

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Hearing Date: March 23, 2023 at 1:00 p.m. (ET)

Objection Deadline: March 8, 2023 at 4:00 p.m. (ET)

**MEDLEY LLC LIQUIDATING TRUST'S MOTION PURSUANT TO 11 U.S.C. § 105(a)
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 TO APPROVE
SETTLEMENT WITH CERTAIN FORMER INSIDERS OF THE DEBTOR**

The Medley LLC Liquidating Trust (the "Liquidating Trust"), established by the confirmed plan (the "Plan")² in this case of the above-captioned debtor (the "Debtor"), by and through its undersigned counsel, hereby moves (the "Motion") for the entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to section 105 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving proposed settlements of the Liquidating Trust's claims against certain former insiders of the Debtor. In support of the Motion, the Liquidating Trust respectfully states as follows:

PRELIMINARY STATEMENT

1. The Liquidating Trust requests approval of the two proposed Settlement Agreements attached hereto as **Exhibit B** and **Exhibit C** (collectively the "Settlement Agreements"). The counterparties to the Settlement Agreements are former insiders of the Debtor (the "Settling Insiders," and together with the Liquidating Trust, the "Settling Parties"), against

¹ 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.

² Docket No. 445-1.



whom the Liquidating Trust has alleged and mediated certain claims that vested in the Liquidating Trust in connection with the Court's order confirming the *Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan of Medley LLC*.³

2. The Settlement Agreements, which are the culmination of extensive, arm's-length negotiations that have lasted more than a year between the Liquidating Trust and the Settling Insiders, are an excellent result for several reasons. First, the Settlement Agreements allow the Liquidating Trust to recover up to \$13.1 million, a substantial portion of the total damages sought by the Liquidating Trust. Second, the Settlement Agreements permit the Liquidating Trust to recover more than half of that amount (\$6.7 million) within the next 60 days from wasting insurance policies of the Debtor that would otherwise be exhausted. Third, the Settlement Agreements authorize the Liquidating Trust to recover the remainder (\$6.4 million) through an assignment of claims against insurance companies that have thus far declined to provide coverage for the Liquidating Trust's claims against the Settling Insiders. Fourth, the Settling Agreements require the Settling Insiders to cooperate with the Liquidating Trust in the pursuit of those assigned claims.

3. In sum, the Liquidating Trust believes that the Settlement Agreements should be approved under Bankruptcy Rule 9019 as being fair, equitable, and in the best interests of the bankruptcy estate, its creditors, and other parties-in-interest.

JURISDICTION AND VENUE

4. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157(a) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This Motion is a core proceeding pursuant

³ Docket No. 445.

to 28 U.S.C. § 157(b)(2). Venue for this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The legal predicates for the relief requested in the Motion are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Liquidating Trust consents to entry of a final order by this Court in connection with the Motion, if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

A. The Bankruptcy Case

6. On March 7, 2021, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing this bankruptcy case.

7. On October 14, 2021, the Debtor filed its Plan, which provided for the establishment of the Liquidating Trust and the retention by the Liquidating Trust of causes of action held by the Debtor, including causes of action against the Debtor's former insiders.⁴

8. On October 18, 2021, the Court entered an amended order⁵ confirming the Plan, which went effective on the same day.⁶

B. The Claims Against the Settling Insiders

9. After the Plan went effective, the Liquidating Trust began investigating potential causes of action against former officers and other insiders of the Debtor (collectively, the

⁴ Docket No. 431.

⁵ Docket No. 445.

⁶ Docket No. 449.

“D&Os”). As part of its investigation, the Liquidating Trust analyzed the allegations that the Securities and Exchange Commission (the “SEC”) had made against (1) the Debtor, (2) the Debtor’s former managing member, Medley Management, Inc. (“MDLY”), and (3) certain of the D&Os in connection with the SEC’s own investigation (the “SEC Inquiry”). The Liquidating Trust also analyzed documents and emails, including the Debtor’s financial statements and bank records, to which the Liquidating Trust had access pursuant to the Plan. Based on its investigation, the Liquidating Trust ultimately determined that the Liquidating Trust has viable claims against certain of the D&Os.

10. The Liquidating Trust’s claims fall into two separate categories—those based on conduct that occurred before April 30, 2019 (the “Pre-April 30 Claims”) and those based on conduct that occurred on or after April 30, 2019 (the “Post-April 30 Claims”).

11. The Pre-April 30 Claims involve quarterly distributions of purported profits that the Debtor made to its former members while insolvent. The Debtor’s records reveal that those distributions stopped in April 2019. The Pre-April 30 Claims have two sets of potential defendants—the D&Os who ordered and effected the voidable distributions and the Debtor’s former members who received them. The recipients included some of the D&Os individually as well as entities owned or controlled by other D&Os. In short, the Pre-April 30 Claims involved alleged self-dealing that effected voidable distributions to the detriment of the Debtor and its creditor body. The estimated damages for the Pre-April 30 Claims are approximately \$48 million.

12. The Post-April 30 Claims, on the other hand, have an entirely different character and involve alleged breaches of different sections of the Debtor’s governing documents. Unlike the Pre-April 30 Claims, the Post-April 30 Claims concern conduct that did not begin until June 2019. There is no overlap between the two sets of claims. Instead, the Post-April 30 Claims

consist of the D&Os' granting nonratable benefits to MDLY through: (1) paying MDLY's debts with the Debtor's cash; (2) rerouting to MDLY payments owed to the Debtor; and (3) prolonging the life of a hopelessly insolvent Debtor after May 2020 solely for MDLY's benefit. The estimated damages for the Post-April 30 Claims are approximately \$19 million.

C. The Wasting Insurance Policies

13. The Liquidating Trust's investigation also included an analysis of the insurance policies of the Debtor that are available to provide coverage for—and pay settlements to resolve—the Liquidating Trust's claims (collectively, the "Policies"). The Policies are spread across three towers of insurance, with each tower having primary and excess layers of coverage. For ease of reference, the Motion refers to each tower by the insurance company that issued that tower's primary layer—the "Berkshire Tower," the "Allianz Tower," and the "Travelers Tower."

14. Each of the Policies has date restrictions. The Berkshire Tower provides coverage only for conduct that occurred before April 30, 2019. The Allianz Tower provides coverage only for conduct that occurred on or after April 30, 2019. And the Travelers Tower's policy limits depend on when a claim for coverage was made. For example, the Travelers Tower's policy limits are capped at \$7.5 million for claims made against the Travelers Tower after August 2020. The following graphic depicts these three insurance towers with their initial policy limits:

Initial Policy Limits

Berkshire Tower (\$15M)	Allianz Tower (\$10M)	Travelers Tower (\$7.5M)
Allied World—\$5M (Excess 2)	Old Republic—\$2.5M (Excess 2)	Nationwide—\$2.5M (Excess 1)
Starr—\$5M (Excess 1)	Lloyd’s—\$2.5M (Excess 1)	Travelers—\$5M (Primary)
Berkshire—\$5M (Primary)	Allianz—\$5M (Primary)	
Conduct before 4/30/2019	Conduct on or after 4/30/2019	Claims made after 8/31/2020

15. During its investigation, the Liquidating Trust also learned that the Policies are “wasting” insurance policies, where defense costs reduce the amount of remaining coverage. Indeed, before the Plan was confirmed, the Berkshire Tower’s \$5 million primary layer of insurance had been fully exhausted paying defense costs related to the SEC Inquiry. Of further concern, another \$6 million or so in defense costs related to the SEC Inquiry—and thus covered by the Policies—was also supposedly due and owing. Moreover, those costs were going to continue to mount for the duration of the SEC Inquiry. That is, shortly into its role, the Liquidating Trust understood that the total remaining insurance proceeds available to fund a settlement had been reduced to less than \$22 million, as depicted below, and would continue to decrease:

Approximate Policy Limits as of the Plan Effective Date

Berkshire Tower (\$5M)	Allianz Tower (\$10M)	Travelers Tower (\$6.8M)
Allied World—\$5M (Excess 2)	Old Republic—\$2.5M (Excess 2)	Nationwide—\$2.5M (Excess 1)
Starr—\$5M (Excess 1)	Lloyd’s—\$2.5M (Excess 1)	Travelers— \$5M \$4.3M (Primary)
Berkshire—\$5M (Primary)	Allianz—\$5M (Primary)	
Conduct before 4/30/2019	Conduct on or after 4/30/2019	Claims made after 8/31/2020

16. In light of the insurance policies' diminishing availability, the Liquidating Trust accelerated its investigation. To wit, the Liquidating Trust and the Settling Insiders began settlement negotiations in December 2021, less than two months after Plan confirmation. Over the next 13 months, the Liquidating Trust and the Settling Insiders engaged in three mediation sessions with two different mediators, negotiated the resolution of three sets of claims, and executed numerous different agreements related to the various settlements.

17. The following table describes the universe of the Liquidating Trust's claims against the D&Os, the existence of insurance coverage, and the status of each set of claims:

D&O Conduct	Insurance Coverage	Status
Alleged misconduct where loss is not covered by the Policies (<i>e.g.</i> , avoidance actions)	No	Settled and released via the SEC Settlement (defined below) in March 2022
Alleged misconduct that occurred prior to April 30, 2019, where loss is covered by the Policies (<i>e.g.</i> , breach of fiduciary duty)	Yes	To be resolved via the Settlement Agreement attached as Exhibit B hereto
Alleged misconduct that occurred on or after April 30, 2019, where loss is covered by the Policies (<i>e.g.</i> , breach of fiduciary duty)	Yes	To be resolved via the Settlement Agreement attached as Exhibit C hereto

D. The SEC Settlement

18. The first settlement that the Liquidating Trust brokered helped end the SEC Inquiry in a manner that already has benefited the Liquidating Trust's beneficiaries. In March 2022, after months of arm's-length negotiations, (1) the Liquidating Trust; (2) the SEC; and (3) MDLY, along with certain Settling Insiders (together with MDLY, the "Respondents") reached a settlement and compromise that resulted in, *inter alia*, the SEC's issuing an administrative order against the Respondents (the "SEC Settlement").

19. The SEC Settlement imposed \$10 million in civil penalties against the Respondents but granted them a dollar-for-dollar credit if they paid those amounts to the Liquidating Trust for the benefit of the Debtor's bondholders. In exchange, the Liquidating Trust released certain of its claims against MDLY and the D&Os.

20. Other terms of the SEC Settlement prevented the Respondents from funding their payments to the Liquidating Trust with proceeds from the Policies. As a result, the Liquidating Trust released only its non-insured claims (*i.e.*, claims for which the Policies do not provide insurance coverage, such as claims arising under chapter 5 of the Bankruptcy Code) against the D&Os and preserved all claims for which the Policies do provide insurance coverage.⁷

E. The Settlement of the Pre-April 30 Claims

21. Shortly after the SEC Settlement, the Liquidating Trust began to negotiate the settlement and resolution of the Liquidating Trust's claims against the D&Os for which the Policies provide insurance coverage for loss (the "Covered Claims"). As with the SEC Settlement, these efforts involved months of extensive negotiations and arm's-length dealing.

22. The Liquidating Trust's pursuit and settlement of the Covered Claims included sending the D&Os a settlement demand for most of the remaining insurance limits on the Policies and entering into an agreement to mediate the Covered Claims. Thus, on May 25, 2022, the Liquidating Trust, several of the D&Os, and the insurers who issued the different Policies (the "Insurers") mediated the Covered Claims with Jed Melnick of JAMS.

⁷ Additionally, because of the various levels of government approval required to resolve SEC enforcement actions, the SEC would not agree to make the SEC Settlement contingent on the Bankruptcy Court's approval.

23. At that first all-day mediation session, the Allianz Tower denied coverage of the Liquidating Trust's claims.⁸ That denial of coverage essentially reduced the remaining, accessible insurance limits on the Policies down to approximately \$10.2 million.⁹

24. Notwithstanding the Allianz Tower's denial of coverage, the Liquidating Trust and the Settling Insiders began to negotiate a settlement of the remaining Pre-April 30 Claims. Such claims pre-dated the Allianz Tower's policy period and were thus unaffected by the Allianz Tower's actions. Again, the Pre-April 30 Claims related exclusively to the D&Os' ordering and effecting the quarterly distributions that the Debtor, while insolvent, made to its owners prior to May 2019. Because those quarterly distributions ceased in April 2019, all such claims accrued—and the conduct giving rise to those claims occurred—prior to the Allianz Tower's policy period, but well within the policy periods of the Berkshire Tower and the Travelers Tower.

25. The Allianz Tower's denial of coverage, however, impeded the parties' negotiations and prevented them from reaching a global settlement at that first mediation session. As a pivot, the Liquidating Trust and the Settling Insiders agreed to convene a second mediation to focus solely on the Pre-April 30 Claims.

26. That second mediation session took place two weeks later, on June 8, 2022, and was again an all-day session hosted by Jed Melnick of JAMS. As the parties approached impasse near the end of the day, the Liquidating Trust offered to settle and release the Pre-April 30 Claims in exchange for \$6.7 million, and the Settling Insiders accepted.

⁸ Going into mediation, the Allianz Tower had allegedly reserved rights with respect to its coverage position, but, on information and belief, the Settling Insiders had expected the Allianz Tower to revise its position and acknowledge that the Post-April 30 Claims fall within the Allianz Tower's coverage. Instead, the Allianz Tower announced its position that the Liquidating Trust's Post-April 30 Claims are somehow excluded from coverage. The Liquidating Trust and the Settling Insiders believe that the Allianz Tower's position is meritless.

⁹ Limits on the Policies had continued to "waste" between confirmation of the Plan and the May 2022 mediation.

27. The Liquidating Trust and the Settling Insiders then began working to finalize the documentation of that agreement-in-principle. It was no easy task, taking the next eight months to accomplish and involving no fewer than a dozen different drafts of the settlement documents as the parties worked extensively through various and sometimes evolving issues. The end-result is the Settlement Agreement attached hereto as **Exhibit B**.

F. The Settlement of the Post-April 30 Claims

28. As the Liquidating Trust and the Settling Insiders worked to draft and finalize **Exhibit B**, they also began to pursue the parallel track of trying to resolve the Post-April 30 Claims. To facilitate those settlement discussions, the Liquidating Trust sent the Settling Insiders additional information about those claims as well as a 38-page draft complaint articulating the Post-April 30 Claims in detail.

29. The Liquidating Trust and the Settling Insiders thereafter agreed to attend a third mediation session, this time with Hon. Gerald Rosen (Ret.) of JAMS. That third session took place on August 30, 2022 and lasted six hours.

30. In the final hour of mediation, the parties reached a stalemate regarding a reasonable settlement amount to resolve the Post-April 30 Claims. Judge Rosen proposed to break that stalemate through a mediator's proposal. Reflecting on what would be a "fair proposal" and "represent[] a fair resolution of the case and fair value, when balancing all of the factors, risks and valuations of the claims and defenses," Judge Rosen proposed that the parties settle the Post-April 30 Claims for \$6.4 million.¹⁰ Judge Rosen also included as part of his proposal that the settlement

¹⁰ A true and correct copy of the Judge Rosen's August 30, 2022 email to counsel making his mediator's proposal is attached hereto as **Exhibit D**.

consideration include the Settling Insiders' assigning their rights against the Allianz Tower to the Liquidating Trust.¹¹ Both sides accepted Judge Rosen's proposal.

31. As was true when documenting the Pre-April 30 Claims, preparing the settlement agreement memorializing the parties' agreement-in-principle regarding the Post-April 30 Claims proved difficult. The Liquidating Trust and the Settling Insiders continued to negotiate the terms and timing of that settlement documentation for the next five months. The end-result is the Settlement Agreement attached hereto as **Exhibit C**.

32. The Oversight Committee of the Liquidating Trust has approved the filing of this Motion.

G. The Proposed Settlement Agreements

33. Both Settlement Agreements include the following terms:¹²

- a. **Bankruptcy Court Approval**. The Settling Parties acknowledge and agree that the Settlement Agreements are expressly conditioned upon, and shall not be deemed effective without, the Bankruptcy Court's approval. The Liquidating Trust shall use its best efforts to obtain an order of the Bankruptcy Court approving the Settlement Agreements pursuant to Federal Rule of Bankruptcy Procedure 9019 (the "**Approval Order**").
- b. **Rescission**. If the Bankruptcy Court denies the Liquidating Trust's motion seeking entry of the Approval Order, or if the Approval Order is reversed on appeal, then: (a) the Settlement Agreements shall be deemed void ab initio and shall have no legal effect whatsoever; (b) the Settling Parties shall revert, without prejudice to or waiver of any right, to their respective positions immediately prior to the execution of the Settlement Agreements; and (c) neither Settlement Agreement nor evidence of their respective terms shall be admissible for any purpose in any action or proceeding.

¹¹ See Ex. D ("The [\$6.4 million] number also includes the assignment [by the defendants of the insurance policies we have been discussing.>").

¹² The descriptions of the Settlement Agreements' concepts in paragraphs 33–35 of this Motion are high-level summaries only. Nothing in this Motion modifies either of the Settlement Agreements, and to the extent that anything in this Motion or its descriptions of the Settlement Agreements is in any way inconsistent with actual terms of the Settlement Agreements, the Settlement Agreements control. See Ex. B; Ex. C.

34. In addition to the terms above, the Settlement Agreement resolving the Pre-April 30 Claims (**Exhibit B**) also contains the following concepts:

- a. The Settlement Payment. In full and final settlement of the Pre-April 30 Claims, the Settling Insiders shall collectively cause payments in an aggregate amount of SIX MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$6,700,000) (the “Settlement Payment”),¹³ from the insurance companies who issued the Berkshire Tower and the Travelers Tower to be paid to the Liquidating Trust.
- b. Fair, Reasonable, and Arms-Length Result. The Settling Parties agree that \$6.7 million constitutes a fair and reasonable compromise of the Pre-April 30 Claims, based on their objective assessment of various factors, including: (a) the relative strength of the underlying claims and defenses; (b) the risk of not prevailing on those claims and defenses; (c) the amount of potential damages associated with those claims; and (d) the amount of attorney’s fees and expenses and expert witness fees and expenses necessary to prosecute and defend against the Pre-April 30 Claims. Based upon the Settling Parties’ respective evaluation of these factors, the Settling Parties agree that the settlement reflected in **Exhibit B** represents a full, fair, and reasonable assessment of the risks to the Settling Parties associated with the Pre-April 30 Claims and defenses thereto, and is in the best interest of the Settling Parties. The Settling Parties further agree that the Settlement Amount is the product of arms-length, good-faith, and contentious negotiations over the course of several months, including mediations in May 2022 and June 2022 with Jed Melnick, a nationally respected mediator with JAMS.

35. The Settlement Agreement resolving the Post-April 30 Claims (**Exhibit C**) contains the following concepts:

- a. The Settlement Payment. In full and final settlement of the Post-April 30 Claims, the Settling Insiders have agreed to collectively cause to be paid, from the Allianz Tower or otherwise, an amount of SIX MILLION FOUR HUNDRED THOUSAND DOLLARS (\$6,400,000) (the “Settlement Payment”),¹⁴ to the Liquidating Trust.
- b. Demand. No later than five (5) business days after the Effective Date, the Settling Insiders shall make written demand on the insurance companies who issued the Allianz Tower to pay the Settlement Payment to the Liquidating Trust.

¹³ Terms defined in this paragraph 34 apply solely to this paragraph 34.

¹⁴ Terms defined in this paragraph 35 apply solely to this paragraph 35.

- c. Payment Deadline. If the Liquidating Trust has not received the full amount of the Settlement Payment by no later than fifteen (15) business days after the Effective Date, then:
- i. The Liquidating Trust shall send a letter to the Settling Insiders, notifying them of their failure to pay.
 - ii. Within five (5) business days of receiving that letter (the “Cure Deadline”), the Settling Insiders must either (a) collectively cause the Settlement Payment to be paid in full to the Liquidating Trust or (b) provide the Liquidating Trust with an executed copy of the Assignment attached as Exhibit B thereto (the “Assignment”).
 - iii. If, by the Cure Deadline, the Liquidating Trust does not receive either (a) an executed copy of the Assignment, or (b) full payment of the Settlement Payment, the Liquidating Trust may collect the Settlement Payment from the personal assets of the Settling Insiders.
- d. Fair, Reasonable, and Arms-Length Result. The Settling Parties agree that \$6.4 million constitutes a fair and reasonable compromise of the Post-April 30 Claims, based on their objective assessment of various factors, including: (a) the relative strength of the underlying claims and defenses; (b) the risk of not prevailing on those claims and defenses; (c) the amount of potential damages associated with those claims; and (d) the amount of attorney’s fees and expenses and expert witness fees and expenses necessary to prosecute and defend against the Post-April 30 Claims. Based upon the Settling Parties’ respective evaluation of these factors, the Settling Parties agree that the settlement reflected in Exhibit C is reasonable, represents a full, fair, and reasonable assessment of the risks to the Settling Parties associated with the Post-April 30 Claims and defenses thereto, and is in the best interest of the Settling Parties. The Settling Parties further agree that the Settlement Payment is the product of arms-length, good-faith, and contentious negotiations over the course of several months, including a mediation on August 30, 2022 with Hon. Gerald A. Rosen (ret.), the former Chief Judge of the United States District Court for the Eastern District of Michigan and a nationally respected mediator with JAMS.
- e. Claims Assignment. If, instead of receiving the Settlement Payment in full on or before the Cure Deadline, the Liquidating Trust receives the Assignment, then, on the date that the Assignment goes effective:
- i. Assignment: The Settling Insiders shall immediately convey and assign to the Liquidating Trust all of their right, title, and interest, in and to any claims, causes of action, and contract rights, benefits,

and privileges they have under the insurance policies that comprise the Allianz Tower to seek and recover payment of the Settlement Payment, as well as attorneys' fees and expenses and costs related to enforcing their right to payment of the Settlement Payment under the Allianz Tower and prejudgment and postjudgment interest on the preceding amounts, from the Allianz Tower and/or the insurance companies who issued the Allianz Tower.

- ii. Further Cooperation: The Settling Parties shall agree to execute such additional documents and take such additional actions as may be necessary or appropriate to carry out the transactions contemplated in the Assignment or to fulfill its purposes and intent. As a material condition of certain covenants, each Settling Insider and his counsel individually agrees to cooperate in any coverage action and in any other suit, action, or arbitration concerning the availability of coverage for the Post-April 2019 Claims under the Allianz Tower by accepting service of process, voluntarily responding to reasonable request for documents and other information, appearing on reasonable notice for depositions and pre-deposition meetings (without need of subpoena or other process), and appearing and providing testimony on reasonable notice at trial, at a hearing, or in arbitration proceedings to the extent requested in any suit, action, or arbitration in connection with any of the claims, causes of action, or rights assigned in this Assignment, or any other reasonable request the Liquidating Trust may make of them, in their capacity as a witness or nominal party, in furtherance of litigation between the Liquidating Trust and any of the insurers who issued the Allianz Tower.

RELIEF REQUESTED

36. By this Motion, pursuant to section 105(a) of the Bankruptcy Code¹⁵ and Federal Rule of Bankruptcy Procedure 9019,¹⁶ the Liquidating Trust requests entry of an order (a) approving the Settlement Agreements; and (b) authorizing the parties to take any and all actions necessary to effectuate the Settlement Agreements.

¹⁵ Section 105(a) provides, in relevant part, that “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of [Title 11].” 11 U.S.C. § 105(a).

¹⁶ Bankruptcy Rule 9019 provides, in relevant part, that “[o]n motion . . . and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

BASIS FOR RELIEF REQUESTED

37. The Court has the authority to “approve a compromise or settlement” pursuant to Bankruptcy Rule 9019(a). To exercise this authority, the Court must determine that the proposed settlement is “fair and equitable.” *Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

38. In evaluating the fairness and equity of a proposed settlement, the Court must “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). Specifically, the Court must consider the following factors: (a) the probability of success in litigation; (b) the likely difficulties in collection; (c) the complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending to it; and (d) the paramount interest of creditors. *Martin*, 91 F.3d at 393. The Court also may consider “the extent that the settlement is truly the product of arms-length bargaining, and not fraud or collusion.” *In re Tribune Co.*, 464 B.R. 126, 155 (Bankr. D. Del. 2011).

39. As set forth below, each of these factors supports approval of the Settlement Agreement.

A. Probability of Success in Litigation

a. Probability of Success on the Pre-April 30 Claims

40. In the Pre-April 30 Claims, the Liquidating Trust alleges that the D&Os breached their fiduciary duty of loyalty to the Debtor by using their control over the Debtor to order and effect distributions of to the Debtor’s members while the Debtor was insolvent. To carry its burden, the Liquidating Trust would need to demonstrate that the D&Os owed fiduciary duties to

the Debtor, that they breached those duties by causing quarterly distributions from the Debtor while it was insolvent, and that those distributions either harmed the Debtor or unjustly enriched the D&Os. *See Basho Techs. Holdco B, LLC v. Georgetown Basho Investors, LLC*, C.A. No. 11802-VCL, 2018 WL 3326693, at *23-24 (Del. Ch. July 6, 2018) (noting that “[t]he equitable tort for breach of fiduciary duty has only two formal elements: (i) the existence of a fiduciary duty and (ii) a breach of that duty” but that “a plaintiff will not be awarded a meaningful recovery without additional showings” such as “harm to the beneficiary or . . . the wrongful taking of a benefit by the fiduciary”). Proving fiduciary status would be straightforward. The D&Os were officers of the Debtor and also served as human controllers of the Debtor through their roles as officers and directors of the Debtor’s managing member, MDLY. *See id.* at *25 (noting that if “a defendant wields control over” a company, “then the defendant takes on fiduciary duties”). Proving harm to the Debtor would also have been straightforward. The D&Os caused the Debtor to lose \$48 million through quarterly distributions in the four years leading up to the Debtor’s bankruptcy, and entities that they owned or controlled received the majority of those distributions.

41. The Liquidating Trust’s biggest hurdle would have been demonstrating that the quarterly distributions breached fiduciary duties. Proving breach would require the Liquidating Trust to prove that the Debtor was insolvent at all relevant times. If the Debtor was insolvent, every quarterly distribution was wrongful, and the D&Os’ ordering and facilitating those wrongful distributions breached their duty of loyalty to the Debtor. Conversely, if the Debtor was solvent when a distribution was made, that distribution would not have been a breach; rather, it arguably was either required by the Debtor’s governing documents or a reasonable exercise of business judgment. Hence, the viability of the Pre-April 30 Claims hinges on the Debtor’s insolvency.

42. The value of the Pre-April 30 Claims further depends on the timeliness of the Liquidating Trust's claims. Delaware has a three-year statute of limitations for claims alleging breach of fiduciary duty. *See* 10 Del. C. § 8106. Although the Debtor made \$48 million in purported profit distributions while insolvent, less than \$20 million of those distributions occurred within three years of the Petition Date. Thus, unless the Liquidating Trust could convince a reviewing court that its claims relating to earlier distributions are timely, its \$48 million in estimated damages for the Pre-April 30 Claims would shrink by more than half.

43. The D&Os vehemently contest both the timeliness of the Pre-April 30 Claims and insolvency. They argue that no tolling doctrine applies to save the former and, as to the latter, argue that the prices of MDLY's publicly traded stock and the Debtor's publicly traded bonds prove solvency or at least undermine the Liquidating Trust's insolvency argument. The D&Os also claim to have a solvency analysis from a nationally recognized consulting firm that buttresses their defense. The D&Os' insistence on the Debtor's solvency has never wavered.

44. The D&Os have also consistently maintained that exculpation provisions in the Debtor's governing documents immunize them from liability. *See, e.g.*, 6 Del. Code § 18-1101(e) ("A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for . . . breach of duties (including fiduciary duties) of a member, manager, or other person to a limited liability company . . ."). The Liquidating Trust disputes that the D&Os enjoy any such immunity but acknowledges that courts regularly enforce exculpation provisions to maximum effect. *See Miller v. Black Diamond Cap. Mgmt., LLC (In re Bayou Steel BD Holdings, LLC)*, 642 B.R. 371, 401 (Bankr. D. Del. 2022) (concluding that, based on the Delaware LLC Act and exculpation provisions in the LLC agreement, "the Trustee's ability to seek monetary liability against the Director Defendants for breaches of fiduciary duty . . . is gone").

45. The Liquidating Trust therefore recognizes that the probability of the Pre-April 30 Claims' success, though seemingly good, remains subject to risk and uncertainty. After all, the Liquidating Trust has not yet commenced litigation on the Pre-April 30 Claims, and the outcome already appears to depend on a battle of solvency experts. Plus, the Debtor's quarterly distributions were larger in earlier years, meaning that if the Liquidating Trust is unable to prove the Debtor's insolvency more than a year prior to the Petition Date, recoverable damages on the Pre-April 30 Claims will be a fraction of what the Liquidating Trust would otherwise seek. Further, the Liquidating Trust recognizes that the D&Os will argue that amounts paid to the Liquidating Trust as part of the SEC Settlement should reduce the damages recoverable for the Pre-April 30 Claims—the fiduciary breaches underlying the Pre-April 30 Claims caused the allegedly fraudulent transfers that the Liquidating Trust released in the SEC Settlement—and insist that the failure to receive a credit for that payment would grant the Liquidating Trust a windfall, if not a double recovery. These factors, plus the tolling question, support a risk-based discount.

b. Probability of Success on the Post-April 30 Claims

46. In the Post-April 30 Claims, the Liquidating Trust alleges that Settling Insiders breached fiduciary duties to the Debtor by having it (1) pay MDLY operating expenses with Debtor cash; (2) reroute to MDLY payments owed to the Debtor; and (3) remain alive while hopelessly insolvent solely to benefit themselves and MDLY. The Liquidating Trust alleges that these actions were breaches of the fiduciary duty of loyalty because the D&Os—by virtue of their serving as officers of both MDLY and the Debtor—owed fiduciary duties to both MDLY and the Debtor but chose to benefit one (MDLY) to the detriment of the other (the Debtor). *See Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del. 1983) (recognizing that an individual who owes fiduciary duties to

two companies must exercise that duty “in light of what is best for both companies” and that “[t]here is no ‘safe harbor’ for such divided loyalty in Delaware”).

47. To prevail on its Post-April 30 Claims, the Liquidating Trust would need to demonstrate that the D&Os owed fiduciary duties to the Debtor, that they breached those duties in how they directed the Debtor’s cash to benefit the other entity to whom they owed fiduciary duties (MDLY) and themselves, and that their conduct harmed the Debtor. *See Basho Techs.*, 2018 WL 33326693, at *23-24. Proving the fiduciary status of the D&Os and the harm to the Debtor would have been straightforward. The D&Os were officers and/or human controllers of the Debtor, and the bank statements of the Debtor and MDLY confirm how money flowed out of (and sometimes around) the Debtor to MDLY. Because MDLY had no revenues apart from cash flows from the Debtor, tracing the ultimate recipient of the Debtor’s funds and comparing that payment to an invoice or communication demonstrating that the paid debt was unrelated to the Debtor would also have been straightforward.

48. The Post-April 30 Claims do not require proof of the Debtor’s insolvency at all relevant times. Indeed, none of the Post-April 30 Claims involves a distribution of the Debtor’s purported profits to its former members. Nor is tolling limitations required. Instead, the Liquidating Trust’s challenge would have been overcoming the discretion granted to MDLY as the Debtor’s former manager. For example, the Debtor’s governing documents allowed MDLY to charge or otherwise allocate to the Debtor certain expenses that MDLY incurred in managing the Debtor’s business. From the Liquidating Trust’s perspective, that mandatory nexus narrowed the scope of reimbursable expenses and thus limited the D&Os’ discretion with respect to paying MDLY debts with Debtor funds. The D&Os, on the other hand, appear to have deemed every expense that MDLY incurred as worthy of reimbursement. The viability of nearly all the Post-

April 30 Claims would therefore hinge on whether the expenses underlying the Post-April 30 Claims qualified for reimbursement under the Debtor's governing documents.

49. The D&Os reject that they breached their fiduciary duties in how they managed and spent the Debtor's cash. They insist, instead, that they followed proper corporate governance and exercised their permitted discretion with respect to reimbursing MDLY. The Liquidating Trust, of course, disagrees but recognizes that quibbling over the purpose and propriety of various charges spanning a nearly two-year period raises numerous burdens and difficulties independent of the merits of the Liquidating Trust's claims.

50. The other large component of the Post-April 30 Claims—that the D&Os kept the Debtor alive long after it became hopelessly insolvent in order to benefit MDLY and certain other insiders to the detriment of the Debtor, the Debtor's other owners, and the Debtor's creditor body—has similar difficulties. The Liquidating Trust contends that the Debtor was hopelessly insolvent by May 2020, roughly 10 months before filing its petition for relief. Rather than put the Debtor into bankruptcy during those 10 months, the D&Os instead kept the Debtor alive to (1) pay themselves salaries and bonuses and (2) continue to pay MDLY's vendors despite having no obligation to do so. Keeping the Debtor alive solely to benefit certain insiders also had collateral consequences. The Debtor paid certain creditors during this period while skipping others and preferred insider creditors to the detriment of the creditor body at-large.

51. The D&Os fervently deny any wrongdoing and insist that the Debtor was solvent throughout this late-2020 time period. The Liquidating Trust also recognizes that some of its Post-

April 30 Claims arguably require it to prove bad faith on the part of the D&Os, which can be a difficult burden to satisfy.¹⁷

52. To be clear, the Liquidating Trust believes that it would succeed on the Post-April 30 Claims and the associated 8-figure damage estimate. The D&Os ignored guardrails preventing them from preferring MDLY to the Debtor's other owners. Yet, at the same time, the Liquidating Trust recognizes that the Post-April 30 Claims are subject to risk and uncertainty and that the propriety of the D&Os' conduct may depend on another battle of experts, this one concerning corporate governance. These risks are difficult to quantify but impossible to ignore. A risk-based discount for the Post-April 30 Claims is therefore appropriate, especially at this pre-suit stage.

B. Difficulties in Collection

53. Even if it were to prevail on its claims, the Liquidating Trust would likely have trouble collecting the full amount of a resulting judgment for at least three reasons. First, there would probably be no insurance proceeds left for the Liquidating Trust to collect. Because of the Allianz Tower's wrongful denial of coverage, the remaining Policies would likely be exhausted by the time all trials and appeals are finished. More specifically, it is the Liquidating Trust's understanding that, if it were to sue the D&Os, the Insurers would first pay amounts still owed related to the SEC Inquiry, which would leave less than \$10 million on the Policies to defend against the Liquidating Trust. The number of D&Os and their counsel and expert witnesses who would be drawing on those remaining policy limits, the scope of necessary discovery, and the length and complexity of litigation would likely drain most, if not all, of those remaining limits

¹⁷ Additionally, the D&Os argue that the same exculpation provisions referenced above also insulate them from liability on the Post-April 30 Claims. Again, the Liquidating Trust disputes that the exculpation provisions in the Debtor's governing documents protect the D&Os, but the Liquidating Trust acknowledges that it would need to overcome the D&Os' argument to survive a motion to dismiss.

before a final judgment could be rendered. In any event, that remaining amount would be far less than what the Liquidating Trust would receive now under the Settlement Agreements.

54. Second, the Liquidating Trust's efforts to collect a judgment would face delay because the D&Os would likely appeal any adverse judgment. *See, e.g., In re Key3Media Grp.*, 336 B.R. 87, 97 (Bankr. D. Del. 2005) (noting how "collection of a judgment could be further delayed by the potential for appeal by the Defendant" in weighing the "difficulties in collection" factor), *aff'd*, No. 03-10323, 2006 WL 2842462 (D. Del. Oct. 2, 2006).

55. Third, even ignoring appellate delay, the Liquidating Trust's efforts to collect a judgment from the D&Os' personal assets would still face a long, difficult, and uncertain process. As a threshold matter, any judgment that the Liquidating Trust obtains would likely be far more than what the D&Os could pay in immediately available funds.¹⁸ The Liquidating Trust would thus need to pursue post-judgment collection efforts against each liable D&O in various jurisdictions, where the Liquidating Trust would likely face numerous and perhaps unforeseeable hurdles to collection, and then engage in other time-consuming and costly efforts to liquidate whatever it collects.

56. Given these challenges, it is reasonable to conclude that the Liquidating Trust would have difficulty collecting anything from the D&Os beyond whatever insurance proceeds remained under the Policies. *See, e.g., Donovan v. Robbins*, 752 F.2d 1170, 1182 (7th Cir. 1985) ("[B]ecause it is so difficult to collect large judgments from individuals unless they have insurance coverage, it is natural and ordinarily reasonable for a plaintiff to settle for the limits of that coverage."). What's more, certain of the D&Os have already paid \$10 million from their liquid

¹⁸ The Liquidating Trust would, after all, be seeking an award of more than \$67 million, plus prejudgment and post-judgment interest, against individuals.

assets to the Liquidating Trust as part of the SEC Settlement, thus reducing their remaining non-exempt, liquid assets.

57. If the Liquidating Trust were to prevail on its claims, the D&Os might attempt to mitigate their personal exposure by offering to assign, as a post-judgment settlement, their right to sue the Allianz Tower for breach of its duty to defend them. Absent the Settlement Agreements, however, that result is likely years away. Here, on the other hand, **Exhibit C** includes an assignment mechanism that would allow the Liquidating Trust to initiate litigation against the Allianz Tower in the coming weeks.

C. Complexity, Expense, and Delay of Litigation

58. The Liquidating Trust would face a complex, lengthy, and expensive process in litigating claims against the D&Os. The claims raise difficult questions regarding the operations of a large, complex enterprise over a period of several years. Questions like insolvency and corporate governance would require costly expert analysis and testimony as well as a voluminous discovery record. These questions, moreover, would likely not be ripe for decision on dispositive motions, thereby requiring a lengthy, expensive trial and possibly subsequent appeal.

D. Paramount Interest of Creditors

59. The Liquidating Trust believes that the paramount interest of creditors would be served by the Settlement Agreements. The proposed settlements would avoid substantial costs, delays, and risks of litigating against the D&Os and also allow the Liquidating Trust to liquidate its claims against the D&Os for a substantial portion of the amount in controversy. The Settlement Agreements would bring at least \$6.7 million into the Liquidating Trust in the near-term and provide it with different avenues to obtain the remaining \$6.4 million in settlement consideration,

whether through immediate payment from the Allianz Tower or an assignment of the Settling Insiders' claims (and their cooperation) against the Allianz Tower for that payment.

60. The proposed settlements would also remove collection risk. Instead of having to execute judgments against perhaps illiquid, depreciating, or sheltered assets of the D&Os, the Liquidating Trust would receive or pursue recoveries from solvent and liquid Insurers.

E. Arm's-Length and Good-Faith Settlement Negotiations as to the Litigation

61. The Settlement Agreements are the product of arm's-length and good-faith negotiations. Indeed, counsel for the Liquidating Trust and the Settling Insiders have collectively spent more than 1000 hours working on and negotiating the Settlement Agreements' various terms.

62. The Liquidating Trust and the Settling Insiders began negotiating settlements of the Liquidating Trust's claims in December 2021. Those negotiations included hundreds of phone calls and emails between counsel for the respective parties (often on a near-daily basis and over holidays and weekends), three different mediation sessions, and months of back-and-forth regarding the various terms in the Settlement Agreements.

63. Each of the three mediation sessions took most of the day and were preceded by the exchange of voluminous documents and several calls with the mediators. Each of those three sessions was followed by dozens more emails and phone calls as the parties continued to negotiate. Even once deals-in-principle were reached, negotiations over drafts of the Settlement Agreements' terms stretched on for months, as each side worked zealously (albeit professionally and in good faith) to achieve the best possible results for their respective clients and constituents. Dozens of drafts were exchanged, various concepts were vigorously debated, stalemates were reached and bridged, and compromises were begrudgingly accepted when appropriate. The result is the fair, reasonable, and hard-fought outcome memorialized in the Settlement Agreements.

64. In sum, all relevant factors support approval of the Settlement Agreements. The Liquidating Trust, therefore, submits that the Settlement Agreements should be approved under Rule 9019 as being fair, equitable, and in the best interests of the Debtor's estate and its creditors.

NOTICE

65. The Liquidating Trust has provided notice of this Motion to the following: (a) the United States Trustee for the District of Delaware; (b) counsel to the Settling Insiders; (c) counsel to the Insurers under the Policies; and (d) all parties entitled to notice under Federal Rule of Bankruptcy Procedure 2002. In light of the relief requested in this Motion, the Liquidating Trust submits that no other or further notice is necessary.

NO PRIOR REQUESTS

66. No prior request for the relief requested in the Motion has been made to this Court.

CONCLUSION

WHEREFORE, the Liquidating Trust respectfully requests entry of the proposed order, substantially in the form attached as **Exhibit A**, (a) approving the Settlement Agreements; (b) authorizing the parties to take any and all actions necessary to effectuate the Settlement Agreements; and (c) granting such other and further relief as the Court deems just and proper.

[Remainder of Page Intentionally Left Blank]

Dated: February 22, 2023

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

/s/ Sameen Rizvi

Christopher M. Samis (No. 4909)
Sameen Rizvi (No. 6902)
1313 N. Market Street, 6th Floor
Wilmington, DE 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
csamis@potteranderson.com
srizvi@potteranderson.com

-and-

KELLEY DRYE & WARREN LLP

James S. Carr, Esq. (admitted *pro hac vice*)
Sean T. Wilson, Esq. (admitted *pro hac vice*)
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Telephone: (212) 808-7800
Facsimile: (212) 808-7897
jcarr@kelleydrye.com
swilson@kelleydrye.com

-and-

REID COLLINS & TSAI LLP

Eric D. Madden, Esq. (admitted *pro hac vice*)
Brandon V. Lewis, Esq. (admitted *pro hac vice*)
1601 Elm Street, Suite 4200
Dallas, TX 75201
Telephone: (214) 420-8900
Facsimile: (214) 420-8909
emadden@reidcollins.com
blewis@reidcollins.com

Counsel for the Liquidating Trust

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

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Hearing Date: March 23, 2023 at 1:00 p.m. (ET)

Objection Deadline: March 8, 2023 at 4:00 p.m. (ET)

**NOTICE OF MEDLEY LLC LIQUIDATING TRUST'S MOTION PURSUANT TO
11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 TO
APPROVE SETTLEMENT WITH CERTAIN FORMER INSIDERS OF THE DEBTOR**

PLEASE TAKE NOTICE that Medley LLC Liquidating Trust (the "Liquidating Trust") established in the above-captioned case filed the *Medley LLC Liquidating Trust's Motion Pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9019 to Approve Settlement with Certain Former Insiders of the Debtor* (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be in writing, filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **March 8, 2023 at 4:00 p.m. (ET)** (the "Objection Deadline"), and served upon and received by the undersigned counsel for the Liquidating Trust.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before the Honorable Karen B. Owens at the Bankruptcy Court, 824 N. Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 on **March 23, 2023 at 1:00 p.m. (ET)**.

¹ 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.

Dated: February 22, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Sameen Rizvi

Christopher M. Samis (No. 4909)

Sameen Rizvi (No. 6902)

POTTER ANDERSON & CORROON LLP

1313 N. Market Street, 6th Floor

Wilmington, Delaware 19801

Telephone: (302) 984-6000

Facsimile: (302) 658-1192

Email: csamis@potteranderson.com

srizvi@potteranderson.com

-and-

James S. Carr, Esq. (admitted *pro hac vice*)

Sean T. Wilson, Esq. (admitted *pro hac vice*)

KELLEY DRYE & WARREN LLP

3 World Trade Center

175 Greenwich Street

New York, New York 10007

Telephone: (212) 808-7800

Facsimile: (212) 808-7897

Email: jcarr@kelleydrye.com

swilson@kelleydrye.com

-and-

Eric D. Madden, Esq. (admitted *pro hac vice*)

Brandon V. Lewis, Esq. (admitted *pro hac vice*)

REID COLLINS & TSAI LLP

1601 Elm Street, Suite 4200

Dallas, Texas 75201

Telephone: (214) 420-8900

Facsimile: (214) 420-8909

Email: emadden@reidcollins.com

blewis@reidcollins.com

Counsel for the Liquidating Trust

EXHIBIT A

**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 GRANTING MEDLEY LLC LIQUIDATING TRUST'S MOTION
PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019 TO APPROVE SETTLEMENT WITH
CERTAIN FORMER INSIDERS OF THE DEBTOR**

Upon consideration of the Medley LLC Liquidating Trust's motion (the "Motion");² and this Court's having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties identified in the Certificate of Service filed with the Motion, and it appearing that no other or further notice need be provided; and the Court having considered the objections, if any, filed in opposition to the Motion; the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors, the estate, the Liquidating Trust, and all parties in interest; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceeding had before the Court and after due deliberation and sufficient cause appearing therefore, it is

¹ 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.

² Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

1. ORDERED that pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Motion is GRANTED; and it is further

2. ORDERED that the Settlement Agreements attached as **Exhibit B** and **Exhibit C** to the Motion are incorporated by reference and made part of this Order as if fully set forth herein; and it is further

3. ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to implementation, interpretation and/or enforcement of this Order.

EXHIBIT B

Execution Copy

**SETTLEMENT AGREEMENT AND
RELEASE OF PRE-APRIL 30 CLAIMS**

This SETTLEMENT AGREEMENT AND RELEASE OF PRE-APRIL 30 CLAIMS (the “Agreement”) is made and entered into on February 13, 2023 by (i) the Medley D&Os¹ and (ii) the Medley LLC Liquidating Trust (the “Liquidating Trust”) through Saccullo Business Consulting, LLC, as Liquidating Trustee (the “Liquidating Trustee”). Collectively, the Liquidating Trust and the Medley D&Os are referred to herein as the “Settling Parties.”

I. RECITALS

A. WHEREAS, Medley LLC (the “Debtor”) is a privately-held company that, on March 7, 2021, filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 21-10526;

B. WHEREAS, on October 18, 2021, (i) the Bankruptcy Court entered the *Amended Findings Of Fact, Conclusions Of Law, And Order (I) Approving The Adequacy Of Disclosures On A Final Basis And (II) Confirming The Modified Third Amended Combined Disclosure Statement And Chapter 11 Plan Of Medley LLC* (Docket No. 445) (the “Confirmation Order”), approving the *Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan of Medley LLC* (Docket No. 445-1) (the “Plan”) and (ii) the Plan became effective;

C. WHEREAS, on October 18, 2021, the Debtor’s assets, including its Causes of Action, automatically vested in the Liquidating Trust, and the Liquidating Trustee was authorized to: (i) marshal and liquidate the Liquidating Trust’s assets for distribution under the Plan, (ii) pursue all such Causes of Action on behalf of the Liquidating Trust; and (iii) settle such Causes of Action subject to the terms of that certain Liquidating Trust Agreement and Declaration of Trust executed in connection with the Plan and Confirmation Order (the “Liquidating Trust Agreement”);²

D. WHEREAS, the Liquidating Trustee is the only party that may commence, litigate and settle any Causes of Action that are Liquidating Trust Assets (as defined in the Plan);

E. WHEREAS, on October 18, 2021, the Liquidating Trust Assets included all of the Debtor’s Causes of Action against the D&O Released Parties³ (the “Insider Claims”);⁴

F. WHEREAS, the Insider Claims consist, or consisted, only of: (1) purported Causes of Action for damages against one or more of the D&O Released Parties (defined in Section 9.1 below) for Wrongful Acts which allegedly caused Loss for which the Liquidating Trustee contends

¹ “Medley D&Os” is defined in Schedule I annexed hereto.

² “Causes of Action” is defined in Schedule I annexed hereto.

³ “D&O Released Parties” is defined in Section 9.1 below.

⁴ For the avoidance of doubt, Insider Claims also include those Causes of Action against the D&O Released Parties that became Liquidating Trust Assets after October 18, 2021.

Execution Copy

one or more of the insurance policies listed in Schedule II annexed hereto (the “Policies”), subject to their terms and conditions, provide, or have provided, coverage pursuant to the terms of the Policies (the “Covered Claims”); and (2) those Causes of Action that the Liquidating Trust finally and conclusively settled and released in the March 2022 Settlement Agreement (the “March 2022 Released Claims”);⁵

G. WHEREAS, the March 2022 Settlement Agreement did not settle or release any Covered Claims;

H. WHEREAS, the Covered Claims consist of (1) Covered Claims that involve wrongdoing alleged to have occurred before April 30, 2019 (the “Pre-April 30 Claims”) and (2) Covered Claims that involve wrongdoing alleged to have occurred on or after April 30, 2019 (the “Post-April 30 Claims”);⁶ and

I. WHEREAS, to avoid the uncertainty, expense, burden, and delay of litigating the Pre-April 30 Claims, the Settling Parties desire to finally and conclusively settle and compromise any and all Pre-April 30 Claims on the terms and conditions set forth below.

II. AGREEMENT

For good and valuable consideration, receipt of which is mutually acknowledged, the Settling Parties, intending to be legally bound by this Agreement, agree as follows:

1. Adoption of Recitals. The recitals set forth above are adopted as part of the Agreement, and the facts set forth therein are acknowledged and agreed to be true and correct.

2. Bankruptcy Court Approval. The Settling Parties acknowledge and agree that this Agreement is expressly conditioned upon, and shall not be deemed effective without, the Bankruptcy Court’s approval. The Liquidating Trustee shall use its best efforts to obtain an order of the Bankruptcy Court approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 (the “Approval Order”). The Liquidating Trustee shall file a motion seeking entry of the Approval Order in the Bankruptcy Court no later than ten (10) business days after the execution of this Agreement.

3. Effective Date: This Agreement shall become effective on the date (the “Effective Date”) on which the following conditions have been satisfied: (1) the Bankruptcy Court has entered the Approval Order; (2) the Approval Order has become a final order because either (a)

⁵ “March 2022 Settlement Agreement” is defined in Schedule I annexed hereto. For the avoidance of doubt, the Settling Parties acknowledge and agree that the definitions and use of the terms Insider Claims, Covered Claims, and March 2022 Released Claims in this Agreement: (1) are not meant to, and do not in any way, impact, alter, or modify the scope of the releases granted in the March 2022 Settlement Agreement; and (2) shall not be used as a basis to alter or modify the meaning or effectiveness of the terms “Preserved Claims” and “Released Claims” as such terms are used in the March 2022 Settlement Agreement.

⁶ For the avoidance of doubt, Pre-April 30 Claims and Post-April 30 Claims are mutually exclusive, and nothing in this Agreement releases Post-April 30 Claims or anyone other than those listed in Section 9 below. Further, no claim or cause of action for damages the liability for which is covered by those Policies listed under “Tower 1 (D&O)” on Schedule II of this Agreement is a Post-April 30 Claim or otherwise preserved under this Agreement.

Execution Copy

no objection was timely filed to the Liquidating Trustee's motion seeking entry of the Approval Order; or (b) an objection to entry of the Approval Order was filed and (i) no motion for reconsideration regarding the Approval Order has been timely filed within fourteen (14) calendar days after the date of the entry of the Approval Order, as required by Federal Rule of Bankruptcy Procedure 9023; (ii) no notice of appeal regarding the Approval Order has been timely filed within fourteen (14) calendar days after the date of the entry of the Approval Order, as required by Federal Rule of Bankruptcy Procedure 8002(a); and (iii) if a notice of appeal or motion for reconsideration of the Approval Order has been timely filed, as required by Federal Rule of Bankruptcy Procedure 9023 or Federal Rule of Bankruptcy Procedure 8002(a), then such appeal or motion has been denied with prejudice and the Approval Order is not subject to further timely appellate review; and (3) the Liquidating Trust has provided all payment information reasonably required to facilitate the Settlement Payment (as defined in Paragraph 5 below), including wiring instructions, a W9 and any other necessary tax information, and verbal confirmation of the wire instructions by the Liquidating Trustee or his counsel.

4. Rescission. If the Bankruptcy Court denies the Liquidating Trustee's motion seeking entry of an Approval Order, or if the Approval Order is reversed on appeal, then: (a) this Agreement shall be deemed void ab initio and shall have no legal effect whatsoever; (b) the Settling Parties shall revert, without prejudice to or waiver of any right, to their respective positions immediately prior to the execution of this Agreement; and (c) neither this Agreement nor evidence of its terms shall be admissible for any purpose in any action or proceeding.

5. The Settlement Payment. In full and final settlement of the Liquidating Trust's Pre-April 30 Claims, the Medley D&Os shall collectively cause payments in an aggregate amount of SIX MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$6,700,000) (the "Settlement Payment"), from the insurance carriers listed under "Tower 1 (D&O)" and "Tower 3 (E&O)" on Schedule II to be paid to the Liquidating Trust by wire transfer or by certified check delivered by common carrier pursuant to instructions that the Liquidating Trustee will provide.

6. The Payment Deadline. The Medley D&Os shall cause the full amount of the Settlement Payment to be paid to, and received by, the Liquidating Trust by no later than fifteen (15) business days after the Effective Date (the "Payment Deadline").

7. Fair, Reasonable, and Arms-Length Result. The Settling Parties agree that the Settlement Payment constitutes a fair and reasonable compromise of the claims and defenses that have been asserted or that could be asserted with respect to the Pre-April 30 Claims, based on their objective assessment of various factors, including: (a) the relative strength of the underlying claims and defenses; (b) the risk of not prevailing on those claims and defenses; (c) the amount of potential damages associated with those claims; and (d) the amount of attorney's fees and expenses and expert witness fees and expenses necessary to prosecute and defend against the Pre-April 30 Claims. Based upon the Settling Parties' respective evaluation of these factors, the Settling Parties agree that the settlement reflected in this Agreement, as set forth herein, is reasonable, represents a full, fair, and reasonable assessment of the risks to the Settling Parties associated with the Pre-April 30 Claims and defenses thereto, and is in the best interest of the Settling Parties. The Settling Parties further agree that the Settlement Payment is the product of arms-length, good-faith, and

Execution Copy

contentious negotiations over the course of several months, including mediations in May 2022 and June 2022 with Jed Melnick, a nationally respected mediator with JAMS.

8. Release Effective Date. The releases set forth in Section 9 of this Agreement will immediately, automatically and irrevocably become effective on the date that the Liquidating Trust receives payment in full of the Settlement Payment (the “Release Effective Date”).

9. Releases and Covenants. On the Release Effective Date, the Settling Parties will make the following respective releases and covenants.⁷ For the avoidance of doubt, nothing in this Section 9 or elsewhere in this Agreement releases any Settling Party from the obligations contained in this Agreement.⁸

9.1 Liquidating Trust Releases. On the Release Effective Date, the Liquidating Trust, the Liquidating Trustee, and the Debtor (the “Liquidating Trust Releasing Parties”) hereby release, waive, relinquish, disavow and forever discharge (i) the Medley D&Os, James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr., and Christopher Taube, and all of their respective affiliates, subsidiaries, family members, former spouses, trusts, former trusts (including, but not limited to, any trust that has been revoked or terminated),⁹ successors, heirs and assigns, other entities owned or controlled by them, their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (collectively, the “D&O Released Parties”) and (ii) each of the insurers listed under “Tower 3 (E&O)” on Schedule II and all of their respective successors, heirs, and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (the “Insurer Released Parties”), of and from any and all Pre-April 30 Claims that are Liquidating Trust Assets, whether considered claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys’ fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, from conduct of any nature whatsoever occurring before April 30, 2019, which the Liquidating Trust Releasing Parties have or may claim to have, against any of the D&O

⁷ Notwithstanding anything to the contrary, nothing in this Section 9 or elsewhere in this Agreement shall be intended to hamper or restrict the Settling Parties’ ability to seek discovery from any other Settling Party.

⁸ Notwithstanding anything to the contrary, nothing in this Section 9 or elsewhere in this Agreement or in the March 2022 Settlement Agreement shall constitute a release, waiver, or covenant not to sue regarding any claims or causes of action held by a Settling Party, the Debtor or MDLY (as defined in Schedule I annexed hereto) against any attorney or law firm, other than John Fredericks with respect to Pre-April 30 Claims, that may have represented such Settling Party, the Debtor or MDLY.

⁹ Including, without limitation, B. Taube 2014 Associates LLC, the Seth and Angie Taube Trust, A. Taube 2014 Associates, LLC, S. Taube 2014 Associates, LLC, and Canyon Capital Holdings LLC.

Execution Copy

Released Parties and the Insurer Released Parties; provided however, that notwithstanding the foregoing, nothing in this Agreement releases any Post-April 30 Claim that the Liquidating Trust may have against any of the D&O Released Parties, the Insurer Released Parties or anyone else. Further, notwithstanding the foregoing, nothing in this Agreement releases claims held by the Debtor against any Medley Subsidiary¹⁰ or held by any Medley Subsidiary against any Medley Subsidiary. For the avoidance of doubt, the release in this Section 9.1 applies whether a Pre-April 30 Claim is a Liquidating Trust Asset on the Release Effective Date or becomes a Liquidating Trust Asset after the Release Effective Date.

9.2 Liquidating Trust's Covenant Not to Sue. On the Release Effective Date, the Liquidating Trust Releasing Parties, on behalf of themselves and their successors and assigns, each hereby agrees and covenants not to initiate, prosecute, assert, or otherwise seek to enforce or execute on any claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, that any Medley Subsidiary may have or claim to have against any of the D&O Released Parties or the Insurer Released Parties for conduct occurring before April 30, 2019.¹¹

9.3 Medley D&Os Releases. On the Release Effective Date, the Medley D&Os hereby release, waive, relinquish, disavow and forever discharge the Liquidating Trust Releasing Parties and all of their respective successors, heirs, and assigns, and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing from any and all claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments (including with respect to any capital calls), rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, arising from conduct of any nature whatsoever that occurred prior to April 30, 2019.

¹⁰ "Medley Subsidiary" is defined in Schedule I annexed hereto.

¹¹ For the avoidance of doubt, nothing in this Section 9.2 or elsewhere in this Agreement releases or otherwise impairs any rights of any of the Medley Subsidiaries.

Execution Copy

10. Unknown Claims. The releases and covenants in Section 9 are executed with the full knowledge and understanding by the Liquidating Trust Releasing Parties and the D&O Released Parties that there may be more serious consequences or damages that are now not known. The Settling Parties knowingly, voluntarily, and expressly waive, to the fullest extent permitted by law, any and all rights they may have under any statute or any common law principle that would limit the effect of the releases and covenants in Section 9 based upon their knowledge at the time they execute this Agreement. The Settling Parties expressly waive their respective rights under the provisions of Section 1542 of the California Civil Code (or any other federal or state statute or law of similar effect), which provides as follows:

“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.”

11. No Admission of Liability. This Agreement is intended as a compromise and is not intended and shall not be construed as an admission of liability by any Settling Party.

12. Mutual Representations and Warranties. The Settling Parties, and each of them, represent, warrant, and agree with each other as of the Release Effective Date as follows:

12.1 Each Settling Party has received or has had the opportunity to receive independent legal advice from attorneys of his or her choice with respect to the advisability of making the settlement and release provided herein, and with respect to the advisability of executing and being bound by this Agreement.

12.2 Except as expressly stated in this Agreement, no Settling Party has made any statement or representation to any other Settling Party regarding any fact that may be relied upon by any other Settling Party in entering into this Agreement, and each Settling Party specifically does not rely upon any statement, representation, or promise of any other Settling Party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

12.3 Each Settling Party has made such investigation of the facts pertaining to this settlement and this Agreement, and all the matters pertaining thereto, as each Settling Party deems necessary.

12.4 The terms of this Agreement are contractual, not a mere recital, and are the result of negotiation among all the Settling Parties.

12.5 This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely by, each Settling Party.

12.6 This Agreement has been drafted by the Settling Parties' respective counsel and is to be construed neutrally and not for or against any Settling Party.

Execution Copy

13. Liquidating Trust Representations and Warranties. The Liquidating Trustee further represents and warrants that (i) this Agreement has been duly and validly authorized, executed and delivered on behalf of the Liquidating Trust, shall constitute the legal, valid and binding obligations of the Liquidating Trust, and shall be enforceable against the Liquidating Trust; (ii) it has complied with all provisions of the Liquidating Trust Agreement and the Plan necessary to validly enter into this Agreement, including Section 3.2.13 of the Liquidating Trust Agreement; (iii) the Liquidating Trust has not assigned or otherwise transferred and will not assign or otherwise transfer any claims to be released hereunder prior to the Release Effective Date; and (iv) it will not bring any action for any claims to be released hereunder, or that would be subject to the covenant not to sue in Section 9.2 hereof, prior to the Release Effective Date.

14. Modification and Counterpart Copies. This Agreement may only be modified by a written instrument executed by all the Settling Parties. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Settling Party, except as specifically set forth in this Agreement. All prior discussion and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. So long as each Settling Party executes this Agreement, a copy of this Agreement, whether signed by one Settling Party or multiple Settling Parties, shall have the same force, effect, and validity as an original Agreement executed by all Settling Parties.

15. Attorneys' Fees. Each Settling Party shall bear his or its own attorney's fees and costs related to this Agreement and the releases herein. Notwithstanding the foregoing, in the event suit is brought or an attorney is retained by any Settling Party to enforce the Agreement's terms, or to collect any damages due for breach hereof, each Settling Party shall be solely and exclusively responsible for his or its own attorneys' fees, court costs, costs of investigation, and other related expenses incurred in connection therewith. Except as expressly provided herein, nothing in this Agreement is construed as a waiver by any Settling Party of any rights under any insurance policy.

16. Caption and Titles. The captions and titles contained in this Agreement are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

17. Construction of Agreement. Each of the Settling Parties has read and agreed to the terms of the Agreement after consulting with counsel, and the language of this Agreement shall, therefore, not be presumptively construed either in favor of or against any Settling Party.

18. Governing Law and Forum. In the event any Settling Party seeks to enforce this Agreement including through a declaratory or similar action or to assert a claim for its breach, each of the Settling Parties hereby expressly consents to the exclusive jurisdiction of the Bankruptcy Court. The Settling Parties agree that the Agreement shall be governed and construed in accordance with the laws of the State of New York.

19. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the Settling Parties, their respective agents, attorneys, executors, guardians, companies, partners,

Execution Copy

members, beneficiaries, managers, directors, officers, employees, heirs, successors and assigns, and the Medley D&Os' affiliates.

20. Relationship of Parties. Nothing in this Agreement shall be deemed or construed to constitute or create any agency, partnership, or affiliation agreement among or between any of the Settling Parties; no Settling Party shall have any power to obligate or bind another Settling Party in any manner whatsoever.

21. Waiver. No waiver by any Settling Party of a breach or a default hereunder shall be deemed a waiver of a subsequent breach or default of a like or similar nature.

22. Severability. If any provision is held invalid by the Bankruptcy Court or any other court of competent jurisdiction, such provision shall not invalidate the entire Agreement, but the Agreement shall be construed as not containing the particular provision held to be invalid, and the rights and obligations of the Settling Parties shall be construed accordingly.

23. Notices. Any notice required by this Agreement shall be provided in writing via overnight mail and via email to each of the Settling Parties and in the following manner:

To the Liquidating Trustee:

Eric D. Madden, Esq.
Reid Collins & Tsai LLP
1601 Elm Street, Suite 4200
Dallas, Texas 75201
emadden@reidcollins.com

-and-

James S. Carr, Esq.
Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, New York 10007
jcarr@kelleydrye.com

To Richard Allorto

Gregory S. Bruch, Esq.
Bruch Law Group
1099 New York Ave., NW, Suite 500
Washington, D.C. 20001
gbruch@bruchlawgroup.com

To Samuel Anderson

Execution Copy

Adriaen Morse, Esq.
SECIL Law PLLC
1701 Pennsylvania Ave., Suite 200
Washington, DC 20006
amorse@secillaw.com

To Brook Taube and Seth Taube

Douglas Koff, Esq.
Schulte Roth & Zabel LLP
919 3rd Ave.
New York, New York 10022
douglas.koff@srz.com

To Jeffrey Tonkel

Samuel J. Winer, Esq.
Foley & Lardner LLP
3000 K Street, N.W.
Washington, D.C. 20007
swiner@foley.com

24. Third-Party Beneficiaries. James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr. and Christopher Taube are third-party beneficiaries of this Agreement, but only with respect to the ability to enforce the releases and covenants contained in Section 9 above.

[Signature pages to follow]

Execution Copy

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the dates reflected below.

MEDLEY LLC LIQUIDATING TRUST

DocuSigned by:

Anthony M. Saccullo

ED66622A7682427...

By: Saccullo Business Consulting, LLC, as
Liquidating Trustee
Name: Anthony M. Saccullo
Title: Trustee
Date: 2/20/2023

DocuSigned by:

[Signature]

C74837A7BA7A492...

Richard Allorto
Date: 2/14/2023

DocuSigned by:

Samuel Anderson

8D4877680E7442B...

Samuel Anderson
Date: 2/13/2023

DocuSigned by:

Brook Taube

97FC428FD9B64F3...

Brook Taube
Date:

DocuSigned by:

Seth Taube

89EA0E1756F5419...

Seth Taube
Date: 2/14/2023

DocuSigned by:

Jeffrey Tonkel

C128DA0E7BA04F1...

Jeffrey Tonkel
Date: 2/13/2023

SCHEDULE I – DEFINED TERMS

As used in this Agreement, the following terms have the meanings set forth below.

“Cause of Action” or “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise against any party, including current and former directors, officers, and employees of the Debtor and its affiliates. Causes of Action also include, but are not limited to: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest claims or interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Defense Expenses” means the necessary costs, charges, expenses, and fees, including attorney’s, expert’s, mediator’s, and arbitrator’s fees, incurred in defending a Cause of Action, and the premium for appeal, attachment, or similar bond.

“Loss” means (a) Defense Expenses; and (b) damages, judgments, settlements, and prejudgment and postjudgment interest that an Insured Person is legally obligated to pay as a result of a Cause of Action or written demand for monetary damages.

“Insured Person” means a natural person who was a director, officer, or employee, or the functional equivalent of the foregoing, of MDLY or the Debtor.

“Management Services” means acts by an Insured Person solely in his or her capacity as a director, officer, or employee of MDLY or the Debtor.

“March 2022 Settlement Agreement” refers to that certain Settlement Agreement and Release entered into by the Liquidating Trust, MDLY, Brook Taube Trust, Brook Taube, and Seth Taube on or about March 23, 2022.

“MDLY” refers to Medley Management, Inc.

“Medley D&Os” refers collectively to Richard Allorto, Samuel Anderson, Brook Taube, Seth Taube, and Jeffrey Tonkel.

“Medley Subsidiary” means any entity that is or was a direct or indirect subsidiary of the Debtor.

“Wrongful Acts” means (a) an error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed or attempted by an Insured Person performing, or failing to perform, Management Services; or (b) a matter claimed against an Insured Person solely by reason of his or her service in such capacity.

SCHEDULE II – THE POLICIES*

Tower 1 (D&O)		
Insurer	Policy Number	Policy Limits**
Berkshire Hathaway Specialty Insurance Company	47-EPF-301833-03	\$5MM (primary)
Starr Indemnity & Liability Company	1000059851171	\$5MM (first excess)
Allied World Insurance Company (Side A)	0310-3481	\$5MM (second excess)

Tower 2 (D&O)		
Insurer	Policy Number	Policy Limits**
Allianz Global Risks US Insurance Company	USF00298219	\$5MM (primary)
Euclid Financial Institution Underwriters, LLC (Certain Underwriters at Lloyd's of London; Associated Industries Insurance Company)	EFI1203059-00	\$2.5MM (first excess)
Old Republic Professional Liability, Inc.	ORPRO 44299	\$2.5MM (second excess)

Tower 3 (E&O)		
Insurer	Policy Number	Policy Limits**
Travelers Casualty and Surety Co. of America	106601622	\$5MM (primary)
Nationwide Mutual Insurance Company	XMF1702465	\$5MM (first excess)

(Freedom Specialty Insurance Company)		
Sompo International (Endurance American Insurance Company)	FIX10007675802	\$5MM (second excess)
Allianz Global Risks US Insurance Company	DOX2010224	\$3MM (third excess)

*Based on information and belief.

**Amounts do not reflect remaining amounts, ability to access or coverage.

EXHIBIT C

Execution Copy

**SETTLEMENT AGREEMENT AND
RELEASE OF POST-APRIL 30 CLAIMS**

This SETTLEMENT AGREEMENT AND RELEASE OF POST-APRIL 30 CLAIMS (the “Agreement”) is made and entered into on February 13, 2023 by (i) the Medley D&Os¹ and (ii) the Medley LLC Liquidating Trust (the “Liquidating Trust”) through Saccullo Business Consulting, LLC, as Liquidating Trustee (the “Liquidating Trustee”). Collectively, the Liquidating Trust and the Medley D&Os are referred to herein as the “Settling Parties.”

I. RECITALS

A. WHEREAS, Medley LLC (the “Debtor”) is a privately-held company that, on March 7, 2021, filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 21-10526;

B. WHEREAS, on October 18, 2021, (i) the Bankruptcy Court entered the *Amended Findings Of Fact, Conclusions Of Law, And Order (I) Approving The Adequacy Of Disclosures On A Final Basis And (II) Confirming The Modified Third Amended Combined Disclosure Statement And Chapter 11 Plan Of Medley LLC* (Docket No. 445) (the “Confirmation Order”), approving the *Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan of Medley LLC* (Docket No. 445-1) (the “Plan”) and (ii) the Plan became effective;

C. WHEREAS, on October 18, 2021, the Debtor’s assets, including its Causes of Action, automatically vested in the Liquidating Trust, and the Liquidating Trustee was authorized to: (i) marshal and liquidate the Liquidating Trust’s assets for distribution under the Plan, (ii) pursue all such Causes of Action on behalf of the Liquidating Trust; and (iii) settle Causes of Action subject to the terms of that certain Liquidating Trust Agreement and Declaration of Trust executed in connection with the Plan and Confirmation Order (the “Liquidating Trust Agreement”);²

D. WHEREAS, the Liquidating Trustee is the only party that may commence, litigate and settle any Causes of Action that are Liquidating Trust Assets (as defined in the Plan);

E. WHEREAS, on October 18, 2021, the Liquidating Trust Assets included all of the Debtor’s Causes of Action against the D&O Released Parties³ (the “Insider Claims”);⁴

F. WHEREAS, the Insider Claims consist, or consisted, only of: (1) purported Causes of Action for damages against one or more of the D&O Released Parties (defined in Section 7.1 below) for Wrongful Acts which allegedly caused Loss for which the Liquidating Trustee contends

¹ “Medley D&Os” is defined in Schedule I annexed hereto.

² “Causes of Action” is defined in Schedule I annexed hereto.

³ “D&O Released Parties” is defined in Section 7.1 below.

⁴ For the avoidance of doubt, Insider Claims also include those Causes of Action against the D&O Released Parties that became Liquidating Trust Assets after October 18, 2021.

Execution Copy

one or more of the insurance policies listed in Schedule II annexed hereto (the “Policies”), subject to their terms and conditions, provide, or have provided, coverage pursuant to the terms of the Policies (the “Covered Claims”); and (2) those Causes of Action that the Liquidating Trust finally and conclusively settled and released in the March 2022 Settlement Agreement (the “March 2022 Released Claims”);⁵

G. WHEREAS, the March 2022 Settlement Agreement did not settle or release any Covered Claims;

H. WHEREAS, the Covered Claims consist of (1) Covered Claims that involve wrongdoing alleged to have occurred before April 30, 2019 (the “Pre-April 30 Claims”) and (2) Covered Claims that involve wrongdoing alleged to have occurred on or after April 30, 2019 (the “Post-April 30 Claims”);⁶ and

I. WHEREAS, to avoid the uncertainty, expense, burden, and delay of litigating the Post-April 30 Claims, the Settling Parties desire to finally and conclusively settle and compromise any and all Post-April 30 Claims on the terms and conditions set forth below.

II. AGREEMENT

For good and valuable consideration, receipt of which is mutually acknowledged, the Settling Parties, intending to be legally bound by this Agreement, agree as follows:

1. Adoption of Recitals. The recitals set forth above are adopted as part of the Agreement, and the facts set forth therein are acknowledged and agreed to be true and correct.

2. Bankruptcy Court Approval. The Settling Parties acknowledge and agree that this Agreement is expressly conditioned upon, and shall not be deemed effective without, the Bankruptcy Court’s approval. The Liquidating Trustee shall use its best efforts to obtain an order of the Bankruptcy Court approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 (the “Approval Order”). The Liquidating Trustee shall file a motion seeking entry of the Approval Order in the Bankruptcy Court no later than ten (10) business days after the execution of this Agreement.

3. Effective Date: This Agreement shall become effective on the date (the “Effective Date”) on which the following conditions have been satisfied: (1) the Bankruptcy Court has entered the Approval Order; and (2) the Approval Order has become a final order because either (a) no objection was timely filed to the Liquidating Trustee’s motion seeking entry of the Approval

⁵ “March 2022 Settlement Agreement” is defined in Schedule I annexed hereto. For the avoidance of doubt, the Settling Parties acknowledge and agree that the definitions and use of the terms Insider Claims, Covered Claims, and March 2022 Released Claims in this Agreement: (1) are not meant to, and do not in any way, impact, alter, or modify the scope of the releases granted in the March 2022 Settlement Agreement; and (2) shall not be used as a basis to alter or modify the meaning or effectiveness of the terms “Preserved Claims” and “Released Claims” as such terms are used in the March 2022 Settlement Agreement.

⁶ For the avoidance of doubt, Pre-April 30 Claims and Post-April 30 Claims are mutually exclusive, and nothing in this Agreement releases Pre-April 30 Claims or anyone other than those listed in Section 7 below.

Execution Copy

Order; or (b) an objection to entry of the Approval Order was filed and (i) no motion for reconsideration regarding the Approval Order has been timely filed within fourteen (14) calendar days after the date of the entry of the Approval Order, as required by Federal Rule of Bankruptcy Procedure 9023; (ii) no notice of appeal regarding the Approval Order has been timely filed within fourteen (14) calendar days after the date of the entry of the Approval Order, as required by Federal Rule of Bankruptcy Procedure 8002(a); and (iii) if a notice of appeal or motion for reconsideration of the Approval Order has been timely filed, as required by Federal Rule of Bankruptcy Procedure 9023 or Federal Rule of Bankruptcy Procedure 8002(a), then such appeal or motion has been denied with prejudice and the Approval Order is not subject to further timely appellate review.

4. Rescission. If the Bankruptcy Court denies the Liquidating Trustee's motion seeking entry of an Approval Order, or if the Approval Order is reversed on appeal, then: (a) this Agreement shall be deemed void ab initio and shall have no legal effect whatsoever; (b) the Settling Parties shall revert, without prejudice to or waiver of any right, to their respective positions immediately prior to the execution of this Agreement; and (c) neither this Agreement nor evidence of its terms shall be admissible for any purpose in any action or proceeding.

5. The Settlement Payment. In full and final settlement of the Post-April 30 Claims, the Medley D&Os have agreed to collectively cause to be paid, from the Policies or otherwise, an amount of SIX MILLION FOUR HUNDRED THOUSAND DOLLARS (\$6,400,000) (the "Settlement Payment"), to the Liquidating Trust in the manner described in this Section 5.⁷ No amounts in this Agreement shall be subject to set off.

5.1 Demand. No later than five (5) business days after the Effective Date, the Medley D&Os will make written demand on the insurance companies listed under "Tower 2 (D&O)" on Schedule II to pay the Settlement Payment to the Liquidating Trust pursuant to the terms of the insurance policies listed under "Tower 2 (D&O)" on Schedule II. Said demand will include this Agreement and the Approval Order.

5.2 Payment Deadline. No later than fifteen (15) business days after the Effective Date (the "Payment Deadline"), the Medley D&Os shall collectively cause the Settlement Payment to be paid to the Liquidating Trust pursuant to wire instructions that the Liquidating Trust will provide. If the Liquidating Trust has not received the full amount of the Settlement Payment by the Payment Deadline, the Settling Parties agree that the following procedure will control:

5.2.1 The Liquidating Trustee will send a letter substantially in the form attached hereto as Exhibit A (the "Notice Letter") by no later than five (5) business days after the Payment Deadline.

5.2.2 Within five (5) business days of receiving the Notice Letter (the "Cure Deadline"), the Medley D&Os must either (a) collectively cause the

⁷ The Settling Parties agree that the Settlement Payment is in addition to the \$6.7 million that the Medley D&Os have agreed will be paid to the Liquidating Trust to settle the Pre-April 30 Claims (the "Pre-April 30 Claims Settlement"). The Settling Parties further agree that the Liquidating Trust's receipt of the Pre-April 30 Claims Settlement will not reduce the Settlement Payment owed under this Agreement.

Execution Copy

Settlement Payment to be paid to the Liquidating Trust or (b) provide the Liquidating Trustee with an executed copy of the document attached hereto as Exhibit B (the "Assignment").

5.2.3 If, by the Cure Deadline, the Liquidating Trust does not receive either (a) an executed copy of the Assignment from the Medley D&Os or (b) full payment of the Settlement Payment, the Liquidating Trust may pursue claims to enforce or effectuate this Agreement by seeking to collect the Settlement Payment from the personal assets of the Medley D&Os.⁸

5.2.4 If the Liquidating Trust receives an executed Assignment from the Medley D&Os by the Cure Deadline, the Liquidating Trust must return a fully executed copy of the Assignment to the Medley D&Os within five (5) business days of receipt.

6. Fair, Reasonable, and Arms-Length Result. The Settling Parties agree that the Settlement Payment constitutes a fair and reasonable compromise of the claims and defenses that have been asserted or that could be asserted with respect to the Post-April 30 Claims, based on their objective assessment of various factors, including: (a) the relative strength of the underlying claims and defenses; (b) the risk of not prevailing on those claims and defenses; (c) the amount of potential damages associated with those claims; and (d) the amount of attorney's fees and expenses and expert witness fees and expenses necessary to prosecute and defend against the Post-April 30 Claims. Based upon the Settling Parties' respective evaluation of these factors, the Settling Parties agree that the settlement reflected in this Agreement, as set forth herein, is reasonable, represents a full, fair, and reasonable assessment of the risks to the Settling Parties associated with the Post-April 30 Claims and defenses thereto, and is in the best interest of the Settling Parties. The Settling Parties further agree that the Settlement Payment is the product of arms-length, good-faith, and contentious negotiations over the course of several months, including a mediation on August 30, 2022 with Hon. Gerald A. Rosen (ret.), the former Chief Judge of the United States District Court for the Eastern District of Michigan and a nationally respected mediator with JAMS.

7. Releases and Covenants. On the Release Effective Date (as defined below), the Settling Parties will make the following respective releases and covenants.⁹ For the avoidance of doubt, nothing in this Section 7 or elsewhere in this Agreement releases any Settling Party from the obligations contained in this Agreement.¹⁰

⁸ For the avoidance of doubt, the Liquidating Trust cannot invoke Section 5.2.3 if it receives either the Assignment or full payment of the Settlement Payment by the Cure Deadline.

⁹ Notwithstanding anything to the contrary, nothing in this Section 7 or elsewhere in this Agreement shall be intended to hamper or restrict the Settling Parties' ability to seek discovery from any other Settling Party.

¹⁰ Notwithstanding anything to the contrary, nothing in this Section 7 or elsewhere in this Agreement or in the March 2022 Settlement Agreement shall constitute a release, waiver, or covenant not to sue regarding any claims or causes of action held by a Settling Party, the Debtor or MDLY (as defined in Schedule I annexed hereto) against any attorney or law firm, other than John Fredericks with respect to Post-April 30 Claims, that may have represented such Settling Party, the Debtor or MDLY.

Execution Copy

7.1 Liquidating Trust Releases. On the Release Effective Date, the Liquidating Trust, the Liquidating Trustee, and the Debtor (the “Liquidating Trust Releasing Parties”) hereby release, waive, relinquish, disavow and forever discharge (i) the Medley D&Os, Samuel Anderson, James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr., Christopher Taube, and Jeffrey Tonkel, and all of their respective affiliates, subsidiaries, family members, former spouses, trusts, former trusts (including, but not limited to, any trust that has been revoked or terminated),¹¹ successors, heirs and assigns, other entities owned or controlled by them, their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (collectively, the “D&O Released Parties”) and (ii) each of the insurers listed under “Tower 3 (E&O)” on Schedule II and all of their respective successors, heirs, and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (the “Insurer Released Parties”), of and from any and all Post-April 30 Claims that are Liquidating Trust Assets, whether considered claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys’ fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, from conduct of any nature whatsoever occurring on or after April 30, 2019, which the Liquidating Trust Releasing Parties have or may claim to have, against any of the D&O Released Parties and the Insurer Released Parties; provided however, that notwithstanding the foregoing, nothing in this Agreement releases any Pre-April 30 Claim (to the extent such Pre-April 30 Claim has not already been released) that the Liquidating Trust may have against any of the D&O Released Parties, the Insurer Released Parties, or anyone else. Further, notwithstanding the foregoing, nothing in this Agreement releases claims held by the Debtor against any Medley Subsidiary¹² or held by any Medley Subsidiary against any Medley Subsidiary. For the avoidance of doubt, the release in this Section 7.1 applies whether a Post-April 30 Claim is a Liquidating Trust Asset on the Release Effective Date or becomes a Liquidating Trust Asset after the Release Effective Date.

7.2 Liquidating Trust’s Covenant Not to Sue. On the Release Effective Date, the Liquidating Trust Releasing Parties, on behalf of themselves and their successors and

¹¹ Including, without limitation, B. Taube 2014 Associates LLC, the Seth and Angie Taube Trust, A. Taube 2014 Associates, LLC, S. Taube 2014 Associates, LLC, and Canyon Capital Holdings LLC.

¹² “Medley Subsidiary” is defined in Schedule I annexed hereto.

Execution Copy

assigns, each hereby agree and covenant not to initiate, prosecute, assert, or otherwise seek to enforce or execute on any claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, that any Medley Subsidiary may have or claim to have against any of the D&O Released Parties or the Insurer Released Parties for conduct occurring on or after April 30, 2019.¹³

7.3 Medley D&O Releases. On the Release Effective Date, the Medley D&Os hereby release, waive, relinquish, disavow and forever discharge the Liquidating Trust Releasing Parties and all of their respective successors, heirs, and assigns, and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing from any and all claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments (including with respect to any capital calls), rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, arising from conduct of any nature whatsoever that occurred on or after April 30, 2019; provided however that nothing herein: (1) is meant to, or shall, impact or release any of the Medley D&Os' ability to raise defenses regarding the Liquidating Trust Releasing Parties in any litigation brought against any of the Medley D&Os by any Medley Subsidiary; and (2) releases the Liquidating Trust from any obligations under the March 2022 Settlement Agreement.

7.4 Release Effective Date. The releases contained in this Section 7 shall be immediately, automatically and irrevocably effective on the date that the Liquidating Trust receives payment in full of the Settlement Payment from the Medley D&Os (the "Release Effective Date"). If, in lieu of the Settlement Payment, the Medley D&Os provide the Liquidating Trust with an executed copy of the Assignment on or before the Cure Deadline,

¹³ For the avoidance of doubt, nothing in this Section 7.2 or elsewhere in this Agreement releases or otherwise impairs any rights of any Medley Subsidiary.

Execution Copy

any releases and covenants between the Settling Parties concerning the Post-April 30 Claims will be governed by the Assignment.

8. Unknown Claims. The releases and covenants in Section 7 are executed with the full knowledge and understanding by the Settling Parties that there may be more serious consequences or damages that are now not known. The Settling Parties knowingly, voluntarily, and expressly waive, to the fullest extent permitted by law, any and all rights they may have under any statute or any common law principle that would limit the effect of the releases and covenants in Section 5 based upon their knowledge at the time they execute this Agreement. The Settling Parties expressly waive their respective rights under the provisions of Section 1542 of the California Civil Code (or any other federal or state statute or law of similar effect), which provides as follows:

“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.”

9. No Admission of Liability. This Agreement is intended as a compromise and is not intended and shall not be construed as an admission of liability by any Settling Party.

10. Mutual Representations and Warranties. The Settling Parties, and each of them, represent, warrant, and agree with each other as of the Effective Date as follows:

10.1 Each Settling Party has received or has had the opportunity to receive independent legal advice from attorneys of his or her choice with respect to the advisability of making the settlement and release provided herein, and with respect to the advisability of executing and being bound by this Agreement.

10.2 Except as expressly stated in this Agreement, no Settling Party has made any statement or representation to any other Settling Party regarding any fact that may be relied upon by any other Settling Party in entering into this Agreement, and each Settling Party specifically does not rely upon any statement, representation, or promise of any other Settling Party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

10.3 Each Settling Party has made such investigation of the facts pertaining to this settlement and this Agreement, and all the matters pertaining thereto, as each Settling Party deems necessary.

10.4 The terms of this Agreement are contractual, not a mere recital, and are the result of negotiation among all the Settling Parties.

10.5 This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely by, each Settling Party.

Execution Copy

10.6 This Agreement has been drafted by the Settling Parties' respective counsel and is to be construed neutrally and not for or against any Settling Party.

11. Liquidating Trust Representations and Warranties. The Liquidating Trustee further represents and warrants that (i) this Agreement has been duly and validly authorized, executed and delivered on behalf of the Liquidating Trust, shall constitute the legal, valid and binding obligations of the Liquidating Trust, and shall be enforceable against the Liquidating Trust; (ii) it has complied with all provisions of the Liquidating Trust Agreement and the Plan necessary to validly enter into this Agreement, including Section 3.2.13 of the Liquidating Trust Agreement; (iii) the Liquidating Trust has not assigned or otherwise transferred and will not assign or otherwise transfer any claims released hereunder, or under the Assignment, prior to the Release Effective Date; and (iv) it will not bring any action for any claims to be released hereunder, under the Assignment, or that would be subject to the covenant not to sue in Section 7.2 hereof, prior to the Cure Deadline.

12. Modification and Counterpart Copies. This Agreement may only be modified by a written instrument executed by all the Settling Parties. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Settling Party, except as specifically set forth in this Agreement. All prior discussion and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. So long as each Settling Party executes this Agreement, a copy of this Agreement, whether signed by one Settling Party or multiple Settling Parties, shall have the same force, effect, and validity as an original Agreement executed by all Settling Parties.

13. Attorneys' Fees. Each Settling Party shall bear his or its own attorney's fees and costs related to this Agreement and the releases herein. Notwithstanding the foregoing, in the event suit is brought or an attorney is retained by any Settling Party to enforce the Agreement's terms, or to collect any damages due for breach hereof, each Settling Party shall be solely and exclusively responsible for his or its own attorneys' fees, court costs, costs of investigation, and other related expenses incurred in connection therewith. Except as expressly provided herein, nothing in this Agreement is construed as a waiver by any Settling Party of any rights under any insurance policy.

14. Caption and Titles. The captions and titles contained in this Agreement are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

15. Construction of Agreement. Each of the Settling Parties has read and agreed to the terms of the Agreement after consulting with counsel, and the language of this Agreement shall, therefore, not be presumptively construed either in favor of or against any Settling Party.

16. Governing Law and Forum. In the event any Settling Party seeks to enforce this Agreement including through a declaratory or similar action or to assert a claim for its breach, each of the Settling Parties hereby expressly consents to the exclusive jurisdiction of the Bankruptcy Court. The Settling Parties agree that the Agreement shall be governed and construed in accordance with the laws of the State of New York.

Execution Copy

17. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the Settling Parties, their respective agents, attorneys, executors, guardians, companies, partners, members, beneficiaries, managers, officers, employees, heirs, successors and assigns, and the Medley D&Os' affiliates.

18. Relationship of Parties. Nothing in this Agreement shall be deemed or construed to constitute or create any agency, partnership, or affiliation agreement among or between any of the Settling Parties; no Settling Party shall have any power to obligate or bind another Settling Party in any manner whatsoever.

19. Waiver. No waiver by any Settling Party of a breach or a default hereunder shall be deemed a waiver of a subsequent breach or default of a like or similar nature.

20. Severability. If any provision is held invalid by the Bankruptcy Court or any other court of competent jurisdiction, such provision shall not invalidate the entire Agreement, but the Agreement shall be construed as not containing the particular provision held to be invalid, and the rights and obligations of the Settling Parties shall be construed accordingly.

21. Notices. Any notice required by this Agreement shall be provided in writing via overnight mail and via email to each of the Settling Parties and in the following manner:

To the Liquidating Trustee:

Eric D. Madden, Esq.
Reid Collins & Tsai LLP
1601 Elm Street, Suite 4200
Dallas, Texas 75201
emadden@reidcollins.com

-and-

James S. Carr, Esq.
Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, New York 10007
jcarr@kelleydrye.com

To Richard Allorto

Gregory S. Bruch, Esq.
Bruch Law Group
1099 New York Ave., NW, Suite 500
Washington, D.C. 20001
gbruch@bruchlawgroup.com

Execution Copy

-and-

Jay B. Spievack, Esq.
Cohen Tauber Spievack & Wagner PC
420 Lexington Ave., Suite 2400
New York, New York 10170-2499
jspievack@ctwslaw.com

To Brook Taube and Seth Taube

Douglas Koff, Esq.
Schulte Roth & Zabel LLP
919 3rd Ave.
New York, New York 10022
douglas.koff@srz.com

-and-

Jay B. Spievack, Esq.
Cohen Tauber Spievack & Wagner PC
420 Lexington Ave., Suite 2400
New York, New York 10170-2499
jspievack@ctwslaw.com

22. Third-Party Beneficiaries. Samuel Anderson, James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr., Christopher Taube and Jeffrey Tonkel are third-party beneficiaries of this Agreement, but only with respect to the ability to enforce the releases and covenants contained in Section 7 above.

[Signature page to follow]

Execution Copy

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the dates reflected below.

MEDLEY LLC LIQUIDATING TRUST

DocuSigned by:
Anthony M. Saccullo

By: ^{EB66522A7662427}Saccullo Business Consulting, LLC, as Liquidating Trustee

Name: Anthony M. Saccullo

Title: Trustee

Date: 2/20/2023

DocuSigned by:
[Signature]
C74837A7BA7A492...

Richard Allorto

Date: 2/14/2023

DocuSigned by:
Brook Taube
97FC428FD9864F3...

Brook Taube

Date:

DocuSigned by:
Seth Taube
89EA0E1756F5419...

Seth Taube

Date: 2/14/2023

SCHEDULE I – DEFINED TERMS

As used in this Agreement, the following terms have the meanings set forth below.

“Cause of Action” or “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise against any party, including current and former directors, officers, and employees of the Debtor and its affiliates. Causes of Action also include, but are not limited to: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest claims or interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Defense Expenses” means the necessary costs, charges, expenses, and fees, including attorney’s, expert’s, mediator’s, and arbitrator’s fees, incurred in defending a Cause of Action, and the premium for appeal, attachment, or similar bond.

“Loss” means (a) Defense Expenses; and (b) damages, judgments, settlements, and prejudgment and postjudgment interest that an Insured Person is legally obligated to pay as a result of a Cause of Action or written demand for monetary damages.

“Insured Person” means a natural person who was a director, officer, or employee, or the functional equivalent of the foregoing, of MDLY or the Debtor.

“Management Services” means acts by an Insured Person solely in his or her capacity as a director, officer, or employee of MDLY or the Debtor.

“March 2022 Settlement Agreement” refers to that certain Settlement Agreement and Release entered into by the Liquidating Trust, MDLY, Brook Taube Trust, Brook Taube, and Seth Taube on or about March 23, 2022.

“MDLY” refers to Medley Management, Inc.

“Medley D&Os” refers collectively to Richard Allorto, Brook Taube, and Seth Taube.

“Medley Subsidiary” means any entity that is or was a direct or indirect subsidiary of the Debtor.

“Wrongful Acts,” as used in this Agreement, means (a) an error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed or attempted by an Insured Person performing, or failing to perform, Management Services; or (b) a matter claimed against an Insured Person solely by reason of his or her service in such capacity.

SCHEDULE II – THE POLICIES*

Tower 1 (D&O)		
Insurer	Policy Number	Policy Limits**
Berkshire Hathaway Specialty Insurance Company	47-EPF-301833-03	\$5MM (primary)
Starr Indemnity & Liability Company	1000059851171	\$5MM (first excess)
Allied World Insurance Company (Side A)	0310-3481	\$5MM (second excess)

Tower 2 (D&O)		
Insurer	Policy Number	Policy Limits**
Allianz Global Risks US Insurance Company	USF00298219	\$5MM (primary)
Euclid Financial Institution Underwriters, LLC (Certain Underwriters at Lloyd's of London; Associated Industries Insurance Company)	EFI1203059-00	\$2.5MM (first excess)
Old Republic Professional Liability, Inc.	ORPRO 44299	\$2.5MM (second excess)

Tower 3 (E&O)		
Insurer	Policy Number	Policy Limits**
Travelers Casualty and Surety Co. of America	106601622	\$5MM (primary)
Nationwide Mutual Insurance Company	XMF1702465	\$5MM (first excess)

(Freedom Specialty Insurance Company)		
Sompo International (Endurance American Insurance Company)	FIX10007675802	\$5MM (second excess)
Allianz Global Risks US Insurance Company	DOX2010224	\$3MM (third excess)

*Based on information and belief.

**Amounts do not reflect remaining amounts, ability to access or coverage.

EXHIBIT A

FORM OF NOTICE LETTER

This Notice Letter is made as of [], by Saccullo Business Consulting, as liquidating trustee (the “Liquidating Trustee”) of the Medley LLC Liquidating Trust (the “Liquidating Trust”), pursuant to the Settlement Agreement and Release of Post-April 30 Claims dated as of [], 2023 (as amended, supplemented or otherwise modified prior to the date hereof, the “Agreement”) by and among the Medley D&Os and the Liquidating Trust.

Pursuant to Section 5.2.1 of the Agreement, the Liquidating Trustee hereby gives notice as follows:

1. The Effective Date of the Agreement was [XX].¹
2. The Payment Deadline for the Settlement Payment was [XX].
3. Notwithstanding Section 5 of the Agreement, the Liquidating Trust has not received the Settlement Payment.
4. To avoid the Liquidating Trust’s invoking its rights under Section 5.2.3 of the Agreement, the Medley D&Os may deliver to counsel for the Liquidating Trust an executed copy of the Assignment, pursuant to Section 5.2.2(b) of the Agreement.
5. If an executed copy of the Assignment is not delivered to counsel for the Liquidating Trust by [XX], the Liquidating Trust intends to exercise its rights under Section 5.2.3 of the Agreement to pursue claims to collect the Settlement Payment from the personal assets of the Medley D&Os.

MEDLEY LLC LIQUIDATING TRUST

By: Saccullo Business Consulting, LLC, as
Liquidating Trustee
Name:
Title:

¹ Unless otherwise defined, all capitalized terms have the definition ascribed to them in the Agreement.

EXHIBIT B

FORM OF ASSIGNMENT AND COVENANT NOT TO SUE

This ASSIGNMENT AND COVENANT NOT TO SUE (the “Assignment”) is made and entered into on [___,] by (i) the Medley D&Os¹ and (ii) the Medley LLC Liquidating Trust (the “Liquidating Trust”) through Saccullo Business Consulting, LLC, as Liquidating Trustee (the “Liquidating Trustee”). Collectively, the Liquidating Trust and the Medley Executives are referred to herein as the “Settling Parties.”

I. RECITALS

A. WHEREAS, Medley LLC (the “Debtor”) is a privately-held company that, on March 7, 2021, filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 21-10526;

B. WHEREAS, on October 18, 2021, (i) the Bankruptcy Court entered the *Amended Findings Of Fact, Conclusions Of Law, And Order (I) Approving The Adequacy Of Disclosures On A Final Basis And (II) Confirming The Modified Third Amended Combined Disclosure Statement And Chapter 11 Plan Of Medley LLC* (Docket No. 445) (the “Confirmation Order”), approving the *Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan of Medley LLC* (Docket No. 445-1) (the “Plan”) and (ii) the Plan became effective;

C. WHEREAS, on October 18, 2021, the Debtor’s assets, including its Causes of Action, automatically vested in the Liquidating Trust, and the Liquidating Trustee was authorized to: (i) marshal and liquidate the Liquidating Trust’s assets for distribution under the Plan, (ii) pursue all such Causes of Action on behalf of the Liquidating Trust; and (iii) settle such Causes of Action subject to the terms of that certain Liquidating Trust Agreement and Declaration of Trust executed in connection with the Plan and Confirmation Order (the “Liquidating Trust Agreement”);²

D. WHEREAS, the Liquidating Trustee is the only party that may commence, litigate and settle any Causes of Action that are Liquidating Trust Assets (as defined in the Plan);

E. WHEREAS, on October 18, 2021, the Liquidating Trust Assets included all of the Debtor’s Causes of Action against the D&O Parties³ (the “Insider Claims”);⁴

¹ “Medley D&Os” is defined on Schedule I annexed hereto.

² “Causes of Action” is defined in Schedule I annexed hereto.

³ “D&O Parties” is defined in Section 6.1.1 below.

⁴ For the avoidance of doubt, Insider Claims also include those Causes of Action against the D&O Parties that became Liquidating Trust Assets after October 18, 2021

F. WHEREAS, the Insider Claims consist, or consisted, only of: (1) purported Causes of Action for damages against one or more of the D&O Parties for Wrongful Acts which allegedly caused Loss for which the Liquidating Trustee contends one or more of the insurance policies listed in Schedule II annexed hereto (the “Policies”), subject to their terms and conditions, provide, or have provided, coverage pursuant to the terms of the Policies (the “Covered Claims”); and (2) those Causes of Action that the Liquidating Trust finally and conclusively settled and released in the March 2022 Settlement Agreement (the “March 2022 Released Claims”);⁵

G. WHEREAS, the March 2022 Settlement Agreement did not settle or release any Covered Claims;

H. WHEREAS, the Covered Claims consist of (1) Covered Claims that involved wrongdoing alleged to have occurred before April 30, 2019 (the “Pre-April 30 Claims”) and (2) Covered Claims that involved wrongdoing alleged to have occurred on or after April 30, 2019 (the “Post-April 30 Claims”);⁶

I. WHEREAS, the Settling Parties negotiated a settlement of the Post-April 30 Claims in the manner set forth in that Settlement Agreement and Release of Post-April 30 Claims dated as of February 13, 2023 (the “Post-April 30 Claims Settlement Agreement”);

J. WHEREAS, the Post-April 30 Claims Settlement Agreement contemplated the settlement and release of the Post-April 30 Claims in exchange for the Medley D&Os’ causing SIX MILLION FOUR HUNDRED THOUSAND DOLLARS (\$6,400,000) (the “Settlement Payment”) to be paid to the Liquidating Trust;

K. WHEREAS, the Liquidating Trust has not received the Settlement Payment;

L. WHEREAS, as a result of the Liquidating Trust’s not receiving the Settlement Payment, (a) the Medley D&Os remain personally liable for the Settlement Payment on a joint-and-several basis; and (b) the Liquidating Trust has not released the Post-April 30 Claims; and

M. WHEREAS, to avoid the uncertainty, expense, burden, and delay of litigation, the Settling Parties desire to finally and conclusively settle and compromise the Post-April 30 Claims on the terms and conditions set forth below.

⁵ “March 2022 Settlement Agreement” is defined in Schedule I annexed hereto. For the avoidance of doubt, the Settling Parties acknowledge and agree that the definitions and use of the terms Insider Claims, Covered Claims, and March 2022 Released Claims in this Agreement: (1) are not meant to, and do not in any way, impact, alter, or modify the scope of the releases granted in the March 2022 Settlement Agreement; and (2) shall not be used as a basis to alter or modify the meaning or effectiveness of the terms “Preserved Claims” and “Released Claims” as such terms are used in the March 2022 Settlement Agreement.

⁶ For the avoidance of doubt, Pre-April 30 Claims and Post-April 30 Claims are mutually exclusive, and nothing in this Agreement releases Pre-April 30 Claims or Post-April 30 Claims.

II. AGREEMENT

For good and valuable consideration, receipt of which is mutually acknowledged, the Settling Parties, intending to be legally bound by this Assignment, agree as follows:

1. Adoption of Recitals. The recitals set forth above are adopted as part of the Assignment, and the facts set forth therein are acknowledged and agreed to be true and correct.

2. Effective Date. This Assignment shall become effective on the date (the “Effective Date”) all of the following conditions have been satisfied: (a) all of the Settling Parties have executed this Assignment; and (b) either (i) at least \$7.5 million in insurance proceeds have been paid out from those Policies listed under “Tower 3 (E&O)” in Schedule II or (ii) the Medley D&Os have executed a release of the insurance companies that issued the Policies listed under “Tower 3 (E&O)” in Schedule II in connection with those insurance companies’ funding some or all of a settlement of the Pre-April 30 Claims.

3. Expiration Date. If the Effective Date does not occur prior to July 1, 2023, this Assignment becomes null and void, and neither this Assignment nor evidence of its terms shall be admissible for any purpose in any action or proceeding.⁷

4. Claims Assignment.

4.1. On the Effective Date and without need of further documentation, the Medley D&Os hereby convey and assign to the Liquidating Trust and its successors and assigns all of their right, title, and interest, in and to any claims, causes of action, and contract rights, benefits, and privileges they have under those Policies listed under “Tower 2 (D&O)” in Schedule II (the “Tower 2 Policies”) to seek and recover payment of the Settlement Payment from the Tower 2 Policies, as well as attorneys’ fees and expenses and costs related to enforcing their right to payment of the Settlement Payment under the Tower 2 Policies and prejudgment and postjudgment interest on the preceding amounts against the insurance companies who issued the Tower 2 Policies (the “Tower 2 Insurers”). The total of the Settlement Payment, attorneys’ fees and expenses and costs incurred to obtain the Settlement Payment from the Tower 2 Insurers, and any prejudgment and postjudgment interest awarded on those amounts are collectively referred to herein as the “Denial Damages.”

4.2. The Medley D&Os do not convey and assign to the Liquidating Trust and its successors and assigns—and thus reserve for themselves—any of their rights, title, and interest in and to the Tower 2 Policies, except as provided in Section 4.1 above, to seek payment or reimbursement up to \$3.6 million under the Tower 2 Policies for Loss (as defined in the Tower 2 Policies) unrelated to pursuing the Denial Damages; provided

⁷ If, within 20 business days of the Expiration Date, either (a) the Bankruptcy Court has not yet ruled on the motion seeking entry of the Approval Order (as defined in Post-April 30 Claims Settlement Agreement) or (b) the Approval Order has been entered but has not become a final order, then upon the request of any Settling Party, the Expiration Date shall be extended from time to time by the written consent of the Settling Parties pursuant to Section 10 of this Assignment (which consent shall not be unreasonably withheld).

however, that if the Liquidating Trust releases the Tower 2 Insurers for less than the Settlement Payment, then the Medley D&Os may seek payment or reimbursement under the Tower 2 Policies for Loss equal to whatever aggregate Limits of Liability (as defined in the Tower 2 Policies) remain after the Liquidating Trust releases the Tower 2 Insurers.⁸

4.3. The Liquidating Trust agrees that it (a) will not seek or accept, from or against the Tower 2 Insurers, any payment, settlement, or judgment in excess of the Denial Damages; and (b) lacks the authority to release the Tower 2 Policies from any claim, demand, or cause of action thereunder unrelated to the Denial Damages.

4.4. If the assignment recited in this Section 4 is not effective or is unenforceable in whole or in part, or, even if it is effective and enforceable, it is a breach of any of the Tower 2 Policies, the assignment described herein shall be deemed rescinded and the Medley D&Os agree and consent to counsel for the Liquidating Trust's prosecution of a coverage action against the Tower 2 Insurers in the name of the Medley D&Os and on their behalf, with any resulting judgment or award, up to and including the Denial Damages, automatically becoming a Liquidating Trust Asset and due and owing to the Liquidating Trust.

4.5. For the avoidance of doubt, Medley D&Os confirm that they have not, do not, and will not convey or assign to the Liquidating Trust and its successors and assigns any of their right, title, and interest, in and to any claims, causes of action, and contract rights, benefits, and privileges they have under those Policies listed under "Tower 3 (E&O)" in Schedule II (the "Tower 3 Policies") including, without limitation, their right to seek payment or reimbursement of the Settlement Payment from the Tower 3 Policies and their right to recover attorneys' fees and expenses under the Tower 3 Policies against the insurance companies who issued the Tower 3 Policies (the "Tower 3 Insurers").

5. Further Cooperation. The Settling Parties agree to execute such additional documents and take such additional actions as may be necessary or appropriate to carry out the transactions contemplated hereunder or to fulfill the purposes and intent of this Assignment. As a material condition of covenants set forth in Section 6 below, each Medley D&O and his counsel individually agrees to cooperate in any coverage action and in any other suit, action, or arbitration concerning the availability of coverage for the Post-April 2019 Claims under the Tower 2 Policies by accepting service of process, voluntarily responding to reasonable request for documents and other information, appearing on reasonable notice for depositions and pre-deposition meetings (without need of subpoena or other process), and appearing and providing testimony on reasonable notice at trial, at a hearing, or in arbitration proceedings to the extent requested in any suit, action, or arbitration in connection with any of the claims, causes of action, or rights assigned in this Assignment, or any other reasonable request the Liquidating Trustee may make of them, in their capacity as a witness or nominal party, in furtherance of litigation between the Liquidating Trust and any of the Tower 2 Insurers. No Medley D&O shall be considered to be in violation or breach of any obligation under this Section 5 unless the Liquidating Trustee first gives said Medley D&O

⁸ For the avoidance of doubt, the Settling Parties agree that this Assignment does not assign or convey—and the Medley D&Os reserve—rights under the Tower 2 Policies to be paid or reimbursed up to \$3.6 million for Defense Costs (as that term is defined in the Tower 2 Policies) incurred prior to the Effective Date.

notice and five (5) business days to cure the violation or breach and the Medley D&O fails to do so.

6. Releases and Covenants. On the Effective Date, the Settling Parties will make the following respective covenants and releases.⁹ For the avoidance of doubt, nothing in this Section 6 or elsewhere in this Assignment releases any Settling Party from the obligations contained in this Assignment.¹⁰

6.1. Liquidating Trust's Covenant Not to Sue. On the Effective Date, and as consideration and in exchange for the assignments and cooperation contemplated in, respectively, Sections 4 and 5 above, the Liquidating Trust, the Liquidating Trustee, and the Debtor (the "Liquidating Trust Parties"), on behalf of themselves and their successors and assigns, each hereby agrees and covenants as follows:

6.1.1. To not initiate, prosecute, assert, assign, or otherwise seek to enforce or execute on any Post-April 30 Claims that are Liquidating Trust Assets, whether considered claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) against (i) any of the Medley D&Os, Samuel Anderson, James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr., Christopher Taube, and Jeffrey Tonkel, as well as Medley's other officers and the directors of MDLY, and all of their respective affiliates, subsidiaries, family members, former spouses, trusts, former trusts (including, but not limited to, any trust that has been revoked or terminated),¹¹ successors, heirs and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (collectively, the "D&O Parties") and (ii) each of Tower 3 Insurers and all of their respective successors, heirs, and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (the "Insurer Parties"), for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses,

⁹ Notwithstanding anything to the contrary, nothing in this Section 6 or elsewhere in this Agreement shall be intended to hamper or restrict the Settling Parties' ability to seek discovery from any other Settling Party.

¹⁰ Notwithstanding anything to the contrary, nothing in this Section 6 or elsewhere in this Assignment, the Post-April 30 Claims Settlement Agreement, or the March 2022 Settlement Agreement shall constitute a release, waiver, or covenant not to sue regarding any claims or causes of action held by a Settling Party, the Debtor, or MDLY (as defined in Schedule I annexed hereto) against any attorney or law firm, other than John Fredericks with respect to Post-April 30 Claims, that may have represented such Settling Party, the Debtor, or MDLY.

¹¹ Including, without limitation, B. Taube 2014 Associates LLC, the Seth and Angie Taube Trust, A. Taube 2014 Associates, LLC, S. Taube 2014 Associates, LLC, and Canyon Capital Holdings LLC.

offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, that arises from conduct of any nature whatsoever occurring on or after April 30, 2019. For the avoidance of doubt, the covenant in this Section 6.1.1 applies whether a claim is a Liquidating Trust Asset on the Effective Date or becomes a Liquidating Trust Asset after the Effective Date.

6.1.2. To not initiate, prosecute, assert, or otherwise seek to enforce or execute on any claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, that any Medley Subsidiary¹² may have or claim to have against any of the D&O Parties or the Insurer Parties for conduct occurring on or after April 30, 2019.¹³

6.2. D&O Parties' Releases. On the Effective Date, and in exchange for the covenants above, the D&O Parties hereby automatically release, waive, relinquish, disavow and forever discharge the Liquidating Trust Parties and all of their respective successors, heirs, and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing from any and all claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief, any avoidance action and any cause of action) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, arising from conduct of any nature whatsoever that occurred on or after April 30, 2019; provided that nothing herein: (1) is meant to, or shall, impact or release any of the Medley D&Os' ability

¹² "Medley Subsidiary" is defined in Schedule I annexed hereto.

¹³ For the avoidance of doubt, nothing in this Section 6.1.2 or elsewhere in this Assignment releases or otherwise impairs any rights of any Medley Subsidiary.

to raise defenses regarding the Liquidating Trust Parties in any litigation brought against any of the Medley D&Os by any Medley Subsidiary; and (2) releases the Liquidating Trust from any obligations under the March 2022 Settlement Agreement.

7. No Admission of Liability. This Assignment is intended as a compromise and is not intended and shall not be construed as an admission of liability by any Settling Party.

8. Mutual Representations and Warranties. The Settling Parties, and each of them, represent, warrant, and agree with each other as of the Effective Date as follows:

8.1. Each Settling Party has received or has had the opportunity to receive independent legal advice from attorneys of his or her choice with respect to the advisability of making the settlement and release provided herein, and with respect to the advisability of executing and being bound by this Assignment.

8.2. Except as expressly stated in this Assignment, no Settling Party has made any statement or representation to any other Settling Party regarding any fact that may be relied upon by any other Settling Party in entering into this Assignment, and each Settling Party specifically does not rely upon any statement, representation, or promise of any other Settling Party in executing this Assignment, or in making the settlement provided for herein, except as expressly stated in this Assignment.

8.3. Each Settling Party has made such investigation of the facts pertaining to this settlement and this Assignment, and all the matters pertaining thereto, as each Settling Party deems necessary.

8.4. The terms of this Assignment are contractual, not a mere recital, and are the result of negotiation among all the Settling Parties.

8.5. This Assignment has been carefully read by, the contents hereof are known and understood by, and it is signed freely by, each Settling Party.

8.6. This Assignment has been drafted by the Settling Parties' respective counsel and is to be construed neutrally and not for or against any Settling Party.

9. Liquidating Trust Representations and Warranties. The Liquidating Trustee further represents and warrants that (i) this Assignment has been duly and validly authorized, executed and delivered on behalf of the Liquidating Trust, shall constitute the legal, valid and binding obligations of the Liquidating Trust, and shall be enforceable against the Liquidating Trust; (ii) it has complied with all provisions of the Liquidating Trust Agreement and the Plan necessary to validly enter into this Assignment, including Section 3.2.13 of the Liquidating Trust Agreement; and (iii) it has not assigned or otherwise transferred and will not assign or otherwise transfer any Post-April 30 Claims.

10. Modification and Counterpart Copies. This Assignment may only be modified by a written instrument executed by all the Settling Parties. No covenants, agreements,

representations, or warranties of any kind whatsoever have been made by any Settling Party, except as specifically set forth in this Assignment. All prior discussion and negotiations have been and are merged and integrated into, and are superseded by, this Assignment. So long as each Settling Party executes this Assignment, a copy of this Assignment, whether signed by one Settling Party or multiple Settling Parties, shall have the same force, effect, and validity as an original Assignment executed by all Settling Parties.

11. Attorneys' Fees. Each Settling Party shall bear his or its own attorney's fees and costs related to this Assignment. Notwithstanding the foregoing, in the event suit is brought or an attorney is retained by any Settling Party to enforce the Assignment's terms, or to collect any damages due for breach hereof, each Settling Party shall be solely and exclusively responsible for his or its own attorneys' fees, court costs, costs of investigation, and other related expenses incurred in connection therewith. Except as expressly provided herein, nothing in this Assignment is construed as a waiver by any Settling Party of any rights under any insurance policy.

12. Caption and Titles. The captions and titles contained in this Assignment are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Assignment or the intent of any provision hereof.

13. Construction of Assignment. Each of the Settling Parties has read and agreed to the terms of the Assignment after consulting with counsel, and the language of this Assignment shall, therefore, not be presumptively construed either in favor of or against any Settling Party.

14. Governing Law and Forum. In the event any Settling Party seeks to enforce this Assignment including through a declaratory or similar action or to assert a claim for its breach, each of the Settling Parties hereby expressly consents to the exclusive jurisdiction of the Bankruptcy Court. The Settling Parties agree that the Assignment shall be governed and construed in accordance with the laws of the State of New York.

15. Parties Bound. This Assignment shall be binding upon and inure to the benefit of the Settling Parties, their respective agents, attorneys, executors, guardians, companies, partners, members, beneficiaries, managers, officers, employees, heirs, successors and assigns, and the Medley D&Os' affiliates.

16. Relationship of Parties. Nothing in this Assignment shall be deemed or construed to constitute or create any agency, partnership, or affiliation agreement among or between any of the Settling Parties; no Settling Party shall have any power to obligate or bind another Settling Party in any manner whatsoever.

17. Waiver. No waiver by any Settling Party of a breach or a default hereunder shall be deemed a waiver of a subsequent breach or default of a like or similar nature.

18. Severability. If any provision is held invalid by the Bankruptcy Court or any other court of competent jurisdiction, such provision shall not invalidate the entire Assignment, but the Assignment shall be construed as not containing the particular provision held to be invalid, and the rights and obligations of the Settling Parties shall be construed accordingly.

19. Notices. Any notice required by this Assignment shall be provided in writing via overnight mail and via email to each of the Settling Parties and in the following manner:

To the Liquidating Trustee:

Eric D. Madden, Esq.
Reid Collins & Tsai LLP
1601 Elm Street, Suite 4200
Dallas, Texas 75201
emadden@reidcollins.com

-and-

James S. Carr, Esq.
Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, New York 10007
jcarr@kelleydrye.com

To Richard Allorto

Gregory S. Bruch, Esq.
Bruch Law Group
1099 New York Ave., NW, Suite 500
Washington, D.C. 20001
gbruch@bruchlawgroup.com

-and-

Jay B. Spievack, Esq.
Cohen Tauber Spievack & Wagner PC
420 Lexington Ave., Suite 2400
New York, New York 10170-2499
jspievack@ctwslaw.com

To Brook Taube and Seth Taube

Douglas Koff, Esq.
Schulte Roth & Zabel LLP
919 3rd Ave.
New York, New York 10022
douglas.koff@srz.com

-and-

Jay B. Spievack, Esq.
Cohen Tauber Spievack & Wagner PC
420 Lexington Ave., Suite 2400
New York, New York 10170-2499
jspievack@ctwslaw.com

20. Third-Party Beneficiaries. Samuel Anderson, James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr., Christopher Taube and Jeffrey Tonkel are third-party beneficiaries of this Assignment, but only with respect to the ability to enforce the covenants contained in Section 6 above.

[Signature page to follow]

IN WITNESS WHEREOF, the undersigned have duly executed this Assignment as of the dates reflected below.

MEDLEY LLC LIQUIDATING TRUST

By: Saccullo Business Consulting, LLC, as Liquidating Trustee

Name:

Title:

Date:

Richard Allorto

Date:

Brook Taube

Date:

Seth Taube

Date:

SCHEDULE I – DEFINED TERMS

As used in this Assignment, the following terms have the meanings set forth below.

“Cause of Action” or “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise against any party, including current and former directors, officers, and employees of the Debtor and its affiliates. Causes of Action also include, but are not limited to: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest claims or interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Defense Expenses” means the necessary costs, charges, expenses, and fees, including attorney’s, expert’s, mediator’s, and arbitrator’s fees, incurred in defending a Cause of Action, and the premium for appeal, attachment, or similar bond.

“Loss” means (a) Defense Expenses; and (b) damages, judgments, settlements, and prejudgment and postjudgment interest that an Insured Person is legally obligated to pay as a result of a Cause of Action or written demand for monetary damages.

“Insured Person” means a natural person who was a director, officer, or employee, or the functional equivalent of the foregoing, of MDLY or the Debtor.

“Management Services” means acts by an Insured Person solely in his or her capacity as a director, officer, or employee of MDLY or the Debtor.

“March 2022 Settlement Agreement” refers to that certain Settlement Agreement and Release entered into by the Liquidating Trust, MDLY, Brook Taube Trust, Brook Taube, and Seth Taube on or about March 23, 2022.

“MDLY” refers to Medley Management, Inc.

“Medley D&Os” refers collectively to Richard Allorto, Brook Taube, and Seth Taube.

“Medley Subsidiary” means any entity that is or was a direct or indirect subsidiary of the Debtor.

“Wrongful Acts” means (a) an error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed or attempted by an Insured Person performing, or failing to perform, Management Services; or (b) a matter claimed against an Insured Person solely by reason of his or her service in such capacity.

SCHEDULE II – THE POLICIES*

Tower 1 (D&O)		
Insurer	Policy Number	Policy Limits**
Berkshire Hathaway Specialty Insurance Company	47-EPF-301833-03	\$5MM (primary)
Starr Indemnity & Liability Company	1000059851171	\$5MM (first excess)
Allied World Insurance Company (Side A)	0310-3481	\$5MM (second excess)

Tower 2 (D&O)		
Insurer	Policy Number	Policy Limits**
Allianz Global Risks US Insurance Company	USF00298219	\$5MM (primary)
Euclid Financial Institution Underwriters, LLC (Certain Underwriters at Lloyd's of London; Associated Industries Insurance Company)	EFI1203059-00	\$2.5MM (first excess)
Old Republic Professional Liability, Inc.	ORPRO 44299	\$2.5MM (second excess)

Tower 3 (E&O)		
Insurer	Policy Number	Policy Limits**
Travelers Casualty and Surety Co. of America	106601622	\$5MM (primary)
Nationwide Mutual Insurance Company	XMF1702465	\$5MM (first excess)

(Freedom Specialty Insurance Company)		
Sompo International (Endurance American Insurance Company)	FIX10007675802	\$5MM (second excess)
Allianz Global Risks US Insurance Company	DOX2010224	\$3MM (third excess)

*Based on information and belief.

**Amounts do not reflect remaining amounts, ability to access or coverage.

EXHIBIT D

From: [Gerald Rosen](#)
To: [Eric Madden](#)
Cc: [Brandon Lewis](#); jcarr@kelleydrye.com; douglas.koff@srz.com; eric.prather@srz.com; gbruch@bruchlawgroup.com; ams@sacculloconsulting.com
Subject: Settlement proposal ...
Date: Tuesday, August 30, 2022 1:35:38 PM

CONFIDENTIAL

All -

Thank you all for all of your hard work and efforts today. I really appreciate the good faith in which you have approached today's mediation.

After significant back-and-forth, I think this is an appropriate point for me to put a settlement proposal on the table for both sides to consider. I believe that payment by defendants to the Trustee of \$6.4 million represents a fair resolution of the case and fair value, when balancing all of the factors, risks and valuation of the claims and defenses we have been discussing. The number also includes the assignment by the defendants of the insurance policies we have been discussing.

We will do this double-blind to protect the negotiating position of both sides in the event we are unable to reach a settlement. I would ask that by 3:30 pm this afternoon, you both get back to me, my eyes only, with your response as to whether you accept my settlement proposal. If both sides accept, I will immediately advise both sides that we have agreement. If neither side accepts, I will simply advise both sides that we are unable to reach agreement, and will discuss next steps separately with both sides. If one side accepts and the other does not, I will similarly indicate that we were unable to reach agreement and we will discuss next steps — I will not tell the non-accepting side that the other side has accepted.

I recognize that neither party will be completely satisfied with this settlement proposal. But, I do think it is a fair proposal and would urge both sides to give it their most serious consideration.

I look forward to hearing back from you.

GER



Hon. Gerald E. Rosen (Ret.)

Mediator/Arbitrator

[150 West Jefferson St., Suite 850](#)

[Detroit, MI 48226](#)

P: [313.872.1100](tel:313.872.1100)

F: [313.872.1101](tel:313.872.1101)

On Aug 26, 2022, at 3:04 PM, Marjon Neal <MNeal@jamsadr.com> wrote:

Good afternoon,

In order to participate in the **Tuesday, August 30, 2022 at 9:30 a.m. Eastern REMOTE** mediation session with **Hon. Gerald Rosen (Ret.)**, please use the following information:

Moderator: Michelle Renderos - Please contact Michelle [here](#) via email for any connectivity issues the day of the Zoom session.

Click here to Join Zoom Meeting (Audio & Video):

<https://jamsadr.zoom.us/j/99446988137>

Passcode: 771105

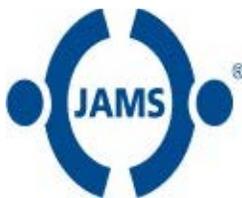
Meeting ID: 994 4698 8137

Join by audio: 312-626-6799

Please forward this invite to any parties who may not be included on the service list.

Important note: You should treat this information as private and confidential. You should not share your unique Zoom link and identifier with anyone. You should not post your Zoom meeting information on any public facing platform or social media.

Best Regards,
Marjon



Marjon Neal

Case Coordinator

JAMS - Local Solutions. Global Reach.™

150 West Jefferson | Suite 850 | Detroit, MI 48226

P: 1.313.209.8856

E: MNeal@JAMSADR.com

www.JAMSADR.com

Follow us on:



JAMS was recently recognized at [Legalweek's Leaders in Tech Law Awards](#).
Learn more about our [Virtual and Hybrid capabilities](#).