**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| KYLE MARTEL and JOE BRYANT,<br><br>Plaintiffs,<br>v.<br><br>FUSION SPONSOR LLC, JOHN JAMES, JEFFREY GARY, JIM ROSS, KELLY DRISCOLL, BEN BUETTELL, DIWAKAR CHOUBEY, and BROADHAVEN CAPITAL PARTNERS, LLC,<br><br>Defendants. | ) | C.A. No. 2024-0329-NAC<br><br>**PUBLIC VERSION**<br>**Filed: June 26, 2025** |

**PLAINTIFFS' OPENING BRIEF IN SUPPORT OF THEIR MOTION TO APPROVE THE SETTLEMENT AND PLAN OF ALLOCATION, CERTIFY THE CLASS, AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS**

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Plaintiffs Kyle Martel and Joe Bryant (together, "Plaintiffs), by and through their undersigned attorneys, on behalf of themselves and the Class (defined herein) of Fusion Acquisition Corp. ("FAC" or the "Company") public stockholders, submit this Opening Brief in support of their Motion to Approve the Settlement, Certify the Class, and for an Award of Attorneys' Fees and Expenses and Service Awards (the "Motion") seeking: (i) certification of the Class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (ii) final approval of the proposed settlement (the "Settlement") between (a) Plaintiffs and (b) Defendants Fusion Sponsor LLC ("Sponsor"), John James ("James"), Jeffrey Gary ("Gary"), Jim Ross ("Ross"), Kelly Driscoll ("Driscoll"), Ben Buettell ("Buettell," with the Sponsor, James, Gary, Ross, and Driscoll, the "FAC Defendants"), Diwakar Choubey ("Choubey"), and Broadhaven Capital Partners, LLC ("Broadhaven," with the FAC Defendants and Choubey, "Defendants," with Plaintiffs, the "Parties"), as set forth in the Stipulation and Agreement, Compromise, and Release dated April 14, 2025 (Trans. ID 76070198) (the "Stipulation"); (iii) approval of the proposed Plan of Allocation[1]; (iv) an award of attorneys' fees and reimbursement of expenses; and (v) the requested service awards to the named Plaintiffs.

[1] Unless otherwise defined herein, capitalized terms have the same meaning as set forth in the Stipulation.

Putative Class members were given notice of the Settlement in accordance with the Scheduling Order entered by the Court on April 28, 2025.[2] To date, there have been no objections. A hearing is scheduled for July 24, 2025 at 11:00 a.m. for the Court to consider these matters.

## PRELIMINARY STATEMENT

The proposed settlement (the "Settlement") will provide a $12.75 million recovery (the "Settlement Consideration") for Class members to compensate them for the impairment of their right to make fully informed decisions of whether to redeem their FAC shares or invest in the combined company resulting from FAC's September 22, 2021 merger with private company MoneyLion Inc. ("Legacy MoneyLion") (the "Merger").

The Settlement marks the culmination of Plaintiffs' hard-fought and extensive investigation and litigation efforts, which included pursuing books-and-records investigations, filing separate actions to pursue additional books and records of the Company, negotiating for and obtaining extensive ESI and other materials comprising over 5,000 documents of over 29,000 pages as a result of their 220 actions and discovery in this Action from Defendants, the Company, and non-parties Edison Partners Management LLC ("Edison Partners") and J.P. Morgan Securities LLC ("J.P. Morgan"), drafting a comprehensive Complaint

[2] (Trans. ID 76159755).

based on the substantial Section 220 record, and fully briefing separate motions to dismiss filed by Defendants Choubey and Broadhaven. The Parties negotiated the Settlement at arms'-length under the guidance of a highly regarded mediator.

The Settlement is fair, reasonable, and adequate under any metric. It provides an exceptional per share recovery of approximately $1.40 to Class members, which well exceeds the per share recoveries in nearly all de-SPAC merger settlements previously approved by this Court,[3] exceeds the per share

[3] *See, e.g.*, *In re XL Fleet (Pivotal) S'holder Litig.*, C.A. No. 2021-0808-KSJM (Del. Ch. Mar. 21, 2025) ("*XL Fleet*") (TRANSCRIPT) (approving settlement that provided approximately $0.21 per share); *In re Multiplan Corp. S'holders Litig., Consol.* C.A. No. 2021-0300-LWW ("*Multiplan*") (Del. Ch. Feb. 28, 2023) (TRANSCRIPT) (approving settlement that provided approximately $0.368 per share); *Siseles v. Lutnick*, C.A. No. 2023-1152-JTL ("*View*") (Del. Ch. Dec. 6, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.32 per share); *In re Finserv Acquisition Corp. SPAC Litig.*, C.A. No. 2022-0755-PAF (Del. Ch. Oct. 10, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.38 per share); *In re GeneDX De-SPAC Litig.*, C.A. No. 2023-0140-PAF ("*GeneDX*") (Del. Ch. Dec. 2, 2024) (TRANSCRIPT) (approving settlement that provided $0.47 per share); *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW ("*Lordstown*") (Del. Ch. June 24, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.57 per share); *Yu v. RMG Sponsor, LLC*, C.A. No. 2021-0932-NAC ("*Romeo Power*") (Del. Ch. Oct. 18, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.52 per share); *Delman v. Riley*, C.A. No. 2023-0293-LWW (Del. Ch. Oct. 17, 2024) (TRANSCRIPT) ("*Eos*") (approving settlement that provided approximately $0.99 per share); *Paul Berger Revocable Tr. v. Falcon Equity Invs., LLC*, C.A. No. 2023-0820-JTL (Del. Ch. Jan. 21, 2025) (TRANSCRIPT) ("*Sharecare*") (approving settlement that provided approximately $1.10 per share); *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024) (TRANSCRIPT) ("*Gig2*") (approving settlement that provided approximately $1.94 per share); *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch. May 12, 2025) (TRANSCRIPT) ("*Latch*") (approving settlement that provided approximately $0.99 per share); *Bushansky v. GigAcquisitions4, LLC*, C.A. No. 2023-0685-LWW, Corrected Plaintiffs Opening Brief In Support of Settlement And Award of Attorneys' Fees and

recovery in every settlement in de-SPAC merger cases in the eight figures, and represents a nearly *47%* recovery of the Class's net cash per share damages.

As in the numerous other de-SPAC merger settlements that have come before this Court, this Action is well-suited for class certification.[4] Holders of more than 9.1 million shares of FAC common stock chose to forego their redemption rights and invest in the Merger. Because these shares were likely held by thousands of Class members, joinder of all Class members is impractical and the proposed Class meets Rule 23(a)(1)'s numerosity requirement. Defendants' actions in pursuing the unfair Merger and impairing stockholders' redemption decisions by issuing the misleading Proxy affected all public stockholders in substantially the same manner, resulting in common questions of law and fact among the Class members. Plaintiffs and the Class were similarly affected by Defendants' actions, and Plaintiffs face no unique defenses. Further, Plaintiffs have acted fairly and adequately to protect the Class, as shown by hiring experienced law firms, including law firms well known to this Court, and securing a substantial settlement. Finally, the Class satisfies the requirements of both Rule 23(b)(1) and Rule 23(b)(2) due to the risk of inconsistent adjudications, that

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Expenses at 3 (Del. Ch. Sept. 10, 2024) ("*Gig4*") (the settlement provided approximately $2.38 per share).

[4] *See*, *e.g.*, *In re Multiplan S'holders Litig.*, 2023 WL 2329706, at *2 (Del. Ch. Mar. 1, 2023) (certifying a non-opt-out class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2)).

adjudications of some actions would likely be dispositive of the interests of other members of the Class, and that Defendants acted in a manner that is generally applicable to the Class. Accordingly, Plaintiffs request this Court certify the Class.

Plaintiffs' proposed Plan of Allocation is also reasonable and appropriate. Similar to the plans of allocation the Court approved in *Eos*[5] and assessed to be a "thoughtful way to distribute proceeds fairly to class members" in *Latch*,[6] the Plan of Allocation is designed to equitably distribute the Settlement proceeds in accordance with the extent of a Class member's recognized loss. The Court should approve the Plan of Allocation.

Plaintiffs further submit that an all-in award of $2,295,500 for attorneys' fees, inclusive of expenses (18% of the Settlement Consideration) is appropriate here. The Settlement marks the culmination of an extensive investigation and hard-fought litigation challenging Defendants' impairment of Class members' redemption rights. Each Plaintiff served and pursued a books-and-records demand, prosecuted a Section 220 action, and obtained significant custodial productions prior to filing of the Complaint. After filing the Complaint, Plaintiffs fully briefed two separate motions to dismiss filed by Broadhaven and Choubey, and Plaintiffs pursued and received discovery, including non-party document productions. As a

[5] *Eos*, C.A. No. 2023-0293-LWW (Del. Ch. Oct. 17, 2024) (TRANSCRIPT) at 20-21.

[6] *Latch*, C.A. No. 2023-0509-LWW (Del. Ch. Mar. 27, 2025) (TRANSCRIPT) at 27.

result of these efforts, Plaintiffs' counsel obtained and reviewed more than 5,000 documents comprising more than 29,000 pages of non-public information. It was not until after review of these documents, fully briefing two motions to dismiss, and meeting and conferring about additional forthcoming productions that the Parties were able to reach agreement in principle to settle the claims. In light of the extensive pre-filing investigation, including custodial searches and ESI productions, the discovery conducted and obtained while the plenary action was pending, and that the Parties fully briefed two motions to dismiss, this Settlement is squarely comparable to other cases where "meaningful litigation efforts" have occurred and for which fees in the amount of 15% to 25% are typically awarded, and the requested award of 18% is on the lower end of the range.

Plaintiffs' counsel devoted 1,709.15 hours from inception through the April 14, 2025 signing of the Settlement Stipulation (with a lodestar value of $1,319,961.00) to investigating, prosecuting, and resolving the Action and expended $72,565.16 in litigation expenses—all on a fully contingent basis. Plaintiffs respectfully submit the requested fee and expense award is reasonable and appropriate. Additionally, awarding modest service awards of $2,500 for each Plaintiff to compensate them for their successful efforts is warranted.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. THE CONTROLLER DEFENDANTS FORM FAC

On March 6, 2020, FAC was incorporated in Delaware as a Special Purpose Acquisition Company ("SPAC"). FAC's sole purpose was to combine with another company in what is commonly referred to as a de-SPAC merger.[7] Pursuant to the terms of its corporate charter, FAC had only 18 months from the closing of its initial public offering ("IPO") to complete a business combination, or it would be forced to liquidate and return the funds raised in the IPO and held in trust to public stockholders, with interest.[8]

FAC was founded and controlled by its Sponsor, which, in turn, was controlled by its managing member, FAC director and Chief Executive Officer ("CEO") James, along with FAC chairman of the board of directors (the "Board") Ross (together with James and the Sponsor, the "Controller Defendants).[9]

Shortly after FAC was incorporated, the Controller Defendants caused FAC to issue 8,750,000 "Founder Shares" to the Sponsor in exchange for nominal consideration of less than $0.003 per share.[10] The FAC Defendants waived their redemption rights and any rights to a liquidating distribution from the trust with

[7] Verified Class Action Complaint (Del. Ch. Mar. 29, 2024) (Trans. ID 72641814) ("Complaint" or "¶__") at ¶¶ 1, 40.

[8] ¶¶ 1, 45.

[9] ¶ 42.

[10] ¶ 41 (following a series of stock splits and a forfeiture).

respect to the Founder Shares. As such, the Founder Shares only held value if and when FAC consummated a business combination.[11] If FAC failed to complete a merger within 18 months, it would be forced to liquidate, and the Founder Shares would be worthless.[12] If FAC closed a merger, the Founder Shares could be worth more than $87 million.

James and Ross appointed their long-known colleagues as the other officers and directors of FAC, thereby consolidating their control over the Company,[13] with Gary appointed to serve as a director and Chief Financial Officer ("CFO") of FAC,[14] and Driscoll and Buettell appointed to serve as directors.[15] Each of FAC's directors and officers had significant personal, business, or financial relationships with James and Ross.[16]

### B. FAC GOES PUBLIC

On June 30, 2020, FAC consummated its IPO, selling 35,000,000 public units (the "Public Units") to investors for $10.00 per unit and generating $350,000,000 in total proceeds.[17] The Public Units consisted of one share of Class

[11] ¶¶ 4–5.

[12] *Id.*

[13] ¶ 42.

[14] ¶ 24.

[15] ¶¶ 25–26.

[16] ¶¶ 22, 24–26, 42.

[17] ¶ 43.

A common stock ("Public Share(s)") and one-half of one warrant, with each whole warrant ("Public Warrant(s)") exercisable for the purchase of one share of Class A common stock at an exercise price of $11.50.[18] The funds raised in the IPO were placed in a trust for the benefit of FAC's public stockholders.[19]

Each Public Share had a redemption right that, if and when FAC entered into a business combination (or the Board sought an extension of the Charter's liquidation deadline), entitled the holder to redeem the share for $10.00 plus interest.[20] If FAC did not find a merger partner and liquidated, public stockholders would receive the same $10.00 per share plus interest.[21] The trust funds would not become corporate assets unless and until: (a) FAC entered into a business combination; and (b) all public stockholders had an opportunity to redeem their shares, and redeeming stockholders received their pro rata portions of the funds held in the trust.[22] A stockholder that exercised a redemption right would still keep their Public Warrants and be permitted to vote on the transaction in accordance with their pro rata ownership interest pre-redemption.[23]

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[18] *Id.*

[19] ¶ 47.

[20] ¶ 44.

[21] ¶¶ 44–45, 58, 165.

[22] ¶¶ 45, 47.

[23] ¶¶ 20, 44–45, 58

Simultaneously with the IPO, the Sponsor purchased 8,100,000 FAC warrants in a private placement for $1.00 per warrant ("Private Placement Warrant(s)"), raising an additional $8.1 million.[24] The Private Placement Warrants were exercisable on a cashless basis at an exercise price of $11.50,[25] but could not be transferred, assigned, or sold until 30 days after FAC completed its initial business combination.[26] Thus, like the Founder Shares, the Private Placement Warrants would be worthless if FAC did not complete a merger prior to the liquidation deadline.[27] And, if FAC were forced to liquidate, public stockholders would have been made whole, but the FAC Defendants' Founder Shares and Private Placement Warrants would have been worthless, and the Sponsor would have lost the entirety of its investment.[28]

### C. FAC SEEKS TO MERGE WITH LEGACY MONEYLION

Prior to the Merger, Legacy MoneyLion was private company that acted as "an all-in one, digital financial platform that provid[ed] convenient, low-cost

[24] ¶¶4, 20, 46.

[25] ¶ 46.

[26] *Id.*

[27] ¶¶ 4–5, 44.

[28] ¶¶ 5, 59.

access to banking, borrowing and investing solutions tailored for its customers, rooted in data, and delivered through its proprietary technology platform."[29]

Defendant Choubey was Legacy MoneyLion's co-founder and had served as its CEO since its inception in 2013.[30] Defendant Broadhaven was a long-time investor in Legacy MoneyLion, since at least its Series A financing round. Broadhaven executive Gary DePetris ("DePetris") served as Legacy MoneyLion's "Head of Strategy" and also held a seat on the Legacy MoneyLion board, Nominating and Governance Committee, and the Risk and Compliance Committee. Broadhaven also served as a financial advisor to Legacy MoneyLion in connection with the Merger.[31]

Notwithstanding FAC's assertion in the Proxy that it had not "selected any specific business combination target" prior to the IPO and the Proxy's assertion that "neither Fusion, nor anyone on its behalf, engaged in any substantive discussions, directly or indirectly, with any business combination target with respect to an initial business combination with Fusion," in the weeks that preceded the IPO, the Controller Defendants had already engaged in several discussions with Legacy MoneyLion concerning a potential acquisition of Legacy MoneyLion by

[29] ¶ 35.

[30] ¶ 27.

[31] ¶ 28.

FAC.[32] These discussions continued immediately post-IPO. On July 1, 2020, the day after the IPO was consummated, Gary contacted Chris Sugden ("Sugden"), a member of Legacy MoneyLion's board of directors and a managing partner and chairman of growth equity firm Edison Partners, another investor in Legacy MoneyLion, to continue discussions concerning the potential business combination.[33] Gary and Sugden had known each other for years through their mutual membership in their country club.[34]

On July 18, 2020, Gary, James, and Buettell met telephonically with Choubey to discuss the potential merger of FAC and Legacy MoneyLion.[35] While the Proxy described the various meetings between FAC and Legacy MoneyLion representatives generally, important details were omitted and facts were revealed through the 220 process that called into question the veracity of the Proxy's other representations regarding the Merger process and Legacy MoneyLion's historical financials and future projections. On July 27, 2020, Choubey informed Gary that Legacy MoneyLion did not have a financial forecast for 2021, but claimed it would generate a forecast and provide it to FAC within two weeks.[36] When Choubey

[32] ¶ 61 (citing ML_Bryant_220_001836); Proxy at 89.

[33] *Id.*

[34] *Id.*

[35] ¶ 63.

[36] ¶ 64.

failed to meet that deadline to provide the projections and Legacy MoneyLion's historical financials, on August 5, 2020, James contacted Choubey to inquire as to the status.[37] Choubey responded that he would provide FAC with "a first pass of financials with a narrative early next week" and that his finance team was "working on it."[38] On the same day, James, Gary, DePetris, and others held a call to discuss the delayed financial data.[39] On the call, DePetris informed James and Gary that Legacy MoneyLion had accounting irregularities that he believed would take six to nine months to resolve.[40] Following the call, Sugden observed that "it is fair to say [Legacy MoneyLion] would have some work to do to ensure financials are properly prepared for a public filing to meet PCAOB standards."[41]

These accounting irregularities continued to delay Legacy MoneyLion's provision of historical financials and forecasts to the FAC Defendants for their consideration.[42] It was not until much later, on September 18, 2020, on a Zoom conference with Gary and Choubey, that Legacy MoneyLion provided any insight into financials to the FAC Defendants. On that Zoom, Choubey merely "flash[ed]

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[37] ¶ 65.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] ¶ 67.

the financials" to Gary, who then conveyed what he saw on the screen to the other FAC Defendants.[43] Specifically, Choubey provided the following projections:

- 2019 revenues of $35 million;
- 2020 year-to-date revenue through July 31, 2020 of $38 million;
- 2020 full-year revenue projected at $60 million; and
- 2021 full-year revenue projected between $90 to $100 million.[44]

These "flashed" financials were significantly lower than both the projections contained in the Proxy (the "Proxy Projections") and later-published Revised Projections (defined herein).[45] After that screen flash, FAC director and CFO Gary began "working with" Legacy MoneyLion's financials to match the valuation with the Merger consideration. Together through this process, FAC and Legacy MoneyLion raised the projections for 2020 full-year revenue to a $70 to $80 million range and raised revenue projections for 2021 to $95 to $105 million.[46] On December 17, 2020, despite the dearth of substantive information provided by Legacy MoneyLion, having only received a "flash" of financials that they then manipulated, FAC submitted a letter of intent to acquire Legacy MoneyLion in a

[43] *Id.* (citing ML_Bryant_220_0018325).

[44] ¶ 68.

[45] *Id.* (citing ML_Bryant_220_0018377).

[46] ¶ 70.

transaction that contemplated a pre-money enterprise valuation of Legacy MoneyLion of between $2.0 and $2.5 billion.[47]

Four days later, on December 21, 2020, the FAC Defendants met with Choubey and Broadhaven to discuss further tweaking Legacy MoneyLion's financial projections to meet the implied valuation set forth in the letter of intent.[48] The Proxy stated that "[p]rior to the meeting, FAC prepared and reviewed with its advisors extensive financial models of [Legacy] MoneyLion's business in order to generate a view as to the expected near-term financial performance and growth potential within the digital banking and wealth management product offerings."[49] In reality, there is no evidence in the 220 productions (which contained considerable ESI from Driscoll, Gary, and James) that the described diligence took place. To the contrary, while Gary suggested to Legacy MoneyLion that it make a presentation at the meeting, "including [a] discussion of financial performance and forecasts," Choubey informed Gary on a call prior to the meeting that Legacy MoneyLion was still unprepared to provide that information, though he did provide

[47] ¶ 71.

[48] ¶ 73.

[49] *Id.*

2022 net revenues of $188.7 million when the other participants on the call pushed him to do so in the form of another screen "flash."[50]

Eventually, Legacy MoneyLion would upload a financial model to a shared data room that projected only $172.6 million in 2022 revenues, coming in over $16 million lower than Choubey conveyed on the call.[51] On December 27, 2020, FAC provided Legacy MoneyLion with a revised letter of intent that narrowed the pre-money valuation range of Legacy MoneyLion to $2.1 to $2.25 billion and contemplated a $500 million PIPE offering in connection with the Merger.[52] This prompted Buettell to concede in an email dated December 29, 2020 that "[i]t just feels like we [i.e., the FAC Defendants and FAC's advisor, J.P. Morgan Securities LLC ("J.P. Morgan Securities")] are using numbers to justify our valuation conclusion and some discount rates to get to the number we want of $2.2B."[53]

On January 4, 2021, despite minimal diligence, with no insight into the reported accounting irregularities, only screen flashes of financial projections, and historical financials and a financial model that did not match up with what

[50] *Id.*

[51] ¶ 74.

[52] ¶ 77.

[53] ¶ 81.

Choubey previously told the FAC Defendants, Legacy MoneyLion and FAC executed a final letter of intent.[54]

With the final terms of the Merger consideration agreed to, FAC, Choubey, and Broadhaven pivoted to securing the PIPE funding.[55] Broadhaven provided FAC advisor, J.P. Morgan Securities, with new financial projections for Legacy MoneyLion, which assumed that Legacy MoneyLion would receive both 100 percent of the cash that FAC held in trust and the contemplated PIPE proceeds.[56] The projections Broadhaven provided were materially higher as to revenue than the Legacy MoneyLion projections Legacy MoneyLion management previously provided to FAC and also did not match the Legacy MoneyLion financial model uploaded to the data room.[57] On January 20, 2021, Broadhaven provided further updated projections.[58] The "Beat Case" in those projections matched the Proxy Projections.[59]

Ultimately, FAC and Legacy MoneyLion agreed to merge at a pre-money valuation of $2.2 billion—at the upper range of the valuation contemplated by the

[54] ¶¶ 82, 85.

[55] ¶ 86.

[56] ¶ 87.

[57] *Id.*

[58] ¶ 88.

[59] *Id.*

signed letter of intent.[60] After all of this was complete, on February 10, 2021, the Board met for the *first time* to discuss the Merger. At this very first meeting of the Board, and without the benefit of a fairness opinion, the FAC Board approved the Merger and Merger Agreement.[61] On February 11, 2021, the parties signed the Merger Agreement.[62] On February 12, 2021, Legacy MoneyLion and FAC announced the Merger and the PIPE transaction (which ultimately fell far below the $500 million contemplated in Legacy MoneyLion's and FAC's projections).[63]

On September 3, 2021, Defendants issued the Proxy and disseminated it to public stockholders.[64] The Proxy informed FAC's public stockholders of their redemption rights and set the stockholder vote on the Merger.[65] Five days later, on September 8, 2021, with FAC's stock trading below $10.00 and with expressed concerns about significant numbers of redemptions, Defendants issued a supplement to the Proxy (the "Supplement"), including new projections for Legacy Moneylion that further inflated the Proxy Projections (the "Revised Projections").[66]

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[60] ¶ 90.

[61] ¶ 92.

[62] ¶ 93.

[63] ¶ 95.

[64] ¶ 100.

[65] *Id.*

[66] ¶¶ 105, 134.

On September 22, 2021, the Merger closed.[67]

### D. FOLLOWING THE MERGER, NEW MONEYLION UNDERPERFORMS

On November 16, 2021, only a few months after the Merger, New MoneyLion announced that it had acquired Malka Media Group, LLC ("Malka"), by exchanging, *inter alia*, $10 million in cash and $30 million in restricted New MoneyLion common stock as consideration.[68] New MoneyLion shares were valued at $9.00 per share in the Malka transaction, notwithstanding the fact that the Proxy told FAC stockholders that their investment would be worth $10.00 per share just seven weeks earlier.[69] Following the acquisition of Malka, New MoneyLion announced another acquisition, this time of Even Financial, Inc. ("Even Financial").[70] An investor presentation touting the transaction informed stockholders that, excluding synergies, Even Financial was expected to be EBITDA positive in 2022 and to add an incremental $90 million in revenue in 2022.[71]

Despite the purportedly revenue- and EBITDA-generating acquisitions of Even Financial and Malka, less than one year following the Merger, New

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[67] ¶ 107.

[68] ¶ 153.

[69] *Id.*

[70] ¶ 154.

[71] *Id.*

MoneyLion began missing the Revised Projections and even the lower Proxy Projections.[72] Later, New MoneyLion announced that the Company's disclosure controls and procedures were not effective as of March 31, 2022 and its financial results for the period ending September 30, 2021 and prior periods were unreliable and would need to be restated.[73]

Concurrently with that announcement, New MoneyLion lowered guidance for fiscal year 2022—lowering adjusted gross profit margin to 60% to 65% from the 71% projected in the Proxy, with Adjusted EBITDA of approximately negative $50 to negative $45 million.[74] It also announced projected adjusted revenue of approximately $325 to $335 million, which included the projected $90 million in revenue that New MoneyLion expected the Even Financial transaction would generate.[75] Accordingly, adjusted for the Even Financial transaction, New MoneyLion's adjusted revenue guidance would come in well below the $285 million adjusted revenue guidance set forth in the Revised Projections.[76]

On August 11, 2022, New MoneyLion announced its second quarter 2022 results and reaffirmed its projection that its adjusted gross profit margin for 2022

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[72] ¶ 155.

[73] ¶ 156.

[74] *Id.*

[75] *Id.*

[76] *Id.*

would be 57% and not the 71% forecast in the Proxy.[77] Further, despite increasing full year 2022 adjusted revenue guidance to a range of $330 to $340 million, the Company lowered its adjusted EBITDA to the range of negative $65 million to negative $55 million.[78] Additionally, New MoneyLion disclosed that it would once again need to restate prior financials.[79]

On November 23, 2022, New MoneyLion disclosed that its stock was at risk of delisting from the NYSE because it traded below $1.00 per share over a consecutive 30-trading day period.[80] In response to that development, New MoneyLion effected a 1-for-30 reverse split to remain eligible for listing on the NYSE.[81]

As of March 28, 2024, one day before Plaintiffs' Complaint was filed, New MoneyLion stock had dropped by more than 76 percent from its redemption value.[82]

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[77] ¶ 160.

[78] *Id.*

[79] *Id.*

[80] ¶ 162.

[81] ¶ 15.

[82] ¶ 152.

### E. PLAINTIFFS UNDERTAKE SECTION 220 INVESTIGATIONS

Given New MoneyLion's post-Merger performance, Plaintiffs separately retained counsel and determined to conduct section 220 books-and-records investigations.

#### 1. The Martel Demand

On February 15, 2023, Plaintiff Martel (represented by Grant & Eisenhofer, P.A. ("G&E")) served New MoneyLion with a demand to inspect books and records, pursuant to 8 *Del. C.* § 220 ("Martel Demand").[83]

On a March 8, 2023 conferral, New MoneyLion's counsel disclosed that it may not have documents responsive to the Martel Demand.[84] On March 15, 2023, counsel for New MoneyLion informed Mr. Martel that New MoneyLion did not have board minutes or materials to produce, despite the existence of various laws, regulations, and rules that require the preservation of such materials.[85] Counsel for New MoneyLion represented that they would continue searching for records responsive the Martel Demand and would provide an update when information

[83] *See Martel v. MoneyLion, Inc.*, C.A. No. 2023-0431-BWD ("Martel 220 Action"), Verified Complaint to Compel Inspection of Books and Records Under 8 *Del. C.* § 220 (filed on Apr. 13, 2023) (Trans. ID 69818624), at ¶ 37.

[84] *Id.* at ¶ 46.

[85] *Id.* at ¶ 47.

became available.[86] After waiting for another month without any production of records from New MoneyLion, Mr. Martel filed his 220 complaint.[87]

### 2. The Bryant Demand

On May 5, 2023, Plaintiff Bryant (represented by Wolf Popper LLP ("Wolf Popper")) sent a Section 220 books-and-records inspection demand to New MoneyLion that largely overlapped with the requests set forth in the Martel Demand, but also sought post-Merger records related to executive compensation and an investigation by the Consumer Financial Protection Bureau related to MoneyLion's and its affiliates' alleged violations of the Military Lending Act.[88] Bryant also found the Company's production to be deficient and following additional meet-and-confer discussions, filed his 220 Action.[89]

### 3. Substantial ESI Discovery Results from the Martel and Bryant 220 Actions

Both the Martel and Bryant 220 Actions were assigned to then-Magistrate Bonnie W. David. While the Martel and Bryant 220 Actions were pending, in light of the absence of virtually any formal board materials from FAC, Plaintiffs successfully negotiated an ESI protocol utilizing custodial searches with search

[86] *Id.*

[87] *Id.*

[88] *See Bryant v. MoneyLion, Inc.*, C.A. No. 2023-0739-BWD ("Bryant 220 Action"), Verified Complaint Pursuant to 8 Del. Code § 220 to Compel Inspection of Books and Records (filed July 20, 2023) (Trans. ID 70438955), at ¶ 33.

[89] *Id.* at ¶ 46.

terms in lieu of traditional books and records, and which designated Defendants Driscoll, Gary, and James as document custodians. In total, as a direct result of their hard-fought 220 efforts, Plaintiffs obtained substantial custodial document productions comprising thousands of documents. The materials, more akin to traditional discovery received in plenary litigation than summary Section 220 proceedings, were instrumental in enabling Plaintiffs to plead their breach of fiduciary duty claims persuasively and with specificity. The comprehensiveness of the Complaint certainly was relevant to the FAC Defendants' decision to answer the pleading, rather than file a motion to dismiss and allowed Plaintiffs to push discovery, including third-party discovery, notwithstanding the pendency of motions to dismiss filed by Choubey and Broadhaven.

### A. PLAINTIFFS FILE THEIR COMPLAINT

On November 16, 2023, MoneyLion certified that its agreed-upon production was complete. On March 1, 2024, Plaintiffs voluntarily dismissed their books-and-records actions.[90] On March 29, 2024, Plaintiffs commenced this action against Defendants, on behalf of themselves and other similarly situated public stockholders who did not redeem their FAC Public Shares before the redemption deadline. The Complaint alleged that the FAC Defendants breached their fiduciary

[90] Martel 220 Action, Notice of Voluntary Dismissal (Mar. 1, 2024) (Trans. ID 72220376); Bryant 220 Action, Notice of Voluntary Dismissal (Mar. 1, 2024) (Trans. ID 72220190).

duties impairing public stockholder redemption rights and were unjustly enriched and that Choubey and Broadhaven aided and abetted those breaches, claims which would be evaluated under the onerous entire fairness standard.[91]

Among other things, Plaintiffs alleged that the Proxy disseminated to stockholders in connection with the Merger omitted material information and included false and misleading information concerning the following: (i) the value of FAC's stock being exchanged in the Merger with Legacy MoneyLion; (ii) net cash per share being contributed to New MoneyLion in the Merger; (iii) the Board's consideration of the Merger and the process leading up thereto; (iv) accounting deficiencies and irregularities at Legacy MoneyLion; (v) painting an unrealistically rosy portrait of Legacy MoneyLion's future business prospects; and (vi) the interest of FAC's "independent" directors in connection with the Merger.[92]

On May 30, 2024, the FAC Defendants filed an Answer to the Complaint.[93] On May 30, 2024, Defendants Choubey and Broadhaven filed their papers in support of separate Motions to Dismiss.[94] On July 1, 2024, Plaintiffs filed an

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[91] *See generally Delman v. GigAcquisitions3, LLC*, 288 A.3d 692, 713–14 (Del. Ch. 2023) ("*Gig3*") (applying entire fairness standard in a similar de-SPAC transaction).

[92] ¶¶ 109-65.

[93] Defendants' Answer to Plaintiffs' Verified Amended Class Action Complaint (May 30, 2024) (Trans. ID 73272955).

[94] Defendant Diwakar Choubey's Motion to Dismiss the Verified Class Action Complaint (Trans. ID 73266844), publicly filed on June 6, 2024 (Trans. ID 73330398); Defendant Broadhaven Capital Partners, LLC's Motion to Dismiss the Verified Class Action

omnibus answering brief, and, on July 22, 2024, Choubey and Broadhaven filed replies.[95] The Court scheduled oral argument on the motions to dismiss for January 13, 2025.

At the same time Choubey's and Broadhaven's motions to dismiss were pending, Plaintiffs pressed discovery, obtaining document productions from Defendants, New MoneyLion, Edison Partners, and J.P. Morgan.

### F. Following a Full-Day Mediation Session and Additional Follow-up Sessions, the Parties Reach Agreement to Settle the Action

While discovery proceeded, on October 23, 2024, the Parties attended a full day, in-person mediation in New York with David M. Murphy, Esq. of Phillips ADR. Although the mediation was unsuccessful, the parties continued their arms'-length negotiations with the assistance of Mr. Murphy, while at the same time continuing to litigate and meet and confer on various discovery matters. On January 11, 2025, the parties accepted a double-blind mediator's proposal to settle

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Complaint (Trans. ID 73269798), publicly filed on June 6, 2024 (Trans. ID 73330221) ("Broadhaven MTD").

[95] Plaintiffs' Answering Brief in Opposition to Defendants Diwakar Choubey's and Broadhaven Capital Partners, LLC's Motions to Dismiss (Trans. ID 73528695), publicly filed on July 9, 2024 (Trans. ID 73586982) ("Plaintiffs' Answering Brief"); Defendant Diwakar Choubey's Reply Brief in Further Support of His Motion to Dismiss Plaintiffs' Verified Class Action Complaint (Trans. ID 73742843); Defendant Broadhaven Capital Partners, LLC's Reply Brief in Further Support of Its Motion to Dismiss Plaintiffs' Verified Class Action Complaint (Trans. ID 73743909).

the action for $12,750,000.[96] The parties thereafter engaged in negotiations concerning the terms of the Stipulation, which was executed on April 14, 2025, and filed with the Court the following day.[97]

Pursuant to a Scheduling Order entered on April 28, 2025, notice has disseminated and a hearing was scheduled for July 24, 2025 to determine whether the Class should be certified and to evaluate the Settlement and Plan of Allocation and counsel's request for an award of attorneys' fees and expenses and service awards to Plaintiffs.[98]

## ARGUMENT

### I. THE CLASS SHOULD BE CERTIFIED PURSUANT TO COURT OF CHANCERY RULES 23(a), 23(b)(1), AND 23(b)(2)

The requirements for class certification are set forth in Court of Chancery Rule 23. Each requirement is satisfied here, and, consequently, class certification is appropriate. Specifically, Plaintiffs move the Court for certification of a non-opt-out Class for settlement purposes only pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) (the "Class"), consisting of:

> all record and beneficial holders of FAC Class A common stock, who held such stock as of the Redemption Deadline of September 17, 2021, and who elected not to redeem all or some of their stock

[96] Stipulation at V.

[97] Stipulation.

[98] Scheduling Order (Apr. 28, 2025) (Trans. ID 76159755).

> including their heirs, successors-in-interest, successors, transferees and assigns excluding any Excluded Persons.
>
> The Class does not include any of the following:
>
> (a) Defendants; (b) members of the immediate family of any Individual Defendant; (c) any person who was a manager or managing member of any Entity Defendant as of September 17, 2021, and any members of their immediate family; (d) any parent, subsidiary, or affiliate or an Entity Defendant; (e) any entity in which any Defendant or any other Excluded Person, or group of Excluded Persons, has, or had as of the Redemption Deadline, a controlling interest; and (f) the legal representatives, agents, affiliates, heirs, estates, successors, or assigns of any such Excluded Persons.

### A. THE CLASS SATISFIES RULE 23(a)

For a class to be certified, "(1) the class [must be] so numerous that joinder of all members is impracticable, (2) there [must be] questions of law or fact common to the class, (3) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class, and (4) the representative parties [must] fairly and adequately protect the interests of the class."[99]

#### 1. The Class Is So Numerous That Joinder of All Members Is Not Practical

The numerosity requirement of Rule 23(a)(1) may be satisfied by "numbers in the proposed class in excess of forty, and particularly in excess of one hundred."[37] The test "is not whether joinder of all the putative class members

[99] Del. Ct. Ch. R. 23.

would be impossible, but whether joinder would be practical."[100] There were 9,112,013 Public Shares outstanding on of the Redemption Deadline that were not submitted for redemption in connection with the Merger. Joinder of the likely thousands of holders of millions of shares is not practical, and numerosity is satisfied.

### 2. Questions of Law Are Common to Class Members

Commonality is "met where the question of law linking the Class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[101] Here, common questions of law include whether the FAC Defendants: (i) breached their fiduciary duties by impairing stockholder redemption rights and/or aided and abetted those breaches; (ii) failed to disclose material information and/or made materially misleading statements in the Proxy in connection with Merger; (iii) secured the consummation of a conflicted, controlled merger that was procedurally and substantively unfair to public stockholders; (iv) unjustly enriched themselves by securing unique financial benefits to the detriment of public stockholders; and (v) injured Plaintiffs and Class members through their conduct, and whether Choubey and Broadhaven aided and

[100] *Marie Raymond Revocable Tr.*, 980 A.2d at 400 (quoting Del. Ct. Ch. R. 23).

[101] *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) (citations and internal quotation marks omitted).

abetted the FAC Defendants' breaches of fiduciary duty. This Court has certified classes in analogous circumstances.[102]

### 3. Plaintiffs' Claims Are Typical of the Class

"The test of typicality is that the legal and factual position of the class representative must not be markedly different from that of the members of the class" and "focuses on whether the class representative claim (or defense) fairly presents the issues on behalf of the represented class."[103] Plaintiffs, stockholders who did not redeem their FAC stock and chose to invest in New MoneyLion, are similarly situated to the other unaffiliated non-redeemers of Public Shares and their claims "arise[] from the same event or course of conduct that gives rise to the claims . . . of other class members and [are] based on the same legal theory."[104]

### 4. The Class's Interests Are Fairly and Adequately Protected

There is no divergence of interest between Plaintiffs, who are incentivized to maximize the Settlement consideration, and absent Class members. Moreover, the recovery achieved through the Settlement demonstrates that Plaintiffs' interests

[102] *See, e.g.*, *Multiplan*, 2023 WL 2329706, at *2 (certifying a non-opt-out class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2)).

[103] *Weiner & Assocs.*, 584 A.2d at 1225-26 (citations and internal quotation marks omitted).

[104] *Id*. at 1226 (citation omitted).

were aligned with those of absent Class members and is likewise indicative of the competence and effectiveness of Plaintiffs' counsel.[105]

### B. THE CLASS SATISFIES RULE 23(b)(1) AND 23(b)(2)

Once the Rule 23(a) factors are established Rule 23(b) enumerates when certification is appropriate.[106] Consistent with longstanding Delaware corporate law practice, the Stipulation binds the parties to seek certification of a non-opt out settlement class pursuant to Rules 23(b)(1) and 23(b)(2).

The proposed Class satisfies Rule 23(b)(1). All Class members are unaffiliated holders of FAC common stock who suffered the same harm as a result of Defendants' conduct. The Class definition expressly excludes Defendants and their affiliates. The relief afforded through the proposed Settlement would impact all Class members equally, and approval of the proposed Settlement would protect all absent Class members' interests in uniform fashion.[107]

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[105] *See Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL, at 20-21 (Del. Ch. Sept. 28, 2017) (TRANSCRIPT) ("*Haverhill* Tr.") ("Given that I am approving the settlement as fair and adequate, it follows that I necessarily believe that the class representatives, as well as the derivative action representatives, provided adequate representation in this matter.").

[106] Del. Ct. Ch. R. 23(b)(1)-(2).

[107] *See Haverhill* Tr. at 21 ("The class is appropriately certified pursuant to Rule 23(b)(1) as a non-opt-out class, because had this action been prosecuted separately by individual class members, there would have been a risk of inconsistent or varying results, and effectively, adjudication with respect to one would have been dispositive of everyone's interests.").

The Class also satisfies Rule 23(b)(2). Defendants' actions impacted Class members in a uniform fashion, and the Settlement would afford final relief with respect to the Class as a whole.[108]

### C. THE REMAINING REQUIREMENTS OF RULE 23 ARE SATISFIED

Rule 23(f) provides that "a class action may be . . . settled only if the Court approves the terms of the proposed . . . settlement," including that "notice of the proposed . . . settlement must be given to all class members in the manner directed by the Court."[109] As will be set forth in the forthcoming affidavit of the claims administrator, notice was provided to all absent Class members, pursuant to the process set forth in the Scheduling Order.

Pursuant to Rule 23(aa), Plaintiffs have sworn that they have not received, been promised, or been offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this Action except for: (1) such damages or other relief as the Court may award them as a member of the Class; (2) such fees, costs, or other payments as the Court expressly approves; or (3) reimbursement, paid by such the Plaintiffs' attorneys, of

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[108] *See generally Nottingham Partners v. Dana*, 564 A.2d 1089, 1096-97 (Del. 1989) (affirming class certification where primary relief in settlement was declaratory, injunctive, and rescissory and thus afforded "similar equitable relief with respect to the class as a whole").

[109] Del. Ct. Ch. R. 23(f).

actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of the Action.[110]

* * *

For the foregoing reasons, Plaintiffs respectfully submit that the Court should certify the Class.

## II. THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE, AND ADEQUATE

Delaware law favors voluntary settlement of complex class actions,[111] reflecting the Court's belief that settlements "promote judicial economy" and that "litigants are generally in the best position to evaluate the strengths and weaknesses" of their respective cases.[112] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses thereto 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

[110] Affidavit of Kyle Martel in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Service Award at ¶ 6 (filed herewith); Affidavit of Joe Bryant in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Service Award at ¶ 6 (filed herewith).

[111] *See, e.g.*, *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 265-66 (Del. 1990); *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964); *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1042 (Del. Ch. 2015); *In re Triarc Cos. Class & Deriv. Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001); *Ryan v. Gifford*, 2009 WL 18143, at *5 (Del. Ch. Jan. 2, 2009); *Kahn v. Sullivan*, 594 A.2d 48, 58 (Del. 1991).

[112] *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 402 (Del. Ch. 2008).

information then available, reasonably could accept."[113] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[114] The Court may consider several factors when making this determination, including:

> (1) the probable validity of the claims; (2) the apparent difficulties in enforcing the claims through the courts; (3) the collectability of any judgment recovered; (4) the delay, expense, and trouble of litigation; (5) the amount of compromise as compared with the amount of collectability of a judgment; and (6) the views of the parties involved, pro and con.[115]

In making this determination, the Court need not "decide any of the issues on the merits,"[116] and ultimately must weigh "the value of all the claims being compromised against the value of the benefit to be conferred on the [c]lass by the settlement."[117]

Evaluation of the Settlement pursuant to these criteria demonstrates that the Court should approve the Settlement. The Settlement was the product of hard-fought litigation, informed by substantial discovery, and arms'-length negotiations with the assistance of an experienced mediator in Mr. Murphy. The Settlement

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[113] *Activision*, 124 A.3d at 1064 (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

[114] *Goodrich v. E. F. Hutton Grp.*, 681 A.2d 1039, 1045 (Del. 1996).

[115] *Activision*, 124 A.3d at 1063.

[116] *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986).

[117] *Brinckerhoff v. Texas Eastern Prods. Pipeline Co., LLC*, 986 A.2d 370, 384 (Del. Ch. 2010) (quoting *In re MCA, Inc.*, 598 A.2d 687, 691 (Del. Ch. 1991)).

provides substantial economic consideration to Class members and reflects Plaintiffs' and their counsel's well-informed judgment regarding the strengths and defenses at issue, the potential damages award, and the benefits of a guaranteed recovery.

### A. THE SETTLEMENT PROVIDES SUBSTANTIAL BENEFITS TO THE CLASS

Plaintiffs sought through the litigation to remedy harm to themselves and other Class members due to the impairment of their redemption rights.

While pursuant to the Plan of Allocation the Settlement Consideration will be distributed to Class members equitably based total economic loss, measured on a per share basis, the Settlement Consideration of $12.75 million amounts to recovery of $1.40 per Class share. Compared to other settlements this Court has considered or approved in de-SPAC merger cases, $1.40 per share would rank as the *third largest* per share recovery in a de-SPAC merger litigation settlement, and reflects the *highest* recovery on a per share basis where the total settlement consideration reached eight figures.[118]

With the benefit of discovery, Plaintiffs' likely strongest claims concerned their allegations relating to omissions and disclosures regarding the net cash per share that FAC and its public stockholders would be contributing to the Merger. In this scenario, damages would likely be measured by the difference between the

[118] *See supra* n.3 (listing approved and pending settlements in de-SPAC merger cases).

redemption value of $10.00 per share and the net cash per share contributed of approximately $7.00 per share—or damages of $3.00 per share. There are 9,112,013 shares that were not submitted for redemption. A full recovery under this theory would equal approximately $27.3 million,[119] making the settlement recovery equate to approximately *47% of potential damages*. When comparing this to other "post-*Theriault* settlements in deal cases where entire fairness would apply," the Settlement compares extremely favorably and well above the median of 16.5%.[120] Compared to other de-SPAC merger settlements, this 47% recovery of net cash per share damages ranks second only to *Sharecare*. Further, compared with the Court's recent analysis in *Dell* and settlements in other de-SPAC merger cases considered by the Court, looking at the settlement as a percentage of total redemption value (in *Dell*, equity value of the challenged transactions) of 14%,[121] the Settlement would rank first.[122] That is, assuming maximum damages under a rescissory theory (a remedy Defendants would have likely resisted at every stage), this settlement ranks number one, not only compared to other de-SPAC merger

[119] 9,112,013 shares x $3.00.

[120] *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 724 (Del. Ch. 2023), *aff'd*, 326 A.3d 686 (Del. 2024) ("*Dell V*") (analyzing other settlements as a percentage of maximum damages).

[121] (9,112,013 shares x $10.00)/12,750,000 x 100 = 13.99%.

[122] *Id.* at 725.

settlements, but also in comparison to all other entire fairness cases analyzed by the Court in *Dell*.

There should be no question that the Settlement provides a substantial recovery to Class members and provides an effective resolution for all the claims and allegations in the Action.

### B. COMPARING THE BENEFITS OBTAINED TO THE LIKELIHOOD OF SUCCESS AT TRIAL SUPPORTS APPROVAL OF THE SETTLEMENT

Comparing the benefits provided by the Settlement to the challenges Plaintiffs would face should the litigation continue supports approval. Plaintiffs brought claims for breaches of fiduciary duty and unjust enrichment against each of the FAC Defendants and aiding and abetting claims against Choubey and Broadhaven.

At trial, Plaintiffs' claims would have been viewed under the entire fairness standard. Although Plaintiffs were guardedly optimistic about their chances of prevailing at trial, Plaintiffs are well aware that even an entire fairness trial is not a low risk proposition. As this Court noted in *Dell*, in the years since *Thierault*, "there have been at least ten post-trial decisions in entire fairness cases where the defendants prevailed, plus three more where the Court awarded only nominal damages of $1.00."[123] And while Plaintiffs believed their allegations as to aiding

[123] *Id.* at 709-10.

and abetting against Choubey and Broadhaven were strong and informed by substantial discovery, the Delaware Supreme Court's recent decisions in *Mindbody* and *Columbia Pipeline* raised serious concerns about those claims.[124] Moreover, even if Plaintiffs were to win at trial, they would have faced "significant risk on appeal" given the reality that, in the six (now eight) post-*Thierault* appeals from post-trial damages awards in which representative plaintiffs obtained cash recoveries and defendants challenged the liability determination that the Supreme Court has heard, the high court affirmed only three and reversed the rest,[125] and the claims in de-SPAC merger cases, including with regard to allegations related to omission of net cash per share in proxy statements, have yet to be substantively addressed on appeal.

Further, although Plaintiffs believe that they would have prevailed in proving that the FAC Defendants breached their fiduciary duties, and Choubey and Broadhaven aided and abetted those breaches, Defendants may have proved that these breaches did not cause the Class's damages.

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[124] *See generally In re Columbia Pipeline Grp., Inc. Merger Litig.*, 2025 WL 16937491, at *1 (Del. June 17, 2025) (holding that "for an acquiror to be held liable for aiding and abetting a sell-side breach of fiduciary duty, the acquiror must have actual knowledge of both the target's breach and the wrongfulness of its own conduct"); *In re Mindbody, Inc. S'holder Litig.*, 332 A.3d 349, 399-401 (Del. 2024) (holding that the acquiror's failure to act despite contractual obligation to correct misstatements in the merger proxy statement was insufficient to establish "substantial assistance" where there was no evidence that the acquiror "actively contributed to drafting or editing the Proxy Materials in any way").

[125] *Id.*; *Dell V*, 300 A.3d at 710.

Balancing these risks against the certain recovery afforded by the Settlement further supports approval.

### C. THE SETTLEMENT IS THE RESULT OF HARD-FOUGHT, ARMS'-LENGTH NEGOTIATIONS BETWEEN EXPERIENCED COUNSEL BEFORE AN EXPERIENCED AND WELL-RESPECTED MEDIATOR

When evaluating the fairness of a settlement, Delaware courts also scrutinize the negotiations that led up to the settlement and heavily favor settlements that resulted from arms'-length negotiations.[126] Here, the parties arrived at the Settlement after months of negotiations, including a joint mediation session and multiple follow-up discussions with Mr. Murphy. The Settlement was also agreed to with the benefit of substantial discovery obtained, among other things, pursuant to Plaintiffs' 220 Actions, and after briefing on certain of the Defendants' motions to dismiss, reinforcing the fairness of the Settlement.

### D. COUNSEL'S EXPERIENCE AND OPINION WEIGH IN FAVOR OF SETTLEMENT APPROVAL

Where counsel is experienced, as here, the Court also considers Counsel's opinion of evaluating a settlement.[127] Counsel, including attorneys at Grant & Eisenhofer P.A., and Wolf Popper LLP, are plaintiffs' firms that have substantial

[126] *See Ryan*, 2009 WL 18143, at *5 (noting that the settlement there was "fair, reasonable, and adequate" when reached after "vigorous arms-length negotiations following meaningful discovery").

[127] *See Polk*, 507 A.2d at 536 (stating that the Court considers "the views of the parties involved" in determining "the overall reasonableness of the settlement").

experience in negotiating settlements of complex derivative and class actions, as well as a lengthy track record of advocacy in the Delaware Court of Chancery, including in de-SPAC merger redemption rights cases that have survived motions to dismiss pursuant to Court of Chancery Rule 12 or have proceeded far into discovery.[128] Counsel believes that the Settlement is fair and in the best interests of the Class. Counsel's opinion in this regard is shaped not only by their depth of experience, but by their deep knowledge of this case following pre-suit investigation, substantial discovery, briefing on Defendants' motions to dismiss, and extensive settlement discussions, where both sides candidly addressed the benefits and risks of continued litigation. Counsel's opinion further weighs in favor of approving the Settlement.

## III. THE PLAN OF ALLOCATION IS REASONABLE AND APPROPRIATE

The Settlement allocates a $12.75 million recovery—plus any interest that accrues after being deposited in the Escrow Account and minus the payment of administrative costs, attorneys' fee and expenses, and any tax expenses—to the Class. The Plan of Allocation provides for an equitable recovery that will allow Class members who did not redeem and sold their shares for less than the redemption amount (or held their shares through the day the Complaint was filed)

[128] *See, e.g.*, *Gig3*, 288 A.3d 692; *Gig2*, 2023 WL 2292488 (Del. Ch. Mar. 1, 2023); *XL Fleet*, Consol. C.A. No. 2021-0808-KJSM (Del. Ch. June 9, 2023) (TRANSCRIPT).

to recover a portion of any economic damages they suffered. It also provides for an automatic base recovery in a nominal amount to all Class members be paid through DTC participant data, regardless of whether they submit a claim.

The Plan of Allocation mirrors the plan this Court approved previously in *Romeo Power*[129] and *View*.[130] As the Court recently stated in *Latch*, this Plan of Allocation is "smart" and "makes sense" because stockholders are "selling or holding at different times," and "it's a very thoughtful way to distribute proceeds fairly to class members . . . and address the delta between when they might have sold their stock, if they held their stock, and the recovery that they're getting here."[131]

For all Class members, a base amount of $0.10 per share for each share held on the redemption deadline will be paid via DTC securities transfer records. Along with that distribution, Class members who submit claims will receive additional compensation. For Class members who submit claims and who sold their shares between the redemption deadline and the day the Complaint was filed (March 28,

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[129] *Romeo Power* Tr. at 46-47 (approving Plan of Allocation described in Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear (Trans. ID 73416695)).

[130] *View*, Order and Final Judgment (Del. Ch. Dec. 6, 2024) (Trans. ID 75158239) at ¶ 3 (approving Plan of Allocation described in Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear (Trans. ID 74119511)).

[131] *Latch* Tr., *supra* n.5 at 13, 27.

2025) for less than the $10.00 per share redemption price, the equitable per share portion of each Class Member's recognized claims shall be calculated as the difference between $10.00 and the price at which the Class Member sold her or his share(s). For Class members who submit claims and who held their shares as of the date the Complaint was filed, the equitable per share recovery of the Class Member's recognized claim shall be calculated as the difference between the $10.00 per share redemption price and $2.37, the closing price of New MoneyLion stock on March 28, 2024.[132] The net settlement fund, after accounting for distribution of the base amount, will then be distributed to Class Members who submitted claims on a pro rata basis based on the relative size of their total recognized claims, calculated by dividing each Class Member's total recognized claims by the total of all Class Members' recognized claims and multiplying that number by the net settlement fund amount.

As contemplated by Rule 23(f)(6), the Plan of Allocation provides that "residual settlement funds be redistributed to identified class members" unless "redistribution is uneconomic."[133] In such cases, the funds will be transferred "to the Combined Campaign for Justice."[134]

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[132] Adjusted for the April 24, 2023 1-for-30 reverse split.

[133] Del. Ct. Ch. R. 23(f)(6); Stipulation Ex. B at 14.

[134] *Id.*; *see also In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1227170, at *2-*3 (Del. Ch. Apr. 25, 2022) (modifying proposed order to provide for funds that would be

The distribution methodology contemplated by the plan of allocation is "fair, reasonable, and adequate."[135] Therefore, the Plan of Allocation should be approved.

## IV. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiffs move for an award of attorneys' fees of $2,295,000, inclusive of expenses in the amount of $72,565.16. The Settlement provides an excellent outcome for the Class, providing an immediate and substantial recovery. This requested fee and expense award is well within the Court's precedent, and Plaintiffs' request is reasonable given the substantial benefit the Settlement provides, the risks of the litigation, the necessary expenses that Plaintiffs have incurred to date, and the hundreds of hours Counsel have devoted to the prosecution of this Action.

### A. LEGAL STANDARD

The Court may award attorneys' fees to counsel whose efforts conferred a common benefit.[136] The determination of any attorney fee and expense award is

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uneconomic to redistribute to class members to be distributed to the Delaware Combined Campaign for Justice).

[135] *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).

[136] *See, e.g.*, *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012); *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989).

left to the Court's discretion.[137] The Court considers the *Sugarland* factors, including: "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."[138] Delaware courts have assigned the greatest weight to the benefit achieved in litigation.[139]

### B. THE BENEFITS OF THE SETTLEMENT ARE SUBSTANTIAL

As set forth herein, the proposed Settlement confers substantial and quantifiable benefits on the Class. As the factor afforded the most weight by the Court, this exceptional recovery counsels heavily in favor of Plaintiffs' requested fee award.[140] As discussed herein at section II.A., on a per share basis, the Settlement Consideration ranks *number one* on a variety of metrics as compared with other settlements in entire fairness cases, including other settlements in de-SPAC merger cases, and ranks top three in others. The Court has stated that "the

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[137] *Theriault*, 51 A.3d at 1254-55 (upholding fee award of over $304 million); *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149-50 (Del. 1980).

[138] *Theriault*, 51 A.3d at 1254 (citing *Sugarland*, 420 A.2d at 149).

[139] *Id.*; *see also Julian v. E. States Const. Serv., Inc.*, 2009 WL 154432, at *2 (Del. Ch. Jan. 14, 2009) ("In determining the size of an award, the courts assign the greatest weight to the benefit achieved in the litigation." (citing *Franklin Balance Inv. Fund v. Crowley*, 2007 WL 2495018, at *8 (Del. Ch. Aug. 30, 2007)).

[140] *Theriault*, 51 A.3d at 1254; *Gatz v. Ponsoldt*, 2009 WL 1743760, at *3 (Del. Ch. June 12, 2009); *In re Orchard Enters. Inc. S'holder Litig.*, 2014 WL 4181912, at *8 (Del. Ch. Aug. 22, 2014) ("A percentage of a low or ordinary recovery will produce a low or ordinary fee; the same percentage of an exceptional recovery will produce an exceptional fee.").

dollar amount of the fund created . . . is the heart of the *Sugarland* analysis."[141] Plaintiffs' requested fee and expense award represents 18% of the Settlement Consideration, which is comfortably within the range granted by this Court on a percentage-of-the-benefit basis in similar circumstances.[142]

### C. THE CONTINGENT NATURE OF COUNSEL'S REPRESENTATION SUPPORTS THE REQUESTED FEE

The "second most important factor" in the Court's *Sugarland* analysis is the contingent nature of counsel's representation.[143] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[144] Contingent representation entitles plaintiffs' counsel to both a "risk" premium and an "incentive" premium on top of the value of their standard hourly rates.[145]

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[141] *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000).

[142] *GeneDX* Tr. at 44 (awarding 19.5% in fees prior to any discovery and with limited motion practice); *Lordstown* Tr. at 45 (approving 22.5% fee; limited discovery and motion practice); *In re Josephson Int'l, Inc.*, 1988 WL 112909 (Del. Ch. Oct. 19, 1988) (ordering fees of 18% of the recovery when case settled after 10 days of document discovery); *Schreiber v. Hadson Petroleum Corp.*, 1986 WL 12169, at *3 (Del. Ch. Oct. 29, 1986) (awarding fees of 16% of the benefit conferred when case settled "[s]hortly after suit was filed" with no motion practice or discovery).

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

[144] *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005); *see also In re First Interstate Bancorp. Consol. S'holder Litig.*, 756 A.2d 353, 365 (Del. Ch. 1999), *aff'd sub nom. First Interstate Bancorp v. Williamson*, 755 A.2d 388 (Del. 2000) (noting that it is "consistent with the public policy" of Delaware to "reward this sort of risk taking in determining the amount of a fee award.").

[145] *Seinfeld*, 847 A.2d at 337; *see also Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at *12 (Del. Ch. Aug. 30, 2007) ("Fee awards should encourage future meritorious lawsuits by compensating the plaintiffs' attorneys for their lost

Here, as set forth in the accompanying attorney affidavits,[146] Plaintiffs' counsel pursued this case on a fully contingent basis. Accordingly, in undertaking the representation, they incurred all of the class contingent fee risks, including the ultimate risk—no recovery whatsoever and a loss of all expenses incurred. This factor thus supports the requested fee award.

### D. THE TIME AND EFFORTS EXPENDED BY COUNSEL SUPPORT THE REQUESTED FEE AWARD

Fee awards should neither penalize counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[147] Accordingly, the time spent by counsel in this litigation should only serve as a cross-check on the reasonableness of the fee award.[148] Prior to reaching agreement on the Settlement Stipulation, Counsel's efforts included a deep review of over 5,000 documents comprising over 29,000 pages produced by the Company, Defendants, and non-parties, including an ESI search of three of the Individual Defendants' emails and

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opportunity cost (typically their hourly rate), the risks associated with the litigation, and a premium.") (citations omitted).

[146] Affidavit of Kelly L. Tucker in Support of an Award of Attorneys' Fees and Expenses ("Tucker Aff.") at ¶ 2 (filed herewith); Affidavit of Adam J. Blander in Support of an Award of Attorneys' Fees and Expenses ("Blander Aff.") at ¶ 2 (filed herewith).

[147] *Sciabacucchi v. Salzberg*, 2019 WL 2913272, at *6 (Del. Ch. July 8, 2019).

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

other ESI, fully briefing Choubey's and Broadhaven's motions to dismiss, and engaging in the mediation and arms'-length negotiation in reaching the Settlement.

The Court has "explicitly disapproved the . . . lodestar method. Therefore, Delaware courts are not required to award fees based on hourly rates that may not be commensurate with the value of the common fund created by the attorneys' efforts."[149] But "[t]he time and effort expended by counsel is considered as a cross-check to guard against windfalls."[150] Counsel spent 1,709.15 hours litigating this action, from inception through the April 14, 2025 signing of the Settlement Stipulation.[151] This amounts to a lodestar value of $1,319,961.00. Counsel also incurred $72,565.16 in expenses. The requested fee award (net of expenses) implies an hourly rate of approximately $1,300.36 per hour,[152] and a lodestar

[149] *Theriault*, 51 A.3d at 1254.

[150] *In re Emerson Radio S'holder Deriv. Litig.*, 2011 WL 1135006, at *2 (Del. Ch. Mar. 28, 2011).

[151] Tucker Aff. ¶ 4; Blander Aff. ¶ 4; Affidavit of Michael I. Fistel, Jr. in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses ¶ 4 ("Fistel Aff."); Unsworn Affidavit of Michael Klausner in Support of an Award of Attorneys' Fees ¶ 4.

[152] *In re Versum Materials, Inc. S'holder Litig.*, C.A. No. 2019-0206-JTL, at 81 (Del. Ch. July 16, 2020) (TRANSCRIPT) (approving fees equivalent to an hourly rate of over $10,000); *Sciabacucchi*, 2019 WL 2913272, at *6 (fees equivalent to $11,262.26 per hour were reasonable); *In re Medley Cap. Corp. S'holders Litig.*, Consol. C.A. No. 2019-0100-KSJM, at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (observing a $5,989 hourly rate would not be "beyond the bounds of reasonableness"); *Dell*, 300 A.3d at 726 (granting award representing $5,000 implied hourly rate); *In re Activision Blizzard Inc. S'holder Litig.*, Consol. C.A. No. 8885-VCL (Del. Ch. May 20, 2015) (ORDER) (awarding an effective hourly rate of $9,685); *Berger v. Pubco Corp.*, 2010 WL 2573881,

multiple of approximately 1.68x[153] both of which is well within the range of hourly rates and lodestar multiples previously awarded by the Court of Chancery.[154]

In sum, counsel's substantial "meaningful litigation efforts," including significant discovery efforts, support the requested fee award.[155]

### E. THE ACTION IMPLICATES COMPLEX ISSUES OF FACT AND LAW

In determining an appropriate award of fees, the Court also considers the complexity of the litigation. "Litigation that is challenging and complex supports a higher fee award."[156] This Action is complex both legally and factually.

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at *1 (Del. Ch. June 23, 2010) (awarding a fee of 26% noting that "the hourly rate to which the fee translates (approximately $3,450 per hour . . . ) is nestled within the range of hourly rates found among Court of Chancery monetary-benefit cases.").

[153] *See, e.g.*, *In re Saba Software, Inc. S'holder Litig.*, 2018 WL 4620107 (Del. Ch. Sept. 26, 2018) (awarding a 3x lodestar multiple); *Vero Beach Police Officers' Ret. Fund v. Bettino*, 2018 WL 6330140 (Del. Ch. Dec. 3, 2018) (awarding an effective hourly rate of $3,165 and a 5.1x lodestar multiplier); *In re Pilgrim's Pride Corp. Deriv. Litig.*, 2020 WL 474676 (Del. Ch. Jan. 28, 2020) (awarding an effective hourly rate of $4,511.09 and a 7.0x lodestar multiplier); *Carr v. New Enter. Assoc. Inc.*, 2019 WL 1491579 (Del. Ch. Apr. 4, 2019) (awarding an effective hourly rate of $1,030 and an 7.2x lodestar multiplier); *In re AVX Corp. S'holders Litig.*, Consol. C.A. No. 2020-1046-SG (Del. Ch. Dec. 27, 2022) (ORDER) (awarding an effective hourly rate of $1,256.97 and a 2.61x lodestar multiplier).

[154] *Supra* nn.152 & 153.

[155] *Theriault*, 51 A.3d at 1259–60 (where the case settles early, the Court of Chancery historically awarded "10–15% of the monetary benefit conferred," that "[w]hen a case settles after the plaintiffs have engaged in meaningful litigation efforts, . . . fee awards in the Court of Chancery range from 15–25% of the monetary benefit conferred," and that 33% is the highest end of the range).

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

Plaintiffs' claims in this action presented well-established legal challenges concerning Defendants' duties to act loyally with regard to FAC stockholders, but involved novel legal issues, such as whether given the unique nature of de-SPAC merger redemption rights cases, disclosure of net cash per share, where there was a material difference between that value and redemption value, was required. These uncertainties resulted in the potential for complex legal disputes that have not yet been tested on appeal or at trial. Similarly, Plaintiffs' disclosure claims related to Legacy MoneyLion's material weaknesses raised novel questions regarding the extent of disclosure required concerning confidential letters between the Parent and Company that are incorporated into the terms of a publicly disclosed Merger Agreement.[157]

Moreover, the aiding and abetting claims were also untested. As Broadhaven was keen to point out in its motion to dismiss, it was "unable to identify any Delaware decision evaluating . . . an aiding and abetting claim filed against a fiduciary's transaction *counterparty's* financial advisor."[158] As Plaintiffs set forth in their Answering Brief, Broadhaven was not just a financial advisor, but also a substantial and long-time Legacy MoneyLion investor with a director on the target's board of directors. Plaintiffs' claims against Broadhaven were strong but

[157] Plaintiffs' Answering Brief at 44.

[158] Broadhaven MTD at 1-2 (emphasis in original).

were also indisputably novel and raised complex issues regarding the "knowing participation" element of an aiding and abetting claim, and were vigorously challenged by Broadhaven. Recent Delaware Supreme Court decisions highlight the uncertainty of success on these claims.[159]

Further, the factual issues presented in this action were complex. Plaintiffs had to delve into the web of interrelationships between each of the Defendants, including their various businesses, directorships, and their interrelatedness and financial interests. Plaintiffs had to review more than 29,000 pages of documents to ascertain, *inter alia*, the undisclosed interests of the "independent" director Defendants in the Sponsor, the status of Legacy MoneyLion's digital financial platform, its customer base, and the value of Legacy MoneyLion, a risky and highly regulated consumer-facing Fintech start-up, at the time of the Merger, along with other related disclosure issues and facts relevant to questions of process and price.

The legal and factual complexity at issue in this litigation supports the requested fee award.

[159] *Mindbody*, 332 A.3d at 396; *Columbia Pipeline*, 2025 WL 1693491 at *36.

### F. COUNSEL IS WELL-REGARDED WITH A HISTORY OF SUCCESS BEFORE THIS COURT

The Court also considers the standing and ability of counsel when determining the reasonableness of a fee and expense award.[160]

Here, Plaintiffs' counsel is experienced in stockholder class and corporate governance litigation, with lengthy track records of obtaining exceptional recoveries for stockholders in challenging, complex cases. The reputation of counsel has been the subject of favorable comments by this Court.[161] G&E and Wolf Popper have participated in some of the largest settlement and post-trial recoveries for plaintiffs in class and derivative litigation in Delaware.[162] Plaintiffs'

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[160] *See Sugarland*, 420 A.2d at 149.

[161] *See, e.g.*, *In re Del Monte Foods Co. S'holders Litig.*, 2010 WL 5550677 (Del. Ch. Dec. 31, 2010) ("Ultimately, the most important factor when appointing lead counsel is the degree to which the attorneys will provide effective representation for the class going forward. . . . G&E's track record stands out." *Id.* at *9. "The results achieved by G&E [] demonstrate that they have the ability and resources to litigate the case competently and vigorously." *Id.* at *11); *In re GGP, Inc. S'holder Litig.*, Consol. C.A. No. 2018-0267-NAC at 30, 40 (Del. Ch. July 16, 2024) (TRANSCRIPT) (observing that Wolf Popper and its co-lead counsel "are experienced litigators, with an extensive track record of trying cases in this Court and have achieved strong results for [their] clients over the years" and describing settlement as "excellent result after a very lengthy and hard-fought litigation. And I think folks should be proud of this outcome"); *Ross v. Lineage Cell Therapeutics, Inc.*, C.A. No. 2019-0822-LWW at 23-24 (Del. Ch. Feb. 8, 2023) (TRANSCRIPT) (approving settlement in alleged entire fairness case as "fantastic result" for class, and finding that Wolf Popper, which served as sole lead counsel, was "well-experienced in these matters"). For other examples, please see G&E's and Wolf Popper's firm résumés, attached as Exhibits A & B.

[162] *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015) ($148 million trial verdict); *In re Digex, Inc. S'holder Litig.*, 2001 WL 34131395 (Del. Ch. Apr. 6, 2001) ($420 million settlement); *In re McKesson Corp. S'holder Deriv. Litig.*,

counsel respectfully submit that the Settlement is another exceptional recovery that extends this record.

The standing of opposing counsel also may be considered in determining the reasonableness of a fee award. Defendants are represented by experienced, skillful, and well-respected law firms with demonstrated expertise advising directors and officers in de-SPAC merger litigation, and who vigorously defended their clients' interests. Those firms included, *inter alia,* White & Case LLP, Sidley Austin LLP, and Davis Polk & Wardwell LLP. The ability of opposing counsel enhances the significance of the benefit achieved for the Class.

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2020 WL 1985047 (Del. Ch. Apr. 24, 2020) ($175 million settlement and corporate governance reforms); *In re News Corp. S'holder Deriv. Litig.*, 2013 WL 3231415 (Del. Ch. June 26, 2013) ($139 million settlement); *In re Freeport-McMoRan Copper & Gold, Inc. Deriv. Litig.*, 2015 WL 1565918 (Del. Ch. Apr. 7, 2015) ($153.75 million settlement and corporate governance reforms); *Teachers' Ret. Sys. of Louisiana v. Greenberg*, 2008 WL 5260548 (Del. Ch. Dec. 17, 2008) ($115 million settlement); *In re Am. Int'l Grp., Inc. Consol. Deriv. Litig.*, 2011 WL 244179 (Del. Ch. Jan. 25, 2011) ($90 million Settlement); *In re CBS Corp. S'holder Class Action & Deriv. Litig.*, 2023 WL 5817795 (Del. Ch. Sept. 7, 2023) ($167.5 million settlement); *City of Monroe Emps.' Ret. Sys. v. Murdoch*, 2018 WL 822498 (Del. Ch. Feb. 9, 2018) ($90 million settlement plus corporate governance reforms); *In re Jefferies Grp., Inc. S'holders Litig.*, 2015 WL 1414350 (Del. Ch. Mar. 26, 2015) ($92 million settlement); *In re AMC Ent. Holdings, Inc. S'holder Litig.*, 2023 WL 516606 (Del. Ch. Aug. 11, 2023) ($76 million settlement); *In re MSG Networks Inc. S'holder Class Action Litig.*, 2023 WL 5302339 (Del. Ch. Aug. 16, 2023) ($48.5 million settlement); *In re AmTrust Fin. Servs., Inc. S'holder Litig.*, C.A. No. 2018-0396-LWW (Del. Ch. Nov. 22, 2021) (ORDER) ($40 million settlement); *In re Starz S'holder Litig.*, 2018 WL 6515452 (Del. Ch. Dec. 10, 2018) ($92.5 million settlement); *In re El Paso Corp. S'holder Litig.*, Consol. C.A. No. 6949-CS (Del. Ch. Dec. 3, 2012) (ORDER) ($110 million settlement).

### G. COUNSEL'S EXPENSES WERE APPROPRIATELY INCURRED

While Plaintiffs' counsel is requesting an "all in" combined Fee and Expense Award, counsel incurred $72,565.16 in out-of-pocket expenses in prosecuting this Action. [163] If not for counsel's all-in request, the expenses would be separately reimbursable, and they were all reasonably and necessarily incurred in the pursuit of this Action on behalf of the Class, and are modest when compared to the Settlement Amount. Those expenses included payments to an economic expert consultant who provided preliminary damages analyses, mediation fees, court costs, and travel-related expenses.

## V. MODEST SERVICE AWARDS TO MR. MARTEL AND MR. BRYANT ARE APPROPRIATE

The Court should approve the payment of modest service awards of $2,500 to each Plaintiff, to be paid out of the fees awarded to Class Counsel, as compensation for the time and effort that they each devoted to this litigation. Plaintiffs are retail stockholders of FAC whose redemption rights were impaired, and they suffered economically as a result of Defendants' misconduct. Each Plaintiff was eager to vindicate his rights and the rights of other similarly situated stockholders. They participated in critical aspects of the litigation, including (i) retaining documents; (ii) reviewing and providing feedback on a variety of core

[163] Tucker Aff. at ¶ 6; Blander Aff. at ¶ 6; Fistel Aff. ¶ 6.

documents, such as Plaintiffs' respective books and records demands and pleadings, the Complaint in this Action, and related filings; (iii) and communicating with their counsel on case updates, including the motions to dismiss and mediation developments, which culminated in their determination to accept the Settlement. Without Plaintiffs, there would have been no settlement. Their requests for services awards were disclosed in the Notice, and no stockholder has yet objected to them. The requested service awards in the amount of $2,500 per Plaintiff are reasonable in light of other recent awards.[164] Accordingly, Plaintiffs respectfully request that the Court grant the requested awards, which will be paid from counsel's fee award.

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the Settlement and Plan of Allocation, certify the Class pursuant to Court of Chancery Rules 23(1), 23(b)(1), and 23(b)(2), and grant the requested fee and expense award and service awards.

[164] *See, e.g.*, *Dell*, 300 A.3d at 734 (awarding $50,000); *In re Tile Shop Holdings, Inc. Litig.*, C.A. No. 2019-0892-SG (Del. Ch. Oct. 13, 2020) (ORDER) (Trans. ID 66014623) (award of $25,000 to both plaintiffs); *In re Pivotal Software, Inc. S'holders Litig.*, C.A. No. 2020-0440-KSJM (Del. Ch. Oct. 4, 2022) (ORDER) (Trans. ID 68210425) (award of $10,000 to plaintiff); *Activision*, 124 A.3d at 1077 (award of $50,000); *In re EZCorp Inc. Consulting Agreement Deriv. Litig.*, C.A. No. 9962-VCL (Del. Ch. Apr. 3, 2018) (TRANSCRIPT) at 22 (awarding $5,000 incentive awards); *Latch* Tr., *supra* n.3 at 17 (approving an award of $5,000 per plaintiff).

Dated: June 24, 2025

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