



GRANTED WITH MODIFICATIONS

EFiled: Jun 12 2025 01:45PM EDT
Transaction ID: 76489916
Case No. 2023-0873-LWW



IL BERGER, as Trustee for the Paul
Berger Revocable Trust,

Plaintiff,

v.

C.A. No. 2023-0873-LWW

GRAF ACQUISITION LLC, JAMES A.
GRAF, MICHAEL DEE, KEVIN
STARKE, SABRINA MCKEE, KEITH
ABELL, and JULIE LEVENSON,

Defendants.

[PROPOSED] SCHEDULING ORDER

WHEREAS, a stockholder class action is pending in this Court captioned *Berger v. Graf Acquisition LLC et al.*, C.A. No. 2023-0873-LWW (the “Action”).

WHEREAS, (i) Plaintiff Paul Berger, as Trustee for the Paul Berger Revocable Trust (“Plaintiff”), on behalf of himself and the other members of the Settlement Class (as defined in Paragraph 3 below); and (ii) Defendants James A. Graf, Michael Dee, Kevin Starke, Sabrina McKee, Keith Abell, and Julie Levenson (the “Individual Defendants”) and Graf Acquisition LLC (“Graf Acquisition”), (together with the Individual Defendants, “Defendants”) (Plaintiff and Defendants, together, the “Parties”) have determined to settle all claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation and Agreement of Settlement, Compromise, and Release dated June 4, 2025 (the “Stipulation”), subject to the approval of this Court (the “Settlement”);

WHEREAS, in accordance with the Stipulation, Plaintiff and Defendants have made an application, pursuant to Court of Chancery Rule 23, for entry of a scheduling order in accordance with the Stipulation, approving the form and content of notice of the Settlement to the Settlement Class, and scheduling the date and time for the Settlement Hearing (as defined below); and

WHEREAS, the Court having considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to the Settlement Class; and all Parties having consented to the entry of this Order.

NOW THEREFORE, IT IS HEREBY ORDERED, this ___ day of _____, 2025, as follows:

1. **Definitions**: Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.

2. **Jurisdiction**: The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over the Parties and each of the Settlement Class Members.

3. **Class Certification**: The Action is preliminarily certified as a non-opt-out class action, for settlement purposes only, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), on behalf of the Settlement Class consisting of all holders of Graf Industrial common stock, whether beneficial or of record, as of the Effective Time of the Merger on September 29, 2020, but excluding (i) Defendants; (ii) any person who was an officer or director of Graf Industrial, Legacy Velodyne,

New Velodyne, Graf Acquisition, or Owl Creek as of the Effective Time; (iii) the immediate family members of any of the foregoing; (iv) any trusts, estates, entities, or accounts that held Graf Industrial common stock for the benefit of any of the foregoing; and (v) the legal representatives, heirs, transferees, and assigns of the foregoing. Plaintiff is preliminarily certified as the Class Representative for the Settlement Class. Plaintiff's Counsel is preliminarily certified as Class Counsel for the Settlement Class.

4. Based on the record of the Action, for purposes of the Settlement only, the Court preliminarily finds that: (i) the Settlement Class is so numerous that joinder of all members is impracticable, satisfying Court of Chancery Rule 23(a)(1); (ii) there are questions of law and fact common to the Settlement Class, satisfying Court of Chancery Rule 23(a)(2); (iii) the claims of Plaintiff are typical of the claims of absent Settlement Class Members in that they all arise from the same allegedly wrongful course of conduct and are based on the same legal theories, satisfying Court of Chancery Rule 23(a)(3); (iv) Plaintiff and Plaintiff's Counsel are fair and adequate representatives of the Settlement Class, satisfying Court of Chancery Rule 23(a)(4); (v) the prosecution of separate actions by individual Settlement Class Members would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for Defendants, and, as a practical matter, the disposition of the Action as against Defendants would influence the disposition of any pending or future identical suits, actions, or proceedings brought by other

Settlement Class Members, satisfying Court of Chancery Rule 23(b)(1); and (vi) Defendants are alleged to have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole, satisfying Court of Chancery Rule 23(b)(2).

5. **Settlement Hearing**: The Court will hold a hearing (the “Settlement Hearing”) on _____, 2025, at __:__ .m., at the Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, to, among other things: (i) determine whether to finally certify the Settlement Class for settlement purposes only, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (ii) determine whether Plaintiff and Plaintiff’s Counsel have adequately represented the Settlement Class, and whether they should be finally appointed as Class Representative and Class Counsel, respectively, for the Settlement Class; (iii) determine whether the proposed Settlement should be approved as fair, reasonable, and adequate to, and in the best interests of, Plaintiff and the other members of the Settlement Class; (iv) determine whether the proposed Final Order and Judgment approving the Settlement, dismissing the Action with prejudice, and granting the Releases provided under the Stipulation should be entered; (v) determine whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable and should be approved; (vi) determine whether and in what amount any award of

attorneys' fees and payment of Litigation Expenses to Plaintiff's Counsel (the "Fee and Expense Award") should be paid out of the Settlement Fund, including any incentive award to Plaintiff (the "Incentive Award") to be paid solely from any Fee and Expense Award; (vii) hear and rule on any objections to the Settlement, the proposed Plan of Allocation, and/or Plaintiff's Counsel's application for a Fee and Expense Award, including Plaintiff's application for an Incentive Award to be paid solely from any Fee and Expense Award (the "Fee and Expense Application"); and (viii) consider any other matters that may properly be brought before the Court in connection with the Settlement.

6. The Court reserves the right to adjourn and reconvene the Settlement Hearing, including consideration of the proposed Plan of Allocation and the Fee and Expense Application, without further notice to the Settlement Class other than by announcement at the Settlement Hearing or any adjournment thereof.

7. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modifications as may be consented to by the Parties and without further notice to the Settlement Class.

8. The Court may decide to hold the Settlement Hearing by telephone, by video conference, or in person without further notice to the Settlement Class. Any Settlement Class Member (or his, her, or its counsel) who wishes to appear at the Settlement Hearing should consult the Court's docket and/or the Settlement website for any change in date, time, or format of the hearing.

9. **Retention of Settlement Administrator and Manner of Providing**

Notice: Plaintiff's Counsel are hereby authorized to retain A.B. Data, Ltd. as the settlement administrator (the "Settlement Administrator") to provide notice to potential Settlement Class Members and administer the Settlement, including the allocation and distribution of the Net Settlement Fund to eligible Settlement Class Members. Notice of the Settlement and the Settlement Hearing shall be given as follows:

a. Not later than sixty (60) calendar days prior to the date of the Settlement Hearing (the "Notice Date"), the Settlement Administrator shall cause a copy of the Notice, substantially in the form attached to the Stipulation as Exhibit B, to be mailed by first-class U.S. mail, or emailed, to potential Settlement Class Members at the addresses set forth in the Stockholder Register provided by Defendants or who otherwise may be identified through further reasonable effort;

b. Not later than the Notice Date, the Settlement Administrator shall post a copy of the Notice on the website established for the Settlement;

c. Not later than ten (10) business days after the Notice Date, the Settlement Administrator shall cause the Summary Notice, substantially in the form attached to the Stipulation as Exhibit C, to be published once in *Investor's Business Daily* and to be transmitted once over the *PR Newswire*; and

d. Not later than seven (7) calendar days prior to the Settlement Hearing, Plaintiff's Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

10. **Approval of Form and Content of Notice:** The Court: (a) approves, as to form and content, the Notice, attached to the Stipulation as Exhibit B, and the Summary Notice, attached to the Stipulation as Exhibit C, and (b) finds that the mailing of the Notice and publication of the Summary Notice in the manner and form set forth in Paragraph 9 of this Order: (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the effect of the proposed Settlement (including the Releases to be provided thereunder), the proposed Plan of Allocation, the Fee and Expense Application, and Settlement Class Members' rights to object to any aspect of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, and to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules.

11. **Nominees Procedures:** Brokers and other nominees that held shares of Graf Industrial common stock as of the Effective Time, as record holders for the

benefit of another person or entity shall be requested to either: (i) within seven (7) calendar days of receipt of the Notice, request from the Settlement Administrator sufficient copies of the Notice to forward to all such beneficial owners and, within seven (7) calendar days of receipt of those Notices, forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of the Notice, provide a list of the names, addresses, and, if available, email addresses of all such beneficial owners to the Settlement Administrator, in which event the Settlement Administrator shall promptly mail the Notice to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Settlement Administrator with proper documentation supporting the expenses for which reimbursement is sought.

12. **Appearance at Settlement Hearing and Objections:** Unless the Court orders otherwise, any Settlement Class Member may enter an appearance in the Action at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Register in Chancery and delivering a notice of appearance to Plaintiff's Counsel and Defendants' Counsel, at the addresses set forth in Paragraph 13 below, such that it is received no later than fifteen (15) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Plaintiff's Counsel and shall be deemed to have waived and forfeited any and all

rights he, she, they, or it may otherwise have to appear separately at the Settlement Hearing.

13. Any Settlement Class Member may file a written objection to the proposed Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application (“Objector”) if he, she, they, or it has any cause why the Settlement, Plan of Allocation, and/or Fee and Expense Application, including Plaintiff’s application for any Incentive Award, should not be approved; *provided however*, that, unless otherwise directed by the Court for good cause shown, no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, including any application for an Incentive Award, unless that person or entity files a written objection with the Register in Chancery, Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (electronically by File & Serve*Xpress*, by hand, by first-class U.S. mail, or by express service) and serves copies of the objection upon each of the following counsel at the following addresses such that they are received no later than fifteen (15) calendar days prior to the Settlement Hearing, with copies also emailed to kim@blockleviton.com and msirkin@ramllp.com:

Plaintiff’s Counsel: Kimberly A. Evans, Block & Leviton LLP, 222 Delaware Avenue, Suite 1120, Wilmington, DE 19801.

Defendants' Counsel: Michael Sirkin, Ross Aronstam & Moritz LLP, 1313 N. Market St., Suite 1001, Wilmington, DE 19801.

14. Any objections must: (i) identify the case name and civil action number: “*Berger v. Graf Acquisition LLC et al.*, C.A. No. 2023-0873-LWW”; (ii) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of the Objector’s counsel; (iii) be signed by the Objector; (iv) state with specificity the grounds for and purpose of the objection, including a detailed statement of the specific legal and factual basis for each and every objection and whether the objection applies only to the Objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) if the Objector has indicated that he, she, they, or it intends to appear at the Settlement Hearing, the identity of any witnesses the Objector may call to testify, and any exhibits the Objector intends to introduce into evidence at the hearing; and (vi) include documentary evidence sufficient to prove that the Objector is a member of the Settlement Class. Plaintiff’s Counsel is authorized to request from any Objector additional information or documentation sufficient to prove that the Objector is a member of the Settlement Class.

15. Unless the Court orders otherwise, any Settlement Class Member who or which does not make his, her, or its objection in the manner provided herein shall: (i) be deemed to have waived and forfeited his, her, or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, or the Fee and Expense

Application, including Plaintiff's application for an Incentive Award; (ii) be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, the Plan of Allocation, and the Fee and Expense Application, including Plaintiff's application for an Incentive Award; and (iii) be deemed to have waived and to be forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning the Settlement, the Plan of Allocation, or the Fee and Expense Application, including Plaintiff's application for an Incentive Award.

16. **Stay and Temporary Injunction:** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiff and each of the other Settlement Class Members from commencing, instigating, or prosecuting the Released Plaintiff's Claims against the Released Defendant Parties.

17. **Settlement Fund:** The contents of the Settlement Fund that will be held in the Escrow Account shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the exclusive jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

18. **Notice and Administration Costs:** All Notice and Administration Costs shall be paid in accordance with the terms of the Stipulation without further order of the Court.

19. **Taxes:** Plaintiff's Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

20. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, then: this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation; this Order shall be without prejudice to the rights of the Parties or the Settlement Class; and Plaintiff and Defendants shall revert to their respective positions in the Action as of immediately prior to March 26, 2025, the date on which an agreement in principle was reached between the Parties.

21. **Supporting Papers:** Plaintiff's Counsel shall file and serve the opening papers in support of the proposed Settlement, the proposed Plan of Allocation, and the Fee and Expense Application, including any application by Plaintiff for an Incentive Award, no later than forty-five (45) calendar days prior to

the Settlement Hearing. Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application, including any application by Plaintiff for an Incentive Award, shall be filed and served no later than fifteen (15) calendar days prior to the Settlement Hearing. If reply papers are necessary, they are to be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

22. **Retention of Jurisdiction**: The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

23. **Extension of Deadlines**: The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

Vice Chancellor Lori W. Will

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Lori W. Will

**File & Serve
Transaction ID:** 76394398

Current Date: Jun 12, 2025

Case Number: 2023-0873-LWW

Case Name: CONF ORDER - Paul Berger v. Graf Acquisition LLC, et al.

**Court Authorizer
Comments:**

The Settlement Hearing will be held on October 7, 2025 at 1:30 p.m. at the Leonard L. Williams Justice Center in Wilmington, Delaware.

/s/ Judge Lori W. Will