



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE EMISPHERE TECHNOLOGIES, INC. STOCKHOLDERS LITIGATION	}	CONSOLIDATED C.A. No. 2021-0025-NAC
---	---	--

**STIPULATION AND AGREEMENT OF COMPROMISE
AND SETTLEMENT**

This Stipulation and Agreement of Compromise and Settlement (the “Stipulation”), dated June 27, 2025, is entered into by and among the following parties in the above-captioned action (“Action”) and the other parties named herein: (i) plaintiffs Stephen Brandenburg, Robert K. Brennan, James DeVilliers, Dr. Michael Goldberg, and Samuel Menasha (“Plaintiffs”), on behalf of themselves and on behalf of the Class;¹ (ii) defendants Timothy Rothwell and Michael Weiser; (iii) defendants Mark H. Rachesky, MHR Fund Management LLC, MHR Holdings LLC, MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP, MHR Institutional Partners IIA LP, MHR Advisors LLC, MHRC LLC, MHR Institutional Advisors II LLC, and MHRC II LLC (collectively, the “MHR Defendants,” and together with Rothwell and Weiser, the “Defendants”); and (iv) non-party Novo Nordisk A/S (“Novo Nordisk”).

¹ All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings given to them in Section I below.

This Stipulation states all of the terms of the Settlement and resolution of claims asserted in the Action and is intended by Plaintiffs, on behalf of themselves and the Class, and Defendants (and Novo Nordisk) to fully, finally, and forever release, resolve, remise, compromise, settle, and discharge the Released Plaintiffs' Claims (defined below) and the Released Defendants' Claims (defined below), subject to the approval of the Court.

WHEREAS:

A. On November 5, 2020, the board of directors (the "Board") of Emisphere Technologies, Inc. ("Emisphere" or the "Company"), a Delaware corporation, approved the Company's entry into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which Emisphere agreed to be acquired by Novo Nordisk (the "Acquisition") for \$1.35 billion, subject to certain adjustments, or about \$7.83 per share (the "Acquisition Consideration"). On the same date and contemporaneously with entering into the Merger Agreement, Novo Nordisk and Novo Nordisk Pharmaceuticals A/S (the "Novo Nordisk Buyers") entered into an Asset Purchase Agreement (the "Asset Purchase Agreement") with MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP, and MHR Institutional Partners IIA LP (the "MHR Sellers"), pursuant to which the Novo Nordisk Buyers agreed to acquire the Purchased Assets (as that term was defined in the Asset Purchase Agreement) from the MHR Sellers

for \$450 million (the “MHR Royalty Consideration”) (the “Asset Purchase” and together with the Acquisition, the “Transaction”).

B. On or about November 16, 2020, Emisphere disseminated a proxy statement (the “Proxy”) recommending that stockholders vote their shares in favor of the Merger Agreement.

C. On November 16, 2020, Emisphere stockholder IsZo Capital LP sent a letter to the Board of Emisphere demanding inspection of Emisphere’s books and records, pursuant to 8 *Del. C.* § 220 (the “IsZo Demand”).

D. On November 25, 2020, Emisphere stockholder George Assad sent a letter to the Board of Emisphere demanding inspection of Emisphere’s books and records, pursuant to 8 *Del. C.* § 220 (the “Assad Demand”).

E. Also on November 25, 2020, Emisphere responded to the IsZo Demand.

F. On November 27, 2020, Emisphere stockholder Charles Corby sent a letter to the Board of Emisphere demanding inspection of Emisphere’s books and records, pursuant to 8 *Del. C.* § 220 (the “Corby Demand”).

G. On November 30, 2020, plaintiff Robert K. Brennan sent a letter to the Board of Emisphere demanding inspection of Emisphere’s books and records, pursuant to 8 *Del. C.* § 220 (the “Brennan Demand”).

H. On December 6, 2020, Emisphere responded to the Assad Demand and the Corby Demand.

I. On December 7, 2020, Emisphere responded to the Brennan Demand.

J. On December 7, 2020, Corby filed a lawsuit in the Court, pursuant to Section 220 of the Delaware General Corporation Law, captioned *Charles Corby v. Emisphere Technologies, Inc.*, C.A. No. 2020-1037-JRS (Del. Ch.), seeking to compel inspection of Emisphere's books and records.

K. On December 7, 2020, IsZo Capital filed a lawsuit in the Court, pursuant to Section 220 of the Delaware General Corporation Law, captioned *IsZo Capital LP v. Emisphere Technologies, Inc.*, C.A. No. 2020-1038-JRS (Del. Ch.), seeking to compel inspection of Emisphere's books and records.

L. On December 7, 2020, Assad filed a lawsuit in the Court, pursuant to Section 220 of the Delaware General Corporation Law, captioned *George Assad, Jr. v. Emisphere Technologies, Inc.*, C.A. No. 2020-1039-JRS (Del. Ch.), seeking to compel inspection of Emisphere's books and records.

M. On December 8, 2020, Brennan filed a lawsuit in the Court, pursuant to Section 220 of the Delaware General Corporation Law, captioned *Robert K. Brennan v. Emisphere Technologies, Inc.*, C.A. No. 2020-1040-JRS (Del. Ch.) (the "§ 220 Action"), seeking to compel inspection of Emisphere's books and records.

N. Later on December 8, 2020, (i) the Acquisition was completed and Emisphere became a wholly-owned subsidiary of Novo Nordisk, and (ii) the Asset Purchase Agreement was consummated.

O. Following briefing and negotiations between Brennan’s counsel and Emisphere’s counsel, Emisphere produced books and records for inspection by Brennan to resolve the § 220 Action.

P. On December 28, 2020, petitioner Frank Funds filed a petition for appraisal in the Court, captioned *Frank Funds v. Emisphere Technologies, Inc.*, C.A. 2020-1101-NAC (the “Appraisal Action”).

Q. On January 14, 2021, Emisphere stockholders Nicolae Barbulescu, Kenneth Novick, Jack Barouh, and Eliot Houman filed a Verified Stockholder Class Action Complaint, which alleged that Defendants (including, in addition to the current Defendants, former Emisphere directors John Harkey, Howard Draft, and Timothy McInerney) and certain of the MHR Defendants breached their fiduciary duties by (a) allowing those MHR Defendants to receive disproportionate Transaction consideration and causing the proposed class members to receive inadequate Transaction consideration; and (b) causing the Company to issue a materially misleading and incomplete Proxy.

R. On June 8, 2021, Assad and IsZo Capital each filed a Verified Class Action Complaint, each of which alleged: (i) in Count I, that the MHR Defendants

breached their fiduciary duties as controlling stockholders of Emisphere by agreeing to and entering into the Transaction without ensuring that it was entirely fair; (ii) in Count II, that the Board breached its fiduciary duties by, among other things, agreeing to and entering into the Transaction without ensuring that it was entirely fair and by issuing a false and misleading Proxy; and (iii) in Count III, that Rothwell and Weiser breached the fiduciary duties they owed as officers of Emisphere by prioritizing their own interests in the Transaction and by issuing a false and misleading Proxy.

S. On July 2, 2021, Plaintiffs filed their Verified Class Action Complaint, alleging: (i) in Count I, that all of the defendants (including, in addition to the current Defendants, former Emisphere directors John Harkey, Howard Draft, and Timothy McInerney) breached their fiduciary duties by (a) unfairly diverting and/or allowing the MHR Defendants to unfairly divert Transaction consideration from minority stockholders to themselves; (b) causing the Company to enter into the Transaction at an inopportune time, on unfair terms, following an unfair process; and (c) failing to provide other directors or the Company's minority stockholders all material information necessary to understand their wrongdoing; (ii) in Count II, that the MHR Defendants breached their fiduciary duties by abusing their control of Emisphere to have Emisphere issue excessive shares of its stock to them in exchange for debt and warrants of a far lesser value; and (iii) in Count III, that all of the director defendants

breached their fiduciary duties by taking action for the primary purpose of impeding the stockholder franchise and guaranteeing approval of the Transaction, by accelerating the vesting of two million outstanding RSUs held by Rothwell and Weiser.

T. On December 6, 2021, following briefing and argument, the Court entered an Order Establishing Leadership Structure, which designated the Plaintiffs as Co-Lead Plaintiffs for this Action, and designated Robbins Geller Rudman & Dowd LLP and Friedlander & Gorris, P.A. as Co-Lead Counsel and Johnson Fistel, LLP as additional plaintiffs' counsel for this Action.

U. On February 11, 2022, Plaintiffs filed a Verified Amended Class Action Complaint.

V. On April 12, 2022, defendants Draft, McInerney, and Harkey filed motion(s) to dismiss the Verified Amended Class Action Complaint, with opening brief(s) in support, and defendants Rothwell, Weiser, and the MHR Defendants filed partial motions to dismiss portions of the Verified Amended Class Action Complaint, with opening briefs in support.

W. On May 17, 2022, Plaintiffs initiated discovery by serving document requests directed to each of the MHR Defendants.

X. On May 26, 2022, the Court entered a Stipulation and Order of Dismissal, under which Plaintiffs agreed to dismiss without prejudice Plaintiffs'

claims against Howard Draft and Timothy McInerney, subject to the terms of a tolling agreement permitting Plaintiffs to reassert claims against Draft and McInerney at a later time and obligating Draft and McInerney to cooperate in responding to discovery in the same manner as if they were a party.

Y. On June 13, 2022, Plaintiffs filed an Unopposed Motion for Leave to File Verified Second Amended Class Action Complaint, which the Court granted on June 14, 2022.

Z. On June 14, 2022, Plaintiffs filed a Verified Second Amended Class Action Complaint (the “Operative Complaint”). In the Operative Complaint, Plaintiffs alleged: (i) in Count I, that the Defendants breached their fiduciary duties by (a) unfairly diverting and/or allowing the MHR Defendants to unfairly divert Transaction consideration from minority stockholders to themselves; (b) causing the Company to enter into the Transaction at an inopportune time, on unfair terms, following an unfair process; and (c) failing to provide other directors or the Company’s minority stockholders all material information necessary to understand their wrongdoing; (ii) in Counts II and III, that the MHR Defendants breached their fiduciary duties by abusing their control of Emisphere to have Emisphere issue excessive shares of its stock to them in exchange for debt and warrants of a far lesser value; and (iii) in Count IV, that defendants Rachesky, Rothwell, and Weiser breached their fiduciary duties by taking action for the primary purpose of impeding

the stockholder franchise and guaranteeing approval of the Transaction, by accelerating the vesting of two million outstanding RSUs held by Rothwell and Weiser. The Operative Complaint sought relief including (a) damages, including compensatory and rescissory damages; (b) interest upon such damages, as well as reasonable fees and costs; and (c) other relief as the Court may have deemed just and proper, including equitable relief.

AA. On July 29, 2022, defendants Rothwell and Weiser filed a partial motion to dismiss portions of the Operative Complaint, with an opening brief in support, and the MHR Defendants filed a partial motion to dismiss portions of the Operative Complaint, with an opening brief in support. MHR Defendants argued that: (a) there was nothing improper about MHR's prior funding of Emisphere, which was necessary to keep the company afloat during periods in which it had no marketable products or revenue; and (b) given MHR's economic interests in Emisphere, MHR was fully incentivized to pursue the highest sale price it could for the benefit of all Emisphere stockholders, including minority stockholders.

BB. On August 11, 2022, the Court entered a Stipulation and Order of Dismissal, under which Plaintiffs agreed to dismiss without prejudice Plaintiffs' claims against John Harkey, subject to the terms of a tolling agreement permitting Plaintiffs to reassert claims against Harkey at a later time and obligating Harkey to cooperate in responding to discovery in the same manner as if he were a party.

CC. On February 16, 2023, Plaintiffs filed a motion to compel discovery from the MHR Defendants respecting Counts I and IV of the Operative Complaint.

DD. On May 5, 2023, after briefing and argument, the Court granted Plaintiffs' motion to compel discovery from the MHR Defendants respecting Counts I and IV of the Operative Complaint.

EE. On August 2, 2023, the Court denied Defendants' partial motions to dismiss as to Count I, and granted Defendants' partial motions to dismiss as to Counts II, III, and IV. The Court dismissed all Counts alleging impropriety regarding Emisphere's past issuances of equity to MHR, which took place during periods in which Plaintiffs were also Emisphere stockholders and neither they nor any other class member brought any action to challenge these issuances at the time. The Court further ruled that the vesting of RSUs held by Rothwell and Weiser did not improperly impede the minority stockholders' franchise rights and was consistent with Delaware law. The Court accordingly ruled that all three Counts failed to state claims for which relief could be granted.

FF. On September 22, 2023, Defendants filed Verified Answers to the Operative Complaint. Defendants vigorously disputed all remaining allegations of wrongdoing, including: (a) all allegations of unfairness regarding the allocation of Transaction proceeds; (b) that Emisphere could have been sold for a higher price; and (c) that disclosures regarding the Transaction contained any material omissions.

The Defendants further asserted numerous defenses, including: (i) that Plaintiffs failed to state a claim upon which relief could be granted; (ii) that Plaintiffs' claims were barred on the grounds of unclean hands; (iii) that Plaintiffs' claims were barred on the grounds of estoppel and related doctrines; (iv) that Plaintiffs' claims were barred by statute; and (v) that Plaintiffs failed to establish any cognizable loss, in particular given that Defendants were incentivized to maximize the price for any transaction involving Emisphere.

GG. The Parties engaged in extensive factual discovery, including by preparing, serving, and responding to requests for production of documents and interrogatories, serving subpoenas on third parties, negotiating privilege disputes, taking and defending depositions, and engaging in various written and oral communications concerning the scope of discovery. Plaintiffs have obtained, reviewed, and analyzed approximately 170,800 responsive documents (over 916,000 pages) produced by Defendants, Former Defendants, and various non-parties, including Emisphere, Novo Nordisk, Evercore Inc. (the financial advisor to Novo Nordisk in connection with the Acquisition), Jefferies Securities LLC (the financial advisor to the special committee of Emisphere's Board in connection with the Acquisition), Phil Nikolayuk (a former employee of Emisphere), and two wireless service providers. Plaintiffs produced approximately 7,960 pages of documents, including text messages from personal devices, responded to three sets of

interrogatories (27 interrogatories directed to each of the Plaintiffs individually, plus 19 directed to Plaintiffs collectively, or 154 total interrogatories, excluding subparts) from Defendants, and were deposed by Defendants. Plaintiffs' Counsel took 19 depositions, and propounded interrogatories to Defendants.

HH. The Parties engaged in expert witness discovery. Plaintiffs served four expert reports, including two opening reports and two rebuttal reports. Defendants served five expert reports, including two opening reports and three rebuttal reports.

II. On November 8, 2024, after Plaintiffs had provided discovery, including having their depositions taken, and conferred with Defendants, Plaintiffs filed an Unopposed Motion for Class Certification. On November 14, 2024, the Court granted the Unopposed Motion for Class Certification, certifying the following non-opt-out class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2):

All persons who held shares of Emisphere Technologies, Inc. common stock at closing of the Transaction² and received consideration for such shares (the "Class"). Excluded from the Class are Defendants³ and any

² "Transaction" was defined as the acquisition of Emisphere Technologies, Inc. by Novo Nordisk A/S.

³ "Defendants" was defined as Mark H. Rachesky, MHR Fund Management LLC, MHR Holdings, LLC, MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP, MHR Institutional Partners IIA LP, MHR Advisors LLC, MHRC LLC, MHR Institutional Advisors II LLC, MHRC II LLC, Michael Weiser, and Timothy Rothwell.

person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.

The Court also appointed Plaintiffs as Class Representatives, and Plaintiffs' Counsel as Class Counsel.

JJ. Trial was scheduled for five days to commence on May 19, 2025.

KK. On January 29, 2025, Defendants submitted letters to the Court seeking leave to file motions for summary judgment with respect to certain claims asserted in the Operative Complaint.

LL. On February 19, 2025, Plaintiffs submitted letters responding to Defendants' requests for leave to file motions for summary judgment.

MM. On March 1, 2025, the Court granted in part and denied in part Defendants' requests for leave to file motions for summary judgment, and the Court removed the trial from its calendar.

NN. During the course of the litigation, the Parties periodically engaged in settlement negotiations. The Parties also engaged in settlement negotiations with extensive assistance of former U.S. District Judge Layn R. Phillips as mediator. Judge Phillips assisted in a mediation session on April 20, 2023. That mediation session did not lead to a resolution, but the Parties continued to periodically discuss potential resolutions through the mediator, including another mediation session with Judge Phillips on March 6, 2025. On March 7, 2025, Judge Phillips made a mediator's recommendation that the Parties settle the remaining claims in this

Action for \$32 million, which the Parties accepted. After the Parties accepted the mediator's recommendation, the Court was promptly notified and all existing deadlines in this matter were vacated by the Court.

OO. This Stipulation is intended to fully, finally, and forever release, resolve, remise, compromise, settle, and discharge the Released Plaintiffs' Claims and the Released Defendants' Claims with prejudice.

PP. 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.

QQ. Plaintiffs continue to believe that their claims have legal merit, but also believe that the Settlement set forth below provides substantial and immediate benefits for the Class. In addition to these substantial benefits, Plaintiffs and Plaintiffs' Counsel (defined below) have considered: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Released Plaintiffs' Claims; (ii) the probability of success on the merits of the Released Plaintiffs' Claims; (iii) issues with respect to proof and possible defenses at trial and the delay and uncertainty that could be incurred by any appeal; (iv) the difficulty and risk of collecting any judgment even if the Plaintiffs were to prevail; (v) the desirability of permitting the Settlement to be consummated according to its terms; (vi) the expense

and length of continued proceedings necessary to prosecute the Released Plaintiffs' Claims against Defendants through trial and appeals; and (vii) the conclusion of Plaintiffs and Plaintiffs' Counsel that the terms and conditions of the Stipulation are fair, reasonable, and adequate, and that it is in the best interests of the Class to settle the Released Plaintiffs' Claims on the terms set forth herein.

RR. Based on Plaintiffs' Counsel's extensive review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, which has been ongoing since 2020, Plaintiffs' Counsel believe that the Settlement set forth in this Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon the Class. Based upon Plaintiffs' Counsel's evaluation as well as Plaintiffs' own evaluation, Plaintiffs have determined that the Settlement is in the best interests of the Class and have agreed to the terms and conditions set forth herein.

SS. The Settlement and this Stipulation shall in no event be construed as, or deemed to be, evidence of or an admission or concession on the part of the Defendants with respect to any claim, any legal or factual allegation, any fault, any wrongdoing, any breach of duty, any liability, any harm or damage whatsoever, or any infirmity in the defenses that Defendants have or could have asserted. Defendants enter into this Stipulation solely because they consider it desirable that the Released Plaintiffs' Claims be settled and dismissed with prejudice in order to: (1) eliminate the uncertainty, burden, inconvenience, distraction, and expense of

further litigation; and (2) finally and forever put to rest, resolve, and terminate the Released Plaintiffs' Claims.

TT. Plaintiffs, for themselves and on behalf of the Class, Defendants, and Novo Nordisk agree that the Settlement is intended to and will resolve the Released Plaintiffs' Claims against the Released Defendant Parties.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Plaintiffs, for themselves and on behalf of the Class, Defendants, and Novo Nordisk that, subject to the approval of the Court and pursuant to Court of Chancery Rule 23, for the good and valuable consideration set forth herein, the Released Plaintiffs' Claims and Released Defendants' Claims shall be fully, finally, and forever settled, compromised, and dismissed on the merits and with prejudice, and are fully, finally, and forever released, resolved, remised, compromised, settled, and discharged with prejudice as to the Released Defendant Parties and the Released Plaintiff Parties, in the manner and upon the terms and conditions set forth herein.

I. Definitions

1. In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms used in this Stipulation and any exhibits attached hereto shall have the meanings specified below:

(a) “Administrative Costs” means all costs, fees, and expenses incurred by the Administrator and/or Plaintiffs’ Counsel in providing notice of the Settlement to the Class, locating Class Members, administering the Settlement, distributing the Settlement Fund, paying escrow, fees and costs, if any, and otherwise administering or carrying out the terms of the Settlement. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Notice, reimbursements to nominee owners for forwarding the Notice to their Eligible Beneficial Owners, the administrative expenses incurred and fees charged by the Administrator in connection with providing notice and administering the Settlement, and the fees, if any, of the Escrow Agent.

(b) “Administrator” means the firm of A.B. Data, Ltd.

(c) “Class” means the following Class that the Court certified on November 14, 2024:

All persons who held shares of Emisphere Technologies, Inc. common stock at closing of the Transaction⁴ and received consideration for such shares (the “Class”). Excluded from the Class are Defendants⁵ and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.

The shares of Emisphere common stock for which appraisal rights were perfected, including the shares of Emisphere common stock held by Frank Funds that are the subject of the Appraisal Action, are not included in the Class.

(d) “Class Member” means a member of the Class.

(e) “Court” means the Court of Chancery of the State of Delaware.

(f) “Defendants’ Counsel” means the law firms of Quinn Emanuel Urquhart & Sullivan, LLP; Wachtell, Lipton, Rosen & Katz; Morris, Nichols, Arsht & Tunnell LLP; and Richards, Layton & Finger, P.A.

(g) “DTC Participants” means the participants of the Depository Trust Company (“DTC”) for whom Cede & Co., Inc. (“Cede”), as nominee for DTC, was the holder of record of Emisphere common stock at the time such shares were

⁴ “Transaction” was defined as the acquisition of Emisphere Technologies, Inc. by Novo Nordisk A/S.

⁵ “Defendants” was defined as Mark H. Rachesky, MHR Fund Management LLC, MHR Holdings, LLC, MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP, MHR Institutional Partners IIA LP, MHR Advisors LLC, MHRC LLC, MHR Institutional Advisors II LLC, MHRC II LLC, Michael Weiser, and Timothy Rothwell.

paid the Acquisition Consideration because the shares were converted into the right to receive Acquisition Consideration pursuant to the terms of the Merger Agreement.

(h) “Effective Date” means the first business day following the date the Judgment becomes Final.

(i) “Eligible Beneficial Owner” means the ultimate beneficial owner of any shares of Emisphere common stock held of record by Cede at the time such shares were paid the Acquisition Consideration because the shares were converted into the right to receive the Acquisition Consideration pursuant to the Merger Agreement, provided that no Excluded Person may be an Eligible Beneficial Owner.

(j) “Eligible Record Holder” means the record holder of any shares of Emisphere common stock, other than Cede, at the time such shares were paid the Acquisition Consideration because the shares were converted into the right to receive the Acquisition Consideration pursuant to the Merger Agreement, provided that no Excluded Person may be an Eligible Record Holder.

(k) “Emisphere” means Emisphere Technologies, Inc.

(l) “Escrow Account” means the account that is maintained by the Escrow Agent and into which the Settlement Amount shall be deposited.

(m) “Escrow Agent” means Robbins Geller Rudman & Dowd LLP.

(n) “Excluded Persons” means Emisphere, Novo Nordisk, the MHR Defendants, Timothy Rothwell, Michael Weiser, John Harkey, Howard Draft, and

Timothy McInerney, as well as the members of their immediate families, and any entity in which any of them has a controlling interest, and the heirs, successors, or assignees of any such excluded party. Excluded Persons also include any trusts, estates, entities, or accounts that held Company shares for the benefit of any of the foregoing.

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

(p) “Final,” when referring to the Judgment, means the later of:

(i) entry of the Judgment and the expiration of any time for appeal, reconsideration, reargument, rehearing, or other review of the Judgment; or (ii) if any appeal or application for reconsideration, reargument, or rehearing is filed and not dismissed or withdrawn, issuance of a decision upholding the Judgment in all material respects, which is no longer subject to appeal, reconsideration, reargument, or rehearing, and the expiration of all times for the filing of any petition for reconsideration, reargument, rehearing, appeal, or review of the Judgment or any order affirming the Judgment; provided, however, that any disputes or appeals relating solely to the

amount, payment, or allocation of the Fee and Expense Award, or to the allocation or distribution of the Net Settlement Fund (including the Plan of Allocation), shall have no effect on finality for purposes of determining the date on which the Judgment becomes Final and shall not otherwise prevent, limit, or otherwise affect the Judgment, or prevent, limit, delay, or hinder entry of Judgment.

(q) “Former Defendants” means Howard Draft, John Harkey, and Timothy McInerney.

(r) “Former Defendants’ Counsel” means the law firms of Wachtell, Lipton, Rosen & Katz; Morris, Nichols, Arsht & Tunnell LLP; and Greenberg Traurig, LLP.

(s) “Initial Payment” means the \$500,000 initial payment from the Settlement Amount. The Initial Payment is to be made by Novo Nordisk. Should the Court order amounts beyond the Initial Payment be made prior to five (5) business days prior to the Settlement Hearing, those payments shall also be made by Novo Nordisk, *provided*, these amounts do not total more than \$24.5 million (\$24,500,000).

(t) “Judgment” means the Order and Final Judgment to be entered in the Action, in all material respects in the form attached as Exhibit C hereto.

(u) “Net Settlement Fund” means the Settlement Fund as defined herein less: (i) any Fee and Expense Award, and interest thereon; (ii) Administrative Costs; (iii) Taxes and Tax Expenses; and (iv) other Court-approved deductions.

(v) “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, substantially in the form attached hereto as Exhibit B.

(w) “Novo Nordisk” means Novo Nordisk A/S.

(x) “Novo Nordisk’s Counsel” means Davis Polk & Wardwell LLP; Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Ross Aronstam & Moritz LLP.

(y) “Party” means any one of, and “Parties” means, collectively, the Defendants, Plaintiffs, on behalf of themselves and the Class, and Novo Nordisk.

(z) “Person” means a natural person, individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity.

(aa) “Plaintiffs’ Counsel” means the law firms of Robbins Geller Rudman & Dowd LLP; Friedlander & Gorris, P.A.; and Johnson Fistel, LLP.

(bb) “Plan of Allocation” means the manner in which the Net Settlement Fund will be distributed, as set forth in Section II herein and the Notice or as otherwise approved by the Court.

(cc) “Released Defendant Parties” means the Defendants, the Former Defendants, Emisphere, Novo Nordisk, Emily Merger Subsidiary, Inc., and any and all of their past, present, or future immediate family members, parents, subsidiaries, affiliates, predecessors, successors, or assigns, as well as any and all of their current, former, or future officers, directors, executives, employees, investors, associates, agents, partners, limited partners, general partners, partnerships, principals, members, managers, joint ventures, stockholders, insurance carriers, underwriters, attorneys (including Defendants’ Counsel and Novo Nordisk’s Counsel), advisors, financial advisors, consultants, bankers, publicists, independent certified public accountants, auditors, accountants, creditors, administrators, heirs, executors, trustees, trusts, estates, personal or legal representatives, or other persons acting on their behalf.

(dd) “Released Defendants’ Claims” means, as against the Released Plaintiff Parties, any and all claims, complaints, liabilities, causes of action, or sanctions, including Unknown Claims, that have been or could have been asserted by the Defendants in the Action or the § 220 Action, or in any court, tribunal, forum, or proceeding, which arise out of or relate in any way to the Action or the § 220 Action; provided, however, that the Released Defendants’ Claims shall not include: (i) any claims to enforce this Stipulation; or (ii) any claims to enforce a final order and judgment entered by the Court. For the avoidance of doubt, Released

Defendants' Claims do not include: (i) any rights to, and claims for, advancement or indemnification; or (ii) 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.

(ee) "Released Plaintiff Parties" means Plaintiffs, all other Class Members, Plaintiffs' Counsel, and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing.

(ff) "Released Plaintiffs' Claims" means, as against the Released Defendant Parties to the fullest extent permitted by Delaware law, any and all manner of claims, including Unknown Claims (as defined herein), suits, actions, causes of action, demands, liabilities, losses, rights, obligations, duties, damages, diminution in value, disgorgement, debts, costs, expenses, interest, penalties, fines, sanctions, fees, attorneys' fees, expert or consulting fees, agreements, judgments, decrees, matters, allegations, issues, and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or unapparent, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, whether based on state, local, federal, foreign, statutory, regulatory,

common, or other law or rule that (i) Plaintiffs alleged, asserted, set forth, or claimed against Released Defendant Parties in the Operative Complaint or any complaint filed in the Action or in the § 220 Action; or (ii) Plaintiffs, or any other Class Member, could have alleged, asserted, set forth, or claimed against Released Defendant Parties in any court, tribunal, forum, or proceeding arising out of or relating to the facts that were alleged in the Operative Complaint or any other complaint filed in the Action, or in the § 220 Action. Notwithstanding the above, any claim to enforce the Stipulation or Judgment shall not be released.

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

(hh) “Settlement” means the settlement contemplated by this Stipulation.

(ii) “Settlement Amount” means a total of \$32 million (\$32,000,000) in cash.

(jj) “Settlement Fund” means the principal amount of \$32 million (\$32,000,000) in cash, plus any interest that may accrue on that sum after it is deposited in the Escrow Account.

(kk) “Settlement Hearing” means the hearing to be held by the Court to determine whether the proposed Settlement should be approved as fair,

reasonable, and adequate, whether a Judgment approving the Settlement should be entered in accordance with the terms of this Stipulation, and whether and in what amount any award of attorneys' fees and expenses should be paid to Plaintiffs' Counsel.

(ll) "Settlement Payment Recipients" means all Eligible Beneficial Owners and all Eligible Record Holders.

(mm) "Taxes" means all federal, state, and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund.

(nn) "Tax Expenses" means the expenses and costs incurred in connection with the calculation and payment of Taxes or the preparation of tax returns and related documents, including expenses of tax attorneys and/or accountants and mailing and distribution costs relating to filing (or failing to file) the returns described in Section VII.

(oo) "Unknown Claims" means any claims that a releasing Person does not know or suspect exists in his, her, or its favor at the time of the release of the Released Plaintiffs' Claims and Released Defendants' Claims, which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Plaintiffs' Claims and Released Defendants' Claims, upon the Effective Date, Plaintiffs, Defendants, Former

Defendants, Emisphere, and Novo Nordisk shall expressly waive, and each of the Class Members, the Released Plaintiff Parties, and Released Defendant Parties shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, relinquished, and released any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law or foreign law, which 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.

Plaintiffs, Defendants, Former Defendants, Emisphere, and Novo Nordisk acknowledge, and the Released Plaintiff Parties and the Released Defendant Parties by operation of law are deemed to acknowledge, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Plaintiffs' Claims and the Released Defendants' Claims, but that it is the intention of Plaintiffs, Defendants, Former Defendants, Emisphere, and Novo Nordisk, and by operation of law the Released Plaintiff Parties and the Released Defendant Parties, effective upon the Effective Date, to completely, fully, finally, and forever extinguish any and all Released Plaintiffs' Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, which now

exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiffs, Defendants, Former Defendants, Emisphere, and Novo Nordisk also acknowledge, and the Released Plaintiff Parties and the Released Defendant Parties by operation of law are deemed to acknowledge, that the inclusion of “Unknown Claims” in the definition of Released Plaintiffs’ Claims and Released Defendants’ Claims is separately bargained for and is a key element of the Settlement.

II. Settlement Fund

A. The Settlement Fund

2. In consideration for the full and final release, settlement, and discharge of Released Plaintiffs’ Claims and Released Defendants’ Claims, Plaintiffs, Defendants, and Novo Nordisk have agreed as follows:

(a) Novo Nordisk and MHR Defendants’ insurance carriers shall pay or cause to be paid the Settlement Amount into the Escrow Account as follows:

(i) The Initial Payment shall be paid within five (5) business days after the later of: (i) approval and entry of the Scheduling Order by the Court, or (ii) Plaintiffs’ Counsel’s delivery to Defendants’ Counsel and Novo Nordisk’s Counsel of all necessary wiring/payment information, a signed IRS Form W-9 reflecting a valid taxpayer identification number for the Escrow Account, and any

other information reasonably requested to effectuate payment into the Escrow Account.

(ii) The Settlement Amount, less the amount of the Initial Payment made in accordance with Article II Section 2(a)(i), shall be paid no later than five (5) business days prior to the Settlement Hearing, into the Escrow Account.

(b) All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Stipulation and/or further order(s) of the Court.

(c) The Settlement Fund shall be administered by the Administrator and the Escrow Agent and shall be used: (i) to pay all Administrative Costs; (ii) to pay any Fee and Expense Award; (iii) to pay any Taxes and Tax Expenses; and (iv) following the payment of (i), (ii), and (iii) herein, for subsequent disbursement of the Net Settlement Fund to the Settlement Payment Recipients as provided in Section II herein and the Plan of Allocation as approved by the Court.

(d) Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Plaintiffs' Counsel may pay from the Settlement Fund, without order of the Court, all reasonable costs and expenses actually incurred in connection with Administrative Costs up to the sum of \$500,000, which shall include the costs of providing notice. Before the Effective Date, Administrative Costs in excess of

\$500,000 may be paid from the Settlement Fund only with prior approval of the Court and Defendants. In the event that the Settlement does not become Final, Administrative Costs paid out of the Settlement Fund shall not be returned or repaid to any person or entity who or which funded the Settlement Fund. After the Effective Date, Administrative Costs may be paid as incurred pursuant to an administrative order by the Court.

(e) For the avoidance of doubt: (i) neither Plaintiffs, the Class Members, nor Plaintiffs' Counsel shall seek any monetary relief as a condition of the Settlement other than payment of the Settlement Amount in accordance with ¶ 2(a); (ii) the Released Defendant Parties shall have no liability or responsibility whatsoever in connection with the Settlement, the Settlement Fund, the investment or distribution of the Settlement Fund, the Net Settlement Fund, the administration or calculation of any payment from the Net Settlement Fund, the Plan of Allocation, Administrative Costs, Taxes, Tax Expenses, Fee and Expense Award or acts or omissions of the Administrator or the Escrow Agent, or the Action, except as specifically set forth herein; and (iii) none of Rothwell, Weiser, the Former Defendants, or any of the MHR Defendants will bear any personal responsibility for any payment in connection with this Stipulation or the Settlement under any circumstances.

B. Distribution of the Settlement Fund

3. Subject to the approval of the Court, Plaintiffs shall retain the Administrator to oversee the administration of the Settlement and distribution of the Settlement Fund.

4. As soon as practicable after the Effective Date, the Administrator shall distribute the Net Settlement Fund to the Settlement Payment Recipients as set forth in this Section II.B or as otherwise approved by the Court.

5. The Net Settlement Fund will be allocated and distributed on a per-share basis among the Settlement Payment Recipients (the “Initial Distribution”). Each Settlement Payment Recipient will receive a *pro rata* payment from the Net Settlement Fund equal to the product of (i) the number of “Eligible Shares” held by the Settlement Payment Recipient, where Eligible Shares are shares held by the Settlement Payment Recipient at closing and for which the Settlement Payment Recipient received Acquisition Consideration, and (ii) the “Per-Share Recovery” for the Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares. For the avoidance of doubt, the Net Settlement Fund will be paid to the holders of Emisphere common stock who were paid the Acquisition Consideration because their shares were converted into the right to receive Acquisition Consideration pursuant to the terms of the Merger Agreement, other than Excluded Persons.

6. Information Required for Settlement Administration:

(a) The Administrator shall promptly, and no later than 20 calendar days after execution of this Stipulation, obtain from DTC a copy of the allocation report or any similar document or data used by DTC to distribute the Acquisition Consideration and any additional information necessary to identify all DTC Participants who received the Acquisition Consideration in exchange for Emisphere common stock in connection with the Acquisition, the number of shares as to which each DTC Participant received payment (and/or the amount of consideration each DTC Participant received), and the correct address or other contact information used to communicate with the appropriate representatives of each DTC Participant that received Acquisition Consideration (collectively, the “DTC Information”);

(b) No later than 20 calendar days after execution of this Stipulation, Emisphere or Novo Nordisk shall provide to the Administrator a copy of Emisphere’s list of stockholders of record used by Emisphere or Novo Nordisk to distribute the Acquisition Consideration and any additional information necessary to identify all record holders of Emisphere common stock who received the Acquisition Consideration in exchange for Emisphere common stock in connection with the Acquisition, the number of shares as to which each record holder received payment (and/or the amount of consideration each record holder received), and the address or other contact information used to communicate with the appropriate representatives

of each record holder that received Acquisition Consideration (collectively, the “Record Holder Information”); and

(c) Defendants, Defendants’ Counsel, Former Defendants, Former Defendants’ Counsel, Novo Nordisk, and Novo Nordisk’s Counsel shall make commercially reasonable efforts to cooperate with Plaintiffs’ Counsel and the Administrator as reasonably necessary to cause DTC to provide the DTC Information. The Administrator and, to the extent they obtain access to the DTC Information and the Record Holder Information, Plaintiffs’ Counsel, shall use the DTC Information and the Record Holder Information solely for the purpose of administering the Settlement as set forth in this Stipulation, and not for any other purpose, and shall not disclose the DTC Information or the Record Holder Information to any other party except as necessary to administer the Settlement or as required by law.

7. With respect to Emisphere common stock held of record at the closing by DTC through its nominee Cede, provided that the Administrator first receives the necessary DTC Information, the Administrator shall cause the relevant portion of the Net Settlement Fund to be allocated to Eligible Beneficial Owners who held their shares through DTC Participants by first distributing that portion of the Net Settlement Fund among the DTC Participants by paying each DTC Participant the Per-Share Recovery times its respective Closing Security Position (defined below).

For each DTC Participant, the “Closing Security Position” means the number of shares of Emisphere common stock reflected on the DTC allocation report used by DTC to pay the Acquisition Consideration, less any shares that were held by an Excluded Person at the time of the Acquisition. The Administrator shall further take all appropriate steps to instruct DTC Participants to distribute the portion of the Net Settlement Fund that they receive to the Eligible Beneficial Holders on a *pro rata* basis in accordance with each Eligible Beneficial Owner’s “Closing Beneficial Ownership Position,” which means, for each Eligible Beneficial Owner, the number of shares of Emisphere common stock beneficially owned by such Eligible Beneficial Owner as of closing, for which the Eligible Beneficial Owner received payment of the Acquisition Consideration, in a similar manner to that in which the DTC Participants paid the Acquisition Consideration in connection with the Acquisition. Defendants, Former Defendants, Emisphere, and Novo Nordisk shall cooperate with Plaintiffs’ Counsel and the Administrator to provide information as to themselves and make reasonable efforts to obtain information from the other Excluded Persons and, as applicable, the relevant DTC Participants in order to ensure that no portion of the Net Settlement Fund is distributed to any Excluded Person, including information sufficient (a) to identify the number of shares of Emisphere common stock beneficially owned by each Excluded Person as of closing, (b) to identify the DTC Participant or non-Cede record holder through which

such shares were held as of closing, and (c) to enable any relevant DTC Participant to identify and exclude from payment all shares of Emisphere common stock beneficially owned by each Excluded Person as of closing (collectively, the “Excluded Person Information”).

8. With respect to Emisphere common stock held of record at the closing of the Acquisition other than by Cede, as nominee for DTC (a “Closing Non-Cede Record Position”), provided that the Administrator first receives the necessary Record Holder Information, the Administrator will distribute the *pro rata* amount of the Net Settlement Fund attributable to the Eligible Record Holders by paying directly to each Eligible Record Holder an amount equal to the Per-Share Recovery times the number of shares of Emisphere common stock comprising such Closing Non-Cede Record Position.

9. If there is any balance remaining in the Net Settlement Fund six (6) months 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 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, Plaintiffs’ Counsel may

file a motion for an administrative order instructing the Administrator to distribute any balance which still remains in the Net Settlement Fund, after provision for all anticipated 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.

10. The Net Settlement Fund shall be distributed to Settlement Payment Recipients only after the Effective Date of the Settlement and after all Administrative Costs, all Taxes and Tax Expenses, and any Fee and Expense Award have been paid from the Settlement Fund or reserved.

11. Payment pursuant to the Plan of Allocation or other such plan of allocation as may be approved by the Court shall be final and conclusive against all Class Members. Plaintiffs, Defendants, Defendants' Counsel, Novo Nordisk, and Novo Nordisk's Counsel shall have no liability whatsoever for the determination, administration, or investment of the Settlement Fund or the Net Settlement Fund; the calculation or distribution of any payment from the Settlement Fund or Net Settlement Fund; the performance or nonperformance of the Administrator, Escrow Agent, any DTC Participants, or any nominee holding shares on behalf of a Class Member; the determination, administration, payment, or withholding of Taxes (including interest and penalties) owed by the Settlement Fund; or any losses incurred in connection with any of the foregoing.

12. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, Defendants, the Released Defendant Parties, Novo Nordisk, the MHR Defendants' insurance carriers, and any other person or entity who or which paid any portion of the Settlement Amount shall have no right to the return of the Settlement Amount or any portion thereof for any reason whatsoever, including the inability to locate Class Members or the failure of Settlement Payment Recipients to deposit settlement funds distributed by the Administrator, but the foregoing does not limit the right of the Defendants and Released Defendant Parties to enforce the terms of and their rights under this Stipulation.

13. The Plan of Allocation proposed in this Stipulation is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. No Party can cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Defendants and Novo Nordisk shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action and shall not have any involvement with the application of the Court-approved plan of allocation except as explicitly provided herein.

14. All proceedings with respect to the administration of the Settlement and distribution pursuant to the proposed Plan of Allocation or other such plan of

allocation as may be approved by the Court shall be subject to the exclusive jurisdiction of the Court.

15. Defendants and Novo Nordisk shall have no input, responsibility, or liability for any claims, payments, or determinations by the Administrator concerning the distribution of the Settlement Fund, except to provide information as required in ¶ 7 hereof.

C. The Escrow Agent

16. The Escrow Agent shall invest the Settlement Fund, deposited pursuant to ¶ 2 above, in instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S. Government or an agency thereof, or in money funds holding only instruments backed by the full faith and credit of the U.S. Government, and shall reinvest the proceeds of these instruments at their then-current market rates. The Settlement Fund shall bear all risks related to investment of the Settlement Amount.

17. The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of counsel for Plaintiffs, Defendants, and Novo Nordisk.

18. Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Class as are consistent with the terms of this Stipulation.

III. Scope of the Settlement

19. Upon entry of the Judgment, the Action shall be dismissed with prejudice. The foregoing dismissal is without fees, costs, or expenses, except as expressly provided in this Stipulation.

20. Upon the Effective Date, Plaintiffs and each and every member of the Class, on behalf of themselves and any other person or entity who could assert any of the Released Plaintiffs' Claims on their behalf, and to the fullest extent permitted by law, including in light of the releases set forth in ¶ 21, the other Released Plaintiff Parties and any and all of the predecessors, successors, assigns, agents, representatives, trustees, executors, administrators, estates, heirs, and transferees of any of the foregoing persons, whether immediate or remote, shall and shall be deemed to fully, finally, and forever release, relinquish, settle, and discharge the Released Defendant Parties from and with respect to every one of the Released Plaintiffs' Claims on the terms and conditions set forth herein, and shall thereupon be forever barred and enjoined from commencing, instituting, instigating, facilitating, asserting, continuing, maintaining, participating in, or prosecuting any and all Released Plaintiffs' Claims against the Released Defendant Parties.

21. Upon the Effective Date, Defendants, on behalf of themselves and any other person or entity who could assert any of the Released Defendants' Claims on their behalf, and to the fullest extent permitted by law, including in light of the

releases set forth in ¶ 20, the other Released Defendant Parties, shall or shall be deemed to, fully, finally, and forever release, relinquish, settle, and discharge the Released Plaintiff Parties from and with respect to every one of the Released Defendants' Claims on the terms and conditions set forth herein, and shall thereupon be forever barred and enjoined from commencing, instituting, instigating, facilitating, asserting, continuing, maintaining, participating in, or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

IV. Submission of the Settlement to the Court for Approval

22. As soon as practicable after this Stipulation has been executed, Plaintiffs and Defendants shall jointly apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A, providing for, among other things: (a) the dissemination of the Notice, which includes a Plan of Allocation, substantially in the form attached hereto as Exhibit B; and (b) the scheduling of the Settlement Hearing to consider: (i) the proposed Settlement; (ii) the joint request of the Parties that the Judgment be entered in all material respects in the form attached hereto as Exhibit C; (iii) Plaintiffs' Counsel's Fee Application (defined below), including any application by Plaintiffs for incentive awards; and (iv) any objections to any of the foregoing. The Parties agree to take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order. If the Administrator does not receive, at least five business days before the scheduled date of the Settlement

Hearing, any additional information required under ¶¶ 6 or 7, then Plaintiffs' Counsel may seek a postponement or adjournment of the Settlement Hearing for a period reasonably sufficient for the Administrator to obtain the missing information; provided, however, that if the Settlement Hearing has been postponed or adjourned and the Administrator does not receive all of the information required under ¶¶ 6 or 7 within six (6) months of the date of this Stipulation, the Parties shall confer in good faith, including with respect to an alternative plan of allocation of the Settlement Fund to be presented to the Court, and seek to schedule as promptly as practicable the Settlement Hearing and obtain Court approval of the Stipulation and the Settlement.

23. The Parties and their attorneys agree to use their individual and collective reasonable best efforts to obtain Court approval of the Stipulation. The Parties and their attorneys further agree to use their individual and collective reasonable best efforts 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, the Stipulation provided for hereunder and the entry of the Judgment. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation, to jointly request at the Settlement Hearing that the Judgment be entered, and to take all reasonable and appropriate

steps to obtain a Final Judgment in all material respects in the form attached hereto as Exhibit C.

24. If, before the Settlement becomes Final, any action is filed in any court, arbitration tribunal, administrative forum, or other forum of any kind asserting a Released Plaintiffs' Claim, Plaintiffs agree to cooperate in good faith with any and all reasonable actions by Defendants seeking a stay or dismissal of such action or proceeding, and preventing and opposing entry of any interim or final relief in favor of the plaintiff(s) in any such action or proceeding.

V. Conditions of Settlement

25. This Settlement shall be subject to the following conditions, which the Parties shall use their reasonable best efforts to effectuate:

(a) the entry of the Scheduling Order in all material respects in the form attached hereto as Exhibit A;

(b) the entry of the Judgment in all material respects in the form attached hereto as Exhibit C, including Releases substantially in the form set out herein and dismissal of the Action with prejudice as to Defendants;

(c) the absence of any adjustment to the Court's prior certification of the Class as a non-opt-out class, and continued existence of the Class as defined by the Court's November 8, 2024 order;

(d) the deposit of the Settlement Amount in the Escrow Account in accordance with ¶ 2; and

(e) the occurrence of the Effective Date.

VI. Attorneys' Fees and Expenses

26. Plaintiffs' Counsel will submit an application or applications (the "Fee Application") for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Amount and an award of litigation expenses or charges in an amount not to exceed \$1,200,000, plus any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund until paid (together, the "Fee and Expense Award"). The Fee Application will be wholly inclusive of any request for attorneys' fees and expenses on behalf of any Class Member or his, her, or its counsel in connection with the Settlement or the litigation of the Action or § 220 Action to date, and any application by Plaintiffs for incentive awards. Plaintiffs' Counsel reserve the right to make, and Defendants reserve the right to oppose, subsequent fee applications should the situation warrant it.

27. Any award of attorneys' fees and expenses by the Court pursuant to the Fee Application (*i.e.*, the Fee and Expense Award), or any subsequent fee applications, including any application by Plaintiffs for incentive awards, shall be paid out of, and not be in addition to, the Settlement Fund.

28. The Fee and Expense Award shall be payable to Plaintiffs' Counsel from the Settlement Fund immediately upon entry of an order by the Court granting the Fee and Expense Award. In the event that (i) the Effective Date does not occur, (ii) this Stipulation is disapproved, canceled, or terminated pursuant to its terms, (iii) the Settlement otherwise does not become Final for any reason, or (iv) the Fee and Expense Award is disapproved, reduced, reversed, or otherwise modified, as a result of any further proceedings, including any successful collateral attack, then Plaintiffs' Counsel shall, within five (5) business days after Plaintiffs' Counsel receive notice of any such failure of the Effective Date to occur, termination of this Stipulation, failure of the Settlement to become Final, or disapproval, reduction, reversal, or other modification of the Fee and Expense Award, return to the Escrow Account, as applicable, either the entirety of the Fee and Expense Award or the difference between the attorneys' fees and expenses awarded by the Court in the Fee and Expense Award, and any attorneys' fees and expenses ultimately and finally awarded on appeal, further proceedings on remand, or otherwise. For the avoidance of doubt, no Court order or reversal on appeal of any order concerning the Plan of Allocation or the Fee and Expense Award, or any other fee and expense award in connection with the Action, shall operate to terminate or cancel this Stipulation and/or the Settlement, or constitute grounds for termination or cancellation of this Stipulation and/or the Settlement.

29. The disposition of the Fee Application is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted or that any Fee and Expense Award be made. The Fee Application may be considered separately from the proposed Stipulation.

30. Plaintiffs' Counsel warrant that no portion of any Fee and Expense Award shall be paid to Plaintiffs or any Class Member, except as approved by the Court.

31. The Released Defendant Parties and Novo Nordisk shall have no input into, or responsibility or liability for, the allocation by Plaintiffs' Counsel of the Fee and Expense Award.

VII. Escrow Account and Taxes

32. The Parties agree as follows:

(a) The Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1, and the regulations promulgated thereunder. The Parties and the Escrow Agent further agree that the Settlement Fund shall be established pursuant to the Court's subject matter jurisdiction within the meaning of Treas. Reg. § 1.468B-1(c)(1). In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 32, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest

permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” (as defined in Treas. Reg. § 1.468B-2(k)(3)) shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the Settlement Fund (including the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the elections described in ¶ 32(a) hereof) shall be consistent with this ¶ 32 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶ 32(c) hereof.

(c) Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Settlement Payment Recipients any funds

necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)). Neither the Released Defendant Parties nor their counsel shall have any responsibility or liability for any Taxes, Tax Expenses, administration of Taxes and Tax Expenses, or any acts or omissions of the Escrow Agent (or its agents). The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 32.

VIII. Termination of Settlement; Effect of Termination

33. Defendants, Plaintiffs, or Novo Nordisk shall have the right (but not the obligation) to terminate the Settlement and this Stipulation by providing written notice of their election to do so to all other Parties within ten (10) business days of: (a) the Court's declining to enter the Scheduling Order, in any material respect; (b) the Court's declining to enter the Judgment approving the Settlement, in any material respect; (c) modification or reversal of the Judgment approving the Settlement, in any material respect on or following reargument, reconsideration, rehearing, appellate review, remand, collateral attack, or other proceedings; or (d) failure to satisfy any of the other conditions of Section V.

34. Neither modification nor a reversal on appeal of the Fee and Expense Award or the Plan of Allocation shall be deemed a material modification of the

Judgment or this Stipulation, shall operate to terminate or cancel this Stipulation and/or the Settlement, or shall constitute grounds for termination or cancellation of this Stipulation and/or the Settlement.

35. If either: (a) the Effective Date does not occur; (b) this Stipulation is disapproved, canceled, or terminated pursuant to its terms; or (c) the Settlement otherwise does not become Final for any reason, then (i) the Settlement and this Stipulation (other than this Section, ¶ 28, and Sections IX-X) shall be canceled and terminated; (ii) 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*; (iii) the releases provided under the Settlement shall be null and void; (iv) the fact of the Settlement shall not be admissible in any proceeding before any court or tribunal; (v) all proceedings respecting the Released Plaintiffs' Claims (and, if applicable, the Released Defendants' Claims) shall revert to their status before the Settlement; (vi) the Parties shall proceed in all respects as if the Settlement and this Stipulation (other than this Section) had not been entered into by the Parties; and (vii) the Settlement Amount (including any accrued interest thereon in the Escrow Account), less any Administrative Costs and Taxes and Tax Expenses actually incurred and paid or payable, and including any Fee and Expense Award or portion thereof required to be returned to the Escrow Account by Plaintiffs' Counsel pursuant to ¶ 30 above, shall be refunded by the Escrow Agent, within thirty (30) calendar days after such

cancellation or termination, directly to the parties who made payments pursuant to ¶ 2(a) in proportion to the portion of the Settlement Amount funded by such parties.

IX. No Admission of Wrongdoing

36. Nothing in this Stipulation (whether or not consummated) shall be deemed or argued to be evidence of, or to constitute an admission or concession by Defendants, 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, negligence, or liability or any kind by any of them, which each of them expressly denies.

37. The Parties further mutually covenant that neither this Stipulation, nor the fact or any terms of the Settlement, or any communications relating thereto, is evidence of, or an admission or concession by Plaintiffs, any Class Member, any Released Plaintiff Parties, Defendants, or any of the Released Defendant Parties of, any fault, liability, or wrongdoing whatsoever, or as to the validity or merit of any claim or defense alleged or asserted in any proceeding, including the Action. Accordingly, neither the Settlement, the Stipulation, any terms of this Stipulation, any negotiations or proceedings in connection therewith, nor any documents or statements referred to herein or therein, (a) shall (i) be argued to be, used, or

construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, act, or omission on the part of any of the Released Defendant Parties or Released Plaintiff Parties, or of any infirmity of any defense, or of any damage to Plaintiffs or any other Class Member, or any lack of merit of any claim, or lack of damages to Plaintiffs or any other Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Parties or Released Plaintiff Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Defendant Parties or Released Plaintiff Parties or any injury, or damages to any person or entity, or (b) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Judgment may be introduced in any proceeding subject to Delaware Rule of Evidence 408 and any and all other state and federal law corollaries thereto, whether in the Court or otherwise, as may be necessary to argue and establish that the Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and Judgment or to secure any indemnification, advancement, or insurance rights or proceeds of any of the Released Defendant Parties or Released Plaintiff Parties or as otherwise required by law.

X. Miscellaneous Provisions

38. Plaintiffs, Defendants, and Novo Nordisk represent and agree that the terms of the Settlement were negotiated at arm's length and in good faith, with the assistance of the Honorable Layn R. Phillips of Phillips ADR as mediator, and reflect a settlement that was reached voluntarily based upon adequate information, sufficient discovery, and consultation with experienced legal counsel.

39. All of the exhibits attached hereto (the "Exhibits") are material and integral parts of the Stipulation, and shall be incorporated by reference as though fully set forth herein.

40. This Stipulation and the Exhibits constitute the entire agreement among Plaintiffs, Defendants, and Novo Nordisk, and supersede any prior agreements among Plaintiffs, Defendants, and/or Novo Nordisk, with respect to the Settlement. No representations, warranties, or inducements have been made to or relied upon by any party concerning this Stipulation or its Exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

41. This Stipulation is and shall be binding upon and shall inure to the benefit of the Released Defendant Parties, the Released Plaintiff Parties (including the Class Members), and the respective legal representatives, heirs, executors, administrators, transferees, successors, and assigns of all such foregoing persons and

entities and upon any corporation, partnership, or other entity into or with which any of the foregoing may merge, consolidate, or reorganize.

42. This Stipulation may not be amended or modified, nor may any of its provisions be waived, except by written instrument signed by Plaintiffs' Counsel, Defendants' Counsel and Novo Nordisk's Counsel, or their successors-in-interest.

43. The waiver by Plaintiffs, Defendants, or Novo Nordisk of any breach of this Stipulation shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation.

44. Plaintiffs represent and warrant that Plaintiffs are members of the Class and that none of Plaintiffs' claims or causes of action referred to in this Stipulation has been assigned, encumbered, or otherwise transferred in whole or in part.

45. 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.

46. Each counsel signing this Stipulation warrants that such counsel has been duly empowered and authorized to sign this Stipulation on behalf of his or her client(s).

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

48. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any portion of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between the parties, and all parties have contributed substantially and materially to the preparation of this Stipulation.

49. Without further Order of the Court, Plaintiffs, Defendants, and Novo Nordisk may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

50. To the extent permitted by law, all agreements made and orders entered during the course of the Action related to the confidentiality of documents or information shall survive this Stipulation.

51. This Stipulation may be executed in counterparts by electronic signature, email, PDF, fax, or original signature by any of the signatories hereto and as so executed shall constitute one agreement.

52. This Stipulation, the Settlement, and any and all disputes arising out of or relating in any way to this Stipulation or Settlement, whether in contract, tort, or otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law principles.

53. The consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for

the purpose of entering orders providing for any award of attorneys' fees and expenses and enforcing the terms of this Stipulation.

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

55. Plaintiffs, Defendants, and Novo Nordisk agree that, in the event of any breach of this Stipulation, all of Plaintiffs', Defendants', and Novo Nordisk's rights and remedies at law, equity, or otherwise are expressly reserved.

IN WITNESS WHEREOF, the parties by their undersigned attorneys have executed this Stipulation as of June 27, 2025.

<p>OF COUNSEL:</p> <p>ROBBINS GELLER RUDMAN & DOWD LLP Randall J. Baron 655 West Broadway, Suite 1900 San Diego, CA 92101 619/231-1058</p> <p><i>Co-Lead Counsel for Plaintiffs</i></p> <p>JOHNSON FISTEL, LLP Brett M. Middleton 501 West Broadway, Suite 800 San Diego, CA 92101 619/230-0063</p> <p><i>Additional Plaintiffs' Counsel</i></p> <p>OF COUNSEL:</p> <p>QUINN EMANUEL URQUHART & SULLIVAN, LLP Andrew J. Rossman Jonathan B. Oblak Jesse Bernstein Colin E. Gillespie Charles Sangree 51 Madison Avenue, 22nd Floor, New York, NY 10010 212/849-7000</p>	<p>ROBBINS GELLER RUDMAN & DOWD LLP</p> <hr/> <p><i>/s/ Christopher H. Lyons</i></p> <p>Christopher H. Lyons (Bar No. 5493) Tayler D. Bolton (Bar No. 6640) 1521 Concord Pike, Suite 301 Wilmington, DE 19803 (302) 467-2660</p> <p><i>Co-Lead Counsel for Plaintiffs</i></p> <p>FRIEDLANDER & GORRIS, P.A. Joel Friedlander (Bar No. 3163) Jeffrey M. Gorris (Bar No. 5012) Christopher M. Foulds (Bar No. 5169) David Hahn (Bar No. 6417) 1201 N. Market St., Suite 2200 Wilmington, Delaware 19801 302/573-3500</p> <p><i>Co-Lead Counsel for Plaintiffs</i></p> <p>RICHARDS, LAYTON & FINGER, P.A.</p> <hr/> <p><i>/s/ Blake Rohrbacher</i></p> <p>Blake Rohrbacher (#4750) Andrew L. Milam (#6564) Sandy Xu (#6966) One Rodney Square 920 N. King Street Wilmington, DE 19801 302/651-7700</p>
--	---

<p>OF COUNSEL:</p> <p>WACHTELL, LIPTON, ROSEN & KATZ William Savitt Lauren M. Kofke 51 West 52nd Street New York, NY 10019 212/403-1000</p> <p>OF COUNSEL:</p> <p>DAVIS POLK & WARDWELL LLP Andrew Ditchfield Cristina M. Rincon 450 Lexington Ave New York, New York 10017 (212) 450-4000</p>	<p><i>Attorneys for Defendants Mark H. Rachesky, MHR Fund Management LLC, MHR Holdings LLC, MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP, MHR Institutional Partners IIA LP, MHR Advisors LLC, MHRC LLC, MHR Institutional Advisors II LLC, and MHRC II LLC</i></p> <p>MORRIS, NICHOLS, ARSHT & TUNNELL LLP</p> <p><i>/s/ Megan Ward Cascio</i></p> <hr/> <p>Megan Ward Cascio (#3785) Matthew R. Clark (#5147) 1201 N. Market Street Wilmington, Delaware 19801 302/658-9200 mcascio@morrisnichols.com mclark@morrisnichols.com</p> <p><i>Attorneys for Defendants Timothy Rothwell and Michael Weiser</i></p> <p>ROSS ARONSTAM & MORITZ LLP</p> <p><i>/s/ Bradley R. Aronstam</i></p> <hr/> <p>Bradley R. Aronstam (Bar NO. 5129) Adam D. Gold (Bar NO. 6412) Hercules Building 1313 North Market Street, Suite 1001 Wilmington, Delaware 19801 (302) 576-1600</p> <p><i>Attorneys for Emisphere Technologies, Inc. and Novo Nordisk A/S</i></p>
--	--