

Lisa J. Rodriguez  
**SCHNADER HARRISON SEGAL &  
LEWIS LLP**  
Woodland Falls Corporate Park  
220 Lake Drive East, Suite 200  
Cherry Hill, NJ 08002  
Tel: (845) 482-5741  
Fax: (856) 482-6980

*Liaison Counsel for Lead Plaintiff Movants  
The Yannes Family and Proposed Liaison  
Counsel for the Class*

Robert V. Prongay  
Charles H. Linehan  
Pavithra Rajesh  
**GLANCY PRONGAY & MURRAY LLP**  
1925 Century Park East, Suite 2100  
Los Angeles, California 90067  
Tel: (310) 201-9150  
Fax: (310) 201-9160

*Counsel for Lead Plaintiff Movants The  
Yannes Family and Proposed Lead Counsel  
for the Class*

**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

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION OF THE  
YANNES FAMILY FOR  
APPOINTMENT AS LEAD PLAINTIFF  
AND APPROVAL OF COUNSEL**

**PRELIMINARY STATEMENT**

Daniel Yannes, Paul Yannes, and Mary Ann Yannes (collectively, “Movants” or the “Yannes Family”) respectfully move this Court for appointment as Lead Plaintiff 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”). Movants further move for approval of their selection of counsel on behalf of a putative Class of purchasers of Kodak securities (as defined below).

Pursuant to the PSLRA, the person or group with the largest financial interest in the relief sought by the class who satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure is presumed to be the “most adequate plaintiff” – the plaintiff most capable of adequately representing the interests of class members. The PSLRA provides that the Court shall appoint the most adequate plaintiff as lead plaintiff.

Movants believe that they are the “most adequate plaintiff” as defined by the PSLRA and should be appointed as lead plaintiff based on their financial losses suffered as a result of defendants’ wrongful conduct as alleged in this action. In addition, for purposes of this motion, Movants satisfy the relevant requirements of Rule 23 of the Federal Rules of Civil Procedure, as their claims are typical of other class members’ claims, and they are committed to fairly and adequately representing the interests of the class. Thus, pursuant to the PSLRA’s lead plaintiff provision, Movants respectfully submit that they are presumptively the most adequate plaintiff and should be appointed as lead plaintiff for the class.

Additionally, Movants’ selection of Glancy Prongay & Murray LLP as Lead Counsel and Schnader Harrison Segal & Lewis LLP for the Class should be approved because the firms have substantial expertise in securities class action litigation and the experience and resources to efficiently prosecute this action.

## I. FACTUAL BACKGROUND<sup>1</sup>

This is a class action on behalf of persons or entities who purchased or otherwise acquired Eastman Kodak Company (“Kodak” or the “Company”) securities between July 27, 2020 and August 11, 2020, inclusive (the “Class Period”).

Kodak is a technology company that provides hardware, software, consumables, and services to customers in commercial print, packaging, publishing, manufacturing, and entertainment.

On July 27, 2020, Kodak sent a news advisory to media outlets stating there was a “new manufacturing initiative that could change the course of history for Rochester and the American People.” The same day, unknown to investors, Kodak granted 1.75 million stock options to Kodak’s Chief Executive Officer (“CEO”), James V. Continenza, at a conversion price of between \$3.03 and \$12 per share. The Company also awarded 45,000 stock options each to its Chief Financial Officer David Bullwinkle, its Vice President Randy Vandagriff, and its General Counsel Roger Byrd at the same conversion prices.

On July 28, 2020, media outlets reported that Kodak won a \$765 million government loan from the U.S. International Development Finance Corporation (“DFC”) to produce pharmaceutical materials, including ingredients for COVID-19 drugs.

On July 29, 2020, after the market closed, news articles suggested wrongdoing by Kodak in connection with the disclosure of the DFC loan. Specifically, *The Wall Street Journal* reported that “Kodak sent a news advisory to media outlets without indicating the information wasn’t

---

<sup>1</sup> This section is adapted using the allegations in the complaint in the above-captioned action, *see* Dkt. No. 1, and the complaint in the substantially similar action captioned *McAdams v. Eastman Kodak Company, et al.*, Case No. 1:20-cv-06861-JGK (S.D.N.Y.).

intended to be released publicly.” regarding a Kodak initiative with the government in response to the coronavirus pandemic.

On this news, Kodak’s share price fell \$3.37, more than 10%, to close at \$29.83 per share on July 30, 2020. The share price continued to decline over the next trading session by \$7.98, or 27%, to close at \$21.85 per share on July 31, 2020.

On August 1, 2020, *Reuters* reported that the 1.75 million option grant to Continenza “occurred because of an understanding” between Continenza and Kodak’s Board “that had previously neither been listed in his employment contract nor made public.”

On this news, Kodak’s share price fell \$6.91, or over 34%, to close at \$14.94 per share on August 3, 2020.

On August 4, 2020, media reported that U.S. Senator Elizabeth Warren had written a letter asking the SEC to investigate apparent violations of securities laws, including that Continenza and certain Kodak directors purchased Kodak stock “while the company was involved in secret negotiations with the government over a lucrative contract.” Regarding the initial disclosure of the deal ahead of the official announcement, she also questioned whether Kodak violated Rule 100 of SEC Regulation FD by asking “reporters to remove the information after they posted it.”

The same day, *The Wall Street Journal* reported that the SEC had commenced an investigation, encompassing, among other things, “how Kodak controlled disclosure of the loan, word of which began to emerge on July 27, causing Kodak’s stock price to rise 25% that day.” The SEC is also “expected to examine the stock options granted to executives on July 27,” which “instantly became profitable” when Kodak’s government loan was announced.

On this news, Kodak's share price fell \$0.54, or about 3.6%, to close at \$14.40 per share on August 4, 2020, on unusually heavy trading volume.

On August 7, 2020, the Company announced that its Board had commenced "an internal review" of the disclosure of the \$765 million loan.

On this news, Kodak's share price fell \$1.23, or about 7.6%, to close at \$14.88 per share on August 7, 2020, on unusually heavy trading volume.

On August 7, 2020, after the market closed, the DFC tweeted: "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."

On August 10, 2020, the first trading session following the news, Kodak's share price fell \$4.15, or nearly 28%, to close at \$10.73 per share on August 10, 2020, on unusually heavy trading volume.

On August 11, 2020, multiple news outlets reported that George Karfunkel, a Kodak director, had made a suspiciously timed gift of 3 million shares to a congregation in Brooklyn, New York on July 29, 2020. The gift was valued at over \$116 million, making it the single largest donation to a religious group.

On this news, Kodak's share price fell \$0.72 per share, or about 6.7%, to close at \$10.01 per share on August 11, 2020.

On August 11, 2020, after the market closed, Kodak held a conference call to discuss its financial results. During the call, defendant Continenza repeatedly referred to the loan as a "potential loan" and stated that "we . . . support the DFC's decision to wait clarification before moving forward with the loan process."

On this news, Kodak's share price fell \$0.29, or 2.9%, to close at \$9.72 per share on August 12, 2020.

Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that, before a \$765 million government loan was announced, Kodak's CEO was granted 1.75 million stock options and other insiders were engaging in suspiciously timed transactions based on material non-public information; (2) that Kodak's insiders had improperly leaked the information to the market on July 27, 2020 before the official announcement and actively engaged in a cover-up scheme; (3) that the status and likelihood of the \$765 million government loan was misrepresented to the market for many reasons, particularly given the Company's wrongful behavior in terms of secretly granting options to Kodak's CEO and other insider transactions while in possession of material non-public information; and (4) that, as a result, the Company's public statements were materially false and misleading at all relevant times.

## **II. PROCEDURAL BACKGROUND**

On August 13, 2020, plaintiff Tiandong Tang commenced the above-captioned action in this District on behalf of persons or entities that purchased or otherwise acquired Kodak common stock from July 27, 2020 through August 7, 2020, inclusive.

On August 26, 2020, plaintiffs Jimmie A. McAdams and Judy P. McAdams commenced a substantially similar action in the Southern District of New York, Case No. 1:20-cv-06861-JGK, on behalf of persons and entities who purchased or sold the publicly traded securities of Kodak from July 27, 2020 through August 11, 2020, inclusive.

### **III. ARGUMENT**

#### **A. Movants Should Be Appointed Lead Plaintiff**

The PSLRA provides the procedure for selecting a lead plaintiff in class actions brought under the federal securities laws. 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”—*i.e.*, the plaintiff most capable of adequately representing the interests of the Class—is the class member 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)(I). The presumption in favor of appointing a movant as lead plaintiff may be rebutted only upon proof “by a purported member of the plaintiff class” that the presumptively most adequate plaintiff:

(aa) will not fairly and adequately protect the interest 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)(II). As set forth below, Movants satisfy all of the PSLRA criteria and have complied with all of the PSLRA’s requirements to be appointed lead plaintiff. Movants have, to the best of their knowledge, the largest financial interest in this litigation and meet the relevant requirements of Federal Rule of Civil Procedure 23. In addition, Movants are not aware of any unique defenses Defendants could raise against them that would render them inadequate

to represent the Class. Accordingly, Movants respectfully submit that they should be appointed lead plaintiff. *See Varghese v. China Shenghuo Pharm. Holdings, Inc.*, 589 F. Supp. 2d 388, 397 (S.D.N.Y. 2008).

**1. Movants Filed a Timely Motion**

On August 14, 2020, pursuant to Section 27(a)(3)(A)(i) of the PSLRA, notice was published in connection with this action. *See* Declaration of Lisa J. Rodriguez (“Rodriguez Decl.”), Exhibit (“Ex.”) A. Therefore, Movants had sixty days (*i.e.*, until October 13, 2020) to file a motion to be appointed as Lead Plaintiff. As purchasers of Kodak securities during the Class Period, Movants are members of the proposed class and have timely filed a motion for appointment as lead plaintiff within sixty days of the notice, in compliance with the PSLRA. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa).

Additionally, as set forth in their PSLRA certifications, Movants attest that they have reviewed the complaint, adopt the allegations therein, and are willing to serve as representatives of the class. *See* Rodriguez Decl., Ex. B. Accordingly, Movants satisfy the first PSLRA requirement to be appointed lead plaintiff.

**2. Movants Have the Largest Financial Interest**

The PSLRA requires a court to adopt the 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). At the time of this filing, Movants believe that they have the largest financial interest among Class members who filed timely applications for appointment as lead plaintiff and are presumed to be the “most adequate plaintiff.”

Movants purchased Kodak securities during the Class Period at prices alleged to be artificially inflated by Defendants’ misstatements and omissions and, as a result, suffered



financial harm. *See* Rodriguez Decl., Ex. C. To the best of their knowledge, Movants are not aware of any other Class member that has filed a motion for appointment as lead plaintiff who claims a larger financial interest. As such, Movants believe they have the “largest financial interest in the relief sought by the Class,” and thus satisfy the second PSLRA requirement to be appointed as lead plaintiff for the Class. *See Varghese*, 589 F. Supp. 2d at 396.

**3. Movants Satisfy the Requirements of Rule 23 of the Federal Rules of Civil Procedure**

The PSLRA further provides that in addition to possessing the largest financial interest in the outcome of the litigation, a lead plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *See In re Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001). Rule 23(a) generally provides that a class action may proceed 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 interest of the class.

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

In making its determination that a lead plaintiff candidate otherwise satisfies the requirements of Rule 23, “typicality and adequacy of representation are the only provisions [of Rule 23] relevant to the determination.” *City of Monroe Employees’ Ret. Sys. v. Hartford Fin. Svcs. Group, Inc.* 269 F.R.D. 291, 296 (S.D.N.Y. 2010). At the lead plaintiff stage of the litigation, a movant need only make a preliminary showing that they satisfy Rule 23’s typicality and adequacy requirements. *Id.* at 296-97 (citing *In re eSpeed, Inc. Sec. Litig.*, 232 F.R.D. 95, 102 (S.D.N.Y. 2005).

**a) Movants' 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 Merck & Co., Inc. Sec.*, No. 05-cv-1151, 2013 WL 396117, at \*5 (D.N.J. Jan. 30, 2013). Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Id.* at \*7.

Movants' claims are typical of the claims asserted by the proposed Class. Like all members of the Class, Movants allege that Defendants' material misstatements and omissions concerning Kodak's business, operations, and financial prospects violated the federal securities laws. Movants, like all of the members of the Class, purchased Kodak securities in reliance on Defendants' alleged misstatements and omissions and were damaged thereby. Accordingly, Movants' interests and claims are "typical" of the interests and claims of the Class.

**b) Movants Are Adequate Representatives**

The adequacy requirement is satisfied where: (1) class counsel is qualified, experienced, and generally able to conduct the litigation; (2) there is no conflict between the proposed lead plaintiff and the members of the class; and (3) the proposed lead plaintiff has a sufficient interest in the outcome of the case to ensure vigorous advocacy. *See In re Pharmaprint, Inc. Sec. Litig.*, No. 00-cv-00061, 2002 WL 31056813, at \*6 (D.N.J. Apr. 17, 2002).

Movants have demonstrated their adequacy by retaining competent and experienced counsel with the resources and expertise to efficiently prosecute this action, and their financial losses ensure that they have sufficient incentive to provide vigorous advocacy. *See Rodriguez Decl., Ex. C.* Daniel Yannes is a Director of Development with a Bachelor's degree in Accounting and has been managing his own portfolio for 32 years. His father, Paul Yannes, was

a machinist for 35 years and is currently retired. Movants are not aware of any conflict between their claims and those asserted on behalf of the Class.

**B. The Court Should Approve Lead Plaintiff's Choice of Counsel**

The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only to approval of the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *In re Cendant Corp.*, 264 F.3d at 274. Thus, the Court should not disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). Here, Movants have selected Glancy Prongay & Murray LLP as lead counsel and Schnader Harrison Segal & Lewis LLP as liaison counsel. The firms have successfully prosecuted numerous securities fraud class actions on behalf of injured investors. As reflected by the firms' résumés, *see* Rodriguez Decl., Exs. D and E, 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. Accordingly, the Court should approve Movants' selection of counsel.

**IV. CONCLUSION**

For the foregoing reasons, Movants respectfully request that the Court grant their Motion and enter an Order: (1) appointing Daniel Yannes, Paul Yannes, and Mary Ann Yannes as lead plaintiff; (2) approving Movant's selection of Glancy Prongay & Murray LLP as lead counsel and Schnader Harrison Segal & Lewis LLP as liaison counsel for the class; and (3) granting such other relief as the Court may deem just and proper.

DATED: October 13, 2020

Respectfully submitted,

**SCHNADER HARRISON SEGAL & LEWIS  
LLP**

By: s/ Lisa J. Rodriguez

Lisa J. Rodriguez  
Woodland Falls Corporate Park  
220 Lake Drive East, Suite 200

Cherry Hill, NJ 08002  
Tel: (845) 482-5741  
Fax: (856) 482-6980

*Liaison Counsel for Lead Plaintiff Movants and  
Proposed Liaison Counsel for the Class*

**GLANCY PRONGAY & MURRAY LLP**

Robert V. Prongay  
Charles H. Linehan  
Pavithra Rajesh  
1925 Century Park East, Suite 2100  
Los Angeles, California 90067  
Telephone: (310) 201-9150

*Counsel for Lead Plaintiff Movants and Proposed  
Lead Counsel for the Class*

**THE LAW OFFICES OF FRANK R. CRUZ**

Frank R. Cruz  
1999 Avenue of the Stars, Suite 1100  
Los Angeles, CA 90067  
Telephone: (310) 914-5007

*Additional Counsel*