Docket #0027 Date Filed: 5/2/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
Medley LLC,	:	Case No. 21-10526 (KBO)
Debtor.	:	
MEDLEY LLC LIQUIDATING TRUST,	:	
Plaintiff,	:	Adv. Pro. 23-50121-KBO
-against-	:	
EVERSHEDS SUTHERLAND (US) LLP,	:	
Defendant.	:	

OPENING BRIEF OF DEFENDANT EVERSHEDS SUTHERLAND (US) LLP IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BASED UPON RELEASE

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Dated: May 2, 2025

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Defendant Eversheds Sutherland (US) LLP (**"Eversheds"**) respectfully submits this Opening Brief in support of its Motion, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, as incorporated into Rule 7056(a) of the Federal Rules of Bankruptcy Procedure, for summary judgment on the ground that the claims set forth in the Complaint were released by Plaintiff, the Medley LLC Liquidating Trust and its Liquidating Trustee (collectively, the **"Liquidating Trust"**), in March 2022 and are now barred.

NATURE AND STAGE OF PROCEEDINGS

Eversheds is the United States component of an international law firm that, for many years, provided legal services to Medley LLC (the **"Debtor"**), its parent company, Medley Management Inc. (**"Management"**), and certain of its affiliates and, more recently, its officers and directors, including Brook and Seth Taube (the **"Taubes"**). In particular, between September 2019 and the March 7, 2021 date on which the Debtor filed its chapter 11 case (the **"Petition Date"**), Eversheds represented the Debtor, Management and, for a period, the Taubes and other of Management's and the Debtor's executives in a complex Securities and Exchange Commission (**"SEC"**) investigation that ended in a settlement of the investigation and related proceedings. Eversheds devoted thousands of hours of attorney time to the effort and thousands of hours more in other related matters for the Debtor over the years. The other critical matters included providing the Debtor complicated securities regulatory advice and separate legal services concerning the Debtor's attempt to engage in a merger transaction that would have rebalanced the Debtor's balance sheet and maximized its potential growth for its own benefit and for the benefit of its then-existing bond holders, creditors and equity holders.

The Liquidating Trust now seeks return of the entire amount the Debtor paid Eversheds for services Eversheds provided over the four years predating the Petition Date—including money

provided by a third-party insurer and money Medley received from its affiliates, each for the express purpose of paying Eversheds' invoices. On March 3, 2023, the Liquidating Trust filed its Complaint (the **"Complaint"**) asserting: (i) a $2,015,986.53 preference claim under 11 U.S.C. § 547 relating to payments made during the ninety days predating the Petition Date; and (ii) an "alternative" $2,015,986.53 along with an additional $3,346,713.39 in fraudulent transfer claims under 11 U.S.C. §§ 544 and 548(a)(1)(B) relating to payments made during the four years prior to the Petition Date. [D.I. 1.][1] (A copy of the Complaint is attached as **Exhibit A** to the Declaration of Adam D. Cole, Esq. ["Cole Decl."], dated May 2, 2025.) The amounts the Liquidating Trust now seeks are in addition to $2,080,055.19 in approved administrative expenses Eversheds has already relinquished relating to post-petition legal services provided to the Debtor. [*See* Main Case D.I. 686.][2]

The Liquidating Trust served the Complaint nearly three months later, on May 24, 2023. [D.I. 3.] On June 23, 2023, Eversheds answered the Complaint and asserted certain affirmative defenses and a counterclaim. [D.I. 4.] Under a stipulation with the Liquidating Trustee pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, on May 1, 2025, Eversheds filed its First Amended Answer and Counterclaim which includes the affirmative defense of "settlement and release." (A copy of Eversheds' First Amended Answer and Counterclaim is attached as Cole Decl., **Exhibit B**.) The current document discovery deadline is May 30, 2025, with the remainder of deposition and then expert discovery to be completed by September 1, 2025. [D.I. 22.]

[1] "D.I." refers to the Docket in this adversary proceeding, Adv. Pro. 23-50121-KBO.

[2] "Main Case D.I." refers to the Docket in the Debtor's main chapter 11 case, Case No. 21-10526 (KBO).

By the present motion, Eversheds respectfully requests summary judgment based upon a release of claims set forth in a settlement agreement (the **"Settlement Agreement"**) that the Liquidating Trust had entered back in March 2022 with Management and the Taubes, both of which Eversheds had represented. (A copy of the *Settlement Agreement and Release* signed on March 23, 2022 is attached as **Exhibit 1** to the Declaration of Nicholas Christakos, Esq. ["Christakos Decl."], dated May 1, 2025.) The Settlement Agreement that the Liquidating Trust entered released Management, the Taubes, and their "legal advisors" and "attorneys" (including Eversheds) from "any and all Released Claims" which were, in turn, defined as claims "including those arising under chapter 5 of the Bankruptcy Code." (*Id*.) As the Liquidating Trustee seeks relief "under chapter 5 of the Bankruptcy Code" against Eversheds relating to its representation of the Debtor, of Management and of the Taubes, Eversheds respectfully requests that summary judgment be entered dismissing this action as barred by the release in the Settlement Agreement.

SUMMARY OF ARGUMENT

The Settlement Agreement the Liquidating Trust negotiated and entered is governed by New York law and released Management, the Taubes, and their "legal advisors" and "attorneys"—which included Eversheds—from "any and all Released Claims" defined as claims "including those arising under chapter 5 of the Bankruptcy Code." (Christakos Decl., Ex. 1.) This action asserts claims against Eversheds "under chapter 5 of the Bankruptcy Code." A release is a valid basis for summary judgment. *See Mortellite v. Novartis Crop Prot., Inc*., 460 F.3d 483, 493 (3d Cir. 2006). And under the applicable New York law, summary judgment is warranted where an unambiguous release includes a release of the signatory party's attorneys and agents. *See Weisman Celler Spett & Modlin, P.C. v. Trans-Lux Corp*., No. 12 CIV. 5141 JMF, 2014 WL 476348, at *3 (S.D.N.Y. Feb. 6, 2014); *Coby Grp., LLC v. Kriss*, 63 A.D.3d 569, 570, 881 N.Y.S.2d 101, 102 (1st

Dep't 2009). Accordingly, the Court should grant summary judgment because the claims asserted against Eversheds were expressly and unambiguously released in the Settlement Agreement that the Liquidating Trust negotiated and executed.

STATEMENT OF FACTS

The following facts are limited to providing the relevant background and, as relevant to summary judgment, are based upon uncontested documentary evidence.

Eversheds' Representation of the Debtor, Management and the Taubes

Eversheds served as counsel for Management, the Debtor and, more recently, certain of the Debtors' officers and directors, including the Taubes, in connection with, among other matters, matters that included the Debtor's pre-petition efforts at engaging in a merger transaction and an investigation conducted by the SEC (the **"SEC Investigation"**). (Complaint ¶¶14, 15; *see* Christakos Decl. ¶3.) Eversheds received pre-petition payments for its services including payments from the Debtor. (*See, e.g.*, Complaint ¶¶ 25, 32.)

On October 18, 2021, the Court entered its *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* confirming the Debtor's combined Plan and Disclosure Statement (the **"Plan"**). [Main Case D.I. 445.] The Plan provided for a liquidating trust to be established and appointment of a liquidating trustee governed by a *Liquidating Trust Agreement and Declaration of Trust*, dated as of October 18, 2021. [Main Case D.I. 431 at 57-62.] The Liquidating Trust was thereby empowered to assert causes of action and claims that belonged to the Debtor as of the effective date of the Plan including, but not limited to, claims under certain insurance policies that provided director and officer liability insurance to its former officers and directors (the **"Insurance Policies"**). (*See*

Christakos Decl., Ex. 1 ¶1.D.) The Liquidating Trust was also empowered to resolve any such claims with or without Court approval. (*Id*.)

Eversheds continued to represent the Debtor in the SEC Investigation after the Debtor's March 7, 2021 Petition Date. (Christakos Decl. ¶5.) On January 26, 2022, the Court entered an Amended Omnibus Order Awarding Final Fee Applications, including approving Eversheds' final administrative expense claim of $2,080,055 (the **"Eversheds Administrative Claim"**). [Main Case D.I. 569.]

The Settlement Agreement

Between October 2021 and mid-February 2022, the Liquidating Trust entered settlement negotiations with Management and the Taubes. (Christakos Decl. ¶6.) By mid-February 2022, Management and the Taubes were represented by counsel separate from Eversheds in connection with those negotiations. (Christakos Decl. ¶6.) At approximately the same time, Management and the Taubes, through their separate counsel that were engaged in those negotiations also discussed a settlement with the SEC. (Christakos Decl. ¶6.)

By mid-February 2022, Eversheds was alerted to the negotiations among the Liquidating Trust, the Taubes and Management to reach a settlement relating to the matters raised in the SEC Investigation that also gave rise to potential claims by the Liquidating Trust. (Christakos Decl. ¶7.) As shown by the parties' ultimate agreements, the settlement negotiations centered around purported claims against the Taubes, Management and others that were covered by the Debtor's insurance policies and *were not* to be released (ultimately referred to as the **"Preserved Claims"**), and claims that were not covered by insurance, including claims under chapter 5 of the Bankruptcy Code, that *were* to be released (ultimately referred to as the **"Released Claims"**). (Christakos Decl. ¶7.)

Eversheds was alerted to the negotiations among the Liquidating Trust, the Taubes and Management because, to help enable the negotiations, Eversheds was asked (1) to waive collection of the Eversheds Administrative Claim until other estate costs and expenses were paid or reserved, and (2) to first seek payment of the Eversheds Administrative Claim from the Debtor's insurers prior to seeking collection from the Liquidating Trust. (Christakos Decl. ¶8.) In addition, Eversheds was asked to forebear collection of its fees from the Debtor's insurers to enable the Liquidation Trust, the Taubes and Management separately to engage in a settlement mediation with the Debtor's insurers without the distraction of any competing claims for fees against the available insurance. (Christakos Decl. ¶8.)

On March 9, 2022, Eversheds entered an "Agreement" with the Liquidating Trust to implement the waiver and collection prerequisites the Liquidating Trust had requested (ultimately referred to as the **"Eversheds Letter"**). (Christakos Decl., Ex. 2.) In the Eversheds Letter, the Liquidating Trust confirmed that Eversheds' waiver and forbearance were "integral and inextricable" to the settlement the Liquidating Trust was negotiating with Management and the Taubes and that Eversheds' agreement was designed to help and enable the Liquidating Trust to maximize recoveries for itself and its creditor constituencies:

> the forbearance and waiver of rights by Eversheds set forth in this Agreement are necessary to permit the Liquidating Trust to receive the maximum benefit of the negotiated agreement by and between the Settling Defendants and the Liquidating Trust, and to maximize the distribution to all creditors in this case by avoiding unnecessary litigation and the incumbent dissipation of assets and insurance proceeds that may otherwise be available for distribution to creditors.

(Christakos Decl., Ex. 2 at 1-2.)

Consistent with the Eversheds Letter, and in anticipation of resolving the SEC Investigation, which would involve the Debtor, Management and the Taubes, the Liquidating Trust

thereafter negotiated and entered into the Settlement Agreement with Management and the Taubes on March 23, 2022. (Christakos Decl., Ex. 1.) The Settlement Agreement explained that the Liquidating Trust had alleged certain wrongful acts against, among others, the Taubes that were believed to be covered under the Insurance Policies and that the specific insured claims against the Taubes and insurers—the Preserved Claims—were to be preserved, and not released, under the Settlement Agreement. (Christakos Decl., Ex. 1 at 2 & ¶6.1.) In addition, under the Settlement Agreement, the Taubes and Management agreed to pay $13,225,000 in exchange for, among other things, a broad release of the "Released Claims." (Christakos Decl., Ex. 1 ¶¶3, 6.1.)

The Settlement Agreement that the Liquidating Trust negotiated and executed defined the "Released Claims" as follows:

> WHEREAS, the Liquidating Trust has other alleged ***Causes of Action*** against one or more of ***the Taube Released Parties*** in addition to the Preserved Claims, including ***those arising under chapter 5 of the Bankruptcy Code and local, state and federal law analogues, which avoid, disgorge and compel restitution of monies received from the Debtor*** (the "Released Claims"). Further, any Cause of Action that the Liquidating Trust has against one or more of the Taube Released Parties that is not a Preserved Claim is a Released Claim.

(Christakos Decl., Ex. 1 at 2) (emphasis added). The "Causes of Action" were further defined, in relevant part, as follows:

> "Cause of Action" or "Causes of Action" means any claims, . . . remedies, causes of action, . . . 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 . . . . Causes of Action also include, but are not limited to: . . . (c) ***claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code*** . . . .

(Christakos Decl., Ex. 1, Sch. I) (emphasis added).

The Settlement Agreement, in relevant part, then provided for broad "Releases" and defined the "Taube Released Parties" as follows:

> On the Release Date, the Liquidating Trust, the Liquidating Trustee and the Debtor (the "Liquidating Trust Releasing Parties") hereby release, waive, relinquish, disavow and forever discharge Medley, the Taubes, BTT, and the Executives and all of their respective affiliates, subsidiaries, . . . ***legal advisors***, and all employees, ***representatives***, agents, vendors, ***and attorneys of each of the foregoing*** (collectively, the "Taube Released Parties"), of and from ***any and all Released Claims***, whether considered claims, actions, or 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, which the Liquidating Trust Releasing Parties may have or claim to have, against any of the Taube Released Parties . . . .

(Christakos Decl., Ex. 1 ¶6.1.) Eversheds was among the "attorneys" that represented the Taube's and Management in a joint and common representation with the Debtor pre-petition in the SEC Investigation. (Complaint ¶¶14-15; Christakos Decl. ¶3.) For a period of time pre-petition, Eversheds also represented the "Executives" in a joint and common representation with the Debtor in the SEC Investigation, the "Executives" being certain "past and current members of [Management's] board of directors and officers" listed in an attached "Schedule II." (Christakos Decl., Ex. 1, Sch. II.)

To document its separate forbearance pledge, on March 23, 2022, Eversheds also entered a Forbearance Agreement and Agreement to Mediate (the **"Forbearance Agreement"**) with the Taubes, Management and certain of the Debtor's and Management's other officers and directors. (Christakos Decl., Ex. 3.) Consistent with its pledge, Eversheds agreed to forebear collection of its fees from the Debtor's insurers to enable the Liquidation Trust, the Taubes and Management separately to engage in a settlement mediation with the Debtor's insurers. In this way, Eversheds further agreed to help facilitate the Liquidating Trust's attempt to maximize the funds available to

creditors by delaying payment of its post-petition fees and forbearing from seeking reimbursement of fees from insurers for a period to enable the Liquidating Trust to mediate and attempt to settle the Preserved Claims. (Christakos Decl., Exs. 2, 3.)

The Settlement Agreement was directly connected with the SEC Investigation in which Eversheds had represented the Debtor, Management, the Taubes and others prior to the Petition Date, and in which Management and the Taubes' new counsel submitted offers of settlement. Indeed, the Settlement Agreement provided it was contingent upon the SEC approving the offer of settlement and the offer of settlement would be considered "approved" upon the SEC issuing an Order Instituting Administrative proceedings. (Christakos Decl., Ex. 1 ¶2.) On April 28, 2022, the SEC entered an order instituting proceedings against Management and the Taubes as part of a settlement with the SEC (the **"SEC Settlement"**). (Cole Decl., **Exhibit C**.) The SEC Settlement provided for a $4 million penalty against Management, a $4 million penalty against Brook Taube and a $2,000,000 penalty against Seth Taube. (Cole Decl., Ex. C at 23-24.) The SEC Settlement further contemplated the Settlement Agreement and provided for payments made by Management and the Taubes to the Liquidating Trust under the Settlement Agreement to be offset against the penalties imposed under the SEC Settlement. (Cole Decl., Ex. C at 24-25.)

Nearly one year later, on February 22, 2023, and after multiple mediation sessions, the Liquidating Trust managed to reach settlements of the Preserved Claims that had been carved out of the Settlement Agreement release. [Main Case D.I. 622 ¶16.] As part of seeking approval for the Preserved Claims settlement, the Liquidating Trustee confirmed that loss associated with potential "avoidance actions" had been "[s]ettled and released" as "non-insured claims" under the Settlement Agreement. [Main Case D.I. 622 ¶¶17, 18, 19.] And in the Preserved Claims settlement agreements themselves, the Liquidating Trust further confirmed that the terms used in those

settlement agreements "(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." [Main Case D.I. 622-2 n.5; Main Case D.I. 622-3 n.5] (emphasis added).[3]

The Present Action

The present action was commenced on March 3, 2023, three days before the statute of limitations period expired. The summons and Complaint were not served until May 24, 2023. [D.I. 3.] Eversheds filed its Answer on June 23, 2023 but inadvertently did not include "settlement and release" as an affirmative defense. [D.I. 4.] The oversight was discovered on April 23, 2025. (Christakos Decl. ¶¶13-14.) On May 1, 2025, Eversheds and the Liquidating Stipulated to Eversheds filing a First Amended Answer and Counterclaim. [D.I. 24.] The same day, Eversheds

[3] Although note 5 in the Preserved Claims settlement agreements states that the scope of the release remains unchanged, the Preserved Claims settlement agreements also included a note that, although somewhat ambiguous, appears to attempt to clarify the release in the Settlement Agreement as not including attorneys. [Main Case D.I. 622-2 n.8; Main Case D.I. 622-3 n.8.] Under applicable New York law (as explained below), because the scope of release in the Settlement Agreement is unambiguous, the footnote in the Preserved Claims settlement agreements is, if anything, extrinsic and parol evidence that is unavailable to "create an ambiguity" where none otherwise exists. *W.W.W. Assocs., Inc. v. Giancontieri*, 77 N.Y.2d 157, 163, 566 N.E.2d 639, 642 (1990); *see WDF, Inc. v. City of New York*, 104 A.D.3d 557, 960 N.Y.S.2d 644 (1st Dep't 2013) ("'Because the release is clear and unambiguous, plaintiff may not endeavor to vary its terms or to create an ambiguity by resorting to extrinsic evidence' meant to explain the parties' intentions") (quoting *Serbin v. Rodman Principal Invs., LLC*, 87 A.D.3d 870, 929 N.Y.S.2d 136 (1st Dept. 2011)). Neither is the footnote a modification because nothing in the Preserved Claims settlement agreements suggests that they were entered as amendments or modifications to the Settlement Agreement and, nevertheless, the Settlement Agreement could only be modified by written instrument signed by all the original parties. (Christakos Decl., Ex. 1 ¶12.) The Preserved Claims settlement agreements were not signed by all the original parties to the Settlement Agreement.

filed its First Amended Answer and Counterclaim that included its defense of "settlement and release." (Cole Decl., Ex. B.)

The present Motion follows.

ARGUMENT

THE COURT SHOULD GRANT SUMMARY JUDGMENT BECAUSE THE CLAIMS IN THE COMPLAINT ARE BARRED BY THE RELEASE

A. The Standards Applicable to this Motion

Summary judgment is warranted where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Where, as here, the subject of the motion is an "unambiguous" contract term that is dispositive, there is no material issue of fact and Eversheds is therefore entitled to summary judgment as a matter of law. *In re Energy Future Holdings Corp*., 990 F.3d 728, 737 (3d Cir. 2021).

The Settlement Agreement is governed by New York law. (Christakos Decl., Ex. 1 ¶16.) As the Third Circuit has confirmed, "New York courts 'have long adhered to the sound rule in the construction of contracts, that where the language is clear, unequivocal and unambiguous, the contract is to be interpreted by its own language.'" *Ophrys LLC v. OneMain Fin. Inc*., 846 F. App'x 133, 138 (3d Cir. 2021) (quoting *R/S Assocs. v. New York Job Dev. Auth*., 98 N.Y.2d 29, 32, 771 N.E.2d 240, 242 (2002)). Thus, "when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms." *Id*. (quoting *W.W.W. Assocs., Inc. v. Giancontieri*, 77 N.Y.2d 157, 162, 566 N.E.2d 639, 642 (1990)); *see In re Zohar III, Corp*., 650 B.R. 622, 644 (Bankr. D. Del. 2023) (contract language unambiguous and enforceable where no "reasonable disagreement" as to terms). Clear contract language does not become ambiguous simply because the parties "urge different interpretations." *Aetna Cas. & Sur. Co. v. Aniero Concrete Co*., 404 F.3d 566, 598 (2d Cir. 2005) (quotations and citations omitted).

These settled standards governing the "rules of contract" apply with equal force to the unambiguous release included in the Settlement Agreement.[4] *Nikci v. Quality Bldg. Servs*., 995 F. Supp. 2d 240, 250 (S.D.N.Y. 2014). Indeed, New York enforces valid releases "'which are clear and unambiguous on their face and which were knowingly and voluntarily entered into and were not the product of fraud, duress, or undue influence.'" *Id*. (quoting *DiFilippo v. Barclays Capital, Inc*., 552 F. Supp. 2d 417, 426 (S.D.N.Y. 2008); *see Leftridge v. New York City Dep't of Educ.*, No. 17CV7027, 2020 WL 1503665, at *7 (S.D.N.Y. Mar. 30, 2020) (same). Under no circumstances can the Liquidating Trust contend at this late a date that the Settlement Agreement was the product of fraud, duress, or undue influence; after all, the Liquidating Trust confirmed existence of "the releases granted in the March 2022 Settlement Agreement" and their "scope" nearly one year thereafter in the separate Preserved Claim settlement agreements. [Main Case D.I. 622; Main Case D.I. 622-2 n.5; Main Case D.I. 622-3 n.5] And as explained above, extrinsic and parol evidence is inadmissible to "create an ambiguity" in release language where none otherwise existed. *W.W.W. Assocs*., 77 N.Y.2d at 163, 566 N.E.2d at 642; *WDF, Inc.*, 104 A.D.3d 557, 960 N.Y.S.2d 644

B. <u>The Liquidating Trust's Claims Were Released Under the Settlement Agreement</u>

The Settlement Agreement's release is clear and unambiguous because "it has 'a definite and precise meaning, unattended by danger of misconception in the purport of the [contract] itself, and concerning which there is no reasonable basis for a difference of opinion.'" *Zohar*, 650 B.R. at 644 (quoting *Revson v. Cinque & Cinque, P.C*., 221 F.3d 59, 66 (2d Cir. 2000)). The release in

[4] An exception to the "rules of contract" is that New York does not require consideration for a release to be valid and enforceable. *See* N.Y. GEN. OBLIG. LAW § 15-303 ("A written instrument which purports to be a total or partial release of all claims, debts, demands or obligations, or a total or partial release of any particular claim, debt, demand or obligation, or a release or discharge in whole or in part of a mortgage, lien, security interest or charge upon personal or real property, shall not be invalid because of the absence of consideration or of a seal.").

the Settlement Agreement is "definite and precise" and there can be no reasonable difference of opinion as to its meaning:

1. Under the release's clear, unequivocal and unambiguous terms, the Liquidating Trust released, waived and discharged the ***"Taube Released Parties,"*** including Management, the Taubes and the "Executives" along with all of their respective ***"legal advisors," "representatives"*** and ***"attorneys,"*** of and from all ***"Released Claims"*** of "whatever kind, nature or character. . . ." (Christakos Decl., Ex. 1 ¶6.1) (emphasis added);

2. The phrase ***"Released Claims"*** in turn is defined as ***"Causes of Action"*** that the Liquidating Trust has "against one or more of the Taube Released Parties . . . including those ***arising under chapter 5 of the Bankruptcy Code and local, state and federal law analogues***, which avoid, disgorge and compel restitution of monies received from the Debtor (the 'Released Claims')." (Christakos Decl., Ex. 1 at 2) (emphasis added); and

3. And the phrase ***"Causes of Action"*** that are released is defined as "any claims, . . . remedies, causes of action, . . . of any kind or character whatsoever" and expressly includes "but are not limited to: . . . (c) ***claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code***. . . ." (Christakos Decl., Ex. 1, Sch. I) (emphasis added).

And it is uncontested that:

1. Eversheds was among the ***"legal advisors," "representatives"*** and ***"attorneys"*** that represented Management, the Taubes and the "Executives" in a joint and common representation with the Debtor in the SEC Investigation, as the Complaint makes clear, and therefore Eversheds is among the ***"Taube Released Parties."*** (Complaint ¶¶14-15; Christakos Decl. ¶3; *see* Christakos Decl., Ex. 1, Sch. II.)); and

2. The Liquidating Trust asserts four causes of action against Eversheds as "legal advisors" and "attorneys" that represented Management, the Taubes and the "Executives," all of which are pursuant to chapter 5 of the Bankruptcy Code including sections ***"544 through 550"***—*i.e*., sections 547, 544, 548 and 550. (Complaint ¶¶1, 2, 36-56.)

Accordingly, the Liquidating Trust's claims against Eversheds fall squarely within the scope of the unambiguous release in the Settlement Agreement. Because Liquidating Trust released the very claims it asserts against Eversheds in the Complaint, the claims are barred and should be dismissed on summary judgment.

CONCLUSION

For all the foregoing reasons, the Court should enter summary judgment dismissing the Complaint.

Dated: May 2, 2025
Wilmington, Delaware

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