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GRANTED**EFiled: Jul 21 2025 01:29PM EDT**
Transaction ID 76695655
Case No. 2021-0025-NAC**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**IN RE EMISPHERE TECHNOLOGIES,
INC. STOCKHOLDERS LITIGATION} CONSOLIDATED
} C.A. No. 2021-0025-NAC**[PROPOSED] SCHEDULING ORDER**

WHEREAS, on November 14, 2024, the Court certified this Action as a non-opt-out class action under Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) on behalf of the following class (the “Class”) and appointed Plaintiffs as Class Representatives, and Plaintiffs’ Counsel as counsel for the Class:

All persons who held shares of Emisphere Technologies, Inc. common stock at closing of the Transaction¹ and received consideration for such shares (the “Class”). Excluded from the Class are Defendants² and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.³

WHEREAS, the parties to the above-captioned action (the “Action”), along with non-party Novo Nordisk A/S, have entered into a Stipulation and Agreement of Compromise and Settlement dated June 27, 2025 (the “Stipulation”), which sets

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

² “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.

³ 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.

forth the terms and conditions for the proposed settlement and resolution of certain claims asserted in the Action, subject to review and approval by this Court pursuant to Court of Chancery Rule 23 upon notice to the Class;

NOW, THEREFORE, this ____ day of _____, 2025, upon application of the parties, IT IS HEREBY ORDERED that:

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

2. A hearing (the “Settlement Hearing”) will be held on _____, 2025, at __:__.m., in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, to: (a) determine whether the Court should approve the Settlement as fair, reasonable, and adequate and in the best interests of the Class; (b) determine whether the Action should be dismissed with prejudice by entry of the Judgment pursuant to the Stipulation, releasing the Released Plaintiffs’ Claims and Released Defendants’ Claims against the respective released parties, and barring and enjoining prosecution of any and all released claims against any and all respective released parties; (c) consider the application by Plaintiffs’ Counsel for attorneys’ fees, costs, and payment of expenses, including any application by Plaintiffs for incentive awards; (d) hear and determine any objections to the Settlement and/or to the application of Plaintiffs’ Counsel for an award of attorneys’ fees, costs, and expenses, including

any application by Plaintiffs for incentive awards; and (e) rule on such other matters as the Court may deem appropriate.

3. The Court may adjourn and reconvene the Settlement Hearing, or any adjournment thereof, including the consideration of the application for attorneys' fees, costs, and expenses, including any application by Plaintiffs for incentive awards, without further notice to Class Members other than oral announcement at the Settlement Hearing or any adjournment thereof or a notation on the docket in the Action, and retains jurisdiction over the Parties and all Class Members to consider all further applications arising out of or connected with the proposed Settlement.

4. The Court may approve the Settlement at or after the Settlement Hearing, according to the terms and conditions of the Stipulation, as it may be modified by the Parties, without further notice to Class Members. Further, the Court may render its judgment and order the payment of attorneys' fees and expenses, or plaintiff incentive awards, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice of any kind.

5. The Court approves, in form and substance, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), substantially in the form attached as Exhibit B to the Stipulation.

6. The Court finds that the mailing and publication of the Notice in substantially the manner set forth in this Scheduling Order: (i) constitutes the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder and the Plan of Allocation), of Plaintiffs' Counsel's application for an award of attorneys' fees and litigation expenses, including any application by Plaintiffs for incentive awards, of their right to object to the Settlement, and/or their right to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

7. The Court approves A.B. Data, Ltd. as the Administrator.

8. Defendants and Defendants' Counsel shall make commercially reasonable efforts to cooperate with Plaintiffs' Counsel and the Administrator as reasonably necessary to obtain any additional information required under Paragraph 6 of the Stipulation or any other information needed for administration of the Settlement.

9. Not less than sixty (60) calendar days before the Settlement Hearing, the Administrator shall cause the Notice, substantially in the form attached as Exhibit B to the Stipulation, to be mailed by first-class mail, to each Person who was a record holder of Emisphere common stock as of December 8, 2020, at their last known address appearing in the stock transfer records maintained by or on behalf of Emisphere. All stockholders of record of Emisphere who were not also the beneficiary of any shares of common stock held by them of record shall be directed in the Notice to forward promptly the Notice to the beneficial owners of those shares. The Administrator shall use reasonable efforts to give notice to such beneficial owners by: (i) making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners; or (ii) mailing additional copies of the Notice to beneficial owners as reasonably requested by record holders who provide names and addresses for such beneficial owners.

10. The Parties shall provide further notice to the Class Members within ten (10) business days of the entry of this Scheduling Order by causing the Stipulation and the Notice to be posted on a Settlement website established and maintained by the Administrator.

11. The costs associated with the distribution of the Notice or any additional notice shall be paid in accordance with the Stipulation.

12. At least forty (40) business days before the Settlement Hearing, Plaintiffs shall file any opening briefs in support of the proposed Settlement, and Plaintiffs' Counsel shall file their application for an award of attorneys' fees, costs, and expenses, including any application by Plaintiffs for incentive awards, together with any supporting affidavit(s). If any brief, application, or supporting paper is filed under seal, Plaintiffs' Counsel shall promptly provide an un-redacted copy of such brief, affidavit, or paper to any person who has: (i) appeared in the Action as an objector or stated an intent to object in accordance with Paragraph 14, below; and (ii) served upon Counsel for the Parties, in the manner provided under Paragraph 14, a signed undertaking in the form attached as Exhibit A to the Stipulation and Order for the Production and Exchange of Confidential Information.

13. At least twenty (20) business days before the date of the Settlement Hearing, Plaintiffs shall file with the Court proof of mailing of the Notice.

14. At the Settlement Hearing, any Class Member who desires to do so may appear personally or by counsel, and show cause, if any, why the Settlement of the Action in accordance with and as set forth in the Stipulation should not be approved as fair, reasonable, and adequate and in the best interests of the Class; why the Judgment should not be entered in accordance with and as set forth in the Stipulation; or why the Court should not grant Plaintiffs' Counsel's application for an award of attorneys' fees, costs, and expenses incurred in the Action, including any application

by Plaintiffs for incentive awards; provided, however, that unless the Court in its discretion otherwise directs, no Class Member, or any other person, shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the Judgment to be entered thereon, or the allowance of fees, costs, and expenses to Plaintiffs' Counsel, and no papers, briefs, pleadings, or other documents submitted by any Class Member or any other person (excluding a Party to the Stipulation) shall be received or considered, except by order of the Court for good cause shown, unless, no later than fifteen (15) business days prior to the Settlement Hearing, such person files with the Register in Chancery, the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, and serves upon the attorneys listed below: (a) a written and signed notice of intention to appear, which states the name, address, telephone number, and email address (if available) of the objector or, if represented, his, her, or its counsel; (b) documentation evidencing membership in the Class; (c) a written and detailed statement of objections to any matter before the Court; and (d) the grounds therefor or the reasons for wanting to appear and be heard, as well as all documents or writings the Court shall be asked to consider. These writings must also be served, on or before such filing with the Court, electronically, by hand, or by first-class mail upon the following attorneys:

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Counsel for the Parties are directed to promptly furnish each other with copies of any and all objections that might come into their possession.

15. Unless the Court orders otherwise, any Class Member who or which does not make his, her, or its objection in the manner provided herein shall: (a) be deemed to have waived and forfeited his, her, or its right to object, including any right of appeal, to any aspect of the proposed Settlement or Plaintiffs' Counsel's application for an award of attorneys' fees and litigation expenses; (b) be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, or the attorneys' fees and litigation expenses requested or awarded; and (c) be deemed to have waived and be forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning the Settlement or the requested or awarded attorneys' fees and litigation expenses.

16. At least five (5) business days before the date of the Settlement Hearing, the Parties may file any reply in response to any objections to the Settlement and Plaintiffs' Counsel shall file any reply in response to any objections to their application for an award of attorneys' fees, costs, and expenses, including any

application by Plaintiffs for incentive awards. If any reply is filed under seal, Plaintiffs' Counsel shall promptly provide an un-redacted copy of such reply to any person who has: (i) submitted an objection in compliance with Paragraph 14, above; (ii) requested an un-redacted copy of the reply; and (iii) provided to Plaintiffs' Counsel a signed undertaking in the form attached as Exhibit A to the Stipulation and Order for the Production and Exchange of Confidential Information.

17. Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination by the Court of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and all other members of the Class, from instituting, commencing, or prosecuting any and all of the Released Plaintiffs' Claims against any and all of the Released Defendant Parties.

18. 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 the Stipulation and/or further order(s) of the Court.

19. If the Settlement is approved by the Court at or following the Settlement Hearing, the Court shall enter an Order and Final Judgment, substantially in the form of Exhibit C to the Stipulation.

20. If the Settlement is terminated as provided in the Stipulation, this Scheduling Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Scheduling Order shall be without prejudice to the rights of Plaintiffs, the other Class Members, and the Defendants, and Plaintiffs and the Defendants shall revert to their status before the Settlement, as provided in the Stipulation.

21. The Court may, for good cause, extend any of the deadlines set forth in this Scheduling Order without further notice.

IT IS HEREBY ORDERED this ____ day of _____, 2025.

Vice Chancellor Nathan A. Cook

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

Court: DE Court of Chancery Civil Action

Judge: Nathan A Cook

File & Serve

Transaction ID: 76548823

Current Date: Jul 21, 2025

Case Number: 2021-0025-NAC

Case Name: CONF ORDER CON/Sw/ 2021-0497-JRS, 2021-0502-JRS, 2021-0576-JRS IN RE
EMISPHERE TECHNOLOGIES INC STOCKHOLDERS LITIGATION

Court Authorizer: Nathan A Cook

Court Authorizer

Comments:

The Settlement Hearing will be held on October 17, 2025, at 1:30 p.m. at the Leonard L. Williams Justice Center in Wilmington, Delaware.

/s/ Judge Nathan A Cook