

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SANDRA LIFSCHITZ, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

NEXTWAVE WIRELESS INC., ALLEN  
SALMASI, GEORGE C. ALEX and FRANK A.  
CASSOU,

Defendants.

CASE NO. 08cv1697-AJB(WMc)  
(consol. w/ 3:08-CV-01934-AJB (WMc))

**CLASS ACTION**

Hon. Anthony J. Battaglia

ALEX BENJAMIN, Individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

NEXTWAVE WIRELESS INC., ALLEN  
SALMASI, GEORGE C. ALEX and FRANK A.  
CASSOU,

Defendants.

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION,  
SETTLEMENT HEARING AND APPLICATION FOR ATTORNEYS' FEES**

**TO: ALL PERSONS WHO PURCHASED NEXTWAVE WIRELESS INC., ("NEXTWAVE")  
COMMON STOCK DURING THE PERIOD BETWEEN NOVEMBER 14, 2006 AND  
AUGUST 7, 2008, INCLUSIVE.**

**PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR FURTHER INFORMATION**

**THIS NOTICE IS TO INFORM YOU OF THE PENDENCY OF THE ABOVE-CAPTIONED CLASS ACTION  
LAWSUIT (THE "ACTION") AND THAT A SETTLEMENT OF THE ACTION HAS BEEN PROPOSED TO THE  
COURT FOR APPROVAL AT A HEARING ON NOVEMBER 9, 2012.**

**SECURITY AND TIME PERIOD:** The Action is brought on behalf of persons who purchased the common stock of NextWave Wireless, Inc., ("NextWave") between November 14, 2006 and August 7, 2008, inclusive (the "Class Period"). If you purchased NextWave common stock during the Class Period, you are a Class Member and your legal rights are affected by the Action and the proposed settlement, whether you act or do not act.

**SETTLEMENT FUND:** A fund in the amount of \$1,400,000, in cash, has been created by the proposed settlement for the Class. Your recovery from the Settlement Fund will depend on the number of shares of common stock of NextWave you purchased in the Class Period, whether you

sold those shares during the Class Period, and the aggregate number of eligible shares that participate in the settlement. Assuming that all of the Class Members participate in the settlement by filing Proof of Claim forms, the estimated recovery per share would be approximately \$0.034, before deduction of any court-ordered attorneys' fees and expenses and costs of administration of the Settlement Fund.

**REASONS FOR SETTLEMENT:** The proposed settlement provides the Class with a substantial dollar recovery and avoids the additional costs and risks associated with continued litigation, including the risk of no recovery for the Class.

**IF THE CASE HAD NOT SETTLED:** Continuing to litigate the case, which is currently on appeal from an order of dismissal by the District Court, could result in dismissal of the Action by the Ninth Circuit, dismissal of the action upon remand at the District Court level by summary judgment or loss after a trial. Defendants vigorously deny any allegation of fault, wrongdoing or liability whatsoever. Lead Plaintiff and Defendants do not agree on the amount of money that could have been won (damages) even if the Lead Plaintiff won at trial. Lead Plaintiff and Defendants also disagree on the following issues, among others: (1) whether the statements made or facts allegedly omitted were false, material, or otherwise actionable under the federal securities laws; (2) whether defendants acted recklessly or intentionally in making their statements to the market; (3) the amount by which NextWave common stock was artificially inflated (if at all) during the Class Period; (4) the effect of various market forces influencing the trading price of NextWave common stock at various times during the Class Period; and (5) the extent (if any) to which the statements that Lead Plaintiff alleged were materially false or misleading influenced the trading price of NextWave common stock during the Class Period.

**FEES AND EXPENSES:** Lead Counsel for the Lead Plaintiff have not received any payment for their work investigating the facts, conducting this litigation and negotiating the settlement on behalf of Lead Plaintiff and the Class. Lead Counsel, on behalf of Plaintiffs' Counsel, will ask the Court to award attorneys' fees in an amount not to exceed 25% of the Settlement Fund and reimbursement of out-of-pocket expenses in an amount not to exceed \$75,000.00. The amounts awarded by the Court will be paid out of the Settlement Fund. If these amounts are awarded by the Court, the average cost per share will be approximately \$0.01.

**COURT HEARING:** The Court has scheduled a hearing on the fairness of the proposed settlement, including the certification of the Class and the request for attorneys' fees and reimbursement of expenses (the "Settlement Fairness Hearing"). The Settlement Fairness Hearing will be held before the Honorable Anthony J. Battaglia, United States District Judge, in Courtroom 12 of the United States Courthouse, 940 Front Street, San Diego, California 92101, on November 9, 2012 at 1:30 p.m.

**THE FOLLOWING DEADLINES APPLY:**

<b>Submit Proof of Claim:</b>	<b>December 10, 2012</b>
<b>Request to be Excluded From the Class Action:</b>	<b>October 19, 2012</b>
<b>File an Objection to the Settlement or Attorneys' Fees:</b>	<b>October 19, 2012</b>

**SUMMARY OF THE ACTION**

In the fall of 2008, two securities fraud class actions were filed in the United States District Court for the Southern District of California; *Lifschitz v. NextWave Wireless, Inc. et al.* (CV-08-01697-MMA-WMC) and *Benjamin v. NextWave, Inc. et al.* (CV-08-1934-H-CAB). Both cases were brought pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. §240.10b-5, alleging that NextWave and certain officers violated the

Exchange Act by issuing materially false and misleading statements regarding the Company's business and financial results throughout the class period. Specifically, the complaints alleged that defendants misrepresented and failed to disclose that: (1) NextWave did not have adequate liquidity to continue operations as it executed its growth strategy and continued making aggressive worldwide acquisitions; (2) NextWave did not have the wherewithal to launch its new WiMAX semiconductor products in the first six months of 2008; (3) NextWave did not have financial resources to continue as a going concern; (4) NextWave did not have the financial resources to continue to operate its world-wide operations through the end of 2008; and (5) defendants had no reasonable basis to make favorable statements that the Company's WiMAX semiconductor products would be available for commercial sale in the first half of 2008.

By Order dated February 24, 2009, the actions were consolidated into the above captioned action (the "Action"), and The White Trust Group was appointed Lead Plaintiff, with Law Offices Bernard M. Gross, P.C. appointed as Lead Counsel and Hulett Harper Stewart LLP appointed as Liaison Counsel for Lead Plaintiff.

On May 15, 2009, the Consolidated Amended Complaint was filed by Lead Plaintiff, individually and on behalf of a class of shareholders who purchased NextWave common stock from November 14, 2006 through August 7, 2008, alleging that NextWave and certain officers, including Salmasi and Alex, violated Sections 10(b) and 20 of the Securities Exchange Act of 1934, 15 U.S.C. §§78j(b), 78t, and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5. On June 29, 2009, the named defendants filed an omnibus motion to dismiss the Consolidated Amended Complaint, submitting a memorandum of law, declaration, and exhibits in support thereof to the Court. Lead Plaintiff responded, on August 19, 2009, by filing a memorandum of law in opposition to the motion to dismiss. Supplemental briefing was also submitted to the Court by Lead Plaintiff thereafter. On March 13, 2010, without oral argument, the Court dismissed the Consolidated Amended Complaint without prejudice, granting Lead Plaintiff the opportunity to replead.

On March 26, 2010, the Second Amended Consolidated Complaint was filed by Lead Plaintiff alleging that Defendants violated Sections 10(b) and 20 of the Securities Exchange Act and SEC Rule 10b-5 during the Class Period. Defendants filed an omnibus motion to dismiss the Second Amended Consolidated Complaint, submitting a memorandum of law, declaration, and exhibits in support thereof to the Court. Lead Plaintiff responded by filing a memorandum of law in opposition to Defendants' motion. On March 16, 2011, without oral argument, the Court dismissed the Second Amended Consolidated Complaint without prejudice, granting Lead Plaintiff the opportunity to replead.

On May 5, 2011, the Third Amended Consolidated Complaint for Violations of the Federal Securities Laws (the "Complaint") was filed by Lead Plaintiff against Defendants. Defendants filed an omnibus motion to dismiss the Complaint, submitting a memorandum of law, declaration, and exhibits in support thereof to the Court. Lead Plaintiff responded by filing a memorandum of law in opposition to Defendants' motion. On November 21, 2011, without oral argument, the Court dismissed the Complaint with prejudice, denying Lead Plaintiff the opportunity to replead.

Thereafter, on December 19, 2011, Lead Plaintiff filed a timely Notice of Appeal with the Ninth Circuit on the District Order granting Defendants' motion to dismiss the Complaint with prejudice. The appeal was docketed with the Ninth Circuit Court of Appeals as No. 11-57207.

## **I. THE PROPOSED SETTLEMENT**

Lead Plaintiff and Defendants engaged in extensive discussions in an effort to reach a settlement of the Action. Pursuant to those arm's length negotiations, the parties agreed to the proposed settlement of \$1,400,000. The complete terms of the proposed settlement are set forth in the Stipulation and Agreement of Settlement, dated June 20, 2012, (the "Stipulation"), on file with the Clerk of the Court.

## **II. CERTIFICATION OF THE CLASS AND REQUESTS FOR EXCLUSION**

### **Certification of the Class**

For purposes of the proposed settlement, the Court, by order dated July 25, 2012, has conditionally certified the Class. The Class is defined as all persons who purchased shares of NextWave common stock between November 14, 2006 and August 7, 2008, inclusive (the "Class Period"). Excluded from the Class are Defendant NextWave, Defendants Salmasi and Alex, members of their immediate families (parents, spouses, siblings and children), any subsidiary or affiliate of NextWave, and the directors or executive officers of NextWave or its subsidiaries or affiliates, or entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assignees of such excluded party.

### **Right to Exclusion From the Class**

You may choose to exclude yourself from the Class. If you choose to exclude yourself, you will not participate in the Class Action and will not share in the Settlement Fund, if the settlement is approved by the Court. You may wish to consult your own legal advisor in order to properly evaluate those rights.

The Court will exclude you from the Class if you make a proper request to be excluded ("Request for Exclusion"). To be valid, your Request for Exclusion must be in writing, and include: (a) your name and address; (b) the name and number of the Action as shown at the top of the first page of this Notice; (c) the name and address of the person in whose name the stock was registered (if other than you); (d) a clear statement requesting to be excluded from the Class; (e) the date(s) of your purchase(s), acquisition(s), sale(s) or disposition(s) of NextWave common stock; (f) the number of shares purchased or sold during the Class Period; (g) the price(s) paid and/or received for the shares; and (h) your signature.

A Request for Exclusion must be postmarked no later than October 19, 2012, and addressed to:

NextWave Request For Exclusion  
NextWave Securities Litigation  
c/o Strategic Claims Services  
P.O. Box 230  
600 Jackson Street, Suite 3  
Media, PA 19063

## **III. THE PLAN OF DISTRIBUTION OF THE NET SETTLEMENT FUND TO CLASS MEMBERS**

The Settlement Fund, after deduction of Court-ordered attorneys' fees and expenses, and administrative fees and costs, including taxes (the "Net Settlement Fund"), shall be distributed to members of the Class who file approved Proofs of Claim ("Authorized Claimants"). Only shares purchased in the Class Period and owned at the close of trading on the last day of the Class Period, August 7, 2008, are eligible to recover from the Net Settlement Fund. The amount of money you will receive from the Net Settlement Fund will be calculated by multiplying the Net Settlement Fund times the ratio of the number of shares you purchased and held at the close of trading on the last day of the Class Period to the aggregate number of shares purchased and held on the last day of the Class Period by all Authorized Claimants. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the settlement. No distribution will be made on a claim where the potential distribution amount is less than \$10.00 (U.S.).

You must file a Proof of Claim no later than December 10, 2012, to be eligible to share in the Net Settlement Fund.

## **IV. ATTORNEYS' FEES AND REIMBURSEMENTS OF COSTS**

Lead Counsel for the Lead Plaintiffs and the Class is Deborah R. Gross, Esquire, Law Offices Bernard M. Gross, P.C., 100 Penn Square East, Suite 450, Philadelphia, Pennsylvania 19107.

Lead Counsel, on behalf of all Plaintiffs' Counsel, will apply to the Court for an award of attorneys' fees not to exceed 25% of the Settlement Fund and reimbursement of expenses, including experts' fees, in an amount not to exceed \$75,000.00.

The amount of attorneys' fees and reimbursed expenses must be awarded by the Court, and the amounts awarded by the Court will be paid from the Settlement Fund.

#### **V. THE SETTLEMENT FAIRNESS HEARING**

At the Settlement Fairness Hearing on November 9, 2012, at 1:30 p.m., the Court will consider whether:

1. the certification of the Class should become final,
2. the proposed settlement of the Action, which includes the Settlement Fund in the amount of \$1,400,000, plus interest, is fair, reasonable and adequate and should be approved,
3. an Order and Final Judgment should be entered dismissing all claims in the Action against the Defendants and dismissing the Action with prejudice and in its entirety, and without costs,
4. the Plan of Distribution of the Net Settlement Fund to Class Members should be approved, and
5. the award of attorneys' fees and reimbursement of expenses requested by Lead Counsel.

#### **VI. LEAD PLAINTIFF'S AND DEFENDANTS' REASONS FOR SETTLEMENT**

Lead Plaintiff and Lead Counsel have carefully weighed the benefits to the Class of the Settlement of the Action for the consideration offered by Defendants against the significant costs, risks of recovery, and delay that continued prosecution of the Action would involve. Lead Plaintiff and Lead Counsel recognize the expense and length of continued proceedings necessary to continue the Action against Defendants through the appeals process, have considered the problems of proof against Defendants, and believe that the certainty and amount of this recovery outweigh the risks and delays of proceeding further with the Action. Defendants, while denying any fault, wrongdoing, or liability whatsoever, or that any of the allegations of the Action are true, have concluded that the further conduct of the Action would be expensive and protracted. Substantial amounts of time, energy and resources of these parties have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by the Lead Plaintiff in the Action. Thus, without conceding any infirmity in their defenses or the validity of any claims, Defendants in order to avoid the cost and distraction of burdensome, protracted and uncertain litigation, have agreed to enter into the Settlement in order to terminate the Action with prejudice.

#### **VII. DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY**

Defendants vigorously deny any allegation of fault, wrongdoing or liability whatsoever. Defendants consider it desirable, however, to enter into this Settlement without in any way acknowledging any fault, wrongdoing or liability, solely for the purpose of terminating the pending appeal of the Court's order dismissing the Action, and to avoid the cost, expense, inconvenience, and time and effort required to continue to defend such complex, burdensome and protracted litigation.

This Settlement and all related documents are not and shall not be construed or be deemed to be evidence or an admission or a concession on the part of any of the Defendants of any fault, wrongdoing, liability or damages whatsoever, and Defendants do not concede the validity of any claims asserted in the Action or any infirmity in the defenses that they have asserted or intended to assert in the Action.

### VIII. APPEARANCES AND OBJECTIONS BY CLASS MEMBERS

Any Class Member who does not request exclusion from the Class may file an objection with the Court to the proposed Settlement, Plan of Distribution, or to Lead Counsel's application for attorneys' fees and reimbursement of expenses. The objection must be filed with the Clerk of the United States District Court for the Southern District of California, 880 Front Street, Room 4290, San Diego, California 92101-8900. The objection must be filed with the Court by October 19, 2012, in order to be considered by the Court.

The objection also must be mailed to the following:

**Lead Counsel for Lead Plaintiff and the Class:** Deborah R. Gross, Esquire, Law Offices Bernard M. Gross, P.C., 100 Penn Square East, Suite 450, Philadelphia, Pennsylvania 19107.

**Defendants' Counsel:** Meryl L. Young, Esquire, Gibson Dunn & Crutcher LLP, 3161 Michelson Drive, Irvine, California 92612-4412.

The written objection must include a written statement signed by the objector and setting forth: (a) the name, address, and telephone number of the objector; (b) the number and price of shares of NextWave common stock purchased by the objector during the Class Period, and the date of each such transaction with proof thereof; (c) the number and price of shares of NextWave common stock sold during the Class Period or thereafter, and the date of each such transaction with proof thereof; and (d) the reason the person is objecting.

Any Class Member who fails to file an objection in the manner provided above shall be deemed to have waived such objection and shall be foreclosed from making any such objection.

### IX. PROOF OF CLAIM PROCESS

To be eligible to participate in the Net Settlement Fund, a Class Member who has not requested exclusion from the Class must mail a properly completed Proof of Claim on or before December 10, 2012, to the following address:

NextWave Proof of Claim  
NextWave Securities Litigation  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 3  
Media, PA 19063

If you do not submit a Proof of Claim, you will not be entitled to share in the Net Settlement Fund. You will, however, be bound by the Settlement and barred and enjoined from asserting any claims which have been or might have been asserted in the Action.

You may obtain a Proof of Claim form by contacting the Claims Administrator, toll free at 1-866-274-4004 or by visiting [www.nextwavelitigationsettlement.com](http://www.nextwavelitigationsettlement.com) on the Internet. You should submit only one Proof of Claim.

Each Proof of Claim received shall be deemed to have been submitted when posted, if mailed by First Class Mail postage prepaid and addressed in accordance with the instructions given in the Proof of Claim.

### X. EFFECT OF APPROVAL OF THE PROPOSED SETTLEMENT AND RELEASE

If the Court approves the proposed Settlement, judgment will be entered approving the Settlement as fair, reasonable and adequate. From and after the Effective Date (defined in the Stipulation as the date on which the Order and Final Judgment approving the Settlement and dismissing the Action with prejudice is final and is no longer subject to any further appeal or judicial

review), the Lead Plaintiff and each Class Member on behalf of themselves and any of their heirs, executors, agents, administrators, successors, and assigns, forever and fully RELEASE, REMISE and DISCHARGE the Released Parties from all Settled Claims, as those terms are defined below.

“Released Parties” means any and all of the Defendants, their past or present subsidiaries, parents, affiliates, successors and predecessors, and the officers, directors, agents, employees, attorneys, underwriters, auditors, accountants, insurers, reinsurers, legal representatives, heirs, executors, administrators, successors in interest or assigns of any of the foregoing.

“Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities of any kind whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in this Action against any of the Released Parties, or (ii) that could have been asserted in any forum by the Class Members or any of them against any of the Released Parties which arise out of or are related to the allegations, transactions, facts, matters or occurrences, representations or omissions, including any public statement by any Defendant during the Class Period, involved, set forth, or referred to in the Complaint.

“Unknown Claims” means any and all Settled Claims which the Lead Plaintiff or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all such Unknown Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiff and each Class Member shall expressly be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived and relinquished any and all provisions, rights and benefits conferred by Cal. Civ. Code §1542, or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In addition, each Class Member will be precluded from bringing suit against any of the Released Parties or otherwise asserting, directly or indirectly, any of the Settled Claims against any of the Released Parties.

#### **XI. NOTICE TO BANKS, BROKERS AND OTHER NOMINEES**

If you purchased NextWave common stock during the Class Period for the beneficial interest of a person or entity other than yourself, you must promptly provide the name and last known address for each person or entity for whom or which you effected such purchases. The information should be sent to the Claims Administrator at the address set forth above. Upon receipt of such information, copies of the Postcard Notice will be sent to each beneficial owner so designated containing directions about how this Notice and the Proof of Claim form can be obtained through the Internet. Alternatively, beneficial owners of NextWave common stock may obtain additional copies of this Notice and Proof of Claim directly by visiting [www.nextwavelitigationsettlement.com](http://www.nextwavelitigationsettlement.com). Lead Counsel shall cause you or your designee to be reimbursed from the Settlement Fund for reasonable expenses actually incurred in mailing copies of this Notice directly or in identifying beneficial owners.

## XII. QUESTIONS

If you have any questions about the Action, the proposed settlement, class certification, Lead Counsel's attorney fees and expenses, this Notice, the Proof of Claim form, or any other matter, please visit the website at [www.nextwavelitigationsettlement.com](http://www.nextwavelitigationsettlement.com), or contact Plaintiffs' Lead Counsel: Deborah R. Gross, Esquire, Law Offices Bernard M. Gross, P.C., 100 Penn Square East, Suite 450, Philadelphia, Pennsylvania 19107, (215) 561-3600 or via email at [debbie@bernardmgross.com](mailto:debbie@bernardmgross.com), or Strategic Claims Services, the Claims Administrator, at 1-866-274-4004, via e-mail at [info@strategicclaims.net](mailto:info@strategicclaims.net), or in writing at:

NextWave Questions  
NextWave Securities Litigation  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 3  
Media, PA 19063

## XIII. EXAMINATION OF PAPERS

You may inspect the papers and pleadings that have been filed in the Action at the Office of the Clerk of Court, the United States District Court of the Southern District of California, 880 Front Street, Room 4290, San Diego, California 92101-8900, during normal business hours of each business day, or by accessing the docket at <http://www.pacer.gov> for a fee.

Dated: San Diego, California  
July 25, 2012

**By Order of the Court**  
**CLERK OF THE COURT**