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Case No. 2021-0690-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LAWRENCE BASS, on behalf of himself and all other similarly situated stockholders of MUDRICK CAPITAL ACQUISITION CORPORATION II, Plaintiff, v. MUDRICK CAPITAL ACQUISITION CORPORATION II, SCOTT KASEN, DAVID KIRSCH, BRIAN KUSHNER, JASON MUDRICK and DENNIS STOGSDILL, Defendants.	C.A. No. 2021-____-___

VERIFIED STOCKHOLDER CLASS ACTION COMPLAINT

Plaintiff Lawrence Bass brings this action, directly on behalf of himself and similarly situated stockholders of Mudrick Capital Acquisition Corporation II (the "Company"), to assert a claim against the Company and its board of directors (the "Board") for their violation of the Delaware General Corporation Law (the "DGCL"), and to assert a claim against the Board for breach of fiduciary duty in connection with the DGCL violation.[1]

[1] Plaintiff's allegations are made upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which included, *inter alia*, a review of documents the Company filed with the U.S. Securities and Exchange Commission (the "SEC")

NATURE AND SUMMARY OF THE ACTION

1. The Company is a dual-class special purpose acquisition company ("SPAC")—a non-operational shell company formed exclusively to raise capital and then acquire a private company (or companies).

2. The Company has found a private company to buy. In connection with that transaction, the Board is seeking stockholder approval of an amendment to the Company's Amended and Restated Certificate of Incorporation (the "Charter", attached as Ex. A) to authorize an additional 250 million shares of the Company's Class A Common Stock (the "Class A Share Increase Amendment"). In seeking this approval, the Board is attempting to force the Class A Common Stockholders to vote together with the Company's sponsor, which owns 100% of the Company's Class B Common Stock and controls 20% of the vote. The DGCL, however, provides the Company's Class A Common Stockholders the right to vote as a separate class on the proposed Class A Share Increase Amendment.

3. At the same time, the Board adopted an amendment to the Charter seeking to opt out of the separate class voting right for future increases in authorized shares (the "Opt-Out Provision Amendment"). The Board is attempting to obtain approval of this amendment with a combined vote of the Class A and Class B Common Stockholders, which is also in violation of the DGCL.

4. Plaintiff commenced this action to enforce the right of the Company's Class A Common Stockholders to have a separate class vote on both of these Charter amendments.

5. As is typical of SPACs, with no particular acquisition target in sight, the Company completed an initial public offering (the "IPO") in December 2020, selling 31,625,000 "Units" to public investors. The Units, which sold for $10.00 a piece, consisted of one share of Class A Common Stock and one-half of a warrant, with each whole warrant entitling the holder to purchase one share of Class A Common Stock. Following the IPO, there were 31,625,000 outstanding shares of Class A Common Stock.

6. Mudrick Capital Management, L.P. (with its affiliates, "Mudrick Capital Management"), the Company's founding sponsor, acquired 7,906,250 shares of the Company's Class B Common Stock – representing a 20% stake in the Company – for a total purchase price of $25,000 (the "Sponsor Shares").

7. For their sponsors, SPACs are akin to a ticking timebomb. A sponsor has a short window to consummate a business combination (in the case of the Company, 21 months following the IPO). If the sponsor completes a business combination before the deadline, the shares it bought for a nominal amount can deliver an extraordinary return.

8. The flip side, however, is that a SPAC sponsor makes nothing if it does not complete an acquisition before the deadline. Thus, if the Company fails to complete a business combination by the deadline, the IPO proceeds will be returned to the holders of Class A Common Stock, the Company will be dissolved, and Mudrick Capital Management's Sponsor Shares and warrants will be worthless.

9. In other words, the SPAC business model inherently involves a significant conflict of interest. The public stockholders require a business combination to be advantageous enough that its value makes up for the substantial dilution associated with the issuance of the Sponsor Shares. On the other hand, as the New York Times explained, the typical SPAC structure "provides [sponsors] an incentive to get a deal done, rather than get the right deal done at the right price and time," and therefore "SPACs are rife with misaligned incentives between the sponsor and other investors[.]"[2]

10. On April 6, 2021, the Company announced that it had entered into an Agreement and Plan of Merger (the "Merger Agreement") to acquire The Topps Company, Inc. ("Topps") (the "Topps Business Combination"). If the Company closes its proposed acquisition of Topps, the Sponsor Shares will convert into Class

[2] New York Times, *Wall Street's New Favorite Deal Trend Has Issues* (Feb. 10, 2021), https://www.nytimes.com/2021/02/10/business/dealbook/spac-wall-street-deals.html.

A Common Stock worth approximately $80 million—instantly providing the Sponsors with a ***320,000% return*** on their $25,000 investment.

11. If the Topps Business Combination is completed, there will be over 70 million outstanding shares of Class A Common Stock, after accounting for (a) the issuance of Class A Common Stock to Topps stockholders as consideration in the Topps Business Combination, (b) the conversion of the Sponsor Shares, and (c) the issuance of shares in connection with a private placement entered into by the Company that is conditioned on the consummation of the Topps Business Combination. When combined with the over 28 million outstanding warrants to purchase Class A common stock, the Company's proposed acquisition of Topps will effectively consume all 100 million authorized shares of Class A Common Stock.

12. Accordingly, the Board amended the Charter to increase the amount of authorized Class A Common Stock to 350 million shares. Closing the Topps Business Combination is cross-conditioned on stockholder approval of the Class A Share Increase Amendment (among other Charter amendments).

13. Under Section 242(b)(2) of the DGCL ("Section 242(b)(2)"), holders of a class of stock are entitled to a separate class vote on an amendment to a certificate of incorporation that increases the amount of authorized shares of that class. Section 242(b)(2) permits a corporation to opt out of the requirement of a separate class vote for increases in authorized shares by expressly providing in its

charter than an increase in the authorized shares of a class requires the approval of the "holders of a majority of the stock of the corporation entitled to vote irrespective of [Section 242(b)(2)]." In its current Charter, the Company does not have such an opt out provision, and accordingly, the holders of the Company's Class A Common Stock are entitled to a separate class vote on the Class A Share Increase Amendment—*i.e.*, a vote that excludes Mudrick Capital Management's Class B Common Stock. However, the Board wrongfully plans to conduct the stockholder vote on the Class A Share Increase Amendment by aggregating the votes of all outstanding shares of common stock – i.e., by having the Class A and Class B common stockholders voting together – without also conducting a separate class vote on the Class A Share Increase Amendment.

14. Moreover, the Board is now attempting to add a valid opt out provision, the Opt-Out Provision Amendment, to its new Charter upon consummation of the Topps Business Combination. But once, as here, class shares have been issued, approval of such an opt-out provision itself requires a separate class vote. Yet the Board is attempting to seek approval of the Opt-Out Provision Amendment while denying the Class A Common Stockholders their right to a separate class vote.

15. Specifically, on July 30, 2021, the Company filed a Schedule 14A Definitive Proxy Statement (the "Proxy", attached as Ex. B) with the SEC in connection with a special meeting of stockholders (the "Special Meeting") scheduled

for August 25, 2021. In Proposal No. 1 of the Proxy, the Board is seeking stockholder approval of the Topps Business Combination. In Proposal No. 2 ("Proposal No. 2"), the Board is seeking approval of a Second Amended and Restated Certificate of Incorporation (the "Amended Charter"), which includes various amendments to the Charter adopted by the Board, including the Class A Share Increase Amendment and the Opt-Out Provision Amendment. As disclosed in the Proxy, however, the Board is bringing Proposal No. 2 only in front of (a) the Company's Class B Common Stockholders voting as a separate class; and (b) the Company's Class A and Class B Common Stockholders voting together.

16. Because of the conflict of interest between the Sponsors and the public stockholders, the protection the DGCL affords to the latter is paramount. If the Topps Business Combination is consummated, the Class A Common Stockholders will be significantly diluted. If the Topps Business Combination is not consummated (and the Sponsors fail to consummate an alternative transaction by the deadline), the Sponsors stand to lose roughly $80 million.

17. The difference between a separate class vote and the combined vote is critical, and may well be outcome-determinative. Under a proper class vote, approval of the Class A Share Increase Amendment and the Opt-Out Provision Amendment would require the affirmative support of a majority of the Class A Common Stockholders. Yet if Mudrick Capital Management is permitted to vote with the

holders of Class A Common Stock, the Amendments could be (improperly) deemed approved with just 37.5% support from the Class A Common Stockholders, which would significantly improve the Amendment's odds of passage.

18. The Board knows that public stockholders have a right to a separate class vote. Plaintiff sent the Company's directors a detailed pre-suit demand explaining the issue before a Special Meeting date had been established. However, two of the five members of the Board are Mudrick Capital Management executives while the other three members hold a "direct or indirect interest" in Mudrick Capital Management, and the conflicted Board scheduled the improper vote anyway—to cram down the Class A Share Increase Amendment (and the Opt-Out Provision Amendment) and secure the sponsor's payday.

19. Plaintiff therefore seeks to enjoin the vote so that Defendants are required to re-submit these votes in compliance with the DGCL.

THE PARTIES

20. Plaintiff Lawrence Bass has owned shares of the Company's Class A Common Stock continuously since March 2021. Plaintiff is entitled to vote at the Special Meeting.

21. Defendant Mudrick Capital Acquisition Corporation II is a Delaware corporation. Its Class A Common Stock is listed on NASDAQ under the ticker symbol "MUDS."

22. Defendant Scott Kasen ("Kasen") has been a member of the Board since December 2020.

23. Defendant David Kirsch ("Kirsch") has been a member of the Board and the Company's Vice President ("VP") since August 2020.

24. Defendant Brian Kushner ("Kushner") has been a member of the Board since December 2020.

25. Defendant Jason Mudrick has been Chairman of the Board and the Company's Chief Executive Officer ("CEO") since August 2020.

26. Defendant Dennis Stogsdill ("Stogsdill") has been a member of the Board since December 2020.

27. Defendants Kasen, Kirsch, Kushner, Jason Mudrick, and Stogsdill comprise the five members of the Board, and are collectively referred to herein as the "Director Defendants."

FURTHER SUBSTANTIVE ALLEGATIONS

A. Background

28. The Company is a blank check Delaware corporation formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses (the "Initial Business Combination").

29. Article IV, Section 4.1 of the Charter sets the establishes the Company's three classes of authorized capital stock: (1) Class A Common Stock, of which 100 million shares are authorized; (2) Class B Common Stock, of which 10 million shares are authorized; and (3) preferred stock ("Preferred Stock"), of which 1 million shares are authorized. Specifically, Article IV, Section 4.1 of the Charter provides:

> Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock, each with a par value of $0.0001 per share, which the Corporation is authorized to issue is 111,000,000 shares, consisting of (a) 110,000,000 shares of common stock (the "***Common Stock***"), including (i) 100,000,000 shares of Class A Common Stock (the "***Class A Common Stock***"), and (ii) 10,000,000 shares of Class B Common Stock (the "***Class B Common Stock***"), and (b) 1,000,000 shares of preferred stock (the "***Preferred Stock***").

30. The Company was formed by Mudrick Capital Management, an investment firm specializing in distressed credit and post-restructured equities.

31. Mudrick Capital Management also directs the Company's management. The Company's Chairman and CEO, defendant Jason Mudrick, is Mudrick Capital Management's founder and Chief Investment Officer. Company VPs Victor Danh and Defendant Kirsch are each a Managing Director and Senior Analyst at Mudrick Capital Management. Glenn Springer serves as Chief Financial Officer at both companies. Moreover, the Company acknowledges that each of its three purportedly "independent" directors, Kasen, Kushner, and Stogsdill "hold a direct or indirect interest in the Sponsor."

32. In August 2020, Mudrick Capital Management paid $25,000 for 8,625,000 shares of Class B Common Stock, or approximately $0.0029 per share (i.e., the Sponsor Shares).

33. Mudrick Capital Management returned 1,437,500 Sponsor Shares to the Company in November 2020, which the Company then cancelled, leaving 7,187,500 Sponsor Shares outstanding.

34. The Company consummated the IPO on December 10, 2020, selling 27,500,000 "Units", at a price of $10.00 per Unit, which generated gross proceeds of $275 million. Each Unit consisted of (a) one share of Class A Common Stock, and (b) one-half of a redeemable warrant (the "Public Warrants"), with each whole warrant entitling the holder to purchase one share of Class A Common Stock for $11.50.

35. On December 14, 2020, the IPO underwriters exercised their over-allotment option in full, purchasing an additional 4,125,000 Units for $41.25 million.

36. Following the IPO and the exercise of the over-allotment option, there were 31,625,000 outstanding shares of Class A Common Stock (the "Public Shares").

37. Simultaneously with the closing of the IPO, the Company sold 11,375,000 private placement warrants, of which 10 million were purchased by Mudrick Capital Management (the "Private Placement Warrants"). The Private

Placement Warrants were sold for $1.00 each, yielding gross sale proceeds of $11,375,000. Each Private Placement Warrant entitles its holder to purchase one share of Class A Common Stock for $11.50. In connection with the underwriters' exercise of their over-allotment option, the Company sold an additional 1,443,750 Private Placement Warrants (of which 1,237,500 were purchased by Mudrick Capital Management) for $1.00 per warrant, generating gross proceeds of $1,443,750. The Private Placement Warrants are not redeemable and may not be transferred, assigned, or sold until 30 days after the completion of an Initial Business Combination.

38. The proceeds of approximately $321 million from the IPO, the exercise of the over-allotment option, and the sale of the Private Placement Warrants were placed in a trust account (the "Trust Account"). Trust Account funds may be used as consideration to buy a target business with which the Company completes its Initial Business Combination.

39. Under Article IX, Section 9.2(a) of the Charter, in connection with the consummation of an Initial Business Combination that is subject to a stockholder vote, holders of the Public Shares are entitled to have their shares redeemed by the Company following the business combination (the "Redemption Right"). Specifically, stockholders electing to have the Company redeem their shares are entitled to a per share amount equal to the funds in the Trust Account (including any

retained interest) divided by the number of outstanding Public Shares (the "Redemption Price").

40. According to the Company's April 2, 2021 Form 10-K Annual Report (attached as Ex. C), the number of Sponsor Shares issued was "determined based on the expectation that such [Sponsor Shares] would represent 20% of the outstanding shares upon completion of [the IPO]." Thus, immediately prior to the IPO, the Company "effected a stock dividend" of 718,750 shares of Class B Common Stock "to maintain the ownership of [the Company's] initial stockholders at 20% of the issued and outstanding shares of [the Company's] common stock upon the consummation of the offering." As a result, following the IPO, Mudrick Capital Management held 7,906,250 Sponsor Shares.

41. The Company has until September 10, 2022 to complete an Initial Business Combination (the "Deadline Date"). If the Company does not complete an Initial Business Combination by the Deadline Date, Article IX, Section 9.2(d) of the Charter provides that the Company must: (a) cease all operations except for the purpose of winding up; (b) redeem all Public Shares within ten business days, in cash at the Redemption Price less a holdback to pay dissolution expenses; and (c) promptly dissolve and liquidate the Company, subject to stockholder and Board approval.

42. The only Class B Common Stock issued and outstanding are the 7,906,250 Sponsor Shares held by Mudrick Capital Management. Mudrick Capital Management (including its executives serving on the Board and in Company management) is heavily incentivized to complete and approve an Initial Business Combination by the Deadline Date. Under the Charter, each share of Class B Common Stock automatically converts into a share of Class A Common Stock upon the closing of an Initial Business Combination. Thus, if an Initial Business Combination is completed by the Deadline Date, Mudrick Capital Management would hold more than 7.9 million shares of Class A Common Stock, likely worth approximately $80 million – 3,200 times its $25,000 investment. However, the Class B Common Stockholders are not entitled to participate in a redemption or a liquidation of the Trust Account. Thus, if an Initial Business Combination is not completed by the Deadline Date, the Public Shares would be redeemed, the Company dissolved, and Mudrick Capital Management's Sponsor Shares and Private Placement Warrants (which are also not entitled to be redeemed) would be worthless.

B. The Charter and the DGCL entitle holders of Public Shares to a class vote to authorize additional Class A Common Stock.

43. The Charter provides that, except as otherwise required by law or the Charter itself, holders of Class A Common Stock and holders of Class B Common Stock vote together as a single class on all matters submitted to the Company's

stockholders for approval. Specifically, Article IV, Section 4.3(a)(iii) of the Charter provides in pertinent part:

> ***Except as otherwise required by law*** or this Amended and Restated Certificate (including any Preferred Stock Designation), at any annual or special meeting of the stockholders of the Corporation, holders of the Class A Common Stock and holders of the Class B Common Stock, voting together as a single class, shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. [(emphasis added).]

44. Section 242(b)(2), however, requires a separate class vote with respect to certain certificate of incorporation amendments. Specifically, Section 242(b)(2) provides:

> ***The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class***, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely (emphasis added).

45. Accordingly, Section 242(b)(2) expressly provides that the holders of a class of common stock – here the Class A Common Stock – are entitled to vote as a separate class on a charter amendment that would increase the number of authorized shares of that class whether or not the certificate of incorporation entitles them to do so (the "Share Increase Class Vote Requirement").

46. Section 242(b)(2) allows corporations to opt out of the Share Increase Class Vote Requirement. Specifically, Section 242(b)(2) further provides:

> The number of authorized shares of any such class or classes of stock ***may be increased or decreased*** (but not below the number of shares thereof then outstanding) ***by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this subsection, if so provided in the original certificate of incorporation***, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted ***by the affirmative vote of the holders of a majority of such class or classes of stock*** (emphasis added).

47. Thus, a corporation can opt out of the Share Increase Class Vote Requirement by expressly providing in its certificate of incorporation that an increase in the authorized shares of a class requires the approval of the "holders of a majority of the stock of the corporation entitled to vote irrespective of [Section 242(b)(2)]." Once shares of a class are outstanding, however, an opt out provision must be approved by "the affirmative vote of the holders of a majority" of the affected class.

48. While the vast majority of corporations with multiple-class stock structures have adopted charter provisions opting out of the Share Increase Class Vote Requirement, the Company has not done so in the Charter.[3]

49. Accordingly, as pertinent here, holders of the Company's Class A Common Stock are entitled to a separate class vote on any Charter amendment that increases the authorized shares of Class A Common Stock. The Sponsor Shares, as Class B Common Stock, would not be eligible to participate in that separate class vote.

C. The Company agrees to acquire Topps.

50. On April 6, 2021, the Company announced that it had entered into an Agreement and Plan of Merger to acquire Topps (i.e. the Merger Agreement).

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[3] For example, Facebook, Inc.'s Restated Certificate of Incorporation (attached as Ex. H) provides:

> The number of authorized shares of Class A Common Stock or Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of capital stock representing a majority of the voting power of all the then-outstanding shares of capital stock of the corporation entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the [DGCL.]

According to recent scholarship, Share Increase Class Vote Requirement opt-out provisions "are almost always included in the charters of publicly traded corporations." Choi, Albert H. and Min, Geeyoung, *Amending Corporate Charters and Bylaws*, U. Pa. L. Legal Scholarship Repository, Aug. 2017, at 3, fn.3 (attached as Ex. I).

51. Topps is controlled by The Tornante Company, LLC ("Tornante"). Tornante is a privately held investment firm founded and owned by former Walt Disney Company CEO Michel Eisner.

52. Under the Merger Agreement, the Company, Topps, and various subsidiary corporations will engage in a series of mergers that will result in Topps becoming a wholly-owned subsidiary of the Company (*i.e.*, the Topps Business Combination). Following the Topps Business Combination, the Company will be renamed Topps Companies, Inc., and the Class A Common Stock will remain listed on NASDAQ under the new ticker symbol "TOPP." Eisner, who is currently Chairman of Topps, will become Chairman of the Company's Board following the Topps Business Combination.

53. Concurrently with the execution of the Merger Agreement, the Company entered into subscription agreements, under which the Company agreed to sell to private investors (collectively, the "PIPE Investors") up to 24,630,542 shares of Class A Common Stock (the "PIPE Investment"). The PIPE Investment purchase price is $10.15 per share, for an aggregate commitment of $250 million. As part of the PIPE Investment, the Company entered into a subscription agreement (the "Backstop Agreement") with funds and accounts managed by Mudrick Capital Management (the "Backstop Parties"), under which the Backstop Parties agreed to purchase up to 9,852,216 shares of Class A Common Stock for a purchase price of

$10.15 per share and for an aggregate commitment of approximately $100 million (the "Backstop Amount").

54. In connection with the Merger Agreement, Mudrick Capital Management entered into a Sponsor Support Agreement (the "Sponsor Support Agreement"). Under the Sponsor Support Agreement, Mudrick Capital Management agreed that if more than 20% of Class A Common Stock is redeemed in connection with the Business Combination, Mudrick Capital Management would surrender for cancellation up to 2,635,416 shares of the Sponsor Shares in proportion to the incremental percentage of shares redeemed above such 20% threshold. Mudrick Capital Management also agreed that it would vote all of its Sponsor Shares in favor of the Topps Business Combination and related proposals.

55. Topps stockholders will receive the following consideration for the Topps Business Combination under the Merger Agreement:

(a) stock and cash consideration with aggregate value of $1.227 billion, less: (i) Topps's net indebtedness as of immediately prior to the closing, (ii) certain transaction expenses incurred by the Company and Topps, and (iii) any remaining amounts payable by Topps under any affiliated contract being terminated as part of the Topps Business Combination (the "Closing Consideration"); and

(b) 7,684,730 shares of Class B Common Stock of the post-combination Company, subject to forfeiture if share price targets are not achieved (the "Earnout Shares").

56. The amount of the Closing Consideration payable in cash will be determined based on a formula, with total cash consideration capped at 60% of the total consideration payable at the closing. The remainder of the Closing Consideration will be paid in shares of Class A Common Stock and Class E Common Stock ("Class E Common Stock"), which will be created as part of the Topps Business Combination, at a per share valuation price of $10.15 per share.

57. The portion of the Closing Consideration to be paid to Tornante will consist entirely of Class E Common Stock (entitled to ten votes per share) and will not include any cash. The portion of the Closing Consideration to be paid to all other Topps stockholders will consist of cash and Class A Common Stock (entitled to one vote per share).

58. Prior to completion of the Topps Business Combination, the holders of the Company's Public Shares will be able to exercise their Redemption Right and force the Company to redeem their shares at a Redemption Price of approximately $10.15 per share. The Company has disclosed that a maximum of 21,772,783 shares of the Company's Class A Common Stock may be redeemed based on the $321 million that remains in the Trust Account.

59. The Company estimates that, if no Public Shares are redeemed, there will be approximately 72 million outstanding shares of Class A Common Stock and 42.5 million outstanding shares of Class E Common Stock immediately following the Topps Business Combination. Under the maximum redemption scenario, the Company estimates that there will be 70.4 million outstanding shares of Class A Common Stock and 42.5 million outstanding shares of Class E Common Stock upon closing the transaction.

60. If no Public Shares are redeemed, the approximate ownership structure of the Company following the Topps Business Combination will be as follows:[4]

	Voting Power Ownership	**Economic Ownership**
Eisner/Torante	85.5%	37.1%
Public Shares owners	6.4%	27.6%
PIPE Investors (including Backstop Parties)	5.0%	21.5%
Other Topps investors	1.6%	6.9%
Mudrick Capital Management	1.6%	6.9%

61. If the Redemption Right is fully exercised by the holders of the Public Shares, the approximate ownership structure of the Company following the Topps Business Combination will be as follows:

	Voting Power	**Economic**

[4] The charts in this and the following paragraph ignore any impact of the Earnout Shares and the potential exercise of the Public Warrants and the Private Placement Warrants.

	Ownership	**Ownership**
Eisner/Torante	85.8%	37.7%
Other Topps investors	6.0%	26.2%
PIPE Investors (including Backstop Parties)	5.0%	21.8%
Public Shares owners	2.0%	8.7%
Mudrick Capital Management	1.3%	5.6%

62. Accordingly, following completion of the Topps Business Combination, Eisner will be the Company's controlling stockholder. The Proxy disclosed that Eisner (through Torante) "will control a majority of the voting power of outstanding capital stock of the post-combination company," and "will therefore control all decisions put to stockholders." As a result, and as further disclosed in the Proxy, following closing, the Company will not be subject to NASDAQ requirements that the Board have either (a) a majority of independent directors, or (b) a nominating and corporate governance committee or compensation committee comprised solely of independent directors.

D. The Board adopted amendments to the Charter as part of the Topps Business Combination.

63. The Board adopted, subject to stockholder approval, various amendments to the Charter in connection with the execution of the Merger Agreement (collectively, the "Charter Amendments"). The Charter Amendments are incorporated into the Company's Second Amended and Restated Certificate of Incorporation (i.e., the Amended Charter).

64. The Amended Charter will take effect upon consummation of the Topps Business Combination. As described in the Proxy, the Board believes the Charter Amendments are "necessary to adequately address the needs of [the Company] following the consummation" of the Topps Business Combination.

65. Included in the Charter Amendments is the Class A Share Increase Amendment, which would increase the number of authorized shares of Class A Common Stock from 100 million to 350 million.

66. Another of the Charter Amendments is the Opt Out Provision Amendment, which would eliminate the Share Increase Class Vote Requirement. Specifically, the Amended Charter includes a new section, Article IV, Section 4.1(b), which provides:

> The number of authorized shares of any of the Preferred Stock, Class A Common Stock, Class B Common Stock or Class E Common Stock may be increased or decreased (but not below the number of shares of such class or series then outstanding) by ***the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no separate class vote*** of the holders of any of the Preferred Stock, Class A Common Stock, the Class B Common Stock or Class E Common Stock ***shall be required therefor***, except as otherwise expressly provided in this Certificate of Incorporation (including pursuant to any certificate of designation relating to any series of Preferred Stock) (emphasis added).

67. The Charter Amendments also include amendments that would: (a) decrease the number of authorized shares of Class B Common Stock from 10 million to 8 million, which would consist of 4 million shares of Series B-1 common stock and 4 million shares of Series B-2 common stock; (b) create supervoting Class E Common Stock, of which 50 million shares would be authorized and whose holders would be entitled to ten votes per share; and (c) increase the number of authorized shares of Preferred Stock from 1 million to 2 million. The Board also adopted a number of other amendments as part of the Charter Amendments.

68. As stated in the Proxy, the Charter Amendments increasing the number of authorized shares of capital stock, including the Class A Share Increase Amendment, "allow[] for the issuance of the approximately 82,745,639 shares of common stock necessary to consummate the [Topps Business Combination]… and also provide[]flexibility for future issuances of common stock if determined by the [Company] to be in the best interests of [the Company] without incurring the risk, delay and potential expense incident to obtaining stockholder approval for a particular issuance."

69. Consummation of the Topps Business Combination would effectively exhaust the current 100 million shares of Class A Common Stock authorized under the Charter, when accounting for the over 70 million shares of Class A Common Stock that would be outstanding following consummation of the Topps Business

Combination along with issued and outstanding warrants (i.e. the Public Warrants and Private Placement Warrants) to purchase more than 28.6 million shares of Class A Common Stock.

70. Additionally, another 7.7 million shares of Class A Common Stock must be available to permit conversion of the Earnout Shares. In connection with the Merger Agreement, the Board also approved a new equity compensation plan that would initially authorize awards covering more than 7.3 million shares of Class A Common Stock, with an annual "evergreen" increase to the share reserve that could add another 28 million shares over ten years.

E. The Board is illegally denying owners of the Public Shares a separate class vote on the Class A Share Increase Amendment.

71. The Board filed the Proxy in connection with the Special Meeting, where the Company's stockholders will vote on the Topps Business Combination along with a number of related proposals, including approval of the Amended Charter. The Special Meeting is scheduled for August 25, 2021.

72. The record date for the Special Meeting is June 30, 2021 (the "Record Date"). As of the Record Date, there were 31,625,000 outstanding shares of Class A Common Stock (*i.e.*, the Public Shares), and 7,906,250 outstanding shares of Class B Common Stock (*i.e.*, Mudrick Capital Management's Sponsor Shares).

73. In Proposal No. 1 of the Proxy, the Board is seeking stockholder approval of the Topps Business Combination (the "Business Combination

Proposal"). As described in the Proxy, the Business Combination Proposal will be deemed approved if it receives the "affirmative vote of a majority of the votes cast by holders of [the Company's] outstanding shares of common stock represented at the special meeting by attendance via the virtual meeting website or by proxy and entitled to vote at the special meeting."

74. In Proposal No. 2 of the Proxy ("Proposal No. 2"), titled the "Charter Proposal," the Board is seeking stockholder approval of the Amended Charter, including the Class A Share Increase Amendment, the Opt-Out Provision Amendment, and the other Charter Amendments. Consummation of the Business Combination is conditioned on approval of the Amended Charter, and vice versa.

75. As explained above, under Section 242(b)(2)'s Share Increase Class Vote Requirement, the holders of Class A Common Stock are entitled to a separate class vote on any amendment to the Charter that would increase the number of authorized shares of Class A Common Stock.

76. The Class A Share Increase Amendment would increase the number of authorized shares of Class A Common Stock, and therefore the holders of the Class A Common Stock are entitled to vote as a separate class on this amendment.

77. The Opt-Out Provision Amendment would eliminate the entitlement of holders of Class A Common Stock to approve increases in the number of authorized shares of Class A Common Stock. Pursuant to Section 242(b)(2), because shares of

Class A common stock are already outstanding, the Opt-Out Provision Amendment must be approved by the "affirmative vote of the holders of a majority of" the affected class.

78. However, the Board is depriving the Class A Common Stockholders of their right to a separate vote in violation of Section 242(b)(2). Instead, in connection with the Charter Proposal, the Proxy states:

> **Vote Required**
> The approval of the charter proposal will require (i) the affirmative vote or written consent of holders of a majority of the shares of Class B common stock then outstanding and (ii) the affirmative vote of holders of a majority of the outstanding shares of common stock entitled to vote thereon at the special meeting.

79. In other words, the Amended Charter, which incorporates the Class A Share Increase Amendment and the Opt-Out Provision Amendment, will be deemed approved if it is supported by the affirmative vote of a majority of: (a) the holders of ***Class B Common Stock*** voting separately as a class; and (b) the holders of ***Class A Common Stock and Class B Common Stock***, ***voting together as a single class***. Class A common stockholders are being denied their right to vote as a separate class on the Class A Share Increase Amendment.

80. As the Proxy acknowledges, approval of the Topps Business Combination and the cross-conditioned Amended Charter will result in "significant" and "immediate" dilution for holders of Class A Common Stock. As the Proxy states,

the issuance of shares as part of the Closing Consideration, the PIPE Investment, and the Earnout Shares, among other share issuances "would result in significant dilution to our stockholders, and would afford our stockholders a smaller percentage interest in the voting power, liquidation value and aggregate book value of the post-combination company." As the Proxy further acknowledges, "stockholders who do not redeem their public shares will experience immediate dilution as a consequence of the issuance of shares as consideration in the [Topps Business Combination] and may experience dilution from several additional sources in connection with and after the business combination." For this reason, the Class A Common Stockholders may be inclined to vote against the Topps Business Combination and the Amended Charter.

81. On the other hand, Mudrick Capital Management, the sole holder of all outstanding Class B Common Stock, has a strong financial incentive to secure approval of both the Topps Business Combination and the Amended Charter. As described above, if the Topps Business Combination is consummated, Mudrick Capital Management stands to turn its nominal investment in Sponsor Shares (*i.e.*, Class B Common Stock) into post-closing equity worth tens of millions of dollars. Indeed, if no Sponsor Shares are surrendered pursuant to the Sponsor Support Agreement, the Sponsor Shares will convert into 7,906,250 shares of Class A Common Stock and will immediately be worth roughly $80 million. However, if the

Topps Business Combination is not consummated and another combination not approved by the Deadline Date, the Sponsor Shares and Private Placement Warrants will become worthless. And yet, holders of Class A Common Stock—who may well oppose the Amended Charter—are being illegally forced to vote together with Mudrick Capital Management on the Amended Charter, in violation of Section 242(b)(2).

82. The impact of forcing Class A Common Stockholders to vote together with the Sponsor Shares on the Class A Share Increase Amendment rather than providing them with a separate class vote is dramatic because the Sponsor Shares comprise approximately 20% of the Company's voting power.

83. If made subject to approval by a separate class vote of Class A Common Stock, as required by law, approval of the Amended Charter would require the affirmative support of 15,812,501 of the 31,625,000 outstanding Public Shares, i.e., more than 50% of the Public Shares would need to support the proposal for it to be deemed approved. However, with an aggregate of 39,531,250 combined outstanding shares of Class A Common Stock and Class B Common Stock, grouping both classes into a single vote means that the Amended Charter needs 19,765,626 affirmative votes to be (improperly) deemed approved, 7,906,250 of which will be supplied the Sponsor Shares. Accordingly, without a separate class vote, only 11,859,376 of the 31,625,000 Public Shares—just 37.5%—would need to vote in favor of the

Amended Charter for it to be (improperly) deemed approved. In other words, by denying the holders of Public Shares their right to a separate class vote, the Board and Mudrick Capital Management are attempting to make it possible to approve the Amended Charter without the support of a majority of Class A Common Stock, and are making it substantially easier to pass through the vote on the Amended Charter.

84. The Board is well aware that the manner in which it is attempting to obtain stockholder approval of the Amended Charter violates Section 242(b)(2) and the existing Charter. The Board disclosed the manner in which it intends to conduct the vote to approve the Amended Charter in a series of preliminary proxy statements.

85. On July 26, 2021, seeking to avoid expedited litigation, Plaintiff made a demand on the Board (delivered immediately via email and the next day via overnight courier) to provide holders of Class A Common Stock with a separate class vote on the Class A Share Increase Amendment and appropriately disclose their entitlement to a separate class vote (the "Demand"). At the time, a date for the Special Meeting had not yet been disclosed to stockholders. The Demand's explanation of the Board's wrongdoing is materially indistinguishable from the content of this Complaint. Armed with the Demand's detailed recital of the pertinent facts and legal standards, the Board nevertheless caused the Company to file the definitive Proxy on July 30, 2021, without correcting the voting standard applicable to the vote to approve the Amended Charter. In the definitive Proxy, the Board

established a Special Meeting date of August 25, 2021. The Company disseminated the Proxy to the Company's stockholders on August 2, 2021.

86. Then, on August 9, 2021, Plaintiff's counsel received a letter from Potter Anderson & Corroon LLP, on behalf of the Board (the "Response Letter", attached as Ex. D). In the Response Letter, the Board argued that the "holders of ***Class A*** Common Stock are not entitled to a separate class vote" purportedly because the "Class A Common Stock" and "Class B Common Stock" are, despite their names, not actually separate "classes" of stock. Instead, according to the Response Letter, they are actually "series" of stock within a single class of "Common Stock," and accordingly are not subject to the Share Increase Class Vote Requirement in Section 242(b)(2).

87. The Board's interpretation is absurd for a number of reasons. First, the Charter expressly defines the two types of Common Stock as "***Class A*** Common Stock" and "***Class B*** Common Stock," and not "Series A Common Stock" and "Series B Common Stock." This alone should put an end to the matter.

88. Second, the Company has consistently referred to these types of Common Stock as "classes" throughout its public filings. *See*, e.g., DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, filed as Exhibit 4.5 to the Form 10-K filed by the Company with the

SEC on April 2, 2021 ("As of December 31, 2020, Mudrick Capital Acquisition Corp. II…had the following three ***classes*** of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended…(ii) ***its Class A common stock***…") (attached as Ex. E); Form 424B4 Prospectus filed by the Company with the SEC on December 9, 2020, at 5 ("If such adjustment is not waived, the specified future issuance would not reduce the percentage ownership of holders of our Class B common stock, but would reduce the percentage ownership of holders of our Class A common stock. If such adjustment is waived, the specified future issuance would reduce the percentage ownership of holders of ***both classes of our common stock***") (attached as Ex. F); Form 10-K/A filed by the Company with the SEC on May 10, 2021, at 5 ("If such adjustment is not waived, the specified future issuance would not reduce the percentage ownership of holders of our Class B common stock, but would reduce the percentage ownership of holders of our Class A common stock. If such adjustment is waived, the specified future issuance would reduce the percentage ownership of holders of ***both classes of our common stock***") (attached as Ex. G); Charter, Article IV, Section 4.3(b)(ii)(… written consent or agreement of holders of a majority of the shares of Class B Common Stock then outstanding consenting or agreeing separately ***as a single class***); Charter, Article IV, Section 4.3(b)(iii)("…without the prior vote or written consent of the holders of a majority

of the shares of Class B Common Stock then outstanding, voting separately ***as a single class***…").

89. Third, in its Amended Charter, the Company's Class B Common Stock now includes two series, defined as "Series B-1 Common Stock" and "Series B-2 Common Stock." Accordingly, the Board very well knows how to create and name a "series" of stock when it actually intends to do so.

90. Fourth, it is of paramount importance that the Company's investors understood what they were buying, exactly, i.e., what their rights would be if they purchased "Class A Common Stock." Investors buying what is being referred to as "Class A Common Stock" certainly thought they were buying a "class" of stock that came with the protections of the DGCL applicable to classes, including the right to a separate class vote under Section 242(b)(2) of the DGCL for authorized share increases. Yet, the Board is now attempting single-handedly to divest Class A Common Stockholders of their statutory right to a separate class vote by unilaterally calling "Class A Common Stock" a "series" with no evidence to suggest that it is actually a "series." Shareholder voting rights cannot be dispensed with so cavalierly, and certainly not simply to advance the Sponsor's interests, with whom all five Board members are affiliated.

91. And fifth, by adopting the Opt-Out Provision Amendment for the Amended Charter, the Board is effectively conceding that the "Class A Common Stock" and "Class B Common Stock" are "classes" of stock; if they were "series," the Opt-Out Provision Amendment would be wholly unnecessary and meaningless, as "series" of stock do *not* have a right to a separate "series" vote in the first place for increases in authorized shares of a series, and in any event Section 242(b)(2) does not provide an opt out right for "series" of stock. Indeed, this is the whole basis for the Board's current position that no separate vote is required.

92. In light of the Board's response to the Demand, the Board is knowingly and intentionally denying holders of Class A Common Stock their right to a separate class vote on the Amended Charter.

CLASS ACTION ALLEGATIONS

93. Plaintiff repeats each allegation above as if set forth in full herein.

94. Plaintiff brings this action as a class action on behalf of all owners of Class A Common Stock as of the Record Date (the "Class"). Excluded from the Class are defendants and Mudrick Capital Management, and each of their affiliates, legal representatives, heirs, successors or assigns, and any entity in which Defendants or Mudrick Capital Management have or had a controlling interest.

95. The Class is so numerous that joinder of all members is impracticable. Although the exact number of Class members is unknown to Plaintiff at this time

and can only be ascertained through discovery, Plaintiff believes there are hundreds or thousands of members of the Class. As of the Record Date, there were 31,625,000 outstanding shares of Class A Common Stock.

96. There are questions of law and fact common to the Class and which predominate over questions affecting any individual member of the Class. The common question include:

a. Whether Defendants are violating Section 242(b)(2);

b. Whether the Board has complied with its fiduciary duties in connection with the manner in which they are conducting the stockholder vote concerning the Charter Proposal and the public disclosures made in connection with that vote;

c. Whether members of the Class, as holders of Class A Common Stock, are entitled to vote separately as a class to approve the Class A Share Increase Amendment, the Opt-Out Provision Amendment and the Amended Charter;

d. Whether members of the Class would be irreparably harmed if the Class A Share Increase Amendment, the Opt-Out Provision Amendment and the Amended Charter are deemed approved without approval of a majority of the Class A Common Stockholders voting separately as a class;

e. Whether members of the Class would be irreparably harmed if the Company issues Class A Common stock or otherwise acts under authority granted by the Amended Charter to the extent the Class A Share Increase Amendment, the Opt-Out Provision Amendment and the Amended Charter have not been approved by a majority of the Class A Common Stockholders voting separately as a class (to the exclusion of the holders of Class B Common Stock).

97. Plaintiff's claims are typical of those of the other members of the Class and Plaintiff has the same interests as the other members of the Class.

98. Plaintiff is committed to prosecuting this action and has retained counsel experienced in litigation of this nature. Plaintiff has no interest contrary to, or in conflict with, those of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

99. A class action is a superior method for adjudication because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible standards of conduct and rights for the parties opposing the Class.

100. Conflicting adjudications for individual members of the Class might, 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.

101. A class action is a superior method for adjudication because the cost of prosecuting individual actions is prohibitive and the expense of adjudicating repetitious individual claims in different courts would be an inefficient use of judicial resources.

102. Concentrating the litigation of claims in this forum is desirable because the Company is a Delaware corporation and the litigation involves issues of Delaware statutory and common law.

103. Defendants have acted on grounds generally applicable to the Class, making class-wide adjudication a superior method of resolving Plaintiff's claims and making final injunctive relief appropriate with respect to the Class.

104. There are no issues requiring individualized resolution and class-wide adjudication thus will not present manageability concerns.

COUNT I

(Individual and Class claim for violation of Section 242(b)(2))

105. Plaintiff repeats each allegation above as if set forth in full herein.

106. Under Section 242(b)(2), the holders of Class A Common stock are entitled to vote separately as a class on the Class A Share Increase Amendment, the Opt-Out Provision Amendment, and the Amended Charter.

107. Defendants have proposed to effectuate the Class A Share Increase Amendment, the Opt-Out Provision Amendment, and the Amended Charter, based on a vote of holders of all of the Company's outstanding common stock voting together, without conducting a vote of the holders of Class A Common Stock voting separately as a class.

108. Defendants' plan to effectuate the Class A Share Increase Amendment, the Opt-Out Provision Amendment, and the Amended Charter in violation of Section 242(b)(2) could lead to disastrous and potentially irreversible consequences, including closing of the Topps Business Combination (the closing of which is cross-conditioned on stockholder approval of the Amended Charter) and the issuance of unauthorized and void Class A Common Stock to public stock market investors. Later attempts to unwind either the Topps Business Combination or the public stock market issuance of additional Class A Common Stock may prove impossible or impracticable and could lead to substantial damage awards to injured parties.

109. As a result of Defendants' violation and planned violation of Section 242(b)(2), Plaintiff and the Class have been and will be harmed.

COUNT II

(Individual and Class claim against the Director Defendants for breach of fiduciary duty)

110. Plaintiff repeats each allegation above as if set forth in full herein.

111. The Director Defendants owe Plaintiff and the Class the fiduciary duties of due care, good faith, and loyalty.

112. The Director Defendants are breaching the fiduciary duties they owe to plaintiff and the Class by: (a) conducting the vote on the Charter Proposal at the Special Meeting in violation of Section 242(b)(2); and (b) making materially false and misleading statements in the Proxy concerning the vote required to approve the Amended Charter.

113. As a result of the Director Defendants' breaches of their fiduciary duties, Plaintiff and the Class have been and will be harmed.

114. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Declaring this action properly maintainable as a class action and certifying plaintiff as the Class's representatives and Plaintiff's counsel as the Class's counsel;

B. Declaring, finding, and determining that Defendants have violated and are violating Section 242(b)(2);

C. Declaring, finding, and determining that the Board has breached its fiduciary duties;

D. Awarding Plaintiff and the Class such preliminary and final injunctive relief as is appropriate, including preliminarily enjoining the vote on the Charter Proposal at the Special Meeting until Defendants conduct a separate class vote among the holders of Class A Common Stock on the Class A Share Increase Amendment, the Opt-Out Provision Amendment, and the Amended Charter, and following corrective supplemental disclosure;

E. Awarding damages to Plaintiff and the Class, plus pre-judgment and post-judgment interest;

F. Awarding Plaintiff the costs and disbursements of this action, including reasonable allowance of fees and costs for Plaintiff's attorneys, experts, and accountants; and

G. Granting Plaintiff such other and further relief as the Court may deem just and proper.

August 10, 2021

SMITH KATZENSTEIN & JENKINS LLP

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