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Case No. 2023-0538-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DYLAN NEWMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. SPORTS ENTERTAINMENT ACQUISITION HOLDINGS LLC, JOHN COLLINS, ERIC GRUBMAN, NATARA HOLLOWAY BRANCH, and TIMOTHY GOODELL, Defendants.	)	C.A. No. 2023-0538-LWW

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

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RULES

Plaintiff Dylan Newman ("Plaintiff"), by and through his undersigned attorneys, individually and on behalf of the Class (defined herein) of former stockholders of Sports Entertainment Acquisition Corp. ("SEAC"), submits this Opening Brief in Support of Approval of Proposed Settlement, Class Certification, Award of Attorneys' Fees and Expenses, and Incentive Award seeking: (i) approval of the proposed settlement (the "Settlement") between (a) Plaintiff and (b) defendants John Collins, Eric Grubman, Natara Holloway Branch, Timothy Goodell, and Sports Entertainment Acquisition Holdings LLC (collectively, "Defendants") (together with Plaintiff and Defendants, the "Parties" and each a "Party"), as set forth in the Revised Stipulation and Agreement of Compromise, Settlement, and Release dated July 11, 2025 (the "Stipulation") (Dkt. 51); (ii) certification of the Class (defined herein) for settlement purposes, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (iii) an award of attorneys' fees and expenses; and (iv) a $2,000 incentive award for Plaintiff.

Class Members were given notice of the Settlement in accordance with the Scheduling Order entered by the Court on July 11, 2025. To date, there have been no objections. The Court scheduled a hearing for September 15, 2025, to consider these matters.

PRELIMINARY STATEMENT

Plaintiff brought this action on behalf of himself and former SEAC stockholders who were entitled to, but did not, redeem their shares of SEAC Class A common stock in connection with SEAC's business combination (the "Merger") pursuant to which (i) SGHC Limited and Super Group (SGHC) Limited (collectively "Legacy Super Group") underwent a pre-closing reorganization, and (ii) SEAC merged with and into Super Group (SGHC) Merger Sub, with SEAC continuing as a wholly owned subsidiary of Super Group (the "Class"). The proposed Settlement is the result of determined litigation efforts in the face of significant risk and provides a substantial immediate recovery to the Class.

The risks presented by the litigation were unique and consequential. Because Super Group is a foreign company, Plaintiff could not pursue books and records pursuant to 8 *Del. C.* § 220 to investigate potential claims prior to filing this action. Thus, Plaintiff could rely only on public information and independent investigative efforts to assess potential claims.

The core theory of liability Plaintiff crafted based on the public record centered on apparent disclosure violations concerning the expected impact of changes in European gambling laws on Super Group's go-forward prospects. While the Court denied Defendants' motion to dismiss, in part, based on Plaintiff's well-pled allegations, the Court noted that Plaintiff's disclosure theory was

"relatively weaker" than in other SPAC cases. Recognizing that the European regulatory changes were both recent and external and that the majority of Super Group's revenue came from markets outside Europe, the Court questioned the extent to which fiduciaries must disclose the expected effects of public, forward-looking regulatory developments.[1] Indeed, Defendants argued forcefully that any drop in Super Group's stock price was not the result of European results, as analysts and the markets largely ignored the European market.

Also, unlike many other SPAC cases, the Court's application of entire fairness review was not indisputable. Defendants were not serial SPAC creators and the Sponsor lacked longstanding relationships with the SPAC's outside directors. As the Court noted in its order on Defendants' motion to dismiss, the Sponsor's ability to remove directors did not, on its own, create a disabling conflict.[2] The question of director disinterest turned on the materiality of the 25,000 Founders Shares granted to Goodell and Branch, which were only valuable if a deal closed. The Court described this issue as "a close call," observing that although the expected value of the shares—approximately $249,000—might have

[1] *See* Transcript of Court's Ruling on Defendants' Motion to Dismiss, dated May 20, 2024, at 26-27 ("MTD Tr.") (Dkt. 41).

[2] *Id.* at 30.

created a disabling interest, the record was silent as to the directors' financial circumstances, leaving uncertainty as to whether that amount was material.[3]

Additionally, SEAC stockholders redeemed approximately 55% of the shares eligible for redemption. As the Court explained in *Solak*, a high redemption rate "suggests a lack of a material omission."[4] Plaintiff would have borne the burden of proving materiality in the face of substantial redemptions—a question Delaware has yet to directly answer.

Despite these risks, Plaintiff litigated this Action diligently, repeatedly overcoming roadblocks set up by Defendants and Super Group. Plaintiff drafted and filed a detailed Complaint and Amended Complaint (defined below) asserting claims against Defendants and Chris Shumway ("Shumway") for breach of fiduciary duty and unjust enrichment. Plaintiff alleged that the Defendants impaired SEAC stockholders' ability to exercise their redemption rights on a fully informed basis. The Parties engaged in a hard fought motion to dismiss. While the Court dismissed Shumway, it upheld Plaintiff's claims against the remaining Defendants. In reaching its decision, the Court provided important guidance on a claim based on the failure to disclose a SPAC's net cash per share. Specifically,

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[3] *Id*.

[4] *Solak v. Mountain Crest Cap. LLC*, 2024 WL 4524682, at *10 (Del. Ch. Oct. 18, 2024).

the Court held that the viability of a net cash per share claim depends on "the relative amount of dilution and dissipation of cash" and if there is a "significant delta" between "what one would be investing in the combined entity versus the fixed $10 redemption price[.][5]

After nearly a half year of document and other written discovery, on November 20, 2024, the Parties engaged in a full day in-person mediation session before Robert Meyer of JAMS ("Mediator"). The Parties did not reach a settlement at the mediation but agreed to continue discussions. Following further settlement negotiations, on December 6, 2024, the Parties accepted a Mediator's proposal to resolve the Action for $12 million in cash, subject to Court approval. The Stipulation reflects the definitive terms of the Settlement.

Plaintiff respectfully submits that the Court should approve the Settlement as fair, reasonable, and adequate. The $12 million Settlement compares favorably to what Plaintiff and the Class could have recovered at trial and is consistent with recent recoveries in comparable SPAC case settlements.[6] Notably, the $12 million Settlement recovery equates to a $0.59 per share recovery, which is in line with

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[5] MTD Tr. at 19.

[6] *See, e.g.*, *In re Finserv Acquisition Corp. SPAC Litig.*, 2024 WL 4472073 (Del. Ch. Oct. 10, 2024) (ORDER AND FINAL JUDGMENT) (approving $9.5 million settlement); *Yu v. RMG Sponsor, LLC*, 2024 WL 4547457 (Del. Ch. Oct. 18, 2024) (ORDER AND FINAL JUDGMENT) (approving $11.99 million settlement).

previous settlements on a per share basis and is higher than at least eight other SPAC settlements.[7]

Plaintiff's meaningful litigation efforts support an attorney's fee between 15% and 25% of the Settlement Amount. The Settlement marks the culmination of hard-fought litigation challenging Defendants' impairment of the Class's redemption rights—all undertaken on a fully contingent basis. Given the motion practice and the documents and discovery materials that Plaintiff solicited and analyzed, Plaintiff submits that an all-in award of $2.04 million for attorneys' fees and expenses (*i.e.*, 17% of the Settlement Amount) is appropriate.

Finally, Plaintiff requests that the Court approve the payment of a $2,000 incentive award to Plaintiff out of any attorneys' fees awarded to reward him for his role in this Action. This amount is warranted due to Plaintiff's willingness to stand in for the Class and subject himself to discovery and other challenges inherent in complex litigation.

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[7] *Finserv*, 2024 WL 4472073 (ORDER AND FINAL JUDGMENT) ($0.38 per share settlement); *In re Gores Holdings IV, Inc. S'holders Litig.*, 2025 WL 1953368 (Del. Ch. July 15, 2025) ($0.41 per share settlement); *Drulias v. Apex Tech. Sponsor LLC*, 2025 WL 1913626 (Del. Ch. July 10, 2025) (ORDER AND FINAL JUDGMENT) ($0.41 per share settlement); *In re MultiPlan Corp. S'holders Litig.*, 2023 WL 2329706 (Del. Ch. Mar. 1, 2023) (ORDER AND FINAL JUDGMENT) ($0.44 per share settlement); *In re GeneDX De-SPAC Litig.*, 2024 WL 4952176 (Del. Ch. Dec. 2, 2024) (ORDER AND FINAL JUDGMENT) ($0.47 per share settlement); *RMG Sponsor*, 2024 WL 4547457 (ORDER AND FINAL JUDGMENT) ($0.52 per share settlement); *Newbold v. McCaw*, 2024 WL 3596113 (Del. Ch. July 30, 2024) (ORDER AND FINAL JUDGMENT) ($0.55 per share settlement); *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch. July 5, 2024) (ORDER AND FINAL JUDGMENT) ($0.57 per share settlement).

Notice of the Settlement was provided to former SEAC stockholders in accordance with the Scheduling Order entered by the Court on July 11, 2025.[8] To date, there have been no objections.

Accordingly, and for the additional reasons set forth below, Plaintiff respectfully requests that the Court approve the Settlement, approve the Fee and Expense Award, approve a $2,000 incentive award for Plaintiff, certify the Class, appoint Plaintiff as Class Representative, and appoint Plaintiff's Counsel as Class Counsel.

FACTUAL AND PROCEDURAL BACKGROUND

A. Grubman, Collins, and Shumway Form SEAC and Sponsor

On July 30, 2020, Defendants Grubman and Collins (along with non-defendant Shumway) incorporated the Sponsor (collectively, the "Control Group").[9] They agreed to jointly control the Sponsor, with each serving as a managing member of the Sponsor.[10] That same day, the Control Group incorporated SEAC in Delaware as a blank-check company formed for the purpose of effecting a merger or acquisition.[11] Grubman and Collins placed themselves in

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[8] Scheduling Order (Dkt. 52) at ¶¶ 7-8.

[9] ¶¶ 41-42. All citations herein to "¶ __" are to the Amended Complaint. All capitalized terms not defined herein shall have the meaning ascribed in the Amended Complaint or the Stipulation.

[10] *Id.*

charge of SEAC.[12] By the terms of its corporate charter, SEAC had 24 months from the closing of its initial public offering ("IPO") to effectuate a business combination or it would be forced to liquidate and return the funds held in trust to public stockholders.[13]

In August 2020, Sponsor purchased 10,062,500 founder shares for $25,000, representing 20% of the post-IPO, pre-business combination stock of the blank-check company ("Founder Shares").[14] Only holders of Founder Shares were entitled to vote on the election of SEAC directors.[15] Therefore the Control Group, as the controllers of the Founder Shares, determined who sat on the Board of Directors of SEAC ("Board").[16] They selected Grubman, Branch, and Goodell to serve on the Board. In September 2020, Sponsor transferred 25,000 Founder Shares to each of Branch and Goodell, aligning their fiscal interests with those of the Sponsor.[17]

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[11] *Id.*

[12] ¶ 42.

[13] ¶ 45.

[14] ¶¶ 33, 43.

[15] ¶ 49.

[16] *Id.*

[17] ¶ 43.

If SEAC entered a business combination within 24 months of the IPO, the Founder Shares would convert to Class A stock on a one-for-one basis and become freely tradable after a short lockup period.[18] If SEAC did not complete a transaction within 24 months, the Founder Shares would expire as worthless.[19] At the time of the Merger, Branch, Goodell, and Sponsor owned 11,200,000 Founder Shares worth approximately $112 million.[20]

B. SEAC Goes Public

On October 6, 2020, SEAC completed its IPO of 45,000,000 units (each a "Public Unit") at a price of $10.00 per unit.[21] Each Public Unit consisted of one share of Class A common stock (each a "Public Share") and one-half of one warrant.[22] If SEAC entered into a business combination, public stockholders would have the option to either redeem their shares and recoup their $10 per share investment (plus interest) or invest in the post-Merger company.[23] The funds raised in the IPO were placed in a trust for the benefit of SEAC's public

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[18] ¶ 34.

[19] ¶4.

[20] ¶¶ 43, 74.

[21] ¶ 44.

[22] *Id*.

[23] *Id.*

stockholders, and would only move to the combined post-Merger company after paying redemptions.[24]

C. SEAC Merges with Legacy Super Group

Legacy Super Group was in the business of online sports betting and gaming and in need of operating capital.[25] Two days after SEAC went public, on October 8, 2020, an advisor of Legacy Super Group contacted Grubman about a potential transaction with SEAC.[26] Incentivized to complete a business combination, the Control Group dominated the Merger process and relegated SEAC's directors to the sidelines.[27] The proxy statement issued in connection with the Merger (the "Proxy") reveals that the Board played at best a minor role in both the sales process and the ultimate negotiations of the Merger.[28]

Immediately after the IPO, without any Board involvement, Grubman and Collins held conversations with potential targets, commenced preliminary due diligence on those targets, and decided which opportunities to pursue.[29] Grubman and Collins focused their efforts on Legacy Super Group throughout October

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[24] *Id.*

[25] ¶ 6.

[26] ¶ 59.

[27] ¶¶ 59-75.

[28] ¶ 61.

[29] *Id.*

2020.[30] However, the Board itself did not learn about Legacy Super Group until a Board meeting on November 13, 2020, where SEAC management merely provided "'general information regarding [Legacy Super Group], and advised the Board that a preliminary review of the Company's financial information had begun…[.]'"[31]

Grubman, without input from the Board, continued to discuss a potential transaction with Legacy Super Group and communicated on behalf of SEAC that SEAC intended to pursue a merger with Legacy Super Group.[32] Legacy Super Group made an informational presentation to members of the Control Group on December 3, 2020.[33]

On January 15, 2021, the Control Group provided Legacy Super Group with a proposed term sheet, which included a $4.125 billion enterprise valuation of Legacy Super Group, a $200 million PIPE financing, and a 7-member board for the post-combination entity, with SEAC appointing 2 seats.[34] Delayed financial statements by Legacy Super Group, however, created difficulty in reaching final terms. On February 5, 2021, Legacy Super Group informed SEAC at a due

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[30] ¶ 62.

[31] ¶ 64.

[32] ¶ 63.

[33] ¶ 65.

[34] ¶ 66.

diligence meeting that it still had not completed its financial statements.[35] Legacy Super Group's financial advisor met with Grubman on March 6, 2021, and explained the difficulty in achieving $200 million in PIPE financing due to "the ongoing accounting, financial and regulatory diligence that remained to be completed, as well as the updated timing for the preparation of audited financials."[36]

After initially revising the term sheet by lowering the PIPE financing to $100 million,[37] on March 7, 2021, Grubman and Collins gave into the pressure to get a transaction completed and abandoned the PIPE financing altogether.[38] Instead of using Legacy Super Group's inability to secure PIPE financing as leverage to get a better deal for SEAC, and despite the poor state of Legacy Super Group's financials, Grubman and Collins revised the term sheet by increasing Legacy Super Group's valuation by over $600 million, from $4.125 billion to $4.75 billion.[39] Legacy Super Group continued to be unable to deliver complete financial statements as late as April 2021, but the Board nonetheless approved the

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[35] ¶ 68.

[36] ¶ 69.

[37] ¶ 67.

[38] ¶ 69.

[39] ¶ 70.

Merger on April 20, 2021. The Board did not obtain a third-party valuation or fairness opinion in connection with its resolution to approve the Merger.[40]

D. Defendants Issue a Materially False and Misleading Proxy

On January 13, 2022, Defendants issued a Proxy containing materially misleading statements or omissions concerning SEAC's net cash per share and the impact of European gambling regulations on Legacy Super Group's business. First, the Proxy misleadingly claimed that SEAC's net cash per share was $10.00 when in fact SEAC's net cash per share was only worth, at most, $6.12 (when approximating the value of the Private Warrants).[41] Second, the Proxy omitted the fact that new gambling regulations in Europe were driving down Legacy Super Group's revenues.[42] Europe accounted for 22% of Legacy Super Group's revenues in 2020 and was Legacy Super Group's second largest market.[43] The Proxy nonetheless disregarded the then-existing negative impact of these regulatory changes in key markets, resulting in inflated projections for the Company.[44]

Stockholders voted in favor of the Merger on January 26, 2022, and redeemed approximately 24.8 million shares, leaving approximately 20.2 million

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[40] *Id.*

[41] ¶ 79.

[42] ¶ 90.

[43] ¶ 99.

[44] ¶¶ 90-101.

shares unredeemed.[45] The high redemptions and the inability to secure a PIPE left the trust with less than the $300 million minimum cash required, necessitating that Legacy Super Group waive the minimum cash contribution to consummate the Merger, which it did.[46] SEAC and Legacy Super Group closed the Merger that same day.[47]

E. Post-Merger Developments Reveal the Truth About Super Group

On May 25, 2022, Super Group announced its financial results for the first quarter of the 2022 fiscal year, its first time doing so as a public company. The results were not positive. A May 25, 2022 press release explained that Super Group was dealing with "challeng[es] ... due to industry and economic headwinds."[48] On an earnings call the same day, Super Group's executives attributed the challenges to "regulatory changes in markets such as Germany, Austria, and the Netherlands" and gave an update that the Company was "assessing the viability of casino gaming in Germany given the current onerous tax regime there."[49] In the wake of Super Group's underperformance for the first quarter of

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[45] ¶ 75.

[46] *Id.*

[47] *Id.*

[48] ¶ 106.

[49] ¶ 107.

fiscal year 2022, the Company was forced to withdraw its guidance for the full fiscal year.[50]

Super Group again underperformed during the second quarter of fiscal year 2022, announcing a revenue decrease of 10%, on August 11, 2022.[51] It also revised guidance downward, forecasting 2022 revenue at just $1.186 billion to $1.32 billion, $600 million lower than the guidance provided in the Proxy.[52] Super Group also lowered adjusted EBITDA by approximately $200 million to $206 million compared to the adjusted EBITDA projected in the Proxy.[53]

Super Group's stock price fell precipitously. At the time Plaintiff filed his initial Complaint, Super Group's stock was trading at just $3.72 per share. When Plaintiff filed the Amended Complaint on August 25, 2023 ("Amended Complaint"), Super Group's stock price was just $3.50 per share.

F. Plaintiff Files Suit, Largely Defeats Defendants' Motion to Dismiss, and Pursues Discovery

On May 18, 2023, Plaintiff filed his initial Complaint, alleging that the Defendants and Shumway breached their fiduciary duties and unjustly enriched themselves by, among other things: (i) prioritizing their own personal, financial,

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[50] ¶ 108.

[51] ¶ 109.

[52] ¶ 110.

[53] *Id.*

and reputational interests above those of the stockholders; (ii) approving an unfair merger; and (iii) interfering with the Class Members' ability to make a fully informed redemption decision by disseminating a materially false and misleading proxy.

Defendants and Shumway filed their opening brief in support of their motion to dismiss on July 27, 2023. Plaintiff filed his Amended Complaint on August 25, 2023. Defendants and Shumway moved to dismiss the Amended Complaint on September 29, 2023, which Plaintiff opposed. The Court heard oral argument on the motion on February 23, 2024.

Three months later, the Court granted in part and denied in part the motion to dismiss. The Court granted the motion as to Shumway and dismissed him from the Action. The Court rejected Defendants' arguments that net cash per share was not material to stockholders because Legacy Super Group was "highly profitable[.]" The Court explained that the Proxy only discussed the "get" of the transaction, whereas net cash per share was the "give", which remained undisclosed.[54] The Court distinguished the Delaware Supreme Court's recent decision in *City of Dearborn Police and Fire Revised Retirement System v. Brookfield Asset Management*, which held that information was not hidden when disclosed within a few pages in a proxy, by noting that the Proxy scattered the

[54] MTD Tr. at 19.

inputs to calculate net cash per share throughout the 343-page Proxy and that proxy statements "shouldn't be a treasure hunt or a game of clue."[55]

Concerning the European regulations, the Court disagreed with Defendants' arguments that the Proxy's projections were not required to address the legal changes since they only took into account events as April 6, 2021, and that the Proxy contained general warnings about betting and gaming law regulations.[56] Finally, the Court rejected Defendants' arguments that Plaintiff's claims are "fraud by hindsight" or that Plaintiff was trying to obligate Defendants to providing legal advice.[57]

Defendants filed their Answer to the Amended Complaint on July 9, 2024. From July 2024 through November 2024, the Parties engaged in document and other written discovery: (i) Plaintiff propounded requests for the production of documents and interrogatories to the Defendants; (ii) Plaintiff served a third party with a subpoena *duces tecum* and *ad testificandum* and received responses; (iii) Defendants served responses and objections to Plaintiff's requests for production of documents; and (iv) Defendants produced 4,640 documents consisting of 32,573 pages in response to Plaintiff's document requests.

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[55] *Id.* at 20.

[56] *Id*. at 23.

[57] *Id.* at 25-26.

G. Negotiating the Settlement

The Parties engaged in substantial settlement negotiations before agreeing to the Settlement. On November 20, 2024, the Parties participated in a full-day mediation session before the Mediator, but did not reach an agreement. The Parties did, however, agree to continue discussions. On December 6, 2024, following the Mediator's proposal, the Parties agreed to settle the Action for $12 million in cash, subject to Court approval. Over the next few months, the Parties negotiated the terms in the Stipulation, which they executed and submitted to the Court on July 11, 2025. That same day, the Court issued a scheduling order and set a settlement hearing for September 15, 2025 to consider these matters.[58]

ARGUMENT

I. THE CLASS SHOULD BE CERTIFIED

Chancery Court Rule 23 sets forth the requirements for class certification. Plaintiff moves the Court for certification of a non-opt-out Class for settlement purposes only pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) consisting of:

> All holders of SEAC Class A common stock who did not redeem all of their shares of SEAC Class A common stock as of the closing of the Merger, including their heirs, successors, transferees, and assigns who obtained shares by operation of law, but excluding the Excluded Persons.

The Excluded Persons means:

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[58] Dkt. 52.

> Sports Entertainment Acquisition Holdings LLC, John Collins, Eric Grubman, Natara Holloway Branch, Timothy Goodell, and Chris Shumway, as well as members of their immediate families, any entity in which any of them has a controlling interest to the extent such entity held shares of SEAC Class A common stock for their benefit, their legal representatives, heirs, successors, transferees, or assigns.

Certification of the Class is appropriate because this Action satisfies Rule 23(a) and fits "within the framework provided for in subsection (b)."[59] Indeed, the Court acknowledged in another *MultiPlan* action that "[t]his is a classic type of situation for a Rule 23 certification."[60] Plaintiff's proposed class definition takes into account the Court's recent holding in *TS Innovation*, making it clear that the Class includes only those stockholders that became successors in interest by operation of law.[61]

A. The Class Satisfies Rule 23(a)

For a class to be certified, "(1) the class [must be] so numerous that joinder of all members is impracticable; (2) there [must be] questions of law or fact common to the class; (3) the claims or defenses of the representative parties [must

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[59] *Nottingham Partners v. Dana*, 564 A.2d 1089, 1095 (Del. 1989).

[60] *Paul Berger Revocable Tr. v. Falcon Equity Invs. LLC, et al.*, C.A. No. 2023-0820-JTL, at 36 (Del. Ch. Jan. 21, 2025) (TRANSCRIPT).

[61] *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, 2025 WL 1892466, at *1-2 (Del. Ch. July 9, 2025).

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."[62]

B. The Class Is Sufficiently Numerous

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable."[63] "'[N]umbers in the proposed class in excess of forty, and particularly in excess of one hundred, have sustained the numerosity requirement.'"[64] The test "is not whether joinder of all the putative class members would be impossible, but whether joinder would be practical."[65] As of the redemption deadline, January 24, 2022, there were 45 million shares of SEAC Class A common stock issued and outstanding. Investors redeemed 24,774,309 SEAC Class A shares in connection with the Merger. Accordingly, the proposed Class consists of holders of 20,225,691 unredeemed shares. Joinder of the likely thousands of holders of those shares is not practical.

C. There Are Issues of Law and Fact Common to All 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

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62 Del. Ct. Ch. R. 23(a).

63 *Id.*

64 *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 400 (Del. Ch. 2008) (quoting *Smith v. Hercules, Inc.*, 2003 WL 1580603, at *4 (Del. Super. Jan. 31, 2003)).

65 *Id*.

are not identically situated."[66] Here, common questions of law and fact include whether the 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 Proxy in connection with the 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 Plaintiff and other Class Members through their conduct. Since this Action involves claims that "implicate the interests of all members of the proposed class of [stock]holders," commonality is satisfied.[67] Indeed, this Court has consistently certified classes in analogous circumstances.[68]

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

[67] *In re Lawson Software, Inc.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011); *see also 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.").

[68] *See, e.g.*, *MultiPlan*, 2023 WL 2329706, at *2 (certifying a non-opt-out class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2)); *GeneDX*, 2024 WL 4952176, at *1 (same); *Siseles v. Lutnick*, 2024 WL 5046087, at *1 (Del Ch. Dec. 6, 2024) (same); *In re Finserv Acquisition Corp. SPAC Litig.*, C.A. No. 2022-0755-PAF (Del. Ch. Nov. 1, 2023) (same); *In re Gores Holdings IV, Inc. S'holders Litig.*, C.A. No. 2023-0284-LWW (Del. Ch. Mar. 7, 2023) (same); *Drulias, et al. v. Apex Tech. Sponsor LLC, et al.*, C.A. No. 2024-0094-LWW (Del. Ch. Feb. 2, 2024) (same).

D. Plaintiff's Claims Are Typical of the Class

"The test of typicality is that the legal and factual position of the class representative must not be markedly different from that of the members of the class" and "focuses on whether the class representative claim (or defense) fairly presents the issues on behalf of the represented class."[69] Plaintiff is similarly situated to the other unaffiliated SEAC stockholders who did not redeem their shares, and their claims "arise[] from the same event or course of conduct that gives rise to the claims . . . of other class members and [are] based on the same legal theory."[70]

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

Rule 23(a)(4) requires that "'the representative parties will fairly and adequately protect the interests of the class.'"[71] There is no divergence of interest between Plaintiff and absent Class Members. Moreover, the recovery achieved through this litigation demonstrates that Plaintiff's interests were aligned with

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

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

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

those of absent class members and is likewise indicative of the competence and effectiveness of Plaintiff's counsel.[72]

F. Certification Is Proper Under Rules 23(b)(1) and 23(b)(2)

To be certified, a proposed class must also "fit[] into one of the three categories specified in Court of Chancery Rule 23(b)."[73] "Delaware courts 'repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2).'"[74] Because this is such an action, it should be so certified. A class may be certified under Rule 23(b)(1) where: (i) the prosecution of separate actions by or against individual members of the class would create a risk of "'inconsistent or varying adjudications'" which would create incompatible standards of conduct for the opposing party; and (ii) "'adjudications with respect to individual members of the Class'" would as a practical matter be dispositive of the interests of the other members not parties to this Action.[75]

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

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

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

[75] *In re Countrywide Corp. S'holder Litig.*, 2009 WL 846019, at *11 (Del. Ch. Mar. 31, 2009) (quoting *Weiner*, 584 A.2d at 1226 n.2).

The proposed Class satisfies Rule 23(b)(1). All Class Members are unaffiliated holders of SEAC common stock who suffered the same harm as a result of Defendants' conduct. The relief afforded through the proposed Settlement would impact all stockholders equally, and approval of the proposed Settlement would protect all absent Class Members' interests in uniform fashion.[76]

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.[77]

G. 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."[78] Notice was provided to all

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

[77] *See generally Nottingham*, 564 A.2d at 1089, 1096-97 (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").

[78] Del. Super. Ct. R. 23(e).

absent Class Members pursuant to the process set forth in the Scheduling Order.[79] To date, no objections have been received.

Pursuant to 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 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.[80]

* * *

For the foregoing reasons, Plaintiff respectfully submits that the Court should certify the Class.

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[79] *See generally* Affidavit of Jack Ewashko Regarding the Dissemination of Notice and Publication of the Summary Notice ("Ewashko Aff.") (filed herewith).

[80] Affidavit of Dylan Newman in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Incentive Award at ¶ 5 (filed herewith).

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

Delaware law favors the voluntary settlement of complex class actions,[81] 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.[82] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses 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."[83] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[84] Under Rule 23(f)(5), the Court considers whether:

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[81] *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 & Derivative 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).

[82] *Marie Raymond Revocable Tr.*, 980 A.2d at 402.

[83] *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)).

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

> (A) the representative party and class counsel have adequately represented the class;
>
> (B) adequate notice of the hearing was provided;
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> (C) the proposed dismissal or settlement was negotiated at arm's length; and
>
> (D) the relief provided for the class falls within a range of reasonableness, taking into account:
>
> (i) the strength of the claims;
>
> (ii) the costs, risks, and delay of trial and appeal;
>
> (iii) the scope of the release; and
>
> (iv) any objections to the proposed dismissal or settlement.[85]

In making this determination, the Court need not "decide any of the issues on the merits,"[86] and ultimately must weigh "the value of all the claims being compromised against the value of the benefit to be conferred on the [c]lass by the settlement."[87]

For the reasons set forth herein, the Court should approve the Settlement. The Settlement was the product of hard-fought litigation, informed by Plaintiff's review and analysis of the discovery materials, which the Parties negotiated at arm's length with the assistance of a mediator. The Settlement provides substantial

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[85] Del. Ct. Ch. R. 23(f)(5). This revised rule is consistent with prior law. *See, e.g.*, *Polk v. Good*, 507 A.2d 531, 535-36 (Del. 1986) (setting forth equivalent standards).

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

[87] *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)).

economic consideration to Class Members and reflects Plaintiff's well-informed judgment regarding the strength of the claims and defenses at issue, the potential damages that the Class could recover following a trial, and the benefits of a guaranteed recovery.

A. The Relief Provided Falls Within the Range of Reasonableness

In assessing the Settlement, the Court weighs the "give" (the release) against the "get" (the consideration obtained) in order "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."[88] The get ($12 million) weighs favorably against the give (Released Plaintiff's Claims), particularly given the risk of establishing damages.

Plaintiff is confident in the strength of his claims. At trial, the Court would review Plaintiff's claims under the entire fairness standard, shifting the burden to Defendants to "demonstrate that the challenged act or transaction was entirely fair."[89] Plaintiff also had strong process-based liability claims, making such a showing unlikely.

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[88] *Activision*, 124 A.3d at 1064 (citing *Forsythe*, 2013 WL 458373, at *2).

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

Although Plaintiff was guardedly optimistic about his chances of prevailing at trial, Plaintiff is well aware that even an entire fairness trial is not a low risk proposition. As this Court noted in *Dell Class V*, in the years since *Americas Mining*, "there have been at least ten post-trial decisions in entire fairness cases where the defendants prevailed, plus three more where the court awarded only nominal damages of $1.00."[90] Moreover, even if Plaintiff were to win at trial, he would have faced "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."[91]

Plaintiff (and the Class) faced unique risks here compared with other SPAC litigation. Defendants were not serial SPAC creators and the Controlling Defendants lacked longstanding relationships with the other directors. The Court noted that the question of whether the directors were disinterested turned on the materiality of the 25,000 Founders Shares granted to Goodell and Branch, which it described as "a close call[.]"[92] Defendants had strong arguments that given these

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[90] *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 709-10 (Del. Ch. 2023) ("*Dell Class V*").

[91] *Id.* at 710.

[92] MTD Tr. at 30.

individuals net worth and stature in the business community, the Founder Shares were not material to them.

Additionally, approximately 55% of the SEAC stockholders redeemed their shares. As least one Court has recognized that high redemption rates can undermine materiality by suggesting that stockholders made informed decisions to exit. In particular, the Court explained in *Solak* that, a high redemption rate "suggests a lack of a material omission[.]"[93] Here, Plaintiff would have borne the burden of proving materiality in the face of substantial redemptions.

Finally, the core theory of liability in this matter centered on the expected impact of changes in European gambling laws. Despite denying Defendants' motion to dismiss in part, the Court noted that the disclosure theory was "relatively weaker" than in other SPAC cases, recognizing that the regulatory changes were both recent and external, and that most of Super Group's revenue came from markets outside Europe.[94]

Despite these risks, Plaintiff was able to secure the Settlement's $12.0 million cash recovery—a per share recovery of approximately $0.59 for each of the 20,225,691 shares included in the Class. The $12 million fund is consistent with recent recoveries in settlements of comparable SPAC cases.[95] In addition, the

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[93] *Solak*, 2024 WL 4524682, at *10.

[94] MTD Tr. at 26-27.

Settlement's $0.59 per share recovery is larger than many recent settlements on a per share basis.[96]

The Settlement also compares favorably to what Plaintiff and the Class could have recovered at trial, particularly given the litigation risks. Although the proper method for determining damages resulting from an impaired redemption right is unsettled, one potential method would be to compare the redemption price ($10.00 per share) to the true net cash per share underlying SEAC's shares (approximately $6.12). This approach yields damages of $3.88 per share (*i.e.*, Class damages of approximately $78.5 million). The Settlement provides Class Members approximately 15.3% of this potential post-trial damages figure, which compares favorably with what the Court has approved in similar circumstances.[97] Finally, a recovery of $12 million now eliminates delay and risk of trial.

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[95] *See, e.g.*, *Finserv*, 2024 WL 4472073 (ORDER AND FINAL JUDGMENT) (approving $9.5 million settlement); *RMG Sponsor*, 2024 WL 4547457 (ORDER AND FINAL JUDGMENT) (approving $11.99 million settlement).

[96] *Finserv*, 2024 WL 4472073 (ORDER AND FINAL JUDGMENT) ($0.38 per share settlement); *Gores Holdings*, 2025 WL 1953368 ($0.41 per share settlement); *Apex Tech.*, 2025 WL 1913626 (ORDER AND FINAL JUDGMENT) ($0.41 per share settlement); *MultiPlan*, 2023 WL 2329706 (ORDER AND FINAL JUDGMENT) ($0.44 per share settlement); *GeneDX*, 2024 WL 4952176 (ORDER AND FINAL JUDGMENT) ($0.47 per share settlement); *RMG Sponsor*, 2024 WL 4547457 (ORDER AND FINAL JUDGMENT) ($0.52 per share settlement); *McCaw*, 2024 WL 3596113 (ORDER AND FINAL JUDGMENT) ($0.55 per share settlement); *Lordstown*, C.A. No. 2021-1066-LWW (Del. Ch. July 5, 2024) (ORDER AND FINAL JUDGMENT) ($0.57 per share settlement).

[97] *See, e.g.*, *Drulias, et al. v. Apex Tech. Sponsor LLC, et al.*, C.A. No. 2024-0094-LWW (Del. Ch.) (14.2%); *Makris v. Ionis Pharms., Inc.*, C.A. No. 2021-0681-LWW (Del. Ch.

In exchange for this immediate cash recovery for the Class, Plaintiff agreed to the following release of claims against Defendants:

> "Released Plaintiff's Claims" means, as against the Released Defendant Parties, to the fullest extent permitted by Delaware law, any and all claims and causes of action of every nature and description whatsoever, including Unknown Claims, whether disclosed or undisclosed, accrued or unaccrued, apparent or unapparent, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, whether arising under state, federal, common, equity, local, statutory, regulatory, foreign, or other law or rule, that (a) were alleged, asserted, set forth, or claimed in the Action, or (b) could have been alleged, asserted, set forth, or claimed in the Action by Plaintiff or any other member of the Class individually or on behalf of the Class, and that are based upon, arise out of, relate to, or involve, directly or indirectly, the actions, inactions, deliberations, discussions, decisions, votes, or any other conduct of any kind by any of the Released Defendant Parties relating to any agreement, transaction, occurrence, conduct, or fact that was at issue in the Action, including, but not limited to, claims related to the Merger, the Proxy Statement, any other disclosure relating to or concerning the Merger, or the involvement of any of the Released Defendant Parties with respect to any of the foregoing; provided, however, that the Released Plaintiff's Claims shall not include (i) any claims to enforce this Stipulation; or (ii) any claims to enforce the Judgment.

This release is in line with others previously approved by the Court in *MultiPlan* and similar cases.[98] Accordingly, the release is appropriately tailored.

Oct. 11, 2022) (TRANSCRIPT) (9.53%); *Dell Class V* (9.34%); *In re Amtrust Fin. Serv., Inc.*, Consol. C.A. No. 2018-0396-LWW (Del. Ch.) (9.2%).

[98] *See MultiPlan*, 2023 WL 2329706; *Lordstown*, C.A. No. 2021-1066-LWW (Del. Ch. July 5, 2024) (ORDER AND FINAL JUDGMENT).

Finally, no Class Member has objected to the Settlement after Plaintiff provided notice in the manner approved by the Court, further supporting the Court's approval of the Settlement. In particular, the Notice provided, in easily understood language:

> (i) the location, date, and time of any hearing; (ii) the nature of the action; (iii) the definition of the class; (iv) a summary of the claims, issues, defenses, and relief that the class action sought; (v) a description of the terms of the proposed dismissal or settlement; (vi) any award of attorney's fees or expenses, or any representative-party award, that will be sought if the proposed dismissal or settlement is approved; (vii) instructions for objectors; (viii) that additional information can be obtained by contacting class counsel; (ix) how to contact class counsel; and (x) not to contact the Court with questions about the terms of the proposed dismissal or settlement.[99]

The Settlement Administrator posted the Notice on its website and mailed the Notice, by first class U.S. mail or other mail service if mailed outside the U.S., postage prepaid, to each Class Member at their last known address who could be identified: (i) as a result of receiving a stockholder list from Defendants at the time of the redemption decision; or (ii) by the Settlement Administrator who contacted entities which commonly hold securities in "street name" as nominees for the benefit of their customers who are beneficial purchasers of securities to identify

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

beneficial holders of SEAC's Class A common stock on or around the Redemption Deadline.[100]

The deadline for objections is September 2, 2025. As of this brief's filing, there have been no "objections to the proposed dismissal or settlement."[101]

B. The Settlement Is the Result of Hard-Fought, Arms'-Length Negotiations Between Experienced Counsel Before an Experienced and Well-Respected Mediator

When evaluating the fairness of a settlement, Delaware courts also scrutinize the negotiations that led up to the settlement and heavily favor settlements that resulted from arm's-length negotiations.[102] Here, as discussed above, the Parties arrived at the Settlement only after extensive and hard-fought negotiations during and after joint mediation sessions with an experienced mediator.

C. 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.[103] Counsel here include attorneys at Robbins Geller Rudman & Dowd LLP, Robbins LLP, and Andrews & Springer LLC, highly

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[100] Ewashko Aff., ¶¶ 2-9, 12.

[101] *Id.*

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

[103] *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").

regarded firms that have substantial experience in negotiating settlements of complex derivative and class actions and a lengthy track record in this Court—including litigating numerous 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.[104] 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 their review of the discovery materials. Counsel's opinion further weighs in favor of approving the Settlement.

III. THE PLAN OF ALLOCATION IS REASONABLE AND APPROPRIATE

Plaintiff's proposed plan of allocation (the "Plan of Allocation") requires Class Members to submit proofs of claim demonstrating their membership in the Class and any economic loss sustained as a result of not redeeming their shares of SEAC Class A common stock in connection with the Merger. Class Members that demonstrate an economic loss will receive a *pro rata* portion of the Settlement based on this harm. In addition, all Class Members who submit a claim will receive a "nominal" damage amount in recognition of the direct harm to their redemption rights. By recognizing that only some Class Members suffered

[104] *See, e.g.*, *Gores*, C.A. No. 2023-0284-LWW (Del. Ch. Mar. 7, 2023); *GeneDx*, 2024 WL 4952176; (TRANSCRIPT); *RMG Sponsor*, 2024 WL 4547457.

economic losses (and that such losses are of varying degree) and that all Class Members were harmed by the impairment of their redemption right regardless of whether they suffered an economic loss, this method of allocation provides for an equitable distribution of *MultiPlan* settlement proceeds. The Court has approved similar plans of allocation.[105]

IV. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiff moves for an all-in fee and expense award of $2.04 million (*i.e.*, 17% of the $12 million settlement fund, inclusive of $55,179.79 in expenses reasonably incurred in connection with litigating this Action). The Settlement provides a strong outcome for the Class, with an immediate and substantial recovery. The Court's precedent supports Plaintiff's requested fee and expense award. Further, Plaintiff's request is reasonable given the substantial benefit the Settlement provides compared against the risks and the hundreds of hours 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.[106] The determination of any attorney fee and expense award is

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[105] *Siseles*, 2024 WL 5046087, at *3; *RMG Sponsor*, 2024 WL 4547457, at *3; *GeneDx*, 2024 WL 4952176, at *3.

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

left to the Court's discretion.[107] The Court considers the *Sugarland* factors, including: "(1) the results achieved; (2) the time and effort of counsel; (3) the relative complexities of the litigation; (4) any contingency factor; and (5) the standing and ability of counsel involved."[108] Delaware courts have assigned the greatest weight to the benefit achieved in litigation.[109]

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

B. The Benefits of the Settlement Are Substantial

As explained above, the proposed Settlement confers substantial and quantifiable financial benefits on the Class. As the factor accorded the most weight by the Court, this exceptional recovery counsels heavily in favor of Plaintiff's requested fee and expense award.[110] The Court has stated that "the dollar amount of the fund created ... is the heart of the *Sugarland* analysis."[111]

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

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

[109] *Id.*; *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)).

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

Plaintiff's requested fee and expense award represents 17% of the Settlement Amount (inclusive of expenses).

Plaintiff submits that he engaged in "meaningful litigation efforts" in which the Court normally awards fees between 15% and 25%. Plaintiff drafted two detailed complaints and was also largely successful in defeating a motion to dismiss that addressed the then-novel legal issues. Notably, because Super Group is a foreign company, Plaintiff could not use 8 *Del. C.* § 220 to investigate potential claims prior to filing suit and was therefore required to rely solely on public information and independent investigative efforts to determine what the Board knew or should have known at the time of the Merger.

In addition, the Parties engaged in document and other written discovery: (i) Plaintiff propounded requests for the production of documents and interrogatories to the Defendants; (ii) Plaintiff served a third party with a subpoena *duces tecum* and *ad testificandum* and received responses; (iii) Defendants served responses and objections to Plaintiff's requests for production of documents; and (iv) Defendants produced 4,640 documents consisting of 32,573 pages in response to Plaintiff's document requests.

1. The Contingent Nature of Counsel's Representation Supports the Requested Fee and Expense Award

The "second most important factor" in the Court's *Sugarland* analysis is the

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

contingent nature of counsel's representation.[112] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[113] Contingent representation entitles Plaintiff's counsel to both a "risk" premium and an "incentive" premium on top of the value of their standard hourly rates.[114]

Here, as set forth in the accompanying attorney affidavits,[115] Plaintiff's Counsel pursued this case on a fully contingent basis. Accordingly, in undertaking this representation, they incurred all the classic contingent fee risks, including the ultimate risk—no recovery whatsoever and a loss of all time and expenses incurred. This factor thus supports the requested fee and expense award.

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

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

[114] *Seinfeld*, 847 A.2d at 337; *see also Crowley*, 2007 WL 2495018, at *12 ("Fee awards should encourage future meritorious lawsuits by compensating the plaintiffs' attorneys for their lost opportunity cost (typically their hourly rate), the risks associated with the litigation, and a premium.") (citations omitted).

[115] Affidavit of Erik W. Luedeke in Support of an Award of Attorneys' Fees and Expenses (filed herewith) ("Luedeke Aff."); Affidavit of Gregory E. Del Gaizo in Support of an Award of Attorneys' Fees and Expenses (filed herewith) ("Del Gaizo Aff."); Affidavit of David M. Sborz (filed herewith) ("Sborz Aff.").

2. The Time and Efforts Expended by Counsel Support the Requested Fee and Expense Award

Fee awards should neither penalize counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[116] Accordingly, the time spent by counsel in this litigation should only serve as a cross-check on the reasonableness of the fee award.[117] Before reaching agreement on the Stipulation, Plaintiff's Counsel's efforts included: (i) drafting and filing the initial and amended complaints; (ii) reviewing, opposing, and largely defeating Defendants' motion to dismiss on then relatively novel issues; (iii) requesting and reviewing discovery materials; and (iv) engaging in hard-fought settlement negotiations with the assistance of an experienced mediator.

Plaintiff's Counsel spent 1,379.1 hours litigating this Action from inception through the April 2, 2005, signing of the Stipulation.[118] This amounts to a lodestar value of $1,012,729.50. Counsel also incurred $55,179.79 in expenses. The requested fee award implies an hourly rate of approximately $1,479.23 per hour

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

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

[118] Luedeke Aff. at ¶ 4; Del Gaizo Aff. at ¶ 4; Sborz Aff. at ¶ 7.

and a lodestar multiplier of approximately 2.01x.[119] Both metrics are well within the range previously awarded by the Court.[120]

Accordingly, the substantial efforts of Plaintiff's Counsel support the requested fee and expense award.

3. 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."[121] This Action is complex both legally and factually.

Although Plaintiff's claims in this Action presented well-established legal challenges concerning Defendants' fiduciary duties, the claims involved

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[119] Plaintiff's Counsel's lodestar multiplier falls below 2x, to approximately 1.96x, after reducing the fee by Plaintiff's expenses.

[120] *See, e.g.*, *In re Versum Materials, Inc. S'holder Litig.*, C.A. No. 2019-0206-JTL, at 81 (Del. Ch. July 16, 2020) (TRANSCRIPT) (approving fees equivalent to an hourly rate of over $10,000); *Sciabacucchi*, 2019 WL 2913272, at *6 (fees equivalent to $11,262.26 per hour were reasonable); *In re Medley Cap. Corp. S'holders Litig.*, Consol. C.A. No. 2019-0100-KSJM, at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (observing a $5,989 hourly rate would not be "beyond the bounds of reasonableness"); *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).

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

challenging questions and legal issues, including (i) the contours of what constitutes impairment of stockholder redemption rights; (ii) whether Plaintiff would need to prove reliance and causation; (iii) whether fiduciaries must disclose the expected impact of recent, public regulatory changes; (iv) whether directors were conflicted based on contingent compensation, an issue the Court described as "a close call"; and (v) whether high redemption rates undercut the materiality of the alleged omissions. These uncertainties resulted in the potential for complex legal battlegrounds that have not yet been assessed on appeal.

Further, the factual issues presented in this Action were likewise complex. Plaintiff had to delve into the web of interrelationships between each of the Defendants, including their various businesses, directorships, and their interrelatedness and financial interests. Plaintiff had to review and analyze documents and discovery materials to ascertain the status of Legacy Super Group's business operations, and the likely value of Legacy Super Group at the time of the Merger.

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

4. Counsel Is Well-Regarded with a History of Success Before This Court

The Court also considers the standing and ability of counsel when determining the reasonableness of a fee and expense award.[122]

Here, Plaintiff's Counsel are experienced in stockholder class and corporate governance litigation, with a lengthy record of obtaining exceptional recoveries for stockholders in challenging and complex cases. 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.[123] Plaintiff's Counsel

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

[123] *See, e.g.*, *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 689 (Del. 2024) ($1 billion settlement, RGRD and A&S additional counsel); *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015) ($148 million trial verdict, RGRD co-lead counsel); *Goldstein v. Denner*, 2024 WL 4182879 (Del. Ch. Sept. 12, 2024) ($124 million total settlement, RGRD co-lead counsel); *In re Viacom Inc. S'holder Litig.*, 2023 WL 4761807 (Del. Ch. July 25, 2023) ($122.5 million settlement, RGRD additional counsel); *In re Rural Metro Corp. S'holder Litig.*, 2015 WL 725425 (Del. Ch. Feb. 19, 2015) (partial settlement and post-trial recovery totaling $109.4 million, RGRD co-lead counsel); *In re Pattern Energy Grp. Inc. S'holders Litig.*, 2024 WL 2045461 (Del. Ch. May 6, 2024) ($100 million settlement, RGRD co-lead counsel); *City of Monroe Emps.' Ret. Sys. v. Murdoch*, 2018 WL 822498 (Del. Ch. Feb. 9, 2018) ($90 million settlement plus corporate governance reforms, Robbins LLP additional counsel); *In re Del Monte Foods Co. S'holder Litig.*, 2011 WL 6008590 (Del. Ch. Dec. 1, 2011) ($89.4 million settlement, RGRD co-lead counsel); *City of Warren General Emps.' Ret. Sys. v. Alkire*, 2024 WL 3179324 (Del. Ch. June 25, 2024) ($71 million settlement, RGRD co-lead counsel); *In re Tesla Motors, Inc. S'holder Litig.*, 2020 WL 4795384 (Del. Ch. Aug. 17, 2020) ($60 million partial settlement, RGRD co-lead counsel); *In re Good Tech. Corp. S'holder Litig.*, C.A. No. 11580-VCL, 2018 WL 1672986, 2018 WL 4944082, Trans. ID 62655664 (Del. Ch. Apr. 5 & Nov. 9, 2018) (settlements totaling $52 million, or 1.5 times common stockholders' merger consideration, RGRD co-lead counsel).

respectfully submit that the Settlement is another strong recovery that extends this history.

The Court may also consider the standing of opposing counsel in determining the reasonableness of a fee award.[124] 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.

V. THE COURT SHOULD APPROVE AN INCENTIVE AWARD FOR THE PLAINTIFF

The Court should approve the payment of a modest $2,000 incentive award to the Plaintiff, 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. This Court has recognized that a modest incentive fee is appropriate where, as here, 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."[125]

In determining the appropriateness of an incentive fee, the Court considers the time and effort expended by the class representative and the size of the benefit

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[124] *See, e.g.*, *Dell Class V*, 300 A.3d at 727 (considering that "an army of skilled defense counsel fought the plaintiffs at every turn").

[125] *In re EZCorp Inc. Consulting Agreement Deriv. Litig.*, C.A. No. 9962-VCL, at 22 (Del. Ch. Apr. 3, 2018) (TRANSCRIPT) (awarding $5,000 incentive awards).

to the class.[126] Here, Plaintiff monitored counsel's work, reviewed pleadings, and regularly communicated with counsel regarding litigation strategy and significant litigation developments. These efforts are in line with those of the plaintiff in *EZCorp* and amply support the modest $2,000 award requested.[127]

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), award Plaintiff's Counsel the requested fee and expense award, and authorize the payment of the requested incentive award from counsel's fees.

ROBBINS GELLER RUDMAN
& DOWD LLP

/s/ Jason M. Avellino

[126] *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 5, 2006).

[127] *See also In re AMC Ent. Holdings, Inc. Stockholder Litig.*, 2023 WL 5165606, at *41 (Del. Ch. Aug. 11, 2023) ("In typical baseline circumstances, an incentive award of $5,000 rewards competent participation.").

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