

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY  
20<sup>TH</sup> JUDICIAL DISTRICT  
THE STATE OF TENNESSEE

BRITTANY VANG, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

SMILEDIRECTCLUB, INC., JORDAN  
KATZMAN, ALEXANDER FENKELL,  
DAVID KATZMAN, KYLE WAILES,  
STEVEN KATZMAN, 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.

) CLASS ACTION

) COMPLAINT FOR VIOLATION OF  
) THE SECURITIES ACT OF 1933

) DEMAND FOR JURY TRIAL

Plaintiff Brittany Vang (“plaintiff”) alleges the following based upon the investigation of plaintiff’s counsel, which included a review of U.S. Securities and Exchange Commission (“SEC”) filings by SmileDirectClub, Inc. (“SmileDirectClub” or the “Company”), as well as regulatory filings and reports, securities analysts’ reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a securities class action on behalf of all purchasers of the Class A common stock of SmileDirectClub pursuant and/or traceable to the Registration Statement issued in connection with SmileDirectClub’s September 12, 2019 initial public stock offering (the “IPO”), seeking to pursue remedies under the Securities Act of 1933 (the “Securities Act”).

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over the causes of action asserted herein pursuant to Tenn. Code Ann. §16-10-101, because this case is a cause not given by statute to another tribunal in this State. This action may not be removed to federal court. 15 U.S.C. §77v.

3. This Court has personal jurisdiction over each of the defendants named herein because they conducted substantial business in, were citizens of, and/or orchestrated the IPO out of Tennessee, including SmileDirectClub, which maintained its principal place of business in Nashville, Tennessee at the time of the IPO. Each of the Underwriter Defendants (defined below) also conducts substantial business in this District. The violations of law

complained of herein occurred in Tennessee, including the preparation and dissemination of the materially false and misleading Registration Statement complained of herein, which was disseminated into this State.

4. Venue is properly laid in this County pursuant to Tenn. Code Ann. §20-4-101.

The acts and conduct complained of herein occurred in substantial part in this County.

### **PARTIES**

5. Plaintiff Brittany Vang purchased SmileDirectClub Class A common stock pursuant and/or traceable to the IPO, and was damaged thereby.

6. Defendant SmileDirectClub describes itself as a tele-dentistry company headquartered in Nashville, Tennessee.

7. Defendants Jordan Katzman and Alexander Fenkell (“Fenkell”) are, and were at the time of the IPO, the co-founders of SmileDirectClub and members of its Board of Directors. Defendant Jordan Katzman runs SmileDirectClub’s IT department, while defendant Fenkell heads up its marketing department.

8. Defendant David Katzman is, and was at the time of the IPO, the Chief Executive Officer and Chairman of the Board of SmileDirectClub. David Katzman is co-founder Jordan Katzman’s father. Through his stock ownership, stock voting agreement, and position as the managing partner of defendant Camelot Venture Group (described below), he controls the business operations of SmileDirectClub.

9. Defendant Kyle Wailes is, and was at the time of the IPO, the Chief Financial Officer of SmileDirectClub.

10. Defendant Steven Katzman is, and was at the time of the IPO, Chief Operating Officer and a director of SmileDirectClub. Defendant Steven Katzman is co-founder Jordan

Katzman's uncle. Through his stock ownership, stock voting agreement, and position as an advisor of defendant Camelot Venture Group, he controls the business operations of SmileDirectClub.

11. Defendants Richard Schnall and Susan Greenspon Rammelt are, and were at the time of the IPO, directors of SmileDirectClub.

12. The defendants named in ¶¶7-11 are referred to herein as the "Individual Defendants." The Individual Defendants each signed the Registration Statement.

13. Defendant Camelot Venture Group is a partnership with its principal place of business located in Michigan. Camelot Venture Group is controlled by its managing partner, defendant David Katzman, and is, as described on its website, the largest shareholder of SmileDirectClub and the managing member of the limited liability corporation that controls SmileDirectClub. As such, Camelot Venture Group – through its stock ownership, its control as the managing member of SmileDirectClub, and its ability to appoint David Katzman and Steven Katzman as the operating officers of SmileDirectClub – controls SmileDirectClub and is directly liable for the Company's actions and the violations of the federal securities laws detailed herein.

14. Defendants J.P. Morgan Securities LLC ("JP Morgan"), Citigroup Global Markets Inc. ("Citigroup"), 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 (the "Underwriter Defendants"), are investment banking firms that acted as underwriters of SmileDirectClub's IPO, helping to draft and disseminate the offering documents, with JP

Morgan and Citigroup acting as representatives of the other Underwriter Defendants. Pursuant to the Securities Act, the Underwriter Defendants are liable for the false and misleading statements in the Registration Statement as follows:

(a) The Underwriter Defendants are investment banking houses that specialize, *inter alia*, in underwriting public offerings of securities. They served as the underwriters of the IPO and shared more than \$67.3 million in fees collectively. The Underwriter Defendants determined that in return for their share of the IPO proceeds, they were willing to merchandize SmileDirectClub stock in the IPO. The Underwriter Defendants arranged a multi-city roadshow prior to the IPO during which they, and representatives from SmileDirectClub, met with potential investors and presented highly favorable information about the Company, its operations, and its financial prospects.

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

(c) Representatives of the Underwriter Defendants also assisted SmileDirectClub and the Individual Defendants in planning the IPO, and purportedly conducted an adequate and reasonable investigation into the business and operations of SmileDirectClub, 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 SmileDirectClub's operations and financial prospects.

(d) In addition to availing themselves of virtually unbridled access to internal corporate documents, agents of the Underwriter Defendants met with SmileDirectClub's lawyers, management, and top executives and engaged in "drafting sessions" between at least May 3, 2019 and September 13, 2019. 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 at which SmileDirectClub stock would be sold; (iii) the language to be used in the Registration Statement; (iv) what disclosures about SmileDirectClub would be made in the Registration Statement; and (v) what responses would be made to the SEC in connection with its review of the Registration Statement. As a result of those constant contacts and communications between the Underwriter Defendants' representatives and SmileDirectClub management and top executives, the Underwriter Defendants knew, or should have known, of SmileDirectClub's existing problems as detailed herein.

(e) The Underwriter Defendants caused the Registration Statement to be filed with the SEC and declared effective in connection with offers and sales thereof, including to plaintiff and the Class (as defined below).

### **SUBSTANTIVE ALLEGATIONS**

15. Defendant SmileDirectClub was co-founded in 2014 by defendants Jordan Katzman and Fenkell. Its initial management and capital were provided by defendant Camelot Venture Group, owned and operated by defendants David Katzman and Steven Katzman.

16. SmileDirectClub produces 3D-printed clear tooth aligners on 3D printers at its Tennessee headquarters, which are utilized by customers to correct orthodontic issues. While the Company has some retail locations, the substantial majority of the Company's business and dentistry is conducted online. SmileDirectClub manufactures its aligners in Tennessee and directs its marketing efforts from Tennessee. Following a member's payment of the fee of approximately \$1,900 for the aligners, SmileDirectClub manufactures the aligners and then sends them to the member with instructions for their use.

17. Unlike braces and clear aligners from companies like Invisalign, which are prescribed and fitted by traditional dentists in their offices, SmileDirectClub impression kits are sent to customers who create impressions of their mouths and ship them back to the Company to be used to create the customers' aligners. According to SmileDirectClub, the impression is used to create a digital picture of a member's mouth to be reviewed by dentists or orthodontists, who the Company says oversee the treatment process.

18. On or about May 3, 2019, SmileDirectClub filed with the SEC a Registration Statement on Form S-1, which, after several amendments would later be utilized for the IPO. The SEC declared the Registration Statement effective on September 11, 2019, and on that same day, SmileDirectClub and the Underwriter Defendants priced and commenced the IPO. On September 13, 2019, SmileDirectClub and the Underwriter Defendants filed the final prospectus for the IPO with the SEC, which forms part of the Registration Statement (collectively, the "Registration Statement").

19. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material fact or omitted to state other facts necessary to make the

statements made not misleading and was not prepared in accordance with the rules and regulations governing its preparation.

20. For example, the Registration Statement claimed that SmileDirectClub's customers were "highly satisfied" with the Company's products and gave satisfaction scores many multiples above traditional orthodontic solutions. The Registration Statement stated in pertinent part:

*Our primary focus is on delivering an exceptional customer ("member") experience. Our average net promoter score of 57 since inception, compared to an average net promoter score of 1 for the entire dental industry (according to West Monroe Partners), and our average rating of 4.9 out of 5 from over 100,000 member reviews on our website, demonstrate that our members are highly satisfied. As a testament to our confidence in the quality and efficacy of our product, we offer a Smile Guarantee, which provides members a refund or additional treatment, at no extra cost, if they are not entirely satisfied.*

21. In particular, the Registration Statement highlighted SmileDirectClub's "Smile Guarantee," stating that "[m]embers can feel confident in using our products and services on a risk-free basis," and that, "[a]s a testament to our confidence in the quality and efficacy of our product, we offer a Smile Guarantee: If our members are dissatisfied with their aligners for any reason within the first 30 days of their treatment, we allow them to return their aligners and receive a full refund." The Registration Statement further stated that, "[a]lternatively, after the first 30 days, we allow members to return the remainder of their aligners for a pro-rated refund based on the number of aligners used," and that "[f]inally, if a member follows their treatment plan guidelines and does not achieve a smile they love, the treating doctor will re-evaluate the member's results, and we will provide additional aligners for further adjustment at no additional cost."

22. The Registration Statement also positively described the quality of SmileDirectClub's products, professional services, and overall treatment success. The Registration Statement stated in pertinent part as follows:

Our vertically integrated model enables us to *solve critical problems* around cost, convenience, and access to care. We offer *professional-level service and high-quality* clear aligners at a cost of \$1,895, up to 60% less than traditional orthodontic solutions. We achieve this cost savings *while maintaining high quality* by removing the overhead cost of in-person doctor visits and managing the entire member experience, all the way from marketing to aligner manufacturing, fulfillment, *treatment by a member's doctor*, and *monitoring through completion of their treatment*, which is supported by our proprietary teledentistry platform ("SmileCheck"). These efficiencies enable us to pass the cost savings directly to the members and *allow doctors in our network to focus on what matters most*: providing convenient access to excellent clinical care.

23. Similarly, the Registration Statement described the professional oversight of the Company's products, stating that, "via SmileCheck, a state licensed doctor within our network reviews and approves the member's clinical information and treatment plan" and that "a treating doctor monitors a member's progress."

24. The Registration Statement represented that with respect to the patient/dentist relationship there is "seamless communication with the treating doctor over the course of treatment," and that "each member's treating doctor is available to answer clinical questions."

25. The statements referenced above in ¶¶20-24 were inaccurate statements of material fact because they failed to disclose the following material facts that existed at the time of the IPO:

(a) that customers of SmileDirectClub had suffered far higher rates of harm and dissatisfaction than disclosed in the Registration Statement, including failures to correct

serious adverse orthodontic problems or prevent tooth misalignment, non-responsive or ineffective customer services provided by the Company, and customers generally not receiving the quality of care for the price or within the timeframe represented;

(b) that in order to receive refunds, SmileDirectClub customers were forced to sign onerous non-disclosure agreements (“NDAs”), which prevented them from publicly sharing their adverse experiences using the Company’s products;

(c) that, as a result of being forced to sign onerous NDAs that prevented customers from disparaging the Company or providing negative information about their experiences, customer reviews and the measures of satisfaction provided in the Registration Statement were artificially skewed to mask problems with the Company’s products and processes and high levels of customer dissatisfaction;

(d) that SmileDirectClub did not provide the high quality product, professional services, or treatment success as represented in the Registration Statement; and

(e) that, as a result of the foregoing, the Company’s business metrics and financial prospects were materially worse than the Registration Statement represented.

26. In addition, under the rules and regulations governing the preparation of the Registration Statement, SmileDirectClub was required to disclose at the time of the IPO that the quality of SmileDirectClub’s product offerings, professional services and treatment success were subpar to those described in the Registration Statement and had been masked by the Company’s practice of forcing customers to sign NDAs in order to receive a refund. The Registration Statement, however, contained no such disclosures. Pursuant to Item 303 of Regulation S-K [17 C.F.R. §229.303] and the SEC’s related interpretive releases thereto,

issuers are required to disclose “any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” The known trends and uncertainties associated with the high level of customer dissatisfaction and harm, which had been masked by the forced signing of NDAs, were reasonably likely to have a material impact on SmileDirectClub’s profitability, and, therefore, were required to be disclosed in the Registration Statement.

27. In addition, Item 105 of SEC Regulation S-K [17 C.F.R. §229.105] required, in the “Risk Factors” section of the Registration Statement, a discussion of the most significant factors that made the offering risky or speculative and that each risk factor adequately describe the risk. Because the omitted material facts alleged herein were not disclosed, as well as the consequent material adverse effects on the Company’s future results and prospects, defendants violated Item 105.

28. The IPO was successful for the Company and the Underwriter Defendants, who sold over 58.5 million shares of SmileDirectClub Class A common stock to the public at \$23 per share, raising more than \$1.3 billion in gross proceeds for the Company.

29. At the time of the filing of this complaint, SmileDirectClub stock was trading for only about \$13 per share, **43% below** the IPO price.

### **CLASS ACTION ALLEGATIONS**

30. Plaintiff brings this action as a class action on behalf of all purchasers of SmileDirectClub Class A common stock pursuant and/or traceable to the Registration Statement issued in connection with the IPO (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 their immediate families, and their legal representatives, heirs, successors or assigns and any entities in which defendants have or had a controlling interest.

31. 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 thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by SmileDirectClub or its transfer agent and may be notified of the pendency of this action electronically or by mail, using the form of notice similar to that customarily used in securities class actions.

32. 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.

33. 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.

34. 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 Registration Statement was negligently prepared and contained inaccurate statements of material fact 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.

35. 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 Violation of §11 of the Securities Act Against All Defendants**

36. Plaintiff incorporates ¶¶1-35 by reference.

37. 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.

38. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

39. Defendants SmileDirectClub, the Individual Defendants and Camelot Venture Group (in its respondeat superior capacity) are strictly liable to plaintiff and the Class for the misstatements and omissions.

40. None of the defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omission of any material fact and were not misleading.

41. By reason of the conduct herein alleged, each defendant violated, and/or controlled a person who violated, §11 of the Securities Act.

42. Plaintiff acquired SmileDirectClub Class A common stock pursuant to the IPO.

43. Plaintiff and the Class have sustained damages. The value of SmileDirectClub Class A common stock has declined substantially subsequent to and due to defendants' violations.

44. At the time of their purchases of SmileDirectClub Class A common stock, plaintiff and 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 has 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**

### **For Violation of §15 of the Securities Act Against the Company, the Individual Defendants and Camelot Venture Group**

45. Plaintiff incorporates ¶¶1-44 by reference.

46. This Cause of Action is brought pursuant to §15 of the Securities Act against the Company, the Individual Defendants and Camelot Venture Group.

47. The Individual Defendants each were control persons of SmileDirectClub by virtue of their positions as directors and/or senior officers of SmileDirectClub. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of SmileDirectClub. The Registration Statement expressly acknowledges that due to his stock ownership, “[a]fter the completion of this 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,” and “[a]s a result, we will be a ‘controlled company’ within the meaning of the corporate governance standards of NASDAQ.” Moreover, through its stock ownership, its control as the managing member of SmileDirectClub, and its ability to appoint defendants David Katzman and Steven Katzman as the operating officers of SmileDirectClub, defendant Camelot Venture Group controlled SmileDirectClub. Defendant Camelot Venture Group also appointed Susan Greenspon Rammelt as general counsel of SmileDirectClub and directed the day-to-day management of SmileDirectClub through other Camelot Venture Group employees. As such, defendant Camelot Venture Group, along with the Katzmans, directed SmileDirectClub to undertake the IPO utilizing the materially false and misleading Registration Statement. Indeed, defendants concede in the Registration Statement that 98% of the SmileDirectClub voting shares – and the day-to-day control of SmileDirectClub – will remain with the Katzmans and Camelot Venture Partners. The Company controlled the Individual Defendants and all of SmileDirectClub’s employees.

48. SmileDirectClub, the Individual Defendants and Camelot Venture Partners each were culpable participants in the violations of §11 of the Securities Act alleged in the Cause of Action above, based on their having signed or authorized the signing of the Registration Statement and having otherwise participated in the process that allowed the IPO to be successfully completed.

### PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment as follows:

- A. Determining that this action is a proper class action, certifying plaintiff as a Class representative under Tenn. R. Civ. P. 23 and appointing plaintiff's counsel as Lead Counsel;
- B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Such equitable/injunctive or other relief as deemed appropriate by the Court.

### JURY DEMAND

Plaintiff hereby demands a trial by jury.

DATED: September 30, 2019

BARRETT JOHNSTON MARTIN  
& GARRISON, LLC  
JERRY E. MARTIN, #20193

*s/ Jerry E. Martin*  
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