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Case No. 2024-0221-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE INTERPRIVATE ACQUISITION CORP. STOCKHOLDER LITIGATION	CONSOLIDATED C.A. No. 2024-0221-LWW **PUBLIC VERSION FILED ON: AUGUST 8, 2025**

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

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Plaintiffs Louis Smith ("Smith") and Todd Katz ("Katz," with Smith, "Plaintiffs"), by and through their undersigned attorneys, on behalf of themselves and the Class (defined herein) of InterPrivate Acquisition Corp. ("InterPrivate") public stockholders who held InterPrivate Class A shares as of the redemption deadline, submit this Opening Brief in Support of Their Motion to Certify the Class, Approve the Settlement, for Attorneys' Fees and Expenses, and for Service Awards (the "Motion") seeking: (1) certification of the Class for settlement purposes, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (2) final approval of the proposed settlement (the "Settlement") between (a) Plaintiffs and (b) defendants Ahmed Fattouh ("Fattouh"), Brandon C. Bentley ("Bentley"), Jeffrey A. Harris ("Harris"), Allan Pinto ("Pinto"), Brian Q. Pham ("Pham"), Minesh K. Patel ("Patel"), Soroush Salehian Dardashti ("Dardashti"), Mina Rezk ("Rezk"), InterPrivate Acquisition Management LLC (the "Sponsor"), InterPrivate LLC ("IP LLC"), and Aeva Technologies, Inc. ("New Aeva" or the "Company," with Fattouh, Bentley, Harris, Pinto, Pham, Patel, Dardashti, Rezk, the Sponsor, and IP LLC, "Defendants"), as set forth in the Amended Stipulation and Agreement of Settlement, Compromise, and Release dated April 28, 2025 (the "Amended Stipulation"); (3) approval of the proposed Plan of Allocation; (4) an award of attorneys' fees and reimbursement of expenses; and (5) service awards to the named Plaintiffs.

Putative Class members were given notice of the Settlement in accordance with the Scheduling Order entered by the Court on May 23, 2025.[1] An in-person hearing is scheduled for September 12, 2025 at 1:30 p.m. for the Court to consider these matters.

PRELIMINARY STATEMENT

The proposed settlement (the "Settlement") provides a $14,000,000 recovery (the "Settlement Consideration") for Class members to compensate them for the impairment of their rights to make fully informed decisions of whether to redeem their InterPrivate shares or invest in the combined company resulting from InterPrivate's March 12, 2021 merger (the "Merger") with private company Aeva Inc. ("Legacy Aeva").

The Settlement marks the culmination of Plaintiffs' hard-fought and meaningful investigation and litigation efforts, which included pursing books-and-records investigations pursuant to 8 Delaware Code, section 220, and filing separate plenary actions. Most importantly, Plaintiffs won a remand of the *Smith* Action[2] back to this Court following Defendants' removal of it to the United States District Court for the District of Delaware on the basis of a novel theory.[3] If Defendants'

[1] Trans. ID 76331794.

[2] *Smith v. Fattouh*, C.A. No. 2024-0221-LWW (the "*Smith* Action").

[3] *See Smith v. Fattouh*, Case No. 1:24-cv-00484-GBW, Defendants' Memorandum at Law in Opposition to Plaintiff Louis Smith's Motion for Remand and in Support of Defendants'

theory was correct, that actions concerning de-SPAC mergers were preempted by the Securities Litigation Uniform Standards Act ("SLUSA"), then federal law would prevent stockholders from bringing any de-SPAC action in Delaware state court, or according to Defendants, the claims would have been entirely preempted. Plaintiffs took on this challenge and risk and secured a victory for all SPAC investors.

The Settlement is fair, reasonable, and adequate under any metric. The Parties negotiated the Settlement at arm's-length under the guidance of a highly regarded mediator. It provides an approximately $0.58 per share recovery to Class members, which exceeds the per-share recoveries in the majority of de-SPAC merger settlements approved by this Court.[4] The Settlement represents an excellent 36.5%

Cross-Motion to Dismiss, at 19 (ECF No. 20) (D. Del. June 5, 2024) (arguing SLUSA required dismissal) (attached hereto as Ex. 1).

[4] *See, e.g.*, *In re XL Fleet (Pivotal) S'holder Litig.*, C.A. No. 2021-0808-KSJM (Del. Ch. Mar. 21, 2025) ("*XL Fleet*") (TRANSCRIPT) (approving settlement that provided approximately $0.21 per share); *In re Multiplan Corp. S'holders Litig.*, Consol. C.A. No. 2021-0300-LWW ("*Multiplan*") (Del. Ch. Feb. 28, 2023) (TRANSCRIPT) (approving settlement that provided approximately $0.368 per share); *Siseles v. Lutnick*, C.A. No. 2023-1152-JTL ("*View*") (Del. Ch. Dec. 6, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.32 per share); *In re Finserv Acquisition Corp. SPAC Litig.*, C.A. No. 2022-0755-PAF (Del. Ch. Oct. 10, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.38 per share); *In re GeneDX De-SPAC Litig.*, C.A. No. 2023-0140-PAF ("*GeneDX*") (Del. Ch. Dec. 2, 2024) (TRANSCRIPT) (approving settlement that provided $0.47 per share); *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW ("*Lordstown*") (Del. Ch. June 24, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.57 per share); *Yu v. RMG Sponsor, LLC*, C.A. No. 2021-0932-NAC ("*Romeo Power*") (Del. Ch. Oct. 18, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.52 per share); *cf. Delman v. Riley*, C.A. No. 2023-0293-LWW (Del. Ch. Oct. 17, 2024) (TRANSCRIPT) ("*Eos*") (approving settlement that provided approximately $0.99 per share); *Paul Berger*

recovery of the Class's damages measured by the delta between redemption price and net cash per share. The Settlement Consideration is particularly notable here, as New Aeva stock traded above the $10.07 per share redemption price post-Merger for approximately six months, and an estimated 117,793,996 shares changed hands during this period while the Founder Shares and shares issued to Legacy Aeva stockholders were locked up.

Plaintiffs' Plan of Allocation[5] is also reasonable and appropriate. Similar to the plans of allocation the Court approved in *Eos*,[6] *Latch*,[7] and *Gores IV*,[8] among others, the Plan of Allocation is designed to equitably distribute the Settlement

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Revocable Tr. v. Falcon Equity Invs., LLC, C.A. No. 2023-0820-JTL (Del. Ch. Jan. 21, 2025) (TRANSCRIPT) ("*Sharecare*") (approving settlement that provided approximately $1.10 per share); *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024) (TRANSCRIPT) ("*Gig2*") (approving settlement that provided approximately $1.94 per share); *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch. May 12, 2025) (TRANSCRIPT) ("*Latch*") (approving settlement that provided approximately $0.99 per share); *Bushansky v. GigAcquisitions4, LLC*, C.A. No. 2023-0685-LWW, Corrected Plaintiffs Opening Brief in Support of Settlement And Award of Attorneys' Fees and Expenses at 3 (Del. Ch. Sept. 10, 2024) ("*Gig4*") (the settlement provided approximately $2.38 per share).

[5] Unless otherwise set forth herein, capitalized terms have the same meaning as set forth in the Amended Stipulation of Settlement (Trans. ID 76169336) (filed Apr. 29, 2025) (the "Stipulation").

[6] *Eos* Tr. at 20–21.

[7] *Latch* Tr. at 27; *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch. July 9, 2025) (LETTER).

[8] *In re Gores IV, Inc. S'holder Litig.*, No. 2023-0284-LWW (Del. Ch. July 15, 2025) (ORDER AND FINAL JUDGMENT) at ¶ 7.

proceeds in accordance with the size of a Class Member's recognized loss. The Court should approve the Plan of Allocation.

Plaintiffs further submit that an award of $2,240,000 for attorneys' fees (16% of the Settlement Consideration), inclusive of expenses, is appropriate here. Plaintiffs' counsel devoted 1,163.2 hours (with a lodestar value of $1,099,283.75) to bringing, prosecuting, and resolving the Action and expended $59,619,12 in litigation expenses—all on a fully contingent basis. Plaintiffs respectfully submit that Plaintiffs' counsel's efforts constituted meaningful litigation efforts for which fees in the amount of 15% to 25% are typically awarded. The Settlement marks the culmination of an extensive investigation and hard-fought litigation, including an ultimately successful motion to remand the *Smith* Action that "was complicated [with] new territory that was being explored."[9] Defendants' theory of removal was not only novel, but the potential consequences were significant. In light of the stage of the litigation and the novel issues presented and litigated, Plaintiffs respectfully submit that the requested fee and expense award is reasonable and appropriate.

Finally, awarding modest service awards of $2,500 each to Plaintiffs to compensate them for their successful efforts in achieving an excellent settlement on behalf of the Class is warranted.

[9] *Gig2* Tr. at 18.

FACTUAL AND PROCEDURAL BACKGROUND

A. THE CONTROLLER DEFENDANTS FORM INTERPRIVATE

On August 16, 2019, InterPrivate was incorporated in Delaware as a Special Purpose Acquisition Company ("SPAC").[10] InterPrivate's sole purpose was to combine with another company in what is commonly referred to as a de-SPAC merger.[11] Pursuant to the terms of its corporate charter, Interprivate only had 18 months from the closing of its initial public offering ("IPO") to complete a business combination, or it would be forced to liquidate and return the funds raised in the IPO and held in trust to public stockholders, with interest.[12]

InterPrivate was formed and controlled by its Sponsor, which, in turn, was controlled by IP LLC.[13] IP LLC was controlled by Fattouh and Bentley.[14] Fattouh named himself Chairman and Chief Executive Officer of InterPrivate, and Bentley as its General Counsel.[15]

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[10] *Smith* Action, Amended Verified Class Action Complaint (Trans. ID 72709924) (filed Apr. 10, 2024) ("Complaint," or ¶__") at ¶ 32.

[11] *Id.*

[12] ¶ 40.

[13] ¶ 41.

[14] *Id.*

[15] ¶¶ 42–43.

Shortly after InterPrivate was incorporated, the Controller Defendants caused InterPrivate to issue 6,037,500 Founder Shares[16] to the Sponsor in exchange for $25,000, approximately $0.004 per share.[17] The Controller Defendants subsequently caused the Sponsor to gift 30,000 Founder Shares to Harris, Luckett, and Cinquegrana.[18] In connection with the IPO, the Sponsor also purchased 501,081 units for $10.00 per unit ("Private Placement Unit").[19] Each Private Placement Unit consisted of one share of InterPrivate Class A common stock ("Private Placement Share") and one-half of one warrant, with each whole warrant ("Private Placement Warrant") exercisable to purchase one share of InterPrivate Class A common stock at an exercise price of $11.50.[20] Defendants waived their redemption rights and any rights to a liquidating distribution from the trust with respect to the Founder Shares and Private Placement Shares.[21] Further, the Private Placement Warrants could not be exercised until 30 days following the close of a business combination.[22] Accordingly, if InterPrivate failed to complete a merger within 18 months, it would

[16] Following a dividend and a forfeiture. ¶ 4.

[17] ¶¶ 4, 33.

[18] ¶¶ 6, 22–24.

[19] ¶ 5.

[20] ¶¶ 5, 39.

[21] ¶ 5.

[22] *Id.*

be forced to liquidate, rendering the Founder Shares, Private Placement Shares, and Private Placement Warrants would worthless, and resulting in Defendants losing their entire investment.[23]

In January 2020, Fattouh and Bentley appointed their long-known colleagues, Harris and Cinquegrana, as the other directors of InterPrivate, and added Pinto, Pham, and Patel as its officers.[24] Following the IPO, Fattouh and Bentley added Luckett to the Board.[25] To further consolidate their control, the Controller Defendants allowed Harris to invest $250,000 in the Sponsor in exchange for an additional 100,000 Founder Shares and 12,500 Private Placement Warrants.[26] Similarly, Luckett was permitted to invest $50,000 in the Sponsor in exchange for 20,000 Founder Shares and 2,500 Private Placement Warrants.[27]

Each of InterPrivate's directors and officers had significant personal, business, or financial relationships with Fattouh and Bentley, including through their other SPACs.[28]

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[23] *Id.*

[24] ¶ 35.

[25] ¶ 45.

[26] ¶¶ 6, 44.

[27] ¶¶ 6, 45.

[28] ¶¶ 21–23, 25–27.

B. INTERPRIVATE GOES PUBLIC

On February 3, 2020, InterPrivate consummated its IPO, selling 24,150,000 public units ("Public Units") to investors at a price of $10.00 per unit, raising $241,500,000 in proceeds.[29] Each Public Unit consisted of one share of Class A common stock and one-half of one warrant. The funds raised in the IPO were placed in a trust for the benefit of InterPrivate's public stockholders.[30] If InterPrivate 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.[31] If InterPrivate liquidated, public stockholders would have received a liquidating distribution in the same amount.[32] The funds in trust would not become corporate assets unless and until: (a) InterPrivate entered into a business combination; and (b) all public stockholders had the opportunity to redeem their shares and received $10.00 per redeemed share plus interest.

C. INTERPRIVATE MERGES WITH LEGACY AEVA

Following the IPO, Defendants started searching for a merger partner. After initial talks with a different company fell through, and Defendants were starting to feel greater pressure due to the looming liquidation deadline, sights turned to finding

[29] ¶¶ 36–37.

[30] ¶ 37.

[31] ¶ 36.

[32] *Id.*

a new partner.[33] In September 2020, the Controller and Officer Defendants began discussions with private company Legacy Aeva.[34] Legacy Aeva was a provider of perception solutions for automated driving applications, focused in its 4D LiDAR-on-chip silicon photonics technology.[35]

The "process" proceeded with haste. On September 12, 2020, the parties entered into a non-disclosure agreement and the next day, InterPrivate was given access to a data room with Legacy Aeva's financial model.[36] Less than two weeks later, by September 25, 2020, InterPrivate and Legacy Aeva already had agreed to the material terms of their business combination, including the valuation of Legacy Aeva and, on that date, executed a final letter of intent.[37] The Board had little involvement in the process, seeing letters of intent only after they had been exchanged with Legacy Aeva and meeting only once before the final letter of intent was executed.[38]

Further "diligence" of Legacy Aeva followed, and the parties finalized the Merger Agreement. While InterPrivate had retained [redacted]

[33] ¶¶ 51–52.

[34] ¶ 52.

[35] ¶ 30.

[36] ¶ 55.

[37] ¶¶ 61–65.

[38] ¶¶ 60, 62.

[redacted] as due diligence advisors in connection with the Merger, as of an October 27, 2020 Board meeting, [redacted][39] Sometime between October 27, 2020 and November 1, 2020, the Board was provided with reports from these advisors, along with a presentation from Legacy Aeva management.[40] [redacted][41] [redacted][42] [redacted][43] [redacted]

[39] ¶ 66.

[40] ¶¶ 67–75.

[41] *Id.*

[42] ¶ 68.

[43] *Id.*

[redacted][44] [redacted][45] [redacted][46] [redacted], on November 1, 2020, the Board approved the Merger and Merger

[44] ¶¶ 72–75.

[45] ¶¶ 69–71.

[46] ¶¶ 70–71.

Agreement.[47] On November 2, 2020, InterPrivate announced the Merger to its stockholders.[48]

On February 16, 2021, InterPrivate issued the Proxy.[49] The Proxy informed stockholders of their redemption rights.[50] The Proxy was false and misleading in several respects. First, it failed to disclose the net cash per share underlying InterPrivate shares that would be exchanged in the Merger.[51] While the Proxy implied that the value of InterPrivate shares being used as merger consideration was $10.00 per share, in fact, as alleged in the Complaint, there was less than $8.50 underlying each InterPrivate share, even before any redemptions.[52] [redacted][53] Overall, the Proxy painted an overly rosy picture of Legacy Aeva's future projected performance and

[47] ¶ 78.

[48] ¶ 79.

[49] ¶ 80.

[50] *Id.*

[51] ¶¶ 91–92.

[52] *Id.*

[53] ¶¶ 94–115.

failed to disclose counterbalancing information that would have called into question the reliability of the Proxy Projections.[54]

A majority of InterPrivate's stockholders voted to approve the Merger, and the Merger closed.[55] Stockholders redeemed only 30,874 shares of InterPrivate Class A common stock.

On March 21, 2021, the first trading day for New Aeva stock, it closed at $16.16 per share.[56] As of this date, a sale of the Sponsor's Founder Shares would have netted approximately $97.6 million, a return of over [redacted] of the Sponsor's $25,000 investment.[57]

D. PLAINTIFFS UNDERTAKE SECTION 220 INVESTIGATIONS AND VIGOROUSLY PROSECUTE THE ACTIONS

On February 27, 2023, Plaintiff Smith served a 220 demand. On September 20, 2023, Plaintiff Katz did the same. New Aeva produced 60 documents comprising 2,111 pages in response, which included Board minutes, materials and presentations, and certain due diligence information provided to InterPrivate and the Board. [redacted]

[54] *Id.*

[55] ¶ 81.

[56] ¶ 83.

[57] *Id.*

[redacted]

Following their 220 investigations, on March 7, 2024, Plaintiff Smith filed his initial complaint. He filed his amended Complaint on April 10, 2024. The Complaint alleges that Defendants impaired stockholders' redemption decisions in a breach of their duty of loyalty and were unjustly enriched, in part, by failing to disclose material information and making materially misleading statements in the Proxy.

On April 15, 2024, Defendants removed the *Smith* Action to the United States District Court for the District of Delaware, purportedly pursuant to SLUSA. On May 15, 2024, Plaintiff Smith filed a motion to remand.

On June 3, 2024, plaintiff Katz filed his Verified Class Action Complaint in the Delaware Court of Chancery (the "*Katz* Action," with the *Smith* Action, the "Action"), alleging largely the same misconduct, but adding an aiding and abetting claim against New Aeva, Soroush Salehian Dardashti, and Mina Rezk.

On June 5, 2024, Defendants opposed the motion to remand in the *Smith* Action and cross moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

E. THE PARTIES MEDIATE AND REACH AGREEMENT ON THE SETTLEMENT CONSIDERATION

On June 12, 2024, the Parties participated in a full-day mediation (the "Mediation") before Greg Danilow, Esq. of Phillips ADR Enterprises. Following extensive arm's-length negotiations, the Parties reached agreement in principle to settle the Action for $14 million. Over the following weeks, the Parties engaged in further arm's-length negotiations concerning the Settlement, which were subsequently recorded in the Term Sheet and fully executed on July 2, 2024.

On December 6, 2024, Mr. Smith filed an unopposed motion for preliminary approval of Settlement in the District Court for the District of Delaware, where the *Smith* Action was then pending, before the Honorable Gregory B. Williams. On March 6, 2025, Judge Williams held a hearing on Plaintiff Smith's motion for preliminary approval of the Settlement. At that hearing, he expressed concerns about whether the District Court had jurisdiction to consider the Settlement. On March 20, 2025, Judge Williams granted Plaintiff Smith's motion to remand and denied Defendants' motion to dismiss.

On April 2, 2025, with both actions back before the Delaware Court of Chancery, the Court consolidated the *Smith* Action and the *Katz* Action, and appointed plaintiffs Smith and Katz as Co-Lead Plaintiffs, and Grant & Eisenhofer P.A. ("G&E"), Robbins Geller Rudman & Dowd LLP ("RGRD"), and Robbin LLP

("Robbins") as Co-Lead Counsel.[58] On that same date, the Parties filed the Amended Stipulation. On May 23, 2025, the Court entered its Scheduling Order preliminary certifying the class, approving the proposed notices, and setting a hearing date to hear Plaintiffs' Motion.

F. THE SETTLEMENT TERMS AND THE PLAN OF ALLOCATION

The Settlement provides consideration of $14,000,000, which will include payment of all 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.

As set forth in the Plan of Allocation: (i) all Eligible Class Members will receive $0.10 for each share of InterPrivate Class A common stock held at the close of the market on March 9, 2021 ("Eligible Share"); (ii) each Eligible Class Member that sold InterPrivate Class A common stock or Aeva common stock after the close of market on March 9, 2021 through March 7, 2024 at a price of less than $10.07 per share will receive pro rata damages per Eligible Share of $10.07 minus the sale price; and (iii) each Eligible Class Member that continued to hold New Aeva common

[58] Stipulation and Order for Consolidation and Appointment of Co-Lead Plaintiffs and Co-Lead Plaintiffs' Counsel (Trans. ID 75983477) (Apr. 2, 2025).

stock as of the close of the market on March 7, 2024 will receive pro rata damages per Eligible Share of $10.07 minus $1.19.

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. Plaintiffs respectfully submit that each requirement is satisfied here and that, consequently, class certification is appropriate. Specifically, Plaintiffs move the Court for certification of a non-opt-out Class for settlement purposes only pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) (the "Class"), consisting of:

> All record and beneficial holders of InterPrivate Class A common stock owned by Class Members immediately after the Redemption Deadline (March 9, 2021), who purchased, acquired, or held such securities at any time between August 16, 2019 and March 12, 2021, and continued to hold redeemable stock on March 9, 2021.

The Class does not include any of the following:

> (a) Defendants; (b) members of the immediate family of any Individual Defendant; (c) any person who was an officer, director, or partner of any Defendant during the Class Period and any members of their immediate family; (d) any parent, subsidiary, or affiliate of Defendants; (e) any entity in which any Defendant or any other excluded person or entity has, or had during the Class Period, a controlling interest; (f) affiliates, heirs, estates, trusts, successors, or assigns of any such excluded persons or entities; and (g) account that held Legacy Aeva or InterPrivate stock for the benefit of any such excluded persons or entities.

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."[59]

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."[60] The test "is not whether joinder of all the putative class members would be impossible, but whether joinder would be practical."[61] There were 24,469,126 Public Shares outstanding on the redemption deadline that were not submitted for redemption in connection with the Merger. Joinder of the likely thousands of holders of millions of shares is not practical, and numerosity is satisfied.

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

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

[61] *Id.*

2. Questions of Law Are Common to Class Members

Commonality is "met where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[62] Here, common questions of law include whether Defendants: (i) breached their fiduciary duties by impairing stockholder redemption rights and/or aided and abetted those breaches; (ii) failed to disclose material information and/or made materially misleading statements in the Proxy in connection with Merger; (iii) undertook an unfair Merger process at an unfair price; (iv) unjustly enriched themselves by securing unique financial benefits to the detriment of public stockholders; and (v) injured Plaintiffs and Class members through their conduct. This Court has certified classes 18 times in analogous circumstances.[63]

3. Plaintiffs' Claims Are Typical of the Class

"The test of typicality is that the legal and factual position of the class representative must not be markedly different from that of the members of the class" and "focuses on whether the class representative claim (or defense) fairly presents

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

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

the issues on behalf of the represented class."[64] Plaintiffs, public stockholders of InterPrivate who did not redeem their InterPrivate stock and instead chose to invest in New Aeva, are similarly situated to the other unaffiliated non-redeemers of Public Shares, and their claims "arise[] from the same event or course of conduct that gives rise to the claims . . . of other class members and [are] based on the same legal theory."[65]

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

There is no divergence of interest between Plaintiffs, who are incentivized to maximize the Settlement Consideration, and absent Class members. Moreover, the recovery achieved through the Settlement demonstrates that Plaintiffs' interests were aligned with those of absent Class members and is likewise indicative of the competence and effectiveness of Plaintiffs' counsel.[66]

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

Once the Rule 23(a) factors are established Rule 23(b) enumerates when certification is appropriate.[67] Consistent with longstanding Delaware corporate law

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

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

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

[67] Del. Ct. Ch. R. 23(b)(1)–(2).

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 InterPrivate common stock who suffered the same harm as a result of Defendants' conduct. The Class definition expressly excludes Defendants and their affiliates. The relief afforded through the proposed Settlement would impact all Class members equally, and approval of the proposed Settlement would protect all absent Class members' interests in uniform fashion.[68]

The Class also satisfies Rule 23(b)(2). Defendants' actions impacted Class members in a uniform fashion, and the Settlement would afford final relief with respect to the Class as a whole.[69]

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

[68] *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.").

[69] *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").

proposed . . . settlement must be given to all class members in the manner directed by the Court."[70] Notice was provided to all absent Class members, pursuant to the process set forth in the Scheduling Order.

Pursuant to Rule 23(aa), Plaintiffs have sworn that they have not received, been promised, or 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 the Plaintiffs' attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of the Action.[71]

* * *

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

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

[71] Unsworn Affidavit of Louis Smith in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Service Awards at ¶ 7 (filed herewith); Affidavit of Todd Katz in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Service Awards at ¶ 7 (filed herewith).

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

Delaware law favors the voluntary settlement of complex class actions,[72] 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.[73] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses thereto to "determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept."[74] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[75] 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

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[72] *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).

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

[74] *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)).

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

> judgment recovered; (4) the delay, expense, and trouble of litigation; (5) the amount of compromise as compared with the amount and collectability of a judgment; and (6) the views of the parties involved, pro and con.[76]

In making this determination, the Court need not "decide any of the issues on the merits,"[77] 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."[78]

For the reasons set forth herein, the Settlement should be approved. The Settlement was the product of hard-fought litigation, informed by Plaintiffs' review of non-public information obtained through the 220 process and arm's-length negotiations with the assistance of an experienced mediator in Mr. Danilow. The Settlement provides substantial economic consideration to Class members who suffered actual financial losses and reflects Plaintiffs' and their counsel'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.

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

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

[78] *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)).

A. THE SETTLEMENT PROVIDES SUBSTANTIAL BENEFITS TO THE CLASS

The Settlement provides a $14 million cash recovery, which equates to a per-share recovery of $0.58 per share. This is an outstanding result, above the mid-range per-share recovery of de-SPAC merger settlements approved by this Court.[79]

Plaintiffs' strongest claims concerned their allegations relating to omissions and disclosures regarding the net cash per share that InterPrivate's public stockholders would be contributing to the Merger. In this scenario, damages would likely be measured by the difference between the redemption value of $10.07 per share and the net cash per share contributed of approximately $8.50 per share—or damages of $1.57 per share. There were 24,469,126 shares that were not submitted for redemption. A full recovery under this theory would equal approximately $38.4 million,[80] making the settlement recovery equate to approximately *36.5% of potential damages*. Comparing the Settlement to other post-*Theriault* "settlements in deal cases . . . where entire fairness would apply," the recovery is extremely favorable.[81] Compared to other de-SPAC merger settlements, this 36.5% recovery of "net cash per share damages" ranks in the top five to date. This result is

[79] *See supra* n.4.

[80] 24,469,126 shares x $1.57 = $38.416,527.80.

[81] *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 723–24 (Del. Ch. 2023), *aff'd*, 326 A.3d 686 (Del. 2024) ("*Dell V*") (analyzing other settlements as a percentage of maximum damages).

particularly remarkable when one takes into consideration that New Aeva's stock price traded above the redemption price for a period of months post-Merger and many Class members' actual economic losses were likely mitigated.

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

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

Comparing the benefits provided by the Settlement to the challenges Plaintiffs would have faced should the litigation continue likewise supports approval. Plaintiffs brought claims for breaches of fiduciary duty and unjust enrichment against each of the Defendants. While Plaintiffs believe that the evidence for liability was strong, the Court has indicated that to recover more than nominal damages, Plaintiffs may need to prove actual economic harm. As with other cases where the post-redemption stock price was above redemption value, this could prove to be a challenge, or, at a minimum, lower the total recoverable damages suffered by the class.

In the six months following the Merger, New Aeva stock traded as high as $16.16 per share, and a total of 117,793,996 shares changed hands through September 7, 2021 at prices above the redemption price. Thus, the number of Class

members who suffered actual economic harm as a result of Defendants' breaches is likely fewer than the total number of unredeemed Class shares.

In similar circumstances, this Court has recognized the not insignificant risk that both unfair price and the quantification of damages could be established that created additional uncertainties should the case proceed to trial. Though the Court has observed that "[t]he fact that you may be able to sell after[][the redemption deadline] is alternative relief in the form of self-help, but you are still harmed at the time of the [redemption] decision,"[82] it also observed that "the positive reaction to the stock price [post-Merger can] make[] a weak [SPAC] case."[83] Similarly, in *Hennessy*, this Court observed that "a finding of unfair price (not to mention damages) may prove unobtainable [when a de-SPAC entity's] stock price . . . traded around $10 per share for months."[84] Both of these observations highlighted potential risks that Plaintiffs would face should the case proceed to trial and were factors considered by Plaintiffs in determining the fairness, reasonableness, and adequacy of the Settlement.

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[82] *In re Kensington-QuantumScape de-SPAC Litig.*, C.A. No. 2022-0721-JTL (Del. Ch. Feb. 21, 2024) (TRANSCRIPT) ("*QuantumScape* Tr."), at 62.

[83] *Id*. at 61; *see also id.* at 62 ("It doesn't seem to me like there should be a rule where it's no harm, no foul if your stock trades above for a sufficient period of time before the harm manifests itself.").

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

Plaintiffs also faced the risk that the Court may hold that the delta between the $8.50 in net cash per share being contributed in connection with the Merger and the $10.07 redemption price was not material. If so, this determination would have undermined one of Plaintiffs' strongest disclosure violations.

Plaintiffs also assessed that the Actions would face a significant risk of substantial delay before ultimate resolution, including delays associated with the motion for remand, fact and expert discovery, potential motions for summary judgment, trial, and potential appeals that could last for years. The near-term relief that the Settlement provides to Class members warrants approval in light of the delays inherent in continued litigation.

Although Plaintiffs believe the claims they asserted in the Action are strong, they acknowledge there are risks to litigation and ultimate recovery. Weighing the Settlement against these palpable risks further supports approval.

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

When evaluating the fairness of a settlement, Delaware courts also scrutinize the negotiations that led up to the settlement and heavily favor settlements that

resulted from arm's-length negotiations.[85] Here, the parties arrived at the Settlement following a joint mediation session and multiple follow-up discussions concerning the key terms of the Settlement. The Settlement was also agreed to with the benefit of discovery obtained pursuant to Plaintiffs' 220 demands, and after briefing on substantive motions.

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

Where counsel is experienced, as here, the Court also considers Counsel's opinion of evaluating a settlement.[86] Counsel, including attorneys at G&E, RGRD, and Robbins, are plaintiffs' firms that 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. Counsel believes that the Settlement is fair and in the best interests of the Class. Counsel's opinion in this regard is shaped not only by their depth of experience, but by their deep knowledge of this case following pre-suit investigation, briefing on certain of the Defendants' motion to remand and dismiss, and extensive settlement discussions, where both sides candidly addressed the

[85] *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").

[86] *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").

benefits and risks of continued litigation. Counsel's opinion further weighs in favor of approving the Settlement.

III. THE PLAN OF ALLOCATION IS REASONABLE AND APPROPRIATE

The Settlement allocates a $14 million recovery—plus any interest that accrues after being deposited in the Escrow Account and minus the payment of administrative costs, attorneys' fee and expenses, and any tax expenses—to the Class. The Plan of Allocation provides for an equitable recovery that will allow Class members who did not redeem and either sold their shares for less than the redemption amount or held their shares through the day the Complaint was filed to recover a portion of any economic damages they suffered. It also provides for an automatic base recovery in a nominal amount to all Class members be paid through DTC participant data, regardless of whether they submit a claim.

The Plan of Allocation mirrors the plan this Court approved previously in *Romeo Power*[87] and *View*.[88] As the Court recently stated in *Latch*, this Plan of Allocation is "smart" and "makes sense" because stockholders are "selling or

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

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

holding at different times," and "it's a very thoughtful way to distribute proceeds fairly to class members . . . and address the delta between when they might have sold their stock, if they held their stock, and the recovery that they're getting here."[89]

For all Class members, a nominal amount of $0.10 per share for each share held on the redemption deadline will be paid via DTC securities transfer records. Along with that distribution, Class members who submit claims will receive additional compensation. For Class members who submit claims and who sold their shares between the redemption deadline and the day the Complaint was filed (March 7, 2024) for less than the $10.07 per share redemption price, the equitable per share portion of each Class Member's recognized claims shall be calculated as the difference between $10.07 and the price at which the Class Member sold her or his share(s). For Class members who submit claims and who held their shares as of the date the Complaint was filed, the equitable per share recovery of the Class Member's recognized claim shall be calculated as the difference between the $10.07 per share redemption price and $1.19, the closing price of New Aeva stock on March 7, 2024. The net settlement fund, after accounting for distribution of the nominal amount, will then be distributed to Class Members who submitted claims on a pro rata basis based on the relative size of their total recognized claims, calculated by dividing

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

each Class Member's total recognized claims by the total of all Class Members' recognized claims and multiplying that number by the net settlement fund amount.

As contemplated by Rule 23(f)(6), the Plan of Allocation provides that residual settlement funds be redistributed to identified class members unless redistribution is uneconomic.[90] In such cases, the funds will be transferred "to the Combined Campaign for Justice."[91]

The distribution methodology contemplated by the plan of allocation is "fair, reasonable, and adequate."[92] Therefore, the Plan of Allocation should be approved.

IV. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiffs moves for an award of attorneys' fees of $2,240,000, inclusive of expenses in the amount of $59,619.12. The Settlement provides an excellent outcome for the Class, providing an immediate and substantial recovery. This requested fee and expense award is well within the Court's precedent, and Plaintiffs' request is reasonable given the substantial benefit the Settlement provides, the risks of the litigation and a potential appeal, the necessary expenses that Plaintiffs have

[90] Del. Ct. Ch. R. 23(f)(6); Stipulation Ex. B at 24.

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

[92] *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).

incurred to date, and the over one thousand 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.[93] The determination of any attorney fee and expense award is left to the Court's discretion.[94] 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."[95] The greatest weight in this analysis is afforded to the benefit achieved in litigation.[96]

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

B. THE BENEFITS OF THE SETTLEMENT ARE SUBSTANTIAL AND THE ACTION IMPLICATES COMPLEX ISSUES OF FACT AND LAW

As set forth herein, the proposed Settlement confers substantial and quantifiable financial benefits on the Class. The Court has stated that "the dollar

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[93] *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).

[94] *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).

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

[96] *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))).

amount of the fund created . . . is the heart of the *Sugarland* analysis."[97] As the factor afforded the most weight by the Court, this exceptional recovery counsels heavily in favor of Plaintiffs' requested fee award.[98] Plaintiffs' requested fee and expense award represents 16% of the Settlement Consideration, which is comfortably within the range granted by this Court on a percentage-of-the-benefit basis in similar circumstances.[99]

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.[100] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[101] Contingent

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

[98] *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.").

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

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

[101] *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)

representation entitles Plaintiffs' counsel to both a "risk" premium and an "incentive" premium on top of the value of their standard hourly rates.[102]

Here, as set forth in the accompanying attorney affidavits, Plaintiffs' counsel pursued this case on a fully contingent basis.[103] 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

Fee awards should neither penalize counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[104] Accordingly, the time spent by counsel in this litigation should only serve as a cross-check on the

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(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.").

[102] *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).

[103] Affidavit of Kelly L. Tucker in Support of an Award of Attorneys' Fees and Expenses at ¶ 2 (filed herewith) ("Tucker Aff."); Affidavit of Gregory E. Del Gaizo in Support of an Award of Attorneys' Fees and Expenses at ¶ 2 (filed herewith) ("Del Gaizo Aff."); Affidavit of Erik W. Luedeke on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses at ¶ 2 (filed herewith) ("Luedeke Aff."); Affidavit of Michael E. Criden on Behalf of Criden & Love, P.A. in Support of Award of Attorneys' Fees and Expenses at ¶ 2 (filed herewith) ("Criden Aff.").

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

reasonableness of the fee award.[105] 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 Complaints, and engaging in the hard-fought motion to remand briefing. Counsel also conducted an extensive damages assessment with the assistance of experts, and engaged in the mediation and 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."[106] But "[t]he time and effort expended by counsel is considered as a cross-check to guard against windfalls."[107] Counsel spent 1,163.2 hours litigating this Action from inception though the signing of the Amended Settlement Stipulation on April 28, 2025.[108] This amounts to a lodestar value of $1,099,283.75. Counsel also

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

[106] *Theriault*, 51 A.3d at 1254 (internal quotation marks and citations omitted).

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

[108] Tucker Aff. at ¶ 4; Del Gazio Aff. at ¶ 6; Luedeke Aff. at ¶ 5; Criden Aff. at ¶ 4; Unsworn Declaration of Michael Klausner in Support of an Award of Attorneys' Fees and Expenses (filed herewith) at ¶ 4; Affidavit of Eitan Kimelman in Support of an Award of Attorneys' Fees and Expenses (filed herewith) at ¶ 3.

incurred $59,619.12 in expenses.[109] The requested fee award (net of expenses) implies an hourly rate of approximately $1874.47 per hour,[110] and a lodestar multiple of approximately 1.98x,[111] both of which are well within the range of hourly rates and lodestar multiples previously awarded by the Court of Chancery.[112]

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

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[109] Tucker Aff. at ¶ 7; Del Gazio Aff. at ¶ 8; Luedeke Aff. at ¶ 7.

[110] *In re Versum Materials, Inc. S'holder Litig.*, C.A. 2019-0206-JTL (Del. Ch. July 16, 2020) (TRANSCRIPT), at 81 (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 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT), at 67–68 (observing a $5,989 hourly rate would not be "beyond the bounds of reasonableness"); *Dell*, 300 A.3d at 726 (granting award representing $5,000 implied hourly rate); *In re Activision Blizzard Inc. S'holder Litig.*, Consol. C.A. No. 8885-VCL (Del. Ch. May 20, 2015) (ORDER) (awarding an effective hourly rate of $9,685); *Berger v. Pubco Corp.*, 2010 WL 2573881, 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.").

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

[112] *Id.*; *supra* n.110.

E. THE ACTION INVOLVED COMPLEX QUESTIONS OF LAW AND FACT

In determining an appropriate award of fees, the Court also considers the complexity of the litigation. "Litigation that is challenging and complex supports a higher fee award."[113] This Action is complex, both legally and factually.

Plaintiffs' claims in this Action presented well-established legal challenges concerning Defendants' duties to act loyally with regard to InterPrivate stockholders, but involved novel legal issues, such as whether given the unique nature of de-SPAC merger redemption rights cases, disclosure of net cash per share was required when the delta was less than $1.60 per share. Moreover, the aiding and abetting claims were also untested but recent Delaware Supreme Court decisions highlight the uncertainty of success on these claims.[114] These uncertainties resulted in the potential for complex legal disputes that have not yet been tested on appeal or at trial.

Additionally, the legal issue raised by Plaintiff Smith's motion to remand "was complicated, and there was a new territory that was being explored."[115] Had Defendants been successful in arguing SLUSA applied to the claims, litigation alleging breaches of fiduciary duty in connection with stockholder redemption rights

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

[114] *In re Mindbody, Inc. S'holder Litig.*, 332 A.3d 349, 396 (Del. 2024); *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 2025 WL 1693491 at *36 (Del. June 17, 2025).

[115] *Gig2* Tr. at 18.

potentially all would have been preempted. Plaintiffs' counsel's actions in successfully moving to remand eliminated this monumental potential downside for SPAC public stockholders.

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.[116]

Here, Plaintiffs' 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.[117] Plaintiffs' counsel have participated in some of the largest settlement and post-trial recoveries for plaintiffs in class and derivative

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

[117] *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. "Robbins Geller likewise has achieved significant success in Delaware." *Id*. at *10. "The results achieved by G&E and Robbins Geller demonstrate that they have the ability and resources to litigate the case competently and vigorously." *Id.* at *11.). '

litigation before this Court.[118] Plaintiffs' counsel respectfully submits that the Settlement is another exceptional recovery that extends this track record.

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

[118] *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 689 (Del. 2024) ($1 billion settlement); *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015) ($148 million trial verdict); *In re Digex, Inc. S'holder Litig.*, 2001 WL 34131395 (Del. Ch. Apr. 6, 2001) ($420 million settlement); *In re McKesson Corp. S'holder Deriv. Litig.*, 2020 WL 1985047 (Del. Ch. Apr. 24, 2020) ($175 million settlement and corporate governance reforms); *In re News Corp. S'holder Deriv. Litig.*, 2013 WL 3231415 (Del. Ch. June 26, 2013) ($139 million settlement); *In re Freeport-McMoRan Copper & Gold, Inc. Deriv. Litig.*, 2015 WL 1565918 (Del. Ch. Apr. 7, 2015) ($153.75 million settlement and corporate governance reforms); *Teachers' Ret. Sys. of Louisiana v. Greenberg*, 2008 WL 5260548 (Del. Ch. Dec. 17, 2008) ($115 million settlement); *In re Am. Int'l Grp., Inc., Consol. Deriv. Litig.*, 2011 WL 244179 (Del. Ch. Jan. 25, 2011) ($90 Million Settlement); *In re CBS Corp. S'holder Class Action & Deriv. Litig.*, 2023 WL 5817795 (Del. Ch. Sept. 7, 2023) ($167.5 million settlement); *City of Monroe Emps.' Ret. Sys. v. Murdoch*, 2018 WL 822498 (Del. Ch. Feb. 9, 2018) ($90 million settlement plus corporate governance reforms); *In re Jefferies Grp., Inc. S'holders Litig.*, 2015 WL 1414350 (Del. Ch. Mar. 26, 2015) ($92 million settlement); *In re AMC 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); *In re El Paso Corp. S'holder Litig.*, Consol. C.A. No. 6949-CS (Del. Ch. Dec. 3, 2012) (ORDER) ($110 million settlement).

V. THE COURT SHOULD APPROVE SERVICE AWARDS FOR THE PLAINTIFFS

The Court should approve the payment of a modest $2,500 service award to both of the named Plaintiffs, to be paid out of the fees awarded to Plaintiffs' counsel, to compensate them for the time and effort that they devoted to this matter. This Court has recognized that a modest service fee is appropriate where, as here, Plaintiffs have "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."[119]

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.[120] Here, Plaintiffs monitored counsel's work, reviewed pleadings, regularly communicated with counsel regarding litigation strategy and significant litigation developments, oversaw the Settlement negotiations, and achieved an excellent Settlement on behalf of the Class they seek to represent. These efforts are in line with those of the plaintiffs in *MoneyLion*, where the Court awarded a similar service award,[121] and amply support the modest $2,500 awards requested.

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

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

[121] *Martel v. Fusion Sponsor LLC*, C.A. No. 2024-0329-NAC (Del. Ch. July 24, 2025) (ORDER AND FINAL JUDGMENT).

CONCLUSION

For the foregoing reasons, Plaintiffs 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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