

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DENIS MARC AUDET, MICHAEL PFEIFFER, DEAN ALLEN SHINNERS, and JASON VARGAS, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. STUART A. FRASER, GAW MINERS, LLC, and ZENMINER, LLC, (d/b/a ZEN CLOUD), Defendants.	Case 3:16-cv-00940 Hon. Michael P. Shea Courtroom 2 ECF Case <u>CLASS ACTION</u> December 16, 2022
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**DECLARATION OF SETH ARD IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, Seth Ard, declare as follows:

1. I submit this declaration in support of preliminary approval of the proposed class action settlement between Plaintiffs, on behalf of themselves and the class, and Defendant Stuart Fraser ("Fraser" or "Defendant").

2. I am a partner in the law firm of Susman Godfrey L.L.P., which is counsel for Plaintiffs and the Court-appointed Class Counsel (referred to herein as "Class Counsel") in the above-captioned matter. ECF No. 144. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Susman Godfrey and co-Class Counsel have significant experience litigating securities fraud class actions on behalf of injured investors. A copy of the firm's class action profile, and the profiles of myself and co-Class Counsel at Izard, Kindall & Raabe, LLP, are attached hereto as Exhibit 1.

4. I was among the negotiators of the proposed class action settlement with Defendant. Following extensive negotiations, the parties reached an agreement in principle in late September 2022, and the final Settlement Agreement was fully executed on December 14, 2022. I attach a true and correct copy of the Settlement Agreement as Exhibit 2. It is the opinion of Class Counsel that this settlement with Defendant is fair, adequate, and reasonable. Each Plaintiff similarly supports this Settlement and believes it to be fair, adequate, and reasonable.

5. The Settlement Agreement is the result of extended negotiations between the parties. At various points in this litigation the parties discussed a possible pretrial resolution. After the Court denied Fraser's motion to decertify the class and set pretrial deadlines in May 2020, the parties agreed to mediate the case with the assistance of Jack P. Levin, a respected mediator and arbitrator.

6. Although the parties continued discussions with each other and with the mediator for several months between July and October 2020, they were unable to reach agreement at that time.

7. The terms of the Settlement were negotiated after the parties exchanged numerous offers and counteroffers and participated in teleconferences and email discussions between June and September 2022. The negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length.

8. Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Settlement Class.

9. Plaintiffs, Class Counsel, and their experts reviewed tens of thousands of documents, which included company communications, advertising and marketing materials,

transactions and sales databases, and the source code underlying GAW's cryptocurrency token. These documents included not only Fraser's records, but evidence obtained from extensive third-party discovery and investigation.

10. For example, Plaintiffs obtained and reviewed thousands of invaluable internal company documents from GAW and ZenMiner—by that point defunct entities—almost none of which had been in Fraser's possession. Plaintiffs also obtained significant evidence through Freedom of Information Act requests to the Securities and Exchange Commission.

11. Plaintiffs took and defended 23 depositions. Each of the three Plaintiffs—as well as six members of the class who were not named plaintiffs—were deposed. Plaintiffs also deposed Fraser, former GAW CEO and co-Defendant Joshua Garza, and numerous former employees of GAW.

12. In addition to over 5 years' of discovery and pretrial practice, the parties tried the case to a jury between October 20 and November 1, 2021. Trial counsel for the parties are the same counsel who have negotiated the Settlement Agreement. After two days of deliberating, the jury returned a verdict in favor of Fraser. Specifically, the jury found that Fraser was not liable for any of Plaintiff's securities-related claims because it determined that the products at issue were not "securities." The jury also found that Fraser was not liable for aiding and abetting common-law fraud against Plaintiffs. *See* ECF No. 330.

13. Plaintiffs filed post-trial motions for judgment as a matter of law and for a new trial pursuant to Federal Rules of Civil Procedure 50(b) and 59. On June 2, 2022, the Court granted Plaintiffs' motion for a new trial with respect to their claims relating to the Paycoin product and ordered the parties to meet and confer regarding a trial date.

14. The specific terms and conditions of the settlement are set forth in the Settlement Agreement, which is attached as Exhibit 2. The principal term of the settlement provides \$3,500,000 in monetary compensation to Settlement Class Members.

15. Plaintiffs' prior damages model, submitted in support of class certification, reported an estimated \$17.5 million in class-wide damages for only two of the four products—Hashlets and HashStakers—originally at issue in the litigation. *See* ECF No. 179-2 at ¶ 36 (explaining that, at the time, Plaintiffs' damages for Paycoin and Hashpoints could not be determined by reference to the ZenCloud or Paybase databases).

16. However, only claims related to Paycoin are currently active in this litigation. Even if class-wide damages for Hashpoints and Paycoin would be similar to Plaintiffs' previously calculated damages for Hashlets and HashStakers (*i.e.*, \$17.5 million for Hashpoints and Paycoin, or \$35 million total for all four GAW Products), and even though Paycoin and Hashpoints were sold and/or acquired over a significantly shorter time period than Hashlets, the Settlement Fund would still represent approximately 10% of a "best possible recovery" of that \$35 million.

17. In my opinion, the consideration to the Class adequately compensates the members of the proposed Settlement Class for their damages in view of the risks of litigation. The Settlement represents an especially good result for the Class because none of the cash in the Settlement Fund will be returned to Defendant.

18. Class Counsel recommends the proposed Plan of Distribution, attached in full as Exhibit 3, and described in Plaintiffs' accompanying memorandum and in the proposed Long- and Short-form Notices attached to the Declaration of Nicholas Schmidt. Under the Plan of Distribution, Settlement Class Members will be distributed the Net Settlement Fund on a *pro*

rata basis. Class Counsel prepared the Plan of Distribution with the assistance of their damages expert, Robert Mills, who also has significant experience in these issues, and the proposed Settlement Administrator, Epiq.

19. The proposal is fair, adequate, and reasonable, especially in light of Counsel's detailed assessments of the strengths and weaknesses of the claims asserted, the applicable damages, and the likelihood of recovery.

20. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 16, 2022

/s/ Seth Ard
Seth Ard
Susman Godfrey LLP
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New York, NY 10019
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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, I caused the foregoing document to be served via the Electronic Case Filing (ECF) system in the United States District Court for the District of Connecticut, on all parties registered for CM/ECF in the above-captioned matter.

Dated: December 16, 2022

/s/ Russell Rennie
Russell Rennie

EXHIBIT 1

The Susman Godfrey Difference

For over forty years, Susman Godfrey has focused its nationally recognized practice on just one thing: high-stakes commercial litigation. We are one of the nation's leading litigation boutique law firms, with offices in Houston, Los Angeles, New York and Seattle. We have a unique perspective, the will to win, and an uncommon structure, which taken together provide the way to win.

The Will to Win

At Susman Godfrey, we want to win because we are stand-up trial attorneys, not discovery litigators. We approach each case as if it is headed for trial. Everything that we do is designed to prepare our attorneys to persuade a jury. When you are represented by Susman Godfrey, the opposing party will know that you are willing to take the case all the way to a verdict if necessary; this fact alone can make a good settlement possible.

Susman Godfrey has a longstanding reputation as one of the premier firms of trial lawyers in the United States. We are often brought in on the eve of trial to "rescue" troubled cases or to take the reins when the case requires trial lawyers with a proven record of courtroom success.

We also want to win because we share the risk with our clients. We prefer to work on a contingency-fee basis so that our time and efforts pay off only when we win. Our interests are aligned with our clients—we want to achieve the best-possible outcome at the lowest possible cost.

Finally, we want to win because each of our attorneys shares a commitment to your success. Each attorney at the firm—associate as well as partner—examines every proposed contingent fee case and has an equal vote on whether or not to accept it. The resulting profit or loss affects the compensation of every attorney at the firm. This model has been a tremendous success for both our attorneys and our clients. In recent years, we have achieved the highest profit-per-partner results in the nation. Our associates have enjoyed performance bonuses equal to their annual salaries. When you win, our attorneys win.

Unique Perspective

Susman Godfrey represents both plaintiffs and defendants. We thrive on variety, flexibility, and creativity. Clients appreciate the insights that our broad experience brings. "I think that's how they keep their tools sharp," says one.

Many companies who have had to defend cases brought by Susman Godfrey on behalf of plaintiffs are so impressed with our work in the courtroom that they hire us themselves next time around—companies like El Paso Corporation, Georgia-Pacific Corporation, Mead Paper, and Nokia Corporation.

We know from experience what motivates both plaintiffs and defendants. This dual perspective informs not just our trial tactics, but also our approach to settlement negotiations and mediation presentations. We are successful in court because we understand our opponent's case as well as our own.

An Uncommon Structure

At Susman Godfrey, our clients hire us to achieve the best possible result in the courtroom at the least possible cost. Because we learned to run our practice on a contingency-fee model where preparation of a case is at our expense, we have developed a very efficient approach to commercial litigation. We proved that big cases do not require big hours. And, because we staff and run all cases using the same model, clients who prefer to hire us by the hour also benefit from our approach.

There is no costly pyramid structure at Susman Godfrey. As a business, we are lean, mean and un-leveraged—with a two-to-one ratio between partners and associates. To counter the structural bloat of our opponents, who often have three associates for each partner, we rely on creativity and efficiency.

Susman Godfrey's experience has taught what is important at trial and what can be safely ignored. We limit document discovery and depositions to the essential. For most depositions and other case-related events we send one attorney and one attorney alone to handle the matter. After three decades of trials, we know what we need—and what is just a waste of time and money.

Unparalleled Talent

Susman Godfrey prides itself on a talent pool as deep as any firm in the country. Clerking for a judge in the federal court system is considered to be the best training for a young trial attorney, 100% of our Associates and over 90% of our Partners served in these highly sought-after clerkships after law school. Ten of our trial lawyers have clerked at the highest level—for Justices of the United States Supreme Court.

Our associates are not document-churning drones. Each associate at Susman Godfrey is expected to second-chair cases in the courtroom from the start. Because we are so confident in their abilities, we consider associates for partnership after seven years with the firm, unless they joined us following a federal judicial clerkship. In that case, we give credit for the clerkship, and the partnership track is generally six years. We pay them top salaries and bonuses, make them privy to the firm's financials, and let them vote—on an equal standing with partners—on virtually all firm decisions.

Each trial attorney at Susman Godfrey is invested in our unique model and stands ready to handle your big-stakes commercial litigation.

A Record of Winning

From antitrust to copyright, to securities to product liability, Susman Godfrey's trial lawyers have litigated and achieved impressive results for significant nationwide class action lawsuits. While some of these actions are ongoing, others have settled prosperously for our clients. In three cases alone, the firm obtained more than \$1 billion in settlements for plaintiffs. The firm has also represented defendants such as Chevron, Walmart, Texas Brine, The Rawlings Co., and Dean Foods in high stakes class actions.

Plaintiff-Side Litigation:

- ***In re Automotive Parts Antitrust Litigation.*** Secured, to date, over \$1.2 billion in settlements to date as co-lead counsel for a class of end payor plaintiffs in this complex series of antitrust cases brought against dozens of automobile suppliers who engaged in price-fixing and bid-rigging in the multi-billion-dollar automotive parts industry. This massive multi-district litigation is related to a criminal investigation which the US Department of Justice described as the largest price-fixing investigation in history. The litigation continues against the non-settling defendants.
- ***In re Libor-based Financial Instruments Antitrust Litigation.*** Secured, to date, \$590 million in settlements for plaintiffs who allege several banks were involved in setting LIBOR and manipulating it to their advantage. Barclays PLC agreed to pay \$120 million, Citigroup agreed to pay \$130 million, Deutsche Bank agreed to pay \$240 million, and HSBC agreed to pay \$100 million. Since that time, a multitude of lawsuits have been consolidated as part of a multidistrict litigation proceeding. These settlements are each combined with breakthrough agreements with the defendant banks to cooperate with plaintiffs in the ongoing litigation.
- ***Flo & Eddie v. Sirius XM and Flo & Eddie v. Pandora.*** Serving as co-lead counsel representing Flo & Eddie, founding members of 60's music group, The Turtles, along with a class of owners of pre-1972 sound recordings

for copyright violations by music provider Sirius XM. Sirius XM agreed to pay at least \$25.5 million and royalties under a 10-year license that is valued up to \$62 million as compensation for publicly performing without a license Pre-1972 sound recordings. Flo & Eddie have a similar putative class action pending against Pandora.

- **Leonard et al. v. John Hancock Life Insurance Co. of New York et al.** Secured a settlement valued at \$143 million, including a cash fund of over \$93 million and an agreement by John Hancock Life Insurance Company not to impose a higher cost of insurance rate scale for 5 years (even in the face of a worldwide pandemic), on behalf of a class of approximately 1,200 policyholders who alleged that Hancock breached the terms of their respective life insurance policies and overcharged them for life insurance. When granting final approval, the Court held that the settlement provided an “absolutely extraordinary” recovery rate for the class, and lauded Susman Godfrey’s “extraordinary work.”
- **Helen Hanks v. Voya Retirement Insurance and Annuity Company.** Negotiated settlement worth \$118 million including a cash fund of over \$92 million and an agreement by Voya not to impose a higher rate scale for 5 years, on behalf of a certified class of 46,000+ policyholders over allegations that Voya improperly raised cost-of-insurance charges. Over the course of litigation, the team from Susman Godfrey secured certification of the nationwide class and defeated summary judgment. The Court recognized the quality of the work, stating: “I want to commend you all for the work done on the pretrial order and motions in limine . . . I’m very happy to have you as lawyers appearing before me.”
- **In re Qualcomm Antitrust Litigation.** Appointed by the Court as co-lead counsel in this multi-district litigation on behalf of purchasers impacted by Qualcomm’s anti-competitive conduct. Denying Qualcomm’s motion to dismiss, the Court granted class certification in a 66-page order finding “substantial,” “strong,” and “compelling” evidence to support the certification. The certification order is currently subject to an interlocutory appeal in the Ninth Circuit. With damages topping \$5 billion, Qualcomm has called it “the largest class action in history.”
- **ODonnell v. Harris County.** Tried, pro bono, on behalf of the plaintiffs, an extraordinary lawsuit challenging the constitutionality of Harris County’s (Houston) system of secured money bail for the release of misdemeanor arrestees. Harris County jailed tens of thousands of people arrested for minor, non-violent misdemeanors, many of which were financially unable to post cash bail. After an 8-day evidentiary hearing, the Southern District of Texas found that Harris County’s bail system violated both the due process clause and equal protection clause of the US Constitution and enjoined the County and its judges from further violations. The Supreme Court denied the County’s motion for a stay and the injunction was implemented. The 5th Circuit affirmed the constitutional rulings. After just one year in which the injunction relief was in effect, more than 12,000 people were released from jail.
- **Animal Science Products**
 - **In re Vitamin C Antitrust Litigation.** Secured a \$54.1 million jury verdict in an antitrust price-fixing class action brought on behalf of direct purchasers of vitamin C against two Chinese vitamin C manufacturers in the first-ever case in which mainland Chinese companies were successfully sued under US antitrust law. The verdict was tripled as required by law and, after adjusting for \$32.5 million in settlements with other defendants, a final judgment of \$147 million was entered against the defendants. This antitrust price-fixing class action was later reviewed by the United States Supreme Court, which issued a unanimous 9-0 decision in favor of the plaintiffs. In its ruling, the Supreme Court provided clarification as to how much deference US federal courts must show statements made by foreign governments regarding the application of their domestic laws.
 - **Animal Science Products v. Chinook Group.** Obtained a \$1.05 billion settlement in a price-fixing case against leading European vitamin manufacturers, including Hoffman-La Roche, BASEF A.G. and Rhone-Poulenc S.A.

- ***In re Animators Antitrust Litigation***. Secured more than \$168 million in settlements for a class of animation industry employees in this antitrust action against the largest animation companies, including Disney, Pixar, Lucas Films, DreamWorks, and Sony, based on restrictions on their ability to compete against one another for talent.
- ***Ferrick v. Spotify USA***. Secured a settlement worth over \$100 million to resolve a class-action lawsuit against music streaming service, Spotify, brought on behalf of music copyright owners.
- ***In re Allergan Proxy Violation Derivatives Litigation***. Recovered \$40 million—what is believed to be the largest recovery ever obtained on behalf of derivative securities investors—in an insider trading case. Our team served as co-lead counsel for the plaintiff class, who alleged that Valeant Pharmaceuticals International, Inc. provided non-public information to Pershing Square Capital Management about its impending hostile takeover of Allergan, Inc. so that Pershing Square could secretly buy Allergan stock and commit that stake in support of Valeant's bid. Plaintiffs claimed that Pershing Square then secretly acquired a 10% stake in Allergan and gleaned millions of dollars in profits by selling on the news of the takeover bid. A California federal judge granted final approval of two settlements totaling \$290 million to resolve these insider-trading claims shortly before trial was set to commence in the first of the two actions.
- ***Fleisher v. Phoenix Life Insurance***. Secured a landmark settlement on behalf of plaintiffs in a case challenging Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. The case settled the day of the final Pretrial Conference. Settlement terms included a \$48.5 million cash fund, COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court said: "This may be the best settlement pound for pound for the class that I've ever seen."
- ***Behrehnd et al. v. Comcast***. Represented a class of 800,000 Comcast cable subscribers who alleged that between 2003 and 2008, Comcast and other cable companies entered into subscriber swaps and acquisitions that deterred over-builder competition and enabled Comcast to raise prices to supra-competitive levels, in violation of sections 1 and 2 of the Sherman Act. The parties settled for \$50 million after remand of the case from the Supreme Court.
- ***In re NYC Bus Tour Antitrust Litigation***. Secured a \$19 million cash settlement for customers of two New York City tour bus companies, Coach USA Inc. and City Sights LLC, and their joint venture, Twin America LLC. The settlement ended an antitrust class action against the joint venture, which plaintiffs said eliminated competition between the two bus companies and artificially raised prices for passengers.
- ***In re Korean Air Lines Antitrust Litigation***. Secured \$86 million in settlements in this antitrust litigation involving more than 70 class action cases brought on behalf of airline passengers who alleged that between 2000 and 2007, Korean Air Lines and Asiana Airlines conspired to fix the price of air travel between the United States and the Republic of Korea.
- ***In re Toyota Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation***. Appointed by the Court as co-lead counsel to the plaintiffs, the Susman Godfrey team negotiated a deal with Toyota Motor Corporation in which Toyota agreed to pay benefits worth up to \$1.6 billion to settle multi-district class action litigation pending in federal court in Santa Ana, California. Plaintiffs brought the case over allegations of economic losses as a result of recalls for defects causing unintended acceleration in Toyota, Lexus, and Scion vehicles.
- ***Coady v. IndyMac Bancorp et al.*** Appointed as co-lead counsel for investors who were allegedly defrauded into purchasing securities issued by the parent of mortgage lender IndyMac Bank. Plaintiffs alleged that

IndyMac had misrepresented its financial health and the quality of its lending practices. After more than five years of intense, hard-fought litigation, the Court granted final approval of a \$6.5 million recovery for the class.

- **Google AdWords Class Action** Obtained a \$20 million settlement for a class against Google for breach of contract, unfair competition, and false advertising relating to Google's AdWords billing practices and related disclosures.
- **White v. NCAA.** Served as co-lead counsel in an antitrust class action alleging that the NCAA violated the federal antitrust laws by restricting amounts of athletic based financial aid. The NCAA settled and paid, in addition to fees and expenses, \$218 million for use by current student-athletes to cover the costs of attending college and paid \$10 million to cover educational and professional development expenses for former student-athletes.
- **Powell v. Yates Petroleum.** Obtained a \$27.5 million settlement with ConocoPhillips for alleged underpayment of royalty on natural gas liquids produced from the San Juan Basin of northwestern New Mexico and processed at the New Blanco Plant near Bloomfield, New Mexico on behalf of 4,300 royalty and overriding royalty owners across the United States.
- **Drayton v. Western Auto.** Obtained class certification from the Middle District of Florida for a class of Black employees of Western Auto Supply Co. (now owned by Advance Stores Company, Inc.) who were suing the former auto parts retailer for racial discrimination. The defendants immediately appealed the certification decision to the 11th Circuit. The Court affirmed the class certification decision—the first such class action decision the 11th Circuit had upheld in decades. The case settled with the defendants making a substantial payment to the class

Defense-Side Litigation

- **Fitzgerald et. al. v. Apache.** Secured a complete defensive win for Apache Corporation when Chief Judge H. Lee Rosenthal from the Southern District of Texas granted in full a motion to dismiss a royalty class action brought by a putative class of plaintiffs who alleged – contrary to existing law – that Apache breached thousands of mineral leases by allegedly underpaying royalties. .
- **In re Caustic Soda Antitrust Litigation.** Serving as lead counsel for Westlake Chemical Corporation in its defense of a group of nationwide antitrust cases relating to the production and sale of caustic soda.
- **Walmart Employment Class Actions.** As National Trial Counsel, represented Walmart in numerous wage and hour class actions in courts across the country, three of which were tried.
- **Walmart Consumer Class Action.** Represented Walmart in defense of a Pennsylvania consumer class action regarding how grocery coupons are treated for sales tax purposes
- **In re Bayou Corne Sinkhole Litigation.** Represented Texas Brine Corporation in a case pending in Napoleonville, Louisiana, resulting from the Bayou Corne sinkhole that formed in 2012. This case involves complex technical and environmental issues surrounding the collapse of a salt dome. Texas Brine settled with the plaintiff landowners on favorable terms, and then pursued and recovered huge amounts of the costs from other companies responsible for the collapse.
- **Johnston v. Rawlings.** Won a defense-side jury verdict on behalf of The Rawlings Company in a certified class action challenging the company's classification of its employees. After a three-week jury trial in Kentucky state court, the jury decided in favor of the defense.
- **Watts v. Sysco Corp.** Represented Sysco Corp. (SYSCO) and several California subsidiaries in a labor dispute in which the plaintiffs sought to assert class wide claims to recover business expenses and late wage penalties

under California law. The firm negotiated a favorable settlement for SYSCO, which was approved months later by the Court.

- ***Siebenmorgen v. Hertz***. Represented the Hertz Corporation in a class action case challenging the company's rental car fuel service charges. Susman Godfrey successfully argued and won the appeal in the case. The class consisted of tens of thousands of class members and alleged millions of dollars in damages. The Texas Court of Appeals reversed the trial court's class certification order and decertified the class on all claims.
- ***Bates v. Schneider National Carrier***. Defended Georgia-Pacific against claims alleging injuries from exposure to formaldehyde fumes released by various wood products. Of the approximately 200 cases handled by Susman Godfrey, two proceeded to a jury verdict. In one case, the jury returned a verdict for our client and awarded no damages to the plaintiff. In the other, in which the plaintiff was seeking \$5 million in damages, the jury returned a verdict of \$12,500.
- ***ASARCO v. Nueces County TX***. Represented ASARCO Incorporated in defending cases filed by approximately 3,000 plaintiffs alleging arsenic contamination in Commerce, Texas.
- ***Coleman v. ABB Lummus Crest***. Represented a German chemical company and its subsidiaries in the defense of claims made by soldiers allegedly exposed to chemical and biological warfare agents in the Persian Gulf war. The case is one of the largest toxic tort cases ever filed. The firm was successful in obtaining dismissals of its clients at an early stage of the litigation.
- ***In re Rio Piedras Explosion Litigation***. Represented Enron Corporation and San Juan Gas Company in more than 500 cases pending in San Juan, Puerto Rico. The cases, brought by more than 2,000 plaintiffs, arose from a 1996 building explosion. As lead counsel, our team coordinated the activities of the numerous law firms involved in the defense.
- ***NYLCare Personal Injury Litigation***. Represented NYLCare, a health maintenance organization, in a number of personal injury claims against NYLCare alleging direct and vicarious liability for medical malpractice by doctors. The plaintiffs in those claims have sued NYLCare alleging theories of negligent credentialing, negligent hiring, and negligent supervision. Susman Godfrey has also represented NYLCare in the defense of various related class action lawsuits.

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FIRM RESUME

Izard, Kindall & Raabe LLP (“IKR”)¹ is one of the premier firms engaged in class action litigation on behalf of consumers, investors and employees. In the consumer area, the Firm has served or is serving as lead counsel in cases involving a variety of industries including banking, *Mathena v. Webster Bank, N.A.*, Civil Action No. 3:10-cv-01448-SRU (D. Conn), *Farb v. Peoples United Bank*, UWY-CV11-6009779-S (Conn Sup. Ct); *Forgione v. Webster Bank, N.A.*, No. X10-UWY-CV-12-6015956-S (Conn. Sup. Ct.); wholesale milk pricing, *Ice Cream Liquidation, Inc. v. Land O’Lakes, Inc.*, No. 02-cv-0377 (D. Conn.); book printing and distribution, *Booklocker.com, Inc. v. Amazon.com*, 08-cv-00160-JAW (D. Me); gasoline distribution, *Wyatt Energy v. Motiva Enterprises, LLC*, X01 cv 02-0174090-S (Conn. Super Ct); and electricity supply contracts, *Chandler v. Discount Power*, No. X03-HHD-CV14-6055537 (Conn. Super. Ct.), *Edwards v. North American Power & Gas, LLC*, No. 3:14-cv-1714 (D. Conn.), *Gruber v. Starion Energy, Inc.*, No. 3:14-cv-01828 (D. Conn.), *Jurich v. Verde Energy, USA, Inc.*, No. HHD-cv-156060160 (Conn. Super. Ct.), *Sanborn v. Viridian Energy, Inc.*, No. 3:14-cv-01731 (D. Conn.), and *Steketee v. Viridian Energy, Inc.*, No. 3:15-cv-00585.

IKR is representing, or has represented, purchasers of a variety of consumer products in unfair trade practice cases, including *Langan v. Johnson & Johnson Consumer Companies, Inc.*,

¹ Formerly known as Izard Nobel LLP, Schatz Nobel Izard, P.C., and Schatz & Nobel, P.C.

Nos. 13-cv-01470 (D. Conn.), *Morales v. Conopco Inc., d/b/a Unilever*, No. 2:13-cv-2213 (ED Cal.), and *Balser v. The Hain Celestial Group, Inc.*, No. 13-cv-5604 (C.D. Cal.). The Firm's successful consumer practice is informed by our lawyers' work prior to joining IKR. For example, Robert IZard and Craig Raabe were partners at a large, regional law firm and handled trial matters across the United States for plaintiffs and defendants, while Seth Klein worked for the consumer protection department of the Connecticut Attorney General's Office.

Our practice is also built upon the Firm's decades of experience in class action litigation where we have frequently served as lead or co-lead counsel, including:

- *Overby v. Tyco Int'l, Ltd.*, No. 02-CV-1357-B (D.N.H.);
- *In re Reliant Energy ERISA Litig.*, No. H-02-2051 (S.D. Tex.);
- *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, MDL Docket No. 1500 (S.D.N.Y.);
- *Furstenau v. AT&T*, Case No. 02 CV 8853 (D.N.J.);
- *In re AEP ERISA Litig.*, Case No. C2-03-67 (S.D. Ohio);
- *In re JDS Uniphase Corp. ERISA Litig.*, Civil Action No. 03-4743-CW (N.D. Cal.);
- *In re Sprint Corporation ERISA Litig.*, Master File No. 2:03-CV-02202-JWL (D. Kan.);
- *In re Cardinal Health, Inc. ERISA Litig.*, Case No. C 2-04-642 (S.D. Ohio);
- *Spear v. Hartford Fin. Svcs Group, Inc.*, No. 04-1790 (D. Conn.);
- *In re Merck & Co., Inc. Sec., Derivative and ERISA Litig.*, MDL No. 1658 (D.N.J.);
- *In re Diebold ERISA Litig.* No. 5:06-CV- 0170 (N.D. Ohio);
- *In re Bausch & Lomb, Inc. ERISA Litig.*, Master File No. 06-CV-6297-MAT-MWP (W.D.N.Y.);
- *In re Hartford Fin. Svcs Group, Inc. ERISA Litig.*, No. 08-1708 (D. Conn.);
- *In re Merck & Co., Inc. Vytarin ERISA Litig.*, MDL No. 1938, 05-CV-1974 (D.N.J.);
- *Mayer v. Admin. Comm. of Smurfit Stone Container Corp.*, 09-CV-2984 (N.D. IL.);

- *In re YRC Worldwide ERISA Litig.*, Case No. 09-CV-02593 (D. Kan);
- *Board of Trustees v. JP Morgan Chase Bank*, Case No. 09-cv-9333 (S.D.N.Y.);
- *White v. Marshall & Ilsley Corp.*, No. 10-CV-00311 (E.D. Wis.);
- *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.);
- *In re Eastman Kodak ERISA Litig.*, Master File No. 6:12-cv-06051-DGL (W.D.N.Y.);
- *Kemp-DeLisser v. Saint Francis Hospital and Medical Center*, Civil Action No. 3:15-cv-01113-VAB (D. Conn.);
- *Tucker v. Baptist Health System, Inc.*, Case No. 2:15-cv-00382-SLB (N.D.AL.);
- *Cryer v. Franklin Resources, Inc.*, No. 4:16-cv-04265 (N.D. Cal.);
- *Bishop-Bristol v. Massachusetts Mutual Life Insurance Company*, No. 3:16-cv-30082-MGM (D. Mass.);
- *Matthews v. Reliance Trust Company*, No. 1:16-cv-04773 (N.D. Ill.);
- *Brace v. Methodist Le Bonheur Healthcare*, No. 16-cv-2412-SHL-tmp (W.D. Tenn.);
- *Nicholson v. Franciscan Missionaries of our Lady Health Systems*, No. 16-CV-258-SDD-EWD (M.D. LA);
- *In re Mercy Health ERISA Litig.*, No. a:16-cv-441 (S.D. Ohio);
- *Negron v. Cigna Corp.*, No. 3:16-cv-01702 (D. Conn.);
- *Schultz v. Edward D. Jones & Co.*, No. 4:16-cv-01346 (E.D. Mo.);
- *Larson v. Allina Health Syst.*, No. 0:17-cv-03835 (D. Minn.);
- *Johnson v. Providence Health & Services*, No. 2:17-cv-01779 (W.D. Wash.);
- *Berry v. Wells Fargo & Co.*, No. 3:17-304 (D.S.C.);
- *Neufeld v. Cigna Health & Life Ins.*, No. 3:17-cv-01693 (D. Conn.);
- *Myers v. 401(k) Fiduciary Comm. for Seventy Seven Energy*, No. 5:17-cv-00200 (D. Okl.);
- *Quatrone v. Gannett Co., Inc.*, No. 1:18-cv-00325 (E.D. Va);
- *Reidt v. Frontier Communications Corp.*, No. 3:18-cv-01538 (D. Conn.);

- *Sohmer v. UnitedHealth Group, Inc.*, No. 0:18-cv-03191 (D. Minn.);
- *Masten v. Metropolitan Life Ins. Co.*, No. 1:18-cv-11229 (S.D.N.Y.)
- *Smith v. U.S. Bancorp*, No. 0:18-cv-03405 (D. Minn.);
- *Paetzold v. Metropolitan District Commission*, X07-HHD-CV-18-6090558-S (Conn.)
- *Mannino v. Louisiana Health Serv. & Indemnity Co.*, No. 3:19-cv-00185 (M.D. La.);
- *Herndon v. Huntington-Ingalls Industries, Inc.*, No. 4:19-cv-00052 (E.D. Va.);
- *Belknap v. Partners Healthcare System, Inc.*, No. 1:19-cv-11437 (D. Mass.);
- *Cruz v. Raytheon Co.*, No. 1:19-cv-11425 (D. Mass.);
- *Smith v. Rockwell Automation Inc.*, No. 2:19-cv-00505 (E.D. Wisc.);
- *Brown v. United Parcel Service, Inc.*, No. 1:20-cv-00460-MLB (N.D. GA);
- *Berube v. Rockwell Automation Inc.*, No. 2:20-cv-01783 (E.D. Wisc.); and
- *Shafer v. Morgan Stanley*, 1:20-cv-11047 (S.D.N.Y.).

Moreover, IKR was also appointed to the Steering Committee in *Tittle v. Enron Corp.*, No. H-01-3913 (S.D. Tex.); *In re Electronic Data Systems ERISA Litig.*, 3:02-CV-1323 (E.D. Tex.); and *In re Marsh ERISA Litig.*, Master File No. 04 CV 8157 (S.D.N.Y.).

Some notable successes include settlements against the Franciscan Missionaries of Our Lady Health System (\$125 million), Saint Francis Hospital & Medical Center (\$107 million), AOL Time Warner (\$100 million); Wells Fargo (\$79 million); Tyco International (\$70.5 million); Raytheon (\$59 million); Merck (\$49.5 million); Cardinal Health (\$40 million); and AT&T (\$29 million). Moreover, IKR was on the Executive Committee in *In re Enron Corporation Securities and ERISA Litig.*, No. 02-13624 (S.D. Tex.), which resulted in a recovery in excess of \$250 million. In *Morales v. Conopco Inc., d/b/a Unilever*, the Court noted that the Settlement IKR negotiated achieved the “key goal” of discontinuing sales of the challenged products under the “naturals”

label as well as providing Class Members with damages that were “greater than the economic damages suffered per product purchased.” *Morales v. Conopco, Inc.*, No. 2:13-2213 WBS EFB, 2016 WL 6094504, at *6 (E.D. Cal. Oct. 18, 2016).

IKR’s successful prosecution of class actions has been recognized and commended by judges in numerous judicial districts. In the *Tyco ERISA* litigation, Judge Barbadoro commented:

I have absolutely no doubt here that the settlement is fair, reasonable and adequate. I think, frankly, it's an extraordinary settlement given the circumstances of the case and the knowledge that I have about the risks that the plaintiff class faced in pursuing this matter to verdict [I]t was a very, very hard fight and they made you work for everything you obtained on behalf of the Class here....

I have a high regard for you. I know you to be a highly experienced ERISA class action lawyer. You've represented your clients aggressively, appropriately and effectively in this litigation, and I have a high degree of confidence in you so I don't think there's any question that the quality of counsel here is a factor that favor's the Court's endorsement of the proposed settlement. . . .

I have enjoyed working with you in this case. You've always been helpful. You've been a gentleman. You've been patient when I've been working on other matters. .

In re Tyco Int'l Ltd. Sec. Litig., Case No. 02-1335 (D.N.H. Nov. 18, 2009). Similarly, in approving the Sprint ERISA settlement, Judge Lungstrum found, “[t]he high quality of [IKR's] work culminated in the successful resolution of this complex case” and that “the results obtained by virtue of the settlement are extraordinary. . . .” *In re Sprint Corp. ERISA Litig.*, No. 03-2202 (D. Kan. Aug. 3, 2006). A Special Master appointed in the AOL Time Warner ERISA case commented that obtaining an additional \$30 million for the class stood out as “some of the hardest work and most outstanding results” obtained by IKR and its co-counsel. *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 02-CV-1500 (S.D.N.Y.), Report & Recommendation of Special Master

dated August 7, 2007. The District Court's decision approving the settlement negotiated by IKR in the St. Francis litigation similarly found the result to be "an extremely favorable one for the class," noting that the recovery achieved by the settlement represented over 76 percent of the amount by which the retirement plan was alleged to be underfunded. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB), 2016 WL 6542707, at *10 (D. Conn. Nov. 3, 2016). The Court also noted that IKR's time and efforts "resulted in an extremely efficient and favorable resolution of the case." *Id.* at *5.

ATTORNEYS

Robert A. Izard heads the firm's ERISA team and has been lead or co-lead counsel in many of the nation's most significant ERISA class actions, including cases against Raytheon, Wells Fargo, JP Morgan, Metropolitan Life, United Healthcare, Cigna, Merck, Time Warner, AT&T, Fidelity, Prudential and John Hancock among others. Mr. Izard has substantial experience in other types of complex class action and commercial litigation matters. For example, he represented a class of milk purchasers in a price fixing case. He also represented a large gasoline terminal in a gasoline distribution monopolization lawsuit.

As part of his thirty-five plus years litigating complex commercial cases, Mr. Izard has substantial jury and nonjury trial experience, including a seven-month jury trial in federal district court. He is also experienced in various forms of alternative dispute resolution, including mediation and arbitration.

Mr. Izard is the author of *Lawyers and Lawsuits: A Guide to Litigation* published by Simon and Schuster and a contributing author to the *Mediation Practice Guide*. He is the former Chair of the Commercial and Business Litigation Committee of the Litigation Section of

the American Bar Association. He is listed in Best Lawyers in the areas of ERISA and antitrust litigation. He is listed in Super Lawyers in the areas of class action and business litigation.

Mr. Izard received his B.A. from Yale University and his J.D., with honors, from Emory University, where he was elected to the Order of the Coif and was an editor of the Emory Law Journal.

Craig A. Raabe joined the partnership in 2016 from a large, regional law firm, where he previously served as the chair of the litigation department. Mr. Raabe has a nationwide practice and has tried many complex civil and criminal cases and prosecuted and defended many class actions. He is a Fellow in the American College of Trial Lawyers. The Best Lawyers in America© (Copyright by Woodward/White, Inc., Aiken, SC) has named Mr. Raabe as the regional “Lawyer of the Year” in the areas of Bet-the-Company Litigation, Antitrust Litigation (3 times), White-Collar Criminal Defense, and Intellectual Property Litigation. He also has been listed generally in The Best Lawyers in America© since 2006, most recently in seven disciplines: Bet-the-Company Litigation, Antitrust Litigation, Commercial Litigation, White-Collar Criminal Defense, General Criminal Defense, Intellectual Property Litigation, and Regulatory Enforcement (SEC, Telecom, Energy) Litigation. Chambers and Partners© has named Mr. Raabe to its highest level of recognition, Band 1, in the area of General Commercial Litigation and White-Collar Crime and Government Investigations. In addition, he has been honored repeatedly as one of the Top 10 Lawyers in Connecticut by Super Lawyers® 2022 (Super Lawyers is a registered trademark of Key Professional Media, Inc.).

Mr. Raabe’s commercial trial experience is broad and includes areas such as antitrust, government contracting, fraud, intellectual property, and unfair trade practices. He also has

tried many serious felony criminal cases in state and federal court and is active in the criminal defense trial bar. In addition to his trial practice, Mr. Raabe also counsels clients on compliance issues and the resolution of regulatory enforcement actions by government agencies.

By appointment of the chief judge of the Second Circuit, Mr. Raabe has served on the Reappointment Committee for Connecticut's Federal Defender. The chief judge of the Connecticut district court appointed him to chair the United States Magistrate Reappointment Committee, to serve on the Merit Selection Panel for Magistrate Judges and to serve on the District Criminal Justice Act Committee. The Connecticut district court judges also selected Mr. Raabe for the district's Pro Bono Award for his service to indigent clients. In addition, he has been listed repeatedly as one of the Top 10 Lawyers in Connecticut by Super Lawyers® 2022 (Super Lawyers is a registered trademark of Key Professional Media, Inc.).

Mr. Raabe is admitted to practice in the U.S. Supreme Court, the Courts of Appeals for the First, Second, and D.C. Circuits, the U.S. District Courts for Connecticut and the Eastern and Southern Districts of New York, the U.S. Tax Court and the state of Connecticut. He is an honors graduate of Valparaiso University and Western New England College of Law, where he served as Editor-in-Chief of the Law Review. Following graduation, Mr. Raabe served as the law clerk for the Honorable Arthur H. Healey of the Connecticut Supreme Court.

Mr. Raabe is a commercial, instrument-rated pilot and is active in general aviation. He serves as a volunteer pilot for Angel Flight Northeast, which provides free air transportation to people requiring serious medical care.

Seth R. Klein has been an attorney at Izard Kindall & Raabe LLP for nearly twenty years, focusing on both class action and complex civil litigation in areas including ERISA, consumer protection, securities and antitrust law.

In recent years Mr. Klein's class action work has resulted in significant class-wide recoveries. For example, in *Paetzold v. Metropolitan District Commission* (Conn. Super.), his team successfully recovered full damages against a quasi-public agency for wrongful excess billing of water customers. He also worked on the successful recovery of tens of millions of dollars for consumers wrongfully charged excessive electricity rates by several different third-party suppliers in *Richards v. Direct Energy Services LLC* (D. Conn.); *Edwards v. North American Power & Gas LLC* (D. Conn.); *Sanborn v. Viridian Energy, Inc.* (D. Conn.); *Chandler v. Discount Power* (Conn. Super.); *Gruber v. Starion Energy, Inc.* (Conn. Super.); and *Jurich v. Verde Energy USA, Inc.* (Conn. Super.).

In addition, Mr. Klein has worked on teams that have successfully represented high net worth individuals on complex civil matters as both plaintiff and defendant, including at trial.

Mr. Klein's current class cases include litigation against several of the largest United States real estate companies for the alleged charging of anticompetitive commissions (*Nosalek v. MLS Property Information Network* (D. Mass)) and several class actions against companies alleged to have overcharged patients for medical and prescription drug benefits (*Negron v. Cigna Health and Life Insurance Company* (D. Conn.); *Neufeld v. Cigna Health and Life Insurance Company* (D. Conn.); *Bennett v. Blue Cross and Blue Shield of Louisiana* (M.D. La.); *Mohr-Lercara v. Oxford Health Ins., Inc.* (S.D.N.Y.); and *Sohmer v. UnitedHealth Group Inc.* (D. Minn.)).

Mr. Klein also continues to represent individual clients in complex civil matters, including representation of an unjustly convicted former inmate to recover damages for the police misconduct that led to his wrongful imprisonment. He also is representing a regulated entity against the Connecticut Department of Banking in a variety of complex administrative and court proceedings.

Prior to joining Iazard Kindall and Raabe, Mr. Klein was associated with the reinsurance litigation group at Cadwalader, Wickersham & Taft LLP in New York, where he focused on complex business disputes routinely involving hundreds of millions of dollars. Before that, Mr. Klein served as an Assistant Attorney General for the State of Connecticut, where he specialized in consumer protection matters and was a founding member of the office's electronic commerce unit. Mr. Klein is a 1996 graduate of the University of Michigan law school and clerked for the Hon. David M. Borden of the Connecticut Supreme Court upon graduation.

Douglas P. Needham represents plaintiffs in class actions cases under ERISA and consumer protection statutes concerning pension calculations, fees and investments in 401(k) plans, and insurance rates and coverage. He has litigated class actions cases against some of America's largest companies about ERISA's vesting rules, 401(k) plan investments and how corporate transactions affect participants' benefits, and has obtained significant class-wide recoveries.

Mr. Needham works extensively with experts in the fields of actuarial science, finance and economics to apply the ERISA statute to novel issues and complex annuity and financial products. Since 2018, he has taken a leading role in developing and litigating cases around the country involving the payment of actuarially equivalent pension benefits under ERISA. These

cases include *Cruz v. Raytheon*, a case in the District of Massachusetts that settled in 2021 by providing class members increased pension benefits valued at more than \$59 million, as well as *Herndon v. Huntington Ingalls Industries, Inc.* (E.D. Virginia), *Masten v. Metropolitan Life Insurance Company* (S.D. New York), *Berube v. Rockwell Automation, Inc.* (E.D. Wisconsin), and *Belknap v. Partners Healthcare System, Inc.* (D. Massachusetts).

In *Berry v. Wells Fargo*, 2020 WL 9311859 (D.S.C. July 29, 2020), Mr. Needham litigated whether a plan was improperly claiming “top hat” status under ERISA. In approving the \$79 million settlement, the court found it was “the largest recovery in a ‘top hat’ case in the history of ERISA” and was the result of “displayed extraordinary skill and determination.” Mr. Needham is also co-counsel for the class in *Stegemann v. Gannett*, 970 F.3d 465 (4th Cir. 2020), a case about a single-stock fund in a 401(k) plan that clarified the pleading standards for claims under ERISA’s duties of prudence and diversification that Law360 called one of the “most significant” ERISA decisions of 2020.

Before joining IZARD, KINDALL & RAABE in 2016, Mr. Needham was a partner in a large national law firm, where he represented clients in cases involving business torts, claims for breach of fiduciary duty and fraud in Connecticut, New York, and Massachusetts.

Mr. Needham received his J.D. from Boston University School of Law in 2007 and his B.S. from Cornell University in 2004, where he received numerous academic honors, was a Cornell Tradition Fellow and an All-Ivy player on the men’s lacrosse team. He is a board member for his town’s lacrosse program, the risk manager for his town’s soccer program and the co-founder and treasurer of a charitable foundation that provides college scholarships to graduates of his high school alma mater.

Christopher M. Barrett is an attorney at Izard, Kindall & Raabe, LLP where his practice focuses on representing plaintiffs in class actions against large companies, representing clients in complex civil litigation, and defending and counseling white collar criminal defendants.

Mr. Barrett is a member of teams currently prosecuting class actions against companies alleged to have overcharged patients for medical and prescription drug benefits, including: *Negron v. Cigna Health and Life Insurance Company*; *Neufeld v. Cigna Health and Life Insurance Company*; *Bennett v. Blue Cross and Blue Shield of Louisiana*; *Mohr-Lercara v. Oxford Health Ins., Inc.*; and *Sohmer v. UnitedHealth Group Inc.* Mr. Barrett is also a member of a team prosecuting claims alleging antitrust violations against some of the largest real estate companies in the country, in *Nosalek v. MLS Property Information Network et al.*

He has previously been involved in the prosecution of numerous successful class actions in which over \$150 million dollars have been recovered for class members, including: *Paetzold v. Metropolitan District Commission* (\$7.7 million, representing 100% of class losses); *Medoff v. CVS Caremark Corp.* (\$48 million recovery); *Citiline Holdings, Inc. v. iStar Fin. Inc.* (\$29 million recovery); *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC* (\$14 million recovery); *In re Delphi Fin. Group Shareholder Litigation* (\$49 million recovery); and *In re OSG Sec. Litigation* (\$34 million recovery, representing 93% of bond purchasers' damages and 28% of stock purchasers' damages).

Mr. Barrett also represents plaintiffs who are unable to afford legal counsel. He has served as trial counsel in significant federal felony cases and as a volunteer attorney on the District of Connecticut's Civil Pro Bono Panel.

Prior to joining Izard, Kindall & Raabe, Mr. Barrett was associated with Robbins Geller Rudman & Dowd, where his practice focused on prosecuting class actions on behalf of plaintiffs, and Mayer Brown, where his practice focused on complex commercial litigation.

Mr. Barrett is a member of the Connecticut and New York bars and is admitted to practice in the District of Connecticut, the Southern District of New York, the Eastern District of New York, and the Court of Appeals for the Second Circuit.

In 2015 through 2020, Mr. Barrett was recognized by Super Lawyers magazine as a Rising Star. Mr. Barrett received his J.D., magna cum laude from Fordham University School of Law where he served as a member of the Fordham Law Review and was inducted into the Order of the Coif and the honor society Alpha Sigma Nu. For his work in the law school's law clinic, he was awarded the Archibald R. Murray Public Service Award. He earned his B.S. in Finance from Long Island University. During law school, Mr. Barrett served as a judicial intern to United States District Judge Shira Sheindlin (S.D.N.Y.), United District Judge Thomas Platt (E.D.N.Y.) and New York Supreme Court Justice Stephen Bucaria.

Practice areas

- Class actions on behalf of plaintiffs
- ERISA and benefits litigation
- Healthcare litigation
- White collar defense
- Complex civil litigation
- Civil rights litigation

Oren Faircloth Since joining the firm in 2018, Oren Faircloth has represented numerous retirees seeking to hold major corporations accountable. He focuses primarily on complex class actions brought under the Employee Retirement Income Securities Act (ERISA). He has

investigated, developed and drafted complaints against some of America's largest corporations, including: Huntington Ingalls, Raytheon Technologies, UPS and Rockwell Automation. Mr. Faircloth has worked on ERISA cases involving actuarial equivalence, mismanagement of 401k plans, excessive fee, and breach of contract and breach of fiduciary duty matters. His persistence and dedication have contributed to substantial, multi-million dollar recoveries for plan participants and beneficiaries.

Mr. Faircloth graduated from Quinnipiac University School of Law, magna cum laude, in 2016. During law school, he worked at the State Treasurer's office, served on law review and provided tax advice to low-income individuals. He is actively involved in the community serving on the board of a non-profit and representing incarcerated individuals on a pro bono basis.

In his free time, Oren enjoys cooking, reading, skiing, and spending time with his wife and two boys.

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DENIS MARC AUDET, MICHAEL
PFEIFFER, and DEAN ALLEN SHINNERS,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

STUART A. FRASER, GAW MINERS, LLC,
and ZENMINER, LLC (d/b/a ZEN CLOUD),

Defendants.

Case 3:16-cv-00940

Hon. Michael P. Shea
Courtroom 2

ECF Case

CLASS ACTION

JOINT STIPULATION AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, subject to the Court's approval and pursuant to Rule 23 of the Federal Rules of Civil Procedure, by and between: (i) Plaintiffs Denis Marc Audet, Michael Pfeiffer, and Dean Allen Shinners (collectively "Plaintiffs"), individually and on behalf of the Settlement Class (as defined herein); and (ii) Defendant Stuart A. Fraser ("Fraser"), that the causes of action and matters raised by and related to this lawsuit, as captioned above, are hereby settled and compromised on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement ("Agreement").

This Agreement is made and entered into by and between Plaintiffs and Fraser and is intended to fully, finally, and forever resolve, discharge, and settle the Action and the Released Claims (both as described below) upon and subject to the terms and conditions hereof.

Capitalized terms in this Agreement shall have the meaning set forth at Section I below.

I. DEFINITIONS AND CONSTRUCTION

1. “Action” means the lawsuit, captioned *Audet, et al. v. Fraser, et al.*, Case No. 3:16-cv-00940, currently pending in the United States District Court for the District of Connecticut.

2. “Agreement” means this Joint Stipulation and Settlement Agreement.

3. “Claimants” means all Settlement Class Members who submit valid and timely Settlement Claims.

4. “Claims” means all suits, proceedings, claims, cross-claims, counter-claims, complaints, charges, controversies, liabilities, rights, demands, agreements, contracts, covenants, promises, obligations, undertakings, debts, indemnities, accounts, bills, dues, sums of money, costs, fees (including without limitation attorneys’ fees), expenses, losses, damages (including without limitation compensatory damages, statutory damages, liquidated damages, exemplary damages and punitive damages), liens, actions, or causes of action (however denominated), including Unknown Claims, of any nature, character, or description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, present or contingent, or asserted or unasserted.

5. “Class Counsel” means Susman Godfrey L.L.P.

6. “Class Counsel’s Fees and Expenses” means the amount of the award approved by the Court to be paid to Class Counsel from the Settlement Fund for attorneys’ fees and reimbursement of Class Counsel’s costs and expenses.

7. “Class Notice” means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator to the Settlement Class.

8. “Court” means The United States District Court for the District of Connecticut, Hon. Michael P. Shea.

9. “Fairness Hearing” means the hearing at which the Court considers final approval of the Settlement.

10. “Final Approval Date” means the date on which the Court enters its Order and Judgment approving the Settlement.

11. “Final Settlement Date” means the date on which the Order and Judgment becomes final, which shall be the latest of: (i) the date of final affirmance on any appeal of the Order and Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any form of valid appeal from the Order and Judgment.

12. “Fraser” means Defendant Stuart A. Fraser.

13. “Incentive Awards” means the aggregate amount of any awards approved by the Court to be paid to Plaintiffs from the Settlement Fund, in addition to any settlement relief they may be eligible to receive, to compensate Plaintiffs for their efforts undertaken on behalf of the Settlement Class. The Incentive Awards shall be made to Plaintiffs in addition to, and shall not diminish or prejudice in any way, any settlement relief which they may be eligible to receive.

14. “Net Settlement Fund” means the Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Awards awarded by the Court; (iii) any Class Counsel’s Fees and Expenses awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order and Judgment.

15. “Notice Date” means the earliest date on which any form of the Class Notice is first mailed, published, or appears online.

16. “Objection Period” means the 45-day period that begins on the Notice Date and ends 45 days after the Notice Date, or as otherwise determined by the Court. The deadline for the Objection Period will be specified in the Class Notice.

17. “Opt-Outs” means the persons and entities who timely elected to opt out of the Class on or before October 28, 2019.

18. “Order and Judgment” means the Court’s order approving the Settlement and entering final judgment.

19. “Parties” means, collectively, Plaintiffs and Fraser. The singular term “Party” means any of Plaintiffs or Fraser, as appropriate.

20. “Plaintiffs” means Denis Marc Audet, Michael Pfeiffer, and Dean Allen Shinners, individually and as representatives of the Settlement Class, and their assigns, successors, and representatives.

21. “Plan of Distribution” means a distribution formula or other process for allocating the Net Settlement Fund to Claimants.

22. “Released Claims” means all past, present and future Claims that the Releasing Parties ever had, have now, or hereafter can, shall, or may have against the Released Parties, which were asserted or could have been asserted in the Action, arising out of or related in any way to the Action or the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action.

23. “Released Parties” means Fraser and his spouse, children, and any other family members, heirs, assigns, successors, and representatives.

24. “Releasing Parties” means Plaintiffs and each Settlement Class Member, and their respective heirs, assigns, successors, and representatives (for individual Settlement Class

Members) and past and present parents, subsidiaries, affiliates, employees, officers, directors, members, partners, principals, assigns, successors, agents, and representatives (for Settlement Class Members that are entities).

25. “Settlement” means the settlement set forth in this Agreement.

26. “Settlement Administration Expenses” means all Class Notice and administrative fees, costs, or expenses incurred in administering the Settlement, including the fees charged by the Settlement Administrator, as well as the fees, costs, and expenses incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Settlement Fund.

27. “Settlement Administrator” means the third-party settlement administrator of the Settlement as approved by the Court. Plaintiffs shall be responsible for selecting the Settlement Administrator.

28. “Settlement Claims” means claims submitted by Settlement Class Members to share in the Net Settlement Fund.

29. “Settlement Class” means all persons and entities who, between August 1, 2014 and January 19, 2015, (1) purchased Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC and/or ZenMiner, LLC; or (2) acquired Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC and/or ZenMiner, LLC, by converting, upgrading, or exchanging other products sold by GAW Miners, LLC and/or ZenMiner, LLC. Specifically excluded from the Settlement Class are the Opt Outs, any defendants, any parent, subsidiary, affiliate, or employee of any defendant, any co-conspirator, and any governmental agency.

30. “Settlement Class Member(s)” means all persons and entities that are included in the Settlement Class.

31. “Settlement Fund” means the cash funds Fraser will pay into the Settlement Fund Account pursuant to Paragraph 36.

32. “Settlement Fund Account” means the escrow account from which all payments out of the Settlement Fund will be made. Plaintiffs shall establish the escrow account at a depository institution, that Plaintiffs will select, and such funds shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. The Parties and their respective counsel shall have no responsibility for or liability whatsoever with respect to investment decisions made for the Settlement Fund Account. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Class.

33. “Unknown Claims” means any claims asserted, that might have been asserted, or that hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action or that could have been alleged in the Action that the Releasing Parties do not know or suspect to exist in his or her favor at the Final Approval Date, and which if known by him or her might have affected his or her decision to object to the Settlement.

34. The terms “he or she” and “his or her” include “it” or “its,” where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

35. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

II. SETTLEMENT RELIEF

36. Fraser agrees to fund the Settlement Fund, in the amount of \$3,500,000. Fraser shall deposit the Settlement Fund into the Settlement Fund Account in three installments in accordance with the following plan: (i) Fraser shall deposit the first installment of \$1.5 million, no later than thirty (30) business days after the date that the Court grants preliminary approval of this Settlement; and (ii) Fraser shall deposit the next two installments of \$1 million each 4 months and 8 months respectively from the date of the first installment payment. If the Court's approval of the Settlement becomes final and no longer subject to appeal, upon the Final Settlement Date, there will be no reversion of the Settlement Amount to Fraser. In the event the Settlement does not become final, and there is no Final Settlement Date, the full settlement amount paid into the Settlement Fund by Fraser will be fully refunded back to Fraser; in such an event, Plaintiffs and Plaintiffs' counsel shall reasonably work with Fraser and Fraser's counsel in good faith to effectuate such refund.

37. The Net Settlement Fund shall be distributed to Claimants pursuant to a Plan of Distribution to be developed by Class Counsel and approved by the Court. Fraser will not oppose any such proposed Plan of Distribution, provided that no payment or other disbursement shall be made out of the Settlement Fund Account for any reason until after the Final Settlement Date. Under no circumstances shall the Parties or their respective counsel be liable to a Settlement Class Member or any other person or entity in connection with the Plan of Distribution and its implementation.

38. Under no circumstances shall Fraser be liable or obligated to pay any fees, expenses, costs, or disbursements to any person or entity, in connection with the Action, this Agreement, or the Settlement other than the Settlement Fund amount, which represents Fraser's total and maximum contribution to this Settlement, inclusive without limitation of all relief to the

Settlement Class, Class Counsel's Fees and Expenses, Incentive Awards, and Settlement Administration Fees.

III. PRELIMINARY APPROVAL AND CLASS NOTICE

39. The Parties agree that Plaintiffs shall move for an order seeking preliminary approval of the Settlement, which shall include a request to notify the Settlement Class of the Settlement and provide a period during which Settlement Class Members may object to the Settlement. Plaintiffs will share a draft of the motion seeking preliminary approval of the Settlement, including any proposed Class Notice and Plan of Distribution, with Fraser no less than 3 business days before it is filed. Plaintiffs will share a draft of the motion seeking final approval of the Settlement (but not Class Counsel's Motion for Plaintiffs' Incentive Awards and Class Counsel's Fees and Expenses) with Fraser no less than 5 business days before it is filed. Fraser will not oppose the motions or any proposed Class Notice and Plan of Distribution, provided they are in accordance with this Agreement. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Parties will negotiate in good faith to modify the Settlement and endeavor to resolve the issue(s) to the satisfaction of the Court.

40. Settlement Class Members may object to this Settlement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Class Notice) within the Objection Period. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member and of the Settlement Class Member's counsel, if any; (2) documentation of the Settlement Class Member's purchase or acquisition of Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC or ZenMiner, LLC between August 1, 2014 and January 19, 2015; (3) a written statement of all grounds for the objection accompanied by legal support for the objection (if any); (4) copies of any papers, briefs, or other documents

upon which the objection is based; (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing, individually and/or through counsel; and (7) the signature of the Settlement Class Member or his/her counsel. If an objecting Settlement Class Member retains counsel in connection with the objection, after serving the objection, the Settlement Class Member shall promptly notify counsel for the respective Parties. Unless otherwise ordered by the Court, Settlement Class Members who do not timely make their objections as provided in this paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal any aspect of the Settlement, including any Incentive Awards or Class Counsel's Fees and Expenses. The Class Notice shall advise Settlement Class Members of their right to object and the manner required to do so.

41. Within 10 calendar days following the filing of this Agreement with the Court, Fraser shall serve notices of the proposed Settlement upon appropriate officials in compliance with the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. Plaintiffs and Class Counsel shall cooperate in good faith with Fraser's counsel to provide information reasonably necessary to prepare the CAFA notices.

IV. INCENTIVE AWARD AND FEES AND EXPENSES

42. Class Counsel may move for an award of attorneys' fees, reimbursement of all expenses incurred or to be incurred, and Incentive Awards to the Plaintiffs, payable only from the Settlement Fund, provided that Class Counsel will not move for any award of attorneys' fees exceeding 33 1/3% of the Settlement Fund. Class Counsel's Fees and Expenses and Plaintiffs' Incentive Awards, as approved by the Court, may be paid immediately upon the later of (i) the date on which the Court enters an order approving such awards, and (ii) the Final Settlement Date, or at a later date if required by the Court (the "Earliest Award Payment Date"). In the event the Settlement Fund Account is not fully funded on the Earliest Award Payment Date, the awards may

be paid out of the Settlement Fund Account as soon as the account is sufficiently funded, in accordance with the timeline set forth in Paragraph 36, after the Earliest Award Payment Date. Fraser agrees not to oppose Class Counsel's proposed Incentive Awards or Class Counsel's proposed Fees and Expenses to the extent the request does not exceed the amount set forth above.

43. Neither Plaintiffs nor Fraser shall be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action, the Released Claims, this Agreement, or the Settlement, other than those expressly provided in this Agreement. For clarity, Fraser's liability or obligation to pay any amounts under this Agreement are limited to the amount set forth in Paragraph 36 above.

44. The Parties agree that the Settlement is not conditioned on the Court's approval of Incentive Awards or Class Counsel's Fees and Expenses.

V. TAX REPORTING AND NO PREVAILING PARTY

45. Any person or entity receiving any payment or consideration pursuant to this Agreement shall alone be responsible for the reporting and payment of any federal, state and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement, and Fraser shall not have obligations to report or pay any federal, state and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement.

46. All taxes resulting from the tax liabilities of the Settlement Fund shall be paid solely out of the Settlement Fund.

47. No Party shall be deemed the prevailing party for any purposes of this Action.

VI. RELEASES AND WAIVERS

48. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Parties of and from all Released Claims.

49. The Releasing Parties hereby expressly further agree that they shall not now or hereafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Released Parties asserting Released Claims.

50. Nothing in this Section VI shall preclude any action to enforce the terms of this Agreement.

51. The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

VII. OTHER PROVISIONS

52. The Parties: (i) acknowledge that it is their intent to consummate this Agreement, (ii) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and conditions of the Agreement, and (iii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. The Parties agree that the amounts paid in the Settlement and the other terms of the Settlement were negotiated in good faith, and at arm's length by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

53. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, Fraser's counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement and the Settlement contained therein or further orders of the Court.

54. Fraser specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the claims in the Action and makes no concessions or admissions of

liability of any sort. Neither this Agreement, nor the Settlement, nor any drafts or communications related thereto, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Claims, or of any alleged wrongdoing or liability of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any alleged fault or omission of the Released Parties, in any civil, criminal, administrative, or other proceeding in any court, administrative agency, or other tribunal. Nothing in this paragraph shall prevent Fraser and/or any of the Released Parties from using this Agreement or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

55. The Parties agree that if this Agreement or the Settlement fails to be approved, fails to become effective, otherwise fails to be consummated, is declared void, or if there is no Final Settlement Date, then the Parties will be returned to *status quo ante*, as if this Agreement had never been negotiated or executed, and the Parties will work in good faith to ensure the prompt return of any amounts in the Settlement Fund Account to Fraser, except that no incurred Settlement Administration Expenses shall be recouped. Each Party will be restored to the place it was in as of the date this Agreement was signed with the right to assert in the Action any argument or defense that was available to it at that time.

56. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless

the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No amendment or modification made to this Agreement pursuant to this paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. Plaintiffs and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or modifications made to this Agreement on any website for the Settlement if approved by the Court as part of Class Notice, as described in Paragraph 39.

57. Each person executing the Agreement on behalf of any Party hereby warrants that such person has the full authority to do so.

58. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Furthermore, electronically signed PDF versions or copies of original signatures may be accepted as actual signatures and will have the same force and effect as the original.

59. The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties hereto. This Agreement is not designed to and does not create any third-party beneficiaries either express or implied, except for the Settlement Class Members.

60. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of this Agreement are contractual and are the product of arms-length negotiations between the Parties and their counsel. Each Party and its respective counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement shall not be construed against any Party.

61. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Connecticut, without reference to its choice-of-law or conflict-of-laws rules.

62. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement and any discovery sought from or concerning objectors to this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

63. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturday and Sunday) express delivery service as follows:

(a) If to Fraser, then to:

Daniel H. Weiner
Marc A. Weinstein
Amina Hassan
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
Tel: (212) 837-6000
Fax: (212) 422-4726
daniel.weiner@hugheshubbard.com
marc.weinstein@hugheshubbard.com
amina.hassan@hugheshubbard.com

(b) If to Plaintiffs or the Class, then to:

Jacob Buchdahl
Seth Ard
Geng Chen
Russell Rennie
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (212) 336-8330
Fax: (212) 336-8340
jbuchdahl@susmangodfrey.com
sard@susmangodfrey.com
gchen@susmangodfrey.com

rrennie@susmangodfrey.com

64. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

AGREED TO BY:

Plaintiffs individually, and on behalf of the Settlement Class

Denis Marc Audet

By: _____

Date: _____

Defendant

Stuart A. Fraser

By: _____

Date: _____

Michael Pfeiffer

By: _____

Date: _____

Dean Allen Shinnors

By: _____

Date: _____

rrennie@susmangodfrey.com

64. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

AGREED TO BY:

Plaintiffs individually, and on behalf of the Settlement Class

Denis Marc Audet

By: Denis Marc Audet

Date: Dec. 13, 2022

Defendant

Stuart A. Fraser

By: _____

Date: _____

Michael Pfeiffer

By: _____

Date: _____

Dean Allen Shinnars

By: _____

Date: _____

64. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

AGREED TO BY:

Plaintiffs individually, and on behalf of the **Defendant**
Settlement Class

Denis Marc Audet

By: _____

Date: _____

Stuart A. Fraser

By: _____

Date: _____

Michael Pfeiffer

By: Michael Pfeiffer

Date: December 14, 2022

Dean Allen Shinnors

By: _____

Date: _____

rrennie@susmangodfrey.com

64. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

AGREED TO BY:

Plaintiffs individually, and on behalf of the Settlement Class

Denis Marc Audet

By: _____

Date: _____

Michael Pfeiffer

By: _____

Date: _____

Dean Allen Shinnors

By: Dean Allen Shinnors

Date: 12-12-2022

Defendant

Stuart A. Fraser

By: _____

Date: _____

APPROVED ONLY AS TO FORM:

Daniel H. Weiner
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
Tel: (212) 837-6000
Fax: (212) 422-4726
daniel.weiner@hugheshubbard.com

Counsel for Defendant Stuart A. Fraser



Jacob W. Buchdahl
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
Fax: 212-336-8340
jbuchdahl@susmangodfrey.com

Class Counsel and Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DENIS MARC AUDET, MICHAEL
PFEIFFER, and DEAN ALLEN SHINNERS,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

STUART A. FRASER, GAW MINERS, LLC,
and ZENMINER, LLC (d/b/a ZEN CLOUD),

Defendants.

Case 3:16-cv-00940

Hon. Michael P. Shea
Courtroom 2

ECF Case

CLASS ACTION

JOINT STIPULATION AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, subject to the Court's approval and pursuant to Rule 23 of the Federal Rules of Civil Procedure, by and between: (i) Plaintiffs Denis Marc Audet, Michael Pfeiffer, and Dean Allen Shinners (collectively "Plaintiffs"), individually and on behalf of the Settlement Class (as defined herein); and (ii) Defendant Stuart A. Fraser ("Fraser"), that the causes of action and matters raised by and related to this lawsuit, as captioned above, are hereby settled and compromised on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement ("Agreement").

This Agreement is made and entered into by and between Plaintiffs and Fraser and is intended to fully, finally, and forever resolve, discharge, and settle the Action and the Released Claims (both as described below) upon and subject to the terms and conditions hereof.

Capitalized terms in this Agreement shall have the meaning set forth at Section I below.

I. DEFINITIONS AND CONSTRUCTION

1. “Action” means the lawsuit, captioned *Audet, et al. v. Fraser, et al.*, Case No. 3:16-cv-00940, currently pending in the United States District Court for the District of Connecticut.

2. “Agreement” means this Joint Stipulation and Settlement Agreement.

3. “Claimants” means all Settlement Class Members who submit valid and timely Settlement Claims.

4. “Claims” means all suits, proceedings, claims, cross-claims, counter-claims, complaints, charges, controversies, liabilities, rights, demands, agreements, contracts, covenants, promises, obligations, undertakings, debts, indemnities, accounts, bills, dues, sums of money, costs, fees (including without limitation attorneys’ fees), expenses, losses, damages (including without limitation compensatory damages, statutory damages, liquidated damages, exemplary damages and punitive damages), liens, actions, or causes of action (however denominated), including Unknown Claims, of any nature, character, or description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, present or contingent, or asserted or unasserted.

5. “Class Counsel” means Susman Godfrey L.L.P.

6. “Class Counsel’s Fees and Expenses” means the amount of the award approved by the Court to be paid to Class Counsel from the Settlement Fund for attorneys’ fees and reimbursement of Class Counsel’s costs and expenses.

7. “Class Notice” means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator to the Settlement Class.

8. “Court” means The United States District Court for the District of Connecticut, Hon. Michael P. Shea.

9. “Fairness Hearing” means the hearing at which the Court considers final approval of the Settlement.

10. “Final Approval Date” means the date on which the Court enters its Order and Judgment approving the Settlement.

11. “Final Settlement Date” means the date on which the Order and Judgment becomes final, which shall be the latest of: (i) the date of final affirmance on any appeal of the Order and Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any form of valid appeal from the Order and Judgment.

12. “Fraser” means Defendant Stuart A. Fraser.

13. “Incentive Awards” means the aggregate amount of any awards approved by the Court to be paid to Plaintiffs from the Settlement Fund, in addition to any settlement relief they may be eligible to receive, to compensate Plaintiffs for their efforts undertaken on behalf of the Settlement Class. The Incentive Awards shall be made to Plaintiffs in addition to, and shall not diminish or prejudice in any way, any settlement relief which they may be eligible to receive.

14. “Net Settlement Fund” means the Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Awards awarded by the Court; (iii) any Class Counsel’s Fees and Expenses awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order and Judgment.

15. “Notice Date” means the earliest date on which any form of the Class Notice is first mailed, published, or appears online.

16. “Objection Period” means the 45-day period that begins on the Notice Date and ends 45 days after the Notice Date, or as otherwise determined by the Court. The deadline for the Objection Period will be specified in the Class Notice.

17. “Opt-Outs” means the persons and entities who timely elected to opt out of the Class on or before October 28, 2019.

18. “Order and Judgment” means the Court’s order approving the Settlement and entering final judgment.

19. “Parties” means, collectively, Plaintiffs and Fraser. The singular term “Party” means any of Plaintiffs or Fraser, as appropriate.

20. “Plaintiffs” means Denis Marc Audet, Michael Pfeiffer, and Dean Allen Shinnors, individually and as representatives of the Settlement Class, and their assigns, successors, and representatives.

21. “Plan of Distribution” means a distribution formula or other process for allocating the Net Settlement Fund to Claimants.

22. “Released Claims” means all past, present and future Claims that the Releasing Parties ever had, have now, or hereafter can, shall, or may have against the Released Parties, which were asserted or could have been asserted in the Action, arising out of or related in any way to the Action or the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action.

23. “Released Parties” means Fraser and his spouse, children, and any other family members, heirs, assigns, successors, and representatives.

24. “Releasing Parties” means Plaintiffs and each Settlement Class Member, and their respective heirs, assigns, successors, and representatives (for individual Settlement Class

Members) and past and present parents, subsidiaries, affiliates, employees, officers, directors, members, partners, principals, assigns, successors, agents, and representatives (for Settlement Class Members that are entities).

25. “Settlement” means the settlement set forth in this Agreement.

26. “Settlement Administration Expenses” means all Class Notice and administrative fees, costs, or expenses incurred in administering the Settlement, including the fees charged by the Settlement Administrator, as well as the fees, costs, and expenses incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Settlement Fund.

27. “Settlement Administrator” means the third-party settlement administrator of the Settlement as approved by the Court. Plaintiffs shall be responsible for selecting the Settlement Administrator.

28. “Settlement Claims” means claims submitted by Settlement Class Members to share in the Net Settlement Fund.

29. “Settlement Class” means all persons and entities who, between August 1, 2014 and January 19, 2015, (1) purchased Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC and/or ZenMiner, LLC; or (2) acquired Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC and/or ZenMiner, LLC, by converting, upgrading, or exchanging other products sold by GAW Miners, LLC and/or ZenMiner, LLC. Specifically excluded from the Settlement Class are the Opt Outs, any defendants, any parent, subsidiary, affiliate, or employee of any defendant, any co-conspirator, and any governmental agency.

30. “Settlement Class Member(s)” means all persons and entities that are included in the Settlement Class.

31. “Settlement Fund” means the cash funds Fraser will pay into the Settlement Fund Account pursuant to Paragraph 36.

32. “Settlement Fund Account” means the escrow account from which all payments out of the Settlement Fund will be made. Plaintiffs shall establish the escrow account at a depository institution, that Plaintiffs will select, and such funds shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. The Parties and their respective counsel shall have no responsibility for or liability whatsoever with respect to investment decisions made for the Settlement Fund Account. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Class.

33. “Unknown Claims” means any claims asserted, that might have been asserted, or that hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action or that could have been alleged in the Action that the Releasing Parties do not know or suspect to exist in his or her favor at the Final Approval Date, and which if known by him or her might have affected his or her decision to object to the Settlement.

34. The terms “he or she” and “his or her” include “it” or “its,” where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

35. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

II. SETTLEMENT RELIEF

36. Fraser agrees to fund the Settlement Fund, in the amount of \$3,500,000. Fraser shall deposit the Settlement Fund into the Settlement Fund Account in three installments in accordance with the following plan: (i) Fraser shall deposit the first installment of \$1.5 million, no later than thirty (30) business days after the date that the Court grants preliminary approval of this Settlement; and (ii) Fraser shall deposit the next two installments of \$1 million each 4 months and 8 months respectively from the date of the first installment payment. If the Court's approval of the Settlement becomes final and no longer subject to appeal, upon the Final Settlement Date, there will be no reversion of the Settlement Amount to Fraser. In the event the Settlement does not become final, and there is no Final Settlement Date, the full settlement amount paid into the Settlement Fund by Fraser will be fully refunded back to Fraser; in such an event, Plaintiffs and Plaintiffs' counsel shall reasonably work with Fraser and Fraser's counsel in good faith to effectuate such refund.

37. The Net Settlement Fund shall be distributed to Claimants pursuant to a Plan of Distribution to be developed by Class Counsel and approved by the Court. Fraser will not oppose any such proposed Plan of Distribution, provided that no payment or other disbursement shall be made out of the Settlement Fund Account for any reason until after the Final Settlement Date. Under no circumstances shall the Parties or their respective counsel be liable to a Settlement Class Member or any other person or entity in connection with the Plan of Distribution and its implementation.

38. Under no circumstances shall Fraser be liable or obligated to pay any fees, expenses, costs, or disbursements to any person or entity, in connection with the Action, this Agreement, or the Settlement other than the Settlement Fund amount, which represents Fraser's total and maximum contribution to this Settlement, inclusive without limitation of all relief to the

Settlement Class, Class Counsel's Fees and Expenses, Incentive Awards, and Settlement Administration Fees.

III. PRELIMINARY APPROVAL AND CLASS NOTICE

39. The Parties agree that Plaintiffs shall move for an order seeking preliminary approval of the Settlement, which shall include a request to notify the Settlement Class of the Settlement and provide a period during which Settlement Class Members may object to the Settlement. Plaintiffs will share a draft of the motion seeking preliminary approval of the Settlement, including any proposed Class Notice and Plan of Distribution, with Fraser no less than 3 business days before it is filed. Plaintiffs will share a draft of the motion seeking final approval of the Settlement (but not Class Counsel's Motion for Plaintiffs' Incentive Awards and Class Counsel's Fees and Expenses) with Fraser no less than 5 business days before it is filed. Fraser will not oppose the motions or any proposed Class Notice and Plan of Distribution, provided they are in accordance with this Agreement. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Parties will negotiate in good faith to modify the Settlement and endeavor to resolve the issue(s) to the satisfaction of the Court.

40. Settlement Class Members may object to this Settlement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Class Notice) within the Objection Period. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member and of the Settlement Class Member's counsel, if any; (2) documentation of the Settlement Class Member's purchase or acquisition of Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC or ZenMiner, LLC between August 1, 2014 and January 19, 2015; (3) a written statement of all grounds for the objection accompanied by legal support for the objection (if any); (4) copies of any papers, briefs, or other documents

upon which the objection is based; (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing, individually and/or through counsel; and (7) the signature of the Settlement Class Member or his/her counsel. If an objecting Settlement Class Member retains counsel in connection with the objection, after serving the objection, the Settlement Class Member shall promptly notify counsel for the respective Parties. Unless otherwise ordered by the Court, Settlement Class Members who do not timely make their objections as provided in this paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal any aspect of the Settlement, including any Incentive Awards or Class Counsel's Fees and Expenses. The Class Notice shall advise Settlement Class Members of their right to object and the manner required to do so.

41. Within 10 calendar days following the filing of this Agreement with the Court, Fraser shall serve notices of the proposed Settlement upon appropriate officials in compliance with the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. Plaintiffs and Class Counsel shall cooperate in good faith with Fraser's counsel to provide information reasonably necessary to prepare the CAFA notices.

IV. INCENTIVE AWARD AND FEES AND EXPENSES

42. Class Counsel may move for an award of attorneys' fees, reimbursement of all expenses incurred or to be incurred, and Incentive Awards to the Plaintiffs, payable only from the Settlement Fund, provided that Class Counsel will not move for any award of attorneys' fees exceeding 33 1/3% of the Settlement Fund. Class Counsel's Fees and Expenses and Plaintiffs' Incentive Awards, as approved by the Court, may be paid immediately upon the later of (i) the date on which the Court enters an order approving such awards, and (ii) the Final Settlement Date, or at a later date if required by the Court (the "Earliest Award Payment Date"). In the event the Settlement Fund Account is not fully funded on the Earliest Award Payment Date, the awards may

be paid out of the Settlement Fund Account as soon as the account is sufficiently funded, in accordance with the timeline set forth in Paragraph 36, after the Earliest Award Payment Date. Fraser agrees not to oppose Class Counsel's proposed Incentive Awards or Class Counsel's proposed Fees and Expenses to the extent the request does not exceed the amount set forth above.

43. Neither Plaintiffs nor Fraser shall be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action, the Released Claims, this Agreement, or the Settlement, other than those expressly provided in this Agreement. For clarity, Fraser's liability or obligation to pay any amounts under this Agreement are limited to the amount set forth in Paragraph 36 above.

44. The Parties agree that the Settlement is not conditioned on the Court's approval of Incentive Awards or Class Counsel's Fees and Expenses.

V. TAX REPORTING AND NO PREVAILING PARTY

45. Any person or entity receiving any payment or consideration pursuant to this Agreement shall alone be responsible for the reporting and payment of any federal, state and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement, and Fraser shall not have obligations to report or pay any federal, state and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement.

46. All taxes resulting from the tax liabilities of the Settlement Fund shall be paid solely out of the Settlement Fund.

47. No Party shall be deemed the prevailing party for any purposes of this Action.

VI. RELEASES AND WAIVERS

48. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Parties of and from all Released Claims.

49. The Releasing Parties hereby expressly further agree that they shall not now or hereafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Released Parties asserting Released Claims.

50. Nothing in this Section VI shall preclude any action to enforce the terms of this Agreement.

51. The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

VII. OTHER PROVISIONS

52. The Parties: (i) acknowledge that it is their intent to consummate this Agreement, (ii) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and conditions of the Agreement, and (iii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. The Parties agree that the amounts paid in the Settlement and the other terms of the Settlement were negotiated in good faith, and at arm's length by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

53. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, Fraser's counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement and the Settlement contained therein or further orders of the Court.

54. Fraser specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the claims in the Action and makes no concessions or admissions of

liability of any sort. Neither this Agreement, nor the Settlement, nor any drafts or communications related thereto, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Claims, or of any alleged wrongdoing or liability of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any alleged fault or omission of the Released Parties, in any civil, criminal, administrative, or other proceeding in any court, administrative agency, or other tribunal. Nothing in this paragraph shall prevent Fraser and/or any of the Released Parties from using this Agreement or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

55. The Parties agree that if this Agreement or the Settlement fails to be approved, fails to become effective, otherwise fails to be consummated, is declared void, or if there is no Final Settlement Date, then the Parties will be returned to *status quo ante*, as if this Agreement had never been negotiated or executed, and the Parties will work in good faith to ensure the prompt return of any amounts in the Settlement Fund Account to Fraser, except that no incurred Settlement Administration Expenses shall be recouped. Each Party will be restored to the place it was in as of the date this Agreement was signed with the right to assert in the Action any argument or defense that was available to it at that time.

56. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless

the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No amendment or modification made to this Agreement pursuant to this paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. Plaintiffs and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or modifications made to this Agreement on any website for the Settlement if approved by the Court as part of Class Notice, as described in Paragraph 39.

57. Each person executing the Agreement on behalf of any Party hereby warrants that such person has the full authority to do so.

58. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Furthermore, electronically signed PDF versions or copies of original signatures may be accepted as actual signatures and will have the same force and effect as the original.

59. The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties hereto. This Agreement is not designed to and does not create any third-party beneficiaries either express or implied, except for the Settlement Class Members.

60. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of this Agreement are contractual and are the product of arms-length negotiations between the Parties and their counsel. Each Party and its respective counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement shall not be construed against any Party.

61. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Connecticut, without reference to its choice-of-law or conflict-of-laws rules.

62. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement and any discovery sought from or concerning objectors to this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

63. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturday and Sunday) express delivery service as follows:

(a) If to Fraser, then to:

Daniel H. Weiner
Marc A. Weinstein
Amina Hassan
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
Tel: (212) 837-6000
Fax: (212) 422-4726
daniel.weiner@hugheshubbard.com
marc.weinstein@hugheshubbard.com
amina.hassan@hugheshubbard.com

(b) If to Plaintiffs or the Class, then to:

Jacob Buchdahl
Seth Ard
Geng Chen
Russell Rennie
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (212) 336-8330
Fax: (212) 336-8340
jbuchdahl@susmangodfrey.com
sard@susmangodfrey.com
gchen@susmangodfrey.com

rrennie@susmangodfrey.com

64. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

AGREED TO BY:

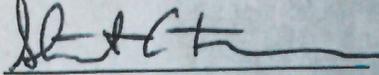
Plaintiffs individually, and on behalf of the **Defendant**
Settlement Class

Denis Marc Audet

By: _____

Date: _____

Stuart A. Fraser

By: 

Date: 12-12-22

Michael Pfeiffer

By: _____

Date: _____

Dean Allen Shinnors

By: _____

Date: _____

APPROVED ONLY AS TO FORM:



Daniel H. Weiner
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
Tel: (212) 837-6000
Fax: (212) 422-4726
daniel.weiner@hugheshubbard.com

Counsel for Defendant Stuart A. Fraser

Jacob Buchdahl
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
Fax: 212-336-8340
jbuchdahl@susmangodfrey.com

Class Counsel and Counsel for Plaintiffs

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DENIS MARC AUDET, MICHAEL
PFEIFFER, and DEAN ALLEN SHINNERS,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

STUART A. FRASER, GAW MINERS, LLC,
and ZENMINER, LLC, (d/b/a ZEN CLOUD),

Defendants.

Case 3:16-cv-00940

Hon. Michael P. Shea
Courtroom 2

ECF Case

CLASS ACTION

DECEMBER 16, 2022

PLAN OF DISTRIBUTION

1. **Settlement Fund.** The Settlement Fund is \$3,500,000. The Settlement Agreement can be found at www.gawminersclassaction.com. All capitalized terms herein are used as defined in the Settlement Agreement. The Net Settlement Fund shall be distributed to Claimants as described below.
2. **Qualifying Products.** For purposes of this Plan of Distribution, a “Qualifying Product” is a Hashlet, Hashpoint, HashStaker, or Paycoin that qualifies its holder to be a member of the Settlement Class, and for which a valid and timely Settlement Claim has been filed. The Settlement Class means, subject to certain exceptions set forth in the Settlement Agreement, all persons and entities who, between August 1, 2014 and January 19, 2015, (1) purchased Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC and/or ZenMiner, LLC; or (2) acquired Hashlets, Hashpoints, HashStakers, or Paycoin from GAW Miners, LLC and/or ZenMiner, LLC, by converting, upgrading, or exchanging other products sold by GAW Miners, LLC and/or ZenMiner, LLC. For purposes of this

Plan of Distribution, GAW Miners, LLC and ZenMiner, LLC are referred to collectively as “GAW.”

3. **Claimants.** To earn benefits from the Settlement Fund, a Settlement Class Member must submit a timely Settlement Claim that is accepted in whole or in part by the Settlement Administrator.
4. **Paid to GAW and Received from GAW.** For purposes of this Plan of Distribution, “Paid to GAW” refers to amounts paid to GAW for Qualifying Products. “Received from GAW” refers to amounts received from GAW associated with Qualifying Products (*i.e.*, mining rewards from Hashlets).
5. **Sales of Qualifying Products.** For purposes of this Plan of Distribution, “Sales of Qualifying Products” refers to amounts received by Claimants for selling Qualifying Products.
6. **Mined Hashpoints.** The Settlement Class includes Settlement Class Members who acquired Hashpoints by “mining” them with Hashlets. For purposes of this Plan of Distribution, “Mined Hashpoints” refers to the value of these “mined” Hashpoints received by Claimants and shall be calculated at \$0.01 per Hashpoint.
7. **Denomination.** With respect to amounts Paid to GAW, Received from GAW, or received from Sales of Qualifying Products, all such amounts shall be denominated in U.S. Dollars for the purposes of this Plan of Distribution.
8. **Pro Rata Claim.** The Settlement Administrator will determine the *Pro Rata* Claim of each Claimant by calculating each Claimant’s *pro rata* share of the Net Settlement Fund. This will be calculated in the following four steps:
 - a. **First,** the Claimant’s Claimant Stake will be calculated as follows:

$$\text{Total Stake} = (\text{Paid to GAW}) + (\text{Mined Hashpoints}) - (\text{Received from GAW}) - (\text{Sales of Qualifying Products})$$

- b. Second, the Total Stake will be calculated by summing all Claimant Stakes.
 - c. Third, each Claimant's *Pro Rata* Percentage will be calculated by dividing that Claimant's Claimant Stake by the Total Stake.
 - d. Fourth, each Claimant's *Pro Rata* Claim will be calculated by multiplying the amount in the Net Settlement Fund by the Claimant's *Pro Rata* Percentage.
 - e. Fifth, each Claimant's *Pro Rata* Claim may be subject to adjustment based upon compensation received pursuant to the Restitution Order in *United States v. Garza*, Case No. 3:17-cr-158-RNC (D. Conn.).
9. **Claim Validation.** The Settlement Administrator shall have discretion to audit any Settlement Claim including but not limited to auditing the information submitted with information contained in the ZenCloud database and/or Paybase database. The Settlement Administrator shall also have discretion to require the submission of documentation or other supporting material to validate a Settlement Claim. For example, the Settlement Administrator may require a supplemental submission when a Claimant Stake is significantly higher than the average Claimant Stake. The Settlement Administrator shall have discretion to accept or reject a supplemental submission or to require an additional submission if needed to validate a Settlement Claim, subject to Court approval in the event of any dispute.
10. **Distribution.** The Settlement Administrator will distribute the *Pro Rata* Claims to the Claimants from the Net Settlement Fund. The Settlement Administrator shall have the discretion to resolve any disputes regarding the meaning and application of this Plan of

Distribution, subject to Court approval if a Settlement Class Member affected by the Settlement Administrator's determination objects to that resolution.

11. **De Minimis Amount.** No payment will be made to any Claimant whose *Pro Rata* Claim would be \$10 or less; in such an event, the amount of that *Pro Rata* Claim will revert back to the Net Settlement Fund.
12. **Modifications.** This Plan of Distribution may be modified upon further order of the Court. Any modifications to the Plan of Distribution will be published on the website <https://www.gawminersclassaction.com>, and Settlement Class Members should check the website for updates to this Plan of Distribution regularly, including on the day of the final deadline for the filing of Settlement Claims.