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Case No. 9250-VCG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BUTTONWOOD TREE VALUE PARTNERS, L.P., a California Limited Partnership and MITCHELL PARTNERS L.P., a California Limited Partnership, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	C.A. No. 9250-VCG
	)	CLASS ACTION
v.	)	
R. L. POLK & CO., INC., STEPHEN R. POLK (individually and on behalf of a Defendant Class of similarly situated persons), THE ESTATE OF NANCY K. POLK, KATHERINE POLK OSBORNE, DAVID COLE, RICK INATOME, CHARLES MCCLURE, J. MICHAEL MOORE, RLP & C HOLDING, INC., RLP MERGER CO., STOUT RISIUS ROSS, INC., and HONIGMAN MILLER SCHWARTZ AND COHN LLP,	)	
Defendants.	)	

PLAINTIFF'S OPENING BRIEF IN SUPPORT OF SETTLEMENT AND REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS

September 23, 2004

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INTRODUCTION AND SUMMARY

The Plaintiffs have proposed a settlement of this case for the payment of $15,000,000 into a Settlement Fund[1] in exchange for a plenary release of all claims the Class members have relating to their ownership of and transactions in the common stock of R.L. Polk & Co., Inc. ("Polk"). The Action arose out of claims that the Defendants (and other entities and persons dismissed by interlocutory decisions of the Court) violated the rights of Class members in connection with a 2011 Self-Tender which resulted in Polk acquiring their shares (or in them selling their shares into the market) at an unfair price. See the complaints listed at ¶II.A. of the Stipulation.

The Settlement is fair reasonable and adequate for the following reasons.

1. The $15,000,000 is 160% of the maximum $9,402,750 in compensatory damages and about 20% of the maximum $78,182,125 in rescissory damages which Plaintiffs could have sought at trial. See, Exhibits A and B containing the draft opinions of Plaintiffs' expert witnesses. Even if either of these were awarded and the Court added prejudgment interest under established precedent, the maximum potential damages recoverable at trial likely would have been between $16 million

[1] Unless otherwise stated this Brief uses the definitions in the Stipulation and Agreement of Compromise and Settlement ("Stipulation").

and $108 million.[2] The Settlement represents an unusually high percentage of the potential recovery for cases of this type.

It also represents an unusually large recovery when compared to the transaction price. The gross recovery of over $422 per share, and the estimated net of at least $285 per share, compare favorably with the Tender-Offer price of $810 per share, and yield a gross recovery of 52% more than the price at which Class members chose to sell their shares. This is far in excess of the usual recoveries of additional compensation in cases challenging transactional compensation.

2. The ability to recover either compensatory or rescissory damages is subject to substantial uncertainty. Defendants hotly dispute any liability. However, even if liability were established, there is substantial uncertainty in Delaware law as to the ability to recover on more than "nominal" damages on a class-wide basis for disclosure claims of the type here under *Dohmen v. Goodman*, 234 A.3d 1161 (Del. 2020) ("*Dohmen*") and subsequent decisions of the Court of Chancery. There is also substantial uncertainty as to the meaning of "nominal damages." This Court reserved decision as to certifying a class for more than "ultra-nominal" damages. *Buttonwood v. Polk*, 2022 WL 2255258 at *12 (Del.Ch.). Precedents awarding "nominal" damages usually make awards in the $1.00 per share range translating

[2] The Court would have reduced interest by the interest attributable to the $810 tender payment received in 2011.

into the single digit percentage increased in compensation. *In re Mindbody, Inc. S'holder Litig.*, 2023 WL 2518149 at *46-47 (Del.Ch.). Further, even if the Court ultimately considered rescissory damages on a class-wide basis, whether to award such and the manner of calculating such are within the broad discretion of the Court. E.g., *In re Orchard Enterprises, Inc. S'holder Litig.,* 88 A.3d 1, 38 (Del. Ch. 2014). An award of the maximum was substantially uncertain.

3. The release of all claims related to ownership of or transactions in Polk shares is appropriate in scope. *In re AMC Ent. Holdings, Inc. S'holder Litig.*, 2023 WL 5165606, at *5 (Del. Ch.), aff'd 2024 WL 2305792 (Del.). The claims arise from transactions in which the Class members sold their shares, thereby terminating their ownership. Any claims arising from that termination of ownership are at least 13 years old. Further, Polk was taken private in 2013, 11 years ago. Even if a Class member tendered or sold only a portion of their Polk shares in 2011, no Class member has owned any Polk shares since 2013. It is difficult to conceive of circumstances under which any released claim not in litigation already would not be time-barred. Plaintiffs are not aware of any such litigation other than this Action.

4. This Action has been fully investigated by Plaintiffs in the face of a vigorous defense. The Court is aware of the likely evidence that would be presented at trial. The Settlement is excellent even if one assumes liability would be established at trial.

5. The requested fees of $4,125,000, constituting 27.5% of the total Settlement Fund, is appropriate for this settlement considering the very late stage of the Action, the nature of the case, the results obtained, and the efforts involved. The expense reimbursement of $422,034.90 is appropriate and documented.

6. The deadline for objections to the Settlement is October 4, 2024, however none has been received to date.

Having been the assigned jurist to this action since its inception in January 2014 and having held multiple hearings, issued at least 5 written decisions, and numerous other orders, this Court is quite familiar with this action, the claims asserted, a significant portion of the evidence adduced in discovery, and the quality and quantity of advocacy that has occurred over the last 10 years. Nonetheless, Plaintiffs set forth below a full presentation of their view of the case, why the Settlement should be approved, and why the requested Attorney's fees and expenses and incentive fees should be awarded. Plaintiff notes that the Defendants dispute many of these facts and dispute any liability.

STATEMENT OF FACTS

THE CLAIMS

Polk was founded in 1870 as a directory publisher by Ralph Polk and was majority owned and controlled by the Polk family from its founding until they sold

the Company in 2013. Class Certification McNew Dec. Ex. 52.[3] ("CC Ex.").

Before its acquisition by IHS in 2013,[4] Polk common stock was a very thinly traded on the OTC pink sheet market. CC Ex. 42. The prices at which Polk stock traded reflected heavy discounts to fair value. CC Ex. 43 at 6. Polk was a "value" stock attracting investors who would "buy and hold" the stock waiting for a liquidity event in which the discounts to value reflected in trading prices were eliminated or greatly reduced (a "Full-Value Liquidity Event"). From at least 2007 onward, Polk was over 90% beneficially owned by third and fourth generation descendants of its founder and related trusts and affiliates. E.g., CC Ex. 2, 43 at 18.

For "value investment" companies with this shareholder profile, the most common Full-Value Liquidity Events are either a going private transaction (capturing the entire value of the company for the founder's descendants) and/or a sale of the company (allowing the founder's descendants to cash out and diversify their wealth). In such transactions, minority investors can realize the undiscounted value of their shares. E.g., *Gearreald v. Just Care, Inc.*, 2012 WL 1569818 at *9

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[3] The Court does not adjudicate the merits of the claims in determining whether to approve a settlement of a class action. However, it does need to assess the "get" with the "give." E.g., *In re AMC Ent. Holdings, Inc. S'holder Litig.*, 2023 WL 5165606, at *5 (Del. Ch.). As a result, Plaintiffs supply their view of the facts with references to evidence. Defendants dispute these claims and any liability thereunder.

[4] That transaction was structured as a short-form merger minority freeze-out of all shareholders except the Polk family shareholders, followed by a sale of Polk by Defendants and the Defendant Class to IHS.

(Del.Ch.); *Borruso v. Communications Telesystems Inter.*, 753 A.2d 451, 459-60 (Del.Ch. 1999).

This action arises out of the Self-Tender in 2011 at a price of $810 per share. The disclosures in the Offer to Purchase and Supplement to the Offer to Purchase (collectively the "Disclosures") were alleged to be materially deceptive and deficient through a combination of omissions and misstatements which had two effects. First, they omitted and misstated historical facts relating to recent Polk family and Company activity material to assessing the likelihood of a Full-Value Liquidity Event. Second, the Disclosures omitted and misstated historical facts which would have revealed recent activity material to assessing the stated purposes of the Offer to Purchase.

At least by early November 2010, Stephen Polk also began working with Polk's outside legal counsel, PriceWaterhouseCoopers, and Polk management, on a transaction to eliminate the non-Polk family stockholders in a short form merger. CC Ex. 6. 10, 11, 12, 13, 14, 18. The transaction was referred to among counsel as a "going private/squeezeout." CC Ex. 24.

The going private plan was structured in two parts; first, eliminating the minority non-family shareholders using the 90% voting power of all the Polk family shares; and second, *considering* a separate transaction, possibly as much as a year later, at a separately determined price, eliminating the Polk family shareholders

ineligible under Subchapter S. CC Ex. 4, 5, 9, 17, 18. In late December, 2010, the Polk family asked a special committee that had been formed to consider the offer to cease activity so that they could considered what price they desired to pay to the minority shareholders. CC Ex. 34, 35. By February 17, 2011, however, the Polk family abruptly stopped work on the merger plans. Plaintiff's assert this was because they were unwilling to pay the minority shareholders fair value. CC Ex. 33.

Simultaneously with "shelving" the short-form merger plan, the Polk family revived a plan from 2008 to acquire minority shares using a self-tender. CC Ex. 30, 31, 38, 40. Stephen Polk informed the Board of this development at a March 9, 2011 Board meeting. CC Ex. 39, 48. The full board, at that meeting and based solely on Stephen Polk's presentation and without questioning the abrupt change in plans, agreed. CC Ex. 39, 48. Within weeks the 2011 Self-tender was launched and closed, using: (1) the 2008 Self-tender structure and disclosures as the transaction's template, (2) the valuation performed by SRR to aid the Polk family in taking Polk private as the basis for the self-tender price, and (3) Polk's outside legal counsel, who had worked for the Polk family on the going private merger, as the Company's outside counsel. CC Ex. 38, 43, 49, 50.

The Self-Tender Disclosures specifically disclaimed any business combination activities and stated:

> The Board did not consider any of the following as there were no firm offers for: (1)

> the merger or consolidation of the Company with or into another company or vice versa; (2) the sale or other transfer of all or any substantial part of the assets of the Company; or (3) a purchase of our securities that would enable the holder to exercise control of the Company. *In addition, the Polk family has not expressed interest in exploring any such transactions.* March 31, 2011 Offer To Purchase at 6 (emphasis added).

Absent from the Self-Tender Disclosures were the following facts: (1) the fall 2010/spring 2011 short-form merger/going private planning; (2) the conflicts arising from use of company counsel and advisors in that effort; (3) the timing regarding the switch from the going-private/short-form merger plan to the self-tender and the reason therefore. E.g., CC Ex. 2, 19, 20, 21. Critically, the only disclosed purposes for the Self-Tender were to (1) provide liquidity to its shareholders; and (2) reduce the burdens associated with maintaining smaller shareholders. CC Ex. 43 at 5.

The 2011 Disclosures were written to make it appear that the Self-Tender was a unique and rare opportunity for liquidity at above market prices and, expressly disclaimed that the Polk Family had expressed any desire to freeze-out the minority or sell the Company. The Price of $810 per share was determined using minority and liquidity discounts to fair value.

After Self-Tender, and at least by October 2012, Stephen Polk again spoke with investment bankers about selling Polk. CC Ex. 52. Around June 13, 2013, the

Polk family froze out the minority non-family shareholders and then sold the Company for $1.341 billion to IHS. *Id.* Had Plaintiffs and the Plaintiff Class not sold their shares in 2011, they would have received $2,675 per share in the IHS Sale, i.e., as well as receiving an intervening extraordinary special dividend.

THE PLAINTIFFS

Plaintiff, Buttonwood, a California limited partnership, was a Polk shareholder and tendered 1,048 shares into the Self-Tender, which shares were purchased by Polk pursuant to the 2011 Offer To Purchase. Until his death, Jack Norberg was Buttonwood's representative authorized to act in this case. After Norberg's passing, Buttonwood made Phil Milner its authorized representative. Buttonwood's representatives have participated throughout, authorizing and verifying the complaint and its amendments, participating in discovery, being deposed, reviewing and monitoring counsel, and approving this settlement. Milner deposition and exhibits D.I. 307. Buttonwood has submitted the required affidavit under Court of Chancery Rule 23(aa) and (f).

Plaintiff, MP, a California limited partnership, at all times relevant hereto, was a Polk shareholder and as a result of the 2011 Disclosures, sold 700 shares for $811 per share on or about May 6, 2011, after the receiving the disclosures for the 2011 self-tender and before the close of the Self-Tender. Until his recent passing, James Mitchell was MP's representative authorized to act in this case. After his passing,

MP designated William Mitchell to act as its authorized representative in this action. MP's representatives have participated throughout, authorizing and verifying the complaint and its amendments, participating in discovery, being deposed, reviewing and monitoring counsel, attending in-person mediation, and approving this settlement. Mitchell deposition and exhibits. D.I. 306. MP has submitted the required affidavit under Court of Chancery Rule 23(aa) and (f).

THE CLASS

The Class for the Settlement consists of those shareholders who had shares acquired by Polk in the Self-Tender (34,825 shares) and those shareholders who had net sales of shares into the market during the pendency of the Self-Tender, March 31, 2011 through May 16, 2011 (estimated at a maximum of 726 shares). In the face of Defendants' "tenacious[]" opposition, this Court previously certified a Class consisting of these Class members represented by the plaintiffs as class representatives. *Buttonwood v. Polk*, 2022 WL 2255258 (Del.Ch.). The Court found the Class met the requirements of Rule 23(a) as to numerosity, commonality, and typicality and the Representatives and their counsel satisfied adequacy of representation. *Id.* None of those facts have changed. The Court also found the Classes' claims met the requirements for certifying a non-opt out class under Rule 23(b)(1). *Id.* The certified claims have not changed. The Class was certified as to the issues of liability and nominal damages. There are no developments in the law

or the facts warranting any change in Class definition or revisiting the claims that were certified previously. Plaintiffs rely on their prior submissions on these issues. D.I. 294, 313.

The Court declined to rule as to whether the Class should be certified as to "ultra-nominal" damages. What has changed for the Settlement is Defendants have agreed to a conditional certification for settlement purposes as to that issue. Subsequently, the parties submitted subsequent authority regarding *Dohmen* and certification of disclosure claims for "ultra-nominal" damages. E.g., D.I. 375. Respectfully, Plaintiffs submit these authorities show an appropriate basis for this certification and support the requested conditional certification. Further, if conditional certification of the damages aspects of these claims is unavailable in a settlement context, as a practical matter, settlements of cases involving *Dohmen* issues could never be approved by the Court.

THE LITIGATION EFFORTS

At present, the Court's docket has 391 docket entries reflecting almost 10 1/2 years of effort by Plaintiffs and their counsel.[5] Those efforts involved:

1. At least 25 motions. D.I. 17, 18, 23, 47, 83, 87, 94, 99, 123, 127, 132,

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[5] Prior to this case another action was filed, wrongfully removed, and dismissed, so as to add undisputed facts to the complaint establishing that the removal was wrongful. While there have been some periods of relative inactivity, Plaintiffs previously provided an analysis showing that others, principally Defendants, were responsible for those. Defendants never provided any rebuttal analysis.

157, 158, 159, 171, 220, 271, 282, 283, 294, 331, 354, 365, 380, 384.

2. Numerous discovery requests consisting of interrogatories, documents requests and requests for admission, and 9 document subpoenas of third parties.

3. 14 depositions: defendants – 9 depositions; third parties - 3 depositions; plaintiffs – 2 depositions; with approximately 150 deposition exhibits.

4. Review of over 66,000 pages of documents from Defendants and third parties.

5. Multiple proceedings before former Chancellor William Chandler serving as a special discovery magistrate. Report of Special Discovery Magistrate. D.I. 211

6. At least 12 hearings. D.I. 80. 119, 138, 196, 210, 249, 262, 280, 324, 338, 364, 392.

7. 7 opinions of this Court. D.I. 40, 197, 204, 281, 293, 327, 379.

8. Mediation before former Chancellor Andre Bouchard including an all-day in-person session in Wilmington DE and preparation and submission of a mediation statement including 95 exhibits.

9. Preparation of two expert opinions

From Plaintiff's perspective all that remained before trial was judicial finalization of the claims to be presented and the scope of the trial, any necessary

follow-up to the Class certification, and expert discovery. Plaintiffs' expert opinions were prepared and ready for finalization.

THE MEDIATION

This Settlement was reached at the end of a mediation conducted before former Chancellor Andre Bouchard, without whom this Settlement would have been unlikely. Plaintiffs thank the former Chancellor for his efforts and his instrumental role in the reaching of this Settlement. The mediation included pre-mediation submissions with 95 exhibits. A full day in-person mediation was attended by counsel and a Plaintiffs' representative and was followed by numerous telephone and email exchanges. The mediator fees were $67,362.00.

Until the sign-off on the Settlement Agreement, there was a significant question of whether settlement could be achieved. Ultimately these efforts culminated in a sign off on June 14, 2024. There was no prior agreement in principle.

THE EFFORTS OF PLAINTIFFS' COUNSEL

Throughout this case, the Plaintiffs have been represented by R. Bruce McNew with the assistance of lawyers working under his supervision. The total effort encompassed 4,623.0 attorney hours, 547.4 paralegal hours, and out of pocket expenses of $422,034.90. This work started while McNew was at the firm of Taylor & McNew. He subsequently joined the firm of Wilks, Lukoff & Bracegirdle and then moved to the firm of Cooch and Taylor. In addition, certain case expenses

while McNew has been at Cooch and Taylor, have been advanced by the McNew Law Firm, LLC. All time and expense records have been summarized by the applicable firm at which the time and expenses were incurred. McNew is authorized to make this application on behalf of all firms and counsel who have works for the Plaintiffs in this action. All fees and expenses awarded, except as expressly authorized to pay any incentive awards, will be distributed among attorneys currently affiliated with Cooch and Taylor, P.A. These facts and a summary of the time and resulting loadstar amounts for these attorneys in question are reflected in the Affidavit of R. Bruce McNew. Esq. submitted with this brief. The detailed records are available for the Court at its request.

ARGUMENT

I. THE CLASS CERTIFICATION SHOULD BE CONTINUED AND EXPANDED TO CONDITIONALLY INCLUDE ALL ISSUES RELATED TO DAMAGES.

The Court previously certified the Class except as to the issues related to "ultra-nominal" damages. *Buttonwood v. Polk*, 2022 WL 2255258 (Del.Ch.). The Court did not address the issues of certification under Rule 23(b)(2) or "ultra-nominal" damages. That certification should be continued and expanded conditionally to include the issues of ultra nominal damages.

A. Plaintiff Class Satisfies the Requirements of Rule 23

Class certification involves a two-step analysis: first, the action must satisfy all four prerequisites mandated by Rule 23(a); second, the action must fall within one or more of the three categories set forth in Rule 23(b). *Zirn v. VLI Corp*., 1991 WL 20378, at *4 (Del.Ch.); *Emerald Partners v. Berlin*, 1991 WL 244230, at *4-*5 (Del.Ch.). When deciding whether to certify a class action, the court does not adjudicate the merits of the claims and accepts the Plaintiffs' substantive allegations as true. *Rosen v. Juniper Petroleum Corp.*, 1986 WL 4279, at *2 (Del.Ch.). As demonstrated below, the requirements of Rule 23(a), 23(b)(1) and 23(b)(2) are satisfied here.

B. The Action Satisfies all Four Prerequisites Mandated by Rule 23(a)

Under Rule 23(a), an action may be certified as a class action where: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Chancery Court Rule 23(a). "Prerequisites (1) and (2) focus on the characteristics of the proposed class, while prerequisites (3) and (4) focus on the characteristics of the named party as the proposed class representative." *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) ("*Weiner*").

1. Rule 23(a)(1): the Class Is So Numerous that Joinder of All Members Is Impracticable

Rule 23(a)(1) requires that a proposed Class be "so numerous that joinder of all members is impracticable." Ch. Ct. R. 23(a)(1). Here, the numerosity requirement of Rule 23(a)(1) is met. The Plaintiff Class encompasses between 58 and 64 members who owned 36,349 shares. Class sizes of less than the instant putative Plaintiff Class have been found to satisfy this requirement. *E.g.*, *Weiner*, 584 A.2d at 1225 ("Numbers in the proposed class in excess of forty … have sustained the numerosity requirement.") (citations omitted); *Dubroff v. Wren Holdings, LLC*, 2010 WL 3294219, at *5 (Del.Ch.) (stating "classes with as few as twenty-three members have been upheld"). The test is not impossibility of joinder but instead is whether joinder would involve a "strong litigational inconvenience." *Weiner,* 584 A.2d at 1225. *Marie Raymond Irr. Trust v. MAST Five LLC*, 980 A.2d 388, 400 (Del.Ch. 2008). Accordingly, the numerosity requirement is satisfied.

2. Rule 23(a)(2): Questions of Law and Fact Are Common to the Class

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Ch. Ct. R. 23(a)(2). The commonality requirement is satisfied where "there are numerous questions of law and fact common to the Class, including whether

[Individual] Defendants breached their fiduciary duties, whether [Individual] Defendants met their disclosure obligations, and to what relief the Class is entitled." *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *8 (Del Ch.). Where "the Complaint alleges breaches of fiduciary duty that implicate the interests of all members of the proposed class of shareholders. . . . there are 'questions of law [and fact]' common to the class." *Lawson*, 2011 WL 2185613, at *2.

Here, Plaintiff's claims are predicated on Defendants' breaches of fiduciary duties owed to the Class. Specifically, this Action concerns, at a minimum, the common factual and/or legal questions noted above. These issues implicate the interests of all Class members. *Turner v. Bernstein*, 768 A.2d 24, 33 (Del.Ch. 2000) ("In challenges to corporate [transactions] … brought on behalf of the stockholders not affiliated with the defendants, it is virtually never the case that there is any legitimate basis that 'a defendant might be found liable to some plaintiffs and not to others.'"). Buttonwood tendered into the tender offer and MP sold shares while the offer was pending. Both Plaintiff meet the requirements for commonality. *Nottingham Partners v. Dana*, 564 A.2d 1089 (Del. 1989) ("*Nottingham*"); *In re Celera Shareholders Litigation*, 59 A.3d 418 (Del. 2012) ("*Celera*"): *Noerr v. Greenwood*, 2002 WL 31720734 (Del.Ch.). Thus, there are questions of law and fact common to the Class. *Lawson*, 2011 WL 2185613, at *2. Accordingly, the commonality requirement of Rule 23(a)(2) is satisfied here.

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

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Ch. Ct. R. 23(a)(3). This "typicality" requirement is satisfied where the named representatives' interests arise from the same events or course of conduct that gives rise to claims of other class members, and the claims are based on the same legal theories. *Weiner*, 584 A.2d at 1226. In the corporate transaction context, "[a]ll claims grow out of the same events and courses of conduct and the same legal theories would apply." *Lawson*, 2011 WL 2185613, at *2. Further, where it is ultimately found that a fiduciary has breached his duty, "all of the minority shareholders will have been injured in the same way and by the same acts or omissions." *Van de Walle v. Unimation, Inc.*, 1983 WL 8949, at *3 (Del.Ch.).

Here, Plaintiff's claims are typical of the other Class' members' claims. *Nottingham*, supra; *Celera, supra*. Plaintiffs' claims arise from the 2011 self-tender and the disclosures relating to it, which are the same as other Class members' claims. In addition, given that the claims arose in the self-tender context, the same legal theories apply to Plaintiff's and other Class members' claims. *See Lawson*, 2011 WL 2185613, at *2.

The 2011 self-tender disclosures and Defendants' liability shall be evaluated under the standards of *Malone v Brincat*, 722 A.2d 5 (Del. 1998) and its progeny, which hold that "[a]n action for a breach of fiduciary duty arising out of disclosure violations in connection with a request for stockholder action does not include the elements of reliance, causation and actual quantifiable monetary damages." Instead, such actions require the challenged disclosure to have a connection to the request for shareholder action. The essential inquiry in such an action is whether the alleged omission or misrepresentation is material. Materiality is determined with respect to the shareholder action being sought. *Dohman v. Goodman*, 234 A.3d 1161, 1167 (Del. 2020).

Here the challenged disclosures and the action sought are identical for every Class member. Accordingly, the typicality requirement of Rule 23(a)(3) is satisfied here.

4. Rule 23(a)(4): Plaintiffs Will Fairly and Adequately Protect the Interests of the Class

Rule 23(a)(4) requires that the representative party be able to fairly and adequately protect the interests of the class. Ch. Ct. Rule 23(a)(4). Rule 23(a)(4) is satisfied where, as here: (1) the named plaintiff's interests are not antagonistic to other members of the class; and (2) plaintiff's attorneys are qualified, experienced, and generally able to conduct the litigation. *Emerald Partners v. Berlin*, 564 A.2d

670, 673-74 (Del. Ch. 1989); *In re TD Banknorth S'holders Litig.*, 2008 WL 2897102, at *2 (Del.Ch.). Rule 23(a)(4) does not require that the named party be '"the best of all representatives,'" but merely that such party is '"one who will pursue a resolution of the controversy in the interests of the class.'" *Price v. Wilmington Tr. Co.*, 730 A.2d 1236, 1238 (Del. Ch. 1997) (quoting *Ross v. A.H. Robins Co.*, 100 F.R.D. 5, 6 (S.D.N.Y. 1982)). As the Court stated in *O'Malley*:

- [T]he requirements for an "adequate" class representative are not onerous. In certain instances, a named plaintiff's understanding and control of the litigation has been held to be largely insignificant. It is a well-settled legal principle that class representatives are not required to fully understand the nuances of the legal theories underlying each of their claims. That is the job of legal counsel. Plainly, a rudimentary understanding of the claims, facts, and issues is adequate. *O'Malley v. Boris*, 2001 WL 50204, at *5 (Del.Ch.).

Rule 23(a)(4) is met here. As former Polk shareholders who received the disclosures in connection with the 2011 self-tender and whose economic interests were impaired, Plaintiffs legal and economic interests do not conflict, and are in fact identical to those of the Plaintiff Class members. See, *In re J.P.Morgan Chase & Co. Shareholder Litigation*, 906 A.2d 766 (Del. 2006).

In addition, Plaintiffs' counsel is well qualified and experienced in handling stockholder class-action and corporate litigation matters such as this type of

representative litigation. See, https://coochtaylor.com Finally, as has been amply demonstrated in this protracted and "pitched battle" litigation, Plaintiffs and their counsel have vigorously prosecuted this Action on behalf of the Class. Plaintiffs submits that they and their counsel have amply demonstrated they will fairly and adequately protect the interests of the Class.

The record in this action demonstrates Plaintiffs have acted diligently to prosecute this case. As to the length of time this case has been pending, Plaintiffs have demonstrated, to the extent any party is responsible for delay, it is Defendants. E.g., Plaintiffs' Reply Brief at 6-7, and Ex. A thereto, February 17, 2021 [Trans-ID 66345564]. Rule 23(a)(4) is satisfied.

C. The Action Satisfies Rule 23(b)(1) and (2).

If Rule 23(a) is satisfied, as is the case here, at least one of the three subsections of Rule 23(b) must also be satisfied for an action to be certified as a class action. As relevant to this motion, "[s]ubdivision (b)(1) applies to class actions that are necessary to protect the party opposing the class or the members of the class from inconsistent adjudications in separate actions," while "[s]ubdivision (b)(2) applies to class actions for class-wide injunctive or declaratory relief." *Nottingham Partners v. Dana*, 564 A.2d 1089, 1095 (Del. 1989) (citations and quotations omitted). Seeking an equitable remedy, as here, satisfies Rule 23(b)(2). *Id. In re Orchard Enterprises, Inc. Shareholder Litigation*, 88 A.3d 1, 38 (Del.Ch. 2014); *Turner*, 768

A.2d at 30-37. "Delaware courts repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2)." *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 432-33 (Del. 2012) (internal quotations omitted).[6] *In re Ebix Stockholder Litigation,* 2018 WL 3570126 (Del.Ch.); *In re Lawson Software, Inc.*, 2011 WL 2185613 (Del.Ch.). Both are met here.

1. Rule 23(b)(1)(a) is Satisfied

Rule 23(b)(1) provides for class certification where:

The prosecution of separate actions by or against individual members of the class would create a risk of:

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) Adjudications with respect to individual members of the class which

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[6] Similarly, the Delaware Court of Chancery stated:

> I also must consider Rules 23(b)(1) and (b)(2). These are routinely satisfied when corporate fiduciary cases such as these are brought. Without the class action mechanism, there would be a risk of inconsistent adjudications. Similarly, the defendants are alleged to have engaged in a course of conduct affecting all members of the class equally. Thus, I am satisfied that Rules 23(b)(1) and 23(b)(2) have been satisfied.

New Jersey Carpenters Pension Fund v. Infogroup, Inc. et al., C.A. No. 5334-VCN, Tr. at 50 (Del. Ch. Jan. 17, 2013).

would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests[.] Ch. Ct. R. 23(b)(1).

Incompatible standards are created where one stockholder is awarded one amount of per-share damages, and an identically situated stockholder is awarded a different amount of damages per share. *See Turner*, 768 A.2d at 26; see also *Noerr v. Greenwood*, 2002 WL 31720734, at *6 (Del. Ch.) (finding certification under Rule 23(b)(1) more appropriate because "any damages to which class members would be entitled would be based solely upon the number of shares that they own"). In addition, "[r]ule 23(b)(1) clearly embraces cases in which the party is obligated by law to treat the class members alike, including claims seeking money damages." *Turner*, 768 A.2d at 32 (internal quotations omitted).

Here, certification is appropriate under Rule 23(b)(1)(A) and (B). Defendants are alleged to have breached fiduciary duties that affected all Class members similarly. *Strassburger v. Earley*, 752 A.2d 557, 579 (Del. Ch. 2000) (holding that the "traditional measure of damages" is "equal to the 'fair' or 'intrinsic' value of [the] stock at the time of the merger, less the price per share that [class members] actually received"). *In re Philadelphia Stock Exchange Inc.*, 945 A.2d 1123, 1139-40 (Del. 2008) (class proper includes all shares held at the time of the wrong, here the improper disclosures). *In re Ebix, Inc. Stockholder Lit.*, 2018 WL 3570126 at *

2-3 (Del.Ch.). Thus, if separate actions were commenced, identically situated Class members could be awarded different per-share damages, which would produce inequitable results and establishing incompatible standards for Defendants. In addition, adjudication of individual Class members' claims would, as a practical matter, be dispositive of the interests of other Class members, which would in turn potentially prejudice non-parties and substantially burden the Court with an inefficient means of resolving this Action. *See In re Best Lock Corp. S'holder Litig.*, 845 A.2d 1057, 1095 (Del. Ch. 2001). Accordingly, certification under Rule 23(b)(1)(A) and (B) is appropriate.

2. Rule 23(b)(2) Is Satisfied

Rule 23(b)(2) provides for class certification where:

The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole . . . . Ch. Ct. R. 23(b)(2). Where particular facts of any stockholder would have no bearing on the appropriate remedy, Rule 23(b)(2) certification is appropriate. *See Hynson v. Drummond Coal Co.*, 601 A.2d 570, 575-77 (Del. Ch. 1991). Class certification under Rule 23(b)(2) is appropriate where defendants engaged in a single course of conduct that affects all members of the class, made an identical disclosure to each, and the damages are owed equally to all class members. *See In re Celera Corp.*

S'holder Litig., 2012 WL 1020471, at *18 (Del. Ch.) (holding that Rule 23(b)(2) is applicable to claims for damages where "the monetary relief flows directly from a finding of liability to the class as a whole"); *see also In re Del Monte Foods Co. S'holders Litig.*, C.A. No. 6027-VCL, tr. at 48-49 (Del. Ch. Dec. 12, 2011) Appendix Ex. F. ("The idea that a court can't certify a class under (b)(2) simply because it involves monetary damages . . . is based on an overly cramped and unpersuasive reading of *Shutts* and *Wal-Mart*.").

Here, Defendants are alleged to have breached their fiduciary duties in connection with the 2011 self-tender. In doing so, Defendants engaged in a course of conduct that affected all Class members in the same manner. The particular facts of any Class member will have no bearing on the appropriate remedy. Reliance on the disclosures is irrelevant. Plaintiff seeks class-wide equitable relief for Defendants' misconduct. Such equitable relief will be shared by Class members equally. Thus, certification under Rule 23(b)(2) is appropriate.

D. The Action Satisfies Rule 23(aa) and (f).

As representatives of the Class, Plaintiffs warrant that they have not and will not accept any form of compensation, directly or indirectly, for serving as Class representatives in this Action, excepting only (i) such damages or other relief as the Court may award to it as a member of the Class; (ii) such fees, costs or other payments as the Court expressly approves to be paid to it, or (iii) reimbursement,

paid by its attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action. *See,* Verifications of SAC ¶5, December 19, 2016. Both Plaintiffs have remade those certifications as required by Rule 23(f) which affidavits are filed contemporaneously herewith.

II. THE SETTLEMENT SHOULD BE APPROVED.

Delaware law favors the voluntary settlement of contested claims. *See*, *e.g.*, *In re Triarc Cos., Inc. Class & Deriv. Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001). In reviewing a proposed class or derivative settlement, the Court is "not required to decide any of the issues on the merits." *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986). Rather, the Court must "determine, using its business judgment, whether the settlement terms are fair, reasonable, and adequate." *Ryan v. Gifford*, 2009 WL 18143, at *5 (Del. Ch. Jan. 2, 2009). In doing so, the factors to be considered are:

> (1) the probable validity of the claims, (2) the apparent difficulties in enforcing the claims through the courts, (3) the collectability of any judgment recovered, (4) the delay, expense and trouble of litigation, (5) the amount of the compromise as compared with the amount and collectability of a judgment, and (6) the views of the parties involved, pro and con.

Polk, 507 A.2d at 536.

Plaintiff believes the allegations in the Complaint have been supported by fact discovery. However, litigating the claims through trial and appeal presented real risks. Most significantly, Plaintiff faced meaningful challenges with respect to

proving damages on those claims. The benefits of the $15 million are substantial when compared to those risks.

A. Risks of Continued Litigation

1. Liability: Universal Trial Risk and Appellate Risk

As reflected in the description of facts above, the Self-Tender disclosures were flawed. Plaintiffs believe they had good arguments and facts to establish that Defendants committed a non-exculpated breaches of fiduciary duty. As of the time of Settlement, the Court had not agreed to the presentation of any other claims. Litigation is risky, and it is impossible to confidently predict the outcome of trial. Defendants at trial would have continued to have the representation of their great corporate litigators to present their defense. Further, even if this Court awarded compensatory or rescissory damages, Defendants would have appealed. What the Delaware Supreme Court would conclude regarding the scope of *Dohmen* is an open question.

2. Collectability Risk

Much of the Polk family wealth is held in a complex array of trusts and other devices often used in estate planning by very wealthy families. These can make collection of judgments against specific individuals difficult, if not impossible. Until a judgment was obtained, Plaintiffs lacked the ability to assess this risk.

B. Plaintiffs Faced Substantial Risk As To Ultra-Nominal Damages

Even if Plaintiffs presented strong evidence of liability, that is no guarantee this Court or the Supreme Court would require Defendants to pay substantial monetary damages. *See, In re Tesla Motors, Inc. S'holder Litig.*, 2022 WL 1237185, at *2 (Del. Ch. Apr. 27, 2022) (finding, after trial under entire fairness standard, that process "was far from perfect," but entering judgment for defendant because Court found defendants proved "fair price"), *aff'd* 2023 WL 3854008 (Del. June 6, 2023).

While Plaintiffs did not need to prove reliance to prevail on liability, there is an ongoing dispute as to whether under Delaware law reliance needed to be proven to recovery more than nominal damages and if so, what the measure of nominal damages is. Those issues have been briefed extensively already and Plaintiffs do not repeat the arguments here. The briefing makes clear, however, that Plaintiffs faced significant risks as to damages at trial and on appeal.

Even assuming liability, even if this Court had established a right to "ultra-nominal" damages, trial would have involved a battle of the experts and the issue of the proper measure of such damages. Plaintiffs were prepared to present two theories of damages: fair value at the time of tender and rescissory damages.

Plaintiffs' fair value expert would have presented an analysis using Defendants' own valuations and numbers, backing out the minority and liquidity discounts. Appendix A. Plaintiffs believe this would have been the proper measure

of compensatory damages. E.g., *Gearreald v. Just Care, Inc.*, 2012 WL 1569818 at *9 (Del.Ch.); *Borruso v. Communications Telesystems Inter.*, 753 A.2d 451, 459-60 (Del.Ch. 1999). They also believe using Defendants' own valuation figures would have been a strong presentation. Those damages would have been $9,402,750. The value of the Settlement exceeds those damages.

Rescissory damages were far more problematic. They would have required that Plaintiffs convince the Court the Class members most likely would have held their shares for another 18 to 24 months and then received the benefit of the going private transaction. Their expert opinion would have supported that conclusion. Appendix B. If successful in convincing the Court Class members would have held their shares until the going private transaction, the amounts they would have received were undisputed. However, rescissory damages and their amount are discretionary and a Court may award any value that the stock had between the time of the transaction to trial. *In re Orchard Enterprises, Inc. S'holder Litig.*, 88 A.3d 1, 38 (Del. Ch. 2014). While that maximum valuation was $78,182,125, the risk that the Court would award something less than the maximum was high.

Based on all of these factors, Plaintiffs and their counsel believe $15 million is a great outcome.

C. Other Factors Support the Settlement.

Delaware courts consider "the views of the parties involved" in determining the "overall reasonableness of the settlement." *Polk*, 507 A.2d at 536; *see also Jane Doe 30's Mother v. Bradley*, 64 A.3d 379, 396 (Del. Super Ct. 2012). The parties reached the Settlement after significant discovery and arm's-length negotiations by skilled counsel overseen by an experienced mediator. Only after a full day of mediation and months of negotiation, numerous calls and emails did Plaintiffs agree to settle.

In addition, to date, "no shareholders have objected to the proposed settlement. That fact obviously weighs heavily in the Court's analysis." *Spen v. Andrews Grp., Inc.*, 1992 WL 127512, at *1 (Del. Ch. June 5, 1992).

D. The Notice Was Appropriate.

Notice was provided directly by mail to all class members or their nominees using contemporaneous shareholder lists from Polk. When notices were returned as non-deliverable, the Settlement Administrator followed up by seeking a subsequent address and mailing to that address. Ultimately only 5 shareholders could not be located. None of those shareholders are class members as records related to the 2013 going private transaction show they were all owners of record for all shares they held in 2011 well into 2013.

E. The Proposed Plan Of Allocation Should Be Approved.

Plaintiff also seeks approval of the proposed Plan of Allocation. "A distribution plan 'must be fair, reasonable, and adequate.'" *In re PLX Tech., Inc. S'holders Litig.* ("*PLX Distribution*"), 2022 WL 1133118, at *5 (Del. Ch. Apr. 18, 2022). Plaintiff's proposed Plan of Allocation is consistent with how settlement funds are distributed to class members in corporate merger and acquisition litigation. The proposed Plan of Allocation treats Class Members equitably and allocates the Net Settlement Fund fairly and efficiently, providing for *pro rata* distribution of the Net Settlement Fund to Class Members that tendered or sold shares of Polk stock at during the Tender Offer.

Shareholders who tendered are automatically mailed checks. The claims process is already under way and updated information on addresses and successors in interest is being actively solicited. The notices to the non-tendering owners at the time has given any eligible sellers ample opportunity to file a claim.[7] The net available settlement funds will be divided pro-rata among all eligible shares. Rather than have any residual funds disposed of by *cy-pres* or escheat, (Rule 23(e)(6)), if there are any residual funds after approximately a year after distribution of the checks to the Class, they will be returned to the Defendants.

[7] The Settlement Administrator has received inquires from such shareholders, although Mitchell Partners has filed the only "seller" claim that is eligible for participation.

F. The Scope Of The Release Is Appropriate.

The release of all claims related to the ownership of, or transactions in, Polk shares is appropriate in scope. The claims arise from transactions in which the Class members sold their shares, thereby terminating their ownership. Any claims arising from that termination of ownership are at least 13 years old. Further, Polk was taken private in 2013, 11 years ago. Even if a class member tendered or sold only a portion of their Polk shares in 2011, no Class member has owned any Polk shares since 2013. It is difficult to conceive of circumstances under which any released claim not in litigation already would not be time-barred. Plaintiffs are not aware of any such litigation other than this Action.

III. THE REQUESTED FEE AND EXPENSE AWARD IS FAIR AND SHOULD BE APPROVED.

This Court awards attorneys' fees and expenses to counsel whose efforts have created a common fund. *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012). Plaintiff requests reimbursement of counsel's out-of-pocket expenses, and a fee award of 27.5% of the common fund, plus reimbursement of out of pocket expenses.

A. Expenses Should Be Reimbursed from the Total Fund.

Plaintiff requests reimbursement of $422,034.90 in expenses in addition to a

percentage of the settlement fund requested awarded for attorneys' fees. This is the approach the Court took in awarding Plaintiffs reimbursement of expenses and in other cases. *E.g.*, *Dell*, 300 A.3d at 731–32.

The expenses are grouped by category and by the law firm that advanced them in the affidavit of R. Bruce McNew, filed herewith. Mr. McNew is authorized to make this application on behalf of all the firms listed. The summary was complied from detailed listings of expenses kept on a contemporaneous basis. Those records are available for the Court upon request. These expenses are commensurate with litigation that has been this hard fought for this long. All these expenses have been advanced on a fully contingent basis. Plaintiff's expenses are reasonable and were necessary to litigate the action and confer benefits on the Class. Plaintiff respectfully requests their reimbursement.

B. The *Sugarland* Factors and Precedent Support a Fee of 27.5% of the Settlement Fund.

Plaintiffs request and award of 27.5% or $4,125,000. In setting an attorneys' fee award, Delaware courts look to the *Sugarland* factors: "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved." *Ams. Mining*, 51 A.3d at 1254 (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980)). Delaware courts also consider the stage of the case at which the settlement was reached. *In re Dell Tech. Inc Class V S'holders. Lit.*,, 300 A.3d 679,

693–700 (Del.Ch. 2023) (collecting and citing authorities).

1. The Benefits Achieved

The benefit achieved is the "first and most important of the *Sugarland* factors." *Ams. Mining*, 51 A.3d at 1255. The $15 million benefit achieved here is a rare result for several reasons.

First, Plaintiffs succeeded in litigating a disclosure-based challenge relating to an otherwise voluntary transaction and achieved a recovery greater than the fair value of the shares at the time of the transaction. Plaintiffs do not claim to have an encyclopedic knowledge of all settlements, but they are unaware of any similar settlement in Delaware that achieved this benchmark.

Second, the settlement providing an additional $15 million payment on a $28 million transaction is an outlier in terms of recovery above the transaction price. This is significantly greater than the 16.5% median of the entire-fairness settlements the Court analyzed in *Dell*, and comparable to the highest of those settlements. 300 A.2d at 723–24.

Third, $15,000,000 is 160% of the $9,402,750 in compensatory damages. "[A]n exceptional recovery will produce an exceptional fee." *In re Orchard Enters. Inc. S'holder Litig.,* 2014 WL 4181912, at *8 (Del. Ch.). It is also about 20% of the "home run" maximum $78,182,125 in rescissory damages. These high percentages confirms that Plaintiffs maximized the recovery. Successfully obtaining high-

percentage results should be rewarded with a high percentage award.

2. The Effort of Counsel and Stage of the Settlement Warrant a Substantial Fee.

When the benefit is quantifiable, the fee should be based on a percentage of the benefit that rewards counsel for pushing the case further. *Ams. Mining*, 51 A.3d at 1259–60; *see also Dell*, 300 A.3d at 692–99. "[T]he use of guideline ranges promotes consistent awards so that similar cases are treated similarly." *Dell*, 300 A.3d at 695. A case that stops short of a fully litigated judgment merits an award of 25% to 30%. *Id.* Selecting the exact percentage, however, is a discretionary exercise and not a mechanical one. *Id.* The requested award, even if fees and expenses are combined is 30%, justifiably at the high end of the settled before trial range and within precedent. See, *Ryan v. Gifford*, 2009 WL 18143 (Del.Ch. Jan. 2, 2009) (awarding 33% of cash amount where plaintiffs' counsel engaged in "meaningful discovery," survived "significant, hard fought motion practice" and incurred nearly $400,000 in expenses) (cited with approval *Ams. Mining.,* 51 A.3d at 1260). It is less than the 33% warranted after a trial. *Dell*, 300 A.3d at 695.

After ten years of litigation, this action settled. Plaintiffs litigated the case. They served multiple subpoenas, contested discovery responses, had a lengthy and successfully dispute over privilege claims, which resulted in production of many of the documents most damaging to Defendants, took numerous fact depositions, prepared two expert reports, prepared two alternate damages analyses, defended their

depositions, fully briefed and largely prevailed on a contested class certification motion, and litigated the nature and scope of the claims being presented through multiple motions. Only finishing expert discovery and limited pretrial motion practice remained before trial.

3. The Secondary Factors Support the Requested Fee Award.

The other *Sugarland* factors support the requested fee award. The action involved "true contingency risk" because "counsel did not enter the case with a ready-made exit or obvious settlement opportunity." *Dell*, 300 A.3d at 726. This case was challenging and complex. Defendants' aggressive approach to discovery also made the case more difficult, but Plaintiff still prevailed. The Court is familiar with the reputations of the firms involved and has seen their work as this case has been litigated.

Part of the contingency risk in this action also is related to the maximum potential recovery in the case. As Plaintiffs' counsel has noted previously to this Court, unlike the cases involving large publicly traded companies with large public share floats, where potential damages are multiple hundreds of millions, cases such as this one, involving OTC stocks with small public share floats, involve lower potential recoveries and therefore higher risks. The amount of work, as to many aspects of the case, remains the same, but the potential reward is less. This can be seen in the manner in which these cases develop. Unlike the large public company

cases, where multiple counsel vie for, and often openly contest, the right to represent the class, these cases usually only see only one firm willing to take the case, or none at all. The large well-known Plaintiff's firms, simply are not interested because the maximum potential recovery potential makes them too risky.

Finally, "[t]he time and effort expended by counsel serves [as] a cross-check on the reasonableness of a fee award." *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1138 (Del. Ch. 2011). Plaintiff's counsel devoted 5,170.4 hours (with a value of $3,817,145.00 on a non-contingent basis) litigating the case from January 14, 2014 through reaching an agreement in principle. The implied hourly rate of the requested fee award is $798 per hour. This is reasonable and is consistent with precedent. See, *In re Cornerstone Therapeutics Inc. S'holders Litig.*, 2017 WL 384272 (Del. Ch.) (Order); 2017 WL 264993 (Del. Ch. Jan. 17, 2017) (Brief) (awarding a percentage of 27.8% where counsel reviewed 20,000 pages of documents, took four depositions, and engaged in some motion practice).

IV. THE REQUESTED INCENTIVE FEES ARE APPROPRIATE

"Public policy favors incentive awards in appropriate circumstances: 'Compensating the lead plaintiff for efforts expended is not only a rescissory measure returning certain lead plaintiffs to their position before the case was initiated, but an incentive to proceed with costly litigation (especially costly for an actively participating plaintiff) with uncertain outcomes.'" *Dell*, 2023 WL 4864861,

at *37 (quoting *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006)). The award can be based on the "time, effort and expertise expended by the class representative, and a significant benefit to the class." *Raider*, 2006 WL 75310, at *1.

The facts of this case support modest $5,000 incentive awards for each plaintiff, to be paid out of the attorneys' fees award.

Each of the Plaintiffs had personnel spent significant time monitoring this Action over the last 10 years, produced their records, had a representative attend a deposition, and Mitchell Partners had a representative attend mediation in Wilmington. Awards of $5,000 each are in line with incentive awards approved by this Court before. Plaintiff respectfully submits that the requested $5,000 incentive awards are well justified here.

CONCLUSION

For all of these reasons, Plaintiffs and Plaintiffs' counsel respectfully request that the Court: (i) certify the Settlement Class; (ii) approve the Settlement as fair, reasonable, and adequate; (iii) reimburse Plaintiff's counsel's expenses as requested and award Plaintiff's counsel attorneys' fees of 27.5% of the Settlement Amount; (iv) award reimbursement of the litigation expenses of $422,034.90, and (v) award each Plaintiff an incentive award of $5,000 to be paid out of counsels' fee.

September 23, 2004

COOCH AND TAYLOR, P.A.

/s/ R. Bruce McNew

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EFiled: Sep 23 2024 11:24AM EDT
Transaction ID 74563695
Case No. 9250-VCG

EXHIBIT A

DRAFT LETTER DATED 11.8.19

THE CENTER FOR
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EXPERT ANALYSIS AND TESTIMONY SINCE 1980

Reply to Philadelphia Office

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November 8, 2019

R. Bruce McNew, Esquire
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Re: *Buttonwood Tree Value Partners, et al. v. R.L. Polk & Co., Inc., et al.*

Dear Mr. McNew:

At your request, we assessed the Offer to Purchase for Cash extended by R.L. Polk & Co., Inc. ("Polk") on March 31, 2011. We reserve the right to amend this report upon receipt of any additional relevant information.

I. Documents Relied Upon

- March 31, 2011 Offer to Purchase for Cash
- May 2, 2011 First Supplement to Offer to Purchase for Cash
- March 25, 2011 Fairness Opinion Supplement to the Board of Directors of R.L. Polk & Co. by Stout Risius Ross, Inc. ("SRR")

Any additional documents used in preparation of this report, such as professional and governmental publications, are fully cited herein.

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II. BACKGROUND

On March 31, 2011, Polk extended an offer to purchase up to 37,037 shares of common stock in the company from shareholders at a purchase price of $810 per share.[1] In determining the fairness of the Offer, Polk relied upon the March 25, 2011 Fairness Opinion conducted by SRR. SRR presented valuation analyses based on three methods: discounted cash flow, guideline public company, and merger and acquisition. SRR arrived at the following ranges of equity value per share:[2]

- Discounted Cash Flow: $998.34 to $1,095.28
- Guideline Public Company: $1,030.03 to $1,113.93
- Merger and Acquisition: $1,054.27 to $1,136.30

SRR then applies a 25% discount for alleged lack of marketability. This results in an overall range of values from $748.76 to $852.23 per share, resulting in the final offer price of $810 per share.

III. COMMENTS

The assumptions and methods employed by SRR in deriving the above ranges (prior to the lack of marketability discount) appear to be within reason. However, discounts for lack of marketability are typically applied to fair market valuations of interests in closely held companies when the prospective purchaser is unknown. SRR's ultimate range alleges to represent the fair market value of equity per share. It is important to note that other definitions of value exist beyond fair market value. As such, fair market value is not necessarily the applicable definition of value in this matter. A discussion of the different definitions of value, and particularly the contrast between Fair Market Value and Investment Value is summarized in *Business Valuation and Taxes, Procedure, Law, and Perspective* as follows:[3]

> [F]air market value necessarily involves hypothetical buyers, hypothetical sellers, and a hypothetical marketplace. The term *investment value* differs significantly from fair market value in that investment value denotes value to a *particular* buyer, seller, owner, or investor.

The SRR analysis was conducted to facilitate the purchase of shares by Polk from shareholders. As such, the buyer, potential sellers, and market were not hypothetical, but had already been identified. Accordingly, SRR's valuation under a fair market value standard and the associated reduction for lack of marketability is not appropriate. As such SRR's 25% reduction for an alleged lack of marketability should be added back to their estimate of value.

[1] Offer to Purchase for Cash
[2] Pp. 21-23
[3] p. 15

Adding 25% to the offer price of $810 yields an adjusted price per share of $1,080.[4] This figure falls within the equity value range derived by SRR.

IV. Summary

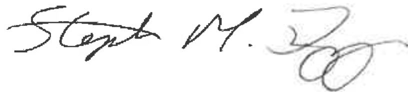
SRR's inclusion of a discount for lack of marketability is unwarranted in this matter, as the buyer and pool of sellers were known rather than hypothetical. Had the lack of marketability discount not been applied the appropriate offer price would be $1,080 per share.

Please do not hesitate to contact us if you have further questions.

Sincerely,

The Center for Forensic Economic Studies

Chad L. Staller, JD, MBA, MAC, CVA



Stephen M. Dripps, M.Fin., CVA

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[4] $1,080 = $810 / (1-0.25)

EXHIBIT B

DRAFT ANTICIPATED INVESTMENT STRATEGY DATED 10.21.19

Anticipated investment strategy of shareholders investing in firms like R.L. Polk & Co.

Prepared by:

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October 21, 2019

Summary:

Long-term value investing in U.S. stocks is one of the more popular ways for both individual and professional investors to earn sizable returns. However, it requires the investor to have considerable patience, the right temperament, and analytical skill to identify attractive opportunities and exit strategies. If an investor possesses these traits, then value investing is a viable means to achieve superior risk-adjusted returns because the "value anomaly" is one of the most persistent and widespread phenomena in finance. This anomaly is supported by an extensive amount of academic research, as the "value premium" has been observed in numerous countries and across many asset classes for up to 100 years, including U.S. equities (e.g., see Ilmanen, Israel, Moskowitz, Thapar, and Wang, 2019, and Gray and Carlisle, 2013). Although there is continuing debate about what is the

specific source of the value premium (i.e., either risk-based or behavioral-driven), there is growing evidence that investor misperceptions of expected risk and return are driving at least a portion of this premium (Piotroski and So, 2013). Investor errors in projecting future equity returns are likely to occur for stocks that exhibit a larger difference between a company's current market price and its "fundamental" value based on its financial condition.

In addition, stock markets with low trading volume that do not have strong financial disclosure requirements are viewed as less transparent to investors (also known as financially "opaque" and "illiquid" markets). Due to this lack of information, stocks that trade in illiquid markets are more likely to be overlooked by the average investor and therefore mis-valued. In turn, this potential for mis-valuation provides valuable investment opportunities to long-term value investors that follow a niche strategy which focuses specifically on buying illiquid stocks. These investors actively search for such stocks because they are expected to earn a substantial premium, at some point in the future, when a "liquidity event" occurs such as the sale of the firm to another entity.

As White (2016) documents, stocks such as R.L. Polk & Co. (ticker = POLL) that trade on the OTC Market's Pink Sheets system are highly illiquid, predominantly held by retail investors, susceptible to alleged market manipulation, and are likely to generate negative and volatile returns on average. The author also

notes that listing a stock on the Pink Sheets system requires relatively minimal levels of financial disclosure which can create severe valuation problems for investors. This lack of disclosure can lead to an informationally "inefficient market" (e.g., Bushee and Leuz, 2005). This inefficiency and lack of trading volume makes it very difficult for a casual investor to find a firm such as R.L. Polk & Co. Investors in stocks such as these must deliberately search out stocks with these characteristics. Someone who invests in this type of stock will have performed careful research to identify the stock and its potential as well as possess the patience to wait for an opportune liquidity event to occur.

Pinto et al. (2015) and others suggest that the valuations of illiquid stocks and privately held firms should be subject to a substantial discount for lack of marketability (DLOM) and, where applicable, a discount for lack of control (DLOC) if the investors hold a minority interest in a firm that is not operating at its optimal level. Although there are many different methods to estimate these discounts, most analysts (as well as judges, regulators, and tax authorities) typically use a range of 10% to 35% for both discounts (e.g., see IRS, 2009). In Polk's case, both discounts are relevant due to the stock's illiquidity and the relatively small percentage of shares held by minority investors not related to the Polk family. Given the range of these relatively large discounts, a patient long-term value investor plans to benefit from a large surge in an illiquid, opaque

stock's value when these marketability and control discounts are removed due to a "liquidity event" such as a credible buy-out offer of the firm by another entity. From a minority investor's perspective with limited information, the 2011 tender offer by Polk could be viewed as a legitimate liquidity event because of the offer price's sizable premium over the market price at the time of this offer. It is also reasonable to assume that if this tender offer had not been made, then long-term investors like Mitchell Partners, L.P., and Buttonwood Tree Value Partners L.P. (i.e., "Buttonwood") would have continued to hold Polk's shares and wait for an appropriate liquidity event in the future. The next such event to occur for Polk was the sale to IHS.

Beyond the problems of inadequate financial disclosure, thinly traded markets, and the lack of control associated with most OTC stocks, a minority investor that follows a Graham and Dodd (1934) style of investing must also consider the expected financial performance of the company. Ideally, a value investor wants to have an informational and/or analytical "edge" over other investors. This can be accomplished by performing rigorous fundamental financial analysis as well as by identifying "signals" of future positive financial performance. One such signal could be related to the ownership structure of the firm's equity.

There is growing academic evidence that "founding-family" and/or "family-controlled" publicly traded companies (sometimes referred to as "FFCFs") can perform better than firms of similar size and industry that do not have a large ownership stake held by the founder's family. For example, Anderson and Reeb (2003a) notes that one-third of S&P 500 firms are "FFCFs" and out-perform comparable non-family-owned firms, especially when the CEO is a family member. However, these positive benefits of FFCFs can, in more extreme cases, be offset if the firm's disclosures are not transparent and the family members use their control to expropriate wealth from minority shareholders. In most cases, the family ownership stake can help align the incentives of shareholders, management, and creditors in order to increase the firms' value as well as its chances of survival through difficult economic conditions. In turn, this is beneficial because the greater probability of survival and better alignment of interests can lead to increased stock returns to all types of investors. Given these findings and other related evidence, a long-term investor could use the presence of a large family ownership stake in a well-managed business as a strong, positive signal about the firm's future performance.

Based on the extensive academic literature on value investing, illiquid and opaque stock markets, and the role of family-founded and family-controlled firms described in this report, an investment in Polk stock had the potential to generate

above-average risk-adjusted returns. In practice, real-world investors that invest in firms like Polk such as Mitchell Partners and Buttonwood Value Tree Partners have indeed achieved superior returns. For example, Mitchell Partners' annual investment returns of 11.11% during 2000-2018 have exhibited substantially less risk than the overall market while exceeding the 8.54% annual return of the Russell 2000 small cap stock index by over 2.5 percentage points during this period (and the Standard & Poor's 500 Stock Index by 4.6 percentage points).[1] Thus, following a long-term value investing approach which focuses on family-owned firms that trade in illiquid markets can be successful if appropriate patience is exercised. Overall, investments in stocks such as R.L. Polk & Co. are supported by a large amount of academic evidence within several sub-fields of finance. In addition, this investment is consistent with these funds' overall value-focused investment strategy because Polk's stock had strong fundamentals, traded on the illiquid OTC Market, and was family-controlled with approximately 90% of shares held by the Polk family.

The Rationale for Long-term Value Investing:

Long-term value investing is a viable means to achieve superior risk-adjusted returns because the value anomaly is one of the most persistent and

[1] The investment and financial performance reported here are the author's calculations based primarily on data provided by Mitchell Partners, L.P.

pervasive phenomena according to academic research. For example, the value premium (also referred to as the "value factor") has been observed in numerous countries and many asset classes for up to 100 years, including U.S. equities (e.g., see Asness, Moskowitz, and Pedersen, 2013, Ilmanen et al., 2019, and Gray and Carlisle, 2013). The concept underlying the value premium dates to Graham and Dodd (1934) which espoused a careful analysis of the "fundamentals" of a stock's financial condition in order to identify "cheap" stocks where the "intrinsic" value is greater than the current stock price. In this way, an investor can identify "cheap" and "expensive" stocks with the goal of buying the cheap securities and avoiding the expensive securities.

This value premium can be economically quite large. For example, both Asness et al. (2013) and Ilmanen et al. (2019) show relatively similar value premium estimates for the U.S. equity markets at +3.7% and +4.3% per year, respectively. These authors also show that the value anomaly is present both globally and across many different asset classes (e.g., stocks, bonds, currencies, and commodities). Thus, the value premium is both pervasive and persistent across assets, countries, and time. This value anomaly, along with the "momentum" anomaly first reported in Jegadeesh and Titman (1993), are viewed

by many academic researchers as well as investment practitioners as the most consistent and statistically reliable factors that can affect stock returns.[2]

It should be noted, however, that these anomalies exhibit a substantial amount of variation in return performance on a year-to-year basis. For example, Asness et al. (2013) reports a standard deviation of 12.8% per year for the value premium in U.S. stocks, which is over three times larger than the average annual +3.7% return to this factor. Gray and Carlisle (2013) observe that to take advantage of the value premium an investor must have a long-term perspective and a strong mental attitude in order to tolerate the variability of the value factor and withstand several consecutive years of under-performance relative to conventional investment benchmarks such as the Standard & Poor's 500 Stock Index (S&P 500). Gray and Carlisle (2013) summarize this view from two highly successful investment managers at Berkshire Hathaway, "A value investment strategy might provide an edge, but some other element is required to fully exploit that advantage. Warren Buffett and Charlie Munger believe that the missing ingredient is

[2] The momentum effect describes how the past return performance of a stock (usually over the past 12 months) is positively related to future stock returns. Thus, if a stock has declined over the past 12 months, then it is more likely to continue to decline (and, conversely, the stock is likely to rise in the future if it has increased in the recent past). Using over 200 years of data, Geczy and Samonov (2016) confirm that the momentum effect has been present for a very long time. Other anomalies that appear to represent fairly persistent return factors are: low-volatility, firm quality, investment activity, and liquidity. See Frazzini and Pedersen (2013), Fama and French (2015), and Pastor and Stambaugh (2003) for examples of these factors. Given that Mitchell Partner's and Buttonwood's investment strategies are focused on "value" stocks (a.k.a., "cheap" stocks), I will focus in this report on the value anomaly as a key motivation for why long-term value investing can be successful.

temperament. … 'what you need is the temperament to control the urges that get other people into trouble in investing.'"

To help understand why long-term value investing can be a viable, successful strategy, it is useful to understand some of the related academic literature in finance and economics. After the pioneering work by Sharpe (1964), Lintner (1965), and Mossin (1966) yielded the Capital Asset Pricing Model (CAPM) over 50 years ago, subsequent empirical research has attempted to test this theoretical model in order determine whether a single "market" risk factor (referred to as "beta") is sufficient to explain real-world security returns. William Sharpe ultimately shared in the 1990 Nobel Prize in Economics due to his contributions in formulating the CAPM. This model is also consistent with the Efficient Market Hypothesis (EMH) first posited by Fama (1970) which states (in its "semi-strong" form) that all publicly available information is quickly incorporated into a security's prices.[3] However, beginning with Black, Jensen, and Scholes (1972), the CAPM's theoretical predictions were not found to be fully supported by empirical data. This started an intensive search for explanations of why real-world returns deviated from those expected by the CAPM.

[3] Eugene Fama shared the 2013 Nobel Prize in Economics for his work in the area of EMH.

Early work by Banz (1981) first identified a "size" effect where smaller stocks earned higher returns than those predicted by CAPM. Rosenberg, Reid, and Lanstein (1985) noted that a stock's price-to-earnings ratio could be useful in generating stock returns above those expected by the CAPM (this is commonly referred to as "risk-adjusted excess returns" because the returns are above and beyond what would be expected based on a stock's CAPM beta or other asset pricing model). Campbell and Shiller (1988) was another seminal paper that showed how dividend yields (i.e., a stock's dividend divided by its current stock price) contained useful information about future stock market returns.

DeBondt and Thaler (1985) observed that stock returns tend to "overreact" and based their assessment on the psychology of decision-making when faced with risky choices. Kahneman and Tversky (1979) found that people can make irrational choices when presented with a choice between risky alternatives that are driven by psychological "biases" rooted in humans' inability to perfectly process all relevant information. Kahneman and Tversky's work led to a Nobel Prize in Economics for Daniel Kahneman during 2002. In addition, DeBondt and Thaler's (1985) spawned a new branch of financial research known as "behavioral finance" which attempts to explain CAPM and other asset pricing anomalies based on

investors' psychological biases.[4] In turn, Richard Thaler received the 2017 Nobel Prize in Economics for his ground-breaking work in behavioral finance.

Building upon these earlier empirical observations, Fama and French (1992, 1993) developed the first empirical "multi-factor" model to explain fluctuations in stock returns.[5] The Fama-French 3-factor model identified not only the "market" factor from the CAPM but also included two additional variables to improve upon the model's explanatory power and help explain the anomalies that had been identified in prior research. The authors found a "size" factor and a "value" factor as two economically significant variables which can explain real-world stock returns better than the CAPM. This important finding spurred a rapid growth in research to identify other potential explanatory factors including the Jegadeesh and Titman's (1993) "momentum" effect described earlier in this analysis. Carhart (1997) refined the Fama-French 3-factor model to include a momentum factor which, in turn, led to a proliferation of research papers which claim to have identified additional factors. Cochrane (2011) states that there is now a "zoo of new factors" and Harvey, Liu, and Zhu (2016) shows that relatively few of these

[4] For example, empirical models of investor sentiment developed by Baker and Wurgler (2006), among others, were motivated by this earlier work.

[5] A "factor" model attempts to isolate a parsimonious set of key variables that can describe a stock's or portfolio's returns. The CAPM is consider a "one-factor" model since the riskiness of the global "market" portfolio is the only variable used to described security returns. Ross (1976) developed the first "multi-factor" model but this theoretical specification did not explicitly describe which factors should be included in empirical tests.

factors are robust after their analysis of 300+ factor-based research papers. As noted in Harvey et al. (2016) and earlier research, the value effect is one of the more robust, statistically reliable factors in the 27 years since the publication of the original Fama-French 3-factor model.[6]

Subsequent to Fama and French's work in the early 1990s, there has also been a search for an explanation to why additional factors, beyond the CAPM's market factor, are economically significant drivers of security returns. This research falls into one of two camps: 1) risk-based or 2) behavioral / investor mispricing explanations. For example, Fama and French (1992) suggest the additional factors compensate for the risk of financial distress and Fama and French (1995) and Chen, Petkova, and Zhang (2008) support this notion by showing systematic differences in future earnings growth rates and returns between "value" and "growth" stocks. Related risk-based work has also examined different stocks' sensitivities to macroeconomic risks such as Cohen, Polk, and Vuolteenaho (2003), Campbell, Polk, and Vuolteenaho (2009), and Lettau and Wachter (2007).

In contrast, a patient, rational investor will seek out value stocks to exploit the psychological biases of other investors in the market. The pattern of

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[6] In more recent work, Fama and French (2015) have identified a five-factor model that includes two additional factors ("quality" and "investment") which claims to subsume many of the other anomalies noted in Cochrane (2011) and Harvey et al. (2016). Most relevant for my report is that the value factor remains one of the key explanatory variables in this newer five-factor model.

incorrectly estimating the future performance of firms was noted in Lakonishok, Shleifer, and Vishny (1994) and has been supported in LaPorta, Lakonishok, Shleifer, and Vishny (1997), Dechow and Sloan (1997), Piotroski and So (2013), and several other studies. Shleifer and Vishny (1997) argues that for these behavioral biases to persist, there must be some limitations to exploiting these biases such as agency conflicts with arbitrageurs and professional money managers as well as high transaction costs.[7] Empirical research by Chevalier and Ellison (1997) confirms that such agency conflicts can exist amongst mutual fund portfolio managers.

Although there is continuing debate about what is the specific source of the value premium (i.e., either risk-based or behavioral), there is growing evidence that investor misperceptions of expected risk and return are driving at least a portion of this premium (as noted in Piotroski and So, 2013, and references within that study). Piotroski and So (2013) summarize how this finding relates to long-term value investors, "assuming no impediments to trade or arbitrage, long-term investors profit through the capture of subsequent revisions of biased expectations and related price conditions." The research discussed above suggests that professional value investors such as Mitchell Partners and Buttonwood can achieve

[7] An agency conflict occurs when an agent (e.g., a money manager) does not have an incentive to work in the best interest of a principal (e.g., a retail investor) by exerting less effort, taking less risk, etc.

high risk-adjusted returns by taking advantage of mispriced stocks caused by behavioral biases and agency conflicts which cannot be easily arbitraged away.

OTC Market Structure:

In addition to following a long-term value investing strategy, the chances of investment success can be improved by identifying financial markets where the investor might have an informational advantage over other investors in those markets. In finance and economics, the issues associated with an informational advantage of one set of economic agents over others is commonly referred to as an "asymmetric information" problem. In an investing context, this issue arises whenever some people (typically "insiders" such as senior management and board directors) have more information than "external" investors (i.e., independent investors that are not affiliated with the company). Whenever external investors are at an informational disadvantage to insiders, there is the risk that those with intimate knowledge of the firm's operations and business plan will exploit their advantage to the detriment of external investors. Thus, an "adverse selection"

problem occurs when external investors make inferior choices due to insiders' privileged information.[8]

Diamond and Verrecchia (1987) and Boone and White (2015) show, among others, that the amount of financial and operating information disclosed by insiders to external investors can affect the pricing and liquidity of marketable securities. For example, less financial disclosure by firm's management can create a larger asymmetric information problem which then causes external investors to pay less for the firm's stock in order to protect themselves from being exploited by insiders. This lack of disclosure is commonly referred to as "opacity" or the lack of "transparency." In addition, some investors might avoid the stock altogether, thus decreasing its liquidity.[9] In this situation, an investor like Mitchell Partners or Buttonwood that takes the time to seek out and conduct rigorous financial analysis on stocks like Polk can earn above-average risk-adjusted returns by resolving this adverse selection problem more effectively than, say, relatively uninformed retail investors. As I will discuss in a subsequent section, an external investor can achieve this by identifying credible "signals" of the firm's true quality through

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[8] The concepts of asymmetric information and adverse selection were first explored in Akerlof (1970), Spence (1973), and Rothschild and Stiglitz (1976). The 2001 Nobel Prize in Economics was awarded to George Akerlof, Michael Spence, and Joseph Stiglitz for their pioneering work in this area.

[9] Other studies have shown that the opposite is also true: greater transparency is positively related to stock liquidity (Healy and Palepu, 2001, and Balakrishnan, Billings, Kelly, and Ljungvist, 2014) because firms with better disclosure can reduce the adverse selection problem faced by external investors (Leuz and Verrecchia, 2000).

rigorous financial analysis, due diligence, and careful observation of other factors such as the composition of senior management and board directors.

A value investor such as Mitchell Partners is also more likely to find "bargains" (i.e., stocks trading at prices less than their fundamental value) in financial markets that are relatively illiquid because investors know that stocks in these types of markets will be difficult to trade in large volume, thus limiting their marketability and attractiveness to other investors. Since liquidity is typically described in finance as the ability to convert a security into cash quickly at or close to its fair value, an illiquid market for a stock is one that is unable to do this. Consequently, a stock owner will be forced to accept a lower price when selling the stock in an illiquid market. This is sometimes referred to as an illiquidity "discount" or a "lack of marketability discount" and, as noted in a later section of this report, this discount can be quite substantial.[10] So, a buyer of the illiquid stock benefits by typically paying a price below the stock's fundamental or fair value. Amihud and Mendelson (1986, 1991) represent early research which documents that stock returns are positively related to measures of illiquidity. Thus, investors faced with investing in an illiquid market will pay less for a stock which, in turn, leads to a higher return in order to compensate for the reality that it will be difficult

[10] See Pinto, Henry, Robinson, and Stowe (2015) for a discussion of discounts associated with lack of marketability, commonly referred to as a "discount for lack of marketability" or "DLOM."

to sell this stock in the future. Amihud (2002), Acharya and Pedersen (2003), Pastor and Stambaugh (2003), and Sadka (2006) provide further evidence of the impact of the risks associated with trading illiquid securities, commonly referred to as "liquidity risk."

Given the above discussion of the problems associated with opaque and illiquid financial markets, value investors such as Mitchell Partners and Buttonwood seek out such markets to take advantage of the substantial price discounts associated with this illiquidity. Within the U.S., one of the most opaque and illiquid markets is the OTC Markets where the stock listing requirements are minimal and trading activity can be very limited. White (2016) and others explore the OTC Markets in the U.S. and find that, despite its recent growth in trading volume (e.g., $200 billion in 2015), the market has become less transparent (i.e., the "Pink Sheets" stocks require much less financial disclosure than other OTC Market stocks but have grown to over 69% of trading volume in 2015).[11] It should also be noted that R.L. Polk stock had traded within the Pink Sheets of the OTC Markets system and was very thinly traded (e.g., a total of 1,680 shares traded on this system during 2011-2013 according to the OTC Markets Group data service).[12]

[11] There are three tiers of stocks listed in the OTC Markets system (QX, QB, and Pink Sheets) with the majority of stocks traded in the Pink Sheets market. See the OTC Markets web site for more details on reporting standards: https://www.otcmarkets.com/learn/reporting-standards.

[12] The 2011-2013 period is the most relevant period for the analysis because the tender offer first occurred in 2011 and subsequent corporate actions happened in 2013.

White (2016) makes reference to several research papers that indicate the Pink Sheets stocks are: 1) highly illiquid (Ang, Shtauber, and Tetlock, 2013), 2) predominantly held by retail investors (White, 2016, Ang et al., 2013), 3) susceptible to alleged market manipulation,[13] and 4) generate negative and volatile returns for most investors.[14] In addition, the limited disclosure requirements of the OTC Markets (especially the Pink Sheets which have no SEC reporting obligations) exacerbates the asymmetric information problem because external investors have much less data to analyze compared to a stock that trades on a major stock exchange such as the New York Stock Exchange or the Nasdaq Stock Market.[15]

Consistent with a behavioral finance perspective, Nofsinger and Varma (2014) and Eraker and Ready (2015) show that investors in this market are not gambling but instead are systematically under-estimating the probabilities of gains and losses. Nofsinger and Varma (2014) also report that OTC investors tend to be individual investors rather than institutional investors and are typically older,

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[13] For example, see Hanke and Hauser (2005), Aggarwal and Wu (2006), Bohme and Holz (2006), Frieder and Zittrain (2008), Nelson, Price, and Rountree (2013), and Massoud, Scholnick, and Ullah (2016). In contrast, Bollen and Christie (2009) observe that trading volume in OTC stocks can surge in response to news about a firm's fundamentals and thus not all large jumps in trading activity are the result of market manipulation.

[14] Evidence of the return behavior of OTC stocks can be found in Ang et al. (2013), Eraker and Ready (2015), Brüggemann, Kaul, Leuz, and Werner (2018), as well as White (2016).

[15] Research that identifies this issue include Luft, Levine, and Larson (2001), Luft and Levine (2004), and Jiang, Petroni, and Wang (2015).

wealthier, and consider themselves to be more experienced at investing. Despite these demographics, White (2016) shows that 67.1% of all returns to individual investors in a sample of 514 OTC stocks resulted in a dollar loss and the median annualized return was -60.3%. Other studies also report large negative returns to OTC stock investments. For example, Brüggemann et al. (2018) report a -37% median annual return while Eraker and Ready (2015) estimate an average of -24% per year. These findings are consistent with the theoretical model of Pagano (1989) which shows that a financial market can become naturally "thin" (i.e., illiquid) due to many investors' joint and simultaneous choices to avoid trading in a specific market, thus creating more volatile security prices which ultimately cause more investors to leave the market. This can create a self-perpetuating "vicious circle" where a market remains thin and prices are much more volatile than what the fundamental values of the stocks would suggest. Consequently, long-term value investors will demand a larger discount from a stock's fundamental value because of an illiquid market's greater risk of losses.

For most professional investors, especially larger ones with billions of dollars of assets under management, the dynamics of the OTC Market noted above will discourage them from investing in this type of illiquid, opaque, and volatile financial market. Due to their large portfolios, the low trading volume of this market also makes it difficult for these institutional investors to invest enough

capital to establish economically significant positions in these stocks. Thus, the OTC Market contains many stocks that exhibit a large amount of asymmetric information which can be advantageous to smaller professional investors such as Mitchell Partners and Buttonwood that are temperamentally suited to holding such securities. By investing in the OTC Markets, such investment firms are the right size to compete with retail investors. This market also naturally attracts a smaller pool of investors and therefore the demand for a stock like Polk is likely to be limited. These attributes of the OTC Market enable investors to take advantage of the market's opacity and illiquidity to buy stocks well below their fundamental value, thus earning higher risk-adjusted returns.

Family-founded/controlled Firm Behavior and Performance:

Beyond the problems of inadequate financial disclosure and thinly traded markets associated with most OTC stocks, an external investor is most likely to be a minority shareholder and thus does not have direct control over a firm's management and operations. As noted earlier, an investor that follows a Graham and Dodd (1934) style of long-term value investing relies on detailed fundamental analysis and thus must also consider the expected financial performance of the company. Ideally, the value investor wants to have an informational and/or

analytical edge over other investors. This can be accomplished by performing superior fundamental financial analysis as well as by identifying "signals" of future positive financial performance.

One such signal could be related to the ownership structure of the firm's equity. There is growing evidence that "founding-family" and/or "family-controlled" publicly traded companies (sometimes referred to as "FFCFs") perform better than firms of similar size and industry that do not have a large ownership stake held by the founder's family. For example, Anderson and Reeb (2003a) notes that one-third of S&P 500 firms are "FFCFs" and out-perform comparable non-family-owned firms, especially when the CEO is the founder or a family member. This study also showed a nonlinear, inverted U-shaped pattern between financial performance and family control. Family equity ownership up to 31% leads to increased firm performance (as measured by return on assets and "Tobin's q" measure) while ownership levels beyond this level can decrease firm performance. This inverted U pattern is similar to what Morck, Shleifer, and Vishny (1988) reported when comparing firm performance to managerial ownership.

Both studies suggest that some level of ownership by insiders is beneficial because it aligns the incentives of these individuals with external minority investors. In terms of the finance and economics literature, the insiders have an

incentive to be an effective internal "monitor" of the firm's operations, much like an investor with a large equity stake (referred to as a "blockholder") can act as an effective external "monitor." However, at higher levels of ownership, these insiders can become "entrenched" and use their position to extract what is commonly referred to as "private benefits of control." Thus, an entrenched group of insiders is not typically incentivized to maximize the firm's value which can ultimately harm minority shareholders.[16]

In contrast, other papers by Anderson and Reeb (2003b) and Anderson, Mansi, and Reeb (2003) suggest FFCFs, on average, take more risk without increased debt levels and obtain lower-cost debt financing because the family members can be effective internal monitors of the firm's operations and thus, in many but not all cases, are able to reduce agency conflicts between external shareholders and managers as well as between shareholders and creditors. Thus, an effective board governance structure, along with a family ownership stake up to approximately 31%, can help align the incentives of shareholders, management, and creditors in order to increase the firms' value as well as its chances of survival through challenging economic conditions.

[16] For example, see Shleifer and Vishny (1986) for a theoretical model which examines the trade-offs between large minority shareholders and the optimal concentration of ownership between insiders and external investors. Pagano and Roell (1998) is another example of a model that analyzes this relationship between blockholders, effective monitoring, and ownership concentration. Demsetz (1986) also examines the relationship between insiders, corporate control, and the effects on financial performance. Anderson and Reeb (2004) provides an empirical examination of another form of corporate insiders: the board of directors of FFCFs relative to non-FFCF boards.

Anderson and Reeb (2003a, 2003b) and others such as McConaughy, Walker, Henderson, and Mishra (1998) have shown that most of the empirical evidence supports the notion that most FFCFs deliver strong financial performance and do not take advantage of their position to exploit minority shareholders. However, one important caveat to this research is that much of this work has been done with relatively large FFCFs that are part of the S&P 500. Some of the more recent studies have expanded the data set to include the largest 2,000 publicly traded companies in the U.S. For example, Anderson, Duru, and Reeb (2009) use this larger data set and find that the benefits associated with family ownership are mainly focused on the larger S&P 500 firms within their sample. The authors developed an "opacity index" to rank the entire sample by the degree to which the firm's disclosures provide a transparent or opaque view of the firms' financial condition. The study finds that firm performance is best when a family-controlled firm is highly transparent and uses a non-family CEO. Conversely, an FFCF performs the worst when the firm is considered opaque (regardless of who is the CEO).[17] Thus, the accuracy of management's disclosures directly affects the

[17] Using the larger 2,000-firm sample, Anderson, Duru, and Reeb (2012) and Anderson, Reeb, and Zhao (2012) examine FFCFs' investment policy and the information content of short-selling the FFCFs' shares. The former paper shows that FFCFs invest less for the long-term and prefer safer investments in physical assets rather than riskier research and development projects. Short-selling by traders in FFCF shares appear to be more informative than for non-FFCF stocks which suggests these traders are better informed than the average investor. However, due to the very limited trading activity in the OTC Markets, it would be extremely risky and costly for a trader to execute a short sale of any economically meaningful size in this financial market.

opacity of the firm, which can be another important signal of a firm's quality to external investors.

As noted earlier, value investors such as Mitchell Partners and Buttonwood can use the signals of opacity and family ownership levels, along with a focus on illiquid markets, to pursue an investment strategy that can deliver strong investment performance. One can also see that Mitchell Partners' and Buttonwood's long-term investments in the equity of R.L. Polk & Co. are consistent with this strategy of focusing on financially strong, family-controlled companies that trade in illiquid markets.

Methods to Estimate the Discount for Lack of Marketability (DLOM) and the Discount for Lack of Control (DLOC):

A stock that is privately held or thinly traded in a public market typically suffers from a lack of marketability that results in a substantial discount in the stock's price relative to its fundamental value. This discount for lack of marketability (DLOM) can be exacerbated when the stockholding represents a minority interest where other people and/or entities with a large ownership stake can exert significant control over the firm's operations, financing, dividend policy, etc. Pinto et al. (2015) and others suggest that the valuations of illiquid publicly

traded stocks and privately held firms should be subject to a discount for lack of marketability (DLOM) and, where applicable, a discount for lack of control (DLOC) if the investors hold a minority interest and senior management is not conducting operations in an optimal manner. Pinto et al. (2015) note that the application of these discounts is security-specific and estimates can vary dramatically. The authors mention several factors that are typically considered when estimating this discount such as: the prospects for a liquidity event (e.g., sale to a new owner), ownership lock-up agreements, restrictions on transferability, the potential set of buyers, timing of dividends and other distributions, ownership concentration, as well as the firm's size and risk.

Although there are many different methods to estimate these discounts, most analysts (as well as judges, regulators, and tax authorities) typically use a range of 10% to 35% (e.g., see IRS, 2009). These estimates are usually based on empirical studies of private placement sales, block trade purchases, restricted stock sales, IPO launches, and exchange de-listings.[18] Given these relatively large discounts, a patient long-term value investor has the potential to benefit from a large jump in an illiquid stock's value if these marketability and control discounts are removed due

[18] A detailed analysis of these various estimation methods is beyond the scope of this report but the interested reader can review some of the salient papers on this subject, such as Sanger and McConnell (1986), Ritter (1987), Barclay and Holderness (1989), Wruck (1989), Silber (1991), Edelman and Baker (1993), Hertzel and Smith (1993), Longstaff (1995), Bajaj, Denis, Ferris, and Sarin (2001), Pratt (2001), Barclay, Holderness, and Sheehan (2007), and the Internal Revenue Service job aid manual (2009).

to a liquidity event. A credible buy-out offer by another entity that is acting in good faith to acquire the firm would be an example of such a liquidity event.

Pinto et al. (2015) and others note that an overall "total" discount based on both a lack of marketability (DLOM) and a lack of control (DLOC) is multiplicative in nature and results in a sequential discounting of the security's value (i.e., first by the DLOM and then by the DLOC). The formula to compute this multiplicative effect is shown below:

$$\text{Total Discount} = 1 - \{(1 - \text{DLOM}) \times (1 - \text{DLOC})\}$$

It appears that Mitchell Partner's and Buttonwood's stakes in R.L. Polk & Co. are likely to have suffered from both types of discounts because the Polk family owned approximately 90% of Polk's equity and the stock traded in an illiquid, opaque market. The following section applies various multiplicative discounts of both DLOM and DLOC to obtain a range of reasonable estimates for the return an investor could expect if these marketability and control discounts were removed due to some type of liquidity event.

Matrix of Potential Valuation Discounts and Expected Returns:

A numerical analysis is presented in the table below to quantify the effects of possible valuation discounts based on various assumptions of marketability and

control discounts. The scenarios represent a range of possible discounts from 10% - 30% that is consistent with estimates of DLOM and DLOC from the relevant academic literature.

Table 1. Valuation Total Discounts (as a % of fundamental value):

DLOM:

DLOC:	**10%**	**15%**	**20%**	**25%**	**30%**
10%	19%	24%	28%	33%	37%
15%	24%	28%	32%	36%	41%
20%	28%	32%	36%	40%	44%
25%	33%	36%	40%	44%	48%
30%	37%	41%	44%	48%	51%

The above table shows that the Total Discount due to the DLOC and DLOM ranges from 19% of the firm's fundamental value (when both DLOC and DLOM equal 10%) to 51% (when DLOC and DLOM are 30% each). Thus, the total discount from fundamental value can be quite large.

Based on Table 1, one can compute the expected returns if these discounts were removed due to a liquidity event such as a buy-out of the firm by another entity. The table presented below calculates the expected returns on the stock if

both the control and marketability discounts are simultaneously removed. For example, such a computation implies that the stock can be traded in a liquid and transparent financial market rather than in an illiquid, opaque market. In addition, it assumes that the senior management team and board of directors begin operating the firm in an optimal way that does not harm minority shareholders. If this were to occur, then the firm's stock price would reflect 100% of its true fundamental value and no marketability and control discounts would be applicable. These returns are computed using the following formula:

$$\text{Expected Return} = [1 / (1 - \text{Total Discount})] - 1.0$$

Table 2. Expected Returns if the DLOM and DLOC discounts were removed:

DLOM:

DLOC:	**10%**	**15%**	**20%**	**25%**	**30%**
10%	23%	31%	39%	48%	59%
15%	31%	38%	47%	57%	68%
20%	39%	47%	56%	67%	79%
25%	48%	57%	67%	78%	90%
30%	59%	68%	79%	90%	104%

Table 2 shows that the Expected Returns from removing the DLOC and DLOM range from +23% of the firm's fundamental value (when both DLOC and DLOM equal 10%) to +104% (when DLOC and DLOM are 30% each). Thus, the impact of the total discount on expected returns can be quite large if, for example, a liquidity event such as a buy-out from a large, publicly traded firm were to occur. In addition, the actual gain from a buy-out could be much larger than the returns noted above if the acquirer is also able to develop alternative operational opportunities from the acquisition. Therefore, the expected returns presented here should be considered a minimum range that does not consider potentially very large gains from other opportunities to improve the firm's operations.

Evaluating the Opportunity of Investing in R.L. Polk & Co. Stock:

Investing in fundamentally strong, family-controlled firms that trade in illiquid OTC markets with limited financial disclosure requires the patience and proper temperament to follow a long-term, value-focused niche strategy. These attributes can provide a disciplined investor with an informational and analytical edge over smaller retail investors as well as larger institutional investors who cannot or do not follow this approach. By focusing on thinly traded stocks, investors such as Mitchell Partners and Buttonwood are also shielded from larger

professional money management competitors who cannot put sufficient funds to use because of the limited "capacity" to invest in OTC Markets (i.e., these investors are constrained due to the large size of their portfolios and thus small investments in OTC stocks are not economically worthwhile to them).

Based on the academic research presented in this report, firms with greater financial opacity that trade in less-liquid stock markets which also lack strong disclosure requirements are likely to be under-valued due to severe asymmetric information problems. In turn, this potential for mis-valuation provides valuable investment opportunities to investors such as Mitchell Partners and Buttonwood that are patient and can overcome the potential problems associated with asymmetric information, behavioral biases, and agency conflicts by buying family controlled stocks at a discount and waiting for a liquidity event to occur.

Given the research on value investing, illiquid and informationally opaque stock markets, as well as the role of family-founded and family-controlled firms, it is interesting to see that real-world investors such as Mitchell Partners and Buttonwood can earn above-average risk-adjusted returns by following an investment philosophy that is consistent with this academic evidence. As noted earlier in the Summary section, Mitchell Partners' annual investment returns of 11.11% during 2000-2018 have exhibited less risk than the overall market (e.g., the fund's market "beta" based on the CAPM is 0.41, which is much lower than the

overall market beta of 1.00). In addition, the portfolio's performance exceeded the 8.54% annual return of the Russell 2000 small cap stock index by over 2.5 percentage points during this period (and surpassed the S&P 500 returns by 4.6 percentage points). In terms of risk-adjusted performance, Mitchell Partners' portfolio reported an "alpha" estimate of +7.50% and a Sharpe ratio of 0.831. Both statistics confirm that Mitchell Partners' performance delivers superior returns even after accounting for the riskiness of this portfolio.[19]

Following a long-term value investing approach which focuses on family-owned firms that trade in illiquid markets would be consistent with an investment in R.L. Polk & Co., which had traded on the OTC Markets' Pink Sheets, because Polk had strong fundamentals, was traded in an illiquid, opaque market, and was family-controlled with approximately 90% of shares held by the Polk family. Thus, it is reasonable to conclude that Polk was a stock which attracted long-term value investors like Mitchell Partners and Buttonwood, who would buy it and hold awaiting a value-generating liquidity event.

[19] The investment and financial performance reported here are the author's calculations based primarily on data provided by Mitchell Partners, L.P. The portfolio performance and risk-adjusted return statistics are based on the CAPM method using annual data where the market portfolio is defined as the annual return on the S&P 500 Stock Index. The market beta estimate remains the same (0.41) and alpha is still very large (+7.34%) when a broader market portfolio measure such as the Fama-French market factor is employed. In addition, when a Fama-French 3-factor model is used, the main findings remain relatively unchanged with a beta of 0.42 and an alpha of +5.68%.

Conclusion:

Based on the above numerical analysis and the academic research on value investing, illiquid and informationally opaque stock markets, as well as the role of family-founded and family-controlled firms (FFCFs), Polk's stock had all the right attributes to garner the attention of investors that pursue a long-term value investment philosophy such as Mitchell Partners, L.P., and Buttonwood Tree Value Partners L.P. Patient investors in Polk could earn above-average returns by taking advantage of the value premium and waiting for a legitimate liquidity event that would have ultimately unlocked the firm's full fundamental value. Thus, the investment in Polk stock is consistent with a long-term investor's philosophy because the firm was (at the time of the 2011 tender offer) family-controlled, performing well financially, and its shares were traded in an illiquid, opaque market that provided this type of value investor with an informational and analytical edge over many other investors. It is also reasonable to conclude that given the minimal trading in Polk stock, had the self-tender not occurred, those minority investors as of the time of the self-tender would have held until the next liquidity event, in this case, the sale to IHS.

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Case No. 9250-VCG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BUTTONWOOD TREE VALUE PARTNERS, L.P., a California Limited Partnership and MITCHELL PARTNERS L.P., a California Limited Partnership, on behalf of themselves and all others similarly situated,

Plaintiffs,

\- against -

R.L. POLK & CO., INC., STEPHEN R. POLK (individually and on behalf of a Defendant Class of similarly situated persons), THE ESTATE OF NANCY K. POLK, KATHERINE POLK OSBORNE, DAVID COLE, RICK INATOME, CHARLES MCCLURE, J. MICHAEL MOORE, RLP & C HOLDING, INC., RLP MERGER CO., STOUT RISIUS ROSS, INC., and HONIGMAN MILLER SCHWARTZ AND COHN LLP,

Defendants.

Case No. 9250-VCG

AFFIDAVIT OF
BUTTONWOOD TREE VALUE PARTNERS, L.P.

STATE OF CALIFORNIA)
) **SS.**
ORANGE COUNTY)

I, Philip Milner, being duly sworn, hereby state as follows:

1. I am an authorized representative of Plaintiff Buttonwood Tree Value Partners, L.P. ("Buttonwood") in the above-captioned action (the "Action"). I respectfully submit this affidavit in support of the proposed Settlement of the

remaining claims in this Action, and the application for an award of attorneys' fees, expenses, and charges to Plaintiff's Counsel.[1]

2. Buttonwood was formerly a stockholder of Polk.

3. As the Plaintiff in this action, Jack Norberg, before his passing, and I after Mr. Norberg's passing, have monitored the work of counsel and have been kept apprised of the status of the Action. Buttonwood communicated with counsel regarding the strategic direction of the Action, significant developments, status updates, and major decisions in the Action. Further, Buttonwood discussed with its counsel and/or reviewed its counsel's views regarding the pleadings and relevant documents in this Action, including the discovery record.

4. From January 14, 2014 through the present, Buttonwood's involvement in this litigation included:

(a) Contacting and retaining counsel to initiate this action;

(b) Communicating with counsel throughout this Action about the litigation status and strategy;

(c) Having its deposition taken through Phil Milner;

(d) Retrieving and producing Buttonwood's records relating to Polk;

[1] All capitalized terms that are not otherwise defined herein shall have the same definitions as set forth in the Stipulation and Agreement of Compromise and Settlement filed with the Court on June 24, 2024.

(e) Working with counsel to ensure that its responses to interrogatories and requests for production of documents in this Action were accurate and truthful; and

(f) Communicating with my counsel and Mitchell Partners, L.P. throughout this Action regarding major decisions, including those with respect to the Settlement.

5. Buttonwood has not received, been promised or offered, and will not accept any form of compensation, directly or indirectly, for prosecuting or for serving as a representative party in this Action except: (a) such damages or other relief as the Court may award me as a Class Member; (b) such fees, costs, or other payments as the Court expressly approves to be paid to it or on its behalf; or (c) reimbursement, paid by Buttonwood's attorneys, of actual and reasonable out-of-pocket expenditures in connection with the prosecution of this Action.

6. Buttonwood has accepted and authorized the Settlement because it believes that it is a fair, adequate, and reasonable compromise that is in the best interest of the Class. After consulting with counsel, it believes that, balanced against the risks, duration, and uncertainty of continued litigation, the Settlement's guarantee of meaningful monetary benefits to the Class justifies settling this Action on the agreed terms.

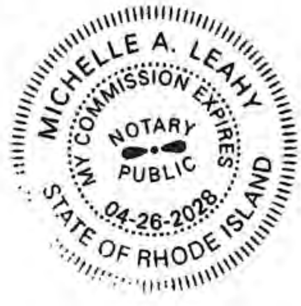
7. Buttonwood is aware of the requested award of attorney's fees and expenses and fully supports its counsel's application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of September 2024 at Orange County, California.

Philip Milner
Philip Milner
Authorized representative,
Buttonwood Tree Value Partners, L.P.

SWORN TO AND SUBSCRIBED before me this 17 day of September 2024.



Michelle A. Leahy
NOTARY PUBLIC

My Commission Expires: 4/26/2028

EFiled: Sep 23 2024 11:24AM EDT
Transaction ID 74563695
Case No. 9250-VCG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BUTTONWOOD TREE VALUE PARTNERS, L.P., a California Limited Partnership and MITCHELL PARTNERS L.P., a California Limited Partnership, on behalf of themselves and all others similarly situated, Plaintiffs, - against - R.L. POLK & CO., INC., STEPHEN R. POLK (individually and on behalf of a Defendant Class of similarly situated persons), THE ESTATE OF NANCY K. POLK, KATHERINE POLK OSBORNE, DAVID COLE, RICK INATOME, CHARLES MCCLURE, J. MICHAEL MOORE, RLP & C HOLDING, INC., RLP MERGER CO., STOUT RISIUS ROSS, INC., and HONIGMAN MILLER SCHWARTZ AND COHN LLP, Defendants.	)	Case No. 9250-VCG

AFFIDAVIT OF
MITCHELL PARTNERS, L.P.

STATE OF CALIFORNIA)
) SS.
SANTA CLARA COUNTY)

I, William Mitchell, being duly sworn, hereby state as follows:

1. I am an authorized representative of Plaintiff Mitchell Partners, L.P. ("Mitchell Partners") in the above-captioned action (the "Action"). I respectfully submit this affidavit in support of the proposed Settlement of the remaining claims in

this Action, and the application for an award of attorneys' fees, expenses, and charges to Plaintiff's Counsel.[1]

2. Mitchell Partners was formerly a stockholder of Polk.

3. As the Plaintiff in this action, Mitchell Partners monitored the work of counsel and has been kept apprised of the status of the Action. Until his recent passing these activities were performed by James Mitchell, including approving the substantive terms of the settlement of this action and the anticipated application for attorney's fees and expenses. Since his passing the monitoring of this action has been performed by William Mitchell. Mitchell Partners communicated with counsel regarding the strategic direction of the Action, significant developments, status updates, and major decisions in the Action. Further, it discussed with counsel and/or reviewed my counsel's views regarding the pleadings and relevant documents in this Action, including the discovery record.

4. From January 14, 2014 through the present, Mitchell Partners' involvement in this litigation included:

(a) Contacting and retaining counsel to initiate this Action;

---

[1] All capitalized terms that are not otherwise defined herein shall have the same definitions as set forth in the Stipulation and Agreement of Compromise and Settlement filed with the Court on June 24, 2024.

(b) Communicating with its counsel throughout this Action about the litigation status and strategy;

(c) Having its deposition taken through James Mitchell;

(d) Retrieving and producing Mitchell Partner's records relating to Polk;

(e) Working with counsel to ensure that its responses to interrogatories and requests for production of documents in this Action were accurate and truthful; and

(f) Participating, through James Mitchell in the in-person mediation in Delaware;

(g) Communicating with my counsel and Buttonwood throughout this Action regarding major decisions, including with respect to the Settlement.

5. Mitchell Partners has not received, been promised or offered, and will not accept any form of compensation, directly or indirectly, for prosecuting or for serving as a representative party in this Action except: (a) such damages or other relief as the Court may award it as a Class Member; (b) such fees, costs, or other payments as the Court expressly approves to be paid to it or on its behalf; or (c) reimbursement, paid by its attorneys, of actual and reasonable out-of-pocket expenditures in connection with the prosecution of this Action.

6. Mitchell Partners has accepted and authorized the Settlement because it believes that it is a fair, adequate, and reasonable compromise that is in the best interest of the Class. After consulting with counsel, it believes that, balanced against the risks, duration, and uncertainty of continued litigation, the Settlement's guarantee of meaningful monetary benefits to the Class justifies settling this Action on the agreed terms.

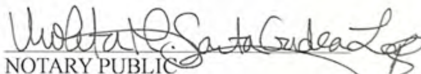
7. Mitchell Partners is aware of the requested award of attorney's fees and expenses and fully supports its counsel's application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of AUGUST 2024 at Santa Clara County, California.

William Mitchell
Authorized representative,
Mitchell Partners, L.P.

SWORN TO AND SUBSCRIBED before me this 29th day of August 2024.



NOTARY PUBLIC

My Commission Expires: 11/10/2025

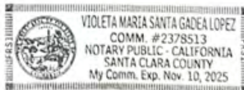
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this 29 day of August, 20 24, by William Mitchell, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature ____________

(Seal)



EFiled: Sep 23 2024 11:24AM EDT
Transaction ID 74563695
Case No. 9250-VCG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BUTTONWOOD TREE VALUE PARTNERS, L.P., a California Limited Partnership and MITCHELL PARTNERS L.P., a California Limited Partnership, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
- against -	)	Case No. 9250-VCG
R.L. POLK & CO., INC., STEPHEN R. POLK (individually and on behalf of a Defendant Class of similarly situated persons), THE ESTATE OF NANCY K. POLK, KATHERINE POLK OSBORNE, DAVID COLE, RICK INATOME, CHARLES MCCLURE, J. MICHAEL MOORE, RLP & C HOLDING, INC., RLP MERGER CO., STOUT RISIUS ROSS, INC., and HONIGMAN MILLER SCHWARTZ AND COHN LLP,	)	
Defendants.	)	

AFFIDAVIT OF R. BRUCE McNEW FILED ON BEHALF OF PLAINTIFF AND THE CLASS IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

STATE OF DELAWARE	)	
	)	SS.
NEW CASTLE COUNTY	)	

I, R. BRUCE McNEW, being duly sworn, deposes and says:

1. I am a member in good standing of the Bar of the State of Delaware and a director with the firm of Cooch and Taylor, P.A. ("Cooch and Taylor"

or the "Firm"). I was actively involved in the investigation and prosecution of the above-captioned action (the "Action") since its inception, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my participation in all material aspects of the Action.[1]

2. I am submitting this Affidavit in support of the application for an award of attorneys' fees, and expenses in connection with services rendered in the Action. During the pendency of this action and while I have served as counsel for Plaintiffs and the Class I have been associated with the firms of Cooch and Taylor, P.A., The McNew Law Firm, LLC, Wilks, Lukoff & Bracegirdle, LLC and Taylor and McNew, LP (collectively the "Firms"). I have authority to make this application on behalf of those firms and authority to distribute any fee and expense award on their behalf. That distribution, except as expressly ordered by the Court, shall be only to attorneys currently associated with Cooch and Taylor, P.A.

3. The information in this affidavit regarding the Firms' time and expenses is taken from time and expense reports and supporting documentation prepared and maintained on a contemporaneous basis by the Firms in the ordinary course of business. Because the detailed records from Taylor and McNew were unavailable, no time or expenses incurred by that firm is included. I am the partner/director who

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[1]All capitalized terms that are not otherwise defined herein shall have the same definitions as set forth in the Stipulation and Agreement of Compromise and Settlement filed with the Court on June 14, 2024.

oversaw and conducted the day-to-day activities in the Action on behalf of each of the Firms. I reviewed these reports (and back-up documentation where necessary or appropriate) in connection with the preparation of this affidavit.

4. The purpose of the foregoing review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. To ensure the accuracy of the hours entered in all cases, the Firms employ a regular business practice and policy of maintaining contemporaneous time records which were/are checked for accuracy on a monthly basis. Based on this review, I believe that the time reflected in the Firms' lodestar calculation and the expenses for which payment is sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

5. On June 10, 2024, Plaintiffs reached an agreement in principle on the prior settlement, which was formalized with a stipulation of settlement that was signed on June 14, 2024. The number of hours spent on the Action by the Firms inception of this matter, through June 14, 2024, is 5,170.4 hours. A breakdown of the lodestar is provided in the attached Exhibit A. This excludes hours spent after a settlement agreement in principle was reached finalizing documentation of the Settlement, preparing documentation for presenting the Settlement, and matters related to administering the Settlement.

6. The lodestar amount for attorney and paraprofessional time based on the Firm's current rates is $3,817,145.00. The hourly rates shown in Exhibit A are the Firm's current rates in contingent and non-contingent cases set by the Firm for each individual currently affiliated with Cooch and Taylor. These hourly rates are consistent with hourly rates submitted by the Firm to state and federal courts in other stockholder derivative and securities class action litigation, as well as rates that clients of the firm pay the firm in hourly rate matters. The Firm's rates are set based on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense side, as adjusted annually for inflation. Different timekeepers within the same employment category (e.g., partners, attorneys, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the Firm, years in the current position (e.g., years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our Firm or other firms. Hourly rates for attorneys and paralegals formerly employed by Cooch and Taylor or currently with other firms are recorded at historical rates. All these hours have been incurred pursuant to agreements with the Plaintiffs making the payments of fees and reimbursement of advanced expenses contingent upon a successful result, and in the case of a class wide settlement such as this, subject to approval of the Court.

7. Moreover, the Firms seeks an award of $422,034.90 in expenses and charges incurred in connection with the prosecution of the Action from inception through June 10, 2024. Those expenses and charges are summarized by category in the attached Exhibit B. The expenses pertaining to this case are reflected in the books and records of the Firm. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses. These expenses are recorded at cost from actual invoices. The expenses of The McNew Law Firm, LLC were incurred while I have been associated with Cooch and Taylor, P.A. pursuant to an agreement on the payment of costs in litigation matters involving me. The McNew Law Firm, LLC submits no attorney hours in any of matter involving Cooch and Taylor. All costs have been advanced on the same completely contingent basis as the Firms' professional time.

8. The firms respectfully request approval of requested the attorneys' fees, expense reimbursement, and incentive awards as part of approval of the Settlement.

I declare under penalty of perjury that the foregoing is true and correct.

9/23/24
Dated

R. Bruce McNew
Attorney for the Plaintiffs and the Class

State of Delaware)
) SS.
New Castle County)

SWORN TO AND SUBSCRIBED before me this 23rd day of September, 2024.

Carol M. Wetty
Notary Public
My Commission Expires: 12-5-2026

EFiled: Sep 23 2024 11:24AM EDT
Transaction ID 74563695
Case No. 9250-VCG

EXHIBIT A

Loadstar Summary by Firm and Professional

Law Firm	Name		Hours	Rate	Loadstar
Wilks Lukoff & Bracegirdle					
	David Wilks	P	9.20	$700	$6,440.00
	Paul Lukoff	P	0.40	$500	$200.00
	Thad Bracegirdle	P	1.80	$500	$900.00
	R. Bruce McNew	P	1,124.30	$900	$1,011,870.00
	Sam Moultrie	P	406.10	$350	$142,135.00
	Scott Czerwonka	P	57.50	$350	$20,125.00
	Andrea Brooks	A	678.70	$300	$203,619.00
	Laina Herbert	A	1.40	$350	$490.00
	Doug Cummings	A	6.30	$250	$1,575.00
	Amy Garrahan	PL	117.40	$125	$14,675.00
	Jose Hood	PL	60.80	$125	$7,600.00
	Teresa McKnight	PL	29.60	$125	$3,700.00
	Jeanette Brown	PL	8.80	$125	$1,100.00
Cooch and Taylor					
	R. Bruce McNew	P	2342.40	$900	$2,108,160.00
	Robert Pedigo	P	595.80	$425	$253,215.00
	Tammy Patterson	PL	154.90	$125	$19,362.50

	Karen Hanling	PL	128.60	$125	$16,075.00
	Carol Wetty	PL	23.10	$125	$2,887.50
	Angela Orsini	PL	15.90	$125	$1,987.50
	Elizabeth Bonfiglio	PL	8.30	$125	$1,037.50
TOTAL			5,170.40		3,817,145.00

(P) Partner/Dierctor

(A) Associate

(PL) Paralegal

The daily time records for Taylor & McNew, L.P. could not be located and are not included.

Exhibit B

EXPENSES BY CATEGORY AND FIRM[1]

CATEGORY	Cooch and Taylor	McNew Law Firm	Wilks Lukoff and Bracegirdle	Total for all Firms
Online Research	$39.40	$4,692.78	$8,409.13	$13,078.31
Courier	$1,498.95	0	$2,317.99	$3,816.94
Court costs	$12,258.10	0	$12,379.81	$24,637.91
Document, production and data storage	$56,649.47	0	$4,337.55	$60,987.02
Transcripts	$1,052.50	$21,427.10	$9,600.70	$32,080.30
Travel	0	$17,311.16	$4,795.67	$22,106.83
Outside photocopying[2]	$64.50	0	0	$64.50
Teleconference Service	$279.77	0	0	$279.77
Mediation	0	$67,362.00	0	$67,362.00
Expert Witnesses	0	$28,476.00	0	$28,476.00
Special Magistrate	0	$169,145.32	0	$169,145.32
Totals	$71,842.69	$308.351.36	$41,840.85	$422,034.90

[1] Costs of Taylor & McNew, L.P. could not be accurately retrieved and are not included
[2] In house photocopying is not invoiced.