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Case No. 2021-821-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CODY LAIDLAW, Plaintiff, v. GIGACQUISITIONS2, LLC, RALUCA DINU, AVI S. KATZ, NEIL MIOTTO, JOHN MIKULSKY, and GIL FROSTIG, Defendants.	C.A. No. 2021-

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Cody Laidlaw ("Plaintiff"), on behalf of himself and similarly situated current and former stockholders of GigCapital2, Inc. ("Gig2" or the "Company"), brings this Verified Class Action Complaint asserting: (i) breach of fiduciary duty claims stemming from Gig2's merger (the "UpHealth Merger") with UpHealth Holdings, Inc. and UpHealth Meger Sub, Inc. (collectively "UpHealth") and its merger (the "Cloudbreak Merger," and, together with the UpHealth Merger, the "Mergers") with Cloudbreak Health, LLC and Cloudbreak Merger Sub, LLC (collectively, "Cloudbreak") against (a) Avi S. Katz, Raluca Dinu, Neil Miotto, John Mikulsky and Gil Frostig, in their capacities as members of the Gig2's board of directors (the "Board") and/or Gig2 officers, and (b) GigAcquisitions2, LLC ("Sponsor") and Katz, in their capacity as Gig2's controller; and (ii) unjust enrichment of Sponsor and Katz.

The allegations are based on Plaintiff's knowledge as to himself, and on information and belief, including counsel's investigation and review of publicly available information.

NATURE OF THE ACTION

1. Gig2, now renamed UpHealth, Inc. ("New Uphealth"), is a Delaware corporation formed as a special purpose acquisition company ("SPAC") by Avi Katz. Gig2 completed its initial public offering ("IPO") of units on June 10, 2019, selling 15 million units to public investors, for proceeds of $150 million. Those units, priced at $10, consisted of one share of common stock, one warrant to purchase one share of common stock at a price of $11.50 per share, and one right. Each right entitled the holder thereof to receive, at no cost, one-twentieth (1/20) of one share of common stock upon the consummation of the Company's initial business combination.

2. A SPAC is a financial innovation that traces its origin back to the 1990s, but whose current structure was largely standardized about a decade ago. The use of SPACs has skyrocketed in the past year and a half, as a means by which a private company can go public through a reverse merger, rather than an IPO.

3. Gig2's history is part of a disturbing trend of SPAC transactions in which financial conflicts of interest of sponsors and insiders override good corporate governance and the interests of SPAC stockholders. Like many SPAC transactions,

which have triggered scrutiny from the SEC relating to financial projections and the reporting of warrants as equity rather than as liabilities, the Gig2 transaction failed to observe the most basic principle of Delaware corporate governance – namely, that a corporation's governance structure should be designed to protect and promote the interests of public stockholders, not the financial interests of its insiders and controllers.

4. Like all SPAC transactions, Gig2 was formed and taken public as a shell company by a "sponsor," GigAcquisitions2, LLC (the "Sponsor"), through which Katz (1) selected the SPAC's directors, (2) dominated the SPAC's management, (3) made an investment in SPAC shares and/or warrants to cover the SPAC's underwriting fees and working capital, and (4) for only a nominal investment received a 20.77% equity stake in Gig2. Under its charter, Gig2 had a 18-month window within which to consummate a merger, though the Company twice extended this deadline to provide for a 24-month window. Its only asset was the cash it raised in its IPO and proceeds of the Private Placement Units purchased by the Sponsor and the underwriters, which were used to cover the underwriting fee for the IPO and other expenses. If Gig2 failed to complete a deal during the 24-month window, Gig2's charter required that it liquidate and return its public stockholders' funds, with interest. A liquidation would have rendered the Sponsor's investment and its 20.77% stake worthless. Hence, Katz was strongly incentivized

to get *any* deal done, even a bad deal for Gig2's public stockholders, rather than liquidate.

5. Although a sponsor can neutralize this inherent conflict of interest by establishing a governance structure that protects the interests of public stockholders – and some sponsors do – many sponsors instead adopt a governance structure for their SPACs that protects their own financial interests. The Gig2 transaction followed the latter approach.

6. Katz owned and controlled the Sponsor and served as the CEO and Executive Chairman of Gig2. The Sponsor, in turn, was the controller of Gig2. This chain of control was cemented through (a) the appointment of Gig2 directors that had multiple, long-standing relationships with Katz and affiliates of his financial enterprise, GigCapital Global ("GigCapital"); (b) compensation of the purportedly independent directors by granting them a direct or indirect economic interest in "Founder Shares" and "Private Placement Units" (defined, *infra*), thereby aligning their interests with those of Katz and the Sponsor, (c) along with other initial stockholders, holding 25.21% of Gig2 outstanding shares as of the record date, and (d) stating at the time of its IPO that it would not hold an annual stockholders' meeting to elect directors, which it recognized "may not be in compliance with Section 211(b) of the DGCL."

7. Consistent with the general practice among SPACs, Katz caused Gig2 to issue 4,018,987 Founder Shares to the Sponsor. In addition, he caused Gig2 to issue 173,108 Founder Shares to Northland Gig 2 Investment LLC ("Northland"), and 115,405 Founder Shares to EarlyBirdCapital, Inc. ("EarlyBird"), for the aggregate nominal sum (including the purchase price of the Founder Shares purchased by the Sponsor) of $25,000 (approximately half of one cent per share). EarlyBird was an underwriter of Gig2's IPO, and Northland was a subsidiary of the other underwriter, Northland Securities, Inc.. The Founder Shares totaled 20% of Gig2's post-IPO equity. In addition, simultaneously with the consummation of Gig2's IPO, the Sponsor, Northland and EarlyBird purchased 481,250, 56,350 and 29,900 private placement units, respectively, for a total of 567,500 private placement units. Like the units issued to the public, each private placement unit consisted of one share of common stock, one warrant, and one right to receive 1/20 of a share upon consummation of the merger), for $10 per unit. The proceeds of this private placement would cover the IPO underwriting fee and Gig2's working capital.

8. Also consistent with general SPAC practice, the rights of holders of Founder Shares differed from the rights of public stockholders in two important respects. First, if Gig2 failed to merge and instead liquidated, the public stockholders would receive, *pro rata*, all proceeds of the IPO plus accrued interest. The IPO proceeds were put in trust for the benefit of the stockholders to ensure they would

be available for this purpose. This would amount to approximately $10.10 per share. Second, each public stockholder had a right to redeem its shares on those same terms rather than participate in a proposed merger. The redemption price was $10.10 per share. The Sponsor and other holders of Founder Shares, by contrast, waived their right to redeem their shares or to participate in a liquidation. Consequently, if Gig2 did not merge, the Founder Shares and Private Placement Units would be worthless in a liquidation. Katz, the Sponsor and others that held economic interests in the Founder Shares and Private Placement Units would get nothing, and the Sponsor would lose its initial investment.

9. Katz served as chairman of the Gig2 Board and, through the Sponsor, selected Gig2's four other Board members—Dinu, Miotto, Mikulsky and Frostig. Although Gig2 contends that three of these directors, Miotto, Mikulsky and Frostig, are independent, their ties to Katz and/or their financial interests in achieving a merger rather than liquidating render this contention untenable. Two of the purportedly independent directors, Miotto and Mikulsky, had pre-existing and continuing loyalties to Katz based on numerous lucrative financial and professional ties to Katz. Among these financial ties, both of these purportedly independent directors have served and/or currently serve as a director of one or more Katz-sponsored SPACs. Miotto, along with Katz and Dinu, will become a director of UpHealth following completion of the Mergers.

10. Katz further secured the loyalty of the purportedly independent directors by having them hold “direct or indirect economic interests” in the Founder Shares and certain Private Placement Units (defined, *infra*) held by the Sponsor. Miotto also holds an interest in GigFounders, LLC, which has an interest in the Sponsor. As a result of these holdings, the purportedly independent directors’ financial interests were tightly linked to those of Katz and the Sponsor – and poorly aligned with the interests of Gig2’s public stockholders.

11. Katz, Dinu, the Sponsor, and the three purportedly independent directors were thus strongly incentivized to get *any* deal done, because any deal (even a knowingly bad one) was virtually certain to make them a lot of money. By contrast, a failure to merge would mean Gig2 would liquidate and return the public stockholders’ investment – in which case the Sponsor, Katz and the other directors would receive nothing, and the Sponsor would lose its $4.8 million investment.

12. Katz and the Board were not about to allow Gig2 to liquidate. So they orchestrated mergers with Uphealth and Cloudbreak, which closed on June 9, 2021 (previously defined as the “Mergers”). As the market would quickly reveal, these transactions were losing propositions for Gig2 public stockholders. Katz and inside director Raluca Dinu (who are married to one another) dominated the negotiations with UpHealth and Cloudbreak and with the investors in a PIPE transaction and certain convertible debt instruments (the “Notes”) that would provide additional

financing to the combined company. The Board provided no meaningful oversight, serving instead as a rubberstamp. There were no fairness opinions and no special committee. The deeply-conflicted members of the Board breached their duty of loyalty by approving the Mergers and their financing, and recommending the transactions to stockholders.

13. The Board failed to consider the fact that the transactions it was contemplating were in all likelihood a far worse alternative for public stockholders than a liquidation in which the stockholders would receive $10.10 per share. The Board did not consider how deeply diluted Gig2's shares were, nor did it consider the extent to which the transaction costs of the Mergers would further dissipate what little cash the SPAC held. At the time of the proxy, Gig2 had less than $7 in net cash to contribute to the combined company. And with $43 million in transaction costs, the Gig2 shareholders' cash would be dissipated further still. Moreover, once the Notes (discussed below) were issued, that amount of net cash per share would be diluted further by virtue of their conversion feature.

14. The merger agreements between the parties valued Gig2 shares at $10, but with less than $7.00 in net cash underlying those shares (and the $43 million in transaction costs to be paid by Gig2), that valuation was severely inflated.

15. Furthermore, with so little cash underlying each share of Gig2 stock, a loyal and diligent board would consider what its stockholders were likely to receive

in return from UpHealth and Cloudbreak. By merging with Gig2, UpHealth and Cloudbreak were in effect exchanging their shares for Gig2's cash. Consequently, there was an obvious possibility that UpHealth and Cloudbreak would be willing to exchange no more in value than the amount of net cash Gig2 would contribute to the combined company. That is, in order to get a fair deal in a share exchange with Gig2, UpHealth and Cloudbreak could reasonably have determined that they would have to overvalue their shares just as Gig2 overvalued its shares at $10.

16. When presented with the deal, the Board simply rubberstamped what Katz requested. Indeed, it appears that none of the independent directors played any meaningful role in the negotiations with UpHealth until the Board met on November 20, 2020, at which time it approved the merger agreements, a PIPE agreement and a convertible note agreement (both of which provided additional funding upon which the Mergers were conditioned), all without the benefit of a fairness opinion.

17. The Board approved the merger agreements on November 20, 2020, and the public stockholders voted to approve the Mergers at a special meeting on June 4, 2021. After securing this shareholder vote, on June 8, 2021, Gig2 disclosed that, in a further breach of the duty of loyalty, it had agreed to issue the PIPE investors 300,000 free warrants to prevent them pulling out of the PIPE deal. In the same announcement, Gig2 disclosed that it had agreed to permit the Notes investors to reduce the size of their investment from $255 million to $160 million and to

reduce the conversion price from $11.50 to $10.65, again to prevent the Notes investors from pulling out of the Notes deal. These announcements plainly signaled that sophisticated investors were souring on the Mergers, causing Gig2 to award consideration to the PIPE investors and noteholders that it did not award to its public stockholders.

18. In addition to breaching its duty of loyalty, the Board breached its duty of candor to Gig2's stockholders by withholding critical information concerning the high degree of dilution of Gig2 shares. The actual cash Gig2 would contribute to the Mergers was less than $7.00 per share (and dissipated further by the $43 million in transaction costs to be paid by Gig2) – not the $10.00 that the merger agreements and the Proxy Statement attributed to Gig2 shares. This information was critical to Gig2 stockholders, who faced a decision both how to vote their shares and whether to redeem their shares for $10 or remain invested in Gig2 through the Mergers.

19. Further, it is inconceivable that the Gig2 Board did not know before the redemption deadline and the stockholder vote that it would need to modify the terms of the PIPE and the Notes in order to prevent those investors from pulling out of the deal and thus kyboshing the Mergers. The failure to disclose this fact, which would have alerted public stockholders to the PIPE and Notes investors' negative view of the deal, was a material omission and therefore a breach of the duty of candor.

20. By approving the Mergers and retaining their shares, Gig2 stockholders saw their shares decline in price to $9.38 on the day the Mergers closed, and to $3.99 on September 13, 2021, three months since the Mergers – a period during which the NYSE composite index rose slightly. Total losses to public shareholders since the date of the Mergers are $34 million.

21. Although an abysmal deal for Gig2 public stockholders, the Mergers were a financial windfall for Katz, the Sponsor, inside director Dinu, and the purportedly independent directors. Even though Gig2's stock price had dropped to $9.38 per share on June 9, 2021 (the day the Mergers were completed) and continued to spiral downward thereafter, Katz and the Sponsor, who had made a $4.8 million investment, held shares and warrants worth approximately $43 million on the day of the Mergers, which are still worth approximately $17.1 million as of September 22, 2021.

22. Due to the conflicts of interest on the part of the Board and the Sponsor, which drove the Board's decision to approve the Mergers, the Mergers require judicial review for entire fairness. In light of the conflicts of interest, the fact that Gig2 failed to disclose the fact that Gig2 had far less cash per share to invest in the Mergers than it purported to have, the fact that it offered special consideration to the PIPE and Note investors to accomplish the transactions, and the disastrous results for the public stockholders, the Mergers cannot meet the exacting entire fairness test.

23. This Court should take this opportunity to affirm that the boards and controllers of SPACs incorporated in Delaware owe the same fiduciary duties to their stockholders as do the boards and controllers of any Delaware corporation, and thus put an end to the money-grabbing SPAC bonanza that has been burgeoning in recent years at the expense of the investing public.

PARTIES

24. Plaintiff Cody Laidlaw purchased Gig2 shares on August 14, 2020, and has held those shares since that date.

25. GigAcquisitions2, LLC (previously defined as the "Sponsor), is a Delaware limited liability company that served as Gig2's sponsor. The Sponsor's managing member is Avi Katz. For an aggregate nominal price of $25,000 (approximately half of one cent) per share, the Sponsor purchased 4,018,987 Gig2 Founder Shares, and underwriters Northland and EarlyBird purchased 173,108 and 115,405 Founder Shares, respectively. As set forth below, Katz's membership interest in the Sponsor, and indirectly, in the Founder Shares, gave him the opportunity to make tens of millions of dollars as long as Gig2 merged with another business within 18 months (later extended to 24 months), as opposed to liquidating as its charter required if it did not merge.

26. Avi Katz is CEO, President, Secretary, Executive Chairman and a director of Gig2, managing member of the Sponsor, and the CEO, Executive

Chairman, and a founding managing partner of GigCapital. He also is founder and/or CEO of many other entities affiliated with GigCapital.[1] Katz has been the managing member of the sponsor of at least seven GigCapital-affiliated SPACs. Katz is a director and co-chairman of the New UpHealth board. Katz is married to Raluca Dinu.

27. Raluca Dinu joined Gig2 as a director in March of 2019. Dinu is a founding managing partner of GigCapital. She was a director of GigCapital3 ("Gig3") (another Katz-sponsored SPAC), continuing in that position with Lightning eMotors, Inc. ("New Lightning"), the post-SPAC company. Dinu also was an executive at GigOptix, Inc. (later renamed "GigPeak"), a designer, developer and global supplier of fabless semiconductors founded by Katz, from 2008 until it was sold in 2017. According to Gig3's website, in this capacity "[s]he was the main partner to [Katz] in the rollup of the company through 10 mergers and acquisitions, and in closing the sale of GigPeak to IDT." She is CEO and a director of Katz-sponsored SPACs GigCapital4 ("Gig4"), GigCapital5 ("Gig5") and GigCapital International1, all of which are currently seeking merger targets, awaiting an announced merger, or awaiting an IPO. Dinu is a director of New UpHealth. Dinu is married to Katz.

[1] https://www.gigcapitalglobal.com/

28. Neil Miotto joined Gig2 as a director in March of 2019. Miotto is a GigCapital partner. Miotto also was a director of GigPeak from its founding in 2008 until its sale in 2017. Miotto has been a director of GigCapial1 ("Gig1") (another Katz-sponsored SPAC) since October 2017, continuing in that position with Kaleyra, Inc., the post-SPAC company. Miotto was also a director of Gig3, continuing in that position with New Lightning, a director of Gig4, and a director of Gig5. Miotto also holds a 10% interest in GigFounders, LLC ("GigFounders"), the manager of the Sponsor. On the GigCapital web site, Miotto says "I have been a part of GigCapital group from the beginning, and I still find it thrilling to witness and contribute to the evolution of the tech-fueled IPO culture." Miotto is a director of New UpHealth.

29. John Mikulsky joined Gig2 as a director in March of 2019. Mikulsky is a GigCapital strategic advisor. Mikulsky also was CEO and President of Endwave until it was purchased by GigPeak in 2011. He then served as a director of GigPeak until its sale in 2017. Mikulsky has been a director of Gig1 since December 2017, continuing in that position with Kaleyra, Inc., the post-SPAC merger company. He was a director of Gig3 until the closing of its merger with Lightning in May of 2020. Mikulsky is a director of New UpHealth.

30. Gil Frostig joined Gig2 as a director in March of 2019. Frostig attended Technion - Israel Institute of Technology from 1979-1983, overlapping for one year

with Katz, who studied there from 1983-1988. He currently serves as a member of the board of directors of Gigcapital6, a Katz SPAC that launched on March 9, 2021.

31. Defendants Katz, Dinu, Miotto, Mikulsky, and Frostig are referred to herein as the "Director Defendants."

32. Defendants Avi Katz and the Sponsor are referred to herein as the "Controller Defendants."

RELEVANT NON-PARTIES

33. Gig2 was a Delaware corporation formed as a special purpose acquisition company ("SPAC") by Avi Katz. A SPAC, often referred to as a "blank check" corporation, is publicly traded but has no operations, and must merge with an operating company or liquidate within a specified period after its initial public offering ("IPO").

34. UpHealth and Cloudbreak were private operating companies. The "de-SPAC" mergers of Gig2, UpHealth and Cloudbreak closed on June 9, 2021. The surviving entity is New UpHealth, a publicly-traded operating company, listed on NYSE.

SUBSTANTIVE ALLEGATIONS

I. Katz Forms Gig2 and Raises $172.5 Million in its IPO

35. Avi Katz is a serial founder of SPACs, corporations that by the terms of their charter have a limited period of time within which to either merge with a

private company – in a "de-SPAC" transaction – and thereby bring the private company public, or to liquidate.

36. Katz is currently on his seventh SPAC. Three of his SPACs, including Gig2, have closed de-SPAC mergers. None has been a success for stockholders. Gig2 closed its merger in early June 2021 and was trading at $3.75 per share as of the close of trading on September 22, 2021, roughly 62.5% below its $10.00 redemption price. Gig1 (now Kaleyra, Inc.) closed its merger in late November 2019 and was trading at $10.90 per share as of September 22, 2021, 9% above its $10.00 redemption price, while the NYSE index has risen approximately 21.6% from $13,440 to $16,352 since the stockholder vote on Gig1 on November 22, 2019. Gig3 (now Lightning eMotors Inc) is trading at $9.12, 8.8% below its $10.00 redemption price. Katz's four other SPACs have not yet merged with a target. Katz's founder shares in Gig1, Gig2 and Gig3 are now worth approximately $33 million, $17 million, and $47.7 million, respectively.

37. Katz held a controlling interest in the Sponsor, and on March 6, 2019, caused the Sponsor to incorporate Gig2 under the laws of Delaware. Katz served as Gig2's CEO, Executive Chairman and director. Consistent with common practice among SPAC sponsors, before Gig2 went public, Katz caused Gig2 to issue to the Sponsor, Northland and EarlyBird 4,307,500 Founder Shares, amounting to 20% of Gig2's post-IPO equity for a nominal cost of $25,000. The Sponsor

received 4,018,987 Founder Shares, Northland received 173,108 Founder Shares, and EarlyBird received 115,405 Founder Shares.

38. Gig2 completed its IPO on June 10, 2019, selling 15,000,000 units to public investors for $10 per unit and raising proceeds totaling $150,000,000. The underwriters exercised their over-allotment of 2,250,000 units, generating additional gross proceeds of $22,500,000. Each unit consisted of one share of common stock, a warrant for the purchase of common stock at an exercise price of $11.50 per share following an eventual merger, and a right to receive, at no cost, 1/20 of a share upon consummation of a merger. Also, consistent with common practice, the shares of common stock were redeemable for $10 – the IPO price of the units – plus interest. Investors in units could redeem their shares and keep the warrants and rights. Hence, for a purchaser of units, the warrants and rights were free. As with all SPACs, the funds raised in Gig2's IPO (an aggregate of $172.5 million) were retained in a trust account for the benefit of the public stockholders. The funds in the trust could be used only to redeem shares, to contribute to a merger, or to return the public stockholders' investment if Gig2 were to liquidate rather than merge.

39. Concurrently with the IPO, the Sponsor purchased 482,250 Gig2 units for $10 each in a private placement. Northland and EarlyBird also purchased 56,350 and 29,900 Private Placement Units, respectively, for $10 each. The proceeds from the Private Placement Units would be used for the initial underwriting fee for Gig2's

IPO and for operating expenses between the time of the IPO and Gig2's eventual Mergers.

40. Additionally, in a separate private placement, Northland Securities, Northland's parent company, purchased 120,000 "Private Underwriter Shares" for $10 each.

II. <u>**Katz Packed the Board With Loyalists and Ensured That Their Financial Interests Were Aligned With His**</u>

41. Rather than establishing a governance structure that addressed the conflicting interests of the public stockholders, on the one hand, and the Sponsor and Katz, on the other, Katz did the opposite. He built a board with loyalty to himself and hence to the Sponsor. Katz appointed himself chairman of the Gig2 Board, and he appointed his wife and founding managing director of GigCapital, Dr. Raluca Dinu, as the other inside Board member. The purportedly independent Board directors were Neil Miotto, John Mikulsky, and Gil Frostig.

42. A majority of the purportedly independent directors have served in multiple capacities in GigCapital-related businesses for years, and they continue to do so today. They are in no way independent. Miotto is a partner at GigCapital, Katz's umbrella enterprise; he was a director of GigPeak, a semiconductor company founded by Katz, from 2008 through 2017; he was a director of Gig1 and Gig3, two SPACs that Katz founded (and he continues in those positions at their post-merger

companies); and he is currently a director of Gig4 and Gig5, which are currently searching for merger targets. Miotto also holds a 10% interest in GigFounders (the manager of the Sponsor), further allying him with Katz. Further, Mikulsky is a GigCapital strategic advisor; he was CEO of Endwave, a company purchased by GigPeak in 2011; he served as a director of GigPeak until its sale in 2017; and he was a director of Gig1 and continues in that position today at the post-merger company; and he is a director of Gig3 and continues in that position at its post-merger company.

43. Additionally, all three purportedly independent directors had direct financial interests aligned with the financial interests of Katz and the Sponsor. All Gig2 directors held direct or indirect economic interests in the 481,250 Private Placement Units and in the 4,018,987 Founder Shares owned by the Sponsor, though the magnitude of these economic interests was not disclosed in the Proxy Statement.

44. It is clear that the purportedly independent directors lacked independence. Reciting the New York Stock Exchange definition of director independence, the Gig2 Proxy Statement claims that Miotto, Mikulsky, and Frostig had no relationships that would interfere with their exercise of independent judgment. This was clearly not true.

45. The Gig2 Board, like any SPAC board, has only one decision to make: whether to *merge* or to *liquidate*. In light of the extent to which the Board members

have worked for, and continue to work for, Katz through other GigCapital entities, *and* in light of their direct financial interest in having Gig2 merge rather than liquidate, the claim that these directors could exercise independent judgment defies belief.

III. The Mergers, PIPE, and Convertible Note

46. On November 2, 2020, Gig2 filed with the SEC and mailed to its stockholders a definitive proxy statement recommending that stockholders vote to approve an amendment to Gig2's certificate of incorporation that would extend the deadline to consummate a merger from December 10, 2020 to March 10, 2021. The vote on this amendment would be cast at Gig2's annual meeting on December 8, 2020. Under Gig2's charter, stockholders would have a right to redeem their shares in the event of an amendment of the deadline for consummating a business combination. Stockholders redeemed 579,881 shares, receiving $5,857,340 from the trust account. The redeeming stockholders kept their warrants and rights.

47. On November 23, 2020, UpHealth, Cloudbreak and Gig2 announced they had entered into merger agreements under which Gig2, UpHealth and CloudBreak stockholders would receive shares in the combined company, New UpHealth.

48. On January 20, 2021, Gig2 entered into PIPE Subscription Agreements with certain investors (collectively, the "PIPE Investors"), for the purchase of three

million Gig2 shares for $30 million in a private investment in public equity (the "PIPE").

49. Also on January 20, 2021, Gig2 entered into subscription agreements, each dated as of January 20, 2021 (the "Convertible Note Subscription Agreements*"),* with certain investors (collectively, the "Convertible Note Investors"), pursuant to which, among other things, the Company agreed to issue and sell to the Convertible Note Investors, in private placements, convertible notes due in 2026 (previously defined as the "Notes") for an aggregate purchase price of $255,000,000. The Notes were convertible into 22,173,913 shares of Gig2 Common Stock at a conversion price of $11.50 (as discussed below, the amount and conversion price of the Notes were amended after the stockholder vote). Gig2 may force conversion of the Notes after the first anniversary of the issuance of the Notes, subject to a holder's prior right to convert, if the trading price of UpHealth's Common Stock exceeds $14.95 (130% of the original conversion price) for 20 out of the preceding 30 trading days and the 30-day average daily trading volume ending on, and including, the last trading day of the applicable exercise period is greater than or equal to $2,000,000. Upon such conversion, Gig2 will be obligated to pay all regularly scheduled semi-annual interest payments, if any, due on the converted Notes on each interest payment date occurring after the conversion date through to, but excluding, the maturity date. In the event that a holder of the Notes elects to

convert the Notes prior to the second anniversary of their issuance, Gig2 will be obligated to pay an amount equal to twelve months of interest. If the conversion takes place on or after the second anniversary of the issuance of the Notes, Gig2 would be obligated to pay any remaining amounts that would be owed, until just before the third anniversary of the issuance of the Notes. These continuing obligations to pay interest on Notes after conversion further dilutes the interests of Gig3's legacy public stockholders by imposing a future liability on New Lightning.

50. The PIPE and Convertible Note transactions would close concurrently with the Mergers and were contingent on the Mergers closing.

51. On February 24, 2021, Gig2 filed with the SEC and mailed to its stockholders a definitive proxy statement requesting that stockholders vote to approve a second amendment to Gig2's certificate of incorporation, extending the deadline to consummate a merger from March 10, 2021 to June 10, 2021, to be voted on at a special meeting on March 8, 2020. Again, the stockholders had a right to redeem their shares, and 1,852,804 shares were redeemed for $18,715,459. The redeeming stockholders kept their warrants and rights. After the redemptions associated with the two extension amendments, the cash in the trust account had been reduced to approximately $149.6 million, which threated to stymie the Mergers as it was below the $150,000,000 cash on hand required for their consummation. The merger agreements both provide that, as a condition precedent to the closing of

the Mergers, Gigcapital2 was required to have an aggregate amount of cash and cash equivalents available from any sources of *not less than $150,000,000*. (emphasis added).

52. On May 13, 2021, Gig2 filed with the SEC a definitive Proxy Statement concerning the Mergers, the PIPE and the Notes (the "Proxy Statement"). Gig2 mailed the Proxy Statement to stockholders a day later. The Proxy Statement informed stockholders of a special meeting to be held on June 4, 2021, at which stockholders would vote whether to approve or disapprove the Mergers. It also informed the stockholders that the deadline for them to redeem their shares was June 2, 2021, two business days before the special meeting.

53. On June 4, 2021, the stockholders approved the Mergers by a majority vote and redeemed 9,373,567 shares. In a Form 8-K filed after the merger, New Uphealth reported "after taking into account the redemptions, [the trust account] had a balance immediately prior to the Closing of approximately $54,935,238."

54. On June 8, 2021 – after Gig2's stockholder's right to redeem their shares had expired, and after the stockholder vote approving the Mergers – Gig2 filed a Form 8-K with the SEC in which it announced that, after negotiating with the Notes investors, it now proposed, subject to final agreement with the Notes Investors, to reduce the conversion price of its convertible Notes to $10.65 from

$11.50 and reduce the total aggregate amount of Notes to approximately $160 million (down from $255 million).

55. The 8-K also disclosed that, after negotiating with the PIPE investors, the Company now proposed, subject to final agreement with the PIPE investors, that the PIPE investors receive 300,000 free warrants.

56. The reduction in the conversion price of the Notes and the issuance of warrants to the PIPE investors further disadvantaged Gig2's public stockholders, but gave Gig2 Board and management certainty that the $150,000,000 funding condition would be satisfied and that the Mergers would close.[2]

57. Demonstrating the leverage that the PIPE and Notes investors held over the merger process, the 8-K explained that Gig2 was required to have available cash and cash equivalents of not less than $150 million as a condition precedent to closing the Mergers, and the changes were necessary to enable the Company to hit that threshold. Thus, in practical terms, the PIPE and Notes transactions were conditions precedent for the closing of the Merger. The clear implication is that the PIPE and Notes investors did not believe Gig2 stock to be worth $10.00 per share and were

[2] Further, the Note Subscription Agreements are conditioned upon, among other things, GigCapital2 having cash and cash equivalents in its trust account and from the transactions contemplated in the Note Subscription Agreements and the PIPE Subscription Agreements of an aggregate amount not less than $150,000,000 pursuant to the terms and conditions of the Business Combination Agreements, and at least $50,000,000 in the Trust Account after giving effect to any redemptions.

prepared to abandon the deal in numbers large enough to imperil its consummation, and Gig2's Board and its Sponsor wanted to ward off that possibility at the expense of the shareholders –without giving them another opportunity to redeem their shares.

58. On June 9, 2021, the Mergers closed, with stockholders not being permitted to redeem further shares, or make a fully-informed vote, in light of the *ex post facto* amendments to the Notes and PIPE deals.

59. On June 15, 2021, New Uphealth filed a Form 8-K announcing that, as proposed on June 8, 2021, (1) the PIPE investors had received 300,000 free warrants; (2) the Notes investors had terminated $95 million of their investment, reducing it from $255 million to $160 million; and (3) Gig2 and the Notes investors had reduced the redemption price of the Notes from $11.50 to $10.65. These changes to the terms of the PIPE and Notes investments further disadvantaged Gig2's public stockholders.

IV. <u>The Board Followed a Flawed Process in Approving the Mergers</u>

60. The process by which Gig2 negotiated the Mergers, the PIPE and the Notes was severely flawed. Katz and inside director Raluca Dinu dominated the negotiations. The Board provided no meaningful oversight, serving as a rubberstamp. There was no special committee – though such committee would have been illusory in light of each purportedly independent director's interest in having the Mergers close.

61. There was no fairness opinion because, according to the Proxy Statement:

> [T]he Company's officers and directors have substantial experience in evaluating the operating and financial merits of companies from a wide range of industries and have substantial experience with mergers and acquisitions. Furthermore, in analyzing the Business Combinations, the Company's board of directors conducted significant due diligence on each of UpHealth and Cloudbreak. Based on the foregoing, the Company's board of directors concluded that its members' collective experience and backgrounds, together with the experience and sector expertise of the Company's advisors, enabled it to make the necessary analyses and determinations regarding the Business Combinations…."

Indeed, it does not appear that Gig2 retained any financial advisor during the merger process.

62. Given the directors' financial interests in pushing the Mergers through, as well as two of the three directors' other substantial financial ties to Katz, their judgment was not a substitute for a fairness opinion from a bank with no stake in the Mergers.

V. **<u>The Board Knew or Should Have Known that the Mergers Were Bad Deals for Stockholders</u>**

A. **<u>Gig2 Had Far Less Than $10 Per Share To Invest in UpHealth and Cloudbreak – And UpHealth and Cloudbreak Knew It</u>**

63. The Board knew or should have known that the Mergers would be a losing proposition for Gig2 stockholders, but nevertheless approved and recommended the Mergers because they were highly lucrative for the Sponsor, Katz, and the Board members themselves.

64. The Gig2 stockholders had the option of redeeming their shares for $10.10 per share in lieu of participating in the Mergers. Alternatively, they could invest far less in the Mergers. After accounting for, *inter alia*, redemptions before the Proxy Statement was issued and the highly dilutive Founder Shares, Gig2 had less than $7.00 in net cash per share to invest in the Mergers, and was responsible for paying $43 million in transaction costs incurred by itself, Uphealth and Cloudbreak.

65. Despite the Board's knowledge of these costs associated with the Mergers, there is no indication in the Proxy Statement that, in approving the Mergers, the Board took them into account. The merger agreements and the Proxy Statement attributed an inflated value of $10 to each Gig2 share. That was materially false. Gig2's only asset was cash, and it would contribute to the Mergers less than $7.00 in net cash per share. By the time that the Company had agreed to (i) issue

the PIPE investors 300,000 free warrants to prevent them pulling out of the PIPE deal, (ii) permit the Notes investors to reduce the size of their investment from $255 million to $160 million and (iii) reduce the conversion price from $11.50 to $10.65 on or around June 8, 2021, the disadvantage to Gig2 stockholders was compounded.

66. Gig2 initially tried to raise additional cash for the Mergers through PIPE financing that would be made concurrently with, and contingent upon, the Mergers. The price Gig2 sought for a PIPE was $10 per share, roughly the price public stockholders would, in effect, pay by forgoing their redemption rights. PIPE financing at such a price is a common feature of SPAC mergers, and is sometimes considered a validation of a deal. In this case, however, Gig2 was required to "sweeten the pot" for its PIPE investors by granting them 300,000 additional warrants, a benefit not shared by Gig2's public stockholders.

67. The reduction in the conversion price from $11.50 to $10.65 was a similar "sweetener" for the Notes investors. With less than $55 million in the trust account after the stockholder vote, it obviously was imperative that Gig2 close the Notes deal if it hoped to satisfy the $150 million cash condition for the Mergers.

68. The Board and its financial advisors knowingly turned a blind eye to the dilution of Gig2's shares and the dissipation of its cash. The Board failed to consider how much better off the stockholders would be with $10.10 per share in a liquidation compared to Mergers in which it could invest less than $7.00 per share.

But neither the Board, nor the Sponsor, nor Katz would be better off with a liquidation. To the contrary, they made tens of millions of dollars from the Mergers. The Board thus breached its duty of loyalty, and approved the Mergers at the expense of Gig2 stockholders.

VI. <u>The Board Failed to Inform the Stockholders' Vote on the Mergers and Their Decision to Redeem Their Shares or Remain Invested in the Mergers</u>

69. Just as the Board breached its duty of loyalty by acting with perverse incentives and ignoring the effect of dilution on the value of the Mergers for stockholders, it breached its duty of candor by failing to inform stockholders of these regrettable aspect of the Mergers.

70. First, the Proxy Statement failed to quantify the economic interests of the Board in seeing a transaction occur. Such information would have been material to a Gig2 stockholder in deciding how to vote.

71. Second, instead of disclosing the amount of cash underlying Gig2 shares prior to the Mergers – and hence the amount of cash it could contribute to a combined company, the Proxy Statement affirmatively misled Gig2's stockholders by attributing a value of $10 to their shares. Due to the dilution and cash dissipation discussed above, this was demonstrably false. The only respect in which Gig2 shares were worth $10 is that the publicly traded shares could be redeemed for that amount (plus interest) by stockholders that chose *not* to participate in the Mergers.

72. The Proxy Statement purports to address dilution in two places. First, it states obliquely: “The issuance of the Common Stock in the Business Combinations will dilute the equity interest of our existing stockholders and may adversely affect prevailing market prices for our public shares and/or public warrants.” By way of explanation, it then goes on to state what the Gig2 stockholders’ percentage ownership in the post-merger company would be. In contrast to the dilution in *value* caused by the issuance of free shares and free warrants, this sort of dilution has no impact on the value of shares. A smaller percentage of a larger pie is not financial dilution, and it is financial dilution that was both costly and not disclosed to stockholders.

73. With respect to the public warrants issued in Gig2’s IPO, the Proxy Statement explains that the issuance of shares in connection to the exercise of a warrant will result in dilution because it will “increase the number of shares eligible for resale in the public market,” and that “[s]ales of such shares in the public market could adversely affect the market price of our Common Stock.” This statement may be true, but it too fails to disclose the true dilution caused by warrants, which is the reduction in the value of outstanding shares due to the ability of a warrant holder to buy shares at less than market price. Moreover, this dilution does not only occur when a warrant is exercised. It occurs when the warrants are issued because of the prospect of exercise. The trading price of a warrant reflects that prospect and is a

measure of value extracted from stockholders at any point in time prior to the exercise of the warrants. The trading price of shares reflects the prospect that the warrants will be exercised as well, but in a downward direction. Alternatively, as the SEC has recently stated, warrants can be viewed as a liability at the time of issue because they reduce the value of public shares *before* they are exercised.[3]

74. The barely relevant statements in the Proxy Statement regarding dilution when new shares are issued are an exercise in misdirection. The relevant dilution was in the prior issuance of essentially free shares and warrants, and in the issuance of the Notes and the warrants attached to the PIPE concurrently with the Mergers. The issuance of those securities, and the transaction costs associated with the Mergers, reduced the net cash underlying the public stockholders' shares. The Proxy Statement failed to inform the stockholders of this fact or its importance in terms of what those shares might buy in mergers with UpHealth and Cloudbreak. This was a material omission that violated the Board's duty of candor and prevented the stockholders from making informed decisions in voting their shares or exercising their redemption rights.

[3] SEC Public Statement, *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies ("SPACs")*, April 12, 2021 (available at https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs).

75. The Board further breached its duty of candor in presenting the stockholders the choice between merging and redeeming or liquidating. As stated above, the Board had one decision to make: *to merge or to liquidate*. It breached its duty of loyalty by choosing to merge. Each stockholder had a parallel right: to invest in the Mergers by retaining its shares, or to redeem their shares for $10.10. The Board breached its duty of candor by failing to provide the stockholders with the information they needed to make that decision. The reason behind the Board's failure to do so is clear. The Board had no interest in seeing stockholders redeem their shares and drain cash from Gig2. Under the terms of the Merger Agreements, if Gig2 had less than $150 million in cash, UpHealth and Cloudbreak could walk away from the deal. Neither the Board, the Sponsor nor Katz wanted that to happen. Following the redemptions associated with the two extension amendments, Gig2 had less than $150 million in its trust account, and faced the likelihood of additional redemptions before the shareholder vote to approve or disapprove the Mergers (a likelihood that became reality, as discussed above). In short, from the perspective of Katz, the Sponsor and the Board, it was imperative for Gig2 to discourage additional redemptions, just as it was imperative to pacify restive PIPE and Notes investors at the public shareholders' expense.

76. To dissuade public investors from redeeming their shares, the Proxy Statement raised the specter of there being insufficient funds available to pay the redemption price:

> If we do not consummate either Business Combination, we may continue to try to complete a business combination with a different target business until the applicable deadline. If we fail to complete an initial business combination by the applicable deadline, then we will: (i) cease all operations except for the purpose of winding up; (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem our public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest not previously released to the Company to pay its franchise and income taxes (less up to $100,000 of interest to pay dissolution expenses), divided by the number of then outstanding public shares, which redemption will completely extinguish our public stockholders' rights as stockholders (including the right to receive further liquidating distributions, if any), subject to applicable law; and (iii) as promptly as reasonably possible following such redemption, subject to the approval of our remaining stockholders and our Board, dissolve and liquidate, subject in each case to our obligations under Delaware law to provide for claims of creditors and the requirements of other applicable law. In the event of such distribution, it is possible that the per share value of the residual assets remaining available for distribution (including Trust Account assets) will be less than the initial public offering price per unit in the IPO.

This is simply a description of the liquidation scenario required by the Gig2 charter, but stated in ominous terms designed to lure stockholders into supporting the Mergers for fear that they might get less in liquidation than the $10 they were promised, even though the proceeds of the sale of those units in the IPO had been held in trust precisely to assure public stockholders that there would be cash available for redemptions or liquidation.

77. A few pages later, the Proxy Statement again explains that the redemption price could be less than $10 if there were creditor claims against Gig2 that reduced the value of the trust below $10. But, as the Proxy Statement recognizes, the Sponsor had agreed to indemnify the stockholders against such claims – as SPAC sponsors typically do.

78. The Proxy Statement then explains that "[t]he Sponsor may not have sufficient funds to satisfy its indemnity obligations," because "[Gig2] has not asked the Sponsor to reserve for such indemnification obligations." Although the Board's failure to have asked the Sponsor to reserve for this purpose could well be a breach of the duty of loyalty in itself, the more important point is that the likelihood that stockholders would not receive the $10 plus interest that they were promised was extremely low.

79. The Proxy Statement goes to great lengths to explain the vanishingly unlikely possibility of third-party claims reducing the redemption price below $10 and the sponsor failing to pay those claims. Public sources indicate that this has never occurred in a SPAC. Especially in light of how poorly it informed the stockholders of how diluted their shares were and how little cash they would, in

effect, invest in the Mergers, the Proxy Statement was manifestly misleading with respect to the danger of opting to redeem their shares.

80. Finally, the Board breached its duty of candor by failing to disclose that it would have to make post-merger concessions to the PIPE and Notes investors in order to bring those transactions over the finish line and achieve the cash-on-hand needed to close the Mergers. The Board had to have known before the shareholder vote that it would need to make these concessions, including issuing 300,000 free additional warrants to the PIPE investors, permitting the Notes investors to reduce the size of their investment from $255 million to $160 million, and reducing the Notes' conversion price from $11.50 to $10.65, all of which inured to the detriment of and were material to Gig2's public stockholders.

VII. <u>New UpHealth's Post-Merger Performance</u>

81. The redemption deadline was June 2, 2021. As a practical matter, shares had to be purchased well before that, in order for the transactions to clear and then be submitted before the redemption deadline. On May 28, 2021, two trading days before the redemption deadline, Gig2's stock price closed at $10.08 per share. By the June 2, 2021 redemption deadline, the share price had fallen to $9.92 per share.

82. By June 9, 2021, the date the Mergers closed, New UpHealth's stock price was $9.38 per share.

83. By September 13, 2021, New UpHealth's stock price had fallen to $3.99 per share.

84. Gig2's post-redemption and post-Merger performance confirms the unfairness of the Mergers to the legacy Gig2 stockholders. Since June 2, 2021 – approximately the date on which public stockholders gave up their redemption option – Gig2's stock has *lost* 60% of its value (while the NYSE composite index has risen slightly).

85. As bad as the Mergers have been for the Gig2 public stockholders, they were lucrative for the Sponsor, Katz, and his hand-picked Board members. When the Mergers closed, the Founder Shares – which the Sponsor had purchased a year earlier for a mere $25,000 – were worth more than $37 million. Even at a deflated share price as of the day before this Complaint was filed, those Founder Shares were worth approximately $15.1 million.

86. Had no merger occurred, the Sponsor, Katz, and the other directors would have received nothing. The public stockholders, however, would have received $10.10 per share.

87. In sum, the Board breached its duties of loyalty by turning a blind eye to the dilution of the public shares and its implications for the Mergers, and it breached its duty of candor by leaving the public stockholders in the dark as well. The Board's abdication of its duties stemmed from the desire of Katz, the Sponsor

and the Board to consummate any deal, even a value-destroying deal. In light of these conflicts and the windfall reaped by the Defendants at the public stockholders' expense – the Mergers cannot meet the test of entire fairness.

CLASS ACTION ALLEGATIONS

88. Plaintiff, a stockholder in Gig2, brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of himself and all record and beneficial holders of Gig2 common stock (the "Class") who held such stock during the time period from the Record Date through the Closing Date (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) and who were injured by the Defendants' breaches of fiduciary duties and other violations of law, and their successors in interest.

89. This action is properly maintainable as a class action.

90. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

91. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands, and they are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

92. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

a. whether Defendants owed fiduciary duties to Plaintiff and the Class;

b. whether the Controller Defendants controlled Gig2;

c. whether "entire fairness" is the applicable standard of review;

d. which party or parties bear the burden of proof;

e. whether Defendants breached their fiduciary duties to Plaintiff and the Class;

f. the existence and extent of any injury to the Class or Plaintiff caused by any breach;

g. the availability and propriety of equitable re-opening of the redemption period; and

h. the proper measure of the Class's damages.

93. Plaintiff's claims and defenses are typical of the claims and defenses of other Class members, and Plaintiff has no interests antagonistic or adverse to the interests of other Class members. Plaintiff will fairly and adequately protect the interests of the Class.

94. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

95. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

96. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

(Direct Claim for Breach of Fiduciary Duty Against the Director Defendants)

97. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

98. As directors of Gig2, the Director Defendants owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, and to make accurate material disclosures to Gig2's stockholders.

99. These duties required them to place the interests of Gig2 stockholders above their personal interests and the interests of the Controller Defendants.

100. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal and financial interests and approving the Mergers, which was unfair to Gig2's public stockholders.

101. The Director Defendants also breached their duty of candor by issuing the false and misleading Proxy Statement.

102. As a result, Plaintiff and the Class were harmed by being deprived of the information they needed to exercise, or to choose not to exercise, their redemption rights in an informed manner prior to the Mergers.

103. In addition, by virtue of misstatements and omissions in the Proxy Statement, members of the Class could not exercise their vote in an informed manner and approved the acquisitions of UpHealth and Cloudbreak based on false and misleading information.

104. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT II

(Direct Claim for Breach of Fiduciary Duty Against the Controller Defendants)

105. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

106. The Controller Defendants were Avi Katz and the Sponsor. The Sponsor – and Katz through the Sponsor – elected (and could remove at any time) the members of the Board, had deep personal and financial ties to the members of the Board they selected –through "direct or indirect interests" in the Founder Shares and the Private Placement Units, and through positions in other business, including other SPACs, affiliated with GigCapital.

107. As such, the Controller Defendants owed Plaintiff and the Class fiduciary duties of care and loyalty, which include an obligation to act in good faith, and to provide accurate material disclosures to Gig2 stockholders.

108. At all relevant times, the Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—Gig2 to enter into the Mergers.

109. The Mergers were unfair, reflecting an unfair price and unfair process.

110. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiff and the Class by agreeing to and entering into the Mergers without ensuring that they were entirely fair to Plaintiff

and the Class, thereby breaching their duty of loyalty to Plaintiff and the Class. As a result, Plaintiff and the Class were harmed.

111. Further, by failing to inform shareholders to allow them to make an informed redemption decision, Defendants breached their duty of candor. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Mergers.

112. In addition, members of the Class approved the acquisition of UpHealth and Cloudbreak based on false and misleading information.

113. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT III

(Direct Claim for Unjust Enrichment Against Sponsor and Director Defendants)

114. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

115. As a result of the conduct described above, the Sponsor and the Director Defendants breached their fiduciary duties to Gig2 public stockholders and were disloyal by putting their own financial interests above those of Gig2 public stockholders.

116. Defendants were unjustly enriched by their disloyalty.

117. All unjust profits realized by the Sponsor and the Director Defendants should be disgorged and recouped by the affected stockholders.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this Action is properly maintainable as a class action;

B. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

C. Finding the Controller Defendants liable for breaching their fiduciary duties, in their capacity as the controllers of Gig2, owed to Plaintiff and the Class;

D. Finding that the Sponsor and the Director Defendants were disloyal fiduciaries that were unjustly enriched;

E. Certifying the proposed Class;

F. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;

G. Ordering disgorgement of any unjust enrichment to the plaintiff class.

H. With respect to Class members who had the right to seek redemption and still hold their shares, equitably re-opening the redemption window to allow them to redeem their shares, as per the terms of Gig2's foundational documents.

I. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

J. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

Dated: September 23, 2021

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry

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