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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KENNETH A. FOSTER, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiff,

vs.

MAXWELL TECHNOLOGIES, INC.,
DAVID J. SCHRAMM, KEVIN S.
ROYAL and VAN M. ANDREWS,

Defendants.

No. 13-cv-00580-BEN-RBB

**ORDER CONSOLIDATING
RELATED ACTIONS,
APPOINTING EMPLOYEES'
PENSION PLAN OF THE CITY
OF CLEARWATER AS LEAD
PLAINTIFF, AND APPROVING
ITS SELECTION OF CLASS
COUNSEL**

[Docket Nos. 30, 31, 32, 33]

1 JOSHUA WEINSTEIN, Individually
2 and On Behalf of All Others Similarly
3 Situated,

Plaintiff,

4 vs.

5 MAXWELL TECHNOLOGIES, INC.,
6 DAVID J. SCHRAMM, KEVIN S.
7 ROYAL and VAN M. ANDREWS,

Defendants.

) No. 3:13-cv-00686-BEN-RBB

8 VICTOR SANJUAN ABANADES,
9 Individually and On Behalf of All
10 Others Similarly Situated,

Plaintiff,

) No: 3:13-cv-00867-BEN-RBB

11 vs.

12 MAXWELL TECHNOLOGIES, INC.,
13 DAVID J. SCHRAMM, KEVIN S.
14 ROYAL and VAN M. ANDREWS,

Defendants.

) No: 3:13-cv-00942-BEN-RBB

15 EDWARD MEBARAK, Individually
16 and On Behalf of All Others Similarly
17 Situated,

Plaintiff,

18 vs.

19 MAXWELL TECHNOLOGIES, INC.,
20 DAVID J. SCHRAMM, KEVIN S.
21 ROYAL and VAN M. ANDREWS,

Defendants.

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BACKGROUND

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2 Defendant Maxwell Technologies, Inc. manufactures energy storage and power-
3 delivery related products. Defendant David J. Schramm is the Chief Executive Officer
4 and President of Maxwell, Defendant Kevin S. Royal is the Chief Financial Officer and
5 Senior Vice President of Maxwell, and Defendant Van M. Andrew is the former Senior
6 Vice President of Sales and Marketing of Maxwell.

7 On March 7, 2013, Maxwell disclosed that the Audit Committee of Maxwell's
8 Board of Directors had determined that Maxwell had prematurely recognized revenue
9 from certain sales and the published financial statements for the 2011 and 2012 fiscal
10 years were incorrect. Maxwell announced that it would issue revised financial
11 statements, which would reduce reported revenues by \$12 million over the seven-
12 quarter period. By the end of the trading session on March 8, 2013, Maxwell's stock
13 price had fallen \$1.01 per share, or 11.09 percent, to \$8.10 per share.

14 This action was filed on March 13, 2013. The Complaint alleges that Defendants
15 misled investors by: (1) overstating Maxwell's revenues and earnings in 2011 and
16 2012; (2) reporting revenues prior to the time the sales price was fixed and/or
17 collection was reasonably assured; and (3) having internal accounting controls that
18 were deficient and permitted the premature recognition of revenue. There are three
19 related actions: *Weinstein v. Maxwell Technologies, Inc.*, No. 13-CV-686 BEN (RBB),
20 *Abanades v. Maxwell Technologies, Inc.*, No. 13-CV-867 BEN (RBB), and *Mebarak*
21 *v. Maxwell Technologies, Inc.*, No. 13-CV-942 BEN (RBB).

22 Presently before the Court are: (1) Byron Lai, Kathleen Lai and Alice Lai ("Lai
23 Family")'s Motion for Consolidation, Appointment of Lead Plaintiff and Approval of
24 Lead and Liaison Counsel (Docket No. 30); (2) Martin Schiffenbauer's Motion for
25 Consolidation of Related Actions, Appointment as Lead Plaintiff and Approval of Lead
26 Counsel (Docket No. 31); (3) Public School Teachers' Pension and Retirement Fund
27 of Chicago ("Chicago Teachers") and Electrical Workers Pension Fund, Local 103
28 I.B.E.W. ("Local 103") (collectively "Chicago Group")'s Motion for Consolidation,

1 Appointment as Lead Plaintiff, and Approval of Selection of Co-Lead Counsel
2 (Docket No. 32); and (4) The Employees' Pension Plan of the City of Clearwater
3 ("Clearwater")'s Motion for Consolidation, Appointment as Lead Plaintiff, and
4 Approval of its Selection of Class Counsel (Docket No. 33).

5 DISCUSSION

6 I. MOTIONS FOR CONSOLIDATION

7 The Lai Family, Schiffenbauer, the Chicago Group, and Clearwater all seek
8 consolidation of the Related Actions, *Foster v. Maxwell Technologies, Inc.*, Case No.
9 13-CV-580 BEN (RBB), *Weinstein v. Maxwell Technologies, Inc.*, No. 13-CV-686
10 BEN (RBB), *Abanades v. Maxwell Technologies, Inc.*, No. 13-CV-867 BEN (RBB),
11 and *Mebarak v. Maxwell Technologies, Inc.*, No. 13-CV-942 BEN (RBB). Defendants
12 have consented to the consolidation of the Related Actions. (Docket Nos. 35, 36.)

13 Consolidation is appropriate where there is "a common question of law or fact"
14 pending before the Court. FED. R. CIV. P. 42(a). The Court has broad discretion under
15 Rule 42(a) to consolidate pending actions. *See Plumbers & Pipefitters Local 51*
16 *Pension Fund v. Petco Animal Supplies, Inc.*, No. 05-CV-823, 2005 WL 5957815, at
17 *2 (S.D. Cal. Aug. 17, 2005).

18 Here, the Related Actions present substantially identical factual and legal issues.
19 The Related Actions arise from the same underlying facts and circumstances, allege
20 violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and
21 name the same defendants. Accordingly, the parties' motions to consolidate are
22 **GRANTED.**

23 II. MOTIONS FOR APPOINTMENT OF LEAD PLAINTIFF

24 The Private Securities Litigation Reform Act of 1995 ("PSLRA") provides a
25 procedure for selecting a lead plaintiff for "each private action arising under [the
26 Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules
27 of Civil Procedure." 15 U.S.C. § 78u-4(a)(1); *see also* 15 U.S.C. § 78u-4(a)(3)(B).
28 Specifically:

1 Not later than 20 days after the date on which the complaint is filed, the
2 plaintiff or plaintiffs shall cause to be published, in a widely circulated
3 national business-oriented publication or wire service, a notice advising
4 members of the purported plaintiff class—
5 (I) of the pendency of the action, the claims asserted therein, and the
6 purported class period; and
7 (II) that, not later than 60 days after the date on which the notice is
8 published, any member of the purported class may move the court to
9 serve as lead plaintiff of the purported class.

10 15 U.S.C. § 78u-4(a)(3)(A)(i); *see also In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir.
11 2002).

12 After considering any motions made by class members, the court is to appoint
13 the movant that is determined to be most capable of adequately representing the
14 interests of the class as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). There is a
15 presumption that the “most adequate plaintiff” is the person or group of persons who:
16 (1) filed a complaint or made a motion to serve as lead plaintiff; (2) has the largest
17 financial interest in the relief sought by the class; and (3) who otherwise satisfies the
18 requirements of Rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d
19 at 729-30. This presumption may be rebutted by proof that the presumptively most
20 adequate plaintiff “will not fairly and adequately protect the interests of the class’ or
21 ‘is subject to unique defenses that render such plaintiff incapable of adequately
22 representing the class.” *Cavanaugh*, 306 F.3d at 741 (quoting 15 U.S.C. § 78u-
23 4(a)(3)(B)(iii)(II)).

24 The Ninth Circuit has not prescribed a method for determining which movant has
25 the largest “financial interest.” Rather, “the court may select accounting methods that
26 are both rational and consistently applied.” *Id.* at 730 n.4.

27 This Court focuses on the amount of potential recovery in the relief sought by
28 the class. *See Schueneman v. Arena Pharm., Inc.*, No. 10cv1959, 2011 WL 3475380,
at *3 (S.D. Cal. Aug. 8, 2011); *Ruland v. InfoSonics Corp.*, No. 06cv1231, 2006 WL
3746716, at *5 (S.D. Cal. Oct. 23, 2006). In *Dura Pharmaceuticals, Inc. v. Broudo*,
544 U.S. 336 (2005), the Supreme Court distinguished between economic losses and

1 recoverable damages. An inflated purchase price due to deception or misrepresentation
2 does not cause the relevant economic loss, because when the transaction takes place
3 the purchase price is offset by ownership of a share that at that time possesses
4 equivalent value. *Id.* at 342. The misrepresentation does not lead to a loss if the
5 purchaser sells the shares before the truth is revealed. *Id.* “Accordingly, for purposes
6 of evaluating financial interest, it makes sense to disregard any gains or losses resulting
7 from stock trades before the truth was disclosed.” *Schueneman*, 2011 WL 3475380,
8 at *3.

9 Consistent with *Dura*, this Court has adopted the retained share methodology.
10 *See id.* at *4. Under the retained share methodology, the court “looks to the number
11 of retained shares at the end of the class period” to determine the potential recovery.
12 *Id.* “Under the retained share methodology, the purchase price of the retained shares
13 is subtracted from either (1) the average of the daily closing price of the stock during
14 the 90 day period beginning at the end of the class period (if the share was not sold
15 during the 90 day period) or (2) the higher of the actual sale price or an average of the
16 daily closing price from the end of the class period to the date of sale (if a share was
17 sold within the 90 day period). The purchase price is calculated based either on the
18 purchase price of shares purchased at the beginning of the class period or the purchase
19 price of shares purchased most recently, but within the class period.” *Id.* (citation
20 omitted).

21 **A. Lai Family’s Motion for Appointment of Lead Plaintiff**

22 On May 13, 2013, the Lai Family moved to be appointed as lead plaintiff.
23 (Docket No. 30.) On June 3, 2013, the Lai Family filed a notice of non-opposition with
24 respect to the competing pending motions for appointment as lead plaintiff. (Docket
25 No. 34.) Accordingly, the Lai Family’s motion to be appointed as lead plaintiff is
26 **DENIED.**

27 **B. Schiffenbauer’s Motion for Appointment of Lead Plaintiff**

28 On May 13, 2013, Schiffenbauer moved to be appointed as lead plaintiff.

1 (Docket No. 31.) Schiffenbauer argues that he has the largest financial interest in the
2 relief sought by the class because he purchased 4,000 shares of Maxwell during the
3 class period and has suffered losses of \$18,248. As discussed below, Clearwater has
4 the largest financial interest in the relief sought by the class. In addition, Schiffenbauer
5 does not oppose Clearwater's motion to be appointed lead plaintiff. Accordingly,
6 Schiffenbauer's motion to be appointed as lead plaintiff is **DENIED**.

7 **C. The Chicago Group's and Clearwater's Motions for Appointment of**
8 **Lead Plaintiff**

9 On May 13, 2013, the Chicago Group moved to be appointed as lead plaintiff.
10 (Docket No. 32.) Also on May 13, 2013, Clearwater moved to be appointed as lead
11 plaintiff. (Docket No. 33.)

12 First, both the Chicago Group and Clearwater timely moved to serve as lead
13 plaintiff. Notice that a class action had been initiated against Defendants was first
14 published in Business Wire on March 13, 2013, giving the parties until May 13, 2013
15 to move to be appointed as lead plaintiff.

16 Second, the Court determines which party has the largest financial interest in the
17 relief sought by the class. The Chicago Group argues that they have the largest
18 financial interest in the relief sought by the class because they have suffered \$907,930
19 in losses as calculated under the Last-In-First-Out ("LIFO")¹ method. Clearwater
20 argues that because the Chicago Group sold most of its stock ten months before the
21 disclosure of the accounting fraud, the Chicago Group has in fact suffered only
22 \$178,994 in losses that may potentially be recovered in the relief sought by the Class.
23 According to Clearwater, because Clearwater has suffered \$196,969 in losses, it has
24 the largest financial interest in the relief sought by the class.

25 The Chicago Group does not dispute Clearwater's calculation that only \$178,994
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27 ¹ Last-In-First-Out ("LIFO") and First-In-First Out ("FIFO") are two methods
28 used to calculate losses. *Perlmutter v. Intuitive Surgical, Inc.*, No. 10-CV-3451, 2011
WL 566814, at *10 (N.D. Cal. Feb. 15, 2011). LIFO is the favored method in the Ninth
Circuit. *Id.*

1 of the Chicago Group's losses resulted from the sale of stock that took place after the
2 March 2013 disclosure of accounting fraud. Rather, the Chicago Group argues that a
3 partial disclosure occurred on April 26, 2012, when Maxwell disclosed disappointing
4 results for the first quarter of 2012. According to the Chicago Group, this disclosure
5 contained statements regarding Maxwell's poor revenues and poor revenue guidance.
6 The Chicago Group claims that they suffered \$907,930 of losses as a result of sales that
7 took place after this partial disclosure of the fraud.

8 On the contrary, although the complaints filed in the Related Actions mention
9 Maxwell's April 2012 earnings miss, none of them identify this or any other
10 announcement prior to the March 7, 2013 disclosure as disclosing, in whole or in part,
11 Maxwell's alleged fraud. *See Foster* Compl. ¶¶ 30-32; *Weinstein* Compl. ¶¶ 27-28;
12 *Abanades* Compl. ¶¶ 28-30; *Mebarak* Compl. ¶¶ 27-28. The Chicago Group's own
13 Complaint alleges that after the April 2012 earnings miss, "Maxwell's stock continued
14 to trade at artificially inflated levels as defendants concealed the Company's improper
15 revenue recognition and deficient internal controls." *Foster* Compl. ¶ 31. The
16 Complaints in the Related Actions all allege that the fraud was not disclosed until after
17 the closing of the stock market on March 7, 2013. *See Foster* Compl. ¶¶ 1, 4-7;
18 *Weinstein* Compl. ¶¶ 1, 3-6; *Abanades* Compl. ¶¶ 1, 3-6; *Mebarak* Compl. ¶¶ 1, 3-6.
19 The Court is limited to considering the allegations in the pending complaints at this
20 stage of the litigation. *See In re Converse Tech., Inc. Sec. Litig.*, No. 06-CV-1825,
21 2007 WL 680779, at *5 (E.D.N.Y. Mar. 2, 2007) ("*Dura* . . . require[s] a court to make
22 pre-discovery loss causation determinations regarding asserted claims . . . that are
23 based on the facts alleged in the complaint.").

24 Because the disclosure of fraud did not take place until March 2013, only
25 \$178,994 of the Chicago Group's losses resulted from the sale of stock that took place
26 after the disclosure of accounting fraud. Under the retained share methodology, the
27 Chicago Group has suffered \$178,994 in losses while Clearwater has suffered
28 \$196,969 in losses. Accordingly, Clearwater has the larger financial interest in this

1 action.

2 Third, the Court determines whether Clearwater otherwise satisfies the
3 requirements of Federal Rule of Civil Procedure 23. Rule 23(a) provides that a party
4 may serve as a class representative if: “(1) the class is so numerous that joinder of all
5 members is impracticable; (2) there are questions of law or fact common to the class;
6 (3) the claims or defenses of the representative parties are typical of the claims or
7 defenses of the class; and (4) the representative parties will fairly and adequately
8 protect the interests of the class.” Of these four prerequisites, only typicality and
9 adequacy are relevant to the lead plaintiff analysis. *See, e.g., Russo v. Finisar Corp.*,
10 No. 5:CV 11-1252, 2011 WL 5117560, at *3 (N.D. Cal. Oct. 27, 2011).

11 The typicality prerequisite requires that “the presumptive lead plaintiff’s claim
12 arise from the same event or course of conduct giving rise to the claims of other class
13 members and be based on the same legal theory.” *In re Surebeam Corp. Sec. Litig.*,
14 No. 03 CV 1721, 2004 WL 5159061, at *6 (S.D. Cal. Jan. 5, 2004) (internal quotation
15 marks omitted). This test “considers whether other members of the class have the same
16 or similar injury, whether the action is based on conduct which is not unique to the
17 named plaintiffs, and whether other class members have been injured by the same
18 course of conduct.” *Id.* (internal quotation marks omitted). The representative claims
19 are “typical” if they are “reasonably co-extensive with those of absent class members,”
20 though they “need not be substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d
21 1011, 1020 (9th Cir. 1998).

22 Here, Clearwater satisfies the typicality prerequisite. Like the other class
23 members, Clearwater: (1) purchased or acquired Maxwell securities during the class
24 period; (2) at prices artificially inflated by Maxwell’s allegedly false and misleading
25 statements and/or omissions; and (3) suffered damages when the March 2013
26 disclosure of accounting fraud removed the inflation caused by Defendants’ alleged
27 fraud. Clearwater’s claims are typical of those of the class because its claims arise out
28 of the same course of events.

1 In regards to the adequacy prerequisite, representation is adequate if the
2 plaintiffs: (1) “do not have conflicts of interest with the proposed class” and (2) are
3 “represented by qualified and competent counsel.” *Dukes v. Wal-Mart, Inc.*, 509 F.3d
4 1168, 1185 (9th Cir. 2007).

5 Here, Clearwater satisfies the adequacy prerequisite. Clearwater’s interests are
6 aligned with the interests of the members of the proposed class. There is no evidence
7 of antagonism or conflict between Clearwater’s interests and the interests of the
8 putative class. Because Clearwater suffered injury by purchasing Maxwell securities
9 at prices artificially inflated by Maxwell’s allegedly materially false and misleading
10 statements, Clearwater’s interests are aligned with the interests of the other class
11 members. In addition, Clearwater has chosen qualified and competent counsel, as
12 explained below.

13 The Chicago Group argues that Clearwater would be an inadequate lead plaintiff.
14 According to the Chicago Group, Clearwater has demonstrated that it would not fulfill
15 its role as lead plaintiff to maximize recovery for the entire class because it has asked
16 the Court to ignore a partial disclosure of fraud alleged in two of the four complaints.
17 As explained above, however, a partial disclosure of fraud has not been alleged in any
18 of the Complaints filed in the Related Actions. All four complaints allege that the
19 fraud was not disclosed until after the closing of the stock market on March 7, 2013.
20 *See Foster* Compl. ¶¶ 1, 4-7; *Weinstein* Compl. ¶¶ 1, 3-6; *Abanades* Compl. ¶¶ 1, 3-6;
21 *Mebarek* Compl. ¶¶ 1, 3-6.

22 Accordingly, the Chicago Group’s motion to be appointed lead plaintiff is
23 **DENIED**, and Clearwater’s motion to be appointed lead plaintiff is **GRANTED**.

24 II. MOTION FOR APPROVAL OF LEAD COUNSEL

25 Pursuant to the PSLRA, the lead plaintiff shall select and retain counsel to
26 represent the class, subject to court approval. 15 U.S.C. § 78u-4(a)(3)(B)(v). A court
27 may disturb the lead plaintiff’s choice of counsel only if “necessary to protect the
28 interests of the plaintiff class.” Statement of Manager—The “Private Securities

1 Litigation Reform Act of 1995,” 141 Cong. Rec. H14691-08, at H13700 (daily ed. Nov.
2 28, 1995); *see also Cavanaugh*, 306 F.3d at 732-33.

3 Here, Clearwater has selected Saxena White P.A. to serve as lead counsel.
4 Saxena White has extensive experience litigating securities class actions, and has
5 successfully prosecuted numerous securities fraud class actions on behalf of investors.
6 (*See White Decl.* [Docket No. 33-2], Exh. 4.) For instance, Saxena White has served
7 as class counsel in *Central Laborers’ Pension Fund v. SIRVA, Inc.*, No. 04 CV-07644
8 (N.D. Ill.) (\$53.3 million settlement), and in *In re Sadia S.A. Securities Litigation*, No.
9 08-CV-9528 (S.D.N.Y.) (\$27 million settlement).

10 In addition, Clearwater has selected Bernstein Litowitz Berger & Grossmann
11 LLP to serve as liaison counsel. Bernstein Litowitz has successfully prosecuted
12 numerous complex securities class actions on behalf of investors. For instance,
13 Bernstein Litowitz has served as class counsel in *In re WorldCom, Inc. Securities*
14 *Litigation*, No. 02-CV-3288 (S.D.N.Y.) (settlements in excess of \$6 billion), and in *In*
15 *re Nortel Networks Corp. Securities Litigation*, No. 05-MD-1659 (S.D.N.Y.)
16 (recovering \$1.3 billion for investors). (*See See White Decl.* [Docket No. 33-2], Exh.
17 5.)

18 Accordingly, Clearwater’s motion to appoint Saxena White as lead counsel and
19 Bernstein Litowitz as liaison counsel is **GRANTED**.

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CONCLUSION

For the foregoing reasons, the Court hereby **ORDERS** as follows:

I. CONSOLIDATION

1. Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the following actions are hereby consolidated for all purposes into one action:

Case Caption	Docket No.
Foster v. Maxwell Technologies, Inc., et al.	3:13-cv-00580-BEN-RBB
Weinstein v. Maxwell Technologies, Inc., et al.	3:13-cv-00686-BEN-RBB
Abanades v. Maxwell Technologies, Inc., et al.	3:13-cv-00867-BEN-RBB
Mebarak v. Maxwell Technologies, Inc., et al.	3:13-cv-00942-BEN-RBB

2. These actions shall be referred to herein as the “Consolidated Actions.” This Order shall apply to the Consolidated Actions and to each case that is subsequently filed in this Court or transferred to this Court that relates to the same subject matter as in the Consolidated Actions.

3. Every pleading in this Consolidated Action shall bear the following caption:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE MAXWELL TECHNOLOGIES
INC., SECURITIES LITIGATION

Case No. 3:13-cv-00580-BEN-RBB

1 4. This Court requests the assistance of counsel in calling to the attention
2 of the Clerk of this Court the filing or transfer of any case that might properly be
3 consolidated as part of this Consolidated Action.

4 **II. MASTER DOCKET AND MASTER FILE**

5 5. A Master Docket and Master File shall be established for the
6 Consolidated Actions. The Master File shall be Case No. 3:13-cv-00580. All
7 orders, pleadings, motions and other documents shall, when filed and docketed in
8 the Master file, be deemed filed and docketed in each individual case to the extent
9 applicable. When an order, pleading, or other document is filed with a caption
10 indicating that it is applicable to fewer than all of these consolidated actions, the
11 clerk shall file such pleadings in the Master File and note such filing in the Master
12 Docket and in the docket of each action referenced.

13 **III. NEWLY-FILED OR TRANSFERRED ACTIONS**

14 6. When a case that arises out of the subject matter of this action is
15 hereinafter filed in this Court or transferred to this Court from another court, the
16 Clerk of this Court shall:

- 17 a. file a copy of this Order in the separate file for such action;
18 b. mail a copy of this Order to the attorneys for the plaintiff(s) in
19 the newly filed or transferred case and to any new defendant(s) in the newly filed
20 or transferred case; and
21 c. make the appropriate entry in the docket for this action.

22 7. Each new case arising out of the subject matter of this Consolidated
23 Action that is filed in this Court or transferred to this Court shall be consolidated
24 with this action and this Order shall apply thereto, unless a party objecting to this
25 Order or any provision of this Order shall, within ten (10) days after the date upon
26 which a copy of this Order is served on counsel for such party, files an application
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1 for relief from this Order or any provision herein and this Court deems it
2 appropriate to grant such application.

3 **IV. APPOINTMENT OF LEAD PLAINTIFF, LEAD COUNSEL AND**
4 **LIAISON COUNSEL**

5 8. Movant has timely moved the Court to be appointed Lead Plaintiff in
6 the Consolidated Action.

7 9. Having considered the provisions of 15 U.S.C. § 78u-4(a)(3)(B), and
8 the material submitted by Clearwater in support of its motion, the Court hereby
9 concludes that Clearwater is the “most adequate plaintiff” and that Clearwater
10 satisfies the requirements of 15 U.S.C. § 78u-4(a)(3)(B). The Court hereby
11 appoints Clearwater to be the Lead Plaintiff and to represent the interests of the
12 Class.

13 10. Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), Lead Plaintiff has selected
14 and retained the law firms of Saxena White P.A. to serve as Lead Counsel and
15 Bernstein Litowitz Berger & Grossmann LLP to serve as Liaison Counsel. The
16 Court hereby approves the Lead Plaintiff’s selection of Saxena White P.A. as Lead
17 Counsel and Bernstein Litowitz Berger & Grossmann LLP as Liaison Counsel.

18 11. Lead Counsel shall have the following responsibilities and duties, to
19 be carried out either personally or through other counsel designated by Lead
20 Counsel:

- 21 a. to coordinate the briefing and argument of any and all motions;
- 22 b. to coordinate the conduct of any and all discovery proceedings;
- 23 c. to coordinate the examination of any and all witnesses in
24 depositions;
- 25 d. to coordinate the selection of counsel to act as spokesperson at
26 all pretrial conferences;
- 27
- 28

1 e. to call meetings of the plaintiffs' counsel as they deem
2 necessary and appropriate from time to time;

3 f. to coordinate all settlement negotiations with counsel for
4 defendants;

5 g. to coordinate and direct the pretrial discovery proceedings and
6 the preparation for trial and the trial of this matter and to delegate work
7 responsibilities to selected counsel as may be required;

8 h. to coordinate the preparation and filings of all pleadings; and

9 i. to supervise all other matters concerning the prosecution or
10 resolution of the Consolidated Actions.

11 12. No motion, request for discovery, or other pretrial proceeding shall be
12 initiated or filed by any plaintiff without the approval of Lead Counsel, so as to
13 prevent duplicative pleadings or discovery. No settlement negotiations shall be
14 conducted without the approval of Lead Counsel.

15 13. Lead Counsel shall have responsibility for receiving and
16 disseminating Court orders and notices.

17 14. Lead Counsel shall be the contact between plaintiffs' counsel and
18 defendants' counsel, shall serve as the spokespersons for plaintiffs' counsel, and
19 shall direct and coordinate the activities of plaintiffs' counsel. Lead Counsel shall
20 be the liaison between the Court and plaintiffs and their counsel.

21 **IT IS SO ORDERED.**

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23 DATED: 10/24/13

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25 HON. ROGER T. BENITEZ
26 UNITED STATES DISTRICT JUDGE
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