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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DARCY LIEN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. EAGLE EQUITY PARTNERS II, LLC, HARRY E. SLOAN, SCOTT M. DELMAN, JOSHUA KAZAM, ALAN MNUCHIN, LAURENCE E. PAUL, ELI BAKER, and JEFF SAGANSKY, Defendants.	C.A. No. 2022-0972-PAF

VERIFIED AMENDED CLASS ACTION COMPLAINT

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Gregory V. Varallo (Bar No. 2242)
Mae Oberste (Bar No. 6690)
Daniel E. Meyer (Bar No. 6876)
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3600

Attorneys for Plaintiff

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VERIFIED AMENDED CLASS ACTION COMPLAINT

Plaintiff Darcy Lien ("Plaintiff"), pursuant to the Order Granting Plaintiff's Motion for Leave to File a Verified Amended Class Action Complaint entered today in this action, on behalf of himself and all other similarly situated current and former stockholders of Skillz Inc. ("Skillz" or the "Company") f/k/a Flying Eagle Acquisition Corp. ("Flying Eagle"), brings this Verified Amended Class Action Complaint (the "Complaint") against the Director Defendants, the Officer Defendants, and the Controller Defendants (as each are defined herein). The allegations in this Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief as to all other matters. This Complaint is also based on the investigation of Plaintiff's counsel, which included, among other things, a

review of documents (the "220 Production") produced in response to Plaintiff's inspection demand pursuant to 8 *Del. C.* § 220 (the "220 Demand"), a review of public filings with the U.S. Securities and Exchange Commission ("SEC"), and a review of news reports, press releases, and other publicly available sources.

NATURE AND SUMMARY OF THE ACTION

1. As the Court is aware, although special purpose acquisition companies ("SPACs") can theoretically create value for stockholders, their structure is inherently conflicted in the context of a value-decreasing transaction.[1] This case is an example of conflicted fiduciaries of a SPAC who pushed through an unfair transaction and interfered with public stockholders' redemption rights in order to cash-in on their founder shares.

2. The entities and underlying transactions at issue here conformed to the "standardized" SPAC model, in which a "sponsor" and its human controllers form the SPAC, which in turn raises capital in an initial public offering ("IPO").[2] The IPO units are customarily sold for $10 each and consist of one share and a fraction of one warrant. The IPO proceeds are held in trust for the benefit of the SPAC's public stockholders, who retain the right to redeem their shares after a merger target

[1] *See, e.g.*, *Delman v. GigAcquisitions3, LLC*, 288 A.3d 692, 713 (Del. Ch. 2023); *In re MultiPlan Corp. S'holders Litig.*, 268 A.3d 784, 792 (Del. Ch. 2022).

[2] *GigAcquisitions3*, 288 A.3d at 701.

is identified. These "redemption rights" essentially guarantee public IPO investors a fixed return—usually the initial investment plus interest.

3. The SPAC is administered by the sponsor, which is compensated through a "promote" in the form of a percentage of the SPAC's post-IPO equity—issued as "founder shares"—for a nominal price. Unless the SPAC identifies and completes a transaction with a private company within a fixed period—typically 18-24 months—the SPAC will liquidate. In the event of liquidation, the proceeds in trust (consisting of the IPO proceeds and interest) are returned to the SPAC's public stockholders. The founder shares, by contrast, will expire worthless.

4. This dynamic presents an inherent and powerful conflict between SPAC insiders and public stockholders in the context of a value-decreasing transaction. Founder stockholders are incentivized toward a value-decreasing transaction given the choice between no gain (in the event of no transaction) and large potential upside against the nominal value paid for founder shares (in the event of a value-decreasing transaction). Public stockholders do not own founder shares and retain the right to redeem their shares and thus are not similarly situated.

5. Flying Eagle—which was formed by Defendants Jeff Sagansky ("Sagansky"), Harry E. Sloan ("Sloan"), Eli Baker ("Baker"), and Alan Mnuchin ("Mnuchin") on January 15, 2020—possessed these typical SPAC traits. Flying

Eagle was one of eight SPACs formed by Defendants, all with an eagle-themed name.

6. Before Flying Eagle went public, Defendants received 17.25 million shares of Class B common stock—the "Founder Shares"—taking into account a later reverse stock split, for approximately $25,000, or less than $0.002 per share. Flying Eagle went public on March 10, 2020, selling 69 million units consisting of one share of Class A common stock and one quarter of a warrant at $10 per share, raising proceeds of $690 million. The IPO proceeds were placed in a trust account (the "Trust").

7. Defendants' Founder Shares would convert into Class A common stock of the *pro forma* entity ***if*** Flying Eagle entered into a business combination within 24 months of the IPO. Absent a closed deal, the Founder Shares and the over 10 million warrants that Defendant Eagle Equity Partners II, LLC (the "Sponsor" or "Eagle Equity Partners") purchased for $15 million would be worthless.

8. As a result, Defendants knew that even a bad deal that caused Flying Eagle's stock price to drop below the $10 per share IPO price was much better for them than no deal because it would still provide them with a financial windfall. The worst-case scenario for Defendants would be the failure to enter into any business combination at all, because in that case Flying Eagle would be forced to return the

Class A investors' money with interest and Defendants would suffer a total loss of their investment in Flying Eagle.

9. Thus, Defendants were personally incentivized to push Class A investors to vote in favor of a merger regardless of its merits. Defendants were similarly incentivized to encourage public Class A stockholders not to exercise their redemption rights. By limiting the amount of redemptions, which would deplete cash from the Trust that could only be used to consummate a transaction, Defendants sought to maximize the funds in the Trust used to consummate a merger and ensure that Defendants would receive value for their Founder Shares. Notably, Class A stockholders could vote "for" a potential transaction and nonetheless redeem their shares, decoupling their voting interests in a potential transaction from their economic interests.

10. In December 2020, Flying Eagle completed the acquisition (the "Merger") of Skillz Inc. ("Legacy Skillz"), to create new Skillz Inc. (as defined above, "Skillz"). Legacy Skillz was, and Skillz is, a technology company "that enables game developers to monetize their content through fun and fair multi-player competition." Skillz allows game developers to build and offer their games for individuals to play on their smartphones or tablets. Although unbeknownst to Flying Eagle's public stockholders, Legacy Skillz was always the preferred target of

Defendants Sloan and Baker, each of whom had known Legacy Skillz and its founder, Andrew Paradise ("Paradise"), for years pre-IPO.

11. Not only was the acquisition of Legacy Skillz a foregone conclusion, the merits of the Merger were at best an afterthought to the fiduciaries tasked with conducting diligence, approving, and recommending the Merger to stockholders. In response to Plaintiff's 220 Demand, Defendants agreed to produce ***all Board books and records*** concerning "the pre-[Merger] due diligence conducted on Legacy Skillz," among other topics. The 220 Production contains no evidence of Flying Eagle's Board of Directors' (the "Board") oversight of or involvement in this process. Indeed, the Board failed to perform anything more than cursory (if any) due diligence on Legacy Skillz's business. In particular, the 220 Production contained ***no*** Flying Eagle Board meeting minutes assessing the Merger, nor did it contain a ***single*** Flying Eagle Board presentation concerning the Merger.[3]

12. Rather, the Board's record of reviewing and approving the Merger consists solely of two Unanimous Written Consents (in lieu of meetings) concerning the Merger. In the first Unanimous Written Consent, dated September 1, 2020, the Board delegated its authority to consummate the Merger to Flying Eagle's officers

[3] The Company's counsel confirmed on October 14, 2022, that the 220 Production was complete.

and adopted an implausible valuation of Legacy Skillz without underlying analysis or support. In other words, the Board ceded all authority concerning the Merger to Defendants Sloan, Sagansky, and Baker—all of whom were incentivized to get any deal done as a result of their ownership of 17,190,000 Founder Shares. The second Unanimous Written Consent, dated November 30, 2020, authorized the stockholder meeting to vote on the Merger and stated that the Flying Eagle Board's recommendation in favor of the Merger be included in the proxy.

13. Defendants issued a materially false and misleading Registration Statement (defined below) to ensure that they would receive their Founder Shares and that the Merger was consummated, and to minimize the depletion of the Trust by stockholders exercising their redemption rights. A closing condition of the Merger was the availability of at least $550 million of cash from the Trust as well as proceeds from a private investment in public entity ("PIPE") investment. A significant number of redemptions could challenge or even derail Defendants' ability to close the Merger.

14. ***First***, the Registration Statement misrepresented the Board's role in assessing the Merger. The Registration Statement stated, for example, that "[b]ased on its due diligence investigations of Skillz and the industries in which it operates, including the financial and other information provided by Skillz in the course of [Flying Eagle]'s due diligence investigations, the [Flying Eagle] board of directors

believes that the [Merger] is in the best interests of [Flying Eagle] and its stockholders[.]" The Registration Statement further stated that "[b]efore reaching its decision" to recommend the Merger to stockholders, the Flying Eagle "board of directors reviewed the results of management's due diligence[.]" These statements are materially false and misleading. As the 220 Production makes clear, the Board was not involved in the diligence process whatsoever. In deciding whether to redeem, a reasonable Flying Eagle stockholder would have considered it important to know that the Board had no basis to recommend stockholders approve the Merger based on diligence the Board never reviewed.

15. ***Second***, the Registration Statement misrepresented Sloan's and Baker's roles in orchestrating the Merger. The Registration Statement stated, for example, that "[p]rior to the consummation of our IPO, neither [Flying Eagle], nor anyone on its behalf, engaged in any substantive discussions, directly or indirectly, with any business combination target with respect to an initial business combination with [Flying Eagle]." This too is materially false and misleading. Defendants Sloan and Baker had known Legacy Skillz and Paradise since mid-2018 and had "met with them every year" since. They "loved the business" and "were super interested in it" and "stayed close" to Paradise. Indeed, Legacy Skillz nominated Sloan to its board as early as March 3, 2020, ***before*** the IPO, indicating that the Sponsor had already chosen Legacy Skillz as its target. In deciding whether to redeem, a reasonable

Flying Eagle stockholder would have considered it important to know that a de-SPAC transaction with Legacy Skillz was preordained.

16. ***Third***, the Registration Statement overstated the value of the SPAC's shares as consideration in the Merger. The Registration Statement valued each Flying Eagle share to be invested in Skillz as a result of the Merger at $10 per share. Due to dilution and dissipation of cash, however, those shares actually contributed less than $7.33 net cash per share in value. Further, had the Class exercised their maximum Redemption Rights, Flying Eagle would have only contributed $6.21 per share. In deciding whether to redeem, a reasonable Flying Eagle stockholder would have considered it important to know of the substantial delta between the value per share public stockholders were told to expect and the SPAC's net cash per share.

17. The Defendants obtained their desired result through the materially false and misleading Registration Statement. Flying Eagle's stockholders voted to approve the Merger on December 16, 2020. Only 2,140 shares, approximately 0.0025% of Class A shares, exercised redemption rights.

18. The stockholders who did not redeem now hold a penny stock. In total, since the de-SPAC transaction, Skillz shares have lost over ***95%*** of their overall value and were trading at ***less than $1.00 per share*** the day before the filing of this Amended Complaint. This decline in stock price implies value destruction of over $652 million for Class A stockholders, when compared with the $10 per share

Redemption Rights (plus interest). Nevertheless, given the economics of the Founder Shares, the fiduciaries of this SPAC are still poised to realize multi-million-dollar paydays.

19. Plaintiff seeks monetary damages and all available equitable relief arising from Defendants' breaches of fiduciary duty and the unfair acquisition of Legacy Skillz. The Court should now apply entire fairness and award damages accordingly.

THE PARTIES AND RELEVANT NON-PARTIES

A. The Eagle Family of SPACs

20. Skillz is a Delaware corporation with principal executive offices located in San Francisco, California. The Company is the result of Flying Eagle acquiring Legacy Skillz. Legacy Skillz, and now Skillz, develops and supports a proprietary mobile gaming platform. Developers utilize the platform to build games in which players use their mobile devices to play against each other.

21. Flying Eagle was one of a series of SPACs, all with "Eagle" in their name, formed by Defendants Sloan, the former CEO of MGM Studios, Sagansky, the former president of CBS Entertainment, and Baker.[4] In an interview, Sloan

[4] To the best of Plaintiff's knowledge, Defendant Mnuchin also co-founded Flying Eagle. *See, e.g.*, Flying Eagle Acquisition Corp., Current Report Ex. 99.1 (Form 8-K) (Sept. 2, 2020), https://www.sec.gov/Archives/edgar/data/1801661/

explained that he became involved in SPACs because Sagansky called him while Sloan was running MGM Studios and said, "there is this new device on Wall Street where you can raise money on your good looks and a public company and then buy something."[5] Sloan stated that "the idea that you can raise money in the public markets and then go buy something sounded too good to be true." Baker joined Sloan and Sagansky in 2014 in creating the Eagle family of SPACs. Baker stated that Sagansky came to him and pitched Baker on joining them after explaining the concept of SPACs.

22. In addition to Flying Eagle, the "Eagle" family of SPACs includes Screaming Eagle Acquisition Corp. ("Screaming Eagle"), Silver Eagle Acquisition Corp. ("Silver Eagle"), Soaring Eagle Acquisition Corp (f/k/a Spinning Eagle Acquisition Corp.) ("Soaring Eagle"), Diamond Eagle Acquisition Corp. ("Diamond Eagle"), Platinum Eagle Acquisition Corp. ("Platinum Eagle"), Global Eagle Acquisition Corp. ("Global Eagle"), and Double Eagle Acquisition Corp. ("Double Eagle").

000110465920101664/tm2029912d1_ex99-1.htm ("Flying Eagle Acquisition Corp. is a $690 million special purpose acquisition company founded by Harry E. Sloan, Jeff Sagansky, Eli Baker and Alan Mnuchin for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses.").

[5] Sloan later stated that an individual needs to raise money based on their record, not their good looks.

23. Defendants Sloan, Sagansky, and Baker created entities, known in the SPAC industry as "sponsors," to form each of the Eagle SPACs. Flying Eagle's Sponsor—controlled by Sloan, Sagansky, and Baker—was also a founding investor of Falcon Equity Investors LLC. Falcon Equity Investors LLC was the sponsor for Falcon Capital Acquisition Corp. ("Falcon Capital"), a SPAC created by Defendant Mnuchin in June 2020.

24. In keeping with the theme started with the creation of the Eagle family of SPACs, Defendants Sloan, Sagansky, and Baker rely on their known group of friends to staff the boards of the Eagle SPACs. The following table shows the overlap among the Defendants and their affiliation with the Eagle family of SPACs.

Defendant	Eagle Equity Partners II, LLC (*i.e.*, the Sponsor)	Flying Eagle Acquisition Corp.	Diamond Eagle Acquisition Corp	Platinum Eagle Acquisition Corp.	Screaming Eagle Acquisition Corp.	Soaring Eagle Acquisition Corp.
Sagansky	✔	✔	✔	✔	✔	✔
Sloan	✔	✔	✔	✔	✔	✔
Baker	✔	✔	✔	✔	✔	✔
Delman	-	✔	✔	-	-	✔
Kazam	-	✔	✔	✔	✔	✔
Mnuchin	-	✔	-	✔	-	-
Paul	-	✔	-	-	-	✔

B. Plaintiff

25. **Plaintiff Darcy Lien** is a stockholder of Skillz and has continuously been a stockholder at all relevant times.

C. Defendants

26. **Defendant Sponsor** is a Delaware limited liability company with principal executive offices at 2121 Avenue of the Stars, Suite 2300, Los Angeles, California. Defendants Sloan, Sagansky, and Baker were each managing members of Defendant Sponsor and therefore shared voting and dispositive power over shares held by Defendant Sponsor.

27. On January 15, 2020, Sponsor purchased 11,500,000 Founder Shares for a capital contribution of $25,000 (or $0.002 per share). After various stock splits and transfers of 20,000 Founder Shares to each of Defendants Scott M. Delman ("Delman"), Joshua Kazam ("Kazam"), and Laurence E. Paul ("Paul"), as Flying Eagle directors, Sponsor held 17,190,000 Founder Shares (out of 17,250,000), representing 19.9% of Flying Eagle's total shares outstanding.

28. **Defendant Sloan** was a managing member of Defendant Sponsor from at least February 2020 to February 2023. Sloan was also Flying Eagle's Chief Executive Officer ("CEO"), Chairman of the Board, and a director from January 2020 to December 2020, and a Skillz director from December 2020 to August 2022. Sloan has been the Chairman of the Board and a director of Screaming Eagle since

November 2021. Sloan was also Silver Eagle's CEO, Chairman of the Board, and a director from April 2013 to April 2015; Soaring Eagle's CEO, Chairman of the Board, and a director from October 2020 to September 2021; Global Eagle's CEO, Chairman of the Board, and a director from February 2011 to January 2013; and Spinning Eagle's CEO, Chairman of the Board, and a director from February 2021 to at least April 2022.

29. **Defendant Sagansky** was a managing member of Defendant Sponsor from at least February 2020 to February 2023. Sagansky also has been a Screaming Eagle director since December 2021. Sagansky was also Diamond Eagle's CEO, Chairman of the Board, and a director from March 2019 to April 2020; Double Eagle's President and CEO from August 2015 to November 2017, and a director from June 2015 to November 2017; Platinum Eagle's CEO, Chairman of the Board, and a director from December 2017 to March 2019; Silver Eagle's President from April 2013 to April 2015; and Global Eagle's President and a director from February 2011 to January 2013.

30. **Defendant Baker** was Flying Eagle's President, Chief Financial Officer ("CFO"), and Secretary from January 2020 to December 2020, and a managing member of Defendant Sponsor from at least February 2020 to February 2023. Defendant Baker also has been Screaming Eagle's CEO and a director since November 2021. Baker was also Diamond Eagle's President, CFO, and Secretary

from March 2019 to April 2020; Soaring Eagle's President, CFO, and Secretary from October 2020 to September 2021; Platinum Eagle's President, CFO, and Secretary from July 2017 to March 2019; Double Eagle's Vice President, General Counsel, and Secretary from July 2015 to November 2017; and a Silver Eagle director from July 2014 to April 2015.

31. Defendants Sloan and Baker were Flying Eagle's sole executive officers and its only employees.

32. **Defendant Delman** was a Flying Eagle director from March 2020 to December 2020. Delman was also a director of Diamond Eagle from December 2019 to April 2020, and a Soaring Eagle director from February to September 2021.

33. **Defendant Kazam** was a Flying Eagle director from March 2020 to December 2020. Kazam also has been a Screaming Eagle director since January 2022. Kazam was also a Diamond Eagle director from May 2019 to April 2020; a Platinum Eagle director from January 2018 to March 2019; and a Soaring Eagle director from February to September 2021.

34. **Defendant Mnuchin** was a Flying Eagle director from May 2020 to December 2020. Mnuchin was also a Platinum Eagle director from January 2019 to March 2019. As discussed above, Flying Eagle held Mnuchin out to have been a Flying Eagle co-founder in its SEC filings.

35. **Defendant Paul** was a Flying Eagle director from May 2020 to December 2020. Paul was also a Soaring Eagle director from February 2021 to September 2021.

36. Defendants Sponsor, Sloan, Baker, and Sagansky are referred to herein as the "Controller Defendants."

37. Defendants Sloan, Delman, Kazam, Mnuchin, and Paul are referred to herein as the "Director Defendants."

38. Defendants Sloan and Baker are referred to herein as the "Officer Defendants."

FACTUAL BACKGROUND

A. The Inherently Conflicted SPAC Structure

39. SPACs, also known as "special purpose acquisition companies" or "blank check companies," are publicly traded shells created to merge with privately held businesses. Once a SPAC identifies a target and they agree to a deal, the parties effect a business combination through a reverse merger.

40. This transactional structure allows the target company to take the SPAC's place on a public exchange, permitting the target to bypass the traditional IPO process, and allowing its equity to become publicly traded in an expedited manner without the traditional regulatory scrutiny that comes with a formal IPO.

41. Although the traditional IPO process lets investors (*i.e.*, the market) set the price at which the company is valued, the SPAC process switches the usual order of events. With a SPAC, investors can buy shares of the empty-shell public entity to have the "opportunity" to see their shares converted into shares of an as-yet unidentified operating business. In other words, investors rely on the managers of the SPAC in which they invest to find the right opportunity for an acquisition in order to create value.

42. Most SPACs follow the same basic structure. A SPAC will raise a predetermined amount of funds from public investors through an IPO selling shares (and related warrants) at $10 per unit, and it will hold those funds in "trust" for those investors while the SPAC seeks an acquisition target. The SPAC will then have a "completion window"—generally two years—to identify and execute a business combination. If the SPAC fails to do so during the completion window, it must return the funds to its public stockholders with interest, and the SPAC dissolves.

43. If the SPAC identifies a target and proposes a business combination, but certain SPAC public stockholders do not like the deal, these stockholders have the right to redeem their stock for approximately the same amount as their initial investment, plus interest, minus some expenses. Thus, stockholders have a crucial investment decision to make, weighing the value of the redemption right against the anticipated value of the post-deal company's stock.

44. The value of the redemption right is directly tied to the quality of the disclosures surrounding the proposed acquisition. Disclosures concerning SPAC deals are, to date, far less regulated than those made in connection with an IPO. For instance, unlike with traditional IPOs, in a SPAC merger there is no road show where institutional investors and analysts can ask questions of management and no "quiet period" or practical prohibition on disclosure of projections.

45. To the extent investors are induced into foregoing their redemption rights because they are convinced that an acquisition can create greater value than $10 per share despite the inherent dilution caused by the conversion of Founder Shares (further discussed below), any inadequacy of those disclosures does and should subject the fiduciaries to exacting scrutiny under the entire fairness doctrine.

46. Entire fairness applies to the review of the typical SPAC merger because that structure inherently creates conflicts for its founders, whose interests are at odds with those of the public investors, and who control the investment and financing decisions of a SPAC with little, if any, oversight.

47. In a typical SPAC, founders receive, for a nominal price, "Founder Shares," which are convertible into 20% of the post-IPO, pre-business combination stock of the blank-check company. Once the SPAC finds a business combination to effectively take a company public, these Founder Shares (often acquired for pennies—or even less—per share) convert into regular common stock of the post-

merger company. As a result, founders are greatly incentivized to complete a deal—almost any deal—before the completion window closes (when the SPAC otherwise must return investors' money) even if that deal is not the best outcome for SPAC public stockholders.

48. Founder Shares have the potential to create powerful, misaligned incentives for their recipients. Founder Shares are worthless absent any business combination. Upon the consummation of a business combination and subsequent stockholder approval, however, Founder Shares become worth millions of dollars at even modest valuations, providing a spectacular windfall the SPAC founders would not receive if they failed to complete a business combination.

49. Also, founders often allow themselves and selected investors to participate in additional investments in the SPAC acquisitions—on especially favorable terms—through private warrant placements and so-called "private investment in public entity," or "PIPE" financings. In a traditional IPO, the underwriters buy the shares to be issued, and then sell those shares to investors of their choosing. When a SPAC conducts an acquisition using PIPE financing, however, the SPAC managers essentially dilute the existing SPAC investors by selecting their preferred investors who will acquire post-deal equity, often at PIPE-investor-favorable valuations, by providing PIPE financing to complete the acquisition.

B. Flying Eagle's Pre-Merger Structure

50. Defendants Sagansky, Sloan, Baker, and Mnuchin created Flying Eagle as a blank check company and incorporated it in Delaware on January 15, 2020. Defendants formed Flying Eagle "for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses." As noted above, Sagansky, Sloan, and Baker had a practice of creating SPACs under the "Eagle" moniker. In fact, Flying Eagle was one of at least eight "Eagle" SPACs.

51. On March 10, 2020, Flying Eagle closed its IPO of 69 million units at $10 per unit, with each unit consisting of one share of Class A common stock and one-fourth of one warrant, generating total gross proceeds of $690 million. The IPO proceeds were placed in the Trust. The funds held in Trust could not be released until the earlier of (i) the closing of a transaction, in which they would be used to fund a portion of the merger consideration, or (ii) the expiration of 24 months from the IPO, at which point they would be disbursed back to public stockholders, plus interest.

52. Before the IPO, Defendant Sponsor purchased 11.5 million Founder Shares for an aggregate purchase price of $25,000, or less than $0.002 per share. Those Founder Shares represented approximately 20% of Flying Eagle's outstanding stock immediately after the IPO.

53. Before the IPO, Sponsor transferred 20,000 Founder Shares to Defendants Delman, Kazam, and Paul each for a total purchase price of $80.

54. As per Flying Eagle's Certificate of Incorporation, Defendants had 24 months from the IPO—or until March 10, 2022—to complete an initial business combination.

55. Concurrent with the consummation of Flying Eagle's IPO, Defendants Sponsor and Sloan purchased 10,033,333 private placement warrants at a price of $1.50 per warrant, generating gross proceeds of $15,050,000. Each full warrant entitled the holder to purchase one share of Flying Eagle Class A common stock at an exercise price of $11.50 per share. The warrants were exercisable 30 days after the business combination or one year after the closing of the IPO, whichever was later. Again, absent a deal, the warrants would expire worthless.

56. Accordingly, Flying Eagle had all the conflicts of interests summarized above that render SPACs problematic and encourage the selection of acquisition targets without proper prior diligence, negotiation, or public disclosures.

C. The Controller Defendants Controlled Flying Eagle

57. The Controller Defendants controlled Flying Eagle at all relevant times through a combination of voting power and managerial authority.

58. As discussed above, Defendants Sloan, Baker, and Sagansky were managing members of the Sponsor, which they controlled. Through their control

over the Sponsor, Sloan, Baker, and Sagansky exercised control over Flying Eagle. Notably, the Sponsor owned the vast majority of the Founder Shares and controlled 19.9% of Flying Eagle's voting shares as of the Merger. Those same individuals (with Mnuchin) co-founded Flying Eagle, with Sloan and Baker serving as the lone directors at inception. Sagansky was identified as Flying Eagle's "founding investor."

59. The Controller Defendants exerted further control over Flying Eagle by installing themselves as executive officers and Flying Eagle's sole employees. Sloan served as Flying Eagle's CEO and Chairman of the Board, and Baker served as Flying Eagle's President, CFO, and Secretary. The Controller Defendants used their authority to cause Flying Eagle to enter into a services agreement with Global Eagle Acquisition LLC, another member of the "Eagle" family of entities. This services agreement included office space at 2121 Avenue of the Stars, Suite 2300, the home of several other "Eagle" entities, including Diamond Eagle.

D. The Controller Defendants Install a Conflicted Board

60. Furthering their control, the Controller Defendants subsequently packed the Board with loyalists who would be incentivized to approve an initial business combination, even on terms that would be value destructive. On March 5, 2020, Sloan and Baker acted by unanimous written consent to appoint Defendants

Delman and Kazam as directors.[6] On May 8, the Controller Defendants' hand-selected Board appointed two additional directors, Defendants Mnuchin and Paul. Baker, no longer a Flying Eagle director, signed the written consent as well. With only six months between the IPO and the signing of the merger agreement with Legacy Skillz (the "Merger Agreement"), Flying Eagle stockholders had no practical ability to vote on any issues at the Company before the Merger or even the election of any of the directors. Each of Delman, Kazam, Mnuchin, and Paul were interested in the Merger or lacked independence from the Controller Defendants.

61. The Controller Defendants ensured the fealty of Defendants Delman, Kazam, and Paul by compensating them exclusively with Founder Shares. Each of Delman, Kazam, and Paul received 20,000 Founder Shares from the Sponsor, which would be valuable only upon the consummation of an initial combination (even a value-destructive one). Delman, Kazam, and Paul paid an aggregate purchase price of only $80 (the same per-share price initially paid by the Sponsor) for these Founder Shares. Thus, even in a bad deal, Delman, Kazam, and Paul stood to make a windfall but would receive nothing if Flying Eagle failed to consummate a deal. Worse, their sole compensation in the form of Founder Shares more closely aligned their interests with the Controller Defendants rather than public Flying Eagle stockholders.

[6] Baker resigned as a director but remained President, CFO, and Secretary.

62. Moreover, each Board member had deep ties to (or were) the Controller Defendants and/or their affiliated entities. Defendants Sagansky and Sloan are the founders of the "Eagle" family of SPACs going back to at least 2011. They invited Defendant Baker to join them in 2014, and he co-founded the next "Eagle" SPAC.[7] Delman, Kazam, Mnuchin, and Paul served on various boards of Eagle SPACs:

SPACs	Delman	Kazam	Mnuchin	Paul
Flying Eagle	Director (Mar. 2020 – Dec. 2020)	Director (Mar. 2020 – Dec. 2020)	Director (May 2020 – Dec. 2020)	Director (May 2020 – Dec. 2020)
Diamond Eagle	Director (Dec. 2019 – April 2020)	Director (May 2019 – April 2020)		
Platinum Eagle		Director (Jan. 2018 – Mar. 2019)	Director, Audit Committee member (Jan. 2019 – Mar. 2019)	
Screaming Eagle		Director (Jan. 2022 – Present)		
Soaring Eagle	Director (Feb. 2021 – Sept. 2021)	Director (Feb. 2021 – Sept. 2021)		Director (Feb. 2021 – Sept. 2021)

[7] Sagansky and Sloan were fundamentally involved in each of these SPACs, and Baker for the SPACs after 2014. Sagansky and Sloan together co-founded each SPAC, and for each SPAC, Sloan and/or Sagansky served as a director. Typically, one of Sloan or Sagansky served as CEO, and Baker also had an officer role.

63. The Controller Defendants' appointment of Defendants Delman, Kazam, Mnuchin, and Paul to the boards of multiple entities within the Eagle family of SPACs demonstrates the trust that the Controller Defendants placed in each of these directors and their lack of independence from the Controller Defendants.

64. Defendants Delman, Kazam, Mnuchin, and Paul also had substantial economic motivations not to run afoul of Sagansky, Sloan, and Baker, as doing so could endanger their paydays from current and/or future "Eagle" SPACs. Indeed, these supposedly "outside" directors have already received substantial paydays from Flying Eagle and prior Eagle SPACs:

Defendant	SPAC	Founder Shares	Implied Value at $10 Per Share
Delman	Flying Eagle Acquisition Corp.	20,000	$200,000
	Diamond Eagle Acquisition Corp	20,000	$200,000
			Total: $400,000
Kazam	Flying Eagle Acquisition Corp.	20,000	$200,000
	Diamond Eagle Acquisition Corp	20,000	$200,000
	Platinum Eagle Acquisition Corp.	353,334	$3,533,340
			Total: $3,933,340
Mnuchin	Platinum Eagle Acquisition Corp.	15,000	$150,000
			Total: $150,000
Paul	Flying Eagle Acquisition Corp.	20,000	$200,000
			Total: $200,000

65. Defendant Mnuchin shares deeper ties with Defendants Sagansky, Sloan, and Baker, who helped Mnuchin start his own family of SPACs. Mnuchin is the CEO and Chairman of Falcon Capital, which was formed as a partnership between Ariliam Group and Eagle Equity Partners. Mnuchin is the founder and CEO of Ariliam Group. The initial SEC filings by Falcon Capital highlighted Defendants Sagansky, Sloan, and Baker as leading Eagle Equity Partners and Sagansky served on the Falcon Capital board of directors along with Mnuchin.[8]

[8] *See, e.g.*, Falcon Capital Acquisition Corp., Draft Registration Statement at 2 (Form DRS-1) (June 26, 2020), https://www.sec.gov/Archives/edgar/data/1816233/000121390020015997/filename1.htm ("Our management team is supported by the Eagle Equity Partners team, which is comprised of Harry E. Sloan, Jeff Sagansky and Eli Baker. Jeff Sagansky and Eli Baker, who will serve as our directors, and Harry E. Sloan, who is our founding investor, together have extensive experience with special purpose acquisition companies and consummating business combinations."); Falcon Capital Acquisition Corp., Registration Statement at 2 (Form S-1) (Sept. 3, 2020), https://www.sec.gov/Archives/edgar/data/1816233/000121390020025247/fs12020_falconcapital.htm ("We also expect to benefit from the advice and participation of the principals of Eagle Equity Partners, including Jeff Sagansky who will be one of our directors. Mr. Sagansky and the other principals of Eagle Equity Partners have extensive experience with special purpose acquisition companies and consummating business combinations."); *id.* at 73 ("We also expect to benefit from the investment partnership we have formed with Eagle Equity Partners, which is a founding investor in our sponsor. One of the principals of Eagle Equity Partners, Jeff Sagansky, will serve as one of our directors. We intend to leverage the skill sets of Ariliam Group and Eagle Equity Partners and their combined network of relationships within these industries to identify the most attractive high-growth businesses within our areas of focus.").

66. Falcon Capital entered into a de-SPAC transaction with Sharecare, Inc. ("Sharecare") on July 1, 2021. Sagansky and Mnuchin were both directors of Falcon Capital and are now directors of Sharecare. As a result of the Falcon Capital–Sharecare transaction, Mnuchin held 4.643 million Sharecare shares. As of July 1, 2021, the day the business combination was completed, Mnuchin's Sharecare stock was worth over $41 million. Accordingly, Defendant Mnuchin lacked independence from Defendants Sagansky, Sloan, and Baker.

E. The Acquisition of Legacy Skillz Was a Foregone Conclusion

67. As noted above, the absence of any contemporaneous Board minutes or materials in the 220 Production leave the Registration Statement as the sole (and sparse) record of the process culminating in the Merger. According to the Registration Statement, after the IPO:

> [Flying Eagle's] officers and directors commenced an active search for prospective businesses or assets to acquire in our initial business combination. Representatives of [Flying Eagle] were contacted by, and representatives of [Flying Eagle] contacted, numerous individuals, financial advisors and other entities who offered to present ideas for business combination opportunities. Our officers and directors and their affiliates also brought to our attention target business candidates.
>
> During this search process, [Flying Eagle] reviewed several business combination opportunities and entered into substantive discussions with two potential target businesses other than [Legacy] Skillz. One such target ("Company Y") was in the technology industry, and

> discussions with that target progressed to detailed negotiations. The second target ("Company Z") was also in the technology industry.[9]

68. The absence of contemporaneous documents, however, demonstrates that the Board was uninvolved in the Merger or considering alternatives. Despite the Registration Statement's claim that Flying Eagle had "detailed negotiations" with Company Y, for example, the 220 Production contained no documents evidencing any negotiations, discussing any potential targets for the business combination, or suggesting that the Board received any information about Company Y or otherwise participated in or learned of "detailed negotiations" with Company Y. Nor is there contemporaneous evidence that the Board ever reviewed any prospective business combinations or any possible asset purchase before approving (by written consent) the Merger at a $3.5 billion valuation in September 2020.

69. The absence of such contemporaneous documents also reflects the Controller Defendants' total domination of the process of identifying a potential transaction partner and negotiating the Merger. Indeed, it appears that Sloan, Baker, and Sagansky were looking for one of their Eagle SPACs to eventually take Legacy Skillz public from the outset and just waiting for the appropriate opportunity to do

[9] Flying Eagle Acquisition Corp., Registration Statement (Form S-4) at 90 (Nov. 30, 2020) ("Registration Statement").

so. In an interview with Sloan and Baker conducted in January 2022, Sloan explained that he and Baker had first encountered Legacy Skillz "three-and-a-half years ago" in mid-2018 and had "met with them every year" since. Baker revealed that he and Sloan had met Paradise (the founder of Legacy Skillz) when Legacy Skillz was "substantially smaller than it is today and we loved the business, [they] were super interested in it, but it certainly wasn't ready to go public and [they] stayed close to Andrew [Paradise] for a variety of different reasons and ideas and finally it was."

70. Sloan and Baker further acknowledged that they had substantive business discussions with Paradise regarding Legacy Skillz. Sloan revealed that Paradise "showed us numbers every year and then beat them." Confirming how well-acquainted Sloan was with Legacy Skillz's management, Legacy Skillz's internal presentation materials dated March 3, 2020—***days before the IPO***—identify Sloan in its list of Legacy Skillz director nominees.

Nomination of Directors for 2021 Annual Meeting

- Andrew Paradise
- Casey Chafkin
- Vanna Mehta-Krantz
- Kent Wakeford
- Harry E. Sloan
- Jerry Bruckheimer

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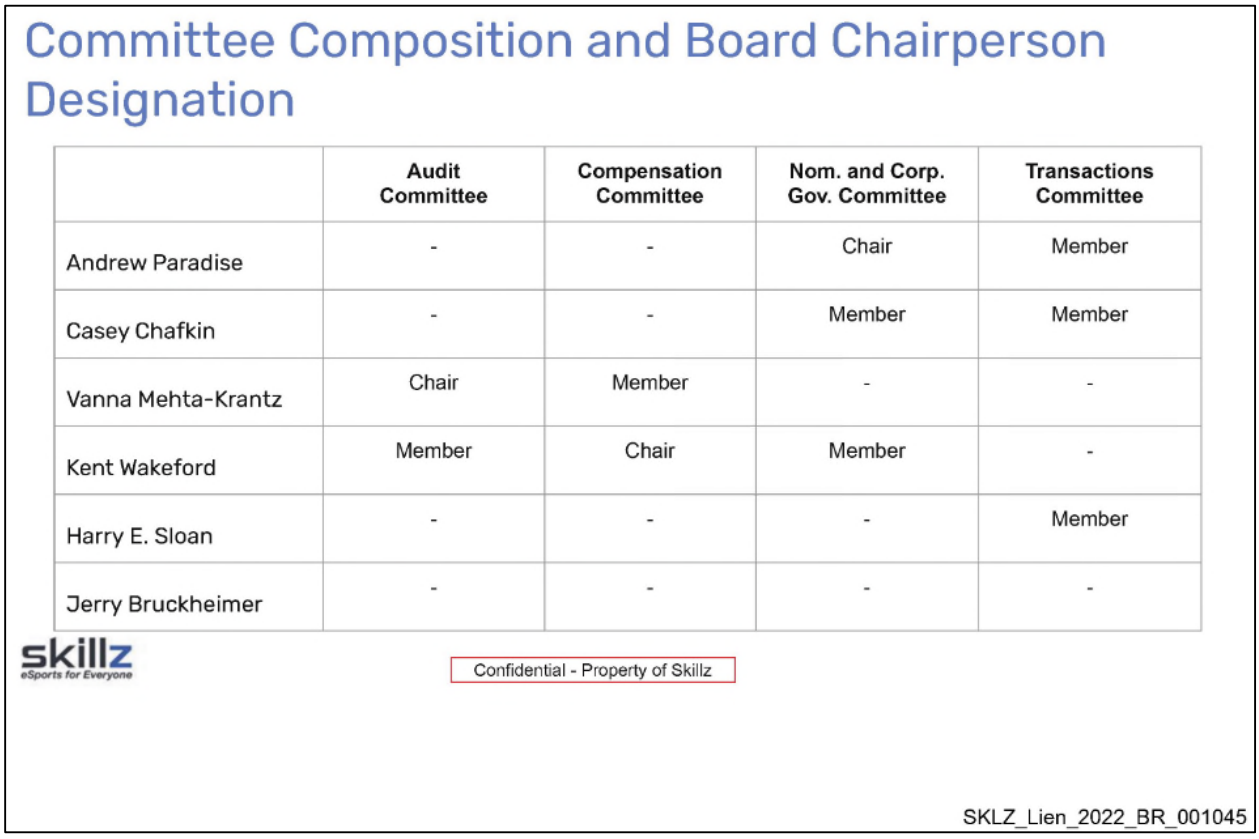
Those Legacy Skillz board materials further identify Sloan as a proposed member of a "Transactions Committee."



Committee Composition and Board Chairperson Designation

	Audit Committee	Compensation Committee	Nom. and Corp. Gov. Committee	Transactions Committee
Andrew Paradise	-	-	Chair	Member
Casey Chafkin	-	-	Member	Member
Vanna Mehta-Krantz	Chair	Member	-	-
Kent Wakeford	Member	Chair	Member	-
Harry E. Sloan	-	-	-	Member
Jerry Bruckheimer	-	-	-	-

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The fact that Legacy Skillz already selected one of the SPAC's controllers as a future board of the post-closing entity before Flying Eagle had consummated its own IPO member speaks volumes. Only after the Merger closed did Sloan disclose that he "had a deal with [Legacy Skillz] to help them put together a board," which explains why Legacy Skillz's management would have nominated him to be a director.

71. Sloan, Baker, and Sagansky "stayed close" to Legacy Skillz's founder until the time was right to publicly announce what they had already known for months, that Legacy Skillz was the target for the SPAC's business combination.

Sloan, in a post-Merger statement, emphasized his pre-existing relationships with companies like Skillz and DraftKings, Inc. (another "Eagle" SPAC business combination) as enabling SPAC mergers to "happen quickly." The Registration Statement nonetheless fails to disclose the close relationship the Controller Defendants had with Legacy Skillz.

72. To the contrary, and as discussed below, the Registration Statement states, "[p]rior to the consummation of [Flying Eagle's] IPO, neither [Flying Eagle], nor anyone on its behalf, engaged in any substantive discussions, directly or indirectly, with any business combination target with respect to an initial business combination with [Flying Eagle]." The Registration Statement omits, however, the years of substantive discussions between Sloan and Baker on the one hand and Legacy Skillz on the other. And, in disclosing that "[o]n May 19, 2020, [Sloan] contacted Andrew Paradise, CEO and Co-Founder of [Legacy] Skillz, to inquire about the status of [Legacy] Skillz and as to whether the company had interest in seeking access to the public markets in a business combination with [Flying Eagle]," the Registration Statement misleadingly omitted that Sloan and Baker had sought for years to take Legacy Skillz public. In deciding whether to redeem, a reasonable Flying Eagle stockholder would have considered it important to know that the Controller Defendants had effectively decided to merge with Legacy Skillz at the outset, rendering the target identification process a façade.

73. The Controller Defendants left the other Board members almost as uninformed as the SPAC's investors. There is no contemporaneous evidence in the 220 Production or in the Registration Statement that the Board saw the "numbers" Sloan referenced or even knew that Sloan, Baker, and Sagansky had been considering taking Legacy Skillz public for years.

F. A Passive (and Interested) Board Allows the Controller Defendants to Dominate the Merger Process

74. Given the Board's ties to the Controller Defendants and their compensation in Founder Shares, the Board—like the boards of comparable SPACs—had little incentive to actively engage in the process of identifying, conducting diligence, and negotiating with an acquisition target. The record from the 220 Production and Registration Statement—particularly the absence of ***any*** contemporaneous Board minutes and materials concerning the Merger—illustrate this particular Board's complete capitulation to the Controller Defendants. Indeed, at every juncture, the Controller Defendants dominated the transaction process while the Board did nothing.

75. On May 29, 2020, Sloan, Baker, and Sagansky met with Paradise to discuss a possible merger. Two days later, on June 2, Flying Eagle entered into a non-disclosure agreement with Legacy Skillz. By this point, the Controller Defendants had not presented any information about Legacy Skillz to the Board.

76. Flying Eagle also retained Goldman Sachs & Co. LLC ("Goldman Sachs"), its primary underwriter in the IPO, to provide financial advice on the Merger. The Board did not retain its own financial advisor to advise it on the Merger, and there is no evidence that the Board approved the retention of Goldman Sachs or was even consulted regarding this representation.

77. The Registration Statement asserts that over the next few weeks, Flying Eagle conducted due diligence on Legacy Skillz. Regardless of what the Controller Defendants may or may not have done, there is no evidence that any meaningful due diligence occurred, and no evidence that the Board reviewed any such due diligence, even to the extent any did actually occur.

78. On June 11, 2020, Flying Eagle provided a draft term sheet to Legacy Skillz, which provided the framework for a potential business combination. There is no evidence the Board reviewed or approved this draft term sheet, and the Company did not include any draft term sheet in the 220 Production. Even if the Board could appropriately delegate some of the day-to-day search for an acquisition target to the Controller Defendants, the delivery of a term sheet is the type of material event that an independent, disinterested, and motivated board, trying to conduct a fair process, should be expected to approve. Not only is there no evidence the Board approved the term sheet, there is no evidence the Board even saw it.

79. In a meeting held later that same day between Paradise and Casey Chafkin (Legacy Skillz's Chief Revenue Officer), and Sloan and Baker, the parties discussed the transaction, the term sheet, and the timeline for completion and agreed that both were mutually interested in negotiating a full set of terms that would be agreeable to both parties. There is no evidence that the Board knew of this meeting before it occurred or authorized Sloan and Baker to agree that Flying Eagle was interested in negotiating the terms of a merger agreement with Legacy Skillz.

80. According to the Registration Statement, Flying Eagle sent a proposed letter of intent to Legacy Skillz on June 24, 2020. Although the letter of intent valued Legacy Skillz at $3.5 billion, there is no evidence the Flying Eagle Board knew of or approved the sending of this letter of intent. Indeed, the Company did not include the letter of intent in the 220 Production. Nor is there any evidence explaining how Flying Eagle arrived at a $3.5 billion valuation for Legacy Skillz or indicating the Board's approval of this valuation.

81. As the Registration Statement admits, the Board "did not seek a third-party valuation, and did not receive any report, valuation[,] or opinion from any third party in connection with the [Merger]." The Registration Statement claims that the Board relied on due diligence and "extensive research reports and data," but the 220 Production contains no evidence supporting that assertion. Although the Registration Statement notes that the Board relied on "management's [*i.e.*, Sloan and

Baker's] collective experience in public markets transactions," it conceals the fact that the only financial analysis ostensibly provided to the Board was the view of the Controller Defendants, who for the reasons set forth above, were conflicted and had interests divergent from that of Class A stockholders.

82. The Registration Statement states that the Flying Eagle Board met for the first time on June 24, 2020, to discuss the Merger and related matters. There are no minutes or presentations from this June 24, 2020 meeting. The June 24, 2020 meeting is not mentioned in the Company's privilege log. This June 24, 2020 meeting is never mentioned in any of the documents from the 220 Production. In short, there is no contemporaneous evidence that this June 24, 2020 meeting ever occurred.

83. Even if this meeting did occur, there is zero evidence in the Registration Statement or otherwise regarding any diligence conducted by or presented to the Board. According to the Registration Statement, "[d]uring the meeting, Mr. Sloan updated the Board on the status of negotiations with Skillz, including the principal terms of the transaction, proposed timing and related information." Diligence efforts are conspicuously absent from this summary statement. It is reasonable to infer that the Board conducted no diligence into Legacy Skillz and received no updates on diligence either.

84. The Registration Statement states that on July 17, 2020, Flying Eagle's management and Goldman Sachs gave a presentation to Legacy Skillz's management and board. Other than the Controller Defendants, it does not appear that any member of Flying Eagle's Board was present at this meeting. In fact, there is no evidence the Board formally learned about this meeting, if they knew about it at all.

85. On July 19, 2020, Flying Eagle and Legacy Skillz entered into a letter of intent regarding the Merger. Immediately before signing the letter of intent, Flying Eagle broke off negotiations with two other companies. There is no evidence that the Board knew about or approved this course of action. There is no evidence that the Board considered which approach was best for Flying Eagle's public stockholders. And there is no evidence that the Board ever learned that Sloan and Baker had known Paradise and Legacy Skillz for several years before the IPO, "loved the business" and were "super interested in it," but realized that Legacy Skillz "certainly wasn't ready to go public" at an earlier juncture.

86. The Registration Statement asserts, however, that Flying Eagle thought entering into a transaction with Legacy Skillz was the best course was because "it was immediately actionable." That assertion echoes Sloan's later statement, discussed above, that longstanding relationships with target companies preceding a de-SPAC transaction enables such transactions to "happen quickly."

87. On July 20, 2020, Flying Eagle management began working on securing commitments from the Company's stockholders to hold and not redeem their stock. Pursuant to this approach, Defendants Sloan and Baker met with a group of existing stockholders starting on July 27. As Sloan described it, Legacy Skillz was not a "brand name" or well-known company. Therefore, Sloan claims that he had to conduct ***150 investor meetings*** before the Merger vote. During those meetings, Sloan stated that he told investors "these are guys that make their numbers, we've seen it over and over." Similarly, Sloan claimed that he "had to meet with many analysts" and investment vehicles. Again, there is no evidence that the Flying Eagle Board knew about or attended any of these meetings, much less vetted what representations the Controller Defendants made to analysts or to Class A stockholders to induce them to forgo their redemption rights.

88. Sloan also stated that he had to work with Legacy Skillz to put together the board of the post-closing entity so it was appropriate for a public board, demonstrating his dominance over the Merger process.

89. The Registration Statement states that the Flying Eagle Board met for a second and final time on August 14, 2020 to discuss the Merger and related matters. There are no minutes or presentations from this August 14, 2020 meeting. The August 14, 2020 meeting is not mentioned on the Company's privilege log. This August 14, 2020 meeting is not identified anywhere in the 220 Production. In short,

there is no evidence that this August 14, 2020 meeting ever occurred. Even if it did occur, there is again zero evidence of the Board's diligence efforts in the Registration Statement or otherwise.

90. On September 1, 2020, the Flying Eagle Board, acting by unanimous written consent, approved the Merger and the Merger Agreement.

91. On September 8, 2020, Flying Eagle filed a preliminary proxy on Form S-4 with the SEC. There is no evidence the Flying Eagle Board reviewed, much less approved, the filing of the preliminary proxy.

92. On November 30, 2020, Flying Eagle filed the Registration Statement with the SEC. That same day, the Flying Eagle Board, acting by unanimous written consent and without meeting, approved the date of the special meeting at which stockholders would be asked to vote to approve the Merger Agreement, and to include the request for such approval in the Registration Statement. There is no evidence the Board reviewed the actual Registration Statement.

93. The Registration Statement set the record date as November 6, 2020 and December 16, 2020 as the date of the stockholder meeting. The Registration Statement set the deadline to submit a request to redeem stock as December 14, 2020, 12:00 p.m. ET.

94. The parties consummated the Merger on December 16, 2020. Out of 86.25 million shares, there were only 2,140 redemptions.

95. On that day, the Company's stock price closed at $17.68 per share, meaning the Defendants' 17.25 million Founder Shares were worth nearly $305 million. At that point, the 20,000 Founder Shares held by each of Delman, Kazam, and Paul were worth $353,600 to each director (less the $80 they collectively paid for those shares). Those shares would be released from the lock-up period on June 14, 2021. On that date, Skillz's stock price closed at $19.82 per share, meaning the Founder Shares that Defendants acquired for only $25,000 were worth over $340 million and became freely tradable. At that point, the 20,000 Founder Shares held by each of Delman, Kazam, and Paul were worth $396,400 to each director (less the $80 they collectively paid for those shares).

96. Defendant Sponsor's warrants were worth approximately $34.6 million as of November 27, 2020.

G. Defendants Issue a Materially False and Misleading Registration Statement to Deter Redemptions

97. Approval of the Merger required an affirmative vote of a majority of Flying Eagle Class A stockholders at the special meeting.[10] If the Merger did not

[10] Notably, Flying Eagle's public stockholders' redemption rights were untethered from their vote on the Merger. Said differently, Flying Eagle's public stockholders could separate their warrants from their shares and vote "for" the Merger (allowing them to capture any potential upside from the Merger) and nonetheless redeem their shares.

close and Flying Eagle could not find another transaction partner before the expiration of the 24-month window, Defendants' Founder Shares and warrants would expire worthless. Moreover, a closing condition of the Merger was the availability of at least $550 million of cash from the Trust as well as proceeds from the PIPE investment. Thus, Defendants had a strong motive to limit the number of redemptions and to induce stockholder approval of the Merger.

98. As noted above, a SPAC's public stockholders rely on the entity's sponsor, officers, and directors to identify a favorable merger target. Because Flying Eagle's public stockholders retain redemption rights, Defendants were required to disclose all material information to public stockholders so as not to impair their ability to decide whether to redeem or to invest in the post-merger company.

99. Sloan understood these obligations acutely. In an interview given post-Merger, Sloan explained that ideal SPAC targets are "companies that don't have comps" and emphasized the importance of "tell[ing] a big future story" to investors. Sloan suggested that SPAC investors rely heavily, if not exclusively, on the SPAC's public disclosures, revealing that "SPAC investors, alone, they're playing momentum, they're playing what's the reputation of the sponsor, they're not really digging into the company." Notwithstanding Sloan's candid observations, the Registration Statement was materially false and misleading in a manner that interfered with Flying Eagle public stockholders' redemption decisions.

100. On November 30, 2020, Defendants caused the Registration Statement to be filed with the SEC. Defendants Sloan and Baker signed the Registration Statement. The Registration Statement was materially false and misleading in at least three respects.

101. ***First***, the Registration Statement misleadingly describes both the due diligence into Legacy Skillz and the reasons for the Board's approval of the Merger. Notably, the Registration Statement states that the Board unanimously approved the Merger and recommended that Flying Eagle stockholders approve the Merger as well because the Board "reviewed the results of management's due diligence[.]" The Registration Statement further states that, "[b]ased on its due diligence investigations of Skillz and the industries in which it operates, including the financial and other information provided by Skillz in the course of [Flying Eagle]'s due diligence investigations, the [Flying Eagle] board of directors believes that the [Merger] is in the best interests of [Flying Eagle] and its stockholders[.]" The Registration Statement additionally claims that the Board "relied on … due diligence on Skillz's business operations[.]"

102. Based on the complete lack of documents in the 220 Production, these disclosures are simply false. The absence of any contemporaneous documents from the 220 Production demonstrate that the Board did no due diligence itself and learned nothing from the Controller Defendants about what they had learned in diligence

either. The Company agreed to provide, as part of the 220 Demand, any Board or Board committee minutes or materials concerning, among other topics: (a) "the pre-[Merger] due diligence conducted on Legacy Skillz"; (b) "any experts or consultants used in connection with the [Merger], including, without limitation, the decision on whether or not to obtain a third-party valuation or fairness opinion in connection with the [Merger]"; and (c) "the review and approval of the [Registration] Statement, including review of any earlier versions or drafts[.]" Of the 51 documents Skillz produced in response to the 220 Demand, at most 15 documents pre-date the Merger closing. Of those 15, only 9 were created by Flying Eagle. And of those 9 pre-Merger documents created by Flying Eagle, 6 are unanimous written consents. The 220 Production contained ***zero*** Flying Eagle Board minutes or materials presented.

103. The glaring absence of such Board materials evidence an indifference to corporate formality at best and strongly suggests that the Board never considered management's diligence findings, to the extent there were any given the Controller Defendants' longtime desire to do a deal with Legacy Skillz. And the descriptions of these Board meetings in the Registration Statement confirm that the Board neither conducted diligence itself nor received the results of any such diligence from the Controller Defendants and therefore had no basis, beyond the Controller Defendants' conflicted recommendation, to recommend stockholders approve the

Merger. In deciding whether to redeem, a reasonable Flying Eagle stockholder would have considered it important to know that the Board knew little—if anything—about the Merger it had approved and recommended to stockholders.

104. ***Second***, the Registration Statement failed to disclose the multi-year relationship between Sloan and Baker on the one hand and Legacy Skillz on the other, which preceded the IPO and the Merger. Instead, the Registration Statement discloses that, "[p]rior to the consummation of our IPO, neither [Flying Eagle], nor anyone on its behalf, engaged in any substantive discussions, directly or indirectly, with any business combination target with respect to an initial business combination with [Flying Eagle]." This was materially misleading.

105. As discussed above, Sloan and Baker had known Paradise and Legacy Skillz for several years before the IPO. They "loved the business" and were "super interested in it" but realized that Legacy Skillz "certainly wasn't ready to go public" at that stage. Sloan and Baker nonetheless "stayed close to" Paradise who "showed [them] numbers every year and then beat them." It is reasonably inferable that, over the course of these multi-year discussions regarding a business that Sloan and Baker "loved" but "wasn't ready to go public," Sloan and Baker engaged in substantive business discussions with Legacy Skillz about a potential future transaction. Confirming the thickness of the Controller Defendants' pre-IPO relationship,

Legacy Skillz nominated Sloan to the Legacy Skillz board and its Transaction Committee even before the IPO.

106. In deciding whether to redeem, a reasonable Flying Eagle stockholder would have considered it important to know that the Merger, which ostensibly resulted from "an active search for prospective businesses or assets to acquire," was a foregone conclusion. The Registration Statement instead gave the misleading impression that Legacy Skillz was the best option among several possible acquisition targets forged in the crucible of an "active search" and subsequent due diligence.

107. ***Third***, the Registration Statement attributed a $10 value per share to each Flying Eagle share that was to be invested in Skillz as a result of the Merger. This was false. Flying Eagle's only asset at the time of the Proxy was the cash it had raised, which amounted to materially less than $10 per share.

108. At the time of the Registration Statement, Flying Eagle had approximately $848,570,000 in cash (including approximately $690,040,000 of IPO and equity raising proceeds held in trust and $158.5 million in PIPE financing). "To determine net cash per share, costs would be subtracted from that total cash (about $[850] million) before dividing by the number of pre-merger shares"[11]:

$$\textbf{Net Cash per Share} = \frac{\textbf{Cash} - \textbf{Costs}}{\textbf{Pre-Merger Shares}}$$

[11] *Delman*, 288 A.3d at 724.

Subtracting $106,600,000 in known costs (including $24,150,000 in underwriting fees, $32,326,000 in advisory and other fees, $40,124,000 in market value for the public warrants based on the average trading price of the warrants the week before the Merger announcement, and $10 million in Legacy Skillz's executive transaction bonus fee) from this cash component renders a $741,970,000 total net cash contribution.[12] Dividing the total net cash contribution by 101,203,000 pre-merger shares (which includes 69,000,000 IPO shares (including the underwriters' overallotment), 16,350,000 Founder Shares, and 15,853,000 PIPE shares) results in $7.33 net cash per share for Flying Eagle shares at the time of the Registration Statement. In addition, there were 10,033,333 private warrants. Using the same value as the public warrants, due to the public warrants having the same characteristics as the private warrant, the private warrants increase the costs by $30,447,000 and decreases the true value of Flying Eagle's net cash per value to just $7.03. Notably, this amount assumes the absence of any redemptions. If stockholders exercised the maximum amount of redemptions, the true net cash per share value of Flying Eagle shares would be $5.79 per share.

109. "[T]he sizeable difference between the $10 of value per share [Flying Eagle] stockholders expected and [Flying Eagle's] net cash per share after

[12] *See id.* at 724 n.229.

accounting for dilution and dissipation of cash is information 'that a reasonable shareholder would consider … important in deciding' whether to redeem or invest in New [Skillz]."[13] Flying Eagle's "stockholders could not logically expect to receive $10 per share of value in exchange" for stock worth considerably less and thus would have suspected Skillz's value was inflated.[14]

H. Stockholders Approve the Merger and Forgo Redemption

110. Flying Eagle held the stockholder special meeting on the Merger on December 16, 2020. On that date, the Company's stock closed at $17.68 per share.

111. At this valuation, at least four of Flying Eagle's five directors, as direct and/or indirect holders of Founder Shares (because they were considered beneficial owners of Defendant Sponsor), collectively were set to reap profits of nearly $305 million for their Founder Shares.

112. After receiving the false and misleading statements in the Registration Statement, the Company's stockholders approved the Merger, with barely any exercising their redemption rights. Of the 86.25 million voting shares, 70% were voted to approve the Merger. Only 2,140 shares, or 0.003% of all Class A common stock, were redeemed. Thus, given the option to receive $10 (plus interest) in lieu

[13] *Id*. at 725 (omission in original).

[14] *Id.*

of participating in the post-Merger investment, nearly all Flying Eagle investors were induced to seek the purported value of Skillz. This is no surprise, given the aforementioned misleading disclosures and omissions.

113. The Merger closed on December 16, 2020, and the Company's stock now trades on the New York Stock Exchange under the ticker symbol "SKLZ." Since becoming a public company, Skillz has slowly revealed the unsustainability of its business model. The Company acquires and keeps short-term users through substantial advertising spending, making the entire process unprofitable. These users are not loyal and move to the next platform as soon as Skillz's advertising enticements end. By the third quarter of 2021, the market questioned how Skillz could become profitable through excessive user acquisition and engagement spending. For example, an RBC Capital Markets analyst wrote the following concerning the Company on November 4, 2021:

> With churn rates of the business unknown, it continues to feel like SKLZ is heavily levered to end-user incentives to retain its paying user base where we lack solid reasons why this would materially abate. Management cited that it could potentially reduce engagement marketing spend in '22 amidst a greater focus on new paid user acquisition spend. If this proves true, we worry this would create not only a retention headwind but also a dilutive paid player turnover cycle that would do little to address the company's path to sustainable growth and profitability.

Unable to show any signs of sustained growth without excessive spend, Skillz claimed to pivot away from such investments. But, as could be expected with such

a move, users fled Skillz's platform. For instance, in August 2022, Skillz cut its yearly revenue guidance from $400 million to $275 million due to declining paying monthly active users. For the first six months of 2022, Skillz spent $190.5 million on marketing, more than its entire revenue during that period, and still saw declining revenue.

114. Investors fled Skillz as it continued to fail to deliver positive results and the market learned about its unsustainable business model. In total, since the Merger, Skillz shares have lost over 95% of their overall value and closed at $0.55 per share the day before the filing of this Amended Complaint. This decline in stock price implies value destruction of over $652 million for Skillz Class A stockholders, when compared with a $10 per share redemption value. Nevertheless, given the economics of the Founder Shares, the fiduciaries of this SPAC accomplished their multi-million-dollar paydays.

I. The Merger Was Unfair

115. By any objective measure, the Merger was grossly unfair to holders of Class A common stock. Post-Merger, the Company's stock price plummeted and remains below the $10 per share IPO price. Indeed, the closing price of Skillz stock as of this Complaint's filing was only $0.55 per share.

116. Since the conflicts inherent to the controllers of Flying Eagle trigger the entire fairness standard, and no effort was made to comply with the *MFW* factors,

Defendants bear the burden to show the inherent fairness of the process and price resulting in the Merger.

117. Accordingly, the Court should conduct a standard entire fairness review, and unless Defendants can show that the process leading to the Merger and the price approved in the Merger were inherently fair, the Court should award damages reflecting the difference between the value Class A stockholders held before the Merger and what they actually received in the Merger.

CLASS ACTION ALLEGATIONS

118. Plaintiff, a stockholder in the Company, brings this action individually and as a class action pursuant to Rule 23 of the Court of Chancery of the State of Delaware on behalf of himself and all holders of Flying Eagle Class A common stock as of the closing of the Merger (excluding Defendants and any person, firm, trust, corporation, or other entity related to, affiliated with, or under the control of any of the Defendants) and who were injured by Defendants' breaches of fiduciary duties and other violations of law (the "Class").

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

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

121. The Class is so numerous that joinder of all members is impracticable.

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

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

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

(b) whether "entire fairness" is the applicable standard of review;

(c) which party or parties bear the burden of proof;

(d) whether Defendants breached their fiduciary duties to Plaintiff and the Class;

(e) the existence and extent of any injury to the Class or Plaintiff caused by any breach;

(f) the availability and propriety of equitable remedies; and

(g) the proper measure of the Class's damages.

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

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

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

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

COUNT I

Direct Claim for Breach of Fiduciary Duty Against the Controller Defendants

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

129. As explained herein, the Controller Defendants were Flying Eagle's controlling stockholders. As Flying Eagle's controlling stockholders, the Controller Defendants owed the Class the utmost fiduciary duties of care, good faith, and loyalty.

130. For their own personal benefit and in breach of their fiduciary duties, the Controller Defendants caused the Company to enter into the Merger. The Controller Defendants breached their fiduciary duties owed to the Company by, *inter alia*, engaging in an unfair process which resulted in the Controller Defendants receiving unique benefits in the form of Founder Shares.

131. The Merger was not fair, and the Controller Defendants will be unable to carry their burden to establish the inherent fairness of either the process leading to or the price reflected in the Merger.

132. Stockholders of Flying Eagle have been harmed by receiving an unfair price in the Merger and were unable to exercise their redemption rights prior to the Merger on a fully informed basis.

133. Plaintiff and the Class are therefore entitled to damages from the Controller Defendants' breaches of fiduciary duty.

134. Plaintiff and the Class lack an adequate remedy at law.

COUNT II

Direct Claim for Breach of Fiduciary Duty Against the Officer Defendants

135. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

136. Defendant Sloan, as Flying Eagle's CEO and Chairman, and Defendant Baker, as Flying Eagle's President, CFO, and Secretary, owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which include an obligation to act in good faith, with candor, and to provide accurate material disclosures to Flying Eagle's stockholders.

137. These duties required the Officer Defendants to place the interests of Flying Eagle's stockholders above their personal interests and the interests of the Director Defendants and/or Defendant Sponsor. The Officer Defendants are not exculpated from breaches of their duty of care for actions taken in their capacity as officers (which include all actions set forth herein except their formal vote on the Merger).

138. Through the events and actions described herein, the Officer Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and/or reputational interests and recommended the Board approve the Merger, which was unfair to Flying Eagle's Class A stockholders.

139. The Merger was not fair, and the Officer Defendants will be unable to carry their burden to establish the inherent fairness of either the process leading to or the price reflected in the Merger.

140. The Officer Defendants also breached their duty of candor by issuing the false and misleading Registration Statement.

141. As a result, Plaintiff and the Class lacked material information needed to knowledgeably exercise their redemption rights prior to the Merger.

142. To the contrary, the Class approved the acquisition of Legacy Skillz based on false and misleading information.

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

144. Plaintiff and the Class lack an adequate remedy at law.

COUNT III

Direct Claim for Breach of Fiduciary Duty Against the Director Defendants

145. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

146. The Director Defendants, as Flying Eagle directors, owe the Company the utmost fiduciary duties of due care, good faith, loyalty, and candor. By virtue of their positions as directors of Flying Eagle and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause Flying Eagle to engage in the practices complained of herein. Each of the Director Defendants was required to (i) use their ability to control and manage Flying Eagle in a fair, just, and equitable manner; and

(ii) act in furtherance of the best interests of Flying Eagle and its stockholders and not their own.

147. These duties required the Director Defendants to place the interests of Flying Eagle's stockholders above their personal interests and the interests of the Officer Defendants and/or Defendant Sponsor.

148. The Director Defendants breached their fiduciary duties owed to Plaintiff and the Class by, *inter alia*: (i) overseeing an unfair process and approving an unfair transaction by permitting Flying Eagle to enter into the Merger; (ii) coercing Flying Eagle stockholders to vote in favor of the Merger based on false and/or materially misleading disclosures in the Registration Statement; and (iii) impairing Flying Eagle stockholders' redemption rights by issuing false and/or materially misleading disclosures in the Registration Statement.

149. The Merger was not fair, and the Director Defendants will be unable to carry their burden to establish the inherent fairness of either the process leading to or the price reflected in the Merger.

150. Stockholders of Flying Eagle have been harmed by receiving an unfair price in the Merger and lacked material information needed to knowledgeably exercise their redemption rights prior to the Merger.

151. Plaintiff and the Class are therefore entitled to damages from the Director Defendants' breaches of fiduciary duty.

152. Plaintiff and the Class lack an adequate remedy at law.

COUNT IV

Direct Claim for Unjust Enrichment Against Defendants

153. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

154. As detailed herein, any profits on account of ownership of Founder Shares is unfair to Plaintiff and the Class and is the product of breaches of fiduciary duty by each of the named Defendants.

155. It would be unconscionable to permit each named Defendant to retain the improper benefits received pursuant to the Merger. Equity requires Defendants to disgorge all Founder Shares (and any profits realized therefrom) received as a result of their breaches of fiduciary duty.

PRAYER FOR RELIEF

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

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

B. Finding the Director Defendants liable for breaches of fiduciary duty;

C. Finding the Officer Defendants liable for breaches of fiduciary duty;

D. Finding the Controller Defendants breached their fiduciary duties in their capacity as: (i) the controlling stockholders of Flying Eagle; and (ii) as controlling stockholder over the challenged transaction;

E. Finding the stockholder vote on the Merger was not fully informed;

F. Finding that the process culminating in the Merger and the issuance of the Founder Shares was not entirely fair;

G. Disgorging all ill-gotten gains from Defendants;

H. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with pre- and post-judgment interest therein;

I. Awarding reasonable attorneys' and experts witness' fees and other costs; and

J. Awarding such other and further relief as this Court may deem just and proper.

Dated: April 12, 2023

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ Mae Oberste
Gregory V. Varallo (Bar No. 2242)
Mae Oberste (Bar No. 6690)
Daniel E. Meyer (Bar No. 6876)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3600

Counsel for Plaintiff

OF COUNSEL:

Mark Lebovitch
Thomas G. James
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Brian J. Robbins
Gregory E. Del Gaizo
ROBBINS LLP
5060 Shoreham Place, Suite 300
San Diego, CA 92122
(619) 525-3990

Aaron T. Morris
Leonid Kandinov
Andrew W. Robertson
MORRIS KANDINOV LLP
1740 Broadway, 15th Floor
New York, NY 10019
(877) 216-1552

CERTIFICATE OF SERVICE

Mae Oberste hereby certifies that on April 12, 2023, a copy of the foregoing *Plaintiff's Verified Amended Class Action Complaint* was filed and served electronically upon the following counsel of record:

Kevin M. Gallagher, Esq.
Spencer V. Crawford, Esq.
RICHARDS, LAYTON
& FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

/s/ Mae Oberste
Mae Oberste (Bar No. 6690)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DARCY LIEN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. EAGLE EQUITY PARTNERS II, LLC, HARRY E. SLOAN, SCOTT M. DELMAN, JOSHUA KAZAM, ALAN MNUCHIN, LAURENCE E. PAUL, ELI BAKER, and JEFF SAGANSKY, Defendants.	C.A. No. 2022-0972-PAF

UNSWORN DECLARATION AND VERIFICATION OF DARCY LIEN

Pursuant to the Delaware Uniform Unsworn Foreign Declarations Act, 10 Del. C. §5351, *et seq.*, I, Darcy Lien, declare:

1. I am a plaintiff in the above-captioned class action and a continuous holder of common stock of Skillz Inc. during all relevant times alleged in the Verified Amended Class Action Complaint (the "Amended Complaint"). I am a resident of Canada and am of full legal age. I make this Unsworn Declaration and Verification in support of the Amended Complaint filed in the above-captioned case.

2. I make this Unsworn Declaration and Verification under penalty of perjury under the laws of Delaware.

3. I have read the Amended Complaint and consulted with counsel.

4. The facts alleged in the Amended Complaint are true and correct to the best of my knowledge, information, and belief.

5. In accordance with Delaware Court of Chancery Rule 23(aa), I have not received, been promised, or offered, nor will accept, any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this Action except for:

(a) such damages or other relief as the Court may award Plaintiffs as members of the class;

(b) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of Plaintiffs; or

(c) reimbursement, paid by Plaintiffs' attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the 4/4/2023 day of April, 2023, at Edmonton, Alberta, Canada.

DocuSigned by:
Darcy Lien
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DARCY LIEN