

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

S/M MERGER ARBITRAGE, L.P.,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

EMISPHERE TECHNOLOGIES, INC.,
MARK H. RACHESKY, MICHAEL
WEISER, TIMOTHY ROTHWELL,
TIMOTHY MCINERNEY and
HOWARD DRAFT,

Defendants.

Civil Action No: 2:23-cv-20898 (SDW)(AME)

Hon. Susan D. Wigenton

~~[PROPOSED]~~ **ORDER GRANTING THE
EMISPHERE INVESTORS' MOTION
FOR APPOINTMENT AS LEAD
PLAINTIFF AND APPROVAL OF
SELECTION OF COUNSEL**

Motion Date: January 2, 2024

WHEREAS, on December 4, 2023, the Emisphere Investors¹ filed a Motion for Appointment as Lead Plaintiff and Approval of Selection of Counsel [D.E. 5]; and

WHEREAS, the Court, having considered the Emisphere Investors' Motion for Appointment as Lead Plaintiff and Approval of Selection of Counsel, including the Declaration of Joseph J. DePalma with exhibits, **and, in its discretion, rules without oral argument; and no opposition having been filed; and for good cause shown,**

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Emisphere Investors' Motion for Appointment as Lead Plaintiff and Approval of Selection of Counsel is **GRANTED**;

¹ The Emisphere Investors consist of: SM Merger/Arbitrage, L.P., Associated Capital Group, Inc., ODS Capital LLC, the Hilary L. Shane Revocable Trust, and Hilary L. Shane.

2. The Emisphere Investors are **APPOINTED** as Lead Plaintiff for a proposed class (“Class”) consisting of investors that sold shares of the publicly traded common stock of Emisphere Technologies, Inc. (“Emisphere”) from November 6, 2020, the announcement date of the merger (“Merger”) between Emisphere and Novo Nordisk A/S, through the close of the Merger on December 8, 2020, including investors who sold their shares of Emisphere common stock into the Merger, and were damaged as a result of Defendants’ alleged wrongdoing; and

3. The Emisphere Investors’ selection of Entwistle & Cappucci LLP and Saxena White P.A. to serve as Lead Counsel for the Class, and Lite DePalma Greenberg & Afanador, LLC to serve as Liaison Counsel for the Class, is **APPROVED**.

4. Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, any subsequently filed, removed or transferred actions brought on behalf of Emisphere investors that are related to the claims in this action are **CONSOLIDATED** under the caption *In Emisphere Technologies, Inc.*

Securities Litigation.

5. [The Clerk of Court shall terminate the motion at D.E. 5](#)

IT IS SO ORDERED.

Dated: January 19, 2024

/s/ André M. Espinosa

ANDRÉ M. ESPINOSA
United States Magistrate Judge