

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE EMISPHERE TECHNOLOGIES, INC.
STOCKHOLDERS LITIGATION

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

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT
OF CLASS ACTION**

TO: ALL PERSONS WHO HELD SHARES OF EMISPHERE TECHNOLOGIES, INC. (“EMISPHERE” OR THE “COMPANY”) COMMON STOCK AS OF THE DECEMBER 8, 2020 CLOSING OF THE ACQUISITION OF EMISPHERE BY NOVO NORDISK A/S AND RECEIVED CONSIDERATION FOR SUCH SHARES (THE “CLASS”)

PLEASE READ ALL OF THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THE ACTION (AS DEFINED HEREIN). IF THE COURT (AS DEFINED HEREIN) APPROVES THE PROPOSED SETTLEMENT DESCRIBED BELOW, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE PROPOSED SETTLEMENT OR PURSUING THE RELEASED PLAINTIFFS’ CLAIMS AGAINST THE RELEASED DEFENDANT PARTIES.

IF YOU HELD EMISPHERE COMMON STOCK FOR THE BENEFIT OF OTHERS, READ THE SECTION BELOW ENTITLED “INSTRUCTIONS TO BROKERS AND OTHERS WHO HELD FOR THE BENEFIT OF OTHERS.”

I. PURPOSE OF NOTICE

The purpose of this Notice of Pendency and Proposed Settlement of Class Action (“Notice”) is to inform you of the proposed settlement (the “Settlement”) of the above-captioned lawsuit (the “Action”) pending in the Court of Chancery of the State of Delaware (the “Court”).¹

Pursuant to the Stipulation, 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, have agreed to settle and dismiss with prejudice their claims against (i) defendants Timothy Rothwell and Michael Weiser; and (ii) 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”). Non-party Novo Nordisk A/S (“Novo Nordisk,” and together with the Plaintiffs and the Defendants, the “Parties” and each a “Party”), along with Plaintiffs and Defendants, have also agreed to the Settlement on the terms described herein and set forth in the Stipulation.

The Settlement resolves all actual and potential claims by the Class against the Released Defendant Parties alleged in the Operative Complaint in the Action, including (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

¹ The complete terms of the Settlement are set forth in the Stipulation and Agreement of Compromise and Settlement (the “Stipulation”), which can be viewed and/or downloaded at www.emispherestockholderssettlement.com. All capitalized terms in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation.

minority stockholders all material information necessary to understand their wrongdoing; (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) 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. In consideration of the Settlement, a total of \$32 million (\$32,000,000) in cash will be deposited into an account and will be distributed to the Settlement Payment Recipients (described herein) according to the Plan of Allocation (described herein).

This Notice also informs you of your right to participate in a hearing before the Court to be held on October 17, 2025, at 1:30 p.m., in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (the “Settlement Hearing”) 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.

This Notice describes the rights you may have under the Settlement and what steps you may, but are not required to, take in relation to the Settlement.

If the Court approves the Settlement, the Parties to the Action will ask the Court at the Settlement Hearing to enter a Judgment dismissing the Action with prejudice as to the Defendants.

If you are a member of the Class, you will be bound by any judgment entered in the Action. You may not opt out of the Class.

II. BACKGROUND OF THE ACTION

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE SETTling PARTIES.

On November 5, 2020, the board of directors (the “Board”) of Emisphere Technologies, Inc., 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”).

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.

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.

On July 2, 2021, Plaintiffs filed their Verified Class Action Complaint. In addition to the current Defendants, the Verified Class Action Complaint named former Emisphere directors John Harkey, Howard Draft, and Timothy McInerney as defendants.

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.

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").

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

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.

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.

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.

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.

On August 2, 2023, after briefing and oral argument, 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.

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.

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.

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.

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 Transaction and received consideration for such shares (the "Class"). Excluded from the Class are Defendants 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.

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

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

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.

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

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.

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.

III. THE SETTLEMENT CONSIDERATION

In consideration of the Settlement, Novo Nordisk and MHR Defendants' insurance carriers shall cause their respective portions of a total of \$32 million (\$32,000,000) in cash (the "Settlement Amount") to be deposited into an account to be (subject to Court approval of the Settlement) distributed to all Class Members entitled to receive a portion of the Settlement Fund pursuant to an approved Plan of Allocation.

IV. THE PLAN OF ALLOCATION

Plaintiffs' Counsel will work with the Administrator to oversee the administration of the Settlement and distribution of the Settlement Fund, and to ensure that the Settlement Payment Recipients do not include Excluded Persons. The Settlement Fund will be administered by the Administrator and the Escrow Agent and shall be used (subject to Court approval): (i) to pay all Administrative Costs; (ii) to pay any Fee and Expense Award, including any plaintiff incentive awards; (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 below. This Section IV describes the Plan of Allocation provided for under Section II.B of the Stipulation.

Following the Effective Date, the Administrator shall distribute the Net Settlement Fund to the Settlement Payment Recipients on a per-share basis. Settlement Payment Recipients do not have to submit a claim form or take any other action in order to receive payment.

Only the Settlement Payment Recipients will qualify to share in the distribution of the Settlement Fund to the Class after payment of settlement administration expenses, attorneys' fees and expenses, and Taxes and Tax Expenses.

RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. ONLY PERSONS WHO HELD SHARES OF EMISPHERE COMMON STOCK AT CLOSING OF THE TRANSACTION AND RECEIVED CONSIDERATION FOR SUCH SHARES, OTHER THAN THE EXCLUDED PERSONS, ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

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.

The Net Settlement Fund will not be distributed to the Settlement Payment Recipients until the Court has approved the Settlement and the proposed Plan of Allocation (or such other allocation plan as the Court may approve), the time periods for any petition for rehearing, appeal or review, whether by certiorari or otherwise, of the Judgment approving the Settlement and the Plan of Allocation have expired, and the Judgment becomes Final.

The Court has jurisdiction to allow, disallow, or adjust on equitable grounds the claim of any Class Member. The Court also has the power to modify the Plan of Allocation without further notice to Class Members.

As soon as practicable after the Effective Date, the Administrator will distribute the Net Settlement Fund to the Settlement Payment Recipients as set forth below.

(a) 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.

(b) With respect to Emisphere common stock held of record at the closing by DTC through its nominee Cede, provided that the Administrator has 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”).

(c) 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.

(d) 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.

(e) 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.

(f) 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 the Stipulation.

V. THE RELEASES

Pursuant to the Stipulation, in consideration of the benefits provided by the Settlement, the Judgment is proposed to, among other things, provide for dismissal of the Action with prejudice on the merits without fees, costs, or expenses to any Party or any Party's attorneys, experts, advisors, agents, or representatives (except as provided in the Stipulation) and provide for the following releases.

Released Plaintiffs' Claims

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 paragraph 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.

"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

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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.

“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.

“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.

Released Defendants’ Claims

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 paragraph 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.

"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 the 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.

"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.

THE SETTLEMENT OF THE ACTION, IF APPROVED BY THE COURT, ON THE TERMS AND CONDITIONS SET FORTH IN THE STIPULATION, WILL INCLUDE, BUT NOT BE LIMITED TO, A RELEASE OF ALL CLAIMS WHICH WERE OR COULD HAVE BEEN ASSERTED IN THIS ACTION AGAINST THE RELEASED DEFENDANT PARTIES.

THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF THE CLAIMS MADE BY PLAINTIFFS OR THE DEFENSES OF THE DEFENDANTS. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RELIEF IN ANY FORM OR RECOVERY IN ANY AMOUNT COULD BE HAD IF THE ACTION WAS NOT SETTLED.

VI. REASONS FOR THE SETTLEMENT

Plaintiffs and Plaintiffs' Counsel have reviewed and analyzed the facts and circumstances relating to the claims asserted in the Action, as known by Plaintiffs to date. Plaintiffs' Counsel have reviewed a significant number of documents, taken a significant number of depositions, and exchanged expert reports with Defendants. Plaintiffs' Counsel believe that they have received sufficient information to evaluate the merits of the proposed Settlement.

Plaintiffs' Counsel have analyzed the evidence adduced during their investigation, and have researched the applicable law with respect to the claims of Plaintiffs and the Class against the Defendants and the potential defenses thereto. Based on this investigation and discovery, Plaintiffs have decided to enter into the Settlement, after taking into account, among other things, (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 in the Stipulation.

The entry by Plaintiffs and the Defendants into the Stipulation is not an admission as to the merit or lack of merit of any claims or defenses asserted in the Action. Each Party denies any and all allegations of wrongdoing,

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fault, liability, or damage in the Action. Neither the Stipulation, nor the fact or any terms of the Settlement, or any communications relating thereto, is evidence of, or an admission or concession by any Party or their counsel, any Class Member, or any of the Released Defendant Parties or Released Plaintiff Parties, of any fault, liability, or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or asserted in any such action or proceeding.

VII. APPLICATION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES AND FOR PLAINTIFFS' INCENTIVE AWARD

Concurrent with seeking final approval of the Settlement, Plaintiffs' Counsel will submit an application or applications to the Court for an award for 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 interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund until paid. Any such award will be paid out of, and not be in addition to, the Settlement Fund. Plaintiffs may also submit an application or applications to the Court for an incentive award in an amount not to exceed a total of \$15,000 each, to be paid out of the attorneys' fee award.

VIII. SETTLEMENT HEARING

The Court has scheduled a hearing, which will be held on October 17, 2025, at 1:30 p.m. (the "Settlement Hearing"), at 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.

The Court may adjourn and reconvene the Settlement Hearing, or any adjournment thereof, including the hearing on 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. The Court may also approve the Settlement at or after the Settlement Hearing with such modification(s) to the Stipulation as may be consented to by the Parties without further notice to Class Members. Further, the Court may render its judgment and order the payment of attorneys' fees, costs, and expenses, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice of any kind.

IX. RIGHT TO APPEAR AND OBJECT

Any Class Member who objects to the Settlement and/or the Judgment to be entered by the Court, and/or Plaintiffs' Counsel's application for attorneys' fees, costs, and expenses, including any application by Plaintiffs for incentive awards, or otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present any evidence or argument that may be proper and relevant; ***provided, however***, that no member of the Class may be heard and no papers or briefs submitted by or on behalf of any members of the Class shall be received and considered, except by Order of the Court for good cause shown, unless, no later than fifteen (15) business days before the Settlement Hearing (*i.e.*, by September 26, 2025), such person files with the Register in Chancery, the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center,

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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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*Attorneys for Emisphere Technologies, Inc. and Novo
Nordisk A/S*

Unless the Court otherwise directs, no person will be entitled to object to the approval of the Settlement, the Judgment to be entered in the Action, or the fee, cost, and expense application, including any application by Plaintiffs for incentive awards, nor will he, she, or it otherwise be entitled to be heard, except by serving and filing a written objection as described above.

Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including the right to appeal) and will be forever barred from raising such objection in this or any other action or proceeding.

Any Class Member who does not object to the Settlement, the fee, cost, and expense application, including any application by Plaintiffs for incentive awards, or any other matter stated above need not do anything.

X. ORDER AND JUDGMENT OF THE COURT

If the Court determines that the Settlement, as provided for in the Stipulation, is fair, reasonable, adequate, and in the best interests of the Class, the Court will enter an Order and Final Judgment, which will, among other things:

- (a) Determine that the form and manner of notice of the Settlement was the best notice practicable under the circumstances and fully complied with each of the requirements of due process, Delaware Court of Chancery Rule 23, and applicable law;
- (b) Determine that all members of the Class are bound by the Judgment;
- (c) Determine that the Settlement is fair, reasonable, and adequate and in the best interests of the Class;
- (d) Dismiss the Action with prejudice without the award of any fees, costs, or expenses or the grant of further relief except for the payments contemplated by the Stipulation;
- (e) Fully, finally, and forever release, settle, and discharge the Released Defendant Parties from and with respect to every one of the Released Plaintiffs' Claims;
- (f) Bar and enjoin Plaintiffs and any Class Members from instituting, commencing, or prosecuting any and all Released Plaintiffs' Claims against any Released Defendant Party;
- (g) Award Plaintiffs' Counsel such attorneys' fees, costs, and expenses, and award Plaintiffs such incentive awards to be paid out of such attorneys' fees, as the Court deems fair and reasonable; and
- (h) Fully, finally, and forever, release, settle, and discharge the Released Plaintiff Parties from and with respect to every one of the Released Defendants' Claims.

XI. INSTRUCTIONS TO BROKERS AND OTHERS WHO HELD FOR THE BENEFIT OF OTHERS

Brokerage firms, banks, and/or other persons or entities who held shares of Emisphere common stock for the benefit of others must, within seven (7) days of the receipt of this Notice, either: (a) provide to the Administrator at the address below the name and last known address of each person or organization for whom or which you held any such securities during such time periods; or (b) request additional copies of this Notice from the Administrator at the address below, which will be provided to you free of charge, and, within seven (7) days of your receipt of such copies, mail the Notice directly to the beneficial owners of the securities referred to herein. You are entitled to reimbursement for your reasonable expenses incurred in connection with the foregoing, including reimbursement of postage expenses and the cost of ascertaining the names and addresses of beneficial owners. Reasonable expenses actually incurred in connection with the foregoing includes up to \$0.03 per record for providing names, addresses, and email addresses to the Claims Administrator; up to a maximum of \$0.03 per Notice mailed by you, plus postage at the rate used by the Claims Administrator; or \$0.03 per Notice sent by email. These expenses will be paid by the Administrator from the Settlement Fund upon request and submission

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of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Administrator at info@EmisphereStockholderSettlement.com or at the following address:

Emisphere Stockholder Settlement
c/o A.B. Data, Ltd.
P.O. Box 173103
Milwaukee, WI 53217

XII. SCOPE OF THE NOTICE

The Notice is not all-inclusive. The references in this Notice to the pleadings in the Action, the Stipulation, and other papers and proceedings are only summaries and do not purport to be comprehensive. For the full details of the Action, claims which have been asserted in the Action, and the terms and conditions of the Settlement, including a complete copy of the Stipulation, Class Members are referred to the Court files in the Action. A complete copy of the Stipulation can also be found at www.emispherestockholdersettlement.com.

You or your attorney may examine the Court files from the Action during regular business hours of each business day at the office of 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.

Questions or comments about the Settlement or the Action may be directed to counsel for the Plaintiffs:

Christopher H. Lyons
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Randall J. Baron
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& DOWD LLP
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San Diego, CA 92101

Counsel for Plaintiffs

DO NOT WRITE OR TELEPHONE THE COURT.

Dated: August 4, 2025

BY ORDER OF THE COURT

Register in Chancery

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