

**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. 25

**CERTIFICATION OF COUNSEL REGARDING ORDER AUTHORIZING THE
DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC
AS ADMINISTRATIVE ADVISOR EFFECTIVE *NUNC PRO TUNC*
TO THE PETITION DATE**

I, Eric J. Monzo, of Morris James LLP, proposed counsel for Medley LLC (the “Debtor”) hereby certifies as follows:

1. On March 9, 2021, the Debtor filed the *Application for Entry of an Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date* (the “Application”) [Docket No. 25].

2. The deadline to object to the Application was March 30, 2021.

3. The Debtor has received informal comments from the United States Trustee for the District of Delaware (the “US Trustee”) with regard to Application.

4. The Debtor respectfully requests that the Court enter the revised proposed order attached hereto as **Exhibit A** (“Revised Order”), which incorporates the comments of the US Trustee. A redline comparing the Revised Order to the order as filed with the Motion is attached as **Exhibit B**.

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.



5. The undersigned counsel is available should the Court have any concerns with respect to the foregoing, and respectfully requests that the Court enter the Revised Order at its earliest convenience.

Dated: April 1, 2021

MORRIS JAMES LLP

/s/ Eric J. Monzo

Eric J. Monzo (DE # 5214)

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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. 25

**ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN
KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR
EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the “Application”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an Order (this “Order”), pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1, authorizing the Debtor to employ and retain Kurtzman Carson Consultants LLC (“KCC”) as its administrative advisor (the “Administrative Advisor”) in the Chapter 11 Case effective *nunc pro tunc* to the Petition Date; all as more fully set forth in the Application; and upon the First Day Declaration and the Gershbein Declaration; and this Court having 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.); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Section is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and this Court having found that the Debtor’s notice of the Application and

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opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application; and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is granted, as set forth herein.
2. Notwithstanding the terms of the Services Agreement attached to the Application, the Application is granted solely as set forth in this Order.
3. The Debtor is authorized to employ and retain KCC as its Administrative Advisor, effective *nunc pro tunc* to the Petition Date, to perform the Administrative Services described in the Application, as set forth in the Application and under the terms of the Services Agreement, attached to the Application as **Exhibit C**, relating to such services.
4. KCC is authorized to take such other action to comply with all duties set forth in the Application and the Services Agreement.
5. KCC shall apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any orders entered in the Chapter 11 Case regarding professional compensation and reimbursement of expenses.
6. KCC shall use its reasonable best efforts to avoid any unnecessary duplication of services provided by any of the Debtor's retained professionals in the Chapter 11 Case.
7. Except to the extent set forth herein, the Debtor is authorized to indemnify KCC under the terms of the Services Agreement, KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the

services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court.

- (i) Notwithstanding anything to the contrary in the Services Agreement, the Debtor shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (a) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from KCC's bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct, or fraud; (b) for a contractual dispute in which the Debtor alleges breach of KCC's contractual obligations under the Services Agreement unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (a) and (b) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Application and this Order.

8. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Case (that order having become a final order no longer subject to appeal) or (b) the entry of an order closing the Chapter 11 Case, KCC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, KCC must file an application before this Court, and the Debtor may not pay any such amounts to KCC before the entry of an order by this

Court approving such application and payment requested therein. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution, or reimbursement.

9. In the event of any inconsistency between the Services Agreement, the Application, and this Order, this Order shall govern.

10. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

11. The relief granted herein shall be binding upon any chapter 11 trustee appointed in the Chapter 11 Case or upon any chapter 7 trustee appointed in the event of a subsequent conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

12. The Debtor and KCC are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

13. Notice of the Application has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Application or the entry of this Order shall be required.

14. Notwithstanding any term in the Engagement Agreement to the contrary, KCC's liability during these Chapter 11 Cases shall not be limited to the amount billed or paid under the Engagement Agreement.

15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this 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)

Re: Docket No. __

**ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN
KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR
EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the “Application”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an Order (this “Order”), pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1, authorizing the Debtor to employ and retain Kurtzman Carson Consultants LLC (“KCC”) as its administrative advisor (the “Administrative Advisor”) in the Chapter 11 Case effective *nunc pro tunc* to the Petition Date; all as more fully set forth in the Application; and upon the First Day Declaration and the Gershbein Declaration; and this Court having 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.); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Section is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and this Court having found that the Debtor’s notice of the Application and opportunity for a hearing on the Application were appropriate under the

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circumstances and no other notice need be provided; and this Court having reviewed the Application; and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is granted, as set forth herein.
2. Notwithstanding the terms of the Services Agreement attached to the Application, the Application is granted solely as set forth in this Order.
3. The Debtor is authorized to employ and retain KCC as its Administrative Advisor, effective *nunc pro tunc* to the Petition Date, to perform the Administrative Services described in the Application, as set forth in the Application and under the terms of the Services Agreement, attached to the Application as **Exhibit C**, relating to such services.
4. KCC is authorized to take such other action to comply with all duties set forth in the Application and the Services Agreement.
5. KCC shall apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any orders entered in the Chapter 11 Case regarding professional compensation and reimbursement of expenses.
6. KCC shall use its reasonable best efforts to avoid any unnecessary duplication of services provided by any of the Debtor's retained professionals in the Chapter 11 Case.
7. Except to the extent set forth herein, the Debtor is authorized to indemnify KCC under the terms of the Services Agreement, KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the

services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court.

- (i) Notwithstanding anything to the contrary in the Services Agreement, the Debtor shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (a) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from KCC's bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct, or fraud; (b) for a contractual dispute in which the Debtor alleges breach of KCC's contractual obligations under the Services Agreement unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (a) and (b) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Application and this Order.

8. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Case (that order having become a final order no longer subject to appeal) or (b) the entry of an order closing the Chapter 11 Case, KCC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, KCC must file an application

before this Court, and the Debtor may not pay any such amounts to KCC before the entry of an order by this Court approving such application and payment requested therein. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution, or reimbursement.

9. In the event of any inconsistency between the Services Agreement, the Application, and this Order, this Order shall govern.

10. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

11. The relief granted herein shall be binding upon any chapter 11 trustee appointed in the Chapter 11 Case or upon any chapter 7 trustee appointed in the event of a subsequent conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

12. The Debtor and KCC are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

13. Notice of the Application has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Application or the entry of this Order shall be required.

14. Notwithstanding any term in the Engagement Agreement to the contrary, KCC's liability during these Chapter 11 Cases shall not be limited to the amount billed or paid under the Engagement Agreement.

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

Summary report:	
Litera® Change-Pro for Word 10.7.0.7 Document comparison done on 3/19/2021 3:18:14 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://ROS-IWODMSCLSTR/DBIWOV2/208537565/2	
Modified DMS: iw://ROS-IWODMSCLSTR/DBIWOV2/208537565/3	
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Delete	1
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	4