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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE PATTERN ENERGY GROUP INC. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. No. 2020-0357-MTZ **Redacted Version Dated**: April 9, 2024

PLAINTIFFS' BRIEF IN SUPPORT OF THE PROPOSED SETTLEMENT, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS

OF COUNSEL:

John Vielandi
LABATON KELLER SUCHAROW LLP
140 Broadway, 34th Floor
New York, NY 10005
(212) 907-0700

LABATON KELLER SUCHAROW LLP
Ned Weinberger (Bar No. 5256)
Mark Richardson (Bar No. 6575)
Michael C. Wagner (Bar No. 6955)
Brendan W. Sullivan (Bar No. 5810)
Jiahui (Rose) Wang (Bar No. 7127)
222 Delaware Avenue, Suite 1510
Wilmington, DE 19801
(302) 573-2540
nweinberger@labaton.com
mrichardson@labaton.com
mwagner@labaton.com
bsullivan@labaton.com
rwang@labaton.com

Co-Lead Counsel for the Class

Chad Johnson
Noam Mandel
Desiree Cummings
Jonathan Zweig
Cristelle Rabban
Ana Avalos Cuellar
ROBBINS GELLER RUDMAN
& DOWD LLP
420 Lexington Avenue, Suite 1832
New York, NY 10170
(212) 432-5100

Sabrina Tirabassi
Mason Roth
ROBBINS GELLER RUDMAN
& DOWD LLP
225 NE Mizner Boulevard
Suite 720
Boca Raton, FL 33432
(561) 750-3000

Co-Lead Counsel for the Class

Brian Schall
Rina Restaino
SCHALL LAW FIRM
1880 Century Park East, Suite 404
Los Angeles, CA 90067
(310) 301-3335

Additional Counsel for Chancery Plaintiff

Andrew J. Entwistle
ENTWISTLE & CAPPUCI LLP
500 W. 2nd Street, Suite 1900-16

FARNAN LLP
Sue L. Robinson (Bar No. 100658)
Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
919 North Market Street, 12th Floor
Wilmington, DE 19801
srobinson@farnanlaw.com
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com
(302) 777-0300

Counsel for Federal Plaintiffs

Austin, TX 78701
(512) 710-5960

Vincent R. Cappucci
Jessica A. Margulis
ENTWISTLE & CAPPUCI LLP
230 Park Avenue, 3rd Floor
New York, NY 10169
(212) 894-7200

Co-Lead Counsel for the Class

Marc M. Seltzer
Krysta Kauble Pachman
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
(310) 789-3100

Christopher J. Kupka
FIELDS KUPKA & SHUKUROV LLP
141 Tompkins Ave., Suite 404
Pleasantville, NY 10570
(212) 231-1500

Additional Counsel for Federal Plaintiffs

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INTRODUCTION

Lead Plaintiffs Jody Britt ("Chancery Plaintiff") and the Water Island Funds[1] ("Federal Plaintiffs," and together with Jody Britt, "Plaintiffs") respectfully seek approval of the $100 million Settlement of the Class's claims challenging the unfair acquisition of Pattern Energy Group, Inc. ("PEGI") by the Canada Pension Plan Investment Board ("CPPIB") in March 2020 (the "Merger"). As discussed further below, the Merger was the product of a conflicted sale process in which the Riverstone[2] and Officer[3] Defendants competed with PEGI's stockholders for Merger consideration, blocked a superior, third-party offer and then, with the Director Defendants,[4] issued a false and materially misleading proxy (the "Proxy") to obtain stockholder approval.

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[1] The "Water Island Funds" are Diversified Event-Driven Fund; Columbia Multi-Manager Alternative Strategies Fund; The Arbitrage Fund; Litman Gregory Masters Alternative Strategies Fund; Water Island Long/Short Fund; Water Island LevArb Fund, LP; Morningstar Alternatives Fund a series of Morningstar Funds Trust; and Water Island Merger Arbitrage Institutional Commingled Fund, LP. Capitalized terms not defined herein have the meaning given to them in Stipulation and Agreement of Settlement, Compromise, and Release (the "Stipulation"). Trans. ID 71541011.

[2] Defendants Riverstone Holdings LLC ("Riverstone"), Pattern Development 2 and Pattern Energy II Holdings, LP.

[3] Defendants Michael Garland, Hunter Armistead, Daniel Elkort, Michael Lyon and Esben Pedersen.

[4] Defendants Michael Garland, Alan Batkin, John Browne, Richard Goodman, Douglas Hall, Patricia Newson and Mona Sutphen.

The Settlement—which is to counsel's knowledge the largest settlement of *Revlon* claims in this Court's history and only the fifth nine-figure cash settlement achieved in a class action in this Court[5]—is the result of over three years of hard fought and complex litigation in state and federal court, where a Class recovery of ***any*** amount was far from assured. Collectively, Plaintiffs' Counsel in the Chancery and Federal Actions developed a damning record of fiduciary misconduct and violations of the Federal Securities Laws by, *inter alia*, reviewing over 300,000 documents (comprising over 2,000,000 pages); deposing 30 individuals over the course of 53 days across the two Actions; and engaging in extensive expert discovery. Having developed this record across two separate Actions, Plaintiffs united in August 2023 to reach a global Settlement of both Actions just eight weeks before trial in the Federal Action.

Plaintiffs also seek an award of attorneys' fees and expenses to Plaintiffs' Counsel equal to 27% of the Settlement fund after deducting expenses (the "Fee and Expense Award"). The Fee and Expense Award fairly compensates Plaintiffs'

[5] *See In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 725 (Del. Ch. 2023), *as revised* (Aug. 21, 2023) (discussing *Dell Class V* ($1 billion), *Dole* ($148.2 million) and *Malone* ($110 million); *In re Viacom Inc. S'holders Litig.*, Consol. C.A. No. 2019-0948-SG, Tr. at 4, 37-38 (Del. Ch. July 25, 2023) (TRANSCRIPT) ($122.5 million).

Counsel for the benefits conferred on the Class and is conservative when compared to other settlements reached shortly before trial.

Finally, Chancery Plaintiff and Federal Plaintiffs seek an award of $25,000 each for a total of $50,000 (the "Incentive Awards"), respectively, for their efforts on behalf of the Class, which if awarded will be deducted entirely from the Fee and Expense Award.

FACTUAL BACKGROUND

I. RIVERSTONE'S RELATIONSHIP WITH PD1, PD2, THE OFFICER DEFENDANTS, AND PEGI

Riverstone and the Officer Defendants formed Pattern Development 1 ("PD1") in 2009. PD1 was a Riverstone-controlled company that developed and constructed renewable energy projects.[6] Riverstone and the Officer Defendants subsequently formed PEGI, which held a right of first offer ("ROFO") to purchase and operate PD1's projects.[7] In 2013, PD1 took PEGI public and retained a 67.9%

[6] ¶¶67-69. All citations to "¶_" or "¶¶_" are to the Amended Complaint filed on October 7, 2022. Trans. ID 68227281. To avoid burdening the Court with a voluminous number of exhibits, Plaintiffs have included citations to documents (by bates number) and deposition transcripts (by deponent and date) but have not attached those documents to this brief. Plaintiffs will provide the Court with such documents and testimony if the Court wishes to further review the record.

[7] ¶69.

voting interest, such that Riverstone controlled PEGI.[8] The Officer Defendants were officers of PD1 and PEGI.[9]

In or around 2017, Riverstone and the Officer Defendants began winding down PD1 to replace it with Pattern Development 2 ("PD2").[10] Riverstone and PEGI owned 71% and 29% of PD2, respectively, and the Officer Defendants were awarded a significant PD2 equity.[11] The Officer Defendants, except Lyon, were also officers of PD2.[12]

PEGI was a limited partner of PD2 through a partnership agreement ("Partnership Agreement").[13] PEGI and PD2 were parties to several other contracts, including a Management Services Agreement, under which PD2 executives (including certain Officer Defendants) provided management services to PEGI, and a Purchase Rights Agreement, under which PEGI obtained a ROFO on renewable energy projects developed by PD2.[14]

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[8] ¶70.

[9] ¶74.

[10] ¶80.

[11] ¶¶81-82.

[12] ¶¶38-42.

[13] ¶83.

[14] ¶¶75, 260.

Under the Partnership Agreement, any transfer of interests in PD2 by a partner other than Riverstone required PD2's—*i.e.*, Riverstone's—consent (the "Consent Right").[15] The Consent Right ***did not*** apply to a transaction where PEGI ***acquired*** another company because there would be no transfer of PD2 interests.[16]

II. RIVERSTONE AND THE OFFICER DEFENDANTS CONSPIRE TO TAKE PEGI PRIVATE AND COMBINE IT WITH PD2

In early 2018, Riverstone and the Officer Defendants began conspiring to consolidate PEGI and PD2 in a take-private transaction. In March 2018, Riverstone retained Goldman Sachs & Co. LLC ("Goldman") to evaluate strategic alternatives for PD2 and related entities, including PEGI.[17] Throughout March and April 2018, Goldman advised Riverstone on various strategic alternatives, including a PEGI take-private.[18] Goldman relied on PEGI projections which, at the direction of PEGI's CEO, Garland, were furnished to Goldman without Board authority.[19]

On April 24, 2018, PEGI executives gathered for their annual retreat. Contemporaneous notes from the retreat show the Officer Defendants sought to take

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[15] ¶¶85-91.

[16] ¶91.

[17] RIV00008479.

[18] RIV00008439 at 447-550.

[19] *See, e.g.*, *id.* at 8442; Garland 5/4/23 Tr. 64:4-65:8.

PEGI private and combine it with PD2 to further their personal interests.[20] Among other things, the notes show that:

- PEGI management's "[p]referred path" was for Riverstone and other private investors in PD2 (including the Officer Defendants) to acquire PD2 and PEGI together by forming "P3" (*i.e.,* Pattern Development 3);
- Management contemplated that if outside investors had to be brought in management believed there would need to be a ***"$400-500M undervalue of PEGI to offset [a] $200M [PD2] premium"***; and
- Management and Riverstone would achieve the "[m]ost benefit" by acquiring PEGI "when [the] share price is down[.]"[21]

Garland requested (i) the final meeting notes omit any reference to a "$400-500 undervalue of PEGI"; and (ii) that management "delete the prior version."[22]

Two days later, on April 26, 2018, Riverstone and Garland met with Public Sector Pension Investment Board ("PSP")—a 9.9% stockholder of PEGI and a 22% unitholder of PD2 (through funds managed by Riverstone)[23]—to discuss the potential take-private.[24] The group agreed to keep their plans secret until "numbers and path forward are agreed."[25] Throughout May 2018, Goldman continued to

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[20] PEGI-00055465 at 466-467.

[21] *Id*. (emphasis added).

[22] PEGI-00463524; Garland 1/26/23 Tr. 193:19-194:2.

[23] ¶¶ 95, 97-98.

[24] PEGI-00093690 at 691.

[25] *Id*. at 697.

present take-private analyses to Riverstone.[26] Around the same time, CPPIB's Martin Laguerre and Defendant Pedersen discussed a PEGI transaction.[27] Goldman's analyses contemplated potential merger structures that were virtually identical to CPPIB's eventual proposal to acquire PEGI.

III. THE BOARD FORMS A SPECIAL COMMITTEE AFTER GARLAND ADVOCATES FOR A SALE

On June 5, 2018, the "Board held its annual strategy session to discuss and evaluate Pattern's business and strategic plan[.]"[28] Garland—who, unbeknownst to the Board, had been working with Riverstone and Goldman on a take-private strategy—led the meeting and advocated for a sale.[29] Representatives of PSP and Riverstone, PEGI's potential counterparties, attended the full meeting, which included confidential valuations of PEGI.[30] The Board formed a special committee (the "Committee") at the same meeting.[31]

The Committee retained Evercore Group L.L.C. ("Evercore") as its financial adviser and Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss") as its

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[26] *See* RIV00008454; RIV00008447-450.

[27] PEGI-00086337 (noting May 2018 call).

[28] Pattern Energy Group Inc., Proxy (Schedule 14A) at 36 (Feb. 4, 2020) ("Proxy").

[29] PEGI-00000468 at 469; PEGI-00098924 at 925; *see also* SCPEGI0020236.

[30] PEGI-00000468; PEGI-00098924.

[31] PEGI-00000468 at 469-470.

counsel.[32] This was despite management's strong push for Goldman,[33] but the Committee left open the possibility of retaining Goldman as a second advisor to appease management.[34]

IV. BROOKFIELD EXPRESSES INTEREST IN A PEGI TRANSACTION AND GARLAND BACKCHANNELS WITH RIVERSTONE

From the outset, the Committee considered Riverstone and PSP to be potential counterparties. At its August 2, 2018, meeting, the Committee proposed approaching both Riverstone and PSP.[35] The Committee nonetheless allowed Garland (who was CEO of, and an investor in, PD2) and former Riverstone managing director John Browne (who managed Riverstone's initial PEGI investment) to participate in the Committee's process. A backchannel quickly developed between Garland and Riverstone and continued throughout the entire sale process.

In September 2018, Brookfield expressed interest in PEGI.[36] On October 29, 2018, the Committee discussed the "potential for a transaction with PSP, Riverstone,

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[32] PEGI-00000490.

[33] *Id.*

[34] *Id.* at 491 (Garland and Lyon "favored retaining Goldman"); PEGI-00068845 (Batkin "reminded [Garland] that the committee did not think that Goldman was necessary").

[35] PEGI-00000493 at 494.

[36] PEGI-00055770 at 772; BROOKFIELD_TF-PATTERN_0023766 at 766.

or another party" and Garland told the Committee that Brookfield and Global Infrastructure Partners ("GIP") had expressed interest in PEGI.[37] The Committee authorized Garland to respond to Brookfield and GIP and determined to develop management guidelines for the sale process (the "Guidelines").[38]

The Guidelines were animated by management's clear self-interest, which Committee member Bellinger recognized during the October meeting:

> It is obviously going to be important that the management team find any option sufficiently attractive to get on board. More importantly, and concerning to me about today's discussion was the lack of mention (such as I could hear) about shareholders and our obligation to them.[39]

In December 2018, Bellinger resigned from PEGI's Board.[40]

The Guidelines prohibited management from, *inter alia*: (i) contacting any potential counterparty without Committee consent; (ii) discussing management's post-close roles or compensation; or (iii) discussing the inclusion of PD2 in any potential transaction.[41] The Guidelines required strict confidentiality of the Committee's deliberations and the sale process.[42]

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[37] Proxy at 37; PEGI-00098936 at 936-937.

[38] PEGI-00000500 at 500-501.

[39] SCPEGI0011665 at 667.

[40] The Committee was initially comprised of Bellinger, Batkin, Hall, and Newson. After Bellinger's resignation, Goodman and Sutphen were appointed to the Committee.

[41] PEGI-00205058.

[42] *See id.* at 4-5.

In November 2018, Garland violated the Guidelines by alerting Riverstone to Brookfield's outreach.[43] By then, Riverstone had sold all its PEGI stock.[44] Garland also discussed Brookfield's outreach with Goldman's Brian Bolster.[45] Shortly thereafter, PSP and Riverstone discussed a potential PEGI transaction with CPPIB.[46] Bolster did the same.[47]

In February 2019, Brookfield delivered an initial term sheet to PEGI proposing that Brookfield's publicly traded subsidiary, TerraForm Power, Inc. ("TerraForm"), merge with PEGI in an all-stock merger of equals.[48] Defendant Hall immediately recognized Brookfield's PEGI-only offer was "compelling" and that stockholders "should be happy" with it, but anticipated "[t]he status of [PD2] will be a headache," because he could not see "any reason [Riverstone] would want this deal to happen, and they have access to roadblocks."[49]

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[43] RIV00246991 at 991-992.

[44] RIV00246930.

[45] GS-0151694 at 694-695; GS-0151698.

[46] CPPIB_0259352 (noting December 2018 "[d]iscussions with PSP and Riverstone on potential investment into [PEGI]").

[47] GS-0153889; GS-0164267; *see also* GS-0164243 (memorializing July 2018 discussion with CPPIB concerning PEGI and "right angle there (PSP vs. MGMT vs. Riverstone)").

[48] Proxy at 39.

[49] SCPEGI0001970.

Following Brookfield's initial term sheet, Defendants Garland and Elkort (a dual fiduciary as PEGI and PD2's Chief Legal Officer) emphasized Riverstone's supposed Consent Right, including at a March 9, 2019 Committee meeting when Defendant Elkort told the Committee "the need for R[iverstone]'s support for any potential . . . transaction should not be underestimated because R[iverstone]'s rights to consent that would likely be implicated by the proposed transaction appeared to be very broad."[50]

The Committee authorized Garland to notify PD2 and Riverstone of PEGI's discussions with Brookfield without divulging specific terms,[51] but Riverstone was already aware of Brookfield through Garland.[52] The Committee also established additional "guidelines for management's discussions with the various parties[,]"[53] which Elkort told Garland he should treat as "PW [*i.e.*, Paul, Weiss] branded toilet paper [*sic*]."[54]

On March 12, 2019, PEGI provided Brookfield with a revised term sheet that contemplated a merger of PEGI and [TerraForm] with a 15% premium for PEGI

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[50] PEGI-00000485 at 486.

[51] *Id*. at 488.

[52] *Supra* n.43.

[53] PEGI-00000485 at 488; SCPEGI0013435 at 436.

[54] PEGI-00121841.

stockholders.[55] The term sheet, which was prepared by Paul, Weiss and Evercore, made clear Riverstone's Consent Right was avoided by "structur[ing] the transaction as a merger of [TerraForm] into a subsidiary of [PEGI.]"[56] Garland and Riverstone then set about orchestrating a PEGI transaction that would include PD2.

V. CPPIB AND RIVERSTONE PLAN A PEGI/PD2 ACQUISITION

CPPIB helped Garland and Riverstone advance their own interests. On March 28, 2019, CPPIB discussed with Riverstone a potential transaction involving PEGI and PD2.[57] Riverstone identified Brookfield as a competing bidder and shared details of PEGI's confidential sale process, presumably learned from Garland, with CPPIB.[58]

On April 11, 2019, Riverstone signed an NDA with Brookfield that included a standstill barring Riverstone from discussing a potential PEGI transaction with any third-parties.[59] On April 15, Garland had dinner with Riverstone and CPPIB, and discussed potential strategic transactions involving PEGI.[60] CPPIB told Garland

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[55] BROOKFIELD_TF-PATTERN_0007047.

[56] *Id.* at 048.

[57] CPPIB_0007009 at 010-011.

[58] Hogg 2/14/23 Tr. 96:15-97:21; *see also* CPPIB_0007009 at 010.

[59] BROOKFIELD_TF-PATTERN_0010029.

[60] CPPIB_0042962 at 962; Conrad 5/25/23 Tr. 109:3-112:4.

and Riverstone it was interested in a "take private of PEGI, recombination with PD1 and PD2, with Riverstone rolling its interests."[61] Through this meeting and subsequent discussions with PEGI management and Riverstone, CPPIB came to believe it "would be the White Knight … for Management, RS[,] and maybe PSP."[62] CPPIB also confirmed with Riverstone that, while Riverstone did "have lots of leverage (*e.g.*, development exclusivity, management economics, etc.)[,]" it did ***not*** have "a lethal poison pill"—through the Consent Right or otherwise—that could block a PEGI-Brookfield transaction.[63]

CPPIB began modeling an acquisition of both companies and recognized "to the extent Riverstone has unrealistic price requirements for PD2 and PD1, it may be difficult to make a compelling takeover offer to PEGI with an appropriate premium to its share price (absent increasing the aggregate purchase price and reducing returns)."[64] Similarly, because Riverstone would roll its interest, a higher price paid for PEGI would lower Riverstone's returns.[65]

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[61] Conrad 5/25/23 Tr. 112:22-113:18; CPPIB_0216382 at 386 ("I don't think [Riverstone's] Hunt fully got the concept that he would have to pay [the PEGI] premium if he rolled (first meeting so I let him of the hook).").

[62] CPPIB_0057832.

[63] *Id.*; *see also* CPPIB_0072915; Conrad 5/25/23 Tr. 75:9-76:15.

[64] CPPIB_0303503 at 509.

[65] Conrad 5/25/23 Tr. 180:10-183:11; Marti 2/10/23 Tr. 140:9-22.

On May 2, 2019, the Committee first learned Garland and Riverstone had spoken to CPPIB in violation of the Guidelines and the standstill.[66] Garland explained that "[Riverstone] and a Canadian pension fund" had recently asked him to dinner where "[Riverstone] and the pension fund raised their possible interest in a take private transaction with [PEGI] and an acquisition of [PD2]."[67] Subsequently, Riverstone had told Garland "they [we]re not actively discussing the privatization transaction and effectively it [wa]s on hold," but Garland told the Committee it should proceed as if Riverstone might participate.[68]

The Committee nonetheless permitted Garland to continue spearheading the sale process. The Committee also acquiesced to management's demands to retain Goldman as a second financial advisor[69] notwithstanding that Goldman's conflict disclosures revealed that:

- Certain Goldman-affiliated funds held a substantial investment in Riverstone;[70]

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[66] PEGI-00000405; SCPEGI0011185.

[67] SCPEGI-0011185-204.

[68] *Id.*

[69] *See* SCPEGI0008428 at 428 (Batkin recommended the Committee engage Goldman as a second financial advisor, despite telling management he "did not feel this was necessary" and was already pleased with the "assistance and guidance" it was receiving from Evercore); *see also* Batkin 2/1/23 Tr. 249:19-250:12.

[70] GS-0012993 at 002-003; PEGI-00001021 at 041-042.

- Goldman had advised Riverstone concerning a potential PEGI take-private in 2018;[71] and
- Goldman's lead banker, Bolster, was "a member of the Investment Banking Division team serving Riverstone."[72]

Unbeknownst to the Committee, Bolster had also advised Garland regarding a potential Brookfield transaction[73] and was advising CPPIB on a concurrent engagement.[74]

VI. MANAGEMENT AND RIVERSTONE FULLY UNDERMINE THE SALE PROCESS

On May 28, 2019, CPPIB and PEGI entered into an NDA and CPPIB, PEGI and Riverstone entered into a side letter to the NDA to share PD2 information.[75] That same day, Riverstone met with its financial advisor to develop a strategy to advance PD2's interests in the sale process.[76]

Riverstone determined to accelerate its negotiations with CPPIB concerning PD2 "irrespective" of CPPIB's discussions with PEGI to encourage the Committee to consider CPPIB as a merger partner.[77] Riverstone also developed a contingency

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[71] GS-0012993 at 002.

[72] *Id.*

[73] *Supra* n.45.

[74] Kelly 5/24/23 Tr. 80:5-81:25.

[75] Proxy at 41.

[76] RIV00088441 at 443; Hunt 5/10/23 Tr. 263:13-19.

[77] RIV00088441 at 446.

plan to scuttle an imminent Brookfield-PEGI transaction, including by, *inter alia*, submitting a letter invoking the Consent Right, threatening litigation, and demanding significant revisions to the contracts governing the PEGI/PD2 relationship.[78]

On June 28, 2019, CPPIB made an initial non-binding offer to acquire PEGI for $25.50/share, which was contingent on CPPIB acquiring PD2.[79] Separately, CPPIB had reached a handshake agreement to pay 1.75x Riverstone's invested capital for PD2.[80] Before submitting its offer, CPPIB analyzed Brookfield's "ability to pay" assuming Brookfield would: (i) acquire PEGI; (ii) terminate the PEGI/PD2 partnership in June 2023 under the Partnership Agreement;[81] and (iii) purchase PD2's asset pipeline at a "slight discount" because Riverstone "w[ould] have more limited options to sell its stake[.]"[82] CPPIB could only conduct this analysis because Garland and Riverstone fed confidential information about negotiations with Brookfield to CPPIB throughout the sale process while keeping Brookfield in the

[78] RIV00088441 at 448.

[79] PEGI-00000904 at 904-908; *see also* Proxy at 42.

[80] CPPIB_0079155.

[81] CPPIB_0390553 at 558.

[82] *Id.*

dark.[83] The information-sharing was so pervasive that CPPIB referred to Brookfield ***using PEGI's own codename for Brookfield***, *i.e.,* Birch.[84]

On July 1, 2019, Brookfield submitted a non-binding stock-for-stock offer for a combination of PEGI and TerraForm representing a 15.0% premium to the trading price of PEGI's common stock.[85] Brookfield indicated a willingness to provide PEGI stockholders with cash consideration subject to limitations to be determined.[86] Brookfield also proposed that the combined company would purchase PD2 from Riverstone for 1.75x Riverstone's invested capital in cash.[87]

During July 2019, PEGI management met with CPPIB and Riverstone, as well as Brookfield, to discuss their proposals.[88] By late July, Brookfield had proposed a merger between TerraForm and PEGI wherein PEGI stockholders would receive a 15% premium if the transaction included PD2 or a 20% premium if the transaction excluded PD2.[89] On July 31 and August 1, the Committee met to consider the

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[83] Mazin 5/23/23 Tr. 517:21-518:13.

[84] CPPIB_0211791 ("The special committee sent Birch to ask Redwood for the consent[.]"); PEGI-00123171 at 171; Garland 5/5/23 Tr. 309:20-311:3.

[85] BROOKFIELD_TF-PATTERN_0005317 at 317-319.

[86] *Id*.

[87] *Id*.

[88] Proxy at 43.

[89] BROOKFIELD_TF-PATTERN_0006240 at 241-242.

proposals.[90] The Committee noted that Brookfield's offer would cash out Riverstone while CPPIB's offer would permit Riverstone to continue to own PD2 equity.[91] The Committee also recognized that the 15% premium Brookfield offered was worth more than CPPIB's offer, equating to a 1.8413 exchange ratio or approximately $28.25/share.[92] The Committee nevertheless decided to advance discussions with CPPIB instead of Brookfield.[93]

The Committee's decision to engage with CPPIB despite Brookfield's higher bid confirmed for CPPIB that the process was skewed in its favor. Internally, CPPIB concluded "we are [at a] lower price but simpler than Birch" and there is a "[c]lear preference for us."[94] Riverstone told CPPIB it disfavored a Brookfield transaction that would cash Riverstone out of PD2, explaining "we don't want B[rookfield] to have all [the] fun for the [] next 20 years and not be able to participate in upside."[95] As a Riverstone advisor recognized, Garland "d[idn't] want to upend a 12 year

[90] PEGI-00000420; PEGI-00274372.

[91] PEGI-00000420 at 424.

[92] PEGI-00360511 at 555.

[93] PEGI-00274372.

[94] CPPIB_0201586.

[95] CPPIB_0024108.

relationship with R[iverstone] over [a Brookfield] deal" even though it was "frankly . . . ***the only one that makes sense for [PEGI]***."[96]

PEGI asked CPPIB to increase its price, and CPPIB in turn demanded that "any future increase above the $25.75 price [be] funded 100% by [Riverstone] by reducing the value of PD2 by -$25m for each $0.25 per share increment above $25.75 offer price[.]"[97] Riverstone lamented that "all [post-closing] shareholders get diluted if [CPPIB] has to pay more for [PEGI], so … we are already … sharing that pain."[98] To bridge the gap, CPPIB, Riverstone and Garland began negotiating an earnout that would be paid to Riverstone and PEGI management in lieu of a higher upfront payment for PD2.[99] CPPIB recognized it was "solving for" the PEGI price by determining the price for PD2.[100] On August 13, Garland and Riverstone proposed that CPPIB pay $26.50/share for PEGI and $700 million for PD2 with a $225 million earnout.[101] Garland's involvement in these negotiations violated the Guidelines.

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[96] CVP0013784 at 784 (emphasis added).

[97] CPPIB_0052683 at 684.

[98] RIV00266396.

[99] RIV00043658.

[100] CPPIB_0003010.

[101] RIV00043432 at 433; PEGI-00061731 at 731-732.

On August 16, CPPIB submitted an updated offer to purchase PEGI in a range of $26.25 to $26.50/share in a transaction that included a merger with PD2.[102] CPPIB characterized its offer as a 15.8% premium over the PEGI three-month weighted average price, which was significantly lower than the 20% premium Brookfield offered to pay in a PEGI-only transaction.[103] Garland updated the Officer Defendants: "We got a new proposal! $26.25-26.50; nothing in the letter re. P2 but it is also agreed -RS piece $700mm net with a $225 mm earn out … A deal is hatched."[104]

On August 19, the Committee discussed CPPIB's updated offer and noted "an earn-out arrangement made it less likely that [CPPIB] would adjust its proposed offer price to acquire [PEGI] in response to matters related to [Pattern Development 2]."[105] The Committee nevertheless advanced discussions with CPPIB and authorized management to discuss compensation arrangements with CPPIB.[106]

On August 26, 2019, Brookfield submitted an updated offer explaining it had been told: (i) the Board no longer supported a transaction that internalized PD2; and

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[102] PEGI-00048716.

[103] *Id.* at 718.

[104] PEGI-00155664 at Row 1222.

[105] PEGI-00000434 at 436-437.

[106] PEGI-00000434 at 436-437; Proxy at 45.

(ii) Riverstone would use its Consent Right to block a PEGI-only transaction.[107] Undeterred, Brookfield proposed an acquisition of TerraForm by PEGI that would avoid the Consent Right and in which PEGI stockholders would receive two shares of TerraForm stock for each PEGI share they owned.[108] Brookfield's offer valued PEGI as high as $33.38/share—far above CPPIB's offer and the final Merger price.[109]

Garland immediately told the Officer Defendants: "***The shit has hit the fan. $33/share.***"[110] They subsequently formed the PD2/PEGI "mutual support society" to advocate against Brookfield's PEGI-only transaction and in favor of CPPIB's acquisition of both companies.[111]

Upon receipt of Brookfield's letter, Batkin asked: "Where does he get this thing about being told on 8/20 'that the BOD of PEGI is no longer supportive of internalizing the 71% of PD2'?"[112] Goldman admitted it had told Brookfield this,[113]

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[107] BROOKFIELD_TF-PATTERN_0002563.

[108] *Id.* at 566.

[109] *Id.*

[110] PEGl-00114661 (emphasis added); *see also* Armistead 1/12/23 Tr. 93:2-94:17.

[111] PEGI-00165462 at Rows 462-463.

[112] GS-0002740.

[113] *Id.*

even though PEGI was advancing a transaction with CPPIB in which PD2 would be internalized.

On September 4, 2019, Brookfield's CEO met with Garland and Riverstone at the request of the Committee.[114] Riverstone falsely insisted its consent was required for ***any*** PEGI transaction, threatened Brookfield with litigation if it pursued a PEGI-only transaction and demanded any PEGI-only transaction be conditioned on "amendment[s] to the contractual relationships between [PEGI] and [PD2]."[115] Riverstone considered this "good progress" with Brookfield "in that we seem to have got them to back off from a hostile move for just the yieldco [*i.e.,* PEGI-only] merger, which puts the leverage back on our side to continue grinding with CPP and PSP to make that deal work."[116] Management and Riverstone celebrated the "progress" with drinks that evening.[117]

Brookfield was willing to accommodate Riverstone's demands. On September 10, 2019, Brookfield reaffirmed its August 26 offer and proposed that: (i) PEGI and Riverstone discuss and agree on amendments to the PEGI/PD2

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[114] Proxy at 48.

[115] SCPEGI0018058 at 043.

[116] RIV00044723.

[117] PEGI-00155664 at 1263-1264.

contractual relationship or (ii) the Board grant Brookfield exclusivity so it, PEGI and Riverstone could negotiate such amendments.[118]

On September 12, 2019, consistent with the plan developed months earlier, Riverstone wrote the Committee on behalf of PD2 and invoked the Consent Right.[119] Riverstone also indicated PD2 was "getting close to deal terms and a structure with [CPPIB.]"[120] Shortly thereafter, Batkin asked Riverstone "to prepare a list of amendments to the existing [PEGI]/[PD2] arrangements" in the event of a Brookfield transaction.[121] Batkin requested that Riverstone "undertake th[e] endeavor in good faith and propose minimal changes to the current [PEGI/PD2] relationship documents."[122]

Riverstone did neither. On September 18, Riverstone sent Brookfield its proposed amendments.[123] Riverstone demanded: (i) termination of the Purchase Rights Agreement, including the ROFO; (ii) a sale of PEGI's Japanese operating assets to PD2 at cost; (iii) a call right to purchase PEGI's PD2 equity stake at a 30-

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[118] BROOKFIELD_TF-PATTERN_0005142 at 144.

[119] PEGI-00062072 at 073.

[120] *Id*.

[121] BROOKFIELD_TF-PATTERN_0000674 at 674.

[122] RIV00122266 at 267.

[123] RIV00091436 at 438-440.

35% discount to FMV; and (iv) a $200 million payment from PEGI to PD2.[124] Riverstone's proposal was "a total unwind of [the] original business platform[.]"[125] As Riverstone's Alfredo Marti explained to his colleagues, their very point was to scuttle, not facilitate, a Brookfield transaction:

> The trick is to come across as 'not unreasonable' but at the same time either convince [Brookfield] that a friendly negotiated outcome is inconsistent with the math of their [PEGI] deal (so best to move on), or secure enough improvements for P2 that we don't mind a [Brookfield] deal.[126]

On September 29, the Committee met to discuss Brookfield's offer and Riverstone's "fairly expansive" list of demands.[127] Batkin reported that, remarkably, Brookfield "was generally comfortable with the proposed terms and thought that any potential issues were not insurmountable."[128] Batkin also indicated that Brookfield believed it could sign onto the terms of Riverstone's letter as-is.[129] The Committee observed that it had a duty, given the potentially higher bid from

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[124] *See* RIV00091436; RIV00126523.

[125] EVR_00046280.

[126] RIV00126144.

[127] PEGI-00001288 at 289.

[128] *Id.* at 290.

[129] *Id*.

Brookfield, to "maximize value for shareholders" but declined to grant Brookfield exclusivity.[130]

At the same meeting, Garland pressured the Committee to authorize the issuance of voting preferred shares ("Preferred Issuance") to affiliates of CBRE Caledon Capital Management Inc. ("CBRE"), purportedly to fund the purchase of two renewable energy projects.[131] Despite having no apparent relationship to the sale process and a specifically-designated committee to carry out the issuance, Garland emphasized to the Committee his "concern that the Preferred Issuance had already been delayed for months" due to the sales process "and indicated that it had reached a point where it could not be delayed any further without risk of [CBRE] walking away from the proposed deal."[132] PEGI's transaction committee approved the Preferred Issuance the next day. CBRE signed a purchase agreement requiring it to vote for any merger approved by PEGI's Board.[133]

In violation of the Guidelines, Garland again updated the Officer Defendants regarding the Committee's deliberations, explaining that the Committee would likely want to continue to negotiate with Brookfield because "[t]he price difference

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[130] *Id*. at 291.

[131] *Id*.

[132] *Id.*

[133] Proxy at 129-30.

[between PEGI and CPPIB] [wa]s still too large."[134] By then, CPPIB understood "[m]anagement is behind us and we are the best alternative to them and [Riverstone] who has the lock on the PD2 deal. . . . [Brookfield] and [Riverstone] are not compatible and management is with [Riverstone]."[135]

Despite management's efforts to steer the Committee towards CPPIB, however, the difference in value was still too great for the Committee to ignore. According to Garland, the Committee and Paul, Weiss became "convinced" that Brookfield "has too good of a deal to pass up."[136]

VII. GARLAND THREATENS TO RESIGN AND THE BOARD APPROVES THE TRANSACTION

On October 17, Evercore instructed Brookfield and CPPIB to submit "best and final" offers by October 28, 2019.[137] Brookfield reiterated its prior proposal valuing PEGI as high as $33.38/share, which represented a 47% premium, noting "***we have been advised by you and your advisors that our proposal is superior from a value perspective to the others that you have received and that you will receive in this sales process.***"[138] Brookfield reiterated it could agree to Riverstone's

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[134] PEGI-00048169.

[135] CPPIB_0387450.

[136] PEGI-00155664 at Row 1361.

[137] Proxy at 51.

[138] BROOKFIELD_TF_PATTERN_0000826 at 827 (emphasis added).

demands and close a PEGI-only transaction without implicating the Consent Right.[139] CPPIB submitted a final offer to acquire PEGI for $26.75/share, simultaneously acquire PD2, and allow Riverstone and PEGI management to rollover into the combined company.[140] CPPIB's investment committee had authorized CPPIB to bid $27.00/share but CPPIB submitted a lower bid, recognizing "***Our advantage isn't price. It's Riverstone's support.***"[141]

On October 30 and 31, 2019, the Committee met to evaluate the offers. Because Brookfield's offer was superior, Garland became concerned Batkin "might agree to give either exclusivity or a very extended period of time to [Brookfield] to try to work out issues when things weren't getting resolved or give it to them without resolution."[142] At a dinner with the Committee on October 30, Hall discussed that idea with Garland who became so frustrated he stormed out.[143]

Around this same time, Garland threatened to resign if the Committee proceeded with a Brookfield transaction.[144] Garland acknowledged Brookfield's

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[139] *Id.* at 827.

[140] SCPEGI0000021.

[141] CPPIB_0265524 (emphasis added); Hogg 2/14/23 Tr. 224:20-227:18.

[142] Garland 5/5/23 Tr. 391:18-392:19.

[143] EVR_0156451; Garland 5/5/23 Tr. 401:21-402:16.

[144] PEGI-00221579 at 582.

offer was more valuable than CPPIB's, explaining "[t]he banks have advised they think the stock will trade between $28-30/share" and that "it [wa]s reasonable to think that [the] stock should trade at $28-30/share."[145] Garland emphasized, however, that Riverstone was an obstacle to a Brookfield deal and competing with PEGI stockholders for merger consideration, explaining that Riverstone "ha[d] made it abundantly clear that they plan on suing if an acceptable arrangement is not worked out with [Brookfield]" and that "[a] reasonable estimate of satisfying [Riverstone's] concerns could be somewhere between $1.5-3/share…."[146] At a nearly four hour Committee meeting the next day, Goldman and management advocated for CPPIB and Riverstone.[147]

On November 1, 2019, Brookfield told Paul, Weiss it could negotiate any necessary amendments with Riverstone within thirty days.[148] Paul, Weiss demanded Brookfield submit definitive documents by the next day, which would require cooperation from Riverstone. Brookfield responded that this direction was "entirely contradictory" to the instructions it had previously received from Batkin, observed that "PEGI's Riverstone problem" was preventing PEGI from reaching a deal with

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[145] PEGI-00221579 at 581.

[146] *Id.* at 581-582.

[147] PEGI-00000457.

[148] Proxy at 52.

Brookfield, and withdrew its bid.[149] On November 3, 2019, the Committee recommended PEGI's Board approve the Merger with CPPIB at $26.75/share.[150] The Board approved the Merger that same day.[151]

PEGI contacted Brookfield during the go-shop, but Brookfield was "wary of any conflict with Riverstone" and did not bid.[152] Internally, Brookfield concluded it "***all came down to the fact that Riverstone didn't want another [general partner] in the mix and used their consent right on the deal to block us.***"[153]

VIII. THE MARKET REACTS NEGATIVELY AND CPPIB CONSIDERS A PRICE BUMP OF UP TO $1.25/SHARE

On February 4, 2020, PEGI issued the Proxy.[154] On February 18 and 24, 2020, Water Island Capital, LLC, the investment advisor to Federal Plaintiffs, published open letters to shareholders of PEGI urging them to vote against the Merger while identifying that the proposed merger consideration undervalued PEGI and citing problems in the merger process and inadequate disclosures in the Proxy.[155]

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[149] BROOKFIELD_TF-PATTERN_0012183; BROOKFIELD_TF-PATTERN_0012189.

[150] Proxy at 53.

[151] *Id.* at 53-54.

[152] PEGI-00140404 at 405.

[153] BROOKFIELD_TF-PATTERN_0020253 (emphasis added).

[154] Notice ¶5.

[155] *Water Island Capital, LLC Issues Open Letter to Shareholders of Pattern Energy Group, Inc*., BUS. WIRE, Feb. 18, 2020; *Water Island Capital, LLC Issues Open Letter to*

On February 28, 2020, ISS recommended stockholders vote against the Merger, concluding that "[o]n balance, there is insufficient evidence – particularly given the disclosure concerns and the erosion of any control premium by the shift in peer valuations – that the proposed offer is the best alternative at this time."[156] On March 2, Glass Lewis did the same, highlighting the "Poor process; Conflicts of interest; Limited disclosure; Inadequate valuation; [and] Strong standalone prospects" as concerns.[157] In response, PEGI issued a Proxy supplement, which disclosed the $1.06 billion "effective value" of PD2 at signing but misleadingly omitted the value of the earnout.[158]

As stockholder opposition mounted, CPPIB considered a price bump of up to $1.25/share to obtain stockholder approval of the Merger.[159] To help fund the bump, CPPIB obtained from the Officer Defendants and Riverstone an agreement that the

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Shareholders in Response to Misleading Claims Made by Pattern Energy Group, Inc. Board of Directors, BUS. WIRE, Feb. 24, 2020.

[156] JFWBK_0002098 at 102, 118.

[157] SCPEGI0000182 at 182.

[158] March 4, 2020 Supplemental Proxy at 6; RIV00164828; Conrad 5/25/23 Tr. 269:21-270:9; PEGI-00299803 at 803 ("If a disclosure does not include some estimate for the earnout, I think we risk criticism for a misleading comparison.").

[159] CPPIB_0312945 at 945.

hurdle rate on their earnout would be increased from 9% to 10% so that everyone would "share the pain."[160]

Throughout the morning of March 10, 2020 (*i.e.,* the day of the stockholder vote) PEGI management attempted to persuade large stockholders to vote in favor of the Merger.[161] PEGI management ultimately "flipped" the votes of two large stockholders to achieve approval of the Merger by a razor-thin margin.[162]

Garland instructed his personal attorney that "we did not change the price of the transaction so the agreement to change the [price] … should be torn up."[163] Days later, Garland complained to Riverstone: "***I wish CPP recognized we saved them maybe $100 mm by turning votes in the last 12 hours...***"[164]

IX. DEFENDANTS OBTAIN APPROVAL OF THE TRANSACTION THROUGH A FALSE AND MISLEADING PROXY

On November 3, 2019, when the Board approved the Merger, the Board adopted resolutions that delegated to management the full authority to prepare and

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[160] CPPIB_0314152 at 153; Hogg 2/14/23 Tr. 258:24-260:18, 269:21-270:9; Hunt 5/10/23 Tr. 409:5-411:5; PEGI-00155664 at Rows 1364-1375.

[161] Kelly 5/24/23 Tr. 231:12-23.

[162] Kelly 5/24/23 Tr. 238:13-239:6.

[163] PEGl-00118402 at 402.

[164] PEGI-00155664 at Row 489; Garland 5/5/23 Tr. 417:15-419:7.

disseminate the Proxy.[165] The Proxy (and supplements thereto) were false and materially misleading. Among other things, the Proxy failed to disclose:

- Riverstone used its purported Consent Right to block a more valuable Brookfield/TerraForm transaction.
- Garland had unauthorized discussions with potential bidders and Riverstone in violation of the Guidelines, including the unauthorized in-person meeting with CPPIB on April 15, 2019.
- Goldman's conflicts of interest, including that Goldman owned a substantial stake in Riverstone, had advised Riverstone on a potential take-private of PEGI, was advising CPPIB on a concurrent engagement and had earned fees totaling [redacted] from Riverstone and CPPIB in recent years.
- Defendant Browne, a founder of Riverstone, attended a majority of the Special Committee's meetings.
- PEGI's largest stockholder, PSP, indirectly held a 22% interest in PD2 through Riverstone-managed funds.
- The negotiations surrounding the issuance of the Preferred Stock or that it was not necessary to fund the acquisitions in question.
- The terms of the Contribution and Exchange Agreement providing for the concurrent acquisition of PD2, which was necessary to understand if Merger consideration was being siphoned from stockholders to subsidize that second transaction.

Even with the sanitized Proxy, a majority of the Company's disinterested stockholders do not appear to have voted in favor of the Merger. All told, only 52% of the Company's outstanding shares were voted in favor of the Merger, but over

[165] PEGI-00000382 at 389-390.

twenty million of those shares were cast by potentially interested parties.[166] Excluding those shares, a minority – only 41% – of the shares held by independent and disinterested stockholders were voted in favor of the Merger. The Merger closed on March 16, 2020.[167]

X. PROCEDURAL HISTORY

A. The Chancery Action

On May 28, 2020, following a books-and-records investigation, Chancery Plaintiff filed her original complaint (the "Initial Complaint").[168] The Initial Complaint alleged that the Director Defendants, Officer Defendants and Riverstone Defendants breached their fiduciary duties by: (i) steering the Company into and/or approving the Merger, which was the preferred transaction of PEGI management and Riverstone, over a Brookfield merger, which was superior for PEGI's public stockholders; and (ii) causing directly or indirectly the Company to issue a false and misleading Proxy.[169] In the alternative, Chancery Plaintiff alleged claims of (i) aiding and abetting a breach of fiduciary duty, (ii) tortious interference with a

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[166] 9,341,025 shares were owned by PSP. 1,210,049 shares were owned by PEGI management. CBRE's 10,400,000 preferred shares, which were rolled over into the post-closing company, were required to be voted in favor of the Merger.

[167] Pattern Energy Group Inc., Current Report (Form 8-K) (Mar. 16, 2020).

[168] *See* Long-Form Notice (the "Notice") ¶9 (included as Ex. A to Affidavit of Jack Ewashko ("Ewashko Aff.")); Trans. ID 65652871.

[169] *Id.*

prospective economic advantage, and (iii) civil conspiracy against the Riverstone Defendants.[170]

In September 2020, Defendants moved to dismiss the Initial Complaint.[171] In May 2021, the Court (i) denied the motions to dismiss breach of fiduciary duty claims against the Director and Officer Defendants; (ii) denied the motions to dismiss the tortious interference claims; and (iii) held in abeyance the claims for aiding and abetting, conspiracy, and breach of control person fiduciary duty.[172] Defendants answered the Initial Complaint in July 2021.[173]

On May 6, 2022, the Court entered a stipulated order certifying the Chancery Action as a non-opt out class action under Rules 23(a), 23(b)(1), and 23(b)(2) comprised of all record and beneficial owners of PEGI common stock, as of March 16, 2020, who received Merger consideration, excluding Defendants and their affiliates.[174] The Order also appointed Chancery Plaintiff as class representative, appointed Labaton Keller Sucharow LLP and Robbins Geller & Dowd LLP as co-

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[170] *Id.*

[171] Notice ¶12; Trans. IDs 65922641, 65925045.

[172] Notice ¶13. The Court issued a corrected Memorandum Opinion on May 11, 2021. *Id.*

[173] Notice ¶14.

[174] Notice ¶15; Trans. ID 67596268.

lead counsel for the Class, and appointed the Schall Law Firm as additional Class counsel.[175]

On October 7, 2022, after obtaining further discovery, Chancery Plaintiff filed the operative complaint (the "Complaint"), which added Goldman as a defendant and asserted claims against Goldman for aiding and abetting, tortious interference, and conspiracy.[176] Defendants subsequently answered the Complaint.[177]

B. The Federal Action

On February 25, 2020 (and prior to the close of the Merger), Federal Plaintiffs filed their initial complaint in the Federal Action, alleging violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. § 240.14a-9 in connection with the Merger.[178]

On March 6, 2020, Federal Plaintiffs filed a Motion for Appointment as Lead Plaintiffs, Approval of Their Selection of Lead Counsel and Liaison Counsel and Consolidation of Related Actions.[179] The Court granted the Federal Plaintiffs

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[175] *Id.*

[176] Notice ¶16; Trans. ID 68227281.

[177] Notice ¶16.

[178] Notice ¶21.

[179] *In re Pattern Energy Grp. Inc. Sec. Litig.*, C.A. No. 20-cv-275 (D. Del. Mar. 6, 2020), ECF No. 5.

motion on March 23, 2020 appointing the Federal Plaintiffs as Lead Plaintiffs, Entwistle & Cappucci LLP as Lead Counsel, and Farnan LLP as Liaison Counsel.[180]

Subsequently, in May 2020, Federal Plaintiffs filed a First Amended Complaint ("FAC") against certain of the Defendants alleging their original federal securities claims and adding claims for breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty.[181]

On July 8, 2020, Federal Plaintiffs filed a Notice of Challenge to Confidential Treatment in this Court seeking unredacted copies of the complaints filed in the Chancery Action, including the Initial Complaint.[182] On August 12, 2020, the Court granted in part and denied in part the motion, ruling that all information besides the identity of certain unsuccessful bidders and information in paragraph 280 of the Initial Complaint be made public.[183]

On March 29, 2021, Federal Plaintiffs filed the operative Second Amended Complaint in the Federal Action (the "Federal Complaint"), again alleging violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule

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[180] *Id.* at ECF No. 12.

[181] Notice ¶23.

[182] Notice ¶24.

[183] *Id.*

14a-9 and adding claims for breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty in connection with the Merger.

On January 27, 2022, Magistrate Judge Hall issued a R&R that the motions to dismiss the Federal Complaint be denied as to the Federal Plaintiffs' federal securities law claims and granted as to their state law claims.[184] On March 30, 2022, Judge Noreika adopted that R&R.[185]

On March 27, 2023, the Federal Court certified a federal class consisting of all persons who: (i) held PEGI common stock as of the record date for the Merger; (ii) were entitled to vote on the Merger; and (iii) received Merger consideration.[186] The Federal Class Order also appointed the Federal Plaintiffs as class representatives of the Federal Class and appointed the law firm of Entwistle & Cappucci LLP as lead counsel, Farnan LLP as liaison counsel, and Susman Godfrey LLP as additional counsel for the Federal Class.[187]

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[184] Notice ¶29.

[185] *Id.*

[186] Notice ¶34; *In re Pattern Energy Grp. Inc. Sec. Litig.*, C.A. No. 20-cv-275 (D. Del. Mar. 27, 2023), ECF No. 260.

[187] *Id.*

C. Plaintiffs Zealously Litigate Their Respective Cases

Between June 2021 and April 2023, Chancery Plaintiff propounded extensive discovery demands on Defendants and third parties, including 54 document requests, 103 interrogatories, 41 requests for admission and 29 subpoenas. Defendants and non-parties produced in excess of 300,000 documents totaling more than 2,000,000 pages.[188] During the same time period, Defendants also propounded extensive discovery on Chancery Plaintiff, including 42 document requests and 16 interrogatories.

Federal Plaintiffs' discovery efforts were likewise substantial. Between March 31, 2022 and February 2023, Federal Plaintiffs propounded extensive discovery demands, including 47 document requests, 19 interrogatories and 14 subpoenas. Defendants and non-parties produced to Federal Plaintiffs in excess of 275,000 documents totaling more than 1,700,000 pages of documents. Defendants also propounded extensive discovery demands on Federal Plaintiffs, including 36 document requests and 26 interrogatories. Federal Plaintiffs produced approximately 22,000 documents totaling approximately 92,000 pages of documents.

[188] Notice ¶17.

Plaintiffs' Counsel engaged in extensive deposition practice as well. Collectively, Plaintiffs' Counsel deposed 30 individuals over the course of 53 days across the two Actions.[189] Federal Plaintiffs also sat for two depositions. When permitted by Defendants, Chancery Plaintiff would attend Federal Plaintiff depositions and vice versa.[190] To avoid duplication, transcripts of all depositions taken in the Federal Action of Defendant witnesses were made available to Plaintiff in this Action, and vice versa, and Plaintiffs agreed to no duplicative questioning of witnesses.[191]

Expert discovery was conducted in both Actions. On June 30, 2023, the parties in the Chancery Action exchanged four opening expert reports.[192] On August 22, 2023, the parties in the Chancery Action agreed to extend the deadline for the submission of rebuttal expert reports (August 25) and the expert discovery deadline (September 22) by one week while the parties mediated.[193]

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[189] *See* Affidavit of Ned Weinberger ("Weinberger Aff.") Ex. 1.

[190] *Id.*

[191] Notice ¶32; Consol. C.A. No. 2020-0357-MTZ, Tr. at 13-14 (Del. Ch. Jan. 9. 2023) (TRANSCRIPT) (Chancery Plaintiff's counsel explaining "[w]e have no intention of duplicating things … we would have the transcript of that deposition" and "[w]e would be able to fully understand and incorporate, sort of in our planning, what testimony had actually been taken, and take as efficient a deposition as possible").

[192] Notice ¶19.

[193] Trans. ID 70691886.

Federal Plaintiffs completed expert discovery, having served two opening expert reports in the Federal Action on February 24, 2023, and two rebuttal reports on March 24, 2023. In April 2023, the parties took depositions of the four experts in the Federal Action.[194]

On April 24, 2023, defendants in the Federal Action moved for summary judgment and to exclude one of the Federal Plaintiffs' experts. The parties briefed those motions in April and May 2023.[195] On August 25, 2023, Federal Plaintiffs sent defendants a draft of the pre-trial order and were otherwise actively engaged in pretrial preparation for their October 23, 2023 trial at the time the parties mediated.[196]

Trial in the Chancery Action was scheduled to begin in March 2024.[197]

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[194] Notice ¶36. All expert reports exchanged in the Federal Action were made available in the Chancery Action, and all expert reports exchanged in the Chancery Action were made available in the Federal Action.

[195] Notice ¶36.

[196] Notice ¶39.

[197] Trans. ID 70763619.

XI. PLAINTIFFS UNITE TO REACH A GLOBAL SETTLEMENT ON THE EVE OF TRIAL IN THE FEDERAL ACTION

While vigorously litigating the Actions, Plaintiffs determined that it was in the Class's best interests to engage in settlement discussions at various points in the Actions.

In April 2022, Chancery Plaintiff and the then-defendants in the Chancery Action participated in a mediation before the Honorable Layn R. Phillips (Ret.) of Phillips ADR (the "Mediator"). Prior to the mediation, Chancery Plaintiff and defendants exchanged mediation statements and exhibits that addressed liability and damages. The first mediation did not result in a settlement.[198]

In June 2023, following the close of fact discovery, Plaintiffs' Counsel in both Actions and Defendants' counsel participated in a global mediation, which lasted a full day before the Mediator. Before the mediation, Plaintiffs and Defendants exchanged supplemental mediation statements and exhibits, which again addressed liability and potential damages. The Actions were not resolved during the second mediation.[199]

Finally, on August 30, 2023, the parties held a third in-person mediation, again lasting a full day. Following extensive arm's-length negotiations, the parties

[198] Notice ¶40.

[199] Notice ¶40.

accepted Judge Phillips's recommendation: a $100,000,000 global settlement of the Chancery and Federal Actions, which was memorialized in a term sheet executed on September 3, 2023.[200] After additional negotiations regarding the specific terms of their agreement, and guidance from the Federal Court, the parties entered into the Stipulation on December 6, 2023.[201]

In connection with the Settlement, Federal Plaintiffs and their counsel moved on December 7, 2023 to be appointed as co-lead plaintiff and co-lead counsel for the Class.[202] On January 8, 2024, the Court entered an Order granting that motion.[203]

On March 4, 2024, Plaintiffs began providing the Class formal notice of the Settlement.[204] To date, no Class member has objected to the Settlement, proposed Fee and Expense Award, or proposed Incentive Awards.

ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND SHOULD BE APPROVED BY THE COURT

When deciding whether to approve a class action settlement, the Court looks to the facts and circumstances underlying the claims and exercises its informed

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[200] Notice ¶¶42-43.

[201] Notice ¶46.

[202] Trans. ID 71566409.

[203] Trans. ID 71762385.

[204] Ewashko Aff. ¶¶3-9.

judgment as to whether the proposed settlement is fair and reasonable.[205] Such "facts and circumstances" include: (i) the probable validity of the claims; (ii) the apparent difficulties in enforcing the claims through the courts; (iii) the collectability of any judgment recovered; (iv) the delay, expense, and trouble of litigation; (v) the amount of the compromise compared with the amount of any collectible judgment; and (vi) the views of the parties involved.[206]

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."[207] The Court's role is not to try the Class's claims, *i.e.,* "decide any of the issues on the merits"; it determines from the totality of the circumstances whether the settlement is fair, reasonable, and adequate.[208]

Here, the $100 million global settlement of the Chancery and Federal Actions is fair, reasonable and adequate by any measure.

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[205] *Prezant v. De Angelis*, 636 A.2d 915, 921 (Del. 1994).

[206] *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986) (citing *Rome v. Archer*, 197 A.2d 49, 53-54 (Del. 1964)).

[207] *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.) Inc.*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

[208] *See Polk*, 507 A.2d at 536.

A. The $100 Million Settlement Provides a Significant Financial Benefit to the Class

The $100 million Settlement, which amounts to roughly $1.02/share,[209] is an "obvious and self-pricing benefit[.]"[210] Indeed, this Court "considers the premium to the deal price as a rough proxy for the strength of the settlement[,]"[211] and has held that settlements approximating "1 to 2 percent of equity value" are generally fair.[212] The Settlement, which reflects a 3.8% premium to equity value,[213] is ***above*** this range.

B. The Settlement Reflects the Strength of Plaintiffs' Claims Weighed Against the Risks of Seeking a Post-Trial Judgment and Appeal

The Settlement reflects Plaintiffs' experienced and informed assessment of both the likelihood Plaintiffs would prove liability against Defendants and the potential damages outcomes at trial and on appeal in the respective Actions.

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[209] $1.00 x 98,218,625 shares in Class before exclusion of Excluded Shares.

[210] *In re Orchard Enters., Inc. S'holder Litig.*, 2014 WL 4181912, at *5 (Del. Ch. Aug. 22, 2014).

[211] *Garfield v. BlackRock Mortg. Ventures, LLC*, C.A. No. 2018-0917-KSJM, Tr. at 24 (Del. Ch. Feb. 11, 2021) (TRANSCRIPT).

[212] *See In re Dell Techs. Inc. Class V S'holders Litig.*, Consol. C.A. No. 2018-0816-JTL, Tr. at 41 (Del. Ch. Apr. 19, 2023) (TRANSCRIPT) ("I think it's fair to say that 1 to 2 percent of equity value, particularly as the deal sizes get larger, is where things settle out.").

[213] $1.02/share Settlement divided by $26.75/share Merger consideration.

1. The Settlement Reflects Assessment of Plaintiffs' Theories of Liability

Chancery Plaintiff believes that had she tried her claims, she likely would have proven, at a minimum, that the Officer Defendants breached their fiduciary duties. The factual record developed against the Officer Defendants is damning. In violation of the Committee's Guidelines and their fiduciary duties, Garland and the other Officer Defendants undermined the Committee's sale process by tilting the playing field in CPPIB's favor and causing PEGI to issue a false and materially misleading Proxy that concealed their misconduct. When stockholders opposed the Merger anyway, the Officer Defendants flipped votes in favor of the Merger so they would not have to "share the pain" of funding a price bump to CPPIB. In real time, Garland recognized the Officer Defendants had saved CPPIB "maybe $100 mm"—*i.e.*, the Settlement Amount—by turning votes at the eleventh hour.[214]

Proving non-exculpated breaches of fiduciary against the other Defendants was less certain. No evidence showed that Defendant Browne had served as Riverstone's mole on the Committee. Regarding the Committee members, though the record likely establishes a *Revlon* breach, proving non-exculpated conduct (*i.e.,* disloyalty or bad faith) would have been exceedingly difficult. Indeed, the record

[214] *Supra* n.164.

contains evidence that the Committee—most notably, Batkin—went to great lengths to keep Brookfield at the bargaining table and push back against the Officer Defendants' efforts to undermine the sale process.[215] The Committee was comprised of independent directors, counseled by independent counsel, who attempted to impose the Guidelines on management and offered facially plausible explanations for their decision to proceed with the Merger despite Brookfield's interest.[216] Defendants would have also highlighted Brookfield's own delays to argue that Brookfield's offer was never actionable.[217]

In short, the record reflects a Committee that acceded to the demands of the Officer Defendants and Riverstone only after Riverstone threatened litigation ***and*** Brookfield determined to satisfy Riverstone's demands because of that threat—*i.e.,* not a Committee that actively placed the interests of management and Riverstone over PEGI stockholders. Garland's perpetual frustration with the Committee, which

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[215] BROOKFIELD_TF-PATTERN_0012183 (explaining Batkin had secretly requested Brookfield send a letter accepting Brookfield's demands).

[216] Batkin 5/30/23 Tr. 116:9-119:7 (explaining how Committee refused Brookfield's request for thirty days to paper Riverstone amendments because Committee feared CPPIB might walk and wanted Brookfield to bear risk of not reaching compromise with Riverstone).

[217] *See* BROOKFIELD_TF-PATTERN_0020422 (Brookfield cancelled call with Riverstone concerning Riverstone's demands).

drove him to the brink of resignation, seemingly confirms that.[218] Additionally, while the Committee members reviewed and failed to correct the false and misleading Proxy before it was filed,[219] the $100 million Settlement approximates an award of disclosure damages without the risk of appeal.[220]

Proving an aiding and abetting claim (or similar third-party claim) against Goldman likewise would have been difficult.[221] While Goldman had extensive ties to Garland and Riverstone, the most serious were disclosed to the Committee.[222] Further, while Bolster and CPPIB used Goldman's concurrent engagement with CPPIB to discuss PEGI, many of Bolster's communications encouraged CPPIB to raise its price.[223] Perhaps the most problematic communication, when Bolster revealed to CPPIB that the Committee had sent Brookfield to get Riverstone's

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[218] *Supra* nn.144-146.

[219] Batkin 1/1/23 Tr. 254:6-24; Goodman 1/26/23 Tr. 103:4-105:15; Hall 2/8/23 Tr. 12:17-15:13; Sutphen 1/24/23 Tr. 48:11-49:16.

[220] *Infra* n.247.

[221] *See, e.g.*, *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 865-66 (Del. 2015) ("[T]he requirement that the aider and abettor act with *scienter* makes an aiding and abetting claim among the most difficult to prove."); *Morgan v. Cash*, 2010 WL 2803746, at *8 (Del. Ch. July 16, 2010).

[222] *Supra* n.70-72.

[223] Kelly 5/24/23 Tr. 99:1-100:6; CPPIB_0009898 at 899; CPPIB_0211791.

consent, came at a time when CPPIB already knew its competitive advantage against Brookfield.[224]

Finally, proving controller liability against Riverstone would have been exceedingly difficult. "At the time of the Merger … Riverstone and [PD]2 held no stock in the Company."[225] Thus, Chancery Plaintiff's case relied on Riverstone's soft control over the Company through the Consent Right and PD2's other contractual arrangements with PEGI. "Substantial uncertainty exists as to whether a stockholder could bring a viable fiduciary duty claim against [a party in Riverstone's position] for exercising [its purported contractual rights] under Delaware precedent."[226]

Chancery Plaintiff's alternative theories against Riverstone would similarly be difficult to prove. Riverstone might rebut the tortious interference claim by arguing it was privileged to compete as a potential counterparty and protect its interest in PD2.[227] Similarly, the aiding and abetting claim against Riverstone would

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[224] *Supra* n.84.

[225] *In re Pattern Energy Grp. Inc. S'holders Litig.*, 2021 WL 1812674, at *44 (Del. Ch. May 6, 2021).

[226] *W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 2024 WL 550750, at *17 (Del. Ch. Feb. 12, 2024) (collecting cases).

[227] *See DeBonaventura v. Nationwide Mut. Ins. Co.*, 419 A.2d 942, 947 (Del. Ch. 1980), *aff'd*, 428 A.2d 1151 (Del. 1981); *OptimisCorp v. Waite*, 2015 WL 5147038, at *78 (Del. Ch. Aug. 26, 2015), *aff'd*, 137 A.3d 970 (Del. 2016) (TABLE).

depend on a fact-intensive determination of whether Riverstone drove a hard bargain or crossed the line into knowing exploitation of a sell-side breach.[228]

The Settlement also accounts for the strength of the Federal Action claims as well as the relative difficulty of proving them.

The Federal Action was weeks away from trial at the time the parties reached an agreement in principle to settle the Actions. Federal Plaintiffs believe that had they tried their claims, they likely would have proven the Defendants violated the Federal Securities laws and in particular under Section 14(a) of the Securities Exchange Act of 1934. Among other things, the Federal record established that the Officer Defendants privately schemed to "undervalue" PEGI by more than half-a-billion dollars in a take-private transaction in which they stood on both sides and the Special Committee fell down on the job in allowing the Officer Defendants to improperly steer the process to their desired result—a transaction with management's preferred partner CPPIB that deprived PEGI shareholders of substantial value. In the end, the Officer Defendants, the Board Defendants and PEGI narrowly obtained stockholder approval for this transaction by hiding the

[228] *In re Columbia Pipeline Grp., Merger Litig.*, 299 A.3d 393, 478 (Del. Ch. 2023).

reality from the stockholders via a series of misstatements, omissions and half-truths in the Proxy.[229]

These facts were omitted and/or falsely portrayed in the Proxy in a number of important respects. For example, among other things, the Proxy misleadingly provided a valuation range for Brookfield's bid (which would provide shareholders with stock in a combined company) capped at 28.8% higher than the unaffected share price,[230] despite the fact that PEGI's lead financial advisor Evercore presented materials to the Special Committee that concluded the bid could be up to 45.2% higher than the unaffected PEGI share price.[231] At the same time, the Proxy failed to disclose the terms of CPPIB's concurrent acquisition of PD2 or the agreement governing that transaction, such that PEGI shareholders could not determine how much value was being shifted from PEGI Shareholders to PD2's owners in what a prominent Proxy advisor concluded was a zero-sum game.[232]

The Proxy likewise misleadingly stated that the Special Committee believed CPPIB's Merger Consideration "represented the best value reasonably available to

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[229] *Id.*

[230] Proxy at 46.

[231] PEGI-00051079 at 1082.

[232] PEGI-00062122 at 141.

[PEGI] shareholders"[233] and that "[t]he Special Committee sought and believes it obtained the highest price reasonably available for [PEGI],"[234] while omitting facts that conflict with what a reasonable investor would take from those statements. Indeed, the Federal Plaintiffs believe that upon the developed factual record here the jury was likely to conclude that in this regard either or both of the conditions set forth in the leading cases *Omnicare* and *Jaroslawicz*, are met.[235]

Under the first prong, the jury could have reasonably concluded that the stated belief was not sincerely held,[236] given, *inter alia*, (1) Evercore's presentation to the Special Committee showing a valuation of Brookfield's bid of up to $33.82 per share;[237] (2) Defendant Garland's October 13, 2019 text message stating that Defendant Batkin "is convinced that [Brookfield] has too good of a deal to pass up";[238] (3) Defendant Batkin's statement to Brookfield that Brookfield's proposal was "superior from a value perspective";[239] (4) the fact that Brookfield had agreed

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[233] Proxy at 55.

[234] *See* Pattern Energy Group Inc., Current Report (Form 8-K), Ex. 99.1 at 4 (Feb. 26, 2020) (incorporated by reference into the Proxy).

[235] *See Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 187-90 (2015); *Jaroslawicz v. M&T Bank Corp.*, 962 F.3d 701, 717 (3d Cir. 2020).

[236] *Omnicare*, 575 U.S. at 187-88; *Jaroslawicz*, 962 F.3d at 717.

[237] PEGI-00051079 at 1082.

[238] PEGI-00155664 at Row 1361.

[239] BROOKFIELD_TF_PATTERN_0000826 at 827.

to all of Riverstone's demands and was ready, willing and able to proceed with its proposed transaction;[240] and (5) the fact Defendants knew that CPPIB was ready to pay $1.25 more a share on the eve of the Shareholder vote.[241]

For the same reasons, a jury could have concluded under the second prong of *Omnicare* and *Jaroslawicz*—which is independently sufficient and which Defendants wholly ignore—that even if sincerely held, the statements "omit[] material facts" and the omitted facts "conflict with what a reasonable investor would take from the statement itself[.]"[242] The Special Committee Defendants, of course, denied they misstated their belief in a public filing, but the jury would have been free to weigh the denials of these biased witnesses against the contemporaneous record contradicting them.

These and other defenses (including Defendants' argument that Federal Plaintiffs could not prove "loss causation" or damages) were raised by Defendants in connection with their motions for summary judgment which were pending at the time the Settlement was negotiated. Federal Plaintiffs' belief that they would have prevailed notwithstanding, the outcome of the summary judgment motion was

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[240] PEGI-00001288 at 290, Mazin 4/13/23 Tr. 191:1-25, 217:8-16, 271:2-19.

[241] *Supra* nn.159-160.

[242] *Omnicare*, 575 U.S. at 189; *Jaroslawicz*, 962 F.3d at 717.

unknown and there was no certainty as to how a jury would have viewed the Defendants' arguments at trial or whether the jury would have credited at least one of damages theories presented by Federal Plaintiffs experts.

2. The Settlement Reflects a Candid, Risk-Adjusted Assessment of the Damages Plaintiffs Might Prove at Trial

"In Chancery M&A litigation, … [c]ases are tried. The risk of a post-trial loss is real, and the risk of reversal is high."[243] Further, "when plaintiffs prevail, they rarely receive their full requested damages."[244] Here, Chancery Plaintiff believed that potential recoverable damages were in the range of approximately $25 million to $600 million (before applying any risk-adjustment)[245]:

- **$.25/share.** CPPIB's investment committee authorized CPPIB to bid up to $27.00/share but CPPIB submitted a $26.75 bid because it had Riverstone's support.[246] If the Court were to award the incremental consideration as damages, it would result in a ***$24,554,656.25*** judgment.

- **$.50-$1.00/share**. In *Columbia Pipeline* and *Mindbody*, the Court awarded $.50 and $1.00/share, respectively, as "Disclosure Damages" where plaintiffs proved disclosure violations but did not

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[243] *Dell,* 300 A.3d at 710.

[244] *Id.* at 722.

[245] *See, e.g., In re Oracle Corp. Deriv. Litig.,* 2019 WL 6522297, at *16 (Del. Ch. Dec. 4, 2019) ("It is an accepted principle of Delaware law that the value of a [stockholder] claim is derived primarily from the risk-adjusted recovery sought by the plaintiff.").

[246] *Supra* n.141.

prove casually related damages (*i.e.,* reliance).[247] If the Court awarded similar Disclosure Damages, it would result in a judgment in the range of ***$49,109,312.50-$98,218,625.00***.

- **$1.25/share.** CPPIB had contemplated a price bump of an additional $1.25/share.[248] If the Court were to award the incremental consideration as damages, it would result in a ***$122,773,281.25*** judgment.

- **$4.17/share**. Chancery Plaintiff's expert estimated the value of Brookfield's offer was $30.92/share during the time when that transaction may have closed (November 4, 2019 to July 30, 2020) though not on the Merger closing date.[249] If the Court were to award the incremental value as damages,[250] it would result in a ***$409,571,666.25*** judgment.

- **$6.08/share**. Chancery Plaintiff's expert also estimated PEGI was worth $32.83/share at closing using a Levered DCF analysis.[251] If the Court were to award the incremental value as damages, it would result in a ***$597,169,240*** judgment.

Importantly, Chancery Plaintiff's expert's Levered DCF analysis, like any valuation exercise, relies upon numerous economic assumptions and judgments. Chancery Plaintiff considered it significantly more likely that the Court would have

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[247] *Columbia Pipeline*, 299 A.3d at 498-99; *In re Mindbody, Inc., S'holder Litig.*, 2023 WL 2518149, at *47 (Del. Ch. Mar. 15, 2023).

[248] *Supra* nn.159-160.

[249] Weinberger Aff. Ex. 2 (Expert Report of J.T. Atkins (Chancery Action)) ¶12(c).

[250] *See, e.g.*, *Columbia Pipeline*, 299 A.3d at 481 ("If the plaintiffs prove that the defendants could have sold the corporation to the same or to a different acquirer for a higher price, then the measure of damages should be based on the lost transaction price.").

[251] Weinberger Aff. Ex. 2 ¶12(a).

instead selected a market-based methodology that was supported by contemporaneous evidence in assessing damages.[252]

A market-based recovery was not a sure thing either. For example, proving damages by establishing the value of Brookfield's offer posed significant complications and required valuation judgments that Defendants would attack,[253] including:

- Uncertainty as to when any PEGI-Brookfield deal would have closed;
- Valuing TerraForm, particularly after TerraForm engaged in an alternate transaction in January 2020, thus requiring assumptions to be made about how TerraForm would have traded absent that transaction;
- Whether a pro forma PEGI-TerraForm would have traded at or near TerraForm's standalone dividend yield, which is necessary to establish that the expected value of Brookfield's two-for-one offer was approximately TerraForm's standalone price times two;
- The extent of PEGI-TerraForm synergies;
- The valuation impact of significant litigation that was ongoing against TerraForm; and
- Any valuation impact of separating PEGI and PD2 and implementing Riverstone's demands.

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[252] *See, e.g.*, *Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, 177 A.3d 1, 35 (Del. 2017); *Dell*, 300 A.3d at 722.

[253] *See Generally* Weinberger Aff. Exs. 3 (Expert Report of Frederick G. Van Zijl (Chancery Action)) & 4 (Expert Report of Daniel R. Fischel (Chancery Action)).

Defendants also had a facially-appealing argument that, when the Merger closed on March 16, 2020, TerraForm's stock price had crashed due to the market effects of the COVID-19 outbreak, and the market price of two TerraForm shares on that date was less than the Merger consideration.[254] Defendants would emphasize that the fluctuations in TerraForm's stock price underscored the appeal of CPPIB's cash offer. Defendants would likewise emphasize that CPPIB's decision not to increase its price was driven by the same market turmoil,[255] and that neither Brookfield's offer nor CPPIB's contemplated price bump were sufficiently firm to be capable of acceptance and thus were not available to PEGI stockholders.[256] Chancery Plaintiff believed she had strong responses to each of these arguments, but the outcome would still be uncertain.

The Settlement also accounts for the magnitude of potential damages recoverable in the Federal Action. Here, Federal Plaintiffs believed that potential recoverable damages were in the range of approximately $120 million to $820 million (before applying any risk-adjustment):

- **$6.42/share - $8.39/share.** Federal Plaintiffs' experts estimated that the fair value of PEGI common stock was $33.17 per share

[254] Weinberger Aff. Ex. 3 ¶98.

[255] Kelly 5/24/23 Tr. 225:5-228:23.

[256] *See Columbia Pipeline*, 299 A.3d at 405 (awarding lost transaction price where plaintiffs proved that parties had $26 deal prior to defendants' misconduct).

of out-of-pocket damages based on a comparable company analysis. Alternatively, Federal Plaintiffs' expert conducted a discounted cash flow analysis ("DCF"), which concluded that the fair value of PEGI common stock was $35.14 per share of out-of-pocket damages. If the jury were to award out-of-pocket damages, it would result in a ***$630,563,572.50 - $824,054,263.75*** judgement.[257]

- **$6.68/share**. PEGI shareholders lost the opportunity to participate in the merger transaction proposed by Brookfield as a result of the PEGI Board's decision to approve the Merger with CPPIB while Brookfield remained willing to engage on more favorable terms. Federal Plaintiffs' expert determined the merger Brookfield had proposed provided shareholders with the opportunity to receive stock in the proposed merged company worth $33.43/share exchanged. If the jury were to award the consideration as lost opportunity damages, it would result in a ***$656,100,415.00*** judgment.[258]

- **$1.25/share.** As discussed above, CPPIB had contemplated a price bump of an additional $1.25/share.[259] If the jury were to award the incremental consideration as lost opportunity damages, it would result in a ***$122,773,281.25*** judgment.

The complications described above apply with equal weight to Federal Plaintiffs' damages analyses and the Federal Plaintiffs likewise believe they had strong responses to each argument.[260] Additionally, Federal Plaintiffs acknowledge that

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[257] *See* Weinberger Aff. Ex. 5 (Expert Report of Micah S. Officer (Federal Action)) ¶193.

[258] *Id.* ¶194.

[259] *Id.*

[260] *See Generally* Weinberger Aff. Exs. 6 (Expert Report of Paul A. Gompers, Ph.D (Federal Action) &7 (Expert Report of Frederick G. Van Zijl (Federal Action)).

there were obstacles in explaining damages based on complex financial models to a jury.

In sum, the Settlement, which reflects between 12-17% of Plaintiffs' top-line damages and approximates an award of Disclosure Damages (as well as the price bump CPPIB considered but did not pay) is an excellent result in light of the risk-adjusted likelihood of various trial outcomes.[261]

C. The Settlement is the Result of Arm's-Length Negotiations Between Experienced Counsel Before an Experienced and Well-Respected Mediator

"[T]he manner in which the Settlement was reached provides further evidence of its reasonableness."[262] Here, the parties were assisted by "a highly respected former United States District Court Judge"[263] and former United States Attorney who presided over three mediation sessions before recommending the parties settle for $100,000,000 in cash.[264] Further, the parties only agreed to the Settlement after

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[261] *Dell*, 300 A.3d at 722 (calculating risk-adjusted damages outcomes, noting risk of appeal and asking "[m]ight a one-in-five estimate, or an even-money chance be putting the odds a bit high?").

[262] *Activision*, 124 A.3d at 1067.

[263] *Id.*; *see also Voigt v. Metcalf*, C.A. No. 2018-0828-JTL, Tr. at 48 (Del. Ch. Jan. 19, 2022) (TRANSCRIPT) ("I also take into account that the settlement was achieved with the assistance of an outstanding mediator, which I think is an important *bona fide*."); *Cumming v. Edens*, C.A. No. 13007-VCS, Tr. at 17 (Del. Ch. July 31, 2019) (TRANSCRIPT) ("I'm always comforted when settlements presented to me are the product of mediation.").

[264] *Supra* nn.198-201.

fact discovery had closed, extensive expert work had been completed and the parties were "in the shadow of an impending trial" in the Federal Action.[265]

D. Counsel's Experience and Opinion Likewise Weigh in Favor of Approval

The opinion of experienced counsel also supports the Settlement.[266] Plaintiffs' Counsel include stockholder advocates who are well-known to the Court, have significant experience prosecuting fiduciary misconduct under Delaware law, and have substantial experience trying complex claims like these. Plaintiffs' Counsel are also well-informed, having litigated their claims through fact discovery, substantial expert discovery, and to summary judgment and the eve of trial in the Federal Action.

Moreover, the absence of objections here "strongly" supports the Settlement's fairness.[267] Indeed, it has long been the case that when (as here) a settlement is noticed to a class of sophisticated investors who have large interests at stake, the lack of objections creates a "strong presumption that the agreement is fair."[268]

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[265] *Activision*, 124 A.3d at 1067.

[266] *See, e.g.*, *Polk*, 507 A.2d at 536 (noting the court's consideration of "the views of the parties involved" when determining the "overall reasonableness of the settlement").

[267] *In re DaimlerChrysler AG Sec. Litig.*, 2004 WL 7351531, at *16 (D. Del. Jan. 28, 2004) (Seitz, Jr., Special Master).

[268] *Developments in the Law: Class Action*, 89 HARV. L. REV. 1536, 1567-68 (1976) ("If each class member has a large interest at stake, the judge can legitimately rely upon absentees to respond to notice and appear before the court if they have any significant

II. THE PLAN OF ALLOCATION SHOULD BE APPROVED

Plaintiffs also seek approval of their plan of allocation. "An allocation plan must be fair, reasonable, and adequate."[269] Here, the plan of allocation entails distributing, *pro rata*, Settlement proceeds directly to stockholders that held at the close of the Merger (excluding Defendants and their affiliates).[270] This plan avoids the "relatively high administrative costs" and "unknown distributional effects"[271] of a claim process and adheres to the Court's guidance.[272]

III. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

"The determination of any attorney fee award is a matter within the sound judicial discretion of the Court of Chancery."[273] In evaluating a fee and expense application, this Court considers the factors enumerated in *Sugarland Industries, Inc. v. Thomas*: (i) the results achieved; (ii) the contingent nature of counsel's fee;

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objections to the settlement. If no objectors appear, there should be a strong presumption that the agreement is fair.").

[269] *Schultz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009), *overruled on other grounds by Urdan v. WR Cap. P'rs, LLC*, 244 A.3d 668 (Del. 2020).

[270] Notice ¶¶59-62.

[271] *See Montgomery v. Erickson Inc.*, C.A. No. 8784-VCL, Tr. at 16 (Del. Ch. Sept. 12, 2016) (TRANSCRIPT).

[272] *See In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1133118, at *4 (Del. Ch. Apr. 18, 2022).

[273] *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012) (citation omitted).

(iii) the litigation's relative complexities; (iv) counsel's efforts, including time and expenses; and (v) counsel's standing and ability.[274]

Here, Plaintiffs' Counsel together seek as attorney fees 27% of the Settlement Fund after reimbursement of $2,781,150.65 in litigation expenses, or $26,249,089.32. Each *Sugarland* factor supports Plaintiffs' requests.

A. Counsel Obtained a Substantial Benefit for the Class

"Delaware courts have assigned the greatest weight to the benefit achieved in litigation."[275] The Class's recovery "is the heart of the *Sugarland* analysis."[276] Here, Plaintiffs submit they obtained an "exceptional result"[277] for the Class: $100 million in cash.

"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."[278] This Court typically awards fees in "a range of 25% to 30% for a late-stage settlement" like this one.[279] Further, "[i]n a case where counsel have incurred

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[274] 420 A.2d 142 (Del. 1980).

[275] *Ams. Mining,* 51 A.3d at 1254 (citation omitted).

[276] *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000) (emphasis in original).

[277] *Supra* Argument §II.A.

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

[279] *Dell*, 300 A.3d at 699; *see also Ams. Mining*, 51 A.3d at 1259-60 ("When a case settles after the plaintiffs have engaged in meaningful litigation efforts, typically including

significant out-of-pocket costs," as here, "the approach that best balances the interests of the attorneys and the class is to reimburse for out-of-pocket costs first, then award a fee based on a percentage of the net fund."[280]

Plaintiffs' Counsel respectfully submit that the 27% fee sought here—after payment of counsel's litigation expenses—is eminently fair given the stage at which the Actions settled. In the Chancery Action, counsel had completed all fact discovery, served an opening expert report, and were prepared to serve a rebuttal expert report (which was all but completed) absent an extension of that deadline to facilitate the Settlement. This left only expert depositions, pre-trial briefing, and trial. In the Federal Action, the Settlement occurred approximately eight weeks from trial, with counsel having completed fact and expert discovery and all other pre-trial practice, including motions *in limine* and a draft of the pre-trial order.

Recently, in *Tornetta v. Maffei*,[281] Chancellor McCormick awarded class counsel 28.5% of the settlement fund, following payment of approximately $800,000 in expenses, where plaintiff's counsel had completed fact and expert discovery but had not yet begun pre-trial proceedings.

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multiple depositions and some level of motion practice, fee awards in the Court of Chancery range from 15–25% of the monetary benefits conferred.").

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

[281] C.A. No. 2019-0649-KSJM, Tr. at 19-20 (Del. Ch. Jan. 8, 2024) (TRANSCRIPT).

Similarly, in *In re Mindbody, Inc. Stockholder Litigation*, Chancellor McCormick awarded "30 percent of the [settlement] fund…net of the expenses"[282] where plaintiff's counsel agreed in principle to settle certain of their claims approximately six weeks before trial.[283]

Finally, in *In re MSG Networks Inc. Stockholder Litigation*, Vice Chancellor Will awarded class counsel 27% of the settlement fund, following payment of approximately $2.3 million in litigation expenses, where plaintiffs' counsel agreed to settle the case two-and-half weeks before trial.[284]

Additional precedent in this Court involving comparable (or less) litigation activity likewise supports Plaintiffs' Fee and Expense Request:

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[282] C.A. No. 2019-0442-KSJM, Tr. at 32 (Del. Ch. June 8, 2022) (TRANSCRIPT).

[283] *Compare* Trans. ID 67349508 at 4 (agreement-in-principle January 18, 2022) *with* Trans. ID 67388909 (Trial commenced February 28, 2022).

[284] C.A. No. 2021-0575-LWW, Tr. at 30, 36-38 (Del. Ch. Aug. 14, 2023) (TRANSCRIPT).

Case Name	Settlement Amount	Awarded Fee Percentage	Stage of Litigation
In re Cornerstone Therapeutics Inc. S'holder Litig., C.A. No. 8922-VCG (Jan. 26, 2017) (ORDER); (Jan. 17, 2017) (BRIEF) at 4 n.5, 12-17.	$17,900,000	27.6%	Reviewed over 20,000 pages of documents, took four depositions, and engaged in some motion practice.
In re Prospect Med. Hldgs., Inc. S'holders Litig., Consol. C.A. No. 5760-VCN (Jan. 21, 2016) (ORDER); (Jan. 13, 2016) (BRIEF) at 12-20.	$6,500,000	27.5%	Reviewed approximately 310,000 pages of documents, took seven depositions, and engaged in some motion practice.
Lacey v. Mota-Velasco, C.A. No. 11779-VCG (Dec. 27, 2018) (TRANSCRIPT) at 13; (Nov. 5, 2018) (BRIEF) at 2-4.	$50,000,000	27%	Reviewed 1,200,000 pages of documents, took four depositions, and engaged in some motion practice.

B. The Secondary Sugarland Factors Support the Fee and Expense Award

1. The Contingent Nature of the Litigation Supports the Requested Fee Award

The contingent nature of the representation is the "second most important factor considered by this Court" in awarding attorneys' fees.[285] "It is consistent with the public policy of Delaware to reward this risk-taking in the interests of shareholders."[286] Accordingly, "[t]his Court has recognized that an attorney may be entitled to a much larger fee when the compensation is contingent than when it is fixed on an hourly or contractual basis."[287] The Court assesses litigation contingency risk as of the outset of the litigation.[288]

"This case involved true contingency risk."[289] Plaintiffs' Counsel expended tens of thousands of hours, and millions of dollars in costs and expenses, on an entirely contingent basis, without any guarantee of any fee or recovery of costs and

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[285] *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Mar. 4, 1992).

[286] *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005).

[287] *Ryan v. Gifford*, 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009); *see also Seinfeld*, 847 A.2d at 337 (recognizing that when the compensation of plaintiffs' counsel is contingent on recovery, an award of a risk premium and an incentive premium on top of their standard hourly rates is appropriate).

[288] *See, e.g.*, *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1140 (Del. Ch. 2011).

[289] *Activision,* 124 A.3d at 1074.

expenses. This factor therefore weighs heavily in favor of approving the Fee and Expense Award.

2. The Complexity of the Litigations Supports the Requested Fee Award

Another "secondary *Sugarland* factor[] is the complexity of the litigation. All else equal, litigation that is challenging and complex supports a higher fee award."[290] As noted above, discovery was not only broad—consisting of the review of over 300,000 documents and 53 days of depositions across the two Actions—it was also complex. Indeed, the complexity of the PEGI/PD2 business relationship required Chancery Plaintiff to develop multiple theories of liability with respect to Defendants, including novel theories of controller liability based on Riverstone's "soft control" of PEGI. Federal Plaintiffs were likewise required to address complex issues concerning arguments that the DGCL inoculates Defendants from federal securities violations, developing Third Circuit law related to proof of their Section 14(a) claims, and developing law in connection with proof of Section 14(a) damages.

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

3. The Efforts of Plaintiffs' Counsel Support the Requested Fee Award

"The time and effort expended by counsel serves [as] a cross-check on the reasonableness of a fee award.[291] "'More important than hours is 'effort, as in what Plaintiffs' counsel actually did[,]'"[292] and counsel is not to be punished for achieving victory efficiently.[293]

As detailed above, Plaintiffs' Counsel vigorously litigated both Actions for nearly four years and united on the eve of trial in the Federal Action to achieve a global resolution. While the Actions were not coordinated, Plaintiffs' Counsel were cognizant at all times to avoid duplication.[294] And even had the Actions been coordinated it is not certain that would have led to more efficiency.[295]

Chancery Plaintiff aggressively litigated this Action, including by, *inter alia*, (i) using the "tools at hand" to draft the Initial Complaint based, in part, on novel theories of controller liability that would (and ultimately did) overcome motions to

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[291] *Sauer-Danfoss*, 65 A.3d at 1138 (citation omitted).

[292] *Ams. Mining*, 51 A.3d at 1258 (citation omitted).

[293] *See Olson v. ev3, Inc.*, 2011 WL 704409, at *15 (Del. Ch. Feb. 21, 2011).

[294] *Supra* n.191.

[295] *Viacom*, Consol. C.A. No. 2019-0948-SG, Tr. at 9 ("Since discovery was coordinated with the CBS case discovery, many of the depositions were multi-day depositions and often involved questioning from numerous constituencies, at times as many as six different groups[.]").

dismiss the Chancery Action; (ii) pursuing and developing extensive plenary discovery of over 300,000 documents and 2,000,000 pages; (iii) adding Goldman as a Defendant after that substantial discovery record revealed its central role; (iv) taking 27 depositions; (v) exchanging opening expert reports; and (vi) ultimately uniting with Federal Plaintiffs to settle both Actions on the eve of trial in the Federal Action.

Federal Plaintiffs' efforts were likewise extensive. The Federal Plaintiffs: (i) briefed two motions to dismiss, (ii) reviewed in excess of 275,000 documents totaling more than 1,700,000 pages, (iii) produced approximately 22,000 documents totaling approximately 92,000 pages, (iv) deposed 21 fact witnesses, (v) sat for two depositions, (vi) obtained class certification over defendants' objections, (vii) completed expert discovery, (viii) briefed summary judgment, (ix) drafted the pre-trial order; and (x) ultimately united with Chancery Plaintiff to settle both Actions on the eve of trial.[296]

All told, Chancery Plaintiff's Counsel devoted 38,620.95 hours to litigating the Chancery Action from inception to December 6, 2023, the date of the Stipulation,[297] with a total lodestar of $22,965,317.50 at their currently applicable

[296] *See* Trans. ID 71541011 at 14-19.

[297] In their affidavits, each of Plaintiffs' Counsel have also provided the Court with hours worked through the signing of the September 3, 2023 Term Sheet. By either measure,

hourly rates.[298] The total expenses incurred by Chancery Plaintiff's Counsel are $1,122,135.65.[299] Federal Plaintiffs' Counsel devoted 24,481.25 hours to litigating the Federal Action from inception through the same date, with a total lodestar of $27,555,666.50 at their currently applicable hourly rates.[300] The total expenses incurred by Federal Plaintiffs' Counsel are $1,659,015.00.[301]

Combined, Plaintiffs' Counsel devoted 63,102.20 hours to litigating the Actions and incurred $2,781,150.65 in expenses. After subtracting the combined expenses, the net requested fee award is $26,249,089.32.[302] The combined implied hourly rate of the net fee award is $415.98 per hour.[303] The implied hourly rate is reasonable in comparison to the non-contingent hourly rates of experienced and qualified counsel who practice before this Court, and is consistent with hourly rates approved by this Court in comparable cases.[304]

Plaintiffs' Counsel submit that the requested Fee and Request Award is consistent with the hourly rates approved by this Court in comparable cases. *Infra* n.304.

[298] Weinberger Aff. ¶¶3-7, 10.

[299] Weinberger Aff. ¶¶8,10.

[300] Affidavit of Andrew J. Entwistle ¶¶12, 14.

[301] *Id*.

[302] $100,000,000 (Settlement amount) – $2,781,150.65 (combined expenses) = $97,218,849.35. $97,218,849.35 x (.27, representing contingency fee) = $26,249,089.32.

[303] $26,249,089.32 / 63,102.20 (combined hours worked) = $415.98/hour worked.

[304] *See, e.g.*, *In re Versum Mat'ls, Inc. S'holder Litig.*, 2020 WL 639486 (Del. Ch. Feb. 5, 2020) (Brief); Consol. C.A. 2019-0206-JTL, Tr. at 81 (Del. Ch. July 16, 2020)

4. Plaintiffs' Counsel's Standing and Ability Supports the Requested Fee and Expense Award

Under *Sugarland*, the Court should also consider the "standing and ability of plaintiffs' counsel."[305] Plaintiffs' Counsel include highly experienced shareholder advocates who have litigated numerous high-stakes cases in this Court and others. This track record and reputation gave counsel the credibility necessary to achieve the favorable Settlement.

Plaintiffs' Counsel were also matched against multiple "white shoe" defense firms, representing sophisticated clients with vast resources. Their standing and ability should also be considered in determining the Fee and Expense Award.[306]

IV. THE COURT SHOULD GRANT THE INCENTIVE AWARDS

Finally, Plaintiffs request the Court approve awards of $25,000 to each Plaintiff, to be deducted from the Fee and Expense Award, as compensation for the considerable time and effort Plaintiffs devoted to the Actions.[307] When granting an

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(TRANSCRIPT) Trans. ID 65817799 (awarding hourly rate of over $10,000); *Sciabacucchi v. Salzberg*, 2019 WL 2913272, at *6 (Del. Ch. July 8, 2019) (awarding $11,262.26 hourly rate and stating that a $6,000 hourly rate would be reasonable); *In re Medley Cap. Corp. S'holders Litig.*, Consol. C.A. No. 2019-0100-KSJM, Tr. at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) Trans. ID 64511321 (finding a $5,989 hourly rate would not be "beyond the bounds of reasonableness").

[305] *Sauer-Danfoss*, 65 A.3d at 1140.

[306] *Hollywood Firefighters' Pension Fund v. Malone*, 2021 WL 5179219, at *11 (Del. Ch. Nov. 8, 2021).

[307] *See, e.g.*, *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006).

incentive award the Court considers the time, effort, and expertise expended by the class representative, and the benefit to the class.[308] Here, Plaintiffs' dedication and the significant benefit to the Class warrant a meaningful award. Chancery Plaintiff devoted approximately 235 hours to the Chancery Action on meetings, phone calls, and email correspondence with counsel, review and execution of pleadings and other documents, document collection and production and her attendance at various hearings and mediation sessions.[309] Federal Plaintiffs produced approximately 22,000 documents totaling approximately 92,000 pages, answered 26 interrogatories, sat for two depositions, reviewed filings, and attended the two mediation sessions Federal Plaintiffs were invited to attend.[310] The requested Incentive Awards are warranted given the time and effort expended by Plaintiffs to represent the Class.[311]

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[308] *See id.*; *see also In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 2023 WL 5165606, at *40 (Del. Ch. Aug. 11, 2023).

[309] Affidavit of Jody Britt ¶¶3, 7.

[310] Affidavit of Jonathon Hickey ¶5.

[311] *Raider*, 2006 WL 75310, at *2 (awarding $41,000 to plaintiff who devoted 205 hours to case); *Forsythe v. ESC Fund Mgmt. Co. (U.S.), Inc.*, 2012 WL 1655538, at *8 (Del. Ch. May 9, 2012) (awarding $35,000, $20,000, and $7,500 to plaintiffs who participated in discovery and attended mediations); *Activision*, 124 A.3d at 1076-77 (approving award of $50,000 to plaintiff who "participated meaningfully in the case, sat for a deposition, and attended hearings and the mediation").

CONCLUSION

Plaintiffs respectfully request that the Court approve the Settlement, Fee and Expense Award, and Incentive Awards.

LABATON KELLER SUCHAROW LLP

/s/ Ned Weinberger

Ned Weinberger (Bar No. 5256)
Mark Richardson (Bar No. 6575)
Michael C. Wagner (Bar No. 6955)
Brendan W. Sullivan (Bar No. 5810)
Jiahui (Rose) Wang (Bar No. 7127)
222 Delaware Avenue, Suite 1510
Wilmington, DE 19801
(302) 573-2540
nweinberger@labaton.com
mrichardson@labaton.com
mwagner@labaton.com
bsullivan@labaton.com
rwang@labaton.com

Co-Lead Counsel for the Class

Words: 13,970 (of 14,000 word limit)

OF COUNSEL:

John Vielandi
LABATON KELLER SUCHAROW LLP
140 Broadway, 34th Floor
New York, NY 10005
(212) 907-0700

Chad Johnson
Noam Mandel
Desiree Cummings
Jonathan Zweig
Cristelle Rabban
Ana Avalos Cuellar
ROBBINS GELLER RUDMAN & DOWD LLP
420 Lexington Avenue, Suite 1832
New York, NY 10170
(212) 432-5100

Sabrina Tirabassi
Mason Roth
ROBBINS GELLER RUDMAN
& DOWD LLP
225 NE Mizner Boulevard, Suite 720
Boca Raton, FL 33432
(561) 750-3000

Co-Lead Counsel for the Class

Brian Schall
Rina Restaino
SCHALL LAW FIRM
1880 Century Park East, Suite 404
Los Angeles, CA 90067
(310) 301-3335

Additional Counsel for Chancery Plaintiff

Andrew J. Entwistle
ENTWISTLE & CAPPUCI LLP
500 W. 2nd Street, Suite 1900-16
Austin, TX 78701
(512) 710-5960

Vincent R. Cappucci
Jessica A. Margulis
ENTWISTLE & CAPPUCI LLP
230 Park Avenue, 3rd Floor
New York, NY 10169
(212) 894-7200

Co-Lead Counsel for the Class

Marc M. Seltzer
Krysta Kauble Pachman

FARNAN LLP

/s/ Brian E. Farnan
Sue L. Robinson (Bar No. 100658)
Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
919 North Market Street, 12th Floor
Wilmington, DE 19801
srobinson@farnanlaw.com
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com
(302) 777-0300

Counsel for Federal Plaintiffs

SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
(310) 789-3100

Christopher J. Kupka
FIELDS KUPKA & SHUKUROV LLP
141 Tompkins Ave., Suite 404
Pleasantville, NY 10570
(212) 231-1500

Additional Counsel for Federal Plaintiffs

Dated: April 3, 2024
Redacted Version Dated:
April 9, 2024

CERTIFICATE OF SERVICE

I, Ned Weinberger, hereby certify that, on April 9, 2024, I caused a true and correct copy of the foregoing to be served on the following by File and ServeXpress:

A. Thompson Bayliss
Christopher F. Cannataro
April M. Ferraro
E. Wade Houston
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, DE 19807

Rudolf Koch
Matthew D. Perri
Andrew L. Milam
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Matthew D. Stachel
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1313 North Market Street, Suite 806
Post Office Box 32
Wilmington, DE 19899-0032

Stephen C. Norman
Jaclyn C. Levy
Ellis H. Huff
POTTER ANDERSON & CORROON LLP
1313 North Market Street
Hercules Plaza, 6th Floor
Wilmington, DE 19801

Joseph L. Christensen
CHRISTENSEN & DOUGHERTY LLP
1201 North Market Street, Suite 1404
Wilmington, DE 19801

Sue L. Robinson
Brian E. Farnan
Michael J. Farnan
FARNAN LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801

/s/ Ned Weinberger
Ned Weinberger (Bar No. 5256)