



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALAN KAHN,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2021-0103-PAF
)	
JAMES G. GIDWITZ, RALPH W.)	
GIDWITZ, STEVEN GIDWITZ,)	
SCOTT GIDWITZ, THEODORE R.)	
TETZLAFF, DARRELL M. TRENT,)	
PETER E. THIERIOT, RYAN)	
SULLIVAN, BEE STREET)	
HOLDINGS LLC, and BEE STREET)	
II, INC.,)	
)	
Defendants.)	

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (together with the exhibits hereto, the “Stipulation”) is entered into as of January 4, 2022, between (i) plaintiff Alan Kahn (“Plaintiff”), on his own behalf and on behalf of the Class¹; and (ii) defendants James G. Gidwitz, Ralph W. Gidwitz, Steven Gidwitz, Scott Gidwitz, Theodore R. Tetzlaff, Ryan Sullivan, Bee Street Holdings LLC, and Bee Street II, Inc. (collectively, “Defendants,” and together with Plaintiff, the “Parties,” and each individually a “Party”), by and through their respective undersigned counsel, and

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in Paragraph 1 below.

embodies the terms and conditions of the Settlement of the above-captioned consolidated stockholder class action (the “Action”). Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, discharge, and resolve the Released Claims and, subject to approval of the Court of Chancery of the State of Delaware (the “Court”), dismiss the Action in its entirety with prejudice.

WHEREAS:

A. On February 18, 2020, Bee Street Holdings LLC (“Bee Street”) commenced an unsolicited tender offer to purchase all of the issued and outstanding common stock of Continental Materials Corporation (“CMC” or the “Company”) for \$9.50 per share in cash (the “Tender Offer”) by filing a Tender Offer Statement on Schedule TO and Offer to Purchase (together with any subsequent amendments, the “Schedule TO”) with the United States Securities and Exchange Commission (“SEC”), which Tender Offer was set to expire on March 17, 2020 unless extended;

B. Bee Street at the time of the commencement of the Tender Offer was an entity controlled by, among others, James G. Gidwitz, CMC’s Chief Executive Officer and Chairman of the board of directors, and owner of approximately 61% of CMC’s issued and outstanding common stock;

C. The Tender Offer was conditioned upon, among other things, (i) a “Majority Minority Condition” whereby at least a majority of the shares not owned

by Bee Street and its affiliates immediately prior to the Tender Offer were validly tendered and (ii) a “Minimum Tender Condition” whereby the number of validly tendered shares would permit Bee Street to own at least 90% of CMC’s outstanding shares and thus permit Bee Street to complete a “short form” merger under Section 253 of the Delaware General Corporation Law (the “DGCL”);

D. Bee Street disclosed in its filings with the SEC that the Tender Offer was the first step in a “going-private” transaction, whereby if the Minimum Tender Condition and Majority Minority Condition were met and if the Tender Offer was completed, Bee Street, through its Bee Street II, Inc. acquisition subsidiary (“Acquisition Subsidiary”), would complete the short form merger without the need to seek approval from CMC’s remaining stockholders and merge with and into CMC with Bee Street remaining as the indirect 100% owner of CMC (the “Merger”);

E. On March 3, 2020, CMC filed a Solicitation/Recommendation Statement on Schedule 14D-9 (together with any subsequent amendments, the “Schedule 14D-9”) with the SEC, which disclosed, among other things, that CMC’s board of directors unanimously decided to express no opinion and remain neutral with respect to the Tender Offer;

F. On March 9, 2020, CMC received a demand from Plaintiff for the inspection of CMC’s books and records pursuant to Section 220 of the DGCL (the “220 Demand”);

G. Plaintiff through the 220 Demand sought to investigate possible fiduciary breaches or other wrongdoing and demanded internal CMC documents in connection with CMC's financial condition and the Tender Offer and Bee Street's plan to take CMC private;

H. On March 13, 2020, CMC rejected the 220 Demand as improper but stated a willingness to produce certain documents responsive to the 220 Demand;

I. On March 17, 2020, Plaintiff filed a lawsuit (the "220 Action") in the Court, styled as *Kahn v. Continental Materials Corporation*, C.A. No. 2020-0205-PAF (Del. Ch.), seeking to compel the inspection of CMC's books and records as set forth in the 220 Demand;

J. On March 18, 2020, Bee Street extended the expiration of the Tender Offer to April 3, 2020;

K. On April 6, 2020, Bee Street extended the expiration of the Tender Offer to April 14, 2020;

L. On April 15, 2020, Bee Street announced that the Tender Offer was completed with Bee Street accepting for payment 427,321 shares of CMC stock that were validly tendered in the Tender Offer for a total consideration of \$4.06 million, which resulted in Bee Street owning approximately 89% of CMC's outstanding shares;

M. On May 8, 2020, CMC filed in the 220 Action its Answer, in which CMC denied that it had wrongly refused the 220 Demand and denied that it was obligated to produce documents responsive to the 220 Demand;

N. Beginning in late March, 2020 and continuing through late September, 2020, Plaintiff and CMC met and conferred numerous times regarding the scope of an agreed production of documents responsive to the 220 Demand and the parameters of CMC's search for responsive documents, including emails and other electronically stored information ("ESI");

O. In sum, CMC produced 8,723 pages of documents in response to the 220 Demand, including ESI;

P. On September 23, 2020, Plaintiff and CMC agreed to a stipulated dismissal of the 220 Action, which was granted by the Court;

Q. Following the completion of the Tender Offer, Bee Street acquired sufficient shares of CMC to make Bee Street the owner of at least 90% of CMC's outstanding shares;

R. On October 14, 2020, the board of managers of Bee Street and the board of directors of Acquisition Subsidiary each completed unanimous written consents to complete the Merger under Section 253 of the DGCL and acquire 100% of CMC's outstanding shares, which was formalized with the filing of a Certificate of Ownership and Merger with the Delaware Secretary of State the same day;

S. Through the Merger, each share of CMC common stock not owned by Bee Street was cancelled and retired and converted into the right to receive \$9.50 cash (other than any shares for which appraisal was sought under Section 262 of the DGCL);

T. On February 5, 2021, Plaintiff commenced the Action by filing a Verified Stockholder Class Action Complaint (the “Complaint”) against (i) Bee Street and Acquisition Subsidiary, (ii) James G. Gidwitz, Ralph W. Gidwitz, Steven Gidwitz, Scott Gidwitz, Theodore R. Tetzlaff, Darrell M. Trent, and Peter E. Thieriot, who were CMC directors at the time of the Tender Offer and (iii) CMC’s Chief Operating Officer, Ryan Sullivan;

U. In his Complaint, Plaintiff alleged on behalf of himself and a putative class of all other former CMC stockholders that Bee Street and Acquisition Subsidiary, as CMC’s controlling stockholder, and CMC’s directors and officers breached their fiduciary duties because the Tender Offer and Merger were subject to entire fairness review under Delaware law and were not entirely fair as to process and/or price;

V. On May 11, 2021, Defendants filed their Answer in the Action and Darrell M. Trent and Peter E. Thieriot (the “Moving Defendants”) filed a motion to dismiss the Complaint;

W. In their Answer, Defendants denied that they breached any duty to CMC's former stockholders, denied that the Tender Offer and/or Merger were not entirely fair, and asserted numerous affirmative defenses to the claims asserted in the Complaint;

X. In their brief in support of their motion to dismiss, the Moving Defendants argued, among other things, that they were independent directors and did not act disloyally or in bad faith;

Y. On June 9, 2021, Plaintiff filed a notice of voluntary dismissal as to the Moving Defendants, with the Action to continue as to Defendants;

Z. Following the filing of Defendants' answer, Plaintiff served a discovery demand to Defendants to obtain additional documents not yet produced in connection with the 220 Demand;

AA. In connection with Plaintiff's discovery demand, the Parties met and conferred numerous times and also began a discussion regarding a potential resolution of the Action;

BB. The Parties engaged in arm's length settlement negotiations over the course of two months and on October 6, 2021 reached an agreement in principle to settle the Action for \$1.7 million, subject to the terms and conditions set forth in this Stipulation;

CC. This Stipulation is intended fully, finally and forever to resolve, discharge and settle the Released Plaintiff's Claims (as defined herein) and the Released Defendants' Claims (as defined herein) with prejudice. It is the intention of the Parties that the Settlement will release all Released Plaintiff's Claims and Released Defendants' Claims;

DD. The entry by the Parties 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;

EE. Based upon their investigation and prosecution of the Action and the 220 Demand, Plaintiff and Plaintiff's Counsel (as defined herein) have concluded that the terms and conditions of the Settlement are fair, reasonable and adequate to Plaintiff and the other members of the Class (as defined herein) and in their best interests. Based on Plaintiff's direct oversight of the prosecution of this Action and with the advice of his counsel, Plaintiff has agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (a) the financial benefit that Plaintiff and the other members of the Class will receive under the Settlement, (b) the risks of continued litigation and trial, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms and conditions of this Stipulation;

FF. Defendants have denied, and continue to deny, any and all allegations of their respective wrongdoing, fault, liability or damage whatsoever with respect to all claims asserted or that could be asserted in the Action or any other proceeding, and each of the Defendants denies that he, she or it engaged in, committed or aided or abetted the commission of any breach of duty, wrongdoing or violation of law, and maintain that each of the Defendants acted in good faith and in a manner believed to be in the best interests of CMC and all of its stockholders;

GG. Defendants enter into this Stipulation solely because they consider it desirable that the Action be settled and dismissed with prejudice in order to, among other things, eliminate the risks, uncertainties, burden, and expense of further litigation. Nothing in this Stipulation shall be construed as any admission by any of the Defendants of any kind, including admissions as to wrongdoing, fault, liability, or damages whatsoever, or as evidence as to any of the foregoing. Nothing in this Stipulation shall be construed as an allocation of fault or liability between or among any of the Defendants.

HH. The Parties recognize that the Action was filed and prosecuted by Plaintiff and Plaintiff's Counsel in good faith and defended by Defendants in good faith and further that the Settlement and the terms of this Stipulation were negotiated at arm's-length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel;

II. Counsel for the Parties did not discuss the appropriateness or amount of any application by Plaintiff's Counsel for an award of attorneys' fees and expenses with respect to the Settlement until after the Parties reached agreement on all terms of the proposed Settlement, including but not limited to the Settlement Payment.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by Plaintiff, for himself and on behalf of the Class, and by the Defendants that, subject to the approval of the Court and pursuant to Court of Chancery Rule 23 and the other conditions set forth herein, for the good and valuable consideration set forth herein and conferred on Plaintiff and the Class, the Action shall be finally and fully settled, compromised, and dismissed, on the merits and with prejudice, and that the Released Plaintiff's Claims shall be finally and fully compromised, settled, released, discharged, and dismissed with prejudice against the Released Defendant Parties, and that the Released Defendants' Claims shall be finally and fully compromised, settled, released, discharged, and dismissed with prejudice against the Released Plaintiff Parties, in the manner set forth herein.

A. Definitions

1. In addition to the terms defined at various points within this Stipulation, the following capitalized terms, used in this Stipulation and any exhibits attached hereto, shall have the meanings specified below:

a. “Account” means the escrow account that is maintained by the Administrator and into which the Settlement Payment shall be deposited. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the U.S. Government or agency thereof, or if the yield on such instruments is negative, in an account fully insured by the U.S. Government or an agency thereof.

b. “Administrator” means RG2 Claims Administration LLC.

c. “Administrative Costs” means all costs and expenses associated with providing notice of the Settlement to the Class or otherwise administering or carrying out the terms of the Settlement, including, without limitation, all Taxes, the actual costs of printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Administrator in connection with providing Notice via mail, website, telephone and email as needed, and the fees and expenses, of the Administrator. Administrative Costs are not part of the Fee and Expense Award.

d. “Cede” means Cede & Co., Inc.

e. “Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, actions, potential actions, causes of action, suits, agreements,

judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including known claims and Unknown Claims, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule.

f. “Class” means a class consisting of all record holders and beneficial owners of CMC common stock whose shares were (i) tendered and exchanged into the right to receive \$9.50 cash per share in connection with the first step Tender Offer and subsequent offering period that expired on April 17, 2020; and/or (ii) exchanged into the right to receive \$9.50 cash per share in connection with the second step Merger consummated on October 14, 2020, but in each case excluding the Excluded Stockholders.

g. “Class Member” means a member of the Class. For the avoidance of doubt, Class Members excludes Excluded Stockholders.

h. “Closing” means the date of the consummation of the Merger on October 14, 2020.

i. “Closing Beneficial Ownership Position” means, for each Eligible Beneficial Owner, the number of shares of CMC common stock tendered in the Tender Offer by such Eligible Beneficial Owner and/or beneficially owned by such Eligible Beneficial Owner as of Closing, for which the Eligible Beneficial Owner received payment of the Transaction Consideration; *provided, however*, that no Excluded Shares may comprise any part of any Closing Beneficial Ownership Position.

j. “Closing Security Position” means, for each DTC Participant, the number of shares of CMC common stock reflected on the DTC allocation report used by DTC to distribute the Transaction Consideration.

k. “Court” means the Court of Chancery of the State of Delaware.

l. “Defendants’ Counsel” means the law firms of Willkie Farr & Gallagher LLP and Morris, Nichols, Arsht & Tunnell LLP.

m. “DTC” means the Depository Trust Company.

n. “DTC Participants” means the DTC participants to which DTC distributed the Transaction Consideration.

o. “DTC Records” means the information to be obtained from DTC necessary to facilitate DTC’s distribution of the Net Settlement Fund to Eligible Beneficial Owners.

p. “Effective Date” means the first date by which all of the events and conditions specified in Paragraph 25 of this Stipulation have been met and have occurred or have been waived.

q. “Eligible Beneficial Owner” means the ultimate beneficial owner of any shares of CMC common stock tendered in the Tender Offer and/or held at the Closing, *provided, however*, that no Excluded Stockholder may be an Eligible Beneficial Owner.

r. “Eligible Registered Owners” means the registered owners of CMC common stock who or which received or were entitled to receive the Transaction Consideration.

s. “Eligible Shares” means shares of CMC common stock tendered in the Tender Offer by Class Members and/or held by Class Members at the Closing and for which Class Members received or were entitled to receive the Transaction Consideration, except for the Excluded Shares.

t. “Excluded Shares” means the shares of CMC common stock beneficially owned by the Excluded Stockholders.

u. “Excluded Stockholders” means (i) Defendants and the members of their Immediate Family and any entity formed for the benefit of or under the control of any of the foregoing individuals and entities; (ii) CMC, current or former directors or executive officers of CMC at the time of the Tender Offer, and the

members of their Immediate Family and any entity formed for the benefit of or under the control of any of the foregoing individuals and entities; and (iii) current or former managers or members of Bee Street and the members of their Immediate Family and any entity formed for the benefit of or under the control of any of the foregoing individuals and entities. For the avoidance of doubt, Excluded Stockholders includes Peter E. Thieriot, Darrell M. Trent, Paul Ainsworth, Nancy Gidwitz, Nancy Gidwitz Revocable Trust, Joyce Gidwitz, Joyce Gidwitz Declaration of Trust, Pamela C. Gidwitz, Pamela C. Gidwitz Revocable Trust, Mary Kathryn Gidwitz, Mary Kathryn Gidwitz Revocable Trust, Thomas R. Gidwitz, Thomas R. Gidwitz Revocable Trust, Betsy R. Gidwitz, Betsy R. Gidwitz Revocable Trust, Julie Gidwitz, Julie Gidwitz Declaration of Trust, Jill Gidwitz Zisook, Jill Gidwitz Zisook Declaration of Trust, Ronald Gidwitz, Ronald J. Gidwitz Revocable Trust, James G. Gidwitz Revocable Trust, Steven B. Gidwitz Living Trust, CMC Partnership, and GFAM CMC Partnership.

v. “Fee and Expense Award” means any award to Plaintiff’s Counsel of fees and expenses to be paid from the Settlement Fund, approved by the Court and in full satisfaction of all claims for attorneys’ fees that have been, could be, or could have been asserted by Plaintiff’s Counsel with respect to the Settlement Fund or against Defendants. The Fee and Expense Award does not include Administrative Costs, which are to be paid separately from the Settlement Fund.

w. “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 appeal; 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 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 or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari 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 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.

x. “Immediate Family” means an individual’s spouse (a “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union), parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships.

y. “Judgment” means the Order and Final Judgment to be entered by the Court substantially in the form attached hereto as Exhibit C.

z. “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.

aa. “Net Settlement Fund” means the Settlement Fund less (i) any and all Administrative Costs; (iii) any and all Taxes; (iv) any Fee and Expense Award; and (v) any other fees, costs or expenses approved by the Court.

bb. “Per-Share Recovery” means the per-share recovery under the Settlement, which will be calculated by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares held by all Class Members.

cc. “Plaintiff’s Counsel” means Gardy & Notis, LLP, Harold B. Obstfeld, P.C., and Cooch and Taylor, P.A.

dd. “Released Defendants’ Claims” means any and all Claims, including Unknown Claims, that have been or could have been asserted in the Action, or in any court, tribunal, forum or proceeding, by Defendants or any of their respective successors and assigns against any of the Released Plaintiff Parties, that arise out of (i) the institution, prosecution, settlement or dismissal of the Action, including, but not limited to alleged litigation misconduct, breaches of confidentiality orders, violations of court rules, and defamation, (ii) the alleged

conduct underlying Defendants' affirmative defenses, and (iii) and Claims, including Unknown Claims, of bad faith or abuse of process against Plaintiff or Plaintiff's Counsel relating to their prosecution of the Action; *provided, however*, that the Released Defendants' Claims shall not include Claims to enforce the Stipulation.

ee. "Released Defendant Parties" means (i) Defendants, Darrell M. Trent, Peter E. Thieriot, and CMC, (ii) the past or present Immediate Family of any Defendant, and (iii) any of the foregoing's respective direct or indirect parent entities, controlling persons, associates, predecessors, successors, assigns, affiliates, or subsidiaries, and each and all of their past or present officers, directors, managers, members, managing members, executives, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, lenders, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trusts, beneficiaries, distributees, foundations, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, and administrators.

ff. "Released Plaintiff's Claims" means any and all Claims, including Unknown Claims, that have been or could have been asserted by Plaintiff in the Action on behalf of himself and the Class, and any and all Claims, including

Unknown Claims, arising out of the same set of operative facts as the claims asserted by Plaintiff against Released Defendant Parties in the Action, including but not limited to Claims based upon, arising out of, involving, or relating to (i) the Transaction, (ii) any deliberations or negotiations in connection with the Transaction, including all deliberations and negotiations by any of Defendants and any of their respective officers, directors, agents, or advisors, (iii) the consideration received by Class Members in connection with the Transaction, (iv) the disclosures, SEC filings (including without limitation the Schedule TO and the Schedule 14D-9), public filings, periodic reports, press releases, recommendation statements, tender offer statements and materials, or other statements issued, made available or filed relating, directly or indirectly, to the Transaction, including without limitation Claims under any and all federal securities laws (including those within the exclusive jurisdiction of the federal courts), (v) the fiduciary obligations of the Released Defendant Parties in connection with the Transaction, (vi) the fees, expenses or costs incurred in prosecuting, defending or settling the Action, or (vii) any deliberations, negotiations, representations, omissions or other conduct leading to the execution of this Stipulation; *provided, however*, that the Released Plaintiff's Claims shall not include claims to enforce this Stipulation.

gg. "Released Plaintiff Parties" means (i) Plaintiff, (ii) and all other Class Members, and (iii) and any of the foregoing's respective parent entities,

controlling persons, associates, predecessors, successors, assigns, affiliates, or subsidiaries, and each and all of their past or present officers, directors, executives, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, and administrators.

hh. “Released Claims” means the Released Defendants’ Claims and the Released Plaintiff’s Claims.

ii. “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

jj. “Scheduling Order” means the Scheduling Order, substantially in the form attached hereto as Exhibit A.

kk. “Settlement” means the settlement contemplated by this Stipulation.

ll. “Settlement Fund” means the Settlement Payment plus any and all interest earned thereon.

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

nn. “Settlement Payment” means the sum of one million seven hundred thousand dollars and no cents (\$1,700,000.00) in cash.

oo. “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 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).

pp. “Transaction” means the acquisition of CMC by Bee Street via the Tender Offer and Merger.

qq. “Transaction Consideration” means \$9.50 cash per share that CMC common stockholders were entitled to receive in the Transaction.

rr. “Unknown Claims” means any Claim that any of the Released Parties does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement or to object or not to object to the Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that, upon the occurrence of the

Effective Date, Plaintiff shall expressly and, by operation of the Order and Final Judgment, and each other Releasing Party shall be deemed to have, and shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Section 1542 of the Civil Code of the State of California (“Section 1542”) or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 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.

Each of the Released Parties by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiff and Defendants, and by operation of law the Released Parties, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiff and Defendants acknowledge, and each of the Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of

“Released Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each of the Parties in entering into the Settlement Agreement.

B. Settlement Consideration and Administration

2. In consideration for the full and final settlement and dismissal with prejudice of, and the release of, any and all Released Claims, the Defendants and/or their insurers shall cause to be paid the Settlement Payment for the benefit of the Class. The Settlement Payment shall be deposited into the Account, within ten (10) business days of the later of: (i) the Court granting the Scheduling Order; or (ii) Plaintiff’s Counsel and/or the Administrator providing a W-9 for the Settlement Fund and complete information and instructions for payment by both check and wire, and shall be used in the first instance to administer the Settlement. Apart from the payment of the Settlement Payment in accordance with this paragraph, no Defendant, nor CMC, nor any other person or entity who or which paid any portion of the Settlement Payment, nor any Released Defendant Party shall have any obligation to pay or bear any additional amounts, expenses, costs, damages, or fees to or for the benefit of Plaintiff or any Class Members in connection with this Settlement, including but not limited to attorneys’ fees and expenses for any counsel to any Class Member, or any costs of notice or settlement administration or otherwise. Nothing in this Paragraph 2 shall have any effect on the respective rights

and obligations between or among Defendants or their respective insurers, or upon any separate agreements concerning the claims, defenses, debts, obligations or payments between or among Defendants.

3. The Administrator shall, subject to the jurisdiction, direction and approval of the Court, oversee administration and distribution of the Settlement Fund. The Administrator shall discharge its duties under Plaintiff's Counsel's supervision. No Released Defendant Party shall have any responsibility whatsoever for the administration of the Settlement, and no Released Defendant Party shall have any liability whatsoever to any person, including, but not limited to, Plaintiff and the Class Members, for fees or expenses charged by the Administrator or otherwise in connection with any such administration.

4. Under the supervision of Plaintiff's Counsel, the Administrator may pay from the Settlement Fund, without further approval from Defendants, CMC, or further order of the Court, up to \$50,000 for Administrative Costs actually and reasonably incurred. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, any amounts reasonably paid or reasonably incurred pursuant to this Paragraph shall not be returned or repaid to the Defendants, or any other person who paid any portion of the Settlement Payment into the Account.

5. Under the supervision of Plaintiff's Counsel, the Administrator shall provide the Notice to Class Members as identified by the list of record owners

maintained by the Company or its transfer agent as of the Tender Offer and as of the Closing, the persons or entities identified on the DTC SPR Reports, and any other individual or entity who otherwise may be identified through further reasonable effort. The Notice shall request that the DTC Participants who are members of the Class in their capacities as record holders, but not as beneficial owners, send the Notice promptly to beneficial owners or alternatively provide the Administrator last known addresses or emails for such beneficial stockholder class members.

6. Under the supervision of Plaintiff's Counsel, the Administrator shall distribute the Settlement Fund on a pro rata basis as set forth herein, as approved by the Court. Within ten (10) business days of execution of this Stipulation, Defendants shall provide or cause to be provided to Plaintiff's Counsel and/or the Administrator the following information (the "Stockholder Information"), to the extent that it has not already been provided and solely to the extent that it is known or reasonably knowable, or otherwise reasonably identifiable, by Defendants: (i) the stockholder register from CMC's transfer agent, including the names and mailing addresses for all Eligible Registered Owners, the number of Eligible Shares held by such Eligible Registered Owners, and the account information (including financial institution and account numbers where the Eligible Shares were held) for such Eligible Registered Owners; (ii) the DTC SPR Report listing all the DTC Participants as of the Tender Offer and as of the Closing; and (iii) any lists of stockholders and their contact

information held by the solicitation agent; and (iv) the names and mailing addresses for each of the Excluded Stockholders, the number of Excluded Shares held by such Excluded Stockholders, and the account information (including financial institution and account numbers where the Excluded Shares were held) for such Excluded Stockholders. In addition to the foregoing, Defendants shall provide any additional information as may be reasonably required by Plaintiff's Counsel and/or the Administrator to distribute the Net Settlement Fund to Eligible Stockholders and to ensure that the Net Settlement Fund is paid only to Eligible Stockholders and not to Excluded Stockholders, and Defendants agree to provide their good-faith cooperation in procuring and providing such information to the extent that it has not already been provided.

7. Defendants will also obtain Suppression Letters and/or Participant Indemnity 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.

8. Following the Effective Date, the Net Settlement Fund will be disbursed to Class Members, each of which will receive a *pro rata* distribution from the Net Settlement Fund equal to the product of (i) the number of Eligible Shares held by the Class Member and (ii) the Per-Share Recovery under the Settlement.

9. With respect to CMC common stock held of record by Cede, the Administrator shall distribute to DTC the pro rata amount of the Net Settlement Fund attributable to the Eligible Beneficial Holders, with instructions to DTC to distribute it to each DTC Participant pro rata on the basis of the number of shares attributable to each DTC Participant at the time of the Closing, less any shares that are the subject of a payment suppression letter received by DTC from such DTC Participant, in accordance with DTC rules and procedures. The Administrator shall further take all appropriate steps to instruct DTC Participants to distribute the portion of the Net Settlement Fund that they receive to the Eligible Beneficial Holders, according to the number of shares attributable to the Eligible Beneficial Holders who are customers of such DTC Participant, in a similar manner to that in which the DTC Participants distributed the Transaction Consideration and subject to payment suppression instructions with respect to Excluded Shares. The DTC Participants and their respective customers, including any intermediaries, shall then ensure *pro rata* payment to each Eligible Beneficial Owner in accordance with each Eligible Beneficial Owner's Closing Beneficial Ownership Position.

10. With respect to CMC common stock held of record as of the Closing other than by Cede, the Administrator shall distribute the pro rata amount of the Net Settlement Fund attributable to the Eligible Registered Holders by paying directly

to each Eligible Registered Holder an amount equal to such holder's pro rata share, based on relative share ownership, of the Net Settlement Fund.

11. For the avoidance of doubt, a person or entity who acquired shares of CMC common stock on or before October 14, 2020, but had not settled those shares as of the consummation of the Merger ("Non-Settled Shares") shall be treated as an Eligible Beneficial Owner with respect to those Non-Settled Shares (except for the Excluded Shares), and a person who sold those Non-Settled Shares on or before October 14, 2020 shall not be treated as an Eligible Beneficial Owner with respect to those Non-Settled Shares. Payment from the Net Settlement Fund made pursuant to and in the manner set forth above shall be deemed conclusive of compliance with this Stipulation.

12. Defendants and any other Excluded Stockholder 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), 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.

13. If there is any balance remaining in the Net Settlement Fund six (6) months after the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, amounts returned by Excluded Persons who

erroneously receive settlement payments, or otherwise), the Administrator shall, if feasible, distribute such balance among the Settlement Payment Recipients who deposited the checks sent in the initial distribution, in the same manner as the initial distribution. If the cost of making such a further distribution or distributions is unreasonably high relative to the amount remaining in the Net Settlement Fund, Plaintiff's Counsel may instruct the Administrator to distribute any balance which still remains in the Net Settlement Fund, after provision for all anticipated expenses, in accordance with Delaware's unclaimed property law. Neither the Released Defendant Parties nor their indemnitors or insurers shall have any reversionary interest in the Net Settlement Fund.

14. Plaintiff's Counsel shall be solely responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund, subject to Court approval. Plaintiff's Counsel believe that this proposed administration and distribution represents a fair and efficient means of applying the settlement consideration towards the resolution of all the claims and damages alleged in the Action. The Net Settlement Fund shall be distributed to Class Members only after the Effective Date of the Settlement and after (i) all Administrative Costs and Taxes, and any Fee and Expense Award, have been paid from the Settlement Fund or reserved and (ii) the Court has entered an order authorizing the specific distribution of the Net Settlement Fund (the "Class

Distribution Order”). Plaintiff’s Counsel will apply to the Court, on notice to Defendants’ Counsel, for the Class Distribution Order.

15. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members. Plaintiff and Defendants, 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 Administrator or a nominee holding shares on behalf of a Class Member, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

16. 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.

17. The Settlement Fund shall be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or if the yield on such instruments is negative, in an account fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then- current market rates. The Settlement Fund shall bear all risks related to investment of the Settlement Fund.

18. The Settlement Fund shall not be disbursed except as provided in the Stipulation or by an order of the Court.

19. The Settlement Fund shall be deemed and considered to be in custodial legis of the Court, and shall remain subject to the exclusive jurisdiction of the Court, until such time as such funds shall be distributed in accordance to the Stipulation and/or further order(s) of the Court.

20. This is not a claims-made settlement. Upon the Effective Date, neither the Defendants, nor any other person or entity who or which paid any portion of the Settlement Fund, shall have any right to the return of the Settlement Fund or any portion thereof.

C. Scope of the Settlement

21. Upon entry of the Judgment, and subject to the occurrence of the Effective Date, the Action shall be dismissed with prejudice, with each Party to bear its own costs and expenses, except as otherwise expressly provided in this Stipulation.

22. Upon the Effective Date, Plaintiff and all Class Members, on behalf of themselves and their predecessors, 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 Plaintiff's Claims, and shall thereupon be forever barred and enjoined from

commencing, instituting, prosecuting, instigating, or continuing to prosecute, or in any way participating in the commencement or prosecution of, any Released Plaintiff's Claims, either directly, representatively, derivatively, or in any other capacity, against any and all of the Released Defendant Parties.

23. Upon the Effective Date, each of Defendants, on behalf of themselves and their predecessors, 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 Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

D. Submission of the Settlement for Court Approval

24. As soon as practicable after execution of this Stipulation, Plaintiff shall apply to the Court for entry of the Scheduling Order, providing for, among other things, the mailing of the Notice and scheduling the Settlement Hearing to consider: (a) the proposed Settlement, (b) the joint request of the Parties that the Judgment be entered, (c) certification of the Class for purposes of the Settlement; (d) Plaintiff's application for a Fee and Expense Award, and (e) any objections to the foregoing. The Parties agree to take all reasonable and appropriate steps to seek and obtain entry

of the Scheduling Order. At the Settlement Hearing, the Parties shall jointly request that the Judgment be entered.

E. Conditions of Settlement

25. The Settlement is expressly conditioned on, and the Effective Date shall be deemed to occur on, the occurrence or waiver of all of the following events, which the Settling Parties shall use their best efforts to achieve:

a. the Court has entered the Scheduling Order in all material respects in the form attached hereto as Exhibit A;

b. the full amount of the Settlement Payment has been paid into the Account.

c. the Court has entered the Judgment in all material respects in the form attached hereto as Exhibit D; and

d. the Judgment has become Final.

26. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

F. Attorneys' Fees and Expenses

27. Plaintiff's Counsel will apply to the Court for a Fee and Expense Award (the "Fee and Expense Application") not to exceed 25% of the Settlement Fund. Any Fee and Expense Award shall be paid solely from the Settlement Fund and

reduce the settlement consideration paid to the Class Members accordingly. Defendants agree to not oppose the Fee and Expense Application.

28. Any Fee and Expense Award shall be paid solely from the Account to Plaintiff's Counsel within the later of five (5) calendar days (i) of the Court's entry of the Judgement, 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) this Stipulation is disapproved, canceled, or terminated pursuant to its terms or the Effective Date otherwise fails to occur for any reason, or (ii) the Fee and Expense Award is disapproved, reduced, reversed or otherwise modified by Final court order, then Plaintiff's Counsel shall, within five (5) business days after Plaintiff's Counsel receives notice of any such event in (i) or (ii) 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.

29. The Parties acknowledge that the costs of administering the Settlement may include attorneys' fees and expenses and that such costs may be paid from the Settlement Fund. Any such attorneys' fees and expenses will be presented to the Court in connection with Court approval of the accounting and Class Distribution

Order. With the exception of the attorneys' fees and expenses referenced in the preceding two sentences, the Fee and Expense Application shall be the only petition for attorneys' fees and expenses filed by or on behalf of Plaintiff or Plaintiff's Counsel in connection with the Action. In no event shall any of the Released Defendant Parties be obligated to pay any of such attorneys' fees and expenses to Plaintiff or Plaintiff's Counsel as it is expressly understood that all such payments will be made out of the Settlement Fund. It is not a condition of this Stipulation that the Fee and Expense Application be granted. The Fee and Expense Application may be considered separately from the proposed Settlement. Any disapproval or modification of the Fee and Expense Application 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. Plaintiff's Counsel warrants that no portion of any award of attorneys' fees or expenses shall be paid to Plaintiff or any Class Member, except as may be approved by the Court.

G. Stay Pending Court Approval

30. Pending Court approval of the Settlement, the Parties agree to stay any and all proceedings in the Action other than those incident to the Settlement. The Parties also agree to use their reasonable best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Class

Member in any other litigation against any of the Released Parties which challenges the Settlement or otherwise involves, directly or indirectly, a Released Claim.

31. Except as necessary to pursue the Settlement, pending final determination of whether the Settlement should be approved, all Parties agree not to institute, commence, prosecute, continue, or in any way participate in, whether directly or indirectly, representatively, individually, or in any other capacity, any action or other proceeding asserting any Released Claims; provided that nothing herein shall in any way impair or restrict the rights of any Party to defend this Settlement or to otherwise respond in the event any Person objects to the Settlement, the Judgment to be entered, or, in the case of the Plaintiff, the Fee and Expense Application.

H. Effect of Disapproval, Cancellation or Termination

32. If either (i) the Court does not enter the Judgment in substantially the form of Exhibit C, (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 condition of Paragraph 25 is not satisfied, this Stipulation shall be cancelled and terminated unless counsel for each of the Parties, within ten (10) business days from receipt of such ruling or event, agrees in writing with counsel for the other Parties 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. For purposes of this Paragraph, neither a modification nor a reversal on appeal of the amount awarded pursuant to the Fee and Expense Application shall be deemed a material modification of the Judgment or this Stipulation.

33. If either: (i) this Stipulation is canceled or terminated pursuant to its terms, (ii) the conditions set forth in Paragraph 25 above are not satisfied, or (iii) the Settlement does not become final for any reason:

a. The Settlement Fund paid or due with respect to such amounts, less any Administrative Costs actually incurred and paid or payable, and less any escrow fees or costs actually incurred and paid or payable, shall be refunded to the source of payment within ten (10) business days after such cancellation or termination;

b. The Parties shall be deemed to have reverted to their respective litigation status immediately prior to October 6, 2020, they shall negotiate a scheduling order in good faith, and they shall proceed in all respects as if the Stipulation had not been executed (except for Paragraphs 32, 33, 43, and 46 hereof, which shall survive the occurrence of any such event) and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way; and

c. Plaintiff agrees that this Stipulation, and any statements made in connection with the negotiation of this Stipulation, shall not be used to establish liability or the amount of any damages in the Action, other than as otherwise expressly provided herein.

I. Taxes

34. 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 Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Article VIII, 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 § 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the 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, or shall cause to be provided, the statement described in Treas. Reg. § 1.468B-3(e) to Plaintiff’s Counsel within the time period required thereunder.

35. The 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 election described in Paragraph 20 above) shall be consistent with this Article I 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 22 below.

36. All taxes shall be paid out of the Settlement Fund, and shall be timely paid by the 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 Article I 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.

37. Any costs for the preparation of applicable tax returns shall be paid from the Settlement Fund. 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.

38. Defendants agree to cooperate with Plaintiff's Counsel, the Administrator, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

J. Miscellaneous Provisions

39. 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.

40. Defendants warrant that, as to the payments made or to be made on behalf of them, at the time of entering into this Stipulation and at the time of such payment it, or to the best of their knowledge any persons or entities contributing to the payment of the Settlement Payment, 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.

41. 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 Plaintiff, the Parties shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in which event the

releases and Judgment shall be null and void, and the Parties shall be restored to their respective positions in the litigation as provided above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Administrative Costs actually incurred, paid or payable) shall be returned to Defendants.

42. 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 Plaintiff and any other Class Members against Defendants (including former Defendants Trent and Thieriot) with respect to the Released Plaintiff's Claims. Accordingly, Plaintiff and their counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiff or Plaintiff's Counsel or defended by Defendants (including former Defendants Trent and Thieriot) or their respective counsel in bad faith or without a reasonable basis. The Settling Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith and reflect a resolution that was reached voluntarily based upon adequate information and 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.

43. Neither this Stipulation, the fact or any terms of the Settlement, nor any negotiations or proceedings in connection therewith is or shall be deemed to be

evidence of, or a presumption, admission, or concession by any Party in the Action, any signatory hereto, or any Released Party of, any fault, liability, or wrongdoing whatsoever, concerning the Action or any other actions or proceedings. This Stipulation is not a finding or 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 named therein (including former Defendants Trent and Thieriot) or of any damages or injury to Plaintiff or any Class Member. Neither this Stipulation, any of its terms and provisions, any of the negotiations or proceedings in connection therewith, any of the documents or statements referred to herein or therein, the Settlement, the fact of the Settlement, the Settlement proceedings, nor any statements made in connection therewith: (a) shall be used or construed as, offered or received in evidence as, or otherwise constitute or be deemed 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 Parties, or of any infirmity of any defense, or of any damage to Plaintiff or any Class Member; or (b) shall otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted, in the Action, any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any Person: or (c)

shall otherwise be admissible in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that (i) the Stipulation, Scheduling Order, and/or Final Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue that the Stipulation and/or Final Judgment has res judicata, collateral estoppel, or other issue or claim preclusion effect, or to otherwise consummate or enforce the Stipulation and/or Final Judgment, and (ii) Plaintiff and Plaintiff's Counsel may refer to the Stipulation in connection with Settlement-related proceedings in the Action, including, but not limited to, the Fee and Expense Application.

44. While retaining their right to deny or assert that the claims raised in the Action were meritorious, the Parties and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced, prosecuted or defended in bad faith, nor will they deny that the Action was commenced, prosecuted and defended in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiff and his 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.

45. This Stipulation may be amended or modified only by a written instrument signed by counsel for all Parties or their successors.

46. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation. The Parties shall comply with the document return and document destruction provisions in any such confidentiality order.

47. The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation by any other Party.

48. This Stipulation and the Exhibits constitute the entire settlement agreement between Plaintiff, on the one hand, and Defendants, on the other hand, and supersede any prior term sheets and agreements among Plaintiff, on the one hand, and Defendants, on the other hand, with respect to the settlement of the Action. 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.

49. This Stipulation may be executed in one or more counterparts, including by electronic signature and/or signature transmitted by a .pdf/.tif image

transmitted by email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

50. 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).

51. Plaintiff represents and warrant that Plaintiff is a Class Member and that none of Plaintiff's 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.

52. Where this Stipulation creates obligations for specified Parties, only those specified Parties are responsible for the obligations.

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

54. 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 or her clients.

55. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and the Class (and, in the case of the releases, all Released Parties) and

the respective legal representatives, heirs, executors, administrators, transferees, successors and assigns of all such foregoing persons or entities and upon 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 Parties are intended beneficiaries of this Stipulation and are entitled to enforce the releases contemplated by the Settlement.

56. This Stipulation, the Settlement, and any and all disputes arising out of 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 conflicts of law principles. Any action or proceeding arising out of this Stipulation or the Settlement, or to enforce any of the terms of the Stipulation or Settlement, shall (i) be brought, heard and determined exclusively in the Court, which shall retain jurisdiction over the Parties and all such disputes (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 sitting in Wilmington, 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 sitting in Wilmington, Delaware). Each Party hereto (1) consents to personal jurisdiction in any such action (but no other action) brought

in the Court or, if subject matter jurisdiction is unavailable in the Court, any such action brought in any other state or federal court sitting in Wilmington, Delaware; (2) consents to service of process by registered mail upon such Party and/or such Party's agent; (3) waives any objection to venue in the Court or Delaware and any claim that Delaware or the Court is an inconvenient forum; and (4) expressly waives any right to demand a jury trial as to any dispute described in this Paragraph. Nothing in this Paragraph shall affect the applicable law or available forum (i) with respect to any other agreements that survive this Stipulation and the Settlement, or (ii) for claims that are neither released nor created hereby.

[SIGNATURES ON NEXT PAGE]

COOCH AND TAYLOR, P.A.

OF COUNSEL:

GARDY & NOTIS, LLP

James S. Notis
Jennifer Sarnelli
126 East 56th Street, 8th Floor
New York, NY 10022
(212) 905-0509

HAROLD B. OBSTFELD, P.C.

Harold B. Obstfeld
140 East 45th Street, 44th Floor
New York, NY 10017
(212) 696-1212

/s/ Carmella P. Keener

Carmella P. Keener (#2810)
The Nemours Building
1007 North Orange Street, Suite 1120
P.O. Box 1680
Wilmington, DE 19899-1680
(302) 984-3816

Counsel for Plaintiff Alan Kahn

**MORRIS, NICHOLS, ARSHT &
TUNNELL LLP**

OF COUNSEL:

**WILLKIE FARR & GALLAGHER
LLP**

Sameer Advani
787 Seventh Avenue
New York, NY 10019-6099
(212) 728-8000

**WILLKIE FARR & GALLAGHER
LLP**

Craig Martin
Jeremy Salinger
300 North LaSalle
Chicago, IL 60654-3406
(312) 728-9000

/s/ Susan W. Waesco

William M. Lafferty (#2755)
Susan W. Waesco (#4476)
Sara Toscano (#6703)
1201 N. Market Street
Wilmington, DE 19801
(302) 658-9200

*Counsel for Defendants James G.
Gidwitz, Ralph W. Gidwitz, Steven
Gidwitz, Scott Gidwitz, Theodore R.
Tetzlaff, Ryan Sullivan, Bee Street
Holdings LLC, and Bee Street II, Inc.*

January 5, 2022