IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AARON OFFRINGA AND MICHAEL FARZAD, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. DMY SPONSOR II, LLC, HARRY L. YOU, NICCOLO DE MASI, DARLA K. ANDERSON, FRANCESCA LUTHI, and CHARLES E. WERT, Defendants.	C.A. No. 2023-0929-LWW

PLAINTIFFS' OPENING BRIEF IN SUPPORT OF THEIR MOTION TO CERTIFY THE CLASS, APPROVE THE SETTLEMENT, FOR ATTORNEYS' FEES AND EXPENSES, AND FOR SERVICE AWARDS

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Plaintiffs Aaron Offringa and Michael Farzad ("Plaintiffs"), by and through their undersigned counsel, on behalf of themselves and the proposed Class (defined herein) of dMY Technology Group, Inc. II ("dMY II") public stockholders who held dMY II shares as of the redemption deadline, submit this Opening Brief in Support of Their Motion to Certify the Class, Approve the Settlement, for Attorneys' Fees and Expenses, and for Service Awards (the "Motion") seeking: (i) certification of the Class for settlement purposes, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (ii) final approval of the proposed settlement between (a) Plaintiffs and (b) defendants dMY Sponsor II, LLC, Harry L. You, Niccolo de Masi, Darla K. Anderson, Francesca Luthi, and the Estate of Charles E. Wert (collectively, "Defendants," with Plaintiffs, the "Parties") (the "Settlement"), as set forth in the Stipulation and Agreement of Settlement, Compromise, and Release dated October 10, 2025 (the "Stipulation")[1]; (iii) approval of the proposed plan of allocation (the "Plan of Allocation"); (iv) an award of attorneys' fees and reimbursement of expenses; and (v) service awards to Plaintiffs.

Putative Class members were given notice of the Settlement in accordance with the Scheduling Order entered by the Court on November 25, 2025.[2] To date,

[1] (Trans. ID 77290221).

[2] (Trans. ID 77860440).

there have been no objections. An in-person hearing is scheduled for February 23, 2026 for the Court to consider these matters.

PRELIMINARY STATEMENT

Plaintiffs brought this Action on behalf of themselves and other former dMY II stockholders who were entitled to, but did not, redeem their shares of dMY II Class A common stock in connection with dMY II's business combination with Genius Sports Group Ltd. ("Legacy Genius[3]") (the "Merger"). After successfully opposing Defendants' Motion to Dismiss the Verified Class Action Complaint,[4] which the Court denied by Order dated July 30, 2024, and in the face of significant litigation risk, Plaintiffs were able to secure a $14.8 million payment (the "Settlement Consideration") to the Class through their litigation efforts. No breach of fiduciary duty action challenging a de-SPAC merger has proceeded to trial (or even summary judgment). If this matter were the first, the Court (and Parties) would need to address unique and unanswered questions.

[3] Legacy Genius includes Genius Sports Group Ltd. and Maven TopCo Ltd. ("TopCo"), a company incorporated under the laws of Guernsey. Genius Sports Group Ltd. is an affiliate of TopCo.

[4] (Trans. ID 71578989).

Plaintiffs respectfully submit that the Action is well-suited for class certification.[5] Holders of nearly 27.6 million shares of dMY II common stock chose to forgo their redemption rights and invest in Genius Sports Limited ("New Genius"). Because these shares were likely held by thousands of Class members, joinder of all Class members is impractical, and the proposed Class meets Rule 23(a)(1)'s numerosity requirement. Defendants' actions in pursuing the allegedly unfair Merger and impairing stockholders' redemption decisions affected all public stockholders in substantially the same manner, resulting in common questions of law and fact among all Class members. Plaintiffs and other Class members were similarly affected by Defendants' actions, and Plaintiffs face no unique defenses. Further, Plaintiffs have acted fairly and adequately to protect Class members, as shown by hiring experienced law firms, including law firms well known to this Court, and securing this positive settlement. 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 that Defendants acted in a manner that is generally applicable to the Class.

[5] *See, e.g.*, *In re Multiplan Corp. S'holders Litig.*, 2023 WL 2329706, at *2 (Del. Ch. Mar. 1, 2023) (certifying a non-opt-out class pursuant to Ct. Ch. R. 23(a), 23(b)(1), and 23(b)(2)).

Plaintiffs further submit that the Settlement is fair, reasonable, and adequate. The $14.8 million recovery provided by the Settlement compensates Class members for the harm they incurred as a result of the impairment of their redemption rights. The Parties negotiated the Settlement at arm's-length under the guidance of a highly regarded mediator. The Settlement provides an approximately $0.53 per share recovery to Class members, which compares favorably to other settlements this Court has approved in similar actions,[6] and represents a 32.9% recovery of the

[6] *See, e.g.*, Tab 1, *In re XL Fleet (Pivotal) S'holder Litig.*, C.A. No. 2021-0808-KSJM (Del. Ch. Mar. 21, 2025) (TRANSCRIPT) (approving settlement that provided approximately $0.21 per share); Tab 2, *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 3, *Siseles v. Lutnick*, C.A. No. 2023-1152-JTL (Del. Ch. Dec. 6, 2024) (TRANSCRIPT) ("*View*") (approving settlement that provided approximately $0.32 per share); Tab 4, *In re Finserv Acquisition Corp SPAC Litig.*, C.A. No. 2022-0755-PAF (Del. Ch. Oct. 10, 2024) (TRANSCRIPT) ("*Finserv*") (approving settlement that provided approximately $0.38 per share); Tab 5, *In re GeneDX De-SPAC Litig.*, C.A. No. 2023-0140-PAF (Del. Ch. Dec. 2, 2024) (TRANSCRIPT) ("*GeneDX*") (approving settlement that provided $0.47 per share); Tab 6, *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch. June 25, 2024) (TRANSCRIPT) (approving settlement that provided approximately $0.57 per share); Tab 7, *Yu v. RMG Sponsor, LLC*, C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024) (TRANSCRIPT) ("*Romeo Power*") (approving settlement that provided approximately $0.52 per share); Tab 8, *Delman v. Riley*, C.A. No. 2023-0293-LWW (Del. Ch. Oct. 17, 2024) (TRANSCRIPT) ("*Eos*") (approving settlement that provided approximately $0.99 per share); Tab 9, *Paul Berger Revocable Tr. v. Falcon Equity Invs., LLC*, C.A. No. 2023-0820-JTL (Del. Ch. Jan. 21, 2025) (TRANSCRIPT) (approving settlement that provided approximately $1.10 per share); Tab 10, *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW (Del. Ch. May 12, 2025) (TRANSCRIPT) (approving settlement that provided approximately $0.99 per share); Tab 11, *In re Gores IV, Inc. S'holder Litig.*, No. 2023-0284-LWW (Del. Ch. July 15, 2025) (TRANSCRIPT) ("*Gores IV*") (approving settlement that provided approximately $0.412 per share); Tab 12, *In re InterPrivate Acquisition Corp. S'holder Litig.*, Consol. C.A. No. 2024-0221-LWW (Del. Ch. Sept. 12, 2025) (TRANSCRIPT) ("*Aeva*") (approving settlement that provided approximately $0.58 per share); Tab 13, *Drulias v Apex Tech. Sponsor LLC*, C.A. No. 2024-0094-LWW (Del.

Class's damages based on Plaintiffs' preliminary economic loss analysis. The Settlement Consideration is particularly notable here, as New Genius stock traded above the $10.01 per share redemption price post-Merger for approximately seven months, and an estimated 242,082,151 New Genius shares changed hands during this period.

Plaintiffs also submit their proposed Plan of Allocation is reasonable and appropriate and warrants approval. Similar to the plans of allocation the Court approved in *Super Group*,[7] *Apex*,[8] *Romeo Power*,[9] and *Hyzon*,[10] the Plan of Allocation "equitably accounts" for "economic losses . . . of varying degrees"[11] by "class members who sold their stock at different points [and] experienced significantly different losses."[12] The Plan of Allocation is designed to equitably distribute the Settlement proceeds in accordance with the size of a Class member's recognized loss.

Ch. July 10, 2025) (TRANSCRIPT) ("*Apex*") (approving settlement that provided approximately $0.41 per share); Tab 14, *Newman v. Sports Entertainment Acquisition Holdings LLC*, C.A. No. 2023-0538-LWW (Del. Ch. Sept. 15, 2025) (TRANSCRIPT) ("*Super Group*") (approving settlement that provided approximately $0.59 per share).

[7] Tab 14, *Super Group* Tr. at 28.

[8] Tab 13, *Apex* Tr. at 29–30.

[9] Tab 7, *Romeo Power* Tr. at 46–47.

[10] Tab 15, *Malork v. Anderson*, C.A. No. 2022-0260-PAF, at 28–29 (Del. Ch. Oct. 21, 2025) (TRANSCRIPT) ("*Hyzon*").

[11] Tab 14, *Super Group* Tr. at 28.

[12] Tab 13, *Apex* Tr. at 30.

Plaintiffs additionally submit that an all-in award of $2,368,000 for attorneys' fees and expenses (16% of the Settlement Consideration) is appropriate here. Plaintiffs and Plaintiffs' Counsel achieved this positive Settlement following hard-fought litigation—all undertaken on a fully contingent basis. Plaintiffs' litigation efforts included drafting a strong complaint, successfully opposing Defendants' Motion to Dismiss, negotiating for and reviewing a document production, and obtaining a $14.8 million recovery on behalf of Class members following mediation. Plaintiffs' Counsel devoted 1,139.2 hours (with a lodestar value of $972,546.00) to these efforts and expended $59,293.94 in litigation expenses. The requested fee and expense award is on the low end of awards for settlements reached post-substantive motion practice in which fees ranging from 15% to 20% are typically awarded.[13]

Finally, Plaintiffs request that the Court approve the payment of a $2,500 incentive award to each Plaintiff out of any attorneys' fees awarded to reward them for their role in this Action, including the time and expense incurred in responding to 38 requests for production and 35 interrogatories.

[13] The Court has awarded 15% or more in fees in multiple de-SPAC merger settlements reached prior to the Court's decision on a motion to dismiss. Tab 8, *Eos* Tr. at 23 (15%); Tab 3, *View* Tr. at 49 (15%). The requested fee award here is identical to that awarded in *Aeva*, which was settled post-motion to remand. Tab 12, *Aeva* Tr. at 24 (16%).

FACTUAL AND PROCEDURAL BACKGROUND

A. DEFENDANTS FORM dMY II

On June 18, 2020, dMY Sponsor II LLC (the "Sponsor") incorporated dMY II in Delaware.[14] dMY II's sole purpose was to combine with another company in a de-SPAC merger.[15] By terms of its corporate charter, dMY II had only 24 months from the closing of its initial public offering ("IPO") to effectuate a business combination, or it would be forced to liquidate and return the funds held in trust to public stockholders, with interest.[16]

dMY II was controlled by the Sponsor, which, in turn, was controlled by You and de Masi (together with the Sponsor, the "Controller Defendants").[17] In June 2020, the Controller Defendants granted themselves 5,750,000 shares of dMY II Class B Founder Shares in exchange for $25,000.[18] On August 13, 2020, dMY II effected 1:1.2 stock split of its Founder Shares, providing the Controller Defendants an aggregate of 6,900,000 Founder Shares.[19] The Controller Defendants transferred 25,000 Founder Shares to each of dMY II's purportedly independent directors,

[14] *Offringa v. dMY Sponsor II, LLC*, C.A. No. 2023-0929-LWW, Verified Class Action Complaint (Del. Ch. Sept. 12, 2023) (Trans. ID 70841367) at ¶45 ("Complaint" or "¶ __").

[15] ¶¶2, 3, 50.

[16] ¶¶5, 7, 50.

[17] ¶¶19–21, 39–44.

[18] ¶¶4, 46.

[19] ¶46.

Anderson, Luthi, and Wert.[20] Defendants waived their redemption rights and any rights to liquidating distributions from the trust with respect to the Founder Shares. Accordingly, the Founder Shares would be worthless if dMY II failed to consummate a business combination.[21] If dMY II completed a business combination, however, the Founder Shares could be worth tens of millions of dollars.[22]

B. dMY II GOES PUBLIC

On August 18, 2020, dMY II completed its IPO, issuing 27,600,000 units to public stockholders ("Public Unit(s)"), at a price of $10.00 per Public Unit.[23] Each Public Unit consisted of one share of Class A common stock ("Public Share") and one-third of one warrant, with each whole warrant exercisable in exchange for one share of Class A common stock at an exercise price of $11.50 ("Public Warrant").[24] Contemporaneously with the IPO, the Sponsor purchased 5,013,333 warrants in a private placement for approximately $7.52 million (or $1.50 per warrant) ("Private Placement Warrants"), each of which it could exercise to purchase one share of Class A common stock at an exercise price of $11.50, no earlier than 30 days following

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[20] *Id*.

[21] ¶¶5, 7, 50.

[22] ¶49.

[23] ¶47.

[24] *Id*.

the closing of a business combination.[25] Because they could not be sold or exercised prior to the closing of a business combination, like the Founder Shares, the Private Placement Warrants were worthless absent a merger.[26]

The funds raised in the IPO were placed in a trust for the benefit of public stockholders.[27] If dMY II found a merger partner, public stockholders would have the choice whether to redeem each of their shares for the $10.00 plus interest held in trust on their behalves *or* invest in the Merger.[28] If dMY II liquidated because no business combination materialized, public stockholders likewise would have received a liquidating distribution from the trust of $10.00 per share plus interest.[29]

C. dMY II MERGES WITH LEGACY GENIUS

The Controller Defendants began discussions with Legacy Genius about a potential business combination prior the IPO and entered into a non-disclosure agreement with Legacy Genius the day before dMY II went public.[30] After dMY II and Legacy Genius entered into the non-disclosure agreement, Legacy Genius provided dMY II with a confidential information memorandum and a management

[25] ¶48.

[26] ¶¶5, 7, 50.

[27] ¶¶2, 50.

[28] ¶50.

[29] *Id.*

[30] ¶54.

presentation. Legacy Genius also gave dMY II access to a data room that included Legacy Genius's financial information and forecasts.[31]

As part of the Merger negotiations, dMY II and Legacy Genius agreed that if dMY II contributed less than $415 million to the post-Merger company because too many public stockholders redeemed, the Sponsor would forfeit up to 1,035,000 of its Founder Shares. If the cash dMY II would contribute dropped below $315 million, Legacy Genius could terminate the Merger.[32] This provided Defendants with further incentive to deter redemptions, as with each redemption, the funds held in trust would be further depleted, and the Sponsor was at risk of having to forfeit Founder Shares. On October 25, 2020, the Board approved the Merger and the Merger Agreement.[33]

On March 21, 2021, Defendants disseminated the Proxy to stockholders.[34] The Proxy set the special meeting to hold a stockholder vote on the Merger for April 16, 2021 and advised public stockholders that all redemption elections must be made by April 14, 2021.[35] The Proxy stated that the Merger consideration to be paid to dMY II and New Genius stockholders would consist of New Genius stock valued at

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[31] ¶¶57–58, 62.

[32] ¶65.

[33] ¶72.

[34] ¶75.

[35] *Id*.

$10.00 per share, based on a one-to-one share exchange of dMY II stock into New Genius stock.[36] dMY II's public stockholders thus had a choice—they could redeem their shares for $10.01 per share, or they could invest in the Merger, which, according to the Proxy, would also provide dMY II stockholders with shares of New Genius worth at least $10.00 per share post-Merger.[37]

Plaintiffs claim that the Proxy contained misstatements and omitted material information. *First*, Plaintiffs claim that the Proxy misleadingly implied that the Merger consideration was worth $10.00 per share, when the net cash per share dMY II's public stockholders would contribute to the Merger was less than $7.70.[38]

Second, Plaintiffs allege that the Proxy failed to disclose counterbalancing information concerning the impact of the NFL Agreement on the Proxy Projections.[39] The NFL Agreement required Legacy Genius to pay to the NFL 18,500,000 "NFL Warrants," and approximately $120 million per year in cash and equity, which massively increased New Genius's cost of revenue and decreased its Group Adjusted EBITDA, all of which negatively impacted the Proxy Projections.[40]

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[36] ¶¶76–78.

[37] ¶¶50, 76–78, 87.

[38] ¶¶9, 84–87.

[39] ¶¶93–95.

[40] *Id*.

The Proxy, however, only informed stockholders about the positive impact the NFL Agreement was expected to have on revenues.

On April 16, 2021, dMY II stockholders voted to approve the Merger. dMY II stockholders redeemed only 1,296 shares in connection with the Merger.[41] On April 20, 2021, the Merger closed. New Genius stock began to trade on the New York Stock Exchange the next day, closing at $19.78 per share. On that date, Defendants' Founder Shares were worth nearly $140 million.[42] After the close of the Merger, New Genius stock traded over the $10.01 redemption value for seven months, trading at a high of $24.93 and an average of $18.47 per share during that period.

D. Plaintiffs File Their Complaint, and the Court Denies Defendants' Motion to Dismiss

On September 12, 2023, Plaintiffs commenced this Action against the Defendants. On December 3, 2023, Defendants filed a Motion to Dismiss the Complaint.[43] On February 4, 2024, Plaintiffs filed their Answering Brief in Opposition to the Motion to Dismiss,[44] and on March 7, 2024, Defendants filed their Reply.[45]

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[41] Stipulation at Ex. F.

[42] ¶¶20, 46.

[43] (Trans. ID 75178989).

[44] (Trans. ID 71972244).

[45] (Trans. ID 72312746).

On April 30, 2024, the Court held a hearing on the Motion to Dismiss, and on July 30, 2024, the Court issued an oral ruling and entered an order denying it.[46] After the Court denied Defendants' Motion to Dismiss, the Parties commenced discovery, which included a production of documents from the dMY II Board and Plaintiffs' responding to 38 requests for production and 35 interrogatories.

E. THE PARTIES ENGAGE IN ARM'S-LENGTH SETTLEMENT NEGOTIATIONS

Beginning in October 2024, the Settling Parties engaged in extensive arm's-length negotiations, including with the assistance of experienced mediator, Greg Danilow, Esq. of Phillips ADR. A mediation held on October 30, 2024 was unsuccessful, but discussions continued. On February 21, 2025, in response to a double-blind mediator's proposal, the Parties agreed in principle to settle the Action for $14,800,000. On October 10, 2025, after extensive negotiations as to its terms, the Parties executed the Stipulation.

F. THE SETTLEMENT TERMS AND THE PLAN OF ALLOCATION

The Settlement provides consideration of $14,800,000 in exchange for a customary release. This sum will be used, in part, to pay all settlement administration costs, fee and expense awards, service awards, taxes or tax expenses, and any other costs or fees approved by the Court. After accounting for these costs and fees, the

[46] (Trans. ID 73846435).

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

The Plan of Allocation provides that Class members who submit a valid proof of claim demonstrating they suffered an economic loss (either because they sold their shares at a price lower than $10.01 per share or because they continued to hold New Genius Shares as of the date the Complaint was filed) will receive a pro rata share of their eligible loss per share calculated using the following formula: (i) if the Class member sold Class shares prior to the filing of the Complaint, $10.01 minus the sale price of each Class share; or (ii) if the Class member held shares as of the date the Complaint was filed, $10.01 minus $6.09, the share price at which New Genius stock was trading on September 12, 2023. In addition, the Plan of Allocation provides a nominal payment of $0.10 per Class Share to Class members who submit a valid proof of claim, in recognition of the impairment of all Class members' redemption decisions. The Plan of Allocation provides that any remaining funds after the foregoing distribution will be distributed on a pro rata basis to all Class members.

ARGUMENT

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

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

> All record and beneficial holders of dMY II Class A Common Stock who held such shares between the close of business on March 12, 2021 through April 20, 2021, including their successors in interest who obtained shares by operation of law, excluding any Excluded Persons.

The Class does not include any of the following:

> (i) Defendants 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 has a controlling interest; and (iii) the legal representatives, agents, affiliates, heirs, estates, successors, or assigns of any such persons or entities—in each case, only to the extent such persons or entities held shares of dMY II Class A or Class B Common Stock during the Class Period. Excluded Persons also include any trusts, estates, entities, or accounts that held shares of dMY II Class A or Class B Common Stock for the benefit of any Excluded Persons.

A. THE PROPOSED CLASS SATISFIES RULE 23(a)

Rule 23(a) requires that 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."[47]

[47] Ct. Ch. R. 23.

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

The numerosity requirement of Rule 23(a)(1) may be satisfied by "numbers in the proposed class in excess of forty, and particularly in excess of one hundred."[48] The test "is not whether joinder of all the putative class members would be impossible, but whether joinder would be practical."[49] Following all redemptions, there were 27,598,704 Public Shares of dMY II stock outstanding. Joinder of the likely thousands of holders of millions of shares is not practical, rendering numerosity satisfied.

2. Questions of Law Are Common to Class Members

Commonality is "met where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[50] Here, common questions of law include whether Defendants: (i) breached their fiduciary duties by impairing stockholder redemption rights; (ii) failed to disclose material information and/or made materially misleading statements in the Proxy in connection with Merger; (iii) undertook an unfair Merger process at an unfair price; (iv) unjustly enriched themselves by securing unique

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

[49] *Id*.

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

financial benefits to the detriment of public stockholders; and (v) injured Plaintiffs and Class members through their conduct. This Court has certified classes in analogous circumstances.[51]

3. Plaintiffs' Claims Are Typical of the Class

"The test of typicality is that the legal and factual position of the class representative must not be markedly different from that of the members of the class" and "focuses on whether the class representative claim (or defense) fairly presents the issues on behalf of the represented class."[52] Plaintiffs are similarly situated to the other Class members, and their claims "arise[] from the same event or course of conduct that gives rise to the claims . . . of other class members and [are] based on the same legal theory."[53] Accordingly, typicality is satisfied here.

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

There is no divergence of interest between Plaintiffs and absent Class members. All of Plaintiffs and Class members are unaffiliated holders of dMY II Public Shares who held such shares as of the redemption deadline, or their successors-in-interest, by operation of law, and therefore, their interests in recovering for any damages suffered are aligned. Moreover, the recovery achieved

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

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

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

through this litigation demonstrates that Plaintiffs' interests were aligned with those of absent Class members and is likewise indicative of the competence and effectiveness of Plaintiffs' Counsel.[54]

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

Rule 23 enumerates when certification is appropriate.[55] Consistent with longstanding Delaware corporate law practice, the Stipulation binds the Parties to seek certification of a non-opt out settlement class pursuant to Rules 23(b)(1) and 23(b)(2).

The proposed Class satisfies Rule 23(b)(1). As set forth herein, the claims of all Class members are typical. The relief afforded through the proposed Settlement would impact all dMY II public stockholders equally and approval of the proposed Settlement would protect all absent Class members' interests in uniform fashion.[56]

[54] *See* Tab 16, *Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL (Del. Ch. Sept. 28, 2017) (TRANSCRIPT) at 20–21 ("*Haverhill*") ("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.").

[55] Ct. Ch. R. 23(b)(1)–(2).

[56] *See* Tab 16, *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.").

The Class also satisfies Rule 23(b)(2). Defendants' actions impacted Class members in the same manner, and the Settlement would afford final relief with respect to the Class as a whole.[57]

C. THE REMAINING REQUIREMENTS OF RULE 23 ARE SATISFIED

Rule 23(f) provides that "a class action may be . . . settled only if the Court approves the terms of the proposed settlement," including that "notice of the proposed . . . settlement must be given to all class members in the manner directed by the Court."[58] Notice was provided to all absent Class members, pursuant to the process set forth in the Scheduling Order.[59] As of the date of this filing, no objections have been received.

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

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

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

[59] The Settlement Administrator will provide an affidavit of service of the Notice in accordance with the Scheduling Order.

out-of-pocket expenditures incurred directly in connection with the prosecution of the Action.[60]

* * *

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

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

Delaware law favors the voluntary settlement of complex class actions,[61] 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.[62] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses thereto to "determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available,

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[60] Affidavit of Aaron Offringa in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Service Award at ¶7 ("Offringa Aff.") (filed herewith); Affidavit of Michael Farzad in Support of Proposed Settlement and Application for Attorneys' Fees and Expenses and Service Award at ¶7 ("Farzad Aff.") (filed herewith).

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

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

reasonably could accept."[63] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[64] The Court may consider several factors when making this determination, including:

> (1) the probable validity of the claims, (2) the apparent difficulties in enforcing the claims through the courts, (3) the collectability of any judgment recovered, (4) the delay, expense, and trouble of litigation, (5) the amount of compromise as compared with the amount of collectability of a judgment, and (6) the views of the parties involved, pro and con.[65]

In making this determination, the Court need not "decide any of the issues on the merits,"[66] 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."[67]

For the reasons set forth herein, the Settlement should be approved. The Settlement was the product of skilled, thoughtful litigation, informed by Plaintiffs' and their counsel's pre-filing investigation, substantive motion practice, review of confidential documents produced by the Defendants, and vigorous arm's-length negotiations with the assistance of a skilled mediator. Most importantly, the

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[63] *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)).

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

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

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

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

Settlement provides substantial economic consideration to Class members who suffered actual financial losses and reflects Plaintiffs' well-informed judgment regarding the strength of the claims and defenses at issue, the potential damages award, and the benefits of a guaranteed recovery.

A. The Settlement Provides Substantial Benefits

The Settlement provides a $14.8 million cash recovery, which equates to a per-share recovery of $0.536 per share. This is a strong result and is in line with recoveries in multiple de-SPAC merger settlements approved by this Court.[68]

The Settlement also provides a substantial benefit to the Class when compared with potential class damages. The Complaint alleges the shares exchanged in the Merger were worth no more than approximately $7.70 per share (in accordance with the net cash underlying each share) as of the date of the Merger Agreement. Assuming damages of approximately $2.31 per share based on the difference between the $10.01 per share redemption price and the $7.70 net cash per share underlying the dMY II shares, Class damages were approximately $63.75 million.[69] The $14.8 million settlement provides a recovery of an estimated 23.2% of net cash

[68] *See supra* note 6.

[69] 27,598,704 Class shares x $2.31 = $67,753,006.20.

per share damages, which is comparable to recoveries approved by this Court in other de-SPAC merger settlements.[70]

The Settlement also provides an excellent recovery calculated based on an estimate of actual economic losses suffered by Class members. Plaintiffs' outside valuation and damages consultant conducted a statistical analysis of trading in New Genius stock post-Merger that attempts to account for significant share turnover that occurred post-Merger, before the share price fell below the redemption price. As a result of this analysis, the consultant estimated class-wide, injury-in-fact damages at approximately $45 million. Plaintiff's $14.8 million recovery equates to nearly 33% of this estimate.

B. Comparing the Benefits Obtained to the Likelihood of Success at Trial Supports Approval of the Settlement

Comparing the benefits provided by the Settlement to the challenges Plaintiffs would face should the litigation continue likewise supports approval. Plaintiffs brought claims for breaches of fiduciary duty and unjust enrichment against each of the Defendants. While Plaintiffs were successful at the pleading stage and believe that the evidence for liability would be strong, the Court has indicated that to recover more than nominal damages, Plaintiff may need to prove actual economic harm.

[70] *See, e.g.*, Tab 4, *Finserv Tr.* at 15 (15.7% of potential net cash per share damages); Tab 13, *Apex* Tr. at 14 (14.2% of potential net cash per share damages).*GeneDx* Tr. at 16 (23%–24%); Tab 11 *Gores IV* Tr. at 11 ("nearly 23 percent").

After the close of the Merger, New Genius stock traded over $10.01 per share for seven months, with a high of $24.93 and an average of $18.47 per share. A total of 242,082,151 shares changed hands through November 29, 2021 at prices above the redemption price. Thus, the number of Class members who suffered actual economic harm as a result of Defendants' breaches is likely fewer than the number of holders of unredeemed Class shares.

In similar circumstances, this Court has recognized the not insignificant risk that both unfair price and the quantification of damages could be established that created additional uncertainties should the case proceed to trial.[71] Though the Court has observed that "[t]he fact that you may be able to sell after[][the redemption deadline] is alternative relief in the form of self-help, but you are still harmed at the time of the [redemption] decision,"[72] it also observed that "the positive reaction to the stock price [post-Merger can] make[] a weak [SPAC] case."[73] Similarly, in *Hennessy*, this Court observed that "a finding of unfair price (not to mention damages) may prove unobtainable [when a de-SPAC company's] stock price . . .

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[71] *See* Tab 18, *Jandreau v. Wallace*, C.A. No. 2024-0119-MTZ (Del. Ch. Nov. 20, 2025) (TRANSCRIPT) at 37 ("SmartRent's stock price traded above the $10 per share redemption price for nearly five months after the merger closed.").

[72] Tab 19, *In re Kensington-QuantumScape de-SPAC Litig.*, C.A. No. 2022-0721-JTL (Del. Ch. Feb. 21, 2024) (TRANSCRIPT) at 62.

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

traded around $10 per share for months."[74] Both of these observations highlighted potential risks that Plaintiffs would face should the case proceed to trial and were factors considered by Plaintiffs in determining the fairness, reasonableness, and adequacy of the Settlement.

Further, although entire fairness would be the standard of review, and Plaintiffs were guardedly optimistic about his chances of prevailing at trial, Plaintiffs are well aware that even an entire fairness trial is not a low-risk proposition. As this Court noted in *Dell*, in the years since *Thierault*, "there have been at least ten post-trial decisions in entire fairness cases where the defendants prevailed, plus three more where the Court awarded only nominal damages of $1.00."[75] Moreover, even if Plaintiff were to win at trial, he would have faced "significant risk on appeal" given the reality that, in the six (now eight) post-*Thierault* appeals from post-trial damages awards in which representative plaintiffs obtained cash recoveries and defendants challenged the liability determination that the Supreme Court has heard, the high court affirmed only three and reversed the rest,[76] and the claims in de-SPAC merger cases, including with regard to allegations related to omission of net cash per share in proxy statements, have yet to be substantively addressed on appeal.

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[74] *In re Hennessy Acquisition Corp. IV S'holder Litig.*, 318 A.3d 306, 322 (Del. Ch. 2024).
[75] *In re Dell Techs. Class V S'holders Litig.*, 300 A.3d 679, 709–10 (Del. Ch. 2023).
[76] *Id.* at 710.

C. THE PLAN OF ALLOCATION IS REASONABLE AND APPROPRIATE

The Settlement allocates a $14.8 million recovery—plus any interest that accrues after being deposited in the Escrow Account and minus the payment of administrative costs, attorneys' fee and expenses, and any tax expenses—to the Class. The Plan of Allocation provides for an equitable recovery that will allow Class members who held onto their shares and those who sold their shares for less than the redemption amount to recover at least a portion of any actual economic damages they suffered. It also provides for a nominal recovery applicable to all Class members who submit claims.

The Plan of Allocation mirrors the plan this Court approved previously in *Super Group*,[77] *Apex*,[78] *Romeo Power*,[79] and *Hyzon*,[80] that "equitably accounts" for "economic losses . . . of varying degrees"[81] by "class members who sold their stock at different points [and] experienced significantly different losses."[82] 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

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[77] Tab 14, *Super Group* Tr. at 28.

[78] Tab 13, *Apex* Tr. at 29–30.

[79] Tab 7, *Romeo Power* Tr. at 46–47.

[80] Tab 15, *Hyzon* Tr. at 28–29.

[81] Tab 14, *Super Group* Tr. at 28.

[82] Tab 13, *Apex* Tr. at 30.

payments, known as the DTC method, [that] would not account for the impact of post-merger trading."[83]

For Class members who sold their shares between the redemption deadline and the day the Complaint was filed (September 12, 2023) for less than the $10.01 per share redemption price, the total per share loss shall be calculated as the difference between $10.01 and the price at which the Class member sold her or his share(s). For Class members who held their shares as of the date the Complaint was filed, the total per share loss shall be calculated as the difference between the $10.01 per share redemption price and $6.09, the stock trading price of New Genius stock on September 12, 2023. Finally, a nominal amount of $0.10 per share for each share held on the redemption deadline shall be added to each Class member's recognized claim 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 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

[83] *Id.*

"redistribution is uneconomic."[84] In such case, the funds will be transferred "to the Combined Campaign for Justice."[85]

The distribution methodology contemplated by the plan of allocation is "fair, reasonable, and adequate."[86] Therefore, the Plan of Allocation should be approved.

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

When evaluating the fairness of a settlement, Delaware courts also scrutinize the negotiations that led up to the settlement and heavily favor settlements that resulted from arm's-length negotiations.[87] Here, the Parties arrived at a settlement in principle only after months of negotiations with the assistance of an experienced mediator, with the benefit of the Court's decision on Defendants' Motion to Dismiss and with the benefit of limited discovery.

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[84] Stipulation Ex. B at 15; Ct. Ch. R. 23(f)(6).

[85] Stipulation Ex. B 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).

[86] *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).

[87] *See Ryan*, 2009 WL 18143, at *5 (noting that the settlement there was "fair, reasonable, and adequate" when reached after "vigorous arms-length negotiations following meaningful discovery").

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

Where counsel is experienced, as here, the Court also considers counsels' opinion in evaluating a settlement.[88] Here, Plaintiffs' Counsel are experienced in corporate governance class action litigation, with a lengthy track record of obtaining exceptional recoveries for stockholders in challenging and complex cases. Plaintiffs' Counsel respectfully submits that the Settlement is another exceptional recovery that extends this track record.

Plaintiffs' Counsel also have a lengthy track record of advocacy in de-SPAC merger redemption rights cases in the Delaware Court of Chancery, including litigating many of these cases far into discovery.[89] Counsel believes that the Settlement is fair and in the best interests of the Class. Counsel's opinion in this regard is shaped not only by their depth of experience, but by their deep knowledge of this case following a thorough pre-suit investigation. Counsel's opinion further weighs in favor of approving the Settlement.

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[88] *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").

[89] *See, e.g.*, *May v. Gores Guggenheim Sponsor LLC*, C.A. No. 2023-0863-LWW (Del. Ch.) (obtained and reviewed 49,000 documents and pursuing additional documents, discovery); Tab 11, *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 5, *GeneDx* Tr. at 11 (settled after the defendants produced over 21,000 documents, over 100,000 pages).

III. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiffs move for an all-in fee and expense award of $2,368,000 (i.e., 16%, of the $14.8 million settlement fund, inclusive of $59,293.94 in expenses reasonably incurred in connection with litigating this action). The Settlement provides an excellent outcome for the Class, providing an immediate and substantial recovery. This requested fee and expense award is well within the Court's precedent for settlements reached post-substantive motion practice, and Plaintiffs' Counsel's request is reasonable given the substantial benefit the Settlement provides, the risks of the litigation and a potential appeal, the necessary expenses that Plaintiffs have incurred to date, and the hundreds of hours Counsel have devoted to the prosecution of this Action.

A. LEGAL STANDARD

This Court may award attorneys' fees to counsel whose efforts conferred a common benefit.[90] The determination of any attorneys' fee and expense award is left to the Court's discretion.[91] The Court's determination is informed by the *Sugarland* factors, including: "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing

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

[91] *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).

and ability of counsel involved."[92] The greatest weight in this analysis is afforded to the benefit achieved in litigation.[93]

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

B. THE BENEFITS OF THE SETTLEMENT ARE SUBSTANTIAL

As set forth herein, the proposed Settlement confers substantial and quantifiable financial benefits on the Class. Should the Court approve the proposed Settlement of this Action, Class members will receive a substantial portion of their actual economic loss. As the factor accorded the most weight by the Court, this exceptional recovery counsels heavily in favor of Plaintiffs' requested fee award.[94] The Court has stated that "the dollar amount of the fund created . . . is the heart of the *Sugarland* analysis."[95] Plaintiffs' Counsel's requested fee and expense award represents a total of 16% of the Settlement Consideration.

Under the Court's guidance in *Theriault*, fees between 15% and 25% are typically appropriate for settlements that have been reached following "meaningful

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

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

94 *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.").

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

litigation efforts," including settlements reached after substantive motion practice.[96] Plaintiffs respectfully submit that the requested fee award is appropriate under this guidance. Plaintiffs' Counsel (i) investigated the claims and drafted and filed the Complaint; (ii) successfully briefed and argued Defendants' Motion to Dismiss, which the Court denied; (iii) negotiated for, reviewed, and analyzed dMY II Board materials produced by Defendants after the Court denied Defendants' motion to dismiss; and (iv) negotiated and documented the Settlement.

In recent SPAC settlements reached after the Court's denial of defendants' motions to dismiss, the Court has awarded plaintiffs' counsel fees of 17.5% and 18%.[97] The requested fee award is below the low end of this range, consistent with the fees awarded in connection with de-SPAC merger settlements reached prior to the Court's ruling on a motion to dismiss.[98]

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

[97] Tab 21, *Laidlaw v. GigAcquisitions2, LLC*, C.A. No. 2021-0821-LWW (Del. Ch. Oct. 8, 2024) (TRANSCRIPT) at 17–18 (awarding 18% after limited discovery and a "hard-fought" motion to dismiss); Tab 17, *Martel v. Fusion Sponsor LLC,* C.A. No. 2024-0329-NAC (Del. Ch. July 24, 2025) (TRANSCRIPT*)* at 57 (awarding 18% after a 220 investigation, motion to dismiss briefing, though no decision, and "the exceptional recovery f[or] the class obtained by lead counsel"); Tab 22, *Lien v. Eagle Equity Partners II*, C.A. No. 2022-0972-PAF (Del. Ch. Sept. 2, 2024) (TRANSCRIPT) at 42–43 (awarding 17.5% after limited discovery and entry of an order denying the defendants' motion to dismiss); *In re Josephson Int'l, Inc. S'holders Litig.*, 1988 WL 112909 (Del. Ch. Oct. 19, 1988) (awarding 18% when the case settled after ten days of document discovery).

[98] *See supra* note 13.

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.[99] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[100] Contingent representation entitles Plaintiffs' Counsel to both a "risk" premium and an "incentive" premium on top of the value of their standard hourly rates.[101]

Here, as set forth in the accompanying attorney affidavits, Plaintiffs' Counsel pursued this case on a fully contingent basis.[102] Accordingly, in undertaking this representation, they incurred all of the classic contingent fee risks, including the ultimate risk—no recovery whatsoever and a loss of all expenses incurred. This factor thus supports the requested fee award.

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

[100] *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005); *see also In re First Interstate Bancorp. Consol. S'holder Litig.*, 756 A.2d 353, 365 (Del. Ch. 1999), *aff'd sub nom. First Interstate Bancorp v. Williamson*, 755 A.2d 388 (Del. 2000) (noting that it is "consistent with the public policy" of Delaware to "reward this sort of risk taking in determining the amount of a fee award.").

[101] *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).

[102] Affidavit of Kelly L. Tucker in Support of an Award of Attorneys' Fees and Expenses at ¶2 (filed herewith) ("Tucker Aff."); Affidavit of Gregory Del Gaizo in Support of an Award of Attorneys' Fees and Expenses at ¶2 (filed herewith) ("Del Gaizo Aff."); Affidavit of Erik Luedeke in Support of an Award of Attorneys' Fees and Expenses at ¶2 (filed herewith) ("Luedeke Aff."); Affidavit of Michael Klausner in Support of an Award of Attorneys' Fees and Expenses at ¶2 (filed herewith) ("Klausner Aff.").

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

The time spent by counsel in this litigation should serve only as a cross-check on the reasonableness of the fee award.[103] Fee awards should neither penalize counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[104] Prior to reaching agreement in principle to the Settlement, Counsel's efforts included investigating, drafting, and filing the Complaint, successfully briefing and arguing Defendants' Motion to Dismiss, and obtaining and reviewing documents produced by Defendants prior to the mediation. Counsel also carefully considered and assessed potential damages and engaged in an extended arm's-length negotiation in reaching the Settlement.

The Court has "explicitly disapproved the . . . lodestar method. Therefore, Delaware courts are not required to award fees based on hourly rates that may not be commensurate with the value of the common fund created by the attorneys' efforts."[105] But "[t]he time and effort expended by counsel is considered as a cross-check to guard against windfalls."[106]

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

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

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

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

Through the execution of the Stipulation, Counsel spent 1,139.2 hours litigating this Action.[107] This amounts to a lodestar value of $972,546.00. In total, Counsel also incurred $59,293.94 in expenses.[108] The requested fee award (net of expenses) implies an hourly rate of approximately $2,079 per hour,[109] and a lodestar

[107] Tucker Aff. at ¶4; Del Gaizo Aff. at ¶4; Luedeke Aff. at ¶4; Klausner Aff. at ¶4; Affidavit of Michael Fistel in Support of an Award of Attorneys' Fees and Expenses at ¶4 (filed herewith) ("Fistel Aff."). Through the date of agreement in principle, Counsel spent 1000.1 hours litigating this action, amounting to a lodestar value of $835,252.25.

[108] Tucker Aff. at ¶7; Del Gaizo Aff. at ¶7; Luedeke Aff. at ¶7; Fistel Aff. at ¶7.

[109] Tab 23, *In re Versum Materials, Inc. S'holder Litig.*, C.A. 2019-0206-JTL, at 81 (Del. Ch. July 16, 2020) (TRANSCRIPT) (approving fees equivalent to an hourly rate of over $10,000); *Sciabacucchi*, 2019 WL 2913272, at *6 (fees equivalent to $11,262.26 per hour were reasonable); Tab 24, *In re Medley Cap. Corp. S'holders Litig.*, Consol. C.A. No. 2019-0100-KSJM, at 67–68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (observing a $5,989 hourly rate would not be "beyond the bounds of reasonableness"); *Dell*, 300 A.3d at 726 (granting award representing $5,000 implied hourly rate); Tab 25, *In re Activision Blizzard Inc. S'holder Litig.*, Consol. C.A. No. 8885-VCL (Del. Ch. May 20, 2015) (ORDER) (awarding an effective hourly rate of $9,685); *Berger v. Pubco Corp.*, 2010 WL 2573881, at *1 (Del. Ch. June 23, 2010) (awarding a fee of 26% noting that "the hourly rate to which the fee translates (approximately $3,450 per hour . . .) is nestled within the range of hourly rates found among Court of Chancery monetary-benefit cases.").

multiple of approximately 2.5x,[110] both of which are well within the range of hourly rates and lodestar multiples previously awarded by the Court of Chancery.[111]

The lodestar cross-check thus does not counsel adjustment to the requested fee and expense 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."[112] This Action is complex both legally and factually.

Plaintiffs' claims in this Action presented legal challenges concerning Defendants' duties to act loyally with regard to dMY II stockholders, but involved unresolved legal issues, such as the contours of what constitutes impairment of

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[110] *See, e.g.*, Tab 5, *GeneDx* Tr. at 27, 40 (awarding fees amounting to a 2.6x lodestar multiplier); Tab 13, *Apex* Tr. at 33 (awarding fees amounting to an over 2.2x lodestar multiplier); *In re Saba Software, Inc. S'holder Litig.*, 2018 WL 4620107 (Del. Ch. Sept. 26, 2018) (awarding a 3x lodestar multiple); *Vero Beach Police Officers' Ret. Fund v. Bettino*, 2018 WL 6330140 (Del. Ch. Dec. 3, 2018) (awarding an effective hourly rate of $3,165 and a 5.1x lodestar multiplier); *In re Pilgrim's Pride Corp. Deriv. Litig.*, 2020 WL 474676 (Del. Ch. Jan. 28, 2020) (awarding an effective hourly rate of $4,511.09 and a 7.0x lodestar multiplier); *Carr v. New Enter. Assocs. Inc.*, 2019 WL 1491579 (Del. Ch. Apr. 4, 2019) (awarding an effective hourly rate of $1,030 and an 7.2x lodestar multiplier); Tab 26, *In re AVX Corp. S'holders Litig.*, Consol. C.A. No. 2020-1046-SG (Del. Ch. Dec. 27, 2022) (ORDER) (awarding an effective hourly rate of $1,256.97 and a 2.61x lodestar multiplier).

[111] *Id.*; *supra* note 96.

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

stockholder redemption rights, how damages might be calculated, and whether a delta of $2.31 between the net cash per share being contributed to the Merger and the $10.01 per share deemed Merger consideration was material (a question that remains unanswered by the Delaware Supreme Court). These uncertainties resulted in the potential for complex legal battlegrounds that have not yet been trial tested. In light of that, whatever the result of trial may have been, Plaintiffs expected that a lengthy appeals process would have resulted before the Delaware Supreme Court, which has not substantively addressed these issues.

Further, the factual issues presented in this Action were likewise complex. Plaintiffs had to delve into the web of interrelationships between each of the Defendants, including their various businesses, directorships, and their interrelated financial interests. Plaintiffs conducted a substantial review of publicly available documents and Defendants' confidential document production, to ascertain, *inter alia*, the marketability and prospects of Legacy Genius's technology led sports and sports betting products, its relationships with sports league and federations, including the NFL, the assumptions underlying its business model, and the likely value of Legacy Genius at the time of the Merger, along with other related disclosure issues and facts relevant to questions of process and price.

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

F. Counsel Is Well Regarded with a History of Success Before This Court

The Court also considers the standing and ability of counsel when determining the reasonableness of a fee and expense award.[113]

Here, Plaintiffs' Counsel are experienced in stockholder class and corporate governance litigation, with a lengthy track record of obtaining exceptional recoveries for stockholders in challenging and complex cases. The reputation of counsel has been the subject of favorable comments by the courts of this state and other state and federal courts.[114] Plaintiffs' Counsel have participated in some of the largest settlement and post-trial recoveries for plaintiffs in class and derivative litigation before this Court.[115] Plaintiffs' Counsel respectfully submits that the Settlement is another exceptional recovery that extends this track record.

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

[114] *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.).

[115] *See, e.g.*, *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015) ($148 million trial verdict); *In re Digex, Inc. S'holder Litig.*, 2001 WL 34131305 (Del. Ch. Apr. 6, 2001) ($420 million settlement); *In re McKesson Corp. S'holder Deriv. Litig.*, 2020 WL 1985047 (Del. Ch. Apr. 24, 2020) ($175 million settlement and corporate governance reforms); *In re News Corp. S'holder Deriv. Litig.*, 2013 WL 3231415 (Del. Ch. June 26, 2013) ($139 million settlement); *In re Freeport-McMoRan Copper & Gold, Inc. Deriv. Litig.*, 2015 WL 1565918 (Del. Ch. Apr. 7, 2015) ($153.75 million settlement and corporate governance reforms); *Goldstein v. Denner*, 2024 WL 4182879 (Del. Ch. Sept. 12, 2024), 2025 WL 1663869 (Del. Ch. June 10, 2025) ($124 million through two partial

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

IV. THE COURT SHOULD APPROVE SERVICE AWARDS FOR THE PLAINTIFF

The Court should approve the payment of a modest $2,500 service award to each Plaintiff, to be paid out of the fees awarded to Plaintiffs' Counsel, to compensate each for the time and effort that he devoted to this matter. This Court has recognized that a modest service fee is appropriate where, as here, Plaintiffs have "step[ed] forward and take[n] the risk" of getting involved in representative litigation in a culture in which people increasingly are unwilling to "do things for the benefit of others."[116]

In determining the appropriateness of a service fee, the Court considers the time and effort expended by the class representative and the size of the benefit to the

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settlements); *Teachers' Ret. Sys. of Louisiana v. Greenberg*, 2008 WL 5260548 (Del. Ch. Dec. 17, 2008) ($115 million settlement); *In re CBS Corp. S'holder Class Action & Deriv. Litig.*, 2023 WL 5817795 (Del. Ch. Sept. 7, 2023) ($167.5 million settlement).

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

class.[117] Here, Plaintiffs monitored counsel's work, reviewed pleadings, and regularly communicated with counsel regarding litigation strategy and significant litigation developments.[118] In addition, Plaintiffs exerted substantial effort responding to Defendants' discovery requests, including 38 requests for production and 35 interrogatories. These efforts are in line with those of the plaintiffs in other litigation to whom the Court awarded a similar incentive award[119] and amply support the modest $2,500 award requested.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court certify the Class pursuant to Court of Chancery Rules 23(1), 23(b)(1), and 23(b)(2), approve the Settlement and Plan of Allocation, and grant the requested fee and expense award and service awards.

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

[118] Offringa Aff. at ¶3; Farzad Aff. at ¶3.

[119] Tab 28, *Martel v. Fusion Sponsor LLC*, C.A. 2024-0329-NAC (Del. Ch. July 24, 2025) (ORDER AND FINAL JUDGMENT) (awarding incentive awards of $2,500 per plaintiff); Tab 29, *In re InterPrivate Acquisition Corp. Stockholder Litig.*, Consol. C.A. No. 2024-0221-LWW (Del. Ch. Sept. 16, 2025) (ORDER APPROVING PLAN OF ALLOCATION, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS) (same).

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