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RE: *In re Skechers Class Action Merger Litigation*,
C.A. No. 2025-1281-LWW

Dear Counsel:

This decision resolves a leadership dispute in a consolidated class action lawsuit challenging a take-private merger. Four factions vie for appointment as lead plaintiff and lead counsel. One faction suffers from a potential dual-fiduciary conflict arising from its leadership of a parallel appraisal proceeding. And the proposed lead plaintiffs in three of the four factions acquired most of their stock after the merger was announced, inviting typicality defenses. Only one applicant—an institutional investor with a sizeable pre-announcement stake—is free of these concerns. That investor is appointed to lead the class, with its chosen attorneys serving as lead counsel.

I. RELEVANT FACTS

This lawsuit arises from 3G Capital Inc.'s take-private acquisition of Skechers U.S.A. Inc., which was announced in May 2025 and closed in September 2025. Soon after closing, multiple Skechers stockholders filed appraisal actions in this court.[1] The appraisal actions were consolidated in January 2026, and lead counsel and lead plaintiffs were appointed.[2]

Several putative class actions were also filed. The class plaintiffs allege that 3G and Skechers insiders breached their fiduciary duties by undervaluing the company to the detriment of its public stockholders. The class actions were consolidated in May 2026.[3]

Four factions of Skechers stockholders and their counsel now seek to lead the class action.

The first applicants—ODS Capital LLC and International Union of Operating Engineers Stationary Engineers Local 39 Pension Trust Fund—ask to be

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[1] *See, e.g.*, Pet. for Appraisal of Stock, *In re Appraisal of Skechers U.S.A., Inc.*, C.A. No. 2025-1044-LWW (Del. Ch. Sept. 16, 2025).

[2] Order Consolidating Actions and Appointing Lead Counsel and Lead Pet'rs, *In re Appraisal of Skechers U.S.A., Inc.*, C.A. No. 2025-1044-LWW (Del. Ch. Jan. 14, 2026).

appointed co-lead plaintiffs (the "ODS/Local 39 Group").[4] They propose that Block & Leviton LLP and Elsberg Baker & Maruri PLLC be appointed co-lead counsel, with Hach Rose Schirripa & Rehns LLP serving as additional counsel.

The second proposed leadership slate consists of Verition Multi-Strategy Master Fund Ltd. and Empyrean Capital Overseas Master Fund, Ltd. (the "Verition/Empyrean Group").[5] They ask to be appointed co-lead plaintiffs and that their counsel Johnson Van Kwawegen LLP ("JVK") and Friedlander & Gorris, P.A. be appointed co-lead counsel, with Equity Litigation Group LLC serving as additional counsel. JVK is also lead counsel in the related appraisal action, with Equity Litigation Group as additional counsel.[6]

The third faction includes North Collier Fire Control and Rescue District Firefighters' Pension Plan alongside eight funds affiliated with Pentwater Capital Management (the "Pentwater/North Collier Group").[7] They seek the role of

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[3] Order for Consolidation of Related Class Actions (Dkt. 33).

[4] B&L-EBM Gp.'s Leadership Appl. Mot. (Dkt. 36) ("ODS/Local 39 Mot."); *see also* B&L-EBM Gp.'s Answering Leadership Br. (Dkt. 58).

[5] Verition-Empyrean Gp.'s Leadership Appl. (Dkt. 39) ("Verition/Empyrean Mot."); *see also* Verition-Empyrean Gp.'s Opp'n to Competing Appls. for Leadership (Dkt. 61) ("Verition/Empyrean Answering Br.").

[6] Order Consolidating Actions and Appointing Lead Pet'rs and Lead Counsel, *In re Appraisal of Skechers U.S.A., Inc.*, C.A. No. 2025-1044-LWW (Del. Ch. Jan. 14, 2026).

[7] Pentwater and North Collier's Mot. for Appointment as Co-Lead Pls. and Co-Lead Counsel (Dkt. 40) ("Pentwater/N. Collier Mot."); *see also* Pentwater and North Collier's

co-lead plaintiffs, with Grant & Eisenhofer P.A., Heyman Enerio Gattuso & Hirzel LLP, and Rolnick Kramer Securities Litigation LLP serving as co-lead counsel.

The final applicant is FMI Common Stock Fund (the "FMI Group").[8] It seeks the role of sole lead plaintiff and proposes Labaton Keller Sucharow LLP and Saxena White P.A. as co-lead counsel, with Friedman Oster & Tejtel PLLC and Julie & Holleman LLP serving as additional counsel.

Briefing on the leadership dispute ensued, and a hearing on the competing applications was held on July 9.[9]

Answering Br. in Supp. of Mot. for Appointment as Co-Lead Pls. and Co-Lead Counsel (Dkt. 60). The Pentwater funds are PWCM Master Fund Ltd., Pentwater Equity Opportunities Master Fund Ltd., LMA SPC for and on behalf of MAP 98 Segregated Portfolio, Oceana Master Fund Ltd., Pentwater Merger Arbitrage Master Fund Ltd., Crown Managed Accounts SPC acting for and on behalf of Crown/PW Segregated Portfolio, Investment Opportunities SPC for the account of Investment Opportunities 3 Segregated Portfolio, and Pentwater Unconstrained Master Fund Ltd.

[8] FMI Common Stock Fund's Mot. to Appoint Lead Pl. and Co-Lead Counsel (Dkt. 41) ("FMI Mot."); *see also* FMI Common Stock Fund's Answering Br. in Further Supp. of Mot. to Appoint Lead Pl. and Co-Lead Counsel (Dkt. 59).

[9] Dkt. 81; Tr. of July 9, 2026 Oral Arg. (Dkt. 85) ("Leadership Hr'g Tr.").

II. ANALYSIS

Court of Chancery Rule 23(d)(4)(A) codifies the *Hirt* factors, which guide the court in appointing counsel "who can best represent the interests of the class."[10] The factors are:

> (i) counsel's competence and experience; (ii) counsel's access to the resources necessary to represent the class; (iii) the quality of the pleading; (iv) counsel's performance in the litigation to date; (v) the proposed leadership structure; (vi) the relative economic stakes of the representative parties; (vii) any conflicts between counsel or the representative parties and members of the class; and (viii) any other matter pertinent to the ability of counsel or the representative party to fairly and adequately represent the interests of the class.[11]

The court does not simply select the counsel who satisfies the most factors.[12] Rather, it must engage in a "nuanced and case-specific" analysis to "establish a leadership structure that will provide effective representation."[13]

Here, the applicants are largely on equal footing as to their competence, resources, and the quality of their pleadings. The dispositive considerations turn on conflicts of interest, typicality, and the applicants' relative economic stakes. As

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[10] Ct. Ch. R. 23(d)(4); *see Hirt v. U.S. Timberlands Serv. Co. LLC*, 2002 WL 1558342 (Del. Ch. July 3, 2002).

[11] Ct. Ch. R. 23(d)(4)(A).

[12] *See In re Delphi Fin. Gp. S'holder Litig.*, 2012 WL 424886, at *1 (Del. Ch. Feb. 7, 2012) (explaining that the *Hirt* factors provide "guideposts," not a "scorecard").

[13] *In re Del Monte Foods Co. S'holders Litig.*, 2010 WL 5550677, at *6 (Del. Ch. Dec. 31, 2010).

explained below, one group suffers from a potential conflict stemming from the parallel appraisal action. Two other groups hold massive post-announcement stock purchases that invite unique defenses. Only the FMI Group presents a pristine—and significant—pre-announcement stake to adequately anchor the class. I therefore appoint FMI lead plaintiff and its chosen counsel co-lead counsel.

A. Neutral Factors

Several of the Rule 23(d) factors are neutral here: counsels' competence, experience, and access to the resources; the quality of the complaints and performance to date; and the proposed leadership structures.[14]

First, each of the four groups is represented by exceptional counsel. All proposed attorneys are well known to this court and have the competence, experience, and resources to effectively prosecute this case. Every applicant has assembled a team of seasoned litigators capable of trying the matter to judgment.

[14] Ct. Ch. R. 23(d)(4)(A).

Second, "counsel's diligence and competence" is reflected in the high quality of their pleadings.[15] Each group demonstrated pre-suit vigor by pursuing investigations under 8 *Del. C.* § 220, resulting in detailed complaints that "reflect investigative effort and the craftsmanship expected of competent plaintiff's counsel engaged in representative litigation [in] this Court."[16] The groups made different strategic choices.[17] But the core breach of fiduciary duty allegations in each pleading are similar. All four assert that Skechers' purported controlling stockholders partnered with a third-party buyer to take the company private through a corrupt process, extracting unique benefits for themselves while cashing out the minority at an unfair price.

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[15] *In re Endeavor Gp. Hldgs., Inc. S'holders Litig.*, 2025 WL 2754367, at *3 (Del. Ch. Sept. 29, 2025).

[16] *In re Invs. Bancorp, Inc. S'holder Litig.*, 2016 WL 4257503, at *4 (Del. Ch. Aug. 12, 2016).

[17] For example, the ODS/Local 39 Group asserts that alleged controlling stockholders "extracted a non-ratable benefit through the conversion of [m]anagement's PSAs into Class P Units worth nearly three Common Units," named J.P. Morgan as a defendant, and brought an unjust enrichment claim. *See* ODS/Local 39 Mot. 6-7. The Pentwater/North Collier Group advanced a unique theory about unlawful interference with minority stockholders' election rights. *See* Pentwater/N. Collier Mot. ¶ 22. The FMI Group claims a violation of 8 *Del. C.* § 203 and conversion. *See* FMI Mot. 12. And the Verition/Empyrean Group details information that was allegedly kept from the Special Committee that approved the merger. *See* Verition/Empyrean Mot. ¶ 27. Although some theories are stronger than others, I need not parse them because the factors discussed below are overwhelmingly dispositive. *See infra* Section II.B.

Third, the groups present comparable leadership structures and fee arrangements. Each faction proposes a coalition of at least two law firms serving as co-lead counsel; some have additional supporting firms. None of the proposed structures is so unwieldy as to be disqualifying.

The proposed fee structures are also similar insofar as each is capped.[18] Three groups negotiated caps on attorneys' fees ranging from 20% to 22%.[19] The FMI Group agreed to a stage-based fee cap.[20] These arrangements "demonstrate[] that the plaintiffs are mindful of protecting the class from excessive fees."[21]

B. Dispositive Factors

Because the neutral factors do not separate the applicants, my analysis turns to the remaining Rule 23(d) considerations. Conflicts of interest, typicality, and the applicants' economic stakes are dispositive.

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[18] *See Endeavor*, 2025 WL 2049042, at *5 ("A suitable fee structure bears on whether counsel can provide fair representation."); Ct. Ch. R. 23(d)(4)(A)(vii)-(viii).

[19] ODS/Local 39 Mot. 10; Verition/Empyrean Mot. ¶ 19 (citation omitted); Pentwater/N. Collier Mot. ¶ 3.

[20] Aff. of John S. Brandser on Behalf of Proposed Lead Pl. FMI Common Stock Fund (Dkt. 41) ¶ 8.

[21] *Endeavor*, 2025 WL 2754367, at *6.

1. Conflicts of Interest

Lead plaintiffs and counsel owe a "duty of the finest loyalty" to the stockholders they represent.[22] Even if a conflict is not entirely disabling, the court should "pick the counsel and the plaintiff that minimizes the potential for distracting motion practice in the future."[23] The Verition/Empyrean Group's leadership of the related appraisal action creates a potential conflict that risks exactly that.

Empyrean—a proposed co-lead plaintiff for the class—carved out 19% of its Skechers shares for appraisal.[24] JVK—one of the two firms proposed to lead the group—is lead counsel to the petitioners in the parallel appraisal proceeding.[25] These dual roles invite competing loyalties vis-à-vis the class.[26]

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[22] *In re Straight Path Commc'ns Inc.*, 2022 WL 728844, at *5 (Del. Ch. Mar. 11, 2022) (citation omitted).

[23] *In re Towers Watson & Co. S'holder Litig.*, C.A. No. 2018-0132-TMR, at 63 (Del. Ch. June 5, 2018) (TRANSCRIPT).

[24] Empyrean Capital held 4,300,000 shares at the time the take-private closed and is seeking appraisal for 821,000 of those shares. Verition/Empyrean Mot. Ex. 1 ¶ 8.

[25] *See* ODS/Local 39 Mot. 10; FMI Mot. 11; Pentwater/N. Collier Mot. ¶¶ 16-17; *see generally* Resp't's Verified List Pursuant to 8 *Del. C.* § 262(f), *In re Appraisal of Skechers U.S.A., Inc.*, C.A. No. 2025-1044-LWW (Del. Ch. Oct. 13, 2025).

[26] *See In re MPM Hldgs. Inc. Appraisal & S'holder Litig.*, C.A. No. 2019-0519-NAC, at 74 (Del. Ch. July 28, 2023) (TRANSCRIPT) (noting that "the mere proximity to the line raises concerns of their own").

The potential conflict is structural and threatens to ripen as the litigation progresses. Consider a global settlement of the class and appraisal actions. In that scenario, counsel for appraisal petitioners would be incentivized to pursue a disproportionate share of the settlement pot for its clients—who have separate fee arrangements, are pursuing a distinct statutory remedy, and owe no duties to the class. The appraisal petitioners' gain would come at the class members' expense.

The Verition/Empyrean Group seeks to minimize this dilemma by citing *Ryan v. Mindbody, Inc.*, where the court appointed an appraisal petitioner and its selected counsel to lead a class action, observing that settlement-related conflicts were "hypothetical" and could "be managed by counsel, and monitored by th[e] Court, if they ar[o]se."[27] The *Mindbody* plaintiff had a significant non-appraisal stake (5.3 million shares compared to 3.7 million appraisal shares), which the court viewed as aligning its incentives with the class.[28]

The facts here are meaningfully different. *Mindbody* presented an intra-client conflict, where a single plaintiff hedged its bets by demanding appraisal for a portion of its shares. Here, the potential conflict is externalized across dozens of clients. JVK and Equity Litigation Group represent not only Empyrean, but also

[27] 2019 WL 4805820, at *2-3 (Del. Ch. Oct. 1, 2019).

[28] *Id.*

40 other petitioners that have exercised appraisal rights.[29] Should the interests of the appraisal petitioners and class members diverge, counsel would be forced to choose between their clients, making it impossible to discharge their ethical obligations to both groups.

I do not doubt that JVK would strive to serve both constituencies. Nor do I doubt that Friedlander & Gorris—which does not represent any appraisal petitioners—would step up if a conflict matured.[30] But deputizing unconflicted co-counsel at the last minute does not cure the underlying defect. The class is entitled to undivided loyalty from its entire leadership team from the start.

Unlike in *Mindbody*, I am not forced to choose between a potentially conflicted structure and an inferior alternative. Three other factions—each boasting skilled counsel and investors with sizeable stakes, none of which are involved in the appraisal proceeding—stand ready to lead. "[I]f there is an alternative" leadership structure that "takes away the concern" of conflicting incentives, the alternative structure should be selected "absent some clear showing

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[29] Resp't's Verified List Pursuant to 8 *Del. C.* § 262(f), *In re Appraisal of Skechers U.S.A., Inc.*, C.A. No. 2025-1044-LWW (Del. Ch. Oct. 13, 2025). JVK and Equity Litigation Group represent 16,313,108 appraised shares and 16,422,825 non-appraised shares. Verition/Empyrean Answering Br. App'x A.

[30] *See* Verition/Empyrean Answering Br. ¶ 6; Leadership Hr'g Tr. 12.

of prejudice to the class."[31] I therefore remove the Verition/Empyrean Group from consideration.

2. Relative Economic Stakes and Other Pertinent Matters

"[T]he relative economic stakes of the competing litigants in the outcome of the lawsuit" are to "be accorded 'great weight.'"[32] Of the three remaining applicants, the Pentwater/North Collier Group has the largest total stake: 6,605,815 shares.[33] The other two groups have smaller, though sizeable, positions: the ODS/Local 39 Group has a combined 2,671,534 shares;[34] and FMI owns and advises 1,891,718 shares.[35]

If all else were equal, I would likely select the Pentwater/North Collier Group due to the relative size of its economic stake.[36] All else is not equal,

[31] *MPM Hldgs.*, C.A. No. 2019-0519-NAC, at 72-74.

[32] *Hirt*, 2002 WL 1558342, at *2 (citing *TCW Tech. Ltd. P'ship v. Intermedia Commc'ns, Inc.*, 2000 WL 1654504, at *4 (Del. Ch. Oct. 17, 2000)); *see* Ct. Ch. R. 23(d)(4)(vi).

[33] *See* Pentwater/N. Collier Mot. ¶ 1; *see also* Leadership Hr'g Tr. 55-56 (counsel representing that North Collier has 5,815 shares). The Verition/Empyrean Group has a larger economic position: 9,099,547 non-appraisal shares. Verition/Empyrean Mot. ¶¶ 8, 12. Empyrean acquired 100% of its shares post-announcement. Verition acquired 93% of its shares post-announcement. *See* Leadership Hr'g Tr. 13-14.

[34] Aff. of H. Shane in Supp. of the B&L-EBM Gp.'s Leadership Appl. (Dkt. 36) ("Shane Aff.") ¶ 2; Aff. of T. Eggen in Supp. of the B&L-EBM Gp.'s Leadership Appl. (Dkt. 36) ("Eggen Aff.") ¶ 3.

[35] Aff. of J. Brandser on Behalf of Proposed Lead Pl. FMI Common Stock Fund (Dkt. 41) ("Brandser Aff.") ¶¶ 4-5.

[36] *See In re The Boeing Co. Deriv. Litig.*, 2024-1210-MTZ, at 48 (Del. Ch.

however, because 99.9% of the Pentwater/North Collier Group's position was purchased post-announcement.[37] This fact is pertinent to the proposed plaintiffs' ability to "fairly and adequately represent the interests of the class."[38]

A direct breach of fiduciary duty claim challenging a merger's fairness travels with the shares, and a stockholder who purchases shares after the alleged harm remains entitled to a recovery.[39] That does not necessarily mean the purchaser is an appropriate class representative. "Stockholders who buy shares after the transaction's announcement may be atypical under Rule 23(a)(4) because the alleged 'wrongful act' is the 'fixing of the terms of the transaction'—not closing."[40] Post-announcement purchases may therefore give rise to unique defenses.[41]

Mar. 20, 2025) (TRANSCRIPT) (observing that the plaintiff with the largest economic stake has "more to lose, and therefore greater motivation to monitor and succeed").

[37] *Cf. In re Revlon, Inc. S'holders Litig.*, 990 A.2d 940, 955 (Del. Ch. 2010) (explaining that the "weight given to the size of a plaintiff's holding is not used to generate a formalistic ranking").

[38] Ct. Ch. R. 23(d)(4)(viii).

[39] *See Urdan v. WR Cap. P'rs, LLC*, 244 A.3d 668, 679 (Del. 2020); *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1050 (Del. Ch. 2015).

[40] *Endeavor*, 2025 WL 2754367, at *5; *see also Dieter v. Prime Comput., Inc.*, 681 A.2d 1068, 1072-73 (Del. Ch. 1996) (explaining that the plaintiffs' purchase of stock after the announcement of a merger "disqualif[ied] [them] as appropriate class representatives" because they were "not typical of the class which owned [the company's] stock before the announcement of the [deal]" (citation omitted)).

[41] *Endeavor*, 2025 WL 2754367, at *5.

In *In re Endeavor Group Holdings, Inc. Stockholders Litigation*, this court appointed a lead plaintiff group that included one stockholder (Handelsbanken) who acquired its shares pre-announcement and another (Icahn Enterprises) who acquired its shares post-announcement.[42] The court viewed the post-announcement purchases to be a "notable shortcoming."[43] The court's concern was assuaged because Handelsbanken was a large institutional investor that served as an "independent anchor for the leadership team."[44] Handelsbanken could continue to ably lead the litigation if Icahn Enterprises were later removed from its role during the class certification stage. With the typicality risk mitigated by Handelsbanken, the group was selected over a competing retail investor whose nominal stake provided little financial incentive to "effectively oversee the lawsuit."[45]

The Pentwater/North Collier Group lacks a similar "anchor." Pentwater purchased 100% of its 6,600,000 shares after the merger was announced.[46] Its

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[42] *Id.* at *6.

[43] *Id.* at *1.

[44] *Id.* at *6.

[45] *See id.* at *1.

[46] Pentwater/N. Collier Mot. ¶ 1.

proposed co-lead plaintiff, North Collier, is a pre-announcement stockholder. But North Collier holds just 5,815 shares.[47]

The ODS/Local 39 Group's composition carries the same concern—albeit to a lesser degree. ODS's 2,614,268 shares were acquired post-announcement.[48] Local 39, which bought pre-announcement, has 30,266 shares.[49]

FMI's entire position, by contrast, was acquired pre-announcement, meaning it faces neither the typicality challenges nor the unique defense that could impair the Pentwater/North Collier and ODS/Local 39 Groups.[50] The 1,030,000 shares FMI owns directly were worth $64.9 million at the merger price.[51] This economic stake, which is more than thirty times greater than Local 39's position, carries a "resulting incentive . . . to participate in the litigation and monitor [its] counsel."[52] Unlike the retail investor found wanting in *Endeavor*, FMI is a sophisticated

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[47] Leadership Hr'g Tr. 55-56.

[48] Shane Aff. ¶ 2.

[49] Eggen Aff. ¶ 3. By comparison, Handelsbanken had 63,200 pre-announcement shares. *See Endeavor*, 2025 WL 2754367, at *6.

[50] Brandser Aff. ¶¶ 4-5.

[51] *Id.* ¶ 4. FMI's investment manager oversees another 861,718 shares in advised accounts, worth roughly $54.3 million at the merger price. *Id.*

[52] *Dutiel v. Tween Brands, Inc.*, 2009 WL 3494626, at *3 (Del. Ch. Oct. 28, 2009).

institutional investor that is well poised to "devote the skill and resources needed for strategic decision-making."[53]

* * *

On balance, the Rule 23(d) factors support the FMI Group's leadership application. FMI can fairly and adequately represent the class. It has a substantial economic interest in this action, is a sophisticated institutional investor, and "has not previously sought to serve as a representative party in a stockholder class action."[54] It is the only proposed plaintiff that faces no potential conflicts or unique defenses; those factors are determinative. FMI's chosen counsel also have the experience, resources, and ability to prosecute the case. The FMI Group offers a two-firm leadership structure composed of attorneys with strong track records of success for investors.[55]

III. CONCLUSION

The FMI Group's motion is granted. FMI is appointed lead plaintiff. Saxena White P.A. and Labaton Keller Sucharow LLP are appointed co-lead counsel, with Friedman Oster & Tejtel PLLC and Julie & Holleman LLP serving as additional counsel.

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[53] *Endeavor*, 2025 WL 2754367, at *4.

[54] Brandser Aff. ¶ 6.

The competing motions of the ODS/Local 39 Group, Verition/Empyrean Group, and Pentwater/North Collier Group are denied.

IT IS SO ORDERED.

Sincerely yours,

/s/ Lori W. Will

Lori W. Will
Vice Chancellor

[55] *See* FMI Mot. Exs. C & D.