

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Re Docket No. 3

**CERTIFICATION OF COUNSEL REGARDING 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**

I, Brya M. Keilson, of Morris James LLP, proposed counsel for Medley LLC (the “Debtor”) hereby certifies as follows:

1. On March 7, 2021, 2021, the Debtor filed the *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 “Motion”).

2. On March 10, 2021, the Court held a hearing regarding the Motion. As a result of comments made at the hearing, the Debtor has spoken to the United States Trustee for the District of Delaware (the “US Trustee”) and parties in interest and the parties have agreed on a revised form of order (“Revised Order”). The US Trustee does not object to entry of the Revised Order.

3. The Debtor respectfully request that the Court enter the Revised Order attached hereto as Exhibit A. Attached hereto as Exhibit B is a redline version which compares the Revised

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.



Order to the order attached to the Motion. Counsel for the Debtor is available to answer any questions that the Court may have.

Dated: March 11, 2021

MORRIS JAMES LLP

/s/ Brya M. Keilson

Brya M. Keilson (DE # 4643)
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Proposed Counsel to the Debtor and Debtor in Possession

EXHIBIT A

Revised Order

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

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Re Docket No. 3

**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 April 6, 2021, at 1:00 p.m. (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 30, 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, and subject to this Interim Order, 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 (5) business days to the U.S. Trustee, counsel to U.S. Bank National Association, in its capacity as indenture trustee for the 2024 Notes and the 2026 Notes (as defined in the First Day Declaration) (the “Notes Trustee”), Strategic Capital Advisory Services (“Strategic”), and counsel to any statutory committee appointed in this Chapter 11 Case (the “Committee”) 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, and subject to this Interim Order, to continue performing Intercompany Transactions in the ordinary course of business on a postpetition basis; *provided* that the Debtor will provide three (3) business days prior notice of all Intercompany Transactions to be made by the Debtor, setting forth the purpose, amount and the payee with respect to each Intercompany Transaction, to the U.S. Trustee, counsel to the Notes Trustee, Strategic, and counsel to any Committee, and each such party shall have the right to seek emergency relief from the Court with respect to any proposed Intercompany Transfer. 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. A summary report of all Intercompany Transactions, setting forth the date, purpose, amount and the payer/payee with respect to each Intercompany Transaction, shall be provided on a weekly basis to the U.S. Trustee, counsel to the Notes Trustee, Strategic, and counsel to any Committee. 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, counsel to the Notes Trustee, Strategic, and counsel to any Committee 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, counsel to the Notes Trustee, Strategic, and counsel to any Committee 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. The Debtor shall not make any income distributions to management absent prior order from the Court.

19. 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.

20. 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.

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

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

23. 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.

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

EXHIBIT B

Redline Order

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

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (~~—KBO~~)

**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~~ April 6, 2021, at 1:00 p.m. (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

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

~~30~~, 2021 (the “Objection 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, and subject to this Interim Order, 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 (5) business days to the U.S. Trustee ~~and~~, [counsel to U.S. Bank National Association, in its capacity as indenture trustee for the 2024 Notes and the 2026 Notes \(as defined in the First Day Declaration\) \(the “Notes Trustee”\), Strategic Capital Advisory Services \(“Strategic”\), and counsel to](#) any statutory committee appointed in this Chapter 11 Case [\(the “Committee”\)](#) 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, [and subject to this Interim Order](#), to continue performing Intercompany Transactions in the ordinary course of business on a postpetition basis; *provided that the Debtor will provide three (3) business days prior notice of all Intercompany Transactions to be made by the Debtor, setting forth the purpose, amount and the payee with respect to each Intercompany Transaction, to the U.S. Trustee, counsel to the Notes Trustee, Strategic, and counsel to any Committee, and each such party shall have the right to seek emergency relief from the Court with respect to any proposed Intercompany Transfer.* 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. [A summary report of all Intercompany Transactions, setting forth the date, purpose, amount and the payer/payee with respect to each Intercompany Transaction, shall be provided on a weekly basis to the U.S. Trustee, counsel to the Notes Trustee, Strategic, and counsel to any Committee.](#) 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, [counsel to the Notes Trustee, Strategic, and counsel to any Committee](#) 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, [counsel to the Notes Trustee, Strategic,](#) and counsel to any ~~statutory committee appointed in the Chapter 11 Cases~~ [Committee](#) 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.

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[18. The Debtor shall not make any income distributions to management absent prior order from the Court.](#)

~~18.19.~~ 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.

~~19.20.~~ 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.

~~20.21.~~ The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

~~21.22.~~ The requirement of Bankruptcy Rule 6004(a) is waived.

~~22.23.~~ 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.

~~23.24.~~ This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.