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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TIANDONG TANG, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

EASTMAN KODAK COMPANY, JAMES V.
CONTINENZA, AND DAVID BULLWINKLE,

Defendants.

Case No.: 3:20-cv-10462-FLW-ZNQ

CLASS ACTION

**MEMORANDUM OF LAW IN
SUPPORT OF THE MOTION OF THE
KODAK INVESTOR GROUP FOR
APPOINTMENT OF LEAD
PLAINTIFF AND APPROVAL OF
LEAD PLAINTIFF'S SELECTION OF
COUNSEL**

MOTION DATE: NOVEMBER 6, 2020

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Proposed Lead Plaintiffs Fred and Elaine Khachi (“Khachi”), Sasan Payvar, as Trustee of Sasan Payvar and Dina Yaghmai Family Trust (“Yaghmai Trust”), and Domenic Pesce (“Pesce,” and collectively, the “Kodak Investor Group”), respectfully move this Court for entry of an Order, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”): (1) appointing the Kodak Investor Group as Lead Plaintiff; (2) approving its selection of Saxena White P.A. (“Saxena White”) and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (“Carella Byrne”) to serve as Co-Lead Counsel for the Class; and (3) any such other and further relief as the Court may deem proper.

I. PRELIMINARY STATEMENT

Currently pending in the District of New Jersey and the Southern District of New York are two securities class actions against the Eastman Kodak Company (“Kodak” or the “Company”). The *Tang* action, filed by Saxena White, was the first complaint to be filed on August 13, 2020 in the District of New Jersey on behalf of all persons and entities that purchased or acquired Kodak common stock between July 27, 2020 and August 7, 2020, and asserts claims for violations of Sections 10(b) and 20(a) of the Exchange Act, as amended by the PSLRA (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) against Kodak, James V. Continenza (“Continenza”), and David Bullwinkle (“Bullwinkle” and together, “Defendants”). *See Tang v. Eastman Kodak Co., et al*, No. 3:20-cv-10462-FLW-ZNQ (D.N.J), ECF No. 1 (the “*Tang* Complaint”). On August 26, 2020, a second, securities class action was filed in the Southern District of New York against Kodak and Continenza. *See*

McAdams v. Eastman Kodak Co. et al., No. 1:20-cv-06861-JGK (S.D.N.Y), ECF No. 1 (the “*McAdams* Complaint”).¹ See Hooker Decl., Ex. H.

Under the PSLRA, the Court should appoint the “most adequate plaintiff to serve as Lead Plaintiff. See 15 U.S.C. § 78u-4(a)(3)(B)(i). In that regard, the Court assesses the movant with the “largest financial interest” in the relief sought by the Class, and whether the movant is a typical and adequate Class representative under Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii).

The Kodak Investor Group readily satisfies these requirements, is the “most adequate plaintiff” under the PSLRA, and therefore should be appointed Lead Plaintiff. The Kodak Investor Group suffered losses of nearly \$1,019,282 in connection with its Class Period purchases of Kodak common stock.² Furthermore, the Kodak Investor Group understands the commitments of a Lead Plaintiff and, as shown here and in the Kodak Investor Group’s Joint Declaration in support of their motion (see Hooker Decl. Ex. E), satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

¹ The *McAdams* action asserts claims under Sections 10(b) and 20(a) of the Exchange Act on behalf of all persons and entities that purchased or otherwise acquired purchased or acquired Kodak securities between July 27, 2020 and August 11, 2020, inclusive (the “Class Period”). For purposes of this motion, the Kodak Investor Group applies the longer Class Period asserted in the *McAdams* action. See, e.g., *Hom v. Vale, S.A.*, No. 1:15-CV-9539-GHW, 2016 WL 880201, at *4 (S.D.N.Y. Mar. 7, 2016) (“[T]he use of the longer, more inclusive class period is proper... because the longer class period encompasses more potential class members and damages. A number of courts... found it appropriate to rely on the more inclusive class for determining lead plaintiff because it encompasses more potential class members.”) (citations omitted). Because the Kodak Investor Group anticipates both actions will proceed as one consolidated action, the Kodak Investor Group has simultaneously filed motions for lead plaintiff appointment in this Court and in the *McAdams* action pending in the Southern District of New York.

² The Kodak Investor Group’s transactions in Kodak common stock during the Class Period are set forth in the certifications attached as Ex. C to the Declaration of Lester R. Hooker in Support of the Kodak Investor Group’s Motion for Appointment as Lead Plaintiff and Approval of its Selection of Counsel (“Hooker Decl.”). A chart setting forth the Kodak Investor Group’s losses are attached as Ex. D to the Hooker Decl.

The Kodak Investor Group has reinforced its adequacy by selecting Saxena White and Carella Byrne to serve as Co-Lead Counsel for the Class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v) (“the most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class”). Saxena White is a leading national law firm specializing in representing investors in securities and shareholder litigation, with substantial experience and success prosecuting securities class actions and shareholder derivative actions throughout the nation. Similarly, Carella Byrne has extensive experience prosecuting shareholder litigation in the State of New Jersey and throughout the country in major, precedent-setting litigation. Furthermore, Saxena White and Carella Byrne have successfully prosecuted numerous other previous securities class actions and have obtained substantial recoveries for shareholders in this District.

For these reasons, the Kodak Investor Group respectfully requests that the Court appoint it as Lead Plaintiff and approve its selection of Saxena White and Carella Byrne to serve as Co-Lead Counsel for the Class.

II. SUMMARY OF THE FRAUD³

Kodak is a technology company that provides hardware, software, consumables, and services to customers in commercial print, packaging, publishing, manufacturing, and entertainment. ¶2. On July 27, 2020, Kodak issued a statement to media outlets based in Rochester, New York, where it is headquartered, on the imminent public announcement of a “new manufacturing initiative” involving the U.S. International Development Finance Corporation (“DFC”) and the response to COVID-19. *Id.* Following media publication of

³ All “¶” references are to the *Tang* complaint unless otherwise indicated. Unless otherwise defined, capitalized terms have the same meaning set forth in the *Tang* Complaint. The facts set forth in the Complaint are incorporated by reference.

Kodak's initial statement about the deal, the Company claimed this information was released inadvertently. *Id.*

On the same day, to further a scheme to profit from using material non-public information about the deal before its official disclosure, Kodak granted its CEO and Executive Chairman, Defendant Continenza, 1.75 million stock options at a conversion price of between \$3.03 and \$12 per share. ¶3. The Company also awarded 45,000 stock options to its CFO, Defendant Bullwinkle, Vice President Randy Vandagriff, and General Counsel Roger Byrd. *Id.* On the day these options were awarded, Kodak's stock price closed at \$2.62 per share, well below the lowest conversion price, meaning these options were "out of the money" when they were awarded. *Id.*

On July 28, 2020, the price of Kodak's shares jumped 200%, from \$2.62 per share on July 27, 2020 to \$7.94 per share, following news that the Company had won a \$765 million government loan from the DFC under the Defense Production Act ("DPA") to produce pharmaceutical materials, including ingredients for COVID-19 drugs. ¶4. Shares continued to surge by over 300% the next day to close at \$33.20 per share on July 29, 2020. *Id.* This massive stock price increase allowed Defendant Continenza and other Kodak insiders to enrich themselves spectacularly from the compensation scheme, as their stock options were now very much "in the money." Continenza alone saw the value of his options go from zero to \$50 million in just 48 hours. *Id.*

On July 29, 2020, the truth started to emerge through a series of partial revelations beginning with the publication of an article by *The Wall Street Journal* reporting that Kodak had leaked news of the \$765 million DFC loan to certain media outlets on July 27, 2020, after which

the Company sought to cover up its mistake by secretly attempting to retract those stories. *McAdams* Complaint, ¶12.

That same day, Defendant Continenza was interviewed on CNBC's *Squawk Box* during which he touted the DFC loan and the Company's shift to producing the ingredients for COVID-19 drugs. *McAdams* Complaint, ¶9. Among other things, Defendant Continenza stated that he was "very comfortable that we can bank on [the loan]," that Kodak's DFC-related new business unit based on the \$765 million DFC loan would be profitable, that the Loan had been a "tight-kept secret" up until July 28, 2020, and that he had no explanation for the surge in trading volume from about 74,000 on Friday, July 24, 2020 to more than 1.64 million on Monday, July 27, 2020. *Id.* Following the July 29 news, Kodak's declined more than 10% during trading on July 30, 2020 and then declined by approximately 27% on July 31, 2020 to close at \$21.85 per share. *McAdams* Complaint, ¶12.

In the days following the deal announcement, additional details began to emerge revealing the Company's further deception surrounding the compensation scheme. On August 1, 2020, a *Reuters* article reported new details of the "unusual" 1.75 million option grant to Defendant Continenza. ¶5. The article emphasized that the options award "occurred because of an understanding" between Continenza and Kodak's Board of Directors "that had previously neither been listed in his employment contract nor made public." *Id.* On this news, Kodak's shares fell \$6.91 per share the next trading day, or 32%, from \$21.85 per share on July 31, 2020, to \$14.94 per share on August 3, 2020. ¶6.

On August 4, 2020, Kodak Board member George Karfunkel ("Karfunkel") and his wife Renee Karfunkel disclosed to the SEC a July 29, 2020 donation of 3 million of their 6.3 million Kodak shares to a religious institution in Brooklyn, New York, that he founded and controlled, a

gift valued at \$116.3 million. ¶6. Notably, this “charitable” donation took place one day after the DPA loan announcement, the day Kodak’s stock peaked, and was provided to a congregation that had only been incorporated since 2018, used a Brooklyn accountant’s office as its mailing address, had no website, and for which Karfunkel himself served as the President and Chief Financial Officer—one of only three officers of the purported charity. *Id.* A *Mother Jones* article found that the Karfunkels would be able to “pocket a deduction between \$52.5 million and \$180 million.” *Id.*

Additionally, on August 4, 2020, before the market opened, an article published on *CQ Roll Call* reported that United States Senator Elizabeth Warren submitted a letter to the SEC requesting an investigation of the deal and Kodak for apparent violations of the securities laws and SEC regulations. ¶7. The letter noted that on June 23, 2020, Defendant Continenza purchased 46,737 shares and board member Philippe Katz (“Katz”) purchased 5,000 shares—stock trades that “raise questions about several different insider trading laws.” *Id.* According to the letter, each purchase “made while the company was involved in secret negotiations with the government over a lucrative contract raises questions about whether these executives potentially made investment decisions based on material, non-public information derived from their positions,” in violation of the Securities Exchange Act of 1934. *Id.*

The letter also pointed to the Company’s initial July 27, 2020 announcement of the deal to some media outlets, followed by the subsequent frenzy in trading of its shares—a one-day volume of over 1.6 million shares, compared to volume of only 75,000 shares on the previous trading day—as cause for investigation into Kodak’s disclosure of material non-public information, in possible violation of Rule 100 of SEC Regulation FD. ¶8. As a result of the

revelations on August 4, 2020, the Company's stock price dropped another \$0.54, or 4%, from \$14.94 per share on August 3, 2020, to \$14.40 per share on August 4, 2020. ¶11.

On August 5, 2020, several Congressional committees sent a joint letter to Defendant Continenza seeking documents about the loan, insider trading, and stock options for their review of "DFC's decision to award this loan to Kodak despite your company's lack of pharmaceutical experience and the windfall gained by you and other company executives as a result of this loan" which raised "questions that must be thoroughly examined." ¶12. The committees also sent a document request to the DFC's Chief Executive Officer on the same day, inquiring about the Kodak loan, which the letter noted was "an organization that was on the brink of failure in 2012 and was unsuccessful in its previous foray into pharmaceutical manufacturing." *Id.*

Finally, in response to increasing public awareness and Congressional and regulatory scrutiny of Kodak's fraudulent scheme, the DFC paused the deal. ¶13. On August 7, 2020, after the market closed, the DFC announced, "On July 28, we signed a Letter of Interest with Eastman Kodak. Recent allegations of wrongdoing raise serious concerns. We will not proceed any further unless these allegations are cleared." *Id.* On this news, the Company's stock price declined \$4.15, or 28%, from \$14.88 per share on August 7, 2020, to \$10.73 per share on August 10, 2020. ¶14. Kodak's shares continued to decline the next trading day, falling by 6.7% to close at \$10.01 per share on August 11, 2020. *McAdams* Complaint, ¶20.

Later that day, after the market closed, in connection with the Company's release of its financial results for the second quarter, Kodak held a conference call during which Defendant Continenza repeatedly referred to the loan as a "potential loan," in stark contrast to his statements on July 29, 2020 that the loan was effectively a done deal. Additionally, Defendant Continenza said that "we ... support the DFC's decision to wait clarification before moving

forward with the loan process.” *McAdams* Complaint, ¶21. Kodak’s shares declined another 2.9% to close at \$9.72 per share on August 12, 2020. *Id.*

III. ARGUMENT

A. The Kodak Investor Group Should Be Appointed Lead Plaintiff

The Kodak Investor Group respectfully submits that it should be appointed Lead Plaintiff because it is the movant “most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B). The Court “shall” appoint the “most adequate plaintiff,” and is to presume that plaintiff is the person or group of persons which:

(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)(I). *See Sklar v. Amarin Corp. PLC*, 2014 WL 3748248, at *4 (D.N.J. July 29, 2014).

Once the court has identified the most adequate plaintiff, the presumption may only be rebutted by proof from a class member that the “most adequate plaintiff” (1) will not fairly and adequately protect the interests of the class or (2) 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).

As discussed below, the Kodak Investor Group has complied with the procedural prerequisites of the PSLRA. Moreover, the Kodak Investor Group believes that it has the largest financial interest in the litigation that otherwise meets the relevant requirements of Rule 23 of the Federal Rules of Civil Procedure.

1. The Kodak Investor Group Has Timely Filed Its Motion

On August 14, 2020, following the filing of the *Tang* action, a notice (“Notice”) was published on *Globe Newswire* that notified members of the proposed class that a class action lawsuit had been initiated against Kodak and certain of its executives, and that members of the proposed class had a right to move for appointment as Lead Plaintiff within 60 days of the publication of the Notice.⁴ See 15 U.S.C. § 78u-4(a)(3)(A)(i)(II); Hooker Decl., Ex. A. The Kodak Investor Group has timely filed this motion within the 60-day period following publication of the Notice and has evidenced its intention to diligently prosecute this action by timely moving for appointment as Lead Plaintiff.

2. The Kodak Investor Group Has The Largest Financial Interest In The Relief Sought By The Class

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); *Sklar*, 2014 WL 3748248, at *4.

In determining the “largest financial interest” for purposes of lead plaintiff appointment, courts in the Third Circuit consider: (1) the number of shares that the movants purchased during the putative class period; (2) the total net funds expended by the plaintiff during the class period; and (3) the approximate losses suffered by the plaintiff. See *In re Cendant Corp. Litig.*, 264 F.3d 201, 262 (3d Cir. 2001) (citing *Lax v. First Merch. Acceptance Corp.*, No. 97 C 2715, 1997 WL 461036, at *5 (N.D. Ill. Aug. 11, 1997)); See also *Patel v. Zoompass Holdings, Inc.*, No. 17-

⁴ On August 26, 2020, following the filing of the *McAdams* action in the Southern District of New York, a notice was published on *PRNewswire* that a class action lawsuit had been filed against Kodak and Continenza, on behalf of all persons or entities who purchased or otherwise acquired securities of Kodak from July 27, 2020 through August 11, 2020. See Hooker Decl., Ex. B.

3831, 2017 WL 4179814, at *1 (D.N.J. Sept. 20, 2017) (“The most critical among these factors is the approximate loss suffered.”); *Smith v. Antares Pharma, Inc.*, No. 3:17-cv-08945-MAS-DEA, 2018 WL 3611067, at *2 (D.N.J. July 27, 2018).

As shown in the loss calculation charts, the Kodak Investor Group suffered losses of \$1,019,282 when calculated on a last-in, first-out (“LIFO”) basis in connection with its Class Period purchases of Kodak common stock. *See* Hooker Decl., Ex. D. Moreover, to the best of the Kodak Investor Group’s knowledge, no other movant has a larger financial interest in this action. Accordingly, the Kodak Investor Group has the largest financial interest of any qualified movants seeking Lead Plaintiff status, and is the presumptive “most adequate plaintiff.” *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii). In addition, the Kodak Investor Group is not subject to any unique defenses that would render it incapable of adequately representing the Class.

3. The Kodak Investor Group Satisfies The Requirements Of Rule 23

The PSLRA provides that the lead plaintiff must also “otherwise satisfy 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 Vonage Initial Public Offering (IPO) Securities Litigation*, 2007 WL 2683636, at *3 (D.N.J. Sept. 7, 2007). Rule 23(a) provides that a party may serve as a class representative only if these 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.

Fed. R. Civ. P. 23(a).

For purposes of appointing lead plaintiff, the determination of whether the movants with the largest interest in the case otherwise satisfies Rule 23 “should be confined to determining whether the movants have made prima facie showing of typicality and adequacy.” *Sklar*, 2014 WL 3748248, at *5 (citing *In re Cendant Corp. Litig.*, 264 F.3d at 262).

Of the four prerequisites to class certification, only two – typicality and adequacy – directly address the personal characteristics of the class representatives. Thus, in deciding a motion to serve as lead plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a) and defer examination of the remaining requirements until the lead plaintiff moves for class certification. *See In re Vonage*, 2007 WL 2683636, at *4 (“The presumptive lead plaintiff must make a prima facie showing that it satisfies the requirements of Rule 23 (i.e., typicality and adequacy”); *In re Molson Coors Brewing Co. Securities Litigation*, 233 F.R.D. 147, 150 (D. Del. 2005) (“[T]he focus is only on the typicality (Rule 23(a)(3)) and adequacy (Rule 23(a)(4)) requirements.”) (citations omitted).

As detailed below, the Kodak Investor Group satisfies the typicality and adequacy requirements of Rule 23(a), thereby justifying its appointment as Lead Plaintiff in this Action.

a. The Kodak Investor Group’s Claims are Typical of the Class

The typicality requirement of Rule 23(a) is satisfied when (1) the claims of the proposed lead plaintiff arise from the same course of conduct that gives rise to the other purported class members’ claims, and (2) the claims are based on the same legal theory. *See In re Merck & Co., Inc. Securities*, No. 05-cv-1151, 2013 WL 396117, at *39-40 (D.N.J. Jan. 20, 2013), *In re PharmaPrint, Inc. Sec. Litig.*, 2002 WL 31056813, at *16 (D.N.J. Apr. 17, 2002).

Typicality does not require that there be no factual differences between the class representatives and the class members because it is the generalized nature of the claims asserted that determines whether the class representatives are typical. *See In re Cendant*, 264 F.3d at 265.

Here, the Kodak Investor Group's and all other Class members' claims arise from the same course of events, and its arguments to establish Defendants' liability are nearly identical. Like all other Class members, the Kodak Investor Group: (1) purchased Kodak Common Stock during the Class Period; (2) at prices allegedly artificially inflated by Defendants' materially false and misleading statements and/or omissions; and (3) were damaged thereby when the truth was revealed. As a result, the Kodak Investor Group's claims are typical of the Class's claims.

b. The Kodak Investor Group Will Fairly and Adequately Represent the Class' Interests

Under Rule 23(a)(4) of the Federal Rules of Civil Procedure, the representative party must "fairly and adequately protect the interests of the Class." Fed. R. Civ. P. 23(a)(4). A lead plaintiff can demonstrate adequacy by showing that "(a) the [lead plaintiff's] attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the [lead plaintiff] must not have interests antagonistic to those of the class." *In re PharmaPrint, Inc. Sec. Litig.*, 2002 WL 31056813, at *16-17.

Here, the Kodak Investor Group's interests are clearly aligned with the members of the proposed class. Not only is there no evidence of any antagonism between the Kodak Investor Group's interests and those of the class, but the Kodak Investor Group has a significant and compelling interest in prosecuting the Action based on the large financial losses it has suffered as a result of the wrongful conduct alleged in the Action. This motivation, combined with the Kodak Investor Group's identical interest with the members of the Class, shows that the Kodak Investor Group will vigorously pursue the interests of the Class. *See In re Milestone Scientific*

Sec. Litig., 183 F.R.D. 404, 416 (D.N.J. 1998) (“financial stake in the litigation provides an adequate incentive for the [lead plaintiffs] to vigorously prosecute the action.”). As detailed above, the Kodak Investor Group’s claims raise similar questions of law and fact as claims of the class members, and the Kodak Investor Group’s claims are typical of the members of the class. Further, the Kodak Investor Group has shown its adequacy and willingness to serve as and assume the responsibilities of a lead plaintiff, as reflected in the members’ signed certifications. *See* Hooker Decl., Ex. C. Having suffered substantial losses, the Kodak Investor Group will be a zealous advocate for the Class.

Moreover, the Kodak Investor Group has submitted a Joint Declaration, attesting to, among other things, their investment history and backgrounds, as well as Certifications that set forth their understanding of the strength of this case, the responsibilities and duties of serving as a lead plaintiff, their shared desire to obtain the best result for the Class, and the steps that they will take to supervise this litigation. *See id.*, Ex. E; *see Aguilar v. Vitamin Shoppe, Inc.*, No. 2:17-cv-6454-KM-MAH, 2018 WL 1960444, at *10-12 (D.N.J. Apr. 25, 2018) (appointing a group of individuals who submitted a joint declaration). Therefore, the Kodak Investor Group will prosecute the Action vigorously on behalf of the Class.

The Kodak Investor Group has further demonstrated its adequacy by selecting Saxena White and Carella Byrne proposed Co-Lead Counsel for the Class. *See* Hooker Decl., Exs. F & G. As discussed below, Saxena White and Carella Byrne are highly qualified and experienced in the area of securities class action litigation and has repeatedly demonstrated its ability to effectively prosecute complex securities class actions and other forms of shareholder litigation.

Accordingly, at this stage of the proceedings, the Kodak Investor Group has made the preliminary showing necessary to satisfy the typicality and adequacy requirements of Rule 23

and therefore satisfies 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). In addition, because the Kodak Investor Group has sustained the largest amount of losses from Defendants' alleged wrongdoing, it is, therefore, the presumptive lead plaintiff under 15 U.S.C. § 78u-4(3)(B)(iii)(I), and should be appointed as such to lead the Action.

B. The Court Should Approve The Kodak Investor Group's Selection Of Counsel

The Court should approve the Kodak Investor Group's selection of Saxena White to serve as Lead Counsel for the Class. Pursuant to the PSLRA, a movant must, subject to Court approval, select and retain counsel to represent the class it seeks to represent, and the Court should not disturb the Lead Plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

Here, the Kodak Investor Group has selected Saxena White and Carella Byrne as proposed Co-Lead Counsel to represent the Class. As set forth in their firm resumes, Saxena White and Carella Byrne have extensive experience in prosecuting complex litigation on behalf of aggrieved shareholders. *See* Hooker Decl., Exs. F & G. Indeed, Saxena White and Carella Byrne have achieved substantial recoveries on behalf of investor classes when serving as lead or co-lead counsel in securities class actions.

For instance, Saxena White, acting as Co-Lead Counsel, recently secured a \$210 million recovery for the investor class in *In re Wilmington Trust Securities Litigation*, No. 10-cv-00990-ER (D. Del.), which represented the second-largest securities class action recovery in Delaware history. Saxena White's track record serving as lead or co-lead counsel in securities litigation also includes the \$73 million recovery in *In re Rayonier Inc. Sec. Litig.*, No. 3:14-cv-1395-TJC-JBT (M.D. Fla.); the \$53 million recovery in *Central Laborers' Pension Fund v. SIRVA, Inc.*, No. 04 C 7644 (N.D. Ill.); the \$50 million recovery in *In re HD Supply Holdings*,

Inc. Sec. Litig., No. 1:17-CV-02587-ELR (N.D. Ga.); the \$28 million recovery in *Westchester Putnam Ctys. Heavy & Highway Laborers Local 60 Benefit Funds v. Brixmor Prop. Grp., Inc.*, No. 1:16-cv-02400 (AT)(SN) (S.D.N.Y.); as well as the \$6.5 million recovery in this District with Carella Byrne in *In re Enzymotec Ltd. Securities Litigation*, No. 2:14-cv-05556-JMV (D.N.J.). Moreover, Saxena White achieved a settlement valued at \$320 million in a derivative action on behalf of Wells Fargo & Company—one of the largest shareholder derivative settlements in history—which included a \$240 million monetary component that represents the largest insurer-funded monetary recovery in a derivative settlement in history. *See In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 4:16-cv-05541-JST (N.D. Cal.).

Additionally, Carella Byrne has extensive experience prosecuting shareholder-representative litigation, and will serve to facilitate the litigation on a local level. *See* Hooker Decl., Ex. G. Carella Byrne has and currently is in court-appointed leadership positions in some of the largest securities fraud class actions pending in the United States. *See, e.g., In Re: Virgin Mobile USA IPO Litig.*, Lead Case No. 07-5619 (SDW); *In Re Schering-Plough/ Merck Merger Litig.*, Civil Action No. 09-1099 (DMC). Furthermore, the Honorable Jose L. Linares of the District of New Jersey found that Carella Byrne has “demonstrated knowledge of the applicable law and of this Court's local rules and procedures through extensive litigation in this Court, other federal courts, and other state courts.” *See Thomas v. Gerber Products Co.*, 2:12-cv-00835(JLL).

Moreover, Saxena White and Carella Byrne have experience serving as Co-Lead Counsel in this District as demonstrated by their roles in *Fernandez v. Knight Capital Group, Inc.*, No. 12-cv-6760 (D.N.J.), where Saxena White and Carella Byrne served as Co-Lead Counsel and recovered \$13 million for investors.

Accordingly, because there is nothing to suggest that Movants or their counsel will not fairly and adequately represent the Class, or that the Kodak Investor Group is subject to unique defenses—which is the only evidence that can rebut the presumption of inadequacy under the PSLRA—this Court should appoint the Kodak Investor Group as Lead Plaintiff and approve their selection of Saxena White and Carella Byrne as Co-Lead Counsel for the Class.

IV. CONCLUSION

The Kodak Investor Group has satisfied each of the PSLRA's requirements for appointment as lead plaintiff. For the reasons discussed above, the Kodak Investor Group respectfully requests that the Court: (1) appoint the Kodak Investor Group to serve as Lead Plaintiff for the Class; (2) appoint Saxena White and Carella Byrne to serve as Co-Lead Counsel and for the Class; and (3) grant such other relief as the Court may deem proper.

DATED: October 13, 2020

Respectfully submitted,

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***Co-Counsel for Kodak Investor Group and
Proposed Co-Lead Counsel for the Class***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 13, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all registered users.

/s/ James E. Cecchi
James E. Cecchi