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Case No. 2024-0744-PAF

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TOMAS ENRIQUE GOMEZ, Plaintiff, v. RAAC MANAGEMENT LLC, ACCELERATION CAPITAL MANAGEMENT LLC, REVOLUTION SPECIAL OPPORTUNITIES LLC, JOHN J. DELANEY, STEPHEN M. CASE, STEVEN A. MUSELES, PHYLLIS R. CALDWELL, JASON M. FISH, and THOMAS WAGNER, Defendants.	C.A. No. 2024-0744-PAF

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Plaintiff Tomas Gomez ("Plaintiff"), by and through his undersigned attorneys, on behalf of himself and the Class (defined herein) of Revolution Acceleration Acquisition Corp. ("RAAC") public stockholders, submits this Opening Brief in Support of his Motion to Approve Settlement, Certify the Class, for Attorneys' Fees and Expenses, and for a Service Award (the "Motion") seeking: (i) final approval of the proposed settlement (the "Settlement") between (a) Plaintiff; (b) defendants John K. Delaney, Stephen M. Case, Steven A. Museles, Phyllis R. Caldwell, Jason M. Fish, and Thomas Wagner (collectively, "Defendants"),[1] as set forth in the Stipulation and Agreement of Settlement, Compromise, and Release dated July 16, 2025 (the "Stipulation");[2] (ii) approval of the proposed Plan of Allocation; (iii) certification of the Class for Settlement purposes, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (iv) an award of attorneys' fees and reimbursement of expenses; and (v) a service award.

Class Counsel, through a settlement administrator, gave notice of the Settlement in accordance with the Scheduling Order entered by the Court on

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[1] The case caption incorrectly states that John Delaney's middle initial is J; it is K. In addition, Defendants' counsel represented that certain other defendants listed in the case caption, RAAC Management LLC, Acceleration Capital Management LLC, and Revolution Special Opportunities LLC, no longer exist, and Plaintiff filed a notice of dismissal of those defendants on August 9, 2024 (Trans ID. 74007684).

[2] The Stipulation was initially executed on July 16, 2025, then revised on September 10, 2025 (Trans. ID 77049183), in light of inquiries raised by the Court on August 26, 2025, concerning the Class definition (Trans. ID 76933366).

September 24, 2025. To date, there have been no objections. A hearing is scheduled for December 11, 2025, for the Court to consider these matters.

PRELIMINARY STATEMENT

The proposed settlement (the "Settlement") will provide a $7.5 million recovery (the "Settlement Consideration") for Class members (as defined herein) to compensate them for the impairment of their right to make a fully informed decision as to whether to redeem their RAAC shares or invest in the combined company resulting from RAAC's July 21, 2021 merger with Berkshire Grey, Inc. ("Legacy Berkshire Grey") (the "Merger").

The Settlement marks the culmination of Plaintiff's focused litigation efforts, which included review of thousands of pages of documents produced in a Section 220 Demand, drafting and filing the Complaint, and opposing Defendants' Motions to Dismiss the Complaint. The Parties negotiated the Settlement at arm's-length in an extensive negotiation process.

The Settlement is fair, reasonable, and adequate under any metric. It provides a $1.36 per share recovery to Class members, which is measurably higher that the majority of the per-share recoveries in multiple de-SPAC merger settlements approved by this Court,[3] consistent with the top three Court approved de-SPAC

[3] *See, e.g.*, Tab 1, *In re XL Fleet (Pivotal) S'holder Litig.*, C.A. No. 2021-0808-KSJM (Del. Ch. Mar. 21, 2025) ("*XL Fleet*") (TRANSCRIPT) (approving settlement that provided approximately $0.21 per share); Tab 2, *In re Multiplan Corp. S'holders Litig.*, Consol. C.A.

merger settlements,[4] and presents a remarkable 68.2% recovery of the Class's net-cash-per-share damages.

No. 2021-0300-LWW ("*Multiplan*") (Del. Ch. Feb. 28, 2023) (TRANSCRIPT) (approving settlement that provided approximately $0.368 per share); Tab 3, *Siseles v. Lutnick*, C.A. No. 2023-1152-JTL ("*View*") (Del. Ch. Dec. 6, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.32 per share); Tab 4, *In re Finserv Acquisition Corp SPAC Litig.*, C.A. No. 2022-0755-PAF ("*Finserv*") (Del. Ch. Oct. 10, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.38 per share); Tab 5, *In re GeneDX De-SPAC Litig.*, C.A. No. 2023-0140-PAF ("*GeneDX*") (Del. Ch. Dec. 2, 2024) (TRANSCRIPT) (approving settlement that provided $0.47 per share); Tab 6, *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW ("*Lordstown*") (Del. Ch. Jun. 25, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.57 per share); Tab 7, *Yu v. RMG Sponsor, LLC*, C.A. No. 2021-0932-NAC ("*Romeo Power*") (Del. Ch. Oct. 18, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.52 per share); Tab 8, *Delman v. Riley*, C.A. No. 2023-0293-LWW (Del. Ch. Oct. 17, 2024) (TRANSCRIPT) ("*Eos*") (approving settlement that provided approximately $0.99 per share); Tab 9, *Paul Berger Revocable Tr. v. Falcon Equity Invs., LLC*, C.A. No. 2023-0820-JTL (Del. Ch. Jan. 21, 2025) (TRANSCRIPT) ("*Sharecare*") (approving settlement that provided approximately $1.10 per share); Tab 10, *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch. May 12, 2025) (TRANSCRIPT) ("*Latch*") (approving settlement that provided approximately $0.99 per share); Tab 11, *In re Gores IV, Inc. Stockholder Litigation*, No. 2023-0284-LWW (Del. Ch. July 15, 2025) (TRANSCRIPT) ("*Gores IV*") (approving settlement that provided approximately $0.412 per share); Tab 12, *In re InterPrivate Acquisition Corp. S'holder Litig.*, Consol. C.A. No. 2024-0221-LWW (Del. Ch. Sept. 12, 2025) (TRANSCRIPT) ("*Aeva*") (approving settlement that provided approximately $0.58 per share); Tab 13, *Drulias v Apex Tech. Sponsor LLC*, C.A. No. 2024-0094-LWW (Del. Ch. July 10, 2025) (TRANSCRIPT) ("*Apex*") (approving settlement that provided approximately $0.41 per share).

[4] Tab 14, *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024) (TRANSCRIPT) ("*Gig2*") (approving settlement that provided approximately $1.94 per share); Tab 15, *Bushansky v. GigAcquisitions4, LLC*, C.A. No. 2023-0685-LWW, Corrected Plaintiffs Opening Brief In Support of Settlement And Award of Attorneys' Fees and Expenses at 3 (Del. Ch. Sept. 10, 2024) ("Gig4") (the settlement provided approximately $2.38 per share); Tab 16, *Martel v. Fusion Sponsor LLC*, C.A. No. 2024-0329-NAC (Del. Ch. July 24, 2025) (TRANSCRIPT) ("*MoneyLion*") (approving settlement that provided approximately $1.40 per share).

In addition, the Settlement is an appropriate and beneficial result based on the extensive number of shares that were redeemed. Approximately 81% of all RAAC public shares redeemed in advance of the Merger, leaving a class of just 5,498,177 shares. The Court has observed in other similar de-SPAC merger actions that "the relatively high level of redemptions . . . might significantly lower any damages that were awarded. On liability, the number of redemptions might undermine the argument that the redemption right was impaired. Given these risks… the 'get' is a certain cash recovery for stockholders . . . which is meaningful. [Thus] on balance, the . . . settlement is fair, reasonable, and adequate."[5]

Plaintiff's proposed plan of allocation (the "Plan of Allocation") is also reasonable and appropriate. Similar to the plans of allocation the Court approved in *Eos*[6] and assessed to be a "thoughtful way to distribute proceeds fairly to class members" in *Latch*,[7] the Plan of Allocation is designed to equitably distribute the Settlement proceeds in accordance with the size of a Class Member's recognized loss. The Court should approve the Plan of Allocation.

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[5] Tab 14, *Gig2* Tr. at 15 (total non-redeemed stock held by eligible class members was 3,743,748 shares, 21.7% of the shares held by public stockholders, which equated to a recovery of $1.94 per share).

[6] Tab. 8, *Eos*, Tr. at 20-21.

[7] Tab 17, *Latch*, C.A. No. 2023-0509-LWW (Del. Ch. Mar. 27, 2025) (TRANSCRIPT) at 27.

As in the numerous other de-SPAC merger settlements that have come before this Court, this Action is well-suited for class certification.[8] Holders of nearly 5.5 million shares of RAAC stock chose to forego their redemption rights and invest in New Berkshire Grey. Because these shares were likely held by thousands of class members, joinder of all Class members is impractical and the proposed Class meets Rule 23(a)(1)'s numerosity requirement. Defendants' actions in pursuing the allegedly unfair Merger and impairing stockholders' redemption decisions by issuing the misleading Proxy affected all public stockholders in substantially the same manner, resulting in common questions of law and fact among the Class members. Plaintiff and the Class were similarly affected by Defendants' actions, and Plaintiff faces no unique defenses. Further, Plaintiff has acted fairly and adequately protect the Class, as shown by hiring experienced law firms, including law firms well known to this Court, and securing this positive settlement. Finally, the Class satisfies the requirements of both Rule 23(b)(1) and Rule 23(b)(2) due to the risk of inconsistent adjudications, that adjudications of some actions would likely be dispositive of the interests of other members of the Class, and that Defendants acted in a manner that is generally applicable to the Class. Accordingly, Plaintiff requests this Court certify the Class.

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[8] *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 Ct. Ch. R. 23(a), 23(b)(1), and 23(b)(2)).

Plaintiff further submits that an all-in award of $1,350,000 for attorneys' fees and expenses (18% of the Settlement Consideration) is appropriate here. The Settlement represents a superior per-share recovery for the Class, which Plaintiff and Plaintiff's Counsel achieved after reviewing the 220 document production, drafting a strong complaint, opposing Defendants' Motion to Dismiss, and negotiating aggressively to reach the Settlement.

Plaintiff's counsel devoted 481.9 hours (with a lodestar value of $386,465) to bringing, prosecuting, and resolving the Action and expended $15,042.90 in litigation expenses—all on a fully contingent basis. Plaintiff respectfully submits that, based on the result, this Settlement is at or near the top end of early-stage settlement cases for which fees ranging from 10% to 18% are typically awarded.

FACTUAL AND PROCEDURAL BACKGROUND

A. DEFENDANTS FORM RAAC

On September 10, 2020, RAAC Management LLC (the "Sponsor") incorporated RAAC in Delaware.[9] RAAC's sole purpose was to combine with another company in a de-SPAC merger.[10] By terms of its corporate charter, RAAC had only 24 months from the closing of its initial public offering ("IPO") to

[9] *Gomez v. RAAC Management LLC*, C.A. No. 2024-0744-PAF, Verified Class Action Complaint (Del. Ch. July 15, 2024) (Trans. ID 73628319) at ¶¶1, 33, 40 ("Complaint" or "¶ __").

[10] ¶2.

effectuate a business combination, or it would be forced to liquidate and return the funds held in trust to public stockholders, with interest.[11]

RAAC was controlled by the Sponsor, which was controlled by Delaney and Case (together, the "Controller Defendants").[12] Prior to RAAC's IPO, in September 2020, the Controller Defendants granted themselves 8,625,000 shares of RAAC Class B "Founder Shares" in exchange for $25,000.[13] On November 20, 2020, the Sponsor exchanged 4,791,667 Founder Shares for 5,750,000 Class C Shares ("Alignment Shares").[14] The Controller Defendants transferred 16,000 Founder Shares and 24,000 Alignment Shares to each of RAAC's "independent directors," Museles, Caldwell, and Fish.[15] Defendants waived their redemption rights and any rights to liquidating distribution from the trust with respect to the Founder Shares and Alignment Shares. Accordingly, the Founder Shares and Alignment Shares would be worthless if RAAC failed to consummate a business combination.[16] If RAAC was able to close the Merger, the Founder Shares and Alignment Shares would be worth potentially tens of millions of dollars.[17]

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[11] ¶¶7, 51-52, 67.

[12] ¶¶1, 23-26, 30-31, 40, 47, 65.

[13] ¶¶ 4, 41.

[14] ¶5.

[15] *Id*.

[16] ¶¶7, 51-52, 67.

[17] ¶20.

B. RAAC GOES PUBLIC

On December 10, 2020, RAAC completed its IPO, issuing 28,750,000 units ("Public Unit(s)"), 25 million of which were sold to public investors, at a price of $10.00 per Public Unit.[18] Each Public Unit consisted of one share of Class A common stock ("Public Share(s)") and one-third of one warrant, with each whole warrant exercisable in exchange for one share of Class A common stock at an exercise price of $11.50.[19] At the same time as the IPO, the Sponsor purchased 5,166,667 warrants in a private placement for approximately $7.75 million (or $1.50 per warrant) ("Private Placement Warrant(s)"), exercisable to purchase one share of Class A common stock at an exercise price of $11.50 no earlier than 30 days following the closing of a business combination.[20] Because they could not be sold or exercised prior to the closing of a business combination, the Private Placement Warrants were worthless absent a merger, like the Founder Shares and the Alignment Shares.[21] Therefore, if RAAC liquidated, the Sponsor would lose the entirety of its investment.[22]

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[18] ¶42; Stipulation at Ex. B.

[19] ¶42

[20] ¶45.

[21] ¶4.

[22] ¶¶7, 51-52, 67.

The funds raised in the IPO were placed in a trust for the benefit of public stockholders.[23] If RAAC found a merger partner, public stockholders would have the choice whether to redeem each of their shares for $10.00 plus interest *or* invest in the Merger.[24] If RAAC liquidated because no business combination materialized, public stockholders would have received a liquidating distribution from the trust of $10.00 per share plus interest.[25]

C. RAAC MERGES WITH LEGACY BERKSHIRE GREY

In January 2021, RAAC began discussions with Legacy Berkshire Grey about a potential business combination.[26] The Parties entered into a term sheet on January 17, 2021, which assigned to Legacy Berkshire Grey a pre-money deal valuation of $2.25 billion.[27] Defendants agreed to this despite the fact that, as Plaintiff claims, they were aware (or would have been aware, had they conducted their claimed "extensive due diligence"), that Legacy Berkshire Grey's enterprise value was only $784.9 million, and its actual equity value was just $838.7 million, according to the

[23] ¶¶2, 4, 43, 51.

[24] ¶¶42, 44, 76, 83.

[25] *Id*.

[26] ¶57.

[27] ¶62.

Teknos Valuation Report issued on January 11, 2021.[28] On February 23, 2021, Defendants entered into the Merger Agreement.[29]

On June 24, 2021, RAAC disseminated the Proxy to stockholders. The Proxy set a stockholder vote date for July 20, 2021 (the "Special Meeting"), and required all redemption elections to be made by July 16, 2021, two business days prior to the Special Meeting.[30] The Proxy stated that Merger consideration to be paid to New Berkshire Grey stockholders would consist of RAAC shares worth $10.00 each.[31] RAAC's public stockholders thus had a choice—they could redeem their shares for $10.00 per share, or they could invest in the Merger, which, according to the Proxy, would also provide RAAC stockholders at least $10.00 per share post-Merger.[32]

Plaintiff claims that the Proxy contained misstatements and omitted material information concerning the value of Legacy Berkshire Grey and the Merger consideration. *First*, Plaintiff claims that the Proxy misleadingly implied that the Merger consideration was worth $10.00 per share. RAAC's net cash per share at time of the Proxy was less than $8.00 per share.[33] *Second*, Plaintiff alleges that the

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[28] ¶¶16, 59, 63.

[29] ¶64.

[30] ¶¶69, 75.

[31] ¶77.

[32] ¶¶13, 76-77.

[33] ¶¶11, 13, 82-83.

Proxy failed to disclose the Teknos Valuation Report, which assessed Legacy Berkshire Grey's actual equity value to be less than half of the transaction value stated in the Proxy.[34]

RAAC stockholders voted to approve the Merger. Even so, holders of 81% of the RAAC public shares redeemed their stock—a total of 23,252,823 shares of RAAC Class A common stock.[35] The Merger closed on July 21, 2021, and, as of that date, New Berkshire Grey stock traded at $10.00 per share and Defendants' Founder Shares tens of millions of dollars.[36]

On July 20, 2023, less than two years after the Merger, SoftBank acquired New Berkshire Grey for just $1.40 per share.[37] SoftBank valued New Berkshire Grey at only $375 million—or about 17% of the $2.25 billion valuation assigned to the Merger as disclosed in the Proxy.[38]

D. PLAINTIFF UNDERTAKES A SECTION 220 INVESTIGATION AND VIGOROUSLY PROSECUTES THE ACTION

On July 18, 2023, Plaintiff commenced a Section 220 Demand against New Berkshire Grey, seeking production of books and records of the Company concerning, *inter alia*, the IPO, the Merger process, and the relationships amongst

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[34] ¶¶85-92.

[35] Stipulation at Ex. F.

[36] ¶¶20, 46.

[37] ¶¶96-97.

[38] ¶96.

the Defendants. In response, the Company produced a total of 2,289 pages of 84 documents (the "220 Documents"). The 220 Documents included, among other things, the Teknos Valuation Report, and material information concerning the Board's "RAAC Advisors," among whom were individuals affiliated with the entities who controlled the Sponsor.[39] This information was not sufficiently disclosed in the Proxy.

Based on Plaintiff's careful review of the 220 Documents, he made the determination to file a plenary class action, and, on July 15, 2024, he commenced this Action against the Defendants. On August 15, 2024, and August 23, 2024, Defendants filed their Motions to Dismiss the Complaint (Trans. ID 74055604 & 74062583), and on October 25, 2024, Defendants filed their Opening Briefs in Support of their Motions to Dismiss (Trans. ID 74873320 & 74869252). Plaintiff filed his Answering Brief in Opposition to the Motions to Dismiss on December 16, 2024 (Trans. ID 75230630).

[39] ¶¶59-65. The RAAC Advisors included Ted Leonsis and Andrew Wallace. Leonsis and Wallace were key figures at Revolution Group, with Leonsis its co-founder and partner and Wallace its Vice-President. Revolution Group's investment vehicle, Revolution Special Opportunities LLC, was one of two members (and controllers) of the Sponsor, and Revolution LLC's Chairman and CEO (and co-founder) controlled RSO.

E. THE PARTIES ENGAGE IN ARMS-LENGTH SETTLEMENT NEGOTIATIONS

As the Action was unfolding, and the Settling Parties were briefing the motion to dismiss, the Settling Parties agreed to engage in potential settlement discussions. Beginning in October 2024, the Settling Parties engaged in extensive arms-length negotiations and, in January 2025, agreed in principle to settle the Action for $7,500,000. The Settling Parties executed the Stipulation on July 16, 2025.

F. THE SETTLEMENT TERMS AND THE PLAN OF ALLOCATION

The Settlement provides consideration of $7,500,000. This sum will be used, in part, to pay all settlement administration costs, fee and expense awards, service awards, taxes or tax expenses, and any other costs or fees approved by the Court. After accounting for these costs and fees, the remaining funds will be paid to Class members in accordance with the Plan of Allocation.

The Plan of Allocation provides that Class members who submit a valid proof of claim demonstrating they suffered an economic loss (either because they sold their shares at a price lower than $10.00 per share or because they continued to hold as of the date the Complaint was filed) will receive a pro rata share of their eligible loss per share calculated using the following formula: (i) if the Class Member sold Class shares prior to the filing of the Complaint, $10.00 minus the sale price of each Class share; or (ii) if the Class Member held shares as of the date the Complaint was filed, $10.00 minus $1.40, the share price at which New Berkshire Grey was acquired by

SoftBank. In addition, the Plan of Allocation provides a nominal payment of $0.10 per Class Share, in recognition of the impairment of all Class members' redemption decisions. The Plan of Allocation provides that any remaining funds after the foregoing distribution will be distributed on a pro rata basis to all Class members.

ARGUMENT

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

The requirements for class certification are set forth in Court of Chancery Rule 23. Plaintiff respectfully submits that each requirement is satisfied here and that, consequently, class certification is appropriate. Specifically, 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) (the "Class"), consisting of:

> All record and beneficial holders of RAAC Class A Common Stock who held such stock as of the Redemption Deadline of July 16, 2021, and who elected not to redeem all or some of their stock, and their successors in interest who obtained shares by operation of law, excluding any Excluded Persons.

The Class does not include any of the following:

> (i) Defendants; (ii) members of the immediate family of any Individual Defendant; (iii) any stockholder that did not have redemption rights as of the Redemption Deadline; (iv) any parent, subsidiary, or affiliate of and Entity Defendant; (v) any entity in which any Defendant or any other Excluded Persons has, or had as of the Redemption Deadline, a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, estates, successors, or assigns of any such Excluded Persons or of RAAC Management LLC.

A. THE PROPOSED CLASS SATISFIES RULE 23(a)

For a class to be certified, "(1) the class [must be] so numerous that joinder of all members is impracticable, (2) there [must be] questions of law or fact common to the class, (3) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class, and (4) the representative parties [must] fairly and adequately protect the interests of the class."[40]

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

The numerosity requirement of Rule 23(a)(1) may be satisfied by "numbers in the proposed class in excess of forty, and particularly in excess of one hundred."[41] The test "is not whether joinder of all the putative class members would be impossible, but whether joinder would be practical."[42] Following all redemptions, there were 5,498,177 Public Shares of RAAC stock. Joinder of the likely thousands of holders of millions of shares is not practical, and numerosity is satisfied.

2. Questions of Law Are Common to Class Members

Commonality is "met where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals

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[40] Ct. Ch. R. 23.

[41] *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 400 (Del. Ch. 2008) (quoting Ct. Ch. R. 23).

[42] *Id*.

are not identically situated."[43] Here, common questions of law include whether Defendants: (i) breached their fiduciary duties by impairing stockholder redemption rights; (ii) failed to disclose material information and/or made materially misleading statements in the Proxy in connection with Merger; (iii) undertook an unfair Merger process at an unfair price; (iv) unjustly enriched themselves by securing unique financial benefits to the detriment of public stockholders; and (v) injured Plaintiff and Class members through their conduct. This Court has certified classes in analogous circumstances.[44]

3. 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."[45] Plaintiff is similarly situated to the other Class members and his 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."[46]

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

[44] *See, e.g.*, *Multiplan*, 2023 WL 2329706, at *2 (certifying a non-opt-out class pursuant to Ct. Ch. R. 23(a), 23(b)(1), and 23(b)(2)).

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

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

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

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 those of absent Class members and is likewise indicative of the competence and effectiveness of Plaintiff's Counsel.[47]

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

Rule 23 enumerates when certification is appropriate.[48] Consistent with longstanding Delaware corporate law practice, the Stipulation binds the parties to seek certification of a non-opt out settlement class pursuant to Rules 23(b)(1) and 23(b)(2).

The proposed Class satisfies Rule 23(b)(1). All Class members are unaffiliated holders of RAAC Public Shares who suffered the same harm as a result of Defendants' conduct. The definition of the Class expressly excludes Defendants. 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.[49]

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[47] *See* Tab 18, *Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL (Del. Ch. Sept. 28, 2017) (TRANSCRIPT) at 20-21 ("*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.").

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

[49] *See* Tab 18, *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

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.[50]

C. THE REMAINING REQUIREMENTS OF RULE 23 ARE SATISFIED

Rule 23(f) provides that "a class action may be . . . settled only if the Court approves the terms of the proposed settlement," including that "notice of the proposed . . . settlement must be given to all class members in the manner directed by the Court."[51] Notice was provided to all absent Class members, pursuant to the process set forth in the Scheduling Order.

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

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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.").

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

[51] Ct. Ch. R. 23(f).

out-of-pocket expenditures incurred directly in connection with the prosecution of the Action.[52]

* * *

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

II. APPROVAL OF THE SETTLEMENT AS FAIR, REASONABLE, AND ADEQUATE IS WARRANTED

Delaware law favors the voluntary settlement of complex class actions,[53] 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.[54] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses thereto to "determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available,

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[52] Affidavit of Tomas Gomez in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Service Award at ¶ 6 (filed herewith).

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

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

reasonably could accept."[55] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[56] The Court may consider several factors when making this determination, including:

> (1) the probable validity of the claims, (2) the apparent difficulties in enforcing the claims through the courts, (3) the collectability of any judgment recovered, (4) the delay, expense, and trouble of litigation, (5) the amount of compromise as compared with the amount of collectability of a judgment, and (6) the views of the parties involved, pro and con.[57]

In making this determination, the Court need not "decide any of the issues on the merits,"[58] 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."[59]

For the reasons set forth herein, the Settlement should be approved. The Settlement was the product of skilled, thoughtful litigation, informed by Plaintiff's review of the 220 Documents, drafting and filing the Complaint, opposing Defendants' Motions to Dismiss, and vigorous arm's-length negotiations. Most importantly, the Settlement provides substantial economic consideration to Class

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[55] *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)).

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

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

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

[59] *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)).

members who suffered actual financial losses and reflects Plaintiff's well-informed judgment regarding the strength of the claims and defenses at issue, the potential damages award, and the benefits of a guaranteed recovery.

A. THE SETTLEMENT PROVIDES SUBSTANTIAL BENEFITS

The Settlement provides a $7.5 million cash recovery, which equates to a per-share recovery of $1.36 per share. This is an outstanding result, a much higher per-share recovery than the majority of de-SPAC merger settlements approved by this Court,[60] and in line with the top three de-SPAC merger settlements.[61]

The Settlement also provides a substantial benefit to the Class when compared with potential class damages. The Complaint alleges unfair price based on, at a minimum, the net cash per share of approximately $8.00 per share. Assuming damages of approximately $2.00 per share based on the difference between the $10.00 per share redemption price and the (at most) $8.00 net cash per share underlying the RAAC shares, Class damages were approximately $11 million.[62] The $7.5 million settlement provides a hefty ***68.2%*** of the Class's net-cash-per-share damages. Compared to the 15 post-*Americas Mining* settlements in deal cases where entire fairness was the standard of review that Vice Chancellor Laster examined in

[60] *See supra* note 3.

[61] *Gig4* ($2.38); *Gig2* ($1.94); *MoneyLion* ($1.40).

[62] 5,498,177 Class shares X $2.00 = $10,996,354.00.

Dell I, this Settlement (as measured by maximum net cash per share damages) ranks *third* and is over *4x the median* of 16.5%.[63] This Settlement is an outstanding result, under any metric.

[63] *In re Dell Techs., Inc. Class V S'holders Litig.*, 300 A.3d 679, 723-24 (Del. Ch. 2023) *as revised* (Aug. 21, 2023) (analyzing settlement amounts versus maximum damages).

#	Settlement	Transaction Value (in millions)	Settlement Value (in millions)	As % of Max Damages
1	*GFI Group*	$366.00	$10.75	176.23%
2	*Delphi*	$2,500.00	$49.00	89.00%
3	*AVX*	$1,030.00	$49.90	41.58%
4	*Malone*	$7,400.00	$110.00	38.19%
5	*Starz*	$4,400.00	$92.50	38.07%
6	*Homefed*	$156.00	$15.00	19.80%
7	*CNX Gas*	$605.88	$42.70	19.00%
8	*Alon USA Energy*	$407.00	$44.75	14.00%
9	*Jefferies*	$2,400.00	$70.00	10.70%
10	*Akcea*	$446.50	$12.50	9.53%
11	*Dell Class V*	$23,900.00	$1,000.00	9.34%
12	*Amtrust*	$1,040.00	$40.00	9.20%
13	*Pivotal*	$1,430.00	$42.50	9.00%
14	*Venoco*	$363.00	$19.00	5.30%
15	*Straight Path*	$2,450.00	$12.50	1.13%
	Mean (Ex. Dell)	$1,785.31	$43.65	34.34%
	Median (Ex. Dell)	$1,035.00	$42.60	16.50%

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

Comparing the benefits provided by the Settlement to the challenges Plaintiff would face should the litigation continue likewise supports approval. Plaintiff brought claims for breaches of fiduciary duty and unjust enrichment against each of the Defendants. While Plaintiff believes that the evidence for liability was strong, the Court has indicated that to recover more than nominal damages, Plaintiff may need to prove actual economic harm. In other cases in which an extensive number of shares were redeemed, the Court has expressed concerns about the "challenges of assessing damages."[64]

Prior to the redemption deadline, RAAC public stockholders redeemed 81% (or 23,252,823 shares) of RAAC Class A common stock. Thus, the actual number of Class members who suffered actual economic harm as a result of Defendants' breaches is notably lower than the total number of RAAC public investors who chose to forego investing in the Merger.

In similar circumstances, in *Gig2*, this Court recognized that

> the relatively high level of redemptions [which] in Gig2…, might significantly lower any damages that were awarded. On liability, the number of redemptions might undermine the argument that the redemption right was impaired. Given these risks…, the 'get' is a certain cash recovery for stockholders . . . which is meaningful. And on balance, the Gig2 settlement is fair, reasonable and adequate.[65]

[64] Tab 14, *Gig2* Tr. at 15.

[65] *Id*.

The Court took a "similar approach to the settlement" in *Gig4*, where redemptions were 69.3%.[66] Both of these observations highlighted potential risks that Plaintiff would face should the case proceed to trial and were factors considered by Plaintiff in determining the fairness, reasonableness, and adequacy of the Settlement.

An additional risk factor is that, should the case proceed to trial, Plaintiff's claims would have been viewed under the entire fairness standard. 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 I*, in the years since *Thierault*, "there have been at least ten post-trial decisions in entire fairness cases where the defendants prevailed, plus three more where the Court awarded only nominal damages of $1.00."[67] Moreover, even if Plaintiff were to win at trial, he would have faced "significant risk on appeal" given the reality that, in the six (now eight) post-*Thierault* appeals from post-trial damages awards in which representative plaintiffs obtained cash recoveries and defendants challenged the liability determination that the Supreme Court has heard, the high court affirmed only three and reversed the rest,[68] and the claims in de-SPAC

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[66] *Id*.

[67] *Dell I*, 300 A.3d at 709-10.

[68] *Id.* 300 A.3d at 710.

merger cases, including with regard to allegations related to omission of net cash per share in proxy statements, have yet to be substantively addressed on appeal.

C. THE PLAN OF ALLOCATION IS REASONABLE AND APPROPRIATE

The Settlement allocates a $7.5 million recovery—plus any interest that accrues after being deposited in the Escrow Account and minus the payment of administrative costs, attorneys' fee and expenses, and any tax expenses—to the Class. The Plan of Allocation provides for an equitable recovery that will allow Class members who held onto their shares and those who sold their shares for less than the redemption amount to recover at least a portion of any actual economic damages they suffered. It also provides for a nominal recovery applicable to all Class members.

The Plan of Allocation mirrors the plan this Court approved previously in *Romeo Power*[69] and *View*.[70] 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

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[69] Tab 7, *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).

[70] Tab 19, *View*, Order and Final Judgment (Trans. ID 75158239) at ¶ 3 (Del. Ch. Dec. 6, 2024) (approving Plan of Allocation described in Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear (Trans. ID 74119511)).

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."[71]

For Class Members who sold their shares between the redemption deadline and the business day the Complaint was filed (July 12, 2024) for less than the $10.00 per share redemption price, the equitable per share portion of each Class Member's recognized claims shall be calculated as the difference between $10.00 and the price at which the Class Member sold her or his share(s). For Class members who held their shares as of the date the Complaint was filed, the equitable per share recovery of the Class Member's recognized claim shall be calculated as the difference between the $10.00 per share redemption price and $1.40, the price at which New Berkshire Grey was acquired by SoftBank on July 20, 2023. Finally, a nominal amount of $0.10 per share for each share held on the redemption deadline shall be added to each Class Member's recognized claim. The net settlement fund will then be distributed to Class Members on a pro rata basis based on the relative size of their total recognized claims, calculated by dividing each Class Member's total recognized claims by the total of all Class Members' recognized claims and multiplying by the net settlement fund amount.

As contemplated by Rule 23(f)(6), the Plan of Allocation provides that "residual settlement funds be redistributed to identified class members" unless

[71] Tab 17, *Latch* Tr., *supra* note 7 at 13, 27.

"redistribution is uneconomic."[72] In such cases, the funds will be transferred "to the Combined Campaign for Justice."[73]

The distribution methodology contemplated by the plan of allocation is "fair, reasonable, and adequate."[74] Therefore, the Plan of Allocation should be approved.

D. THE SETTLEMENT IS THE RESULT OF HARD-FOUGHT, ARM'S-LENGTH NEGOTIATIONS BETWEEN EXPERIENCED COUNSEL

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.[75] Here, the parties arrived at a settlement in principle only after months of negotiations. The Settlement was agreed to only with the benefit of 220 Document discovery, including Plaintiff's review of and analysis of more than 2,200 pages of documents. In addition, the Parties engaged extensively in the motion to dismiss process, which led to the arms-length negotiations that resulted in the Settlement.

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

[73] Stipulation Ex. B at 14; *see also In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1227170, at *2-3 (Del. Ch. Apr. 25, 2022) (modifying proposed order to provide for funds that would be uneconomic to redistribute to class members to be distributed to the Delaware Combined Campaign for Justice).

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

[75] *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").

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

Where counsel is experienced, as here, the Court also considers Counsel's opinion in evaluating a settlement.[76] Counsel at Grant & Eisenhofer have substantial experience in negotiating settlements of complex derivative and class actions, as well as a lengthy track record of advocacy in the Delaware Court of Chancery, including in de-SPAC merger redemption rights cases that have survived motions pursuant to Court of Chancery Rule 12 and have proceeded far into discovery.[77] Counsel believes that the Settlement is fair and in the best interests of the Class. Counsel's opinion in this regard is shaped not only by their depth of experience, but by their deep knowledge of this case following a thorough pre-suit investigation. Counsel's opinion further weighs in favor of approving the Settlement.

III. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiff moves for an all-in fee and expense award of $1,350,000 (i.e., 18%, of the $7.5 million settlement fund, inclusive of $15,042.90 in expenses reasonably incurred in connection with litigating this action). The Settlement provides an

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[76] *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").

[77] *See, e.g.*, *May v. Gores Guggenheim Sponsor LLC*, C.A. No. 2023-0863-LWW (Del. Ch) (obtained and reviewing 49,000 documents to date, and pursuing additional documents, discovery); Tab 20, *Offringa v. dMY Sponsor II, LLC*, C.A. No. 2023-0929-LWW (Del. Ch. July 30, 2024) (TRANSCRIPT) (denying motion to dismiss).

excellent outcome for the Class, providing an immediate and substantial recovery. This requested fee and expense award is well within the Court's precedent, and Plaintiff's request is reasonable given the substantial benefit the Settlement provides, the risks of the litigation and a potential appeal, the necessary expenses that Plaintiffs have incurred to date, and the hundreds of hours Counsel have devoted to the prosecution of this Action.

A. LEGAL STANDARD

This Court may award attorneys' fees to counsel whose efforts conferred a common benefit.[78] The determination of any attorney fee and expense award is left to the Court's discretion.[79] The Court's determination is informed by 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."[80] The greatest weight in this analysis is afforded to the benefit achieved in litigation.[81]

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

[79] *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).

[80] *Theriault*, 51 A.3d 1213 at 1254 (citing *Sugarland*, 420 A.2d at 149).

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

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

B. THE BENEFITS OF THE SETTLEMENT ARE SUBSTANTIAL

As set forth herein, the proposed Settlement confers substantial and quantifiable financial benefits on the Class. Should the Court approve the proposed Settlement of this Action, Class members will receive a substantial portion of their actual economic loss. As the factor accorded the most weight by the Court, this exceptional recovery counsels heavily in favor of Plaintiff's requested fee award.[82] The Court has stated that "the dollar amount of the fund created . . . is the heart of the *Sugarland* analysis."[83] Plaintiff's requested fee and expense award represent a total of 18% of the Settlement.

Plaintiff recognizes that, under the *Americas Mining* scale, fees ranging from 10% to 15% of the settlement amount are typically appropriate for early stage settlements, while fees between 15% and 25% are typically appropriate for "meaningful litigation efforts" settlements.[84] Plaintiff respectfully submits that this case falls squarely at the dividing line between "early" and "meaningful litigation efforts." Plaintiff's counsel (i) negotiated for, reviewed, and analyzed a more than

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[82] *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.").

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

[84] *Theriault*, 51 A.3d at 1259.

2,220-page Section 220 production to determine if Plaintiff and the Class had viable claims; (ii) drafted and filed the Complaint; (iii) briefed the motion to dismiss; and (iv) negotiated and documented the Settlement.

In litigation scenarios in which a settlement occurs prior to substantial discovery, including SPAC settlements in *Gig2*, *MoneyLion*, and *Lien v. Eagle Equity Partners II, LLC* ("*Skillz*"), the Court has awarded fees around 18%.[85] For example, in *Gig2*, the Court awarded 18%; in *MoneyLion*, the Court ordered 18%, and in *Skillz*, the Court awarded 17.5%.[86] Thus, awarding a fee that is at the intersection of "early settlement" fees and "meaningful litigation efforts settlement" fees appropriately compensates Plaintiffs' counsel for their efforts here.

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

The "second most important factor" in the Court's *Sugarland* analysis is the contingent nature of counsel's representation.[87] It is the "public policy of Delaware

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[85] Tab 14, *Gig2* Tr. at 17-18 (awarding 18% after limited discovery and a "hard-fought" motion to dismiss); Tab 16, *MoneyLion* Tr. at 57 (awarding 18% after limited discovery, motion to dismiss briefing, and "the exceptional recovery f[or] the class obtained by lead counsel"); Tab 21, *Skillz*, C.A. No. 2022-0972-PAF, at 42-43 (Del. Ch. Sept. 2, 2024) (TRANSCRIPT) (awarding 17.5% after limited discovery and surviving a motion to dismiss); *In re Josephson Int'l, Inc.*, 1988 WL 112909 (Del, Ch. Oct. 19, 1988) (awarding 18% when the case settled after ten days of document discovery); *Schreiber v. Hadson Petroleum Corp.*, 1986 WL 12169, at 3* (Del. Ch. Oct. 29, 1986) (awarding 16% when case settled "[]shortly after suit was filed").

[86] Tab 14, *Gig2* Tr. at 17-18; Tab 16, *MoneyLion* Tr. at 57; Tab 21, *Skillz* Tr. at 42-43.

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

to reward this risk-taking in the interests of shareholders."[88] 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.[89]

Here, as set forth in the accompanying attorney affidavits,[90] Plaintiff's Counsel pursued this case on a fully contingent basis. Accordingly, in undertaking this representation, they incurred all of the classic contingent fee risks, including the ultimate risk—no recovery whatsoever and a loss of all expenses incurred. This factor thus supports the requested fee award.

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

The time spent by counsel in this litigation should serve only as a cross-check on the reasonableness of the fee award.[91] Fee awards should neither penalize

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[88] *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.").

[89] *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).

[90] Affidavit of Kelly L. Tucker in Support of an Award of Attorneys' Fees and Expenses at ¶ 2 (filed herewith) ("Tucker Aff."); Affidavit of Michael Klausner in Support of an Award of Attorneys' Fees and Expenses at ¶ 2 (filed herewith) ("Klausner Aff.") Affidavit of Eitan Kimmelman, Support of an Award of Attorneys' Fees and Expenses at ¶ 2 (filed herewith) ("Kimmelman Aff.").

[91] *In re Sauer-Danfoss Inc. S'holders Litig.,* 65 A.3d 1116, 1138-39 (Del. Ch. 2011).

counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[92] Prior to reaching agreement on the Settlement Stipulation, Counsel's efforts included a deep review of 220 documents produced by the Company, drafting and filing the Complaint, and opposing Defendants' Motions to Dismiss. Counsel also carefully considered and assessed potential damages and engaged in an extended arm's-length negotiation in reaching the Settlement.

The Court has "explicitly disapproved the . . . lodestar method. Therefore, Delaware courts are not required to award fees based on hourly rates that may not be commensurate with the value of the common fund created by the attorneys' efforts."[93] But "[t]he time and effort expended by counsel is considered as a cross-check to guard against windfalls."[94] Counsel spent 481.9 hours litigating this Action, from inception through the July 16, 2025 signing of the Settlement Stipulation.[95] This amounts to a lodestar value of $386,465.00. Counsel also incurred $15,042.90 in expenses.[96] The requested fee award (net of expenses) implies an hourly rate of approximately $2,770.20 per hour,[97] and a lodestar multiple

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

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

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

[95] Tucker Aff. at ¶¶ 4-5; Klausner Aff. at ¶ 4; Kimmelman Aff. at ¶ 4.

[96] Tucker Aff. at ¶¶ 6-7.

[97] Tab 22, *In re Versum Materials, Inc. S'holder Litig.*, C.A. 2019-0206-JTL, at 81 (Del. Ch. July 16, 2020) (TRANSCRIPT) (approving fees equivalent to an hourly rate of over

of approximately 3.45x,[98] both of which are well within the range of hourly rates and lodestar multiples previously awarded by the Court of Chancery.[99]

The fruitful efforts of counsel thus support the requested fee award.

E. THE ACTION IMPLICATES COMPLEX ISSUES OF FACT AND LAW

In determining an appropriate award of fees and expenses, the Court also considers the complexity of the litigation. "Litigation that is challenging and complex supports a higher fee award."[100] This Action is complex both legally and factually.

$10,000); *Sciabacucchi*, 2019 WL 2913272, at *6 (fees equivalent to $11,262.26 per hour were reasonable); Tab 23, *In re Medley Cap. Corp. S'holders Litig.*, Consol. C.A. No. 2019-0100-KSJM, at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (observing a $5,989 hourly rate would not be "beyond the bounds of reasonableness"); *Dell*, 300 A.3d at 726 (granting award representing $5,000 implied hourly rate); Tab 24, *In re Activision Blizzard Inc. S'holder Litig.*, Consol. C.A. No. 8885-VCL (Del. Ch. May 20, 2015) (ORDER) (awarding an effective hourly rate of $9,685); *Berger v. Pubco Corp.*, 2010 WL 2573881, at *1 (Del. Ch. June 23, 2010) (awarding a fee of 26% noting that "the hourly rate to which the fee translates (approximately $3,450 per hour . . .) is nestled within the range of hourly rates found among Court of Chancery monetary-benefit cases.").

[98] *See, e.g.*, *In re Saba Software, Inc. S'holder Litig.*, 2018 WL 4620107 (Del. Ch. Sept. 26, 2018) (awarding a 3x lodestar multiple); *Vero Beach Police Officers' Ret. Fund v. Bettino*, 2018 WL 6330140 (Del. Ch. Dec. 3, 2018) (awarding an effective hourly rate of $3,165 and a 5.1x lodestar multiplier); *In re Pilgrim's Pride Corp. Deriv. Litig.*, 2020 WL 474676 (Del. Ch. Jan. 28, 2020) (awarding an effective hourly rate of $4,511.09 and a 7.0x lodestar multiplier); *Carr v. New Enter. Assoc. Inc.*, 2019 WL 1491579 (Del. Ch. Apr. 4, 2019) (awarding an effective hourly rate of $1,030 and an 7.2x lodestar multiplier); Tab 25, *In re AVX Corp. S'holders Litig.*, Consol. C.A. No. 2020-1046-SG (Del. Ch. Dec. 27, 2022) (ORDER) (awarding an effective hourly rate of $1,256.97 and a 2.61x lodestar multiplier).

[99] *Id.*; *supra* note 97.

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

Plaintiff's claims in this Action presented legal challenges concerning Defendants' duties to act loyally with regard to RAAC stockholders, but involved novel (and as yet still unresolved) legal issues, such as the contours of what constitutes impairment of stockholder redemption rights, how damages might be calculated, and whether a delta of $2.00 between the net cash per share being contributed to the Merger and the $10.00 per share deemed Merger consideration was material (a question, along with whether net cash per share must be disclosed when the difference between net cash per share and the deemed merger consideration is material, remains unanswered by the Delaware Supreme Court). These uncertainties resulted in the potential for complex legal battlegrounds that have not yet been trial tested.

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 interrelated financial interests. Plaintiff has had to review eighty-four 220 Documents to ascertain, *inter alia*, the status of Legacy Berkshire Grey's refinance and origination market, the assumptions underlying its business model, and the likely value of Legacy Berkshire Grey at the time of the Merger, along with other related disclosure issues and facts relevant to questions of process and price.

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

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

The Court also considers the standing and ability of counsel when determining the reasonableness of a fee and expense award.[101]

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. The reputation of counsel has been the subject of favorable comments by the courts of this state and other state and federal courts.[102] Plaintiff's Counsel have participated in some of the largest settlement and post-trial recoveries for plaintiffs in class and derivative litigation before this Court.[103] Plaintiff's Counsel respectfully submits that the Settlement is another exceptional recovery that extends this track record.

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

[102] *See, e.g.*, *In re Del Monte Foods Co. S'holders Litig.*, 2010 WL 5550677 (Del. Ch. Dec. 31, 2010) ("Ultimately, the most important factor when appointing lead counsel is the degree to which the attorneys will provide effective representation for the class going forward. . . . G&E's track record stands out." *Id.* at *9. "The results achieved by G&E [] demonstrate that they have the ability and resources to litigate the case competently and vigorously." *Id.* at *11.). '

[103] *See, e.g.*, *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015) ($148 million trial verdict); *In re Digex, Inc. S'holder Litig.*, 2001 WL 34131305 (Del. Ch. Apr. 6, 2001) ($420 million settlement); *In re McKesson Corp. S'holder Deriv. Litig.*, 2020 WL 1985047 (Del. Ch. Apr. 24, 2020) ($175 million settlement and corporate governance reforms); *In re News Corp. S'holder Deriv. Litig.*, 2013 WL 3231415 (Del. Ch.

The standing of opposing counsel also may be considered in determining the reasonableness of a fee award. Defendants are represented by experienced, skillful, and very 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.

IV. THE COURT SHOULD APPROVE SERVICE AWARDS FOR THE PLAINTIFF

The Court should approve the payment of a modest $3,000 service award to 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 service fee is appropriate where, as here, Plaintiff has "step[ed] forward and take[n] the risk" of getting involved in representative litigation in a

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June 26, 2013) ($139 million settlement); *In re Freeport-McMoRan Copper & Gold, Inc. Deriv. Litig.*, 2015 WL 1565918 (Del. Ch. Apr. 7, 2015) ($153.75 million settlement and corporate governance reforms); *Teachers' Ret. Sys. of Louisiana v. Greenberg*, 2008 WL 5260548 (Del. Ch. Dec. 17, 2008) ($115 million settlement); *In re Am. Int'l Gp., Inc., Consol. Deriv. Litig.*, 2011 WL 244179 (Del. Ch. Jan. 25, 2011) ($90 Million Settlement); *In re CBS Corp. S'holder Class Action & Deriv. Litig.*, 2023 WL 5817795 (Del. Ch. Sept. 7, 2023) ($167.5 million settlement); *City of Monroe Emps.' Ret. Sys. v. Murdoch*, 2018 WL 822498 (Del. Ch. Feb. 9, 2018) ($90 million settlement plus corporate governance reforms); *In re Jefferies Grp., Inc. S'holders Litig.*, 2015 WL 1414350 (Del. Ch. Mar. 26, 2015) ($92 million settlement); *In re AMC Entm't Holdings, Inc. S'holder Litig.*, 2023 WL 516606 (Del. Ch. Aug. 11, 2023) ($76 million settlement); *In re MSG Networks Inc. S'holder Class Action Litig.*, 2023 WL 5302339 (Del. Ch. Aug. 16, 2023) ($48.5 million settlement); *In re Starz S'holder Litig.*, 2018 WL 6515452 (Del. Ch. Dec. 10, 2018) ($92.5 million settlement); Tab 26, *In re El Paso Corp. S'holder Litig.*, Consol. C.A. No. 6949-CS (Del. Ch. Dec. 3, 2012) (ORDER) ($110 million settlement).

culture in which people increasingly are unwilling to "do things for the benefit of others."[104]

In determining the appropriateness of a service fee, the Court considers the time and effort expended by the class representative and the size of the benefit to the class.[105] 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 plaintiffs in *Latch* to whom the Court awarded a similar incentive award[106] and amply support the modest $3,000 award requested.

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(1), 23(b)(1), and 23(b)(2), and grant the requested fee and expense award and service awards.

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[104] Tab 27, *In re EZCorp Inc. Consulting Agreement Deriv. Litig.*, C.A. No. 9962-VCL (Del. Ch. April 3, 2018) (TRANSCRIPT) at 37 (awarding $5,000 incentive awards).

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

[106] Tab 10, *Latch* Tr. at 17 (awarding $5,000 incentive awards).

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