

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re AppHarvest Securities Litigation

Case No. 1:21-cv-07985-LJL

**NOTICE OF LEAD PLAINTIFF'S UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF  
ALLOCATION AND FINAL CERTIFICATION OF SETTLEMENT CLASS**

PLEASE TAKE NOTICE that Lead Plaintiff Alan Narzissenfeld,<sup>1</sup> on behalf of himself and of all Settlement Class Members, by and through counsel, respectfully moves this Court pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order: (i) finally approving the proposed Settlement; (ii) finally approving the proposed Plan of Allocation for the distribution of the proceeds of the Settlement to eligible claimants; and (iii) affirming the Court's certification of the Settlement Class for settlement purposes only, including by finally certifying Lead Plaintiff as a class representative and Levi & Korsinsky, LLP as class counsel, for the Settlement Class.

Lead Plaintiff and Lead Counsel were well informed of the strengths and weaknesses of their claims through, *inter alia*, an extensive pre-suit investigation, drafting two amended complaints and defeating Defendants' second motion to dismiss, and attending an arms-length mediation session with counsel for the Individual Defendants overseen by an experienced mediator. The Settlement has the full support of Lead Plaintiff.

The Plan of Allocation, which was developed by Lead Plaintiff's consulting experts in consultation with Lead Counsel, accounts for orders of the Court and provides a reasonable method

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<sup>1</sup> Unless otherwise noted, all internal quotations and citations are omitted, all emphasis is added, and capitalized terms not defined herein shall have the same meaning ascribed to them in the Stipulation and Agreement of Settlement dated February 20, 2024 (ECF No. 117-1, the "Stipulation" or "Stip").

for allocating the Net Settlement Fund among Settlement Class Members on a *pro rata* basis of the recovery.

As of the date of this motion, there have been no objections to the proposed Settlement or Plan of Allocation. Plaintiffs have conferred with the Individual Defendants, through counsel, who confirmed the Individual Defendants do not oppose the relief requested in this motion.

This motion is supported by the accompanying Declaration of Gregory M. Potrepka, all exhibits attached thereto, and Plaintiff's supporting Memorandum of Law, all filed contemporaneously herewith, and all pleadings, records, and papers on file herein.

Lead Plaintiff further submits herewith a [Proposed] Order Approving Plan of Allocation of the Net Settlement Fund. Lead Plaintiff will submit a [Proposed] Order and Final Judgment, substantially identical to the version preliminarily approved by the Court (ECF 119-4), with his reply papers.

Dated: May 8, 2024

Respectfully Submitted,

**LEVI & KORSINSKY, LLP**

By: /s/ Gregory M. Potrepka

Gregory M. Potrepka

Shannon L. Hopkins (SH-1887)  
Gregory M. Potrepka (GP-1275)  
1111 Summer Street, Suite 403  
Stamford, CT 06905  
Telephone: (203) 992-4523  
Facsimile: (212) 363-7171  
shopkins@zlk.com  
gpotrepka@zlk.com

*Lead Counsel for Lead Plaintiff and the  
Settlement Class*

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**[PROPOSED] ORDER APPROVING PLAN OF ALLOCATION OF THE NET  
SETTLEMENT FUND**

THIS CAUSE came before the Court on the Unopposed Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds. The Court having carefully reviewed the file, and being otherwise fully advised, ORDERS as follows:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement, (the “Stipulation”) filed with the Court on February 20, 2024 (ECF 117-1), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. Pursuant to and in compliance with Federal Rule of Civil Procedure 23, this Court hereby finds and concludes that due and adequate notice was directed to persons who are Settlement Class Members who could be identified with reasonable effort, advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was afforded to Persons who are Settlement Class Members to be heard with respect to the Plan of Allocation. There were no objections to the Plan of Allocation.

3. The Court hereby finds and concludes that the Plan of Allocation for the calculation of the claims and claimants that is set forth in the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) disseminated to

Settlement Class Members, provides a fair and reasonable basis upon which to allocate the Net Settlement Fund among Settlement Class Members.

4. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the Notice, is, in all respects, fair, reasonable, and adequate and the Court hereby approves the Plan of Allocation.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024

BY THE COURT:

\_\_\_\_\_  
Honorable Lewis J. Liman  
UNITED STATES DISTRICT JUDGE