IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE NIKOLA CORPORATION	CONSOLIDATED C.A. No. 2022-0023 KSJM

PLAINTIFFS' OPENING BRIEF IN SUPPORT OF APPROVAL OF PROPOSED SETTLEMENT, CLASS CERTIFICATION, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS

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Plaintiffs Barbara Rhodes, Benjamin Rowe, and Zachary BeHage, (collectively, "Lead Plaintiffs"), and Michael Brown and Chrisanto Gomez (together, "Additional Plaintiffs," and with Lead Plaintiffs, "Plaintiffs"), by and through their undersigned attorneys, on behalf of themselves and the Class (define herein) of VectoIQ Acquisition Corp. ("VectoIQ" or the "Company") public stockholders, submit this Opening Brief in Support of Approval of Proposed Settlement, Class Certification, Award of Attorneys' Fees and Expenses, and Incentive Awards seeking: (i) final approval of the proposed settlement (the "Settlement") between, on the one hand, Plaintiffs, and on the other hand, Defendants Stephen Girsky, Robert Gendelman, Sarah W. Hallac, Richard J. Lynch, and Victoria McInnis, and former Defendant Steven M. Schindler (collectively, the "Individual Defendants"), and VectoIQ (together with the Individual Defendants, the "Defendants," both together with Plaintiffs, the "Parties," and each a "Party") as set forth in the Stipulation of Settlement dated August 12, 2025 ("Stipulation" or "Stip."); (ii) approval of the proposed Plan of Allocation; (iii) certification of the Class for purposes of the Settlement pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (iv) an award of attorneys' fees and reimbursement of expenses; and (v) incentive fee awards to Lead Plaintiffs.

Former VectoIQ stockholders were given notice of the Settlement in accordance with the scheduling order entered by the Court on August 20, 2025.

To date, there have been no objections. A hearing is scheduled for November 20, 2025, for the Court to consider these matters.[1]

PRELIMINARY STATEMENT[2]

The Settlement provides a $6.3 million recovery to compensate Class members for the impairment of their right to make a fully informed decision about whether to redeem their VectoIQ shares or invest in Nikola Corporation ("Nikola"), the company that emerged from VectoIQ's merger (the "Merger") with a private company, NIKOLA Hybrids, Inc. ("Legacy Nikola"). The proposed Settlement provides a meaningful recovery to stockholders and is a strong result in light of the significant risks presented by the still-developing Delaware jurisprudence relevant to this Action.

On February 16, 2023, Lead Plaintiffs filed the Complaint asserting various derivative claims on behalf of Nikola and certain direct *MultiPlan* claims on behalf of the Class. With respect to the *MultiPlan* claims, the Complaint alleges that Defendants breached their fiduciary duties by making false and misleading

[1] This Settlement resolves the class claims in the above-captioned consolidated action involving Nikola (the "Consolidated Action"). The Consolidated Action also asserts derivative claims which have been settled separately and will be presented to the Court concurrently with this class settlement. *See* Dkt. 252.

[2] Unless otherwise defined herein, capitalized terms shall have the meanings as set forth in the Stipulation or the Verified Second Consolidated Amended Stockholder Class Action and Derivative Complaint (the "Complaint") (Dkt. 75). Unless otherwise specified, references to "¶__" and "¶¶__" are to the Complaint.

statements in the Merger Proxy and impairing Class members' redemption rights. Among other things, the Complaint alleges that the Merger Proxy contained material misrepresentations and omissions concerning: (i) the value and nature of the combined company's business prospects and operation; (ii) Nikola's claims that it possessed certain claimed proprietary technologies or products; (iii) Defendants' failure to conduct adequate due diligence prior to the Merger; and (iv) the net cash per share contributed to the Merger by VectoIQ.

The Settlement was achieved after years of litigation which included the Court's consideration and partial denial of Defendants' motions to dismiss, a comprehensive discovery program comprised of millions of pages of documents produced by parties and non-parties, Trevor Milton's ("Milton") criminal trial record, the prosecution and findings of the U.S. Securities and Exchange Commission ("SEC"), and the transcripts and exhibits from Nikola's arbitration against Milton—all of which Lead Plaintiffs reviewed. Just before the Parties commenced previously scheduled witness' depositions, they agreed to stay the Action in order to engage in global mediation.

Over the next several months and lengthy arm's-length negotiations, the Parties reached an agreement in principle to settle the Action. Finalization of the Settlement was complicated by Nikola's intervening Chapter 11 filing that

eventually required the Parties to obtain a Rule 9019 Order in the Bankruptcy Court allowing the Settlement to proceed.

Plaintiffs respectfully submit that the Settlement should be approved as fair, reasonable, and adequate. The $6.3 million Settlement is well within the range of damages potentially available to the Class based on the number of VectoIQ shares eligible for redemption prior to Merger.[3]

As in numerous other *MultiPlan* settlements that have come before this Court, this action is also well-suited for class certification.[4] Holders of more than 22.9 million shares of VectoIQ stock chose to forego their redemption rights and invest in Nikola. Because these shares were likely held by hundreds or potentially thousands of class members, joinder of all Class members is impracticable, 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 Merger Proxy affected all VectoIQ stockholders in substantially the same manner, resulting in common questions of law and fact.

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[3] *In re Hennessy Cap. Acquisition Corp. IV S'holder Litig.*, 318 A.3d 306, 322 (Del. Ch. 2024).

[4] *See, e.g., In re MultiPlan Corp. 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)); *In re FinServ Acquisition Corp. SPAC Litig.*, 2024 WL 4472073 (Del. Ch. Oct. 10, 2024) (same); *Yu v. RMG Sponsor, LLC*, 2024 WL 4547457, at *1 (Del.Ch. Oct. 18, 2024) (same).

Plaintiffs and the Class were similarly affected by Defendants' actions, and Plaintiffs face no unique defenses. Further, Plaintiffs have acted to fairly and adequately protect the interests of the Class, as shown by hiring law firms well known to this Court and securing this positive settlement. Finally, as in previous *MultiPlan* settlements, the Class satisfies the requirements of both Rule 23(b)(1) and Rule 23(b)(2) due to the risk of inconsistent adjudications, that adjudications of some actions would likely be dispositive of the interests of other members of the Class, and that the Defendants acted in a manner that is generally applicable to the Class. Accordingly, Plaintiffs request this Court certify the Class.

Plaintiffs further submit that an all-in award of 20% of the $6.3 million Settlement Fund or $1,260,000.00, inclusive of $120,405.40 in reasonably incurred expenses, is appropriate here.[5] This request would result in a net fee award of $1,139,594.60, or 18.1% of the Settlement Fund.

The Settlement marks the culmination of an extensive investigation and hard-fought litigation challenging Defendants' impairment of the Class's redemption rights—all undertaken on a fully contingent basis. Plaintiffs respectfully submit that

[5] As described herein and in the Speirs Declaration and Middleton Affidavit filed concurrently herewith, because the Class Claims in this action were litigated under a single consolidated complaint, the total lodestar and expenses for the Consolidated Action have been allocated between the Class Claims and the Derivative Claims.

this fee request falls comfortably within "meaningful litigation efforts" range of 15% to 25%.

Finally, Plaintiffs request that the Court approve $5,000 in Incentive Awards to the Lead Plaintiffs to be paid out of any attorneys' fees awarded.

FACTUAL AND PROCEDURAL BACKGROUND

A. VectoIQ Is Formed

On January 23, 2018, VectoIQ was incorporated in Delaware for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses. As is true of all SPACs, VectoIQ's public stockholders (and only its public stockholders) would have the right to redeem their shares at the time the Board proposed a merger.[6] If a stockholder chose to redeem, they would be paid the $10 per share, that was paid for units in the IPO.[7] A decision not to redeem would be a decision to invest in the Merger and become a stockholder of the combined company.[8]

Consistent with the general practice of SPACs, VectoIQ issued shares ("Founder Shares") to the Sponsor. Here, the Founders[9] purchased 5.75 million

[6] ¶186.

[7] ¶200.

[8] ¶186.

[9] The Merger Proxy defines VectoIQ's founders to include VectoIQ Holdings, LLC and Cowen Investments II, LLC (collectively, the "Founders").

Founder Shares for just $25,000—approximately $0.004 per share. These Founder Shares would expire worthless if VectoIQ did not enter into a business combination within 24 months of its IPO or otherwise be forced to liquidate.[10]

VectoIQ was controlled by its sponsor, VectoIQ Holdings, LLC. Through the Sponsor, Girsky and Shindler: (i) selected the SPAC's directors; (ii) dominated the SPAC's management; (iii) made an investment in SPAC shares and/or warrants to cover the SPAC's underwriting fees and working capital; and (iv) for only a nominal investment received an equity stake in VectoIQ. Girsky led VectoIQ, serving as its CEO and Chairman, while Shindler served as its CFO. The Founder Shares that the Sponsor purchased—and those that were transferred to the officers and directors—did not provide for redemption rights and would be worthless in a liquidation.[11]

B. VectoIQ Goes Public

On May 18, 2018, VectoIQ completed its IPO when it issued and sold 23 million units at $10 per unit—each consisting of one share of VectoIQ common stock and one VectoIQ warrant to purchase one share of VectoIQ common stock—for a total of $230 million in gross proceeds.[12] Simultaneously with the consummation of VectoIQ's IPO, the Sponsor purchased 890,000 private placement

[10] ¶¶8, 137.

[11] ¶8.

[12] ¶142.

units (consisting of one share of common stock, also referred to in the Proxy Statement as "Initial Stockholder Shares," and one VectoIQ warrant to purchase one share of VectoIQ common stock), for an aggregate purchase price of $8.9 million. The $8.9 million in proceeds were added to the proceeds from the IPO and held in the trust account. Notably, if there was no business combination within 24 months, the private warrants would also expire as worthless.[13]

The $239 million raised in VectoIQ's IPO and the $8.9 million in proceeds from the Sponsor's purchase of private placement units were retained in a trust account for the benefit of the public stockholders, and VectoIQ began trading on the NASDAQ Capital Market.[14] Only in the event that VectoIQ entered into a business combination and there was money left over after satisfying redemptions could the amount left in the Trust contribute to the post-transaction company.[15] If VectoIQ did not enter into a business combination, the funds in the trust account would be returned to its public stockholders with modest interest.[16]

C. VectoIQ Elects to Merge with Nikola

On December 24, 2019, with only six months before VectoIQ's May 18, 2020, deadline, VectoIQ and Nikola signed the Letter of Intent for a

[13] ¶143.

[14] ¶144.

[15] *Id*.

[16] *Id*.

proposed merger.[17] Both the VectoIQ Board and the Legacy Nikola Board approved the Business Combination Agreement (referred to herein as the "Merger Agreement") and related agreements, which were executed on March 2, 2020. On March 3, 2020, prior to the market opening, VectoIQ and Nikola issued a joint statement announcing execution of the Merger Agreement.[18]

The Merger was structured as a "SPAC reverse merger" which provided that each privately held share of Nikola common stock issued and outstanding immediately prior to the Merger would be converted into the right to receive 1.901 shares of VectoIQ common stock. VectoIQ's public stockholders would continue holding one share of common stock in the surviving corporation for each share of VectoIQ they owned prior to the Merger.[19]

On May 8, 2020, VectoIQ filed with the SEC a definitive Proxy Statement (the Merger Proxy) which was mailed to VectoIQ stockholders the same day.[20] The Merger Proxy advised VectoIQ stockholders that they possessed the right to redeem their shares for $10.00 per share regardless of whether they voted to approve the Merger.[21] The redemption deadline was May 29, 2020, at 4:30 p.m.

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[17] ¶157.

[18] ¶160.

[19] ¶165.

[20] ¶175.

[21] ¶200.

The Merger Proxy sought stockholder approval for the Merger. In its reasons for recommending the transaction to VectoIQ stockholders, Plaintiffs allege that Defendants made a number of materially misleading assertions concerning Nikola's disruptive technology, strategic partnerships, high product demand, growth initiatives, due diligence, financial condition, comparable market valuation, and experienced management. The Merger Proxy also included allegedly misleading projections regarding production and sales of vehicles. With regard to VectoIQ's cash contribution to the Merger, Plaintiffs alleged that the Merger Proxy failed to inform stockholders that VectoIQ would contribute only $7.66 of net cash in the Merger as opposed to the $10.00 represented to its stockholders.[22]

At the VectoIQ stockholders' meeting on June 2, 2020, stockholders overwhelmingly approved the proposed Merger, with 19,458,433 shares voting in favor, 1,320 against, and 4,806 abstaining. Only 2,702 shares of VectoIQ, or 0.04%, were redeemed.[23] On June 3, 2020, the Merger closed.[24]

Shortly after the Merger, on June 9, 2020, Nikola's stock price rose to a high of $93.99.[25]

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[22] *See* ¶¶175-185.

[23] ¶107.

[24] *See* ¶¶188, 219, 226.

[25] ¶109.

D. The Hindenburg Report Exposes Nikola's Fraudulent Business Model

On September 10, 2020, Hindenburg Research published a 52-page report asserting that "Nikola is an intricate fraud built on dozens of lies over the course of its Founder and Executive Chairman Trevor Milton's career."[26] The Hindenburg Report gathered "extensive evidence—including recorded phone calls, text messages, private emails and behind-the-scenes photographs," to substantiate its allegations of dozens of false statements by Milton and Nikola.[27]

The evidence uncovered in the Hindenburg Report reflecting Milton's fraud and misleading statements in the Merger Proxy included, among other things, that:

> Nikola did not have certain claimed proprietary technologies or the ability to produce hydrogen;
>
> Nikola never built or designed certain vehicles and its reservations for and orders for trucks were fully cancellable or highly contingent; and
>
> Contrary to its representations, Nikola did not own any gas wells, did not have a source for clean energy, did not have an operational assembly line for its Tre vehicle, and did not have solar panels on the roof of its headquarters.

While the Merger was lucrative for Defendants, it eventually led to catastrophic losses for VectoIQ's public stockholders. By choosing to invest in the Merger, rather than redeem their shares, VectoIQ stockholders saw their share price decline precipitously following publication of the Hindenburg Report and steadily

[26] ¶268.

[27] *Id*.

thereafter its Defendants' deception was further revealed.[28] Nikola ended up filing for Chapter 11 bankruptcy relief, and its shares are now virtually worthless.

E. The DOJ and SEC Investigations

On September 14, 2020, Nikola and five of its officers and employees received subpoenas from the SEC Division of Enforcement.[29] On September 19, 2020, Nikola and Milton received grand jury subpoenas from the U.S. Department of Justice (the "DOJ").[30] The next day, Milton resigned from Nikola.[31]

On July 29, 2021, the DOJ unsealed an indictment charging Milton with two counts of securities fraud and two counts of wire fraud for making "false and misleading statements regarding Nikola's product and technology development" as part of a scheme to target "individual, non-professional investors—so-called 'retail investors'" through "social media and television, print, and podcast interviews."[32] On October 14, 2022, following a four-week trial, a federal jury convicted Milton on one count of criminal securities fraud and two counts of criminal wire fraud.[33]

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[28] *See* ¶¶268, 274.

[29] ¶276.

[30] ¶277.

[31] *Id*.

[32] ¶303.

[33] ¶306. On March 27, 2025, while the criminal conviction was on appeal, Milton received "A full and Unconditional Pardon" from President Trump.

On December 21, 2021, the SEC announced the resolution of its investigation of Nikola arising from Milton's misconduct by issuing a cease-and-desist order (the "SEC Cease-and-Desist Order"), ordering Nikola to pay a $125 million fine.[34]

F. Plaintiffs Undertake Section 220 Investigations

Following the collapse of their investment in Nikola, Lead Plaintiffs each separately served on Nikola a demand for books and records under 8 *Del. C*. § 220 ("Section 220").[35] Following the conclusion of separate meet-and-confer efforts with respect to the two demands, Nikola produced an agreed-upon set of books and records to Rhodes, BeHage, and Rowe, respectively.[36]

G. Lead Plaintiffs File The Action, Undertake Voluminous Discovery, And Successfully Oppose Defendants' Motions To Dismiss

After obtaining, reviewing, and analyzing Nikola's confidential documents, on January 7, 2022, Rhodes filed a Verified Stockholder Derivative Complaint in this Court under the caption *Rhodes v. Milton,* C.A. No. 2022-0023-KSJM ("Rhodes Action"). Following a similar review of Board-level books and records documents, on January 14, 2022, BeHage and Rowe filed a Verified Shareholder

[34] ¶308.

[35] Stip. §I.C.1.

[36] *Id*.

Derivative Complaint in this Court under the caption *BeHage v. Milton*, C.A. No. 2022-0045-KSJM ("BeHage Rowe Action").[37]

On February 1, 2022, this Court consolidated the Rhodes Action and the BeHage Rowe Action under the caption *In re Nikola Corporation Derivative Litigation*, Consol. C.A. No. 2022-0023-KSJM. Two weeks later, on February 15, 2022, Rhodes, BeHage, and Rowe filed their Verified Consolidated Amended Stockholder Derivative Complaint ("First Amended Complaint").[38] On March 10, 2022, Michelle Brown and Crisanto Gomes filed a related Verified Stockholder Derivative Complaint captioned *Brown v. Milton*, C.A. No. 2022-0223-KSJM ("Brown Action").[39]

Despite Lead Plaintiffs' efforts to oppose a complete stay, the foregoing matters were stayed in part and then in full until January 12, 2023, when this Court granted the Parties' stipulation to (i) consolidate the Brown Action into the Delaware Chancery Action; (ii) further stay the Delaware Chancery Action until February 14, 2023; (iii) appoint Rhodes, BeHage, and Rowe as Lead Plaintiffs; (iv) appoint Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and Johnson Fistel PLLP

[37] *Id*.

[38] Dkt. 23.

[39] Stip. §I.C.1.

("Johnson Fistel") as Lead Counsel; (v) appoint Andrews & Springer LLC as Delaware Counsel; and (vi) appoint Robbins LLP as Additional Counsel.[40]

On February 16, 2023, Lead Plaintiffs filed the Verified Second Consolidated Amended Complaint, which incorporated additional evidence from Defendant Milton's criminal trial.[41] The Complaint included derivative claims and added direct *MultiPlan* claims against certain defendants and new defendants related to those claims.

On May 3, 2023, Defendants filed five separate briefs in support of their motions to dismiss the Complaint.[42] The Nikola director defendants and Milton moved to dismiss the derivative claims asserted against them in part but did not move to dismiss claims concerning the alleged disclosure violations under *Malone* or the purported oversight failures under *Caremark*. In response, Lead Plaintiffs filed a 78-page omnibus opposition brief on July 26, 2023.[43]

Following December 8, 2023, oral argument, on April 9, 2024, this Court issued a bench ruling granting in part and denying in part the Defendants' motions

[40] Dkt. 74. Lead Counsel, Delaware Counsel, and Additional Counsel are collectively referred to as "Plaintiffs' Counsel" herein.

[41] Dkt. 75.

[42] Dkts. 102-118.

[43] Dkt. 133.

to dismiss.[44] The Court upheld certain of the direct *MultiPlan* Class Claims concerning the Merger. As for the Derivative Claims, the Court upheld the contested *Brophy* claim against Defendant Ubben and his fund. The alleged disclosure violations under *Malone* and oversight failures under *Caremark* against certain directors and officers remained in the action, as the Court did not address them in connection with the motions to dismiss.

Between June 26, 2023 and March 15, 2024, while the motions to dismiss remained pending, Lead Plaintiffs engaged in extensive fact discovery. They prepared, served, and responded to multiple document requests and subpoenas; negotiated document production scopes; reviewed privilege logs; noticed and prepared for fact witness depositions; and engaged in numerous written communications and meet-and-confers with defendants and non-parties regarding discovery timing, scope, and privilege issues.[45] As a result of these efforts, Lead Plaintiffs obtained more than 2.4 million pages of documents from Defendants and eight non-parties.[46]

Lead Counsel designated a team of attorneys to review and analyze the foregoing produced documents in preparation for anticipated depositions.

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[44] Dkt. 219.

[45] Stip. §I.C.1.a-b.

[46] Stip. §I.C.1.c.

Beginning on February 22, 2024, the Parties exchanged correspondence and conducted conference calls regarding deposition scheduling.[47]

On May 20, 2024, the Parties agreed to temporarily adjourn the scheduling of further depositions, including the taking of a deposition previously confirmed for May 29, 2024, in light of the pending settlement discussions and mediation.[48]

H. The Parties Engage in Mediation

On April 3, 2023, Plaintiffs and the Delaware Chancery Defendants, other than Milton and certain VectoIQ Defendants, agreed to participate in a mediation session before The Honorable Layn R. Phillips (Ret.) in an effort to settle certain derivative claims with the participating Defendants.[49] Although the April 3, 2023 mediation did not result in a settlement, the attending Parties continued settlement discussions.[50]

Lead Plaintiffs sent revised settlement demands on April 25, 2023 and again on July 11, 2023, the latter of which included monetary demands for both the Derivative and Class Claims, and proposed improvements to the Company's

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[47] *Id*.

[48] *Id*.

[49] The Federal Derivative Plaintiffs (who are not parties to the Class Claims) participated in this mediation session and subsequent mediations related solely to the Derivative Claims. Plaintiff Lomont, who filed his action in September 2023, participated in the mediation on May 10, 2024 as well.

[50] Stip. §I.D.

corporate governance related to the Derivative Claims. Because of certain insurance issues and Milton's unwillingness to provide the insurers with the necessary release, settlement discussions were suspended.[51]

During February and March 2024, as depositions approached, Lead Counsel commenced separate discussions with various Defendants' counsel, including Milton's counsel, and proposed a global mediation session that would include all the Parties for both the Derivative and Class Claims. Ultimately, all of the Parties attended a full- day mediation on May 10, 2024, in New York City before Gregory Danilow ("Mediator Danilow") and Niki Mendoza of Phillips ADR. Critically, once Lead Plaintiffs obtained Milton's agreement to attend the mediation, Defendants' insurers also agreed to participate. The Parties submitted mediation statements that addressed monetary demands for both the Derivative Claims and Class Claims.[52]

Although the May 10, 2024, mediation did not result in an immediate settlement, substantial progress was made, and the Parties continued settlement discussions through Mediator Danilow over the next three months.[53]

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[51] *Id.*

[52] *Id.*

[53] *Id.*

The Parties ultimately reached an agreement in principle for a global settlement of all claims on August 23, 2024, following a recommendation by Mediator Danilow.[54] The agreement in principle provided for settlement of the Class Claims for $6.3 million payable from VectoIQ Defendants' insurers.[55]

Following negotiations of the specific terms, the Term Sheet embodying settlement of the Class and Derivative Claims was executed by the Parties on November 19, 2024.

While the Parties were finalizing the separate stipulations for the class and derivative settlements, in February 2025, Nikola filed for Chapter 11 bankruptcy protection, triggering an automatic stay of proceedings pursuant to 11 U.S.C. § 362. Lead Counsel had previously retained bankruptcy counsel on December 31, 2024, and over the next several months sought to finalize the settlement of the Class Claims. Eventually, insurers for the VectoIQ Defendants required an order from the Bankruptcy Court that would permit payment of the Settlement proceeds without violating the automatic stay. On July 16, 2025, the Bankruptcy Court issued an order pursuant to Section 362 of the Bankruptcy Code that lifts and modifies the automatic bankruptcy stay to allow payment or advancements of insurance proceeds in

[54] *Id.*

[55] The Derivative Claims, which settled separately for $22 million and provided for corporate governance measures, included the Federal Derivative Plaintiffs and Plaintiff Lamont.

accordance with the terms and conditions of the policy in order to fund the Settlement.[56]

The definitive terms of the Parties' agreement are reflected in the Stipulation, filed with this Court on August 12, 2025.[57]

I. The Settlement Terms

The Settlement provides for a payment of $6.3 million in cash,[58] which will include any taxes, tax expenses, administration costs, fees and expenses awarded by the Court, and other costs or fees approved by the Court, including incentive fee to Lead Plaintiffs.[59]

The case is being settled on behalf of a class of VectoIQ stockholders as defined *infra*. Under the Plan of Allocation, after accounting for certain costs and fees, the Net Settlement Fund will be distributed to Class Members who were holders of VectoIQ Class A Common Stock and Public Units who had but did not exercise their redemption rights in connection with the Merger. The Settlement Administrator shall distribute to each eligible Class Member their *pro rata* share of the Net Settlement Fund.[60]

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[56] *See* Stip., Ex. D.

[57] *See* Dkt. 246.

[58] Stip. ¶1.30 (defining "Settlement Amount").

[59] *Id.* at ¶12.

[60] *See* Stip., Ex. B. ¶34.

ARGUMENT

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

Delaware law favors the voluntary settlement of complex class actions,[61] 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 cases."[62] 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 information then available, reasonably could accept."[63] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[64] The Court may consider several factors when making this determination, including:

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[61] *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).

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

[63] *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)).

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

> (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 the compromise as compared with the amount and collectability of a judgment, and (6) the views of the parties involved, pro and con.[65]

In making this determination, the Court need not "decide any of the issues on the merits,"[66] but 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."[67]

For the reasons set forth herein, the Settlement should be approved. The Settlement was the product of hard-fought litigation, including Plaintiffs overcoming motions to dismiss, an extensive discovery process, a lengthy and contentious mediation and negotiation process, and the complications related to navigating the settlement agreement in principle through Nikola's Chapter 11 proceeding. The Settlement provides substantial economic consideration to Class members who chose not to redeem their VectoIQ stock and were thus subject to substantial economic loss once Nikola stock dropped below the redemption price of $10.00 per share. And, the Settlement reflects Plaintiffs' well-informed judgment

[65] *Activision*, 124 A.3d at 1063 (quoting *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986)).

[66] *Polk*, 507 A.2d at 536.

[67] *Brinckherhoff v. Tex. E. Prods. Pipeline Co.*, 986 A.2d 370, 384 (Del. Ch. 2010) (quoting *In re MCA, Inc.*, 598 A.2d 687, 691 (Del. Ch. 1991)).

regarding the strength of the claims and defenses at issue, the potential damages that could be recovered following trial, and the benefits to the class of a guaranteed recovery.

A. The Settlement Provides Substantial Benefits To The Class

The Settlement provides a $6.3 million cash recovery, which equates to approximately $0.27 per share.[68] This recovery is a substantial benefit to the Class when compared to potential damages even if Plaintiffs' litigation efforts resulted in a trial victory.

Plaintiffs believe they have a strong possibility of establishing liability against Defendants at trial. The Court partially denied Defendants' Motion to Dismiss, ruling that: (i) entire fairness would apply due to a conflicted controller transaction; and (ii) it was "reasonably conceivable" that Defendants engaged in an unfair transaction by omitting material information regarding (a) the cash-per-share investment VectoIQ would make into Nikola, (b) the value and nature of Nikola's business prospects and operations, and (c) the level of due diligence VectoIQ conducted into Nikola.[69] The extensive fact discovery undertaken by Lead Plaintiffs after the Court's ruling substantiated this potential liability against Defendants.

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[68] $6,300,000 (Settlement Fund) / 23,000,000 (Shares Outstanding as of Redemption Deadline)= $0.2739 (per share).

[69] Transcript of Telephonic Rulings of the Court on Defendants' Motions to Dismiss (Apr. 9, 2024), at 25-26 (entire fairness standard of review applies); *id.* at 28-31

Based on the potential damages recoverable for the Class Claims, the Settlement is well within the range of reasonableness. Here, the estimated per share redemption value would have been approximately $10.00 (plus interest), and VectoIQ's stockholders could only reasonably expect to receive stock of equivalent value in return. However, Plaintiffs' valuation analysis revealed that VectoIQ's stock was worth just $7.66 per share. "[B]ecause [VectoIQ] was not worth $10 per share, [Legacy Nikola's] stated worth was commensurately overstated."[70] By choosing to invest in the post-closing company (viz., Nikola), VectoIQ's non-redeeming stockholders received stock worth, at most, $176,180,000.[71] Thus, the difference between the redemption value ($238,280,000) and value of the stock received ($176,180,000) yields $62,100,000 in maximum potential damages. Alternatively, if the Class were to obtain nominal damages of $1.00 per share, the total recovery would be $23,000,000.[72]

Based on these assessments, Plaintiffs conclude that the $6.3 million Settlement represents in a substantial recovery for the Class.

("reasonably conceivable" that transaction was not entirely fair based on alleged material omissions).

[70] *Delman v. GigAcquisitions3, LLC*, 288 A.3d 692, 725 (Del. Ch. 2023).

[71] 23,000,000 shares * $7.66 = $176,180,000.

[72] *In re Kensington-Quantumscape De-SPAC Litig.*, C.A. No. 2022-0721-JTL, at 61-62 (Del. Ch. Feb. 21, 2024) (TRANSCRIPT); *see also In re Mindbody, Inc., S'holder Litig.*, 2023 WL 8235846, at *2 (Del. Ch. Nov. 27, 2023) (awarding nominal damages in the amount of $1 per share).

Further, per share recovery of approximately $0.27 under the Settlement is materially higher than potential "nominal damages" of $0.10 per share as awarded in other SPAC settlements.[73]

B. Comparing The Benefits Obtained To The Likelihood Of Success At Trial Supports Approval Of The Settlement

At trial, Plaintiffs' claims would be subject to review under the entire fairness standard. Although Plaintiffs are optimistic about their chances of prevailing at trial, Plaintiffs recognize that even an entire fairness trial is not a low-risk proposition. Defendants could convince the Court that their Merger process did not result in unfair dealing, even if the price was unfair, or that Plaintiffs' untested net-cash-per-share theory was not viable, which could eliminate liability. Although Plaintiffs believe that they would prevail in proving that Defendants breached their fiduciary duties, the *MultiPlan* theory of liability is largely untested, and no such case has advanced to trial. Not only might the theory be rejected, but Defendants could prove that Class members did not rely on the allegedly misleading Merger Proxy in making their redemption decision or that their damages were not caused by Defendants' breaches of their fiduciary duties. Moreover, as discussed above, Plaintiffs were legitimately concerned that "a finding of unfair price (not to mention damages) may

[73] *See, e.g., Siseles v. Lutnick*, C.A. No. 2023-1152-JTL (Del. Ch. Dec. 6, 2024) (TRANSCRIPT).

prove unobtainable ... since [Nikola's] stock price recovered and traded [above] $10 per share for months."[74]

Even if Plaintiffs won at trial, they would face "significant risk on appeal" given the reality that, in the six post-*Americas Mining* 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, "[t]he high court affirmed the first two and reversed the next four."[75]

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

C. The Plan Of Allocation Is Reasonable And Appropriate

The Settlement allocates the $6.3 million recovery—plus any interest that accrues after being deposited in the Escrow Account and minus the payment of administrative costs, attorneys' fees and expenses, and any taxes and tax expenses—to the Class. The Plan of Allocation provides for an equitable recovery that will allow all Class Members who did not redeem their shares to receive a *pro rata* recovery for each of their non-redeemed shares held at the close of the Merger.

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

[75] *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 710 (Del. 2024).

The distribution methodology contemplated by the Plan of Allocation is "fair, reasonable, and adequate"[76] and consistent with methods endorsed by the Court in similar cases.[77] As contemplated by Rule 23(f)(6), the Plan of Allocation provides that: "If after completion of such follow-up efforts [$50,000] or more remains in the Net Settlement Fund, the Settlement Administrator shall conduct *pro rata* re-distributions of the remaining funds until the remaining balance is under [$50,000]. At such time as the remaining balance is less than [$50,000], the remaining funds shall be distributed to the Combined Campaign for Justice, P.O. Box 2113, Wilmington, DE 19899, a 501(c)(3) charitable organization."[78]

D. The Settlement Is The Result Of Hard-Fought, Arm's-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 are the product of arm's-length negotiations.[79] Here, the Parties arrived at the

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[76] *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).

[77] *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 9, 2024) (ORDER); *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024) (TRANSCRIPT); *Bushansky v. GigAcquisitions4, LLC*, C.A. No. 2023-0685-LWW (Del. Ch. Oct. 8, 2024) (ORDER); *In re Lordstown Motors Corp. S'holders Litig.*, 2024 WL 3555798, at *4 (Del.Ch. July 05, 2024).

[78] Stip., Ex. B ¶ 38(iii)(b).

[79] *See Ryan*, 2009 WL 18143, at *5 (finding settlement "fair, reasonable, and adequate" when reached after "vigorous arms-length negotiations following meaningful discovery").

Settlement only after extensive and hard-fought negotiations during and after multiple mediation sessions with an experienced mediator. This factor weighs in favor of approving the Settlement.

E. Counsel's Experience And Opinion Weigh In Favor Of Settlement Approval

The fact that experienced, sophisticated counsel support the Settlement also weighs in favor of approval.[80] Plaintiffs' Counsel here include attorneys at Cohen Milstein, Johnson Fistel, Robbins, and Andrews & Springer, highly regarded plaintiffs' firms that have substantial experience litigating and negotiating settlements of complex derivative and class actions, including de-SPAC merger redemption rights cases that have survived motions to dismiss and have proceeded far into discovery—and have secured substantial benefits on behalf of stockholders.[81] Plaintiffs' Counsel believe 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 gained from the

[80] *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").

[81] *RMG Sponsor*, C.A. No. 2021-0932-NAC; *In re FinServ Acquisition Corp. Litig.*, C.A. No. 2022-0755-PAF (Del. Ch. Oct. 10, 2024); *Kensington-QuantumScape*, C.A. No. 2022-0721-JTL; *Newman v. Sports Acquisition Holdings LLC*, C.A. No. 2023-0538-LWW (Del. Ch. Sept. 15, 2025); *In re XL Fleet (Pivotal) S'holder Litig.*, C.A. No. 2021-0808-KSJM (Del. Ch. Mar. 26, 2025).

extensive litigation and discovery process. That opinion further weighs in favor of approving the Settlement.[82]

II. THE CLASS SHOULD BE CERTIFIED PURSUANT TO COURT OF CHANCERY RULES 23(A), 23(B)(1), AND 23(B)(2)

Court of Chancery Rule 23 sets forth the requirements for class certification. Plaintiffs move the Court for certification of a Class for settlement purposes only pursuant to Rules 23(a), 23(b)(1), and 23(b)(2):

> All record and beneficial holders of VectoIQ Class A common stock, whether held as separate shares of common stock or as part of Public Units, directly or indirectly, who held such shares between the close of business on May 8, 2020 (the Record Date) and June 3, 2020 (the "Closing") (the "Class Period"), and their successors in interest who obtained shares by operation of law but excluding [the Excluded Persons].

The Excluded Persons include any of the following:

> (i) stockholders who redeemed 100% of their shares in connection with the Merger; (ii) holders of VectoIQ Class A Common Stock who did not have the right to exercise redemption rights; (iii)(a) Defendants; (b) members of the immediate family of any Individual Defendant; (c) any person who was a manager or managing member of any Defendant during the Class Period and any members of their immediate family; (d) any parent, subsidiary, or affiliate of Defendants; (e) any entity in which any Defendant or any other excluded person or entity has, or had during the Class Period, a controlling interest; and (f) the legal representatives, agents, affiliates, heirs, estates, successors, or assigns of any such excluded persons or entities; and (iv) (a) the

[82] *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.").

> Company; and (b) any person who was an officer or director of the Company during the Class Period and any members of their immediate family.

Plaintiffs respectfully submit that each Rule 23 requirement is satisfied here and that, consequently, class certification is appropriate.

A. The Class Satisfies Rule 23(a)

For a class to be certified, "(i) the class [must be] so numerous that joinder of all members is impracticable, (ii) there [must be] questions of law or fact common to the class, (iii) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class, and (iv) the representative parties [must] fairly and adequately protect the interests of the class."[83]

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

Rule 23(a)(1)'s numerosity requirement may be satisfied by "numbers in the proposed class in excess of forty, and particularly in excess of one hundred."[84] The test "is not whether joinder of all the putative class members would be impossible, but whether joinder would be practical."[85] As of the Redemption Deadline, *i.e.*, May 29, 2020, there were approximately 23 million eligible VectoIQ shares

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

[84] *Marie Raymond*, 980 A.2d at 400 (quoting *Smith v. Hercules, Inc.*, 2003 WL 1580603, at *4 (Del. Super. Ct. Jan. 31, 2003)).

[85] *Id*.

outstanding. Joinder of the likely hundreds if not thousands of VectoIQ shareholders is not practical, and numerosity is therefore 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."[86] Here, common questions of law include whether Defendants: (i) breached their fiduciary duties by impairing stockholder redemption rights; (ii) failed to disclose material information and/or made materially misleading statements in the Merger Proxy in connection with Merger; (iii) undertook an unfair Merger process at an unfair price; (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. This Court has certified classes in analogous circumstances[87] and should do so again here.

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

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

[87] *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)); *Lordstown*, 2024 WL 3555798, at *2 (Del.Ch. July 05, 2024) (same); *RMG Sponsor*, 2024 WL 4547457 at *2 (same).

the issues on behalf of the represented class."[88] Plaintiffs are similarly situated to the other unaffiliated non-redeeming holders of VectoIQ common stock; 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."[89]

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

There is no divergence of interest between Plaintiffs and absent Class members. Moreover, the recovery achieved through this litigation demonstrates that Plaintiffs' interests are aligned with those of absent Class members and is likewise indicative of the competence and effectiveness of Plaintiffs' Counsel.[90]

B. The Class Satisfies Rule 23(b)(1) And 23(b)(2)

Rule 23 enumerates when certification is appropriate.[91] 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).

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[88] *Leon N. Weiner*, 584 A.2d at 1226 (citation omitted).

[89] *Id*. (citation omitted).

[90] *See Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL (Del. Ch. Sept. 28, 2017) (TRANSCRIPT), at 20-21 ("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.").

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

The proposed Class satisfies Rule 23(b)(1). All Class members are unaffiliated holders of VectoIQ common stock, and all Class members suffered the same harm as a result of Defendants' conduct. The Class definitions expressly exclude 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.[92]

The Class also satisfies Rule 23(b)(2). Defendants' actions impacted Class members in uniform fashion, and the Settlement would afford final relief with respect to the Class as a whole.[93]

C. The Remaining Requirements Of Rule 23 Are Satisfied

Rule 23(e) provides that "a class action shall not be dismissed or compromised without the approval of the Court, and notice by mail, publication or otherwise of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs."[94] Notice has been provided to all absent Class

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[92] *See Haverhill*, C.A. No. 11149-VCL, 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.").

[93] *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").

[94] Del. Ct. Ch. R. 23(e).

members, pursuant to the process set forth in the Scheduling Order.[95] To date, no objections have been received.[96]

Pursuant to Rule 23(aa), Plaintiffs have sworn that they had not received or been promised or 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: (i) such damages or other relief as the Court may award them as a member of the Class; (ii) such fees, costs, or other payments as the Court expressly approves to be paid to or on their behalf; or (iii) reimbursement, paid by the Plaintiffs' attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of the Action.[97]

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

III. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

The Settlement provides an excellent outcome for the Class, with an immediate and substantial recovery. Plaintiffs request a fee award of 20% of the

[95] An affidavit of mailing from the settlement administrator will be filed on or before November 6, 2025.

[96] Plaintiffs' Counsel will respond to objections to the Settlement or fee request, if any, in their reply brief to be filed by November 13, 2025.

[97] Affidavit of Barbara Rhodes in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Incentive Award at ¶6 (filed herewith) ("Rhodes Aff."); Affidavit of Benjamin Rowe in Support Proposed Settlement and Application for Attorneys' Fees and Expenses and Incentive Award at ¶6 (filed herewith) ("Rowe Aff.").

$6,300,000 net settlement amount, or $1,260,000.00, inclusive of expenses in the amount of $120,405.40 reasonably incurred in connection with litigating this action.[98] Deducting expenses results in a requested fee award of approximately 18.1% of the Settlement Fund.

This requested fee and expense award is supported by the Court's precedent. Plaintiffs submit that the request is reasonable given the substantial benefit the Settlement provides compared against the risk that Plaintiffs' claims would be dismissed or otherwise denied at trial, and the thousands of hours Plaintiffs' Counsel have devoted to the prosecution of this Action on a fully contingent basis.

A. Legal Standard

This Court may award attorneys' fees to counsel whose efforts conferred a common benefit.[99] The determination of any attorney fee and expense award is left to the Court's discretion.[100] The Court considers the *Sugarland* factors, including: "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities

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[98] The total lodestar for the Consolidated Action is $8,578,868.05. For comparative purposes, Plaintiffs allocated the lodestar and expenses according to the relative size of each of each settlement as a percentage of the total. The total of the two original settlements under the Term Sheet was $28.3 million—$22 million for the Derivative Claims and $6.3 million for the Class Claims. The Class Claims amounted to 22.26% of the total recovered in the Consolidated Action and Plaintiffs have allocated the lodestars and expenses based on that ratio. *See infra* at § III.D for a detailed discussion regarding lodestar allocation.

[99] *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).

[100] *Ams. Mining*, 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).

of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved."[101] Delaware courts assign the greatest weight to the benefit achieved in litigation.[102]

Each of the *Sugarland* factors fully supports the requested fee award here.

B. The Benefits Of The Settlement Are Substantial

As set forth herein, the proposed Settlement confers substantial and quantifiable financial benefits on the Class in the form of $6.3 million in cash. As the factor accorded the most weight by the Court, this exceptional recovery counsels heavily in favor of Plaintiffs' requested fee award.[103] The Court has stated that "the dollar amount of the fund created ... is the heart of the *Sugarland* analysis."[104]

Under the stage-of-the-case method, endorsed in *Americas Mining*, fees ranging from 15% to 25% are typically appropriate for a "meaningful litigation

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[101] *Ams. Mining*, 51 A.3d at 1254 (citing *Sugarland*, 420 A.2d at 149).

[102] *Dell*, 326 A.3d at 698 ("The first factor – the results achieved – is paramount."); *see also Julian v. E. States Constr. 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)).

[103] *Ams. Mining*, 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.").

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

efforts" settlement.[105] Plaintiffs' requested fee and expense award represents 20% of the Settlement—the midpoint for such cases.

Plaintiffs respectfully submit that the requested fee and expense award is appropriate because this Settlement is properly viewed as being at the higher end of "meaningful litigation efforts" settlements. Here, Plaintiffs: (i) prepared Section 220 books and records demand, filed a books and records complaint and received responsive documents prior to filing the instant litigation; (ii) challenged Defendants' motions to stay the Action; (iii) secured a denial of Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint; (iv) conducted extensive discovery that included propounding document requests to parties and subpoenas to non-parties resulting in over 2.4 million pages of produced documents; (v) reviewed a significant portion of those documents in preparation for depositions of several witnesses, as well as for mediation; (vi) reviewed the transcripts and exhibits from Milton's criminal trial, materials from the SEC proceedings, and Nikola's arbitration proceedings against Milton; (vii) responded to document requests propounded by Defendants and produced documents; (viii) substantially prepared for depositions that were soon forthcoming at the time of the Settlement; (ix) engaged in extensive settlement negotiations through a mediator; and

[105] *Ams. Mining*, 51 A.3d at 1259.

(x) retained and worked with bankruptcy counsel in advancing the Settlement to the approval stage.

Such efforts are directly in line with, or extensively more detailed than, the litigation process in cases where the Court had approved fee awards in the "meaningful litigation efforts" range of 15%-25%:

Case	Cash Settlement Amount	Awarded Fee Percentage	State of Litigation
In re Towers Watson & Co. S'holder Litig., C.A. No. 2018-0132-KSJM[106]	$15,000,000	25%	Filed complaint; reviewed approximately 500,000 pages of documents; no depositions; some motion practice; appeal
In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig., C.A. No. 2023-0509-LWW[107]	$29,750,000	23.5%	Conducted Section 220 investigation; drafted and filed complaint; defended against Defendants' Answer; propounded 50 document requests and served 19 subpoenas; obtained over 124,000 documents totaling 1.28 million pages; took three depositions; responded to Defendants' discovery; attended mediation.

[106] 2021 WL 2354964 (Del. Ch. June 8, 2021) (ORDER AND FINAL JUDGMENT); 2021 WL 1831987 (Del. Ch. May 4, 2021) (SETTLEMENT BRIEF).

[107] 2025 WL 1892466 (Del. Ch. Jul. 9, 2025) (conditionally granting Final Order and Judgment).

Case	Cash Settlement Amount	Awarded Fee Percentage	State of Litigation
In re Tangoe, Inc. S'holder Litig., C.A. No. 2017-0650-JRS[108]	$12,500,000	22.6%	Filed complaint incorporating §220 documents; reviewed approximately 250,000 pages of documents; no depositions; some motion practice
In re Lordstown Motors Corp. S'holders Litig., C.A. No. 2021-1066-LWW[109]	$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; no depositions; some motion practice including discovery motion practice; engaged in bankruptcy proceedings
Garfield v. Blackrock Mortg. Ventures, LLC, C.A. No. 2018-0917-KSJM[110]	$6,850,000	22.4%	Filed complaint incorporating §220 documents; reviewed over 38,000 pages of documents; no depositions; some motion practice
In re AVX Corp. S'holders Litig., C.A. No. 2020-1046-SG[111]	$49,900,000	21%	Filed complaint; reviewed approximately one million pages of documents; no depositions; some discovery motion practice

[108] 2020 WL 507523 (Del. Ch. Jan. 29, 2020) (ORDER AND FINAL JUDGMENT); 2020 WL 136813 (Del. Ch. Jan. 9, 2020) (SETTLEMENT BRIEF).

[109] (Del. Ch. June 25, 2024) (TRANSCRIPT); 2024 WL 2882788 (Del. Ch. June 4, 2024) (SETTLEMENT BRIEF).

[110] 2021 WL 763744 (Del. Ch. Feb. 26, 2021) (ORDER AND FINAL JUDGMENT); 2021 WL 274491 (Del. Ch. Jan. 22, 2021) (SETTLEMENT BRIEF).

[111] (Del. Ch. Dec. 27, 2022) (ORDER AND FINAL JUDGMENT); 2022 WL 17415255 (Del. Ch. Dec. 1, 2022) (SETTLEMENT BRIEF).

Case	Cash Settlement Amount	Awarded Fee Percentage	State of Litigation
In re MultiPlan Corp. S'holders Litig., C.A. No. 2021-0300-LWW[112]	$33,750,000	20%	Filed complaint; reviewed substantial quantity of approximately 734,000 pages of documents; no depositions; discovery motion practice
Emile-Berteau v. Glazek, C.A. No. 2020-0873-PAF[113]	$5,000,000	20%	Filed complaint incorporating §220 documents; briefed motion to dismiss, denied in part; reviewed less than 1,500 pages of documents; no depositions
Vero Beach Police Officers' Ret. Fund v. Bettino, C.A. No. 2017-0264-JRS[114]	$17,950,000	19.8%	Filed complaint incorporating §220 documents; no depositions; drafted but did not file motion to dismiss opposition
Laidlaw v. Gigacquisition2, C.A. No. 2021-0821-LWW[115]	$7,250,000	18.0%	Drafted complaint; fully briefed motion to dismiss, which was denied; engaged in written discovery and served single subpoena

[112] 2023 WL 2329706 (Del. Ch. Mar. 1, 2023) (ORDER AND FINAL JUDGMENT); 2023 WL 1927595 (Del. Ch. Feb. 6, 2023) (SETTLEMENT BRIEF).

[113] 2023 WL 8618261 (Del. Ch. Dec. 12, 2023) (ORDER AND FINAL JUDGMENT); 2023 WL 6807603 (Del. Ch. Oct. 10, 2023) (SETTLEMENT BRIEF).

[114] 2018 WL 6330140 (Del. Ch. Dec. 3, 2018) (ORDER AND FINAL JUDGMENT); 2018 WL 6136042 (Del. Ch. Nov. 19, 2018) (SETTLEMENT BRIEF).

[115] 2024 WL 4449785 (Del. Ch. Oct. 8, 2024) (ORDER AND FINAL JUDGMENT); 2024 WL 4191277 (Del. Ch. Sept. 9, 2024) (SETTLEMENT BRIEF).

Case	Cash Settlement Amount	Awarded Fee Percentage	State of Litigation
Yu v. RMG Sponsor, LLC, C.A. No. 2021-0932-NAC[116]	$11,990,000	18.0%	Filed complaint and two amended complaints; obtained 48,000 pages of docs from defendants; mediated and negotiated settlement

These comparable precedents include recent fee awards in similar SPAC cases, including *MultiPlan* and *Lordstown*. In *MultiPlan*, the Court awarded plaintiffs' counsel an all-in fee of 20% of the recovery, while in *Lordstown*, the Court awarded 22.5% of the net recovery along with reimbursement of expenses. Like the present case, those actions involved settlements of breach of fiduciary duty claims related to the impairment of SPAC stockholder redemption rights in a SPAC merger, and both of these cases settled before depositions and expert discovery.[117]

Plaintiffs' Counsel respectfully submits that the requested fee award—equal to 20% of the net Settlement and inclusive of expenses of $120,405.40—is reasonable and appropriate. This request is in line with the Court's approval in *Lordstown*, where counsel sought 22.5% of $15.5 million net settlement fund (after

[116] 2024 WL 4547457 (Del. Ch. Oct. 18, 2024) (ORDER AND FINAL JUDGMENT); 2024 WL 4251030 (Del. Ch. Sept. 16, 2024) (SETTLEMENT BRIEF).

[117] *Lordstown*, C.A. No. 2021-1066-LWW (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).

deducting $429,647.01 in expenses), which equated to $3,390,829.42, or an effective 21.9% of total settlement.[118] Here, Plaintiffs' requested fee award percentage of 20% of the net Settlement is reduced an overall percentage significantly lower, at 18.1%.

C. The Contingent Nature Of Plaintiffs' Counsel's Representation Supports The Requested Fee

The "second most important factor" in the *Sugarland* analysis is the contingent nature of counsel's representation.[119] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[120] "This Court has recognized that an attorney may be entitled to a much larger fee when the compensation is contingent than when it is fixed on an hourly or contractual basis."[121]

Here, as set forth in the accompanying attorney affidavits,[122] Plaintiffs' Counsel pursued this case on a fully contingent basis. Accordingly, in undertaking

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[118] ($15,500,000 - $429,647.01) x 22.5% = $3,390,829.42. $3,390,829.42 / $15,500,000 = 21.876%.

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

[120] *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) (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"), *aff'd sub nom. First Interstate Bancorp v. Williamson*, 755 A.2d 388 (Del. 2000).

[121] *Ryan*, 2009 WL 18143, at *13.

[122] Unsworn Declaration of Richard A. Speirs Pursuant to 10 *Del. C.* § 5356 at ¶3 (filed herewith) ("Speirs Decl."); Affidavit of Brett Middleton at ¶3 (filed herewith) ("Middleton Aff."); Affidavit of David M. Sborz at ¶3 (filed herewith) ("Sborz Aff."); Affidavit of Craig

this representation, they incurred all of the classic contingent fee risks, including the ultimate risk—no recovery whatsoever and loss of all time and expenses incurred. This factor thus supports the requested fee award.

D. The Time And Effort Expended By Counsel Support The Requested Fee Award

Fee awards should neither penalize counsel for early success nor incentivize protracted litigation or unnecessary hours.[123] Accordingly, counsel's time should serve only as a cross-check on the reasonableness of the requested fee award.[124] As detailed above, Plaintiffs' Counsel prosecuted this Action through Section 220 Demands, motions practice, discovery, deposition preparation, mediation, and settlement negotiations--including working with bankruptcy counsel to secure approval of the Settlement.[125]

In connection with the above efforts litigating and settling the Consolidated Action, Plaintiffs' Counsel spent a total of 8,662.78 hours for a total lodestar of $7,787,622.30 from inception through November 19, 2024—the date the Parties executed their pre-bankruptcy proceeding term sheet (the "Term Sheet").[126] Then,

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W. Smith at ¶3 (filed herewith) ("Smith Aff."); Affidavit of Eitan Kimelman at ¶3 (filed herewith) ("Kimelman Aff.").

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

[124] *Id*.

[125] *See infra* at pp. 38-39.

[126] Speirs Decl. at ¶6; Middleton Aff. at ¶6; Sborz Aff. at ¶6; Smith Aff. at ¶6; Kimelman Aff. at ¶6.

from November 20, 2024, through August 12, 2025, (the date of the Stipulation and Agreement of Compromise, Settlement, and Release for the Class Claims), Plaintiffs' Counsel worked a total of 737.35 hours for an additional lodestar of $791,245.75.[127] The total number of hours spent by Plaintiffs' Counsel on the Consolidated Action from inception through August 12, 2025, is 9,400.13, for a total lodestar of $8,578,868.05.[128]

Plaintiffs' Counsel also incurred $540,904.76 in total expenses and charges in connection with the prosecution of the Consolidated Action from inception to date.[129]

Plaintiffs' Counsel utilized the following methodology for allocating time, lodestar, and expenses among the Derivative Claims and the Class Claims. The original settlement of the Derivative Claims as reflected in the Parties' Term Sheet was $22 million. The Class Claims settled for $6.3 million, as reflected in the Term Sheet. The aggregate settlement amount is $28.3 million with the Derivative Claims settlement contributing 77.74% ($22 million), and the Class Claims settlement contributing 22.26% ($6.3 million). Accordingly, Plaintiffs' Counsel has allocated

[127] Speirs Decl. at ¶7; Middleton Aff. at ¶7; Sborz Aff. at ¶7; Smith Aff. at ¶7; Kimelman Aff. at ¶7.

[128] Speirs Decl. at ¶8; Middleton Aff. at ¶8; Sborz Aff. at ¶8; Smith Aff. at ¶8; Kimelman Aff. at ¶8.

[129] Speirs Decl. at ¶9; Middleton Aff. at ¶9; Sborz Aff. at ¶9; Smith Aff. at ¶9; Kimelman Aff. at ¶9.

77.74% of their time, lodestar, and expenses in the Consolidated Action to the Derivative Claims settlement and 22.26% of their time, lodestar, and expenses in the Consolidated Action to the Class Claims settlement.[130]

Applying the 22.26% allocation ratio for the Class Claims to Plaintiffs' Counsel's foregoing totals for time, lodestar and expenses from inception through August 12, 2025, results in 2,092.47 allocated hours (22.26% of 9,400.13 total hours) for an allocated lodestar of $1,909,656.03 (22.26% of $8,578,868.05 total lodestar) and $120,405.40 in allocated expenses (22.26% of $540,904.76 total expenses).

The allocated expenses incurred by Plaintiffs' Counsel are $120,405.40. After subtracting these expenses, the net requested fee award is $1,139,594.60. The requested fee award implies an hourly rate of approximately $544.62 per hour ($1,139,594.60 divided by 2,092.47 allocated hours),[131] with no lodestar multiplier,

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[130] Speirs Decl. at ¶11; Middleton Aff. at ¶11; Sborz Aff. at ¶11; Smith Aff. at ¶11; Kimelman Aff. at ¶11.

[131] *In re Versum Materials, Inc. S'holder Litig.*, C.A. No. 2019-0206-JTL (Del. Ch. July 16, 2020) (TRANSCRIPT), at 81 (approving fees equivalent to 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 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT), at 67-68 ($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); *Activision*, 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, at *1 (Del. Ch. June 23, 2010) (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").

which is substantially lower than the range of hourly rates and lodestar multiples previously awarded by the Court.[132]

The substantial efforts of Plaintiffs' Counsel thus support the requested fee award.

E. The Action Implicates Complex Issues Of Fact And Law

In determining an appropriate award of fees and expenses, the Court also considers the complexity of the litigation. "[L]itigation that is challenging and complex supports a higher fee award."[133] This Action is complex both legally and factually.

Although Plaintiffs' claims in this action presented well-established legal challenges concerning Defendants' fiduciary duties, the claims nevertheless involved novel questions and legal issues, including (i) the contours of what constitutes impairment of stockholder redemption rights; (ii) the relationship between net cash per share and "true value" of the shares being exchanged in the

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[132] *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. Assocs., 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).

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

Merger; and (iii) the proper measure of damages for a claim based on impairment of redemption rights. Further, no de-SPAC merger case has gone to trial yet, creating uncertainties as to how this Court would wrestle with these issues. These uncertainties resulted in the potential for complex legal battlegrounds that have not yet been tested under an evidentiary record—much less on appeal.

The factual issues presented in this action were likewise complex. Plaintiffs' Counsel had to delve into the web of relationships between each of the Defendants, including their various businesses, directorships, and their interrelatedness and financial interests. Plaintiffs' Counsel also had to review documents produced pursuant to their Section 220 demands and in response to document requests to defendants and non-parties to assess Legacy Nikola's actual pre-merger valuation, its representations of claimed technologies and products, and the accuracy and truthfulness of the Merger Proxy disclosures.

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

F. Plaintiffs' Counsel Is Well-Regarded with a History of Successful Class Action Settlements

The Court also considers the standing and ability of counsel when determining the reasonableness of a fee and expense award.[134]

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

Here, Plaintiffs' Counsel are experienced in stockholder class and corporate governance litigation, with lengthy track records of obtaining exceptional recoveries for stockholders in challenging and complex cases. Plaintiffs' Counsel are well-known to the Court and have participated in significant settlements for plaintiffs in class and derivative litigation.[135] Plaintiffs' Counsel respectfully submit that the Settlement is another strong recovery that extends this track record.

The standing of opposing counsel also may be considered in determining the reasonableness of a fee award.[136] Defendants are represented by experienced, skillful, and well-respected law firms who vigorously defended their clients' interests. The ability of opposing counsel enhances the significance of the benefit achieved for the Class.

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[135] *See, e.g., In re Wells Fargo & Co. Secs. Litig.*, No. 1:20-cv-04494 (S.D.N.Y.) ($1 billion settlement); *Iowa Public Emps.' Ret. Sys. v. Bank of Am. Corp.*, No. 1:17-cv-06221 (S.D.N.Y.) ($580mm settlement); *In re Alphabet S'holder Deriv. Litig.*, No. 19-cv-341522 (Cal. Super., Santa Clara Cnty.) ($310mm settlement); *First Energy Corp. S'holder Deriv. Litig.*, Nos. 2:20-cv-04813; 5:20-cv-01743 (S.D. Ohio; N.D. Ohio) ($180mm); *In re Bear Stearns Mortg. Pass-Through Certificates Litig.*, No. 1:08-cv-08093 (S.D.N.Y.) ($505mm); *Maine State Ret. Sys. v. Countrywide Fin. Corp.*, No. 2:10-cv-00302 (C.D. Cal.) ($500mm).

[136] *See Kurz v. Holbrook*, C.A. No. 5019-VCL, at 104 (Del. Ch. July 19, 2010) (TRANSCRIPT) ("I take into account that they were opposed by five rather significant firms.").

IV. THE COURT SHOULD APPROVE INCENTIVE AWARDS FOR THE LEAD PLAINTIFFS

Plaintiffs and Plaintiffs' Counsel respectfully request the Court's approval of a modest Incentive Award to each of the Lead Plaintiffs to be paid out of any attorneys' fees awarded. "Delaware decisions have approved similar awards under similar circumstances."[137] "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."[138] "Courts also have considered the risks a named plaintiff shoulders when determining whether to grant an incentive award."[139]

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[137] *Orchard*, 2014 WL 4181912, at *13; accord *In re Santander Consumer USA Holdings, Inc.*, 2021 WL 256431, at *3 (Del. Ch. Jan. 25, 2021) ("Plaintiffs' Counsel shall pay $5,000 to each Plaintiff as an incentive award."); *Riche v. Pappas*, 2020 WL 6037162, at *2 (Del. Ch. Oct. 8, 2020) (approving incentive award of $7,500); *Mesirov v. Enbridge Energy Co.*, 2019 WL 690410, at *1 (Del. Ch. Feb. 18, 2019) (approving special award of $7,500 to plaintiff); *Hignett v. Adams*, 2018 WL 4922098, at *3 (Del. Ch. Oct. 9, 2018) (approving $5,000 incentive award to each of two lead plaintiffs); *In re EZCORP Inc. Consulting Agreement Deriv. Litig.*, 2018 WL 1627226, at *4 (Del. Ch. Apr. 3, 2018) (approving incentive award of $5,000 to lead plaintiff); *In re Sanchez Energy Deriv. Litig.*, C.A. No. 9132-VCG, at 10 (Del. Ch. Nov. 6, 2017) (TRANSCRIPT) (approving $5,000 incentive payment to each plaintiff); *In re Physicians Formula Holdings*, Inc., 2017 WL 319058, at *4 (Del. Ch. Jan. 20, 2017) (approving $25,000 incentive award to one lead plaintiff, and $5,000 to another).

[138] *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006).

[139] *Chen v. Howard-Anderson*, 2017 WL 2842185, at *5 (Del. Ch. June 30, 2017).

Lead Plaintiffs participated extensively in each phase of the case alongside Plaintiffs' Counsel, including reviewing Section 220 requests, reviewing initial and amended complaints and the motion to dismiss opposition, responding to document requests, and consultation leading up to and during the 2024 in-person mediation session and approval of the Settlement. Lead Plaintiffs were regularly consulted regarding all significant litigation developments in this case and were consulted on all settlement negotiations and bankruptcy proceedings.[140]

In light of these efforts, Plaintiffs and Plaintiffs' Counsel respectfully request that Lead Plaintiffs be awarded Incentive Awards of $5,000 each.

CONCLUSION

For all these reasons, Plaintiffs respectfully request that the Court certify the Class, approve the Settlement and Plan of Allocation, and grant the requested Fee and Expense and the Incentive Awards.

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[140] *See* Rhodes Aff. ¶2; Rowe Aff. ¶2.

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