

**IN THE 20th JUDICIAL DISTRICT
CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE**

MATTHEW G. MANCOUR, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

SMILEDIRECTCLUB, INC.; DAVID KATZMAN; KYLE WAILES; STEVEN KATZMAN; JORDAN KATZMAN; ALEXANDER FENKELL; RICHARD SCHNALL; SUSAN GREENSPON RAMMELT; CAMELOT VENTURE GROUP; J.P. MORGAN SECURITIES LLC; CITIGROUP GLOBAL MARKETS INC.; BOFA SECURITIES, INC.; JEFFERIES LLC; UBS SECURITIES LLC; CREDIT SUISSE SECURITIES (USA) LLC; GUGGENHEIM SECURITIES, LLC; STIFEL, NICOLAUS & COMPANY, INCORPORATED; WILLIAM BLAIR & COMPANY, L.L.C.; and LOOP CAPITAL MARKETS LLC,

Defendants.

Case No. _____

**COMPLAINT FOR VIOLATIONS OF
THE SECURITIES ACT OF 1933**

JURY TRIAL DEMANDED

Plaintiff Matthew G. Mancour (“Mancour” or “Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, alleges the following based upon personal knowledge, as to Plaintiff and Plaintiff’s own acts, and upon information and belief, as to all other matters, based on the investigation conducted by and through Plaintiff’s attorneys, which includes, among other things, a review of U.S. Securities and Exchange Commission (“SEC”) filings made by SmileDirectClub, Inc. (“SmileDirect” or the “Company”), analyst and media reports, and Company press releases. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein.

NATURE AND SUMMARY OF THE ACTION

1. Plaintiff brings this class action on behalf of all persons and entities who purchased SmileDirect common stock directly in the Company’s September 12, 2019 initial public offering (the “Offering” or “IPO”). In connection with the IPO, Defendants (defined below) issued a Registration Statement and Prospectus (both defined below and together, the “Offering Documents”).

2. This action asserts strict-liability, non-fraud claims under §§11, 12(a)(2), and 15 of the Securities Act of 1933 (the “Securities Act”) against: (i) SmileDirect; (ii) certain of SmileDirect’s senior executives and directors, who signed or authorized the signing of the Offering Documents, in connection with the Offering; (iii) a private investment group that controls SmileDirect; and (iv) each of the investment banks that acted as underwriters for the Offering.

3. Defendant SmileDirect is a direct-to-consumer manufacturer and seller of 3D-printed clear teeth aligners. Incorporated in Delaware and headquartered in Nashville, Tennessee, SmileDirect is listed on the Nasdaq Global Select Market (“Nasdaq”) under the symbol “SDC.”

4. SmileDirect's primary product is a clear plastic teeth-aligner that is customized for each customer. In order to customize each aligner, customers make a bite cast or impression of their bite in one of SmileDirect's 300 stores, at home after ordering an impression kit over the internet, or at one of SmileDirect's partners, including CVS, Walgreens, or UK-based Well Pharmacy. After the customer submits the impression, a licensed doctor reviews the treatment plan set out by SmileDirect and the Company manufacturers and ships the aligner to the customer. If paid upfront, SmileDirect aligners cost \$1,895.

5. On or about September 12, 2019, Defendants commenced the SmileDirect IPO, issuing 58,537,000 shares of SmileDirect common stock to the investing public at \$23.00 per share (the "Offering Price"), all pursuant to the Offering Documents.

6. The Offering Documents contained untrue statements of material facts and/or omitted to state material facts both required by governing regulations and necessary to make the statements made therein not misleading. Specifically, Defendants made false and/or misleading statements and/or failed to disclose: (i) the severity of the legal obstacles SmileDirect faces ***in 40 states*** in the United States and in front of ***multiple*** departments and agencies of the federal government; and (ii) over one thousand substantiated, serious customer complaints about the efficacy of the Company's flagship product – the aligner – and the injuries customers are experiencing.

7. Defendants were required to disclose all of the foregoing misrepresented and/or omitted information in the Offering Documents. Moreover, Item 303 of SEC Regulation S-K, 17 C.F.R. §229.303 ("Item 303"), required disclosure of any known events or uncertainties that, at the time of the IPO, had caused, or were reasonably likely to cause, a materially negative impact on SmileDirect. These negative trends were ***already*** having a material negative impact on

SmileDirect because the legal obstacles and customer injuries and complaints were already negatively impacting the Company’s bottom line at the time of the IPO. Defendants’ failure to inform investors of these trends therefore constitute a violation of Item 303.

8. Additionally, Item 503 of SEC Regulation S-K, 17 C.F.R. §229.503 (“Item 503”), requires, in the “Risk Factors” section of registration statements and prospectuses, “a discussion of the most significant factors that make the offering speculative or risky” and that each risk factor “adequately describes the risk.” *Id.* at §229.503(c). At no point do the Offering Documents’ “Risk Factors” section adequately disclose, or even disclose at all, the severity of the Company’s legal obstacles and customer injuries and complaints, even though they were some of the most significant factors that made an investment in shares of SmileDirect common stock speculative or risky. These factors, which were known to the Defendants, but not the investing public, made an investment in SmileDirect common stock a risky choice. Instead of adequately disclosing these known risks and significant trends that impacted the Company before, during, and after the IPO, as the Company’s statutory duty to disclose required, the Offering Documents mislead and/or omitted key facts and left the investing public to suffer the consequences. On this basis, Defendants also violated Item 503.

9. With these misrepresentations and omissions in the Offering Documents, the IPO went forward and was extremely lucrative for Defendants, who raised over \$1.3 billion in gross proceeds. But when the truth emerged, the Company’s stock price plummeted from an IPO price of \$23.00 to \$13.00 on the date this complaint was filed, *a decline of over 43% in just 15 days.*

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to Tenn. Code Ann. §§16-10-101 and 47-18-109 and §22 of the Securities Act, 15 U.S.C. §77v. This action is not

removable. The claims alleged herein arise under §§11, 12(a)(2), and 15 of the Securities Act. *See* 15 U.S.C. §§77k, 77l(a)(2), and 77o. Section 22 of the Securities Act, 15 U.S.C. §77v, expressly states that “[e]xcept as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States.” *Id.* at §77v(a). Section 77p(c) refers to “covered class action[s] brought in any State court involving a covered security, as set forth in subsection (b),” and subsection (b) of §77p, in turn, includes within its scope only covered class actions “based upon the statutory or common law of any State or subdivision thereof.” *See* 15 U.S.C. §77p(b)-(c). This is an action asserting only federal law claims. Thus, this action is not removable to federal court.

11. This Court has personal jurisdiction over each Defendant named herein because each conducted business in, resided in, and/or was a citizen of this County at the time of the Offering. Furthermore, each Defendant engaged in conduct in Tennessee that gave rise to the harm alleged herein.

12. Venue is proper pursuant to Tenn. Code Ann. § 20-4-101. Venue is proper in this County because SmileDirect is headquartered in this County. Additionally, significant activities that gave rise to the causes of action at issue here arose in this County.

PARTIES

A. Plaintiff

13. Plaintiff Matthew G. Mancour, a resident of Ann Arbor, Michigan, purchased shares of SmileDirect common stock directly in the IPO.

B. Defendants

1. The Company

14. Defendant SmileDirect is a limited liability company organized under the laws of the state of Tennessee with its principal place of business in Nashville, Tennessee. SmileDirect is a direct-to-consumer manufacturer and seller of 3D-printed clear teeth aligners. SmileDirect operates its business in and from Tennessee. SmileDirect manufactures its aligners in Tennessee and directs its marketing efforts from Tennessee. Incorporated in Delaware and headquartered in Nashville, Tennessee, SmileDirect is listed on the Nasdaq under the symbol “SDC.” SmileDirect is a “controlled company” under Nasdaq rules because more than 50% of the voting power for the Company’s governance is held by Defendant David Katzman.

2. The Individual Defendants

15. Defendant David Katzman served, at all relevant times, as SmileDirect’s Chief Executive Officer (“CEO”) and Chairman of the Company’s Board of Directors (the “Board”). He is the father of co-founder Jordan Katzman and brother of Chief Operating Officer (“COO”) Steven Katzman. Through his stock ownership, stock voting agreement, and position as the managing partner and founder of Camelot Venture Group (“Camelot”), a private investment group, David Katzman controls the business operations of SmileDirect. This is admitted in the Offering Documents, which state that “[a]fter the completion of the offering, pursuant to a Voting Agreement, David Katzman, our Chairman and Chief Executive Officer, will control a majority of the voting power of shares eligible to vote in the election of our directors.” In the IPO, David Katzman sold off over \$100 million of SmileDirect common stock. He reviewed, contributed to, and signed the Offering Documents.

16. Defendant Jordan Katzman is SmileDirect’s co-founder and served, at all relevant times, as a director on the Company’s Board. He is CEO David Katzman’s son and COO Steven

Katzman's nephew. In the IPO, Jordan Katzman sold off over \$100 million of SmileDirect common stock. He reviewed, contributed to, and signed the Offering Documents.

17. Defendant Steven Katzman served, at all relevant times, as the Company's COO and a director on the Company's Board. He is CEO David Katzman's brother and co-founder Jordan Katzman's uncle. Through his stock ownership, stock voting agreement, and position as an advisor of Camelot, Steven Katzman controls the business operations of SmileDirect. He reviewed, contributed to, and signed the Offering Documents.

18. Defendant Alexander Fenkell ("Fenkell") is SmileDirect's co-founder and served, at all relevant times, as a director on the Company's Board. In the IPO, he sold off over \$100 million of SmileDirect common stock. Fenkell reviewed, contributed to, and signed the Offering Documents.

19. Defendant Kyle Wailes ("Wailes") served, at all relevant times, as the Company's Chief Financial Officer ("CFO"). He reviewed, contributed to, and signed the Offering Documents.

20. Defendant Richard Schnall ("Schnall") served, at all relevant times, as a director on the Company's Board. He reviewed, contributed to, and signed the Offering Documents.

21. Defendant Susan Greenspon Rammelt ("Rammelt") served, at all relevant times, as SmileDirect's General Counsel ("GC"), Corporate Secretary ("CS"), and a director on the Company's Board. She reviewed, contributed to, and signed the Offering Documents.

22. Defendants named in ¶¶16-21 above are collectively referred to herein as the "Individual Defendants." The Individual Defendants each signed, or authorized the signing of, the Offering Documents, solicited the investing public to purchase securities issued pursuant thereto, hired and assisted the underwriters, planned and contributed to the IPO and Offering Documents,

and attended or contributed to road shows and other promotions to meet with and present favorable information to potential SmileDirect investors, all motivated by their own and the Company's financial interests.

3. Camelot

23. Defendant Camelot is a private investment group with its principal place of business in Michigan. Camelot is controlled by its managing partner, David Katzman, and is, as described on its website, the largest shareholder of SmileDirect and managing member of the limited liability corporation that controls SmileDirect. As such, Camelot – through its stock ownership, control as the managing member of the SmileDirect, and ability to appoint David Katzman and Steven Katzman as the operating officers of SmileDirect – controls SmileDirect and is directly liable for its actions and violations of state and federal law.

24. During the relevant periods, David Katzman and Steven Katzman were employed by Camelot, which, pursuant to a management agreement with SmileDirect, appointed them executive officers of SmileDirect. Camelot also appointed Rammelt as general counsel of SmileDirect and directed day-to-day management of SmileDirect through other Camelot employees. As such, Camelot, along with David Katzman and Steven Katzman, controlled the day-to-day operations of SmileDirect.

25. Camelot was paid at least \$150,000 per month for the direct management services it provided to SmileDirect.

4. The Underwriter Defendants

26. Defendant J.P. Morgan Securities LLC ("JPM") served as an underwriter for the IPO. JPM has offices in Nashville, Tennessee. In the IPO, JPM agreed to purchase 29,162,138 shares of SmileDirect common stock.

27. Defendant Citigroup Global Markets Inc. (“Citigroup”) served as an underwriter for the IPO. Citigroup has offices in Nashville, Tennessee. In the IPO, Citigroup agreed to purchase 14,257,045 shares of SmileDirect common stock.

28. Defendant BofA Securities, Inc. (“BofA”) served as an underwriter for the IPO. BofA has offices in Nashville, Tennessee. In the IPO, BofA agreed to purchase 3,295,888 shares of SmileDirect common stock.

29. Defendant Jefferies LLC (“Jefferies”) served as an underwriter for the IPO. Jefferies has offices in Nashville, Tennessee. In the IPO, Jefferies agreed to purchase 3,295,888 shares of SmileDirect common stock.

30. Defendant UBS Securities LLC (“UBS”) served as an underwriter for the IPO. UBS has offices in Nashville, Tennessee. In the IPO, UBS agreed to purchase 3,295,888 shares of SmileDirect common stock.

31. Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) served as an underwriter for the IPO. In the IPO, Credit Suisse agreed to purchase 1,921,541 shares of SmileDirect common stock.

32. Defendant Guggenheim Securities, LLC (“Guggenheim”) served as an underwriter for the IPO. Guggenheim has offices in Nashville, Tennessee. In the IPO, Guggenheim agreed to purchase 1,005,309 shares of SmileDirect common stock.

33. Defendant Stifel, Nicolaus & Company, Incorporated (“Stifel”) served as an underwriter for the IPO. Stifel has offices in Nashville, Tennessee. In the IPO, Stifel agreed to purchase 1,005,309 shares of SmileDirect common stock.

34. Defendant William Blair & Company, L.L.C. (“William Blair”) served as an underwriter for the IPO. In the IPO, William Blair agreed to purchase 1,005,309 shares of SmileDirect common stock.

35. Defendant Loop Capital Markets LLC (“Loop Capital”) served as an underwriter for the IPO. In the IPO, Loop Capital agreed to purchase 870,000 shares of SmileDirect common stock.

36. The Defendants named in ¶¶27-36 above are collectively referred to herein as the “Underwriter Defendants.” The Underwriter Defendants served as lead underwriters for the IPO and collectively received at least \$67 million in fees and commissions for soliciting and selling SmileDirect shares in the IPO. Each underwriter is liable for the false and misleading statements in the Offering Documents pursuant to the Securities Act for the following reasons:

(a) The Underwriter Defendants are investment banking houses which specialize, *inter alia*, in underwriting IPOs of securities. They served as the underwriters of the IPO and collectively shared millions in fees. The Underwriter Defendants determined that in return for their share of the IPO proceeds, they were willing to market and sell SmileDirect stock in the IPO. In the competition that determined the composition of the underwriting syndicate, the Underwriter Defendants promoted their ability to market SmileDirect’s stock. Each Underwriter Defendant designated personnel to the IPO working group, including investment bankers, analysts, associates, and counsel, to market SmileDirect’s stock, and those personnel worked on and approved the content of SmileDirect’s Offering Documents and road show presentation. The Underwriter Defendants arranged a multi-city road show prior to the IPO during which they, along with certain of the Individual Defendants, met with potential investors and presented highly

favorable information about the Company, its operations, and its financial prospects. The Underwriter Defendants also promoted the IPO to their banks' own clients and sold shares to online brokerage account holders.

(b) The Underwriter Defendants also demanded and obtained an agreement from SmileDirect that the Company would indemnify and hold the Underwriter Defendants harmless from any liability under the federal securities laws. They also made certain that SmileDirect had purchased millions of dollars in directors' and officers' liability insurance.

(c) Representatives of the Underwriter Defendants also assisted SmileDirect and the Individual Defendants in planning the IPO and purportedly conducted an adequate and reasonable investigation into the business and operations of SmileDirect, an undertaking known as a "due diligence" investigation. The due diligence investigation was required of the Underwriter Defendants in order to engage in the IPO. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning SmileDirect's operations and financial prospects.

(d) In addition to availing themselves of virtually unlimited access to internal corporate documents, agents of the Underwriter Defendants met with SmileDirect's management, top executives, and outside counsel and engaged in "drafting sessions" in advance of the IPO. During these sessions, understandings were reached as to: (i) the strategy to best accomplish the IPO; (ii) the terms of the IPO, including the price range at which SmileDirect stock would be sold; (iii) the language to be used in the Offering Documents; (iv) what disclosures about SmileDirect would be made in the Offering Documents; and (v) what responses would be made to the SEC in connection with its review of the Offering Documents. As a result of those constant contacts and

communications between the Underwriter Defendants' representatives and SmileDirect's management and top executives, the Underwriter Defendants knew, or should have known, of SmileDirect's existing problems, as detailed herein.

(e) The Underwriter Defendants caused the Offering Documents to be filed with the SEC and declared effective in connection with the offer and sales of the Company's stock, pursuant and/or traceable to the IPO, and solicited and sold SmileDirect common stock in the IPO to Plaintiff and the other members of the Class (defined below).

37. At a minimum, the Underwriter Defendants were negligent in not knowing of the Company's undisclosed existing problems and plans and the materially untrue statements and omissions contained in the Offering Documents, as detailed herein. Their negligent due diligence investigation was a substantial factor leading to the harm complained of herein.

38. SmileDirect, Camelot, the Individuals Defendants, and the Underwriter Defendants are collectively referred to herein as the "Defendants."

SUBSTANTIVE ALLEGATIONS

39. This complaint asserts strict-liability and negligence claims under §§11 and 12(a)(2) of the Securities Act against all of the Defendants for material misstatements in the Offering Documents issued in connection with the IPO. Additionally, this complaint asserts control person claims under §15 of the Securities Act against the Individual and Camelot Defendants.

40. Each Defendant violated §11 of the Securities Act, 15 U.S.C. §77k, when they issued, or caused to be issued, the Offering Documents, which contained untrue statements of material fact and/or omitted to state material facts required or necessary to be stated to make the statements therein not misleading.

41. Each Defendant violated §12(a)(2) of the Securities Act, 15 U.S.C. §77l(a)(2), when they issued, or caused to be issued, the Prospectus, which was incorporated into and formed part of the Offering Documents and included untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements therein not misleading.

42. The Individual Defendants and Defendant Camelot were “controlling persons” within the meaning of §15 of the Securities Act, 15 U.S.C. §77o, and are therefore, jointly and severally, liable with and, to the same extent, as the “controlled person[s]” alleged herein.

A. Background

43. Defendant SmileDirect is a direct-to-consumer manufacturer and seller of 3D-printed clear teeth aligners headquartered in Nashville, Tennessee.

44. The Company’s primary product is a clear plastic teeth-aligner that is customized for each customer. In order to customize each aligner, customers make a bite cast or impression of their bite in one of SmileDirect’s 300 stores, at home after ordering an impression kit over the internet, or at one of SmileDirect’s partners, including CVS, Walgreens, or UK-based Well Pharmacy. After the customer submits the impression, a licensed doctor reviews the treatment plan set out by SmileDirect and the Company manufacturers and ships the aligner to the customer.

B. Materially False and Misleading Statements in the Offering Documents

45. On August 16, 2019, Defendants filed a registration statement for the IPO on Form S-1 with the SEC, which was declared effective on September 11, 2019 (together, with all amendments, the “Registration Statement”). The Registration Statement incorporated by reference any future filings made with the SEC, including prospectuses. On September 11, 2019, SmileDirect filed a prospectus for the IPO on Form 424B4 with the SEC (the “Prospectus”), which was incorporated into and formed part of the Offering Documents. Together, the Registration

Statement and Prospectus were used to sell to the investing public approximately 58.5 million shares of SmileDirect common stock at \$23.00 per share in the IPO.

46. The Offering Documents were signed and/or authorized by the Individual Defendants.

47. The Offering Documents were negligently prepared and, as a result, contained untrue statements of material fact, omitted material facts necessary to make the statements contained therein not misleading, and failed to make adequate disclosures required under the rules and regulations governing the preparation of such documents.

48. First, the Offering Documents fail to mention the true extent of the legal hurdles SmileDirect's business model faces, a critical factor that investors must be made aware of before they can make an informed decision about whether or not to invest. Simply put, at the time the Offering Documents were issued, the fact that (i) at least 40 states and the federal government were taking a hard look at the legality of SmileDirect's business model; (ii) multiple national medical/dental associations and their affiliates in at least 40 states filed numerous complaints warning that patient health and safety were at stake; and (iii) over one thousand customers had already filed complaints about the efficacy and safety of Company's flagship product, cast serious doubt on SmileDirect's ability to continue to operate with its current business model.

49. Instead, the Company limited its mention of the legality of its business model to a few sparse warnings in its "Risk Factors" section that failed to properly inform investors that such problems were not hypothetical, had already come to pass, and were affecting SmileDirect at the time of the IPO. For example, the Company noted that SmileDirect's "current business model" – which the Company repeatedly touts throughout the Offering Documents will lead to profitability and growth – "is dependent, in part, on current laws, rules, and regulations governing remote

healthcare and the practice of dentistry.” This statement only tells part of the story. While SmileDirect’s “current business model” is, in fact, dependent on current laws, rules, and regulations, the Offering Documents fail to state that these existing laws, rules, and regulations very likely rendered the Company’s “current business model” illegal, at least in part.

50. Next, the Offering Documents failed to disclose the numerous *bona fide* customer complaints about the efficacy of SmileDirect’s aligners and injuries that customers have experienced. In fact, in addition to not fully disclosing the complaints, the Offering Documents were misleading as well, noting that the Company has received positive reviews from customers, which “demonstrate[s] that our members are highly satisfied.” Given the importance that customer safety and satisfaction is to any Company’s business model, SmileDirect’s misstatements and omissions in this regard were highly material to investors and should have been disclosed.

C. Items 303 & 503

51. Item 303 requires Defendants to “[d]escribe any *known* trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on the sales or revenues or income from continuing operations.” 17 C.F.R. §229.303(a)(3)(ii) [emphasis added]. Similarly, Item 503 requires, in the “Risk Factors” section of registration statements and prospectuses, “a discussion of the most significant factors that make the offering speculative or risky” and that each risk factor “adequately describes the risk.” 17 C.F.R. §229.503(c).

52. By failing to disclose that, at the time of the IPO, the legality of the Company’s business model was in serious doubt and already impacting SmileDirect’s bottom line, and, relatedly, the over one thousand customer complaints about the safety and efficacy of SmileDirect’s aligners, the Company’s Offering Documents violated Item 303 because these

known, and yet still undisclosed, facts would (and did) have an unfavorable impact on the Company's sales, revenues, and income from continuing operations. In fact, not only did these factors impact SmileDirect in the future, but they also impacted the Company's bottom line *at the time of the IPO*. Indeed, Defendants' failure to disclose the *already occurring known* trends rendered false and misleading certain of the Offering Documents' references to certain "risks" because these so called "risks" had already materialized before the IPO.

53. Moreover, this failure also violated Item 503 because these specific risks were not adequately disclosed, or disclosed at all, even though they were some of the most significant factors that made an investment in SmileDirect common stock speculative or risky. The extent of the discussion about the legality of the Company's business model and the customer complaints, all of which were known to the Defendants, but not the investing public, made an investment in SmileDirect common stock a risky choice. Instead of adequately disclosing these known risks and significant trends that impacted the Company before, during, and after the IPO, as the Company's statutory duty to disclose required, the Offering Documents mislead and/or omitted key facts and left the investing public to suffer the consequences.

SUBSEQUENT DISCLOSURES

54. On September 11, 2019, one day before the IPO, *Forbes* published an article, entitled "What Investors Need to Know About SmileDirectClub's (SDC) IPO,"¹ that took a critical view of SmileDirect's offering, noting the substantial legal and regulatory hurdles that the Company faced:

Like Uber, many question the legality of SDC's business practices. Specifically, the American Association of Orthodontists (AAO) has lodged complaints in 36

¹ David Trainer, *What Investors Need to Know About SmileDirectClub's (SDC) IPO*, FORBES (Sept. 11, 2019), <https://www.forbes.com/sites/greatspeculations/2019/09/11/what-investors-need-to-know-about-smiledirectclubs-sdc-ipo/#3b1d2a5bb55b>.

states with state dental boards and attorneys general alleging that SDC's service is "illegal and creates medical risks."

The way SDC's business model currently works is that customers – either at home or in one of its 300+ retail locations – make a bite cast (or "impression") of their teeth that is used to develop a treatment plan. A licensed doctor reviews the treatment plan and prescribes a clear aligner, which the company manufactures and ships to the patient. Over the course of the treatment – typically five to ten months – the doctor monitors the patient's progress through the company's online platform, called "SmileCheck."

In SDC's telling, its role in this process is simply as a middleman between doctors and patients. It facilitates communication between the two parties and supplies the prescribed aligners, but it is not performing medical work itself.

According to the AAO, however, activities such as taking bite casts constitute medical work that is reserved for licensed medical professionals. In both Georgia and Alabama, the state boards of dentistry have required that a licensed dentist be present for all oral-imaging services. SDC has filed suit against these state boards on antitrust grounds, and litigation is still pending in both these matters. While the FDA and FTC – the two federal agencies that would have jurisdiction to regulate SDC – have yet to take any action against SDC on a federal level, the AAO and other organizations continue to press for more regulation.

55. The following day, SmileDirect's first public day of trading, its stock price opened at \$20.55 and closed at \$16.67, representing a 27.5% decrease from the \$23.00 IPO price.

56. On September 24, 2019, a group of dentists, orthodontists, and consumers filed a class action law suit against SmileDirect, its CEO and COO, and Camelot in federal court in the Middle District of Tennessee,² alleging that the Company's business model constitutes multiple violations of state and federal law, including claims that SmileDirect: (i) is illegally operating as a dentist; (ii) engages in false advertising; (iii) repeatedly violates the Federal Trade Commission Act; and (iv) is in flagrant violation of the Food, Drug, and Cosmetic Act.

57. On this news, SmileDirect common stock fell to \$12.94.

² See Ex. A, *Ciccio v. SmileDirectClub, LLC*, No. 3:19-cv-00845, Complaint for False Advertising, Fraud, Negligence, and Unfair and Deceptive Trade Practices (M.D. Tenn. Sept. 24, 2019).

58. SmileDirect common stock currently sits at \$13.00, a fall of over 43% from the \$23.00 Offering Price of just 15 days prior.

CLASS ACTION ALLEGATIONS

59. Plaintiff brings this action as a class action on behalf of all those who purchased SmileDirect common stock shares directly in the IPO pursuant to the Offering Documents (the “Class”). Excluded from the Class are Defendants and their families, the officers and directors and affiliates of Defendants, at all relevant times, members of Defendants’ immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have, or had, a controlling interest. Also excluded from the Class are any investors who purchased SmileDirect stock in the aftermarket.

60. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by SmileDirect or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

61. Plaintiff’s claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

62. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

63. Common questions of law and fact exist, as to all members of the Class, and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether Defendants violated the Securities Act;
- (b) whether the Offering Documents were negligently prepared, contained inaccurate statements of material facts, and omitted material information required to be stated therein; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

64. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CAUSE OF ACTION
For Violations of §11 of the Securities Act
Against All Defendants

- 65. Plaintiff incorporates ¶¶1-65 by reference as if fully set forth herein.
- 66. This Cause of Action is brought pursuant to §11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants.
- 67. For purposes of this claim, Plaintiff expressly disclaims and excludes any allegations that can be construed as alleging fraud, recklessness, or intentional misconduct, as this Cause of Action is based expressly on claims of strict-liability and/or negligence under the Securities Act.

68. The Offering Documents contained untrue statements of material facts, omitted to state other facts necessary to make the statements made therein not misleading, and omitted to state material facts required to be stated therein.

69. Defendants are strictly liable to Plaintiff and the Class for the misstatements and omissions contained in the Offering Documents.

70. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Offering Documents were true, without omissions of any material facts, and were not misleading.

71. By reason of the conduct herein alleged, each Defendant violated, or controlled a person who violated, §11 of the Securities Act.

72. Plaintiff acquired SmileDirect common stock pursuant to the Offering Documents.

73. Plaintiff and the Class have sustained damages. The value of SmileDirect common stock has declined substantially subsequent and due to Defendants' violations.

74. At the time of their purchases of SmileDirect shares, Plaintiff and the other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to the disclosures herein. Less than one year has elapsed from the time that Plaintiff discovered, or reasonably could have discovered, the facts upon which this complaint is based to the time that Plaintiff commenced this action. Less than three years have elapsed between the time that the securities upon which this Cause of Action is brought were offered to the public and the time Plaintiff commenced this action.

SECOND CAUSE OF ACTION
Violations of §12(a)(2) of the Securities Act
Against All Defendants

75. Plaintiff incorporates ¶¶1-75 by reference as if fully set forth herein.

76. This Cause of Action is brought pursuant to §12(a)(2) of the Securities Act, 15 U.S.C. §77l(a)(2), against all Defendants.

77. For purposes of this claim, Plaintiff expressly disclaims and excludes any allegations that can be construed as alleging fraud, recklessness, or intentional misconduct, as this Cause of Action is based expressly on claims of strict-liability and/or negligence under the Securities Act.

78. By means of the defective Prospectus, Defendants promoted and sold SmileDirect common stock shares to Plaintiff and the other members of the Class.

79. The Prospectus for the IPO contained untrue statements of material facts and concealed and failed to disclose material facts, as detailed above. Defendants owed Plaintiff and the other members of the Class, who purchased SmileDirect shares pursuant to the Prospectus, a duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such statements were true and that there was no omission to state material facts required or necessary to be stated in order to make the statements contained therein not misleading. Defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Prospectus, as set forth above.

80. Plaintiff did not know, nor in the exercise of reasonable diligence could have known, of the untruths and omissions contained in the Prospectus at the time Plaintiff acquired SmileDirect shares.

81. By reason of the conduct alleged herein, Defendants violated §12(a)(2) of the Securities Act, 15 U.S.C. §77l(a)(2). As a direct and proximate result of such violations, Plaintiff and the other members of the Class, who purchased SmileDirect shares pursuant to the Prospectus, sustained substantial damages in connection with their purchases of the stock. Accordingly,

Plaintiff and the other members of the Class, who hold the common stock issued pursuant to the Prospectus, have the right to rescind and recover the consideration paid for their shares and hereby tender their common stock to Defendants sued herein. Plaintiff and Class members, who have sold their SmileDirect common stock, seek damages to the extent permitted by law.

THIRD CAUSE OF ACTION
Violations of §15 of the Securities Act
Against the Individual and Camelot Defendants

82. Plaintiff incorporates ¶¶1-82 by reference as if fully set forth herein.

83. This Cause of Action is brought pursuant to §15 of the Securities Act, 15 U.S.C. §77o, against the Individual Defendants and Camelot.

84. For purposes of this claim, Plaintiff expressly disclaims and excludes any allegations that can be construed as alleging fraud, recklessness, or intentional misconduct, as this Cause of Action is based expressly on claims of strict-liability and/or negligence under the Securities Act.

85. The Individual and Defendants were controlling persons of the Company within the meaning of §15 of the Securities Act. By reason of their senior management positions and/or directorships and/or majority ownership stake held at the Company, as alleged above, the Individual and Camelot Defendants, individually and collectively, had the power to influence and exercised the same over the Company to cause it to engage in the conduct complained of herein.

86. The Individual Defendants were each a culpable participant in the violations of §§11 and 12(a)(2) of the Securities Act alleged in the First and Second Causes of Action above, based on their having signed or authorized the signing of the Offering Documents and having otherwise participated in the process that allowed the IPO to be successfully completed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Certifying this class action, appointing Plaintiff as a Class Representative, and appointing Plaintiff's counsel as Class Counsel;
- B. Awarding damages in favor of Plaintiff and the Class, jointly and severally;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel and expert fees; and
- D. Awarding rescission, disgorgement, or such other equitable, injunctive, or other relief deemed appropriate by the Court.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

DATED: September 27, 2019

/s/ James G. Stranch, III
James G. Stranch, III (TN BPR#(BPR#02542)
Joe P. Leniski, Jr.* (TN BPR#022891)
Benjamin A. Gastel (TN BPR#28699)
**BRANSTETTER, STRANCH &
JENNINGS, PLLC**
223 Rosa Parks Ave. Suite 200
Nashville, TN 37203
Telephone: 615/254-8801
Facsimile: 615/255-5419
Email: beng@bsjfirm.com;
joeyl@bsjfirm.com

Thomas L. Laughlin, IV (*pro hac vice* forthcoming)
Jeffrey P. Jacobson (*pro hac vice* forthcoming)
SCOTT+SCOTT ATTORNEYS AT LAW LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212/223-6444
212/223-6334 (fax)
tlaughlin@scott-scott.com
jjacobson@scott-scott.com

BRIAN J. SCHALL (*pro hac vice* forthcoming)

THE SCHALL LAW FIRM
1880 Century Park E, Suite 404
Los Angeles, CA 90067-1604
Telephone: 310/301-3335
310/388-0192 (fax)
brian@schallfirm.com

Attorneys for Plaintiff Matthew G. Mancour