

KAPLAN FOX & KILSHEIMER LLP

Joel B. Strauss
Frederic S. Fox (*pro hac vice* to be filed)
850 Third Avenue, 14th Floor
New York, NY 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714
email: jstrauss@kaplanfox.com
ffox@kaplanfox.com

William J. Pinilis
160 Morris Street
Morristown, New Jersey 07960
Telephone: (973) 656-0222
Facsimile: (973) 401-1114
E-Mail: wpinilis@kaplanfox.com

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

[Additional counsel appear on signature page]

**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.

Honorable Freda L. Wolfson
Civ. A. No. 3:20-cv-10462-FLW-ZNQ

MOTION DAY: November 16, 2020

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION
OF LES INVESTISSEMENTS KIZ INC. AND UAT TRADING SERVICE, INC.
FOR APPOINTMENT AS LEAD PLAINTIFF AND
APPROVAL OF THEIR SELECTION OF LEAD COUNSEL**

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

II. PROCEDURAL BACKGROUND..... 2

III. STATEMENT OF FACTS 3

IV. ARGUMENT..... 6

 A. The PSLRA Standard for Appointing Lead Plaintiff..... 6

 B. Kiz Inc. and UAT Are the Most Adequate Plaintiff under the PSLRA..... 7

 1. Kiz Inc. and UAT’s Motion is Timely Filed.....8

 2. Kiz Inc. and UAT Has the Largest Financial Interest in the Relief Sought by the Class.....8

 C. Kiz Inc. and UAT Are Qualified Under Rule 23 8

 1. Kiz Inc. and UAT’s Claims Are Typical of the Claims of the Proposed Class.....9

 2. Kiz Inc. and UAT Will Fairly and Adequately Represent the Class’ Interests.....10

 D. This Court Should Approve Kiz Inc. and UAT’s Choice of Counsel 12

CONCLUSION..... 12

TABLE OF AUTHORITIES

| Cases | Page(s) |
|--|----------------|
| <i>Aguilar v. Vitamin Shoppe, Inc.</i> , No. 2:17-CV-6454-KM-MAH, 2018 WL 1960444 (D.N.J. Apr. 25, 2018) | 11 |
| <i>Blake Partners, Inc. v. Orbcomm, Inc.</i> , No. CIV.A. 07-4517 (WHW), 2008 WL 2277117 (D.N.J. June 2, 2008) | 9 |
| <i>Eisenberg v. Gagnon</i> , 766 F.2d 770 (3d Cir. 1985)..... | 10 |
| <i>Faig v. Bioscrip, Inc.</i> , No. 13 Civ. 06922 (AJN), 2013 WL 6705045 (S.D.N.Y. Dec. 19, 2013)..... | 10 |
| <i>Fields v. Biomatrix, Inc.</i> , 198 F.R.D. 451 (D.N.J. 2003)..... | 11 |
| <i>In re Bear Stearns Co., Inc. Sec., Deriv., & ERISA Litig.</i> , No. 08 M.D.L. 1963, 2009 WL 50132 (S.D.N.Y. Jan. 5, 2009)..... | 2 |
| <i>In re Cendant Corp. Litig.</i> , 264 F.3d 201 (3d Cir. 2001)..... | 9, 11, 12 |
| <i>In re Deutsche Bank Aktiengesellschaft Sec. Litig.</i> , 2016 WL 5867497 (S.D.N.Y. Oct. 4, 2016)..... | 10 |
| <i>Roby v. Ocean Power Techs, Inc.</i> , No. 14-cv-3799 (FLW) (LHG), 2015 WL 1334320 (D.N.J. Mar. 17, 2015) | 9 |
| <i>Sun v. Han</i> , No. 15-703, 2015 WL 2364937, (D.N.J. May 14, 2015)..... | 9 |
| <i>Wetzel v. Liberty Mut. Ins. Co.</i> , 508 F.2d 239 (3d Cir. 1975), <i>cert. denied</i> , 421 U.S. 1011, 95 S.Ct. 2415 (1975)..... | 11 |
| Statutes | |
| 15 U.S.C. § 78j(b)..... | 1 |
| 15 U.S.C. § 78t(a)..... | 1 |
| 115 U.S.C. § 78u-4, <i>et seq.</i> | passim |

Other Authorities

H. R. Conf. Rep. No. 104-369, at 35 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730..... 11

Rules

Fed. R. Civ. P. 23 passim

Putative class members Les Investissements Kiz Inc. (“Kiz Inc.”) and UAT Trading Service, Inc. (“UAT”) by their counsel, respectfully submit this Memorandum of Law pursuant to the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4a(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), for entry of an order: (i) appointing Kiz Inc. and UAT as Lead Plaintiff in the above-captioned action (the “Action”); (ii) approving Kiz Inc. and UAT’s selection of the law firms of Kaplan Fox & Kilsheimer LLP (“Kaplan Fox”) and Labaton Sucharow LLP (“Labaton Sucharow”) to serve as Lead Counsel under 15 U.S.C. § 78u-4(a)(3)(B)(v); and (iii) granting such other and further relief as the Court may deem just and proper.

Kiz Inc. and UAT believe they have the largest financial interest in the outcome of this litigation and are presumptively entitled to be appointed Lead Plaintiff and that their choice of counsel should be approved. 15 U.S.C. § 78u-4 (a)(3)(B)(iii)(I)(bb).

I. PRELIMINARY STATEMENT

Presently pending in this District is at least one securities fraud class action and at least one additional securities fraud action is pending in the United States District Court for the Southern District of the New York.¹ These actions have been brought pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and U.S. Securities and Exchange Commission Rule 10b-5 promulgated thereunder, against Eastman Kodak Company (“Kodak” or the “Company”) and certain senior officers and/or directors of the Company in

¹ The action filed in this District is styled *Tang v. Eastman Kodak Company*, 20-cv-10462-FLW-ZNQ (D. N.J. Aug. 13, 2020) (the “*Tang* Action”) and alleges a class period of July 27, 2020 through August 7, 2020. The action filed in the Southern District of New York is styled *McAdams and McAdams v. Eastman Kodak Company*, 20-cv-06861-JGK (S.D.N.Y. Aug. 26, 2020) (the “*McAdams* Action”). The *McAdams* Action alleges a period of July 27, 2020 through August 11, 2020. Contemporaneous with this filing, Kiz Inc. and UAT will move for appointment as Lead Plaintiff in the Southern District of New York.

connection with statements made by the defendants during the period July 27, 2020 through August 11, 2020, both dates inclusive (the “Class Period”).²

Pursuant to the PSLRA, this Court must appoint the member or members of the class “most capable of adequately representing the interests of class members” to serve as lead plaintiff. 15 U.S.C. §§ 78u-4(a)(3)(B)(i). Kiz Inc. and UAT believe they are entitled to appointment as lead plaintiff as the movant with the largest financial interest that otherwise meets the applicable requirements of Rule 23 of the Federal Rules of Civil Procedure. Kiz Inc. and UAT also respectfully request that the Court approve Kaplan Fox and Labaton Sucharow as lead counsel. 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”).

II. PROCEDURAL BACKGROUND

On August 13, 2020, the Action was filed in this District and notice was published to class members on *Globe Newswire* on August 14, 2020, as required by 15 U.S.C. § 78u-4(a)(3)(A)(i) of the Exchange Act (the “Notice”). *See* Exhibit A to the Declaration of Joel B. Strauss in Support of Kiz Inc.’ Motion for Appointment as Lead Plaintiff and Approval of Their Selection of Lead Counsel dated October 13, 2020 (“Strauss Decl.”). The Notice advised purchasers of Kodak common stock of the existence of a lawsuit against defendants and the nature of defendants’ statements, omissions and conduct that allegedly damaged investors. *Id.* The Notice further advised class members of their right to move the Court to be appointed lead plaintiff by October 13, 2020. *Id.*

² The Class Period as defined herein is the longest possible class period of the *Tang* and *McAdams* actions. *See, e.g., In re Bear Stearns Co., Inc. Sec., Deriv., & ERISA Litig.*, No. 08 M.D.L. 1963, 2009 WL 50132, at *8 (S.D.N.Y. Jan. 5, 2009) (noting that when initial complaints allege multiple class periods, “the lead plaintiff analysis should utilize the most inclusive class period because it encompasses more potential class members”) (citation omitted).

Subsequently, the *McAdams* Action was filed in the Southern District of New York on behalf of a class of investors in Kodak securities during the Class Period.³

Accordingly, Kiz Inc. and UAT now move this Court to be appointed as Lead Plaintiff.

III. STATEMENT OF FACTS

The Action alleges that Kodak is a technology company that provides hardware, software, consumables and services to customers in commercial print, packaging, publishing, manufacturing, and entertainment. *See* Compl., ¶ 2.⁴

According to the Action, 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.* ¶ 2. Kodak later claimed this information was released inadvertently. *Id.*

Further, according to the Action, on July 27, 2020, to further a scheme to profit from the use of material non-public information about the deal before its official disclosure, and unknown to investors, Kodak granted its CEO and Executive Chairman, Defendant James Continenza, 1.75 million stock options at a conversion price of between \$3.03 and \$12 per share. *Id.* ¶¶ 3, 5. Additionally, the Company awarded 45,000 stock options each to its Chief Financial Officer, David 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 instantly profitable. *Id.* ¶ 3.

³ The Action in this District and the *McAdams* Action filed in the Southern District of New York are based on similar facts.

⁴ Unless otherwise indicated, “Compl., ¶ ___” refers to the complaint filed in the Action.

According to the Action, 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. *Id.* ¶ 4. Shares continued to surge by over 300% the next day to close at \$33.20 per share on July 29, 2020. *Id.* As a result, Defendant Continenza saw the value of his options go from zero to \$50 million in just 48 hours. *Id.*

According to the Action, on August 1, 2020, a *Reuters* article reported new details of an "unusual" 1.75 million option grant to Defendant Continenza that "occurred because of an understanding" between Defendant Continenza and Kodak's Board of Directors "that had previously neither been listed in his employment contract nor made public." *Id.* ¶ 5. On this news, Kodak's shares fell \$6.91 per share the next trading day, or 32%, to close at \$14.94 per share on August 3, 2020. *Id.* ¶ 6.

On August 4, 2020, reports emerged that United States Senator Elizabeth Warren had submitted a letter to the SEC requesting an investigation of the deal and Kodak for apparent violations of the securities laws and SEC regulations. *Id.* ¶ 7. The letter noted that on June 23, 2020, Defendant Continenza purchased 46,737 shares and board member Philippe Katz purchased 5000 shares – stock trades that "raise questions about several different insider trading laws." *Id.* Further, according to Senator Warren's letter, each purchase "made while the company was involved in secret negotiations with the government over a lucrative contract raising questions about whether these executives potentially made investment decisions based on material, non-public information derived from their positions," in violation of the Exchange Act. *Id.* Additionally, the letter 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 Kodak 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. *Id.* ¶ 8.

Further, according to the Action, on August 4, 2020, the *Wall Street Journal* reported that the SEC had commenced an investigation into “how Kodak controlled disclosure of the loan, word of which began to emerge on July 27, 2020” and the article stated that “[t]he 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. *Id.* ¶ 9.

Additionally, on August 4, 2020, Kodak Board member George Karfunkel (“Karfunkel”) and his wife disclosed in an SEC filing that they had made a July 29, 2020 donation of 3 million of their 6.3 million Kodak shares to a religious institution in Brooklyn, New York that Karfunkel founded and controlled, a gift reportedly valued at \$116.3 million. *Id.* ¶ 10. Notably, this “charitable” donation took place one day after the DFC loan announcement, the day Kodak’s stock peaked at \$60 per share, and was provided to a congregation that reportedly has only been incorporated since 2018, used a Brooklyn accountant’s office as its mailing address, had no website, and for which Karfunkel himself reportedly served as the President—one of only three officers of the purported charity. *Id.* ¶¶ 10, 35. *The Wall Street Journal* later reported that the donation represented the single largest gift recorded to a religious group, and would generate tens of millions of dollars in income-tax benefits for Karfunkel. Karfunkel’s gift is now the subject of an internal review by the Company’s outside counsel. *Id.* ¶ 10. On August 4, 2020, Kodak’s stock price dropped another \$0.54, or 4%, to close at \$14.40 per share. *Id.* ¶ 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 raises “questions that must be thoroughly examined.” *Id.* ¶ 12.

According to the Action, on August 7, 2020, after the market closed, the DFC announced as follows:

“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.* ¶ 13.

On this news, Kodak’s stock price declined \$4.15 per share, or 28%, to close at \$10.73 per share on August 10, 2020. *Id.* ¶ 14.⁵

IV. ARGUMENT

A. **The PSLRA Standard for Appointing Lead Plaintiff**

The PSLRA sets forth the procedure for the selection of a lead plaintiff in “each private action arising under [the Exchange 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), 78u-4(3)(B)(i). Specifically, within 20 days after the date on which a class action is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class –

- (I) of the pendency of the action, the claims asserted therein, and the purported class period; and
- (II) that, 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.

⁵ According to the *McAdams* Action, Kodak’s shares continued to decline the next trading day by \$0.72 per share, or 6.7%, to close at \$10.01 per share on August 11, 2020. *See McAdams* Action, ECF No. 1, ¶ 56. Additionally, Kodak’s shares declined by an additional 2.9% to close at \$9.72 per share on August 12, 2020 following statements by Defendant Continenza after the market closed on August 11, 2020. *Id.*, ¶¶ 57, 58.

15 U.S.C. § 78u-4 (a)(3)(A)(i).

Further, the PSLRA directs the Court to consider any motions by plaintiffs or purported class members to serve as lead plaintiff in response to any such notice within 90 days after the date of publication of the notice, or as soon as practicable after the Court decides any pending motion to consolidate any actions asserting substantially the same claim or claims. 15 U.S.C. § 78u-4 (a)(3)(B).

Under the relevant sections of the Exchange Act, the Court “shall” appoint the “most adequate plaintiff,” and is to presume that plaintiff is the person 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).

B. Kiz Inc. and UAT Are the “Most Adequate Plaintiff” under the PSLRA

Kiz Inc. and UAT respectfully submit that they are the “most adequate plaintiff” because they have complied with the PSLRA procedural requirements, believe they hold the largest financial interest of any movant, and satisfy Rule 23’s typicality and adequacy requirements. *See* Strauss Decl., Exs. B and C. In addition, Kiz Inc. and UAT have both duly signed and filed a certification stating that they are willing to serve as a representative party on behalf of the class. *See* Strauss Decl., Ex. B. Moreover, representatives from both Kiz Inc. and UAT have submitted a Joint Declaration attesting to each entity’s dedication to jointly fulfilling the fiduciary duties of the lead plaintiff should they be appointed. *See* Strauss Decl., Ex. D. Finally, Kiz Inc. and UAT have selected and retained counsel experienced in the prosecution of securities class actions to represent the class. *See id.*, Ex. E (Kaplan Fox Firm Resume); Ex. F (Labaton Sucharow Firm

Resume). Accordingly, Kiz Inc. and UAT satisfy the PSLRA's filing requirements for seeking appointment as lead plaintiff and, therefore should be appointed lead plaintiff.

1. Kiz Inc. and UAT's Motion is Timely Filed

Under the PSLRA, any Class member may move for appointment as lead plaintiff within 60 days of the publication of notice that the first action asserting substantially the same claims has been filed. 15 U.S.C. § 78u-4 (a)(3)(A). In this case, notice of the pendency of the Action in this District was published alerting investors that the deadline to seek lead plaintiff status is October 13, 2020. *See* Strauss Decl., Ex. A.

2. Kiz Inc. and UAT Have the Largest Financial Interest in the Relief Sought by the Class

Under the relevant sections of the Exchange Act, a rebuttable presumption exists whereby the plaintiff with the largest financial interest in the litigation and who otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure is presumed to be the most adequate plaintiff to lead the action. 15 U.S.C. § 78u-4 (a)(3)(B)(iii). Here, Kiz Inc. and UAT suffered substantial losses of approximately \$2,959,987 as a result their transactions in Kodak securities during the Class Period. *See* Strauss Decl., Exs. B and C. Kiz Inc. and UAT are not aware of any other movant with a larger financial interest, believe they possess the largest financial interest of any lead plaintiff movant, and therefore believe they are presumptively entitled to appointment as lead plaintiff.

C. Kiz Inc. and UAT Are Qualified Under Rule 23

The PSLRA provides that 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)(I)(cc). 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.

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

For the purposes of appointment as lead plaintiff, in contrast to the class certification stage of litigation, a proposed lead plaintiff need only make a “prima facie showing of typicality and adequacy.” *Roby v. Ocean Power Techs, Inc.*, No. 14-cv-3799 (FLW) (LHG), 2015 WL 1334320, at *4 (D.N.J. Mar. 17, 2015) (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001)). “Of the four prerequisites for class certification under Rule 23(a), only two – typicality and adequacy or representation – directly address whether a lead plaintiff movant is the ‘most adequate plaintiff’” *Sun v. Han*, No. 15-703, 2015 WL 2364937, at *3 (D.N.J. May 14, 2015) (citing *Blake Partners, Inc. v. Orbcomm, Inc.*, No. CIV.A. 07-4517 (WHW), 2008 WL 2277117, at *6 (D.N.J. June 2, 2008)). 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. As detailed below, Kiz Inc. and UAT satisfy the typicality and adequacy requirements of Rule 23(a), thereby justifying their appointment as Lead Plaintiff for the Action.

1. Kiz Inc. and UAT’s Claims Are Typical of the Claims of the Proposed Class

Pursuant to Rule 23(a)(3), typicality requires “that a party seeking to represent a class have claims or defenses [that] are typical of the claims or defenses of the class[.]” *In re Cendant*, 264 F.3d at 263 (internal quotation marks omitted); Fed R. Civ. P. 23(a)(3). 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, (2) the claims are based on the same legal theory, and (3) the purported class members and proposed lead plaintiff were injured by the same conduct. *See, e.g., In re Deutsche Bank Aktiengesellschaft Sec. Litig.*, 2016 WL 5867497, at *5 (S.D.N.Y. Oct. 4, 2016) (“The typicality requirement is satisfied if each class member’s claim ‘arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.’”) (internal citations omitted); *see also Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985) (“typicality permits the court to assess whether the class representative themselves present those common issues of law and fact that justify class treatment . . .”). Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Faig v. Bioscrip, Inc.*, No. 13 Civ. 06922 (AJN), 2013 WL 6705045, at *3 (S.D.N.Y. Dec. 19, 2013).

The claims asserted by Kiz Inc. and UAT are based on the same legal theory and arise out of the same course of events as the other purported class members' claims. Kiz Inc. and UAT both transacted in Kodak securities, as did each member of the proposed class, at prices artificially inflated by Defendants' false and misleading statements and were damaged thereby. Thus, Kiz Inc. and UAT satisfy the typicality requirement of Rule 23(a).

2. Kiz Inc. and UAT Will Fairly and Adequately Represent the Class' Interests

Kiz Inc. and UAT likewise satisfy the adequacy requirement of Rule 23. Under Rule 23(a)(4) of the Federal Rules of Civil Procedure, the representative party must “fairly and adequately protect the interest of the class.” Fed. R. Civ. P. 23(a)(4). “The adequacy of representation is generally tested against two factors: (1) the plaintiff’s attorney must be qualified, experienced, and generally able to conduct the proposed litigation; and (2) the plaintiff must not have interests antagonistic to those of the class.” *Fields v. Biomatrix, Inc.*, 198 F.R.D.

451, 457 (D.N.J. 2003) (citing *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 247 (3d Cir. 1975), *cert. denied*, 421 U.S. 1011, 95 S.Ct. 2415 (1975)).

Here, Kiz Inc. and UAT's interests are clearly aligned with the members of the proposed class, and there is no evidence of any antagonism between Kiz Inc. and UAT's interests with those of the class. As detailed above, Kiz Inc. and UAT's claims raise similar questions of law and fact as claims of the members of the class, and Kiz Inc. and UAT's claims are typical of the members of the class.

Further, Kiz Inc. and UAT have demonstrated their adequacy and willingness to serve as and assume the responsibilities of a lead plaintiff. *See* Strauss Decl., Ex. B. Having suffered substantial losses, Kiz Inc. and UAT will serve as a zealous advocate and fiduciary on behalf of the class. Moreover, representatives from Kiz Inc. and UAT have submitted a Joint Declaration attesting to Kiz Inc. and UAT's dedication and ability to effectively fulfil their fiduciary duties if appointed as lead plaintiff, as well as the reasons why Kiz Inc. and UAT determined to seek joint appointment as lead plaintiff in the best interests of the class. *See* Strauss Decl., Ex. D; *see, e.g., Aguilar v. Vitamin Shoppe, Inc.*, No. 2:17-CV-6454-KM-MAH, 2018 WL 1960444, at *10 (D.N.J. Apr. 25, 2018) (appointing lead plaintiff group based on detailed joint declaration); *see also In re Cendant*, 264 F.3d at 266-68 (approving the appointment of lead plaintiff groups).

In addition, Kiz Inc. and UAT have selected Kaplan Fox and Labaton Sucharow – counsel highly experienced in prosecuting securities class actions – as proposed lead counsel. *See* Strauss Decl., Exs. E and F. Thus, the interests of Kiz Inc. and UAT are closely aligned with the other class members, and Kiz Inc. and UAT's strong desire to prosecute the Action on behalf of the proposed class, provide ample reason to grant Kiz Inc. and UAT's motion for appointment

as lead plaintiff in the Action. Accordingly, Kiz Inc. and UAT satisfy the prerequisites for appointment as lead plaintiff under the PSLRA.

D. This Court Should Approve Kiz Inc. and UAT’s Choice of Counsel

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject only to court approval. *See* 15 U.S.C. § 78u-4 (a)(3)(B)(v); *In re Cendant*, 264 F.3d at 276 (stating that the PSLRA “evidences a strong presumption in favor of approving a properly-selected lead plaintiff’s decisions as to counsel selection and counsel retention”). Consistent with Congressional intent, a court should not disturb the lead plaintiff’s choice of counsel, unless it is “necessary to protect the interests of the plaintiff class.” *See* Statement of Managers – The Private Securities Litigation Reform Act of 1995, H. R. Conf. Rep. No. 104-369, at 35 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 734.

Kiz Inc. and UAT have retained Kaplan Fox and Labaton Sucharow to file moving papers on their behalf seeking appointment as Lead Plaintiff and to serve as lead counsel to pursue this litigation on behalf of themselves and the class. Kaplan Fox and Labaton Sucharow both possess extensive experience in the area of securities litigation and each has successfully prosecuted numerous securities class actions on behalf of injured investors. *See* Strauss Decl., Exs. E and F. Thus, the Court may be assured that, in the event the instant motion is granted, the members of the class will receive the highest caliber of legal representation available.

CONCLUSION

For all of the foregoing reasons, Kiz Inc. and UAT respectfully request that the Court: (1) appoint Kiz Inc. and UAT as Lead Plaintiff; (2) approve Kiz Inc. and UAT’s selection of Kaplan Fox and Labaton Sucharow as Lead Counsel; and (3) grant such other relief as the Court may deem just and proper.

Dated: October 13, 2020

Respectfully submitted,

/s/ Joel B. Strauss

KAPLAN FOX & KILSHEIMER LLP

Joel B. Strauss

Frederic S. Fox (*pro hac vice* to be filed)

Donald R. Hall (*pro hac vice* to be filed)

Pamela A. Mayer (*pro hac vice* to be filed)

850 Third Avenue, 14th Floor

New York, NY 10022

Telephone: (212) 687-1980

Facsimile: (212) 687-7714

Email: jstrauss@kaplanfox.com

ffox@kaplanfox.com

dhall@kaplanfox.com

pmayer@kaplanfox.com

KAPLAN FOX & KILSHEIMER LLP

William J. Pinilis

160 Morris Street

Morristown, New Jersey 07960

Telephone: (973) 656-0222

Facsimile: (973) 401-1114

Email: wpinilis@kaplanfox.com

LABATON SUCHAROW LLP

Christopher J. Keller (*pro hac vice* to be filed)

Eric J. Belfi (*pro hac vice* to be filed)

Francis P. McConville (*pro hac vice* to be filed)

David J. Schwartz (*pro hac vice* to be file

140 Broadway

New York, New York 10005

Telephone: (212) 907-0700

Facsimile: (212) 818-0477

Email: ckeller@labaton.com

ebelfi@labaton.com

fmconville@labaton.com

dschwartz@labaton.com

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

CERTIFICATE OF SERVICE

I, Joel B. Strauss, hereby certify that, on October 13, 2020, I caused the foregoing to be served on all counsel of record by filing the same with the Court using the CM\ECF system which will send electronic notices of the filing to all counsel of record.

/s/ Joel B. Strauss

Joel B. Strauss