



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN SOLAK,

Plaintiff,

v.

C.A. No.: 2023-0469-BWD

MOUNTAIN CREST CAPITAL LLC,  
SUYING LIU, DONG LIU, NELSON  
HAIGHT, TODD MILBOURN, AND  
WENHUA ZHANG,

Defendants.

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE  
SETTLEMENT, CERTIFY THE CLASS, FOR ATTORNEYS'  
FEES AND EXPENSES, AND FOR AN INCENTIVE AWARD**

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Plaintiff, John Solak (“Plaintiff”), by and through his undersigned attorneys, on behalf of himself and the Class (defined herein) of similarly situated current and former stockholders of Mountain Crest Acquisition Corp. II (“MCAD” or the “Company”), respectfully submit this Brief in Support of Plaintiff’s Motion to Approve Settlement, Certify the Class, for Attorneys’ Fees and Expenses, and for an Incentive Award (the “Motion”) seeking: (i) final approval of the proposed settlement (the “Settlement”) between (a) Plaintiff and (b) defendants Suying Liu, Dong Liu, Nelson Haight, Todd Milbourn, and Wenhua Zhang (collectively, the “Individual Defendants”), and Mountain Crest Capital LLC (“Sponsor,” and together with the Individual Defendants, the “Defendants”), as set forth in the Stipulation of Compromise and Settlement (the “Stipulation”), which fully resolves the above-captioned action (the “Action”); (ii) approval of the proposed Plan of Allocation; (iii) certification of the Class for Settlement purposes, pursuant to Court of Chancery Rule 23; (iv) an award of attorneys’ fees and reimbursement of expenses; and (v) an incentive award to Plaintiff.<sup>1</sup>

Former MCAD stockholders were given notice of the Settlement in accordance with the Scheduling Order entered by the Court on July 25, 2025. To

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<sup>1</sup> Unless otherwise noted, all capitalized terms have the same definitions as set forth in the Stipulation, executed and submitted to the Court on July 10, 2025.

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

## **I. PRELIMINARY STATEMENT**

The Settlement provides for a \$1,050,000.00 recovery for Class members to compensate them for the impairment of their right to make a fully informed decision about whether to redeem their MCAD shares or invest in Better Therapeutics, Inc. (“New Better Therapeutics”), the Company that emerged from MCAD’s merger with a private company, Better Therapeutics, Inc. (“Legacy Better Therapeutics”) (the “Merger”). The proposed Settlement provides a meaningful recovery to stockholders and is a significant result in light of the risks presented by the still-undeveloped Delaware jurisprudence concerning issues relevant to this Action and potential damages.

## **II. RELEVANT BACKGROUND**

### **A. MCAD’S FORMATION**

New Better Therapeutics was the result of a merger between a publicly traded SPAC, MCAD, and Legacy Better Therapeutics, then a private company. Like all SPACs, MCAD was a corporation that was formed solely for the purpose of effecting a merger, share exchange, acquisition, reorganization, or similar business combination with one or more businesses.<sup>2</sup> And, like all SPAC transactions, MCAD

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<sup>2</sup> Compl. ¶ 2.

was formed and taken public as a shell company by a “sponsor,” Mountain Crest Capital LLC.<sup>3</sup> The Company’s then CEO and Chairman, Liu, controlled the Sponsor as its managing member.<sup>4</sup> Because the Sponsor controlled MCAD, and Liu controlled the Sponsor, Liu also controlled MCAD.<sup>5</sup> Thus, the Sponsor, Liu, and the Sponsor’s other member, D. Liu, make up the Controller Defendants.<sup>6</sup>

Liu and D. Liu caused the Sponsor to incorporate MCAD in Delaware on July 31, 2020.<sup>7</sup> Before MCAD went public, Liu and D. Liu caused MCAD to issue to the Sponsor 1,437,500 founder shares, representing 20% of MCAD’s post-IPO equity, for the nominal cost of \$25,000.<sup>8</sup> The Controller Defendants’ founder shares were ineligible for redemption and would not participate in a liquidation.<sup>9</sup>

As alleged in the Complaint, the Controller Defendants’ use of the SPAC structure to effectuate the Merger raised serious questions about financial conflicts of interest of sponsors and insiders who could override the interests of SPAC stockholders.<sup>10</sup> However, rather than protecting the interests of MCAD’s common stockholders, the Controlling Defendants and Director Defendants instead opted for

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<sup>3</sup> Compl. ¶ 5.

<sup>4</sup> Compl. ¶ 7.

<sup>5</sup> *Id.*

<sup>6</sup> Compl. ¶ 30.

<sup>7</sup> Compl. ¶ 39.

<sup>8</sup> *Id.*

<sup>9</sup> Compl. ¶ 9.

<sup>10</sup> Compl. ¶¶ 3, 4.

a governance structure that would protect their own financial interests.<sup>11</sup>

## **B. THE MCAD BOARD**

Liu, through the Sponsor, selected MCAD's four other Board members: D. Liu, Haight, Milbourn and Zhang (together with Liu, the "Board" or "Director Defendants").<sup>12</sup> Haight, Milbourn, and Zhang also served as directors on Liu's four other sponsored SPACs: MCAC, MCAC3, MCAC4, and MCAC5.<sup>13</sup> All MCAD directors held direct or indirect economic interests in the private placement units and founder shares owned by the Sponsor.<sup>14</sup>

## **C. MCAD's IPO**

MCAD went public on January 8, 2021, consummating an IPO of 5 million units to public investors for \$10 per unit and raising proceeds totaling \$50 million.<sup>15</sup> Each unit consisted of one share of common stock, and one right to receive, at no cost, 1/10 of a share of common stock upon consummation of a merger. Also, consistent with common practice, the shares of common stock were redeemable for \$10—the IPO price of the units—plus interest. Investors in units could redeem their shares and keep the rights. Hence, for a purchaser of units, the rights were without

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<sup>11</sup> Compl. ¶ 6.

<sup>12</sup> Compl. ¶ 10.

<sup>13</sup> Compl. ¶ 44.

<sup>14</sup> Compl. ¶ 45.

<sup>15</sup> Compl. ¶ 40.

cost.<sup>16</sup> The funds raised in MCAD's IPO were retained in a trust account and could only be used to redeem shares, to contribute to a merger, or to return the public stockholders' investment if MCAD were to liquidate rather than merge.<sup>17</sup>

Concurrent with the IPO, MCAD sold 185,000 private placement units to the Sponsor and Chardan Capital Markets, LLC, generating gross proceeds of \$1,850,000, and the Sponsor purchased an additional 142,500 private units for \$1,425,000.<sup>18</sup> The proceeds from these sales would be used for the initial underwriting fee for MCAD's IPO and the minimal operating expenses necessary to function until MCAD's eventual Merger.<sup>19</sup>

#### **D. THE MERGER**

Like all SPACs, the Company's only asset was the cash it raised in its IPO and proceeds of the private placement units purchased by the Sponsor and the underwriters. Under its charter, MCAD initially had a nine-month window to consummate a merger, but the Company later extended this deadline to provide for a 15-month window. And, if MCAD failed to merge with another company within this deadline, public stockholders would receive, pro rata, all proceeds of the IPO plus accrued interest (approximately \$10 per share). On the other hand, because

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<sup>16</sup> Compl. ¶¶ 1, 40.

<sup>17</sup> Compl. ¶ 41.

<sup>18</sup> Compl. ¶¶ 8, 42.

<sup>19</sup> Compl. ¶ 42.

holders of founder shares waived their right to redeem their shares or to participate in a liquidation, MCAD's failure to merge would render the founder shares and private placement units worthless, meaning that without a merger, Liu, D. Liu, the Sponsor, and the Directors would get nothing, and the Sponsor would lose its initial investment.<sup>20</sup> Therefore, the Defendants were incentivized to find any company to merge with, and on April 7, 2021, MCAD and Legacy Better Therapeutics announced that they had entered into a merger agreement (the "Merger").<sup>21</sup>

On October 12, 2021, MCAD filed a proxy statement (the "Proxy") recommending that stockholders vote to approve the Merger.<sup>22</sup> The Proxy informed the stockholders that they could vote whether to approve or disapprove the Merger at a special meeting on October 27, 2021, and the deadline to redeem their shares was October 25, 2021.<sup>23</sup>

In recommending the Merger, the Proxy attributed a value of \$10 to each MCAD share.<sup>24</sup> However, after accounting for the dilutive effect of redemptions, founder shares, and transaction costs associated with the Merger, MCAD actually had less than \$7.50 in net cash per share to invest in the Merger (*i.e.*, critical

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<sup>20</sup> Compl. ¶¶ 5, 9.

<sup>21</sup> Compl. ¶ 49.

<sup>22</sup> Compl. ¶ 50.

<sup>23</sup> *Id.*

<sup>24</sup> Compl. ¶ 58.

information that was not disclosed in the Proxy).<sup>25</sup>

For the Merger to be consummated, \$5,000,001 of stockholders' funds had to be available in MCAD's trust to devote to the acquisition, meaning that at least 8.7% of the common stockholders had to forgo redemption or the Merger would fail.<sup>26</sup> On October 27, 2021, the stockholders approved the Merger.<sup>27</sup> Public stockholders redeemed 4,826,260 shares (approximately 84% of shares eligible for redemption) for a total cash value of \$48,273,000.<sup>28</sup> After the redemption deadline, 923,740 shares were not redeemed (including those held by Plaintiff and the Class), and after the Merger, those shares became New Better Therapeutics' common stock.<sup>29</sup>

#### **E. POST-MERGER PERFORMANCE**

Prior to the Merger, MCAD's shares had been trading around \$10 per share. By the redemption deadline, the stock price had fallen to \$9.57 per share.<sup>30</sup> On October 27, 2021, the date the Merger closed, the stock price was trading at \$10.97 per share.<sup>31</sup> By January 27, 2021, three months after the Merger, the Company's stock price declined to \$3.68. By the time Plaintiff filed his complaint, New Better

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<sup>25</sup> Compl. ¶¶ 57, 65-69.

<sup>26</sup> Proxy at 19-20.

<sup>27</sup> Compl. ¶ 51.

<sup>28</sup> *Id.*

<sup>29</sup> *See Solak v. Mountain Crest Capital LLC*, C.A. No. 2023-0469-SG, 2024 WL 4524682, at \*3 (Del. Ch. Oct. 18, 2024).

<sup>30</sup> Compl. ¶ 73.

<sup>31</sup> Compl. ¶ 74.

Therapeutics' stock price was \$1.28 per share.<sup>32</sup>

Ultimately, in March 2024, nearly one year after this Action was commenced, New Better Therapeutics wound down all operations, laid off its employees, and sought a buyer for its remaining assets.<sup>33</sup> The Company also requested a delisting of its securities from Nasdaq, and trading of its stock ceased on Nasdaq on March 18, 2024.<sup>34</sup> In May 2024, the Company's remaining assets were purchased by Click Therapeutics, with all proceeds used to pay creditors for its preexisting debts and obligations.<sup>35</sup> At present, the Company's stock is worth \$.0001 per share, and its common stockholders received nothing from the asset sale.

#### F. THIS LITIGATION

Plaintiff commenced this litigation on April 28, 2023. On June 5, 2023, Plaintiff effected service of the Complaint, verification, and summons on the Sponsor via personal service through its registered agent pursuant to 8 *Del. C.* §321, and on the Individual Defendants via mailing to their last known address pursuant

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<sup>32</sup> Compl. ¶ 78.

<sup>33</sup> Conor Hale, *Digital diabetes app maker Better Therapeutics shuts operations, lays off staff*, FIERCE BIOTECH (Mar. 14, 2024).

<sup>34</sup> Nasdaq, *Delisting of Securities of Better Therapeutics, Inc.; Tritium DCFC Limited; Arcimoto, Inc.; Next.e.GO N.V.; Acutus Medical, Inc.; and NeuBase Therapeutics, Inc. from The Nasdaq Stock Market*, GLOBENEWSWIRE (May 15, 2024).

<sup>35</sup> Sean Whooley, *Click Therapeutics buys shuttered Better Therapeutics' assets*, MASSDEVICE (May 22, 2024).

to 8 *Del. C.* §3114(c).<sup>36</sup> On June 8, 2023, the Register in Chancery effected service of the Complaint, verification, and summons on the Individual Defendants via mailing to their last known address pursuant to 8 *Del. C.* §3114(c).<sup>37</sup> On June 29, 2023, Plaintiff sent each of the Defendants, and Mountain Crest’s successor in interest, New Better Therapeutics, a letter via overnight UPS that warned of the Defendants’ default.

Despite Plaintiff’s efforts, none of the Defendants appeared to defend themselves in this Action. Thus, on July 11, 2023, Plaintiff moved for default judgment against all Defendants.<sup>38</sup> On September 20, 2023, after the Defendants failed to appear at a hearing to consider Plaintiff’s motion for default judgment, the Court entered an order of default.<sup>39</sup> Only then, in response to the Court’s order of default, did Defendants’ counsel first enter an appearance.<sup>40</sup>

Thereafter, the parties stipulated to a proposed order vacating the default, which the Court entered on October 3, 2023.<sup>41</sup> On January 17, 2024, Defendants filed their Opening Brief Supporting their Motion to Dismiss Verified Class Action Complaint (“Motion to Dismiss”).<sup>42</sup> Once briefing was completed on the Motion to

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<sup>36</sup> (Trans. ID 70151524).

<sup>37</sup> (Trans. ID 70194870).

<sup>38</sup> (Trans. ID 70357804).

<sup>39</sup> (Trans. ID 70905882).

<sup>40</sup> (Trans. ID 70971946).

<sup>41</sup> (Trans. ID 71010671).

<sup>42</sup> (Trans. ID 71819045).

Dismiss, the parties appeared for oral argument on June 12, 2024.<sup>43</sup> On October 18, 2024, the Court entered a Memorandum Opinion denying the Defendants' Motion to Dismiss.<sup>44</sup>

### **G. THE PARTIES ENGAGE IN ARM'S-LENGTH NEGOTIATIONS AND RESOLVE THE ACTION**

After the Court denied the Defendants' Motion to Dismiss, based on the potential costs of litigating the case and the defunct nature of New Better Therapeutics, the Parties agreed to engage in arm's-length negotiations regarding the potential settlement of the Action. Following months of these arm's-length negotiations, the Parties reached an agreement in principle to settle the Action in April 2025. The definitive terms of the Parties' agreement are reflected in the Stipulation, which the Parties filed with this Court on July 10, 2025.<sup>45</sup>

### **H. THE SETTLEMENT TERMS**

The Settlement provides for a payment of \$1,050,000 million in cash, which will include any taxes or tax expenses, any administration costs, any fees and expenses awarded by the Court, and any other costs or fees approved by the Court, including an incentive award to Plaintiff.<sup>46</sup> After accounting for these costs and fees,

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<sup>43</sup> Tr. of 6-12-2024 Oral Arg. on Defs.' Mot. to Dismiss Held via Zoom, Dkt. No. 47 ("Tr").

<sup>44</sup> See *Solak v. Mountain Crest Capital LLC*, C.A. No. 2023-0469-SG, 2024 WL 4524682 (Del. Ch. Oct. 18, 2024).

<sup>45</sup> (Trans. ID 76622788).

<sup>46</sup> See Stipulation ¶¶ II.A.1.hh, II.B.

the remaining funds will be paid to Class members in accordance with the Plan of Allocation.

Under the Plan of Allocation, after accounting for certain costs and fees, funds will be distributed to Class Members who were holders of MCAD common stock who held shares as of the Record Date of September 7, 2021, through the closing of the de-SPAC Transaction on October 28, 2021. The Settlement Administrator shall distribute to each eligible Class Member a per share allocation for each of their Eligible Shares.<sup>47</sup>

#### **I. NOTICE TO CLASS MEMBERS**

On July 10, 2025, the Parties filed the Stipulation giving notice to the Court of the Settlement and seeking approval of the Parties' proposed notice of the Settlement to Class Members (the "Notice"). On July 25, 2025, the Court entered the scheduling order (the "Scheduling Order") which set October 24, 2025, at 1:30 p.m. as the date for a hearing to consider approval of the Settlement (the "Settlement Hearing") and directed that the Notice be provided to Class Members via the DTC Participant appearing in the Securities Transfer Records, and publication on the Business Wire and Newman Ferrara LLP's website.<sup>48</sup>

In accordance with the Scheduling Order, Plaintiff's Counsel has been

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<sup>47</sup> See Stipulation ¶¶ II.J.

<sup>48</sup> Scheduling Order ¶¶ 14-17.

informed by the Settlement Administrator that Notice was disseminated to Class Members via the DTC Participant appearing in the Securities Transfer Records, and Class Members were provided with notice of the Settlement via: (i) publication on the Business Wire (link); and (ii) publication on Newman Ferrara LLP’s website (link). To date, Plaintiff’s Counsel has not received any objections from Class Members stockholders following dissemination of Notice. To the extent any objections are received, Plaintiff will respond to any such objection in the brief to be filed on or before October 17, 2025.<sup>49</sup>

### **III. ARGUMENT**

#### **A. APPROVAL OF THE SETTLEMENT AS FAIR, REASONABLE, AND ADEQUATE IS WARRANTED**

##### **1. The Standards for Approval of Class Action Settlements**

Delaware law favors the voluntary settlement of class actions.<sup>50</sup> Settlements are particularly favored in complex actions, such as this one, because they promote the interests of judicial economy.<sup>51</sup> Settlements are encouraged “because the litigants are generally in the best position to evaluate the [relevant] strengths and weaknesses of the[] case.”<sup>52</sup>

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<sup>49</sup> Scheduling Order ¶ 25.

<sup>50</sup> 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. Stockholder Litig.*, 124 A.3d 1025, 1042 (Del. Ch. 2015); *In re Triarc Cos. Class & Derivative Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001).

<sup>51</sup> See *Amsellem v. Shopwell, Inc.*, 1979 WL 2704, at \*2 (Del. Ch. Sept. 6, 1979).

<sup>52</sup> *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 402 (Del. Ch.

Court of Chancery Rule 23(f)(1) requires that “a class action may be dismissed or settled only if the Court approves the terms of the proposed dismissal or settlement.” 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.”<sup>53</sup> The Court does not have to “decide any of the issues on the merits.”<sup>54</sup> Rather, the Court considers the: (1) probable validity of the claims; (2) apparent difficulties enforcing the claims through the courts; (3) collectability of any judgment recovered; (4) delay and expense of litigation; (5) amount of compromise as compared with any judgment amount; and (6) views of the parties involved.<sup>55</sup>

For the reasons set forth herein, the Settlement should be approved. The Settlement was the product of hard-fought litigation, including Plaintiff’s survival of a motion to dismiss, and months of arms’-length negotiations. The Settlement provides substantial economic consideration to Class Members who suffered actual financial losses (including those like Plaintiff who were left with worthless and

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2008).

<sup>53</sup> *In re Activision Blizzard, Inc. S’holder Litig.*, 124 A.3d at 1064 (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at \*2 (Del. Ch. Feb. 6, 2013)).

<sup>54</sup> *Polk v. Good*, 507 A.2d 531, 535-36 (Del. 1986).

<sup>55</sup> *See Activision*, 124 A.3d at 1063.

illiquid shares) 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.

## 2. The Settlement Provides Substantial Benefits

The Settlement provides a \$1,050,000 cash recovery, which equates to a per-share recovery that is estimated to provide Class Members with a benefit of at least \$1.08 per share.<sup>56</sup> This is an outstanding result, consistent with or better than the per-share recovery in multiple de-SPAC merger settlements approved by this Court.<sup>57</sup>

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<sup>56</sup> Based on the Complaint, the Court determined in its Memorandum Opinion denying Defendants' Motion to Dismiss that the Class is comprised of 923,740 shares of New Better Therapeutics common stock. *See Solak v. Mountain Crest Capital LLC*, C.A. No. 2023-0469-SG, 2024 WL 4524682, at \*3 (Del. Ch. Oct. 18, 2024).

<sup>57</sup> *See, e.g., In re Gores Holdings IV, Inc. S'holder litig.*, C.A. No. 2023-0284-LWW (Del. Ch. July 15, 2025) (TRANSCRIPT) (approving settlement that provided approximately \$0.412 per share); *In re XL Fleet (Pivotal) S'holder Litig.*, C.A. No. 2021-0808-KSJM (Del. Ch. Mar. 21, 2025) (TRANSCRIPT) (approving settlement that provided approximately \$0.21 per share); *In re Multiplan Corp. S'holders Litig.*, Consol. C.A. No. 2021-0300-LWW (Del. Ch. Feb. 28, 2023) (TRANSCRIPT) (approving settlement that provided approximately \$0.368 per share); *Siseles v. Lutnick*, C.A. No. 2023-1152-JTL (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 (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 (Del. Ch. Jun. 25, 2024) (TRANSCRIPT) (approving settlement that provided approximately \$0.57 per share); *Yu v. RMG Sponsor, LLC*, C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024) (TRANSCRIPT) (approving settlement that provided approximately \$0.52 per share).

The Settlement also provides a substantial benefit to the Class when compared with potential class damages. The Complaint alleges unfair price based on at least the net cash per share of approximately \$7.50 per share. Assuming damages of approximately \$2.50 per share based on the difference between the \$10.00 per share redemption price and the \$7.50 net cash per share underlying the MCAD shares, Class damages were approximately \$2.31 million.<sup>58</sup> Given that the net cash per share theory of liability has yet to be tested at trial or by the Delaware Supreme Court, and given that a significant question remains open as to whether the delta between the \$10.00 per share assigned to the Merger consideration and \$7.50 in net cash is “material,” following trial, the Court may have instead found appeal in looking at market-based indications of value, such as the per-share price that sophisticated buyers negotiated for the PIPE shares, which would have resulted in a significantly diminished damages award. The \$1,050,000 settlement provides a hefty 43.3% of Class’ 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 *Dell I*, this Settlement (as measured by maximum net cash per share damages) ranks second and is over 2.6x the median of 16.5%.<sup>59</sup> This

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<sup>58</sup> 923,740 Class shares X \$2.50 = \$2,309,350.

<sup>59</sup> *In re Dell Techns., 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 is an outstanding result, under any metric.

### 3. Strength of the Claims and the Difficulty of Litigation

Comparing the benefits provided by the Settlement to the challenges Plaintiff would have faced 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. As with other cases where the post-redemption

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

stock price was above redemption value, this could prove to be a challenge, or, at a minimum, potentially would lower total recoverable damages suffered by the class.

In the days following the Merger, New Better Therapeutics stock traded as high as \$29.40 per share, many shares were sold above the redemption value of \$10.00. Thus, the number of Class members who suffered actual economic harm as compared with redemption value 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 sell afterwards [the redemption deadline] is alternative relief in the form of self-help, but you are still harmed at the time of the [redemption] decision,”<sup>60</sup> it also observed that “the positive reaction to the stock price [post-Merger can] make[] a weak [SPAC] case.”<sup>61</sup> 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

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<sup>60</sup> *In re Kensington-QuantumScape DE-SPAC Deriv. Litig.*,. C.A. No. 2022-0721-JTL at 62 (Del. Ch. Feb. 21, 2024) (TRANSCRIPT).

<sup>61</sup> *Id.* (“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.”).

around \$10 per share for months.”<sup>62</sup> 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. Weighing the Settlement against these risks further supports approval.

#### **4. The Plan of Allocation is Reasonable and Appropriate**

The Settlement allocates the \$1,050,000 million recovery—plus any interest that accrues after being deposited in the Escrow Account and minus the payment of administrative costs, attorneys’ fees and expenses, and any taxes and tax expenses—to the Class. The Plan of Allocation provides for an equitable recovery that will allow all Class Members who did not redeem their shares to receive a pro rata recovery for each of their non-redeemed shares held at the close of the Merger.

The distribution methodology contemplated by the plan of allocation is “fair, reasonable, and adequate”<sup>63</sup> and consistent with methods endorsed by the Court in similar cases.<sup>64</sup> As contemplated by Rule 23(f)(6), the Plan of Allocation provides that: “If after completion of such follow-up efforts \$50,000 or more remains in the

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<sup>62</sup> *In re Hennessy Acquisition Corp. IV S’holder Litig.*, 318 A.3d 306, 322 (Del. Ch. 2024).

<sup>63</sup> *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).

<sup>64</sup> *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 9, 2024); *Bushansky v. GigAcquisitions4, LLC*, C.A. No. 2023-0685-LWW (Del. Ch. Oct. 8, 2024).

Net Settlement Fund, the Settlement Administrator shall conduct pro rata redistributions of the remaining funds until the remaining balance is under \$50,000. At such time as the remaining balance is less than \$50,000, the remaining funds shall be distributed to the Combined Campaign for Justice, P.O. Box 2113, Wilmington, DE 19899, a 501(c)(3) charitable organization.”<sup>65</sup>

### **5. The Adversarial Litigation and Arm’s-Length Negotiations**

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 arms’-length negotiations.<sup>66</sup> Here, the parties arrived at the Settlement only after litigating the Defendants’ Motion to Dismiss and engaging in months of negotiations. This factor weighs in favor of approving the Settlement.

### **6. The Experience and Opinion of Counsel**

This Court may consider the opinion of experienced counsel in determining a settlement’s fairness.<sup>67</sup> Courts may also confidently rely on the opinion of counsel where, as here, Plaintiff’s Counsel are competent, experienced, and fully capable of evaluating the merits of Plaintiff’s case and the probable course of future litigation.<sup>68</sup>

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<sup>65</sup> Stipulation ¶ II.J.6.

<sup>66</sup> *See Ryan v. Gifford*, 2009 WL 18143, at \*5 (Del. Ch. Jan. 2, 2009) (noting that the settlement there was “fair, reasonable, and adequate” when reached after “vigorous arms-length negotiations following meaningful discovery”).

<sup>67</sup> *See generally Rome*, 197 A.2d at 53.

<sup>68</sup> Norton Aff. ¶ 2; Norton Aff., Ex. A (Newman Ferrara Firm Bio); Cooch &

In requesting that the Court approve the proposed Settlement as fair, reasonable, and adequate, Plaintiff and his counsel acted based on their extensive knowledge of the record and issues. Based on their investigation, experience, and judgment, Plaintiff's Counsel concluded that the negotiated benefits of the proposed Settlement provide ample consideration for the parties to settle and for Plaintiff to release the claims in the Action, given the risks, costs, and uncertainties of continued litigation.<sup>69</sup> Plaintiff's Counsel's opinion further weighs in favor of approving the Settlement.

**B. THE CLASS SHOULD BE CERTIFIED PURSUANT TO COURT OF CHANCERY RULE 23**

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) and 23(b)(1) (the "Class"), consisting of:

All record and beneficial holders of MCAD common stock who held shares as of the Record Date of September 7, 2021 through the closing of the de-SPAC Transaction on October 28, 2021, including any and all successors, transferees, or assigns of such stockholders. Excluded from the Class are Defendants, members of the immediate family of any Defendant, any entity in which a Defendant has a controlling interest,

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Taylor, P.A. Firm Bio (annexed as Ex. A to the Affidavit of Blake A. Bennett ("Bennett Aff.")).

<sup>69</sup> See, e.g., *In re Cox Radio, Inc. S'holders Litig.*, C.A. No. 4461-VCP, 2010 Del. Ch. LEXIS 102, \*20 (Del. Ch. May 6, 2010) (approving settlement where "Plaintiffs' counsel assert that they evaluated all of Plaintiffs' claims . . . and found that the Settlement provided a better alternative than pursuing these claims to trial").

and the legal representatives, heirs, successors, or assigns of any such excluded person.

The Class does not include any of the following:

- A. (i) Defendants; (ii) members of the immediate family of any Individual Defendant; (iii) any person who was a manager or managing member of any Defendant during the Class Period and any members of their immediate family; (iv) any parent, subsidiary, or affiliate of Defendants; (v) any entity in which any Defendant or any other excluded person or entity has, or had during the Class Period, a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, estates, successors, or assigns of any such excluded persons or entities;
- B. (i) the Company; and (ii) any person who was an officer or director of the Company during the Class Period and any members of their immediate family;
- C. holders of MCAD Common Stock who did not have the right to exercise redemption rights, including Chardan Capital Markets, B. Riley Securities, Inc., and other holders of non-public shares;
- D. Mountain Crest Capital LLC and its directors, officers, agents (including attorneys, accountants, consultants, investment advisors or bankers), members, employees, representatives, divisions, branches, subsidiaries, affiliates, and any other Person purporting to act on its behalf and any predecessor or successor company; and
- E. Redeeming Stockholders who, in connection with the de-SPAC Transaction, redeemed 100% of their shares of the Company's common stock.

### **1. 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.”<sup>70</sup>

**i. 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.”<sup>71</sup> The test “is not whether joinder of all the putative class members would be impossible, but whether joinder would be practical.”<sup>72</sup> Following all redemptions, there were 923,740 Public Shares of MCAD stock. Joinder of the likely thousands of holders of hundreds of thousands of shares is not practical, and numerosity is satisfied.

**ii. 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.”<sup>73</sup> 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

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<sup>70</sup> Del. Ct. Ch. R. 23.

<sup>71</sup> *Marie Raymond Revocable Tr.*, 980 A.2d at 400 (quoting Del. Ct. Ch. R. 23).

<sup>72</sup> *Id.*

<sup>73</sup> *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) (citations and internal quotation marks omitted).

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.<sup>74</sup>

**iii. 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.”<sup>75</sup> Plaintiff is similarly situated to the other Class Members 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.”<sup>76</sup>

**iv. 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

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<sup>74</sup> See, e.g., *In re MultiPlan Corp. S’holders Litig.*, 2023 WL 2329706, at \*2 (Del. Ch. Mar. 1, 2023) (certifying a non-opt-out class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2)).

<sup>75</sup> *Weiner & Assocs.*, 584 A.2d at 1225-26 (citations and internal quotation marks omitted).

<sup>76</sup> *Id.* at 1226 (citation omitted).

Plaintiff's interests were aligned with those of absent Class Members and is likewise indicative of the competence and effectiveness of Plaintiff's Counsel.

## **2. The Proposed Class Satisfies Rules 23(b)(1)**

Rule 23 enumerates when certification is appropriate.<sup>77</sup> 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).

The proposed Class satisfies Rule 23(b)(1). All Class members are unaffiliated holders of MCAD 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.<sup>78</sup>

## **3. 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

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<sup>77</sup> Del. Ct. Ch. R. 23(b)(1)-(2).

<sup>78</sup> *See Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL at 21 (Del. Ch. Sept. 28, 2017) (TRANSCRIPT) ("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.").

by the Court.”<sup>79</sup> 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 out-of-pocket expenditures incurred directly in connection with the prosecution of the Action.<sup>80</sup> Thus, the Court should certify the Class.

### **C. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED**

Plaintiff moves for an award of attorneys’ fees of \$325,000, inclusive of expenses of approximately \$76,287. The Settlement provides an excellent outcome for the Class, providing an immediate and substantial recovery. Indeed, among similar settlements approved by the Court, this Settlement ranks among the best recoveries to date. Moreover, the 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

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<sup>79</sup> Del. Ct. Ch. R. 23(f).

<sup>80</sup> Del. Ct. Ch. R. 23(aa).

necessary expenses that Plaintiff has incurred to date, and the thousands of hours Counsel have devoted to the prosecution of this Action.

### 1. Legal Standard

This Court may award attorneys' fees to counsel whose efforts conferred a common benefit.<sup>81</sup> The determination of any attorney fee and expense award is left to the Court's discretion.<sup>82</sup> 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."<sup>83</sup> The greatest weight in this analysis is afforded to the benefit achieved in litigation.<sup>84</sup> Here, each of the *Sugarland* factors fully supports the requested fee award.

Plaintiff filed a meritorious action on behalf of the Class, and, through the substantial efforts of his counsel, was directly responsible for reaching the Settlement, which bestows substantial and quantifiable corporate benefits upon the Class Members. For litigating the Action on a fully contingent basis and producing

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<sup>81</sup> See, e.g., *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012); *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989).

<sup>82</sup> *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).

<sup>83</sup> *Theriault*, 51 A.3d 1213 at 1254 (citing *Sugarland*, 420 A.2d at 149).

<sup>84</sup> *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))).

the Settlement's substantial benefits for the Class, Plaintiff requests an award of \$325,000 in attorneys' fees, inclusive of Plaintiff's Counsel's out-of-pocket, unreimbursed expenses, which the Defendants do not oppose. Plaintiff respectfully submits that his requested fee award and reimbursement of expenses is fair and reasonable and, therefore, should be approved.

## **2. The Benefits Achieved Through the Settlement Justify the Requested Fee and Expense Award**

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.<sup>85</sup> Plaintiff's requested fee award of \$248,713, not including unreimbursed expenses, represents a total of 23.69% of the Settlement.

Under the *Americas Mining* scale, fees ranging from 15% to 25% are typically appropriate for a "meaningful litigation efforts" settlement.<sup>86</sup> Plaintiff respectfully submits that this settlement properly falls at the high end of a "meaningful litigation

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<sup>85</sup> *Therault*, 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.").

<sup>86</sup> *See Therault*, 51 A.3d at 1259-60.

efforts” settlement. While litigating on behalf of Class Members of a defunct company, with a substantial opportunity for collectability issues, Plaintiff and Plaintiff’s Counsel: (i) conducted pre-suit investigation and analyses including reviewing New Better Therapeutics’ press releases, public statements, SEC filings, and securities analysts’ reports and advisories about the Company; (ii) reviewed the press releases, public statements, and SEC filings of other companies that engaged in de-SPAC transactions; (iii) reviewed media reports about the Company; (iv) consulted with governance and valuation experts; (v) researched the applicable law with respect to the claims alleged in the Action and the potential defenses thereto; (vi) prepared, reviewed, and filed the Complaint; (vii) secured a motion for default judgment; (viii) secured the denial of Defendants’ Motion to Dismiss; (ix) consulted with co-counsel on the course of the litigation; (x) conducted damages analyses; (xi) participated in informal conferences with Defendants’ Counsel regarding the specific facts of the case, the perceived strengths and weaknesses of the case, and other issues in an effort to facilitate negotiations and additional fact gathering; (xii) drafting settlement proposals; (xiii) negotiated this Settlement with Defendants; and (xiv) memorialized the Settlement.

This Action is directly in line with, or extensively more detailed than, the litigation process in recent SPAC cases where the Court had approved fee awards in

the “meaningful litigation efforts” range of 15%-25%.<sup>87</sup> These comparable precedents include recent fee awards in similar SPAC cases, including *MultiPlan* and *Lordstown*. In *MultiPlan*, the Court awarded plaintiffs’ counsel an all-in fee of 20% of the recovery, while in *Lordstown*, the Court granted awarded plaintiffs’ counsel a fee of 22.5% of the net recovery, along with reimbursement of expenses. Like the present case, those actions involved settlements of breach of fiduciary duty claims related to the impairment of SPAC stockholder redemption rights in a SPAC merger, and both cases settled before depositions and expert discovery.

Significantly, in this case, Plaintiff undertook substantial risk in filing this Action because it had limited upside in terms of absolute dollars. Indeed, MCAD’s IPO involved the issuance of only 5 million shares to raise \$50 million, making the

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<sup>87</sup> See, e.g., *In re MultiPlan Corp. S’holders Litig.*, Consol. C.A. No. 2021-0300-LWW (Del. Ch. Mar. 1, 2023) (awarding fee worth 20% of benefit, with an implied hourly rate of \$1,079, after filing complaint and defeating motion to dismiss); *In re Lordstown Motors Corp. S’holders Litig.*, Consol. C.A. No. 2021-1066-LWW (Del. Ch. July 5, 2024) (awarding fee worth 22.5% of benefit, with an implied hourly rate of \$446, after filing complaint with 220 documents and defeating two motions to dismiss); *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024) (awarding fee worth 18% of benefit, with an implied hourly rate of \$1,476, after filing complaint and defeating motion to dismiss); *In re XL Fleet (Pivotal) S’holder Litig.*, Consol. C.A. No. 2021-0808-KSJM (Del. Ch. Mar. 26, 2025) (awarding fee worth 20% of benefit, with an implied hourly rate of \$186, after filing complaint with 220 documents, defeating motion to dismiss, and engaging in substantial discovery); *In re Gores Holdings IV, Inc. S’holder Litig.*, Consol. C.A. No. 2023-0284-LWW (Del. Ch. July 15, 2025) (awarding fee worth 20% of benefit, with an implied hourly rate of \$674, after filing complaint with 220 documents, defeating motion to dismiss, and engaging in discovery).

extraordinary per share benefit of the Settlement more relevant to evaluating the benefit than its overall dollar value. As the Court has recognized, the “small issuers are the cases where it turns out we most need plaintiff’s lawyers to be looking,” and the attorneys in these cases should be sufficiently incentivized to take on high-risk litigation involving low total potential damages in absolute terms.<sup>88</sup> Accordingly, awarding a fee that is at the high-end of the “meaningful litigation efforts” range would appropriately compensate Plaintiff’s Counsel for the high risk undertaken in bringing this Action and securing an outstanding recovery for the Class that provides a benefit worth at least \$1.08 per share.

Plaintiff’s Counsel respectfully submit that the requested 23.69% fee award of the total Settlement, plus incurred expenses of approximately \$76,287, is reasonable and appropriate. As noted *supra*, this requested fee award is consistent with the Court’s past approval of fees and expenses in similar cases.<sup>89</sup>

### **3. The Efforts of Counsel**

Although the benefit conferred by the Settlement is the primary factor in

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<sup>88</sup> *Browne v. Layfield*, C.A. No. 2024-0079-JTL at 38 (Del. Ch. Sept. 5, 2024) (TRANSCRIPT).

<sup>89</sup> *See, e.g., City of Monroe Emps’ Ret. Sys. v. Murdoch*, C.A. No. 2017-0833-AGB (Del. Ch. Feb. 9, 2018) (TRANSCRIPT) (awarding 25% of the benefit where the case was settled on the basis of a pre-suit investigation before the complaint was filed); *In re China Integrated Energy, Inc. Stockholder Litig.*, C.A. No. 6625-VCL (Del. Ch. Dec. 2, 2015) (TRANSCRIPT) (awarding 26% of the monetary value of a settlement reached after a books and records production and while a motion to dismiss was pending).

awarding a fee, the time and effort of counsel can serve as a cross-check on the reasonableness of a fee award.<sup>90</sup> However, “[c]ounsel should not be penalized for achieving complete victory quickly.”<sup>91</sup> In any event, whether the hours expended are considered important or not, Plaintiff submits that the requested fee is reasonable when viewed in comparison to the hours expended by Plaintiff’s Counsel.

As described *supra*, in connection with this Action, Plaintiff and Plaintiff’s Counsel: (i) conducted pre-suit investigation and analyses including reviewing New Better Therapeutics’ press releases, public statements, SEC filings, and securities analysts’ reports and advisories about the Company; (ii) reviewed the press releases, public statements, and SEC filings of other companies that engaged in de-SPAC transactions; (iii) reviewed media reports about the Company; (iv) consulted with governance and valuation experts; (v) researched the applicable law with respect to the claims alleged in the Action and the potential defenses thereto; (vi) prepared, reviewed, and filed the Complaint; (vii) secured a motion for default judgment; (viii) secured the denial of Defendants’ Motion to Dismiss; (ix) consulted with co-counsel on the course of the litigation; (x) conducted damages analyses; (xi) participated in

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<sup>90</sup> *In re Sauer-Danfoss Inc. S’holders Litig.*, 65 A.3d 1116, 1138 (Del. Ch. 2011); *In re Del Monte Foods Co. S’holders Litig.*, 2011 WL 2535256, at \*12 (Del. Ch. June 27, 2011).

<sup>91</sup> *Olson v. EV3, Inc.*, 2011 WL 704409, at \*15 (Del. Ch. Feb. 21, 2011); *see id.* (“I give no weight to the hours expended. Counsel achieved via settlement all of the relief that they could have obtained by litigating through a merits hearing.”).

informal conferences with Defendants’ Counsel regarding the specific facts of the case, the perceived strengths and weaknesses of the case, and other issues in an effort to facilitate negotiations and additional fact gathering; (xii) drafting settlement proposals; (xiii) negotiated this Settlement with Defendants; and (xiv) memorialized the Settlement. Plaintiff’s Counsel respectfully submit that the services rendered were of a high quality, and could be rendered only by lawyers who are well qualified and highly experienced in prosecuting stockholder litigation.<sup>92</sup>

Plaintiff’s Counsel expended approximately 767.7 hours in attorney and professional staff time prosecuting this Action (representing a combined lodestar of \$604,685), and incurred \$76,287 in unreimbursed expenses.<sup>93</sup> The requested fee award implies an hourly rate of approximately \$325 per hour,<sup>94</sup> net of expenses,

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<sup>92</sup> See *In re Caremark Int’l Inc. Deriv. Litig.*, 698 A.2d 959, 972 (Del. Ch. 1996) (noting that “[t]he services rendered required a high degree of sophistication and expertise”).

<sup>93</sup> Norton Aff. ¶ 11.

<sup>94</sup> *In re Versum Materials, Inc. S’holder Litig.*, C.A. No. 2019-0206-JTL at 81 (Del. Ch. July 16, 2020) (TRANSCRIPT) (approving fees equivalent to an hourly rate of over \$10,000); *Sciabacucchi v. Salzberg*, 2019 WL 2913272, at \*6 (Del. Ch. July 8, 2019) (fees equivalent to \$11,262.26 per hour were reasonable); *In re Medley Cap. Corp. S’holders Litig.*, Consol. C.A. No. 2019-0100-KSJM at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (\$5,989 hourly rate would not be “beyond the bounds of reasonableness”); *In re Dell Tech. Inc. Class V S’holder Litig.*, 300 A.3d 679, 726 (Del. Ch. 2023) (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) (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”).

representing a negative lodestar of .41x, which is significantly less than the lowest range of hourly rates and lodestar multiples previously awarded by the Court.<sup>95</sup>

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

#### 4. Plaintiff's Counsel Operated under a Contingent Fee Arrangement

The contingent nature of the representation is the "second most important factor considered by this Court" in awarding attorneys' fees.<sup>96</sup> In *In re Xoom Corp. Stockholder Litig.*, the court explained:

The decision of plaintiffs' counsel, proceeding on a contingent-fee basis, to pursue such litigation involves significant risk; any recovery to counsel is contingent on producing value for the stockholder class. Because no recovery is available absent value so produced, when counsel have in fact worked a benefit on the class, ***this Court must award a fee sufficient to encourage wholesome levels of litigation.***<sup>97</sup>

Contingent representation entitles plaintiffs' counsel to both a "risk" premium and

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<sup>95</sup> *Id.*; see also, *In re Saba Software, Inc. S'holder Litig.*, 2018 WL 4620107 (Del. Ch. Sept. 26, 2018) (awarding a 3x lodestar multiple); *Vero Beach Order* (awarding an effective hourly rate of \$3,165 and a 5.1x lodestar multiplier); *In re Pilgrim's Pride Corp. Deriv. Litig.*, 2020 WL 474676 (Del. Ch. Jan. 28, 2020) (awarding an effective hourly rate of \$4,511.09 and a 7.0x lodestar multiplier); *Carr v. New Enter. Assocs., Inc.*, 2019 WL 1491579 (Del. Ch. Apr. 4, 2019) (awarding an effective hourly rate of \$1,030 and an 7.2x lodestar multiplier); *AVX Order* (awarding an effective hourly rate of \$1,256.97 and a 2.61x lodestar multiplier).

<sup>96</sup> *Dow Jones & Co. v. Shields*, 1992 WL 44907, at \*2 (Del. Ch. Mar. 4, 1992).

<sup>97</sup> 2016 WL 4146425, at \*5 (Del. Ch. Aug. 4, 2016) (emphasis added); see also *Ryan*, 2009 WL 18143, at \*13 ("This Court has recognized that an attorney may be entitled to a much larger fee when the compensation is contingent than when it is fixed on an hourly or contractual basis.").

an “incentive” premium on top of the hourly value of their services.<sup>98</sup> Plaintiff’s Counsel handled this case on an entirely contingent basis and faced the possibility of receiving no consideration for their efforts if they were not successful in obtaining a recovery. Plaintiff’s Counsel have not been paid for any of their work since Plaintiff commenced his investigation of the Company’s non-employee director compensation practices, nor have any of their costs or expenses been reimbursed. Delaware courts recognize that attorneys are entitled to a larger fee when the fee is contingent upon the outcome of the case, rather than when it is contractually fixed on a time basis.<sup>99</sup> Here, despite the significant financial risk, Plaintiff’s Counsel undertook its reformatory efforts on a contingent basis and brought about a significant benefit for the Class. As such, this factor weighs in favor of Plaintiff’s requested fee.

### **5. The High Quality of Representation Supports the Fee**

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

Here, Plaintiff’s Counsel are highly experienced lawyers in stockholder class

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<sup>98</sup> *Seinfeld v. Coker*, 847 A.2d 330, 337 (Del. Ch. 2000).

<sup>99</sup> *See, e.g., Ryan ex rel. Maxim Integrated Prods., Inc. v. Gifford*, 2009 WL 57763, at \*13-14 (Del. Ch. Jan. 2, 2009); *In re First Interstate Bancorp Consol. S’holders Litig.*, 756 A.2d 353 (Del. Ch. 1999), *aff’d sub nom. First Interstate Bancorp. v. Williamson*, 755 A.2d 388 (Del. 2000); *Chrysler Corp. v. Dann*, 223 A.2d 384, 389 (Del. 1966).

and derivative litigation.<sup>100</sup> Plaintiff's Counsel respectfully submits that the Settlement is another exceptional recovery that extends its 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 counsel who vigorously defended their clients' interests.

All counsel in the Action represented their clients' interests vigorously. The ability of opposing counsel enhances the significance of the results that Plaintiff's Counsel were able to achieve, and further supports approval of the request for attorney fees and expenses. Thus, this factor weighs in favor of Plaintiff's requested fee.

**D. THE COURT SHOULD APPROVE AN INCENTIVE AWARD FOR THE PLAINTIFF**

Plaintiff and his counsel also seek approval of a \$3,500 incentive award, which would be paid out of any Fee and Expense Award approved by the Court. It is in the Court's discretion to approve an incentive award for a representative plaintiff.<sup>101</sup> 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 culture in which people increasingly are unwilling to

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<sup>100</sup> Norton Aff., Ex. A; Bennett Aff., Ex. A.

<sup>101</sup> See, e.g., *Chen v. Howard-Anderson*, C.A. No. 5878-VCL, 2017 WL 2842185 (Del. Ch. June 30, 2017).

“do things for the benefit of others.”<sup>102</sup>

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.<sup>103</sup> Here, Plaintiff monitored the prosecution of the action through regular contact with his counsel and consulted with his counsel concerning the settlement terms and rationale for settlement. The modest service award is reasonable in light of Plaintiff’s meaningful assistance in securing benefits for the Class. Accordingly, the requested incentive award should be approved.

#### **IV. CONCLUSION**

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

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<sup>102</sup> *In re EZCorp Inc. Consulting Agreement Deriv. Litig.*, C.A. No. 9962-VCL at 22 (Del. Ch. April 3, 2018) (TRANSCRIPT) (awarding \$5,000 incentive awards).

<sup>103</sup> *Raider v. Sunderland*, 2006 WL 75310, at \*1 (Del. Ch. Jan. 5, 2006).

Dated: September 24, 2025

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Respectfully submitted,

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