IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
30TH JUDICIAL DISTRICT, MEMPHIS

IN RE JERNIGAN CAPITAL, INC., SHAREHOLDER LITIGATION	)	
This Document Relates To: ALL ACTIONS.	)	Lead Case No. CH-20-1472-II CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Treatises

Lead Plaintiffs Louis Lane, Mary Pat Forkin Arthur, and Sherry Grosse (collectively "Plaintiffs"),[1] through undersigned counsel, respectfully move this Court for an Order granting final approval of the Settlement, affirming the appointment of Class Counsel, affirming the appointment of Class Representatives, and affirming the certification of the Class for purposes of the Class Settlement.[2]

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND[3]

Plaintiffs brought this class action (the "Action") on behalf of themselves and the former holders of JCAP common stock against (1) the former members of the Board of Directors of JCAP (the "Board") and its CEO (collectively, the "Individual Defendants") for breaches of fiduciary duties and (2) JCAP for nondisclosure, both in connection with the Company's November 6, 2020 sale to and merger with affiliates of NexPoint Advisors, L.P. ("NexPoint") (the "Merger"). Plaintiffs alleged that the Individual Defendants breached their fiduciary duties of good faith and loyalty by conducting a fundamentally flawed sales process through which the conflicted Board succumbed to pressure from its CEO (Individual Defendant John A. Good) and NexPoint – one of its largest shareholders, whose founder and president (Individual Defendant James Dondero) served on the JCAP Board – both of whom had unique interests in the Merger. Plaintiffs further

---

[1] Lead (and named) Plaintiff Patrick Forkin passed away during the pendency of this action.

[2] All capitalized terms not defined herein have the same meaning as in the Stipulation and Agreement of Compromise, Settlement, and Release ("Settlement Agreement"), which was attached as Exhibit 1 to the Declaration of J. Gerard Stranch, IV filed on August 16, 2024 in connection with the Motion for Preliminary Approval. Unless otherwise noted, all emphasis is added and all internal citations are omitted.

[3] Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, filed August 16, 2024, contained an extensive recitation of the facts and procedural history of this action. For the sake of judicial economy, and so as not to repeat the same information to the Court again, Plaintiffs respectfully incorporate herein by reference the facts and procedural history outlined in that brief.

alleged that Defendants withheld material information from and misled shareholders in seeking shareholder approval of the Merger.

After more than three years of litigation, including extensive investigation and document discovery, consultation with a valuation expert, significant briefing of legal issues, and a comprehensive mediation process, Plaintiffs and Defendants (together, the "Settling Parties" or "Parties") have agreed to resolve this matter and settle the claims against Defendants.[4] Plaintiffs have secured a cash settlement in the amount of $3,925,000 (the "Settlement" or "Settlement Amount") for the benefit of the Settlement Class. For the reasons set forth below, as well as those set forth in Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and in the accompanying Stranch Declaration, the Settlement is sufficiently fair, reasonable, and adequate to warrant final approval.

II. BENEFITS OF THE SETTLEMENT

The Settlement satisfies the standard for final approval because it is fair, reasonable, and adequate and represents an excellent result for the Settlement Class. JCAP and/or its insurers have agreed to fund a Settlement Amount of $3,925,000.00 in exchange for the releases provided for in the Settlement Agreement and the dismissal of this Action with prejudice. Importantly, this is not a claims-made settlement. Accordingly, if the Settlement is ultimately approved and becomes effective, Defendants will have no reversionary interest in the $3,925,000.00 Settlement Amount under any circumstance.

---

[4] There is a related federal action pending in the U.S. District Court for the Southern District of New York, captioned *Erickson v. Jernigan Cap., Inc.*, No. 1:20-cv-09575 (S.D.N.Y. Nov. 13, 2020) (the "Federal Action"), which likewise recently reached a settlement. The claims pending in the Federal Action are *not* being released in this Settlement, and the parties have specifically excluded the claims asserted in the Federal Action from the scope of the Release in the Settlement Agreement. The plaintiffs in the Federal Action will be seeking approval of the settlement reached therein in the Federal Action.

The Settlement Amount, after deduction of Court-approved attorneys' fees and expenses, notice and administration expenses, taxes, service awards, and any other fees or expenses approved by the Court, is the "Net Settlement Fund." If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – members of the Class who timely submit valid Proof of Claim and Release forms that are accepted for payment by the Claims Administrator – in accordance with the proposed Plan of Allocation. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement.

The Settlement has no obvious deficiencies and does not grant improper or preferential treatment to Lead Plaintiffs or other segments of the Settlement Class. The Net Settlement Fund will be allocated on a *pro rata*, equal per-share basis amongst the Authorized Claimants. Therefore, assuming 100% of the holders of Class members submit a valid and timely Proof of Claim, the average distribution will be approximately $0.17 per share (before the payment of Court-approved fees and expenses (estimated to be approximately $0.06 per share) and the cost of notice and claims administration). This means that every Authorized Claimant in the Settlement Class, including Plaintiffs, will receive equal treatment under the Plan of Allocation.[5]

III. DEFINITION OF THE CLASS

As provided for in the Parties' Settlement Agreement and the Court's order granting preliminary approval, the Settlement Class is defined as:

> all record holders and beneficial owners of Jernigan common stock, who held such share(s) at any time between August 3, 2020 (the date of the signing of the merger

[5] While each named plaintiff intends to seek an award of reasonable costs and expenses directly relating to their representation of the Settlement Class in an amount up to $5,000 each, such an award does not constitute inequitable treatment of class members. *Andrews v. State Auto Mut. Ins. Co.*, No. 2:21-CV-5867, 2023 U.S. Dist. LEXIS 191571, at *22-23 (S.D. Ohio Oct. 25, 2023); *Salinas v. United States Xpress Enters., Inc.*, No. 1:13-cv-00245-TRM-SKL, 2018 U.S. Dist. LEXIS 50800, at *26-27 (E. D. Tenn. Mar. 8, 2018).

> agreement whereby Jernigan would be acquired by affiliates of NexPoint), and November 6, 2020 (the effective time of the closing of the merger), including any and all of their respective successors in interest, trustees, executors, administrators, heirs, assigns or transferees.

Settlement Agreement, at ¶33; Order Granting Preliminary Approval, at ¶3. Excluded from the Settlement Class are:

> (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) Jernigan's and NexPoint's subsidiaries and affiliates (provided that, for the avoidance of doubt, such subsidiaries and affiliates do not include any Jernigan-sponsored retirement and/or pension plans); (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the "Excluded Stockholders").

Id.

IV. THE COURT SHOULD AFFIRM ITS APPOINTMENT OF CLASS REPRESENTATIVES

The Court provisionally certified Plaintiffs as the Settlement Class representatives for the purposes of the Settlement in its Order of Preliminary Approval of Settlement and For Notice and Scheduling ("Preliminary Approval Order"). Preliminary Approval Order, ¶4. As outlined in Plaintiffs' Motion for Preliminary Approval, Plaintiffs have served the Class admirably, have "common interests with the unnamed class members," and have "vigorously prosecute[d] the case and protect[ed] the interests of the class through qualified counsel." *In re SmileDirectClub, Inc. Sec. Litig.*, No. M2021-00469-COA-R3-CV, 2022 Tenn. App. LEXIS 103, at *43 (Ct. App. Mar. 18, 2022). Moreover, they have provided and reviewed documents and other information, reviewed filings, and have otherwise been available to Counsel whenever needed. Stranch Decl., ¶16. Thus, the Court should affirm its appointment of Plaintiffs as Class Representatives.

V. THE COURT SHOULD AFFIRM ITS APPOINTMENT OF CLASS COUNSEL

The Court provisionally appointed Monteverde & Associates PC and Kahn Swick & Foti, LLC, as Co-Class Counsel and Stranch, Jennings & Garvey PLLC as Liaison Counsel for the Settlement Class, for settlement purposes. Preliminary Approval Order, ¶4. As likewise outlined in Plaintiffs' Motion for Preliminary Approval, Class Counsel were well qualified to conduct the proposed litigation given their deep experience pursuing mergers and acquisitions and securities class actions aimed at holding boards accountable when directors and management breach their fiduciary duties in orchestrating unfair mergers and/or mislead shareholders. Stranch Decl., ¶ 15; *see also* Exhibits 2 and 3 to the Declaration of J. Gerard Stranch, IV filed on August 16, 2024 in connection with the Motion for Preliminary Approval. Moreover, Class Counsel have dedicated significant time and resources to this matter (over 1,500 hours) and have negotiated a favorable settlement. Stranch Decl., ¶ 15. Thus, the Court should affirm its appointment of Class Counsel.

VI. THE COURT SHOULD AFFIRM ITS CERTIFICATION OF CLASS FOR THE PURPOSES OF SETTLEMENT

In the Court's order granting preliminary approval, the Court conditionally held that the Class met the requirements of Tennessee Rule of Civil Procedure 23.01. Preliminary Approval Order, ¶3. Since then, no material facts regarding any of the factors for class certification have changed. The Court should therefore now affirm its certification of the Class for the purposes of settlement, as the requirements for certification under Tennessee Rule of Civil Procedure 23 remain satisfied. *See In re Fam. Dollar Stores, Inc.*, No. 2:22-md-3032-SHL-tmp, 2024 U.S. Dist. LEXIS 82088, at *25 (W.D. Tenn. May 6, 2024) ("For the same reasons the Court granted preliminary approval, the Court grants final certification of the Class").

VII. THE COURT SHOULD GRANT FINAL APPROVAL TO THE SETTLEMENT

Rule 23.05 requires Court approval for any settlement of a class action. Tenn. R. Civ. P. 23.05. In determining whether the Settlement should be approved, the Court should determine whether it is fair, reasonable, adequate, and in compliance with due process, bearing in mind that Tennessee law favors settlement. *In re Pacer Int'l, Inc.*, No. M2015-00356-COA-R3-CV, 2017 Tenn. App. LEXIS 442, at *14-16 (Ct. App. June 30, 2017). Though the Tennessee Rules of Procedure do not provide any specific legal standard to guide the Court's determination, courts have directed trial judges to several factors that should be considered, including (1) the risk and reward of continuing the litigation, the range of possible outcomes, and whether class counsel's fees are proportional to the benefits of the settlement. *Id.* at *14-15. The most important consideration is the strength of the plaintiffs' case on the merits weighed against the benefits of the settlement. *Id.*

Moreover, although Tennessee's version of Rule 23 is "markedly different" than its federal counterpart and Tennessee law controls, courts may consider federal law as persuasive authority. *Id.* at *16. Thus, the Court may also consider some additional factors commonly considered by Sixth Circuit federal courts, including (1) the risk of collusion; (2) the complexity, expense, and duration of the litigation; (3) the amount of discovery engaged in by the parties, (4) the reaction of class members; (5) the opinion of counsel; and (6) any public interest considerations. *Does 1-2 v. Deja Vu Servs., Inc.*, 925 F.3d 886, 894-95 (6th Cir. 2019).

A. Risk and Reward of Continued Litigation and the Range of Possible Outcomes

The Settlement warrants final approval because it is a reasonable result given the value of the potential recovery compared to the numerous and substantial risks of further litigation, the additional expenses associated with further litigation, and the complexity of the Action. *Pacer*,

2017 Tenn. App. LEXIS 442, at *18 ("The court must determine, not whether the settlement represents the best outcome, but whether it falls within the 'range of reasonableness.'"); *Id.* ("In evaluating a class action settlement, both Tennessee and federal courts weigh the 'plaintiffs' likelihood of success on the merits against the amount and form of the relief offered in the settlement.'"); *Id.* (noting that "this case would be relatively complex and expensive to take to trial, involving issues of securities regulation and corporate governance.")

While Plaintiffs believe the asserted claims have merit, Plaintiffs and the Settlement Class nevertheless faced significant obstacles to recovery. *See e.g., Id.* at *19 ("Plaintiffs had a heavy burden to overcome to succeed on the merits[, as] Tennessee courts are loathe 'to substitute their judgment for that of a corporation's board of directors.'"). There is significant risk and expense in prosecuting Plaintiffs' claims successfully through a hearing on class certification, completion of fact and expert discovery, summary judgment, trial, and subsequent appeals, and there is no assurance that Plaintiffs could prove causation or damages in excess of the Settlement Amount at trial.

In the Complaint, Plaintiffs alleged that the Individual Defendants – led by Good and with the help of Dondero – engaged in a hasty and conflicted sales process with the primary motive of unlocking certain unique personal financial benefits, and that that process favored NexPoint to the detriment of shareholders. In their Complaint, Plaintiffs alleged that following (i) a contentiously negotiated Internalization that conferred upon Good the Earn-Out Consideration OC Units that would expire at the end of 2024 if he didn't sell JCAP or get its stock price to $25.00 per share, and (ii) the arrival of the COVID-19 pandemic that all-but guaranteed JCAP's stock price would not reach the necessary $25.00 milestone, Good immediately – before the Internalization was even approved by shareholders – embarked on a mission to sell JCAP and unlock the value of the

imperiled Earn Out Consideration OC Units. Through the Merger, Good (and non-party Perry) secured $1.3 million in cash (each) for the Earn Out Consideration OC Units. **The Settlement represents a <u>full</u> recovery – over *three times* the amount – of the $1.3 million in Earn Out Consideration that Individual Defendant Good received in connection with the Merger he pushed through.**

Defendants have vehemently denied the claims asserted by Plaintiffs, arguing, among other things, that Plaintiffs' claims that the shareholder vote was not fully informed are meritless, and that, accordingly, under Maryland law, Plaintiffs' breach of fiduciary duty claims cannot survive. Defendants' further point out that (i) Good received the Earn-Out Consideration from a stockholder-approved transaction; (ii) that a merger was not the only trigger of the Earn Out Consideration; (iii) that Good's interests were aligned with shareholders; and (iv) that, regardless, the independent Transaction Committee was aware of these potential conflicts and satisfied their fiduciary duties in negotiating a premium transaction with the assistance of experienced advisors, and therefore the Defendants and the Merger are entitled to business judgment protection. Defendants likewise argue that Plaintiffs' economic allegations ignore the impact of the COVID-19 pandemic. These strong defenses cut against the viability of Plaintiffs' claims.

What is more, while discovery revealed some evidence that would support Plaintiffs' claims, it also revealed contradictory evidence that cut against their claims, including evidence that cut against their claim that Defendants withheld the ExtraSpace deal from shareholders. In the light of this evidence, Defendants would no-doubt seek – and potentially find – safe harbor and defense in ratification, by arguing that the shareholder vote was fully informed. *See Whitlow v. Bowser*, No. 24-C-21-004813, 2023 Md. Cir. Ct. LEXIS 6, at *9 (Md. Cir. Ct. Jan. 4, 2023) (citing *Wittman v.*

Crooke, 120 Md. App. 369, 377 (Md. App. 1998)) ("Maryland has long recognized the proposition that a board of directors is not liable to the stockholders for acts ratified by them.").

Furthermore, while Plaintiffs believed that the Complaint's allegations that the Individual Defendants baselessly lowered the Company's financial projections were meritorious, Defendants would again no-doubt seek – and potentially find – safe harbor and defense in the then-worsening impacts of the COVID-19 pandemic. Class Counsel is particularly aware of the difficulty in pursuing such claims given the effects of the pandemic on businesses and the reluctance of courts to deem *pre-pandemic* projections more reliable than projections prepared by management in or around May 2020, in the midst of the pandemic, for use in evaluating the Merger. *See e.g. In re Zagg Inc. Stockholder Litig.,* No. 2021-0982-NAC, 2023 Del. Ch. LEXIS 980 (Del. Ch. Aug. 16, 2023), Exhibit 4 to the Declaration of J. Gerard Stranch, IV filed on August 16, 2024 in connection with the Motion for Preliminary Approval (Transcript excerpt, at pp. 29, 33) (noting that, "[h]aving lived through the [p]andemic, I think we can all agree that things got worse before they got better"; recognizing that an earlier set of projections "did not appropriately account for the harm wrought by the pandemic over the intervening months" and the need for additional revisions "as the [p]andemic continued to rage"; and ultimately dismissing the complaint's claims related to the revisions to the company's projections).

Finally, even setting aside these potential weaknesses in proving the liability portion of their breach of fiduciary duty claims, proving damages is where the proverbial rubber met the road. While the Merger Consideration represented a 16% discount to the Company's high trading price of $20.66 per share on February 7, 2020 (before the pandemic), it represented a *23% premium* to JCAP's closing stock price on the last trading day pre-Merger announcement, a *27.4% premium* over its 30-day volume-weighted average price, and a *92.4% premium* over the post-pandemic low

price in late March 2020. More convincingly, following the announcement of the Merger Agreement, *no other bidder* emerged in the Company's go-shop process to pay a higher price.

Under these circumstances, Plaintiffs and Class Counsel concluded that the proposed Settlement – which represents a 3x recovery of the Earn Out Consideration alleged to have motivated Good to pursue a sale – is a good outcome for the Settlement Class. The Settlement thus provides a favorable, immediate recovery and eliminates the risk, delay, and expense of continued litigation, and likewise allows shareholders to receive the additional recovery represented by the settlement of the Federal Action. *See Pacer*, 2017 Tenn. App. LEXIS 442, at *18-19.

Finally, even if these obstacles did not remain, continued litigation means that Class Members would have to wait years before they saw any benefits from this action, including through trial and probable appeals. Class Counsel believes the best outcome is for Plaintiffs and the Settlement Class to receive immediate relief. Stranch Decl., ¶11. This factor weighs in favor of final approval.

B. Proportionality of Class Counsel's Fees in Relation to the Benefits Achieved

As discussed more fully in in Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, filed contemporaneously herewith, Class Counsel are moving for attorneys' fees of one-third of the Settlement Fund, plus expenses in the amount of $47,697.20. A one-third fee of the $3,925,000 Settlement Amount equates to $1,308,333, which reasonably and fairly compensates Class Counsel for their efforts to date. *See e.g., In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 2:12-cv-83, 2014 U.S. Dist. LEXIS 91661, at *4-5 (E.D. Tenn. June 30, 2014) (recognizing "the trend in 'common fund cases has been toward use of the percentage method.'" (citing *In re Cardizem CD Antitrust Litig*., 218 F.R.D. 508, 532 (E.D. Mich. 2003) (courts in the Sixth Circuit have "indicated a preference for the percentage-of-the-fund method in common fund cases.")));

Id. (finding that counsel fee of one third was fair and within the range of fees ordinarily awarded in complex class actions).

Class Counsel's fee request of one-third of the Settlement is commensurate with amounts awarded in similar class action litigation matters in Tennessee, the Sixth Circuit, and around the country. *See, e.g., In re Se. Milk Antitrust Litig.*, No. 2:07-CV 208, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (awarding one-third of common fund); *In re Skelaxin (Metaxalone)*, 2014 U.S. Dist. LEXIS 91661, at *4-5 (finding that counsel fee of one-third was fair and within the range of fees ordinarily awarded in complex class actions); *Bessey v. Packerland Plainwell, Inc.,* No. 4:06-cv-95, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (awarding one-third of common fund and noting that "[e]mpirical studies show that . . . fee awards in class actions average around one-third of recovery"); *In Re Prandin Direct Purchaser Antitrust Litig.,* No. 10-cv-12141, 2015 WL 1396473, at *4 (E.D. Mich. Jan. 20, 2015) (awarding one-third of the common fund); *see also Denver Area Meat Cutters & Emps. Pension Plan v. Clayton,* 209 S.W.3d 584, 592–93 (Tenn. Ct. App. 2006) (affirming trial court award of one-third of settlement fund in common fund case); *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663, 664 (9th Cir. 2003) (affirming 33% fee in $14.8 million settlement); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee in $12 million settlement); *Muhammad v. Nat'l City Mortg., Inc.*, C.A. No. 2:07-0423, 2008 U.S. Dist. LEXIS 103534, at *26 (S.D. W. Va. Dec. 19, 2008) (one-third of recovery); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, at *23 (S.D. Cal. 2010) ("33.33% of the common fund falls within the typical range of 20% to 50% awarded in similar cases"); *see also* 4 *Newberg on Class Actions* § 14:6 (4th ed. 2002) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Ziegler v. GW Pharm., PLC*, No. 21-cv-1019-BAS-MSB,

2024 U.S. Dist. LEXIS 52979, at *25 (S.D. Cal. Mar. 25, 2024) (awarding class counsel one-third fee in merger-related class action).

C. Risk of Collusion

Arm's-length negotiations conducted by competent counsel constitute *prima facie* evidence of the fairness of a settlement. *Hawkins v. First Tenn. Bank, N.A.*, No. CT-004085-11, 2016 WL 11740305, at *4 (Tenn.Cir.Ct. Aug. 23, 2016); *Shy v. Navistar Int'l Corp.*, No. 3:92-CV-00333, 2022 U.S. Dist. LEXIS 105677, at *21 (S.D. Ohio June 13, 2022); *Roldan v. Convergys Customer Mgmt. Grp., Inc.*, No. 1:15-CV-00325, 2017 WL 977589, at *1 (S.D. Ohio Mar. 10, 2017) (noting that settlement was "reached after good faith, arms' length negotiations, warranting a presumption in favor of approval"); *Brotherton v. Cleveland*, 141 F. Supp.2d 894, 906 (S.D. Ohio 2001) (absence of any evidence suggesting collusion or illegality "lends toward a determination that the agreed proposed settlement was fair, adequate and reasonable"). Here, the Settlement is the product of serious, informed, non-collusive negotiations between the Parties after thorough litigation, including a fully briefed motion to dismiss, extensive investigation and discovery by Counsel, and a protracted and adversarial mediation process before an experienced mediator (David Murphy). Mr. Murphy has been a mediator for more than seven years, serving as mediator for cases regarding complex business litigation all over the United States, including securities and derivative class actions.[6] The participation of an independent mediator weighs heavily in favor of a finding of non-collusiveness in settlement negotiations. *See e.g. In re: Regions Morgan Keegan Sec.*, No. 08-2260, 2015 WL 11145134, at *4 (W.D. Tenn. Nov. 30, 2015); *Hillson v. Kelly Servs.*, No. 2:15-cv-10803, 2017 U.S. Dist. LEXIS 8699, at *18 (E.D. Mich. Jan. 23, 2017); *Humphrey v. Stored Value Cards*, No. 1:18-cv-01050, 2021 U.S. Dist. LEXIS 5539, at

[6] *See* David M. Murphy – Biography, Phillips ADR Enterprises, https://phillipsadr.com/our-team/david-m-murphy/ (last visited November 6, 2024).

*10 (N.D. Ohio Jan. 12, 2021). Moreover, through the mediation process, the strengths and weaknesses of the respective claims and defenses were extensively debated. At the time the Settlement was reached, Plaintiffs and Class Counsel were well-positioned to assess the fairness of the Settlement in light of those strengths and weaknesses. Finally, no one has presented any evidence of collusion or alleged any such collusion. This factor weighs in favor of final approval.

D. The Complexity, Expense, and Duration of Litigation

This factor is mostly subsumed under the first factor, but nevertheless weighs in favor of final approval. As noted above, securities litigation is significantly complex, often goes on for years, and requires expensive expert testimony from valuation experts. Moreover, the questions presented are not well-suited for summary judgment disposition, so a trial would be likely. And, if Plaintiffs prevail, Defendant will almost certainly appeal, further delaying Class Members' access to relief. Thus, a resolution at this stage of the litigation and for the Settlement Amount is an excellent result for the Class.

E. Amount of Discovery Engaged In

Defendants produced approximately 140,000 pages of documents. The review of those documents uncovered additional facts both supporting and contradicting the allegations in the Complaint. In October 2023, Plaintiffs filed a motion for class certification, which was thereafter withdrawn and all proceedings were stayed in lieu of and pending the outcome of a formal mediation. On February 2, 2024, the Parties engaged in a full-day mediation before an experienced mediator. In advance of the mediation, Class Counsel retained a damages expert and prepared and exchanged a 25-page mediation brief detailing Plaintiffs' claims and the evidence gleaned through discovery to date. The parties did not reach an agreement that day and continued to engage in informal negotiations and continued discovery. On March 22, 2024, Plaintiffs filed a renewed motion for class certification. On or about June 7, 2024, after more than four months of ongoing

settlement discussions, the Settling Parties reached an agreement in principle to settle the Action for a $3.925 million common fund. Moreover, through the mediation process, the strengths and weaknesses of the respective claims and defenses were extensively debated. Accordingly, at the time the Settlement was reached, Plaintiffs and Class Counsel were well-positioned to assess the fairness of the Settlement in light of those strengths and weaknesses.

F. The Reaction of the Class

The reaction of the Class has been positive, which weighs strongly in favor of final approval. To date, no Class Members have objected to the Settlement nor requested exclusion (the deadline is Nov. 22, 2024). Stranch Decl., ¶9; *Fusion Elite All Stars v. Varsity Brands, LLC*, No. 2:20-cv-02600, 2023 WL 6466398, *5 (W.D. Tenn. Oct. 4, 2023) (holding that reaction of the class weighed in favor of approval because no class member objected and only one opted out).

G. The Opinion of Counsel

Class Counsel's significant experience in securities litigation and their recommendation of the proposed settlement also weighs in favor of approval. *See e.g. In re High Pressure Laminate Antitrust Litig.,* No. M2005-01747-COA-R3-CV, 2006 Tenn. App. LEXIS 786, at *14 (Ct. App. Dec. 13, 2006) (noting that the trial court "properly considered" that "Counsel representing all Settling Parties were experienced"); *Pacer*, 2017 Tenn. App. LEXIS 442, at *15. Class Counsel have an extensive track record of working on behalf of shareholders to secure substantial monetary recoveries. Stranch Decl., ¶15; Exhibits 2 and 3 to the Declaration of J. Gerard Stranch, IV filed on August 16, 2024 in connection with the Motion for Preliminary Approval. Based upon their experience in securities litigation, thorough investigation of the claims at issue, their analysis of Defendants' legal and factual arguments, and zealous advocacy on behalf of Plaintiffs during the mediation process, Class Counsel were well-suited to evaluate the fairness of the Settlement and determine whether it is in the best interests of the Settlement Class.

H. Public Interest

Public interest considerations further weigh in favor of granting final approval to the Settlement. A strong public interest exists "in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *In re Family Dollar Stores, Inc., Pest Infestation Litig.*, No. 2:22 MD-03032-SHL-TMP, 2023 WL 7112838, at *13 (W.D. Tenn. Oct. 27, 2023*)* (quoting *Does 1–2*, 925 F.3d at 899).

* * *

Because the relevant factors all weigh in favor of final approval, the Court should grant Plaintiffs' motion and approve the Settlement as fair, reasonable, and adequate.

VIII. THE NOTICE PROGRAM AFFORDED ABSENT CLASS MEMBERS AMPLE DUE PROCESS

In the Court's order granting preliminary approval, the Court approved the form and content of the Notice and found that distribution of the Notice, Proof of Claim and Release, Summary Notice and Postcard Notice would fully satisfy the requirements of Tennessee law and other applicable law. Preliminary Approval Order, ¶7. Thereafter, the Claims Administrator made reasonable efforts to identify all Settlement Class Members. On September 13, 2024, the Claims Administrator caused the Postcard Notice, substantially in the form annexed to the Stipulation, to be mailed by First-Class Mail to all Settlement Class Members who could be identified with reasonable effort. Stranch Decl., ¶8. Contemporaneously with the mailing of the Postcard Notice, the Claims Administrator caused the Notice and Proof of Claim, substantially in the forms attached to the Stipulation, to be posted on the Settlement website at https://www.rg2claims.com/jernigan.html, from which copies of the documents can be downloaded. *Id.* The Settlement Website also provided Class Members with all important dates,

including the deadlines to object or opt-out and the date of the Final Approval Hearing. *Id.* Moreover, the Settlement Website provided Class Members with frequently asked questions, which included information on how Class Members could object or opt-out. *Id.* On September 13, 2024, Class Counsel caused the Summary Notice to be published via PRNewswire. *Id.* In sum, the Notice program supplied absent Class Members with sufficient due process.

IX. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion and enter an order affirming its appointment of Class Representatives and Class Counsel, affirming certification of the Class for the purposes of settlement, and granting final approval to the Class Settlement as fair, reasonable, and adequate and because it affords Class Members the appropriate due process.

DATED: November 8, 2024

Respectfully Submitted By:

/s/ J. Gerard Stranch, IV

STRANCH, JENNINGS & GARVEY PLLC
J. Gerard Stranch, IV (BPR #23045)
The Freedom Center
223 Rosa L. Parks Avenue, Suite 200
Nashville, TN 37203
Tel: (615) 254-8801
Fax: (615) 255-5419

OF COUNSEL:

MONTEVERDE & ASSOCIATES PC
Juan E. Monteverde
The Empire State Building
350 Fifth Avenue, Suite 4740
New York, NY 10118
Tel: (212) 971-1341

KAHN SWICK & FOTI, LLC
Michael J. Palestina
1100 Poydras Street, Suite 960
New Orleans, LA 70163
Tel: (504) 455-1400

Counsel for Lead Plaintiffs and Co-Lead Counsel for the Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document has been forwarded, via U.S. mail and e-mail, to the following on this 8th day of November 2024.

Britt K. Latham
Jonathan Nelson
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Email: blatham@bassberry.com
Email: JENelson@bassberry.com

James P. Smith III
Matthew L. DiRisio
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166-4193
Tel.: (212) 294-4633
Fax: (212) 294-4700
Email: jpsmith@winston.com
mdirisio@winston.com

Counsel for Defendants

/s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV (BPR #23045)