



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), QAD
PARENT, LLC (F/K/A PROJECT
QUICK PARENT, LLC)

Defendants.

C.A. No. 2021-0573-PAF

PLAINTIFF'S [UNOPPOSED] MOTION FOR ADMINISTRATIVE ORDER

Plaintiff Nantahala Capital Partners II Limited Partnership (the "Plaintiff") hereby moves the Court for an order: (1) authorizing an initial distribution ("Initial Distribution") of the Net Settlement Amount¹ to former stockholders of QAD Inc. ("QAD"); and (2) approving payment from the Escrow Account to the Settlement Administrator for Notice and Administrative Costs, *i.e.*, the costs incurred by the

¹ Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Stipulation and Agreement of Compromise and Settlement (the "Stipulation") (Trans. ID 70679921).

Settlement Administrator in providing notice to the Class and administering the Settlement. In support of its motion, Plaintiff states as follows:

The Settlement

1. The Court approved the Settlement on December 13, 2023.
2. Pursuant to the Settlement, Defendants and/or their insurers caused \$65,000,000 in cash to be deposited into an Escrow Account established by Plaintiff's counsel. Stipulation ¶¶1.7, 2.1. The Net Settlement Amount of \$50,233,411.19 remains in the Escrow Account after accruing interest, deducting the \$15,363,369.80 Fee and Expense Award, deducting \$6,028 in Banking Costs and deducting \$91,287.01 in Notice and Administrative Costs. *See* Affidavit of Jack Ewashko in Support of Plaintiff's [Unopposed] Motion for Administrative Order ("Ewashko Affidavit" or "Ewashko Aff.") ¶¶10-11.
3. The Settlement requires Plaintiff's counsel to distribute the Net Settlement Amount to beneficial holders of QAD Class A common stock—excluding the Excluded Persons and their respective Excluded Shares—as of November 5, 2021 (the "Closing Date") whose shares of QAD Class A common stock were exchanged for a per share cash consideration of \$87.50. ("Eligible Class Member"). Stipulation ¶¶1.14, 10.3.
4. Counsel retained A.B. Data, Ltd. ("A.B. Data" or the "Settlement Administrator") to provide notice to the Class and administer the Settlement,

including distribution of the Net Settlement Amount. Jack Ewashko, a Director of Client Services for A.B. Data, has submitted the Ewashko Affidavit in support of this motion, which describes in more detail the Settlement administration process and the proposed plan for distribution of the Net Settlement Amount.² By this motion, Plaintiff requests that the Court approve payment of \$91,287.01 from the Account to A.B. Data for Notice and Administrative Costs, *i.e.*, the costs of providing the services described herein and in the Ewashko Affidavit.

Identification of Eligible Class Members

5. The Settlement does not entail a claims process. The Net Settlement Amount will be distributed directly, on a *pro rata* basis, to Eligible Class Members identified by the Settlement Administrator.

6. The Settlement Administrator has identified Eligible Class Members as follows.

7. QAD's counsel provided a stockholder register (the "Registered Holder List"), identifying each stockholder of record ("Merger Record Holders") as of the Closing Date. Ewashko Aff. ¶5.

8. DTC produced a DTCC Allocation Report identifying each DTCC Participant's holdings of QAD Class A common stock as of the Closing Date. *Id.* ¶6.

² The Ewashko Affidavit is filed simultaneously herewith.

9. Finally, pursuant to the Settlement, counsel for Defendants have provided information regarding the shareholdings of Excluded Persons as of the Closing Date. *Id.* ¶8. This information includes the number of Excluded Shares of QAD Class A common stock held by each Excluded Person and the accounts where such Excluded Shares reside. *Id.*; Stipulation ¶10.3.

The Proposed Initial Distribution

10. Each Eligible Class Member is entitled to his, her or its *pro rata* share of the Net Settlement Amount. Stipulation Ex. B (Notice of Settlement) ¶¶25-28.

11. The Settlement Amount is presently invested in an interest-bearing Escrow Account. *Id.* ¶22; Stipulation ¶2.1. At the time of the Initial Distribution, the Net Settlement Amount is expected to be approximately \$50,233,411.19. *Ewashko Aff.* ¶¶10-11.

12. There were 13,994,037 shares of common stock outstanding as of the Closing Date. *Id.* ¶7.

13. Because Excluded Persons held 2,122,801 of those shares, Eligible Class Members held 11,871,236 shares of QAD Class A common stock on the Closing Date (“Eligible Shares”). *Id.* ¶¶8-9.

14. The Initial Distribution should therefore consist of a payment of approximately \$4.23 per Eligible Share (the “Per Eligible Share Amount”). *Id.* ¶12.

15. Subject to approval of the Court, the Settlement Administrator will distribute the Class Amount as follows.

16. The Settlement Administrator will send a check or wire funds to each relevant DTCC Participant or Merger Record Holder. *Id.* ¶15.

17. The Settlement Administrator will direct the DTCC Participant to pay the Per Eligible Share Amount to Eligible Class Members and similarly direct that no shares held by Excluded Persons be paid the Per Share Eligible Amount. *Id.*

18. With respect to Eligible Class Members whose Eligible Shares were *not* provided by the DTCC Allocation Report, the Settlement Administrator will send checks or wire funds to the Merger Record Holders as identified on the Registered Holder List. The Settlement Administrator will instruct that in the event that the record holder is not also the beneficial holder of Eligible Shares, it is the responsibility of that record holder to distribute the Per Eligible Share Amount to the beneficial holder(s) of such shares. *Id.*

19. Subject to the approval of this Court, Plaintiff's counsel and A.B. Data are prepared to implement the proposed plan of Initial Distribution for the Net Settlement Amount.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order, a form of which is submitted herewith: (1) authorizing the Initial Distribution of the

Net Settlement Amount to Eligible Class Members; and (2) approving payment from the Account to the Settlement Administrator for Administrative Costs.

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*Counsel for Plaintiff Nantahala Capital
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Dated: May 28, 2024

Words: 899 (of 3,000 word limit)

CERTIFICATE OF SERVICE

I, Ned Weinberger, hereby certify that, on May 28, 2024, I caused a true and correct copy of the foregoing to be served on the following by File and ServeXpress:

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