

Fill in this information to identify the case:

Debtor Medley LLC

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 21-10526

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>New Mexico Educational Retirement Board</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor <u>NM ERB</u>	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	See summary page	
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	
	Contact phone <u>505-476-1988</u>	Contact phone _____
Contact email <u>francine.jacquez@state.nm.us</u>	Contact email _____	
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 1,770,806.00. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 08/10/2021
MM / DD / YYYY

/s/Rick Scroggins
Signature

Print the name of the person who is completing and signing this claim:

Name Rick Scroggins
First name Middle name Last name

Title Interim Executive Director

Company New Mexico Educational Retirement Board
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 701 Camino De Los Marquez, Santa Fe, New Mexico, 87505, United States

Contact phone 505-476-6152 Email rick.scroggins@state.nm.us



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 634-7166 | International 001-310-823-9000

Debtor: 21-10526 - Medley LLC		
District: District of Delaware		
Creditor: New Mexico Educational Retirement Board Francine Jacquez 1596 Pacheco Street, Suite 107 Santa Fe, New Mexico, 97505 United States Phone: 505-476-1988 Phone 2: Fax: Email: francine.jacquez@state.nm.us	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Other Names Used with Debtor: NM ERB	Amends Claim: No Acquired Claim: No	
Basis of Claim:	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 1,770,806.00	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Rick Scroggins on 10-Aug-2021 6:56:55 p.m. Eastern Time Title: Interim Executive Director Company: New Mexico Educational Retirement Board		
Optional Signature Address: Rick Scroggins 701 Camino De Los Marquez Santa Fe, New Mexico, 87505 United States Telephone Number: 505-476-6152 Email: rick.scroggins@state.nm.us		

Fill in this information to identify the case:

Debtor 1 Medley LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: District of Delaware

Case number 21-10526 (KBO)

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** New Mexico Educational Retirement Board
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor NM ERB

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	<u>Francine Jacquez</u> Name <u>1596 Pacheco Street, Suite 107</u> Number Street <u>Santa Fe NM 87505</u> City State ZIP Code Contact phone <u>(505) 476-1988</u> Contact email <u>francine.jacquez@state.nm.us</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----	_____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 1,770,806.00. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.
Clawback of carried interest payments

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 08/10/2021
MM / DD / YYYY

Rick Scroggins
Signature

Print the name of the person who is completing and signing this claim:

Name Rick Scroggins
First name Middle name Last name

Title Interim Executive Director

Company New Mexico Educational Retirement Board
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 701 Camino De Los Marquez
Number Street

Santa Fe NM 87505
City State ZIP Code

Contact phone (505) 476-6152 Email rick.scroggins@state.nm.us

MOF II GP LLC
New Mexico ERB
Carried Interest Clawback calculation
Prepared as of 3/31/2021

Terms of the LPA

Total Carry Distribution Received by MOF II GP LLC	9,324,385
New Mexico ERB ownership percentage	<u>26.07%</u>
Total carry distribution attributable to New Mexico ERB	2,431,307
Assumed Tax Rate:	56.7%
Square:	32.1%
100% minus Square	<u>67.9%</u>
Amount Subject to Clawback	1,649,668

Terms of the Side Letter

Clawback Cap:

Notwithstanding the foregoing, the amount of the Investor Clawback Payment shall not exceed (a) the aggregate amount of the Carried Interest received by the General Partner with respect to all Partnership Investments attributable to Investor, and (b) the aggregate Transaction Fees received by members of the General Partner Group that are attributable to Investor's Capital Commitment (less any Management Fee offsets made with respect to Investor pursuant to Section 3.3(c) of the Partnership Agreement), net of applicable income taxes calculated on both such amounts at the Assumed Tax Rate.

	\$	Transaction Fees	%
Total carry distribution attributable to New Mexico ERB	2,431,307	Transaction Fee (Closing Fee) \$	5,527,717 100%
Aggregate Transaction Fees Received Less any Management Fee Offsets	<u>1,658,315</u>	Management offset	3,869,402 70%
	\$	Net Transaction Fee \$	1,658,315 30%
Net of applicable taxes at the Assumed Tax Rate	<u>43.300%</u>		
Clawback Cap	<u>\$ 1,770,806</u>		

NOTE: As the side letters contain a MFN clause, the calculation of any clawback will be based on the most favorable of (1) terms of the side letter or (2) terms of the limited partnership agreement (LPA)

LPA Amount	\$ 1,649,668
Side Letter Cap Amount	\$ 1,770,806
Greater of LPA or Side Letter	\$ <u>1,770,806</u>

3. Clawback Payments. In lieu of, and not in addition to, the Clawback Payments specified in Section 10.4(c) of the Partnership Agreement, the General Partner shall make a clawback payment to Investor as follows:

Within thirty (30) days following the dissolution of the Partnership, the General Partner will be obligated to make a payment to Investor (the “Investor Clawback Payment”) in an amount equal to the greater of (a) the excess of (i) the sum of the aggregate amount of Capital Contributions made by Investor plus the Preferred Return thereon, over (ii) the aggregate amount of the distributions received by Investor pursuant to Sections 7.1(a) and 10.4(a) of the Partnership Agreement, and (b) the excess of (i) the aggregated amount of Carried Interest received by the General Partner with respect to all Partnership Investments attributable to Investor, over (ii) an amount equal to the Carried Interest that the General Partner could have received if the Carried Interest was calculated only upon the disposition of all Partnership Investments attributable to Investor. For the sake of clarity, the General Partner acknowledges that the second prong of the clawback provision set forth in this paragraph is intended to be interpreted such that the General Partner shall not be permitted to retain Carried Interest distributions attributable to Investor's investment in an amount in excess of twenty percent (20%) of the total Net Profits derived by Investor prior to the Partnership's dissolution. In no event, however, shall the Clawback Payments to Investor exceed the maximum amounts set forth in this paragraph.

Notwithstanding the foregoing, the amount of the Investor Clawback Payment shall not exceed (a) the aggregate amount of the Carried Interest received by the General Partner with respect to all Partnership Investments attributable to Investor, and (b) the aggregate Transaction Fees received by members of the General Partner Group that are attributable to Investor's Capital Commitment (less any Management Fee offsets made with respect to Investor pursuant to Section 3.3(c) of the Partnership Agreement), net of applicable income taxes calculated on both such amounts at the Assumed Tax Rate.

Dan Youngblut

From: Rick Allorto <richard.allorto@mdly.com>
Sent: Wednesday, June 09, 2021 4:13 PM
To: Chippeaux, Kay, ERB; Chris Taube
Cc: Dean Crowe; Jacquez, Francine, ERB
Subject: [EXT] RE: LPA extension request
Attachments: New Mexico ERB clawback calculation.pdf

Kay,

As requested attached is the calculation of the clawback amount. Please note that attached is as of March 31, 2021 and the amount increased slightly from what was provided below which was as of December 31, 2020.

Thanks

Rick

Richard Allorto | Chief Financial Officer
MEDLEY
100 Park Ave
New York, NY 10017

D: 646.465.7898

E: richard.allorto@mdly.com

W: mdly.com

From: Chippeaux, Kay, ERB [mailto:kay.chippeaux@state.nm.us]
Sent: Tuesday, June 08, 2021 4:08 PM
To: Chris Taube
Cc: Dean Crowe; Rick Allorto; Jacquez, Francine, ERB
Subject: RE: LPA extension request

Chris, would you please have someone send us the details, including dates and amounts, on the calculation of the Clawback Payment? Thank you.

Kay Chippeaux
505-476-1983

From: Chris Taube <chris.taube@mdly.com>
Sent: Tuesday, June 8, 2021 9:51 AM
To: Chippeaux, Kay, ERB <kay.chippeaux@state.nm.us>
Cc: Dean Crowe <dean.crowe@mdly.com>; Rick Allorto <richard.allorto@mdly.com>
Subject: [EXT] RE: LPA extension request

Hi Kay,

I apologize for the delay.

The only Carried Interest distributions made were tax distributions under Section 7.1(h) of the LPA. The General Partner thus did not establish an escrow account, as no amounts would have been required to be deposited in such an escrow account under Section 10.4(d) of the LPA, which states, "The General Partner shall deposit in the Escrow Account an amount equal to one hundred (100%) of the aggregate amount of all Carried Interest distributed to it pursuant to Section 7.1 (net of applicable income taxes calculated at the Assumed Tax Rate)."

The amount of the Clawback Payment is calculated pursuant to Section 10.4(c), subject to certain side letter modifications. Based on our most recent calculation, New Mexico's share of the expected Clawback Payment as calculated under your side letter would be approximately \$1,765,000.

Please let us know if you have any follow-up questions re: the above or the LPA extension request.

As a reminder, one of the limited partners in MOF II asked to speak with you as the largest limited partner in the fund.

Will you please confirm that you are OK with me giving the individual from WP Global your email?

Best regards,

Chris

Christopher Taube | Senior Managing Director

MEDLEY

280 Park Avenue, 6th Floor East

New York, NY 10017

O: 646.465.8420

M: 917.371.5865

E: chris.taube@mdly.com

W: mdly.com

From: Chippeaux, Kay, ERB [<mailto:kay.chippeaux@state.nm.us>]

Sent: Friday, June 4, 2021 4:52 PM

To: Chris Taube

Subject: RE: LPA extension request

Hi, Chris. I thought I would check in with you for the Medley response to my questions below.

Thank you.

Kay Chippeaux

505-476-1983

From: Chris Taube <chris.taube@mdly.com>

Sent: Wednesday, June 2, 2021 9:51 AM

To: Chippeaux, Kay, ERB <kay.chippeaux@state.nm.us>

Subject: [EXT] RE: LPA extension request

Hi Kay,

Let me check with my CFO and I will revert back with details later today.

Thanks,

Chris

Christopher Taube | Senior Managing Director

MEDLEY

280 Park Avenue, 6th Floor East

New York, NY 10017

O: 646.465.8420

M: 917.371.5865

E: chris.taube@mdly.com

W: mdly.com

From: Chippeaux, Kay, ERB [<mailto:kay.chippeaux@state.nm.us>]

Sent: Tuesday, June 1, 2021 6:28 PM

To: Chris Taube

Subject: LPA extension request

Hi, Chris. We do have a follow-up question regarding the LPA extension request. We would like to know what Medley has calculated for any incentive compensation clawback due to the limited partners. The LPA also states that any such amounts will be held in escrow. Assuming there is a clawback, and we believe there is, where is the escrow for the clawback held, both as to the Medley entity balance sheet where held and the bank where held?

Thank you.

Kay Chippeaux

Deputy CIO – Public Securities & Credit

New Mexico Educational Retirement Board

1596 Pacheco St., Ste. 107

Santa Fe, NM 87505

Kay.Chippeaux@state.nm.us

505-476-1983