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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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

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
MOVANTS SCOTT REYNOLDS AND
SRR FORTRESS CAPITAL LLC FOR
APPOINTMENT AS LEAD
PLAINTIFFS AND APPROVAL OF
SELECTION OF COUNSEL

Motion Date: November 16, 2020

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Movants Scott Reynolds and SRR Fortress Capital LLC ("Movants") respectfully submit this Memorandum of Law in support of their Motion for: (i) appointment as Lead Plaintiffs in the above-captioned action pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4; and (ii) approval of their selection of Robbins LLP Lead Counsel and Herman Jones LLP ("Herman Jones") as Liaison Counsel for Lead Plaintiffs and the proposed class.

I. INTRODUCTION

Presently pending in this District is the securities class action lawsuit filed on August 13, 2020 (the "Action"), on behalf of purchasers of Eastman Kodak Company ("Kodak" or the "Company") securities between July 27, 2020 and August 7, 2020, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").¹

Under the PSLRA, the Court is tasked with appointing the Lead Plaintiff for this Action. In particular, the PSLRA instructs the Court is to appoint as Lead Plaintiff the movant: (i) making a timely motion under the PSLRA's sixty-day deadline; (ii) who asserts the largest financial interest in the litigation; and (iii) who

¹ Movants are also filing a Lead Plaintiff motion in the substantially similar action pending in the U.S. District Court for the Southern District of New York. If appointed Lead Plaintiffs, Movants will seek to transfer and consolidate the actions in one forum.

also satisfies the relevant requirements of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). *See* 15 U.S.C. §78u-4(a)(3)(B)(iii). Movants meet these requirements, because: (i) Movants timely filed for appointment as Lead Plaintiffs; (ii) to the best of their knowledge, Movants have the largest financial interest in this litigation; and (iii) Movants meet the applicable requirements under Rule 23. *See id.; infra* Section III.A. Accordingly, the Court should appoint Movants as Lead Plaintiffs.

Finally, the Court should approve Movants' choice of Lead Counsel. Movants have retained experienced and competent counsel. As the "most adequate plaintiff" under the PSLRA, the Court should defer to Movants' selection of Robbins LLP as Lead Counsel and Herman Jones as Liaison Counsel for Lead Plaintiffs and the proposed class, and should be approved. *See* 15 U.S.C. §78u-4(a)(3)(B)(v).

II. STATEMENT OF FACTS

Kodak, a New Jersey corporation, headquartered in Rochester, New York, is a technology company that provides hardware, software, consumables, and services to customers in commercial print, packaging, publishing, manufacturing, and entertainment. The Company's shares trade on the New York Stock Exchange under the ticker symbol "KODK."

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 U.S. International Development Finance Corporation ("DFC") under the Defense Production Act to produce pharmaceutical materials, including ingredients for COVID-19 drugs. Shares continued to surge by over 300% the next day to close at \$33.20 per share on July 29, 2020.

The Action alleges that during the Class Period, defendants are responsible for false and misleading statements and omitting material facts concerning the Company's financial condition and results of operations. Specifically, defendants authorized or signed and/or participated in making false and misleading statements that omitted material facts and/or failed to disclose that: (i) the Company had granted its Chief Executive Officer, defendant James V. Continenza ("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; (ii) while in possession of this material, nonpublic 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; (iii) as a result, defendants' statements about Kodak's business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times; and (iv) as a result of this fraudulent scheme, defendants artificially inflated the Company's stock price throughout the Class Period and made investment decisions based on material, nonpublic information derived from their positions at Kodak.

However, once the market learned the truth about Kodak's business and financial prospects that existed at the time, Kodak's stock price plummeted over \$29 per share over four trading days, falling from \$33.20 per share at opening on July 29, 2020, to closing at just \$14.40 per share on August 4, 2020—a decline of over 57%, damaging investors.

On August 7, 2020, after close of trading, 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." On this news, shares of Kodak's common stock dropped another \$4.15 per share, or 28%, from \$14.88 per share on August 7, 2020, to \$10.73 per share on August 10, 2020, damaging investors.

III. ARGUMENT

A. Movants Satisfy the PSLRA's Requirements and Should Be Appointed Lead Plaintiffs

The PSLRA establishes the procedure that governs the appointment of a Lead Plaintiff in a 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)-(3)(B)(i).

First, a plaintiff who files the initial action must publish a notice to the class within twenty days of filing the action informing class members of the following: (i) the pendency of the action; (ii) the claims asserted therein; (iii) the purported class period; and (iv) the right to move the Court to be appointed as Lead Plaintiff within sixty days of the publication of the notice. 15 U.S.C. §78u-4(a)(3)(A)(i). Here, the relevant notice was published in *Globe Newswire* on August 14, 2020. *See* Declaration of Serina M. Vash in Support of Motion of Movants Scott Reynolds and SRR Fortress Capital LLC for Appointment as Lead Plaintiffs and Approval of Selection of Counsel ("Vash Decl."), Ex. A. filed concurrently herewith. Within sixty days after publication of the notice, any "person" or "group of persons" that 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. *See* 15 U.S.C. §78u-4(a)(3)(A)-(B).

Second, the PSLRA provides that within ninety 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. *See* 15 U.S.C. §78u-4(a)(3)(B). In determining the "most adequate plaintiff," the PSLRA provides that the Court shall adopt a presumption that the most adequate plaintiff in any private action arising under this 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).

1. Movants Have Timely Moved for Appointment as Lead Plaintiffs

The notice published in the Action informed class members that the deadline to move for appointment as Lead Plaintiff was sixty days from August 14, 2020, or October 13, 2020. *See* Vash Decl., Ex. A. As this motion is being filed on October 13, 2020, it is timely. Thus, Movants have complied with the PSLRA's first requirement and are entitled to be considered for appointment as Lead Plaintiffs.

2. Movants Have the Requisite Financial Interest in the Relief Sought by the Class

To be eligible for the "most adequate plaintiff" presumption, a movant must also possess the "largest financial interest in the relief sought by the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb). Movants purchased the Company's stock and suffered losses of \$1,649,523.57 in connection with their purchase of Kodak stock. *See* Vash Decl., Exs. B and C. To the best of Movants' counsel's knowledge, Movants' financial interest in this matter is the largest of any known lead plaintiff movants. Therefore, Movants satisfy the PSLRA's prerequisite of having the largest financial interest.

3. Movants Satisfy the Requirements of Rule 23

In addition to possessing a significant financial interest, a 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 requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class; and [that] the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(3)-(4). "[A]lthough the language of the first subsection does not permit courts simply to 'presume' that the movant with 'the largest financial interest in the relief sought by the class' satisfies the typicality and adequacy requirements, both the structure of the section as a whole and the legislative history support the view that the court's initial inquiry should be

confined to determining whether such movants have stated a *prima facie* case of typicality and adequacy." *In re Cendant Corp. Litig.*, 264 F.3d 201, 264 (3d Cir. 2001). Further, at this stage of litigation, only a preliminary showing of typicality and adequacy is required. *Id.* (noting that in determining whether a movant is entitled to presumptive lead status, the movant need only make a preliminary showing that he satisfies the typicality and adequacy requirements).

"[I]n inquiring whether the movant has preliminarily satisfied the typicality requirement, [courts] should consider 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.'" *Id.* at 265 (citations omitted). "If the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is established regardless of factual differences." *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183-84 (3d Cir. 2001), *as amended* (Oct. 16, 2001).

Here, Movants satisfy the typicality requirement for purposes of selecting a Lead Plaintiff because, like other class members, they: (i) purchased Kodak securities during the Class Period; (ii) paid allegedly inflated prices because of claimed false and misleading statements by defendants; and (iii) thereby suffered damages. Thus, Movants' claims are typical of those of other class members since

their claims and the claims of other class members arise out of the same course of events.

"In assessing whether the movant satisfies Rule 23's adequacy requirement, courts should consider whether it 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." *In re Cendant*, 264 F.3d at 265 (citations and internal quotations omitted).

Here, Movants are adequate Lead Plaintiffs because their interest in aggressively pursuing the claims against defendants is aligned with the interests of the members of the class who were similarly harmed as a result of defendants' false and misleading statements. There is no antagonism between Movants' interests and those of the other members of the class and there is nothing to indicate that Movants will do anything but vigorously pursue the claims on behalf of the class. In addition, Movants have submitted certifications detailing their investments in Kodak during the Class Period and confirming their willingness to discharge the obligations of class representatives in the Action. *See* Vash Decl., Ex. B.

In addition, as described below, Movants have selected and retained highly competent counsel with significant experience in class action and securities litigation to represent the class. All of these factors sufficiently evidence Movants'

satisfaction of the Rule 23 requirements and capacity and willingness to serve as Lead Plaintiffs.

B. Movants' Selection of Counsel Should Be Approved

The PSLRA vests authority in the Lead Plaintiff to select and retain Lead Counsel, subject to this Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). This 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). Movants have selected Robbins LLP to serve as Lead Counsel and Herman Jones to serve as Liaison Counsel.

Robbins LLP is a nationally-recognized shareholder rights firm focusing its practice on complex shareholder litigation. *See* Vash Decl., Ex. D. Robbins LLP attorneys have secured impressive recoveries in shareholder rights actions. For example, Robbins LLP served as Lead Counsel in the securities fraud class action *In re Titan, Inc. Sec. Litig.*, No. 04-CV-0676-LAB (S.D. Cal. Dec. 20, 2005), which settled for \$61.5 million.

Herman Jones has also prosecuted numerous securities and financial fraud lawsuits on behalf of investors in court within the state of New Jersey and throughout the nation to serve as Liaison Counsel. *See* Vash Decl., Ex. E.

Based on these qualifications, the Court may be assured that the members of the class will receive the highest caliber of legal representation available from

Robbins LLP and Herman Jones if this motion is granted. Accordingly, Movants' selection of counsel should be approved.

IV. CONCLUSION

Movants have satisfied each of the PSLRA's requirements for appointment as Lead Plaintiffs. As such, Movants respectfully request that the Court appoint them as Lead Plaintiffs, approve their selection of Robbins LLP as Lead Counsel and Herman Jones as Liaison Counsel for Lead Plaintiffs and the proposed class, and grant such other relief as the Court may deem just and proper.

Dated: October 13, 2020

Respectfully submitted,

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