IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHUHUAN YU, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. RMG SPONSOR, LLC, MKC INVESTMENTS LLC, ROBERT S. MANCINI, PHILIP KASSIN, D. JAMES CARPENTER, W. GRANT GREGORY, CRAIG BRODERICK, W. THADDEUS MILLER, and STEVEN P. BUFFONE, Defendants.	C.A. No. 2021-0932-NAC

PLAINTIFF'S OPENING BRIEF IN SUPPORT OF APPROVAL OF PROPOSED SETTLEMENT, CLASS CERTIFICATION, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE FEE AWARD

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Plaintiff Shuhuan Yu ("Plaintiff") submits this opening brief in support of the proposed Settlement[1] for the above-captioned class action. Plaintiff brought this Action on behalf of a putative class of Class A common stockholders of RMG Acquisition Corp. ("RMG"), a special purpose acquisition company ("SPAC"), that did not redeem their shares of RMG stock in connection with its merger with Romeo Systems, Inc. ("Merger"). As set forth below, the Settlement is fair and reasonable, and its approval is in the best interest of the Class.

PRELIMINARY STATEMENT

The proposed Settlement is the result of resolute litigation efforts that involved significant risk in light of, among other things, then-undeveloped Delaware jurisprudence relevant to issues in this Action. Plaintiff filed this Action on October 28, 2021. At the time of filing, the Court had yet to issue its seminal decision, *In re Multiplan Corporation Stockholders Litigation*, 268 A.3d 784 (Del. Ch. 2022). As a result, how the Court would address key issues in a breach of fiduciary duty case arising from a SPAC merger were unknown, including: (i) the applicable standard of review; (ii) whether Plaintiff could bring such claims directly rather than derivatively; (iii) if brought directly, whether the claims were "holder"

[1] Capitalized terms not defined herein have the meanings ascribed to them in the Stipulation and Agreement of Compromise, Settlement, and Release ("Settlement Stipulation") (Dkt. 71). "¶ __" or "¶¶ __" refer to the Verified Second Amended Class Action Complaint ("Complaint") (Dkt. 39). Citations are omitted and emphasis is added throughout unless otherwise indicated.

claims and thus unsuitable for class status; and (iv) whether stockholders effectively acquiesced to the conflicts inherent in the merger. Even after *Multiplan*, Defendants argued that there were important distinctions associated with the Merger here. Indeed, Defendants moved to dismiss Plaintiff's first and second amended complaints.[2] Defendants only relented and answered the Complaint after Plaintiff opposed their motion and submitted supplemental authority in support of her opposition.

Defendants later introduced new arguments in the opening brief in support their Motion for Judgment on the Pleadings or, in the Alternative, for Class Certification.[3] Specifically, Defendants argued that the Class did not suffer compensable damage due to significant trading in Romeo's stock above the redemption price in the months following the Merger.[4] Plaintiff's own non-testifying outside consultant agreed that substantial turnover likely occurred in Romeo's stock ownership above the redemption value during this period. While Plaintiff disputes this as the appropriate measure of damages in an entire fairness

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[2] *See* Dkts. 24, 42.

[3] Dkt. 61.

[4] *Id.* at 7-8.

action, no case has definitively resolved the issue, presenting Plaintiff with novel challenges in establishing damages in this Action.[5]

Plaintiff actively litigated this Action despite the risks she faced. Her counsel reviewed over 6,700 documents consisting of nearly 45,000 pages. Plaintiff also moved for class certification. Moreover, the parties' initial attempt to resolve this Action, including mediation with the assistance of former United States District Court Judge Layn R. Phillips, was unsuccessful. However, after months of further litigation and additional settlement negotiations, the parties accepted a mediator's proposal of $11.99 million.

The proposed Settlement represents a meaningful portion of the maximum realistic recovery stockholders could have achieved at trial if the Court accepted Defendants' damages approach. By Plaintiff's Counsels' estimation, eligible Class Members will recover nearly the full amount of their actual losses upon Settlement approval. Additionally, the Settlement offers RMG stockholders immediate compensation, avoiding years of delay through trial and potential appeals.

[5] The Court recently hinted at this problem for Plaintiff in *In re Hennessy Cap. Acquisition Corp. IV S'holder Litig.*, noting that "a finding of unfair price (not to mention damages) may prove unobtainable—especially since Canoo's stock price recovered and traded around $10 per share for months." 318 A.3d 306, 322 (Del. Ch. 2024)

Former RMG stockholders were given notice of the Settlement in accordance with the scheduling order entered by the Court on July 1, 2024.[6] To date, there have been no objections. The Settlement hearing is scheduled for October 18, 2024.[7] Plaintiff respectfully requests approval of the Settlement, certification of the Class, an all-in award of 18% of the common fund, inclusive of fees and expenses, and an incentive award of $2,500 for Plaintiff.

FACTUAL BACKGROUND

A. Defendants Create RMG

Defendants Carpenter, Mancini, and Kassin incorporated RMG in Delaware as a blank check company for the purpose of effecting a merger, capital stock-exchange, asset acquisition, share purchase, reorganization, or similar business combination. They then appointed defendants Buffone, Miller, Broderick, and Gregory to join them on the RMG Board of Directors ("Board").

Around the same time, defendants Carpenter, Mancini, and Kassin created the Sponsor. The sole managing member of the Sponsor was MKC, and Carpenter, Mancini, and Kassin are the managing members of MKC. Before RMG went public, Defendants, through the Sponsor, paid approximately $21,500 for 7,187,500 million

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[6] Dkt. 72; *see* Affidavit of Ross D. Murray Regarding Mailing and Publication of the Notice of Proposed Settlement of Class Action ("Murray Aff."), at ¶ 2.

[7] Dkt. 72.

"Founder Shares."[8] RMG's outside stockholders had no say in the selection of RMG's directors, officers, or acquisition target.

Defendants took RMG public on February 12, 2019, selling 20 million units at $10 per share, raising proceeds of $200 million, not including the underwriters' overallotment ("IPO").[9] Each unit consisted of one share of the Company's Class A common stock and one-third of one warrant, with each warrant enabling the holder to purchase one share of Class A common stock at a price of $11.50 per share.[10] Concurrent with the IPO, Defendants purchased 3,766,677 warrants for $5.65 million.[11] Defendants had 24 months from the IPO to complete a business combination or their Founder Shares and warrants would expire as worthless.[12]

B. Defendants Cause RMG to Acquire Legacy Romeo

On October 5, 2020, with just three months remaining to complete a business combination, Defendants announced that RMG would acquire Romeo Power Inc. ("Legacy Romeo"). Legacy Romeo was a privately-held company allegedly

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[8] ¶ 41. A reverse split reduced the number of Founder Shares to 5.75 million. ¶ 16.

[9] ¶ 49.

[10] *Id.*

[11] ¶ 50.

[12] ¶ 49.

engaged in the design and manufacture of lithium-ion battery modules and packs for commercial electric vehicles.

The Merger was contingent on two conditions: (i) the affirmative vote of RMG's stockholders at the December 28, 2020 Special Meeting; and (ii) the level of stockholder redemptions.[13] Separate and distinct from their right to vote on the Merger, RMG's outside stockholders had the option to invest in the post-Merger company or exchange (*i.e.*, "redeem") their RMG stock for their $10 per share investment, plus interest.[14]

To obtain RMG stockholder approval of the Merger and to limit RMG stockholder redemptions, Defendants made a series of false and misleading statements in support of the Merger.[15] For example, in conjunction with their announcement of the Merger, Defendants filed an investor presentation claiming that Legacy Romeo's revenue would increase over twelve-fold, from $11 million in 2020 to $140 million in 2021.[16] Then, on October 15, 2020, Defendants filed RMG's Registration Statement on Form S-4 (together with its amendments,

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[13] ¶ 54.

[14] ¶¶ 4, 36.

[15] ¶¶ 9, 51-63.

[16] ¶¶ 6, 50.

"Registration Statement").[17] The Registration Statement reiterated the $140 million revenue estimate for 2021, claimed that Legacy Romeo had a backlog of approximately $310 million, and asserted a "close relationship" with at least four battery cell suppliers, suggesting Legacy Romeo was a more attractive target than other businesses.[18]

Defendants' representations achieved their intended result. At RMG's December 28, 2020 Special Meeting, 99.8% of voting RMG stockholders voted in favor of the Merger and no stockholders redeemed any of their shares.[19] The Merger closed on December 29, 2020.[20]

C. Post-Merger Developments Reveal the Truth About Romeo

Romeo revealed its true business health and prospects in a series of post-Merger disclosures. On March 30, 2021, Romeo filed a press release on Form 8-K revealing, among other things, that "Romeo Power is subject to a significant shortfall in cell capacity industrywide, and now expects its revenue for 2021 to be in the range of $18-40 million," well below the $140 million previous projected.[21] During the

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[17] ¶ 56.

[18] ¶¶ 60, 61, 65.

[19] ¶¶ 10, 63.

[20] ¶ 10.

[21] ¶ 71.

earnings conference call with analysts and investors held that same day, Romeo's CEO, Lionel Selwood, admitted that Romeo had only two cell suppliers.[22]

On April 12, 2021, Romeo filed with the SEC its 2020 Form 10-K revealing, among other things, that "[t]he portion of our backlog as of December 31, 2020, that is expected to be recognized in the twelve-month period following December 31, 2020 is approximately $23.4 million," well below the $59 million in backlog revenue previously anticipated to be recognized for the 12-month period ending September 30, 2021.[23]

On March 1, 2022, Romeo filed its full year results for the 2021 fiscal year on SEC Form 8-K in which it reported total revenue of just $16.8 million, well below the $140 million in revenue previously projected.[24]

Finally, on August 8, 2022, Romeo announced that it had agreed to be acquired by Nikola Corporation ("Nikola") in a stock-for-stock transaction that valued Romeo at $144 million ($0.74 a share).[25]

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[22] ¶ 72.

[23] ¶¶ 72, 75.

[24] ¶ 81.

[25] ¶ 82.

D. Plaintiff Files Suit, Prosecutes the Action, and Pursues Discovery

On October 28, 2021, Plaintiff filed the Verified Class Action Complaint, on behalf of herself and all other similarly situated former RMG stockholders, against all Defendants except MKC, asserting claims for breach of fiduciary duty and unjust enrichment in connection with the impairment of putative Class's redemption rights.[26]

On January 26, 2022, Defendants (except MKC) filed a motion to dismiss Plaintiff's initial complaint, with their opening brief and supporting exhibits.[27]

On April 22, 2022, Plaintiff filed her Verified Amended Class Action Complaint, asserting similar claims for breach of fiduciary duty and unjust enrichment and a new claim for aiding and abetting breach of fiduciary duty and adding MKC as an additional defendant.[28]

On June 17, 2022, Defendants filed a Motion to Dismiss Plaintiff's Verified Amended Class Action Complaint, with their opening brief and supporting exhibits.[29]

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[26] Dkt. 1.

[27] Dkts. 9-11.

[28] Dkt. 13.

[29] Dkts. 24-26.

On August 17, 2022, Plaintiff filed her Verified Second Amended Class Action Complaint against Defendants, asserting similar claims for breach of fiduciary duty, unjust enrichment, and aiding and abetting breach of fiduciary duty.[30]

On September 23, 2022, Defendants filed a Motion to Dismiss the Complaint, with their opening brief and supporting exhibits.[31] Plaintiff filed an answering brief in opposition to Defendants' motion on December 1, 2022 and submitted supplemental authorities in support of her opposition on May 3, 2023.[32] On August 28, 2023, Defendants withdrew their Motion to Dismiss the Complaint.[33]

That same day, Defendants filed their Answer and Affirmative Defenses to Plaintiff's Verified Second Amended Class Action Complaint ("Answer"), asserting that: (i) the Complaint fails to state a claim upon which relief could be granted; (ii) Plaintiff's claims fail under the business judgment rule; (iii) Plaintiff's claims are barred by 8 *Del. C.* § 141(e) because Defendants relied in good faith on RMG's records and information presented by its officers or advisors; (iv) Plaintiff's claims are derivative and fail under Delaware Court of Chancery Rule 23.1; (v) Plaintiff's claims are barred by the 8 *Del. C.* § 102(b)(7) exculpatory provision in RMG's

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30 Dkt. 39

31 Dkts. 42-44.

32 Dkts. 48, 54.

33 Dkt. 60.

certificate of incorporation; (vi) Defendants' conduct did not cause any injury-in-fact or damages to Plaintiff; and (vii) Plaintiff's claims are barred "by laches, waiver, ratification, acquiescence, and/or estoppel," because "the alleged conflicts of interest were disclosed to, and known by, Plaintiff [before] … acquiring RMG stock and … voting on the Merger."[34]

Also on August 28, 2023, Defendants filed their Motion for Judgment on the Pleadings or, in the Alternative, for Class Certification, arguing they are entitled to judgment because Plaintiff and the putative Class are not entitled to recover and, alternatively, that class certification should be granted under a narrowed class definition.[35] Plaintiff filed her Motion for Class Certification on November 6, 2023.[36]

On May 16, 2023, Plaintiff served her first requests for production of documents.[37] Defendants served responses and objections to the requests for production on June 15, 2023.[38] On August 31, 2023, Defendants produced 6,851

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[34] Dkt. 60 at 40.

[35] Dkt. 61.

[36] Dkt. 68.

[37] Dkt. 55.

[38] Dkt. 56.

documents consisting of 47,954 pages. The parties continued to meet and confer regarding a search protocol for additional responsive documents.

Plaintiff served a subpoena *duces tecum* and *ad testificandum* on Nikola on September 20, 2023.[39] On October 2, 2023, Plaintiff served her first set of interrogatories directed to all Defendants.[40]

E. The Parties Engage in Mediation and Negotiate the Settlement

The parties engaged in substantial settlement negotiations before agreeing to the Settlement.[41] On March 23, 2023, the parties held a mediation session with the assistance of former U.S. District Judge Layn R. Phillips of Phillips ADR Enterprises.[42] The March 23, 2023 mediation session was unsuccessful.[43]

The parties re-engaged in settlement negotiations beginning in August 2023, facilitated by Judge Phillips, while the litigation progressed.[44] Prior to these discussions, Plaintiff retained a valuation and damages consultant to assist in estimating Class-wide damages under various theories. Ultimately, these renewed

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[39] Dkt. 63.

[40] Dkt. 65.

[41] Dkt. 71 at ¶ S.

[42] *Id*.

[43] *Id.*

[44] *Id*.

negotiations led to a final mediator's recommendation to settle the Action for $11.99 million in cash, inclusive of attorneys' fees and costs, that the parties accepted on November 6, 2023.[45] The parties then negotiated the definitive terms of the Settlement, which were agreed to on June 17, 2024, and which are reflected in the Settlement Stipulation and the Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear ("Notice"),[46] which the Court approved on July 1, 2024 in the Scheduling Order.[47]

ARGUMENT

I. The Settlement Class Should Be Certified

Class actions in this Court are governed by Rule 23.[48] "Certification of a class under Court of Chancery Rule 23 is a two-step process, which requires that the purported class meet all four criteria within Court of Chancery Rule 23(a) and at least one of the criteria within Court of Chancery Rule 23(b)."[49]

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[45] *Id.*

[46] Dkt. 71, Ex. B.

[47] Dkt. 72.

[48] *Nottingham Partners v. Dana*, 564 A.2d 1089, 1094 (Del. 1989).

[49] *In re Ebix, Inc. S'holder Litig.*, 2018 WL 3570126, at *1 (Del. Ch. July 17, 2018).

On July 1, 2024, the Court entered the Scheduling Order, which, among other things, preliminarily certified, under Rules 23(a), 23(b)(1), and 23(b)(2), a non-opt-out class (previously defined as the "Class") as follows:

> All Persons who held RMG Class A common stock as of the Redemption Deadline, either of record or beneficially, and who did not redeem all of their shares, including their heirs, successors-in-interest, successors, transferees, and assigns, but excluding the Excluded Persons.[50]

Certification of the Class is appropriate because this Action satisfies Rule 23(a) and fits "within the framework provided for in subsection (b)" of Rule 23.[51]

A. The Class Satisfies the Requirements of Rule 23(a)

Under Rule 23(a), a class must meet four requirements to be certified: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy.[52]

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[50] Dkt. 72 at ¶ 2. "Excluded Persons" means "(i) RMG, RMG Sponsor, LLC, MKC Investments LLC, Robert S. Mancini, Philip Kassin, D. James Carpenter, W. Grant Gregory, Craig Broderick, W. Thaddeus Miller, and Steven P. Buffone, as well as the members of their immediate families, and any entity in which any of them has a controlling interest, and the legal representatives, heirs, successors, or assignees of any such excluded party; (ii) any trusts, estates, entities, or accounts that held RMG shares for the benefit of any of the foregoing; and (iii) Nikola and its present affiliates." Dkt. 71 at ¶ 1(i).

[51] *Nottingham*, 564 A.2d at 1095.

[52] Del. Ct. Ch. R. 23(a).

1. The Class Is Sufficiently Numerous

Rule 23(a)(1) requires that the class members be "so numerous that joinder of all members is impracticable."[53] While "[t]here is no bright-line cutoffs," "numbers 'in excess of forty, and particularly in excess of one hundred, have sustained the numerosity requirement.'"[54] Here, the 23 million shares of RMG Class A common stock outstanding on the redemption deadline were likely held by thousands of potential Class Members, making it impracticable to join all potential plaintiffs before this Court.[55] Therefore, the Class satisfies the numerosity requirement of Rule 23(a)(1).

2. There Are Issues of Law and Fact Common to All Class Members

Rule 23(a)(2) requires that there be at least one "question[] of law or fact common to [members of the] class."[56] Commonality will be met "where the question of law linking the class members is substantially related to the resolution

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[53] Del. Ct. Ch. R. 23(a)(1).

[54] *In re Countrywide Corp. S'holders Litig.*, 2009 WL 846019, at *13 (Del. Ch. Mar. 31, 2009) (quoting *Leon N. Weiner Assocs. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991)).

[55] *See* ¶¶ 5, 49; October 15, 2020 Registration Statement, at 18 ("On the record date, there were 28,750,000 shares of RMG common stock entitled to vote at the special meeting, of which 23,000,000 were public shares and 5,750,000 were Founder Shares.").

[56] Del. Ct. Ch. R. 23(a)(2).

of the litigation even though the individuals are not identically situated."[57] That the Class Members have "'different interests and views' will not defeat commonality, so long as the common legal questions are not dependent on divergent facts and significant factual diversity does not exist among individual class members."[58]

The factual and legal issues in this Action are common to all Class Members, including whether: (i) the Officer Defendants and Director Defendants breached their fiduciary duty by impairing Class Members' right to redeem their RMG shares before the redemption deadline; (ii) the Sponsor and MKC aided and abetted these breaches of fiduciary duty and were unjustly enriched in connection with the Merger; and (iii) the extent of damages resulting from such misconduct. Since this Action involves claims that "implicate the interests of all members of the proposed class of shareholders," the commonality requirement of Rule 23(a)(2) is satisfied.[59]

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[57] *In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1141 (Del. 2008).

[58] *Id.*

[59] *In re Lawson Software, Inc.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011); *see also e.g.*, *Hynson v. Drummond Coal Co.*, 601 A.2d 570, 575 (Del. Ch. 1991) ("An action seeking to prove a breach of [fiduciary] duty is inescapably a true class action" because "[r]elief whether it be by injunction, rescission or an award of money will be determined by reference to the effects of the fiduciary's wrong on ... the corporation or all of its stockholders as a class.").

3. Plaintiff's Claims Are Typical of the Claims of Other Class Members

Rule 23(a)(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class."[60] Rule 23(a)(3) "focuses on whether the class representative['s] claim … fairly presents the issues on behalf of the represented class" and requires that "the legal and factual position of the class representative must not be markedly different from that of the members of the class."[61] The Court will generally find typicality where, as here, the class representative's claims "arise[] from the same event or course of conduct that gives rise to the claims [or defenses] of other class members and [are] based on the same legal theory."[62]

Plaintiff's claims arise from the same events, namely the Officer Defendants' and Director Defendants' breaches of fiduciary duty by impairing the Class Members' decision whether to redeem their RMG shares and the Sponsor and MKC aiding and abetting such breaches and unjust enrichment arising from these violations. All proposed Class Members were affected by the alleged misconduct in a similar manner and have the same interest, namely establishing the unfairness of

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[60] Del. Ct. Ch. R. 23(a)(3).

[61] *Weiner*, 584 A.2d at 1225-26.

[62] *N.J. Carpenters Pension Fund v. infoGROUP, Inc.*, 2013 WL 610143, at *3 (Del. Ch. Feb. 13, 2013).

the Merger and resulting damages. Thus, Plaintiff's claims arise "'from the same event or course of conduct that gives rise to the claims [or defenses] of other class members and is based on the same legal theory,'"[63] satisfying the typicality requirement.[64]

4. Plaintiff Has Fairly and Adequately Protected the Interests of the Class

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class."[65] As explained above, Plaintiff and Plaintiff's Counsel have adequately protected the interests of the Class.[66] Accordingly, the requirements of Rule 23(a)(4) are satisfied.[67]

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[63] *Weiner*, 584 A.2d at 1226.

[64] *In re AmTrust Fin. Servs. Inc. S'holder Litig.,* Consol. C.A. No. 2018-0396-LWW, at 33 (Del. Ch. Nov. 22, 2021) (TRANSCRIPT) (noting typicality was met because "all class members, as stockholders, face[d] the same alleged injury from the same alleged conduct, and the plaintiffs [were] affected the same as the rest of the class members."); *see also In re MultiPlan Corp. S'holders Litig.*, C.A. No. 2021-0300-LWW, at ¶ 5(c) (Del. Ch. Mar. 1, 2023) (FINAL ORDER AND JUDGMENT) (finding in settlement of fiduciary duty action challenging de-SPAC transaction that "the claims of Plaintiffs are typical of the claims of the Class").

[65] *Nottingham*, 564 A.2d at 1094-95.

[66] *See supra* Section I.D.

[67] *See AmTrust*, Consol. C.A. No. 2018-0396-LWW, Tr. at 33.

B. Certification is Proper Under Rules 23(b)(1) and 23(b)(2)

Beyond the requirements of Rule 23(a), for a proposed class to be certified it must "fit[] into one of the three categories specified in Court of Chancery Rule 23(b)."[68] "Delaware courts 'repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2).'"[69] The same is appropriate here.

A class may be certified under Rule 23(b)(1) where: (i) the prosecution of separate actions by or against individual members of the class would create a risk of "'inconsistent or varying adjudications'" which would create incompatible standards of conduct for the opposing party; and (ii) "'adjudications with respect to individual members of the Class'" would as a practical matter be dispositive of the interests of the other members not parties to this Action.[70]

Here, if proposed Class Members commenced separate actions, Defendants would be subject to the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct and would, as a practical matter, be dispositive of the interests of other proposed Class Members, making certification

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[68] *Ebix*, 2018 WL 3570126, at *4.

[69] *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 432-33 (Del. 2012).

[70] *Countrywide*, 2009 WL 846019, at *11 (quoting *Weiner*, 584 A.2d at 1226 n.2).

under Rule 23(b)(1) appropriate.[71] In short, absent certification, multiple lawsuits by individual plaintiffs could follow, which would prejudice non-parties and substantially burden the Court with an inefficient means of resolving the Action.[72]

Certification pursuant to Rule 23(b)(2) is also warranted where defendants are alleged to have engaged in a single course of conduct generally applicable to the Class, even if there is simply monetary recovery.[73] Here, Plaintiff alleged that Defendants breached their fiduciary duties to RMG's stockholders, and that all Class Members were harmed by Defendants' alleged misconduct. Thus, certification under Rule 23(b)(2) is appropriate here as Defendants' conduct was

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[71] *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2022 WL 2236192, at *11 (Del. Ch. June 14, 2022) (certifying proposed class under Rules 23(b)(1) and (2), noting: "If the Proposed Class is not certified, and the instant facts are sued upon across multiple matters, a risk of inconsistent adjudications certainly would arise.").

[72] *See In re Best Lock Corp. S'holder Litig.*, 845 A.2d 1057, 1095 (Del. Ch. 2001) ("Class certification under Rule 23(b)(1) is proper in this case because the multiple lawsuits that would follow were this motion denied would be both prejudicial to nonparties and inefficient."); *see also MultiPlan*, C.A. No. 2021-0300-LWW, Order at ¶ 5(e) (finding in settlement of fiduciary duty action challenging de-SPAC transaction that "the prosecution of separate … Class Members would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for Defendants, and, as a practical matter, the disposition of the Action as against Defendants would influence the disposition of any pending or further identical suits, actions, or proceedings brought by other Class Members" and certifying proposed class under Rule 23(b)(1)).

[73] *See In re Del Monte Foods Co. S'holders Litig.*, C.A. No. 6027-VCL, at 48 (Del. Ch. Dec. 1, 2011) (TRANSCRIPT) ("The idea that a court can't certify a class under (b)(2) simply because it involves money damages is … based on an overly cramped and unpersuasive reading of Shutts and Wal-Mart.").

generally applicable to the Class as a whole and the Class is treated fairly with respect to the application of the relief.

II. The Settlement Should Be Approved as Fair, Reasonable, and Adequate

Delaware law "'favors the voluntary settlement of contested issues.'"[74] When deciding whether to approve a proposed settlement of a stockholder class action, the Court exercises its informed judgment as to whether the proposed settlement is "reasonable."[75] Under the amended Court of Chancery Rules ("Rules"), the Court considers whether:

> (A) the representative party and class counsel have adequately represented the class;
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> (B) adequate notice of the hearing was provided;
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> (C) the proposed dismissal or settlement was negotiated at arm's length; and
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> (D) the relief provided for the class falls within a range of reasonableness, taking into account:
>
> (i) the strength of the claims;
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> (ii) the costs, risks, and delay of trial and appeal;
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> (iii) the scope of the release; and
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> (iv) any objections to the proposed dismissal or settlement.[76]

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[74] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1042 (Del. Ch. 2015).

[75] *Prezant v. De Angelis*, 636 A.2d 915, 921 (Del. 1994).

[76] Del. Ct. Ch. R. 23(f)(5). The new rule is consistent with prior law. *See, e.g.*, *Polk v. Good*, 507 A.2d 531, 535-36 (Del. 1986) ("facts and circumstances" to be considered

The Settlement is fair and reasonable and satisfies all the requirements of Rule 23(f)(5).

A. The Settlement Falls Within the Range of Reasonableness

The Court weighs the "give" (*i.e.*, the value of the claims released) against the "get" (*i.e.*, the value of the consideration obtained) to "'determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept.'"[77] Plaintiff respectfully submits that a comparison of the "give" (the claims released) and the "get" (the $11.99 million cash payment to the Class) demonstrates the fairness, reasonableness, and adequacy of the Settlement.

1. Factors (D)(I) and (Ii): the Strength of the Claims Weighted Against the Costs, Risks, and Delay of Trial and Appeal

The $11.99 million cash payment Plaintiff secured is a substantial "get" for the Class that provides meaningful, immediate, and tangible benefits. The "get"

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include: (i) the probable validity of the claims; (ii) the apparent difficulties in enforcing the claims through the courts; (iii) the collectability of any judgment recovered; (iv) the delay, expense and trouble of litigation; (v) the amount of the compromise as compared with the amount of any collectible judgment; and (vi) the views of the parties involved) (citing *Rome v. Archer*, 197 A.2d 49, 53-54 (Del. 1964)).

[77] *Activision*, 124 A.3d at 1043, 1064 ("The tasks assigned to the court include … assessing the reasonableness of the 'give' and the 'get' ….").

compares favorably to the "give" in this situation considering the risk of establishing damages.

Plaintiff believed that she had strong process-based liability claims against Defendants. Plaintiff was confident that the Court would analyze the Merger under the exacting entire fairness standard "due to inherent conflicts between the SPAC's fiduciaries and public stockholders in the context of a value-decreasing transaction."[78] The burden would then fall to Defendants "to demonstrate that the challenged act or transaction was entirely fair."[79] Given the factual record supporting Plaintiff's belief that that Defendants prioritized closing the Merger over their fiduciary obligations to RMG stockholders, which Plaintiff would have further developed with depositions, Plaintiff is confident Defendants could not have carried their burden to demonstrate fair process.

Defendants likely would be unable to meet their burden of demonstrating fair price, based on the true value of Romeo.[80] Romeo had no ability to meet the projections in the Registration Statement and in the ensuing years would be acquired

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[78] *MultiPlan*, 268 A.3d at 792.

[79] *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 52 (Del. 2006).

[80] *See, e.g.*, *In re Lordstown Motors Corp. S'holders Litig.*, 2022 WL 678597, at *5 (Del. Ch. Mar. 7, 2022) ("The plaintiffs' attempted recovery in this Action, by contrast, could turn on the $10 redemption price (plus interest) relative to the value the class received in the de-SPAC transaction.").

by Nikola at a pittance, with Nikola eventually carving Romeo out and placing it in bankruptcy. However, Plaintiff faced significant challenges demonstrating that the members of the Class experienced an injury-in-fact resulting from Defendants' unfair dealing due to the length of time Romeo's stock price traded above the redemption price following the Merger and the amount of trading that occurred during this period. Defendants argued forcefully in their Motion for Judgment on the Pleadings or, in the Alternative, for Class Certification that the heavy trading in Romeo stock meant that Class members would have largely sold their former RMG shares at prices at or above the redemption price and thus would have incurred no harm. The Court recently hinted at the difficulty of proving damages in such a situation in *Hennessy,* stating, "finding of unfair price (not to mention damages) may prove unobtainable – especially since Canoo's stock price recovered and traded around $10 per share for months."[81]

Plaintiff's outside valuation and damages consultant conducted a statistical analysis of Romeo's stock trading post-Merger and similarly concluded that significant turnover likely occurred post-Merger before the share price fell below the redemption price. If the Court adopted Defendants' argument that an injury-in-fact was required for Class Members to recover, the consultant's

[81] *Hennessy*, 318 A.3d at 322.

preliminary analysis estimated class-wide injury-in-fact damages at approximately $12.5 million. Plaintiff's recovery of $11.99 million compares very favorably to this estimate.

There was also the real possibility that the Court would limit Plaintiff's recovery on behalf of the Class to nominal damages in light of the amount of time Romeo's stock traded above the redemption price. In *Columbia Pipeline*, the Court noted that nominal damages of $1.00 to $2.00 per share is supported by precedent, while awarding $0.50 per share nominal damages based on a disclosure violation.[82] With 23 million shares subject to redemption, the potential nominal damages were between $11.5 million and $46 million. Again, the $11.99 million recovery compares favorably to this amount.

Defendants would also likely argue that Plaintiff would need to prove causation and reliance at trial to recover more than nominal damages for their claims of false and misleading representations.[83] Proving "the causal chain" necessary for compensatory or rescissory damages would require demonstrating that Plaintiff and the Class "relied on the misrepresentation or material omission in making a decision [on the Transaction], the decision must have caused the damages, and the damages

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[82] *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 299 A.3d 393, 409-500 (Del. Ch. 2023).

[83] *See Dohmen v. Goodman*, 234 A.3d 1161, 1168 (Del. 2020).

must be quantified."[84] Proving Class-wide reliance would present additional risk, though it is arguable whether Plaintiff would have been required to prove causation and reliance.[85]

Beyond all those trial risks, Plaintiff recognized that any post-trial recovery would be subject to meaningful appellate risk:

> During the post-*Americas Mining* era, plaintiffs in representative actions who have prevailed at the trial court level and recovered a monetary judgment have lost on appeal 67% of the time, with a 100% reversal rate since 2016. A plaintiff who takes a case to trial and prevails thus faces significant appellate risk. A settlement renders that risk trivial.[86]

Despite believing in the strength of her claims, Plaintiff recognized that litigation is inherently uncertain. While the Court's SPAC jurisprudence is growing, certain issues, including what damages are available to SPAC stockholders asserting breach of fiduciary claims, remain matters of first impression. In light of the risks, Plaintiff believes that the $11.99 million recovery for the Class compares favorably to an uncertain trial outcome.

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[84] *Columbia Pipeline*, 299 A.3d at 485.

[85] *Id*. at 493 ("This outcome has the benefit of being consistent with *Corwin*, which presumes both reliance and causation by holding that when fiduciaries have satisfied their duty of disclosure in connection with a transaction that requires stockholder approval, then the effect of the vote is to lower the standard of review to an irrebuttable version of the business judgment rule.").

[86] *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 696-97 (Del. Ch. 2023) *aff'd*, __ A.3d __, 2024 WL 3811075 (Del. 2024).

2. Factor (D)(iii): The Scope of the Release

As to Rule 23(f)(5)(D)(iii), the "scope of the release" is reasonable and appropriately tailored to Plaintiff's claims in the Action.[87] Out of an abundance of caution, the release carved out claims that had been asserted in the securities action.[88] Specifically, the release language in the Settlement Stipulation states:

> ***"Released Plaintiff's Claims" means***, as against the Released Defendant Parties, to the fullest extent permitted by Delaware law, any and all manner of claims, including Unknown Claims, suits, actions, causes of action, demands, liabilities, losses, rights, obligations, duties, damages, diminution in value, disgorgement, debts, costs, expenses, interest, penalties, fines, sanctions, fees, attorneys' fees, expert or consulting fees, agreements, judgments, decrees, matters, allegations, issue, and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or unapparent, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, whether based on state, local, federal, foreign, statutory, regulatory, common, or other law or rules that: ***(a) were alleged, asserted, set forth, or claimed in the Action; or (b) could have been alleged, asserted, set forth, or claimed in the Action or in any other action in any other court, tribunal, or proceeding*** by Plaintiff or any other member of the Class, individually or on behalf of the Class directly, and ***that are based upon, arise out of, or relate to the facts alleged in the Complaint or any prior version of the complaint in this Action*** (including, but not limited to, any claims related to the Merger and related stockholder votes); provided, however, that the Released Plaintiff's Claims shall not include: (i) any claims to enforce this Stipulation; (ii) any claims to enforce a final order and judgment entered by the Court; or (iii) any claims asserted in the operative

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[87] Del. Ct. Ch. R. 23(f)(5)(D)(iii).

[88] *See In re Romeo Power Inc. Sec. Litig.*, Case No. 1:21-cv-03362 (S.D.N.Y).

complaint in the action captioned *In re Romeo Power Inc. Securities Litigation*, Case No. 1:21-cv-03362 (S.D.N.Y).[89]

The release is reasonably and appropriately tailored to the claims asserted in this Action. It is also in line with others previously approved by the Court of Chancery in *Multiplan* and similar cases.[90]

3. Factor (D)(iv): Any Objections to the Proposed Dismissal or Settlement

Under Rule 23(f)(5)(D)(iv), the absence of objectors weighs in favor of approving the proposed Settlement.

The parties submitted as Exhibits B, B-1, and C to the Stipulation, a proposed Notice, Proof of Claim, and Summary Notice, which the Court approved "in form and substance" in the July 1, 2024 Scheduling Order.[91] As detailed in the affidavit submitted on behalf of the Settlement Administrator, summary notice was published in *The Wall Street Journal* and once over a national newswire service and notice was posted on the Settlement Administrator's website and mailed, by first class U.S. mail or other mail service if mailed outside the U.S., postage prepaid, to each Class Member at their last known address who could be identified: (i) as a result of

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[89] Dkt. 71 at ¶ 1(z).

[90] *See MultiPlan*, C.A. No. 2021-0300-LWW; *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch. July 5, 2024) (ORDER AND FINAL JUDGMENT).

[91] Dkt. 72 at ¶ 7.

the subpoena on RMG's transfer agent for the Merger, American Stock Transfer & Trust; or (ii) by the Settlement Administrator who contacted entities which commonly hold securities in "street name" as nominees for the benefit of their customers who are beneficial purchasers of securities to identify beneficial holders of RMG Class A common stock on or around the Redemption Deadline.[92]

As required by Rule 23(f)(3)(D), the Notice states in plain, easily understood language:

> (i) the location, date, and time of any hearing; (ii) the nature of the action; (iii) the definition of the class; (iv) a summary of the claims, issues, defenses, and relief that the class action sought; (v) a description of the terms of the proposed dismissal or settlement; (vi) any award of attorney's fees or expenses, or any representative-party award, that will be sought if the proposed dismissal or settlement is approved;[93] (vii) instructions for objectors; (viii) that additional information can be obtained by contacting class counsel; (ix) how to contact class counsel; and (x) not to contact the Court with questions about the terms of the proposed dismissal or settlement.[94]

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[92] Dkt. 71, Ex. B at 5-8; Murray Aff. at ¶¶ 5, 8-9, 12, 14.

[93] Dkt. 71, Ex. B at 19 (notifying Class Members that counsel may seek fees "not to exceed 18% of the Settlement Amount, plus an award of expenses incurred in connection with the Action" and that Plaintiff may seek a service award "not to exceed $5,000").

[94] Del. Ct. Ch. R. 23(f)(3)(D).

While the deadline for objections (October 4, 2024) has not arrived, at the time of this writing, there have not been any "objections to the proposed dismissal or settlement."[95]

B. The Settlement Was Negotiated at Arm's Length

In assessing whether a proposed settlement is fair, this Court gives substantial weight to whether the settlement was reached through arm's-length negotiations.[96] That a proposed settlement was achieved after hard-fought negotiations overseen by an experienced mediator supports the reasonableness of a settlement and weighs in favor of approval.[97]

The Settlement was reached after months of arm's-length negotiations led by the experienced and well-regarded independent mediator, former U.S. District Judge Layn R. Phillips. The mediator oversaw a full-day mediation session on March 23, 2023, which was unsuccessful. The mediator facilitated continued periodic negotiations among the parties over the ensuing eight months before issuing a final mediator's recommendation to settle the Action for $11.99 million, inclusive of attorneys' fees and costs, which the parties accepted. This was followed by

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[95] Del. Ct. Ch. R. 23(f)(5)(D)(iv).

[96] Del. Ct. Ch. R. 23(f)(5)(C).

[97] *See, e.g.*, *Activision*, 124 A.3d at 1067 ("The diligence with which plaintiffs' counsel pursued the claims and the hard fought negotiation process weigh in favor of approval of the Settlement.").

several months of additional arm's length negotiations regarding the definitive settlement papers, which were ultimately filed on June 17, 2024.[98]

C. Adequate Notice of the Settlement Hearing Has Been Provided

Another consideration now enumerated in Rule 23(f)(5)(B) that supports approval of the Settlement is that "adequate notice of the hearing was provided."[99] As discussed above, the Court "approve[d], in form and substance," the Notice, the Proof of Claim, and the Summary Notice that were attached as Exhibits B, B-1, and C to the Stipulation.[100] Such notice:

> (i) constitutes the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder and the Plan of Allocation), of Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, of their right to object to the Settlement, and of their right to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all Persons and entities entitled to receive notice of the Settlement; and (iv) satisfies the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.[101]

Accordingly, adequate notice has been provided to RMG stockholders.

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[98] Dkt. 71.

[99] Del. Ct. Ch. R. 23(f)(5)(B).

[100] Dkt. 72 at ¶ 7.

[101] *Id*. at ¶ 8.

D. Plaintiff and Plaintiff's Counsel Have Adequately Represented the Class

Approval of the proposed Settlement is further supported by the fact that "the representative party and class counsel have adequately represented the class."[102]

Class representatives are generally adequate if: (i) there is no "economic antagonism[] between the representative and the class"; and (ii) the class representative is represented by "qualified, experienced, and competent" counsel capable of prosecuting the litigation.[103] This Court has previously noted that "the requirements for an 'adequate' class representative are not onerous."[104] There are no conflicts between Plaintiff's interests and those of the Class. Indeed, like all Class Members, Plaintiff held RMG Class A shares on the redemption deadline.[105] She continued to hold such shares, worth approximately $34,000 on the redemption deadline, through their conversion to three shares of Nikola stock, collectively worth less than $16 today. Plaintiff is a typical member of the Class she seeks to represent.

Plaintiff selected counsel with significant experience in stockholder class actions. Counsel has skillfully and vigorously litigated this Action, investigating the

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[102] Del. Ct. Ch. R. 23(f)(5)(A).

[103] *infoGROUP*, 2013 WL 610143, at *3 & n.24.

[104] *O'Malley v. Boris*, 2001 WL 50204, at *5 (Del. Ch. Jan. 11, 2001).

[105] *See* Affidavit of Shuhuan Yu in Support of Proposed Settlement Approval ("Yu Aff."), at ¶ 3.

claims, filing multiple thorough and well-pled complaints that Defendants chose to answer rather than move to dismiss, pursuing and obtaining discovery, and leveraging evidence to secure a favorable settlement for the Class. Therefore, Plaintiff and Plaintiff's Counsel have adequately represented the Class.[106]

E. The Experience and Opinion of Plaintiff and Plaintiff's Counsel Favor Approving the Proposed Settlement

In evaluating a proposed settlement, Delaware courts recognize that the opinion of representative plaintiffs and their experienced counsel is entitled to weight in determining the fairness of the proposed settlement.[107] Here, Plaintiff's Counsel are experienced stockholder advocates known to the Court. Plaintiff's Counsel fully appreciated the strengths and weaknesses of Plaintiff's claims in the Action when they negotiated the Settlement. Plaintiff has filed an affidavit in compliance with Rule 23(f)(2)(A) stating her support for the Settlement.[108] Plaintiff and Plaintiff's Counsel's belief that the Settlement is in the best interests of the Class supports final approval.

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[106] Del. Ct. Ch. R. 23(f)(5)(A).

[107] *See, e.g.*, *Polk*, 507 A.2d at 536 (noting the court's consideration of "the views of the parties involved" when determining the "overall reasonableness of the settlement"); *Jane Doe 30's Mother v. Bradley*, 64 A.3d 379, 396 (Del. Super. Ct. 2012) ("It is appropriate for the Court to consider the opinions of experienced counsel when determining the fairness of a proposed class action.").

[108] *See* Yu Aff. at ¶ 7.

III. The Plan of Allocation Should Be Approved

A proposed "allocation plan must be fair, reasonable, and adequate."[109] As set forth in the Settlement Stipulation and the Notice approved by the Court on July 1, 2024 in the Scheduling Order, the $11.99 million Settlement Amount plus any interest that may accrue on that sum after it is deposited in the Escrow Account (*i.e.*, the "Settlement Fund"), will first be used to pay administrative costs, attorneys' fees' and expense awards and a service award to Plaintiff, and any taxes and tax expenses, and following those payments, the remainder of the Settlement Fund (*i.e.*, the "Net Settlement Fund") will be equitably distributed on a *pro rata* basis to stockholders that were beneficial owners or record holders of Romeo Class A common stock as of the redemption deadline based on the relative size of their total claim, excluding Defendants and their affiliates.[110]

The Plan of Allocation avoids the "relatively high administrative costs" and "unknown distributional effects" of a claim process by providing for a direct distribution to Class Members through the Settlement Administrator, which the

[109] *Schultz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009), *overruled on other grounds by Urdan v. WR Cap. Partners*, LLC, 244 A.3d 668 (Del. 2020).

[110] Dkt. 71 at ¶ 1; *id.* at Ex. B at 11-12.

Court has endorsed in similar cases.[111] In addition, consistent with new Rule 23(f)(6), the plan of allocation provides that "residual settlement funds be redistributed to identified class members" unless "redistribution is uneconomic," in which case funds are to be transferred "to the Combined Campaign for Justice."[112] The Plan of Allocation should therefore be approved.

IV. The Requested Fee Award Is Fair and Should Be Approved

This Court awards attorneys' fees and expenses to counsel whose efforts have created a common fund.[113] "The determination of any attorney fee award is a matter within the sound judicial discretion of the Court of Chancery."[114] "When awarding fees, the Court of Chancery 'must make an independent determination of reasonableness.'"[115] In "evaluating the reasonableness of a fee award, the Court of Chancery considers the factors identified by the Delaware Supreme Court in

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[111] *See Montgomery v. Erickson Inc.*, C.A. No. 8784-VCL, at 16 (Del. Ch. Sept. 12, 2016) (TRANSCRIPT); *In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1133118 (Del. Ch. Apr. 18, 2022).

[112] Del. Ct. Ch. R. 23(f)(6); Dkt. 71, ¶ 14; *see also In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1227170, at *2 (Del. Ch. Apr. 25, 2022) (modifying proposed order to provide for funds that would be economic to redistribute to class members to be distributed to the Delaware Combined Campaign for Justice).

[113] *See Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012).

[114] *Id.*

[115] *Activision*, 124 A.3d at 1070 (quoting *Goodrich v. E.F. Hutton Grp., Inc.*, 681 A.2d 1039, 1046 (Del. 1996)).

Sugarland Industries, Inc. v. Thomas, 420 A.2d 142 (Del. 1980)…. The Delaware Supreme Court has … summarized [the *Sugarland* factors] as follows: '1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved.'"[116]

Plaintiff respectfully requests an all-in award of 18% of the common fund, inclusive of fees and expenses. Plaintiff's request is strongly supported by the *Sugarland* factors and applicable precedent and, indeed, as demonstrated below, is below market.

A. The Financial Benefit

The benefit achieved is the "first and most important of the *Sugarland* factors."[117] Fee awards for monetary benefits are based on a sliding scale of increasing percentages based on the litigation effort that produced the benefit.[118]

The Settlement was the result of substantial litigation and negotiation effort over the course of three years. Though Defendants eventually decided to answer the Complaint, it was only after two amendments and after Plaintiff opposed their

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[116] *Activision*, 124 A.3d at 1070 (quoting *Ams. Mining*, 51 A.3d at 1254).

[117] *Ams. Mining*, 51 A.3d at 1255; *Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at *8 (Del. Ch. Aug. 30, 2007) ("[C]ourts assign the greatest weight to the benefit achieved.").

[118] *See Ams. Mining*, 51 A.3d at 1259-60.

motion to dismiss. In discovery, Plaintiff obtained nearly 48,000 pages of documents from Defendants. Plaintiff's Counsel believed, after analyzing Defendants' answers, reviewing nearly 45,000 pages of documents, and engaging in class certification briefing and months of settlement negotiations, that Plaintiff had maximized the litigation leverage, that deposition testimony was not likely to improve Plaintiff's litigation position and settlement leverage, and that the substantial additional risk and delay involved with litigating through trial and potential appeal outweighed the potential benefits. With Judge Phillips, Plaintiff secured $11.99 million in a case where Defendants argued that the Class had no damages based on their analysis of Romeo's stock trading.[119]

Plaintiff's substantial efforts to achieve this material benefit for the Class put this case solidly within the 15-25% range for cases involving "meaningful litigation efforts."[120] Plaintiff's Counsel submits that an 18% all-in fee award is not only reasonable and appropriate, but at the low end of this range, given this Court's precedent involving comparable litigation activity:

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[119] Dkt. 68 at 14, 16-19.

[120] *See Ams. Mining*, 51 A.3d at 1259-60.

Case	Cash Settlement Amount	Awarded Fee Percentage	Stage of Litigation
In re Towers Watson & Co. S'holder Litig., C.A. No. 2018-0132-KSJM[121]	$15,000,000	25%	Filed complaint; reviewed approximately 500,000 pages of documents; took no depositions; engaged in some motion practice, including appeal
In re Tangoe, Inc. S'holder Litig., C.A. No. 2017-0650-JRS (Del. Ch. Jan. 29, 2020) (ORDER AND FINAL JUDGMENT)	$12,500,000	22.6%	Filed complaint incorporating §220 documents; reviewed approximately 250,000 pages of documents; took no depositions; engaged in some motion practice
In re Lordstown Motors Corp. S'holders Litig., C.A. No. 2021-1066-LWW (Del. Ch. June 25, 2024) (TRANSCRIPT)	$15,500,000	22.5%	Filed complaint incorporating §220 documents; briefed motion to dismiss that was later withdrawn; reviewed over 250,000 pages of documents; took no depositions; engaged in some motion practice; engaged in some discovery motion practice; engaged in bankruptcy proceedings

[121] 2021 WL 2354964 (Del. Ch. June 8, 2021) (ORDER AND FINAL JUDGMENT); 2021 WL 1831987 (Del. Ch. May 4, 2021) (SETTLEMENT BRIEF).

Case	Cash Settlement Amount	Awarded Fee Percentage	Stage of Litigation
Garfield v. Blackrock Mortg. Ventures, LLC, C.A. No. 2018-0917-KSJM[122]	$6,850,000	22.4%	Filed complaint incorporating §220 documents; reviewed over 38,000 pages of documents; took no depositions; engaged in some motion practice
In re AVX Corp. S'holders Litig., C.A. No. 2020-1046-SG[123]	$49,900,000	21%	Filed complaint; reviewed approximately one million pages of documents; took no depositions; engaged in some discovery motion practice
In re MultiPlan Corp. S'holders Litig., C.A. No. 2021-0300-LWW[124]	$33,750,000	20%	Filed complaint; reviewed substantial quantity of approximately 734,000 pages of documents; took no depositions; engaged in discovery motion practice

[122] (Del. Ch. Feb. 26, 2021) (ORDER AND FINAL JUDGMENT); (Del. Ch. Jan. 21, 2021) (SETTLEMENT BRIEF).

[123] (Del. Ch. Dec. 27, 2022) (ORDER AND FINAL JUDGMENT); (Del. Ch. Nov. 22, 2022) (SETTLEMENT BRIEF).

[124] (Del. Ch. Mar. 1, 2023) (ORDER AND FINAL JUDGMENT); (Del. Ch. Jan. 27, 2023) (SETTLEMENT BRIEF).

Case	Cash Settlement Amount	Awarded Fee Percentage	Stage of Litigation
Emile-Berteau v. Glazek, C.A. No. 2020-0873-PAF[125]	$5,000,000	20%	Filed complaint incorporating §220 documents; fully briefed motion to dismiss, denied in part; reviewed less than 1,500 pages of documents; took no depositions
Vero Beach Police Officers' Ret. Fund v. Bettino, C.A. No. 2017-0264-JRS[126]	$17,950,000	19.8%	Filed complaint incorporating §220 documents; took no depositions; drafted but did not file motion to dismiss opposition
City of Warren Gen. Emps.' Ret. Sys. v. Roche, C.A. No. 2019-0740-PAF[127]	$29,500,000	19%	Filed complaint incorporating §220 documents; reviewed about 300,000 pages of documents; took no depositions; some motion practice

[125] (Del. Ch. Dec. 12, 2023) (ORDER AND FINAL JUDGMENT); (Del. Ch. Oct. 10, 2023) (SETTLEMENT BRIEF).

[126] (Del. Ch. Dec. 3, 2018) (ORDER AND FINAL JUDGMENT); (Del. Ch. Nov. 16, 2018) (SETTLEMENT BRIEF).

[127] (Del. Ch. Oct. 5, 2022) (ORDER AND FINAL JUDGMENT); (Del. Ch. Sept. 7, 2022) (SETTLEMENT BRIEF).

Case	Cash Settlement Amount	Awarded Fee Percentage	Stage of Litigation
Markis v. Ionis Pharms., Inc., C.A. No. 2021-0681-LWW[128]	$12,500,000	17%	Filed complaint incorporating §220 documents; fully briefed motion to dismiss, not decided; no discovery
Verma v. Costolo, C.A. No. 2018-0509-PAF[129]	$38,000,000, plus fees	~15.5%[130]	Filed complaint incorporating §220 documents; reviewed about 5,500 pages of documents; took no depositions; settled pre-motion to dismiss argument

Recent fee awards in similar SPAC merger-based stockholder class actions, such as *MultiPlan* and *Lordstown*, support Plaintiff's requested fee range. In *MultiPlan*, for example, the Court awarded plaintiffs' counsel an all-in fee of 20%

[128] (Del. Ch. Oct. 11, 2022) (ORDER AND FINAL JUDGMENT); (Del. Ch. Sept. 9, 2022 (SETTLEMENT BRIEF).

[129] (Del. Ch. July 27, 2021) (FINAL ORDER AND JUDGMENT); (Del. Ch. Feb. 15, 2021) (SETTLEMENT BRIEF). *Verma v. Costolo* involved a $38 million monetary recovery plus attorneys' fees and non-monetary relief. In approving the fee award, the Court noted "this case settled early before arguments on motions to dismiss" and estimated the fee attributable to the monetary benefit was "about 15.5 percent of the overall monetary benefit." C.A. No. 2018-0509-PAF, at 48-49 (Del. Ch. July 19, 2021) (TRANSCRIPT).

[130] The Court awarded $7 million of the $45 million for the common fund, equating to approximately 15.5% of the overall monetary benefit.

of the recovery, while in *Lordstown* the Court awarded plaintiffs' counsel a fee of 22.5% of the net recovery plus reimbursement of expenses. Like here, those actions involved settlements of breach of fiduciary duty claims arising from the impairment of SPAC stockholder redemption rights in a SPAC merger and settled before depositions and expert discovery.[131] Although the plaintiffs in *Lordstown* and *MultiPlan* obtained more documents, Plaintiff here is requesting a correspondingly lower fee percentage. Thus, Plaintiff's Counsel respectfully submits that the requested 18% all-in fee award is reasonable and appropriate.

B. The Secondary Factors Further Support the Requested Fee Award

The contingent nature of the representation is the "second most important factor considered by this Court" in awarding attorneys' fees.[132] "It is consistent with the public policy of Delaware to reward this risk-taking in the interests of shareholders."[133] Accordingly, "[t]his Court has recognized that an attorney may be entitled to a much larger fee when the compensation is contingent than when it is

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[131] *Lordstown Motors*, C.A. No. 2021-1066-LWW, Order at ¶11 (awarding reimbursement of expenses plus fees equating to 22.5% of the net settlement fund); *Multiplan*, C.A. No. 2021-0300-LWW (awarding 20% all-in fee award).

[132] *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Jan. 10, 1992).

[133] *In re Plains Res. Inc. S'holders Litig*., 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005).

fixed on an hourly or contractual basis."[134] Plaintiff's Counsel litigated this case on a fully contingent basis, facing significant risk of receiving no compensation for their efforts.[135] When Plaintiff filed this Action, the Court had not yet issued the seminal *Multiplan* decision, leaving substantial uncertainty about whether these claims were direct and what damages might result from such breaches of fiduciary duty.

Another of "the secondary *Sugarland* factors is the complexity of the litigation. All else equal, litigation that is challenging and complex supports a higher fee award."[136] This was a complex case and one of the first filed in a then-novel area of Delaware jurisprudence. Securing the Settlement required multiple complaint amendments, opposing Defendants' motions to dismiss, providing supplemental authority on novel issues of Delaware law, pushing for discovery, briefing on class certification, developing a damages theory, and months of settlement negotiations.

The "standing and ability of counsel involved" also favors granting the requested fee.[137] "Law firms establish a track record over time, and they 'build (and

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[134] *Ryan v. Gifford*, 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009).

[135] *See* Affidavit of Erik W. Luedeke ("Luedeke Aff."), at ¶ 3; Affidavit of Gregory E. Del Gaizo ("Del Gaizo Aff."), at ¶ 3; Affidavit of David M. Sborz ("Sborz Aff."), at ¶ 3.

[136] *Activision*, 124 A.3d at 1072.

[137] *See Ams. Mining*, 51 A.3d at 1254.

sometimes burn) reputational capital.'"[138] Plaintiff's Counsel have built reputational capital by demonstrating a repeated willingness over the years to bring cases to trial and appeal. Litigating this case demanded mastery of a complex record and a commitment to pursue the case as long as necessary to maximize its value. Counsel's proven track record in this and previous cases provided the credibility needed to secure the favorable outcome achieved.

"The time and effort expended by counsel serves [as] a cross-check on the reasonableness of a fee award. This factor has two separate but related components: (i) time and (ii) effort."[139] "More important than hours is 'effort, as in what Plaintiffs' counsel actually did,'"[140] and counsel is not to be punished for achieving victory efficiently.[141]

As described herein, Plaintiff's Counsel efficiently pursued untested and complex claims in this Action over a three-year period, utilizing a litigation team with substantial litigation experience. Plaintiff's Counsel devoted 2,048.05 hours to litigating the case from inception to November 6, 2023, when the parties accepted

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[138] *Dell*, 300 A.3d at 728 (quoting *In re Del Monte Foods Co. S'holders Litig.*, 2010 WL 5550677, at *9 (Del. Ch. Dec. 31, 2010)).

[139] *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1138 (Del. Ch. 2011).

[140] *Ams. Mining*, 51 A.3d at 1258.

[141] *See Olson v. ev3, Inc.*, 2011 WL 704409, at *15 (Del. Ch. Feb. 21, 2011) ("Counsel should not be penalized for achieving complete victory quickly.").

the mediator's recommendation.[142] Plaintiff's Counsel worked an additional 345.5 hours through June 17, 2024.[143] Hours continue to accumulate as they seek approval of the Settlement and will further accrue during the distribution to Class Members.

Plaintiff's Counsel incurred total expenses of $70,498.35, including mediation fees, non-testifying valuation/damages consultants, and other necessary costs, all of which are included in the requested all-in award.[144] To build the strong record that made this recovery possible, Plaintiff's Counsel conducted a thorough pre-filing investigation, filed a detailed plenary complaint, an amended complaint, and a second amended non-dismissible complaint, identified key documents from the nearly 48,000 pages of documents produced in discovery, analyzed Defendants' arguments in their Motion for Judgment on the Pleadings or, in the Alternative, for Class Certification, drafted Plaintiff's Motion for Class Certification, and engaged in a months-long mediation process.

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[142] *See* Luedeke Aff. at ¶ 5 (1,172.3); Del Gaizo Aff. at ¶ 5 (690.75); and Sborz Aff. at ¶ 4 (185).

[143] *See* Luedeke Aff. at ¶ 6 (245.0); Del Gaizo Aff. at ¶ 5 (92.0); Sborz Aff. at ¶ 5 (8.5).

[144] *See* Luedeke Aff. at ¶ 8 ($45,613.79); Del Gaizo Aff. at ¶ 6 ($16,424.23); Sborz Aff. at ¶ 7 ($8,460.33).

The requested Fee and Expense Award of 18% percent of the common fund amounts to $2,158,200. After deducting $70,498.35 in expenses,[145] the implied blended hourly rate is $1,019.36 per hour (using the November 6, 2023 cutoff). This rate is reasonable compared to the non-contingent hourly rates of experienced and qualified counsel who practicing before this Court[146] and aligns with established precedent.[147]

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[145] *See* Luedeke Aff. at ¶ 8 ($45,613.79); Del Gaizo Aff. at ¶ 6 ($16,424.23); Sborz Aff. at ¶ 7 ($8,460.33).

[146] *See generally* Dan Roe, *As Billing Rates Skyrocket, Historic Fee Leaders Find Company at $2,000 Per Hour*, American Lawyer (July 28, 2022), https://www.law.com/americanlawyer/2022/07/28/as-bankruptcy-rates-skyrocket-historic-fee-leaders-find-company-at-2000-per-hour/; Roy Strom, *Big Law Rates Topping $2,000 Leave Value 'In Eye of Beholder'*, Bloomberg Law (June 9, 2022), https://news.bloomberglaw.com/business-and-practice/big-law-rates-topping-2-000-leave-value-in-eye-of-beholder; *see also* Debra Cassens Wiess, *Nearly $1,000 an hour is rate for second-year associates at these BigLaw firms*, ABA Journal (Apr. 3, 2023), https://www.abajournal.com/news/article/nearly-1000-an-hour-is-rate-for-second-year-associate-at-these-biglaw-firms.

[147] *See, e.g.*, *Franklin*, 2007 WL 2495018, at *14 ("As a 'backstop check,' this Court also considers whether a contemplated fee award translates into an exorbitant hourly rate.") (quoting *In re Abercrombie & Fitch Co., S'holders Deriv. Litig.*, 886 A.2d 1271, 1274 (Del. 2005)); *see also Ams. Mining*, 51 A.3d at 1257 (affirming fee award that implied "approximately $35,000 an hour, if you look at it that way"); *In re Versum Materials, Inc. S'holder Litig.*, C.A. No. 2019-0206-JTL (Del. Ch. July 16, 2020) (TRANSCRIPT) (awarding fee that represented $10,667 per hour); *Activision*, 124 A.3d at 129 (awarding fee that represented $9,685 per hour); *In re Medley Cap. Corp. S'holders Litig.,* Consol. C.A. No. 2019-0100-KSJM, at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (finding a $5,989 hourly rate would not be "beyond the bounds of reasonableness" and noting that a 6x or 7x multiplier "is well within the range that this Court has awarded over the years"); *Bettino*, C.A. No. 2017-0264-JRS, at 24 (Del. Ch. Dec. 3, 2018) (TRANSCRIPT) (awarding fee that represented $3,165 per hour); *Garfield v. BlackRock Mortg. Ventures, LLC*, C.A. No. 2018-0917-KSJM, at 28 (Del. Ch. Feb. 11, 2021) (TRANSCRIPT) (awarding fee that represented $1,775.64 per hour); *In re Tangoe, Inc.*

V. A Modest Incentive Award for Plaintiff Is Appropriate

"Public policy favors incentive awards in appropriate circumstances: 'Compensating the lead plaintiff for efforts expended is not only a rescissory measure returning certain lead plaintiffs to their position before the case was initiated, but an incentive to proceed with costly litigation (especially costly for an actively participating plaintiff) with uncertain outcomes.'"[148] This Court has recognized that it is "important to incentivize stockholders to serve as engaged representatives."[149]

The facts of this case justify Plaintiff's request for a $2,500 incentive award to be paid from the Fee and Expense Award. "In typical baseline circumstances, an incentive award of $5,000 rewards competent participation."[150] Here, Plaintiff filed

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S'holder Litig., C.A. No. 2017-0650-JRS, at 22 (Del. Ch. Jan. 29, 2020) (TRANSCRIPT) (awarding fee that represented $1,500 per hour); *In re Genentech, Inc. S'holder Litig.*, C.A. No. 3911-VCS, at 56 (Del. Ch. July 9, 2009) (TRANSCRIPT) (awarding a $24.5 million fee where "the multiple of the lodestar is something like 11.3" and the implied hourly rate was "something like $5,400"); *In re MultiPlan Corp. S'holders Litig.*, C.A. No. 2021-0300-LWW, at 49-51 (Del. Ch. Feb. 28, 2023) (TRANSCRIPT) (awarding a $6.5 million fee where the implied hourly rate "comes out to about $1,079").

[148] *Dell*, 2023 WL 4864861, at *37 (quoting *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006)).

[149] *In re HomeFed Corp. S'holder Litig.*, C.A. No. 2019-0592-LWW, at 30 (Del. Ch. Feb. 15, 2022) (TRANSCRIPT).

[150] *In re AMC Ent. Holdings, Inc. S'holder Litig.*, 2023 WL 5165606, at *41 (Del. Ch. Aug. 11, 2023) (awarding $5,000 to each of two plaintiffs who "served a demand under 8 *Del. C.* § 220, which this Court encourages as a tool to gather information before initiating a plenary lawsuit"; "produced documents in discovery"; and "prepared for a deposition before it was cancelled"; also noting that "the nature of" the *AMC* litigation could have

a detailed plenary complaint, amended complaint, and a second amended complaint—which Defendants answered—and oversaw this litigation for three years.[151] Plaintiff's personal injury-in-fact was crucial in countering Defendants' argument that no RMG stockholder was injured. In short, the recovery would not have been possible without her efforts. Accordingly, an incentive award is warranted.

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supported a higher award); *Sciabacucchi v. Howley*, 2023 WL 4345406, at *6 & n.69 (Del. Ch. July 3, 2023) (awarding "service award of $4,000" to plaintiff who "sought inspection of the Company's books and records and pursued litigation on behalf of the Company," and stating that plaintiff's efforts "were modest and would not support a higher service award"); *Estreen v. Lefkofsky*, 2023 WL 4027474, at *3 (Del. Ch. June 14, 2023) ($2,500 service award to each of three plaintiffs who sent 220 demands, reviewed/verified complaints, monitored litigation, maintained *contact with counsel, maintained their ownership, and participated in settlement negotiations (see also Estreen v. Lefkofsky*, 2023 WL 3435113 (Del. Ch. May 9, 2023)); *Spritzer v. Aklog*, C.A. No. 2020-0935-KSJM, at 44 (Del. Ch. Nov. 3, 2022) (TRANSCRIPT) (awarding $2,000 for plaintiff who did not participate in discovery and observing that awards of that magnitude incentivize "plaintiffs who are willing to put their names on the papers … when they know that they have to monitor litigation and may be called to sit for depositions and other forms of discovery and relief"); *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, C.A. No. 2017-0486-SG, at ¶ 13 (Del. Ch. Dec. 27, 2022) (ORDER AND FINAL JUDGMENT) (awarding $10,000 incentive award to plaintiff); *In re Pivotal Software, Inc. S'holders Litig.*, 2022 WL5185565 (Del. Ch. Oct. 4, 2022) (same); *In re HomeFed Corp. S'holder Litig.*, 2022 WL 489484, at *4 (Del. Ch. Feb. 15, 2022) (ORDER AND FINAL JUDGMENT) (awarding a $5,000 incentive award to each co-lead plaintiff); *Ryan*, 2009 WL 18143, at *14 (authorizing payment of $5,000 each to two plaintiffs without substantive comment).

[151] Yu Aff. at ¶ 6.

CONCLUSION

For all these reasons, Plaintiff respectfully requests that the Court approve the Settlement, certify the Class, grant the Fee and Expense Award, and grant Plaintiff's requested incentive award.

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