



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE EMISPHERE TECHNOLOGIES,  
INC. STOCKHOLDERS LITIGATION

CONSOLIDATED  
C.A. No. 2021-0025-NAC

**ORDER AND FINAL JUDGMENT**

A hearing having been held before the Court on the 17th day of October, 2025, to determine (1) whether the terms and conditions of the settlement proposed in the Stipulation and Agreement of Compromise and Settlement between: (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; (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”), dated June 27, 2025 (the “Stipulation”), which is incorporated herein by reference, provides for a fair, reasonable, and adequate settlement for the Released Plaintiffs’ Claims and (2) whether the Order and Final Judgment should be entered in the above-captioned

consolidated class action (the “Action”), and the Court having considered all matters submitted to it at the hearing and otherwise;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties for purposes of the Settlement.

3. The Court finds that the mailing and internet distribution of the Notice: (a) were implemented in accordance with the Scheduling Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Plan of Allocation and releases to be provided thereunder); (iii) Plaintiffs’ Counsel’s application for an award of attorneys’ fees and expenses, including any application by Plaintiffs for incentive awards; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation, and Plaintiffs’ Counsel’s application for attorneys’ fees and expenses, including any application by Plaintiffs for incentive awards; and (v) their right to appear at the Settlement Hearing; (d) constituted due,

adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

4. On November 14, 2024, the Court certified a non-opt-out Class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) consisting of:

All persons who held shares of Emisphere Technologies, Inc. common stock at closing of the Transaction<sup>1</sup> and received consideration for such shares (the “Class”). Excluded from the Class are Defendants<sup>2</sup> and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.<sup>3</sup>

5. The Court also appointed Plaintiffs as Class Representatives, and Robbins Geller Rudman & Dowd LLP; Friedlander & Gorris, P.A.; and Johnson Fistel, LLP (“Plaintiffs’ Counsel”) as counsel for the Class.

6. The Settlement of this Action as provided for in the Stipulation is approved as fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Class.

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<sup>1</sup> “Transaction” was defined as the acquisition of Emisphere Technologies, Inc. by Novo Nordisk A/S.

<sup>2</sup> “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.

<sup>3</sup> For the avoidance of doubt, 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.

7. The formula for the calculation of payments to eligible Class Members as set forth in the Plan of Allocation provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund with due consideration having been given to administrative convenience and necessity. No proceedings or court order with respect to approval of the Plan of Allocation shall in any way affect or delay the finality of this Order and Final Judgment (or otherwise preclude this Order and Final Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

8. Pursuant to Court of Chancery Rule 23, this Court approves the Settlement in all respects, and the Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register of Chancery is directed to enter and docket this Order and Final Judgment.

9. Without further order of the Court, Plaintiffs, Defendants, and Novo Nordisk may agree to reasonable extensions of time to carry out any provisions of the Settlement.

10. 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 of the Stipulation, 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 in the Stipulation, 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.

11. 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 of the Stipulation, 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 in the Stipulation, 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.

12. Plaintiffs' Counsel are hereby awarded attorneys' fees in the sum of \$7,285,744.93, which sum the Court finds to be fair and reasonable, and payment of costs and expenses in the amount of \$996,830.09. Plaintiffs are awarded an incentive award of \$5,000.00 each, which shall be paid out of the attorneys' fees awarded pursuant to the foregoing sentence. Such sums shall be paid pursuant to the provisions of the Stipulation. Neither Plaintiffs, nor Plaintiffs' Counsel, nor any Class Member shall make, or assist any other counsel in making, any application for an award of fees, costs, or expenses in any other jurisdiction from the Released Defendant Parties.

13. The binding effect of this Order and Final Judgment and the obligations of Plaintiffs, Class Members, Defendants, Emisphere, and Novo Nordisk under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of attorneys' fees, costs, and expenses or the Plan of Allocation.

14. Plaintiffs, the Defendants, Emisphere, Novo Nordisk, and all Class Members shall be and are deemed bound by the Stipulation and this Order and Final Judgment. This Order and Final Judgment, including the release of all Released Plaintiffs' Claims against all Released Defendant Parties, and Released Defendants' Claims against all Released Plaintiff Parties, shall have *res judicata*, collateral

estoppel and all other preclusive effect in all pending and future lawsuits, arbitrations, or other proceedings involving any of the released parties.

15. Neither this Order and Final Judgment, the Stipulation, nor the fact or any terms of the Settlement, nor any communications relating thereto, is evidence of, or an admission or concession by Plaintiffs, any Class Member, any Released Plaintiff Parties, the 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, this Order and Final Judgment, any terms of the Stipulation or this Order and Final Judgment, 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

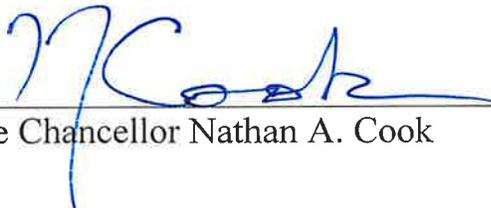
liability, fault, or wrongdoing of the Released Defendant Parties or Released Plaintiff Parties or any injury, or damages to any person or entity, or (b) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Judgment 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, insurance rights, or proceeds of any of the Released Defendant Parties or Released Plaintiff Parties or as otherwise required by law.

16. If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Order and Final Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation; this Order and Final Judgment shall be without prejudice to the rights of Plaintiffs, the Defendants, Emisphere, Novo Nordisk, or the Class; and Plaintiffs and the Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation.

17. Without affecting the finality of this Order and Final Judgment in any way, the Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

18. The Action is hereby dismissed in its entirety and with prejudice. The Parties are to bear their own fees, costs, and expenses except as otherwise provided in this Order and Final Judgment and the Stipulation.

IT IS HEREBY ORDERED this 8th day of December, 2025.

  
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Vice Chancellor Nathan A. Cook