

Eduard Korsinsky
LEVI & KORSINSKY, LLP
55 Broadway, 10th Floor
New York, New York 10006
Tel: 212-363-7500
Fax: 212-363-7171
Email: ek@zlk.com

*Attorneys for Lead Plaintiffs and
Lead Counsel for the Class*

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

SANDI ROPER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SITO MOBILE LTD., JERRY HUG, and
KURT STREAMS,

Defendants.

Case No. 2:17-cv-01106-ES-MAH

**LEAD PLAINTIFFS’
NOTICE OF MOTION FOR
FINAL APPROVAL OF
SETTLEMENT**

**TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR
COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that Lead Plaintiffs Red Oak Fund, LP, Red Oak Long Fund LP, Red Oak Institutional Founders Long Fund, and Pinnacle Opportunities Fund, LP (collectively, “Plaintiffs”), by and through their counsel, Levi & Korsinsky, LLP, will and hereby do move this Court, under Rule 23 of the Federal Rules of Civil Procedure, for entry of an order granting final approval of the proposed settlement (the “Settlement”), including certifying the Class for settlement

purposes only and approving the proposed plan of allocation of the proceeds of the Settlement, as set forth in the Stipulation, between Plaintiffs and Defendants.

PLEASE TAKE FURTHER NOTICE that Plaintiffs' motion is supported by the Stipulation of Settlement dated July 31, 2019 (Dkt. No. 84), the Declaration of Adam M. Apton (Dkt. No. 85-2), the Declaration of Richard W. Simmons on behalf of Analytics Consulting (filed herewith), and the Declaration of David Sandberg on behalf of Plaintiffs (filed herewith). Plaintiffs also file herewith a proposed order.

Dated March 3, 2020

Respectfully submitted,

LEVI & KORSINSKY, LLP

/s/ Eduard Korsinsky

Eduard Korsinsky
55 Broadway, 10th Floor
New York, New York 10006
Tel: 212-363-7500
Fax: 212-363-7171
Email: ek@zlk.com

-and-

LEVI & KORSINSKY, LLP
Adam M. Apton
1101 30th Street NW, Suite 115
Washington, DC 20007
Tel: (202) 524-4290
Fax: (202) 333-2121
Email: nporritt@zlk.com
Email: aapton@zlk.com

*Attorneys for Lead Plaintiffs
and Lead Counsel for the Class*

Eduard Korsinsky (EK-8989)
LEVI & KORSINSKY, LLP
55 Broadway, 10th Floor
New York, NY 10006
Tel.: (212) 363-7500
Fax: (212) 363-7171
Email: ek@zlk.com

*Attorneys for Lead Plaintiffs and
Lead Counsel for the Proposed Class*

(Additional counsel appears on signature page)

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DISTRICT OF NEW JERSEY**

SANDI ROPER, Individually and on
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Plaintiff,

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KURT STREAMS,

Defendants.

Case No.: 2:17-cv-01106-ES-MAH

CLASS ACTION

**BRIEF IN SUPPORT OF LEAD
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND APPROVAL OF
PLAN OF ALLOCATION**

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I. PRELIMINARY STATEMENT

The Settlement pending before this Court is a strong result for the Class. Class Members will receive a total of \$1,250,000 before attorneys' fees and expenses. This did not come easily. Lead Plaintiffs briefed extensive motions to dismiss and engaged in a hard-fought mediation and negotiation process. Fortunately, the time and effort invested in this case by Lead Plaintiffs and Lead Counsel has paid off and, with the Court's approval, the matter can finally reach a resolution that is in Class Members' best interests.

In exchange for the payment of \$1,250,000 in cash for the benefit of the Settlement Class, the Settlement will release all Released Defendant Parties from all Released Claims, as set forth in the Stipulation. The Settlement is not "claims-made" and all proceeds of the Settlement, after the deduction of Court-approved fees and costs, will be distributed to eligible claimants. Given the facts, the applicable law, and the risk and expense of continued litigation, Lead Plaintiffs and Lead Counsel submit that the proposed Settlement is fair, reasonable and adequate, represents a very favorable result, and is in the best interests of the Settlement Class.

Lead Plaintiffs also request that the Court approve the Plan of Allocation, which is set forth in the Notice that has been sent to Settlement Class Members. The Plan of Allocation, which was developed by Lead Plaintiffs' consulting damages expert in consultation with Lead Counsel, provides a reasonable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims based on the losses they suffered as result of the conduct alleged in the Action. For the reasons set forth below, the Plan of Allocation is fair and reasonable, and should likewise be approved.

Accordingly, Lead Plaintiffs respectfully request that the Court approve the Settlement and the Plan of Allocation, and finally certify the Settlement Class.

II. LEGAL STANDARD

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be approved by the Court upon a finding that the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001). “The strong judicial policy in favor of class action settlement[s] contemplates a circumscribed role for the district courts in settlement review and approval proceedings.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). Although this Court has discretion in determining whether to approve the Settlement, it should be hesitant to substitute its judgment for that of the parties who negotiated the Settlement. *See Sutton v. Med. Serv. Ass’n of Pennsylvania*, No. 92-4787, 1994 WL 246166, at *5 (E.D. Pa. June 8, 1994). “Courts judge the fairness of a proposed compromise by weighing the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement. . . . They do not decide the merits of the case or resolve unsettled legal questions.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Walsh v. Great Atl. & Pac. Tea Co.*, 96 F.R.D. 632, 642-43 (D.N.J. 1983), *aff’d*, 726 F.2d 956 (3d Cir. 1983).

In determining the adequacy of a proposed settlement, a court should ascertain whether the settlement is within a range that responsible and experienced attorneys could accept, considering all relevant risks. *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at *4 (D.N.J. Nov. 9, 2005) (citing *Walsh*, 96 F.R.D. at 642). That analysis recognizes the “uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion” *Id.* (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).

The Court should also assess the reasonableness of the settlement pursuant to the factors set forth in *Girsh v. Jepsen*, 521 F.2d 153 (3d Cir. 1975):

(1) the complexity, expense and likely duration of the litigation . . . ; (2) the reaction of the class to the settlement . . . ; (3) the stage of the proceedings and the amount of discovery completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through the trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . . ; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id. at 157 (citation omitted); *see also In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164-65 (3d Cir. 2006).

The Third Circuit also advises courts to consider, where applicable, the additional factors set forth in *In re Prudential Insurance Company America. Sales Practice Litigation Agent Actions*, 148 F.3d 283 (3d Cir. 1998):

[T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys’ fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

Id. at 323.

III. ARGUMENT

A. The Proposed Settlement Warrants Final Approval Because It Is Fair, Reasonable, and Adequate.

1. Plaintiffs' Motion for Preliminary Approval Demonstrated the Fairness, Reasonableness, and Adequacy of the Settlement.

In moving for preliminary approval of the Settlement, Lead Plaintiffs complied with Rule 23(e)(1)(A) by making an evidentiary showing that the Court would “likely be able to . . . approve the [Settlement] under Rule 23(e)(2)” and “certify the class for purposes of judgment.” FED. R. CIV. P. 23(e)(1)(B). Lead Plaintiffs submitted a declaration from Adam M. Apton, one of the lead attorneys on the matter, that outlined the litigation and described the basis for the Settlement. In pertinent part, the declaration demonstrated the complexity of the case and the work that was performed in order to arrive at the proposed Settlement. Declaration of Adam M. Apton, Dkt. No. 85-2 (the “Apton Decl.”), ¶¶3-13. As evidence of the adequacy of the Settlement, Lead Plaintiffs provided the Court with information concerning past settlements in similar cases. *Id.* at ¶16. Significantly, relative to median settlement values of approximately 14% of overall damages, the Settlement at hand represents between 10% and 50% of overall damages. *Id.* at ¶16.

2. Additional Evidence Supports Granting Final Approval of the Settlement.

Lead Plaintiffs' motion for preliminary approval addressed each of the factors identified in Rule 23(e)(2). As additional evidentiary support for the Settlement, Lead Plaintiffs have submitted with their motion for final approval a supplemental declaration from Lead Counsel (the “Supp. Apton Decl.”), declarations from each of the Lead Plaintiffs, and a declaration from the Claims Administrator. These declarations, as explained below, strengthen Lead Plaintiffs' basis for seeking final

approval. Lead Plaintiffs also support approval of the Settlement, as evidenced by their own declaration submitted herewith.

3. Analysis of the *Girsh* Factors Confirms That the Settlement Is Fair, Reasonable and Adequate and Should Be Approved.

To determine whether a proposed settlement in a class action is fair, reasonable, and adequate, district courts in this Circuit consider the nine factors identified in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975). These factors strongly support approval of the Settlement.

a) **The Complexity, Expense and Likely Duration of This Action.**

The first *Girsh* factor looks to the “complexity, expense, and likely duration of the litigation.” *Girsh*, 521 F.2d at 157. This factor addresses the “probable costs, in both time and money, of continued litigation.” *Cendant*, 264 F.3d at 233 (citation and internal quotation marks omitted). A settlement is favored where “continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004). Courts have noted that “[s]ecurities fraud class actions are notably complex, lengthy, and expensive cases to litigate.” *In re Par Pharm. Sec. Litig.*, No. 06 Civ 3226, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013). This case is no exception, which supports approval of the Settlement. *See, e.g., In re Suprema Specialties, Inc. Sec. Litig.*, No. 02 Civ. 168, 2008 WL 906254, at *4-5 (D.N.J. Mar. 31, 2008) (finding complexity of securities class action supports final approval).

Here, achieving a litigated verdict in this Action for Lead Plaintiffs and the Settlement Class would require substantial additional time and expense. Lead Plaintiffs reasonably expect that the continued prosecution of this Action through class certification, the completion of discovery, summary judgment, and trial would

have involved substantial additional work and expense that would not have necessarily resulted in a recovery for the Settlement Class. Additionally, Sito Mobile was at risk of entering bankruptcy proceedings and, as a result, obtaining documents and discovery from it would have been extremely difficult.

To obtain a judgment at trial, Lead Plaintiffs would have had to complete and prevail on a contested motion for class certification, and any subsequent interlocutory appeals if a favorable decision was issued by this Court. Lead Plaintiffs would have to complete both fact and expert discovery. After the close of discovery, Lead Plaintiffs would then need to brief the inevitable summary judgment motions, *Daubert* motions, and other pre-trial motions. Trial would be complex and expensive, requiring significant factual and expert testimony to prove the elements of Lead Plaintiffs' claims. Importantly, even a jury verdict would not guarantee the recovery of damages for the Settlement Class that this \$1,250,000 cash recovery does. *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07 Civ. 61542, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (overturning jury verdict in favor of plaintiff class and granting judgment for defendants as a matter of law). Defendants would likely appeal any favorable verdict, and the appellate process could last several years, with no assurance of a favorable outcome for the Settlement Class. Thus, even after additional protracted and expensive efforts, the Settlement Class might obtain a result less than the Settlement recovery, or even nothing at all.

b) The Reaction of the Settlement Class.

This factor “requires the Court to evaluate whether the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable.” *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08 Civ. 397, 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013). It is well-established that the lack of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.

See In re Linerboard Antitrust Litig., 296 F. Supp. 2d 568, 578 (E.D. Pa. 2003) (“unanimous approval of the proposed settlement by the class members is entitled to nearly dispositive weight in this court’s evaluation of the proposed settlement”).

Lead Plaintiffs submit in support of this motion a declaration from Lead Plaintiffs’ claims administrator, Analytics Consulting, LLC. As described, over 3,500 Notice packets were disseminated to potential Settlement Class Members. Declaration of Richard Simmons (“Simmons Decl.”), ¶8. Analytics also published notice of the Settlement over a national newswire on January 3 and 17, 2020. *Id.* at ¶9. Moreover, Analytics also created a website providing information about the Settlement that has been available for public viewing since January 3, 2020. *Id.* at ¶10. Having fully complied with the Court’s Notice directives (as ordered in the Preliminary Approval Order), and not receiving any objections, exclusions, or complaints with regard to the Settlement (*id.* at ¶12), the Court can infer that SITO Mobile shareholders support approval of the Settlement.

“The Third Circuit Court of Appeals has recognized the practical conclusion that it is generally appropriate to assume that ‘silence constitutes tacit consent to the agreement’” in the class settlement context.” *Harlan v. Transworld Sys., Inc.*, No. 13-5882, 2015 WL 505400, at *8 (E.D. Pa. Feb. 6, 2015) (citing *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 n.15 (3d Cir. 1993). “The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption . . . in favor of the Settlement . . .” *Cendant*, 264 F.3d at 235; *see also Stoezner v. United States Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 “strongly favors settlement”). The fact that there are no objections to the proposed Plan of Allocation provides strong support for the plan, as well. *See Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (finding that “the

favorable reaction of the Class supports approval of the proposed Plan of Allocation”).

c) The Stage of the Proceedings and Amount of Discovery Completed.

The third *Girsh* factor requires a court to consider “the degree of case development that class counsel have accomplished prior to settlement” in order to “determine whether counsel had an adequate appreciation of the merits of the case before negotiating” the settlement. *Cendant*, 264 F.3d at 235 (citation omitted); *see also Warfarin*, 391 F.3d at 537; *Devlin v. Ferrandino & Son, Inc.*, No. 15-4976, 2016 WL 7178338, at *5 (E.D. Pa. Dec. 9, 2016).

Here, Lead Plaintiffs and Lead Counsel had a sound basis for assessing the strengths and weaknesses of the claims and Defendants’ defenses when they entered into the Settlement. Lead Counsel extensively investigated the merits of the case prior to filing the Complaint.

As set forth in the Apton Declaration, Lead Plaintiffs’ efforts also included, among others, interviewing former employees, analyzing SEC filings, and reviewing news articles and other publicly available information and statements issued by or concerning Sito Mobile. Apton Decl. ¶5. Lead Plaintiffs and Lead Counsel further obtained information about the strengths of the claims and the defenses asserted by Defendants through briefing of the motions to dismiss. *Id.* at ¶¶8-9. The Parties also participated in a formal mediation session with Ms. Yoshida where the strengths and weaknesses of the Settlement Class’ claims were fully vetted. *Id.* at ¶¶11-12. Prior to the mediation, Lead Plaintiffs and Defendants submitted to Ms. Yoshida and exchanged detailed mediation statements which further highlighted the factual and legal issues in dispute. *Id.* There is no question that Lead Plaintiffs and their counsel were in an excellent position to evaluate the strengths and weaknesses of the claims asserted and defenses raised by Defendants, as well as the substantial risks of

continued litigation and the propriety of settlement. *Id.* at ¶13. Having sufficient information to properly evaluate the case, the Action was settled on terms highly favorable to the Settlement Class.

Within the Third Circuit and throughout the country, “a strong public policy exists, which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation.” *Ehrheart*, 609 F.3d at 593; *see also In re Gen. Motors Corp. Pick-Up Trucks Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (“*GMC Trucks*”) (“[t]he law favors settlement”). The Third Circuit has noted that this strong presumption in favor of voluntary settlement agreements “is especially strong ‘in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.’” *Ehrheart*, 609 F.3d at 595 (quoting *GMC Trucks*, 55 F.3d at 784). This policy will be well-served by approval of the Settlement of this complex securities class action that, absent resolution, would consume years of additional time of this Court and likely, years of additional appellate practice.

d) The Risks of Establishing Liability.

The fourth *Girsh* factor looks to “the risks of establishing liability.” *Girsh*, 521 F.2d at 157. Under this factor, “[b]y evaluating the risks of establishing liability, the district court can examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them.” *GMC Trucks*, 55 F.3d at 814. In considering this factor, the Court has recognized that “[a] trial on the merits always entails considerable risks,” *In re Schering-Plough/ Merck Merger Litig.*, No. 09-cv-1099, 2010 WL 1257722, at *10 (D.N.J. Mar. 26, 2010), and “no matter how confident one may of the outcome of the litigation, such confidence is often misplaced.” *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 343 (E.D. Pa. 2007). Indeed, “[c]lass action securities litigation cases are notoriously difficult cases to prove.” *In re Viropharma*

Inc. Sec. Litig., No. CV 12-2714, 2016 WL 312108, at *11 (E.D. Pa. Jan. 25, 2016); *see also In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) (noting that “[l]arge class actions alleging securities fraud” are “inherently complex”). Although Lead Plaintiffs believe that their claims have merit, the risks of establishing liability in this Action were particularly significant and weigh heavily in favor of approval of the Settlement.

To establish their Section 10(b) claim, Lead Plaintiffs must prove that Defendants: (1) made a misstatement or an omission of a material fact; (2) with scienter; (3) in connection with the purchase or sale of a security; (4) upon which the plaintiffs reasonably relied; and (5) that proximately caused their injuries. *Ikon*, 277 F.3d at 667. Here, Defendants had numerous scienter arguments that posed significant hurdles to proving that they acted with an intent to commit securities fraud or with severe recklessness. Scienter is commonly regarded to be the most difficult element to prove in a securities fraud case. *See, e.g., ViroPharma*, 2016 WL 312108, at *12 (approving settlement and noting that “proving scienter is an uncertain and difficult necessity for plaintiffs”); *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 WL 4225828, at *4 (D.N.J. Nov. 28, 2007) (proving scienter in a securities class action is a “formidable task” that supported final approval of the settlement).

Although Lead Plaintiffs believe that documentary and testimonial evidence would support their claims as the case continued, proving scienter is a complex, nuanced, and evidence-intensive process, which would have presented significant challenges. There was no certainty that the jury would have ultimately credited Lead Plaintiffs’ theories of the case and evidence concerning scienter over Defendants’ counter-evidence.

e) The Risks of Establishing Loss Causation and Damages.

Even if Lead Plaintiffs successfully established liability, they also confronted challenges in establishing loss causation and ultimately proving damages, including arguments that the alleged misstatements had only a minimally inflationary effect on Sito Mobile's stock price during the Class Period. Lead Plaintiffs bear the burden of proving loss causation and damages for their claims under Section 10(b) – that is, they must show that the alleged false statements or omissions caused investors' losses. *See ViroPharma*, 2016 WL 312108, at *12. The Supreme Court's decision in *Dura Pharms., Inc.. v. Broudo*, 544 U.S. 336 (2005), and the subsequent cases interpreting *Dura*, have made proving loss causation even more difficult and uncertain than it was in the past. *See, e.g., In re Ocean Power Techs., Inc.*, No. 14 Civ. 3799, 2016 WL 6778218, at *19 (D.N.J. Nov. 15, 2016) (“proving loss causation would be a major risk faced by Plaintiff”).

Here, Lead Plaintiffs' estimated maximum aggregate damages are approximately \$12.5 million for the Class Period. *See* Apton Decl. at ¶16. Although Lead Plaintiffs would have been able to present a cogent and persuasive expert's view establishing damages, there is little doubt that Defendants would have been able to present a well-qualified expert who would opine against Lead Plaintiffs' findings.

Indeed, Defendants would likely argue that aggregate damages for the Class Period are much less than Lead Plaintiffs' estimate of \$14.5 million; \$2 million to be exact. *See* Apton Decl. at ¶16. If Defendants' damages arguments were accepted by the Court at summary judgment or by a jury after trial, recoverable damages would be greatly reduced.

“Courts in this district have recognized that competing expert testimony presents significant risks to Lead Plaintiff's success in establishing damages.” *Par*

Pharm., 2013 WL 3930091, at *6 (citing *Cendant*, 264 F.3d at 239 (“[E]stablishing damages at trial would lead to a ‘battle of experts’ with each side presenting its figures to the jury and with no guarantee whom the jury would believe.”). Lead Plaintiffs could not be certain which expert’s view would be credited by the jury and, accordingly, this “battle of the experts” created an additional level of litigation risk. *See ViroPharma*, 2016 WL 312108, at *13 (“The conflicting damage theories of defendants and plaintiffs would likely have resulted in an expensive battle of the experts and it is impossible to predict how a jury would have responded.”); *Schuler v. Medicines Co.*, No. CV 14-1149 (CCC), 2016 WL 3457218, at *7 (D.N.J. June 24, 2016) (“In this ‘battle of experts,’ it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions.”) (quoting *In re Warner Commc’ns Sec. Litig.*, 618 F. Supp. 735, 744–45 (S.D.N.Y. 1985)).

In short, Lead Plaintiffs and Lead Counsel recognized the possibility that a jury could be swayed by experts for the Defendants, and find that there were no damages or only a fraction of the amount of damages Lead Plaintiffs might have sought at trial.

f) The Risks of Maintaining Class Action Status Through Trial.

The risk of obtaining and maintaining class certification through trial also supports approval of the Settlement. Lead Plaintiffs had not yet moved for class certification at the time of the Settlement and, absent the Settlement, there would have been a contested motion for class certification. Although Lead Counsel believe that the requirements for Rule 23 are satisfied in this case and would vigorously argue for class certification, class-certification discovery would have been conducted and Defendants, without doubt, would have opposed the motion. The

process would have added time and expense to the proceedings, and the outcome of such a contested motion was far from certain.

Moreover, even if the class was certified for other than settlement purposes, “[t]here will always be a ‘risk’ or possibility of decertification, and consequently the court can always claim this factor weighs in favor of settlement.” *Prudential*, 148 F.3d at 321; *see also In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 506–07 (W.D. Pa. 2003) (“[A]s in any class action, there remains some risk of decertification in the event the Propose[d] Settlement is not approved. While this may not be a particularly weighty factor, on balance it somewhat favors approve of the proposed Settlement.”).

g) The Ability of Defendants to Withstand a Greater Judgment.

This factor considers “whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement.” *Cendant*, 264 F.3d at 240; *Ikon*, 194 F.R.D. at 183 (defendants’ inability to pay a greater sum would support approval of settlement). Even the “fact that [defendants] could afford to pay more does not mean that [they are] obligated to pay any more than what the [] class members are entitled to under the theories of liability that existed at the time the settlement was reached.” *Warfarin*, 391 F.3d at 538; *see also Schering-Plough*, 2009 WL 5218066, at *4 (“pushing for more in the face of risks and delay would not be in the interests of the class”). Here, Sito Mobile was on the verge of bankruptcy at the time of Settlement, and while Defendants arguably could afford to pay more in their individual capacities, that was not a certain outcome. Insurance policy proceeds had already been significantly wasted by the time of settlement and were likely to exhaust even further as discovery intensified.

h) The Size of the Settlement Fund in Light of the Range of Possible Recovery and the Risks of Litigation.

The final two *Girsh* factors, typically considered in tandem, ask “whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial.” *Prudential*, 148 F.3d at 322. “In making this assessment, the Court compares the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, with the amount of the proposed settlement.” *Par Pharm.*, 2013 WL 3930091, at *7 (citing *GMC Trucks*, 55 F.3d at 806).

The proposed \$1,250,000 Settlement is reasonable in light of the risks of litigation (as discussed above) and the best possible recovery. The Settlement is just below or above the 14.1% median recovery for cases with damages under \$25 million in 2018 securities cases. Apton Decl. at ¶16. Lead Plaintiffs estimate maximum aggregate damages of approximately \$12.5 million for the Settlement Class Period. Measured against that yardstick, the Settlement recovery represents approximately 10% of maximum damages – a strong recovery in light of the procedural posture of the case, Sito’s near bankruptcy, Defendants’ countervailing legal arguments, and the risk that continued litigation might result in a vastly smaller recovery or no recovery at all. *Id.* at ¶17.

That percentage recovery is also very favorable when compared to the percentage of damages recovered in other securities class action settlements. *See, e.g., Par Pharm.*, 2013 WL 3930091, at *2 (approving settlement with total sum of \$8.1 million, which amounted to approximately 7% of class-wide damages); *Schuler*, 2016 WL 3457218, at *8 (approving \$4,250,000 securities fraud settlement that reflected approximately 4% of the estimated recoverable damages and noting

percentage “falls squarely within the range of previous settlement approvals”).¹ This is particularly true when considered in view of the substantial risks and obstacles to recovery if the Action were to continue through class certification, through summary judgment, to trial, and through likely post-trial motions and appeals.

When all the *Girsh* factors are considered, the proposed Settlement is fair, reasonable, and adequate and provides a certain outcome in the best interests of the Settlement Class. Lead Counsel, on behalf of Lead Plaintiffs, have weighed the strengths and weaknesses of the relevant claims, defenses, and likelihood of recovery and, after extensive arm’s-length negotiations through a mediator, reached this Settlement. Under these circumstances, Lead Plaintiffs respectfully submit that the Settlement should be finally approved.

4. The *Prudential* Considerations Also Support the Settlement

In addition to the traditional *Girsh* factors, the Third Circuit also advises courts to address considerations set forth in *Prudential*, 148 F.3d at 323, where applicable. With respect to the first consideration, Lead Plaintiffs and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the case gained through an extensive investigation, the drafting of a thorough and detailed amended complaint, motion practice, consultations with experts in the fields of damages and loss causation, and the mediation process.

¹ See also *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, No. 05 Civ. 232, 2008 WL 4974782, at *3, *9, *13 (E.D. Pa. Nov. 21, 2008) (approving \$16,767,500 settlement representing 2.5% of damages); *Medoff v. CVS Caremark Corp.*, No. 09 Civ. 554, 2016 WL 632238, at *6-7 (D.R.I. Feb. 17, 2016) (approving \$48 million settlement representing approximately 5.33% of estimated recoverable damages and noting that this is “well above the median percentage of settlement recoveries in comparable securities class action cases”); *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 12 Civ. 1609, 2015 WL 965693, at *9 (W.D. La. Mar. 3, 2015) (finding reasonable a \$7,850,000 settlement in securities fraud action providing 7.4% to 10.3% of class’s potential recovery); *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (\$13.75 million settlement yielding 6% of potential damages was “higher than the median percentage of investor losses recovered in recent shareholder class action settlements”).

The remaining additional factors all support approval of the Settlement because Settlement Class Members were afforded the right to opt out of the Settlement (the fourth factor) and, to date, none have chosen to do so; Lead Counsel's request for attorneys' fees is reasonable as set forth in the accompanying Brief in Support of Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (and, in any event, approval of the Settlement is separate from and not dependent on any outcome of the motion for attorneys' fees and reimbursement of litigation expenses); and the Plan of Allocation, which will govern the processing of claims and the allocation of settlement funds (the sixth factor), is fair and reasonable as set forth in Part III.B. below.

B. The Plan of Allocation Is Fair, Reasonable, and Adequate.

The “[a]pproval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate.” *In re Merck & Co. Vytarin ERISA Litig.*, No. 08-CV- 285, 2010 WL 547613, at *6 (D.N.J. Feb. 9, 2010) (citing *Ikon*, 194 F.R.D. at 184). “In evaluating a plan of allocation, the opinion of qualified counsel is entitled to significant respect. The proposed allocation need not meet standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis.” *Boyd v. Coventry Health Care Inc.*, No. DKC09-2661, 2014 WL 359567 (D. Md. Jan. 31, 2014).

Here, the proposed Plan of Allocation, which was developed by Lead Counsel in consultation with Lead Plaintiffs' consulting damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms. Under the Plan of Allocation, a “Recognized Loss Amount” will be calculated for each purchase or acquisition of

Sito Mobile publicly traded common stock during the Settlement Class Period that is listed in the Claim Form and for which adequate documentation is provided. The calculation of Recognized Loss Amounts is generally based on the amount of the decline in Sito Mobile's common stock price following the release of negative information about the Company related to the alleged fraud. The sum of the Recognized Loss Amounts for all of a claimant's purchases of Sito Mobile's common stock during the Settlement Class Period is the claimant's "Recognized Claim" and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. *See, e.g., In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (deeming plan of allocation "even handed" where "claimants are to be reimbursed on a *pro rata* basis for their recognized losses based largely on when they bought and sold their shares of General Instrument stock"); *Ocean Power*, 2016 WL 6778218, at *23 ("*pro rata* distributions are consistently upheld, and there is no requirement that a plan of allocation 'differentiat[e] within a class based on the strength or weakness of the theories of recovery'") (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011)).

Lead Counsel submit that the Plan of Allocation fairly and rationally allocates the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered as a result of the conduct alleged in the Complaint. Moreover, to date, there have been no objections to the proposed Plan of Allocation. Accordingly, for all of the reasons set forth herein and in the Joint Declaration, the Plan of Allocation is fair and reasonable, and should be approved.

C. Notice to the Settlement Class Satisfies the Requirements of Rule 23, Due Process, and the PSLRA.

Notice to the Settlement Class of the proposed Settlement satisfied Rule 23's requirement of "the best notice that is practicable under the circumstances, including

individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974).

In accordance with the Court’s Preliminary Approval Order, the Claims Administrator completed mailing copies of the Notice Packet to potential Settlement Class Members and their nominees on January 17, 2020. Over 3,500 Notice Packets have been mailed to date. *See* Simmons Decl. at ¶8. The Notice advised potential Settlement Class Members of, among other things: (i) their right to exclude themselves from the Settlement Class; (ii) their right to object to any aspect of the Settlement, the Plan of Allocation, or the attorneys’ fee and expense request; and (iii) the method for submitting a Claim Form in order to be eligible to receive a payment from the proceeds of the Settlement. In addition, the Summary Notice was published via national newswire on January 3 and 17, 2020, and copies of the Notice, Claim Form, Stipulation, Preliminary Approval Order, and Complaint have been posted to the website established for the Action, www.SITOMobileSecuritiesSettlement.com. *Id.* at ¶¶9, 10.

Notice programs such as this have been approved in a multitude of class action settlements. *See, e.g., In re Veritas Software Corp. Sec. Litig.*, 396 Fed. Appx. 815, 816 (3d Cir. 2010) (describing notice combining mail to known class members and publication in *Investor’s Business Daily* and over newswire); *Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985) (“It is well settled that in the usual situation first-class mail and publication in the press fully satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause.”). The Notice program satisfied Rule 23(e)(1)’s requirement that notice of a settlement be “reasonable” – *i.e.*, it must “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings” (*Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d

96, 114 (2d Cir. 2005)), and it was “the best notice . . . practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).

D. Certification of the Settlement Class Remains Warranted

In presenting the proposed Settlement to the Court for preliminary approval, Lead Plaintiffs requested, for purposes of the Settlement only, that the Court certify the Settlement Class under Rules 23(a) and (b)(3). In Preliminary Approval Order, this Court certified the Settlement Class. *See* Dkt. No. 86 at ¶2. Nothing has changed to alter the propriety of the Court’s certification, and no Settlement Class Member has objected to class certification. For all the reasons stated in Lead Plaintiffs’ Brief In Support of Lead Plaintiffs’ Unopposed Motion for (I) Preliminary Approval of Settlement, (II) Certification of the Settlement Class, and (III) Approval of Notice to the Settlement Class (Dkt. No. 85-1), which is incorporated herein by reference, and in the Court’s Preliminary Approval Order, Lead Plaintiffs request that the Court reaffirm its determinations in the Preliminary Approval Order and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and (b)(3), appoint Lead Plaintiffs as Settlement Class Representatives and appoint Lead Plaintiffs’ counsel Levi & Korsinsky, LLP as Settlement Class Counsel.

IV. CONCLUSION

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court: (i) grant final approval of the Settlement and Plan of Allocation; and (ii) reaffirm its determination to finally certify the Settlement Class for purposes of carrying out the Settlement.

Dated: March 3, 2020

Respectfully submitted,

LEVI & KORSINSKY, LLP

s/ Eduard Korsinsky
Eduard Korsinsky
55 Broadway, 10th Floor
New York, New York 10006
Tel.: 212-363-7500
Fax: 212-363-7171
Email: ek@zlk.com

-and-

LEVI & KORSINSKY, LLP
Nicholas I. Porritt
Adam M. Apton
1101 30th Street NW, Suite 115
Washington, DC 20007
Tel.: (202) 524-4290
Fax: (202) 333-2121
nporritt@zlk.com
aapton@zlk.com

*Attorneys for Lead Plaintiffs
and Lead Counsel for the Class*

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

SANDI ROPER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SITO MOBILE LTD., JERRY HUG,
and KURT STREAMS,

Defendants.

Case No.: 2:17-cv-01106-ES-MAH

**SUPPLEMENTAL DECLARATION
OF ADAM M. APTON**

I, Adam M. Apton, hereby declare as follows:

1. I am a partner of the law firm of Levi & Korsinsky, LLP, attorneys for Lead Plaintiffs Red Oak Fund, LP, Red Oak Long Fund LP, Red Oak Institutional Founders Long Fund, and Pinnacle Opportunities Fund, LP (collectively, “Lead Plaintiffs”) and Lead Counsel in this Action. I am admitted to practice *pro hac vice* before this Court and have personal knowledge of the various matters set forth herein based on my day-to-day participation in the prosecution and settlement of this Action. I submit this Declaration in support of Plaintiffs’ Motions for: (i) Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds; and (ii) an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses.¹

¹ All capitalized terms not otherwise defined herein have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated as of August 6, 2019 (Dkt. No. 84) (the “Stipulation”).

FINAL APPROVAL

2. I previously submitted a declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of the Settlement on August 6, 2019 (Dkt. No. 85-2). In that declaration, I expressed support for the Settlement and explained why I believed that it represented an excellent result for the Class. I continue to believe that today and, in fact, even more so based on the absence of any objections to the Settlement from potential Class Members.

3. The Court-appointed claims administrator, Analytics Consulting LLC, has faithfully carried out its obligation to disseminate notice to potential Class Members. As described in the accompanying Declaration of Richard W. Simmons, Analytics Consulting has published the Notice in print and online, and mailed it to over 3,500 potential Class Members. Neither the Claims Administrator nor I have received any objections to the Settlement or requests for exclusion from the Settlement. In my experience as a class action securities litigator, this suggests that the Settlement is broadly supported by the Class.

ATTORNEYS' FEES

4. As compensation for our efforts, Lead Counsel is applying for an award of attorneys' fees in the amount of \$330,000 of the total Settlement Fund. This amount *includes* reimbursement for Lead Counsel's out-of-pocket expenses in the amount of \$29,018.18.

5. Lead Counsel has prosecuted this case for approximately three years without any compensation and has incurred thousands of dollars in expenses without any guarantee of success. The fee request is within the range of fees awarded by courts in the Third Circuit, as further detailed and discussed the Memorandum of Law in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed concurrently herewith.

6. Lead Counsel undertook representation of Plaintiffs and the Class on a

wholly contingent basis. Lead Counsel knew from the outset that they would expend a substantial amount of time prosecuting this Action, yet receive no compensation if the Action ultimately proved unsuccessful. Thus, the contingent nature of payment of fees and expenses and the risks and complexity of the Action should be given substantial weight by the Court in considering the instant application for fees and expenses.

7. Lead Counsel's request for attorneys' fees is also supported by the amount of time and effort they invested in the litigation. Lead Counsel dedicated 311 hours to prosecuting this Action. These hours were compiled from contemporaneous time records maintained by each attorney and professional staff member affiliated with Lead Counsel. Applying Lead Counsel's current hourly rates, which are consistent with those charged by similarly skilled firms in their respective geographic areas, to the hours expended in this Action yields a lodestar amount of \$258,906.25. Thus, if the request is granted, Lead Counsel would be receiving a relatively small "multiplier" of only 1.15x.

8. The following table lists the professionals who worked on this matter, the role of each of the professionals, the number of hours expended by each such professional, and their hourly rates at Levi & Korsinsky, LLP:

Name and Title	Hours	Hourly Rate	Lodestar
Eduard Korsinsky, Partner	1.00	\$1025	\$1025
Adam M. Apton, Partner	255	\$850	\$216750
Nicholas I. Porritt, Partner	20.75	\$975	\$20231.25
Alexander A. Krot, Assoc.	18.75	\$650	\$12187.5
Cecille Cargill, Assoc.	3.00	\$550	\$1650
Jonathan Gitlen, Assoc.	10.25	\$625	\$6406.25
Paralegal	1.25	\$265	\$331.25

Paralegal	1.00	\$325	\$325.00
<i>Total</i>	<i>311.00</i>		<i>\$258,906.25</i>

9. Lead Counsel also incurred \$29,018.18 in unreimbursed expenses in connection with the prosecution of this litigation. The following table, compiled from the records regularly maintained by Levi & Korsinsky, LLP, lists the expenses it incurred in furtherance of this Action:

Expense	Amount
Expert Fees	\$3,670.00
Investigator Fees	\$11,350.00
Travel and Meals	\$1,114.76
Filing/Court Fees	\$550.00
Mediation	\$10,500.00
Notices	\$1,752.92
Computer Research	\$80.50
<i>TOTAL</i>	<i>\$29,018.18</i>

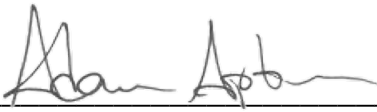
10. The expenses listed in the above table were necessary and reasonable for the litigation of this Action. In particular, at the outset of this litigation, Lead Counsel retained an outside investigator to interview potential witnesses. The investigator spent over 40 hours researching databases for potential witnesses and then interviewing those witnesses to obtain relevant information. Those interviews provided beneficial information for the case.

11. Other significant expenses included the mediation fee. In this case, the parties used Michelle Yoshida, Esq., a well-known and highly respected mediator in the area of securities litigation. In large part due to her experience, Ms. Yoshida was able to successfully resolve this action. Though her fee was substantial, this

settlement may not have been obtained without her involvement.

12. A true and accurate copy of Levi & Korsinsky, LLP's firm resume is attached hereto as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 3rd day of March 2020.



Adam M. Apton

EXHIBIT “A”

LEVI&KORSINSKY LLP

New York 55 Broadway
10th Floor
New York, NY 10006
Toll Free 877-363-5972
T. 212-363-7500
F. 212-363-7171

Washington, D.C. 1101 30th Street NW
Suite 115
Washington, D.C. 20007
T. 202-524-4290
F. 202-333-2121

Connecticut 1111 Summer Street
Suite 401-403
Stamford, CT 06905
T. 203-992-4523

California *Los Angeles*
445 South Figueroa Street
31st Floor
Los Angeles, CA 90071
T. 213-985-7290

San Francisco
388 Market Street
Suite 1300
San Francisco, CA 94111
T. 415-373-1671
F. 415-484-1294

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ABOUT THE FIRM

Levi & Korsinsky, LLP is a national law firm with decades of combined experience litigating complex securities, class, and consumer actions in state and federal courts throughout the country. Our main office is located in New York City and we also maintain offices in Connecticut, California, and Washington, D.C.

We represent the interests of aggrieved shareholders in class action and derivative litigation through the vigorous prosecution of corporations that have committed securities fraud and boards of directors who have breached their fiduciary duties. We have served as Lead and Co-Lead Counsel in many precedent-setting litigations, recovered millions of dollars for shareholders via securities fraud lawsuits, and obtained fair value, multi-billion dollar settlements in merger transactions.

We also represent clients in high-stakes consumer class actions against some of the largest corporations in America. Our legal team has a long and successful track record of litigating high-stakes, resource-intensive cases and consistently achieving results for our clients.

Our attorneys are highly skilled and experienced in the field of securities class action litigation. They bring a vast breadth of knowledge and skill to the table and, as a result, are frequently appointed Lead Counsel in complex shareholder and consumer litigations in various jurisdictions. We are able to allocate substantial resources to each case, reviewing public documents, interviewing witnesses, and consulting with experts concerning issues particular to each case. Our attorneys are supported by exceptionally qualified professionals including financial experts, investigators, and administrative staff, as well as cutting-edge technology and e-discovery systems. Consequently, we are able to quickly mobilize and produce excellent litigation results. Our ability to try cases, and win them, results in substantially better recoveries than our peers.

We do not shy away from uphill battles – indeed, we routinely take on complex and challenging cases, and we prosecute them with integrity, determination, and professionalism.

“...a model for how [the] great legal profession should conduct itself.”

Justice Timothy S. Driscoll in *Grossman v. State Bancorp, Inc.*,
Index No. 600469/2011 (N.Y. Sup. Ct. Nassau Cnty. Nov. 29, 2011)

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PRACTICE AREAS

Securities Fraud Class Actions

According to Lex Machina's second annual Securities Litigation Report, Levi & Korsinsky was named the Top Securities Firm for the period of January 2017 and June 30, 2018, with 266 lawsuits filed during that period. Law360.com dubbed the Firm one of the "busiest securities firms" in what is "on track to be one of the busiest [years] for federal securities litigation." Our firm has been appointed Lead Counsel in a significant number of class actions filed in both federal and state courts across the country.

In *In re U.S. Steel Consolidated Cases*, Civil Action No. 17-559-CB (W.D. Pa. 2017) the firm is sole Lead Counsel and has prevailed on a Motion to Dismiss. The class action case is moving into discovery, wherein shareholders stand to recover potential damages totaling hundreds of millions of dollars.

In *Ford v. TD Ameritrade Holding Corporation*, No. 14-cv-396 (D. Neb.), the Firm was appointed Lead Counsel and successfully defeated a motion to dismiss. We achieved certification of a class of customers, on whose behalf we are challenging a securities fraud scheme that has netted the defendant broker well over a billion dollars since the beginning of the class period at the cost of the execution quality of class members' orders. We are using cutting edge data analysis techniques to precisely measure damages incurred by millions of class members.

We have been appointed Lead or Co-Lead Counsel in the following securities class actions:

- **Scheller v. Nutanix Inc.**, 19-cv-01651-WHO (N.D. Cal. Jul. 10, 2019)
- **Luo v. Sogou Inc.**, 1:19-cv-00230-JPO (S.D.N.Y. Apr. 2, 2019)
- **Kanefsky v. Honeywell Int'l Inc.**, 2:18-cv-15536-WJM-SCM (D.N.J. Feb. 26, 2019)
- **Chew v. MoneyGram International, Inc.**, 1:18-cv-07537 (E.D. Ill. Feb. 12, 2019)
- **Tung v. Dycor Industries, Inc.**, 9:18-cv-81448-RLR (S.D. Fla. Jan. 11, 2019)
- **Guyer v. MGT Capital Investments, Inc.**, 1:18-cv-09228-LAP (S.D.N.Y. Jan. 9, 2019)
- **In re Adient plc Sec. Litig.**, 1:18-CV-09116 (S.D.N.Y. Dec. 21, 2018)
- **Church VI v. Glencore PLC**, 18-cv-11477 (SDW)(CLW) (D.N.J. Dec. 12, 2018)
- **In re Tesla Inc. Sec. Litig.**, 3:18-cv-04865-EMC (N.D. Cal. Nov. 27, 2018)
- **In re Helios and Matheson Analytics, Inc. Sec. Litig.**, 1:18-cv-06965-JGK (S.D.N.Y. Nov. 16, 2018)
- **In re Prothena Corp. plc Sec. Litig.**, 1:18-cv-06425 (S.D.N.Y. Oct. 31, 2018)
- **Balestra v. Cloud With Me Ltd.**, 2:18-cv-00804-LPL (W.D. Pa. Oct. 18, 2018)
- **Pierrelouis v. Gogo Inc.**, 1:18-cv-04473 (N.D. Ill. Oct. 10, 2018)
- **In re Restoration Robotics, Inc. Sec. Litig.**, 5:18-cv-03712-EJD (N.D. Cal. Oct. 2, 2018)
- **Richmond v. Mercury Systems, Inc.**, 1:18-cv-11434-IT (D. Mass. Sept. 27, 2018)
- **Balestra v. Giga Watt, Inc.**, 2:18-cv-00103-SMJ (E.D. Wash. June 28, 2018)
- **Chandler v. Ulta Beauty, Inc.**, 1:18-cv-01577 (N.D. Ill. June 26, 2018)
- **In re Longfin Corp. Sec. Litig.**, 1:18-cv-2933 (S.D.N.Y. June 25, 2018)
- **Chahal v. Credit Suisse Group AG**, 1:18-cv-02268-AT (S.D.N.Y. June 21, 2018)
- **In re Bitconnect Sec. Litig.**, 9:18-cv-80086-DMM (S.D. Fla. June 19, 2018)

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- ***In re Aqua Metals Sec. Litig.***, 4:17-cv-07142-HSG (N.D. Cal. May 23, 2018)
 - ***Davy v. Paragon Coin, Inc.***, 4:18-cv-00671-JSW (N.D. Cal. May 10, 2018)
 - ***Rensel v. Centra Tech, Inc.***, 17-cv-24500-JLK (S.D. Fla. Apr. 11, 2018)
 - ***Cullinan v. Cemtrex, Inc.***, 2:17-cv-01067 (E.D.N.Y. Mar. 3, 2018)
 - ***Emerson v. Genocoe Biosciences, Inc.***, 1:17-cv-12137 (D. Mass. Feb. 2, 2018)
 - ***In re Navient Corporation Sec. Litig.***, 1:17-cv-08373-RBK-AMD (D.N.J. Feb. 2, 2018)
 - ***Abouzied v. Applied Optoelectronics, Inc.***, 4:17-cv-2399 (S.D. Tex. Jan. 22, 2018)
 - ***Huang v. Depomed, Inc.***, 3:17-cv-04830-JST (N.D. Cal. Dec. 8, 2017)
 - ***In re Regulus Therapeutics Inc. Sec. Litig.***, 3:17-cv-00182-BTM-RBB (D. Mass. Oct. 26, 2017)
 - ***Mahoney v. Foundation Medicine, Inc.***, 1:17-cv-11394-LTS (D. Mass. Oct. 20, 2017)
 - ***Murphy III v. JBS S.A.***, 1:17-cv-03084-ILG-RER (E.D.N.Y. Oct. 10, 2017)
 - ***Goldsmith v. Weibo Corporation***, 2:17-cv-04728-SRC-CLW (D.N.J. Sept. 28, 2017)
 - ***Waterford Township Police and Fire Retirement System v. Mattel, Inc.***, 2:17-cv-04732-VAP-KS (C.D. Cal. Sept. 9, 2017)
 - ***In re U.S. Steel Consolidated Cases***, Civil Action No. 17-559-CB (W.D. Pa. Aug. 16, 2017)
 - ***Hinshaw v. Neurotrope, Inc.***, 1:17-cv-03718-LGS (S.D.N.Y. Aug. 10, 2017)
 - ***Ohren v. Amyris, Inc.***, 3:17-cv-002210-WHO (N.D. Cal. Aug. 8, 2017)
 - ***Rodriguez v. Gigamon Inc.***, 5:17-cv-00434-EJD (N.D. Cal. July 26, 2017)
 - ***Beezley v. Fenix Parts, Inc.***, 2:17-cv-00233 (D.N.J. June 28, 2017)
 - ***M & M Hart Living Trust v. Global Eagle Entertainment, Inc.***, 2:17-cv-01479 (C.D. Cal. June 26, 2017)
 - ***Maurer v. Argos Therapeutics, Inc.***, 1:17-cv-00216 (M.D.N.C. June 23, 2017)
 - ***Ruedelstei v. U.S. Concrete, Inc.***, 4:17-cv-266 (N.D. Tex. June 22, 2017)
 - ***In re Aratana Therapeutics, Inc. Sec. Litig.***, 1:17-cv-880 (S.D.N.Y. June 6, 2017)
 - ***In re Insys Therapeutics, Inc.***, 1:17-cv-1954 (S.D.N.Y. May 31, 2017)
 - ***Clevlen v. Anthera Pharmaceuticals, Inc.***, 3:17-cv-00715 (N.D. Cal. May 18, 2017)
 - ***In re Agile Therapeutics, Inc. Sec. Litig.***, 3:17-cv-00119-AET-LHG (D.N.J. May 15, 2017)
 - ***Chupka v. Pearson Plc.***, 1:17-cv-1422 (S.D.N.Y. May 9, 2017)
 - ***Roper v. SITO Mobile Ltd.***, 2:17-cv-01106-ES-MAH (D.N.J. May 8, 2017)
 - ***In re Egalet Corporation Sec. Litig.***, 2:17-cv-00617 (E.D.Pa. May 1, 2017)
 - ***In re Illumina, Inc. Sec. Litig.***, 3:16-cv-03044-L-KSC (S.D. Cal. Mar. 30, 2017)
 - ***In re Arrowhead Pharmaceuticals, Inc.***, 2:16-cv-08505-PSG-PJW (C.D. Cal. Mar. 8, 2017)
 - ***Michael Gregory v ProNAi***, 1:16-cv-08703-PAE (Mass. Sup. Ct. Feb. 1, 2017)
 - ***Rosbach v. VASCO Data Security Int'l Inc.***, 1:15-cv-06605 (N.D. Ill. Dec. 1, 2016)
 - ***In re PTC Therapeutics, Inc.***, 2:16-cv-01224-KM-MAH (D.N.J. Nov. 14, 2016)
 - ***Schwab v. E*Trade Financial Corporation***, 1:16-cv-05891-JGK (S.D.N.Y. Nov. 9, 2016)
 - ***Wilbush v. Ambac Financial Group, Inc.***, Civ. No. 1:16-cv-05076 RMB (S.D.N.Y. Oct. 11, 2016)
 - ***The TransEnterix Investor Group v. TransEnterix, Inc.***, 5:16-cv-00313-D (E.D.N.C. Aug. 30, 2016)
 - ***Magro v. Freeport-McMoran Inc.***, 2:16-cv-00186-DJH (D. Ariz. Aug. 19, 2016)
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- **Gormley v. magicJack VocalTec Ltd.**, 1:16-cv-01869-VM (S.D.N.Y. July 12, 2016)
- **Azar v. Blount Int'l Inc.**, Civ. No. 3:16-cv-00483-SI (D. Or. July 1, 2016)
- **Plumley v. Semptra Energy**, 3:16-cv-00512-BEN-RBB (S.D. Cal. June 6, 2016)
- **Francisco v. Abengoa, S.A.**, 1:15-cv-06279-ER (S.D.N.Y. May 24, 2016)
- **Harrington v. Tetraphase Pharmaceuticals, Inc.**, Civ. No. 1:16-cv-10133-LTS (D. Mass. May 13, 2016)
- **De Vito v. Liquid Holdings Group, Inc.**, 2:15-cv-06969-KM-JBC (D.N.J. Apr. 7, 2016)
- **In re OvaScience Inc. Stockholder Litig.**, C.A. No. 15-3087-BLS2 (Mass. Super. Ct. Apr. 2, 2016)
- **Ford v. Natural Health Trends Corp.**, 2:16-cv-00255-TJH-AFM (C.D. Cal. Mar. 29, 2016)
- **Bai v. TCP International Holdings Ltd.**, 1:16-cv-00102-DCN (N.D. Ohio Mar. 18, 2016)
- **Meier v. Checkpoint Systems, Inc.**, 1:15-cv-08007 (D.N.J. Jan. 1, 2016)
- **Messner v. USA Technologies, Inc.**, 2:15-cv-05427-MAK (E.D. Pa. Dec. 15, 2015)
- **Levin v. Resource Capital Corp.**, 1:15-cv-07081-LLS (S.D.N.Y. Nov. 24, 2015)
- **Messerli v. Root 9B Technologies, Inc.**, 1:15-cv-02152-WYD (D. Colo. Oct. 14, 2015)
- **Martin v. Altisource Residential Corp.**, 1:15-cv-00024 (D.V.I. Oct. 7, 2015)
- **Paggos v. Resonant, Inc.**, 2:15-cv-01970 SJO (VBKx) (C.D. Cal. Aug. 7, 2015)
- **Fragala v. 500.com Ltd.**, 2:15-cv-01463-MMM (C.D. Cal. July 7, 2015)
- **Stevens v. Quiksilver Inc.**, 8:15-cv-00516-JVS-JCGx. (C.D. Cal. June 26, 2015)
- **In re Ocean Power Technologies, Inc. Sec. Litig.**, 14-3799 (FLW) (LHG) (D.N.J. Mar. 17, 2015)
- **In re Energy Recovery Inc. Sec. Litig.**, 3:15-cv-00265 (N.D. Cal. Jan. 20, 2015)
- **Klein v. TD Ameritrade Holding Corp.**, 3:14-cv-05738 (D. Neb. Dec. 2, 2014)
- **In re China Commercial Credit Sec. Litig.**, 1:15-cv-00557 (ALC) (D.N.J. Oct. 31, 2014)
- **In re Violin Memory, Inc. Sec. Litig.**, 4:13-cv-05486-YGR (N.D. Cal. Feb. 26, 2014)
- **Berry v. Kior, Inc.**, 4:13-cv-02443 (S.D. Tex. Nov. 25, 2013)
- **In re OCZ Technology Group, Inc. Sec. Litig.**, 3:12-cv-05265-RS (N.D. Cal. Jan. 4, 2013)
- **In re Digital Domain Media Group, Inc. Sec. Litig.**, 12-CIV-14333 (JEM) (S.D. Fla. Sept. 20, 2012)
- **Zaghian v. THQ, Inc.**, 2:12-cv-05227-GAF-JEM (C.D. Cal. Sept. 14, 2012)

Derivative, Corporate Governance & Executive Compensation

We protect shareholders by enforcing the obligations of corporate fiduciaries. We are a leader in achieving important corporate governance reforms for the benefit of shareholders. Our efforts include the prosecution of derivative actions in courts around the country, making pre-litigation demands on corporate boards to investigate misconduct and taking remedial action for the benefit of shareholders. In situations where a company's board responds to a demand by commencing its own investigation, we frequently work with the board's counsel to assist with and monitor the investigation, ensuring that the investigation is thorough and conducted in an appropriate manner.

We also have successfully prosecuted derivative and class action cases to hold corporate executives and board members accountable for various abuses and to help preserve corporate assets through long-lasting and meaningful corporate governance changes, thus ensuring that prior misconduct does not

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reoccur. We have extensive experience challenging executive compensation, recapturing assets for the benefit of companies and their shareholders. In addition, we have secured corporate governance changes to ensure that executive compensation is consistent with shareholder-approved compensation plans, company performance, and federal securities laws.

In **MacCormack v. Groupon, Inc.**, C.A. No. 13-940-GMS (D. Del. 2013), we caused the cancellation of \$2.3 million worth of restricted stock units granted to a company executive in violation of a shareholder-approved plan, as well as the adoption of enhanced corporate governance procedures designed to ensure that the board of directors complies with the terms of the plan; we also obtained additional material disclosures to shareholders in connection with a shareholder vote on amendments to the plan.

In **Scherer v. Lu**, (Diodes Incorporated), No. 13-358-GMS, 2014 U.S. Dist. LEXIS 196440 (D. Del. 2014), we secured the cancellation of \$4.9 million worth of stock options granted to the company's CEO in violation of a shareholder-approved plan, and obtained additional disclosures to enable shareholders to cast a fully-informed vote on the adoption of a new compensation plan at the company's annual meeting.

In **Edwards v. Benson**, (Headwaters Incorporated), (D. Utah 2014), we caused the cancellation of \$3.2 million worth of stock appreciation rights granted to the company's CEO in violation of a shareholder-approved plan and the adoption of enhanced corporate governance procedures designed to ensure that the board of directors complies with the terms of the plan.

In **Pfeiffer v. Begley**, (DeVry, Inc.), (Cir. Ct. DuPage Cty., Ill. 2012), we secured the cancellation of \$2.1 million worth of stock options granted to the company's CEO in 2008-2012 in violation of a shareholder-approved incentive plan.

In **Basch v. Healy** (D. Del. 2014), we obtained a cash payment to the company to compensate for equity awards issued to officers in violation of the company's compensation plan and caused significant changes in the company's compensation policies and procedures designed to ensure that future compensation decisions are made consistent with the company's plans, charters and policies. We also impacted the board's creation of a new compensation plan and obtained additional disclosures to stockholders concerning the board's administration of the company's plan and the excess compensation.

In **Pfeiffer v. Toll** (Toll Brothers Derivative Litigation), C.A. No. 4140-VCL (Del. Ch. 2010), we prevailed in defeating defendants' motion to dismiss in a case seeking disgorgement of profits that company insiders reaped through a pattern of insider-trading. After extensive discovery, we secured a settlement returning \$16.25 million in cash to the company, including a significant contribution from the individuals who traded on inside information.

In **Kleba v. Dees**, C.A. 3-1-13 (Tenn. Cir. Ct. Knox Cty. 2014), we recovered approximately \$9 million in excess compensation given to insiders and the cancellation of millions of shares of stock options issued in violation of a shareholder-approved compensation plan. In addition, we obtained the adoption of formal corporate governance procedures designed to ensure that future compensation decisions are made independently and consistent with the plan.

In **Lopez v. Nudelman**, (CTI BioPharma Corp.), 14-2-18941-9 SEA (Wash. Super. Ct. King Cnty. 2015), we recovered approximately \$3.5 million in excess compensation given to directors and obtained the adoption of a cap on director compensation, as well as other formal corporate governance procedures designed to implement best practices with regard to director and executive compensation.

In **re i2 Technologies, Inc. Shareholder Litigation**, C.A. No. 4003-CC (Del. Ch. 2008), as Counsel for the Lead Plaintiff, we challenged the fairness of certain asset sales made by the company and secured a \$4 million recovery.

In **re Activision, Inc. Shareholder Derivative Litigation**, No. 06-cv-04771-MRP (JTLX) (C.D. Cal. 2008), we were Co-Lead Counsel and challenged executive compensation related to the dating of options. This effort resulted in the recovery of more than \$24 million in excessive compensation and expenses, as well as

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the implementation of substantial corporate governance changes.

In ***In re Corinthian Colleges, Inc. Shareholder Derivative Litigation***, 8:06cv777-AHS (C.D. Cal. 2006), we were Co-Lead Counsel and achieved a \$2 million benefit for the company, resulting in the re-pricing of executive stock options and the establishment of extensive corporate governance changes.

In ***Pfeiffer v. Alpert (Beazer Homes Derivative Litigation)***, C.A. No. 10-cv-1063-PD (D. Del. 2010), we successfully challenged certain aspects of the company's executive compensation structure, ultimately forcing the company to improve its compensation practices.

In ***In re Cincinnati Bell, Inc., Derivative Litigation***, Case No. A1105305 (Ohio, Hamilton Cty. 2012), we achieved significant corporate governance changes and enhancements related to the company's compensation policies and practices in order to better align executive compensation with company performance. Reforms included the formation of an entirely independent compensation committee with staggered terms and term limits for service.

In ***Woodford v. Mizel (M.D.C. Holdings, Inc.)***, 1:2011cv00879 (D. Del. 2012), we challenged excessive executive compensation, ultimately obtaining millions of dollars in reductions of that compensation, as well as corporate governance enhancements designed to implement best practices with regard to executive compensation and increased shareholder input.

In ***Bader v. Goldman Sachs Group, Inc.***, No. 10-4364-cv, 2011 WL 6318037 (2d Cir. Dec. 19, 2011), we persuaded the Second Circuit Court of Appeals to reverse the District Court's dismissal of derivative claims seeking to recover excessive compensation granted to officers and directors of Goldman Sachs.

In ***In re Google Inc. Class C Shareholder Litigation***, C.A. No. 7469-CS (Del. Ch. 2012), we challenged a stock recapitalization transaction to create a new class of nonvoting shares and strengthen the corporate control of the Google founders. We helped achieve an agreement that provided an adjustment payment to shareholders in the event of certain discounts in the price of Google stock, and provided enhanced board scrutiny of the Google founders' ability to transfer stock, including the implementation of a new procedure for a waiver or modification of the founders' Transfer Restriction Agreement.

Mergers & Acquisitions

We have achieved an impressive record in obtaining injunctive relief for shareholders and are one of the premier law firms engaged in mergers & acquisitions and takeover litigation, where we strive to maximize shareholder value. In these cases, we regularly fight to obtain settlements that enable the submission of competing buyout bid proposals, thereby increasing consideration for shareholders.

We have litigated landmark cases that have altered the landscape of mergers & acquisitions law and resulted in multi-million dollar awards to aggrieved shareholders.

In ***In re Sauer-Danfoss Stockholder Litig.***, C.A. No. 8396 (Del. Ch.), as one of plaintiffs' co-lead counsel, we recovered a \$10 million common fund settlement in connection with a controlling stockholder merger transaction.

In ***In re Yongye International, Inc. Shareholders' Litigation***, Consolidated Case No.: A-12-670468-B (District Court, Clark County, Nevada), as one of plaintiffs' co-lead counsel, we recovered a \$6 million common fund settlement in connection with a management-led buyout of minority stockholders in a China-based company incorporated under Nevada law.

In ***In re Great Wolf Resorts, Inc. Shareholder Litigation***, C.A. No. 7328-VCN (Del. Ch. 2012), we achieved tremendous results for shareholders, including partial responsibility for a \$93 million (57%) increase in merger consideration and the waiver of several "don't-ask-don't-waive" standstill agreements that were restricting

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certain potential bidders from making a topping bid for the company.

In ***In re CNX Gas Corp. Shareholder Litigation***, 4 A.3d 397 (Del. Ch. 2010), as Plaintiffs' Executive Committee Counsel, we obtained a landmark ruling from the Delaware Chancery Court that set forth a unified standard for assessing the rights of shareholders in the context of freeze-out transactions and ultimately led to a common fund recovery of over \$42.7 million for the company's shareholders.

In ***In re Talecris Biotherapeutics Holdings Shareholder Litigation***, C.A. No. 5614-VCL (Del. Ch. 2010), we served as counsel for one of the Lead Plaintiffs, achieving a settlement that increased the merger consideration to Talecris shareholders by an additional 500,000 shares of the acquiring company's stock and providing shareholders with appraisal rights.

In ***In re Minerva Group LP v. Mod-Pac Corp.***, Index No. 800621/2013 (N.Y. Sup. Ct. Erie Cty. 2013), we obtained a settlement in which defendants increased the price of an insider buyout from \$8.40 to \$9.25 per share, representing a recovery of \$2.4 million for shareholders.

In ***Stephen J. Dannis v. J.D. Nichols***, C.A. No. 13-CI-00452 (Ky. Cir. Ct. Jefferson Cty. 2014), as Co-Lead Counsel, we obtained a 23% increase in the merger consideration (from \$7.50 to \$9.25 per unit) for shareholders of NTS Realty Holdings Limited Partnership. The total benefit of \$7.4 million was achieved after two years of hard-fought litigation, challenging the fairness of the going-private, squeeze-out merger by NTS's controlling unitholder and Chairman, Defendant Jack Nichols. The unitholders bringing the action alleged that Nichols' proposed transaction grossly undervalued NTS's units. The 23% increase in consideration was a remarkable result given that on October 18, 2013, the Special Committee appointed by the Board of Directors had terminated the existing merger agreement with Nichols. Through counsel's tenacious efforts the transaction was resurrected and improved.

In ***Dias v. Purches***, C.A. No. 7199-VCG (Del. Ch. 2012), Vice Chancellor Sam Glasscock, III of the Delaware Chancery Court partially granted shareholders' motion for preliminary injunction and ordered that defendants correct a material misrepresentation in the proxy statement related to the acquisition of Parlux Fragrances, Inc. by Perfumania Holding, Inc.

In ***Forgo v. Health Grades, Inc.***, C.A. No. 5716-VCS (Del. Ch. 2010), as Co-Lead Counsel, our attorneys established that defendants had likely breached their fiduciary duties to Health Grades' shareholders by failing to maximize value as required under *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986). We secured an agreement with defendants to take numerous steps to seek a superior offer for the company, including making key modifications to the merger agreement, creating an independent committee to evaluate potential offers, extending the tender offer period, and issuing a "Fort Howard" release affirmatively stating that the company would participate in good faith discussions with any party making a bona fide acquisition proposal.

In ***Chen v. Howard-Anderson***, C.A. No 5878-VCL (Del. Ch. 2010), we represented shareholders in challenging the merger between Occam Networks, Inc. and Calix, Inc., obtaining a preliminary injunction against the merger after showing that the proxy statement by which the shareholders were solicited to vote for the merger was materially false and misleading. We then took the case to trial and recovered \$35 million for the shareholders.

In ***In re Pamrapo Bancorp Shareholder Litigation***, Docket C-89-09 (N.J. Ch. Hudson Cty. 2011) & HUD-L-3608-12 (N.J. Law Div. Hudson Cty. 2015), we defeated defendants' motion to dismiss shareholders' class action claims for money damages and a motion for summary judgment, ultimately securing a settlement recovering \$1.95 million for the Class plus the Class's legal fees and expenses up to \$1 million (representing an increase in consideration of 15-23% for the members of the Class). The case stemmed from the sale of Pamrapo Bancorp to BCB Bancorp at an allegedly unfair price through an unfair process. In addition to obtaining this recovery, the Court also found that our efforts substantially benefited the shareholders by obtaining supplemental disclosures for shareholders ahead of the merger vote.

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In ***In re Complete Genomics, Inc. Shareholder Litigation***, C.A. No. 7888-VCL (Del. Ch. 2012), we obtained preliminary injunctions of corporate merger and acquisition transactions, and Plaintiffs successfully enjoined a “don’t-ask-don’t-waive” standstill agreement.

In ***In re Integrated Silicon Solution, Inc. Stockholder Litigation***, Lead Case No. 115CV279142 (Super. Ct. Santa Clara, CA 2015), we won an injunction requiring corrective disclosures concerning “don’t-ask-don’t-waive” standstill agreements and certain financial advisor conflicts of interests, and contributed to the integrity of a post-agreement bidding contest that led to an increase in consideration from \$19.25 to \$23 per share, a bump of almost 25 percent.

In ***In re Bluegreen Corp. Shareholder Litigation***, Case No. 502011CA018111 (Cir. Ct. for Palm Beach Cty., FL), as Co-Lead Counsel, we achieved a common fund recovery of \$36.5 million for minority shareholders in connection with a management-led buyout, increasing gross consideration to shareholders in connection with the transaction by 25% after three years of intense litigation.

Consumer Litigation

Levi & Korsinsky works hard to protect consumers by holding corporations accountable for defective products, false and misleading advertising, overcharging, and unfair or deceptive business practices.

Our litigation and class action expertise combined with our in-depth understanding of federal and state laws enables us to fight for consumers who purchased defective products, including automobiles, appliances, electronic goods, and home products, as well as consumers who were deceived by consumer service providers such as banks and insurance, credit card, or phone companies.

In ***NV Security, Inc. v. Fluke Networks***, Case No. CV05-4217 GW (SSx) (C.D. Cal. 2005), we negotiated a settlement on behalf of purchasers of Test Set telephones in an action alleging that the Test Sets contained a defective 3-volt battery. We benefited the consumer class by obtaining the following relief: free repair of the 3-volt battery, reimbursement for certain prior repair, an advisory concerning the 3-volt battery on the outside of packages of new Test Sets, an agreement that defendants would cease to market and/or sell certain Test Sets, and a 42-month warranty on the 3-volt battery contained in certain devices sold in the future.

In ***Bustos v. Vonage America, Inc.***, Case No. 06 Civ. 2308 (HAA) (D.N.J. 2006), our firm achieved a common fund settlement of \$1.75 million on behalf of class members who purchased Vonage Fax Service in an action alleging that Vonage made false and misleading statements in the marketing, advertising, and sale of Vonage Fax Service by failing to inform consumers that the protocol Defendant used for the Vonage Fax Service was unreliable and unsuitable for facsimile communications.

In ***Masterson v. Canon U.S.A.***, Case No. BC340740 (Cal. Super. Ct. L.A. Cty. 2006), we represented purchasers of Cannon SD Cameras in an action alleging that liquid crystal display (“LCD”) screens on Cannon SD Cameras cracked, broke, or otherwise malfunctioned, and obtained refunds for certain broken LCD repair charges and important changes to the product warranty.

“The quality of the representation... has been extremely high, not just in terms of the favorable outcome in terms of the substance of the settlement, but in terms of the diligence and the hard work that has gone into producing that outcome.”

The Honorable Joseph F. Bianco, in *Landes v. Sony Mobile Communications*,
17-cv-02264-JFB-SIL (E.D.N.Y. Dec. 1, 2017)

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OUR ATTORNEYS

Managing Partners

Eduard Korsinsky

For more than 20 years Eduard Korsinsky has represented clients in securities cases, derivative actions, consumer fraud, and complex commercial matters. He has been named a New York "Super Lawyer" by Thomson Reuters and is recognized as one of the country's leading practitioners in class and derivative matters. Mr. Korsinsky also has served as an editor of the American Bar Association's Securities Litigation Section's newsletter and is a member of the American Bar Association's Derivative Suits Subcommittee.

Cases which he has litigated include:

- ***E-Trade Financial Corp. Sec. Litig.***, No. 07-cv-8538 (S.D.N.Y. 2007), \$79 million recovery
- ***In re Activision, Inc. S'holder Derivative Litig.***, No. 06-cv-04771-MRP (JTLX) (C.D. Cal. 2006), recovered \$24 million in excess compensation
- ***Corinthian Colleges, Inc., S'holder Derivative Litig.***, SACV-06-0777-AHS (C.D. Cal. 2009), obtained re-pricing of executive stock options providing more than \$2 million in benefits to the company
- ***Pfeiffer v. Toll***, C.A. No. 4140-VCL (Del. Ch. 2010), \$16.25 million in insider trading profits recovered
- ***In re Net2Phone, Inc. S'holder Litig.***, Case No. 1467-N (Del. Ch. 2005), obtained increase in tender offer price from \$1.70 per share to \$2.05 per share
- ***In re Pamrapo Bancorp S'holder Litig.***, C-89-09 (N.J. Ch. Hudson Cty. 2011) & HUD-L-3608-12 (N.J. Law Div. Hudson Cty. 2015), obtained supplemental disclosures following the filing of a motion for preliminary injunction, pursued case post-closing, defeated motion for summary judgment, and obtained an increase in consideration of between 15-23% for the members of the Class
- ***In re Google Inc. Class C S'holder Litig.***, C.A. No. 19786 (Del. Ch. 2012), obtained payment ladder indemnifying investors up to \$8 billion in losses stemming from trading discounts expected to affect the new stock
- ***Woodford v. M.D.C. Holdings, Inc.***, 1:2011cv00879 (D. Del. 2012), one of a few successful challenges to say on pay voting, recovered millions of dollars in reductions to compensation
- ***i2 Technologies, Inc. S'holder Litig.***, C.A. No. 4003-CC (Del. Ch. 2008), \$4 million recovered, challenging fairness of certain asset sales made by the company
- ***Pfeiffer v. Alpert (Beazer Homes)***, C.A. No. 10-cv-1063-PD (D. Del. 2011), obtained substantial revisions to an unlawful executive compensation structure
- ***In re NCS Healthcare, Inc. Sec. Litig.***, C.A. CA 19786, (Del. Ch. 2002), case settled for approximately \$100 million
- ***Paraschos v. YBM Magnex Int'l, Inc.***, No. 98-CV-6444 (E.D. Pa.), United States and Canadian cases settled for \$85 million Canadian

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Education

- New York University School of Law, LL.M. Master of Law(s) Taxation (1997)
- Brooklyn Law School, J.D. (1995)
- Brooklyn College, B.S., Accounting, *summa cum laude* (1992)

Admissions

- New York (1996)
- New Jersey (1996)
- United States District Court for the Southern District of New York (1998)
- United States District Court for the Eastern District of New York (1998)
- United States Court of Appeals for the Second Circuit (2006)
- United States Court of Appeals for the Third Circuit (2010)
- United States District Court for the Northern District of New York (2011)
- United States District Court of New Jersey (2012)
- United States Court of Appeals for the Sixth Circuit (2013)

Publications

- Delaware Court Dismisses Compensation Case Against Goldman Sachs, ABA Section of Securities Litigation News & Developments (Nov. 7, 2011)
- SDNY Questions SEC Settlement Practices in Citigroup Settlement, ABA Section of Securities Litigation News & Developments (Nov. 7, 2011)
- New York Court Dismisses Shareholder Suit Against Goldman Sachs, ABA Section of Securities Litigation News & Developments (Oct. 31, 2011)

Joseph E. Levi

Joseph E. Levi is a central figure in shaping and managing the Firm's securities litigation practice. Mr. Levi has been lead or co-lead in dozens of cases involving the enforcement of shareholder rights in the context of mergers & acquisitions and securities fraud. In addition to his involvement in class action litigation, he has represented numerous patent holders in enforcing their patent rights in areas including computer hardware, software, communications, and information processing, and has been instrumental in obtaining substantial awards and settlements.

Mr. Levi and the attorneys achieved success on behalf of the former shareholders of Occam Networks, Inc. in litigation challenging the Company's merger with Calix, Inc., obtaining a preliminary injunction against the merger due to material representations and omissions in the proxy statement by which the shareholders were solicited to vote. See **Chen v. Howard-Anderson**, No. 5878-VCL (Del. Ch. Jan. 24, 2011). Vigorous litigation efforts continued to trial, recovering \$35 million for the shareholders.

Another victory for Mr. Levi and the attorneys was in litigation challenging the acquisition of Health Grades, Inc. by affiliates of Vestar Capital Partners, L.P., where it was successfully demonstrated to the Delaware Court of Chancery that the defendants had likely breached their fiduciary duties to Health Grades' shareholders by failing to maximize value as required by **Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.**, 506 A.2d 173 (Del. 1986). See **Weigard v. Hicks**, No. 5732-VCS (Del. Ch. Sept. 3, 2010). This ruling was

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used to reach a favorable settlement in which defendants agreed to a host of measures designed to increase the likelihood of superior bid. Vice Chancellor Strine “applaud[ed]” the litigation team for their preparation and the extraordinary high-quality of the briefing. He and the attorneys also played a prominent role in the matter of ***In re CNX Gas Corp. Shareholders Litigation***, C.A. No. 5377-VCL (Del. Ch. 2010), in which plaintiffs recovered a common fund of over \$42.7 million for stockholders.

Education

- Brooklyn Law School, J.D., *magna cum laude* (1995)
- Polytechnic University, B.S., *summa cum laude* (1984); M.S. (1986)

Admissions

- New York (1996)
- New Jersey (1996)
- United States Patent and Trademark Office (1997)
- United States District Court for the Southern District of New York (1997)
- United States District Court for the Eastern District of New York (1997)

“[The court] appreciated very much the quality of the argument..., the obvious preparation that went into it, and the ability of counsel...”

Vice Chancellor Sam Glasscock, III in *Dias v. Purches*, C.A. No. 7199-VCG (Del. Ch. Apr. 5, 2012)

Partners

Adam M. Apton

Adam M. Apton focuses his practice on investor protection. He represents institutional investors and high net worth individuals in securities fraud, corporate governance, and shareholder rights litigation. Prior to joining the firm, Mr. Apton defended corporate clients against complex mass tort, commercial, and products liability lawsuits. Thomson Reuters has selected Mr. Apton to the Super Lawyers Washington, DC “Rising Stars” list every year since 2016, a distinction given to only the top 2.5% of lawyers.

Mr. Apton’s past representations and successes include:

- ***Levin v. Resource Capital Corp., et al.***, 1:15-cv-07081-LLS (S.D.N.Y.) (\$9.5 million settlement in class action over fraudulent statements about toxic mezzanine loan assets)
- ***In re Prothena Corporation Plc Securities Litigation***, 1:18-cv-06425-ALC (S.D.N.Y.) (\$15.75 million settlement fund against international drug company for false statements about development of lead biopharmaceutical product)
- ***In re Violin Memory Inc. Sec. Litig.***, 4: 13-cv-05486-YGR (N.D. Cal.) (settlement of \$7.5 million over allegations of false statements in initial public offering documents concerning sales to government sector)

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- ***In re OCZ Technology Group, Inc. Sec. Litig.***, 3:12-cv-05265-RS (N.D. Cal.) (settlement fund of \$7.5 million over allegations of accounting fraud relating to improper revenue recognition)
- ***Rux v. Meyer (Sirius XM Holdings Inc.)***, No. 11577 (Del. Ch.) (recovery of \$8.25 million against SiriusXM's Board of Directors for engaging in harmful related-party transactions with controlling stockholder, John. C. Malone and Liberty Media Corp.)

Education

- New York Law School, J.D., *cum laude* (2009), where he served as Articles Editor of the *New York Law School Law Review* and interned for the New York State Supreme Court, Commercial Division
- University of Minnesota, B.A., Entrepreneurial Management & Psychology, With Distinction (2006)

Admissions

- New York (2010)
- United States District Court for the Southern District of New York (2010)
- United States District Court for the Eastern District of New York (2010)
- District of Columbia (2013)
- United States Court of Appeals for the Ninth Circuit (2015)
- United States Court of Appeals for the Second Circuit (2016)
- United States Court of Appeals for the Third Circuit (2016)
- California (2017)
- United States District Court for the Northern District of California (2017)
- United States District Court for the Central District of California (2017)
- United States District Court for the Southern District of California (2017)

Donald J. Enright

During his 23 years as a litigator and trial lawyer, Mr. Enright has handled matters in the fields of securities, commodities, consumer fraud and commercial litigation, with a particular emphasis on shareholder M&A and securities fraud class action litigation. He has been named as one of the leading financial litigators in the nation by Lawdragon, as a Washington, DC "Super Lawyer" by Thomson Reuters, and as one of the city's "Top Lawyers" by *Washingtonian* magazine.

Mr. Enright has shown a track record of achieving victories in federal trials and appeals, including:

- ***Nathenson v. Zonagen, Inc.***, 267 F. 3d 400, 413 (5th Cir. 2001)
- ***SEC v. Butler***, 2005 U.S. Dist. LEXIS 7194 (W.D. Pa. April 18, 2005)
- ***Belizan v. Hershon***, 434 F. 3d 579 (D.C. Cir. 2006)

Most recently, as Co-Lead Counsel in ***In re Bluegreen Corp. Shareholder Litigation***, Case No. 502011CA018111 (Cir. Ct. for Palm Beach Cnty., Fla.), Mr. Enright achieved a \$36.5 million common fund settlement in the wake of a majority shareholder buyout, representing a 25% increase in total consideration to the minority stockholders. Similarly, in ***In re CNX Gas Corp. Shareholders Litigation***, C.A. No. 53377-VCL (Del. Ch. 2010), in which Levi & Korsinsky served upon plaintiffs' Executive Committee, Mr. Enright helped obtain the recovery of a common fund of over \$42.7 million for stockholders.

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Mr. Enright has also played a leadership role in numerous securities and shareholder class actions from inception to conclusion. Most recently, he has served as lead counsel in several cryptocurrency-related securities class actions. His leadership has produced multi-million-dollar recoveries in shareholder class actions involving such companies as:

- Allied Irish Banks PLC
- Iridium World Communications, Ltd.
- En Pointe Technologies, Inc.
- PriceSmart, Inc.
- Polk Audio, Inc.
- Meade Instruments Corp.
- Xicor, Inc.
- Streamlogic Corp.
- Interbank Funding Corp.
- Riggs National Corp.
- UTStarcom, Inc.
- Manugistics Group, Inc.

Mr. Enright also has a successful track record of obtaining injunctive relief in connection with shareholder M&A litigation, having won preliminary injunctions or other injunctive relief in the cases of:

- ***In re Portec Rail Products, Inc. S'holder Litig.***, G.D. 10-3547 (Ct. Com. Pleas Pa. 2010)
- ***In re Craftmade International, Inc. S'holder Litig.***, C.A. No. 6950-VCL (Del. Ch. 2011)
- ***Dias v. Purches***, C.A. No. 7199-VCG (Del. Ch. 2012)
- ***In re Complete Genomics, Inc. S'holder Litig.***, C.A. No. 7888-VCL (Del. Ch. 2012)
- ***In re Integrated Silicon Solution, Inc. Stockholder Litig.***, Lead Case No. 115CV279142 (Sup. Ct. Santa Clara, CA 2015)

Mr. Enright has also demonstrated considerable success in obtaining deal price increases for shareholders in M&A litigation. As Co-Lead Counsel in the matter of ***In re Great Wolf Resorts, Inc. Shareholder Litigation***, C.A. No. 7328-VCN (Del. Ch. 2012), Mr. Enright was partially responsible for a \$93 million (57%) increase in merger consideration and waiver of several "don't-ask-don't-waive" standstill agreements that were precluding certain potential bidders from making a topping bid for the company.

Similarly, Mr. Enright served as Co-Lead Counsel in the case of ***Berger v. Life Sciences Research, Inc.***, No. SOM-C-12006-09 (NJ Sup. Ct. 2009), which caused a significant increase in the transaction price from \$7.50 to \$8.50 per share, representing additional consideration for shareholders of approximately \$11.5 million.

Mr. Enright also served as Co-Lead Counsel in ***Minerva Group, LP v. Keane***, Index No. 800621/2013 (NY Sup. Ct. of Erie Cnty.), and obtained a settlement in which Defendants increased the price of an insider buyout from \$8.40 to \$9.25 per share.

The courts have consistently recognized and praised the quality of Mr. Enright's work. In ***In re Interbank Funding Corp. Securities Litigation*** (D.D.C. 02-1490), Judge Bates of the United States District Court for the District of Columbia observed that Mr. Enright had "...skillfully, efficiently, and zealously represented the class, and... worked relentlessly throughout the course of the case."

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Similarly, in **Freeland v. Iridium World Communications**, LTD, (D.D.C. 99-1002), Judge Nanette Laughrey stated that Mr. Enright had done "an outstanding job" in connection with the recovery of \$43.1 million for the shareholder class.

And, in the matter of **Osieczanek v. Thomas Properties Group**, C.A. No. 9029-VCG (Del. Ch. 2013), Vice Chancellor Sam Glasscock of the Chancery Court of Delaware observed that "it's always a pleasure to have counsel [like Mr. Enright] who are articulate and exuberant in presenting their position," and that Mr. Enright's prosecution of a merger case was "wholesome" and served as "a model of . . . plaintiffs' litigation in the merger arena."

Education

- George Washington University School of Law, J.D. (1996), where he was a Member Editor of The George Washington University Journal of International Law and Economics from 1994 to 1996
- Drew University, B.A., Political Science and Economics, *cum laude* (1993)

Admissions

- Maryland (1996)
- New Jersey (1996)
- United States District Court for the District of Maryland (1997)
- United States District Court for the District of New Jersey (1997)
- District of Columbia (1999)
- United States Court of Appeals for the Fourth Circuit (1999)
- United States Court of Appeals for the Fifth Circuit (1999)
- United States District Court for the District of Columbia (1999)
- United States Court of Appeals for the District of Columbia (2004)
- United States Court of Appeals for the Second Circuit (2005)
- United States Court of Appeals for the Third Circuit (2006)
- United States District Court for the District of Colorado (2017)

Publications

- "SEC Enforcement Actions and Investigations in Private and Public Offerings," Securities: Public and Private Offerings, Second Edition, West Publishing 2007
- "Dura Pharmaceuticals: Loss Causation Redefined or Merely Clarified?" J. Tax'n & Reg. Fin. Inst. September/October 2007, Page 5

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Shannon L. Hopkins

Shannon L. Hopkins manages the Firm's Connecticut office. She was selected in 2013 as a New York "Super Lawyer" by Thomson Reuters. For more than a decade Ms. Hopkins has been prosecuting a wide range of complex class action matters in securities fraud, mergers and acquisitions, and consumer fraud litigation on behalf of individuals and large institutional clients. Ms. Hopkins has played a lead role in numerous shareholder securities fraud and merger and acquisition matters and has been involved in recovering multi-million dollar settlements on behalf of shareholders, including:

- ***In re Force Protection, Inc. S'holder Litig.***, C.A. No. A-11-651336-B (D. Nev. 2015), \$11 million shareholder recovery
- ***Craig Telke v. New Frontier Media, Inc.***, C.A. No. 1:12-cv-02941-JLK (D. Co. 2015), \$2.25 million shareholder recovery
- ***Shona Investments v. Callisto Pharmaceuticals, Inc.***, C.A. No. 652783/2012 (NY Sup. Ct. 2015), shareholder recovery of \$2.5 million and increase in exchange ratio from 0.1700 to 0.1799
- ***E-Trade Financial Corp. S'holder Litig.***, No. 07-cv-8538 (S.D.N.Y. 2007), \$79 million recovery for the shareholder class
- ***In re Cogent, Inc. S'holder Litig.***, C.A. No. 5780-VCP (Del. Ch. 2010), \$1.9 million shareholder recovery and corrective disclosures relating to the Merger
- ***In re CMS Energy Sec. Litig.***, Civil No. 02 CV 72004 (GCS) (E.D. Mich. Sept. 6, 2007), \$200 million recovery
- ***In re Sears, Roebuck and Co. Sec. Litig.***, No. 02-cv-07527 (N.D. Ill. Jan. 8, 2007), \$200 million recovery
- ***In re El Paso Electric Co. Sec. Litig.***, C.A. No. 3:03-cv-00004-DB (W.D. Tex. Sept. 15, 2005), \$10 million recovery
- ***In re Novastar Fin. Sec. Litig.***, 4:04-cv-00330-ODS (W.D. Mo. Apr. 14, 2009), \$7.25 million recovery

The quality of Ms. Hopkin's work has been noted by courts. In ***In re Health Grades, Inc. Shareholder Litigation***, C.A. No. 5716-VCS (Del. Ch. 2010), where Ms. Hopkins was significantly involved with the briefing of the preliminary injunction motion, then Vice Chancellor Strine "applaud[ed]" Co-Lead Counsel for their preparation and the extraordinary high-quality of the briefing.

In addition to her legal practice, Ms. Hopkins is a Certified Public Accountant (1998 Massachusetts). Prior to becoming an attorney, Ms. Hopkins was a senior auditor with PricewaterhouseCoopers LLP, where she led audit engagements for large publicly held companies in a variety of industries.

Education

- Suffolk University Law School, J.D., *magna cum laude* (2003), where she served on the Journal for High Technology and as Vice Magister of the Phi Delta Phi International Honors Fraternity
- Bryant University, B.S.B.A., Accounting and Finance, *cum laude* (1995), where she was elected to the Beta Gamma Sigma Honor Society

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Admissions

- Massachusetts (2003)
- United States District Court for the District of Massachusetts (2004)
- New York (2004)
- United States District Court for the Southern District of New York (2004)
- United States District Court for the Eastern District of New York (2004)
- United States District Court for the District of Colorado (2004)
- United States Court of Appeals for the First Circuit (2008)
- United States Court of Appeals for the Third Circuit (2010)
- Connecticut (2013)

Publications

- "Cybercrime Convention: A Positive Beginning to a Long Road Ahead," 2 J. High Tech. L. 101 (2003)

In appointing the Firm Lead Counsel, the Honorable Gary Allen Feess noted our "significant prior experience in securities litigation and complex class actions."

Zaghian v. THQ, Inc., 2:12-cv-05227-GAF-JEM (C.D. Cal. Sept. 14, 2012)

Gregory Mark Nespole

Gregory Mark Nespole is a Partner of the Firm, having been previously a member of the management committee of one of the oldest firms in New York, as well as chair of that firm's investor protection practice. He specializes in complex class actions, derivative actions, and transactional litigation representing institutional investors such as public and labor pension funds, labor health and welfare benefit funds, and private institutions. Prior to practicing law, Mr. Nespole was a strategist on an arbitrage desk and an associate in a major international investment bank where he worked on structuring private placements and conducting transactional due diligence.

For over twenty years, Mr. Nespole has played a lead role in numerous shareholder securities fraud and merger and acquisition matters and has been involved in recovering multi-million-dollar settlements on behalf of shareholders, including:

- Served as co-chair of a Madoff Related Litigation Task Force that recovered over several hundred million dollars for wronged investors;
- Obtained a \$90 million award on behalf of a publicly listed company against a global bank arising out of fraudulently marketed auction rated securities;
- Successfully obtained multi-million-dollar securities litigation recoveries and/or corporate governance reforms from Cablevision, JP Morgan, American Pharmaceutical Partners, Sepracor, and MBIA, among many others.

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Mr. Nespole's peers have elected him a "Super Lawyer" in the class action field annually since 2009. He is active in his community as a youth sports coach.

Education

- Brooklyn Law School, J.D. (1993)
- Bates College, B.A. (1989)

Admissions

- New York (1994)
- United States District Court for the Southern District of New York (1994)
- United States District Court for the Eastern District of New York (1994)
- United States Court of Appeals for the Second Circuit (1994)
- United States Court of Appeals for the Fourth Circuit (1994)
- United States Court of Appeals for the Fifth Circuit (1994)
- United States District Court for the Northern District of New York (2018)
- United States Court of Appeals for the Eighth Circuit (2019)
- United States Court of Appeals for the Third Circuit (2020)

Nicholas I. Porritt

Nicholas I. Porritt prosecutes securities class actions, shareholder class actions, derivative actions, and mergers and acquisitions litigation. He has extensive experience representing plaintiffs and defendants in a wide variety of complex commercial litigation, including civil fraud, breach of contract, and professional malpractice, as well as defending SEC investigations and enforcement actions. Mr. Porritt has helped recover hundreds of millions of dollars on behalf of shareholders. He was one of the Lead Counsel in ***In re Google Inc. Class C Shareholder Litigation***, C.A. No. 7469-CS (Del. Ch. 2012) that resulted in a payment of \$522 million to shareholders and overall benefit of over \$3 billion to Google's minority shareholders. He was one of the lead counsel in ***Chen v. Howard-Anderson***, No. 5878-VCL (Del. Ch. Jan. 24, 2011) that settled during trial resulting in a \$35 million payment to the former shareholders of Occam Networks, Inc., one of the largest quasi-appraisal recoveries for shareholders. Some of Mr. Porritt's cases include:

- ***Zaghian v. Farrell***, 675 Fed. Appx. 718, (9th Cir. 2017)
- ***SEC v. Cuban***, 620 F.3d 551 (5th Cir. 2010)
- ***Cozzarelli v. Inspire Pharmaceuticals, Inc.***, 549 F.3d 618 (4th Cir. 2008)
- ***Teachers' Retirement System of Louisiana v. Hunter***, 477 F.3d 162 (4th Cir. 2007)
- ***In re PTC Therapeutics Sec. Litig.***, 2017 WL 3705801 (D.N.J. Aug. 28, 2017)
- ***Gormley v. magicJack VocalTec Ltd.***, 220 F. Supp. 3d 510 (S.D.N.Y. 2016)
- ***Carlton v. Cannon***, 184 F. Supp. 3d 428 (S.D. Tex. 2016)
- ***Zola v. TD Ameritrade, Inc.***, 172 F. Supp. 3d 1055 (D. Neb. 2016)
- ***In re Energy Recovery Sec. Litig.***, 2016 WL 324150 (N.D. Cal. Jan. 27, 2016)
- ***In re EZCorp Inc. Consulting Agreement Deriv. Litig.***, 2016 WL 301245 (Del. Ch. Jan. 25, 2016)
- ***In re Violin Memory Sec. Litig.***, 2014 WL 5525946 (N.D. Cal. Oct. 31, 2014)
- ***Garnitschnig v. Horovitz***, 48 F. Supp. 3d 820 (D. Md. 2014)

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Mr. Porritt speaks frequently on current topics relating to securities laws and derivative actions, including presentations on behalf of the Council for Institutional Investors, Nasdaq, and the Practising Law Institute. He currently serves as co-chair of the American Bar Association Sub-Committee on Derivative Actions.

Before joining the Firm, Mr. Porritt practiced as a partner at Akin Gump Strauss Hauer & Feld LLP and prior to that was a partner at Wilson Sonsini Goodrich & Rosati PC.

Education

- University of Chicago Law School, J.D., With Honors (1996)
- University of Chicago Law School, LL.M. (1993)
- Victoria University of Wellington, LL.B. (Hons.), With First Class Honors, Senior Scholarship (1990)

Admissions

- New York (1997)
- District of Columbia (1998)
- United States District Court for the District of Columbia (1999)
- United States District Court for the Southern District of New York (2004)
- United States Court of Appeals for the Fourth Circuit (2004)
- United States Court of Appeals for the District of Columbia Circuit (2006)
- United States Supreme Court (2006)
- United States District Court for the District of Maryland (2007)
- United States District Court for the Eastern District of New York (2012)
- United States Court of Appeals for the Second Circuit (2014)
- United States Court of Appeals for the Ninth Circuit (2015)
- United States District Court for the District of Colorado (2015)
- United States Court of Appeals for the Tenth Circuit (2016)
- United States Court of Appeals for the Eleventh Circuit (2017)
- United States Court of Appeals for the Eighth Circuit (2019)

Publications

- "Current Trends in Securities Litigation: How Companies and Counsel Should Respond," *Inside the Minds Recent Developments in Securities Law* (Aspatore Press 2010)

Rosemary M. Rivas

The Firm's Consumer Litigation Group is led by Rosemary M. Rivas, who manages the Firm's San Francisco office. She has dedicated her legal career to representing consumers in complex, class action litigation in various areas including defective products and automobiles, data breach and privacy rights, false and misleading advertising, and unfair business practices, among others. Ms. Rivas has been influential in recovering millions of dollars and changes to corporate practices on behalf of consumers. In a highly competitive application process, Judge Charles R. Breyer appointed Ms. Rivas to the Plaintiffs' Steering Committee in ***In re: Volkswagen "Clean Diesel" MDL***, Case No. 15-MDL-2672-CRB (JSC), which resulted in unprecedented settlements exceeding \$15 billion dollars.

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Currently, Ms. Rivas is Co-Lead Counsel in the action titled **Intel Corp. CPU Marketing, Sales Practices and Products Liability Litig.**, Case No. 3:18-md-02828-SI, involving allegations that Intel sold CPUs that were defective and allowed unauthorized access to confidential information. Ms. Rivas is also currently a member of the Plaintiffs' Steering Committee in the action titled **In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litig.**, Case No. 2:17-md-02785 (D. Kan.) involving unlawful monopoly claims in the market for epinephrine injection pens.

Ms. Rivas' work has resulted in important monetary and injunctive settlements in a number of class action cases, such as:

- **Sung v. Schuman Fine Papers**, Case No. 17-cv-02760 (N.D. Cal.) (Co-Lead Class Counsel): nationwide class action settlement of claims for unauthorized disclosure of W2s; eligible class members could recover up to \$500 and implementation of training and changes to practices for the protection of employee personal and financial information
- **Scott v. JPMorgan Chase Bank, N.A.**, Case No. 1:17-cv-00249 (D.D.C.) (Co-Lead Class Counsel): nationwide class action settlement of claims alleging improper fees to payments awarded to jurors; 100% direct refund of improper fees collected
- **Lilly v. ConAgra Foods**, 743 F.3d 662 (9th Cir. 2014) (Class Counsel): claims that food manufacturer violated food regulations by failing to list total sodium on salt of sunflower seeds product were not preempted by federal law; class action injunctive relief settlement for change in product labels
- **Petersen v. CJ America, Inc.**, Case No. 3:14-cv-02570 (S.D. Cal.) (Co-Lead Class Counsel): nationwide class action involving false advertising claims; \$1.5 million common fund and changes to product labeling
- **Lilly v. Jamba Juice**, Case No. 13-cv-02998 (N.D. Cal.) (Co-Lead Class Counsel): class action injunctive relief settlement; change in product labels
- **In re Carrier IQ, Inc., Consumer Privacy Litig.**, Case No. 3:12-md-02330 (N.D. Cal.) (Executive Committee): nationwide class action settlement involving data privacy; \$9 million settlement and changes to corporate practices
- **Pappas v. Naked Juice**, Case No. 2:11-cv-08276 (C.D. Cal.) (Co-Lead Class Counsel): nationwide class action settlement for \$9 million and changes to the company's testing procedures and product labels
- **Garcia v. Allergan, Inc.**, Case No. 09-cv-7088 PSG (C.D. Cal.) (Co-Lead Class Counsel): nationwide class action settlement of false advertising and unfair business practice claims; \$7.75 million settlement and changes to the company's training procedures
- **Rodriguez v. West Publishing Corp.**, 563 F.3d 948 (9th Cir. 2009): nationwide class action settlement of antitrust claims in bar review market; \$49 million and dissolution of allegedly illegal market allocation agreement
- **Lima v. Gateway**, Case No. SACV-09-1366 (C.D. Cal.) (Co-Lead Class Counsel): nationwide class action involving defective monitor; \$195 cash refund for each monitor purchased

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She has also been instrumental in obtaining favorable appellate decisions on behalf of consumers in the areas of false advertising, federal preemption, and arbitration, such as:

- ***Lilly v. ConAgra Foods, Inc.***, 743 F.3d 662 (9th Cir. 2014)
- ***In re Sony PS3 "Other OS" Litig.***, 551 Fed. App. 916 (9th Cir. 2014)
- ***Probst v. Superior Court (Health Net of California)***, 2012 Cal. LEXIS 4476 (Ct. Appeal, 1st Dist., May 9, 2012)

Ms. Rivas is a recipient of the 2018 California Lawyer Attorney of the Year (CLAY) Award. The CLAY award was presented to her by the Daily Journal for her work in the Volkswagen litigation. The CLAY awards are given annually to outstanding California practitioners "whose extraordinary work and cases had a major impact on the law."

In 2019 Ms. Rivas was selected as a Super Lawyer. From 2009-2011, Ms. Rivas was selected as a Rising Star by Law & Politics Magazine, which recognizes the best lawyers 40 years old or under or in practice for 10 years or less. In 2015, Bay Area Legal Aid presented her with the Guardian of Justice award, for her work achievements in the law and her role in helping direct cy près funds to ensure equal access to the civil justice system. As a recognized leader in consumer class actions, Ms. Rivas is regularly invited to speak at conferences concerning class action litigation, including the following:

- *Class Action Law Forum 2020 – Review of Key Class Action Decisions*, March 2020 (Western Alliance Bank in collaboration with University of San Diego School of Law)
- *Nationwide Settlement Classes – The Impact of the Hyundai/Kia Litigation*, 2018 (National Consumer Law Center's Consumer Rights Litigation Conference and Class Action Symposium)
- *One Class Action Or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements*, 2018 (5th Annual Western Regional CLE Program on Class Actions and Mass Torts)
- *The Right Approach to Effective Claims*, 2018 (Beard Group - Class Action Money & Ethics)
- *False Advertising Class Actions: A Practitioner's Guide to Class Certification, Damages and Trial*, 2017 (The Bar Association of San Francisco)
- *Section 17200: The Fertility of Man's Invention*, 2016 (The Bar Association of San Francisco)
- *Food Labeling and False Advertising Class Actions*, 2015 (The Bar Association of San Francisco)
- *Data Privacy Law 101: U.S. Data Privacy and Security Laws 2015* (The Bar Association of San Francisco)
- *Effective Consumer Privacy Enforcement*, 2011 (Berkeley Law and The Samuelson Law, Technology & Public Policy Clinic)
- *Class Actions: New Developments & Approaches for Strategic Response*, 2013 (American Bar Association)

Previously, Ms. Rivas served as a Board Member and Diversity Director of the Barristers Club of the San Francisco Bar Association. Ms. Rivas is fluent in Spanish.

Education

- University of California, Hastings College of Law, J.D. (2000)
- San Francisco State University, B.A., Political Science (1997)

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Admissions

- United States Court of Appeals for the Ninth Circuit (2001)
- United States District Court for the Northern District of California (2001)
- United States District Court for the Central District of California (2002)
- United States District Court for the Eastern District of California (2005)
- United States District Court for the Southern District of California (2005)

Elizabeth K. Tripodi

Elizabeth K. Tripodi focuses her practice on shareholder M&A litigation, representing shareholders of public companies impacted by mergers, acquisitions, tender offers, and other change-in-control transactions. Ms. Tripodi has been named as a Washington, DC “Super Lawyer” and was selected as a “Rising Star” by Thomson Reuters for several consecutive years.

Ms. Tripodi has played a lead role in obtaining monetary recoveries for shareholders in M&A litigation:

- ***In re Bluegreen Corp. S'holder Litig.***, Case No. 502011CA018111 (Circuit Ct. for Palm Beach Cty., FL), creation of a \$36.5 million common fund settlement in the wake of a majority shareholder buyout, representing a 25% increase in total consideration to the minority stockholders
- ***In re Cybex International S'holder Litig.***, Index No. 653794/2012 (N.Y. Sup. Ct. 2014), recovery of \$1.8 million common fund, which represented an 8% increase in stockholder consideration in connection with management-led cash-out merger
- ***In re Great Wolf Resorts, Inc. S'holder Litig.***, C.A. No. 7328-VCN (Del. Ch. 2012), where there was a \$93 million (57%) increase in merger consideration
- ***Minerva Group, LP v. Keane***, Index No. 800621/2013 (N.Y. Sup. Ct. 2013), settlement in which Defendants increased the price of an insider buyout from \$8.40 to \$9.25 per share

Ms. Tripodi has played a key role in obtaining injunctive relief while representing shareholders in connection with M&A litigation, including obtaining preliminary injunctions or other injunctive relief in the following actions:

- ***In re Portec Rail Products, Inc. S'holder Litig.***, G.D. 10-3547 (Ct. Com. Pleas Pa. 2010)
- ***In re Craftmade International, Inc. S'holder Litig.***, C.A. No. 6950-VCL (Del. Ch. 2011)
- ***Dias v. Purches***, C.A. No. 7199-VCG (Del. Ch. 2012)
- ***In re Complete Genomics, Inc. S'holder Litig.***, C.A. No. 7888-VCL (Del. Ch. 2012)
- ***In re Integrated Silicon Solution, Inc. Stockholder Litig.***, Lead Case No. 115CV279142 (Sup. Ct. Santa Clara, CA 2015)

Prior to joining Levi & Korsinsky, Ms. Tripodi was a member of the litigation team that served as Lead Counsel in, and was responsible for, the successful prosecution of numerous class actions, including: *Rudolph v. UTStarcom* (stock option backdating litigation obtaining a \$9.5 million settlement); *Grecian v. Meade Instruments* (stock option backdating litigation obtaining a \$3.5 million settlement).

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Education

- American University Washington College of Law, *cum laude* (2006), where she served as Editor in Chief of the Business Law Brief, was a member of the National Environmental Moot Court team, and interned for Environmental Enforcement Section at the Department of Justice
- Davidson College, B.A., Art History (2000)

Admissions

- Virginia (2006)
- District of Columbia (2008)
- United States District Court for the Eastern District of Virginia (2006)
- United States District Court for the District of Columbia (2010)

Of Counsel**Andrew E. Lencyk**

Andrew E. Lencyk is Of Counsel to the Firm. Prior to joining the Firm, Mr. Lencyk was a partner in an established boutique firm in New York specializing in securities litigation. He was graduated magna cum laude from Fordham College, New York, with a B.A. in Economics and History, where he was a member of the College's Honors Program, and was elected to Phi Beta Kappa. Mr. Lencyk received his J.D. from Fordham University School of Law, where he was a member of the Fordham Urban Law Journal. He was named to the 2013, 2014, 2015, 2016, 2017, 2018 and 2019 Super Lawyers ®, New York Metro Edition.

Mr. Lencyk has co-authored the following articles for the Practising Law Institute's Accountants' Liability Handbooks:

- *Liability in Forecast and Projection Engagements: Impact of Luce v. Edelstein*
- *An Accountant's Duty to Disclose Internal Control Weaknesses*
- *Whistle-blowing: An Accountants' Duty to Disclose A Client's Illegal Acts*
- *Pleading Motions under the Private Securities Litigation Reform Act of 1995*
- *Discovery Issues in Cases Involving Auditors* (co-authored and appeared in the 2002 PLI Handbook on Accountants' Liability After Enron.)

In addition, he co-authored the following article for the Association of the Bar of the City of New York, Corporate & Securities Law Updates:

- *Safe Harbor Provisions for Forward-Looking Statements* (co-authored and published by the Association of the Bar of the City of New York, Corporate & Securities Law Updates, Vol. II, May 12, 2000)

Cases in which Mr. Lencyk actively represented plaintiffs include:

- *In re Community Psychiatric Centers Securities Litigation*, SA CV-91-533-AHS (Eex) (C.D. Cal.) and *McGann v. Ernst & Young*, SA CV-93-0814-AHS (Eex) (C.D. Cal.) (recovery of \$54.5 million against company and its outside auditors)
- *In re Danskin Securities Litigation*, Master File No. 92 CIV. 8753 (JSM) (S.D.N.Y.);
- *In re JWP Securities Litigation*, Master File No. 92 Civ. 5815 (WCC) (S.D.N.Y.) (class recovery of approximately \$36 million)
- *In re Porta Systems Securities Litigation*, Master File No. 93 Civ. 1453 (TCP) (E.D.N.Y.);

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- *In re Leslie Fay Cos. Securities Litigation*, No. 92 Civ. 8036 (S.D.N.Y.) (\$35 million recovery)
- *Berke v. Presstek, Inc.*, Civ. No. 96-347-M (MDL Docket No. 1140) (D.N.H.) (\$22 million recovery)
- *In re Micro Focus Securities Litigation*, No. C-01-01352-SBA-WDB (N.D. Cal.)
- *Dusek v. Mattel, Inc., et al.*, CV99-10864 MRP (C.D. Cal.) (\$122 million global settlement)
- *In re Sonus Networks, Inc. Securities Litigation-II*, No. 06-CV-10040 (MLW) (D. Mass.)
- *In re AIG ERISA Litigation*, No. 04 Civ. 9387 (JES) (S.D.N.Y.) (\$24.2 million recovery)
- *In re Mutual Funds Investment Litigation*, MDL No. 1586 (D. Md.)
- *In re Alger, Columbia, Janus, MFS, One Group, Putnam, Allianz Dresdner*, MDL No. 15863-JFM - Allianz Dresdner subtrack (D. Md.)
- *In re Alliance, Franklin/Templeton, Bank of America/Nations Funds and Pilgrim Baxter*, MDL No. 15862-AMD – Franklin/Templeton subtrack (D. Md.)
- *In re AIG ERISA Litigation II*, No. 08 Civ. 5722 (LTS) (S.D.N.Y.) (\$40 million recovery); and
- *Flynn v. Sientra, Inc.*, CV-15-07548 SJO (RAOx) (C.D. Cal.) (\$10.9 million recovery) (co-lead counsel)

Court decisions in which Mr. Lencyk played an active role on behalf of plaintiffs include:

- *Pub. Empls' Ret. Sys. of Miss. v. TreeHouse Foods*, 2018 U.S. Dist. LEXIS 22717 (N.D. Ill. Feb. 12, 2018) (denying defendants' motion to dismiss in its entirety)
- *Flynn v. Sientra, Inc.*, 2016 U.S. Dist. LEXIS 83409 (C.D. Cal. June 9, 2016) (denying in substantial part defendants' motions to dismiss Section 10(b), Section 11 and 12(b)(2) claims), *motion for reconsideration denied*, slip op. (C.D. Cal. Aug 12, 2016)
- *In re Principal U.S. Property Account ERISA Litigation*, 274 F.R.D. 649 (S.D. Iowa 2011) (denying defendants' motion to dismiss)
- *In re AIG ERISA Litigation II*, No. 08 Civ. 5722(LTS), 2011 U.S. Dist. LEXIS 35717 (S.D.N.Y. May 31, 2011) (denying in substantial part defendants' motions to dismiss), *renewed motion to dismiss denied*, slip op. (S.D.N.Y. June 26, 2014)
- *In re Mutual Funds Investment Litigation*, 384 F. Supp. 2d 845 (D. Md. 2005) (denying in substantial part defendants' motions to dismiss), *In re Alger, Columbia, Janus, MFS, One Group, Putnam, Allianz Dresdner*, MDL No. 15863-JFM - Allianz Dresdner subtrack (D. Md. Nov. 3, 2005) (denying in substantial part defendants' motions to dismiss), and *In re Alliance, Franklin/Templeton, Bank of America/Nations Funds and Pilgrim Baxter*, MDL No. 15862-AMD – Franklin/Templeton subtrack (D. Md. June 27, 2008) (same)
- *In re AIG ERISA Litigation*, No. 04 Civ. 9387 (JES) (S.D.N.Y. Dec. 12, 2006) (denying defendants' motions to dismiss in their entirety)
- *Dusek v. Mattel, Inc., et al.*, CV99-10864 MRP (C.D. Cal. Dec. 17, 2001) (denying defendants' motions to dismiss Section 14(a) complaint in their entirety)
- *In re Micro Focus Sec. Litig.*, Case No. C-00-20055 SW (N.D. Cal. Dec. 20, 2000) (denying motion to dismiss Section 11 complaint);
- *Zuckerman v. FoxMeyer Health Corp.*, 4 F. Supp.2d 618 (N.D. Tex. 1998) (denying defendants' motion to dismiss in its entirety in one of the first cases decided in the Fifth Circuit under the Private Securities Litigation Reform Act of 1995)
- *In re U.S. Liquids Securities Litigation*, Master File No. H-99-2785 (S.D. Tex. Jan. 23, 2001) (denying motion to dismiss Section 11 claims)
- *Sands Point Partners, L.P., et al. v. Pediatrix Medical Group, Inc., et al.*, Case No. 99-6181-CIV-Zloch (S.D. Fla. June 6, 2000) (denying defendants' motion to dismiss in its entirety)
- *Berke v. Presstek, Inc.*, Civ. No. 96-347-M (MDL Docket No. 1140) (D.N.H. Mar. 30, 1999) (denying defendants' motion to dismiss)
- *Chalverus v. Pegasystems, Inc.*, 59 F. Supp. 2d 226 (D. Mass. 1999) (denying defendants' motion to dismiss);
- *Danis v. USN Communications, Inc.*, 73 F. Supp. 2d 923 (N.D. Ill. 1999) (denying defendants' motion to dismiss)
- *In re JWP Inc. Securities Litigation*, 928 F. Supp. 1239 (S.D.N.Y. 1996) (denying defendants' motion for summary judgment);

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- *In re Danskin Securities Litigation*, Master File No. 92 CIV. 8753 (JSM) (S.D.N.Y. Feb. 23, 1994) (denying corporate and underwriter defendants' motions to dismiss in all respects)
- *In re UCAR International Inc., Securities Litigation*, No. 3:98cv600 (JBA) (D. Conn.) (Case settled during pendency of defendants' motion to dismiss).

Education:

- Fordham University School of Law, J.D. (1992)
- Fordham College, B.A. *magna cum laude*, 1988)

Admissions

- New York (1993)
- Connecticut (1992)
- United States District Court for the Southern District of New York (2004)
- United States District Court for the Eastern District of New York (2004)
- United States Court of Appeals for the Second Circuit (2015)

Associates**Stephanie A. Bartone**

Stephanie A. Bartone practices in all areas of the firm, with a focus on securities fraud litigation. Prior to joining the firm, Ms. Bartone worked for the Connecticut Judicial System where she assisted state court judges in civil and family matters. Ms. Bartone also previously worked for a firm specializing in civil litigation and criminal defense at the state and federal level. While attending The University of Connecticut School of Law, Ms. Bartone was the Symposium Editor of the *Connecticut Law Review*.

Education

- The University of Connecticut School of Law, J.D. (2012)
- The University of New Hampshire, B.A. *summa cum laude* (2008) Psychology and Justice Studies

Admissions

- Connecticut (2012)
- Massachusetts (2012)
- United States District Court for the District of Colorado (2013)
- United States District Court for the District of Connecticut (2015)
- United States District Court for the District of Massachusetts (2016)
- United States Court of Appeals for the Third Circuit (2020)

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Jordan A. Cafritz

Jordan Cafritz is an Associate with the Firm's Washington, D.C. office. While attending law school at American University he was an active member of the American University Business Law Review and worked as a Rule 16 attorney in the Criminal Justice Defense Clinic. After graduating from law school, Mr. Cafritz clerked for the Honorable Paul W. Grimm in the U.S. District Court for the District of Maryland.

Education

- American University Washington College of Law, J.D. (2014)
- University of Wisconsin-Madison, B.A., Economics & History (2010)

Admissions

- Maryland (2014)
- District of Columbia (2018)

Cecille B. Cargill

Cecille B. Cargill manages the Firm's client development services. She advises shareholders of their rights related to securities litigation, complex class actions, and shareholder and derivative litigation, and also responds to shareholder inquiries pertaining to the Firm and specific cases.

Education

- Boston University School of Law, J.D. (1994)
- State University at Buffalo, B.A., History & Legal Studies (1990)

Admissions

- Massachusetts (1995)

*"I think you've done a superb job and I really appreciate
the way this case was handled."*

The Honorable Ronald B. Rubin in *Teoh v. Ferrantino*, C.A. No. 356627
(Cir. Ct. for Montgomery Cnty., MD 2012)

John A. Carriel

John A. Carriel is an Associate with the Firm in the Washington, D.C. office, where he focuses his practice on financial litigation, including class action litigation relating to corporate governance, securities, cryptocurrencies, and initial coin offerings. During law school, he interned for the Enforcement and Investment Management Divisions of the Securities and Exchange Commission and the Legal Division of the Consumer Financial Protection Bureau. In addition, he worked as a summer associate for a midsize business law firm in New York.

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Education

- The George Washington University Law School, J.D., With Honors (2017)
- Universidad Pontificia Comillas (ICADE), LL.M., International and European Business Law, With Honors (2015)
- Drew University, B.A., Business Studies (2013)

Admissions

- District of Columbia (2017)
- United States District Court for the District of Colorado (2018)

Publications

- "M-U-N-I: Evidencing the Inadequacies of the Municipal Securities Regulatory Framework," 1 BUS. ENTREPRENEURSHIP & TAX L. REV. 528 (2017).

Vice Chancellor Sam Glasscock, III said "it's always a pleasure to have counsel who are articulate and exuberant..." and referred to our approach to merger litigation as "wholesome" and "a model of... plaintiffs' litigation in the merger arena."

Ocieczanek v. Thomas Properties Group, C.A. No. 9029-VCG (Del. Ch. May 15, 2014)

Michael Keating

Michael Keating is an Associate with the Firm's Stamford office focusing on federal securities litigation. Mr. Keating previously interned with the Division of Enforcement for the Securities and Exchange Commission while attending law school.

Education:

- University of Connecticut School of Law, J.D. (2019)
- University of Connecticut, B.A Psychology (2014)

Admissions:

- Connecticut

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Alexander Krot

Education

- The George Washington University, B.B.A., Finance and International Business (2003)
- American University Washington College of Law, J.D. (2010)
- Georgetown University Law Center, LL.M., Securities and Financial Regulation, With Distinction (2011)
- American University, Kogod School of Business, M.B.A. (2012)

Admissions

- Maryland (2011)
- District of Columbia (2014)
- United States District Court for the District of Colorado (2015)
- United States Court of Appeals for the Tenth Circuit (2016)
- United States District Court for the Eastern District of Wisconsin (2017)
- United States Court of Appeals for the Third Circuit (2018)

*Then Vice Chancellor Leo E. Strine, Jr. praised the Firms’
“exceedingly measured and logical” argument*

Forgo v. Health Grades, Inc., C.A. No. 5716-VCS (Del. Ch. Sept. 3, 2010)

Courtney E. Maccarone

Courtney E. Maccarone focuses her practice on prosecuting consumer class actions. Prior to joining Levi & Korsinsky, Ms. Maccarone was an associate at a boutique firm in New York specializing in class action litigation. While attending Brooklyn Law School, Ms. Maccarone served as the Executive Symposium Editor of the *Brooklyn Journal of International Law* and was a member of the Moot Court Honor Society. Her note, “Crossing Borders: A TRIPS-Like Treaty on Quarantines and Human Rights” was published in the Spring 2011 edition of the *Brooklyn Journal of International Law*.

Ms. Maccarone also gained experience in law school as an intern to the Honorable Martin Glenn of the Southern District of New York Bankruptcy Court and as a law clerk at a New York City-based class action firm. Ms. Maccarone has been recognized as a Super Lawyer “Rising Star” for the New York Metro area for the past six consecutive years.

Education

- Brooklyn Law School, J.D., *magna cum laude* (2011), where she served as the Executive Symposium Editor of the *Brooklyn Journal of International Law* and was a member of the Moot Court Honor Society
- New York University, B.A., *magna cum laude* (2008)

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Admissions

- New Jersey (2011)
- New York (2012)
- United States District Court for the District of New Jersey (2012)
- United States District Court for the Eastern District of New York (2012)
- United States District Court for the Southern District of New York (2012)

Publications

- "Crossing Borders: A TRIPS-Like Treaty on Quarantines and Human Rights," published in the Spring 2011 edition of the *Brooklyn Journal of International Law*

Rosanne L. Mah

Rosanne L. Mah is an Associate in Levi & Korsinsky, LLP's San Francisco office. She represents consumers in complex class action litigation involving deceptive or misleading practices, false advertising, and data/privacy issues.

Education

- University of San Francisco, School of Law, J.D. (2005)
- University of California at Santa Cruz, B.A., Politics and Environmental Studies (1995)

Admissions

- United States District Court for the Northern District of California (2007)
- United States District Court for the Eastern District of California (2007)
- United States District Court for the Central District of California (2017)

Adam C. McCall

Adam C. McCall is an Associate with the Firm. Prior to joining Levi & Korsinsky, Mr. McCall was a Summer Analyst at Moelis & Company and an intern at Fortress Investment Group. While attending the Georgetown University Law Center, he was an extern at the Securities and Exchange Commission's Division of Corporate Finance.

Education

- Georgetown University Law Center, LL.M., Securities and Financial Regulation (2015)
- California Western School of Law, J.D., *cum laude* (2013)
- Santa Clara University, Certificate of Advanced Accounting Proficiency (2010)
- University of Southern California, B.A., Economics (2008)

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Admissions

- California (2014)
- United States District Court for the Central District of California (2015)
- United States District Court for the Eastern District of California (2015)
- United States District Court for the Northern District of California (2015)
- United States District Court for the Southern District of California (2015)
- United States Court of Appeals for the Ninth Circuit (2016)
- District of Columbia (2017)

Melissa Muller

Melissa Muller is an Associate with the Firm's New York Office focusing on federal securities litigation. Ms. Muller previously worked as a paralegal for the New York office while attending law school.

Education

- New York Law School, J.D., Dean's Scholar Award, member of the Dean's Leadership Council (2018)
- John Jay College of Criminal Justice, B.A. (2013), *magna cum laude*

Admissions

- New York (2019)
- United States District Court for the Southern District of New York (2020)

Gregory M. Potrepka

Gregory M. Potrepka is an Associate in Levi & Korsinsky's Connecticut office. Mr. Potrepka is an experienced lawyer having litigated cases in State, Federal, and Tribal courts, at both the trial and appellate levels. While in law school, Mr. Potrepka clerked in the Civil Division of the United States Attorney's Office for the District of Columbia.

Education

- University of Connecticut School of Law, J.D. (2015)
- University of Connecticut Department of Public Policy, M.P.A. (2015)
- University of Connecticut, B.A., Political Science (2010)

Admissions

- Connecticut (2015)
- Mashantucket Pequot Tribal Court (2015)
- United States District Court for the District of Connecticut (2016)
- United States District Court for the Southern District of New York (2018)
- United States District Court for the Eastern District of New York (2018)

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Andrew Rocco

Andrew Rocco is an Associate with the Firm in the Connecticut office. As a law student, he interned for the Office of the Attorney General for the State of Connecticut in the Employment Rights Department, and served as the Editor-in-Chief of the Quinnipiac Probate Law Journal.

Education

- Quinnipiac University School of Law, J.D., *summa cum laude* (2017)
- Champlain College, B.A., Legal Studies, *summa cum laude* (2014)

Admissions

- Connecticut

Brian Stewart

Brian Stewart is an Associate with the Firm practicing in the Washington, D.C. office. Prior to joining the firm, Mr. Stewart was an associate at a small litigation firm in Washington D.C. and a regulatory analyst at the Financial Industry Regulatory Authority (FINRA). During law school, he interned for the Enforcement Divisions of the SEC and CFPB.

Education

- American University Washington College of Law, J.D. (2012)
- University of Washington, B.S., Economics and Mathematics (2008)

Admissions

- Maryland (2012)
- District of Columbia (2014)

Sebastian Tornatore

Sebastian Tornatore is an Associate in the Connecticut office where he focuses on representing shareholders in federal securities actions. While at the University of Connecticut School of Law, Mr. Tornatore served as an Executive Editor of the *Connecticut Law Review* and as a member of the Connecticut Moot Court Board. Prior to joining the Firm, Mr. Tornatore worked for the Connecticut Judicial System, where he gained significant experience assisting various state judges.

Education

- University of Connecticut School of Law, J.D. (2012)
- Boston College, B.A. (2008)

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Admissions

- Massachusetts (2012)
- Connecticut (2012)
- New York (2014)
- United States District Court for the District of Connecticut (2014)
- United States District Court for the Southern District of New York (2016)
- United States District Court for the District of Massachusetts (2016)
- United States District Court for the Eastern District of New York (2018)

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

SANDI ROPER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,)	
)	
)	
PLAINTIFF,)	No. 2:17-cv-01106-ES-MAH
)	
V.)	<u>CLASS ACTION</u>
)	
SITO MOBILE, LTD., <i>ET. AL.</i>,)	
)	
DEFENDANTS.)	
)	
)	
)	
)	

**DECLARATION OF RICHARD W. SIMMONS REGARDING CLASS NOTICE AND
REPORT ON REQUESTS FOR EXCLUSION RECEIVED**

I, RICHARD W. SIMMONS, hereby declare under penalty of perjury as follows:

1. I am the President of Analytics Consulting, LLC (“Analytics”). The following statements are based on my personal knowledge and information provided by other Analytics employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

2. Pursuant to its Order Granting Preliminary Approval of Settlement dated November 7, 2019 (ECF No. 86, the “Preliminary Approval Order”), the Court approved the retention of Analytics as the Claims Administrator of for the above-captioned action (the “Action”).¹ I submit this declaration to provide the Court with proof of the mailing of the Court-approved Notice of Pendency and Proposed Settlement of Class Action (the “Class Notice”), the publication of the

¹ Unless otherwise defined in this declaration, all capitalized terms have the meanings defined in the Preliminary Approval Order.

Summary Notice, and to report on the requests for exclusion from the Class in connection with dissemination of the Class Notice.

MAILING OF THE CLASS NOTICE

3. Pursuant to the Notice Orders, Analytics has disseminated the Class Notice to potential Class Members and nominees. A copy of the Class Notice is attached to this declaration as Exhibit A.

4. As in most class actions of this nature, the large majority of potential Class Members are beneficial purchasers whose securities are held in “street name” – *i.e.*, the securities are purchased by brokerage firms, banks, institutions, and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. To provide targeted notice to investors, Analytics consulted with The Depository Trust Company (the “DTC”) to identify banks, brokers, and other nominees that held shares of SITO Mobile during the class period. On January 17, 2020, Analytics caused the Class Notice to be mailed to 125 brokerage firms, banks, institutions, other third-party nominees, and third-party filers.

5. On January 17, 2020, Analytics distributed the Class Notice to all custodian banks and broker-dealers in the United States via the DTC’s Legal Electronic Notification System.

6. The Class Notice instructed those who, during the period between August 15, 2016 and January 2, 2017, inclusive, purchased or otherwise acquired shares of SITO Mobile common stock, for the beneficial interest of any person or entity other than themselves, that they must, within 10 business days of receipt of the Class Notice, either: (i) request sufficient copies of the Class Notice to forward to all such beneficial owners (and then forward the Class Notices to the beneficial owners within 10 business days of receipt) or (ii) provide the names and addresses of such Persons to the Claims Administrator. *See* Class Notice, Special Notice to Nominees.

7. Through the date of this Declaration, Analytics has mailed an additional 1,740 copies of the Class Notice to potential members of the Class whose names and addresses were received from individuals, entities, or nominees requesting that the Class Notice be mailed to such persons. In addition, 1,845 Class Notices have been delivered to nominees for forwarding to their customers.

8. Through the date of this Declaration, a total of 3,585 Class Notices have been disseminated to potential members of the Class or their nominees. In addition, Analytics has re-mailed 33 Class Notices to persons whose original mailings were returned by the U.S. Postal Service (“USPS”) as undeliverable and for whom updated addresses were provided to Analytics by the USPS.

PUBLICATION OF THE SUMMARY CLASS NOTICE

9. Pursuant to the Notice Order, Analytics caused the Summary Class Notice to be transmitted over the *PR Newswire* on January 3, 2020 and January 17, 2020. Copies of proof of publication of the Summary Class Notice in the *PR Newswire* are attached to this declaration as Exhibits B and C, respectively.

WEBSITE

10. Beginning on January 3, 2020, Analytics established and continues to maintain a website dedicated to this Action (www.SITOMobileSecuritiesSettlement.com) to assist Class Members. The website address was set forth in the Class Notice and the Summary Class Notice. The website lists the deadline for requesting exclusion from the Class and contains copies of the Stipulation of Settlement (ECF No. 84), the Unopposed Motion for Preliminary Approval of Settlement (ECF No. 85), and this Court’s Order Granting Preliminary Approval of Settlement (ECF No. 86). On January 17, Analytics updated the website to include preliminary versions of the Brief in Support of Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and

Approval of Plan of Allocation and the Brief in Support of Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. Analytics will continue operating, maintaining, and updating the case website as appropriate.

TOLL-FREE TELEPHONE LINE

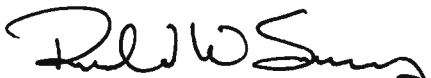
11. Beginning on January 3, 2020, Analytics established and continues to maintain a toll-free telephone number for the Action, 1-855-953-2395. During business hours, callers to the toll-free telephone line can speak to a live operator regarding the status of the Action and/or obtain answers to questions they may have about the Class Notice. After hours, callers are provided with to the opportunity to leave a message requesting a return call.

REPORT ON OBJECTIONS AND REQUESTS FOR EXCLUSION

12. The Class Notice informed potential Class Members that objections and requests for exclusion were to be mailed to Analytics, postmarked no later than March 17, 2020. As of the date of this Declaration, Analytics has received no objections or requests for exclusion.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

Executed on March 6, 2020.



Richard W. Simmons

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

**SANDI ROPER, Individually and on Behalf of All
Others Similarly Situated,**

Plaintiff,

v.

SITO MOBILE, LTD., *ET AL.*,

Defendants.

No. 2:17-cv-01106-ES-MAH

CLASS ACTION

**NOTICE OF PENDENCY AND PROPOSED
SETTLEMENT OF CLASS ACTION**

TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED SITO MOBILE, LTD. COMMON STOCK BETWEEN AUGUST 15, 2016 AND JANUARY 2, 2017, INCLUSIVE.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION.

Security and Time Period: SITO Mobile, Ltd. (“SITO Mobile”) common stock purchased or acquired between August 15, 2016 and January 2, 2017, inclusive.

Settlement Fund: \$1.25 million in cash. Your recovery will depend on the amount of shares purchased and the timing of your purchases and any sales. Depending on the number of eligible shares that participate in the settlement and when those shares were purchased and sold, Lead Plaintiff estimates the average cash recovery per share of common stock will be approximately \$0.15 per share (assuming claims representing 8,500,000 shares are filed) before deduction of court-approved fees and expenses.

Reasons for Settlement: Avoids the costs and risks associated with continued litigation, including the danger of no recovery for Class Members.

If the Case Had Not Settled: Continuing with the case could have resulted in loss at summary judgment, trial or appeal. The two sides disagree on both liability and the amount of money that could have been won if Lead Plaintiff prevailed at trial. The issues on which the parties disagree are many and include: (1) whether Defendants engaged in conduct that would give rise to any liability to the Class under the federal securities laws, or any other laws; (2) whether Defendants have valid defenses to any such claims of liability; (3) the method for determining whether SITO Mobile common stock was artificially inflated, if at all, during the relevant period; (4) whether there was any inflation and the amount of any such alleged inflation; (5) the extent to which external factors or market factors influenced the trading price of SITO Mobile common stock during the Class Period; (6) the extent that various facts alleged by Lead Plaintiff influenced the trading price of SITO Mobile common stock during the Class Period; and (7) whether the facts alleged were material, false, misleading, or otherwise actionable under the securities laws.

Attorneys’ Fees and Expenses: Lead Counsel has not received any payment for their work investigating the facts, conducting this litigation or negotiating the settlement on behalf of Lead Plaintiff and the Class. Court-appointed Lead Counsel will ask the Court for an award of \$330,000 from the Settlement Fund as payment for attorneys’ fees and reimbursement of out-of-pocket litigation expenses. If the above amount is requested and approved by the Court, the average cost per share of common stock will be \$0.04.

Deadlines:

Submit Claim: **April 16, 2020**
 Request Exclusion: **March 17, 2020**
 File Objection: **March 17, 2020**

Court Hearing on Fairness of Settlement: April 21, 2020

More Information: www.SITOMobileSecuritiesSettlement.com or

Claims Administrator:

SITO Mobile Securities Litigation
 Claims Administrator, Analytics Consulting LLC
 P.O. Box 2002
 Chanhassen, MN 55317-2002
info@SITOMobileSecuritiesSettlement.com

Lead Counsel:

Nicholas I. Porritt, Esq
 Levi & Korsinsky LLP
 1101 30th Street, N.W., Suite 115
 Washington, D.C. 20007
nporritt@zlk.com

Your legal rights are affected whether you act or do not act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM	If you are a Class Member and do not exclude yourself from the Class, the only way to get a payment is to submit a claim form. You may submit a claim form and still object to any aspect of the settlement, the request for an award of attorneys' fees and expenses and/or the Plan of Allocation. If you submit a claim form, you give up your right to participate in another lawsuit against the Defendants for the legal claims in this case. <i>See Answer to Question 12 for a more detailed description of what you are giving up if you submit a claim form.</i>
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to participate in another lawsuit against the Defendants relating to the legal claims in this case.
OBJECT	If you are a Class Member and do not exclude yourself from the Class, you may write to the Court if you do not like the settlement, the request for attorneys' fees and expenses, or the Plan of Allocation. If you submit an objection to the settlement, Plan of Allocation or the request for an award of attorneys' fees and expenses and do not submit a claim form seeking payment from the settlement proceeds, your objection may be rejected because you would no longer have an interest in the settlement.
GO TO A HEARING	You may ask to speak in Court about the fairness of the settlement, the request for attorneys' fees and expenses, or the Plan of Allocation.
DO NOTHING	If you do nothing, you will not receive any payments, will not be allowed to object to the settlement, Plan of Allocation or Lead Plaintiff's counsel's request for an award of attorneys' fees and expenses and will give up your right to participate in another lawsuit against the Defendants for the legal claims in this case. <i>See Answer to Question 12 for a more detailed description of what you are giving up if you do nothing.</i>

These rights and options – ***and the deadlines to exercise them*** – are explained in this Notice.

The Court in charge of this case must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and, if there are any appeals, after appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why Did I Get This Notice Package?

You or someone in your family may have purchased or acquired the publicly traded shares of SITO Mobile common stock between August 15, 2016 and January 2, 2017, inclusive.

The Court ordered that this Notice be sent to you because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will make the payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the District of New Jersey, and the case is known as *Roper v. SITO Mobile, Ltd.*, Case No. 2:17-cv-01106-ES-MAH. The person who sued is called the Lead Plaintiff, and the companies and the individuals they sued, SITO Mobile, Jerry Hug, and Kurt Streams, are called Defendants.

2. What is this Lawsuit About?

Lead Plaintiff has filed this lawsuit alleging that Defendants acted with scienter when making false and materially misleading statements and omissions about SITO Mobile's sales and revenue for the third and fourth quarters of 2016. Lead Plaintiff further alleges that these purportedly false and materially misleading statements and omissions induced Lead Plaintiff and other similarly situated shareholders to purchase shares of SITO Mobile common stock at artificially inflated prices. When the truth was revealed, Lead Plaintiff alleges that the value of SITO Mobile common stock declined significantly and, as a result, it and other members of the Class suffered substantial damages.

Defendants have denied and continue to deny each and all of the claims and allegations of wrongdoing made by Lead Plaintiff in the Litigation and maintain furthermore that they have meritorious defenses. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied and continue to deny, among other allegations, the allegations that the Lead Plaintiff or the Class have suffered any damage, that the price of SITO Mobile common stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, or that the Lead Plaintiff or the Class were harmed by the conduct alleged in the Litigation.

3. Why Is This a Class Action?

In a class action, one or more people or entities called class representatives (in this case the court-appointed Lead Plaintiff) sue on behalf of people who have similar claims. All these people are called a class or Class Members. One court resolves the issues for all the Class Members, except for those who exclude themselves from the Class. Judge Esther Salas is in charge of this class action.

4. Why Is There a Settlement?

The Court did not decide in favor of the Lead Plaintiff or Defendants. Instead, both sides agreed to a settlement with the assistance of an experienced mediator. The settlement allows both sides to avoid the risks and cost of lengthy and uncertain litigation and the uncertainty of a trial and appeals, and permits Class Members to be compensated without further delay. Lead Plaintiff and its attorneys think the settlement is best for all Class Members.

WHO GETS MONEY FROM THE SETTLEMENT

To see if you will get money from this settlement, you first have to determine if you are a Class Member.

5. How Do I Know if I Am A Part of the Settlement?

The Class includes all persons or entities who purchased or otherwise acquired SITO Mobile common stock between August 15, 2016 and January 2, 2017, inclusive, *except those persons or entities that are excluded, as described below.*

6. What Are the Exceptions to Being Included?

You are not a Class Member if you are:

- A Defendant;
- A director, officer, or employee of SITO Mobile during the Class Period;
- A member of the immediate family, trust, company, entity or affiliate controlled or owned by any excluded party; and
- Any firm or entity in which any Defendant has or had a controlling interest.

Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to this Notice.

7. I'm Still Not Sure If I Am Included in the Class Action

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at 1-855-953-2395, or you can fill out and return the Proof of Claim form enclosed with this Notice package, to see if you qualify.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What Does the Settlement Provide?

Defendants have agreed to pay or cause to be paid a total of \$1.25 million in cash (the “Settlement Fund”). The Settlement Fund, plus interest earned from the date it is established, less costs, fees, and expenses (the “Net Settlement Fund”), will be divided among all eligible Class Members who send in valid Proofs of Claim forms. Costs, fees, and expenses include Court-approved attorneys’ fees and expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing notice, and taxes on the Settlement Fund.

9. How Much Will My Payment Be?

Your share of the Net Settlement Fund will depend on several things, including, how many Class Members submit timely and valid Proof of Claim forms, the total recognized losses represented by the valid Proof of Claim forms that Class Members send in, the total number of shares of SITO Mobile common stock you purchased or acquired, how much you paid, when you purchased or acquired, and if you sold your shares and for how much.

By following the instructions in the Plan of Allocation, you can calculate what is called your Recognized Loss. The Plan of Allocation for this Settlement is as follows: Each Class Member that submits a valid Claim (an “Authorized Claimant”) will be assigned a Recognized Loss. An Authorized Claimant’s Recognized Loss depends upon the number of SITO Mobile shares held at certain points in time during the Class Period. The following table provides the per-share amount of each Authorized Claimant’s Recognized Loss. These amounts represent the average amount of potential damages per share:

Date Shares Purchased	Date Shares Sold			
		Before 11/15/16	11/15/16 to 1/2/17	After 1/2/17
	8/15/16 to 11/14/16	\$0/share	\$0.76/share	\$1.96/share
	11/15/16 to 1/2/17	N/A	\$0/share	\$1.20/share

It is unlikely that you will get a payment for all of your Recognized Loss. After all Class Members have sent in their Proof of Claim forms, the payment you get will be a part of the Net Settlement Fund equal to your Recognized Loss divided by the total of everyone’s Recognized Losses. Your payment will be made in cash.

The Plan of Allocation also includes the following provisions:

- 1) An Authorized Claimant will have a Recognized Loss only in connection with damaged shares. Thus, any transaction that resulted in a profit or gain will not be included in an Authorized Claimant's overall Recognized Loss;
- 2) There shall be no Recognized Loss attributed to any SITO Mobile securities other than Common Stock or to any shares of Common Stock purchased on a foreign exchange;
- 3) The date of a purchase or sale is the "trade" date and not the "settlement" date;
- 4) The last-in, first-out basis ("LIFO") will be applied to both purchases and sales;
- 5) Exercise of option contracts or the conversion of preferred stock into Common Stock will be considered to be purchases or sales of Common Stock as of the date of the exercise or conversion. Your purchase or sale price will be the closing price for the stock on that day, unless otherwise stated herein;
- 6) No cash payment will be made on a claim where the potential distribution amount is less than \$10. Please be advised that if you did not incur a Recognized Loss as defined in the Plan of Allocation, you will not receive a cash distribution from the Net Settlement Fund, but you will be bound by all determinations and judgments of the Court in connection with the Settlement, including being barred from asserting any of the Released Claims against the Released Parties;
- 7) No person shall have any claim against Lead Counsel or the Claims Administrator based on the distribution made substantially in accordance with the Stipulation and this Plan of Allocation, or further orders of the Court. In addition, Defendants and Defendants' Counsel have no responsibility for the Plan of Allocation, the administration of the settlement, or the distribution to Settlement Class Members, and no person shall have any claim against Defendants or Defendants' Counsel based on the Plan of Allocation, the administration of the settlement, or the distribution to the Settlement Class Members; and
- 8) Settlement Class Members who do not submit valid Proof of Claim forms will not share in the settlement proceeds. Settlement Class Members who do not either submit a request for exclusion or submit a valid Proof of Claim form will nevertheless be bound by the Settlement and the Order and Final Judgment of the Court dismissing this Consolidated Action.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How Will I Get a Payment?

To qualify for payment, you must be an eligible Class Member and you must send in a Proof of Claim form. A Proof of Claim form is enclosed with this Notice. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it in the enclosed envelope postmarked no later than **April 16, 2020**.

11. When Will I Get My Payment?

The Court will hold a hearing on April 21, 2020, to decide whether to approve the settlement. If Judge Salas approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved favorably, and resolving them can take time, perhaps several years. If there are no appeals and depending on the number of claims submitted, the Claims Administrator could distribute the Net Settlement Fund as early as nine months after the fairness hearing. Everyone who sends in a claim form will be informed of the determination with respect to their claim. Please be patient.

12. What Am I Giving Up to Get a Payment or Stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants about the same legal issues in this case. It also means that all of the Court's Order will apply to you and legally bind you and you will release your claims in this case against the Defendants. The terms of the release are included in the claim form that is enclosed.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue any of the Defendants on your own about the same legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself or is sometimes referred to as opting out of the Class.

13. How Do I Get Out of the Settlement Class?

To exclude yourself from the Settlement Class, you must send a letter by mail stating that you want to be excluded from *Roper v. SITO Mobile, Ltd. et al*, Case No. 2:17-cv-01106-ES-MAH. You must include your name, address, telephone number, signature, and the number of shares of SITO Mobile common stock you purchased or acquired between August 15, 2016 and January 2, 2017, inclusive, the number of shares of SITO Mobile common stock sold during this time period, if any, and the dates, quantities, and prices of such purchases and sales. If you cannot find the prices or exact dates of your purchases, acquisitions and/or sales, you can still submit an exclusion request for review. You must mail your exclusion request postmarked no later than **March 17, 2020** to:

SITO Mobile Securities Litigation
Claims Administrator, Analytics Consulting LLC
P.O. Box 2002
Chanhassen, MN 55317-2002

You cannot exclude yourself by phone or by e-mail. If you ask to be excluded, you are not eligible to get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

14. If I Do Not Exclude Myself, Can I Sue the Defendants for the Same Thing Later?

No. Unless you exclude yourself, you give up any right to sue the Defendants and their Related Parties for the claims resolved by the settlement. If you have a pending lawsuit against any of the Defendants, speak to your lawyer in that case immediately. Remember the exclusion deadline is **March 17, 2020**.

15. If I Exclude Myself, Can I Get Money from This Settlement?

No. If you exclude yourself, do not send in a Proof of Claim form. Once you exclude yourself, you will receive no cash payment even if you also submit a Proof of Claim.

THE LAWYERS REPRESENTING YOU

16. Do I Have a Lawyer in This Case?

The Court appointed the law firm Levi & Korsinsky, LLP to represent you and other Class Members. These lawyers are called Lead Counsel. These lawyers will apply to the Court for payment from the Settlement Fund; you have not been and will not otherwise be charged for their work. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will the Lawyers Be Paid?

At the Settlement Hearing, Lead Plaintiff's Counsel will ask the Court for an award of \$330,000. This amount is intended to compensate Lead Plaintiff's Counsel for their attorneys' fees and out-of-pocket litigation expenses. Lead Plaintiff's Counsel's out-of-pocket litigation expenses in this action were approximately \$25,000. This award amounts to approximately 25% of the Settlement Fund. If awarded, the cost would be approximately \$0.04 per share. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

To date, Lead Counsel has not been paid for their services for conducting this litigation on behalf of the Lead Plaintiff and Class nor for their out-of-pocket expenses. The fees requested will compensate Lead Counsel for their work in achieving the Settlement Fund and is well within the range of fees awarded to class counsel under similar circumstances in other cases of this type. The Court may award less than this amount.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement, the Plan of Allocation, or Lead Plaintiff's counsel's request for an award of attorneys' fees and expenses.

18. How Do I Tell the Court that I Do Not Like the Settlement?

If you are a Class Member (and you have not excluded yourself), you can object to the settlement, the request for attorneys' fees and expenses, or the Plan of Allocation if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the

settlement in *Roper v. SITO Mobile, Ltd.*, Case No. 2:17-CV-01106-ES-MAH. Be sure to include your name, address, telephone number, signature, the SITO Mobile common stock purchased and sold between August 15, 2016 and January 2, 2017, inclusive, and the reasons you object to the settlement, the requested attorneys' fees and expenses, or the Plan of Allocation. Any objection to the settlement must be filed with the Court at the following address no later than **March 17, 2020**.

Clerk of Court
United States District Court
Martin Luther King Building
50 Walnut Street, Room 4015
Newark, NJ 07101

Lead Counsel will then immediately provide to Defendants' Counsel any such objection.

19. What's the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you do not like something about the proposed settlement. You can object *only if* you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the proposed settlement. You may attend and you may ask to speak, but you do not have to.

20. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a fairness hearing at **10:00 a.m.**, on **April 21, 2020**, at the United States District Court, District of New Jersey, Courtroom MLK 5A, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101. At this hearing the Court will consider whether the settlement of the Litigation is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Salas will listen to people who have asked to speak at the hearing. The Court will also consider whether to approve the payment of fees and expenses to Lead Plaintiff's counsel and the Plan of Allocation. The Court may decide these issues at the hearing or take them under consideration. We do not know how long these decisions will take.

21. Do I Have to Come to the Settlement Hearing?

No. Lead Counsel will answer any questions Judge Salas may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

22. May I Speak at the Settlement Hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter saying that it is your intention to appear in *Roper v. SITO Mobile, Ltd. Securities Litigation*, Case No. 2:17-CV-01106-ES-MAH. Be sure to include your name, address, telephone number, signature, and the number of shares of SITO Mobile common stock purchased or acquired between August 15, 2016 and January 2, 2017, inclusive. Your notice of intention to appear must be filed no later than **April 7, 2020**, with the Clerk of the Court, at the address listed in Question 18. You cannot speak at the hearing if you exclude yourself from the Class.

IF YOU DO NOTHING

23. What Happens if I Do Nothing At All?

If you do nothing, you will get no money from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants or their Related Parties about the same legal issues in this case.

GETTING MORE INFORMATION

24. Are There More Details About the Settlement?

This Notice only contains a summary of the proposed settlement. More details are in the Stipulation of Settlement dated as of July 31, 2019. You can get a copy of the Stipulation or more information about the Settlement by visiting www.SITOMobileSecuritiesSettlement.com.

You can also contact the Claims Administrator:

SITO Mobile Securities Litigation
Claims Administrator, Analytics Consulting LLC
P.O. Box 2002
Chanhassen, MN 55317-2002

Or Lead Counsel:

Nicholas I. Porritt, Esq.
Levi & Korsinsky, LLP
1101 30th Street, N.W., Suite 115
Washington, D.C. 20007

You can also obtain a copy from the Clerk's Office during regular business hours:

Clerk of Court
United States District Court
Martin Luther King Building
50 Walnut Street, Room 4015
Newark, NJ 07101

DO NOT TELEPHONE THE COURT OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE

SPECIAL NOTICE TO NOMINEES

If you hold shares of SITO Mobile common stock purchased between August 15, 2016 and January 2, 2017, inclusive, as a nominee for a beneficial owner, then, within ten (10) days after you received this Notice, you must either: (1) send a copy of this Notice and Proof of Claim by first class mail to all such beneficial owners; or (2) provide a list of names and addresses of such Persons to the Claims Administrator:

SITO Mobile Securities Litigation
Claims Administrator, Analytics Consulting LLC
P.O. Box 2002
Chanhassen, MN 55317-2002

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reasonable reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: JANUARY 3, 2020

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

SITO Mobile Securities Litigation

Claims Administrator, Analytics Consulting LLC

P.O. Box 2002

Chanhassen, MN 55317-2002

Toll-Free Number: 1-855-953-2395

Website: www.SITOMobileSecuritiesSettlement.com

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ROPER v. SITO MOBILE, LTD., et al.

Case No. 2:17-cv-01106-ES-MAH

Must be Postmarked No Later Than APRIL 16, 2020

PROOF OF CLAIM AND RELEASE

I. GENERAL INSTRUCTIONS

1. All capitalized terms not otherwise defined shall have the same meanings as set forth in the Stipulation of Settlement dated as of July 31, 2019, which can be downloaded at www.SITOMobileSecuritiesSettlement.com.
2. To recover as a Class Member based on claims in the action entitled *Roper v. SITO Mobile Ltd., et al.*, Case No. 2:17-cv-01106-ES-MAH (the "Litigation"), you must complete and, on page 5 hereof, sign this Proof of Claim and Release form ("Proof of Claim"). If you fail to file a properly addressed (as set forth in paragraph 4 below) Proof of Claim, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed settlement.
3. Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of the settlement of the Litigation.
4. YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM POSTMARKED ON OR BEFORE **APRIL 16, 2020**, ADDRESSED AS FOLLOWS:

SITO Mobile Securities Litigation

Claims Administrator, Analytics Consulting LLC

P.O. Box 2002

Chanhassen, MN 55317-2002

5. If you are a Class Member, you are bound by the terms of any judgment entered in the Litigation, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM unless you timely and validly request exclusion from the settlement class pursuant to the Notice.

II. CLAIMANT IDENTIFICATION

1. If you purchased and/or acquired SITO Mobile common stock and held the certificate(s) in your name, you are the beneficial purchaser or acquirer as well as the record purchaser or acquirer. If, however, the certificate(s) were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is a record purchaser.

- ### III. CLAIM FORM

- ## **PART I – CLAIMANT INFORMATION**

$$\begin{array}{|c|c|c|} \hline & & \\ \hline \end{array} - \begin{array}{|c|c|c|} \hline & & \\ \hline \end{array} - \begin{array}{|c|c|c|c|} \hline & & & \\ \hline \end{array}$$

PART II – SCHEDULE OF TRANSACTIONS IN SITO MOBILE COMMON STOCK

- A. Number of shares of SITO Mobile common stock held at the close of trading on August 14, 2016. (Must be documented)** If none, write "zero" or "0."

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Confirm Proof
of Position
Enclosed

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- B. Purchases or acquisitions of SITO Mobile common stock between August 15, 2016 and January 2, 2017: (Must be documented)**

	Trade Date (List Chronologically) M M / D D / Y Y	Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price (excluding any commissions, taxes and fees)	Confirm Proof of Purchase Enclosed
1.			\$	
2.			\$	
3.			\$	

IMPORTANT: Identify by number listed above all purchases in which you covered a "short sale":

- C. Sales of SITO Mobile common stock between August 15, 2016 and January 2, 2017, inclusive: (Must be documented)**

	Trade Date (List Chronologically) M M / D D / Y Y	Number of Shares Sold	Total Sales Price (excluding any commissions, taxes and fees)	Confirm Proof of Sale Enclosed
1.			\$	
2.			\$	
3.			\$	

- D. Number of shares of SITO Mobile common stock held at the close of trading on November 14, 2016. (Must be documented)** If none, write "zero" or "0."

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Confirm Proof
of Position
Enclosed

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- E. Number of shares of SITO Mobile common stock held at the close of trading on January 2, 2017. (Must be documented)** If none, write "zero" or "0."

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Confirm Proof
of Position
Enclosed

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If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

YOU MUST READ AND SIGN THE RELEASE ON PAGE 5. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim under the terms of the Stipulation of Settlement, dated as of July 31, 2019 described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the District of New Jersey, with respect to my (our claim) as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to Lead Counsel to support this claim if required to do so. I (We) have not submitted any other claim covering the same purchases or sales of SITO Mobile common stock during the Class Period and know of no other Person having done so on my (our) behalf.

V. RELEASE

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release, relinquish and discharge and covenant not to sue with respect to, the Released Claims each and all of the Released Parties.
2. "Released Claims" means any and all claims, rights, actions, suits or causes of action of every nature and description, including Unknown Claims, debts, demands, disputes, matters, damages, obligations or liabilities of any kind, nature, and/or character whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any and all other costs, expenses or liabilities whatsoever), whether known or unknown, whether the claims arise under federal, state, local, statutory, regulatory, common, foreign or other law, or any other law, rule or regulation, whether fixed or contingent or absolute, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, concealed or hidden, foreseen or unforeseen, and whether asserted or that might have been asserted individually, directly, representatively, derivatively, or in any other capacity, by Lead Plaintiffs or the Class Members, or any of them, against the Released Persons based upon, arising out of, or related to (a) the purchase or acquisition of SITO common stock during the Class Period and any of the facts, transactions, events, occurrences, disclosures, statements, acts, omissions, or failures to act which were or could have been alleged in or embraced or otherwise referred to or encompassed by the Litigation, regardless of what legal theory based, including, without limitation, claims for negligence, gross negligence, recklessness, fraud, breach of duty of care and/or loyalty or violations of common law, administrative rule or regulation, tort, contract, equity, or otherwise of any federal statutes, rules, regulations or common law, or the law of any foreign jurisdiction; or (b) that Defendants improperly defended or settled the Litigation, the Released Claims, or both.
3. "Unknown Claims" means any and all Released Claims which Lead Plaintiffs, Lead Plaintiffs' Counsel, or any Class Members do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons which, if known by him, her or it might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her, or its decision(s) with respect to the Settlement (including the decision not to object or exclude himself, herself, or itself from the Settlement). Unknown Claims include those Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiffs and the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished the provisions, rights, and benefits conferred by or under California Civil Code § 1542, or any other law of the United States or any state or territory of the United States, or principle of common law that is similar, comparable, or equivalent to § 1542, 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.**

Lead Plaintiffs acknowledge that they 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, but

the Lead Plaintiffs shall expressly settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled and released, any and all 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 now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement of which this release is a part.

4. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.
5. I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in SITO Mobile common stock that occurred during the Class Period as well as the number and type of SITO Mobile shares held by me (us) on August 14, 2016, November 14, 2016, and January 2, 2017.
6. I (We) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code.

Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied on this Proof of Claim by the undersigned is true and correct.

Executed this _____ day of _____ in _____.
(Month/Year) (City/State/Country)

(Sign your name here)

(Sign your name here)

(Type or print your name here)

(Type or print your name here)

(Capacity of person(s) signing, e.g.,
Beneficial Purchaser, Executor or Administrator)

(Capacity of person(s) signing, e.g.,
Beneficial Purchaser, Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

REMINDER CHECKLIST

1. Please sign the above declaration.
2. If this Claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. Do **not** send originals or certificates.
5. Keep a copy of your claim form and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to the address below.
8. **Do not use red pen or highlighter** on the Proof of Claim and Release Form or on supporting documentation.

**THIS PROOF OF CLAIM FORM MUST BE MAILED NO LATER THAN APRIL 16, 2020,
ADDRESSED AS FOLLOWS:**

SITO Mobile Securities Litigation
Claims Administrator, Analytics Consulting LLC
P.O. Box 2002
Chanhassen, MN 55317-2002

EXHIBIT B

Levi & Korsinsky, LLP Announces Proposed Settlement of the SITO Mobile, Ltd. Securities Litigation

NEWS PROVIDED BY

Levi & Korsinsky →

Jan 03, 2020, 15:00 ET

WASHINGTON, Jan. 3, 2020 /PRNewswire/ --

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

SUMMARY NOTICE

**TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE
ACQUIRED SITO MOBILE, LTD. COMMON STOCK BETWEEN AUGUST 15,
2016 AND JANUARY 2, 2017, INCLUSIVE.**

YOU ARE HEREBY NOTIFIED that pursuant to an Order of the United States District Court for the District of New Jersey, a hearing will be held on April 21, 2020, at 10:00 a.m., before the Honorable Esther Salas, United States District Judge, at the Courthouse for the United States District Court, District of New Jersey, Courtroom MLK 5A, Martin Luther King Building &

U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, for the purpose of determining: (1) whether the proposed settlement of the Litigation for the combined sum of \$1,250,000 in cash should be approved by the Court as fair, reasonable and adequate; (2) whether the Settlement Class should be certified for purposes of the Settlement and whether Lead Plaintiff and Lead Counsel should be certified as class representative and class counsel for the purposes of the Settlement; (3) whether, thereafter, the Litigation should be dismissed with prejudice as set forth in the Stipulation of Settlement dated as of July 31, 2019 ("Stipulation"); (4) whether the Plan of Allocation of settlement proceeds is fair, reasonable and adequate and therefore should be approved; and (5) whether the application of Lead Counsel for the payment of attorneys' fees and reimbursement of expenses incurred in connection with the Litigation should be approved.

If you purchased or otherwise acquired SITO Mobile common stock from August 15, 2016 through January 2, 2017, inclusive, your rights may be affected by this Litigation and the settlement thereof. If you have not received the detailed Notice of Pendency and Proposed Settlement of Class Action (the "Notice") and a copy of the Proof of Claim and Release form, you may obtain copies of them free of charge by contacting the Claims Administrator, by writing to *SITO Mobile, Ltd. Securities Litigation*, Claims Administrator, Analytics Consulting LLC, P.O. Box 2002, Chanhassen, MN 55317-2002, or by downloading this information at www.SITOMobileSecuritiesSettlement.com.

If you are a Class Member and wish to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim form postmarked no later than April 16, 2020 establishing that you are entitled to recovery. As further described in the Notice, you will be bound by any Judgment entered in the Litigation, regardless of whether you submit a Proof of Claim, unless you exclude yourself from the Class, in accordance with the procedures set forth in the Notice, no later than March 17, 2020.

Any objections to the Settlement, Plan of Allocation or attorneys' fees and

expenses must be filed and served, in accordance with the procedures set forth in the Notice, no later than March 17, 2020 at the following address:

Clerk of the Court
United States District Court
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

**INQUIRIES SHOULD NOT BE DIRECTED TO THE COURT, THE
CLERK'S OFFICE, THE DEFENDANTS, OR DEFENDANTS' COUNSEL.**

If you have any questions about the Settlement, you may contact Lead Counsel for the Class: Nicholas I. Porritt, Esq, Levi & Korsinsky LLP, 1101 30th Street, N.W., Suite 115, Washington, D.C. 20007, nporritt@zlk.com.

DATED: JANUARY 3, 2020

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

SOURCE Levi & Korsinsky

Related Links

<http://www.SITOMobileSecuritiesSettlement.com>

EXHIBIT C

Levi & Korsinsky, LLP Announces Proposed Settlement of the SITO Mobile, Ltd. Securities Litigation

NEWS PROVIDED BY

Levi & Korsinsky →

Jan 17, 2020, 09:00 ET

WASHINGTON, Jan. 17, 2020 /PRNewswire/ --

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

SUMMARY NOTICE

TO: All persons or entities who purchased or otherwise acquired SITO Mobile, LTD. common stock between August 15, 2016 and January 2, 2017, inclusive.

YOU ARE HEREBY NOTIFIED that pursuant to an Order of the United States District Court for the District of New Jersey, a hearing will be held on April 21, 2020, at 10:00 a.m., before the Honorable Esther Salas, United States District Judge, at the Courthouse for the United States District Court, District of New Jersey, Courtroom MLK 5A, Martin Luther King Building &

U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, for the purpose of determining: (1) whether the proposed settlement of the Litigation for the combined sum of \$1,250,000 in cash should be approved by the Court as fair, reasonable and adequate; (2) whether the Settlement Class should be certified for purposes of the Settlement and whether Lead Plaintiff and Lead Counsel should be certified as class representative and class counsel for the purposes of the Settlement; (3) whether, thereafter, the Litigation should be dismissed with prejudice as set forth in the Stipulation of Settlement dated as of July 31, 2019 ("Stipulation"); (4) whether the Plan of Allocation of settlement proceeds is fair, reasonable and adequate and therefore should be approved; and (5) whether the application of Lead Counsel for the payment of attorneys' fees and reimbursement of expenses incurred in connection with the Litigation should be approved.

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Newark, NJ 07101

INQUIRIES SHOULD NOT BE DIRECTED TO THE COURT, THE CLERK'S OFFICE, THE DEFENDANTS, OR DEFENDANTS' COUNSEL.

If you have any questions about the Settlement, you may contact Lead Counsel for the Class: Nicholas I. Porritt, Esq, Levi & Korsinsky LLP, 1101 30th Street, N.W., Suite 115, Washington, D.C. 20007, nporritt@zlk.com.

DATED: JANUARY 17, 2020

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

SOURCE Levi & Korsinsky

Eduard Korsinsky
LEVI & KORSINSKY, LLP
55 Broadway, 10th Floor
New York, New York 10006
Tel: 212-363-7500
Fax: 212-363-7171

*Attorneys for Lead Plaintiffs and
Lead Counsel for the Class*

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

SANDI ROPER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SITO MOBILE LTD., JERRY HUG, and
KURT STREAMS,

Defendants.

Case No. 2:17-cv-01106-ES-MAH

**DECLARATION OF DAVID
SANDBERG IN SUPPORT OF
LEAD PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF
SETTLEMENT**

I, David Sandberg, hereby declare as follows:

1. I am the Managing Member of Red Oak Partners, LLC, which is the General Partner of Red Oak Fund, LP, The Red Oak Long Fund LP, The Red Oak Institutional Founders Long Fund, and Pinnacle Opportunities Fund, LP (the "Red Oak Funds" or "Plaintiffs"). I am authorized to make this declaration on behalf of the Red Oak Funds.

2. The Red Oak Funds served as the Lead Plaintiff in this securities class action (the “Action”). I submit this Declaration in support of (a) Plaintiffs’ motion for final approval of the proposed settlement reached in the Action (the “Settlement”) and the proposed Plan of Allocation for the Settlement proceeds; and (b) Lead Counsel’s request for an award of attorneys’ fees and reimbursement of litigation expenses. I have personal knowledge of the matters set forth in this Declaration as I have been directly involved in monitoring and overseeing the prosecution and settlement of the Action, and I could and would testify competently thereto.

3. In fulfillment of my responsibilities as the Court-appointed Lead Plaintiff, and on behalf of all members of the Settlement Class, I undertook to diligently perform my role as a class representative in pursuit of a favorable result in this Action. This included (a) conferring with counsel concerning the issues and strategy in the case; (b) reviewing court filings in the Action and periodic reports from counsel concerning the work being done; (c) conferring with counsel with respect to settlement and mediation efforts; (d) researching and collecting documents in my possession relevant to my claims; and (e) evaluating the Settlement with counsel prior to and during the resolution of this Action.

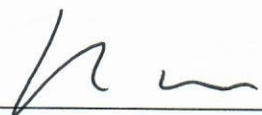
4. Based on my involvement throughout the prosecution and resolution of the Action, I believe that the proposed Settlement is fair, reasonable and adequate to the Settlement Class. I also believe that the proposed Settlement represents a favorable recovery for the Settlement Class, particularly in light of the risks of continued litigation in this case, including our ability to establish damages at trial and the potential defenses that would have been raised with regard to the forward-looking nature of the alleged misrepresentations at issue in this case. Therefore, I endorse approval of the Settlement by the Court.

5. I believe that Lead Counsel's request for an award of attorneys' fees in the amount of \$330,000 is fair and reasonable. I have evaluated counsel's fee request by considering the amount of work they have performed on behalf of the Settlement Class over the past three years, the complexity of the litigation, the recovery obtained relative to overall recoverable damages, and the fact that Lead Counsel accepted this representation on a contingency basis. I have also considered the fact that this amount includes reimbursement for litigation expenses of approximately \$25,000 which were reasonable and necessary for the prosecution and resolution of this securities fraud action.

6. Based on the foregoing, and consistent with my obligation to the Class to obtain the best result at the most efficient cost, I support Lead Counsel's pending motions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 25, 2020.



David Sandberg,
Managing Member of Red Oak Partners, LLC,
General Partner of the Red Oak Funds

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

**SANDI ROPER, INDIVIDUALLY AND ON)
BEHALF OF ALL OTHERS SIMILARLY)
SITUATED,)**

PLAINTIFF,)

No. 2:17-cv-01106-ES-MAH

V.

CLASS ACTION

SITO MOBILE, LTD., ET. AL.,)

DEFENDANTS.)

**[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL
WITH PREJUDICE**

This matter came before the Court for hearing pursuant to an Order of this Court, dated November 7, 2019, on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement, dated as of July 31, 2019 (the “Stipulation”). Due and adequate notice having been given to the Class as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

1. This Final Order and Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of this Litigation and over all parties to this Litigation, including all Class Members.

3. The Court hereby finally certifies a Class defined as: “all Persons who purchased or otherwise acquired the common stock of SITO Mobile between August 15, 2016 and January 2, 2017, inclusive, excluding Defendants, SITO’s officers and directors during the Class Period, and their immediate families and affiliates, and any firm or entity in which any Defendant has or had a controlling interest. Also excluded from the Class are those Persons who validly and timely request exclusion from the Class.”

4. With respect to the Class, this Court finds solely for purposes of

effectuating this settlement that: (a) the Members of the Class are so numerous that joinder of all Class Members in the Litigation is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the Lead Plaintiff are typical of the claims of the Class; (d) Lead Plaintiff and Lead Counsel have fairly and adequately represented and protected the interests of all of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the Class in individually controlling the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by Members of the Class; (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the class action.

5. The Notice of Proposed Settlement of Class Action given to the Class was the best notice practicable under the circumstances, including individual notice to all Members of the Class who could be identified through reasonable effort along with publication of the Summary Notice. Said notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal

Rule of Civil Procedure 23 and the requirements of due process.

6. The terms and provisions of the Stipulation were negotiated by the parties at arm's length and were entered into by the parties in good faith.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby approves the Settlement set forth in the Stipulation as fair, reasonable, and adequate as to the Class, and directs that the settlement be consummated in accordance with the terms and conditions set forth in the Stipulation.

8. The Plan of Allocation, as described in the Notice and Publication Notice, is hereby approved as fair, reasonable and adequate. Any order, proceeding, appeal, modification or change relating to the Plan of Allocation or any fee and expense award shall in no way disturb or affect the finality of this Judgment, and shall be considered separate from this Judgment.

9. Upon the Effective Date, the Lead Plaintiff and each and every Class Member, for themselves and for any Person claiming now or in the future through or on behalf of them, shall be deemed to have, and by operation of the Judgment entered in the Litigation shall have, fully, finally, and forever waived, released, relinquished, discharged and dismissed each and every Released Claim against each and every one of the Released Persons, whether or not such Class Member executes and delivers the Proof of Claim and Release form, and whether or not such Class Member shares or seeks to share in the Settlement Fund.

10. Upon the Effective Date, the Lead Plaintiff and each and every Class Member, for themselves and for any Person claiming now or in the future through or on behalf of them, shall covenant or be deemed to have covenanted not to sue the Released Persons with respect to the Released Claims, and shall be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum or other forum, asserting the Released Claims against any of the Released Persons.

11. In accordance with 15 U.S.C. § 78u-4(f)(7), claims for contribution arising out of any Released Claim, including, but not limited to, any claims that arise out of the Litigation (i) by any Person against a Released Person, and (ii) by any Released Defendant against any Person other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii) are hereby permanently barred, extinguished, discharged, satisfied, and unenforceable.

12. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding the attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

13. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or

evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants or their Related parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of any of the Defendants or their Related Parties in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Neither the Stipulation nor the settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement shall be admissible in any proceeding for any purpose except that the Released Persons may file the Stipulation and/or this Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or similar defense or counterclaim.

14. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses in the Litigation; (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation; and (e) all other proceedings related to the implementation and enforcement of the terms of the Stipulation and/or settlement.

15. The Court finds that during the course of the Litigation, the Settling Parties, and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants or their insurers, then 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, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

17. This Litigation is dismissed with prejudice. The parties are to bear their own costs, except as otherwise provided in the Stipulation or this Judgment.

18. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. The provisions of this Judgment constitute a full and complete adjudication of the matters considered and adjudged herein, and the Court finds for purposes of Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in the entry of this Judgment and expressly directs entry of the Judgment.

SO ORDERED in the District of New Jersey on _____, 2020.

THE HON. ESTHER SALAS
UNITED STATES DISTRICT JUDGE

Eduard Korsinsky
LEVI & KORSINSKY, LLP
55 Broadway, 10th Floor
New York, New York 10006
Tel: 212-363-7500
Fax: 212-363-7171
Email: ek@zlk.com

*Attorneys for Lead Plaintiffs and
Lead Counsel for the Class*

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

SANDI ROPER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SITO MOBILE LTD., JERRY HUG, and
KURT STREAMS,

Defendants.

Case No. 2:17-cv-01106-ES-MAH

CERTIFICATE OF SERVICE

I, Eduard Korsinsky, hereby certify that on March 3, 2020, I authorized the electronic filing of the foregoing motion and accompanying documents with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

Dated: March 3, 2020

s/ Eduard Korsinsky
Eduard Korsinsky (EK-8989)