UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID CASPER, Individually And On Behalf Of All Others Similarly Situated, Plaintiff, vs. SONG JINAN, TAO (TRAVIS) CAI, HUI S. CHANG, CHIN JI WEI, DU WEN MIN, SIMON YICK, YAN LI, and CHINA-BIOTICS, INC., Defendants.	**Civil Action: 1:12-cv-4202-NRB**

MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE BLANCK INVESTOR GROUP'S MOTION TO BE APPOINTED AS LEAD PLAINTIFF AND FOR APPROVAL OF ITS SELECTION OF COUNSEL, AND IN REPLY TO THE COMPETING MOTION

Counsel for movant Crist realizes that its client's losses are significantly lower than the losses of the Blanck Investor Group's losses. Using speculative arguments, counsel for movant Crist now attacks the adequacy of the Blanck Investor Group's counsel in order to attempt to secure a lead counsel position.

INTRODUCTION

As acknowledged by movant Crist, the Blanck Investor Group's losses are at least 50% greater than the losses of movant Crist.[1] The Blanck Investor Group therefore possesses the largest financial interest in the litigation, and, because it has made a *prima facie* showing of its adequacy and typicality under Rule 23, it is presumptively the "most adequate plaintiff" under the provisions of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

I. MOVANT CRIST'S ATTACKS ON GAINEY & McKENNA'S ADEQUACY TO LITIGATE THIS ACTION SHOULD BE REJECTED BY THIS COURT

A. Counsel For The Blanck Investor Group Has Not Engaged In Lawyer-Driven Litigation

In an effort to unseat the Blanck Investor Group as the most adequate plaintiff, movant Crist argues that the Blanck Investor Group's counsel is not adequate to represent the class. As explained below, this theory is without merit and should be rejected by this Court.

Movant Crist first makes the baseless and unfounded assertion that counsel for the Blanck Investor Group "has engaged in lawyer-driven litigation . . . ." *See* Scott Crist's

[1] While movant Crist claims to have a financial interest of $104,790.25, an analysis of the legal sufficiency of his claims reveals that his loss is significantly less than he reported. Indeed, movant Crist sold a large portion (nearly 67%) of his position in China Biotic stock prior to the disclosure of the alleged fraud at the end of the Class Period (July 1, 2011) (*i.e.*, he sold during the time when the stock was alleged to be artificially inflated). Thus***, movant Crist's actual loss is only $36.703.75*** because many of the shares he purchased during the Class Period were also sold at inflated prices.

Opposition to the Blanck Investor Group's Motion for Appointment as Lead Plaintiff and for Approval of Lead Counsel (Docket No. 12) (the "Crist Opp. Br.") at 2-4. In particular, movant Crist argues that the Blanck Investor Group's certifications "evidence that the Blanck Group will not adequately supervise or oversee Gainey & McKenna or firms chosen by it." *Id.* at 3. This assertion is factually incorrect.

On May 25, 2012, Gainey & McKenna and the Egleston Law Firm initiated the first (and only) filed action against these Defendants entitled *David Casper v. Song Jinan, et al.*, Civil Action No. 12-cv-4202 (the "Complaint"). On that same date, Gainey & McKenna and the Egleston Law Firm caused a notice (the "Gainey & McKenna and Egleston Notice") to be published pursuant to Section 21D(a)(3)(A)(i), which announced that a securities class action had been filed against China Biotics, Inc. ("China Biotics" or the "Company") and certain directors and officers of the Company, and which advised putative class members that they had sixty (60) days, or until July 24, 2012, to file a motion to seek appointment as a lead plaintiff in the action. *See* Declaration of Thomas J. McKenna in Support of the Blanck Investor Group Motion to be Appointed as Lead Plaintiff and for Approval of Selection of Counsel at Exhibit C (Docket No. 7-3).

Shortly thereafter, on June 1, 2012, counsel for movant Crist issued a press release entitled *Faruqi & Faruqi, LLP Encourages Investors Who Suffered Substantial Losses Investing In China-Biotics, Inc. To Contact The Firm.* *See* Declaration of Thomas J. McKenna in Further Support of the Blanck Investor's Group's Motion to Be Appointed as Lead Plaintiff and for Approval of its Selection of Counsel, and in Reply to the Competing Motion ("McKenna Decl.") at Exhibit A (the "Solicitation Notice"). This Solicitation Notice was misleading, however, because it failed to disclose that: (1) a complaint had already been filed in this Court by plaintiff

Casper and his chosen counsel alleging the same exact facts which Faruqi & Faruqi plagiarized in its Solicitation Notice; (2) members of the putative class had until July 24, 2012 to move the Court to be appointed lead plaintiff; and (3) Faruqi & Faruqi had not actually filed a complaint in this litigation.

Furthermore, the Solicitation Notice directed potential class members to Faruqi & Faruqi's website where, under the heading "Request Information," potential class members are encouraged to complete a form and "[Faruqi & Faruqi] will provide [the potential class member] with additional information ***on how to join the Class Action*** and ***move for Lead Plaintiff*** or [potential class members] can join this action by clicking here." *See* McKenna Decl. at B (emphasis added) (underscore in original). Clearly, Faruqi & Faruqi's webpage is misleading as it strongly infers that a class action brought by them against China Biotics is presently in progress.

Further, the certification Faruqi & Faruqi used for this case against China Biotic states "Plaintiff selects Faruqi & Faruqi, LLP ***and any firm with which it affiliates for the purpose of prosecuting*** this action as my counsel for the purposes of prosecuting my claim against defendants." *Id.* (emphasis added); *see also* movant Crist's certification at Docket No. 11-2. This is basically the same language about "affiliated firms" found in the Blanck Investor Group certifications which the Faruqi firm criticizes. Unlike the members of the Blanck Investor Group who are aware of the Egleston Law Firm's presence since the original complaint was filed, it is unknown whether movant Crist is aware of what other firm(s) Faruqi & Faruqi will affiliate themselves with "for the purpose of prosecuting this action."

Further, in or around the first week of June 2012, as a result of the Gainey & McKenna and Egleston Notice, the Blanck Investor Group contacted Gainey & McKenna. The Blanck

Investor Group was then sent a copy of the original Complaint along with a form of certification. There was no secret that the Egleston Law Firm was involved in the case as the members of the Blanck Investor Group read the Gainey & McKenna and Egleston Notice, responded to it and in turn received a copy of the Complaint on which The Egleston Law Firm was a signatory.[2]

B. Gainey & McKenna Have Sufficient Resources And Experience In Complex Litigation To Prosecute This Action

Gainey & McKenna has years of experience prosecuting complex litigation (including securities class actions) and has very recently been appointed as lead counsel and/or settled some very high profile complex class action cases.[3] For example:

- *In re New Energy Systems Group Sec. Litig.*, 7:12-cv-01041-ER (S.D.N.Y.) (Judge Ramos appointed Gainey &

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[2] Counsel for movant Crist argues that "the precise relationship between the two firms [Gainey & McKenna and the Egleston Law Firm] is difficult to ascertain" attempting to raise some sort of issue "whether the Blanck [Investor] Group is even aware of the presence and involvement of the Egleston Law Firm in the case." *See* Crist Opp. Br. at 4. As discussed above and in the declaration filed herewith, the Blanck Investor Group is well aware of the Egleston Law Firm's involvement in the action. *See* McKenna Decl. Further, the fact that Mr. Egleston is "of counsel" to Gainey & McKenna in *Jason v. Jungfeng*, No. 12-cv-1041 (S.D.N.Y.) and *Hanson v. Frazer Frost*, LLP, No. 12-cv-3166 (S.D.N.Y.), is of no moment to the present motion. It is perfectly proper for an attorney to be a member of one firm and "of counsel" to another firm. *See* McKinney's New York Rules of Court, Disciplinary Rules, Section 1200.7 ("A lawyer or law firm may be designated 'Of Counsel' on a letterhead if there is a continuing relationship with a lawyer or law firm . . . ."). Movant Crist's suggestion that there is something "off" about this is ill-founded.

[3] Movant Crist's reliance on *Freedman v. Weatherford Int'l Ltd.*, No. 12 Civ. 2121 (S.D.N.Y. July 10, 2012) (attached as Exhibit G to the Gonnello Decl. (Docket No. 13-7)) does not support his argument that Gainey & McKenna are somehow inadequate to represent the putative class. In *Weatherford*, a motion for ***co-lead*** counsel was made on behalf of an institution and an individual (who appeared to have the largest loss). Judge Kaplan in *Weatherford* denied the individual counsel's request for co-lead position holding that the institutional investor and its counsel were enough to lead the case. Here, the Blanck Investor Group has moved to appoint their counsel – Gainey & McKenna – sole lead counsel in the matter. Further, Judge Kaplan has already found Gainey & McKenna "to be entirely capable of handling" a complex ERISA "stock drop" case in *In re Lehman Brothers ERISA Litig.*, Civil Action No.: 08 Civ 5598 (LAK), and appointed Gainey & McKenna as co-lead counsel in that action.

McKenna as lead counsel in a securities class action; consolidated complaint filed);

- *Hanson v. Frazer, LLP, et al.*, Case No. 12-cv-3166 (Judge Rakoff appointed Gainey & McKenna as lead counsel in a securities class action; consolidated complaint filed, oral argument on motion to dismiss just held);

- *Patel v. Satyam Computer Services, Ltd., et al.*, 09-cv-00093 (S.D.N.Y.) (co-counsel in a securities fraud class action. Gainey & McKenna assisted on the case and represented a sub-class of investors with unique claims whose claims were helpful in getting the case settled for a $150,500,000 payment to the class);

- *Aviva Partners, LLC v. Exide Technologies, et al.*, 05cv03098 (D.N.J.) (co-counsel in securities fraud class action. Gainey & McKenna represented one of the lead plaintiffs, assisted in the prosecution of the case and attended the eventually successful mediation which resulted in a settlement to the class of $13.7 million);

- *In re Schering-Plough Corp. Enhance ERISA Litig.*, (D.N.J.) (co-lead counsel in a so-called ERISA "stock drop" class action coordinated with the securities fraud case, where the ERISA case recently settled for $12.25 million);

- *In re Popular Inc. ERISA Litig.* (co-lead counsel in an ERISA "stock drop" class action where the case recently settled for $8.2 million);

- *Morrison, et al. v. Moneygram Int'l, Inc.*, 08-cv-01121-PJS-JJG (D. Minn.) (sole lead counsel in an ERISA "stock drop" class action where the case settled during discovery for $4.5 million);

- *In re Lehman Brothers ERISA Litig.*, Civil Action No.: 08 Civ 5598 (LAK) (S.D.N.Y.) (Judge Kaplan appoints Gainey & McKenna as interim co-lead counsel in an ERISA "stock drop" class action and states "***Gainey & McKenna appears to be entirely capable of handling the case*** . . . .") (*see* McKenna Decl. at Exhibit C) (emphasis added); and

- *In re UBS AG ERISA Litig.*, No. 08 CV 06696 (RJS) (S.D.N.Y.) (Judge Marrero appoints Gainey & McKenna as interim co-lead counsel in an ERISA "stock drop" class action) (*see* McKenna Decl. at Exhibit D).

Interestingly, Faruqi & Faruqi raised a very similar argument regarding the Egleston Law Firm's adequacy as counsel in a recent ERISA class action entitled *Outten v. Wilmington Trust Corp., et al.*, 281 F.R.D. 193 (D. Del. 2012). However, District Judge Sue Lewis Robinson gave little credence to their argument, appointed the Egleston Law Firm as co-lead counsel with a another firm (Stull, Stull & Brody), and held "***Mr. Egleston is well qualified through extensive experience in securities class action litigation and complex litigation generally*** . . . ." "Mr. Egleston's past major litigation experience includes: "[1] *In re Deutsche Telekom A.G. Sec. Litig.* (S.D.N.Y.) ($120 million settlement fund); [2] *In re Willbros Group, Inc. Sec. Litig*. (S.D. Tex.) ($10.5 million settlement fund); *In re Lumenis Sec. Litig.* (S.D.N.Y.) ($20.1 million settlement); [3] *In re Marsh & McLennan Companies Inc. Sec. Litig.* ($400 million settlement); *In re Union Global Comm., Inc. S'holders Litig.* ($25 million recovery in going-private transactions); and [4] *In re Cablevision Sys. Corp. S'holders Litig.* (Blocked going-private transaction by controlling shareholder leading to payment of a dividend to shareholders worth approximately $2.5 billion)." 281 F.R.D. at 201 (emphasis added).

C. Gainey & McKenna Has Not Padded Its Résumé

Movant Crist argues that Gainey & McKenna "list a great number of cases in which it describes its role as 'counsel' or 'co-counsel[]'" and that "[i]n some – if not all – of these cases, the firm had a very limited role in the proceedings, sometimes doing little more than filing lead plaintiff papers with the court." *See* Crist Opp. Br. at 6. This baseless assertion should be ignored. In fact, counsel for movant Crist cite to *Carroll v. Am. Int'l Grp., Inc.*, 08-cv-8659

(S.D.N.Y.)[4] for the proposition that Gainey & McKenna only filed a complaint and lead plaintiff papers and has no other role in the litigation. Movant Crist is incorrect. In *Carroll*, Gainey & McKenna represents a client who owns AIG 7.7% Series A-5 Junior Subordinated Debentures issued December 11, 2007 (a unique sub-class); has attended their client's deposition in the case; and is also involved in conducting discovery in the matter.

Further, movant Crist's speculative musings are just as off-base about *Durgin v. Technical Olympic USA, Inc.*, No. 06-61844 (S.D. Fla.). There, Gainey & McKenna's client, Diamondback Capital Management, LLC ("Diamondback"), had the largest loss and instructed Gainey & McKenna to seek its appointment as the lead plaintiff. Gainey & McKenna, on a contingent basis, thereafter expended considerable sums in further investigating the facts and in drafting a consolidated complaint. Unfortunately, there was a change in management at Diamondback and new instructions were issued to Gainey & McKenna that the client wished to withdraw as lead plaintiff. Gainey & McKenna did what an attorney is supposed to do: followed its client's instructions. The court allowed a new lead plaintiff and new lead counsel to be appointed but the case was eventually dismissed on a motion to dismiss and an appeal was lost as well.

As to *Araj v. JML Portfolio Mgmt., Ltd.*, No. 09-cv-00903 (M.D. Fla.), the prime defendant was dismissed from the case based on a forum selection clause that required suit to be brought in Switzerland. The case was dismissed because, in counsel's opinion, it was no longer winnable. Upon information and belief, no other plaintiff or law firm came forward to assert class action claims against any of the defendants.

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[4] The case in now entitled *In re American Int'l Group, Inc. 2008 Sec. Litig.*, Master File No.: 08-CV-4772-LTS.

Finally, *Labit v. Zagoren*, No. 03-cv-02298 (S.D.N.Y.) was a case involving a pump and dump scheme in a penny stock. There, Gainey & McKenna represented five individuals who were the Lead Plaintiff group, as well as about 30 other individuals who also joined forces with the Lead Plaintiff group ("Class Member Group"). These individuals had organized themselves and tried unsuccessfully to interest many law firms in the case. Only Gainey & McKenna accepted it for prosecution. In that case, the prime fraud-doer, Jean Pierre Collardeau, was indicted and his assets seized by the federal government. At first, Gainey & McKenna had to litigate with the government asset-forfeiture unit to get them to agree to distribute approximately $5.3 million in forfeited assets to the class members. Eventually the government agreed to the distribution. Meanwhile, a class action suit was brought against the accountants who had limited insurance. The motion to dismiss was denied and during discovery the case was settled. That recovery, which was basically found money, was also distributed to the class members. The only legal fee accepted was on the recovery from the class action. The Class Members Group were active clients and all were well-satisfied with the efforts that Gainey & McKenna made on their behalf.

Last, while movant Crist argues that "the Faruqi Firm has previously obtained significant recoveries to injured investors," *see* Crist Opp. Br. at 8, it must be noted that this is often not true. According to an article entitled *When Merger Suits Enrich Only Lawyers*, many cases litigated by counsel for movant Crist produced nothing for their clients. The article states in relevant part:

> A shareholder lawyer told a Delaware judge at a midsummer court hearing two years ago that his team deserved $700,000 for work on a lawsuit in which ***his clients received nothing***.
>
> Shareholders of BJ Services Co., an oilfield services company now owned by Baker Hughes Inc. (BHI), claimed its sale to the former

parent would undervalue their holdings. The settlement of the case gave investors "crucial" data such as performance projections for five more years, ***Shane T. Rowley of Faruqi & Faruqi LLP*** told the judge, seeking to justify the legal fees.

"***I can't think of fruit that's closer to the ground***," ***Chancery Court Judge John W. Noble responded.*** Still, the judge awarded Rowley and his colleagues $500,000 for their efforts.

Scenarios like the one played out at the July 2010 hearing in Wilmington are common in the Delaware court, the chief U.S. venue for mergers and acquisitions suits. Of 57 such investor class actions settled or otherwise concluded there in 2010 and 2011, 40 -- or 70 percent -- made money for plaintiffs' lawyers but not clients, according to data compiled by *Bloomberg News*.

"The greatest benefit is for the plaintiffs' attorneys" in such litigation, said John C. Coffee Jr., a Columbia University professor who teaches securities law.

None of the 10 cases that New York-based Faruqi & Faruqi helped to settle during the two years produced cash for clients, according to court records. Legal fees in those 10 cases totaled $6 million, split among plaintiffs' firms.

* * *

The Faruqi law firm played a leading role in 10 of the 57 suits, making it second to Prickett in settlement activity during the two years measured here. Among firms settling five or more cases, ***only Faruqi's clients*** ended up empty handed in cases it helped direct. ***In nine of its 10 settlements, Faruqi's clients received only additional information on the deals***.

Nadeem Faruqi and Rowley, the Faruqi law firm partner in the BJ Services case, didn't return telephone and e-mail messages seeking comment on their lawsuits.

* * *

Judge Strine remarked on the frequency of disclosure-only settlements at an October hearing in a Faruqi case. ***He quipped that shareholders "seem to be hungry readers," as they always want more information about deals, and then settle their cases when they get it.***

* * *

Law Firms With a Leading Role in Five or More Cases

Plaintiffs' Firm	Cases as Lead, Co-Lead or of Counsel*	Cases With Shareholder Recovery	Amount Recovered ($M)	Legal Fees Awarded@ ($M)
Prickett Jones	12	7	46.6	21.1
Faruqi & Faruqi	10	0	0.0	6.0
Rosenthal Monhait	9	1	18.4	5.5
Grant & Eisenhofer	8	4	253.9	66.2
Robbins Geller	8	2	107.8	31.3
Bernstein Litowitz	7	3	164.5	43.1
Kessler Topaz#	6	2	14.0	9.8
Levi & Korinsky	6	1	18.4	5.3
Rigrodsky & Long	6	2	17.7	10.0
Weiser	5	2	17.7	7.7

* -- Leadership roles sometimes filled by multiple firms.

@ -- Includes cases with no shareholder recovery. Also includes total of fees shared by multiple firms. The full amount of fees was included in each firm's total as breakdown isn't disclosed.

See McKenna Decl. at Exhibit E (emphasis added).

II. CONCLUSION

Because the Blanck Investor Group has the largest financial interest in the Action and otherwise satisfies the typicality and adequacy requirements of Rule 23, the Blanck Investor Group's motion should be granted in its entirety.

Dated: August 20, 2012

Respectfully submitted,

GAINEY & McKENNA

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on August 20, 2012.

/s/ Thomas J. McKenna
Thomas J. McKenna