

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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YAO-YI LIU, TUNG-HUNG HSIEH, and  
CHIU-PAO TSAI Individually and on Behalf  
of All Others Similarly Situated,

Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and  
WILMINGTON TRUST, NATIONAL  
ASSOCIATION,

Defendants.

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**[PROPOSED] FINAL ORDER AND JUDGMENT**

WHEREAS:

A. As of August 12, 2022, Plaintiffs Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai (collectively, “Plaintiffs”), individually and as class representatives on behalf of the Settlement Class, and (defined below), on the one hand, and Wilmington Trust Company and Wilmington Trust, National Association (“Wilmington” or “Defendants”), on the other, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of this Action, and the claims asserted therein, filed on May 22, 2015, on the merits and with prejudice (the “Settlement”);

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered October 11, 2022 (the “Preliminary Approval Order”), the Court scheduled a

hearing for January 11, 2023, at 2:00 p.m., which date was rescheduled for February 13, 2023 at 2:30 p.m. (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule on Class Counsel’s Fee and Expense Application, and a request for a Service Award to the Class Representatives;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses and Service Award (the “Notice”) and a Proof of Claim and Release form (“Proof of Claim”), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before thirty (30) days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members (defined below) who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be transmitted over an international news wire within thirty (30) days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by December 21, 2022 (extended to January 23, 2023);

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On January 9, 2023, the Class Representatives moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held

before this Court on [REDACTED], 2023, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered the Class Representatives' motion, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates and makes a part hereof: (i) the Stipulation filed with the Court on August 12, 2022; and (ii) the Notice, which was filed with the Court on August 12, 2022. Capitalized terms not defined in this Judgment shall have the meanings set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class Members.

3. The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for purposes of the Settlement only, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Settlement Class of: all persons and entities who invested in the Bio Profit Scheme and were damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) any person who was an officer or director of Defendants; (iii) any firm or entity in which any Defendants have or had a controlling interest; (iv) the parents or subsidiaries of Defendants; (v) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such; and (vi) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded

person or entity, in their respective capacity as such. No investors have requested exclusion from the Settlement Class.

4. Pursuant to Fed. R. Civ. P. 23, and for purposes of the Settlement only, the Court hereby re-affirms its determinations in the Preliminary Approval Order and finally certifies Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai as Class Representatives for the Settlement Class; and finally appoints the law firm of Rosca Scarlato, LLC as Class Counsel for the Settlement Class.

5. The Court finds that the mailing and publication of the Notice, Summary Notice, and Proof of Claim: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Class Counsel's request for an award of attorney's fees and payment of litigation expenses incurred in connection with the prosecution of the Action, of Class Counsel's request for a Service Award to the Class Representatives for their representation of the Class, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, and the United States Constitution (including the Due Process Clause).

6. There have been no objections to the Settlement.

7. Pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement and finds that in light of the benefits to the Settlement Class, the complexity and expense of further litigation, and the costs of continued litigation, said Settlement is, in all respects, fair, reasonable, and adequate, having considered and found that: (a) Class

Representatives and Class Counsel have adequately represented the Settlement Class; (b) the proposal was negotiated at arm's-length; (c) the relief provided for the Settlement Class is adequate, having taken into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the Settlement Class, including the method of processing Settlement Class Member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; (iv) the request for a Service Award; (v) any agreement required to be identified under Rule 23(e)(3); and (d) the proposed Plan of Allocation treats Settlement Class Members equitably relative to each other. Accordingly, the Settlement is hereby approved in all respects and shall be consummated in accordance with the terms and provisions of the Stipulation.

8. This Action, and all claims asserted therein, is **DISMISSED IN ITS ENTIRETY, WITH PREJUDICE** without costs to any Party.

9. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

10. The releases set forth in the Stipulation, together with the definitions contained in the Stipulation relating thereto, are expressly incorporated herein in all respects and are effective as of the Effective Date. Each Settlement Class Member, whether or not such Settlement Class Member executes and delivers a Proof of Claim, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

11. Upon the Effective Date, Class Representatives and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully,

finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

12. Upon the Effective Date, Defendants, on behalf of themselves and each of their past, present, or future parents, holding companies, subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, employees, representatives, consultants, accountants, and attorneys, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

13. This Judgment and the Stipulation, whether or not consummated, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of any of the Parties or their respective counsel, for any purpose other than in an action to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or the

Released Defendant Parties with respect to the truth of any allegation by Class Representatives and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or entity whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or the Released Defendant Parties as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants, or against or to the prejudice of Class Representatives, or any other member of the Settlement Class, as evidence of any infirmity in the claims of Class Representatives, or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or the Released Defendant Parties, Class Representatives, any other member of the Settlement Class, or their respective counsel, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of Defendants or the Released Defendant Parties, Class Representatives, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(d) do not constitute, and shall not be construed against Defendants or the Released Defendant Parties, Class Representatives, or any other member of the Settlement Class, as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(e) do not constitute, and shall not be construed as or received in evidence as an admission, concession, or presumption against Class Representatives, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount.

14. Notwithstanding the foregoing, any of the Parties may file or refer to this Judgment, the Stipulation, and/or any Proof of Claim: (i) to effectuate the liability protections granted hereunder, including without limitation to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (ii) to enforce any applicable insurance policies and any agreements relating thereto; or (iii) to enforce the terms of the Stipulation and/or this Judgment.

15. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

17. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. The Parties are hereby directed to consummate the Stipulation and to perform its terms.



19. Plaintiffs and Class Counsel, on behalf of all Plaintiffs' Counsel, have moved for an award of attorneys' fees, costs and expenses. The Court, having separately considered Class Counsel's application, hereby awards attorneys' fees in the amount of [REDACTED], plus interest at the same rate earned by the Settlement Fund and \$ [REDACTED] in payment of litigation expenses, plus accrued interest, which sums the Court finds to be fair and reasonable. Class Counsel shall allocate the attorneys' fee award amongst Plaintiffs' Counsel.

20. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

A. The Settlement has created a fund of \$4,350,000.00 in cash that has been paid into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of counsel;

B. The fee sought by Class Counsel has been reviewed and approved as reasonable by the Class Representatives, the investors that oversaw the prosecution and resolution of the Action;

C. The Notice mailed to potential Settlement Class Members and nominees stated that Class Counsel would apply for attorneys' fees in an amount not to exceed 30% of the Settlement Fund and litigation expenses in an amount not to exceed \$700,000.00;

D. The Action raised a number of complex issues;

E. Had Class Counsel not achieved the Settlement there would remain a significant risk that Class Representatives and the other members of the Settlement Class may have recovered less or nothing from Defendant;

F. Class Counsel conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

G. The amount of attorneys' fees awarded and litigation expenses to be paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases;

H. Public policy concerns favor the award of attorneys' fees and expenses in securities class action litigation; and

I. Plaintiffs' Counsel expended [REDACTED] hours, with a lodestar value of \$[REDACTED], to achieve the Settlement.

21. Class Counsel has moved for a Service Award payable to the Class Representatives out of the Settlement Fund for in recognition of their time and efforts in prosecuting the Action for the benefit of the Settlement Class. Those efforts included, among other things, taking a week's leave from work and traveling half-way around the world from Taipei, Taiwan to Buffalo, New York to have their depositions taken by Defendant. Moreover, they produced several thousand pages of documents in discovery. The Court finds that service awards for the Class Representatives in the amount of \$[REDACTED] are fair and reasonable and the Court approves of the Service Awards in this amount. The Court directs the Claims Administrator to disburse this award to the Class Representatives as provided in the Stipulation and Agreement of Settlement.

22. The Class Representatives and Class Counsel have moved for approval of the proposed Plan of Allocation set forth in the Notice. The Court hereby finds and concludes that the Plan of Allocation for the calculation of the claims of claimants that is set forth in the Notice disseminated to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the Net Settlement Fund among Settlement Class Members.

23. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the Notice, is, in all respects, fair, reasonable, and adequate and the Court hereby approves the Plan of Allocation.

24. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application, a Service Award, or the Plan of Allocation shall in no way disturb or affect the finality of the Judgment.

25. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the allowance, disallowance or adjustment of any Settlement Class Member's claim on equitable grounds; (iii) disposition of the Settlement Fund; (iv) any applications for attorneys' fees, costs, interest and payment of expenses in the Action; (v) any application for a Service Award to the Class Representatives for their efforts in representing the interests of the Class; (vi) all Parties for the purpose of construing, enforcing and administering the Settlement and this Judgment; and (vii) other matters related or ancillary to the foregoing. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023

BY THE COURT:

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Honorable Elizabeth A. Wolford  
CHIEF UNITED STATES DISTRICT JUDGE