

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHRIS HASHEM, individually and
on behalf of all others similarly
situated,

Plaintiff,

vs.

NMC HEALTH PLC, PRASANTH
MANGHAT, KHALIFA BIN BUTTI,
PRASHANTH SHENOY, H.J. MARK
TOMPKINS, and B.R. SHETTY,

Defendant.

Case No.: CV 20-2303 CBM
(MAAx)

**ORDER RE: PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF PARTIAL
CLASS ACTION SETTLEMENT
[50]**

WHEREAS, Lead Plaintiffs Chris Hashem, Shengming Huang and Abdul Razeq Abdul Ahad (“Lead Plaintiffs”), on behalf of themselves and the Settlement Class, and Defendant H.J. Mark Tompkins (“Tompkins” or the “Settling Defendant” and with Lead Plaintiffs, the “Settling Parties”) entered into the Stipulation and Agreement of Settlement, dated June 14, 2021 (“Settlement Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure, and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal of the class

1 action pending before the Court titled, *Hashem v. NMC Health PLC, et al.*, Case
2 No. 2:20-cv-02303-CBM-MAA (C.D. Cal.), which is consolidated with
3 *Shengming Huang v. NMC Health PLC, et al.*, No. 2:20-cv-02895-CBM-MAA
4 (collectively, the “Action”); and the Court having read and considered the
5 Settlement Stipulation and the exhibits thereto and submissions made relating
6 thereto, and finding that substantial and sufficient grounds exist for entering this
7 Order;

8 NOW, THEREFORE, IT IS HEREBY ORDERED, this 12th day of August
9 2021, that:

10 1. Capitalized terms used herein have the meanings defined in the
11 Settlement Stipulation.

12 2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil
13 Procedure and for the purposes of the Settlement only, the Action is hereby
14 preliminarily certified as a class action on behalf of all Persons that purchased or
15 acquired NMC Health PLC (“NMC”) American Depositary Shares (“ADSs”)
16 between March 13, 2016 and March 10, 2020, both dates inclusive (“Class
17 Period”) excluding: (i) Defendants; (ii) current and former officers and directors
18 of NMC and any Tompkins Released Parties; (iii) the Persons expressly excluded
19 from the definition of Settlement Class in paragraph 1.29 of the Settlement
20 Stipulation; (iv) the respective spouses, children, or parents of any Person
21 excluded under subparagraphs, (i) through (iii) of this paragraph; (v) any Person
22 more than 5% owned or directly or indirectly controlled by any Person excluded
23 under subparagraphs (i) through (iv) of this paragraph or any trust of which such a
24 Person is a beneficiary or of which any Person is related or affiliated to a
25 beneficiary or a trustee; (vi) the respective heirs, successors, trustees and assigns
26 of any Person excluded under paragraphs (i) through (v); and (vii) those Persons
27 who file valid and timely requests for exclusion in accordance with this
28 Preliminary Approval Order.

1 3. This Court finds, preliminarily and for purposes of this Settlement
2 only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the
3 Federal Rules of Civil Procedure have been satisfied in that: (a) the number of
4 Settlement Class Members is so numerous that joinder of all members of the
5 Settlement Class is impracticable; (b) there are questions of law and fact common
6 to the Settlement Class; (c) the Lead Plaintiffs' claims are typical of the claims of
7 the Settlement Class they seek to represent; (d) Lead Plaintiffs fairly and
8 adequately represent the interests of the Settlement Class; (e) questions of law and
9 fact common to the Settlement Class predominate over any questions affecting
10 only individual members of the Settlement Class; and (f) a class action is superior
11 to other available methods for the fair and efficient adjudication of the Action.

12 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure,
13 preliminarily and for the purposes of this Settlement only, Lead Plaintiffs are
14 certified as the class representatives on behalf of the Settlement Class and Lead
15 Counsel, previously selected by Lead Plaintiffs and appointed by the Court, is
16 hereby appointed as Co-Lead Counsel for the Settlement Class.

17 5. The Court finds that (a) the Settlement Stipulation resulted from good
18 faith, arm's length negotiations, and (b) the Settlement Stipulation is sufficiently
19 fair, reasonable and adequate to the Settlement Class Members to warrant
20 providing notice of the Settlement to Settlement Class Members and holding a
21 Settlement Hearing.

22 6. The Court hereby preliminarily approves the Settlement, subject to
23 further consideration at a hearing ("Settlement Hearing") pursuant to Federal
24 Rule of Civil Procedure 23(e), which is hereby scheduled to be held before the
25 Court on November 30, 2021 at 10:00 a.m. for the following purposes:

26 (a) to determine finally whether the applicable prerequisites for
27 class action treatment under Federal Rules of Civil Procedure 23(a) and (b)
28 are satisfied;

1 (b) to determine finally whether the Settlement is fair, reasonable,
2 and adequate, and should be approved by the Court;

3 (c) to determine finally whether the Order and Partial Final
4 Judgment as provided under the Settlement Stipulation should be entered,
5 dismissing the Action on the merits and with prejudice as to Tompkins, and
6 to determine, among other things, whether the release by the Plaintiffs
7 Releasing Parties of the Released Claims against the Tompkins Released
8 Parties, as set forth in the Settlement Stipulation, should be ordered, along
9 with a permanent injunction barring efforts to prosecute or attempt to
10 prosecute any Plaintiffs' Released Claims extinguished by the release
11 against any of the Tompkins Released Parties, as also set forth in the
12 Settlement Stipulation;

13 (d) to determine finally whether the proposed Plan of Allocation
14 for the distribution of the Net Settlement Fund is fair and reasonable and
15 should be approved by the Court;

16 (e) to consider any application of Co-Lead Counsel for an award
17 of expenses to Lead Counsel;

18 (f) to consider Settlement Class Members' or any other Person's
19 objections to the Settlement, if any, whether submitted previously in writing
20 or presented orally at the Settlement Hearing by Settlement Class Members
21 (or by counsel on their behalf) provided that they gave proper notice that
22 they intend to appear at the Settlement Hearing; and

23 (g) to rule upon such other matters as the Court may deem
24 appropriate.

25 7. The Court reserves the right to adjourn the Settlement Hearing to a
26 later date and to approve the Settlement without modification, or with such
27 modifications as may be agreed to by the Settling Parties, and with or without
28 further notice of any kind. The Court further reserves the right to enter its Order

1 and Partial Final Judgment approving the Settlement and dismissing the Action as
2 to Tompkins, on the merits and with prejudice, regardless of whether it has
3 approved the Plan of Allocation or awarded expenses. Nothing in this Order shall
4 affect the ability of Lead Plaintiffs or the Settlement Class to continue to prosecute
5 claims in this Action against Defendants other than Tompkins.

6 8. The Court approves the form, substance and requirements of (a) the
7 Notice, (b) the Summary Notice, (c) the Postcard Notice, and (d) the Proof of
8 Claim and Release Form, all of which are exhibits to the Settlement Stipulation.

9 9. Co-Lead Counsel has the authority to enter into the Settlement on
10 behalf of the Settlement Class and has the authority to act on behalf of the
11 Settlement Class with respect to all acts or consents required by or that may be
12 given pursuant to the Settlement Stipulation or such other acts that are reasonably
13 necessary to consummate the Settlement.

14 10. For settlement purposes only, Strategic Claims Services is appointed
15 and approved as the Claims Administrator to supervise and administer the notice
16 procedure as well as the processing of claims. Up to \$25,000 in notice and
17 administration costs may be paid to the Claims Administrator without further
18 order of this Court.

19 11. Within sixteen (16) calendar days of the entry of this Order, Co-Lead
20 Counsel, through the Claims Administrator, shall either (a) email the Summary
21 Notice to Settlement Class Members for whom the Claims Administrator is able
22 to obtain email addresses, substantially in the form annexed to the Settlement
23 Stipulation as Exhibit A-3 or (b) cause the Postcard Notice, substantially in the
24 form annexed to the Settlement Stipulation as Exhibit A-4, if no electronic mail
25 address can be obtained, mailed, by first class mail, postage prepaid, to Settlement
26 Class Members who can be identified with reasonable effort by Co-Lead Counsel,
27 through the Claims Administrator.

28 12. Co-Lead Counsel, through the Claims Administrator, shall make all

1 reasonable efforts to give notice to nominees or custodians who held NMC ADSs
2 during the Class Period as record owners but not as beneficial owners. Such
3 nominees or custodians shall, within ten (10) calendar days of receipt of the
4 notice, either: (i) request copies of the Postcard Notice sufficient to send the
5 Postcard Notice to all beneficial owners for whom they are nominee or custodian,
6 and within ten (10) calendar days after receipt thereof send copies to such
7 beneficial owners; or (ii) request an electronic link to the Notice and Proof of
8 Claim and Release Form (“Notice and Claim Link”), and within ten (10) calendar
9 days after receipt thereof, email the Notice and Claim Links to such beneficial
10 owners for whom valid email addresses are available; or (iii) provide the Claims
11 Administrator with lists of the names, last known addresses and email addresses
12 (to the extent known) of such beneficial owners, in which event the Claims
13 Administrator shall promptly deliver the Postcard Notice to such beneficial
14 owners. If the Claims Administrator receives an email address, it will send a
15 Notice and Claim Link electronically. Nominees or custodians who elect to send
16 the Postcard Notice or Notice and Claim Link to their beneficial owners shall send
17 a written certification to the Claims Administrator confirming that the mailing or
18 emailing has been made as directed. Copies of the Postcard Notice or Notice and
19 Claim Links shall be made available to any nominee or custodian requesting same
20 for the purpose of distribution to beneficial owners. The Claims Administrator
21 shall, if requested, reimburse nominees or custodians out of the Settlement Fund
22 solely for their reasonable out-of-pocket expenses, incurred in providing notice to
23 beneficial owners, which expenses would not have been incurred except for the
24 providing names and addresses up to \$0.05 per name (with address and email
25 address) provided to the Claims Administrator; up to \$0.05 per Postcard Notice
26 plus postage at the rate used by the Claims Administrator; or up to \$0.05 per
27 Notice and Claim Link sent by email, and subject to further order of this Court
28 with respect to any dispute concerning such reimbursement.

1 13. Co-Lead Counsel shall, at least seven (7) calendar days before the
2 Settlement Hearing, serve upon counsel for Settling Defendant and file with the
3 Court proof of the mailing of the Postcard Notice as required by this Order.

4 14. Co-Lead Counsel, through the Claims Administrator, shall cause the
5 Settlement Stipulation and its exhibits, this Order, and a copy of the Notice and
6 Proof of Claim and Release Form to be posted on the Claims Administrator's
7 website within sixteen (16) calendar days after entry of this Order.

8 15. Co-Lead Counsel, through the Claims Administrator, shall cause the
9 Summary Notice to be published electronically once on the *GlobeNewswire*
10 within ten (10) calendar days after the Postcard Notice mailing or Notice and
11 Claim Link emailing. Co-Lead Counsel shall, at least seven (7) calendar days
12 before the Settlement Hearing, serve upon counsel for Settling Defendant and file
13 with the Court proof of publication of the Summary Notice.

14 16. The forms and methods set forth herein of notifying the Settlement
15 Class Members of the Settlement and its terms and conditions meet the
16 requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and
17 Section 21D(a)(7) of the Exchange Act, 15 U.S.C. 78u-4(a)(7), as amended by the
18 Private Securities Litigation Reform Act of 1995; constitute the best notice
19 practicable under the circumstances; and constitute due and sufficient notice to all
20 Persons entitled thereto. No Settlement Class Member will be relieved from the
21 terms and conditions of the Settlement, including the releases provided for
22 therein, based upon the contention or proof that such Settlement Class Member
23 failed to receive actual or adequate notice.

24 17. In order to be entitled to participate in recovery from the Net
25 Settlement Fund after the Effective Date, each Settlement Class Member shall
26 take the following action and be subject to the following conditions:

27 (a) A properly completed and executed Proof of Claim and
28 Release Form must be submitted to the Claims Administrator: (a)

1 electronically through the Claims Administrator's website,
2 www.strategicclaims.net/NMCHHealth by 11:59 p.m. EST on October 30,
3 2021; or (b) at the Post Office Box indicated in the Notice, postmarked no
4 later than October 30, 2021 (thirty (30) calendar days prior to the
5 Settlement Hearing). Such deadline may be further extended by Order of
6 the Court. Each Proof of Claim and Release Form shall be deemed to have
7 been submitted when: (a) the claim receives a confirmation notice from
8 Strategic Claims Services for electronic submissions; or (b) legibly
9 postmarked (if properly addressed and mailed by first class mail) provided
10 such Proof of Claim and Release Form is actually received before the filing
11 of a motion for an Order of the Court approving distribution of the Net
12 Settlement Fund. Any Proof of Claim and Release Form submitted in any
13 other manner shall be deemed to have been submitted when it was actually
14 received by the Claims Administrator at the address designated in the
15 Notice.

16 (b) The Proof of Claim and Release Form submitted by each
17 Settlement Class Member must satisfy the following conditions: (i) it must
18 be properly completed, signed and submitted in a timely manner in
19 accordance with the provisions of the preceding subparagraph; (ii) it must
20 be accompanied by adequate supporting documentation for the transactions
21 reported therein, in the form of broker confirmation slips, broker account
22 statements, an authorized statement from the broker containing the
23 transactional information found in a broker confirmation slip, or such other
24 documentation as is deemed adequate by the Claims Administrator or Co-
25 Lead Counsel; (iii) if the Person executing the Proof of Claim and Release
26 Form is acting in a representative capacity, a certification of his current
27 authority to act on behalf of the Settlement Class Member must be provided
28 with the Proof of Claim and Release Form; and (iv) the Proof of Claim and

1 Release Form must be complete and contain no material deletions or
2 modifications of any of the printed matter contained therein and must be
3 signed under penalty of perjury.

4 (c) Once the Claims Administrator has considered a timely
5 submitted Proof of Claim and Release Form, it shall determine whether
6 such claim is valid, deficient, or rejected. For each claim determined to be
7 either deficient or rejected, the Claims Administrator shall send a deficiency
8 letter or rejection letter as appropriate, describing the basis on which the
9 claim was so determined. Persons who timely submit a Proof of Claim and
10 Release Form that is deficient or otherwise rejected shall be afforded a
11 reasonable time (at least ten (10) calendar days) to cure such deficiency if it
12 shall appear that such deficiency may be cured. If any Claimant whose
13 claim has been rejected in whole or in part wishes to contest such rejection,
14 the Claimant must, within ten (10) calendar days after the date of mailing of
15 the notice, serve upon the Claims Administrator a notice and statement of
16 reasons indicating the Claimant's ground for contesting the rejection along
17 with any supporting documentation, and requesting a review thereof by the
18 Court. If an issue concerning a claim cannot be otherwise resolved, Co-
19 Lead Counsel shall thereafter present the request for review to the Court.

20 (d) As part of the Proof of Claim and Release Form, each
21 Settlement Class Member shall submit to the jurisdiction of the Court with
22 respect to the claim submitted, and shall, upon the Effective Date, release
23 all claims as provided in the Settlement Stipulation. No discovery shall be
24 allowed on the merits of the Action or the Settlement in connection with
25 processing of the Proof of Claim and Release Forms, nor shall any
26 discovery from or of Defendants be allowed on any topic.

27 18. All Settlement Class Members who do not submit valid and timely
28 Proof of Claim and Release Forms will be forever barred from receiving any

1 payments from the Net Settlement Fund, but will in all other respects be subject to
2 and bound by the provisions of the Settlement Stipulation and the Order and
3 Partial Final Judgment, if entered

4 19. Settlement Class Members shall be bound by all determinations and
5 judgments in this Action whether favorable or unfavorable, unless such Persons
6 request exclusion from the Settlement Class in a timely and proper manner, as
7 hereinafter provided. A Settlement Class Member wishing to make such request
8 for exclusion shall mail it by first class mail, postage prepaid, or otherwise deliver
9 it, so that it is received no later than November 9, 2021 (twenty-one (21) calendar
10 days prior to the Settlement Hearing) (“Exclusion Deadline”), to the address listed
11 in the Notice. In order to be valid, such request for exclusion (A) must clearly
12 indicate the name and address and phone number and e-mail contact information
13 (if any) of the Person seeking exclusion, and state that the sender specifically
14 “requests to be excluded from the Settlement Class in *Hashem v. NMC Health*
15 *PLC, et al.*, 2:20-cv-02303-CBM-MAA (C.D. Cal.) and *Shengming Huang v.*
16 *NMC Health PLC., et al.*, No. 2:20-cv-02895-CBM-MAA (C.D. Cal.)” and (B)
17 state the date, number of shares and dollar amount of each NMC ADS purchase or
18 acquisition during the Settlement Class Period, and any sale transactions as well
19 as the number of NMC ADSs held by the Person as of March 13, 2016 and March
20 10, 2020. In order to be valid, such request for exclusion must be submitted with
21 documentary proof: (i) of each purchase or acquisition and, if applicable, sale
22 transaction of NMC ADSs during the Settlement Class Period; and (ii)
23 demonstrating the Person’s status as a beneficial owner of the NMC ADSs. Any
24 such request for exclusion must be signed and submitted by the beneficial owner
25 under penalty of perjury. The request for exclusion shall not be effective unless it
26 provides the required information, is legible, and is made within the time stated
27 above, or the exclusion is otherwise accepted by the Court. Co-Lead Counsel may
28 contact any Person filing a request for exclusion, or their attorney if one is

1 designated, to discuss the request for exclusion.

2 20. The Claims Administrator shall provide all requests for exclusion and
3 supporting documentation submitted therewith (including untimely requests and
4 revocations of requests) to counsel for the Settling Parties (by email) as soon as
5 possible and no later than the Exclusion Deadline or upon the receipt thereof (if
6 later than the Exclusion Deadline). The Settlement Class will not include any
7 Person who delivers a valid and timely request for exclusion.

8 21. Any Person that submits a request for exclusion may thereafter
9 submit to the Claims Administrator a written revocation of that request for
10 exclusion, provided that it is received no later than two (2) Business Days before
11 the Settlement Hearing, in which event that Person will be included in the
12 Settlement Class.

13 22. All Persons who submit a valid, timely and unrevoked request for
14 exclusion will be forever barred from receiving any payments from the Net
15 Settlement Fund.

16 23. The Court will consider comments and/or objections to the
17 Settlement, the Plan of Allocation, or the Expense Application, provided,
18 however, that no Settlement Class Member or other Person shall be heard or
19 entitled to contest the approval of the terms and conditions of the proposed
20 Settlement or, if approved, the Order and Partial Final Judgment, or any other
21 order relating thereto, unless that Person has served copies of any objections,
22 papers and briefs to the following counsel at least twenty-one (21) calendar days
23 prior to the Settlement Hearing Date:

24 POMERANTZ LLP
25 Joshua Silverman, Esq.
26 10 South La Salle Street, Suite 3505
27 Chicago, Illinois 60603

28 THE ROSEN LAW FIRM, P.A.

1 Phillip Kim, Esq.
2 275 Madison Avenue, 40th Floor
3 New York, New York 10016

4 EARLY SULLIVAN WRIGHT GIZER & MCRAE LLP
5 William A. Wright, Esq.
6 6420 Wilshire Blvd., 17th Floor
7 Los Angeles, CA 90048

8 To be valid, any such objection must contain the Person's: (1) name,
9 address, and telephone number; (2) a list of all purchases and sales of the NMC
10 ADSs during the Class Period in order to show membership in the Settlement
11 Class; (3) all grounds for the objection, including any legal support known to the
12 Settlement Class Member and/or his, her, or its counsel; (4) the name, address and
13 telephone number of all counsel who represent the Settlement Class Member,
14 including former or current counsel who may be entitled to compensation in
15 connection with the objection; and (5) the number of times the Settlement Class
16 Member and/or his, her, or its counsel has filed an objection to a class action
17 settlement in the last five years, the nature of each such objection in each case, the
18 jurisdiction in each case, and the name of the issuer of the security or seller of the
19 product or service at issue in each case. Attendance at the Settlement Hearing is
20 not necessary but Persons wishing to be heard orally in opposition to the approval
21 of the Settlement Stipulation, the Plan of Allocation, and/or the Expense
22 Application are required to indicate in their written objection (or in a separate
23 writing that is submitted in accordance with the deadline and after instruction
24 pertinent to the submission of a written objection) that they intend to appear at the
25 Settlement Hearing and identify any witnesses they may call to testify or exhibits
26 they intend to introduce into evidence at the Settlement Hearing. Settlement Class
27 Members do not need to appear at the Settlement Hearing or take any other action
28 to indicate their approval.

1 24. Any Settlement Class Member or other Person who does not object
2 in the manner prescribed above shall be deemed to have waived all such
3 objections and shall forever be foreclosed from making any objection to the
4 fairness, adequacy or reasonableness of the Settlement, the Order and Partial Final
5 Judgment to be entered approving the Settlement, the Plan of Allocation, and/or
6 Expense Application, unless otherwise ordered by the Court; shall be bound by all
7 the terms and provisions of the Settlement Stipulation and by all proceedings,
8 orders and judgments in the Action; and shall also be foreclosed from appealing
9 from any judgment or order entered in this Action.

10 25. The Court reserves the right to adjourn the Settlement Hearing
11 without any further notice other than entry of an Order on the Court's docket, and
12 to approve the Settlement without further notice to the Settlement Class.

13 26. All papers in support of the Settlement, the Plan of Allocation and/or
14 the Fee and Expense Application shall be filed and served no later than twenty-
15 eight (28) calendar days before the Settlement Hearing.

16 27. Any submissions filed in response to any objections or in further
17 support of the Settlement, the Plan of Allocation and/or the Expense Application
18 shall be filed no later than seven (7) calendar days prior to the Settlement Hearing.

19 28. Settling Defendant, his counsel, his insurers and other Tompkins
20 Released Parties shall have no responsibility for, or liability with respect to, the
21 Plan of Allocation or any application for attorneys' fees and interest, or expenses
22 or payments to the Lead Plaintiffs submitted by Co-Lead Counsel, and such
23 matters will be considered separately from the fairness, reasonableness, and
24 adequacy of the Settlement.

25 29. Pending final determination of whether the Settlement should be
26 approved, all Plaintiffs Releasing Parties shall be enjoined from commencing,
27 prosecuting, or attempting to prosecute any Released Claims against any
28 Tompkins Released Party in any court or tribunal or proceeding (including in the

1 Action), unless and until the Settlement Stipulation is cancelled and terminated
2 pursuant to the Settlement Stipulation.

3 30. Tompkins shall not be required to answer or otherwise respond to the
4 complaints in this Action unless the Settlement is terminated, canceled or
5 otherwise fails to become effective. In the event the Settlement is terminated,
6 canceled or otherwise fails to become effective, Tompkins shall have 21 days from
7 such event to answer or otherwise respond to the complaints.

8 31. All funds held in the Escrow Account shall be deemed and
9 considered to be in the custody of the Court, and shall remain subject to the
10 jurisdiction of the Court, until such time as such funds shall be distributed or
11 returned pursuant to the Settlement Stipulation and Plan of Allocation and/or
12 further order(s) of the Court.

13 32. Neither the Settlement Stipulation, nor any of its terms or provisions,
14 nor any of the negotiations or proceedings connected with it, nor this Order shall
15 be construed as an admission or concession by the Settling Defendant, his
16 counsel, his insurers or any of the other Tompkins Released Parties of the truth of
17 any of the allegations in the Action, or of any liability, fault, or wrongdoing or any
18 kind and shall not be construed as, or deemed to be evidence of or an admission or
19 concession that Lead Plaintiffs or any Settlement Class Members have suffered
20 any damages, harm, or loss. Further, neither the Settlement Stipulation, nor any of
21 its terms or provisions, nor any of the negotiations or proceedings connected with
22 it, nor this Order shall be construed as, or argued to be, a waiver of any of
23 Tompkins' defenses in the Action, including but not limited to the defenses listed
24 in Fed. R. Civ. P. 12(b) with regard to the complaints in the Action (and including
25 Tompkins' rights, objections and defenses based on lack of personal jurisdiction
26 and venue/forum). Further, neither the Settlement Stipulation, nor any of its terms
27 or provisions, nor any of the negotiations or proceedings connected with it, nor
28 this Order shall be construed as an admission or concession by the Lead Plaintiffs

1 of the validity of any factual or legal defense or of the infirmity of any of the
2 claims or facts alleged in this Action.

3 33. In the event the Settlement is not consummated in accordance with
4 the terms of the Settlement Stipulation, then the Settlement Stipulation and this
5 Order (including any amendment(s) thereof, and except as expressly provided in
6 the Settlement Stipulation or by order of the Court) shall be null and void, of no
7 further force or effect, and without prejudice to any Settling Party, and may not be
8 introduced as evidence or used in any action or proceeding by any Person against
9 the Settling Parties or the Tompkins Released Parties, and each Settling Party
10 shall be restored to his, her or its respective litigation positions as they existed
11 prior to June 1, 2021, pursuant to the terms of the Settlement Stipulation.

12 34. The Court reserves the right to alter the time or the date of the
13 Settlement Hearing without further notice to the Settlement Class Members,
14 provided that the time or the date of the Settlement Hearing shall not be set at a
15 time or date earlier than the time and date set forth in ¶ 6 above. The Court retains
16 exclusive jurisdiction to consider all further matters arising out of, or relating to,
17 the Settlement Stipulation, including by way of illustration and not limitation, any
18 dispute concerning any Proof of Claim and Release Form submitted and any
19 future requests by one or more of the Settling Parties that the Order and Partial
20 Final Judgment, the releases and/or the permanent injunction set forth in the
21 Settlement Stipulation be enforced.

22
23 **IT IS SO ORDERED.**

24
25 DATED: August 12, 2021

26 

27 _____
28 CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE