Docket #0672 Date Filed: 09/18/2023

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

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| In re: | Chapter 11 |
| Medley LLC, [1] | Case No. 21-10526 (KBO) |
| Debtor. | **Re: Docket No. 610** |
| | **Hearing Date: October 2, 2023 at 9:30 a.m. (ET)**<br>**Obj. Deadline: September 25, 2023 at 4:00 p.m. (ET)** |

**MEDLEY LLC LIQUIDATING TRUST'S SUPPLEMENT IN SUPPORT OF ITS MOTION PURSUANT FEDERAL RULE OF CIVIL PROCEDURE 60(b) TO VACATE (I) THE ORDER RETAINING EVERSHEDS SUTHERLAND (US) LLP, AND (II) THAT PORTION OF THE AMENDED OMNIBUS ORDER AWARDING THE FINAL FEE APPLICATION TO EVERSHEDS SUTHERLAND (US) LLP**

The Medley LLC Liquidating Trust (the "Liquidating Trust"), established by the confirmed combined disclosure statement and plan (the "Plan")[2] in this case (the "Case") of the above-captioned debtor (the "Debtor"), by and through its undersigned counsel, hereby files this supplement (the "Supplement") in support of its *Motion Pursuant to Federal Rule of Civil Procedure 60(b) to Vacate (I) the Order Retaining Eversheds Sutherland (US) LLP, and (II) That Portion of the Amended Omnibus Order Awarding the Final Fee Application to Eversheds Sutherland (US) LLP* (the "Motion")[3] seeking entry of an order, pursuant to Federal Rule of Civil Procedure 60(b), vacating (i) the Order retaining Eversheds Sutherland (US) LLP ("Eversheds") as special counsel to the Debtor (the "Retention Order"),[4] and (ii) only that portion of the Amended

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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.

3 Docket No. 610.

4 Docket No. 167.



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Omnibus Final Fee Order[5] awarding Eversheds' final fee application (the "Final Fee Application").[6] In support of the Supplement, the Liquidating Trust respectfully represents as follows:

## PRELIMINARY STATEMENT

1. After filing the Motion, the parties engaged in discovery. The Liquidating Trust learned additional facts that further supports that portion of the relief sought in the Motion seeking to vacate the Amended Omnibus Final Fee Order.

2. In connection with the Final Fee Application, Eversheds misrepresented to the Court the amount the Debtor owed it. After filing the Motion, the Liquidating Trust discovered that pre-petition, Eversheds was retained by several directors and officers of Medley Management, Inc. ("Medley Management"), and that Medley Management was responsible for paying their legal fees. During the Case, Eversheds did not bill Medley Management for the directors' and officers' fees. Instead, during the Case, Eversheds billed the Debtor for these fees.

3. In addition, after the Amended Omnibus Final Fee Order was entered, Eversheds sent a letter (the "Coverage Letter") to Travelers Casualty and Surety Company of America ("Travelers"), seeking reimbursement of defense costs in connection with the investigation conducted by Securities and Exchange Commission's Division of Enforcement (the "SEC").[7] In the Coverage Letter, Eversheds asserted that its total bill for $3,493,386.21 should be

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5 Docket No. 569. The Motion does not seek to modify any other administrative claim that was awarded pursuant to the Amended Omnibus Final Fee Order.

6 Docket No. 515.

7 *See* Coverage Letter at 1-2 attached hereto as **Exhibit A.**

allocated equally among its clients, which were Medley Management, the Debtor, Brook Taube, Seth Taube, Jeffrey Tonkel, John Fredericks, Samuel Anderson and Richard Allorto, resulting in the Debtor allegedly owing $436,673.28 to Eversheds as opposed to the $3,283,619.50 that Eversheds sought in the Final Fee Application from the Debtor.[8] When asked about the Coverage Letter, Eversheds has taken the tenuous position that statements in the Coverage Letter were for insurance purposes only.

4. The Liquidating Trust files the Supplement in further support of that portion of the Motion seeking to vacate the Amended Omnibus Final Fee Order, which is appropriate given the material false statements Eversheds made to the Court in the Final Fee Application.

## BACKGROUND

### A. SEC Investigation and Inquiry

5. The Debtor was a direct subsidiary of Medley Management.[9] On September 17, 2019, the SEC informed Medley Management that it was conducting an informal inquiry, and requested the production and preservation of certain documents and records.[10] By letter dated December 18, 2019, the SEC advised Medley Management that a formal order of private investigation had been issued converting the informal inquiry into a formal investigation.[11] In connection with this investigation, Medley Management, the Debtor, Medley Capital, LLC, and several current and former officers, directors, and employees retained Eversheds as counsel.[12]

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8 *See id.* at 1-2.

9 Plan at Article II.A.

10 Plan at Article II.I.

11 *Id*.

12 Docket No. 119 at ¶ 8.

### B. Eversheds Representations of Medley Management and the Directors and Officers

6. From July 22, 2020 to February 17, 2021, Eversheds entered into several engagement letters (the "Joint Individual Engagement Letters") with Brook and Seth Taube, Jeffrey Tonkel, Richard Allorto, Dean Crowe, Brian Dohmen, James Feeley, Andrew Pacini, John Fredericks, Burke Loeffler, William Guo, and Mark Giuliani (collectively, the "Individual Clients"), agreeing to jointly represent the Individual Clients in connection with the SEC investigation.[13]

7. The Joint Individual Engagement Letters provided that Medley Management was to pay all legal fees and expenses on behalf of the Individual Clients:[14]

> MDLY has previously retained Eversheds Sutherland to represent MDLY itself in this same matter, as well as [the Individual Clients] and to pay for all legal fees and expenses incurred by this firm in connection with said representation.

As explained further below, this did not happen during the Case, as Eversheds billed these fees and expenses to the Debtor instead.

### C. Bankruptcy Case

8. On March 7, 2021 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court. On April 6, 2021, the Debtor filed an application to retain Eversheds as special counsel (the "Retention Application") pursuant to section 328(a) and 327(e) of the Bankruptcy Code.

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[13] *See* Eversheds Engagement Letter with Seth Taube attached hereto as **Exhibit B**. We are only attaching one of the Joint Individual Engagement Letters as an example.

[14] *Id.* at 1.

9. On April 21, 2021, Eversheds and the Debtor, Medley Management, and Medley Capital, LLC (collectively, the "Medley Affiliates") executed an engagement letter in connection with the Retention Application, whereby Eversheds would jointly represent the Medley Affiliates in connection with the SEC investigation (the "Medley Affiliate Engagement Letter").[15] The Medley Affiliate Engagement Letter provided that Eversheds would not represent the Debtor's shareholders, officers, directors, or employees:[16]

> We wish to confirm at the outset that we have been retained to represent only the Company, as well as Medley Capital LLC and Medley Management Inc. . . . in this matter and that we have not been retained to provide legal services to, or on behalf of, the [Debtor's] shareholders, officers, directors, or employees.

10. On May 17, 2021, the Court entered the Retention Order. On December 1, 2021, Eversheds filed the Final Fee Application, seeking fees in the amount of $2,715,049.00 and expenses of $568,570.50 for a total of $3,283,619.50.[17] After Eversheds filed the Final Fee Application, Eversheds sent the invoices attached to the Final Fee Application to the Liquidating Trust, representing they were invoices for legal services performed for the Debtor in connection with the Medley Affiliate Engagement Letter. On January 26, 2022, the Bankruptcy Court entered the Amended Omnibus Final Fee Order.

11. On January 23, 2023, the Liquidating Trust filed the Motion. On February 13, 2023, Eversheds filed its response in opposition to the Motion (the "Response"). The Liquidating Trust discovered that the Final Fee Application contained legal services performed on

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15 **Exhibit C**.

16 *Id.* at 1.

17 Docket No. 515.

behalf of the Medley Management, Inc. and on behalf of several of the Individual Clients as opposed to just the Debtor.

12. Specifically, on October 14, 2022, Eversheds sent the Coverage Letter to Travelers. In the Coverage Letter, Eversheds asserted it was owed $3,493,386.21[18] for legal services rendered to Medley Management, the Debtor, Brook Taube, Seth Taube, Jeffrey Tonkel, John Fredericks, Samuel Anderson and Richard Allorto equally, thus resulting in $436,673.28 that was owed from the Debtor:[19]

> Eversheds represented Medley Management and Medley LLC from day one, and each of Brook Taube, Seth Taube, Jeffrey Tonkel, John Fredericks, Samuel Anderson and Richard Allorto from the time each was subpoenaed for testimony . . . with no one client being "primary" over another. . . . Our fees totaling $3,493,386.21 . . . should therefore be viewed as incurred by each Respondent equally, resulting in an allocated amount of $436,673.28 per Respondent . . . Travelers should also issue payment to our firm of at least 25% of the properly allocated portion of Medley LLC fees of $436,673.28.

13. Eversheds position to Travelers in the Coverage Letter directly contradicts Eversheds representation to the Liquidating Trust and to the Court when it filed its Final Fee Application. When asked about the Coverage Letter, Eversheds has asserted that the statements in the Coverage Letter were for insurance purposes only.

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[18] The $3,493,386.21 is comprised of all the invoices attached to the Final Fee Application (total $3,283,619.50) plus invoice 1151184 ($170,911.18) ($3,283,619.50 + $170,911.18 = $3,493,386.21).

[19] *See* Exhibit A at 1-2.

## LEGAL ARGUMENT

### A. Eversheds' Misrepresentation and Misconduct Warrants Vacating the Amended Omnibus Final Fee Order Under Federal Rule 60(b)

14. Rule 60 of the Federal Rules of Civil Procedure governs requests for relief from an order. Bankruptcy Rule 9024, which incorporates Federal Rule of Civil Procedure 60(b), provides, in relevant part:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgement . . . [or] order . . . for the following reasons: . . . misrepresentation, or other misconduct by an opposing party . . . or . . . any other reason justifying relief from the operation of the judgment.[20]

15. To establish relief under Federal Rule 60(b)(3), the movant must establish that the adverse party engaged in a misrepresentation or other misconduct, and that this conduct "prevented the moving party from fully and fairly presenting his case."[21] "[R]elief under Rule 60(b)(3) may be warranted . . . if such evidence 'would have made a difference' in" the moving party's objection.[22] Misrepresentation, as used in Federal Rule 60(b)(3), also includes unintentional representations.[23] Similarly, misconduct under Federal Rule 60(b)(3), "does not demand proof of nefarious intent or purpose as a prerequisite to redress . . . . The term can cover even accidental

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[20] Fed. R. Civ. P. 60(b).

[21] *Stridiron v. Stridiron*, 698 F.2d 204, 207 (3d Cir. 1983).

[22] *See Floorgraphics Inc. v. News Am. Mktg. In-Store Servs., Inc.*, 434 F. App'x 109, 111 (3d Cir. 2011).

[23] *Lonsdorf v. Seefeldt*, 47 F.3d 893, 895 (7th Cir. 1995) ("Fed. R. Civ. P. 60(b)(3) applies to both intentional and unintentional misrepresentations").

omissions."[24] The movant must also demonstrate that the misrepresentation or misconduct was material.[25]

16. Eversheds' false statements in the Final Fee Application constitute both a misrepresentation and misconduct under Federal Rule 60(b)(3) because they failed to disclose that the Debtor's alleged allocated amount of legal fees was only $436,673.28 as opposed to $3,283,619.50. These false statements were material because they prevented the Court from assessing whether the Final Fee Application was appropriate given the joint representation of the Medley Affiliates and how Medley Management was obligated to pay the fees of the Individual Clients. Similarly, the U.S. Trustee ("UST"), SEC, the Liquidating Trust, and creditors were unable to evaluate whether a valid basis to object to the Final Fee Application existed. Courts in this district have granted relief under Federal Rule 60(b)(3) for similar misrepresentations.[26] Finally, the misrepresentations may prevent the Liquidating Trust from seeking payment from Travelers to the extent the Trust is obligated to reimburse Eversheds the $3,283,619.50 awarded to Eversheds pursuant to the Amended Omnibus Final Fee Order, since the Coverage Letter specifically limited the Debtor's allocated portion of Eversheds fees to $436,673.28. Accordingly, Eversheds' misrepresentations warrant vacating the Amended Omnibus Final Fee Order.

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24 *Churchill Downs, Inc. v. NLR Entm't, LLC*, 2018 WL 4589992 (D.N.J. Sept. 25, 2018).

25 *Linear Tech. Corp. v. Monolithic Power Sys., Inc.*, No. CIV.A. 06-476 GMS, 2009 WL 3805567, at *3 (D. Del. Nov. 12, 2009).

26 *See Stridiron v. Stridiron*, 698 F.2d 204, 207 (3d Cir. 1983) (misrepresentation during discovery was sufficient to grant relief and vacate order); *In re Muma Servs. Inc.*, 279 B.R. 478, 485–86 (Bankr. D. Del. 2002) (unintentional misrepresentation was sufficient to grant relief and vacate order).

### B. The Court Should Vacate the Amended Final Fee Order Under Federal Rule 60(b)(6)

17. To vacate an order under Federal Rule 60(b)(6), the movant must show "some 'other reason' justifying relief outside of the earlier clauses of the Rule, or, if the reasons for seeking relief could have been considered in an earlier motion under another subsection of the rule, [the movant] must show 'extraordinary circumstances' suggesting the party is faultless in the delay."[27] Applying this standard, the Court should vacate the Amended Omnibus Final Fee Order.

18. Estate professionals have a duty to properly disclose all relevant facts in connection with their employment.[28] The Court and parties in interest did not know that Eversheds was charging the Debtor for legal services being provided to the Individual Clients. As such, Eversheds' failure to disclose this relevant fact provides cause to vacate the Amended Omnibus Final Fee Order.

## CONCLUSION

**WHEREFORE**, the Liquidating Trust respectfully requests that the Court grant the Motion, and provide for such other and further relief as the Court deems appropriate.

*[Remainder of the Page Intentionally Left Blank]*

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27 *In re Benjamin's–Arnolds, Inc.*, No. 4–90–6127, 1997 WL 86463, at *10 (Bankr. D. Minn. Feb. 28, 1997).

28 *In re Southmark Corp.*, 181 B.R. 291, 296 (Bankr. N.D. Tex. 1995) ("The professional person must disclose and continue to disclose all connections that may effect employment eligibility. Failure to do so constitutes a basis for relief from the compensation order under Rule 60(b)(6).")

Dated: September 18, 2023
Wilmington, Delaware

Respectfully submitted,

*/s/ Sameen Rizvi*

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Sameen Rizvi (No. 6902)
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*Counsel for the Liquidating Trust*

**Exhibit A**

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October 14, 2022

**VIA EMAIL AND FEDERAL EXPRESS**

Matthew Mawby, Esq.
Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
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mmawby@kbrlaw.com

Re: Medley LLC/Wells Notices – Travelers Claim No. T2116166
KBR File No. 187.399

Dear Mr. Mawby:

As General Counsel for Eversheds Sutherland (US) LLP ("Eversheds Sutherland"), I write in response to your email dated January 3, 2022, in which you explain Travelers' position regarding initial reimbursements of defense costs in the referenced matter. For the reasons explained below, Eversheds Sutherland takes issue with Travelers' position and its conclusion that no payments are due Eversheds Sutherland. To the contrary, Eversheds Sutherland is owed at least $873,346.56 based on the invoices reflected in your chart, even accepting the arbitrary 75%/25% allocation you assume as between the Berkshire Hathaway tower and the Travelers tower.

As a threshold matter, Travelers' conclusion is based on the incorrect assumption, reflected in your email, that Eversheds Sutherland "primarily represents" Medley Management Inc. ("MDLY") and Medley LLC, resulting in an erroneous conclusion that all of our fees in the matter are subject to a $2 million Retention. In fact, as you are surely aware, Eversheds Sutherland represented MDLY and Medley LLC from day one, and each of Brook Taube, Seth Taube, Jeffrey Tonkel, John Fredericks, Samuel Anderson and Richard Allorto from the time each was subpoenaed for testimony ("Respondents" with respect to the Wells Notices), with no one client being "primary" over another. There came a point when other firms were engaged by the individuals to address the potential for conflicts of interest with the corporate entities or each other. In responding to the Wells Notices and all attendant dealings with regulators, however, Eversheds Sutherland has acted for everyone and represented all equally. Many of the core positions were developed by Eversheds Sutherland for the group.

Our fees totalling $3,493,386.21, as reflected on the chart attached to your January 3 email, should therefore be viewed as incurred by each Respondent equally, resulting in an allocated amount of $436,673.28 per Respondent. Accordingly, for the six individuals, Eversheds Sutherland is due fees totalling $2,620,039.68, as to which no Retention should be applied. We dispute the arbitrary allocation percentages of 75%/25% as between the Berkshire Hathaway and Travelers towers, which was assumed for purposes of a letter earlier by coverage counsel for some of the Respondents as a means of facilitating an interim payment of amounts surely owed, but was never characterized by that coverage counsel as an "allocation." Even under that structure, however, we

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note that Travelers owes our firm a substantial payment. Assuming *arguendo* your 75%/25% methodology, as reflected in your January 3 email and accompanying chart for the other firms, whose sole clients are the individuals, Eversheds Sutherland is entitled to receive from Travelers at least 25% of $2,620,039.68, or $655,009.92.

More fundamentally, Travelers has taken the position that MDLY is not an Insured under the policy, which is incorrect. Section II.O of the Private Equity Liability Coverage defines "Insured" as both Insured Persons and Insured Organizations. Section II.P defines "Insured Organization" to also include "a General Partner." Section II.I of the General Terms and Conditions defines "General Partner" to mean "an entity designated as a . . . managing member . . . of the Insured Organization [Medley LLC] by the Insured Organization's Operating Documents." Section II.T of the General Terms and Conditions defines "Operating Documents" to include "operating agreements, partnership agreements . . . including functional or foreign equivalents." And finally, during the relevant period, Medley LLC's Fourth Amended and Restated Limited Liability Company Agreement named MDLY as Medley LLC's managing member. Accordingly, Medley LLC is an Insured Organization whose Operating Documents name MDLY as its General Partner, thereby making MDLY an Insured Organization (and thus an Insured) under the policies.

Travelers has also failed to take account of the "Vicarious Liability Defense Expense Coverage for Specified Entity Endorsement" ("the Endorsement"). In the Endorsement, an exclusion is added to the underlying policy with respect to "Loss on account of a Claim against a Specified Entity," but Defense Expenses are carved out of the exclusion and therefore covered "on account of a Claim made against a Specified Entity, but only if, and so long as:

a. such Claim results from a Wrongful Act committed solely by an Insured;

b. such Insured and such Specified Entity are represented by the same counsel in connection with such Claim; and

c. such Insured is included as a co-defendant in connection with such Claim."

MDLY is identified as the Specified Entity to which this Endorsement applies, and each of the conditions for coverage of Defense Expenses is satisfied with respect to Eversheds Sutherland's joint representation of the individuals and MDLY, all of whom should be viewed as "co-defendants" in connection with this Claim. It does not appear from the documents available to me that the foregoing Defense Expenses are subject to any Retention. Accordingly, based on the per Respondent allocated fee amount of $436,673.28, Eversheds Sutherland is entitled to 25% of that sum from Travelers at this time for its representation of MDLY, or an additional $109,168.32.

Finally, even if the Retention were to apply, as it clearly does with respect to fees incurred by Medley LLC, we note that Medley LLC directly paid our firm fees in the amount of $3,112,124.21 in connection with this matter prior to its bankruptcy proceeding, more than satisfying the Retention. We can substantiate those payments if you do not already have that information. As a result, Travelers should also issue payment to our firm of at least 25% of the properly allocated portion of Medley LLC fees of $436,673.28, or an additional $109,168.32.

We therefore conclude that Travelers owes Eversheds Sutherland at least $873,346.56, which represents 25% of the full outstanding amount owed of $3,493,386.21, even under the

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Travelers' methodology. That methodology, however, likely has no continued utility as we understand that the Starr policy limits within the Berkshire tower have been exhausted.

Bringing the calculation of outstanding fees/expenses current, I can confirm that the receivable on our books for fees and expenses is $1,727,134.84. We request immediate payment of that full amount to resolve the matter.

Eversheds Sutherland reserves all of its rights and positions in the matter, including with respect to the prior arbitrary 75%/25% allocation.

Sincerely,

Nicholas T. Christakos
General Counsel

Cc via email:
Bruce Bettigole, Esq
Ms. Jacqueline Vinar

**Exhibit B**

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January 5, 2021

**VIA EMAIL**

Seth Taube
seth@mdly.com

Re: Eversheds Sutherland (US) LLP Engagement Letter
*Medley Capital Corporation (NY-10045) SEC Investigation*

Dear Mr. Taube:

As you know, the U.S. Securities and Exchange Commission staff is conducting the investigation referenced in the caption of this letter. Medley Management, Inc. ("MDLY") has retained this firm to provide representation to you. MDLY has previously retained Eversheds Sutherland to represent MDLY itself in this same matter, as well as Brook Taube, Jeffrey Tonkel, Richard Allorto, Dean Crowe, Brian Dohmen, James Feeley, Andrew Pacini, John Fredericks, Burke Loeffler, William Guo, and Mark Giuliani (collectively, "Individual Clients") and to pay for all legal fees and expenses incurred by this firm in connection with said representation, subject to the terms and conditions outlined herein. This letter will serve to confirm our collective understandings of certain obligations with regard to this matter.

The representation of more than one party (commonly referred to as "joint representation") presents special ethical considerations for a lawyer. These considerations are discussed in greater detail below. Joint representation usually provides certain cost advantages or savings over the cost that would otherwise be incurred where each party retains separate counsel. The Rules of Professional Conduct (the "Rules") permit the joint representation of multiple clients where the law firm can represent the interests of each client adequately and where each client knowingly consents to that representation.

Because we represent multiple parties in the above-referenced matter, there is always the potential that a conflict of interest may arise among other parties and you with respect to the subject matter of our representation. The Rules require us to disclose to you the possibility (however unlikely) that such a conflict may arise and the consequences from such an event. If an actual conflict occurs, this firm may be unable to exercise complete independent professional judgment on behalf of all parties. In the event that an actual conflict arose, this firm could be forced to withdraw from its representation of another party or you. Based upon our present understanding of the facts of this case, however, no actual conflict has arisen between MDLY, the Individual Clients, or you that prevents us from continuing to represent all of you, and we do not presently anticipate such a conflict arising.

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We understand that you do not believe there is any conflict of interest between MDLY, the Individual Clients, and you. We ask that if this were to change in the future, you would please call to our attention immediately, in writing, any matter that you believe might suggest the existence of any such actual or potential conflict of interest. If we do not receive a written statement to that effect from you, we will assume that you agree that no such conflict exists.

Typically, in an attorney-client relationship, information given to the lawyer by the client in confidence as part of the representation may be considered privileged information—that is, absent certain circumstances, the lawyer may not disclose that information to any third party without the client's consent. The attorney-client privilege also exists in the context of a joint representation, but there is one added factor of note: the privilege extends to protect the confidences of the entire group from disclosure to any person who is not a member of the group. It does not, however, permit the lawyer to keep confidences or secrets from other members of the group. In other words, information that you provide to us in connection with this representation will be available to MDLY and the Individual Clients. While we, as counsel, will not use any information you may provide us against you, MDLY and the Individual Clients will be free to use that information against the party who disclosed it.

Therefore, although all information you provide to us will be held in the strictest of confidence, we may share it with representatives of MDLY and the Individual Clients (and, in fact, may be obligated to do so) to the extent it bears upon the defense of this case.

If you so desire, you should seek the advice of separate counsel with regard to whether you are in agreement with the foregoing provisions, so that your decision to waive future conflicts and certain benefits of the attorney-client privilege is not based solely on the advice of the firm retained for you.

Should circumstances arise during the course of this matter that require or make it desirable that you retain other, separate legal representation in this matter, our firm would be free to continue to represent MDLY and the Individual Clients. By signing this letter and accepting our joint representation, you agree that, should it become necessary or desirable for you to disengage us, you will not seek to disqualify our firm from continuing to represent any other person or entity, including MDLY and the Individual Clients.

By signing this engagement letter and engaging our firm, you agree not to assert during the course of our joint representation any possible claims that you may have against MDLY and the Individual Clients. In other words, you agree to reserve bringing any such claims until after the conclusion of this engagement. Our engagement as counsel does not include, nor could it permissibly include, evaluating or opining as to any possible claims between or among any of our clients. We have not undertaken, nor will we undertake, to evaluate any such claim. We express no opinion as to whether any such claims exist or might hereafter exist, nor do we express any opinion as to whether any such claims, even if they existed, would remain available after the conclusion of the engagement.

You may terminate our representation of you in this matter at any time. Likewise, we may withdraw from this representation at any time, subject to any legal or ethical

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obligations that we may have. Your failure to honor this agreement in any material respect or your failure to cooperate or follow our advice on a material matter relating to compliance with court rules and procedures or other regulations and laws may result in our withdrawal from this representation, or seeking to do so as appropriate.

Additionally, as you know, it is imperative during the course of our representation of you that you be available and willing to assist us in our handling of this matter. This may take many forms, but will likely include our need for you to supply us with information and documents, and be available for interviews, and possibly to supply sworn testimony or submit to an SEC interview voluntarily. Although we will be respectful of your time, it is important that you let us know how to reach you, and that you keep us informed of any change in work and home telephone numbers and addresses.

Finally, unless otherwise indicated by us in writing, we have agreed to represent you only in the above-referenced matter. We expressly do not agree to represent you in any other matter.

Please sign where indicated below confirming that you have engaged us to represent you under the terms reflected in this letter. Please return the original letter to me, signed by you, at your earliest convenience. A copy is enclosed for your files.

We very much look forward to working with you in this case. If you have any questions about this matter, please do not hesitate to call me at 202-383-0165.

Sincerely,

Bruce M. Bettigole
Eversheds Sutherland (US) LLP

I hereby consent to the terms of the legal representation by Eversheds Sutherland (US) LLP under the terms expressed above.

AGREED and ACCEPTED: DATE:

Seth Taube 1/6/2021

cc: Nathan Bryce, Esq.
Payam Siadatpour, Esq.

**Exhibit C**

EVERSHEDS SUTHERLAND

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April 21, 2021

Mr. Rick Allorto
Chief Financial Officer
Medley LLC
280 Park Avenue
6th Floor East
New York, NY 10017

Dear Rick:

We are pleased to be retained by Medley LLC (the "Company") to provide legal services to the Company on the regulatory compliance matter. Prior to undertaking an engagement, it is our practice in opening new matters for clients to provide an engagement letter in order to confirm our mutual understanding of the terms and conditions under which we will render legal services and the scope of such services.

***Client.*** We wish to confirm at the outset that we have been retained to represent only the Company, as well as Medley Capital LLC and Medley Management Inc. (the "Medley Affiliates"), in this matter and that we have not been retained to provide legal services to, or on behalf of, the Company's shareholders, officers, directors, or employees or any other person or affiliate other than those specifically identified in this engagement letter. If this is not your understanding, or if you wish to include or exclude additional entities within the scope of our representation, please provide us with the complete names of any such parties in writing as soon as practicable as we are unable to accept any obligations on behalf of these entities prior to notification and the clearance of any potential conflicts. Please be aware that our ethical obligations also necessitate that we cannot commit in advance to any subsequent expansion of our representation.

***Joint Representation Considerations.*** The firm has been engaged to represent the Company and the Medley Affiliates jointly in this matter, and the applicable ethical rules require that certain disclosures be made to you concerning possible conflicts of interest and the potential risks and consequences that could result in that event and to obtain from each of you your consent to proceed with the joint representation. While it presently appears that the interests of each of the companies are fully aligned with respect to this matter, the representation of multiple clients always raises the potential risk that disputes or conflicts between or among the parties may arise during the engagement, which could create a conflict of interest for the firm. For example, a conflict may arise if one client finds it necessary to take a position adverse to another client. If that were to occur, the firm would not be able to represent the conflicting interests simultaneously. If actual conflicts or divergences of interest occur, the firm may not be able to exercise independent professional judgment and loyalty on behalf of each of you in this matter. In that event, the firm may be required to withdraw from its representation of one or the other of you if the conflict

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cannot be resolved satisfactorily. In certain situations, the firm may be required to withdraw from representing all parties in the matter. In either case, we would, of course, cooperate with the affected client or clients in effecting an orderly transition to new counsel.

Based on our understanding of the facts, we are unaware of any present conflict that would ethically preclude a joint representation, and we do not anticipate that any such conflict will arise in the future. We ask that you call to our attention immediately any circumstance of which you are or become aware that you believe may lead to any actual conflict between the Company and the Medley Affiliates. Communications and information provided by each of you to the firm during the joint representation in this matter will be held in confidence, will be subject to the attorney-client privilege, and will not be disclosed to third parties without consent. Nevertheless, you should be aware that all information we receive from each of you relating to the matter will be fully shared with and disclosed to the Medley Affiliates. A request by one client to withhold such information from the other client may require the firm to withdraw from representation of the client requesting non-disclosure, particularly if such information is material to the matter. If you know of any information regarding this matter that you do not wish to have shared with others, you should advise us (without necessarily disclosing the information), so that we may determine whether it is appropriate to continue the joint representation. In addition, while the attorney-client privilege will continue to be applicable as to third parties, the privilege will likely not apply as between each of you with respect to your communications and information regarding this matter in the event of a subsequent dispute between you relating to the subject of the case.

***Scope of Engagement***. At this time, we have been retained by the Company to provide advice with regard to regulatory compliance and related services. Specifically, within the context of this representation, we will be responsible for representing the Company and the Medley Affiliates in front of the U.S. Securities and Exchange Commission. To the extent there are future requests for legal services with respect to these matters or other matters, such services will be described with specificity in an addendum to this engagement letter and will also be governed by this engagement letter unless otherwise mutually agreed. Finally, it is our understanding that the Company relies, or may rely, upon inside legal counsel and other outside law firms for the provision of additional legal services. As such, our representation of, and responsibility to, the Company is expressly limited to those specific agreed-upon matters for which you request our services.

In order to enable us effectively to render these services, you have agreed to disclose fully and accurately all facts and keep us apprised of all developments relating to the matter. You have agreed otherwise to cooperate fully with us and to be available to attend meetings, discovery proceedings, and conferences, hearings and other proceedings. Since the outcome of litigation is subject to the vagaries and risks inherent in the litigation process, it is understood that we have made no promises or guarantees to you concerning the outcome and cannot do so. Nothing in this letter shall be construed as such a promise or guarantee.

***Principal Points of Contact.*** Payam Siadatpour and I will be primarily responsible for handling this matter, and you should feel free to contact either of us concerning the status of the case and any questions you may have about the matter.

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We understand that you will be our principal contact at the Company. We will maintain communication with you as necessary regarding developments and progress in the case. These communications will generally be subject to the attorney-client privilege and will not be disclosed to third parties without your consent. You should nevertheless exercise care in the transmission and receipt of correspondence, faxes, electronic messages, and other confidential documents in order to avoid an inadvertent waiver of confidentiality and privilege.

***Fees and Billing.*** Our fees generally are based upon the time spent and our then-prevailing hourly charges. Our hourly rates are established for each attorney and legal assistant, depending upon the nature and length of their experience and particular skills, and are reviewed and revised periodically, generally annually. We are mindful of the costs of legal services and understand that every client wishes to avoid unnecessary expense. Accordingly, we will seek at all times to handle your matter(s) as efficiently and effectively as possible without sacrificing the quality of our services.

We reserve the right to call upon other attorneys in our firm, including partners, counsel, and associates, to advise or assist us on your matters where appropriate. Current billing rates for partners range from $555 to $1,295 per hour, and our rates for associates and counsel currently range from $290 to $1,025 per hour. In addition, we anticipate that this matter may necessitate the need for experts and consultants, which may be retained by us on your behalf.

Fees and charges generally will be billed monthly and are payable upon presentation. Interest may be charged on matters unpaid forty-five (45) days from the invoice date, at the rate of twelve percent (12%) annually (simple interest).

In addition to the payment of our fees, you will be responsible for costs and expenses incurred, such as charges for photocopying, messenger and delivery service, computerized research, expert and consultant fees, travel (including airfare, lodging, meals, ground transportation, parking and mileage), printing, necessary secretarial overtime, filing fees, etc. Charges for certain of such items may exceed our direct costs to cover our overhead.

***Global Resources***. Eversheds Sutherland is the name and brand under which the members of Eversheds Sutherland Limited (Eversheds Sutherland (International) LLP and Eversheds Sutherland (US) LLP) and their respective controlled, managed, affiliated and member firms (each an "Eversheds Sutherland Entity" and together the "Eversheds Sutherland Entities") provide legal or other services to clients around the world. Eversheds Sutherland Entities are constituted and regulated in accordance with relevant local regulatory and legal requirements and operate in accordance with their locally registered names. The use of the name Eversheds Sutherland is for description purposes only and does not imply that the member firms or their controlled, managed, affiliated and member entities are in a partnership or are part of a global LLP. Each firm will remain a separate legal entity, there will be no profit sharing, and client information will remain separate unless the firms are working together on a matter.

The global resources of Eversheds Sutherland are diverse and extensive, and can be made available to assist in your matter if necessary.

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***Advance Consent and Conflict Waiver.*** Eversheds Sutherland provides advice to a large number of clients on a wide variety of matters around the world. In order to streamline the process for US conflicts, we ask for your advance consent and waiver for the Eversheds Sutherland Entities to represent clients who are adverse to you or any of your affiliates, including any entities (whether corporate or not) acting as trustees or fiduciaries of retirement or other benefit plans, in non-litigation matters that are not substantially related to matters as to which we at Eversheds Sutherland (US) LLP have acted or are acting on your behalf. The Eversheds Sutherland Entities would also not act for the opposing party where we have confidential information from you that could be material to the matter. Providing us with your advance consent and waiver would mean that any Eversheds Sutherland Entity, including Eversheds Sutherland (US) LLP, would be able, without further consent from you, to advise or otherwise act for the opposing party in a future transactional matter, regulatory matter, lobbying or other legislative matter, in providing advice or counseling, or in any other type of matter short of litigation or other formal adversary proceeding, so long as the matter is not substantially related to work we have performed or are performing for you and so long as we do not possess any confidential information from you that is material to the matter. Your signature below confirms your agreement to this advance consent and waiver.

***Non-Assignment.*** By agreeing to this representation, you agree and recognize that the legal services to be furnished pursuant to this engagement are of a unique and personal nature that gives them a peculiar value, and therefore, by your and our agreement, may not be assigned by either of us except with the prior written agreement of both of us.

***Termination of Engagement.*** You have the right to terminate our services and representation at any time for any reason upon written notice. We reserve the right to withdraw from our representation if, among other things, irreconcilable conflicts arise with another existing client, if any fact or circumstance arises that would, in our view, render our continuing representation unlawful, unethical, or inconsistent with the terms of this engagement letter, or if you fail to pay our fees and expenses. We would, of course, honor instructions to take reasonable measures under the circumstances to facilitate the orderly transfer of responsibility to other counsel of your choice.

***Document Retention***. You agree that, unless we receive other written instructions from you with respect to the storage of your electronic and physical files, we will maintain your files for a period of ten years following conclusion of the matter, after which we are entitled to discard such files with no further notice to, or consent from, you. Reasonable steps will be taken to ensure that your files are discarded in a manner that does not compromise their confidentiality.

***Cyber Security.*** The Firm utilizes Tier 1 cloud infrastructure as service offerings from Microsoft Azure. These systems are managed via least privilege using designated servers within the US. Access is controlled to maintain the Confidentiality, Integrity and Accessibility of all client data. The Firm maintains ISO 27001 certification of a robust information security management system that provides for governance of encryption and access to all data.

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Unless we receive other written instructions from you with respect to cyber security, the Firm will maintain cyber security standards in alignment with commonly accepted legal industry standards pertaining to data in its care. In that regard, we have the capability to employ encrypted communications and storage when required. The Firm can utilize either Transport Layer Security ("TLS") or close circuit messaging to communicate any data or information required to be encr
We look forward to the opportunity to serve the Company and are grateful that you have chosen us for this representation. I hope that this letter has been helpful in clarifying the scope of our engagement.

If the foregoing is an acceptable summary of the terms and conditions of our representation, please indicate your acceptance by executing the enclosed copy of this letter in the space provided below and returning a copy to me.

Sincerely,

EVERSHEDS SUTHERLAND (US) LLP

/s/ Steven B. Boehm
Steven B. Boehm
Partner

AGREED and ACCEPTED:

MEDLEY LLC

By: _____
Rick Allorto
Chief Financial Officer