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Case No. 2024-0524-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL FARZAD, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. HIGHCAPE CAPITAL, LP, HIGHCAPE CAPITAL ACQUISITION LLC, KEVIN RAKIN, MATT ZUGA, DAVID COLPMAN, ROBERT TAUB, ANTONY LOEBEL, JONATHAN M. ROTHBERG, and FORESITE CAPITAL MANAGEMENT, LLC, Defendants.	C.A. No. 2024-0524-LWW **Public Version Filed: February 25, 2026**

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

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Plaintiff Michael Farzad ("Plaintiff"), by and through his undersigned attorneys, individually and on behalf of the Class (defined herein) of former stockholders of HighCape Capital Acquisition Corp. ("HighCape"), submits this Opening Brief in Support of His Motion to Certify the Class, Approve the Proposed Settlement, Award Attorneys' Fees and Expenses, and Approve a Service Award seeking: (i) certification of the Class for settlement purposes, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (ii) approval of the proposed settlement (the "Settlement") between (a) Plaintiff and (b) defendants HighCape Capital, LP, HighCape Capital Acquisition LLC, Kevin Rakin, Matt Zuga, David Colpman, Robert Taub, Antony Loebel (the "HighCape Defendants"), Jonathan M. Rothberg, and Foresite Capital Management, LLC (the "Aiding and Abetting Defendants") (collectively, with the HighCape Defendants, the "Defendants," and with Plaintiff, the "Parties"), as set forth in the Stipulation and Agreement of Compromise, Settlement, and Release dated December 12, 2025 (the "Stipulation"); (iii) an award of attorneys' fees and expenses; and (iv) a $2,000 service award for Plaintiff.[1]

[1] All capitalized terms not defined herein shall have the meaning ascribed in the Stipulation.

Class Members were given notice of the Settlement in accordance with the Scheduling Order entered by the Court on January 7, 2026.[2] To date, there have been no objections. A hearing is scheduled for March 27, 2026, for the Court to consider these matters.

PRELIMINARY STATEMENT

Plaintiff brought this Action on behalf of himself and other former HighCape stockholders who were entitled to, but did not, redeem their shares of HighCape Class A common stock in connection with HighCape's business combination (the "Merger") with Quantum-Si Incorporated ("Legacy QSI").[3]

HighCape sold just 11.5 million public units in its initial public offering ("IPO"), making it one of the smaller SPACs at the center of a "*MultiPlan* action."[4] Despite its size, Plaintiff litigated this Action aggressively. Plaintiff served New QSI with a Section 220 demand and engaged in extensive negotiations with New QSI over the documents that would be produced by New QSI in response to that demand. Armed with these corporate records, Plaintiff drafted and filed a detailed Complaint

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[2] *See* Affidavit of Luiggy Segura Regarding: (A) Dissemination of the Notice; (B) Publication of the Summary Notice; and (C) Establishment of Call Center Services and Settlement Website ("Segura Aff.") (filed herewith).

[3] Following the Merger, HighCape changed its name to Quantum-Si Incorporated ("New QSI") and its common stock began trading on the NASDAQ under the symbol "QSI."

[4] As of the date of the Merger close, accounting for certain redemptions, there were 10,928,872 shares of Class A HighCape common stock held by public stockholders.

that Plaintiff was confident would survive Defendants' pleading stage challenges, including core allegations, based on the Section 220 Production, that the Proxy misleadingly stated the involvement of HighCape's Board of Directors (the "Board"). The HighCape Defendants apparently agreed. In an attempt to counter the Complaint's well-pled allegations, the HighCape Defendants arbitrarily and selectively produced documents to Plaintiff months after he filed the Complaint. The HighCape Defendants then relied upon those documents when moving to dismiss the Complaint, claiming that these post-filing documents were incorporated into the Complaint, an unprecedented argument.

In light of the HighCape Defendants' improper partial, self-selected production, Plaintiff served document requests and interrogatories, pursuing discovery as to the derivation of the partial production and the circumstances surrounding its production and composition. After a breakdown of negotiations and incomplete responses and productions, Plaintiff moved to compel complete responses to those discovery requests. The HighCape Defendants opposed and countered by seeking a protective order staying discovery pending resolution of their then-pending motion to dismiss.

The Court largely agreed with Plaintiff, ordering Defendants to conduct "a counsel-led targeted document review and [provide] supplemental, verified interrogatory responses."[5] During the hearing on the motions, the Court recognized:

[5] Trans. ID 75026028.

> "After the complaint is filed, the defendants can't say here are additional documents useful to us, and these now need to be deemed incorporated by reference. When the complaint is filed, the universe of 220 documents is set for purposes of the complaint, and the documents properly before the Court at the pleading stage are fixed."[6]

With these additional discovery efforts underway, the Parties engaged in an unsuccessful mediation session. Arm's-length negotiations among the Parties, under the auspices of the mediator, continued for an additional three months. Following a double-blind mediator's recommendation, on July 22, 2025, the Parties agreed to settle this Action for $7.6 million in cash (the "Settlement Amount"), subject to Court approval.

The Action is well-suited for class certification. Holders of over 10.9 million shares of HighCape Class A common stock chose to forgo their redemption rights and invest in New QSI. These shares were likely held by thousands of Class Members, making joinder of all Class Members impractical, and satisfying Rule 23(a)(1)'s numerosity requirement. Defendants' pursuit of the allegedly unfair Merger and impairment of HighCape Class A stockholders' redemption decisions impacted Plaintiff and other Class Members in substantially the same manner, resulting in common questions of law and fact among all Class Members. As demonstrated by Plaintiff hiring experienced law firms well known to this Court, and by securing this positive settlement for the Class, Plaintiff has acted fairly and adequately to protect

[6] Trans. ID 75115976 at 6-7.

Class Members. Finally, the proposed Class satisfies the requirements of both Rule 23(b)(1) and Rule 23(b)(2) due to the risk of inconsistent adjudications, that adjudications of some actions would likely be dispositive of the interests of other Class Members, and because Defendants acted in a manner that is generally applicable to all Class Members.

Plaintiff also respectfully submits that the Settlement should be approved as fair, reasonable, and adequate. The $7.6 million recovery provided by the Settlement compensates Class Members for the harm they incurred as a result of Defendants' impairment of their redemption rights. The Settlement provides an approximately $0.695 per share recovery to Class Members, which compares favorably to other settlements this Court has approved in similar *MultiPlan* actions.[7]

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[7] *See, e.g.*, Tab 12, *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); Tab 9, *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch. June 24, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.57 per share); Tab 2, *Delman v. Riley*, C.A. No. 2023-0293-LWW (Del. Ch. Oct. 17, 2024) (TRANSCRIPT) ("*Eos* Tr.") (approving settlement that provided approximately $0.99 per share); Tab 13, *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch. May 12, 2025) (TRANSCRIPT) (approving settlement that provided approximately $0.99 per share); Tab 7, *In re Gores Holdings IV, Inc. S'holder Litig.*, C.A. No. 2023-0284-LWW (Del. Ch. July 15, 2025) (TRANSCRIPT) ("*Gores IV* Tr.") (approving settlement that provided approximately $0.412 per share); Tab 8, *In re InterPrivate Acquisition Corp. S'holder Litig.*, Consol. C.A. No. 2024-0221-LWW (Del. Ch. Sept. 12, 2025) (TRANSCRIPT) ("*Aeva* Tr.") (approving settlement that provided approximately $0.58 per share); Tab 3, *Drulias v. Apex Tech. Sponsor, LLC*, C.A. No. 2024-0094-LWW (Del. Ch. July 10, 2025) (TRANSCRIPT) ("*Apex* Tr.") (approving settlement that provided approximately $0.41 per share); Tab 17, *Newman v. Sports Ent. Acquisition Holdings LLC*, C.A. No. 2023-0538-LWW (Del. Ch. Sept. 15,

Plaintiff further submits that an all-in award of $1.064 million for attorneys' fees and expenses (*i.e.*, 14% of the Settlement Amount) is appropriate here. The Settlement marks the culmination of an extensive investigation and hard-fought litigation challenging Defendants' impairment of the Class's redemption rights—all undertaken on a fully contingent basis. Given (i) Plaintiff's substantial efforts in obtaining and reviewing the 220 Document Production; (ii) Plaintiff's successful pursuit of discovery materials through a motion to compel and opposition to the HighCape Defendants' cross motion for protective order; (iii) the relatively small size of HighCape's initial public offering; and (iv) the mediation session and lengthy follow-up settlement negotiations, Plaintiff's Counsel's efforts justify an award at the higher end of the 10% to 15% range typically awarded when "a case settles early."[8]

Finally, Plaintiff requests that the Court approve the payment of a modest $2,000 service award to Plaintiff out of any attorneys' fees awarded to Plaintiff's Counsel to reward him for standing in for the Class and participating in the Section 220 demand and this Action.

2025) (TRANSCRIPT) ("*Super Group* Tr.") (approving settlement that provided approximately $0.59 per share).

[8] *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1259 (Del. 2012).

FACTUAL AND PROCEDURAL BACKGROUND

A. The HighCape Defendants Form HighCape

On June 10, 2020, defendants HighCape Capital, Rakin, and Zuga created HighCape and incorporated it in Delaware as a blank-check company formed for the purpose of "effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses."[9] By the terms of its charter, HighCape had 24 months from the closing of its IPO to effectuate a business combination, or it would be forced to liquidate and return the IPO funds held in trust to public stockholders.[10]

HighCape's sponsor, HighCape Capital Acquisition LLC (the "Sponsor"), was controlled by Rakin, Zuga, and their investment firm, HighCape Capital.[11] HighCape Capital owned an approximately 75% equity stake in the Sponsor.[12] Zuga was the Sponsor's sole managing member and Rakin served as the Sponsor's Chairman and

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[9] ¶ 40. All citations herein to "¶ __" are to the Verified Class Action Complaint ("Complaint"). All capitalized terms not defined herein shall have the meaning ascribed in the Complaint or the Stipulation.

[10] ¶¶ 3, 43.

[11] ¶¶ 21, 45.

[12] ¶¶ 41, 45.

CEO.[13] Rakin and Zuga, therefore, individually and through their control of the Sponsor and HighCape Capital, controlled HighCape.[14]

To ensure control over the process, Rakin, Zuga, and HighCape Capital populated HighCape's Board with loyalists—Colpman, Taub, and Loebel—who they compensated with Founder Shares, giving them a direct financial stake in the Merger's completion.[15] Colpman, Taub, and Loebel were advisors to HighCape Capital before they joined the Board, further dividing their loyalties.[16] These directors lacked the independence necessary to protect stockholder interests. This ensured that any proposed transaction—regardless of its merits—would receive Board approval without meaningful scrutiny.

Before HighCape's IPO, the Sponsor paid $25,000 for 2.875 million "Founder Shares," which would equate to 20% of HighCape's stock following its IPO.[17] The Sponsor transferred 30,000 Founder Shares to each of Colpman, Taub, and Loebel, leaving the Sponsor with 2,785,000 Founder Shares.[18] The Sponsor also purchased

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[13] ¶ 45.

[14] *Id.*

[15] ¶¶ 41, 48.

[16] ¶¶ 25-27, 51.

[17] ¶¶ 4, 22, 41.

[18] ¶¶ 4, 22, 41. Sponsor entered into Subscription Agreements which required it to forfeit and cancel 696,250 Founder Shares immediately prior to the closing of the Merger (and issue 696,250 shares of HighCape Class A common stock at a price of $0.001 per share to

405,000 private placement units for $4.05 million.[19] If HighCape entered a business combination within 24 months of the IPO, the Founder Shares would convert to Class A common stock on a one-for-one basis and become freely tradable after a short "lockup" period.[20] At the $10 per share IPO price, the Sponsor's Founder Shares were worth over $20 million.[21] If HighCape did not complete a transaction within 24 months, the Founder Shares and private placement units would expire worthless.[22]

B. The HighCape Defendants Take HighCape Public

On September 9, 2020, HighCape consummated its IPO of 11.5 million public units at a price of $10.00 per unit, with each public unit consisting of one share of Class A common stock and one-third of one warrant, raising $115 million from public investors.[23] The funds raised in the IPO were placed in a trust for the benefit of HighCape's public stockholders.[24] If HighCape entered into a business combination, public stockholders would have the option to either redeem their shares and recoup the

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Foresite, an early Legacy QSI investor), leaving the Sponsor with 2,088,750 Founder Shares. ¶¶ 30, 71.

[19] ¶¶ 5, 22, 44.

[20] ¶¶ 3, 107.

[21] *Id.*

[22] ¶¶ 4-5, 44.

[23] ¶¶ 3, 42.

[24] *Id.*

$10 per share plus interest that HighCape held in trust on their behalf, or invest in the post-Merger company.[25]

C. HighCape Merges with Legacy QSI

On February 18, 2021, HighCape entered into a business combination agreement with Legacy QSI, an early-stage life sciences company, pursuant to which HighCape would acquire Legacy QSI in a merger that valued Legacy QSI at approximately $1.46 billion.[26] Rakin, Zuga, and HighCape Capital, driven by their own financial interests, orchestrated a merger process characterized by a lack of due diligence, conflicted valuations, and a complete disregard for Board oversight, ultimately harming the public stockholders.[27]

Despite the Proxy's claims to the contrary, the Section 220 Production (and post-Complaint productions) showed a mostly uninvolved (and largely ignored) Board.[28] Rakin initiated contact with Legacy QSI's founder, Rothberg, in late October 2020, with no evidence of Board involvement.[29] Rakin and Zuga, acting independently, without Board consultation, entered into a confidentiality agreement between Legacy QSI and HighCape on December 28, 2020 and when discussing

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[25] *Id.*

[26] ¶ 8.

[27] ¶¶ 47, 49.

[28] ¶¶ 9, 49.

[29] ¶ 57.

"preliminary valuation parameters" and a "potential lead investor" three days later.[30] Discovery produced by Defendants demonstrates that Rakin and Zuga did not tell the Board that they entered into the letter of intent with Legacy QSI until after the fact.[31]

Rakin, Zuga, and HighCape Capital relied on Foresite for valuation guidance and due diligence information that further compromised the integrity of the process.[32] Foresite, a significant Legacy QSI investor, had a clear financial incentive to inflate Legacy QSI's valuation, and its "perspective" became the primary source for the $810 million valuation assessed in the Merger.[33] This valuation was initially reached without any financial information from Legacy QSI and was finalized without Board review.[34] Rakin, Zuga, and HighCape Capital also retained J.P. Morgan to provide advisory services without Board approval and did not obtain a fairness opinion, underscoring the lack of independent oversight throughout the Merger process.[35] Rakin, Zuga, and HighCape Capital's agreement to a dual-class common stock structure for New QSI, granting Rothberg super-voting rights, further demonstrated

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30 ¶¶ 59-61.

31 *See* Ex. A hereto (Jan. 12, 2021 email from Rakin to Board).

32 ¶¶ 66-67, 70-71.

33 ¶¶ 66, 70-72.

34 ¶ 72.

35 ¶¶ 64-65.

their willingness to prioritize personal relationships and conflicted interests over stockholder value.[36]

D. The HighCape Defendants Issue a Materially False and Misleading Proxy

Despite having no role in the actual negotiation of any of the Merger's terms, including the valuation, on February 17, 2021, the HighCape Board purportedly met and approved the Merger.[37] On May 14, 2021, HighCape filed the Proxy with the U.S. Securities and Exchange Commission, soliciting HighCape stockholders' vote in favor of the Merger and setting the redemption deadline for June 7, 2021.[38] The Proxy explained that instead of investing in the post-Merger company, HighCape's stockholders could redeem their stock and receive their *pro rata* portion of the funds held in Trust—then $10.01 per share.[39] Incentivized to see the Merger close with the fewest redemptions, Defendants issued the Proxy replete with false statements and omissions of material facts.[40]

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[36] ¶¶ 28, 66.

[37] ¶¶ 75-76. While the Proxy refers to purported discussions occurring at January 27, 2021 and February 17, 2021 Board meetings, neither the Court-ordered discovery nor the Section 220 documents contain minutes or final Board presentations from these purported meetings. ¶¶ 73, 75-76.

[38] ¶ 80.

[39] ¶¶ 18, 80-81.

[40] ¶¶ 82-104.

First, the Proxy portrayed the Board as actively engaged in the Merger process, citing numerous purported meetings and diligent consideration of Legacy QSI.[41] In stark contrast, the Section 220 Production and discovery in this Action revealed that the outside directors agreed to only be involved "as needed" and effectively handed over control of the entire Merger process to Rakin and Zuga.[42]

Second, the Proxy included materially overstated projections for New QSI, projecting substantial revenue growth resulting from market penetration and efficient operations.[43] However, as HighCape's own technical expert report—emailed to each HighCape director—revealed, Legacy QSI's products were far from market-ready and achieving the projected revenue would have required a drastic, undisclosed increase in operational expenses.[44] Just thirteen days post-Merger, the New QSI board received significantly downgraded projections that showed substantial increases in operating expenses and significant net losses as compared to the Proxy's claims, demonstrating the falsity of the Proxy's projections.[45]

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[41] ¶¶ 91-96.

[42] ¶ 84. Despite the lack of contemporaneous materials produced during the Section 220 process, and the lack of formal materials for key meetings such as the February 17, 2021 meeting, post-Complaint discovery revealed that the Board meetings mentioned in the Proxy do appear to have taken place.

[43] ¶¶ 90-91.

[44] ¶¶ 90, 93-95.

[45] ¶¶ 93-97.

Third, the Proxy misleadingly referenced the HighCape Financial Model, which purportedly supported the $810 million valuation of Legacy QSI.[46] There is no evidence in either the Section 220 Production or the discovery produced in this Action that the HighCape Financial Model actually exists, but to the extent it does it constitutes material information, and its omission from the Proxy deprived HighCape stockholders of important valuation information.[47]

Fourth, the Proxy overstated the state of Legacy QSI's production development and commercialization, falsely claiming that Legacy QSI would broadly commercialize its products in 2022.[48] In reality, Legacy QSI's products were far from market-ready, with "minimal viable applications" absent significant and material technological advances.[49]

On June 9, 2021, HighCape stockholders approved the Merger.[50] The Merger closed the next day.[51] As of the Merger close, HighCape stockholders had redeemed only 571,128 shares, approximately 5% of HighCape Class A common stock.[52]

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[46] ¶¶ 99-100.

[47] *Id.*

[48] ¶¶ 32, 101-103.

[49] ¶¶ 32, 102-104.

[50] ¶ 105.

[51] *Id.*

[52] *Id.*

E. The Truth About New QSI Emerges Soon After the Merger

After the Merger closed, the stark reality of New QSI's business and financial health quickly emerged. On February 28, 2022, New QSI reported no revenue for 2021 and significantly higher operating expenses and net losses than projected in the Proxy.[53] This trend continued throughout 2022, with repeated reports of zero revenue and substantial operating expenses and net losses far exceeding the Proxy's projections.[54]

New QSI struggled to commercialize its products, experiencing significant technical issues and delays.[55] These product issues, combined with the Company's inability to meet even drastically reduced revenue projections reforecast thirteen days post-Merger, highlighted the fundamental flaws in the Proxy's unreasonably optimistic outlook.[56]

Analysts expressed significant skepticism of the business model, questioning the viability of New QSI's technology and the Company's financial stability.[57] Post-Merger, the Company's lack of revenue guidance and its failure to reaffirm or retract

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[53] ¶ 109.

[54] ¶¶ 110-112, 117.

[55] ¶¶ 113, 115, 122.

[56] ¶¶ 118-121.

[57] ¶ 123.

the Proxy's projections further eroded investor confidence.[58] New QSI's stock price plummeted as a result. Despite initially trading at $10.68 per share post-Merger, New QSI's stock price fell below $2.00 per share by the time Plaintiff filed the Complaint, inflicting substantial losses on unsuspecting stockholders.[59]

F. Plaintiff Undertakes a Section 220 Investigation

On March 31, 2023, Plaintiff served his Section 220 demand on New QSI seeking production of books and records concerning, among other things, the IPO, the Merger process, and the relationships among Defendants. Between June and July 2023, New QSI made four document productions to Plaintiff in response to Plaintiff's Section 220 demand, totaling 952 pages (the "Section 220 Production"). After six months of negotiations and partial productions, on August 12, 2023, New QSI certified completion of the Section 220 Production.

G. Plaintiff Brings the Action

Following his review and analysis of the Section 220 Production, on May 16, 2024, Plaintiff filed his Complaint, alleging that the HighCape Defendants breached their fiduciary duties to HighCape stockholders by impairing stockholders' ability to exercise their redemption rights on a fully informed basis in connection with the

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[58] ¶ 124.

[59] ¶¶ 108, 127.

Merger, that the Aiding and Abetting Defendants aided and abetted those breaches of fiduciary duty, and that all Defendants were unjustly enriched.

On June 21, 2024, after reviewing the allegations in Plaintiff's Complaint, certain Defendants sent Plaintiff a production of documents (consisting of approximately 100 pages) purportedly responsive to Plaintiff's Section 220 demand that they claimed to have recently discovered (the "June 2024 Production"). On July 29, 2024, Defendants then filed opening briefs in support of their motions to dismiss Plaintiff's Complaint (the "Motions to Dismiss") in which the HighCape Defendants cited to documents contained solely in the June 2024 Production.[60]

Accordingly, on August 12 and August 15, 2024, respectively, Plaintiff served narrowly tailored requests for production of documents and interrogatories on the HighCape Defendants, seeking clarity as to the provenance of the June 2024 Production, including how the documents were identified and why they were not produced earlier, and confirmation as to whether additional documents responsive to the Section 220 demand exist that were not produced.[61] After initially refusing to respond, the HighCape Defendants partially answered the interrogatories and provided a handful of additional documents that appeared hand-selected by Defendants and forwarded to counsel, but refused to conduct a neutral, counsel-overseen search for

[60] Trans. ID 73831294; Trans. ID 73831697; Trans. ID 73830523.

[61] Trans. ID 74024028; Trans. ID 74062415.

documents relating to the allegations to remedy the obvious issues raised by Defendants' self-interested and Complaint-driven production of documents. Because of these deficiencies with regard to Defendants' discovery responses, on October 8, 2024, Plaintiff filed a Motion to Compel Production of Documents and Interrogatory Answers (the "Motion to Compel").[62] Defendants opposed the Motion to Compel and moved for a protective order pending resolution of their Motions to Dismiss.[63] Following briefing and oral argument, on November 18, 2024, the Court granted in part Plaintiff's Motion to Compel and denied the HighCape Defendants' motion for protective order.[64]

Over the next two months, Plaintiff and the HighCape Defendants negotiated over search terms and other parameters to govern the HighCape Defendants' further production. Ultimately, the HighCape Defendants produced an additional 151 documents to Plaintiff, totaling 2,120 pages.

H. The Parties Negotiate and Agree to a Settlement

On April 30, 2025, the Parties conducted a full-day mediation session before Michelle Yoshida, Esq. of Phillips ADR Enterprises. No agreement was reached at the mediation, but the Parties agreed to continue discussions. On July 22, 2025,

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[62] Trans. ID 74704026.

[63] Trans. ID 74842407.

[64] Trans. ID 74976370; Trans. ID 75015777; Trans. ID 75026028.

following a double-blind mediator's recommendation, the Parties agreed to settle the Action for $7.6 million in cash, subject to Court approval. Over the next few months, the Parties negotiated the terms of the Stipulation, which was executed and submitted to the Court on December 12, 2025.

ARGUMENT

I. THE CLASS SHOULD BE CERTIFIED

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

> [A]ll record and beneficial holders of HighCape Class A Common Stock who held such shares during the Class Period, including their successors-in-interest who obtained shares by operation of law, but excluding the Excluded Persons.

The "Class Period" is the period between the close of business on May 10, 2021, the record date, through June 10, 2021, the date the Merger closed. The "Excluded Persons" are:

> (i) Defendants and the members of the Individual Defendants' immediate families; (ii) any Person, firm, trust, corporation, or any entity related to or affiliated with any of the foregoing individuals or entities, or in which any of the foregoing individuals or entities has a controlling interest; (iii) the legal representatives, heirs, successors, or assignees of any such Excluded Persons—in each case, only to the extent such Persons or entities held shares of HighCape Class A Common Stock during the Class Period; and (iv) any trusts, estates, entities, or accounts that held shares of HighCape Class A Common Stock for the benefit of any of the foregoing.

Certification of the Class is appropriate because this Action satisfies Rule 23(a) and fits "within the framework provided for in subsection (b)."[65] Indeed, "[t]his is a classic type of situation for a Rule 23 certification."[66]

A. The Class Satisfies Rule 23(a)

For a class to be certified, "(1) the class [must be] so numerous that joinder of all members is impracticable; (2) there [must be] questions of law or fact common to the class; (3) the claims or defenses of the representative parties [must 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."[67]

1. The Class Is Sufficiently Numerous

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable."[68] "'[N]umbers in the proposed class in excess of forty, and particularly in excess of one hundred, have sustained the numerosity requirement.'"[69] The test "is not whether joinder of all the putative class members

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

66 Tab 19, *Paul Berger Revocable Tr. v. Falcon Equity Investors LLC, et al.*, C.A. No. 2023-0820-JTL (Del. Ch. Jan. 21, 2025) (TRANSCRIPT), at 36.

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

68 *Id.*

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

would be impossible, but whether joinder would be practical."[70] Before any redemptions, there were 11.5 million shares of HighCape Class A common stock issued and outstanding. Joinder of the likely thousands of holders of those shares is not practical.

2. There Are Issues of Law and Fact Common to All Class Members

Commonality is "met where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[71] Here, common questions of law and fact include whether: (i) the HighCape Defendants breached their fiduciary duties by impairing stockholder redemption rights; (ii) the HighCape Defendants failed to disclose material information and/or made materially misleading statements in the Proxy in connection with Merger; (iii) the HighCape Defendants undertook an unfair Merger process at an unfair price; (iv) the Aiding and Abetting Defendants aided and abetted the HighCape Defendants' fiduciary breaches; (v) Defendants unjustly enriched themselves by securing unique financial benefits in the Merger; and (vi) Defendants injured Plaintiff and other Class Members through their conduct. Since this Action involves claims that "implicate the interests of all members of the proposed class of [stock]holders,"

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[70] *Id*.

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

commonality is satisfied.[72] Indeed, this Court has consistently certified classes in analogous circumstances.[73]

3. Plaintiff's Claims Are Typical of the Class

"The test of typicality is that the legal and factual position of the class representative must not be markedly different from that of the members of the class" and "focuses on whether the class representative claim (or defense) fairly presents the issues on behalf of the represented class."[74] Plaintiff is similarly situated to the other unaffiliated HighCape stockholders who did not redeem their shares, and their claims "arise[] from the same event or course of conduct that gives rise to the claims ... of other class members and [are] based on the same legal theory."[75]

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[72] *In re Lawson Software, Inc.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011); *see also Hynson v. Drummond Coal Co.*, 601 A.2d 570, 575 (Del. Ch. 1991) ("An action seeking to prove a breach of [fiduciary] duty is inescapably a true class action" because "[r]elief whether it be by injunction, rescission or an award of money will be determined by reference to the effects of the fiduciary's wrong on . . . the corporation or all of its stockholders as a class.").

[73] *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)); *In re GeneDX De-SPAC Litig.*, 2024 WL 4952176, at *1 (Del. Ch. Dec. 2, 2024) (same); *Siseles v. Lutnick*, 2024 WL 5046087, at *1 (Del. Ch. Dec. 6, 2024) (same); *see also* Tab 15, *Kenville v. Northern Star Sponsor, LLC*, C.A. No. 2024-0276-PAF (Del. Ch. Oct. 31, 2025) (ORDER) (certifying a similar class of SPAC stockholders in a *Multiplan* action), *appeal refused* Tab 18, *Northern Star Sponsor, LLC v. Kenville*, No. 482, 2025 (Del. Jan. 15, 2026) (ORDER).

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

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

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

Rule 23(a)(4) requires that "'the representative parties will fairly and adequately protect the interests of the class.'"[76] There is no divergence of interest between Plaintiff and absent Class Members. Moreover, the recovery achieved through this litigation demonstrates that Plaintiff's interests were aligned with those of absent Class Members and is likewise indicative of the competence and effectiveness of Plaintiff's Counsel.[77]

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

To be certified, a proposed class must also "fit[] into one of the three categories specified in Court of Chancery Rule 23(b)."[78] "Delaware courts 'repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2).'"[79] This is such an action.

A class may be certified under Rule 23(b)(1) where: (i) the prosecution of separate actions by or against individual members of the class would create a risk of

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

[77] *See* Tab 4, *Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL (Del. Ch. Sept. 28, 2017) (TRANSCRIPT), at 20-21 ("*Haverhill* Tr.") ("Given that I am approving the settlement as fair and adequate, it follows that I necessarily believe that the class representatives, as well as the derivative action representatives, provided adequate representation in this matter.").

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

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

"'inconsistent or varying adjudications'" which would create incompatible standards of conduct for the opposing party; and (ii) "'adjudications with respect to individual members of the class'" would as a practical matter be dispositive of the interests of the other members not parties to the action.[80] The proposed Class satisfies Rule 23(b)(1). All Class Members are unaffiliated holders of HighCape Class A common stock 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.[81]

The proposed Class also satisfies Rule 23(b)(2), which provides that a class may be certified where "the party opposing the class has acted or refused to act on grounds that apply generally to the class."[82] Defendants' actions impacted Class

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

[81] *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.").

[82] Del. Ct. Ch. R. 23(b)(2).

Members in uniform fashion, and the Settlement would afford final relief with respect to the Class as a whole.[83]

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 "[n]otice of the proposed . . . settlement must be given to all class members in the manner directed by the Court."[84] Notice was provided to all absent Class Members, pursuant to the process set forth in the Scheduling Order.[85] As required by Rule 23(f)(3)(D), the Notice "clearly and concisely state[s]":

> (i) the location, date, and time of any hearing;[86]
>
> (ii) the nature of the action;[87]
>
> (iii) the definition of the class;[88]
>
> (iv) a summary of the claims, issues, defenses, and relief that the class action sought;[89]

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

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

[85] *See generally* Segura Aff.

[86] *See* Segura Aff., Ex. A (Notice) at 3, 20-21.

[87] *See id.* at 1-2.

[88] *See id.* at 9.

[89] *See id.* at 5-9.

(v) a description of the terms of the proposed dismissal or settlement;[90]

(vi) any award of attorney's fees or expenses, or any representative-party award, that will be sought if the proposed dismissal or settlement is approved;[91]

(vii) instructions for objectors;[92]

(viii) that additional information can be obtained by contacting class counsel;[93]

(ix) how to contact class counsel;[94] and

(x) not to contact the Court with questions about the terms of the proposed dismissal or settlement.[95]

As of the date of this filing, no objections have been received.

Pursuant to Rule 23(aa), Plaintiff has sworn that he has not received, been promised, or been offered—and will not accept—any form of compensation, directly or indirectly, for serving as a representative party in this Action, except for: (i) any damages or other relief that the Court may award him as a Class Member; (ii) any fees, costs, or other payments that the Court expressly approves; or (iii)

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90 *See id.* at 9-19.

91 *See id.* at 19-20.

92 *See id.* at 3, 21-24.

93 *See id.* at 24-25.

94 *See id.* at 25.

95 *See id.* at 25-26; Del. Ct. Ch. R. 23(f).

reimbursement from Plaintiff's Counsel of actual and reasonable out-of-pocket expenditures incurred in prosecuting the Action.[96]

* * *

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

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

Delaware law favors the voluntary settlement of complex class actions,[97] 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.[98] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses to "determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably

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[96] *See* Affidavit of Michael Farzad in Support of Plaintiff's Opening Brief in Support of His Motion to Certify the Class, Approve the Settlement, for Attorneys' Fees and Expenses, and for Service Award ("Farzad Aff."), ¶ 6 (filed herewith).

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

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

could accept."[99] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[100] Under Rule 23(f)(5), the Court considers whether:

> (A) the representative party and class counsel have adequately represented the class;
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> (B) adequate notice of the hearing was provided;
>
> (C) the proposed dismissal or settlement was negotiated at arm's length; and
>
> (D) the relief provided for the class falls within a range of reasonableness, taking into account:
>
> (i) the strength of the claims;
>
> (ii) the costs, risks, and delay of trial and appeal;
>
> (iii) the scope of the release; and
>
> (iv) any objections to the proposed dismissal or settlement.[101]

In making this determination, the Court need not "decide any of the issues on the merits,"[102] 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."[103]

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[99] *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)).

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

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

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

For the reasons set forth herein, the Settlement should be approved. The Settlement was the product of skilled, thoughtful litigation, informed by Plaintiff's and Plaintiff's Counsel's review and analysis of the Section 220 Production and discovery Defendants produced in this Action, and was negotiated at arm's length with the assistance of a skilled mediator. The Settlement provides substantial economic consideration to Class Members and reflects Plaintiff's well-informed judgment regarding the strength of the claims and defenses at issue, the potential damages that could be recovered following a trial, and the benefits of a guaranteed recovery.

A. The Relief Provided Falls Within the Range of Reasonableness

In assessing the Settlement, the Court weighs the "give" (the release) against the "get" (the consideration obtained) in order "to determine whether the [S]ettlement falls within a range of results that a reasonable party in the position of the [P]laintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept."[104] The get—a $7.6 million cash payment—equates to a per-share recovery of approximately $0.695 per share. This result weighs

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[103] *Brinckerhoff v. Texas Eastern Prods. Pipeline Co.*, 986 A.2d 370, 384 (Del. Ch. 2010) (quoting *In re MCA, Inc.*, 598 A.2d 687, 691 (Del. Ch. 1991)).

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

favorably against the give—a customary *MultiPlan* release[105]—and is in line with recoveries in other *MultiPlan* settlements approved by this Court.[106]

Plaintiff is confident in the strength of his claims. At trial, Plaintiff's claims would have been reviewed under the entire fairness standard, shifting the burden to Defendants to "demonstrate that the challenged act or transaction was entirely fair."[107] Plaintiff also had strong process-based liability claims, making such a showing by Defendants unlikely.

Although Plaintiff was guardedly optimistic about his chances of prevailing at trial, Plaintiff is well aware that even an entire fairness trial is not a low risk proposition. As this Court noted in *Dell Class V*, in the years between *Americas Mining* and *Dell Class V*, "there ha[d] been at least ten post-trial decisions in entire fairness cases where the defendants prevailed, plus three more where the court awarded only nominal damages of $1.00."[108] Plaintiff faced some unique issues. It appears, based on the discovery produced, that the meetings mentioned in the Proxy did occur, notwithstanding the lack of evidence of meetings in the Section 220

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[105] *See MultiPlan*, 2023 WL 2329706; Tab 10, *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch. July 5, 2024) (ORDER AND FINAL JUDGMENT).

[106] *See supra* note 6.

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

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

Production. Defendants also argued strenuously that the changes in business expectations only occurred *post*-deSPAC Merger, making this matter similar to the only *Multiplan* action that a Court has dismissed on the merits, *In re Hennessy Cap. Acquisition Corp. IV Stockholder Litigation*.[109]

Even if Plaintiff were to prevail at trial, he would have faced "significant risk on appeal."[110] Numerous post-trial verdicts in favor of stockholder plaintiffs have been overturned on appeal,[111] and the claims in *MultiPlan* actions have not yet been substantively addressed on appeal. A recovery of $7.6 million now eliminates the delay and risk of trial and appeal.

Finally, despite the Settlement Administrator providing notice to Class Members in accordance with the Scheduling Order, there have been no objections to date. The deadline for objections is March 13, 2026.

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[109] 2024 WL 2799044 (Del. Ch. May 31, 2024); *see, e.g.*, Trans. ID 73963311 at 2. Further, unlike many *Multiplan* actions that survived motions to dismiss, there were no net cash per share allegations here.

[110] *Id.* at 710.

[111] *See Dell Class V*, 300 A.3d at 696-697 (describing recent history); *see also In re Tesla, Inc. Deriv. Litig.*, 2025 WL 3689114 (Del. Dec. 19, 2025) (reversing post-trial verdict in favor of stockholder plaintiff); *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324 (Del. 2025) (same).

B. The Settlement Is the Result of Hard-Fought, Arm's-Length Negotiations Between Experienced Counsel

When evaluating the fairness of a settlement, Delaware courts also scrutinize the negotiations that led to the settlement and favor settlements that resulted from arm's-length negotiations.[112] Here, the Parties reached the Settlement only after extensive, hard-fought negotiations with the assistance of an experienced mediator and with the benefit of limited discovery.

C. Counsel's Experience and Opinion Weigh in Favor of Settlement Approval

The fact that experienced, sophisticated counsel support the Settlement also weighs in favor of approval.[113] Plaintiff's Counsel include attorneys at Robbins Geller Rudman & Dowd LLP, Robbins LLP, and Grant & Eisenhofer P.A., highly regarded firms with a lengthy track record of obtaining exceptional recoveries for stockholders in challenging and complex cases in this Court—including in numerous *MultiPlan* actions that have survived motions to dismiss and have proceeded far into discovery.[114] Plaintiff's Counsel believe that the Settlement is fair and in the best

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

[113] *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").

[114] *See, e.g.*, *Gores IV* Tr. at 7 (settled after multiple depositions, successful motion to compel, and the production of 77,000 documents comprising of 400,000 pages); Tab 6, *In re GeneDx De-SPAC Litig.*, C.A. No. 2023-0140-PAF (Del. Ch. Dec. 2, 2024)

interests of the Class. Counsel's opinion in this regard is shaped not only by their depth of experience, but by their deep knowledge of this case gained from their review of the Section 220 Production and discovery materials. Plaintiff's Counsel's opinion further weighs in favor of approving the Settlement.

III. THE PLAN OF ALLOCATION IS REASONABLE AND APPROPRIATE

The Settlement allocated the $7.6 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 tax expenses—to the Class. The Plan of Allocation provides for an equitable recovery that will allow Class Members who held onto their shares and those who sold their shares for less than the redemption price to recover at least a portion of any actual economic damages they suffered. It also provides for a nominal recovery for all Class Members who submit claims in recognition of the direct harm to their redemption rights.

The Plan of Allocation mirrors the plans of allocation this Court approved previously in *Super Group*,[115] *Apex*,[116] *Romeo Power*,[117] and *Hyzon*,[118] that "equitably

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(TRANSCRIPT), at 11 ("*GeneDx* Tr.") (settled after the defendants produced over 21,000 documents, over 100,000 pages).

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

[116] *Apex* Tr. at 29-30.

[117] Tab 21, *Yu v. RMG Sponsor, LLC, et al.*, C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024) (TRANSCRIPT), at 23-30 ("*Romeo Power*").

account[]" for "economic losses . . . of varying degrees"[119] by "class members who sold their stock at different points [and] experienced significantly different alleged losses."[120] The Plan of Allocation is designed to equitably distribute the Settlement proceeds in accordance with the size of a Class Member's recognized loss, and eliminates "direct pro rata payments, known as the DTC method, [that] would not account for the impact of post-merger trading."[121]

For Class Members who sold their shares between the redemption deadline and the day the Complaint was filed (May 16, 2024) for less than the $10.00 per share, the total per share loss will be calculated as the difference between $10.00 and the price at which the Class Member sold her or his share(s). For Class Members who held shares as of the date the Complaint was filed, the total per share loss for those shares will be calculated as the difference between $10.00 and $1.86, the closing price of New QSI stock on May 16, 2024. Finally, a nominal amount of $0.10 per share for each share held on the redemption deadline shall be added to each Class Member's recognized claim for those Class Members who submit a claim. The Net Settlement Fund will then be distributed to Class Members on a *pro rata* basis based on the relative size of

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[118] Tab 16, *Malork v. Anderson, et al.*, C.A. No. 2022-0260-PAF (Del. Ch. Oct. 3, 2025) (TRANSCRIPT), at 30-31 ("*Hyzon*").

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

[120] *Apex* Tr. at 30.

[121] *Id*.

their total recognized claims, calculated by dividing each Class Member's total recognized claims by the total of all Class Members' recognized claims and multiplying by the Net Settlement Fund amount.

As contemplated by Rule 23(f)(6), the Plan of Allocation provides that residual settlement funds be redistributed to identified Class Members unless "re-distribution of funds remaining in the Net Settlement Fund is not cost-effective."[122] In such case, the funds will be transferred "to the Delaware Combined Campaign for Justice."[123]

The distribution methodology contemplated by the Plan of Allocation is "fair, reasonable, and adequate."[124] Therefore, the Plan of Allocation should be approved.

IV. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiff moves for an all-in fee and expense award of $1,064,000 (*i.e.*, 14% of the $7.6 million settlement fund, inclusive of $36,249.56 in expenses reasonably incurred in connection with litigating this Action). The Settlement provides a strong outcome for the Class, providing an immediate and substantial recovery. This requested fee and expense award is supported by the Court's precedent, and it is

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[122] Segura Aff., Ex. A (Notice) at 15; Del. Ct. Ch. R. 23(f)(6).

[123] Segura Aff., Ex. A (Notice) at 15; *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).

[124] *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).

reasonable given the substantial benefit the Settlement provides compared against the risks of continued litigation, the necessary expenses Plaintiff's Counsel have incurred to date, and the hundreds of hours Plaintiff's Counsel have devoted to the prosecution of this Action, on a fully contingent basis.

A. Legal Standard

This Court may award attorneys' fees to counsel whose efforts conferred a common benefit.[125] The determination of any attorney fee and expense award is left to the Court's discretion.[126] 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."[127] "Delaware courts have assigned the greatest weight to the benefit achieved in litigation."[128]

Each *Sugarland* factor supports the requested fee award here.

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[125] *See, e.g.*, *Theriault*, 51 A.3d at 1255; *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989).

[126] *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).

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

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

B. The Benefits of the Settlement Are Substantial

As explained above, the proposed Settlement confers substantial and quantifiable financial benefits on the Class. As the factor accorded the most weight by the Court, this strong recovery counsels heavily in favor of Plaintiff's requested fee award.[129] The Court has stated that "the dollar amount of the fund created . . . is the heart of the *Sugarland* analysis."[130] Plaintiff's Counsel's requested fee and expense award represents 14% of the Settlement Amount (inclusive of expenses).

Before initiating this Action, Plaintiff pursued books and records from New QSI. Following the initiation of this Action, and as a result of certain defendants' reliance on extraneous records in support of their Motions to Dismiss, Plaintiff pursued discovery, propounding document requests and interrogatories on the HighCape Defendants. These efforts culminated in a motion to compel that was, to Plaintiff's Counsel's knowledge, novel, and that was granted, resulting in Plaintiff obtaining additional discovery materials.

Finally, Plaintiff undertook substantial risk in filing this Action, given the limited upside in terms of absolute dollars. HighCape's IPO involved the issuance of only 11.5 million shares, a $115 million offering, and therefore would be considered a

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[129] *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.").

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

"micro-cap" company.[131] As this Court has recognized, the "small issuers are the cases where it turns out we most need plaintiff's lawyers to be looking," and the Court should sufficiently incentivize attorneys to take on high-risk litigation where the total potential damages are not great in absolute terms.[132]

Given these factors, awarding a fee that is at the high end of the 10% to 15% range for "early" settlements appropriately compensates Plaintiff's Counsel for the risk undertaken in bringing this Action and securing a healthy recovery for the Class.[133]

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.[134] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[135] Contingent

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[131] *See, e.g.*, https://www.investopedia.com/terms/m/microcapstock.asp (defining "micro-cap" as a company with a market capitalization of less than $300 million).

[132] Tab 1, *Browne v. Layfield*, C.A. No. 2024-0079-JTL (Del. Ch. Sept. 5, 2024) (TRANSCRIPT), at 38.

[133] *See Aeva* Tr. at 24 (awarding 16% fee in *MultiPlan* settlement reached post-motion to remand); *Eos* Tr. at 23 (awarding 15% fee in *MultiPlan* settlement reached before motion to dismiss decision); Tab 20, *Siseles v. Lutnick, et al.*, C.A. No. 2023-1152-JTL (Del. Ch. Dec. 6, 2024) (TRANSCRIPT), at 49 (same).

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

[135] *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 Plaintiff's Counsel to both a "risk" premium and an "incentive" premium on top of the value of their standard hourly rates.[136]

Here, as set forth in the accompanying attorney affidavits, Plaintiff's Counsel pursued this case on a fully contingent basis.[137] 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 time and expenses incurred. This factor thus supports the requested fee award.

D. The Time and Effort 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.[138] Accordingly, the time spent by counsel in this litigation should only serve as a cross-check on the reasonableness of the fee award.[139] Before reaching agreement on the Stipulation,

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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").

[136] *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).

[137] Affidavit of Erik W. Luedeke, ¶ 3 (filed herewith) ("Luedeke Aff."); Affidavit of Gregory E. Del Gaizo, ¶ 3 (filed herewith) ("Del Gaizo Aff."); Affidavit of Kelly L. Tucker, ¶ 3 (filed herewith) ("Tucker Aff.").

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

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

Plaintiff's Counsel's efforts included: : (i) review and analysis of public information respecting the Merger and the reasons for its failure; (ii) review and analysis of documents produced in response to Plaintiff's Section 220 demand; (iii) drafting and filing the Complaint; (iv) analyzing Defendants' Motions to Dismiss; (v) propounding requests for production and interrogatories on the HighCape Defendants; (vi) drafting, arguing, and largely winning a motion to compel the production of documents and interrogatory answers; (vii) reviewing discovery materials; and (viii) engaging in hard-fought settlement negotiations with the assistance of an experienced mediator.

Counsel spent 1,054.7 hours litigating this Action from inception through the December 23, 2025, signing of the Stipulation.[140] This amounts to a lodestar value of $844,963.75. Counsel also incurred $36,249.56 in expenses. The requested fee award (net of expenses) implies an hourly rate of approximately $970 per hour and a lodestar multiplier of approximately 1.26x. Both metrics are well within the range previously awarded by the Court.[141] They also compare favorably to the non-contingent hourly rates charged by similarly qualified defense counsel.[142]

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[140] Luedeke Aff., ¶ 5; Del Gaizo Aff., ¶ 5; Tucker Aff., ¶ 5.

[141] *See, e.g.*, Tab 14, *In re Versum Materials, Inc. S'holder Litig.*, C.A. No. 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); Tab 11, *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"); *In re Saba Software, Inc. S'holder Litig.*, 2018 WL 4620107 (Del. Ch. Sept. 26, 2018) (awarding a 3x lodestar multiple); *GeneDx* Tr. at 27, 40 (awarding a 2.6x lodestar multiple); *Apex* Tr. at 33

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

E. The Action Implicates Complex Issues of Fact and Law

In determining an appropriate award of fees and expenses, the Court also considers the complexity of the litigation. "[L]itigation that is challenging and complex supports a higher fee award."[143] This Action is complex both legally and factually.

Although Plaintiff's claims in this Action presented now-well-established legal challenges concerning the HighCape Defendants' fiduciary duties, the claims involved novel questions and legal issues, including (i) the contours of what constitutes impairment of stockholder redemption rights; (ii) the proper measure of damages for a claim based on impairment of stockholder redemption rights; (iii) whether Plaintiff would need to prove reliance and causation; and (iv) whether the Aiding and Abetting Defendants could be held accountable in relation to the underlying fiduciary breaches.

(awarding a 2.2x 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 multiple); *In re Pilgrim's Pride Corp. Derivative Litig.*, 2020 WL 474676 (Del. Ch. Jan. 28, 2020) (awarding an effective hourly rate of $4,511.09 and a 7.0x lodestar multiple); *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 multiple).

[142] *See* Aebra Coe, *Some Associates Bill $2,000 Per Hour as BigLaw Fees Rise* (Apr. 22, 2025).

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

Further, no de-SPAC merger case has gone to trial yet, creating further uncertainties as to how the Court would wrestle with these issues. These uncertainties resulted in the potential for complex legal battlegrounds that have not yet been tested on appeal.

Further, the factual issues presented in this Action were likewise complex. Plaintiff had to delve into the web of interrelationships among the Defendants, including their various businesses, directorships, and their interrelatedness and financial interests. Plaintiff had to review and analyze documents obtained through a contentious Section 220 process and discovery primarily obtained through a Motion to Compel to ascertain the involvement of the HighCape Board in the Merger process and the market-readiness of Legacy QSI's nascent products.

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.[144]

Here, Plaintiff's Counsel are experienced in stockholder class and corporate governance litigation, with a lengthy track record of obtaining exceptional recoveries

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

for stockholders in challenging and complex cases.[145] Plaintiff's Counsel have participated in some of the largest settlement and post-trial recoveries for plaintiffs in class and derivative litigation before this Court.[146] Plaintiff's Counsel respectfully submit that the Settlement is another strong recovery that extends this track record.

The standing of opposing counsel also may be considered in determining the reasonableness of a fee award.[147] Defendants are represented by experienced, skillful, and well-respected law firms who vigorously defended their clients' interests. The

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[145] *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.).

[146] *See, e.g.*, *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015) ($148 million trial verdict); *In re Digex, Inc. S'holder Litig.*, 2001 WL 34131305 (Del. Ch. Apr. 6, 2001) ($420 million settlement); *In re McKesson Corp. S'holder Deriv. Litig.*, 2020 WL 1985047 (Del. Ch. Apr. 24, 2020) ($175 million settlement and corporate governance reforms); *In re CBS Corp. S'holder Class Action & Deriv. Litig.*, 2023 WL 5817795 (Del. Ch. Sept. 7, 2023) ($167.5 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); *In re News Corp. S'holder Deriv. Litig.*, 2013 WL 3231415 (Del. Ch. June 26, 2013) ($139 million settlement); *Goldstein v. Denner*, 2024 WL 4182879 (Del. Ch. Sept. 12, 2024) ($124 million total settlement); *In re Viacom Inc. S'holder Litig.*, 2023 WL 4761807 (Del. Ch. July 25, 2023) ($122.5 million settlement); *Teachers' Ret. Sys. of Louisiana v. Greenberg*, 2008 WL 5260548 (Del. Ch. Dec. 17, 2008) ($115 million settlement); *In re Rural Metro Corp. S'holder Litig.*, 2015 WL 725425 (Del. Ch. Feb. 19, 2015) (partial settlement and post-trial recovery totaling $109.4 million); *In re Pattern Energy Group Inc. S'holders Litig.*, 2024 WL 2045461 (Del. Ch. May 6, 2024) ($100 million settlement).

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

ability of opposing counsel enhances the significance of the benefit achieved for the Class in the Settlement.

V. THE COURT SHOULD APPROVE A SERVICE AWARD FOR THE PLAINTIFF

The Court should approve the payment of a modest $2,000 incentive award to the Plaintiff, to be paid out of the fees awarded to Plaintiff's Counsel, to compensate him for the time and effort that he devoted to this matter. This Court has recognized that a modest incentive fee is appropriate where, as here, Plaintiff has "step[ped] 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."[148]

In determining the appropriateness of an incentive fee, the Court considers the time and effort expended by the class representative and the size of the benefit to the class.[149] Here, Plaintiff monitored the work of Plaintiff's Counsel, reviewed and verified pleadings, and regularly communicated with counsel regarding litigation strategy and significant litigation developments. These efforts are in line with those of

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

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

the plaintiffs in other litigation where the Court awarded a similar service award and amply support the modest $2,000 award requested.[150]

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the Settlement and Plan of Allocation, certify the Class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), award Plaintiff's Counsel the requested fee and expense award, and authorize the payment of the requested service award from Plaintiff's Counsel's fees.

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

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