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[Proposed] Lead Counsel for Lead Plaintiff and Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DONALD W. FINCH, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

iANTHUS CAPITAL HOLDINGS, INC.,
GOTHAM GREEN PARTNERS, HADLEY C.
FORD, JULIUS JOHN KALCEVICH, and
JASON ADLER,

Defendants.

CASE No.: 1:20-cv-03135-LAK

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION OF
ROBERT DANKNER TO: (1)
CONSOLIDATE RELATED
ACTIONS; (2) APPOINT LEAD
PLAINTIFF; AND (3) APPROVE
LEAD PLAINTIFF'S SELECTION
OF COUNSEL**

CLASS ACTION

PETER L. CEDENO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

iANTHUS CAPITAL HOLDINGS, INC.,
GOTHAM GREEN PARTNERS, HADLEY C.
FORD, JULIUS JOHN KALCEVICH, and
JASON ADLER,

Defendants.

CASE No.: 1:20-cv-03513-PGG

CLASS ACTION

Plaintiff Robert Dankner (“Movant”) respectfully submits this memorandum of law in support of his motion for an Order, 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 (the “PSLRA”):

- (a) consolidating the above-captioned actions;
- (b) appointing Movant as Lead Plaintiff for the class of all purchasers of the publicly traded securities of iAnthus Capital Holdings, Inc. (“iAnthus” or the “Company”) between May 14, 2018 and April 6, 2020, both dates inclusive (the “Class Period”); and
- (c) approving Movant’s selection of The Rosen Law Firm, P.A. as Lead Counsel for the Class.

INTRODUCTION AND BACKGROUND

The first action filed, styled as *Riback v. iAnthus Capital Holdings, Inc. et al*, Case No. 1:20-CV-03044-NRB (the “*Riback* Action”), was commenced on April 15, 2020, against iAnthus Capital Holdings, Inc., Gotham Green Partners, Hadley C. Ford, Julius John Kalcevich, and Jason Adler (“Defendants”) for violations under the Exchange Act. On April 17, 2020, an early notice pursuant to the PSLRA was published advising class members of, *inter alia*, the allegations and claims in the complaint, the Class Period, and advising class members of their option to seek appointment as Lead Plaintiff. *See* Ex. 1 hereto.

On April 20, 2020, the *Riback* Action was voluntarily dismissed without prejudice by Plaintiff pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure.¹ That same day, a new action, the above-captioned *Finch v. iAnthus Capital Holdings, Inc. et al*, Case No. 1:20-CV-03135-LAK was filed. The related action, titled *Cedeno v. iAnthus Capital Holdings, Inc. et*

¹ *See*, Dkt. 14 of the *Riback* Action, Case No. 1:20-CV-03044-NRB.

al, Case No. 1:20-cv-03513-PGG, was filed on May 5, 2020. Both of the actions allege violations under the Exchange Act against the same Defendants.

iAnthus is a holding company and represents that, “[t]hrough its wholly-owned subsidiaries, the Company’s principal business activity is to provide Shareholders with diversified exposure to best-in-class licensed cannabis cultivators, processors and dispensaries throughout the United States” by “acquir[ing] and operat[ing] a diversified portfolio of cannabis licenses and investments for Shareholders.” Heavily leveraged, iAnthus has at all relevant times depended upon equity and debt financing to fund its aggressive expansion plans.

The complaints allege that defendants made materially false and misleading statements regarding iAnthus's business, operational, and compliance policies. Specifically, defendants issued a series of statements representing that iAnthus's business operations, financed through various debt and equity offerings, were expanding throughout the United States, without disclosing to shareholders that defendants were either unwilling or unable to utilize escrowed funds to make necessary interest payments under certain of iAnthus's debenture agreements. When the true details entered the market, the lawsuit claims that investors suffered damages.

On April 6, 2020, iAnthus issued a press release announcing that it did not make the applicable interest payments due on its 13.0% Senior Secured Debentures and 13.0% Unsecured Convertible Debentures due on March 31, 2020. In addition, the Company announced the formation of a special committee to investigate alleged related party transactions involving Defendant Ford.

On news of the default, the price of the Company’s common stock fell 62%, from a close of \$0.469 per share on April 3, 2020, the last trading day before the announcement, to a close of \$0.179 per share on April 6, 2020 on unusually high trading volume.

ARGUMENT

I. THE RELATED ACTIONS SHOULD BE CONSOLIDATED

Consolidation of related cases is proper where, as here, the actions involve common questions of law and fact such that consolidation would prevent unnecessary cost or delay in adjudication. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters at issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Fed. R. Civ. P. 42(a).

The PSLRA contemplates consolidation where “more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed.” 15 U.S.C. §78u-4(a)(3)(A)(ii). As such, the PSLRA does not displace the traditional legal standards for consolidation under Fed. R. Civ. P. 42(a).

Each of the above-captioned related actions has been filed in this District alleging similar factual and legal grounds to support allegations of violations of the Exchange Act by the same Defendants arising from the public dissemination of false and misleading information to investors. Accordingly, the above-captioned cases should be consolidated pursuant to Fed. R. Civ. P. 42(a) for all purposes.

II. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF

The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to a published notice of class action by the later of: (i) 90 days after the date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA provides a “rebuttable presumption” that the “most adequate plaintiff” to serve as lead plaintiff is the person or group that:

(aa) has either filed the complaint or made a motion in response to a notice...;

(bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii).

As set forth below, Movant satisfies all three of these criteria, and thus is entitled to the presumption of being the “most adequate plaintiff” for the Class.

A. Movant Is Willing to Serve as Class Representative

Movant has filed herewith a PSLRA certification attesting that he is willing to serve as representative of the class and remains willing to provide testimony at deposition and trial, if necessary. *See* Ex. 2 hereto. Accordingly, Movant satisfies the first requirement to serve as Lead Plaintiff for the Class.

B. Movant Has the Largest Financial Interest in the Action

The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate plaintiff...is the person or group of persons that ...has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). “While the PSLRA does not specify how we should decide which plaintiff group has the ‘largest financial interest’ in the relief sought, most courts simply determine which potential lead plaintiff has suffered the greatest total losses.” *Takara Trust v. Molex*, 229 F.R.D. 577, 579 (N.D. Ill. 2005). Of the *Lax/Olsten*-styled² factors in determining the largest financial interest, the financial loss is the most significant factor. *See In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 437 (S.D.N.Y. 2008). Indeed, “the best yardstick by

² *Lax v. Merch. Acceptance Corp.*, 1997 WL 461036 *5 (N.D. Ill. Aug. 11, 1997); *In re Olsten Corp. Sec. Litig.*, 3 F.Supp.2d 286, 295 (E.D.N.Y. 1998).

which to judge ‘largest financial interest’ is the amount of loss, period.” *In re Bally Total Fitness, Sec. Litig.*, 2005 WL 627960 * 4 (N.D. Ill. Mar. 15, 2005).

Movant lost \$280,634.81 in connection with his purchases of iAnthus securities. *See* Ex. 3 hereto. Movant is not aware of any other movant that has suffered greater losses in iAnthus securities during the Class Period. Accordingly, Movant satisfies the largest financial interest requirement to be appointed as Lead Plaintiff for the class.

C. Movant Satisfies the Requirements of Rule 23 of the Federal Rules of Civil Procedure

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In making its determination that the Lead Plaintiff satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification – a *prima facie* showing that Movant will satisfy the requirements of Rule 23 is sufficient. *Fuwei Films*, 247 F.R.D. at 439 (only a *prima facie* showing is required). Moreover, “typicality and adequacy of representation are the only provisions relevant to a determination of lead plaintiff under the PSLRA.” *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998).

1. Movant's Claims are Typical

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). Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Id.*

Here, Movant's claims are typical of the claims asserted by the Class. Movant, like all members of the Class, alleges that Defendants violated the Exchange Act by issuing false and misleading statements about iAnthus's business. Movant's interests are closely aligned with the other Class members' and Movant's interests are, therefore, typical of the other members of the Class.

2. Movant Is Adequate

The adequacy of representation of Rule 23 is satisfied where it is established that a representative party has the ability to represent the claims of the class vigorously, has obtained adequate counsel, and there is no conflict between a potential representative's claim and those asserted on behalf of the class. *In re Cendant Corp. Litigation*, 264 F.3d. 201, 265 (3d Cir. 2001).

Here, Movant has communicated with competent, experienced counsel concerning this case, and made this motion to be appointed as Lead Plaintiff. Movant is not aware that any conflict exists between his claims and those asserted on behalf of the Class. Movant also sustained substantial financial losses from investments in iAnthus securities and is, therefore, extremely motivated to pursue the claims in this action. Therefore, Movant is presumptively the most adequate plaintiff and should be appointed as Lead Plaintiff for the Class.

D. Movant Is Presumptively the Most Adequate Plaintiff

The presumption in favor of appointing Movant as Lead Plaintiff may be rebutted only upon proof “by a purported member of the Plaintiffs’ class” that the presumptively most adequate plaintiff:

(aa) will not fairly and adequately protect the interests of the class; or

(bb) 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)(I).

The presumption that Movant is the most adequate Lead Plaintiff is not, therefore subject to rebuttal. Accordingly, Movant has suffered financial losses and has the largest financial interest in this case of any timely lead plaintiff. The ability of Movant to represent the Class fairly and adequately is discussed above. Movant is not aware of any unique defenses Defendants could raise against him that would render Movant inadequate to represent the Class.

III. MOVANT’S SELECTION OF COUNSEL SHOULD BE APPROVED

The PSLRA vests authority in the Lead Plaintiff to select and retain Lead Counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should only interfere with Lead Plaintiff’s selection when necessary “to protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

Movant has selected The Rosen Law Firm, P.A. as Lead Counsel. The firm has been actively researching Movant’s and Class Plaintiffs’ claims as well as reviewing publicly available financial and other documents while gathering information in support of the claims against Defendants. Furthermore, the firm has an extensive history bringing significant recoveries to investors and is experienced in the area of securities litigation and class actions, having been appointed as lead counsel in securities class actions in this District and in other

courts throughout the nation. *See* Ex. 4 hereto. The firm has prosecuted numerous securities fraud class actions and other complex litigation and obtained substantial recoveries on behalf of investors.

As a result of the firm's experience in litigation involving issues similar to those raised in this action, Movant's counsel has the skill and knowledge to prosecute this action effectively and expeditiously. Thus, the Court may be assured that by approving Movant's selection of Lead Counsel, the members of the class will receive the best legal representation available.

CONCLUSION

For the foregoing reasons, Movant respectfully requests the Court issue an Order: (1) consolidating the related actions; (2) appointing Movant as Lead Plaintiff of the Class; (3) approving Movant's selection of The Rosen Law Firm, P.A. as Lead Counsel; and (4) granting such other relief as the Court may deem to be just and proper.

Dated: June 15, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/Phillip Kim