

**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
(I) ESTABLISHING CERTAIN PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS
RETAINED BY ORDER OF THIS COURT, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor-in-possession (the "Debtor"), by and through its undersigned proposed counsel, submits this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**: (i) establishing procedures for interim compensation and reimbursement of expenses of professionals retained by order of the Court; and (ii) granting related relief. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION, VENUE AND STATUTORY PREDICATES

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

3. The statutory predicates for the relief requested herein are sections 105(a) and 331 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2016-2 of the Local Rules of

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.



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 order on the Motion by this Court if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

BACKGROUND

5. On the date hereof (the “Petition Date”), the above-captioned Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby initiating the above-captioned chapter 11 case (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.

7. As of the filing of this Motion, no trustee, examiner, or committee has been requested or appointed in the Chapter 11 Case.

8. Additional background facts concerning the Debtor and the commencement of the Chapter 11 Case are provided in the *Declaration of Richard T. Allorto, Jr. in Support of Chapter 11 Petition and First Day Pleadings* (the “First Day Declaration”), which is incorporated by reference.

RETENTION OF PROFESSIONALS

9. The Debtor has, by separate applications, applied to this Court to retain (a) Lowenstein Sandler LLP as counsel to the Debtor; (b) Morris James LLP as Delaware counsel to the Debtor; (c) B. Riley FBR, Inc. as financial advisor and investment banker to the Debtor; and (d) Kurtzman Carson Consultants, LLC as the Debtor’s claims and noticing agent and administrative advisor (collectively, the “Professionals”). Additionally, if an official committee is appointed, such committee may also file applications for authority to retain and employ counsel and additional professionals to assist it in this Chapter 11 Case.

PROCEDURES REQUESTED

10. The Debtor requests that procedures for compensating and reimbursing the Professionals retained under section 327 of the Bankruptcy Code and, to the extent applicable, sections 328(a) and 1107 of the Bankruptcy Code, be established comparable to those approved in other chapter 11 cases in this District and in accordance with the Local Rules.

11. The requested procedures would require the presentation of a monthly fee application to the parties described below for interim approval and allowance of compensation for professional services rendered and reimbursement of expenses incurred by each such Professional during the immediately preceding month. The Debtor submits that the proposed procedures for compensating and reimbursing the Professionals will enable the Court and all parties-in-interest to monitor professional fees and costs incurred more effectively and on a more current basis. Specifically, the Debtor proposes that the monthly payment of compensation and reimbursement of expenses of Professionals be structured as follows (collectively, the “Compensation Procedures”):

(a) Monthly Fee Applications.

- (1) On or after the twentieth (20th) day of each calendar month (or if such date falls on a weekend or federal holiday, on the next business day thereafter) following the month for which compensation is sought, or as soon as reasonably practicable thereafter, each Professional seeking interim allowance of its fees and expenses shall file with the Court an application, which will include the relevant time entries and descriptions and expense details for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month (a “Monthly Fee Application”). Professionals may submit a combined first Monthly Fee Application covering the period from the Petition Date through April 30, 2021, on or before May 20, 2021, or as soon as practicable thereafter.
- (2) Each Professional who files a Monthly Fee Application shall serve a copy of such Monthly Fee Application on the following parties (each, a “Notice Party” and collectively, the “Notice Parties”):

- (A) Lowenstein Sandler LLP, as Debtor’s counsel, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Robert M. Hirsh, Esq. and Eric S. Chafetz, Esq.);
 - (B) counsel for any official committee appointed in the Chapter 11 Case;
 - (C) the office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Jane Leamy, Esq.);
 - (D) any party requesting notice of all proceedings; and
 - (E) any other party designated by the Court.
- (3) Any Professional that fails to file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application that includes a request for compensation earned or expenses incurred during previous months. All Monthly Fee Applications shall comply with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court.
- (4) The deadline to object to any Monthly Fee Application is **4:00 p.m. (Eastern Prevailing Time)** on the twentieth (20th) day (or the next business day if such day is not a business day) following the date the Monthly Fee Application is served (the “Objection Deadline”). Upon the expiration of the Objection Deadline, a Professional may file a certificate of no objection (“CNO”) with the Court with respect to any fees and expenses not subject to an Objection. After a Professional files a CNO, the Debtor shall promptly pay the Professional 80% of the fees and 100% of the expenses requested in the applicable Monthly Fee Application that are not subject to an Objection.
- (5) To object to a Professional’s Monthly Fee Application, the objecting party must (i) file with the Court a written objection (an “Objection”) on or before the Objection Deadline and (ii) serve the Objection upon the affected Professional and each of the Notice Parties.
- (6) Upon the expiration of the Objection Deadline, if a Professional’s Monthly Fee Application is subject to an Objection and the parties are unable to reach a consensual resolution, the Professional may either: (i) file with the Court a response to the Objection, together with a request for payment of any portion of the amounts subject to the Objection; or (ii) forego payment of such amounts until the next

hearing to consider interim or final fee applications, at which time the Court will adjudicate any unresolved Objections.

(b) Interim Fee Applications.

- (1) Beginning with the approximately three-month period ending on May 31, 2021, and at three-month intervals thereafter or at such other intervals convenient to the Court, each of the Professionals shall file with the Court and serve on the Notice Parties an application (an “Interim Fee Application”) for interim approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Fee Applications filed during such period (the “Interim Fee Period”). The Interim Fee Application shall include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules. Each Professional shall file its Interim Fee Application within forty-five (45) days after the end of the Interim Fee Period for which the request seeks allowance of fees and reimbursement of expenses. Any Professional that fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted by the Professional.
- (2) Each Interim Fee Application shall include a brief description identifying the following:
 - i. the Monthly Fee Applications that are the subject of the request;
 - ii. the amount of fees and expenses requested;
 - iii. the amount of fees and expenses paid to date or subject to an Objection;
 - iv. the deadline for parties to file objections to the Interim Fee Application (such objections, the “Additional Objections”); and
 - v. any other information requested by the Court or required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules.
- (3) Additional Objections to any Interim Fee Application shall be filed with the Court and served upon the affected Professional and each of the Notice Parties on or before **4:00 p.m. (Eastern Prevailing**

Time) on the **twentieth (20th)** day (or the next business day if such day is not a business day), following service of the applicable Interim Fee Application.

- (4) The Debtor may request that the Court schedule a hearing on Interim Fee Applications at least once every three (3) months or at such other intervals as the Court deems appropriate. If no Objections are pending and no Additional Objections are timely filed, the Court may approve and allow an Interim Fee Application without a hearing.
- (5) Each Professional will serve its Interim Fee Application and final fee application upon the Notice Parties. Each Professional will serve a notice of hearing on its Interim Fee Application and final fee application on all parties that have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. No further notice is necessary.
- (6) A pending Objection to compensation or reimbursement of a retained Professional does not disqualify the Professional from future compensation or reimbursement.
- (7) Neither (i) the payment of, or the failure to pay, in whole or in part, any interim compensation and reimbursement to a Professional nor (ii) the filing of, or failure to file, an Objection will bind any party in interest or the Court with respect to the final allowance of any compensation of fees for services rendered or reimbursement of expenses incurred by a Professional. All fees and expenses paid to Professionals under these Interim Compensation Procedures are subject to disgorgement until final allowance by the Court.
- (8) Any member of the creditors' committee or any other statutorily-appointed committee in this Chapter 11 Case may submit statements of expenses (excluding the fees and expenses of an individual committee member's third-party counsel) and supporting vouchers to the applicable committee's counsel, which counsel will collect and submit the committee members' requests for reimbursement in accordance with the Compensation Procedures; *provided that*, payment of such expenses is not authorized to the extent that such authorization does not exist under the Bankruptcy Code, applicable Third Circuit law, the Bankruptcy Rules, the Local Rules, or the procedures and practices of this Court.
- (9) No Professional may serve a Monthly Fee Application or file an Interim Fee Application until the Court enters an order approving

the retention of such Professional pursuant to sections 327 or 1103 of the Bankruptcy Code.

RELIEF REQUESTED AND BASIS THEREFORE

12. By this Motion, the Debtor seeks entry of an order pursuant to sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-2 authorizing in this Chapter 11 Case an orderly, regular process for allowance and payment of compensation and reimbursement of expenses for the Professionals retained by the Debtor and any official committee appointed, whose services are authorized by this Court and who are required to file applications for the allowance of compensation and the reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code and Local Rule 2016-2.

13. Section 331 of the Bankruptcy Code authorizes professionals to submit applications for interim compensation and reimbursement of expenses every 120 days or more often, if the court permits. 11 U.S.C. § 331. In addition, section 105(a) of the Bankruptcy Code authorizes the court to issue any order “that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

14. The Debtor further submits that implementing the Compensation Procedures will significantly aid the efficient administration of the Chapter 11 Case and is in the best interests of the Debtor, its estate and creditors. Accordingly, the Debtor submits that the relief requested herein should be granted.

NOTICE

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.

Dated: March 7, 2021

MORRIS JAMES LLP

/s/ Brya M. Keilson

Eric J. Monzo (DE Bar No. 5214)
Brya M. Keilson (DE Bar No. 4643)
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
E-mail: emonzo@morrisjames.com
E-mail: bkeilson@morrisjames.com

-and-

Robert M. Hirsh, Esq. (*pro hac vice forthcoming*)
Eric Chafetz, Esq. (*pro hac vice forthcoming*)
Phillip Khezri, Esq. (*pro hac vice forthcoming*)
LOWENSTEIN SANDLER LLP
1251 Avenue of the Americas
New York, NY 10020
Telephone: (973) 597-2500
Facsimile: (973) 597-2400
E-mail: rhirsh@lowenstein.com
E-mail: echafetz@lowenstein.com
E-mail: pkhezri@lowenstein.com

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

Exhibit A
Proposed Order

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

In re:

MEDLEY LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

Re: Docket No. ____

**ORDER (I) ESTABLISHING CERTAIN PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS
RETAINED BY ORDER OF THIS COURT, AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the Debtor for the entry of an order pursuant to sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016 and Local Rule 2016-2, establishing procedures for interim compensation and reimbursement of expenses incurred by attorneys and other professionals who will be retained pursuant to sections 327 or 1103 of title 11 of the United States Code (the “Bankruptcy Code”) and are required to file applications pursuant to sections 330 and 331 of the Bankruptcy Code, on terms that satisfy the requirements of Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2016-2 of the Local Rules (such attorneys and professionals, collectively, the “Professionals”) and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein 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.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that

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.

no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion (the “Hearing”); and upon the record of the Hearing, if any; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, as set forth herein.
2. Except as otherwise provided in an order of this Court authorizing the retention of Professional, Professionals may seek interim payment of compensation and reimbursement of expenses in accordance with the following compensation procedures (collectively, the “Compensation Procedures”):

(a) Monthly Fee Applications.

- (1) On or after the twentieth (20th) day of each calendar month (or if such date falls on a weekend or federal holiday, on the next business day thereafter) following the month for which compensation is sought, or as soon as reasonably practicable thereafter, each Professional seeking interim allowance of its fees and expenses shall file with the Court an application, which will include the relevant time entries and descriptions and expense details for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month (a “Monthly Fee Application”). Professionals may submit a combined first Monthly Fee Application covering the period from the Petition Date through April 30, 2021, on or before May 20, 2021, or as soon as practicable thereafter.
- (2) Each Professional who files a Monthly Fee Application shall serve a copy of such Monthly Fee Application on the following parties (each, a “Notice Party” and collectively, the “Notice Parties”):
 - (A) Lowenstein Sandler LLP, as Debtor’s counsel, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Robert M. Hirsh, Esq. and Eric S. Chafetz, Esq.);

- (B) counsel for any official committee appointed in the Chapter 11 Case;
 - (C) the office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Jane Leamy, Esq.);
 - (D) any party requesting notice of all proceedings; and
 - (E) any other party designated by the Court.
- (3) Any Professional that fails to file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application that includes a request for compensation earned or expenses incurred during previous months. All Monthly Fee Applications shall comply with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court.
- (4) The deadline to object to any Monthly Fee Application is **4:00 p.m. (Eastern Prevailing Time)** on the twentieth (20th) day (or the next business day if such day is not a business day) following the date the Monthly Fee Application is served (the “Objection Deadline”). Upon the expiration of the Objection Deadline, a Professional may file a certificate of no objection (“CNO”) with the Court with respect to any fees and expenses not subject to an Objection. After a Professional files a CNO, the Debtor shall promptly pay the Professional 80% of the fees and 100% of the expenses requested in the applicable Monthly Fee Application that are not subject to an Objection.
- (5) To object to a Professional’s Monthly Fee Application, the objecting party must (i) file with the Court a written objection (an “Objection”) on or before the Objection Deadline and (ii) serve the Objection upon the affected Professional and each of the Notice Parties.
- (6) Upon the expiration of the Objection Deadline, if a Professional’s Monthly Fee Application is subject to an Objection and the parties are unable to reach a consensual resolution, the Professional may either: (i) file with the Court a response to the Objection, together with a request for payment of any portion of the amounts subject to the Objection; or (ii) forego payment of such amounts until the next hearing to consider interim or final fee applications, at which time the Court will adjudicate any unresolved Objections.
- (b) Interim Fee Applications.

- (1) Beginning with the approximately three-month period ending on May 31, 2021, and at three-month intervals thereafter or at such other intervals convenient to the Court, each of the Professionals shall file with the Court and serve on the Notice Parties an application (an “Interim Fee Application”) for interim approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Fee Applications filed during such period (the “Interim Fee Period”). The Interim Fee Application shall include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules. Each Professional shall file its Interim Fee Application within forty-five (45) days after the end of the Interim Fee Period for which the request seeks allowance of fees and reimbursement of expenses. Any Professional that fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted by the Professional.

- (2) Each Interim Fee Application shall include a brief description identifying the following:
 - i. the Monthly Fee Applications that are the subject of the request;
 - ii. the amount of fees and expenses requested;
 - iii. the amount of fees and expenses paid to date or subject to an Objection;
 - iv. the deadline for parties to file objections to the Interim Fee Application (such objections, the “Additional Objections”); and
 - v. any other information requested by the Court or required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules.

- (3) Additional Objections to any Interim Fee Application shall be filed with the Court and served upon the affected Professional and each of the Notice Parties on or before **4:00 p.m. (Eastern Prevailing Time)** on the **twentieth (20th)** day (or the next business day if such day is not a business day), following service of the applicable Interim Fee Application.

- (4) The Debtor may request that the Court schedule a hearing on Interim Fee Applications at least once every three (3) months or at such other intervals as the Court deems appropriate. If no Objections are pending and no Additional Objections are timely filed, the Court may approve and allow an Interim Fee Application without a hearing.
- (5) Each Professional will serve its Interim Fee Application and final fee application upon the Notice Parties. Each Professional will serve a notice of hearing on its Interim Fee Application and final fee application on all parties that have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. No further notice is necessary.
- (6) A pending Objection to compensation or reimbursement of a retained Professional does not disqualify the Professional from future compensation or reimbursement.
- (7) Neither (i) the payment of, or the failure to pay, in whole or in part, any interim compensation and reimbursement to a Professional nor (ii) the filing of, or failure to file, an Objection will bind any party in interest or the Court with respect to the final allowance of any compensation of fees for services rendered or reimbursement of expenses incurred by a Professional. All fees and expenses paid to Professionals under these Interim Compensation Procedures are subject to disgorgement until final allowance by the Court.
- (8) Any member of the creditors' committee or any other statutorily-appointed committee in this Chapter 11 Case may submit statements of expenses (excluding the fees and expenses of an individual committee member's third-party counsel) and supporting vouchers to the applicable committee's counsel, which counsel will collect and submit the committee members' requests for reimbursement in accordance with the Compensation Procedures; *provided that*, payment of such expenses is not authorized to the extent that such authorization does not exist under the Bankruptcy Code, applicable Third Circuit law, the Bankruptcy Rules, the Local Rules, or the procedures and practices of this Court.
- (9) No Professional may serve a Monthly Fee Application or file an Interim Fee Application until the Court enters an order approving the retention of such Professional pursuant to sections 327 or 1103 of the Bankruptcy Code.

3. Notice of the interim and final fee applications shall be served on (a) the Notice Parties and (b) all parties that have filed a notice of appearance with the Clerk of this Court and requested such notice. The Notice Parties shall be entitled to receive both the Interim Fee Applications and the notice of hearing thereon (the "Hearing Notice"), and all other parties entitled to notice shall be entitled to receive only the Hearing Notice. Notice given in accordance with this paragraph is deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules and Local Rules.

4. In accordance with the Compensation Procedures authorized and established herein, each member of a statutory committee shall be permitted to submit statements of expenses and supporting vouchers to the statutory committee's counsel, which shall collect and submit such requests for reimbursement.

5. All time periods referenced in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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