UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ATG FUND II LLC, individually and on behalf of all others similarly situated,

Plaintiff,

v.

VPC IMPACT ACQUISITION HOLDINGS SPONSOR II, LLC, BRENDAN CARROLL, GORDON WATSON, CARLY ALTIERI, JOHN MARTIN, JOSEPH LIEBERMAN, and KAI SCHMITZ,

Defendants,

-and-

VPC IMPACT ACQUISITION HOLDINGS II,

Nominal Defendant.

Civil Action No. 23-1978-JSR

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT, CLASS CERTIFICATION, AND PLAN OF ALLOCATION

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PRELIMINARY STATEMENT

Lead Plaintiff ATG Fund II LLC ("Lead Plaintiff" or "ATG") respectfully seeks final approval of the proposed settlement (the "Settlement") of the above-captioned shareholder class action and derivative litigation (the "Action") brought on behalf of Nominal Defendant VPC Impact Acquisition Holdings II ("VPCB" or the "SPAC") and a proposed Settlement Class (as defined below) of former holders of VPCB's Class A Public Shares pursuant to Rules 23 and 23.1 of the Federal Rules of Civil Procedure. The Settlement resolves all claims asserted against Defendants[1] in the Action, and resolution of this matter on a class-wide basis will promote efficiency and judicial economy, while providing relief to all former Class A shareholders. The terms of the Settlement, which were preliminarily approved by the Court on June 18, 2024, are set forth in the Stipulation and Agreement of Settlement, Compromise, and Release, dated June 12, 2024 (the "Settlement Agreement") (ECF 26-1).

The Settlement provides a substantial and immediate benefit to the Settlement Class: namely, a cash payment of $7,000,000 to be distributed *pro rata* to Class A shareholders. No objections to the Settlement have been submitted to date, and this motion is supported by multiple large members of the Class. The Settlement resulted from rigorous and contentious litigation and arm's-length negotiations, and should be approved by the Court as fair, reasonable, and adequate.

[1] Defendants include VPCB (named as a Nominal Defendant), VPC Impact Acquisition Holdings Sponsor II ("Sponsor"), and Brendan Carroll, Gordon Watson, Carly Altieri, John Martin, Joseph Lieberman (now deceased), and Kai Schmitz (collectively, the "Individual Defendants," and together with the Sponsor, the "Sponsor Defendants").

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. The SPAC's IPO

VPCB completed its IPO in March 2021. ¶ 5.[2] Through the IPO, VPCB issued approximately 25.4 million Class A Shares and raised $254 million in proceeds, which were placed in a trust account (the "Trust Account") pending completion of a business combination. ¶ 36. If VPCB failed to consummate a business combination within two years after completing its IPO, it was required to liquidate and distribute its assets (including the IPO proceeds) to Public Shareholders. ¶ 6.

In connection with the IPO, VPCB also issued to the Sponsor approximately 7.2 million Founder Shares for less than a penny per share. ¶ 34. If VPCB successfully completed a business combination, the Class B Shares would convert into Class A Shares, giving holders of Class B Shares approximately 22% of the SPAC's equity ownership of the combined entity. ¶ 35. If it failed to complete a business combination, however, the Founder Shares would be "worthless" (as stated in the IPO prospectus) and the Sponsor and Individual Defendants would "lose their entire investment." ¶ 41.

B. VPCB's Failed Business Combination Results In A Termination Fee

On August 2, 2021, VPCB announced that it had reached an agreement (the "Business Combination Agreement") for a business combination with FinAccel Pte. Ltd. (d.b.a. Kredivo) ("Kredivo"), an AI-enabled digital consumer credit platform in Southeast Asia. ¶ 43. By early 2022, the SPAC had not solicited shareholder approval of the business combination. ¶ 48.

On March 14, 2022, Defendants revealed that the SPAC had agreed with Kredivo to "the mutual termination of their previously announced business combination agreement." ¶ 49.

[2] "¶__" refers to paragraphs of the Class Action and Derivative Complaint filed with the Court on March 8, 2023 (ECF No. 1).

Defendants received at least three forms of consideration in the termination agreement entered by Kredivo and VPCB (the "Termination Agreement"): (1) a $145 million private investment in Kredivo; (2) $4 million as reimbursement to the SPAC for transaction costs; and (3) if the SPAC failed to complete an alternative transaction, warrants permitting the SPAC to acquire a stake equal to 3.5% of the fully diluted equity securities of Kredivo (the "Warrants"). ¶¶ 50-52.

In exchange, Defendants agreed to forfeit the SPAC's rights and claims under the Business Combination Agreement. The Termination Agreement provided Kredivo with a full release of liability from the SPAC for "all Claims with respect to, pertaining to, based on, arising out of, resulting from, or relating to the Business Combination Agreement, the Ancillary Documents or the transactions contemplated by the Business Combination Agreement." ¶ 55. Defendants did not indicate how they would distribute the value of the Warrants. ¶ 57.

Over the next year, Defendants did not complete an alternative transaction. ¶ 58.

C. VPCB Announces That Class A Shares Will Be Redeemed Without Distribution Of The Termination Fee

On March 3, 2023, six days before the SPAC's dissolution deadline, the SPAC announced that it would "not complete an initial business combination within the time period required" and would "cease all operations except for the purpose of winding up." ¶ 59.

VPCB further disclosed that "as promptly as reasonably possible but not more than ten business days thereafter," the SPAC would "redeem the public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the trust account . . . which redemption will completely extinguish public shareholders' rights as shareholders (including the right to receive further liquidation distributions, if any)." ¶ 60.

The redemption payments to Public Stockholders would not include any portion of the value of the Warrants. Rather, the payments would be limited only to the SPAC's assets held in the Trust

Account (*i.e.*, the IPO proceeds, plus interest), which would be distributed *pro rata*, "and no other amounts." The Warrants would be distributed to the remaining shareholders (*i.e.*, the Sponsor and Individual Defendants). ¶ 61.

D. Lead Plaintiff Initiates Litigation To Recover The Termination Fee For Public Shareholders

On March 8, 2023, Lead Plaintiff filed its initial complaint (ECF 1) seeking to recover the value of the Warrants on behalf of a class of the SPAC's Class A shareholders (subject to certain exclusions). Lead Plaintiff alleged, among other things, that the Sponsor and the Individual Defendants had disclaimed any right to any assets of the SPAC in a letter agreement entered in connection with the SPAC's IPO (the "Sponsor Agreement"), and that their plan to arrogate the Warrants for themselves was a breach of their fiduciary duties as well as of the Sponsor Agreement. Lead Plaintiff asserted claims for breach of contract, breach of fiduciary duty, and declaratory judgment. On February 20, 2024, Lead Plaintiff filed an amended complaint (ECF 12) seeking largely the same relief, as well seeking to prevent the SPAC from indemnifying the Sponsor and Individual Defendants for costs of defense or any liability in this action.

On March 5, 2024, the Joint Official Liquidators (the "JOLs"), in their capacity as the court appointed official liquidators of VPCB, and the Individual Defendants filed separate Motions to Dismiss the action (ECF 15, 16). Plaintiff responded with an omnibus opposition brief on March 15, 2024 (ECF 22), and Defendants filed their reply briefs on March 21, 2024 (ECF 24, 25).

With the motion to dismiss fully briefed, Lead Plaintiff, Defendants, and the JOLs continued to engage in extensive discussions regarding the potential to resolve all pending claims and avoid further depletion of the SPAC's available assets and potential litigation and collection risk. The parties engaged in frank exchanges of positions and expected outcomes of the litigation, which resulted in the Settlement Agreement executed on June 12, 2024.

E. The Cayman and Chapter 15 Proceedings

The dispute over the respective entitlement of Class A and Class B stockholders to the Termination Fee was also the subject of separate proceedings in the Grand Court of the Cayman Islands (the "Cayman Court"). On March 17, 2023, Funicular Funds LP ("Funicular") filed a petition for the winding up of VPCB in the Cayman Court captioned *In re VPC Acquisition Impact Acquisition Holdings II (In Official Liquidation)*, FSD No. 73 of 2023 (DDJ). On April 7, 2023, VPCB was placed into voluntary liquidation, and Alexander Lawson and Christopher Kennedy of Alvarez & Marsal Cayman Islands Limited were appointed as joint voluntary liquidators. Funicular's winding up petition was subsequently dismissed in favor of a liquidation proceeding to be conducted by Messrs. Lawson and Kennedy acting as JOLs, under the supervision of the Cayman Court, which the Cayman Court authorized on July 5, 2023 in a proceeding captioned *In re VPC Impact Acquisition Holdings II (In Official Liquidation)*, FSD No. 120 of 2023 (MRHCJ) (the "Cayman Proceeding").

On September 7, 2023, the JOLs filed a petition in the U.S. Bankruptcy Court for the Southern District of New York for recognition of the Cayman Proceeding as a foreign main proceeding under Chapter 15 of Title 11 of the United States Code. *See In re VPC Impact Acquisition Holdings II (In Official Liquidation)*, Case No. 23-11441 (MEW) (Bankr. S.D.N.Y.). Judge Wiles entered a recognition order on November 6, 2023; however, after conferences with the parties, including Plaintiff's counsel, Judge Wiles subsequently modified the recognition order on February 2, 2024 such that this action would be permitted to proceed notwithstanding Chapter 15 recognition and the Bankruptcy Code's automatic stay.

F. Settlement Negotiations And The Terms Of The Proposed Settlement

Since the initial filing of this action and the Cayman Proceeding, the parties have engaged in extensive, arm's-length negotiations to resolve the matters in dispute, both directly and through

counsel. The parties realized the value of an efficient resolution, but reaching terms was difficult given the illiquidity of the asset, its uncertain value, and the parties' fiercely disputed views generally on the entitlement to the SPAC's residual assets upon having failed to complete a business combination. On September 29, 2023, in connection with the Cayman Proceeding, Lead Plaintiff as well as Funicular and Camac Fund LP ("Camac") entered into a Conciliation Agreement with Individual Defendants and the JOLs to discuss a possible resolution. Lead Plaintiff, Funicular and Camac formed an ad hoc group to formally represent the interests of Class A stockholders (the "Ad Hoc Group"). The JOLs were extensively involved in settlement discussions as quasi-mediators to facilitate discussions with the Ad Hoc Group and Defendants. The JOLs' efforts included meeting separately with the Ad Hoc Group and with the Sponsor and Individual Defendants to candidly discuss their respective claims to the residual assets and the cost, burden and risk of continued litigation. The parties also held a conciliation session on October 3, 2023. While the Conciliation Agreement did not result in an agreement to resolve the litigation, the parties continued their discussions with assistance from the JOLs over the following months.

On March 27, 2024, the parties reached an agreement-in-principle to resolve the action and executed a settlement term sheet memorializing their agreement. Pursuant to the parties' agreement, the Settlement Class will receive (net of attorneys' fees and expenses) a cash payment of $7 million. Based on a professional valuation performed by specialists retained by the JOLs and provided to Lead Plaintiff, and a confirmatory deposition conducted by Lead Plaintiff, Lead Plaintiff believes that the Settlement Amount reflects between 56% and 94% of the value of the Warrants.[3] Lead Plaintiff believes that these terms are incredibly favorable to Class A stockholders

[3] The valuation range of the Warrants was determined based upon a security-specific analysis, taking into consideration structural features of the Warrants, including, but not limited to its

because they provide immediate, substantial and certain cash value as to an illiquid asset with inherently uncertain future value and significant litigation risks in obtaining it for Class A stockholders, and thus the Settlement is fair, reasonable, and adequate.

ARGUMENT

I. THE SETTLEMENT MERITS FINAL APPROVAL

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise or settlement of class-action claims, and Rule 23.1(c) likewise requires court approval of settlements of shareholder derivative actions. *See* Fed. R. Civ. P. 23(e), 23.1(c). A settlement merits approval where the court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

The Second Circuit has recognized that public policy favors the settlement of disputed claims among private litigants, particularly in class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("*Visa*") ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'") (citation omitted). In ruling on final approval of a class settlement, a court should examine both the negotiating process leading to the settlement and the settlement's substantive terms. *See Visa*, 396 F.3d at 116; *In re Citigroup Inc. Sec. Litig.*, 2014 WL 2112136, at *2-3 (S.D.N.Y. May 20, 2014).

District Courts in the Second Circuit apply a settlement approval analysis based on two overlapping multi-factor tests. Courts first consider the factors specified in Rule 23(e)(2)—namely, whether:

> (A) the class representatives and class counsel have adequately represented the class;
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> (B) the proposal was negotiated at arm's length;

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subordinated rank within the capital structure, various transfer restrictions, and information limitations.

> (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Courts also weigh the *Grinnell* factors set forth by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). *See In re GSE Bonds*, 414 F. Supp. 3d at 692. These factors include:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class throughout trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463.

Lead Plaintiff addresses below the Settlement's "fairness, reasonableness, and adequacy" principally under the four factors listed in Rule 23(e)(2), while also discussing application of relevant, non-duplicative *Grinnell* factors. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019), *aff'd sub nom*, *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704 (2d Cir. 2023) (noting that "the new Rule 23(e) factors . . . add to, rather than displace, the *Grinnell* factors"). For the reasons below, all relevant factors strongly support approval of the proposed Settlement.

A. Lead Plaintiff And Lead Counsel Have Zealously Represented The Class

The adequacy of representation determination "generally 'entails inquiry as to whether: (1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation.'" *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007).

Here, Lead Plaintiff is a significant holder of VPCB's Class A shares and thus has interests that are fully aligned with those of the entire Settlement Class. Each member is entitled to a *pro rata* portion of a common asset—the SPAC's residual assets, net of expenses. Lead Plaintiff and the Settlement Class have suffered the same injuries (deprivation of the disputed assets) and stand to realize the same benefits (a *pro rata* distribution). Moreover, because of the size of Lead Plaintiff's holdings, it has a strong "interest in vigorously pursuing the claims of the class" to an extent arguably larger than other smaller members of the Class. *See Denny v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006); *Doe 1 v. JPMorgan Chase Bank N.A.*, 2023 WL 3945773, at *7 (S.D.N.Y. June 12, 2023) (lead plaintiff was adequate because she was incentivized to "secure as large an award of damages as is possible"). Lead Plaintiff has demonstrated throughout this action that it is committed to a substantial recovery for the Settlement Class, including by (a) electing to assert claims on behalf of the Class despite that it could have brought individual claims and potentially achieved an individual settlement; (b) devoting substantial time and resources, primarily of its principal, to litigation strategy, oversight of counsel, and negotiations with the JOLs and Individual Defendants in this action and the Cayman Proceeding; and (c) assuming substantial distraction and risk by agreeing to serve as the named plaintiff. In addition, Funicular and Camac, who are also seeking appointment as additional Class Representatives with Lead Plaintiff, also participated in settlement negotiations in this action and through the Ad Hoc Group

in the Cayman Proceeding. Funicular and Camac also hold a substantial portion of the SPAC's outstanding stock and provided a further check on the adequacy of the Settlement.

Class Counsel, for its part, has also zealously represented the Settlement Class. Counsel (i) developed novel claims based on a thorough review of the SPAC's public disclosures and the contractual and organizational documents governing the respective rights of Class A and Class B stockholders; (ii) moved quickly to file this action and ensure that the Warrants were not liquidated, traded or distributed until this litigation could be resolved; (iii) briefed Defendants' Motions to Dismiss, one filed by the JOLs and the other by the Sponsor and Individual Defendants, through which the parties were able to further assess the strengths and weaknesses of the claims and defenses; (iv) appeared in the Chapter 15 Proceeding to ensure that this action could proceed for the benefit of Class A stockholders notwithstanding the Bankruptcy Court's grant of Chapter 15 recognition; (iv) actively participated in the Cayman Proceeding and coordinated with Cayman counsel with respect to this case in an effort to protect the interests of the Settlement Class; (v) engaged in difficult, contentious and complicated multi-party negotiations over the course of months with the JOLs, Sponsor and Individual Defendants in an effort to find a resolution that maximized the interests of the Settlement Class; and (vi) conducted confirmatory discovery to ensure that the Settlement, and the premises supporting it, were well founded and the terms fair, reasonable and adequate. *See* Declaration of Aaron T. Morris in Support of (A) Motion for Final Approval of Settlement, Class Certification, and Plan of Allocation; and (B) Motion for Attorneys' Fees and Litigation Expenses ("Morris Decl.") ¶¶ 4-9.

B. The Settlement Was Reached After Complex Negotiations And Dispositive Motion Practice

Courts must also consider whether a proposed settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). Traditionally, courts also consider: (i) whether counsel had an adequate

understanding of the case's strengths and weakness based on "the stage of the proceedings and the amount of discovery completed,"[4] (ii) any indicia of collusion;[5] and (iii) the involvement of an independent mediator. Here, these factors also strongly support approval of the Settlement.

When a class settlement is reached through arm's-length negotiations between experienced, capable counsel, it "will enjoy a presumption of fairness." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 575 (S.D.N.Y. 2008) ("presumption of correctness"); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (courts consistently give "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation"). Here, Class Counsel is experienced and capable in SPAC-related litigation: not only has counsel handled multiple cases involving SPACs, but it simultaneously handled three other cases involving materially identical circumstances in which the SPAC's residual assets were appropriated by sponsors. With that experience and expertise, Class Counsel was uniquely situated to develop an accurate view as to the merits of this action and settlement value, and counsel has judged the outcome for the Settlement Class to be an excellent result under the circumstances.

There is no "evidence or indicia suggesting that the negotiations were collusive" because they were not. *See Simerlein v. Toyota Motor Corp.*, No. 17-CV-1091, 2019 WL 1435055, at *14

[4] *See Grinnell*, 495 F.2d at 463 (third factor); *see also In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *4 (S.D.N.Y. Nov. 9, 2015) ("the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement"), *aff'd*, 674 F. App'x 37 (2d Cir. 2016).

[5] *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982) ("the absence of any indication of collusion, the protracted settlement negotiations, the ability and experience of plaintiffs' counsel, [and] the extensive discovery preceding settlement . . . are important indicia of the propriety of settlement negotiations").

(D. Conn. Jan. 14, 2019). The Settlement arose from extensive, arm's-length negotiations over the course of several months, and both sides were prepared to continue to litigate if a mutually acceptable settlement was not achieved. The discussions were facilitated by the JOLs, who attempted to provide an independent perspective as to the parties' legal positions and assessments of litigation risk. Therefore, the Court should conclude that this consideration weighs in favor of approval.

Lead Plaintiff's support for the Settlement is another factor that favors approval. Lead Plaintiff is a sophisticated institutional investor and a large holder of Class A shares, and thus has significant "skin in the game." A settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor is . . . 'entitled to an even greater presumption of reasonableness.'" *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007).

C. The Settlement Provides Adequate Relief

The proposed Settlement is an excellent result and readily satisfies Rule 23(e)(2)(C). Under two reasonable valuations of the Warrants in dispute, public stockholders will obtain 56% or 94% of the value of the Warrants on top of the Trust Account proceeds that have already been distributed to the Settlement Class. In other words, Class A shareholders will receive not only the entirety of their investments back, plus interest, but $7 million in additional proceeds (net of fees and expenses) derived solely through this litigation. Absent this litigation, there would be no additional distribution.

This result is especially impressive when considered in view of the specific factors identified in Rule 23(e)(2)(C).

Costs, Risks, and Delay of Trial and Appeal. While Plaintiff believes the claims asserted against Defendants were strong and supported by substantial evidence, there were significant risks

to continued litigation. Defendants vigorously contested liability and raised a host of arguments in opposition to Plaintiff's claims, including contending that (a) Class A shareholders are not intended third-party beneficiaries of the Sponsor Agreement; (b) the waiver provision in the Sponsor Agreement applies only to the Trust Account, and does not apply to the Termination Fee; (c) redemption of Class A shareholders extinguished any rights they may have had to the SPAC's assets; and (d) Defendants do not owe fiduciary duties to Class A shareholders as a matter of Cayman Islands law. Lead Plaintiff believes each of these arguments is without merit, but if the Court or a jury were to adopt any one of them, then the Class could be left with no recovery at all. The proposed Settlement eliminates these risks, while allowing the Class to recover a significant portion of the value of the disputed Warrants. *See In re Payment Card*, 330 F.R.D. at 37 (court "should balance the benefits afforded the Class, including immediacy and certainty of recovery, against the continuing risks of litigation"); *Gordon v. Vanda Pharm. Inc.*, 2022 WL 4296092, at *4 (E.D.N.Y. Sept. 15, 2022) (considering risks of continuing litigation where "the parties remain fiercely divided on fundamental issues of liability"). Moreover, "even if [Plaintiff] 'were to prevail at trial, post-trial motions and the potential for appeal could prevent the class members from obtaining any recovery for several years, if at all.'" *In re GSE Bonds*, 414. F. Supp. 3d at 693-94) (quoting *Sykes v. Harris*, No. 09-CV-8486, 2016 WL 3030156, at *12 (S.D.N.Y. May 24, 2016)).

Courts also consider a defendant's ability to withstand or avoid a greater judgment. *Grinnell*, 495 F.2d at 463. Here, aside from a limited pool of cash that will be exhausted by the SPAC's expenses, including liquidation costs, the Kredivo Warrants are the SPAC's only remaining asset. Class A stockholders receive the substantial majority of the value of those Warrants, today, without assuming the liquidity risks associated with Warrants in a private company as well as the risk that the Warrants may not be worth anything if Kredivo's business is not ultimately successful.

See, e.g., *In re Currency Conversion Fee Antitrust Litig.*, 01-CV-1409, 2006 WL 3247396, at *6 (S.D.N.Y. Nov. 8, 2006) (approving settlements "representing roughly 10-15% of the credit transaction fees collected by Defendants"); *Gordon*, 2022 WL 4296092, at *6 (approving a settlement of "approximately 10.2% of reasonably recoverable damages").

Method of Distributing Settlement Funds to the Class. The Court should also conclude that the proposed method of distributing relief is effective and equitable. Here, the Settlement is in cash and will be distributed *pro rata* to Class A shareholders (other than those excluded from the Class). Rather than requiring the time and expense of a claims process, the Settlement Administrator will leverage the information previously used to distribute the trust account to distribute the settlement funds to the same investors. Such a straightforward plan ensures "the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund." *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *4 (S.D.N.Y. 2016). This sensible approach satisfies Rule 23(e)(2)(C)(ii).

Requested Attorneys' Fees, Expenses and Incentive Award. The terms of the proposed Settlement as to attorneys' fees and litigation expenses also favors approval. Courts in this Circuit routinely "find requests for attorney's fees which are approximately one-third of the class action's total settlement . . . to be reasonable." *Gordon*, 2022 WL 4296092, at *5) (citing *Rosenfeld v. Lenich*, No. 18-CV-6720, 2021 WL 508339, at *7 (E.D.N.Y. Feb. 11, 2021)); *see also In re Payment Card*, 991 F. Supp. 2d at 445 (E.D.N.Y. 2014). Here, the requested fee award of 25% of the Settlement is fair and reasonable in view of Class Counsel's expedited investigation and filing of this action, work performed in litigating this action, work performed in the Cayman Proceeding and the Chapter 15 Proceeding, and the extensive settlement negotiations and confirmatory discovery that culminated in an exceptional result for all Class A stockholders. Counsel also seeks

reimbursement of the reasonable costs of litigation incurred by Counsel as well as ATG and the Class Representatives (*i.e.*, the members of the Ad Hoc Group), in the amount of $144,553.28, all of which was reasonable and critical to prosecuting and protecting the rights of the Settlement Class.

In addition, Lead Plaintiff has applied for an incentive award for the Lead Plaintiff not to exceed $50,000. An incentive award is warranted by the circumstances of this case and the contributions made by the Lead Plaintiff, including (a) its willingness to seek recovery on behalf of the Class, rather than pursuing individual claims; (b) its active participation in litigation strategy and oversight of counsel; and (c) its direct and substantive participation in settlement negotiations ultimately leading to a highly favorable result for the Class.

Agreements Required To Be Identified Under Rule 23(e)(3). All agreements pertaining to the Settlement are set forth in the previously filed Settlement Agreement (ECF 26-1).

D. The Settlement Treats Class Members Equitably Relative to Each Other

The Settlement also treats Class Members equitably relative to one another. As noted at § II below, under the Court-approved Plan of Allocation, all eligible claimants will receive their *pro rata* share of the recovery based on the amount of their transactions in VPCB Class A common stock. Lead Plaintiff will receive the same *pro rata* recovery, calculated under the same Plan of Allocation provisions, as other Class Members.

E. The Reaction Of The Class To The Settlement Supports Approval

An important factor set forth in *Grinnell*, but not included in Rule 23(e)(2), is the reaction of the class to the Settlement. *See, e.g.*, *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012); *FLAG Telecom*, 2010 WL 4537550, at *16; *Veeco*, 2007 WL 4115809, at *7. Pursuant to the Preliminary Approval Order, the JOLs and the Settlement Administrator obtained in electronic format a list of holders of VPCB Class A common

stock who are part of the Class and provided all Class Members a copy of the Notice either electronically or by U.S. Mail where electronic delivery was not feasible. *See* Affidavit of Emily Young ("Young Decl.") at ¶¶ 4-6. Further, the Settlement Administrator published the Summary Notice in Investor's Business Daily and on the Global Newswire on July 22, 2024. *Id*. at ¶¶ 11-12. The Notice set out the essential terms of the Settlement and informed Class Members of, among other things, their right to object to any aspect of the Settlement. While the September 5, 2024, deadline set by the Court for Class Members to object has not yet passed, no objections have been received. *See* Morris Decl. at ¶ 38. As provided in the Preliminary Approval Order, Lead Plaintiff will address any objections that may be received in reply papers (which are due on September 19, 2024). The Class's reaction thus far has been exclusively positive and thus this factor strongly supports approval of the Settlement.

II. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

In preliminarily approving the Settlement, this Court found that each element required for certification has been or will likely be met and it "likely [would] be able to certify the Settlement Class solely for the purposes of the proposed Settlement" pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of Civil Procedure. ECF 28 at 3. Lead Plaintiff now moves for the Court to certify that Settlement Class, which is defined as:

> All persons who held a legal or beneficial interest in Class A Shares of the SPAC as of the redemption date of March 21, 2023, whose shares were redeemed, including the legal representatives, heirs, successors-in-interest, transferees, and assignees of all such holders, but excluding: (a) the SPAC; (b) the Sponsor; (c) the Individual Defendants; (d) any person who is, or was as of March 21, 2023, a trustee, officer, or director of the Sponsor; (e) the immediate family members, legal representatives, heirs, successors-in-interest, transferees, and assignees of the foregoing; and (f) any trusts, estates, entities, or accounts that held Class A Shares for the benefit of any of the foregoing.

See Settlement Agreement ¶ 1.1; ECF 28 at 2-3.

The Second Circuit has long acknowledged the propriety of certifying a class solely for purposes of a class action settlement. *See Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014). Certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 158 (S.D.N.Y. 2011) (citation omitted). A settlement class, like other certified classes, must satisfy the requirements of Rule 23(a) and (b). *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006). The proposed Settlement Class here meets these requirements and should be certified.

A. The Settlement Class Satisfies The Requirements Of Rule 23(a)

Certification is appropriate under Rule 23(a) if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

1. The Settlement Class Satisfies Numerosity

In this Circuit, numerosity is presumed when a class consists of 40 or more members. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995); *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 90 (S.D.N.Y. 2009). To satisfy numerosity, plaintiff need not provide "a precise calculation of the number of class members," but instead "may rely on reasonable inferences drawn from the available facts in order to estimate the size of the class." *Dietrich v. Bauer*, 192 F.R.D. 119, 123 (S.D.N.Y. 2000) (citations omitted). Accordingly, "courts

in this district have certified plaintiff classes based on the volume of outstanding shares." *Pa. Ave. Funds v. Inyx Inc.*, 2011 WL 2732544, at *3 (S.D.N.Y. July 5, 2011).

Here, the proposed Settlement Class easily satisfies the numerosity requirement. The SPAC issued more than 25 million shares of Class A common stock into the public markets, which were held by hundreds, if not thousands, of public investors. Numerosity is thus readily established here. *See, e.g.*, *Inyx*, 2011 WL 2732544, at *3 (certifying class where "27 million shares of common stock [were] outstanding" during class period).

2. <u>There Are Common Questions Of Law And Fact</u>

The commonality requirement is "liberally construed" and "is usually a minimal burden for a party to shoulder." *Charron v. Pinnacle Grp. N.Y. LLC*, 269 F.R.D. 221, 230 (S.D.N.Y. 2010). "A question is common to the class if it is capable of classwide resolution—which means the determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Doe I*, 2023 WL at *4 (internal quotations omitted). "Even a single common question of law or fact may suffice to satisfy the commonality requirement." *Id*.

The core issues in this litigation are entirely common to the Settlement Class, including whether Defendants' taking of the Termination Fee for themselves complies with their fiduciary duties to Class A shareholders and their contractual commitments in the Sponsor Agreement. Resolution of those issues would resolve the claims of all members of the proposed Settlement Class, who are each entitled to a *pro rata* share of the assets Defendants are appropriating. *See Funicular Funds, LP v. Pioneer Merger Corp.*, 2023 WL 7182055, at *4 (S.D.N.Y. Nov. 1, 2023) (granting class certification in view of common issues underlying claims of SPAC's public shareholders to termination fee); *see also Steinberg v. Nationwide Mut. Ins. Co*., 224 F.R.D. 67, 74 (E.D.N.Y. 2004) ("[C]laims arising from interpretations of a form contract appear to present

the classic case for treatment as a class action, and breach of contract cases are routinely certified as such.").

Defendants' defenses likewise are entirely common to the Settlement Class. For example, Defendants have argued that: (a) they do not owe fiduciary duties to Class A shareholders; (b) under the SPAC's governing documents, Class A shareholders are entitled only to the assets held in the Trust Account, which already have been distributed to them; and (c) Class A shareholders are not third-party beneficiaries of the Sponsor Agreement and cannot enforce any restriction it may impose on Defendants' taking of the Termination Fee. Resolution of those issues likewise would be based on class-wide proof and apply equally to all members of the Settlement Class.

3. Lead Plaintiff Is Typical

Rule 23(a)(3) requires that the claims of the class representative be "typical" of the claims of the class. Typicality is established where "each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 245 (2d Cir. 2007), "Courts in this Circuit have held that the 'typicality requirement is not demanding.'" *Pub. Employees' Ret. Sys. of Mississippi v. Merrill Lynch & Co.*, 277 F.R.D. 97, 106 (S.D.N.Y. 2011). "Typical" does not mean "identical," *In re Marsh & McLennan Cos., Sec. Litig.*, 2009 WL 5178546, at *10 (S.D.N.Y. Dec. 23, 2009), and "[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1993) (vacating denial of class certification as to typicality).

Lead Plaintiff's claims in this case are identical to the Settlement Class as a whole. The Settlement Class, including Plaintiff, have *pro rata* claims on a single pot of disputed assets. They hold these claims as a result of having been SPAC shareholders at the time of the redemption of Class A Shares. All disputed material facts and circumstances in this action focus on Defendants' treatment of the SPAC's assets relative to their contractual and fiduciary duties, and there is nothing unique about Lead Plaintiff's claims vis-à-vis the Settlement Class. The additional Class Representatives are identically situated and thus are also typical under Rule 23.

4. Lead Plaintiff Adequately Protected The Settlement Class

Rule 23(a)(4) mandates that "the representative parties will fairly and adequately protect the interests of the class." "Adequacy entails inquiry as to whether: (1) plaintiffs' interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Merrill Lynch*, 277 F.R.D. at 109.

Here, there is no conflict between Lead Plaintiff and the proposed Settlement Class. Like the other members of the Class, Lead Plaintiff was a holder of Class A common stock at the time of its redemption, and has been injured by precisely the same course of conduct as other Class A Shareholders. If Lead Plaintiff were to prove its claims at trial, it would also prove the Settlement Class's claims. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 460 (2013) (adequacy satisfied where class's claims "will prevail or fall in unison"); *In re Platinum & Palladium Commodities Litig.*, 2014 WL 3500655, at *10 (S.D.N.Y. July 15, 2014) ("The fact that plaintiffs' claims are typical of the class is strong evidence that their interests are not antagonistic to those of the class."). Thus, the interests of Lead Plaintiff and the other Settlement Class members are aligned, and they share the common objective of maximizing their recovery. *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs

and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representative and other class members."). Indeed, as the largest holder of Class A Shares, Lead Plaintiff could have brought this litigation individually, but it chose to seek recovery on behalf of all Class A shareholders because of the blatant inequity of Defendants' actions. The other Class Representatives likewise participated extensively in this litigation and the Cayman Proceeding and the adequacy of their representation is demonstrated by the excellent result in this case.

Further, Lead Plaintiff has shown its commitment to this case by retaining qualified counsel to vigorously litigate it. Class Counsel Morris Kandinov LLP specializes in capital markets litigation and is a leading advocate for SPAC shareholders. Counsel has committed significant time and resources to investigating and litigating this matter, and was (and continues to be) fully committed to litigating the matter through trial if necessary to obtain a just result on behalf of the Class. Rule 23(a)(4) is satisfied.

B. The Settlement Class Satisfies The Requirements Of Rule 23(b)(1)

Rule 23(b)(1) provides for certification of a class where individual actions "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 interest of [others] or would substantially impair or impede their ability to protect their interests."

While the presence of either category of risk under Rule 23(b)(1) would justify class certification, both are present here. First, because the claims of all Settlement Class members involve the same factual and legal issues, adjudication of individual claims creates a high risk of inconsistent or varying rulings, with some Class members found to be entitled to the Termination

Fee, and others facing denial of their claims. Second, because all members of the Settlement Class seek to recover from the same limited pool of assets, individual actions would create a risk that successful claimants would exhaust the available recovery before all Class members have their claims adjudicated.

In these circumstances, certification of the Settlement Class accomplishes the purposes of Rule 23(b)(1) by ensuring that the claims of all Class members are resolved in the same manner and the recovery is apportioned *pro rata* among Class members. *See Funicular Funds*, 2023 WL 7182055, at *4 (certifying, pursuant to Rule 23(b)(1), class of SPAC's public shareholders in dispute over termination fee); *see also In re Simon II Litig.*, 407 F.3d 125, 133 (2d Cir. 2005) (describing, as example of certification under Rule 23(b)(1), "a suit by shareholders to compel declaration of a dividend or to compel proper recognition and handling of redemption and preemption rights"). Thus, the Settlement Class should be certified pursuant to Rule 23(b)(1).[6]

III. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *Bear Stearns*, 909 F. Supp. 2d at 270. A plan of allocation is fair and reasonable as long as it has a "rational basis." *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020); *FLAG Telecom*, 2010 WL 4537550, at *21. Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable.

[6] Although the Court need not reach the issue, certification of the Settlement Class also would be appropriate under Rule 23(b)(2) because Defendants acted on grounds generally applicable to the Class, or under Rule 23(b)(3) because common issues of law and fact predominate over any individualized issues.

See Signet, 2020 WL 4196468, at *13. In determining whether a plan of allocation is reasonable, "courts give great weight to the opinion of experienced counsel." *Id*.

As the Court approved in the Preliminary Order, the proposed Plan of Allocation (or "Plan") is for the Settlement Administrator to implement a *pro rata* distribution of the Net Settlement Fund via the facilities of the DTC to all members of the Settlement Class eligible to receive payments from the Net Settlement Fund proportionate to the number of Class A Shares held by each Class Member as of March 21, 2023 (*i.e.*, at the time VPCB redeemed all Class A Shares). Settlement Agreement ¶ 9.3. *Pro rata* distribution is inherently fair, required by the SPAC's governing documents, and was the same methodology used to allocate the assets held in trust. *See, e.g.*, *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 135 (S.D.N.Y. 2008) ("A plan of allocation that calls for the *pro rata* distribution of settlement proceeds on the basis of investment loss is presumptively reasonable.").

IV. THE NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The Notice to the Class satisfied Rule 23(e)(1), which requires that notice of a settlement be "reasonable"—*i.e.*, it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Visa*, 396 F.3d at 114. Both the substance of the Notice and the method of its dissemination to members of the Settlement Class satisfied these standards. The Court-approved Notice included: (i) an explanation of the nature of the Action and the claims asserted; (ii) the definition of the Settlement Class; (iii) the amount of the Settlement; (iv) a description of the Plan of Allocation; (v) an explanation of the reasons why the Parties are proposing the Settlement; (vi) a statement indicating the attorneys' fees, expenses, and incentive award that will be sought; (vii) a description of Class Members' right to object to the Settlement, the Plan of Allocation, or the

requested attorneys' fees, expenses, or incentive award; and (viii) notice of the binding effect of a judgment on Class Members.

As noted above, in accordance with the Court's Preliminary Approval Order, the JOLs and the Settlement Administrator obtained in electronic format a list of holders of VPCB Class A common stock who are part of the Settlement Class and provided all Class Members a copy of the Notice either electronically or by U.S. Mail. *See* Young Decl. at ¶¶ 4-6. Further, the Settlement Administrator published the Summary Notice in Investor's Business Daily and on the Global Newswire. *Id*. at ¶¶ 11-12. The combination of electronic or physical mail to all Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate, widely circulated publication, transmitted over the newswire, and set forth on internet websites, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *In re Qudian Inc. Sec. Litig.*, 2021 WL 2383550, at *3 (S.D.N.Y. June 8, 2021); *In re Blue Apron Holdings, Inc. Sec. Litig.*, 2021 WL 345790, at *4 (E.D.N.Y. Feb. 1, 2021); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 182-83 (S.D.N.Y. 2014). Lead Plaintiff has received outreach from other Class members and it appears that the Class is generally aware of the resolution, which suggests that the Notice was adequate.

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement, certify the Settlement Class, and approve the proposed Plan of Allocation.

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Respectfully submitted,

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