

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HORACE CARVALHO, Individually and on § Civil Action No. 4:13-cv-1166
Behalf of All Other Persons Similarly Situated, §

Plaintiff, §

vs. §

MAGNUM HUNTER RESOURCES §
CORPORATION, et al., §

Defendants. §

CLASS ACTION

DAVID MAINGOT, Individually and on § Civil Action No. 4:13-cv-1289
Behalf of All Others Similarly Situated, §

Plaintiff, §

vs. §

MAGNUM HUNTER RESOURCES §
CORPORATION, et al., §

Defendants. §

CLASS ACTION

**MAGNUM HUNTER INSTITUTIONAL INVESTOR GROUP’S MOTION FOR
APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF
COUNSEL AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Class members Macomb County Employees' Retirement System, IBEW Local Union No. 58 Annuity Fund and Iron Workers District Council of New England Pension Fund ("Magnum Hunter Institutional Investor Group"), by their counsel, hereby move this Court for an Order: (i) appointing the Magnum Hunter Institutional Investor Group as Lead Plaintiff; (ii) approving the Magnum Hunter Institutional Investor Group's selection of the law firms of Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and Labaton Sucharow LLP ("Labaton Sucharow") to serve as co-lead counsel and the law firm of Edison, McDowell & Hetherington LLP ("Edison McDowell") to serve as liaison counsel; and (iii) granting such other and further relief as the Court may deem just and proper.¹ In support of this Motion, the Magnum Hunter Institutional Investor Group submits a memorandum of law and the Declaration of Andrew M. Edison ("Edison Decl.") filed concurrently herewith.²

I. PRELIMINARY STATEMENT

This securities class action lawsuit (the "Action") was brought on behalf of all those who purchased or otherwise acquired the publicly traded securities of Magnum Hunter Resources Corporation ("Magnum Hunter" or the "Company") between January 17, 2012 and April 22, 2013

¹ Local Rule 7.1.D. requires a conference of counsel prior to filing motions. Pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), however, if any class member desires to be appointed lead plaintiff, the class member must file a motion within a certain period of time. 15 U.S.C. §78u-4(a)(3). Thus, there is no way for the Magnum Hunter Institutional Investor Group to know which other entities or persons plan to move for appointment as lead plaintiff until after all the movants have filed their respective motions. Under these circumstances, the Magnum Hunter Institutional Investor Group respectfully requests that the conferral requirement of LR7.1.D. be waived.

² Currently pending in the United States District Court for the Southern District of New York are additional consolidated securities class actions which each raise similar legal and factual issues as the above-captioned action pending in this District. *See Rosian v. Magnum Hunter Resources Corp.*, No. 1:13-cv-02668 (S.D.N.Y., filed April 23, 2013). For this reason, the Magnum Hunter Institutional Investor Group also filed a motion for appointment as lead plaintiff in the consolidated case pending in New York.

(the “Class Period”), and alleges violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), as amended by the PSLRA (15 U.S.C. §78(j)(b) and 78(t) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

The Magnum Hunter Institutional Investor Group hereby submits this memorandum of law in support of its motion for appointment as lead plaintiff and approval of its selection of counsel. The Magnum Hunter Institutional Investor Group’s motion is made on the grounds that it is the most adequate plaintiff, as defined by the PSLRA. The Magnum Hunter Institutional Investor Group suffered losses in excess of \$818,452 in connection with its purchases of shares of Magnum securities during the Class Period. *See* Edison Decl., Ex. A & C. In addition, the Magnum Hunter Institutional Investor Group, for the purposes of this Motion, adequately satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 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.

II. FACTUAL BACKGROUND

Magnum Hunter engages in the acquisition, exploration, exploitation, development and production of crude oil and natural gas onshore in the U.S. and Canada. The complaint alleges that during the Class Period, Magnum Hunter issued materially false and misleading statements regarding the reliability of its publicly reported financial reports. It is alleged that investors were misled concerning the reliability of Magnum Hunter’s financial statements and internal controls in order to, among other things, facilitate the sale by Magnum Hunter of hundreds of millions of dollars’ worth of its common stock, preferred shares and publicly traded debt in multiple offerings conducted during the Class Period.

The complaint further alleges that on April 16, 2013, Magnum Hunter disclosed that it had dismissed its “independent” outside auditor, PricewaterhouseCoopers LLP (“PwC”), after PwC advised it of material weaknesses in Magnum Hunter’s internal accounting controls, and that PwC

has demanded further investigation into: (1) the valuation of Magnum Hunter's oil and gas properties; (2) calculation of its oil and gas reserves; (3) its position with respect to certain tax matters; (4) its accounting for its acquisition of NGAS Resources, Inc.; and (5) its compliance with certain debt covenants. Then on April 22, 2013, Magnum Hunter was forced to disclose that PwC disagreed with its account of their parting, disclosing a letter from PwC stating that PwC had "advised the Company that information [had come] to [its] attention that [PwC had] concluded materially impact[ed] the fairness or reliability of the Company's consolidated financial statements and [that] this issue was not resolved to [PwC's] satisfaction prior to [its] dismissal."

The complaint alleges that following the April 16, 2013 disclosure of PwC's potential disagreement with Magnum Hunter's accounting practices, which required additional investigation; Magnum Hunter's resulting termination of PwC; Magnum Hunter's resulting inability to provide timely audited financial results for fiscal 2012 and its subsequent admission of significant defects in its internal controls; and the April 22, 2013 confirmation that PwC had concluded the Company's previously reported financial reports did not fairly or reliably reflect its actual financial results, the price of Magnum Hunter's publicly traded securities plummeted, erasing billions of dollars in market capitalization.

III. ARGUMENT

A. The Magnum Hunter Institutional Investor Group 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 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), (a)(3)(B)(i).

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 in the Action caused the first notice regarding the pendency of these actions to be published on *Business Wire*, a national, business-oriented newswire service, on April 23, 2013. *See* Edison Decl., Ex. B. 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 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)(I).

2. The Magnum Hunter Institutional Investor Group Satisfies the “Lead Plaintiff” Requirements of the Exchange Act

a. The Magnum Hunter Institutional Investor Group Has Complied with the Exchange Act and Should Be Appointed Lead Plaintiff

The time period in which class members may move to be appointed lead plaintiff herein under 15 U.S.C. §78u-4(a)(3)(A) and (B) expires on June 24, 2013. Pursuant to the provisions of the PSLRA and within the requisite time frame after publication of the required notice (published on

April 23, 2013), the Magnum Hunter Institutional Investor Group timely moves this Court to be appointed lead plaintiff on behalf of all members of the class.

Each member of the Magnum Hunter Institutional Investor Group has duly signed and filed a certification stating that it is willing to serve as the representative party on behalf of the class. *See* Edison Decl., Ex. C. In addition, the Magnum Hunter Institutional Investor Group has submitted a joint declaration demonstrating its cohesiveness and ability to effectively and efficiently prosecute this case together. *See* Edison Decl., Ex. D. The Magnum Hunter Institutional Investor Group has also selected and retained competent counsel to represent it and the class. *See* Edison Decl., Exs. E-G. Accordingly, the Magnum Hunter Institutional Investor Group has satisfied the individual requirements of 15 U.S.C. §78u-4(a)(3)(B) and is entitled to have its application for appointment as lead plaintiff and selection of co-lead and liaison counsel as set forth herein, considered and approved by the Court.

b. The Magnum Hunter Institutional Investor Group Has the Requisite Financial Interest in the Relief Sought by the Class

During the Class Period, as evidenced by, among other things, the accompanying signed certifications, *see* Edison Decl., Ex. C., the Magnum Hunter Institutional Investor Group expended more than \$2,232,413 purchasing 522,432 shares of Magnum Hunter securities in reliance upon the materially false and misleading statements issued by the defendants, retained all of its shares when the truth began to be revealed, and incurred more than \$818,452 in losses on its transactions in Magnum Hunter securities under the first-in first-out loss calculation method, and more than \$528,962 under the last-in first-out loss calculation method. *See also* Edison Decl., Ex. A. The Magnum Hunter Institutional Investor Group thus believes it has the largest financial interest in the relief sought by the class in this case. Therefore, the Magnum Hunter Institutional Investor Group

satisfies the PSLRA's prerequisites for appointment as lead plaintiff in this Action and should be appointed lead plaintiff pursuant to 15 U.S.C. §78u-4(a)(3)(B).

**c. The Magnum Hunter Institutional Investor Group
Otherwise Satisfies Rule 23**

According to 15 U.S.C. §78u-4(a)(3)(B), 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)(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.

Of the four prerequisites to class certification, only two – typicality and adequacy – directly address the personal characteristics of the class representative. 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 In re Enron Corp., Sec. Litig.*, 206 F.R.D. 427, 441 (S.D. Tex. 2002) ("Typicality and adequacy are directly relevant to the choice of the Lead Plaintiff as well as of the class representative in securities fraud class actions."); *see also In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998) ("Typicality and adequacy of representation are the only provisions [of Rule 23(a)] relevant to a determination of lead plaintiff under the PSLRA."). "Although the inquiry at this stage of the litigation in selecting the Lead Plaintiff is not as searching as the one triggered by a subsequent motion for class certification, the proposed Lead Plaintiff must make at least a preliminary showing that it has claims that are typical of those of the putative class and has the capacity to provide adequate representation for those class members." *Enron*, 206

F.R.D. at 441. The Magnum Hunter Institutional Investor Group satisfies both the typicality and adequacy requirements of Rule 23, thereby justifying its appointment as lead plaintiff.

Under Rule 23(a)(3), the claims or defenses of the representative parties must be typical of those of the class. Typicality exists where the plaintiffs' claims arise from the same series of events and are based on the same legal theories as the claims of all the class members. *See In re BP, PLC Sec. Litig.*, 758 F. Supp. 2d 428, 435 (S.D. Tex. 2010). 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 which determines whether the class representatives are typical. *See id.* The requirement that the proposed class representatives' claims be typical of the claims of the class does not mean, however, that the claims must be identical. *See id.* at 435 (“Typicality does not require a complete identity of claims.”) (citation omitted); *Phillips v. Joint Legislative Comm. on Performance & Expenditure Review*, 637 F.2d 1014, 1024 (5th Cir. 1981).

The Magnum Hunter Institutional Investor Group satisfies this requirement because, just like all other class members, it: (1) purchased Magnum Hunter securities during the Class Period; (2) purchased Magnum Hunter securities in reliance upon the allegedly materially false and misleading statements issued by defendants; and (3) suffered damages thereby. Thus, the Magnum Hunter Institutional Investor Group's claim is typical of those of other class members since its claims and the claims of other class members arise out of the same course of events.

Under Rule 23(a)(4) the representative parties must also “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The PSLRA directs this Court to limit its inquiry regarding the adequacy of the Magnum Hunter Institutional Investor Group to represent the class to the existence of any conflicts between the interests of the Magnum Hunter Institutional Investor Group and the members of the class. “With regard to the adequacy requirement, ‘[d]ifferences between named plaintiffs and class members render the named plaintiffs inadequate representatives

only if those differences create conflicts between the named plaintiffs' interests and the class members' interests.'" *BP*, 758 F. Supp. 2d at 435 (quoting *Mullen v. Treasure Chest Casino, L.L.C.*, 186 F.3d 620, 626 (5th Cir. 1999)).

Here, the Magnum Hunter Institutional Investor Group is an adequate representative of the class. As evidenced by the injuries suffered by it, purchasing Magnum Hunter securities at prices allegedly artificially inflated by defendants' materially false and misleading statements, the Magnum Hunter Institutional Investor Group's interests are clearly aligned with the members of the class, and there is no evidence of any antagonism between its interests and those of the other members of the class. The Magnum Hunter Institutional Investor Group consists of three institutional investors, and as such is the paradigmatic lead plaintiff to lead a securities class action like this one. *See* S. Rep. 104-98, at 11 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 690. Further, the Magnum Hunter Institutional Investor Group has retained competent and experienced counsel to prosecute these claims. In addition, as shown below, the Magnum Hunter Institutional Investor Group's proposed co-lead and liaison counsel are highly qualified, experienced and able to conduct this complex litigation in a professional manner.

Thus, the Magnum Hunter Institutional Investor Group *prima facie* satisfies the commonality, typicality and adequacy requirements of Rule 23 for the purposes of this Motion.

B. The Court Should Approve the Magnum Hunter Institutional Investor Group's Selection of Counsel

Pursuant to 15 U.S.C. §78u-4(a)(3)(B)(v), the proposed lead plaintiff shall, subject to Court approval, select and retain counsel to represent the class it seeks to represent. In that regard, the Magnum Hunter Institutional Investor Group has selected the law firms of Robbins Geller and Labaton Sucharow as co-lead counsel and the law firm of Edison McDowell as liaison counsel, firms which have substantial experience in the prosecution of shareholder and securities class actions. *See* Edison Decl., Exs. E-F.

Robbins Geller is a 180-lawyer law firm that is actively engaged in complex litigation, emphasizing securities, consumer, and antitrust class actions. *See Cortese v. Radian Group, Inc.*, No. 07-3375, 2008 U.S. Dist. LEXIS 6958, at *18 (E.D. Pa. Jan. 30, 2008) (“The firm is comprised of probably the most prominent securities class action attorneys in the country.”) (citation omitted); Robbins Geller possesses extensive experience litigating securities class actions and its attorneys have successfully prosecuted numerous securities fraud class actions on behalf of injured investors, including *In re Cardinal Health, Inc. Sec. Litig.*, 226 F.R.D. 298, 308 (S.D. Ohio 2005) (“the Court finds that [Robbins Geller] will represent deftly the class’s interests”) and *In re Enron Corp. Sec.*, 586 F. Supp. 2d 732, 789 (S.D. Tex. 2008) (“The Court finds that in the face of extraordinary obstacles, the skills, expertise, commitment, and tenacity of Lead Counsel in this litigation cannot be overstated.”). Robbins Geller’s securities department includes numerous trial attorneys and many former federal and state prosecutors and law clerks, and utilizes an extensive group of in-house experts to aid in the prosecution of complex securities issues. *See* Edison Decl., Ex. E. Robbins Geller’s exceptional experience in prosecuting securities fraud class actions has been demonstrated in its success at trial. In *In re AT&T Corp. Sec. Litig.*, MDL No. 1399 (D.N.J.), Robbins Geller served as lead counsel and brought the case to trial, where after two weeks of trial, the case settled for \$100 million. In addition, Robbins Geller serves as lead counsel in *Jaffe v. Household Int’l, Inc.*, No. 02-C-05893 (N.D. Ill.), and obtained a jury verdict in May of 2009 following a six-week trial.

Labaton Sucharow has excelled as lead counsel in numerous important actions on behalf of defrauded investors. Labaton Sucharow is lead counsel in *In re American International Group, Inc. Securities Litigation*, No. 04-cv-8141 (S.D.N.Y. 2004), in which it recently achieved settlements-in-principle totaling approximately \$1 billion. In November 2012, Labaton Sucharow secured a \$294.9 million settlement in *In re Bear Stearns Cos., Inc. Securities, Derivative & ERISA Litigation*, No. 08-md-1963 (S.D.N.Y.), in which the firm served as co-lead counsel. In addition, Labaton

Sucharow is lead counsel in *In re Countrywide Financial Corp. Securities Litigation*, No. 07-cv-5295 (C.D. Cal. 2007), which resulted in a settlement of \$624 million – one of the largest securities fraud settlements arising from the financial crisis of 2007 to 2008. Labaton Sucharow is currently serving as lead or co-lead counsel in securities class actions cases against Federal National Mortgage Association (Fannie Mae), Goldman Sachs Group, Inc., MF Global Holdings Ltd., Facebook, Inc., and the Hewlett-Packard Company, among other significant investor class actions. *See* Edison Decl., Ex. F.

Accordingly, the Court should approve the Magnum Hunter Institutional Investor Group's selection of counsel.

IV. CONCLUSION

The Magnum Hunter Institutional Investor Group has the largest financial interest in the relief sought by the class. In addition, the Magnum Hunter Institutional Investor Group meets the typicality and adequacy requirements of Rule 23. As a result, the Magnum Hunter Institutional Investor Group respectfully requests that the Court: (i) appoint it as Lead Plaintiff in the Action; (ii) approve its selection of Lead and Liaison Counsel as set forth herein; and (iii) grant such other relief as the Court may deem just and proper.

DATED: June 24, 2013

Respectfully submitted,

EDISON, MCDOWELL & HETHERINGTON, LLP

s/ ANDREW M. EDISON
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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses of all counsel of record, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 24, 2013.

s/ ANDREW M. EDISON

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