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Re: *In re WideOpenWest, Inc. Stockholders' Litigation*,
C.A. No. 2026-0801-NAC

Dear Counsel:

This letter decision resolves the leadership dispute in this consolidated class-action lawsuit challenging a take-private merger. Two factions seek appointment as lead plaintiff and lead counsel. The *Hirt* factors, as codified in Court of Chancery Rule 23(d)(4)(A), are neutral as to the two factions, leading me to consider additional characteristics of the proposed lead plaintiffs as the tiebreaker.

The first proposed lead plaintiff is a sophisticated institutional investor with substantial experience managing capital for third parties, including university endowments. The second is an individual managing capital for himself and his wife. Considering the *Hirt* factors are a wash between the two proposed plaintiffs, and considering the potential advantages of having an institutional investor involved, I ultimately conclude that the institutional investor should serve as lead.

I. FACTUAL BACKGROUND

This action challenges the take-private acquisition (the "Merger") of WideOpenWest, Inc. ("WOW") by its controlling stockholder, Crestview Advisors, L.L.C., and DigitalBridge Investments, LLC. WOW's board of directors approved the Merger on August 11, 2025, and the Merger closed on December 31. Following the Merger, multiple putative class actions were filed, alleging that Crestview, as controlling stockholder, and certain WOW directors and an officer breached their

fiduciary duties by approving the Merger through an unfair process and at an unfair price. The Court consolidated the class actions on September 11, 2026.[1]

Two factions of WOW stockholders and their counsel now seek to lead the class action. On one side are LB Partners LLC ("LBP") and ODS Capital LLC ("ODS") as proposed lead plaintiffs, with Bernstein Litowitz Berger & Grossmann LLP and Block & Leviton LLP as co-lead counsel, and Labaton Keller Sucharow LLP and Friedman & Tejtel PLLC as additional counsel (the "LBP Faction"). On the other side is Matthew Turk as proposed lead plaintiff, with Prickett, Jones & Elliott, P.A., Kessler Topaz Meltzer & Check, LLP, and Johnson Van Kwawegen LLP as co-lead counsel (the "Turk Faction").

The two factions briefed the leadership dispute,[2] and the Court held a hearing on October 19, 2026.[3]

II. ANALYSIS

Court of Chancery Rule 23(d)(4)(A) codifies the *Hirt* factors and guides the Court's analysis. The Court may consider:

> (i) counsel's competence and experience; (ii) counsel's access to the resources necessary to represent the class; (iii) the quality of the

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[1] Dkt. 18.

[2] Dkt. 22, The LB Partners Group's Motion for Appointment as Lead Plaintiff and Co-Lead Counsel (cited as "LBP Mot. at __"); Dkt. 24, The Turk Team's Motion for Appointment of Lead Plaintiff and Co-Lead Counsel (cited as "Turk Mot. at __"); Dkt. 27, The LB Partners Group's Opposition to Turk's Motion for Appointment of Lead Plaintiff and Co-Lead Counsel (cited as "LBP Opp. at __"); Dkt. 28, The Turk Team's Response in Further Support of Motion for Appointment of Lead Plaintiff and Co-Lead Counsel (cited as "Turk Opp. at __").

[3] Dkt. 42; Transcript of Oral Argument on Cross-Motions for Appointment of Lead Plaintiff and Co-Lead Counsel (cited as "Hr'g Tr. at __").

> 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.[4]

The Court's analysis is "nuanced and case-specific," with the goal of "establish[ing] a leadership structure that will provide effective representation."[5] The competing applicants advance arguments concerning factors (iii), (iv), (v), and (vi). They treat the remaining factors as neutral.

A. Factor (iii): Quality of the Pleadings

Each faction claims its pleading is better, with each identifying theories and details it pled that the other did not.[6] Both factions pursued books-and-records demands under 8 *Del. C.* § 220 and obtained materials they used in drafting their complaints. Neither side argues that the other's complaint faces a significant risk of dispositive motion practice. Indeed, the defendants already answered the LBP complaint and offered to stipulate that their answer to that complaint would suffice as an answer to the Turk complaint. This factor is thus neutral.

B. Factor (iv): Counsel's Performance in the Litigation to Date

As mentioned above, both sides pursued Section 220 investigations. The Turk Faction argues that work performed by certain counsel within its faction in related

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

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

[6] Dkt. 22, LBP Mot. ¶¶ 23–29; Turk Mot. ¶¶ 40–44.

appraisal actions should be considered, specifically citing discovery efforts and criticizing the LBP Faction for proceeding with overlapping discovery.[7] The LBP Faction explained that it had no access to the written discovery served in the appraisal actions.[8] The Turk Faction acknowledged the same limitation: when asked at the leadership hearing for details about the discovery obtained in the appraisal actions, the Turk Faction said it knew "very little" because the discovery was not available on the docket.[9] This factor is neutral.

C. Factor (v): Proposed Leadership Structure

The Turk Faction argues that the LBP Faction is a "committee of the willing that the lawyers assembled on the fly," and that the number of firms in the LBP Faction is unwieldy.[10] In response, the LBP Faction clarifies that it has proposed a two-firm leadership structure, not six as the Turk Faction argues.[11] The other counsel involved with the LBP Faction are "either proffered as Additional Counsel or were firms with whom the LBP Group coordinated during the investigation phase."[12] Like the Turk Faction, the LBP Faction is led by excellent counsel, so the Court sees no issue.[13] Moreover, while featuring this point prominently in its papers, the Turk

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[7] Turk Mot. ¶¶ 38–39; Turk Opp. ¶¶ 18–20.

[8] Hr'g Tr. at 51.

[9] Hr'g Tr. at 50.

[10] Turk. Mot. ¶¶ 4, 46–47; Turk Opp. ¶ 28.

[11] LBP Opp. ¶ 27.

[12] *Id.*

[13] The Turk Faction is also led by excellent counsel.

Faction did not press this issue at oral argument. In these circumstances, the Court concludes this factor is neutral.

D. Factor (vi): Relative Economic Stakes of the Representative Parties

"[R]elative ownership is 'to be accorded great weight,' as a relatively small ownership stake may reduce a stockholder's incentive to monitor counsel, leading to greater agency costs."[14] This factor is given "great weight" because "[a] lead plaintiff is a fiduciary with a duty to monitor counsel and ensure the litigation benefits all class members."[15] "A representative with a trivial investment . . . has little reason to perform this role because her personal wealth is unaffected by the outcome."[16] And this "economic indifference creates a vacuum, increasing the risk that [the] lawyers, whose financial interests can diverge from those of the class, drive the litigation."[17]

"By contrast, a lead plaintiff with a substantial economic stake is incentivized to bridge this gap. Having more to gain provides a powerful motive to supervise counsel and secure a favorable outcome."[18] The Court has also noted, in comparing

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[14] *Ryan v. Mindbody, Inc.*, 2019 WL 4805820, at *2 (Del. Ch. Oct. 2, 2019) (quoting *Hirt v. U.S. Timberlands Service Co. LLC*, 2002 WL 1558342, at *2 (Del. Ch. July 3, 2002) and citing *Del Monte Foods*, 2010 WL 5550677, at *8).

[15] *In re Endeavor Gp. Hldgs., Inc. S'holders' Litig.*, 2025 WL 2754367, at *4 (Del. Ch. Sept. 29, 2025).

[16] *Id.*

[17] *Id.*

[18] *Id. See also In re Medco Health Solutions, Inc. S'holders Litig.*, Consol. C.A. No. 6720-CS (Del. Ch. Aug. 23, 2011) (Strine, C.) (TRANSCRIPT) ("[T]o read the pleadings in the case, [the proposed lead plaintiff, with 50 shares,] would be better off getting a job at the local coffee shop, economically, than being involved in the case. He could do summer lawn service

individual and institutional investors applying for lead plaintiff status, that "[a]n institutional investor may also be well suited to devote the skill and resources needed for strategic decision-making."[19]

Some leadership decisions take the approach, depending on the circumstances, that "*relative* economic stakes" may be given "great weight . . . ."[20] In evaluating relative economic stakes, these decisions look at the size of proposed plaintiffs' stakes both (1) relative to the subject company and (2) relative to the plaintiffs' portfolios.[21]

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and make more money; right? . . . For someone to have as a hobby—I'm doing something which, frankly, I can make more money at the local sub shop or as a pizza delivery person than by filing this lawsuit and paying attention to it, that's just a strange thing for me as a rational—you know, a person who presumes I have to apply secular kind of principles of reasoning in making determinations, that I would make someone like that the head of something. It actually suggests in that case that really the—the lead rep is the lawyer.").

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

[20] *In re Emisphere Techs., Inc. S'holders Litig.*, 2021 WL 5815994, at *3 (quoting *Wiehl v. Eon Labs*, 2005 WL 696764, at *3 (Del. Ch. Mar. 22, 2005) (emphasis in original)).

[21] *See, e.g., Wiehl*, 2005 WL 696764, at *3 ("Here, Prickett's client has fewer shares than the clients of Milberg or Faruqi. But the analysis should not stop there. In this case, Eon has 88 million shares outstanding. Thus, each of the plaintiffs' respective stakes in Eon is miniscule. Indeed, even the largest plaintiff owns only 0.065% of Eon's shares."); *Del Monte*, 2010 WL 5550677, at *6 ("[Union's] facially large position in Del Monte represents approximately 0.02% of its assets under management. . . . NECA's stake in Del Monte represents approximately 0.07% of its $700 million in assets under management. . . . When viewed in isolation, Union's economic interest is sufficiently large that it could be economically rational for Union to fund litigation challenging the Merger on a non-contingent basis. At the same time, Union's investment in Del Monte comprises only a tiny fraction of its assets under management, and therefore Union decision-makers could be rationally apathetic and take a hands-off approach to the litigation."); *In re Fox Corp. Deriv. Litig.*, 307 A.3d 979, 994 (Del. Ch. 2023) ("The court can consider the size of a plaintiff's stake both in absolute terms and relative to other factors, such as assets under management. A stake that is larger in absolute terms may be less significant to a large holder than a stake that is smaller in absolute terms but more significant to that investor's portfolio.").

Here, both sides have substantial absolute and relative economic stakes. LBP held 3,888,326 shares at the time of the Merger, representing $20.2 million in Merger consideration.[22] LBP was "WOW's largest unaffiliated stockholder,"[23] with its stake representing "approximately 7% of the unaffiliated float[.]"[24] And "WOW was LBP's largest investment," representing "approximately 17% of the securities LBP reported on Form 13F."[25] Turk owned 900,000 shares, representing $4.5 million in Merger consideration and, according to LBP, "Turk's [shares] were under 2%" of the public float.[26] Turk's stake comprised "approximately 20% of his portfolio."[27]

These are both sufficiently substantial equity stakes, on an absolute and relative basis, to address any concern the Court might have about the possibility for economically rational apathy. Indeed, the Turk Faction concedes that "LBP also has a sufficient stake to incentiv[ize] it to monitor[.]"[28]

I could conclude that LBP's massive stake in the Company should give it pole position. I could also conclude that Turk has pole position because his very healthy stake in the Company was a significantly, but not substantially, larger share of his portfolio. Ultimately, deciding between two excellent proposed leadership teams is

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[22] LBP Mot. ¶ 18.

[23] *Id.* ¶¶ 18–19.

[24] LBP Opp. ¶ 5.

[25] *Id.* ¶¶ 5–6.

[26] *Id.*

[27] Turk Mot. ¶ 32.

[28] *Id.* ¶ 33.

an art and not a science—and the decision cannot boil down to a formula. In the circumstances, although LBP could be deemed to have the edge, I conclude it is a wash.

E. Additional Characteristics of the Proposed Lead Plaintiffs

This leads me to "consider[] additional characteristics of the proposed lead plaintiffs."[29] "Both negative and positive attributes are relevant."[30] In addition to considering "any conflicts" between the proposed plaintiff and the class, the Court can consider "[p]ositive factors," such as "a particular plaintiff's experience acting as a fiduciary, skill at monitoring, or expertise that could assist the team."[31]

LBP told the Court who it is. Turk did not. Turk did not file an affidavit attesting to his WOW stockholdings or his background before the hearing. Nor did Turk explain who he was in his briefing. Instead, the Court had to ask at the leadership hearing.[32]

LBP is a sophisticated fund founded by Charles Pollard Cocke, Jr. in 2020.[33] Before founding LBP, Cocke worked as an investment analyst at the University of Virginia Investment Management Company, which manages the university's

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[29] *Fox*, 307 A.3d at 995.

[30] *Id.*

[31] *Id.*

[32] Hr'g Tr. at 36 ("THE COURT: Just a couple [questions]. I guess my first one is, just very basically, who is Mr. Turk?"); *id.* at 42–43 ("THE COURT: . . . And so that's why I say, who is Mr. Turk? Who is this individual who wants to be lead?").

[33] LBP Mot. Ex. B ¶ 7.

endowment.[34] Cocke then co-founded Investure LLC, "which became a leading outsourced investment office serving a consortium of prominent educational and eleemosynary institutions."[35] Cocke spent 16 years building Investure "from a startup into an organization managing approximately $14 billion in assets on behalf of leading nonprofit endowments and charitable foundations."[36]

In addition to managing capital for third parties, LBP is Cocke's "family's *de facto* investment office and manages the vast majority of [his] family's wealth[.]"[37] In addition to "limit[ing] capital raised" and "charg[ing] below-market fees designed to favor investors," LBP "ensures that [Cocke's] family remains the largest investor across [LBP's] funds, making LBP's capital "personal capital and a personal commitment, not merely a business allocation."[38]

Unlike LBP, as noted above, Turk did not submit an affidavit or explain who he is or his background in the leadership briefing. In response to the Court's query at the leadership hearing, Turk's counsel explained that Turk is an individual investing on behalf of himself and his wife.[39] The Court has no doubt that Turk is a sophisticated individual investor. But, given the briefing and argument, and given

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[34] *Id.* ¶ 5.

[35] *Id.* ¶ 6.

[36] *Id.*

[37] *Id.* ¶ 7.

[38] *Id.* ¶¶ 7, 9.

[39] Hr'g Tr. at 36.

LBP's enormous stake and sophistication, it seems clear that the LBP Faction should be appointed lead.

Indeed, the presence of sophisticated institutional investors as lead plaintiffs can lend legitimacy to the perception of class action lawsuits:

> Those [institutional] investors have the knowledge and financial sophistication necessary to serve as effective litigation monitors. Their stake in the outcome of class actions would give them an incentive to do that job well. Suits brought or controlled by major financial institutions, we believe, would be perceived as much more legitimate than suits brought in the name of figurehead plaintiffs.[40]

In other cases, this Court has recognized the value of having investors, not only with large stakes, but also with experience and skill that allow them to aid counsel in the litigation.[41]

Perhaps recognizing this, the Turk Faction attempts to blunt LBP's pole position by criticizing LBP for selling 43% of its stake in WOW between the Merger's signing and closing.[42] LBP responds that this was a rebalancing of its portfolio and,

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[40] Elliott J. Weiss & John S. Beckerman, Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions, 104 YALE L. J. 2053, 2126–27(1995).

[41] *See, e.g., Fox*, 307 A.3d at 995 n.3 (noting contribution of Herbert Chen in *Chen v. Howard-Anderson*, 2017 WL 2842185, at *5 (Del. Ch. June 30, 2017) as "illustrat[ing] how a named plaintiff can contribute substantially to the success of a litigation team"); *In re Santander Consumer USA Hldgs. Inc. S'holders' Liltig.*, 2025 WL 1012345, at *1, *4–5 (Del. Ch. Mar. 31, 2025) (explaining contributions of "Elliott—a prominent investment management firm that held a large stake in the subsidiary," which led to $500,000 incentive award).

[42] Turk Mot. ¶¶ 33–35; Turk Opp. ¶¶ 9–12.

if anything, reflects good fiduciary conduct.[43] And that frankly makes sense for an institution like LBP.[44]

Additionally, as the Court noted at the hearing, this seems unlikely to make any material difference at the end of the day.[45] The Turk Faction suggests that the defendants could try to make hay of all this and speculates that LBP's appointment as lead counsel could risk exposing the class to a fair price defense that would not exist if Turk is appointed lead. And yet, counsel could not identify a case in which a representative plaintiff's pre-litigation views on value based on public information were material to the Court's fair price determination.[46] Perhaps such a case exists, but the absence of ready precedent suggests the answer here. And, frankly, from a practical perspective, if LBP's pre-litigation sales and pre-discovery views on value end up being a meaningful consideration for the Court here, the class's valuation case will already be in trouble.

Moreover, despite the LBP sales featuring heavily in the Turk Faction's leadership application, it turns out that Turk sold too, a fact not disclosed until the

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[43] LBP Opp. ¶¶ 9–16.

[44] It is also not clear that the presence of a lead plaintiff whose valuation is tethered to the real world would, in the grand scheme of things, be a negative for litigation before this Court. One could just as easily imagine that appointing plaintiffs with no real-world grounding or constraints on valuation formulation may ultimately not be a net-positive for diversified investors.

[45] Hr'g Tr. at 40.

[46] Hr'g Tr. at 46.

eve of the leadership hearing.[47] Having conceded he similarly sold shares between the Merger's signing and closing for liquidity purposes, this takes the wind out of this argument's sails.[48]

III. CONCLUSION

The LBP Faction's motion is granted. LBP and ODS are appointed lead plaintiffs. Bernstein Litowitz Berger & Grossmann LLP and Block & Leviton LLP are appointed co-lead counsel, with Labaton Keller Sucharow LLP and Friedman & Tejtel PLLC serving as additional counsel.

The Turk Faction's competing motion is denied.

IT IS SO ORDERED.

Sincerely,

/s/ Nathan A. Cook

Vice Chancellor

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[47] The Turk Faction tries to rebut this by arguing that although Turk did engage in substantial sales between the Merger's signing and closing, he ended up buying shares back shortly before closing in a form of class action arbitrage to ensure he had a substantial position for a fiduciary duty claim. The Turk Faction claims this means Turk is ultimately less of a net seller than LBP and shows Turk's commitment to or belief in the value of the suit. That could be true, but one might wonder if this too risks creating arguments for the defense that could have been avoided—thus painting Turk with the same brush that he seeks to paint LBP. Ultimately, none of this compels a different outcome.

[48] The Turk Faction made LBP's pre-litigation stock a featured argument in its leadership application. Yet, nowhere does the application mention Turk's own hefty pre-litigation stock sales. These were disclosed only after briefing on the leadership application closed, in a letter filed on the docket the day before the leadership hearing. At the hearing the next day, the LBP Faction argued that it is "hard to believe that [Turk] even read the briefs because he would have said, wait a second, I sold. He knows his own trading. So I think that's important to grapple with." Hr'g Tr. at 18. They have a point.