2021, or the quarterly interest payment that came due on the 2026 Notes on February 16, 2021. The indentures governing each of the Notes provide the Debtor with a 30-day grace period, through March 3, 2021 and March 18, 2021 for the 2024 Notes and the 2026 Notes, respectively, before either of the missed payments may be treated as an event of default under the terms of the Notes.

ii. The Strategic Claim

22. Strategic Capital Advisory Services, LLC (“Strategic”) was a minority interest holder in SIC Advisors. In order to purchase Strategic’s minority interest, the Debtor entered into a letter agreement, dated as of December 31, 2018 (the “Letter Agreement”) with Strategic,

pursuant to which the Debtor provided consideration in the amount of \$14,000,000 (the “Strategic Obligations”) to redeem Strategic’s minority interest in SIC Advisors. The Letter Agreement provided that the Strategic Obligations were payable in sixteen (16) equal quarterly installments, from January 15, 2019 through August 5, 2022.

23. Due to the ongoing economic impact of COVID-19, the Company did not make the installment payment that was due in May 2020, and commenced discussions with Strategic in an attempt to defer or restructure the remaining installments under the Letter Agreement. As a result of these discussions, the Debtor and Strategic entered into an amendment to the original Letter Agreement, dated as of August 4, 2020 (the “Amended Letter Agreement”), which, among other things, revised the payment terms under the original Letter Agreement. Pursuant to the Amended Letter Agreement, the Debtor and Strategic agreed that the \$8,750,000 remaining balance owing by the Debtor to Strategic would be paid according to the following schedule:

Payment Date	Payment Amount
August 5, 2020	\$700,000
November 5, 2020	\$350,000
February 5, 2021	\$350,000
May 5, 2021	\$350,000
August 5, 2021	\$1,000,000
November 5, 2021	\$1,000,000
February 5, 2022	\$1,000,000
May 5, 2022	\$1,000,000
August 5, 2022	\$1,000,000

November 5, 2022	\$1,000,000
February 5, 2023	\$1,000,000
TOTAL	\$8,750,000

24. As of the Petition Date, the outstanding balance owed by the Debtor to Strategic is \$7,700,000 (the “Strategic Claim”). The Debtor did not pay the installment that came due on February 5, 2021.

iii. Other Potential Liabilities

25. In addition to the foregoing, the Debtor may incur obligations or become subject to other potential liabilities in the ordinary course of its business. Among other things, the Debtor may incur obligations owing to the Company’s professionals and advisors and certain other service providers in the ordinary course of its business. Additionally, the Debtor may also become engaged in litigation. The Debtor is currently named as a defendant in a putative class action captioned, *Solomon et al. v. American Web Loan, Inc., et al.* (E.D. Va., Case No. 4:17-cv-145)—though it appears possible that the Debtor will not be required to pay any judgment or settlement amounts in connection with this litigation, the outcome of the litigation is yet to be determined. Moreover, the Debtor is the guarantor on the commercial property lease with Vornado Realty Trust pursuant to which Medley Capital leases the Company’s executive office space.

26. Furthermore, on September 17, 2019 the staff of the SEC’s Division of Enforcement (the “Staff”) informed the Company that it was conducting an informal inquiry and requested the production and preservation of certain documents and records. The Company fully cooperated with the Staff’s informal inquiry and began voluntarily providing the Staff with any requested documents.

27. By letter dated December 18, 2019, the Staff advised the Company that a formal

order of private investigation (the “Order”) had been issued and that the informal inquiry was now a formal investigation. The Order indicated that the investigation relates to Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940, Rule 206(4)-8, Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 thereunder. The Company continues to cooperate fully with the investigation.

28. The Company cannot predict the outcome of, or the timeframe for, the conclusion of this investigation. An adverse outcome could have a material effect on the Company’s business, financial condition, or results of operations.

iv. Equity Holders

29. As of the Petition Date, MDLY holds approximately 98% of the equity interests of the Debtor. The balance of the Debtor’s equity interests are held by Freedom 2021 LLC. Freedom 2021 LLC is controlled by Seth Taube.

III. EVENTS LEADING TO THE FILING OF THE CHAPTER 11 CASE AND THE DEBTOR’S PROPOSED CHAPTER 11 PLAN AND SOLICITATION PROCEDURES

30. As of December 31, 2018, the Company had approximately \$2,800,000,000 in FEAUM, and total revenues of approximately \$56,500,000.

31. During 2018 and 2019, the Company pursued a number of strategic transactions, including the contemplated tri-party mergers with Medley Capital Corporation (“MCC”) ⁶ and Sierra Income Corporation (“Sierra,” and collectively with the Company and MCC, the “Merger Parties”), which were clients of Advisors at the time. ⁷ After the Merger Parties executed a merger agreement, in February 2019, stockholders commenced a stockholder class action against MCC in

⁶ As of January 1, 2021, MCC changed its name to PhenixFIN Corporation.

⁷ As set forth in paragraphs 13 and 32 herein, MCC is no longer a client of Advisors.

the Delaware Chancery Court which was resolved in December 2019. The Merger Parties continued to pursue the merger transaction while the litigation was pending. No merger transaction ultimately occurred. At the same time, a reduction in leverage and declines in fund values at the Company's permanent capital vehicles (Sierra and MCC), as well as investment realizations and changes in fund values at the Company's long-dated private funds and separately managed accounts resulted in further declines in FEAUM. By December 31, 2019, the Company's FEAUM was \$2,100,000,000 and revenues were approximately \$48,800,000, a decline of 23.2% and 13.6%, respectively.

32. The Company experienced significant additional FEAUM declines in 2020. The COVID-19 pandemic contributed to a material decline in FEAUM in the first half of 2020. Further, as noted above, on November 18, 2020, the board of directors of MCC Advisors' client, MCC, approved the adoption of an internalized management structure effective January 1, 2021. As a result, the MCC Advisors' IMA and administrative agreement with MCC expired on December 31, 2020, resulting in the loss of this client. These factors contributed to an approximate 38% annual decline (2020 vs. 2019) in the Company's FEAUM to approximately \$1,300,000,000.

33. These factors also resulted in a liquidity strain that adversely impacted the Debtor's ability to service the interest obligations owing on the Notes. As a result, on January 7, 2021, the Company engaged B. Riley Securities Inc. (the Debtor's proposed investment banker and financial advisor) to assist in analyzing various strategic financial alternatives to address its capital structure, including restructuring the capital structure and other contractual obligations, with a particularized focus on the Notes Claims. The Debtor considered a number of alternatives, including an out-of-court exchange offer of debt for cash, debt for debt, debt for equity, or a combination thereof. However, the Debtor ultimately determined that due to the retail nature of the bonds, an out-of-

court restructuring would be largely unworkable and ultimately pivoted to the proposed reorganization of the Notes Claims pursuant to the Bankruptcy Code.

34. The Debtor determined that the most effective path for maximizing profitability and ultimately, value, for all of its stakeholders was to pursue an efficient debt restructuring through the present Chapter 11 Case. To that end, the Debtor is filing its proposed chapter 11 plan (the “Plan”) on the Petition Date, which will provide for, among other things, the issuance of equity interests in MDLY in full satisfaction of the Notes Claims, and the modification of the amount and payment terms of the Strategic Claim.

35. The structure of the Plan proposed by the Debtor and Medley Management is critical to the success of this Chapter 11 Case and maximizing value for all stakeholders. The Plan is designed to avoid a change of control event through the Chapter 11 Case and to limit the potential for client defections. As illustrated by the termination of the Company’s relationship with MCC at the end of 2020, the loss of a client can have material adverse consequences in the business. The proposed Plan seeks to avoid a change of control in order to allow the Company to maintain its client base and properly restructure its business and operations during and after this Chapter 11 Case.

36. The Plan will be described in greater detail in the Debtor’s disclosure statement, which will accompany the Plan. The Debtor believes that confirmation and consummation of the proposed Plan will result in the deleveraged balance sheet and reduction of ongoing debt service obligations necessary to facilitate the Debtor’s continued success post-emergence from this Chapter 11 Case.

IV. FIRST DAY RELIEF REQUESTED

37. In order to facilitate the Debtor’s transition into chapter 11, a successful Plan

confirmation process and, ultimately, emergence from chapter 11, the Debtor seeks “first day” relief to gain and maintain the support of the Debtor’s stakeholders and other key constituencies and continue the day-to-day operations of the Debtor’s business with minimal disruption. The Debtor’s ability to preserve the value of the business during the pendency of this Chapter 11 Case and proposed Plan confirmation process is dependent upon the Debtor maintaining the loyalty and goodwill of the Company’s employees, clients, creditors, and stakeholders. I have reviewed each of the First Day Pleadings filed to date, or filed substantially contemporaneously herewith, and the facts set forth in the First Day Pleadings are true and correct to the best of my knowledge, information, and belief, and are incorporated herein by reference.

38. To that end, the Debtor has filed the following First Day Pleadings seeking relief intended to allow the Debtor to effectively transition into chapter 11 and minimize disruption to the Company’s business operations, thereby preserving and maximizing the value of the Debtor’s estate:

A. Administrative/Case Management Motions

- i. Application for Entry of an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective *Nunc Pro Tunc* to the Petition Date (the “Application”);
 - a. The Debtor submits that, based on the engagement proposals obtained and reviewed, KCC’s rates are competitive and reasonable given the quality of services and expertise KCC provides. The Debtor believes that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment, as proposed in this Application; and

B. Operational Motions

- ii. 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 “Cash Management Motion”).

- a. As set forth in the Cash Management Motion, the Debtor seeks interim and final orders that, among other things, would authorize them to maintain and utilize their existing cash management system, bank account with City National Bank, and business forms (letterhead, purchase orders, invoices, etc.) without reference to “Debtor in Possession”, pursuant to 11 U.S.C. §§ 105(a), 345, and 363. In addition, the Debtor seeks to continue arrangements between it and non-Debtor affiliates, including engaging in intercompany transfers.

39. The relief sought in the First Day Pleadings will allow the Debtor to, among other things, (i) obtain certain operational relief and establish various administrative procedures to promote a seamless transition into bankruptcy, and (ii) commence an efficient and cost-effective chapter 11 Plan confirmation process for the benefit of all stakeholders.

40. In my opinion, approval of the relief sought in the First Day Pleadings will be critical to maintaining the stability of the Debtor’s business operations, preserving value, and allowing the Debtor to focus its efforts on maximizing value for all constituencies through the Plan confirmation process.

41. I understand that the Bankruptcy Rules permit the Court to grant relief within the first 21 days after the Petition Date where such relief is necessary to avoid immediate and irreparable harm. I believe an immediate and orderly transition into chapter 11 is critical to the viability of the Debtors' operations and that any delay in granting the relief requested in the First Day Pleadings could hinder the Debtors’ ability to maintain the going concern value of the Company and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ ability to maintain their operations at this important juncture.

V. CONCLUSION

42. Accordingly, for the reasons stated herein and in each of the First Day Pleadings, I

respectfully request that the Court grant each First Day Pleading in its entirety and grant such other and further relief as this Court deems just and proper.

I certify under penalty of perjury that, to the best of my knowledge, information and belief, the statements set forth in this Declaration are true and correct.

Dated: March 7, 2021

/s/ Richard T. Allorto, Jr.

Name: Richard T. Allorto, Jr.

Title: Chief Financial Officer

EXHIBIT A
Organizational Chart

Organizational Chart

