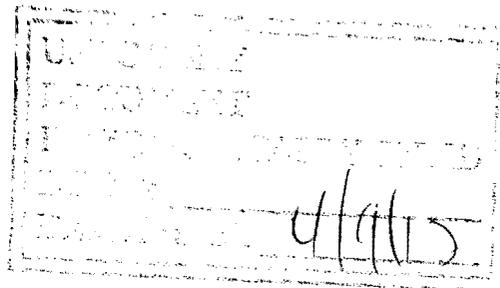


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SIDNEY GORDON, :  
 :  
 Plaintiff, :  
 :  
 -v- :  
 :  
 SONAR CAPITAL MANAGEMENT LLC, NOAH :  
 FREEMAN, NEIL DRUKER AND PRIMARY :  
 GLOBAL RESEARCH, LLC, :  
 :  
 Defendant. :  
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11 Civ. 9665 (JSR)

MEMORANDUM ORDER



JED S. RAKOFF, U.S.D.J.

On December 29, 2011, plaintiff Sidney Gordon filed this class-action suit, which alleges violations of §§ 10(b), 20A, & 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. Under the Private Securities Litigation Reform Act ("PSLRA"), a plaintiff who commences a securities class action such as this one must, within twenty days of filing the action, publish a notice to the proposed class informing class members of their ability to move to serve as lead plaintiff. See 15 U.S.C. § 78u-4(a)(3)(A)(i); see also id. § 78u-4(a)(3)(B)(i). Gordon met this requirement by publishing a notice in Investor's Business Daily on January 3, 2012. Decl. of Edward F. Haber dated March 2, 2012 ¶ 2. Then, on March 2, 2012, Gordon moved for appointment as lead plaintiff. Three days later, on March 5, 2012, another member of the class, Jeffrey Tauber, a retired California Superior Court judge, moved to serve as lead plaintiff. Subsequently, however, on March 16, 2012, Gordon and Tauber amended their motions to

request that the Court appoint them both to serve as co-lead plaintiffs. For the reasons stated below, the Court grants Gordon's and Tauber's motion to serve as co-lead plaintiffs and approves their choice of counsel.

Under the PSLRA, the Court "shall 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 interests of class members." 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA requires a court to presume that "the most adequate plaintiff" is "the person or 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.

Id. § 78u-4(a)(3)(B)(iii). Relying on plain language, courts have frequently selected a group of plaintiffs as the lead plaintiff. See Weltz v. Lee, 199 F.R.D. 129, 133-34 (S.D.N.Y. 2001).

On March 29, 2012, the Court conducted a hearing to analyze Gordon's and Tauber's motion to serve as co-lead plaintiffs. Neither Tauber nor Gordon has extensive experience with overseeing securities litigation. See Decl. of Jeffrey Tauber dated March 16, 2012; Decl. of Sidney Gordon dated March 16, 2012. Nonetheless, the facts and transactions underlying this litigation have already resulted in

several criminal convictions -- see, e.g., United States v. Freeman, 11 Cr. 116 (DAB); United States v. Jiau, 11 Cr. 161 (JSR) -- and the records of those cases will provide Tauber and Gordon with an independent resource for familiarizing themselves with some of the underlying facts and issues.

Although the plaintiffs collectively have the largest known stake in the relief sought by the class, Gordon has both a comparatively modest stake and limited experience with legal matters. Gordon also appears to have first discovered his possible claim against defendants through an advertisement his now-attorney placed on the internet. Transcript from March 29, 2012 ("Tr.") at 43:19-44:12. In contrast, Judge Tauber, while also inexperienced in securities litigation, has significant legal credentials and impressed the Court at the hearing as someone who will supervise his attorneys closely. See Decl. of Jeffrey Tauber dated March 16, 2012. Judge Tauber also has by far the greater financial stake in this case. Compare id. ¶ 3, with Decl. of Sidney Gordon dated March 16, 2012 ¶ 3. Finally, Judge Tauber appears to have played a more independent role in seeking and retaining counsel. See Tr. at 10:10-11:16.

While these differences might counsel in favor of appointing only Tauber as lead plaintiff, the Court finds that, on balance, the participation of both Gordon and Tauber as lead plaintiffs will aid the class in its pursuit of relief. To begin with, their combined business and legal expertise gives them a decided advantage in

evaluating the pluses and minuses of various approaches to litigating the case. Second, at the hearing on the motion, plaintiffs' counsel suggested, albeit coyly, that arguments that might be made by defendants as to whether one or the other of the proposed lead plaintiffs was inadequate to represent the entire class would be mooted by their joint representation.<sup>1</sup> Third, the Court infers from the fact that Gordon and Tauber met privately with one another, Tr. at 22:5-7, that the plaintiffs independently agreed to cooperate to oversee the class. Thus, the Court finds that, in addition to having the largest financial stake in the case, Gordon and Tauber collectively satisfy the requirements of Rule 23. See Fed. R. Civ. P. 23. Accordingly, the Court grants the motion of Gordon and Tauber to serve as co-lead plaintiffs.

With respect to plaintiffs' choice of lead counsel, the PSLRA provides that the "most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class." 15 U.S.C. § 78u-4(a)(3)(B)(v). Here, Gordon and Tauber have requested that the firms they respectively retained previously -- Shapiro Haber & Urmy LLP for Gordon and Brower Piven for Tauber -- serve jointly as lead counsel. While the Court might ordinarily

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<sup>1</sup>These issues appear to relate to the fact that Gordon only sold shares during the class period, whereas Tauber both bought and sold shares during that time. Tr. at 37:6-12. A joint representation would therefore better allow the lead plaintiffs to satisfy the requirement of typicality. See Fed. R. Civ. P. 23(a)(3).

hesitate to appoint two law firms as class counsel, plaintiffs' attorneys have represented that they have often worked together previously and that they will not duplicate each other's efforts. Tr. at 40:45-41:11. The Court will scrutinize the firms' work-product to ensure that no such duplication occurs.<sup>2</sup> Accordingly, the Court approves Gordon's and Tauber's choice of co-lead counsel.

The parties should convene a conference call no later than April 10, 2012 to schedule further proceedings in this case. The Clerk of the Court is directed to close items number 22, 25, and 30 on the docket of this case.

SO ORDERED.

  
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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
April 5, 2012

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<sup>2</sup>The Court has inspected each firm's retainer agreement. The agreement into which Judge Tauber has entered requires Brower Piven to continue representing him even if the class's motion for certification ultimately fails. Tr. at 48:18-22. Mr. Gordon's agreement, in contrast, does not. Id. at 49:23-50:2.