



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

DARCY LIEN, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

C.A. No. 2022-0972-PAF

EAGLE EQUITY PARTNERS II, LLC,  
HARRY E. SLOAN, SCOTT M.  
DELMAN, JOSHUA KAZAM, ALAN  
MNUCHIN, LAURENCE E. PAUL, ELI  
BAKER, and JEFF SAGANSKY,

Defendants.

**AMENDED STIPULATION AND AGREEMENT OF SETTLEMENT,  
COMPROMISE, AND RELEASE**

This Amended Stipulation and Agreement of Settlement, Compromise, and Release, dated August 22, 2025 (the “Stipulation”), is entered into by and among: (i) plaintiffs Darcy Lien, Tony Diao, Michael Ogilvie, Walter Sutherland, and Wesam Taliani (“Plaintiffs”), on behalf of themselves and the other members of the Settlement Class (as defined in paragraph 1(y) below); and (ii) defendant Eagle Equity Partners II, LLC (“Eagle Equity Partners”), and defendants Harry E. Sloan, Scott M. Delman, Joshua Kazam, Alan Mnuchin, Laurence E. Paul, Eli Baker, and Jeff Sagansky (the “Individual Defendants,” and together with Eagle Equity

Partners, “Defendants”) (Plaintiffs and Defendants, together, the “Parties”).<sup>1</sup> Upon the terms and subject to the conditions set forth herein and the approval of the Court of Chancery of the State of Delaware (the “Court”) under Delaware Court of Chancery Rule 23, the Settlement embodied in this Stipulation is intended to be a full and final disposition of the claims asserted against Defendants in the above-captioned consolidated stockholder class action (the “Action”).

**WHEREAS:**

A. On March 10, 2020, Flying Eagle Acquisition Corp. (“Flying Eagle” or the “Company”), a special purpose acquisition company formed for the purpose of effecting a merger or other business combination, completed its initial public offering of 69 million units, with each unit consisting of one share of Flying Eagle Class A common stock and one-fourth of a warrant with an exercise price of \$11.50 per share.

B. On September 1, 2020, Flying Eagle, FEAC Merger Sub Inc. (a wholly owned subsidiary of Flying Eagle), Skillz Inc. (“Legacy Skillz”), and Andrew Paradise, in his capacity as representative of the stockholders of Legacy Skillz, entered into an Agreement and Plan of Merger (such agreement with any

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<sup>1</sup> All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings given to them in paragraph 1 below.

amendments thereto, the “Merger Agreement”), pursuant to which Legacy Skillz would be acquired by Flying Eagle (the “Merger”).

C. On November 30, 2020, Flying Eagle filed a definitive proxy statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 with the United States Securities and Exchange Commission relating to the Merger (such proxy statement together with any preliminary proxy filings, as well as any amendments or supplements thereto, the “Registration Statement”). The Registration Statement set the deadline for Flying Eagle stockholders to request to redeem their stock as December 14, 2020.

D. On December 16, 2020, a majority of Flying Eagle stockholders voted to approve the Merger; the Merger closed the same day, and Flying Eagle changed its name to Skillz Inc. (“Skillz”). Flying Eagle stockholders redeemed 2,140 of their shares.

E. On January 24, 2022, Plaintiff Darcy Lien served a demand to inspect the books and records of the Company pursuant to 8 *Del. C.* § 220 (the “Section 220 Demand”). In response to the Section 220 Demand, the Company produced 1,103 pages of documents to Plaintiff.

F. On October 27, 2022, Plaintiff Darcy Lien filed his Verified Class Action Complaint on behalf of himself and all other similarly situated current and

former Company stockholders, commencing this action in the Delaware Court of Chancery.

G. On January 20, 2023, Defendants filed a motion to suspend deadlines in this Action pending resolution of a motion to dismiss in another SPAC-related action pending before the Court of Chancery, and the Parties completed briefing of the motion to stay on January 27, 2023.

H. On February 3, 2023, the Court denied the motion to suspend deadlines.

I. On February 17, 2023, Defendants filed two motions to dismiss the Complaint under Court of Chancery Rule 12(b)(6).

J. On April 12, 2023, Plaintiff Darcy Lien filed his Verified Amended Class Action Complaint (the “Amended Complaint”) alleging that Defendants breached their fiduciary duties owed to Flying Eagle stockholders by pursuing the Merger with the purpose of gaining a non-ratable benefit for themselves through their interest in Flying Eagle Class B shares and by issuing an allegedly false and misleading Registration Statement that misled unaffiliated Flying Eagle Class A stockholders about the diligence Defendants conducted into the viability of Skillz’s post-Merger future and that precluded unaffiliated Flying Eagle Class A stockholders from making an informed decision as to whether to exercise their redemption rights. The Amended Complaint sought, among other things, a Court order awarding Plaintiff and the other members of the class monetary damages.

K. On June 2, 2023, Defendants filed a motion to dismiss the Amended Complaint under Court of Chancery Rule 12(b)(6), and Defendants Eagle Equity Partners and Sagansky filed a separate motion to dismiss (together, the “Motions to Dismiss”); the Parties submitted briefs to the Court, and the Court held a hearing on January 16, 2024.

L. On May 28, 2024, the Court delivered a bench ruling denying the Motions to Dismiss.

M. On June 26, 2024, Defendants filed an Answer to the Amended Complaint (the “Answer”). In the Answer, Defendants asserted as defenses to Plaintiff Darcy Lien’s claims, among others things, that the Amended Complaint failed to state a claim upon which relief could be granted, that Plaintiff lacked standing, and that the claims were barred because (i) the Merger was overwhelmingly approved by an uncoerced and fully informed stockholder vote, (ii) the Registration Statement did not contain any false or misleading statement or omit any material fact necessary to make any statement therein not misleading, or because any alleged misstatements or allegedly omitted information were immaterial as a matter of law, (iii) the Merger was subject to the business judgment rule and/or was entirely fair to Flying Eagle’s stockholders, (iv) Flying Eagle’s exculpatory charter provision enacted pursuant to Section 102(b)(7) of the Delaware General Corporation Law precluded the claims, and (v) Defendants’ good faith reliance on

Legacy Skillz's records and information, opinions, reports, or statements presented to Flying Eagle by any of its officers or employees, committees, or members of the Board of Directors, as well as advisors that were selected with reasonable care on matters within their professional or expert competence pursuant to Section 141(e) of the Delaware General Corporation Law.

N. Between June 2024 and February 2025, the Parties engaged in the following document and other written discovery: (i) Plaintiff propounded 55 requests for the production of documents to Defendants, served 104 interrogatories directed to Defendants, and served subpoenas on six third-parties; (ii) Plaintiff obtained over 25,000 pages of documents from his discovery requests propounded to Defendants and third parties, as well as responses to interrogatories; and (iii) Defendants propounded 41 requests for the production of Documents to Plaintiffs and served 36 interrogatories on Plaintiffs.

O. On August 16, 2024, the Court entered the Parties' Stipulation and Order for the Production and Exchange of Confidential Information.

P. On October 9, 2024, Plaintiffs' Counsel and Defendants' Counsel participated in a mediation session before Jed Melnick (the "Mediator"). In advance of that session, the Parties exchanged mediation statements and exhibits to the Mediator, which addressed the issues of both liability and damages. Plaintiff Darcy Lien set forth a summary of his claims and the issues presented in the Action (as

summarized in paragraph J above), and Defendants set forth their defenses (as summarized in paragraph M above). Although the session ended without any agreement being reached, the Parties continued their discussions concerning resolution of this Action.

Q. On January 14, 2025, the Court granted Plaintiffs Tony Diao, Michael Ogilvie, Walter Sutherland, and Wesam Taliani's unopposed motion to intervene.

R. As a result of extensive, arm's-length negotiations at the mediation session, and following the mediation session, the Parties reached an agreement in principle to settle the Action that was memorialized in a Settlement Term Sheet executed on March 27, 2025 (the "Settlement Term Sheet"). The Settlement Term Sheet set forth, among other things, the Parties' agreement to settle and release all claims against Defendants in the Action in return for a cash payment of \$10,000,000 (United States Dollars), subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers.

S. On April 2, 2024, the Parties submitted a letter to the Court regarding the agreement in principle to settle the Action and requesting that the Court stay the Action.

T. On May 19, 2025, the Parties executed a Stipulation and Agreement of Settlement, Compromise, and Release (the "May 19, 2025 Stipulation") (Trans. ID 76300451).

U. After May 19, 2025, in light of certain rulings of the Court in other SPAC-related actions, the Parties met and conferred and agreed to update the definition of “Settlement Class” to include only those successors-in-interest who obtained their shares by operation of law. This Stipulation (together with the exhibits hereto) reflects the final and binding agreement among the Parties and supersedes the Settlement Term Sheet and the May 19, 2025 Stipulation.

V. Plaintiffs, through Plaintiffs’ Counsel, have conducted an investigation and pursued extensive discovery relating to the claims and the underlying events alleged in the Action. Plaintiffs’ Counsel have analyzed the evidence adduced during the investigation and discovery as described above and have also researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto. This investigation and the settlement negotiations between the Parties have provided Plaintiffs with a detailed basis upon which to assess the relative strengths and weaknesses of the Parties’ respective positions in the Action.

W. Based upon their investigation, prosecution, and mediation of the Action, Plaintiffs and Plaintiffs’ Counsel have concluded that the terms and conditions of the Settlement and this Stipulation are fair, reasonable, and adequate to Plaintiffs and the other Settlement Class Members and in their best interests. Based on Plaintiffs’ direct oversight of the prosecution of the Action, along with the input of Plaintiffs’ Counsel, Plaintiffs have agreed to settle the claims raised in the



Action pursuant to the terms and provisions of this Stipulation, after considering: (i) the substantial benefits that Plaintiffs and the other Settlement Class Members will receive from the resolution of the Action; (ii) the attendant risks of litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation. The Settlement and this Stipulation shall in no event be construed as, or deemed to be, evidence of a concession by Plaintiffs of any infirmity in the claims asserted in the Action.

X. Defendants deny all allegations of wrongdoing, fault, liability, or damage to Plaintiffs and the Settlement Class, and further deny that Plaintiffs have asserted a valid claim as to any of them. Defendants further deny that they engaged in any wrongdoing or committed any violation of law or breach of duty and believe that at all relevant times they acted properly, in good faith, and in a manner consistent with their legal duties and are entering into the Settlement and this Stipulation solely to avoid the substantial burden, expense, inconvenience, and distraction of continued litigation and to resolve each of Plaintiffs' claims against Defendants. The Settlement Term Sheet, the Stipulation, the Settlement, the negotiations leading to the execution of the Settlement Term Sheet or the Stipulation, or any proceedings taken pursuant to or in connection with the Settlement Term Sheet or the Stipulation and/or approval of the Settlement, shall not be deemed or argued to be evidence of, or to constitute any presumption, admission, or concession by any Defendant or any

of the other Released Defendants' Persons, as to: (i) the truth of any fact alleged by Plaintiffs; (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Action or in any other proceeding; (iii) the deficiency of any defense that has been or could have been asserted in the Action or in any other proceeding; (iv) any wrongdoing, fault, or liability of any kind by any of them, which each of them expressly denies, or (v) any damages whatsoever. The fact of this Settlement, including the Settlement Term Sheet, the Stipulation, and the negotiation leading to the execution of the Settlement Term Sheet and the Stipulation, shall be inadmissible, and no party shall offer any such evidence or rely on or refer to it in this Action or in any other lawsuit or proceeding to support liability or damages.

Y. The Parties recognize that the Action has been filed and prosecuted by Plaintiffs in good faith and defended by Defendants in good faith and further that the Settlement Amount to be paid, and the other terms of the Settlement as set forth herein, were negotiated at arms' length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

**NOW THEREFORE, IT IS STIPULATED AND AGREED**, by and among Plaintiffs (individually and on behalf of the Settlement Class) and Defendants that, subject to the approval of the Court under Court of Chancery Rule 23, for good and valuable consideration set forth herein and conferred on Plaintiffs and the Settlement Class, the sufficiency of which is acknowledged, the claims asserted in

the Action on behalf of Plaintiffs and the Settlement Class against Defendants shall be finally and fully settled, resolved, discharged, and dismissed with prejudice, and that the Released Plaintiffs' Claims shall be finally and fully settled, resolved, discharged, and dismissed with prejudice against the Released Defendants' Persons, and that the Released Defendants' Claims shall be finally and fully settled, resolved, discharged, and dismissed with prejudice against the Released Plaintiffs' Persons, in the manner set forth herein.

## **I. DEFINITIONS**

1. In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation and the exhibits attached hereto and made a part hereof, shall have the meanings given to them below:

(a) "Defendants' Counsel" means White & Case LLP and Richards Layton & Finger, P.A.

(b) "DTC" means the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company.

(c) "Effective Date" means the first date by which all of the events and conditions specified in paragraph 30 of this Stipulation have been met and have occurred or have been waived.

(d) “Escrow Account” means the interest-bearing escrow account maintained by Plaintiffs’ Lead Counsel and into which the Settlement Amount shall be deposited.

(e) “Final,” when referring to the Judgment or any other court order, means (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any motion for reconsideration, reargument, appeal, or other review of the order; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari, reconsideration, or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari, reconsideration, reargument, or other form of review, or the denial of a writ of certiorari, reconsideration, reargument, or other form of review, and, if certiorari, reconsideration, or other form of review is granted, the date of final affirmance following review pursuant to that grant; provided, however, that any disputes or appeals relating solely to (i) the amount, payment, or allocation of attorneys’ fees and expenses or (ii) the plan of allocation of the Settlement proceeds (as submitted or subsequently modified), 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.

(f) “Judgment” means the Final Order and Judgment, substantially in the form attached hereto as Exhibit D, to be entered by the Court approving the Settlement.

(g) “Litigation Expenses” means any and all costs and expenses incurred by Plaintiffs’ Counsel in connection with commencing, prosecuting, and settling the Action, for which Plaintiffs’ Counsel intend to apply to the Court for payment from the Settlement Fund.

(h) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Court-awarded attorneys’ fees and/or Litigation Expenses to Plaintiffs’ Counsel to be paid from the Settlement Fund, including any incentive awards to Plaintiffs to be deducted solely from any award of attorneys’ fees to Plaintiffs’ Counsel; and (iv) any other costs or fees approved by the Court.

(i) “Notice” means the Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B, which is to be mailed or emailed to potential Settlement Class Members.

(j) “Notice and Administration Costs” means the reasonable costs, fees, and expenses incurred by the Settlement Administrator and/or Plaintiffs’ Counsel in connection with: (i) providing notice to the Settlement Class; and

(ii) administering the Settlement, including the costs, fees, and expenses incurred in connection with the Escrow Account.

(k) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice, or such other plan of allocation approved by the Court.

(l) “Plaintiffs’ Counsel” means Plaintiffs’ Lead Counsel, Morris Kandinov LLP, Kaskela Law LLC, and The Weiser Law Firm, P.C.

(m) “Plaintiffs’ Lead Counsel” means Bernstein Litowitz Berger & Grossmann LLP and Robbins LLP.

(n) “Released Claims” means, collectively, the Released Plaintiffs’ Claims and the Released Defendants’ Claims.

(o) “Released Defendants’ Claims” means any and all actions, causes of action, suits, liabilities, claims, rights of action, debts, sums of money, covenants, contracts, controversies, agreements, promises, damages, contributions, indemnities, and demands of every nature and description, whether or not currently asserted, whether known or Unknown Claims, suspected, existing, or discoverable, whether arising under federal, state, common, local, statutory, regulatory, foreign, or other law or rule, whether based in contract, tort, statute, law, equity, or otherwise, that arise out of, relate to, or are based upon the institution, prosecution, or settlement

of the claims against Defendants in the Action. Released Defendants' Claims shall not include the right to enforce the Settlement or any final judgment in this Action.

(p) "Released Defendants' Persons" means Defendants and Flying Eagle (n/k/a Skillz Inc.), as well as each of their respective current and former parents, affiliates, subsidiaries, committees, insurers, reinsurers, heirs, executors, administrators, trustees, estates, agents, employees, officers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, immediate family members, beneficiaries, assigns, advisors, counsel, representatives, and any entity under their control.

(q) "Released Plaintiffs' Claims" means any and all actions, causes of action, suits, liabilities, claims, rights of action, debts, sums of money, covenants, contracts, controversies, agreements, promises, damages, contributions, indemnities, and demands of every nature and description, whether or not currently asserted, whether known or Unknown Claims, suspected, existing, or discoverable, whether arising under federal, state, common, local, statutory, regulatory, foreign, or other law or rule, whether based in contract, tort, statute, law, equity, or otherwise (including, but not limited to, federal and state securities laws), that Plaintiffs or any other member of the Settlement Class (i) asserted in the Action or (ii) could have alleged, asserted, set forth, or claimed in the Action by Plaintiffs or any other member of the Settlement Class, individually or on behalf of the Settlement Class or

on behalf of Flying Eagle (n/k/a Skillz Inc.), that (1) concern, relate to, or arise out of the allegations, transactions, facts, circumstances, events, acts, disclosures, statements, representations, omissions, or failures to act alleged, set forth, referenced, or involved in the Action, including those claims related to (a) the Merger, (b) the Registration Statement, (c) any other disclosures relating to or concerning the Merger, or (d) the control or participation of any of Released Defendants' Persons with respect to any of the foregoing; and (2) arise out of, are based upon, relate to, or concern the rights of, duties owed to, and/or ownership of Flying Eagle shares as to which Plaintiffs or Settlement Class Members had redemption rights as of the redemption deadline. Released Plaintiffs' Claims shall not include (i) the right to enforce the Settlement or any final judgment in this Action; or (ii) claims asserted in *Hanna v. Paradise et. al.*, C.A. No. 2024-0228-KSJM (Del. Ch.).

(r) "Released Plaintiffs' Persons" means Plaintiffs, their attorneys (including Plaintiffs' Counsel), and all other Settlement Class Members, as well as each of their respective current and former parents, affiliates, subsidiaries, committees, insurers, reinsurers, heirs, executors, administrators, trustees, estates, agents, employees, officers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, immediate family members, beneficiaries, assigns, advisors, counsel, representatives, and any entity under their control.



(s) “Released Persons” means, collectively, the Released Plaintiffs’ Persons and the Released Defendants’ Persons.

(t) “Releases” means the releases set forth in paragraphs 4, 5, and 6, of this Stipulation.

(u) “Scheduling Order” means the Order, substantially in the form attached hereto as Exhibit A, directing notice of the Settlement and scheduling Settlement-related events.

(v) “Settlement” means the resolution of Action as against Defendants on the terms and conditions set forth in this Stipulation.

(w) “Settlement Administrator” means the settlement administrator selected by Plaintiffs to provide notice to the Settlement Class and administer the Settlement.

(x) “Settlement Amount” means \$10,000,000 (United States Dollars) in cash.

(y) “Settlement Class” means all holders of Flying Eagle Class A common stock, whether beneficial or of record, as of the closing of the Merger, including successors-in-interest who obtained their shares by operation of law. Excluded from the Settlement Class are (i) Defendants; (ii) members of the immediate families of the Individual Defendants; (iii) any person who is, or was at the time of the closing of the Merger on December 16, 2020, an officer or director

of Flying Eagle, Eagle Equity Partners, or Legacy Skillz, and their immediate family members; (iv) any parent, subsidiary, or affiliate of Flying Eagle, Eagle Equity Partners, or Legacy Skillz; (v) any entity in which any Defendant or any other excluded person or entity has, or had at the time of the closing of the Merger on December 16, 2020, a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors, and assigns of any such excluded person or entity (each, an “Excluded Person” and, collectively, the “Excluded Persons”). .

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

(aa) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(bb) “Settlement Hearing” means the hearing to be set by the Court under Delaware Court of Chancery Rule 23 to consider, among other things, final approval of the Settlement.

(cc) “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C, to be published as set forth in the Scheduling Order.

(dd) “Taxes” means: (i) all federal, state, and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses

and costs incurred by Plaintiffs' Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(ee) "Unknown Claims" means any Released Plaintiffs' Claims that Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants' Claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement.

## **II. CLASS CERTIFICATION**

2. Solely for the purposes of the Settlement and for no other purpose, the Parties stipulate and agree to: (a) certification of the Settlement Class as a non-opt-out class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (b) appointment of Plaintiffs as Class Representatives for the Settlement Class; and (c) appointment of Plaintiffs' Lead Counsel as Class Counsel for the Settlement Class.

### **III. RELEASE OF CLAIMS**

3. The obligations incurred pursuant to this Stipulation are in consideration of: (a) the full and final disposition of the Action; and (b) the Releases provided for under this Stipulation.

4. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Plaintiffs and each and every other Settlement Class Member, on behalf of themselves and 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 or entity acting for or on behalf of, or claiming under or through, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, each of the foregoing in their capacities as such only, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever dismissed with prejudice, settled, resolved, released and discharged the Released Plaintiffs' Claims against the Released Defendants' Persons, and shall forever be barred and enjoined from prosecuting the Released Plaintiffs' Claims against the Released Defendants' Persons.

5. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendants and Flying Eagle (n/k/a Skillz Inc.), on

behalf of themselves and 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 or entity acting for or on behalf of, or claiming under or through, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, each of the foregoing in their capacities as such only, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever dismissed with prejudice, settled, resolved, released and discharged the Released Defendants' Claims against the Released Plaintiffs' Persons, and shall forever be barred and enjoined from prosecuting the Released Defendants' Claims against the Released Plaintiffs' Persons.

6. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs, Defendants, and Flying Eagle (n/k/a Skillz Inc.) shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs, Defendants, and Flying Eagle (n/k/a Skillz Inc.) acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

7. Notwithstanding paragraphs 4, 5, and 6 above, nothing in the Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of this Stipulation or the Judgment.

#### **IV. SETTLEMENT CONSIDERATION**

8. No later than twenty (20) business days after the later of (i) approval and entry of the Scheduling Order by the Court, or (ii) Plaintiffs' Lead Counsel's delivery to Defendants' Counsel of all necessary wiring/payment information, a signed IRS Form W-9 reflecting a valid taxpayer identification number for the Escrow Account, and any other information reasonably requested to effectuate payment into the Escrow Account (including the name and telephone number of a person with knowledge who verbally can confirm wiring instructions), Defendants shall cause the Settlement Amount to be paid into the Escrow Account. Payment of

the Settlement Amount shall be made by wire transfer and/or ACH payment into the Escrow Account; payment shall not be made by check.

9. If Defendants fail to pay or cause the full payment of the Settlement Amount in a timely manner, Plaintiffs may exercise their right under paragraph 32 below to terminate the Settlement.

## **V. USE OF SETTLEMENT FUND**

10. The Settlement Amount plus any and all interest earned thereon is referred to as the “Settlement Fund.” The Settlement Fund is an all-in settlement number, and shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any attorneys’ fees and/or Litigation Expenses awarded by the Court from the Settlement Fund, including any incentive awards to Plaintiffs to be deducted solely from any award of attorneys’ fees to Plaintiffs’ Counsel; and (d) any other costs or fees approved by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Settlement Class Members pursuant to the proposed Plan of Allocation set forth in the Notice or such other plan of allocation approved by the Court.

11. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall

be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

12. The Parties agree that the Settlement Fund is intended to be a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 and that Plaintiffs' Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Plaintiffs' Lead



Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Defendants' Persons shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide Plaintiffs' Lead Counsel with the statement described in Treasury Regulation § 1.468B-3(e). Plaintiffs' Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the qualified settlement fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

13. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Plaintiffs' Lead Counsel and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph 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.

14. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, Defendants, Flying Eagle (n/k/a Skillz Inc.), and the other

Released Defendants' Persons, and any of their insurers or affiliates and any other person or entity who or which paid any portion of the Settlement Amount, shall not have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including the inability to locate Settlement Class Members or the failure of Settlement Class Members to deposit settlement funds distributed by the Settlement Administrator.

15. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Plaintiffs' Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Settlement Administrator in connection with providing notice and administering the Settlement, and the fees, if any, of the Escrow Agent. If the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, any of the other Released Defendants' Persons, or any other person or entity who or which paid any portion of the Settlement Amount.

## **VI. ATTORNEYS' FEES AND LITIGATION EXPENSES**

16. In connection with the Settlement, Plaintiffs' Counsel will apply to the Court for a collective award of attorneys' fees and payment of Litigation Expenses (the "Fee and Expense Award") to be paid solely from (and out of) the Settlement Fund. In connection with Plaintiffs' Counsel's application for a Fee and Expense Award, Plaintiffs may petition the Court for incentive awards (the "Incentive Awards") to be paid solely from any Fee and Expense Award to Plaintiffs' Counsel. Plaintiffs' Counsel's application for a Fee and Expense Award, including any application by Plaintiffs for Incentive Awards, is not the subject of any agreement among the Parties other than what is set forth in this Stipulation.

17. The Fee and Expense Award shall be paid to Plaintiffs' Counsel, and any Incentive Awards approved by the Court shall be paid to Plaintiffs, from the Settlement Fund immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's and Plaintiffs' obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award or any Incentive Awards are reduced or reversed and such order

reducing or reversing the award has become Final. Plaintiffs' Counsel and Plaintiffs shall make the appropriate refund or repayment in full no later than twenty (20) business days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the Fee and Expense Award has become Final. Any Fee and Expense Award is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. In the event that the Court does not award attorneys' fees or expenses, or in the event the Court makes an award in an amount that is less than the amount requested by Plaintiffs' Counsel or is otherwise unsatisfactory to Plaintiffs' Counsel, or in the event that any such award is vacated or reduced on appeal, this Stipulation and the Settlement, including the effectiveness of the Releases and other obligations of the Parties under the Settlement, nevertheless shall remain in full force and effect. Neither Plaintiffs nor Plaintiffs' Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to any Fee and Expense Award.

18. Plaintiffs' Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in their discretion, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. The Released Defendants' Persons shall have no

responsibility for or liability whatsoever with respect to the allocation or award of the Fee and Expense Award, if any, to Plaintiffs' Counsel.

## **VII. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL**

19. As soon as practicable after execution of this Stipulation, Plaintiffs shall apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A, providing for, among other things: (a) the dissemination by mail, or email, of the Notice; (b) the publication of the Summary Notice; and (c) the scheduling of the Settlement Hearing to consider: (1) final approval of the proposed Settlement, (2) the request that the Judgment, substantially in the form attached hereto as Exhibit D, be entered by the Court, (3) Plaintiffs' Counsel's application for a Fee and Expense Award, including any application by Plaintiffs for Incentive Awards, and approval of the proposed Plan of Allocation, and (4) any objections to any of the foregoing. The Parties shall take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order. The date and time of the Settlement Hearing set by the Court in Scheduling Order may be changed by the Court without further written notice to the Settlement Class.

20. The Parties shall request at the Settlement Hearing that the Court approve the Settlement and enter the Judgment, substantially in the form attached hereto as Exhibit D. The Parties shall take all reasonable and appropriate steps to obtain entry of the Judgment.

## **VIII. SETTLEMENT ADMINISTRATION**

21. Plaintiffs shall retain a Settlement Administrator to provide notice of the Settlement and for the disbursement of the Net Settlement Fund to eligible Settlement Class Members. Defendants and the other Released Defendants' Persons shall not have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Settlement Administrator.

22. Defendants shall cooperate with Plaintiffs in providing notice of the Settlement and administering the Settlement, including providing the information required under paragraphs 23 and 24 below.

23. For purposes of providing notice of the Settlement to potential Settlement Class Members, no later than five (5) business days after the date of entry of the Scheduling Order, Defendants, at no cost to the Settlement Fund, Plaintiffs' Counsel, or the Settlement Administrator, shall make reasonable best efforts to cause to be provided to Plaintiffs' Lead Counsel, to the extent available to them: (a) an Excel file containing the stockholder register from Flying Eagle's transfer agent, which lists the names, mailing addresses and, if available, email addresses for all registered holders of Flying Eagle Class A common stock ("Registered Holders") as of the closing of the Merger on December 16, 2020, and for each of those Registered Holders, the number of shares of Flying Eagle Class A common stock held as of the closing of the Merger on December 16, 2020; and (b) an Excel file containing the

allocation report generated by DTC (the “Allocation Report”), which lists (i) each DTC participant (“DTC Participant”) that held shares of Flying Eagle Class A common stock as of the closing of the Merger on December 16, 2020; (ii) the number of shares of Flying Eagle Class A common stock held by each DTC Participant as of the closing of the Merger on December 16, 2020; and (iii) the “DTC Number” of each such DTC Participant.

24. For purposes of distributing the Net Settlement Fund to eligible Settlement Class Members, no later than fifteen (15) business days after the date of execution of this Stipulation, Defendants, at no cost to the Settlement Fund, Plaintiffs’ Counsel, or the Settlement Administrator, shall cause to be provided to Plaintiffs’ Lead Counsel in an electronically-searchable form, such as Excel, the following information: (a) a list of the Excluded Persons (as defined in paragraph 1(y) above); and (b) for each of the Excluded Persons: (i) an indication of whether the Excluded Person was, as of the closing of the Merger on December 16, 2020, either (1) a record holder of Flying Eagle Class A common stock or (2) a beneficial holder of Flying Eagle Class A common stock whose shares were held via a financial institution on behalf of the Excluded Person; (ii) the number of shares of Flying Eagle Class A common stock owned by the Excluded Person as of the closing of the Merger on December 16, 2020 (the “Excluded Shares”); and (iii) for each of the Excluded Persons that is a beneficial holder of Flying Eagle Class A

common stock, the name and “DTC Number” of the financial institution(s) where their Excluded Shares were held and the Excluded Person’s account number(s) at such financial institution(s). For purposes of distributing the Net Settlement Fund to eligible Settlement Class Members, no later than fifteen (15) business days after the date of execution of this Stipulation, Defendants, at no cost to the Settlement Fund, Plaintiffs’ Counsel, or the Settlement Administrator, shall also make reasonable best efforts to cause to be provided to Plaintiffs’ Lead Counsel in an electronically-searchable form, such as Excel, to the extent available to them: (a) a list of the holders of Redeemed Shares (as defined in paragraph 1(y) above; such holders, “Redeeming Stockholders”); and (b) for each of the Redeeming Stockholders: (i) an indication of whether the Redeeming Stockholder was, as of the closing of the Merger on December 16, 2020, either (1) a record holder of Flying Eagle Class A common stock or (2) a beneficial holder of Flying Eagle Class A common stock whose shares were held via a financial institution on behalf of the Redeeming Stockholder; (ii) the number of Redeemed Shares for each Redeeming Stockholder; and (iii) for each of the Redeeming Stockholders that is a beneficial holder of Flying Eagle Class A common stock, the name and “DTC Number” of the financial institution(s) where their Redeemed Shares were held and the Redeeming Stockholder’s account number(s) at such financial institution(s). At the request of Plaintiffs’ Lead Counsel, Defendants will use reasonable best efforts to provide



such additional information or documentation as may be required to distribute the Net Settlement Fund to eligible Settlement Class Members and not to Excluded Persons or in connection with Redeemed Shares.

25. No Excluded Persons and no Redeeming Stockholders shall 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.

26. The Net Settlement Fund shall be distributed to eligible Settlement Class Members in accordance with the proposed Plan of Allocation set forth in the Notice or such other plan of allocation as may be approved by the Court. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation, and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Plaintiffs and Plaintiffs' Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Plaintiffs' Lead Counsel have provided Defendants with reasonable notice to, and opportunity to comment on, the Plan of

Allocation before execution of this Stipulation. Defendants and the other Released Defendants' Persons shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action, and shall not have any involvement with the application of the Court-approved plan of allocation, except with respect to the delivery of the information required under paragraphs 23 and 24 above.

27. The Net Settlement Fund shall be distributed to eligible Settlement Class Members only after the Effective Date of the Settlement and after: (a) all Notice and Administration Costs, all Taxes, and any Fee and Expense Award, including any Incentive Awards to Plaintiffs to be solely from any Fee and Expense Award, have been paid from the Settlement Fund or reserved; and (b) the Court has entered an order authorizing the specific distribution of the Net Settlement Fund (the "Class Distribution Order"). At such time that Plaintiffs' Lead Counsel, in their sole discretion, deem it appropriate to move forward with the distribution of the Net Settlement Fund to eligible Settlement Class Members, Plaintiffs' Counsel shall apply to the Court, on notice to Defendants' Counsel, for the Class Distribution Order. Subject to the approval of the Court under the Plan of Allocation and the Class Distribution Order, any residual amounts remaining in the Net Settlement Fund may be redistributed to identified Settlement Class Members; provided, however, that if redistribution is uneconomic, the residual funds may be transferred to the Combined Campaign for Justice or a similar organization.

28. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. Plaintiffs, Defendants, and the other Released Defendants' Persons and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the determination, administration, or calculation of any payment from the Net Settlement Fund; the nonperformance of the Settlement Administrator or a nominee holding shares of Company common stock; the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund; or any losses incurred in connection with any of the foregoing.

29. All proceedings with respect to the administration of the Settlement and distribution pursuant to the Class Distribution Order shall be subject to the exclusive jurisdiction of the Court.

## **IX. CONDITIONS OF SETTLEMENT**

30. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver in writing by the Parties of all of the following conditions, which the Parties shall use their respective best efforts to achieve:

(a) the full amount of the Settlement Amount has been paid into the Escrow Account accordance with paragraph 8 above;

(b) the Court has entered the Scheduling Order, substantially in the form attached hereto as Exhibit A;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

(d) Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, and entered the Judgment, substantially in the form attached hereto as Exhibit D; and

(f) the Judgment has become Final.

31. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants, Flying Eagle (n/k/a Skillz Inc.), or any of their respective insurers or affiliates, or any other person or entity who or which funded the Settlement Amount, in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

#### **X. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION**

32. Plaintiffs (provided Plaintiffs unanimously agree amongst themselves) and Defendants (provided Defendants unanimously agree amongst themselves) shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other Parties within thirty (30) calendar days of: (a) the Court’s final refusal to enter the Scheduling Order in any material respect and such final refusal decision having

become Final; (b) the Court's final refusal to approve the Settlement or any material part thereof and such final refusal decision has become Final; (c) the Court's final refusal to enter the Judgment in any material respect as to the Settlement and such final refusal decision having become Final; or (d) the date upon which an order modifying or reversing the Judgment in any material respect becomes Final. In addition to the foregoing, Plaintiffs (provided Plaintiffs unanimously agree amongst themselves) shall have the unilateral right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so to Defendants within thirty (30) calendar days of any failure of Defendants to cause the full payment of the Settlement Amount into the Escrow Account in a timely manner in accordance with paragraph 8 above. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application by Plaintiffs' Counsel for a Fee and Expense Award, including any application by Plaintiffs for Incentive Awards, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination of the Settlement.

33. If (i) Plaintiffs exercise their right to terminate the Settlement as provided in this Stipulation; or (ii) Defendants exercise their right to terminate the Settlement as provided in this Stipulation, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated;

(b) Plaintiffs and Defendants shall revert to their respective positions in the Action as of immediately prior to the Parties' execution of the Settlement Term Sheet on March 27, 2025;

(c) The terms and provisions of this Stipulation, with the exception of this paragraph 33 and paragraphs 15, 17, 34, and 58 of this Stipulation, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

(d) Within twenty (20) business days after joint written notification of termination is sent by Defendants' Counsel and Plaintiffs' Lead Counsel to the Escrow Agent, the Settlement Fund (after giving effect to any change in value as a result of the investment of the Settlement Fund and including any funds received by Plaintiffs' Counsel consistent with paragraph 17 above), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes paid, due, or owing shall be refunded by the Escrow Agent to Defendants and/or such other person or entity contributing to the payment of the Settlement Amount, with the refund allocated according to the respective contributions to the Settlement

Amount (according to instructions to be provided by Defendants to Plaintiffs' Lead Counsel). In the event that the funds received by Plaintiffs' Counsel consistent with paragraph 17 above have not been refunded to the Settlement Fund within the twenty (20) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to Defendants and/or such other person or entity contributing to the payment of the Settlement Amount, with the refund allocated according to the respective contributions to the Settlement Amount (according to instructions to be provided by Defendants to Plaintiffs' Lead Counsel) immediately upon their deposit into the Escrow Account consistent with paragraph 17 above.

#### **XI. NO ADMISSION OF WRONGDOING**

34. Neither this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of this Stipulation, nor any proceedings taken pursuant to or in connection with this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or

could have been asserted or the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Released Plaintiffs' Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Persons that any of their claims are without merit, that any of the Released Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaints would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Released Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration which could be or would have been achieved after trial;



*provided, however*, that if this Stipulation is approved by the Court, the Parties and the Released Persons and their respective counsel may refer to it to effectuate the protections from liability granted under this Stipulation or otherwise to enforce the terms of the Settlement.

35. The Parties may file this Stipulation and/or the Order and Final Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim or in connection with any insurance litigation. The provisions in paragraphs 34 and 35 shall remain in force in the event that this Stipulation or the Settlement is terminated for any reason whatsoever.

## **XII. MISCELLANEOUS PROVISIONS**

36. All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, if 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.

37. Each of the Defendants warrants that, as to the payments made or to be made on behalf of him, her, or it, at the time of entering into this Stipulation and at the time of such payment he, she, or it, or to the best of his, her, or its knowledge

any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of them render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their counsel.

38. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer, or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiffs, Plaintiffs and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the other Released Persons pursuant to this Stipulation, in which event the Releases and Judgment shall be null and void, and Plaintiffs and Defendants shall be restored to their respective positions in the litigation as provided in paragraph 33 above and any cash amounts in the Settlement Fund (less any Taxes paid, due, or owing with respect to the Settlement Fund) shall be returned as provided in paragraph 33 above.

39. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs

and any other Settlement Class Members against Defendants with respect to the Released Plaintiffs' Claims. Accordingly, Plaintiffs and their counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

40. While retaining their right to deny that the Claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiffs and their counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

41. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of each of the Parties (or their successors-in-interest).

42. The headings herein are used for the purpose of convenience only and are not meant to have legal effect. The use of the word “including” herein shall mean “including without limitation.”

43. If any deadline set forth in this Stipulation or the exhibits hereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

44. Without further Order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

45. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys’ fees and Litigation Expenses to Plaintiffs’ Counsel, and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Class Settlement Fund to eligible Settlement Class Members.

46. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of such breach by any other Party or a waiver by the waiving Party of any other prior or subsequent breach of this Stipulation.

47. This Stipulation and its exhibits constitute the entire agreement among the Parties concerning the Settlement and this Stipulation and its exhibits. Each Party acknowledges that no other agreements, representations, warranties, or inducements have been made by or on behalf of any Party concerning this Stipulation or its exhibits other than those contained and memorialized in such documents.

48. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, DocuSign, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

49. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, and the Released Persons, and any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize. The Parties acknowledge and agree, for the avoidance of doubt, that the Released Defendants' Persons and the Released Plaintiffs' Persons are intended beneficiaries of this Stipulation and are entitled to enforce the Releases contemplated by the Settlement.

50. The construction, interpretation, operation, effect and validity of this Stipulation and all documents necessary to effectuate it shall be governed by the internal laws of the State of Delaware without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

51. Any action arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in the Court to the extent the Court has jurisdiction over the claims and parties to such action or proceedings.

52. 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 among the Parties and that all Parties have contributed substantially and materially to the preparation of this Stipulation.

53. All counsel and all other persons executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

54. Plaintiffs' Lead Counsel and Defendants' Counsel agree to cooperate fully with one another to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required of this Stipulation (including using their respective

best efforts to resolve any objections raised to the Settlement), and to use best efforts 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.

55. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs or Plaintiffs' Lead  
Counsel:

Bernstein Litowitz Berger & Grossmann LLP  
Attn: Jeroen van Kwawegen, Esq.  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 554-1400  
jeroen@blbglaw.com

Robbins LLP  
Attn: Gregory Del Gaizo, Esq.  
5060 Shoreham Pl., Ste. 300  
San Diego, CA 92122  
(619) 525-3990  
gdelgaizo@robbinsllp.com

If to Defendants:

White & Case LLP  
Attn: Greg Starner, Esq.  
1221 Avenue of the Americas  
New York, New York 10020-1095  
(212) 819-8839  
gstarner@whitecase.com

Richards, Layton & Finger, P.A.  
Attn: Kevin M. Gallagher, Esq.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
(302) 651-7692  
gallagher@rlf.com

56. Except as otherwise provided herein, each Party shall bear its own costs.

57. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Settlement.

58. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, drafts, and proceedings in connection with the preparation and execution of this Stipulation confidential.

59. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

60. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given



by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**IN WITNESS WHEREOF**, the Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of August 22, 2025.

[Signatures Beginning on Next Page]

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

OF COUNSEL:

Jeroen van Kwawegen  
Thomas G. James

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Delman, Joshua Kazam, Alan Mnuchin,  
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