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Case #19CV357070
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14 *Co-Lead Counsel for Plaintiff and the Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SANTA CLARA**

18 IN RE MAXAR TECHNOLOGIES, INC.)
SHAREHOLDER LITIGATION)

Case No. 19CV357070

) CLASS ACTION

20 This Document Relates To:)
21 ALL ACTIONS)

) **JOINT DECLARATION OF ADAM E.
POLK AND DAVID W. HALL IN
SUPPORT OF PLAINTIFF’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

) Date Action Filed: October 21, 2019
) Dept. 1
) Judge: Hon. Sunil R. Kulkarni
) Hearing: June 8, 2023, 1:30 P.M.

1 We, Adam E. Polk and David W. Hall, declare as follows:

2 1. We are attorneys duly licensed to practice before all the courts of the State of
3 California. We are members of the law firm Girard Sharp LLP (“Girard Sharp”) and Hedin Hall LLP
4 (“Hedin Hall”), respectively.¹ We have personal knowledge of the matters stated herein based on our
5 work on this lawsuit, and, if called upon, we could and would competently testify thereto.

6 2. We submit this joint declaration in support of Plaintiff’s Motion for Preliminary
7 Approval of Class Action Settlement. The motion seeks: (a) preliminary approval of the Settlement
8 set forth in the Stipulation of Settlement dated May 5, 2023 (the “Stipulation” or “Settlement”), which
9 provides for a cash Settlement in the amount of \$36,500,000; (b) approval of the proposed form and
10 method of providing notice to the Class of the proposed Settlement; and (c) setting of a Settlement
11 Fairness Hearing and relevant deadlines related thereto.²

12 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Stipulation of Settlement
13 entered into between the parties of this litigation.

14 a. Attached to the Stipulation as **Exhibit 1.A** is a true and correct copy of the
15 [Proposed] Order Preliminarily Approving Settlement and Providing for Notice.

16 b. Attached to the Stipulation as **Exhibit 1.A-1** is a true and correct copy of the
17 Notice of the Proposed Class Action and Settlement.

18 c. Attached to the Stipulation as **Exhibit 1.A-2** is a true and correct copy of the
19 Proof of Claim and Release.

20 d. Attached to the Stipulation as **Exhibit 1.A-3** is a true and correct copy of the
21 Summary Notice of the Proposed Class Action.

22
23
24 _____
25 ¹ For convenience, Girard Sharp and Hedin Hall are referred to in this Declaration as “Co-Lead
26 Counsel,” “Plaintiff’s Counsel” or “we.”

27 ² All capitalized terms not otherwise defined shall have the same meaning as set forth in the
28 Stipulation. Citations are omitted and emphasis is added throughout unless otherwise indicated.

1 e. Attached to the Stipulation as **Exhibit 1.B** is a true and correct copy of the
2 [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement.

3 4. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Plaintiff
4 Michael McCurdy in Support of Plaintiff's Motion for Preliminary Approval of Class Action
5 Settlement.

6 5. Attached hereto as **Exhibit 3** is a true and correct copy of Girard Sharp LLP's firm
7 resume.

8 6. Attached hereto as **Exhibit 4** is a true and correct copy of Hedin Hall LLP's firm
9 resume.

10 **I. RELEVANT PROCEDURAL HISTORY AND SUMMARY OF PLAINTIFF'S**
11 **CLAIMS**

12 7. This is a securities class action against Defendants that asserts claims under §§ 11,
13 12(a)(2) and 15 of the Securities Act of 1933. The Action is brought on behalf of all persons who
14 acquired Maxar common stock in exchange for DigitalGlobe common stock pursuant to the Offering
15 Materials issued in connection with Maxar's October 2017 acquisition of DigitalGlobe. The Court
16 certified this case as a class action on August 20, 2021.

17 8. Plaintiff alleges that Defendants violated §§ 11, 12(a)(2) and 15 of the Securities Act
18 by reason of material misrepresentations and omissions in the registration statement and prospectus
19 issued in connection with the Merger. Specifically, Plaintiff alleges that the Offering Materials
20 misrepresented and omitted material facts regarding Maxar's business, including that: (1) there were
21 significant indicators of impairment of Maxar's assets, particularly in its Communications, SSL, and
22 geostationary satellite communications businesses; (2) Maxar had not adequately tested for
23 impairment; (3) GeoComm was severely impaired as of the date of the Offering Materials; (4) Maxar
24 was not complying with IFRS accounting standards, including related to impairment testing; and (5)
25 risks that Maxar characterized as hypothetical had already materialized at the time of the Merger.

1 (*See generally* Complaint.) Defendants have denied, and continue to deny, these allegations and that
2 there was any violation of the Securities Act.

3 9. On October 21, 2019, Plaintiff commenced this action against Defendants in the
4 Superior Court of California, County of Santa Clara, alleging Defendants violated §§ 11, 12(a)(2)
5 and 15 of the Securities Act in connection with Maxar’s October 2017 merger and acquisition of
6 DigitalGlobe.

7 10. On January 31, 2020, the Court appointed Girard Sharp and Hedin Hall as Co-Lead
8 Counsel and set a schedule for amending and responding to the complaint. On April 30, 2020,
9 Plaintiff filed the operative complaint.

10 11. On June 29, 2020, Defendants moved to stay the case. On September 29, 2020, the
11 Court issued an order denying the motion to stay and directed the parties to meet and confer as to
12 coordinating discovery with *Oregon Laborers Employers Pension Trust Fund v. Maxar Tech., Inc.*,
13 No. 19-cv-0124 (D. Colo.).

14 12. On November 10, 2020, Defendants filed a demurrer to the operative complaint.
15 Plaintiff opposed the demurrer on December 8, 2020, and Defendants filed their reply on December
16 22, 2020. On January 14, 2021, the Court held a hearing on the demurrer. The Court entered an order
17 on January 24, 2021, overruling in part and sustaining in part the demurrer.

18 13. On March 5, 2021, Defendants filed their answer to the Complaint.

19 14. On May 28, 2021, Plaintiff filed a motion for class certification. On August 5, 2021,
20 Defendants filed a statement of non-opposition. On August 20, 2021, the Court issued an order
21 certifying the Class, appointing Plaintiff Michael McCurdy as class representative, and appointing
22 Girard Sharp and Hedin Hall as co-lead class counsel.

23 15. Counsel for Plaintiff has engaged in voluminous discovery throughout this litigation,
24 including reviewing hundreds of thousands of pages of documents and taking 20 depositions. The
25 Parties also conducted extensive expert discovery that included the retention, preparation, and
26 disclosure of expert witness reports on a range of complex issues.

1 **II. PLAINTIFF’S WORK ON BEHALF OF THE CLASS**

2 16. Plaintiff and Co-Lead Counsel have diligently prosecuted this Action since its
3 commencement on October 21, 2019 to the present. Among other work, Plaintiff and Co-Lead
4 Counsel:

5 a. conducted an extensive pre-commencement investigation of Defendants’
6 actions in connection with the Merger and the claims alleged in this Action and continued their
7 investigation over the next five years. This included, *inter alia*, analyzing public filings, analyst
8 reports, press releases, and documents concerning Defendants and third parties and researching the
9 applicable law with respect to Plaintiff’s claims against Defendants and the potential defenses thereto;

10 b. continued their investigation over the next five years, through several amended
11 pleadings; crafted and litigated formal, targeted written discovery requests; consulted at length with
12 accounting, financial, and other subject matter experts; and briefed and presented oral argument on
13 several contested procedural, discovery, and merits motions, demurrers, and other filings by
14 Defendants. At every stage, Co-Lead Counsel continued their investigation into the claims, theories,
15 and remedies alleged and sought in this action, and prepared thorough briefing in response to
16 Defendants’ numerous, often novel arguments and filings while also maintaining a professional and
17 open line of communication with Defendants’ counsel;

18 c. engaged in extensive discovery efforts. In response to Plaintiff’s discovery
19 requests, Defendants produced over 584,000 pages of documents. Plaintiff also sought and obtained
20 discovery from ten nonparties, including from foreign entities by means of letters rogatory, and those
21 nonparties collectively produced over 41,000 pages of documents. Co-Lead Counsel reviewed
22 hundreds of thousands of pages of documents during the course of the litigation. The Parties also
23 engaged in numerous meet and confer conferences regarding discovery as well as many informal
24 discovery conferences with the Court. Co-Lead Counsel prepared for and took 20 depositions: eight
25 depositions in coordination with the Federal Action, and 12 additional depositions following the
26 settlement of the Federal Action. Defendants also deposed Plaintiff;

1 d. served four opening expert reports, retained expert consultants to analyze
2 damages, causation, tracing and accounting issues, researched the applicable law with respect to the
3 claims of Plaintiff and the Class against Defendants and the potential defenses thereto; and

4 e. analyzed, briefed and presented evidence in support of the claims of the Class
5 at three-full day mediations.

6 **III. MEDIATION**

7 17. The Parties participated in three full-day mediations supervised by two well-regarded
8 mediators, the Honorable Layn R. Phillips (Ret.) and Gregory P. Lindstrom, both specializing in the
9 mediation of similar securities class actions and other complex matters, in an effort to reach a
10 resolution. During these negotiations the Parties were each represented by experienced securities
11 litigation counsel well-versed in the facts and law at issue, who debated and fully explored the
12 strengths and weaknesses of their respective claims and defenses.

13 18. On March 31, 2021, the Parties participated in a mediation before Mr. Lindstrom of
14 Phillips ADR. Prior to the mediation, the Parties prepared, exchanged and provided to Mr. Lindstrom
15 detailed mediation statements and exhibits setting forth their respective positions on the merits and
16 damages. Plaintiff and Defendants exchanged comprehensive mediation statements (including
17 numerous exhibits) detailing their respective positions, including an analysis of Plaintiff's and
18 Defendants' theories of falsity, materiality, causation and damages, among other matters. Although
19 the Parties negotiated in good faith, no settlement was reached and litigation continued.

20 19. On August 25, 2022, the Parties participated in a second mediation before Mr.
21 Lindstrom and again prepared, exchanged, and provided detailed mediation statements setting forth
22 their respective positions on the merits and damages. Again, no settlement was reached.

23 20. On March 3, 2023, the Parties attended a full-day in-person mediation with Judge
24 Phillips and Mr. Lindstrom, after exchanging comprehensive mediation statements and exhibits.
25 Although no agreement was reached at the March 3, 2023 mediation, the Parties continued to actively
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1 negotiate toward settlement through the mediators, participating in numerous conference calls with
2 Judge Phillips and Mr. Lindstrom.

3 21. The litigation and settlement efforts summarized above informed the Parties' hard
4 fought, arm's-length negotiations that occurred over the course of more than two years. During these
5 negotiations, Plaintiff's Counsel advanced Plaintiff's positions and were fully prepared to continue
6 to litigate rather than accept a settlement that was not in the best interests of the Class. As a result of
7 the zealous negotiations, the Parties fully understood the nuances of the disputed issues in the Action
8 when they considered – and on March 22, 2023, agreed to – the mediators' proposal from Judge
9 Phillips and Mr. Lindstrom for the monetary terms for a class settlement of this Action.

10 22. On March 23, 2023, the Parties signed a detailed term sheet and thereafter exchanged
11 drafts of the Stipulation and the supporting settlement documents. The Stipulation and its
12 incorporated exhibits constitute the final and binding agreement between the Parties.

13 23. The Settlement reflects careful consideration by the Parties of the benefits, burdens,
14 and risks associated with the continued litigation of this Action. Plaintiff and Co-Lead Counsel's
15 assessment of the propriety of the Settlement was informed by years of litigation, an intimate
16 understanding of the strength and weaknesses of the Action, and continued investigation of and
17 discovery into Defendants' conduct, the impairment and IFRS standards at issue, and all the
18 underlying facts and contentions.

19 **IV. STRENGTHS AND WEAKNESSES OF THE CASE**

20 24. Co-Lead Counsel believe that this cash Settlement for \$36,500,000 is an excellent
21 result for the Class.

22 25. Based on the extensive investigation and review of publicly available and confidential
23 documents produced during discovery, including expert analysis of accounting, damages, tracing and
24 other matters, Plaintiff believes that substantial evidence exists to support his claims. As discussed
25 below, however, proceeding with this Action through summary judgment and/or trial would have
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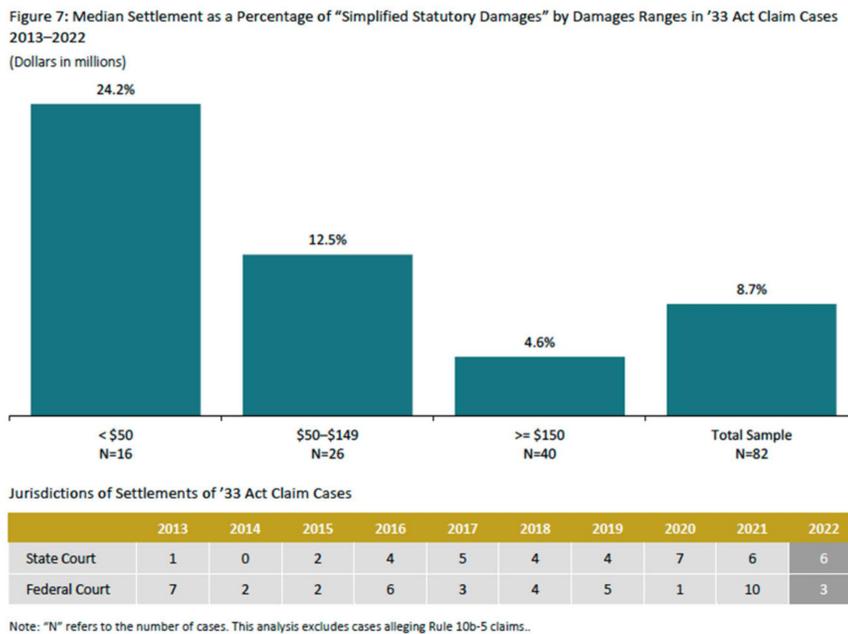
1 posed a number of real and substantial risks for the Class. Co-Lead Counsel carefully considered
2 these risks in the years leading up to the Settlement and during the Parties' negotiations.

3 26. While Plaintiff strongly believes in the merit of his claims, success at further stages of
4 litigation was far from certain. Defendants have vigorously argued that Plaintiff cannot demonstrate
5 the falsity or materiality of the challenged statements in the Registration Statement. Defendants
6 would likely continue to argue that the Offering Documents contained no material misrepresentations
7 and in fact disclosed the very risks Plaintiff alleged were omitted. These issues have been heavily
8 disputed throughout the Action and would present significant challenges to the Class prevailing at
9 trial.

10 27. Plaintiff's burden at summary judgment and trial would require expert testimony on
11 industry-specific issues, complex accounting standards, and damages. Even with the most competent
12 experts in these fields, there could be no guarantee that Plaintiff would prevail on liability and
13 damages. Defendants' experts would likely present opinions designed to establish affirmative
14 defenses, such as the statute of limitations, negative causation, and due diligence, undermine
15 Plaintiff's ability to demonstrate liability, and mitigate or eliminate damages.

16 28. Defendants would likely assert the statutory defense of negative causation. Under
17 § 11(e) of the Securities Act, a defendant can reduce or eliminate damage through a showing that the
18 false or misleading statement or omission alleged was not the cause of the Class's loss. After years
19 of discovery, challenges related to loss causation can prove difficult to overcome at trial. *See, e.g.,*
20 *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 712 (11th Cir. 2012) (affirming trial court's grant
21 of judgment as a matter of law for defendants on the basis of loss causation, overturning jury verdict
22 and award in plaintiff's favor). The risk of no recovery at all was a real possibility in this case. Even
23 apart from the risks, the recovery obtained is tremendous in light of the alleged losses suffered by
24 Class Members. Plaintiff estimates that the Settlement Amount represents between approximately
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40% and 65% of the Class’s recoverable damages.³ Plaintiff derived his estimate in consultation with causation and damages experts on the basis of standard damages methodologies and accounting for Defendants’ various negative causation and related damages arguments. Such a recovery significantly exceeds the median recovery in Securities Act class action cases. As the latest data from Cornerstone Research shows, the median recovery for Securities Act cases under Cornerstone’s Statutory Damages formula is just 8.7% of statutory damages, as reflected in the following chart:⁴



³ Under § 11(e) of the Securities Act, damages are to be calculated as “the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought.” 15 U.S.C. § 77k(e). For the § 12(a)(2) claim, stockholders may sue to “recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if [they] no longer [own] the security.” See 15 U.S.C. § 77l(a)(2). Plaintiff’s § 15 claim is a “control person” liability claim and hence does not call for a separate calculation of damages, but instead simply makes any control person liable for any damages under §§ 11 or 12. Plaintiff has calculated damages under § 11 and believes the § 12 damages would be similar. Defendants have consistently maintained that the damages are vastly smaller than those estimated by Plaintiff.

⁴ The full report, entitled “Securities Class Action Settlements: 2022 Review and Analysis,” is available at: <https://www.cornerstone.com/wp-content/uploads/2023/03/Securities-Class-Action-Settlements-2022-Review-and-Analysis.pdf>.

1 **VI. ADDITIONAL INFORMATION PROVIDED IN ACCORDANCE WITH THIS**
2 **COURT’S GUIDELINES FOR CLASS SETTLEMENT APPROVAL MOTIONS**

3 38. In compliance with this Court’s Guidelines for Motions Relating to Preliminary and
4 Final Approval of Class Actions, we provide further information relevant to Co-Lead Counsel’s
5 experience litigating complex shareholder class actions. Many additional complex cases handled by
6 the firms are described in our respective firm resumes; the following are representative examples of
7 Girard Sharp’s and Hedin Hall’s experience and success in securities class actions:

- 8 • *In re Lehman Brothers Equity/Debt Securities Litigation*, No. 08-Civ-5523
9 (S.D.N.Y.). Girard Sharp was appointed class counsel for a certified class of retail
10 investors in structured products sold by UBS Financial Services, Inc., following the
11 collapse of Lehman Brothers Holdings, Inc. in the largest bankruptcy in American
12 history. The plaintiffs alleged that UBS misrepresented Lehman’s financial condition
and failed to disclose that the “principal protection” feature of many of the notes
13 depended upon Lehman’s solvency. Girard Sharp negotiated a settlement that
14 established a \$120 million fund to resolve these claims.
- 15 • *In re CannTrust Holdings, Inc. Securities Litigation*, No. 1:19-cv-06396-JPO
16 (S.D.N.Y.). Girard Sharp represented investors in California state court against
17 officers, directors and underwriters involved with a Canada-based cannabis operation
18 that was running unregistered “grows.” Coordinated with litigation in Canada, the
CannTrust case settled for \$83 million.
- 19 • *Daccache v. Raymond James Financial, Inc.*, No. 1:16-cv-21575-FAM (S.D. Fla.).
20 Girard Sharp served as a member of the leadership team representing investors in
21 various Jay Peak EB-5 Immigrant Investor Program project offerings. The investors’
22 funds were diverted and misappropriated instead of being applied to the intended
23 project to develop the area surrounding the Jay Peak Ski Resort. In June 2017, the
court approved a settlement of \$150 million for the investors.
- 24 • *In re Oppenheimer Rochester Funds Group Securities Litigation*, No. 09-md-02063-
25 JLK (D. Colo). Girard Sharp represented investors who were misled by the
26 Oppenheimer California Municipal Bond Fund about the investment risks associated
with the fund’s holdings. On November 6, 2017, the Honorable John L. Kane
approved a \$50.75 million settlement for the investors.
- 27 • *Plymouth Cty. Ret. Sys. v. Impinj, Inc.*, Index No. 650629/2019 (N.Y. Sup. Ct., N.Y.
28 Cnty.). Hedin Hall obtained a \$20 million aggregate recovery as co-lead counsel for
an investor class under the Securities Act of 1933.
- *Plutte v. Sea Ltd.*, Index No. 655436/2018 (N.Y. Sup. Ct., N.Y. Cnty.). Hedin Hall
obtained a \$10.75 million settlement for an investor class.
- *In re EverQuote, Inc. Sec. Litig.*, Index No. 650907/2019 (N.Y. Sup. Ct., N.Y. Cnty.).
Hedin Hall secured a \$4.75 million settlement for an investor class.

1 approved in connection with class certification notice earlier in this Action, and has served as a trusted
2 and efficient class action claims administrator for over 30 years. *See*
3 <https://abdataclassaction.com/about-us/our-story/>; <https://abdataclassaction.com/2021/09/a-b-data-remains-a-top-claims-administrator-for-2020/>.

5 **VII. CO-LEAD COUNSEL’S FEES AND EXPENSES**

6 43. Co-Lead Counsel will seek an award of attorneys’ fees not to exceed 35% of the
7 Settlement Amount, plus reasonable litigation expenses and notice and settlement administration
8 costs.

9 44. Co-Lead Counsel will detail their work, hours, lodestar, and expenses in their motion
10 for an award of attorneys’ fees and costs and will provide the Court with information necessary to
11 determine the adequacy of the requested awards based on the percentage of fund method with a
12 lodestar cross-check.

13 **VIII. SERVICE AWARD**

14 45. Co-Lead Counsel will also seek a service award to be awarded to Plaintiff, not to
15 exceed \$10,000, to be paid out of the Settlement Amount. Plaintiff understood and carried out his
16 responsibilities in serving as a Class Representative, participated in this litigation from its inception,
17 spent time providing valuable information to Co-Lead Counsel in connection with investigating and
18 developing the claims in this action, reviewed and approved documents including the Complaint and
19 the Stipulation, and participated in discovery by reviewing discovery requests, producing documents,
20 providing several rounds of written discovery responses, and preparing and sitting for his deposition,
21 in addition to vigorously pursuing the litigation on behalf of the Class.

22 * * *

23 46. For all the reasons provided, we strongly support the Settlement and believe it
24 represents an outstanding result for the Class. As such, we respectfully request that the Court
25 preliminarily approve the proposed Settlement and enter the Preliminary Approval Order.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 5, 2023, at San Francisco, California.

/s/ Adam E. Polk

Adam E. Polk

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 5, 2023, at San Francisco, California.

/s/ David W. Hall

David W. Hall

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2023, I served the foregoing document on all counsel on record through One Legal LLC’s e-filing system.

/s/ Adam E. Polk _____