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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 IN RE ZOOM SECURITIES
12 LITIGATION.

Case No.: 20-cv-02353-JD

13 NOTICE OF MOTION AND MOTION OF
14 THE ZOOM INVESTOR GROUP FOR
15 APPOINTMENT AS LEAD PLAINTIFF AND
16 APPROVAL OF CO-LEAD COUNSEL;
17 MEMORANDUM OF POINTS AND
18 AUTHORITIES IN SUPPORT

19 CLASS ACTION

20 Date: July 16, 2020

21 Time: 10:00 a.m.

22 Judge: Hon. James Donato

23 Courtroom: 11 – 19th Floor

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NOTICE OF MOTION

1 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

2 PLEASE TAKE NOTICE that on Thursday, July 16, 2020, at 10:00 a.m., before the
3 Honorable James Donato, at the San Francisco Federal District Courthouse, 450 Golden Gate
4 Avenue, Courtroom 11, Nineteenth Floor, San Francisco, California 94102, Michael Bens,
5 Bhadresh Shah, Kwan Sin Ng, and Tony D. Pham (collectively, the “Zoom Investor Group” or
6 “Movant”) will and hereby does respectfully move this Court pursuant to Section 21D(a)(3) of
7 the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3), as amended
8 by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) and Rule 42 of the Federal
9 Rules of Civil Procedure, for the entry of an Order: (1) appointing the Zoom Investor Group as
10 Lead Plaintiff in the Action on behalf of all persons and entities who purchased Zoom Video
11 Communications, Inc. (“Zoom” or the “Company”) securities from April 18, 2019 through April
12 6, 2020, inclusive (the “Class Period”) (the “Class”); and (2) approving the Zoom Investor
13 Group’s selection of Pomerantz LLP (“Pomerantz”) and The Rosen Law Firm, P.A. (“Rosen”) as
14 Co-Lead Counsel.
15

16 **SUMMARY OF ARGUMENT**

17 To the extent that this motion seeks appointment of the Zoom Investor Group as Lead
18 Plaintiff, this motion is made on the grounds that the Zoom Investor Group is the “most adequate
19 plaintiff” to lead the Class within the meaning of the PSLRA and that the PSLRA therefore
20 mandates the Zoom Investor Group’s appointment as Lead Plaintiff. *See* 15 U.S.C. § 78u-
21 4(a)(3)(B)(i). The Zoom Investor Group is entitled to a rebuttable presumption favoring its
22 appointment, since it has the “largest financial interest” in the relief sought by the Class in the
23 Action by virtue of, *inter alia*, its losses of approximately \$708,760, which were suffered as a
24 result of the above-captioned defendants’ (“Defendants”) wrongful conduct as alleged in the
25 Action. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii); *see also Lax v. First Merchants Acceptance Corp.*,
26 No. 97 C 2715, 1997 U.S. Dist. LEXIS 11866, at *17-*18 (N.D. Ill. Aug. 6, 1997) (determining
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1 financial interest by (1) the number of shares purchased during the class period; (2) the number
2 of net shares purchased during the class period; (3) the total net funds expended during the class
3 period; and (4) the approximate losses suffered); *Nicolow v. Hewlett Packard Co.*, Nos. 12-05980
4 CRB *et al.*, 2013 U.S. Dist. LEXIS 29876, at *18 (N.D. Cal. Mar. 4, 2013) (“District courts
5 commonly refer to the four-factor [*Lax*] test, which considers (1) total shares purchased, (2) net
6 shares purchased, (3) net funds expended, and (4) approximate losses suffered.”); *City of Royal*
7 *Oak Ret. Sys. v. Juniper Networks, Inc.*, No. 11-CV-04003-LHK, 2012 U.S. Dist. LEXIS 2776,
8 at *10-*11 (N.D. Cal. Jan. 9, 2012) (same); *Knox v. Yingli Green Energy Holding Co.*, 136 F.
9 Supp. 3d 1159, 1163 (C.D. Cal. 2015) (same). Of the *Lax* factors, courts in this Circuit tend to
10 emphasize approximate loss in assessing a lead plaintiff movant’s financial interest within the
11 meaning of the PSLRA. *See, e.g., Nicolow*, 2013 U.S. Dist. LEXIS, at *18-*19; *Knox*, 135 F.
12 Supp. 3d. at 1163. Thus, as the movant with the largest known financial interest in the Action,
13 the Zoom Investor Group believes it is presumptively the most adequate lead plaintiff within the
14 meaning of the PSLRA.

15 The Zoom Investor Group also satisfies the requirements of Fed. R. Civ. P. 23 (“Rule 23”) because its claims are typical of the claims of other putative Class members and because it will
16 fairly and adequately represent their interests.

17 In addition, the PSLRA vests authority in the Lead Plaintiff to select and retain lead
18 counsel, subject to the approval of the Court. The Zoom Investor Group’s choice of co-counsel,
19 Pomerantz and Rosen, have the skill, knowledge, expertise, resources, and experience that will
20 enable the firms to prosecute the Action effectively and expeditiously under the Zoom Investor
21 Group’s direction.

22 This motion is supported by the memorandum of points and authorities submitted
23 herewith, the Declaration of Jennifer Pafiti (“Pafiti Decl.”), and all exhibits thereto.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Pursuant to the PSLRA, the Court is to appoint as Lead Plaintiff the movant that is shown to be the “most adequate plaintiff.” *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). The PSLRA creates a rebuttable presumption that the “most adequate plaintiff” is the one that possesses the “largest financial interest” in the outcome of the litigation and that satisfies the requirements of Fed. R. Civ. P. 23. *Id.* The Zoom Investor Group believes that it should benefit from a rebuttable presumption arising from its having the largest financial interest in this litigation. The Zoom Investor Group purchased 60,394 shares of Zoom securities during the Class Period, expended \$7,682,579 on its purchases, retained 25,394 of its Zoom shares, and, as a result of the disclosures revealing the misrepresentations and/or omissions during the Class Period, incurred losses of approximately \$708,760 in connection with its purchases of Zoom securities. *See* Pafiti Decl., Ex. A. The Zoom Investor Group further satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure as it is an adequate representative with claims typical of the other Class members. Accordingly, the Zoom Investor Group respectfully submits that it should be appointed Lead Plaintiff.

II. STATEMENT OF FACTS

As alleged in the Complaint of the case bearing the caption *Drieu v. Zoom Video Communications, Inc.* (No. 20-cv-02353-JD) (“Drieu Complaint”), Zoom provides a video communications platform application (“app”) that allows users to interact with each other primarily in the Americas, the Asia Pacific, Europe, the Middle East, and Africa. *See* Drieu Complaint ¶ 3. Users may connect through frictionless video, voice, chat, and content sharing. *Id.* The Company’s cloud-native platform enables face-to-face video experiences and connects users across various devices and locations in a single meeting. *Id.* The Company serves education, entertainment/media, enterprise infrastructure, finance, healthcare, manufacturing,

1 non-profit/not for profit and social impact, retail/consumer products, and software/Internet
2 industries, as well as individuals. *Id.*

3 On March 22, 2019, Zoom filed a registration statement on Form S-1 with the SEC in
4 connection with its initial public offering (“IPO”), which, after several amendments, was declared
5 effective by the SEC on April 17, 2019 (the “Registration Statement”). *Id.* ¶ 4.

6 On April 18, 2019, Zoom filed a prospectus on Form 424B4 with the SEC in connection
7 with its IPO, which purported to provide information necessary for investors to consider before
8 partaking in its IPO and purchasing the Company’s newly publicly-issued stock (collectively with
9 the Registration Statement, the “Offering Documents”). *Id.* ¶ 5.

10 That same day, Zoom conducted its IPO and began trading publicly on the Nasdaq Global
11 Select Market (“NASDAQ”) under the ticker symbol “ZM.” *Id.* ¶ 6. Pursuant to Zoom’s IPO,
12 the Company sold 9.91 million of the Company’s shares to the public at the offering price of
13 \$36.00 per share. *Id.*

14 Throughout the Class Period, Defendants made materially false and misleading statements
15 regarding the Company’s business, operational and compliance policies. *Id.* ¶ 7. Specifically,
16 Defendants made false and/or misleading statements and/or failed to disclose that: (i) Zoom had
17 inadequate data privacy and security measures; (ii) contrary to Zoom’s assertions, the Company’s
18 video communications service was not end-to-end encrypted; (iii) as a result of all the foregoing,
19 users of Zoom’s communications services were at an increased risk of having their personal
20 information accessed by unauthorized parties, including Facebook; (iv) usage of the Company’s
21 video communications services was foreseeably likely to decline when the foregoing facts came
22 to light; and (v) as a result, the Company’s public statements were materially false and misleading
23 at all relevant times. *Id.*

24 The truth about the deficiencies in Zoom’s software encryption began to come to light as
25 early as July 2019. *Id.* ¶ 8. However, due in large part to the Company’s obfuscation, it was not
26 until the COVID-19 pandemic in March and April of 2020, with businesses and other
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1 organizations increasingly relying on Zoom’s video communication software to facilitate remote
2 work activity as governments increasingly implemented shelter-in-place orders, that the truth was
3 more fully laid bare in a series of corrective disclosures. *Id.* As it became clear through a series
4 of news reports and admissions by the Company that Zoom had significantly overstated the degree
5 to which its video communication software was encrypted, and organizations consequently
6 prohibited its employees from utilizing Zoom for work activities, the Company’s stock price
7 plummeted, damaging investors. *Id.*

8 As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the
9 market value of the Company’s common stock, Plaintiff and other Class members have suffered
10 significant losses and damages. *Id.* ¶ 9.

11 **III. ARGUMENT**

12 **A. THE ZOOM INVESTOR GROUP SHOULD BE APPOINTED LEAD** 13 **PLAINTIFF**

14 Motions by proposed lead plaintiffs must be filed within 60 days of the publication of
15 notice of the action, which in this case was published on April 7, 2020 (*see* Pafiti Decl., Ex. B).
16 *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). The PSLRA directs courts to consider any such motion by
17 the later of (i) 90 days after the date of publication, or (ii) as soon as practicable after the Court
18 decides any pending motion to consolidate. *See* 15 U.S.C. § 78u-4(a)(3)(B)(i) & (ii). The Zoom
19 Investor Group’s instant motion is thus timely and must be considered.

20 When faced with competing lead plaintiff motions, under 15 U.S.C. § 78u-4(a)(3)(B), the
21 Court “shall appoint as lead plaintiff the member or members of the purported class that the court
22 determines to be the most capable of adequately representing the interests of class members
23 (hereinafter ... the ‘most adequate plaintiff’).” *See* 15 U.S.C. § 78u-4(a)(3)(B)(i). The Zoom
24 Investor Group is the “most adequate plaintiff” within the meaning of the PSLRA and should
25 therefore be appointed as Lead Plaintiff.
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1 To guide this determination, the PSLRA creates a rebuttable presumption that the “most
2 adequate plaintiff” “is the person or group of persons that” (i) either filed the complaint or made
3 a lead plaintiff motion; (ii) “in the determination of the court, has the largest financial interest in
4 the relief sought by the class”; and (iii) otherwise satisfies the requirements of Rule 23. *See* 15
5 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa)-(cc). As set forth below, the Zoom Investor Group satisfies
6 all three of these criteria and thus believes that it is entitled to the rebuttable presumption that it
7 is the most adequate plaintiff within the meaning of the PSLRA. Specifically, the Zoom Investor
8 Group is willing to serve as Lead Plaintiff, has the largest financial interest in the Action to its
9 knowledge and otherwise strongly satisfies the requirements of Rule 23.

10 For all these reasons, as set forth in greater detail below, the Zoom Investor Group
11 respectfully urges the Court to appoint it to serve as Lead Plaintiff overseeing the Action.

12 **1. The Zoom Investor Group Is Willing to Serve as Class** 13 **Representative**

14 On April 7, 2020, Pomerantz, counsel for the plaintiff in the case bearing the caption *Drieu*
15 *v. Zoom Video Communications, Inc.* (No. 20-cv-02353-JD) caused a notice (the “Notice”) to be
16 published over *Globe Newswire* pursuant to § 21D(a)(3)(A)(i) of the PSLRA, which announced
17 that a securities class action had been filed against Defendants and which advised investors in
18 Zoom securities that they had 60 days from the date of the Notice—*i.e.*, until June 8, 2020—to
19 file a motion to be appointed as lead plaintiff. *See* Pafiti Decl., Ex. B. The Zoom Investor Group
20 has filed the instant motion pursuant to that Notice, and its members have attached signed
21 Certifications attesting that they are willing to serve as representatives for the Class and to provide
22 testimony at deposition and trial, if necessary. *See* Pafiti Decl., Ex. C. Under the PSLRA, the
23 Zoom Investor Group’s actions were timely and legally sufficient. Accordingly, the Zoom
24 Investor Group readily satisfies the first requirement to serve as Lead Plaintiff of the Class.
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1 During the Class Period, the Zoom Investor Group (1) purchased 60,394 shares of Zoom
2 securities; (2) expended \$7,682,579 on its purchases of Zoom securities; (3) retained 25,394 of
3 its Zoom shares; and (4) as a result of the disclosures revealing the misrepresentations and/or
4 omissions during the Class Period, incurred losses of approximately \$708,760 in connection with
5 its purchases of Zoom securities. *See* Pafiti Decl., Ex. A. Thus, under the *Lax* factors, the Zoom
6 Investor Group believes it has the largest financial interest among any potential lead plaintiff
7 movants in the Action, thereby entitling the Zoom Investor Group to a rebuttable presumption
8 that it is the “most adequate plaintiff” within the PSLRA’s meaning (15 U.S.C. § 78u-
9 4(a)(3)(B)(iii)(I)(bb)), given that it also satisfies the requirements of Fed. R. Civ. P. 23.

10
11 **b. The Zoom Investor Group Otherwise Satisfies the
Requirements of Rule 23**

12 For a lead plaintiff movant to secure the PSLRA’s rebuttable presumption that the movant
13 is the “most adequate plaintiff,” the movant must also demonstrate that the movant “otherwise
14 satisfies the requirements of Rule 23.” *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). A *prima facie*
15 showing suffices for this determination. *Hessefort v. Super Micro Comput., Inc.*, 317 F. Supp. 3d
16 1056, 1060-01 (N.D. Cal. 2018); *Bao v. SolarCity Corp.*, No. 14-cv-01435-BLF, 2014 U.S. Dist.
17 LEXIS 111869, at *9 (N.D. Cal. Aug. 11, 2014). “This showing need not be as thorough as what
18 would be required on a class certification motion and only needs to satisfy typicality and
19 adequacy.” *In re SolarCity Corp. Sec. Litig.*, No. 16-CV-04686-LHK, 2017 U.S. Dist. LEXIS
20 11553, at *13 (N.D. Cal. Jan. 25, 2017). The Zoom Investor Group readily passes muster.

21 The Zoom Investor Group satisfies the threshold for Rule 23(a)(3) typicality. “The test of
22 typicality ‘is whether other members have the same or similar injury, whether the action is based
23 on conduct which is not unique to the named plaintiffs, and whether other class members have
24 been injured by the same course of conduct.’” *Richardson*, 2007 U.S. Dist. LEXIS, at *16 (N.D.
25 Cal. Apr. 16, 2007) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).
26 The Zoom Investor Group’s claims are typical of those of the Class members. Like all Class
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1 members, the Zoom Investor Group alleges that: (1) Defendants violated the Exchange Act by
2 making false or misleading statements of material facts and/or omitting to disclose material facts
3 concerning Zoom; (2) the Zoom Investor Group and the Class members purchased Zoom
4 securities during the Class Period at prices artificially inflated by Defendants' misrepresentations
5 or omissions and were damaged upon the disclosure of those misrepresentations and/or omissions;
6 and (3) the Zoom Investor Group and the Class members were damaged upon the revelation of
7 Defendants' alleged misrepresentations or omissions through corrective disclosures that drove
8 Zoom's share price downward. These shared claims, which are based on the same legal theories
9 and arise from the same underlying facts and course of conduct, demonstrate the Zoom Investor
10 Group's typicality under Rule 23(a)(3).

11 The Zoom Investor Group also satisfies the Rule 23(a)(4) adequacy requirement. In
12 determining whether that requirement is met, courts in the Ninth Circuit consider whether "the
13 representative plaintiffs and their counsel have any conflicts of interest with other class members"
14 and ask "will the representative plaintiffs and their counsel prosecute the action vigorously on
15 behalf of the class?" *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) (citations omitted).
16 Here, the Zoom Investor Group has submitted Certifications signed by the members of the Zoom
17 Investor Group, declaring the Zoom Investor Group's commitment to protect the interests of the
18 Class. *See* Pafiti Decl., Ex. C. In addition, the members of the Zoom Investor Group have
19 submitted a Declaration attesting to, *inter alia*, their communications with counsel prior to filing
20 this motion, their backgrounds, their understanding of the responsibilities of a lead plaintiff
21 appointed pursuant to the PSLRA, and their readiness to undertake those responsibilities on behalf
22 of the Class in this Action. *See id.*, Ex. D. The Zoom Investor Group has no conflicts of interest
23 or antagonism with the Class of Zoom investors it seeks to represent. The Zoom Investor Group's
24 significant losses from its purchases of Zoom securities during the Class Period demonstrate that
25 it has a sufficient interest in the outcome of this litigation that aligns with the interests of Class
26 members.
27

1 Moreover, the Zoom Investor Group constitutes an appropriate group of the type routinely
2 appointed to serve as Lead Plaintiffs. *See, e.g., Robb v. Fitbit Inc.*, 2016 U.S. Dist. LEXIS 62457,
3 at *13-*14 (N.D. Cal. May 10, 2016) (appointing five-person investor group as lead plaintiff);
4 *Perrin v. Southwest Water Co.*, 2009 U.S. Dist. LEXIS 134154, at *13 (C.D. Cal. Feb. 12, 2009)
5 (“[c]ourts have generally held that small and manageable groups serving as lead plaintiffs do not
6 frustrate Congress’ desire to ensure that investors, rather than lawyers, control securities
7 litigation.”); *In re Blue Apron Holdings, Inc. Sec. Litig.*, 2017 WL 6403513, at *4 (E.D.N.Y. Dec.
8 15, 2017); *Weltz v. Lee*, 199 F.R.D. 129, 133 (S.D.N.Y. 2001) (“recogniz[ing] that appointing a
9 group of people as co-lead plaintiffs is allowable under the PSLRA” and finding that a group of
10 seven shareholders with the greatest loss was “presumptively the most adequate plaintiff”);
11 *Barnet v. Elan Corp., PLC*, 236 F.R.D. 158, 162 (S.D.N.Y. 2005) (holding that “there can be no
12 doubt” that the PSLRA permits appointment of groups and appointing group consisting of six
13 members with the largest financial interest as lead plaintiff); *In re Cendant Corp. Litig.*, 264 F.3d
14 201, 266 (3d. Cir. 2001) (“The PSLRA explicitly permits a ‘group of persons’ to serve as lead
15 plaintiff”) (citation omitted).

16 Indeed, the Zoom Investor Group has already demonstrated its ability to pursue securities
17 claims through its choice of co-counsel, Pomerantz and Rosen. Pomerantz and Rosen are two
18 one of the nation’s leading plaintiff-side securities litigation firms, as discussed in greater detail
19 in § III.B., *infra*. The Zoom Investor Group’s, Pomerantz’s, and Rosen’s willingness and ability
20 to zealously litigate the claims in this action on behalf of the Class cannot reasonably be
21 questioned.

22
23 **B. LEAD PLAINTIFF’S SELECTION OF COUNSEL SHOULD BE**
24 **APPROVED**

25 The PSLRA vests authority in a lead plaintiff to select and retain lead counsel, subject to
26 the approval of the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *Osher v. Guess?, Inc.*, No. CV 01-
27 00871 LGB (RNBx), 2001 U.S. Dist. LEXIS 6057, at *15 (C.D. Cal. Apr. 26, 2001). The Court

1 should not interfere with Lead Plaintiff’s selection unless it is necessary to do so in order “to
2 protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

3 Here, the Zoom Investor Group has selected Pomerantz and Rosen as Co-Lead Counsel
4 for the Class. Pomerantz is highly experienced in the area of securities litigation and class actions,
5 and has successfully prosecuted numerous securities litigations and securities fraud class actions
6 on behalf of investors, as detailed in the firm’s resume. Pomerantz recently secured a recovery
7 of \$3 billion on behalf of investors in the securities of *Petróleo Brasileiro S.A. — Petrobras*, the
8 largest class action settlement in a decade and the largest settlement ever in a class action
9 involving a foreign issuer. *See* Pafiti Decl., Ex. E. *Petrobras* is part of a long line of record-
10 setting recoveries led by Pomerantz, including the \$225 million settlement in *In re Comverse*
11 *Technology, Inc. Securities Litigation*, No. 06-CV-1825 (E.D.N.Y.), in June 2010. *See id.*

12 Rosen also has extensive experience in securities class action. Recently, Rosen as sole
13 Lead Counsel achieved a \$250 million settlement in the *Aliababa* securities litigation—the largest
14 ever settlement involving a Chinese company. *See* Pafiti Decl., Ex. F. Rosen has also worked
15 successfully and efficiently with Pomerantz as Co-Lead Counsel in a number of cases. Rosen
16 and Pomerantz were Co Lead Counsel in the *Fiat Chrysler* securities litigation, resulting in a \$110
17 million settlement for investors. *See* Pafiti Decl., Exs. E-F. The two firms also served as Co-
18 Lead Counsel in the *Walter Investment, Och-Ziff, Magnachip, and Galena Securities Litigations*
19 that respectively resulted in \$29.7 million, \$28.75 million, \$24 million, and \$20 million recoveries
20 for investors. *Id.*

21 The Zoom Investor Group’s chosen counsel have the skill and knowledge which will
22 enable them to prosecute the Action effectively and expeditiously. Thus, the Court may be
23 assured that by approving the selection of Co-Lead Counsel by the Zoom Investor Group, the
24 members of the class will receive the best legal representation available.

25 **IV. CONCLUSION**

26 For the foregoing reasons, the Zoom Investor Group respectfully requests that the Court
27 issue an Order: (1) appointing the Zoom Investor Group as Lead Plaintiff for the Class and (2)
28

1 approving the Zoom Investor Group's selection of Pomerantz and Rosen as Co-Lead Counsel for
2 the Class.

3
4 Dated: June 8, 2020

Respectfully submitted,

5 POMERANTZ LLP

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PROOF OF SERVICE

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I hereby certify that on June 8, 2020, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court’s CM/ECF System.

/s/ Jennifer Pafiti
Jennifer Pafiti