

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY ROSIAN, Individually and on	:	Civil Action No. 1:13-cv-02668-KBF
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
MAGNUM HUNTER RESOURCES	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	
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SHAUN FOSTER, Individually and on Behalf	:	Civil Action No. 1:13-cv-02766-KBF
of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
MAGNUM HUNTER RESOURCES	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	
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[Caption continued on following page.]

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

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TEDDY ATCHLEY, Individually and on Behalf of All Others Similarly Situated,	:	Civil Action No. 1:13-cv-02969-KBF
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	
	:	
MAGNUM HUNTER RESOURCES CORPORATION, et al.,	:	
	:	
Defendants.	:	
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MARY PAPPAS, Individually and on Behalf of All Others Similarly Situated,	:	Civil Action No. 1:13-cv-03446-KBF
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	
	:	
MAGNUM HUNTER RESOURCES CORPORATION, et al.,	:	
	:	
Defendants.	:	
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DAVID MACATTE, Individually and on Behalf of All Others Similarly Situated,	:	Civil Action No. 1:13-cv-3899-KBF
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	
	:	
MAGNUM HUNTER RESOURCES CORPORATION, et al.,	:	
	:	
Defendants.	:	
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Magnum Hunter Resources Corporation (“Magnum Hunter” or the “Company”) investors 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”) respectfully submit this memorandum of law in support of their motion for: (1) appointment as lead plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”); and (2) approval of the Magnum Hunter Institutional Investor Group’s selection of Robbins Geller Robbins & Dowd LLP (“Robbins Geller”) and Labaton Sucharow LLP (“Labaton Sucharow”) as co-lead counsel for the class.

## I. INTRODUCTION

Presently pending in this district is a consolidated securities class action lawsuit brought on behalf of purchasers of Magnum Hunter securities between January 27, 2012 and April 22, 2013 (the “Class Period”). This action is brought pursuant to §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Securities and Exchange Commission Rule 10b-5, 17 C.F.R. §240.10b-5.<sup>1</sup>

In securities class actions, the PSLRA requires district courts to “consider any motion made by a purported class member” and “appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the

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<sup>1</sup> On May 16, 2013, the Court consolidated three related securities class actions. Dkt. No. 11. After that date, two additional securities class actions were filed which should also be consolidated into this Action as they all raise nearly identical factual and legal issues: *Pappas v. Magnum Hunter Resources Corp., et al*, No. 1:13-cv-03446; and *Macatte v. Magnum Hunter Resources Corp., et al.*, No. 1:13-cv-03899. Another case is pending in the United States District Court for the Southern District of Texas, *Carvalho v. Magnum Hunter Resources Corp., et al*, No. 4:13-cv-1166. For this reason, the Magnum Hunter Institutional Investor Group also filed a motion for appointment as lead plaintiff in the Texas action.

interests of class members.” 15 U.S.C. §78u-4(a)(3)(B)(i). The Magnum Hunter Institutional Investor Group should be appointed as lead plaintiff because it: (1) timely filed this Motion; (2) has the largest financial interest in this litigation of which its counsel is aware; and (3) will fairly and adequately represent the interests of the putative class. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii). In addition, the Magnum Hunter Institutional Investor Group’s selection of Robbins Geller and Labaton Sucharow as co-lead counsel should be approved. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). Robbins Geller and Labaton Sucharow each possesses substantial experience in the prosecution of securities class actions and will adequately represent the interests of all class members as lead counsel.

## **II. STATEMENT OF FACTS**

Magnum Hunter engages in the acquisition, exploration, exploitation, development and production of crude oil and natural gas onshore in the U.S. and Canada. This Action 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 complaints further allege 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 had 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. in 2011; 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, publishing a letter from PwC in which PwC stated that it 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.”

This Action alleges that the price of Magnum Hunter’s publicly traded securities fell precipitously 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.

### **III. ARGUMENT**

#### **A. The Magnum Hunter Institutional Investor Group Should Be Appointed Lead Plaintiff**

The PSLRA establishes the procedures for 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); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i). First, the pendency of the action must be publicized in a widely circulated national business-oriented publication or wire service not later than 20 days after the filing of the first complaint. 15 U.S.C. §78u-4(a)(3)(A)(i). Next, the PSLRA provides that the Court shall adopt a presumption that the most adequate plaintiff is the person or the 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). The Magnum Hunter Institutional Investor Group meets each of these requirements and should therefore be appointed as lead plaintiff.

**1. The Magnum Hunter Institutional Investor Group's Motion Is Timely**

The notice published in this action on April 23, 2013 advised class members of: (a) the pendency of the action; (b) the claims asserted therein; (c) the proposed class period; and (d) the right to move the Court to be appointed lead plaintiff within 60 days of the date of the notice, or by June 24, 2013.<sup>2</sup> See Declaration of David A. Rosenfeld in Support of Memorandum of Law in Support of the Magnum Hunter Institutional Investor Group's Motion for Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection of Lead Counsel ("Rosenfeld Decl."), Ex. A. Because the Magnum Hunter Institutional Investor Group's motion is timely filed, it is entitled to be considered for appointment as lead plaintiff.

**2. The Magnum Hunter Institutional Investor Group Has the Largest Financial Interest In the Relief Sought by the Class**

During the Class Period, the Magnum Hunter Institutional Investor Group expended more than \$2,232,413 purchasing 522,432 shares of Magnum Hunter stock at artificially inflated prices, retained all of its shares when the truth began to be revealed, and suffered harm of more than \$818,452 as the price of Magnum Hunter stock declined under a first-in first-out loss calculation

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<sup>2</sup> The 60-day period expired on June 22, 2013, which was a Saturday. Therefore, pursuant to the time calculation in Rule 6 of the Federal Rules of Civil Procedure, the due date was extended to the next business day, or Monday June 24, 2013.

method, and more than \$528,962 under the last-in first-out loss calculation method. *See* Rosenfeld Decl., Exs. B & C. To the best knowledge of the Magnum Hunter Institutional Investor Group’s counsel, no other investors have a larger financial interest in this action. Therefore, the Magnum Hunter Institutional Investor Group satisfies the PSLRA’s prerequisite of having the largest financial interest.

**3. The Magnum Hunter Institutional Investor Group Otherwise Satisfies Rule 23 of the Federal Rules of Civil Procedure**

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). “At the lead plaintiff stage of the litigation, in contrast to the class certification stage, ‘a proposed lead plaintiff need only make a “preliminary showing” that it will satisfy the typicality and adequacy requirements of Rule 23.’” *Sgalambo v. McKenzie*, 268 F.R.D. 170, 173 (S.D.N.Y. 2010).<sup>3</sup> “‘Typicality “requires that the claims of the class representatives be typical of those of the class, and is satisfied when 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.’”” *Id.* at 173-74. “‘The adequacy requirement is satisfied where the proposed Lead Plaintiff does not have interests that are antagonistic to the class that he seeks to represent and has retained counsel that is capable and qualified to vigorously represent the interests of the class . . . .’” *Id.* at 174.

Like all class members, the Magnum Hunter Institutional Investor Group purchased Magnum Hunter securities during the Class Period at allegedly inflated prices and suffered damages when defendants’ misconduct came to light. *See* Rosenfeld Decl., Exs. B & C. The Magnum Hunter

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<sup>3</sup> Unless otherwise noted, all emphasis is added and citations are omitted.

Institutional Investor Group's substantial financial interest indicates that it has the requisite incentive to vigorously represent the class's claims. In addition, the Magnum Hunter Institutional Investor Group is not subject to unique defenses and is not aware of any conflicts between its claims and those asserted by the class. Finally, as discussed below, the Magnum Hunter Institutional Investor Group has selected qualified counsel experienced in securities litigation.

Consisting of three institutional investors, the Magnum Hunter Institutional Investor Group is also 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. In addition, the Magnum Hunter Institutional Investor Group has submitted a joint declaration demonstrating its cohesiveness and its ability to efficiently and vigorously prosecute this case together. *See* Rosenfeld Decl., Ex. D.

The Magnum Hunter Institutional Investor Group's common interests shared with the class, substantial financial interest in this litigation, and selection of qualified counsel demonstrate that it *prima facie* satisfies the Rule 23 inquiry at this stage.

**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 lead plaintiff shall, subject to court approval, select and retain counsel to represent the class it seeks to represent. The court should not disturb 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, the Magnum Hunter Institutional Investor Group has selected Robbins Geller and Labaton Sucharow as co-lead counsel for the class.

Robbins Geller – a 180-lawyer law firm with offices across the nation, including within this District – is actively engaged in complex securities litigation. Rosenfeld Decl., Ex. E. District courts throughout the country have noted Robbins Geller's reputation for excellence, resulting in the appointment of Robbins Geller attorneys to lead roles in hundreds of complex class action securities

cases. *See, e.g., Borochoff v. Glaxosmithkline PLC*, 246 F.R.D. 201, 205 (S.D.N.Y. 2007) (Robbins Geller is “a firm which is well qualified and has successfully served as lead counsel or co-lead counsel in numerous complex securities class actions.”).

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 Rosenfeld Decl.*, Ex. F.

Because the Magnum Hunter Institutional Investor Group has retained counsel with the resources and experience necessary to vigorously represent the putative class, the Court should approve its selection of Robbins Geller and Labaton Sucharow as co-lead counsel.

#### **IV. CONCLUSION**

The Magnum Hunter Institutional Investor Group has timely filed this Motion seeking appointment as lead plaintiff, has the largest financial interest in this litigation of any proposed lead plaintiff of which it is aware, and will fairly and adequately represent the interests of the putative

class. Moreover, the Magnum Hunter Institutional Investor Group has retained counsel with the resources and experience necessary to adequately represent the interests of all class members. For these reasons, the Magnum Hunter Institutional Investor Group respectfully requests that the Court appoint it as Lead Plaintiff and approve its selection of Robbins Geller and Labaton Sucharow as Co-Lead Counsel.

DATED: June 24, 2013

Respectfully submitted,

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SAMUEL H. RUDMAN  
DAVID A. ROSENFELD

s/ David A. Rosenfeld  
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[Proposed] Lead Counsel for Plaintiffs

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 denoted on the attached Electronic Mail Notice List, 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 indicated on the attached Manual Notice List.

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/ DAVID A. ROSENFELD  
DAVID A. ROSENFELD

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### Manual Notice List

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