



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN E. MALORK, Individually and)
on Behalf of All Others Similarly)
Situating,)

Plaintiff,)

v.)

C.A. No. 2022-0260-PAF

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,)

Defendants.)

**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION TO APPROVE
THE PROPOSED SETTLEMENT, CERTIFY THE CLASS, AND
FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES
AND INCENTIVE AWARD**

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I. PRELIMINARY STATEMENT

After three years of litigation that included significant motion practice, the exchange of over 800,000 pages of discovery, and Plaintiff sitting for his deposition, Plaintiff obtained an \$8.8 million payment for the Class. In exchange for this fair consideration, the Parties negotiated a narrow release for the Settling Defendants. Released Plaintiff's Claims (the "Release") include only those claims that relate to the core wrongdoing alleged in the Action—the impairment of Class Members' redemption rights in conjunction with the merger between Decarb and Legacy Hyzon—which could be brought only by a narrowly defined group of former Decarb Class A stockholders who held such shares on the Redemption Deadline. In addition, the Release carves out all claims against the Legacy Hyzon Defendants.

Consistent with the Scheduling Order,¹ over 28,400 Notice Packages were mailed to potential Class Members and nominees.² In the months that followed, the Parties received a single objection to the Settlement from Dr. Alfred Miller, the lead plaintiff in a pending federal securities fraud class action filed against Hyzon, the Settling Defendants, and others in the Western District of New York (*In re Hyzon*

¹ See Affidavit of Jack Ewashko Regarding the Dissemination of Notice and Publication of the Summary Notice ("Ewashko Aff.") (D.I. 167-9) and Supplemental Affidavit of Jack Ewashko Regarding the Dissemination of Notice and Objections ("Ewashko Supp. Aff.") (filed herewith). All capitalized terms not defined herein shall have the meaning ascribed in the Stipulation and Agreement of Compromise and Settlement, dated June 10, 2025 (D.I. 163) (the "Stipulation").

² Ewashko Supp. Aff., ¶ 2.

Motors Inc. Sec. Litig., No. 6:21-cv-06612 (W.D.N.Y.) (the “W.D.N.Y. Action”)).³

Miller’s Objection is without legal or factual merit.

The impetus for Miller’s Objection appears to stem from a self-aggrandizing but misguided belief that any settlement of the claims asserted by Plaintiff must occur in federal court through the W.D.N.Y. Action. His biases taint his primary arguments, namely that notice was inadequate (because it did not mention his federal action) and the relief was unreasonable in light of the scope of the Release (because it did not carve out his federal Section 14(a) claim). Notice here is consistent with the Court’s longstanding practice and nearly identical to that approved by the Court in at least 15 other *Mutiplan* cases. Similarly, there is no support for Miller’s argument that the relief provided in the Settlement is insufficient because Plaintiff did not extract a separate payment from the Settling Defendants for Miller’s Section 14(a) claim. As Miller himself admits, his Section 14(a) claim, at least insofar as it relates to redemption impairment, is entirely duplicative of the stronger entire fairness claim Plaintiff pursued in this Action. The Release provided by the Settlement is also narrowly tailored to the specific wrongdoing alleged by Plaintiff that was properly and thoroughly litigated in this Action before this Court. Further, Plaintiff, having originally brought the claim that Miller eventually parroted in his *third* amended

³ D.I. No. 169, Notice of Intent to Appear and Objection to Settlement by Federal Class Action Lead Plaintiff Dr. Alfred Miller (“Objection” or “Obj.”).

complaint, and having engaged in substantial discovery, is in a significantly better position to understand the strengths and weaknesses of a claim based on the impairment of Decarb stockholders' redemption decision.

Miller's other arguments—that the Class should not be certified and that the Court should stay its consideration of the Settlement until the federal court acts on his motion for leave to file a fourth amended complaint (Miller's fifth try at a viable complaint)—are equally unfounded.⁴ The Court has acknowledged that *Mutiplan* actions are the “classic type of situation for a Rule 23 certification.”⁵ Further, the Court has repeatedly refused to stay similar *Mutiplan* actions in favor of related and broader federal securities class actions. Miller wrestles with none of this case law.

Accordingly, Plaintiff respectfully requests that the Court approve the Settlement and certify the Class for Settlement purposes.

II. Relevant Background

A. Plaintiff Aggressively Pursues This Action While the Federal Court Dismisses Miller's Belated Section 14(a) Claim

Miller is the lead plaintiff in a federal securities class action brought on behalf of investors of Decarb and Hyzon. His initial complaint, filed on November 15, 2021,

⁴ Notably, Miller does not dispute that the Settlement was negotiated at arm's length and does not object to the Plan of Allocation, the requested Fee and Expense Award, or the Incentive Award.

⁵ *Paul Berger Revocable Tr. v. Falcon Equity Invs. LLC*, C.A. No. 2023-0820-JTL, at 36 (Del. Ch. Jan. 21, 2025) (TRANSCRIPT) (“*Sharecare*”).

asserted claims under Sections 10(b) and 20(a) of the Exchange Act. Miller amended his complaint on March 21, 2022, again solely asserting Section 10(b) and 20(a) claims. Miller filed a second amended complaint on September 16, 2022, again asserting just Section 10(b) and 20(a) claims.

Plaintiff filed his initial complaint in this Action on March 18, 2022. Plaintiff's theory, which remained consistent throughout his pursuit of the Action, was that the Settling Defendants breached their fiduciary duties owed to Decarb stockholders by impairing those stockholders' redemption rights when pushing through the value destructive Merger. On August 2, 2022, Plaintiff filed his First Amended Complaint against the Settling Defendants. Following briefing and argument, on July 17, 2023, the Court denied the Settling Defendants' motion to dismiss Plaintiff's First Amended Complaint. Discovery ensued thereafter.

Nearly two months after argument on the Settling Defendants' motion to dismiss and less than a month before the Court denied that motion, Miller filed yet another amended complaint in the W.D.N.Y. Action, on June 23, 2023. Beyond reasserting the Section 10(b) and Section 20(a) claims he had previously alleged, Miller's third amended complaint (his fourth overall) largely regurgitated Plaintiff's theory that the misleading Proxy impaired stockholders' redemption rights. Rather than calling this wrongdoing a breach of fiduciary duty, however, Miller framed the alleged impairment as a violation of Section 14(a) of the Exchange Act. Miller also

alleged that the misleading Proxy violated Section 14(a) by causing stockholders to vote in favor of the Merger, something Plaintiff does not allege here. Defendants in the W.D.N.Y. Action moved to dismiss Miller's third amended complaint on September 13, 2023. Briefing on the motion to dismiss in the W.D.N.Y. Action was completed on November 22, 2023.

On July 31, 2024, after Plaintiff had received over 800,000 pages of documents from the Settling Defendants, Hyzon, and other third parties, Plaintiff and the Settling Defendants engaged in a full-day mediation with an experienced mediator, Robert Meyer of JAMS.⁶ With the Mediator's assistance, the Parties reached an agreement-in-principle at the conclusion of the Mediation to settle the Released Plaintiff's Claims for \$8.8 million in cash, subject to Court approval.⁷ On August 6, 2024, counsel for Plaintiff notified the Court of the agreement-in-principle to settle the Action and that in light of that development the Parties proposed removing all dates from the Court's calendar. On August 7, 2024, the Court entered a minute order staying all deadlines in the case scheduling order pending further order from the Court.⁸ Miller did not reach out to Plaintiff at this time.

⁶ See Plaintiff's Opening Brief in Support of Motion to Approve the Proposed Settlement, Certify the Class, and for an Award of Attorneys' Fees and Expenses and Incentive Award ("Opening Brief") (D.I. 167-1) at 25.

⁷ *Id.*

⁸ D.I. 134.

On June 18, 2025, Miller contacted Plaintiff's Counsel for the first time about the proposed Settlement. Miller correctly asserted that the Release released claims against the Settling Defendants related to alleged interference with the Class's redemption rights, but incorrectly claimed that the Release would "hamstring" his Section 10(b) claims and that this Court "lacks authority" to release the duplicative Section 14(a) claim.⁹

On June 24, 2025, Plaintiff and the Settling Parties met with Miller. Plaintiff questioned how the limited nature of the Release could affect Miller's core Section 10(b) claim. Miller did not (in Plaintiff's view) have a satisfactory response. In his Objection, Miller seems to have abandoned his concerns related to his Section 10(b) claims. Instead, he now complains (incorrectly) that the Release releases the entirety of his (currently-dismissed) Section 14(a) claim.

As noted in the Parties' July 1, 2025, letter to the Court, Miller moved the Court in the W.D.N.Y. Action to: (i) enjoin this Court's consideration of this Settlement; and (ii) expedite a hearing on his motion to enjoin.¹⁰ On June 30, 2025, the Court in the W.D.N.Y. Action denied the motion to expedite the motion to enjoin.

⁹ See D.I. 169-5 (Ex. C to Affidavit of Raffi Melanson, June 18, 2025 Letter from Lucas E. Gilmore to Erik W. Luedeke at 3).

¹⁰ D.I. 165.

On July 14, 2025, the District Court granted the W.D.N.Y. Action defendants' motion to dismiss Miller's Section 14(a) claim in its entirety. It also dismissed all claims relating to pre-Merger disclosures and all the claims against all Settling Defendants who were named as defendants in Miller's action. In doing so, the district court held that the proxy solicitation materials Miller challenged were "forward-looking statements" that "'project[ed] results in the future'" and were "protected by the 'bespeaks caution doctrine.'"¹¹ The Court also "reluctant[ly]" allowed Miller to *move* for leave to amend his complaint a fourth time.¹²

Instead of litigating his surviving claims, and finally engaging in discovery, Miller moved for leave to file a fourth amended complaint. The core theory underlying Miller's proposed amended complaint remains the Section 10(b) claims, but Miller again tacks on allegations that certain defendants violated Section 14(a) in connection with the redemption decision and the vote on the Merger. As of this filing, Miller's motions for leave to amend and to enjoin the Settlement remain pending, despite the W.D.N.Y. acknowledging that it is aware of the forthcoming settlement approval hearing in this Action.

¹¹ *In re Hyzon Motors Inc. Sec. Litig.*, No. 6:21-cv-06612, ECF 119 at 48, 54-55 (W.D.N.Y. July 14, 2025) (ORDER) (alteration in original). The federal court denied the motion to dismiss certain of Miller's core Section 10(b) and 20(a) claims against the Hyzon defendants related to post-Merger disclosures.

¹² *Id.* at 62.

B. The Notice Process

On June 25, 2025, the Court issued a Scheduling Order requiring that the Settlement Administrator: (i) mail the Notice Package to potential Class Members; (ii) publish the Summary Notice over the *PR Newswire*; and (iii) post the Notice Package on a Settlement website.

On July 16, 2025, the Settlement Administrator mailed 24,644 Notice Packages to potential Class Members and nominees, published the Summary Notice over the *PR Newswire*, and posted the Notice Package on the Settlement website.¹³ As of September 26, 2025, 28,421 Notice Packages have been mailed to potential Class Members and their nominees.¹⁴

Pursuant to the Scheduling Order, the deadline for objections to the Settlement was September 19, 2025. Miller is the only stockholder to object to the proposed Settlement.

III. ARGUMENT

A. The Settlement Should Be Approved

In determining whether to approve a class action settlement, the Court examines whether:

(A) the representative party and class counsel have adequately represented the class;

¹³ Ewashko Aff., ¶¶ 5, 10, 12.

¹⁴ Ewashko Supp. Aff., ¶ 2.

- (B) adequate notice of the hearing was provided;
- (C) the proposed dismissal or settlement was negotiated at arm's length;
and
- (D) the relief provided for the class falls within a range of reasonableness, taking into account:
 - (i) the strength of the claims;
 - (ii) the costs, risks, and delay of trial and appeal;
 - (iii) the scope of the release; and
 - (iv) any objections to the proposed dismissal or settlement.¹⁵

The Court's role is to “determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept.”¹⁶

In his Opening Brief, Plaintiff establishes that the Settlement satisfies each of the elements of Court of Chancery Rule (“Rule”) 23(f)(5).¹⁷ Miller nonetheless contends that notice was inadequate and that the relief provided for the Class was insufficient in light of the breadth of the Release. For the reasons stated herein and in

¹⁵ Ct. Ch. R. 23(f)(5).

¹⁶ *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1064 (Del. Ch. 2015) (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

¹⁷ See Opening Brief at 34-47.

Plaintiff's Opening Brief, Plaintiff respectfully submits that notice was adequate and the Settlement is fair and reasonable and should be approved.

1. Notice Was Adequate

Rule 23(f) provides that “[n]otice may be given by any appropriate means approved by the Court, including first-class U.S. mail, email, or publication.”¹⁸ Rule 23(f)(3)(D), requires that the Notice “clearly and concisely state, in plain, easily understood language”:

- (i) the location, date, and time of any hearing;
- (ii) the nature of the action;
- (iii) the definition of the class;
- (iv) a summary of the claims, issues, defenses, and relief that the class action sought;
- (v) a description of the terms of the proposed dismissal or settlement;
- (vi) any award of attorney's fees or expenses, or any representative-party award, that will be sought if the proposed dismissal or settlement is approved;
- (vii) instructions for objectors;
- (viii) that additional information can be obtained by contacting class counsel;
- (ix) how to contact class counsel; and
- (x) not to contact the Court with questions about the terms of the proposed dismissal or settlement.¹⁹

¹⁸ Ct. Ch. R. 23(f)(3)(C).

¹⁹ Ct. Ch. R. 23(f)(3)(D).

The Court preliminarily approved the Notice in the Scheduling Order. Plaintiff ensured that notice was provided to all absent Class Members in the form and manner the Court approved.²⁰

Plaintiff's Notice complied with each of Rule 23(f)(3)(D) requirements. As required by Rule 23(f)(3)(D), the Notice states, among other things, the nature of the case, the Parties' reasons for the Settlement, the Settlement Amount (in four locations), the proposed Plan of Allocation, and the applicable releases. Miller does not contend otherwise. Instead, without reference to a single Delaware case in support of his position, Miller seeks to have the Court read into Rule 23(f)(3)(D) additional requirements, supposedly on the basis of "due process," including that Plaintiff detail why the Settlement Amount is reasonable and that the Parties lay out Miller's interpretation of the W.D.N.Y. Action.²¹ Miller's concerns are unfounded and unsupported by Delaware law.

First, there is nothing in Rule 23(f)(3)(D) that requires Plaintiff to explain in the Notice why the Settlement Amount is reasonable, so long as the Notice describes the claims, issues, defenses, and relief that the class action sought, and the terms of the proposed Settlement (which it indisputably does). Rather, explaining the "give" and the "get" is one of the purposes of Plaintiff's briefing in support of the Settlement. As

²⁰ See generally *Ewashko Aff.*

²¹ Obj. at 26-28.

Miller appears to acknowledge, Plaintiff’s public Opening Brief, which was posted on the Settlement Website identified in the Notice, provides the explanation Miller was looking for.²² If stockholders had any concerns or questions about the Settlement Amount, they could review the Opening Brief or contact the Parties, as invited by the Notice.²³

Second, Miller argues that the Notice should have mentioned the Federal Action and “inform[ed] investors that the potential recovery in the Federal Action could be substantially greater.”²⁴ Again, Rule 23(f)(3)(D) does not require this. Further, Miller’s suggestion that the Notice should inform stockholders that they could receive a “substantially greater recovery” from a dismissed duplicative Section 14(a) claim would only serve to confuse Class Members, as a recovery from such a claim is vanishingly unlikely.²⁵ Even if his Section 14(a) claims were still viable, Miller does not provide any damages model supporting his conclusory statement that higher recoverable damages were possible through the federal court. Rather, elsewhere in his

²² Opening Brief at 34-46; *see* Ewashko Supp. Aff., ¶ 5.

²³ Notice at 18.

²⁴ Obj. at 27.

²⁵ To the extent Miller is referencing the claims in the W.D.N.Y. Action that survived dismissal, there appears to be no dispute that such claims are not subject to release through the proposed Settlement.

Objection, Miller claims that the recovery for his Section 14(a) claim would be the same as that sought by Plaintiff here.²⁶

Miller's reliance on *In re Lendingclub Sec. Litig.*, 282 F. Supp. 3d 1171 (N.D. Cal. 2017), his sole authority, is misplaced.²⁷ In *LendingClub*, the federal court plaintiffs moved to enjoin the state court plaintiffs who were asserting the exact same federal claim from sending out notice of class certification and providing investors the opportunity to opt out of the class.²⁸ The federal court plaintiffs argued that the state court plaintiffs' unsent notice was improper because it failed to mention the federal case, the potential recovery in the federal court action was greater, and that there was a matter at the Supreme Court that could be dispositive of state action.²⁹ The Court refused to grant the federal court plaintiff's injunction.³⁰ However, to address the federal court plaintiff's "concerns," the Court ordered the state plaintiffs to mention the three issues stated above in their notice, subject to the state court's approval.³¹ First, *LendingClub* makes no mention of any due process rights, as Miller implies.

²⁶ See, e.g., Obj. at 1 (stating that Plaintiff and Miller "seek[] similar, if not the same damages"); *id.* at 28 (stating that Plaintiff "asserts nearly the exact same theories in this forum" as Miller).

²⁷ Obj. at 27-28.

²⁸ 282 F. Supp. 3d. at 1191.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Second, the Court in *LendingClub* did not hold that the state plaintiffs' unsent notice violated Rule 23. Rather, the Court made a pragmatic decision in light of the state court plaintiffs' notice still being unsent to address any potential "concerns."

Here, Plaintiff is not asserting federal claims. His notice complies with Delaware law. The Release will not undercut Miller's entire action. There is no reason to believe that Miller's dismissed and copied Section 14(a) claim could result in a greater recovery than Plaintiff's entire fairness claim. And, the expense of sending out the Court approved Notice has already been incurred.

Accordingly, the notice regime was adequate.

2. The Settlement Is Fair, Reasonable, and Adequate

As Plaintiff explained in his opening brief, the Settlement is fair, reasonable, and adequate based on the factors set forth under Rule 23(f)(5). In his Objection, Miller either ignores or is seemingly unaware of Delaware law and the allegations in his proposed fourth amended complaint.

To start, Miller makes no attempt to address Rule 23(f)(5)'s factors. Rather, in addition to his due process claims about notice, Miller states that "Plaintiff has failed to show that the strength of the claims compromised far outweighs the benefits received."³² This statement seemingly suggests Miller agrees with Plaintiff that the benefits received by the Class outweigh the strength of the claims being released,

³² Obj. at 22.

providing justification for the Settlement. Assuming Miller is instead arguing that the Settlement fails to satisfy Rule 23(f)(5)(D) as his other arguments would suggest, he is incorrect. “[T]he relief provided for the class falls within the range of reasonableness,” supporting Settlement approval.³³

a. The “Give” Is Narrowly Tailored

In deciding whether a settlement falls within the range of reasonableness, the Court considers the “give” versus the “get.”³⁴ Here, the Release—the “give”—is narrowly tailored to apply to only those claims that were or could have been alleged that “are based upon, arise out of, or relate in any way to the impairment of the redemption rights of any Decarb Class A stockholder,” the core wrongdoing at issue in this Action.³⁵

As stated in the Opening Brief, the Release is narrower than that provided in many similar actions. For example, the release in *Multiplan* included any claim that related to or concerned “(i) the Business Combination, (ii) the Proxy, (iii) any other disclosures relating to or concerning the Business Combination or the Company, or (iv) the control or participation of any of Defendants’ Released Parties with respect to

³³ Ct. Ch. R. 23(f)(5)(D).

³⁴ *Activision*, 124 A.3d at 1064 (quoting *Forsythe*, 2013 WL 458373, at *2).

³⁵ Opening Brief at 42.

any of the foregoing.”³⁶ Thus, the release in *Multiplan* went well beyond just the impairment of a redemption right.³⁷

Miller complains that Plaintiff “never explains how the is [sic] release is less encompassing, for example, by identifying types of claims that would be allowed to live on.”³⁸ But doing so would be an unreasonable undertaking, as there are a seemingly unlimited number of claims that could still be brought. The Release only impacts claims that were or could be brought by Redemption Deadline holders of Decarb Class A common stock who did not redeem such shares against the Settling Defendants based on the impairment of their redemption decision. As it concerns Miller, the Release does not include any of the defendants or claims that currently remain in the W.D.N.Y. Action. In the event Miller is granted leave to amend, he is free to argue that the Release also does not apply to his Section 14(a) claim to the extent it is based on the stockholders’ vote to approve the Merger. The only piece of Miller’s action that the Release arguably touches is the entirely duplicative claim that stockholders’ redemption rights were impaired—a claim Miller parroted from

³⁶ *Id.* at 42-43.

³⁷ See also, e.g., *In re GeneDX De-SPAC Litig.*, C.A. No. 2023-0140-PAF, at 15-16 (Del. Ch. Aug. 16, 2024) (STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT, AND RELEASE) (releasing claims that “relate to the ownership of [the SPAC] Class A common stock as of the Redemption Deadline through the close of the Merger, the Proxy, any other disclosure relating to or concerning the Merger, or the involvement of any of the Released Defendant Parties with respect to any of the foregoing”).

³⁸ *Obj.* at 22 n.73.

Plaintiff. In contrast, a release mirroring the one in *Multiplan* would likely bar almost the entirety of the W.D.N.Y. Action. Accordingly, the Release is narrowly tailored.

b. The “Get” Is Substantial

The “get”—the Settlement Amount—is material, and reasonable when compared to the “give.” As explained in Plaintiff’s Opening Brief, the Settlement equates to \$0.43 per share, and approximately 15.8% of maximum recoverable damages.³⁹ This result is in line with or superior to many SPAC settlements.⁴⁰ It compares even more favorably to the average federal securities class action settlement.⁴¹ As also explained in the Opening Brief, Plaintiff faced real risk of obtaining no “get” for the Class due to: (a) potentially having to show reliance and causation; (b) the Court’s view that certain alleged disclosure violations were “a very close call”; (c) the Founder Shares potentially not being material to the Decarb directors defendants; (d) the settling directors riding their Hyzon stock holdings down along with public stockholders; and (e) discovery revealing that the Legacy Hyzon Defendants may be equally or more to blame for the alleged false and misleading disclosures.⁴²

³⁹ Opening Brief at 40-41.

⁴⁰ Opening Brief at 40 n.130.

⁴¹ *See infra*, §III.A.2.c. (discussing Cornerstone Research review of securities class action settlements).

⁴² Opening Brief at 39-40, 42.

Miller criticizes two of these apparent risks. Concerning the false statements being a “close call,” Miller points out that the SEC eventually sued Hyzon.⁴³ But that lawsuit does not alleviate Plaintiff’s concerns. First, even the pieces of the SEC’s lawsuit that Miller points to concern actions taken by Hyzon and its employees who Plaintiff explicitly excluded from the Release.⁴⁴ Second, the SEC took no action against the Settling Defendants, despite conducting extensive discovery. Third, Miller’s attacks on Plaintiff’s efforts, such as his claim that “if Plaintiff’s counsel were diligent, they should have received the same discovery material received by the SEC in its pre-suit investigation,” are unfounded.⁴⁵ If Miller proceeded with the diligence he accuses Plaintiff’s Counsel of lacking before asserting these arguments, he would know that Plaintiff moved to compel this very information and received over 800,000 pages of discovery in total.⁴⁶ Fourth, Miller’s W.D.N.Y. Action demonstrates that a Court may not agree that the Settling Defendants’ statements were misleading, especially once past the plaintiff-friendly pleading stage. Fifth, if the Section 14(a) claim was the slam-dunk that Miller claims it to be, why was it dismissed by the

⁴³ Obj. at 23.

⁴⁴ *See, e.g.*, Obj. at 23 (“[a]lthough Hyzon had solicited transactions with these companies, none had indicated they would purchase [hydrogen vehicles] from Hyzon”).

⁴⁵ Obj. at 24.

⁴⁶ *See, e.g.*, D.I. 91; Opening Brief at 22 (“the Court granted Plaintiff’s motion in part and denied it in part, ordering, among other things, Hyzon to produce certain documents produced to the SEC”).

federal court and why did he wait until his *third* complaint to assert it, and until after Plaintiff had demonstrated the strength of the claim through his motion to dismiss briefing and argument?

Miller also claims that even if the source of the false information was Legacy Hyzon, the Settling Defendants negligently included that information in the pre-Merger solicitation documents.⁴⁷ But Miller has no support for this claim. Just because the Settling Defendants did not catch the Legacy Hyzon Defendants in a lie does not necessarily mean they acted negligently. Further, before the Settling Defendants culpability even matters, Miller would have to adequately address the district court in the W.D.N.Y. Action's finding that there were no false statements in any of the pre-Merger solicitation documents.

c. The Duplicative Section 14(a) Claim Does Not Justify Denying the Settlement

At bottom, Miller's true concern is his belief that the Settlement releases his Section 14(a) claim. Miller overstates the scope of the Release. The Stipulation explicitly does not release any claim against Hyzon, Hyzon's former CEO, Knight, former CFO, Gordon, and former Chairman, Gu, who are all defendants against whom Miller asserted his 14(a) claim.⁴⁸ Further, as explained above, the Release is limited to the impairment of the Decarb stockholders' redemption rights. Miller is free to

⁴⁷ Obj. at 24.

⁴⁸ See Stip. at 17 n. 3.

argue in the federal proceeding that the Release does not cover his Section 14(a) claims under other theories. Even so, Plaintiff is permitted to release federal claims under long-standing Delaware law.⁴⁹

Miller's complaint that the Settlement does not extract additional money due to the loss of (one piece) of a federal claim is also unsupported.⁵⁰ The damages for the impaired redemption piece of Miller's Section 14(a) released by the Settlement are entirely duplicative of the breach of fiduciary duty claims asserted in this Action, as Miller seems to admit.⁵¹ Further, the W.D.N.Y. has already dismissed Miller's piggybacked Section 14(a) claim. What value could Miller rationally expect a party to ascribe to a belatedly brought, entirely duplicative, and inadequately pled claim?

Miller does not answer this question. Notably absent from Miller's Objection is any mention of the value he ascribes to his Section 14(a) claim, let alone the piece of this claim the Settlement actually releases. Instead, he relies solely on the potential recovery from Plaintiff's own estimate of the maximum amount of damages *Plaintiff could recover at trial*.⁵² Again evidencing his unfamiliarity with Delaware law, Miller

⁴⁹ See *Activision*, 124 A3d at 1044.

⁵⁰ Obj. at 22.

⁵¹ Obj. at 1. Miller states that this Action "seeks similar, if not the same damages" as his action. *Id.* Presumably he is talking about just his Section 14(a) claim, as Miller's Section 10(b) claim has completely different damages.

⁵² Obj. at 23.

argues that the Court should only consider the potential “full damages” in assessing whether the Settlement Amount is reasonable and ignore the risks involved in continuing to litigate this Action, including that his Section 14(a) claim may continue to fail and that the Class may be left with only nominal damages in this matter.⁵³ That, however, is not the approach taken in Delaware, where “[a] court should know what plaintiff’s counsel thought their best day would bring, but the real test is what the settlement achieves relative to the risk-adjusted value of the case.”⁵⁴

Miller presents no evidence to indicate that the Settlement Amount falls outside this range the range of reasonableness, particularly when adjusted for the risks Plaintiff identified. For example, Miller has not indicated how he could extract more from the Settling Defendants due to the impaired redemption rights portion of his 14(a) claim that is entirely duplicative of Plaintiff’s breach of fiduciary duty claims. Indeed, recent literature suggests the exact opposite. Cornerstone Research conducted a review of securities class action settlements that included the average settlement recovery as a percentage of “plaintiff-style” damages.⁵⁵ Cornerstone Research found

⁵³ Obj. at 23 n. 76.

⁵⁴ *In re Dell Techs. Inc. Class V S’holders Litig.*, 300 A.3d 679, 723 (Del. Ch. 2023), as revised (Aug. 21, 2023), *aff’d*, 326 A.3d 686 (Del. 2024).

⁵⁵ <https://www.cornerstone.com/wp-content/uploads/2025/03/Securities-Class-Action-Settlements-2024-Review-and-Analysis.pdf>. Plaintiff recognizes that Miller is objecting based on the release of part of his Section 14(a) claim, not Section 10(b)-5, but both claims arise under the Exchange Act and Plaintiff is aware of no comprehensive review of

that between 2015 and 2023 the median settlement in Rule 10b-5 cases as a percentage of damages for matters in which damages were between \$25 million and \$75 million was just 10.3% and fell to 8.4% in 2024.⁵⁶ For settlements where plaintiff-style damages were between \$75 million and \$149 million, the median settlement recovery fell to 7.3% for cases between 2015 and 2023, and 7.5% in 2024.⁵⁷ Accordingly, the recovery Plaintiff obtained for the Class exceeding 15% of maximum damages is a very favorable result when compared to what investors could likely expect to receive through settlement of the redemption rights portion of Miller's claim in federal court.

Miller has also not shown how his claim, which has been dismissed, is stronger than Plaintiff's claim that survived a pleadings challenge. Miller's silence on the subject and the W.D.N.Y.'s dismissal demonstrates the weakness of his Section 14(a) claim. As this Court has recognized, it is proper to release a claim that is weak or of little value as part of an overall settlement.⁵⁸

settlements in Section 14(a) cases, likely due to their rarity compared to Section 10(b)-5 cases.

⁵⁶ *Id.* at 7.

⁵⁷ *Id.*

⁵⁸ *See, e.g., Activision*, 124 A.3d at 1068.

Miller's reliance on *Off v. Ross*, 2008 WL 5053448 (Del. Ch. Nov. 26, 2008) is inapposite.⁵⁹ In *Off*, the Court stated that the benefit of the settlement was "only marginal," and had doubts that there was any actual benefit from the settlement.⁶⁰ In exchange for this dubious benefit, the release in *Off* would affect "*all*" the stockholder remedies in two related actions.⁶¹ In particular, "the release undermines all claims relating to the fiduciary duties . . . and seriously jeopardizes the viability of the New York Action."⁶² The Court also noted that the challenged claims already survived a motion to dismiss and "trial now appears imminent."⁶³ Further, the plaintiff in *Off* failed to show that the released claim was segregable from the remaining claims in the related action.⁶⁴ Thus, the Court held that the claims that were potentially being released in the related action were credible.⁶⁵ Accordingly, the Court held in its independent judgment that the marginal to nonexistent relief was not commensurate with the loss of potentially valuable claims.⁶⁶

⁵⁹ Obj. at 19-20.

⁶⁰ 2008 WL 5053448 at *7-8.

⁶¹ *Id.* at *10.

⁶² *Id.*

⁶³ *Id.* at *12.

⁶⁴ *Id.* at *13.

⁶⁵ *Id.*

⁶⁶ *Id.*

The situation here bears only a superficial resemblance to *Off*. Unlike in *Off*, the economic benefit provided by the Settlement is real and a direct result of Plaintiff's efforts. Unlike the objector in *Off*, Miller fails to show the viability of his Section 14(a) claim, with it having already been dismissed once and the Court still not granting his motion to amend to reassert such a claim. Further, unlike in *Off*, trial is not imminent in the W.D.N.Y. Action. Finally, there is no argument that the Release somehow harms all of Miller's claims or threatens the viability of the W.D.N.Y. Action. Even Miller acknowledges that the only claim at issue is his Section 14(a) claim (though he fails to recognize that the Release does not affect part of that claim). Given that Miller tacked on the Section 14(a) claim in his third attempt at a viable complaint, his case could not rise or fall based on it.

Finally, in an amazing display of sophistry, Miller claims that this Court denying the Settling Defendants' motion to dismiss shows that there is merit to the allegations that he belatedly copied in his case, despite the district court's dismissal.⁶⁷ Miller also admits that he had no access to discovery himself.⁶⁸ In contrast, Plaintiff here received over 800,000 pages of discovery and, contrary to Miller's rhetoric about a "race to the courthouse" and his allegations respecting lack of diligence, Plaintiff's Counsel spent nearly 8,000 hours developing, litigating, and analyzing the evidence in

⁶⁷ Obj. at 21.

⁶⁸ Obj. at 24.

this case.⁶⁹ Plaintiff agrees that his claim had merit. He and his counsel analyzed that claim after successfully fighting for and reviewing substantial discovery. Based on that analysis, Plaintiff believes that the Settlement is in the best interests of the Class. Given his history, Plaintiff is in an eminently better position to make that call than someone that copied a theory to add to a complaint and without access to similar nonpublic documents.

B. Class Certification Is Appropriate

Plaintiff seeks certification of a non-opt-out class consisting of:

[A]ll Persons who held shares of Decarb Class A common stock as of the Redemption Deadline, either of record or beneficially, and who did not redeem all of their shares, including their successors-in-interest who obtained shares by operation of law, but excluding the Excluded Persons.

As discussed more thoroughly in Plaintiff’s Opening Brief, this proposed Class satisfies the requirements of Rules 23(a), 23(b)(1), and 23(b)(2).⁷⁰ Similar settlement classes have been certified in similar de-SPAC merger cases on at least fifteen occasions.⁷¹

⁶⁹ Opening Brief at 54.

⁷⁰ Delaware courts liberally interpret Rule 23’s requirements to favor class certification. *See Parker v. Univ. of Del.*, 75 A.2d 225, 227 (Del. 1950).

⁷¹ *In re Multiplan Corp. S’holders Litig.*, 2023 WL 2329706, at *2-3 (Del. Ch. Mar. 1, 2023) (ORDER); *In re Lordstown Motors Corp. S’holder Litig.*, C.A. No. 2021-1066-LWW, at 47 (Del. Ch. June 25, 2024) (TRANSCRIPT); *Newbold v. McCaw*, 2024 WL 3596113, at *2-3 (Del. Ch. July 30, 2024) (ORDER); *Bushansky v. GigAcquisitions4, LLC*, 2024 WL 4449788, at *2 (Del. Ch. Oct. 8, 2024) (ORDER); *Laidlaw v. GigAcquisitions2, LLC*, 2024 WL 4449785, at *2 (Del. Ch. Oct. 8, 2024) (ORDER); *In re Finserv Acquisition Corp. SPAC*

Miller again reveals his unfamiliarity with both Delaware law and the facts of the Action when objecting to class certification. For example, Miller claims that Plaintiff “chose[] to settle early in the litigation.”⁷² This is objectively incorrect. As the public record and readily available settlement documents indicate, Plaintiff settled with just two months left before the close of fact discovery and nine months before trial.⁷³ The W.D.N.Y. Action, in contract, has been pending for almost four years without any progress.

Miller also argues that Plaintiff should have “revealed the extent of his potentially minimal financial interest in this lawsuit” and faults Plaintiff for not moving for class certification before settling, leaving “no way of testing whether he is subject to any unique circumstances or defenses.”⁷⁴ Such proffers are not required

Litig., C.A. No. 2022-0755-PAF, at 34-39 (Del. Ch. Oct. 10, 2024) (TRANSCRIPT); *Delman v. Riley*, 2024 WL 4547452, at *2 (Del Ch. Oct. 17, 2024) (ORDER); *Yu v. RMG Sponsor, LLC*, C.A. No. 2021-0932-NAC, at 40-42 (Del. Ch. Oct. 18, 2024) (TRANSCRIPT) (“*Romeo Power Settlement Tr.*”); *In re GeneDX de-SPAC Litig.*, 2024 WL 4952176, at *1 (Del. Ch. Dec. 2, 2024) (ORDER); *Siseles v. Lutnick*, C.A. 2023-1152-JTL, at 42-43 (Del Ch. Dec. 6, 2024) (TRANSCRIPT) (“*View Settlement Tr.*”); *Sharecare* at 36 (TRANSCRIPT); *In re Kensington-Quantumscape de-SPAC Litigation*, C.A. 2022-0721-JTL, at 33-34 (Del. Ch. July 11, 2025) (TRANSCRIPT); *Drulias v. APEX Tech. Sponsor, LLC*, C.A. No. 2024-0094-LWW, 24-26 (Del. Ch. July 10, 2025) (TRANSCRIPT); *Newman v. Sports Ent. Acquisition Holdings LLC*, 2025 WL 2652501, at *1 (Del. Ch. Sept. 15, 2025) (ORDER); *In re Interprivate Acquisition Corp. S’holder Litig.*, 2025 WL 2652504, at *2 (Del. Ch. Sept. 12, 2025) (ORDER).

⁷² Obj. at 25.

⁷³ Opening Brief at 25-26; D.I. 134.

⁷⁴ Obj. at 25-26.

under Rule 23(a)(3), which merely requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.”⁷⁵ “As the Supreme Court observed in [*Krapf*], ‘the test ... is that the legal and factual position of the class representative must not be markedly different from that of the members of the class.’”⁷⁶ As in other de-SPAC merger cases, Plaintiff and all proposed Class Members have the same interest - namely, establishing that they were deprived of their right to seek redemption because of false statements or the omission of material information.⁷⁷ The relative size of Plaintiff’s holdings is irrelevant. “Courts routinely find that the proposed class representative’s claims are typical even if the amount of damages sought differ from those of the class or if there are differences among class members in the amount of damages each is claiming.”⁷⁸ “Because Plaintiff is affected in the same way as the rest of the class, ... the typicality requirement of Rule 23(a)(3) is satisfied.” *Romeo Power Settlement Tr.* at 38-39.

⁷⁵ Ct. Ch. R. 23(a)(3); *see also 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.’”).

⁷⁶ *See In re XL Fleet S’holder Litig.*, C.A. No. 2021-0808-KSJM, at 28 (Del. Ch. Mar. 21, 2025) (TRANSCRIPT).

⁷⁷ *View Settlement Tr.* at 41 (“Typicality is also easily met. All the class members and stockholders face the same injury from the same conduct, and the plaintiffs were affected the same way as everyone else.”); *Romeo Power Settlement Tr.* at 38-39 (same).

⁷⁸ 1 NEWBERG ON CLASS ACTIONS §3:43 (5th ed. 2011).

Miller’s arguments concerning the adequacy of Plaintiff’s protection of the interests of the Class are also unsupported. The adequacy requirement is satisfied where, as here: (i) the named plaintiff’s interests are not antagonistic to other members of the Class; and (ii) the plaintiff’s attorneys are qualified, experienced, and generally able to conduct the litigation.⁷⁹ This prerequisite does not require that the named party be “the best of all representatives” but merely that such party is “one who will pursue a resolution of the controversy in the interests of the class.”⁸⁰ There is no evidence that Plaintiff, who sat for a deposition, is antagonistic to the Class, and Miller makes no such argument concerning Plaintiff’s Counsel.

Miller also incorrectly argues that Plaintiff’s interests diverge from those of absent class members because the “Proposed Settlement seeks to extinguish a potential source of additional recovery for absent class members from their federal class action claims.”⁸¹ Plaintiff is relinquishing the same right to recover under the currently-dismissed—and thus seemingly valueless—impairment portion of Miller’s 14(a) claim as other Class Members.⁸² Further, Plaintiff is only releasing the piece of

⁷⁹ *In re Lawson Software, Inc.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011). Miller does not challenge the second prong (*i.e.*, the qualifications of Plaintiff’s Counsel).

⁸⁰ *Price v. Wilmington Tr. Co.*, 730 A.2d 1236, 1238 (Del. Ch. 1997) (citation modified).

⁸¹ Obj. at 26.

⁸² Despite claiming Decarb stockholders may be entitled to additional recovery under the 14(a) claim he asserts may be released, he does not attempt to assign a monetary value to the claim. *See* Obj. at 3, 26.

Miller’s 14(a) claim that is entirely duplicative of breach of fiduciary duty Plaintiff brought here first. The Parties were also not obligated to involve Miller—who at the time of the Settlement had yet to have a single claim survive a motion to dismiss—in their settlement negotiations or notify him of the potential settlement in a different manner than through the notice regime approved by this Court through which all potential Class Members were notified of the potential settlement.⁸³

C. A Stay Is Not Warranted

Again without citing any legal support, Miller requests the Court stay this Action pending a decision from the W.D.N.Y. on whether to allow Miller to file his proposed fourth amended complaint.⁸⁴ This Court has declined to stay *Multiplan* cases in deference to related securities class actions on multiple occasions.⁸⁵ This is because “in the representative litigation setting, the court’s paramount interest is to ensure that stockholders receive fair and consistent enforcement of their rights under the law governing the corporation,” and *Multiplan* cases involve “quintessential Delaware concerns.”⁸⁶ Considering whether a settlement is fair and reasonable goes

⁸³ See Obj. at 26.

⁸⁴ Obj. at 28-30.

⁸⁵ See, e.g., *In re Lordstown Motors Corp. S’holders Litig.*, 2022 WL 678597 (Del. Ch. Mar. 7, 2022); *Sezonov v. Longview Invs. LLC*, C.A. 2023-1238-NAC (Del. Ch. Nov. 25, 2024) (TRANSCRIPT).

⁸⁶ *Lordstown*, 2022 WL 678597, at *3-4 (citation modified).

directly to these Delaware concerns of enforcement of stockholder of a Delaware company's rights. Those concerns are not dissipated because Miller clad the already pending Delaware breach of fiduciary claim in a Section 14(a) wrapper. The result therefore should be no different here.

Miller's argument that W.D.N.Y. is moving expeditiously rings hollow.⁸⁷ The W.D.N.Y. Action has been pending for over four years, no discovery has occurred, and Miller is still attempting to file a complaint that can completely survive a motion to dismiss.

Further, as Miller acknowledges, his Section 14(a) claim is simply a copycat of Plaintiff's already pending action.⁸⁸ Even in the unlikely event that the W.D.N.Y. Court allows the fourth amended complaint, Miller has utterly failed to present any evidence to support the idea that the impairment piece of his Section 14(a) claim would lead to a greater recovery than Plaintiff was able to accomplish here. In contrast, Plaintiff overcame pleading challenges, conducted substantial discovery, and even sat for a deposition. Thus, Plaintiff is well informed about the strengths and weaknesses of his claims and well-positioned to provide the Court with the

⁸⁷ Obj. at 28-30.

⁸⁸ Obj. at 28 (stating it would be "foolhardy" for plaintiff to attack the viability of the Section 14(a) claim because Plaintiff "asserts nearly the exact same theories in this forum").

information necessary for it to exercise its independent judgment in assessing the fairness and reasonableness of the Settlement.

The Merger closed over four years ago and the truth about Hyzon started to come out shortly thereafter, causing harm to the Class.⁸⁹ It is imprudent to cause the Class to wait even longer to receive proceeds from the Settlement. Accordingly, the Court should reject Miller's invitation to further delay.

IV. CONCLUSION

For the foregoing reasons and those set forth in Plaintiff's Opening Brief, Plaintiff respectfully requests that the Court approve the Settlement and Plan of Allocation, certify the Class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), award Plaintiff's Counsel the requested fee award, and authorize the payment of the requested incentive award from counsel's fees.

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⁸⁹ Opening Brief at 14.

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