



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE MH HABERKORN 2006
TRUST, MATTHEW H.
HABERKORN, KILEY ROSE
HABERKORN, and TIPPY LIVING
TRUST U/A DTD SEPTEMBER 10,
2013, on behalf of themselves and all
other similarly situated stockholders of
Empire Resorts, Inc.

Plaintiffs,

v.

KIEN HUAT REALTY III LIMITED,
EMANUEL R. PEARLMAN, KEITH
L. HORN, GERARD EWE KENG
LIM, EDMUND MARINUCCI,
NANCY A. PALUMBO, RYAN
ELLER, GENTING MALAYSIA
BERHAD, GENTING (USA)
LIMITED

Defendants.

C.A. No. 2020-0619-KSJM

**STIPULATION AND AGREEMENT
OF COMPROMISE AND SETTLEMENT**

This Stipulation and Agreement of Compromise and Settlement (the “Stipulation”), dated June 13, 2022, is entered into by and among the following parties in the above-captioned action (the “Action”): (i) plaintiffs The MH Haberkorn 2006 Trust, Matthew H. Haberkorn, Kiley Rose Haberkorn, and the Tippy Living Trust U/A DTD September 10, 2013 (“Plaintiffs”); and (ii) defendants Kien Huat Realty III Limited (“Kien Huat”), Emanuel R. Pearlman (“Pearlman”),

Keith L. Horn (“Horn”), Gerard Ewe Keng Lim (“Gerard Lim”), Edmund Marinucci (“Marinucci”), Nancy A. Palumbo (“Palumbo”), Ryan Eller (“Eller”), Genting Malaysia Berhad (“GenM”), and Genting (USA) Limited (“Genting USA,” together with GenM, “Genting”) (collectively, “Defendants”). Plaintiffs and Defendants are the “Parties” and are each individually a “Party.”

This Stipulation states the terms for the Settlement and resolution of this matter as between Plaintiffs and Defendants to fully and finally release, resolve, compromise, settle and discharge the Released Defendants’ Claims against the Released Defendant Parties, and the Released Plaintiffs’ Claims against the Released Plaintiff Parties, subject to the approval of the Court of Chancery of the State of Delaware (the “Court”). All capitalized terms herein shall have the meanings ascribed to them in Section A.1. below, unless defined elsewhere in this Stipulation.

WHEREAS:

A. On February 8, 2018, Empire Resorts, Inc. (“Empire”) opened Resorts World Catskills (“Resorts World”).

B. Kien Huat was the holder of more than 88% of Empire’s outstanding common stock during this time. Given the percentage of its stock ownership, in February 2016, Kien Huat had agreed not to pursue a going-private transaction for Empire before February 2019, unless conditioned on prior approval of a committee

of independent directors and a majority of minority stockholders. This commitment was subsequently extended through February 8, 2020.

C. On November 6, 2018, Empire and Kien Huat entered into a commitment letter (as amended and restated on November 9, 2018) whereby Kien Huat agreed to purchase up to \$126 million of Series F Preferred Stock.

D. On November 14, 2018, Empire and Hillside (New Media Holdings) Limited (“Hillside NMH”), an affiliate of bet365 Group Limited, entered into a purchase agreement whereby Hillside NMH agreed to purchase up to \$50 million of Empire common stock. On the same day, Empire and Hillside (New York) LLC (“Hillside NY”), an affiliate of bet365 Group Limited (collectively with Hillside NMH and Hillside NY, “bet365”), entered into a collaboration agreement providing bet365 the right to operate Empire’s retail sportsbook at Resorts World, and Empire’s online sportsbook, online casino and/or table games, and online poker, if New York regulators legalized retail and online sports betting.

E. In March 2019, Empire retained Morowitz Gaming Advisors, LLC and Global Gaming & Hospitality Capital Advisors, LLC (collectively, “GGH Morowitz”) to advise Empire in connection with potentially relocating Empire’s video lottery terminal (“VLT”) facility in Monticello, New York.

F. On June 20, 2019, the New York legislature approved the relocation of Empire’s Monticello VLT facility to Orange County, New York (“Orange County”).

G. On June 21, 2019, the Empire Board of Directors (the “Board”) formed a special committee consisting of Horn, Marinucci, and Palumbo (the “Special Committee”). The Special Committee selected Paul, Weiss, Rifkind, Wharton & Garrison LLP as its legal advisor and Moelis & Company LLC as its financial advisor.

H. On July 25, 2019, Kien Huat filed with the Securities and Exchange Commission (“SEC”) an amended Schedule 13D, attaching as an exhibit a letter from Kien Huat to the Special Committee stating that Kien Huat “[did] not intend to provide further equity or debt financing beyond [their] obligations . . . while Empire remain[ed] a public company.” The letter further indicated that, if requested by the Special Committee, Kien Huat would be willing to submit a proposal to acquire the remaining outstanding shares of Empire common stock that it did not already own.

I. On August 5, 2019, affiliates of Kien Huat and GenM made an offer to acquire the outstanding shares of Empire common stock for \$9.74 per share in cash.

J. On August 19, 2019, Empire announced a definitive agreement and plan of merger (the “Merger Agreement”) whereby affiliates of Kien Huat and GenM would acquire the outstanding shares of Empire common stock (the “Merger”) for \$9.74 per share in cash (the “Merger Consideration”).

K. On October 11, 2019, Empire filed its Definitive Proxy Statement (the “Proxy”) with the SEC in connection with the Merger. The Proxy disclosed that the special meeting of stockholders of Empire was scheduled for November 13, 2019.

L. On October 16, 2019, Plaintiffs served Empire with a demand to inspect books and records pursuant to 8 *Del. C.* § 220 (“Section 220”). Between October 23, 2019 and November 12, 2019, Plaintiffs negotiated with Empire for the production of certain documents, with Empire agreeing to, and producing 2,527 pages of documents in response to Plaintiffs’ Section 220 demand.

M. On November 6, 2019, Empire filed a Form 8-K, with the SEC supplementing the Proxy (“Supplemental 8-K”).

N. On November 12, 2019, Plaintiffs filed a Verified Complaint for Inspection of Books and Records Under 8 *Del. C.* § 220 (“Plaintiffs’ 220 Complaint” or “220 Action”).

O. On November 13, 2019, at the special meeting of Empire stockholders, the holders of a majority of Empire’s common stock voted to approve the Merger.

P. On November 15, 2019, the Merger closed.

Q. On November 26, 2019, Empire filed an Answer and Defenses to Plaintiffs’ 220 Complaint.

R. On December 4, 2019, Plaintiffs served Empire with Plaintiffs' First Set of Interrogatories Directed to Empire. On December 11, 2019, Empire served 32 pages of Responses and Objections to Plaintiffs' First Set of Interrogatories.

S. On December 11, 2019, Empire served Plaintiffs with Empire's First Set of Interrogatories Directed to Plaintiffs and Empire's First Request for Production of Documents Directed to Plaintiffs. On December 23, 2019, Plaintiffs served 37 pages of Responses and Objections to Empire's First Set of Interrogatories Directed to Plaintiffs and served Responses and Objections to Empire's First Request for the Production of Documents. Plaintiffs produced documents in response to Empire's First Request for Production of Documents on a rolling basis on December 30, 2019, January 8, 2020, and January 9, 2020.

T. Following extensive meeting and conferring, on December 16, 2019 and December 20, 2019, Empire served additional Supplemental Responses and Objections to Plaintiffs' First Set of Interrogatories.

U. On December 20, 2019, Plaintiffs filed their Pre-Trial Opening Brief in advance of the trial on Plaintiffs' 220 Action.

V. On January 8, 2020, Plaintiffs served Empire with a Redaction Log in connection with Plaintiffs' document production in Plaintiffs' 220 Action.

W. On January 9, 2020, Plaintiffs served Empire with a Privilege Log and Supplemental Redaction Log in connection with Plaintiffs' document production in Plaintiffs' 220 Action.

X. On January 15, 2020, Empire filed its Answering Pre-Trial Brief in advance of the trial on Plaintiffs' 220 Action.

Y. On January 22, 2020, Plaintiffs filed their Pre-Trial Reply Brief in advance of the trial on Plaintiffs' 220 Action.

Z. On January 30, 2020, the Court held a full day trial on Plaintiffs' 220 Action.

AA. On February 20, 2020, the Court issued judgment via a bench ruling in the 220 Action, ordering the production by Empire of certain additional categories of documents, and denying Plaintiffs' request for other documents. Defendants produced an additional 620 pages of documents to Plaintiffs as a result of the Court's judgment in the 220 Action. All told, Plaintiffs received from Empire 3,147 pages of documents and produced to Empire 1,988 pages of documents in Plaintiffs' 220 Action.

BB. On April 13, 2020, Empire provided Plaintiffs with a Privilege and Redaction Log in connection with Empire's document productions in the 220 Action.

CC. On July 24, 2020, Plaintiffs, on behalf of themselves and all other similarly situated public stockholders of Empire, filed a Verified Stockholder Class Action Complaint (the “Complaint”) in the action captioned *The MH Haberkorn 2006 Trust, Matthew H. Haberkorn, Kiley Rose Haberkorn, and Tippy Living Trust U/A DTD September 10, 2013 v. Empire Resorts, Inc., Kien Huat Realty III Limited, Emanuel R. Pearlman, Keith L. Horn, Gerard Ewe Keng Lim, Edmund Marinucci, Nancy A. Palumbo, Ryan Eller, Genting Malaysia Berhad, Genting (USA) Limited, and Hercules Topco LLC*, C.A. No. 2020-0619.

DD. In the Complaint, Plaintiffs alleged that Kien Huat, Genting, Pearlman, Horn, Gerard Lim, Marinucci, Palumbo, and Eller breached their fiduciary duties to Plaintiffs and the Class in connection with their (i) decision to cause Empire to enter into the Merger Agreement, (ii) recommendation that Empire stockholders approve the Merger, and (iii) failure to disclose all material information in the Proxy. Plaintiffs also alleged that Hercules Topco LLC (“Hercules”) aided and abetted the breaches of fiduciary duty by Kien Huat and/or Genting. Plaintiffs further alleged that to the extent Genting was not found to be a controller of Empire, in the alternative, Genting aided and abetted Kien Huat’s breaches of fiduciary duty.

EE. On October 28, 2020, Defendants, Empire, and Hercules filed briefs in support of their motions to dismiss the Complaint.

FF. On November 16, 2020, Plaintiffs served on GenM Plaintiffs' First Request for the Production of Documents Directed to Defendant GenM in Support of Jurisdictional Discovery ("Jurisdictional Discovery Requests").

GG. On December 15, 2020, the Court held oral argument on Plaintiffs' request for jurisdictional discovery and denied Plaintiffs' request.

HH. On December 16, 2020, GenM served Plaintiffs with its Responses and Objections to Plaintiffs' Jurisdictional Discovery Requests.

II. On January 4, 2021, Plaintiffs filed an omnibus answering brief in opposition to the Defendants', Empire's, and Hercules' motions to dismiss.

JJ. On March 1, 2021, Defendants, Empire, and Hercules filed reply briefs in further support of their motions to dismiss the Complaint.

KK. On April 29, 2021, the Court held oral argument on the motions to dismiss the Complaint.

LL. On July 23, 2021, the Court issued a bench ruling on the motions to dismiss the Complaint, dismissing Plaintiffs' claims against Empire and Hercules. The remaining Defendants' motions to dismiss were otherwise denied.

MM. On August 27, 2021, Plaintiffs served Defendants with Plaintiffs' First Request for Production of Documents. Defendants responded to Plaintiffs' First Request for Production of Documents on October 11, 2021.

NN. On September 1, 2021, Defendants served Plaintiffs with Defendants' First Request for Production of Documents. Plaintiffs responded to Defendants' First Request for Production of Documents on October 15, 2021.

OO. On September 24, 2021, Defendants filed Answers to the Complaint.

PP. Between October 14, 2021 and February 15, 2022, Plaintiffs served five third-party subpoenas on GGH Morowitz, Hillside (New York) LLC, J. Frank Associates, LLC d/b/a Joele Frank, Wilkinson Brimmer Katcher, Moelis & Company LLC, and Union Gaming Securities LLC.

QQ. Plaintiffs received 175,265 pages of documents in connection with discovery in this Action, including: 122,969 pages of documents produced by Defendants and 52,296 pages of documents produced by third parties. Plaintiffs produced an additional 73 pages of documents to Defendants in connection with discovery in this Action beyond the production of documents Plaintiffs made in Plaintiffs' 220 Action.

RR. On April 4, 2022, the Parties participated in a mediation before Phillips ADR Enterprises Mediator, Michelle Yoshida ("Ms. Yoshida"). The full-day mediation did not result in a resolution of the Action at that time.

SS. Between April 7, 2022 and April 14, 2022, the Parties engaged in further arm's-length negotiations facilitated by Ms. Yoshida in an attempt to resolve the Action. On April 14, 2022, Ms. Yoshida made a mediator's proposal to resolve

the matter for a \$12,000,000 payment to the Class, which the Parties separately accepted on April 15, 2022.

TT. On April 28, 2022, the Parties executed a term sheet, in which, among other things, Plaintiffs, on behalf of the Class, agreed to fully and finally settle the claims asserted against Defendants in the Action in exchange for a cash payment of \$12,000,000 to the Class (the “Settlement Amount”). As part of the negotiations of the term sheet, the Plaintiffs and bet365 negotiated to exclude bet365 from the Class.

UU. The entry by Defendants 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 asserted in the Action. Defendants assert that this Stipulation in no way constitutes an admission of any wrongdoing on the part of Defendants, nor an admission of liability or obligation by any of the Parties, nor a waiver by Defendants of any applicable defense and is being entered into solely for the purpose of compromising disputed claims and avoiding the costs and inconvenience of further litigation. Defendants expressly deny all assertions of wrongdoing, fault, liability, or damage arising out of any of the conduct, acts or omissions alleged against the Defendants and otherwise deny that they engaged in any wrongdoing or committed any violation of law or breach of duty, but wish to settle and resolve all claims relating to or arising out of the Action on the terms and conditions stated in this Stipulation.

VV. The entry by Plaintiffs into this Stipulation is not an admission as to the lack of merit of any claims asserted in the Action. Rather, in negotiating and evaluating the terms of this Settlement, Plaintiffs' Counsel considered: the legal and factual defenses to Plaintiffs and the Class Members' claims that Defendants raised and might have raised throughout the pendency of the Action and the benefits to be provided to the Class through the payment of the Settlement Amount. Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement set forth in this Stipulation is fair, reasonable, and adequate to Plaintiffs and the Class and that it confers substantial benefits upon the Class, particularly when compared to the risk and uncertainties of continued litigation.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by Plaintiffs, for themselves and on behalf of the Class, and Defendants that, subject to the approval of the Court and pursuant to Delaware Court of Chancery Rule 23 and the other conditions set forth in Section B, for the good and valuable consideration set forth herein and conferred on Plaintiffs and the Class, the sufficiency of which is hereby acknowledged, the Action against Defendants shall be finally and fully settled, compromised and dismissed, on the merits and with prejudice, and that the Released Defendants' Claims shall be finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Defendant Parties, and the Released Plaintiffs' Claims shall be finally

and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Plaintiff Parties, in the manner set forth herein.

A. Definitions

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

(a) “Account” means the interest bearing escrow account designated by Plaintiffs’ Counsel and maintained by the Settlement Administrator into which the Settlement Amount shall be deposited.

(b) “Administrative Costs” means all costs and expenses associated with administering or carrying out the terms of the Settlement, including the cost of providing Notice, other than the costs incurred by Defendants when providing the stockholder register and/or transfer records from Empire’s former transfer agents as set forth in Section F.

(c) “Class” means a class consisting of all record and beneficial owners of Empire common stock as of November 15, 2019, who are not excluded pursuant to the below, and who were allegedly damaged thereby as alleged in the Complaint. Those to be excluded from the Class include: (i) the Defendants, Empire

and any parent, subsidiary, or affiliate thereof,¹ (ii) any person or entity who is or was between and including February 1, 2019 and November 15, 2019 a partner, executive officer, director, or controlling person of any person or entity excluded in subsection (i) above, (iii) members of the Immediate Families of any Defendants who are natural persons, (iv) any entity in which any Defendant has or had on November 15, 2019 a controlling interest, (v) bet365 Group Limited, Hillside (New Media Holdings) Limited, Hillside (New York) LLC and any parent, subsidiary, or affiliate thereof, (vi) Defendants' directors' and officers' liability insurance carries, and any parents, affiliates, or subsidiaries thereof, (vii) persons who held Empire common stock that was borrowed as part of a short sale transaction (only with respect to their holdings in such borrowed shares), and (viii) the legal representatives, agents, heirs, successors, and assigns of any excluded party (collectively, the "Excluded Stockholders").

(d) "Class Member" means a member of the Class.

(e) "Closing" means the consummation of the Merger on November 15, 2019, as of which date each outstanding share of Empire common stock not held by Kien Huat or Genting was converted into the right to receive \$9.74 per share in cash.

¹ The term "affiliate" as it relates to defendants Horn, Marinucci and Palumbo shall be limited to entities for which they served as directors or named executive officers in the period between, and including, February 1, 2019 and November 15, 2019.

(f) “Defendants’ Counsel” means the law firms of Cleary Gottlieb Steen & Hamilton LLP, Richards, Layton & Finger, P.A. and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

(g) “DTC” means the Depository Trust Company.

(h) “DTC Participant” means the brokers, dealers, banks, trust companies, clearing corporations, and other financial organizations on whose behalf the DTC holds securities.

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

(j) “Eligible Class Members” means Class Members who held shares of Empire common stock at the Closing and received or were entitled to receive the Merger Consideration for their Eligible Shares.

(k) “Eligible Shares” means shares of Empire common stock held by Eligible Class Members at the Closing and for which Eligible Class Members received or were entitled to receive Merger Consideration.

(l) “Excluded Shares” means shares of Empire common stock held by Excluded Stockholders at the Closing that were entitled to receive Merger Consideration.

(m) “Final,” when referring to the Judgment, means (i) entry of the Judgment or (ii) if there is an objection to the Settlement, the expiration of any time

for appeal or review of the Judgment, or, if any appeal is filed and not dismissed or withdrawn, issuance of a decision upholding the Judgment on appeal in all material respects, which is no longer subject to review upon appeal or other review, and the expiration of the time for the filing of any petition for reargument, 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 attorneys' fees and expenses 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 the Judgment.

(n) "Immediate Family" means parents, children (including stepchildren), spouses, and siblings. As used in this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(o) "Judgment" means the Order and Final Judgment to be entered by the Court in the Action in all material respects in the form attached as Exhibit C hereto.

(p) "Net Settlement Fund" means the Settlement Fund less (i) any Fee and Expense Award and (ii) Administrative Costs, including costs of Notice.

(q) “Plaintiffs’ Counsel” means the law firms of Kessler Topaz Meltzer & Check, LLP and Bernstein Litowitz Berger & Grossmann LLP.

(r) “Plan of Allocation” means the plan to distribute the Settlement Fund to Eligible Class Members, attached hereto as Exhibit D.

(s) “Released Claims” means Released Plaintiffs’ Claims and Released Defendants’ Claims, collectively or individually.

(t) “Released Defendant Parties” means Defendants and each of their respective past or present Immediate Family members, trusts of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of any Defendants’ Immediate Family, trustees, executors, beneficiaries, distributees, agents, fiduciaries, partners, control persons, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, stockholders, principals, officers, directors, advisors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, personal or legal representatives, heirs, estates, administrators, insurers and attorneys (including Defendants’ Counsel).

(u) “Released Defendants’ Claims” means any and all claims for relief, damages, compensation, demands, suits, actions, injuries, losses, costs, expenses and/or causes of action of any kind or character, whether at law or in equity, regardless of legal theory, whether foreseen or unforeseen, contingent or actual,

liquidated or unliquidated, known or unknown, which Plaintiffs or any Class Member, ever had, now has, or may have against any of the Released Defendant Parties, whether class or individual in nature, whether based on state, local, foreign, federal (including, but not limited to, any state or federal securities laws), statutory, regulatory, common or other law or rule, which are based upon, arise out of, involve, directly or indirectly, or relate in any way to any of the facts, allegations, conduct, actions, inaction, breaches of fiduciary duty or other obligations, statements, misrepresentations, omissions, transactions, events or occurrences that were, could have been, or in the future could be alleged, asserted, or claimed in the Action or relate to the subject matter thereof, in any court (whether state or federal), tribunal, forum, or proceeding; provided, however, that the Released Defendants' Claims shall not include (i) the right to enforce the Settlement or this Stipulation or (ii) claims solely for statutory appraisal with respect to the Merger pursuant to 8 *Del. C.* § 262 by Empire stockholders, and any successors-in-interest thereto, who properly perfected such claims for appraisal and have not otherwise waived their appraisal rights.

(v) "Released Parties" means Released Plaintiff Parties and Released Defendant Parties, collectively or individually.

(w) “Released Plaintiff Parties” means Plaintiffs, all other Class Members, and their respective trustees, officers, directors, employees, agents, advisors, experts and attorneys (including Plaintiffs’ Counsel).

(x) “Released Plaintiffs’ Claims” means any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, against any Released Plaintiff Parties (i) arising out of and/or relating in any way to the prosecution of, participation in, and/or settlement of the Action or (ii) that otherwise in any way relate to the subject matter of the Action. The Released Plaintiffs’ Claims shall not include claims to enforce this Stipulation or Plaintiffs’ Counsel’s application for a Fee and Expense Award.

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

(z) “Settlement Administrator” means the settlement administrator to be selected by Plaintiffs’ Counsel to administer the Settlement.

(aa) “Settlement Amount” means twelve million U.S. dollars in cash (\$12,000,000).

(bb) “Settlement Fund” means the Settlement Amount plus all interest earned thereon.

(cc) “Settlement Hearing” means the hearing to be held by the Court under Delaware Court of Chancery Rule 23 to consider, among other things, final approval of the Settlement, certification of a class for the purpose of the Settlement, and any Fee and Expense Award to Plaintiffs’ Counsel.

B. Settlement Consideration

2. In consideration for the full and final release, settlement and discharge of any and all Released Defendants’ Claims against the Released Defendant Parties, the Parties have agreed to the following consideration:

(a) *Settlement Payment:*

(i) Within ten (10) calendar days after the later of (1) the Court’s entry of the Scheduling Order setting the Settlement Hearing, or (2) Plaintiffs’ Counsel providing complete and accurate payment instructions and a W-9 for the Settlement Fund, the Defendants shall cause \$100,000 of the Settlement Amount pursuant to the Settlement to be deposited into the Account.

(ii) Within thirty (30) business days after the later of (1) the Court’s entry of the Scheduling Order setting the Settlement Hearing, or (2) Plaintiffs’ Counsel providing complete and accurate payment instructions and a W-9 for the Settlement Fund, the Defendants shall cause the remaining \$11,900,000 of the Settlement Amount pursuant to the Settlement to be deposited into the Account.

(iii) The Settlement Fund shall be used (1) to pay any Fee and Expense Award, (2) to pay all Administrative Costs, including the costs of Notice, and following the payment of (1) and (2), for subsequent distribution of the Net Settlement Fund to the Eligible Class Members as provided in paragraph 2(b) herein.

(iv) The Settlement Fund—less expenses paid, incurred, or due and owing consistent with this Stipulation and Notice and other Administrative Costs—shall be returned to the persons that paid their respective parts of the Settlement Amount within ten (10) business days in the event that the Judgment is not approved by the Court in substantially the form attached hereto as Exhibit C, is not upheld on appeal, or is otherwise vacated.

(b) *Distribution of the Settlement Fund:*

Following the Effective Date, the Net Settlement Fund will be distributed to the Eligible Class Members by the Settlement Administrator as ordered by the Court pursuant to the Plan of Allocation attached hereto as Exhibit D. The Defendants shall not object to the Plan of Allocation and shall have no input, responsibility or liability for any claims, payments or determinations by the Settlement Administrator with respect to Class Member claims for payment under this Stipulation. If there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Plaintiffs' Counsel may petition the Court for

reimbursement of their time at applicable hourly rates and expenses incurred in administration of the Settlement Fund. After the Court's consideration and authorization of any such reimbursement, Plaintiffs' Counsel shall, if feasible, reallocate such balance among Eligible Class Members who received the initial distribution in an equitable and economic fashion. Thereafter, or if a second distribution is not feasible, any balance which still remains in the Net Settlement Fund shall escheat to the State of Delaware.

(c) *Costs of Notice and Settlement Administration:*

(i) All Administrative Costs of the Settlement will be paid out of the Settlement Fund. In the event that the Settlement is not consummated, money paid or costs incurred for administrative purposes, including Notice purposes, shall not be returned or repaid to Defendants, their insurers, or any other person or entity who or which funded the Settlement Amount.

(ii) Defendants shall be responsible for paying the costs of providing Empire's stockholder register and/or transfer records from Empire's former transfer agent, which shall be provided within five (5) business days after the execution of this Stipulation.

(iii) All Administrative Costs associated with the allocation and distribution of the Net Settlement Fund (including the costs of any

re-distribution of the Net Settlement Fund and the costs, if any, associated with escheat) shall be paid out of the Settlement Fund.

(d) *Investment and Distribution of the Settlement Fund:*

(i) The Settlement Fund deposited pursuant to paragraph 2(a) shall be invested in the Account. The Settlement Fund shall bear all risks related to investment of the Settlement Fund.

(ii) The Settlement Fund shall not be distributed except as provided in this Stipulation or by an order of the Court.

(iii) The Settlement Fund shall be deemed and considered to be in *custodia legis* 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. Scope of the Settlement

3. Upon the entry of the Judgment, Defendants shall be dismissed with prejudice from the Action with respect to all Class Members (including Plaintiffs) without the award of any damages, costs, or fees or the grant of further relief except for the payments provided in this Stipulation.

4. Upon the Effective Date, Plaintiffs and all Class Members and their successors and assigns shall thereupon be deemed to have fully, finally and forever, released, settled and discharged the Released Defendant Parties from and with

respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Defendants' Claims against any of the Released Defendant Parties.

5. Upon the Effective Date, each of Defendants, on behalf of themselves, the other Released Defendant Parties and their successors and assigns shall thereupon be deemed to have fully, finally and forever, released, settled and discharged the Released Plaintiff Parties from and with respect to every one of the Released Plaintiffs' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Released Plaintiff Parties.

6. The contemplated releases given by the Parties in this Stipulation extend to the Released Claims that the Parties did not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into this Stipulation.

7. For the avoidance of doubt, nothing herein shall affect the Released Defendant Parties' claims for advancement or indemnity of their legal fees, costs, and expenses incurred in connection with the Action and this Settlement, or any claims that any Released Defendant Parties may have against any of their respective insurers, co-insurers, or reinsurers.

8. With respect to the Released Claims, the Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9. With respect to the Released Claims, the Parties shall also be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state of the United States or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542. The Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but that it is their intention to fully, finally, and forever settle and release any and all such Released Claims, known or unknown, suspected or unsuspected, which now exist or heretofore existed, from the beginning of time to the Effective Date, without regard

to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.

10. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and the Released Claims. It is the intention of the Parties that the Settlement eliminate all further risk and liability relating to the Released Claims, and that the Settlement shall be a final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Claims.

D. Class Certification

11. For purposes of the Settlement only, the Parties agree to certification of the Action as a non-opt-out class action, pursuant to Delaware Court of Chancery Rules 23(a), (b)(1) and (b)(2), on behalf of the Class. For purposes of the Settlement only, the Parties also agree to the appointment of Plaintiffs as Class Representatives for the Class, and the appointment of Plaintiffs' Counsel as Class Counsel.

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

E. Submission of the Settlement to the Court for Approval

13. As soon as practicable after this Stipulation has been executed, Plaintiffs shall (1) apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the “Scheduling Order”), providing for, among other things: (a) the dissemination of the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), substantially in the form attached hereto as Exhibit B, which includes the Plan of Allocation set forth in Exhibit D; and (b) the scheduling of the Settlement Hearing to consider: (i) the proposed Settlement, (ii) the request that the Judgment be entered in all material respects in the form attached hereto as Exhibit C, (iii) Plaintiffs’ Counsel’s application for the Fee and Expense Award, and (iv) any objections to any of the foregoing; and (2) take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order.

14. Plaintiffs shall request at the Settlement Hearing that:

(a) The Court approve the Settlement, certify the Class, approve the Fee and Expense Award; and

(b) The Judgment be entered.

15. The Parties shall take all reasonable and appropriate steps to obtain Final entry of the Judgment in all material respects in the form attached hereto as Exhibit C.

F. Settlement Notice and Administration

16. The Notice shall be provided in accordance with the Scheduling Order. Plaintiffs shall retain a Settlement Administrator to disseminate the Notice and for the distribution of the Settlement Fund.

17. Defendants shall cooperate with Plaintiffs in providing the Notice, including, but not limited to, providing to the Settlement Administrator and Plaintiffs' Counsel, within five (5) business days following entry of this Stipulation, in electronic format, the stockholder register and/or transfer records from Empire's transfer agent containing the names, mailing addresses and, if available, email addresses for all registered holders of Empire common stock as of November 15, 2019 ("Class Member Records").

18. For purposes of distributing the Net Settlement Fund to Eligible Class Members, within ten (10) business days after the Court's entry of the Judgment, Defendants, at no cost to the Settlement Fund, Plaintiffs' Counsel, or the Settlement Administrator, will use reasonable best efforts to provide to Plaintiffs' Counsel or the Settlement Administrator the allocation or "chill" report generated by the DTC in anticipation of the Merger to facilitate the allocation of the Merger Consideration to Empire stockholders (the "DTC Allocation Report"), which shall include, for each DTC Participant to which DTC distributed the Merger Consideration, the number of

shares of Empire common stock reflected on the DTC Allocation Report used by DTC to distribute the Merger Consideration.

19. In addition to the information to be provided under paragraph 17 above, Defendants, shall make reasonable best efforts to provide such additional information from Empire, Empire's former transfer agent, and/or DTC (or its nominee, Cede & Co.) as may be required to distribute the Net Settlement Fund to Eligible Class Members and to ensure that the Net Settlement Fund is paid only to Eligible Class Members and not to Excluded Stockholders. To facilitate the distribution of the Net Settlement Fund to Eligible Class Members, the information to be provided by Defendants to DTC may include, without limitation, "suppression letters" from DTC Participants concerning the Excluded Shares, instructing DTC to withhold payment on those Excluded Shares and containing other terms as DTC may reasonably require.

20. Defendants and other Excluded Stockholders shall not have any right to receive any part of the Settlement Fund for his, her, or its own account(s) (i.e., accounts in which he, she or it holds a proprietary interest, but not including accounts managed on behalf of others), or any additional amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, in each case under any theory, including, but not limited to, contract, application of statutory or judicial law, or equity.

G. Conditions of Settlement

21. This Settlement shall be subject to the following conditions, which the Parties shall use their best efforts to achieve:

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

(b) the Court entering in all material respects the Judgment in the form attached hereto as Exhibit C;

(c) the dismissal with prejudice of Defendants from the Action with respect to all Class Members (including Plaintiffs) without the award of any damages, costs, or fees or the grant of further relief except for the payments contemplated by this Stipulation;

(d) the Effective Date shall have occurred; and

(e) the Parties have complied with their obligations set forth herein.

H. Attorneys' Fees and Expenses

22. Plaintiffs' Counsel will apply for an award of fees of up to 25% of the Settlement Amount plus reimbursement of reasonable out-of-pocket expenses (the "Fee and Expense Award"). Defendants agree not to oppose the Fee and Expense Award. The Parties acknowledge and agree that any Fee and Expense Award in connection with the Settlement shall be paid from the Settlement Fund and shall reduce the settlement consideration paid to the Eligible Class Members accordingly.

23. The Fee and Expense Award shall be paid to Plaintiffs' Counsel from the Settlement Fund within five (5) business days of entry of the Judgment, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. 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 ten (10) business days after Plaintiffs' Counsel receives notice of any such event in subsections (i) to (iv) above, return to the 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 on the one hand, and any attorneys' fees and expenses ultimately and finally awarded on appeal, further proceedings on remand or otherwise on the other hand.

24. The disposition of the Fee and Expense Award is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted. The Fee and Expense Award may be considered separately from the proposed Stipulation. Any disapproval or modification of the Fee and Expense Award by the Court or on appeal shall not affect or delay the enforceability of this

Stipulation, provide any of the Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Judgment and the release of the Released Claims. Final resolution of the Fee and Expense Award shall not be a condition to the dismissal, with prejudice, of the Action as to Defendants or effectiveness of the releases of the Released Defendants' Claims.

25. 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.

I. Stay Pending Court Approval

26. Plaintiffs and the Defendants agree to stay the proceedings in the Action and Plaintiffs agree not to initiate any other proceedings against Defendants other than those incident to the Settlement itself pending the occurrence of the Effective Date. The Parties also agree to use their reasonable best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings which challenge the Settlement or the Merger or otherwise assert or involve the commencement or prosecution of any Released Defendants' Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Defendant Party.

27. The Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved,

Plaintiffs and all Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any Released Defendants' Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Defendant Party.

J. Taxes

28. The Parties agree that the Settlement Fund together with all interest earned on the Settlement Fund is intended to be a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Section J, including, if necessary, the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under section 1.468B of the Internal Revenue Code of 1986, as amended. It shall be the responsibility of the Settlement Administrator 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. Defendants shall provide the statement described in Treas. Reg. § 1.468B-3(e) to Plaintiffs' Counsel within the time period required thereunder.

29. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the elections described in paragraph 28 hereof) shall be consistent with this Section J 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 paragraph 30 hereof.

30. All taxes shall be paid out of the Settlement Fund and shall be timely paid by Plaintiffs' Counsel and the Settlement Administrator without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth herein) shall be consistent with this Section J and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund, as provided herein. Any costs for the preparation of applicable tax returns shall be paid from the Settlement Fund as an Administrative Cost. Defendants and Released Defendant Parties shall not bear any tax liability in connection with the Settlement Fund, including any liability for income taxes owed by any Class Member by virtue of their receipt of payment from the Settlement Fund.

31. The Parties hereto agree to cooperate with the administrators of the Settlement Fund, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section J.

K. Termination of Settlement; Effect of Termination

32. Subject to paragraph 33, if either (i) the Court alters the Judgment in any material respect prior to entry, (ii) the Court enters the Judgment but on or following appellate review, the Judgment is modified or reversed in any material respect, or (iii) any of the other conditions of Section G (other than the occurrence of the Effective Date) is not satisfied, this Stipulation shall be canceled and terminated unless each of the Parties to this Stipulation, within ten (10) business days from receipt of such ruling, agrees in writing with the other Parties hereto to proceed with this Stipulation and Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree. For purposes of this paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. Neither a modification nor a reversal on appeal of the amount of fees, costs and expenses awarded by the Court to Plaintiffs' Counsel shall be deemed a material modification of the Judgment or this Stipulation.

33. Notwithstanding anything to the contrary set forth above, in the event the Defendants (and/or their respective insurers) fail to deposit the Settlement

Amount, nothing herein shall be construed to limit or prejudice in any way any of Plaintiffs' rights to seek enforcement of the terms of the Settlement against any Defendant which fails to make the required deposit, including specifically, rights to sue for breach of contract and for specific performance and/or to seek appropriate legal and/or equitable relief from the Court to enforce the Settlement and for fees and expenses to enforce the Settlement against a party or parties who have breached their obligations under this Stipulation.

34. If the Effective Date does not occur, or if this Stipulation is disapproved, canceled or terminated pursuant to its terms, or the Settlement otherwise does not become Final for any reason, (i) the Parties shall be deemed to have reverted to their respective litigation status immediately prior to April 28, 2022, they shall negotiate a new trial schedule in good faith and they shall proceed as if this Stipulation had not been executed and the related orders had not been entered, (ii) all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way, and (iii) the statements made in connection with the negotiations of this Stipulation shall not be deemed to prejudice in any way the positions of any of the Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Party, shall not be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Action, and neither the existence of this Stipulation nor its contents nor any statements made in

connection with its negotiation or any settlement communications shall be admissible in evidence or shall be referred to for any purpose in the Action, or in any other litigation or judicial proceeding.

L. Miscellaneous Provisions

35. All of the Exhibits attached hereto are material and integral parts hereof and shall be incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of this Stipulation shall prevail.

36. This Stipulation may not be amended or modified, nor may any of its provisions be waived, except by a written instrument signed by counsel for Plaintiffs and the Defendants or their successors-in-interest.

37. Plaintiffs and Defendants represent and agree that the terms of the Settlement reached between Plaintiffs and Defendants were negotiated at arm's-length and in good faith by Plaintiffs and Defendants and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

38. Plaintiffs and Defendants covenant and agree that neither this Stipulation, nor the fact or any terms of the Settlement, or any communications relating thereto, is evidence, or an admission or concession by Plaintiffs or

Defendants or their counsel, any Class Member, or any other 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 otherwise, 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. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by Plaintiffs, Defendants, any Class Member or other Released Defendant Party or Released Plaintiff Party, or any damages or injury to Plaintiffs, Defendants, any Class Member or other Released Defendant Party or Released Plaintiff Party. Neither this Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, (i) shall (a) 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, acts or omissions 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 (b) 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 (ii) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that this Stipulation and the Judgment may be introduced in any proceeding subject to Rule 408 of the Federal Rules of Evidence and any and all other state law corollaries thereto, whether in the Court or otherwise, as may be necessary to argue and establish that this Stipulation and 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 insurance rights or proceeds of any of the Released Defendant Parties or Released Plaintiff Parties or as otherwise required by law.

39. The consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court.

40. Without further order of the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

41. The waiver by Plaintiffs or Defendants 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.

42. This Stipulation and the Exhibits constitute the entire agreement between Plaintiffs and Defendants and supersede any prior agreements among Plaintiffs and Defendants 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.

43. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument and may be delivered by facsimile or electronic mail.

44. The Parties and their respective counsel of record agree that they will use their reasonable best efforts to obtain all necessary approvals of the Court required by this Stipulation (including, but not limited to, using their reasonable best efforts to resolve any objections raised to the Settlement), and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

45. Plaintiffs and Plaintiffs' Counsel 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 have been assigned, encumbered, or otherwise transferred in any manner in whole or in part.

46. Each counsel signing this Stipulation represents and warrants that such counsel has been duly empowered and authorized to sign this Stipulation on behalf of his, her or its clients.

47. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part 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.

48. This Stipulation is and shall be binding upon and shall inure to the benefit of the Released Defendant Parties and 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 party may merge, consolidate or reorganize.

49. 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 laws principles. Any action or proceeding to enforce any of the terms of this Stipulation or Settlement shall (i) be brought, heard and determined exclusively in the Court (provided that, in the event

that subject matter jurisdiction is unavailable in the Court, then any such action or proceeding shall be brought, heard and determined exclusively in any other state or federal court located in the State of Delaware) and (ii) shall not be litigated or otherwise pursued in any forum or venue other than the Court (or, if subject matter jurisdiction is unavailable in the Court, then in any forum or venue other than any other state or federal court located in the State of Delaware). Each Party hereto (1) consents to personal jurisdiction in any such action (but in no other action) brought in Delaware; (2) consents to service of process by registered mail upon such party and/or such party's agent (including, but not limited to, counsel representing the Parties in this Settlement) in any such action (but in no other action); and (3) in any such action (but in no other action), waives any objection to venue in this Court or any other federal and state court located in the State of Delaware and any claim that Delaware or the Court is an inconvenient forum.

Dated: June 13, 2022

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

**KESSLER TOPAZ MELTZER
& CHECK, LLP**

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J. Daniel Albert
Grant D. Goodhart
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/s/ Gregory V. Varallo

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Daniel Meyer (Bar No. 6876)
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(302) 364-3601

Counsel for Plaintiffs

Counsel for Plaintiffs

Dated: June 13, 2022

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& HAMILTON LLP**

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*Counsel for Non-Committee
Defendants*

Dated: June 13, 2022

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Defendants*

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*Counsel for the Special Committee
Defendants*

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE MH HABERKORN 2006)	
TRUST, MATTHEW H.)	
HABERKORN, KILEY ROSE)	
HABERKORN, and TIPPY LIVING)	C.A. No. 2020-0619-KSJM
TRUST U/A DTD SEPTEMBER 10,)	
2013, on behalf of themselves and all)	
other similarly situated stockholders of)	
Empire Resorts, Inc.)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
)	
KIEN HUAT REALTY III LIMITED,)	
EMANUEL R. PEARLMAN, KEITH)	
L. HORN, GERARD EWE KENG)	
LIM, EDMUND MARINUCCI,)	
NANCY A. PALUMBO, RYAN)	
ELLER, GENTING MALAYSIA)	
BERHAD, GENTING (USA))	
LIMITED)	
)	
)	
Defendants.)	
)	
)	

[PROPOSED] SCHEDULING ORDER

Plaintiffs The MH Haberkorn 2006 Trust, Matthew H. Haberkorn, Kiley Rose Haberkorn, and the Tippy Living Trust U/A DTD September 10, 2013 (collectively, the “Plaintiffs”) and defendants Kien Huat Realty III Limited, Emanuel R. Pearlman, Keith L. Horn, Gerard Ewe Keng Lim, Edmund Marinucci, Nancy A. Palumbo, Ryan Eller, Genting Malaysia Berhad, Genting (USA) Limited (collectively,

“Defendants”), having applied pursuant to Court of Chancery Rule 23(e) for an order approving the proposed settlement (“Settlement”) of the above-captioned class action (the “Action”), in accordance with the terms and conditions of the Stipulation and Agreement of Compromise and Settlement entered into by the parties dated June 13, 2022 (the “Stipulation”),

NOW, THEREFORE, IT IS HEREBY ORDERED this _____ day of _____, 2022, that:

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

2. A hearing (the “Settlement Hearing”) shall be held on _____, 2022 at _____.m., in the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (or by telephonic or video conference as may be designated by the Court), to:

(a) certify the Class and appoint Plaintiffs as Class Representatives and Plaintiffs’ Counsel as Class Counsel;

(b) confirm that the form and content of the Notice and mailing and distribution of the Notice meets the requirements of Court of Chancery Rule 23 and due process;

(c) determine whether the Settlement should be approved by the Court as fair, reasonable and adequate;

(d) determine whether the Judgment should be entered pursuant to the Stipulation;

(e) consider Plaintiffs' Counsel's application for a Fee and Expense Award; and

(f) consider any other matters that may properly be brought before the Court in connection with the Stipulation.

3. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of Plaintiffs' Counsel's application for a Fee and Expense Award, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, and retains jurisdiction over this Action to consider all further applications arising out of or connected with the proposed Settlement.

4. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) to the Stipulation as may be consented to by the Parties and without further notice to the former stockholders of Empire.

5. Plaintiffs are authorized to retain a settlement administrator (the "Settlement Administrator") to provide Notice to the Class and administer the proposed Settlement, including the distribution of the Net Settlement Fund.

6. Within five (5) business days following the entry of the Stipulation, Defendants will provide the Class Member Records as set forth in paragraph 17 of the Stipulation.

7. At least sixty (60) calendar days before the Settlement Hearing (the “Notice Date”), the Settlement Administrator shall cause the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), in substantially the form annexed as Exhibit B to the Stipulation, to be mailed by first-class mail to potential Class Members at the addresses set forth in the Class Member Records provided by Defendants. The former record stockholders of Empire who are not or were not also the beneficial owners of the shares of Empire common stock held by them of record shall be requested to forward the Notice to the beneficial owners of those shares. The Settlement Administrator shall take all reasonably available efforts to give notice to such beneficial owners by: (a) making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to the beneficial owners; or (b) mailing additional copies of the Notice to the beneficial owners whose names and addresses the Settlement Administrator receives or has received from record owners.

8. The Court approves, in form and content, the Notice, attached to the Stipulation as Exhibit B and finds that dissemination of the Notice substantially in the manner and form set forth in this Order meets the requirements of Court of

Chancery Rule 23 and due process, is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

9. Plaintiffs' Counsel shall, at least five (5) business days before the Settlement Hearing, file with the Court an appropriate affidavit with respect to the preparation and dissemination of the Notice to the former record stockholders of Empire.

10. The cost of providing Notice shall be paid out of the Settlement Fund.

11. Unless otherwise ordered by the Court, until entry of the Judgment, all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation shall be stayed and the Court bars and enjoins Plaintiffs and all Class Members, from commencing, prosecuting instigating or in any way participating in the commencement or prosecution of any Released Defendants' Claims, either directly, representatively or in any other capacity, against any Released Defendant Parties.

12. Any person who objects to the Settlement, the Plan of Allocation, the Judgment to be entered in the Action, and/or Plaintiffs' Counsel's application for a Fee and Expense Award, or who otherwise wishes to be heard, may appear in person or through counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided however, that, except by order

of the Court for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless not later than fourteen (14) calendar days prior to the Settlement Hearing such person files with the Court and serves upon counsel listed below: (a) a written notice of intention to appear; (b) proof of prior ownership of Empire common stock; (c) a statement of such person's objections to any matters before the Court; and (d) the grounds for such objections and the reasons that such person desires to appear and be heard, as well as all documents or writings such person desires the Court to consider. Such filings shall be served electronically via File & ServeXpress, by hand, or by overnight mail upon the following counsel:

Gregory V. Varallo (Bar No. 2242)
Daniel Meyer (Bar No. 6876)
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Counsel for Plaintiffs

-and-

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Counsel for Defendants Keith L. Horn, Edmund Marinucci, and Nancy A. Palumbo

-and-

John D. Hendershot
Alexander M. Krischik
Andrew L. Milam
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920 North King Street
Wilmington, Delaware 19801

Counsel for Defendants Kien Huat Realty III Limited, Emanuel R. Pearlman, Gerard Ewe Keng Lim, Ryan Eller, Genting Malaysia Berhad, and Genting (USA) Limited

13. Unless the Court otherwise directs, no person shall be entitled to object to the approval of the Settlement, any judgment entered thereon, any award of attorneys' fees and expenses, or otherwise be heard, except by serving and filing a written objection and supporting papers and documents as prescribed in paragraph 12. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding.

14. Plaintiffs shall serve and file its opening brief and supporting papers in support of the Settlement and the Fee and Expense Award no later than twenty-one (21) calendar days before the Settlement Hearing. Plaintiffs and/or Defendants may file and serve their brief(s) in response to any objection(s) to the Settlement or application for attorneys' fees and expenses no later than seven (7) calendar days before the Settlement Hearing.

15. The Court may for good cause, extend any of the deadlines set forth in this Order without further notice to the former record stockholders of Empire.

IT IS SO ORDERED this _____ day of _____, 2022.

The Honorable Kathaleen St. Jude McCormick

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE MH HABERKORN 2006 TRUST,
MATTHEW H. HABERKORN, KILEY
ROSE HABERKORN, and TIPPY LIVING
TRUST U/A DTD SEPTEMBER 10, 2013,
on behalf of themselves and all other
similarly situated stockholders of Empire
Resorts, Inc.

Plaintiffs,

v.

KIEN HUAT REALTY III LIMITED,
EMANUEL R. PEARLMAN, KEITH L.
HORN, GERARD EWE KENG LIM,
EDMUND MARINUCCI, NANCY A.
PALUMBO, RYAN ELLER, GENTING
MALAYSIA BERHAD, GENTING (USA)
LIMITED

Defendants.

C.A. No. 2020-0619-KSJM

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL RECORD AND BENEFICIAL OWNERS OF EMPIRE RESORTS, INC. (“EMPIRE” OR THE “COMPANY”) AS OF NOVEMBER 15, 2019.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE LITIGATION REFERRED TO IN THE ABOVE CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS OR ADEQUACY OF THE SETTLEMENT, AND FROM PURSUING THE RELEASED DEFENDANTS’ CLAIMS.

The purpose of this Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) is to inform you of (i) the pendency of the above-captioned action (the “Action”), which was brought in the Court of Chancery of the State of Delaware (the “Court”) by former stockholders of Empire Resorts, Inc. (“Empire”) asserting claims on behalf of and for the benefit of a class of former Empire stockholders; (ii) the Court’s determination to preliminarily certify the Action as a non-opt-out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (iii) the proposed settlement of the Action (the “Settlement”), subject to Court approval and other conditions of the Settlement being satisfied, as provided for in a Stipulation and Agreement of

Compromise and Settlement, dated June __, 2022 (the “Stipulation”), which was filed with the Court and is publicly available for review; and (iv) your right to participate in a hearing to be held on _____ __, 2022, at [TIME], before the Court at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (the “Settlement Hearing”).¹ The purpose of the Settlement Hearing to be held by the Court is to determine: (i) whether to certify the Class (defined below) for settlement purposes only; (ii) whether Plaintiffs and Plaintiffs’ Counsel have adequately represented the Class; (iii) whether the proposed Settlement and the proposed Plan of Allocation should be approved as fair, reasonable, and adequate to the Class and in the best interests of the Class; (iv) whether the Action should be dismissed with prejudice and all Released Claims against the Released Parties should be released; (v) whether an Order and Final Judgment approving the Settlement should be entered; and (vi) whether and in what amount any Fee and Expense Award (defined below) should be paid to Plaintiffs’ Counsel out of the Settlement Amount (defined below).

The Stipulation was entered into as of June XX, 2022, by and among (i) The MH Haberkorn 2006 Trust, Matthew H. Haberkorn, Kiley Rose Haberkorn, and the Tippy Living Trust U/A DTD September 10, 2013 (collectively, “Plaintiffs”), on behalf of themselves and the putative Class, and (ii) defendants Kien Huat Realty III Limited (“Kien Huat”), Emanuel R. Pearlman (“Pearlman”), Keith L. Horn (“Horn”), Gerard Ewe Keng Lim (“Gerard Lim”), Edmund Marinucci (“Marinucci”), Nancy A. Palumbo (“Palumbo”), Ryan Eller (“Eller”), Genting Malaysia Berhad (“GenM”), and Genting (USA) Limited (“Genting USA,” together with GenM, “Genting”) (collectively, “Defendants,” and together with Plaintiffs, the “Parties”).

This Notice describes the rights you may have in the Action pursuant to the Stipulation and what steps you may take, but are not required to take, in relation to the Settlement. If the Court approves the Settlement, the Parties will ask the Court at the Settlement Hearing to enter an Order and Final Judgment dismissing the Action with prejudice in accordance with the terms of the Stipulation.

WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Action, the terms of the proposed Settlement, and how the Settlement affects the legal rights of Empire stockholders and Class Members (as defined below).
2. In a class action, one or more people and/or entities who were stockholders at the time the claim arose sue on behalf of and for the benefit of the individual class members, seeking to enforce the class members’ legal rights.
3. As described more fully in paragraph 70 below, Class Members have the right to object to the proposed Settlement, the proposed Plan of Allocation and the application by Plaintiffs’ Counsel for an award of fees and expenses (the “Fee and Expense Award”). Class Members have the right to appear and be heard at the Settlement Hearing, which will be held before The

¹ Capitalized terms not defined in this Notice have the meaning set forth in the Stipulation, which is publicly available as indicated in paragraph 72 below.

Honorable Kathaleen McCormick on [DATE AND TIME], at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801.

4. The Court has reserved the right to adjourn or continue the Settlement Hearing, including consideration of the Fee and Expense Award, without further notice to you other than by announcement at the Settlement Hearing or any adjournment thereof, or notation on the docket in the Action. The Court has further reserved the right to approve the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice of any kind.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

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 PARTIES.

5. On August 18, 2019, Empire announced that it had entered into an Agreement and Plan of Merger (the “Merger Agreement”) with affiliates of Kien Huat and GenM, pursuant to which affiliates of Kien Huat and GenM would acquire the outstanding common shares of Empire for \$9.74 per share (the “Merger Consideration”) (such transaction, the “Merger”);

6. On October 11, 2019, Empire filed a proxy statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 (together with all amendments thereto, the “Proxy”) with the U.S. Securities and Exchange Commission (the “SEC”) in connection with the Merger;

7. On October 16, 2019, Plaintiffs served Empire with a demand to inspect books and records pursuant to 8 *Del. C.* § 220 (“Section 220”). Between October 23, 2019 and November 12, 2019, Plaintiffs negotiated with Empire for the production of certain documents, with Empire agreeing to and producing 2,527 pages of documents in response to Plaintiffs’ Section 220 demand.

8. On November 6, 2019, Empire filed with the SEC a Form 8-K supplementing the Proxy.

9. On November 12, 2019, Plaintiffs filed a Verified Complaint for Inspection of Books and Records Under 8 *Del. C.* § 220 (“Plaintiffs’ 220 Complaint” or “220 Action”).

10. On November 13, 2019, at the special meeting of Empire stockholders, the holders of a majority of Empire’s common stock voted to approve the Merger.

11. On November 15, 2019, the Merger closed.

12. On November 26, 2019, Empire filed an Answer and Defenses to Plaintiffs’ 220 Complaint.

13. On December 20, 2019, Plaintiffs filed their Pre-Trial Opening Brief in advance of the trial on Plaintiffs’ 220 Action.

14. On January 15, 2020, Empire filed its Answering Pre-Trial Brief in advance of the trial on Plaintiffs’ 220 Action.

15. On January 22, 2020, Plaintiffs filed their Pre-Trial Reply Brief in advance of the trial on Plaintiffs' 220 Action.

16. On January 30, 2020, the Court held a full day trial on Plaintiffs' 220 Action.

17. On February 20, 2020, the Court issued judgment via a bench ruling in the 220 Action, ordering the production by Empire of certain additional categories of documents, and denying Plaintiffs' request for other documents. Defendants produced an additional 620 pages of documents to Plaintiffs as a result of the Court's judgment in the 220 Action. All told, Plaintiffs received from Empire 3,147 pages of documents and produced to Empire 1,988 pages of documents in Plaintiffs' 220 Action.

18. On July 24, 2020, Plaintiffs, on behalf of themselves and all other similarly situated public stockholders of Empire, filed a Verified Stockholder Class Action Complaint (the "Complaint") in the action captioned *The MH Haberkorn 2006 Trust, Matthew H. Haberkorn, Kiley Rose Haberkorn, and Tippy Living Trust U/A DTD September 10, 2013 v. Empire Resorts, Inc., Kien Huat Realty III Limited, Emanuel R. Pearlman, Keith L. Horn, Gerard Ewe Keng Lim, Edmund Marinucci, Nancy A. Palumbo, Ryan Eller, Genting Malaysia Berhad, Genting (USA) Limited, and Hercules Topco LLC*, C.A. No. 2020-0619.

19. In the Complaint, Plaintiffs alleged that Kien Huat, Genting, Pearlman, Horn, Gerard Lim, Marinucci, Palumbo, and Eller breached their fiduciary duties to Plaintiffs and the Class in connection with their (i) decision to cause Empire to enter into the Merger Agreement, (ii) recommendation that Empire stockholders approve the Merger, and (iii) failure to disclose all material information in the Proxy. Plaintiffs also alleged that Hercules Topco LLC ("Hercules") aided and abetted the breaches of fiduciary duty by Kien Huat and/or Genting. Plaintiffs further alleged that to the extent Genting was not found to be a controller of Empire, in the alternative, Genting aided and abetted Kien Huat's breaches of fiduciary duty.

20. On October 28, 2020, Defendants, Empire, and Hercules filed briefs in support of their motions to dismiss the Complaint.

21. On November 16, 2020, Plaintiffs served on GenM Plaintiffs' First Request for the Production of Documents Directed to Defendant GenM in Support of Jurisdictional Discovery ("Jurisdictional Discovery Requests").

22. On December 15, 2020, the Court held oral argument on Plaintiffs' request for jurisdictional discovery and denied Plaintiffs' request.

23. On December 16, 2020, GenM served Plaintiffs with its Responses and Objections to Plaintiffs' Jurisdictional Discovery Requests.

24. On January 4, 2021, Plaintiffs filed an omnibus answering brief in opposition to the Defendants', Empire's, and Hercules' motions to dismiss.

25. On March 1, 2021, Defendants, Empire, and Hercules filed reply briefs in further support of their motions to dismiss the Complaint.

26. On April 29, 2021, the Court held oral argument on the motions to dismiss the Complaint.

27. On July 23, 2021, the Court issued a bench ruling on the motions to dismiss the Complaint, dismissing Plaintiffs' claims against Empire and Hercules. The remaining Defendants' motions to dismiss were otherwise denied.

28. On August 27, 2021, Plaintiffs served Defendants with Plaintiffs' First Request for Production of Documents. Defendants responded to Plaintiffs' First Request for Production of Documents on October 11, 2021.

29. On September 1, 2021, Defendants served Plaintiffs with Defendants' First Request for Production of Documents. Plaintiffs responded to Defendants' First Request for Production of Documents on October 15, 2021.

30. On September 24, 2021, Defendants filed Answers to the Complaint.

31. Between October 14, 2021 and February 15, 2022, Plaintiffs served five third-party subpoenas on GGH Morowitz, Hillside (New York) LLC, J. Frank Associates, LLC d/b/a Joele Frank, Wilkinson Brimmer Katcher, Moelis & Company LLC, and Union Gaming Securities LLC.

32. Plaintiffs received 175,265 pages of documents in connection with discovery in this Action, including: 122,969 pages of documents produced by Defendants and 52,296 pages of documents produced by third parties. Plaintiffs produced an additional 73 pages of documents to Defendants in connection with discovery in this Action beyond the production of documents Plaintiffs made in Plaintiffs' 220 Action.

33. On April 4, 2022, the Parties participated in a mediation before Phillips ADR Enterprises Mediator, Michelle Yoshida ("Ms. Yoshida"). The full-day mediation did not result in a resolution of the Action at that time.

34. Between April 7, 2022 and April 14, 2022, the Parties engaged in further arm's-length negotiations facilitated by Ms. Yoshida in an attempt to resolve the Action. On April 14, 2022, Ms. Yoshida made a mediator's proposal to resolve the matter for a \$12,000,000 payment to the Class, which the Parties separately accepted on April 15, 2022.

35. On April 28, 2022, the Parties executed a term sheet, in which, among other things, Plaintiffs, on behalf of the Class, agreed to fully and finally settle the claims asserted against Defendants in the Action in exchange for a cash payment of \$12,000,000 to the Class (the "Settlement Amount"). As part of the negotiations of the term sheet, the Plaintiffs and bet365 Group Limited, Hillside (New Media Holdings) Limited ("Hillside NMH"), Hillside (New York) LLC ("Hillside NY") (collectively, "bet365") negotiated to exclude bet365 from the Class due to its business relationship with Empire, including a stock purchase agreement whereby Hillside NMH agreed to purchase up to \$50 million of Empire common stock, and a collaboration agreement providing bet365 the right to operate Empire's retail and online sportsbook, online casino and/or table games, and online poker.

WHAT ARE THE TERMS OF THE SETTLEMENT?

36. Set forth below is a summary of the principal terms of the proposed Settlement, as agreed to by the Parties, subject to the approval of the Court. The following statements are a summary. Please refer to the Stipulation, which is publicly available as indicated in paragraph 72 below, for a full and complete statement of the terms of the Settlement.

Certain Relevant Definitions:

37. “Account” means the interest bearing escrow account designated by Plaintiffs’ Counsel and maintained by the Settlement Administrator into which the Settlement Amount shall be deposited.

38. “Administrative Costs” means all costs and expenses associated with administering or carrying out the terms of the Settlement, including the cost of providing Notice, other than the costs incurred by Defendants when providing the stockholder register and/or transfer records from Empire’s former transfer agents as set forth in Section F of the Stipulation.

39. “Class” means a class consisting of all record and beneficial owners of Empire common stock as of November 15, 2019, who are not excluded pursuant to the below, and who were allegedly damaged thereby as alleged in the Complaint. Those to be excluded from the Class include: (i) the Defendants, Empire and any parent, subsidiary, or affiliate thereof,² (ii) any person or entity who is or was between and including February 1, 2019 and November 15, 2019 a partner, executive officer, director, or controlling person of any person or entity excluded in subsection (i) above, (iii) members of the Immediate Families of any Defendants who are natural persons, (iv) any entity in which any Defendant has or had on November 15, 2019 a controlling interest, (v) bet365 Group Limited, Hillside (New Media Holdings) Limited, Hillside (New York) LLC and any parent, subsidiary, or affiliate thereof, (vi) Defendants’ directors’ and officers’ liability insurance carriers, and any parents, affiliates, or subsidiaries thereof, (vii) persons who held Empire common stock that was borrowed as part of a short sale transaction (only with respect to their holdings in such borrowed shares), and (viii) the legal representatives, agents, heirs, successors, and assigns of any excluded party (collectively, the “Excluded Stockholders”).

40. “DTC” means the Depository Trust Company.

41. “DTC Participant” means the brokers, dealers, banks, trust companies, clearing corporations, and other financial organizations on whose behalf the DTC holds securities.

42. “Eligible Class Members” means Class Members who held shares of Empire common stock at the Closing and received or were entitled to receive the Merger Consideration for their Eligible Shares.

² The term “affiliate” as it relates to defendants Horn, Marinucci and Palumbo shall be limited to entities for which they served as directors or named executive officers in the period between, and including, February 1, 2019 and November 15, 2019.

43. “Eligible Shares” means shares of Empire common stock held by Eligible Class Members at the Closing and for which Eligible Class Members received or were entitled to receive the Merger Consideration.

44. “Final,” when referring to the Judgment, means (i) entry of the Judgment or (ii) if there is an objection to the Settlement, the expiration of any time for appeal or review of the Judgment, or, if any appeal is filed and not dismissed or withdrawn, issuance of a decision upholding the Judgment on appeal in all material respects, which is no longer subject to review upon appeal or other review, and the expiration of the time for the filing of any petition for reargument, 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 attorneys’ fees and expenses 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 the Judgment.

45. “Net Settlement Fund” means the Settlement Fund less (i) any Fee and Expense Award and (ii) Administrative Costs, including costs of Notice.

46. “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, attached as Exhibit B to the Stipulation.

47. “Plan of Allocation” means the plan to distribute the Net Settlement Fund to Eligible Class Members, attached as Exhibit D to the Stipulation.

48. “Settlement Administrator” means the settlement administrator to be selected by Plaintiffs’ Counsel to administer the Settlement.

49. “Settlement Fund” means the Settlement Amount plus all interest earned thereon.

The Settlement Amount:

50. In consideration for the full and final release, settlement, dismissal, and discharge of any and all Released Claims (defined below) against the Released Parties (defined below), the Parties agreed to a payment of twelve million dollars and no cents (\$12,000,000.00) to be paid by Defendants and/or their insurers.

Distribution of Settlement Amount/Plan of Allocation:

51. Pursuant to the proposed Plan of Allocation or in accordance with a plan of allocation to be approved by the Court, the Settlement Administrator shall allocate the Net Settlement Fund among Eligible Class Members on a pro rata, per-share basis and distribute the Net Settlement Amount to Eligible Class Members.

52. For Eligible Class Members whose Merger Consideration was distributed through Cede & Co., as nominee for DTC, the Settlement Administrator shall send their portion of the Net Settlement Fund to DTC for distribution.

53. The Settlement Administrator shall instruct DTC Participants to distribute the Eligible Shares of the Net Settlement Fund to Eligible Class Members in the same manner in which the DTC Participants distributed proceeds in connection with the Merger.

54. The Settlement Administrator shall provide DTC Participants with a list of Excluded Stockholders and direct the DTC Participants not to distribute any payment to any Excluded Stockholders.

55. DTC's sole obligation in connection with the Settlement shall be to distribute the Eligible Shares of the Net Settlement Amount to DTC Participants in accordance with the Stipulation and DTC rules and procedures, and DTC shall not be responsible for any errors in the calculation of any distribution or for any failure by the Settlement Administrator, Defendants, or Plaintiffs' Counsel to identify the Excluded Stockholders.

56. For Eligible Class Members who did not receive the Merger Consideration from DTC, the Settlement Administrator shall send their portion of the Net Settlement Fund to the address listed on the stockholder register or other relevant books and records of Empire or its transfer agent.

57. Defendants shall have no responsibility or liability for any claims, payments or determinations that the Settlement Administrator makes with respect to any Class Member claims for payment.

WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?

58. The Settlement set forth in the Stipulation reflects the results of the Parties' negotiations and the final terms of their agreement, which was reached only after arm's-length negotiations among the Parties, who were all represented by counsel with extensive experience and expertise in stockholder class action litigation.

59. The Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation. This Settlement is not evidence of the validity or invalidity of any claims or defenses in the Action or any other actions or proceedings, or of any wrongdoing by any of the Defendants or of any damages or injury to Plaintiffs or any Class Member.

60. The entry by Plaintiffs into the Stipulation is not an admission as to the lack of merit of any claims asserted in the Action. Rather, in negotiating and evaluating the terms of this Settlement, Plaintiffs' Counsel considered: the legal and factual defenses to Plaintiffs and the Class Members' claims that Defendants raised and might have raised throughout the pendency of the Action and the benefits to be provided to the Class through the payment of the Settlement Amount. Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement set forth in the Stipulation is fair, reasonable, and adequate to Plaintiffs and the Class and that it confers substantial benefits upon the Class, particularly when compared to the risk and uncertainties of continued litigation.

61. The entry by Defendants into the 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 asserted in the Action. Defendants assert that the Stipulation in no way constitutes an admission of any wrongdoing on the part of Defendants, nor an admission of liability or obligation by any of the Parties, nor a waiver by Defendants of any applicable defense and is solely for the purpose of compromising disputed claims and avoiding further litigation. Defendants expressly deny all assertions of wrongdoing, fault, liability, or damage arising out of any of the conduct, acts or omissions alleged against the Defendants and otherwise deny that they engaged in any wrongdoing or committed any violation of law or breach of duty, but wish to settle and resolve all claims relating to or arising out of the Action on the terms and conditions stated in the Stipulation.

**WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED?
WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

62. If the Settlement is approved, the Court will enter the Judgment approving the Settlement in accordance with the Stipulation, at which time the Action will be dismissed with prejudice on the merits.

63. As of the Effective Date, the following releases will occur:

Plaintiffs, all Class Members, and Defendants on behalf of themselves, and any and all of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, agree to release and forever discharge, and by operation of the Order and Final Judgment shall release and forever discharge, all Released Claims as against all Released Parties.

With respect to the Released Claims, the Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

With respect to the Released Claims, the parties shall also be deemed to have waived any all provisions, rights, and benefits conferred by any law of any state of the United States or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542. The Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but that it is their intention to fully, finally, and forever settle and release any and all such Released Claims, known or unknown, suspected or unsuspected, which now exist or heretofore existed, from the beginning of time to the Effective Date, without regard to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.

Relevant Definitions:

"Released Defendants' Claims" means any and all claims for relief, damages, compensation, demands, suits, actions, injuries, losses, costs, expenses and/or causes of

action of any kind or character, whether at law or in equity, regardless of legal theory, whether foreseen or unforeseen, contingent or actual, liquidated or unliquidated, known or unknown, which Plaintiffs or any Class Member, ever had, now has, or may have against any of the Released Defendant Parties, whether class or individual in nature, whether based on state, local, foreign, federal (including, but not limited to, any state or federal securities laws), statutory, regulatory, common or other law or rule, which are based upon, arise out of, involve, directly or indirectly, or relate in any way to any of the facts, allegations, conduct, actions, inaction, breaches of fiduciary duty or other obligations, statements, misrepresentations, omissions, transactions, events or occurrences that were, could have been, or in the future could be alleged, asserted, or claimed in the Action or relate to the subject matter thereof, in any court (whether state or federal), tribunal, forum, or proceeding; provided, however, that the Released Defendants' Claims shall not include (i) the right to enforce the Settlement or the Stipulation or (ii) claims solely for statutory appraisal with respect to the Merger pursuant to 8 *Del. C.* § 262 by Empire stockholders, and any successors-in-interest thereto, who properly perfected such claims for appraisal and have not otherwise waived their appraisal rights.

"Released Defendant Parties" means Defendants and each of their respective past or present Immediate Family members, trusts of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of any Defendants' Immediate Family, trustees, executors, beneficiaries, distributees, agents, fiduciaries, partners, control persons, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, stockholders, principals, officers, directors, advisors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, personal or legal representatives, heirs, estates, administrators, insurers and attorneys (including Defendants' Counsel).

"Released Plaintiffs' Claims" means any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, against any Released Plaintiff Parties (i) arising out of and/or relating in any way to the prosecution of, participation in, and/or settlement of the Action or (ii) that otherwise in any way relate to the subject matter of the Action. The Released Plaintiffs' Claims shall not include claims to enforce the Stipulation or Plaintiffs' Counsel's application for a Fee and Expense Award.

"Released Plaintiff Parties" means Plaintiffs, all other Class Members, and their respective trustees, officers, directors, employees, agents, advisors, experts and attorneys (including Plaintiffs' Counsel).

"Released Claims" means Released Plaintiffs' Claims and Released Defendants' Claims, collectively or individually.

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

WHO ARE THE MEMBERS OF THE CLASS?

64. The Court has provisionally ordered that the Action shall be maintained as a non-opt-out class action pursuant to Court of Chancery Rule 23 on behalf of a class consisting of any record holders and all beneficial owners of the common stock of Empire who held or owned such stock on November 15, 2019, including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns.

65. Excluded from the Class are the Excluded Stockholders (as defined above).

HOW WILL THE ATTORNEYS BE PAID?

66. Concurrent with seeking final approval of the Settlement, Plaintiffs' Counsel intends to make an application to the Court for a Fee and Expense Award in an amount of up to 25% of the Settlement Amount plus reimbursement of reasonable out-of-pocket expenses incurred in connection with the Action. The Parties acknowledge and agree that the Fee and Expense Award shall be paid solely from, and not in addition to, the Settlement Amount. The fee application shall be the only request for attorneys' fees and expenses filed by or on behalf of Plaintiffs and their counsel.

WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?

67. The Court will consider the Settlement and all matters related to the Settlement, including the application for a Fee and Expense Award, at the Settlement Hearing. The Settlement Hearing will be held before The Honorable Kathaleen McCormick on [DATE & TIME], in the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801.

68. Any Person who objects to the Settlement, the Plan of Allocation, the Judgment to be entered in the Action, and/or Plaintiffs' Counsel's application for a Fee and Expense Award, or who otherwise wishes to be heard, may appear in person or through counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided however, that, except by order of the Court for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless not later than fourteen (14) calendar days prior to the Settlement Hearing such person files with the Court and serves upon counsel listed below: (a) a written notice of intention to appear; (b) proof of prior ownership of Empire common stock; (c) a statement of such person's objections to any matters before the Court; and (d) the grounds for such objections and the reasons that such person desires to appear and be heard, as well as all documents or writings such person desires the Court to consider. Such filings shall be served electronically via File & ServeXpress, by hand, or by overnight mail upon the following counsel:

Gregory V. Varallo (Bar No. 2242)
Daniel Meyer (Bar No. 6876)
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
Counsel for Plaintiffs

John D. Hendershot
Alexander M. Krischik
Andrew L. Milam
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, DE 19801
Counsel for Defendants Kien Huat Realty III Limited, Emanuel R. Pearlman, Gerard Ewe Keng Lim, Ryan Eller, Genting Malaysia Berhad, and Genting (USA) Limited

Matthew D. Stachel
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Counsel for Defendants Keith L. Horn, Edmund Marinucci, and Nancy A. Palumbo

69. Unless the Court otherwise directs, any person who fails to object in the manner prescribed above shall be deemed to have waived his, her, or its right to object and shall be forever barred from raising any objection to the Settlement, the proposed Plan of Allocation or the application by Plaintiffs' Counsel for an award of attorneys' fees and expenses, or any other matter related to the Settlement, in the Action or in any other action or proceeding.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

70. This Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Action, you may inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, during regular business hours of each business day, or [SETTLEMENT ADMINISTRATION EMAIL ADDRESS]. If you have questions regarding the Settlement, you may write or call Plaintiffs' counsel: Gregory V. Varallo, Bernstein Litowitz Berger & Grossmann LLP, 500 Delaware Avenue, Suite 901, Wilmington, DE 19801, (302) 364-3601; or J. Daniel Albert, Kessler Topaz Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, PA 19087, (610) 667-7706.

DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE

**NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON
BEHALF OF OTHERS**

71. Brokerage firms, banks, and other persons or entities who held shares of Empire common stock as record owners, but not as beneficial owners, are directed to either (a) promptly request from [SETTLEMENT ADMINISTRATOR] sufficient copies of this Notice to forward to all such beneficial owners and after receipt of the requested copies promptly forward the copies of the Notice to all such beneficial owners; or (b) promptly provide a list of the names and addresses of all such beneficial owners to [SETTLEMENT ADMINISTRATOR], after which [SETTLEMENT ADMINISTRATOR] will promptly send copies of the Notice to such beneficial owners. Copies of this Notice may be obtained by calling [SETTLEMENT ADMINISTRATOR] toll-free at [SETTLEMENT ADMINISTRATOR PHONE NUMBER].

Dated:

BY ORDER OF THE COURT

Register in Chancery

incorporated herein by reference, and the terms and conditions of the settlement proposed in the Stipulation (the “Settlement”), are fair, reasonable and adequate for the settlement of all Released Claims that were or could have been asserted in the above-captioned action (the “Action”), and whether an order and final judgment should be entered in the Action; and the Court having considered all matters submitted to it at the hearing and otherwise for the reasons stated herein;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this [] day of [], 2022, as follows:

1. **Notice**: The Court finds that the dissemination of the Notice was implemented in accordance with the Scheduling Order entered on _____, __, 2022 (the “Scheduling Order”) and constituted the best notice practicable under the circumstances and satisfied the requirements of Court of Chancery Rule 23, due process, and all other applicable law and rules.

2. **Class Certification**: The Court hereby certifies the Action as a non-opt-out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), on behalf of a Class consisting of all record and beneficial owners of Empire as of November 15, 2019, who are not excluded and who were allegedly damaged as alleged in the Complaint. Those to be excluded from the Class include:

(i) the Defendants, Empire and any parent, subsidiary, or affiliate thereof,² (ii) any person or entity who is or was between and including February 1, 2019 and November 15, 2019 a partner, executive officer, director, or controlling person of any person or entity excluded in subsection (i), (iii) members of the Immediate Families of any Defendants who are natural persons, (iv) any entity in which any Defendant has or had on November 15, 2019 a controlling interest, (v) bet365 Group Limited, Hillside (New Media Holdings) Limited, Hillside (New York) LLC and any parent, subsidiary, or affiliate thereof, (vi) Defendants' directors' and officers' liability insurance carries, and any parents, affiliates, or subsidiaries thereof, (vii) persons who held Empire common stock that was borrowed as part of a short sale transaction (only with respect to their holdings in such borrowed shares), and (viii) the legal representatives, agents, heirs, successors, and assigns of any excluded party (collectively, the "Excluded Stockholders").

3. The Court hereby appoints Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class Counsel. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the Class both in prosecuting the Action and for purposes of entering into and implementing the Settlement.

² The term "affiliate" as it relates to defendants Horn, Marinucci and Palumbo shall be limited to entities for which they served as directors or named executive officers in the period between and including February 1, 2019 and November 15, 2019.

4. **Class Findings:** The Court hereby finds, pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), as follows:

- a. That (i) the Class is so numerous that joinder of all members is impracticable; (ii) there are questions of law and fact common to the Class; (iii) the claims of Plaintiffs are typical of the claims of the Class; and (iv) Plaintiffs and Class Counsel have fairly and adequately protected and represented the interests of the Class. As such, the Court confirms that the requirements of Rule 23(a) have been satisfied.
- b. The Court further finds that (i) the prosecution of separate actions by individual Class Members would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for Defendants; and (ii) as a practical matter, the disposition of this Action would influence the disposition of any pending or future identical cases brought by other Class Members. As such, the Court confirms that the requirements of Rule 23(b)(1) have been satisfied.
- c. The Court further finds that Plaintiffs allege Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final declaratory relief with respect to the Class as a whole. As such, the Court confirms that the requirements of Rule 23(b)(2) have been satisfied.

5. **Final Settlement Approval and Dismissal of Claims:** The Stipulation and the terms of the Settlement as described in the Stipulation and the Notice are found to be fair, reasonable, and adequate, and are hereby approved. The Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with the terms and provisions set forth in the Stipulation.

6. The Action against the Defendants is hereby finally and fully settled, compromised and dismissed, on the merits and with prejudice; the Released Plaintiffs' Claims are hereby finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Plaintiff Parties; and the Released Defendants' Claims are hereby finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Defendant Parties. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

7. **Settlement Distribution:** The Settlement Administrator shall make distributions to Eligible Class Members in the manner and subject to the conditions set forth in the Stipulation and the Plan of Allocation.

8. **Binding Effect:** This Judgment and the Stipulation are and shall be binding upon and shall inure to the benefit of the Released Defendant Parties and the Released Plaintiff Parties.

9. **Releases:** The Court orders that:

a. Upon the Effective Date, Plaintiffs and all Class Members and their successors and assigns shall thereupon be deemed to have fully, finally and forever, released, settled and discharged the Released Defendant Parties from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Defendants' Claims against any of the Released Defendant Parties.

i. "Released Defendant Parties" means Defendants and each of their respective past or present Immediate Family members, trusts of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of any Defendants' Immediate Family, trustees, executors, beneficiaries, distributees, agents, fiduciaries, partners, control persons, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, stockholders, principals, officers, directors, advisors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, personal or legal representatives, heirs, estates, administrators, insurers and attorneys (including Defendants' Counsel).

ii. "Released Defendants' Claims" means any and all claims for relief, damages, compensation, demands, suits, actions, injuries, losses, costs, expenses and/or causes of action of any kind or character, whether at law or in equity,

regardless of legal theory, whether foreseen or unforeseen, contingent or actual, liquidated or unliquidated, known or unknown, which Plaintiffs or any Class Member, ever had, now has, or may have against any of the Released Defendant Parties, whether class or individual in nature, whether based on state, local, foreign, federal (including, but not limited to, any state or federal securities laws), statutory, regulatory, common or other law or rule, which are based upon, arise out of, involve, directly or indirectly, or relate in any way to any of the facts, allegations, conduct, actions, inaction, breaches of fiduciary duty or other obligations, statements, misrepresentations, omissions, transactions, events or occurrences that were, could have been, or in the future could be alleged, asserted, or claimed in the Action or relate to the subject matter thereof, in any court (whether state or federal), tribunal, forum, or proceeding; provided, however, that the Released Defendants' Claims shall not include (i) the right to enforce the Settlement or the Stipulation or (ii) claims solely for statutory appraisal with respect to the Merger pursuant to 8 *Del. C.* § 262 by Empire stockholders, and any successors-in-interest thereto, who properly perfected such claims for appraisal and have not otherwise waived their appraisal rights.

b. Upon the Effective Date, each of Defendants, on behalf of themselves, the other Released Defendant Parties and their successors and assigns shall thereupon be deemed to have fully, finally and forever, released, settled and

discharged the Released Plaintiff Parties from and with respect to every one of the Released Plaintiffs' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Released Plaintiff Parties.

i. "Released Plaintiff Parties" means Plaintiffs, all other Class Members, and their respective trustees, officers, directors, employees, agents, advisors, experts and attorneys (including Plaintiffs' Counsel).

ii. "Released Plaintiffs' Claims" means any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, against any Released Plaintiff Parties (i) arising out of and/or relating in any way to the prosecution of, participation in, and/or settlement of the Action or (ii) that otherwise in any way relate to the subject matter of the Action. The Released Plaintiffs' Claims shall not include claims to enforce the Stipulation or Plaintiffs' Counsel's application for a Fee and Expense Award.

10. With respect to the Released Claims, the Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of unknown claims to the fullest extent permitted by law,

and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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, THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11. **No Admissions**: Neither the Stipulation, nor the fact or any terms of the Settlement, or any communications relating thereto, is evidence, or an admission or concession by Plaintiffs or Defendants or their counsel, any Class Member, or any other 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 otherwise, 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. The Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by Plaintiffs, Defendants, any Class Member or other Released Defendant Parties or Released Plaintiff Parties, or any damages or injury to Plaintiffs, Defendants, any Class Member or other Released Defendant Parties or Released Plaintiff Parties. Neither the Stipulation, nor any of the terms and provisions of the Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor

the Settlement proceedings, nor any statements in connection therewith, (i) shall (a) 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, acts or omissions 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 (b) 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 (ii) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation and Judgment may be introduced in any proceeding subject to Rule 408 of the Federal Rules of Evidence and any and all other state law corollaries thereto, whether in the Court or otherwise, as may be necessary to argue and establish that the Stipulation and 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 insurance rights or proceeds of any of the Released Defendant Parties or Released Plaintiff Parties or as otherwise required by law.

12. **Award of Attorneys' Fees and Litigation Expenses:** Plaintiffs' Counsel is hereby awarded attorneys' fees of \$ _____ and expenses in the sum of \$ _____, which sum the Court finds to be fair and reasonable. Such sum shall be paid in accordance with the terms of the Stipulation.

13. **Contingent Reversion:** If the Effective Date does not occur, or if this Judgment or the Stipulation is disapproved, canceled or terminated pursuant to its terms, or the Settlement otherwise does not become Final for any reason, (i) the Parties shall be deemed to have reverted to their respective litigation status immediately prior to April 28, 2022, they shall negotiate a new trial schedule in good faith and they shall proceed as if the Stipulation had not been executed and the related orders had not been entered, (ii) all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way, and (iii) the statements made in connection with the negotiations of the Stipulation shall not be deemed to prejudice in any way the positions of any of the Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Party, shall not be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Action, and neither the existence of the Stipulation nor its contents nor any statements made in connection with its negotiation or any settlement communications shall be admissible in evidence or shall be referred to for any purpose in the Action, or in any other litigation or judicial proceeding.

IT IS SO ORDERED this _____ day of _____, 2022.

The Honorable Kathaleen St. Jude McCormick

Plan of Allocation¹

1. “Closing Security Position” means, for each DTC Participant, the number of shares of Empire common stock reflected on the DTC Allocation Report used by DTC to distribute the per share Merger Consideration.
2. “Eligible Class Members” means Class Members who held shares of Empire common stock at the Closing and received or were entitled to receive the Merger Consideration for their Eligible Shares.
3. “Eligible Shares” means shares of Empire common stock held by Eligible Class Members at the Closing and for which Eligible Class Members received or were entitled to receive Merger Consideration.
4. “Eligible Share Distribution” means an amount of the Net Settlement Fund equal to the product of (a) the Net Settlement Fund and (b) a fraction, the numerator of which is the number of Eligible Shares held by such Eligible Class Member and the denominator of which is the number representing the total number of Eligible Shares owned by all Eligible Class Members.
5. “DTC” means the Depository Trust Company.

¹ Unless defined herein, capitalized terms have the meaning ascribed to them in the Stipulation and Agreement of Compromise and Settlement dated June 13, 2022.

6. “DTC Allocation Report” means the allocation or “chill” report generated by the DTC in anticipation of the Merger to facilitate the allocation of the Merger Consideration to Empire stockholders.
7. “DTC Participant” means the brokers, dealers, banks, trust companies, clearing corporations, and other financial organizations on whose behalf the DTC holds securities.
8. “Merger Consideration” means \$9.74 per share in cash.
9. The Net Settlement Fund will be distributed on a pro rata basis to Eligible Class Members. The Settlement Administrator shall make distributions from the Net Settlement Fund to Eligible Class Members in the following manner and subject to the following conditions:
 - (a) Eligible Shares held of record by Cede & Co. (“Cede”) as nominee for the DTC – The Settlement Administrator will pay DTC an amount equal to the Eligible Share Distribution times the number of Eligible Shares for which Cede was the record holder. DTC will then distribute to each DTC Participant an amount equal to each DTC Participant’s Closing Security Position times the Eligible Share Distribution, using the same mechanism that DTC used to distribute the Merger Consideration and subject to payment suppression instructions

with respect to shares owned by any non-Class Member. The DTC Participants and their respective customers, including any intermediaries, shall then ensure pro rata payment to each Eligible Class Member based on the number of Eligible Shares beneficially owned by such Eligible Class Members.

- (b) All other Eligible Shares held – The Settlement Administrator shall pay directly to Eligible Class Members that held Eligible Shares other than through Cede, as nominee for DTC, an amount equal to the Eligible Share Distribution times the number of Eligible Shares held by each Eligible Class Member.
- (c) For the avoidance of doubt, Eligible Class Members that purchased shares of Empire common stock on or before November 15, 2019, but had not settled those shares at the Closing (“Non-Settled Shares”) shall be treated as Eligible Class Members with respect to those Non-Settled Shares, and Eligible Class Members that sold those Non-Settled Shares on or before November 15, 2019, but had not settled those Non-Settled Shares at the Closing shall not be treated as Eligible Class Members with respect to those Non-Settled Shares.

10. To the extent that any record holder, or any DTC Participant or his/her/its respective customers, including any intermediaries, took or permitted actions that had the effect of increasing the number of shares of Empire common stock entitled to payment of the per share Merger Consideration or to the equivalent thereof, whether through permitting naked short-selling or the cash settlement of short positions or through any other means (“Increased Merger Shares”), such record holder, DTC Participant, and DTC Participant’s customers (including intermediaries) shall be responsible for paying to the ultimate beneficial owners of such Increased Merger Shares an amount equal to the Eligible Share Distribution times the number of the Increased Merger Shares. Increased Merger Shares shall not increase the number of Eligible Shares. Whether DTC, any DTC Participant or DTC Participants’ customers are entitled to receive such funds from any such short-seller is not before the Court. However, in no event shall the payment of the Eligible Share Distributions be in any way diluted or reduced to cover amounts due as a result of any Increased Merger Shares.