IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SEAN MURRAY, Plaintiff, v. JOSEPH MOGLIA, KYLE CERMINARA, LARRY SWETS, JR., NICHOLAS RUDD, ROBERT WEEKS, HASSAN BAQAR, FG NEW AMERICA INVESTORS, LLC, THINKEQUITY LLC, JARED KAPLAN, THEODORE SCHWARTZ, TODD SCHWARTZ, and SCHWARTZ CAPITAL GROUP, Defendants.	C.A. No. 2023-0737-PAF **PUBLIC VERSION FILED ON: AUGUST 5, 2026**

PLAINTIFF'S OPENING BRIEF IN SUPPORT OF HIS MOTION TO APPROVE THE SETTLEMENT AND PLAN OF ALLOCATION, CERTIFY THE CLASS, AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD

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Dated: July 29, 2026

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Plaintiff Sean Murray ("Plaintiff"), by and through his undersigned counsel, on behalf of himself and the proposed Settlement Class, submits this Opening Brief in Support of his motion to approve the settlement and plan of allocation, certify the class, and for an award of attorneys' fees and expenses and service award (the "Motion"), seeking: (i) final approval of the proposed Settlement between Plaintiff and Defendants[1] (collectively, the "Parties"), as set forth in the Stipulation and Agreement of Settlement, Compromise, and Release filed April 27, 2026[2] (the "Stipulation"); (ii) approval of the proposed Plan of Allocation; (iii) final certification of the Settlement Class for settlement purposes pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); and (iv) an award of attorneys' fees and reimbursement of litigation expenses to Plaintiff's Counsel, as well as a service award to Plaintiff to be paid from the attorneys' fee award.

I. PRELIMINARY STATEMENT

Plaintiff brought this Action on behalf of former FG New America Acquisition Corp. ("FGNA") public stockholders who were entitled to, but did not, redeem their shares in connection with FGNA's July 20, 2021 merger with

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[1] "Defendants" refers collectively to Joseph Moglia, Kyle Cerminara, Larry Swets, Jr., Nicholas Rudd, Robert Weeks, Hassan Baqar, FG New America Investors, LLC, Jared Kaplan, Theodore Schwartz, Todd Schwartz, Schwartz Capital Group, and ThinkEquity LLC.

[2] Trans. ID. 79304669. Unless defined otherwise here, all capitalized terms are intended to have the same definition and meaning as provided in the Stipulation.

Opportunity Financial LLC ("Legacy OppFi"). The Verified Amended Stockholder Class Action Complaint[3] (the "Amended Complaint" or "Am. Compl.") alleges that Defendants pursued a conflicted de-SPAC transaction and impaired public stockholders' redemption rights by causing them to vote on the Merger and decide whether to redeem their shares based on a materially misleading Proxy. After nearly three years of hard-fought litigation, Plaintiff secured a $13 million all-cash Settlement for the Settlement Class.

The $13 million Settlement is fair, reasonable, and adequate and should be approved. To begin, the Settlement provides a substantial and certain recovery while eliminating further litigation risk. Plaintiff estimates that on a gross, per-share basis, the Settlement delivers approximately $1.18 per eligible share. This is an exceptional result when compared to other SPAC litigation, much of which settles far below $1.00 per share. While Plaintiff certainly would have sought a higher recovery at trial, there were considerable risks that weighed in favor of the negotiated resolution. For example, at the time of the mediator's proposal to settle the matter for $13 million, the Legacy OppFi Defendants and ThinkEquity were both seeking a pleading-stage dismissal of the claims pled against them in the Amended Complaint. Had they succeeded, it is difficult to know what negotiated resolution

[3] Filed on February 7, 2025 (Trans. ID 75604093).

could have been achieved. This is in addition to the longer-term risks inherent in any litigation, including the risks associated with litigating through a post-trial judgment and potential appeals. In short, the customary release of claims by the Settlement Class is a fair "give" for the $13 million "get" reflected in the Settlement.

In addition, Plaintiff and Class Counsel agreed to the Settlement with a full understanding of the merits. Over nearly three years of litigation, the Parties completed substantial document discovery. In addition to the books and records investigation conducted before filing, Plaintiff reviewed the written record, including documents produced by third parties, retained a financial expert on damage issues, and filed a comprehensive amended complaint, which pled strong claims that were only apparent from the plenary discovery record.

Further, the Parties reached the Settlement through an arm's-length negotiation overseen by an experienced mediator, Greg Danilow, Esq. In fact, the Parties agreed to the final settlement amount through a double-blind mediator's proposal to resolve the matter for $13 million. Accordingly, the Court should approve this sizable settlement, reached through adversarial litigation and arm's-length negotiations under the auspices of an experienced mediator. It is a fair, reasonable, and adequate compromise of the Class's claims.

The Court should likewise certify the proposed Settlement Class. As is typical in SPAC litigation, the proposed Settlement Class easily satisfies the Rule 23 requirements. The Court should also approve the Plan of Allocation, which will provide a nominal per-share damage amount to every class member, before taking into consideration each class member's trading profits and losses on their SPAC shares. As in other SPAC litigation, this Plan of Allocation will fairly distribute the Net Settlement Fund based on recognized losses.

Plaintiff also requests approval of a $2,392,043.89 Fee and Expense Award (inclusive of litigation expenses) and a $2,000 representative award for Plaintiff Sean Murray to be paid from the Fee and Expense Award. The fee request represents 17.5% of the recovery net of expenses and a modest .76 multiplier on counsel's lodestar. It would represent an "all-in" fee award of approximately 18.4%. It is an appropriate award, given the stage of the case, the substantial document discovery undertaken in the Action, and the effort undertaken by counsel over the preceding three years (all of which occurred on a contingency basis).

Accordingly, Plaintiff requests that the Court enter the proposed Final Order and Judgment, approving the Settlement and Plan of Allocation, certifying the Settlement Class, and granting the requested fee and service awards.

II. FACTUAL BACKGROUND

A. Formation Of FGNA

FGNA was a special purpose acquisition company ("SPAC") formed to identify and merge with a private operating company. Am. Compl. ¶1. In June 2020, the Sponsor formed FGNA. *Id.* ¶1. Moglia, Cerminara, and Swets formed and exclusively managed the Sponsor. Am. Compl. ¶35.

In connection with FGNA's initial public offering ("IPO"), the Sponsor acquired 5,943,750 Founder Shares for $30,000—less than $0.005 per share. Am. Compl. ¶¶4 & 4 n.3.[4] On August 7, 2020, the Sponsor caused FGNA to transfer 1,250,000 of these shares to FGNA's directors and officers, leaving the Sponsor with 4,693,750 shares. Am. Compl. ¶53. This created an improper incentive for the defendant fiduciaries because, unlike public shares, the Founder Shares converted one-to-one into Class A common stock only if a business combination occurred. *Id.* If FGNA liquidated instead, those interests would become worthless. Am. Compl. ¶¶4-6, 32. By giving 1,250,000 shares to FGNA's directors and officers, the Sponsor aligned their personal financial interests with completing a business combination,

[4] In connection with the IPO, the total number of Founder Shares was reduced from 6,468,750 to 5,943,750 due to the underwriter's failure to exercise in full its overallotment option.

regardless of whether it was in the public stockholders' best interests. Am. Compl. ¶¶4, 5, 53.

On October 2, 2020, FGNA completed its IPO, selling 23,775,000 units at $10.00 per unit and raising approximately $237.75 million. Am. Compl. ¶54. ThinkEquity LLC ("ThinkEquity") underwrote FGNA's IPO, earning an entitlement to $2,580,212 in deferred underwriting compensation upon the completion of a business combination. Am. Compl. ¶105. ThinkEquity would later agree to serve as FGNA's financial advisor and issue a "fairness opinion" supporting the Merger. Am. Compl. ¶¶56-57, 104.

The IPO proceeds went into a trust account for the benefit of public stockholders, who retained the right to redeem their shares for their pro rata portion of the trust in connection with any proposed business combination. Am. Compl. ¶¶ 2, 54-55.

B. LEGACY OPPFI FINDS FGNA AFTER UNSUCCESSFULLY ATTEMPTING TO SELL ITSELF TO OTHER PARTIES

Opportunity Financial LLC ("Legacy OppFi") operated a financial services platform that partners with banks to provide personal installment loans to consumers with poor or limited credit histories, who are typically denied credit by traditional banks. Am. Compl. ¶¶49, 111. Defendant Theodore ("Ted") Schwartz co-founded Legacy OppFi and, together with his son Todd Schwartz, controlled the operating company through Schwartz Capital Group ("SCG") and affiliated entities. Todd Schwartz served as Legacy OppFi's Chairman and, under the Merger Agreement, acted as the Members' Representative on behalf of Legacy OppFi's equity holders. Am. Compl. ¶¶46, 110.

As revealed in discovery and pled in the Amended Complaint, Legacy OppFi's pursuit of the merger began years before FGNA existed. In November 2018, Legacy OppFi retained Moelis & Company to conduct a sale process internally code-named "Project Trend." Am. Compl. ¶61. The objective of Project Trend was to provide "Schwartz with a liquidity event." *Id.* In this process, Moelis distributed a Confidential Information Memorandum ("CIM") to approximately 60 prospective buyers under confidentiality agreements; at least 44 of which formally rejected the opportunity, with many citing concerns regarding Legacy OppFi's valuation and "the risks" associated with its "subprime lending" business. Am. Compl. ¶62. After those efforts proved unsuccessful, Legacy OppFi repositioned itself as a "fintech" instead of a subprime lender. Am. Compl. ¶63. FGNA was approximately the 57th potential buyer contacted by Moelis. *Id.*

In October 2020, FGNA executed a non-disclosure agreement with Legacy OppFi and received the CIM, which included financial projections used during Legacy OppFi's earlier unsuccessful sale process (the "CIM Projections"). Am.

Compl. ¶¶64-65. Relying on the CIM Projections, FGNA made an initial offer on November 24, 2020, valuing Legacy OppFi's equity at approximately $550 million. Am. Compl. ¶¶67–74. By December 10, 2020, however, the parties had negotiated a substantially higher equity valuation of $743 million. Am. Compl. ¶82. Plaintiff alleges this increased valuation was not supported by changes to Legacy OppFi's business and was not based on "advice from any financial advisor." Am. Compl. ¶¶75–76, 84.

C. Legacy OppFi Replaced the CIM Projections with the Proxy Projections

After failing to find a buyer using the CIM Projections, Legacy OppFi created a new financial model for its negotiations with FGNA with materially more optimistic assumptions (the "Proxy Projections"). These new projections significantly inflated projected beginning receivables, change in receivables, revenue, adjusted EBITDA, and free cash flow compared to the earlier CIM Projections—including a free cash flow increase of over $100 million across the projection period. Am. Compl. ¶¶77–82, 97–103. The Proxy Projections also boosted projected full-year Adjusted EBT relative to the CIM Projections by approximately 115% for 2020 and 119% for 2021. Am. Compl. ¶¶77–79.

The Legacy OppFi Defendants provided these inflated projections to FGNA on February 1, 2021, just days before executing the Business Combination Agreement. Am. Compl. ¶¶97–98, 164.

D. THINKEQUITY ISSUES A FLAWED FAIRNESS OPINION

ThinkEquity served as FGNA's financial advisor for the transaction and issued a "Fairness Opinion." ThinkEquity was conflicted. Having served as the underwriter for FGNA's October 2020 IPO, it stood to gain $2,580,212 in deferred fees payable only if a business combination closed. Am. Compl. ¶42, 105. More significantly, on January 20, 2021, ThinkEquity agreed to provide a fairness opinion for this transaction pursuant to a flat-fee arrangement contemplated to apply "across multiple SPACs" involving the Controller Defendants for $150,000 each. Am. Compl. ¶93. At the time of the engagement, ThinkEquity and FGNA contemplated that the fairness opinion would be kept secret. Am. Compl. ¶101. Once Defendants decided to disclose the fairness opinion to stockholders rather than retain it internally, ThinkEquity's fee increased to $200,000. Am. Compl. ¶16. Defendants never told stockholders about the flat-fee arrangement negotiated for this and future fairness opinions that ThinkEquity would provide in connection with the Sponsor's other SPACs.

ThinkEquity delivered its February 7, 2021 fairness opinion to the Board via email without any accompanying presentation or discussion. Am. Compl. ¶104. The underlying valuation analyses relied on the inflated Proxy Projections, used unsupported discount rates and comparable companies, and contained mathematical errors in the discounted cash flow (DCF) analysis. Am. Compl. ¶¶106–108. For example, ThinkEquity incorrectly added depreciation and amortization expenses when it should have subtracted them from projected Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA") when calculating adjusted earnings before taxes. Am. Compl. ¶107. ThinkEquity selected a discount rate below Legacy OppFi's actual cost of debt, which resulted in an unreasonably low weighted average cost of capital to discount Legacy OppFi's future cash flows. *Id.* ThinkEquity selected companies for its market-based analysis that were not comparable to Legacy OppFi, which enabled ThinkEquity to inflate Legacy OppFi's value based on trading multiples. Am. Compl. ¶108. These flawed inputs, among others, resulted in highly inflated valuations of Legacy OppFi, producing an implied valuation of $981.8 million under the DCF analysis and $1.1 billion under the comparable-companies analysis. Am. Compl. ¶¶106–108.

E. COORDINATED EFFORTS TO MINIMIZE REDEMPTIONS

The Business Combination Agreement required FGNA to contribute at least $200 million in cash at closing, meaning that redemptions could not exceed approximately 18% of the public shares if the condition was to be satisfied. Am. Compl. ¶19. An April 20, 2021 "FGNA Key Priority List" identified strategies Defendants would undertake to reduce redemptions, including insider purchases, obtaining "non-redemption commitments" from institutional investors, and marketing Legacy OppFi as a "fintech" company. Am. Compl. ¶120. These initiatives were coordinated through undisclosed meetings among FGNA, Schwartz Capital Group, and Moelis. Am. Compl. ¶¶113-119.

F. THE FGNA DEFENDANTS ISSUE A MISLEADING PROXY

On June 22, 2021, FGNA filed its Definitive Proxy Statement (the "Proxy") seeking stockholder approval of the Legacy OppFi merger. Am. Compl. ¶¶21, 123. It set the redemption deadline for July 14, 2021, and the special meeting for July 16, 2021. Am. Compl. ¶¶28, 124. The Proxy contained material misstatements and omissions falling into at least four categories.

First, the Proxy materially overstated Legacy OppFi's future financial prospects by disclosing only the revised Proxy Projections, but not the materially lower CIM Projections used during the parties' price negotiations. Am. Compl.

¶¶158–169. These newer projections inflated receivables, revenue, Adjusted EBITDA, and free cash flow, and they came into being only *after* the parties agreed to a higher transaction valuation than the FGNA Defendants originally proposed. *Id.*

Second, the Proxy failed to disclose ThinkEquity's conflict of interest. Specifically, the Proxy omitted any reference to the flat-fee ThinkEquity negotiated with the Sponsor for future SPAC fairness opinions and the fact that the Fairness Opinion was intended to be held in secret, rather than disclosed to stockholders. Am. Compl. ¶¶173–177.

Third, the Proxy misstated Legacy OppFi's historic profitability because it improperly accounted for "Earnout Units." Am. Compl. ¶¶155–157. After the merger closed, OppFi restated its financial statements, reducing diluted earnings per share for fiscal year 2021 from $0.78 to $0.48. Am. Compl. ¶¶155, 185. The same accounting error affected the historical financial information and valuation metrics presented to FGNA stockholders in the Proxy.

Fourth, the Proxy understated the economic cost of remaining invested by hiding severe transaction dilution. While redeeming stockholders would receive roughly $10.00 per share plus interest, FGNA's actual net cash contribution was only about $6.50 per public share—even assuming zero redemptions. Am. Compl. ¶¶22, 144–154.

1. The Revised Minimum Cash Condition

Prior to the Special Meeting, approximately 54% of FGNA's public shares were redeemed.[5] This left FGNA with approximately $91.6 million in cash—well below the $200 million minimum cash condition in the original Business Combination Agreement. Am. Compl. ¶¶26, 142.

Defendants responded by renegotiating the transaction after the redemption deadline had already passed. Am. Compl. ¶¶137-140. On July 15, 2021—the day before the final stockholder vote—FGNA announced that the parties agreed to slash the minimum cash requirement to $83 million in exchange for altered lock-up restrictions. *Id.* As Plaintiff alleged, Defendants likely discussed these revisions before the redemption deadline but did not disclose them until stockholders no longer had the ability to redeem their shares. *Id.*

2. Stockholders Approved the Merger and the Transaction Closed

On July 16, 2021, FGNA stockholders approved the merger, and the transaction closed on July 20, 2021, with FGNA renaming itself OppFi Inc. ("New OppFi"). Am. Compl. ¶¶47, 141–142.

[5] Plaintiff estimates there are holders of 11,052,565 public shares who did not redeem their stock. Am. Compl. ¶54; compare ¶142.

The day after the Merger closed, the Sponsor's Founder Shares—which had formed its original $30,000 investment—were worth more than $34.6 million. Am. Compl. ¶32. This immediate windfall highlighted the incentives that drove key decisions throughout the transaction.

New OppFi's post-closing performance quickly fell short of the expectations reflected in the Proxy. Less than one month after the Merger closed, the Company reduced its fiscal-year 2021 revenue guidance from $418 million to a range of $350 to $360 million. Am. Compl. ¶179. It later downgraded its 2022 outlook; by the end of that year, it generated only $453 million in revenue—roughly 31% below the $656 million projected in the Proxy. Am. Compl. ¶186. New OppFi ultimately failed to achieve the financial performance reflected in the Proxy Projections and, in several respects, even performed below the earlier CIM Projections. Am. Compl. ¶168.

III. PROCEDURAL BACKGROUND AND SETTLEMENT TERMS

A. PLAINTIFF PROSECUTES THE ACTION AND NEGOTIATES THE SETTLEMENT

Plaintiff commenced this Action on July 20, 2023, by filing a Verified Stockholder Class Action Complaint asserting claims against the FGNA Defendants for breach of fiduciary duty and unjust enrichment (the "Initial Complaint," captioned *Murray v. Moglia, et al.*, C.A. No. 2023-0737-PAF). (Trans. ID 70432522).

The FGNA Defendants answered the Initial Complaint on November 30, 2023 (Trans. ID 71514786). Following the entry of scheduling and confidentiality orders, the Parties engaged in substantial document discovery. Plaintiff obtained 11,095 documents from Defendants. Plaintiff secured an additional 7,526 documents through subpoenas to Moelis, Piper Sandler, and ThinkEquity, bringing the total to 18,621 documents, comprised of 138,155 pages. Plaintiff also complied with Defendants' written discovery requests, serving responses to 44 requests for production and 33 interrogatories, for a total of 77 written discovery requests—alongside 281 pages of produced documents. (Trans. ID 72891487).

On October 24, 2024, Plaintiff and the FGNA Defendants participated in a full-day mediation before Greg Danilow, Esq., of Phillips ADR Enterprises. Before the mediation, Plaintiff secured an expert in economics to opine on relevant financial information and perform damages analyses. The mediation did not result in a settlement, and the Parties continued with litigation.

On February 7, 2025, Plaintiff filed the Amended Complaint, adding aiding-and-abetting claims against Todd Schwartz, OppFi Shares LLC, and the other Legacy OppFi Defendants (together the "Legacy OppFi Defendants") and ThinkEquity, as well as unjust enrichment claims against all Defendants (including the original FGNA Defendants). (Trans. ID 75604093). The Amended Complaint incorporated the evidence uncovered through discovery concerning both the negotiation of the Merger and ThinkEquity's role in supporting the Transaction. The Amended Complaint reflected not only simple refinements to Plaintiff's existing theories, but significant new evidence uncovered through discovery that expanded both the factual record and the scope of Defendants' alleged misconduct.

The FGNA Defendants answered the Amended Complaint on April 30, 2025. (Trans. ID 76182981). On the same date, the Legacy OppFi Defendants and ThinkEquity moved to dismiss the claims asserted against them (the "Motion to Dismiss"). (Trans. ID 76179263).

All Parties, including Legacy OppFi Defendants and ThinkEquity, participated in a second mediation session before Mr. Danilow on June 12, 2025. Although that session likewise concluded without agreement, negotiations continued with the mediator's assistance.

On July 21, 2025, Plaintiff filed an opposition to the Motion to Dismiss (the "Opposition") (Trans. ID 76697195), and on August 20, 2025, the Legacy OppFi Defendants and ThinkEquity Defendants filed their reply brief. (Trans. ID 76903096). The Court scheduled a hearing on the Motion to Dismiss for February 20, 2026. (Trans. ID 76954692).

On February 6, 2026, following continued arm's-length negotiations, the Settling Parties reached an agreement in principle to settle the Action after receiving and accepting a double-blind mediator's proposal on the Settlement Amount. On February 9, 2026, the Settling Parties informed the Court of the agreement in principle, and the hearing on the Motions to Dismiss was adjourned. (Trans. ID 78423420).

Pursuant to the Court's Scheduling Order entered on May 7, 2026 (Trans. ID 79408553), notice of the proposed Settlement was disseminated to Settlement Class Members advising them of the Settlement terms, the proposed Plan of Allocation, Plaintiff's anticipated application for attorneys' fees and litigation expenses, and their right to object or appear at the Settlement Hearing.[6] To date, there have been no objections. A hearing has been scheduled for September 10, 2026, at which time the Court will consider the Motion.[7]

B. THE SETTLEMENT TERMS

Under the Stipulation, in exchange for a customary release of claims in connection with the de-SPAC transaction, Defendants have agreed to cause

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[6] Ex. B to the Stipulation; Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear ("Notice"), *as revised* on June 15, 2026. (Trans. ID 79747789).

[7] Trans. ID 79408553.

$13,000,000 in cash (the "Settlement Amount") to be deposited into an interest-bearing escrow account for the benefit of the Settlement Class. After deduction of Court-approved attorneys' fees and expenses, notice and administration costs, taxes, and other approved expenses, the remaining Net Settlement Fund will be distributed to eligible Settlement Class Members pursuant to the proposed Plan of Allocation.

The Settlement Fund is non-reversionary, meaning no portion of the Net Settlement Fund will revert to Defendants. Instead, the Net Settlement Fund will be distributed pro rata among eligible Settlement Class Members based on their relative losses.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

Delaware law favors the voluntary settlement of complex class actions,[8] 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.[9] The Court may approve the Settlement after "mak[ing] an

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[8] *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., Inc. 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).

[9] *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 402 (Del. Ch. 2008), *aff'd,* 976 A.2d 172 (Del. 2009).

independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[10] To fulfill this duty, the Court assesses the reasonableness of both sides of the exchange: the "give" and the "get," defined as what the class releases and "what the class members receive in exchange for ending the litigation."[11] While the Court is not required to "decide any of the issues on the merits,"[12] it still considers "the nature of the claim," "possible defenses," and the "legal and factual obstacles facing the plaintiff" when applying its judgment.[13] In doing so, the terms of the settlement should land "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."[14]

For the reasons set forth herein, the Settlement should be approved.

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

[11] *In re Trulia, Inc. S'holder Litig.*, 129 A.3d 884, 891 (Del. Ch. 2016) (citing *In re Activision*, 124 A.3d at 1043); *Brinckerhoff v. Texas E. 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)) ("the value of all the claims being compromised against the value of the benefit to be conferred on the [c]lass by the settlement.").

[12] *Polk v. Good*, 507 A.2d 532, 536 (Del. 1986).

[13] *Rome*, 197 A.2d at 53–54.

[14] *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)).

A. THE SETTLEMENT PROVIDES MEANINGFUL RELIEF TO THE CLASS

The Settlement provides an immediate, substantial benefit to the Settlement Class in the form of a $13 million cash recovery to be distributed among the class members. This is a significant recovery in a de-SPAC case. Plaintiff estimates there are 11,052,565 eligible shares held by Settlement Class Members, meaning that the $13 million recovery equates to a gross per-share recovery of $1.18.[15] On a per-share basis, this amount is well above other recoveries that the Court has approved.[16]

B. WEIGHING THE STRENGTH OF PLAINTIFF'S CLAIMS AGAINST RISKS OF CONTINUED LITIGATION SUPPORTS SETTLEMENT

The Settlement was reached at a critical point in the litigation, just weeks before scheduled oral arguments on the fully briefed motions to dismiss filed by ThinkEquity and the Legacy OppFi Defendants. Had the case proceeded, Plaintiff

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[15] $13,000,000 gross settlement / ~11,052,565 non-redeeming Class A shares = approx. $1.18.

[16] *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) ($0.21 per share); *Siseles v. Lutnick*, C.A. No. 2023-1152-JTL (Del. Ch. Dec. 6, 2024) ("View") (TRANSCRIPT) ($0.32 per share); *In re GeneDX De-SPAC Litig.*, C.A. No. 2023-0140-PAF (Del. Ch. Dec. 2, 2024) ("*GeneDX*") (TRANSCRIPT) ($0.47 per share); *Yu v. RMG Sponsor, LLC*, C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024) ("*Romeo Power*") (TRANSCRIPT) ($0.52 per share); *In re Finserv Acquisition Corp. SPAC Litig.*, C.A. No. 2022-0755-PAF (Del. Ch. Oct. 10, 2024) ("*Finserv*") (TRANSCRIPT) ($0.38 per share); *In re Multiplan Corp. S'holders Litig.*, Consol. C.A. No. 2021-0300-LWW (Del. Ch. Feb. 28, 2023) ("Multiplan") (TRANSCRIPT) ($0.368 per share).

would have faced the immediate risk that his claims against these two groups of defendants would be dismissed based on two big-picture arguments.

First, the ThinkEquity and Legacy OppFi Defendants argued that Plaintiff's claims were time-barred because they were first asserted in the Amended Complaint more than three years after the Merger.[17] While Plaintiff countered that equitable tolling and fraudulent concealment applied because the claims were based on newly uncovered discovery,[18] uncertainty remained as to whether the Court would conclude the claims were timely.

Second, Plaintiff's claims against ThinkEquity and the Legacy OppFi Defendants were asserted under an aiding-and-abetting theory.[19] For the Legacy OppFi Defendants, Plaintiff alleged they manipulated the financial projections to inflate the company's valuation, participated in drafting the proxy statement, and worked to discourage stockholder redemptions.[20] Regarding ThinkEquity, Plaintiff alleged that it knowingly participated by colluding with FGNA insiders to provide a

[17] Opening Brief in Support of the Motion to Dismiss at 1–2; 11-17.

[18] Opposition at 2, 18–25.

[19] Opposition at 2, 25–43.

[20] Opposition at 29–31

flawed fairness opinion that was pre-destined to support the overinflated price the directors negotiated.[21]

While these motions were pending, the Delaware Supreme Court tightened the framework for aiding and abetting claims, requiring proof of actual—rather than constructive—knowledge to establish aiding and abetting.[22] As this Court later observed, "*Columbia Pipeline*. . . made the knowledge aspect tougher" because "the aider and abettor's knowledge 'must be actual knowledge.'"[23] This shifting legal landscape created acute litigation risks. As this Court recently recognized in another de-SPAC action, allegations that target-company executives supplied optimistic projections or understood the transaction timeline, standing alone, do not support a reasonable inference of actual knowledge of disclosure violations.[24] Consequently, there was a possibility that all of Plaintiff's aiding-and-abetting claims would not survive the pleading stage.

Even if Plaintiff prevailed at the pleading stage as to the ThinkEquity and Legacy OppFi Defendants, substantial risks would continue through trial with all

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[21] Opposition at 40–41.

[22] *In re Columbia Pipeline Grp, Inc. Merger Litig.*, 342 A.3d 324 (Del. 2025).

[23] *Calumet Cap. Partners LLC v. Victory Park Cap. Advisors, LLC*, 353 A.3d 88, 115 (Del. Ch. 2026) (quoting *Columbia Pipeline*, 342 A.3d at 368).

[24] *Jacob v. Vogel*, C.A. No. 2022-0600-PAF (Del. Ch. Mar. 17, 2026) (TRANSCRIPT).

Defendants. To Plaintiff's knowledge, no de-SPAC merger case has made it to trial, leaving substantial doubt as to the required elements of proof on the claim and the appropriate remedy in such cases and whether a plaintiff is entitled to any more than "nominal damages" on the claim.

These risks, among others, were carefully considered by Plaintiff and Plaintiff's Counsel in determining that the Settlement provides a fair, reasonable, and adequate result for the Settlement Class.

C. THE SETTLEMENT RESULTED FROM HARD-FOUGHT LITIGATION AND MEDIATION EFFORTS

When evaluating the fairness of a settlement, Delaware courts evaluate the negotiations that led up to the settlement and heavily favor settlements that occurred after meaningful discovery and vigorous negotiations.[25] Here, the Parties reached a resolution only after significant fact discovery. Plaintiff and his counsel received and reviewed 18,621 documents (138,155 pages)—comprising 11,095 from Defendants and 7,526 from third parties. Plaintiff similarly responded to 33 interrogatories and produced 281 pages across 44 requests for production. The evidence Plaintiff uncovered during this exchange formed the foundation for the

[25] *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").

Amended Complaint and its aiding-and-abetting claims. Thus, by the time the Parties reached their compromise, Plaintiff and his counsel were well informed of the facts animating this action.

In addition, Plaintiff and Defendants engaged in a protracted negotiation process overseen by Greg Danilow, Esq., an experienced and highly regarded mediator with Phillips ADR Enterprises. Plaintiff and the FGNA Defendants first participated in an initial mediation session on October 24, 2024, exchanging mediation briefs that provided both sides' views on liability and potential damages. Plaintiff retained an expert to advise on his damages arguments. While that session did not yield an immediate resolution, the Parties continued to litigate the case and negotiate with the mediator's continued guidance. Armed with the expert's damages analysis and observations regarding ThinkEquity's analyses, Plaintiff filed the Amended Complaint. Following the Amended Complaint and new discovery, all Parties—including the Legacy OppFi Defendants and ThinkEquity—convened for a second formal mediation session on June 12, 2025. Plaintiff also submitted a supplemental mediation statement on June 10, 2025, to prepare for this session. Although the second mediation also ended without an immediate settlement, the Parties maintained negotiations for several months. The process ultimately culminated on February 6, 2026, when all sides accepted a double-blind mediator's proposal and reached an agreement in principle to resolve the Action.

Thus, the final Settlement Amount reflects a compromise proposed by a well-regarded mediator after extensive arm's-length negotiations.[26] The Parties accepted that proposal, knowledgeable of the facts giving rise to the litigation, the opposing legal arguments they would face, and the opposing views on damages that would be presented at trial. Accordingly, the well-informed, arm's-length process through which the Parties reached a resolution speaks in favor of settlement approval.

D. PLAINTIFF'S COUNSEL'S EXPERIENCE AND JUDGMENT SUPPORTS APPROVAL

Where counsel is experienced, the Court also considers counsel's opinion in evaluating a settlement.[27] Here, Plaintiff's Counsel are experienced in stockholder class and corporate governance litigation, with a lengthy track record of obtaining exceptional recoveries for stockholders in challenging and complex cases. Of particular relevance here, Plaintiff's counsel have a strong track record in this Court,

[26] *Activision*, 124 A.3d at 1067 (noting that a settlement that "resulted from a protracted mediation conducted by a highly respected" practitioner "further evidence[s]" its reasonableness).

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

including successfully resolving other SPAC-related merger actions.[28] 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 following extensive discovery. Counsel's opinion further weighs in favor of approving the Settlement.

E. THE PLAN OF ALLOCATION IS FAIR AND EQUITABLE

A proposed "allocation plan must be fair, reasonable, and adequate."[29] Here, Plaintiff's Plan of Allocation provides a fair and equitable recovery that allows Class Members to receive compensation based on the actual economic harm they suffered, as well as a nominal payment to compensate them for the impairment of their redemption rights.

Under the Plan of Allocation, claims forms will be used to determine the "Total Loss" of every class member. Class Members who sold their shares between the July 14, 2021, redemption deadline and July 20, 2023, (the day Plaintiff filed this

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[28] *See, e.g.*, *XL Fleet*, Consol. C.A. No. 2021-0808-KSJM (Del. Ch) (extensive document discovery and multiple depositions); *In re Gores Holdings, IV, Inc. S'holder Litig.* C.A., No. 2023-0284-LWW (Del. Ch.) ("*Gores IV*") (same); *Jandreau v. Wallace*, C.A. No. 2024-0119-MTZ (Del. Ch.) (extensive document discovery and twelve depositions); *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch.) (reviewing over 1.2 million pages of documents and completing three of thirteen scheduled depositions).

[29] *Schultz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009).

action) for less than the $10.00 per share redemption price will have a Total Loss equal to the difference between $10.00 and their sale price. Class Members who continued holding their shares as of July 20, 2023, will have a Total Loss equal to the difference between $10.00 and $1.98—the closing price of New OppFi stock on that date. In addition, all Class Members will receive a nominal recovery of $0.10 for each share they held on the redemption deadline to compensate them for the impairment of their right to make a fully informed redemption decision, this includes Class Members who sold their shares at a profit. The Net Settlement Fund shall be distributed to Eligible Class Members on a pro rata basis based on the relative size of the Eligible Class Member's Total Losses. Specifically, a "Claimed Distribution Amount" will be calculated for each Eligible Class Member, which will be the sum of the Eligible Class Member's Total Losses divided by the combined Total Loss for all Eligible Class Members, multiplied by the total amount in the Net Settlement Fund. If the Eligible Class Member's Claimed Distribution Amount calculates to less than $10.00, it will not be included in the calculation, and no distribution will be made to that Eligible Class Member; however, they will nevertheless be bound by the Settlement and the Order and Final Judgment of the Court dismissing this Action.

If the total of Total Losses of all Eligible Class Members who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Eligible Class Member shall receive their pro rata share of the Net Settlement Fund. If the Net Settlement Fund exceeds the total amount of the Total Losses of all Eligible Class Members entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed pro rata to all Eligible Class Members entitled to receive payment. Defendants shall not have a reversionary interest in the Net Settlement Fund.

This structure closely mirrors allocation plans previously approved by this Court in *Latch,*[30] *Romeo Power*,[31] *View,*[32] *Quantum Si,*[33] *Genius Sports*,[34] *Super*

[30] *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch. Mar. 27, 2025) ("*Latch*") (TRANSCRIPT) at 13, 27.

[31] *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)).

[32] *Siseles v. Lutnick*, 2024 WL 5046087, at ¶3 (Del. Ch. Dec. 6, 2024) (ORDER).

[33] *Farzad v. HighCape Cap., LP*, 2026 WL 868380, at *3 (Del. Ch. Mar. 27, 2026) (ORDER AND FINAL JUDGMENT) ("*Quantum-Si*").

[34] *Offringa v. dMY Sponsor II, LLC*, C.A. No. 2023-0929-LWW (Del. Ch. Feb. 23, 2026) ("*Genius Sports*") (TRANSCRIPT) at 20.

Group,[35] *Apex*,[36] and *Hyzon*.[37] It directly satisfies the mandate to "equitably account" for "economic losses... of varying degrees"[38] suffered by "class members who sold their stock at different points [and] experienced significantly different alleged losses."[39] 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."[40]

Further, consistent with Rule 23(f)(6), the Plan of Allocation provides that any residual funds will be redistributed to eligible Class Members, unless

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[35] *Newman v. Sports Ent. Acq. Holdings*, C.A. No. 2023-0538-LWW (Del. Ch. Sept. 15, 2025) ("*Super Group*") (TRANSCRIPT) at 28-29.

[36] *Drulias v. Apex Tech. Sponsor LLC*, C.A. No. 2024-0094-LWW (Del. Ch. July 10, 2025) ("*Apex*") (TRANSCRIPT) at 29–30.

[37] *Malork v. Anderson*, C.A. No. 2022-0260-PAF (Del. Ch. Oct. 21, 2025) ("*Hyzon*") (TRANSCRIPT) at 28-29.

[38] *Super Group* Tr. at 28.

[39] *Apex* Tr. at 30.

[40] *Latch* Tr. at 13, 27.

"redistribution is uneconomic"—in which case the remaining balance will be donated to the Delaware Combined Campaign for Justice.[41]

Accordingly, Plaintiff's Plan of Allocation is "fair, reasonable, and adequate," and should be approved.[42]

F. THE SETTLEMENT CLASS SHOULD BE CERTIFIED UNDER COURT OF CHANCERY RULES 23(A), 23(B)(1), AND 23(B)(2)

In connection with this Settlement, Plaintiff moves the Court for certification of a non-opt-out Class consisting of:

> All record and beneficial holders of FGNA Class A Common Stock who held such stock as of the Redemption Deadline on July 14, 2021, at 5:00 PM ET, the Redemption Deadline, and who elected not to redeem all or some of their FGNA Class A Common Stock, including their successors in interest who obtained shares by operation of law, but excluding: (i) Defendants; (ii) members of the immediate family of any individual Defendant; (iii) any parent, subsidiary, or affiliate of any entity Defendant; (iv) any entity in which any Defendant or any other Excluded Person, or group of Excluded Persons, has, or had on the Redemption Deadline a controlling interest; and (v) the legal representatives, agents, affiliates, heirs, estates, successors, or assigns of any such Excluded Persons.[43]

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[41] Del. Ct. Ch. R. 23(f)(6)(B); *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 that funds for which Class redistribution would be uneconomical be issued to the Delaware Combined Campaign for Justice).

[42] *Schultz*, 965 A.2d at 667.

[43] Stipulation at 11-12 ¶c and 13 ¶k.

The requirements for class certification are set forth in Court of Chancery Rule 23. Plaintiff respectfully submits that each of Rule 23's requirements is satisfied here, and the Court's certification of the Class is appropriate.

G. Each Of The Rule 23(a) Requirements Is Satisfied

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."[44] As set forth below, each of these requirements is met.

1. Rule 23(a)(1): The Class is so Numerous that Joinder of All Class Members is Not Practical

Rule 23(a)(1) requires that the proposed class be "so numerous that joinder of all members is impracticable."[45] "The test is not impossibility of joinder, but practicability. 'A showing of strong litigational inconvenience in the prosecution of claims separately or jointly by the proposed class members is sufficient.'"[46]

[44] Ct. Ch. R. 23.

[45] Ct. Ch. R. 23(a)(1).

[46] *Dubroff v. Wren Holdings, LLC*, 2010 WL 3294219, at *5 (Del. Ch. Aug. 20, 2010) (quoting *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991)).

Here, as of the July 14, 2021, redemption deadline, there were 23,775,000 publicly held FGNA Class A common shares issued and outstanding. Following all redemptions, Plaintiff estimates there are 11,052,565 public shares of FGNA that remained unredeemed. Accordingly, the proposed Settlement Class of holders of unredeemed shares is sufficiently numerous to satisfy Rule 23(a)(1).

2. Rule 23(a)(2): There Are Questions of Law and Fact Common to the Class Members

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." This requirement is satisfied "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."[47] "A class still satisfies the commonality requirement even where its members have different interests and views, 'so long as the common legal questions are not dependent on divergent facts and significant factual diversity does not exist among the individual class members.'"[48] When a stockholder brings claims for "breaches of fiduciary duty that implicate the interests

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[47] *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2022 WL 2236192, at *4 (Del. Ch. June 14, 2022).

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

of all members of the proposed class," there are questions of law and fact that are "common to the class."[49]

Here, there are factual and legal issues common to all Settlement Class Members, including whether: (i) the FGNA directors breached their fiduciary duties by impairing former stockholders' redemption rights; (ii) the Proxy Statement failed to disclose material information or included materially false or misleading statements; (iii) the Merger was entirely fair, both in process and in price; (iv) Defendants unjustly enriched themselves by securing unique financial benefits to the detriment of public stockholders; and (v) Defendants' conduct injured Plaintiff and other Class Members.

Because this action involves claims that "implicate the interests of all members of the proposed class of [stock]holders," commonality is satisfied.[50] This

[49] *In re Lawson Software, Inc. S'holder Litig*., 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011).

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

Court has consistently certified settlement classes in analogous circumstances, and it should do the same here.[51]

3. Rule 23(a)(3): Plaintiff's Claims Are Typical of The Claims of The Class

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses 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."[52] The Court will generally find typicality where, as here, the class representative's claims "arise[] from the same event or course of conduct that gives rise to the claims [or defenses] of other class members and [are] based on the same legal theory."[53]

Plaintiff's claims in this action arise from the same events: Defendants breached their fiduciary duties by, *inter alia*, negotiating and approving an unfair

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[51] *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)); *GeneDX*, 2024 WL 4952176, at *1 (Del. Ch. Dec. 2, 2024) (same); *View*, 2024 WL 5046087, at *1 (same).

[52] *Weiner & Assocs.*, 584 A.2d at, 1225-26.

[53] *New Jersey Carpenters Pension Fund v. infoGROUP, Inc.*, 2013 WL 610143, at *3 (Del. Ch. Feb. 13, 2013).

Merger, disseminating false and misleading statements and omitting material information from the Proxy, and interfering with the Class's right to make a fully informed redemption decision. All Settlement Class Members have the same interest—namely, establishing that they were deprived of their right to seek redemption because of false statements or the omission of material information and were damaged thereby. As in most stockholder challenges, "[a]ll claims grow out of the same events and courses of conduct and the same legal theories would apply. As one regularly finds in challenges to the conduct of fiduciaries in the merger context, the typicality requirement is satisfied here."[54]

4. Rule 23(a)(4): The Class's Interests Are Fairly and Adequately Protected

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." The adequacy requirement is satisfied when: (i) the named plaintiff's interests are not antagonistic to other members of the Class; and (ii) the plaintiff's attorneys are qualified, experienced, and generally able to conduct the litigation.[55]

Here, not only has Plaintiff vigorously litigated the action through experienced and well-qualified counsel, but there is no divergence of interest

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[54] *Lawson*, 2011 WL 2185613, at *2.

[55] *Id*.

between Plaintiff and absent Class Members, and the recovery achieved demonstrates Plaintiff's aligned interests.[56]

H. The Rule 23(b)(1) and (b)(2) Requirements Are Met

A proposed class must "fit[] into one of the three categories specified in Court of Chancery Rule 23(b)."[57] "Delaware courts repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions"—as is the case here—"are properly certifiable under both subdivisions (b)(1) and (b)(2)."[58] A class may be certified under Rule 23(b)(1) where: (i) the prosecution of separate actions by or against individual members of the class would create a risk of "inconsistent or varying adjudications" that would create incompatible standards of conduct for the opposing party; and (ii) "adjudications with respect to individual members of the Class" would as a practical matter be dispositive of the interests of the other members not parties to this action.[59] A class

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[56] *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.").

[57] *In re Ebix, Inc. S'holder Litig.*, 2018 WL 3570126, at *4 (Del. Ch. July 17, 2018).

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

[59] *In re Countrywide Corp. S'holder Litig.*, 2009 WL 846019, at *11 (Del. Ch. Mar. 31, 2009).

may be certified under Rule 23(b)(2) where "the party opposing the class has acted or refused to act on grounds that apply generally to the class," making "final injunctive relief or corresponding declaratory relief [] appropriate with respect to the class as a whole." 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 (b)(2).

The Class satisfies Rule 23(b)(1) and (b)(2). All Settlement Class Members are unaffiliated, held FGNA common stock at the Redemption Deadline, and suffered the same uniform harm because of Defendants' conduct. It follows that prosecution of separate actions could result in inconsistent adjudications or practically dispose of the interest of absent class members. Similarly, final declaratory relief is appropriate with respect to the entire Settlement Class. Accordingly, the requirements of Rules 23(b)(1) and (b)(2) are met.

I. THE REMAINING RULE 23 REQUIREMENTS ARE SATISFIED

Plaintiff and Plaintiff's Counsel satisfy the remaining requirements of Chancery Rule 23. *First*, Plaintiff has filed an affidavit in accordance with Rule 23(f)(2)(A) setting forth his support for the Settlement. As required by Rule 23(a), Plaintiff has sworn that he has not received, been promised, or been offered—and will not accept—any form of compensation, directly or indirectly, for serving as a representative party in this action, except for: (i) any damages or other relief that the Court may award him as a Settlement Class Member; (ii) any fees, costs, or other payments that the Court expressly approves to be paid to him or on his behalf; or (iii) reimbursement from his attorneys of actual and reasonable out-of-pocket expenditures incurred in prosecuting the action.[60]

Second, 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." Here, notice has been provided to the Settlement Class in the manner approved by the Court in the Scheduling Order. To date, no objections to the Settlement have been received by Plaintiff's Counsel or filed with the Court.

Third, as required by Rule 23(f)(5), the Settlement meets all elements necessary for certification of a Settlement Class:

- Rule 23(f)(5)(A): Plaintiff and his Counsel have adequately represented the interests of the proposed Settlement Class.
- Rule 23(f)(5)(B): Adequate notice of the proposed Settlement and Settlement Hearing has been provided to the Class, as set forth in the

[60] Affidavit of Sean Murray in Support of an Award of Attorneys' Fees and Expenses at ¶5 (filed herewith) ("Murray Aff.").

Scheduling Order and to be further supported by affidavits of mailing and publication.

- Rule 23(f)(5)(C): The Settlement was negotiated at arm's-length by experienced counsel.
- Rule 23(f)(5)(D): The relief provided to the Settlement Class is fair, reasonable, and adequate in light of the strength of the claims, the risks and costs of continued litigation and appeal, the scope of the release, and the absence of any objections.

For the foregoing reasons, Plaintiff respectfully requests that the Court certify the Settlement Class.

V. THE REQUESTED ATTORNEYS' FEES AND EXPENSES SHOULD BE APPROVED

This Court may award attorneys' fees and expenses to counsel whose efforts have created a common fund.[61] Such an award is "committed to the sound discretion of the Court of Chancery."[62] In making this determination, the Court considers the *Sugarland* factors, including: (i) the benefit achieved; (ii) the contingent nature of counsel's fee and the efforts of counsel and time invested; (iii) the complexity of the litigation; and (iv) the standing and ability of counsel involved.[63] Delaware courts

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[61] *In re Dell Techs. Inc. Class V S'holder Litig.*, 326 A.3d 686, 697 (Del. 2024) ("*Dell II*").

[62] *Americas Mining Corp. v. Theriault,* 51 A.3d 1213, 1261 (Del. 2012).

[63] *Dell II*, 326 A.3d at 698.

have assigned the "greatest weight" to the first factor—the benefit achieved in litigation.[64] The other factors are generally considered "secondary."[65]

Here, Plaintiff's Counsel requests attorneys' fees of 17.5% of the net Settlement Amount (i.e., $13,000,000 less $141,871.39 in litigation expenses), amounting to a fee request of $2,250,172.50. Plaintiff's Counsel also seek reimbursement of $141,871.39 in litigation expenses, for a total award of $2,392,043.89 (together, the "Fee and Expense Award"). As set forth below, the *Sugarland* factors fully support the requested Fee and Expense Award, particularly given the exceptional recovery Plaintiff's Counsel achieved for the Class in the face of substantial risks at trial and on appeal.

A. PLAINTIFF'S COUNSEL ACHIEVED A SIGNIFICANT BENEFIT FOR THE CLASS

Plaintiff's Counsel secured a $13 million common fund recovery that provides meaningful, quantifiable relief to Class Members who did not redeem their shares in connection with the Merger. Should the Court approve the proposed Settlement of this action, the Class Members who did not redeem their shares will receive an immediate financial benefit.

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[64] *Tornetta v. Musk*, 326 A.3d 1203, 1236 n.183 (Del. Ch. 2024).

[65] *Id.* at 1236, 1262-63.

As this Court has recognized, the benefit achieved is the most important factor, and "the dollar amount of the fund created . . . is the heart of the *Sugarland* analysis."[66] The requested attorneys' fee of 17.5% of the net Settlement is firmly within the range awarded in comparable cases. Plaintiff respectfully submits that this case falls squarely at the median line for "meaningful litigation efforts."[67] Plaintiff's Counsel (i) drafted and filed an initial and an Amended Complaint; (ii) fully briefed and opposed the New Defendants'[68] motion to dismiss the Amended Complaint; (iii) served (and responded to) document requests and interrogatories, and ultimately received, reviewed, and analyzed approximately 18,621 documents, for a total of over 138,155 pages of documents from Defendants and numerous third parties; (iv) engaged an expert on damages issues; and (v) negotiated and documented the Settlement.

"Precedent awards from similar cases may be considered for the obvious reason that like cases should be treated alike."[69] Plaintiff's Counsel submit that an

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

[67] *Americas Mining*, 51 A.3d at 1259-60.

[68] "New Defendants" refers to Theodore Schwartz, Todd Schwartz, Jared Kaplan, ThinkEquity LLC, and Schwartz Capital Group.

[69] *Olson v. ev3, Inc.*, 2011 WL 704409, at *8 (Del. Ch. Feb. 21, 2011); *see also City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr. v. Foley*, C.A. No. 2020-0650-KSJM (Del. Ch. June 21, 2022) (TRANSCRIPT) at 51 ("[W]e look really to precedent to inform the value of the benefits conferred, and for good reason.").

attorneys' fee equal to 17.5% of the Settlement Amount net of litigation expenses—representing an 18.4% all-in Fee and Expense Award[70]—is reasonable and appropriate given this Court's precedent involving comparable litigation activity (substantial discovery; some motion practice, no deposition discovery), e.g.:

Case	**Award**	**Stage of Settlement**
In re Towers Watson & Co. S'holder Litig., C.A. No. 2018-0132-KSJM (Del. Ch. May 25, 2021) (TRANSCRIPT)	25%	Reviewed documents, some motion practice, no depositions
Asbestos Workers' Phila. Pension Fund v. Avril, C.A. No. 2019-0633-SG (Del. Ch. Apr. 16, 2021) (TRANSCRIPT)	23.5%	Reviewed documents, some motion practice, no depositions
Garfield v. Blackrock Mortg. Ventures, LLC, C.A. No. 2018-0917-KSJM (Del. Ch. Feb. 11, 2021) (TRANSCRIPT)	23%	Reviewed documents, some motion practice, no depositions
Carr v. New Enter. Assoc., Inc., C.A. No. 2017-0381-AGB (Del. Ch. Apr. 4, 2019) (TRANSCRIPT)	23%	Reviewed documents, some motion practice, no depositions
In re China Agritech, Inc. S'holders Deriv. Litig., C.A. No. 7163-VCL (Del. Ch. Feb. 13, 2015) (TRANSCRIPT)	23%	Reviewed documents, some motion practice, no depositions
In re Tangoe, Inc. S'holder Litig., 2020 WL 507523 (Del. Ch. Jan. 29, 2020) (ORDER AND FINAL JUDGMENT); 2020 WL 136813 (Del. Ch. Jan. 9, 2020) (SETTLEMENT BRIEF)	22.6%	Reviewed documents, some motion practice, no depositions
In re Lordstown Motors Corp. S'holders Litig., C.A. No. 2021-1066-LWW (Del. Ch. Jun. 24, 2024), at 45	22.5%	No depositions and some motion practice

[70] The requested attorneys' fee equals 17.5% of the Settlement Fund after reimbursement of litigation expenses: $13,000,000.00 − $141,871.39 = $12,858,128.61; $12,858,128.61 × 17.5% = $2,250,172.50. Including litigation expenses, the total Fee and Expense Award is $2,392,043.89, or approximately 18.4% of the Settlement Amount.

Case	Award	Stage of Settlement
(TRANSCRIPT); 2024 WL 3555798, at ¶11 (Del. Ch. July 5, 2024)		
In re Am. Int'l Grp., Inc. Consol. Deriv. Litig., C.A. No. 769-VCS (Del. Ch. Jan. 25, 2011) (TRANSCRIPT)	22.5%	Reviewed documents from related Securities Action, some motion practice, no depositions
In re AVX Corp. S'holder Litig., C.A. No. 2020-1046-SG (Del. Ch. Dec. 22, 2022) (TRANSCRIPT)	22%	Reviewed documents, some motion practice, no depositions
In re China Integrated Energy, Inc. S'holders Litig., C.A. No. 6625-VCL (Del. Ch. Dec. 2015) (TRANSCRIPT)	20%	After books and records inspection but before motion to dismiss
In re MultiPlan Corp. S'holders Litig., 2023 WL 2329706 (Del. Ch. Mar. 1, 2023) (FINAL ORDER AND JUDGMENT); 2023 WL 1927595 (Del. Ch. Feb. 6, 2023) (SETTLEMENT BRIEF)	20%	No depositions and some motion practice
Vero Beach Police Officers' Ret. Fund v. Bettino, 2018 WL 6330140 (Del. Ch. Dec. 3, 2018) (ORDER AND FINAL JUDGMENT); 2018 WL 6136042 (Del. Ch. Nov. 19, 2018) (SETTLEMENT BRIEF)	19.8%	Filed complaint incorporating §220 documents; no depositions
In re GeneDX De-SPAC Litig., C.A. No. 2023-0140-PAF (Del. Ch. Dec. 2, 2024) (TRANSCRIPT)	19.5%	Reviewed documents, no motion practice, no depositions
Yu v. RMG Sponsor, LLC, C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024) (TRANSCRIPT)	18%	After commencement of document discovery, motion for class certification
Laidlaw v. GigAcquisitions2, LLC, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024) (TRANSCRIPT)	18%	After the Court denied the motion to dismiss; limited document discovery; no depositions
Martel v. Fusion Sponsor LLC, C.A. No. 2024-0329-NAC (Del. Ch. July 24, 2025) (TRANSCRIPT)	18%	Filed complaint incorporating §220 documents; briefing on

Case	Award	Stage of Settlement
		motion to dismiss but no Court ruling; no further discovery or depositions
In re Finserv Acquisition Corp. SPAC Litig., C.A. No. 2022-0755-PAF (Del. Ch. Oct. 10, 2024) (TRANSCRIPT)	17.5%	The Court partially denied a motion to dismiss; limited discovery; no depositions
Darcy Lien v. Eagle Equity Partners II, LLC, C.A. No. 2022-0972-PAF (Del. Ch. Sept. 2, 2024) (TRANSCRIPT)	17.5%	The Court denied the motion to dismiss; limited discovery; no depositions

Considering the strength of the recovery and the extent of litigation efforts, Plaintiff respectfully submits that the requested 17.5% of the net settlement fund—representing an approximately 18.4% all-in Fee and Expense Award—is amply supported by precedent, is fair and reasonable, and should be approved.

B. The Contingent Nature Of The Case And Counsel's Effort Support The Request

The "second most important factor" in the *Sugarland* analysis is the contingent nature of counsel's representation.[71] As the Court has explained, it is the "public policy of Delaware to reward risk-taking in the interests of shareholders."[72] Here, as set forth in the attorney affidavits, Plaintiff's Counsel pursued this case on

[71] *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Jan. 10, 1992), *as revised* (Mar. 4, 1992).

[72] *Activision*, 124 A.3d at 1073.

a fully contingent basis and at their own risk.[73] They incurred considerable costs—time, resources, and expenses—with no guarantee of recovery.

In undertaking this representation, Plaintiff's Counsel invested significant time and sizable out-of-pocket expenses in pursuing a meaningful recovery for the Class. Plaintiff's Counsel incurred all the classic contingent fee risks, including the ultimate risk—no recovery whatsoever and a loss of all time and expenses. This factor thus supports the requested fee award.

C. The Time And Effort Expended By Counsel Supports The Requested Fee Award

Fee awards should neither penalize counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[74] "The time and effort expended by counsel serves [as] a cross-check on the reasonableness of a fee award. This factor has two separate but related components: (i) time and (ii) effort."[75] "[M]ore important than hours is 'effort, as in what Plaintiff['s] counsel actually

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[73] Affidavit of Rebecca A. Musarra in Support of an Award of Attorneys' Fees and Expenses at ¶3 (filed herewith) ("Musarra Aff."); Affidavit of Justin O. Reliford in Support of an Award of Attorneys' Fees and Expenses at ¶3 (filed herewith) ("Reliford Aff."); Affidavit of Michael Klausner in Support of an Award of Attorneys' Fees and Expenses at ¶2 (filed herewith) ("Klausner Aff.").

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

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

did.'"[76] Before reaching an agreement in principle on the Settlement, Counsel's efforts included a pre-suit books and records investigation, drafting and filing the initial and Amended Complaints, fully briefing and opposing the New Defendants' motion to dismiss the Amended Complaint, conducting extensive document discovery (including obtaining, reviewing, and analyzing over 138,000 pages of documents produced by Defendants and third parties), responding to document requests and interrogatories served on Plaintiff, and conducting arm's-length negotiations before an experienced mediator.

Plaintiff's Counsel invested substantial time and resources into prosecuting this action, spanning aggressive litigation through settlement finalization. Prior to the February 6, 2026 agreement in principle, Counsel dedicated 3,781.85 hours to this litigation, representing a $2,905,118.00 lodestar at their currently applicable hourly rates as set forth in the chart below:

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[76] *Americas Mining*, 51 A.3d at 1258 (*quoting In re Del Monte Foods Co. S'holders Litig.*, 2011 WL 2535256, at *13 (Del. Ch. June 27, 2011)).

Firm	Hours	Lodestar
GRANT & EISENHOFER P.A.	1,496.8	$1,253,600.00
Scott+Scott Attorneys at Law, LLP	2,271.80	$1,630,318.00
Michael Klausner	13.25	$21,200.00
TOTALS	**3781.85**	**$2,905,118.00**

After reaching the agreement in principle, Counsel invested an additional 54.9 hours between February 7, 2026, and April 24, 2026, to negotiate and draft the Stipulation and accompanying papers, adding $59,691.50 to the lodestar, as set forth in the chart below:

Firm	Hours	Lodestar
GRANT & EISENHOFER P.A.	29	$29,000.00
Scott+Scott Attorneys at Law, LLP	25.9	$30,691.50
TOTALS	**54.9**	**$59,691.50**

In addition, Counsel expended a total of $141,871.39 in expenses in connection with this action, as follows:

Firm	Expenses
GRANT & EISENHOFER P.A.	$97,048.11
Scott+Scott Attorneys at Law, LLP	$44,823.28
TOTALS	**$141,871.39**

In total, Counsel devoted 3836.75 hours to this matter, yielding an aggregate lodestar value of $2,964,809.50 and incurring $141,871.39 in litigation expenses. After subtracting expenses, the net requested fee award is $2,250,172.50, reflecting an effective hourly rate of $586.47 per hour. Because this requested amount represents a 0.76 multiplier (i.e., a *negative* multiplier) on Counsel's $2,964,809.50 total lodestar, the award is demonstrably fair and avoids any windfall.

D. The Complexity And Duration Of The Case

"[L]itigation that is challenging and complex supports a higher fee award."[77] This action involved not only the typical fiduciary duty claims, but also unresolved legal issues, including: (i) the boundaries of what constitutes impairment of redemption rights; (ii) the proper measure of damages for the impairment of redemption rights; (iii) whether Plaintiff must prove reliance and causation; and (iv) with respect to aiding and abetting, what constitutes active participation for financial

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

advisors and target-company insiders alleged to have participated in SPAC fiduciary's disclosure violations. As no de-SPAC merger case has gone to trial, these unsettled legal questions created uncertainties and material risk.

For nearly three years, Plaintiff's Counsel have dedicated considerable resources to these legally and factually complex issues without any guarantee of success. The complexity and duration of the work in this Action supports approval of the requested fee.

E. THE STANDING AND SKILL OF COUNSEL

Delaware courts consider the standing and ability of counsel when determining the reasonableness of a fee and expense award.[78] Here, Plaintiff's Counsel—co-lead counsel G&E and S+S—are experienced leaders in stockholder class and governance litigation. G&E and S+S have litigated cases in this Court and around the country and repeatedly have demonstrated a willingness to bring cases to trial. Plaintiff's Counsel have participated in some of the largest settlements and post-trial recoveries for plaintiffs in class and derivative litigation before this Court. Critically, Plaintiff's Counsel have successfully prosecuted several other SPAC

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

litigation matters and have obtained significant SPAC settlements to date.[79] This Settlement is consistent with that track record. Plaintiff's Counsel aggressively litigated this case and secured a strong result, aided by their credibility and experience.

Delaware courts also consider the standing and ability of opposing counsel in determining the reasonableness of a fee award.[80] Defendants were represented by skillful and highly respected law firms—including Quinn Emanuel Urquhart & Sullivan, LLP, Sidley Austin LLP, Abrams & Bayliss LLP, and Potter Anderson & Corroon LLP—that vigorously defended their clients' interests. The strength and

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[79] *See, e.g.*, *XL Fleet*, Consol. C.A. No. 2021-0808-KSJM; *View*, C.A. No. 2023-1152-JTL; *Delman v. Riley*, C.A. No. 2023-0293-LWW (Del. Ch. Oct. 17, 2024); *Latch*, C.A. No. 2023-0509-LWW; *Gores IV*, No. 2023-0284-LWW; *GeneDX*, C.A. No. 2023-0140-PAF; *Paul Berger Revocable Tr. v. Falcon Equity Invs., LLC*, C.A. No. 2023-0820-JTL (Del. Ch. Jan. 21, 2025); *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024); *Bushansky v. GigAcquisitions4, LLC*, C.A. No. 2023-0685-LWW (Del. Ch. Sept. 10, 2024); *In re InterPrivate Acquisition Corp. S'holder Litig.*, Consol. C.A. No. 2024-0221-LWW (Del. Ch. Sept. 12, 2025); *Apex*, C.A. No. 2024-0094-LWW; *Martel v. Fusion Sponsor LLC*, C.A. No. 2024-0239-NAC (Del. Ch. July 24, 2025); *In re Lottery.com S'holders Litig.*, Consol. C.A. No. 2023-0395-MTZ (Del. Ch. May 16, 2025); *Delman v. GigAcquisitions 3, LLC*, C.A. No. 2021-0679-LLW (settlement approved in *Shafer v. Lightning eMotors, Inc.*, No. 1:21-cv-2774 (D. Colo. Nov. 19, 2024)); *Gomez v. RAAC Mgmt. LLC*, C.A. No. 2024-0744-PAF (Del. Ch. July 16, 2025); *Drulias v. Affeldt, et al.*, C.A. No. 2024-0161-BWD (Del. Ch. Dec. 26, 2025); *Drulias v. Osprey Sponsor II et al.*, C.A. No. 2024-0478-KSJM (Del. Ch. Jan. 7, 2026); *Ihle v. Brombach, et al.*, C.A. No. 2023-0759-LWW (Del. Ch. Mar. 17, 2026); *Jandreau v. Wallace, et al.*, C.A. No. 2024-0119-MTZ (Del. Ch. Nov. 20, 2025).

[80] *See, e.g.*, *In re Dell Techs. Inc. Class V S'holder Litig.,* 300 A.3d 679, 727 (Del. Ch. 2023) (considering that "an army of skilled defense counsel fought the Plaintiff[] at every turn").

reputation of opposing counsel enhances the significance of the benefit achieved for the Class. This factor favors the requested Fee and Expense Award.

VI. THE COURT SHOULD APPROVE A SERVICE AWARD FOR PLAINTIFF

The Court should approve the payment of a $2,000 service award to Plaintiff Sean Murray, to be paid out of the fees awarded to Plaintiff's Counsel, to compensate him for the time and effort that he devoted to this matter.[81] This Court has recognized that a service fee is appropriate where a plaintiff has "step[ed] forward and take[n] the risk" of getting involved in representative litigation in a culture in which people increasingly are unwilling to "do things for the benefit of others."[82]

In determining the appropriateness of a service fee, the Court considers the "time, effort[,] and expertise expended by the class representative," and the "benefit to the class."[83] Here, Plaintiff monitored counsel's work, reviewed two sets of pleadings, regularly communicated with counsel regarding litigation strategy and significant litigation developments, had his electronic documents imaged, searched, and produced, remained informed regarding the lengthy Settlement negotiations, and

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[81] Stipulation at ¶ 22.

[82] *In re EZCorp Inc. Consulting Agreement Deriv. Litig*., C.A. No. 9962-VCL (Del. Ch. Apr. 3, 2018) (TRANSCRIPT) at 36-37 (awarding $5,000 service awards).

[83] *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006), *as revised* (Jan. 5, 2006).

achieved an excellent Settlement on behalf of the Class. These efforts amply support the modest $2,000 award requested.[84]

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the Settlement and Plan of Allocation, certify the Class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), and grant the requested Fee and Expense Award and service award.

[84] *Spritzer v. Aklog*, C.A. No. 2020-0935-KSJM (Del. Ch. Nov. 3, 2022) (TRANSCRIPT) at 44 (awarding $2,000 for plaintiff who did not participate in discovery and observing that awards of that magnitude incentivize "plaintiffs who are willing to put their names on the papers ... when they know that they have to monitor litigation and may be called to sit for depositions and other forms of discovery and relief"); *In re Galena Biopharma, Inc.*, Consol. C.A. No. 2017-0423-JTL (Del. Ch. June 14, 2018) (TRANSCRIPT) at 83–84 (awarding $5,000 incentive fee for named plaintiff who did not sit for a deposition and characterizing $1,000 to $5,000 "nominal awards [as] understandable and appropriate").

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