

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

In re:

Medley LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Hearing Date: October 2, 2023 at 9:30 a.m. (ET)

Obj. Deadline: September 22, 2023 at 4:00 p.m. (ET)

**MEDLEY LLC LIQUIDATING TRUST'S MOTION FOR  
AN ORDER AUTHORIZING THE ABANDONMENT AND  
DESTRUCTION OF OBSOLETE BUSINESS DOCUMENTS**

The Medley LLC Liquidating Trust (the "Liquidating Trust"), established by the confirmed combined plan and disclosure statement (the "Plan")<sup>2</sup> in this case of the above-captioned debtor (the "Debtor"), by and through its undersigned counsel, hereby submits this motion (the "Motion") for an order, substantially in the form attached hereto as **Exhibit A**, authorizing the abandonment and destruction of obsolete business documents. In support of the Motion, the Liquidating Trust respectfully represents as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and other predicates for the relief requested herein are sections 105, 363, and 554 of the Bankruptcy Code, Bankruptcy Rule 6007, Section 37 of the Amended Order confirming the Plan (the "Confirmation Order"),<sup>3</sup> and Articles X and XI.I of the Plan.

<sup>1</sup> The Debtor's current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

<sup>2</sup> Docket No. 445-1.

<sup>3</sup> Docket No. 445.



### **BACKGROUND**

3. On March 7, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. On October 18, 2021, the Court entered the Confirmation Order, which went effective on the same day (the “Effective Date”).<sup>4</sup> Among other things, the Plan provided for the creation of the Liquidating Trust to liquidate the remaining estate assets and pursue potential causes of action, which were transferred to the Liquidating Trust.<sup>5</sup>

5. Under the Plan, to facilitate the performance of its role and responsibilities, the Liquidating Trust is vested with “all power and authority that may be or could have been exercised, with respect to the Liquidating Trust Assets, by any officer, director, or other party acting in the name of the Debtor or its estate[.]”<sup>6</sup> Included among these powers, is the right to “abandon, or otherwise dispose of the Liquidating Trust Assets or any part thereof... except that the abandonment of Records is subject to Article XI.I of this Combined Plan and Disclosure Statement.”<sup>7</sup> Article XI.I of the Plan states that the Liquidating Trust “shall retain and preserve all Records prior to the Petition Date that are currently in their respective possession” and “[n]either the Debtor nor the Liquidating Trustee shall destroy or otherwise abandon any Records without seeking further authorization from the Bankruptcy Court after notice and an opportunity for hearing[.]”<sup>8</sup>

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<sup>4</sup> Docket No. 449.

<sup>5</sup> Plan at Article VII.

<sup>6</sup> *Id.* at Article X.

<sup>7</sup> Plan at Article VII.F.1.(h).

<sup>8</sup> Plan at XI.I.

6. Among the “Records” that were transferred to the Liquidating Trust as of the Effective Date are certain hard copy records that had been maintained by the Debtor in the ordinary course of business. In particular, the Debtor possessed 236 boxes containing hard-copy legacy files that formerly belonged to non-debtor subsidiary Medley Capital, LLC (“Medley Capital”) that Medley Capital stored at a storage facility at a cost of approximately \$1,500 per month. According to Iron Mountain’s records, the documents are catalogued in **Exhibit B** and include items such as: (i) employee expenses and employee expense reports; (ii) employee payroll and W2 documents; (iii) 401k reports; (iv) miscellaneous invoices and statements; and (v) various other documents that the Liquidating Trust has determined will be of no use to the Liquidating Trust.

### **RELIEF REQUESTED**

7. Article XI.I of the Plan and Section 37 of the Confirmation Order provides, in pertinent part, that the Liquidating Trust “shall continue to retain and preserve all Records prior to the Petition Date that are currently in their respective possession” and, further, that the Trust shall not “destroy or otherwise abandon any such Records without seeking further authorization from the Court after notice and an opportunity for hearing.”<sup>9</sup>

8. The Liquidating Trust has determined that the documents described in **Exhibit B** (the “Obsolete Documents”) are unnecessary to the continued administration of the Liquidating Trust, and are unduly burdensome to maintain.

9. Counsel for the Liquidating Trust exchanged correspondence with counsel for Debtor’s parent company, Medley Management, Inc. (“Medley Management”), concerning the potential destruction of the Obsolete Documents. Counsel to Lowenstein Sandler, LLP

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<sup>9</sup> *Id.*; see also Confirmation Order at § 37.

(“Lowenstein”), Medley Management’s prior counsel, has also been made aware of the potential destruction of the Obsolete Documents. Medley Management does not want to take possession of the Obsolete Documents. Lowenstein is still considering reviewing the documents. Because the Plan requires Court approval to destroy the Obsolete Documents, the Liquidating Trust seeks an order authorizing the Liquidating Trust to do so.

### ARGUMENT

10. Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.”<sup>10</sup> Additionally, Section 363(b)(1) of the Bankruptcy Code authorizes the trustee to “use, sell, or lease, other than in the ordinary course of business, property of the estate” if the proposed use (or in this case, disuse) of estate assets is within a trustee’s reasonable business judgment.<sup>11</sup> Courts uniformly defer to the trustee’s business judgment in reviewing the trustee’s decision to abandon property under section 554 of the Bankruptcy Code.<sup>12</sup>

11. Moreover, the Liquidating Trust’s request for the relief sought by the Motion is made in a good faith effort to eliminate unnecessary administrative costs for the benefit of the Debtor’s creditors. The Obsolete Documents are fairly voluminous and are costing the Liquidating Trust approximately \$1500 per month. Consequently, the administrative costs

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<sup>10</sup> 11 U.S.C. § 554(a).

<sup>11</sup> 11 U.S.C. § 363(b)(1); *see also*, *In re Martin*, 91 F.3d 389, 395 (3d. Cir. 1996) (stating that the court generally defers to a trustee’s judgment so long as there is a legitimate business justification).

<sup>12</sup> *See In re Slack*, 290 B.R. 282, 284 (Bankr. D. N.J. 2003) (“The trustee’s power to abandon property is discretionary... The court only needs to find the trustee made: 1) a business judgment; 2) in good faith; 3) upon some reasonable basis; and 4) within the trustee’s scope of authority.”).

incurred to store the Obsolete Documents are not necessary or justified in light of the lack of any benefit to the estate of retaining them.

12. It is possible that certain of the Obsolete Documents could contain confidential information (*e.g.*, employee records or other personal information) that requires special disposal. Therefore, the Liquidating Trust will arrange for the destruction of the Obsolete Documents in an appropriate manner so as to ensure that the confidentiality of any such information cannot be obtained by any party.

**NOTICE**

13. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to Medley Management, Inc., Alan Frank (afrank@alflaw.net), Samantha Millrood (smillrood@alflaw.net); (c) counsel to Lowenstein & Sandler LLP, Zachary Proulx (Zachary.proulx@lw.com), Robert Malionek (Robert.Malionek@lw.com), Lemay Diaz (Lemay.Diaz@lw.com), Brittany Davis (Brittany.Davis@lw.com), Jeffrey Cohen (jcohen@lowenstein.com); (d) counsel to the U.S. Securities and Exchange Commission, William M. Uptegrove (uptegrovew@sec.gov) and Theresa A. Scheuer (scheuert@sec.gov); and (d) any party filing a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Liquidating Trust submits that no other or further notice is necessary or required under the circumstances.

**NO PRIOR REQUEST**

14. No previous motion for the relief sought herein has been made to this or any other Court.

*[Remainder of the Page Intentionally Left Blank]*

**CONCLUSION**

WHEREFORE, the Liquidating Trust respectfully requests entry of an order substantially in the form attached hereto as **Exhibit A** granting the relief requested herein and such other and further relief as is just and proper.

Dated: September 8, 2023  
Wilmington, Delaware

Respectfully submitted,

/s/ Sameen Rizvi

Christopher M. Samis (No. 4909)

Sameen Rizvi (No. 6902)

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*Counsel for the Liquidating Trust*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

Medley LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Hearing Date: October 2, 2023 at 9:30 a.m. (ET)

Obj. Deadline: September 22, 2023 at 4:00 p.m. (ET)

**NOTICE OF MEDLEY LLC LIQUIDATING TRUST'S MOTION  
FOR AN ORDER AUTHORIZING THE ABANDONMENT  
AND DESTRUCTION OF OBSOLETE BUSINESS DOCUMENTS**

PLEASE TAKE NOTICE that on September 8, 2023, the Medley LLC Liquidating Trust filed the *Motion of Liquidating Trust for an Order Authorizing the Abandonment and Destruction of Obsolete Business Materials* (the "Motion") with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware, and served upon and received by the undersigned counsel on or before **September 22, 2023 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that if any objections or responses are received, a hearing with respect to the Motion will be held on **October 2, 2023 at 9:30 a.m. (Eastern Standard Time)** before The Honorable Karen B. Owens, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom 3, Wilmington, Delaware 19801.

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<sup>1</sup> The Debtor's current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THIS MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 8, 2023  
Wilmington, Delaware

Respectfully submitted,

/s/ Sameen Rizvi

Christopher M. Samis (No. 4909)

Sameen Rizvi (No. 6902)

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**EXHIBIT A**

**(Proposed Order)**

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

In re:

Medley LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Re: Docket No. \_\_

**ORDER AUTHORIZING THE ABANDONMENT AND  
DESTRUCTION OF OBSOLETE BUSINESS DOCUMENTS**

Upon the motion (the “Motion”)<sup>2</sup> of the Medley LLC Liquidating Trust (the “Liquidating Trust”) dated September 8, 2023, for an order pursuant to sections 105(a), 363 and 554 of the Bankruptcy Code, Bankruptcy Rule 6007, Section 37 of the Confirmation Order and Articles X and XI.I of the Plan, authorizing the abandonment and destruction of certain obsolete business records; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court; and consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor’s estate, its creditors and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED, as set forth herein.

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<sup>1</sup> The Debtor’s current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. The provision of notice to the parties listed in paragraph 13 of the Motion is proper and sufficient under the circumstances, and the requirement of notice to any other parties as set forth in Bankruptcy Rule 6007 including, but not limited to, service of the Motion on all of the Debtor's creditors, is dispensed with and waived.

3. The Liquidating Trust is authorized and directed to destroy the Obsolete Documents.

4. Without need to seek further orders from this Court, the Liquidating Trust is hereby authorized to take such steps and perform such acts as the Liquidating Trust deems reasonable and appropriate to implement and effectuate the terms of this Order.

5. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and implementation of this Order.

**EXHIBIT B**

Row Labels	1 - Review Required	2 - Complete	Total
D0041		57	57
H8390		39	39
AP 2010 TES		1	1
TES		38	38
J7661		197	197
17 EMPLOYEE EXPENSES		1	1
2009 STATEMENTS		1	1
2010 STATEMENTS		1	1
401K REPORTS		1	1
A-O CORP ACCOUNTING		1	1
ACCOUNT STATEMENTS		2	2
ACCOUNTING		1	1
ACCOUNTING MCC		1	1
ADC ALTRA ASW AURORA CANDOR		1	1
ALLIED CASH ADVANCED BUSINESS		1	1
ALOYA, CPC, CAREGIVER		1	1
ALTRA NEBRASKA, ADC-GREEN		1	1
AMEX STATEMENTS		1	1
AMEX STATEMENTS 2012		1	1
ANABI ABG		1	1
ANABI HOLDINGS		1	1
ASSET MANAGEMENT 2007 & 2006		1	1
ASSET MANAGEMENT 2008/2009		1	1
BANK PECANCIATIONS		1	1
BANK RECONCILIATIONS		1	1
BANK STATEMENTS 2010		1	1
BENNU SHEFFIELD VELUM MISCDOCS		1	1
BOX 1 MIS		1	1
CAMERON/BENNO BINDER & RAM DOC		1	1
CGEN MEDIA BRAZIL LOMA FARMS		1	1
CHINA SOUTH US HOLDINGS CO 200		1	1
COMPLIANCE MANUALS MINS		2	2
CONDER LEGAR OORS		1	1
CONDOR EXPLORATION		1	1
CORP ACCOUNTING		4	4
CORP ACCOUNTING A-J		1	1
CORP ACCOUNTING K-X		1	1
CORP ACCOUNTING P-X		1	1
CREDIT AGREEMENTS MOF-1		1	1
CREDIT STORE, DURANT BIOFUELS		1	1
DEALS AND STATEMENTS		1	1
DF HOMES LEGAL DOCS		1	1
DIANIIN TENERE FLURIOMAR		1	1
EARTH ING		1	1
EMPLOYEE EXPENSE REPORTS		1	1
EMPLOYEE EXPENSES		1	1
EMPLOYEE REPORTS PRE 2010		1	1
ESTRELLA		1	1
EXPENSES 2011 AND PRIOR		1	1
EXPENSES 2011 ONLY		1	1
FA 30 RECICEPTS		1	1
FALLBROOK MILTON TIMBER MMFX		1	1
FALLBROOK, FORTES, ESTRELLA		1	1
FLUVIMAR CAMERON CONDOR		1	1
FLUVIOMAR, CAMERON FAMILY GLAS		1	1
FORMER EMPLOYEE EXPENSE REPORT		2	2
FOURTH THIRD DOCUMENTS MOFLD D		1	1
GENEVA PNC		1	1
GENEVA WOOD FUELS, WYSTERIA		1	1
HR		6	6
HR ACCOUNTING		1	1
I-9 CURRENT TERMED EMPLOYEES		1	1
INVESTING		13	13
INVOICES 2008 AND PRIOR		1	1
INVOICES 2011 AND PRIOR		1	1
JAN AUG BANK REC 16 17		1	1
LCD, NAMALU, AURORA		1	1
LEGAL AND COMPLIANCE DOCS		1	1
LEGAL DOCS		1	1
LEGAL INVOICES		1	1
LEGAL INVOICES 2008 2009		1	1

LONDON AMCDMENTS 1-5	1	1
M OF I INVESTOR DOCS	4	4
M OF I/CONDOR LEGAL	1	1
M OFI & MACRO INVESTOR DOCS	1	1
MACRO ACCOUNT STATEMENTS	2	2
MACRO PITCHBOOKS 2009/2010	1	1
MC PAYROLL 2010	1	1
MC PAYROLL-2007-2009	1	1
MCC	3	3
MCC ACCOUNTING	4	4
MCC CREDIT AFREEMENT REVIEWS	1	1
MCC WIRES, MCC WORKPAPERS, MIS	1	1
MCC-2014, 2013 MEWILES	1	1
MEDLEY CAPITAL CORPORATION	1	1
MEDLEY CAPITAL LLC + NATHALIE	1	1
MH RUBY FUND NEDERLANDER, GENE	1	1
MILTON TIMBER,OCEAN BULKER ONE	1	1
MISC BOX 1	1	1
MISC CONDOR-DIGS	1	1
MISC HR	1	1
MISC INVOICES 2010-2014	1	1
MISC LEGAL	1	1
MMFX & MACRO LEGAL	1	1
MOF I ASSORTED LEGAL	1	1
MOFI 06-09 CAYMAN/PURCH AGRMT	1	1
MOFI VALUATION BINDERS	1	1
MOFII-2011,2012-2013	1	1
MONTERY SHORES OCENBULKER	1	1
MORIT PITCHBOOKS 2010 MCBOARDR	1	1
NAV IRON MOUNTAIN	2	2
NNP COMUNICATIONS, TIMELY MED	1	1
OCEAN BULKER	2	2
PARTICIPATION AGREEMENTS	1	1
PAYROLL 2017	1	1
PAYROLL 2017/2018	1	1
PAYROLL 401K MISC	1	1
PAYROLL BENEFITS	1	1
PAYROLL BENEFITS OLD W2	1	1
PAYROLL W2S 2015	1	1
PNC Q CAPITAL	1	1
PT ARTHA MMFX	1	1
Q1 Q3 15 SOX REVIEW	1	1
Q14 FINANCIAL STATEMENTS Q114	1	1
Q2012 WORK PAPERS	1	1
RAM, THORNTON AMERICAS HOLDING	1	1
RICK	1	1
SARBANES AND OXLEY	2	2
SCNHOLDCO MACFARLAM GOLF COAST	1	1
SHEFFIELD, MONTERARYBAY SHORES	1	1
SIC INVOICES 2014	1	1
SIC INVOICES 2014-2015	2	2
SIC SOX BINDERS AND WORKPAPERS	1	1
SIC SOX DEC 2013	1	1
SIERRA INCOME 2012	1	1
SOUTH CHINA FORTES RAM	1	1
SOX 2013 DOCUMENTS	1	1
SOX BINDERS Q414 Q123415	1	1
SOX CASH MOFLL CLOSING DOCS	1	1
SOX REVIEW	1	1
SOXILEGAL 2013 DOCUMENTS	1	1
TERMED EMPS	4	4
TIANJIN, TURBINE ENERGY SLTNS	1	1
VIATHON	5	5
WATER CAPITAL	1	1
WATER CAPITAL, VELUM, BENNU	1	1
WIRE INFORMATION	1	1
(blank)	21	21