

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

In re:	)	Chapter 11
	)	
FTX TRADING LTD., <i>et al.</i> ,	)	Case No. 22-11068 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	
FTX RECOVERY TRUST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 24-50216 (KBO)
	)	
NEIL PATEL, I'M KIND OF A BIG DEAL,	)	Related to Adv. Docket No. 15
LLC, and NEIL PATEL DIGITAL, LLC,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM ORDER¹

Before the Court is *Debtors' Motion to Dismiss the Complaint* (the "Motion")² pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. For the reasons set forth herein, the Motion is granted in part and denied in part.

I. FACTS ALLEGED IN THE COMPLAINT

Debtors Alameda Research Ltd., FTX Trading Ltd. ("FTX Trading"), Cottonwood Grove Ltd., and West Realm Shire Services Inc. (d/b/a FTX.US) are part of the larger FTX Group,³ which prior to the filing of the above-captioned chapter 11 bankruptcy proceedings operated two centralized digital asset exchanges where millions of customers bought, sold, and traded digital assets. In this and several other proceedings (both civil and criminal), it is alleged that Samuel Bankman-Fried ("Bankman-Fried"), co-founder and CEO of the FTX Group, and a group of

¹ Given the narrow relief addressed in this Memorandum Order, the Court writes solely for the parties. They are familiar with the procedural and substantive background of this adversary proceeding and the Debtors' complex chapter 11 proceedings.

² Adv. D.I. 15.

³ "FTX Group" means, collectively, the Debtors and all affiliates of the Debtors that have not filed voluntary chapter 11 petitions in the United States under the Bankruptcy Code.

insiders (together with Bankman-Fried, the “FTX Insiders”) orchestrated an elaborate fraudulent scheme whereby they misappropriated billions of dollars in customer deposits to finance their lavish lifestyles, entice business prospects, and make reckless investments for the purpose of propping up their business and advancing their stature in the crypto community.

In furtherance of this fraudulent scheme, the FTX Insiders retained the marketing services of Defendant Neil Patel (“Patel”) and his companies⁴ with the goal of increasing customer deposits on the exchanges so that an ongoing stream of capital was available to keep the house of cards from collapsing.⁵ Several agreements memorialize the scope and nature of the parties’ arrangement, including: (1) the Master Services Agreement (“Big Deal MSA”) and Statement of Work (“Big Deal SOW”) between FTX Trading and Defendant Big Deal (the “Big Deal Agreements”); (2) the Master Service Agreement between FTX Trading and Defendant NP Digital (the “FTX Media MSA”); (3) the Earned Media Statement of Work (the “Earned Media SOW”) between FTX Trading and NP Digital; (4) the Paid Media Statement of Work (the “Paid Media SOW”) between FTX Trading and NP Digital; and (5) two Serum Agreements between Cottonwood Grove Ltd., non-debtor Incentive Ecosystem Foundation, and NP Digital (the “Serum Agreements”). Plaintiff alleges that the Debtors entered into these agreements with virtually no diligence or negotiation, paid Defendants over \$30 million, and received little to nothing in return.

II. RELEVANT PROCEDURAL HISTORY

On October 8, 2024, the Court entered its *Findings of Fact, Conclusions of Law and Order Confirming the Second Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Debtor Affiliates* (the “Confirmation Order”).⁶ One month later, Alameda Research Ltd., FTX Trading, Cottonwood Grove Ltd., and West Realm Shire Services Inc. commenced this adversary proceeding by filing the *Complaint* against the Defendants asserting claims for fraudulent transfer (Counts I-IV), preferential transfer (Counts V-VI), equitable subordination (Count VII), property recovery (Count VIII), disallowance of claims (Count IX), and knowing assistance in breach of fiduciary duties (Count X). The *Second Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Debtor Affiliates* (the “Plan”)⁷ went effective a few months later on January 3, 2025 (the “Effective Date”)⁸ and shortly thereafter, the FTX Recovery Trust substituted as Plaintiff.⁹ By the Motion, Defendants seek dismissal of the Complaint. Briefing is complete, and oral argument is unnecessary.

⁴ Patel is the owner and sole registered agent of Defendant I’m Kind of a Big Deal, LLC (“Big Deal”). Adv. D.I. 1 (the “Complaint”) ¶ 17. He is also a registered officer of Defendant Neil Patel Digital, LLC (“NP Digital”). *Id.* ¶ 18.

⁵ *Id.* ¶¶ 1 & 2.

⁶ Case No. 22-11068 (the “Bankruptcy Case”), D.I. 26404.

⁷ *Id.*, Ex. 1.

⁸ *Id.*, D.I. 29127 (*Notice of Effective Date of the Second Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Debtor Affiliates*).

⁹ Adv. D.I. 32 (*Notice of Substitution of Plaintiff*); Bankruptcy Case, D.I. 29554 (*Order Granting the FTX Recovery Trust’s Omnibus Motion to Substitute Plaintiffs in Adversary Proceedings*).

III. JURISDICTION

As the Court will explain in more detail, it has subject-matter jurisdiction over the claims in this proceeding pursuant to 28 U.S.C. § 1334(b), 28 U.S.C. § 157, and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware. Venue is proper pursuant to 28 U.S.C. § 1409(a).

IV. LEGAL STANDARD

Federal Rule 12(b)(6) provides for dismissal for “failure to state a claim upon which relief can be granted.”¹⁰ To survive a motion to dismiss, a plaintiff must allege well-pleaded facts with sufficient detail to “state a claim to relief that is plausible on its face.”¹¹ The Third Circuit has adopted a two-part analysis to employ when deciding a motion to dismiss for failure to state a claim.¹² “First, the factual and legal elements of a claim should be separated” with the reviewing court accepting “all of the complaint’s well-pleaded facts as true, but . . . disregard[ing] any legal conclusions.”¹³ Next, the reviewing court must “determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a ‘plausible claim for relief.’”¹⁴

Federal Rule 12(b)(1) provides for dismissal for “lack of subject-matter jurisdiction.”¹⁵ “A challenge to subject matter jurisdiction under Rule 12(b)(1) may be either a facial or a factual attack.”¹⁶ “The former challenges subject matter jurisdiction without disputing the facts alleged in the complaint, and it requires the court to consider the allegations of the complaint as true.”¹⁷ “The latter, a factual challenge, attacks the factual allegations underlying the complaint’s assertion of jurisdiction, either through the filing of an answer or otherwise presenting competing facts.”¹⁸ Rule 12(b)(1) also inverts the burden of persuasion. “When presenting a Rule 12(b)(6) motion, the defendant bears the burden to show that the plaintiff has not stated a claim. But under Rule 12(b)(1), the plaintiff must prove the court has subject matter jurisdiction.”¹⁹ Defendants here do not dispute the facts relevant to subject matter jurisdiction and have therefore presented a facial attack on the Court’s subject matter jurisdiction.

¹⁰ FED. R. CIV. PROC. 12(b)(6).

¹¹ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

¹² *Fowler*, 578 F.3d at 210.

¹³ *Id.* at 210-11.

¹⁴ *Id.* (quoting *Iqbal*, 556 U.S. at 679).

¹⁵ FED. R. CIV. PROC. 12(b)(1).

¹⁶ *Davis v. Wells Fargo*, 824 F.3d 333, 346 (3d Cir. 2016).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 349 (citations omitted).

V. DISCUSSION

A. Avoidance Claims (Counts I-VI)

1. Standing

Defendants first argue that the Plaintiff lacks standing to pursue its avoidance claims in Counts I through VI because creditors will be paid in full pursuant to the Plan and 11 U.S.C. § 550(a) prohibits a debtor from recovering more than the outstanding amount of creditor claims.²⁰ This argument is premature. Distribution on claims is in its early stages, and projections regarding recoveries are subject to change. Moreover, while it is true that some creditors may receive full payment on their allowed claims under the Plan, others are projected to receive far less.²¹

2. Fraudulent Transfer Claims Pursuant to 11 U.S.C. §§ 544, 548 (Counts I-IV)

Counts I and III are Plaintiff's claims for actual fraudulent transfer. To state a claim for actual fraudulent transfer, a plaintiff must allege that there was a transfer of an interest in debtor's property made with an actual intent to hinder, delay, or defraud its creditors.²² "Direct evidence of fraudulent intent, however, is often unavailable and courts usually rely on circumstantial evidence, including the circumstances of the transaction, to infer fraudulent intent."²³ Defendants argue that Plaintiff failed to plead fraudulent intent, but their arguments raise issues of fact not amenable to resolution on a motion to dismiss. Plaintiff has alleged facts that, if proven, would be sufficient to establish the necessary intent.²⁴ Therefore, Counts I and III will remain.

Defendants also move to dismiss Counts II and IV in which Plaintiff asserts claims for constructive fraudulent transfer. "At the motion to dismiss stage, to adequately plead a constructive fraud claim all that is needed . . . is an allegation that there was a transfer for less than reasonably equivalent value at a time when the Debtors were insolvent."²⁵ Defendants contend that Plaintiff has failed to allege a lack of reasonably equivalent value. The Court disagrees.

²⁰ See, e.g., *In re DSI Renal Holdings, LLC*, No. 11-11722, 2020 WL 550987, at *6 (Bankr. D. Del. Feb. 4, 2020) (interpreting the phrase 'for the benefit of the estate' in § 550(a) as prohibiting debtors from receiving surplus avoidance recoveries and granting partial summary judgment to limit trustee's recovery to the total amount necessary to satisfy all allowed creditor claims and expenses).

²¹ Bankruptcy Case, D.I. 19143 § 1.G at 13-22.

²² 11 U.S.C. § 548(a)(1)(A).

²³ *Liquidation Tr. of Hechinger Inv. Co. of Del., Inc. v. Fleet Retail Fin. Grp. (In re Hechinger Inv. Co. of Del., Inc.)*, 327 B.R. 537, 550-51 (D. Del. 2005).

²⁴ See, e.g., Complaint ¶ 33 (describing plan to pursue aggressive marketing campaigns to attract new customers and ensure steady stream of capital needed to perpetuate fraudulent scheme), ¶¶ 36-48 (describing FTX's quick entry into agreements with Defendants without diligence), ¶ 42 & ¶ 49-50 (describing concealment of agreements), ¶¶ 51-56 (describing lack of services received).

²⁵ *Beskroner v. Opengate Capital Grp., LLC (In re Pennysaver USA Publ'g, LLC)*, 602 B.R. 256, 266 (Bankr. D. Del. 2019) (citations omitted).

Plaintiff has alleged that the Debtors either failed to receive the full scope of the services promised to be performed by the Defendants or received none. Plaintiff also alleges that NP Digital charged FTX Trading 12 times more than it charged others for similar services.²⁶ That is sufficient at this stage. Therefore, Counts II and IV will also remain.

3. Preference Claims Pursuant to 11 U.S.C. § 547 (Counts V & VI)

Defendants next argue that Counts V and VI, asserting claims for preferential transfers, should be dismissed. To state a preference claim, a plaintiff must allege facts that, if true, would establish: (1) a transfer of an interest of the debtor in property; (2) that was made to or for the benefit of a creditor of the debtor; (3) that was made on account of an antecedent debt; (4) that was made while the debtor was insolvent; (5) that was made either within 90 days of the petition date or if the creditor was an insider within one year of the petition date; and (6) that the transfer enabled the creditor to receive more than the creditor would have received in a chapter 7 liquidation.²⁷ Defendants allege that Plaintiff's claims fail because the transfers at issue were advance payments and therefore were not made to satisfy antecedent debt.²⁸

"The Third Circuit has said that for a debt to be antecedent, the debt must have been incurred before the transfer was made."²⁹ "In order to determine when a debt was incurred – and whether it was 'incurred before the transfer was made' – courts look to when the debtor becomes legally obligated to pay."³⁰ "The right to payment generally arises when the debtor obtains the goods or services."³¹

"It is well established that advance payments are *prima facie* not preferences because the transfer from the debtor to the creditor is not for or on account of an antecedent debt.³² "[A] prepayment is a payment made before the debtor incurs an obligation to pay – that is, these payments are made in anticipation of goods being delivered or services being provided. Unless and until such goods and services are received, no obligation to pay exists."³³

²⁶ Complaint ¶¶ 50, 56.

²⁷ 11 U.S.C. § 547.

²⁸ Count V seeks to avoid alleged preferential transfers made to the Defendants as alleged non-statutory insiders within one year of Debtors' petition date. Defendants argue that this count should be dismissed because they are not insiders. Plaintiff, however, has alleged sufficient facts on this issue to survive a motion to dismiss. See *infra* notes 49-53 and accompanying text.

²⁹ *Pirinate Consulting Grp., LLC v. Kadant Sols. Div. (In re NewPage Corp.)*, 569 B.R. 593, 599 (D. Del. 2017) (citations omitted).

³⁰ *Id.* (quoting 11 U.S.C. § 547(b)).

³¹ *U.S. Trustee v. First Jersey Sec., Inc.*, 180 F.3d 504, 511 (3d Cir. 1999).

³² *In re Hechinger Inv. Co. of Del., Inc.*, No. 01-3170, 2004 WL 3113718, *2 (Bankr. D. Del. Dec. 14, 2004).

³³ *Drivetrain, LLC v. X. Com., Inc.*, No. 22-50448, 2023 WL 1804627, at *7 (Bankr. D. Del. Feb. 7, 2023).

(i) Big Deal Agreements

The first transfer at issue is one for \$14.8 million made pursuant to the Big Deal Agreements (the “Big Deal Transfer”). Defendants argue the payment was made “upfront” to Big Deal under the express terms of the Big Deal MSA,³⁴ so it cannot be a transfer made on account of antecedent debt.³⁵ Plaintiff responds by pointing the Court to a provision contained in the Big Deal SOW stating that “all invoices for fees and expenses charged by Big Deal . . . shall be due and payable upon receipt,”³⁶ and to an invoice issued four days prior to the Big Deal Transfer. In Plaintiff’s view, the Big Deal Transfer was made on account of antecedent debt because the terms of the Big Deal Agreements along with the invoice created an obligation to pay Big Deal that arose prior to the transfer. This argument is unpersuasive.

“[T]he existence of an agreement between the parties for payment in advance does not alter the conclusion that advance payments are not payments on account of antecedent debt.”³⁷ Debts arise when goods and services are received. Accordingly, the terms of the Big Deal Agreements do not change the fact that the Big Deal Transfer was, indisputably, a payment made in advance of any services provided by the Defendants. Accordingly, the Motion to dismiss Counts V and VI will be granted with respect to the Big Deal Transfer.³⁸

(ii) Earned Media SOW

The next transfer at issue is one for \$6 million made pursuant to the Earned Media SOW and related FTX Media MSA (the “Earned Media Transfer”). Defendants argue that this transfer was an upfront payment of an annual management fee for year two of the Earned Media SOW.³⁹ Plaintiff responds by pointing to a provision in the applicable MSA that states that invoices for

³⁴ *Declaration of Peter R. Morrison in Support of Defendants’ Motion to Dismiss* (“Morrison Decl.”), Adv. D.I. 17, Ex. 5 (Big Deal SOW) at 1-2 (stating Big Deal will be paid one-time payment of \$14.8 million and that “Client will make the payment upfront to Big Deal”).

³⁵ “[A] court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document.” *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

³⁶ *Morrison Decl.*, Ex 4 (Big Deal MSA).

³⁷ *NewPage*, 569 B.R. at 600; *see also Drivetrain*, No. 22-50448, 2023 WL 1804627, at *7 (granting motion to dismiss and finding payment made to defendant was “properly classified as a prepayment” despite contractual obligation to make it).

³⁸ “Where claims arise out of or rely on a contract, [] ‘[t]he court may grant a motion to dismiss when unambiguous language of contract contradicts plaintiff’s allegations in a complaint’ or otherwise precludes plaintiff’s claims.” *10X Genomics, Inc. v. Vizgen, Inc.*, 654 F. Supp. 3d 310, 324 (D. Del. 2023) (quoting *Phunware, Inc. v. Excelmind Grp. Ltd.*, 117 F. Supp. 3d 613, 625 (D. Del. 2015)).

³⁹ *Morrison Decl.*, Ex. 2 (Earned Media SOW) at 28 (providing for annual management fee of \$6 million and stating that “Client will be invoiced upon signature and then annually on the anniversary of the Commencement Date”).

fees will be due and payable upon receipt,⁴⁰ along with the invoice issued under the Earned Media SOW just prior to payment. Like the Big Deal Transfer, Plaintiff argues that the Earned Media Transfer was made on account of antecedent debt because the terms of the governing agreements along with the invoice created an obligation to pay that arose prior to the transfer.

Unlike the Big Deal MSA, the Earned Media SOW does not expressly state that the payment will be “upfront”. It is clear from the plain language of the agreement, however, that payment was to be made at the beginning of each contracted period for services that would follow.⁴¹ Importantly, this interpretation of the contract aligns with the Plaintiff’s own understanding:

[O]n October 22, 2021, FTX Trading and Defendant NP Digital executed a Master Services Agreement (the “FTX Media MSA”), effective October 19, 2021. . . . Under the FTX Media MSA, NP Digital was engaged for a term of three years to render services to FTX Trading as further outlined in two Statements of Work In exchange [for services under the Earned Media SOW], FTX Trading was required to pay NP Digital a one-time set-up fee of \$1 million and an annual management fee of \$6 million. . . . On October 21, 2022, . . . Patel sent a private message to FTX Trading’s former CFO, seeking the full \$6 million Annual Management Fee *for year two* of the Earned Media SOW. Four days later, on October 25, 2022, . . . NP Digital received a transfer of \$6 million from an FTX Trading account[.]⁴²

Given that, by Plaintiff’s own account, the Earned Media Transfer was made for the purpose of securing future services, the Court finds that it was an advance payment and not one made on account of antecedent debt. For this reason, the Motion to dismiss Counts V and VI will be granted with respect to the Earned Media Transfer.

(iii) Serum Agreements

Next are several transfers made pursuant to the Serum Agreements (the “Serum Transfers”). Defendants argue that these transfers do not meet the antecedent debt requirement because the Serum Agreements contemplate that payments would be made in advance. Specifically, Defendants point to provisions of the agreements that require the payment of the annual management fee in monthly installments, with the first installment due upon execution of

⁴⁰ *Id.*, Ex. 1 (FTX Media MSA) at § 2.2 (stating that FTX Trading will “pay all fees associated with any SOW” and that all invoices for fees and expenses “shall be due and payable upon receipt”).

⁴¹ *Id.*, Ex. 2 (Earned Media MSA) at 28 (providing for annual management fee of \$6 million and stating that “Client will be invoiced upon signature and then annually on the anniversary of the Commencement Date”).

⁴² Complaint ¶¶ 45, 55 (emphasis added).

the agreements.⁴³ From this they conclude that all transfers made pursuant to the Serum Agreements are advance payments.

This might be a reasonable conclusion if viewing the Serum Agreements in isolation. However, the record of alleged payments indicates that they were not made as contractually promised. The Serum Agreements were executed on January 12, 2022 and rather than making the first payment at such time as required by the Serum Agreements, it was not made until April 6.⁴⁴ Moreover, the first payment was \$900,000 – not \$150,000 as contemplated by contract.⁴⁵ There was a payment made the next month, but that payment was for \$600,000 – again, not the \$150,000 contemplated by contract.⁴⁶ While some of the later payments were in the amount of \$150,000, they were quickly followed by a second \$150,000 transfer the very next day, which is, again, not the timing provided for in the contract.⁴⁷ Therefore, the Court cannot do as Defendants wish and rely entirely on the terms of the Serum Agreements to conclude that the challenged transfers were advanced payments. The Motion to dismiss Counts V and VI is therefore denied with respect to the Serum Transfers.⁴⁸

B. Equitable Subordination Pursuant to 11 U.S.C. § 510(c) (Count VII)

In Count VII of the Complaint, Plaintiff asserts a claim pursuant to 11 U.S.C. § 510(c) for equitable subordination of Defendants' claims against the Debtors' estates on the grounds that the FTX Media Agreements and Serum Agreements were insider transactions, and that NP Digital and Patel engaged in a pattern of misconduct at the expense of the Debtors and their estates. Defendants argue that this claim should be dismissed because Plaintiff has not established that any Defendants qualify as insiders.

Under the Bankruptcy Code, “insiders” of a corporate debtor include its directors, officers, and persons in control, a partnership in which the debtor is a general partner, general partners of the debtor, and relatives of the general partners, directors, officers, or persons in control of the debtor.⁴⁹ The Code also provides that an insider may be an affiliate or managing agent of the debtor.⁵⁰ “[C]ourts have ‘uniformly’ held that the Bankruptcy Code’s definition is merely

⁴³ Morrison Decl., Exs. 7 at 17-18, 9 at 27 (indicating annual management fee of \$1.8 million to be paid in monthly installments of \$150,000, beginning upon execution of the agreement).

⁴⁴ Complaint, Ex. B.

⁴⁵ *Id.*

⁴⁶ *Id.*; *see also* Morrison Decl., Exs. 7 & 9.

⁴⁷ Complaint, Ex. B.

⁴⁸ Despite moving to dismiss the entirety of Counts V and VI, the Defendants fail to address in their briefing the transfer dated August 25, 2022 under the Paid Media SOW. *See id.* The Court therefore denies the relief in the Motion to the extent it seeks dismissal of preference claims pertaining to this transfer.

⁴⁹ 11 U.S.C. § 101(31)(B).

⁵⁰ *Id.* § 101(31)(E)-(F).

illustrative and that the term ‘insider’ must be flexibly applied on a case-by-case basis.”⁵¹ In the Third Circuit’s view, “the question is whether there is a close relationship between debtor and creditor and anything other than closeness to suggest that any transactions were not conducted at arm’s length.”⁵² Here, Plaintiff has alleged, among other things, that Patel: (1) was hired as marketing manager for debtor Blockfolio, but was held out as Chief Marketing Officer of the FTX Group; (2) signed at least 51 sponsorship contracts on behalf of FTX.US, approved budgets, and was involved in the hiring process; and (3) drafted one-sided agreements between his companies and the FTX Group, which were then executed quickly without negotiation and paid in advance (and, on at least one occasion, in secret).⁵³ In the context of this unique case and the non-traditional manner in which the FTX Group functioned, this is enough to survive a motion to dismiss on this issue. The Motion with respect to Count VII is therefore denied.

C. Property Recovery Pursuant to 11 U.S.C. § 550(a) and Disallowance Pursuant to 11 U.S.C. § 502(d) (Counts VIII & IX)

Defendants argue that the claims in Count VIII (property recovery pursuant to 11 U.S.C. § 550(a)) and Count IX (claim disallowance pursuant to 11 U.S.C. § 502(d)) should be dismissed because they are dependent upon Plaintiff’s ability to succeed on its avoidance claims. Because Plaintiff’s avoidance claims remain, Defendants’ arguments with respect to these claims are moot.

D. Knowing Assistance of Breach of Fiduciary Duty Under Antigua and Barbuda Law (Count X)

In Count X, Plaintiff asserts a claim against Patel for knowing assistance of breach of fiduciary duties, a claim that arises under the laws of Antigua and Barbuda (where FTX Trading is incorporated). Plaintiff alleges that Bankman-Fried breached his fiduciary duties to FTX Trading when he directed transfers to Defendants. It alleges that Patel knowingly assisted in that breach because he knew that the transfers had little prospect of providing FTX Trading with reasonably equivalent value. Defendants move to dismiss this claim on two grounds: (1) lack of subject matter jurisdiction; and (2) failure to sufficiently allege the claim.

1. Subject Matter Jurisdiction

Defendants argue that this Court lacks subject matter jurisdiction over Count X. The parties do not disagree that the claim is non-core and that the Court’s grant of authority over it springs solely from the fact that this proceeding may be “related to” the Debtors’ bankruptcy cases.⁵⁴ The dispute is whether the “close nexus” test applies to determine “related to” jurisdiction

⁵¹ *OHC Liquidation Tr. v. Credit Suisse First Bos. (In re Oakwood Homes Corp.)*, 389 B.R. 357, 366 (D. Del. 2008).

⁵² *In re Winstar Commc’ns, Inc.*, 554 F.3d 382, 395 (3d Cir. 2009) (internal quotations and alterations omitted).

⁵³ Complaint ¶¶ 37-60.

⁵⁴ See 28 U.S.C. § 1334 ([T]he district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.”).

under the Third Circuit’s holding in *Resorts*⁵⁵ or whether the “conceivable effect” test applies under the Third Circuit’s holding in *Pacor*.⁵⁶ Typically, the latter test applies to claims brought prior to confirmation and the former to those brought after.⁵⁷

Defendants argue that the “close nexus” test applies to Count X because the Complaint was filed after the Confirmation Order was entered. If the Court applies that test, Defendants assert that “related to” jurisdiction will not exist because the matter does not affect the interpretation, implementation, consummation, execution, or administration of the Plan.⁵⁸ The Plaintiff asks the Court to apply the “conceivable effect” test instead of the “close nexus” test because the Complaint was filed after the Confirmation Order was entered but before the Plan’s Effective Date. Under that test, Plaintiff argues that the Court has the authority to adjudicate Count X because it seeks monetary damages that will inure to the benefit of creditor recoveries, thus effecting the administered estates.

As the Third Circuit has explained, its reasoning for departing from the *Pacor* test in the post-confirmation period is because application of that test becomes difficult once a bankrupt debtor’s estate ceases to exist.⁵⁹ Although, as Defendants point out, Third Circuit opinions generally refer to the confirmation date of a plan and not its effective date as the point in time when the standard changes,⁶⁰ this is likely because the confirmation date and the effective date of a plan are usually in such proximity that distinguishing between the two is unnecessary. However, this does not mean that the confirmation date is always determinative. As the Third Circuit explained in *Venoco*,

⁵⁵ *Binder v. Price Waterhouse & Co., LLP (In re Resorts Int’l, Inc.)*, 372 F.3d 154, 168-69 (3d Cir. 2004) (“[W]here there is a close nexus to the bankruptcy plan or proceeding, as when a matter affects the interpretation, implementation, consummation, execution, or administration of a confirmed plan or incorporated litigation trust agreement, retention of post-confirmation bankruptcy court jurisdiction is normally appropriate.”).

⁵⁶ *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (holding that a bankruptcy court has related to jurisdiction over a proceeding so long as “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy”).

⁵⁷ *Geruschat v. Ernst Young LLP (In re Seven Fields Dev. Corp.)*, 505 F.3d 237, 265 (3d Cir. 2007) (“[W]ith respect to ‘related to’ jurisdiction, the *Pacor* test applies in all disputes raised pre-confirmation and the ‘close nexus’ test applies in all disputes raised post-confirmation, regardless of when the conduct alleged in the complaint occurred.”).

⁵⁸ *Resorts*, 372 F.3d at 168-69 (jurisdiction is normally appropriate where the matter “affects the interpretation, implementation, consummation, execution, or administration of a confirmed plan[.]”).

⁵⁹ *Id.* at 165 (“At the most literal level, it is impossible for the bankrupt debtor’s estate to be affected by a post-confirmation dispute because the debtor’s estate ceases to exist once confirmation has occurred.”); *Seven Fields*, 505 F.3d at 265 (“In *Resorts*, we indicated that our central reason to depart from the *Pacor* test in the post-confirmation context was that there no longer is an estate that can be affected so application of the *Pacor* test was ‘problematic.’”).

⁶⁰ See e.g., *Seven Fields*, 505 F.3d at 265 (concluding that “with respect to ‘related to’ jurisdiction, the *Pacor* test applies in all disputes raised pre-confirmation and the ‘close nexus’ test applies in all disputes raised post-confirmation. . . .”).

[P]arties often use the terms “confirmation date” and “effective date” interchangeably, but there is a meaningful difference. Typically “the debtor’s estate ceases to exist once confirmation [of a plan] has occurred.” *In re Resorts Int’l, Inc.*, 372 F.3d 154, 165 (3d Cir. 2004) (citation omitted); *see also* 11 U.S.C. § 1141(b) (“Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.”). However, that is not the case here where the order confirming the Plan provided that Venoco’s assets were vested in the Trust as of the Plan’s effective date, not the confirmation date. *See* JA 459. While the effective date typically occurs shortly after confirmation, there was a nearly five-month delay here between confirmation in May 2018 and the Plan going effective in October 2018. Thus the relevant date for the California Parties’ argument is the effective date, not the confirmation date, though this distinction does not affect the result we reach.⁶¹

Stated differently, the event that triggers a change in the jurisdictional inquiry is the cessation of the estate. As Judge Goldblatt recently explained in his *Smallhold* decision:

In an ordinary chapter 11 corporate reorganization case, the effective date of the plan marks the dividing line between the time when the debtor is “in” bankruptcy and the date when it emerges from bankruptcy protection. That date is important for a number of reasons. One of them is that while a company is “in” bankruptcy, its assets are part of the “bankruptcy estate.” And any dispute that can have a “conceivable effect” on that estate falls within the subject-matter jurisdiction of the bankruptcy court.⁶²

Here, as in *Venoco*, the Confirmation Order vested all property of the Debtors’ estates in the required post-confirmation wind-down entities as of the Plan’s Effective Date, not the date of the Confirmation Order.⁶³ Therefore, the estates did not cease their existence until the Effective Date, and the Court’s jurisdiction over Count X is determined by the *Pacor* test. As stated in *Pacor*, a bankruptcy court has jurisdiction over a proceeding so long as “the outcome of that

⁶¹ *Davis v. Cal. (In re Venoco LLC)*, 998 F.3d 94, 107 n.14 (3d Cir. 2021). The Court acknowledges Defendants’ argument that this *Venoco* statement is likely *dicta*. Nevertheless, it is relevant to the question presented and persuasive.

⁶² *In re Smallhold, Inc.*, No. 24-10267, 2025 WL 2395029, at *1 (Bankr. D. Del. Aug. 18, 2025).

⁶³ *Compare* Bankruptcy Case, D.I. 26404 (Confirmation Order) ¶ 106 (“As provided in the Plan, on the Effective Date, the Plan Assets shall be deemed irrevocably transferred and assigned to and automatically vested in the Wind Down Entities[.]”); Plan § 5.13 (same), *with* Confirmation Order ¶ 152 (“During the period from entry of this Confirmation Order through and until the Effective Date, the Debtors shall continue to operate their businesses as debtors-in-possession in the ordinary course in a manner consistent with past practice in all material respects, and as otherwise necessary to consummate the Plan, subject to all applicable Final Orders, the Plan and any other Plan Documents.”).

proceeding could conceivably have any effect on the estate[.]”⁶⁴ The Court finds that this standard is met here where the prosecution of Count X could result in the recovery of additional funds for creditors. Subject matter jurisdiction over Count X is therefore proper.

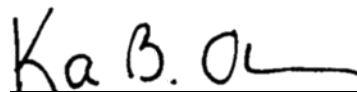
2. Failure to State a Claim

Defendants also move to dismiss Count X as insufficiently pled, arguing that the Plaintiff does not establish that the claim of knowing assistance of a breach of fiduciary duty is recognized by the laws of Antigua or Barbuda. Defendants contend that the declaration submitted by Plaintiff in support of its opposition to the Motion fails to attach a single case that confirms the existence of the claim or that sets forth its elements.⁶⁵ But it is the burden of the Defendants – not the Plaintiff – to make such a showing at this stage.⁶⁶ Defendants do not submit a declaration of their own or put forth any other evidence that supports their assertion that the claim is not recognized. Consequently, the Motion with respect to Count X will be denied.

VI. CONCLUSION

For the reasons set forth above, Counts V and VI with respect to the Big Deal Transfer and Earned Media Transfer are **DISMISSED**. The remainder of the relief requested in the Motion is **DENIED**.

Dated: October 27, 2025
Wilmington, Delaware



Karen B. Owens
Chief Judge

⁶⁴ *Pacor*, 743 F.2d at 994.

⁶⁵ *See Adv. D.I. 25 (Declaration of C. Debra Burnette)*.

⁶⁶ *See Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005) (stating that on a Rule 12(b)(6) motion, “[t]he defendant bears the burden of showing that no claim has been presented.”).