IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SJUNDE AP-FONDEN, Plaintiff, v. ACTIVISION BLIZZARD, INC., ROBERT KOTICK, BRIAN KELLY, ROBERT MORGADO, ROBERT CORTI, HENDRIK HARTONG III, CASEY WASSERMAN, PETER NOLAN, DAWN OSTROFF, BARRY MEYER, REVETA BOWERS, KERRY CARR, MICROSOFT CORPORATION, and ACTIVISION BLIZZARD, INC., as successor to ANCHORAGE MERGER SUB INC., Defendants.	)	C.A. No. 2022-1001-KSJM

MEMORANDUM OPINION APPROVING SETTLEMENT AND AWARDING ATTORNEYS' FEES

Date Submitted: September 15, 2026
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McCORMICK, C.

A stockholder plaintiff brought this class action challenging Microsoft Corporation's acquisition of Activision Blizzard, Inc. An epic battle ensued. After nearly four hard-fought years of litigation, the parties laid down their steel and agreed to settle. To secure a global release of claims arising from the merger, the defendants would pay $250 million—among the largest ever settlement funds in a stockholder litigation challenging a third-party merger. The parties moved for approval of the settlement, and the plaintiff petitioned for an award of attorneys' fees.

A final challenger then emerged. An arbitrage fund objects to the settlement, though not based on the settlement consideration, from which the fund stands to receive around $250,000. Rather, the fund objects to the extent the settlement extinguishes federal securities claims it filed on behalf of stockholders who sold their Activision shares before the merger closed. Citing due process concerns and class certification requirements, the fund asks the court to carve out the federal securities claims from the release.

But the defendants bargained for a broad release covering the overlapping facts at issue in this action and the federal action. Carving out the federal securities claims from the release would upend the settlement and deprive class members (including the fund) of incredibly beneficial settlement consideration. Contrary to the fund's arguments, neither due process rights nor class certification requirements demand this outcome. This decision thus overrules the objection, approves the $250 million settlement, and awards the plaintiff's counsel fees in the amount of $60 million plus reasonable expenses.

I. FACTUAL BACKGROUND

When approving a settlement and evaluating a fee request, the court must evaluate the proposed terms of the settlement against the strength of the claims asserted and the efforts of counsel.[1] The background that follows contextualizes that analysis, largely by adumbrating the court's prior decisions in this action.[2] These are not factual findings.

A. This Litigation

Regulators began investigating sexual harassment at Activision in 2018. When they made their findings public in mid-2021, Activision's stock price plunged and the company began hemorrhaging senior leadership. In November 2021, investigative journalists blamed Activision's CEO Robert Kotick for the toxic workplace culture, prompting Kotick to openly question his future as leader of the company. Later that month, Microsoft proposed to a weakened Kotick that Microsoft

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[1] *See In re Caremark Int'l Inc. Deriv. Litig.*, 698 A.2d 959, 961 (Del. Ch. 1996) ("[T]he facts stated hereafter represent the court's effort to understand the context of the motion from the discovery record, but do not deserve the respect that judicial findings after trial are customarily accorded.").

[2] *See Sjunde AP-Fonden v. Activision Blizzard, Inc.*, 2024 WL 863290, at *8–10 (Del. Ch. Feb. 29, 2024), *as corrected* (Mar. 19, 2024) ["*Activision I*"] (denying in part first motion to dismiss); *Sjunde AP-Fonden v. Activision Blizzard, Inc.*, 2024 WL 863325, at *2–3 (Del. Ch. Feb. 29, 2024) ["*Activision II*"] (addressing motion to dismiss Plaintiff's Section 251(c) claim; denying in part Microsoft and the merger subsidiary's motion to dismiss; and denying Plaintiff's motion for partial summary judgment); *Sjunde AP-Fonden v. Activision Blizzard, Inc.*, 2025 WL 2803254, at *3 (Del. Ch. Oct. 2, 2025) ["*Activision III*"] (denying in part second motion to dismiss); *see also In re Activision Blizzard, Inc.*, 2025 WL 1276988, at *1 (Del. Ch. May 2, 2025) ["*Section 205 Decision*"] (awarding Plaintiff's counsel mootness fees after entering judgment for Activision and Microsoft under 8 *Del. C.* § 205 in the Section 205 Action and preserving aspects of Plaintiff's claims in this action in the process).

buy Activision.[3] In January 2022, the Activision board of directors (the "Board") approved a draft merger agreement. Activision then executed the final agreement (the "Merger Agreement" setting out the terms of the "Merger") on January 18, 2022, and issued the proxy statement on March 21, 2022.[4] The Activision stockholders approved the Merger on April 28, 2022.

Plaintiff Sjunde AP-Fonden owned Activision stock. On March 7, 2022, Plaintiff served a demand under Section 220 of the Delaware General Corporation Law (the "DGCL") to inspect Activision's books and records to investigate potential wrongdoing in connection with the Merger.[5] After Plaintiff filed a Section 220 complaint on March 24, 2022, Activision produced some documents in response.[6]

Plaintiff initiated this action on November 3, 2022, before the Merger closed, against Kotick, Activision, Board members, Microsoft, and the Merger subsidiary (collectively, "Defendants"). Plaintiff claimed that Kotick and the Board breached their fiduciary duties in connection with the Merger and that Microsoft aided and abetted those breaches. Plaintiff also claimed that Defendants violated multiple provisions of the DGCL governing board negotiation and board and stockholder approval of merger agreements. In part, Plaintiff challenged the Board's decision to

[3] C.A. No. 2022-1001-KSJM, Docket ("Dkt.") 171 ("Third Am. Compl.") ¶¶ 94, 96.

[4] *Id.* ¶¶ 186, 245.

[5] *See* Dkt. 427 ("Stipulation") ¶ M.

[6] *See id.* ¶¶ N–O; *see also* Third Am. Compl. ¶¶ 306–11.

delegate negotiation of the provision of the Merger Agreement limiting dividends as a violation of Section 141(c) of the DGCL (the "Dividend Claim").[7]

By July 18, 2023, the Merger Agreement's outside termination date, the Merger had not received antitrust clearance. On that date, the Board executed a letter agreement that Kotick had negotiated with Microsoft (the "Letter Agreement"). The Letter Agreement extended the termination date to October 18, 2023; eliminated Activision's right to collect a $3 billion termination fee otherwise due July 18; narrowed Activision's right to terminate the Merger Agreement; and eliminated or waived various conditions to closing. It also allowed Activision to pay a one-time dividend for fiscal year 2023 of $0.99 per share (the "2023 Dividend").

By authorizing the 2023 Dividend, the Letter Agreement partially mooted the Dividend Claim and mitigated damages.[8] Plaintiff argued, however, that the 2023 Dividend gave rise to other claims because Activision allegedly paid the dividend on treasury stock (the "Treasury-Dividend Claim").

Ultimately, Defendants restructured the transaction in response to regulatory concerns. The Merger closed on October 13, 2023.[9] At closing, Plaintiff tendered over 900,000 Activision shares that it held since before the Merger was announced.[10]

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[7] Dkt. 1 ("Compl.") ¶¶ 287–88.

[8] Dkt. 429 ("Pl.'s Opening Br.") at 37.

[9] *Id.* ¶ L.

[10] Dkt. 434 ("Pl.'s Reply Br."), Ex. 33 at 30.

While the Merger was pending, Plaintiff had sold 130,641 and purchased 115,332 shares.[11]

Meanwhile, the parties agreed to bifurcate proceedings to address aspects of Plaintiff's statutory claims at the outset of the litigation. In *Activision I* and *Activision II*, the court dismissed some of Plaintiff's statutory claims and denied Plaintiff's motion for summary judgment. The court sustained the Dividend Claim and other statutory claims, finding it reasonably conceivable that Defendants violated multiple provisions of the DGCL when approving the Merger. The court observed that judicial ratification under Section 205 of the DGCL could validate the Merger.

On May 2, 2024, Microsoft and Activision filed an action to validate the Merger under Section 205 of the DGCL. The parties stipulated to a resolution of the Section 205 Action, and the court entered the stipulated proposed order, thereby validating the Merger.[12] The parties agreed that validation of the merger resolved all of Plaintiff's Section 251 claims and had no effect on its fiduciary claims or the Dividend Claim.[13] Plaintiff then moved for mootness fees, which the court granted.[14]

After *Activision I* and *Activision II*, Plaintiff amended the complaint twice, adding disclosure claims, theories of conversion (with earlier-pled theories, the

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[11] *Id.* at 29–30.

[12] C.A. No. 2024-0466-KSJM, Dkt. 27.

[13] *Id.* ¶¶ 3–4.

[14] *Section 205 Decision*, 2025 WL 1276988, at *14.

"Conversion Claims"), fiduciary claims based on the Letter Agreement, and the Treasury-Dividend Claim.[15]

Defendants moved to dismiss again. This round was even more epic than the others. The parties submitted 590 pages of briefs with 63 exhibits. Plaintiff moved to convert aspects of the motion to dismiss into a motion for summary judgment and submitted 84 additional pages of briefing and Rule 56(f) affidavits including 95 exhibits. Defendants then moved to strike the Rule 56(f) affidavits, adding another 44 pages to the pile. In *Activision III*, the court denied the motion to dismiss Plaintiff's core *Revlon* claims and the Dividend Claim and dismissed some of the Conversion Claims along with the aiding and abetting claims.[16] The court converted aspects of Defendants' motion challenging the Treasury-Dividend Claim to a motion for summary judgment.

On December 22, 2025, Kotick, Activision, Microsoft, and the Director Defendants filed answers and counterclaims totaling roughly 1,500 pages. Activision and Microsoft each filed a counterclaim under Section 205 seeking to eliminate the Dividend Claim and the remaining Conversion Claims.[17] Kotick counterclaimed for abuse of process, alleging that Plaintiff filed this action despite knowing that the sexual misconduct issues were fabricated by regulators, unions, the media, and Activision's competitors to help an Activision competitor.

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[15] C.A. No. 2022-1001-KSJM, Dkt. 136; Third Am. Compl.

[16] *Activision III*, 2025 WL 2803254, at *3–4.

[17] Stipulation ¶ VV.

In early 2026, Plaintiff moved to stay discovery on Kotick's counterclaim and filed motions to dismiss all of the counterclaims. Plaintiff also moved to strike Kotick's 97-page "Preliminary Statement" as an improper pleading.[18]

B. The Settlement

Parallel to their prodigious litigation efforts, the parties engaged in mediation. They held their first in-person mediation on November 21, 2024 with Judge Layn Phillips and Greg Danilow.[19] That effort was unsuccessful. They tried again on March 20, 2026.[20] On March 25, 2026, Judge Phillips made a mediator's proposal for the all-in cash settlement of $250 million.[21] The parties' third mediation session on April 3, 2026 led to a term sheet based on the mediator's proposal (the "Term Sheet").[22] The parties then negotiated the Stipulation and Agreement of Settlement, Compromise, and Release (the "Stipulation" setting forth the "Settlement"), which they signed and filed on May 21, 2026.

With the Stipulation, the parties filed a proposed schedule for presenting to the court the Settlement and related issues, including class certification and Plaintiff's anticipated fee petition. The court approved the Scheduling Order on June 8, 2026, setting the settlement hearing for September 15, 2026.[23]

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[18] *Id.* ¶ XX.

[19] *Id.* ¶ CCC.

[20] *Id.* ¶ DDD.

[21] *Id.* ¶ EEE.

[22] *Id.* ¶ FFF.

[23] Dkt. 428.

C. The Objection

The Scheduling Order established an objection deadline of August 31, 2026. One subset of the proposed class—a collection of merger-arbitrage funds led by The Arbitrage Fund (the "Fund"), which are lead plaintiffs in a related federal securities class action—filed an objection.[24] The Fund acquired shares of Activision stock after the company announced the Merger.[25] The Fund sold 26,600 shares and held 819,477.[26] It has received at least $811,282.23 from the 2023 Dividend and $77,850,315 in Merger consideration.[27] The Fund appeared and presented argument in support of the objection during the September 15, 2026 settlement hearing.[28]

II. LEGAL ANALYSIS

The parties have moved for class certification and approval of the Settlement, including the release of claims and the plan of allocation. And Plaintiff has moved for an award of attorneys' fees and expenses. Because the Fund's objection challenges

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[24] *See* Dkt. 432 ("Obj.") at 1; Pl.'s Opening Br., Ex. 3. Like the Fund, the other lead plaintiffs are also merger-arbitrage funds managed by Water Island Capital. Those funds include AltShares Merger Arbitrage ETF; AltShares Event-Driven ETF; Water Island LevArb Fund, LP; and Water Island Merger Arbitrage Institutional Commingled Master Fund LP. These funds also purchased Activision shares after the Merger was announced. Dkt. 435 ("Defs.' Resp. to Obj."), Ex. J, sub-ex. A, Sched. A at 1.

[25] *Id.*

[26] *Id.*

[27] *See id.*

[28] The Fund filed 29 pages in support of its objection. The court allowed the Fund to file an additional 24-page reply brief, Dkt. 439, Ex. 1, on the eve of the settlement hearing, over Plaintiff's objection. Dkt. 443 ("Settlement Hr'g Tr.") at 6:16–20.

aspects of class certification and the scope of the release, the analysis addresses the objection first.

A. The Objection

Three weeks after the parties signed the Term Sheet, the Fund filed suit in federal court, asserting federal securities law claims (the "Federal Claims") on behalf of Activision stockholders who sold shares during the Merger's twenty-one-month pendency (the "Seller Class"). The Fund does not object to the fairness of the Settlement,[29] from which the Fund stands to receive approximately $250,000 based on the shares it held.[30] Rather, the Fund seeks to carve out the Federal Claims from the proposed release.[31]

The Fund's limited objection targets the proposed class and the proposed release. The proposed class includes all former holders of Activision common stock who held stock at any time from the January 18, 2022 announcement of the Merger through the October 13, 2023 closing of the Merger, and their transferees, successors, and assigns (the "Settlement Class").[32] The Settlement Class includes the Seller Class. The proposed release extends to claims by any Settlement Class member

[29] Obj. at 1.

[30] *See* Pl.'s Opening Br. at 7, 26.

[31] *See* Obj. at 1, 13 (stating that the Fund "wish[es] to continue to pursue [its] Federal Claims . . . while the Chancery Plaintiff seeks this Settlement of its state law breach of fiduciary duty claims").

[32] Stipulation § I(d).

asserted in any forum that arise out of the facts alleged in this action (the "Release").[33] The Release thus extends to the Federal Claims.

Although the Settlement Class includes the Seller Class members, the Seller Class members have no rights to bring or benefit from the claims asserted in this action based on the shares they sold.[34] And although the Release extends to the Federal Claims, the Federal Claims are personal claims that could not have been brought in this court.[35]

Thus, as the Fund observes, the parties ask the court to release the Federal Claims "for no consideration, through a settlement in a state court in which [the Seller Class] did not and could not have chosen to litigate their [Federal Claims]."[36] The Fund argues that this outcome is fundamentally unfair and asks the court to expressly exclude both the Seller Class from the Settlement Class and the Federal Claims from the Release.[37]

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[33] *Id.* § I(cc).

[34] As this court has explained, stockholder claims associated with the rights carried by Activision shares of common stock, like those asserted in this action, are "a property right associated with the shares. By default, that property right travels with the shares. By selling their shares, the members of the Seller Class defeased to their purchasers any right they had to bring or benefit from these claims." *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1044 (Del Ch. 2015) ["*Activision OG*"].

[35] *See id.* at 1056 ("A Rule 10b-5 claim under the federal securities laws is a personal claim akin to a tort claim for fraud."); *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 370 (1996) (stating that federal courts have exclusive jurisdiction over claims arising from the Securities Exchange Act of 1934).

[36] Obj. at 3.

[37] *Id.* at 24.

Though framed as limited in scope, the Fund's objection has far-reaching consequences. As is common, Defendants require that the Settlement include a global release that achieves global peace.[38] If the Seller Class is excluded from the Settlement Class and the Federal Claims are excluded from the Release, there will be no settlement.[39] The Fund's objection threatens to upend the $250 million settlement fund.

The Fund's briefing presents three reasons for rejecting this landmark settlement.[40] The Fund first argues that releasing the Federal Claims under these circumstances violates the Seller Class members' due process rights. The Fund next contends that Plaintiff is not adequate to represent the Settlement Class if the Settlement Class includes members of the Seller Class. The Fund further argues that even if releasing the Federal Claims does not violate due process, and even if Plaintiff is adequate, this court should defer to the federal court to assess the merits of the Federal Claims. None of these arguments justify the relief the Fund seeks.

Approving the Release does not violate the Fund's due process rights. "Under controlling Delaware Supreme Court precedent, a settlement can release claims of negligible value to achieve a settlement that provides reasonable consideration for meaningful claims."[41] "If it appears that those claims are weak or of little or no

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[38] *See In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1137 (Del. 2008); *In re Countrywide Corp. S'holders Litig.*, 2009 WL 846019, at *10 (Del. Ch. Mar. 31, 2009).

[39] *See* Stipulation §§ VII(1)(b), X(1), X(3).

[40] The Fund's briefing did not present these as three discrete arguments. This decision reorganizes the thoughts to make better sense of them.

[41] *Activision OG*, 124 A.3d at 1044 (citing *Phila. Stock Exch.*, 945 A.2d at 1140).

probable value or would not likely result in any recovery of damages by individual stockholders, it is fair to bar those claims as part of the overall settlement."[42] "The court's ability to bar weak personal claims extends to federal securities claims, even though the claims could not be litigated in this court."[43]

The Delaware Supreme Court rejected the Fund's due process argument over thirty years ago in *Nottingham Partners v. Dana*.[44] There, the high court affirmed approval of a settlement that released federal securities claims that had been stayed pending resolution of state settlement proceedings.[45] An objector pursuing federal securities claims argued that the due process clause of the U.S. Constitution required that an absent class member with a money damages claim be afforded the opportunity to opt out of a settlement. In rejecting this argument, the high court held that constitutional due process requires notification but not a right to opt out of the class.[46]

Nottingham held that a trial court has the discretionary power when certifying the class "to provide for an opt out right . . . if it believes that an opt out right is

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[42] *In re Triarc Cos., Inc.*, 791 A.2d 872, 876 (Del. 2001).

[43] *Activision OG*, 124 A.3d at 1068 (citing *Matsushita*, 516 U.S. 367).

[44] 564 A.2d 1089 (Del. 1989).

[45] *Id.* at 1091 & n.1.

[46] *Id.* at 1101. The day before the settlement hearing, the Delaware Supreme Court reaffirmed *Nottingham's* due process requirements for an objector to a non-opt-out class. *IsZo Cap. LP v. Brandenburg*, 2026 WL 2689902, at *5 (Del. Sep. 14, 2026) (ORDER) (Objector "received the full discovery record, briefed its objection, was heard at length, and had its request thoughtfully considered on the merits. In short, [it] received the process it was due.").

necessary to protect the interest of absent class members."[47] In exercising this discretion, the court "must balance the equities of the defendants' desire to resolve all claims in a single proceeding against the individuals' interest in having their own day in Court."[48] *Nottingham* reflects Delaware policy favoring settlements releasing exclusively federal claims in the interest of "achiev[ing] a comprehensive settlement" of claims based on the same operative alleged facts—such as the same merger.[49]

When conducting this balancing analysis to determine whether to extend opt-out rights to class members, this court has focused on the value of the claims being released. In *Philadelphia Stock Exchange*, for example, the Delaware Supreme Court affirmed the Court of Chancery's refusal to grant an opt-out right despite the "almost certain outcome" that objectors would pursue further litigation regarding the same transactions "in a different forum."[50] The high court held that, because the "economic benefits" afforded by the settlement dwarfed the "minimal value of the claims being surrendered," the trial court properly denied opt-out rights.[51] Reinforcing this outcome, the court held that such opt-out rights "would utterly defeat the purpose of the settlement."[52] The high court held that "the settlement must either be as broad

[47] *Nottingham*, 564 A.2d at 1101.

[48] *Id.*

[49] *Id.* at 1106; *Matsushita*, 516 U.S. at 376–77.

[50] *Phila. Stock Exch.*, 945 A.2d at 1137.

[51] *Id.*

[52] *Id.*

in scope as the law would allow and bind all class members, or there would be no settlement."[53]

Similarly, in earlier class litigation challenging a different corporate transaction at Activision, the court approved a settlement that released federal securities claims without allocating any consideration to those claims.[54] The court observed that it is fair to bar federal securities claims as part of an overall settlement "[i]f it appears that those claims are weak or of little or no probable value or would not likely result in any recovery of damages by individual stockholders."[55] The court held that the federal securities claims were of little or no value and were unlikely to result in recovery because they had not been asserted and were thus "entirely hypothetical."[56]

Federal law is the same. In *Matsushita*, the Supreme Court of the United States addressed the preclusive effect in federal court of a Court of Chancery

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[53] *Id.*

[54] *Activision OG*, 124 A.3d at 1068.

[55] *Id.* (quoting *Triarc*, 791 A.2d at 876).

[56] *Id.* This court routinely approves non-opt-out class settlements releasing federal claims of minimal value over the objections of class members seeking to pursue such claims in federal court. *See, e.g.*, *In re Countrywide Corp. S'holders Litig.*, 2009 WL 2595739, at *4, *7 (Del. Ch. Aug. 24, 2009) (releasing the objector's "potential federal securities law claims [of] no obvious value," certifying a non-opt-out class, and approving the settlement), *aff'd sub nom. Ark. Tchr. Ret. Sys. v. Ciafa*, 996 A.2d 321 (Del. 2010); *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *2, *19, *23 (Del. Ch. May 6, 2010) (releasing weak federal claims for no consideration over an objection by the plaintiffs in a pending federal class action, certifying the class, and approving the settlement), *aff'd,* 9 A.3d 475 (Del. 2010) (TABLE).

judgment approving a class settlement that released federal securities claims.[57] The Court reasoned that state courts do not infringe on federal courts' exclusive jurisdiction over federal securities claims by evaluating the strength of those claims in the settlement context.[58] Further, because the underlying dispute in that case was based on state law claims within the state court's jurisdiction, federal courts were bound by the preclusive effect of the judgment releasing the federal securities claims.[59] Thus, the Court held that state courts may approve release of exclusively federal claims in class settlements.[60]

Thus, under well-established Delaware and federal law, this court has the ability to approve the Release, which releases the Federal Claims, if those claims are of little or no value or unlikely to lead to recovery for the class members. That is not a due process violation.

The Fund's attack on Plaintiff's adequacy to represent the Class similarly fails. The Fund initially argued that Plaintiff is inadequate because Plaintiff did not sell its shares and thus could not have filed the Federal Claims.[61] But that is false. Like the Fund, Plaintiff sold a portion of its Activision shares before the Merger. Plaintiff actually sold more shares than the Fund. And Plaintiff was thus as well-positioned as the Fund to pursue the Federal Claims. Confronted with this fact, the Fund

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[57] 516 U.S. at 369–71.

[58] *Id.* at 382–83.

[59] *Id.* at 386–87.

[60] *Id.* at 369.

[61] Obj. at 13.

pivoted to argue that Plaintiff harbors disqualifying conflicts because it did not pursue the Federal Claims and now advocates in favor of releasing those claims. But if the Federal Claims had value, Plaintiff would be more incentivized than the Fund to pursue them. The analysis once again reduces to the question of whether the Federal Claims have value.

There is no reason to defer to the federal court on this issue. Deferring to the federal court would delay settlement approval. And each day of delay would cost the Settlement Class nearly $10,000 in interest.[62] The Settlement Class need not bear the costs of waiting for the federal court. This is a benefit of *Matsushita*, which enshrined a state court's ability to consider the fairness of a settlement that releases federal securities claims.[63]

The Fund cites *In re MCA, Inc.*,[64] for the proposition that a federal court must first "determine[] the merits of the [federal] claims" released by a proposed settlement.[65] But *MCA* does not stand for that proposition. *MCA* rejected the initial settlement in the litigation that later gave rise to *Matsushita*.[66] The *MCA* court did not reject the first settlement because of a blanket requirement that federal claims

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[62] Settlement Hr'g Tr. at 16:13–17.

[63] *See Matsushita*, 516 U.S. at 385 (State court litigants are "able to waive, or 'release,' the right to litigate Exchange Act claims in a federal forum as part of a settlement agreement. . . . [A] statute conferring exclusive federal jurisdiction for a certain class of claims does not necessarily require resolution of those claims in a federal court.").

[64] 598 A.2d 687 (Del. Ch. 1991),

[65] Obj. at 18.

[66] The Court of Chancery subsequently approved a second settlement that was the focus of the Court's analysis in *Matsushita*.

be evaluated in federal court. Quite the opposite. In *MCA*, the court ultimately concluded that "*the only claims*" encompassed by the settlement's release with "*any* substantial merit" were federal securities claims.[67] The state law claims, by contrast, were "at best, extremely weak"; their settlement "ha[d] little or no value to the class."[68] *MCA* directs that this court evaluate the strength of the federal claims when analyzing a settlement that releases them.

Nottingham is again instructive. There, the Delaware Supreme Court rejected the objector's argument that ruling on the value of federal securities claims interferes with the jurisdiction of the federal court. The high court observed that the "law has uniformly distinguished between the approval of a general release and dismissal or adjudication of an exclusively federal claim. The former is within a state court's power, the latter is not."[69]

The same is true here. Evaluating the strength of the claim does not interfere with the federal court's jurisdiction; the federal court can determine whether to enforce the Release and dismiss the Federal Claims. As explained in *Matsushita*, this court need not wait to release federal securities claims.[70] Waiting deprives the

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[67] 598 A.2d at 696 (emphasis added).

[68] *Id.* at 694–95.

[69] *Nottingham*, 564 A.2d at 1104; *see also Matsushita*, 516 U.S. at 376–84; *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 299 A.3d 501, 526 (Del. Ch. 2023); *In re Faraday Future Intelligent Elec. Inc., S'holder Litig.*, 2025 WL 445038, at *8 & nn.81–82 (Del. Ch. Feb. 10, 2025).

[70] 516 U.S. at 377–78 (taking no issue with the Delaware Supreme Court's view that "on-going or future" federal claims may be released.).

Settlement Class of the Settlement's considerable value and the parties of the global peace for which they negotiated.

The Federal Claims have little or no value, in this court's assessment. Although only the federal court can rule on their merits, in this court's view, the Fund—or any plaintiff pursuing the Federal Claims—would struggle to achieve a meaningful recovery due to statute of limitations arguments and difficulties proving loss causation.

The Fund filed its suit in federal court on April 27, 2026—four years after Activision announced the Merger, two and a half years after the Merger closed, and three weeks after the parties executed the Term Sheet.[71] The Fund advances two federal securities law claims. Count I alleges that Activision, Kotick, and Activision director Brian Kelly (collectively, the "Federal Defendants") violated Section 10(b) of the Exchange Act and SEC Rule 10b-5.[72] Count II alleges that Kotick and Kelly violated Section 20(a) of the Exchange Act.[73]

The gravamen of the Federal Claims is that the Federal Defendants caused Activision to make materially misleading statements in connection with the Merger, deflating Activision's stock price and in turn causing harm to the Seller Class.[74] In particular, the Fund alleges that the Federal Defendants falsely asserted that the

[71] Pl.'s Opening Br. at 6.

[72] *Id.*, Ex. 3 ("Federal Compl.") ¶¶ 177–87.

[73] *Id.* ¶¶ 188–94.

[74] *See id.* ¶ 13.

Merger was financially fair, failed to disclose an agreement that offset the reverse termination fee, and concealed dividend payments to an Activision subsidiary.[75]

The relevant statute of limitations for these claims is the earlier of two years after a reasonably diligent plaintiff would have discovered, or the Fund actually discovered, the facts constituting the alleged violation of federal securities law.[76] As such, the Federal Claims would be time-barred if a reasonably diligent plaintiff would have discovered the necessary underlying facts before April 27, 2024. To answer this question, the court must determine when a reasonably diligent plaintiff would begin an investigation—taking account of the notice provided by lawsuits, news articles, analyst reports, and financial filings related to its investment—and when such an investigation would have yielded fruitful results.[77]

The parties in this action are well-positioned to argue when a reasonably diligent plaintiff ought to have discovered the information supporting the Federal Claims, given their intimate familiarity with this case earned through years of hard-fought litigation. By contrast, the Fund appeared to do little independent legwork beyond cribbing from the filings in this case.[78] The court agrees with the parties that

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[75] *Id.* ¶¶ 134–54.

[76] 28 U.S.C. § 1658(b)(1); *Merck & Co. v. Reynolds*, 559 U.S. 633, 637 (2010); *see also In re Exxon Mobil Corp. Sec. Litig.*, 500 F.3d 189, 202 (3d Cir. 2007) (affirming the trial court's dismissal of a § 20(a) claim because the underlying § 10(b) claim was time-barred).

[77] *Pension Tr. Fund for Operating Eng'rs v. Mortg. Asset Securitization Transactions, Inc.*, 730 F.3d 263, 276–79 (3d Cir. 2013).

[78] *See* Settlement Hr'g Tr. at 42:16–47:6 ("We responded to what we saw being filed [in the Court of Chancery] . . . We simply were monitoring litigation and saw that the Chancery plaintiffs were not asserting these claims.").

the facts underlying each of the three materially misleading statements alleged in the Federal Claims could have been discovered more than two years before the Fund filed its suit.

By the end of 2022, a reasonably diligent plaintiff would have begun its investigation into the purported fairness of the Merger. In the first half of 2022, Activision's SEC filings disclosed lawsuits alleging that the Merger price was lower than what Activision's internal projections suggested the stock was worth.[79] And by November, Plaintiff had filed its lawsuit challenging the fairness of the Merger.[80]

Further, the record indicates that such an investigation would have borne fruit within a matter of months. By June 2022, Plaintiff had obtained the Long-Range Plan undercutting the $95 Merger consideration.[81] And when the Fund's counsel sought information from Defendants under Rule 5.1, it received that information in less than a month.[82] Thus, no later than mid-2023, a reasonably diligent plaintiff would have discovered the facts necessary to challenge any alleged misrepresentations regarding the Merger's fairness.

The same is true for any alleged misstatement regarding an agreement to offset the termination fee. The Fund claims that the Federal Defendants did not

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[79] *See* Defs.' Resp. to Obj., Ex. D at 9–10, 71–72 (disclosing, in March 21, 2022, proxy statement, books and records demands alleging "that management may have attempted to validate the consideration through downward adjustments to the Long-Range Plan"); *id.*, Ex. F at 27 (disclosing the same in May 3, 2022 10-Q).

[80] Compl.

[81] Pl.'s Opening Br. at 55–56.

[82] *See id.* at 19; Dkts. 285, 308.

reveal that Activision agreed to purchase cloud services from Microsoft for an amount equal to one-third the reverse termination fee, rendering statements about the fee misleading.[83] The terms of this agreement were contained in a company disclosure letter. The Merger Agreement repeatedly references the company disclosure letter.[84] Plaintiff's original complaint does as well, describing its efforts to acquire the letter through a books and records request and characterizing the document as necessary to understand the "entire agreement of merger."[85] Plaintiff acquired documents describing the relevant terms of the cloud services agreement in 2022 and the company disclosure letter itself in March 2024.[86] Therefore, a reasonably diligent plaintiff would have discovered the facts necessary to challenge the alleged misstatements related to the reverse termination fee more than two years before the Fund filed its complaint.

And all the facts necessary to allege that the Federal Defendants misrepresented the nature of the dividend payment to Activision's subsidiary were publicly available by 2023 when that payment was announced. The Merger Agreement specified that the shares owned by the subsidiary were common stock and would remain outstanding after the Merger closed.[87] The allegedly misleading

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[83] Federal Compl. ¶ 144.

[84] Defs.' Resp. to Obj., Ex. A at 58–59.

[85] Compl. ¶¶ 5–6, 157, 262–267, 279.

[86] Pl.'s Opening Br. at 53–54; *see also id.*, Ex. 25 at Activision_0000504 (stating a "key parameter[]" of the Merger was Activision "purchasing cloud services from [Microsoft] in an amount equal to one-third of the termination fee over a seven-year term").

[87] Defs.' Resp. to Obj., Ex. A at 3, A-11, A-17, A-22.

statements Activision made in its SEC filings announcing the dividend stated the dividend would be paid on Activision's outstanding common stock.[88] A reasonably diligent plaintiff would have investigated the dividend and whether its payment on common stock held by the Activision subsidiary improperly diverted value to Microsoft from unaffiliated Activision shareholders.[89] Such a straightforward investigation would have borne fruit before April 2024, making the facts underlying this alleged misstatement discoverable more than two years before the filing of the Federal Claims.

In addition to the limitations defense to the Federal Claims, the Fund must grapple with a weak theory of loss causation. To prevail on its claims, the Fund must prove the Federal Defendants' alleged misstatements caused it economic loss.[90] But the Fund's merger-arbitrage strategy involved the purchase of Activision stock *after* Activision announced the Merger and made the allegedly false statements. It then sold this stock while the Merger was pending.[91] The Fund was not damaged from buying and then selling while the Merger was pending, as both the purchase and sale price already reflected any alleged deflation. Plus, Activision's stock price increased

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[88] Federal Compl. ¶¶ 148–53.

[89] The Fund's assertion that the payment of the dividend on common stock held by Activision's subsidiary improperly diverted value to Microsoft is also illogical. In a world where the Board does not pay the dividend on the subsidiary's shares, that cash remains with Activision. Whether the cash is with Activision or its subsidiary, that value ultimately flowed to Microsoft when the Merger closed. The Fund's claim does not raise any of the complicated questions of fact or law implicated by Plaintiff's Treasury-Dividend Claim.

[90] *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342, 346 (2005).

[91] Defs.' Resp. to Obj., Ex. J, sub-ex. A, Sched. A at 1.

dramatically on the Merger's announcement, contradicting the Fund's allegations that statements made at the same time artificially depressed the stock price. Nowhere does the Fund explain how the Seller Class could have sold their shares for more profit than they actually did if the alleged misrepresentations had never been made. Thus, even a more traditionally situated stockholder that held shares before the Merger was announced and sold before it closed—like Plaintiff—would have a difficult time proving that it was damaged by these alleged misrepresentations.

In a seeming concession to this reality, the Fund argues two alternate theories of loss causation. First, but for the misrepresentations, the Seller Class would not have been induced to sell their shares and forfeit their appraisal rights, or second, armed with the knowledge of Activision's true value, the Seller Class could have threatened to enjoin the Merger to negotiate higher consideration. Such theories of loss rely on multiple layers of speculation that would present an uphill battle in litigation. The weak loss causation theories underlying the Federal Claims thus support the court's decision to release those claims to secure the Settlement.

Ultimately, this court decides whether the release of the Federal Claims is appropriate in light of their value and the consideration achieved. The statute of limitations and weak theory of loss causation pose formidable obstacles to any recovery on the Federal Claims. They weigh against affording the Federal Claims any significant value for the purposes of settlement. Accordingly, releasing these claims for no consideration to the Seller Class is appropriate to realize the massive

benefits of the Settlement for the Settlement Class. The Fund's objection is overruled.

B. Class Certification

The certification of a class action involves a two-step analysis.[92] The first step requires that the action satisfy the four prerequisites of Court of Chancery Rule 23(a), which are numerosity, commonality, typicality, and adequacy.[93] If that step is satisfied, the court next must determine whether the suit properly fits into one or more of the Rule 23(b) categories.[94]

The four prerequisites of Rule 23(a) are satisfied. The parties seek to certify the Settlement Class as a non-opt-out class consisting of

> [a]ll former holders of Activision common stock who held Activision shares at any time from the announcement of the Merger Agreement on January 18, 2022, through the closing of the Merger on October 13, 2023 . . . , including all persons or entities who (i) purchased or otherwise acquired or (ii) sold or otherwise forfeited Activision common stock during the Class Period, whether beneficial or of record, including their legal representatives, heirs, successors-in-interest, transferees, and assignees. Excluded from the Class are Defendants and their legal representatives, heirs, successors-in-interest, transferees, and assignees[.][95]

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[92] *Prezant v. De Angelis*, 636 A.2d 915, 920 (Del. 1994) (quoting *Nottingham*, 564 A.2d at 1094).

[93] *Id.* (quoting Ct. Ch. R. 23(a)).

[94] *Id.* at 1094–95 (citing *Nottingham*, 564 A.2d at 1095).

[95] Stipulation § I(d).

There is numerosity. Activision had over 780 million shares of common stock outstanding, held by over 1,000 record holders.[96] Those figures are sufficient to satisfy numerosity.

There is commonality. The question of law linking the Settlement Class members is substantially related to the resolution of the litigation.[97]

Plaintiff's claims are also typical of the Settlement Class, and Plaintiff has proven an adequate representative, although the Fund challenges both conclusions.

There is also adequacy because there is no conflict between Plaintiff and the other Settlement Class members, and Plaintiff fairly represented the Settlement Class.[98]

Where, as here, the requirements of Rule 23(a) are satisfied, parties seeking class certification must also establish that the class meets the criteria of at least one of the subsections of Rule 23(b). Plaintiff argues that the Settlement Class meets Rule 23(b)(1) and (2).[99] Under Rule 23(b)(1), a class may be maintained under Rule 23(b)(1) when

> prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or

[96] Pl.'s Opening Br. at 22.

[97] *See Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991).

[98] *Id.* at 1225–26.

[99] Pl.'s Opening Br. at 23.

> would substantially impair or impede their ability to protect their interests[.][100]

Here, the underlying facts and the applicable law are the same for all Settlement Class members, and the only issue individual to each Settlement Class member is the amount of damages. The pursuit of separate actions by these similarly situated Settlement Class members would risk inconsistent adjudications and the application of incompatible standards of conduct for Defendants. Because the Settlement Class satisfies the Rule 23(b)(1) requirements, this opinion forgoes an analysis under Rule 23(b)(2).

Thus, the Settlement Class satisfies both prongs of the required Rule 23 analysis. The Settlement Class is certified.

C. Settlement Approval

Delaware law favors the voluntary settlement of contested claims.[101] In the settlement of representative litigation, however, there is "potential divergence between the personal interests of the attorneys conducting the litigation and the interests of the class or corporation they represent."[102] In light of the potential divergence, Court of Chancery Rule 23(f) requires court approval of the terms of a proposed settlement of class actions.[103]

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[100] Ct. Ch. R. 23(b)(1).

[101] *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964).

[102] *Activision OG*, 124 A.3d at 1042–43.

[103] Ct. Ch. R. 23(f).

Court of Chancery Rule 23(f)(5) provides that, if the settlement would bind class members, the court "may approve it only after a hearing and only on finding that it is reasonable after considering" the following four issues:

> (A) the representative party and class counsel have adequately represented the class; (B) adequate notice of the hearing was provided; (C) the proposed dismissal or settlement was negotiated at arm's length; and (D) the relief provided for the class falls within a range of reasonableness, taking into account: (i) the strength of the claims; (ii) the costs, risks, and delay of trial and appeal; (iii) the scope of the release; and (iv) any objections to the proposed dismissal or settlement.[104]

1. Adequate Representation

Rule 23(f)(5)(A) asks whether the representative party and class counsel have adequately represented the class. To speak to the adequacy of the plaintiff, Rule 23(aa) requires each representative party to submit an affidavit and provides the required content of that statement.[105] A representative of Plaintiff submitted an affidavit on August 3, 2026,[106] as well as at the beginning of this litigation.[107] Additionally, Plaintiff has proved to be a capable litigant, as evidenced by the

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[104] Ct. Ch. R. 23(f)(5).

[105] Ct. Ch. R. 23(aa)(2) ("The affidavit must state that the person has not received, been promised, or been offered—and will not accept—any form of compensation, directly or indirectly, for serving as a representative party, 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.").

[106] Dkt. 429, Verification of Hans Bergström in Supp. of Settlement and Award of Att'ys' Fees and Expenses.

[107] Dkt. 1, Verification to Class Action Compl. and Aff. Pursuant to Rules 3(aa) and 23(aa).

litigation history of this action and the parties' settlement negotiations. Plaintiff is adequate for all relevant purposes.

So too is Plaintiff's counsel. To preview the analysis of the fee petition, Plaintiff's counsel vigorously pursued this litigation against esteemed opposition, dedicating significant hours over the course of four years of hard-fought litigation, achieving an exceptional benefit for the class. They are more than adequate.

2. Adequate Notice

Rule 23(f)(5)(B) looks at whether class members received adequate notice. Rule 23(f)(3)(B) requires the parties to provide the court with information sufficient to rule on whether to require notice and in what form, and Rule 23(f)(3)(D) establishes the default contents of such notice. A notice of settlement is sufficient if it contains a description of the lawsuit, the consideration for the settlement, and the location and time of the settlement hearing and informs class members that they can obtain additional information by contacting class counsel.[108]

The court approved the parties' form and mechanism of notice when entering the Scheduling Order on June 8, 2026, concluding that it constituted the best notice reasonably practicable under the circumstances and met the requirements of Rule 23(f).[109] The court also authorized the parties' retention of an administrator in connection with the Settlement. The Scheduling Order required the administrator to

[108] *See Phila. Stock Exch.*, 945 A.2d at 1134 n.13.

[109] Dkt. 428 ¶¶ 14–15.

distribute the notice to all Settlement Class members no fewer than sixty days before the settlement hearing. It also required the creation of a notice website.

Plaintiff's counsel retained A.B. Data, Ltd. as the administrator. Estrellita Villanueva-Jones, a project manager at A.B. Data, submitted an affidavit on September 2, 2026, describing the administrator's efforts to provide notice.[110] In all, A.B. Data has mailed over one million notices to potential Settlement Class members. On July 17, 2026, A.B. Data published a website containing information on the Settlement, including a telephone helpline where potential Settlement Class members could ask questions. The notice requirement is met.

3. Arm's-Length Negotiations

Rule 23(f)(5)(C) looks at whether the parties reached the proposed settlement through arm's-length negotiations. They did. The Stipulation resulted from extensive negotiations, including three mediation sessions with Judge Phillips and Danilow.[111] Following this, the parties reached an agreement in principle to settle the action.[112] All indicators are that the parties conducted negotiations in good faith, with each side vigorously advocating for its respective position, and that the Settlement was the result of a fair and professional negotiation process.

4. Reasonable Results

When evaluating the merits, the court must ask whether the terms of the proposed settlement are fair and reasonable. When reviewing a proposed class or

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[110] Dkt. 433.

[111] Stipulation ¶¶ DDD–FFF.

[112] *Id.*

derivative settlement, this court uses its own business judgement to determine whether the terms of the settlement are fair, reasonable, and adequate.[113]

Case law describing this standard directs the court to balance the "give"—here, the Release—against the "get"—the settlement terms.[114] The "get" here is substantial.

The Settlement undoubtedly provides significant value to Settlement Class members. Under the terms of the Stipulation, Defendants agreed to pay $250 million to compensate stockholders for the numerous claims that had survived in this litigation, including the Dividend Claim, Conversion Claims, Treasury-Dividend Claim, Plaintiff's core *Revlon* claim, and the Letter Agreement claim.

The $250 million Settlement Fund is the largest ever cash settlement in the Court of Chancery challenging a third-party merger.[115] That amount equates to a per-share recovery of $0.30 and a 0.35% increase in the Merger consideration.[116] Further, the Settlement is in line with comparable settlements this court has approved in other cases challenging large third-party mergers.[117]

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[113] *Goodrich v. E.F. Hutton Gp., Inc.*, 681 A.2d 1039, 1045 (Del. 1996).

[114] *See, e.g.*, *Activision OG*, 124 A.3d at 1043.

[115] Pl.'s Opening Br. at 25–26 (citing analysis of settlements in *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 711–12 (Del. Ch. 2023), *as revised* (Aug. 21, 2023) ["*Dell I*"], *aff'd*, 326 A.3d 686 (Del. 2024)).

[116] *Id.* at 26–27.

[117] *See id.* at 26–28 (charting settlements in *In re El Paso Corp. S'holder Litig.*, 2012 WL 6057331 (Del. Ch. Dec. 3, 2012); *In re Columbia Pipeline Gp. Inc. Merger Litig.*, 2022 WL 1810191 (Del. Ch. June 1, 2022); *In re Gardner Denver, Inc. S'holder Litig.*, C.A. No. 8505-VCN (Del. Ch. Sep. 3, 2014) (TRANSCRIPT); and *In re Dreamworks Animation SKG, Inc.*, 2018 WL 1876323 (Del. Ch. Apr. 18, 2018)).

When reviewing the terms of a proposed class action settlement, the court's role is "to determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept."[118] Rule 23(f)(5)(D) identifies four considerations that factor into this analysis, calling for the court to take into account: "(i) the strength of the claims; (ii) the costs, risks, and delay of trial and appeal; (iii) the scope of the release; and (iv) any objections to the proposed dismissal or settlement."[119] This decision has already addressed the fourth factor—the objection to the Settlement. The other factors similarly support approval.

The surviving claims were sufficient to withstand motions to dismiss. Aspects of the Conversion Claims survived motions to dismiss in *Activision I*, *II*, and *III*.[120] The Dividend Claim was sufficient to survive a motion to dismiss in *Activision I* and *III*.[121] Plaintiff's fiduciary duty claims, including the core of their *Revlon* claim and the Letter Agreement claims, also survived *Activision III*.[122] As the court recognized in *Activision III*, the Treasury-Dividend Claim warranted review on summary

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[118] *Forsythe v. ESC Fund Mgmt. Co. (U.S.), Inc.*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013).

[119] Ct. Ch. R. 23 (f)(5)(D).

[120] *Activision I*, 2024 WL 863290, at *1-8, *10; *Activision II*, 2024 WL 863325, at *2; *Activision III*, 2025 WL 2803254, at *31-32.

[121] *See Activision I*, 2024 WL 863290, at *9-10 & nn.60-64; *Activision III*, 2025 WL 2803254, at *29-30.

[122] *Activision III*, 2025 WL 2803254, at *18–19, *28–29.

judgment.[123] A claim that survives a motion to dismiss is typically strong enough to support a settlement.[124] The surviving claims here certainly do.

Continued litigation carries significant risks and uncertainties. A trial would likely involve complex financial analyses, expert testimony, and wading through extensive discovery to prove liability, all of which would have substantial monetary costs. Even on the claims strong enough to survive the gauntlet of litigation to this point, victory is not certain.[125] Moreover, proving damages entails significant risk for Plaintiff—the 2023 Dividend at least partially mitigated damages on all claims.[126] The risk of continued litigation thus weighs in favor of approving the Settlement.

The scope of the Release is broad but appropriate. The Settlement Class is releasing

> all claims and causes of action of every nature and description, whether [known or unknown], whether arising under state, federal, common, local, statutory, regulatory, foreign, or other law or rule (including federal securities law, rules and regulations, and any state disclosure laws), (i) that arise from [the Settlement Class's] capacity as former Activision stockholders; (ii) that Plaintiff or any other Class Member (a) asserted in the Action, (b) could have alleged, asserted, set forth, or claimed in the Action,

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[123] *Id.* at *4.

[124] *See Krinsky v. Helfand*, 156 A.2d 90, 92, 94–95 (Del. 1959) (affirming the approval of a settlement with claims predicated on "a very weak factual case" that nonetheless survived a motion to dismiss); *see also In re Cox Commc'ns, Inc. S'holders Litig.*, 879 A.2d 604, 634 (Del. Ch. 2005) ([O]ur precedent also reveals that there is no requirement that the court deny approval of a settlement if it concludes that the claims to be released could not withstand a motion to dismiss.").

[125] *See* Pl.'s Opening Br. at 30 (conceding that there are "significant obstacles to liability on Plaintiff's claims" and that "recovering substantial damages would be difficult, uncertain, and delayed").

[126] *Id.* at 37.

> or (c) have alleged, asserted, set forth or claimed, or could have alleged, asserted, set forth, or claimed in any other action or proceeding in any forum, individually or on behalf of the Class or any subset or group of Class Members, or derivatively, that directly or indirectly relate in any way to, or arise out of: (1) the Merger, (2) any control, participation, or conduct of any of the [Defendants] with respect to the Merger, (3) any conduct by any of the [Defendants] with respect to Activision stock, (4) the Action; or (5) the facts, circumstances, events, acts, disclosures, statements, representations, omissions, or failures to act that were alleged in the Action or that could have been raised in the Action; and/or (iii) that arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the claims, counterclaims, and allegations asserted in the Action, except for claims to enforce the Settlement.[127]

When evaluating the scope of the release, the court determines whether the released claims rest on the same factual predicate or operative facts as the underlying action.[128] The Release applies to all Settlement Class members and bars any future litigation asserting similar claims that were alleged or could have been alleged in this action. Because Plaintiff's fiduciary and statutory theories broadly covered all events surrounding the Merger, the scope of the Release is proportionately broad. As previously discussed, that breadth is essential to promote global peace in this context and is thus appropriate despite the limited objection. The scope of the Release supports approving the Settlement.

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[127] Stipulation § I(cc).

[128] *See AMC*, 299 A.3d at 525–26 (quoting *Phila. Stock Exch.*, 945 A.2d at 1146); *see also Faraday*, 2025 WL 445038, at *8 ("A release can encompass claims not specifically asserted in a settled class action, including claims that might not have been presentable, if they arise from the same identical factual predicate or the same set of operative facts as the underlying action." (internal quotation marks omitted)).

Considering the Settlement's benefits, the strength of the claims, the risks associated with continued litigation, and the appropriateness of the Release's scope, the Settlement falls within the range of reasonable outcomes that a party acting voluntarily would accept. Accordingly, the Settlement is approved.

D. Attorneys' Fees And Expenses

Plaintiff's counsel requests reimbursement of expenses worth $447,680.66, all of which were reasonably incurred,[129] and fees of $60 million. Defendants do not oppose this request, and the Fund did not object to it.

The default rule in American litigation is that litigants pay their own legal fees.[130] An exception to this rule allows the court to award fees to counsel who created a "common benefit" for a class. One type of common benefit involves the creation of a common fund.[131] In a common fund case, counsel's fees are paid from the fund.[132]

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[129] Most of this went to expert and mediator fees. *See* Dkt. 429, Aff. Of Stacey A. Greenspan in Supp. of Award of Att'ys' Fees and Expenses ("Greenspan Aff.") ¶¶ 8, 15.

[130] *Maurer v. Int'l Re-Ins. Corp.*, 95 A.2d 827, 830 (Del. 1953) ("We start with the general principle that, apart from statute or contract, a litigant must pay his counsel fees. 'The general and well recognized rule, subject to but few exceptions, is that a litigant must himself defray the costs of representation by counsel.'" (quoting *In re Equitable Tr. Co.*, 30 A.2d 271, 272 (Del. Ch. 1943))); *Tandycrafts, Inc. v. Initio P'rs*, 562 A.2d 1162, 1164 (Del. 1989) (describing the American rule).

[131] *Goodrich*, 681 A.2d at 1044–45 (discussing the history of the common-fund doctrine); *Chrysler Corp. v. Dann*, 223 A.2d 384, 386 (Del. 1966) (applying the common-fund doctrine in the derivative context, explaining that that the exception applies "provided the litigation . . . has specifically and substantially benefited the class which, in a derivative action, is the corporation," and collecting cases).

[132] *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 697 (Del. 2024) ["*Dell II*"].

This creates a conflict between counsel and their clients—"[t]he more the attorneys receive, the less goes to the class."[133]

As fiduciaries for the class and under rules of professional responsibility, counsel must limit their fee request to what is reasonable.[134] But the court still has an important role to play in policing conflicts that arise in this context. When awarding fees for a common benefit, the court "must make an independent determination of reasonableness on behalf of the common fund's beneficiaries."[135] This "task is not cursory."[136]

Delaware courts apply the *Sugarland* factors to assess the reasonableness of a fee award. Those factors are "(1) the results achieved; (2) the time and effort of counsel; (3) the relative complexities of the litigation; (4) any contingency factor; and (5) the standing and ability of counsel involved."[137] Of these factors, "[t]he first factor – the results achieved – is paramount."[138] The other factors are secondary. As part of the first factor, the court must also consider the causal relationship between "what counsel accomplished through the litigation and the ultimate result."[139]

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[133] *Id.*; *see Goodrich*, 681 A.2d at 1045.

[134] *Dell II*, 326 A.3d at 697 (citing *Goodrich*, 681 A.2d at 1045).

[135] *Goodrich*, 681 A.2d at 1046 (citing *Nottingham*, 564 A.2d at 1102).

[136] *Dell II*, 326 A.3d at 697 (citing *Goodrich*, 681 A.2d at 1045–46).

[137] *Id.* at 698 (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 150 (Del. 1980)).

[138] *Id.*; *see also Olson v. EV3, Inc.*, 2011 WL 704409, at *8 (Del. Ch. Feb. 21, 2011) ("In determining the size of an award of attorney's fees, courts assign the greatest weight to the benefit achieved in light of the nature of the claims and the likelihood of success on the merits." (internal quotation marks omitted)).

[139] *Dell II*, 326 A.3d at 698 (citing *Sugarland*, 420 A.2d at 150–51); *see also Dell I*, 300 A.3d at 692 ("The causal dimension is critical, because Delaware public policy calls

The Delaware Supreme Court has eschewed any "formulaic" or "mechanical approach" under *Sugarland*, emphasizing that this court enjoys broad discretion when awarding fees.[140] The overarching goal is to right-size fee awards to the benefit achieved. By doing so, the court provides incentives for "counsel to accept challenging cases" despite "the risk of recovering nothing in the end," while simultaneously avoiding awards that "exceed their value as an incentive to take representative cases and turn into a windfall."[141]

The primary *Sugarland* factor looks to the value of benefit created by counsel's efforts. The Settlement creates a $250 million settlement fund for the Settlement Class. The Settlement Fund is the largest ever cash settlement in the Delaware Court of Chancery challenging a third-party merger.[142] The Settlement Fund sits among the largest cash recoveries achieved in merger-and-acquisition-related settlements in the Court of Chancery between 2012 and 2025.[143] According to Cornerstone Research, only 12 out of 143 settlements (approximately 8%) in that

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for compensating counsel for the beneficial results they produced. Counsel cannot take credit for results they did not produce, so a court must consider whether the plaintiff can rightly receive all the credit for the benefit conferred or only a portion thereof." (citations and internal quotation marks omitted)), *aff'd*, 326 A.3d 686 (Del. 2024).

[140] *Dell II*, 326 A.3d at 698–99 (eschewing a "formulaic approach to fee requests" and affirming "the discretion of the Court of Chancery" to award fees).

[141] *Id.* at 702.

[142] *Dell I*, 300 A.3d at 712–13 (analyzing settlements in deal cases since *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2013)).

[143] Frank Schneider *et al.*, *2012-2025 Review & Analysis: M&A Litigation Settlements in the Delaware Court of Chancery*, CORNERSTONE RESEARCH, at 5 (Sep. 23, 2025).

thirteen-year span were equal to or greater than $100 million.[144] Of 143 settlements, 116 (over 80%) were below $50 million.[145]

The $250 million Settlement Fund is not the only benefit achieved in this litigation. Plaintiff also challenged a provision of the Merger Agreement that limited Activision to one $0.47-per-share dividend payable in 2022 as statutorily invalid because the Board improperly delegated approval of the term to a committee. Defendants mooted that claim by signing the Letter Agreement, authorizing the 2023 Dividend two months before the merger closed. For the Settlement Class, the 2023 Dividend totaled approximately $778 million.[146]

The Settlement Fund is an "obvious and self-pricing benefit."[147] When awarding fees based on a quantifiable benefit like the Settlement Fund, the Delaware Supreme Court has endorsed the stage-of-case approach established in *Americas Mining*. The stage-of-case approach starts by calculating a fee as a percentage of the benefit achieved, basing that percentage on the stage of the case at which the litigation is resolved.[148] "Other *Sugarland* factors may cause the court to adjust the

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[144] *Id.* The analysis restricted its sample set to deal cases and excluded the $1 billion *Dell* settlement because *Dell* challenged a stock conversion. *See id.* at 17; *Dell II*, 326 A.3d at 689.

[145] Schneider, *supra*, at 5.

[146] The parties agree that Plaintiff may argue that the 2023 Dividend is part of the benefits achieved by the litigation and a relevant consideration in determining the benefit achieved for the Settlement Class. Stipulation § VIII(2).

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

[148] *Dell I*, 300 A.3d at 686 (discussing *Ams. Mining* and the stage-of-case approach).

indicative fee up or down, but the starting point under *Americas Mining* is a percentage calculation."[149]

When a case resolves early, the guideline range is 10–15%.[150] When a case resolves after meaningful litigation efforts, including multiple depositions and some level of motion practice, the guideline range is 15–25%.[151] The highest percentage of 33% is reserved for plaintiffs who prevail after trial.[152] Selecting the appropriate percentage of the financial benefits to award as fees requires an exercise of judicial discretion.[153] The test is not mechanical.[154]

When the Settlement was reached, Plaintiff had been pursuing litigation for over four years. Plaintiff had beaten back two rounds of motions to dismiss and the Section 205 Action, filed two additional lengthy amended complaints, served and pursued extensive discovery, obtained significant production of documents, briefed motions to dismiss the counterclaims, engaged in substantial additional motion practice, and participated in extended settlement negotiations and mediation proceedings. This level of litigation activity is meaningful, justifying a percentage in the range of 15–25%.

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[149] *Id.* at 692.

[150] *Id.* at 694 (quoting *Ams. Mining*, 51 A.3d at 1259–60).

[151] *Id.*

[152] *Id.*

[153] *Ams Mining*, 51 A.3d at 1261; *In re Appraisal of Dell, Inc.*, 2016 WL 6069017, at *13 (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); *Baker v. Sadiq*, 2016 WL 4375250, at *6–7 (Del. Ch. Aug. 16, 2016).

[154] *Appraisal of Dell*, 2016 WL 6069017, at *13.

Based on the Settlement Fund alone, and excluding the benefit of the 2023 Dividend, Plaintiff's requested $60 million fee is approximately 24% of the net Settlement Fund after subtracting out the requested expenses. This percentage is within the applicable guideline range and reasonable. In light of the value of the 2023 Dividend also caused by this litigation, the requested fee award is more than reasonable.

The other *Sugarland* factors support the requested fee. Plaintiff's counsel invested significant time and effort, dedicating 10,727.20 hours to litigating this action from its inception through the filing of the Stipulation, with a value of $10,852,110.50.[155] The requested fee award amounts to an implied hourly rate of $5,593, with a lodestar multiplier of 5.5x. This litigation involved a high degree of complexity, both factually and legally. This lawsuit proceeded for years and involved difficult and innovative claims challenging a third-party merger of enormous size. Plaintiff's counsel pursued this case on a fully contingent basis.[156] And the court holds Plaintiff's counsel and the six defense firms they went up against in high esteem.

Plaintiff's counsel is thus entitled to reimbursement of their full expenses and requested attorneys' fees.

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[155] Greenspan Aff. ¶ 14. This does not include Plaintiff's counsel's time in the Section 205 Action, for which they already received a fee award.

[156] *Id.* ¶ 4.

III. CONCLUSION

The Fund's objection is overruled. The Settlement Class is certified. The Settlement, including the Release and plan of allocation, is approved. And Plaintiff's counsel is entitled to reimbursement of $447,680.66 in expenses and payment of $60 million in attorneys' fees.