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Case No. 2022-1173-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FUNICULAR FUNDS, LP, Plaintiff, v. CONCORD ACQUISITION CORP, CONCORD SPONSOR GROUP LLC, CA CO-INVESTMENT LLC, BOB DIAMOND, JEFF TUDER, MICHELE CITO, DAVID SCHAMIS, PETER ORT, THOMAS KING, and LARRY LEIBOWITZ, Defendants.	C.A. No. _____

VERIFIED CLASS ACTION COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

Plaintiff Funicular Funds, LP ("Plaintiff") alleges for its complaint against Concord Acquisition Corp ("Concord" or the "SPAC"), Concord Sponsor Group LLC (the "Sponsor"), CA Co-Investment LLC ("CA Co-Investment"), Bob Diamond, Jeff Tuder, Michele Cito, David Schamis, Peter Ort, Thomas King and Larry Leibowitz (together, the "Defendants") the following upon knowledge as to itself and its own actions, and upon information and belief as to all other matters.

I. INTRODUCTION

1. This action arises from a SPAC sponsor's disloyal attempt to appropriate for itself a $20 million asset rightfully belonging to the stockholders of the SPAC.

2. The SPAC and its Sponsor were formed by Atlas Merchant Capital LLC ("Atlas") to make an acquisition in the financial technology sector. Each of the SPAC's officers and directors has personal and financial ties to Atlas, and all but one are employed by or directly affiliated with Atlas.

3. The SPAC initially negotiated a business combination with Circle Internet Financial Limited ("Circle"), a cryptocurrency company, but that deal fell through in early December 2022. The SPAC subsequently announced that it would not complete a business combination before its two-year deadline and would wind down and distribute its assets.

4. While the Sponsor had the opportunity to realize a significant profit by completing a business combination, it failed to make that happen. Based on the SPAC's governing documents, applicable agreements, and the Sponsor's numerous public representations, the Sponsor agreed that, having failed to strike a deal, it would lose its entire investment and its "shares will be worthless."

5. Unhappy with the reality of that result, Defendants decided to award themselves a "consolation prize" by misappropriating a $20 million break-up fee

paid by Circle that rightfully belongs to Plaintiff and the proposed Class as the SPAC's public shareholders.

6. The members of the SPAC's Board of Directors (the "Board")—all of whom have financial interests in the Sponsor—have determined that the $20 million break-up fee—paid through the issuance of Circle stock to the SPAC—will be awarded to the Sponsor in connection with the SPAC's dissolution. Stockholders, in contrast, will receive back only their initial investments, with minimal interest, after two years of being held in a trust account.

7. Defendants' decision to misappropriate the break-up fee from the SPAC violates not only their fiduciary duties to stockholders but also the express terms of an agreement with the SPAC, pursuant to which Defendants waived any right or claim to the SPAC's assets in a distribution, which they acknowledged and reiterated in the SPAC's public filings with the SEC.

8. Defendants have announced their plan to redeem the Class A Public Shares (defined below) on or before December 20, 2022. Thereafter, Defendants plan to dissolve the SPAC and distribute its remaining assets, including the break-up fee, to themselves.

9. This action seeks injunctive relief precluding the final dissolution of the SPAC and the distribution of its remaining net assets—other than those currently held in trust for investors—and seeks an order compelling Defendants to distribute

the break-up fee and any other remaining assets of the SPAC to the holders of Class A Public Shares.

II. THE PARTIES

10. Plaintiff is a Delaware limited partnership and a stockholder of the SPAC. Plaintiff continuously held shares of the SPAC at all times relevant to this action.

11. The SPAC is a special purpose acquisition company, sometimes called a "blank check company," organized as a Delaware corporation. The SPAC was formed by Atlas to acquire a private company.

12. The Sponsor is a Delaware limited liability company and is responsible for managing the SPAC. Atlas formed the Sponsor, and the Sponsor's managing members consist of three Atlas senior personnel, Defendants Bob Diamond, David Schamis and Jeff Tuder.

13. Defendant Bob Diamond is the Chairman of the SPAC's Board. He is a Founding Partner and the Chief Executive Officer ("CEO") of Atlas. He is also the Chairman of two other SPACs launched by Atlas: Concord Acquisition Corp II ("Concord II") and Concord Acquisition Corp III ("Concord III").

14. Defendant Jeff Tuder is the CEO of the SPAC. He is an Operating Partner of Atlas. He is also the Chief Executive Officer of Concord II and Concord III, and a director of Concord III.

15. Defendant Michele Cito is the SPAC's Chief Financial Officer ("CFO"). She is the CFO and a Managing Director of Atlas. She is also the CFO of Concord II and Concord III.

16. Defendant David Schamis is a member of the Board. He is a Founding Partner and the Chief Investment Officer of Atlas.

17. Defendant Thomas King is a member of the Board. He is an Operating Partner of Atlas. He is also a member of the boards of directors of Concord II and Concord III.

18. Defendant Larry Leibowitz is a member of the Board. He is an Operating Partner of Atlas. He is also a member of the boards of directors of Concord II and Concord III.

19. Defendant Peter Ort is a member of the Board. He is a Co-Founder of CurAlea Associates LLC and General Partner at Cambium Capital Partners. He is also a member of the boards of directors of Concord II and Concord III.

20. Defendants Diamond, King, Leibowitz and Ort are referred to as the "Director Defendants."

21. Defendants Diamond, Tuder and Cito are referred to as the "Officer Defendants."

22. All of the Director and Officer Defendants are affiliated directly or indirectly with Atlas and each has financial interests in the ownership of the Sponsor.

III. SUBSTANTIVE ALLEGATIONS

A. Atlas Forms The Sponsor And The SPAC To Make An Acquisition

23. Atlas formed the Sponsor and the SPAC in September 2020 for the purpose of identifying a business combination with a financial services or technology company.

24. Atlas placed its own senior personnel in officer and director positions for both the Sponsor and the SPAC, and only one member of the SPAC Board, Defendant Ort, is not directly affiliated with Atlas. However, Ort serves on the boards of two other Atlas-sponsored SPACs and also has a financial interest in the Sponsor.

25. The SPAC's capital structure consists of Class B common stock ("Founder Shares") and Class A common stock ("Public Shares").

26. The Class B Founder Shares are held entirely by the Sponsor and certain of the Defendants.

27. In September 2020, the Sponsor, CA Co-Investment, and Defendants Ort, King and Leibowitz purchased approximately 7.1 million Founder Shares from the SPAC for an aggregate purchase amount of $25,000 (or approximately 0.35 cents per share).

28. In connection with the IPO, Defendants also (i) purchased 752,000 Class A Public Shares at $10 per share for $7,520,000 (the "Private Placement

Shares"); and (ii) forfeited a portion of their Founder Shares, leaving 6,900,000 Founder Shares currently outstanding as of today.

29. The Class A Public Shares were issued to investors in an initial public offering ("IPO"), which was completed on December 10, 2020. Through the IPO, Concord issued 27,600,000 Public Shares at $10.00 per share and generated proceeds of $276,000,000.

30. The proceeds of the IPO have been held in a trust account pending the SPAC's identification of a business combination.

31. Concord had until December 10, 2022 to consummate a business combination or else it would be forced to dissolve and return its assets to stockholders.

32. As is typical for SPACs, Concord's governing documents provided that, in the event of successful business combination, the Class B Founder Shares would be convertible to Class A Public Shares. This feature would potentially provide the Sponsor and other Defendants with a windfall reward for orchestrating a deal, given that they acquired millions of Founder Shares for 0.35 cents each (*i.e.*, less than a penny per share).

33. However, in the event the SPAC failed to identify a business combination within the allotted time, Defendants acknowledged they would receive nothing and would lose their entire investment.

34. In the IPO prospectus, Defendants stated that the "[F]ounder [S]hares will be worthless if we do not complete an initial business combination," and the Sponsor and other Defendants "will lose their entire investment in [the SPAC] if [an] initial business combination is not completed (other than with respect to any public shares they may hold)."

35. In the event that Concord failed to consummate a transaction, its Amended Certificate of Incorporation (the "Charter") stated that it would cease operations, return its assets to stockholders, and dissolve.

36. While the Charter provided that "the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Class A Common Stock (on an as converted basis with respect to the Class B Common Stock)"—*i.e.*, both Class A and Class B stockholders would be entitled to a *pro rata* distribution of the SPAC's assets—Defendants subsequently agreed in connection with the IPO to waive their rights with respect to any distribution of the SPAC's assets.

37. In a December 7, 2020 agreement between Concord, the Sponsor, and each of the Defendants (the "Sponsor Agreement"), which supersedes the Charter, Defendants agreed that "it, he or she has no right, title, interest or claim of any kind in or to any monies held in the Trust Account or any other asset of the [SPAC] as a

result of any liquidation of the [SPAC] with respect to the Founder Shares and Private Placement Shares held by it."

38. Defendants also expressly waived all redemption rights with respect to all shares except for Public Shares acquired in the open market following the IPO.

39. Defendants repeatedly reiterated the effect of the Sponsor Agreement in the SPAC's public filings with the SEC. For example, Defendants stated in the SPAC's 2021 Form 10-K that "[t]he founder shares will be worthless if we do not complete an initial business combination," and that the "752,000 private placement units . . . will also be worthless if we do not complete our initial business combination."

40. The Form 10-K also summarized the Sponsor Agreement and stated that the Defendants "have entered into a letter agreement with [Concord], pursuant to which they have waived their rights to liquidating distributions from the trust account with respect to any founder shares and private placement shares held by them if we fail to complete our initial business combination within the prescribed time period."

B. Atlas Privately Invests In Circle In 2021 Before The SPAC Announces A Transaction

41. Circle is a financial technology firm that provides payment and treasury infrastructure for digital assets and blockchain.

42. On May 28, 2021, Atlas announced that it had joined a group of private equity, institutional and strategic investors in a $440 million private investment in Circle. Circle's valuation in connection with this funding round was not disclosed.

43. At the time, Circle revealed that it was also contemplating a SPAC transaction but did not disclose the identity of the transaction partner.

44. Two months later, on July 8, 2021, Concord and Circle announced that the SPAC would invest approximately $276 million in Circle in a transaction that valued Circle at $4.5 billion (the "Original Transaction").

45. In connection with the Original Transaction, Defendant Diamond, a co-founder of Atlas, would join Circle's board of directors.

46. By early 2022, the parties had not closed the Original Transaction, and it appears that Circle and its current shareholders—including Atlas—became dissatisfied with Circle's valuation. The cryptocurrency market had reached a crescendo by that point, and valuations of crypto-related companies had soared.

47. On February 16, 2022, Concord and Circle mutually terminated the Original Transaction and entered into a revised agreement (the "Transaction Agreement") that doubled the valuation of Circle from $4.5 billion to $9 billion (the "Transaction").

48. The Transaction Agreement set a closing deadline of December 8, 2022, which could be extended only if the SEC declared Concord's registration statement/proxy statement effective.

49. The Transaction Agreement provided that in the event that the Transaction is terminated "by mutual written consent of Concord and [Circle]," then Circle "shall issue to Concord a number of [Circle] Ordinary Shares equal in value to $20,000,000" (the "Break-Up Fee").

50. On October 25, 2022, Concord filed its preliminary proxy statement seeking shareholder approval of the Transaction.

C. Defendants Terminate The Transaction After A String Of Collapses In The Crypto Industry, But Attempt To Keep The Break-Up Fee

51. Between February 16, 2022 (the date of the revised Transaction) and November 2022, the once high-flying cryptocurrency market experienced significant turbulence and declines.

52. The price of Bitcoin fell from approximately $44,000 on February 16, 2022 to approximately $20,000 by November 2022, and numerous high-profile companies in the industry collapsed, including Terraform Labs, Celsius Network, Voyager Digital, Three Arrows Capital and BlockFi. Thereafter, in early November 2022, crypto-exchange FTX disclosed misconduct involving the apparent

misappropriation of billions of dollars of customers' funds and, later in the month, filed for bankruptcy.

53. By early December 2022, Bitcoin was trading well below $20,000 and the cryptocurrency markets were in disarray.

54. On December 5, 2022, Defendants announced that Concord and Circle had mutually agreed to terminate the Transaction (the "Termination Agreement").

55. Defendants stated that, consistent with the Transaction Agreement, Circle "agreed to issue to Concord an aggregate of $20,000,000 of its restricted, unregistered ordinary shares (valued at the Circle valuation set forth in the Transaction Agreement)."

56. Defendants further stated that they did "not believe that there is sufficient time for Concord to consummate an initial business combination within the period provided for in its certificate of incorporation," and thus the SPAC would redeem its Public Shares and dissolve.

57. Despite having agreed in advance to accept a complete loss if they failed to orchestrate a business combination for the SPAC, Defendants announced that, in the dissolution, Class A stockholders would receive back only their initial investments.

58. Defendants planned to keep for themselves all of the Circle shares received as a result of the Break-Up Fee, despite their fiduciary duties to Class A

stockholders, their written assurances otherwise, and their contractual waiver of all rights to any liquidating distributions.

59. Defendants stated that "[p]ursuant to such provision of [the Charter] extinguishing the rights of Concord's public stockholders upon the required redemption of Concord's public shares as a result of the failure to complete an initial business combination, and in light of the Sponsor's agreement to provide releases in connection with the termination of the Transaction Agreement, Concord's independent directors [*i.e.*, Defendants in this action with personal financial interests in the Sponsor and Atlas] concluded that the Circle shares to be received by Concord will be for the benefit of the Sponsor."

60. Defendants plan to redeem the Class A Public Shares on or within ten days of December 10, 2022, and thereafter distribute the Break-Up Fee solely to the Sponsor and themselves.

61. Defendants' planned appropriation of the Break-Up Fee breaches their fiduciary duties to Class A stockholders, the Sponsor Agreement and the repeated public representations set forth in the SPAC's SEC filings.

62. The Break-Up Fee is an asset of the SPAC—derived from the SPAC's Transaction Agreement and paid to the SPAC directly—and therefore Defendants have no right or claim whatsoever to misappropriate it.

IV. CLASS ACTION ALLEGATIONS

63. Plaintiff brings this Action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware individually and as a class action on behalf of all public investors in the SPAC (the "Class").

64. The Class includes all holders of Class A Public Shares on the date of Concord's redemption of the Public Shares. The Class does not include Defendants named herein, and any person, firm, trust, corporation, or other entity related by blood or marriage to or affiliated or associated with any of the Defendants or their successors in interest.

65. The members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the SPAC's shares are beneficially owned by thousands of geographically dispersed stockholders.

66. There are questions of law and fact common to the Class, which predominate over questions affecting any individual Class member. These common questions include, *inter alia*:

- Whether Defendants breached their contractual and fiduciary duties to stockholders;
- Whether Defendants were unjustly enriched; and
- The existence and extent of injury to Plaintiff and the Class caused by such breaches, violations, and misconduct.

67. No difficulties are likely to be encountered in the management of this case as a class action.

68. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

69. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of other Class members and Plaintiff has the same interests as other Class members. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

70. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

71. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CAUSES OF ACTION

COUNT I

Declaratory Judgment

72. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

73. As set forth in detail above, pursuant to the Charter, Sponsor Agreement, and Defendants' public representations, Defendants have no right, claim or other entitlement to the Break-Up Fee or other remaining assets of the SPAC. The Break-Up Fee is a corporate asset of the SPAC and rightfully belongs to holders of Class A Public Shares.

74. Plaintiff is entitled to a declaratory judgment that Defendants have no entitlement to the Break-Up Fee or any remaining assets of the SPAC, and that the Break-Up Fee must be distributed equitably to holders of Class A Public Shares in connection with the SPAC's dissolution.

75. Plaintiff seeks all appropriate injunctive relief necessary to enforce the declaratory judgment entered by this Count. In the absence of such injunctive relief, stockholders will incur significant non-monetary harm that cannot be remedied by monetary damages.

COUNT II

Claim For Breach Of Fiduciary Duty

76. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

77. Defendants owe duties of care and loyalty to all Concord stockholders by virtue of their control of the SPAC and their positions as officers and/or directors of the SPAC

78. Defendants have breached their fiduciary duties by determining to appropriate the Break-Up Fee for themselves at the expense of stockholders.

79. Defendants are each self-interested in the distribution of the Break-Up Fee to the Sponsor (*i.e.*, themselves) because each has a financial interest in Atlas and/or the ownership of the Sponsor.

80. Defendants have no equitable, legal or contractual right, or business purpose, to appropriate the Break-Up Fee for themselves, and plan to do so solely based on their own financial self-interests. Defendants waived any right or claim to the SPAC's assets under the Sponsor Agreement—as a necessary condition to raise public funds in the first place—and therefore there are no circumstances under which Defendants may equitably make a claim on those assets.

81. Defendants' actions are not entitled to business judgment protection because of their financial self-interests in the Sponsor and Atlas, and thus their

decision must be weighed under the entire fairness standard. The contemplated distribution of assets is unfair on its face.

82. This Court should enjoin Concord from distributing any assets other than the IPO proceeds that are currently held in trust for holders of Class A Public Shares, and should order Defendants to equitably distribute the Break-Up Fee and other remaining assets to Plaintiff and the Class. For the avoidance of doubt, this action does not seek to enjoin the distribution of the assets held in trust in connection with the redemption of Class A Public Shares.

83. In the absence of such injunctive relief, stockholders will incur significant non-monetary harm that cannot be remedied by monetary damages.

COUNT III

Unjust Enrichment

84. Plaintiff repeats and realleges all of the allegations set forth in the paragraphs above as if fully set forth herein.

85. By their self-interested and wrongful acts, Defendants are attempting to unjustly enrich themselves at the expense of, and to the detriment of, the SPAC's public stockholders.

86. Defendants plan to divert the SPAC's Break-Up Fee, after redemption of Class A Public Shares, to themselves for their own personal financial benefit.

87. This Count seeks the same injunctive relief against Defendants described above in Count II.

88. Plaintiffs and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Declaring that this suit may proceed as a class action;

B. Declaring that the Defendants are not entitled to the Break-Up Fee, which should be distributed equitably to Plaintiff and the Class;

C. Declaring that the Defendants breached their fiduciary duties owed to stockholders and have unjustly enriched themselves to the detriment of stockholders;

D. Enjoining the distribution of the SPAC's assets other than with respect to the IPO proceeds held in trust for holders of Class A Public Shares;

E. Ordering Defendants to equitably distribute the Break-Up Fee exclusively to Plaintiff and the Class;

F. Granting any additional extraordinary, equitable and injunctive relief against all Defendants to the fullest extent permitted by law and/or equity and consistent with the allegations above;

G. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as to Plaintiff the costs of the action, including

reasonable attorneys' fees, accountants' fees, consultants' fees, and experts' fees, costs, and expenses; and

H. Granting such further relief as the Court deems just and equitable.

Dated: December 19, 2022

MELUNEY ALLEMAN & SPENCE, LLC

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