EFiled: May 21 2024 04:57PM EDT
Transaction ID 73136224
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: May 21, 2024

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Michael Farzad ("Plaintiff") alleges the following on information and belief, except as to the allegations specifically pertaining to Plaintiff, which are based on personal knowledge. This complaint is also based on the investigation of Plaintiff's counsel, which included, among other things, a review of documents produced in response to Plaintiff's inspection demand pursuant to 8 *Del. C.* §220 ("Section 220"), a review of public filings with the U.S. Securities and Exchange Commission ("SEC"), and a review of news reports, press releases, and other publicly available sources.

NATURE OF THE ACTION

1. This is a class action brought by Plaintiff on behalf of himself and all other similarly situated investors in HighCape Capital Acquisition Corp. ("HighCape" or the "Company"), now known as Quantum-Si Incorporated ("New QSI"), who held stock in HighCape on the redemption deadline set in connection with the Company's merger with privately held company, Quantum-Si Incorporated ("Legacy QSI") (the "Merger"). Plaintiff asserts claims in connection with the impairment of his and Class (as defined herein) members' Redemption Rights (as defined herein) for: (a) breaches of fiduciary duty against the following individuals and entities: (i) defendants Kevin Rakin ("Rakin"), Matt Zuga ("Zuga"), David Colpman ("Colpman"), Robert Taub ("Taub"), and Antony Loebel ("Loebel") in their capacities as members of HighCape's Board of Directors (collectively, the "Director Defendants" or the "Board"); (ii) HighCape's Chief Executive Officer ("CEO") Rakin and HighCape's Chief Financial Officer ("CFO") and Chief Operating Officer ("COO") Zuga, in their capacities as HighCape's officers (the "Officer Defendants"); (iii) HighCape Capital Acquisition LLC (the "Sponsor") and HighCape Capital, LP ("HighCape Capital") (together with Rakin and Zuga, the "Controller Defendants") (collectively with the Director Defendants and the Officer Defendants, the "HighCape Defendants"); (b) aiding and abetting breaches of fiduciary duty against Legacy QSI's founder and former CEO Jonathan M. Rothberg

("Rothberg") and Foresite Capital Management, LLC ("Foresite"), an investor in HighCape and Legacy QSI (collectively, the "Aiding and Abetting Defendants"); and (c) unjust enrichment against the Defendants.

2. New QSI, as it exists today, is the product of the Merger between HighCape—then a publicly traded special purpose acquisition company ("SPAC")—and Legacy QSI, a privately held early-stage life sciences company. Prior to the Merger, HighCape lacked any business operations of its own. Instead, its sole purpose was to seek out and merge with an operating company or business.

3. On September 9, 2020, HighCape consummated an initial public offering ("IPO"). In the IPO, HighCape sold 11,500,000 public units—with each public unit consisting of one share of HighCape Class A common stock ("Public Share") and one-third of one warrant—priced at $10 per public unit, raising $115,000,000 in gross proceeds. These IPO proceeds were held in trust for the benefit of HighCape's public stockholders. Pursuant to the terms of its Charter, HighCape had two years after the IPO to complete an initial business combination or to liquidate. If HighCape were to liquidate, Class A stockholders would be entitled to receive $10 per share, plus interest.[1] Critically, once the Board approved of an initial business combination, HighCape's public stockholders had a decision:

[1] HighCape could also seek stockholder approval to extend the liquidation deadline, but would have to give HighCape's public stockholders the right to redeem their shares.

they could elect to redeem all or a portion of their shares—and receive a proportionate share of the funds held in trust ("Redemption Rights")—*or* they could invest in the post-combination company.

4. Prior to the IPO, the Controller Defendants purchased 2,875,000 shares of Class B common stock, or "Founder Shares," for just $25,000, roughly $0.009 per share. Shortly after their purchase, the Controller Defendants transferred 90,000 Founder Shares (30,000 shares each) to directors Colpman, Loebel, and Taub, aligning their interests with those of the Controller Defendants.

5. In addition, concurrently with the IPO, the Sponsor purchased 405,000 private placement units (the "Private Placement Units") at a price of $10 per unit, for a total for $4,050,000. Each Private Placement Unit consisted of one share of Class A common stock (the "Private Placement Shares"), and one-third of one warrant (the "Private Placement Warrants").[2]

6. Defendants waived their liquidation and Redemption Rights with respect to all their Founder Shares and the Private Placement Shares. As a result, unlike the shares held by HighCape's public stockholders, the Founder Shares and Private Placement Shares Defendants held would only have value if HighCape closed a business combination. Similarly, the Private Placement Warrants could not

[2] Each whole Private Placement Warrant was exercisable for one share of Class A common stock at a price of $11.50 per share.

be transferred, assigned, sold, or exercised until 30 days after a business combination was completed. Accordingly, if HighCape liquidated, the HighCape Defendants' Founder Shares, Private Placement Shares, and Private Placement Warrants would be worthless—and the Sponsor would lose its entire investment. Thus, these insiders' interests in getting any deal done—even a value-destructive one—to avoid liquidation provided them with a perverse incentive to complete a merger regardless of whether it was in the best interests of the Company's public stockholders.

7. Furthermore, since Defendants would continue to hold their shares and warrants after any business combination, they had an interest in discouraging public stockholders from redeeming their shares, as each share redeemed would decrease the cash underlying their Founder Shares and Private Placement Shares and the liquidity of the post-Merger Company. Thus, Defendants each had a strong personal incentive to convince public stockholders to not redeem their shares and to approve the Merger.

8. Unfortunately for the Class, Defendants put their own interests ahead of public stockholders (and their fiduciary duties). On February 18, 2021, HighCape entered into a business combination agreement with Legacy QSI (the "Business Combination Agreement"), pursuant to which HighCape would acquire Legacy QSI in a merger that valued Legacy QSI at approximately $1.46 billion. On May 14, 2021, Defendants caused HighCape to file with the SEC a false and misleading

Definitive Proxy Statement/Prospectus on Schedule 424B3 (the "Proxy") that misstated or omitted information material to HighCape stockholders' redemption decision.

9. First, the Proxy overstated the Board's role in the process leading up to the Merger. For example, the Proxy claimed that the Board conducted due diligence and considered a "wide variety" of "positive" and "negative" factors relating to, among other things, Legacy QSI's "product pipeline," "the size and scope of the market" for Legacy QSI's products, and Legacy QSI's ability "to meet its commercial and financial projections and other financial and operating metrics." The Section 220 production, that the Company's counsel certified in writing was complete, however, reveals the opposite. The Board was entirely uninvolved in the Merger process. Under section 6.1(e) of HighCape's Bylaws, the Company's Secretary was required to attend all Board meetings, record the proceedings of such meetings, and keep those records in specified books.[3] Nevertheless, the Company produced no documents evidencing any due diligence, deliberations, votes, discussions, or meetings by the Board concerning Legacy QSI, in any way, in response to Plaintiff's Section 220 inspection demand, demonstrating that,

[3] Similarly, 8 *Del. C.* §142(a) requires: "One of the officers shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose."

notwithstanding the representations in the Proxy to the contrary, the HighCape Board did not conduct any review of Legacy QSI at all. In fact, the single HighCape document the Company produced was a slide deck for a HighCape Board meeting dated October 1, 2020, *before* HighCape even began considering Legacy QSI.[4]

10. Second, the Proxy also falsely portrayed the state of Legacy QSI's product development. In particular, the Proxy stated that Legacy QSI had developed a proprietary universal single molecule detection "platform" that enables researchers and clinicians to access a "proteome," a set of proteins within a cell, which then provides the ability to "unlock significant biological information." This platform purportedly "could be used for biomarker discovery and disease detection, pathway analysis, immune response, and vaccine development." The Proxy stated that Legacy QSI would "*seek to broadly commercialize [its] platform, for research use only, in 2022*." Defendants knew or should have known at the time of the Proxy that Legacy QSI's "platform" was not close to being ready for commercialization because, among other reasons, the product applications that comprised the platform were not fully developed and its manufacturing infrastructure was not capable of producing products at the projected scale.

[4] QSI_0000001. All references to "QSI________" are to the documents produced in response to Plaintiff's Section 220 inspection demand. All emphasis are added unless stated otherwise.

11. Third, the Proxy contained Legacy QSI's claimed "estimates and assumptions with respect to the expected future financial performance of [New QSI]" through 2025 (the "Projections"). Defendants knew or should have known that the Projections were patently unattainable due to the same inability of Legacy QSI to "broadly commercialize" its platform of products and its under-developed manufacturing infrastructure. Further, despite knowing that, as late as December 31, 2020, Legacy QSI was outsourcing its accounting and financial reporting and "did not have its own financing function or finance or accounting professionals," the Board nonetheless blindly published the Projections supplied by Legacy QSI, a private company whose leadership was likewise set to make a windfall if the Merger was consummated.

12. Fourth, the Proxy was misleading because it omitted a financial model the HighCape Defendants purportedly relied upon to help confirm the valuation of Legacy QSI agreed upon in the Merger (the "HighCape Financial Model"). Rakin and Zuga allegedly created this model after reviewing with Legacy QSI management "a detailed financial forecast and conducted a review of the financial models, including *all* major assumptions for *all* internal and external costs," "*key* assumptions for projected product revenues" and "pricing assumptions for *all* elements of the product and consumable offerings." For some of these assumptions, Legacy QSI management proposed "a range of possible outcomes." Rakin and Zuga

claim to have taken "a conservative approach in its consideration of such ranges." The Proxy, however, disclosed only the Projections, which came from Legacy QSI, but omitted any information from the HighCape Financial Model or the "range[s] of possible outcomes" provided by Legacy QSI. HighCape forwent a fairness opinion, and admittedly relied on its own valuation to conclude that the Merger price was "fair and reasonable" to stockholders. Because HighCape acted as its own financial advisor, its omitted model and "range[s] of possible outcomes" it considered in making this determination were therefore material. Thus, the Proxy failed to provide appropriate counterbalancing information about Legacy QSI's valuation.

13. As a result of these material misstatements and omissions, HighCape's public stockholders were deprived of an accurate portrayal of Legacy QSI's financial health and valuation, what they could expect from post-Merger New QSI, and thus their decision whether or not to redeem their shares of HighCape stock in connection with the Merger was impaired. Ultimately, HighCape's stockholders approved the Merger, with public stockholders redeeming just 571,128 shares—approximately 4.79% of the total outstanding shares of HighCape Class A stock. On June 10, 2021, the Merger closed.

14. The Board should have expected what eventually became reality—New QSI did not achieve any revenues until 2023, and even then, its revenues were only a small fraction of the Projections' expectations—generating only $1.08 million in

revenues for fiscal year 2023, compared with the $49 million for the same year set forth in the Projections.

15. Just two weeks after the Merger closed, and barely one month after the Proxy told HighCape stockholders to expect that New QSI would commercialize and generate $17 million in fiscal year 2022, on June 23, 2021, New QSI's board reviewed models that contemplated the possibility that it would not [redacted][5] At that same meeting, New QSI's management presented its board with two new sets of five-year projections (the "Downgraded Projections"). The Downgraded Projections were materially different from the Projections set forth in the Proxy. With respect to expenses, the Downgraded Projections estimated that New QSI's total operating expenses from 2021 through 2025 would be [redacted] than the Projections.[6] As to revenue, both sets of Downgraded Projections demonstrated that the Company would come [redacted] of its Projections.[7] For example, the Downgraded Projections stated that Fiscal Year 2023 estimated

[5] QSI_0000422.

[6] *Id.*

[7] *Id.*

revenues would either be [redacted] million or [redacted] million, depending on which path the Company took, versus the Projections claim of $49 million.[8]

16. On November 9, 2021, New QSI's management provided the New QSI board with presentation materials admitting that [redacted][9] Five months post-Merger, [redacted].[10]

17. New QSI's actual financial results have been much closer to the Downgraded Projections than the Proxy's Projections—though in many instances, performance was significantly worse than even the Downgraded Projections. Specifically, the Proxy projected that New QSI would incur net losses of $56 million in 2021 and $70 million in 2022 and 2023. On the other hand, the Downgraded Projections anticipated that New QSI would incur net losses between [redacted] million and [redacted] million in 2021, between [redacted] and [redacted] million in 2022, and [redacted] and [redacted] million in 2023.[11] New QSI's actual net losses for the years 2021, 2022,

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[8] *Id.*

[9] QSI_0000190.

[10] QSI_0000374-75.

[11] *Id.*; QSI_0000422.

and 2023 were $94.9 million, $132.4 million, and $96 million respectively—*41%, 47.1%, and 37% higher* than the Proxy's projected net losses for 2021, 2022, and 2023. The variance between New QSI's actual results, the Proxy's Projections, and the Downgraded Projections given to the New QSI board just weeks after the Merger closed show that the Proxy's Projections were not, as the Proxy claims, "the best currently available estimates" for the "the expected future financial performance of Quantum-Si."

18. Since the Merger, New QSI's stock price has plummeted to below $2 per share as of April 1, 2024. HighCape stockholders gave up the opportunity to redeem their HighCape shares at $10.01 per share, implying value destruction of over $90 million.

19. Due to the conflicts of interest on the part of Defendants, the Merger requires judicial review for entire fairness, a test which Defendants cannot meet.

THE PARTIES AND RELEVANT NON-PARTY

A. PLAINTIFF

20. Plaintiff Michael Farzad has consistently held, and has been the beneficial owner of, HighCape Class A common stock since April 15, 2021, and was entitled to redeem his HighCape shares.

B. DEFENDANTS

21. Defendant HighCape Capital is "a life sciences investment firm" co-founded in 2013 by Rakin and Zuga, whose principal executive offices were located at 452 Fifth Avenue, 21st Floor, New York, New York. As of June 30, 2020, HighCape Capital had approximately $145 million in assets under management. On June 10, 2020, HighCape Capital formed HighCape to "identify, acquire and, after [HighCape's] initial business combination, build, a life sciences or life sciences related business." HighCape Capital was controlled by its managing members, Rakin and Zuga, and, therefore, all three had control over the Sponsor. Defendants Colpman, Taub, and Loebel each serve as HighCape Capital advisors and have served as such since before the Merger. HighCape Capital purchased 1,801,000 shares of HighCape stock in the private investment in public equity ("PIPE") financing conducted in connection with the Merger.

22. Defendant the Sponsor is a Delaware limited liability company with principal executive offices located at 452 Fifth Avenue, 21st Floor, New York, New York. The Sponsor was controlled by HighCape Capital, Rakin, and Zuga. The Proxy states that Zuga is the Sponsor's sole managing member with "voting and investment discretion with respect to the common stock held by [the Sponsor]." However, Rakin and Zuga are the managing members of HighCape Capital, which beneficially owns the Sponsor, and therefore, Rakin also had the ability to control

the Sponsor. In fact, on February 18, 2021, the Sponsor, HighCape, Deerfield Mgmt, L.P. (and collectively with Deerfield Partners, L.P. and Deerfield Management Company, L.P., "Deerfield"), and other holders of Founder Shares entered into a "Sponsor Letter Agreement," obliging the parties to the agreement to, among other things, vote their shares of stock in favor of the Merger. Rakin signed the Sponsor Letter Agreement on behalf of the Sponsor as its "Chairman and CEO," requiring the Sponsor to vote its shares in favor of the Merger. On June 10, 2020, Sponsor purchased an aggregate of 2,875,000 shares of HighCape Class B common stock—the Founder Shares—for a total purchase price of $25,000 (or $0.009 per share). On June 30, 2020, the Sponsor transferred 30,000 Founder Shares to each of Colpman, Taub, and Loebel, leaving the Sponsor with 2,785,000 Founder Shares. Simultaneously with the consummation of HighCape's IPO, Sponsor also purchased 405,000 Private Placement Units at a price of $10 per unit. In total, at the time of the Proxy, the Sponsor held 3,190,000 shares of HighCape stock—as to which the Sponsor agreed to waive any Redemption Rights and which were not entitled to any liquidation distribution in the event that HighCape would liquidate. HighCape Capital is a limited partnership controlled by Rakin and Zuga that "manages several investment vehicles" for the benefit of HighCape Capital, and by extension, Rakin and Zuga. HighCape Captial founded HighCape and is also an "affiliate" of HighCape Partners QP II, L.P., a member of the Sponsor. Both members of the

Sponsor, HighCape Partners QP II, L.P. and HighCape Partners II, L.P., as well as HighCape Partners QSI II Invest, L.P. (not a member of the Sponsor) are managed by the same general partner, HighCape Partners II GP, L.P., which is managed by its general partner, HighCape Capital II GP, LLC. Each of these HighCape Capital "general partner" entities are therefore HighCape Capital, LLC investment vehicles that are ultimately controlled by Rakin and Zuga, its managing members.

23. Defendant Rakin was HighCape's Chairman and CEO from June 2020 to June 2021. As a result of the Merger, Rakin was nominated and later named to serve as a director of New QSI. Rakin has served on the New QSI board ever since. Rakin purchased 100,000 shares of HighCape stock in the PIPE financing conducted in connection with the Merger. Rakin co-founded HighCape Capital in 2013 with Zuga, who has worked with Rakin for over 20 years.

24. Defendant Zuga was a director of HighCape as well as HighCape's CFO and COO from June 2020 to June 2021. Zuga co-founded HighCape Capital in 2013 with Rakin, who has worked with Zuga for over 20 years. Zuga is the Sponsor's sole managing member.

25. Defendant Colpman was a HighCape director from September 2020 to June 2021. Colpman has served as an advisor to HighCape Capital since at least August 2020. At the time of the Merger, Colpman owned 30,000 Founder Shares.

26. Defendant Taub was a HighCape director from September 2020 to June 2021. Taub has served as an advisor to HighCape Capital since at least August 2020. At the time of the Merger, Taub owned 30,000 Founder Shares.

27. Defendant Loebel was a HighCape director from September 2020 to June 2021. Loebel has served as an advisor to HighCape Capital since at least November 2020. At the time of the Merger, Loebel owned 30,000 Founder Shares.

28. Defendant Rothberg is the founder of Legacy QSI, served as Legacy QSI's CEO from December 2015 until November 2020 and again from February 2022 until October 2022, and currently serves as New QSI's Chairman, a position he held at Legacy QSI prior to the Merger. Rothberg founded Legacy QSI in 2013, and has controlled Legacy QSI or New QSI ever since. As part of the Merger, the HighCape Defendants agreed to grant Rothberg sole ownership over newly issued shares of Class B stock with 20:1 voting power over New QSI Class A common stock, giving Rothberg over 80% of New QSI's voting power. The Proxy states that Rothberg and Rakin have known each other for over 20 years, but provides no additional information about their relationship.

29. Rothberg founded 4Catalyzer Corporation ("4C") in 2014, whose principal executive offices are located at 530 Old Whitfield Street, Guilford, Connecticut. 4C is a start-up "medical technology incubator" for Rothberg's

portfolio of companies he founded. New QSI is one of at least 11 4C portfolio companies.

30. Defendant Foresite was an early investor in Legacy QSI. In connection with the Business Combination Agreement, Foresite and the Sponsor entered into Subscription Agreements which required the Sponsor to forfeit and cancel 696,250 Founder Shares and issue 696,250 shares of HighCape Class A common stock at a price of $0.001 per share, or $696.25, to Foresite immediately prior to the closing of the Merger. Foresite also purchased 2,500,000 shares of HighCape stock in the PIPE financing conducted in connection with the Merger. In addition, the Business Combination Agreement also granted Foresite one designee of its choosing to serve as a director on New QSI's board following the Merger. Foresite designated its founder, CEO, and sole managing member, James Tananbaum. On June 16, 2022, New QSI announced that Foresite managing director Vikram Bajaj was appointed to New QSI's board of directors.

C. RELEVANT NON-PARTIES

31. New QSI claims to be an "innovative life sciences company with the mission of transforming single molecule analysis and democratizing its use by providing researchers and clinicians access to the proteome, the set of proteins expressed within a cell," to "unlock significant biological information through improved resolution and unbiased access to the proteome at a speed and scale that is

not available today." Its current existence as a publicly traded company is due to the Merger of Legacy QSI with HighCape.

32. New QSI's "platform" consist of two products: (i) "the Carbon™ automated sample preparation instrument" ("Carbon") and (ii) "the Platinum™ NGPS[12] instrument" ("Platinum"). "Quantum-Si Cloud™" ("QSI Cloud") is New QSI's software program used to gather the data collected by Platinum, and is inclusive in the $70,000 purchase price of Platinum and not sold as an individual product.[13] Therefore, New QSI's platform products include Carbon and Platinum, which require the use of separately sold kits and chips to run them (the "Platform"). Each of these products are purportedly designed for laboratory or experimental use in medical or medical-related research fields.

33. Deerfield, along with their controller, James E. Flynn, owned an approximately 25% equity stake in the Sponsor, and aided the Sponsor and HighCape in its evaluation of acquisition targets, including Legacy QSI.[14] Along with the Controller Defendants and Director Defendants, Deerfield agreed to vote all of its HighCape stock in favor of the Merger and agreed not redeem any of its shares in connection with the Merger.

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[12] "NGPS" means next generation protein sequencing.

[13] QSI_0000436.

[14] QSI_0000001.

SUBSTANTIVE ALLEGATIONS

A. STRUCTURE OF SPACS

34. SPACs are publicly traded corporations, founded by "sponsors," that have no business operations of their own, but are instead created to raise funds through an IPO for the purpose of merging, typically with privately held operating businesses within a specified period of time. In the IPOs, SPACs generally issue and sell "units," which are comprised of both shares and warrants to purchase shares. The funds raised in the IPO are held in a trust. SPACs have a deadline, set forth in their charters, to identify a target company or business to acquire or to liquidate (or seek stockholder approval for an extension), normally between 18 and 24 months.

35. Once a SPAC identifies a target and the target agrees to the terms of a merger, public stockholders' Redemption Rights are triggered. The SPAC will issue a proxy statement soliciting stockholder support for the deal and informing public stockholders of their Redemption Rights. The IPO and other funds held in trust do not become assets of the SPAC unless and until all public stockholders have been given the opportunity to redeem their shares and receive $10 per share plus interest. If the SPAC does not complete a transaction within the specified window, it liquidates and dissolves, and the money held in the trust is returned to public investors. Because targets are typically privately held, to make their decision whether to redeem their shares or invest in the targeted transaction, SPAC public

stockholders necessarily must depend on their fiduciaries to provide complete and accurate information about the merger and the target company.

36. This transactional structure serves as a back door to an IPO for the target company. Typically, the target company reverse merges with a subsidiary of the publicly listed SPAC, which then serves as the SPAC's operating subsidiary going forward. The SPAC, which is the surviving entity, then assumes the identity of the target company, changing its name and applicable security listings. This structure allows the target company to bypass the time and expense of a traditional public listing and avoid regulatory scrutiny and traditional gatekeepers, such as the underwriters who would perform due diligence in a firm commitment offering.

37. Accordingly, the founders and management team of a SPAC, who own approximately 20% of the SPAC through their ownership of founder shares and typically have invested millions of dollars in warrants to buy additional shares of the combined company are highly incentivized to get a qualifying transaction consummated within the liquidation deadline. Furthermore, SPAC sponsors, management, and directors are heavily incentivized to reduce stockholder redemptions, because redemptions deplete available cash in the trust that will be used to fund the merger and ongoing operations following the merger, reducing the value of the founder shares and warrants that the SPAC sponsor, management, and directors hold, and often, threatening the business combination altogether.

38. An important check on the potential for misconduct by the directors, officers, and controllers of SPACs, however, is their fiduciary duties to stockholders. Delaware SPACs are still Delaware corporations, governed by the State's statutory and common law. Accordingly, if a SPAC chooses to incorporate in Delaware, its fiduciaries are bound by their fiduciary duties.

39. Defendants here enjoyed all the typical powers and opportunities bestowed upon them by the conflict-laden SPAC structure. But they then used those powers and opportunities to serve their own interests at the expense of the interests of the Class. Where, as here, there are "inherent conflicts between the SPAC's fiduciaries and public stockholders," then "[t]he entire fairness standard of review applies."[15] The Merger, the product of an unfair process at an unfair price, fails that standard. In breach of their fiduciary duties of loyalty and good faith, Defendants misled Plaintiff and Class members in order to minimize redemptions and maximize their windfalls.

1. HighCape's Structure Before the Merger

40. Defendants HighCape Capital, Rakin, and Zuga created HighCape as a SPAC and incorporated it in Delaware on June 10, 2020. Defendants created HighCape for the purpose of "effecting a merger, capital stock exchange, asset

[15] *See In re MultiPlan Corp. S'holders Litig.*, 268 A.3d 784, 792 (Del. Ch. 2022).

acquisition, stock purchase, reorganization or similar business combination with one or more businesses."

41. On June 10, 2020, Sponsor purchased 2,875,000 Founder Shares for $25,000 ($0.009 per share). It then transferred 30,000 Founder Shares to each of Colpman, Taub, and Loebel, leaving the Sponsor with 2,785,000 Founder Shares. Deerfield owned an approximately 25% equity stake in the Sponsor, and HighCape owned the rest.[16] The Founder Shares represented approximately 20% of HighCape's outstanding stock immediately after the IPO.

42. On September 9, 2020, HighCape consummated its IPO, selling 11,500,000 units at $10 per unit, with each unit consisting of one share of Class A common stock and one-third of one warrant, generating total gross proceeds of $115 million. The IPO proceeds were placed in a trust account to be held for the benefit of public stockholders. Pursuant to HighCape's charter, the funds held in the trust account could not be released to the Company until the closing of a transaction, and in which case the trust funds would first be used to pay any stockholders exercising their Redemption Rights and then the leftover to fund a portion of the merger consideration.

[16] QSI_0000001.

43. Per HighCape's Certificate of Incorporation, Defendants had 24 months from the IPO, or until September 9, 2022, to complete an initial business combination.

44. Simultaneously with the consummation of HighCape's IPO, the Sponsor purchased 405,000 Private Placement Units at a price of $10 per unit, raising $4.05 million. Each Private Placement Unit was comprised of one Private Placement Share and one-third of one whole Private Placement Warrant. Each whole Private Placement Warrant entitled the holder to purchase one share of Legacy QSI Class A common stock at an exercise price of $11.50 per share. Each whole warrant was exercisable 30 days after the business combination or one year after the closing of the IPO, whichever was later. Because the Sponsor waived the Redemption Rights as to the Founder Shares and Private Placement Shares, absent a deal, they would be worthless. The Private Placement Warrants, which could only be transferred, exercised, assigned, or sold 30 days after a business combination was consummated, would also expire as worthless absent an initial business combination.

B. THE CONTROLLER DEFENDANTS CONTROLLED HIGHCAPE

45. The Prospectus issued in connection with the IPO admitted that HighCape's "initial stockholders will continue to exert control [over HighCape] at least until the completion of [its] initial business combination." "Initial stockholders" was defined as the Sponsor and any other holders of the Founder

Shares immediately prior to the offering. Rakin and Zuga co-founded and co-manage HighCape Capital. HighCape Capital, in turn, owned 75% of the Sponsor, with Deerfield owning the remaining 25%. The Proxy claimed that Zuga was the Sponsor's sole managing member with sole voting discretion for its shares of HighCape stock. Rakin, however, signed the Sponsor Letter Agreement on February 18, 2021, as the Sponsor's Chairman and CEO, requiring the Sponsor to vote all of its stock in favor of the Merger, demonstrating he also controlled the Sponsor. Rakin and Zuga, therefore, individually and through their control of the Sponsor and HighCape Capital, controlled HighCape.

46. The Controller Defendants set up HighCape with a classified Board, consisting of three different classes of directors. Only defendant Loebel would stand for reelection at the first annual meeting of stockholders and defendants Colpman and Taub would stand for reelection at the second annual meeting. Thus, it would take at least two annual meetings to change a majority of the Board. Further, the first annual meeting would not occur until after HighCape's first fiscal year after listing on the Nasdaq Stock Market. Therefore, stockholders would be unable to change the control of the Board within the two years allotted for HighCape's search for a business combination.

47. Zuga and Rakin also consolidated the day-to-day management and control of HighCape amongst themselves. Rakin was the CEO and Chairman of the

Board of HighCape. Zuga, was the CFO, COO, and a director of HighCape. It appears Rakin and Zuga were the only representatives of HighCape tasked with negotiations in connection with the Merger.

48. The Controller Defendants also packed the Board with loyalists who they then incentivized to approve an initial business combination, even on terms that would be value destructive. Specifically, the Controller Defendants appointed Colpman, Loebel, and Taub to the Board, which was divided into three classes, and ensured the fealty of Colpman, Loebel, and Taub by compensating them with Founder Shares, which would only be valuable upon the consummation of an initial business combination. Thus, Colpman, Loebel, and Taub were conflicted and interested in the Merger.

49. The Controller Defendants (specifically, Rakin and Zuga) ran the Merger process. The Company only produced a single document that was attributable to HighCape or the Controller Defendants, HighCape Board materials dated October 1, 2020 (before the Merger process began and before Legacy QSI was under consideration).[17] This document tasked Colpman, Loebel, and Taub with participating in "Diligence" and in the "Transaction" [redacted]

[17] As explained above, both Delaware law and HighCape's Bylaws required the Company's Secretary to keep minutes of any Board meeting that occurred.

[redacted]

[redacted][18]

[redacted]

C. CONCURRENT CONFLICTS OF INTEREST

50. Defendants were crippled by numerous conflicts of interest that existed.

51. Colpman and Taub have served as Advisors to HighCape Capital since at least August 2020. Loebel has served as an Advisor to HighCape Capital since at least November 2020.

52. Since before the Merger, Rakin has served as Executive Chairman of Aziyo Biologics, Inc. (now known as Elutia Inc.), a publicly traded portfolio company of HighCape Capital which he co-founded. Following the Merger, on

[18] QSI_0000010. The document gives the Board [redacted] in the event of [redacted] presumably meaning that the Board [redacted]

November 2021 and October 2022, respectively, Zuga and Colpman were named directors of Aziyo Biologics, Inc.

53. Rakin and Taub have also had a years-long relationship at Nyxoah S.A., a company founded by Taub. Taub currently serves as Nyxoah S.A.'s Chairman and CEO, while Rakin has served as a director since September 2016.

54. As mentioned above, Rakin has known Rothberg for over 20 years. Other than mentioning the length of Rakin and Rothberg's decades-long relationship, the Proxy does not discuss the scope of that relationship, or any potential conflicts arising from it.

55. On February 9, 2021, over three months prior to the issuance of the Proxy and while the Controller Defendants were negotiating the terms of the Merger, HighCape Capital formed a second SPAC, HighCape Capital Acquisition Corp. II ("HighCape II"). HighCape II filed its Registration Statement on Form S-1 with the SEC on March 10, 2021. HighCape II's Registration Statement noted that its director nominees were Colpman, Taub, and Loebel and that HighCape II's sponsor transferred each of them 30,000 HighCape II founder shares in March 2021.[19]

[19] HighCape II did not ultimately perform an IPO, and filed its withdrawal with the SEC on February 10, 2022.

D. THE CONTROLLER DEFENDANTS CAUSE HIGHCAPE TO ACQUIRE LEGACY QSI

56. HighCape completed its IPO on September 9, 2020. The Proxy claims that before going public HighCape did not engage in discussions with any businesses about a transaction. In the less than two months between the IPO and late October 2020, the Proxy claims that HighCape "reviewed *over 40* business combination opportunities" and "entered into nondisclosure agreements with *15 companies* to pursue a more detailed diligence review" of those companies. No Section 220 documents support this claim.

57. In late October, Rakin wrote to Rothberg, Legacy QSI's founder and Chairman, to "inquire whether HighCape could start discussions with *any* of the [4C] companies." There is no evidence in the Section 220 production that the Board ever saw this correspondence.

58. On November 5, 2020, James Streator of Cowen & Company, LLC informed Rakin and Zuga that Legacy QSI was evaluating "financing alternatives" and "wanted to get an update" about HighCape's potential interest.

59. On December 28, 2020, HighCape's process of evaluating Legacy QSI effectively began with HighCape and Legacy QSI entering into a confidentiality agreement after a virtual meeting between Rothberg and Rakin.

60. Three days later, on December 31, 2020, Rakin and Zuga met virtually with Rothberg. During the meeting, Rothberg engaged in specific discussions with Rakin and Zuga about his position on Legacy QSI's business, "preliminary valuation parameters," and "the potential business combination."

61. From that point forward, HighCape had its sights only on Legacy QSI. Without having conducted any due diligence to that point, Rakin and Zuga also discussed with Rothberg "a potential lead investor for a PIPE financing," and "a transaction timeline and next steps." There is no indication Colpman, Loebel, and Taub approved or were even aware of the confidentiality agreement or the subject matter of these discussions, which is no surprise given the Controller Defendants' instruction that they would only be consulted on an "as needed" basis.

62. That same day, Legacy QSI's counsel delivered a draft letter of intent to HighCape. There is no evidence that the Board ever reviewed or was informed about the letter of intent, or that it was aware that Legacy QSI was exploring "financing alternatives." Moreover, there is no evidence that Defendants ever explored whether Legacy QSI, which had no revenue, could continue its operations at all without getting a cash infusion from public stockholders through a de-SPAC merger.

63. Also on December 31, 2020, Rothberg introduced Rakin and Zuga to "investment bankers at J. P. Morgan Securities LLC ("J.P. Morgan")." During the

meeting, they discussed "financing and valuation metrics" and J.P. Morgan's involvement "as the placement agent to the PIPE financing." HighCape would later retain J.P. Morgan to act as placement agent to the Merger's PIPE financing. J.P. Morgan's payment would be fully contingent on consummation of the Merger.

64. According to the Proxy, J.P. Morgan was also retained by HighCape to "provide its advisory services." There are no HighCape Board meeting minutes or presentations mentioning J.P. Morgan and no Board resolutions or similar documents demonstrating that the Board was ever aware that J.P. Morgan was retained by HighCape for any purpose before signing the Business Combination Agreement. There is also no evidence of J.P. Morgan providing any advisory services to the Board, despite HighCape's representation in connection with Plaintiff's Section 220 demand that its production of Board materials concerning the Merger was complete.

65. Further, the Proxy admits that J.P. Morgan's retention did not include a fairness opinion or independent analysis or diligence associated with Legacy QSI's finances. In fact, the Board never sought a fairness opinion or third-party financial advice from any financial advisor in conjunction with the Merger. It was undisclosed how much J.P. Morgan was paid for these purported "advisory" services.

66. On January 4, 2021, Rothberg, Rakin, Zuga, and Foresite met. Foresite gave its "perspective on valuation and a potential financing," while Rothberg emphasized the importance of the governance structure of New QSI post-Merger. Rothberg required post-Merger control of New QSI. Without the knowledge or approval of Colpman, Loebel, or Taub, Rakin and Zuga agreed that "HighCape and [Legacy QSI] would pursue a dual-class common stock structure, where one class of shares would hold 20 times more voting power than the other class of shares." Rothberg was the only person who would receive any super-voting shares in post-Merger QSI.

67. On January 8, 2021, Rakin delivered to Legacy QSI a counter-proposal to Legacy QSI's December 31, 2020 draft letter of intent, which was "formulated with consideration given to a range of valuations discussed with Foresite." There is no indication Colpman, Loebel, or Taub approved or were even aware of the counter-proposal or its terms.

68. On January 11, 2021, Rakin visited Legacy QSI and 4C's joint headquarters in Guilford, Connecticut. While there, Rakin allegedly met with Legacy QSI's management. Zuga, Deerfield, Foresite, as well as two of HighCape Capital's advisors attended the meeting virtually. Colpman, Loebel, and Taub were not present. At the meeting, Legacy QSI gave an "overview presentation of its vision, products, technology, intellectual property, competitive positioning, market

opportunity and financial projections," while HighCape presented "its vision on adding value to Quantum-Si's business." Again, there were no Section 220 documents produced relating to these presentations or this meeting. Likewise, there is no indication that Colpman, Loebel, and Taub were ever apprised of, or inquired about, this meeting or the information discussed.

69. On January 12, 2021, the day after the supposed "overview" session, without a Board meeting or approval, HighCape and Legacy QSI entered into a non-binding letter of intent ("LOI"). The LOI valued Legacy QSI at $810 million, the same pre-Merger equity valuation at which the Merger closed.

70. To this point, there is no indication that HighCape had received any financial information from Legacy QSI. Prior to January 13, 2021, significant Legacy QSI investor, Foresite, appears to have acted as Rakin and Zuga's primary source of information on Legacy QSI's valuation on which the LOI valuation (and ultimately, the Merger consideration) was presumably based, giving the Controller Defendants its "perspective," "insight into certain due diligence activities" Foresite conducted on Legacy QSI over the past year, and "thoughts about an estimated valuation" for the Merger.

71. Foresite, however, was conflicted and stood to benefit in multiple ways if the Merger closed. First, Foresite was an early and ongoing investor in Legacy QSI, holding a substantial illiquid block of Legacy QSI stock. Between July 12,

2019 and February 21, 2020, Foresite purchased 6,716,418 shares of Legacy QSI Series E Preferred Stock for $36,000,000 or approximately 8% of Legacy QSI's equity prior to the Merger, giving it a material incentive to convince Defendants to highly value Legacy QSI. As a result of the Merger, Foresite's illiquid equity in Legacy QSI would become 8,384,216 shares of saleable QSI Class A common stock. Thus, Foresite had a significant financial incentive to get a deal done on terms and at a price favorable to Legacy QSI. Foresite took advantage of its position and the Controller Defendants' conflicts to also negotiate an agreement with HighCape and the Sponsor whereby HighCape granted Foresite 696,250 shares of HighCape Class A common stock for $696.25. Foresite later nominated Tananbaum to serve as a QSI director post-Merger.

72. Sometime between January 13 and February 16, 2021, HighCape finally received financial information from Legacy QSI. The Proxy states that the financial information that Legacy QSI provided "served as a basis for developing HighCape's financial model of [Legacy QSI] and aided in the confirmation of the valuation agreed upon in the LOI." Despite HighCape's financial model purportedly being the basis for confirming the accuracy of the Projections prior to publishing them to stockholders, the Board was never shown Legacy QSI's financial information, and based on the absence of any documents showing such information provided in response to the Section 220 demand, the Board was not provided with

the model HighCape developed to "confirm[] ... the valuation agreed upon in the LOI." In fact, it appears the Board was never even shown the $810 million valuation or Projections for Legacy QSI (until the Proxy).

73. While no documents were produced evidencing a Board meeting during the Merger process, the Proxy claims that the Board convened a meeting on January 27, 2021. At that purported virtual meeting, Rakin and Zuga, for the first time, "briefed" Colpman, Loebel, and Taub on the terms of the proposed Merger, the status of the PIPE financing, "the *results* of [HighCape's] technology and intellectual property due diligence," and J.P. Morgan's comparable company analysis. The Section 220 production contained no minutes of this meeting, no presentation documents from this meeting, no documents demonstrating J.P. Morgan's analysis, and no evidence that this analysis exists. There is also no indication that Colpman, Loebel, or Taub ever received a copy of the LOI or reviewed any due diligence materials.

74. Beginning on February 1, 2021, Rakin, Zuga, and Legacy QSI's management engaged with potential investors on a PIPE financing. There is no evidence that Colpman, Loebel, or Taub played any role in these discussions, reviewed any materials presented at these meetings, or approved of the investors.

75. In the weeks that followed, subject to the rubber stamp by Colpman, Loebel, and Taub, the terms of the Business Combination Agreement were finalized.

There is no evidence that Colpman, Loebel, or Taub were consulted during the negotiation process. The Proxy claims that on February 17, 2021, the Board convened its second and final meeting concerning a potential business combination with Legacy QSI via video conference "to discuss the Business Combination and the terms of the definitive agreements, as well as HighCape's diligence review." The Section 220 production contained no minutes of a February 17, 2021 meeting, no presentation, no agenda, no documents supporting the Board's "unanimous vote" approving the Merger, or any other evidence to suggest this meeting even occurred.[20] The Board purportedly approved the Merger at that meeting (though no resolution or written consent reflecting such approval exists), and HighCape entered into the Business Combination Agreement the next day.

76. On February 17, 2021, the Legacy QSI board of directors met to discuss the Merger. At that meeting, attended by Rothberg and Foresite's founder Tananbaum, Legacy QSI's board discussed a [redacted] that included a reference to [redacted][21]

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[20] At a minimum, assuming the Board did actually approve the Merger, the Proxy's claim that there was a diligence review is false.

[21] QSI_0000948, QSI_0000950.

77. At the same time the Business Combination Agreement was entered into on February 18, 2021, HighCape entered into Subscription Agreements to sell 42,500,000 shares of HighCape Class A common stock at $10 per share (the "PIPE Transaction") to increase the aggregate gross proceeds available to fund the Merger. The PIPE Transaction would close concurrently with the Merger.

78. The Company announced the Merger on February 18, 2021.

E. DEFENDANTS ISSUE A MATERIALLY MISLEADING PROXY

79. Approval of the Merger required an affirmative vote of a majority of HighCape Class A stockholders at the Special Meeting. In addition, pursuant to the Business Combination Agreement, the Merger was contingent on HighCape contributing at least $160,000,000 in cash to Legacy QSI from the trust account, including the proceeds from the PIPE financing.

80. On May 14, 2021, Defendants caused HighCape to file the Proxy with the SEC. The Proxy announced that HighCape would hold the Special Meeting of Stockholders on June 9, 2021. The Proxy set the record date as May 10, 2021 and June 7, 2021 as the date by which HighCape Class A stockholders were required to redeem their shares in the event they elected to do so.

81. As of the date of the Proxy, based on $115 million being held for the benefit of HighCape's public stockholders in the trust, the estimated redemption value was approximately $10 per share. Stockholders could redeem their shares

regardless of how they vote on the Merger. If they redeemed their shares, stockholders would still retain their warrants.

82. "The [HighCape] Board was under an 'affirmative duty' to provide 'materially accurate and complete' information to stockholders in connection with the redemption choice and merger vote."[22] The Proxy, however, contained false and misleading disclosures or omitted material information concerning: (i) the role of the Board during the Merger process; (ii) Legacy QSI's Platform and its ability to commercialize; (iii) the Projections for Legacy QSI; and (iv) the valuations purportedly conducted to value Legacy QSI.

1. The Proxy Materially Overstated the Role of the Board in the Merger Process

83. The Proxy refers to numerous Board meetings and interactions with HighCape management and its advisors. The Proxy also states that the Board was an active participant in the Merger process and carefully considered Legacy QSI before agreeing to the Merger. These statements were false and misleading based on the Section 220 documents produced by the Company.

84. Specifically, the Proxy states that the Board met on: (i) January 27, 2021 to discuss the Merger and Merger-related documents, due diligence, and J.P. Morgan's valuation analysis; and (ii) February 17, 2021 to discuss the Merger, the

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[22] *See Delman v. GigAcquisitions3, LLC*, 288 A.3d 692, 723-24 (Del. Ch. 2023).

Business Combination Agreement, due diligence review, PIPE financing, and information provided by Foresite, and then approved the Merger. There is no evidence that either of the meetings or these discussions actually occurred. The only evidence that any Board meeting took place at all is the October Board Presentation, which suggests the Board only met directly following the IPO and before the Merger process even began.

85. The Proxy states that the Board was provided with: (i) an update from HighCape management on the executed LOI and a summary of the Merger process on January 12, 2021; (ii) the J.P. Morgan valuation presentation; (iii) a review of the "results of management's due diligence"; (iv) "current information and forecast projections from [Legacy QSI] and HighCape's management"; (v) information "by third party consultants reviewing [Legacy QSI's] technology development and intellectual property"; (vi) Legacy QSI's total addressable market ("TAM") and potential for international commercialization; (vii) information on comparable companies; (viii) potential strategic value from PIPE investors; and (ix) extensive research reports and data related to the life sciences tools sectors. The Proxy also stated that HighCape's management presented its "findings" to the Board that supported an $810 million Legacy QSI valuation.

86. There is no evidence that any of this information was actually provided to the Board. Based on this evidence, or lack thereof, the members of the Board

abdicated their obligation under Delaware law to be active participants in the Merger process. Had they done the work they were obligated to do as directors of a Delaware corporation, they would have learned that the Projections were unrealistic, Legacy QSI's products were not market-ready, and that Legacy QSI could never actually manufacture the requisite number of products to fulfill orders to meet its lofty Projections.

87. These material omissions and misrepresentations gave the impression to stockholders that the Board worked arduously and effectively to ensure fair process and fair price. This was absolutely false and misleading based on the evidence—or lack thereof—gathered in response to Plaintiff's Section 220 demand, and Legacy QSI's actual business expectations and financial results as discussed *infra*.

2. The Proxy Projections Were Inflated and Omitted Counterbalancing Factors

88. The Proxy disclosed the Projections, which it claimed were Legacy QSI management's "estimates and assumptions with respect to the expected future financial performance of [New QSI]" through 2025:

$ in millions	2021	2022	2023	2024	2025
Revenue	NM	$ 17	$ 49	$104	$186
Operating expenses	$ 56	$ 81	$102	$125	$147
Net income	$ (56)	$(70)	$ (70)	$ (53)	$ (15)
% gross margin	NM	65%	65%	69%	71%

89. The Proxy stated that the revenue in the Projections was "based on device placements across research, clinical and applied market settings," which would be generated by penetrating less than 1% of TAM in 2022-23, and between 1.5% and 3% of TAM in 2024-25. Gross margins were forecasted based on product selling prices and manufacturing costs, and operating expenses were based on "hiring plans." According to the Proxy, the Projections were prepared as of February 1, 2021. Based on the Section 220 documents, the Projections were provided to the Legacy QSI board of directors on February 17, 2021.[23]

90. The Projections were false and misleading. Legacy QSI was not close to bringing any products to market at the time the Proxy was issued and thus was not reasonably expected to be able to earn any revenue in the near term as the Projections forecasted. In addition, even if New QSI could have gotten closer to generating revenue, doing so would require a drastic increase in expenses, further decreasing its net income.

91. Defendants knew, or should have known, that the assumptions underlying the Projections were overly optimistic and unachievable. Foresite and Rothberg provided the Projections and valuations to Rakin and Zuga. The Proxy stated that Rakin and Zuga reviewed, with Legacy QSI management, "a detailed

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[23] QSI_0000950.

financial forecast and conducted a review of the financial models, including *all* major assumptions for *all* internal and external costs," "*key* assumptions for projected product revenues" and "pricing assumptions for *all* elements of the product and consumable offerings." The Proxy also stated that for some of these assumptions, Legacy QSI (a/k/a Rothberg and Foresite) "proposed a range of possible outcomes," and further, that Rakin and Zuga "took a *conservative approach* in its consideration of such ranges" before "settling on a final valuation." This material information would have informed the HighCape Defendants that Legacy QSI had no actual business ability to meet the high-end product revenue and TAM penetration assumed in the Projections.

92. That the Projections were materially misleading is directly supported by the fact that, less than two weeks after the close of the Merger, the New QSI board was provided with the Downgraded Projections.

93. Just 13 days after the close of the Merger, on June 23, 2021, the New QSI board was presented with two sets of "five-year projections" by QSI management.[24] The first scenario showed that in order achieve revenues consistent with the Proxy's Projections, New QSI would have to [redacted]

[24] QSI_0000030.

[redacted][25] In particular, the first scenario set forth the following:

[redacted]

94. The second scenario assumed [redacted] Here, while projecting [redacted]

[25] QSI_0000422.

[redacted][26] In particular, the second scenario showed:

[redacted]

95. Under either scenario, New QSI's net losses were projected to be [redacted] each year compared to the net losses projected in the Proxy. The following tables show the differences between the Proxy Projections and those provided to the New QSI board less than two weeks after the Merger closed:

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[26] *Id.*

TOTAL OPERATING EXPENSES ($ millions)			
	Proxy Projections	**Scenario 1**	**Scenario 2**
2021	$56	[redacted]	[redacted]
2022	$81	[redacted]	[redacted]
2023	$102	[redacted]	[redacted]
2024	$125	[redacted]	[redacted]
2025	$147	[redacted]	[redacted]

TOTAL REVENUE ($ millions)			
	Proxy Projections	**Scenario 1**	**Scenario 2**
2021	$0	[redacted]	[redacted]
2022	$17	[redacted]	[redacted]
2023	$49	[redacted]	[redacted]
2024	$104	[redacted]	[redacted]
2025	$186	[redacted]	[redacted]

NET INCOME (LOSS) ($ millions)			
	Proxy Projections	**Scenario 1**	**Scenario 2**
2021	($56)	[redacted]	[redacted]
2022	($70)	[redacted]	[redacted]
2023	($70)	[redacted]	[redacted]
2024	($53)	[redacted]	[redacted]
2025	($15)	[redacted]	[redacted]

96. This is material information that the HighCape Defendants knew, or should have known, with regard to the due diligence conducted in connection with the Merger, and certainly prior to the dissemination of the Proxy.

97. This is also information that the Aiding and Abetting Defendants knew based on representations in the Proxy as to their involvement in providing valuations and Projections to the HighCape Defendants and as a result of their roles with Legacy QSI.

98. Indeed, the Business Combination Agreement signed by Rakin and Rothberg specifies that the HighCape Defendants and Legacy QSI had an obligation and legal duty to revise and update any disclosures in the Proxy prior to the close of the Merger "[i]f any Party becomes aware of any information that should be disclosed in an amendment or supplement to the" Proxy. In particular, the Business Combination Agreement states:

> If any Party becomes aware of any information that should be disclosed in an amendment or supplement to the Registration Statement / Proxy Statement, then (i) such Party shall promptly inform, in the case of any HighCape Party, the Company, or, in the case of the Company, HighCape, thereof; (ii) such Party shall prepare and mutually agree upon with, in the case of HighCape, the Company, or, in the case of the Company, HighCape (in either case, such agreement not to be unreasonably withheld, conditioned or delayed), an amendment or supplement to the Registration Statement / Proxy Statement; (iii) HighCape shall file such mutually agreed upon amendment or supplement with the SEC; and (iv) the Parties shall reasonably cooperate, if appropriate, in mailing such amendment or supplement to the Pre-Closing HighCape Holders. HighCape shall as promptly as reasonably practicable advise the Company of the time of effectiveness of the Registration Statement / Proxy Statement, the issuance of any stop order relating thereto or the suspension of the qualification of HighCape Common Stock for offering or sale in any jurisdiction, and HighCape and the Company shall each use its reasonable best efforts to have any such stop order or suspension

> lifted, reversed or otherwise terminated. Each of the Parties shall use reasonable best efforts to ensure that none of the information related to him, her or it or any of his, her or its Non-Party Affiliates or its or their respective Representatives, supplied by or on his, her or its behalf for inclusion or incorporation by reference in the Registration Statement / Proxy Statement will, at the time the Registration Statement / Proxy Statement is initially filed with the SEC, at each time at which it is amended, or at the time it becomes effective under the Securities Act contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

Business Combination Agreement §5.7.

3. The Proxy Failed to Disclose the HighCape Financial Model

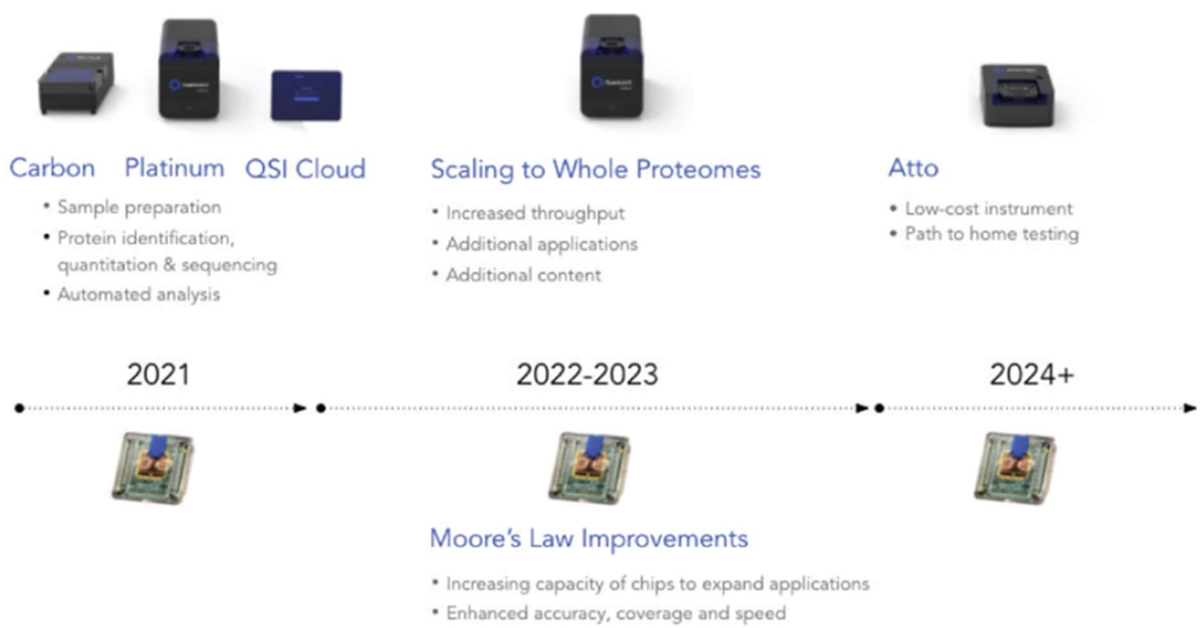
99. The Proxy states that HighCape created the HighCape Financial Model that was provided to the Board and "aided in the confirmation of the valuation agreed upon in the [January 27, 2021] LOI" that valued Legacy QSI at a pre-transaction equity value of $810 million. For "certain assumptions," the HighCape Financial Model purportedly considered "range[s] of possible outcomes" proposed by Legacy QSI management.

100. The HighCape Financial Model was not produced in the Section 220 documents. To the extent that this financial model exists, it should have been disclosed in the Proxy. Failure to disclose the HighCape Financial Model was a material omission.

4. The Proxy Overstated the State of Legacy QSI's Product Development and Commercialization

101. The Proxy claimed that Legacy QSI would "*seek to broadly commercialize [QSI's] platform*, for research use only, *in 2022*." The Proxy also included a "Product Development Roadmap," that told stockholders to expect QSI's "commercial launch in 2022:"

Product Development Roadmap



102. This was untrue. Legacy QSI's Platinum product had, at best, only "minimal viable applications" and Carbon has never been sold to date. New QSI recently disclosed that it "put the beta testing and launch of Carbon on hold while [it] complete[s] an evaluation of [Carbon's] business case," to assess whether to discontinue it entirely.

103. The Company's inability to bring its products to market was known or knowable to Defendants. A mere five months after the Merger closed, at New QSI's November 9, 2021 board meeting, New QSI management presented the board with its revised financial model and preliminary product launch plans for 2022.[27] New QSI's "new" commercial plans and financial model differed [redacted] from the commercialization plans discussed in the Proxy. New QSI management told its board that [redacted][28] In addition, New QSI management informed the board that [redacted][29] In addition, [redacted] In particular, the presentation stated:[30]

[27] QSI_0000173.

[28] QSI_0000190.

[29] QSI_0000183-84, QSI_0000202.

[30] QSI_0000185, QSI_0000190.

[redacted]

104. Thus, New QSI had [redacted] "broad[] commercializ[ation]" in 2022 by November 9, 2021. The same was true when the Merger closed five months earlier, and when the Proxy was issued a month before that. All of this was known or, had the Board conducted the due diligence expected of them, knowable at the time of the Merger. Indeed, New QSI would not make its

first Platinum sales until 2023, and Carbon has never been sold and, as detailed below, likely never will be.

5. The Merger Is Consummated

105. On June 9, 2021, HighCape stockholders approved the Merger, with stockholders redeeming only 5% of the public shares, or 571,128 shares. The Merger closed on June 10, 2021.

106. On that day, New QSI's stock price closed at $10.68 per share, meaning that based on that trading price, the Defendants' 2,805,375 Class B Founder Shares, which they acquired for only $25,000, were worth approximately $29,961,405.

107. In addition, at the close of the Merger, the Controller Defendants' Private Placement Units, consisting of Private Placement Shares and Warrants,[31] were worth over $4.7 million based on then-current trading prices. Notably, the Private Placement Warrants were subject to only a 30-day post-Merger lockup period. In addition, the Controller Defendants purchased 1,801,000 shares of HighCape Class A common stock in PIPE financing Subscription Agreements, worth approximately $19,234,680 at the time of the Merger, which were not subject to a lock-up period.

[31] The public and private warrants had similar terms and thus Plaintiff is using the value of the public warrants as an appropriate proxy for the Private Placement Warrants.

F. THE TRUTH ABOUT QSI IS REVEALED

108. On June 10, 2021, the day the Merger closed, New QSI's stock closed at $10.68 per share. As would soon be revealed, however, New QSI stock was worth but a fraction of this amount

109. New QSI reported no actual revenue for 2021. On February 28, 2022, New QSI reported total operating expenses of $96.9 million, $40 million higher than operating expenses for 2021 in the Proxy Projections, and net loss of $95 million, also nearly $40 million higher than negative net income of $56 million projected in the Proxy Projections. QSI stock traded down to $4.16 per share on this date, as compared to its trading price of $8.22 per share on January 3, 2022.

110. On May 9, 2022, New QSI again reported no revenue for the first quarter of 2022. Instead, New QSI reported $27.1 million in operating expenses and a net loss of $35.2 million.

111. On August 8, 2022, New QSI's disappointing results continued. New QSI reported $30.2 million in operating expenses and net loss of $32.4 million for the second quarter of 2022, and, again, no revenue.

112. Throughout 2022, QSI presented to investors numerous times, tacitly moving back their anticipated "broad commercial" plans for its products. Even by the time New QSI held its November 7, 2022 earnings call, New QSI management could still not provide revenue guidance or commit to any product or production

roadmaps, stating that "*[w]e're not providing any [revenue] guidance yet for 2023*" but that New QSI was making "*good progress on productizing [its] technology*." On November 7, 2022, QSI stated was unable to provide revenue guidance for 2023. QSI also reported operating expenses of $27.7 million and net loss of $31.7 million for the third quarter of 2022, with no revenue.

113. A day later, at New QSI's November 8, 2022 board meeting, QSI management presented a slide deck to its board, describing that the [redacted]

[32] QSI_0000293-94.

[redacted]

114. In addition to the lack of revenue resulting from its product issues and inability to commercialize, as New QSI anticipated less than two weeks after the Merger, New QSI's spending had greatly exceeded the Proxy's Projections. Specifically, New QSI's Annual Reports on Forms 10-K for fiscal years 2021, 2022, and 2023 show that the Company's operating expenses for those years were $96.9 million, $123.8 million, and $111.7 million, respectively, rather than the $56 million, $81 million, and $102 million, respectively, claimed in the Proxy. Net losses too, without any revenue at all, dwarfed the Projections' numbers by an even larger amount.

115. By the end of 2022, New QSI still had not "broadly commercialize[d]" any products. By December 30, 2022, New QSI's stock price had fallen to just $1.83 per share.

116. On March 6, 2023, New QSI reported total operating expenses of $123.8 million for 2022, more than $40 million higher than 2022 operating expenses in the Projections of $81 million, and net loss of $132.4 million, nearly $65 million higher than negative net income in the Projections of $70 million.

[33] QSI_0000294.

117. New QSI did not achieve any revenue at all until the first quarter of 2023, when New QSI finally made its first Platinum sales. Even then, its sales were paltry.

118. New QSI's product problems continued. For instance, New QSI noted internally at its May 2023 board meeting, that [redacted][34] In other words, because Platinum's functionality [redacted] potential customers will not buy it. Carbon on the other hand, may be discontinued entirely prior to ever being released. New QSI management announced further revised 2023 revenue projections to the board at that meeting—it was now projecting just [redacted] million in revenue for all of 2023.[35] Despite now only projecting [redacted] of the $123 million revenue projected in the Proxy for 2023, New QSI's manufacturers were [redacted][36]

119. In a March 6, 2023 press release, New QSI indicated that it "plan[ed] to *begin beta testing for Carbon ... in Q2 2023* and then move to launch in the second half of the year."

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[34] QSI_0000563.

[35] QSI_0000558.

[36] QSI_0000590.

120. When New QSI filed with the SEC its Quarterly Report on Form 10-Q for the first quarter of 2023 on May 11, 2023, New QSI disclosed it had a "backlog" of orders for Platinum of approximately $200,000. But New QSI only reported *$254,000* total revenue that quarter (New QSI's only revenue since the Merger). These revenue numbers are striking. New QSI was then selling Platinum for $70,000 per unit. That meant that New QSI was only able to fulfill, at most, approximately three to four orders of Platinum almost two years after the Proxy led stockholders to believe New QSI would "broadly commercialize" Platinum *and* Carbon, rather than a single dysfunctional product.

121. In the second quarter of 2023, New QSI generated just $205,000 in revenue. As of June 30, 2023, New QSI's backlog declined to only approximately $100,000. Therefore, even absent manufacturing issues, New QSI's revenue would be less than $600,000 for the first half of 2023—*less than one half of 1%* of the $123 million revenue projected in the Proxy for 2023. Ultimately, New QSI would only achieve slightly over $1 million in revenue for 2023—wildly missing the Projections by a very large margin.

122. In New QSI's Quarterly Report on Form 10-K for the second quarter of 2023 filed with the SEC on August 7, 2023, QSI disclosed in a single sentence, six pages from the end of the document, in a section titled "Liquidity and Capital Resources," that New QSI was now "completing a business case evaluation

surrounding" Carbon. Days later, in New QSI's Registration Statement on Form S-3 filed with the SEC on August 11, 2023, New QSI disclosed the full truth about Carbon, stating:

> There are commercially available liquid handling platforms and sample preparation chemistries other than Carbon that may be an equal or better fit for our customers. To this end, we have put the beta testing and launch of Carbon on hold while we complete an evaluation of the business case and assessment of potential options to address the sample preparation portion of the customer workflow.

In other words, over two years after the Merger, before attempting to sell Carbon at all, New QSI is considering Carbon's ability to be commercialized altogether, and may discontinue it completely because it is not as proprietary as it led stockholders to believe in the Proxy.

123. Analysts have expressed considerable skepticism over New QSI and its technology since the Merger. For instance, at New QSI's August 2022 board meeting, QSI's board and management discussed "Investor Feedback & Stock Catalysts," which included the following questions from analysts who refused to initiate coverage on New QSI due to [redacted][37]

- [redacted]

[37] QSI_0000167; QSI_0000469.

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

124. New QSI management explained on the same page of that document that it [redacted][38] These criticisms characterize the public's view of New QSI. Notably, only one analyst has ever agreed to cover New QSI since the Merger closed.

[38] QSI_0000469.

125. And for good reason—New QSI's true product capabilities and its path to realizing meaningful revenue is still, over two years after the Merger, a far-cry from what HighCape stockholders were led to believe in the Proxy.

126. On February 29, 2024, New QSI released its annual results for 2023. New QSI's total revenue for 2023 was only $1.1 million, as compared to $49 million projected in the Projections. Operating expenses were $111.7 million versus the $102 million in the Projections. New QSI projected 2024 total revenue of only up to $4.2 million—just over 4% of the $104 million revenue assumed in the Projections.

127. New QSI's stock price has steadily declined as the public has learned that New QSI was, and remains, incapable of achieving the lofty expectations provided in the Proxy. Today, New QSI's stock trades for under $2 per share.

G. THE MERGER WAS UNFAIR TO THE CLASS

128. By any objective measure, the Merger was grossly unfair to the members of the Class. As the market slowly learned the true facts about the state of New QSI's product commercialization and financial health and prospects, its stock price plummeted and today, sits far below the $10 per share redemption value.

129. Since the conflicts inherent to the controllers and directors of HighCape trigger the entire fairness standard, and no effort was made to comply with the *MFW*

factors, Defendants bear the burden to meet the exacting entire fairness standard of review.

130. Defendants cannot do so for the reasons set forth herein, and, therefore, the Court should award damages reflecting the difference between the price per share HighCape Class A stockholders would have received had they exercised their Redemption Rights and the true value they actually received by instead investing in the Merger.

CLASS ACTION ALLEGATIONS

131. Plaintiff brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of himself and holders of HighCape Class A common stock (the "Class") who held such stock as of the redemption deadline and who elected not to redeem all or some of their stock (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants) and their successors-in-interest.

132. This action is properly maintainable as a class action.

133. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

134. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands, and they are likely

scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

135. There are questions of law and fact that are common to all Class members and that predominate over any questions affecting only individuals, including, without limitation:

a. whether the HighCape Defendants owed fiduciary duties to Plaintiff and the Class;

b. whether the Controller Defendants controlled HighCape;

c. whether "entire fairness" is the applicable standard of review;

d. which party or parties bear the burden of proof;

e. whether the HighCape Defendants breached their fiduciary duties to Plaintiff and the Class;

f. whether the Aiding and Abetting Defendants aided and abetted the breaches of fiduciary duty by the HighCape Defendants;

g. the existence and extent of any injury to the Class or Plaintiff caused by any breach

h. whether Defendants were unjustly enriched by their actions;

i. the availability and propriety of equitable remedies; and

j. the proper measure of the Class's damages.

136. Plaintiff's claims and defenses are typical of the claims and defenses of other Class members and Plaintiff has no interests antagonistic or adverse to the

interests of other Class members. The Plaintiff will fairly and adequately protect the interests of the Class.

137. Plaintiff is committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

138. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

139. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

FIRST CAUSE OF ACTION

Direct Claim for Breach of Fiduciary Duty
(Against the Director Defendants and the Officer Defendants)

140. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

141. As fiduciaries of HighCape, the Director Defendants, in their capacities as directors of HighCape, owed Plaintiff and the Class the utmost fiduciary duties of

care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate and complete material disclosures to HighCape stockholders.

142. These duties required the Director Defendants to place the interests of HighCape stockholders above their personal interests and the interests of the Controller Defendants.

143. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and reputational interests above those of HighCape's stockholders. The Director Defendants also breached their fiduciary duty by approving the unfair Merger and by failing to inform stockholders of the material information necessary to allow them to make an informed redemption decision.

144. The Director Defendants also breached their duty of candor by issuing the materially false and misleading Proxy.

145. Plaintiff and the Class were harmed as the Proxy contained false or misleading disclosures or omitted material information necessary for HighCape's stockholders to make an informed decision whether to exercise their Redemption Rights or invest in the Merger.

146. As fiduciaries of HighCape, the Officer Defendants, in their capacities as officers of HighCape, owed Plaintiff and the Class the utmost fiduciary duties of

care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate and complete material disclosures to HighCape stockholders.

147. These duties required the Officer Defendants, in their capacities as officers of HighCape, to place the interests of HighCape's stockholders above their personal interests and the interests of the Director Defendants and/or the Sponsor. The Officer Defendants are not exculpated from the breach of their duty of care for actions taken in their capacities as officers (which includes all actions set forth herein except their formal vote on the Merger).

148. Through the events and actions described herein, the Officer Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and/or reputational interests, failing to adequately inform stockholders of material information necessary to allow them to make an informed redemption decision, and approving the Merger, which was unfair to HighCape's Class A stockholders.

149. The Officer Defendants also breached their duty of candor by issuing the false and misleading Proxy.

150. The Merger was not fair, and the Director Defendants and Officer Defendants will be unable to carry their burden under entire fairness.

151. As a result, Plaintiff and the Class were unable to mitigate or avoid the harm from the Director Defendants' and the Officer Defendants' breaches by exercising their Redemption Rights prior to the Merger.

152. The Class chose not to redeem their stock based on false and misleading information.

153. Plaintiff and the Class suffered damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION

Direct Claim for Breach of Fiduciary Duty
(Against the Controller Defendants)

154. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

155. The Controller Defendants were HighCape's controlling stockholders. Specifically, the Controller Defendants controlled all of the Founder Shares, appointed the other members of the Board, and held the Chairman and officer roles at HighCape. Further, it was the Controller Defendants that ran the Merger process with little input from the Board.

156. The Controller Defendants owed Plaintiff and the Class fiduciary duties of care and loyalty, which included an obligation to act in good faith, with candor,

and to provide complete and accurate material disclosures to HighCape stockholders.

157. At all relevant times, the Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—the Company to enter into the Merger.

158. The Merger was unfair, reflecting an unfair price and unfair process.

159. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiff and the Class by failing to adequately inform public stockholders of material information necessary to allow them to make an informed redemption decision and by agreeing to and entering into the Merger without ensuring that it was entirely fair to Plaintiff and the Class.

160. As a result, Plaintiff and the Class were harmed when, having been deceived by the false and misleading disclosures and the Board's approval of the Merger, they did not exercise their Redemption Rights prior to the Merger.

161. In addition, the majority of the Class approved the Merger based on false and misleading information.

162. Plaintiff and the Class suffered damages in an amount to be determined at trial.

<u>THIRD CAUSE OF ACTION</u>

Direct Claim for Aiding and Abetting Breaches of Fiduciary Duties (Against the Aiding and Abetting Defendants)

163. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

164. The Aiding and Abetting Defendants knew that the HighCape Defendants owed fiduciary duties to HighCape's common stockholders, which, as set forth above, required that the HighCape Defendants ensure that HighCape's public stockholders' ability to make an informed redemption decision not be impaired.

165. The Aiding and Abetting Defendants knowingly participated in the HighCape Defendants' breaches of their duties, including the fiduciary duties of care and loyalty, which included an obligation to act in good faith, with candor, and to provide accurate material disclosures to stockholders.

166. The Aiding and Abetting Defendants exploited the competing financial interests between the HighCape Defendants and HighCape's public stockholders by conspiring with the HighCape Defendants and providing false and misleading information, including the Projections and information about Legacy QSI's expected future performance and omitting material information regarding the same, which was incorporated in public statements and filings, including the Proxy, which they

had a contractual obligation to review and correct. The Aiding and Abetting Defendants did so, because they too stood to gain a substantial financial windfall if the Merger were to overstate the value of Legacy QSI.

167. As a result of The Aiding and Abetting Defendants' aiding and abetting of the HighCape Defendants' breaches of fiduciary duty, Plaintiff and the Class were harmed through the impairment of their Redemption Rights.

168. Plaintiff and the Class suffered damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

Direct Claim for Unjust Enrichment
(Against All Defendants)

169. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

170. As a result of the conduct described above, the HighCape Defendants breached their duties to the Class, or aided and abetted breaches of fiduciary duty, and put their own interests ahead of those of the Class.

171. The Defendants were unjustly enriched by the wrongful conduct detailed above.

172. All unjust profits realized by the Defendants should be disgorged and recouped by the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against the Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action;

B. Finding the Director Defendants liable for breaches of fiduciary duty;

C. Finding the Officer Defendant liable for breaches of fiduciary duty;

D. Finding the Controller Defendants breached their fiduciary duties in their capacity as the controlling stockholders of HighCape;

E. Finding the Aiding and Abetting Defendants aided and abetted breaches of fiduciary duty by the Officer Defendants, the Director Defendants, and the Controller Defendants;

F. Finding the stockholder vote on the Merger was not fully informed;

G. Finding that the process culminating in the Merger and the issuance of the Founder Shares was not entirely fair;

H. Disgorging all ill-gotten gains from the Defendants;

I. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with pre- and post-judgment interest therein;

J. Awarding reasonable attorneys' and experts witness' fees and other costs; and

K. Awarding such other and further relief as this Court may deem just and proper.

Dated: May 16, 2024

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