



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAUL BERGER REVOCABLE
TRUST

Plaintiff,

v.

FALCON EQUITY INVESTORS LLC,
EAGLE FALCON JV CO LLC, ALAN
G. MNUCHIN, JEFF SAGANSKY,
EDGAR BRONFMAN, JR., KAREN
FINERMAN, MICHAEL RONEN,
AND SAIF RAHMAN,

Defendants.

C.A. No. 2023-0820-JTL

**STIPULATION AND AGREEMENT OF SETTLEMENT,
COMPROMISE, AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise, and Release, dated November 6, 2024 (with the Exhibits hereto, the “Stipulation,” and the settlement contemplated hereby, the “Settlement”), regarding the above-captioned stockholder class action (the “Action”), is entered into by and among the following parties (the “Settling Parties”): (i) plaintiff Paul Berger Revocable Trust (“Plaintiff”), on behalf of itself and the Class (as defined herein); (ii) defendants Alan Mnuchin, Jeff Sagansky, Edgar Bronfman, Jr., Karen Finerman, Michael Ronen, and Saif Rahman (collectively, the “Individual Defendants”); and (iii)

defendants Falcon Equity Investors LLC and Eagle Falcon JV CO LLC (the “Entity Defendants” and together with the Individual Defendants, the “Defendants”).

This Stipulation is submitted pursuant to Court of Chancery Rule 23. Subject to the terms and conditions set forth herein and the approval of the Court of Chancery of the State of Delaware (the “Court”), the Settlement embodied in this Stipulation is intended: (i) to be a full and final disposition of the Action; (ii) to state all of the terms of the Settlement and the resolution of the Action; (iii) to fully, finally, and forever compromise, resolve, dismiss, discharge and settle each and every one of the Released Claims and result in the complete dismissal of the Action with prejudice, with each party to bear their own costs except as otherwise provided for herein.¹

RECITALS

WHEREAS:

Summary of the Action

A. One June 5, 2020, Falcon Capital Acquisition Corp (“FCAC” or the “Company”), a special purpose acquisition company, was incorporated in Delaware as a blank check company for the purpose of effecting a merger, capital stock-exchange, asset acquisition, stock purchase, reorganization, or similar business combination.

¹ Capitalized terms have the meanings set forth in the “Definitions” section below or as otherwise defined in this Stipulation.

B. In September 2020, FCAC consummated its initial public offering (“IPO”) of 34.5 million units (“Public Units”) at a price of \$10.00 per Public Unit, generating gross proceeds of 345 million. Each Public Unit consisted of one share of FCAC Class A common stock (“Common Stock”), and one-third of one warrant redeemable at a price of \$11.50 per share to purchase one share of Common Stock upon the completion of an initial business combination.

C. The funds raised from the IPO were placed in a trust account for the benefit of FCAC public stockholders, who had the right to redeem all or a portion of their shares of Common stock at a per-share price, payable in cash, equal to their pro rata share of the aggregate amount on deposit in the trust account upon the occurrence of certain events.

D. On February 12, 2021, FCAC entered into an Agreement and Plan of Merger by and among FCAC, Sharecare, Inc. (“Legacy Sharecare”) and FCAC Merger Sub, Inc., a wholly owned subsidiary of FCAC (“Merger Sub”), pursuant to which Merger Sub would merge with and into Legacy Sharecare, with Legacy Sharecare becoming a wholly owned subsidiary of FCAC (the “Merger”).

E. On June 3, 2021, FCAC filed with the United States Securities and Exchange Commission (“SEC”) a proxy statement and prospectus concerning the Merger (such proxy statement and prospectus together with any preliminary proxy filings, as well as any amendments or supplements thereto, the “Proxy”) which was

mailed to FCAC stockholders on or about the same day. The Proxy informed stockholders of a special meeting to be held on June 29, 2021 (the “Special Meeting”), at which stockholders would vote on whether to approve the Merger and related transactions. The Proxy also informed stockholders that the deadline for them to redeem their shares in connection with the Merger was June 25, 2021 (the “Redemption Deadline”).

F. Prior to the Special Meeting, the holders of 19,864,030 shares of FCAC Common Stock (the “Redeeming Stockholders”) exercised their right to redeem those shares, and, concurrent with the consummation of the Merger, the Redeeming Stockholders received approximately \$198,640,300.

G. On June 29, 2021, FCAC stockholders voted to approve the Merger and related transactions.

H. On July 1, 2021, the merger and related transactions closed (the “Closing”). Following the Merger, FCAC was renamed Sharecare, Inc.

I. On August 22, 2022, Plaintiff served a demand on Sharecare, Inc. to inspect certain books and records of Sharecare, Inc., pursuant to 8 *Del. C.* § 220 (the “220 Demand”).

J. On August 11, 2023, Plaintiff commenced the Action against Defendants, on behalf of itself and similarly situated current and former Company stockholders, by filing a Verified Class Action Complaint in this Court bearing the

caption *Paul Berger Revocable Trust v. Falcon Equity Investors LLC*, C.A. No. 2023-0820-JTL (the “Complaint”) (Trans. ID 70613333). The Complaint alleged claims against the Defendants for breach of fiduciary duties as directors, officers, and/or alleged controllers of FCAC as well as unjust enrichment in connection with the Merger.

K. On October 30, 2023, Defendants filed their Motion to Dismiss Plaintiff’s Verified Class Action Complaint and opening brief in support thereof (together, the “Motion to Dismiss”) (Trans. ID 71223855), a public version of which was filed on November 6, 2023 (Trans. ID 71333109).

L. On December 22, 2023, Plaintiff filed its Answering Brief in Opposition to Defendants’ Motion to Dismiss the Verified Class Action Complaint (Trans. ID 71684387), a public version of which was filed on January 2, 2024 (Trans. ID 71723800).

M. On January 31, 2024, Defendants filed their Reply Brief in Support of the Motion to Dismiss (Trans. ID 17918475), which Defendants publicly filed on February 7, 2024 (Trans. ID 71971291).

N. A hearing on the Motion to Dismiss was scheduled for April 19, 2024.

O. In April 2024, the Parties discussed a proposed stay of the Action to explore a potential resolution of the Action through mediation.

P. On April 16, 2024, the Court entered a Stipulation and Order Regarding Motion to Dismiss and Staying the Action Pending Mediation (the “Stay Order”) (Trans. ID 72758160). Pursuant to the Stay Order, Defendants withdrew their Motion to Dismiss and all related litigation activity was stayed pending completion of mediation.

Q. On July 25, 2024, the Settling Parties participated in a voluntary full-day mediation (the “Mediation”) before Greg Danilow (the “Mediator”) of Phillips ADR Enterprises. Although the Mediation concluded without a settlement agreement, the Settling Parties continued their arms’-length negotiations with the assistance of Mr. Danilow.

R. Following those arms’-length negotiations, on September 23, 2024, the Settling Parties executed a Settlement Term Sheet (the “Term Sheet”), the definitive terms of which are reflected in this Stipulation.

S. This Stipulation (together with the Exhibits hereto) has been duly executed by the undersigned signatories on behalf of their respective clients, and reflects the final and binding agreement between the Settling Parties.

T. The entry by the Parties into this Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any claims or defenses that were asserted or could have been asserted in the Action.

Plaintiff's Claims and the Benefits of the Settlement

U. Based upon their investigation and prosecution of the Action, Plaintiff and Plaintiff's Counsel believe that the claims asserted have merit, but also believe that the Settlement set forth herein provides substantial and immediate benefits for the Class. In addition to those substantial benefits, Plaintiff and Plaintiff's Counsel have considered: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (ii) the probability of success on the merits; (iii) the inherent problems of proof associated with, and possible defenses to, the claims asserted in the Action; (iv) the desirability of permitting the Settlement to be consummated according to its terms; (v) the expense and length of continued proceedings necessary to prosecute the Action through trial and appeals; and (vi) the conclusion of Plaintiff and Plaintiff's Counsel that the terms and conditions of the Settlement and this Stipulation are fair, reasonable, and adequate, and that it is in the best interests of the Class to settle the claims asserted in the Action on the terms set forth herein. The Settlement and this Stipulation shall in no event be construed as, or deemed to be, evidence of a concession by Plaintiff of any infirmity in the claims asserted in the Action.

V. Based on Plaintiff's Counsel's thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiff's Counsel believes that the Settlement set forth in this Stipulation is fair, reasonable,

and adequate, and confers substantial benefits upon the Class. Based upon their direct oversight of the prosecution of this Action, as well as evaluation and input from Plaintiff's Counsel, Plaintiff has determined that the Settlement is in the best interests of the Class, and have agreed to the terms and conditions set forth in this Stipulation.

Defendants' Denial of Wrongdoing and Liability

W. Defendants deny any and all allegations of fault, breach of duty, liability, wrongdoing, or damages whatsoever in connection with the Action, including, but not limited to, any allegations that Defendants have committed any violations of law or breach of any duty owed to FCAC stockholders, that the Merger was not entirely fair to, or in the best interests of, FCAC stockholders, that Defendants have acted improperly in any way, that Defendants have any liability or owe any damages of any kind to Plaintiff and/or the Class, and/or that Defendants were unjustly enriched in the Merger. Defendants maintain that their conduct was at all times proper, in the best interests of FCAC and its stockholders, and in compliance with applicable law. Defendants also deny that FCAC's stockholders were harmed by any conduct of Defendants that was alleged, or that could have been alleged, in the Action. Each of the Defendants asserts that, at all relevant times, such Defendant acted in good faith and in a manner believed to be in the best interests of FCAC and all of its stockholders. Neither the Term Sheet, this Stipulation, the

Settlement, or the negotiations leading to the execution of the Term Sheet or this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet or the Stipulation and/or approval of the Settlement shall be deemed or argued to be evidence of, or to constitute any presumption, admission, or concession by any Defendant or any of the other Defendant Releasees, as to (i) the truth of any fact alleged by Plaintiffs; (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Action or in any other proceeding; (iii) the deficiency of any defense that has been or could have been asserted in the Action or in any other proceeding; or (iv) any wrongdoing, fault, or liability of any kind by any of them, which each of them expressly denies.

X. Plaintiff, for itself and on behalf of the Class, and Defendants agree that the Settlement is intended to and will resolve Released Plaintiff's Claims against Released Defendant Parties.

Y. The Settling Parties recognize that the Action has been filed and prosecuted by Plaintiff in good faith and defended by Defendants in good faith and further that the Settlement Payment, and the other terms of the Settlement as set forth herein, were negotiated at arms'-length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by and among the Settling Parties, subject to the approval of

the Court pursuant to Court of Chancery Rule 23, that the Action shall be fully and finally compromised, settled, and dismissed with prejudice, and that for the good and valuable consideration set forth herein, (i) all Released Plaintiffs' Claims shall be completely, fully, finally, and forever compromised, settled, released, discharged, extinguished, and dismissed with prejudice and without costs (except as provided herein) as against all Released Defendant Parties, and (ii) all Released Defendants' Claims shall be completely, fully, finally, and forever compromised, settled, released, discharged, extinguished, and dismissed with prejudice and without costs (except as provided herein) as against all Released Plaintiff Parties, in the manner and upon the terms and conditions set forth herein.

A. DEFINITIONS

1. In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation and its Exhibits, shall have the respective meanings specified below:

a. "Administration Costs" means all costs, fees, and expenses associated with the administration or disbursement of the Settlement Fund, including, without limitation, processing claims made by Class Members, calculating payments to Class Members or resolving any dispute relating thereto, or any other cost, fee, or expense otherwise incurred by the Settlement Administrator or Plaintiff's Counsel in administering or carrying out the terms of the Settlement.

b. “Class” means a non-opt-out class for settlement purposes only and pursuant to Court of Chancery Rules 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) consisting of all record and beneficial holders of FCAC Class A common stock, who held such stock immediately following the Redemption Deadline (June 25, 2021) and as of the Redemption Deadline, had the right to, but did not, exercise their right to redeem some or all shares of such stock, excluding any Excluded Persons.

c. “Class Distribution Order” means an order authorizing the specific distribution of the Net Settlement Fund.

d. “Class Member” means a Person who is a member of the Class.

e. “Class Period” means June 25, 2021.

f. “Confidentiality Order” means the Stipulation and Order for the Production and Exchange of Confidential Information (Trans. ID 71760840) entered by the Court on January 8, 2024.

g. “Defendants’ Counsel” means White and Case LLP and Richards, Layton & Finger, P.A.

h. “DTC” means the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company.

i. “DTC Participants” means all DTC participants that held FCAC Common Stock immediately after the Redemption Deadline.

j. “Effective Date” means the first date by which all of the events and conditions specified in paragraph 20 of this Stipulation have been met and have occurred or have been waived in writing.

k. “Eligible Shares” means those shares of FCAC Common Stock owned by Class Members immediately after the Redemption Deadline that were not submitted for redemption in connection with the Merger.

l. “Escrow Account” means the account that is maintained by the Escrow Agent and into which the Settlement Amount shall be deposited. The funds deposited into the Escrow Account shall be invested in instruments backed by the full faith and credit of the United States Government or an agency thereof or in money funds holding only instruments backed by the full faith and credit of the United States Government and the proceeds of these instruments shall be reinvested at their then-current market rates.

m. “Escrow Agent” means the agent or agents who shall be chosen by Plaintiff’s Counsel to administer the Escrow Account.

n. “Excluded Defendants’ Claims” means (i) any claims of the Defendants relating to the enforcement of this Stipulation, (ii) any rights to, and claims for, advancement or indemnification, and (iii) any claims that the Released Defendant Parties may have against their respective insurers, co-insurers, or

reinsurers, or concerning any insurance coverage or policies that may be available to any of the Released Defendant Parties.

o. “Excluded Persons” means: (a) Defendants; (b) members of the immediate family of any Individual Defendant; (c) any person who was a manager or managing member of any Entity Defendant during the Class Period, and any members of their immediate family; (d) any parent, subsidiary, or affiliate of an Entity Defendant; (e) any entity in which any Defendant or any other Excluded Person, or group of Excluded Persons, has, or had as of the Redemption Deadline, a controlling interest; and (f) the legal representatives, agents, affiliates, heirs, estates, successors, or assigns of any such Excluded Persons.

p. “Excluded Plaintiff’s Claims” means any claims of Plaintiff relating to the enforcement of this Stipulation or the Settlement.

q. “Exhibits” means the exhibits attached hereto.

r. “FDIC” means the Federal Deposit Insurance Corporation.

s. “Fee and Expense Award” means an award to Plaintiff’s Counsel of attorneys’ fees and expenses to be paid exclusively from the Settlement Fund, approved by the Court and in full satisfaction of all claims for attorneys’ fees and any other expenses or charges that have been, could be, or could have been asserted by Plaintiff’s Counsel or any other counsel, or any Class Member in connection with the Released Plaintiff’s Claims and the Settlement.

t. “Final” when referring to the Order and Final Judgment or any other order entered by the Court, means that one of the following has occurred: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any motion for reconsideration, reargument, appeal, or other review of the Order and Final Judgment or other order; or (ii) if there is an appeal from the Order and Final Judgment or other order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari, reconsideration, or otherwise, or (b) the date the Order and Final Judgment or other order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari, reconsideration, reargument, or other form of review, or the denial of a writ of certiorari, reconsideration, reargument, or other form of review, and, if certiorari, reconsideration, or other form of review is granted, the date of final affirmance following review pursuant to that grant; provided, however, that any disputes or appeals relating solely to (i) the amount, payment, or allocation of attorneys’ fees and expenses, or (ii) the Plan of Allocation, or any other plan of allocation, in this Action shall have no effect on finality for purposes of determining the date on which the Order and Final Judgment becomes Final, and shall not prevent, limit, delay, or hinder the entry of the Order and Final Judgment.

u. “First Settlement Payment” means the payment of ten million United States dollars (\$10,000,000.00) in cash.

v. “Insurance Carrier” means Endurance American Insurance Company, the issuer of FCAC’s directors and officers liability insurance policy for the policy period of September 22, 2020 to July 1, 2021 (the “Policy”).

w. “Net Settlement Fund” means the balance remaining in the Settlement Fund after the payment of (i) any Taxes or Tax Expenses; (ii) any Administration Costs or Notice Costs; (iii) any Fee and Expense Award awarded by the Court; and (iv) any other costs or fees approved by the Court.

x. “Notice” means the Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B.

y. “Notice Costs” means the reasonable costs, fees, and expenses that are incurred by the Settlement Administrator and/or Plaintiff’s Counsel in connection with providing notice of the Settlement to the Class.

z. “Order and Final Judgment” means the Order and Final Judgment to be entered in the Action, substantially in the form attached hereto as Exhibit D, or as modified by agreement of the Settling Parties in writing.

aa. “Person” means any natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, affiliate, joint stock company, investment fund, estate, legal

representative, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

bb. “Plaintiff’s Counsel” means Grant & Eisenhofer P.A.

cc. “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund to Class Members, set forth in in Exhibit E hereto, or such other plan of allocation approved by the Court.

dd. “Proof of Claim and Release” means the form that is to be sent to Class Members with the Notice Package substantially in the form of Exhibit E-1 attached hereto or as modified pursuant to agreement of the Settling Parties or order of the Court.

ee. “Released Claims” means Released Defendants’ Claims and Released Plaintiff’s Claims, collectively or individually.

ff. “Released Defendant Parties” means Defendants and FCAC, as well as each of their respective current and former parents, affiliates, subsidiaries, committees, insurers, reinsurers, heirs, executors, administrators, trustees, estates, agents, employees, officers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, immediate family members, beneficiaries, assigns, advisors, counsel, representatives, and any entity under their control.

gg. “Released Defendants’ Claims” means any and all claims and causes of action that Defendants, FCAC, or any of their respective successors and

assigns could have asserted against the Released Plaintiff Parties and Plaintiff's Counsel of every nature and description, whether known or unknown, whether arising under state, federal, common, local, statutory, regulatory, foreign, or other law or rule that arise out of or relate to the institution, prosecution, or settlement of the claims asserted in the Action, except for claims to enforce the Settlement.

hh. "Released Parties" means Released Plaintiff Parties and Released Defendant Parties, collectively or individually.

ii. "Released Plaintiff's Claims" means any and all actions, causes of action, suits, liabilities, claims, rights of action, debts, sums of money, covenants, contracts, controversies, agreements, promises, damages, contributions, indemnities, and demands of every nature and description, whether or not currently asserted, whether known or unknown claims, suspected, existing, or discoverable, whether arising under federal, state, common, local, statutory, regulatory, foreign, or other law or rule, whether based in contract, tort, statute, law, equity, or otherwise (including, but not limited to, federal and state securities laws), that Plaintiff or any other Class Member, on behalf of themselves and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under or through, any of them, and each of them, (a) asserted in the Action

or (b) could have alleged, asserted, set forth, or claimed in the Action by Plaintiff or any other member of the Class, individually or on behalf of the Class or on behalf of the Company, that (1) in full or in part, concern, relate to, arise out of, or are in any way connected to the claims, allegations, transactions, facts, circumstances, events, acts, disclosures, statements, representations, omissions, or failures to act alleged, set forth, referred to, or involved in the Action, and (2) arise out of, are based upon, relate to, or concern the rights of, duties owed to, and/or ownership of FCAC shares as to which Plaintiff or Class Members had redemption rights as of the Redemption Deadline, including, but not limited to, any claims related to (i) the Merger, (ii) the Proxy, (iii) any other disclosures relating to or concerning the Merger or FCAC, or (iv) the control or participation of any of Defendant Releasees. For the avoidance of doubt, Released Plaintiff's Claims shall not include the right to enforce the Settlement or any final judgment in this Action, nor do Released Plaintiff's Claims release any actual or potential claims held by the Company that can be brought by someone other than Plaintiff or a Class Member.

jj. "Released Plaintiff Parties" means Plaintiff, and each and every other Class Member, on behalf of themselves and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any person or entity acting for or on behalf

of, or claiming under or through, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns.

kk. “Releases” means the releases set forth in paragraphs 3-5 of this Stipulation.

ll. “Scheduling Order” means the scheduling order to be entered by the Court pursuant to Court of Chancery Rule 23, substantially in the form attached hereto as Exhibit A.

mm. “Second Settlement Payment” means the payment of one million, five hundred-thousand United States dollars (\$1,500,000.00) in cash.

nn. “Securities Transfer Records” means the stock transfer records maintained by or on behalf of the Company listing the names, mailing addresses, and, if available, email addresses for all registered holders of Common Stock during the Class Period.

oo. “Settlement Administrator” means the class action settlement administrator, if any, selected by Plaintiff’s Counsel in connection with the Settlement.

pp. “Settlement Amount” means the sum of eleven million five hundred-thousand United States Dollars (\$11,500,000) in cash.

qq. “Settlement Fund” means the Settlement Amount plus any interest that may accrue on that sum after it is deposited in the Escrow Account.

rr. “Settlement Hearing” means the hearing to be held by the Court under Court of Chancery Rule 23 to consider, among other things, final approval of the Settlement.

ss. “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C, to be published as set forth in the Scheduling Order.

tt. “Taxes” means any taxes (including any estimated taxes, interest, penalties, or additional amounts) arising with respect to income earned by the Settlement Fund, including with respect to (i) any income earned by the Settlement Fund for any period during which the Settlement Fund on deposit in the Escrow Account is not treated, or does not qualify, as a “qualified settlement fund” for federal or state income tax purposes, and (ii) the payment or reimbursement by the Settlement Fund of any amounts described in clause (i).

uu. “Tax Expenses” means reasonable expenses and costs incurred in connection with determining the amount of, and paying, any Taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and/or

accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any tax returns).

vv. “Termination Notice” means written notice of a Settling Party’s exercise of such Settling Party’s right to terminate the Settlement and this Stipulation in accordance with paragraph 49 of this Stipulation.

ww. “Unknown Claims” means any Released Claims which any of the Released Parties does not know or suspect to exist at the time of the release of such claims, which, if known by any of the Released Parties, might have affected one or more of the Released Parties’ decisions with respect to the Settlement.

B. RELEASE OF CLAIMS

2. The obligations incurred pursuant to this Stipulation are in consideration of: (a) the full and final disposition of this Action; and (b) the Released Claims provided for under this Stipulation.

3. Pursuant to the Order and Final Judgment, without further action by anyone, upon the Effective Date of the Settlement, the Released Plaintiff Parties shall be deemed to have, and by operation of law and of the Order and Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged the Released Plaintiff’s Claims against the Released Defendant Parties, and shall forever be barred and enjoined

from prosecuting the Released Plaintiff's Claims against the Released Defendant Parties.

4. Pursuant to the Order and Final Judgment, without further action by anyone, upon the Effective Date of the Settlement, the Released Defendant Parties shall be deemed to have, and by operation of law and of the Order and Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged the Released Defendants' Claims against the Released Plaintiff Parties, and shall forever be barred and enjoined from prosecuting the Released Defendants' Claims against the Released Plaintiff Parties. For avoidance of doubt, Released Defendants' Claims shall not include any of the Excluded Defendants' Claims.

5. With respect to the Released Claims, the Settling Parties stipulate and agree that, upon the occurrence of the Effective Date, the Settling Parties shall waive expressly, and by operation of the Order and Final Judgment, each Class Member shall be deemed to have, and shall have, expressly waived, relinquished, and released any and all provisions, rights, and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR

SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Settling Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Settling Parties, and Class Members (by operation of law), to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, heretofore existed, or may hereafter exist and without regard to the subsequent discovery of additional or different facts. The Settling Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Plaintiff’s Claims” and “Released Defendants’ Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each and all of Plaintiff and Defendants in entering into this Stipulation.

6. Upon entry of the Order and Final Judgment, the Action shall be dismissed in its entirety and with prejudice. Plaintiff and Defendants shall bear their own respective fees, costs, and expenses, except as expressly provided in this Stipulation; provided, however, that nothing herein shall affect Defendants’ rights to, and claims for, advancement or indemnity of their legal fees, costs, and expenses

in connection with the Action, the Settlement, or any of Released Plaintiff's Claims, nor any claims that the Defendants may have against their respective insurers, co-insurers, or reinsurers.

7. Notwithstanding paragraphs 3-5, nothing in the Order and Final Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of this Stipulation or the Order and Final Judgment.

C. SETTLEMENT CONSIDERATION

8. In consideration for the full and final release, settlement, dismissal, and discharge of any and all of the Released Claims against the Released Parties, the Settling Parties have agreed to the following consideration:

A. THE SETTLEMENT PAYMENTS:

9. The Settlement Amount shall be paid pursuant to the following:

a. Within five (5) business days after execution of this Stipulation, Plaintiff's Counsel shall provide complete wire transfer information, instructions, as well as a completed Form W-9, and the name and telephone number of a person with knowledge who verbally can confirm the wiring instructions to Defendants' Counsel.

b. No later than twenty-one (21) business days after entry of the Scheduling Order by the Court, the Insurance Carrier shall pay the First Settlement Payment into the Escrow Account.

c. The First Settlement Payment Amount shall be made by wire transfer or by check into the Escrow Account.

d. Apart from the payment of the First Settlement Payment in accordance with this paragraph, the Insurance Carrier shall have no further or other obligations, monetary or otherwise, to Plaintiff, the other Class members, Plaintiff's Counsel or any other Person with respect to the Settlement, the Action or the Policy.

e. No later than ten (10) calendar days prior to the Settlement Hearing, Defendants shall cause the Second Payment Amount to be deposited into the Escrow Account.

f. Payment of the Second Settlement Amount shall be made by wire transfer or by check into the Escrow Account.

g. Apart from the payment of the Second Settlement Payment in accordance with this paragraph and any and all costs associated with providing information pursuant to paragraphs 40 and 41 below, Defendants shall have no further or other monetary obligations to Plaintiff, the other Class members, or Plaintiff's Counsel under the Settlement.

10. If the Settlement Amount is not paid in a timely manner in accordance with paragraphs 9.b. and 9.e., Plaintiff may exercise its right to terminate the Settlement under paragraph 49 below.

11. Notwithstanding the fact that the Effective Date of the Settlement has not occurred, Plaintiff's Counsel may pay from the Settlement Fund, without further approval from Defendants, the Insurance Carrier, and/or order of the Court, all reasonable costs and expenses actually incurred in connection with Notice and Administration Costs up to the sum of \$750,000, which shall include the costs of disseminating the Notice Package. Before the Effective Date, all such Notice and Administration Costs in excess of \$750,000 may be paid from the Settlement Fund only with prior approval of the Court. In the event that the Settlement is terminated pursuant to the terms of this Stipulation or the Settlement does not become final, all Notice Costs, Administration Costs, Taxes, or Tax Expenses actually paid or incurred, including any related fees, shall not be returned or repaid to the Defendants or the Insurance Carrier. After the Effective Date, Notice and Administration Costs may be paid as incurred, without approval of Defendants, the Insurance Carrier, and/or further order of the Court.

D. CLASS CERTIFICATION

12. The Parties agree that certification of the Class, for settlement purposes only, is appropriate in the Action. For purposes of this Settlement only, the Settling Parties agree to: (a) certification of the Class as a non-opt-out class pursuant to Court of Chancery Rules 23(a), 23(b)(1), 23(b)(2), and 23(b)(3); (b) appointment of

Plaintiff as class representatives for the Class; and (c) appointment of Plaintiff's Counsel as counsel for the Class.

13. The certification of the Class shall be binding only with respect to the Settlement and this Stipulation. In the event that the Settlement or this Stipulation is terminated pursuant to their terms or the Effective Date fails to occur, the certification of the Class shall be deemed vacated and the Action shall proceed as though the Class had never been certified.

E. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL

14. As soon as practicable after this Stipulation has been executed, the Settling Parties shall jointly submit this Stipulation, together with its Exhibits, to the Court, and shall jointly apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A.

15. The Settling Parties and their respective attorneys agree to cooperate fully with one another and to use their individual and collective best efforts to obtain Court approval of the Settlement as soon as practicable and to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, and to obtain final approval by the Court of the Settlement provided for in this Stipulation and the dismissal of the Action with prejudice.

16. If the Settlement embodied in this Stipulation is approved by the Court, the Settling Parties shall request that the Court enter the Order and Final Judgment, substantially in the form attached hereto as Exhibit D.

F. STAY PENDING COURT APPROVAL

17. The Settling Parties hereby agree to stay the proceedings in the Action, to file no further actions against the Released Parties asserting any Released Claims, and to stay and not to initiate any and all other such proceedings other than those incident to the Settlement itself, pending the occurrence of the Effective Date. The Settling Parties' (and any third-parties') respective deadlines to respond to any filed or served pleadings, motions, or discovery requests are extended indefinitely. Any Settling Party may inform the recipient of any subpoenas issued in connection with the Action (regardless of which Settling Party issued the subpoena) that the proceedings in the Action are stayed pending approval of the Settlement and entry of the Order and Final Judgment.

18. The Settling Parties agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of, any Class Member, in any other proceedings against any of Defendants or any other Released Defendant Parties that challenge the Settlement or otherwise assert or involve, directly or indirectly, any of the Released Plaintiff's Claims against any of Released Defendant Parties.

19. Notwithstanding paragraphs 17 and 18, nothing herein shall in any way impair or restrict the rights of any Settling Party to defend this Stipulation or the Settlement or to otherwise respond in the event any Person objects to this Stipulation, the Settlement, the Order and Final Judgment, the Fee and Expense Award, or the Plan of Allocation.

G. CONDITIONS OF SETTLEMENT

20. The Effective Date of the Settlement shall be deemed to occur on the occurrence or written waiver of all of the following events, which the Settling Parties shall use their best efforts to achieve:

- a. the payment in full of the Settlement Amount into the Escrow Account in accordance with paragraph 9.b. and 9.e. of this Stipulation;
- b. the Court's certification of the Class as a non-opt-out settlement class;
- c. the Court's entry of the Order and Final Judgment, including the Releases substantially in the form set out in this Stipulation and the dismissal with prejudice of the Action without the award of any damages, costs, or fees and expenses, except as provided for in this Stipulation; and
- d. the Final Order becoming Final.

21. Upon the occurrence of the Effective Date, any and all remaining interest or right in the Settlement Fund of Defendants or any other of Released

Defendant Parties shall be absolutely and forever extinguished, and the Releases provided under this Stipulation shall be effective.

H. ATTORNEYS' FEES AND EXPENSES

22. Plaintiff's Counsel intends to petition the Court for a Fee and Expense Award, which application will be wholly inclusive of any request for attorneys' fees and expenses on behalf of any Class Member or their counsel in connection with the Settlement. The Settling Parties acknowledge and agree that any Fee and Expense Award in connection with the Settlement shall be paid from the Settlement Fund and shall reduce the Settlement consideration paid to the Class accordingly. Plaintiff's Counsel's application for a Fee and Expense Award is not the subject of any agreement among the Settling Parties except as set forth in this Stipulation.

23. The Fee and Expense Award shall be paid from the Settlement Fund to Plaintiff's Counsel immediately upon award by the Court, notwithstanding the existence of any timely filed objections to the Fee and Expense Award or any appeal or potential for appeal therefrom, or collateral attack on the Fee and Expense Award, the Settlement, or any part thereof, subject to Plaintiff's Counsel's obligation to make refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or

reversed and such order reducing or reversing the award has become Final. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than thirty (30) business days after: (a) receiving from Defendants' Counsel a notice of termination of the Settlement pursuant to the terms of this Stipulation; or (b) any order disapproving, reducing, reversing, or otherwise modifying the Fee and Expense Award has become Final.

24. This Stipulation, the Settlement, the Order and Final Judgment, and whether the Order and Final Judgment becomes Final, are not conditioned upon the approval of any Fee and Expense Award, either at all or in any particular amount, by the Court. The Fee and Expense Award may be considered separately from this Stipulation and the proposed Settlement. Any disapproval or modification of the Fee and Expense Award by the Court or on appeal shall not (a) affect or delay the enforceability of this Stipulation or the Settlement, (b) provide any Settling Party the right to terminate the Settlement, (c) affect or delay the binding effect or finality of the Order and Final Judgment or the release of the Released Claims against the Released Parties, or (d) prevent the occurrence of the Effective Date.

25. Plaintiff's Counsel warrants that no portion of any Fee and Expense Award shall be paid to Plaintiff or any Class member, except as may be approved by the Court.

26. Plaintiff's Counsel shall be responsible for allocating and paying any portion of the Fee and Expense Award to any other counsel or any Class Member. Released Defendant Parties shall not have any liability to any counsel for any Class member or to any Class member for any claimed attorneys' fees and expenses in connection with the Action or the Settlement. The Fee and Expense Award shall be payable solely from the Settlement Fund.

I. THE SETTLEMENT FUND

27. The Settlement Fund shall be used to pay: (a) any Taxes or Tax Expenses; (b) any Administration Costs or Notice Costs; (c) any Fee and Expense Award awarded by the Court; and (d) any other costs or fees approved by the Court. The Net Settlement Fund shall be distributed pursuant to the Plan of Allocation approved by the Court.

28. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned to Defendants and/or the Insurance Carrier pursuant to the terms of this Stipulation and/or further order of the Court.

29. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such

instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

30. The Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and Plaintiff’s Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for timely and properly filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Plaintiff’s Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Defendants shall provide to Plaintiff’s Counsel the statement described in Treasury Regulation § 1.468B-3(e).

Plaintiff's Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the qualified settlement fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

31. All Taxes and Tax Expenses shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Plaintiff's Counsel and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. Released Defendant Parties shall have no responsibility or liability for any such Taxes or Tax Expenses or the acts or omissions of Plaintiff's Counsel or its agents with respect to the payment of Taxes or Tax Expenses, as described herein.

32. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, none of Defendants, any other Released Defendant Parties, or any other Person who or which paid any portion of the Settlement Amount, shall

have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever.

J. NOTICE TO CLASS MEMBERS

33. In accordance with the Scheduling Order, the Settlement Administrator shall mail, or cause to be mailed, by first class U.S. mail, postage prepaid, or other mail service if mailed outside the United States, the Notice, attached hereto as Exhibit B, with Plan of Allocation and Proof of Claim and Release, attached hereto as Exhibits E and E-1 (the “Notice Package”), to each Class member at their last known address appearing in the Securities Transfer Records. All record holders of stock who hold such stock on behalf of beneficial owners and who receive the Notice shall be requested to forward the Notice promptly to such beneficial owners.

34. In accordance with the Scheduling Order, Plaintiff’s Counsel or the Settlement Administrator shall also cause the Summary Notice to be published in *Investor’s Business Daily* and over the PR Newswire.

35. The proposed Notice Package to be mailed to Class Members in accordance with the Scheduling Order apprises Class Members of (among other disclosures) the nature of the Action, the definition of the Class, the claims and issues in the Action, the claims that will be released in the Settlement, Class Members’ right to object to the Settlement and the process for lodging an objection, the process

for submitting a claim, and the plan and process for allocating and distributing the Net Settlement Fund.

36. The Settling Parties further agree that the Notice Package, as approved by the Court, and other relevant documents will be posted on a Settlement website established and maintained by the Settlement Administrator in accordance with the Scheduling Order.

37. Subject to the approval of the Court, Plaintiff shall retain a Settlement Administrator to provide all notices approved by the Court to Class Members, to establish and maintain the Settlement website, to process the Proof of Claim and Release forms, to oversee the administration of the Settlement, and to distribute the Net Settlement Fund.

38. Any and all Notice and Administration Costs shall be paid from the Settlement Fund, regardless of the form or manner of notice approved or directed by the Court and regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall Plaintiff or the Released Defendant Parties, or any of their attorneys have any liability or responsibility for the Notice and Administration Costs. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs actually paid or incurred up to the date of termination shall not be returned or repaid to the Defendants and/or the Insurance Carrier.

K. DISTRIBUTION OF THE SETTLEMENT FUND

39. Plaintiff's Counsel shall retain a Settlement Administrator to provide notice of the Settlement to the Class and for the disbursement of the Net Settlement Fund to Class Members as set forth in the Plan of Allocation, attached hereto as Exhibit E. Released Defendant Parties shall not have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Settlement Administrator, the giving of Notice to the Class, or the disbursement of the Net Settlement Fund to Class Members.

40. For purposes of distributing the Net Settlement Fund to Class Members, Defendants, at no cost to the Settlement Fund, Plaintiff's Counsel, or the Settlement Administrator, shall: (i) within ten (10) business days after the Court's entry of the Scheduling Order, provide, or cause to be provided, to Plaintiff's Counsel or the Settlement Administrator in an electronically searchable form, such as Microsoft Excel, the Securities Transfer Records and an allocation report, "chill" report, or such other report generated by DTC providing, for each relevant DTC Participant on the Redemption Deadline, the participant's "DTC number," the relevant number of shares of Common Stock held as of the Redemption Deadline, and the address or other contact information used to communicate with the appropriate representatives of each such DTC Participant; (ii) within ten (10) business days after the Court's entry of the Scheduling Order, provide, or cause to be provided, to Plaintiff's

Counsel or the Settlement Administrator in an electronically searchable form, such as Microsoft Excel, the Securities Transfer Records for Redeeming Stockholders; and (iii) within ten (10) business days after the Court's entry of the Scheduling Order, provide, or cause to be provided, to Plaintiff's Counsel or the Settlement Administrator in an electronically searchable form, such as Microsoft Excel, the Securities Transfer Records for Excluded Persons.

41. In addition to the information to be provided under paragraph 40 of this Stipulation, Defendants, at the request of Plaintiff and/or Plaintiff's Counsel, and at no cost to the Settlement Fund, Plaintiff, Plaintiff's Counsel, or the Settlement Administrator, shall make reasonable efforts to provide such additional information as may be required to distribute the Net Settlement Fund to Class Members and to ensure that the Net Settlement Fund is paid only to Class Members as to Eligible Shares, and not to Excluded Persons, including, without limitation, using reasonable efforts to obtain suppression letters from Excluded Persons and/or Excluded Persons' brokers if requested to do so by the DTC.

42. Excluded Persons shall not have any right to receive any part of the Settlement Fund for their own account(s) (i.e., accounts in which they hold a proprietary interest), or any additional amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, under any

theory, including, but not limited to, contract, application of statutory or judicial law, or equity.

43. The Net Settlement Fund shall be allocated and distributed to Class Members in accordance with the Plan of Allocation, set forth in detail in Exhibit E hereto, which is subject to approval by the Court.

44. If there is any balance remaining in the Net Settlement Fund within a reasonable amount of time after distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, amounts returned by Excluded Persons who erroneously receive settlement payments, or otherwise), the Settlement Administrator shall, if feasible, distribute such balance among the Settlement Payment recipients who received and deposited the initial distribution, in the same manner as the initial distribution. If the cost of making such a further distribution or distributions is unreasonably high relative to the amount remaining in the Net Settlement Fund, Plaintiff's Counsel may seek leave of the Court to instruct the Settlement Administrator to distribute any balance which still remains in the Net Settlement Fund, after provision for all anticipated Taxes, Tax Expenses, and other Administrative Costs and expenses, to the Delaware Combined Campaign for Justice. Neither the Released Defendant Parties nor their indemnitors or insurers shall have any reversionary interest in the Net Settlement Fund.

45. Notwithstanding anything to the contrary in this Stipulation, the Plan of Allocation is not a necessary term of the Settlement or this Stipulation, and it is not a condition of the Settlement or this Stipulation that any particular plan of allocation be approved by the Court. Plaintiff and Plaintiff's Counsel may not cancel or terminate the Settlement (or this Stipulation) based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in connection with the Settlement.

46. The Net Settlement Fund shall be distributed to Class Members only after the Effective Date of the Settlement and after: (a) all Notice Costs, all Administration Costs, all Taxes, and any Fee and Expense Award have been paid from the Settlement Fund or reserved; and (b) the Court has entered the Class Distribution Order. At such time as Plaintiff's Counsel, in their sole discretion, deems it appropriate to move forward with the distribution of the Net Settlement Fund to the Class, Plaintiff's Counsel will apply to the Court, on notice to Defendants' Counsel, for the Class Distribution Order.

47. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members. Plaintiff, Defendants, the other Released Defendant Parties, and each of their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the determination, administration, or calculation of any payment

from the Net Settlement Fund, the nonperformance of the Settlement Administrator or a nominee holding shares on behalf of a Class Member, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

48. All proceedings with respect to the administration of the Settlement and distribution pursuant to the Class Distribution Order shall be subject to the exclusive jurisdiction of the Court.

L. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION

49. Each of Plaintiff and Defendants (as a Defendant group that unanimously agrees amongst themselves) shall have the right to terminate the Settlement and this Stipulation by providing a Termination Notice to the other parties to this Stipulation within thirty (30) calendar days after: (a) the Court's final refusal to enter the Scheduling Order in any material respect and such final refusal decision has become Final; (b) the Court's final refusal to approve the Settlement, or any material part thereof and such final refusal decision has become Final; (c) the Court's final refusal to enter the Order and Final Judgment in any material respect as to the Settlement and such final refusal decision has become Final; or (d) the date upon which the Order and Final Judgment is modified or reversed in any material respect by an appellate court and such appellate court order modifying or reversing the Order and Final Judgment becomes Final. In addition to the foregoing, Plaintiff

shall have the unilateral right to terminate the Settlement and this Stipulation, by providing a Termination Notice within thirty (30) calendar days after any failure of the Defendants and the Insurance Carrier to pay the full payment of the Settlement Amount into the Escrow Account in a timely manner in accordance with paragraphs 9.b. and 9.e. of this Stipulation. For the avoidance of doubt, the Settling Parties stipulate and agree that any change to the scope or substance of the Releases provided for in this Stipulation and the Settlement would constitute a material change that gives rise to each of the Settling Parties' rights to terminate this Stipulation and the Settlement in accordance with this paragraph 49. Neither a modification or rejection of any Fee and Expense Award nor a reversal on appeal of any Fee and Expense Award awarded by the Court or any order modifying or rejecting the Plan of Allocation shall be deemed a material modification of the Order and Final Judgment or this Stipulation.

50. In the event that the Settlement is terminated pursuant to the terms of paragraph 49 of this Stipulation or the Effective Date otherwise fails to occur for any other reason, then (a) the Settlement and this Stipulation (other than this paragraph 50 and paragraphs 11, 23, 28, 29, 30, 31, 49, 51, 52, 54, 71, and 73 of this Stipulation) shall be canceled and terminated; (b) any judgment entered in the Action and any related orders entered by the Court shall in all events be treated as vacated, *nunc pro tunc*; (c) the Releases provided under the Settlement shall be null and void; (d) the

fact of, and negotiations and other discussions leading to, the Settlement shall not be admissible in any proceeding before any court or tribunal; (e) all proceedings in the Action shall revert to their status as of immediately prior to the Parties' entry into the Term Sheet on September 23, 2024, and no materials created by or received from any Settling Party that were used in, obtained during, or related to the Settlement discussions shall be admissible for any purpose in any court or tribunal, or used, absent consent from the disclosing party, for any other purpose or in any other capacity, except to the extent that such materials are otherwise required to be produced during discovery in the Action or in any other litigation; (f) Plaintiff and Defendants shall meet and confer and jointly petition the Court for a case scheduling order; (g) the Settling Parties shall proceed in all respects as if the Settlement and this Stipulation (other than this paragraph) had not been entered into by the Settling Parties; and (h) within fifteen (15) calendar days after joint written notification of termination is sent by the Settling Parties' respective counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and any other change in value as a result of the investment of all or any portion of the Settlement Fund, and any funds received by Plaintiff's Counsel consistent with paragraph 23 of this Stipulation), less any Notice Costs and Administration Costs actually incurred, paid, or payable, and less any Taxes and Tax Expenses paid, due, or owing, shall be refunded by the Escrow Agent directly to the Persons who made payments pursuant

to paragraphs 9.b. and 9.e. above in such amounts as directed by Defendants' Counsel. In the event that the funds received by Plaintiff's Counsel consistent with paragraph 23 of this Stipulation above have not been refunded to the Settlement Fund within the fifteen (15) calendar days specified in this paragraph, those funds shall be refunded by the Escrow Agent immediately upon their deposit into the Escrow Account directly to the Persons who made payment pursuant to paragraphs 9.b. and 9.e. above in such amounts as directed by Defendants' Counsel.

M. NO ADMISSION OF LIABILITY

51. It is expressly understood and agreed that neither the Settlement nor any act or omission in connection therewith is intended or shall be deemed or argued to be evidence of or to constitute an admission or concession by: (a) Defendants or any of Released Defendant Parties, as to (i) the truth of any fact alleged by Plaintiff, (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Action or in any other litigation, (iii) the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation, or (iv) any wrongdoing, fault, or liability of any kind by any of them, which each of them expressly denies; or (b) Plaintiff that any of their claims are without merit, that any Defendants had meritorious defenses, or that damages recoverable from Defendants under the Complaint would not have exceeded the Settlement Amount.

The provisions in this paragraph 51 shall remain in force in the event that this Stipulation or the Settlement is terminated for any reason whatsoever.

52. The Released Parties may file this Stipulation and/or the Order and Final Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim or in connection with any insurance litigation.

N. MISCELLANEOUS PROVISIONS

53. Defendants warrant that, as to the payments made or to be made on behalf of Defendants pursuant to the Settlement and this Stipulation, at the time of entering into this Stipulation and at the time of such payment, to the best of their knowledge, none of the Defendants, the Company, or the Insurance Carrier is insolvent, nor will the payment required to be made on behalf of the Defendants render the Defendants, the Company, or the Insurance Carrier insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof.

54. Each Party represents and warrants that the Party has made such investigation of the facts pertaining to the Settlement provided for in this Stipulation,

and all of the matters pertaining thereto, and has been advised by counsel, as the Party deems necessary and advisable.

55. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof on behalf of the Defendants to be a preference, voidable transfer, fraudulent transfer, or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiff, the Settling Parties shall jointly move the Court to vacate and set aside the Releases given and the Order and Final Judgment entered pursuant to this Stipulation, in which event (i) the Releases and the Order and Final Judgment shall be null and void; (ii) the Settling Parties shall be restored to their respective positions in the litigation as provided in paragraph 50 of this Stipulation; (iii) Plaintiff's Counsel shall refund the Fee and Expense Award consistent with paragraph 23 of this Stipulation; and (iv) any cash amounts in the Settlement Fund (less any Taxes paid, due, or owing with respect to the Settlement Fund, and less any Notice and Administration Costs actually incurred, paid, or payable) shall be returned to the Persons who made payments pursuant to paragraphs 9.b. and 9.e above in such amounts as directed by Defendants' Counsel. Before directing Plaintiff's Counsel and/or the Escrow Agent pursuant to this paragraph, Defendants' Counsel shall notify the Persons who made payments pursuant to paragraphs 9.b.

and 9.e above and obtain their written approval of the proposed refund directions to be given to Plaintiff's Counsel and/or the Escrow Agent.

56. This Stipulation shall be deemed to have been mutually prepared by the Settling Parties and shall not be construed against any of them by reason of authorship.

57. The Settling Parties agree that in the event of any breach of this Stipulation, all of the Settling Parties' rights and remedies at law, equity, or otherwise, are expressly reserved.

58. This Stipulation may be executed in one or more counterparts by electronic signature, email, PDF, fax, or original signature by any of the signatories hereto and as so executed shall constitute one agreement. Any signature to this Stipulation by means of facsimile or other electronic means shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof and without any necessity for delivery of the original signed signature pages in order for this Stipulation to constitute a binding agreement.

59. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

60. If any deadline set forth in this Stipulation or the Exhibits thereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

61. Each counsel or other person executing this Stipulation on behalf of any Settling Party warrants that he or she has the full authority to bind his or her principal to this Stipulation.

62. Plaintiff represents and warrants that Plaintiff is a member of the Class and has not assigned, encumbered, or in any manner transferred, in whole or in part, any of the Released Plaintiff's Claims.

63. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of all of the Settling Parties (or their successors-in-interest).

64. Any failure by any Settling Party to insist upon the strict performance by any other Settling Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Settling Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Settling Party. Waiver by any Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other

prior or subsequent breach of this Stipulation, and failure by any Settling Party to assert any claim for breach of this Stipulation shall not be deemed to be a waiver as to that or any other breach and will not preclude any Settling Party from seeking to remedy a breach and enforce the terms of this Stipulation. Each of the Defendants' respective obligations hereunder are several and not joint, and the breach or default by one of the Defendants shall not be imputed to, nor shall any Defendant have any liability or responsibility for, the obligations of any other Settling Party herein.

65. This Stipulation is and shall be binding upon, and shall inure to the benefit of, the Settling Parties (and, in the case of the Releases, all Released Parties as third-party beneficiaries), and their respective legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, including, without limitation, any corporation or other entity with which any party hereto may merge, reorganize, or otherwise consolidate.

66. Notwithstanding the entry of the Order and Final Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of this Stipulation and the Settlement, and all of the Settling Parties submit to the jurisdiction of the Court for all matters relating to the administration, enforcement, and consummation of the Settlement and the implementation, enforcement, and interpretation of this Stipulation. For any such

action (but no other action) brought in the Court, each of the Settling Parties (i) consents to personal jurisdiction, (ii) consents to service of process on such Settling Party by email to its undersigned counsel, and (iii) waives any objection to venue in the Court and any claim that the Court is an inconvenient forum.

67. The construction and interpretation of this Stipulation, and any and all disputes arising out of or relating in any way to this Stipulation, shall be governed by and construed in accordance with the internal laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto.

68. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

69. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

70. Except as otherwise provided herein, each Settling Party shall bear its own costs.

71. Whether or not this Stipulation is approved by the Court and whether or not the Settlement is consummated, or the Effective Date occurs, the Settling Parties and their respective counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with this Stipulation confidential.

72. All agreements made and orders entered during the course of this Action relating to the confidentiality of information, including, without limitation, the Confidentiality Order, shall survive the Settlement and entry of the Order and Final Judgment.

73. This Stipulation and the Exhibits (Exhibit A: [Proposed] Scheduling Order with Respect to Notice and Settlement Hearing; Exhibit B: Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear; Exhibit C: Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear; Exhibit D: [Proposed] Order and Final Judgment; Exhibit E: Plan of Allocation; and Exhibit E-1: Proof of Claim and Release) constitute the entire agreement among the Settling Parties with respect to the subject matter hereof. The Exhibits are incorporated by reference as if set forth herein verbatim, and the terms of all Exhibits are expressly made part of this Stipulation, provided, however, that if there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit, the terms of this Stipulation shall prevail. No representations, warranties, or inducements have been made to or relied upon by any Settling Party concerning this Stipulation or its Exhibits, other than the representations, warranties, and covenants expressly set forth in this Stipulation or the Exhibits.

74. The Settling Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiff and any other Class Members against Released Defendant Parties with respect to Released Plaintiff's Claims. Accordingly, Plaintiff, Defendants, and their respective counsel agree not to assert in any forum that this Action was brought by Plaintiff or defended by Defendants in bad faith or without a reasonable basis. Plaintiff and Defendants represent and agree that the terms of the Settlement reached between Plaintiff and Defendants were negotiated at arms'-length and in good faith by Plaintiff and Defendants, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

75. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their respective counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. While retaining their right to assert that the claims asserted in the Action were meritorious, Plaintiff and their respective counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was defended in bad faith, nor will they

deny that the Action was defended in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, the Settling Parties and their respective counsel shall not make any accusations of wrongful or actionable conduct by any Settling Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

76. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by Plaintiff, Defendants, or their respective counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

IN WITNESS WHEREOF, the Settling Parties, through their undersigned counsel, have executed this Stipulation effective as of the Effective Date set forth above.

DATED: November 7, 2024

GRANT & EISENHOFER, P.A.

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