

**LITE DEPALMA GREENBERG, LLC**

Bruce D. Greenberg  
570 Broad Street, Suite 1201  
Newark, NJ 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858  
bgreenberg@litedepalma.com

*Liaison Counsel*

**HAGENS BERMAN SOBOL SHAPIRO LLP**

Lucas E. Gilmore  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
lucasg@hbsslaw.com

*[Proposed] Lead Counsel for [Proposed] Lead Plaintiff*

**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 MOTION OF KODAK INVESTOR  
GROUP FOR APPOINTMENT AS LEAD  
PLAINTIFF AND APPROVAL OF  
SELECTION OF COUNSEL**

ORAL ARGUMENT REQUESTED

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## I. PRELIMINARY STATEMENT

Presently pending before this Court is a securities class action lawsuit brought on behalf of investors who purchased or otherwise acquired Eastman Kodak Company (“Kodak” or the “Company”) securities seeking to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5 against the Company and certain of its senior executives. The above-captioned case is brought on behalf of investors who purchased or otherwise acquired Kodak securities between July 27, 2020 and August 7, 2020, inclusive. Separately, a second action captioned, *McAdams v. Eastman Kodak Company, et al.*, No. 1:20-cv-06861-JGK (S.D.N.Y.) (“*McAdams*”), alleging the same securities fraud claims against similar defendants, but with a longer alleged class period (July 27, 2020 and August 11, 2020), was subsequently filed in the Southern District of New York on August 26, 2020 and is now pending before the Hon. John G. Koeltl, U.S.D.J.<sup>1</sup>

Accordingly, for purposes of this motion, the longest and most inclusive alleged class period is used – July 27, 2020 and August 11, 2020, inclusive (the “Class Period”). *See, e.g., In re Party City Sec. Litig.*, 189 F.R.D. 91, 94 (D.N.J. 1999) (“The Catanzarite Action is relied upon for the purposes of this motion because the class period alleged therein covers the longest class period alleged in the actions filed against the Defendants.”); *accord Miller v. Dyadic Int’l, Inc.*, 2008 U.S. Dist. LEXIS 32271, at \*11 (S.D. Fla. Apr. 18, 2008) (in determining the appropriate class period to evaluate lead plaintiff motions, “the Court finds that the better rule, as many other

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<sup>1</sup>Movant will be filing a copy of these motion papers in the *McAdams* action.

courts have held, is the rule that chooses the most inclusive class period at this early stage in the litigation.”).

Proposed lead plaintiffs Charles Satterwhite, Terry Butler, and Yiqi Woodling (the “Kodak Investor Group” or “Movant”) hereby move this Court for an order: (i) appointing the Kodak Investor Group as Lead Plaintiff, and (ii) approving the Kodak Investor Group’s selection of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) to serve as Lead Counsel and Lite DePalma Greenberg, LLC (“LDG”) to serve as Liaison Counsel.

This motion is made on the grounds that the Kodak Investor Group is the most adequate plaintiff, as defined by the PSLRA, because it possesses a significant financial interest in the Actions, and it otherwise satisfies the requirements of Federal Rule of Civil Procedure 23 in that its claims are typical of the claims of the putative class and that it will fairly and adequately represent the interests of the class. The Kodak Investor Group also comprises three sophisticated long-term investors with extensive professional backgrounds. Accordingly, the Kodak Investor Group’s motion should be granted.

## **II. FACTUAL BACKGROUND**

The above-captioned asserts violations of Sections 10(b) and 20(a) of the Exchange Act against Kodak, a technology company that provides hardware, software, consumables, and services to customers in commercial print, packaging, publishing, manufacturing, and entertainment. Kodak is incorporated in New Jersey and its securities trade on the New York Stock Exchange (“NYSE”) under the ticker symbol “KODK.” Compl. ¶ 21. Defendant James V. Continenza (“Continenza”) was the Company’s Chief Executive Officer, and Executive Chairman of the Board of Directors of Kodak, and Defendant David Bullwinkle (“Bullwinkle”) served as the Company’s Chief Financial Officer (“CFO”), and Senior Vice President of Kodak. Compl. ¶¶ 22-23.

This action claims that Defendants violated of the Exchange Act for false and misleading statements regarding the Company's business, operations and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that the Company had granted Defendant Continenza and several other Company insiders millions of dollars' worth of stock options, immediately prior to the Company publicly disclosing that it had received a \$765 million loan from the DFC to produce drugs to treat COVID-19, which Defendants knew would cause Kodak's stock to immediately increase in value once the deal was announced. In addition, while in possession of this material non-public information, Defendant Continenza and other Company insiders purchased tens of thousands of the Company's shares immediately prior to the announcement, again at prices that they knew would increase exponentially once news of the loan became public. Compl. ¶ 36. These false and misleading statements caused the price of Kodak securities to be artificially inflated, and thereby resulted in the damages suffered by Movant and the other members of the class. Compl. ¶¶ 36, 52, 54-55, 57-58, 60-61, 65, 70, 75-77.

The truth was revealed on August 1, 2020 when *Reuters* article reported new details of the "unusual" 1.75 million option grant to Continenza, that the grant was due to an "understanding" between Continenza and Kodak's Board of Directors "that had previously neither been listed in his employment contract nor made public," and that "The decision to grant Continenza options was never formalized or made into a binding agreement, which is why it was not disclosed previously." Compl. ¶ 37. On this news, Kodak's stock price fell approximately \$6.91 per share, or 34%, on August 3, 2020. Compl. ¶ 38.

On August 14, 2020, Plaintiff Tang's counsel published a notice of pendency of that action over the national wire service, *GlobeNewswire*. See accompanying Declaration of Bruce

D. Greenberg (“Greenberg Decl.”) Ex. C (Published Notice). That notice advised class members of the existence of the lawsuit and described the claims asserted. *Id.*

### III. LEGAL ARGUMENT

#### A. The Kodak Investor Group Is the “Most Adequate Plaintiff” and Should Be Appointed Lead Plaintiff

##### 1. The Procedure Required by the PSLRA

The PSLRA has established a procedure that governs the appointment of a lead plaintiff in “each private action arising under [the Securities 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). Plaintiff here caused the first notice regarding the pendency of the Action to be published on *GlobeNewswire*, a national, business-oriented newswire service, on August 14, 2020. *See* Greenberg Decl., Ex. C. Within 60 days after publication of the notice, any person or group of persons who are members of the proposed class may apply to the court to be appointed as lead plaintiff, whether or not they have previously filed a complaint in the action. 15 U.S.C. § 78u-4(a)(3)(A)-(B).

Second, the PSLRA provides that, within 90 days after publication of the notice, the court shall consider any motion made by a class member and shall appoint as lead plaintiff the member or members of the 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). In determining the “most adequate plaintiff,” the PSLRA provides that:

[T]he court shall adopt a presumption that the most adequate plaintiff in any private action arising under [the Securities Act] is the person or group of persons 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); *see also Celgene*, 2018 U.S. Dist. LEXIS 165878, at \*6-7

(describing PSLRA standards for appointment of lead plaintiff); *Bucks Cty. Emples. Ret. Fund v.*

*Newell Brands, Inc.*, No. 18-10878 (JMV)(JBC), 2018 U.S. Dist. LEXIS 165879, at \*5-6 (D.N.J.

Sept. 27, 2018) (same).

**2. The Kodak Investor Group Satisfies the “Lead Plaintiff” Requirements of the PSLRA**

**a. The Kodak Investor Group Has Timely Filed a Lead Plaintiff Motion**

According to the published notice, the time period in which class members may move to be appointed lead plaintiff herein under the PSLRA expires on October 13, 2020. *See* 15 U.S.C. § 78u-4(a)(3)(A) & (B). Pursuant to the provisions of the PSLRA, and within the requisite timeframe after publication of the required notice (published on August 14, 2020), the Kodak Investor Group timely moves this Court to be appointed Lead Plaintiff on behalf of all members of the class.

The Kodak Investor Group has duly signed certifications stating that each member is willing to serve as the representative party on behalf of the class. *See* Greenberg Decl. Ex. A. In addition, the Kodak Investor Group has submitted a Joint Declaration attesting that they have conferred about the motion, understand their responsibilities as Lead Plaintiff, and wish to pursue this motion jointly for the benefit of the class. *See* Greenberg Decl. Ex. D. Finally, the Kodak Investor Group has selected and retained competent counsel to represent them and the

class. Accordingly, the Kodak Investor Group is entitled to have its application for appointment as Lead Plaintiff considered and approved by the Court.

**b. The Kodak Investor Group Has the Largest Financial Interest in the Relief Sought by the Class**

During the Class Period, as evidenced by, among other things, the accompanying signed Certification and loss chart, the Kodak Investor Group incurred combined losses of approximately \$1,355,399 on class period transactions in Kodak securities in reliance upon the materially false and misleading statements issued by defendants. *See* Greenberg Decl., Exs. A, B.<sup>2</sup> Upon information and belief, no other investor possesses a larger financial interest in the Action. Accordingly, the Kodak Investor Group satisfies the PSLRA's prerequisite of having a significant financial interest in the Action, and is the presumptive "most adequate plaintiff." 15 U.S.C. § 78u-4(a)(3)(B)(iii).

**c. The Kodak Investor Group Otherwise Satisfies Rule 23**

According to the PSLRA, in addition to possessing the largest financial interest in the outcome of the litigation, the 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); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 222 (3d Cir. 2001); *Celgene*, 2018 U.S. Dist. LEXIS 165878, at \*6. Rule 23(a) provides that a party may serve as a class representative only 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."

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<sup>2</sup> Movants Charles Satterwhite, Terry Butler, and Yiqi Woodling suffered individual losses of \$489,695.31, \$534,660.36 and \$331,043.41, respectively. *Id.*

Of these four prerequisites, only two – typicality and adequacy – directly address the personal characteristics of the class representative, rather than the class as a whole. Consequently, 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 Celgene*, 2018 U.S. Dist. LEXIS 165878, at \*6 (“In deciding a motion to appoint a lead plaintiff, a 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.’”). The Kodak Investor Group satisfies both the typicality and adequacy requirements of Rule 23, thereby justifying its appointment as Lead Plaintiff in these Actions.

Under Rule 23(a)(3), the claims or defenses of the representative parties must be typical of those of the class. In making the *prima facie* determination of typicality, the Court should apply traditional Rule 23 principles, including whether the circumstances of the movant with the largest losses “are markedly different or the legal theory upon which the claims [of that movant] are based differ[ ] from that upon which the claims of other class members will perforce be based.” *Cendant*, 264 F.3d at 265. Thus, typicality exists if claims “arise from the same event or course of conduct that gave rise to the claims of the other class members and are premised upon the same legal theory.” *In re Party City Sec. Litig.*, 189 F.R.D. at 107 n.13.

The Kodak Investor Group satisfies this requirement because, just like all other class members, it: (a) purchased or otherwise acquired Kodak securities during the Class Period; (b) was adversely affected by Defendants’ false and misleading statements; and (c) suffered damages by the conduct set forth in the complaint. Thus, the Kodak Investor Group’s claims are

typical of those of other class members because its claims and the claims of other class members arise out of the same course of events and same legal theories.

Under Rule 23(a)(4), the representative parties must also “fairly and adequately protect the interests of the class.” The PSLRA directs this Court to limit its inquiry regarding the adequacy of the Kodak Investor Group to represent the class to the existence of any conflicts between the interests of the Kodak Investor Group and the members of the class. The Court must evaluate adequacy of representation by considering whether the Kodak Investor Group “has the ability and incentive to represent the claims of the class vigorously, [whether it] has obtained adequate counsel, and [whether] there is [a] conflict between [the movant’s] claims and those asserted on behalf of the class.” *Cendant*, 264 F.3d at 265; *see also Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 630 (3d Cir. 1996) (stating that the adequacy of representation inquiry involves consideration of both whether “the interests of the named plaintiffs [are] sufficiently aligned with those of the absentees” and whether “class counsel [is] qualified and [will] serve the interests of the entire class”).

Here, the Kodak Investor Group meets these requirements. As evidenced by the injuries suffered by the Kodak Investor Group in purchasing Kodak securities at prices allegedly artificially inflated by defendants’ materially false and misleading statements, and by the injury the group suffered based on materially false and misleading statements, the interests of the Kodak Investor Group are clearly aligned with the interests of the class. The Kodak Investor Group is not aware of any conflicts between them and the putative class members.

In addition, the Kodak Investor Group has evidenced its willingness and ability to serve as lead plaintiff in this case as well as the ability to work together to control the litigation. The Kodak Investor Group respectfully submits herewith a Joint Declaration in support of its lead

plaintiff motion executed after a joint conference call held between the members of the Kodak Investor Group, in order to discuss, among other things, proposed litigation strategy, protocols to ensure efficient communication, and its commitment to oversee Lead Counsel and this litigation. Greenberg Decl., Ex. D; *see Aguilar v. Vitamin Shoppe, Inc.*, No. 2:17-cv-6454-KM-MAH, 2018 U.S. Dist. LEXIS 69968, at \*29-30 (D.N.J. Apr. 25, 2018) (appointing a group of individuals who submitted a joint declaration with their motion).

The Joint Declaration submitted by the Kodak Investor Group demonstrates that the group comprises sophisticated investors who are extremely capable of representing the Class. Charles Satterwhite has 12-15 years of investing experience and has been an insurance agent for the past thirty-eight years. *See* Greenberg Decl., Ex. D at ¶ 4. Terry Butler has more than 25 years of investing experience and previously owned and operated his own tax consultant business, advising clients on tax issues. *Id.* at ¶ 5. Yiqi Woodling, has over 25 years of investing experience and is a mechanical engineer. *Id.* at ¶ 6.

Finally, the Kodak Investor Group has taken significant steps, which demonstrate that it will protect the interests of the class: it has retained competent and experienced counsel to prosecute these claims. As shown below, the Kodak Investor Group's proposed Lead Counsel and Liaison Counsel are highly qualified, experienced, and able to conduct this complex litigation in a professional manner. Accordingly, the Kodak Investor Group *prima facie* satisfies each of the PSLRA's requirements and should be appointed Lead Plaintiff.

**B. The Court Should Approve the Kodak Investor Group's Choice of Counsel**

Pursuant to the PSLRA, the proposed lead plaintiff shall, subject to Court approval, select and retain counsel to represent the class it seeks to represent. 15 U.S.C. § 78u-4(a)(3)(B)(v). In this regard, Movant has selected Hagens Berman, a firm with substantial experience in the prosecution of shareholder and securities class actions, to serve as Lead Counsel, and LDG, also

an experienced firm in that area, and one known to this Court, as Liaison Counsel. *See* the respective firm resumes, Greenberg Decl., Exs. E and F.

Hagens Berman has litigated complex securities fraud actions in Districts around the Country, including this one, *see Fergus v. Immunomedics, Inc.*, No. 2:16-cv-03335-KSH-CLW (D.N.J.) (appointing Hagens Berman as lead counsel and LDG as liaison counsel in securities case), and has been recognized for its role in successfully prosecuting actions on behalf of investors.<sup>3</sup> *See also In re Charles Schwab Corp. Sec. Litig.*, No. 3:08-cv-01510-WHA, 2011 WL 1481424, at \*8 (N.D. Cal. Apr. 19, 2011) (after Hagens Berman negotiated two settlements resulting in an 82.1% recovery by California class members in the *Schwab* case, the Honorable William Alsup commented, “Class counsel did a good job persistently advocating for the best interests of the class members, and obtained a very good result for the class . . .”).

LDG is also very experienced in representing plaintiffs in class actions in general and securities fraud class actions in particular. Its firm resume, Greenberg Decl., Ex. F, and its website [www.litedepalma.com](http://www.litedepalma.com), demonstrates that experience.

As such, the 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 available from Hagens Berman and LDG. Because the Kodak Investor Group’s selection of Hagens Berman and LDG is reasonable, its motion should be granted.

#### IV. CONCLUSION

For all the foregoing reasons, the Kodak Investor Group respectfully requests that the Court: (a) appoint the Kodak Investor Group as Lead Plaintiff in the Action; (b) approve its

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<sup>3</sup> Additional details about Hagens Berman are available at [www.hbsslaw.com](http://www.hbsslaw.com).

selection of Lead and Liaison Counsel as set forth herein; and (c) grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: October 13, 2020

**LITE DEPALMA GREENBERG, LLC**

By: /s/ Bruce D. Greenberg

Bruce D. Greenberg  
570 Broad Street, Suite 1201  
Newark, NJ 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858  
bgreenberg@litedepalma.com

*Liaison Counsel*

**HAGENS BERMAN SOBOL SHAPIRO LLP**

Reed R. Kathrein (*pro hac vice* forthcoming)  
Lucas E. Gilmore (*pro hac vice* forthcoming)  
Danielle Smith  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
reed@hbsslaw.com  
lucasg@hbsslaw.com  
danielles@hbsslaw.com

**HAGENS BERMAN SOBOL SHAPIRO LLP**

Steve W. Berman  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
steve@hbsslaw.com

*[Proposed] Lead Counsel for  
[Proposed] Lead Plaintiff*