

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

WEINING HU, derivatively on behalf of
GINKGO BIOWORKS HOLDINGS, INC., a
Delaware corporation,
Plaintiff,
vs.
ELI BAKER, *et al.*,
Defendants,
- and -
GINKGO BIOWORKS HOLDINGS, INC.,
Nominal Defendant.

Case No. 4:23-cv-02077-KAW

The Honorable Kandis A. Westmore

ERIC BOWERS, Derivatively on behalf of
Nominal Defendant GINKGO BIOWORKS
HOLDINGS, INC.,
Plaintiff,
vs.
JASON KELLY, *et al.*,
Defendants,
- and -
GINKGO BIOWORKS HOLDINGS, INC.,
Nominal Defendant.

Case No. 4:23-cv-05396-KAW

The Honorable Kandis A. Westmore

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) dated May 27, 2025, is entered into by and among: (i) Weining Hu (“Hu”) and Eric Bowers (“Bowers”), plaintiffs in the above-styled derivative actions (together, the “Federal Derivative Actions”) on behalf of Ginkgo Bioworks Holdings, Inc. (“Ginkgo” or the “Company”); (ii) Dylan Newman (“Newman”) and Shlomo Moskowitz (“Moskowitz”), plaintiffs in the consolidated derivative action on behalf of Ginkgo styled *In re Ginkgo Bioworks Holdings, Inc. Stockholder Derivative Litigation*, C.A. No. 2024-0361-KSJM (Del. Ch.), pending in the Court of Chancery of the State of Delaware (the “Delaware Chancery Action”) (the Federal Derivative Actions and the Delaware Chancery Action are collectively referred to as the “Derivative Actions,” and the plaintiffs in the Derivative Actions are collectively referred to as the “Plaintiffs”); (iii) Eli Baker, Arie Beldegrun, Marijn Dekkers, Scott M. Delman, Mark Dmytruk, Christian Henry, Jason Kelly, Reshma Kewalramani, Isaac Lee, Timothy Leiweke, Dennis A. Miller, Laurence E. Paul, Shyam Sankar, Reshma Shetty, Harry E. Sloan, Joshua Kazam, Anna Marie Wagner, and Eagle Equity Partners III, LLC, defendants in the Derivative Actions (collectively, the “Individual Defendants”); and (iv) nominal defendant Ginkgo (together with the Individual Defendants, the “Defendants”) (Plaintiffs and Defendants are collectively referred to as the “Parties” or the “Settling Parties”), by and through their respective undersigned counsel. Subject to the approval of the United States District Court for the Northern District of California (the “Court”) and the terms and conditions expressly provided herein, this Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims.¹

I. THE DERIVATIVE ACTIONS

A. Procedural History of the Derivative Actions

1. The Federal Derivative Actions

On April 28, 2023, Hu filed the action styled *Hu v. Baker, et al.*, No. 4:23-cv-02077-KAW, in this Court derivatively on behalf of nominal defendant Ginkgo against certain of the Individual Defendants alleging claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, violations of Section 14(a) of the Securities Exchange Act of 1934 (“Exchange Act”), unjust

¹ Capitalized words or terms used herein, unless otherwise defined, shall have the meanings ascribed to them in Section II.A.1 herein titled “Certain Definitions.”

1 enrichment, and contribution and indemnification (the “*Hu* Action”).

2 On October 20, 2023, Bowers filed the action styled *Bowers v. Kelly, et al.*, No. 4:23-cv-05396-
3 KAW, in this Court derivatively on behalf of nominal defendant Ginkgo against certain of the
4 Individual Defendants alleging claims for violations of Section 14(a) of the Exchange Act, breach of
5 fiduciary duty, aiding and abetting breach of fiduciary duty, unjust enrichment, abuse of control, gross
6 mismanagement, and waste of corporate assets (the “*Bowers* Action”). Prior to filing his complaint,
7 Bowers made a litigation demand on the Company’s board of directors (the “Board”) to investigate
8 and redress the wrongdoing alleged in the Derivative Actions (the “Litigation Demand”).

9 On December 15, 2023, the Court entered a Stipulation and Order staying the *Bowers* Action
10 pending events in the related securities class action captioned *Bernstein v. Ginkgo Bioworks Holdings,*
11 *Inc., et al.*, C.A. No. 4:21-cv-08943-KAW, in this Court (the “Securities Action”) and subject to
12 certain conditions. On January 29, 2024, the Court entered a similar Stipulation and Order in the *Hu*
13 Action. On February 28, 2024, Hu moved to consolidate the *Hu* Action and the *Bowers* Action
14 (previously defined, together, as the “Federal Derivative Actions”). Bowers opposed Hu’s motion.
15 On September 13, 2024, the Court denied Hu’s motion to consolidate. On January 17, 2025,
16 Defendants moved to dismiss in part and transfer in part both Federal Derivative Actions and filed
17 therewith requests for judicial notice. On February 19, 2025, the Court entered a Stipulation and Order
18 suspending the deadlines in the Federal Derivative Actions to allow the parties to finalize settlement
19 of the Derivative Actions.

20 **2. The Delaware Chancery Action**

21 On April 14, 2023, Newman made a demand to inspect the Company’s books and records
22 pursuant to 8 *Del. C.* § 220 in connection with the misconduct alleged in the Derivative Actions (the
23 “Newman 220 Demand”). Thereafter, pursuant to a confidentiality agreement, the Company produced
24 over four thousand pages of documents to Newman that were responsive to his demand (the “220
25 Documents”). On April 4, 2024, utilizing the 220 Documents, Newman filed the action styled
26 *Newman v. Eagle Equity Partners III, LLC, et al.*, C.A. No. 2024-0361-KSJM (Del. Ch.), in the
27 Delaware Chancery Court derivatively on behalf of nominal defendant Ginkgo against the Individual
28 Defendants alleging claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty,

1 and unjust enrichment (the “*Newman Action*”).

2 On July 6, 2023, Moskowitz made a demand to inspect the Company’s books and records
3 pursuant to 8 *Del. C.* § 220 in connection with the misconduct alleged in the Derivative Actions (the
4 “Moskowitz 220 Demand,” and with the Newman 220 Demand, the “220 Demands”). Thereafter,
5 pursuant to a confidentiality agreement, the Company produced 220 Documents to Moskowitz that
6 were responsive to his demand. On April 17, 2024, utilizing the 220 Documents, Moskowitz filed the
7 action styled *Moskowitz v. Kelly, et al.*, C.A. No. 2024-0401-KSJM (Del. Ch.), in the Delaware
8 Chancery Court derivatively on behalf of nominal defendant Ginkgo against certain of the Individual
9 Defendants alleging claims for breach of fiduciary duty, contribution and indemnification, and aiding
10 and abetting breach of fiduciary duty (the “*Moskowitz Action*”).

11 On September 10, 2024, the Delaware Chancery Court granted the parties’ stipulation for
12 consolidation of the *Newman Action* and the *Moskowitz Action* (into the “Delaware Chancery
13 Action”), appointing co-lead counsel, and extending the defendants’ deadline to respond to the
14 operative complaint. On November 22, 2024, Defendants moved to dismiss the operative complaint
15 in the Delaware Chancery Action and filed an opening brief in support of their motion. On January
16 17, 2025, plaintiffs in the Delaware Chancery Action filed a verified amended consolidated complaint.

17 **B. Mediation and Settlement**

18 The Settling Parties, by and through their undersigned attorneys, engaged in months of good-
19 faith, arm’s-length discussions and negotiations with regard to the possible settlement of the
20 Derivative Actions. To that end, the Settling Parties agreed to participate in mediation before Michelle
21 Yoshida, Esq. of Phillips ADR Enterprises (the “Mediator”), a nationally recognized mediator with
22 extensive experience mediating complex shareholder disputes similar to the Derivative Actions, who
23 was also serving as mediator in the related Securities Action.

24 On January 30, 2024, plaintiffs in the Federal Derivative Actions participated in a virtual
25 mediation before the Mediator to discuss a possible settlement. Following several calls with the
26 Mediator in the weeks that followed, on March 22, 2024, Bowers provided Ginkgo and the Individual
27 Defendants with a detailed settlement demand.

28 On September 30, 2024, counsel for Plaintiffs in the Derivative Actions participated in a full-

1 day, in-person mediation session in New York City before the Mediator, along with counsel for
2 Ginkgo and the Individual Defendants. In advance of the mediation, Plaintiffs in the Derivative
3 Actions prepared and submitted a detailed mediation statement and prepared and served a global
4 settlement demand upon Defendants.

5 While no resolution was reached at the conclusion of either mediation session, progress was
6 made and the Parties continued negotiating a potential settlement thereafter and engaging in frank
7 discussions regarding the strengths and weaknesses of the claims and defenses at issue, with the
8 facilitation and, when necessary, the involvement of the Mediator. The Settling Parties continued to
9 exchange information, documents, and detailed written settlement proposals and counterproposals,
10 debating the merits of the proposals in numerous communications between the Settling Parties’
11 counsel and the Mediator.

12 From January 2024 to February 2025, Plaintiffs’ Counsel had numerous discussions with
13 Defendants’ Counsel (defined *infra*) and the Mediator regarding settlement issues and to request
14 additional information. On February 8, 2025, the Mediator made a double-blind recommendation
15 concerning the cash component of the Settlement, in the amount of \$4,125,000, which the Settling
16 Parties accepted. See paragraph 2.1 *infra*. At the same time, the Settling Parties agreed on the
17 corporate governance reforms to be adopted by the Company in connection with the Settlement, as set
18 forth below in paragraph 2.5 (the “Reforms”), as well as the valuable contract termination, as set forth
19 and described below in paragraph 2.2.

20 After reaching agreement on the cash component, Reforms, and contract termination, the
21 Settling Parties commenced negotiations regarding reasonable attorneys’ fees and expenses to be paid
22 to Plaintiffs’ Counsel (defined *infra*), subject to Court approval, in consideration for the substantial
23 benefits conferred upon Ginkgo and Current Ginkgo Stockholders (defined *infra*) by the Settlement.

24 **C. Plaintiffs’ Claims and the Benefits of Settlement**

25 Plaintiffs asserted claims for violations of the Exchange Act, breaches of fiduciary duty, the
26 aiding and abetting thereof, and related stockholder causes of action under Delaware law against the
27 Individual Defendants in connection with, *inter alia*, the Individual Defendants’ (i) alleged material
28 misstatements and omissions about the Company’s revenue and sources of revenue; and (ii) other

1 alleged misconduct in connection with the business combination between Ginkgo Bioworks, Inc.
2 (“Legacy Ginkgo”) and the special purpose acquisition company (“SPAC”) Soaring Eagle Acquisition
3 Corp. (“Soaring Eagle”) that formed Ginkgo.

4 Plaintiffs and Plaintiffs’ Counsel brought the claims in good faith and continue to believe that
5 the claims asserted in the Derivative Actions have merit. However, Plaintiffs and Plaintiffs’ Counsel
6 recognize and acknowledge the expense, time, and uncertainty inherent in the continued prosecution
7 of their claims in the Derivative Actions through dispositive motion practice, trial(s) and any
8 subsequent appeal(s). Plaintiffs and Plaintiffs’ Counsel also have taken into account the uncertain
9 outcome and the risk of any litigation, especially in complex actions such as the Derivative Actions,
10 as well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs’ Counsel also
11 are mindful of the inherent problems of proof of, and possible defenses to, the claims asserted in the
12 Derivative Actions. Based on their investigation and evaluation set forth in more detail *infra*, the
13 Plaintiffs and Plaintiffs’ Counsel have determined that the Settlement set forth in this Stipulation is in
14 the best interests of Ginkgo and Current Ginkgo Stockholders.

15 Plaintiffs’ Counsel have conducted an extensive investigation, including, *inter alia*:
16 (i) reviewing Ginkgo’s press releases, public statements, U.S. Securities and Exchange Commission
17 (“SEC”) filings, and securities analysts’ reports and advisories about the Company; (ii) reviewing
18 public filings, media reports, and analyst commentaries about the Company; (iii) researching the
19 applicable law with respect to the claims asserted in the Derivative Actions and the potential defenses
20 thereto; (iv) reviewing and analyzing the Company’s Corporate Governance Guidelines and Code of
21 Conduct and the charters of all Board committees; (v) reviewing and analyzing the pleadings and other
22 papers filed in the Securities Action, and evaluating the merits of, and the Individual Defendants’
23 liability in connection with, the Securities Action and the Derivative Actions; (vi) certain Plaintiffs’
24 preparing and serving the litigation and books and records inspection demands; (vii) reviewing and
25 evaluating over four thousand pages of 220 Documents that were produced in response to certain
26 Plaintiffs’ books and records demands pursuant to 8 *Del. C.* §220; (viii) preparing and filing derivative
27 complaints, as well as a consolidated amended complaint in the Delaware Chancery Court; (ix)
28 reviewing certain Company contracts and the Company’s existing corporate governance policies and

1 preparing extensive settlement demands detailing proposed corporate governance reforms to
2 strengthen the Company's internal controls and corporate governance practices; (x) conducting
3 damages analyses and preparing extensive mediation statements; (xi) participating in multiple
4 mediation sessions and substantive, protracted settlement discussions with Defendants' Counsel under
5 the auspices of the Mediator; (xii) reviewing and analyzing confidential information provided to
6 Plaintiffs' Counsel in the context of mediation; and (xiii) negotiating this Stipulation.

7 Based on Plaintiffs' Counsel's thorough review and analysis of the relevant facts, allegations,
8 defenses, and controlling legal principles, Plaintiffs and Plaintiffs' Counsel submit that the Settlement
9 set forth in this Stipulation is fair, reasonable, adequate, and confers substantial benefits on Ginkgo
10 and Current Ginkgo Stockholders. Based upon Plaintiffs' Counsel's evaluation, Plaintiffs have
11 determined that the Settlement is in the best interests of Ginkgo and Current Ginkgo Stockholders,
12 and have agreed to settle the Derivative Actions upon the terms and subject to the conditions set forth
13 herein.

14 **D. Defendants' Denials of Wrongdoing**

15 Defendants have denied and continue to deny all allegations of wrongdoing, fault, liability or
16 damage to the Plaintiffs, to the Company, or to the Company's current and former stockholders,
17 including without limitations, deny that they engaged in any wrongdoing or violation of the law; deny
18 that they breached any fiduciary duty, including the duty of care, duty of loyalty, or duty of candor;
19 deny that they wasted corporate assets, were unjustly enriched, engaged in gross mismanagement, or
20 aided and abetted any breaches of fiduciary duty; deny that the Company's disclosures were deficient
21 in any way; deny that they violated any securities laws; and deny that they acted in bad faith or
22 improperly in any way. Defendants believe that they and all Released Persons (defined *infra*) have
23 acted properly at all times, believe that the complaints in the Derivative Actions have no merit, and
24 believe that Plaintiffs have failed to and/or cannot meet their burden of pleading with particularity that
25 any demand that the Company initiate legal action was excused or wrongfully refused.

26 Nonetheless, taking into account the uncertainty and risks inherent in any litigation, especially
27 in complex cases such as this one, the Defendants have concluded that further litigation of the
28 Derivative Actions would be protracted, burdensome, and expensive, and that it is desirable and

beneficial that the claims asserted in or that could be asserted in the Derivative Actions be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Stipulation.

E. Board Approval

Ginkgo's Board, including its independent, non-defendant directors, in a good-faith exercise of business judgment, has determined that: (i) the Settlement confers a substantial benefit upon Ginkgo and its stockholders; and (ii) the Settlement, and each of its terms, is in all respects fair, adequate, reasonable, and in the best interests of Ginkgo and its stockholders.

II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

A. Introduction

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Plaintiffs (on behalf of themselves, and derivatively on behalf of Ginkgo) and the Defendants, by and through their respective undersigned counsel or attorneys of record that, subject to approval of the Court, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Derivative Actions and the Released Claims (defined *infra*) shall be finally and fully compromised, settled and released, and the Derivative Actions shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Stipulation, as follows:

1. Certain Definitions

As used in this Stipulation the following terms have the meanings specified below:

1.1. "Court" means the United States District Court for the Northern District of California.

1.2. "Current Ginkgo Stockholder" or "Current Ginkgo Stockholders" means all record and beneficial owners of Ginkgo common stock and the representatives, trustees, executors, heirs, administrators, transferees, agents, successors, or assigns of all such owners, immediate or remote, in each case solely in their capacities as stockholders of Ginkgo, who own Ginkgo stock as of the date of the execution of this Stipulation and continue to hold their Ginkgo stock as of the date of the Settlement Hearing.

1.3. "Defendants' Counsel" means the law firms of Wachtell, Lipton, Rosen & Katz, White & Case LLP, Morrison & Foerster LLP, and Richards, Layton & Finger, P.A.

1 1.4. “Effective Date” means the first date by which all of the events and conditions specified
2 in paragraph 6.1 of this Stipulation have been met and have occurred.

3 1.5. “Fee and Expense Amount” means the agreed-to amount of \$2,750,000 to be paid to
4 Plaintiffs’ Counsel for attorneys’ fees and expense reimbursement, subject to paragraph 3.1 and Court
5 approval.

6 1.6. “Final” means (i) the Court has entered a Judgment (defined *infra*) approving the
7 Settlement in all material respects, including but not limited to (a) approving the scope of the Releases,
8 and (b) ordering the Clerk of the Court to enter final judgment in the form set forth in Exhibit D
9 pursuant to Federal Rule of Civil Procedure 54(b), finding that there is no just reason for delay of
10 enforcement or appeal of the Judgment, and (ii) the Judgment has not been reversed, vacated, or
11 modified in any way and is no longer subject to further appellate review, either because of disposition
12 on appeal and conclusion of the appellate process or because of passage of time for seeking appellate
13 review without action. More specifically, the foregoing clause (ii) is satisfied when (a) no appeal has
14 been filed and the time has passed for any notice of appeal to be timely filed from the Judgment; (b) if
15 an appeal has been filed, the court of appeal has either affirmed the Judgment or dismissed that appeal
16 and the time for any reconsideration or further appellate review has passed; or (iii) a higher court has
17 granted further appellate review and that court has either affirmed the Judgment or affirmed the court
18 of appeal’s decision affirming the Judgment or dismissing the appeal, and the time for any
19 reconsideration or further appellate review has passed. Provided, however, and notwithstanding any
20 provision to the contrary in this Settlement, “Final” shall not include (and the Settlement is expressly
21 not conditioned upon) the Court’s approval of attorneys’ fees and the reimbursement of expenses
22 agreed to be paid to the Plaintiffs’ Counsel, or the approval of payment of Service Awards (defined
23 herein at paragraph 3.3) for the time and expenses expended by the Plaintiffs, or any appeals solely
24 related thereto.

25 1.7. “Insurers” means Ginkgo’s and Soaring Eagle’s insurance carriers, as applicable, and is
26 inclusive of their respective reinsurers.

27 1.8. “Judgment” means the final order and judgment to be entered by the Court approving
28 the Settlement, substantially in the form attached hereto as Exhibit D.

1 1.9. “Long Form Notice” means the Notice of Pendency and Proposed Settlement of
2 Derivative Actions, a proposed version of which is submitted to the Court for approval and attached
3 hereto as Exhibit B.

4 1.10. “Notice” means collectively the Long Form Notice and Summary Notice of Proposed
5 Settlement of Derivative Actions (described at paragraph 1.21, *infra*).

6 1.11. “Person” means an individual, corporation, partnership, limited partnership, limited
7 liability company, association, joint stock company, estate, legal representative, trust, unincorporated
8 association, government or any political subdivision or agency thereof, and any business or legal entity
9 and their spouses, heirs, predecessors, successors, representatives, or assigns.

10 1.12. “Plaintiffs’ Counsel” means collectively, Bottini & Bottini, Inc., Rigrodsky Law, P.A.,
11 Wolf Haldenstein Adler Freeman & Herz LLP, Grabar Law Offices, Robbins LLP, Prickett, Jones &
12 Elliott, P.A., Weiss Law, and Cooch and Taylor, P.A.

13 1.13. “Preliminary Approval Order” means the order, substantially in the form attached
14 hereto as Exhibit A, preliminarily approving the Settlement and the form and manner of Notice to be
15 provided to Current Ginkgo Stockholders, and setting a date for the Settlement Hearing.

16 1.14. “Reforms” means the corporate governance reforms to be adopted by the Company in
17 connection with the Settlement, as set forth below in paragraph 2.4.

18 1.15. “Related Parties” means (i) with regard to any individual, his or her respective spouses,
19 immediate family members, heirs, executors, personal representatives, estates, administrators, trusts,
20 beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general
21 or limited partners of partnerships, joint ventures, member firms, limited liability companies,
22 corporations, predecessors, successors, and assigns or other individual or entity in which such
23 individual has a controlling interest, and each and all of their respective past and present officers,
24 directors, employees, agents, affiliates, parents, subsidiaries, divisions, attorneys, accountants,
25 auditors, advisors, heirs, executors, personal representatives, estates, administrators, trusts,
26 predecessors, successors, assigns, financial or investment advisors, consultants, investment bankers,
27 entities providing any fairness opinion, underwriters, brokers, dealers, lenders, and commercial
28 bankers; and (ii) with regard to any entity (*i.e.*, non-individual), its respective past or present agents,

1 officers, directors, attorneys, accountants, auditors, advisors, consultants, partners, controlling
2 stockholders, joint venturers, fiduciaries, partners, partnerships, general or limited partners of
3 partnerships, joint ventures, member firms, limited liability companies, corporations, related or
4 affiliated entities, employees, affiliates, predecessors, successors, parents, subsidiaries, and assigns,
5 and (iii) with regard to the Individual Defendants, their Insurers.

6 1.16. “Released Claims” shall collectively mean any and all manner of claims for relief, debts,
7 demands, rights or causes of action or liabilities whatsoever (including any claims for compensatory
8 damages, punitive damages, interest, attorneys’ fees, expert or consulting fees, and any other costs,
9 expenses, liability or relief, monetary, injunctive, or otherwise), whether based on federal, state, local,
10 foreign, international, statutory or common law or any other law, rule or regulation, whether fixed or
11 contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured,
12 pleaded or unpleaded, known or unknown, suspected or unsuspected (including Unknown Claims) that
13 (a) were asserted in any of the complaints filed in any of the Derivative Actions, the Litigation
14 Demand, the Newman 220 Demand, or the Moskowitz 220 Demand, or (b) could have been asserted
15 by Ginkgo directly, or any Plaintiff or other Current Ginkgo Stockholder derivatively on behalf of
16 Ginkgo, in any court, forum, tribunal, or proceeding arising out of or relating to any facts, allegations,
17 transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or
18 failures to act which were alleged, asserted, or referred to in any complaint in any of the Derivative
19 Actions, the Litigation Demand, the Newman 220 Demand, or the Moskowitz 220 Demand, except
20 for (i) any claims by a class member to recover under the approved plan of allocation in settlement of
21 the Securities Action; (ii) any claims by the Individual Defendants or any insured to enforce their
22 rights relating to insurance coverage, indemnification, or under any contract, and (iii) any claims to
23 enforce this Stipulation or the Settlement.

24 1.17. “Released Persons” means each and all of the Defendants and their Related Parties,
25 including their Insurers.

26 1.18. “Settling Parties” means Plaintiffs and Defendants, each a “Settling Party.”

27 1.19. “Settlement” means the settlement contemplated by this Stipulation.
28

1.20. "Settlement Hearing" means the hearing or hearings at which the Court will review the adequacy, fairness, and reasonableness of the Settlement, and whether the payment of the agreed-to Fee and Expense Amount and the Service Awards (as defined in paragraph 3.3) for the Plaintiffs to be drawn therefrom should be approved.

1.21. "Summary Notice" means the Summary Notice of Proposed Settlement of Derivative Actions, a proposed version of which is submitted to the Court for approval and attached hereto as Exhibit C.

1.22. "Unknown Claims" means any Released Claim that any Plaintiff, Defendant or Current Ginkgo Stockholder does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, including without limitation claims that, if known by him, her or it, might have affected his, her or its decision to enter into the Settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Settling Parties expressly waive and relinquish, and each of the Current Ginkgo Stockholders shall be deemed by operation of the Judgment to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by or under California Civil Code Section 1542, or any other laws of the United States or any state or territory of the United States, or principles of common law that are similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties and each Current Ginkgo Stockholder may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity, but the Parties and each other Current Ginkgo Stockholder derivatively

1 on behalf of the Company shall expressly, fully, finally and forever settle and release, and upon the
2 Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and
3 forever, any and all Released Claims as applicable without regard to the subsequent discovery or
4 existence of such different or additional facts. The Parties acknowledge, and the Current Ginkgo
5 Stockholders shall be deemed by operation of the Judgment to have acknowledged, that the foregoing
6 waiver was separately bargained for and is a key element of the Settlement of which this release is a
7 part.

8 1.23. All references in this Stipulation to “including” shall mean “including, but not limited
9 to.”

10 2. Settlement of the Derivative Actions

11 2.1. In connection with the Settlement and in consideration of the releases set forth herein,
12 Individual Defendants shall cause their Insurers to pay Ginkgo the sum of four million one hundred
13 twenty-five thousand dollars (\$4,125,000) (the “Settlement Amount”). The Settlement Amount shall
14 be paid by Individual Defendants’ Insurers to Ginkgo within thirty (30) days after the Court enters the
15 Judgment. Ginkgo will provide the Individual Defendants’ Insurers with wire payment instructions
16 and such other documents as may be reasonably required to facilitate timely payment of the Settlement
17 Amount. The Settlement Amount is inclusive of all fees and expenses of Plaintiffs’ Counsel and
18 Service Awards, which will be paid in the manner set forth in paragraphs 3.2 and 3.3 if approved by
19 the Court. In no event shall the Defendants or their Insurers be required to pay any amount greater
20 than the Settlement Amount in connection with the Settlement, other than as expressly set forth in
21 paragraph 4.1 with respect to the costs of providing Notice.

22 2.2. Within thirty (30) days after the Court enters the Judgment, the Company will terminate
23 the contract through which it has historically incubated new operating companies or “OpCos” via a
24 third-party service provider (the “Contract Termination”). The Parties estimate based upon their
25 analysis and investigation that the Contract Termination will have a value to the Company, in the form
26 of savings of fees under the contract and other associated costs savings over at least the next three (3)
27 years, of approximately \$3–4 million.
28

2.3. The Settling Parties acknowledge and agree that the Plaintiffs' litigation and settlement efforts in the Derivative Actions caused the payment of the Settlement Amount contemplated in paragraph 2.1 and the Contract Termination contemplated in paragraph 2.2.

2.4. Within thirty (30) days after the Court enters the Judgment, the Board shall take all necessary and appropriate action to adopt, implement, and maintain for a period of not less than three (3) years, the corporate governance, oversight, and internal controls Reforms set forth below. The Settling Parties acknowledge and agree that Plaintiffs' litigation and settlement efforts in the Derivative Actions were a substantial factor in the Board's agreement to adopt the Reforms. The Settling Parties further acknowledge and agree that these Reforms confer substantial benefits on the Company and Current Ginkgo Stockholders and that the Settlement on the terms set forth herein is in all respects fair, reasonable, and adequate, and serves the best interests of the Company and Current Ginkgo Stockholders.

2.5. In the event of any change in law or regulations that impacts any subject matter in the Reforms, the Company's Board may adopt such amendments as it determines in its good faith business judgment, after consultation with counsel, to be required to comply with such law or regulations while maintaining the purposes of the Reforms to the greatest extent practicable.

CORPORATE GOVERNANCE AND OTHER REFORMS

A. Oversight and Disclosure Procedures for Related Person Transactions

1. The Audit Committee of the Company's Board will review and oversee related person transactions in accordance with the Company's related person transaction policy and procedures, which shall be maintained in compliance with the requirements set forth below.
2. The members of the Audit Committee who review related person transactions shall include at least three directors, each of whom must satisfy the independence requirements of the New York Stock Exchange and the more rigorous independence rules for members of the Audit Committee issued by the U.S. Securities and Exchange Commission.
3. No member of the Audit Committee who reviews a related person transaction shall

1 have any direct or indirect financial interests in such transaction, other than stock
2 ownership in Ginkgo.

3 4. Further to the Audit Committee's responsibilities as set forth above, the Audit
4 Committee shall adopt the following enhancements to its review of related person
5 transactions:

6 i. At each meeting of the Audit Committee, the agenda shall include a
7 standing agenda item to discuss any new related person transactions that
8 require review in accordance with the Company's related person transaction
9 policy and procedures. In the event that no related person transactions are
10 submitted for review by the Audit Committee at any meeting, the agenda
11 shall note that fact.

12 ii. At each meeting of the Audit Committee at which a related person
13 transaction is submitted for review, the minutes of the meeting shall
14 separately record the discussion of such transaction, including the
15 Committee's determination and the grounds for approving or disapproving
16 such transaction.

17 5. The Company shall maintain a related person transaction policy and procedures
18 defining a "related person" as:

19 i. any person who is, or at any time since the beginning of the Company's last
20 fiscal year was, a director or executive officer of the Company or a nominee
21 to become a director of the Company;

22 ii. any person who is known to be the beneficial owner of more than 5% of any
23 class of the Company's voting securities;

24 iii. any immediate family member of any of the foregoing persons, which
25 means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-
26 law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-
27 law of a director, executive officer, nominee or beneficial owner of more
28 than 5% of any class of the Company's voting securities, and any other

1 person (other than a tenant or employee) sharing the same household of such
2 director, executive officer, nominee or beneficial owner of more than 5% of
3 any class of the Company's voting securities; and

4 iv. any firm, corporation or other entity in which any of the foregoing persons
5 is employed or is a general partner or principal or in a similar position or in
6 which such person has a 5% or greater beneficial ownership interest in any
7 class of the Company's voting securities.

8 6. The related person transaction policy and procedures that the Company shall
9 maintain shall further provide that:

10 i. a transaction between the Company and a related person valued at \$120,000
11 or more shall be presumed to be a material transaction requiring review in
12 accordance with the policy;

13 ii. a potential material related person transaction that is proposed to be entered
14 into by the Company must be reported to the Company's General Counsel
15 and Chief Financial Officer by both the related person and/or the person at
16 the Company proposing such potential related person transaction;

17 iii. if the Company's Legal Department determines that a transaction or
18 relationship is a related person transaction under the policy and procedures,
19 then the General Counsel, Chief Financial Officer ("CFO"), or their
20 designee shall present such transaction to the Audit Committee;

21 iv. a material related person transaction shall be consummated and shall
22 continue only if the Audit Committee has approved or ratified such
23 transaction;

24 v. management of the Company shall update the Audit Committee as to any
25 material changes to any approved or ratified related person transaction and
26 shall periodically provide a status report to the Audit Committee of all then
27 current related person transactions; and

28 vi. approved material related party transactions shall be disclosed in the

Company's securities filings. Furthermore, approved material related person transactions shall be disclosed to the Company's full Board of Directors.

B. Enhanced Employee Training in Related Person Transactions and Disclosures

1. The Company's General Counsel shall develop and implement a training program focused on best practices in managing, mitigating and ensuring proper disclosure of potential conflicts of interest that may arise from the Company and relationships between related persons and related person-affiliated or controlled entities. The program shall clearly inform participants of how a related party and a related party transaction is defined, and shall include the Company's policies and procedures for seeking advice and guidance from the General Counsel, and when and how matters should be escalated to the Audit Committee for evaluation and decision-making as provided herein.
2. Training will be provided to all Section 16 reporting officers and will be optional for other officers as the General Counsel may reasonably determine to be appropriate.

C. Audit Committee Enhancements

1. The Company will maintain an Audit Committee Charter that requires the following review of the Company's periodic securities filings:
 - i. *Form 10-K Review*. The Committee must review and discuss the annual audited financial statements with the Company's management and independent auditor, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."
 - ii. *Form 10-Q Review*. The Committee must review and discuss the quarterly financial statements with the Company's management and independent auditor, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."

2. Members of the Audit Committee shall be provided a recording or transcript of each Company earnings call within thirty (30) days of its availability to permit the Committee's review of these public statements by the Company's officers.
3. The chair or vice chair of the Company's Disclosure Committee (as described below) will advise the Audit Committee of any necessary or advisable material corrections, supplementations or modifications to public statements made by Company management, including with respect to revenue recognition and deferred revenue, and the Audit Committee will work with the Disclosure Committee to draft any material corrective or clarifying disclosures as necessary.

D. Disclosure Committee Enhancements

1. The Company shall maintain a charter for its management-level Disclosure Committee that includes at least the following provisions:
 - i. The function of the Disclosure Committee shall be to ensure that all public disclosures made by the Company: (i) are accurate, complete, and timely; (ii) fairly present the Company's financial condition; and (iii) meet any other applicable laws and stock exchange requirements;
 - ii. The membership of the Disclosure Committee must include, at least, the Company's CFO, General Counsel, and Chief Accounting Officer. The Disclosure Committee may, in its discretion, invite additional individuals to attend meetings of the Disclosure Committee as appropriate, including the heads of the Company's business units for discussion of matters relating to such units; and
 - iii. The CFO shall serve as chair of the Disclosure Committee and the Chief Accounting Officer shall serve as vice chair. The chair and vice chair shall serve as liaisons between the Disclosure Committee and the Audit Committee for any necessary or required communications to the Audit Committee.
2. The Disclosure Committee shall be responsible for, among other things, the

1 following:

- 2 i. Establish controls and other procedures that are designed to ensure that (i)
3 information required by the Company to be disclosed to the SEC and other
4 information that the Company will publicly disclose is recorded, processed,
5 summarized and reported accurately (in all material respects) and on a
6 timely basis, and (ii) information is accumulated and communicated to
7 management as appropriate to allow timely decisions regarding such
8 required disclosure;
- 9 ii. Review the Company's (i) periodic and current reports, proxy statements,
10 registration statements and any other information filed with or furnished to
11 the SEC, (ii) press releases containing financial information, earnings
12 guidance, information about programs, collaborations, regulatory matters,
13 or material acquisitions or dispositions, or other information material to the
14 Company's security holders, (iii) correspondence broadly disseminated to
15 security holders and any presentations to analysts and the investment
16 community, and (iv) presentations to rating agencies and lenders
17 (collectively, the "Disclosure Statements");
- 18 iii. Review any disclosure policies for the Company's website;
- 19 iv. Participate in discussions and make recommendations to the Company's
20 senior officers regarding decisions related to materiality of information and
21 determination of disclosure obligations with respect to the Disclosure
22 Statements; and
- 23 v. To the extent requested by the senior officers, provide a certification to the
24 senior officers prior to the filing with the SEC of each periodic report as to
25 certain of the items required to be certified by the senior officers.
- 26 3. The Disclosure Committee shall hold regular meetings, including a meeting at least
27 in conjunction with each of the Company's Forms 10-K, Forms 10-Q, and annual
28 proxy statements.

4. At least on a quarterly basis, or as otherwise necessary, the chair of the Disclosure Committee shall provide an oral update to the Audit Committee regarding any disclosure issues or concerns. The updates shall be recorded in the minutes of the meeting of the Audit Committee.

E. Internal Audit and Financial Oversight Enhancements

1. During the pendency of the Derivative Actions, the Company added personnel to its finance functions responsible for internal controls, internal audits, and financial reporting.

3. Plaintiffs' Counsel's Fee and Expense Amount and Plaintiffs' Service Awards

3.1. Prior to negotiating and agreeing upon the Fee and Expense Amount, the Settling Parties negotiated and agreed upon the Settlement Amount, the Contract Termination, and the Reforms to be adopted as part of the Settlement. Defendants acknowledge that the Settlement confers substantial benefits upon Ginkgo and Current Ginkgo Stockholders and, in recognition of those substantial benefits, have agreed to pay Plaintiffs' Counsel attorneys' fees and expenses in the amount of \$2,750,000, subject to the approval of the Court. In no event shall Ginkgo, any of the Individual Defendants, or any of their Insurers be obligated to pay an amount greater than \$2,750,000 for attorneys' fees and expenses to Plaintiffs' Counsel or any counsel purporting to represent any other stockholder of Ginkgo in connection with the Derivative Actions or the Settlement.

3.2. The attorneys' fees and expenses approved by the Court shall be deposited by Ginkgo into an escrow account controlled by Plaintiffs' Counsel within five (5) business days of receipt by Ginkgo of the Settlement Amount from the Insurers pursuant to paragraph 2.1 (and upon provision by Plaintiffs' Counsel of all required funding information and tax identification numbers); Plaintiffs' Counsel shall be severally obligated to make refunds or repayment of such applicable amount received directly to Ginkgo if, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Fee and Expense Amount is reduced.

3.3. Defendants do not oppose the Fee and Expense Amount or reasonable service awards in the amount of \$2,000 to each of the Plaintiffs to be paid by Plaintiffs' Counsel out of the Fee and

Expense Amount in recognition of Plaintiffs' efforts to achieve the Settlement's benefits to the Company and all Current Ginkgo Stockholders, subject to Court approval (the "Service Awards").

3.4. Plaintiffs' Counsel shall allocate the Fee and Expense Amount as agreed among themselves. The Defendants shall play no role in the allocation of the Fee and Expense Amount among Plaintiffs' Counsel. If a dispute arises among Plaintiffs' Counsel regarding the proposed allocation of the Fee and Expense Amount, then the Mediator will resolve such disputes pursuant to expedited arbitral procedures, as determined by the Mediator. The costs of any such allocation, mediation or arbitration shall be borne solely by Plaintiffs' Counsel and allocated by agreement or as finally determined by the Mediator.

3.5. Any order or proceeding (or any portion thereof) relating solely to an award of attorneys' fees and expenses, or any appeal from any order (or any portion thereof) relating thereto or reversal or modification thereof, shall have no effect on the Settlement and shall not operate to terminate or cancel this Stipulation or to affect or delay the finality of the Judgment approving this Stipulation. Except as provided in the Stipulation, the Defendants and their Insurers shall bear no other expenses, costs, damages or fees incurred by the Plaintiffs or any of their attorneys, experts, advisers, agents or representatives. Defendants and Defendants' Counsel shall have no responsibility for or liability with respect to the allocation among any counsel for any Plaintiffs of the Fee and Expense Amount as approved by the Court and the Defendants take no position with respect to such matters.

4. Settlement Procedure and Notice

4.1. No later than seven (7) days after execution of the Stipulation, the plaintiffs in the Federal Derivative Actions shall submit the Stipulation and its Exhibits to the Court and apply for the Preliminary Approval Order substantially in the form of Exhibit A hereto: (a) preliminarily approving the Settlement; (b) approving the form and manner of notice of the Settlement and directing that, (i) within ten (10) business days of entry of the Preliminary Approval Order, Ginkgo shall post the Long Form Notice and the Stipulation (and exhibits thereto) on the Investor Relations page of Ginkgo's website and maintain the documents there until after the Settlement Hearing; (ii) within ten (10) business days of the entry of the Preliminary Approval Order, Ginkgo shall cause the Summary Notice to be disseminated on *GlobeNewswire* or similar wire service, with a link to the Company's Investor

1 Relations webpage where the Long Form Notice and Stipulation (and exhibits thereto) will be posted
2 and available, and (iii) at least thirty (30) calendar days before the Settlement Hearing, Ginkgo shall
3 include in a filing with the SEC a disclosure of the settlement, with a link to the Company's Investor
4 Relations webpage where the Long Form Notice and Stipulation (and exhibits thereto) will be posted
5 and available; (c) setting a date and time for the Settlement Hearing, as well as deadlines for the
6 submission of papers in support of the Settlement and for objections to the Settlement; and (d) enjoining
7 all other Ginkgo stockholders from commencing, instituting, or prosecuting any of the claims asserted
8 in the Derivative Actions or any other Released Claims. Ginkgo shall undertake the administrative
9 responsibility for giving notice to Current Ginkgo Stockholders and shall be solely responsible for all
10 expenses incurred in providing notice in the time and manner ordered by the Court. The Settling Parties
11 believe the content and manner of the Notice, as set forth in this paragraph, constitutes adequate and
12 reasonable notice to Current Ginkgo Stockholders pursuant to Federal Rule of Civil Procedure 23.1,
13 applicable law and Constitutional due process requirements. No later than twenty-eight (28) days
14 before the Settlement Hearing, Defendants' Counsel shall file with the Court an appropriate affidavit
15 or declaration confirming compliance with the form, manner and timeliness of the publication and
16 posting of Notice as approved by the Court.

17 4.2. Plaintiffs' Counsel in the Federal Derivative Actions will request that, at least sixty (60)
18 days after Notice is provided, the Court hold the Settlement Hearing and approve the Settlement of the
19 Derivative Actions as set forth herein and enter a Judgment substantially in the form attached hereto as
20 Exhibit D: (a) approving the terms of the Settlement as fair, reasonable and adequate, including the
21 payment of the Fee and Expense Amount in the amount agreed to by the Settling Parties and Service
22 Awards for the Plaintiffs to be drawn therefrom; and (b) dismissing with prejudice all claims released
23 against any of the Released Persons.

24 4.3. Within five (5) business days of the Judgment becoming Final in the Federal Derivative
25 Actions, the parties in the Delaware Chancery Action shall file the necessary documents for dismissal
26 with prejudice in accordance with local rules of the Delaware Chancery Court and shall take all steps
27 necessary to ensure that such action is fully and finally dismissed with prejudice. Plaintiffs' Counsel
28 shall provide reasonable assistance to Defendants as requested to assist Defendants' efforts to obtain

1 dismissal of any stockholder derivative actions not listed above that may be later filed in any state or
2 federal court asserting any of the Released Claims against the Released Persons.

3 4.4. Pending the Effective Date, the Parties agree that all proceedings and discovery in the
4 Derivative Actions shall be stayed (except as otherwise provided herein and the proceedings necessary
5 to effectuate the consummation and final approval of the Settlement) and not to initiate any other
6 proceedings other than those related to the Settlement itself. During the pendency of such stay, the
7 Parties shall not file, prosecute, instigate, or in any way participate in the commencement or
8 prosecution of any of the Released Claims.

9 5. Releases

10 5.1. Upon the Effective Date, Ginkgo acting directly, the Plaintiffs (acting on their own
11 behalf and derivatively on behalf of Ginkgo), and each of the Current Ginkgo Stockholders shall be
12 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,
13 relinquished, discharged, and dismissed with prejudice each of the Released Claims (including
14 Unknown Claims) against each of the Released Persons and shall be forever enjoined from asserting,
15 commencing, instituting, or prosecuting any of the Released Claims against any Released Person.
16 Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms
17 of the Settlement.

18 5.2. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by
19 operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged
20 each and all of the Plaintiffs and Plaintiffs' Counsel and their subsidiaries, affiliates, members,
21 directors, officers, employees, partners, principals, associates, paralegals, agents, heirs, administrators,
22 successors, and assigns from all claims (including Unknown Claims) arising out of, relating to, or in
23 connection with, the institution, prosecution, assertion, settlement or resolution of the Derivative
24 Actions or the Released Claims. Nothing herein shall in any way impair or restrict the rights of any of
25 the Settling Parties to enforce the terms of the Settlement.
26
27
28

**6. Conditions of Settlement, Effect of Disapproval,
Cancellation or Termination**

6.1. The Settlement shall not become effective until the first date upon which all of the following conditions have been satisfied, unless one or more of the conditions is expressly waived in writing by counsel for each of the Settling Parties:

- A. approval by Ginkgo's Board and all Defendants of the Stipulation;
- B. the entry of the Judgment by the Court approving the Settlement;
- C. the Judgment shall have become Final; and
- D. the entry of an Order by the Delaware Chancery Court dismissing with prejudice the Delaware Chancery Action.

6.2. If any of the conditions specified in paragraph 6.1 are not met, then the Stipulation shall be canceled and terminated, unless counsel for the Settling Parties mutually agree in writing to proceed with the Stipulation. If for any reason this Stipulation is in any way canceled, terminated, or fails to become Final in accordance with its terms or the Effective Date otherwise fails to occur: (i) all Parties and Released Persons shall be restored to their respective positions in the Derivative Actions prior to their agreement in principle on the Settlement; (ii) all releases delivered in connection with this Stipulation shall be null and void, except as otherwise provided for in this Stipulation; (iii) the Settlement Amount shall not be paid or, if already paid, shall be refunded to the Individual Defendants' Insurers; (iv) the Fee and Expense Amount shall not be paid or, if already paid, shall be refunded by Plaintiffs' Counsel; (v) and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission by any of the Parties of any act, matter, or proposition, and shall not be used or referred to in any manner for any purpose (other than to enforce the terms remaining in effect) in any subsequent proceeding in the Derivative Actions or in any other action or proceeding. In such event, the terms and provisions of this Stipulation shall not be used in the Derivative Actions or in any other proceeding for any purpose.

1 **7. Miscellaneous Provisions**

2 7.1. The Settling Parties: (a) acknowledge that it is their intent to consummate this
3 Settlement as set forth in this Stipulation; and (b) agree to act in good faith and to cooperate to the
4 extent reasonably necessary to expeditiously effectuate and implement all terms and conditions of the
5 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the
6 Stipulation.

7 7.2. The Settling Parties intend this Settlement to be a final and complete resolution of all
8 disputes between them with respect to the Derivative Actions. The Settlement compromises claims
9 which are contested and shall not be deemed an admission by any of the Settling Parties as to the
10 merits of any claim, allegation or defense. The Settling Parties further agree that the claims are being
11 settled voluntarily after consultation with competent legal counsel. The Settling Parties will jointly
12 request that the Judgment contain a finding that during the course of the litigation, the Settling Parties
13 and their respective counsel at all times complied with the applicable requirements of good-faith
14 litigation and that no action, allegation, position taken, or filing was undertaken or made in bad faith
15 or in violation of Rule 11 of the Federal Rules of Civil Procedure, Rule 11 of the Rules of the Delaware
16 Chancery Court, or any other comparable provision of state law.

17 7.3. Neither the Stipulation nor the Settlement, nor any act performed or document executed
18 pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may
19 be offered, attempted to be offered or used in any way by the Settling Parties or any other Person as a
20 presumption, a concession or an admission of, or evidence of, jurisdiction over, fault, wrongdoing or
21 liability of the Defendants or of the validity of any Released Claims; or (b) is intended by the Settling
22 Parties to be offered or received as evidence or used by any other Person in any other actions or
23 proceedings, whether civil, criminal or administrative.

24 7.4. The Released Persons may file the Stipulation and/or the Judgment in any action that
25 may be brought against them in order to support a defense or counterclaim based on principles of *res*
26 *judicata*, collateral estoppel, full faith and credit, release, good-faith settlement, judgment bar or
27 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
28 counterclaim.

1 7.5. The Settling Parties agree that any public comments from the Settling Parties regarding
2 the Settlement, other than any disclosures required by law or in filings with a Court, will not
3 substantially deviate from words to the effect that the Parties have reached a mutually acceptable
4 resolution by way of a mediated settlement, a description of the settlement's terms, as reflected in this
5 Stipulation, and that both sides are satisfied with this resolution. For the avoidance of doubt, nothing
6 in this Paragraph shall prevent the Parties from making the Court filings or providing notices necessary
7 to effectuate the Settlement.

8 7.6. Plaintiffs' Counsel agree that within thirty (30) days of the Effective Date, they will
9 return to the producing party all documents and other material obtained from such producing party in
10 any matter, including all documents made available in response to the 220 Demands (collectively,
11 "Discovery Material"), or destroy all such Discovery Material and confirm the same to Defendants'
12 Counsel; provided, however, that Plaintiffs' Counsel shall be entitled to retain all filings, court papers,
13 hearing transcripts, and attorney-work product containing or reflecting Discovery Material, subject to
14 the requirement that Plaintiffs' Counsel shall not disclose any information contained or referenced in
15 the Discovery Material to any person except, following reasonable advance notice to Ginkgo, pursuant
16 to a validly issued subpoena not subject to a motion to quash, court order, or agreement with Ginkgo.

17 7.7. All designations and agreements made and orders entered during the course of the
18 Derivative Actions or the 220 Demands relating to the confidentiality of documents or information,
19 including the confidentiality agreement governing the Settling Parties' mediation and the
20 confidentiality agreements governing the 220 Demands, shall survive this Settlement. Nothing in this
21 Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver
22 of any applicable privilege or immunity, including, without limitation, the attorney-client privilege,
23 the joint defense privilege, or work product protection.

24 7.8. This Stipulation supersedes and replaces any prior or contemporaneous writing,
25 statement, or understanding pertaining to the Derivative Actions, and no parol or other evidence may
26 be offered to explain, construe, contradict, or clarify its terms, the intent of the Settling Parties or their
27 counsel, or the circumstances under which the Stipulation was made or executed.
28

1 7.9. The Exhibits to this Stipulation are material and integral parts hereof and are fully
2 incorporated herein by this reference.

3 7.10. The headings herein are used for the purpose of convenience only and are not meant to
4 have legal effect.

5 7.11. The Stipulation may be amended or modified only by a written instrument signed by
6 or on behalf of all Settling Parties or their respective successors-in-interest.

7 7.12. This Stipulation and the Exhibits attached hereto constitute the entire agreement among
8 the Settling Parties and no representations, warranties or inducements have been made to any Settling
9 Party concerning the Stipulation or any of its Exhibits other than the representations, warranties and
10 covenants contained and memorialized in such documents. Except as otherwise provided herein and
11 subject to applicable indemnities and policies of insurance, each of the Settling Parties shall bear their
12 own costs. Nothing in this Stipulation is intended to alter in any way any of the Individual Defendants'
13 indemnification rights arising under law or by contract with the Company or affect any agreement
14 between any Individual Defendant and the Company.

15 7.13. Plaintiffs' Counsel are expressly authorized by the Plaintiffs, derivatively on behalf of
16 Ginkgo, to take all appropriate action required or permitted to be taken pursuant to the Stipulation to
17 effectuate its terms and also are expressly authorized by the Plaintiffs to enter into any modifications
18 or amendments to the Stipulation which they deem appropriate on behalf of the Plaintiffs.

19 7.14. Each counsel or other Person executing the Stipulation or its Exhibits on behalf of a
20 Settling Party hereby warrants that such Person has the full authority to do so on behalf of that Settling
21 Party. Moreover, each Settling Party hereby warrants that such Person has the full authority to enter
22 into this Stipulation.

23 7.15. The Stipulation may be executed in one or more counterparts. All executed
24 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of
25 counterparts, either originally executed or copies thereof, shall be filed with the Court.

26 7.16. The Stipulation shall be binding upon, and inure to the benefit of, the successors and
27 assigns of the Settling Parties and the Released Persons.
28

1 7.17. The Court shall retain jurisdiction with respect to implementation and enforcement of
2 the terms of the Stipulation, and the Settling Parties submit to the jurisdiction of the Court solely for
3 purposes of implementing and enforcing the Settlement embodied in the Stipulation.

4 7.18. The construction, interpretation, operation, effect, and validity of this Stipulation
5 and all documents necessary to effectuate it shall be governed by the laws of the State of California
6 without regard to conflicts of law rules, except to the extent that federal law requires that federal law
7 govern. The exclusive forum for the adjudication of any disputes arising under this Stipulation shall
8 be the United States District Court for the Northern District of California. Each Party accepts and
9 consents to jurisdiction and waives any objection to venue in the identified court.

10 7.19. Counsel for the Settling Parties agree to cooperate fully with one another in seeking
11 Court approval of the Settlement, as embodied in this Stipulation, and to use best efforts to promptly
12 agree upon and execute all such other documentation as may be reasonably required to obtain final
13 approval by the Court of the Settlement.

14 7.20. The Stipulation shall be treated as jointly drafted and will not be construed against any
15 Settling Party as the drafter.

16 7.21. The Defendants have denied and continue to deny all of the claims in the Derivative
17 Actions, and have denied and continue to deny having committed, aided, or attempted to commit any
18 violations of law or breach of any duty of any kind or otherwise acted in any improper manner. But
19 neither the Defendants, the Company, nor their respective counsel will, in any statement made to any
20 media representative (whether or not for attribution), assert that the Derivative Actions were commenced
21 or prosecuted in bad faith, nor will they deny that the Derivative Actions were commenced and prosecuted
22 in good faith and are being settled voluntarily after consultation with competent legal counsel. Likewise,
23 Plaintiffs and Plaintiffs' Counsel shall retain their right to maintain that their claims have merit. In all
24 events, none of the Settling Parties shall make any accusations of wrongful or actionable conduct by any
25 Settling Party concerning the prosecution, defense, and resolution of the Derivative Actions, nor shall
26 they otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

27 7.22. Neither the Settlement nor any of its terms shall be construed as an admission or
28 evidence of any violation of any law or admission as to the truth of any allegation.

1 7.23. Except as set forth herein, each Party shall bear his, her, or its own fees and costs.

2 7.24. Any waiver of any of the terms of this Stipulation must be in writing, signed by the
3 party against whom the waiver is sought to be enforced. The waiver by one Settling Party of any
4 breach of this Stipulation by any other party shall not be deemed a waiver by any other Settling Party
5 or a waiver of any other prior or subsequent breach of this Stipulation.

6 7.25. Any failure by any party to this Stipulation to insist upon the strict performance by any
7 other party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the
8 provisions, and such party, notwithstanding such failure, shall have the right thereafter to insist upon
9 the strict performance of any and all of the provisions of this Stipulation to be performed by such other
10 party.

11 7.26. In the event that any portion of the Settlement is found to be unlawful, void,
12 unconscionable, or against public policy by a court of competent jurisdiction, the remaining terms and
13 conditions of the Settlement shall remain intact.

14 7.27. Unless otherwise provided, the Settling Parties may agree to reasonable extensions of
15 time to carry out any of the provisions of this Stipulation without further order of the Court.

16 7.28. All notices, requests, demands, claims, and other communications hereunder shall be
17 in writing and shall be deemed duly given (i) when delivered personally to the recipient, (ii) one (1)
18 business day after being sent to the recipient by reputable overnight courier service (charges prepaid),
19 or (iii) when delivered to the recipient's email address of record as set forth below:

20 ***If to Plaintiffs or Plaintiffs' Counsel:***

21 Plaintiff Weining Hu

22 Bottini & Bottini, Inc.
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24 fbottini@bottinilaw.com
25 achang@bottinilaw.com

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gstarner@whitecase.com

IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation to be executed, by
their duly authorized attorneys, as of May 27, 2025.

Albert Y. Chang

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Albert Y. Chang (SBN 296065)
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*Additional Counsel for Newman in the Delaware
Chancery Action*

[Signatures continued on following page]

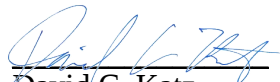
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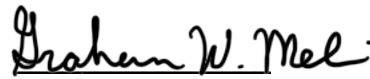
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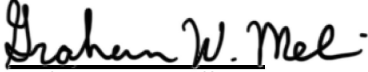
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Delman, Joshua Kazam, Isaac Lee, Dennis A.
Miller, Laurence E. Paul, and Timothy Leiweke
in the Delaware Chancery Action*

EXHIBIT A

EXHIBIT A

Confidential Settlement Communication
Subject to FRE 408 and Equivalents

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WEINING HU, derivatively on behalf of
GINKGO BIOWORKS HOLDINGS, INC., a
Delaware corporation,

Plaintiff,

vs.

ELI BAKER, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-02077-KAW

The Honorable Kandis A. Westmore

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT**

ERIC BOWERS, Derivatively on behalf of
Nominal Defendant GINKGO BIOWORKS
HOLDINGS, INC.,

Plaintiff,

vs.

JASON KELLY, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-05396-KAW

The Honorable Kandis A. Westmore

Confidential Settlement Communication
Subject to FRE 408 and Equivalents

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

Plaintiffs in the above-captioned Federal Derivative Actions made an application, pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, for an order: (i) preliminarily approving the Settlement, in accordance with the Stipulation and Agreement of Settlement (the “Stipulation”) dated May 27, 2025, which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Derivative Actions (the “Settlement”) and for dismissal of the Derivative Actions with prejudice; and (ii) approving the form and content of the Notice, including, Ginkgo Bioworks Holdings, Inc. (“Ginkgo” or the “Company”), causing the Summary Notice to be published via *GlobeNewswire* or similar wire service, posting the Long Form Notice and Stipulation (and exhibits thereto) on Ginkgo’s investor relations website, and including in a filing with the U.S. Securities and Exchange Commission (“SEC”) a disclosure of the status of the Settlement with a link to the page where the Long Form Notice and Stipulation and its exhibits will be posted. The Court having read and considered the Stipulation and exhibits annexed thereto; and all parties to the Settlement having agreed to the entry of this Order, and all capitalized terms herein having the same meaning as set forth in the Stipulation;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Court preliminarily approves, subject to further consideration at the Settlement Hearing described below, the Stipulation and the Settlement set forth therein, including the terms and conditions for settlement and dismissals with prejudice described in the Stipulation.

2. A hearing (the “Settlement Hearing”) shall be held before the Court on _____, 2025, at _____, either in person at Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, or by telephone or videoconference (in the discretion of the Court), for the purpose of determining: (i) whether the Settlement of the Derivative Actions on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Ginkgo and Current Ginkgo Stockholders, and should be finally approved by the Court; (ii) whether a Judgment as provided in, and attached as Exhibit D to the Stipulation should be entered; (iii) whether to approve the payment of the Fee and Expense Amount in the amount negotiated and agreed to by the Settling Parties and Service Awards for the Plaintiffs to be drawn therefrom; and (iv) such other matters as may be necessary or proper in the circumstances.

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1 3. The Court approves, as to form and content, the Long Form Notice and Summary
2 Notice annexed as Exhibits B and C to the Stipulation, respectively (collectively, the “Notice”), and
3 finds that the distribution of the Notice substantially in the manner and form set forth in the Stipulation
4 and this Order fully satisfies Rule 23.1 of the Federal Rules of Civil Procedure and the requirements
5 of due process, complies with the rules of this Court, and is the best notice practicable under the
6 circumstances and shall constitute due and sufficient notice for all purposes to all Current Ginkgo
7 Stockholders. Non-material changes to the form of the Notice may be made without further approval
8 of the Court.

9 4. Ginkgo is hereby authorized and empowered to: (i) within ten (10) business days of the
10 entry of this Order, post the Long Form Notice and the Stipulation (and exhibits thereto) on the
11 Investor Relations page of Ginkgo’s website and maintain the documents there until after the
12 Settlement Hearing; (ii) within ten (10) business days of the entry of this Order, cause the Summary
13 Notice to be disseminated on *GlobeNewswire* or similar wire service, with a link to the Company’s
14 Investor Relations page on Ginkgo’s website where the Long Form Notice and Stipulation (and
15 exhibits thereto) will be posted and available; and (iii) at least thirty (30) calendar days before the
16 Settlement Hearing, include in a filing with the SEC a disclosure of the Settlement, with a link to the
17 Company’s Investor Relations webpage where the Long Form Notice and Stipulation (and exhibits
18 thereto) will be posted and available.

19 5. No later than twenty-eight (28) calendar days prior to the Settlement Hearing provided
20 for in ¶2 of this Order, Defendants’ Counsel shall file with the Court an appropriate affidavit or
21 declaration confirming compliance with the form, manner, and timeliness of the publication and
22 posting of Notice as approved by the Court.

23 6. No later than seven (7) calendar days before the Objection Deadline described in ¶7
24 below, Plaintiffs’ Counsel shall file: (1) their motion in support of final approval of the Settlement;
25 and (2) their application for the Court’s approval of the Fee and Expense Amount, including Service
26 Awards.

27 7. Any Current Ginkgo Stockholder may, but is not required to, appear at the Settlement
28 Hearing and express an opinion as to whether the Settlement, Fee and Expense Amount, and/or the

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Subject to FRE 408 and Equivalents

Service Awards should be approved; provided, however, that no Current Ginkgo Stockholder or any other person shall be heard or entitled to object to the approval of the terms and conditions of the Settlement, Fee and Expense Amount, and/or Service Award, if approved, and the Judgment to be entered thereon approving same, unless on or before fourteen (14) calendar days prior to the Settlement Hearing (“Objection Deadline”), such Person has filed their written objection(s) with the Court and sent their written objection(s) by hand or by first class mail, postage pre-paid, to the Settling Parties’ counsel. The written objections must be postmarked by the Objection Deadline and sent to the following counsel:

Francis A. Bottini, Jr.
Albert Chang
Bottini & Bottini, Inc.
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
(858) 914-2001

Counsel for Weining Hu

Graham W. Meli
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Counsel for Defendants

Seth D. Rigrotsky
Vincent A. Licata
Rigrotsky Law, P.A.
825 East Gate Boulevard, Suite 300
Garden City, NY 11530
(516) 683-3516

Counsel for Eric Bowers

The written objection(s) must contain the following information: (i) notice of whether such Person intends to appear at the Settlement Hearing; (ii) such Person’s name, legal address, and telephone number; (iii) state that such Person is a Current Ginkgo Stockholder as of May 27, 2025 and represent that the Person will continue to own Ginkgo common stock as of the date of the Settlement Hearing; (iv) provide the date(s) such Person acquired his, her, or its Ginkgo shares and the number of Ginkgo shares held; (v) contain a detailed statement of such Person’s specific position with respect to the matters to be heard at the Settlement Hearing, including a statement of each objection being made; and (vi) state the grounds for each objection or the reasons for such Person’s desire to appear and be heard. Any counsel retained by a purported objector for the purpose of asserting an objection must make a notice of appearance on the Court at least fourteen (14) calendar days before the Settlement Hearing.

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1 8. Any Person who fails to object in the above-prescribed manner shall be deemed to have
2 waived his, her, or its right to object to any aspect of the Settlement or otherwise request to be heard
3 (including the right to appeal) and will be forever barred from raising such objection or request to be
4 heard in this or any other action or proceeding, but shall otherwise be bound by the Judgment to be
5 entered and the releases to be given.

6 9. No later than seven (7) calendar days prior to the Settlement Hearing, the Settling
7 Parties shall file and serve their responses to any objection from Current Ginkgo Stockholders.

8 10. All discovery and other pretrial proceedings in the Federal Derivative Actions are
9 hereby stayed and suspended until further order of this Court (except as otherwise provided in the
10 Stipulation and the proceedings necessary to effectuate the consummation and final approval of the
11 Settlement) and the Parties have agreed not to initiate any other proceedings other than those related
12 to the Settlement itself. Pending the Effective Date, all stockholders of Ginkgo are barred and enjoined
13 from, either directly, representatively, or in any other capacity, prosecuting, instituting, commencing,
14 or continuing to prosecute on behalf of Ginkgo or any stockholders thereof, any claim which has been
15 or could have been asserted in the Derivative Actions or any other Released Claims. The provisions
16 of this paragraph shall expressly not apply to any securities fraud claims by a class member in
17 *Bernstein v. Ginkgo Bioworks Holdings, Inc., et al.*, C.A. No. 4:21-cv-08943-KAW in this Court.

18 11. In the event that the Settlement does not become effective in accordance with the terms
19 of the Stipulation, the Stipulation shall become null and void and of no further force or effect, and
20 shall not be used or referred to for any purpose whatsoever. In such event, the Stipulation and all
21 negotiations and proceedings related thereto shall be withdrawn without prejudice as to the rights of
22 any and all such Settling Parties thereto, who, in accordance with the provisions of the Stipulation, (i)
23 shall be restored to their respective positions in the Derivative Actions prior to their agreement in
24 principle on the Settlement (ii) all releases delivered in connection with the Stipulation shall be null
25 and void, except as otherwise provided for in the Stipulation; (iii) the Settlement Amount shall not be
26 paid or, if already paid, shall be refunded to the Individual Defendants' Insurers; (iv) the Fee and
27 Expense Amount shall not be paid or, if already paid, shall be refunded by Plaintiffs' Counsel; (v) and
28

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1 all negotiations, proceedings, documents prepared, and statements made in connection with the
2 Stipulation or the Settlement shall be without prejudice to the Parties, shall not be deemed or construed
3 to be an admission by any of the Parties of any act, matter, or proposition, and shall not be used or
4 referred to in any manner for any purpose (other than to enforce the terms remaining in effect) in any
5 subsequent proceeding in the Derivative Actions or in any other action or proceeding for any purpose.
6

7 12. The Court reserves the right to approve the Stipulation with further modifications as
8 may be agreed to by counsel for the Settling Parties and without further notice to Current Ginkgo
9 Stockholders, and retains jurisdiction to consider all further applications arising out of or connected
10 with the proposed Settlement. The Court may also adjourn the Settlement Hearing provided for herein
11 without further notice other than to counsel for the Settling Parties.

12 **SO ORDERED** in the Northern District of California on _____, 2025.
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15

16 _____
THE HON. KANDIS A. WESTMORE
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EXHIBIT B

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WEINING HU, derivatively on behalf of
GINKGO BIOWORKS HOLDINGS, INC., a
Delaware corporation,

Plaintiff,

vs.

ELI BAKER, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-02077-KAW

The Honorable Kandis A. Westmore

**NOTICE OF PENDENCY AND
PROPOSED SETTLEMENT OF
DERIVATIVE ACTIONS**

ERIC BOWERS, Derivatively on behalf of
Nominal Defendant GINKGO BIOWORKS
HOLDINGS, INC.,

Plaintiff,

vs.

JASON KELLY, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-05396-KAW

The Honorable Kandis A. Westmore

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF DERIVATIVE
ACTIONS**

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

**TO: ALL PERSONS OR ENTITIES WHO OR WHICH HELD SHARES
OF GINKGO BIOWORKS HOLDINGS, INC. (“GINKGO” OR “THE
COMPANY”) COMMON STOCK AS OF THE CLOSE OF
TRADING ON MAY 27, 2025 (THE “RECORD DATE”).**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
THIS NOTICE RELATES TO A PROPOSED SETTLEMENT AND
DISMISSAL OF LITIGATION AND CONTAINS IMPORTANT
INFORMATION REGARDING YOUR RIGHTS. YOUR RIGHTS MAY BE
AFFECTED BY THESE LEGAL PROCEEDINGS. IF THE COURT
APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED**

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FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND FROM PURSUING THE RELEASED CLAIMS.

IF YOU HOLD GINKGO COMMON STOCK FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.

THE COURT HAS MADE NO FINDINGS OR DETERMINATIONS CONCERNING THE MERITS OF THE DERIVATIVE ACTIONS. THE RECITATION OF THE BACKGROUND AND CIRCUMSTANCES OF THE SETTLEMENT CONTAINED HEREIN DOES NOT CONSTITUTE THE FINDINGS OF THE COURT. IT IS BASED ON REPRESENTATIONS MADE TO THE COURT BY COUNSEL FOR THE PARTIES.

THE DERIVATIVE ACTIONS ARE NOT “CLASS ACTIONS.” THUS, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR A MONETARY PAYMENT. THERE IS NO PROOF OF CLAIM FORM FOR STOCKHOLDERS TO SUBMIT IN CONNECTION WITH THIS SETTLEMENT, AND STOCKHOLDERS ARE NOT REQUIRED TO TAKE ANY ACTION IN RESPONSE TO THIS NOTICE.

Notice is hereby provided to you of the proposed Settlement¹ of the above-captioned Federal Derivative Actions and another consolidated Derivative Action pending in Delaware Chancery Court. This Notice is provided by order of the United States District Court for the Northern District of California (the “Court”). It is not an expression of any opinion by the Court. It is to notify Current Ginkgo Stockholders of the terms of the proposed Settlement of the Derivative Actions.

I. WHY THIS NOTICE HAS BEEN ISSUED

This Notice is intended to notify all Ginkgo stockholders affected by the Settlement of the stockholder derivative actions styled *Hu v. Baker, et al.*, No. 4:23-cv-02077-KAW (N.D. Cal.) and *Bowers v. Kelly, et al.*, No. 4:23-cv-05396-KAW and a related Delaware Chancery Action (as defined below) of the Notice of Pendency and Proposed Settlement of Derivative Actions (the “Long Form Notice”). The following Settling Parties (defined herein) through their respective counsel have agreed upon terms to settle the Derivative Actions and have signed the written

¹ The capitalized terms used in this Notice and not otherwise defined are defined in the Stipulation and Agreement of Settlement (“Stipulation” or “Stip.”) (dated May 27, 2025).

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Stipulation setting forth the terms of the Settlement: (i) Weining Hu (“Hu”) and Eric Bowers (“Bowers”), plaintiffs in the Federal Derivative Actions; (ii) Dylan Newman (“Newman”) and Shlomo Moskowitz (“Moskowitz”), plaintiffs in the consolidated derivative action styled *In re Ginkgo Bioworks Holdings, Inc., Stockholder Derivative Litigation*, C.A. No. 2024-0361-KSJM (Del. Ch.), pending in the Court of Chancery of the State of Delaware (the “Delaware Chancery Action”) (the Federal Derivative Actions and the Delaware Chancery Action, are collectively referred to as the “Derivative Actions,” and the plaintiffs in the Derivative Actions are collectively referred to as the “Plaintiffs”); (iii) Eli Baker, Arie Beldegrun, Marijn Dekkers, Scott M. Delman, Mark Dmytruk, Christian Henry, Jason Kelly, Reshma Kewalramani, Isaac Lee, Timothy Leiweke, Dennis A. Miller, Laurence E. Paul, Shyam Sankar, Reshma Shetty, Harry E. Sloan, Joshua Kazam, Anna Marie Wagner, and Eagle Equity Partners III, LLC, defendants in the Derivative Actions (collectively, the “Individual Defendants”); and (iv) nominal defendant Ginkgo (together with the Individual Defendants, the “Defendants”) (Plaintiffs and Defendants are collectively referred to as the “Parties” or the “Settling Parties”). Subject to the approval of the Court and the terms and conditions expressly provided herein, the Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims.

On _____ 2025, at _____, the Court will hold a hearing (the “Settlement Hearing”). The purpose of the Settlement Hearing is to determine: (i) whether the Settlement of the Derivative Actions on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Ginkgo and Current Ginkgo Stockholders, and should be finally approved by the Court; (ii) whether a Judgment as provided in, and attached as Exhibit D to the Stipulation should be entered; (iii) whether to approve the payment of the Fee and Expense Amount (defined herein) in the amount agreed-to by the Settling Parties and Service Awards (defined herein) for Plaintiffs to be drawn therefrom; and (iv) such other matters as may be necessary or proper in the circumstances.

II. SUMMARY OF THE LITIGATION

A. Procedural History of the Derivative Actions

1. The Federal Derivative Actions

On April 28, 2023, Hu filed the action styled *Hu v. Baker, et al.*, No. 4:23-cv-02077-KAW in this Court derivatively on behalf of nominal defendant Ginkgo against certain of the Individual Defendants alleging claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, violations of Section 14(a) of the Securities Exchange Act of 1934 (“Exchange Act”), unjust enrichment and contribution and indemnification (the “*Hu Action*”).

On October 20, 2023, Bowers filed the action styled *Bowers v. Kelly, et al.*, No. 4:23-cv-05396-KAW in this Court derivatively on behalf of nominal defendant Ginkgo against certain of the Individual Defendants alleging claims for violations of Section 14(a) of the Exchange Act, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, and waste of corporate assets (the “*Bowers Action*”). Prior to filing his complaint, Bowers made a litigation demand on the Company’s board of directors (the “Board”) to investigate and redress the wrongdoing alleged in the Derivative Actions (the “Litigation Demand”).

On December 15, 2023, the Court entered a Stipulation and Order staying the *Bowers Action* pending events in the related securities class action captioned *Bernstein v. Ginkgo Bioworks Holdings, Inc., et al.*, C.A. No. 4:21-cv-08943-KAW in this Court (the “*Securities Action*”) and subject to certain conditions. On January 29, 2024, the Court entered a similar Stipulation and Order in the *Hu Action*. On February 28, 2024, Hu moved to consolidate the *Hu Action* and the *Bowers Action* (previously defined, together, as the “Federal Derivative Actions”). Bowers opposed Hu’s motion. On September 13, 2024, the Court denied Hu’s motion to consolidate. On January 17, 2025, Defendants moved to dismiss in part and transfer in part both Federal Derivative Actions and filed therewith requests for judicial notice. On February 19, 2025, the Court entered a Stipulation and Order suspending the deadlines in the Federal Derivative Actions to allow the parties to finalize settlement of the Derivative Actions.

2. The Delaware Chancery Action

On April 14, 2023, Newman made a demand to inspect the Company's books and records pursuant to 8 *Del. C.* § 220 in connection with the misconduct alleged in the Derivative Actions. Thereafter, pursuant to a confidentiality agreement, the Company produced over four thousand pages of documents to Newman that were responsive to his demand (the "220 Documents"). On April 4, 2024, utilizing the 220 Documents, Newman filed the action styled *Newman v. Eagle Equity Partners III, LLC, et al.*, C.A. No. 2024-0361-KSJM (Del. Ch.), in the Delaware Chancery Court derivatively on behalf of nominal defendant Ginkgo against the Individual Defendants alleging claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and unjust enrichment (the "*Newman Action*").

On July 6, 2023, Moskowitz made a demand to inspect the Company's books and records pursuant to 8 *Del. C.* § 220 in connection with the misconduct alleged in the Derivative Actions (the "Moskowitz 220 Demand," and with the Newman 220 Demand, the "220 Demands"). Thereafter, pursuant to a confidentiality agreement, the Company produced 220 Documents to Moskowitz that were responsive to his demand. On April 17, 2024, utilizing the 220 Documents, Moskowitz filed the action styled *Moskowitz v. Kelly, et al.*, C.A. No. 2024-0401-KSJM (Del. Ch.), in the Delaware Chancery Court derivatively on behalf of nominal defendant Ginkgo against certain of the Individual Defendants alleging claims for breach of fiduciary duty, contribution and indemnification, and aiding and abetting breach of fiduciary duty (the "*Moskowitz Action*").

On September 10, 2024, the Delaware Chancery Court granted the parties' stipulation for consolidation of the *Newman Action* and the *Moskowitz Action* (into the "Delaware Chancery Action"), appointing co-lead counsel, and extending the defendants deadline to respond to the operative complaint. On November 22, 2024, Defendants moved to dismiss the operative complaint in the Delaware Chancery Action and filed an opening brief in support of their motion. On January 17, 2025, plaintiffs in the Delaware Chancery Action filed a verified amended consolidated complaint.

B. Mediation and Settlement

The Settling Parties, by and through their attorneys, engaged in months of good-faith, arm's-length discussions and negotiations with regard to the possible settlement of the Derivative Actions. To that end, the Settling Parties agreed to participate in mediation before Michelle Yoshida, Esq. of Phillips ADR Enterprises (the "Mediator"), a nationally recognized mediator with extensive experience mediating complex shareholder disputes similar to the Derivative Actions, who was also serving as mediator in the related Securities Action.

On January 30, 2024, plaintiffs in the Federal Derivative Actions participated in a virtual mediation before the Mediator to discuss a possible settlement. Following several calls with the Mediator in the weeks that followed, on March 22, 2024, Bowers provided Ginkgo and the Individual Defendants with a detailed settlement demand.

On September 30, 2024, counsel for Plaintiffs in the Derivative Actions participated in a full day, in person mediation session in New York City before the Mediator, along with counsel for Ginkgo and the Individual Defendants. In advance of the mediation, Plaintiffs in the Derivative Actions prepared and submitted a detailed mediation statement and prepared and served a global settlement demand upon Defendants.

While no resolution was reached at the conclusion of either mediation session, progress was made and the Parties continued negotiating a potential settlement thereafter and engaging in frank discussions regarding the strengths and weaknesses of the claims and defenses at issue, with the facilitation and, when necessary, the involvement of the Mediator. The Settling Parties continued to exchange information, documents, and detailed written settlement proposals and counterproposals, debating the merits of the proposals in numerous communications between the Settling Parties' counsel and the Mediator.

From January 2024 to February 2025, Plaintiffs' Counsel had numerous discussions with Defendants' Counsel and the Mediator regarding settlement issues and to request additional information. On February 8, 2025, the Mediator made a double-blind recommendation concerning the cash component of the Settlement, in the amount of \$4,125,000, which the Settling Parties

Confidential Settlement Communication
Subject to FRE 408 and Equivalents

accepted. See Stip., ¶ 2.1. At the same time, the Settling Parties agreed on the corporate governance reforms to be adopted by the Company in connection with the Settlement, as set forth in ¶ 2.5 of the Stipulation and below (the “Reforms”), as well as the valuable contract termination, as set forth and described in ¶ 2.2 of the Stipulation and below.

After reaching agreement on the cash component, Reforms, and contract termination, the Settling Parties commenced negotiations regarding reasonable attorneys’ fees and expenses to be paid to Plaintiffs’ Counsel, subject to Court approval, in consideration for the substantial benefits conferred upon Ginkgo and Current Ginkgo Stockholders by the Settlement.

III. TERMS OF THE PROPOSED DERIVATIVE SETTLEMENT

The principal terms, conditions and other matters that are part of the Settlement, which is subject to approval by the Court, are summarized below. This summary should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Stipulation, which has been filed with the Court and is also available for viewing on the Investor Relations page of Ginkgo’s website at <https://investors.ginkgobioworks.com/overview/default.aspx>.

In connection with the Settlement and in consideration of the releases set forth herein, the Individual Defendants shall cause their Insurers to pay Ginkgo the sum of four million one hundred twenty-five thousand dollars (\$4,125,000) (the “Settlement Amount”). The Settlement Amount shall be paid by Individual Defendants’ Insurers to Ginkgo within thirty (30) days after the Court enters the Judgment. The Settlement Amount is inclusive of all fees and expenses of Plaintiffs’ Counsel and Service Awards, which will be paid in the manner set forth in ¶¶ 3.2 and 3.3 of the Stipulation if approved by the Court. In no event shall the Defendants or their Insurers be required to pay any amount greater than the Settlement Amount in connection with the Settlement, other than as expressly set forth in ¶ 4.1 of the Stipulation with respect to the costs of providing Notice.

Within thirty (30) days after the Court enters the Judgment, the Company will terminate the contract through which it has historically incubated new operating companies or “OpCos” via a third-party service provider (the “Contract Termination”). The Parties estimate, based upon their

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analysis and investigation, that the Contract Termination will have a value to the Company, in the form of savings of fees under the contract and other associated costs savings over at least the next three (3) years, of approximately \$3–4 million. The Settling Parties acknowledge and agree that the Plaintiffs’ litigation and settlement efforts in the Derivative Actions caused the payment of the Settlement Amount contemplated and the Contract Termination.

Within thirty (30) days after the Court enters the Judgment, the Board shall take all necessary and appropriate action to adopt, implement, and maintain for a period of not less than three (3) years, the corporate governance, oversight, and internal controls Reforms set forth below and in the Stipulation. The Settling Parties acknowledge and agree that Plaintiffs’ litigation and settlement efforts in the Derivative Actions were a substantial factor in the Board’s agreement to adopt the Reforms. The Settling Parties further acknowledge and agree that these Reforms confer substantial benefits on the Company and Current Ginkgo Stockholders and that the Settlement on the terms set forth herein is in all respects fair, reasonable, and adequate, and serves the best interests of the Company and Current Ginkgo Stockholders.

In the event of any change in law or regulations that impacts any subject matter in the Reforms, the Company’s Board may adopt such amendments as it determines in its good faith business judgment, after consultation with counsel, to be required to comply with such law or regulations while maintaining the purposes of the Reforms to the greatest extent practicable.

Ginkgo’s Board, including its independent, non-defendant directors, in a good-faith exercise of business judgment, has determined that: (i) the Settlement confers a substantial benefit upon Ginkgo and its stockholders; and (ii) the Settlement, and each of its terms, is in all respects fair, adequate, reasonable, and in the best interests of Ginkgo and its stockholders.

CORPORATE GOVERNANCE AND OTHER REFORMS**A. Oversight and Disclosure Procedures for Related Person Transactions**

1. The Audit Committee of the Company’s Board will review and oversee related person transactions in accordance with the Company’s related person transaction policy and procedures, which shall be maintained in compliance

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with the requirements set forth below.

2. The members of the Audit Committee who review related person transactions shall include at least three directors, each of whom must satisfy the independence requirements of the New York Stock Exchange and the more rigorous independence rules for members of the Audit Committee issued by the U.S. Securities and Exchange Commission.
3. No member of the Audit Committee who reviews a related person transaction shall have any direct or indirect financial interests in such transaction, other than stock ownership in Ginkgo.
4. Further to the Audit Committee's responsibilities as set forth above, the Audit Committee shall adopt the following enhancements to its review of related person transactions:
 - i. At each meeting of the Audit Committee, the agenda shall include a standing agenda item to discuss any new related person transactions that require review in accordance with the Company's related person transaction policy and procedures. In the event that no related person transactions are submitted for review by the Audit Committee at any meeting, the agenda shall note that fact.
 - ii. At each meeting of the Audit Committee at which a related person transaction is submitted for review, the minutes of the meeting shall separately record the discussion of such transaction, including the Committee's determination and the grounds for approving or disapproving such transaction.
5. The Company shall maintain a related person transaction policy and procedures defining a "related person" as:
 - i. any person who is, or at any time since the beginning of the Company's last fiscal year was, a director or executive officer of the Company or a

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- nominee to become a director of the Company;
- ii. any person who is known to be the beneficial owner of more than 5% of any class of the Company's voting securities;
 - iii. any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of a director, executive officer, nominee or beneficial owner of more than 5% of any class of the Company's voting securities, and any other person (other than a tenant or employee) sharing the same household of such director, executive officer, nominee or beneficial owner of more than 5% of any class of the Company's voting securities; and
 - iv. any firm, corporation or other entity in which any of the foregoing persons is employed or is a general partner or principal or in a similar position or in which such person has a 5% or greater beneficial ownership interest in any class of the Company's voting securities.
6. The related person transaction policy and procedures that the Company shall maintain shall further provide that:
- i. a transaction between the Company and a related person valued at \$120,000 or more shall be presumed to be a material transaction requiring review in accordance with the policy;
 - ii. a potential material related person transaction that is proposed to be entered into by the Company must be reported to the Company's General Counsel and Chief Financial Officer by both the related person and/or the person at the Company proposing such potential related person transaction;
 - iii. if the Company's Legal Department determines that a transaction or

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- relationship is a related person transaction under the policy and procedures, then the General Counsel, Chief Financial Officer (“CFO”), or their designee shall present such transaction to the Audit Committee;
- iv. a material related person transaction shall be consummated and shall continue only if the Audit Committee has approved or ratified such transaction;
 - v. management of the Company shall update the Audit Committee as to any material changes to any approved or ratified related person transaction and shall periodically provide a status report to the Audit Committee of all then current related person transactions; and
 - vi. approved material related party transactions shall be disclosed in the Company’s securities filings. Furthermore, approved material related person transactions shall be disclosed to the Company’s full Board of Directors.

B. Enhanced Employee Training in Related Person Transactions and Disclosures

1. The Company’s General Counsel shall develop and implement a training program focused on best practices in managing, mitigating and ensuring proper disclosure of potential conflicts of interest that may arise from the Company and relationships between related persons and related person-affiliated or controlled entities. The program shall clearly inform participants of how a related party and a related party transaction is defined, and shall include the Company’s policies and procedures for seeking advice and guidance from the General Counsel, and when and how matters should be escalated to the Audit Committee for evaluation and decision-making as provided herein.
2. Training will be provided to all Section 16 reporting officers and will be optional for other officers as the General Counsel may reasonably determine to be appropriate.

C. Audit Committee Enhancements

1. The Company will maintain an Audit Committee Charter that requires the following review of the Company's periodic securities filings:
 - i. *Form 10-K Review*. The Committee must review and discuss the annual audited financial statements with the Company's management and independent auditor, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."
 - ii. *Form 10-Q Review*. The Committee must review and discuss the quarterly financial statements with the Company's management and independent auditor, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."
2. Members of the Audit Committee shall be provided a recording or transcript of each Company earnings call within thirty (30) days of its availability to permit the Committee's review of these public statements by the Company's officers.
3. The chair or vice chair of the Company's Disclosure Committee (as described below) will advise the Audit Committee of any necessary or advisable material corrections, supplementations or modifications to public statements made by Company management, including with respect to revenue recognition and deferred revenue, and the Audit Committee will work with the Disclosure Committee to draft any material corrective or clarifying disclosures as necessary.

D. Disclosure Committee Enhancements

1. The Company shall maintain a charter for its management-level Disclosure Committee that includes at least the following provisions:
 - i. The function of the Disclosure Committee shall be to ensure that all

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- public disclosures made by the Company: (i) are accurate, complete, and timely; (ii) fairly present the Company's financial condition; and (iii) meet any other applicable laws and stock exchange requirements;
- ii. The membership of the Disclosure Committee must include, at least, the Company's CFO, General Counsel, and Chief Accounting Officer. The Disclosure Committee may, in its discretion, invite additional individuals to attend meetings of the Disclosure Committee as appropriate, including the heads of the Company's business units for discussion of matters relating to such units; and
 - iii. The CFO shall serve as chair of the Disclosure Committee and the Chief Accounting Officer shall serve as vice chair. The chair and vice chair shall serve as liaisons between the Disclosure Committee and the Audit Committee for any necessary or required communications to the Audit Committee.
2. The Disclosure Committee shall be responsible for, among other things, the following:
- i. Establish controls and other procedures that are designed to ensure that (i) information required by the Company to be disclosed to the SEC and other information that the Company will publicly disclose is recorded, processed, summarized and reported accurately (in all material respects) and on a timely basis, and (ii) information is accumulated and communicated to management as appropriate to allow timely decisions regarding such required disclosure;
 - ii. Review the Company's (i) periodic and current reports, proxy statements, registration statements and any other information filed with or furnished to the SEC, (ii) press releases containing financial information, earnings guidance, information about programs,

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- collaborations, regulatory matters, or material acquisitions or dispositions, or other information material to the Company's security holders, (iii) correspondence broadly disseminated to security holders and any presentations to analysts and the investment community, and (iv) presentations to rating agencies and lenders (collectively, the "Disclosure Statements");
- iii. Review any disclosure policies for the Company's website;
 - iv. Participate in discussions and make recommendations to the Company's senior officers regarding decisions related to materiality of information and determination of disclosure obligations with respect to the Disclosure Statements; and
 - v. To the extent requested by the senior officers, provide a certification to the senior officers prior to the filing with the SEC of each periodic report as to certain of the items required to be certified by the senior officers.
3. The Disclosure Committee shall hold regular meetings, including a meeting at least in conjunction with each of the Company's Forms 10-K, Forms 10-Q, and annual proxy statements.
4. At least on a quarterly basis, or as otherwise necessary, the chair of the Disclosure Committee shall provide an oral update to the Audit Committee regarding any disclosure issues or concerns. The updates shall be recorded in the minutes of the meeting of the Audit Committee.

E. Internal Audit and Financial Oversight Enhancements

- 1. During the pendency of the Derivative Actions, the Company added personnel to its finance functions responsible for internal controls, internal audits, and financial reporting.

The Stipulation also provides for the entry of judgment dismissing the Derivative Actions against Ginkgo and the Individual Defendants with prejudice and, as explained in more detail in

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the Stipulation, barring and releasing any known or unknown claims that have been or could have been brought in any court by Plaintiffs in the Derivative Actions or by Ginkgo, or any of its stockholders, against Ginkgo and the Individual Defendants relating to any of the claims or matters that were or could have been alleged or asserted in any of the Derivative Actions. Plaintiffs' Counsel shall provide reasonable assistance to Defendants as requested to assist Defendants' efforts to obtain dismissal of any stockholder derivative actions not listed in the Stipulation that may be later filed in any state or federal court asserting any of the Released Claims (as defined in Stip. ¶1.16) against the Released Persons (as defined in Stip. ¶1.17).

The Stipulation further provides that the entry of judgment will bar and release any known or unknown claims that have been or could have been brought in any court by Defendants against Plaintiffs or Plaintiffs' Counsel related to the institution, prosecution, assertion, settlement or resolution of the Derivative Actions or the Released Claims.

Further pending the Effective Date (as defined in the Stip. ¶1.4), the Parties agreed that all proceedings and discovery in the Derivative Actions shall be stayed (except as otherwise provided herein and the proceedings necessary to effectuate the consummation and final approval of the Settlement) and not to initiate any other proceedings other than those related to the Settlement itself. During the pendency of such stay, the Parties shall not file, prosecute, instigate, or in any way participate in the commencement or prosecution of any of the Released Claims.

IV. PLAINTIFFS' COUNSEL'S FEE AND EXPENSE AMOUNT AND PLAINTIFFS' SERVICE AWARDS

Prior to negotiating and agreeing upon the Fee and Expense Amount, the Settling Parties negotiated and agreed upon the Settlement Amount, the Contract Termination, and the Reforms to be adopted as part of the Settlement. The Settling Parties agree that the Settlement confers substantial benefits upon Ginkgo and its stockholders, and in recognition of those substantial benefits, have agreed to pay Plaintiffs' Counsel the \$2,750,000 Fee and Expense Amount, subject to the approval of the Court. The Fee and Expense Amount, as approved by the Court, shall be paid out of the Settlement Amount in the manner set forth in ¶ 3.2 of the Stipulation. In no event shall

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Ginkgo, any of the Individual Defendants, or any of their Insurers be obligated to pay an amount greater than \$2,750,000 for attorneys' fees and expenses to Plaintiffs' Counsel or any counsel purporting to represent any other stockholder of Ginkgo in connection with the Derivative Actions or the Settlement.

The Fee and Expense Amount includes fees and expenses incurred by Plaintiffs' Counsel in connection with the prosecution and settlement of the Derivative Actions. To date, Plaintiffs' Counsel have not received any payments for their efforts on behalf of Ginkgo stockholders nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket litigation expenses. The Fee and Expense Amount will compensate Plaintiffs' Counsel for the substantial benefits achieved in the Derivative Actions, and the risks of undertaking the prosecution of the Derivative Actions on a contingent basis.

Defendants agree not to oppose the Fee and Expense Amount or reasonable service awards in the amount of \$2,000 to each of the Plaintiffs to be paid by Plaintiffs' Counsel out of the Fee and Expense Amount in recognition of Plaintiffs' efforts to achieve the Settlement's benefits to the Company and all Current Ginkgo Stockholders, subject to Court approval.

V. REASONS AND BENEFITS OF THE SETTLEMENT

Counsel for the Settling Parties believe that the Settlement is in the best interests of Ginkgo and its stockholders.

A. Why Did the Plaintiffs Agree to Settle?

Plaintiffs and Plaintiffs' Counsel brought the claims in good faith and continue to believe that the claims asserted in the Derivative Actions have merit. However, the Plaintiffs and Plaintiffs' Counsel recognize and acknowledge the expense, time, and uncertainty inherent in the continued prosecution of their claims in the Derivative Actions through trial and any subsequent appeal(s). The Plaintiffs and Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Derivative Actions, as well as the difficulties and delays inherent in such litigation. The Plaintiffs and

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Plaintiffs' Counsel also are mindful of the inherent problems of proof of, and possible defenses to, the claims asserted in the Derivative Actions.

Based upon their investigation and evaluation set forth in more detail in the Stip., §I.C, Plaintiffs and Plaintiffs' Counsel have concluded that the Settlement as set forth in the Stipulation is fair, reasonable and adequate, and is in the best interest of Plaintiffs, Ginkgo, and Current Ginkgo Stockholders, and have agreed to settle the claims raised in the Derivative Actions pursuant to the terms and provisions of the Stipulation after considering, among other things: (a) the substantial benefits that Current Ginkgo Stockholders and Ginkgo have received or will receive from the Settlement; (b) the attendant risks of continued litigation; and (c) the desirability of permitting the Settlement to be consummated.

In particular, Plaintiffs and Plaintiffs' Counsel considered the significant litigation risk inherent in shareholder derivative litigation. The law imposes significant burdens on plaintiffs for pleading and proving a shareholder derivative claim. While Plaintiffs believe their claims are meritorious, Plaintiffs acknowledge that there is a substantial risk that the Derivative Actions may not succeed in producing a recovery in light of the applicable legal standards and possible defenses. Plaintiffs and Plaintiffs' Counsel believe that, under the circumstances, they have obtained the best possible relief for Ginkgo and Current Ginkgo Stockholders.

B. Why Did the Defendants Agree to Settle?

Defendants have denied, and continue to deny, each and every allegation of liability or wrongdoing made against them in the Derivative Actions, and assert that they have meritorious defenses to those claims and that judgment should be entered dismissing all claims against them with prejudice. Defendants have thus entered into this Stipulation solely to avoid the continuing additional expense, inconvenience, and distraction of litigating the Derivative Actions and/or any related litigation and to avoid the risks inherent in any lawsuit, and without admitting any wrongdoing or liability whatsoever.

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VI. SETTLEMENT HEARING

On _____, 2025, at _____, the Court will hold the Settlement Hearing either in person at Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, or by telephone or videoconference (at the discretion of the Court). At the Settlement Hearing, the Court will determine: (i) whether the Settlement of the Derivative Actions on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Ginkgo and Current Ginkgo Stockholders, and should be finally approved by the Court; (ii) whether a Judgment as provided in, and attached as Exhibit D to the Stipulation should be entered; (iii) whether to approve the payment of the Fee and Expense Amount in the amount negotiated and agreed to by the Settling Parties and Service Awards for the Plaintiffs to be drawn therefrom; and (iv) such other matters as may be necessary or proper under the circumstances.

VII. RIGHT TO ATTEND SETTLEMENT HEARING

Any Current Ginkgo Stockholder may, but is not required to, appear in person at the Settlement Hearing. If you want to be heard at the Settlement Hearing in opposition to the Settlement, Fee and Expense Amount, and/or the Service Awards, then you must first comply with the procedures for objection, which are set forth below. The Court has the right to change the hearing dates or times without further notice. Thus, if you are planning to attend the Settlement Hearing, you should confirm the date and time before going to the Court. **CURRENT GINKGO STOCKHOLDERS WHO HAVE NO OBJECTION TO THE SETTLEMENT DO NOT NEED TO APPEAR AT THE SETTLEMENT HEARING OR TAKE ANY OTHER ACTION.**

VIII. RIGHT TO OBJECT TO THE SETTLEMENT AND PROCEDURES FOR DOING SO

You have the right to object to any aspect of the Settlement. You must object in writing, and you may request to be heard at the Settlement Hearing. If you choose to object, then you must follow these procedures.

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A. You Must Make Detailed Objections in Writing

Any objections must be presented in writing and must contain the following information:

1. Notice of whether you intend to appear at the Settlement Hearing;
2. Your name, legal address, and telephone number;
3. Proof of being a Current Ginkgo Stockholder as of the Record Date and representation that you will continue to own Ginkgo common stock as of the date of the Settlement Hearing;
4. The date(s) you acquired your Ginkgo shares and the number of Ginkgo shares held;
5. A detailed statement of your specific position with respect to the matters to be heard at the Settlement Hearing, including a statement of each objection being made; and
6. The grounds for each objection or the reasons for your desire to appear and to be heard.

The Court will not consider any objection that does not substantially comply with these requirements. Any counsel retained by a purported objector for the purpose of asserting an objection must make a notice of appearance on the Court by ____, 2025, which is fourteen (14) days prior to the Settlement Hearing.

B. You Must Timely Deliver Written Objections to Certain Plaintiffs' Counsel

YOUR WRITTEN OBJECTIONS MUST BE FILED WITH THE COURT AND SENT BY HAND OR BY FIRST CLASS MAIL, POSTAGE PRE-PAID TO THE COUNSEL FOR THE SETTLING PARTIES OUTLINED BELOW. THE WRITTEN OBJECTIONS MUST BE POSTMARKED NO LATER THAN ____, 2025, WHICH IS FOURTEEN (14) CALENDAR DAYS PRIOR TO THE SETTLEMENT HEARING to the following addresses:

Francis A. Bottini, Jr.
Albert Chang
Bottini & Bottini, Inc.
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
(858) 914-2001

Counsel for Weining Hu

Seth D. Rigrodsky
Vincent A. Licata
Rigrodsky Law, P.A.
825 East Gate Boulevard, Suite 300
Garden City, NY 11530
(516) 683-3516

Counsel for Eric Bowers

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Graham W. Meli
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Bryan Merryman
Gregory Starner
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020

Counsel for Defendants

The Court will not consider any objection that is not timely filed with the Court and delivered to Settling Parties' counsel.

Any Person who fails to object in the above prescribed manner will be deemed to have waived the right to object to any aspect of the Settlement, Fee and Expense Amount, and/or Service Awards or otherwise request to be heard (including the right to appeal) and will be forever barred from raising such objection or request to be heard in this or any other action or proceeding, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

IX. INTERIM INJUNCTION

Pending the Effective Date, all stockholders of Ginkgo are barred and enjoined from, either directly, representatively, or in any other capacity, prosecuting, instituting, commencing, or continuing to prosecute on behalf of Ginkgo or any stockholders thereof, any claim which has been or could have been asserted in the Derivative Actions or any other Released Claims. The provisions of this paragraph shall expressly not apply to any securities fraud claims by a class member in *Bernstein v. Ginkgo Bioworks Holdings, Inc., et al.*, C.A. No. 4:21-cv-08943-KAW in this Court.

X. HOW TO OBTAIN ADDITIONAL INFORMATION

This Long Form Notice summarizes the Settling Parties' Stipulation. It is not a complete statement of the events of the Derivative Actions or the Stipulation. Although the Settling Parties believe that the descriptions about the Settlement that are contained in this Long Form Notice are accurate in all material respects, in the event of any inconsistencies between the descriptions in this Long Form Notice and the Stipulation, the Stipulation will control.

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You may inspect the Stipulation and other papers at
<https://investors.ginkgobioworks.com/overview/default.aspx>.

PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT QUESTIONS TO
EITHER THE COURT OR THE CLERK'S OFFICE. Any questions you have about matters in
this Notice should be directed by telephone or in writing to the named Plaintiffs' Counsel at the
addresses set forth above.

**XI. NOTICE TO PERSONS OR ENTITIES HOLDING OWNERSHIP ON BEHALF OF
OTHERS**

Brokerage firms, banks and/or other persons or entities who held shares of Ginkgo common
stock for the benefit of others are requested to immediately send this Long Form Notice to all of
their respective beneficial owners. If Current Ginkgo Stockholders have questions or comments
about the Settlement, they should follow the procedures listed in Section X.

Dated _____

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

EXHIBIT C

EXHIBIT C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WEINING HU, derivatively on behalf of
GINKGO BIOWORKS HOLDINGS, INC., a
Delaware corporation,

Plaintiff,

vs.

ELI BAKER, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-02077-KAW
The Honorable Kandis A. Westmore
**SUMMARY NOTICE OF PROPOSED
SETTLEMENT OF DERIVATIVE
ACTIONS**

ERIC BOWERS, Derivatively on behalf of
Nominal Defendant GINKGO BIOWORKS
HOLDINGS, INC.,

Plaintiff,

vs.

JASON KELLY, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-05396-KAW
The Honorable Kandis A. Westmore

SUMMARY NOTICE OF PROPOSED SETTLEMENT OF DERIVATIVE ACTIONS

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

**TO: ALL PERSONS OR ENTITIES WHO OR WHICH HELD SHARES
OF GINKGO BIOWORKS HOLDINGS, INC. (“GINKGO” OR “THE
COMPANY”) COMMON STOCK AS OF THE CLOSE OF
TRADING ON MAY 27, 2025 (THE “RECORD DATE”).**

PLEASE TAKE NOTICE that the above-captioned Federal Derivative Actions and another consolidated Derivative Action pending in Delaware Chancery Court are being settled on the terms set forth in a Stipulation and Agreement of Settlement dated May 27, 2025 (the “Stipulation”).¹

¹ The capitalized terms used in this Summary Notice and not otherwise defined are defined in the Stipulation. This Summary Notice should be read in conjunction with, and is qualified in its

In connection with the Settlement and in consideration of the releases set forth in the Stipulation, the Individual Defendants shall cause their Insurers to pay Ginkgo the sum of four million one hundred twenty-five thousand dollars (\$4,125,000) (the “Settlement Amount”). The Settlement Amount shall be paid by Individual Defendants’ Insurers to Ginkgo within thirty (30) days after the Court enters the Judgment under the terms of the Stipulation ¶2.1. The Settlement Amount is inclusive of all fees and expenses of Plaintiffs’ Counsel and Service Awards, which will be paid in the manner set forth in the Stipulation, ¶¶3.2 and 3.3, if approved by the Court. In no event shall the Defendants or their Insurers be required to pay any amount greater than the Settlement Amount in connection with the Settlement, other than as expressly set forth in the Stipulation ¶4.1 with respect to the costs of providing Notice.

In addition, under the terms of the Stipulation, within thirty (30) days after the Court enters the Judgment, (i) Ginkgo will terminate a certain contract as further set forth in the Stipulation, and (ii) the Board shall take all necessary and appropriate action to adopt, implement, and maintain for a period of not less than three (3) years, the comprehensive corporate governance, oversight, and internal controls Reforms set forth in the Stipulation. The foregoing matters, which are detailed more fully in the Stipulation and Long Form Notice, are intended to provide additional value to the Company and to address the claims asserted in the Derivative Actions. In the event of any change in law or regulations that impacts any subject matter in the Reforms, the Company’s Board may adopt such amendments as it determines in its good faith business judgment, after consultation with counsel, to be required to comply with such law or regulations while maintaining the purposes of the Reforms to the greatest extent practicable.

Ginkgo’s Board, including its independent, non-defendant directors, in a good-faith exercise of business judgment, has determined that: (i) the Settlement confers a substantial benefit upon Ginkgo and its stockholders; and (ii) the Settlement, and each of its terms, is in all respects fair, adequate, reasonable, and in the best interests of Ginkgo and its stockholders.

entirety by reference to, the text of the Stipulation and its Exhibits, which have been filed with the United States District Court for the Northern District of California.

Plaintiffs' Counsel intends to request that the Court approve the agreed-to \$2,750,000 Fee and Expense Amount, inclusive of \$2,000 Service Awards to each of the Plaintiffs. The Defendants have agreed to this amount and not to oppose this request. The amount of attorneys' fees and expenses will be within the sole discretion of the Court.

IF YOU WERE A RECORD OR BENEFICIAL OWNER OF GINKGO COMMON STOCK AS OF THE RECORD DATE ABOVE, PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY AS YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THE ABOVE-REFERENCED LITIGATION.

On _____, 2025, at _____, the Court will hold the Settlement Hearing either in person at the United States District Courthouse for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, or by telephone or videoconference (at the discretion of the Court). At the Settlement Hearing, the Court will determine: (i) whether the Settlement of the Derivative Actions on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Ginkgo and Current Ginkgo Stockholders, and should be finally approved by the Court; (ii) whether a Judgment as provided in, and attached as Exhibit D to the Stipulation should be entered; (iii) whether to approve the payment of the Fee and Expense Amount in the amount negotiated and agreed to by the Settling Parties and Service Awards for the Plaintiffs to be drawn therefrom; and (iv) such other matters as may be necessary or proper in the circumstances.

Any Current Ginkgo Stockholder may, but is not required to, appear in person at the Settlement Hearing. If you want to be heard at the Settlement Hearing in opposition to the Settlement, the Fee and Expense Amount, and/or the Service Awards, then you must first comply with the following procedures for objecting.

Any objections must be presented in writing and must contain the following information:

1. Notice of whether you intend to appear at the Settlement Hearing;
2. Your name, legal address, and telephone number;

3. Proof of being a Current Ginkgo Stockholder as of the Record Date and representation that you will continue to own Ginkgo common stock as of the date of the Settlement Hearing;
4. The date(s) you acquired your Ginkgo shares and the number of Ginkgo shares held;
5. A detailed statement of your specific position with respect to the matters to be heard at the Settlement Hearing, including a statement of each objection being made; and
6. The grounds for each objection or the reasons for your desire to appear and to be heard.

Any counsel retained by a purported objector for the purpose of asserting an objection must make a notice of appearance on the Court by ____, 2025, which is fourteen (14) days before the Settlement Hearing. The Court will not consider any objection that does not substantially comply with these requirements.

Any written objections must be filed with the Court and sent by hand or by first class mail, postage pre-paid to the Settling Parties' counsel below no later than fourteen (14) days prior to the Settlement Hearing at the following addresses:

Francis A. Bottini, Jr.
Albert Chang
Bottini & Bottini, Inc.
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
(858) 914-2001

Counsel for Weining Hu

Graham W. Meli
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Bryan Merryman
Gregory Starnier
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020

Counsel for Defendants

Seth D. Rigrodsky
Vincent A. Licata
Rigrodsky Law, P.A.
825 East Gate Boulevard, Suite 300
Garden City, NY 11530
(516) 683-3516

Counsel for Eric Bowers

The Court will not consider any objection that is not timely filed with the Court and

delivered to the Settling Parties' counsel.

Any Person who fails to object in the above prescribed manner will be deemed to have waived the right to object to any aspect of the Settlement, Fee and Expense Amount, and/or Service Awards or otherwise request to be heard (including the right to appeal) and will be forever barred from raising such objection or request to be heard in this or any other action or proceeding, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

This Summary Notice summarizes the Settling Parties' Stipulation. It is not a complete statement of the events of the Derivative Actions or the Stipulation. You may inspect the Stipulation and other papers at <https://investors.ginkgobioworks.com/overview/default.aspx>.

PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT QUESTIONS TO EITHER THE COURT OR THE CLERK'S OFFICE. Any questions you have about matters in this Notice should be directed by telephone or in writing to the named Plaintiffs' Counsel at the addresses set forth above.

Dated _____

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

EXHIBIT D

EXHIBIT D

Confidential Settlement Communication
Subject to FRE 408 and Equivalents

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

WEINING HU, derivatively on behalf of
GINKGO BIOWORKS HOLDINGS, INC., a
Delaware corporation,

Plaintiff,

vs.

ELI BAKER, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-02077-KAW

The Honorable Kandis A. Westmore

**[PROPOSED] FINAL JUDGMENT AND
ORDER APPROVING DERIVATIVE
SETTLEMENT**

ERIC BOWERS, Derivatively on behalf of
Nominal Defendant GINKGO BIOWORKS
HOLDINGS, INC.,

Plaintiff,

vs.

JASON KELLY, *et al.*,

Defendants,

- and -

GINKGO BIOWORKS HOLDINGS, INC.,

Nominal Defendant.

Case No. 4:23-cv-05396-KAW

The Honorable Kandis A. Westmore

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**[PROPOSED] FINAL JUDGMENT AND ORDER APPROVING DERIVATIVE
SETTLEMENT**

WHEREAS:

(A) On April 28, 2023, Weining Hu filed the action styled *Hu v. Baker, et al.*, No. 4:23-cv-02077-KAW in this Court derivatively on behalf of nominal defendant Ginkgo Bioworks Holdings, Inc. (“Ginkgo” or the “Company”) against certain of the Individual Defendants alleging claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, violations of Section 14(a) of the Securities Exchange Act of 1934 (“Exchange Act”), unjust enrichment and contribution and indemnification (the “*Hu* Action”).

(B) On October 20, 2023, Eric Bowers filed the action styled *Bowers v. Kelly, et al.*, No. 4:23-cv-05396-KAW in this Court derivatively on behalf of nominal defendant Ginkgo against certain of the Individual Defendants alleging claims similar to those alleged in the *Hu* Action (the “*Bowers* Action” and together with the *Hu* Action the “Federal Derivative Actions”). Prior to filing his complaint, Bowers made a litigation demand on the Company’s board of directors to investigate and redress the wrongdoing alleged.

(C) From January 2024 to February 2025, Plaintiffs’ Counsel had numerous discussions with Defendants’ Counsel and Michelle Yoshida, Esq. of Phillips ADR Enterprises (the “Mediator”) regarding settlement issues and to request information. On February 8, 2025, following multiple mediation sessions, the Mediator made a double-blind recommendation concerning the cash component of the Settlement, in the amount of \$4,125,000, which the Settling Parties accepted. At the same time, the Settling Parties agreed on the corporate governance reforms to be adopted by the Company in connection with the Settlement, as well as the valuable Contract Termination. See Stip., §§ 2.1-2.5.

(D) Pursuant to the Preliminary Approval Order entered on _____, 2025, this Court scheduled a Settlement Hearing for _____, 2025, at _____ to, *inter alia*, determine whether

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1 the Settlement of the Derivative Actions on the terms and conditions provided for in the Stipulation
2 and Agreement of Settlement, executed on May 27, 2025 (the “Stipulation”) is fair, reasonable, and
3 adequate to Ginkgo and Current Ginkgo Stockholders, and should be finally approved by the Court,
4 whether to approve the payment of the Fee and Expense Amount in the amount negotiated and agreed
5 to by the Settling Parties and Service Awards for the Plaintiffs to be drawn therefrom, and such other
6 matters as may be necessary or proper in the circumstances.

7 (E) The Court has received affidavit(s) and/or declaration(s) attesting to compliance with
8 the terms of the Preliminary Approval Order regarding Notice to Current Ginkgo Stockholders,
9 including the Company causing the Summary Notice to be published via *GlobeNewswire* or similar
10 wire service, posting the Long Form Notice and Stipulation (and exhibits thereto) on Ginkgo’s investor
11 relations website, and including in a filing with the U.S. Securities and Exchange Commission
12 (“SEC”) a disclosure of the status of the Settlement with a link to the page where the Long Form
13 Notice and Stipulation and its exhibits were posted.

14 (F) Due to adequate notice having been given to Current Ginkgo Stockholders as required
15 by the Preliminary Approval Order, and the Court having held a Settlement Hearing on ___, 2025, and
16 the Court having considered all papers filed and proceedings in the Federal Derivative Actions and
17 otherwise being fully informed of the matters herein and good cause appearing.

18 **NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

19 1. The Provisions of the Stipulation, including definitions of the terms used therein, are
20 hereby incorporated by reference as though fully set forth herein. All capitalized terms used herein
21 have the meanings set forth in the Stipulation.

22 2. This Court has jurisdiction over the subject matter of the Federal Derivative Actions,
23 including all matters necessary to effectuate the Settlement, over all parties to the Federal Derivative
24 Actions, and over Current Ginkgo Stockholders.

25 3. This Court finds that the publishing, posting and filing of the Notice, which was
26 implemented in accordance with the terms of the Stipulation and the Court’s Preliminary Approval
27 Order:
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1 (a) Constituted the best practicable notice to Current Ginkgo Stockholders under the
2 circumstances;

3 (b) Was reasonably calculated, under the circumstances, to apprise Current Ginkgo
4 Stockholders of: (i) the Settlement of the Derivative Actions; (ii) their right to object and the
5 procedures to object to any aspect of the Settlement; (iii) their right to appear at the Settlement
6 Hearing, either on their own or through counsel hired at their own expense; (iv) the Fee and
7 Expense Amount to Plaintiffs' Counsel and the Service Awards to Plaintiffs to be drawn
8 therefrom; and (v) the binding effect of the proceedings, rulings, orders, and judgments in these
9 Federal Derivative Actions on other potential or filed actions or claims, whether favorable or
10 unfavorable; and

11 (c) Was reasonable and constituted due, adequate, and sufficient notice to all persons
12 entitled to be provided with notice and fully satisfied Rule 23.1 of the Federal Rules of Civil
13 Procedure and the requirements of due process and complied with the rules of this Court.

14 4. The terms and provisions of the Stipulation were negotiated by the Settling Parties at
15 arm's length and were entered into by the Parties in good faith.

16 5. The Court finds that the Settlement set forth in the Stipulation is fair, reasonable,
17 adequate, and in the best interests of Current Ginkgo Stockholders, taking into account, *inter alia*, the
18 substantial benefits to Ginkgo and Current Ginkgo Stockholders; the complexity, expense, and
19 possible duration of further litigation; the risks of establishing damages; and the costs of continued
20 litigation. The Settlement set forth in the Stipulation is hereby finally approved in all respects, in
21 accordance with the terms and provisions therein, and all Settling Parties are hereby bound by the
22 terms of the Settlement as set forth in the Stipulation.

23 6. Upon the Effective Date, Ginkgo acting directly, Plaintiffs (acting on their own behalf
24 and, derivatively on behalf of Ginkgo), and each of the Current Ginkgo Stockholders shall be deemed
25 to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished,
26 discharged, and dismissed with prejudice each of the Released Claims (including Unknown Claims)
27 against each of the Released Persons and shall be forever enjoined from asserting, commencing,
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1 instituting, or prosecuting any of the Released Claims against any Released Person. Nothing herein
2 shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Settlement.

3 7. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by
4 operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged
5 each and all of the Plaintiffs and Plaintiffs' Counsel and their subsidiaries, affiliates, members,
6 directors, officers, employees, partners, agents, heirs, administrators, successors, and assigns from all
7 claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution,
8 prosecution, assertion, settlement or resolution of the Derivative Actions or the Released Claims.
9 Nothing herein shall in any way impair or restrict the rights of any of the Settling Parties to enforce
10 the terms of the Settlement.

11 8. The Stipulation, and all related documents, shall not be construed as or deemed to be
12 evidence of (i) any presumption, an admission, or concession on the part of any Defendant, or any of
13 the Released Persons, with respect to any claim of any fact alleged by Plaintiffs or any Ginkgo
14 stockholder, the validity of any claim that was or could have been asserted by Plaintiffs or any Ginkgo
15 stockholder, or any deficiency or any defense that has been or could have been asserted by Defendants
16 in the Derivative Actions, or in any other litigation, or (ii) any liability, negligence, fault, wrongdoing,
17 or damage whatsoever of any kind of any of the Released Persons, or in any way referred to for any
18 other reason as against any of Released Persons, in any civil, criminal, or administrative action or
19 proceeding, other than such proceeding.

20 9. Whether or not the Effective Date occurs or the Stipulation is terminated, neither the
21 Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant
22 to or in furtherance of the Stipulation or the Settlement:

23 (a) may be deemed, or shall be used, offered, or received against Defendants or Released
24 Persons, or each or any of them, as an admission, concession or evidence of, the validity of
25 any Released Claims, the truth of any fact alleged by Plaintiffs, the deficiency of any defense
26 that has been or could have been asserted in the litigation, or of any alleged wrongdoing,
27 liability, negligence, or fault of the Defendants and the Released Persons, or any of them;
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(b) may be deemed, or shall be used, offered or received against Plaintiffs or any Current Ginkgo Stockholder, or each or any of them, as an admission, concession or evidence of, the validity or invalidity of any of the Released Claims, the infirmity or strength of any claims raised in the Derivative Actions, the truth or falsity of any fact alleged by Defendants, or the availability or lack of availability of meritorious defenses to the claims raised in the Derivative Actions.

10. The Released Persons may file the Stipulation and/or this Judgment in any action that may be brought against such party or parties 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.

11. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event: (i) all Parties and Released Persons shall be restored to their respective positions in the Derivative Actions prior to their agreement in principle on the Settlement; (ii) all releases delivered in connection with the Stipulation shall be null and void, except as otherwise provided for in the Stipulation; (iii) the Settlement Amount shall not be paid or, if already paid, shall be refunded to the Individual Defendants' Insurers; (iv) the Fee and Expense Amount shall not be paid or, if already paid, shall be refunded by Plaintiffs' Counsel; (v) all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission by any of the Parties of any act, matter, or proposition, and shall not be used or referred to in any manner for any purpose (other than to enforce the terms remaining in effect) in any subsequent proceeding in the Derivative Actions or in any other action or proceeding. Further, the terms and provisions of the Stipulation shall not be used in the Derivative Actions or in any other proceeding for any purpose.

12. The Court finds that during the course of the Federal Derivative Actions, all Settling Parties, Plaintiffs' Counsel, and Defendants' Counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure and all other rules of professional conduct.

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13. The Fee and Expense Amount and Service Awards, as set forth in the Stipulation, are hereby approved. Plaintiffs' Counsel shall allocate the Fee and Expense Amount among themselves in accordance with the Stipulation.

14. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; and (ii) the Settling Parties for the purpose of construing, enforcing, and administering the Stipulation and the Settlement, including, if necessary, setting aside and vacating this Judgment, on motion of a party, to the extent consistent with and in accordance with the Stipulation if the Effective Date fails to occur in accordance with the Stipulation.

15. This Federal Derivative Actions and all Released Claims are dismissed with prejudice. The parties are to bear their own fees and costs, except as otherwise provided in the Stipulation or this Judgment.

16. The provisions of this Judgment constitute a full and complete adjudication of the matters considered and adjudged herein, and the Court determines that there is no just reason for delay in the entry of this Judgment. The Clerk is hereby directed to immediately enter this Judgment

SO ORDERED in the Northern District of California on _____, 2025.

THE HON. KANDIS A. WESTMORE