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Case Number 264,2021

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEAN J. GRIFFITH,

Objector Below-Appellant,

v.

SHIVA STEIN, derivatively on behalf of The Goldman Sachs Group, Inc., and individually as a Stockholder of The Goldman Sachs Group, Inc.,

Plaintiff Below-Appellee, and

LLOYD C. BLANKFEIN, M. MICHELE BURNS, GARY D. COHN, MARK A. FLAHERTY, WILLIAM W. GEORGE, JAMES A. JOHNSON, ELLEN J. KULLMAN, LAKSHMI N. MITTAL, ADEBAYO O. OGUNLESI, PETER OPPENHEIMER, DEBORA L. SPAR, MARK E. TUCKER, DAVID A. VINIAR, MARK O. WINKELMAN and THE GOLDMAN SACHS GROUP, INC.,

Defendants Below-Appellees.

No. 264, 2021

Court Below:

Court of Chancery of the State of Delaware
C.A. No. 2017-0354-SG

DEFENDANT-APPELLEES' ANSWERING BRIEF

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NATURE OF PROCEEDINGS

Over one-and-a-half years ago, the parties settled this derivative case (the "Settlement"). At the time, the sole surviving claim, which the Court of Chancery (Glasscock, V.C.) rightly characterized as "not . . . particularly strong," challenged the amount of fees paid to the non-employee directors of The Goldman Sachs Group, Inc. ("GS Group" or the "Firm"). *Stein* v. *Blankfein*, 2019 WL 2323790, at *8 (Del. Ch. May 31, 2019). Plaintiff's claim was premised on the unremarkable fact that those fees were higher than the average paid to directors of peer financial services firms. (A32-34.) The Settlement's principal consideration was an agreement (i) to reduce compensation by at least $125,000 per director through GS Group's 2024 annual meeting, and (ii) to submit the reduced compensation amounts in a Stock Incentive Plan ("SIP") for stockholder approval at the then-upcoming 2021 annual meeting. (A499-500.) The Settlement was framed by the parties to abide by the ratification procedures that this Court articulated in *In re Investors Bancorp, Inc. Stockholder Litigation*, 177 A.3d 1208, 1211 (Del. 2017).

Only one stockholder objected to the Settlement: Sean Griffith ("Objector"), a frequent settlement objector, whom the Court of Chancery described as possessing a "business model as an itinerant intervenor providing an independent voice in potential class settlements." *Stein* v. *Blankfein*, 2021 WL 2926169, at *2 (Del. Ch. July 12, 2021). After multiple rounds of briefing by Objector, the Court

of Chancery denied his objection, approved the Settlement, and denied Objector's request for a second fee award "in the range of $280,000 to $90,000" on top of the fee of $100,000 that the Court had previously awarded for his objection to a prior proposed settlement in an earlier phase of the case. (A528; B384; B397; B544; Appellant's Opening Brief ("Obj. Br.") Ex. C ("Tr.") at 42-44); *Stein*, 2021 WL 2926169. GS Group's stockholders voted to approve the reduced compensation levels in April 2021, and the directors are currently receiving the reduced amounts. (B545.)

Objector's litigation campaign nonetheless continues. In particular, Objector demands that this Court hold that the Court of Chancery abused its discretion by granting him a (mere) $100,000 fee award for his earlier objection. The Court of Chancery considered four written submissions from Objector about his fee, heard argument, and, in awarding a $100,000 fee, issued a written ruling carefully applying the factors that this Court set forth in *Sugarland Industries, Inc.* v. *Thomas*, 420 A.2d 142 (Del. 1980). (B233; B248; A290; B258; A313.) There is no basis to conclude that the Court of Chancery abused its discretion by not awarding Objector an amount *higher* than $100,000—an award that the Court of Chancery considered "reasonable in equity" and that certainly falls within the range of discretion. *Stein*, 2021 WL 2926169, at *2.

Having obtained no fee award for his more recent unsuccessful objection, Objector also appeals the denial of that objection. In so doing, Objector does not challenge the substance of the Settlement. Instead, he nit-picks the Settlement to try to find fault. For example, Objector criticizes the Settlement as "based on future conduct" because it releases claims concerning the amount of director compensation paid under the Settlement. (Obj. Br. at 22.) But there is nothing unknown or unpredictable about these fixed amounts, which were set in the Settlement and approved by GS Group's stockholders. In any event, the Settlement does not release any claims about this compensation that were not *already barred* by operation of law under *Investors Bancorp* when GS Group's stockholders ratified the compensation amounts. Under *Investors Bancorp*, director compensation approved by a vote of fully informed stockholders can only be challenged for waste—which is precisely the approach followed by the Settlement here.

Objector also seeks to invalidate the Settlement on the ground that, when approving the Settlement, the Court of Chancery did not make findings about Plaintiff Shiva Stein's "fitness going forward." (Tr. at 45:24.) Objector does not dispute that the Court found the Settlement terms "fair" and "reasonable and, indeed, a favorable compromise," and "that the Settlement is the result of arms'-length negotiations between experienced counsel fairly and adequately representing the interests of the respective Parties." (Tr. at 45:16-22; Obj. Br. Ex. E at 4.) Having

found adequate representation with respect to the Settlement, the Court of Chancery correctly noted that issues concerning Plaintiff's "fitness going forward" were "obviate[d]." (Tr. at 45:23-24.) Objector cites no case rejecting a derivative settlement based on consideration of whether a Plaintiff would have been adequate had the case hypothetically continued, not least where the court has found the settlement substantively and procedurally fair.

"Delaware law favors settlements." *Crescent/Mach I Partners, L.P.* v. *Dr Pepper Bottling Co. of Texas*, 962 A.2d 205, 208 (Del. 2008). "[T]he Court in considering a settlement of a derivative action must bear in mind the principle that the law favors the voluntary settlement of contested issues in the interest of judicial economy." *Chiulli* v. *Hardwicke Cos.*, 1985 WL 11532, at *2 (Del. Ch. Feb. 11, 1985). Regrettably, Objector seeks endless litigation in the hope of generating fees. The Court of Chancery should be affirmed, finally putting an end to this case.

SUMMARY OF ARGUMENT

1. ***Denied***. The Court of Chancery did not abuse its discretion by approving the Settlement agreement and its release of claims.

Objector does not dispute the Court of Chancery's determination that the Settlement consideration—including tangible monetary benefits in the form of reduced director compensation—is fair and reasonable. Instead, Objector challenges the validity of the release for claims arising from the implementation of Settlement terms. But the release does not extend to "future operative facts" (Ob. Br. at 5)—it concerns *fixed* compensation amounts that had *already* been agreed to by the parties and memorialized in the Settlement and notice, and have since been approved by GS Group's stockholders. Delaware courts permit such releases, which are necessary to ensure finality. (*See* Section I.C.3, *infra*.) In any event, this aspect of the release tracks this Court's procedure for ratification of director compensation in *Investors Bancorp* and so only releases claims already extinguished through operation of governing Delaware law.

2. ***Denied***. The Court of Chancery did not abuse its discretion in finding the Settlement substantively and procedurally fair. The Court of Chancery made findings about the adequacy of Plaintiff's representation of GS Group's interests when it determined that the Settlement was fair and reasonable and the result of "arms'-length negotiations between experienced counsel fairly and

adequately representing the interests of the respective Parties." (Obj. Br. Ex. E at 4.) Having approved the Settlement, including the termination of the case, the Court of Chancery correctly noted that questions about the Plaintiff's "fitness going forward" were "obviate[d]." (Tr. at 45:23-24.) Objector cites no authority refuting this common sense observation or requiring a trial court to make additional findings about a derivative plaintiff's adequacy for proceedings that will not occur.

3. ***Denied***. The Court of Chancery did not abuse its discretion by declining to grant Objector a fee award exceeding the $100,000 awarded to him in connection with his objection to an earlier proposed settlement. The Court correctly weighed the well-established factors for setting a fee award identified by this Court in *Sugarland Industries*, 420 A.2d 142. Recognizing that Objector's intervention was "not crucial" to the Court's decision to deny the earlier proposed settlement, the Court ultimately deemed it "reasonable in equity" to award Objector a $100,000 fee "in full compensation for the benefit created." *Stein*, 2021 WL 2926169, at *1-2. It is implausible that this generous $100,000 fee award will somehow discourage well-founded objections. (Obj. Br. at 6.) There is no basis for requiring GS Group to pay Objector any further fee award, particularly given the costs he continues to impose on the Firm through litigating his fee demands.

STATEMENT OF FACTS

A. Plaintiff's Claims

Plaintiff Shiva Stein filed the Complaint on May 9, 2017, asserting four claims:

Count One: Outside Director Compensation Claim. Count One of the Complaint asserted a derivative claim for a purported breach of the fiduciary duty of loyalty because GS Group paid its outside directors more in compensation from 2015 through 2017 than the average of four peer financial services firms.

Counts Two, Three and Four: Disclosure-Based Claims. In Counts Two and Three of the Complaint, Plaintiff asserted derivative and direct claims based on the allegation that GS Group's 2013 and 2015 Proxy Statements concerning the Firm's 2013 and 2015 SIPs did not disclose "each class of persons . . . eligible to participate" in the SIPs, "the approximate number of persons in each such class, and . . . the basis of such participation," as required by Item 10(a)(1) of Schedule 14A of the Rules under the Securities Exchange Act of 1934, 17 C.F.R. § 240.14a-101. (A36.) Plaintiff claimed that awards made under those plans were consequently invalid. Plaintiff estimated that the value of potential "recovery" on these claims was "$1.4 billion," which, according to Plaintiff, "dwarfs any possible recovery from the director excessive compensation claim[]." (B220.)

In Count Four of the Complaint, Plaintiff brought a direct claim challenging the disclosures in GS Group's 2015 through 2017 Proxy Statements that GS Group "*may* decide to pay non-deductible variable compensation." (A41 (emphasis added).) Plaintiff claimed that from 2014 through 2016, GS Group did, in fact, award variable compensation to its Named Executive Officers in the form of Long-Term Incentive Plan Awards, and that this compensation was "not tax-deductible." (A41.)

B. The Initial Proposed Settlement

Prior to oral argument on Defendants' motion to dismiss, the parties agreed to a proposed settlement and submitted it to the Court of Chancery for approval on March 20, 2018. (A49.) Defendants agreed to enhanced proxy statement disclosures, including, among other things, the disclosure of the identity of each class of persons eligible to participate in the 2018 SIP and the number of approximate persons in each such class. GS Group also agreed to continue certain governance and disclosure practices for director compensation, which GS Group has again agreed to continue as part of the Settlement currently on appeal. (A63-65.) Defendants and GS Group did not admit any wrongdoing, or that GS Group's disclosures were inaccurate in any respect. (A72-74.)

Sean Griffith, an alleged GS Group stockholder and law professor, objected to the proposed settlement. Mr. Griffith describes himself as an "activist

investor" who "assemble[s]" "holdings" in companies specifically "in order to bring challenges" to merger litigation settlements, and touts his "track record" of such objections. (A128.) *See, e.g.*, *Evangelista* v. *Duggan*, 2020 WL 780961, at *4 (Cal. Ct. App. Feb. 14, 2020) (affirming approval of merger litigation settlement over Griffith's objection); *In re Riverbed Tech., Inc. S'holders Litig.*, 2015 WL 5458041, at *2 (Del. Ch. Sept. 17, 2015) (approving settlement over Griffith's objection after he bought stock "for the specific purpose of making an objection"); *see also Delman* v. *Quality Distrib., Inc.*, 2017 WL 2694490, at *1 (Fla. Cir. Ct. June 21, 2017) (approving merger settlement over Griffith's objection but denying plaintiff's attorney fees; Griffith had "bought ten shares of stock . . . shortly after the merger was announced"). Mr. Griffith and his counsel also co-authored a "how-to guide" on how to object to disclosure-based settlements. Sean J. Griffith & Anthony A. Rickey, *Objections to Disclosure Settlements: A How-to Guide*, 70 Okla. L. Rev. 281, 282 (2017).

In objecting to the proposed settlement, Objector candidly explained that his goal was to "extend" the law by raising "underexamined" or "novel issues." (B240.) Objector argued that the proposed settlement was unfair and that Plaintiff consented to a settlement that offered minimal value. (A105-106.) In doing so, Objector acknowledged the weakness of Plaintiff's claims, described Plaintiff's "1.4 billion valuation" of the case as "wishful thinking," and conceded that Plaintiff's

claims were "unconvincing on the merits." (A134; A191.) Objector also challenged Plaintiff's adequacy as a representative and Plaintiff's fee request. (A131.)

Without awaiting adjudication of his objection, Objector moved for an award of fees and expenses of "between $82,000 and $575,000." (B235.) Objector claimed that the parties' decision to remove antitrust and "unknown" claims from the scope of the release following his objection created a "benefit" "of between $288,000 and $2.3 million," but he did not explain what antitrust or "unknown" claims were preserved or the supposed value of those claims. (B234, B237-238, B242-243.) Objector also claimed that he should be paid based on his objection because it saved GS Group a fee award to Plaintiff of up to $575,000 and because he provided the Court "an adversarial presentation." (B242-243, B238-239.)

The Court of Chancery rejected the proposed settlement. The Court acknowledged that the "future acts of corporate hygiene" included in the settlement consideration "may well have merit." *Stein* v. *Blankfein*, 2018 WL 5279358, at *4 (Del. Ch. Oct. 23, 2018). But the Court determined that it could not "approve a settlement that effectively resolves direct claims belonging to the Plaintiff in return for voiding potentially-meritorious monetary causes of action belonging to the Company." *Id.* The Court did not reach or address the policy issues of "extend[ing]" the law that Objector had urged. (B240.)

The parties and Objector were unable to agree on a fee award and, on July 1, 2019, following briefing, the Court of Chancery awarded Objector $100,000. *Stein* v. *Blankfein*, 2019 WL 2750100, at *2 (Del. Ch. July 1, 2019). The Court of Chancery applied the factors specified in *Sugarland Industries*, 420 A.2d 142, observing that the "most important" factor was "the benefit created by the Objector," but that the Court's "conclusions were not entirely congruent with the Objector's." *Stein*, 2019 WL 2750100, at *1. The Court found that Objector "contributed to several benefits": (1) "avoid[ing] a $575,000 fee request the Plaintiff sought"; (2) "aid[ing] the survival of the compensation claim . . . which, if entirely successful, could return approximately $8 million," though "the value of that claim remains to be litigated and its present value is—substantially—less"; and (3) "there may have been unknown claims preserved" by modifying the release. *Id.* at *2. In determining an award, the Court explained that "if I attribute the entire avoided fee request [of $575,000] to the Objector's actions and consider a one-third contingency fee, that would imply, at most, a fee of $192,000." *Id.* The Court found it "reasonable" to "credit" Objector with "half of that fee avoidance," causing the "maximum amount [to] drop[] somewhat below $100,000." *Id.* Taking into account the other benefits to which Objector contributed, including the survival of the compensation claim, as well as considering the time expended by Objector as a "useful check," the Court

found an award of $100,000 plus the $1,923.30 of costs expended to Objector, to be "equitable." *Id.*

Dissatisfied with this $100,000 award, Objector sought immediate certification of an interlocutory appeal, which the Court of Chancery denied. *Stein* v. *Blankfein*, 2019 WL 3311227, at *2 (Del. Ch. July 23, 2019). Objector then filed two appeals with this Court—one interlocutory and one under the collateral order doctrine—which this Court rejected. *Griffith* v. *Stein*, 2019 WL 4071894 (Del. Aug. 29, 2019). GS Group has paid Objector the Court of Chancery's $100,000 fee award.

C. The Motion to Dismiss Decision

On May 31, 2019, the Court of Chancery dismissed all of Plaintiff's disclosure-based claims (Counts Two, Three and Four). *See Stein*, 2019 WL 2323790, at *10-11. The Court concluded that (i) Plaintiff lacked standing to challenge disclosures issued before she held stock; (ii) Plaintiff's claims that GS Group's proxy statements violated SEC Item 10(a)(1) (Counts Two and Three) were barred by laches because they were brought more than two years after the stockholder vote to which the challenged proxy disclosure related; and (iii) the tax-deductibility disclosure challenged in Count Four was not misleading. *Id.* at *9-11.

The Court of Chancery allowed Plaintiff to proceed on her claim (Count One) that GS Group directors breached their duty of loyalty because they allegedly were over-compensated. *Id.* at *5-8. The Court of Chancery explained that, under

this Court's then-recent *Investors Bancorp* decision, entire fairness review applied. *Id.* at *7. Plaintiff's claims were based on the allegation that Defendants' compensation was higher than the average of directors at peer financial services firms, but the Court emphasized that "setting salaries above the peer average is not evidence of excessive compensation—if it were, half of all companies would be overcompensating their directors." *Id*. at *7. Drawing "all inferences in favor" of Plaintiff, the Court concluded Plaintiff had met her "low pleading burden." *Id.* at *8. Nonetheless, the Court made clear that her claim was "not . . . particularly strong," and that "Defendants' argument may ultimately prove persuasive." *Id.*

D. The Settlement

Following the decision, Defendants answered the Complaint and the parties engaged in discovery. (A488.)

In February 2020, the parties agreed to the Settlement, which stated that Defendants "deny all allegations of wrongdoing," including that the challenged director compensation was "excessive or otherwise improper" or that any of GS Group's disclosures were "misleading or deficient in any way." (A490-491.)

Regarding director compensation, the Settlement provided:

- As to outside director compensation for 2020, the GS Group Board of Directors would reduce per director annual compensation by $125,000. GS Group outside directors who do not serve as committee chairs would receive $450,000 (versus prior compensation of $575,000) in

annual compensation, and outside directors who serve as committee chairs would receive $475,000 in annual compensation (versus prior compensation of $600,000). (A499.) GS Group could pay these amounts in cash or equity. (A499.)

- As to outside director compensation for 2021 through 2023, the GS Group Board committed to set director compensation at amounts not exceeding 2020 levels. (A499-500.) The settlement provided that GS Group anticipated seeking stockholder approval of a SIP at its 2021 annual meeting. This 2021 SIP would set a specified total annual compensation for outside directors not to exceed 2020 amounts through at least GS Group's 2024 annual meeting. (A500-501.)

The Settlement stipulation estimated the aggregate value of the contemplated decrease in director compensation to be $5,381,721. (B382.) The Settlement also included an agreement for GS Group to continue certain director compensation practices, and to describe those practices in each of its proxy statements through its 2024 annual meeting:

- Annual review of outside director compensation by the Board's Corporate Governance and Nominating Committee (the "Governance Committee");

- Annual engagement by the Governance Committee of an independent compensation consultant to review outside director compensation;

- Annual recommendation by the Governance Committee to the Board with respect to the outside director compensation program; and

- Annual disclosure in GS Group's proxy statement of its outside director compensation process and program. (A501-502.)

The Settlement included an agreement that GS Group will continue to include disclosures regarding who is eligible to participate in stock incentive plans in any proxy statement soliciting stockholder approval of a SIP through the 2024 proxy statement. (A502.)

Of relevance here, the Settlement provided Defendants with a customary release of claims relating to Plaintiff's claims and their settlement, defining "Released Plaintiff Claims" in relevant part as follows:

> (1) any and all manner of claims . . .;
>
> (2) whether known or unknown . . .;
>
> (3) that
>
> > . . . (C) any other GS Group stockholder could have asserted or could hereafter assert against any of the Released Defendant Parties derivatively on behalf of GS Group under federal, state, local, statutory, regulatory, common, or other law or rule relating to fiduciary or disclosure duties . . .,
>
> (4) in any court, tribunal, forum, suit, action, or proceeding; and
>
> (5) which now or hereafter, are based upon, arise out of, relate in any way to . . .:
>
> > (A) the Action;
> >
> > (B) the subject matter of the Action;
> >
> > (C) the amount of GS Group's non-employee director compensation paid or awarded in respect of director service from 2014 through 2019;

> (D) ***the amount of GS Group's non-employee director compensation paid or awarded or to be paid or awarded in respect of director service during 2020 as set forth in Paragraph 2(a) of this Stipulation, excluding a claim alleging that a non-employee director's service during 2020 served no corporate purpose whatsoever*****;**
>
> (E) ***the amount of GS Group's non-employee director compensation to be paid or awarded pursuant to the 2021 SIP as set forth in Paragraphs 2(b)-(d) of this Stipulation, excluding a claim that a non-employee director's service during the period when compensation was paid pursuant to the 2021 SIP served no corporate purpose whatsoever*****;**
>
> (F) the approval by GS Group stockholders of the 2013, 2015 and 2018 SIPs; or
>
> (G) the disclosures in all GS Group proxy statements prior to the date of this Stipulation regarding (i) GS Group non-employee director compensation paid or awarded in respect of director service from 2014 through the date of this Stipulation, (ii) the 2013, 2015 and 2018 SIPs, or (iii) the tax-deductibility of awards under GS Group's Long-Term Incentive Plan.
>
> . . . .

(A495-498 (emphasis added).)

On appeal, Objector's challenge to the substantive Settlement terms is limited to challenging the two sub-clauses ***bolded*** above that release claims, other than waste, concerning the specific director compensation amounts agreed upon in the Settlement.

The parties did not agree on Plaintiff's proposed fee award, and so the Settlement provided that "Defendants have not agreed to the Fee and Expense

Amount" of $1.5 million sought by Plaintiff's Counsel "and intend to oppose any request" for that amount. (A507.)

E. The Court of Chancery's Approval of the Settlement

Following notice to stockholders, Objector filed the sole objection to the Settlement. (A528.) Objector argued that the Settlement was a "bad deal" because it supposedly released Defendants from "claims for future wrongdoing" and because Plaintiff was an inadequate representative, and also sought still more fees. (A549-551, A577.)

On August 18, 2020, the Court of Chancery issued a bench ruling approving the Settlement and rejecting Objector's arguments. (Tr. at 42:17-46:19.) The Court determined that the reduction in compensation was "so close to the maximum amount that could be recovered" that it was "fair" and a "favorable compromise," especially where the claims "were not particularly strong." (Tr. at 45:14-22.) The Court noted that its conclusion about the Settlement's fairness "obviates the need to argue about Ms. Stein's fitness going forward" as a representative. (*Id.* at 45:22-24.)

The Court rejected Objector's arguments that the Settlement released claims based on future unknown facts, explaining that "the facts are determined here. And the facts are that the compensation sought shall be capped at an amount substantially below current compensation for next year and, if approved by the

stockholders, going forward." (*Id.* at 43:7-11.) The Court also emphasized that "the purpose of a settlement is to provide peace for the issues that are raised in the litigation." (*Id.* at 42:8-10.) And where a settlement attempts to address allegations of past overpayment by limiting future compensation, "there has to be a forward-looking release of some kind." (*Id.* at 42:6-07.) As to Objector's theory that the release's carve-out for compensation serving "no corporate purpose" somehow differed from Delaware's waste standard, the Court remarked that it was "not sure that's true," but that it did not matter because the Court relied on the parties' representation that the carve-out applies to waste claims "in approving this settlement." (*Id.* at 43:13-44:3.) The Court explained that its reliance on the parties' representation gives rise to judicial estoppel and thus bars the parties from ever arguing that the release somehow covers waste claims. (*Id.*)

F. GS Group Stockholders' Approval of the Reduced Director Compensation

In addition to the description of the Settlement provided to stockholders in the notice of settlement, GS Group's 2021 proxy statement also described the 2021 SIP and explained that it included the Settlement "commitment to include a fixed amount of annual director compensation in the SIP not in excess of current

levels." (B475.) On April 29, 2021 the GS Group stockholders voted to approve the 2021 SIP, including the reduced director compensation amounts. (B547.)[1]

G. The Court's Denial of Objector's Request for a Fee Award for His Unsuccessful Objection

On July 12, 2021, the Court of Chancery issued a letter opinion addressing Plaintiff's and Objector's fees. *Stein*, 2021 WL 2926169, at *1. The Court denied Objector's demand for additional fees for serving as an "adversary," noting that a "failed objection to a settlement I found to be fair does not amount to a corporate benefit for which I can award a fee." *Id.* at *2. The Court reasoned that "Objector's real argument is that, largely as a result of his initial objection, the common fund was created, a benefit for which he was not adequately compensated in the initial fee award." *Id.* But the Court emphasized that the initial $100,000 award was "intended . . . to be in full compensation for the benefit created." *Id*. The Court concluded that, "I understand that the Objector forcefully disagrees with this decision and considers it inimical to his business model as an itinerant intervenor. . . . [H]e is free to seek redress on appeal." *Id.*

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[1] This Court may take judicial notice of the "public filing[] with the SEC" reporting this vote. *See DFC Global Corp.* v. *Muirfield Value Partners, L.P.*, 172 A.3d 346, 351 n.7 (Del. 2017).

ARGUMENT

I. OBJECTOR'S CRITICISMS OF THE SETTLEMENT RELEASE ARE GROUNDLESS.

A. Question Presented

Whether the Court of Chancery abused its discretion by approving a settlement that, by design, mirrored this Court's *Investors Bancorp* decision by releasing claims, other than waste, arising from the reduced director compensation levels agreed in the Settlement and then ratified by GS Group stockholders? This question was presented below at A617-630; Tr. at 12-16, 33-41.

B. Scope of Review

"For this Court to set aside a settlement which has been found by the Court of Chancery to be fair and reasonable, the evidence in the record must be so strongly to the contrary that the approval of the settlement constituted an abuse of discretion." *Kahn* v. *Sullivan*, 594 A.2d 48, 59 (Del. 1991) (citations omitted).

C. Merits of the Argument

1. There Is No Dispute That the Settlement Consideration is Fair and Reasonable.

Tellingly, Objector does not appeal the adequacy of the Settlement consideration. In fact, neither Objector, nor any other GS Group stockholder, "object[ed] to the settlement itself." (Tr. at 44:19-20.) The Settlement consideration included tangible monetary benefits: Defendants agreed to reduce annual outside director compensation by at least $125,000 per director, per year, from 2020 through

the Firm's 2024 annual meeting, reflecting total savings of $5,381,721 for GS Group.

This consideration alone meets or exceeds other settlements the Court of Chancery has recently approved for claims challenging director compensation. *See* Ex. A, *In re Salesforce.com, Inc. Deriv. Litig.*, C.A. No. 2018-0922-AGB, at 56:2-5 (Del. Ch. Dec. 17, 2019) (TRANSCRIPT) (approving settlement, over objection, that "caps the amount of compensation"); *see also* Ex. B, *Solak* v. *Barrett*, C.A. No. 2017-0362-JRS, at 19:5-14 (Del. Ch. May 30, 2018) (TRANSCRIPT) (settlement "provid[ed] significant benefits" where "new compensation plan that will be presented for approval to stockholders" "will save" the company "money and . . . set limits on the board's discretion in making self-interested compensation decisions in the future").

These benefits were value-tested through settlement approval and, importantly, also through ratification, with fully-informed Goldman Sachs stockholders voting to adopt the reduced director compensation levels. Even Objector conceded below that "rejecting the settlement for insufficient consideration would break from precedent." (A537.)

That the Settlement secures value by reducing future payment obligations "[w]ithout [d]isgorgement" or "claw back" of "past compensation" makes no difference. (Obj. Br. at 11.) "Prospective benefits can provide

consideration for a derivative settlement, and indeed [Delaware] court[s] ha[ve] approved such arrangements many times." *Salesforce.com*, Tr. at 57:8-12 (rejecting objection that settlement did "not obtain[] disgorgement" from directors). As Objector also admitted below, approval of settlements that include "prospective reductions in director compensation are now commonplace." (A537.)

The adequacy of the consideration here is heightened because "the weakness of the claims to be released is factored into the court's analysis of the fairness and reasonableness of the settlement." *In re Cox Commc'ns, Inc. S'holders Litig.*, 879 A.2d 604, 634 (Del. Ch. 2005). The Court of Chancery expressly recognized Plaintiff's claims are "not . . . particularly strong." *Stein*, 2019 WL 2323790, at *8. The Court of Chancery noted that the "Complaint is . . . silent as to unfair process," and the challenged compensation was "set . . . with the help of an outside consultant." *Id.* at *7. For the "fair price" inquiry, the court asks whether the transaction was "within a *range of fair value*." *Cinerama, Inc.* v. *Technicolor, Inc.*, 663 A.2d 1134, 1143 (Del. Ch. 1994), *aff'd*, 663 A.2d 1156 (Del. 1995) (emphasis added). The Court of Chancery observed that the challenged compensation was "not shockingly" higher than peer firms and that Defendants could "argue that their compensation is well within the bounds reasonable to a company of Goldman's caliber, particularly considering the checks established on their own self-interest," pointing to their "extensive duties," including "outside . . .

official Board meetings," in defending the fairness of their compensation. *Stein*, 2019 WL 2323790, at *1, *8.

2. The Settlement Release Tracks This Court's *Investors Bancorp* Standard.

Rather than challenge the substance of the Settlement, Objector makes only a single narrow, technical attack on just one part of the release. The portion of the release criticized by Objector, however, merely releases claims that are *already barred* by this Court's *Investors Bancorp* decision, which patently does not prejudice any stockholder.

Under *Investors Bancorp*, "when the stockholders have approved a[] [compensation] plan, the affirmative defense of stockholder ratification comes into play." 177 A.3d 1208, 1211 (Del. 2017). "[A] deferential business judgment standard of review" applies to compensation ratified by stockholders. *Id*. "[V]alid stockholder ratification leads to waste being the doctrinal standard of review. . . ." *Calma* v. *Templeton*, 114 A.3d 563, 587 (Del. Ch. 2015).

The Settlement tracks the *Investors Bancorp* standard. The Settlement specified fixed limits to director compensation (at reduced levels) and required that the compensation amounts be subject to stockholder ratification in the 2021 SIP submitted at the Firm's 2021 annual meeting. Consistent with *Investors Bancorp*, the Settlement releases claims challenging the stockholder-ratified compensation amounts, but does not release claims for waste. (A497-498.) In other words, the

release language Objector attacks does not extinguish any claim not already invalidated by operation of stockholder ratification under Delaware law.

In straining to find fault with the release, Objector criticizes the settlement for describing the waste standard in the carve-out from the release, rather than using the literal word "waste." (Obj. Br. at 26-28.) Specifically, the release of claims challenging the stockholder-ratified compensation amounts "exclud[es] a claim that a non-employee director's service during the period when compensation was paid pursuant to the 2021 SIP *served no corporate purpose whatsoever*." (A497-498 (emphasis added).) This language is designed to reflect the Delaware waste standard, and Objector identifies no practical distinction. *See, e.g.*, *White* v. *Panic*, 783 A.2d 543, 554 (Del. 2001) (waste where "the challenged transaction *served no corporate purpose* or where the corporation received no consideration at all") (emphasis added); *Brehm* v. *Eisner*, 746 A.2d 244, 263 (Del. 2000) (waste where transaction "*serves no corporate purpose*; or for which no consideration at all is received") (emphasis added; internal quotation marks omitted).[2] A situation where the corporation received "no consideration at all" for director compensation

[2] *See also*, *e.g.*, *In re AbbVie Inc. S'holder Deriv. Litig.*, 2015 WL 4464505, at *6 (Del. Ch. July 21, 2015) (waste where "challenged transaction *served no corporate purpose* or where the corporation received no consideration at all") (emphasis added; internal quotation marks omitted); *Protas* v. *Cavanagh*, 2012 WL 1580969, at *9 (Del. Ch. May 4, 2012) (waste where transaction "*serves no corporate purpose*, or for which no consideration at all is received") (emphasis added; internal quotation marks and alteration omitted).

would, by definition, mean that the compensation also served no corporate purpose. That the carve-out does not include the phrase "no consideration at all" does not narrow the carve-out or result in the release of any waste claims. Objector contends that the carve-out is somehow limited to "an extreme example of a waste claim." (Obj. Br. at 26.) But Delaware courts consistently describe waste as an "extreme test," *Espinoza* v. *Zuckerberg*, 124 A.3d 47, 67 (Del. Ch. 2015), where the consideration is "so egregious or irrational that it could not have been based on a valid assessment of the corporation's best interests," *White*, 783 A.2d at 554 n.36.

Irrespective of Objector's linguistic contortions, as the Court of Chancery correctly observed, any theoretical distinction between the release language and the waste standard is "of no moment" because the parties represented to the Court that the release "import[s] the Delaware waste standard" and so "judicial estoppel would arise." (Tr. at 43:21-44:11.) The Court of Chancery here expressly "accepted that" the release excludes waste claims and "rel[ied] on that in approving this settlement," so there is no question that judicial estoppel precludes Defendants from applying the release to waste claims going forward. (Tr. at 43:21-44:3.) *See Julian* v. *E. States Constr. Serv., Inc.*, 2009 WL 1211642, at *6 (Del. Ch. May 5, 2009) ("Judicial estoppel prevents a litigant from advancing an argument that contradicts a position previously taken by that same litigant, and that a court was persuaded to accept as the basis for its ruling.") (internal quotation marks and

alteration omitted). Objector speculates that it might be "unclear" whether "parties never named" in the action might be subject to judicial estoppel. (Obj. Br. at 28.) That is irrelevant because the release concerns claims brought derivatively on behalf of GS Group, which is a named party and thus subject to judicial estoppel. (A43, A45-46.) Objector complains that stockholders "will have no notice of any estoppel without scrutinizing the hearing transcript." (Obj. Br. at 27-28.) But judicial estoppel is always based on the court record, which, here, is indisputably public.

Objector further speculates that the release might extend to claims "'argu[ing] for the . . . reversal of' *Investors Bancorp* itself." (Obj. Br. at 26.) The parties reasonably based their Settlement on current Delaware law and no settlement would ever be adequate if it had to satisfy hypothetical future changes in legal standards that objectors might imagine. Nor is Objector correct that a stockholder who brings a "meritorious" lawsuit would "face[] sanctions" under the "settlement" for "defying a court injunction." (Obj. Br. at 26.) The Settlement contains no "sanctions" provision and courts do not impose sanctions for bringing "meritorious" lawsuits.

3. The Settlement Does Not Release Claims Based on Future Decisions or Different Operative Facts.

Objector's theory that the Settlement impermissibly releases claims based on "[f]uture [c]onduct" or "future events" is wrong. (Obj. Br. at 22, 23.) The Settlement does *not* release claims related to future decisions, only claims related to

the fixed compensation amounts that GS Group's Board has *already* approved, that have *already* been memorialized in the Stipulation, and which now also have been ratified in a vote by GS Group stockholders at the Firm's 2021 annual meeting. Because these specific compensation amounts have been set and fully approved, the Settlement does not release claims based on unpredictable future conduct. *See, e.g.*, *In re Sirius XM S'holder Litig.*, 2013 WL 5411268, at *5 (Del. Ch. Sept. 27, 2013) (fiduciary duty claims accrued when corporate contract was "agreed to and disclosed to the public," not when corporation took subsequent action "anticipated by and, in fact, required under" contract).

As the Court of Chancery recognized, the Settlement "address[es] allegations of past overpayments by limiting future nonemployee director compensation." (Tr. at 42:2-4.) The portion of the release that Objector challenges arises from implementing these Settlement terms. The Court of Chancery rightly reasoned that, under such circumstances, "there has to be a forward-looking release of some kind if such a settlement will work because the purpose of a settlement is to provide peace for the issues that are raised in the litigation." (*Id.* at 42:6-10.)

This Court credited that reasoning in *Philadelphia Stock Exchange*, noting that "any settlement of . . . litigation would have to afford the defendants complete peace," including "a release to the broadest extent possible under law." *In re Philadelphia Stock Exchange, Inc.*, 945 A.2d 1123, 1137 (Del. 2008). "If

implementing the settlement terms themselves gives rise to new claims, then . . . settlements requiring post-execution implementation would be impracticable." Ex. C, *In re Medley Cap. Corp. S'holders Litig.*, C.A. No. 2019-0100-KSJM, at 38:2-6 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT). Recognizing that "defendants agree to a settlement in order to achieve finality in litigation," *id.* at 38:1-2, Delaware courts have repeatedly approved settlements that contain releases for actions required by the settlement terms. In *Marie Raymond Revocable Tr.* v. *MAT Five LLC*, 980 A.2d 388 (Del. Ch. 2008), *aff'd sub nom. Whitson* v. *Marie Raymond Revocable Tr.*, 976 A.2d 172 (Del. 2009), which involved a challenge to a tender offer, the settlement included a revised tender offer to occur after "the [s]ettlement ha[d] been approved." *See* Stipulation ¶¶ 15, 17, *Marie Raymond Revocable Tr.* v. *MAT Five LLC*, 2008 WL 7961438 (Del. Ch. Nov. 10, 2008). As part of the settlement, class members released all claims related to that future revised tender offer. (*Marie Raymond* Stipulation, ¶¶ 13(o), 18.) The release thus extended to transactions that occurred after the settlement approval hearing. The Court approved the settlement and this Court affirmed.

Likewise in *Blank* v. *Belzberg*, 858 A.2d 336, 341-42 (Del. Ch. 2003), the settlement required the corporation, among other things, to close a short-form merger within 10 days of the settlement approval order. The Court approved the settlement, including a provision that "any claim or objection relating to the Merger

disclosures" would be "released and waived" unless brought before "expiration of . . . [the] appeal period" for the settlement approval. *Id.*

Objector's reliance on *UniSuper, Ltd.* v. *News Corp.*, 898 A.2d 344 (Del. Ch. 2006), is misplaced. (Obj. Br. at 20-21.) The narrow release here is nothing like the release rejected in *UniSuper*, which broadly extended to *all* claims involving the adoption of a future rights plan. (Obj. Br. at 20.) *See UniSuper*, 898 A.2d at 348 (rejecting release for claims "relating to the adoption of the [] 2006 Rights Plan."). By contrast, the release here does not cover all claims related to the adoption of the SIP. Instead, the release is restricted to claims arising from the "amount" of director compensation and does not extend to other claims, such as disclosure claims regarding the 2021 SIP or any other aspect of the 2021 SIP beyond the director compensation amounts. Further, the release simply tracks the protections afforded following stockholder ratification under *Investors Bancorp* and so puts an end to the litigation, including back-door attempts to re-litigate the claims and their settlement by challenging the implementation of the settlement.

Objector points to *dicta* in *UniSuper* stating that "Defendants cite no authority for the proposition that there is an exception for future conduct arising out of, or contemplated by, the settlement itself," 898 A.2d at 348, but concedes that this Court did not rely on this language when referencing the case in *Philadelphia Stock Exchange*. (Obj. Br. at 20.) Unlike in *UniSuper*, defendants here point to such

authority above, and, in any event, *Philadelphia Stock Exchange* endorsed the importance of securing "complete peace" through "a release to the broadest extent possible under law." 945 A.2d at 1137.

Finally, Objector posits "infinite hypotheticals" of future events that might warrant lowering director compensation amounts. (Obj. Br. at 23-25.) This argument is beside the point. Because GS Group stockholders have ratified the director compensation levels set forth in the 2021 SIP through the 2024 annual meeting, the release provides the same protection under *Investors Bancorp* that is provided to directors of all Delaware corporations, irrespective of unanticipated future events, whose compensation is ratified by stockholders. For this reason it is also irrelevant that "future directors" might be appointed following the Settlement. (Obj. Br. at 23.) GS Group stockholders have ratified compensation amounts for all directors serving during the period covered by the 2021 SIP. Stockholders of GS Group—no different from other corporations where stockholders ratified director compensation amounts—may still bring claims for waste if warranted by future events.

II. THE COURT SHOULD REJECT OBJECTOR'S BASELESS THEORY THAT, HAVING APPROVED THE SETTLEMENT, THE COURT OF CHANCERY ALSO SHOULD HAVE MADE FINDINGS ABOUT PLAINTIFF'S ADEQUACY "GOING FORWARD."

A. Questions Presented

Whether the Court of Chancery abused its discretion by approving the Settlement as fair and reasonable and stemming from arms'-length negotiation with adequate representation, while noting that questions about Plaintiff's "fitness going forward" were "obviate[d]"? This question was presented below at Tr. at 45:22-24 and Obj. Br. Ex. E at 4.

B. Scope of Review

The Court of Chancery's approval of a settlement as fair and reasonable is reviewed for "abuse of discretion." *Kahn*, 594 A.2d at 59.

C. Merits of the Argument

Notwithstanding that the Court of Chancery found the Settlement, fair, reasonable, and negotiated at arms'-length with adequate representation, Objector claims that "[r]eversal and remand is required" for the Court to make findings "about Stein's fitness as plaintiff." (Obj. Br. at 31, 38.) Nothing in the record or Delaware law warrants the unnecessary and wasteful exercise that Objector demands.

Following consideration of extensive submissions by the Parties and Objector, as well as holding a hearing, the Court determined that the Settlement was "fair, reasonable, adequate, and in the best interests of GS Group." (Obj. Br. Ex. E

at 4.) After hearing from the parties and Objector, the Court observed that its determination that the Settlement is "fair" "obviates the need to argue about Ms. Stein's fitness going forward." (Tr. at 45:22-24.) Objector construes this comment to mean that the Court ignored adequacy. But that is not so. The Court's determination included consideration of whether the Parties' interests were adequately and fairly represented in reaching the Settlement. For example, in its approval order, the Court specifically stated that it "finds that the Settlement is the result of *arms'-length negotiation* between experienced counsel *fairly and adequately representing the interests of the respective Parties*." (Obj. Br. Ex. E at 4 (emphasis added).)

To avoid the Court's adequacy finding, Objector argues that "Parties" is not defined to include "absent stockholders." (Obj. Br. at 34.) But, as a derivative plaintiff, Plaintiff's role was to represent the interests of nominal defendant GS Group, which plainly was a Party. Because the Court expressly found that Plaintiff's counsel fairly and adequately represented the interests of GS Group in reaching the Settlement, Objector's theory that the Settlement could fail to satisfy "due process" or be subject to "collateral attacks" is groundless. (Obj. Br. at 32.) Having found the Parties adequately represented in fairly negotiating the Settlement, the Court was correct to observe that its Settlement approval "obviates the need to argue about Ms. Stein's fitness going forward." (Tr. at 45:23-24.) The Settlement terminates the

case and so there are no proceedings "going forward." Given the Court's findings that the Settlement is fair, reasonable and based on adequate representation, requiring the Court of Chancery to make additional findings about Plaintiff's "fitness going forward" would be unwarranted and pointless.

Even putting aside that the Court found the Settlement was achieved with fair and adequate representation, Objector cites no case holding that courts must make express findings about a *derivative* plaintiff's adequacy before approving a settlement. Instead, he relies on cases addressing approval of class action settlements under Rule 23. Selectively quoting *In re Infinity Broadcasting Corp. S'holders Litig.*, 802 A.2d 285 (Del. 2002), Objector claims that "[a] determination of Stein's adequacy was 'an "essential component" of the settlement approval process . . . .'" (Obj. Br. at 32.) Critically, Objector omits from his quotation that "the adequacy of *a class representative* is an 'essential component'" of the process. 802 A.2d at 291 (emphasis added). The "essential component" phrase in *Infinity* is itself quoted from this Court's decision in *Goodrich* v. *E.F. Hutton Group, Inc.*, 681 A.2d 1039 (Del. 1996). *Goodrich* also addressed a class action settlement approval and stated that "[a]n *essential component* of that approval process is 'a judicial determination that the adequate representation requirement of *Rule 23(a)(4)* has been

satisfied.'" *Id.* at 1045 (emphasis added) (quoting *Prezant* v. *De Angelis*, 636 A.2d 915, 924 (Del. 1994)).[3]

The reason that Objector relies solely on cases under Rule 23—and none under Rule 23.1, which applies here—is because of the very specific procedural requirements for settlement under Rule 23. As *Prezant* explained, Rule 23(e), governing dismissal and settlement, "presuppose[s] the existence of a properly maintainable class action, *i.e.*, one that satisfies all the [certification] requisites of subsection (a) and . . . (b)." 636 A.2d 915 at 921. Under Rule 23(a), a class action can be certified "*only*" on a finding of adequacy. No commensurate procedural requirement appears in Rule 23.1, which provides that "the action shall not be dismissed or compromised without the approval of the court."

That there are "adequacy requirements implicit in . . . Rule 23.1" does not change this analysis. *South* v. *Baker*, 62 A.3d 1, 21 (Del. Ch. 2012). Notwithstanding that Rule 23 and Rule 23.1 both *substantively* require adequacy, there are *procedural* differences between the rules. "[O]ne critical difference" is that "[i]n a class action, the plaintiff bears the burden of proving adequate representation." *Id.* at 21-22. That courts approving settlements under Rule 23

[3] The "arms'-length" Settlement process here is nothing like *Prezant* where the Court found the settlement process "'suspicious,'" "'disturbing,'" and warranting "'the closest scrutiny.'" 636 A.2d at 919-20, 926.

determine whether the class action prerequisites, including adequacy, have been met reflects this procedural burden, which does not apply to Rule 23.1.

Finally, notwithstanding his own role as a serial objector, most of Objector's criticisms relate to Plaintiff's role as a serial plaintiff in unrelated actions. (*See* Obj. Br. at 35-37.) Although Objector styles himself as the only participant in the proceedings raising Plaintiff's litigation history (*see*, *e.g.*, Obj. Br. at 33), Defendants identified Plaintiff's frequent filings to the Court more than a year before Objector appeared. (B15.) Fundamentally, Plaintiff's shortcomings in those cases do not affect the Court of Chancery's determination that this Settlement was procedurally and substantively fair.

III. THE COURT OF CHANCERY DID NOT ABUSE ITS "CONSIDERABLE DISCRETION" IN DENYING OBJECTOR ADDITIONAL FEES BEYOND THE $100,000 IT AWARDED.

A. Question Presented

Did the Court of Chancery clearly abuse its discretion by not granting Objector more fees beyond the $100,000 award the Court determined "to be equitable"? This question was presented at A630-632, Tr. at 58-61.

B. Scope of Review

"Absent a clear abuse of discretion, this Court will not reverse" the Court of Chancery's determination of a "proper fee award." *Johnston* v. *Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 547 (Del. 1998).

C. Merits of the Argument

As Objector concedes, fee awards are a matter of "considerable discretion." (Obj. Br. at 39.) The Court of Chancery did not abuse its discretion when it declined to meet Objector's demand for a fee award in excess of $100,000. Rather than too low, Objector's $100,000 fee award *exceeds* awards granted to objectors in other cases. *See In re Riverbed Tech., Inc. S'holders Litig.*, 2015 WL 7769861, at *3 (Del. Ch. Dec. 2, 2015) (objector awarded $10,000 plus expenses); *Brinckerhoff* v. *Texas E. Prods. Pipeline Co., LLC*, 986 A.2d 370, 397 (Del. Ch. 2010) (objector awarded fee of $80,000 constituting 0.08% of a $100 million benefit to which objector and plaintiffs both contributed).

In determining Objector's award in connection with his objection to the earlier proposed settlement, the Court of Chancery carefully followed the "factors pertinent to setting [] a fee" set forth by this Court in *Sugarland Industries*, 420 A.2d 142. *See Stein*, 2019 WL 2750100, at *1. As part of weighing those factors, the Court of Chancery considered "several benefits" to which Objector "contributed," including avoidance of the $575,000 fee request sought by Plaintiff. *Id.* at *2. The Court observed that the "outer limit" of an "equitable fee" would be one-third of that amount ($195,000) and determined that if it "credit[ed]" Objector with "half of that fee avoidance" and weighted other factors, an award of $100,000 would be "equitable." *Id.*

Objector misconstrues the Court of Chancery's reasoning. The Court did not "credit[] Objector with only half of the benefit that Objector created." (Obj. Br. at 41.) Instead, the Court determined that any benefit created by Objector was at most half of the avoided fee request.[4] *See Stein*, 2021 WL 2926169, at *2 ("I intended the initial award of fees in the amount of $100,000 to be in full compensation for the benefit created."). If anything, this award is generous given that the Court found that "Objector's participation" was "not crucial" to the Court's denial of approval for the initial settlement. *Id*. at *2; *see also Stein*, 2019 WL

[4] Objector's theory that the "avoided fee request" constitutes a "benefit" for which he should be paid is itself dubious. The amount was merely a request by Plaintiff, which could have been reduced or denied by the Court.

2750100, at *1 ("[M]y conclusions were not entirely congruent with the Objector's.").

Objector opines at length on policy reasons why objectors supposedly should be compensated for providing their "adversarial" input. (Obj. Br. at 42-47.) As the Court of Chancery recognized, however, the benefit conferred is the "paramount" factor when determining a "proper fee award." *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *20 (Del. Ch. May 6, 2010), *aff'd*, 9 A.3d 475 (Del. 2010). Delaware should not force corporations to pay objectors' fees without a commensurate corporate benefit. As Chancellor Allen recognized, "caution is especially appropriate when the person claiming entitlement to a fee not only has no monetary recovery to demonstrate the real value of its services, but is an objector to a proposed settlement." *In re Katy Indus., Inc., S'holders Litig.*, 1994 WL 444765, at *3 (Del. Ch. Aug. 11, 1994); *see also* Ex. D, *In re Google Inc. Class C S'holder Litig.*, C.A. No. 7469-CS (Del. Ch. Nov. 9, 2013) (ORDER) ("Objections should not be filed as a vehicle for another law firm to generate a fee for itself."). If a lawyer wastes hours to confer a service no one asked for and no one needs, the inefficiencies should not be borne by others. And encouraging objectors to intervene solely for their own economic advantage promotes "opportunistic behavior" contrary to the purpose of derivative litigation. *Id.*

Through his innumerable filings for more than three years in this action, Objector has imposed substantial costs on GS Group and its stockholders that far exceed the value of whatever benefit he purportedly conferred. Those costs include (among other things) not only his $100,000 fee and the $612,500 ultimately awarded to Plaintiff's counsel, but also the cost of this appeal, protracted briefing over Objector's fee demands, and Objector's prior failed appeals of his fee award, which Defendants opposed. *Griffith*, 2019 WL 4071894, at *2. Endless ancillary litigation by Objector causes only costs and no corporate benefit, further reinforcing that the Court of Chancery acted within its broad discretion in rejecting Objector's demand for more fees.

CONCLUSION

For the reasons stated here, the judgment should be affirmed.

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