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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF ENDEAVOR GROUP HOLDINGS, INC.

Consolidated
C.A. No.: 2025-0317-LWW

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THE A&B GROUP'S BRIEF IN OPPOSITION TO THE RKS GROUP'S MOTION FOR DESIGNATION AS SOLE LEAD COUNSEL AND IN SUPPORT OF ITS CROSS-MOTION FOR AN ALTERNATIVE LEADERSHIP STRUCTURE

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PRELIMINARY STATEMENT

This appraisal litigation is the largest in the history of the Delaware courts by a significant margin. Stockholders of Endeavor Group Holdings, Inc. ("EDR") have demanded appraisal of 149,250,809 shares of EDR's Class A common stock, worth more than $4.1 billion at the $27.50 transaction price.

The dissenting investors fully expect to demonstrate at trial that the fair value of EDR stock at closing exceeded the merger price by a massive amount. The transaction resulted from a deeply flawed process dominated by a controlling stockholder who refused a majority-of-the minority vote condition and crammed down the deal by written consent. The timing could not have been worse for minority investors. EDR's largest asset is a controlling stake in another public company whose stock gained nearly 70% between the signing and closing of the challenged transaction, confirming that the deal was a steal for the controller and a disaster for the minority.

On April 29, 2025, Rolnick Kramer Sadighi LLP and Heyman Enerio Gattuso & Hirzel LLP (collectively the "RKS Group") moved for an order appointing themselves as sole lead counsel in the appraisal litigation, despite the fact that many investors with enormous amounts at stake have chosen other lawyers. [redacted]

[redacted]

[redacted]

[redacted].[1] Nevertheless, the RKS Group seeks an order overriding the will of these investors and effectively forcing them to accept the RKS Group as sole lead counsel.

The pitch from the RKS Group is deceptively simple: "[t]here should only be one captain to steer this ship." Because the RKS Group purports to represent the appraisal claimants with the largest number of shares, the Court should appoint them sole lead. According to the RKS Group, any other structure would "overcomplicate or delay this otherwise narrowly focused litigation."

As explained below, the RKS Group's representations regarding the holdings of its clients and its desire for "efficiency" are misleading. [redacted] The Court should deny the RKS Group's motion and adopt the alternative leadership structure described below.

First, [redacted] how it gained the scale it touts: [redacted]. Instead of [redacted], the RKS Group has [redacted]

[1] [redacted] At least one occurred after the RKS Group filed its motion.

[redacted] This structure has [redacted] Among other things, it will [redacted] .[2]

Second, the RKS Group's [redacted] what amounts to a [redacted] This scenario seemed increasingly likely as the RKS Group [redacted] Meanwhile, [redacted] Incredibly, [redacted]

[2] After excluding investors who [redacted] the holdings of the clients represented by Abrams & Bayliss LLP ("A&B"). *See infra* at Argument II, C.

[redacted]

Third, the RKS Group's application obscures [redacted] of its proposal to serve as sole lead, which is not in fact motivated by "efficiency" but instead by [redacted]. As explained in detail below, assuming the RKS Group [redacted] Alternatively, if the dissenters *lose the case by obtaining a transaction price award* plus interest, the RKS Group's representation of the dissenters would still [redacted]

Fourth, the RKS Group's application ignores available alternatives. A&B currently represents dissenters holding over 56 million shares worth more than

$1.5 billion at the transaction price. [redacted]. A&B has agreed to represent these clients by the hour, and they have agreed to pay A&B's invoices *pro rata*, [redacted] and fee sharing in proportion to their ownership. Under this arrangement, even if A&B were to spend $50 million prosecuting the appraisal case (which seems highly unlikely at this stage), [redacted] *in the unlikely downside scenario* where the court finds fair value equals the transaction price.

Critically, two of A&B's clients are [redacted] because it eliminates the risk that pay-as-you-go clients might ultimately pay more on an hourly basis than they would to a firm working on contingency.

In sum, the RKS Group's Motion confuses the difference between [redacted]

demonstrate that it is willing to [redacted]

[redacted]

The Court should afford investors the choice to (a) retain A&B on an hourly basis or (b) retain one of the other capable firms involved and offering a contingency model. [redacted]

STATEMENT OF FACTS

A. The Company

EDR is a global conglomerate that operates a portfolio of businesses in the sports and entertainment industries. Among other assets, EDR owns (or recently owned) interests in (i) high profile events like the Miami Open and New York Fashion Week, (ii) talent agencies representing some of the world's best-known actors, authors, and athletes, (iii) sports betting and data aggregation companies, and (iv) TKO Group Holdings, Inc. ("TKO").

TKO is a media conglomerate that owns Ultimate Fighting Championship ("UFC") and World Wrestling Entertainment, Inc. ("WWE"). TKO's Class A Common Stock trades on the New York Stock Exchange under the ticker symbol

"TKO." At the closing of the challenged transaction, EDR controlled approximately 61% of the equity and voting interests in TKO through its ownership of TKO common stock.

At all relevant times, entities affiliated with Silver Lake Group, L.L.C. (collectively, "Silver Lake") controlled a majority of EDR's voting power. As of January 15, 2025, Silver Lake owned approximately 37.2% of EDR's equity and controlled approximately 74.4% of EDR's voting power through its ownership of EDR Class A, Class X, and high-vote Class Y shares. Ex. 1, at 186-88.

B. The A&B Dissenters

A&B represents thirty-nine former holders of EDR Class A Common Stock the "A&B Dissenters"). The A&B Dissenters are sophisticated investors who own a total of 56,956,527 shares subject to appraisal, worth more than $1.5 billion at the transaction price. Ex. 2. The A&B Dissenters include funds and investment managers that have successfully litigated appraisal claims in the Delaware Court of Chancery and several other jurisdictions. These dissenters have the necessary incentives, resources, experience, and industry knowledge to assist A&B in litigating this case effectively and efficiently.

C. The Challenged Transaction

The squeeze out merger (the "Merger") is the result of months of planning by Silver Lake, Ariel Emanuel (EDR's CEO) and Patrick Whitesell (EDR's Executive

Chairman). Ex. 1, at 49-64. Long after this group of insiders began working to put together a favorable deal for themselves, the EDR board formed a special committee. *Id.* at 54-55. The board limited the special committee's mandate to considering a proposed transaction with Silver Lake or EDR as a standalone company, and it did not empower to the special committee to review other potential alternative transactions. To the dismay of investors who later learned about it, the special committee and the buyout group reached agreement on price in just a matter of days. *Id.* at 58-61.

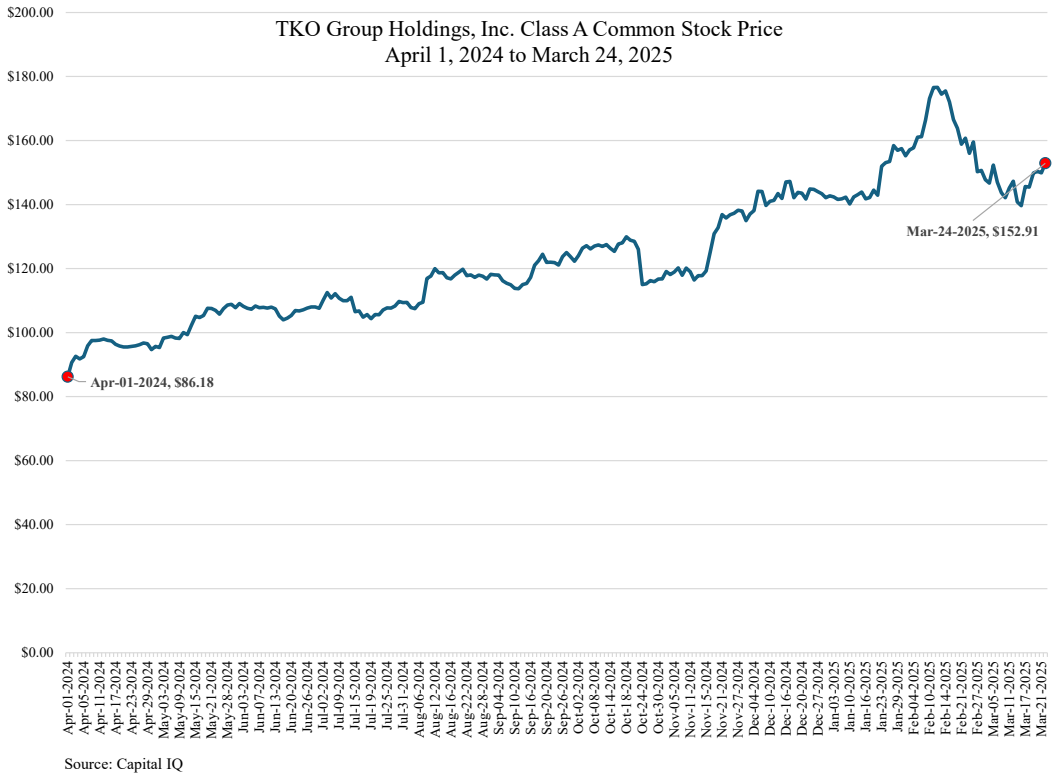
On April 2, 2024, EDR announced the Merger. Ex. 3. The Merger Agreement contemplated that Silver Lake would acquire all EDR shares that it did not already own for $27.50, except for certain rollover shares held by EDR executives and their affiliates, including Emanuel and Whitesell. The Merger consideration implied an enterprise valuation for EDR of approximately $25 billion. EDR's minority stockholders were not given an opportunity to vote on the Merger. Instead, Silver Lake, Emanuel and Whitesell, who collectively owned a majority of the combined voting power of EDR's common stock, approved the Merger by written consent.

D. <u>TKO's Stock Price Performance Between Signing and Closing</u>

Because of its controlling position and deep involvement in day-to-day operations at EDR, the buyout group was uniquely positioned to know just how

valuable EDR really was. The group exploited that informational advantage perfectly, including by successfully convincing the special committee to approve a deal that massively undervalued EDR, including its stake in TKO.

On April 1, 2024, the day before EDR entered into the Merger Agreement, shares of TKO Class A common stock closed at $86.18 per share. Over the next eleven months, TKO announced "record financial performance," including because of its successful integration of the UFC and WWE. Ex. 4. TKO's stock price skyrocketed during this period, reaching a pre-closing high of $176.64 per share before falling to $152.91 per share on March 24, 2025, the day Silver Lake consummated the EDR acquisition.



Source: Capital IQ

If measured by the public market price of TKO Class A common stock, EDR's interest in TKO appreciated by nearly 70%—billions of dollars—between signing and closing.[3] As a result of this run-up, on the effective date of the Merger, the publicly observable trading price of TKO implied that EDR's interest in TKO on a per EDR share basis was worth approximately $39 per share. This is *before* including the value of any of EDR's other assets or taking into account any minority discount embedded in TKO's stock price.[4]

E. [redacted]

Recognizing that this case was likely to be the largest appraisal action in Delaware history by a significant margin, the RKS Group [redacted] an enormous appraisal judgment.

First, the RKS Group [redacted] Jaeger Aff. (Ex. 5) ¶ 6; Wool Aff. (Ex. 6) ¶ 6(c); Mistry Decl.,(Ex. 7) Ex. A; Schulte-Hillen Decl. (Ex. 8) ¶ 6. Under this [redacted]

[3] Through a series of transactions between signing and closing, EDR acquired 30,946,191 additional shares of TKO stock.

[4] On account of TKO's performance, EDR's stock traded well above the announced per share merger consideration of $27.50 for months leading up to the closing. On February 13, 2025, roughly a month before closing, EDR stock reached a high of $35.99 per share, reflecting a 30% premium to the Merger consideration.

[redacted] above the merger consideration, including statutory interest.[5] Jaeger Aff. ¶ 6; Wool Aff. ¶ 6(c); Mistry Decl., Ex. A; Schulte-Hillen Decl. ¶ 6. [redacted]. Jaeger Aff. ¶ 6; Mistry Decl., Ex. A; Schulte-Hillen Decl., Ex. 2. The RKS Group [redacted] Wool Aff. ¶ 7(e).

Second, the RKS Group emphasized [redacted] Wool Aff. ¶ 6(a-b); Schulte-Hillen Decl., Ex. 2. The RKS Group [redacted] in the litigation.[6] *See*

[5] RKS subsequently [redacted] February 4, 2025-the deadline for stockholders to serve EDR appraisal demands. Jaeger Aff. ¶ 7-8; Wool Aff. ¶ 6(c).

[6] [redacted] the appraisal statute guarantees every dissenter identified on the corporation's verified list the right to "participate fully in all proceedings until it is finally determined that such person is not entitled to appraisal rights under this section." 8 *Del. C.* §262(h); *see Sunrise P'rs Ltd. P'ship v. Rouse Props., Inc*., 2016 WL 7188104, at *3 (Del. Ch. Dec. 8, 2016) ("Nothing in the Court's order appointing a leadership structure will deny Brookdale of its right to 'take part' fully in this appraisal litigation along with all of the other petitioners.").

Schulte-Hillen Decl. ¶ 11, Ex. 2; Wool Aff. ¶ 12; Jaeger Aff ¶ 13; Rod Aff. (Ex. 9) ¶ 11; Hanlon Aff. ¶ 10 (Ex. 10). The RKS Group's message [redacted] *Id.*

Third, [redacted] Schulte-Hillen Decl. ¶ 11, Ex. 2. The RKS Group reiterated [redacted] *Id.* In other words, the RKS Group's [redacted] *See id.*

F. <u>The RKS Group</u> [redacted]

The RKS Group's [redacted] EDR's largest stockholders quickly concluded [redacted]

[redacted] *See* Schulte-Hillen Decl. ¶ 12 & Ex. 3. As explained below, [redacted] The RKS Group's [redacted], if the RKS Group secured sole lead status, it could effectively [redacted]

G. <u>The RKS Group</u> [redacted]

Multiple RKS Group [redacted] they RKS Group. Accordingly, they [redacted] with the RKS Group. Schulte-Hillen Decl. ¶¶ 7-8 & Ex. 1; Hanlon Aff. ¶ 6 & Ex. A. The RKS Group appears to have [redacted] Schulte-Hillen Decl. ¶¶ 8-9; Hanlon Aff. ¶ 6.

The RKS Group [redacted]

[redacted].[7] Wool Aff. ¶ 6(e); Mistry Decl. ¶ 10. [redacted] of the RKS Group [redacted] with the RKS Group. Schulte-Hillen Decl. ¶ 13; Hanlon Aff. ¶ 6.

H. Silver Lake Announces That It Will Not Prepay Any Merger Consideration To The Dissenters

By February 4, 2025, EDR stockholders had demanded appraisal of at least 149,250,809 shares of EDR stock, worth $4,104,397,247.50 at the transaction price.[8] Ex. 11. On March 3, 2025, Silver Lake issued a press release announcing that the Merger would close on March 24, 2025. Ex. 12. In a ham-handed attempt to bully EDR's minority investors, Silver Lake "advised all dissenters that it does not intend to pay them any merger consideration at closing – nor at any time until there is a full resolution with respect to such appraisal claims." If Silver Lake's "intention" holds true, the statutory interest that could accrue on the merger consideration alone could approach $1 billion (assuming approximately two years until payment).

[7] Presumably, the RKS Group will contend that [redacted] This is sophistry. The mathematical impact of [redacted]

[8] This figure represents the number of shares EDR disclosed on April 3, 2025 in response to certain A&B Dissenters' requests pursuant to Section 262(e). This figure does not disclose any shares for which demands were withdrawn before April 3.

I. The RKS Group Moves for Sole Lead

After the March 24 Closing, dozens of dissenters represented by A&B, the RKS Group and Reid Collins & Tsai LLP ("RCT") filed petitions for appraisal of their EDR shares. On May 7, 2025, the Court issued a Minute Order instructing counsel for the petitioners to confer on whether the cases should be consolidated and, if so, to submit a proposed consolidation order. Dkt. 4.

On April 28, counsel submitted a proposed order consolidating all pending and forthcoming actions seeking appraisal of EDR stock, which the Court granted on April 29. Dkts. 11, 12. Less than six hours later, without making any effort to meet-and-confer about leadership, the RKS Group filed its Motion for Designation as Sole Lead Counsel (the "Motion") and supporting brief ("RKSOB"). Dkt. 13.

In its Motion, the RKS Group seeks appointment as sole lead counsel, thereby making good on its threats to "sideline" the A&B Dissenters and deprive them of the opportunity to be represented by the counsel of their choice.[9] The RKS Group also requests that the Court appoint all "Moving Dissenters" as "lead petitioner." There are forty-two "Moving Dissenters," and the RKS Group has not even identified all forty-two of them, let alone explained how they could all collectively serve as a "lead

[9] Since the RKS Group filed their Motion, [redacted]

petitioner." Many of these "Moving Dissenters" have not filed petitions, do not qualify as "petitioners" and therefore could not hope to qualify as "lead petitioners." The Court should deny the RKS Group's Motion and adopt the A&B-led leadership structure described below.

ARGUMENT

Appraisal cases share key similarities with class actions, and the Delaware Supreme Court has emphasized that an appraisal proceeding is "*in the nature of* a class [action] suit." *Alabama By-Products Corp. v. Cede & Co. ex rel. Shearson Lehman Bros., Inc*., 657 A.2d 254, 260 (Del. 1995) (emphasis added).

However, appraisal cases are *not* class actions. *See Rouse*, 2016 WL 7188104, at *6 ("Brookdale is correct as a matter of substantive law that this Court will not certify a class of dissenting stockholders who seek statutory appraisal."); Jesse A. Finkelstein & John D. Hendershot, *Appraisal Rights in Mergers & Consolidations*, 38–5th C.P.S. § IV(G)(2), at A–25 ("An appraisal differs from an actual class action in several important respects."). Among other things, an investor cannot participate in an appraisal proceeding without making a specific and individual demand for appraisal. *See* 8 *Del. C.* §262(d).

Perhaps most importantly, Court of Chancery Rule 23 does *not* govern this or any other appraisal proceeding. The caselaw that has developed regarding the treatment of applications for lead counsel only applies by analogy. *See Rouse*, 2016

WL 7188104, at *6 (Del. Ch. Dec. 8, 2016) (finding it was appropriate "to look for guidance to this Court's practices regarding the management of class action litigation"). That caselaw warrants rejection of the RKS Group's motion here.

I. THE RELEVANT TEST TURNS ON WHAT IS BEST FOR THE CLIENTS; NOT WHAT IS BEST FOR THE LAWYERS

A. The *Hirt* Factors and the Rule 23 Factors

In *Rouse*, Vice Chancellor Slights looked to the six factors set forth in *Hirt v. United States Timberlands Service Co.*, 2002 WL 1558342 (Del. Ch. July 3, 2002), before making a case specific determination to appoint lead counsel in the appraisal proceeding before him. *Rouse,* 2016 WL 7188104, at *6. The Court of Chancery has since amended Rule 23, which now indicates the Court may consider the following eight factors: "(i) counsel's competence and experience; (ii) counsel's access to the resources necessary to represent the class; (iii) the quality of the pleading; (iv) counsel's performance in the litigation to date; (v) the proposed leadership structure; (vi) the relative economic stakes of the representative parties; (vii) any conflicts between counsel or the representative parties and members of the class; and (viii) any other matter pertinent to the ability of counsel or the representative party to fairly and adequately represent the interests of the class." Ct. Ch. R. 23.[10]

[10] Citing to *Rouse*, the RKS Group invokes the *Hirt* Factors and contends that they "point overwhelmingly in favor of the Moving Dissenters." RKSOB at 5. The RKS Group

Neither these "Rule 23 Factors" nor the so-called "*Hirt* Factors" are a "scorecard." *In re Delphi Fin. Grp. S'holder Litig.*, 2012 WL 424886, at *1 (Del. Ch. Feb. 7, 2012). A law firm "does not 'win' the lead counsel spot by accumulating the most 'points,' as it might by demonstrating that its client owns the most shares." *Id.* The listed factors are simply "guideposts." Each factor is worthy of weight "only to the extent that it bears on the ultimate question of *what is in the best interests of the plaintiff class*." *Id.* (emphasis added); *see also In re Revlon, Inc. Shareholders Litig.*, 990 A.2d 940, 955 (Del. Ch. 2010) ("A trial court has a continuing duty in a class action case to scrutinize the class attorney to see that he or she is adequately *protecting the interests of the class*.") (quoting 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 13:22, at 417 (2002)).

B. <u>The Rule 23 Factors Important Here</u>

The first six Rule 23 Factors have a minimal impact on the analysis in this case, but certain of them favor the A&B Group.

Factor 1: Competence and experience of counsel. Counsel for each group are competent and have significant experience in the appraisal space. *See infra* at Argument Section IV, C. This factor favors the A&B Group, which has significant recent experience serving as sole lead counsel. In *Bandera Master Fund LP v.*

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fails to account for the fact that Vice Chancellor Slights applied the *Hirt* Factors in 2016, well before the Court of Chancery's May 31, 2024 amendments to Rule 23.

Boardwalk Pipeline Partners, LP, the Court appointed A&B as sole lead counsel after its clients successfully objected to a proposed class action settlement. C.A. No. 2018-0372-JTL, Dkt. 85. A&B litigated the case through trial, against numerous top defense firms, and secured the largest class damages judgment in Delaware history.[11]

The RKS Group cites no cases in which it (or either of its constituent firms) has been designated sole lead counsel following a contest for leadership. Recently, in a consolidated appraisal and class action where the RKS Group served as co-lead counsel (alongside Labaton Keller Sucharow), the RKS Group withdrew from its co-lead position after the Court "made it pretty clear that [the Court] would issue a decision removing them involuntarily if they didn't do so." *In re MPM Holdings Inc. Appraisal and S'holder Litig.*, C.A. No. 2019-0519-NAC, at 21 (Del. Ch. Apr. 10, 2025) (TRANSCRIPT) (Ex. 13).[12]

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[11] *Bandera Master Fund LP v. Boardwalk Pipeline Partners, LP*, 2021 WL 5267734 (Del. Ch. Nov. 12, 2021), *rev'd and remanded*, 288 A.3d 1083 (Del. 2022). The judgment was reversed on appeal, and the case is currently before the Delaware Supreme Court on a second appeal.

[12] *See also MPM Holdings, Inc.*, C.A. No. 2019-0519-NAC (Del. Ch. Aug. 1, 2023) (Order Granting Motion to Withdraw as Co-Lead Plaintiffs and Co-Lead Counsel) (Ex. 14). This followed the hearing on the co-lead plaintiffs' motion to remove the RKS Group and their clients from the leadership structure, during which counsel at RKS repeatedly failed to answer the Court's questions regarding conflicts of interest. *MPM Holdings, Inc.*, C.A. No. 2019-0519-NAC (Del. Ch. July 28, 2023) (TRANSCRIPT) (Ex. 15). The Court ultimately rewarded Labaton (by increasing its fee award percentage from 20% to 21%) for "engag[ing] in substantial and extraordinarily unusual motion practice against their then-co-lead plaintiff and co-lead counsel to benefit the class." *MPM*

Factor 2: Access to resources. Both groups have access to resources. If this factor favors either side, it favors the A&B Group. In this high-value litigation, Respondent will have every reason to make the litigation as costly as possible for counsel operating on contingency, and the RKS Group will have to bear the burden of this litigation out of pocket, creating a significant pressure point. By contrast, the A&B Group, funded monthly by paying clients with over one-and-a-half billion dollars at stake, is less exposed to this type of pressure.

Factor 3: Quality of the pleadings. This factor has little application here. Appraisal petitions are easily completed forms. *Rouse*, 2016 WL 7188104, at *7.

Factor 4: Counsel's performance in the litigation. This is a minor factor, given the stage of the litigation, but it favors the A&B Group because of its cooperative approach to leadership.[13] *See, e.g.*, 2 Corp & Commercial Practice in DE Court of Chancery § 13.02 (2025) ("The Court consistently has evinced a clear preference to leave the resolution of the issue to the joint agreement of competing counsel…"); *Henzel v. XO Holdings, Inc.*, C.A. No. 6150-CS, at 67 (Del. Ch. Sept. 21, 2011) (TRANSCRIPT) ("Many times I have ruled -- people in this room know

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Holdings Inc., C.A. No. 2019-0519-NAC, at 36 (Del. Ch. Apr. 10, 2025) (TRANSCRIPT) (Ex. 13).

[13] The RKS Group indicates that it is in consultation with potential experts. RKSOB at 12. A&B and its dissenter clients have already engaged a leading expert, and they are in discussions with others.

this -- where I picked one plaintiff over another. What I don't reward is no one talking to each other.") (Ex. 16).

Consistent with that expectation, the A&B Group has engaged in discussions and has secured support for its leadership from RCT, Prickett, Jones & Elliott, P.A, Entwistle & Cappucci LLP, and their clients. A&B hoped to adopt this cooperative approach with the RKS Group. On April 28, A&B reached out to RKS to discuss leadership issues, and the firms scheduled a call. Ex. 17. But the call did not proceed, because less than twenty-four hours before it was scheduled to occur, the RKS Group applied for sole lead, emphasizing that there is "simply no need for, or benefit to be had from, any co-lead structure here" and arguing against "force[d] cooperation." RKSOB at 24.[14]

Factor 5: Leadership structure. The competing leadership structures are similar. The RKS Group seeks appointment of a New Jersey/New York-based firm

[14] The RKS Group's assertion in its brief that all of the "Moving Dissenters" – some of whom remain unnamed – should serve as "lead petitioner" further tips the fourth factor in the A&B Group's favor. *See* RKSOB at 1 n.3 ("These petitioners, in addition to other stockholders represented by Counsel, are collectively referred to herein as the 'Moving Dissenters.'"), 4 ("Moving Dissenters should be appointed as sole lead petitioner"), 10 ("this Court should … select the Moving Dissenters … to serve as sole lead petitioner"), 25 ("Moving Dissenters respectfully request that this Court appoint them lead petitioner"). Oddly, the RKS Group in places seems to criticize its own approach. *See* RKSOB at 23 ("There is no need for a leadership structure involving multiple lead petitioners…").

assisted by Delaware counsel. The A&B Group seeks appointment of a Delaware firm assisted by a New York-based firm with a Wilmington office.

Factor 6: Relative economic stakes. As discussed in detail below, the relative economic stakes of the representative parties are not meaningfully different under the relevant authority. Both the RKS Group and the A&B Group represent investors who have more than enough at stake to incentivize adequate monitoring.

Factors 7 and 8: Conflicts and Other Pertinent Matters. The critical factors at play here relate to the existence of [redacted].[15] *See* Ct. Ch. R. 23.

As explained in detail below, the RKS Group [redacted]

Moreover, the RKS Group's [redacted]

[15] Court of Chancery Rule 23(d)(4)(B)(i) provides that the "Court may order any applicant to provide information on any subject pertinent to the application and to propose terms for attorneys fee and expenses…." The advisory committee notes to analogous Federal Rule of Civil Procedure 23 explain that "the court may direct applicants to inform the court concerning any agreements about a prospective award of attorney fees or nontaxable costs, as such agreements may sometimes be significant in the selection of class counsel." *See also* 1 Newberg and Rubenstein on Class Actions § 3:86 (6th ed.) ("In recognition of the substantial effect attorney's fees may have on the motivations and actions of class counsel, the rule specifically authorizes courts to order applicants to disclose information about fee agreements they have negotiated….").

[redacted] on the dissenter pool. There are [redacted]

[redacted]

II. THE RKS GROUP [redacted]

A. The RKS Group's [redacted]

In representative actions, courts closely scrutinize arrangements between potential lead counsel and their clients because these arrangements can create conflicts both among the counsel's clients and with members of the class not represented by counsel but to whom the lawyer would owe a fiduciary duty as lead counsel. These arrangements can include outright kickbacks or promises to seek incentive fee awards.

In order to monitor this type of activity, Delaware courts require representative plaintiffs in class actions to submit affidavits that they have not received or been promised compensation directly or indirectly, except for:

> (A) any damages or other relief that the Court may award the person as a class member; (B) any fees, costs, or other payments that the Court expressly approves to be paid to or on behalf of the person; or (C) reimbursement from the person's attorneys of actual and reasonable out-of-pocket expenditures incurred in prosecuting the action.

Ct. Ch. R. 23(aa)(2); *see also* Ct. Ch. R. 23.1(b)(2) (similar provision for derivative actions).

[redacted] For example, in one well-known case, William Lerach, a former securities lawyer, was sentenced to two

years in prison in connection with his role in providing kickbacks to clients to help his firm secure lead counsel positions in a variety of securities class actions. *See* NBC News, "Lawyer gets 2 years for kickback scheme," (Feb. 11, 2008);[16] *In re Chaparral Resources, Inc. S'holders Litig.*, C.A. No. 2001-N, at 35 (Del. Ch. May 17, 2006) (TRANSCRIPT) (holding that appointment of [a law firm involved in a client kickbacks conspiracy] as lead counsel "would not be an acceptable outcome").

"Delaware courts are reluctant to award lead plaintiffs anything other than their out-of-pocket costs and expenses." *Morrison v. Berry*, 2021 WL 2926138, at *1 (Del. Ch. July 12, 2021) ("Plaintiff awards … should be rare. Only in the exceptional case should such an application be granted." (quotation marks omitted)). The "starting presumption" is that representative plaintiffs are not entitled to incentive awards. *In re Santander Consumer USA Holdings Inc. Stockholders' Litig.*, 2025 WL 1012345, at *5 (Del. Ch. Mar. 31, 2025). Delaware courts allow plaintiffs' counsel to pay incentive awards to representative plaintiffs in certain cases, but only after the Court conducts a searching review to determine whether any incentive payment is warranted and what the amount should be. *See, e.g.*, *id.* at *4;

[16] *Available at*: https://www.nbcnews.com/id/wbna23114753.

In re Dell Techs. Inc. Class V Stockholders Litig., 300 A.3d 679, 733-35 (Del. Ch. 2023).

These Court-approved incentive awards are typically modest, are awarded after-the-fact, and reflect actual effort expended by the representative plaintiff undertaken in aid of the litigation. *See Santander*, 2025 WL 1012345 at *5 n.53, *7 (awarding $500,000 incentive award to representative plaintiff who "devoted extraordinary time and expertise" to the litigation and obtained the second largest class settlement in Court of Chancery history but observing that "greater incentive awards in …unusual cases" have included awards of $20,000, $35,000, $50,000, and $100,000); *Dell Techs. Inc*., 300 A.3d at 733-34 (awarding $50,000 incentive award to representative plaintiff after it endured aggressive discovery, spent significant time and effort on the litigation and faced reputational risk, while leading a case that resulted in the largest class action settlement in Court of Chancery history).

Close scrutiny of incentive awards makes sense because they implicate serious policy concerns. As summarized in a leading law review article, these concerns include the following:

- "The first and most obvious objection to plaintiff incentive awards is that they drive a wedge between the incentives of the named plaintiff and those of the absent class members--the named plaintiff receives the award, and the absent class members do not";

- "A second criticism of plaintiff incentive awards is that the lead plaintiff often does little of value for the class, and the diversion of a portion of the recovery is inappropriate and unfair";

- "A third concern is that lead plaintiffs will engage in rent-seeking behavior…. where the lead plaintiff is in a position to choose which plaintiffs' lawyer will have control of the litigation--together with the attendant financial rewards--the plaintiff may use this power to extract rents. This carries both the risk of the rent extraction itself, and the possibility that a lead plaintiff will select counsel based on which plaintiff's lawyer is likely to work to secure a large incentive award rather than which will best represent the class."

Charles R. Korsmo & Minor Myers, *Lead Plaintiff Incentives in Aggregate Litigation*, 72 VAND. L. REV. 1923, 1932–33 (2019).

These policy concerns are exacerbated where counsel has agreed at the beginning of the engagement to seek an incentive award, especially where that agreement is not promptly disclosed to the Court. In *Rodriguez v. West Publishing Corp.*, the court reversed and remanded the district court's award of fees to class counsel who had included in their engagement letters certain incentive fees not disclosed to the court at the class certification stage. 563 F.3d 948, 968 (9th Cir. 2009) (incentive agreements "created conflicts" and "[i]t was inappropriate not to disclose these agreements at the class certification stage, because an ex ante incentive agreement is relevant to whether a named plaintiff who is party to one can adequately represent the class."). The Court of Appeals observed that "the conflict of interest inhering in the incentive agreements did not just happen…. It was inserted into the retainer agreement." *Id.* The Court found that class counsel violated their

duties to the class by failing to disclose "the possibility of conflict … so that [the court] could take steps to protect the interests of absentee class members." *Id.*[17]

Here, RKS's [redacted] implicates all of these policy concerns, especially the concern related to rent extraction. RKS [redacted] If it secures the sole lead counsel position it requests, [redacted]

The amounts involved here are substantial. The RKS Group's largest [redacted] (assuming interest rates remain steady). Even if the Court found that fair value equaled deal price, with payment in

[17] The Court of Appeals later affirmed the District Court's decision on remand to award class counsel responsible for the relevant engagement agreements their expenses only—and no fees—through the date that the Court denied the incentive awards in connection with the $49 million settlement. *Rodriguez v. Disner*, 688 F.3d 645, 658, 660 n.12 (9th Cir. 2012).

two years, [redacted]. These amounts dwarf the [redacted]

Incredibly, despite its liberal citation to class action authorities, where the rules are crystal clear about [redacted], the RKS Group [redacted] in its application for sole lead counsel. Instead, it lauded the "efficiencies" associated with their appointment, and railed against the "inefficiency, unnecessary duplication of effort, needless disputation and potential delays" associated with the involvement of other law firms. RKSOB at 6.[18]

The Court should not endorse this practice. Among other problems, it would make a mockery of the fiduciary duties that lead petitioners owe to other dissenters. *See Sunrise Partners Ltd. P'ship v. Rouse Props., Inc*., 2016 WL 7188104, at *5 (Del. Ch. Dec. 8, 2016); *In re Shell Oil Co*., 1986 WL 2635, at *1 (Del. Ch. Feb. 21, 1986) (holding that "the named plaintiffs have a fiduciary duty under the appraisal statute to those dissenting stockholders who are entitled to an appraisal but have not

[18] The RKS Group knows better. In battle over the terms of its leadership in another appraisal case, the RKS Group claimed that a petitioner's attempt to secure a special (and favorable) arrangement to govern that petitioner's share of fees and costs "called into doubt her ability to put the interests of the petitioner group as a whole over her own self-interest." *In re Appraisal of Stillwater Mining Co*., C.A. No. 2017-0385-JTL, Dkt. 17 (Petitioners Reply in Further Support of its Motion for Consolidation and for Designation of Lead Counsel).

filed a civil action"). [redacted] in this case and in future appraisal proceedings [redacted]

B. [redacted]

The RKS Group [redacted] before the filing of the definitive information statement [redacted].[19] *See* Rod Aff. ¶ 11; Wool Aff. ¶ 6(c); Jaeger Aff ¶ 6. [redacted] at the end of the case after successfully moving for appointment as sole lead counsel.[20]

As the RKS Group gained scale [redacted],[21] the RKS Group's [redacted] appeared

[19] RKS later [redacted] until the deadline to serve an appraisal demand.

[20] Jaeger Aff. ¶ 8; Misty Decl. ¶ 14; Schulte-Hillen Decl. ¶ 11; Wool Aff. ¶ 12; Rod Aff. ¶ 11; Hanlon Aff. ¶ 10.

[21] RKS ultimately [redacted]

increasingly credible.[22] [redacted]

[redacted].[23] [redacted]

[redacted].[24]

Once it secured [redacted] RKS explained that [redacted] after the definitive information statement was filed. Schulte-Hillen Decl. ¶ 11, Ex. 2. [redacted] RKS intended to seek sole

[22] Even now, EDR dissenters are [redacted] The RKS Group has [redacted] as much (*see, e.g.*, Schulte-Hillen Decl. Ex. 2), and the RKS Group has precedent to cite. *See In re Appraisal of Dell Inc.*, 2016 WL 6069017, at *19 (Del. Ch. Oct. 17, 2016), *rev'd on other grounds sub nom. Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, 177 A.3d 1 (Del. 2017). The Court should eliminate [redacted] at the conclusion of this litigation. *Cf.* Ct. Ch. R. 23(d)(4)(B)(ii) ("The Court may include in the appointing order provisions about the award of attorney's fees or expenses under Rule 23(g)."

[23] Schulte-Hillen Decl. ¶ 9; Hanlon Aff. ¶ 5.

[24] Schulte-Hillen Decl. ¶ 11, Ex. 2.

lead and, if it were appointed sole lead, [redacted] *Id.*

The RKS Group's [redacted] and the Court appointed RKS as sole lead counsel.

The RKS Group's [redacted] *See Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 956 (Del. 1985) (describing a front-end loaded tender offer as "a classic [redacted] at the back end of the transaction"); *Ivanhoe Partners v. Newmont Min. Corp*., 535 A.2d 1334, 1342 (Del. 1987) (finding target board's conduct reasonable in relation to the threat posed by coercive partial tender offer).

The Court should not [redacted]. If it does, [redacted] later.

C. The RKS Group's [redacted]

In its application, the RKS Group repeats again and again that "Counsel for the Moving Dissenters represents more than 90 million shares." RKSOB at 5, 9-10. The RKS Group also emphasizes that it represents stockholders "having the single-largest and the second-largest number of Endeavor shares subject to appraisal." *Id.* at 5-6. According to the RKS Group, the *Hirt* Factor that is "entitled to the greatest weight – the relative financial interest in the outcome of the proceeding – strongly favors the Moving Dissenters and their selected Counsel." *Id.* at 6. The RKS Group's argument fails for at least three reasons.

First, the RKS Group gained the scale it contends the Court should afford "great weight" [redacted] Excluding the stockholders [redacted][25] would shrink the RKS Group by at least 57.8%, leaving them with approximately 38.2 million shares. The A&B Group exceeds that size by approximately

[25] The RKS Group's largest client holds 35,550,000 shares subject to appraisal and its second largest client holds 16,830,000. Combined this is nearly 58% of the shares the RKS Group purports to represent in its brief.

18.7 million shares.[26] [redacted] secure sole lead. Put differently, RKS's [redacted]

Second, Delaware courts have again and again emphasized that the Rule 23 Factors are guideposts, not a "scorecard." *Fox Corp. Derivative Litig*., 307 A.3d 979, 988 (Del. Ch. 2023); *In re Engagesmart, Inc. Stockholder Litig*., C.A. No. 2023-1093-JTL (Del. Ch. Sept. 19, 2024) (Order Establishing Leadership Structure). "If every difference in economic stakes were given great weight, the court could simply add up the number of shares and select the law firm with the largest absolute representation. This is not Delaware law." *Wiehl v. Eon Labs*, 2005 WL 696764, at *3 (Del. Ch. Mar. 22, 2005). In fact, the Court of Chancery has appointed lead counsel who represented clients with smaller economic stakes on many occasions. *See, e.g.*, *In re Del Monte Foods Co. Shareholders Litig.*, 2010 WL 5550677 (Del. Ch. Dec. 31, 2010); *In re Emisphere Techs., Inc. S'holders Litig.*, 2021 WL 5815994,

[26] The numbers boasted by the RKS Group [redacted]

at *2–4 (Del. Ch. Dec. 6, 2021); *In re Fox Corp. Derivative Litig.*, 307 A.3d 979, 994–95 (Del. Ch. 2023).

Third, the "the weight given to the size of a plaintiffs' holding is not used to generate a formalistic ranking, but rather comes into play when a plaintiff owns a sufficient stake to provide an economic incentive to monitor counsel and play a meaningful role in conducting the case." *In re Revlon, Inc. Shareholders Litig.*, 990 A.2d 940, 955 (Del. Ch. 2010). Here, clients represented by A&B represent a total of 56,956,527 shares worth more than $1.5 billion at the transaction price. If A&B's clients alone pursued appraisal here, they would represent the largest dissenter pool in the history of the Court of Chancery. *See* Ex. 18. Their stake in this case is more than enough to ensure adequate monitoring.

D. RKS Seeks [redacted]

"Selecting lead counsel is a constructive hiring decision, and a court should consider the factors that a client would weigh when hiring a lawyer." *Fox Corp.*, 307 A.3d at 988. Here, several of A&B's clients are sophisticated consumers of legal services with hundreds of millions of dollars at stake [redacted] Schulte-Hillen Decl. ¶¶13-14; Hanlon Aff. ¶ 6. Several other A&B clients with many millions of dollars at stake [redacted]

[redacted] Wool Aff. ¶ 7; Jaeger Aff. ¶ 9; Rod Aff. ¶ 7; Mistry Decl. ¶ 11. [redacted] Schulte-Hillen Decl. ¶17; Hanlon Aff. ¶ 9; Wool Aff. ¶ 11; Jaeger Aff. ¶ 12; Rod Aff. ¶ 10; Mistry Decl. ¶ 13. [redacted] *See Fox Corp.*, 307 A.3d at 987 (according weight to an organized, intentional and client-driven process to select counsel).

By seeking appointment as sole lead counsel, the RKS Group [redacted] in the first place: the RKS Group would serve as sole lead counsel [redacted]. *See supra* at Argument Section II, B.

E. *Rouse* Does Not Compel the RKS Group's Appointment

According to the RKS Group, *Rouse* "compel[s]" the conclusion that the RKS Group should be appointed as sole lead counsel. RKSOB at 8. But the facts in *Rouse* are easily distinguishable, and the analysis in *Rouse* favors the A&B Group.

As to the facts, Grant & Eisenhofer [redacted], which held 75% of the shares subject to appraisal. Moreover, Ashby & Geddes, which represented dissenters

holding approximately 21% of the shares, did not seek a lead counsel role. *Rouse*, 2016 WL 7188104, at *7. Here, A&B seeks a lead role. Moreover, the RKS Group's papers intimate that it will treat other dissenters as passive, despite their statutory right to "participate fully" in the proceedings under the appraisal statute and *Rouse*. *See* 2016 WL 7188104, at *3 (addressing 8 *Del. C.* §262(h)).

As to the *Hirt* Factors, the *Rouse* Court found that several favored Grant & Eisenhofer. *Id.*, at *7. Here, none of the *Hirt* Factors favor the RKS Group over A&B. In addition, the dissenting stockholders in *Rouse* filed petitions representing approximately $122 million of stock at deal price, and the 21% stake held by dissenters represented by Ashby & Geddes amounted to less than $30 million. Here, the A&B Group's clients hold more than $1.5 billion dollars of EDR stock at deal price. They have more than enough scale to litigate the case on their own, and they have a huge incentive to monitor the litigation and drive value for all dissenters regardless of size. Two of them have offered to backstop legal fees for dissenters who join the A&B Group. *See infra* at Argument Section IV, B.

Rouse itself acknowledges that a leadership dispute of this nature requires the exercise of discretion based on case-specific factors. *See Rouse,* 2016 WL 7188104, at *2 ("[W]hen various petitioners do not agree, there may well be cases where the Court determines it is best to allow each petitioner to chart its own course"). For the

reasons set forth above and below, this is not a case where the Court should exercise its discretion to appoint the RKS Group as lead.

III. THE RKS GROUP'S [redacted]

The RKS Group spills considerable ink arguing that the Court should appoint them as sole lead because of the "efficiencies" associated with that arrangement. According to the RKS Group, any other structure "risks deadlock, disorganization, inefficiency, and disagreement." RKSOB at 4; *see also id.* at 6 ("A 'co-leadership' structure is…unnecessary and would needlessly introduce discord, disagreement and inefficiency. It would not only fail to add any identifiable benefit, but is likely to be outright counterproductive."); *id.* as 23 ("There is no need for a leadership structure involving multiple lead petitioners and multiple lead law firms, which will only create governance nightmares, operational inefficiencies and hinder the process by which essential decisions about litigation strategy are made.").

Nowhere in their brief does the RKS Group [redacted] As explained below, appointing the RKS Group as sole lead, and the application of [redacted]. The RKS Group cannot

credibly contend that the "efficiencies" associated with their proposed leadership structure are [redacted]

A. <u>The RKS Group's</u> [redacted]

With the exception of certain [redacted].[27] Schulte-Hillen Decl. ¶ 6. For dissenters who [redacted]. Schulte-Hillen Decl. ¶ 18 & Ex. 2; Wool Aff. ¶ 12; Jaeger Aff. ¶ 13; Mistry ¶ 14; Rod Aff. ¶ 11.

As shown in the tables below, [redacted] If the Court awarded a significant premium to deal price (as petitioners understandably expect given TKO's price performance and other factors), the RKS Group's [redacted]

By way of illustration, Table A shows [redacted]

[27] The RKS Group's insistence on [redacted] *See In re Appraisal of Calamos Asset Management, Inc.,* C.A. No. 2017-0139-JTL, at *49 (Transcript) ("I don't think that under our current statute that type of interest can be viewed as upside. It's really interest on deal consideration.").

any portion of the Merger Consideration, interest rates remain at current levels, and the litigation timeline ends in two years:

TABLE A (Appraisal Pool)[28]			
Premium to $27.50	**Dissenter Upside**	[redacted]	[redacted]
0%	[redacted]	[redacted]	[redacted]
50%	[redacted]	[redacted]	[redacted]
100%	[redacted]		

Table B shows [redacted] that A&B's clients [redacted] using the same assumptions:

TABLE B (A&B Clients)			
Premium to $27.50	**Dissenter Upside**	[redacted]	[redacted]
0%	[redacted]	[redacted]	[redacted]
50%	[redacted]	[redacted]	[redacted]
100%	[redacted]	[redacted]	[redacted]

Table C shows [redacted] shares subject to appraisal would [redacted]:

[28] [redacted] in this first section of the table do not reflect any reductions [redacted]

TABLE C			
Premium to $27.50	**Dissenter Upside**		
0%			
50%			
100%			

Tables A, B and C confirm that the RKS Group's in which the Court concludes that fair value equals the transaction consideration.[29] Moreover, as shown in Table D below as further described in Section IV below, the RKS Group's fees under an alternative leadership structure.

TABLE D **Pro Rata Share of $50MM in Fees and Expenses**	
Appraisal Pool	$ 50MM
A&B Clients	$ 19.1MM

[29] The RKS Group's Schulte-Hillen Decl., Ex. 2. Accordingly, in the hypothetical

B. The RKS Group's [redacted]

"The standards governing the award of attorneys' fees in an appraisal class action … are identical to those in other types of shareholder benefit litigation." *Matter of Appraisal of Shell Oil Co.*, 1992 WL 321250, at *3 (Del. Ch. Oct. 30, 1992). "Section 262(j) makes the equitable fund doctrine applicable to appraisal actions." *In re Appraisal of Dell Inc.*, 2016 WL 6069017, at *7 (Del. Ch. Oct. 17, 2016), *rev'd on other grounds sub nom. Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, 177 A.3d 1 (Del. 2017) (citing *id.*).

In the class action context, the Delaware Supreme Court has endorsed the practice of setting the appropriate fee award based on the stage of the litigation at the time of the result secured. *See Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1259-60 (Del. 2012). This Court has reasoned that "[a]warding increasing percentages as counsel pushes deeper into a case ensures that counsel's incentives remain aligned with the case" and "counteracts a natural human tendency towards risk aversion." *In re Dell Techs. Inc. Class V Stockholders Litig.*, 300 A.3d 679, 694 (Del. Ch. 2023), *as revised* (Aug. 21, 2023), *aff'd,* 326 A.3d 686 (Del. 2024).

Here, the RKS Group's [redacted] Instead, it exists as a [redacted] Accordingly, even [redacted] In other words, the RKS Group's [redacted]

[redacted] or the case is taken through trial. In either event, [redacted] are immense. Table E reflects [redacted] six months after the effective date of the merger for the entire appraisal pool, A&B clients, and a [redacted] The far-right column shows the corresponding [redacted]

TABLE E				
	Dissenter Upside Based on 50% Premium to Deal Price	[redacted]	[redacted]	[redacted]
Appraisal Pool	[redacted]	[redacted]	[redacted]	[redacted]
A&B Dissenters	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

The RKS Group's [redacted]

C. The RKS Group's [redacted]

The RKS Group's [redacted]

[redacted] On April 12, 2024, now-former EDR stockholder Handelsbanken Fonder AB filed an action in the Court of Chancery asserting claims against Silver Lake and others for, among other things, breaches of fiduciary duty in connection with the Merger. *See Handelsbanken Fonder AB v. Endeavor Gp. Hldgs., Inc., et al.*, C.A. No. 2024-0391-NAC (Del. Ch.). In addition, multiple former EDR stockholders have served demands to inspect EDR's books and records for purposes of investigating potential claims for breaches of fiduciary in connection with the Merger. *See* Ex. 19, at F-52; *Horowitz v. Endeavor Gp. Hldgs., Inc.*, C.A. No. 2025-0241-SEM (Del. Ch.).

If stockholder plaintiffs promptly file and press a post-closing class action complaint alleging breaches of fiduciary duty, the A&B Dissenters expect that the Court will order the class action and the appraisal action to be coordinated. *See In re Columbia Pipeline Grp., Inc. Merger Litig.*, C.A. No. 2018-0484- JTL, at 5 (Del. Ch. Aug. 8, 2018) (ORDER) ("[I]n the ordinary course, a breach of fiduciary duty case and an appraisal case arising out of the same merger will be either coordinated

or consolidated for purposes of trial."); *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 35 (Del. Ch. 2013) ("[T]he consolidated breach of fiduciary duty action and appraisal proceeding has been a fixture of Delaware law.").

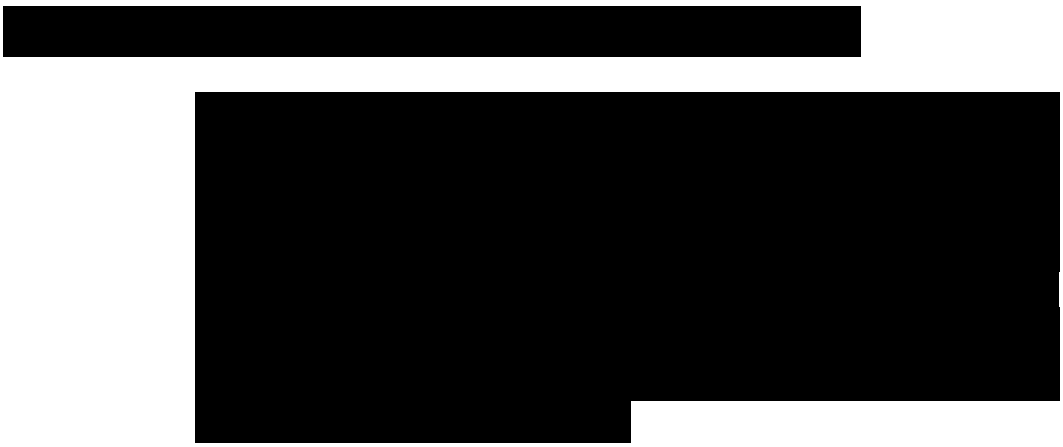
The A&B Dissenters further expect that any coordination order will require the petitioners and class counsel to work together to avoid duplicative discovery requests, subpoenas, depositions and trial presentations. *See In re Starz Appraisal*, C.A. No. 12968-VCG (Del. Ch. May 9, 2017) (ORDER) ("Plaintiffs and Petitioners in the Coordinated Actions shall work together on all matters where it is practicable to do so and will conduct this litigation in a manner designed to avoid duplication.").

Under A&B's hourly fee structure, *the Dissenters* receive the benefit of this anticipated coordination. Any work performed by class counsel will reduce the work performed, and the hourly fees incurred, by A&B. Under the RKS Group's [redacted], *the RKS Group* will [redacted]

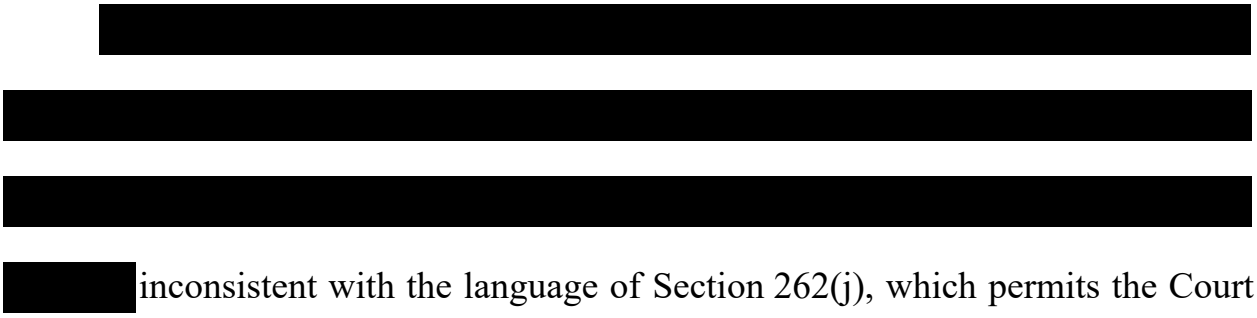
D. 262(J) Favors an Hourly Arrangement

The RKS Group's [redacted] of Section 262(j) and basic principles of equity. Under Section 262(j), "the Court may order all or a portion of" the fees and expenses incurred by petitioner(s) "including, without limitation,

reasonable attorney's fees and expenses of experts, to be charged *pro rata* against the value of the shares entitled to appraisal[.]" Relying on this provision, [redacted]



Schulte-Hillen Decl., Ex. 2.



inconsistent with the language of Section 262(j), which permits the Court to allocate to non-appearing dissenters their "*pro rata*" portion of counsel's fees and expenses. *See* 8 *Del. C.* §262(j).

By definition, a *pro rata* allocation assumes that dissenters will be allocated a fee that is *proportional* to the shares they own and benefits they receive. *See Sunrise P'rs*, 2016 WL 7188104, at *5 ("Section 262(j) incorporates basic common-fund principles with respect to the allocation of counsel fees among the appraisal class at the conclusion of the litigation."); *In re Appraisal of Dell, Inc.*, 2016 WL 6069017,

at *3 (Del. Ch. Oct. 17, 2016) (*rev'd on other grounds*) ("The fees and expenses at the end under 262(j) can be taxed against the entire appraisal class pro rata because that's what's fair. It's a classic application of common-fund principles.").

By contrast, A&B's hourly structure comports with Section 262(j). All A&B clients will simply pay their *pro rata* portion of A&B's fees. No Dissenter, regardless of size, will be forced to pay a higher percentage of its upside.[30]

E. The RKS Group's Prior Work Undermines Its Claims About Alleged Inefficiencies

The RKS Group contends that their appointment as sole lead counsel is necessary because "the appraisal statute expressly contemplates one group of stockholders prosecuting the proceedings for the benefit of all." RKSOB at 22. The RKS Group knows full well that this is not true.

Section 262 contemplates the prosecution of all related appraisal claims in a single action, but it contains nothing indicating a single petitioner or petitioner group and its sole choice of counsel must prosecute the case alone. Instead, the provision the RKS Group cites, Section 262(j), provides that participating petitioners may ask the Court to order all non-appearing dissenters to pay the petitioners their *pro rata*

[30] If a dissenter has entered into a contingency fee agreement with another firm that the Court includes in the leadership structure, that dissenter will proceed in this litigation subject to that fee agreement (and potentially responsible for some portion of fees and expenses pursuant to Section 262(j)).

portion of the fees and expenses incurred in prosecuting a successful appraisal action. 8 *Del. C.* § 262(j).[31] Nowhere does the statute require that the Court appoint a single petitioner or petitioner group and its choice of counsel. In fact, appraisal cases routinely involve petitioner groups, represented by different counsel.

The RKS Group cites the transcript ruling from *In re LSI Corp. S'holders Litig.* as support for their argument. RKSOB at 22. There, two well-known firms, Grant & Eisenhofer and Bernstein Litowitz, sought appointment as co-lead counsel. C.A. No. 9175-VCN at *31 (Del. Ch. Jan. 23, 2014) (Transcript). Levi & Korsinsky sought appointment as additional co-lead counsel over the objection of the other firms. *Id.* The Court ultimately denied Levi & Korsinsky's motion, but it noted that the co-lead structure "is an approach frequently used. Even Grant & Eisenhofer and Bernstein Litowitz [we]re proposing a co-lead structure." *Id.* at *34.

The RKS Group argues that co-lead counsel "will needlessly complicate the effective and efficient prosecution of the proceedings." RKSOB at 22. Yet, RKS (or its attorneys when previously affiliated with Lowenstein Sandler LLP ("Lowenstein")) litigated at least the following appraisal matters in a co-lead role:[32]

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[31] Of course, if a stockholder receives *less* than the merger consideration, the statute does not authorize any pro rata assessment of fees. *Matter of Appraisal of Shell Oil Co.*, 1992 WL 321250, at *5 (Del. Ch. Oct. 30, 1992).

[32] The RKS Group also ignores the fact that some of the biggest and most significant litigation recoveries on behalf of investors in Court of Chancery history resulted from the

- *In re Appraisal of MPM Holdings Inc.*, C.A. No. 2019-0519-JTL, Dkt. 11 (Messrs. Rolnick, Kramer and Hecht, then of Lowenstein, with HEGH signing as their Delaware counsel, stipulated to serve as co-lead counsel alongside Labaton Sucharow LLP, prior to consolidation into *In re MPM Holdings Inc. Appraisal and Stockholder Litigation*, C.A. No. 2019-0519-NAC, and eventual withdrawal as co-lead counsel (*see* supra at 22 n.13 and accompanying text)).

- *In re Appraisal of Bob Evans Farms, Inc.*, C.A. No. 2018-0052-JRS, Dkt. 6 (Messrs. Rolnick and Hecht, then of Lowenstein, with HEGH signing as their Delaware counsel, stipulated to serve as co-lead counsel with Entwistle & Cappucci LLP, with Rosenthal, Monhait & Goddess serving as Delaware Liaison counsel).

- *In re Appraisal of Regal Entertainment Grp.*, C.A. No. 2018-0266-JTL, Dkt. 6 (Messrs. Rolnick and Hecht, then of Lowenstein, with HEGH signing as their Delaware counsel, stipulated to serve as co-lead counsel alongside Prickett, Jones & Elliot, P.A.).

- *In re Appraisal of Panera Bread Company*, C.A. No. 2017-0593-TMR, Dkt. 12 (Messrs. Rolnick, Kramer and Hecht, then of Lowenstein, stipulated to serve as co-lead counsel alongside Grant & Eisenhofer, P.A.).

- *In re Appraisal of Solera Gp.*, C.A. No. 12080-CB, Dkts. 6, 8 (Messrs. Rolnick and Hecht, then of Lowenstein, successfully moved for appointment as co-lead counsel alongside Grant & Eisenhofer, P.A.).

The RKS Group's prior work confirms that it has repeatedly litigated much smaller appraisal cases as part of a consortium of firms. The suggestion that doing so here is impracticable (in the largest appraisal case in the history of the Court of Chancery, involving more than 100 dissenters) is nothing more than a [redacted]

efforts of a consortium of law firms. *See*, *e.g.*, *In re Dell Techs. Inc. Class V Stockholders Litig.*, 300 A.3d 679 (Del. Ch. 2023) (five law firms).

[redacted]

IV. STOCKHOLDERS HAVE BETTER ALTERNATIVES

A. A&B Represents Clients With More-Than-Adequate Scale

The A&B Dissenters seek appraisal of 56,956,527 EDR shares, worth more than $1.5 billion at the deal price. Ex. 2. The value of the A&B Dissenters' shares alone dwarfs the value of dissenting shares in the largest appraisals previously litigated in this Court. *See In re Appraisal of Petsmart, Inc.*, C.A. No. 10782-VCS (Del. Ch.) (seeking appraisal of shares worth approximately $889 million at the transaction price); *In re Appraisal of Dell Inc.*, C.A. No. 9322-VCL (Del. Ch.) (seeking appraisal of shares worth approximately $498 million at the transaction price); *Merion Capital LP v. BMC Software, Inc.*, C.A. No. 8900-VCG (Del. Ch.) (seeking appraisal of shares worth approximately $353 million at the transaction price); Ex. 18.

This scale presents an enormous opportunity for cost sharing and cost savings. A&B has agreed to bill the A&B Dissenters at its standard hourly rates. A&B's fees and expenses will be apportioned among the A&B Dissenters in accordance with their *pro rata* portion of the total number of shares for which the A&B Dissenters seek appraisal. Thus, each A&B Dissenter will pay a fraction of A&B's standard hourly rates. Even if A&B were to incur $50 million of fees and expenses, the

amount paid by each A&B Dissenter would be small, particularly in light of the benefits A&B expects to achieve.

TABLE F			
A&B Fees and Expenses	**Low Pro Rata Allocation (1%)**	**High Pro Rata Allocation (15%)**	**Implied Percentage Rate Based on 50% Premium[33]**
$15 million	$150,000	$2.25 million	1.18%
$20 million	$200,000	$3 million	1.58%
$30 million	$300,000	$4.5 million	2.37%
$40 million	$400,000	$6 million	3.15%
$50 million	$500,000	$7.5 million	3.94%

For example, a hypothetical dissenter owning 7.5 million shares, or 15% of the current A&B Dissenter pool, would hold shares worth $206,250,000 at the deal price. Interest on this Merger consideration alone, assuming no prepayment, current interest rates, and a two-year litigation timeline, would be over $42.6 million. Assuming an aggressive $50 million of litigation spend,[34] each Dissenter's pro rata

[33] The percentage shown in this column assumes a fair value determination of $41.25, no prepayment, and payment two years after the effective date of the Merger.

[34] By way of comparison, fee briefing in *In re Dell Techs. Inc. Class V Stockholders Litigation* indicated that plaintiffs' counsel incurred a lodestar of $39.4MM in fees and $4.1MM in expenses. *See* Consol. C.A. No. 2018-0816-JTL (Del. Ch.), Aff. of Ned Weinberger in Support of Settlement and Award of Attorneys' Fees, Expenses, and Incentive Award, Dkt. No. 510 ¶8. In *Tornetta v. Musk* (currently on appeal to the Delaware Supreme Court), the fee application indicates plaintiffs' counsel incurred a lodestar for work through the Court's issuance of its post-trial opinion of $13.6MM in fees and $1.1MM in expenses. *See* C.A. No. 2018-0408-KSJM, Pls.' Op. Br. ISO Appl. for Award of Fees and Expenses, Dkt. 296, at 38.

share of A&B's fees and expenses would represent less than 15.5% of the interest on the $27.50 transaction consideration alone. If the Court awarded a 50% premium to deal price, a conservative estimate given the unique facts of this case, A&B's fees and expenses would represent less than 4% of the Dissenter's upside. These percentages could improve significantly as A&B continues to add clients who prefer the economics of the pay-as-you-go model.[35]

B. A&B's Backstop Arrangement Eliminates Downside

Typically, the primary benefit of a contingent fee arrangement is that clients pay nothing unless they prevail. That benefit does not exist here for two reasons. First, given EDR's intention not to prepay any portion of the Merger consideration, the only way Dissenters will avoid paying the RKS Group any fee is if the Court renders a fair value determination well below deal price. Given the petitioner-favorable facts of this case, that scenario seems extremely unlikely. Second, even if this extremely unlikely scenario unfolds, two A&B Dissenters have offered to reimburse Dissenters who engage A&B after May 23, 2025 for their pro rata portion of A&B's fees in excess of the Dissenters' upside (the "Backstop

[35] The RKS Group itself has touted the benefits of dissenters paying their pro rata portion of litigation costs given the large size of the dissenter pool. *See* Mistry Decl., Ex. A [redacted]

Agreement"). *See* Ex. 20. Under the Backstop Agreement, new A&B Clients will enjoy the same "downside" protection available under the RKS Group's contingency arrangement.

C. A&B Has the Experience And Skill Necessary to Effectively Litigate This Case

In addition to offering superior economic terms, A&B offers top-notch representation. A&B lawyers have deep and broad experience in the valuation issues that are central to appraisal litigation in the Delaware Court of Chancery. Because A&B has experience representing both petitioners and respondents, it brings unique perspectives and experience to any appraisal representation. In part due to A&B's success in appraisal litigation, Benchmark Litigation named A&B its "Delaware Firm of the Year" in 2016, 2019, 2023 and 2025.

The 2024 edition of the Chambers USA guide states that A&B "[a]ttorneys excel at… valuation disputes." Chambers also ranks A&B Managing Partner, and lead lawyer for the A&B Dissenters, Tom Bayliss, as one of only eleven Band 1 Delaware Chancery litigators. A representative sampling of A&B's appraisal-related engagements is attached as Exhibit 21. In 2023, Cornerstone Research identified A&B as among both the "Most Frequently Observed Petitioner

Counsel" *and* the "Most Frequently Observed Respondent Counsel" during the 2006-2022 period.[36]

D. A&B Would be Glad to Work with Capable Contingency Firms With a Client Mandate

A&B and its dissenter clients respect their co-dissenters' right to be represented by the counsel of their choosing. If a fully informed dissenter *freely* elects to engage counsel on a contingent basis, that is its choice to make. Under those circumstances, A&B is happy to work with capable contingency firms, provided that the shared costs and expenses of the action are apportioned *pro rata* among all dissenters, counsel contribute to the litigation, and counsel commit that they will not seek to have any portion of their fees allocated to the A&B Dissenters.

Given the RKS Group's [redacted] the A&B Group respectfully requests as additional relief that the Court declare that RKS Group [redacted]

[36] Cornerstone Research, *Appraisal Litigation in Delaware: Trends in Petitions and Opinions, 2006-2002*, available at https://www.cornerstone.com/wp-content/uploads/2023/04/Appraisal-Litigation-in-Delaware-2006-2022.pdf

CONCLUSION

For the foregoing reasons, the A&B Dissenters request that the Court deny the RKS Group's Motion and enter an order establishing a leadership structure in which A&B serves as lead counsel and RCT serves as additional counsel.

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