UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In Re: **SITO MOBILE SOLUTIONS, INC.,** Debtor.	Case No.: 20-21436 Judge: Honorable Stacey L. Meisel Chapter: 11
In Re: **SITO MOBILE, LTD.,** Debtor.	Case No.: 20-21435 Judge: Honorable Stacey L. Meisel Chapter: 11
In Re: **SITO MOBILE R&D IP, LLC.,** Debtor.	Case No.: 20-21437 Judge: Honorable Stacey L. Meisel Chapter: 11

CERTIFICATION OF THOMAS CANDELARIA IN SUPPORT OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS

TO: HONORABLE STACEY L. MEISEL
UNITED STATES BANKRUPTCY JUDGE

THOMAS CANDELARIA, President and CEO of SITO Mobile, Ltd. ("SITO Limited"), the debtor and debtor-in-possession (the "Debtor), with affiliates SITO Mobile Solutions, Inc., ("SITO Solutions"), and SITO Mobile R&D IP, LLC. ("SITO R&D") (collectively, the "Debtors"), hereby certifies to this Court in support of this case and the first day motions as follows:

Origin and Operations of the SITO Companies

1. SITO Limited was originally incorporated in 2001 under the name Single Touch Interactive, Inc.

2. Single Touch Interactive's initial business operations comprised a number of software applications directed at the emerging mobile phone market including an Abbreviated Dial Code (ADC) offering, a platform for downloading content (images, ringtones, games) to a mobile phone, and mobile couponing.

3. Late in 2007, Single Touch Interactive, Inc. signed a Master Services Agreement with AT&T Services, Inc. involving the delivery of a free-to-end-user (FTEU) text reminder system/customer interaction program for Wal-Mart. By 2009, this text (Short Message Service - SMS) reminder program at Wal-Mart had become material to the company's ongoing revenue generation. Through integration with the client's customer relationship management (CRM) database, the SMS service created a platform for building customer loyalty and increased sales via highly tailored programs, including messaging, customer incentive programs, and couponing (e.g. Walmart used FTEU for its pharmacy operations for both prescription refill reminders and pick-up notifications).

4. On May 21, 2008, Single Touch Interactive completed a reverse merger with Hosting Sites Network, Inc. (HSN), a Delaware corporation listed on the OTC Bulletin Board. HSN changes its name to Single Touch Systems, Inc.

5. Throughout 2009 to 2013, management focused the company on growing the SMS product offering, whereby the relationship with AT&T and WalMart represented nearly all reported revenue during that time.

6. With the explosive popularity of mobile phones on the rise, in 2014 the Single Touch companies pivoted and started to rebrand as a mobile ad tech platform offering targeted mobile location-based advertising and mobile messaging,

7. In May 2009 Single Touch Systems acquired streaming patents from Streamworks Technologies, Inc. a Delaware corporation, in a stock purchase agreement.

8. Starting in 2010, Single Touch Systems, Inc., started expanding its IP patent portfolio, which was comprised of internal R&D as well as technology purchased from other entities. The portfolio covers the operations of dynamic advertising insertion into digital audio and video streams, certain methods of sending information to and between mobile devices, and methods surrounding the access of information on a mobile device.

9. On October 12, 2012, Single Touch Systems, Inc. and subsidiary Single Touch Interactive, Inc. created a new wholly owned subsidiary, Single Touch Interactive R&D IP, Inc. to consolidate its intellectual property (IP) assets.

10. In July 2014, Single Touch Systems, Inc. acquired DoubleVision Networks, a privately held mobile audience buying and targeting platform that purchases advertising inventory for targeted mobile devices.

11. On September 26, 2014, Single Touch Systems, Inc. was rebranded with the new name of SITO Mobile, Ltd., and associated subsidiaries of SITO Mobile Solutions, Inc. (previously Single Touch Interactive, Inc.), and SITO Mobile R&D IP, LLC (previously Single

Touch Interactive R&D IP, Inc.,) the holder of all intellectual property of the parent SITO Mobile, Ltd.

Prepetition Indebtedness

12. In October 2014, SITO Limited secured $10mm in senior secured notes from Fortress Credit Co. in exchange for granting a security interest in all assets, including the portfolio of patents, as well as an intellectual property revenue sharing agreement that provided for proceeds from the sale or licensing of patents to be used to reduce the outstanding borrowings from Fortress. With the proceeds from this financing, the SITO Limited repaid all outstanding convertible notes in the aggregate principal amount of $3,708,000 and accrued interest, which eliminated the potential issuance of approximately 7.7 million shares of the SITO Limited's common stock upon the conversion of the convertible notes.

13. In July 2015, SITO Limited acquired Hipcricket for stock and cash for an aggregate price of $3.7 million. The purchase enabled SITO Limited to tap new revenue streams for its mobile advertising business through Hipcricket's existing customer relationships with both advertisers and brands.

14. In August of 2015 SITO Limited obtains an uplisting to the Nasdaq National Market stock exchange.

15. In February of 2017 SITO Limited sells its SMS Messaging Portfolio to 3Cinteractive, effectively exiting from its legacy non-core SMS business to focus on its digital ad-media technology and IP portfolio.

16. Between 2014 and 2017, SITO Limited expanded its yearly top line revenue from $3.5 million to $29 million. However, SITO Limited's operations were consistently short on cash-flow resulting in cumulative losses in operations.

Change in Operations

17. After the acquisitions of DoubleVision and Hipcricket, SITO Limited began investing in the development of its mobile advertising product platform (the "Tech Stack" or "Platform"), which was a combination of programming languages and code, libraries, servers, software, tools and people (both in the United States and offshore). In order to activate the Platform, large amounts of data from numerous providers was purchased and stored in a SITO-owned data cloud storage.

18. The Tech Stack and data allowed brands, agencies and retailers the ability to deliver targeted ad campaigns (e.g. ads, coupons, promotions) to mobile phones based on geo-location, in-store traffic and customer response, allowing marketers to target audiences in real time based not only on location, but on interests, behaviors and brand loyalties and offer the opportunity to deliver a coupon or special offer to a consumer right when he or she is in the vicinity of the vendor. Offerings include: Geo-fencing – targeting customers within a certain radius of a location; Verified Walk-in – tracking foot-traffic to locations and seeing which ads drove action into the store; and Behavioral Targeting – tracking past behaviors over 30-90 day increments allowing for real-time campaign management.

Executive Turnover / Shareholder Challenges

19. In early 2017, the Board accepted the resignations of both the CEO Gerald Hug and CFO Kurt Streams for alleged financial misconduct.

20. A class action lawsuit was filed on February 17, 2017 accusing Hug and Streams for misconduct with Violation of the Federal Securities Law. [1]

21. On August 29, 2019, the SEC sued ex CEO Hug and ex CFO Streams, for fraud relating to expense report charges.[2]

22. In February of 2017, Rory O'Connell was appointed as interim CEO.

23. Starting in February of 2017, the company received a 13-D filing on behalf of Stephen Baksa and Thomas Candelaria. A shareholder proxy ensued to remove five of the six existing Board Members along with the appointments of a permanent CEO, COO, CFO management team.

24. The 13-D proxy successfully passed a shareholder vote, and the changes were announced on June 5, 2017.

25. In the 4th quarter of 2017, Tar Holdings, Inc., a former shareholder, acquires senior secured notes from Fortress Credit Corp.

Further Operational Changes

26. In the second quarter of 2018, the SITO Limited successfully sold 2.6 million shares at $5.00 per share through a secondary stock offering led by Oppenheimer and Lakestreet Capital.

27. A portion of the proceeds was used to repurchase the senior secured notes from Tar Holdings, restoring the intellectual property to SITO Mobile R&D.

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[1]Roper vs SITO MOBILE LTD., JERRY HUG, and KURT STREAMS http://securities.stanford.edu/filings-documents/1060/SML00_01/2017217_f01c_17CV01106.pdf

[2]SEC against GERARD F. HUG and KURT W. STREAMS, Case 1:19-cv-16290 https://www.sec.gov/litigation/HugStreams

28. Throughout 2018, the rapid growth in large customer national enterprise opportunities revealed the inadequacy of the technology platform and its inability to deliver a consistent performing data product. SITO Limited's technology started to show signs of code and data-related problems, as well as becoming increasingly costly to revise existing source code and develop necessary future enhancements. Software development teams in the U.S. and offshore worked around the clock to manage these issues and fix recurring bugs, which prevented successful sales to customers from being delivered.

29. As a result of the continued inefficiencies in the Platform, the company suffers an exodus of senior level employees resulting in approximately $1million in severance obligations.

30. In addition, the Company's senior sales staff is recruited in mass by an ex Sales Manager, who opens an office for a direct competitor across the street from SITO Limited's headquarters.

31. During mid-2018, SITO Limited's management recognized an industry trend in the ad media placement business had become flooded with competition thus reducing margins on ad media placements dramatically. Management pivoted away from focusing on ad media and decided to focus revenue direction towards delivering data intelligence. SITO Limited's data stored in the cloud was not in a form readily available to deliver data insights without major enhancements that could take 6 to 9 months to complete. Sales revenue was impacted because of this delay in delivering an enhanced data insights product, resulting in delayed or cancelled revenue. SITO Limited hired several outside contractors to effect the changes needed to enhance the data, adding direct costs to the bottom line.

32. By the end 2018, continued operational loss from the ad media to the data insights pivot, in addition to the legacy ad media operational expenses, unpaid balances began to accumulate with the past vendors.

33. Realizing the continued high cost of investing in building and delivering a product in house was no longer a viable option, SITO Limited elected in the beginning of 2019 to outsource and partner its technology development around existing customer needs. This move allowed SITO Limited to reduce its overhead significantly by cutting costs associated with maintaining and developing its technology platform, including labor, licensing, and data vendor expenses by 70%.

Aviron Ponzi Fraud

34. By the end of the first quarter of 2019, the salesforce utilized SITO Limited's new outsourced technology partners and puts together a $10 million-dollar digital media marketing contract for Aviron Entertainment ("Aviron"). Aviron contracted to have SITO Solutions develop and execute a targeted social media, data insights and ad media placement campaign (the "Aviron Contract") for a worldwide release of the movie *After*.

35. SITO Solutions incurred $8,674,234.39 in unsecured vendor debt, inclusive of $3.5 million dollars SITO Solutions spent out of pocket to perform under the Aviron Contract.

36. The Aviron Contract work continued through the end of May 2019. SITO Solutions then sought collections from Aviron under its invoices submitted from March, April and May. After numerous discussions with Aviron's CEO, William Sadlier, it became apparent that Aviron was refusing to remit payment according to the terms of the contract.

37. On October 7, 2019, SITO Solutions filed suit against Aviron for $12.42 million, in Los Angeles County Superior Courts, for breach of contract. Subsequently, BlackRock Multi-

Sector Income Trust (lending/investor) and After Productions (production company) each filed separate lawsuits against both Aviron Entertainment and CEO William Sadleir.[3]

38. Due to Aviron indicating that it may seek filing Chapter 7 liquidation to remedy any claims, SITO Solutions was granted a Writ of Attachment hearing scheduled for September 29, 2020.

Securities and Exchange Commission Litigation

39. On May 22, 2020, the Securities and Exchange Commission charged William Sadleir with defrauding a publicly traded fund of at least $13.8 million.[4]

40. After being investigated by the FBI, the US Attorney's Office arrested Mr. Sadleir on charges related to the improper use of $1.7 million dollars in Paycheck Protection Program funds.[5]

41. Aviron's willful failure to pay SITO Solutions caused a significant hardship to the company, basically withholding it of any cash necessary to pay vendor debts, maintain its operation expenses and continued service to customers.

42. While SITO Solutions is conducting its separate Aviron campaign on the new outsourced platform, SITO Solutions non-Aviron business went dark due to its legacy platform provider, Clearcode, shutting down service due to late payment of past invoices.

43. SITO Solutions had over 300 customers running on the platform and had to quickly find an outside, third-party technology partner to manage to assist in running the campaigns, which it finds and transitions its campaigns. During this time, campaigns could not run for approximately

[3] https://unicourt.com/case/ca-la23-sito-mobile-solutions-inc-a-corporation-vs-aviron-pictures-llc-450225
[4] https://www.sec.gov/litigation/litreleases/2020/lr24824.htm
[5] https://deadline.com/2020/05/coronavirus-crime-aviron-pictures-william-sadleir-arrested-1202941935/

three weeks, resulting in the loss of several large key customers, in addition to numerous others due to lack of functionality and technical performance needed to support key customer requirements.

Failed MediaJel Merger and Media Capital Stock Sale

44. In the beginning of the 3rd quarter of 2019, SITO Solutions entered into a Commercial Agreement with MediaJel, Inc. to transition all remaining customer ad media campaigns from the interim platform to the MediaJel platform.

45. In order to maintain the sales pivot strategy, on September 16, 2019, SITO Solutions announced a merger with MediaJel Inc. of Walnut Creek, CA. MediaJel was in the same business as SITO Solutions of delivering targeted ad media campaigns, but it had its own proprietary in-house technology platform to run the campaigns. They were not considered a direct competitor, as their core media business was primarily focused on the cannabis industry. The companies and their investment bankers agreed that this was a good synergistic fit.

46. Over the fourth quarter, significant time and money was put into the due diligence and shareholder proxy for the SITO Limited / MediaJel merger. The Agreement called for, among other things, a current audited financial report of MediaJel as a condition to close the deal. SITO Solutions committed legal and proxy costs to fulfill its obligations to the Agreement and incurred additional unsecured debt as the transaction fails to close in the time specified.

47. Concurrent with the MediaJel transaction, SITO Limited also sought capital from investment firms for a cash infusion. SITO Limited entered into a signed agreement with a private equity firm, Merida Capital, who committed to invest $1million pursuant to a stock purchase agreement. Merida Capital failed to remit payment to SITO Limited.

48. By the end of 2019, MediaJel failed to deliver a current audited financial statement and the merger initiative was allowed to terminate in January of 2020. SITO Limited had incurred significant additional unsecured debt as a result of the attempted merger.

Patent Litigation

49. At the beginning of 2020, SITO Limited adopted the strategy of monetizing its large patent portfolio through the wholly owned subsidiary, SITO R&D. The portfolio is comprised of 40+ patents encompassing 3 broad categories:

- Digital Video and Audio Streaming and Advertising
- Sending Information to and between Mobile Devices
- Accessing Information on a Mobile Device

50. Since 2012, the SITO Limited pursued legal opinions in an attempt to document its intellectual property value. For many years, SITO Limited believes several internet streaming media providers (for example, Hulu and FloSports) have been using technology patented by SITO R&D without permission.

51. Beginning in the second quarter of 2019, SITO R&D consulted with several prominent patent law firms to begin the strategy of monetizing the its patent rights.

52. On May 4, 2020, SITO R&D engaged the law firm of Goldberg Segalla, a heavily experienced firm specializing in patent monetization, on a contingency basis to successfully assert the SITO R&D's patent rights.

53. On June 2, 2020, SITO R&D filed the first of patent infringement lawsuits against Hulu and FloSports (case numbers 6:20-cv-00472 and 6:20-cv-00471, respectively) in the Western District of Texas Court, Waco Division.

54. On October 1, 2020, SITO R&D filed its third patent lawsuit against Blue Scout Media (case number 6:20-cv-00910) in the Western District of Texas Court, Waco Division.

COVID-19 Pandemic Effect on Operations

55. In March 2020, COVID-19 emerged and brought SITO Solutions' operations to a halt. SITO Solutions' core business of delivering ads and data insights to mobile phones and drawing foot traffic into theaters and brick and mortar business was no longer effective because people were not going out of their homes due to COVID-19 instructions to stay indoors. SITO Solutions could not measure the foot traffic its campaigns required, and customers needed. Digital mobile ad business nationally became impacted, and ultimately worldwide by the COVID-19 pandemic.

The Debtors' Bankruptcy goals and need for post-petition financing

56. In April 2020, the SITO Solutions was able to secure a loan under the Payroll Protection Program offered through the Small Business Association to continue operations.

57. Today SITO Limited is in a growing transition phase by having drastically reduced its overhead expenses and employee headcount. Sales from the operating entity (SITO Solutions) are focused on regaining customers via several major pilot initiatives focusing on delivering critical data driven insights. In addition, revenue opportunity appears promising over the next several years from the company's patent monetization subsidiary.

58. The Debtors have negotiated a post-petition financing agreement, described more fully in a related pleading (the "DIP Financing").

59. The Debtors' use of the DIP Financing will be for operational costs, as well as critical vendor costs. The Debtor has filed, or shortly will file, a separate pleading seeking authorization for the critical treatment of such vendors.

60. The operational costs covered by the DIP Financing will enable the Debtors to complete work in process and recover receivables related to that work.

61. The Debtor also expects to file, or has filed, retention application related to its efforts to prosecute its patent litigation described above.

62. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Thomas Candelaria .
THOMAS CANDELARIA
CEO
SITO Mobile, Ltd.,
SITO Mobile Solutions, Inc., and
SITO Mobile R&D IP, LLC