



**GRANTED**

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Case No. 2020-0282-KSJM



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

SNOW PHIPPS GROUP, LLC, and )  
DECOPAC HOLDINGS INC., )

Plaintiffs-Counterclaim Defendants, )

v. )

C.A. No. 2020-0282-KSJM

KCAKE ACQUISITION, INC., )  
KOHLBERG INVESTORS VIII-B, L.P., )  
KOHLBERG INVESTORS VIII-C, L.P., )  
KOHLBERG TE INVESTORS VIII, L.P., )  
KOHLBERG TE INVESTORS VIII-B, )  
L.P., KOHLBERG INVESTORS VIII, )  
L.P.; and KOHLBERG PARTNERS VIII, )  
L.P., )

Defendants-Counterclaim Plaintiffs. )

**STIPULATION AND [PROPOSED] ORDER CONCERNING  
PROTOCOL FOR CONDUCTING REMOTE DEPOSITIONS**

**WHEREAS**, the parties (the “Parties”) in the above-captioned action (the “Action”) are engaged in discovery and desire to depose witnesses in this Action;

**WHEREAS**, the Parties anticipate that depositions will need to be conducted remotely due to the COVID-19 pandemic;

**IT IS HEREBY STIPULATED AND AGREED**, by the Parties hereto, through their undersigned counsel, subject to the approval of the Court, that this Stipulation and [Proposed] Order Concerning Protocol for Conducting Remote

Depositions will govern the procedures for conducting remote depositions in this Action:

1. Subject to Paragraph 2 below, unless otherwise agreed by all Parties and, as applicable, any non-party deponent, all depositions in this Action (including third-party depositions) shall be conducted remotely using videoconference technology, and each deponent shall be video-recorded. Should the circumstances concerning the COVID-19 pandemic change such that it is practical to conduct a deposition in person where the deponent and the Parties' counsel are able to attend, the Parties agree to meet and confer regarding whether the deposition should take place in person or remotely. This meet and confer will occur sufficiently in advance of the deposition to allow enough time for those who intend to participate in person to obtain any relevant travel permissions and make the necessary travel arrangements. Regardless of whether it is feasible to conduct a deposition in person due to developments concerning the COVID-19 pandemic, the Parties agree that the deposition will not take place in person unless the deponent and counsel for all Parties all agree to conduct the deposition in person.

2. In the event that a deponent wishes to have his or her counsel present in person during the deposition, the deponent shall provide all counsel with notice of this fact and the identity of that counsel who will attend the deposition as soon as possible, and no later than 5 business days before the deposition date. In that event,

any other counsel of record is also entitled, but not required, to attend the deposition in person. If the deposition proceeds as a remote deposition, any person who is present in the room where the deponent is located shall state his or her appearance for the record and be visible to those participating in the deposition remotely at all times.

3. The Party that notices a deposition (“Noticing Party”) shall be responsible for engaging a service provider to provide court reporting, videoconference and remote deposition services for all remote depositions (the “Service Provider”), and shall be responsible for procuring a written transcript and video record of the remote deposition. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition, subject to any final allocation of costs that may be awarded by the Court.

4. The Parties agree that a Service Provider employee other than the court reporter may remotely attend each remote deposition to video record the deposition, troubleshoot any technological issues that may arise, and administer the virtual breakout rooms. To the extent a deposition needs to be adjourned due to technical problems that cannot be resolved within an hour, the parties shall resume the deposition at the earliest possible date and time. In particular, if the deponent’s counsel experiences technological difficulties such that they cannot timely pose objections and otherwise defend the witness, the deposition will be paused and the

parties will go off the record until counsel for the deponent confirms that the issue has been resolved.

5. The Parties agree that these video-recorded remote depositions may be used at trial or a hearing in this Action to the same extent that an in-person deposition may be used at a trial or a hearing, and the Parties agree not to object to the use of these video recordings on the basis that the deposition was taken remotely. The Parties reserve all other objections to the use of any deposition testimony at trial.

6. The deponent, court reporter, interpreter, and counsel for the Parties will each participate in the videoconference deposition remotely and separately, unless otherwise agreed to in advance of the remote deposition as set forth in Paragraphs 1 and 2 herein. Each person attending a remote deposition shall be visible to all other participants, their statements shall be audible to all participants, and they should each strive to ensure their environment is free from noise and distractions. The deponent, court reporter, interpreter, and counsel agree to work collaboratively when planning and throughout the duration of the deposition to address any logistical or technical issues or requests.

7. Consistent with Court of Chancery Rule 30 and Delaware law, no person shall engage in a private conference or in any communication, including through telephone, text message, electronic mail, instant message or the chat feature in the videoconferencing system, with any deponent while a question is pending or

during any recess regarding the substance of the testimony or to suggest how a question should be answered, except for the purposes allowed under Court of Chancery Rule 30(d)(1).

8. The deponent is prohibited from turning off his or her microphone while on the record. The deponent may not use secondary screens, wireless screens, television screens, or other devices that can be connected remotely to the computer being used for the deposition audio and video feed, unless they are used only for the deposition feed. While on the record, each deponent shall close all documents, emails, browsers, programs and applications other than the Service Provider's deposition feed on his or her computer. While on the record, the deponent shall move any cell phone or other electronic communication device out of reach.

9. During breaks in the deposition, the Parties may use any breakout room feature provided by the Service Provider, which simulates a live breakout room through videoconference. Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by the Service Provider prior to the deposition and controlled by the Service Provider.

10. Remote depositions shall be recorded by stenographic means, but given the COVID-19 pandemic, the court reporter will not be physically present with the witness whose deposition is being taken. The Parties agree not to challenge the

validity of any oath administered by the court reporter, even if the court reporter is not a notary public in the state or country where the deponent is located.

11. The court reporter will stenographically record the testimony, and the court reporter's transcript shall constitute the official record. The Service Provider will simultaneously videotape the deposition and preserve the video recording. The court reporter may be given a copy of the video recording and may review the video recording to improve the accuracy of any written transcript.

12. The Parties agree that the court reporter is an "officer" within the meaning of Court of Chancery Rule 28(a) or a "person commissioned by the Court" within the meaning of Court of Chancery Rule 28(b), as the case may be, and shall be permitted to administer the oath to the witness via the videoconference.

13. The Party that noticed the deposition shall provide the Service Provider with a copy of this Stipulation and Order at least forty-eight hours in advance of the deposition.

14. At the beginning of each deposition, consistent with Court of Chancery Rule 30(c), the Service Provider employee responsible for video-recording the deposition shall begin the deposition with an on-the-record statement that includes: (i) the officer's name and business address; (ii) the date, time, and place of the deposition; (iii) the deponent's name; (iv) the officer's administration of the oath or

affirmation to the deponent; and (v) the identity of all persons present at the remote deposition.

15. At the beginning of each segment of the deposition, consistent with Court of Chancery Rule 30(c), the Service Provider employee responsible for video-recording the deposition shall begin that segment of the remote deposition by reciting (i) the officer's name and business address; (ii) the date, time, and place of the deposition; and (iii) the deponent's name.

16. The Parties agree to work collaboratively and in good faith with the Service Provider to assess each deponent's technological abilities and to troubleshoot any issues at least forty-eight hours in advance of the deposition so any adjustments can be made. The Noticing Party shall also facilitate a test call in advance of the deposition to test the technology and equipment if requested by any Party. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any Party to proceed with a deposition where the deponent cannot hear or understand the other participants or where the participants cannot hear or understand the deponent.

17. Every deponent shall endeavor to have technology sufficient to appear for a videotaped deposition (e.g., a webcam and computer or telephone audio), and

bandwidth sufficient to sustain the remote deposition. Counsel for each deponent shall consult with the deponent prior to the deposition to ensure the deponent has the required technology. If not, counsel for the deponent shall endeavor to supply the required technology to the deponent prior to the deposition. In the case of third-party witnesses, counsel noticing the deposition shall supply any necessary technology that the deponent does not have.

18. The Parties agree to use reasonable efforts to minimize technical disruptions. Notwithstanding the foregoing, in the event that the deponent, counsel, court reporter, and/or videographer experiences a technical malfunction that disrupts his or her audio and/or video during the deposition, the affected Party must raise any objection as to the portion of the deposition during which the affected Party's participation was impaired as soon as possible, but in no event later than the conclusion of the deposition unless the deposition concludes before the affected Party is able to rejoin the deposition. If additional time is needed to complete the deposition due to technical difficulties, the Parties agree to make the deponent whose deposition was interrupted available on another day. The Parties do not waive their right to request additional testimony for any other reason, nor do the Parties waive any objections to any such request.

19. The Parties agree that this Stipulation and Order applies to remote depositions of non-parties under Court of Chancery Rule 45 and the Parties shall



work in a collaborative manner in attempting to schedule remote depositions of non-parties. The Party noticing any third-party deposition shall provide this Stipulation and Order to counsel for any non-party under Court of Chancery Rule 45 a reasonable time before the date of the deposition, but not less than forty-eight hours before the date of the deposition.

20. The Parties agree that any of the following methods for administering exhibits may be employed during a remote deposition, or a combination of one or more methods:

(i) Counsel noticing the deposition may choose to mail or send by courier physical copies of documents that may be used during the deposition to the deponent and the deponent's counsel. In that event, noticing counsel shall so inform the deponent's counsel prior to mailing the documents. Such documents shall be delivered by 8:00 p.m. local time the day before the deposition. If physical copies are mailed, every recipient of a mailed package shall keep the package sealed until the deposition begins and shall only unseal the package on the record, on video, and during the deposition when directed to do so by the counsel taking the deposition. This same procedure shall apply to any physical copies of documents any other counsel intends to use for examining the witness. Electronic copies of the deposition exhibits will be made available to other attendees of the deposition, including other Parties' counsel and the court reporter, as described in Paragraph 20(ii).

(ii) Counsel noticing the deposition may choose to send a compressed .zip file or FTP of the documents that may be used during the deposition via electronic mail to the deponent, the deponent's counsel, the other Party's counsel, and the court reporter. The documents shall be delivered by 8:00 p.m. local time the day before the deposition. The .zip file or FTP link shall be password protected, and counsel taking the deposition shall supply the password via electronic email simultaneously with the delivery of the .zip file or FTP link. Every recipient of a .zip file or FTP link shall not open any documents in the file or otherwise attempt to review or discern the contents of the .zip file or FTP link until the deposition begins and when directed to do so by the counsel taking the deposition. Before the close of the deposition, the deponent shall delete the documents from the deponent's computer and electronic mail, and state for the record and on video that the documents have been deleted.

(iii) Counsel may introduce exhibits electronically during the deposition, by using the Service Provider's document-sharing technology, by using the screen-sharing technology within the videoconferencing platform, or by sending the exhibit to the deponent and all individuals on the record via electronic mail or through other means as may be agreed on the record. To the extent any document is displayed electronically, all participants, including the witness, shall be given full access to the document such that the witness and defending attorney shall have the

independent ability to review all portions of the documents. Before the close of the deposition, the deponent shall delete all exhibits sent electronically during the deposition from the deponent's computer, electronic mail, or otherwise and state for the record and on video that the exhibits have been deleted.

21. All deponents receiving hard-copy documents, pursuant to Paragraph 20(i) above, shall return the documents to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. Counsel noticing the deposition shall include a pre-paid return shipping label in any package of documents mailed or messengered to a deponent.

22. Counsel for the Parties may keep any document or exhibit used during the deposition in accordance with the Amended Stipulation and Order for the Production and Exchange of Confidential and Highly Confidential Information entered in the Action ("Confidentiality Order"). Counsel for the Parties shall return any hard copy documents not used during the deposition to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. Counsel for the Parties shall likewise delete any electronic copies of documents not used during the deposition promptly after the conclusion of the deposition.

23. Counsel noticing the deposition shall provide any counsel for third-party witnesses with a copy of the Confidentiality Order. Counsel for third-party witnesses may keep any document used during the deposition in accordance with the Confidentiality Order, and shall return any hard copy documents not used during the deposition to the Counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. Counsel for third-party witnesses shall likewise delete any electronic copies of documents not used during the deposition promptly after the conclusion of the deposition.

/s/ Eliezer Y. Feinstein

Michael A. Barlow (#3928)  
Eliezer Y. Feinstein (#6409)  
ABRAMS & BAYLISS LLP  
20 Montchanin Road, Suite 200  
Wilmington, Delaware 19807  
(302) 778-1000

*Attorneys for Plaintiffs-Counterclaim  
Defendants Snow Phipps Group, LLC  
and DecoPac Holdings Inc.*

/s/ Daniel T. Menken

William M. Lafferty (#2755)  
Thomas W. Briggs, Jr. (#4076)  
Daniel T. Menken (#6309)  
MORRIS, NICHOLS, ARSHT  
& TUNNELL LLP  
1201 North Market Street 16th Floor  
Wilmington, Delaware 19801

/s/ Daniel A. Mason

Daniel A. Mason (#5206)  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
500 Delaware Avenue, Suite 200  
Post Office Box 32  
Wilmington, DE 19899-0032  
(302) 655-4410

*Attorneys for Defendants-Counterclaim  
Plaintiffs KCAKE Acquisition, Inc.,  
Kohlberg Investors VIII-B, L.P., Kohlberg  
Investors VIII-C, L.P., Kohlberg TE  
Investors VIII, L.P., Kohlberg TE Investors  
VIII-B, L.P., Kohlberg Investors VIII, L.P.  
and Kohlberg Partners VIII, L.P.*

SO ORDERED this \_\_\_\_ day of \_\_\_\_, 2020.

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Vice Chancellor Kathaleen St. Jude McCormick