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October 15, 2021

BY E-FILE AND E-MAIL

The Honorable Karen B. Owens
824 N. Market Street
Wilmington, DE 19801

RE: In re Medley LLC, Case No. 21-10526, Docket Nos. 255, 324, 328, 371, 395,
424 & 431 (D. Del.) (the “Debtor”)

Dear Honorable Judge Owens:

I respectfully write on behalf of Medley Management, Inc. (“Medley Management”), a non-party to the proceedings noted in caption of this letter and the managing member of the Debtor.

Yesterday afternoon, Medley Management learned that a Notice of Filing of Blackline of Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan of Medley, LLC (the “Plan”), was posted to the electronic docket earlier yesterday. It contained new blacklined language as follows: rights to “*...any similar payment pursuant to Internal Revenue Code Section 172*” (emphasis added), which may inequitably impair Medley Management’s substantive and procedural rights without due process.

The language inserted was not part of the Plan, was not raised or discussed at the hearing confirming the Plan to Medley Management’s knowledge, is both broad and vague, and should be rejected. It is an end run around due process.



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We believe this new last-minute insert was in response to Medley Management's reply letter, dated October 11, 2021, attached as Exhibit 1 hereto, to a letter by the Committee's Counsel, dated September 16, 2021, attached as Exhibit 2 hereto. Inserting the mentioned above language into the text of the Plan, the Committee's counsel tries to have the Court hold that to the extent Medley Management is the recipient of "tax refund on account of the Medley Management's Tax Return *or any similar payment pursuant* to Internal Revenue Code Section 172." (emphasis added on newly inserted language), such benefits must immediately be remitted by Medley Management to the Debtor (page 65).

We respectfully ask the Court to reject the aforementioned last-minute attempt of Committee's counsel to claim, without legal due process afforded to Medley Management, that benefits Medley Management might be entitled to in connection with a claim for relief previously made under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"). Benefits under the CARES Act were designed to provide for "emergency assistance . . . for businesses affected by the 2020 coronavirus pandemic." S. 3548 - CARES Act, 116th Congress (2019-2020). Limited liability companies ("LLCs") such as the Debtor are not eligible for those payments under the CARES Act. In order to provide affected corporations with liquidity, the CARES Act allowed corporate taxpayers to make a claim under I.R.C. Section 172 for "net operating loss carryback to each of the five taxable years preceding the taxable year of such loss." The benefits Medley Management is currently seeking under the CARES Act are not, and cannot be, constituted as "refund" of taxes. Throughout the litigation, the basis for Committee counsel's position has been that the Debtor had the right to a share of purported unknown future "refund" of taxes owed to Medley Management due to an overpayment of taxes in prior years, pursuant to the Debtor's operating agreement. Federally administered pandemic-related benefits, however, that are owed exclusively to affected corporations, are far cry from a "refund" of taxes.

Further, in an underhanded act of self-help to wrongfully encroach upon the rights of a non-party to the litigation, without due process, Committee's counsel effectively had the Court reform the Debtor's operating agreement, in complete disregard of a well-established general principle that it is not the proper role of a court to rewrite or supply provisions to a written agreement. Stated differently, no agreement between Medley Management, on the one hand, and the Debtor and its members, on the other hand, provided for sharing right of the kind of benefits Committee's counsel had the Court wrongfully award the Debtor, and in turn, the Committee. Making the Court award ownership over pandemic-related benefits that Medley Management might be entitled to for its own operations and corporate responsibilities, to the Debtor (and as a result to Committee), without support of any agreement or contractual or statutory obligation between the parties to share such pandemic relief benefits, the Federal legislator's intent or case law, is not only procedurally inequitable, but also is in complete disregard of the Debtor express operating agreement which governs the Debtor's members rights and duties. Awarding of such un-bargained for rights and benefits to the Debtor, and in turn to the Committee, is not more than an wrongful windfall. The operating agreement of the Debtor does not provide for rights of Debtor's members to share in such kindred emergency relief from Congress.

We respectfully request that the last-minute addition yesterday of language to the Plan, without according due process, in relation to the reservation of rights of the Committee to receive "...any

similar payment pursuant to Internal Revenue Code Section 172” and that addition should be deleted from the Plan.

Respectfully,
/s/ Adele Hogan
Adele Hogan, Esq.

Enclosures

cc: Jeffrey R. Waxman, Esq.
Justin Rawlins, Esq.
Jane M. Leamy, Esq.
Joseph Farris, Esq.
James S. Carr, Esq.
Benjamin D. Feder, Esq.
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Eric Monzo, Esq.
Eric Chafetz, Esq.
Robert M. Hirsh, Esq.
Michael A. Kaplan, Esq.
Phillip Khezri, Esq.
Avi E. Luft, Esq.

EXHIBIT 1

Response Letter of Counsel of Medley Management, Inc., to Counsel of the Committee of Unsecured Creditors of Medley, LLC, dated October 11, 2021



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October 11, 2021

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VIA EMAIL: jcarr@kelleydrye.com

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Re: Medley Management, Inc.

Dear Mr. Carr:

We have been retained by Medley Management Inc. (the “Company”) with respect to the matters alleged in your letter of September 16, 2021 (the “Letter”) on behalf of Medley LLC (the “Debtor”).

The statements in the letter are based on a misunderstanding of the essential facts and a baseless effort to disregard the explicit terms of the parties’ agreement.

First, the Company does not expect to receive a “tax refund in the approximate amount of \$1,500,000.” Rather, the Company is pursuing a claim for relief under the CARES Act, which provided for “emergency assistance . . . for businesses affected by the 2020 coronavirus pandemic.” S. 3548 - CARES Act, 116th Congress (2019-2020). Specifically, in order to provide affected corporations with liquidity, the CARES Act allowed corporate taxpayers to make a claim under I.R.C. Section 172 for “net operating loss carryback to each of the five taxable years preceding the taxable year of such loss.” The benefit the Company is seeking under the CARES Act is not a “refund” of taxes that, contrary to your assertions, were properly due and paid in prior years (see below). Rather, it is emergency assistance to an eligible corporation, Medley Management Inc.

Limited liability companies such as Medley LLC, the Debtor, are not even eligible for such relief under the CARES Act.

Second, the Debtor’s tax liabilities were never “overestimated” as claimed in the letter. Prior year tax distributions were never greater than the Debtor’s tax liabilities in each of the respective tax years. The Company did not overpay or overestimate any taxes due in prior years. Rather, all of the Company’s taxes were properly calculated and all amounts were due and owing in accordance with the tax returns filed in each of the prior years. The claims made under the CARES Act are on account of losses that were incurred in 2020, not on account of items that occurred or could have been claimed in tax returns in prior years. Importantly, the Company’s Federal tax returns are not being amended or restated for any prior period. There is simply no basis to assert a claim for an “overpayment” as there never were any “distributions greater than a member’s tax liability” in any prior tax year.

Third, even if there had been overpayments on account of distributions greater than a member's tax liability in prior years, as you point out in your letter, Section 4.01(b)(ii) of the Operating Agreement of the Debtor explicitly states that, "in the event that a tax distribution is greater than a member's tax liability, the LLC agreement provides that any overpayment will be credited toward any future Tax Distribution that the Debtor owes to its members." (Emphasis added.) The LLC agreement does not provide for any affirmative payment obligation to be made under any circumstance.

For all of the foregoing and other reasons, the Company disputes the claims asserted in the Letter and rejects your request.

This letter is not intended to and does not waive any rights, powers, privileges, remedies, or defenses of the Company, now existing or hereafter arising, all of which are expressly reserved. This letter may not be used in any litigation as it is for settlement purposes only related to what the Company believes is an unwarranted overreach causing it to incur legal fees.

Sincerely,

M. Ade Hogan

EXHIBIT 2

Letter of Counsel of the Committee of Unsecured Creditors of Medley, LLC, dated September 16, 2021, to Counsel of Medley Management, Inc.



James S. Carr

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3 World Trade Center
175 Greenwich Street
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September 16, 2021

By Email

Adele Hogan, Esq.
Lucosky Brookman LLP
111 Broadway, Suite 807
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Email: ahoxan@lucbro.com

Re: *Medley LLC*, No. 21-10526, United States Bankruptcy Court for the District of Delaware

Dear Ms. Hogan:

We represent the Official Committee of Unsecured Creditors (the "Committee") of Medley LLC (the "Debtor") in the above-captioned bankruptcy case. The Committee understands that your client, Medley Management, Inc. ("MDLY"), expects to receive a tax refund in the approximate amount of \$1.5 million (the "Tax Refund"). Under the terms of the Fourth Amended and Restated Limited Liability Company Agreement for the Debtor (the "LLC Agreement"), the Debtor is entitled to these funds.

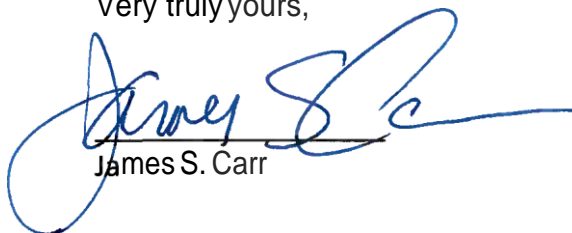
Specifically, pursuant to Section 1.01 of the LLC Agreement, MDLY is the managing member of the Debtor. The Debtor is required to distribute cash to its members, including MDLY, in the event that taxable income from the Debtor gives rise to taxable income for its members ("Tax Distribution"). LLC Agreement, § 4.01(b)(i). In the event the Tax Distribution is less than the amount of tax owed, the Debtor is then required to distribute additional cash to its members to cover the amount of the tax liability owed. *Id.*, § 4.01(b)(ii). In the event a Tax Distribution is greater than a member's tax liability, as is the case here with respect to MDLY, the LLC Agreement provides that any overpayment will be credited toward any future Tax Distribution that the Debtor owes to its members. *Id.* As you are aware, the Debtor is liquidating and there will be no future tax liabilities to which the Tax Refund may be credited. Accordingly, the Tax Refund that MDLY expects to receive will be a refund of cash distributed to it, from the Debtor, to pay MDLY's tax liabilities, which were overestimated. In light of these facts, the Committee demands that MDLY immediately turn over the Tax Refund upon receipt.

Medley LLC
September 16, 2021
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Based on prior discussions with representatives of MDLY, the Committee understands that MDLY disputes the Debtor's entitlement to the Tax Refund. To the extent that remains accurate, please provide an explanation of MDLY's position, along with written acknowledgement that the Tax Refund will be placed in escrow until any dispute concerning ownership of the Tax Refund is resolved. If you do not agree to these terms, the Committee will be forced to seek injunctive relief from the bankruptcy court to protect these funds, which belong to the Debtor.

Thank you for your anticipated cooperation.

Very truly yours,



James S. Carr

cc: Whitney M. Smith, Esq.