



**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

**ORDER AND FINAL JUDGMENT**

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, plaintiff Nantahala Capital Partners II Limited Partnership (“Plaintiff”), on behalf of itself and on behalf of the Class (defined below), and 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”), have entered into a Stipulation and Agreement of Compromise and

Settlement between Plaintiff and the Defendants dated as of August 28, 2023 that 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 therein;

WHEREAS, by Order dated September 6, 2023 (the “Scheduling Order”), this Court (i) preliminarily certified the Class solely for purposes of effectuating the Settlement; (ii) ordered that notice of the proposed Settlement be provided to potential Class Members; (iii) provided Class Members with the opportunity to object to the proposed Settlement, the proposed Plan of Allocation, and/or Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses; and (iv) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on November 21, 2023 (the “Settlement Hearing”) to consider, among other things: (i) whether the Class should be permanently certified by the Court; (ii) 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; (iii) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Class, and should therefore be approved; (iv) whether a Judgment should be entered dismissing the Action with prejudice; (v) whether the proposed Plan of Allocation

of the Net Settlement Fund is fair and reasonable, and should therefore be approved; and (vi) whether the application by Plaintiff's Counsel for an award of attorneys' fees and expenses should be approved;

WHEREAS, on December 1, 2023, the Parties entered an Amended Stipulation and Agreement of Compromise and Settlement (the "Stipulation"), which modified the definition of Released Plaintiff's Claims but did not alter or amend any other aspect of the Settlement;

WHEREAS, it appearing that due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement, Plan of Allocation, and application by Plaintiff's Counsel for an award of attorneys' fees and expenses; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other Persons requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to members of the Class was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order and Final Judgment.

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, and it is further determined that Plaintiff, the Defendants, and the Class, as well as their transferees, heirs, executors, successors, and assigns, are bound by this Order and Final Judgment.

3. The mailing of the Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear (the "Notice"), substantially in the form attached as Exhibit B to the Stipulation, and publication of the Summary Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear (the "Summary Notice"), substantially in the form attached as Exhibit C to the Stipulation, pursuant to and in the manner prescribed in the Scheduling Order is hereby determined to be the best notice practicable under the circumstances and in full compliance with Delaware Court of Chancery Rule 23, the requirements of due process, and all other applicable law and rules.

4. The Court hereby finally certifies, for the purposes of the Settlement only, the Action as a non-opt out class action pursuant to 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”).

5. The Court hereby finally appoints Plaintiff as the class representative for the Class and finally appoints Plaintiff’s Counsel, Labaton Sucharow LLP, as counsel for the Class. Plaintiff and Plaintiff’s Counsel have fairly and adequately represented the Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement.

6. For purposes of settlement only, the Court finds that each element required for certification of the Class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) has been met in 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 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.

7. The Settlement as provided for in the Stipulation is approved as fair, reasonable, and adequate, and in the best interests of Plaintiff and the Class.

8. Pursuant to Court of Chancery Rule 23, this Court fully and finally approves the Settlement in all respects, and the Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Order and Final Judgment.

9. The Stipulation shall be binding upon and inure to the benefit of the Parties, the Released Plaintiff's Persons, and the Released Defendants' Persons.

10. Upon the Effective Date, Plaintiff and each and every other member of the Class, on behalf of themselves and any and all of their respective successors-in-

interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, each of the foregoing in their capacities as such only, shall have fully, finally, and forever released, settled, and discharged the Released Defendants' Persons from and with respect to every one of the Released Plaintiff's Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiff's Claims against any of the Released Defendants' Persons.

11. Upon the Effective Date, the Defendants, on behalf of themselves and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, each of the foregoing in their capacities as such only, shall have fully, finally, and forever released, settled, and discharged the Released Plaintiff's Persons from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting,

prosecuting, or continuing to prosecute any Released Defendants' Claims against any of the Released Plaintiff's Persons.

12. The Parties represent and agree that the terms of the Settlement were negotiated at arm's length and in good faith, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

13. Plaintiff's Counsel are hereby awarded attorneys' fees and expenses in the sum of \$15,363,369.80 (the "Fee and Expense Award"), which sum the Court finds to be fair and reasonable. The Fee and Expense shall be paid solely out of the Settlement Fund. Neither Plaintiff, nor Plaintiff's Counsel, nor any Class Member shall make, or assist any other counsel in making, any application for an award of fees, cost, or expenses in any other jurisdiction from the Released Defendants' Persons.

14. The Court hereby finds and concludes that the formula for the calculation of payments to Class Members as set forth in the Plan of Allocation stated in the Notice provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Class Members with due consideration having been given to administrative convenience and necessity.

15. The binding effect of this Order and Final Judgment and the obligations of Plaintiff, Class Members, and the Defendants under the Settlement shall not be



conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of attorneys' fees, costs, and expenses or to any Plan of Allocation.

16. The Parties and all Class Members shall be and are deemed bound by the Stipulation and this Order and Final Judgment. This Order and Final Judgment, including the release of all Released Plaintiff's Claims against all Released Defendants' Persons, shall have *res judicata*, collateral estoppel and all other preclusive effect in all pending and future lawsuits, arbitrations, or other proceedings involving any of the released parties.

17. If the Settlement is terminated as provided in the Stipulation or the Effective Date otherwise fails to occur, (a) this Order and Final Judgment shall be rendered null and void and shall be vacated; (b) all orders entered and releases delivered in connection herewith shall be null and void; (c) all of the Parties shall be deemed to have reverted to their respective litigation statuses as of immediately prior to the execution of the Stipulation executed on August 28, 2023, and they shall proceed in all respects as if the Stipulation had not been executed and any related orders had not been entered; (d) all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way; (e) the statements made in connection with the negotiation of the Stipulation shall not be deemed to prejudice in any way the positions of any of the Parties with respect to

the Action, or to constitute an admission of fact of wrongdoing by any Party, shall not be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Action; and (f) no materials created by or received from another Party that were used in, obtained during, or related to settlement discussions shall be admissible for any purpose in any court or tribunal, or used, absent consent from the disclosing party, for any other purpose or in any other capacity, except to the extent that such materials are otherwise required to be produced during discovery in the Action or in any other litigation.

18. Neither the Stipulation nor the fact of or any terms and conditions of the Settlement, nor any communications relating thereto, are evidence, or a presumption, admission, or concession by any Party of any wrongdoing, fault, liability, or damages whatsoever, which are expressly denied and disclaimed by each Party. Neither the Stipulation, nor any of their terms, conditions, and provisions, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, shall (a) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts, or omissions on the part of any of the

Released Defendants' Persons, or of any infirmity of any defense, or of any damage to Plaintiff or any Class Member; (b) otherwise be used to create or give rise to any inference or presumption against any of the Released Defendants' Persons concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted in the Action, or of any purported liability, fault, or wrongdoing of the Released Defendants' Persons or of any injury or damages to any Person; (c) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding that any of Plaintiff's claims are without merit, that any of the Defendants had meritorious defenses, or that damages recoverable from the Defendants under the Complaint would not have exceeded the Settlement Amount; or (d) be admissible, referred to, interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action, or in any other suit, action, or proceeding whatsoever, whether civil, criminal, or administrative; *provided, however*, that the Stipulation and/or this Order and Final Judgment may be introduced in any suit, action, or proceeding, whether in this Court or otherwise, as may be necessary to argue that the Stipulation and/or this Order and Final Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect, to otherwise consummate or enforce the Stipulation, Settlement, and/or this Order and Final Judgment, including, without limitation, to secure any insurance

rights or proceeds, or as otherwise required by law. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever.

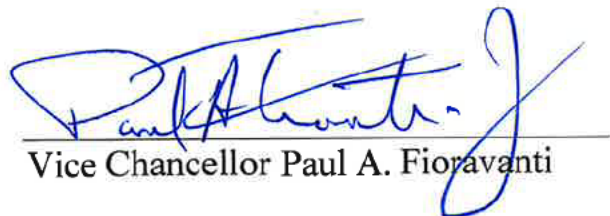
19. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Stipulation.

20. Without further order of the Court, the Parties may agree to and adopt such amendments, modifications, and expansions of the Stipulation and/or any of the Exhibits attached thereto to effectuate the Settlement that are not materially inconsistent with this Order and Final Judgment.

21. Without affecting the finality of this Order and Final Judgment in any way, the Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

22. The Action is hereby dismissed with prejudice, on the merits, and without fees, costs, or expenses (except as provided in the Stipulation).

Dated: December 13, 2023

  
Vice Chancellor Paul A. Fioravanti