



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ASBESTOS WORKERS'
PHILADELPHIA PENSION FUND and
MATTHEW SCIABACUCCHI, on
Behalf of Themselves and on Behalf of
All Others Similarly Situated and
Derivatively on Behalf of Nominal
Defendant FRANCHISE GROUP, INC.
(f/n/a LIBERTY TAX, INC.),

Plaintiffs,

v.

C.A. No. 2019-0633-SG

MATTHEW AVRIL, BRIAN R. KAHN,
ANDREW M. LAURENCE, BRYANT
R. RILEY, KENNETH M. YOUNG,
VINTAGE CAPITAL MANAGEMENT,
LLC, KAHN CAPITAL
MANAGEMENT, LLC and B. RILEY
FINANCIAL, INC.,

Defendants,

and

FRANCHISE GROUP, INC. (f/n/a
LIBERTY TAX, INC.), a
Delaware corporation,

Nominal Defendant.

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

This Stipulation and Agreement of Settlement, Compromise, and Release (the
“Stipulation” or “Settlement Agreement,” and the settlement contemplated hereby,
the “Settlement”) is entered this 10th day of December 2020, by and between the

following parties, settling and resolving the above-captioned stockholder class action and derivative action (the “Action”): (a) Asbestos Workers’ Philadelphia Pension Fund (“Plaintiff Asbestos Workers”) and Matthew Sciabacucchi (“Plaintiff Sciabacucchi,” and together with Plaintiff Asbestos Workers, “Plaintiffs”), individually and on behalf of the Class (as defined below) and derivatively on behalf of Franchise Group, Inc. f/n/a Liberty Tax, Inc. (the “Company”); (b) the Company; (c) Matthew Avril, Brian R. Kahn, Andrew M. Laurence, Bryant R. Riley, and Kenneth M. Young (the “Director Defendants”); and (d) Vintage Capital Management, LLC (“Vintage”), B. Riley Financial, Inc. (“B. Riley”), and Kahn Capital Management, LLC (collectively with the Director Defendants, the “Defendants,” and with Plaintiffs and the Company, each a “Party” and collectively, the “Parties”). This Stipulation states all of the terms of the settlement and resolution of this matter, and the Parties intend this Stipulation to fully compromise, resolve, discharge, and settle the Released Claims (as defined below), resulting in the complete dismissal of the Action with prejudice, subject to the approval of the Court of Chancery of the State of Delaware (the “Court”).

RECITALS

WHEREAS:

A. On July 10, 2019, the Company’s board of directors (the “Board”), upon the recommendation of a special committee of its directors comprising Patrick

A. Cozza, Thomas Herskovits, Lawrence Miller, and G. William Minner Jr. (the “Special Committee” or “Special Committee Members”), approved the following transactions (collectively, the “Buddy’s Transactions”): (a) the Company would acquire Buddy’s Newco, LLC (“Buddy’s”) at a \$122 million valuation (the “Buddy’s Merger”); (b) the Company would make a tender offer to acquire for \$12 per share any and all shares of the Company’s common stock (“Company Common Stock”) not owned by Vintage or B. Riley or their affiliates (the “Tender Offer”); (c) an affiliate of Vintage would buy from the Company 2,083,333.33 shares of Company Common Stock for \$12 per share (resulting in a \$25 million equity financing) and, to the extent needed to fund the Tender Offer, buy additional shares of Company Common Stock for \$12 per share (resulting in a further equity financing capped at \$40 million); and (d) the Company would enter into a tax receivable agreement with the former equity holders of Buddy’s (the “TRA”).

B. On August 1, 2019, the Company launched the Tender Offer and filed a solicitation statement on Schedule TO with the U.S. Securities and Exchange Commission (the “SEC” and “Original Disclosures”).

C. On August 8, 2019, the Company announced that it would (a) acquire Vitamin Shoppe, Inc. (“Vitamin Shoppe”) for approximately \$208 million (the “Vitamin Shoppe Acquisition”); and (b) fund the Vitamin Shoppe Acquisition, in part, by selling shares of Company Common Stock to an affiliate of Vintage for \$12

per share (resulting in an equity financing capped at \$70 million) (the “Vitamin Shoppe Share Issuance”).

D. On August 12, 2019, Plaintiff Asbestos Workers filed a Verified Stockholder Class Action and Derivative Complaint (the “Initial Complaint”), Motion for Expedited Proceedings (the “Expedition Motion”), and Motion for Preliminary Injunction contending that the Director Defendants and the Special Committee Members breached their fiduciary duties in connection with the Buddy’s Transactions and Vitamin Shoppe Share Issuance and failed to disclose certain material information in the Original Disclosures.

E. On August 27, 2019, the Company announced it would acquire from Sears Hometown and Outlet Stores, Inc. the businesses of its Sears Outlet segment and Buddy’s Home Furnishing Stores for approximately \$133 million (the “SHOS Acquisition”).

F. On August 28, 2019, the Company announced it would fund the SHOS Acquisition, in part, by selling shares of Company Common Stock to an affiliate of Vintage for \$12 per share (resulting in an equity financing capped at \$40 million) (the “SHOS Share Issuance” and together with the Buddy’s Transactions and Vitamin Shoppe Share Issuance, the “Transactions”).

G. On August 30, 2019, following full briefing—and immediately before oral argument—on the Expedition Motion, Defendants agreed to provide Plaintiff Asbestos Workers with certain expedited document discovery.

H. On October 16, 2019, the Company filed an amended and restated solicitation statement (the “Amended Disclosures”) mooted certain disclosure claims asserted by the Initial Complaint.

I. On October 23, 2019, the Company completed the SHOS Acquisition.

J. On October 23 and 25, 2019, respectively, Plaintiff Asbestos Workers filed a Verified Amended Stockholder Class Action and Derivative Complaint (the “Amended Complaint”) and a motion to preliminarily enjoin the Tender Offer (the “Injunction Motion”) contending that the Director Defendants and the Special Committee Members breached their fiduciary duties in connection with the Transactions and failed to disclose certain material information in the Amended Disclosures.

K. On November 5, 2019, Defendants made supplemental disclosures and Plaintiff Asbestos Workers determined not to continue to seek an injunction with respect to the disclosure claims asserted by the Amended Complaint (together with the Amended Disclosures, the “Supplemental Disclosures”). Plaintiff Asbestos Workers subsequently withdrew its Injunction Motion.

L. On November 13, 2019 at 5:00 p.m. Eastern Time, the Tender Offer expired. 3,970,938 shares of Company Common Stock were tendered pursuant to the Tender Offer.

M. On December 16, 2019, the Company completed the Vitamin Shoppe Acquisition.

N. On March 10, 2020, the Court granted Plaintiff Sciabacucchi's motion to intervene in the Action.

O. On July 15, 2020, Plaintiffs filed a Verified Second Amended Stockholder Class Action and Derivative Complaint ("Second Amended Complaint") challenging the Transactions.

P. On August 18, 2020, following briefing, the Court heard oral argument on Plaintiff Asbestos Workers' petition for an interim fee award (the "Interim Fee Petition") of \$975,000 for attorneys' fees and expenses in connection with counsel's work in obtaining the Supplemental Disclosures.

Q. After extensive negotiations, on September 17, 2020, Plaintiffs and Defendants (collectively, the "Parties") reached an agreement in principle to settle the Action and the Parties informed the Court that it would no longer need to resolve the Interim Fee Petition.

R. The Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation and wish to settle

and resolve the claims asserted by Plaintiffs and the Class (as defined below) and all claims relating to or arising out of the Tender Offer and the Transactions, including but not limited to the disclosures made in connection therewith.

S. Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability or damage with respect to all claims asserted or that could be asserted in the Action or any other action, in any court or tribunal, relating to the Transactions, including any allegations that Defendants have committed any violations of law, that they have acted improperly in any way, and that they have any liability or owe damages of any kind to Plaintiffs, the Class (as defined below), and/or the Company.

T. Defendants, however, recognize the uncertainty and risk in any litigation, and the difficulties and substantial burdens, expense, and time that may be necessary to defend this Action through trial and appeals. Defendants are entering into this Settlement solely because they consider it desirable that the Action be settled and dismissed with prejudice in order to, among other things: (a) eliminate the uncertainty, burden, inconvenience, expense, and distraction of further litigation; and (b) terminate all claims that were or could have been asserted by Plaintiffs, the Company, or any other Class Member (as defined below) against Defendants in the Action or in any other action, in any court or tribunal, relating to the disclosures made in connection with the Tender Offer and the Transactions.

U. The entry by Plaintiffs into this Settlement is not an admission as to the lack of merit of any claims asserted in the Action. Rather, in negotiating and evaluating the terms of this Settlement, Plaintiffs and Plaintiffs' Counsel (as defined below) considered, among other things: (a) the legal and factual defenses to Plaintiffs' claims that Defendants raised and might have raised throughout the pendency of the Action; and (b) the benefits to be provided to the members of the Class (as defined below) through the payment of the Settlement Amount (as defined below). Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel (as defined below) have determined that the Settlement is fair, reasonable and adequate to Plaintiffs, the Company, and the Class (as defined below) and that it confers substantial benefits upon the members of the Class, particularly when compared to the risk and uncertainties of continued litigation.

V. This Stipulation has been duly executed by the undersigned signatories on behalf of their respective clients, and reflects the final and binding agreement between the Parties.

W. Based upon their investigation and prosecution of the Action, Plaintiffs and Plaintiffs' Counsel (as defined below) have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Plaintiffs, the Company, and the other members of the Class (as defined below), and in their best interests. Based on Plaintiffs' direct oversight of the prosecution of this Action and

with the advice of their counsel, Plaintiffs have agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the financial benefit that Plaintiffs and the other members of the Class (as defined below) will receive under the Settlement; and (b) the significant risks and costs of continued litigation including trial and likely appeal.

X. This Stipulation constitutes a compromise of matters that are in dispute between the Parties. Each of the Parties recognizes and acknowledges that the Action has been initiated, filed and prosecuted by Plaintiffs in good faith and defended by Defendants in good faith, and that the Action is being voluntarily settled with the advice of counsel.

Y. Aside from argument and discussion regarding the propriety and amount of a mootness fee reflected in the briefing on the Interim Fee Petition and oral argument related thereto, counsel for the Parties did not discuss the appropriateness or amount of any application by Plaintiffs' 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 Settlement, including but not limited to the Settlement Amount (as defined below).

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by Plaintiffs, individually and on behalf of the members of the Class, by the Company, and by the Defendants, by and through their respective undersigned

attorneys and subject to the approval of the Court that, under Delaware Court of Chancery Rules 23 and 23.1, and for good and valuable consideration set forth herein and conferred on Plaintiffs and the members of the Class, that the Action shall be finally and fully settled, compromised, and dismissed with prejudice as to Plaintiffs and all other Class Members (as defined below) and the Company, and each and every one of the Released Claims shall be finally and fully compromised, settled, discharged, released, and dismissed with prejudice as to each and every one of the Released Parties, in the manner and upon the terms and conditions set forth below.

DEFINITIONS

1. This Stipulation and its exhibits adopt the following defined terms:
 - (a) “Administrative Costs” means all costs and expenses associated with providing notice of the Settlement to the Class, disbursing the Net Settlement Amount, calculating any payment owed to any Eligible Stockholder, or otherwise administering or carrying out the terms of the Settlement.
 - (b) “Administrator” or “Settlement Administrator” means the class action settlement administrator selected by Plaintiffs’ Counsel in connection with this Settlement to provide all notices approved by the Court to potential Class Members and to administer the Settlement.

(c) “Claims” mean any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, fines, sanctions, fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, for damages, injunctive relief, or any other remedies, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, known or unknown, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or previously existed, including 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 (including, without limitation, any claims under federal or state securities law, federal or state antitrust law, or under state disclosure law, all claims within the exclusive jurisdiction of the federal courts, or any claims that could be asserted derivatively on behalf of the Company).

(d) “Class” means a non-opt-out class for settlement purposes only, and pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), consisting of any record holders and all beneficial owners of Company Common Stock who held or owned such stock at any time during the Class Period, including any and all of their respective successors-in-interest, successors, predecessors-in-interest,

predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns. The Excluded Persons are excluded from the Class.

(e) “Class Member” means a Person who falls within the definition of the Class.

(f) “Class Period” means the period beginning on and including January 1, 2019 through and including December 17, 2019.

(g) “DTC Participants” means the participants of the Depository Trust Company (“DTC”) for whom Cede & Co., as nominee for DTC, was the holder of record of Company Common Stock and whose customers were the beneficial owners of such common stock at the time the Tender Offer expired and the Tender Offer consideration was paid.

(h) “Effective Date” means the fifth business day following the date on which the Order and Final Judgment becomes Final.

(i) “Escrow Account” or “Account” means an account wherein the Settlement Amount shall be deposited and held in escrow under the control of Plaintiffs’ Counsel.

(j) “Excluded Persons” means (i) Defendants, any Board member and each Defendant’s and Board member’s respective Immediate Family, affiliates, legal representatives, heirs, estates, successors or assigns; and (ii) any entity in which any Defendant and/or Board member has or had a direct or indirect controlling interest, and any successors-in-interest thereto.

(k) “Fee and Expense Award” means an award to Plaintiffs’ Counsel of fees and expenses, to be paid from the Settlement Amount, approved by the Court in accordance with this Settlement and in full satisfaction of any and all claims for attorneys’ fees or expenses that have been, could be or could have been asserted by Plaintiffs’ Counsel or any other counsel for any Class Member.

(l) “Final,” with respect 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 of any appeal; or (ii) if there is an appeal from the Judgment or order filed, (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. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued

with respect to attorneys' fees, costs, or expenses shall not in any way delay or preclude the Judgment from becoming Final.

(m) "Immediate Family" means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, "spouse" shall mean a husband, wife, or partner in a state-recognized domestic relationship or civil union.

(n) "Net Settlement Amount" means the Settlement Amount, plus any interest accrued thereon after its deposit in the Account, less (i) any Taxes and Tax Expenses; (ii) any Administrative Costs; and (iii) any Fee and Expense Award.

(o) "Non-Tendering Shares" means shares of Company Common Stock owned by any Non-Tendering Stockholder as of 5:00 p.m. Eastern Time on November 13, 2019 and not tendered into the Tender Offer.

(p) "Non-Tendering Stockholder" means any Class Member who: (i) owned shares of Company Common Stock at 5:00 p.m. Eastern Time on November 13, 2019 and did not tender such shares into the Tender Offer; and (ii) submits a valid claim in the form attached hereto as Exhibit C (the "Proof of Claim") to the Administrator by the deadline set forth in the Notice.

(q) “Notice Payment” means the sum of seventy-five thousand dollars and no cents (\$75,000.00), which is intended to be an amount sufficient to pay for the cost of providing notice to Class Members as required by the Court.

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

(s) “Person” means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, affiliate, joint stock company, investment fund, estate, legal representative trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

(t) “Plaintiffs’ Counsel” means Grant & Eisenhofer P.A. and Friedman Oster & Tejtell PLLC.

(u) “Released Claims” means collectively each and all of the Released Defendant Claims and each and all of the Released Plaintiff Claims.

(v) “Released Defendant Claims” means any and all Claims that have been or could have been asserted in the Action or in any court, tribunal, forum, or proceeding by Defendants or the Company or any of them or their respective successors and assigns against any of the Released Plaintiff Parties, which arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the

Action; provided, however, that the Released Defendant Claims shall not include claims to enforce the Stipulation.

(w) “Released Defendant Parties” means Defendants, the Special Committee Members, the Company, and each of their respective past or present affiliates, parents and subsidiaries, as well as each of their respective past or present family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

(x) “Released Plaintiff Claims” means any and all Claims that have been or could have been asserted in the Action or in any court, tribunal, forum, or proceeding by Plaintiffs or the Class or the Company or any of them or their respective successors and assigns against any of the Released Defendant Parties, or

that are based upon, arise out of, relate in any way to, or involve (in whole or in part) any of the facts alleged in the Action, the Transactions, the Tender Offer, or the disclosures made in connection with the Tender Offer; provided, however, that the Released Plaintiff Claims shall not include claims to enforce the Stipulation.

(y) “Released Plaintiff Parties” means Plaintiffs, Plaintiffs’ Counsel, and all other Class Members, and their respective current and former officers, directors, agents, advisors, parents, affiliates, subsidiaries, trusts, trustees, successors, predecessors, assigns, assignees, employees, and attorneys.

(z) “Releasee(s)” means each and any of the Released Defendant Parties and each and any of the Released Plaintiff Parties.

(aa) “Releases” means the releases set forth in ¶¶ 4 to 9 of this Stipulation.

(bb) “Scheduling Order” means the proposed order, substantially in the form attached hereto as Exhibit A, to be entered by the Court scheduling the Settlement Hearing and directing notice be provided to the Class in the manner set forth therein.

(cc) “Settlement Amount” means the sum of five million six hundred thousand dollars and no cents (\$5,600,000.00).

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

(ee) “Settlement Hearing” means the hearing to be set by the Court under Court of Chancery Rules 23 and 23.1 to consider, among other things, final approval of the Settlement.

(ff) “Settlement Payment Recipients” means all Tendering Stockholders and Non-Tendering Stockholders.

(gg) “Solicitation Statements” means the Schedule TO and Schedule TO amendments filed by the Company with the SEC in connection with the Tender Offer, including without limitation such filings on August 1, 2019, August 8, 2019, August 27, 2019, October 11, 2019, October 16, 2019, November 5, 2019, and November 14, 2019.

(hh) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the 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); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(ii) “Tax Expenses” means all expenses and costs incurred in connection with the payment of Taxes arising with respect to the Settlement Fund, including, without limitation, expenses of tax attorneys and/or accountants and

mailing, administration and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns.

(jj) “Tendering Beneficial Holder” means the ultimate beneficial owner of any shares of Company Common Stock held of record by Cede & Co. at the time such shares were tendered in connection with the Tender Offer, provided that no Excluded Person may be a Tendering Beneficial Holder. For the avoidance of doubt, Tendering Beneficial Holders shall not be required to submit Proofs of Claim to the Administrator to be eligible to participate in this Settlement, unless they also qualify as a Non-Tendering Stockholder, in which case they would be required to submit a Proof of Claim to recover for the shares that qualify them as Non-Tendering Stockholders.

(kk) “Tendering Record Holder” means the record holder of any shares of Company Common Stock, other than Cede & Co., at the time such shares were tendered in connection with the Tender Offer, provided that no Excluded Person may be a Tendering Record Holder. For the avoidance of doubt, Tendering Record Holders shall not be required to submit Proofs of Claim to the Administrator to be eligible to participate in this Settlement, unless they also qualify as a Non-Tendering Stockholder, in which case they would be required to submit a Proof of Claim to recover for the shares that qualify them as Non-Tendering Stockholders.

(ll) “Tendering Shares” means shares of Company Common Stock owned by a Tendering Stockholder that were tendered into the Tender Offer.

(mm) “Tendering Stockholders” means Tendering Beneficial Holders and Tendering Record Holders.

(nn) “Unknown Claims” means any Released Defendant Claims which any Plaintiff or any other 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 Plaintiff Claims which any Defendant does not know or suspect to exist in his favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Defendants shall expressly waive, and each of the other 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 and Defendants acknowledge, and each of the other 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.

SETTLEMENT CONSIDERATION AND ADMINISTRATION

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

a. The Settlement Payments:

i. Within five (5) business days of the Scheduling Order being approved without material modification and entered by the Court, Defendants and/or their insurance carriers shall cause the Notice Payment to be deposited into the Account, provided that Plaintiffs' Counsel has timely provided complete wire transfer information and instructions to the Defendants.

ii. Within twenty (20) calendar days after the Effective Date, Defendants and/or their insurance carriers shall cause an amount equal to the Settlement Amount less the Notice Payment (the "Settlement Amount Balance") to be deposited into the Account, provided that Plaintiffs' Counsel has timely provided complete wire transfer information and instructions to Defendants. Together, the Notice Payment and the Settlement Amount Balance shall constitute the "Settlement Fund." The Settlement Fund shall be used: (a) to pay any Fee and Expense Award;

(b) to pay any Administrative Costs, including any additional notice costs; (c) to pay Taxes and Tax Expenses; and (d) following the payment of the foregoing (a), (b) and (c), for subsequent disbursement of the Net Settlement Amount to the Settlement Payment Recipients as provided in Paragraph 2(b) below. 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.

iii. All funds held in the Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as funds shall be distributed pursuant to this Settlement Agreement and/or further order(s) of the Court.

iv. Apart from the payment of the Settlement Amount in accordance with this Paragraph 2(a), Defendants and the Released Defendant Parties shall have no monetary obligation to Plaintiffs, the Company, the Class, any Class Member, Plaintiffs' Counsel, or counsel for any other Class Member.

v. The Settlement Fund is intended to be a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1 subject to the Court's continuing jurisdiction, and the Parties shall so treat it, and Plaintiffs' Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing any required tax returns

for the Settlement Fund and paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. Plaintiffs' Counsel, or a qualified designee, shall be solely responsible for determining whether any Taxes of any kind are due on income earned by the Settlement Fund, for filing any necessary tax returns, and for causing any necessary Taxes to be paid. All tax returns shall be consistent with the terms herein and in all events shall reflect that all Taxes shall be paid out of the Settlement Fund.

vi. All Taxes and Tax Expenses shall be paid out of the Settlement Fund. Plaintiffs' Counsel or a qualified designee or their agents shall also timely pay any required Tax Expenses out of the Settlement Fund, and are authorized to withdraw, without prior consent of Defendants or order of the Court, from the Settlement Fund amounts necessary to pay Taxes and Tax Expenses. Upon written request, Defendants will provide promptly to Plaintiffs' Counsel the statement described in Treasury Regulation § 1.468B-3(e).

vii. Neither Defendants nor any of the Released Defendant Parties shall have any liability or responsibility for any Taxes or Tax Expenses relating to the Account or the Settlement Fund.

b. Distribution of Net Settlement Amount/Plan of Allocation:

i. As soon as reasonably practicable after the deadline for the submission of proofs of claim by Non-Tendering Stockholders ("Proofs of Claim"),

the Administrator shall determine the total number of shares of Company Common Stock held by (a) all Tendering Stockholders; and (b) all Non-Tendering Stockholders (collectively, the “Total Eligible Shares”).

ii. For the avoidance of doubt, a particular stockholder may submit claims for and/or receive a distribution for Tendering Shares and Non-Tendering Shares, as neither the submission of claims nor the receipt of any distribution based on one of these two categories of shares excludes the submission of claims or the receipt of any distribution under the other category.

iii. To determine the size of the settlement distribution (the “Settlement Distribution Amount”) to each Tendering Stockholder, the Administrator shall divide the number of Tendering Shares owned by the Tendering Stockholder by the Total Eligible Shares and multiply the quotient by the Net Settlement Amount.

iv. For Tendering Beneficial Holders whose Tender Offer consideration was distributed through Cede & Co., as nominee for DTC, Settlement Distribution Amounts shall be sent to DTC for distribution.

a. The Administrator shall instruct DTC Participants to distribute the Settlement Distribution Amounts from the Account to Tendering Beneficial Holders in a similar

manner to that in which the DTC Participants distributed proceeds in connection with the Tender Offer.

- b. The Administrator shall provide DTC Participants with a list of Excluded Persons and direct the DTC Participants not to distribute any payment to any Excluded Person.
- c. DTC's sole obligation in connection with the Settlement shall be to distribute the Settlement Distribution Amounts to DTC Participants in accordance with this Paragraph and DTC rules and procedures, and DTC shall not be responsible for any errors in the calculation of the Settlement Distribution Amounts or for any failure by the Administrator, Defendants, or Plaintiffs' Counsel to identify the Excluded Persons.
- v. For Tendering Record Holders, Settlement Distribution Amounts shall be sent to the address listed on the stockholder register or other relevant books and records of the Company or its transfer agent.
- vi. To determine the size of the Settlement Distribution Amount to each Non-Tendering Stockholder, the Administrator shall divide the number of Non-Tendering Shares owned by the Non-Tendering Stockholder by the Total Eligible Shares and multiply the quotient by the Net Settlement Amount. For

Non-Tendering Stockholders, Settlement Distribution Amounts shall be sent to the address provided by the Non-Tendering Stockholder in the relevant Proof of Claims.

vii. The Parties shall cooperate with Plaintiffs' Counsel and the Administrator in order to ensure that no portion of the Net Settlement Amount is distributed to any Excluded Person.

viii. If there is any balance remaining in the Account after six (6) months from the date of initial distribution (whether by reason of tax refunds; uncashed checks; amounts returned by Excluded Persons, to the extent they receive settlement payments; or for any other reason), such amounts, if feasible, shall be distributed among the Settlement Payment Recipients in the same manner as the initial distribution; provided, however, that if the cost of making such a further distribution or distributions is unreasonably high relative to the amount remaining in the Account, Plaintiffs' Counsel may distribute any balance which still remains in the Account, after provision for all anticipated expenses, in accordance with Delaware's unclaimed property law. Neither Defendants nor their insurers shall have any reversionary interest in the Account.

ix. Notwithstanding any other provision of this Stipulation, Defendants shall have no responsibility or liability for any claims, payments or determinations that the Administrator makes with respect to any Class Member claims for payment under this Settlement Agreement.

c. Costs of Distribution and Reservation of Rights:

i. Plaintiffs or their designees shall pay out of the Account any and all costs associated with the allocation and distribution of the Net Settlement Amount.

ii. Defendants, their insurers, and the Released Defendant Parties shall have no responsibility for or liability relating to any aspect of the allocation or distribution of the Net Settlement Amount to Class Members or with respect to the administration of the Settlement Fund. No Class Member shall have any claim against any Plaintiff, Plaintiffs' Counsel, any Defendant, any of the Released Parties, or any of their counsel, insurers, or bankers based on distributions made substantially in accordance with this Settlement and/or orders of the Court. Defendants, their insurers and the Released Defendant Parties shall have no liability or responsibility whatsoever for the acts or omissions of Plaintiffs or Plaintiffs' Counsel or any of their agents with respect to (a) the administration of the Account or the Settlement Fund or (b) the distribution of the Net Settlement Amount.

CLASS CERTIFICATION

3. Solely for purposes of the Settlement and for no other purpose, the Parties stipulate and agree that Plaintiffs will request that the Court provide in the Order and Final Judgment that the Class be certified for settlement purposes only pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and/or 23(b)(2) as

described therein on a non-opt-out basis. In the event that this Settlement is cancelled or terminated in accordance with the terms hereof, Defendants reserve the right to oppose certification of any plaintiff class in future proceedings.

RELEASE OF CLAIMS

4. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the full and final disposition of the Action as against Defendants; and (ii) the Releases provided for herein.

5. The payment of the Settlement Amount having been agreed to and provided in consideration for the full and final settlement and dismissal with prejudice of the Action and the release of any and all Released Defendant Claims, no Defendant or other 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 Plaintiffs or any Class Member in connection with the Action, this Settlement or any Released Claims, including but not limited to attorneys' fees and expenses for any counsel to any Class Member in the Action, or any costs of notice or settlement administration or otherwise.

6. The Order and Final Judgment shall provide for the dismissal of the Action with prejudice, on the merits and without costs, except as provided herein.

7. As of the Effective Date, each Releasee shall release and forever discharge all Released Claims as against all other Releasees.

8. As of the Effective Date, the Releasees shall be deemed to be released and forever discharged from all of the Released Claims.

9. Notwithstanding anything else herein to the contrary, 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.

SUBMISSION OF SETTLEMENT TO THE COURT FOR APPROVAL

10. As soon as practicable after this Stipulation has been executed, the Parties shall jointly apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the “Scheduling Order”), providing for, among other things: (a) the dissemination to Class Members of the Notice of Pendency and Proposed Settlement of Class and Derivative Action (the “Notice”) substantially in the form attached hereto as Exhibit B, and a Proof of Claim substantially in the form attached hereto as Exhibit C; and (b) the scheduling of the Settlement Hearing to consider (i) the Settlement, (ii) the joint request of the Parties that the Order and Final Judgment be entered substantially in the form attached hereto as Exhibit D, (iii) Class Certification on the terms described in Paragraph 3 hereof, (iv) the Fee and Expense Application (as defined herein), and (v) any objections to any of the foregoing; and (c) an injunction against the prosecution of any of the Released Claims, pending further order of the Court.

11. Plaintiffs shall be responsible for providing notice of the Settlement to the Class. Defendants shall cooperate with Plaintiffs toward Plaintiffs' obligation for providing notice, including, but not limited to, by providing, to the extent reasonably available to Defendants, a list of Company stockholders used for the distribution of the Company's Solicitation Statements and a list of Company stockholders as of the closing of the Tender Offer. All costs and expenses of providing notice, as well as all other Administrative Costs, shall be paid from the Account, and no Defendant or Released Defendant Party shall have any responsibility for such costs and expenses other than the obligation to fund the Account as provided for herein. Plaintiffs, Plaintiffs' Counsel, or their designees may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Administrative Costs actually and reasonably incurred and paid or payable. Notice shall be provided in accordance with the Scheduling Order.

12. Plaintiffs' Counsel and/or the Administrator retained by them for purposes of providing notice of the Settlement to the Class shall file with the Court an appropriate declaration or affidavit with respect to the preparation and dissemination of the Notice. Such declaration or affidavit shall be filed in accordance with the Scheduling Order.

13. At the Settlement Hearing, the Parties shall jointly request that the Order and Final Judgment be entered substantially in the form attached hereto as Exhibit D.

CONDITIONS OF SETTLEMENT

14. This Stipulation is expressly conditioned on and subject to each of the following conditions and, except as provided in Paragraph 22, shall be cancelled and terminated if:

(a) The Court fails to enter the Scheduling Order substantially in the form attached hereto as Exhibit A;

(b) The Court fails to enter the Order and Final Judgment substantially in the form attached hereto as Exhibit D or makes any material modification thereto (as addressed in Paragraph 22 below); or

(c) The Order and Final Judgment fails to become Final.

ATTORNEYS' FEES AND EXPENSES

15. Plaintiffs' Counsel intends to petition the Court for an award of attorneys' fees in an aggregate amount of up to \$1,850,000.00, inclusive of expenses incurred in connection with the prosecution of the Action (the "Fee Application").

16. The Parties acknowledge and agree that the Fee Application shall be paid solely from the Settlement Amount. No petition for attorneys' fees and expenses other than the Fee Application shall be filed by or on behalf of Plaintiffs

and Plaintiffs' Counsel. The Parties shall cooperate in opposing any other petition filed in this Court for an award of attorneys' fees or reimbursement of expenses in connection with any other litigation concerning or relating to the Tender Offer or Transactions.

17. Upon the occurrence of both (and, for the avoidance of doubt, after the later of) (a) the Effective Date, and (b) the Final Approval of the Fee Application, the escrow agent selected by Plaintiffs' Counsel shall thereafter promptly, and in any event within ten (10) business days, disburse from the Account to Plaintiffs' Counsel an amount equal to the Fee and Expense Award.

18. Final resolution by the Court of the Fee Application shall not be a precondition to the Settlement or the dismissal of the Action in accordance with the Settlement and this Settlement Agreement, and the Fee Application may be considered separately from the Settlement. Neither any failure of the Court or any other court (including any appellate court) to approve the Fee Application in whole or in part, nor any other reduction, modification, or reversal of the Fee and Expense Award or failure of such order to become Final, shall have any impact on the effectiveness of the Settlement, provide any of the Parties with the right to terminate the Settlement or this Settlement Agreement, or affect or delay the binding effect or finality of the Order and Final Judgment and the release of the Released Claims.

19. Plaintiffs' Counsel warrants that no portion of any Fee and Expense Award shall be paid to Plaintiffs or any Class Member except as approved by the Court.

STAY PENDING FINALITY OF SETTLEMENT

20. The Parties hereby agree to stay the proceedings in the Action and to file no further actions against the Releasees asserting any Released Claims, other than those incident to the Settlement itself, pending the occurrence of the Effective Date. The Parties' respective deadlines to respond to any filed or served pleadings or discovery requests are extended indefinitely. If, before the occurrence of the Effective Date, any action was or is filed in any court asserting, directly or indirectly, any Released Claims or otherwise challenging the Settlement, the Parties agree to use their reasonable best efforts (including but not limited to filing and prosecuting motions in any such court) to prevent, stay or seek dismissal of any such action, and to oppose entry of any interim or final relief in favor of any Class Member in any such action against any of the Releasees.

21. The Parties will request the Court to order (in the Scheduling Order) that, pending the Effective Date, the Parties and any and all Class Members are barred and enjoined from commencing, maintaining, prosecuting, instigating or in any way participating in the commencement, continuation, or prosecution of any

action asserting any Released Claims, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties.

EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

22. If (a) the Court does not enter the Order and Final Judgment substantially in the form attached hereto as Exhibit D or makes any material modification thereto, (b) the Court enters the Order and Final Judgment substantially in the form attached hereto as Exhibit D but on or following appellate review the Order and Final Judgment is modified or reversed in any material respect, or (c) any of the other conditions of Paragraph 14 are not satisfied, this Stipulation shall be cancelled and terminated unless, within ten (10) business days after receipt of such ruling or notice of such event, counsel for each of the Parties to this Stipulation agrees in writing with counsel for the other Parties hereto to proceed with this Stipulation and the Settlement, including only with such modifications, if any, as to which all Parties in their sole judgment and discretion may agree in writing. For purposes of this Paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. Notwithstanding the foregoing, none of the following modifications shall be deemed a material modification of the Order and Final Judgment or this Stipulation: (a) a modification or a reversal on appeal of the amount of fees, costs or expenses awarded by the Court to Plaintiffs' Counsel in the Action, (b) a non-material modification to the plan of allocation or distribution of the Net

Settlement Amount to the Settlement Payment Recipients, (c) a non-material modification of the definition of the Settlement Payment Recipients, or (d) a non-material modification to the definition of Excluded Persons.

23. If this Stipulation is cancelled or terminated in accordance with the terms hereof, all of the Parties to this Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to the execution of this Stipulation and shall proceed in all respects as if the Stipulation had not been executed 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. Furthermore, in the event of such termination, Plaintiffs and Plaintiffs' Counsel agree that neither this Stipulation, nor any statements made in connection with the negotiation of this Stipulation, may be introduced or used for any purpose, or entitle any Party to recover any fees, costs or expenses incurred, in connection with the Action or any other litigation or judicial proceeding. Notwithstanding the foregoing, Defendants shall have no right to recover any portion of the Administrative Costs that has already been spent on providing notice or otherwise administering the Settlement, in the event that this Stipulation is cancelled or terminated in accordance with the terms hereof; but any portion of the Administrative Costs that has not already been spent on notice costs

at the time of such cancellation or termination shall be returned promptly to Defendants.

MISCELLANEOUS PROVISIONS

24. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

25. This Stipulation may not be amended, changed, waived, discharged, or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by the Party (or its successor) against whom enforcement of such amendment, change, waiver, discharge, or termination is sought.

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

27. 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.

28. The headings in this Stipulation are solely for the convenience of the Parties and shall not be deemed to be a part of this Stipulation and shall not be considered in construing or interpreting this Stipulation.

29. Defendants warrant that, as to the payments made or to be made by or on behalf of them, at the time of entering into this Stipulation and at the time of such payment, to their knowledge any persons or entities contributing to the payment of the Settlement Amount, was not insolvent, nor will the payment required to be made render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof.

30. 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, if Plaintiffs notify Defendants in writing of their election of the following, then Plaintiffs and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendant and the other Releasees pursuant to this Stipulation, in which event the Releases and Order and Final Judgment shall be null and void, and the Parties shall be restored to their respective positions in the litigation as provided in ¶ 23 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 as provided in ¶ 23.

31. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could have been asserted by the Released Plaintiff Parties against the Released Defendant Parties with respect to the Released Plaintiff Claims, or by the Released Defendant Parties against the Released Plaintiff Parties with respect to the Released Defendant Claims. Accordingly, Plaintiffs and Plaintiffs' 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.

32. 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 Plaintiffs' Counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Party concerning the prosecution, defense, or resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

33. 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 both Plaintiffs and Defendants (or their successors-in-interest).

34. 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 a Fee and Expense Award and enforcing the terms of this Stipulation, including the distribution of the Net Settlement Amount to Class Members.

35. The waiver by one 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 this Stipulation.

36. This Stipulation and its exhibits constitute the entire agreement among the Parties concerning the Settlement and this Stipulation and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements

have been made by any Party hereto concerning this Stipulation or its exhibits other than those contained and memorialized in such documents.

37. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, 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.

38. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, including any and all Releasees and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate or reorganize.

39. 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.

40. Any action arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in the Court.

41. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and that all Parties have contributed substantially and materially to the preparation of this Stipulation.

42. 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 the Stipulation to effectuate its terms.

43. Plaintiffs' Counsel and Defendants' counsel agree to cooperate fully with one another in seeking Court approval of the Scheduling Order and the Settlement, as embodied in this Stipulation, 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.

44. 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 email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs:	GRANT & EISENHOFER P.A. Attn: Kimberly Evans, Esq. 123 Justison Street Wilmington, Delaware 19801 Telephone: (302) 622-7000 Email: kevans@gelaw.com
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If to the Company or the Director Defendants:	ABRAMS & BAYLISS LLP Attn: A. Thompson Bayliss, Esq. 20 Montchanin Road, Suite 200
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Wilmington, Delaware 19807
Telephone: (302) 778-1000
Email: bayliss@abramsbayliss.com

If to Vintage or
Kahn Capital
Management, LLC:

WILLKIE FARR & GALLAGHER LLP
Attn: Tariq Mundiya, Esq.
787 Seventh Avenue
New York, NY 10019-6099
Telephone: (212) 728-8565
Email: tmundiya@willkie.com

If to B. Riley:

RICHARDS, LAYTON & FINGER P.A.
Attn: Russell C. Silberglied, Esq.
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7545
Email: silberglied@rlf.com

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

46. 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, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

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

48. No opinion or advice concerning the tax consequences of the Settlement to individual 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 Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each Class Member.

IN WITNESS WHEREOF, the Parties, through their undersigned counsel, hereto have caused this Stipulation to be executed, as of December 10, 2020.

OF COUNSEL:

Jeremy S. Friedman
David F.E. Tejtel
FRIEDMAN OSTER & TEJTEL PLLC
493 Bedford Center Road, Suite 2D
Bedford Hills, New York 10507
(888) 529-1108

/s/ Kimberly A. Evans
Kimberly A. Evans (#5888)
GRANT & EISENHOFER P.A.
123 Justison Street
Wilmington, Delaware 19801
(302) 662-7000

Attorneys for Plaintiffs

OF COUNSEL:

J. Timothy Mast
Mary Weeks
TROUTMAN SANDERS LLP
600 Peachtree Street NE, Suite 3000
Atlanta, Georgia 30308
(404) 885-3000

OF COUNSEL:

Tariq Mundiya
Jeffrey B. Korn
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

/s/ E. Wade Houston

A. Thompson Bayliss (#4379)
E. Wade Houston (#6289)
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
(302) 778-1000

*Attorneys for Nominal Defendant
Franchise Group, Inc.*

/s/ Ryan D. Stottmann

William M. Lafferty (#2755)
Ryan D. Stottmann (#5237)
MORRIS, NICHOLS, ARSHT &
TUNNELL LLP
1201 North Market Street
Wilmington, Delaware 19801
(302) 658-9200

*Attorneys for Defendants Matthew
Avril, Brian R. Kahn, Andrew M.
Laurence and Vintage Capital
Management LLC*

/s/ Russell C. Silberglid

Raymond J. DiCamillo (#3188)
Russell C. Silberglid (#3462)
Kevin M. Gallagher (#5337)
Angela Lam (#6431)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

*Attorneys for Defendants B. Riley
Financial, Inc., Bryant R. Riley, and
Kenneth M. Young*