EFiled: Nov 05 2020 03:00PM EST
Transaction ID 66084706
Case No. 2020-0707-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE WILLIAMS COMPANIES STOCKHOLDER LITIGATION	Consolidated C.A. No. 2020-0707-KSJM **PUBLIC [REDACTED] VERSION AS FILED ON NOVEMBER 5, 2020**

PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

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Dated: October 29, 2020

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Co-Lead Plaintiffs Steven Wolosky ("Mr. Wolosky") and City of St. Clair Shores Police and Fire Retirement System ("St. Clair Shores," and together with Mr. Wolosky, "Plaintiffs") respectfully submit this reply brief in further support of their Motion for Class Certification pursuant to Rule 23.[1]

INTRODUCTION

As Plaintiffs explained in the Motion, the highly aggressive Poison Pill challenged in this Action harms ***all Williams stockholders***, including Plaintiffs, in "precisely the same manner": by "unjustifiably impos[ing] a chilling and coercive effect on the stockholder franchise at Williams" and "effectively foreclos[ing] stockholders and stockholder groups from exercising their franchise." Mot. at 2, 12. Plaintiffs—themselves Williams stockholders with exactly the same claims as their counterparts—seek to represent the Proposed Class of Williams stockholders harmed in exactly the same manner by the Board's aggressive overreach of corporate power.

The Williams Defendants' Opposition to Plaintiffs' Motion for Class Certification (the "Opposition" or "Opp.") fails to meaningfully grapple with this fundamental fact. Instead, the Williams Defendants devote their entire Opposition to attacking the adequacy and typicality of Mr. Wolosky and St. Clair Shores as

[1] Capitalized terms not defined herein shall have the same meaning as set forth in Plaintiffs' Opening Brief in Support of Their Motion for Class Certification ("Motion" or "Mot."). Trans. ID 66027492.

representatives of the Proposed Class. As to adequacy, the Williams Defendants selectively cite the Company's own outdated disclosures as "evidence" of continued stockholder support for the Pill and pluck Plaintiffs' deposition testimony out of context to manufacture supposed "antagonism" between Mr. Wolosky and St. Clair Shores on the one hand and the Proposed Class on the other. As explained below, the Williams Defendants' efforts to undermine Plaintiffs' adequacy as representatives of the Proposed Class fail.

The Williams Defendants also fail to undermine Plaintiffs' typicality. The primary thrust of the Williams Defendants' typicality argument rests on their misapplication of their misreading of the Pill's definition of "Passive Investor," based upon which they conclude that the Pill "does not apply" to Plaintiffs. Even if the Williams Defendants could establish that Plaintiffs are and will always remain "Passive Investors" under the Pill (they cannot), Plaintiffs' claims would still be typical of those of Proposed Class members because ***all Williams stockholders*** have the same claims based on the same harm, *i.e.*, the Pill's impairment of various value-enhancing stockholder activity. And the Williams Defendants' further attempts to manufacture atypicality by taking Plaintiffs' deposition testimony out of context also fail.

Ultimately, Plaintiffs' claims concern the Williams Defendants' gross abuse of corporate power by adopting and maintaining the Pill. This conduct harms all Williams stockholders—including Plaintiffs—in the same manner, and gives rise to the same claims. For the reasons set forth in the Motion and below, Plaintiffs are patently adequate and typical representatives of the Proposed Class. Plaintiffs respectfully request that the Court grant the Motion.

STATEMENT OF FACTS

The Opposition argues, in large part, that class certification is inappropriate because, according to Defendants' 2020 proxy disclosure, as of March 30, 2020, "some [unnamed] stockholders ha[d] … expressed outright support for the Rights Agreement." Opp. at 7. Defendants attempt to convert this tepid and self-serving disclosure that certain unidentified stockholders—which could theoretically include self-interested Company insiders or directors who approved the Pill—allegedly supported the Pill as of March 30, 2020 into an argument that Plaintiffs stand alone in opposing the Pill's adoption and perpetuation. This argument and the highly misleading disclosure on which it relies ignore key facts developed through document discovery to date. To provide that missing context—and because Plaintiffs had yet to receive that discovery when they filed the Motion—Plaintiffs offer the following additional factual background.

A. Williams Adopts the Pill Unrelated to Any Specific Threat and Without Seeking Stockholder Approval

On March 19, 2020, Williams adopted a Poison Pill that included an improper 5% triggering threshold (the "5% Trigger") and facially overbroad and unmanageable "aggregation" and "acting in concert" provisions (the "Wolfpack Provisions"). Mot. at 6-7. The Board adopted the Pill concededly not in response to any "specific takeover threat[,]" but rather because of generalized market volatility and the Company's depressed stock price. Opp. at 6.

When it adopted the Pill, the Board "discussed possible investor reactions if the Board adopted a Rights Plan," including the "potential" for "negative investor reaction." Ex. 1 at WMB_00008026. Despite these discussions and without previously indicating that it was even considering adopting a poison pill, the Board adopted the Pill without seeking stockholder approval or ratification. The Board notified stockholders on March 20, 2020, just over a month before the Company's annual meeting scheduled for April 28, 2020. Opp. at 6.

B. Stockholders Immediately Voice Their Displeasure with the Pill and Williams Belatedly Attempts to Shore Up Support

Unsurprisingly, and as anticipated, the Board's adoption and failure to solicit stockholder approval of the Pill generated immediate and substantial stockholder backlash, despite the Board's assertion that major stockholders "underst[ood] the

need for the adoption of [the Pill]." Opp. at 7.[2] Upon the Pill's March 20, 2020 announcement, Williams' [redacted] expressed its concern with the Pill to Brett Krieg, Williams' director of investor relations, noting:

[redacted]

Ex. 2 at WMB_00002316. A few days later, [redacted] told Williams management that it flatly opposed the Pill. Ex. 3 at WMB_00001950 ("[redacted] said pretty clearly that [they are] opposed to these plans and prefers to make their own decisions on matters like this.... He didn't go as far as to say he understood why we did this or that it was reasonable."). Only after receiving this (and additional) negative feedback from stockholders did the Company "reach[] out to all of [its] major stockholders regarding [its] rights plan," contrary to the Williams Defendants' implication that it did so ***before*** adopting the Pill. Opp. at 7.

Despite Williams' preliminary outreach to its "major stockholders," stockholder dissent to the Pill remained strong. On April 3, 2020, despite Williams'

[2] Needless to say, "understanding" the theoretical need to adopt a poison pill in March 2020 is a far cry from supporting the adoption of the Poison Pill and the onerous terms thereof. Regardless, Williams' stock price has substantially recovered since the Pill's adoption, eliminating the sole basis for Williams' stockholders supporting the Pill as of its adoption.

management's "battle" to convince ISS to change its recommendation,[3] ISS recommended that Williams stockholders vote "AGAINST Chairman Stephen Bergstrom" because of the "board's adoption of a poison pill with a 5 percent trigger," which ISS described as "problematic" and "highly restrictive."[4] Indeed, [redacted] a major stockholder holding roughly [redacted] of the Company's outstanding stock, wrote directly to the Board on April 9, noting that Williams was [redacted] and expressing its decision to vote against the entire Board. Ex. 5 at WMB_00002270.[5] After learning that the "initial votes [were] trending against Steve [Bergstrom]," Williams recognized the necessity of "turn[ing]

[3] Ex. 4 at WMB_00009853 ("Because we adopted the poison pill, ISS is recommending a vote against Chairman Steve Bergstrom and a cautious vote in favor of all other directors. I've been battling ISS for the last couple of days.").

[4] Opp. Ex. 4 at WMB_WOLOSKY_0000456. Indeed, ISS recognized that Williams failed to seek shareholder input on the pill until "after the fact." *Id*. at WMB_WOLOSKY_0000459.

[5] Plaintiffs note that Defendants redacted as privileged several other iterations of this communication, which contains no request for or provision of legal advice, calling into question whether Defendants are attempting to shield evidence of stockholder dissidence regarding the Pill under the guise of unwarranted privilege claims. ***See, e.g.***, ***compare*** Ex. 6 (redacting as privileged an internal discussion regarding [redacted] negative feedback on the Pill in its entirety) & Ex. 7 (redacting as privileged a discussion with Okapi Partners and Williams regarding [redacted] negative feedback on the pill in its entirety) *with* Ex. 5.

around some of the votes that have been cast and shor[ing] up the vote with our largest investors" and began scheduling investor calls on April 7 with the assistance of a proxy advisor. Ex. 8 at WMB_00002524.

C. Despite Williams' Outreach, Stockholders Express Disapproval of the Pill at the Ballot Box

Williams held its annual meeting on April 28, 2020. The Board recommended that Williams' stockholders vote to re-elect the Director Defendants, but did not put the Pill to a stockholder vote. Whereas Bergstrom received approximately 99% of Williams stockholders' votes in favor of his election/re-election at prior annual meetings, over 321 million shares—over ***one-third*** of the vote—were cast against him at the 2020 meeting, consistent with ISS's recommendation to vote against his re-election given the Board's hasty adoption of the Pill. Ex. 9 at WMB_00001674.

Notwithstanding the staggering number of votes against Bergstrom, the Williams Defendants now tout his reelection as evidence of broad stockholder support for the Pill. Opp. at 8. Internally, however, the Williams Defendants were decidedly less upbeat. As Defendant Stephen Chazen recognized, "***no one should take great solace from the voting results***.… A third of the vote against Steve [Bergstrom] is much larger than I would have guessed." Ex. 10 at WMB_00002409 (emphasis added). Defendant Alan Armstrong similarly noted: "I agree that these votes were way too close. And we should take note." *Id.* The Williams Defendants

similarly make much of the re-election of the remaining directors (Opp. at 8), but ignore that "[a]ll directors saw a reduction in votes due to the Rights Plan (from 4-7%)." Ex. 9 at WMB_00001672.

Even the large investors that did not vote against Bergstrom remained critical of the Pill. [redacted] for example, [redacted] Indeed, Williams recognized: "If we extend the Rights Plan, it is important to almost all of our shareholders that we put it to a shareholder vote." Ex. 9 at WMB_00001672.

D. The Supposed "Threat" Of Market Volatility and Low Stock Price Evaporates

In the month leading up to the March 20, 2020 announcement of the Pill, Williams' stock price had decreased from $21.54 on February 21, 2020 to $10.82 on March 19, 2020. ¶60. Since the Board adopted the Poison Pill, however, Williams' stock price has more than recovered—the stock closed at $22.34 on August 17, 2020, ***above*** its trading price before the precipitous fall that supposedly caused the Director Defendants to act. ¶61. On October 15, 2020, the stock closed at $19.71. Mot. at 8.

[6] Ex. 10 at WMB_00002409-10. Again, the Williams Defendants understood at the time that "[their] outreach likely achieved the For vote on Steve [Bergstrom] as [redacted] probably decided they did not want to risk less than a majority vote For him, but still wanted to express an amount of displeasure." Ex. 9 at WMB_00001672.

ARGUMENT

I. PLAINTIFFS' MOTION SHOULD BE GRANTED BECAUSE THE REQUIREMENTS OF COURT OF CHANCERY RULE 23 ARE SATISFIED

The Williams Defendants do not argue that Plaintiffs failed to satisfy the numerosity and commonality prerequisites of Rule 23(a) or Rule 23(b), thus waiving those arguments. *Emerald P'rs v. Berlin*, 2003 WL 21003437, at *43 (Del. Ch. Apr. 28, 2003) ("It is settled Delaware law that a party waives an argument by not including it in its brief."). Instead, the Williams Defendants argue only that Plaintiffs fail to meet the typicality and adequacy requirements of Rule 23(a). As set forth *infra*, the Williams Defendants are wrong. Because Plaintiffs satisfy the requirements of Rules 23(a) and 23(b), certification of the Proposed Class is proper and the Motion should be granted.

A. Rule 23(a)(4): Plaintiffs Are Adequate Class Representatives

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "[T]he requirements for an 'adequate' class representative are not onerous." *O'Malley v. Boris*, 2001 WL 50204, at *5 (Del. Ch. Jan. 11, 2001). "In order to meet the adequacy requirements ... a representative plaintiff must not hold interests antagonistic to the class, retain competent and experienced counsel to act on behalf of the class and, finally, possess a basic familiarity with the facts and issues involved in the lawsuit." *Oliver v. Boston*

Univ., 2002 WL 385553, at *7 (Del. Ch. Feb. 28, 2002) (citation omitted). The Williams Defendants have neither "challenged the competence of the plaintiffs' counsel" nor argued that Plaintiffs lacked "familiarity with the legal or factual issues relevant to this action or the … ability to facilitate this litigation" (*id*.) beyond their arguments concerning typicality, addressed *infra*. Instead, they argue only that Plaintiffs hold interests antagonistic to the Proposed Class. Opp. at 16-21. Wrong.

1. <u>Plaintiffs Have Presented Evidence Demonstrating Their Adequacy</u>

"Absent a conflict between the proposed class representative and members of the class, and absent incompetent or unable counsel, it would seem that an unusual set of facts is required in order for the Court to deny a plaintiff the role of class representative." *N.J. Carpenters Pension Fund v. infoGROUP, Inc.*, 2013 WL 610143, at *5 (Del. Ch. Feb. 13, 2013). No such "extreme" facts are present here, and the Williams Defendants allege none. The law does not require a perfect class representative, merely an adequate one. Holding otherwise "would preclude certification of individuals merely because they lack the educational background necessary to understand the sophisticated concepts presented in many class actions." *Price v. Wilm. Tr. Co.*, 730 A.2d 1236, 1240 (Del. Ch. 1997). Plaintiffs easily satisfy the adequacy requirement of Rule 23(a).

The Williams Defendants' arguments that Plaintiffs "rely on their summary assertion that they 'easily satisfy' the adequacy requirement" and fail to "put forth

factual evidence demonstrating that they are adequate class representatives" are wrong. Opp. at 16-17. The Williams Defendants ignore the substantial time, resources, and efforts described in the Motion that Plaintiffs have invested in this Action. Mot. at 14. Since filing the Motion, Plaintiffs have invested yet more time, resources, and efforts to prosecuting this Action, including by preparing and sitting for their depositions. Plaintiffs and/or their counsel have also: (i) reviewed 13,254 pages of documents produced by the Williams Defendants; (ii) reviewed the Williams Defendants' privilege log and sent Defendants a letter challenging deficiencies identified by Plaintiffs therein; (iii) identified and challenged other deficiencies in Defendants' document production; (iv) succeeded in obtaining, *inter alia*, the production of additional documents (including additional Board minutes and presentations) and the inclusion of an additional document custodian; and (v) noticed three additional depositions. Moreover, the Williams Defendants' criticism of Plaintiffs' Motion for purportedly disregarding Defendants' unsupported assertions of stockholder "support" for the Pill ignores that documents produced by Defendants after (i) Plaintiffs' Motion was due (and filed), and (ii) Mr. Wolosky was deposed call into question the veracity of those assertions.

The evidence produced by the Williams Defendants to date undermines their contention "that the evidence strongly indicates that a significant body of Williams'

stockholders hold views antagonistic to those being advanced by Plaintiffs in this action." Opp. at 17. It is unclear what "evidence" supports this contention other than Defendants' self-serving proxy disclosure. The Pill was not—and never was—on the ballot.[7] Having deliberately chosen ***not*** to put the Pill to a stockholder vote, the Williams Defendants cannot now claim that stockholders support it. Additionally, discovery has undercut Defendants' glowing disclosure about stockholder sentiment, revealing that:

- The initial feedback concerning the Pill from Williams' largest stockholder, among others, was decidedly negative;
- Williams only solicited feedback from "major" stockholders ***after*** stockholders immediately expressed concerns directly to Williams;
- Williams did not solicit further stockholder feedback until learning that initial votes were trending against Bergstrom due to opposition to the Pill;
- Over 321 million shares (representing 26.49% of Williams' total shares outstanding and 33.71% of the votes cast) were voted against Bergstrom, a fact which Williams did not "take great solace from" and was "much larger than" expected;
- Every Williams director saw a reduction in votes, which Williams recognized as a direct result of the Pill; and
- Even the large investors that did not vote against Bergstrom remained critical of the Pill.

[7] Certain stockholders might understandably have been hesitant to overhaul the Board during the height of the COVID-19 pandemic, as the Williams Defendants' own documents suggest. *See* note 6, *supra*.

Far from "fail[ing] to address" the Williams Defendants' so-called "evidence" of limited stockholder support for the Pill (Opp. at 18), Plaintiffs have marshalled substantial evidence demonstrating that stockholders were (and remain) concerned with, if not outright opposed to, the Pill.

Notably, Defendants have presented no evidence—nor even asserted—that Williams stockholders (i) ***continue*** to support maintenance of the Pill now that the stock price has largely recovered from its March 2020 lows, or (ii) oppose this lawsuit. By contrast, the Williams Defendants rely solely on the Company's own self-serving and stale disclosures from March 30, 2020 as support for the proposition that unnamed stockholders "expressed outright support" for the Board's decision to adopt the Pill. Opp. at 18. This temporal aspect is critical: just because certain stockholders might have acquiesced to the Pill at the height of the uncertainty engendered by the onset of the COVID-19 pandemic does not mean that those same stockholders continued to support the Pill when the situation began stabilizing, let alone after Williams' stock price largely recovered.

Moreover, the fact that none of Williams' "major stockholders" who voted for Bergstrom six months ago at the height of the pandemic "is a party to this litigation" makes no legal difference. *Id*. at 2. Even assuming Plaintiffs lacked support from Williams' largest stockholders—an assumption undermined by the evidence

produced to date—the Williams Defendants have "failed to cite any case law *requiring* a class representative to have such support." *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 432 (Del. 2012) (finding class representative adequate where it lacked the support of the company's largest stockholder). That is because there is none. *Id*. ("While the lack of support of large shareholders is a factor the Court of Chancery may consider in deciding who will represent a class, we decline to hold that factor, without more, would transform NOERS into an inadequate representative.").

The Williams Defendants' federal authorities are inapposite. In *Audio-Video World of Wilmington, Inc. v. MHI Hotels Two, Inc.*, plaintiffs holding only five of 169 units in a resort complex were found not to be adequate representatives because they "provided *no evidence that a single other unit owner* wishes to join their proposed class," and the proposed class representatives had severed their business relationships with the defendants, but were seeking to represent a class of those who currently maintained them, creating a real risk of financial conflicts in that representation. 2010 WL 6239353, at *14 (E.D.N.C. Dec. 8, 2010), *report and recommendation adopted as modified*, 2011 WL 1059169 (E.D.N.C. Mar. 18, 2011). By contrast, Plaintiffs do not seek damages through this Action, negating these potential economic conflicts addressed by the *Audio-Video* Court. Further, while

there was no vote seeking stockholder approval of the Pill, despite overwhelming support for his reelection in prior years, in 2020, over 321 million shares (representing 26.49% of Williams' total shares outstanding and 33.71% of the votes cast) were voted against Bergstrom consistent with ISS's recommendation to do so as a result of the Board's adoption of the Pill. And *Horton v. Goose Creek Independent School District*, 690 F.2d 470, 484 (5th Cir. 1982)—an action challenging a school district's use of a canine contraband detection program—"has been criticized as 'at odds with both Rule 23 and traditional notions of alignment of parties and interests.'"[8] The Williams Defendants' remaining authorities likewise find antagonism with respect to differing economic incentives absent here.[9]

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[8] *Plotnick v. Comput. Scis. Corp. Deferred Comp. Plan for Key Execs.*, 182 F. Supp. 3d 573, 589 (E.D. Va. 2016) (quoting *Littlewolf v. Hodel*, 681 F. Supp. 929, 937 n.4 (D.D.C. 1988), *aff'd sub nom. Littlewolf v. Lujan*, 877 F.2d 1058 (D.C. Cir. 1989), *aff'd*, 875 F.3d 160 (4th Cir. 2017)); *see also Littlewolf*, 681 F. Supp. at 937 ("incantations of the potential for antagonism are insufficient").

[9] *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 187 (3d Cir. 2012) (finding possibility of antagonism in the context of a settlement "which divides a single class into two groups of plaintiffs that receive different benefits"); *In re Photochromic Lens Antitrust Litig.*, 2014 WL 1338605, at *14 (M.D. Fla. Apr. 3, 2014) (finding possibility of antagonism considering the "potential for economic winners and losers to emerge from the same putative class"); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 67 F.R.D. 440, 446 (E.D. Pa. 1975) (finding possibility of antagonism between a "proposed class who are currently maintaining a franchise relationship with Aamco" interested in "the continued economic viability and public goodwill of Aamco" and those "who have severed their business relationship with Aamco [who] do not share in this interest").

2. Mr. Wolosky Is An Adequate Representative

Mr. Wolosky is plainly an adequate representative. As the Williams Defendants acknowledge, Mr. Wolosky has "more than 30 years of experience in advising clients on shareholder activism and corporate governance." Opp. at 4. He reviewed the Pill "multiple times" and possesses a "good understanding of" the "material terms" of the Pill, including the "5 percent trigger, 'acting in concert' language, [and the] definition of Acquir[ing] Person" as well as when the Pill expires. Opp. Ex. 8 at 23:14-24:21. Based on his substantial experience in stockholder activism and his review of the Pill, Mr. Wolosky "believe[s] that [the Pill] was an inappropriate pill for a board to adopt." *Id*. at 27:22-28:2. He therefore possesses far more than "a basic familiarity with the facts and issues involved in the lawsuit." *Oliver*, 2002 WL 385553, at *7.

Rather than contest Mr. Wolosky's superlative credentials, the Williams Defendants seize on one out-of-context sentence from his deposition to attempt to manufacture antagonism between Mr. Wolosky and the Class, falsely claiming that he "conceded that he is not, in fact, seeking to represent all Williams stockholders." Opp. at 3. The relevant testimony demonstrates that Mr. Woloksy conceded no such thing:

Q. What is the class that you are proposing to represent in this lawsuit?

A. What is the class?

Q. Yes.

A. Shareholders of Williams.

Q. All shareholders?

A. I would love to, yeah.

Q. I'm sorry, I didn't mean to interrupt you.

A. Go ahead.

Q. Do you propose to represent stockholders who believe that it was in the company's best interest to adopt the rights plan?

A. I believe that the class should represent all shareholders. I don't know -- I don't know what -- I don't specifically know what other shareholders believe.

Q. But do you propose to represent those shareholders even though you don't know what they believe?

A. Yes.

Q. I want you to assume that there are stockholders who supported the adoption of the rights plan and continue to think that it is serving their interests. Do you propose to represent those stockholders?

A. I propose to represent all stockholders.

Q. Including those – I'm sorry, go ahead.

A. If someone wants to object that I can't represent them, have there been any objections to me representing shareholders?

Q. Well, what I want to understand is whether you propose to represent stockholders who believe that the rights plan is serving their best interests.

A. I find it hard to believe that shareholders would believe that.

> Q. But if they did, do you propose to represent them as part of this class?
>
> A. I assume they have the right to object if they don't think I'm properly representing their interests.
>
> Q. Do you propose to represent stockholders who believe that their franchise is not being impacted by the rights plan?
>
> A. Same answer as the last question.
>
> Q. So the answer is yes?
>
> A. Same answer as the last question.
>
> Q. I just want to make sure, because there was a number of questions. Is your answer yes or no, that you propose to represent stockholders who believe that their franchise --
>
> A. I propose to represent all stockholders other than those that object to my representing them.

Opp. Ex. 8 at 100:3-102:17. As the full colloquy demonstrates, Mr. Wolosky purported to represent a class consisting of ***all*** Williams stockholders no fewer than five times. Nevertheless, Defendants' counsel insisted Mr. Wolosky "assume" that certain stockholders fully supported the Pill such that they might object to his representation of them. In the context of that hypothetical, Mr. Wolosky reasserted that he "propose[s] to represent all stockholders," but given the nature of the hypothetical added the caveat "other than those that object to my representing them." Thus, his testimony is clearly not evidence of any antagonism towards the Proposed Class. At most, it demonstrates only the obvious fact that Mr. Wolosky, who is not

a class action litigator, was unclear on the mechanics of objections in the context of Defendants' counsel's hypothetical. *See id.* at 101:22-24 ("A. I assume they have the right to object if they don't think I'm properly representing their interests.").

3. St. Clair Shores Is An Adequate Representative

The Williams Defendants' attempt to conjure a conflict with respect to St. Clair Shores fares no better. St. Clair Shores Chairman James Haddad, testifying on behalf of the fund, plainly demonstrated his understanding of the claims at issue in this Action and the mechanics of the Pill. *See, e.g.*, Opp. Ex. 10 at 17:1-8; 25:18-27:11; 27:24-28:12; 40:7-16; 47:16-48:5; 83:17-84:8. He further testified that St. Clair Shores intends to fairly represent the interests of all members of the Proposed Class. *Id.* at 98:21-99:2.

Because the Williams Defendants cannot dispute that St. Clair Shores has otherwise established its adequacy as a class representative, the only argument they are able to put forward to attempt to defeat the Motion is that St. Clair Shores' interests are antagonistic to the Proposed Class because it has not communicated with other stockholders about the Pill. Opp. at 20-21. This attempt to manufacture a disqualifying conflict supposes too much. *First*, "purely hypothetical, potential, or remote conflicts of interest never disable the individual plaintiff" from serving as a class representative. *In re Celera Corp. S'holder Litig.*, 2012 WL 1020471, at *14 (Del. Ch. March 23, 2012) (quoting *Youngman v. Tahmoush*, 457 A.2d 376, 380

(Del. Ch. 1983), *rev'd on other grounds*, 59 A.3d 418, 432 (Del. 2012)). *Second*, as demonstrated *supra*, discovery to date reveals that, despite the Williams Defendants' protestations to the contrary, there was, in fact, substantial, contemporaneous stockholder dissatisfaction with the Board's adoption of the Pill. Further, the Williams Defendants notably present no purported evidence of current support for the Pill or opposition to this Action, and Plaintiffs are aware of none.

Particularly in light of the Williams Defendants' failure to support their hypothetical conflict with any evidence of antagonism, this meritless argument does not undermine the adequacy of St. Clair Shores as Class Representative and Rule 23(a)(4) is satisfied.

B. Rule 23(a)(3): Plaintiffs' Claims Are Typical of the Proposed Class's Claims

Rule 23(a)(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." This Court has articulated a "relatively non-stringent test for typicality" on class certification motions. *Regal Entm't Grp. v. Amaranth LLC*, 894 A.2d 1104, 1112 (Del. Ch. 2006) (collecting cases). "Courts will liberally construe the typicality requirement as long as no express conflicts exist between the class representatives and the class." *Spark v. MBNA Corp.*, 178 F.R.D. 431, 436 (D. Del. 1998) (citation omitted). Typicality is satisfied where "[a] representative's claim or defense will suffice if it arises from the

same event or course of conduct that gives rise to the claims [or defenses] of other class members and is based on the same legal theory.'" *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1226 (Del. 1991) (citation omitted).

1. Typicality Is Satisfied Because Plaintiffs' and the Proposed Class's Claims Arise from Precisely the Same Events and Legal Theory

Defendants identify no purportedly disqualifying conflict between the claims or defenses of Plaintiffs on the one hand and any other Proposed Class member(s) on the other, and Defendants do not—and cannot—dispute that Plaintiffs' claims arise from the same events and same legal theory applicable to all Proposed Class members. Rule 23(a)(3) is therefore satisfied. *Id*.; *see also, e.g.*, *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 400 (Del. Ch. 2008) ("[T]he claims and defenses of both the plaintiffs and the class arise from the same legal and factual foundation. Therefore, the plaintiffs meet the typicality requirement.") (footnote omitted), *aff'd sub nom. Whitson v. Marie Raymond Revocable Tr.*, 976 A.2d 172 (Del. 2009). The Court need not inquire further.

2. Defendants' Argument Regarding Purported Distinctions Between Plaintiffs and Certain Proposed Class Members Fail

Despite never actually disputing Plaintiffs' standing to challenge the Pill, Defendants contest typicality on the purported basis that Plaintiffs "are not subject to the Rights Plan." Opp. at 24. False. ***All*** Proposed Class members, including Plaintiffs, have the same claims because they are "subject to"—and equally impacted

by—the same harm, *i.e.*, the Pill's impairment of various value-enhancing stockholder activities. This is true regardless of any particular stockholder's desire or intention to engage in such activity. For example, a "Passive" stockholder might lack the desire to seek to influence the Company, yet is still harmed by the Pill's impairment of other stockholders' ability to engage in beneficial stockholder activity.[10] Thus, Plaintiffs' claims and defenses are substantively identical to the claims and defenses of every other Proposed Class member. This critical point independently undermines Defendants' typicality challenge. *See, e.g.*, *Krapf*, 584 A.2d 1226; *Marie Raymond Revocable Tr.*, 980 A.2d at 400.

Ignoring the uniformity among Plaintiffs' and the other Proposed Class members' ***claims***,[11] Defendants instead contend that because Plaintiffs purportedly satisfy the Pill's definition of "Passive Investor," the Pill-based restrictions on Plaintiffs' own activity diverge from the restrictions applicable to "non-passive" stockholders. Opp. at 22-23. Even if that argument were relevant, it is wrong. Defendants argument—that Plaintiffs qualify as "Passive Investors" because

[10] For this reason, among others, Defendants' assertion that Plaintiffs themselves have not "refrained" from engaging in any stockholder activism due to the Pill is irrelevant. Opp. at 26-27.

[11] Indeed, Defendants misstate the relevant inquiry in asserting that "Plaintiffs have failed to demonstrate that ***the proposed class representatives*** are typical of the ***rest of the proposed class***." Opp. at 22 (emphasis added).

"neither acquired Williams stock for the purpose or effect of directing management or influencing the control of Williams" (*id*.)—suggests incorrectly that one's status as a "Passive Investor" is immutably dictated solely by the circumstances existing when the stockholder initially acquires Williams shares. In reality, the "Passive Investor" definition plainly contemplates that a "Passive Investor" loses that status—thus becoming subject to all of the Pill's restrictions—if the ultimate "effect" of the stockholder's acquisition of shares is, using Defendants' phrasing, to (i) "seek to influence the corporate policy of Williams," and/or (ii) "engage[] in any conduct directed at influencing control of Williams." *Id*. at 23.[12] Thus, if a stockholder ultimately sought to launch (or engage with) a proxy contest or consent solicitation, and/or engaged in other similar activity, then the stockholder would no longer be a "Passive Investor" because the "effect" of the stockholder's share acquisition would be to seek to influence Williams' management, policies and/or control.[13]

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[12] The Pill defines a "Passive Investor" as a Person who "***acquires Beneficial Ownership of Common Shares of the Company*** pursuant to trading activities undertaken in the ordinary course of such Person's business ***and not with*** the purpose nor ***the effect,*** either alone or in concert with any Person, ***of exercising the power to direct or cause the direction of the management and policies of the Company or of otherwise changing or influencing the control of the Company***, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b) of the Exchange Act." Opp. Ex. 2 at 4.1, page 7 (emphasis added).

[13] Moreover, Mr. Wolosky and/or St. Clair Shores could decide to purchase ***additional*** Williams shares with the purpose or effect "of exercising the power to

Importantly, Defendants acknowledge the relevance to the Pill's "Passive Investor" definition of Williams stockholders' ***present*** intention—which could change at any moment—by (i) juxtaposing Plaintiffs against stockholders who are ***currently*** "looking to influence Williams' corporate policy" (Opp. at 23), and (ii) asking Plaintiffs questions regarding their ***present*** intentions regarding the exercise of their stockholder rights. *See, e.g.*, Opp. Ex. 10 at 29:17, 85:17-20.[14]

Defendants do not and cannot cite testimony from Plaintiffs foreclosing the possibility of future activity that would foreclose their qualification as "Passive Investors" as defined by the Pill.[15] Indeed, it may be that under the "Passive

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direct or cause the direction of the management and policies of the Company or of otherwise changing or influencing the control of the Company" such that neither would remain a "Passive Investor."

[14] Defendants' assertion that Mr. Haddad testified that St. Clair Shores "has no intent to seek to influence the corporate policy of Williams" (Opp. at 23) mischaracterizes the cited testimony, in which Mr. Haddad merely responded "I do not know" when asked, somewhat ambiguously, whether he "kn[e]w whether the pension fund has any intent to seek to influence the corporate policy of Williams through its shareholders." Opp. Ex. 10 at 29:17-20.

[15] Defendants note that Mr. Wolosky "has not refrained from engaging in a proxy contest or takeover transaction" since the Pill was imposed. Opp. at 26. Defendants omit that since the Pill's imposition, no stockholder has launched a proxy contest or takeover transaction in which Mr. Wolosky could possibly have engaged. Nor does his testimony that the Pill did not prevent his clients from calling him to generally "talk about Williams" in his capacity "***as an attorney***" mean, as Defendants claim, that "he holds a unique position" relative to the rest of the Proposed Class. Opp. at 27 (citing Opp. Ex. 8 at 84:18-22) (emphasis added).

Investor" definition, Plaintiffs' filing of this Action disqualifies them from being "Passive Investors." A reasonable interpretation of the definition is that now that Plaintiffs have initiated this Action seeking to eliminate the Pill, the "effect" of their acquisition and ownership of Williams stock has been to seek to (i) "exercis[e] the power to direct or cause the direction of the management or policies of the Company" and/or (ii) "chang[e] or influenc[e] the control of the Company."

Defendants' assertion that voting behavior should be dispositive of typicality also fails. *See* Opp. at 24-25. As noted *supra*, even a "Passive Investor" that is—and forever remains—quintessentially passive is harmed by the Pill's impairment of value-enhancing activity by other Williams stockholders. By analogy, legislation foreclosing American citizens and citizen groups from pursuing beneficial political reform impairs the rights of—and harms—***all*** American citizens, including those that previously never personally pursued such reform nor have any intention of doing so. Additionally, Defendants' myopic focus on past voting history ignores not only that nothing prevents Plaintiffs from modifying their voting behavior in the future, but also that the Pill chills and impairs other forms of legitimate stockholder activity. *See, e.g.*, Motion to Expedite ¶30 (arguing that the Pill "shut[] down the ability of any stockholder or group to seek to influence the direction of the Company"); *id.* ¶31 (arguing that because of the Pill, "any rational actor is likely to be coerced not

to mount a proxy or consent contest"). Indeed, Defendants themselves note that Mr. Wolosky understands the definition of "stockholder franchise" to include "[t]he ability of shareholders to freely communicate." Opp. at 25 (quoting Opp. Ex. 8 at 59:21-24).

Further, Plaintiffs' subjective interpretations of the legal term of art "stockholder franchise" are irrelevant to the typicality of their claims and defenses. Fixating on certain commentary by Plaintiffs regarding terminology used in certain allegations of the Complaint, Defendants ignore the dispositive fact that, while Plaintiffs may not be able to recite the legal definition of the term on demand, they share the same understanding regarding the fundamental underpinning and objective of this Action—*i.e.*, to eliminate the Pill and the impairment to legitimate

stockholder activism engendered thereby.[16] Indeed, Defendants acknowledge on the first page of their Opposition: "The core theory of this lawsuit is that the adoption of the Rights Plan is a breach of the Board's fiduciary duty because ***it purportedly chills stockholder activism*** and precludes Williams stockholders from exercising the 'corporate franchise.'" Opp. at 1 (emphasis added). The interpretation of "franchise" Mr. Wolosky provided during his deposition (*i.e.*, "the ability of shareholders to freely communicate") is fully consistent with the Action's fundamental goal of eliminating the Pill's impairment of value-enhancing stockholder activism, which is inextricably intertwined with stockholder communication or coordination. Similarly, given Mr. Haddad's clear understanding

[16] *See, e.g.*, Opp. Ex. 10 at 27:6-11 (testifying that the Pill is "very restrictive. The 5 percent is a restrictive number . . . And it . . . protects the board from being taken over or having to make any changes or losing their positions"); 40:12-16 ("[T]he wolfpack provision stops the ability of the stockholders or a group of stockholders from influencing the company, the direction of the company."); 49:17-20 ("[I]f enough shareholders got together, they could make a bid to take over or they could make a change of the board or they could do whatever, but they're precluded from it."); 93:1-2 (testifying that both Plaintiffs "want to see the poison pill removed, basically in a nutshell."); Opp. Ex. 8 at 72:8-9 ("My lawsuit is challenging the shareholder rights plan as a whole."); 81:18-82:2 ("Again, I believe that the provisions of the plan have the potential to entrench the board of directors and chill the ability of shareholders to communicate and express their views on many topics, including the potential to express their views on poor performance or otherwise, poor decisions made by the board."); 103:10-13 ("If I'm successful in getting the shareholder rights plan overturned, I think it would benefit all of Williams' shareholders.").

regarding the Action's fundamental objective, and that the ability of stockholders to use their voting power to influence the direction of the Company is impeded by the Pill, it is irrelevant that, as a non-attorney, he was not able to recite the definition of a single legal term of art used in his pleading on demand at his deposition.

Finally, and tellingly, Defendants cite no case remotely supporting a finding that typicality is not satisfied here. Indeed, their typicality discussion cites only one case in which typicality was not met: *Mentis v. Delaware American Life Insurance, Co.*, 2000 WL 973299 (Del. Super. May 30, 2000) (cited in Opp. at 24). In *Mentis*, the Superior Court found that the proposed class representative's claims of deceptive sales practices based on oral statements were not typical of other class members' claims because (i) the Court held that oral representations made in connection with the sales were of significant importance and would "surely play a large role in any recovery," and (ii) the proposed class representative testified that certain critical oral representations were ***not*** made to him, creating "factual complexities and individualized situations that make [the representative's] claims atypical[.]" *Id.* at *5. *Mentis* is therefore nothing like this Action, where Plaintiffs and the other Proposed Class members indisputably assert precisely the same claims based on the same unlawful Pill.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Class Certification.

Dated: October 29, 2020

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CERTIFICATE OF SERVICE

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