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Case No. 2022-0260-PAF

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN E. MALORK, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ERIK ANDERSON, JENNIFER AAKER, JANE KEARNS, PIERRE LAPEYRE, JR., DAVID LEUSCHEN, ROBERT TICHIO, JIM McDERMOTT, JEFFREY TEPPER, MICHAEL WARREN, RIVERSTONE INVESTMENT GROUP LLC, WRG DCRB INVESTORS, LLC and DECARBONIZATION PLUS ACQUISITION SPONSOR, LLC, CRAIG M. KNIGHT, and HYZON MOTORS INC., Defendants.	C.A. No. 2022-0260-PAF

RESPONSE TO NOTICE OF INTENT TO APPEAR AND OBJECTION TO SETTLEMENT BY FEDERAL CLASS ACTION LEAD PLAINTIFF DR. ALFRED MILLER

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Objector Alfred Miller, the *sole objector* to the proposed $8.8 million Settlement, asks this Court to reject or at least delay approval so that he can continue attempts to revive his later-filed federal version of the same claims, which have been fully dismissed as to the DCRB Defendants. Miller's Objection fails to present any entitlement under the PSLRA to control these claims, any irregularity in the Settlement's process or release, or any reason to believe that his analogous federal claims might be more beneficial to the class.

There is simply no basis for Miller's contention that his federal lead-plaintiff status entitles him to sole control of the "redemption impairment" theory, or to block a release of claims based on that theory. This Court regularly approves settlements that include releases of federal claims based on overlapping allegations and theories. As Miller acknowledges, his claims are brought against the "same defendants," based on "the same facts at issue," predicated on the same redemption impairment theory, to recover the "same damages" as this action.[1] Moreover, Miller is hard-pressed to argue that his now-dismissed federal claims should supplant the much more advanced Delaware claims he copied.

Nor does Miller point to anything improper in the Settlement's process or release. Non-opt-out classes are typical in breach of fiduciary duty settlements in

[1] Dkt. No. 169, Notice of Intent to Appear and Objection to Settlement by Federal Class Action Lead Plaintiff Dr. Alfred Miller (the "Objection") at 1, 8.

this Court (and have been a feature of other SPAC settlements), the class notice approved by this Court thoroughly covered the claims and settlement terms, and the release is targeted to the precise allegations and "redemption impairment" theory asserted in this action.

Finally, Miller presents no basis to believe that his dismissed federal claims will offer any greater value than the Settlement affords, ignoring that his claims have been fully dismissed (despite his efforts to downplay that ruling as merely a finding of "perceived deficiencies.")[2] Miller also ignores that the Settlement was the product of an arm's-length mediation after protracted discovery and that he is the sole objector. Instead, Miller fantasizes that the federal court's dismissal decision did not dispose of the specific statements on which his Section 14(a) claims depend,[3] that his claims will be resurrected despite the federal court's narrow allowance of a request for leave to amend,[4] and that someday his efforts will produce a windfall, which is speculative at best. But in fact, the federal court specifically held that those

[2] Objection at 2.
[3] *Id*. at 14.
[4] Miller's objection remarkably suggests that he has met the federal court's "deadlines for Dr. Miller to amend his complaint" and that the new complaint is "now pending before the federal district court" "under a Rule 12(b)(6) standard." *Id*. at 29. The federal court could not have been more clear in its dismissal decision: "To be clear, the Court does not here grant [Miller] leave to amend." Ex. 1, Decision and Order ("MTD Decision") at 62. Instead, the federal court granted Miller "leave to *move* to amend his complaint to incorporate any further details that emerged in the SEC [enforcement] action" against Hyzon and its former officers. *Id*. That motion for leave is currently pending before the federal court, not a new operative complaint.

statements were inactionable, and any attempt to revisit that ruling is beyond the scope of the federal court's narrow permission that Miller could seek leave to amend, and would constitute a reconsideration motion that rarely succeeds. If anything, the federal court's dismissal of Miller's copycat claims against the DCRB Defendants *after* the Settlement was agreed upon underscores that the Settlement is more than sufficient. The Objection presents no basis to delay approval.

I. BACKGROUND

A. Miller waits for over a year after this action is filed to copy the claims here in federal court.

In March 2022, Plaintiff Malork filed this fiduciary duty action against the directors and alleged controllers of DCRB, alleging that misstatements impaired DCRB stockholders' redemption rights arising from the de-SPAC merger between DCRB and Hyzon Motors, Inc.[5] By this time, Miller had been appointed lead plaintiff in a putative federal securities class action in the Western District of New York only against Hyzon and certain Hyzon-related individuals (not the DCRB Defendants, other than throw-in claims against DCRB's Chairman, CEO, and CFO).[6] His initial consolidated complaint filed in March 2022 asserted claims under

[5] Dkt. No 133, Verified Second Amended Class Action Complaint ("Compl.") ¶ 99.
[6] *See* Ex. 2 Order Appointing Lead Plaintiff.

Sections 10(b) and 20(a) based on post-merger stock drops.[7] It did not mention or base any claim on pre-merger redemption.[8]

It was not until his *third* amended complaint filed in September 2023—over a year after Plaintiff Malork filed this action and months after the completion of motion to dismiss briefing—that Miller added his Section 14(a) claims against the DCRB Defendants, lifting nearly verbatim the "redemption rights" theory from this action.[9]

B. The *Malork* Action is settled and Miller collaterally attacks the settlement in the Western District of New York.

While this action is nearing the finish line, Miller's federal court action is still at the starting gate. Following extensive briefing,[10] this Court denied the DCRB Defendants' dismissal motion on July 17, 2023.[11] The parties then engaged in substantial fact discovery entailing nearly 814,000 pages of produced documents.[12] On July 31, 2024, Malork and the *Malork* DCRB Defendants reached a mediated settlement-in-principle with the assistance of JAMS mediator Robert Meyer. On June 16, 2025, definitive settlement documentation was filed in this Court calling

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[7] Ex. 3, Consolidated Amended Class Action Complaint.
[8] *Id.* at ¶¶ 196-242, 292.
[9] Ex. 4, Third Amended Consolidated Class Action Complaint ¶¶ 48-59, 150, 508.
[10] Dkt. Nos. 26, 35, 38, 42, 51-65.
[11] Ex. 5, Transcript of Ruling on Defendants' Motion to Dismiss.
[12] *See, e.g.*, Dkt. No. 199; Dkt. No. 167, Plaintiff's Opening Brief in Support of Motion to Approve the Proposed Settlement ("Plaintiff's Br.") at 3.

for an $8.8 million settlement fund in exchange for mutual releases including the release of the "Released Plaintiff's Claims."[13]

As with similar SPAC settlements of fiduciary duty claims, the Settlement includes a customary non-opt-out class. The definition of "Released Plaintiff's Claims" follows a standard formulation of releasing claims that were asserted or could have been asserted between the parties in this action, including specifically claims in any forum "based upon, aris[ing] out of, or relat[ing] in any way to the impairment of the redemption rights of any Decarb Class A stockholder"—i.e., the specific theory of liability and harm asserted in the action.[14] Finally, the Settlement provided for class notice and afforded class members ample time to register objections.

Unsatisfied with that avenue for objecting, Miller opted for an end-run by filing an "emergency" motion in the federal court on June 27, 2025 seeking to enjoin this Court "from procedurally advancing the *Malork* [Settlement]," requiring it to "withdraw its scheduling order for the proposed [S]ettlement," and "stay any deadlines or events related to the proposed [S]ettlement."[15] The federal court denied

[13] Dkt. No. 163 Stipulation and Agreement of Compromise and Settlement (the "Settlement").
[14] *Id*.
[15] Ex. 6, Motion to Enjoin Proposed Class Settlement ("Motion to Enjoin").

Miller's request for expedited consideration of his injunction motion.[16] On July 14, 2025, the federal court dismissed all claims against the DCRB Defendants, including holding that Plaintiff's Section 14(a) "redemption impairment" theory was based on forward-looking disclosures protected under federal law.[17] Expressing its "reluctan[ce] to allow [Miller] a further opportunity to amend his complaint," the federal court nonetheless granted Miller the ability to move for leave to amend (but did not grant such leave) only "to incorporate any further details that emerged in" an SEC enforcement action that was brought and settled against Hyzon and certain of its former officers while the dismissal motion was pending.[18] Both Miller's motion for leave to amend and his motion to enjoin the Settlement are fully briefed in the federal court.[19]

Notably, the SEC action did not name or allege wrongdoing by any of the DCRB Defendants.[20] Miller nonetheless premises his Objection on the notion that he should have priority to prosecute the "redemption impairment" theory as a federal lead plaintiff under the PSLRA, that he will be able to revive his dismissed version

[16] Ex. 7, Dkt. No. 117, Text Order Denying Motion to Expedite Hearing on Motion to Enjoin.
[17] MTD Decision at 48, 63.
[18] *Id.* at 62.
[19] Ex. 8, Opposition to Motion for Leave to Amend; Ex. 9, Opposition to Motion to Enjoin at 15-16.
[20] *See* Ex. 10, SEC Complaint.

of that claim against the DCRB Defendants, and that, once resurrected, his federal version will have greater value than afforded in the Settlement.[21]

II. ARGUMENT

Miller's objection and his attempt to halt the settlement of this advanced Delaware action in favor of his dismissed and late-filed federal analogues should be denied for several reasons.

A. Miller has no PSLRA entitlement to usurp the advanced Delaware version of his "redemption impairment" claim.

The Objection argues that Miller's federal lead plaintiff status under the PSLRA and the exclusively federal nature of his Section 14(a) claim entitle him to control the "redemption impairment" theory, apparently even if asserted long after the Delaware predicate he copied and despite the dismissal of his federal version.[22]

Nothing in the PSLRA, however, preempts analogous state law proceedings, and Miller does not question this Court's authority to release exclusively federal claims (or else he would be objecting on that basis). To the contrary, it is well established and routine for this Court to approve settlements releasing claims that could not be brought in this Court, including federal securities claims governed by the PSLRA's lead plaintiff regime.[23]

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[21] Ex. 11, Motion for Leave to File Fourth Amended Complaint (the "Motion to Amend") at 11-14.
[22] Objection at 12-14.
[23] *See In re Countrywide Corp. S'holders Litig.*, 2009 WL 846019, at *10 (Del. Ch. Mar. 31, 2009) ("[A]pproval of a class action settlement containing a broad release of claims

Nor is Miller helped by the PSLRA's process for appointing lead plaintiffs designed to avoid a "race to the courthouse." Miller won the appointment in federal court but then waited over a year after this action began to duplicate his federal version of the same allegations and theories asserted in this action. Further, those federal claims have never survived a dismissal motion while this action advanced to extensive discovery.[24] This is not a situation where a state court plaintiff is seeking to end-run a federal lead plaintiff's advanced claim, but exactly the opposite.

B. The Settlement has followed the standard process and its release is narrowly tailored to the claims asserted here.

Beyond his flawed claim of a right to control the "redemption impairment" theory, Miller's Objection attacks both the process and fairness of the Settlement. But the Settlement has followed the normal procedural path in this Court, and Miller

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functionally disposes of claims belonging to parties not actually before the Court, and often over which it would be unable to assert jurisdiction."); *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1068 (Del. Ch. 2015) ("The court's ability to bar weak personal claims extends to federal securities claims, even though the claims could not be litigated in this court."); *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 406 (Del. Ch. 2008) (The Court of Chancery may release "exclusively federal claims if the claims arise from the same factual predicate, even if the state court could not dismiss or adjudicate the federal claims."); *In re Mobile Commc'ns Corp. of Am., Inc., Consol. Litig.*, 1991 WL 1392, at *16 (Del. Ch. Jan. 7, 1991), *aff'd sub nom. In re Mobile Commc'ns Corp. of Am., Inc. Consol. Litig.*, 608 A.2d 729 (Del. 1992) (approving a settlement that released federal claims and declining to even address Plaintiffs' argument that it would be inappropriate to do so, citing cases that "establish that while a federal court in which a released claim is pending or is brought always remain free to adjudicate the effect of the release, it is within the *in personam* jurisdiction of a state court, in an appropriate case, to authorize the release of all claims, including exclusively federal claims.").

[24] *See supra* § I.B.

fails to establish that his dismissed federal theory gives rise to greater value than the mediated result here.

1. The Settlement features a customary process and release.

Miller initially complains that the Settlement entails a non-opt-out class and that notice was deficient.[25] But a non-opt-out class is typical in Delaware fiduciary duty cases and has been a feature of other SPAC settlements. The class notice, moreover, exhaustively reviewed the claims and scope of the Settlement, and this Court authorized its dissemination.[26]

Nor does Miller present any valid objection to the release, which contains standard language releasing claims that were asserted and could have been asserted in this action, including specifically those arising out of, or relating to the impairment of the redemption right that Decarb Class A stockholders held in connection with the merger. Impairment of such redemption rights is ***the core theory of harm asserted in this action,***[27] and so the release is targeted to those precise claims and theories. *In re Philadelphia Stock Exch., Inc.*, 945 A.2d 1123, 1146 (Del. 2008) ("[I]n order to achieve a comprehensive settlement that would prevent relitigation . . . a court may permit the release of a claim based on the identical factual

[25] Objection at 11, 26-28.
[26] *See* Plaintiff's Reply Brief in Support of Motion to Approve the Proposed Settlement § III.A.1.
[27] Compl. ¶ 191.

predicate as the underlying claims in the settled class action."); *In re Countrywide*, 2009 WL 846019, at *10 ("Settlements almost invariably include a general release provision, binding on the class, which disposes of all liability associated with the challenged transaction to the broadest extent allowable under law."). Indeed, Miller himself highlights that his Section 14(a) claims involve the "same defendants," "same facts at issue," predicated on the same redemption impairment theory, and "same damages."[28] If defendants could not settle and release such overlapping claims, settlement would be impossible. *See In re Countrywide*, 2009 WL 846019, at *10 ("Indeed, settlement is often not possible without granting such 'global peace' to the defendants."); *In re Philadelphia*, 945 A.2d at 1137, 1146 ("[T]he settlement must either be as broad in scope as the law would allow and bind all class members, or there would be no settlement.").

Further, Miller overstates in suggesting that the release would "completely envelop" his federal claims against the DCRB Defendants.[29] First, the release does not include Hyzon or its former officers, leaving the Section 10(b) and (currently dismissed) Section 14(a) claims against those federal defendants unaffected.[30] The release also does not extend to Miller's (also dismissed) Section 10(b) claims against DCRB Defendants Haskopoulos and Tichio, which do not depend on a redemption

[28] Objection at 1, 8.
[29] *Id.* at 1-2.
[30] Opposition to Motion to Enjoin at 16.

impairment theory.[31] And, if his claims are revived, nothing prevents Miller from attempting to demonstrate why his Section 14(a) claims are viable on theories other than his duplicative redemption impairment theory.

2. Miller has failed to show that his dismissed federal claims offer greater value than afforded in the Settlement.

At bottom, Miller's Objection posits his dismissed federal version of the "impairment redemption" theory offers far superior value than the Settlement. In other words, Miller reasons that his motion for leave to amend to incorporate the SEC Settlement will be granted, his claims will be revived against the DCRB Defendants, and at some indeterminate point in the future he will produce a superior result. There is no basis to credit that speculative chain of events.

As an initial matter, the Objection tries to suggest that some aspect of Miller's theory against the DCRB Defendants survived, arguing that the federal court's dismissal order "sustained in part Lead Plaintiff Miller's federal securities law claims, without ruling on false statements describing Hyzon's relationships with customers made in DCRB's [s]oliciting [m]aterials."[32] To the contrary, the federal court dismissed ***all*** claims against the DCRB Defendants and sustained only Miller's claims against Hyzon and certain of its former officers based on alleged misstatements made post-merger. In so ruling, the Court expressly addressed and

[31] *Id*. at 15-16.
[32] Objection at 16; *see also id*. at n.71.

dismissed claims based on statements regarding Hyzon's customer relationships in DCRB's soliciting materials.[33] The federal court's dismissal order specifically identified the statements regarding Hyzon's customer pipeline contained in DCRB's soliciting materials (MTD Decision at 52), analyzed them and held that they were forward-looking statements (*id*. at 54-55), and determined that the statements were accompanied by meaningful cautionary language such that they were protected, non-actionable statements under federal law.[34]

Nor does the Objection provide any reason to believe Miller's claims against the DCRB Defendants will be resurrected. The federal court permitted Miller to *move* for leave only to amend to incorporate "further details that emerged in the SEC Action."[35] But that action does not name or otherwise suggest wrongdoing by any DCRB Defendant; thus, any details from the SEC Action does not support a viable claim against the DCRB Defendants.[36] Moreover, Miller's new proposed complaint challenges the exact same customer statements as he did before, and Miller admits that these statements were "pled in the [prior complaint]."[37] Thus, Miller's motion to amend (like the Objection)[38] in effect seeks rarely granted reconsideration of the

[33] MTD Decision at 50-60.
[34] *Id*. at 55-60.
[35] *Id.* at 62.
[36] *See, e.g.*, SEC Complaint ¶ 24.
[37] Ex. 12, Reply in Support of Motion to Enjoin at 3.
[38] Motion to Amend at 11-14; Objection at 21.

federal court's reasoned dismissal determination.[39] And Miller ignores that the DCRB Defendants raised a number of other dismissal arguments that the federal court has not even reached yet.

Against the formidable hurdles Miller faces in reviving his federal claims against the DCRB Defendants, he offers no answer to the traditional indicia of fairness recognized by this Court in reviewing settlements. The Settlement was entered into at arm's length by parties who are represented by sophisticated counsel and after mediation with a renowned mediator.[40] And Miller is the sole objector.

Miller erroneously relies on *Off v. Ross* to suggest that the settlement consideration is inadequate (Objection at 19-20), but there was *no monetary consideration at all* in *Off*, just the extension of a rights offering to the whole class. 2008 WL 5053448, at *7 (Del. Ch. Nov. 26, 2008). Moreover, the judge in the companion federal action there had indicated that the chance of dismissal of the federal claims was a "low, low percentage. Single digits." *Id*. at *12. Here, the Settlement comes with a substantial monetary payment that is in line with the payments in other SPAC settlements, as explained further in Plaintiff Malork's briefing.[41] Also unlike *Off*, the companion federal claims here have already been dismissed, raising serious doubts that they have any value at all. *In re Countrywide*,

[39] MTD Decision at 54-60.
[40] Plaintiff's Br. at 25-26.
[41] *Id.* at 37-42.

2009 WL 846019, at *10 (allowing the release of already-dismissed claims where "[a]ny significant monetary recovery on these claims is unlikely"); *In re Activision Blizzard*, 124 A.3d at 1044 ("A settlement can release claims of negligible value to achieve a settlement that provides reasonable consideration for meaningful claims."). As the Court applies its business judgment to the reasonableness of the Settlement, the fact that the scope of the release and the amount of the $8.8 million settlement payment were entered into *before* the federal court's dismissal order reinforces the Settlement's adequacy.

C. There is no reason for delay in approving the settlement.

The Objection concludes by requesting that the Court at least delay approval of the Settlement pending the federal court's ruling on Miller's motion to amend.[42] But a revival of the Section 14(a) claims would not impugn the targeted release of claims based on the exact same facts and theories.[43] Moreover, if leave is granted the DCRB Defendants will again move to dismiss—both on arguments that the federal court has already adopted and on those which the federal court did not need to reach on the last motion to dismiss. Thus, adopting Miller's wait-and-see approach could delay the Settlement for years while the federal court determines the viability of the federal claims. Such a "wait and see" approach would also frustrate

[42] Objection at 28-30.
[43] *See supra* § II.B.1.

the ability to finalize many settlements. This Court routinely considers settlements in litigation where parallel actions are pending, and there will always be some upcoming dispositive motion or other event in the parallel action that will provide additional clarity on the value of the claims there. It is well established that the court need not "try the case or decide the merits of settled or released claims." *In re Countrywide*, 2009 WL 846019, at *6.

Instead, as this Court recently noted in overruling a similar objection in a SPAC settlement, the Court is to review the settlement before it and "to exercise independent judgment over the outcome to make sure that it falls within a range of reasonableness." Ex. 13 *View* Tr. at 43:20–44:4. "Whether [the settlement] has any other effect on a lawsuit that seems to proceed, if not parallel basis, at least on overlapping theories, is something that [this court does not] need to weigh in on." *Id*. at 46:7–11. Instead, this Court is to review the settlement before it and "assess the give-and-the-get and determine whether it's within a range that reasonable parties could accept." *Id*. at 44:2–4. "Whether th[e] release has any effect on anything in the federal action is ultimately an issue for the federal court to decide…." *Id*. at 45:25–46:12. Like in *View*, this Court should proceed with considering the Settlement before it and determine that the Settlement is fair, particularly in light of

the fact that it compensates class members for the value of federal redemption impairment claims that have since been dismissed.

III. CONCLUSION

The Court should overrule the objection and approve the Settlement in all respects.

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