UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HORACE CARVALHO, Individually and on Behalf of All Other Persons Similarly Situated, Plaintiff, vs. MAGNUM HUNTER RESOURCES CORPORATION, et al., Defendants.	§	CIVIL ACTION NO. **4:13-CV-1166** CLASS ACTION
DAVID MAINGOT, Individually and on Behalf of All Other Persons Similarly Situated, Plaintiff, vs. MAGNUM HUNTER RESOURCES CORPORATION, et al., Defendants.	§	CIVIL ACTION NO. **4:13-CV-1289** CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF NEXT HORIZON GROUP FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF COUNSEL

Proposed Lead Plaintiffs Josh Sanford and Next Horizon LLLP ("Next Horizon Group" or "Movant") respectfully submit this Memorandum of Law in support of their motion for the entry of an order: (1) appointing Next Horizon Group as Lead Plaintiff; and (2) approving Next Horizon Group's selection of Morgan & Morgan, P.C. ("Morgan & Morgan") as Lead Counsel and The Steckler Law Firm as Liaison Counsel for the Class (as defined below)[1].

I. INTRODUCTION

Presently pending before this court are two securities class action lawsuits (the "Texas Actions" or "Actions") brought against Magnum Hunter Resources Corporation ("Magnum Hunter" or the "Company") and various of its officers and directors on behalf of purchasers of Magnum Hunter securities between January 17, 2012 and April 22, 2013[2], inclusive (the "Class Period"). The Actions allege violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5.

The Texas Actions were consolidated on May 8, 2013. The plaintiff in the first Texas case, Horace Carvalho, filed a notice of dismissal on June 12, 2013. Five substantially similar

[1] The PSLRA permits any putative class member -- regardless of whether they have filed a complaint -- to move for appointment of lead plaintiff. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Consequently, Movant is unable to identify those class members that may file competing motions and accordingly oppose this motion. Courts have held that defendants do not have standing to object to lead plaintiff motions. *See, e.g., In re Waste Management, Inc. Sec. Litig.*, 128 F.Supp.2d 401, 409 (S.D. Tex. 2000)

[2] One of the Texas Actions states a shorter class period of May 3, 2012 through April 16, 2013. With regard to the proper class period for purposes of selecting a lead plaintiff, courts have favored using the longest class period. *See, e.g., In re Doral Fin. Corp. Sec. Litig.*, 414 F. Supp. 2d 398, 402-03 (S.D.N.Y. 2006) ("I find that the use of the longer, most inclusive class period ... is proper, as it encompasses more potential class members..."). There is a risk, however, to blindly accepting the longest class period without further inquiry, as potential lead plaintiffs would be encouraged to manipulate the class period so they had the largest financial interest. *See Plumbers & Pipefitters Local 562 Pension Fund v. MGIC Inv. Corp.*, 256 F.R.D. 620, 625 (E.D.Wis.2009).

actions were filed in the United States District Court for the Southern District of New York ("New York Actions")[3]. The New York Actions were consolidated on May 16, 2013.

On March 18, 2013, Magnum Hunter announced that it would delay filing its annual report on Form 10-K for the year ended December 31, 2012. The Company attributed its delay to the discovery of "certain material weaknesses in its internal controls over financial reporting." Thereafter, on April 16, 2013, Magnum Hunter announced that the Company had dismissed PricewaterhouseCoopers LLP ("PWC") as the Company's independent registered public auditor effective immediately. PWC, according to Magnum Hunter, had identified certain issues in the Company's financial reporting, including: (i) that information had come to PWC's attention that if further investigated may have a material impact on the fairness or reliability of Company's consolidated financial statements, and this information was not further investigated and resolved to PWC's satisfaction prior to its dismissal, and (ii) of the need to significantly expand the scope of PWC's audit of the Company's consolidated financial statements for the fiscal year ended December 31, 2012.

Magnum Hunter is alleged to have made materially misleading statements regarding the Company's financial reporting problems, and/or failed to disclose information necessary to make various statements not materially misleading. As a result, millions of Magnum Hunter shares were sold at artificially inflated prices during the Class Period.

Pursuant to the Exchange Act, as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and for the reasons set forth below, Next Horizon Group respectfully

[3] The New York Actions are: *Rosian v Magnum Hunter Resources Corporation, et al*. 13-cv-2668 (S.D.N.Y. April 23, 2013); *Foster v Magnum Hunter Resources Corporation, et al*. 13-cv-2766 (S.D.N.Y. April 25, 2013); *Atchley v Magnum Hunter Resources Corporation, et al*. 13-cv-2969 (S.D.N.Y. May 2, 2013); *Pappas v Magnum Hunter Resources Corporation, et al*. 13-cv-3446 (S.D.N.Y. May 22, 2013); and *Macatte v Magnum Hunter Resources Corp., et al*. 13-cv-3899 (S.D.N.Y. June 7, 2013)

submits that they should be appointed Lead Plaintiff on behalf of purchasers of all Magnum Hunter securities during the Class Period. As set forth in detail below, Next Horizon Group lost over $255,000 on investments in Magnum Hunter common stock listed on the New York Stock Exchange (the "NYSE").

Copies of the PSLRA-required Certifications submitted by Josh Sanford, both in his individual capacity and in his capacity as General Partner of Next Horizon LLLP, are attached as Exhibit B to the Steckler Declaration. These Certifications set forth all of transactions of Josh Sanford and Next Horizon LLLP in Magnum Hunter during the Class Period. In addition, a chart reflecting the calculation of Next Horizon Group's financial losses in Magnum Hunter stock during the Class Period is attached as Exhibit C to the Steckler Declaration. In light of the significant transactions and losses reflected in these exhibits, Next Horizon Group has a substantial financial interest in the relief sought by this litigation—an interest believed to be greater than that of any competing movant. Next Horizon Group also meets the typicality and adequacy requirements of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") because the claims are typical of those of absent Class members and they will fairly and adequately represent the interests of the Class. In short, Next Horizon Group is the "most adequate plaintiff" and should be appointed Lead Plaintiff.

Finally, pursuant to the PSLRA, the Court should approve the Next Horizon Group's choice of Morgan & Morgan, P.C. ("Morgan & Morgan") to serve as Lead Counsel and The Steckler Law Firm to serve as Liaison Counsel on behalf of the Class. Morgan & Morgan and The Steckler Law Firm are both eminently qualified to prosecute this action and have extensive experience in the prosecution of class actions and securities fraud claims such as those asserted in the Action, and will adequately represent the interests of all Class members.

II. STATEMENT OF FACTS[4]

Magnum Hunter is an independent oil and gas company that engages in the acquisition, exploration, exploitation, development and production of crude oil, natural gas and natural gas liquids primarily in West Virginia, Ohio, Texas, Kentucky and North Dakota, as well as in Saskatchewan, Canada. The Company is active in five of the "most prolific unconventional shale resource plays in North America," namely the Marcellus Shale, Utica Shale, Eagle Ford Shale, Williston Basin/Bakken Shale and the Pearshall Shale.

On March 18, 2013, Magnum Hunter announced that it would delay filing its 2012 Form 10-K for the year ended December 31, 2012. The Company's delay was attributed to the discovery of "material weaknesses in its internal controls over financial reporting." On April 16, 2013, the Company disclosed that it had dismissed its "independent" outside auditor, PWC at the direction of the Audit Committee of the Company's Board of Directors, after PWC advised the Company of material weaknesses in the Company's internal accounting controls. According to the Company, PWC identified certain issues that may have a material impact on the fairness or reliability of Magnum Hunter's consolidated financial statements, including: (1) valuation of the Company's oil and gas properties; (2) calculation of the Company's oil and gas reserves; (3) the Company's position with respect to certain tax matters; (4) the Company's accounting of its acquisition of NGAS Resources, Inc.; and (5) the Company's compliance with certain debt covenants. This was the second auditor the Company had terminated in connection with the fiscal 2012 audit, and this firing rendered the Company unable to provide audited financial statements for 2012.

[4] The statement of facts is based on the on the complaints filed in this matter, namely: *Carvalho v Magnum Hunter Resources Corporation, et al*. 13-cv-1166 (S.D. Tex. April 24, 2013); and *Maingot v Magnum Hunter Resources Corporation, et al*. 13-cv-2766 (S.D. Tex. May 5, 2013).

After having filed multiple corrections to its SEC filings, restating its second quarter 2012 financial results in October 2012 to increase its quarterly loss reported by nearly $4 million and disclosing defects in its internal controls that it intentionally understated, and nearly getting its stock delisted in January 2013 for failing to hold an annual state corporate law and NYSE required shareholder meeting, Magnum Hunter disclosed that it could not timely report its audited 2012 financial results and waivers from its lenders as to debt covenants would be required. Upon the dissemination of this news, Magnum Hunter shares declined $0.49 per share, or 14.76%, to close at $2.83 per share on April 17, 2013, on unusually heavy trading volume.

On April 22, 2013, Magnum Hunter disclosed that PWC disagreed with Magnum Hunter's account of their parting, disclosing a letter from PWC, sent April 18, 2013, stating that PWC did "not agree with the statements concerning" whether there had been any "reportable events" as defined in Item 304(a)(1)(v) or Regulation S-K under the Securities Act of 1933, relating to PWC's engagement as the Company's independent registered public accounting firm. PWC went on to state in the letter that PWC had "advised the Company that information [had come] to [its] attention that [PWC had] concluded materially impacts the fairness or reliability of the Company's consolidated financial statements and this issue was not resolved to [PWC's] satisfaction prior to [its] dismissal." Upon revelation of this disagreement, the Company's stock further declined, on usually high trading volume, to close at $2.50 per share.

Throughout the Class Period, Defendants orchestrated a scheme to inflate the Company's share prices through a series of materially false and misleading statements and omissions regarding the Company's finances, business, prospects, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose: (i) that the Company had material weaknesses in its valuation of its oil and gas properties, its

calculation of oil and gas reserves, its position with respect to 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 of the above, the Company's financial statements were materially false and misleading at all relevant times.

Defendants' wrongful acts and false and misleading statements and omissions have caused a precipitous decline in the market value of the Company's stock. The price of Magnum Hunter stock, which had traded as high as $7.71 per share during the Class Period, plummeted more than 67% to close at $2.50 per share on April 22, 2013, erasing more than $878.5 million in market capitalization.

III. ARGUMENT

A. NEXT HORIZON SHOULD BE APPOINTED LEAD PLAINTIFF

1. The PSLRA Standard for Appointing Lead Plaintiff

The PSLRA establishes the procedure for the appointment of a lead plaintiff in "each private action arising under [the 1934 Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-4(a)(l); *see also* 15 U.S.C. § 78u-4(a)(3)(B) (setting forth procedure for selecting lead plaintiff); *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (same). Section 21D(a)(3)(A)(i) of the PSLRA provides that the pendency of the action must be publicized in a widely circulated national business-oriented publication or wire service not later than 20 days after filing of the first complaint. Next, "not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class." 15 U.S.C. § 78u-4(a)(3)(A)(i). Pursuant to the PSLRA, the Court shall adopt a presumption that the most adequate plaintiff is the person or group of persons that has either filed the complaint or made a motion in response to

a notice . . .; in the determination of the court, has the largest financial interest in the relief sought by the class; and otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also Cavanaugh*, 306 F.3d at 729-30. Next Horizon Group meets each of these requirements and should therefore be appointed as Lead Plaintiff.

2. This Motion Is Timely

The notice published in this action on April 23, 2013 advised class members of: (1) the pendency of the action; (2) the claims asserted therein; (3) the proposed class period; and (4) the right to move the Court to be appointed as lead plaintiff within 60 days from April 23, 2013, or June 24, 2013. *See* Steckler Declaration ("Steckler Decl."), Ex. A. This Motion is therefore timely filed.

3. Next Horizon Group Has the Largest Financial Interest in the Relief Sought by the Class

The PSLRA instructs the Court to adopt a rebuttable presumption that the "most adequate plaintiff" for lead plaintiff purposes is the movant with the largest financial interest in the relief sought by the class, so long as the movant meets the requirements of Rule 23. *See* 15 U.S.C. §78u-4 (a)(3)(B)(iii)(I). Next Horizon Group lost approximately $255,000 in investments in Magnum Hunter during the Class Period. *See* Steckler Decl., Ex. C. As stated in the Certifications (Steckler Decl., Ex. B), Josh Sanford is a General Partner of Next Horizon LLLP. Next Horizon LLLP is a limited partnership, established by Josh Sanford, with one other member. No party other that the two members has contributed funds to Next Horizon LLLP. As a General Partner, Josh Sanford has control rights and the authority to institute suit and litigate on behalf of Next Horizon LLLP. Finally, as Josh Sanford is the founder and General Partner of Next Horizon LLLP, there is a clear pre-litigation relationship between them.

Moreover, the appointment of a small group of related class members as Lead Plaintiff is expressly permitted by the PSLRA, as the court in this District and the majority of courts throughout the country have recognized. *See In re Waste Mgmt., Inc. Sec. Litig*., 128 F.Supp.2d 401, 413 (S.D. Tex. 2000) (concluding that "a small group with the largest financial interest in the outcome of the litigation and a pre-litigation relationship based on more than their losing investment, satisfies the terms of the [PSLRA] and serves the purpose behind its enactment"); *Friedman v. Quest Energy Partners LP*, 261 F.R.D. 607, 614-15 (W.D. Okla. 2009) (finding that the PSRLA "allows for a group of persons to serve as lead plaintiff"); *Dollens v. Zionts*, 2001 U.S. Dist. LEXIS 19966, at *18 n.7 (N.D. Ill. Dec. 4, 2001) (explaining that appointment of a lead plaintiff group is appropriate under the PSLRA provided that the group will "fairly and adequately protect the interests of the class.").

To the best of their counsel's knowledge, there are no other qualified applicants who have sought appointment as lead plaintiff who have a larger financial interest. Therefore, Next Horizon Group satisfies the PSLRA's prerequisite of having the largest financial interest. *Greebel v. FTP Software*, 939 F. Supp. 57, 64 (D. Mass. 1996).

4. Next Horizon Group Otherwise Satisfies Rule 23 of the Federal Rules of Civil Procedure

In addition to possessing a significant financial interest, a lead plaintiff must also "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). Rule 23 of the Federal Rules of Civil Procedure requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class; and [that] the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(3)-(4). The test of typicality "'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named

plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). The adequacy requirement is met if no conflicts exist between the representative and class interests and the representative's attorneys are qualified, experienced and generally able to conduct the litigation. Fed. R. Civ. P. 23(a)(4); *Staton v. Boeing Co*., 327 F.3d 938, 957 (9th Cir. 2003). Next Horizon Group satisfies these requirements at this stage of the litigation.

a. Next Horizon Group's Claims are Typical of Those of the Class

The Rule 23(a) typicality requirement is satisfied when a plaintiff's claims arise from the same event, practice or course of conduct that gives rise to other class members' claims and plaintiff's claims are based on the same legal theory. *See In re Livent, Inc. Noteholders Sec. Litig*., 210 F.R.D. 512, 516 (S.D.N.Y. 2002) (citations omitted). "'Typicality does not require a complete identity of claims. Rather, the critical inquiry is whether the class representative's claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality.'" *James v. City of Dallas, Tex*., 254 F.3d 551, 571 (5th Cir. 2001) (quoting 5 James Wm. Moore, et al., *Moore's Federal Practice* ¶ 23.24[4] (3d ed. 2000)).

The typicality requirement is met here because Next Horizon Group, which is not subject to any unique or special defenses, seeks the same relief and advances the same legal theories as other Class members. Like all members of the Class, Next Horizon Group: (1) acquired Magnum Hunter securities during the Class Period, and (2) suffered damages. *See Ferrari v. Gisch*, 225 F.R.D. 599, 606 (C.D. Cal. 2004) (discussing ways in which lead plaintiff movants can meet the typicality requirement). These shared claims, which are based on the same legal theories and arise from the same events and course of conduct as the Class' claims, satisfy Rule 23(a)(3)'s typicality requirement.

b. Next Horizon Group Will Fairly and Adequately Protect the Interests of the Class

The adequacy of representation requirement of Rule 23(a)(4) is satisfied when a representative party establishes that it "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met if no conflicts exist between the representative's interests and those of the class, and the representative's attorneys are qualified, experienced and generally able to conduct the litigation. *In re Cendant Corp. Litigation*, 264 F.3d 201, 265 (3d Cir. 2001).

Next Horizon Group will fairly and adequately represent the interests of the proposed Class. No antagonism exists between Next Horizon Group's interests and those of the absent Class members; rather, the interests of Next Horizon Group and the Class members are squarely aligned. In addition, Next Horizon Group has retained counsel highly experienced in prosecuting securities class actions vigorously and efficiently, and has timely submitted its choice to the Court for approval, in accordance with the PSLRA. *See* 15 U.S.C. §78u-4 (a)(3)(B)(v). Next Horizon Group suffered substantial losses due to Defendants' alleged fraud and, therefore, has a sufficient interest in the outcome of this case to ensure vigorous prosecution of the Action. Accordingly, Next Horizon Group satisfies the adequacy requirement.

B. THE COURT SHOULD APPROVE NEXT HORIZON GROUP'S SELECTION OF COUNSEL

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to this Court's approval. *See* 15 U.S.C. § 78u- 4(a)(3)(B)(v). This Court should not disturb the lead plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." *See Cavanaugh*, 306 F.3d at 732-33.

The members of Morgan & Morgan's class action securities litigation group have successfully prosecuted complex securities class actions and have been lead counsel in numerous

landmark and precedent-setting class actions. *See* Steckler Decl., Ex. D. Peter Safirstein ("Safirstein") has extensive experience litigating securities matters having served a prominent role in numerous class action including *In re Initial Public Offering Securities Litigation*, No. 21-92 (S.D.N.Y.), in which his former firm oversaw the efforts of approximately 60 plaintiffs' firms in 310 coordinated securities actions arising from the IPOs during the "high tech bubble." In granting final approval to a $586 million settlement on October 5, 2009, the *IPO* court described the law firms comprising the Plaintiffs' Executive Committee as the "cream of the crop." *See id.*

Safirstein, who heads Morgan & Morgan's New York office, has practiced in complex litigation for over 20 years. He formerly served in the United States Attorneys' Office for the Southern District of Florida and in the United States Attorneys' Office for the Southern District of New York (Securities and Commodities Fraud Unit), as well as in the Enforcement Division of the Securities and Exchange Commission. Safirstein's practice includes Human Rights Litigation and he successfully represented Nigerian children allegedly victimized by Pfizer's improper medical experiments involving the drug Trovan. He serves as co-chair of the Securities Subcommittee of the ABA Class Actions and Derivative Suits Committee.

The co-chair of Morgan & Morgan's class action securities litigation group is Christopher Polaszek ("Polaszek"), who has also served a prominent role in numerous securities class actions such as: *In re Beazer Homes USA, Inc. Secs. Litig.* (N.D. Ga. $30.5 million settlement); *In re Liquidmetal Technologies, Inc.* (M.D. Fla. $7 settlement); *In re Omnivision Techs., Inc. Secs. Litig.* (N.D. Cal. $13.7 settlement); and *In re AFC Enters. Secs. Litig.* (N.D. Ga. $15 million settlement). Prior to joining Morgan & Morgan, Polaszek served as the managing partner of the Tampa, Florida office of a national Plaintiff's securities class action firm for over five years. Polaszek has also represented consumers in class actions and practiced complex commercial

litigation with an emphasis on securities fraud litigation and arbitration. In this regard, in addition to successfully litigating matters in state and federal courts, he has represented numerous clients in securities and commercial litigation arbitration proceedings conducted by the National Association of Securities Dealers, Inc., the New York Stock Exchange, and the American Arbitration Association. Polaszek is or has been a member of the Federal Bar Association, Tampa Bay Inn of Court, American Bar Association, Association of Trial Lawyers of America, and the Public Investors Arbitration Bar Association.

Morgan & Morgan has the resources required to lead this complex litigation to conclusion. Morgan & Morgan has more than 200 lawyers, and a support staff of over 1,000 people, with offices in New York, Florida, Georgia, Mississippi, Kentucky, and Tennessee, and has obtained multi-million dollar verdicts in courts throughout the country. As Lead Counsel, Morgan & Morgan will commit significant resources to this litigation to the benefit of the Class and vigorously litigate this matter to conclusion.

Similarly, The Steckler Law Firm is a highly successful litigation firm with extensive experience in complex litigation. *See* Steckler Decl., Ex. E. The firm's attorneys have been recognized both locally and nationally. Bruce Steckler ("Steckler") has been appointed by both federal and state court judges to lead some of the most significant cases in the United States. He was appointed by the Honorable Eldon Fallon in the United States District Court for the Eastern District of Louisiana to serve on the Plaintiffs' Steering Committee for the Chinese Drywall MDL and served as a member of the Plaintiffs' Executive Committee for Bank Overdraft Litigation appointed by the Honorable Lawrence King in the United States District Court for the Southern District of Florida. He was co-lead counsel in the case against JP Morgan Chase in *In Re Checking Account Overdraft Litigation*. He was lead counsel in the *In re: EasySaver Rewards*

Marketing and Sales Practices Litigation, which resulted in a historic $38 million dollar settlement. He has served as liaison counsel and lead counsel in a variety of State and Federal Court MDL cases.

This Court may be assured that in the event this motion is granted, the members of the Class will receive the highest caliber of legal representation. Accordingly, Next Horizon Group's selection of counsel should be approved.

IV. CONCLUSION

For the foregoing reasons, Next Horizon Group respectfully requests that the Court: (1) appoint Next Horizon Group as Lead Plaintiff; and (2) approve Next Horizon Group's selection of Morgan & Morgan as Lead Counsel and The Steckler Law Firm as Liaison Counsel for the Class.

Dated: June 24, 2013

Respectfully submitted,

THE STECKLER LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that on this on the 24th day of June, 2013, the foregoing document was filed using the Court's CM/ECF system which will generate an electronic notice of filing to all parties who have registered to receive same.

/s/ Bruce W. Steckler