



IBIT

# GRANTED WITH MODIFICATIONS

EFiled: Sep 06 2023 11:12AM EDT  
Transaction ID: 070501092  
Case No. 2021-0573-PAF



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NANTAHALA CAPITAL PARTNERS II LIMITED PARTNERSHIP, on behalf of itself and all other similarly situated stockholders of QAD INC.,

Plaintiff,

v.

QAD INC., PAMELA M. LOPKER, ANTON CHILTON, SCOTT J. ADELSON, KATHLEEN M. CRUSCO, PETER R. VAN CUYLENBURG, THOMA BRAVO, LP, QAD ULTIMATE PARENT, LP (F/K/A PROJECT QUICK ULTIMATE PARENT, LP), and QAD PARENT, LLC (F/K/A PROJECT QUICK PARENT, LLC),

Defendants.

C.A. No. 2021-0573-PAF

## **[PROPOSED] SCHEDULING ORDER WITH RESPECT TO NOTICE AND SETTLEMENT HEARING**

WHEREAS, a stockholder class action is pending in this Court, entitled *Nantahala Capital Partners II Limited Partnership v. QAD Inc.*, C.A. No. 2021-0573-PAF (the “Action”);

WHEREAS, a Stipulation and Agreement of Compromise and Settlement between Plaintiff and the Defendants dated as of August 28, 2023 (the “Stipulation”) has been entered into by and among: (i) Nantahala Capital Partners II Limited Partnership, on behalf of itself and on behalf of the Class (defined below), and (ii) defendants QAD Inc., Pamela M. Lopker, Anton Chilton, Scott J. Adelson, Kathleen M. Crusco, Peter R. van Cuylenburg, Thoma Bravo LP, QAD Ultimate Parent, LP,

and QAD Parent, LLC (the “Defendants,” and collectively with Plaintiff, the “Parties”);

WHEREAS, the Stipulation provides for a settlement, subject to the approval of this Court, reached between Plaintiff and the Defendants and for dismissal of the Action with prejudice upon the terms and conditions set forth in the Stipulation (the “Settlement”);

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court and the Exhibits attached thereto, and after due deliberation,

IT IS HEREBY ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2023 that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Scheduling Order.
2. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement of the Action, as well as personal jurisdiction over all of the Parties and each of the Class Members.
3. In accordance with the proposed class definition in the Stipulation, for the purposes of settlement only, the Action preliminarily shall be maintained as a non-opt-out class action under Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) on behalf of the following class (the “Class”):

All record holders and beneficial owners of QAD Inc. Class A common stock as of the closing of the Merger and who received

\$87.50 in cash per Class A share as Merger consideration, excluding (i) QAD, Pamela M. Lopker, Anton Chilton, Scott J. Adelson, Kathleen M. Crusco, Peter R. van Cuylenburg, Thoma Bravo, LP, QAD Ultimate Parent, LP (f/k/a Project Quick Ultimate Parent, LP), and QAD Parent, LLC (f/k/a Project Quick Parent, LLC), and their immediate family members, legal representatives, heirs, estates, successors, or assigns; (ii) any entity in which any of the Defendants has a direct controlling interest; and (iii) any Person who has entered into a separate settlement agreement with any Defendant for claims based on the same or similar facts, transactions, or occurrences as those alleged in the Complaint and which prohibits such Person from participating as a member of the Class (each such person or entity listed in Stipulation Paragraph 1.2(i)–(iii), an “Excluded Person”).

4. The Court preliminarily appoints Plaintiff as the class representative for the Class and Plaintiff’s counsel, Labaton Sucharow LLP, as counsel for the Class (“Plaintiff’s Counsel”).

5. For purposes of settlement only, the Court preliminarily finds that: (a) the members of the Class (collectively, the “Class Members”) are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of Plaintiff are typical of the claims of the Class; (d) in connection with the prosecution of the Action and the Settlement, Plaintiff and Plaintiff’s Counsel have and will fairly and adequately represent and protect the interests of the Class; (e) the prosecution of separate actions by individual Class Members would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for the Defendants, and, as a practical matter, the disposition of the Action as against the Defendants would influence the disposition

of any pending or future identical suits, actions, or proceedings brought by other Class Members; and (f) the Defendants are alleged to have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

6. A Settlement Hearing will be held on \_\_\_\_\_, 2023, at \_\_\_\_ a.m./p.m., at the Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, among other things:

a. determine whether the Action may be finally maintained as a non-opt-out class action and whether the Class should be finally certified, for purposes of the Settlement, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2);

b. determine whether Plaintiff may be finally appointed as the representative for the Class and Plaintiff's Counsel finally appointed as counsel for the Class, and whether Plaintiff and Plaintiff's Counsel have adequately represented the interests of the Class in the Action;

c. determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be approved by the Court;

d. determine whether a Judgment, substantially in the form attached as Exhibit D to the Stipulation, should be entered dismissing the Action with prejudice;

e. determine whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable, and should therefore be approved;

f. determine whether the application by Plaintiff's Counsel for an award of attorneys' fees and expenses should be approved;

g. hear and rule on any objections to the Settlement, the proposed Plan of Allocation, and/or to the application by Plaintiff's Counsel for an award of attorneys' fees and expenses; and

h. consider any other matters that may properly be brought before the Court in connection with the Settlement.

7. The Court may adjourn and reconvene the Settlement Hearing, or any adjournment thereof, including the consideration of the application for attorneys' fees and expenses, without further notice to Class Members other than oral announcement at the Settlement Hearing or any adjournment thereof, or a notation on the docket in the Action; and retains jurisdiction over the Parties and all Class Members to consider all further applications arising out of or connected with the proposed Settlement.

8. The Court may decide to hold the Settlement Hearing remotely by Zoom without further notice to the Class. Any Class Member (or the Class Member's counsel) who wishes to appear at the Settlement Hearing should consult the Court's docket and/or the Settlement website for any change in the date, time, or format of the hearing.

9. The Court may approve the Settlement at or after the Settlement Hearing, according to the terms and conditions of the Stipulation, as it may be modified by the Parties, without further notice to Class Members. The Court may approve the Plan of Allocation or a modified plan of allocation at or after the Settlement Hearing, without further notice to Class Members. Further, the Court may render its judgment and order the payment of attorneys' fees and expenses at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice of any kind.

10. The Court approves the Settlement Administrator to be selected by Plaintiff's Counsel to provide notice to the Class and administer the Settlement, including the allocation and distribution of the Settlement Fund.

11. The Court approves, in form and substance, the Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear attached as Exhibit B to the Stipulation (the "Notice").

12. The Court approves, in form and substance, the Summary Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear attached as Exhibit C to the Stipulation (the “Summary Notice”).

13. The Court finds that the mailing of the Notice and publication of the Summary Notice in substantially the manner set forth in this Order constitutes the best notice practicable under the circumstances to all persons entitled to such notice of the Settlement Hearing and the proposed Settlement, and meets the requirements of Delaware Court of Chancery Rule 23, the requirements of due process, and all other applicable law and rules.

14. No less than sixty (60) calendar days before the Settlement Hearing (the “Notice Date”), the Settlement Administrator shall cause the Notice, substantially in the form attached as Exhibit B to the Stipulation, to be mailed by U.S. first-class mail, or other mail service if mailed outside the U.S., postage prepaid, to each potential Class Member who may be identified through reasonable effort at their last known address appearing in the stock transfer records maintained by or on behalf of QAD. All stockholders of record who held QAD common stock on behalf of beneficial owners and who receive the Notice shall be requested to either: (i) within seven (7) calendar days of receipt of the Notice, request from the Settlement Administrator sufficient copies of the Notice to forward to all such beneficial owners

and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of the Notice, provide a list of the names, addresses, and, if available, email addresses of all such beneficial owners to the Settlement Administrator, in which event the Settlement Administrator shall promptly mail the Notice to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Settlement Administrator with proper documentation supporting the expenses for which reimbursement is sought.

15. Not later than the Notice Date, the Settlement Administrator shall cause the Stipulation and the Notice to be posted on a website to be established for the Settlement, from which copies of the Notice and Stipulation may be downloaded.

16. Not later than the ten (10) business days after the Notice Date, the Settlement Administrator shall cause the Summary Notice to be published through *Business Wire*.

17. All Notice and Administration Costs shall be paid in accordance with the Stipulation without further order of the Court.

18. Plaintiff's Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to



otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

19. At least ten (10) calendar days prior to the date of the Settlement Hearing, Plaintiff shall file with the Court proof of mailing of the Notice and publication of the Summary Notice.

20. The contents of the Settlement Fund that will be held in the Escrow Account shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the exclusive jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

21. Unless the Court orders otherwise, any Class Member may enter an appearance in the Action, at the Class Member's own expense, individually or through counsel of the Class Member's own choice, by filing with the Register in Chancery and delivering a notice of appearance to Plaintiff's Counsel and Defendants' Counsel, at the addresses set forth in paragraph 22 below, such that it is received no later than fifteen (15) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Class Member who does not enter an appearance will be represented by Plaintiff's Counsel, and shall be deemed to have waived and forfeited any and all rights the Class Member may otherwise have to appear separately at the Settlement Hearing.

22. Any Class Member may file a written objection to the proposed Settlement, Plan of Allocation, and/or Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses (“Objector”), if the Class Member has any cause, why the proposed Settlement, Plan of Allocation, and/or the application for an award of attorneys’ fees and expenses should not be approved; *provided, however*, that, unless otherwise directed by the Court for good cause shown, no Objector shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, Plan of Allocation, and/or the application for an award of attorneys’ fees and expenses unless that person or entity has filed a written objection with the Register in Chancery, Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, and served (electronically by File & Serve*Xpress*, by hand, by first-class U.S. Mail, or by express service) copies of the objection upon each of the following counsel at the following addresses such that they are received no later than fifteen (15) calendar days prior to the Settlement Hearing, with copies also emailed to nweinberger@labaton.com, kshannon@potteranderson.com, jjanghorbani@paulweiss.com, chrismcgrath@paulhastings.com, Burns@RLF.com, mark.mckane@kirkland.com, kyla.jackson@kirkland.com, and rstottmann@morrisnichols.com:

Ned Weinberger  
Labaton Sucharow LLP  
222 Delaware Ave., Suite 1510  
Wilmington, DE 19801

*Counsel for Plaintiff*

Mark McKane, P.C.  
KIRKLAND & ELLIS LLP  
555 California Street, 29th Floor  
San Francisco, CA 94104  
(415) 439-1400

Kyla Jackson  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022  
(212) 446-4800

Ryan D. Stottmann  
MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP  
1201 N. Market Street  
Wilmington, DE 19801  
(302) 658-9200

*Counsel for Defendants Thoma Bravo  
L.P., QAD Parent LLC, and QAD  
Ultimate Parent L.P.*

Jaren Janghorbani  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(212) 373-3000

*Counsel for Defendants Peter R. van  
Cuylenburg, Kathleen M. Crusco, and  
Scott J. Adelson*

Kevin R. Shannon  
POTTER ANDERSON & CORROON  
LLP  
1313 N. Market Street  
Hercules Plaza, 6<sup>th</sup> Floor  
Wilmington, DE 19801

(302) 984-6000

*Counsel for Defendants QAD Inc. and  
Anton Chilton*

Christopher H. McGrath  
PAUL HASTINGS LLP  
695 Town Center Drive, 17th Floor  
Costa Mesa, CA 92626  
(714) 668-6200

Robert L. Burns  
RICHARDS, LAYTON & FINGER, PA  
920 North King Street  
Wilmington, DE 19801  
(302) 651-7700

*Counsel for Defendant Pamela M.  
Lopker*

Counsel for the Parties are directed to promptly furnish each other with copies of any and all objections that might come into their possession.

23. Any objections must: (i) identify the case name and civil action number, “*Nantahala Capital Partners II Limited Partnership v. QAD Inc.*, Civil Action Number 2021-0573-PAF”; (ii) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of the Objector’s counsel; (iii) be signed by the Objector; (iv) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the Objector wishes to bring to the Court’s attention, and if the Objector has indicated that he, she, or it intends to appear

at the Settlement Hearing, the identity of any witnesses the Objector may call to testify and any exhibits the Objector intends to introduce into evidence at the hearing; and (v) include documentation sufficient to prove that the Objector is a member of the Class (*i.e.*, held shares of QAD Inc. Class A common stock at the closing of the Merger on November 5, 2021 and received \$87.50 in cash per Class A share as Merger consideration). Documentation establishing that an Objector is a member of the Class must consist of copies of monthly brokerage account statements or an authorized statement from the Objector's broker containing the transactional and holding information found in an account statement.

24. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this Action or any other action or proceeding or otherwise contesting the Settlement, the Plan of Allocation, the application for attorneys' fees and expenses in the Action or any other proceeding and will otherwise be bound by the Judgment to be entered and the releases to be given. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

25. At least thirty (30) calendar days prior to the Settlement Hearing, Plaintiff shall file any opening briefs and supporting documents in support of the proposed Settlement and Plan of Allocation, and Plaintiff's Counsel shall file their

application for an award of attorneys' fees and expenses, including any supporting affidavit(s). At least five (5) calendar days prior to the date of the Settlement Hearing, the Parties shall file any reply in response to any objections to the Settlement or the Plan of Allocation, and Plaintiff's Counsel shall file any reply in response to any objections to their application for an award of attorney's fees and expenses.

26. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiff and all other Class Members from commencing, instituting, or prosecuting any proceedings asserting any of the Released Plaintiff's Claims against any of the Released Defendants' Persons.

27. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class.

28. The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

---

Vice Chancellor Paul A. Fioravanti

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Paul A Fioravanti Jr

**File & Serve**

**Transaction ID:** 70679921

**Current Date:** Sep 06, 2023

**Case Number:** 2021-0573-PAF

**Case Name:** CONF ORD/ Nantahala Capital Partners II Limited Partnership v. QAD Inc.

**Court Authorizer:** Paul A Fioravanti Jr

---

**Court Authorizer**

**Comments:**

The settlement hearing will be held on Tuesday, November 21, 2023 at 11:00 a.m. at the Leonard L. Williams Justice Center.

**/s/ Judge Paul A Fioravanti Jr**