IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE ORBIT/FR, INC. STOCKHOLDERS' LITIGATION	))	C.A. No. 2018-0340-JTL

PLAINTIFF'S OPENING BRIEF SUPPORTING SETTLEMENT, FEE APPLICATION, AND INCENTIVE AWARD

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Defendant Microwave Vision, S.A. ("MVG") was Orbit/FR, Inc.'s majority stockholder. In 2018, MVG froze out Orbit/FR's minority float for $3.30 per share (the "Merger"). This stockholder class action challenged the Merger. In 2021, the original plaintiff agreed to settle for $800,000, reflecting $0.36 per class share and an 11% premium to deal price.

Plaintiff AB Value Partners, L.P. owned 71.6% of the class and contested the proposed settlement. The court permitted AB Value to take over the litigation if it secured the settlement consideration earmarked for the other class members plus a potential fee award for the original plaintiff's counsel. AB Value posted the security and litigated the case.

AB Value now presents a $17,850,000 settlement, reflecting $7.75 per share and a 235% premium to deal price. The settlement values Orbit/FR at 83% of MVG's market capitalization as of the Merger date. The court should approve the settlement and award AB Value its expenses of $4,541,605.13. Most of this amount reflects the hourly fees of AB Value's counsel and expert witnesses.

The court should grant a $650,000 incentive award. AB Value's contributions exceeded those underlying the court's largest incentive award precedents. AB Value invested more than $4.5 million and 2,400 hours of labor in the case. Although $650,000 would be the second largest incentive award on record, AB Value could have sought more given its major contributions and the exceptional result.

The court should award 5.25% simple interest on the $395,000 security deposit that AB Value was ordered to make in 2022. The amount is $81,927.33. The incentive and interest awards are reasonable relative to the handsome class recovery and the risk AB Value undertook litigating for four years.

The requested expense, incentive, and interest awards total $5,273,532, or 29.5% of the face settlement amount. That is a reasonable percentage for a case that settled two days before trial and in which AB Value's counsel billed hourly. Rational contingency counsel would not have gone that far. A determined client was required. AB Value beat a motion to dismiss, won three discovery motions, argued nine hearings, and achieved a ruling at the pre-trial conference that caused the defendants' expert to value Orbit/FR above deal price. AB Value would subsidize its requested awards through its majority class stake.

FACTUAL BACKGROUND

A. Orbit/FR's and MVG's Business

Orbit/FR was a Delaware corporation that produced antenna measurement systems. Orbit/FR specialized in aerospace and defense. Through a series of mergers and a 1997 IPO, Orbit/FR became a public company headquartered in Pennsylvania. PTO ¶¶ 18, 33–36, 38. Orbit/FR's stock traded on the NASDAQ.

In 1999, Orbit/FR "pled guilty to two counts of violating the Arms Export Control Act (AECA) (22 U.S.C. 2778)" by illegally exporting defense products and services to the People's Republic of China. Public Notice 3245, 65 Fed. Reg. 13072 (Mar. 10, 2000). Orbit/FR's business and reputation suffered. Orbit/FR lost its NASDAQ listing. *See* PTO ¶ 46. After nearly six years in the penalty box, Orbit/FR entered a consent agreement with the Department of State and exited debarment in 2005. Public Notice 5182, 70 Fed. Reg. 53267 (Sept. 7, 2005).

While in rebuilding mode, Orbit/FR caught the eye of its French competitor, Satimo S.A. Led by defendant Philippe Garreau, Satimo had pioneered antenna measurement technologies for the civil telecommunications market. Satimo sought to combine its telecom offerings with Orbit/FR's aerospace and defense capabilities. *See* PTO ¶¶ 19, 22, 42; PTB at 3–4, 21.

In May 2008, Satimo bought a 61.6% stake in Orbit/FR for $4.67 per share (the "Control Investment"). Satimo rebranded the combined company "Microwave

Vision Group," or "MVG." PTO ¶ 47. This brief refers to the legacy Satimo operating business as "MVG France."

After the Control Investment, Orbit/FR's Board comprised three MVG persons and two outsiders. *See* PTB at 4–5. MVG controlled Orbit/FR and its Board from the Control Investment through the closing of the Merger. PTO ¶ 47.

Pepper Hamilton LLP (the "Law Firm") represented Orbit/FR in the Control Investment and served as Orbit/FR's outside counsel for the following decade. PTB at 5; PTO ¶ 48.

B. MVG Imposes the Services Agreement

Tax authorities apply transfer pricing rules to transactions between affiliates located in different countries. The rules facilitate proper income reporting across tax jurisdictions. The rules prevent tax evasion or avoidance through non-arm's-length pricing. Transfer pricing rules governed transactions between Orbit/FR, MVG, and MVG's other subsidiaries. PTB at 5.

In August 2009, Orbit/FR and MVG entered a services agreement. Dkt. 153 Ex. 1 (the "Services Agreement" or "SA"). MVG charged fees for management services MVG and MVG France claimed to provide (the "MVG Fees"). The Services Agreement bound Orbit/FR and MVG's wholly owned subsidiaries alike. That was a bad thing. Before 2009, most of MVG's wholly owned subsidiaries had been "branch" offices lacking separate legal existence. MVG acted as if Orbit/FR lacked separateness too. PTB at 5–6.

The MVG Fees included "Management Fees" and "Trademark Fees." The Management Fees covered parent- and subsidiary-level expenses of MVG. MVG defined which fees counted as Management Fees. MVG defined how to allocate the fees among its subsidiaries. *Id.* at 6–8; SA art. 3.

The parent-level MVG Fees subsidized MVG's French stock exchange listing, Paris headquarters, audit and legal functions, and executive compensation and travel. These expenses did not benefit Orbit/FR. MVG inflated the unbeneficial expenses by 5% and charged them to the fee pool. PTB at 6–7; *see* SA § 3.1.

The subsidiary-level MVG Fees included personnel salaries for MVG France and other non-Orbit/FR subsidiaries. MVG charged "markup on markup" on the non-Orbit/FR salaries—inflating them by 5%, adding another 5% markup, and taxing them to the fee pool. PTB at 7.

After setting the fee pool, MVG allocated the Management Fees to each subsidiary according to its contribution to MVG's consolidated gross profit. *Id.*; SA § 3.1. MVG thus charged Orbit/FR based on Orbit/FR's profitability, not the value of MVG's services.

MVG charged Orbit/FR the Trademark Fees, equal to 1% of Orbit/FR's gross sales, for the right to use the name Microwave Vision. SA § 3.3; PTB at 8.

Microwave Vision lacked any trademark or brand recognition because MVG had introduced it in 2008. Like the Management Fees, the Trademark Fees scaled with Orbit/FR's performance, not MVG's contributions. PTB at 8.

The Services Agreement renewed annually. The MVG Fees grew as Orbit/FR grew. SA § 4.2; PTB at 9. Yet the Board never reconsidered the Services Agreement. PTO ¶ 65. Orbit/FR owned claims against MVG for its takings (the "SA Claims"), but the MVG-controlled Board never asserted them. PTB at 9.

C. Plaintiff Invests in Orbit/FR

Plaintiff AB Value is an investment firm that focuses on small companies.[1] Andrew Berger founded AB Value in 2010 after working in value investing as an investor, consultant, and publisher. For years, Berger reviewed "every single company that was under a quarter of a billion dollars in revenue" that published securities filings. Ex. 1 ("Berger Dep.") at 16–17.

Berger identified Orbit/FR as a company "right down the middle" of AB Value's investment thesis: "dramatic undervaluation of illiquid microcap security." *Id.* at 30. Plaintiff invested in Orbit/FR in 2011. PTO ¶ 69.

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[1] "Plaintiff" and "AB Value" refer interchangeably to named plaintiff AB Value Partners, L.P.; AB Opportunity Fund LLC; and AB Value Management LLC. AB Value Management managed the other two entities, which invested in Orbit/FR.

D. MVG Turns Out the Lights

In May 2012, MVG deregistered Orbit/FR's stock and eliminated its reporting obligations in a process MVG called "going dark." The deregistration concealed Orbit/FR's growth and MVG's extractions. MVG did not report Orbit/FR's financials separately from MVG's consolidated results. That made the business hard to follow. PTB at 9 & n.8.

For perceptive investors, MVG's goodwill reporting provided clues about Orbit/FR's performance. Plaintiff knew that IFRS accounting rules required MVG to test its goodwill annually using a conservative discounted cash flow analysis. When MVG continuously reported substantially the same goodwill for its Orbit/FR investment, Plaintiff concluded that MVG still valued Orbit/FR at $4.67 per share or more.[2] Other than that, MVG dropped occasional clues by reporting contract awards that inferably were attributable to Orbit/FR's growing success in the U.S. defense market. *See* Compl. ¶ 22.

After turning out the lights, MVG replaced Orbit/FR's few outside directors with MVG insiders, including defendant Arnaud Gandois. PTB at 9–10; PTO ¶¶ 71, 74–75.

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[2] *See* PTO ¶¶ 64, 68, 114. IFRS rules prohibit reversing an asset impairment. Int'l Acct. Standards Bd., *IAS 36: Impairment of Assets*, No. 124 (2025) ("An impairment loss recognised for goodwill shall not be reversed in a subsequent period."); *see id.*, IAS 36.125. A goodwill asset therefore does not increase even if the value of the acquired business increases dramatically. That happened here.

In 2013, MVG offered to buy AB Value's Orbit/FR stake for $1 per share. AB Value counteroffered to buy MVG's majority interest for the same price. MVG declined. Aff. of David Polonitza Supporting AB Value's Appl. for an Incentive Award ("Polonitza Aff.") ¶ 10.

E. Orbit/FR's Growth Accelerates, and MVG Plans the Merger

In late 2015, MVG again tried unsuccessfully to buy Plaintiff's Orbit/FR stake. Orbit/FR had just won a historically significant defense contract with the Polish defense contractor Pit-Radwar. Continuing its undisclosed growth, Orbit/FR applied for a facility clearance license ("FCL") with the United States Department of Defense. An FCL would allow Orbit/FR to work on classified projects. PTB at 11; PTO ¶¶ 81–82.

In December 2015, Orbit/FR announced three large defense contracts worth almost $7 million. Orbit/FR's revenue accelerated by 16% in 2016 and by 14.7% in 2017. PTB at 11; PTO ¶¶ 106, 150.

In January 2016, Plaintiff served a books-and-records demand on Orbit/FR, questioning MVG's Management Fees. Recognizing that Plaintiff could defeat an unfair squeeze-out if the minority voted separately, MVG evaluated buying out Plaintiff for up to $4.75 per share before squeezing out the rest of the class. Warning that "every minute[] will play against us in case of legal action" by Plaintiff, Garreau tasked defendant Per Iversen with planning a freeze-out. Iversen was Orbit/FR's

CEO. Iversen also was an MVG France officer and a large investor in MVG. PTB at 11–12.

In July 2016, MVG added Merrill and his lifelong friend Matthew Finlay to the Board. Merrill understood that the new directors' assignment was "to allow a stock repurchase by MVG." PTB at 12; PTO ¶ 88.

By letter dated August 15, 2016, MVG proposed buying Orbit/FR's minority float for $2.82 per share. MVG conditioned its offer on approval by a special committee. On September 7, the Board formed a special committee comprising Merrill and Finlay (the "Special Committee"). The Special Committee was only empowered to consider MVG's offer and could not pursue alternatives. PTB at 13; PTO ¶ 91.

From inception, the Special Committee lacked material information about Orbit/FR.

- Merrill believed Orbit/FR's business was flat from 2008 to 2017, a period in which its revenue doubled.
- Merrill viewed a $5 million contract as "[n]ot particularly" large for Orbit/FR, but at the time, Orbit/FR considered any contract over $2 million "a large contract."
- Merrill never learned about the 2015 Pit-Radwar contract, the largest in Orbit/FR's (and MVG's) history at the time.

PTB at 13–14.

F. Management Makes Unreliable Projections

Conflicted Orbit/FR CEO Iversen was the Special Committee's primary contact for information from management. Iversen supervised the Special Committee as it selected a financial advisor. PTB at 14. The Committee hired CBIZ Valuation Group, LLC. PTO ¶ 94.

Iversen and Doron Nir, Orbit/FR's CFO, created projections for CBIZ to value Orbit/FR. Both lacked experience making multi-year forecasts. Before sending projections to the Special Committee, Iversen reviewed them with Garreau and Olivier Gurs. Gurs was MVG's CFO and lead Merger negotiator. *See* PTO ¶ 21; PTB at 14–16.

Iversen and Merrill backchanneled with MVG while CBIZ worked. CBIZ completed most of its work before the Special Committee even retained counsel. Merrill assured MVG that CBIZ would bless MVG's offer. PTB at 16; *see* PTO ¶ 104.

In December 2016, CBIZ's opinions committee rejected management's projections. The Special Committee considered making its own. Iversen told Nir to hurry up, warning that MVG could retaliate. Management submitted revised projections, but they too were unusable. PTB at 16–17 & n.16.

G. MVG Envisions the MVG Sale

In February 2017, MVG sent the Special Committee a draft merger agreement. The draft included a waivable majority-of-minority stockholder approval condition. MVG refused to make it nonwaivable. PTB at 18; PTO ¶ 111.

In March 2017, MVG again offered unsuccessfully to buy Plaintiff's Orbit/FR stake. MVG again withheld positive news. Orbit/FR's management expected that receiving the FCL would unlock "$5M-$10M per year of new business." No one told Plaintiff or the Special Committee about the FCL. PTB at 18; PTO ¶¶ 113–14.

MVG planned to do a parent-level sale (the "MVG Sale"). Potential buyers included MVG competitors Rohde & Schwarz ("R&S") and Anritsu Corporation. MVG referred to the R&S and Anritsu discussions as "Project Blue" and "Project Green," respectively. The Special Committee never learned about Project Blue or Project Green. *See* PTO ¶ 150; PTB at 19, 37.

The prospect of the MVG Sale increased MVG's urgency to close the Merger. To speed things up, MVG hired the Law Firm, Orbit/FR's longtime outside counsel, to represent MVG in the Merger. In May 2017, the Law Firm sent conflict waivers to Orbit/FR, the Special Committee, and MVG. Iversen and Garreau consented to the Law Firm's conflicted representation on behalf of Orbit/FR and MVG, respectively. The Special Committee never consented to the conflict, and the Board never discussed it. The Law Firm took the representation anyway. PTB at 19.

H. CBIZ Resigns

Plaintiff's ownership meant that it could dictate the outcome of any majority-of-the-minority vote. PTB at 11. MVG evaluated buying out Plaintiff at prices up to $4.67 per share. MVG chose an easier path: abandoning the majority-of-the-minority requirement. When CBIZ learned that MVG had removed the majority-of-the-minority condition, CBIZ resigned to avoid being sued. PTB at 19–20.

I. Orbit/FR's Growth Accelerates

In 2017, large defense contractors moved to upgrade their antenna test facilities to capture growing government investment in missile defense. Orbit/FR was a "market leader" in the compact range measurement systems those customers needed. Its only serious U.S. competitor was NSI-MI. *See* PTB at 20; PTO ¶ 45.

By June 2017, Orbit/FR had identified two large opportunities: the "Fast Chamber" contract with Lockheed and the "gOD" contract with Raytheon. The $5 million Fast Chamber contract was large by Orbit/FR standards. The $29 million-plus gOD opportunity was worth nearly three times MVG's largest-ever contract. *See* PTB at 21.

Orbit/FR had an edge with the Fast Chamber opportunity because it required a technology Orbit/FR could source from MVG that NSI-MI could not match. Orbit/FR's primary defense sales manager, Thomas McKeown, was close with

Lockheed's procurement team. Winning this contract would further business as Lockheed upgraded its test facilities. *See* PTB at 21.

J. MVG Coerces the Special Committee While Pursuing the MVG Sale

After CBIZ balked, MVG ramped up pressure on the Special Committee to wrap up the Merger. By August 2017, MVG began evaluating whether the Special Committee could approve the Merger without a fairness opinion. MVG continued pursuing the MVG Sale, signing an NDA with R&S and planning site visits with R&S and Anritsu. PTB at 20, 22.

In September 2017, the Special Committee asked MVG whether to continue working on the Merger. At this point, the Law Firm advised that it should stop representing MVG and Orbit/FR and instead represent MVG exclusively. The Law Firm memorialized its withdrawal from representing Orbit/FR, stating its understanding that the "Committee has now dissolved and the contract opponent for the Second Transaction will be Orbit/FR." The Special Committee had not dissolved. PTB at 22–23.

MVG's merger talks with R&S intensified. By late October 2017, MVG engaged its trusted financial advisors at Sevenstones to lead the effort. MVG sent Sevenstones projections modeling closing the Merger before the MVG Sale. *Id.*

MVG did not tell the Special Committee that it had engaged Sevenstones for a parent-level sale. MVG pressured the Special Committee to negotiate or resign.

The Special Committee proposed hiring Duff & Phelps to replace CBIZ, but MVG was unwilling to pay for it. The Special Committee declined to proceed without a banker. *Id.* at 24.

K. MVG Reviews Its Transfer Pricing

In fall 2017, MVG asked its outside tax counsel at Osborne Clarke to review MVG's transfer pricing policies. On November 17, Osborne Clarke presented to MVG's board. The MVG Fees violated transfer pricing rules: Allocating fees based on gross profit was improper, MVG's 5% markup was "too high," the costs MVG reinvoiced to its subsidiaries were "too wide," and the MVG Fees impermissibly caused fiscal losses at non-French subsidiaries. MVG risked tax audits and penalties. Osborne Clarke recommended materially reducing the MVG Fees. PTB at 24–25; PTO ¶¶ 138, 142.

MVG never told Orbit/FR's Board about Osborne Clarke's work. PTB at 26.

L. Orbit/FR Pursues More Transformative Contracts

By late 2017, Orbit/FR saw more large opportunities as defense contractors modernized their antenna test facilities. The new opportunities were two-horse races with NSI-MI, the only U.S. company that could match Orbit/FR's capabilities for large compact range systems. *See* PTB at 21, 26, 28–29.

By then, NSI-MI had won the gOD contract thanks to its strong ties with Raytheon, which gave it a six-month head start on its bid. NSI also had successfully smeared Orbit/FR as a "foreign" company. Reporting the loss to Garreau, Iversen advised that Orbit/FR had two comparably massive opportunities in its 2018 pipeline. Orbit/FR named them "Zeus" and "Hercules." PTB at 26.

Zeus was another large compact range opportunity, this time with Pratt & Whitney. Orbit/FR ultimately lost the Zeus contract to NSI-MI after Raytheon acquired Pratt & Whitney. Still, the Zeus run gave Orbit/FR valuable experience in designing and pitching proposals for massive compact ranges. PTB at 26.

Hercules was an opportunity to develop a "huge" compact range for a new Lockheed missile factory. Between October and year-end 2017, the project grew from $7 million to $15 million. PTB at 27.

Orbit/FR had the inside track thanks to its successful pursuit of the Fast Chamber and McKeown's close relationship with key procurement personnel at Lockheed Orlando, already one of Orbit/FR's best customers. This time, Orbit/FR overcame its perception as a "foreign" company by highlighting the imminent grant of the FCL. PTB at 27.

Orbit/FR pursued Hercules and Zeus with minimal support from MVG, despite paying Management Fees for sales and marketing services. MVG and Iversen hid these transformative opportunities from the Special Committee. PTB at 28.

M. The Special Committee Hires Stout

As Project Blue progressed, MVG explored risky options to close the Merger. The Law Firm worked with Iversen and MVG's CFO to pre-screen potential replacements for CBIZ. When that process dragged, the Law Firm advised MVG about closing the Merger "unilaterally," with no fairness opinion or independent committee approval. PTB at 28–29.

By 2018, AB Value beneficially owned 1,649,247 shares of Orbit/FR's common stock—71.6% of the minority stockholder class. Polonitza Aff. ¶ 1 n.1.

On January 3, 2018, the Special Committee hired one of MVG's pre-screened banker candidates, Stout Risius Ross LLC, after another finalist withdrew due to litigation risk. Iversen downplayed Orbit/FR's prospects to Stout and suggested that precedent transactions carried low revenue multiples. PTB at 29–30; PTO ¶¶ 151–52.

On January 31, Stout submitted a preliminary analysis to the Special Committee that valued Orbit/FR at $0 to $0.51 per share. PTO ¶ 158. Stout deducted $13.6 million in accrued-but-unpaid MVG Fees from its valuation. Stout did not evaluate the fairness of the MVG Fees. *See* PTB at 31.

N. MVG and the Special Committee Agree on the Merger Price

On February 13, 2018, the Special Committee negotiated the Merger price opposite Gurs and Gandois. Within twenty minutes, the parties agreed to $3.30 per share. *See* PTO ¶ 161; PTB at 31 & n.24.

The Special Committee thus secured a 17% increase over MVG's August 2016 offer of $2.82 per share. PTB at 31. The stock market had appreciated more than 17% since August 2016.[3] The Special Committee underperformed a passive index fund in a period when Orbit/FR's prospects were improving faster than the market. The Special Committee lacked negotiating leverage because MVG hid the MVG Sale, Zeus and Hercules, and MVG's plans to overhaul its transfer pricing policies. *See* PTB at 33.

O. R&S Offers a Massive Premium to Acquire MVG

On February 15, 2018, two days after the Special Committee accepted $3.30 per share for Orbit/FR, R&S offered to acquire MVG for $149.6–162.1 million, a premium of 85%–100% over MVG's $81 million market capitalization. MVG immediately countersigned R&S's letter. Diligence intensified. *See* PTO ¶¶ 162–63; PTB at 32.

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[3] *See* Yahoo! Finance, *Russell 2000 Index (^RUT)*, https://finance.yahoo.com/quote/%5ERUT/history/?period1=1471219200&period2=1518480000 (Russell 2000 Index increase from 1241.86 on August 15, 2016, to 1490.98 on February 13, 2018, and increase of 20%).

Later that day, MVG told its largest investors that the Merger would "simplify any potential future M&A activities" at the MVG parent level. MVG explained that it would not seek minority stockholder approval because a majority-of-the-minority vote would fail. PTB at 32.

Sevenstones prepared a Project Blue timeline. The Merger was step zero. PTB at 33.

Meanwhile, Lockheed commented approvingly on McKeown's Fast Chamber proposal, suggesting that Orbit/FR's reasonable bid left more funds available for Hercules. PTB at 33.

P. The Merger Closes

While Stout finalized its fairness opinion, Nir recognized that management's projections overestimated R&D expenses. To avoid impacting Stout's valuation conclusion, Nir offset his justified reduction to the R&D expenses forecast by adding an equivalent amount of made-up MVG Fees. PTB at 34–35.

On March 26, 2018, Stout presented its fairness opinion to the Special Committee. PTO ¶ 168. Stout valued Orbit/FR at $0.00–0.22 per share, even lower than its preliminary valuation. PTB at 35. Stout valued Orbit/FR in the dark. Stout never learned about Zeus, Hercules, the MVG Sale, the FCL, or MVG's planned transfer pricing reforms. *See* PTB at 35.

On March 28, 2018, the Board met to approve the Merger. No meeting minutes exist. PTO ¶ 169.

The next day, Nir reported growth to Orbit/FR's auditors: Revenue and profits would improve "in the coming years" as "massive" defense investments "translated to orders." Orbit/FR would soon receive the FCL, which Nir reiterated would unlock a new "market that currently is blocked" worth "$5M-$10M per year." PTB at 36.

On April 2, 2018, MVG approved the Merger by written consent. PTO ¶ 173.

On April 4, R&S sent MVG a "letter of confirmation of interest" that raised the floor of R&S's initial offer range (the "Second R&S LOI"). *See* PTO ¶ 180.

On April 6, 2018, the Merger closed. Later that day, MVG and its Board designees executed the Second R&S LOI. PTO ¶¶ 178–79, 181.

The Board never considered Orbit/FR's causes of action for MVG's takings under the Services Agreement. The Merger price omitted the value of the SA Claims. *See* PTO ¶ 176–77.

Internally, MVG celebrated the Merger: "Good news! The completion of lengthy discussions and a step that is also indispensable for Blue, good!" PTB at 38; *see* PTO ¶ 182.

After closing, Orbit/FR issued a misleading notice of merger and appraisal rights. Its flaws escape concise description. *See* PTB at 37 (citing JX 1036).

Q. Project Blue Fails

During Project Blue, MVG provided extensive diligence to R&S, including Osborne Clarke's transfer pricing analysis. After looking under the hood, R&S worried that the MVG Fees broke transfer pricing rules. R&S asked MVG to assure that "corrective action will be implemented" according to Osborne Clarke's recommendations and asked MVG to price the risk its policies created. By mid-April 2018, MVG had made no corrections. On April 19, R&S terminated discussions, citing the inadequate "level and quality of information provided during the due diligence." PTB at 39; *see* PTO ¶ 165.

R. Orbit/FR Continues Growing Post-Merger

Later in April 2018, MVG published optimistic statements about itself and Orbit/FR. New orders were accelerating. MVG expected Orbit/FR's profitability to improve. PTB at 40.

In May 2018, Minerva Group, LP filed this action against MVG, Garreau, Gandois, Iversen, and other defendants. Dkt. 1.

Orbit/FR's Pit-Radwar success facilitated other large defense-sector opportunities. By late June 2018, Orbit/FR was 99% certain it would win the Fast Chamber contract. Orbit/FR's opportunities swelled to a majority of the most valuable prospects in MVG's pipeline. In August, Lockheed invited Orbit/FR to bid for a now-expanded Hercules contract worth nearly $30 million. PTB at 41–42.

S. MVG Reforms Its Transfer Pricing

The Project Blue debacle showed that MVG needed to reform its transfer pricing policies to achieve the MVG Sale. MVG worked with Osborne Clarke to simplify its intercompany transactions and stop violating transfer pricing rules. PTB at 42–43. Osborne Clarke recommended radical reforms. *See* PTB at 43.

MVG simultaneously renewed its pursuit of the MVG Sale, now named "Project Rainbow." PTB at 44.

T. Orbit/FR Wins the Historic Hercules Contract

On February 18, 2019, Orbit/FR signed the Hercules contract for $37.6 million plus a $5 million contingent piece. It was the largest contract in MVG history. PTB at 44.

Hercules enabled additional large contract wins. Orbit/FR won a Hercules replica called "Hercules 2" with Lockheed for $34.8 million. The first Hercules win made Hercules 2 a non-competitive bidding process. PTB at 44.

Orbit/FR's large new contracts had low fixed costs and thus higher profit margins. Orbit/FR had blasted off.

U. MVG Cashes Out

In January 2019, the court denied the defendants' motions to dismiss Minerva's complaint. Dkt. 36. In April 2019, Minerva and MVG discussed settling. *See* Dkt. 93 at 10.

In July 2019, MVG's board formalized the MVG Sale as an auction process. Describing its "bullish strategic plan" to its stockholders, MVG reported that Orbit/FR's success in "defence and aerospace" had created a "major growth phase" for MVG. MVG's bankers advertised "strong demand from the global aerospace and defense industry in the years to come." MVG's promotional materials highlighted Hercules. PTB at 45.

In February 2020, Minerva and MVG agreed to settle "subject to confirmatory depositions and agreement on definitive settlement documentation." Dkt. 93 at 10–11.

"In July 2020, MVG announced that a private equity firm would purchase a controlling interest in MVG[.]" PTO ¶ 193. "HLD Group announced that it would purchase a 52.95% stake in MVG at a €170 million valuation." *Id.* In dollars, the approximately $208.9 million transaction, was more than ten times the $20 million Merger valuation. MVG's senior leaders, including defendants Garreau and Gandois, rolled most or all of their equity. *Id.* ¶ 194. From their perspective, the MVG Sale still undervalued MVG. PTB at 45–46.

By the MVG Sale, MVG's budgets showed Orbit/FR generating 63% of MVG's revenue and over 90% of MVG's EBITDA. PTB at 56.

V. AB Value Objects to the Settlement

In June 2021, Minerva announced a proposed settlement worth $825,000, or $0.36 per share, or $0.26 per share after deducting Minerva's requested contingency fee award and expense reimbursement (the "Original Settlement"). *See* Dkt. 86.

In September 2021, Plaintiff opposed the settlement. Plaintiff asked to replace Minerva as lead plaintiff to pursue two theories why the Merger undervalued Orbit/FR: The MVG Fees (and Orbit/FR's resulting liabilities) were unfair (the "SA Theory"), and the defendants monetized value attributable to Orbit/FR in the MVG Sale (the "MVG Sale Theory," and together with the SA Theory, the "Objection Theories"). Dkt. 108, Settlement Obj. Br. at 2, 20–23.

Minerva defended the proposed settlement vigorously. The defendants did not. The defendants did not respond to the Objection Theories. The defendants said nothing.

On September 14, 2021, the court held a settlement hearing. The court continued the hearing to enable AB Value to prepare its objection. Dkt. 99; *see* Dkt. 105, Tr. at 12–13.

On November 18, 2021, the court reconvened the settlement hearing. Citing many precedents, Minerva argued that the settlement's 11% premium to deal price bested the 1%–5% range that the court routinely approves. Dkt. 126, Tr. at 16–17; *see* Dkt. 93 at 32–33 & n.73.

Minerva explained that while it originally shared AB Value's optimism about Orbit/FR, discovery had revealed "a pretty poor hand." Dkt. 126, Tr. at 9, 32–33. Minerva's two valuation experts believed it would "be exceptionally difficult, if not impossible, to prove that the buyout price was unfairly low or to demonstrate measurable damages." *Id.* at 9, 18, 32. Minerva disputed the SA Theory. *Id.* at 19–20, 27–29. Addressing AB Value's press for further discovery into the MVG Sale Theory, Minerva reasoned, "If there was something brewing in terms of MVG sort of flipping it[self] while this transaction was brewing, we would have seen that in discovery. And we didn't see anything indicating that." *Id.* at 25.

Minerva was right that an 11% bump is a good result for a settlement under the court's precedents. Recognizing the bird in hand, the court questioned whether AB Value could do better. *See id.* at 49 ("I would really like to resolve this with a settlement if it is reasonable to do so. . . . I have some doubt as to the efficacy of continued litigation here."). Prevailing on the SA Theory would be "a steep climb." *Id.* at 55.

At the same time, the court recognized that AB Value owned "a majority of the class" and opposed the settlement. *Id.* at 49–50. Minerva was unaware of precedent in which a majority class member objected and asked for the plaintiff baton—except another case in which AB Value objected. *Id.* at 12. AB Value's majority class ownership kept the litigation alive.

In the hearing, MVG stated that it agreed with Minerva. *Id.* at 40. Nothing else.

On December 9, 2021, the court reconvened. The court directed AB Value to confirm whether it would post a security deposit covering the class's expected recovery. *See* Dkt. 129.

On December 21, 2021, the court reconvened. The court reiterated that "the settlement appears to me, at least facially, to be reasonable, and I suspect, without deciding, that I would approve it if there were no objection." Dkt. 135, Tr. at 4. The court allowed AB Value to take over as plaintiff if AB Value posted security equal to the class's expected recovery and Minerva's requested attorneys' fees and expenses. *See id.* at 4–7. MVG did not speak.

AB Value escrowed $395,000 for the class and Minerva's counsel. Dkt. 136. AB Value filed a proposed leadership substitution order that it had negotiated with Minerva. At this point, MVG woke up and began inflicting litigation expense on AB Value at every possible opportunity.

MVG opposed the substitution order because MVG was "fully committed to supporting the settlement which is still under the Court's consideration." Dkt. 137, Ex. A at 4. MVG complained that AB Value had posted part of the security deposit three days late, a point the court later commended Minerva for not making. *Id.*; Dkt. 141, Tr. at 7. MVG refused to brief its opposition. Dkt. 137, Ex. A at 1–2.

On April 7, 2022, the court held argument on the substitution order. Seeking to parlay the settlement objection into a dismissal, MVG argued points it had never raised before.

MVG never objected when AB Value made the security deposit that the court directed. But in the hearing, MVG argued for the first time that the security deposit created a conflict between AB Value and the class because AB Value "must achieve a result in excess of the current settlement" to recover its security. Dkt. 141, Tr. at 9. MVG simultaneously asked the court "to consider fee shifting" if AB Value *failed* to achieve a better result. *Id.* at 10 ("[D]efendants will likely make such an application for fee shifting following a resolution of this matter.").

The proposed substitution order envisioned AB Value filing a "substitute complaint." Foreshadowing its upcoming second motion to dismiss, MVG argued that a substitute complaint violated "Chancery rules regarding amendments to the pleading." *Id.* at 8. AB Value responded that the substitute complaint was in substance an amended complaint that the court had already authorized. *See id.* at 14.

The court entered AB Value's proposed substitution order over MVG's objections, but MVG's attempt to outspend AB Value was just beginning.

W. AB Value Defeats MVG's Second Motion to Dismiss

In May 2022, AB Value filed its Verified Substitute Class Action Complaint. Dkt. 146 (the "Complaint"). The Complaint advanced the Objection Theories.

In June 2022, AB Value served discovery requests. The defendants provided nothing. When AB Value joined the case specifically to take discovery for the Objection Theories, the defendants had also done nothing.

In July 2022, MVG moved to dismiss, claiming that Plaintiff's "substitute complaint is improper and ought to be dismissed as a whole." Dkt. 189, Tr. at 12; *see id.* at 10; Dkts. 153–54. MVG sought this relief despite having already lost a motion to dismiss against Minerva in 2019.

The defendants moved to stay discovery. Dkts. 163, 167–68. On October 31, 2022, the court denied a stay and authorized discovery for the Objection Theories.[4]

On December 28, 2022, MVG objected to all discovery outside a "Relevant Period" spanning July 1, 2016 through April 6, 2018. *See* Dkt. 205 ¶ 25. The Objection Theories required discovery before (the SA Theory) and after (the MVG Sale Theory) that date range. Through its date range restriction, MVG gave itself the stay the court had just denied.

In January 2023, the court sustained the Complaint as to all defendants but Merrill. Dkt. 193.

[4] *See* Dkt. 188 at 2–3. The court granted a stay as to one defendant only: Special Committee member Merrill. After the court later dismissed Merrill from the case, Plaintiff obtained his documents and deposition using a Vermont subpoena. *See* Polonitza Aff. ¶ 47.

By summer 2023, MVG had produced fewer than 100 documents to AB Value. MVG stood by its unreasoned date range restriction. AB Value moved to compel. Dkt. 205. The court granted the motion. *See* Dkt. 214.

MVG's productions showed the following key facts:

- The MVG Sale and MVG's fear of a lawsuit by AB Value drove the Merger process.
- MVG knew its transfer pricing policies were unfair because its own advisors said so.
- Orbit/FR was pursuing Hercules and other transformative opportunities in the run-up to the Merger.
- By the Merger date, Orbit/FR expected the FCL imminently and viewed it as a major growth driver.

In March 2024, Plaintiff retained two experts: J. Armand Musey of Summit Ridge Group and Rebel Curd of Charles River Associates. Musey opined on both valuation expert and the highly technical scientific and regulatory environment in which Orbit/FR operated. Curd opined on transfer pricing, testifying credibly that the Services Agreement violated transfer pricing rules.

X. AB Value Pushes for More Discovery

In late summer 2024, the parties mediated before a retired Vice Chancellor. Plaintiff prepared mediation expert reports to support its ask. The parties did not settle.

Plaintiff pushed for more discovery from Stout, CBIZ, Orbit/FR's auditor, Merrill, Finlay, Campbell, Lockheed, the Law Firm, and the Special Committee's counsel. Plaintiff simultaneously moved to compel MVG to produce documents incorrectly withheld as privileged and provide additional custodians who were close to the Services Agreement and Hercules, including McKeown and Campbell. Dkt. 250. MVG agreed to moot the motion. The resulting productions helped complete the picture of Orbit/FR's pursuit of large contracts.

Plaintiff previously had sought comprehensive discovery of MVG's transfer pricing, but MVG had produced insufficient data for Curd to analyze. *See* Dkt. 314 ¶ 22 & n.1. Plaintiff crafted additional discovery requests with Curd's input. *See* Dkt. 314 Exs. 6–7.

On November 19, 2024, the court certified the class under "Rule 23(a), 23(b)(1), and 23(b)(2), without opt-out rights." Dkt. 251 ¶ 2.

On December 13, 2024, the court granted fee-shifting for Plaintiff's second motion to compel:

> Plaintiff has shown that the discovery problem that prompted the Motion [to compel] was not an isolated incident. The award of fees and costs is warranted both as a remedial measure in this case and to nudge the [MVG] Defendants towards more responsible behavior in discovery.

Dkt. 264. Six days later, MVG contested Plaintiff's requests for transfer pricing documents as overbroad, unduly burdensome, and irrelevant. *See* Dkt. 314 ¶¶ 23–24, Exs. 6–7.

Y. AB Value Retains a Second Industry Expert

Plaintiff needed expert guidance on the competitive dynamics and procurement processes that determined who won and lost Orbit/FR's large defense contract opportunities. Plaintiff's COO, David Polonitza, researched retired executives of Orbit/FR's competitors. He identified Jeffrey Fordham, a recently retired NSI-MI executive. Fordham agreed to consult. His analyses proved so useful that Plaintiff proffered him as a testifying expert. As a first-time expert, Fordham was uniquely credible and uniquely affordable. Fordham's advice, two expert reports, and deposition testimony cost less than $85,000.

Z. The Parties Settle Just Before Trial

MVG retained a highly respected valuation expert to defend the Merger price. He valued Orbit/FR at $2.67 per share, below the $3.30 per share deal price. *See* Dkt. 334 ("MVG PTB") at 1, 48.

MVG gave its experts the transfer pricing data MVG had withheld from Plaintiff. *See generally* Dkt. 314. Plaintiff moved to exclude the data. In the pre-trial conference, the court granted Plaintiff's motion:

> I am granting AB Value's motion to exclude the document produced after fact discovery. I am also striking those portions of the report that

> rely on that information, and I'm directing the defendants to file a corrected report that omits any reference to that information. Not only that, but . . . MVG cannot have its expert do new analyses . . . . The time for analyses has come and gone.

Dkt. 337 at 17.

The parties resumed settlement discussions. The retired Vice Chancellor who conducted the parties' prior mediations stepped in heroically on short notice.

On the Friday before trial, MVG finished implementing the court's rulings on the motion to exclude. The changes to MVG's transfer pricing report affected its valuation report, which used transfer pricing inputs. MVG's valuation expert now valued Orbit/FR at $4.11 per share, almost 25% more than the Merger price.

The primary issue for trial was damages. Plaintiff likely would have proven an unfair process and won at least some damages, but its quest for a big number faced trial- and appellate-level challenges. Taking MVG's revised valuation as an example, a 25% bump to deal price would have yielded aggregate damages of only $1.9 million. Stressful negotiations happened. On the Saturday before trial, the parties agreed to settle for $17,850,000.

ARGUMENT

I. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT

A. Plaintiff Provided Adequate Notice to the Class

Rule 23(f)(3) provides that "[n]otice of the proposed dismissal or settlement must be given to all class members in the manner directed by the Court," by "any appropriate means approved by the Court, including first-class U.S. mail, email, or publication." The notice must include the following information:

(i) the location, date, and time of any hearing;

(ii) the nature of the action;

(iii) the definition of the class;

(iv) a summary of the claims, issues, defenses, and relief that the class action sought;

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

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

(vii) instructions for objectors;

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

(ix) how to contact class counsel; and

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

Ct. Ch. R. 23(f)(3)(D).

Consistent with the court-approved scheduling order, Dkt. 338 Ex. A, on December 5, 2025, Plaintiff's settlement administrator mailed a notice containing the required information to all record holders (the "Notice"). On the same day, the settlement administrator posted the Notice to a dedicated website (https://www.strategicclaims.net/case/orbit/) and released a summary notice through *Globe Newswire* directing stockholders to the settlement website.[5]

B. The Settlement Is Superior to Reasonably Achievable Damages

Before AB Value objected, the court was inclined to approve the Original Settlement. Dkt. 135, Tr. at 4; Dkt. 126, Tr. at 49. AB Value posted cash security equal to the consideration other class members would have received under the Original Settlement. Plaintiff then litigated for four years and delivered a settlement worth 21.64 times more. The court should approve the proposed settlement because it is the best outcome the class reasonably could expect.

The court evaluates the adequacy of a proposed settlement using "its own business judgment." *In re Infinity Broad. Corp. S'holders Litig.*, 802 A.2d 285, 289 (Del. 2002). The $17.85 million settlement is adequate. It is 21.64 times larger than

[5] AB Value Partners, L.P., *AB Value Partners, L.P. Announces Proposed Settlement of Stockholder Class Action on Behalf of Former Holders of Orbit/FR, Inc. Common Stock - ORFR*, *Globe Newswire* (Dec. 5, 2025), https://www.globenewswire.com/news-release/2025/12/05/3201018/0/en/AB-Value-Partners-L-P-Announces-Proposed-Settlement-of-Stockholder-Class-Action-on-Behalf-of-Former-Holders-of-Orbit-FR-Inc-Common-Stock-ORFR.html.

the Original Settlement, which the court previously viewed as reasonable. The court routinely approves settlements worth 2–6% of deal price.[6] This one eclipses the Merger consideration by approximately 235%. It would be hard to win and defend a judgment worth that much. The remainder of this section non-exhaustively explores obstacles to a comparable damages award.

1. Conventional Valuation Methods

Plaintiff's valuation expert, J. Armand Musey, used a discounted cash flow ("DCF") as his primary valuation methodology. A DCF is reliable only if its projections for the company's future performance are reasonable. The challenge was that not only did no reliable contemporaneous projections exist, but Plaintiff's years'-long factual investigation confirmed that Orbit/FR's post-Merger success surprised everyone.

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[6] *Weiss v. Burke,* C.A. No. 2020-0364-PAF, (Del. Ch. June 15, 2021) (TRANSCRIPT) (~5.8%); *Chester Cty. Empls.' Ret. Fund v. KCG Hldgs., Inc.*, C.A. No. 2017-0421-KSJM, ¶ 6 (Del. Ch. Apr. 2, 2020) (ORDER) (~2.4%); *In re Tangoe, Inc. S'holders Litig.*, C.A. No. 2017-0650-JRS, at 18–19 (Del. Ch. Jan. 29, 2020) (TRANSCRIPT) (5.5% "is generally recognized as a very good result for settling plaintiffs"); *In re Starz S'holder Litig.*, C.A. No. 12584-VCG, at 5–6, 54–55 (Del. Ch. Dec. 10, 2018) (TRANSCRIPT) (~3% "was an excellent settlement for the class"); *In re C&D Techs., Inc., S'holder Litig.*, C.A. No. 6620-VCMR, at 29 (Del. Ch. Mar. 31, 2016) (TRANSCRIPT) ("[A] 2 percent increase . . . . compares favorably to price bumps achieved and approved in other cases in this Court."); *In re El Paso Corp. S'holder Litig.*, C.A. No. 6949-CS (Del. Ch. Dec. 3, 2012) (TRANSCRIPT) (<1%).

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Orbit/FR's chaotic recordkeeping, complicated intercompany entanglements, and lack of reliable management projections confounded traditional DCF analyses and increased Plaintiff's reliance on industry trends and projections. MVG capably contested whether industry trends captured Orbit/FR's operative reality. *See* MVG PTB at 52–53.

Orbit/FR's pursuit of large contracts was a risky valuation driver. Orbit/FR's pipeline reflected transformative opportunities as of the Merger, but those contracts were not guaranteed. McKeown, Orbit/FR's regional sales manager for the eastern United States, was MVG's most credible fact witness. McKeown would have testified persuasively that no one considered any opportunity a sure thing until many months after the Merger. *See* MVG PTB at 23, 29–32, 35–36. Plaintiff's experts would have testified that Orbit/FR had already caught the updraft that propelled it to future success, but that argument would pit Plaintiff's post hoc arguments against contrary testimony from MVG's best witness. Every fact witness except Orbit/FR's CFO would have testified that they did not attribute the value of future game-changer contracts to Orbit/FR on the Merger date.

If the court rejected Musey's DCF, then Plaintiff would have sought damages based on adjustments to MVG's expert valuation. Under that approach, the best reasonably achievable upside scenarios carried damages of $1.85–$2.73 per share. The settlement is worth $7.75 per share.

2. The Second R&S LOI

Plainitff alternatively could have asked the court to rely on the closest thing to a contemporaneous, "market-based" valuation: the Second R&S LOI, which valued MVG at approximately \$150–\$162 million. Extensive diligence informed R&S's offers. Plaintiff would have argued that R&S's views about MVG's value were credible because they were rooted in R&S's economic self-interest to pay a fair price for MVG. Proving that the Second R&S LOI established the value of Orbit/FR would have been difficult.

The first problem with a valuation based on the Second R&S LOI is that MVG never completed any transaction with R&S. MVG argued persuasively that a failed acquisition of MVG does not indicate the value of Orbit/FR. *See* MVG PTB at 57.

The second problem is that Plaintiff lacked a ready-made way to translate the valuation of MVG implied by the Second R&S LOI into a valuation of Orbit/FR. Plaintiff's expert presented several disaggregation methods—valuing Orbit/FR based on its relative contributions to MVG's revenue, gross profit, and EBITDA, and valuing Orbit/FR using a discounted cash flow model based on projections MVG sent R&S. MVG challenged each methodology. Valuators generally do not value companies based on revenue multiples or gross profit alone. MVG's complex, disorganized intercompany accounting made it nearly impossible to disaggregate Orbit/FR's contributions from MVG's consolidated EBITDA. Finally, R&S's offer likely incorporated an unknown amount of synergies that MVG contended should not be included in a valuation of Orbit/FR. MVG PTB at 57.

The third problem with a valuation based on the Second R&S LOI is that the evidentiary record tended to show that R&S was focused on MVG's technology and operations in the civil telecommunications market, not the aerospace and defense market Orbit/FR served. *See* MVG PTB at 28. Garreau would have testified adamantly that Orbit/FR was an afterthought for R&S, whose primary focus was expanding its civil telecom offerings in Europe. MVG would have argued rightly that the projections supporting the Second R&S LOI forecasted low growth and profitability for Orbit/FR.

3. A "Fairer Price" or Rescissory Damages

If Plaintiff could not prove that Orbit/FR's future contract success was baked in on the Merger date or establish Orbit/FR's value using the Second R&S LOI, then Plaintiff would have sought a "fairer price" or rescissory damages. Although these paths could have established a damages award larger than the settlement, that was unlikely to happen.

In an entire fairness case where the price falls "within a range of fairness," the plaintiff still may be "entitled under the circumstances to a 'fairer' price." *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214, at *38 (Del. Ch. Aug. 27, 2015). *Dole* awarded a fairer price, but even that was only a 20% premium to deal price.

2015 WL 5052214, at *2. Applying a 20% premium to the Merger price would be worth $0.66 per share. The proposed settlement is more than ten times larger.

Plaintiff's long-shot damages theory sought rescissory damages. Rescissory damages are an "exceptional" remedy.[7] To achieve a result comparable to the proposed settlement, Plaintiff sought rescissory damages measured as of the MVG Sale, when the defendants monetized the Orbit/FR shares MVG took in the Merger. The theory is untested in a fiduciary duty challenge to a merger, and the passage of time could have given MVG powerful defenses.

Plaintiff would have sought rescissory damages measured by the "highest intervening value" of Orbit/FR's shares "between the time of the [Merger] and the time of judgment." *Reis v. Hazelett Strip-Casting Corp.*, 28 A.3d 442, 467–68 (Del. Ch. 2011). When "a party has a right to sell and the defendant has foreclosed the plaintiff from exercising that right," the court may "award[] the plaintiff the highest intermediate value of the shares." *Mehta v. Smurfit-Stone Container Corp.*, 2014 WL 5438534, at *7 (Del. Ch. Oct. 20, 2014) (citing *Duncan v. Theratx*, 775 A.2d 1019, 1023 (Del. 2001)). "This damages model is premised upon the idea that 'the risk of fluctuations in the market should be borne by the wrongdoer.'"[8]

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[7] *In re Transkaryotic Therapies, Inc.*, 954 A.2d 346, 362 n.55 (Del. Ch. 2008); *accord Strassburger v. Earley*, 752 A.2d 557, 579 (Del. Ch. 2000).

[8] *Segovia v. Equities First Hldgs., LLC*, 2008 WL 2251218, at *21 (Del. Super. May 30, 2008); *Basho Techs. Holdco B, LLC v. Georgetown Basho Invs., LLC*, 2018 WL

Today, MVG is a private company. Plaintiff would have asked the court to set damages equal to Orbit/FR's contribution to the value of MVG in the MVG Sale. MVG had modeled the MVG Sale in secret while the Merger process was ongoing. PTB at 22–24. MVG's secret pursuit of a whole-company sale supported rescissory damages.

The challenge for Plaintiff was that the MVG Sale occurred over two years later. Achieving rescissory damages based on the MVG Sale would have been unprecedented. American courts generally impose a "within a reasonable time" limitation on the highest intermediate price remedy. A "reasonable time" typically means days or weeks, maybe a few months, but not the ten months Plaintiff needed for the Hercules contract or the twenty-seven months Plaintiff needed for the MVG Sale. The lone Delawarean exception Plaintiff found involved a breach of the more rigorous duty of loyalty owed by a trustee. *See Paradee*, 2010 WL 3959604.

3326693, at *50 (Del. Ch. July 6, 2018) ("The disloyal fiduciary who wrongfully takes property from the beneficiary is liable for changes in value while the wrongfully taken property is under the disloyal fiduciary's control."); *Paradee v. Paradee*, 2010 WL 3959604, at *13 (Del. Ch. Oct. 5, 2010) ("Although it would be improbable (bordering on impossible) for the [plaintiff beneficiary] to have sold precisely at the top of the market, the faithless fiduciary must bear that risk, not the innocent beneficiary.").

The highest intermediate price remedy originated in "breach of contract or conversion cases concerning property with dynamic value."[9] For example, in *Galigher*, the counterclaim plaintiff sued his broker for wrongly selling the counterclaimant's stock in late November just before a run-up in the stock. The Supreme Court of the United States affirmed a damages award measured by the highest price the shares reached in the following January, reasoning that by then the counterclaimant "had reasonable time, after receiving notice of the sale of his stock . . . , to replace it by the purchase of new stock, if he desired to do so." 129 U.S. at 199–200. The "reasonable time" limitation avoids the "hardship" to the defendant from changes in the converted asset's value by "the time of the trial, which might be years after the transaction occurred." *Galigher*, 129 U.S. at 201.

The reasonable time limitation is "[k]nown as the New York Rule." *Diamond Fortress Techs., Inc. v. EverID, Inc.*, 274 A.3d 287, 306 (Del. Super. 2022); *see id.* ("This slight variation of the old English rule—which measured damages by the highest value of the stock on or before the day of trial—allows for a more just recovery." (footnote omitted)). The New York Rule "is careful to avoid windfall awards to injured parties." *Diamond Fortress*, 274 A.3d at 307. The highest

[9] *Brown v. Matterport, Inc.*, 2024 WL 2745822, at *12 (Del. Ch. May 28, 2024) (collecting cases), *aff'd in part, rev'd in part on other grounds*, 340 A.3d 1149 (Del. 2025) (ORDER); *see Galigher v. Jones*, 129 U.S. 193, 199–200 (1889).

intermediate price remedy primarily applies in the commercial setting that produced it. There, "Delaware [f]ollows the New York Rule." *Diamond Fortress*, 274 A.3d at 307 (citing *Am. Gen. Corp. v. Cont'l Airlines Corp.*, 622 A.2d 1 (Del. Ch. 1992)).

> The use of the "highest intermediate value" in the computation of damages is "a compromise attempt to value the chance that the plaintiff might at some time have profited by a rise in value." This is not to say, however, that a plaintiff may pick and choose, with hindsight, a single date to set that value. Rather, the date should be established by resort to a "constructive replacement" purchase by the plaintiff, i.e., how long it would have taken the plaintiff to replace the securities on the open market.

Cont'l Airlines, 622 A.2d at 13 (citation omitted).

The Court of Chancery has borrowed principles from conventional highest intermediate price cases to craft remedies like the one Plaintiff sought, but only rarely, and never in identical circumstances. In *Bomarko, Inc. v. International Telecharge, Inc.*, the court ruled that because the defendant's disloyal pre-merger conduct had devalued the corporation's shares, compensatory "damages measured by the actual value of ITI's shares at the time of the Merger" were inadequate. 794 A.2d 1161, 1184–85 & n.9 (Del. Ch. 1999), *aff'd*, 766 A.2d 437 (Del. 2000). The court valued the company as if the defendant had not depressed the value of the shares. *Bomarko*, 794 A.2d at 1184–85.

Bomarko held a defendant liable for depressing the corporation's value before a cash-out. *Bomarko* never held or suggested that a plaintiff may receive post-merger value that arose innocently after a disloyal merger.

The court applied a highest intermediate price remedy in *Paradee v. Paradee*, a case in which a trustee and its co-tortfeasors "wrongfully deprived" the trust of shares of stock and the ability to sell them. 2010 WL 3959604, at *13 (Del. Ch. Oct. 5, 2010). The court awarded damages using the highest intermediate price of the shares the trust would have received over an eleven-year period. *See Paradee*, 2010 WL 3959604, at *13.

Paradee's temporally wide application of highest intermediate price damages might not have applied here. Corporate fiduciary duties generally are "less rigorous" than the default duties of trustees.[10] The Merger, however wrongful, might not have warranted a remedy only awarded in a trust case.

MVG would have had valid defenses to a damages award based on the MVG Sale, which occurred more than two years after the Merger. "Consistent with the requirement of proving causation, this Court has declined to award rescissory damages where a plaintiff proffered insufficient expert evidence and his damages

[10] *New Enter. Assocs. 13, L.P. v. Rich*, 295 A.3d 520, 545–46 & n.67 (Del. Ch. 2023) (collecting authorities); *see also Mennen v. Wilm. Tr. Co.*, 2015 WL 1914599, at *24 n.254 (Del. Ch. Apr. 24, 2015) (quoting *Restatement (Third) of Trusts* § 78 cmt. b (Am. L. Inst. 2007) ("In transactions that violate the trustee's duty of undivided loyalty, under the so-called 'no further inquiry' principle it is immaterial that the trustee may be able to show that the action in question was taken in good faith, that the terms of the transaction were fair, and that no profit resulted to the trustee.")). *But see Cahall v. Burbage*, 121 A. 646, 650 (Del. Ch. 1923) (Wolcott, C.) (holding director "liable for all the damage done" by wrongful issuance and personal sale of stock, "whether the profit was reaped by himself alone or shared by others").

calculation was 'speculative.'" *Universal Enter. Gp., L.P. v. Duncan Petroleum Corp.*, 2013 WL 3353743, at *16 (Del. Ch. July 1, 2013). MVG would have had strong arguments that the value of Orbit/FR on the date of the MVG Sale reflected unforeseeable events post-dating the Merger.

If Plaintiff convinced the court to award rescissory damages, then Plaintiff still would have struggled to quantify them. The task of disaggregating Orbit/FR's value contributions from the MVG Sale price would have been difficult for the same reasons why valuing Orbit/FR based on the Second R&S LOI would have been difficult.

* * *

Proving damages in the same galaxy as the proposed settlement would have been difficult. Any available route would have carried significant appellate risk. The Delaware Supreme Court has reversed damages awards.[11] The best paths to a high damages award involved novel legal theories that carried heightened appellate risk. The proposed settlement avoids both post-trial and appellate risk.

[11] *In re Dell Techs. Inc. Class V S'holders Litig.* [*Dell Class V*], 300 A.3d 679, 696 (Del. Ch. 2023) ("During the post-*Americas Mining* era, plaintiffs in representative actions who have prevailed at the trial court level and recovered a monetary judgment have lost on appeal 67% of the time, with a 100% reversal rate since 2016. A plaintiff who takes a case to trial and prevails thus faces significant appellate risk." (footnote omitted)), *aff'd*, 326 A.3d 686 (Del. 2024).

The proposed settlement values Orbit/FR at $11.05 per share, implying a market capitalization of over $67 million.[12] On the Merger date, MVG's market capitalization was $81 million. PTB at 32. At the time of the Merger, MVG internally forecasted that Orbit/FR would generate half of its 2018 revenue. *Id.* at 29. Plaintiff might not have convinced a court that Orbit/FR was worth 83% of MVG's market capitalization on the Merger date. The proposed settlement avoids having to do that.

C. The Plan of Allocation Is Fair, Reasonable, and Adequate

"An allocation plan must be fair, reasonable, and adequate." *Schultz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009), *overruled on other grounds by Urdan v. WR Cap. P'rs, LLC*, 244 A.3d 668 (Del. 2020). The plan of allocation calls for payment pro rata to the class of the net settlement amount, with payment routed to record holders through DTC. The court has endorsed this approach because it is the best approach.[13] Its application here is fair, reasonable, and adequate.

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[12] The $17.85 million proposed settlement divided by the 2,301,773 minority shares equals $7.75 per share. Adding the $3.30 per share Merger price equals $11.05 per share. Multiplying $11.05 per share times 6,084,473 total shares yields a $67,233,427 implied market capitalization.

[13] *See, e.g.*, *In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1133118, at *1 (Del. Ch. Apr. 18, 2022) (even when the payment-through-DTC method hits an unforeseen snag, it "remains more efficient than the traditional notice-and-claim process"); *Montgomery v. Erickson Inc.*, C.A. No. 8784-VCL, at 16 (Del. Ch. Sept. 12, 2016 (TRANSCRIPT) (allocating settlement proceeds through claims process carries "high administrative costs and . . . unknown distributional effects").

II. THE COURT SHOULD APPROVE PLAINTIFF'S APPLICATIONS

A. The Court Should Apportion AB Value's Fees and Expenses

Plaintiff requests an award of attorneys' fees and expenses equal to $4,541,605.13 (the "Fee and Expense Award"). Because Plaintiff owns 71.6% of the class, Plaintiff will fund 71.6% of any award.

Plaintiff seeks reimbursement for the following costs: $1,109,466.72 in expert fees and expenses, $339,372.11 in litigation costs and other out-of-pocket expenses, and $3,092,766.30 in attorneys' fees.

The Fee and Expense Award is $39,410.16 higher than the amount Plaintiff anticipated requesting when the Notice was mailed. The Notice stated truthfully as follows:

> Plaintiff intends to petition the Court for an award of expenses incurred in connection with the prosecution and resolution of this Action in the amount of $4,502,194.97, representing $3,089,188.70 in attorneys' fees, $1,109,466.72 in expert expenses, and $303,539.55 in discovery costs and other litigation expenses (the "Fee and Expense Application).

Dkt. 338, Notice of Proposed Settlement of Class Action, Settlement Hr'g, & Right to Appear at 8. After the mailing of the Notice, Plaintiff received an additional final invoice from its discovery vendor for $4,361, identified $3,577.60 in additional fees incurred for hourly work performed by its consulting counsel at The Wagner Firm ("Wagner"), and identified $31,471.56 in additional fees previously advanced by

Wagner to Plaintiff's discovery vendor. Plaintiff therefore seeks a total of $39,410.16 in additional fees and expenses, as shown in the following table:

	Notice	**Actual**	**Difference**
Expert Expenses	$ 1,109,466.72	$ 1,109,466.72	$ 0
Litigation Expenses	$ 303,539.55	$ 339,372.11	$ 35,832.56
Attorneys' Fees	$ 3,089,188.70	$ 3,092,766.30	$ 3,577.60
Grand Total	$ 4,502,194.97	$ 4,541,605.13	$ 39,410.16

Plaintiff has paid in full all invoices for which it seeks reimbursement except two invoices from Musey totaling $223,564.45. Plaintiff will pay Musey's remaining invoices. *See* Aff. of David Polonitza Supporting Pl.'s Appl. For an Award of Atty's Fees & Expenses ¶ 12.

Plaintiff is providing public notice of the above by posting this brief promptly to settlement website.

1. The Court Should Apportion AB Value's Out-of-Pocket Expenses

In a typical representative action in which counsel works for a contingent fee, the court commonly approves reimbursement of out-of-pocket costs, including expert expenses, before determining counsel's fee award.[14] Here, Plaintiff funded its

[14] *See, e.g.*, *In re Dell Class V S'holders Litig.*, 300 A.3d 679, 732 (Del. Ch. 2023) ("If plaintiff's counsel had asked for out-of-pocket costs to reimbursed, then the court would have deducted them first and awarded a fee as a percentage of the net benefit."); *see also In re Appraisal of Dell Inc.* [*Dell Appraisal Fee*], 2016 WL 6069017, at *10 (Del. Ch. Oct. 17, 2016) ("In my view, in a case where counsel have incurred significant out-of-pocket expenses, the approach that best balances the interests of the attorneys and the class is to deduct reimbursable expenses first, then award a fee based on the net benefit achieved. I therefore use that method here."); *id.* at *3 ("The fees and expenses . . . can be taxed

own litigation costs and expert expenses. Plaintiff submitted over 600 pages of expert reports, incurred court reporter, transcriptions, and videography costs in twelve offensive depositions, and maintained a discovery database of over 45,000 documents over multiple years at a total cost of $1,448,838.83. It is fair to apportion those costs across the class they benefited.

2. The Court Should Apportion AB Value's Attorneys' Fees

The remaining costs for which Plaintiff seeks reimbursement are attorneys' fees. Plaintiff's trial counsel, Abrams & Bayliss LLP ("A&B"), led the litigation beginning in September 2021. A&B litigated on an hourly basis. Plaintiff's consulting counsel, Wagner, contributed to discovery strategy, assisted with document review, maintained Plaintiff's discovery database, contributed to filings and discovery requests, and participated in mediation efforts. Wagner litigated on a hybrid basis. Plaintiff does not seek reimbursement of the contingent component of Wagner's fees from the settlement fund. *See generally* Aff. of David Polonitza Supporting Pl.'s Appl. for an Award of Atty's Fees & Expenses.

Had counsel litigated on a contingent basis, then Delaware precedents would have supported a fee of at least $4.37 million. Plaintiff seeks only $3.09 million. Plaintiff saved the class at least $1.28 million.

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against the entire appraisal class pro rata because that's what's fair. It's a classic application of common-fund principles . . . ." (quotation marks omitted)).

In contingent fee cases, the court applies the "*Sugarland* factors." *See Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149–50 (Del. 1980). The *Sugarland* factors are "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved." *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1254 (Del. 2012).

Under *Sugarland*, the most important factor is "the benefit achieved in the litigation." *Theriault*, 51 A.3d at 1259. "When the benefit is quantifiable, . . . Sugarland calls for an award of attorneys' fees based upon a percentage of the benefit." *Id*. at 1259. The appropriate percentage increases as the case proceeds through litigation milestones. *See id.* at 1259–60. While choosing the correct percentage is "an exercise of judicial discretion," using "guideline ranges promotes consistent awards so that similar cases are treated similarly." *Dell Class V*, 300 A.3d at 695. After selecting a percentage range from the stage-of-case framework, the Court then considers whether "to adjust the indicative fee up or down" by applying the remaining *Sugarland* factors. *Id.* at 692–93.

In *Dell Class V*, the court surveyed precedent and concluded that "the percentage awarded in a case that stops short of a fully litigated judgment should top out at 30%, leaving a range of 25% to 30% for a late-stage settlement." 300 A.3d at 699. The court selected 26.67%, or "one-third of the way" between 25% and 30%, because "counsel made it through approximately one-third of the late-stage tasks" before settling nineteen days before trial.[15]

In this case, the parties settled two days before trial. Plaintiff was nearly finished "preparing exhibits, working with witnesses," and "choreographing the audio-visual component" of trial. *Dell Class V*, 300 A.3d at 699. Multiplying 26.67% by the $16.4 million settlement fund after deducting out-of-pocket expenses implies a fee award of $4.37 million. To account for the seventeen long days separating *Dell Class V* and this case, the court could have chosen 27.5%, for a fee award of $4.5 million. Plaintiff seeks attorneys' fees of $3.09 million—$1.28 million less than the first scenario and $1.42 million less than the second.

The remaining *Sugarland* factors would be net-positive positive but likely would not warrant departing from the stage-of-case guideline.

- ***Time and effort of counsel.*** The indicative fees just discussed would reflect lodestars of 1.42 to 1.46. A&B's effective hourly rate was $669.63 per hour. Houston Aff. Supporting Pl.'s Appl. for an Award of Attys' Fees & Expenses ¶ 3. Wagner's effective hourly rate was $267.92 per hour. Aff. of Avi Wagner, Esq. Supporting Pl.'s Appl. for an Award of Attys' Fees & Expenses ¶ 3.

- ***Complexity.*** This case was more complex than a typical case involving a merger of its size. As the prior plaintiff's counsel emphasized, Plaintiff's valuation theory based on the SA Claims was hard to plead and prove. It

[15] *Dell Class V*, 300 A.3d at 695, 699 (late-stage tasks include "negotiating the pre-trial order, preparing a pre-trial brief, and presenting any pre-trial motions," then "the trial itself and the tasks associated with that effort, such as preparing exhibits, working with witnesses, performing the stand-up trial work, and choreographing the audio-visual component," and finally "post-trial briefing and argument").

required navigating a minefield of statute of limitations arguments and defeating MVG's *Primedia* arguments. Plaintiff developed and proponed novel valuation and damages theories. Plaintiff mastered complex transfer pricing issues. The case was on hard mode.

- ***Standing and ability of counsel.*** Able counsel litigated earnestly.

Contingency counsel would be entitled to a larger fee than Plaintiff seeks here. That fact supports granting the Fee and Expense Award.

This was a complicated case about a small merger. Contingency counsel declined to represent Plaintiff. *See* Polonitza Aff. ¶ 10. Achieving a significant recovery required retaining counsel on an hourly basis, letting counsel work hard, and hiring experts. Only the largest minority stockholder had the resources and motivation to do that. There is "ample reason to adjust the guideline range up" for fee awards in "litigation involving companies with small capitalizations" because "these companies do not face a high level of market scrutiny" and "there's less of an incentive for capable counsel to investigate fiduciary breaches and governance issues in this context."[16] The small nature of the case supports a higher fee award.

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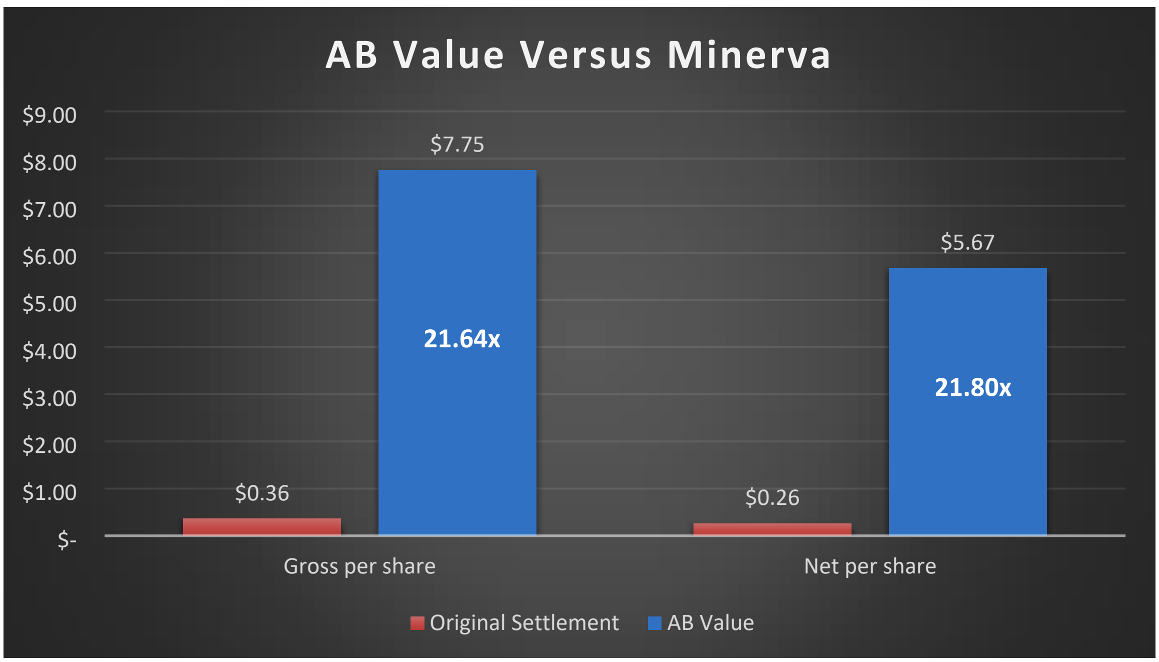
[16] *Carter v. B. Riley Secs., Inc.*, C.A. No. 2024-0605-KSJM, at 56 (Del. Ch. May 13, 2025) (TRANSCRIPT); *accord In re Harvest Cap. Credit Corp. S'holder Litig.*, C.A. No. 2021-0164-JTL, at 30–32 (Del. Ch. July 2, 2024) (TRANSCRIPT); *Riche v. Pappas*, C.A. No. 2018-0177-JTL, at 23–24 (Del. Ch. Sept. 16, 2020) (TRANSCRIPT); *see Browne v. Layfield*, C.A. No. 2024-0079-JTL, at 38 (Del. Ch. Sept. 5, 2024) (TRANSCRIPT) (commenting that "small issuers are the cases where it turns out we most need plaintiff's lawyers to be looking"); *In re Dell Techns. Inc. Class V S'holder Litig.*, C.A. No. 2018-0816-JTL, at 89 (Del. Ch. April 19, 2023) (TRANSCRIPT) (similar); *Chen v. Howard-Anderson*, 2017 WL 2842185, at *2 (Del. Ch. June 30, 2017) (similar); *Baker v. Sadiq*, 2016 WL 4375250, at *6 (Del. Ch. Aug. 16, 2016) (similar).

By hiring hourly billing counsel and retaining three capable experts, Plaintiff embraced contingency risk for the class. A loss at trial or on appeal would have cost Plaintiff more than $4.5 million. In that downside scenario, the rest of the class still would have received the value of the Original Settlement through Plaintiff's security deposit, bringing Plaintiff's losses close to $5 million. Plaintiff then would have faced additional downside risk through MVG's threatened fee-shifting motion.

AB Value stewarded the class's resources effectively. AB Value's requested fees and expenses equal 26.84% of the common fund. The prior plaintiff requested fees and expenses equal to 27.41% of the common fund.

	Original Settlement	AB Value Settlement	*Multiple*
Settlement Amount	$ 825,000	$ 17,850,000	21.64
Gross per share	$ 0.36	$ 7.75	21.64
Fees & Expenses	$ 226,101	$ 4,791,424	21.19
Fees	$ 206,500	$ 3,092,766	14.98
Expenses	$ 19,601	$ 1,698,658	86.66
Net	$ 598,899	$ 13,058,576	21.80
Net per share	$ 0.26	$ 5.67	21.80
Fees & Expenses as Percentage of Recovery	27.41%	26.84%	21.64



These cost savings are impressive because Plaintiff litigated the most expensive parts of the case other than trial. Demonstrating Plaintiff's cost discipline, a single mid-level associate took or defended thirteen depositions. Plaintiff also invested prudently in expert testimony. Musey served as a dual expert in finance and the telecommunications industry. Fordham provided critical testimony at low rates because he was a first-time expert.

The class should pay its share of Plaintiff's investment in this case. The court should approve the Fee and Expense Award.

B. A $650,000 Incentive Award Is Warranted

AB Value seeks a $650,000 incentive award in recognition of its unique contributions to the litigation (the "Incentive Award"). The preceding discussion shows that. The following discussion affirms it.

At the end of a representative litigation, the plaintiff is "eligible for a special payment in recognition of their service to the class." *In re Santander Consumer USA Hldgs. Inc. S'holders Litig.*, 2025 WL 1012345, at *2 (Del. Ch. Mar. 31, 2025) (citation omitted). Two primary factors are relevant: "(i) the time, effort, and expertise expended by the class representative, and (ii) the benefit to the class." *Dell Class V*, 300 A.3d at 733.

1. AB Value Made Unique Contributions

AB Value contributed to the settlement long before the litigation began by becoming an expert investor in illiquid micro-cap companies. Berger Dep. 16–21, 30. AB Value thwarted MVG's efforts to freeze out the class by refusing MVG's many requests to buy out AB Value's shares. MVG's principals sent self-sabotaging emails in response. The pre-litigation record AB Value helped create increased MVG's exposure and willingness to settle.

A larger incentive award is warranted when the plaintiff "is an experienced individual who identified the situation" before hiring counsel and served as the only "enforcement mechanism" backstopping minority stockholders' rights. *Virtus Cap. L.P. v. Sterling Chems.*, Inc., C.A. No. 6951-VCL (Del. Ch. Jan. 5, 2017) (TRANSCRIPT); *see Santander*, 2025 WL 1012345, at *4 ("Elliott's hundreds of hours of investigatory and valuation work prompted it to contact counsel to pursue a challenge to the buyout."). A larger award also is warranted when the plaintiff "generated some of the litigation team's key legal strategies." *Chen v. Howard-Anderson*, 2017 WL 2842185, at *5 (Del. Ch. June 30, 2017) (ORDER). AB Value checks both boxes. AB Value's pre-filing experience and investigation generated the Objection Theories that defeated the Original Settlement. The Objection Theories were meritorious and enabled a better settlement.

A larger award is warranted when the plaintiff brings subject-matter "expertise to the litigation team," including by ensuring "that the litigation team retained a high quality expert." *Id*. AB Value ensured that the team hired two capable experts—by finding and selecting Curd, then finding Fordham and convincing him to serve as a first-time expert. AB Value also contributed financial expertise. AB Value's Chief Operating Officer, David Polonitza, holds master's degrees in accounting and business administration. Polonitza Aff. Polonitza served as AB Value's finance expert in an informal mediation with Minerva's counsel and a Minerva finance expert, an interaction that educated counsel about factual and financial bases for the Objection Theories. Polonitza contributed financial expertise to develop the Objection Theories throughout fact and expert discovery.

A larger award is warranted when the plaintiff immerses itself in the litigation process. *See Santander*, 2025 WL 1012345, at *4. Polonitza devoted extensive time and expertise to the litigation, as detailed in his affidavit. Highlights include the following:

- Sending and receiving over 17,000 emails to and from counsel.
- Spending hundreds of hours in meetings and phone calls with counsel.
- Attending every fact deposition (including his own), and all but one expert deposition.
- Providing defensive discovery and serving as AB Value's primary 30(b)(6) witness.
- Identifying key custodians and subpoena targets.
- Providing both associate-level work (reviewing tens of thousands of English and French documents, analyzing and highlighting deposition transcripts, and drafting discovery requests and deposition questions) and partner-level contributions (providing discovery strategy, designing and pressure-testing valuation theories).

A larger award is warranted when the class representative devotes significant time to the litigation. "A representative plaintiff must devote time to the litigation, and if that time has to be offered gratis, then the representative plaintiff effectively pays for taking on the role of class representative. Rather than receiving the same amount as the class, the named plaintiff receives less." *Dell Class V*, 300 A.3d at 716–17. Polonitza estimates that he spent over 2,400 hours working on the litigation.[17] Only one of his attorneys devoted more.[18] Unlike the attorney, Polonitza is not paid by the hour. A large incentive award is warranted in recognition of the chunk of Polonitza's life spent creating value for the class.

A larger award is warranted when the lead plaintiff secures a large premium to the deal price. In *Santander*, the court awarded $500,000 after the lead plaintiff secured a 6.5% premium. *Santander*, 2025 WL 1012345, at *5. AB Value secured a 235% premium.

* * *

AB Value's contributions warrant a large fee award. The requested award is higher than in all but one of the most analogous cases, which are *Santander*, *Chen*, *Virtus*, and the *El Paso* derivative litigation. For that comparison to be meaningful, precedent should be adjusted to reflect lead plaintiffs' respective time contributions and inflation. After making those adjustments, the requested award is not an outlier.

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[17] *Cf. Santander*, 2025 WL 1012345, at *7 (awarding $500,000 when lead plaintiff devoted 1,630 hours).

[18] *Cf. Chen*, 2017 WL 2842185, at *4 ("Chen effectively acted as a second attorney, working . . . as one of two principal individuals involved in the case.").

Unlike attorney fee awards, no mechanical guidelines govern incentive fees. *See Virtus* at 28. For exceptional cases in which the court awarded a non-nominal incentive award, no discernible relationship links the size of the award with the size of the common fund. That makes sense because incentive awards and attorneys' fees serve different policy interests.

The stage-of-the-case framework promotes consistency because percentages are a relative measure that is generalizable across cases and over time. The stage-of-the-case framework incentivizes counsel to take and win meritorious cases to benefit stockholders. Because stockholder welfare is the primary policy goal, counsel's implied hourly rate is a tertiary cross-check.[19]

Incentive awards are different. When an exceptional lead plaintiff merits a nontrivial incentive award, the court analyzes their contribution more holistically, considering factors like the plaintiff's investment of time and expertise and reputational risk. The holistic analysis serves more nuanced goals: It compensates exceptional non-lawyers for devoting part of their lives to a case and rewards that investment when it benefits other class members. The plaintiff's time investment is

[19] *See, e.g.*, *In re Duke Energy Corp. Deriv. Litig.*, 2017 WL 5256305, at *1 (Del. Ch. Nov. 13, 2017) (lodestar "is typically only a check on the amount awarded, and is not used to set the award itself").

more important than counsel's hours because it reflects personal sacrifices. *See Chen*, 2017 WL 2842185, at *5; *Santander*, 2025 WL 1012345, at *4.

Two consequences follow: First, an appropriate metric of comparison is the hourly rate implied by prior awards. Second, incentive award comparisons should be adjusted by inflation.

Counsel's percentage cut is always generalizable across cases and time because it is a relative measure; precedent-derived percentages apply regardless of the size of the common fund. The exceptional lead plaintiff's investment of hours is not generalizable across cases and time because there is no relative measure involved and the value of a dollar changes. For precedent to serve both consistency and the nuanced policy goals behind incentive awards, it should be adjusted by hours.

The hourly rate implied by AB Value's requested Incentive Award is lower than the average in the four most analogous precedents.

Case	**Hours**	**Award**	**Hourly Rate**	**Implied AB Value Award**
Santander	1,630[20]	$ 500,000	$ 307	$ 740,798
Chen	4,000[21]	$ 1,000,000	$ 250	$ 603,750
Virtus	1,340[22]	$ 350,000	$ 261	$ 630,784

[20] *Santander*, 2025 WL 1012345, at *7.

[21] *Chen*, 2017 WL 2842185, at *4.

[22] *Virtus*, C.A. No. 9808-VCL, Aff. of Steven Gidumal (Dkt. 326) ¶ 99.

Case	Hours	Award	Hourly Rate	Implied AB Value Award
El Paso[23]	1,500[24]	$ 450,000	$ 300	$ 724,500
Average	**2,118**	**$ 575,000**	**$ 279**	**$ 674,958**
AB Value	2,415	$650,000	$ 269	

This method measures time as a function of money, so it should inflate prior awards to reflect the changing value of money. Column X inflates prior awards at the rate of inflation as of September 1, 2025, the latest data available in the relevant Federal Reserve data series.[25] Column Y combines both approaches to estimate an inflation-adjusted fee based on the hourly rates implied by precedent.

Case	Award	Date	Cumulative Inflation	Inflation-Adjusted [X]	Hourly Inflation-Adjusted [Y]
Santander	$ 500,000	3/31/2025	1.3%	$ 506,686	$ 750,703
Chen	$ 1,000,000	6/30/2017	27.9%	$ 1,279,243	$ 772,343
Virtus	$ 350,000	12/9/2016	28.8%	$ 450,876	$ 812,586
El Paso	$ 450,000	2/4/2016	31.0%	$ 589,371	$ 948,887
Average	**$ 575,000**			**$ 706,544**	**$ 821,130**

[23] *In re El Paso Pipeline P'rs, L.P.*, 2016 WL 451320 (Del. Ch. Feb. 4, 2016) (ORDER), *vacated on other grounds sub nom. El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248 (Del. 2016).

[24] *El Paso*, C.A. No. 7141-VCL, Aff. of Peter Brinckerhoff (Dkt. 253) ¶ 10.

[25] *See* Fed. Res. Bank of St. Louis, *Personal Consumption Expenditures: Chain-type Price Index (PCEPI)*, available at https://fred.stlouisfed.org/series/PCEPI. Other official data sources would support higher cumulative inflation figures. Compare, *e.g.*, *id.* (reflecting 31% cumulative inflation between February 2016 and September 2025), *with* U.S. Bur. Lab. Stats., *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm (estimating that $1 in February 2016 "has the same buying power as $1.37 in September 2025").

AB Value's requested award is lower than the average inflation-adjusted award among the four precedents. It is lower than all four inflation-adjusted, implied hourly awards.

2. AB Value's Frugal Litigation Efforts Support Granting the Requested Award

Rewarding AB Value for its contribution to this action still would leave the class better off than if counsel had litigated on a contingent basis. As discussed above, AB Value saved the class between $1.28 million and $1.42 million by retaining hourly counsel. If the court grants the Incentive Award, then the class is still better off—by $631,423 to $767,553. Put differently, the requested Incentive Award is less than half of the average savings to the class implied by the *Sugarland* analysis above.

3. Granting the Incentive Award Will Not Create Bad Incentives

The court balances the positive effects of an incentive award against the risk of creating bad incentives. If the court handed out large incentive awards in every case, then the "promise of a bonus could be used to entice an indifferent stockholder to lend her name and shares to a lawyer-driven lawsuit." *Santander*, 2025 WL 1012345, at *2. AB Value was not an indifferent stockholder. The client drove this lawsuit.

The court also polices the risk that an incentive award could "tempt a class representative to accept a result unfavorable to the class if an incentive payment is offered." *Santander*, 2025 WL 1012345, at *2. The Court of Chancery Rules solve this problem by forbidding a representative plaintiff from accepting compensation not ordered by the Court. Ct. Ch. R. 23(aa), (f). Rule 23(aa) requires that no one, including counsel, "offer" an incentive award. And in any event, the opposite happened here: AB Value objected to an inadequate settlement, litigated for four years, then played its settlement hand perfectly, creating a massive win for the class.

The court also polices the risk that "a plaintiff might withhold consent to 'an optimal settlement in the hopes of achieving a larger settlement' with a larger incentive fee." *Santander*, 2025 WL 1012345, at *2 (quoting *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006)). The court has solved this problem by not tying incentive awards directly to the benefit achieved. This worry also should not exist in cases in which the representative plaintiff is a large holder pursuing its own enlightened self-interest. And again, AB Value achieved an optimal settlement.

C. The Court Should Award Interest on AB Value's Security Deposit

The court ordered AB Value to post a $395,000 deposit to secure the payout to the class and the prior plaintiff's counsel before permitting AB Value to litigate the case. The court's order preceded the 2024 amendments to Rule 23 providing for the posting of security.[26] Plaintiff and Minerva had to devise their own procedure to

[26] *See In re Amendments to Rules 1–6, 8, 9, 11–15, 23, 23.1, 79, 79.1, 79.2, & 174 of Ct. of Ch. Rules, Sections, I, II, III, IV, X, AND XVI* (Del. Ch. June 14, 2024) (ORDER).

implement the court's ruling on short notice. The most natural choice was to place the security deposit in a non-interest-bearing trust account at A&B. AB Value consequently lost the time value of its capital. AB Value seeks $81,927.33, reflecting the application of simple interest at the legal rate to the security deposit from January 19, 2022 (the three-day-late payment) through January 1, 2026. This request conservatively uses both simple interest and a frozen legal rate of 5.25% as of January 19, 2022, when money was still cheap.

A modest interest award also is fair compensation for the risk MVG threatened after AB Value made the deposit. MVG took no position on the security deposit until after AB Value had wired the funds. MVG then opposed AB Value's form of leadership order because part of the security deposit was three days late. MVG also argued that the security deposit distorted AB Value's incentives. MVG added to the claimed problem by threatening to seek fees if AB Value could not top the Original Settlement.

AB Value lost its funds for approximately four years and simultaneously faced threats from its own compliance with the court's order. It is fair to compensate AB Value for some of the lost time-value of its funds.

* * *

Between December 1 and 19, 2025, AB Value incurred an additional estimated $95,000 in attorneys' fees preparing this brief and conducting settlement administration. Although AB Value perhaps could recover part of this amount by asking the court to reimburse its settlement administration expenses using unclaimed settlement funds, that is no guarantee. *See* Dkt. 338, Stip. & Agreement of Compromise, Settlement, & Release ¶ 4 (addressing use of unclaimed settlement funds). This factor further supports granting the Incentive Award and the interest award in full.

CONCLUSION

AB Value respectfully requests that the court approve the settlement and AB Value's Fee and Expense Award, Incentive Award, and request for interest on the security deposit.

/s/ Ben Lucy

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