

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE MH HABERKORN 2006 TRUST,
MATTHEW H. HABERKORN, KILEY
ROSE HABERKORN, and TIPPY LIVING
TRUST U/A DTD SEPTEMBER 10, 2013,
on behalf of themselves and all other
similarly situated stockholders of Empire
Resorts, Inc.

Plaintiffs,

v.

KIEN HUAT REALTY III LIMITED,
EMANUEL R. PEARLMAN, KEITH L.
HORN, GERARD EWE KENG LIM,
EDMUND MARINUCCI, NANCY A.
PALUMBO, RYAN ELLER, GENTING
MALAYSIA BERHAD, GENTING (USA)
LIMITED

Defendants.

C.A. No. 2020-0619-KSJM

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL RECORD AND BENEFICIAL OWNERS OF EMPIRE RESORTS, INC. (“EMPIRE” OR THE “COMPANY”) AS OF NOVEMBER 15, 2019.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE LITIGATION REFERRED TO IN THE ABOVE CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS, OR ADEQUACY OF THE SETTLEMENT, AND FROM PURSUING THE RELEASED DEFENDANTS’ CLAIMS.

The purpose of this Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) is to inform you of (i) the pendency of the above-captioned action (the “Action”), which was brought in the Court of Chancery of the State of Delaware (the “Court”) by former stockholders of Empire Resorts, Inc. (“Empire”) asserting claims on behalf of and for the benefit of a class of former Empire stockholders; (ii) the Court’s determination to preliminarily certify the Action as a non-opt-out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (iii) the proposed settlement of the Action (the “Settlement”), subject to Court approval and other conditions of the Settlement being satisfied, as provided for in a Stipulation and Agreement of

Compromise and Settlement, dated June 13, 2022 (the “Stipulation”), which was filed with the Court and is publicly available for review; and (iv) your right to participate in a hearing to be held on September 15, 2022, at 11:00 a.m., before the Court at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (the “Settlement Hearing”).¹ The purpose of the Settlement Hearing to be held by the Court is to determine: (i) whether to certify the Class (defined below) for settlement purposes only; (ii) whether Plaintiffs and Plaintiffs’ Counsel have adequately represented the Class; (iii) whether the proposed Settlement and the proposed Plan of Allocation should be approved as fair, reasonable, and adequate to the Class and in the best interests of the Class; (iv) whether the Action should be dismissed with prejudice and all Released Claims against the Released Parties should be released; (v) whether an Order and Final Judgment approving the Settlement should be entered; and (vi) whether and in what amount any Fee and Expense Award (defined below) should be paid to Plaintiffs’ Counsel out of the Settlement Amount (defined below).

The Stipulation was entered into as of June 13, 2022, by and among (i) The MH Haberkorn 2006 Trust, Matthew H. Haberkorn, Kiley Rose Haberkorn, and the Tippy Living Trust U/A DTD September 10, 2013 (collectively, “Plaintiffs”), on behalf of themselves and the putative Class, and (ii) defendants Kien Huat Realty III Limited (“Kien Huat”), Emanuel R. Pearlman (“Pearlman”), Keith L. Horn (“Horn”), Gerard Ewe Keng Lim (“Gerard Lim”), Edmund Marinucci (“Marinucci”), Nancy A. Palumbo (“Palumbo”), Ryan Eller (“Eller”), Genting Malaysia Berhad (“GenM”), and Genting (USA) Limited (“Genting USA,” together with GenM, “Genting”) (collectively, “Defendants,” and together with Plaintiffs, the “Parties”).

This Notice describes the rights you may have in the Action pursuant to the Stipulation and what steps you may take, but are not required to take, in relation to the Settlement. If the Court approves the Settlement, the Parties will ask the Court at the Settlement Hearing to enter an Order and Final Judgment dismissing the Action with prejudice in accordance with the terms of the Stipulation.

WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Action, the terms of the proposed Settlement, and how the Settlement affects the legal rights of Empire stockholders and Class Members (as defined below).
2. In a class action, one or more people and/or entities who were stockholders at the time the claim arose sue on behalf of and for the benefit of the individual class members, seeking to enforce the class members’ legal rights.
3. As described more fully in paragraph 68 below, Class Members have the right to object to the proposed Settlement, the proposed Plan of Allocation, and the application by Plaintiffs’ Counsel for an award of fees and expenses (the “Fee and Expense Award”). Class Members have the right to appear and be heard at the Settlement Hearing, which will be held before The Honorable Kathaleen McCormick on September 15, 2022, at 11:00 a.m., at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801.

¹ Capitalized terms not defined in this Notice have the meaning set forth in the Stipulation, which is publicly available as indicated in paragraph 70 below.

4. The Court has reserved the right to adjourn or continue the Settlement Hearing, including consideration of the Fee and Expense Award, without further notice to you other than by announcement at the Settlement Hearing or any adjournment thereof, or notation on the docket in the Action. The Court has further reserved the right to approve the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice of any kind.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

5. On August 18, 2019, Empire announced that it had entered into an Agreement and Plan of Merger (the “Merger Agreement”) with affiliates of Kien Huat and GenM, pursuant to which affiliates of Kien Huat and GenM would acquire the outstanding common shares of Empire for \$9.74 per share (the “Merger Consideration”) (such transaction, the “Merger”).

6. On October 11, 2019, Empire filed a proxy statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 (together with all amendments thereto, the “Proxy”) with the U.S. Securities and Exchange Commission (the “SEC”) in connection with the Merger.

7. On October 16, 2019, Plaintiffs served Empire with a demand to inspect books and records pursuant to 8 *Del. C.* § 220 (“Section 220”). Between October 23, 2019 and November 12, 2019, Plaintiffs negotiated with Empire for the production of certain documents, with Empire agreeing to and producing 2,527 pages of documents in response to Plaintiffs’ Section 220 demand.

8. On November 6, 2019, Empire filed with the SEC a Form 8-K supplementing the Proxy.

9. On November 12, 2019, Plaintiffs filed a Verified Complaint for Inspection of Books and Records Under 8 *Del. C.* § 220 (“Plaintiffs’ 220 Complaint” or “220 Action”).

10. On November 13, 2019, at the special meeting of Empire stockholders, the holders of a majority of Empire’s common stock voted to approve the Merger.

11. On November 15, 2019, the Merger closed.

12. On November 26, 2019, Empire filed an Answer and Defenses to Plaintiffs’ 220 Complaint.

13. On December 20, 2019, Plaintiffs filed their Pre-Trial Opening Brief in advance of the trial on Plaintiffs’ 220 Action.

14. On January 15, 2020, Empire filed its Answering Pre-Trial Brief in advance of the trial on Plaintiffs’ 220 Action.

15. On January 22, 2020, Plaintiffs filed their Pre-Trial Reply Brief in advance of the trial on Plaintiffs’ 220 Action.

16. On January 30, 2020, the Court held a full-day trial on Plaintiffs’ 220 Action.

17. On February 20, 2020, the Court issued judgment via a bench ruling in the 220 Action, ordering the production by Empire of certain additional categories of documents, and denying Plaintiffs' request for other documents. Defendants produced an additional 620 pages of documents to Plaintiffs as a result of the Court's judgment in the 220 Action. All told, Plaintiffs received from Empire 3,147 pages of documents and produced to Empire 1,988 pages of documents in Plaintiffs' 220 Action.

18. On July 24, 2020, Plaintiffs, on behalf of themselves and all other similarly situated public stockholders of Empire, filed a Verified Stockholder Class Action Complaint (the "Complaint") in the action captioned *The MH Haberkorn 2006 Trust, Matthew H. Haberkorn, Kiley Rose Haberkorn, and Tippy Living Trust U/A DTD September 10, 2013 v. Empire Resorts, Inc., Kien Huat Realty III Limited, Emanuel R. Pearlman, Keith L. Horn, Gerard Ewe Keng Lim, Edmund Marinucci, Nancy A. Palumbo, Ryan Eller, Genting Malaysia Berhad, Genting (USA) Limited, and Hercules Topco LLC*, C.A. No. 2020-0619.

19. In the Complaint, Plaintiffs alleged that Kien Huat, Genting, Pearlman, Horn, Gerard Lim, Marinucci, Palumbo, and Eller breached their fiduciary duties to Plaintiffs and the Class in connection with their (i) decision to cause Empire to enter into the Merger Agreement, (ii) recommendation that Empire stockholders approve the Merger, and (iii) failure to disclose all material information in the Proxy. Plaintiffs also alleged that Hercules Topco LLC ("Hercules") aided and abetted the breaches of fiduciary duty by Kien Huat and/or Genting. Plaintiffs further alleged that to the extent Genting was not found to be a controller of Empire, in the alternative, Genting aided and abetted Kien Huat's breaches of fiduciary duty.

20. On October 28, 2020, Defendants, Empire, and Hercules filed briefs in support of their motions to dismiss the Complaint.

21. On November 16, 2020, Plaintiffs served on GenM Plaintiffs' First Request for the Production of Documents Directed to Defendant GenM in Support of Jurisdictional Discovery ("Jurisdictional Discovery Requests").

22. On December 15, 2020, the Court held oral argument on Plaintiffs' request for jurisdictional discovery and denied Plaintiffs' request.

23. On December 16, 2020, GenM served Plaintiffs with its Responses and Objections to Plaintiffs' Jurisdictional Discovery Requests.

24. On January 4, 2021, Plaintiffs filed an omnibus answering brief in opposition to the Defendants', Empire's, and Hercules' motions to dismiss.

25. On March 1, 2021, Defendants, Empire, and Hercules filed reply briefs in further support of their motions to dismiss the Complaint.

26. On April 29, 2021, the Court held oral argument on the motions to dismiss the Complaint.

27. On July 23, 2021, the Court issued a bench ruling on the motions to dismiss the Complaint, dismissing Plaintiffs' claims against Empire and Hercules. The remaining Defendants' motions to dismiss were otherwise denied.

28. On August 27, 2021, Plaintiffs served Defendants with Plaintiffs' First Request for Production of Documents. Defendants responded to Plaintiffs' First Request for Production of Documents on October 11, 2021.

29. On September 1, 2021, Defendants served Plaintiffs with Defendants' First Request for Production of Documents. Plaintiffs responded to Defendants' First Request for Production of Documents on October 15, 2021.

30. On September 24, 2021, Defendants filed Answers to the Complaint.

31. Between October 14, 2021 and February 15, 2022, Plaintiffs served five third-party subpoenas on GGH Morowitz, Hillside (New York) LLC, J. Frank Associates, LLC d/b/a Joele Frank, Wilkinson Brimmer Katcher, Moelis & Company LLC, and Union Gaming Securities LLC.

32. Plaintiffs received 175,265 pages of documents in connection with discovery in this Action, including: 122,969 pages of documents produced by Defendants and 52,296 pages of documents produced by third parties. Plaintiffs produced an additional 73 pages of documents to Defendants in connection with discovery in this Action beyond the production of documents Plaintiffs made in Plaintiffs' 220 Action.

33. On April 4, 2022, the Parties participated in a mediation before Phillips ADR Enterprises Mediator, Michelle Yoshida ("Ms. Yoshida"). The full-day mediation did not result in a resolution of the Action at that time.

34. Between April 7, 2022 and April 14, 2022, the Parties engaged in further arm's-length negotiations facilitated by Ms. Yoshida in an attempt to resolve the Action. On April 14, 2022, Ms. Yoshida made a mediator's proposal to resolve the matter for a \$12,000,000 payment to the Class, which the Parties separately accepted on April 15, 2022.

35. On April 28, 2022, the Parties executed a term sheet, in which, among other things, Plaintiffs, on behalf of the Class, agreed to fully and finally settle the claims asserted against Defendants in the Action in exchange for a cash payment of \$12,000,000 to the Class (the "Settlement Amount"). As part of the negotiations of the term sheet, the Plaintiffs and bet365 Group Limited, Hillside (New Media Holdings) Limited ("Hillside NMH"), and Hillside (New York) LLC ("Hillside NY") (collectively, "bet365") negotiated to exclude bet365 from the Class due to its business relationship with Empire, including a stock purchase agreement whereby Hillside NMH agreed to purchase up to \$50 million of Empire common stock, and a collaboration agreement providing bet365 the right to operate Empire's retail and online sportsbook, online casino and/or table games, and online poker.

WHAT ARE THE TERMS OF THE SETTLEMENT?

36. Set forth below is a summary of the principal terms of the proposed Settlement, as agreed to by the Parties, subject to the approval of the Court. The following statements are a summary. Please refer to the Stipulation, which is publicly available as indicated in paragraph 70 below, for a full and complete statement of the terms of the Settlement.

Certain Relevant Definitions:

37. "Account" means the interest bearing escrow account designated by Plaintiffs' Counsel and maintained by the Settlement Administrator into which the Settlement Amount shall be deposited.

38. "Administrative Costs" means all costs and expenses associated with administering or carrying out the terms of the Settlement, including the cost of providing Notice, other than the costs incurred by Defendants when providing the stockholder register and/or transfer records from Empire's former transfer agents as set forth in Section F of the Stipulation.

39. “Class” means a class consisting of all record and beneficial owners of Empire common stock as of November 15, 2019, who are not excluded pursuant to the below, and who were allegedly damaged thereby as alleged in the Complaint. Those to be excluded from the Class include: (i) the Defendants, Empire and any parent, subsidiary, or affiliate thereof,² (ii) any person or entity who is or was between and including February 1, 2019 and November 15, 2019 a partner, executive officer, director, or controlling person of any person or entity excluded in subsection (i) above, (iii) members of the Immediate Families of any Defendants who are natural persons, (iv) any entity in which any Defendant has or had on November 15, 2019 a controlling interest, (v) bet365 Group Limited, Hillside (New Media Holdings) Limited, Hillside (New York) LLC and any parent, subsidiary, or affiliate thereof, (vi) Defendants’ directors’ and officers’ liability insurance carriers, and any parents, affiliates, or subsidiaries thereof, (vii) persons who held Empire common stock that was borrowed as part of a short sale transaction (only with respect to their holdings in such borrowed shares), and (viii) the legal representatives, agents, heirs, successors, and assigns of any excluded party (collectively, the “Excluded Stockholders”).

40. “DTC” means the Depository Trust Company.

41. “DTC Participant” means the brokers, dealers, banks, trust companies, clearing corporations, and other financial organizations on whose behalf the DTC holds securities.

42. “Eligible Class Members” means Class Members who held shares of Empire common stock at the Closing and received or were entitled to receive the Merger Consideration for their Eligible Shares.

43. “Eligible Shares” means shares of Empire common stock held by Eligible Class Members at the Closing and for which Eligible Class Members received or were entitled to receive the Merger Consideration.

44. “Final,” when referring to the Judgment, means (i) entry of the Judgment or (ii) if there is an objection to the Settlement, the expiration of any time for appeal or review of the Judgment, or, if any appeal is filed and not dismissed or withdrawn, issuance of a decision upholding the Judgment on appeal in all material respects, which is no longer subject to review upon appeal or other review, and the expiration of the time for the filing of any petition for reargument, appeal or review of the Judgment or any order affirming the Judgment; provided, however, that any disputes or appeals relating solely to the amount, payment or allocation of attorneys’ fees and expenses shall have no effect on finality for purposes of determining the date on which the Judgment becomes Final and shall not otherwise prevent, limit or otherwise affect the Judgment, or prevent, limit, delay or hinder entry of the Judgment.

45. “Net Settlement Fund” means the Settlement Fund less (i) any Fee and Expense Award and (ii) Administrative Costs, including costs of Notice.

46. “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, attached as Exhibit B to the Stipulation.

² The term “affiliate” as it relates to defendants Horn, Marinucci, and Palumbo shall be limited to entities for which they served as directors or named executive officers in the period between, and including, February 1, 2019 and November 15, 2019.

47. “Plan of Allocation” means the plan to distribute the Net Settlement Fund to Eligible Class Members, attached as Exhibit D to the Stipulation.

48. “Settlement Administrator” means the settlement administrator to be selected by Plaintiffs’ Counsel to administer the Settlement.

49. “Settlement Fund” means the Settlement Amount plus all interest earned thereon.

The Settlement Amount:

50. In consideration for the full and final release, settlement, dismissal, and discharge of any and all Released Claims (defined below) against the Released Parties (defined below), the Parties agreed to a payment of twelve million dollars and no cents (\$12,000,000.00) to be paid by Defendants and/or their insurers.

Distribution of Settlement Amount/Plan of Allocation:

51. Pursuant to the proposed Plan of Allocation or in accordance with a plan of allocation to be approved by the Court, the Settlement Administrator shall allocate the Net Settlement Fund among Eligible Class Members on a pro rata, per-share basis and distribute the Net Settlement Amount to Eligible Class Members.

52. For Eligible Class Members whose Merger Consideration was distributed through Cede & Co., as nominee for DTC, the Settlement Administrator shall send their portion of the Net Settlement Fund to DTC for distribution.

53. The Settlement Administrator shall instruct DTC Participants to distribute the Eligible Shares of the Net Settlement Fund to Eligible Class Members in the same manner in which the DTC Participants distributed proceeds in connection with the Merger.

54. The Settlement Administrator shall provide DTC Participants with a list of Excluded Stockholders and direct the DTC Participants not to distribute any payment to any Excluded Stockholders.

55. DTC’s sole obligation in connection with the Settlement shall be to distribute the Eligible Shares of the Net Settlement Amount to DTC Participants in accordance with the Stipulation and DTC rules and procedures, and DTC shall not be responsible for any errors in the calculation of any distribution or for any failure by the Settlement Administrator, Defendants, or Plaintiffs’ Counsel to identify the Excluded Stockholders.

56. For Eligible Class Members who did not receive the Merger Consideration from DTC, the Settlement Administrator shall send their portion of the Net Settlement Fund to the address listed on the stockholder register or other relevant books and records of Empire or its transfer agent.

57. Defendants shall have no responsibility or liability for any claims, payments or determinations that the Settlement Administrator makes with respect to any Class Member claims for payment.

WHAT ARE THE PARTIES’ REASONS FOR THE SETTLEMENT?

58. The Settlement set forth in the Stipulation reflects the results of the Parties’ negotiations and the final terms of their agreement, which was reached only after arm’s-length negotiations among

the Parties who were all represented by counsel with extensive experience and expertise in stockholder class action litigation.

59. The Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation. This Settlement is not evidence of the validity or invalidity of any claims or defenses in the Action or any other actions or proceedings, or of any wrongdoing by any of the Defendants or of any damages or injury to Plaintiffs or any Class Member.

60. The entry by Plaintiffs into the Stipulation 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' Counsel considered: the legal and factual defenses to Plaintiffs and the Class Members' claims that Defendants raised and might have raised throughout the pendency of the Action and the benefits to be provided to the Class through the payment of the Settlement Amount. Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement set forth in the Stipulation is fair, reasonable, and adequate to Plaintiffs and the Class and that it confers substantial benefits upon the Class, particularly when compared to the risk and uncertainties of continued litigation.

61. The entry by Defendants into the Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any claims or defenses asserted in the Action. Defendants assert that the Stipulation in no way constitutes an admission of any wrongdoing on the part of Defendants, nor an admission of liability or obligation by any of the Parties, nor a waiver by Defendants of any applicable defense and is solely for the purpose of compromising disputed claims and avoiding further litigation. Defendants expressly deny all assertions of wrongdoing, fault, liability, or damage arising out of any of the conduct, acts, or omissions alleged against the Defendants and otherwise deny that they engaged in any wrongdoing or committed any violation of law or breach of duty, but wish to settle and resolve all claims relating to or arising out of the Action on the terms and conditions stated in the Stipulation.

**WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED?
WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

62. If the Settlement is approved, the Court will enter the Judgment approving the Settlement in accordance with the Stipulation, at which time the Action will be dismissed with prejudice on the merits.

63. As of the Effective Date, the following releases will occur:

Plaintiffs, all Class Members, and Defendants on behalf of themselves, and any and all of their respective past or present family members, spouses, 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, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, agree to release and forever discharge, and by operation of the Order and Final

Judgment shall release and forever discharge, all Released Claims as against all Released Parties.

With respect to the Released Claims, the Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

With respect to the Released Claims, the parties shall also be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state of the United States or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542. The Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but that it is their intention to fully, finally, and forever settle and release any and all such Released Claims, known or unknown, suspected or unsuspected, which now exist or heretofore existed, from the beginning of time to the Effective Date, without regard to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.

Relevant Definitions:

"Released Defendants' Claims" means any and all claims for relief, damages, compensation, demands, suits, actions, injuries, losses, costs, expenses and/or causes of action of any kind or character, whether at law or in equity, regardless of legal theory, whether foreseen or unforeseen, contingent or actual, liquidated or unliquidated, known or unknown, which Plaintiffs or any Class Member, ever had, now has, or may have against any of the Released Defendant Parties, whether class or individual in nature, whether based on state, local, foreign, federal (including, but not limited to, any state or federal securities laws), statutory, regulatory, common or other law or rule, which are based upon, arise out of, involve, directly or indirectly, or relate in any way to any of the facts, allegations, conduct, actions, inaction, breaches of fiduciary duty or other obligations, statements, misrepresentations, omissions, transactions, events or occurrences that were, could have been, or in the future could be alleged, asserted, or claimed in the Action or relate to the subject matter thereof, in any court (whether state or federal), tribunal, forum, or proceeding; provided, however, that the Released Defendants' Claims shall not include (i) the right to enforce the Settlement or the Stipulation or (ii) claims solely for statutory appraisal with respect to the Merger pursuant to 8 *Del. C.* § 262 by Empire stockholders, and any successors-in-interest thereto, who properly perfected such claims for appraisal and have not otherwise waived their appraisal rights.

"Released Defendant Parties" means Defendants and each of their respective past or present Immediate Family members, trusts of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of any Defendants' Immediate Family, trustees,

executors, beneficiaries, distributees, agents, fiduciaries, partners, control persons, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, stockholders, principals, officers, directors, advisors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, personal or legal representatives, heirs, estates, administrators, insurers and attorneys (including Defendants' Counsel).

“Released Plaintiffs' Claims” means any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, against any Released Plaintiff Parties (i) arising out of and/or relating in any way to the prosecution of, participation in, and/or settlement of the Action or (ii) that otherwise in any way relate to the subject matter of the Action. The Released Plaintiffs' Claims shall not include claims to enforce the Stipulation or Plaintiffs' Counsel's application for a Fee and Expense Award.

“Released Plaintiff Parties” means Plaintiffs, all other Class Members, and their respective trustees, officers, directors, employees, agents, advisors, experts and attorneys (including Plaintiffs' Counsel).

“Released Claims” means Released Plaintiffs' Claims and Released Defendants' Claims, collectively or individually.

“Released Parties” means Released Plaintiff Parties and Released Defendant Parties, collectively or individually.

WHO ARE THE MEMBERS OF THE CLASS?

64. The Court has provisionally ordered that the Action shall be maintained as a non-opt-out class action pursuant to Court of Chancery Rule 23 on behalf of a class consisting of any record holders and all beneficial owners of the common stock of Empire who held or owned such stock on November 15, 2019, 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.

65. Excluded from the Class are the Excluded Stockholders (as defined above).

HOW WILL THE ATTORNEYS BE PAID?

66. Concurrent with seeking final approval of the Settlement, Plaintiffs' Counsel intends to make an application to the Court for a Fee and Expense Award in an amount of up to 25% of the Settlement Amount plus reimbursement of reasonable out-of-pocket expenses incurred in connection with the Action. The Parties acknowledge and agree that the Fee and Expense Award shall be paid solely from, and not in addition to, the Settlement Amount. The fee application shall be the only request for attorneys' fees and expenses filed by or on behalf of Plaintiffs and their counsel.

**WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD?
DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

67. The Court will consider the Settlement and all matters related to the Settlement, including the application for a Fee and Expense Award, at the Settlement Hearing. The Settlement Hearing will be held before The Honorable Kathaleen McCormick on September 15, 2022, at 11:00 a.m., in the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801.

68. Any Person who objects to the Settlement, the Plan of Allocation, the Judgment to be entered in the Action, and/or Plaintiffs' Counsel's application for a Fee and Expense Award, or who otherwise wishes to be heard, may appear in person or through counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided however, that, except by order of the Court for good cause shown, no person shall be heard and no papers, briefs, pleadings, or other documents submitted by any person shall be considered by the Court unless not later than fourteen (14) calendar days prior to the Settlement Hearing such person files with the Court and serves upon counsel listed below: (a) a written notice of intention to appear; (b) proof of prior ownership of Empire common stock; (c) a statement of such person's objections to any matters before the Court; and (d) the grounds for such objections and the reasons that such person desires to appear and be heard, as well as all documents or writings such person desires the Court to consider. Such filings shall be served electronically via File & ServeXpress, by hand, or by overnight mail upon the following counsel:

Gregory V. Varallo (Bar No. 2242)

Daniel Meyer (Bar No. 6876)

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Counsel for Defendants Keith L. Horn, Edmund Marinucci, and Nancy A. Palumbo

69. Unless the Court otherwise directs, any person who fails to object in the manner prescribed above shall be deemed to have waived his, her, or its right to object and shall be forever barred from raising any objection to the Settlement, the proposed Plan of Allocation, or the application by Plaintiffs' Counsel for an award of attorneys' fees and expenses, or any other matter related to the Settlement, in the Action or in any other action or proceeding.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

70. This Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Action, you may inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, during regular business hours of each business day, or email the Settlement Administrator at help@abdataclassaction.com. If you have questions regarding the Settlement, you may write or call Plaintiffs' counsel: Gregory V. Varallo, Bernstein Litowitz Berger & Grossmann LLP, 500 Delaware Avenue, Suite 901, Wilmington, DE 19801, (302) 364-3601; or J. Daniel Albert, Kessler Topaz Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, PA 19087, (610) 667-7706.

DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE.

NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS

71. Brokerage firms, banks, and other persons or entities who held shares of Empire common stock as record owners, but not as beneficial owners, are directed to either (a) promptly request from the Settlement Administrator sufficient copies of this Notice to forward to all such beneficial owners and after receipt of the requested copies promptly forward the copies of the Notice to all such beneficial owners; or (b) promptly provide a list of the names and addresses of all such beneficial owners to the Settlement Administrator, after which the Settlement Administrator will promptly send copies of the Notice to such beneficial owners.

Empire Resorts Settlement
c/o A.B. Data, Ltd., Settlement Administrator
P.O. Box 173108
Milwaukee, WI 53217
Telephone: 1-877-354-3826
Email: help@abdataclassaction.com

Dated: June 23, 2022

BY ORDER OF THE COURT
Register in Chancery