

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ZUCCO PARTNERS, LLC,

Plaintiff,

vs.

Case No. 2:05-cv-201-FtM-29DNF

FINDWHAT.COM, CRAIG PISARIS-
HENDERSON, BRENDA AGUIS, FREDERICK
E. GUEST, PHILLIP R. THUNE,

Defendants.

SUNANDA DESAI,

Plaintiff,

vs.

Case No. 2:05-cv-213-FtM-29DNF

FINDWHAT.COM; CRAIG PISARIS-
HENDERSON; PHILLIP THUNE; BRENDA
AGIUS,

Defendants.

VISION WEALTH MANAGEMENT,

Plaintiff,

vs.

Case No. 2:05-cv-233-FtM-29DNF

FINDWHAT.COM; CRAIG PISARIS-
HENDERSON; BRENDA AGIUS; FREDERICK
E. GUEST; PHILLIP R. THUNE,

Defendants.

JASON KOHUT,

Plaintiff,

vs.

Case No. 2:05-cv-236-FtM-29DNF

FINDWHAT.COM; CRAIG PISARIS-
HENDERSON; PHILLIP R. THUNE; BRENDA
AGIUS,

Defendants.

JACQUES HABRA, on behalf of himself
and all other persons similarly
situated,

Plaintiff,

vs.

Case No. 2:05-cv-271-FtM-29DNF

FINDWHAT.COM, CRAIG PISARIS-
HENDERSON, PHILLIP R. THUNE, BRENDA
AGIUS, FREDERICK E. GUEST,

Defendants.

OPINION AND ORDER

_____This matter came before the Court on a July 27, 2005, Status Hearing regarding case management and the following pending motions, filed in some or all of the individual cases: (1) defendants' Motions to Dismiss; (2) Plaintiff Jacques Habra's Motion to Transfer and Consolidate All Related Actions, to which plaintiff Jason Kohut filed a Notice of Non-Opposition to and Joinder in Plaintiff Jacques Habra's Motion and defendants filed a

Response; (3) plaintiffs' Motion to Stay Consideration of Defendants' Motions to Dismiss, or in the Alternative, for an Enlargement of Time in Which to Respond, to which defendants filed an Opposition; (4) proposed lead plaintiff "Findwhat Investor Group's" Motion for Consolidation, Appointment as Lead Plaintiff and Approval of Lead Counsel and corresponding Notice of Non-Opposition also filed by the "Findwhat Investor Group;" and (5) plaintiff's Motion for Relief From Local Rules 3.05 and 4.04 and Proposed Scheduling Order, to which defendants filed a Response.

Based on the Court's review of the motions and responses thereto, and after hearing argument from counsel, the Court hereby

ORDERS AND ADJUDGES:

(1) Plaintiff Jacques Habra's Motion to Transfer and Consolidate All Related Actions is **DENIED** as **moot** to the extent that Case Nos. 2:05-cv-236-FtM-29DNF and 2:05-cv-271-FtM-29DNF have been transferred to the undersigned, and **GRANTED** to the extent that the **five** cases are hereby consolidated as follows:

- a. All future filings shall be made in the first-filed case, Case No. 2:05-cv-201-FtM-29DNF, only.
- b. All counsel must be registered with and utilize the Court's CM/ECF filing system.¹ All court filings and service pursuant to Fed. R. Civ. P. 5 shall be made electronically

¹Any counsel not yet registered shall visit the Court's website, www.flmd.uscourts.gov, and register online.

using the Court's CM/ECF system. Counsel shall provide the Court hard-copy courtesy copies of any attachments and/or exhibits exceeding thirty (30) pages in length.

c. The parties shall use the consolidated case heading used in the consolidated or Amended Complaint (i.e. "In re MIVA, Inc. Securities Litigation") to be filed, rather than a case heading with all five cases listed.

d. The Clerk shall close Case Nos. 2:05-cv-213-FTM-29DNF, 2:05-cv-233-FTM-29DNF, 2:05-cv-236-FTM-29DNF, and 2:05-cv-271-FTM-29DNF based on the consolidation.

e. Any counsel of record listed in the other four cases that are not already added to the lead case to receive electronic notification shall be added by the Clerk of Court as co-counsel.

(2) Defendants' Motions to Dismiss are **DENIED** as moot in light of the Answers filed by defendants.²

(3) Proposed lead plaintiff "Findwhat Investor Group's" Motion for Consolidation, Appointment as Lead Plaintiff and Approval of Lead Counsel is **GRANTED** to the extent that "FindWhat Investor Group" is appointed as lead plaintiff and the firm of Milberg, Weiss, Bershad & Schulman LLP shall act as lead counsel.

²A motion to dismiss is improper once a responsive pleading has been filed, Skrtich v. Thornton, 280 F.3d 1295, 1306 (11th Cir. 2002), and a nullity, Byrne v. Nezhat, 261 F.3d 1075, 1093 n. 35 (11th Cir. 2001).

Any outstanding requests for appointment as lead plaintiff and for approval of selection of lead counsel are deemed **withdrawn**.

(4) The Court will **grant** leave to file a consolidated or amended Complaint within **TWENTY (20) DAYS** of the date of this Opinion and Order. A hard-copy courtesy copy of the Amended Complaint shall be provided to the Court. Defendants shall have **TWENTY (20) DAYS** from the date of service to Answer or otherwise respond, and plaintiffs shall have **TWENTY (20) DAYS** from the date of service of any Motion(s) to Dismiss that are filed to respond.

(5) Plaintiffs' Motion to Stay Consideration of Defendants' Motions to Dismiss, or in the Alternative, for an Enlargement of Time in Which to Respond are **DENIED** as moot.

(6) Plaintiff's Motion for Relief From Local Rules 3.05 and 4.04 and Proposed Scheduling Order is **GRANTED** as follows:

a. The lead case, Case No. 2:05-cv-201-FTM-29DNF, shall be re-designated as a Track Three case.


b. The requirement to file a Case Management Report and Class Certification Motion within the time limits established by the Local Rules is waived.

c. Plaintiffs shall file their Motion for Class Certification within **TWENTY (20) DAYS** of the Opinion and Order adjudicating any Motion(s) to Dismiss that are will be filed. Defendants shall file their Response within **TWENTY (20) DAYS** of service of said Motion.

d. Upon adjudication of any anticipated Motion(s) to Dismiss, the assigned United States Magistrate Judge will conduct a

Preliminary Pretrial Conference to discuss case management, the scheduling of deadlines, and for the entry of a further Case Management and Scheduling Order.

DONE AND ORDERED at Fort Myers, Florida, this 27th day of July, 2005.



JOHN E. STEELE
United States District Judge

Copies:
U.S. Magistrate Judge
Counsel of record
K. Arnett
MAGCD
DCCD