

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
(ALEXANDRIA DIVISION)**

STEPHEN SIMNOWITZ, on Behalf of  
Himself and All Others Similarly Situated,

Plaintiff,

v.

ORBITAL ATK, INC., DAVID W.  
THOMPSON, RONALD R. FOGLEMAN,  
KEVIN P. CHILTON, ROXANNE J.  
DECYK, LENNARD A. FISK, RONALD T.  
KADISH, TIG H. KREKEL, DOUGLAS L.  
MAINE, ROMAN MARTINEZ IV, JANICE  
I. OBUCHOWSKI, JAMES G. ROCHE,  
HARRISON H. SCHMITT, and SCOTT L.  
WEBSTER,

Defendants.

Civil Action No.:

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Plaintiff Stephen Simnowitz (“Plaintiff”), by and through his undersigned counsel, for his complaint against Defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of his counsel as to all other allegations herein, as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over these claims for violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9 thereunder, pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331.

2. This Court also has jurisdiction over Defendants because each defendant is either a corporation that does business in this District, or is an individual with sufficient minimum

contacts with this District such that this Court's exercise of jurisdiction is permissible under due process.

3. Venue is proper in this District under 28 U.S.C. § 1391 because Orbital ATK maintains offices in this District, and events or omissions giving rise to the claims took place in this District. In addition, the Individual Defendants (defined below), because they are Company officers and/or directors, each have extensive contacts to this District.

### **PARTIES**

4. Plaintiff Stephen Simnowitz is, and has been continuously throughout all times relevant hereto, a continuous stockholder of Orbital ATK, Inc.

5. ***Defendant Orbital ATK, Inc.*** ("Orbital" or the "Company") is a Delaware corporation with its principal offices located at 45101 Warp Drive, Dulles, VA 20166. In February 2015, Orbital merged with Alliant Techsystems Inc. (formerly known as "ATK") and the new company became known as Orbital ATK. Orbital's common stock is traded on the New York Stock Exchange under the ticker symbol "OA."

6. ***Defendant David W. Thompson*** ("Thompson") co-founded the Company's predecessor, Orbital Sciences Corporation ("Orbital Sciences"). Defendant Thompson has served as Chairman of the Board of Directors ("Board"), Chief Executive Officer ("CEO") and a director of the Company and its predecessor since 1982. From 1982 to 1999, Defendant Thompson also served as President of Orbital Sciences, resuming that role in mid-2011.

7. ***Defendant Ronald R. Fogleman*** ("Fogleman") has been non-executive Chairman of the Board since November 2009 and a director of the Company and its predecessor since 2004.

8. ***Defendant Kevin P. Chilton*** ("Chilton") is a director of the Company.

9. *Defendant Roxanne J. Decyk* (Decyk”) is a director of the Company.
10. *Defendant Lennard A. Fisk* (“Fisk”) is a director of the Company.
11. *Defendant Ronald T. Kadish* (“Kadish”) is a director of the Company.
12. *Defendant Tig H. Krekel* (“Krekel”) is a director of the Company.
13. *Defendant Douglas L. Maine* (“Maine”) is a director of the Company.
14. *Defendant Roman Martinez IV* (“Martinez”) is a director of the Company.
15. *Defendant Janice I. Obuchowski* (“Obuchowski”) is a director of the Company.
16. *Defendant James G. Roche* (“Roche”) is a director of the Company.
17. *Defendant Harrison H. Schmitt* (“Schmitt”) is a director of the Company.
18. *Defendant Scott L. Webster* (“Webster”) is a director of the Company.

19. Defendants identified in paragraphs 6-18 are collectively referred to herein as the “Board” or the “Individual Defendants.”

#### **OTHER ENTITIES**

20. *Northrop Grumman Corporation* (“Northrop Grumman”) is a Delaware corporation and purports to be leading global security company that offers a broad portfolio of capabilities and technologies to deliver innovative products, systems and solutions for applications areas such as undersea, outer space and cyberspace.

21. *Neptune Merger, Inc.* (“Merger Sub”) is a Delaware company and a wholly-owned subsidiary of Northrop Grumman.

#### **CLASS ACTION ALLEGATIONS**

22. This is a class action brought on behalf of the public stockholders of Orbital against Orbital and its Board for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities

and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. 240.14a-9 and to enjoin the vote on a proposed transaction, pursuant to which Orbital will be acquired by Northrop Grumman, through its wholly-owned subsidiary Merger Sub (the “Proposed Transaction”).

23. Plaintiff brings his claim as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons and entities that own Orbital common stock (the “Class”). Excluded from the Class are Defendants and their affiliates, immediate families, legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

24. Plaintiff’s claim is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

25. The Class is 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 discovery, Plaintiff believes that there are thousands of members in the Class. As of approximately September 26, 2017, there were approximately 57,600,000 shares of Company common stock issued and outstanding. All members of the Class may be identified from records maintained by Orbital or its transfer agent and may be notified of the pendency of this action by mail, using forms of notice similar to that customarily used in securities class actions.

26. Questions of law and fact are common to the Class and predominate over questions affecting any individual Class member, including, among *inter alia*:

(a) Is the Class entitled to injunctive relief or damages as a result of Defendants’ wrongful conduct;

(b) Whether Defendants have disclosed and will disclose all material facts about the Transaction to stockholders;

(c) Have the Individual Defendants breached their fiduciary duties of loyalty and/or care with respect to Plaintiff and the other members of the Class in connection with the Merger; and

(d) Whether Plaintiff and the other members of the Class would be irreparably harmed were the transactions complained of herein consummated.

27. Plaintiff will fairly and adequately protect the interests of the Class, and has no interests contrary to or in conflict with those of the Class that Plaintiff seeks to represent. Plaintiff has retained competent counsel experienced in litigation of this nature.

28. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

29. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

### **SUBSTANTIVE ALLEGATIONS**

30. On September 18, 2017, Orbital and Northrop Grumman issued a joint press release that they had entered into an Agreement and Plan of Merger, dated September 17, 2017 (the “Merger Agreement”) pursuant to which Northrop Grumman will acquire Orbital. Under the terms of the Merger Agreement, Orbital stockholders will have the right to receive \$134.50 in cash for each share of Company common stock they own (the “Merger Consideration”). The Proposed Transaction is valued at approximately \$9.2 billion.

31. On October 2, 2017, Orbital filed a Preliminary Proxy Statement on Schedule 14A (the “Proxy”) with the SEC. The Proxy recommends that Orbital stockholders vote in

favor of the Proposed Transaction. However, it omits or misrepresents material information concerning, among other things: (a) Orbital management's projections, utilized by Orbital's financial advisor, Citigroup Global Markets Inc. ("Citigroup"); (b) the valuation analyses prepared by Citigroup regarding its fairness opinion; and (c) Orbital insiders' potential conflicts of interest.

32. The failure to adequately disclose such material information constitutes a violation of Sections 14(a) and 20(a) of the Exchange Act as Orbital stockholders need such material information in order to cast a fully-informed vote or seek appraisal in connection with the Proposed Transaction.

33. Orbital's public stockholders will be forced to make a voting or appraisal decision on the Proposed Transaction without full disclosure of all material information regarding the Proposed Transaction being provided to them. Plaintiff seeks to enjoin the stockholder vote on the Proposed Transaction unless and until such Exchange Act violations are rectified.

### **BACKGROUND**

34. Orbital purports to be an aerospace and defense systems company and supplier of related products to the U.S. government, allied nations, and contractors. Orbital's main products include launch vehicles and related propulsion systems; satellites and associated components and services; composite aerospace structures; tactical missiles, subsystems and defense electronics; and weapons, armament systems and ammunition.

35. The Company was formed as a result of the February 2015 merger of Orbital and Alliant Techsystems. On February 9, 2015, Alliant Techsystems completed a spin-off and distribution of its former sporting group to Alliant Techsystems' stockholders as a new public

company called Vista Outdoor Inc. (“Vista Outdoor”). Following the distribution, Alliant Techsystems combined with Orbital Sciences, forming the combined company, Orbital.

36. Orbital purports to conduct business in three segments: Space Systems Group, Defense Systems Group, and Flight Systems Group.

(a) *The Space Systems Group* purports to develop and produce small and medium-class satellites to enable global and regional communications and broadcasting, conduct space-related scientific research and perform other activities related to national security. The Space Systems Group purports to develop and produce human-rated space systems for Earth-orbit and deep-space exploration, delivers cargo to the International Space Station, and provides spacecraft components, subsystems, and specialized engineering and operations services to U.S. government agencies;

(b) *The Defense Systems Group* purports to develop and produce small, medium and large caliber ammunition, precision weapons and munitions, high-performance gun systems, and propellant and energetic materials. The Defense Systems Group purports to be a leader in tactical solid rocket motor development and production for air-, sea- and land-based missile systems and produces the U.S. Navy’s Advanced Anti-Radiation Guided Missile;

(c) *The Flight Systems Group* purports to operate in the military and commercial aircraft and launch structures markets. The Flight Systems Group purports to develop launch vehicles to place satellites into Earth orbit and escape trajectories, interceptor and target vehicles for missile defense systems, and suborbital launch vehicles to place payloads into a variety of high-altitude trajectories.

37. On August 3, 2017, the Company reported its second quarter of 2017 financial results. For the quarter just ended, the Company reported revenues of \$1,115 million, a 2.9% increase from \$1,084 million in the second quarter of 2016. The press release focused on the quarter's success and positive outlook, stating: "[t]he quarter was highlighted by solid revenue growth, strong profit margin performance and continued robust contract bookings. As a result, the company increased its revenue and earnings per share guidance and reaffirmed its free cash flow outlook for 2017."

38. Orbital's Chief Financial Officer ("CFO") Garrett E. Pierce ("Pierce") stated in the second quarter 2017 report that:

The second quarter results reflected good top-line growth, considering the temporary Lake City headwind, as well as solid margin performance. At the midpoint of the year, the company is performing well both financially and operationally and is meeting or exceeding our annual plan. . . . As we move to the second half of 2017, we expect revenue and earnings to accelerate and our schedule of operational milestones to trigger significant free cash flow.

### **THE SALES PROCESS**

39. In 2015, a company identified in the Proxy as Company A approached Orbital regarding a potential acquisition. The parties entered into a mutual non-disclosure agreement, but Orbital terminated discussions in December 2015.

40. In 2016, a company identified in the Proxy as Company B approached Orbital regarding a potential acquisition. The parties entered into a mutual non-disclosure agreement, but, following several meetings and discussions, the parties terminated discussions in 2017.

41. The Proposed Transaction is the result of a single-bidder process which benefits the Company insiders and longstanding customer, Northrop Grumman. Despite receiving



interest from potential purchasers as noted above, in this instance the Board failed to conduct even a limited market check before agreeing to the Proposed Transaction.

42. Orbital and Northrup Grumman have a longstanding commercial relationship as Orbital is Northrup Grumman's supplier on several significant programs.

43. On May 24, 2017, during the Aerospace Industries Association Spring Board of Governors meeting, Northrup Grumman's Chairman, CEO and President, Wesley G. Bush ("Bush") initiated a meeting with Thompson. Bush was complimentary of Orbital's work on certain Northrop Grumman programs. He also stated his desire to continue to expand Northrop Grumman's business relations with Orbital, ranging from broader teaming agreements on specific programs, to potential strategic alliances in selected business areas, or a potential business combination of the two companies. Bush did not, however, make any specific proposal regarding a potential business combination, nor were price or any other terms mentioned or discussed. Thompson indicated that Orbital had been focused on pursuing its strategy, which was based on organic growth in Orbital's existing product lines as well as in new products currently in development. He also stated that Orbital itself considered acquisitions of other businesses to strengthen its competitive position and growth opportunities. Thompson said that Orbital was not for sale, but stated that he would report Northrop Grumman's potential interest to Gen. Ronald R. Fogleman, Chairman of the Orbital Board.

44. On June 1, 2017, Thompson met with Fogleman to discuss a range of topics, including Northrop Grumman's interest in a closer business relationship with Orbital, which could potentially include a business combination. Thompson and Fogleman agreed that, while Orbital was not contemplating a sale, management should explore Northrop Grumman's

interest in a range of strategic relationships with Orbital and that Thompson would brief the Orbital Board after more information on the matter was available.

45. On June 9, 2017, Brett B. Lambert, Vice President of Strategic Planning of Northrop Grumman, and Blake E. Larson, Chief Operating Officer of Orbital, met in-person at Orbital's corporate offices to discuss the potential merits of a closer strategic relationship between the companies and possible next steps. No price or other terms in respect of a potential business combination were mentioned or discussed between Lambert and Larson at that meeting.

46. On June 23, 2017, Lambert and Larson held telephone discussions to discuss logistics relating to an upcoming meeting of representatives of the two companies scheduled for June 28, 2017.

47. On June 28, 2017, Thompson, Larson and David M. Wise, Vice President of Corporate Strategy and Integration, of Orbital and Bush, Kenneth L. Bedingfield, Corporate Vice President and Chief Financial Officer, Sheila C. Cheston, Corporate Vice President and General Counsel, Mark A. Caylor, Corporate Vice President, President of Enterprise Services and Chief Strategy Officer and Lambert of Northrop Grumman met in-person in Vienna, Virginia to discuss the possibility of a potential business combination between the two companies. The representatives of Northrop Grumman indicated that Northrop Grumman was interested in a possible acquisition of Orbital, but that Northrop Grumman would not participate in any auction process. The representatives of Northrop Grumman also emphasized their desire to move quickly. Orbital's representatives stated that any potential business combination would have to reflect a compelling valuation and structure for Orbital's stockholders and also would have to maintain Orbital's customer commitments and workforce stability, among other

considerations. Orbital's representatives also emphasized the importance of strict confidentiality during any future discussions. No price or other terms were mentioned or discussed at that meeting.

48. Orbital and Northrop Grumman entered into a mutual non-disclosure agreement, dated June 29, 2017, which did not include a standstill provision. Prior to entering into the non-disclosure agreement, representatives of Orbital and Northrop Grumman disclosed only publicly available information.

49. On June 29 and July 7, 2017, Thompson and Fogleman held telephone discussions in which Thompson reported to Fogleman on the June 28, 2017 meeting with Northrop Grumman, and Thompson and Fogleman discussed an additional meeting to be held with Northrop Grumman on July 11, 2017. Thompson and Fogleman again agreed that, while Orbital was not contemplating a sale, management should continue to explore Northrop Grumman's interest in a potential business combination with Orbital and that a meeting of the Orbital Board could be scheduled during the week of July 17-21, 2017 if Northrop Grumman continued to express interest in a possible acquisition of Orbital at the July 11, 2017 meeting.

50. On July 5-7, 2017, the Northrop Grumman Board held its regularly scheduled annual board meeting focused on Northrop Grumman's strategy and various strategic alternatives. At that meeting, the Northrop Grumman Board received an update on the discussions with Orbital.

51. On July 11, 2017, Thompson, Larson and Wise, Garrett E. Pierce, Chief Financial Officer, Thomas E. McCabe, Senior Vice President, General Counsel and Secretary, and Vivek Upadhyaya, Vice President of Financial Planning and Analysis, of Orbital met in-person in Vienna, Virginia, with Bedingfield, Caylor and Lambert, Cheston, Prabu Natarajan, Vice

President of Business Management, and Karin Flanagan, Vice President of Mergers and Acquisitions of Northrop Grumman, to present an overview of Orbital's business, including its growth strategy, financial plans through 2020, capital allocation priorities, organizational structure and business model, significant programs, contracts and risk items, potential benefits of a combination involving Orbital and Northrop Grumman, workforce matters and Orbital's recent financial restatement. The financial plan Orbital provided to Northrop Grumman included Orbital's financial projections for its business for 2018, 2019 and 2020.

52. On July 12, 2017, Thompson held a telephone discussion with Dr. James G. Roche, a member of the Orbital Board, to discuss Northrop Grumman's interest in a potential transaction. Thompson called Dr. Roche because he was familiar with Northrop Grumman and several of its current executives, having held several executive positions with Northrop Grumman from 1984 to 2001, including Corporate Vice President and President of its electronic sensors and systems sector, as well as having served as Secretary of the U.S. Air Force from 2001 to 2005.

53. On July 13, 18 and 19, 2017, Orbital provided written responses to Northrop Grumman's diligence requests that were made during and subsequent to the July 11, 2017 meeting. Related conference calls between representatives of Orbital and Northrop Grumman were held on July 17 and 18, 2017.

54. On July 21, 2017, the Orbital Board held a telephonic meeting. Attending the meeting were all directors, except for Martin C. Faga and Robert M. Hanisee, who were planning to retire at Orbital's annual meeting of stockholders on August 10, 2017, and Dr. Harrison H. Schmitt, who was traveling internationally. Thompson provided a report on Northrop Grumman's interest in a potential transaction and the interactions between Orbital's

representatives and Northrop Grumman's representatives to date. McCabe briefed the Orbital Board on its fiduciary duties in the context of a potential transaction. A discussion ensued among the members of the Orbital Board regarding a potential transaction. The Orbital Board instructed Thompson to provide an update following the anticipated telephone call from Bush on July 26, 2017.

55. On July 24, 2017, the Northrop Grumman Board held a telephonic meeting during which Bush provided an update on discussions with Orbital and possible next steps.

56. On July 26, 2017, Bush advised Thompson that Northrup Grumman was interested in potentially buying Orbital for \$130.00 per share in cash.

57. On August 17, 2017, Bush advised Thompson that Northrup Grumman was prepared to increase its proposal to \$134.00 per share.

58. The Board met on August 18 and 22, 2017 to consider the new proposal. Although, upon information and belief, the Company had not conducted any proper market check, the Board decided that the risk of a premature disclosure of a potential transaction between Orbital and Northrup Grumman and the possibility of Northrup Grumman withdrawing its offer, outweighed the benefit of contacting other potential strategic buyers.

59. On August 24, 2017, with the Board's authority, Thompson provided Bush a counterproposal requesting that Northrup Grumman either: (i) (a) have committed financing with no financing contingency at closing, (b) agree to take any and all necessary actions to secure antitrust approval, and (c) agree to a tiered break-up fee with a fee of \$125 million for the first 45 days after signing, increasing to \$250 million thereafter; or (ii) increase the price to a range of \$135.00 to \$136.00 per share.

60. On August 25, 2017, Bush informed Thompson that Northrop Grumman was prepared to raise its offer to \$134.50 per share, but would not agree to all provisions, including the two-tiered termination fee.

61. The Board met the same day and agreed it would be willing to accept the \$134.50 per share price.

62. The parties finalized the remaining terms of the deal and on September 16, 2017, Citigroup delivered its fairness opinion and the Board approved the Merger Agreement.

### **PROPOSED TRANSACTION**

63. On September 18, 2017, Orbital and Northrop Grumman issued a joint press release and stated in relevant part:

FALLS CHURCH and DULLES, Va. – Sept. 18, 2017 – Northrop Grumman Corporation (NYSE: NOC), a leading global security company, and Orbital ATK, Inc. (NYSE: OA), a global leader in aerospace and defense technologies, today announced they have entered into a definitive agreement under which Northrop Grumman will acquire Orbital ATK for approximately \$7.8 billion in cash, plus the assumption of \$1.4 billion in net debt. Orbital ATK shareholders will receive all-cash consideration of \$134.50 per share. The agreement has been approved unanimously by the Boards of Directors of both companies. The transaction is expected to close in the first half of 2018 and is subject to customary closing conditions, including regulatory and Orbital ATK shareholder approval.

“The acquisition of Orbital ATK is an exciting strategic step as we continue to invest for profitable growth. Through our combination, customers will benefit from expanded capabilities, accelerated innovation and greater competition in critical global security domains. Our complementary portfolios and technology focused cultures will yield significant value creation through revenue synergies associated with new opportunities, cost savings, operational synergies, and enhanced growth. We look forward to welcoming Orbital ATK’s talented employees to Northrop Grumman, and believe our combined strength will benefit our customers and shareholders,” said Wes Bush, chairman, chief executive officer and president of Northrop Grumman.

\* \* \*

Upon completion of the acquisition, Northrop Grumman plans to establish Orbital ATK as a new, fourth business sector to ensure a strong focus on operating performance and a smooth transition into Northrop Grumman. On a pro forma 2017 basis, Northrop Grumman expects to have sales in the range of \$29.5 to \$30 billion based on current guidance. Northrop Grumman expects the transaction to be accretive to earnings per share and free cash flow per share in the first full year after the transaction closes, and to generate estimated annual pre-tax cost savings of \$150 million by 2020. Northrop Grumman has received fully committed debt financing and expects to put in place permanent financing prior to closing. Northrop Grumman remains committed to maintaining a solid investment grade credit rating and will use its strong cash flow to support debt reduction, while continuing to pay a competitive dividend and repurchase shares.

#### **THE CONFLICT**

64. Upon information and belief, Orbital and Northrop Grumman insiders are the ones who will benefit the most from the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured benefits for themselves from the Proposed Transaction not available to Plaintiff and the shareholders of Orbital.

65. Upon information and belief, the Company insiders will reap financial benefits for securing the transaction with Northrop Grumman. Each outstanding option, restricted share, and performance share will automatically vest and convert into the right to receive cash payments.

66. Upon information and belief, Thompson will receive approximately \$7,770,000; Pierce will receive approximately \$3,423,000; Larson will receive approximately \$4,085,000; Culbertson will receive \$1,855,000 and Lehr will receive approximately \$1,680,000.

67. Upon information and belief, the Company insiders will receive substantial severance benefits in the form of golden parachute compensation: Thompson will receive approximately \$14,365,000; Pierce will receive approximately \$7,670,000; Larson will receive approximately \$8,383,000; Culbertson will receive \$3,830,000 and Lehr will receive approximately \$3,545,000.

### **THE FALSE AND MISLEADING PROXY**

68. Defendants filed a false and misleading Proxy with the SEC. The Proxy omits material information that is necessary for the Company's stockholders to make an informed voting decision in connection with the Proposed Transaction. Specifically, the Proxy does not provide shareholders with information concerning: (a) the Company's management's projections; (b) the valuation analyses prepared by Citigroup in connection with its fairness opinion; and (c) the Company insiders' potential conflicts of interest. Thus, the Company stockholders are being asked to vote for the Proposed Transaction without all material information at their disposal.

69. The Proxy also omits information concerning the Company's management's financial projections and the financial analyses performed by the Company's financial advisor. For example, the Proxy states that:

“Citigroup also performed a discounted cash flow analysis of Orbital by calculating the estimated present value of the unlevered, after-tax free cash flows that Orbital was forecasted to generate during calendar years 2018 through 2020 based on the Orbital projections”

*See* Proxy at 47. However, the Proxy fails to disclose the Company's unlevered, after-tax free cash flows for the projection period and further fails to disclose the line items utilized to calculate the Company's unlevered, after-tax free cash flows as well as the definition of



unlevered, after-tax free cash flows. Further, the Proxy does not disclose: (a) the impact of cash pension reimbursements and contributions and annual cash flows from the Company's A350 and CRS-2 receivables ("Additional Cash Flow Items"); (b) net income; (c) cash from operating activities; (d) capital expenditures; and (e) a reconciliation of all non-GAAP to GAAP metrics.

70. The Proxy also describes Citigroup's fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of Citigroup's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Orbital's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Citigroup's fairness opinion in determining whether to vote in favor of the Proposed Transaction or seek appraisal. This omitted information, if disclosed, would significantly alter the total mix of information available to Orbital's stockholders.

71. With respect to Citigroup's *Discounted Cash Flow Analysis*, the Proxy fails to disclose: (i) the Company's unlevered, after-tax free cash flows for calendar years 2018 through 2020, the constituent line items used in calculating unlevered free cash flows, including cash from operating activities and capital expenditures, as well as the definition of unlevered, after-tax free cash flows; (ii) the Additional Cash Flow Items; (iii) the implied terminal value multiples resulting from the analysis; and (iv) the inputs and assumptions underlying the discount rate range of 6.9% to 8.2%.

72. In Citigroup's *Selected Public Companies Analysis*, the Proxy does not disclose the individual firm value to estimated 2018 EBITDA and per share equity values to estimated 2018 EPS multiples for the selected companies observed by Citigroup as well as any benchmarking financial metrics of the selected companies.

73. In Citigroup's *Selected Transactions Analysis*, the Proxy does not disclose the individual firm value to LTM EBITDA multiples for the selected transactions and the financial metrics and any other multiples observed by Citigroup of the target companies.

74. The Proxy does not disclose whether any members of the Company's management or the Board will continue with the post-close company.

75. The Proxy does not disclose whether any of Northrup Grumman's prior proposals or indications of interest mentioned management retention.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **Class Claims Against Defendants for Violations of Section 14(a) of the Exchange Act And SEC Rule 14a-9 Promulgated Thereunder**

76. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

77. SEC Rule 14a-9, 17 C.F.R. § 240.14a-9, promulgated pursuant to Section 14(a) of the Exchange Act, provides:

No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

78. Defendants disseminated the false and misleading Proxy specified above, which failed to disclose material facts necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading in violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.

79. Defendants were aware of this information and of their duty to disclose this information in the Proxy. The Proxy was prepared, reviewed, and/or disseminated by Defendants. The Proxy misrepresented and/or omitted material facts, including material information about the unfair sale process for the Company, the financial analyses performed by the Company's financial advisor. Defendants were at least negligent in filing the Proxy with these materially false and misleading statements.

80. The omissions and false and misleading statements in the Proxy are material in that a reasonable shareholder would consider them important in deciding how to vote on the Transaction. In addition, a reasonable investor would view a full and accurate disclosure as significantly altering the "total mix" of information made available in the Proxy and in other information reasonably available to unitholders.

81. By reason of the foregoing, Defendants have violated Section 14(a) of the Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.

82. Because of the false and misleading statements in the Proxy, Plaintiff and the putative Class are threatened with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is appropriate to ensure Defendants' misconduct is corrected.

## COUNT II

### **Class Claims Against the Individual Defendants for Violation of Section 20(a) of the Exchange Act**

83. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

84. The Individual Defendants acted as controlling persons of Orbital within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of the Company and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the Proxy filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

85. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

86. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Proxy at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Transaction. They were, thus, directly involved in the making of this document.

87. In addition, as the Proxy sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Transaction. The Proxy purports to describe the various issues and information that they reviewed and considered —descriptions which had input from the Individual Defendants

88. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

89. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands injunctive relief and judgment against defendants jointly and severally, as follows:

(A) declaring this action to be a class action and certifying Plaintiff as the Class representative and his counsel as Class counsel;

(B) declaring that the Registration Statement is materially false or misleading;

(C) enjoining, preliminarily and permanently, the Transaction;

(D) in the event that the Transaction is consummated before the entry of this Court's final judgment, rescinding it or awarding Plaintiff and the Class rescissory damages;

(E) directing that Defendants account to Plaintiff and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties.

(F) awarding Plaintiff the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and

(G) granting Plaintiff and the other members of the Class such further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff respectfully requests a trial by jury on all issues so triable.

Respectfully submitted,

**WILLIAMS & SKILLING PC**

By: /s/ Charles L. Williams  
Charles L. Williams (VSB No. 23587)  
James C. Skilling (VSB No. 27998)  
4801 Radford Avenue, Suite A  
Richmond, VA 23230  
Telephone: (804) 447-0307  
Facsimile: (804) 447-0367  
Email: [cwilliams@williamsandskilling.com](mailto:cwilliams@williamsandskilling.com)  
Email: [jskilling@williamsandskilling.com](mailto:jskilling@williamsandskilling.com)

-and-

**GAINNEY McKENNA & EGGLESTON**

Thomas J. McKenna (*pro hac* pending)  
Gregory M. Eggleston (*pro hac* pending)  
440 Park Avenue South, 5<sup>th</sup> Floor  
New York, NY 10016  
Telephone: (212) 983-1300  
Facsimile: (212) 983-0383  
Email: [tjmckenna@gme-law.com](mailto:tjmckenna@gme-law.com)  
Email: [geggleston@gme-law.com](mailto:geggleston@gme-law.com)

*Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Stephen Simnowitz

(b) County of Residence of First Listed Plaintiff Nassau County, NY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Williams & Skilling, P.C., 4801 Radford Ave., Ste. A, Richmond, VA 23220; (804) 447-0307; Gainey McKenna & Egleston, 440 Park Ave. South, 5th Fl, New York, NY 10016; (212) 983-1300

DEFENDANTS

See attached Rider A

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240, 14a-9

Brief description of cause:

Violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Claude M. Hilton DOCKET NUMBER 17-cv-1139

DATE SIGNATURE OF ATTORNEY OF RECORD

10/18/2017 /s/ Charles L. Williams

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**RIDER A**

Orbital ATK, Inc., Ronald R. Fogleman, Kevin P. Chilton, Roxanne J. Decyk, Lennard A. Fisk, Ronald T. Kadish, Tig H. Krekel, Douglas L. Maine, Roman Martinez IV, Janice I. Obuchowski, James G. Roche, Harrison H. Schmitt, David W. Thompson, and Scott L. Webster



I, Stephen Simnowitz (“Plaintiff”) hereby retain the firm Gainey McKenna & Egleston and such co-counsel it deems appropriate to associate with, subject to their investigation, to pursue my claims on a contingent fee basis and for counsel to advance the costs of the case, with no attorneys fee owing except as may be awarded by the court at the conclusion of the matter and paid out of any recovery obtained and I also hereby declare the following as to the claims asserted under the law that:

Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff’s counsel or in order to participate in this private action.

Plaintiff reviewed a copy of the complaint and is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

Plaintiff’s transactions in (*Orbital ATK, Inc.*) security that is subject of this action during the Class Period are as follows:

<u>No. of Shares</u>	<u>Stock Symbol</u>	<u>Buy/Sell</u>	<u>Date</u>	<u>Price Per Share</u>
100	OA	BUY	02/12/15	\$61.955

**Please list other transactions on a separate sheet of paper, if necessary.**

Plaintiff has sought to serve as a class representative in the following cases within the last three years:

N/A

Plaintiff will not accept any payment serving as a representative party on behalf of the class beyond Plaintiff’s *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of October 2017

/s/ Stephen Simnowitz  
 Signature

Stephen Simnowitz  
 Print Name (& Title if applicable)

# WILLIAMS & SKILLING, P.C.

A PROFESSIONAL CORPORATION + ATTORNEYS AT LAW

4801 RADFORD AVENUE, SUITE A

RICHMOND, VIRGINIA 23230

804 • 447 • 0307

FACSIMILE 804 • 447 • 0367

October 18, 2017

Hon. Fernando Galindo, Clerk  
U.S. District Court  
Eastern District of Virginia  
Alvin V. Bryan U.S. Courthouse  
401 Courthouse Square  
Alexandria, VA 22314

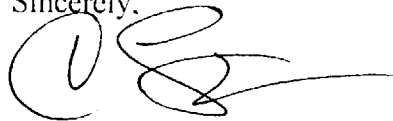
Re: *Stephen Simnowitz, and on Behalf of Himself and All Others Similarly Situated  
v. Orbital ATK, Inc., et al.* (case number pending)

Dear Mr. Galindo:

Enclosed please find a Complaint, Certification and Civil Cover Sheet for filing in the referenced matter. With regard to service, we will contact defense counsel regarding accepting service on behalf of all Defendants. If we are unable to do so promptly, we will contact you regarding the issuance of summonses.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Charles L. Williams

CLW/tdh  
Enclosures

cc: Thomas J. McKenna, Esq.  
Gregory M. Egleston, Esq.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Orbital ATK Facing Sixth Securities Lawsuit Over Proposed Merger](#)

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