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Case No. 2021-0268-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL BLUE and CHRISTIAN GROH, Plaintiffs, v. DAN FIREMAN, CHRISTOPHER AKELMAN, OCTAVIO BOCCALANDRO, MURPHY OFUTT LCV LLC, TPCO HOLDING CORP., FIREMAN CAPITAL PARTNERS LLC, FIREMAN CAPITAL PARTNERS III, L.P., CROCKET RESOURCES S.A., and BASSLER CO CORP., Defendants.	)	C. A. No. 2021-0268-LWW PUBLIC VERSION FILED: August 17, 2026

PLAINTIFFS' BRIEF IN SUPPORT OF THE SETTLEMENT AND <u>AWARD OF ATTORNEYS' FEES AND EXPENSES</u>

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page No.

CASES

RULES

OTHER AUTHORITIES

PRELIMINARY STATEMENT[1]

Plaintiffs initiated this class action against the Director Defendants of Company, the Company's controlling stockholder, Fireman Capital Partners LLC ("Fireman Capital"), and affiliates of Fireman Capital and Boccalandro, for what they believed was a self-interested cash-grab of merger consideration worth more than $30 million from the Company's common stockholders and option holders as the Company entered into agreements to be acquired by TPCO Holding Corp. (the "Merger").

As set forth in the Complaint, Plaintiffs believed Defendants achieved this through amendments to the terms of a $10 million bridge financing Fireman Capital provided to the Company in July 2020. These amendments, forced through immediately prior to the Merger, substantially diluted the value of the merger consideration the members of the Class would receive in the Merger (the "Dilution").

Discovery revealed a more complicated story. As the Merger approached, a clear dispute arose concerning the terms of the bridge financing as to the relative value to be placed on the Company in connection with the Merger. By this time,

[1] Unless otherwise noted, all capitalized terms have the meaning set forth in the June 22, 2026 Stipulation and Agreement of Compromise and Settlement (Trans. ID 79559234) ("Stipulation"), and Plaintiffs' July 25, 2024 Second Amended Verified Complaint (Trans. ID 73712856) ("SAC").

Fireman Capital controlled three of the five directors on the Board and strongly made its case. Trial would have shown that the bridging financing documents were heavily negotiated at arm's-length and knowingly entered into by all parties, each represented by counsel. But there were also contemporaneous spreadsheets exchanged illustrating a complicated waterfall. Either the papering of the deal or the spreadsheets exchanged among the parties were off – they both could not have been correct.

Delaware law on contracts would favor the deal documents, but Fireman Capital controlled the stockholder vote on the Merger and was under no contractual obligation to support it. The Company needed the bridge financing in July 2020 to continue operations through an expected close on the Merger in November 2020. The terms of the bridge financing ensured that if additional financing was provided after that time, the value of the common stock would be wiped out. Both directors unaffiliated with Fireman Capital believed the Merger was in the best interest of the common stockholders, even with Fireman Capital's proposed amendments. Accordingly, Fireman Capital had tremendous leverage.

There is no question Fireman Capital used that leverage to extract better terms for itself than what the documented terms of the bridge financing would have provided. Less clear is whether Fireman Capital dealt unfairly with the Company or whether Fireman Capital extracted an unfair price for its support of the Merger. Fireman Capital did not lie, cheat or steal in dealing with the Company. It just used the powerful leverage it had over whether the Merger would happen or not, coupled with the dilution that would occur if additional financing became necessary, to convince the unaffiliated directors on the Board to vote unanimously in favor for what it wanted. The unaffiliated directors continued to be counseled independently by Cooley and were fully informed on what they were voting for, including the fact that the amendments would be subject to entire fairness review.

In the aggregate, under the documented terms of the bridge financing, the repayment and interest due on the 2020 Note was $15 million, the 2019 Noteholders would have received only $7.8 million, and the 2020 Warrant holders would have received an additional $2.9 million, for a total of $25.7 million.[2] In the back-and-forth leading up to the amendments, Fireman Capital instead proposed a $12.5 million 2020 Note repayment, the 2019 Noteholders receive $35.5 million and the 2020 Warrant holders receive an additional $15.3 million, for a total of $63.2 million. The two directors unaffiliated with Fireman, represented by the Company's independent counsel at Cooley, proposed instead a $12.5 million 2020 Note

[2] There were other payouts in connection with the Merger, including on the common stock, but the payouts on these securities were the ones Fireman Capital sought to improve through the Dilution.

repayment, the 2019 Noteholders receive $32.2 million and the 2020 Warrant holders receive an additional $6.2 million, for a total of $50.8 million.

Neither side's proposal with respect to the 2019 Noteholders was anywhere close to the $7.8 million reflected in the deal documents, and, on that term, both proposals tracked significantly closer to the exchanged waterfall. Also, critically for assessing litigation risk, Plaintiffs understand that in the context of determining an appropriate remedy when defendants have failed to show a deal is entirely fair, a counteroffer made by unaffiliated directors can carry significant weight.[3] This issue was going to be particularly complicated to address at trial because Dawson, one of the unaffiliated directors, was appointed by and was affiliated with Plaintiffs themselves, who are company founders and former directors. (Dawson also had a hand in preparing the waterfall exchanged during the July 2020 negotiations.)

Ultimately, the amendments adopted by the Board, including with the affirmative vote of the two directors unaffiliated with Fireman Capital, resulted in a final payout of a $15 million 2020 Note repayment, the 2019 Noteholders receiving $31.9 million and the 2020 Warrant holders receiving an additional $12.3 million, for a total of $59.2 million. The payout on the 2020 Note was in accordance with its

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[3] *See*, *e.g.*, *In re Southern Peru Copper Corp. S'holder Derivative Litig.*, 52 A.3d 761, 818 (Del. Ch. 2011), *aff'd*, *Americas Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012).

original terms, which Plaintiffs negotiated – a difficult fact for Plaintiffs to address at trial; the payout to the 2019 Noteholders was less than the unaffiliated directors' counteroffer – a difficult fact for Plaintiffs to address at trial; but the payout to the 2020 Warrant holders was $6.1 million more than the amount proposed by the unaffiliated directors and approximately $9.4 million more than the deal documents reflected – Plaintiffs best facts for trial.

But the defendants had another card to play at trial; the Merger consideration is today worthless and was worth significantly less than the $10-per-share headline value even before lockup periods expired. While caselaw would support a damage calculation based on the value of the Merger consideration as of the time of the Merger, nailing down the market value of the shares during that time with competing expert testimony would be no slam dunk. The sum of discovery was that trial would be difficult and proving substantial damage to the Class would be even more so.

After an extended effort to mediate, an attempt to amend the pleadings to broaden the available relief, and prolonged arm's-length settlement negotiations between counsel directly, Plaintiffs ultimately agreed to settle the case for a $4.8 million payment to the Class. Plaintiffs respectfully submit that this negotiated settlement is fair and reasonable given the risks of the case and should be approved.

Plaintiffs' counsel, Prickett, Jones & Elliott, P.A. ("Prickett Jones"), also seek an award of attorneys' fees and reimbursement of expenses. Prickett Jones represented the Class on an entirely contingent basis and advanced $203,389.06 in expenses during the course of the litigation, the bulk of which were mediation fees and litigation support vendors for electronic discovery. Prickett Jones respectfully requests it be reimbursed its expenses and be paid $750,000 in attorneys' fees, which equates to approximately 16.3% of the $4,596,610.94 net recovery after expenses.

STATEMENT OF FACTS

A. The Parties

1. Plaintiffs

Plaintiffs Christian Groh and Michael Blue were at all relevant times common stockholders of the Company.[4] As discussed below, Plaintiffs were two of the founding members of Privateer Holdings, Inc. ("Privateer"), a holding company from which the Company was spun off. Plaintiffs and Privateer co-founder Brendan Kennedy were originally the Company's controlling stockholders.

2. Current Defendants

Defendant Fireman Capital (together with its affiliates) became the Company's controlling stockholder in connection with the July 2020 Bridge Financing and remained the Company's controlling stockholder through the consummation of the Merger, including all relevant times relating to the Dilution.[5] In addition to the notes and warrants Defendants amended in connection with the Dilution, at all relevant times, Fireman Capital also held an irrevocable proxy that provided it with approximately 83% of the Company's outstanding voting power, and the power to seat three of the five members of the Board.[6]

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[4] SAC ¶ 8.

[5] *Id.* ¶ 9.

[6] *Id.* ¶ 9.

Director Defendant Dan Fireman ("Fireman") is a founder and managing partner of Fireman Capital;[7] Director Defendant Christopher Akelman is a partner of Fireman Capital.[8]

Director Defendant Octavio Boccalandro is a self-described "entrepreneur, advisor and investor."[9] Over the last 15 years, Boccalandro has founded and led a number of asset management firms based in Panama and Venezuela, including Defendant Bassler Co Corp ("Bassler").[10] Boccalandro indirectly held notes and warrants Defendants amended in connection with the Dilution through Bassler at all relevant times. Fireman Capital appointed Boccalandro to the Board in July 2020.[11]

Crocket Resources S.A. ("Crocket") was also a holder of notes and warrants Defendants amended in connection with the Dilution at all relevant times. Crocket is managed by Danilo Diazgranados. Diazgranados is a Venezuelan financier.[12] Boccalandro holds a power of attorney from Diazgranados to handle his accounts.

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[7] *Id*. ¶ 10.

[8] *Id*. ¶ 11.

[9] *Id*. ¶ 12.

[10] *Id*. ¶ 12.

[11] *Id*. ¶ 12.

[12] *Id*. ¶ 13.

Diazgranados's son, Danilo Diazgranados, Jr., worked as an "associate member" at Fireman Capital.[13]

3. Dismissed Defendants Auerbach and Brooks[14]

Michael Auerbach is a former officer of Privateer. Auerbach founded, manages and controls Defendant Murphy Ofutt LCV LLC, a private equity fund created to invest in the Company ("Murphy").

Barry A. Brooks is an investor in Murphy. He is also a Partner in the Corporate Department of Paul Hastings, LLP. Brooks "maintains a close personal and business relationship with Auerbach . . . ."[15] Auerbach is Brooks' client. Auerbach engaged Brooks and Paul Hastings to represent TPCO in connection with the Merger.[16] Brooks provides legal and business advice to Auerbach, Boccalandro and Murphy, and was involved in both the Bridge Financing and the Dilution.[17]

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[13] *Id*. ¶ 13.

[14] Following briefing and argument on Brooks and Auerbach's motions to dismiss the SAC, Brooks and Auerbach were dismissed from the Action by Orders dated April 28, 2025 (Trans. ID 76163163) and July 25, 2025 (Trans. ID 76727655), respectively.

[15] SAC ¶ 15.

[16] *Id*. ¶ 15.

[17] *Id*. ¶ 15.

B. Privateer Funds, Incubates and Spins-Off Left Coast Ventures

In 2010, Brendan Kennedy and Plaintiffs Christian Groh and Michael Blue founded Privateer.[18] Privateer was an investment firm that sought to end cannabis prohibition and social harms it causes through the skillful deployment of capital.[19] Through a combination of acquisitions, investments and incubation, Privateer focused on building a portfolio of global brands to lead, legitimize and define the future of cannabis.[20]

In 2019, Privateer determined that it was in the best interest of its stockholders to cause each of its four primary operating subsidiaries to become fully independent.[21] In February 2019, Privateer distributed its ownership in three of those operating subsidiaries to its stockholders, and subsequently merged with and into the fourth.[22] Left Coast Ventures was among the operating subsidiaries spun-off to Privateer stockholders.[23]

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[18] *Id*. ¶ 16.

[19] *Id*. ¶ 16.

[20] *Id*. ¶ 16.

[21] *Id*. ¶ 17.

[22] *Id*. ¶ 17.

[23] *Id*. ¶ 17.

Left Coast Ventures was a leading cannabis operator in California.[24] The Company brought together best-in-class management, experienced operators, and highly strategic assets – including cultivation, manufacturing and distribution across the state, a large-scale distillate extraction operation, a leading line of hemp CBD bath and body care products, and a portfolio of cannabis brands.[25] Left Coast Ventures was strategically positioned to leverage its unique footprint and best-in-class operators to deliver high-quality, consistent and accessible cannabis products to every consumer in California.[26]

C. The Company's Capital Structure

After being spun-off from Privateer, the Company had two classes of stock outstanding: Class A Common stock, holders of which were entitled to one vote per each share; and a high-vote Class B Common stock, holders of which were entitled to ten votes per share.[27]

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[24] *Id*. ¶ 18.

[25] *Id*. ¶ 18.

[26] *Id*. ¶ 18.

[27] *Id*. ¶ 19.

There were approximately 111,575,371 shares of Class A Common stock issued and outstanding, and 54,925,656 shares of Class B Common stock issued and outstanding.[28]

The high-vote Class B Common stock was held by Privateer's founders, Kennedy, Groh and Blue.[29] The Class B Common stock represented approximately 83% of the Company's outstanding voting power.[30]

D. The Company Raises Capital; Seeks Strategic Alternatives

After the spin-off, the Company pursued strategic acquisitions to vertically integrate its supply chain.[31] To fund its strategy, the Company raised capital privately through a series of issuances of convertible notes (the "2019 Notes").[32] During 2019 and early 2020, the Company issued a total of twenty 2019 Notes for an aggregate principal amount of $27,104,450.[33]

The 2019 Notes matured on March 28, 2021.[34] Under their terms, upon issuance and sale of preferred stock in the Company on or before the maturity date

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[28] *Id*. ¶ 20.

[29] *Id*. ¶ 21.

[30] *Id*. ¶ 21.

[31] *Id*. ¶ 22.

[32] *Id*. ¶ 22.

[33] *Id*. ¶ 22.

[34] *Id*. ¶ 23.

in which the Company received gross proceeds of at least $25 million (or such lesser amount as approved by the holders of at least a majority of the outstanding principal amount of the 2019 Notes) (a "Qualified Financing"), both the principal and accrued interest on the 2019 Notes automatically converted into shares of that series of preferred stock.[35]

Defendants acquired $19,500,000 of the 2019 Notes issued, thereby holding a 72% voting control bloc with respect to the 2019 Notes.[36]

By the Spring of 2020, the Company was also actively engaged in discussions with Auerbach and Subversive Capital in connection with a potential merger with TPCO and related and strategically integrated businesses.[37] The potential transaction was complex and there was considerable uncertainty as to whether it would materialize.[38] TPCO and Auerbach publicly claimed that, by August 2020, Auerbach recused himself "from all discussions and voting with respect to a LCV transaction" to avoid any "potential appearance of a conflict of interest."[39]

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[35] *Id*. ¶ 23.

[36] *Id*. ¶ 24.

[37] *Id*. ¶ 25.

[38] *Id*. ¶ 26.

[39] *Id*. ¶ 27.

E. Fireman's July 2020 Bridge Financing

Also, by the Spring of 2020, operational challenges and delays associated with the COVID pandemic required the Company to seek additional financing (the "Bridge Financing").[40]

In April and May 2020, the Company, Fireman and Boccalandro began discussing additional financing for the Company that would involve the issuance of preferred stock.[41] At the time, the Board was composed of Blue, Groh and Brett Cummings, the Company's CEO.[42]

In response to a particularly draconian and dilutive financing proposal from Fireman Capital, Blue suggested that Fireman Capital and the 2019 Noteholders instead acquire the Company for $48.7 million to the paid to the common stockholders. Fireman Capital rejected the proposal.[43]

As the Company's discussions with Auerbach and Subversive Capital continued, Fireman Capital instead proposed $10 million of bridge financing designed to fund the Company for approximately six months and contemplating an

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[40] *Id*. ¶ 26.

[41] *Id*. ¶ 27.

[42] *Id*. ¶ 27.

[43] *Id*. ¶ 28.

option for additional financing of at least $7 million by year end.[44] Under this structure, the Company would have funds to operate while determining whether a transaction with Auerbach's SPAC was realistic, but 2019 Noteholders (52% of which was Fireman Capital and 72% of which were Defendants) that chose to participate in the later financing would enjoy dilutive features that would be draconian to the Company's common stockholders, essentially placing the entire value of the Company in the participating 2019 Noteholders' hands should the later financing prove necessary.[45]

On the other hand, while a transaction with Auerbach's SPAC was still highly speculative, under Fireman Capital's structure, if a deal could materialize in the next few months, Fireman Capital would reap a quick and handsome return on its bridge financing and roll its earlier investment into a larger company under friendly management.[46]

As part of any bridge financing, Fireman Capital also demanded control of the Company.[47] Control of the Company put Fireman Capital in the driver's seat on any terms of a SPAC transaction and would ensure it was Fireman Capital's decision as

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[44] *Id*. ¶ 29.

[45] *Id*. ¶ 29.

[46] *Id*. ¶ 30.

[47] *Id*. ¶ 31.

to if and when the Company required additional financing.[48] The broad strokes of the Bridge Financing as eventually fleshed out by the parties were: (i) that the terms of the 2019 Notes be improved; (ii) the issuance of a new $10 million note (the "2020 Note"); (iii) the issuance of a warrant for shares of Class A common stock; (iv) additional representation on the Board; and (v) an irrevocable proxy to vote the founders' shares of Class B Common stock, giving Fireman Capital voting control over the Company.[49]

The Company, represented by Cooley LLP, and Fireman Capital, represented by Gunster, Yoakley & Stewart, P.A., engaged in extensive negotiations:

- On May 27, 2020, the Company made a counter proposal focused on preserving the current common stockholders' equity in the event the SPAC merger closed. The Company proposed reducing the convertible features of both the 2019 Notes and 2020 Warrants. As to the Board, the Company offered a five-member Board with two seats to Fireman Capital, one seat for the CEO, one seat for Privateer and one seat for an independent director unanimously voted on by the other directors.

- In responding, Fireman Capital made clear control of the Company was its priority. In the likely event the SPAC merger did not materialize, another round of financing would be necessary before year end, after which, Fireman Capital believed, it should essentially own the Company.

- On May 29, 2020, Akelman countered. Calls followed. There were more calls that evening, and again on June 1, 2020, that also included Octavio Boccalandro. A key issue discussed was whether the 2019 Notes would be

[48] *Id*. ¶ 31.

[49] *Id*. ¶ 31.

automatically converted in the event of a Qualified Financing or Qualified Transaction. Akelman wanted flexibility, which was unworkable. Cummings told Akelman and Boccalandro that no new investor would invest money leaving $27 million outstanding. Downround financing was always dilutive to the earlier investment. Late in the evening on June 1, 2020, Cummings advised his team that he had verbal terms for $10 million of Bridge Financing agreed to with Fireman Capital.

- On June 3, 2020, Cooley provided draft deal documents to Cummings and his team for review. The deal documents included (i) an amended and restated stockholder agreement; (ii) an amendment to the 2019 Notes; (iii) the 2020 Note that would provide the $10 million of bridge financing; (iv) a warrant "sweetener" on the return Fireman Capital would receive in connection with the bridge financing; (v) an amended and restated certificate of incorporation; and (vi) a side letter that provided contractual rights to Fireman Capital. On June 5, 2020, Cummings received Privateer's green-light on Cooley's drafts.

- On June 10, 2020, Cooley provided Gunster, Fireman Capital's counsel, the drafts.

- On June 17, 2020, Gunster provided Cooley with comments. Gunster had no comments to Section 3(b) of the amendment to the 2019 Notes, the section relevant to conversion in the event of a Qualified Transaction, but added a new Section 3(d) that would only require the notes be converted in the event of a Qualified Transaction if Fireman Capital's consent (the majority holder of the 2019 Notes) had been obtained. The Company reacted negatively, reminding Akelman and Boccalandro that they had agreed to automatic conversion.

- On June 23, 2020, Cooley sent revised drafts to Gunster. New Section 3(d) was deleted; Section 3(b) was untouched.

- On June 24, 2020, Akelman sent an email to the Board commenting document by document on Cooley's drafts. As to the amendment to the 2019 Notes, he commented on Section 3(a), Section 3(c) and confirmed he was okay with the removal of Section 3(d).

- On June 25, 2020, Blue confirmed that Akelman's comments correctly reflected their conversation on June 24, 2020. He noted that the parties were discussing protective provisions Fireman was to provide in exchange for voting control. Akelman then confirmed the parties were in agreement on intent and that Cooley should keep the pen on the next draft as he continued to hammer out the final details on voting power and control.

- On June 26, 2020, Akelman scheduled an all-hands meeting with the deal teams and their counsel to tie-up loose-ends. Cooley sent revised drafts that day. More meetings follow.

- On July 7, 2020, Cooley provided revised drafts of the certificate of incorporation and side letter intended to reflect the final negotiations between Blue and Akelmen with respect to voting power and control. The revisions to the side letter included an irrevocable proxy to Fireman for the Class B high vote.

- On July 13, 2020, Cooley provided Gunster a slightly revised draft of the side letter and what Cooley believed to be the final drafts of the rest of the documents. On July 14, 2020, Gunster confirmed it was signed-off. On July 15, 2020, the side letter was revised to include payment for Fireman Capital's legal expenses. On July 17, 2020, Akelmen confirmed Fireman Capital was signed off.[50]

The final Bridge Financing documents included an extension of the maturity date of the 2019 Notes to July 31, 2021. Other terms of the 2019 Notes were amended to: (a) lower the $25-million gross-proceeds minimum for a Qualified Financing to $7 million; (b) add automatic conversion events upon: (i) a transaction with a SPAC, (ii) an initial firm commitment to complete an initial public offering,

[50] *Id.* ¶ 31.

or (iii) any other transaction that would result in the Company's capital stock being registered on a stock exchange or market-place; (c) add automatic conversion upon maturity; (d) change a $1.0 billion valuation cap used in determining the number of shares potentially issuable upon conversion to $175 million, subject to potential adjustments depending on the occurrence of a financing as opposed to a SPAC or other transaction resulting in the Company's stock being registered on a stock exchange or marketplace (maximum adjustment up to $325 million).[51]

The new 2020 Note was not convertible and carried a simple interest rate of 12% per annum.[52] The new 2020 Note required the Company to pay Fireman Capital 200% of the outstanding principal plus any accrued interest upon maturity or any other event requiring the repayment of the 2020 Note.[53] However, if the Company closed on the SCAC Merger, or other transaction that resulted in the Company's shares being publicly traded (a "Qualifying Transaction"), by November 30, 2020, then the principal due would be reduced to 150%.[54]

Like the terms of the 2020 Note, the value of the warrant issued to Fireman Capital (and its dilutive impact on the outstanding common stock) varied depending

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[51] *Id*. ¶ 35.

[52] *Id*. ¶ 36.

[53] *Id*. ¶ 36.

[54] *Id*. ¶ 36.

on whether a Qualifying Transaction was completed prior to November 30, 2020.[55] The warrant provided Fireman Capital the right to purchase Class A Common shares of the Company at a price equal to $0.01 per share (the "Exercise Price").[56]

Fireman Capital could exercise the warrant at any time during a 3-year period commencing on the earlier of the closing of a Qualifying Transaction, Qualified Financing, or November 30, 2020.[57]

The maximum shares issuable to Fireman Capital pursuant to the terms of the warrant were $10,000,000 multiplied by 150% or, if after November 30, 2020, 300%, divided by the applicable share price.[58]

The clear purpose and incentive of the terms on which Fireman Capital negotiated and agreed to extend the Bridge Financing was for the Company to close on the SPAC merger it was discussing with Subversive Capital before the end of November 2020, or place the entire value of the Company in the Noteholders'

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[55] *Id*. ¶ 37.

[56] *Id*. ¶ 37.

[57] *Id*. ¶ 38.

[58] *Id*. ¶ 39.

hands.[59] The combination of the increased Board representation and Class B proxy ensured Fireman Capital controlled either outcome.[60]

With the Class B proxy in hand, Fireman Capital controlled more than 80% of the Company's voting power, and the Board was to be recomprised with five directors.[61] With the close of the Bridge Financing, however, Fireman Capital only appointed Akelman and Boccalandro to the Board.[62] The other two directors were Cummings and Adam Dawson. Dawson was appointed by holders of the Class B Common shares, i.e., the Plaintiffs and their Privateer co-founder.[63]

After Fireman Capital was issued the 2020 Note and warrant, it in turn offered certain holders of the 2019 Notes an opportunity to participate in its investment.[64] Defendants Fireman Capital, Crocket, Bassler and Murphy comprised more than 92% of the new investment.[65]

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[59] *Id*. ¶ 40.

[60] *Id*. ¶ 40.

[61] *Id*. ¶ 41.

[62] *Id*. ¶ 41.

[63] *Id*. ¶ 41.

[64] *Id*. ¶ 42.

[65] *Id*. ¶ 43.

F. Defendants' Dilutive Amendments

By August 2020, the key terms of the transaction with Auerbach's SPAC began to materialize.[66] Terms sheets were exchanged, and by September draft merger agreements were being prepared.[67] Negotiations continued despite Subversive Capital not placing as high of a value on the Company as the Company had hoped.[68]

By the end of October 2020, as the SPAC deal neared the finish-line, Fireman Capital realized the terms of the Bridge Financing documents would not support its expected returns. Fireman believed the Bridge Financing documents were drafted in error and more favorable conversion rights had been agreed to with respect to the 2019 Notes.[69] Privately, Boccalandro communicated that he had a different recollection. But he maintained solidarity with Fireman Capital as Fireman Capital approached the Company.[70]

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[66] *Id*. ¶ 44.

[67] *Id*. ¶ 44.

[68] *Id*. ¶ 44.

[69] *Id*. ¶ 46.

[70] *Id*. ¶ 46.

Fireman Capital declared that the terms of the $10 million Bridge Financing were no longer fair to it.[71] Fireman Capital complained that, among other things, treatment of the 2019 Notes upon a Qualifying Transaction – which the Merger was – did not reflect "an agreed minimum conversion premium."[72]

Fireman Capital also complained that the warrant did not reflect the "coverage amount" it was supposed to receive based on a "fixed valuation" of $125,000,000 being attributed to the Company in connection with the Merger.[73]

Fireman Capital demanded extensive changes to the Bridge Financing documents, including reducing the exercise price of its warrant from $0.01 per share to less than 1% of a penny per share.[74]

When Cummings and Dawson balked, Fireman Capital exercised its right to appoint an additional director to the Board, seating Dan Fireman and establishing its majority control over the Board.[75]

Trying to find a middle ground, counsel from Cooley asked Fireman Capital to provide him with the basis for its belief that a mistake existed in the Bridge

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[71] *Id*. ¶ 47.

[72] *Id*. ¶ 47.

[73] *Id*. ¶ 48.

[74] *Id*. ¶ 49.

[75] *Id*. ¶ 50.

Financing documents.[76] Akelman responded by providing emails from May 27 through May 29, contending that the emails established the terms of the financing.[77]

On November 3, 2020, after reviewing all the material, Cooley responded to Akelman, stating that the proposal to revise the 2019 Note amendment would only operate in a manner consistent with Fireman Capital's draconian proposals to provide financing to the Company.[78] Cooley did not say the proposed revisions were in accordance with anything the parties had agreed to during the Bridge Financing negotiations. Cooley also noted that Fireman's proposed revisions to the warrant did not relate to any of the discussions that occurred over the summer.[79]

Cooley further advised Akelman and the Company that revisions to the terms of the Bridge Financing would be subject to entire fairness review.[80] Cooley offered options the Board could consider in an attempt to bring some fairness into this conflicted transaction, including subjecting any proposed amendments to a majority

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[76] *Id*. ¶ 51.

[77] *Id*. ¶ 51.

[78] *Id*. ¶ 52.

[79] *Id*. ¶ 52.

[80] *Id*. ¶ 53.

of the minority unaffiliated stockholder vote or bringing Privateer back to the negotiating table.[81]

On November 10, 2020, Akelman sent Blue the same material he sent Cooley.[82] It was clear to Blue that Akelman was not looking to correct anything, rather he was back to Fireman Capital's opening position and looking to renegotiate the Bridge Financing.[83]

Fireman Capital conferred with Auebach and Brooks.[84] After the meeting, Akelman communicated to Cummings that TPCO had advised him that it needed flexibility to assume the liability of the 2020 Notes at closing rather than pay them off.[85] He then told Cummings and Dawson that satisfaction of the 2020 Notes was a key term for the Bridge Financing and without certainty that the 2020 Notes would be paid at closing, everything needed to be renegotiated.[86] Akelman told Cummings and Dawson that Fireman Capital would not support the Merger unless the Company agreed to its revised terms to the Bridge Financing.[87]

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[81] *Id*. ¶ 53.
[82] *Id*. ¶ 55.
[83] *Id*. ¶ 55.
[84] *Id*. ¶ 57.
[85] *Id*. ¶ 58.
[86] *Id*. ¶ 58.
[87] *Id*. ¶ 58.

Again, Cummings tried to find common ground. On November 16, 2020, Cummings presented a compromise that ensured the common stockholders would still receive approximately $20 million in merger consideration from the Merger.[88] Privately, Cummings communicated to Akelman that the Board needed to be able to support a change from the Bridge Financing documents and he could not support the "insane wholesale 2 page redline" Fireman was proposing.[89]

Fireman rejected the proposal and insisted on its changes to the Bridge Financing. Cooley communicated to Gunster that if the proposal was put before the Board, Dawson would abstain.[90] Dawson told Cooley that while he was not involved in the Bridge Financing negotiations, he had not seen anything to convince him that there was a misunderstanding in the executed agreements.[91] But Dawson also told Cooley he would continue to support the Merger.[92]

Fireman was adamant that the Board needed to unanimously approve its proposal.[93] Akelman conferred with Auerbach, who was simultaneously working

[88] *Id*. ¶ 59.

[89] *Id*. ¶ 59.

[90] *Id*. ¶ 60.

[91] *Id*. ¶ 60.

[92] *Id*. ¶ 60.

[93] *Id*. ¶ 61.

through what Cummings role would be within new TPCO.[94] Auerbach told Akelman he was completely aligned with Fireman Capital.[95] Auerbach then agreed with Akelman that he would call Cummings to tell him he needed to agree to Fireman Capital's terms or "f*ck off."[96]

Dawson was on an island. He did not have the necessary voting power to block the Board from acting and was in an untenable position, risking the Merger and the potential long-term value the synergistic transaction could create for the Company's stockholders by taking "noisy" or more aggressive action.[97] Ultimately, on November 24, 2020, both Cummings and Dawson determined that without agreeing to the new amendments Fireman Capital demanded to the 2019 Notes and warrants, the closing of the Merger would be compromised.[98]

G. The Litigation

Plaintiffs initiated this action on March 30, 2021.[99] Defendants moved to dismiss Plaintiffs' complaint.[100] On February 28, 2022, after briefing and oral

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[94] *Id*. ¶ 61.

[95] *Id*. ¶ 61.

[96] *Id*. ¶ 61.

[97] *Id*. ¶ 62.

[98] *Id*. ¶ 62.

[99] Trans. ID 66442947.

[100] Trans. IDs 66533781, 66551312.

argument, the Court issued its memorandum opinion granting the motions to dismiss in part and denying the motions in part.[101]

The parties thereafter engaged in discovery, with both Plaintiffs and Defendants serving interrogatories, document requests and subpoenas.

On May 12, 2023, while discovery was ongoing, the parties attended a full-day virtual mediation session with the Honorable Judge Andrea L. Rocanelli (Ret.) of Delaware ADR. While the mediation session did not result in a settlement, the parties continued settlement discussions through Judge Rocanelli. Those discussions proved unsuccessful and mediation efforts ended on November 5, 2023.

Discovery continued. Defendants produced 8,974 documents. Plaintiffs produced 2,698 documents. Pursuant to subpoenas, additional documents were produced by Cooley, Gunster, Auerbach, Brooks and Paul Hastings.[102] Plaintiffs and Defendants exchanged privilege logs and deficiency letters.

On January 22, 2024, Plaintiffs moved for leave to amend their complaint to add new allegations based upon document discovery, including naming Auerbach, Brooks, Murphy Ofutt and TPCO as defendants.[103] Defendants stipulated to

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[101] *Blue v. Fireman*, 2022 WL 593899 (Del. Ch. Feb. 28, 2022).

[102] Subpoenas were also served on Brett Cummings, Gold Flora Corporation (formerly TPCO), and Tilray Brands, Inc.

[103] Trans. ID 71844847.

allowing the amendment, and Plaintiffs' Verified Amended Complaint was filed on February 2, 2024.[104] Defendants and TPCO answered the Amended Complaint, and Brooks and Auerbach moved to dismiss.[105] To address the matters raised in these motions, Plaintiffs moved to file an amended complaint on July 15, 2024.[106] That motion was unopposed, and Plaintiffs filed their Second Amended Complaint on July 24, 2024.[107] Auerbach and Brooks moved to dismiss the Second Amended Complaint.[108] Briefing on those motions was completed on January 15, 2025.[109]

The Court granted Brooks's motion to dismiss on April 28, 2025.[110] Oral argument on Auerbach's motion to dismiss was held on May 7, 2025.[111] The motion was granted on July 25, 2025.[112]

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[104] Trans. ID 71897855.

[105] Trans. IDs 73396516, 73393418.

[106] Trans. ID 73632284.

[107] Trans. ID 73712856.

[108] Trans. IDs 73986195, 73997837.

[109] Trans. IDs 75443855, 75446068.

[110] Trans. ID 76163163.

[111] Trans. ID 76222979.

[112] Trans. ID 76727655.

The parties thereafter set a case schedule, with trial scheduled for September 8–11, 14, 2026.[113] The parties also engaged in direct settlement discussions. These discussions resulted in the filing of the Stipulation of Settlement on June 22, 2026.

[113] Trans. ID 78081366.

ARGUMENT

I. THE CLASS SHOULD BE CERTIFIED

Pursuant to Rules 23(a), 23(b)(1), and 23(b)(2), the Parties seek to permanently certify the following non-opt-out class:

> All former holders of Left Coast Ventures, Inc. common stock as of January 15, 2021, together with their successors and assigns, but excluding the Excluded Persons.[114]

Certification of the proposed Class is proper.

A. Legal Standard

This Court conducts a two-step analysis to determine whether an action may be certified as a class action under Court of Chancery Rule 23. First, the Court determines whether the action meets all four requirements of Rule 23(a). Those four requirements are: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.[115] Second, the Court determines whether the action meets at

[114] Stipulation § I.1.(c).

[115] Ct. Ch. R. 23(a).

least one of the prongs of Rule 23(b).[116] Finally, the procedural requirements of Rule 23 must be satisfied.

B. The Requirements of Rule 23(a) Are Met

1. Numerosity

Numerosity under Rule 23(a)(1) is satisfied when the class is "so numerous that joinder of all members is impracticable."[117] The numerosity test is "not impossibility of joinder, but practicality."[118] The threshold is not high, as Delaware courts have found numerosity in cases where class members numbered in the dozens.[119] Moreover, the size of the potential class alone does not dictate if joinder would be impracticable. Rather, the focus of impracticability is on "litigational inconvenience,"[120] and the Court must look at, in addition to class size, "geographical diversity of the class members, the nature of the action, the size of the

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[116] Ct. Ch. R. 23(a)-(b).

[117] Ct. Ch. R. 23(a)(1).

[118] *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991).

[119] *See Meeker v. Bryant*, 1981 WL 7633 (Del. Ch. Nov. 30, 1981) (certifying a class of twenty-three members); *see also Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 400 (Del. Ch. 2008) ("numbers in the proposed class in excess of forty, and particularly in excess of one hundred, have sustained the numerosity requirement" (collecting cases)).

[120] *See Paine Webber R&D Partners v. Centocor, Inc.*, 1997 WL 719096, at *5 (Del. Super. Ct. Oct. 9, 1997).

individual claims, and whether personal jurisdiction can be obtained over some members of the class."[121]

Here, the Class is comprised of all of LCV's common stockholders prior to the close of the Merger, excluding Defendants. At the time of the Amendments, the Company had more than 168 million shares of common stock issued and outstanding, owned by more than 670 record stockholders who reside in many states and around the world. It would be impracticable to join all of these Class members as parties.[122] Thus, joinder of these Class members would be impracticable, and the numerosity requirement is satisfied.[123]

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class."[124] This only requires that there be "at least one question of law or fact common to the members of the class."[125] Even where "the individuals are not identically situated," commonality can exist "where the question of law linking the

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[121] *See Zimmerman v. Home Shopping Network, Inc.*, 1990 WL 118363, at *12 (Del. Ch. Aug. 14, 1990).

[122] SAC ¶ 70.

[123] *Dubroff v. Wren Hldgs., LLC,* 2010 WL 3294219, at *5 (Del. Ch. Aug. 20, 2010).

[124] *Emerald Partners v. Berlin*, 1991 WL 244230, at *2 (Del. Ch. Nov. 15, 1991).

[125] *Id*. at 3.

class members is substantially related to the resolution of the litigation."[126] That class members have "different interests and views will not defeat commonality, so long as the common legal questions are not dependent on divergent facts and significant factual diversity does not exist among individual class members."[127]

Here, the common questions of law and fact include (1) whether Fireman Capital and its affiliates breached their fiduciary duties and wrongfully exercised control over the Company and its assets for their own benefit to the detriment of the Class; (2) whether the Director Defendants breached their duty of loyalty to the Class in approving the Dilution; (3) whether Defendants aided and abetted the Director Defendants breaches of fiduciary duties or acted in combination with them in furtherance of a civil conspiracy to wrongfully enrich themselves; and (4) what damages Plaintiffs and the Class are entitled to as a result of Defendants'

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[126] *Leon N. Weiner Assocs.*, 584 A.2d at 1225 (citations omitted).

[127] *In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1141 (Del. 2008) (citations omitted).

misconduct.[128] These issues implicate the interests of all Class members.[129] Commonality is satisfied here.[130]

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class[.]" The typicality requirement "focuses on whether the class representative's claim (or defense) fairly presents the issues on behalf of the represented class" and requires that "the legal and factual position of the class representatives must not be markedly different from that of the members of the class."[131] "A representative's claim or defense will suffice if it 'arises from the same event or course of conduct that gives rise to the claims [or

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[128] SAC ¶ 71.

[129] *Turner v. Bernstein*, 768 A.2d 24, 33 (Del. Ch. 2000) ("In challenges to corporate mergers brought on behalf of the stockholders not affiliated with the defendants, it is virtually never the case that there is any legitimate basis that a defendant might be found liable to some plaintiffs and not to others.") (citations omitted).

[130] *In re Ebix, Inc. Stockholder Litig.*, 2018 WL 3570126, at *2 (Del. Ch. July 17, 2018) (commonality satisfied where plaintiffs brought claims for breaches of fiduciary duty owed to the stockholder class arising from the same course of conduct); *Phila. Stock Exch.*, 945 A.2d at 1141-42 (same); *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *8 (Del. Ch. May 6, 2010); *In re Lawson Software, Inc.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011) (where "the Complaint alleges breaches of fiduciary duty that implicate the interests of all members of the proposed class of shareholders … there are questions of law [and fact] common to the class.") (citations omitted).

[131] *Leon N. Weiner Assocs.*, 584 A.2d at 1225-26 (citations omitted).

defenses] of other class members and is based on the same legal theory.'"[132] Typicality "does not require that the plaintiff's legal theories and factual circumstances be *identical* to those of the proposed class."[133] "Nor will factual distinctions or differences in the amount of damages sought necessarily render the claims of the class representative atypical."[134] Overall, the test for typicality is "non-stringent."[135]

Plaintiffs' claims are typical of the claims of the proposed Class. The claims arise out of the same nucleus of facts surrounding Defendants' breaches of fiduciary duty resulting from Defendants' efforts to effectuate the unfair Dilution. Because these issues implicate the interest of all Class members, arises from the same event

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[132] *Id*. at 1226 (citation omitted); *accord Regal Entm't Grp. v. Amaranth LLC*, 894 A.2d 1104, 1112 & n.12 (Del. Ch. 2006) (noting "courts have set a 'low threshold' for satisfying typicality," and that under *Weiner*, the "key is that a representative's claim or defense arises from the same event or course of conduct that gives rise to the claims or defenses of other class members and is based on the same legal theory" (citations omitted)).

[133] *Bank v. Electronic Payment Servs., Inc*., 1997 WL 811552, at *15 (D. Del. Dec. 30, 1997) (emphasis added).

[134] D. Wolfe & M. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 12.02[b][4] (2d ed. 2022).

[135] *See Regal Entm't Grp.*, 894 A.2d at 1112 & n.12 (noting that the test for typicality is "relatively nonstringent[.]").

or course of conduct and are based on the same legal theory, the claims should be deemed typical. [136] Thus, typicality is also met.

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Adequacy concerns whether the plaintiff "will fairly and adequately protect the interests of the class"[137] and seeks to "uncover conflicts of interest between named parties and the class they seek to represent."[138] The adequacy requirement is satisfied where: (i) plaintiff's attorneys are "qualified, experienced, and competent to prosecute the litigation";[139] (ii) there is "an assurance of 'vigorous representation,'"[140] and (iii) there is "an absence of conflict between" plaintiff and the other class members.[141] A class representative "need not be the best of all representatives, but [rather] one who will pursue a

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[136] *N.J. Carpenters Pension Fund v. info GROUP, Inc.,* 2013 WL 610143, at *3-4 (Del. Ch. Feb. 17, 2013).

[137] *Wit Cap. Grp., Inc. v. Benning*, 897 A.2d 172, 178 (Del. 2006).

[138] *Mentis v. Del. Am. Life Ins. Co.*, 2000 WL 973299, at *6 (Del. Super. Ct. May 30, 2000).

[139] *N.J. Carpenters Pension Fund v. infoGROUP, Inc.*, 2013 WL 610143, at *3 (Del. Ch. Feb. 13, 2013).

[140] *Id*.

[141] *Id*.

resolution of the controversy in the interests of the class."[142] These criteria are readily satisfied here.

In prosecuting this action, Plaintiffs necessarily protected and promoted the interests of other members of the Class. Additionally, as the record demonstrates to date, Plaintiffs prosecuted their claims vigorously on behalf of the Class. Plaintiffs had an active role in this Action, stayed apprised of all developments, produced documents, attended video mediation, and prepared to attend depositions.

Importantly, "courts generally accord the greatest weight to the presence or absence of conflicts of interest or economic antagonism when evaluating a lead plaintiff's adequacy."[143] This Court has explained that "purely hypothetical, potential, or remote conflicts of interest never disable the individual plaintiff."[144] Conflicts do not present an issue in this case as Plaintiffs' interests align with the interests of the Class.

Lastly, Plaintiffs retained qualified, experienced and competent counsel whose track record prosecuting representative stockholder actions are well-known

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[142] *Price v. Wilmington Trust Co*., 730 A.2d 1236, 1238 (Del. Ch. 1997) (internal quotations and citation omitted).

[143] *In re Celera Corp. S'holder Litig*., 2012 WL 1020471, at *14 (Del. Ch. Mar. 23, 2012), *aff'd in part, rev'd in part*, 59 A.3d 418 (Del. 2012).

[144] *Id*.

to this Court. Counsel demonstrated their adequacy in this action by, among other things, prevailing on a motion to dismiss and continued to diligently litigate this Action.[145]

Thus, the adequacy requirements of Rule 23(a)(4) have been satisfied.

C. The Requirements of Rule 23(b)(1) and (b)(2) Are Satisfied

Once the prerequisites of Rule 23(a) are satisfied, a class action may be certified if either of the conditions of Rule 23(b) are met. Delaware courts repeatedly hold "that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2)."[146] As this Court observed in *Ebix*:

> Typically an action challenging the propriety of director action . . . is certified as a (b)(1) or (b)(2) class because all members of the stockholder class are situated precisely similarly with respect to every issue of liability . . . and because to litigate the matters separately would subject the defendant[s] to the risk of different standards of conduct with respect to the same action.[147]

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[145] *Leon N. Weiner Assocs.*, 584 A.2d at 1225 (finding counsel "clearly effective and capable advocates for the class" which weighed in favor of adequacy under Rule 23(a)(4)).

[146] *Celera.*, 59 A.3d at 432-33.

[147] *Ebix*, 2018 WL 3570126, at *4 (quoting *In re Mobile Commc'ns Corp. of Am., Inc. Consol. Litig*., 1991 WL 1392, at *15 (Del. Ch. Jan. 7, 1991)), *aff'd*, 608 A.2d 729 (Del. 1992)) (alternation in original).

This Action challenged the misconduct of the Director Defendants, the Company's former controlling stockholder, Fireman Capital, and additional note holders Bassler and Crocket for the self-interested Dilution. This Action is properly certifiable under Rule 23(b)(1) and (b)(2).

D. Certification Under Rule 23(b)(1) Is Appropriate

Rule 23(b)(1) provides for class certification where:

> prosecuting separate actions by or against individual class members would create a risk of:
>
> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests [.][148]

"Subdivision (b)(1) 'applies to class actions that are necessary to protect the party opposing the class or the members of the class from inconsistent adjudications

[148] Ct. Ch. R. 23(b)(1).

in separate actions.'"[149] "Rule 23(b)(1) clearly embraces cases in which the party is obliged by law to treat the class members alike[.]"[150]

The requirements of Rule 23(b)(1) are satisfied here. The Dilution caused millions of dollars of would-be merger consideration to be diverted from LCV common stockholders to Defendants. Defendants' actions affected each Class share, and any damages would be distributed on a per-share basis.[151] Allowing other actions regarding these same issues to proceed would risk "inconsistent or varying adjudications," and decisions could be "dispositive of," or "substantially impede or impair," the interests of other proposed Class members.[152] Similarly, inconsistent determinations could subject Defendants to incompatible standards of conduct.[153]

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[149] *Nottingham Partners v. Dana*, 564 A.2d 1089, 1095 (Del. Aug. 29, 1989).

[150] *Turner*, 768 A.2d at 32 (citation omitted).

[151] *See Allen v. El Paso Pipeline GP Co*., 2014 WL 2086371, at *2 (Del. Ch. May 19, 2014) (finding certification under Rule 23(b)(1) appropriate because "any damages to which class members would be entitled would be based solely upon the number of shares that they own" (citation omitted)).

[152] *See Turner*, 768 A.2d at 34 (certifying a class under Rule 23(b)(1) where "[i]t would be wasteful and illogical to have [the] matter tried several times, so that different courts could reach irreconcilable decisions about identical issues such as the adequacy of the disclosures made to [] stockholders by the defendant-directors and the fair value of [the company] on the date of the [m]erger" (citation omitted)) (alternation added)).

[153] *Id*. at 35.

As alleged here, Defendants, by and through their actions in connection with the Dilution, breached fiduciary duties in a way that affected all Class members identically rendering certification warranted under Rule 23(b)(1).

E. Certification Under Rule 23(b)(2) Is Appropriate

Rule 23(b)(2) provides for class certification where:

> the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole[.][154]

Defendants affected the rights of Plaintiffs and all other Class members through the same wrongful conduct and acted on grounds applicable to the Class as a whole. Plaintiffs seek relief applicable to all Class members for Defendants' unlawful conduct. The facts pertaining to any particular stockholder in the Class will not have any bearing on the appropriate remedy. Certifying the Class under Rule 23(b)(2) is appropriate.[155]

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[154] Ct. Ch. R. 23(b)(2); *see also Nottingham*, 564 A.2d at 1095 ("Subdivision (b)(2) 'applies to class actions for class-wide injunctive or declaratory relief.'") (citation omitted).

[155] *See Nottingham*, 564 A.2d at 1096-97; *In re Resorts Int'l S'holders Litig.*, 570 A.2d 259, 269-70 (Del. 1990).

F. The Remaining Requirements of Rule 23 Are Satisfied

Plaintiffs have provided an affidavit in compliance with Rule 23(f), attesting that they have not received or been promised any compensation for the litigation. The Notice was mailed and emailed in advance of the deadline set forth in the Scheduling Order.[156] To date, no proposed Class member has objected to the certification of the Class, the Settlement, or Plaintiffs' application for a Fee and Expense Award.

[156] In accordance with the Scheduling Order, an affidavit of mailing and publication of the Notice will be filed on or before August 24, 2026.

II. THE SETTLEMENT SHOULD BE APPROVED BECAUSE IT IS FAIR, REASONABLE AND ADEQUATE

A. The Standard Governing Judicial Review of the Settlement

This Court has set forth the standard governing review of settlements in class actions:

> Under Court of Chancery Rule 23, the Court must approve the dismissal or settlement of a class action. Although Delaware has long favored the voluntary settlement of litigation, the fiduciary character of a class action requires the Court to independently examine the fairness of a class action settlement before approving it. "Approval of a class action settlement requires more than a cursory scrutiny by the court of the issues presented." The Court must exercise its own judgment to determine whether the settlement is reasonable and intrinsically fair. In doing so, the Court evaluates not only the claim, possible defenses, and obstacles to its successful prosecution, but also "the reasonableness of the 'give' and the 'get,'" or what the class members receive in exchange for ending the litigation.[157]

"The principal focus is upon the benefits provided in the settlement, in light of the nature of the claims and the likelihood of success on the merits."[158] "The resulting judicial inquiry is most akin to range-of-reasonableness review . . . ."[159]

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[157] *In re Trulia, Inc. S'holder Litig.*, 129 A.3d 884, 890-91 (Del. Ch. 2016) (footnotes omitted).

[158] *Baupost Ltd. P'ship 1983 A-1 v. Providential Corp.*, 1993 WL 401866, at *2 (Del. Ch. Sept. 3, 1993).

[159] *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013).

B. The Settlement Benefit

The Settlement benefit is $4.8 million in cash.[160] By comparison, the common stockholders (including Defendants and their affiliates) received only $5.8 million worth of Merger consideration (based on the $10 per share nominal value placed on TPCO shares) in the Merger for their common stock holdings in the Company (excluding converted notes and exercised warrants). The per share value of the Merger consideration was $0.0330. The Settlement provides the Class members with an 88.54% bump in value, an additional $0.0292 per share.

The original terms of the Bridge Financing would have resulted in the common stockholders (including Defendants and their affiliates) receiving approximately $37.16 million in Merger consideration. However, the waterfall prepared contemporaneously by Dawson indicated at the Company's value implied by the Merger the common stockholders would have only received $14.29 million in value. With the Settlement, the Class will receive 76.66% of that value.

An alternative way of considering the Settlement benefit is that it is an approximately 50% recovery of the highest possible recovery on the Class's best claim. As noted above, under the original terms of the Bridge Financing the 2020 Warrant holders would have received only $2.92 million in Merger consideration.

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[160] *See* Stipulation ¶ 1(dd).

As a result of the Dilution, the 2020 Warrant holders received $12.37 million in Merger consideration. If instead the Court were to consider Dawson's contemporaneously prepared waterfall, the 2020 Warrant holders were expected to receive $7.13 million in Merger consideration, meaning the Settlement represents more than a 91% recovery of a very possible potential outcome at trial on the Class's best claim.

Plaintiffs believe whether viewed in terms of a bump to the value paid to the Class in the Merger or as a percentage of potential damages awarded at trial, the benefit to be paid in the Settlement is a fair and reasonable outcome for this Action.

C. The Benefit Secured Is Favorable Compared to the Risks of Continued Litigation

Plaintiffs faced substantial risks at trial. As the Court is aware, entire fairness review does not mean Plaintiffs win.[161] It seems more likely than not that Plaintiffs would have prevailed on liability. In negotiating the Dilution, Defendants failed to implement any procedural safeguard to protect the interests of the minority stockholders. No special committee was established, and the Dilution was not put to the vote of a majority of the minority vote. Cooley alerted Defendants to the fact that any amendment to the Bridge Financing in Fireman Capital's favor would be subject

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[161] *See In re Tesla Motors, Inc. Stockholder Litig.*, 298 A.3d 667, 679 (Del. 2023).

to entire fairness review and went further, suggesting other creative ways Fireman Capital could develop a record to establish fair dealing, including bringing Privateer back to the table to negotiate any changes. Defendants ignored the advice. Still, there are unique facts in this case with which the Court has never grappled. Dawson was not just appointed to the Board by Plaintiffs but was affiliated with Privateer. He was involved in the Bridge Financing negotiations, contemporaneously prepared the waterfall and voted in favor of the Dilution on an informed and counseled basis. There would have been redirect at trial, but his cross-examination was going to be helpful for the Defendants.

But for purposes of assessing litigation risk, Plaintiffs assume they prevail on liability. Plaintiffs still faced significant challenges in proving substantial damages to the Class. As an initial matter, it is unclear how the Court would have valued the Merger consideration. Best case scenario, the Court adopts the $10.00 nominal value placed on TPCO's shares in the transaction. To support the valuation, Plaintiffs would have been able to show that Christian Groh sold all 65,237 TPCO shares he received in the Merger on the open market for an average price of $9.99 per share. But the alleged damages involved millions of misallocated shares and Fireman Capital did not sell any of its shares. Michael Blue also did not sell his shares. And window during which TPCO shares traded in volume at a meaningful value for the

Class was limited. While difficult to quantify, it is possible the Court could have determined that the limited liquidity the Merger presented for the Class reduced the nominal value of the shares for purposes of computing damages.

Assuming Plaintiffs prevailed on the valuation of the Merger consideration, there were still significant obstacles in obtaining a substantial judgment against Defendants. Looking at the Dilution amendments in buckets of value, the potential recovery came from three sources: (i) amendments to the 2019 Note; (ii) amendments to the 2020 Warrants or (iii) differences in the amount repaid on the 2020 Note. While there were aspects of the Merger unaccounted for in some of the waterfall calculations, including taxes and stock consideration paid for other components of the deal, including shares issued to secure Roc Nation's brand strategy agreement, an across the board look at the differences in amounts under the waterfall based on the original Bridge Financing terms, Fireman Capital's proposal, the unaffiliated directors' counterproposal, the ultimate Merger terms and Dawson's waterfall prepared contemporaneously with the Bridge Financing is as follows:

Stakeholders	As Drafted	FCP Proposal	LCV Proposal	Final Payout	Dawson
2019 Note Holders	$7,824,670	$35,465,520	$32,157,120	$31,930,195	$29,156,968
2020 Warrant Holders	$2,919,290	$15,255,310	$6,229,790	$12,369,129	$7,133,152
2020 Note Repayment	$15,000,000	$12,500,000	$12,500,000	$15,000,000	$15,000,000
	$25,743,960	$63,220,830	$50,886,910	$59,299,323	$51,290,120
Common Holders	$37,158,570	$7,223,980	$18,865,830	$5,812,343	$14,294,802
Class: 93.27% of Common	$34,658,285	$6,737,901	$17,596,407	$5,421,248	$13,332,949
Class: Settlement + Merger	$9,856,469	$9,856,469	$9,856,469	$9,856,469	$9,856,469
As a Percent:	28.44%	146.28%	56.01%	181.81%	73.93%

The most difficult bucket to attack was the 2020 Note Repayment. Plaintiffs had a direct hand in negotiating these terms. It is hard to believe Plaintiffs would have prevailed on this issue.

The second most challenging bucket was the amendment to the 2019 Notes. There is no question that Plaintiffs would have been able to make a lot of hay out of Fireman Capital's agreement to the original terms of the Bridge Financing. But Dawson's contemporaneous waterfall seriously undercuts the force of that argument. Somebody made a mistake. Plaintiffs' best argument under the evidence and contract law was that it was Fireman Capital's unilateral mistake, and the contract was enforceable against the 2019 Noteholders as drafted. But that does not resolve whether the amendments to the 2019 Note resulted in an "unfair price" for purposes of the fiduciary claim. The final payout on the 2019 Notes in the Merger was within 91% of Dawson's waterfall and a quarter of a million dollars less than the unaffiliated directors' counterproposal. Those are two data sources that the Court could have used to easily determine the amendments to the 2019 Notes were within a range of reasonableness.

The final bucket was Plaintiffs best target – the amendments to the 2020 Warrants. The final payout on the 2020 Warrants exceeded the original terms of the Bridge Financing by nearly $9.5 million, exceeded the unaffiliated directors' counterproposal by $6.1 million and exceeded Dawson's waterfall by more than $5 million. Plaintiffs also expected Cooley to be a strong witness on this issue and the testimony to be well supported by contemporaneous correspondence with Akelman.

Weighed against these possible outcomes, the cash Settlement of $4.8 million is a favorable result. And these outcomes do not even address collectability. Plaintiffs believe a joint and several judgment could have been collectible against Dan Fireman. But several of the Defendants are judgment proof, including Bassler and Crocket, foreign entities based out of Panama and Venezuela that Plaintiffs were unable to serve directly. Murphy is defunct. TPCO, now Gold Flora, is in receivership (and Plaintiffs are already in a long line to recover $184,621.19 in advancement and indemnification expenses plus interest from it).[162] Fireman Capital's affiliate investment vehicles still hold the worthless securities, but pressing

[162] *Blue v. Left Coast Ventures, Inc.*, Del. Ch., C.A. No. 2024-0448-MTZ (Mar. 11, 2025) (Order).

through the time and expense of trial to recover worthless securities would be the epitome of a Pyrrhic victory.

D. The Plan of Allocation is Fair, Reasonable and Adequate

Approval of a plan of allocation is part of the process of approving a settlement.[163] "An allocation plan must be fair, reasonable, and adequate," but it "does not need to compensate Class members equally to be accepted."[164] "A reasonable plan may consider the relative values of competing claims."[165] In determining whether to approve a plan of allocation, the Court gives substantial weight to counsel's opinion.[166]

Here, the Class members will recover *pro rata* based the (i) number of shares of LCV Class A and Class B common stock owned by each Eligible Record Holder, (ii) multiplied by the amount of the Net Settlement Fund.[167] If after six months following the initial distribution of the Net Settlement fund any balance remains, the balance shall be distributed to Eligible Record Holders who received and deposited

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[163] *CME Grp., Inc. v. Chicago Bd. Options Exch., Inc.*, 2009 WL 1547510, at *7 (Del. Ch. June 3, 2009).

[164] *Schulz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009).

[165] *Id.*

[166] *See CME Grp.*, 2009 WL 1547510 at *10 ("Class counsel, in the Court's judgment, came to a fair and reasonable balancing of the various interests of all class members.").

[167] Stipulation ¶ 6.

the initial distribution, in the same manner as the initial distribution.[168] Plaintiffs respectively submit that this plan is fair, reasonable and adequate.

E. The Reaction of the Class Supports the Settlement

There have been no objections to the Settlement, Plan of Allocation, or the requested Fee and Expense Award. The absence of objections weighs in favor of approving the Settlement.[169]

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[168] Stipulation ¶ 7.

[169] *Spen v. Andrews Grp., Inc.*, 1992 WL 127512, at *1 (Del. Ch. June 5, 1992); *Crowhorn v. Nationwide Mut. Ins. Co.*, 836 A.2d 558, 563 (Del. Super. Ct. 2003).

III. THE FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiffs' Counsel respectfully requests reimbursement of $203,389.06 in expenses[170] and a Fee Award of $750,000 to be paid from the remainder of the Settlement Fund, or 16.3% of the net Settlement Fund. All-in the requested amount is $953,389.06, which is 19.86% of the Settlement Fund.

A. Expenses Should Be Reimbursed from the Settlement Fund

Plaintiffs' Counsel request reimbursement of $203,389.06 in expenses before a percentage of the Net Settlement Fund is awarded for attorneys' fees.[171] This approach "best balances the interests of the attorneys and the class[.]"[172] More than 91% these expenses consist of fees paid by Plaintiffs' Counsel for the costs of mediation ($69,321.25) and electronic document collection, processing and hosting ($114,499.80), all of which is necessary to the prosecution of this type of action, repeatedly encouraged by this Court, and contributed to generating the Settlement.[173] Plaintiffs' Counsel's respectfully submits its advanced expenses are reasonable, particularly given the years of litigation and substantial effort spent prosecuting this Action, and should be reimbursed.

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[170] *See* Affidavit of Marcus E. Montejo in Support of the Settlement and Award of Attorneys' Fees and Expenses ("Montejo Aff.") at ¶ 5.

[171] Montejo Aff. ¶ 5.

[172] *Dell*, 300 A.3d at 732.

[173] Montejo Aff. ¶ 5.

B. Application of the *Sugarland* Factors

The fee request is supported by the *Sugarland* factors: (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.[174]

The benefit achieved is the "first and most important of the *Sugarland* factors"[175] and "[t]he primary factor in calculating a fee award is the benefit created by counsel's effort."[176] "When the benefit is quantifiable, as in this case, by the creation of a common fund, *Sugarland* calls for an award of attorneys' fees based upon a percentage of the benefit."[177] When a case settles after meaningful litigation efforts but before trial, the Court typically awards fees in the range of 15–25% of the benefit achieved.[178] Plaintiffs' Counsel request amounts to only 16.3% of the net Settlement Fund, well within the range this Court has awarded.

The time and effort of counsel has been referred to as a "cross-check" for the reasonableness of a fee award, but the factor relates to what was achieved not the

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[174] *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686 (Del. 2024); *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142 (Del. 1980).

[175] *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012); *Dell*, 300 A.3d at 692.

[176] *Dell*, 300 A.3d at 692.

[177] *Ams. Mining*, 51 A.3d at 1259.

[178] *Id.* at 1259–60.

hours that counsel worked.[179] Under the time and effort rubric, the Court also considers the stage of litigation in which the Settlement was reached. The Court does not, however, "encourage[e] the churning of wheels and devoting unnecessary hours to litigation in order to be able to present larger numbers to the Court."[180] Here, the Settlement came about after meaningful litigation.[181] Plaintiffs' Counsel undertook substantial litigation efforts to achieve this benefit. Plaintiffs (i) investigated the numerous aspects of the facts underlying the Merger; (ii) filed a detailed Verified Complaint; (iii) moved to amend their Complaint after overcoming a motion to dismiss filed by Defendants; (iv) propounded and served multiple sets of document requests, interrogatories, and third-party subpoenas; (v) pursued extensive mediation efforts and attended multiple mediation sessions; (vi) moved for Class certification; (vii) reviewed and analyzed 362,387 pages of documents produced by Defendants and third parties which led to filing of the SAC; (viii) fully briefed and argued in opposition to a second round of motions to dismiss filed by Auerbach and Brooks; (ix) responded to Defendants' document requests and interrogatories and produced

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[179] *See id.* at 1258.

[180] *Seinfeld v. Coker*, 847 A.2d 330, 333 (Del. Ch. 2000).

[181] *See Americas Mining*, 51 A.3d at 1260 (supporting a range of 15-25%).

over 13,000 pages of documents; and (ix) engaged in protracted settlement negotiations with Defendants.

Document discovery was essentially complete. While limited resources were expended on experts, Plaintiffs are highly skilled and experienced investors and Prickett Jones is an expert in business valuation litigation, capable of performing complicated financial analysis. As this Court knows, Christian Groh and Michael Blue are former investment bankers who ventured into the cannabis industry to create, among other things, a billion-dollar publicly traded company.[182] Both are experts in valuation and the industry. And while parties engaged in mediation in advance of Defendants' depositions, unlike other cases where depositions could move the needle or provide leverage, the Plaintiffs were former directors of the Company, former controlling stockholders of the Company, and were "in the room" negotiating the Bridge Financing with Defendants. Even after the Bridge Financing, Plaintiffs had insight into the boardroom through Dawson. In other words, this was not a corporate class action where the representative stockholder knows nothing except through public disclosures and cannot accurately assess litigation risk until fact and expert discovery is underway or complete.

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[182] *In re Tilray, Inc. Reorg. Litig.*, 2021 WL 2199123, *2 (Del. Ch. June 1, 2021).

Since its engagement by Plaintiffs through the time of the Stipulation, Prickett Jones expended 1,466.90 lawyer hours on the case.[183] If the Settlement is approved and the fee award is granted, Pricket Jones would be paid $750,000,[184] plus reimbursement of advanced expenses, amounting to an average hourly rate of $511.28, well within this Court's precedents.[185]

The complexities of the litigation are Prickett Jones' bailiwick. That probably does not enhance a fee award, but it should not detract from one either.

Prickett Jones litigated this case on an entirely contingent basis.[186] The Action involved "true contingency risk" because "counsel did not enter the case with a ready-made exit or obvious settlement opportunity."[187] The risk should be rewarded with a higher fee award.

Finally, Prickett Jones leaves it to the Court to consider its standing and ability, as well as counsel for the Defendants, all of whom are well known to the Court.

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183 Montejo Aff. ¶ 7.

184 25% of Class recovery ($6,025,320) + 25% of dissenter recovery above Merger price plus interest ($222,895.88).

185 *See Dell Techs. Inc. Class V*, 300 A.3d at 726 ("multiplier of seven times lodestar" is not "excessive under this court's precedents").

186 Montejo Aff. ¶ 3; *see Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Jan. 10, 1992).

187 *Dell*, 300 A.3d at 726.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court certify the Class, enter the Final Order approving the Settlement as fair, reasonable and in the best interests of the Class and grant the requested award of attorneys' fees and expenses.

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