

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE MEDLEY CAPITAL )  
CORPORATION STOCKHOLDER ) CONS. C.A. No. 2019-0100-KSJM  
LITIGATION )  
)

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

TO: ANY AND ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF MEDLEY CAPITAL CORPORATION COMMON STOCK AT ANY TIME BETWEEN AND INCLUDING AUGUST 9, 2018 AND THE PRESENT, TOGETHER WITH THEIR SUCCESSORS AND ASSIGNS, EXCEPT FOR THOSE PERSONS AND ENTITIES EXCLUDED FROM THE SETTLEMENT CLASS DEFINED BELOW.

PLEASE READ ALL OF THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT DESCRIBED BELOW, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE PROPOSED SETTLEMENT OR PURSUING THE RELEASED PLAINTIFFS' CLAIMS (AS DEFINED HEREIN) AGAINST THE RELEASED DEFENDANT PARTIES (AS DEFINED HEREIN).

IF YOU HELD MCC COMMON STOCK FOR THE BENEFIT OF OTHERS, READ THE SECTION BELOW ENTITLED "INSTRUCTIONS TO BROKERS AND OTHERS WHO HELD FOR THE BENEFIT OF OTHERS."

**I. PURPOSE OF NOTICE**

The purpose of this Notice is to inform you of the proposed settlement (the "Settlement") of the above-captioned lawsuit (the "Action") pending in the Court of Chancery of the State of Delaware (the "Court"). Pursuant to the Settlement, FrontFour Capital Group LLC ("FFCG") and FrontFour Master Fund, Ltd. ("FFMF") (collectively, "Plaintiffs"), on their own behalf and on behalf of the Settlement Class, have agreed to dismiss with prejudice their claims against Brook Taube, Seth Taube, Jeff Tonkel, Mark Lerdal, Karin Hirtler-Garvey, John E. Mack, Arthur S. Ainsberg, Medley Management, Inc. ("MDLY"), Medley Capital Corporation ("MCC"), MCC Advisors LLC, Medley Group LLC, and Medley LLC (collectively, "Stipulating Defendants"), which relate to certain transactions pursuant to which (i) MCC would merge with and into Sierra Income Corporation ("SIC"), with SIC continuing as the surviving company in the merger, and (ii) MDLY would merge with and into Sierra Management, Inc., a wholly owned subsidiary of SIC ("Merger Sub"), with Merger Sub continuing as the surviving company in the merger (collectively, the "Transactions").

In consideration of the Settlement, Stipulating Defendants have agreed to amend the previously announced Agreement and Plan of Merger, dated August 9, 2018, by and between MCC and SIC (the "MCC Merger Agreement," and, as amended, the "Amended MCC Merger Agreement"), establish a settlement fund in the event that the Closing (as defined in the Stipulation) occurs, and take other actions described herein. Also in connection with the Settlement, Plaintiffs and MCC have entered into a Governance Agreement dated July 29, 2019 (the "Governance Agreement") as set forth herein.

This Notice also informs you of the Court's preliminary certification of the Settlement Class for purposes of the Settlement, and notifies you of your right to participate in a hearing to be held on October 24, 2019, at the New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801 (the "Settlement Hearing") to determine whether the Court should approve the Settlement as fair, reasonable and adequate and in the best interests of the Settlement Class, whether Plaintiffs and the law firms of Abrams & Bayliss LLP and Olshan Frome Wolosky LLP ("Plaintiffs' Counsel") have adequately represented the interests of the Settlement Class in the Action, and to consider other matters, including a request by Plaintiffs' Counsel for an award of attorney's fees and reimbursement of expenses incurred in connection with the prosecution of the Action.

The parties have agreed for purposes of this Settlement only that the Action shall be preliminarily maintained as a non-opt-out class action under Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) on behalf of a Settlement Class consisting of:

Any and all record holders and beneficial owners of MCC common stock at any time during the Settlement Class Period, together with their successors and assigns, but excluding Stipulating Defendants, their Immediate Family, SIC and any person, firm, trust, corporation, joint venture, partnership, foundation or other entity related to or affiliated with any of the Stipulating Defendants, members of their Immediate Families or SIC.

“Settlement Class Period” means the period between and including August 9, 2018, and the later of the (i) the Closing, (ii) the consummation of any transaction based on a Superior Proposal (as defined in the Amended MCC Merger Agreement), and (iii) the termination of the Amended MCC Merger Agreement.

“Immediate Family” means an individual’s spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union.

At the Settlement Hearing, among other things, the Court will consider whether the Settlement Class should be finally certified under Court of Chancery Rule 23 and whether Plaintiffs and Plaintiffs’ Counsel have adequately represented the Class. Further details of the Settlement Hearing are set forth herein.

This Notice describes the rights you may have under the Settlement and what steps you may, but are not required to, take in relation to the Settlement.

If the Court approves the Settlement, the parties to the Settlement (the “Parties”) will ask the Court at the Settlement Hearing to enter an Order dismissing all claims asserted in the Action with prejudice on the merits.

If you are a member of the Settlement Class (a “Class Member”), you will be bound by any judgment entered in the Action whether or not you actually receive this Notice. You may not opt out of the Class.

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.**

## II. BACKGROUND OF THE ACTION

On August 9, 2018, SIC, MCC, and MDLY issued a joint press release concerning definitive agreements pursuant to which (i) MCC would, on the terms and subject to the conditions set forth in the MCC Merger Agreement, merge with and into SIC, with SIC continuing as the surviving company in the merger (the “MCC Merger”), and (ii) MDLY would, on the terms and subject to the conditions set forth in the Agreement and Plan of Merger, dated as of August 9, 2018, by and between MDLY, SIC, and Merger Sub (the “MDLY Merger Agreement”), merge with and into Merger Sub, with Merger Sub continuing as the surviving company in the merger (the “MDLY Merger”).

On August 15, 2018, SIC, MCC, and MDLY filed the MCC Merger Agreement and MDLY Merger Agreement with the U.S. Securities and Exchange Commission (“SEC”) as exhibits to Current Reports on Form 8-K.

On December 21, 2018, SIC, MCC, and MDLY filed with the SEC a joint definitive proxy statement/prospectus in connection with the Transactions (the “Definitive Proxy Statement”).

On January 11, 2019, FFCG commenced an action in the Court of Chancery, captioned *FrontFour Capital Group LLC, et al. v. Medley Capital Corporation*, No. 2019-0021-KSJM (Del. Ch.), seeking inspection of certain of MCC’s books and records pursuant to 8 *Del. C.* § 220 in connection with the Transactions.

On January 16, 2019, Stephen Altman commenced an action in the Court of Chancery, captioned *Stephen Altman v. Medley Capital Corporation*, No. 2019-0031-KSJM (Del. Ch.), seeking inspection of certain of MCC’s books and records pursuant to 8 *Del. C.* § 220 in connection with the Transactions.

On February 5, 2019, SIC, MCC, and MDLY filed with the SEC definitive additional solicitation materials on Schedule 14A containing certain supplemental disclosures in connection with the Transactions (the “Proxy Supplement”).

On February 11, 2019, FFCG and FFMF commenced a purported stockholder class action in the Court of Chancery, captioned *FrontFour Capital Group LLC, et al. v. Brook Taube, et al.*, No. 2019-0100-KSJM (Del. Ch.) (the “FrontFour Action”), against the Stipulating Defendants and SIC (collectively, “Defendants”). On February 12, 2019, FFCG and FFMF filed a Verified Amended Complaint for Injunctive Relief (the “Complaint”).

The Complaint alleged that Brook Taube, Seth Taube, Jeff Tonkel, Mark Lerdal, Karin Hirtler-Garvey, John E. Mack, and Arthur S. Ainsberg (the “Individual Defendants”) breached their fiduciary duties to MCC stockholders in connection with the Transactions. The Complaint also alleged that MDLY, SIC, MCC Advisors LLC, Medley Group LLC, and Medley LLC aided and abetted those alleged breaches of fiduciary duties, and it sought to enjoin the vote of MCC stockholders on the Transactions and enforcement of certain provisions of the MCC Merger Agreement and to compel a curative sale process and additional disclosures.

On March 6, 2019, MCC commenced an action in the United States District Court for the Southern District of New York, captioned *Medley Capital Corporation v. FrontFour Capital Group LLC, et al.*, No. 1:19-cv-02055-LTS (S.D.N.Y.), against

FFCG, FFMF, FrontFour Capital Corporation, FrontFour Opportunity Fund, David A. Lorber, Stephen E. Loukas, Zachary R. George (collectively, “FrontFour”), Moab Capital Partners, LLC (“Moab”), HFR Asset Management, L.L.C. (“HFR”), and NexPoint Advisors, L.P. (“NexPoint,” together with FrontFour, Moab, and HFR, the “Federal Defendants”), alleging that the Federal Defendants were engaging in an illegal solicitation of MCC’s stockholders in connection with the Transactions in violation of federal securities laws (the “Federal Action”). MCC sought damages and injunctive relief to prevent the Federal Defendants from continuing their alleged illegal solicitation of MCC’s stockholders.

The Court held a trial on the claims in the FrontFour Action on March 6-7, 2019 and issued a Memorandum Opinion on March 11, 2019 (the “Decision”), which it subsequently revised on March 22, 2019.

On March 20, 2019, Altman commenced a purported stockholder class action by filing a complaint (the “Altman Complaint”) in the Court of Chancery, captioned *Stephen Altman v. Brook Taube, et al.*, No. 2019-0219-KSJM (Del. Ch.) (the “Altman Action”), against Brook Taube, Seth Taube, Jeff Tonkel, Mark Lerdal, Karin Hirtler-Garvey, John E. Mack, and Arthur S. Ainsberg.

The Altman Complaint alleged that the defendants in the Altman Action breached their fiduciary duties to MCC stockholders in connection with the Transactions, including by approving adjournments of the vote of the MCC stockholders on the Transactions and issuing allegedly false and misleading disclosures regarding the reasons for those adjournments.

On April 8, 2019, pursuant to a stipulation of all parties to the FrontFour Action and the Altman Action, the Court consolidated the Altman Action with the FrontFour Action, appointed the plaintiffs in the FrontFour Action as lead plaintiffs in the Action, appointed counsel to the plaintiffs in the FrontFour Action as lead plaintiffs’ counsel in the Action, and designated the Complaint as the operative complaint in the Action.

Following the Court’s issuance of the Decision, the Parties engaged in extensive, arm’s length negotiations and reached an agreement in principle to finally and fully settle the claims against the Stipulating Defendants. The final Settlement is memorialized in the Stipulation and Agreement of Compromise and Settlement dated July 29, 2019, and the Stipulation Amending Release of Claims and Certain Exhibits filed with the Court on August 8, 2019 (together, the “Stipulation”).

### **III. THE BENEFITS OF THE SETTLEMENT**

In consideration of the Settlement, the Parties have implemented or have agreed to implement the following actions:

#### **1. Changes to MCC Board of Directors**

On April 15, 2019, David A. Lorber and Lowell W. Robinson were appointed to the board of directors of MCC (the “MCC Board”), to the classes of directors up for election in 2021 and 2020, respectively, with Messrs. Lorber and Robinson each being entitled to the same advancement and indemnification rights and insurance coverage as the other members of the MCC Board. In addition, the MCC Board added Messrs. Lorber and Robinson to MCC’s special committee of independent directors (the “MCC Special Committee”), with Mr. Lorber serving as Chair of the MCC Special Committee. Mr. Lorber also was appointed as a member of the nominating and corporate governance committee and the compensation committee of the MCC Board, and Mr. Robinson was appointed as a member of the audit committee of the MCC Board.

#### **2. Corrective Disclosures**

Stipulating Defendants and Plaintiffs shall work in good faith to agree, as soon as reasonably practicable, upon supplemental disclosures that MCC shall disseminate consistent with the Court’s Decision, and which will also clarify that the echo voting of MCC stock deemed to be controlled by MCC management in connection with the Transactions will be calculated without regard to broker non-votes and abstentions.

#### **3. Waiver of Standstills**

Stipulating Defendants have waived any standstill or similar agreement with MDLY or its affiliates that would otherwise still be in effect as of the date hereof, such that any such agreement will not inhibit or restrict such person or entity’s participation in MCC’s exploration of strategic alternatives.

#### **4. Merger Agreement Amendment**

MCC and SIC have entered into the Amended MCC Merger Agreement attached to the Stipulation as Appendix 1, and, concurrently with the execution of the Amended MCC Merger Agreement, MDLY, SIC and Merger Sub entered into the Amended MDLY Merger Agreement attached to the Stipulation as Appendix 2.

Among other terms, the Amended MCC Merger Agreement provides that:

- During the period (the “Go-Shop Period”) beginning on the date of the Amended MCC Merger Agreement and continuing until 12:01 a.m. on the 65th day after the date of the Amended MCC Merger Agreement or, if earlier, the 60th day after the later of (x) the date of the Amended MCC Merger Agreement or (y) the date on which an independent investment banker selected by the MCC Special Committee is retained by the MCC Special

Committee to solicit strategic alternatives for MCC (the “No-Shop Period Start Date”):

- (A) MCC and its representatives shall have the right to directly or indirectly
- (i) solicit, initiate, propose, cause or induce the making, submission or announcement of, or encourage, facilitate or assist, whether publicly or otherwise, any Competing Proposal (as defined in the Amended MCC Merger Agreement) (or any inquiry, proposal or offer that could lead to a Competing Proposal),
  - (ii) subject to the entry into, and in accordance with, an Acceptable Confidentiality Agreement (as defined in the Amended MCC Merger Agreement), the MCC Special Committee, in its discretion, may furnish to any person (and its representatives and financing sources subject to the terms and obligations of such Acceptable Confidentiality Agreement applicable to such person) any non-public information relating to MCC or afford to any such person (and such representatives and financing sources) access to the business, properties, assets, books, records and other nonpublic information, and to any personnel, of MCC (provided that MCC will provide to SIC any information relating to MCC that was not previously provided or made available to SIC prior to or concurrently with the time it is furnished to such person, provided that MCC may omit any information to the extent that it would reveal the identity of the person making, or any terms or conditions of, the Competing Proposal or inquiry that could reasonably be expected to lead to a Competing Proposal being discussed with such person), in any such case with the intent to induce the making, submission and announcement of, and to encourage, facilitate and assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, a Competing Proposal or any inquiries or the making of any proposal that would reasonably be expected to lead to a Competing Proposal, and
  - (iii) engage in, enter into, continue, maintain, or otherwise participate in, any discussions or negotiations with any persons (and their respective representatives, including potential financing sources) with respect to any Competing Proposal (or inquiries, proposals or offers or other efforts that could lead to a Competing Proposal) and cooperate with or assist or participate in or facilitate any such inquiries, proposals, offers, discussions or negotiations or any effort or attempt to make any Competing Proposals; and
- (B) the MCC Board shall have the right to make any MCC Adverse Recommendation Change (as defined in the Amended MCC Merger Agreement).
- Any third party from whom MCC or any of their respective representatives has received after the date of the MCC Merger Agreement and prior to the No-Shop Period Start Date a written Competing Proposal (inclusive of any amendment or modification thereto, if delivered prior to the No-Shop Period Start Date) that the MCC Special Committee determines in good faith (such determination to be made no later than the No Shop Period Start Date), after consultation with outside legal counsel and its financial advisors, constitutes or could reasonably be expected to lead to a Superior Proposal (as defined in the Amended MCC Merger Agreement) shall be considered an Excluded Party (as defined in the Amended MCC Merger Agreement) and shall benefit from the go-shop provisions set forth in the Amended MCC Merger Agreement; provided that any such third party shall cease to be an Excluded Party upon the earlier of (a) 11:59 p.m. (Eastern Time) on the 14th day following the No-Shop Period Start Date and (b) such time as such Third Party finally withdraws its Competing Proposal(s); provided, further, that any amendment, supplement or modification to a Competing Proposal shall not constitute withdrawal of a Competing Proposal.
  - In the event that the Amended MCC Merger Agreement is terminated during the Go-Shop Period or prior to the 14th day following the No-Shop Period Start Date because the MCC Special Committee has made a recommendation change resulting from a Superior Proposal by an Excluded Party, MCC will not be obliged to pay a Termination Fee as defined in the Amended MCC Merger Agreement.

5. Governance Agreement

Plaintiffs and MCC have entered into the Governance Agreement attached to the Stipulation as Appendix 3.

6. Establishment of Settlement Fund

In the event that the Closing occurs, the Parties agree that the Class Payment (as defined below) plus all interest earned thereon (collectively, the “Settlement Fund”) will be established as set forth in the Stipulation. For the avoidance of doubt, the Settlement Fund will not be created if the Closing does not occur for any reason, including if MCC, SIC or MDLY determines to terminate the MCC Merger Agreement or the MDLY Merger Agreement prior to the Closing for any reason whatsoever, including without limitation in order for MCC to enter into an agreement with respect to a Superior Proposal (as defined in the Amended MCC Merger Agreement).

At or prior to the Closing, Defendants (except for MDLY) shall cause \$17,000,000 in cash (the “Cash Component”) to be deposited into an escrow account in accordance with the terms of the Amended MCC Merger Agreement. Immediately following the Closing, Defendants (except for MDLY) shall deposit, or cause to be deposited, the Cash Component and a total of \$30,000,000 in Combined Company Common Stock, the number of shares of which is to be calculated using the pro forma net asset value reported in the proxy supplement disclosing the Amended MCC Merger Agreement (the “Stock Component,” and collectively, the “Class Payment”), into an interest-bearing account controlled by Plaintiffs’ Counsel (the “Account”).

As set forth in the Stipulation and as described below, the Class Payment shall be distributed to the Class Members who hold shares of MCC common stock at the Closing and therefore are entitled to receive a portion of the consideration available to MCC shareholders in connection with the MCC Merger, in accordance with the terms of the MCC Merger Agreement (the “Merger Consideration”) for their shares of MCC common stock owned at the Closing (the “Eligible Shares,” and the owners of those shares, the “Eligible Class Members”). For the avoidance of doubt, Eligible Class Members exclude all persons and entities excluded from the Settlement Class as described in the definition of Settlement Class (the “Excluded Stockholders”).

Prior to distribution to Eligible Class Members, the Class Payment shall be used to pay the following costs and expenses, with the remaining funds constituting the “Net Settlement Amount”: (i) any and all fees, costs and expenses incurred by the Settlement Administrator, or any other person in connection with providing notice (including postage and any broker reimbursement costs) to Class Members and administering the Settlement, including all fees, costs and expenses incurred in connection with issuing payments to members of the Settlement Class (“Notice and Administration Costs”), (ii) any and all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Class Payment after being deposited into the Account (“Taxes”) and the reasonable expenses and costs in connection with determining the amount of, and paying, any Taxes (including, without limitation, reasonable expenses of tax attorneys and accountants), and for the preparation, mailing, administration, and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns in connection with any Taxes (“Tax Expenses”), and (iii) any other fees, costs or expenses approved by the Court; provided, however, that Plaintiffs’ Counsel shall not receive any funds as part of any Taxes, Tax Expenses, or Notice and Administration Costs.

Plaintiffs shall retain a Settlement Administrator to oversee the administration of the Settlement Fund and distribution of the Net Settlement Amount. Within five (5) business days of the Closing, the Stipulating Defendants (except for MDLY) shall provide or cause to be provided to the Settlement Administrator and Plaintiffs’ Counsel, at no cost to the Settlement Fund, Plaintiffs, Plaintiffs’ counsel, or the Settlement Administrator, the following information: (a) the stockholder register from MCC’s transfer agent, which listing shall include the names and mailing addresses for all registered owners of MCC common stock who or which are entitled to receive the Merger Consideration at the Closing (the “Eligible Registered Owners”) and the number of Eligible Shares held by such Eligible Registered Owners; and (b) the names and mailing addresses for each of the Excluded Stockholders and the number of shares of MCC common stock beneficially owned by the Excluded Stockholders (the “Excluded Shares”). In addition to the foregoing, Plaintiffs’ Counsel may request from Stipulating Defendants (except for MDLY) any additional information as may be required to distribute the Net Settlement Amount to Eligible Class Members and to ensure that the Net Settlement Amount is paid only to Eligible Class Members and not to Excluded Stockholders.

The Stipulating Defendants (except for MDLY) will also obtain from the Depository Trust Company (“DTC”) and its nominee, Cede & Co. Inc. (“Cede”), the information to be obtained from DTC necessary to facilitate DTC’s distribution of the Net Settlement Amount to Eligible Beneficial Owners (as defined below) (the “DTC Records”). The DTC Records shall include, without limitation, an allocation or “chill” report generated by DTC in anticipation of the Transactions to facilitate the allocation of the Merger Consideration to stockholders. Plaintiffs’ Counsel will use any information obtained from DTC solely for the purpose of administering the Settlement as set forth in this Stipulation, and not for any other purpose, and will not disclose any information obtained from DTC to any other party except as necessary to administer the Settlement or as required by law. Information to be provided to DTC in connection with the distribution of the Net Settlement Amount includes, without limitation, this Notice and “suppression letters” from DTC participants to which DTC will distribute portions of the Net Settlement Amount pursuant to the terms of the Stipulation (the “DTC Participants”) concerning the Excluded Shares, instructing DTC to withhold payment on those Excluded Shares and containing other terms as DTC may reasonably require.

The Net Settlement Amount shall be distributed from the Account by the Settlement Administrator to Eligible Class Members on a *pro rata* basis equal to the product of (a) the number of Eligible Shares held by each Eligible Class Member and (b) the per-share recovery under the Settlement, which will be calculated by dividing the total amount of the Net Settlement Amount by the total number of Eligible Shares held by all Eligible Class Members (the “Per-Share Recovery”), as promptly as practicable after all of the following conditions are satisfied: (i) the Class Payment has been

deposited into the Account following the Closing, (ii) the Court of Chancery has entered the Judgment (as defined below) substantially in the form attached to the Stipulation as Exhibit D, or entered an Alternative Judgment (as defined below) dismissing the Action with prejudice and providing for the Releases (as defined below) and none of the Parties elects to terminate the Settlement; (iii) the Judgment or Alternative Judgment, as the case may be, has become Final (as defined below); and (iv) on notice to Stipulating Defendants' Counsel, Plaintiffs' Counsel have applied for, and the Court of Chancery has entered, an order authorizing the specific distribution of the Net Settlement Amount (the "Class Distribution Order"). Through the Settlement and the Stipulation, the Parties are not intending to create appraisal rights in connection with the Transactions, and the Parties have agreed to use their best efforts to obtain an order from the Court of Chancery confirming that the distribution of the Net Settlement Amount to Eligible Class Members will not give rise to appraisal rights in connection with the Transactions.

With respect to MCC common stock held of record by Cede, the Settlement Administrator will cause that portion of the Net Settlement Amount to be allocated to the ultimate beneficial owner of any shares of MCC common stock at the Closing (the "Eligible Beneficial Owners," provided, however, that no Excluded Stockholder may be an Eligible Beneficial Owner), who held their shares through DTC Participants to be paid to DTC. DTC shall then distribute that portion of the Net Settlement Amount among the DTC Participants by paying each the Per-Share Recovery times its respective number of shares of MCC common stock reflected on the DTC allocation report used by DTC to distribute portions of the Net Settlement Amount (for each DTC Participant, the "Closing Security Position"), using the same mechanism that DTC used to distribute the Merger Consideration and subject to payment suppression instructions with respect to Excluded Shares. The DTC Participants and their respective customers, including any intermediaries, shall then ensure pro rata payment to each Eligible Beneficial Owner in accordance with each Eligible Beneficial Owner's number of shares of MCC common stock beneficially owned by such Eligible Beneficial Owner as of Closing (for each Eligible Beneficial Owner, the "Closing Beneficial Ownership Position," provided, however, that no Excluded Shares may comprise any part of any Closing Beneficial Ownership Position).

With respect to MCC common stock held of record as of the Closing other than by Cede, as nominee for DTC (a "Closing Non-Cede Record Position"), the payment with respect to each such Closing Non-Cede Record Position shall be made by the Settlement Administrator from the Net Settlement Amount directly to the record owner of each Closing Non-Cede Record Position in an amount equal to the Per-Share Recovery times the number of shares of MCC common stock comprising such Closing Non-Cede Record Position.

For the avoidance of doubt, to the extent that any record owner, any DTC Participants, or their respective customers, including any intermediaries, took or permitted actions that had the effect of increasing the number of shares of MCC common stock entitled to payment of the Merger Consideration, whether through permitted naked short-selling or the cash settlement of short positions or through any other means ("Increased Merger Consideration Entitlements"), such record owner, DTC Participants, or their respective customer (including intermediaries) shall be responsible for paying to the ultimate beneficial owners of such Increased Merger Consideration Entitlements an amount equal to the Per-Share Recovery times the number of the Increased Merger Consideration Entitlements.

For the avoidance of doubt, a person or entity who acquired shares of MCC common stock on or before the Closing but had not settled those shares at Closing ("Non-Settled Shares") shall be treated as an Eligible Beneficial Owner with respect to those Non-Settled Shares (except for the Excluded Shares), and a person who sold those Non-Settled Shares on or before the Closing shall not be treated as an Eligible Beneficial Owner with respect to those Non-Settled Shares.

Payment from the Net Settlement Amount made pursuant to and in the manner set forth above shall be deemed conclusive of compliance with the Stipulation.

The Stipulating Defendants and any other Excluded Stockholder shall not have any right to receive any part of the Settlement Fund for his, her or its own account(s) (*i.e.*, accounts for which he, she or it is a beneficial owner, holds a proprietary interest or controls), or any additional amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

In the event that any payment from the Net Settlement Amount is undeliverable or in the event a check is not cashed by the stale date (*i.e.*, more than six months from the check's issue date), the DTC Participants or the holder of a Closing Non-Cede Record Position shall follow their respective policies with respect to further attempted distribution or escheatment.

All Taxes and Tax Expenses shall be paid out of the Settlement Fund, and shall be timely paid by Plaintiffs' Counsel without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the Stipulation and in all events shall reflect that all Taxes on the income earned by the Class Payment shall be paid out of the Settlement Fund, as provided herein. Stipulating Defendants shall not be liable for any Taxes, Tax Expenses, or income taxes owed by any Class Member.

#### IV. RELEASES

The Stipulation provides that upon the Effective Date (defined below), Plaintiffs and all Class Members, on behalf of themselves, their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, shall thereupon fully, finally and forever, release, settle and discharge the Released Defendant Parties (defined below) from and with respect to every one of the Released Plaintiffs' Claims (defined below), and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any Released Plaintiffs' Claims against any of the Released Defendant Parties.

As set forth in the Stipulation:

1. "Effective Date" means the first date by which all of the events and conditions specified in Section F of the Stipulation have occurred and been met (or have been waived in a writing signed by the Party for whose benefit the conditions exist).
2. "Judgment" means the Order and Final Judgment to be entered in the Action substantially in the form attached as Exhibit D to the Stipulation.
3. "Final," when referring to the Judgment, means entry of the Judgment, the expiration of any time for appeal or review of the Judgment, or, if any appeal is filed and not dismissed or withdrawn, after the Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or other review, and the time for any petition for reargument, appeal or review of the Judgment or any order affirming the Judgment has expired; or, in the event that the Court enters a judgment in a form other than the form attached to the Stipulation as Exhibit D ("Alternative Judgment") and none of the Parties elects to terminate the Stipulation, the expiration of any time for appeal or review of the Alternative Judgment, or if an appeal is filed and not dismissed or withdrawn, after the Alternative Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or other review, and the time for any petition for reargument, appeal or review of the Alternative Judgment or any order affirming the Alternative Judgment has expired; provided, however, that any disputes or appeals relating solely to the amount, payment or allocation of Plaintiffs' Counsel's attorneys' fees and expenses shall have no effect on finality for purposes of determining the date on which the Judgment or an Alternative Judgment becomes Final and shall not otherwise prevent, limit or otherwise affect the effectiveness of the Judgment or an Alternative Judgment or prevent, limit, delay or hinder entry of the Judgment or an Alternative Judgment.
4. "Released Defendant Parties" means (i) any and all of the Stipulating Defendants; (ii) the Stipulating Defendants' Immediate Family members, and respective past or present direct or indirect affiliates, associates, members, partners, partnerships, investment funds, subsidiaries, parents, predecessors, successors, officers, directors, employees, agents, representatives, advisors, financial or investment advisors (including the financial advisor to the MCC Special Committee), insurers, and attorneys (including Stipulating Defendants' Counsel); and (iii) the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing.
5. "Immediate Family" means an individual's spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union.
6. "Stipulating Defendants' Counsel" means the law firms of Morris, Nichols, Arsht & Tunnel LLP; Cadwalader, Wickersham & Taft LLP; Ross Aronstam & Moritz LLP; and Kramer Levin Naftalis & Frankel LLP.
7. "Released Plaintiffs' Claims" means all Claims that were or could have been asserted in the Action through the date of the Settlement Hearing, including, without limitation, all Claims arising out of or relating to (i) alleged mismanagement of MCC; (ii) the Transactions (including any actions, deliberations and negotiations relating thereto); (iii) the MCC Merger Agreement, the Amended MCC Merger Agreement, the MDLY Merger Agreement, and the Amended MDLY Merger Agreement (including any actions, deliberations and negotiations relating thereto); (iv) the disclosures regarding the Transactions; (v) the fiduciary duties or obligations of the Stipulating Defendants in connection with the review of strategic alternatives available to MCC; (vi) the vote or any adjournment of the vote of MCC stockholders on the MCC Merger; and (vii) proxy solicitation efforts in connection with the votes of the MCC stockholders on the MCC Merger. Released Plaintiffs' Claims shall also include all Claims arising out of or relating to the prosecution and settlement of the Federal Action. Notwithstanding the foregoing, the Released Plaintiffs' Claims shall not include claims to enforce the Stipulation or the Governance Agreement.

8. “Claims” mean any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or heretofore or previously existed, including known claims and Unknown Claims, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including but not limited to any claims under federal or state securities law, federal or state antitrust law, or under state disclosure law or any claims that could be asserted derivatively on behalf of MCC).
9. “Closing” means the consummation of the Transactions.
10. “Unknown Claims” means any and all Released Plaintiffs’ Claims which Plaintiffs or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiffs’ Claims against the Released Defendant Parties, which if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement, and any and all Released Defendants’ Claims which any Stipulating Defendant or any other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants’ Claims against the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Plaintiffs’ Claims and Released Defendants’ Claims, the Parties have stipulated and agreed that upon the Effective Date, Plaintiffs and Stipulating Defendants shall expressly waive, and each of the Class Members shall be deemed to have, and by operation of the Judgment or Alternative Judgment that becomes Final shall have expressly, waived, relinquished and released any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law or foreign law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs and Stipulating Defendants have acknowledged, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Plaintiffs’ Claims and the Released Defendants’ Claims, but that it is the intention of Plaintiffs and Stipulating Defendants, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Plaintiffs’ Claims and Released Defendants’ Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiffs and Stipulating Defendants have acknowledged, and the other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Plaintiffs’ Claims was separately bargained for and was a key element of the Settlement.

The Stipulation also provides that upon the Effective Date, each of the Stipulating Defendants, on behalf of themselves, their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, shall thereupon fully, finally and forever, release, settle and discharge the Released Plaintiff Parties (defined below) from and with respect to every one of the Released Defendants’ Claims (defined below), and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants’ Claims against any of the Released Plaintiff Parties.

As set forth in the Stipulation:

1. “Released Plaintiff Parties” means (i) any and all of Plaintiffs, FrontFour and their respective past or present direct or indirect affiliates, associates, members, managers, partners, partnerships, investment funds, subsidiaries, parents, predecessors, successors, officers, directors, employees, agents, representatives, advisors, financial or investment advisors, insurers, and attorneys (including Plaintiffs’ Counsel); (ii) the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing; and (iii) all other Class Members.

2. “Released Defendants’ Claims” means all Claims that were or could have been asserted in the Action through the date of the Settlement Hearing, including, without limitation, all Claims arising out of or relating to (i) alleged mismanagement of MCC; (ii) the Transactions (including any actions, deliberations and negotiations relating thereto); (iii) the MCC Merger Agreement, the Amended MCC Merger Agreement, the MDLY Merger Agreement, and the Amended MDLY Merger Agreement (including any actions, deliberations and negotiations relating thereto); (iv) the disclosures regarding the Transactions; (v) the fiduciary duties or obligations of the Stipulating Defendants in connection with the review of strategic alternatives available to MCC; (vi) the vote or any adjournment of the vote of MCC stockholders on the MCC Merger; and (vii) proxy solicitation efforts in connection with the votes of the MCC stockholders on the MCC Merger. Released Defendants’ Claims shall also include all Claims arising out of or relating to the prosecution and settlement of the Action and all Claims that were or could have been asserted in the Federal Action, provided, however, that the Released Defendants’ Claims shall not include any Claims that were or could have been asserted in the Federal Action against any of the Highland Parties (as defined in the Stipulation). Notwithstanding the foregoing, the Released Defendants’ Claims shall not include claims to enforce the Stipulation or the Governance Agreement.

## **V. REASONS FOR THE SETTLEMENT**

Plaintiffs’ Counsel have conducted an investigation and pursued discovery relating to the claims and the underlying events and transactions alleged in the Action. Plaintiffs’ Counsel have analyzed the evidence adduced during their investigation, through discovery and at trial, and have researched the applicable law with respect to Plaintiffs and the Settlement Class. In negotiating and evaluating the terms of the Stipulation, Plaintiffs’ Counsel considered the significant legal and factual defenses to Plaintiffs’ claims, including the possibility of appeal of the Decision. Plaintiffs and Plaintiffs’ Counsel have received sufficient information to evaluate the merits of this proposed Settlement. Based upon their evaluation, Plaintiffs and Plaintiffs’ Counsel have determined that the Settlement set forth in the Stipulation is fair, reasonable and adequate and in the best interests of all Class Members, and that it confers substantial benefits upon the Class Members.

Stipulating Defendants deny any and all allegations of wrongdoing, fault, liability or damage to Plaintiffs or to other Class Members; deny that they engaged in, committed or aided or abetted the commission of any breach of duty, wrongdoing or violation of law; deny that Plaintiffs or any of the other Class Members suffered any damage whatsoever; deny that they acted improperly in any way; believe that they acted properly at all times; maintain that they complied with their fiduciary duties; maintain that they have complied with federal and state securities laws; and maintain that they have committed no disclosure violations or any other breach of duty or wrongdoing whatsoever in connection with the Transactions.

The Parties have entered into the Stipulation solely to eliminate the uncertainties, burden and expense of further litigation. Nothing in the Stipulation shall be construed as any admission by any of the Parties of wrongdoing, fault, liability, or damages whatsoever.

## **VI. APPLICATION FOR ATTORNEY’S FEES AND EXPENSES**

Plaintiffs’ Counsel will apply to the Court for a collective award of attorney’s fees to Plaintiffs’ Counsel which shall be no greater than \$22,000,000.00. Plaintiffs’ Counsel also will apply to the Court for reimbursement of litigation expenses paid or incurred by Plaintiffs’ Counsel or advanced by Plaintiffs of no more than \$450,000.00. As of the execution of the Stipulation, the Parties have not discussed the amount of any application by Plaintiffs’ Counsel for an award of attorney’s fees and expenses. Stipulating Defendants reserve all rights and all grounds to object to, oppose, consent to, or take no position on the amount of fees and expenses sought by Plaintiffs’ Counsel.

The Parties have agreed that any fees and expenses awarded by the Court to Plaintiffs’ Counsel shall be paid by MCC or its successor and shall not be paid out of the Class Payment or Settlement Fund.

## **VII. CLASS ACTION DETERMINATION**

For purposes of this Settlement, the Court has ordered that the Action shall be preliminarily maintained as a non-opt-out class, pursuant to Court of Chancery Rules 23(b)(1) and (b)(2), consisting of the Settlement Class Members.

## **VIII. SETTLEMENT HEARING**

The Court has scheduled a Settlement Hearing, which will be held on October 24, 2019 at 3:15 p.m. (the “Settlement Hearing Date”), in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801 to: (a) determine whether to certify a Settlement Class consisting of the persons and entities described above as a non-opt-out class pursuant to Court of Chancery Rules 23(b)(1) and 23(b)(2); (b) determine whether the Court should approve the Settlement as fair, reasonable and adequate and in the best interests of the Settlement Class; (c) determine whether Plaintiffs and Plaintiffs’ Counsel have adequately represented the interests of the Settlement Class in the Action; (d) determine whether final judgment should be entered dismissing the Action and the Released Plaintiffs’ Claims as to the Released Defendant Parties with prejudice and barring and enjoining prosecution of any and all Released Plaintiffs’ Claims (as provided

in the Stipulation); (e) hear and determine any objections to the Settlement; (f) consider the application by Plaintiffs' Counsel for attorney's fees and reimbursement of expenses; and (g) rule on such other matters as the Court may deem appropriate.

The Court has reserved the right to adjourn and reconvene the Settlement Hearing, including the hearing on the application for attorney's fees and expenses, without further notice to Class Members other than oral announcement at the Settlement Hearing. The Court has also reserved the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the parties to the Stipulation and without further notice to the Settlement Class.

#### **IX. RIGHT TO APPEAR AND OBJECT**

Any member of the Settlement Class who objects to the Settlement and/or the Order and Final Judgment to be entered by the Court, and/or Plaintiffs' Counsel's application for attorney's fees and expenses, or otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no member of the Settlement Class may be heard and no papers or briefs submitted by or on behalf of any member of the Settlement Class shall be received and considered, except by Order of the Court for good cause shown, unless, no later than fifteen (15) business days prior to the Settlement Hearing, such person files in this Action with the Register in Chancery, Court of Chancery, 500 North King Street, Wilmington, DE, 19801: (a) a written notice of intention to appear; (b) proof of membership in the Settlement Class; (c) a detailed statement of objections to any matter before the Court; and (d) the grounds therefore or the reasons for wanting to appear and be heard, as well as all documents or writings the Court shall be asked to consider. These writings must also be served, on or before such filing with the Court, by hand or overnight mail upon the following attorneys:

A. Thompson Bayliss  
Abrams & Bayliss LLP  
20 Montchanin Road, Suite 200  
Wilmington, DE 19807  
(302) 778-1000

John P. DiTomo  
Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market Street  
Wilmington, DE 19801  
(302) 658-9200

Any Class Member who does not object to the Settlement or the request by Plaintiffs' Counsel for an award of attorney's fees and expenses need not take any action with respect to this Notice or this Settlement.

Unless the Court otherwise directs, no person will be entitled to object to the approval of the Settlement, the judgment to be entered in the Action, or the fee and expense application, nor will he, she or it otherwise be entitled to be heard, except by filing a written objection as described above.

Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including the right to appeal) and will be forever barred from raising such objection in this or any other action or proceeding.

#### **X. INTERIM STAY**

The Parties have agreed to maintain the stay previously entered in the Action and to stay and not to initiate any other proceedings other than those incident to the Settlement itself pending the occurrence of the Effective Date. The Parties also have agreed to use their reasonable efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings against any of the Released Defendant Parties which challenges the Settlement or otherwise involves, directly or indirectly, a Released Plaintiff Claim.

#### **XI. ORDER AND JUDGMENT OF THE COURT**

If the Court determines that the Settlement, as provided for in the Stipulation, is fair, reasonable, adequate and in the best interests of the Settlement Class, the Court will enter an Order and Final Judgment, which will, among other things:

- a. Determine that the form and manner of notice of the Settlement was the best notice practicable under the circumstances and fully complied with each of the requirements of due process, Delaware Court of Chancery Rule 23 and applicable law;
- b. Determine that, for settlement purposes only, the Action is a proper class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), and finally certify the Settlement Class;
- c. Determine that all members of the Settlement Class are bound by the Order and Final Judgment;
- d. Determine that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class;
- e. Dismiss the Action with prejudice, on the merits and without costs (except as provided in the Stipulation);
- f. Fully, finally and forever release, settle and discharge the Released Defendant Parties from and with respect to every one of the Released Plaintiffs' Claims;

- g. Bar and enjoin Plaintiffs and any Class Members from instituting, commencing, or prosecuting any and all Released Plaintiffs' Claims against any Released Defendant Parties; and
- h. Award Plaintiffs' Counsel such attorney's fees and expenses as the Court deems fair and reasonable.
- i. Provide that the Order and Final Judgment, including the release of all Released Plaintiffs' Claims against all Released Defendant Parties, shall have res judicata and other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by or on behalf of the Plaintiffs or any other Class Members, as well as any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them.

If the Effective Date does not occur, or if the Stipulation is disapproved, canceled or terminated pursuant to its terms, or the Settlement otherwise does not become final for any reason, all of the Parties and SIC shall be deemed to have reverted to their respective litigation status immediately prior to their entry into the Stipulation, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action or the Federal Action shall be preserved without prejudice, except that, as set forth more fully in the Stipulation, the Governance Agreement and certain paragraphs of the Stipulation shall survive the termination of the Stipulation. In the event the Effective Date does not occur, or the Stipulation is disapproved, canceled or terminated pursuant to its terms, or the Settlement otherwise does not become Final for any reason, Stipulating Defendants reserve any and all rights to pursue the Federal Action or to oppose certification of any plaintiff class in any future proceedings (including, but not limited to, in any proceedings in the Action).

**XII. INSTRUCTIONS TO BROKERS AND OTHERS WHO HELD FOR THE BENEFIT OF OTHERS**

Brokerage firms, banks and/or other persons or entities who held shares of MCC common stock for the benefit of others are requested to immediately send this Notice to all such beneficial owners. If additional copies of the Notice are needed for forwarding to such beneficial owners, any requests for such additional copies or provision of a list of names and mailing addresses of beneficial owners may be made to:

Medley Capital Stockholder Litigation  
c/o A.B. Data  
P.O. Box 170500  
Milwaukee, WI 53217  
[info@medleycapitalsettlement.com](mailto:info@medleycapitalsettlement.com)

**XIII. SCOPE OF THE NOTICE**

This Notice is not all-inclusive. The references in this Notice to the pleadings in the Action, the Stipulation, and other papers and proceedings are only summaries and do not purport to be comprehensive. For the full details of the Action, claims which have been asserted by the Parties and the terms and conditions of the Settlement, including a complete copy of the Stipulation, members of the Settlement Class are referred to the Court files in the Action.

You or your attorney may examine the Court files from the Action during regular business hours of each business day at the office of the Register in Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801.

Questions or comments may be directed to the Settlement Administrator:

Medley Capital Stockholder Litigation  
c/o A.B. Data  
P.O. Box 170500  
Milwaukee, WI 53217  
[info@medleycapitalsettlement.com](mailto:info@medleycapitalsettlement.com)  
1-877-307-7871

DO NOT WRITE OR TELEPHONE THE COURT

Dated: August 30, 2019

Medley Capital Stockholder Litigation  
c/o A.B. Data  
P.O. Box 170500  
Milwaukee, WI 53217

**COURT-APPROVED NOTICE REGARDING**  
*Medley Capital Stockholder Litigation*

**DATED MATERIAL – OPEN IMMEDIATELY**