IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SCHUFF INTERNATIONAL, INC.	)	CONSOLIDATED
STOCKHOLDERS LITIGATION	)	C.A. No. 10323-VCZ

THE HC2 DEFENDANTS' BRIEF IN SUPPORT OF THE SETTLEMENT AND IN OPPOSITION TO THE OBJECTIONS

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PRELIMINARY STATEMENT

Plaintiff is a longtime Schuff[1] stockholder who did not tender any of his Schuff common stock in the 2014 Tender Offer and continues to own his shares.[2] From the start, Plaintiff has asserted claims on behalf of a class consisting of the Schuff stockholders who sold their shares in the 2014 Tender Offer (the "Tendered Stockholders") and the Schuff stockholders who continue to hold their shares (the "Non-Tendered Stockholders"). The Settlement is the result of more than five years of highly contentious litigation and settlement negotiations. The cornerstone of the Settlement is the proposed payment (subject to offset for the fee award to plaintiffs' counsel) of $67.45 to the Tendered Stockholders (the $31.50 price paid in the 2014 Tender Offer plus a $35.95 Settlement payment) and the parallel payment of the same $67.45 to Schuff stockholders who participate in the Settlement Tender Offer.

Two groups of Non-Tendered Stockholders represented by Objectors Fair Value Investments Incorporated ("Fair Value") and AB Value Partners, L.P. ("AB Value") (together, "Objectors") urge the Court to reject the vigorously negotiated Settlement and deny Schuff's current and former stockholders the substantial

[1] Schuff International, Inc. changed its name in 2016 to DBM Global, Inc.

[2] Capitalized terms not otherwise defined have the meanings in the Settlement Stipulation (the "Stipulation"). Dkt. 100.

benefits the Settlement will provide.[3] However, Objectors do not discuss the specific factors relevant to the Court's consideration of a proposed class action settlement:

1. the probable validity of the claims;
2. the apparent difficulties in enforcing the claims through the courts;
3. the collectibility of any judgment recovered;
4. the delay, expense and trouble of litigation;
5. the amount of the compromise as compared with the amount and collectibility of a judgment;
6. the views of the parties involved, pro and con;
7. the diligence of plaintiff in investigating the claims; and
8. whether the proposed settlement is supported by mutual consideration.[4]

Objectors do not discuss and therefore apparently concede that factors 1–7 support the Settlement. Instead, Objectors challenge only two aspects of the eighth factor:

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[3] *See* Dkt. 121 (Fair Value Investments Incorporated's Brief in Support of Objection to Proposed Settlement) ("FVB"); Dkt. 125 (AB Value Partners, L.P.'s Objection to Proposed Settlement) ("AVPO").

[4] *See, e.g.*, *Polk v. Good,* 507 A.2d 531, 536 (Del. 1986); *Ryan v. Gifford*, 2009 WL 18143, at *5 (Del. Ch. Jan. 2, 2009). In addition to ignoring completely the specific legal standards governing the Court's evaluation of the proposed Settlement, Fair Value mischaracterizes this case as "a securities class action." FVB at 3.

(i) the sources of the settlement payments; and (ii) the scope of the settlement release compared to the settlement consideration.[5]

Objectors have not moved to intervene to litigate the claims in the Action and instead ask the Court to rewrite the Settlement to suit their own interests. Objectors' clear goal in seeking to block the Settlement as to the Non-Tendered Stockholders is solely to put pressure on HC2 to complete a cash-out merger at a higher price than the Net Settlement Tender Offer Payment. The Court should reject Objectors' unsupported requests and approve the Settlement.[6]

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[5] FVB at 11–17; APVO at 2.

[6] The principal of Fair Value, Gary Lutin, has a long and very contentious history with HC2 and Schuff. Since August of 2017, Fair Value has owned only 10 shares of Schuff stock but Mr. Lutin claimed he might be able to speak for upwards of 150,000 shares of Schuff while at the same time asserting he had no actual authority to do so (and with the identities of the holders of such shares for the first time revealed to HC2 through Fair Value's filing). Mr. Lutin repeatedly has attempted to induce HC2 since 2017 to implement a different transaction structure in which Schuff's current public stockholders would exchange their Schuff shares for preferred stock of HC2 convertible into common stock and Fair Value supposedly would facilitate the exchange. Over this two and a half year campaign, Fair Value served ***ten*** books and records requests on Schuff and, through an affiliated organization called The Shareholder Forum, Mr. Lutin in September 2019 distributed an electronic survey asking HC2 (not Schuff) stockholders to rate current management and its strategies while then proposing that HC2 purchase the results of such uncommissioned and unnecessary HC2 stockholder survey for $40,000. Each of these facts undercuts the *bona fides* of Fair Value's objections to the Settlement. *See, e.g.*, *Ryan*, 2009 WL 18143, at *11 ("I have considered Objector Corey's arguments on their merits; however, I should also note that there is evidence that Objector Corey's opposition to the settlement may not be motivated solely by a desire to achieve what is best for Maxim.")

STATEMENT OF FACTS

In May 2014, HC2 purchased for $31.50 per share approximately 65% of Schuff's common stock from (i) Schuff's then-CEO, co-founder, and majority stockholder, and (ii) Jefferies.[7] In August 2014, HC2 commenced the 2014 Tender Offer, which provided all of Schuff's minority stockholders with the opportunity to sell their shares for the same $31.50 per share price HC2 paid to acquire a controlling 65% position approximately three months earlier. The Schuff Board formed the Special Committee to evaluate the 2014 Tender Offer. Although the Special Committee took no position on whether Schuff stockholders should participate in the 2014 Tender Offer, the two Special Committee members and the members of Schuff's senior management tendered their shares.[8]

The 2014 Tender Offer closed on October 7, 2014 and HC2 purchased 721,124 shares of Schuff common stock, increasing HC2's ownership to 88.69%.[9] In October 2014, HC2 increased its ownership of Schuff common stock above 90% through private purchases at $31.50–$34.00 per share.[10] HC2 and its affiliates

[7] Stip. ¶¶ B–C. The $31.50 price was a substantial premium over the weighted-average market price range of $18.02 per share during the year before the May 2014 stock purchase by HC2.

[8] *Id.* ¶¶ I, K, M.

[9] *Id.* ¶ M.

[10] *Id.* ¶ N; Stip. Ex. D at 26.

acquired additional Schuff shares during November 2014–November 2017 at $31.50–$44.50 per share and currently own 92.5% of Schuff's common stock.[11]

Plaintiff's Amended Complaint alleges that (i) the 2014 Tender Offer was the product of disloyalty and bad faith on the part of HC2 and each member of the Schuff Board, including in particular the two members of the Special Committee; and (ii) HC2 breached a purported obligation by declining to complete a cash-out merger following the 2014 Tender Offer. To resolve these parallel claims, the Settlement provides the Tendered Stockholders with a damages payment of $35.95 per share, less the per share amount of the Fee and Expense Award allocated to the Tendered Stockholders.[12] The net settlement payment of $57.56 to the Tendered Stockholders is expected to be nearly double the $31.50 per share the Tendered Stockholders received in the 2014 Tender Offer.

The Settlement Tender Offer also provides an otherwise unavailable opportunity for the Non-Tendered Stockholders to sell their Schuff shares at the premium price of $57.56 per share (accounting for the partial offset from the Fee and Expense Award). The Non-Tendered Stockholders currently have no opportunity to sell large blocks of Schuff stock and there can be no assurance if or

[11] Stip. ¶ N; Stip. Ex. D. at 26.

[12] The per share amount of the Fee and Expense Award allocated to the Tendered Stockholders is currently unknown and depends on the Court's resolution of Plaintiff's request for fees and expenses.

when comparables sale opportunities will arise in the future. Thus, the Settlement Tender Offer provides a valuable opportunity for Non-Tendered Stockholders who wish to sell their shares while giving the other Non-Tendered Stockholders the option to maintain their current positions.

The HC2 Defendants do not agree that Schuff shares were or are worth double the price HC2 paid in the 2014 Tender Offer. If the parties litigated the Action through trial, the HC2 Defendants and their valuation expert from Compass Lexecon would mount a vigorous defense to demonstrate the fairness of the 2014 Tender Offer price. The HC2 Defendants also vigorously reject Plaintiff's contention that HC2 supposedly was or should be required to cash-out the non-tendering public shares at their going concern value. Nevertheless, Plaintiff obtained very favorable settlement payments for the Class by leveraging the risk of substantial future defense costs and pre-judgment interest payments, the negative optics of certain enthusiastic and imprecise statements in the discovery record, and the risk that the increase in the potential value of Schuff since the 2014 Tender Offer would influence the Court's damages determinations.

Based on the absolute insistence of Plaintiff, the Settlement provides the Non-Tendered Stockholders with the *option* to be treated like the Tendered Stockholders and sell their shares at the same $67.45 per share settlement consideration as the Tendered Stockholders—the $31.50 per share the Tendered

Stockholders received in the 2014 Tender Offer and the $35.95 per share the Tendered Stockholders will receive in the Settlement—less the same per share Fee and Expense Award deducted from the settlement payments to the Tendered Stockholders. Plaintiff has alleged from the start of the Action that Defendants' purported misdeeds with respect to the 2014 Tender Offer harmed the Tendered Stockholders and Non-Tendered Stockholders in the same fashion. The Settlement structure addresses Plaintiff's parallel claims.

Despite the substantial benefits the Settlement will provide to all Schuff stockholders, Objectors raise a panoply of objections in the hopes of re-writing the Settlement to suit their own interests. Objectors' arguments are unsupported and, critically, if accepted would result in no Class Members receiving the benefits of the Settlement.

ARGUMENT

Delaware law "favors the voluntary settlement of contested issues."[13] Settlements are encouraged "because the litigants are generally in the best position to evaluate the [relevant] strengths and weaknesses of [the] case."[14] Settlements are particularly favored in complex actions because they promote the interests of

[13] *Polk*, 507 A.2d at 535.

[14] *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 402 (Del. Ch. 2008), *aff'd sub nom. Whitson v. Marie Raymond Revocable Tr.*, 976 A.2d 172 (Del. 2009).

judicial economy.[15] When evaluating a proposed settlement, the Court "consider[s] the nature of the claim, the possible defenses thereto, the legal and factual circumstances of the case, and then . . . appl[ies] its own business judgment in deciding whether the settlement is reasonable in light of these factors."[16] As explained below, all of these factors favor the approval of the Settlement.

I. THE SETTLEMENT IS FAIR TO THE NON-TENDERED STOCKHOLDERS

A. The Settlement Provides The Non-Tendered Stockholders With A Liquidity Opportunity At The Same Premium Price As The Tendered Stockholders

"Perhaps the most important task that the court has when considering a settlement in a representative action is to evaluate the adequacy of the settlement consideration. Determining adequacy does not require a definitive evaluation of the case on its merits."[17] The Settlement reflects an equitable resolution of the

[15] *See Prezant v. De Angelis*, 636 A.2d 915, 923 (Del. 1994) ("Judicial economy is served by a comprehensive settlement hearing rather than piecemeal litigation."); *TR Inv'rs, LLC v. Genger*, 2010 WL 2901704, at *18 n.122 (Del. Ch. July 23, 2010), *aff'd*, 26 A.3d 180 (Del. 2011) ("Settlements are encouraged because they promote judicial economy . . . .").

[16] *In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1137 (Del. 2008) (quoting *Polk*, 507 A.2d at 535).

[17] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1062–63 (Del. Ch. 2015, revised May 21, 2015); *see also Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013) ("[T]his Court's role when acting as a fiduciary in the settlement context is to determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not

Action that properly protects the interests of the Class and was negotiated at arms'-length by well-informed and well-represented parties.[18]

Objectors do not argue that the Settlement offers insufficient consideration to the Tendered Stockholders or that it is unfair to give Non-Tendered Stockholders the option to sell their Schuff stock like the Tendered Stockholders. Instead, Objectors contend that Schuff's nominal responsibility for making the payments to the Non-Tendered Stockholders in the Settlement Tender Offer is a "wealth transfer" of at least $1.5 million from the Non-Tendered Stockholders to the Tendered Stockholders.[19] Objectors further assert that they are entitled to a liquidity opportunity at the purported current intrinsic value of their Schuff shares, rather than at the value the Tendered Stockholders will receive.[20]

Objectors simply disregard that HC2 and Schuff have no obligation whatsoever to buy the Non-Tendered Stockholders Shares at any price. Objectors also ignore the substantial consideration and option value the Settlement Tender

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under any compulsion to settle and with the benefit of the information then available, reasonably could accept.").

[18] *See, e.g.*, *Activision Blizzard*, 124 A.3d at 1063 (citing *Polk*, 507 A.2d at 536 (identifying the "views of the parties involved" as one factor the Court should consider); *In re Liberty Tax, Inc. S'holder Litigation*, C.A. No. 2017-0883-AGB, at 55 (Del. Ch. July 2, 2019) (TRANSCRIPT) (same); *Ryan*, 2009 WL 18143, at *5 (approving settlement that "was reached after vigorous arms-length negotiations following meaningful discovery").

[19] ABVO at 10; *see also id.* at 10–14; FVB at 11–13.

[20] FVB at 6–7, 21; ABVO at 12.

Offer provides to the Non-Tendered Stockholders. For more than two years prior to the announcement of the Settlement, Schuff's minority stockholders had no opportunity to sell their shares at anything close to the Net Settlement Tender Offer Payment—$57.56 per share if the Court approves the requested Fee and Expense Award. Between January 1, 2017 and March 31, 2019 (the last quarter before the parties approved the economic terms of the Settlement) Schuff common stock traded between $32.10 and $45.15.[21] The super premium price in the Settlement Tender Offer compared to the market price, plus the option to sell in the Settlement Tender Offer or remain a Schuff stockholder, provide full consideration for the Settlement.[22]

B. HC2 Bears The Ultimate Burden For Substantially All Of The Expected Settlement Payments

Objectors assert that the settlement payments to the Tendered Stockholders are "an unfair and unreasonable wealth transfer of more than $1.5 million on a *pro*

[21] Stip. Ex. D at 15.

[22] *See, e.g.*, *Marie Raymond*, 980 A.2d at 405 (approving settlement permitting stockholders to decide whether to participate in a settlement tender offer and finding "it reasonable that some investors would choose the economic benefits immediately available under the settlement"); *Lacos Land Co. v. Arden Grp., Inc.*, 1986 WL 14525, at *3 (Del. Ch. Dec. 24, 1986) (recognizing as a settlement benefit that "the settlement offers to all shareholders a valuable option: an opportunity to sell their stock at an 18% premium over the market price of the Company's stock on the day the preliminary injunction opinion was entered").

rata basis from the Non-Tendered Stockholders to the Tendered Stockholders.[23] Objectors are wrong—both on the amount of the Settlement-related payments the Non-Tendered Stockholders indirectly bear and on the assertion that it is unfair for the Non-Tendered Stockholders to indirectly support the financing for the Settlement.

The Stipulation obligates Schuff to make the Net Tender Payment to Tendered Stockholders, "using cash from the DBMG Financing and the Insurers."[24] Schuff also is responsible for any payments in the Settlement Tender Offer.[25] Contrary to Objectors' assertions, this structure does not result in the Non-Tendered Stockholders indirectly bearing any material cost for the Settlement.

HC2's D&O insurers finally agreed after intensive negotiation with HC2 to contribute $13.7 million to fund defense costs and the Settlement payments to the Tendered Stockholders. HC2 expects based on its current estimates that the D&O insurers will contribute approximately $12.26 million (60%) of the $20.44 million in Settlement payments to the Tendered Stockholders. Using these assumptions, the insurance payments would leave Schuff nominally responsible for

[23] ABVO at 10–11; *see also* FVB at 11–13.
[24] Stip. ¶ 2(a).
[25] *Id.* ¶ 2(b).

approximately $8.18 million of the Settlement payment to the Tendered Stockholders.

The Insurers are not paying any amount for the Settlement Tender Offer. Objectors hold 207,301 of the 289,902 Non-Tendered Stockholders Shares and, for present purposes, HC2 assumes (generously) that none of the 207,301 shares will be sold in the Settlement Tender Offer. That leaves 82,601 Non-Tendered Stockholders Shares available for sale in the Settlement Tender Offer. Assuming half of the Non-Tendered Stockholders Shares accept the Settlement Tender Offer, Schuff would repurchase 41,301 shares in the Settlement Tender Offer at a total cost of only $2.79 million. This assumption means that 248,602 of the Non-Tendered Stockholders Shares (207,301 plus 41,301), representing 6.45% of Schuff's outstanding common stock after the Settlement Tender Offer,[26] would be the only publicly-held Schuff shares indirectly funding the Settlement Tender Offer (the "Continuing Public Shares").

Schuff is nominally responsible for approximately $8.18 million of settlement payments to the Tendered Stockholders and, using the assumptions above, approximately $2.79 million for purchases in the Settlement Tender Offer—$10.97 million in total. The Continuing Public Shares, holding 6.45% of

[26] Schuff has 3,855,721 shares of common stock outstanding and 248,602 shares is 6.45% of the outstanding Schuff shares.

Schuff's stock, would share indirect responsibility for only $708,000 of the Settlement-related payments (i.e., $10.97 million multiplied by 6.45%). Accordingly, Objectors' calculation of the alleged "wealth transfer" is overstated by more than double.

More importantly, the benefits the Settlement provides to Schuff and the Non-Tendered Stockholders far outweigh this minimal indirect burden on the Continuing Public Shares. This minimal indirect burden is more than fair in light of the claims and exposure facing eight individual defendants. There is no reasonable argument that HC2—the assumed holder of 93.55% of the Schuff shares after the Settlement Tender Offer—would bear anywhere close to 93.55% of any ultimate judgment to the Tendered Stockholders if the Action is litigated and Plaintiff prevails. Notably, *Gatz v. Ponsoldt*, upon which Objectors rely, found no improper "circular transfer" where "as much as 93%, and not less than 73%, of the proposed settlement payment will be borne by non-class members."[27]

Objectors erroneously argue that the Settlement wrongfully forces Schuff to pay the settlement consideration. In reality, HC2 – the expected 93.55% Schuff stockholder – bears indirectly substantially all of the Settlement-related costs ($10.262 million) and the Settlement provides benefits to Schuff and its current

[27] *See* ABVO at 10 (citing *Gatz*, 2009 WL 1743760, at *4 (Del. Ch. June 12, 2009)).

public stockholders that far outweigh the $708,000 cost the holders of the Schuff Continuing Public Shares will bear indirectly.

Objectors' assertions that HC2 should make the Settlement-related payments improperly assumes that HC2 has the financial capacity and ability to do so.[28] In reality, HC2 is subject to substantial restrictions in its debt agreements and preferred stock designations that impose significant limitations on HC2's ability to incur additional debt, make restricted payments to purchase stock, make investments in subsidiaries, or engage in transactions with affiliates.[29] These restrictions make it impracticable for HC2 to make the Settlement payments, purchase the Non-Tendered Stockholders Shares, or complete a short-form merger with Schuff. HC2 advised Plaintiff during settlement negotiations that it could not access unrestricted funds to make the requested Settlement-related payments. HC2 also has explained repeatedly these restrictions to Mr. Lutin. The Parties to the Action accordingly negotiated a Settlement framework that is fair to all Class Members within the constraints of HC2's debt and preferred stock covenants.

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[28] *See* FVB at 2; AVPO at 2.

[29] *See generally* HC2 Form 8-K (Nov. 20, 2018) (describing HC2's indenture governing its 11.5% senior secured notes due 2021); HC2 Form 8-K (April 3, 2019) (describing HC2's $15 million secured revolving credit agreement); HC2 Form 10-K (March 12, 2019) Ex. 21.5 (Series A preferred stock designations); HC2 10-Q at 60 (November 5, 2019) (explaining debt and preferred stock restrictions).

C. The Settlement Provides Major Benefits To Schuff

Objectors assert that the HC2 Defendants should pay all of the settlement consideration because "principally HC2 [was] the primary beneficiary of the wrongful acts alleged in the Complaint."[30] However, Objectors ignore the litigation claims that resulted in the Settlement.

Plaintiff alleges claims against eight defendants—HC2, three HC2 designees who were directors of Schuff during the 2014 Tender Offer, the two members of the Special Committee who considered the 2014 Tender Offer, and two Schuff officers who also served as Schuff directors during the 2014 Tender Offer.[31] Plaintiff alleges that each of the seven individual defendants faces "substantial personal liability."[32] Notably, Plaintiff alleges that the two Special Committee members had personal conflicts of interest, acted in bad faith, and disseminated wrongful disclosures with respect to the 2014 Tender Offer.[33] Plaintiff further alleges that the Schuff management directors were beholden to HC2 and approved an unfair tender offer in bad faith,[34] and that the individual defendants affiliated

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[30] FVB at 2; *see* ABVO at 12.

[31] AC ¶ 5.

[32] AC ¶ 3.

[33] *See* AC ¶¶ 6–9, 50–54, 60–64, 66, 72, 76, 78, 79, 85–87, 124, 132, 137–42, 144–47, 150, 152, 168–71, 179–80.

[34] AC ¶ 5, 92, 153, 178.

with HC2 approved the 2014 Tender Offer to advance their own interests and not merely those of HC2.[35]

The Settlement properly reflects the reality that HC2 is not the only Defendant or third party facing risk and huge costs in the Action. Schuff, in particular, has potentially massive advancement and indemnification obligations to all of the seven individual defendants in the Action.[36] Those defendants face personal liability and sizeable damages separate and apart from any exposure facing HC2. If the Action does not settle, HC2 expects that Schuff will be required to make more than $10 million in payments to advance the individual defendants' fees and expenses for defending the Action. These amounts will never be recoverable by Schuff if defendants prevail in the Action, if a defendant is found liable but did not act with a mindset that forecloses indemnification, or if defendants are found liable and Schuff cannot secure repayment from various defendants not entitled to indemnification.

Objectors complain that Schuff is borrowing money to finance the payments required for the Settlement.[37] However, the settlement payments from HC2's insurers and the anticipated payments for the Settlement are expected to result in

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[35] AC ¶¶ 27, 177,

[36] *See* Ex. 1 (Schuff Charter) art. Nine. The three groups of individual defendants are represented by three different law firms at substantial expense to Schuff.

[37] FVB at 2.

Schuff borrowing approximately $11 million for the Settlement—an easily manageable sum for Schuff. As of the LTM ending on September 30, 2019 (the last date of public disclosures regarding Schuff's financial condition), Schuff had $741.4 million of revenues, $118.2 million of debt, and adjusted EBITDA of $74.3 million. Schuff's debt/EBITDA ratio will only grow from 1.6x to 1.7x as a result of the borrowing for the Settlement—well below the 3.5x debt/EBITDA ratios that are common. The benefits Schuff will obtain in the Settlement far outweigh the very modest debt obligations it is assuming.

The Settlement also will remove substantial distractions from the Schuff board and management. Four current Schuff directors are Defendants, including the Schuff CEO and CFO. Schuff and all of its stockholders will benefit greatly if its senior management and directors can focus solely on continuing to grow the business instead of this litigation. The Settlement will remove the risk of reputational harm to Schuff by having current directors and officers accused of wrongdoing in the Action. Companies regularly agree to make settlement payments to dispose of claims under these circumstances.[38]

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[38] *See, e.g.*, Ex. 2 (Settlement Stipulation ¶ 4, *In re Delphi Fin. Grp. S'holders Litig.*, Consol. C.A. No. 7144-VCG (Del. Ch. May 15, 2012) (corporation paying $49 million to settle claims primarily against directors)); Ex. 3 (Final Order ¶ 5, *In re Delphi Fin. Grp. S'holders Litig.*, Consol. C.A. No. 7144-VCG (Del. Ch. July 31, 2012) (approving settlement as set forth in settlement stipulation)); Ex. 4 (Settlement Stipulation ¶ Z, *In re Good Tech. Corp. S'holder Litig.*, C.A. No.

Finally, assuming that the Settlement Tender Offer price is less than Schuff's current intrinsic value, Schuff will benefit from the opportunity to acquire its publicly-held stock at $67.45 per share.[39]

II. THE SETTLEMENT PROPERLY USES THE SETTLEMENT TENDER OFFER TO RESOLVE PLAINTIFF'S CLAIM THAT THE NON-TENDERED SHARES SHOULD HAVE BEEN ACQUIRED FOR THE SAME PRICE AS IN THE 2014 TENDER OFFER

A. The Settlement Tender Offer Is In Direct Response To Plaintiff's Allegations And Settlement Demands

Objectors complain that the Settlement Tender Offer is unrelated to the merits or operative facts of the Action.[40] However, from the start of the Action, Plaintiff has purported to challenge the "Buyout," an imaginary "unitary transaction" consisting of the 2014 Tender Offer and a potential short-form merger

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11580-VCL (Del. Ch. Aug. 21, 2017) (corporation paying $35 million to settle claims against investment banker to which corporation owed indemnification obligations)); Ex. 5 (Final Order ¶ 5, *In re Good Tech. Corp. S'holder Litig.*, C.A. No. 11580-VCL (Del. Ch. Nov. 8, 2018) (approving settlement as set forth in settlement stipulation)).

[39] Fair Value raises the incredible suggestion that the Settlement creates "bad incentives" because it "leaves undecided whether Defendants acted disloyally or not." FVB at 13. These purported bad incentives apply to the settlement of *every* action that includes loyalty claims. No judicial determination of wrongdoing is ever required in a settlement. Fair Value's suggestion is directly contrary to the strong pro-settlement policy under Delaware law and would severely undercut judicial economy and the ability of parties to settle cases in a rational manner.

[40] FVB at 16–17; ABVO at 6.

soon after HC2 acquired 90% of Schuff's common stock.[41] Plaintiff alleges that "all of Schuff's minority stockholders, whether they tendered or not, have suffered harms and damages that were inflicted on them by defendants in connection with the Buyout."[42] Plaintiff further alleges that, if Defendants had acted properly in conjunction with the 2014 Tender Offer, "the non-tendering stockholders would have been afforded an opportunity to obtain the fair value of their shares at the time of the Merger through appraisal or plenary litigation."[43] Objectors apparently agree.[44]

Defendants strongly denied any obligation to engage in any second-step transaction with the Non-Tendering Stockholders and repeatedly proposed settlement frameworks that did not provide the Non-Tendered Stockholders with an opportunity to sell their Schuff shares at any in price, much less the premium price to be received by the Tendered Stockholders if the Settlement is approved. Nevertheless, Plaintiff insisted continuously that the Non-Tendered Stockholders should have the option to sell their Schuff shares on the same economic terms as

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[41] *See* Dkt. 1 ("Complaint" or "Compl.") ¶¶ 2, 12, 52–54; Dkt 115 ("Amended Complaint" or "AC") ¶¶ 1, 105–36.

[42] AC ¶¶ 14; *accord* Compl. ¶¶ 29, 72.

[43] AC ¶ 188

[44] *See* FVB at 20–21 (referring to the "Non-Tendered Stockholders' lost opportunities of appraisal had HC2 not failed to complete the Section 253 merger after the Tender Offer closed").

the Tendered Stockholders will receive under the Settlement. Plaintiff's insistence on equal treatment led to the Settlement, which provides the Non-Tendered Stockholders with the opportunity to receive the same aggregate per-share settlement consideration as the Tendered Stockholders—less the same per-share Fee and Expense Award deducted from the settlement payments to the Tendered Stockholders. This equal treatment component of the Settlement secures ***exactly the relief*** originally sought by Plaintiff—a liquidity opportunity for the Non-Tendered Stockholders at the same aggregate consideration the Tendered Stockholders received based on the alleged fair value of Schuff at the close of the 2014 Tender Offer.

B. The Consideration In The Settlement Tender Offer Is More Than Fair To The Non-Tendered Stockholders

Objectors complain that the payment to sellers in the Settlement Tender Offer is unfair because the $67.45 per share gross value is lower than certain 2015 E&Y value estimates, does not include interest, and will be reduced for attorneys' fees.[45] This perspective overlooks that the E&Y value estimates were created months after the 2014 Tender Offer, reflect a new business plan implemented by Schuff's new CEO after the 2014 Tender Offer, and the Defendants would hotly contest in any merits litigation that the 2015 estimates are indicative of Schuff's

[45] FVB at 21–22; ABVO at 7.

"operative reality" on the close of the 2014 Tender Offer.[46] Indeed, Plaintiff's expert's estimated Schuff's value in October 2014 at $66.61—$2.38 per share below the first E&Y estimate in 2015 of $68.99, and the gross Settlement Tender Offer price of $67.45.[47] Moreover, deductions for attorneys' fees and a potential loss of interest are standard offsets in the settlement of representative litigation. The noteworthy aspect of the Settlement is that Plaintiff obtained Settlement payments so close to his litigation-driven value estimate, not that the gross Settlement payments will be reduced to account for normal settlement costs.

Objectors further complain that the Tendered Stockholders may be receiving something close to a best case determination of the fair value of their shares at the time of the 2014 Tender Offer, while the Settlement Tender Offer price purportedly represents only "a fraction of [Schuff's] present day value."[48] Objectors never explain why they are supposedly entitled to a liquidity opportunity at Schuff's present value. Plaintiff's long-held theory is that HC2 had an obligation to close a short-form merger soon after it obtained 90% of Schuff's

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[46] Contrary to AB Value's assertion, the 2015 valuations were prepared by Ernst & Young, not Duff & Phelps, and Plaintiff received these documents in 2015 in one of HC2's earliest document productions. *See* ABVO at 7.

[47] *See* PB at 18, 26–28.

[48] ABVO at 3. Notably, Objectors never directly assert that the $35.95 (gross) Settlement payment to the Tendered Stockholders is too generous.

equity in October 2014.[49] Thus, any alleged harm to the Non-Tendering Stockholders would be based on the value of their shares in 2014, not the present value. The Settlement properly treats the Tendered Stockholders and Non-Tendered Stockholders equally based on when Plaintiff alleges they suffered the same harm. Objectors' attempts to challenge the Settlement allocation based on the purported current value of the Non-Tendered Stockholders Shares simply ignore that HC2 has no obligation whatsoever to buy the Non-Tendered Shares at any price.

Objectors also fail to properly credit Schuff's payment of $17.16 per share in dividends since the close of the 2014 Tender Offer, which resolves any concern that the Non-Tendered Stockholders are worse off than the Tendered Stockholders due to the time value of money since the 2014 Tender Offer. Fair Value asserts that Schuff's dividends since 2014 are insufficient to compensate the Non-Tendered Stockholders for the lack of a short-form merger in October 2014. *See* FBV at 22 n.14. Fair Value's argument has two fatal flaws. First, Fair Value assumes that Schuff's fair value in October 2014 was $68.99 per share based on the value estimate E&Y prepared in 2015. This assumption that would be hotly contested in any appraisal or fiduciary duty litigation, and Schuff stockholders would face significant risk that the Court would determine the value of Schuff

[49] *See, e.g.*, Compl. ¶¶ 2–3, 52–54; AC ¶¶ 96–98.

common stock in October 2014 to be well below $68.99 per share. Second, in Fair Value's interest calculation, Fair Value subtracts Plaintiff's Fee and Expense Award from the Settlement Tender Offer consideration but does not account for the substantial fees and expenses for a hypothetical appraisal action.

Courts have long recognized the benefits a settlement tender offer can provide,[50] and parties litigating in Delaware courts have used settlement tender offers to resolve complex litigation.[51] Accordingly, Parties properly are relying on the Settlement Tender Offer to resolve Plaintiff's demand that the Non-Tendered Stockholders receive equal treatment with the Tendered Stockholders and the same stock sale option.

C. There Is No Prisoners' Dilemma

Fair Value incorrectly asserts the Settlement Tender Offer creates a prisoners' dilemma for the Non-Tendering Stockholders. Fair Value first objects that post-settlement Schuff will have a "reduced value, due to its assets being used to fund the proposed Settlement.[52] As discussed above, however, Schuff will

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[50] *See, e.g.*, *Contreras v. Tweedy, Browne & Knapp*, 76 F.R.D. 39, 45–46 (S.D.N.Y. 1977) (noting the benefits of a settlement tender offer for a close-ended investment that was thinly traded).

[51] *See Marie Raymond*, 980 A.2d at 396 (approving settlement that involved settlement tender offer); *Lacos Land*, 1986 WL 14525, at *3 (same); *Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at *1 (Del. Ch. Aug. 30, 2007) (addressing fee award for settlement that involved settlement tender offer).

[52] FVB at 20.

receive substantial benefits from the Settlement that far outweigh the $708,000 cost of the Settlement that Schuff's Continuing Public Stockholders will bear indirectly.[53]

Fair Value also asserts that the Settlement release unfairly prevents remaining stockholders from protecting their investments.[54] However, Fair Value identifies no actionable claims the Settlement release would prevent any Schuff stockholder from asserting. Objectors' apparent desire to turn the Settlement Tender Offer into a new quasi-appraisal lawsuit would defeat the Settlement and has no justification. Moreover, Objectors do not identify any supposedly valuable claims that Plaintiff has not adequately explored,[55] and Objectors understandably have not moved to assume leadership of the Action.

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[53] *See supra* Section I.C.

[54] FVB at 20.

[55] In November 2014, Plaintiff filed a class action challenging the 2014 Tender Offer in this Court. During 2015-2019, Plaintiff's counsel received more than 114,000 pages of documents from Defendants, received additional document productions from two of HC2's advisors, Duff & Phelps and Deutsche Bank, conducted depositions of the five most important individual defendants, and engaged in very contentious settlement negotiations. Plaintiff also Plaintiff withdrew from the initial tentative settlement agreement and delivered a draft amended complaint to Defendants in July 2017 to push forward the litigation and support Plaintiff's demand for greater and parallel settlement consideration for the two groups in the Class. On November 15, 2019, after prolonged and extremely difficult settlement negotiations over four years, Plaintiff filed the Settlement Stipulation and a further revised complaint containing 189 paragraphs over 84 pages. Objectors' counsel have settled with Court approval numerous cases with

Fair Value complains that Schuff stock is thinly traded and that Schuff has a controlling stockholder "with power to cut dividends or force a merger at a lower price."[56] That point is obviously irrelevant because the public holders of Schuff shares always have been in that situation. HC2 acquired the Schuff family's majority equity interest in May 2014 and has owned continuously a supermajority of Schuff's common stock since the 2014 Tender Offer.[57] Furthermore, Schuff common stock always has been thinly traded before and after the 2014 Tender Offer.[58]

D. There Is No Information Disadvantage Facing The Non-Tendered Stockholders

Defendants made extensive disclosures in connection with the Settlement, including (i) valuation information in the Stipulation and Notice; (ii) the draft

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far less discovery, evaluation of the merits, and settlement negotiations than occurred in this case.

[56] FVB at 20.

[57] Stip. ¶¶ A–C.

[58] Plaintiff alleges that the median pre-2014 tender offer daily trading volume was only 575 shares. AC ¶ 174. Historical volume data from https://www.otcmarkets.com/ indicates that the *monthly* trading volume for Schuff's common stock during the five years before the start of the 2014 Tender Offer (i.e., August 2009–July 2014) was 15,901 shares, which implies a daily trading volume of 530 shares based on a 30-day month. Data from the same source indicates that the *monthly* trading volume for Schuff's common stock since the close of the 2014 Tender Offer (i.e., October 2014–January 2020) was 5,223 shares, which implies a daily trading volume of 174 shares based on a 30-day month.

Offer to Purchase for the Settlement Tender Offer, included as Exhibit D to the Stipulation; and (iii) a Virtual Data Room populated with comprehensive valuation information related to Schuff through the filing of the Stipulation.[59] Objectors, who purport to own 71.5% of all Non-Tendered Stockholders Shares, have reviewed this information and apparently determined that they do not wish to participate in the Settlement Tender Offer. Other Schuff public stockholders may have different investment horizons or objectives and should have the opportunity to make this decision themselves. Notably, Objectors do not argue that the extensive information the Defendants have provided is insufficient to permit Schuff stockholders from making a rational decision on the Settlement Tender Offer based on their individual objectives.

FVB argues—in a footnote—that HC2's disclosure in the Offer to Purchase that HC2 has no present intention to close a short-form merger makes the Settlement Tender Offer coercive.[60] However, this information is neutrally-stated, is material to Non-Tendered Stockholders, and was required by Plaintiff.[61] A

[59] Exhibit D to the Stipulation reflects the final draft of the Offer to Purchase, subject to updating certain identified information for events that occur between the filing of the Stipulation and the start of the Settlement Tender Offer.

[60] FVB at 20 n.12.

[61] *See, e.g.*, *In re CNX Gas Corp. S'holders Litig.*, 4 A.3d 397, 420 (Del. Ch. 2010) (citing numerous supporting opinions and holding that statements in tender offer

transaction is not coercive even when stockholders have "compelling economic incentives for participating" if they are "free at all times to weigh the benefits and the costs" and select "the best option for that individual" stockholder.[62] Furthermore, where a disclosure is required because it is material, making that disclosure cannot serve as the predicate for a claim of wrongful coercion.[63]

E. The Procedures For Self-Tenders Under *Pure Resources* Have No Application In The Settlement Context

Citing to *Pure Resources* and *CNX Gas*, Fair Value complains that the Settlement Tender Offer was not approved by a Schuff special committee and is not subject to a non-waivable majority of the minority tender condition. [64] However, objectors cite no examples where a ***settlement*** tender offer was found defective for lack of these protections. This lack of authority in support of Objectors' position is unsurprising. The concerns animating the *Pure Resources* and *CNX Gas* decisions are completely absent in this context.

The Settlement Tender Offer is being tested by represented objectors as part of the Court's review of a proposed settlement. The class certification procedure

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materials about "actions [the controlling stockholder] may consider if the Tender Offer fails" were not coercive).

[62] *Cantor Fitzgerald, L.P. v. Cantor*, 2001 WL 1456494, at *9 (Del. Ch. Nov. 5, 2001).

[63] *Williams v. Geier*, 671 A.2d 1368, 1383–84 (Del. 1996).

[64] FVB at 19–20.

under Rule 23(b)(1) and Rule 23(b)(2) affords all of the proposed Class members with substantial protection and no need for the procedural protections under *Pure Resources* (or an opt-out) because the Court will consider whether the Class members are:

> (1) adequately represented by the named plaintiffs, (2) represented by an attorney who is qualified, (3) provided with notice of the proposed settlement, (4) given an opportunity to object to the settlement, and (5) assured that the settlement will not take effect unless the trial judge-after analyzing the facts and law of the case and considering all objections to the proposed settlement-determines it to be fair, adequate, and reasonable.[65]

These protections are more than sufficient to ensure the fairness of the Settlement Tender Offer.

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III. A NON-OPT OUT CLASS IS STANDARD AND COMPLETELY APPROPRIATE FOR THIS SETTLEMENT

A. The Court Should Certify The Class Under Rules 23(b)(1) And 23(b)(2)

There is no merit whatsoever to Objectors' criticism of the proposed certification in the Settlement of the plaintiff Class under Court of Chancery Rule 23(b)(1) and 23(b)(2).[66] "Delaware courts have traditionally viewed actions

[65] *Nottingham Partners v. Dana*, 564 A.2d 1089, 1100 (Del. 1989).

[66] *See* FVB at 26–28; AVPO at 19–20.

challenging the propriety of director conduct in carrying out corporate transactions [as] properly certifiable under both subdivisions (b)(1) and (b)(2)."[67] Delaware law has been clear for decades that "[a]n action . . . which consists primarily of equitable claims with an ancillary request for monetary damages[] will not require a provision for opting out."[68] Not surprisingly, AB Value concedes that "breach of fiduciary duty actions recovering money damages are regularly certified in this Court under Rule 23(b)(1) and (2)[.]"[69] Thus, class certification of the claims on behalf of the Tendered Stockholders is entirely appropriate.

As to the Non-Tendered Stockholders, Objectors recognize that the Complaint and Amended Complaint request equitable relief but Fair Value implies that these requests are a sham because "Plaintiff never made any motion for injunctive relief."[70] However, an injunction is not the only form of equitable relief relevant to opt-out determinations and Plaintiff's requested relief could require a mandatory injunction if the Non-Tendered Stockholders are to be treated as if they

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[67] *In re Lawson Software, Inc.*, 2011 WL 2185613, at *1 (Del. Ch. May 27, 2011) (quotation marks omitted).

[68] *In re MCA, Inc.*, 598 A.2d 687, 692 (Del. Ch. 1991); *accord Dana*, 564 A.2d at 1101 ("[W]hen a portion of the relief which is sought is monetary, a member of a class certified under Rule 23(b)(2) has a Constitutional due process right to notification but not a right to opt out of the class.").

[69] AVPO at 19.

[70] FVB at 27.

were entitled to sell their shares to HC2.[71] Objectors once again ignore that the Amended Complaint alleges that HC2 breached and is continuing to breach its fiduciary duties as Schuff's controlling stockholder by not completing a short-form merger.[72] The appropriateness of certifying a plaintiff class under Rules 23(b)(1) and 23(b(2) is well-settled for fiduciary duty claims against a controlling stockholder.[73]

In addition, the Settlement structure is consistent with the primarily equitable nature of Plaintiff's claims on behalf of the Non-Tendered Stockholders. The Amended Complaint asserts the Court should the Defendants' "inequitable conduct" by permitting the Action:

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[71] *See, e.g.*, *In re Phila. Stock Exch.*, 945 A.2d at 1137 (finding claims for rescission and rescissory damages to support no opt out); *In re Wm. Wrigley Jr. Co. S'holders Litig.*, 2009 WL 154380, at *4 (Del. Ch. Jan. 22, 2009) ("remedies sought in the complaint are equitable in nature, including demands for injunctive relief and for additional disclosures").

[72] *See* AC ¶ 12.

[73] *See, e.g., Hynson v. Drummond Coal Co.*, 601 A.2d 570, 572 (Del. Ch. 1991) (certifying class action under Rule 23(b)(1)(A) and (b)(2) where the complaint alleged controlling stockholder violated fiduciary duties by structuring a coercive tender offer and issuing a false and misleading offering circular); *In re AXA Fin., Inc.*, 2002 WL 1283674, at *5 (Del. Ch. May 22, 2002) (finding in class action against controlling stockholder that "[c]ontrary to [objector's] bald assertion that 'This is a consumer class action,' this case presents a clear example of an action arising out of the fiduciary relationships defined under Delaware law that exist between and among a Delaware corporation and its stockholders and directors" and that "[c]ases of this sort are true class actions that can and should be certified under Rule 23(b)(1) and (2) of the Court of Chancery Rules.") (citation omitted).

> to proceed to vindicate the rights of all of Schuff's minority stockholders as though the [short-form] Merger had been consummated on the terms and in the time frame originally promised, and defendants should be equitably estopped from raising any procedural defenses that would serve to the defeat the successful prosecution of this class action or any appraisal action.[74]

This request for equitable relief is addressed in the Settlement through the Settlement Tender Offer, which permits the Non-Tendered Stockholders to receive the same offer to sell and at the same price the Tendered Stockholders received in the 2014 Tender Offer—plus the Settlement consideration payable to the Tendered Stockholders. Thus, the Class is properly certified under Rule 23(b)(1) and 23(b)(2) and no opt out is required.[75]

B. No Discretionary Opt-Out Is Warranted

Objectors argue that the Court should exercise its discretion to permit Non-Tendered Stockholders who do not participate in the Settlement Tender Offer to opt out of the Class.[76] In deciding whether to "extend an opt out privilege," 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

[74] AC ¶ 136; *see also id.* at 83, Prayer for Relief ¶ (B).

[75] *See In re Phila. Stock Exch.*, 945 A.2d at 1137 (denying opt-out where the "relief afforded in the settlement is also primarily equitable").

[76] FVB at 27–28; AVPO at 19.

Court[.]"[77] As conceded by the very sparse precedents relied on by Objectors, that balance almost never tips in favor of allowing an opt-out in a fiduciary duty case and certainly is not warranted here.[78]

1. Objectors Have Not Demonstrated That An Opt-Out Is Appropriate

Objectors' interests in opting out are far less weighty than Defendants' interests in finality. Critically, Objectors never identify with specificity the claims they will lose in the Settlement or why those claims likely have value. Objectors question whether post-2014 claims were "vigorously pursued in discovery or analyzed by" Plaintiff's expert.[79] Objectors also raise the specter of "meritorious claims arising from facts concerning the subject matters that were not presented to the Court by Plaintiff or Defendants and that may only be discovered in the future."[80] However, the only post-2014 aspects of the Settlement release are based on Plaintiff's claims in the Action or activities incident to the Settlement itself.[81]

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[77] *Dana*, 564 A.2d at 1101.

[78] Fair Value relies on three opinions. In *Nottingham v. Dana,* the Supreme Court affirmed the trial court's decision *not* to grant an opt out right. *Trulia* had nothing to do with opt out rights. *Off v. Ross*, 2008 WL 5053448 (Del. Ch. Nov. 26, 2008), did not involve opt out rights, the cited quotation addresses an irrelevant ground for the Court's refusal to approve a settlement, and Fair Value improperly added misleading language in the bracketed section of the quote.

[79] ABVO at 19.

[80] FVB at 17.

[81] *See infra* Section IV.

Objectors' argument that Plaintiff's original class definition did not extend beyond 2014[82] is yet another mistake by Objectors because that class definition included stockholders who did not participate in the 2014 Tender Offer and "any and all of their respective successors in interest, [. . .] assigns or transferees, immediate and remote," which includes all of the Non-Tendered Stockholders.[83] In sum, Objectors have not identified any interests that outweigh Defendants' particularly weighty interests in finality in the Action.

2. The Tendered Stockholders Have No High Probability Claim Relating To A Cash-Out Merger Obligation By HC2 And Therefore No Opt-Out Is Necessary

The Settlement Tender Offer provides a meaningful liquidity opportunity to the Non-Tendered Stockholders at the same aggregate price the Tendered Stockholders are receiving. If the Action were litigated, it is highly unlikely the Non-Tendered Stockholders would receive even this opportunity. Despite Plaintiff's assertions, HC2 never committed to close a short-form merger after obtaining 90% of Schuff's common stock.

On September 30, 2014, HC2 disclosed its ***intent*** to execute a short-form merger if HC2 was able to acquire more than 90% of Schuff's outstanding shares in the 2014 Tender Offer or subsequent purchases following completion of the

[82] ABVO at 19.
[83] Dkt. 58 at 2.

offer.[84] The 2014 Tender Offer closed on October 6, 2014, and HC2 increased its ownership of Schuff common stock to approximately 88.69%.[85] On November 3, 2014, HC2 disclosed that, through private purchases after the 2014 Tender Offer, HC2 acquired more than 90% of Schuff's outstanding shares and disclosed its **intention** to execute a short-form merger.[86] Nevertheless, a $250 million bond offering by HC2 in November 2014, the need to integrate another large acquisition at HC2, and this litigation led HC2 to drop its intended potential short-form merger with Schuff.[87]

Four days after Plaintiff filed the Complaint, HC2 disclosed in a Form 10-Q that the Action "could delay or prevent the completion of [its] purchase of all of the outstanding shares of Schuff."[88] Subsequent descriptions of the Action in HC2's public filings explained that a short-form merger involving Schuff "has

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[84] HC2 Form 8-K (Sept. 30, 2014), Ex. 99.1 ("HC2 ***intends*** that when its ownership in Schuff reaches 90% of Schuff's outstanding shares, as a result of the tender offer or subsequent purchases following completion of the Offer, it will complete the short-for[.]") (emphasis added).

[85] Stip. at 4.

[86] HC2 Form 8-K (Nov. 3, 2014), Ex. 99.5 ("On October 29, 2014, we entered into an open-market transaction to increase our ownership of Schuff to 90.6%, and we ***intend*** to execute a short-form merger as soon as practicable.") (emphasis added).

[87] *See generally* HC2 Form 8-K (Sept. 22, 2014), Ex. 99.1 (announcing Global Marine acquisition); HC2 Form 8-K (Nov. 3, 2014), Ex. 99.2 (announcing $250 million bond offering); HC2 Form 10-Q (Nov. 10, 2014) (disclosing that the Action "could delay or prevent the completion of our purchase of all of the outstanding shares of Schuff").

[88] HC2 Form 10-Q (Nov. 10, 2014) at 63.

never been formally proposed or acted upon"[89] and that HC2 could not assure stockholders that HC2 "will complete such merger in the near term or at all."[90]

Plaintiff is highly unlikely to succeed on his claim that HC2 made a binding commitment to close a short-form merger soon after it acquired at least 90% of Schuff's common stock. Plaintiff is even more unlikely to obtain his requested relief—a directive that HC2 pay going concern value in 2020 or thereafter to the public stockholders of Schuff who did not receive such a payment in 2014. In addition to the complete lack of precedent for such relief, Plaintiff's multi-year delay in requesting this relief makes it even less likely that the Court would grant it. There is no other short-term prospect of a liquidity opportunity for the Non-Tendered Stockholders and they should be allowed to decide whether to accept the premium price in the Settlement Tender Offer.

The Settlement Tender Offer also provides the Non-Tendered Stockholders with a better outcome than they are likely to obtain if Plaintiff actually succeeds on his claim. If the Court accepts after trial Plaintiff's argument that a short-form merger should be deemed to have been "consummated on the terms and in the time

[89] HC2 Form 10-Q (Aug. 10, 2015) at 22.

[90] *See, e.g.*, HC2 Form 8-K (Nov. 4, 2015), Exs. 99.1 & 99.2; HC2 Form 10-Q (Nov. 9, 2015) at 26.

frame originally promised,"[91] the Non-Tendered Stockholders presumably would be forced out of their investment in Schuff, at a price equal to the 2014 Tender Offer price plus prejudgment interest, and with a potential appraisal claim based on the value of Schuff in October 2014. The Settlement Tender Offer provides Non-Tendered Stockholders with the option to accept a better economic outcome ***or*** remain invested in Schuff.[92]

3. No Settlement Will Proceed If The Court Requires An Opt-Out

The Supreme Court has recognized that "[t]he ability to opt out of the class always involves the potential for a multiplicity of lawsuits and variations in adjudication which class actions are intended to prevent."[93] Defendants' interest in resolving all claims is particularly weighty in the Action because of the certainty that opt-out Objectors and their allies would challenge the Settlement Tender Offer and attempt to obtain a quasi-appraisal for all Non-Tendered Stockholders at Schuff's current value.[94] Defendants and their D&O insurers obviously will not proceed with a Settlement that includes an opt-out and allows new lawsuits based

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[91] AC ¶ 136.

[92] Any appraisal or fiduciary duty action disputing the fair value or fair price of Schuff in October 2014 would be hotly contested, and any petitioners or plaintiffs would risk fair value or fair price determinations well below the Net Tender Payment.

[93] *Dana*, 564 A.2d at 1101.

[94] *See* FVB at 3, 18.

on the implementation of the Settlement Tender Offer.[95] Objectors complain that the Settlement merely exchanges one tender offer for another,[96] but Objectors' proposed opt-out irrationally would exchange one lawsuit for another. That is reason enough to reject Objectors' request for an opt-out.[97]

IV. THE SCOPE OF THE SETTLEMENT RELEASE IS APPROPRIATE

"In any settlement of litigation, including class actions, a release of claims is an essential, bargained-for element, with the defendants customarily seeking a release with the broadest permissible scope."[98] Accordingly, "any settlement of this litigation would have to afford the defendants 'complete peace,' that would include 'a release to the broadest extent possible under law."[99] Notwithstanding these well-accepted principles for releases, Objectors challenge nearly every aspect

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[95] *See, e.g.*, *In re Phila. Stock Exch.*, 945 A.2d at 1137 (the Supreme Court affirmed the approval of a settlement without an opt out right for objectors, who appeared to hold over 40% of the shares in one subclass, because it would leave the objectors "free to assert, against the defendants, the identical claims being settled in a different forum[,]" an "almost certain outcome [that] would utterly defeat the purpose of the settlement.").

[96] FVB at 3.

[97] Objectors also suggest that the Court should exclude the Non-Tendered Stockholders from the Class. Objectors do not explain (i) how any settlement class could omit the representative plaintiff—a Non-Tendered Stockholder, or (ii) why the Defendants and their D&O insurers would proceed with only half of the carefully structured Settlement and leave themselves exposed to any further claims.

[98] *In re Phila. Stock Exch.*, 945 A.2d at 1145.

[99] *Id.*

of the Settlement release, including provisions that long have been standard in Delaware litigation and that Objectors' counsel here approved repeatedly.

A. The Settlement Release Is Properly Tailored To The Allegations In The Action

"Settlement agreements almost invariably include general release provisions that bind the class and release all liability claims associated with the challenged transaction to the broadest extent allowable under law."[100] "Such broad release provisions are intended to accord the defendants global peace."[101] Ignoring these well-accepted principles, Fair Value erroneously asserts that the definition of Released Plaintiff Claims in the Settlement release goes beyond the operative facts in the Action.[102] Based on this obviously incorrect construction of the release in the proposed Final Order, Fair Value relies inappropriately on *UniSuper Ltd. v. News Corp.*, 898 A.2d 344, 347 (Del. Ch. 2006).[103] Fair Value misreads the definition of Released Plaintiff Claims and misunderstands the application of *Unisuper* to the release in this case.

Released Plaintiff Claims includes eleven specific events or series of events covered by the release — all of which relate directly to the key claims in the

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[100] *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 433 (Del. 2012) (quotation marks omitted).

[101] *Id.* (quotation marks omitted).

[102] FVB at 14–15.

[103] FVB at 15–17.

Action and the Settlement.[104] Consistent with standard practice in settlements approved by this Court for decades, the definition also includes three summary categories of claims covered by the release—claims relating to the "Action," the "the subject matter of the Action," and "any of the allegations in any complaint or amendment thereto filed in the Action."[105] These summary categories obviously refer to the operative facts for Plaintiff's claims.

Fair Value's misreading of the Released Plaintiff Claims leads to the mistaken reliance on one of the opinions in *Unisuper* which held that a settlement attempting to release all claims with "*some* relationship—however remote or tangential—to any fact, act or conduct referred to in the Action" was improper.[106] The Released Plaintiff Claims definition identifies specific events as to which only claims that "are based upon, arise out of, relate in any way to, or involve, directly or indirectly" such events would be released. Unlike in the rejected release in *Unisuper*, the Released Plaintiff Claims clearly do not include any claim tangentially related to any allegation in the Action. Notably, the Final Order ultimately *approved* in *Unisuper* released all claims "which arise out of or relate in

[104] Stip. ¶ 1(w)(6)(C)–(H), (J)–(N).

[105] Stip. ¶ 1(w)(6)(A)–(B), (I).

[106] *UniSuper Ltd.*, 898 A.2d at 347 (quotation marks omitted) (rejecting release of claims relating to a stockholder vote — five months after the settlement hearing — on a rights plan).

any manner to any facts, events, actions, transactions, representations, omissions or any other issues that were asserted, alleged, or in any way referenced in the Action."[107] The release here is entirely consistent with the release ultimately approved in *Unisuper* and has been approved by Objectors' counsel repeatedly.[108]

B. The Settlement Release Properly Includes The Customary Release Of Derivative Claims

Objectors assert that the Settlement cannot include a release of derivative claims because Schuff allegedly is receiving no benefits in the Settlement.[109] This argument is wrong on its face because the Settlement provides substantial benefits to Schuff.[110] More fundamentally, "the Court does not need to determine whether there is adequate consideration for the release of each individual claim, rather the

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[107] *Unisuper, Ltd. v. News Corp.*, 2006 WL 4555655, at *2 (Del. Ch. June 1, 2006).

[108] *See, e.g.*, Ex. 2 (Settlement Stipulation ¶ 1(r), *In re Delphi Fin. Grp. S'holders Litig.*, Consol. C.A. No. 7144-VCG (Del. Ch. May 15, 2012)); Ex. 3 (Final Order ¶ 5, *In re Delphi Fin. Grp. S'holders Litig.*, Consol. C.A. No. 7144-VCG (Del. Ch. July 31, 2012)); Ex. 13 (Settlement Stipulation ¶ 1, *Johnson v. Arsenal Dig. Sols.*, C.A. No. 3499-VCS (Del. Ch. Oct. 10, 2010)); Ex. 13 (Final Order ¶ 3, *Johnson v. Arsenal Dig. Sols.*, C.A. No. 3499-VCS (Del. Ch. Nov. 29, 2010)); Ex. 17 (Settlement Stipulation ¶ 1, *Brisach v. The AES Corp.*, C.A. No. 4287-CC (Del. Ch. Apr. 30, 2009)); Ex. 18 (Final Order ¶ 5, *Brisach v. The AES Corp.*, C.A. No. 4287-CC (Del. Ch. July 8, 2009)).

[109] FVB at 15-16; *see also* ABVC.

[110] *See supra* Section II.C.

Court must determine whether the value provided by the Settlement is adequate in light of all the released claims."[111]

"A standard global release . . . encompasses claims that could not have been litigated in the settled action[.]"[112] Such global releases result because defendants "appropriately want complete peace."[113] Where, as here, the settlement of class claims provides substantial consideration to the Class, a global release of all claims, including derivative claims, is appropriate.[114] Importantly, Objectors identify no unasserted derivative claims they believe have value but will be released in the

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[111] *Ryan*, 2009 WL 18143, at *11; *see also Polk*, 507 A.2d at 535 ("Validity of a settlement does not depend on every compromised claim in a lawsuit being supported by independent consideration.").

[112] *Brinckerhoff v. Texas E. Prods. Pipeline Co., LLC*, 986 A.2d 370, 385 (Del. Ch. 2010).

[113] *Id.* (quotation marks omitted).

[114] *See*, *e.g.*, *Metro. Life Ins. Co. v. Tremont Grp. Holdings, Inc.*, 2012 WL 6632681, at *12 (Del. Ch. Dec. 20, 2012) ("These disclosures make clear that the derivative claims held by the Funds were released by the [Bernie Madoff federal class action] Settlement."); *City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1044 (1st Cir. 1996) (holding that even if the plaintiffs did not bring derivative claims in the settling class action, "the derivative claims clearly arose from the same factual predicate" as the direct claims "and were releasable by the class action settlement"); *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 336–37 (2d Cir. 1985) (affirming class action's release of derivative claims); 6 *Newberg on Class Actions* § 18:19 n.18 (5th ed.) (citing multiple class action settlements releasing derivative claims).

Settlement.[115] Nor do Objectors propose to intervene to prosecute or file separately any derivative claims.[116]

Objectors' challenge to this aspect of the Settlement release is one of many areas that raise questions about the *bona fides* of Objectors' positions. Objectors once again rely to their detriment on *Unisuper*, but the Final Order entered in the *Unisuper* class action included a release of derivative claims.[117] Moreover, counsel to Objectors have secured the Court's approval of numerous class action settlement agreements that include the release of derivative claims.[118]

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[115] *See Activision Blizzard*, 124 A.3d at 1068 (approving bar of unidentified personal claims for no consideration because "[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, it is fair to bar those claims as part of the overall settlement").

[116] FVB cites *Stein v. Blankfein*, 2018 WL 5279358, at *1 (Del. Ch. Oct. 23, 2018) (FVB at 16), but that opinion rejected a proposed settlement in a ***primarily derivative*** action where the plaintiff proposed to settle the action for modest therapeutic benefits, no monetary consideration, and a payment of attorneys' fees. By contrast, the Settlement provides substantial monetary and other consideration to the Class and substantial benefits to Schuff.

[117] *Unisuper*, 2006 WL 4555655, at *4.

[118] *See, e.g.*, Ex. 6 (Settlement Stipulation ¶¶ 19–20, *In re Starz S'holder Litig.*, Consol. C.A. No. 12584-VCG (Del. Ch. Oct. 9, 2018)); Ex. 7 (Final Order ¶ 5, *In re Starz S'holder Litig.*, Consol. C.A. No. 12584-VCG (Del. Ch. Dec. 10, 2018)); Ex. 8 (Settlement Stipulation at 7, *Sleat v. Geatz*, C.A. No. 7651-VCL (Del. Ch. Mar. 8, 2013)); Ex. 9 (Final Order ¶ 3, *Sleat v. Geatz*, C.A. No. 7651-VCL (Del. Ch. July 19, 2013)); Ex. 10 (Settlement Stipulation at 4, *Joseph v. Troy*, C.A. No. 4676-VCS (Del. Ch. Mar. 22, 2011)); Ex. 11 (Final Order ¶ 3, *Joseph v. Troy*, C.A. No. 4676-VCS (Del. Ch. June 29, 2011)); Ex. 14 (Settlement Stipulation ¶ 1(c), *In re J.Crew Grp. S'holders Litig.*, C.A. No. 6043-CS (Del. Ch. Aug. 31, 2011));

C. The Settlement Release Properly Includes The Customary Release Of Unknown Claims

Fair Value cites *Trulia* to imply that a release of "Unknown Claims" is always improper.[119] However, *Trulia* addressed a disclosure-only settlement—not a settlement reflecting perhaps the largest percentage recovery in Delaware tender offer litigation. Objectors cite no authority for the proposition that a release of unknown claims is inappropriate when the Class is receiving significant monetary compensation in the settlement. The release of such claims is standard, including in the Final Order entered in the *Unisuper* case upon which Objectors rely and in numerous settlement stipulations executed by Objectors' counsel.[120]

Ex. 15 (Final Order ¶ 5, *In re J.Crew Grp. S'holders Litig.*, C.A. No. 6043-CS (Del. Ch. Dec. 16, 2011)).

[119] FVB at 14.

[120] *See*, *e.g., Unisuper*, 2006 WL 4555655, at *3; *Brinckerhoff*, 986 A.2d at 385 ("The language of a release typically extends to all possible claims, known or unknown, asserted or unasserted, arising out of or relating to the events that were the subject of the litigation[.]"); *see also, e.g.*, Ex. 6 (Settlement Stipulation ¶¶ 1(c), (mm), (uu), *In re Starz S'holder Litig.*, Consol. C.A. No. 12584-VCG (Del. Ch. Oct. 9, 2018)); Ex. 7 (Final Order ¶ 5, *In re Starz S'holder Litig.*, Consol. C.A. No. 12584-VCG (Del. Ch. Dec. 10, 2018)); Ex. 8 (Settlement Stipulation at 7 & ¶ 11, *Sleat v. Geatz*, C.A. No. 7651-VCL (Del. Ch. Mar. 8, 2013)); Ex. 9 (Final Order ¶ 3, *Sleat v. Geatz*, C.A. No. 7651-VCL (Del. Ch. July 19, 2013)); Ex. 10 (Settlement Stipulation at 4 & ¶ 12, *Joseph v. Troy*, C.A. No. 4676-VCS (Del. Ch. Mar. 22, 2011)); Ex. 11 (Final Order ¶ 3, *Joseph v. Troy*, C.A. No. 4676-VCS (Del. Ch. June 29, 2011)).

D. The Settlement Release Properly Extends To Prospective Settlement Actions

In pertinent part, Released Plaintiff Claims include claims based upon "the Settlement, the Settlement Tender Offer, the Settlement Tender Offer Disclosures, and the OBMG Financing.[121] The Settlement release does "not include claims based on post-Settlement conduct by the Released Defendant Parties that are not based upon, or do not arise out of, relate in any way to, or involve, directly or indirectly, the Settlement Tender Offer, the DBMG Financing, or the Settlement Tender Offer Disclosures. For example, Released Plaintiff Claims do not include appraisal claims in connection with a subsequent cash-out merger by Non-Tendered Stockholders who elect not to participate in the Settlement Tender Offer."[122]

Fair Value relies solely on *Unisuper* to challenge the Settlement release extending to "the Settlement, the Settlement Tender Offer, and the DBMG Financing."[123] *Unisuper* held that the settlement release before the Court could not extend to a rights plan that would be submitted for a stockholder vote *five months* after the settlement approval — obviously a distinguishing feature not presented by

[121] Stip. ¶ 1(w)(M).
[122] *Id.* ¶ 1(w).
[123] FVB at 16–17.

the Settlement in this case.[124] The *Unisuper* opinion also expressly noted: "Defendants cite no authority for the proposition that there is an exception for future conduct arising out of, or contemplated by, the settlement itself."[125] In reality, one decision prior to *Unisuper* and two decisions since *Unisuper* confirm the appropriateness of extending settlement releases to activities incident to the settlement itself, including transactions that will occur in the future and/or were not based on the operative facts of the underlying action.

1. *Marie Raymond Revocable Tr. v. MAT Five LLC*

In *Marie Raymond*, the Court reviewed the proposed settlement of an action challenging a tender offer by Citigroup.[126] Citigroup offered in settlement an amended tender offer that included significant additional disclosures, additional monetary consideration and expanded choices for the investors."[127] The parties attached revised settlement tender offer materials to the settlement stipulation filed with the Court.[128] The settlement stipulation provided that the defendants would implement the tender offer in accordance with the revised offer materials.[129] In the

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[124] *UniSuper*, 898 A.2d at 347.
[125] *Id.* at 348.
[126] *See Marie Raymond*, 980 A.2d at 393.
[127] *Id.*
[128] *See* Ex. 18 (*Marie Raymond* Settlement Stip.).
[129] *Id.* ¶ 15.

releases, the Class members released all claims related to the revised tender offer.[130]

The revised tender offer was contingent on the Court's approval of the settlement and did not occur until after the settlement was approved.[131] Accordingly, the settlement releases extended to transactions that had not yet occurred at the time of the settlement hearing but were undertaken pursuant to the settlement. The Court approved the settlement and entered a final order stating that the revised tender offer materials provided sufficient notice of the proposal and the settlement.[132]

The *Marie Raymond* settlement is consistent with the structure of the Settlement in that (i) it included a future tender offer as a key component of the proposed settlement; (ii) the parties submitted the revised tender offer disclosures to the Court and the release covered the revised tender offer and the revised disclosures; (iii) the settlement tender offer was conditioned on settlement approval and did not close until after the settlement was approved; and (iv) stockholders had the option to participate in the settlement tender offer.

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[130] *See id.* ¶¶ 13(o), 18.
[131] *See id.* ¶¶ 15, 17.
[132] *See* Ex. 20 (*Marie Raymond* Final Order) ¶ 4.

2. *Blank v. Belzberg*

In *Blank*, plaintiff challenged corporate self-tender offers that substantially increased the ownership of management. The parties agreed to a settlement that required defendants to:

> (i) pay the class members who tendered an additional $.20 per shares for each share tendered; (ii) buy [the non-tendering plaintiff's] 349,300 shares at [the same price as the tendering stockholders], and (iii) consummate a short-form merger in which the remaining shares of Westminster common stock are converted into the right to receive $3 per share in cash.[133]

A tendering stockholder objected to the settlement and argued that the non-tendering plaintiff could not represent tendering stockholders, but the Court rejected the objection based on finding that the non-tendering plaintiff adequately represented the tendering stockholders .[134]

The settlement stipulation in *Blank* provided that the company would file within ten days after the entry of the final order a Schedule 13e-3 to implement a short-form merger.[135] Unlike in the proposed Settlement, the Court permitted the release of future claims related to disclosures that were never presented to the

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[133] 858 A.2d at 339, 341.

[134] *Id.* at 340–41 ("[T]he best evidence of Blank's ability to represent those who tendered is seen in the fact that, after extensive discussions and negotiations, he and his counsel negotiated a settlement that proposes to treat those who tendered in the same fashion as those who did not.").

[135] *Id.* at 341–42.

Court as part of the settlement process and were not disseminated to stockholders until after the settlement hearing. The *Blank* settlement confirms that a settlement release may extend to cover future actions and disclosures incident to the settlement itself.

3. *In re Medley Capital Corp. S'holders Litig.*

The Court's approval of the settlement in *Medley Capital* confirms the policy goals that are satisfied by extending settlement releases to future transactions implementing the settlement. In *Medley Capital*, plaintiffs challenged a controlling stockholder merger transaction and sought corrective disclosures and a curative sale process.[136] The Court declined to order a new sale process but enjoined the transaction based on disclosure violations.[137] Thereafter, the parties reached a settlement agreement resulting in a new sale process and an amended merger agreement.[138]

The proposed settlement release in *Medley Capital* covered the sale process and amended merger agreement that resulted from the settlement. The Court carefully evaluated whether such a release was proper because the sale process and

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[136] *See In re Medley Capital Corp. S'holders Litig.*, C.A. No. 2019-0100-KSJM, at 21 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) ("*Medley Capital*").

[137] *See id.*

[138] *See id.* at 21–27.

the amended merger agreement were not litigated as part of the action.[139] The Court relied on the "pro-settlement standard" articulated by the Supreme Court and "policy and common sense considerations" to approve the settlement release. Critically, the Court recognized that "defendants agree to a settlement in order to achieve finality in litigation. If implementing the settlement terms themselves gives rise to new claims, then . . . settlements requiring post-execution implementation would be impracticable."[140]

These principles are consistent with the proposed release of the Settlement Tender Offer component of the Settlement of the Action, which addresses Plaintiff's insistence that the Non-Tendered Stockholders have the option to be treated equally with the Tendered Stockholders. Defendants rationally would not agree to "settlement terms [that] themselves gives rise to new claims,"[141] so the

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[139] *See id.* at 35–40.

[140] *See Medley Capital* at 38; *see also id.* ("[S]ometimes implementing settlement terms requires papering a new transaction or deal terms, and sometimes those negotiations might take place in a different economic climate warranting new economic terms. Adequate class representatives know best how to manage these risks in a way that promotes beneficial settlements in light of all the circumstances. And the standard for determining whether a new transaction that results from settlement negotiations relates to core facts must favor approval of a settlement.").

[141] *Id.* at 38.

settlement release logically extends to the transactions that implement the Settlement.[142]

* * *

The Court historically has taken a practical approach to settlement releases based on the public policy supporting the settlement of complex lawsuits. Although this policy does not permit limitless releases, the Settlement release falls within existing precedent and is absolutely necessary to permit the negotiated resolution of the Action. The Defendants should be permitted to resolve the Plaintiff's equal treatment demand for Tendered and Non-Tendered Stockholders without exposing themselves to new lawsuits about the transactions used to implement that settlement agreement. To find otherwise would severely undercut the ability of parties in complex actions to settle cases that involve disparate subclasses.

[142] Because in *Medley Capital* the curative sale process was completed and the amended merger agreement was signed before the Court approved the settlement, the parties agreed to extend the original release effective date through the Court's approval of the settlement and not the close of the merger addressed in the amended merger agreement. *See id.* at 33. *Marie Raymond* and *Belzberg*, as well as the pro-settlement policies explained in *Medley Capital*, confirm that in appropriate circumstances a settlement release may extend past the Court's approval of the settlement.

E. The Virtual Data Room Confidentiality And Release Provisions Are Proper

The Virtual Data Room includes non-public and confidential information from certain past or present advisors of HC2 (the "Consultants") relating to the value of Schuff since the 2014 Tender Offer. Many of the documents in the Virtual Data Room were created pursuant to narrow use restrictions in confidentiality agreements with the Consultants that arguably prohibit the disclosure of such documents in the Virtual Data Room. To secure agreements by the Consultants to permit these confidential documents to be used in connection with the Virtual Data Room, the Settlement Notice and the Settlement Tender Offer, considerable time and money were spent negotiating and drafting confidentiality and release provisions to protect the Consultants in connection with the disclosure of their confidential information.

Fair Value complains that the Virtual Data Room restrictions prevent Class Members from suing the disclosing parties based on their disclosure of the documents in the Virtual Data Room,[143] but that is precisely the point. The Virtual Data Room is intended solely to permit Class Members to evaluate the fairness of the Settlement. It is not a fishing hole for plaintiffs' lawyers to search for claims unrelated to the Settlement.

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[143] FVB at 22–26.

CONCLUSION

For the foregoing reasons, the HC2 Defendants respectfully request that the Court deny the Objectors' objections and approve the Settlement.

/s/ Kevin G. Abrams
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Words: 12,103

Dated: February 3, 2020

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SCHUFF INTERNATIONAL, INC.	)	CONSOLIDATED
STOCKHOLDERS LITIGATION	)	C.A. No. 10323-VCZ

TRANSMITTAL AFFIDAVIT OF MATTHEW L. MILLER, ESQ., IN SUPPORT OF THE HC2 DEFENDANTS' BRIEF IN SUPPORT OF THE SETTLEMENT AND IN OPPOSITION TO THE OBJECTIONS

Matthew L. Miller, being duly sworn, deposes and says:

1. I am a member of the bar of the State of Delaware and an attorney at the law firm of Abrams & Bayliss LLP. I represent Defendants HC2 Holdings, Inc., Philip A. Falcone, and Keith M. Hladek (the "HC2 Defendants") in the above-captioned action.

2. I submit this affidavit in support of the HC2 Defendants' Brief in Support of the Settlement and in Opposition to the Objections.

3. Attached to this affidavit are, to the best of my knowledge, true and correct copies of the following documents:

	Description
Exhibit 1	Certificate of Incorporation of Schuff International, Inc., dated June 29, 2001.
Exhibit 2	Settlement Stipulation, *In re Delphi Fin. Grp. S'holders Litig.*, Consol. C.A. No. 7144-VCG (Del. Ch. May 15, 2012).
Exhibit 3	Final Order, *In re Delphi Fin. Grp. S'holders Litig.*, Consol. C.A. No. 7144-VCG (Del. Ch. July 21, 2012).
Exhibit 4	Settlement Stipulation, *In re Good Tech. Corp. S'holder Litig.*, C.A. No. 11580-VCL (Del. Ch. Aug. 21, 2017).
Exhibit 5	Final Order, *In re Good Tech. Corp. S'holder Litig.*, C.A. No. 11580-VCL (Del. Ch. Nov. 9, 2018).
Exhibit 6	Settlement Stipulation, *In re Starz S'holder Litig.*, Consol. C.A. No. 12584-VCG (Del. Ch. Oct. 9, 2018).
Exhibit 7	Final Order, *In re Starz S'holder Litig.*, Consol. C.A. No. 12584-VCG (Del. Ch. Dec. 10, 2018).
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Exhibit 12	Settlement Stipulation, *Johnson v. Arsenal Dig. Sols.*, C.A. No. 3499-VCS (Del. Ch. Oct. 10, 2010).
Exhibit 13	Final Order, *Johnson v. Arsenal Dig. Sols.*, C.A. No. 3499-VCS (Del. Ch. Nov. 29, 2010).

	Description
Exhibit 14	Settlement Stipulation, *In re J.Crew Grp. S'holders Litig.*, C.A. No. 6043-CS (Del. Ch. Sept. 1, 2011).
Exhibit 15	Final Order, *In re J.Crew Grp. S'holders Litig.*, C.A. No. 6043-CS (Del. Ch. Dec. 16, 2011).
Exhibit 16	Settlement Stipulation, *Brisach v. The AES Corp.*, C.A. No. 4287-CC (Del. Ch. Apr. 30, 2009).
Exhibit 17	Final Order, *Brisach v. The AES Corp.*, C.A. No. 4287-CC (Del. Ch. July 8, 2009).
Exhibit 18	Settlement Stipulation, *Marie Raymond Revocable Tr. v. MAT Five LLC*, C.A. No. 3843-VCL (Del. Ch. Nov. 10, 2008).
Exhibit 19	Final Order, *Marie Raymond Revocable Tr. v. MAT Five LLC*, C.A. No. 3843-VCL (Del. Ch. 19, 2008).

Matt Miller

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SWORN AND SUBSCRIBED before me this 3rd day of February, 2020.

Notary Public

TIFFANY NICOLE MATTHEWS
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Aug. 31, 2020