

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY ROSIAN, et al.,	:
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Plaintiffs,	:
	:
-against-	:
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MAGNUM HUNTER RESOURCES	:
CORPORATION, et al.,	:
	:
Defendants.	:
	:
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CIVIL ACTION NO.: 13 civ 2668  
(KBF)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF  
THE MAGNUM HUNTER INVESTOR GROUP FOR  
APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL**

Jason Kelly, Anne Sanders, Darren Sanders, Raymond Sandler and James Carlson (collectively “Movant” or “Magnum Hunter Investor Group”) respectfully submit this memorandum of law in support of their motion for appointment as lead plaintiff and approval of lead counsel.

**I. BACKGROUND**

This is a securities class action on behalf of purchasers of the common stock of Magnum Hunter Resources Corp. (“Magnum Hunter” or the “Company”) between January 17, 2012 and April 22, 2013, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

Magnum Hunter is an independent oil and gas company. The complaint alleges that during the Class Period, Magnum Hunter issued materially false and misleading statements regarding the reliability of its publicly reported financial results. The complaint alleges that investors were misled about 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 also 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 as the public learned the truth about the Company the price of Magnum Hunter's publicly traded securities plummeted, erasing billions of dollars in market capitalization.

As a result of Defendants' wrongful acts and omissions Plaintiff and other Class members have suffered significant losses and damages.

## **II. PROCEDURAL HISTORY**

This action was commenced on April 25, 2013. That same day, the lawyers for the Plaintiff issued a PSLRA early notice, advising potential class members of the pendency of the

action and the option of class members to seek appointment as lead plaintiff. *See* Declaration of Stephen J. Fearon, Jr., filed herewith (“Fearon Decl.”), Ex. 1. Movant files this motion pursuant to the PSLRA early notice, and files this motion prior to expiration of the 60-day period from publication of the April 25, 2013 notice.

### **III. ARGUMENT**

#### **A. Movant Should Be Appointed Lead Plaintiff**

The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to a published notice of class action by the later of (i) 90 days after the date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. §78u-4(a)(3)(B). The PSLRA provides a “rebuttable presumption” that the “most adequate plaintiff” to serve as lead plaintiff is the person or group 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).

As set forth below, Movant satisfies all three of these criteria, and thus are entitled to the presumption that they are the “most adequate plaintiff” for the Class.

#### **1. Movant is Making A Motion In Response To A Notice**

Movant files the instant motion pursuant to the published notice, and submits herewith Movant’s sworn certifications attesting that they are willing to serve as representatives of the Class and willing to provide testimony at deposition and trial, if necessary. *See* Fearon Decl., Ex. 2. Movant

therefore satisfies the first PSLRA requirement that a putative lead plaintiff either file a complaint or make a motion in response to a published notice.

**2. Movant has The Largest Financial Interest In This Action**

The PSLRA requires a court to adopt the rebuttable presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. §78u-4(a)(3)(B)(iii). While the PSLRA does not specify how a court should decide which plaintiff group has the “largest financial interest” in the relief sought, most courts simply determine which potential lead plaintiff has suffered the greatest total losses. The financial loss is the most significant factor. *See In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 437 (S.D.N.Y. 2008). Indeed, “the best yardstick by which to judge ‘largest financial interest’ is the amount of loss, period”. *In re Bally Total Fitness, Sec. Litig.*, 2005 WL 627960 \* 4 (N.D. Ill. Mar. 15, 2005).

The Magnum Hunter Investor Group has suffered collective financial losses of \$16,873.37.<sup>1</sup> *See* Fearon Declaration, Exhibit 3. Movant is not aware of any other movants that have suffered greater losses in Magnum Hunter stock during the Class Period. Accordingly, Movant satisfies the largest financial interest requirement to be appointed as Lead Plaintiff for the class.

**3. Movant Satisfies The Requirements Of Rule 23 Of The Federal Rules Of Civil Procedure**

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

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<sup>1</sup> For held shares Movant uses \$3.38/share.

(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.

In making its determination that the Lead Plaintiff satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification -- a *prima facie* showing that the movants satisfy the requirements of Rule 23 is sufficient. *In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 439 (S.D.N.Y. 2008) (only a *prima facie* showing is required) (citations omitted). Moreover, “typicality and adequacy of representation are the only provisions relevant to a determination of lead plaintiff under the PSLRA.” *Id.*, at 437.

**a. Movant’s Claims Are Typical**

The Rule 23(a) typicality requirement is satisfied when a plaintiff’s claims arise from the same event, practice or course of conduct that gives rise to other class members’ claims and plaintiff’s claims are based on the same legal theory. *See In re Livent, Inc. Noteholders Sec. Litig.*, 210 F.R.D. 512, 516 (S.D.N.Y. 2002) (citations omitted). Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Id.*

Here, Movant’s claims are typical of the claims asserted by the Class. Movant, like all members of the Class, allege that defendants violated the federal securities laws by disseminating false and misleading statements concerning the business, operations and financial prospects of Magnum Hunter. Movant, like all of the members of the Class, purchased Magnum Hunter securities at prices artificially inflated by Defendants’ misrepresentations and omissions, and were damaged thereby. Movant’s interests are closely aligned with other Class members’ interests, and Movant’s interests are, therefore, typical of the other members of the Class.

**b. The Magnum Hunter Investor Group is Adequate**

The adequacy of representation requirement of Rule 23 is satisfied where it is established that a representative party has the ability to represent the claims of the class vigorously, has obtained adequate counsel, and there is no conflict between a movant's claims and those asserted on behalf of the class. *In re Cendant Corp. Litigation*, 264 F.3d 201, 265 (3d Cir. 2001). Here, Movant has demonstrated its adequacy as lead plaintiff by evincing a strong desire to prosecute this action on behalf of the Class, and has shown that it is "willing and able" to "take an active role in and control the litigation and to protect the interests of absentees." *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 479 (5<sup>th</sup> Cir. 2001). Movant has communicated with competent, experienced counsel concerning this case, and has made this motion to be appointed lead plaintiff. Movant is not aware that any conflict exists between Movant's claims and those asserted on behalf of the Class. Movant also sustained substantial financial losses from their investments in Magnum Hunter securities and are, therefore, extremely motivated to pursue the claims in this action. *See* Fearon Decl., Ex. 2.

**4. Movant Is Presumptively the Most Adequate Plaintiff**

The presumption in favor of appointing Movant as lead plaintiff may be rebutted only upon proof "by a purported member of the Plaintiffs' class" that the presumptively most adequate plaintiff:

- (aa) will not fairly and adequately protect the interest of the class; or
- (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. §78 u-4(a)(3)(b)(iii)(I).

The presumption that Movant is the most adequate lead plaintiff is not, therefore, subject to

rebuttal. Movant has suffered substantial financial losses and believe they have the largest financial interest in this case of any timely lead plaintiff movant. The ability of Movant to fairly and adequately represent the Class is discussed above. Movant is not aware of any unique defenses defendants could raise against them that would render Movant inadequate to represent the Class. Accordingly, Movant is presumptively the most adequate plaintiff and should be appointed lead plaintiff for the Class. *See In re Cendant Corp.*, 264 F.3d at 268.

**B. The Court Should Approve Movant's Selection of Counsel**

The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only to approval of the Court. Thus, the Court should not disturb the lead plaintiff's choice of counsel unless "necessary to protect the interest of the plaintiff class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see also In re Cavanaugh* 306 F.3d 726, 733 (9th Cir. 2002). In the present case, Movant has retained Squitieri & Fearon, LLP to pursue this litigation on their behalf, and will retain the firms as plaintiffs' co-lead counsel, in the event Movant is appointed lead plaintiff. The attorneys at Squitieri & Fearon, LLP possess extensive experience in the area of securities litigation and have successfully prosecuted numerous securities fraud class actions on behalf of injured investors, as reflected by the firm's résumé attached to the Fearon Decl., as Ex. 4. Thus, the Court may be assured that, by granting Movant's motion, the Class will receive the highest caliber of legal representation.

#### IV. CONCLUSION

For the foregoing reasons, Movant respectfully asks the Court to grant its motion and enter an Order (a) appointing Movant as lead plaintiff, (b) approving Squitieri & Fearon, LLP as lead counsel for the Class (c) and granting such other relief as the Court may deem just and proper.

DATED: June 24, 2013

Respectfully submitted,

SQUITIERI & FEARON, LLP

By: /s/ Stephen J. Fearon, Jr.

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*Proposed Lead Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of June, 2013, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Stephen J. Fearon, Jr.