UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY ROSIAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MAGNUM HUNTER RESOURCES CORPORATION, GARY C. EVANS, RONALD D. ORMAND, and FRED J. SMITH, JR., Defendants.	:	Case No. 13-cv-02668-KBF
SHUAN FOSTER, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MAGNUM HUNTER RESOURCES CORPORATION, GARY C. EVANS, RONALD D. ORMAND, DAVID S. KRUEGER and FRED J. SMITH, JR., Defendants.	:	Case No. 13-cv-02766-KBF
TEDDY ATCHLEY, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MAGNUM HUNTER RESOURCES CORPORATION, GARY C. EVANS, RONALD D. ORMAND, and FRED J. SMITH, JR., Defendants.	:	Case No. 13-cv-02969-KBF

MARY PAPPAS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MAGNUM HUNTER RESOURCES CORPORATION, GARY C. EVANS, RONALD D. ORMAND, and FRED J. SMITH, JR., Defendants.	:	Case No. 13-cv-03446-KBF
DAVID MACATTE, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MAGNUM HUNTER RESOURCES CORP., GARY C. EVANS, RON ORMAND, JAMES W. DENNY, III, and H.C. "KIP" FERGUSON, III, Defendants.	:	Case No. 13-cv-03899-KBF

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF EDWARD PAIGE AS LEAD PLAINTIFF, APPOINTMENT OF LEAD COUNSEL, AND CONSOLIDATION OF RELATED ACTIONS

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I. INTRODUCTION

Pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), at 15 U.S.C. § 78u-4, and for the reasons set forth below, Edward Paige ("Paige" or "Movant") respectfully moves this Court for an Order appointing Movant as Lead Plaintiff on behalf of himself and all others similarly situated who purchased Magnum Hunter Resources Corporation ("Magnum Hunter" or the "Company") securities between January 17, 2012 and April 22, 2013, inclusive (the "Class Period").[1] Movant also seeks appointment of the law firm of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") as Lead Counsel as well as consolidation of all related actions.

The above-captioned related actions (the "Related Actions")[2] have been filed against Magnum Hunter; its current Chief Executive Officer and the Chairman of its Board of Directors, Gary C. Evans ("Evans"); its current Chief Financial Officer, Ronald D. Ormand ("Ormand"); and its former Senior Vice President of Accounting and Chief Accounting Officer, David S. Krueger ("Krueger") as well as the current Senior Vice President of Accounting and Chief Accounting Officer, Fred J. Smith, Jr. ("Smith") (collectively "Defendants"). The Related Actions are predicated on Defendants' misrepresentation of the Company's financial condition.

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[1] Different complaints name different class periods. The *Rosian*, *Atchley*, *Pappas*, and *Macatte* complaints suggest a class period from May 3, 2012 to April 16, 2013, inclusive, while the *Foster* complaint suggests a class period of January 17, 2013 to April 22, 2013, inclusive. The broader class period is used for purposes of this motion.

[2] There are two additional related cases that have been filed in the United States District Court for the Southern District of Texas: *Carvalho v. Magnum Hunter Resources Corp.*, No. 4:13-cv-1166 (S.D. Tex. Apr. 24, 2013) and *Maingot v. Magnum Hunter Resources Corp.*, No. 4:13-cv-1289 (S.D. Tex. May 3, 2013). The cases were consolidated on May 8, 2013 into the *Carvalho* matter. Dkt. 3.

Movant's losses[3] amount to approximately $324,229.38 during the Class Period as a result of Defendants' misleading conduct. Movant is unaware at this time of any other movant with a greater loss. Thus, under Section 21D of the Exchange Act, Movant is presumptively the "most adequate plaintiff" and should be appointed as lead plaintiff because he has "the largest financial interest in the relief sought by the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). Movant is represented in this action by Cohen Milstein, which is seeking appointment as lead counsel and is eminently qualified to prosecute securities class actions such as this one.

II. BACKGROUND

The Related Actions charge Magnum Hunter and certain of its officers and directors with violations of the Exchange Act, specifically, that Defendants made false and/or misleading statements and/or failed to disclose: (i) that the Company had material weaknesses in its oil and gas properties' valuation, its calculation of oil and gas reserves, its position in certain tax matters, the Company's accounting of its acquisition of NGAS Resources, Inc. ("NGAS"), and the Company's compliance with certain debt covenants; (ii) that, as a result, Magnum Hunter lacked adequate internal and financial controls; and (iii) that, as a result, the Company's financial statements were materially false and misleading at all relevant times.

On April 16, 2013, Magnum Hunter disclosed that it had dismissed its outside auditor, PricewaterhouseCoopers LLP ("PwC"), after PwC advised it of material weaknesses in Magnum Hunter's internal accounting controls, and that PwC had demanded further investigation into: (1) Magnum Hunter's oil and gas properties' valuation; (2) calculation of its oil and gas reserves;

[3] Movant's losses, as detailed herein, are not the same as legally compensable damages, measurement of which is often a complex legal question that generally cannot be determined at this stage of the litigation. The approximate losses can, however, be determined from the executed certifications required under Section 21D of the Exchange Act, and based upon reference to information concerning the market for Magnum Hunter securities. *See* Decl. of S. Douglas Bunch in Supp. of Mot. of Edward Paige ("Bunch Decl."), at Exs. B and C.

(3) its position with respect to certain tax matters; (4) its accounting for its acquisition of NGAS; and (5) its compliance with certain debt covenants. Following these and subsequent disclosures, the price of Magnum Hunter's publicly traded securities plummeted, losing billions of dollars in market capitalization.

By falsely inflating the Company's financial performance, and inflating Magnum Hunter's stock price, Defendants were able to, *inter alia*: 1) generate upward movement in Magnum Hunter's stock price; 2) facilitate the sale of hundreds of thousands of dollars of privately-held Magnum Hunter stock by the Individual Defendants at fraud-inflated prices; 3) facilitate the sale by Magnum Hunter of more than $900 million of its common stock, preferred shares and publicly-traded debt in multiple offerings conducted during the Class Period; 4) obtain a $40+ million increase in the borrowing base under its $750 million senior bank facility in March 2013; 5) meet forecasted revenue and net income amounts; 6) use the Company's artificially inflated stock price to acquire numerous assets; 7) maintain the illusion of the Company's growth to investors; and 8) justify the excessive compensation and undeserved bonuses the individual Defendants were awarded.

III. ARGUMENT

As discussed below, Movant satisfies each of the requirements of the PSLRA and is therefore qualified for appointment as Lead Plaintiff. Additionally, Movant seeks appointment of Cohen Milstein as Lead Counsel for the Class.

A. Movant Satisfies the Procedural Requirements For Appointment as Lead Plaintiff

The Exchange Act, 15 U.S.C. § 78u-4, establishes a procedure for the appointment of a lead plaintiff in "each private action arising under the [Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-4(a)(1).

First, the plaintiff who files the initial action must publish a notice to the class within 20 days of filing the action, informing class members of their right to file a motion for appointment as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i). The first such notice here was published on April 23, 2013 (*see* Bunch Decl., Ex. A).

The PSLRA further provides that within 90 days after the publication of the notice of pendency, or as soon as practicable after the actions have been consolidated, the Court shall consider any motion made by a class member and "shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members." 15 U.S.C. § 78u-4(a)(3)(B)(i).

The 60-day time period provided by the PSLRA in which applications for appointment as lead plaintiff must be filed expires on June 24, 2013. Movant has moved within the statutory 60-day time period. The motion contains the required certification setting forth, *inter alia*, Movant's transactions in Magnum Hunter Resources Corporation securities during the Class Period, and indicates that Movant has reviewed a complaint filed in the case and is willing to serve as a representative party on behalf of the Class. *See* Bunch Decl., Ex. B. In addition, Movant has selected and retained competent and experienced counsel, as set forth in counsel's resume. *See* Cohen Milstein resume at Bunch Decl., Ex. D. As demonstrated in its resume, Cohen Milstein has developed an excellent reputation for successfully prosecuting federal securities law claims.

B. Movant Satisfies the Legal Prerequisites For Appointment as Lead Plaintiff

1. Movant Is Presumptively the Most Adequate Plaintiff

The PSLRA sets forth procedures for the appointment of a lead plaintiff in class actions brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(1). The PSLRA provides that this Court:

> shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

15 U.S.C. § 78u-4(a)(3)(B)(i). In adjudicating this motion, the Court must be guided by a presumption that the most adequate plaintiff is the person or group of persons who (a) filed the Complaint or made a motion to serve as lead plaintiff, (b) has the largest financial interest in the relief sought by the class, and (c) otherwise satisfies the requirements of Fed. R. Civ. P. 23 and 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). This presumption may be rebutted by proof that the presumptively most adequate plaintiff "will not fairly and adequately protect the interests of the class" or "is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Movant is qualified for appointment as lead plaintiff. During the Class Period, Movant suffered losses of approximately $324,229.38[4] from his purchases of Magnum Hunter securities. Movant suffered these losses when it was revealed that the Company's financial condition was not as portrayed. Movant is not aware of any other movant with a larger financial interest in the relief sought by the Class.

Because Movant believes he possesses the most significant interest in the outcome of this litigation, he is presumed to be the "most adequate" plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). Further, Movant is both qualified to represent the Class and willing to serve as a representative party. Finally, Movant has selected counsel that is highly experienced in prosecuting securities class actions such as this one. Accordingly, Movant satisfies the requirements for appointment as Lead Plaintiff under the PSLRA and the instant motion should be granted.

[4] A copy of Movant's certification is attached as Exhibit B to the Bunch Decl. and a copy of Movant's loss calculations are attached as Exhibit C.

2. Movant Satisfies the Requirements of Rule 23

In addition to requiring that the lead plaintiff have the largest financial interest, the PSLRA requires that the lead plaintiff must "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc); *see also In re Elan Corp. Sec. Litig.,* No. 02 Civ. 865 (WK) (FM), 2002 U.S. Dist. LEXIS 23162, at *7 (S.D.N.Y. Dec. 3, 2002); *Albert Fadem Trust v. Citigroup Inc.*, 239 F. Supp. 2d 344, 347 (S.D.N.Y. 2002). Rule 23(a) requires that (1) the class be so numerous that joinder of all members is impracticable; (2) there be questions of law or fact common to the class; (3) such claims be typical of those of the class; and (4) the representatives fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Typicality and adequacy of representation are the only provisions relevant to the determination of lead plaintiff under the PSLRA. *In re Crayfish Co. Sec. Litig.*, No. 00 Civ. 6766 (DAB), 2002 U.S. Dist. LEXIS 10134, at *14 (S.D.N.Y. June 6, 2002) (citing *In re Olsten Corp. Sec. Litig.*, 3 F. Supp. 2d 286, 296 (E.D.N.Y. 1998) and *Weltz v. Lee*, 199 F.R.D 129, 133 (S.D.N.Y. 2001)).

The typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied where "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). A "claim will meet the typicality requirement if 'each class member's claim arises from the same course of conduct, and each class member makes similar legal arguments to prove the defendants' liability.'" *Olsten*, 3 F. Supp. 2d at 296 (quoting *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)); *see also Fields v. Biomatrix, Inc.*, 198 F.R.D. 451, 456 (D.N.J. 2000). The typicality standard is met even where minor distinctions exist. *Id.* As one court has noted: "The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class. Complete identification between the claims constituting each individual action is not required." *Chisholm v. TranSouth*

Fin. Corp., 184 F.R.D. 556, 563-64 (E.D. Va. 1999) (internal citation omitted). The typicality requirement is plainly satisfied in the instant case, where Movant seeks the same relief and advances the same legal theories as class members.

The adequacy of representation requirement of Rule 23(a)(4) is satisfied where it is established that a representative party "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Representation is adequate when "(1) class counsel is qualified, experienced and generally able to conduct the litigation; (2) the class members [d]o not have interests that are antagonistic to one another; and (3) the class has a sufficient interest in the outcome of the case to ensure vigorous adequacy." *Weltz*, 199 F.R.D. at 133 (citing *Olsten*, 3 F. Supp. 2d at 296).

Movant is an adequate representative for the class. Movant purchased Magnum Hunter securities during the Class Period and, like other putative class members, suffered a loss in the form of diminution of the value of his securities. Moreover, Movant has retained counsel highly experienced in prosecuting securities class actions vigorously and efficiently, and has timely submitted his choice to the Court for approval pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

C. The Court Should Appoint Cohen Milstein as Lead Counsel

The PSLRA vests authority in the lead plaintiff to select lead counsel, subject to approval by the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). Thus, a court should not disturb the lead plaintiff's selection of counsel unless such interference is necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). Movant has selected Cohen Milstein to serve as Lead Counsel, and appointing Cohen Milstein as Lead Counsel would be prudent to protect the interests of the class.

As detailed in its firm resume, Cohen Milstein has extensive expertise and experience in the field of securities litigation and has successfully prosecuted numerous securities fraud class

actions and obtained excellent recoveries on behalf of defrauded investors.[5] Thus, the Court may be confident that the class will receive the highest caliber of legal representation in full compliance with the mandates of the PSLRA. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *Albert Fadem Trust*, 239 F. Supp. 2d at 348 (approving as lead counsel law firm with "substantial experience and success in prosecuting securities fraud actions").

D. The Related Actions Should Be Consolidated Pursuant to Fed. R. Civ. P. 42(a)

Class action shareholder suits are ideally suited for consolidation pursuant to Rule 42(a). *See Weltz*, 199 F. R.D. at 131. Indeed, "in securities actions where the complaints are based on the same public statements and reports, consolidation is appropriate if there are common questions of law and fact and the parties will not be prejudiced." *Weltz*, 199 F.R.D. at 131 (internal quotations and citation omitted).

The Related Actions present virtually identical factual and legal issues and allege similar violations of the federal securities laws. They involve substantially the same parties and arise from the same underlying facts and circumstances. "The proper solution to problems caused by the existence of two or more cases involving the same parties and issues, simultaneously pending in the same court would be to consolidate them under Rule 42(a)." *Hargett v. Valley Fed. Sav. Bank*, 60 F.3d 754, 765-66 (11th Cir. 1995) (quoting *Miller v. United States Postal Serv.*, 729 F.2d 1033, 1036 (5th Cir. 1995)); *see also Internet Law Library, Inc. v. Southridge Capital Mgmt., LLC*, 208 F.R.D. 59, 61 (S.D.N.Y. 2002); *Primavera Familienstiftung v. Askin*, 173 F.R.D. 115, 129 (S.D.N.Y. 1997). Because these actions are based on the same facts and involve the same subject matter, discovery obtained in one lawsuit will undoubtedly be relevant to all others. Indeed, "given the near-identity of allegations among the Actions," a slight difference in

[5] A copy of Cohen Milstein's firm resume is attached to the Bunch Decl. as Ex. D.

class periods "does not preclude consolidation." *In re CMED Sec. Litig.*, No. 11 Civ. 9297 (KBF), 2012 U.S. Dist. LEXIS 47785, at *5 (S.D.N.Y. Apr. 2, 2012) (Forrest, J.) (holding that a difference of several months does not preclude consolidation). Consolidation of the Related Actions is thus appropriate as common questions of law and fact predominate in these actions. Fed. R. Civ. P. 42(a). Thus, consolidation is appropriate here. Accordingly, the motion to consolidate the Related Actions should be granted.

IV. CONCLUSION

Based on the foregoing, Movant respectfully requests that the Court: (i) appoint him as Lead Plaintiff; (ii) appoint Cohen Milstein as Lead Counsel; (iii) consolidate all Related Actions; and (iv) grant such other relief as the Court may deem to be just and proper.

Dated: June 24, 2013

Respectfully submitted,

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