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Case No. 2024-0329-NAC

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KYLE MARTEL and JOE BRYANT, Plaintiffs, v. FUSION SPONSOR LLC, JOHN JAMES, JEFFREY GARY, JIM ROSS, KELLY DRISCOLL, BEN BUETTELL, DIWAKAR CHOUBEY and BROADHAVEN CAPITAL PARTNERS, LLC Defendants.	C.A. No. 2024-0329-NAC **Public Version filed on or before April 3, 2024**

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs, Kyle Martel and Joe Bryant ("Plaintiffs," each a "Plaintiff"), on behalf of themselves and similarly situated current and former stockholders of Fusion Acquisition Corp. ("FAC"), now renamed MoneyLion Inc. ("New MoneyLion"), by and through their undersigned counsel, bring this Verified Class Action Complaint asserting: (i) breach of fiduciary duty claims arising from the Company's September 22, 2021 merger (the "Merger") with private company MoneyLion Inc. ("Legacy MoneyLion") against (a) John James ("James"), Jim Ross ("Ross"), Jeffrey Gary ("Gary"), Kelly Driscoll ("Driscoll"), and Ben Buettell ("Buettell") (collectively the "Director Defendants"), in their capacities as members of FAC's board of directors (the "Board"); (b) FAC's Chief Executive Officer ("CEO"), James, and FAC's Chief Financial Officer ("CFO"), Gary (collectively, the "Officer Defendants"), in their capacities as FAC's officers; and (c) Fusion Sponsor LLC ("Sponsor"), (collectively, with James and Ross, the "Controller Defendants," and with the Director Defendants and Officer Defendants, the "FAC Defendants"), in their capacities as FAC's controllers; (ii) aiding and abetting breach of fiduciary duty claims against MoneyLion CEO and co-Founder Diwakar (Dee) Choubey ("Choubey") and Broadhaven Capital Partners, LLC ("Broadhaven"); and (iii) unjust enrichment claims against the FAC Defendants. Defendants' actions described herein impaired stockholders' ability to exercise their redemption rights on a fully informed basis.

The allegations are based on each Plaintiff's knowledge as to himself, and on information and belief, including counsel's investigation, which included a review of non-public documents produced in response to demands for books and records pursuant to 8 *Del. C.* § 220 (the "Section 220 Demands"), and a review of publicly available information.

NATURE OF THE ACTION

1. FAC, now renamed MoneyLion Inc. ("New MoneyLion"), is a Delaware corporation that was formed as a special purpose acquisition company ("SPAC") on March 6, 2020, by the Controller Defendants. The Controller Defendants took FAC public on June 30, 2020, through an initial public offering ("IPO") and subsequently merged it with private company Legacy MoneyLion in

the Merger, which closed on September 22, 2021, approximately three months before the December 31, 2021 liquidation deadline mandated by the IPO prospectus.

2. A SPAC, also known as a "blank check company," is a publicly traded company that does not have commercial operations. Instead, a SPAC is formed for the sole purpose of raising capital through an IPO that the SPAC will then use to fund a business combination with an existing company within a specified period of time. The SPAC holds the IPO proceeds in trust for the benefit of its public stockholders. When a SPAC agrees to a business combination (typically a merger with a private company that will go public as a result of the business combination), the SPAC's public stockholders are given a choice: they can redeem all or a portion of their SPAC shares in exchange for a proportionate share of the IPO funds held in trust ($10.00 per share plus interest) *or* they can invest those funds in the post-combination company. Only after all public stockholders have been given a chance to redeem their shares in connection with a proposed business combination do the funds raised in the IPO and held in the trust become corporate assets. If a SPAC does not close a business combination within the time specified in its charter, it is required to liquidate, in which circumstances each public stockholder would receive their proportionate share of liquidating distributions from the trust.

3. FAC's history is part of a disturbing trend of SPAC transactions in which financial conflicts of interest of sponsors and insiders override good corporate

governance and the interests of public stockholders. FAC failed to observe the most basic principle of Delaware corporate governance—namely, that a corporation's governance structure should be designed to protect and promote the interests of public stockholders, not the financial interests of its insiders and controllers. Instead, Defendants granted themselves financial interests in FAC that diverged from those of public stockholders and allowed their financial interests to override their fiduciary duties and responsibilities as controlling stockholders, directors, and/or officers of a Delaware corporation by forcing through a value-destroying merger with Legacy MoneyLion and impairing stockholder redemption rights in connection therewith, which was accomplished through the provision of materially misleading disclosures.

4. The FAC Defendants had a powerful incentive to cause FAC to enter into any business combination—even a value-destructive one—and avoid a liquidation. Prior to the IPO, the Controller Defendants caused FAC to issue 8,750,000 shares of FAC Class B Common Stock ("Founder Shares") to the Sponsor for the nominal sum of $25,000 (or less than $0.003 per share). Concurrently with FAC's IPO, the Sponsor purchased 8,100,000 warrants (the "Private Placement Warrants") in a private placement for $1.00 per warrant. While not disclosed in the Proxy, the Controller Defendants gave each director and officer an interest in the Sponsor in exchange for nominal consideration, and thus, granting each an interest in hundreds of thousands of Founder Shares and Private Placement Warrants. With

respect to the Founder Shares, the Sponsor waived its redemption rights and rights to liquidating distributions from the trust if FAC did not consummate a business combination. The Private Placement Warrants were not transferrable, assignable, exercisable, or salable until the later of 30 days after the completion of a business combination. That is, if FAC failed to close a business combination within the liquidation window, Defendants' Founder Shares and Private Placement Warrants (and interests in the Sponsor) would be worthless.

5. FAC's structure created an inherent conflict of interest between Defendants and public stockholders. If FAC succeeded in consummating any business combination, Defendants would hold shares and warrants in the combined company. But if FAC failed to close a business combination within 18 months of its IPO and liquidated, Defendants' shares and warrants would be worthless, and they would lose their entire investments. Thus, the interests of Defendants in getting any deal done—even a value destructive transaction—to avoid liquidation, provided them with a perverse incentive to complete a merger regardless of whether it was in the best interests of the Company's public stockholders. Furthermore, since Defendants would continue to hold their shares and warrants after any business combination, they had an interest in discouraging public stockholders from redeeming their shares, as each share redeemed would dilute their interests in the

post-transaction company and reduce the liquidity provided to the post-transaction company.

6. FAC's negotiations with Legacy MoneyLion were infected by these substantial conflicts and dominated by James, Ross, and the Sponsor. It was no surprise, then, that the Board approved the Merger and disseminated a false and misleading proxy statement[1] (the "Proxy"). The Proxy withheld critical information from FAC's public stockholders concerning the high degree of dilution of FAC shares and dissipation of cash that would occur in connection with the Merger. Whereas FAC shares were valued at $10.00 for purposes of the share exchange provided for in the Merger Agreement, those shares were worth far less. The dilution and dissipation of cash reduced the value of shares that FAC would contribute to the Merger to less than $7.00 per share, which in turn reduced the value that FAC stockholders could reasonably expect FAC to contribute to the Merger, and therefore the value of the post-Merger shares that FAC stockholders could expect to hold if they chose to invest in the Merger.

7. Because of this undisclosed mismatch, in order to exchange equivalent value with FAC in the Merger, Legacy MoneyLion would have to inflate its value *at least* commensurately with the inflation of FAC's share value. To support Legacy

[1] Fusion Acquisition Corp., Proxy (Form 424(b)(3)) (Sept. 3, 2021), *available at* https://www.sec.gov/Archives/edgar/data/1807846/000121390021046710/f424b30921_fusionacquisit.htm.

MoneyLion's overvaluation, the Proxy (and later Proxy Supplement (defined *infra*)) contained materially false and misleading financial projections (the "Proxy Projections" and "Revised Projections," respectively).

8. The Proxy also failed to disclose that Legacy MoneyLion's management projections prepared in the ordinary course and provided to the FAC in connection with their consideration of the Merger (indeed the only projections provided to the FAC board prior to negotiation of what would be the final valuation of Legacy MoneyLion) were substantially lower than both the Proxy Projections and the Revised Projections. Further, the Proxy represented that "[t]he [Proxy] Projections were prepared in good faith by MoneyLion management based on their reasonable best estimates and assumptions with respect to the expected future financial performance of MoneyLion at the time the Projections were prepared [February 2021] and speak only as of that time." But that was false, or at least misleading. The Proxy Projections and Revised Projections in fact assumed that Legacy MoneyLion would receive a cash infusion from the Merger, and included in that assumption, *that no FAC stockholders would redeem their shares*, which would never happen. This material assumption was not disclosed. Furthermore, Defendants knew or should have known and did not disclose that the Proxy Projections, far from reasonable expectations of future financial performance, were instead back-of-the-envelope estimations that Legacy MoneyLion created only once Merger negotiations

began and the parties started discussing valuations. That is, that the Proxy Projections were manufactured, not just to address the shortfall caused by FAC's overvaluation of the Merger consideration, but also to match the "valuation" to which the parties had already agreed.

9. The Proxy failed to disclose material information concerning Gary's, Ross's, Driscoll's, and Buettell's unique interests in the Merger and falsely or misleadingly described their interests in the Founder Shares and Private Placement Warrants. The Sponsor's only purpose was to "(i) hold Founder Shares and Private Placement Warrants; (ii) act as the sponsor of [FAC] in connection with its organization, initial public offering and search for and consummation of a Business Combination" and engage in any activities related or incidental thereto.[2] While the Proxy disclosed that each Director and Officer Defendant was a "member" of the Sponsor, it also disclosed that no Director or Officer Defendant had an interest in the Founder Shares other than James. The Proxy also failed entirely to disclose the Director and Officer Defendants' interests in the Private Placement Warrants. The interests that each Director and Officer Defendant had in the Sponsor, and thus in the Founder Shares and Private Placement Warrants was critical to stockholders' evaluation of the Merger in connection with their redemption decision. The veracity and transparency of the Proxy's disclosures as to these contingent interests would

[2] ML_Bryant_220_001707.

have been particularly material to stockholders as to Buettell, Ross, and Driscoll, as these Defendants were purportedly "independent" and should have been charged with safeguarding the best interests of stockholders and the Company in the face of the inherently conflicted controlling stockholder transaction.

10. The Proxy also failed to disclose what was known to Defendants during the due diligence phase of the Merger: that only nine months prior to FAC valuing Legacy MoneyLion at $2.2 billion dollars, Legacy MoneyLion engaged in a financing round [redacted] that valued Legacy MoneyLion [redacted]—at a post-money valuation of [redacted][3] There was no reasonable explanation in the Proxy as to why Legacy MoneyLion's valuation would have more than tripled between the March 2020 financing round and FAC's December 2020 letter of intent, which valued Legacy MoneyLion in the range of $2 to $2.5 billion—essentially the same value assigned to the aggregate consideration to Legacy MoneyLion in the final Merger Agreement of $2.2 billion. Indeed, weeks before entry into the Merger Agreement, Defendant Buettell advised the other FAC Defendants that "[i]t just feels like we are using numbers to justify our valuation conclusion and some discount rates to get to the number we want of $2.2B."[4]

[3] ML_Bryant_220_013710.

[4] ML_Bryant_220_002170.

11. The Proxy also failed to disclose material information concerning FAC's purported financial advisor and private placement agent, J.P. Morgan Securities, Inc. ("J.P. Morgan"), including J.P. Morgan's role in the (inadequate) due diligence of Legacy MoneyLion and J.P. Morgan's fees in connection with both its acting as a financial advisor and as a placement agent. Choubey and Broadhaven aided and abetted the FAC Defendants' breaches of fiduciary duty and interference with stockholders' redemption rights. Choubey and Broadhaven were deeply involved in the Merger process, with both providing and bolstering the false and misleading Proxy Projections and Revised Projections that were published in the Proxy. Both had the opportunity to, and did, draft and review the Proxy prior to its publication and fail to correct false and misleading information and to include all material information. They failed to do so, because they were financially interested in the Merger closing and minimizing redemptions. Both would own newly liquid stock once Legacy MoneyLion was taken public as part of the de-SPAC Merger process. Broadhaven served as Legacy MoneyLion's financial advisor and its [redacted] fees were to be paid by FAC, if and when the Merger closed.

13. After the Merger closed, a series of negative events unfolded. Within a few months of the Merger closing, New MoneyLion had to restate financials, lower guidance, and its stock price was quickly circling the drain. As time went on, it became apparent that the Proxy Projections and Revised Projections were

fabrications and that the Company had no realistic prospects of achieving them. However, even a bad deal that resulted in a post-Merger stock price drop well below $10.00 per share was still better for Defendants, who had different interests in the Merger than public stockholders, than no deal at all.

14. Defendants' conflicts of interest and the impairment of stockholder redemption rights in connection with the Merger require review for entire fairness. Defendants cannot meet this exacting test. No directors, officers, or controlling stockholders fulfilling their fiduciary duties would have entered into the Merger with Legacy MoneyLion, let alone recommended that the Merger was in the best interest of FAC's public stockholders. Defendants promoted their own self-interest in seeing the redemptions minimized and the Merger consummated to secure their windfall from their Founder Shares and Private Placement Warrants.

15. Now, New MoneyLion's stock price plummeted, trading at the equivalent of $2.37 per share[5] as of March 28, 2024, with FAC's public stockholders left holding the bag.

16. Although an abysmal deal for FAC public stockholders, the Merger provided a financial windfall to Defendants. On the day the Merger closed, the Founder Shares were worth approximately $10.76—a return on their initial $25,000

[5] On April 25, 2023, New MoneyLion conducted a 1-for-30 reverse stock split. The current trading price equivalent is calculated by dividing the current trading price by 30.

investment of over 376,500%. Even with New MoneyLion's stock trading at the abysmal $2.37 per share (accounting for the reverse split) it is trading at as of yesterday, if insiders still held their Founder Shares, they could capitalize on an over 82,850% return on that investment.

17. Plaintiffs seek monetary and/or rescissory damages against Defendants for their various breaches of fiduciary duty owed to FAC's public stockholders and for their unjust enrichment.

PARTIES

I. PLAINTIFFS

18. Plaintiff Kyle Martel is a FAC/New MoneyLion public stockholder who purchased shares of FAC Class A common stock on January 14, 2021 and has held those shares since that date.

19. Plaintiff Joe Bryant is a FAC/New MoneyLion public stockholder who purchased shares of FAC Class A common stock beginning on February 16, 2021 and has held shares since that date.

II. DEFENDANTS

20. Defendant Fusion Sponsor LLC (as defined above, the "Sponsor"), a Delaware limited liability company, was FAC's Sponsor. Prior to the consummation of the IPO, the Sponsor acquired all of the Founder Shares for $25,000. The Sponsor also purchased 8,100,000 Private Placement Warrants at a price of $1.00 per warrant. Each Private Placement Warrant was exercisable to purchase a share of FAC Class

A common stock at a price of $11.50. The Sponsor's only assets were the Founder Shares and Private Placement Warrants, and its only activity was to found FAC and cause it to enter into a business combination. As described below, Defendants herein all had interests in Sponsor. As acknowledged in the Proxy, FAC's directors and officers had interests "different" from public stockholders, because, among other things, "Sponsor will lose its entire investment in us if we [i.e., FAC] do not complete a business combination by December 31, 2021."

21. James controlled the Sponsor at all relevant times. James had voting and investment discretion with respect to FAC securities held of record by the Sponsor, and, as discussed herein, Defendants acknowledged that the Sponsor controlled FAC.

22. Defendant John James was CEO and a director of FAC. The Proxy disclosed that James had voting and investment discretion with respect to 8,750,000 Founder Shares held of record by the Sponsor. At the same time FAC was evaluating the MoneyLion Merger, with Ross, James founded Fusion Acquisition Corp. II ("FACII")—their second SPAC. James and Ross likewise nominated Gary, Driscoll, and Buettell to FACII's board. In addition to his SPAC work, James is the founder of BetaSmartz, an Australian fintech firm, where Driscoll and Ross serve as advisors.

23. Defendant Jim Ross was the Non-Executive Chairman of FAC. While the Proxy disclosed that Ross "disclaim[ed] any beneficial ownership of any shares held by the Sponsor," Ross's interest in shares of the Sponsor entitled him to a distribution of over 100,000 Founder Shares or the cash proceeds from a sale thereof and hundreds of thousands of Private Placement Warrants after the Merger closed. Ross was also FACII's non-executive chairman, where he served on the Board with James, Gary, Driscoll, and Buettell. Previously, Ross was an executive vice president at State Street Global Advisors and Chairman of its Global SPDR Business. Ross also served as the Asset Management Advisor to James's BetaSmartz.

24. Defendant Jeffrey Gary was the CFO and a director of FAC. While the Proxy disclosed Gary "disclaim[ed] any beneficial ownership of any shares held by the Sponsor," Gary's interest in shares of the Sponsor entitled him to a distribution of over 100,000 Founder Shares or the cash proceeds from a sale thereof and hundreds of thousands of Private Placement Warrants after the Merger closed. While FAC was considering the MoneyLion Merger, the Controller Defendants appointed Gary to serve as a director of FACII.

25. Defendant Kelly Driscoll was a director of FAC. While the Proxy disclosed that Driscoll "disclaim[ed] any beneficial ownership of any shares held by the Sponsor," her interest in shares of the Sponsor entitled her to a distribution of

over 100,000 Founder Shares or the cash proceeds from a sale thereof and hundreds of thousands of Private Placement Warrants after the Merger closed. While FAC was considering the MoneyLion Merger, the Controller Defendants appointed Driscoll to serve as a director of FACII. According to a video interview with James and Ross, Driscoll and Ross worked together "closely" during their years at State Street.[6] Driscoll also served with Ross at James's BetaSmartz with Ross as BetaSmartz's fiduciary advisor.

26. Defendant Ben Buettell was a director of FAC. While the Proxy disclosed that Buettell "disclaim[ed] any beneficial ownership of any shares held by the Sponsor," his interest in shares of the Sponsor entitled him to a distribution of over 100,000 Founder Shares or the cash proceeds from a sale thereof and hundreds of thousands of Private Placement Warrants after the Merger closed. While FAC was considering the MoneyLion Merger, the Controller Defendants appointed Buettell to serve as a director of FACII. Buettell and Driscoll also had significant preexisting relationships. Buettell was Driscoll's mentor throughout her career.

27. Defendant Diwakar (Dee) Choubey was Legacy MoneyLion's co-founder and had served as its CEO since its inception in 2013. As part of the Merger negotiations, he secured himself a seat on the New MoneyLion board of directors

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[6] https://twitter.com/NYSE/status/1375124606961483776.

and would go on to continue to serve as the Company's CEO. Assuming no redemptions, Choubey would have owned 7.4% of the post-Merger Company.

28. Defendant Broadhaven Capital Partners, LLC is a Delaware limited liability company with a principal place of business located in New York, New York. Broadhaven served as Legacy MoneyLion's financial advisor and was an early investor in Legacy MoneyLion—having invested since at least Legacy MoneyLion's Series A financing round. Broadhaven had a designee on the Legacy MoneyLion board of directors—Broadhaven Ventures, LLC general partner Gary DePetris ("DePetris").

29. Defendants James, Gary, Driscoll, Ross, and Buettell are referred to collectively herein as the "Director Defendants."

30. Defendants James and Gary are referred to collectively as the "Officer Defendants."

31. Defendants James, Ross, and the Sponsor are referred to collectively herein as the "Controller Defendants."

32. The Director, Officer, and Controller Defendants are referred to collectively herein as the "FAC Defendants."

33. Defendants Choubey and Broadhaven are referred to herein as the "Aider and Abettor Defendants."

RELEVANT NON-PARTIES

34. Non-Party FAC is a Delaware corporation formed as a SPAC by the Controller Defendants. Following the "de-SPAC" merger of FAC and Legacy MoneyLion on September 22, 2021, FAC changed its name to MoneyLion Inc. ("New MoneyLion"). New MoneyLion is a publicly traded operating company, listed on the New York Stock Exchange ("NYSE") under the ticker "ML."

35. Non-party Legacy MoneyLion was private company that acted as "an all-in one, digital financial platform that provid[ed] convenient, low-cost access to banking, borrowing and investing solutions tailored for its customers, rooted in data, and delivered through its proprietary technology platform." MoneyLion's credit and advance products are financed through its wholly owned subsidiary Invest in America Credit Fund 1 LLC ("IIA") and related special purpose vehicles.

36. Non-party J.P. Morgan Securities, Inc. ("J.P. Morgan") is an investment bank that was engaged by FAC to act as its financial advisor in connection with the potential merger with MoneyLion. J.P. Morgan received a fee (the amount and terms of which were not disclosed in the Proxy) for its role as a financial advisor; however, the Proxy does not disclose what, if any, financial advice J.P. Morgan actually provided to the FAC Board. J.P. Morgan also served as one of FAC's co-placement agents for a $250 million private investment for certain institutional and accredited investors, who, simultaneously with the execution of the

Merger Agreement, entered into subscription agreements with FAC to purchase, immediately prior to the Merger closing, an aggregate of 25,000,000 shares of FAC Class A common stock at a purchase price of $10.00 per share (the "PIPE" investment). For acting as placement agent, J.P. Morgan also received fees and expense reimbursement (amounts which were not disclosed in the Proxy).

37. Non-party Citigroup Global Markets Inc. ("Citigroup") is an investment bank engaged by FAC to serve as one of its co-placement agents for a $250 million PIPE investment in connection with the Merger, for which it also received fees and expense reimbursement (amounts and terms which were not disclosed in the Proxy).

38. Non-party Cantor Fitzgerald & Co. ("Cantor Fitzgerald") is an investment bank engaged by FAC to serve as an underwriter for FAC's IPO. Cantor Fitzgerald received a portion of the initial underwriting fee of 1.7% of the IPO Proceeds, or $6.1 million. Cantor Fitzgerald also received a portion of the deferred underwriting fee of 3.8% of the IPO proceeds, or $13,150,000 million, which was contingent on FAC successfully completing a business combination. Cantor Fitzgerald also served as one of FAC's co-placement agents for a $250 million PIPE investment in connection with the Merger, for which it also received fees and expense reimbursement (amounts which were not disclosed in the Proxy).

39. Non-party Odeon Capital Group, LLC ("Odeon Capital") is an investment bank engaged by FAC to serve as an underwriter for FAC's IPO. Odeon Capital received a portion of the initial underwriting fee of 1.7% of the IPO Proceeds, or $6.1 million. Odeon Capital also received a portion of the deferred underwriting fee of 3.8% of the IPO proceeds, or $13,150,000 million, which was contingent on a merger taking place. Odeon Capital also served as one of FAC's co-placement agents for the $250 million PIPE financing offered in connection with the Merger, for which it also received fees and expense reimbursement (amounts which were not disclosed in the Proxy).

SUBSTANTIVE ALLEGATIONS

I. FAC IS FORMED AND CONSUMMATES A $350 MILLION IPO

40. On March 6, 2020, the Controller Defendants formed FAC as a SPAC. As with all SPACs, FAC's sole purpose was to identify a target company and effect a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination. FAC had no assets or operations of its own.

41. Four days after FAC was formed, the Controller Defendants caused FAC to issue 5,750,000 Founder Shares to the Sponsor in exchange for $25,000. Following a series of stock splits and a forfeiture, the Sponsor held 8,750,000 Founder Shares that it purchased for less than $0.003 per share.

42. After the incorporation and prior to FAC's IPO, the Controller Defendants appointed their colleagues, Defendants Gary, Driscoll, and Buettell to the Board. On June 23, 2020, the Sponsor entered into agreements with each of Ross, Gary, Driscoll, and Buettell, granting them interests in hundreds of thousands of Founder Shares and Private Placement Warrants (as set forth in Substantive Allegations section IV.A. herein) to align their interests with those of the Sponsor, Ross, and James.[7]

43. On June 30, 2020, FAC commenced its IPO, selling 35,000,000 units ("Public Units") to investors for $10.00 per Public Unit raising $350,000,000 in proceeds. Each Public Unit consisted of one share of Class A common stock ("Public Share(s)") and one-half of one warrant with each whole warrant ("Public Warrant(s)") exercisable for the purchase of one share of Class A common stock at an exercise price of $11.50 per share following FAC's entry into an initial business combination.

44. As in all SPACs, each Public Share had a redemption right that entitled the holder to redeem their shares for $10.00 per share plus interest in the event FAC would enter into a business combination (or seek an extension on the Charter's liquidation deadline). Even if public stockholders redeemed their Public Shares, they

[7] ML_Bryant_220_001742; ML_Bryant_220_001634; ML_Bryant_220_001672; ML_Bryant_220_001707.

could retain their Public Warrants. Hence, for a purchaser of Public Units, the Public Warrants were free. As discussed herein, however, it would become apparent after the closing of the Merger, that MoneyLion would not come close to a $11.50 per-share trading price, rendering the warrants essentially worthless.

45. FAC was required under its Charter to enter into a business combination within 18 months of the June 30, 2020 IPO—i.e., December 31, 2021—or liquidate and return the cash proceeds pro rata to FAC's public stockholders. If FAC entered into a merger agreement, its public stockholders would be given a choice: they could redeem their shares at a price equal to approximately $10.00 per share plus interest *or* they could invest in the merger.

46. Concurrently with the IPO, the Sponsor purchased 8,100,000 Private Placement Warrants in a private placement for $8.1 million (or $1.00 per warrant). Like the Public Warrants, the Private Placement Warrants were exercisable at a price of $11.50 for one share of FAC Class A common stock no earlier than 30 days following the completion of the initial business combination or 12 months from the June 30, 2020 IPO (whichever is later). Unlike the Public Warrants, they could be exercised on a cashless basis, could not be redeemed by the Company, and were not able to be transferred, assigned, or sold until 30 days after FAC completed its initial business combination.

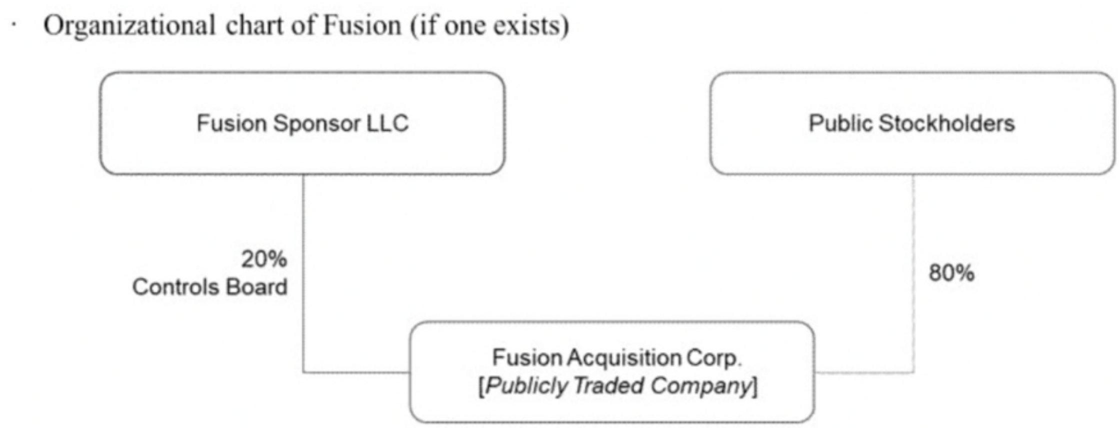
47. The funds raised in FAC's IPO, including those funds raised through the sale of the Private Placement Warrants, minus upfront underwriting fees, were placed and maintained in a trust account for the benefit of the public stockholders.[8] These funds held in the trust could be used only to redeem shares, to contribute to a merger after all redemptions were paid, or to return the public stockholders' investment if FAC were to liquidate rather than merge.

II. THE CONTROLLER DEFENDANTS CONTROLLED FAC AND ALIGNED THE INTERESTS OF THE OTHER DIRECTOR DEFENDANTS WITH THEIRS

48. The Controller Defendants controlled FAC at all relevant times through a combination of voting power and managerial authority. James was the sole managing member of Sponsor and "ha[d] voting and investment discretion with respect to the common stock held of record by [Sponsor]." As of the date of the Proxy, the Sponsor, as record owner of the Founder Shares, controlled approximately 20% of FAC's voting shares.

[8] FAC, Form 8-K (June 30, 2020) ("total of $350,000,000, comprised of $341,900,000 of the proceeds from the IPO (which amount includes $13,150,000 of the underwriters' deferred discount) and $8,100,000 of the proceeds of the sale of the Private Placement Warrants, was placed in a U.S.-based trust account at J.P. Morgan Chase Bank, N.A. maintained by Continental Stock Transfer & Trust Company, acting as trustee.").

49. Internal documents also reveal that the Sponsor and James viewed themselves as the controllers of FAC, noting matter-of-factly that Sponsor "Controls [the] Board:"[9]



50. Other than James, Ross had the largest personal financial interest in the Sponsor's Founder Shares and Private Placement Warrants.

51. James appointed himself FAC's CEO and a director. Ross appointed himself the FAC Board's non-executive chairman. James and Ross appointed Gary as an officer of FAC and appointed each of Gary, Driscoll, and Buettell to the Board, and then granted them substantial interests in the Sponsor, and, correspondingly, in the Founder Shares and Private Placement Warrants to secure their fealty.

52. The Form 424(b)(4) Prospectus issued in connection with FAC's IPO disclosed that the initial stockholders (defined as the Sponsor and James) controlled

[9] ML_Bryant_220_025179.

FAC and would "continue to exert control at least until the completion of [FAC's] initial business combination."

53. The Controller Defendants instituted a staggered Board at FAC, meaning that if there was an FAC annual meeting (and pursuant to the bylaws such annual meeting was not required to be adjourned within the 18-month liquidation deadline), only a minority of the Board would be up for election, ensuring they would maintain control of the Board until they were to cause FAC to enter into a business combination within the specified time period.

54. The Controller Defendants secured their control over Gary, Driscoll, and Buettell by granting them ownership interests in the Sponsor in exchange for nominal consideration. Indeed, while the Proxy, at 158, states that "Fusion's board of directors has determined that Mr. Jim Ross, Ms. Kelly Driscoll and Mr. Ben Buettell are 'independent directors,'" as defined in the rules of the NYSE and applicable SEC rules, what is not disclosed in the Proxy is that, Gary, Ross, Driscoll, and Buettell had a substantial financial interest in the Sponsor, which entitled them to a pro rata share of the Sponsor's Founder Shares and Private Placement Warrants.

55. James also consolidated day-to-day control of FAC in himself. FAC had only two executive officers: Defendant James as CEO, and Gary as CFO.

56. Further, while the Merger was being negotiated, in March 2021, James appointed Gary, Driscoll, and Buettell to the FACII board of directors and granted them interests in FACII's sponsor.

57. Issues of control aside, each of the FAC Defendants had non-ratable benefits that made them interested and not independent with regard to the Merger through their substantial interests in the Sponsor and their corresponding interests in the Founder Shares and Private Placement Warrants.

58. As of the date of the Merger, based on the then-current trading price of the Company's shares, FAC Defendants' Founder Shares were worth $10.76 per share, representing a return on investment as to the Founder Shares as of that date of over *376,500%*. If the FAC Defendants had failed to cause FAC to enter into a business combination by December 31, 2021, their Founder Shares and Private Placement Warrants would have been worth nothing, though public stockholders would have received $10.00 per share plus interest in the liquidation of FAC. This rendered each defendant interested and not independent with regard to the Merger, and with interests that conflicted with public stockholders.

59. At base, the FAC Defendants were motivated to push through any deal, even a potentially value destructive deal, as even a bad deal for FAC's public stockholders would allow Defendants to realize multi-million-dollar economic windfalls.

III. THE UNFAIR PROCESS

60. The Proxy touts that the Board reached its decision based on management's "due diligence investigations" and "extensive meetings and calls with [Legacy] MoneyLion's management team and representatives[.]" However, the process leading up to the Merger was flawed from the start due to the aforementioned conflicts of interests. In reality, James and Gary conducted cursory and inadequate diligence to ensure a deal was consummated before FAC's October 2, 2021 deadline to complete a business combination.

A. THE CONTROLLER DEFENDANTS COMMANDEER THE PROCESS WITH CURSORY DILIGENCE AND NO BOARD OVERSIGHT

61. Despite FAC's assertion in its Prospectus dated June 25, 2020 that "[w]e have not selected any specific business combination target and we have not, nor has anyone on our behalf, engaged in any substantive discussions, directly or indirectly, with any business combination target with respect to an initial business combination with us,"[10] Gary had commenced communications with Ron Suber ("Suber") a consultant to FAC and an advisor to MoneyLion about FAC potentially acquiring MoneyLion over the course of several weeks leading up to the IPO.[11] On

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[10] *See* FAC, Prospectus (Form 424(b)(4)) (June 29, 2020), *available at* **Error! Hyperlink reference not valid.**https://www.sec.gov/Archives/edgar/data/1807846/000121390020016189/f424b4062820_fusion.htm.

[11] ML_Bryant_220_001836. Suber would ultimately be paid just shy of $3 million for making this introduction.

July 1, 2020, the day after the IPO was consummated, Gary reached out to Chris Sugden (“Sugden”), a member of MoneyLion’s board of directors and a managing partner of Edison Partners, an investor in MoneyLion, to discuss the potential business combination. Sudgen and Gary had known each other for years, through their mutual country club.

62. On July 16, 2020, Gary, James, and Buettell spoke with MoneyLion CEO Dee Choubey (“Choubey”) as to whether MoneyLion might be interested in pursuing a potential business combination with FAC. FAC’s other directors did not participate on that call.

63. On July 18, 2020, Gary had a telephone call with Sugden to discuss the potential business combination and MoneyLion’s board’s strategic outlook. Following that call, on July 23, 2020, MoneyLion and FAC entered into a confidentiality agreement. Gary suggested to James that day that FAC retain a firm like Ernst and Young to support due diligence.

64. On July 27, 2020, Gary and Choubey had a brief follow-up telephone call to discuss next steps. Choubey revealed that Legacy MoneyLion did not yet have a 2021 financial forecast, but that it would create it and provide it within two weeks and would provide historical financials that week.

65. On August 5, 2020, James reached out to Choubey as Legacy MoneyLion had still not provided historical financials to FAC. Choubey responded

that he would provide "a first pass of financials with a narrative early next week" and that his finance team "was working on it." On the same date, Sugden arranged a call with James, Gary, himself, and MoneyLion directors Gregory DePetris ("DePetris") and Rohit Dsouza ("Dsouza"). On that call, DePetris revealed that MoneyLion had accounting irregularities that the company expected would take six to nine months to resolve. Sugden revealed that "it is fair to say [Legacy MoneyLion] would have some work to do to ensure financials are properly prepared for a public filing to meet PCAOB standards."[12]

66. On August 23, 2020, Gary and James discovered that [redacted][13]

67. On August 24, 2020, still having not received Legacy MoneyLion's historical financials, James reached out again to Choubey. A week later, on September 1, 2020, Choubey promised to get to James 2020 financials through July that week. On September 16, 2020, having not received any historical financial information, despite it being promised over a month prior, Gary again followed up with Choubey to inquire as to when FAC would receive MoneyLion's historical

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[12] ML_Bryant_220_013554.

[13] ML_Bryant_220_023516 (Aug 23, 2020 email from Gary to James noting that [redacted]; *id.* ("*This is a lot different* than [redacted]") (emphasis added).

financials. In response, Choubey scheduled a ten-minute Zoom conference with Gary on September 18, 2020 where he offered to "flash the financials."[14] After that conference, Gary, copying James, informed Choubey that FAC remained "very interested" in continuing to discuss a potential transaction between FAC and MoneyLion.[15]

68. The financials Choubey flashed on the screen and shared with Gary were then shared with the Board. They were significantly lower than both the Proxy Projections and the Revised Projections. Choubey reported:

- 2019 revenues of [redacted];
- 2020 year-to-date revenue through July 31, 2020 of [redacted];
- 2020 Full Year Revenue projected at [redacted]; and
- 2021 Full Year Revenue projected between [redacted].[16]

69. On December 12, 2020, James suggested that FAC send a preemptive letter of intent to Legacy MoneyLion. As of that date, the only "diligence" FAC had received from Legacy MoneyLion was Choubey's "screen flash" of the foregoing financials.[17]

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[14] ML_Bryant_220_013759.

[15] ML_Bryant_220_018325.

[16] ML_Bryant_220_018377.

[17] *Id.*; ML_Bryant_220_002028.

70. On December 16, 2020, Gary sent his friend Sugden an e-mail following up on a potential deal with Legacy MoneyLion. In that email, Gary revealed that FAC had been "working with" the Legacy MoneyLion financials and that revenues for 2020 should now be in the [redacted] to [redacted] million range and that they should be in the range of [redacted] to [redacted] million for 2021. Gary also advised Sugden that a letter of intent ("LOI") contemplating that FAC would merge with Legacy MoneyLion was forthcoming and that "[w]e believe we can move very quickly and plan to get the company an LOI within a week or less with a valuation range which we can quickly fine tune after a quick due diligence process." Gary thereafter forwarded his communications to the rest of the FAC Board.[18]

71. On December 17, 2020, despite the fact that to date, the only diligence FAC had conducted in connection with a potential merger was seeing a screen "flash" of projections on a screen during a 10-minute Zoom call with Choubey, FAC delivered the LOI to MoneyLion that contemplated a pre-money enterprise value of MoneyLion of between $2.0 billion to $2.5 billion. The LOI further contemplated that FAC would enter into subscription agreements for the Private Placement of FAC Class A common stock, which would close simultaneously with the closing of the business combination, the proceeds of which, together with the amounts retained in the Trust Account, would total approximately $500 million. The LOI stated that all

[18] ML_Bryant_220_002008.

terms were subject to ongoing due diligence by FAC of MoneyLion. The LOI also provided for an exclusivity period during which the parties could continue to negotiate the transaction agreements. Following receipt of the draft LOI, MoneyLion responded that they would continue to consider the potential business combination and review the LOI, and that they were also considering alternate financing strategies.

72. On December 20, Gary convened a call with Sugden. He and James relayed to Driscoll, Buettell, Ross and JP Morgan that the "best news" from the call with Sugden was that MoneyLion had not retained a particular financial advisor known for being "aggressive" in pushing back on lopsided "Sponsor terms." Rather, the advisor was an investor and merely an "informal advisor" to MoneyLion. Sugden advised Gary that he would not let the informal advisor "get in the way of getting a deal done since [Gary] told [Sugden] it was a [FAC's] biggest concern."[19]

73. On December 21, 2020, Defendants met by video conference with Choubey, representatives of Broadhaven (referred to in the Proxy as "certain representatives of MoneyLion" and other of its officers, directors and financial advisors, and FAC presented its vision for a business combination. Members of J.P. Morgan, financial advisors to FAC, also attended. While the Proxy states that "[p]rior to the meeting, FAC prepared and reviewed with its advisors extensive

[19] ML_Bryant_220_024973; ML_Bryant_220_024979.

financial models of MoneyLion's business in order to generate a view as to the expected near-term financial performance and growth potential within the digital banking and wealth management product offerings," in reality, there is no evidence the described diligence ever took place. To the contrary, while Gary suggested to Legacy MoneyLion that Legacy MoneyLion make a presentation at the meeting, "including discussion of financial performance and forecasts," Choubey informed Gary on a call prior to the meeting that MoneyLion was not prepared to provide that information at that time, though he did provide 2022 net revenues when pushed on the call of [redacted]

74. FAC still did not have any further information or insight into Legacy MoneyLion's historical financials and projected future performance.[20] After the December 21, 2020 call, Rick Correia, Legacy MoneyLion's CFO, committed to providing a management presentation and model that Legacy MoneyLion prepared in connection with a potential Series D financing round.[21] The financial model in the data room reflected net revenues of [redacted] for 2022 compared with the [redacted] previously conveyed to the Board, purportedly due to discrepancies with regard to the size of Legacy MoneyLion's planned Series D financing.

[20] ML_Bryant_220_002055.

[21] ML_Bryant_220_002073.

75. The Legacy MoneyLion financial forecast uploaded to the data room also included an assumption that its "Instacash" business (a slightly cheaper alternative to payday loans and overdraft fees) [redacted] Legacy MoneyLion's financials included an assumption that [redacted] the forecasts also assumed that [redacted] Legacy MoneyLion's Instacash assumptions were [redacted]

76. On the same date, FAC began formal discussions as to retention of J.P. Morgan as a financial advisor in connection with the Merger and as a placement agent for the PIPE. All of J.P. Morgan's compensation would be conditional on the Merger closing.

77. On December 27, 2020, FAC delivered a revised LOI to MoneyLion. The LOI narrowed the valuation range for Legacy MoneyLion to between $2.1 billion to $2.25 billion. The LOI also contemplated that FAC would enter into a Private Placement, the proceeds of which, together with the amounts retained in the Trust Account, would total approximately $500 million. The LOI also provided for a period of exclusivity for the parties to negotiate the Merger Agreement and related transaction agreements.

78. On December 29, 2020, Gary sent an email to the FAC Board and JP Morgan recommending that they "should shorten the due diligence and time to publicly announce the deal."[22] James agreed, noting "I would argue in this case that we would not need more than 2 weeks to finalize DD."[23]

79. James agreed that only cursory diligence was necessary and responded as follows in reply to Gary's email: "Yes I would argue in this case that we would not need more than 2 weeks to finalize [due diligence] and we want to build momentum behind an announcement early."[24]

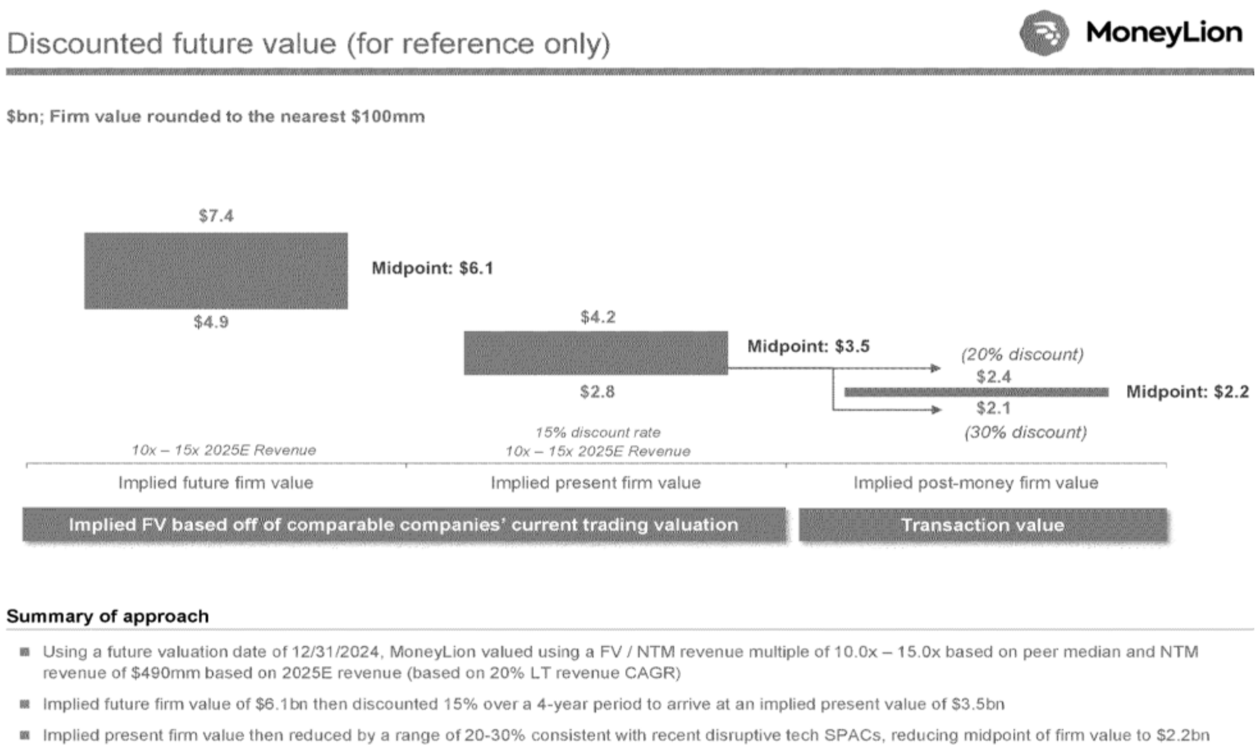
80. Replying to the email from James, on December 29, 2020, Buettell expressed concern regarding the merger valuation materials J.P. Morgan was

[22] ML_Bryant_220_002183.

[23] *Id.*

[24] *Id.*

drafting in advance of a meeting with MoneyLion management the following day. Specifically, at issue was a slide regarding New MoneyLion's "[d]iscounted future value":[25]



81. Commenting on this slide, which, among other things, valued MoneyLion using a FV/NTM revenue multiple of 10.0x to 15x, NTM revenue of $490 million based on estimated 2025 revenue, and implied an (unwarranted and unjustified) future firm value of *$6.1 billion* (thereafter discounted using arbitrary numbers to feign credibility), Buettell stated "[i]t just feels like we are using numbers to justify our valuation conclusion and some discount rates to get to the number we

[25] ML_Bryant_220_002163.

want of $2.2B." The negative comment received no substantive pushback from J.P. Morgan, Gary, Driscoll, Ross, or James, however it was ultimately determined that this slide be removed from the presentation.[26]

82. On January 4, 2021, less than two weeks after FAC finally received some limited due diligence materials, the parties executed the final LOI, which set a valuation of Legacy MoneyLion between $2.1 billion and $2.25 billion. The LOI also included a minimum cash condition that aggregate cash available from amounts held in the Trust Account (after payment of any redemptions) and obtained in connection with the Private Placement, after payment of any transaction expenses, would be no less than $260 million.

83. In addition to the consideration paid to MoneyLion, the parties determined that 17.5 million shares of New MoneyLion Class A common stock would be payable to MoneyLion as earnout shares in three tranches (7.5 million shares at $12.50 per share, 7.5 million shares at $16.50 per share and 2.5 million shares at $18.00 per share).

84. While the Proxy states that on January 4, 2021, FAC convened a special meeting of the FAC Board, attended by J.P. Morgan, to discuss and consider the potential business combination with Legacy MoneyLion and vote on entering into the non-binding LOI, no minutes of this purported meeting exist, there is no

[26] ML_Bryant_220_023574-75.

evidence that this meeting occurred, and email correspondence sent to and from FAC's various directors on this date do not include any mention of any board meeting at all. That is, the Proxy falsely represented that a Board meeting was held on this date and that J.P. Morgan met with the Board, and moreover fabricated a summary of the discussions held, when no such meeting occurred.

85. On January 4, 2021, FAC and Legacy MoneyLion entered into the final LOI which would set the terms of the ultimately agreed to Merger Agreement.

86. Beginning shortly after the January 4, 2021 LOI was signed, James began working with Legacy MoneyLion to modify its projections in order to secure PIPE investors necessary to close the Merger. While confirmatory due diligence was also purportedly occurring at this time, FAC's primary focus was on securing PIPE investors.

87. On January 15, 2021, Broadhaven provided J.P. Morgan with Legacy MoneyLion's new financial projections, which were based on an assumption that Legacy MoneyLion would receive the cash held in the FAC trust (prior to redemptions) and the contemplated PIPE proceeds.[27] These projections were materially higher as to revenue than the ordinary course management projections

[27] ML_Bryant_220_002964, ML_Bryant_220_002966 at 3004, 3008.

previously provided to the Board (though the management projections also included cash from a then-hypothetical financing).[28]

88. On January 20, 2021, an updated set of financial projections was provided to FAC. The net revenues in the "Beat Case" are the Proxy Projections—[redacted]

89. Between January 15 and 18, 2021, FAC formally engaged J.P. Morgan, Citigroup, Cantor and Odeon to serve as placement agents for the Private Placement.

90. On January 26, 2021, FAC and MoneyLion entered into an amendment to the January 4, 2021 LOI (the "LOI Amendment"). In the LOI Amendment, FAC and MoneyLion agreed to a final pre-deal valuation of Legacy MoneyLion of $2.2 billion. The LOI Amendment provided that the earnout shares of New MoneyLion Class A common stock payable to MoneyLion would be in two tranches (7.5 million shares at $12.50 per share and 10 million shares at $16.50 per share). The LOI Amendment further clarified the terms of the cash and equity incentive awards that would be approved and adopted in connection with the Merger and

[28] ML_Bryant_220_002966 at 3004.

extended the period of exclusivity for the parties to negotiate the transaction agreements.

91. The FAC Board did not hold any meetings while the due diligence on Legacy MoneyLion was being undertaken by Gary and James.

B. THE CONFLICTED BOARD APPROVES THE MERGER WITHOUT ADEQUATE DILIGENCE AND WITHOUT OBTAINING A FAIRNESS OPINION

92. While the Board did not hold a single meeting to date, on February 10, 2021, the FAC Board, purportedly acting by unanimous written consent, approved the Merger and Merger Agreement. No documents produced in response to Plaintiffs' 220 Demand evidence this purported written consent.

93. On February 11, 2021, Legacy MoneyLion and FAC, respectively through Defendants Choubey and James, executed the Merger Agreement, FAC entered into the Subscription Agreements for the Private Placement, FAC, the Sponsor, and FAC's directors and officers entered into the Sponsor Support Agreement, and FAC and certain Legacy MoneyLion stockholders entered into the MoneyLion Support Agreements. The Merger was thereafter amended by the parties on June 28, 2021.[29] Ultimately, FAC secured $250 million in PIPE investments.

[29] According to the Proxy, the amendment was executed "to permit the New MoneyLion Board to initially consist of ten directors, instead of nine, and to align the exclusive forum provisions of the Proposed [MoneyLion] Charter with those of the Current Charter."

94. The Merger Agreement also provided that Legacy MoneyLion and FAC would jointly prepare the Proxy and that both parties were responsible for correcting false or misleading statements and ensuring all material information was disclosed.

95. The next morning, on February 12, 2021, FAC and Legacy MoneyLion issued a joint press release announcing the Merger. The announcement revealed the parties' expectation that the deal would close in the first half of 2021.

96. The FAC Board never sought a fairness opinion from a third-party, nor did it receive any advice from an independent financial advisor. Further, it appears the Board never again addressed [redacted]. Nonetheless, the Proxy told stockholders to rely on its purported due diligence and the collective experience of James and Gary as a justification for failing to seek a fairness opinion or a third-party valuation in connection with Legacy MoneyLion's valuation:

> Although the Fusion Board did not seek a third-party valuation and did not receive any report, valuation or opinion from any third party in connection with the Business Combination, the Fusion Board relied on the following sources: (i) due diligence of MoneyLion's business operations conducted by Fusion and its advisors; (ii) extensive research reports and data related to the digital banking sector in the United States and internationally; (iii) Fusion management's collective experience in public markets transactions in constructing and evaluating financial models/projections and conducting valuations of businesses; and (iv) industry expertise and knowledge from its advisors, including J.P.

> Morgan. The total enterprise value for MoneyLion is $2.4 billion. The Fusion Board concluded that this is fair and reasonable, given the growth prospects, potential industry consolidation and other compelling aspects of the transaction.

97. In the months that followed, FAC and Defendants reached out aggressively to investors to keep them on board with the Merger. Envisioning his payday, Gary reached out to his accountant to discuss changing his residence to Florida where he would not have to pay state income tax on his Founder Shares and Private Placement Warrant interests.[30] Though not disclosed, during this time, Gary and James invited Legacy MoneyLion director Sugden to the board of directors of their new SPAC.[31]

98. On April 1, 2021, the FAC Board was informed that Legacy MoneyLion had been subpoenaed by the United States Securities and Exchange Commission ("SEC") in connection with its investigation into whether Legacy MoneyLion may have violated federal securities laws in connection with its prior capital raises and accounting infirmities related to IIA. James assured the directors that it did not raise any concerns for him and remarked "it appears to be an extension of the previous investigation."[32] There is no evidence in the 220 production that any

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[30] ML_Bryant_220_020302.

[31] ML_Bryant_220_020423.

[32] ML_Bryant_220_007493. The Proxy would ultimately disclose the nature of this SEC investigation as follows: "In February and March 2021, we received investigative subpoenas from the Securities and Exchange Commission concerning IIA, which primarily has assets from institutional investors, and is our current source of funding for originated

other directors ever asked any questions upon learning that Legacy MoneyLion was under investigation (again) by the SEC.

99. While FAC and Legacy MoneyLion originally announced that the deal would close in the first half of 2021, the SEC investigation and related delays in approval of the Proxy—apparently due to issues with how Legacy MoneyLion's accounting policies were disclosed resulted in delays.[33]

100. Ultimately, it was not until September 3, 2021, that FAC filed the Proxy with the SEC and disseminated it to FAC stockholders. It set the stockholder vote on the Merger for September 21, 2021 and informed stockholders of their redemption rights, setting a deadline for any redemptions of September 17, 2021—14 days after the issuance of the Proxy.

101. Immediately after the Proxy was issued, with the stock price trading below $10.00 per share, and high redemption levels a serious concern, James and Gary reached out to their advisory team at Citi, expressing concern that equity capital markets teams at various investment banks, and Monashee Capital ("Monashee") and Beryl Capital Management, large FAC stockholders, would not be able to

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receivables. We are cooperating with the investigation, which is at an early stage, and we cannot predict its outcome or any potential impact on our financial condition or operations."

[33] ML_Bryant_220_021546 (August 19, 2021 email chain among FAC and MoneyLion executives expressing hope that the SEC will bless their accounting disclosures in the proxy and prospectus materials).

provide support for the deal as “their hands will be tied unless we can get the price north of $10 (for redemptions).” James suggested reaching out to “‘friendly’ parties who are prepared to get us north of $10.”[34]

102. Paul Abrahimzadeh at Citi responded, noting Citi “absolutely want[s] to find new buyers and help re-rate the stock.” He continued that “most SPAC mergers are trading <$10, and even when they rally >$10 had tended to be short lived” and that “[t]his is due to overwhelming supply given how much money is tied up in SPACs and the # of funds looking for liquidity.” James responded noting concerns that “anything sub-$10 at the moment” meant that FAC’s institutional stockholders “will redeem almost automatically.” James and his colleagues were desperate to keep FAC’s trading price above $10, however short-lived, in order to dissuade redemptions.

103. Four days later, on September 7, 2021, Choubey, copying James, e-mailed Jay Testa (“Testa”) at Monashee, who had previously expressed concern to James that he could not support the Merger, letting Testa know that despite the fact that the Proxy was issued four days prior, Legacy MoneyLion had now upwardly revised its Proxy Projections.[35]

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[34] ML_Bryant_220_023318.

[35] Choubey had sent James a draft of his intended email to Testa. James proposed several tweaks “to try and keep the positive flavor rather than use any negatives,” including removing various references to the delay in the filing of the Proxy and the related delay in

104. Later that evening, Choubey e-mailed the rest of the FAC Board, advising that the Proxy Projections had been upwardly revised. Choubey advised that MoneyLion wanted to announce the new projections the following day, pre-market. James signed off on the revised projections without any Board meeting and without any diligence as to whether such projections were reliable, reasonable, or realistic.

105. On the morning of September 8, 2021, prior to market open, just hours after the Board was provided with the updated projections from Legacy MoneyLion, Defendants issued a Proxy Supplement (the "Proxy Supplement"), which further inflated the Proxy Projections as set forth below, in relevant part (the "Revised Projections").

	2021E		2022E		2023E	
	Prior	***Revised***	Prior	***Revised***	Prior	***Revised***
Adjusted Revenue	$144	**$155**	$258	**$285**	$424	**$525**
Adj. Net Income (Loss)	$(28)	**$(37)**	$(23)	**$(42)**	$18	**$20**
Total Customers (000s)	2,569	**3,028**	4,461	**5,715**	6,987	**8,969**
Total Payment Value	$1,511	**$1,511**	$3,672	**$3,742**	$5,599	**$5,648**
Total Originations	$942	**$1,000**	$2,045	**$2,245**	$3,319	**$3,557**

The Proxy Supplement credited the "strong financial performance of both the first and second quarters and solid momentum" due to the "effectiveness of marketing spend."

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the expected closing date, stating that "we almost want investors to believe we intended there to be a delay." ML_Bryant_220_024641.

106. On September 21, 2021, at a special stockholder meeting, FAC's stockholders approved the Merger and holders of nearly 26 million FAC shares (approximately, 74% of the public unaffiliated shares) elected to redeem their shares. Unlike up-or-down votes in the traditional corporate merger context, FAC stockholders were allowed to vote in favor of the Merger even if they elected to redeem shares.[36]

107. On September 22, 2021, the Merger closed and the combined company, MoneyLion Inc., thereafter traded on the New York Stock Exchange under the ticker "ML."

108. On that day, FAC stock price closed at $10.76, meaning that based on the then-current trading price, Defendants' 8,750,000 New MoneyLion shares were worth approximately $94,150,000.

IV. DEFENDANTS DISSEMINATED A MATERIALLY FALSE AND MISLEADING PROXY TO DETER REDEMPTION AND INDUCE STOCKHOLDER APPROVAL OF THE DEAL

109. Consummation of the Merger required that FAC contribute at least $260 million in cash to the combined company, net of transaction costs. That meant that after accounting for the PIPE, FAC would need at least $50 million in the trust after redemptions or Legacy MoneyLion could back out of the deal. With little more

[36] Proxy at 16. For some stockholders, the fact that warrants would not be extinguished upon the Merger would have been reason to vote "yes" notwithstanding the decision to redeem.

than a month to go before FAC's liquidation deadline, this provided Defendants, who would lose the entirety of their investments and potential windfalls if no deal occurred, with a strong incentive to minimize redemptions. Defendants were further incentivized to minimize redemptions, because with every redemption, there would be less cash underlying the Founder Shares and dilution would increase.

110. To comply with their fiduciary duties, Defendants were required to disclose all material information to public stockholders, so as not to impair their ability to decide whether to redeem their shares or to invest in the post-Merger company. As discussed below, they failed to do so.

111. Moreover, MoneyLion and Choubey were obligated under the Merger Agreement to review the Proxy disseminated to FAC stockholders and to ensure its accuracy. In fact, the 220 Production is rife with documentation of MoneyLion's counsel—and Choubey himself—reviewing and commenting on proxy materials.[37]

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[37] *See, e.g.*, ML_Bryant_220_024660 (Choubey communicating with James directly regarding whether to include in the Proxy supplement a proposal to amend FAC's charter to increase the number of authorized shares of New MoneyLion common stock: "Let's leave it as it is, so we can get it mailed tomorrow without having to need us chase consents"); ML_Bryant_220_028203 (June 15, 2021 email chain showing that Choubey received daily updates on the status of Merger documents, including proxy drafting matters, and showing that he forwarded the tracking email to James, and asking James to "nudge" his counsel at White & Case to move matters along and "play ball"); *id.* (Choubey advising James that MoneyLion is "intentionally and proactively trying to knock things out now so there is no last minute rush"); ML_Bryant_220_028248 (Choubey advising James that "On the s4 our response letter [to the SEC staff letter] with full financial comments have been sent to rsm [MoneyLion's outside auditor]"); ML_Bryant_220_017123 (on August 10, 2021, a few weeks before the Proxy was disseminated, Choubey requesting various data points from J.P. Morgan and FAC to "allay any concerns" given that "[s]ome

A. DEFENDANTS OMITTED MATERIAL INFORMATION CONCERNING THE "INDEPENDENT" DIRECTORS' INTERESTS IN THE SPONSOR

112. In the Proxy, Defendants included a chart, which purported to show the beneficial ownership of the Founder Shares. That chart represented that Defendants Gary, Ross, Driscoll, and Buettell had no interest in the Founder Shares held by the Sponsor, giving the impression that only the Sponsor and James held interests therein.

	Before the Business Combination			After the Business Combination			
				Assuming No Redemption		Assuming Maximum Redemption	
Name and Address of Beneficial Owner	Number of shares of Fusion common stock	%	% of Total Voting Power	Number of shares of New MoneyLion Class A common stock	% of Total Voting Power	Number of shares of New MoneyLion Class A common stock	% of Total Voting Power
Fusion Sponsor LLC[(1)(2)]	8,750,000	20.0%	20.0%	8,750,000	3.5%	8,750,000	3.7%
John James[(1)(2)]	8,750,000	20.0%	20.0%	8,750,000	3.5%	8,750,000	3.7%
Jeffrey Gary[(1)]	—	—	—	—	—	—	—
Jim Ross[(1)]	—	—	—	—	—	—	—
Kelly Driscoll[(1)]	—	—	—	—	—	—	—
Ben Buettell[(1)]	—	—	—	—	—	—	—
All Directors and Executive Officers of Fusion as a Group (five individuals)	**8,750,000**	**20.0%**	**20.0%**	**8,750,000**	**3.5%**	**8,750,000**	**3.7%**

113. In fact, as revealed by Plaintiffs' Section 220 Demands, each of Gary, Ross, Driscoll, and Buettell had significant interests in both the Founder Shares and Private Placement Warrants through their interests in the Sponsor. Specifically, each of the foregoing directors held the following interests in the Sponsor.

investors have asked us questions about the probability of the proxy vote, and the risk to not achieving it").

Director	Investment in the Sponsor	Class X Units[38]	Class Y Shares[39]	Class Y PP Warrants[40]	Class Z1 Shares[41]	Class Z1 Warrants[42]	Class Z2 Shares[43]
Gary	None.	0	94,500	315,000	15,750	68,804	36,148 (plus 53,100 Class Z2 PP Warrants)
Ross	$100,000	100,000	131,250	437,500	21,875	90,005	80,205 (plus 73,750 Class Z2 PP Warrants)
Driscoll	$100,000	100,000	65,625	218,750	10,938	45,003	10,000
Buettell	$50,000	50,000	65,625	218,750	10,938	45,003	0

That is, undisclosed to stockholders, each director held indirect interests in *at least* 76,000 Founder Shares and *at least* 250,000 Private Placement Warrants. That these purportedly independent directors held such substantial and unique financial incentives aligning their conflicted interests directly with the Controller Defendants

[38] Each Class X Unit had the right to receive a pro rata distribution of (i) Class X PP Warrants of which there were 2,800,000 Private Placement Warrants, and (ii) the Class X Founder Share pool, of which there were there were 5,671,591 Founder Shares as set forth in the Amended and Restated limited Liability Company Agreement of Fusion Sponsor LLC.

[39] Class Y Shares consisted of 525,000 Founder Shares held by the Sponsor.

[40] Class Y PP Warrants means 1,750,000 Private Placement Warrants held by the Sponsor.

[41] Class ZI shares meant certain of the remaining Founder Shares held by the Sponsor.

[42] Class Z1 PP warrants meant certain of the remaining Private Placement Warrants held by the Sponsor.

[43] Class Z2 shares meant any Founder Shares remaining after giving effect to the (i) distribution of the Class X, Class Y, and Class Z1 distributions, and the distribution of any additional Founder Shares pursuant to Subscription Agreements with investors in the Class X Units.

surely would have been material to public stockholders when evaluating whether to redeem their shares or invest in the Merger. The Proxy's description of their interests in the Founder Shares as nonexistent was false and, combined with its failure to disclose the directors' interests in the Private Placement Warrants, robbed stockholders of their ability to make an informed redemption decision.

B. DEFENDANTS MADE FALSE STATEMENTS AND OMITTED MATERIAL INFORMATION CONCERNING THE VALUE OF FAC SHARES TO BE EXCHANGED IN THE MERGER

114. The valuation of FAC pre-Merger shares is centrally important to public stockholders because it would be a reasonable estimation of what they could expect to receive by exchanging their shares with Legacy MoneyLion stockholders in the Merger.

115. FAC's sole asset prior to the Merger was cash. The value of a FAC share, therefore, is the amount of net cash underlying that share.

116. To calculate the net value of a share that FAC would exchange with Legacy MoneyLion stockholders in the Merger, one begins with total cash, subtracts costs, and divides that number by FAC's pre-Merger shares outstanding:

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

117. At the time of the Proxy, FAC's *total* cash for this calculation consisted of funds held in the trust, funds to be received at closing in exchange for shares issued to PIPE investors, and net cash outside of the trust.

118. To determine *net* cash, costs must be subtracted from the total cash. Those costs include: (1) transaction costs related to the Merger, including deferred underwriter fees and transaction-related fees paid to FAC's financial advisors, and other transaction-related fees to be paid by FAC; and (2) the value of the Public and Private Placement Warrants, which is a cost overhanging outstanding shares.

119. To determine net cash *per share*, one must then divide net cash by the number of pre-Merger shares outstanding, which include: (1) Public Shares; (2) Founder Shares; and (3) shares to be issued in connection with the PIPE.

120. To the extent one can obtain the inputs listed above—and one cannot obtain all the inputs from the disclosures in the Proxy or elsewhere—FAC's net cash per share was less than $7.00. This is the value FAC would contribute to the Merger.

121. Furthermore, net cash per share would drop, as of the time of the Merger, to the extent shares were redeemed. Costs, in the equation above, would stay constant while the number of shares would fall. That is, the costs of the SPAC would be borne by fewer shares.

122. Defendants did not disclose either the fact that FAC shares were worth less than $7.00, or the fact that the shares would be worth even less to the extent

shares were redeemed. Defendants did not even provide sufficient information and guidance to allow public stockholders to conduct this analysis on their own. Some of the information used to calculate the actual net cash per share was scattered across the Proxy in no coherent form, and other pieces of information are wholly absent.

123. These were highly material facts that reasonable investors would need to make informed redemption decisions. The net cash per share that FAC stockholders would exchange for Legacy MoneyLion shares was directly related to the value they could expect to receive in return from Legacy MoneyLion stockholders. Because there was less than $7.00 underlying FAC shares, FAC stockholders could expect to receive no more from Legacy MoneyLion.

124. Because the Proxy omitted and obfuscated material information needed to determine the net cash underlying FAC's shares—and thus the value that FAC stockholders could expect to receive if they chose not to redeem—FAC's public stockholders could not make an informed decision whether to redeem their shares or invest in the Merger.

125. The Board not only failed to disclose the true value of FAC shares in the Merger, it failed to disclose Legacy MoneyLion's incentive to correspondingly inflate its value. The Merger Agreement overvalued FAC shares at $10.00 per share for purposes of the share exchange—despite the fact that the shares were worth under $7.00 per share. Consequently, Legacy MoneyLion had to inflate its value

commensurately in order to get a fair deal. This should have been evident to the FAC Board, and it is exactly what happened here. Legacy MoneyLion inflated its valuation and supported that valuation with inflated projections. Following the Merger, New MoneyLion failed to reach its inflated projections, and its stock price tanked.

C. DEFENDANTS FALSELY ASSERTED A BOARD MEETING OCCURRED AND MANUFACTURED DUE DILIGENCE, BOARD DISCUSSIONS, AND DELIBERATIONS THAT DID NOT OCCUR

126. When providing information to stockholders to enable them to evaluate whether they should redeem their shares or invest in the Merger, the Proxy described the extensive involvement of the Board in the due diligence and Merger process and the Board provided its reasons for determining that the Merger was in the best interests of FAC and public stockholders. As Plaintiffs' 220 Demand revealed, much of the Proxy's descriptions of the Board's involvement and the due diligence conducted by the Officer Defendants and the Board were, at best, materially misleading, if not a fabrication.

127. For example, while the Proxy disclosed that Choubey provided FAC with Legacy MoneyLion's "financial models" on September 18, 2020, the Proxy did not disclose that Choubey did not actually provide FAC with any financial models. Instead, he merely flashed six numbers on a screen during a Zoom call. He did not provide any materials to FAC at all. Further, while the Proxy discloses further

discussions and e-mails from December 14 to 17, 2020 between Gary and Sugden, it does not disclose that again, far from detailed financial models, all that was exchanged were combined net revenue projections. That is, when FAC provided the initial LOI to MoneyLion that would set the collar for valuation negotiations in connection with the Merger, they had seen nothing more than a "flash" on the screen of projected net revenue numbers.

128. Further, the Proxy disclosed:

> On December 21, 2020, the Fusion Board met by video conference with certain representatives of MoneyLion, including several of its officers, directors and financial advisors, and Fusion presented its vision for a business combination. Members of J.P. Morgan Securities LLC ("J.P. Morgan"), financial advisors to Fusion, also attended. Prior to the meeting, Fusion prepared and reviewed with its advisors extensive financial models of MoneyLion's business in order to generate a view as to the expected near-term financial performance and growth potential within the digital banking and wealth management product offerings. Further research was performed in evaluating the total U.S. addressable market for digital banking and wealth management (relying on third-party sources) and MoneyLion's performance in the United States.

In reality, FAC was not provided with MoneyLion's detailed financial model until after that call occurred.

129. Contrary to the Proxy's assertions, Gary suggested an agenda item for the meeting be a MoneyLion presentation "including discussion of financial performance and forecasts." Choubey refused, though he did provide 2022 net revenues of [redacted] when pushed on the call. It was not until *after* the December 21, 2020 call, Rick Correia, MoneyLion's CFO, committed to providing

a management presentation and model that Legacy MoneyLion prepared in connection with a potential Series D financing round.[44]

130. Additionally, the Proxy falsely represents that the FAC Board convened a special meeting prior to the approval of the final LOI. The Proxy states that on January 4, 2021, FAC convened a special meeting of the FAC Board, attended by J.P. Morgan, to discuss and consider the potential business combination with Legacy MoneyLion and vote on entering into the non-binding LOI. But, no minutes of this purported meeting exist, there is no evidence that this meeting occurred, and email correspondence sent to and from FAC's various directors on this date do not include mention of any board meeting. That is, the Proxy falsely represented that a Board meeting was held on this date and that J.P. Morgan met with the Board, and fabricated a summary of the discussions held, when no such meeting occurred.

131. Finally, the Proxy omitted material information concerning the Board's due diligence into Legacy MoneyLion's accounting policies. Legacy MoneyLion repeatedly told FAC of its accounting issues related to IIA as flagged by the SEC, yet, FAC failed to investigate—even when it became clear that Legacy MoneyLion was under investigation by the SEC for the same issue. After the close of the Merger, New MoneyLion issued a Form 8-K, in which it announced that the Audit Committee of the New MoneyLion board of directors determined that the

[44] ML_Bryant_220_002073.

Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021 should no longer be relied upon and that any press releases, earnings releases, investor presentations, or other communications describing the affected period were also unreliable.

132. It would have been highly material to stockholders to know that prior to setting the terms of the Merger, the Board had no due diligence on Legacy MoneyLion; the Board ignored significant red flags with regard to Legacy MoneyLion's accounting practices, which called into question the reasonableness of the Proxy Projections and historical financials; the Board did not hold a single Board meeting to evaluate the transaction or its terms, let alone to address the plethora of conflicts by those Defendants and advisors primarily tasked with negotiating the deal and conducting due diligence; and the advisors who were engaged to provide a patina of legitimacy to the transaction never provided information to the Board at a Board meeting at all. This is particularly true given that FAC's public stockholders were asked to rely on the involvement of the Board in selecting a transaction counterparty and to protect the best interests of the Company.

D. DEFENDANTS MISREPRESENTED THE PROXY PROJECTIONS AND REVISED PROJECTIONS AND OMITTED MATERIAL ASSUMPTIONS REGARDING THE CASH INFLUX FROM THE MERGER

133. The Proxy also disclosed the Legacy MoneyLion management's projections (the "Proxy Projections"):

(in millions)	2020P[1]	2021E	2022E
Adjusted Revenue[2]	$ 76	$ 144	$ 258
Adjusted Gross Profit[3]	$ 39	$ 94	$ 184

134. On September 8, 2021, five days after the issuance of the Proxy, FAC issued the Proxy Supplement pursuant to Rule 424(b)(3). That Supplement further raised guidance for Legacy MoneyLion due, purportedly, to Legacy MoneyLion's first and second quarter 2021 performance (although there was no explanation as to why such information was not available sooner). The supplement included the following guidance:

Updated Guidance

($ in millions)	2021E		2022E		2023E	
	Prior	***Revised***	*Prior*	***Revised***	*Prior*	***Revised***
Adjusted Revenue[1]	$ 144	**$ 155**	$ 258	**$ 285**	$ 424	**$ 525**
Adj. Gross Profit Margin[2]	65%	**65%**	71%	**71%**	78%	**78%**
Adj. Net Income (Loss) [3]	$ (28)	**$ (37)**	$ (23)	**$ (42)**	$ 18	**$ 20**
Total Customers (000s)	2,569	**3,028**	4,461	**5,715**	6,987	**8,969**
Total Payment Value	$ 1,511	**$ 1,511**	$ 3,672	**$ 3,742**	$ 5,599	**$ 5,648**
Total Originations	$ 942	**$ 1,000**	$ 2,045	**$ 2,245**	$ 3,319	**$ 3,557**

135. Both the Proxy Projections and the Revised Projections assumed a cash influx from the Merger, and thus were not standalone projections, but Defendants did not disclose that assumption to public stockholders.

136. Although not disclosed in the Proxy or the Supplement, both the Proxy Projections and the Revised Projections [redacted] As Defendants identified as part of the due diligence process, the Proxy Projections and

Revised Projections assumed that [redacted] Further, Defendants knew that the Proxy Projections and Revised Projections included [redacted]. These Instacash assumptions were [redacted] Defendants [redacted] never addressed them with Legacy MoneyLion and published projections in the Proxy that relied on the assumptions [redacted]

137. Unsurprisingly given Defendants' failure to properly diligence Legacy MoneyLion's financial projections and accounting irregularities, their failure to address or investigate significant red flags surrounding Legacy MoneyLion's Instacash business [redacted] and that due to a high number of redemptions by large blockholders—that were known or knowable at least as of the time the Revised Projections were published, given Defendants' communication with them in the lead up to the stockholder vote—FAC

would contribute significantly less cash than the projections presumed, both sets of these projections proved to be highly unreliable.

138. That is, Defendants painted an overly rosy picture of Legacy MoneyLion's future performance that failed to take into account or disclose counterbalancing information.

E. DEFENDANTS OMITTED MATERIAL INFORMATION CONCERNING J.P. MORGAN'S ROLE AND ENGAGEMENT

139. Defendants also failed to disclose material information concerning J.P. Morgan's role in the Merger and its engagement. As discussed above, J.P. Morgan received substantial fees for serving as financial advisor to FAC and for serving as placement in connection with the PIPE Investment. The Proxy does not disclose the specific amount of these fees, or whether the payment of these fees, or even a portion of these fees, were contingent on the completion of a business combination.

140. Despite this conflict of interest, the Proxy stated that J.P. Morgan was retained as "financial advisors to [FAC]." This disclosure is misleading and omits material information concerning when J.P. Morgan was purportedly engaged, whether the Board approved the engagement of J.P. Morgan or considered its financial conflicts, and what J.P. Morgan's compensation and compensation structure was for the purported engagement. The Proxy also fails to adequately disclose what financial advisory services J.P. Morgan provided in connection with the potential transaction. Indeed, the Board did not receive a fairness opinion.

141. The Proxy also disclosed that FAC engaged J.P. Morgan as a placement agent in connection with the $250 million PIPE in connection to the Merger, but does not disclose J.P. Morgan's compensation or compensation structure for acting as a placement agent if the Merger was consummated.

142. This information was material to stockholders. Because the Proxy disclosed J.P. Morgan's involvement in connection with the Merger and touted the Board's retention of J.P. Morgan as a financial advisor to lend legitimacy to an otherwise highly conflicted Merger process, who retained J.P. Morgan, when, and the compensation J.P. Morgan would receive (and whether it was Merger-contingent) would be material to a stockholder evaluating whether to invest in the Merger or redeem some or all of his or her shares.

F. DEFENDANTS OMITTED MATERIAL INFORMATION CONCERNING LEGACY MONEYLION'S MATERIAL WEAKNESSES

143. Defendants also failed to disclose material information concerning Legacy MoneyLion's material weaknesses, which were acknowledged by FAC and Legacy MoneyLion and incorporated into the Merger Agreement, the details of which were not disclosed to stockholders.

144. Specifically, the Merger Agreement, in its preamble, provides that the Merger Agreement is to be defined as inclusive of a "Company Disclosure Letter" from Legacy MoneyLion. The Company Disclosure Letter was referenced

throughout the Merger Agreement and constituted a material aspect of the Merger Agreement. However, the contents of the letter were not disclosed to stockholders.

145. Section 4.07 of the Merger Agreement (titled "Financial Statements") noted that Schedule 4.07 of the Company Disclosure Letter contained Legacy MoneyLion's consolidated balance sheets and also contained the following representation:

> During the past three years, neither the Company nor any independent auditor of the Company has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Company, (ii) any fraud, whether or not material, that involves the Company's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or (iii) any claim or allegation regarding any of the foregoing.

146. That, in fact, was false. Legacy MoneyLion was aware of significant deficiencies and material weaknesses in its internal controls, as were Defendants. Specifically, Schedule 4.07 of the Company Disclosure Letter disseminated to Defendants, which Plaintiffs obtained in the 220 Production, stated as follows:

> [1] On October 30, 2020, RSM US LLP notified the Company's Audit Committee and management of a significant deficiency in the Company's internal controls regarding the Company's (i) process in evaluating tax consequences of the Company's operations in Malaysia, (ii) formalization of the Company's tax policies, (iii) determination of whether there is a limitation on the net operating losses from the change in ownership and (iv) evaluation of the requirements of the collection of sales tax related to the Company's subscription service.
>
> [2] On October 30, 2020, RSM US LLP notified the Company's Audit Committee and management of a material weakness in the Company's

> internal controls regarding (i) an understatement on the allowance for losses on finance contracts by approximately $2 million in the aggregate, which resulted in an adjusting journal entry being posted by the Company for this amount, and (ii) not properly accounting for the recoveries of bad debt, which resulted in a reclassifying journal entry being posted in the amount of approximately $2.3 million.[45]

147. Defendants were long aware of these material weaknesses. On January 14, 2021, Legacy MoneyLion's advisor provided the RSM audit report to the FAC Defendants and J.P. Morgan. The report revealed that Legacy MoneyLion's weaknesses and deficiencies were not one-time issues. They resulted from Legacy MoneyLion having "not implemented [the] recommendations made in previous audits."

148. Stockholders evaluating whether to redeem would have certainly found it material that the company FAC was about to merge with had identified multiple material weaknesses and deficiencies in its internal controls within the past year.

149. While the Merger Agreement did disclose a single material weakness related to the "classification of the equity associated with the noncontrolling interests of" certain investors in their investment vehicle, this risk statement and the Proxy as a whole did not disclose any of the material weaknesses and significant deficiencies identified in the Company Disclosure Letter.

[45] ML_Bryant_220_001604.

V. NEW MONEYLION'S POST MERGER PERFORMANCE DEMONSTRATES THE PROXY'S FALSITY

150. The failure of Defendants to adequately diligence Legacy MoneyLion and to uncover the weaknesses in the business and the Proxy Projections materialized after the Merger closed.

151. The problems Defendants should have uncovered at Legacy MoneyLion with proper diligence and disclosed to FAC stockholders would soon be visited upon FAC investors who had been deprived of the opportunity to make a fully informed decision on whether to redeem their shares or invest in the Merger.

152. Following the Merger, New MoneyLion's stock price declined steadily to $2.37 on March 28, 2024 (accounting for the reverse split)—a decline of approximately76 percent from the redemption value.

153. Within weeks of the Merger closing, on November 16, 2021, New MoneyLion announced that it had acquired Malka Media Group LLC ("Malka"), by exchanging, *inter alia,* New MoneyLion shares as consideration. That transaction valued New MoneyLion shares at $9.00 per share, despite Defendants telling FAC stockholders that their investment would be worth $10.00 per share just seven weeks prior. An investor presentation that accompanied the announcement of the deal stated that New MoneyLion expected the deal to be accretive and cash flow positive in 2022.

154. On December 16, 2021, New MoneyLion announced another acquisition, this time of Even Financial, Inc. ("Even"). An investor presentation touting the transaction told stockholders that excluding synergies, Even was expected to be EBITDA positive in 2022 and to add an incremental $90 million in revenue in 2022. The Even transaction closed on February 17, 2022.

155. Even with the touted revenue and EBITDA-generating acquisitions of Even and Malka, less than one year following the Merger, New MoneyLion began missing the Revised Projections and even the lower Proxy Projections.

156. On March 10, 2022, in a press release accompanying the company's filing announcing that of the company's financial results for the period ended September 30, 2021 were unreliable and would need to be restated, New MoneyLion released financial results for fiscal year 2021. At the same time, New MoneyLion lowered guidance for fiscal year 2022—lowering adjusted gross profit margin to 60% to 65% from the 71% contained in the Proxy with Adjusted EBITDA of approximately negative $50 to negative $45 million. In that press release, New MoneyLion projected adjusted revenue of approximately $325 to $335 million, though according to an earnings call in connection with those results, that revenue guidance included revenue from the Malka and Even transactions, including the projected $90 million in revenue from Even, meaning that net of those transactions,

MoneyLion's adjusted revenue guidance would come in well below the $285 million adjusted revenue guidance as reflected in the Supplement.

157. On April 5, 2022, after the market closed, MoneyLion disclosed that its Chief Operating Officer, Samantha Roady, had left the Company.

158. On April 29, 2022, after the market closed, MoneyLion disclosed that Broadhaven's Gregory DePetris, a Class I director of MoneyLion and a member of the Nominating and Corporate Governance Committee of the Board and the Risk & Compliance Committee of the Board, would not seek reelection, but that he intended to continue to serve as a special advisor to MoneyLion's Board and CEO.

159. On May 12, 2022, MoneyLion announced its first quarter 2022 results, reporting nearly $25 million negative Adjusted EBITDA for the first quarter of 2022. Throughout 2022, MoneyLion's economics continued to fall short as compared with the guidance provided in the Proxy and Supplement. By the third quarter of 2022, New MoneyLion announced that despite expecting the Malka and Even transactions to be accretive, adjusted gross profit margins for the year were expected to be 57% versus the 71% projected in the Proxy. MoneyLion subsequently lowered its fiscal year Adjusted EBITDA guidance, indicating that a breakeven by the fourth quarter of 2022 would not be achieved as previously expected.

160. Before the market opened on August 11, 2022, MoneyLion announced its second quarter 2022 results, wherein, among other things, the Company projected

its adjusted gross profit margin for 2022 to be 57%, materially lower than the Proxy's forecast of 71%. MoneyLion also disclosed that it would need to once again restate prior financials, purportedly because of the Company's classification and related accounting treatment of certain consideration paid and payable in restricted shares of MoneyLion common stock to the sellers of Malka, a transaction that was already clearly in the works at the time the Merger closed. Finally, MoneyLion increased its full year 2022 adjusted revenue guidance to a range of $330 million to $340 million, but lowered its adjusted gross profit margin to the range of 55% to 60% and its adjusted EBITDA to the range of ($65 million) to ($55 million).

161. On September 29, 2022, the Consumer Financial Protection Bureau ("CFPB") announced that it had commenced litigation against MoneyLion in the United States District Court of the Southern District of New York for overcharging service members and their dependents. The CFPB alleged, among other things, that "MoneyLion targeted military families by illegally extracting fees and making it difficult to cancel monthly subscriptions," thereby "violat[ing] the Consumer Financial Protection Act and the Military Lending Act." MoneyLion responded to the news after the market closed, stating that it had been "cooperating [with the

CFPB] in good faith for over three years" and called the claims meritless.[46] However, on this news, MoneyLion's stock price fell 29.5%.

162. On November 23, 2022, MoneyLion disclosed that its stock was at risk of a delisting from the NYSE due to its price falling to less than $1.00 per share over a consecutive 30-trading day period.

163. New MoneyLion's post-redemption and post-merger performance confirms the unfairness of the Merger to the Legacy MoneyLion stockholders who based their decision not to redeem on the false and misleading information set forth in the Proxy and described herein. Since the redemption deadline, FAC's stock has plummeted, and lost nearly 76% of its value.

164. As bad as the Merger has been for FAC's stockholders, it was lucrative for the Sponsor, James, and the other Director and Officer Defendants who were beholden to the Controller Defendants (as well as Broadhaven and J.P. Morgan who received compensation related to the Merger). When the Merger closed, the Founder Shares—which the Sponsor had purchased a year earlier for a mere $25,000—were worth more than $94.15 million. Even at today's deflated share price, those Founder Shares are worth more than $20 million—whereas Class A shares purchased by FAC

[46] The Proxy had disclosed the existence of a pending CFPB civil investigative demand seeking information on MoneyLion's "compliance with the MLA and our membership model" but provided no further description of the investigation, and claimed that its "potential impact" on the Company was "unknown at this time." Proxy at 187.

public stockholders are currently trading at a 76.3% loss from the $10.00 they would have received if they redeemed their shares in lieu of investing in the Merger.

165. Had no merger occurred, Defendants who held Founder Shares would have received nothing and the Sponsor would have lost its $8.1 million initial investment in the Private Placement Warrants. The public stockholders, however, would have received $10.00 per share, plus interest.

CLASS ACTION ALLEGATIONS

166. Plaintiffs, MoneyLion (formerly known as FAC) stockholders, bring this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware, and on behalf of themselves and all holders of FAC Class A common stock, who held such stock as of the redemption deadline and who elected not to redeem all or some of their stock (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) and their successors in interest (the "Class")."

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

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

169. The class is so numerous that joinder of all members is impracticable. There were 35,000,000 FAC Class A shares outstanding on the redemption deadline.

As of the date of the Merger, 9,112,013 FAC Class A shares were not redeemed. The number of Class members is believed to be in the thousands and they are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

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

a. whether "entire fairness" is the applicable standard of review;

b. which party or parties bear the burden of proof;

c. whether the Proxy was materially misleading;

d. whether Defendants breached their fiduciary duties to Plaintiffs and the Class;

e. the nature of those breaches, and whether they implicated breaches of the duty of care or loyalty;

f. the existence and extent of any injury to the Class or Plaintiffs caused by any breach;

g. the availability and propriety of re-opening of the redemption period or other equitable and/or rescissory relief; and

h. the proper measure of the Class's damages.

171. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

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

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

COUNT I

Direct Claim For Breach Of Fiduciary Duty (Against The Director Defendants)

174. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

175. As directors of FAC, the Director Defendants owed Plaintiffs and the Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate material disclosures to FAC stockholders.

176. The duties required them to place the interests of FAC stockholders above their personal interests and the interests of the Controller Defendants.

177. Through the events and actions described herein, the Director Defendants breached their fiduciary duties of care, loyalty, and candor to Plaintiffs and the Class by prioritizing their own personal, financial, and/or reputational interests in a manner unfair to and misleading Plaintiffs and the Class by failing to adequately inform public stockholders of material information necessary to allow them to make an informed redemption decision.

178. As a result, Plaintiffs and the Class were harmed due to the impairment of their redemption rights prior to the Merger.

179. In addition, by virtue of misstatements and omissions in the Proxy, members of the Class could not exercise their vote in an informed manner and approved the Merger with Legacy MoneyLion based on false and misleading information.

180. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

COUNT II

Direct Claim for Breach of Fiduciary Duty (Against the Controller Defendants)

181. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

182. The Controller Defendants owed Plaintiffs and the Class fiduciary duties of care and loyalty which included an obligation to act in good faith, and to provide accurate material disclosures to FAC stockholders.

183. At all relevant times, Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—FAC to enter into the Merger and issue the materially misleading Proxy.

184. Through the events and actions described herein, Controller Defendants breached their fiduciary duties of loyalty, care and candor to Plaintiffs and the Class by failing to adequately inform public stockholders of material information necessary to allow them to make an informed redemption decision.

185. As a result, Plaintiffs and the Class were harmed due to the impairment of their redemption rights prior to the Merger.

186. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

<u>COUNT III</u>

Direct Claim for Breach of Fiduciary Duty
(Against the Officer Defendants)

187. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

188. As the most senior officers to the Company, the Officer Defendants owed Plaintiffs and the Class the utmost fiduciary duties of care and loyalty, which

included an obligation to act in good faith, with candor, and to provide accurate material disclosures to the Company's stockholders.

189. These duties required the Officer Defendants to place the interests of the Company's stockholders above their personal interests and the interests of the Controller Defendants. The Officer Defendants were not exculpated for breaches of their duty of care of actions taken in the capacity as officers (which includes all actions set forth herein except their formal vote to approve the Merger).

190. Through the events and actions described herein, the Officer Defendants breached their fiduciary duties to Plaintiffs and the Class by prioritizing their own personal, financial, and/or reputational interests over the interests of Plaintiff and the Class in a manner that was unfair to and that misled Plaintiff and the Class by failing to adequately inform public stockholders of material information necessary to allow them to make an informed redemption decision.

191. As a result, Plaintiffs and the Class were harmed due to the impairment of their redemption rights prior to the Merger.

192. In addition, by virtue of misstatements and omissions in the Proxy, members of the Class could not exercise their vote in an informed manner and approved the Merger with Legacy MoneyLion based on false and misleading information.

193. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

COUNT IV

Direct Claim for Aiding and Abetting Breach of Fiduciary Duty (Against Defendant Choubey and Broadhaven)

194. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

195. The FAC Defendants owed fiduciary duties of loyalty and care to Plaintiff and Class members to provide truthful and complete information in connection with their redemption decisions.

196. As described herein, the FAC Defendants breached those fiduciary duties.

197. Section 7.01 of the Merger Agreement, signed by Choubey, required that Legacy MoneyLion and FAC "jointly prepare" the Proxy. Section 7.01(iii) required that "[e]ach of [FAC] and [Legacy MoneyLion] shall ensure that none of the information supplied by it or on its behalf for inclusion or incorporation by reference in the Registration Statement will, at the time the Registration Statement is filed with the SEC, at each time at which it is amended and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, not misleading."

198. As Legacy MoneyLion's CEO and a significant investor with a seat on the Legacy MoneyLion board of directors, respectively, Defendants Choubey and Broadhaven knew that the FAC Defendants were breaching their fiduciary duties to Plaintiff and Class members and knowingly participated in the FAC Defendants' breaches of fiduciary duty owed to FAC's stockholders by failing to disclose material information to Plaintiff and Class members prior to their redemption decisions. Both Broadhaven and Choubey were directly involved in the drafting of the false and misleading Proxy.[47]

199. Among other acts set forth herein, Broadhaven and Choubey knew the FAC shares FAC stockholders were contributing to the Merger were worth less than $7.00 per share and knew the Proxy omitted that information. They further provided the false and misleading, inflated Proxy Projections to the FAC Defendants, created investor presentations including those Proxy Projections, and failed to correct them or provide necessary counterbalancing information upon their inclusion in the Proxy. They also knew about Legacy MoneyLion's failure to implement procedures to correct deficiencies identified by Legacy MoneyLion's auditors. They necessarily knew about their own conduct in connection with the foregoing.

[47] ML_Martel_220_001041.

200. Moreover, as discussed herein, both Broadhaven and Choubey were greatly incentivized to see the Merger close and dissuade FAC stockholders from redeeming *en masse*.

201. As a result, Plaintiffs and Class members were harmed due to the impairment of their redemption rights prior to the Merger.

202. In addition, by virtue of the misstatements and omissions in the Proxy, members of the Class could not exercise their vote in an informed manner.

203. Plaintiffs and Class members suffered damages in an amount to be determined at trial.

COUNT IV

Direct Claim for Unjust Enrichment
(Against All FAC Defendants)

204. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

205. As a result of the conduct described above, the FAC Defendants breached their fiduciary duties to FAC public stockholders and were disloyal by putting their own financial interests above those of FAC public stockholders.

206. The FAC Defendants were unjustly enriched by their disloyalty.

207. All unjust profits realized by the FAC Defendants should be disgorged and recouped by Plaintiffs and Class members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment and relief in their favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action, and certifying Plaintiffs as Class representatives and Plaintiffs' counsel as Class counsel;

B. Declaring that the FAC Defendants breached their fiduciary duties owed to Plaintiffs and the Class;

C. Declaring that Choubey and Broadhaven aided and abetted the FAC Defendants' breaches of fiduciary duty;

D. Declaring that the FAC Defendants were disloyal fiduciaries who were unjustly enriched;

E. Awarding Plaintiffs and the other members of the Class damages in an amount which may be proven at trial, with interest thereon;

F. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

G. Granting such other and further relief as the Court may deem just and proper.

Date: March 29, 2024

GRANT & EISENHOFER, P.A.

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**pro hac vice* applications to be filed