UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILLIP J. BARKETT, JR., Plaintiff, -against- SOCIÉTÉ GÉNÉRALE, DANIEL BOUTON, and ROBERT A. DAY, Defendants.	Civil Action No. 1:08-CV-2495 (GEL)
CITY OF TAYLOR EMPLOYEES RETIREMENT SYSTEM, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. SOCIÉTÉ GÉNÉRALE GROUP, DANIEL BOUTON, and ROBERT A. DAY, Defendants.	Civil Action No. 1:08-CV-2752 (GEL)
HAROLD OBERKOTTER, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. SOCIÉTÉ GÉNÉRALE, DANIEL BOUTON, and ROBERT A. DAY, Defendants.	Civil Action No. 1:08-CV-2901 (GEL)

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF THE NEW JERSEY CARPENTERS ANNUITY AND PENSION FUNDS FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF CO-LEAD COUNSEL

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INTRODUCTION

Class members the New Jersey Carpenters Annuity and Pension Funds (the "New Jersey Funds Group" or "Movant") have suffered losses of approximately $1,409,263 as a result of their investments in the securities of Société Générale ("SG" or the "Company" or "Defendant"). Movant believes that it has incurred the largest loss of any other movant, and as such, it has the largest financial interest in the outcome of this litigation, and satisfies the requirements to qualify as the "most adequate plaintiff' as defined by the Private Securities Litigation Reform Act of 1995 ("PSLRA").

As the most adequate plaintiff, Movant hereby respectfully requests that the Court: (1) consolidate the three related actions pending before this Court;[1] (2) appoint Movant as Lead Plaintiff pursuant to the PSLRA; (3) approve Movant's selection of Milberg LLP ("Milberg") and Gardy & Notis, LLP ("Gardy & Notis") as Co-Lead counsel in this action and in any subsequently filed and/or related cases; and (4) grant such other and further relief as the Court may deem just and proper.

Movant should be appointed Lead Plaintiff because Movant: (1) timely filed a motion for appointment of Lead Plaintiff; (2) suffered losses of approximately $1,409,263 in connection with its transactions in SG securities during the relevant period, and thus has a substantial financial interest in the litigation; and (3) will adequately represent the interests of the Class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii). Furthermore, Movant's choice of Milberg and Gardy & Notis as

[1] Three related actions alleging violations of the securities laws against and certain of its former and current officers and/or directors are pending in the Southern District of New York, including: (1) *Barkett v. Société Générale*, No. 1:08-CV-2495 (S.D.N.Y. filed Mar. 12, 2008) (GEL); (2) *City Of Taylor Employees Retirement System v. Société Générale Group*, No. 1:08-CV-2752 (S.D.N.Y. filed Mar. 14, 2008) (GEL); and (3) *Oberkotter v. Société Générale*, No. 1:08-CV-2901 (S.D.N.Y. filed Mar. 19, 2008) (GEL).

Co-Lead Counsel should be approved by the Court because, pursuant to the PSLRA, the presumptive Lead Plaintiff selects Lead or Co-Lead Counsel, and Milberg and Gardy & Notis have extensive experience in the prosecution of securities class actions and will more than adequately represent the interests of all class members.

I. PROCEDURAL BACKGROUND

As noted in the introduction, this is a federal class action brought on behalf of persons and entities who purchased or otherwise acquired SG securities during the Class Period, and who were damaged thereby, seeking to pursue remedies against SG and certain of its officers and directors under the Exchange Act and SEC Rule 10b-5.

This action was commenced in this jurisdiction on or about March 12, 2008. Pursuant to 15 U.S.C. § 78u-4(a)(3)(A)(i), on March 12, 2008, the first notice that a class action had been initiated against Defendants was published on *Business Wire*, a widely circulated national business-oriented wire service advising members of the proposed class members of their right to move the Court to serve as Lead Plaintiff within 60 days. *See* Bronson Decl., Ex. C.

The New Jersey Funds Group is a member of the class (*see* Bronson Decl., Ex. A) and is timely filing this motion within the 60-day period following publication of the first notice pursuant to Section 21D of the PSLRA, as discussed herein.

II. FACTUAL BACKGROUND

This federal class action (the "Action") is brought on behalf of persons and entities who purchased or otherwise acquired SG securities between August 1, 2005 and January 23, 2008, inclusive (the "Class Period"), and who were damaged thereby, seeking to pursue remedies under federal securities law. The Action is brought pursuant to §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and

Securities Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. § 240.10b-5. Defendants include SG and certain of its officers and directors.

SG is a large financial services group which employs over 120,000 employees worldwide in three core businesses: Retail Banking & Financial Services, Global Investment Management & Services, and Corporate & Investment Banking ("CIB"). The Company was formed in 1864 and has headquarters in Paris, France. SG opened its first office in the United States in 1938 and its main U.S. branch is located within this district. Today it stands as one of the largest foreign banking organizations in the United States with approximately 2,900 professionals working in 13 U.S. cities.

During the Class Period, SG senior executives are alleged to have violated the federal securities laws by publicly issuing false and misleading statements and failing to disclose material adverse facts concerning: (1) the Company's risk management procedures, policy and practices; (2) the Company's exposure to subprime real estate loans and collateralized debt obligations ("CDOs"), and (3) the Company's internal controls. Specifically, during the Class Period, Defendants represented that the Company maintained conservative provisioning and risk management, risk controls and monitoring, and expertise in risk analysis and structured finance, including CDO vehicles, and that the Company had "very little exposure" to the subprime segment of the U.S. housing market, thus giving investors no warning as to the true extent of the Company's losses relating to that segment and issues relating to its risk management and internal controls.

These representations were materially false and misleading. On January 23, 2008, the last day of the Class Period, SG unexpectedly announced that it would be writing down 2.05 billion euros for the fourth quarter of 2007, including 1.1 billion euros relating to U.S. housing

mortgage risk, 550 million euros from exposure to U.S. bond insurance companies, and 400 million euros in additional provisions against the risk that those losses would grow. The Company also announced that one of the bank's futures traders, Jérôme Kerviel ("Kerviel") had lost the bank 4.9 billion euros (the equivalent of approximately 7.2 billion dollars).[2] In response to the Company's shocking news, two credit rating agencies, Fitch and Moody's, immediately downgraded the bank's long term debt ratings: from AA to AA- (Fitch); and from Aal/B to Aa2/B- (Moody's).

Moreover, just before these disclosures were made, Defendant Robert A. Day ("Day"), a U.S. executive and board member of the Company and company insider, sold more than $140 million of SG stock at artificially inflated prices during the Class Period. Defendant Day's sales are currently under investigation by the U.S. Department of Justice, the SEC, and French regulators.

The emergence of the truth of the Company's financial situation at the end of the Class Period caused SG's stock price, including its ADRs and other securities, to drop significantly, thereby damaging investors, including the New Jersey Funds Group.

The New Jersey Funds Group, with losses of approximately $1,409,263 in connection with its purchases of SG securities during the Class Period, is suitable and adequate to serve as Lead Plaintiff.[3] Movant has submitted a sworn certification signed by George Laufenberg on

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[2] An interim report published on February 20, 2008 by three independent SG board members revealed that SG had ignored or failed to act upon seventy-five alerts that should have put the Company on notice of Kerviel's purportedly unauthorized massive trading activity from 2005 through early 2008. This report also highlighted that SG's operating staff "did not systematically carry out more detailed checks," and that certain controls that might have detected the fraud were absent and unaccounted for.

[3] The losses suffered by Movant are not the same as its legally compensable damages, measurement of which is often a complex legal question that cannot be determined at this stage

behalf of Movant the New Jersey Funds Group, demonstrating Movant's desire to serve as the Lead Plaintiff. *See* Bronson Decl., Ex. A.[4]

To the best of its knowledge, Movant's losses represent the largest known financial interest of any Class member seeking to be appointed as Lead Plaintiff. *See* Bronson Decl., Ex. B. Movant is not aware of any other class member that has filed an action or filed an application for appointment as Lead Plaintiff that has sustained greater losses. In addition, Movant satisfies each of the requirements of the PSLRA and Rule 23 of the Federal Rules of Civil Procedure and therefore is qualified for appointment as Lead Plaintiff in this Action. Thus, as demonstrated herein, Movant is presumptively the most adequate plaintiff and should be appointed Lead Plaintiff.

Movant respectfully submits this Memorandum of Law in support of its motion, pursuant to Section 21D of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the PSLRA, for an order: (1) consolidating the related actions; (2) appointing the New Jersey Funds Group as Lead Plaintiff pursuant to the PSLRA; (3) approving Movant's selection of Milberg, and Gardy & Notis as Co-Lead Counsel in this action and in any subsequently filed and/or related cases; and (4) granting such other and further relief as the Court may deem just and proper.

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of the litigation. The approximate losses can, however, be determined from the certification required under Section 21D of the Exchange Act, 15 U.S.C. § 78u-4(a)(2)(A) and based upon reference to information concerning the current market for the Company's securities.

[4] Unless otherwise indicated, all exhibit references herein refer to the Declaration of Kent A. Bronson in Support of the Motion of the New Jersey Carpenters Annuity and Pension Funds for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Co-Lead Counsel submitted herewith (the "Bronson Decl.").

ARGUMENT

I. THE ACTIONS SHOULD BE CONSOLIDATED FOR ALL PURPOSES

Consolidation is appropriate where there are actions involving common questions of law or fact. Fed. R. Civ. P. 42 (a). Pending before this Court are four related actions, each of which asserts class claims on behalf of those who purchased or otherwise acquired SG securities for alleged violations of the Exchange Act during the Class Period. The Actions each name the Company and certain of its officers and/or directors as defendants and involve the same factual and legal issues, namely, whether plaintiffs purchased or otherwise acquired SG securities at artificially inflated prices as a result of defendants' allegedly false and misleading statements, and whether defendants' conduct violates Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5. Consolidation is appropriate when, as here, there are actions involving common questions of law or fact. *See* Fed. R. Civ. P. 42(a); *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (2d Cir. 1990). That test is met here. Therefore, the Actions should be consolidated.

II. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF

The New Jersey Funds Group should be appointed Lead Plaintiff because it has complied with all of the PSLRA's requirements, is believed to have the largest financial interest in this litigation and otherwise meets the relevant requirements of Fed. R. Civ. P. 23.

A. THE REQUIREMENTS OF THE PSLRA

The PSLRA establishes a procedure that governs 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)(l) and (a)(3)(B)(i).

First, the plaintiff who files the initial action must publish a notice to the class, within 20 days of filing the action, informing class members of their right to file a motion for appointment as Lead Plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i). The plaintiff in the first-filed, above-captioned

action caused notice to be published pursuant to the PSLRA on *Business Wire* on March 12, 2008.[5]

Second, within 60 days of publishing the notice, any person or group of persons who are members of the proposed class may apply to the court to be appointed as lead plaintiff, whether or not they have previously filed a complaint in the action. 15 U.S.C. § 78u-4(a)(3)(A) and (B).

Finally, within 90 days after publication of the initial notice of pendency, the Court shall consider any motion made by a class member and shall appoint as lead plaintiff the member or members of the 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). In determining the "most adequate plaintiff," the PSLRA provides that:

> [T]he court shall adopt a presumption that the most adequate plaintiff in any private action arising under this Act 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.

15 U.S.C. § 78u-4(a)(3)(B)(iii). *See In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002); *see also Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. LaBranche & Co.*, 229 F.R.D. 395, 402-04 (S.D.N.Y. 2004).

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[5] *See* Bronson Decl., Ex. C. National news wire services have been recognized as suitable vehicles for meeting the statutory requirement that notice be published "in a widely circulated national business-oriented publication or wire service." *Greebel v. FTP Software, Inc.*, 939 F. Supp. 57, 62-64 (D. Mass. 1996); *Lax v. First Merchs. Acceptance Corp.*, No. 97-C-2715, 1997 U.S. Dist. LEXIS 11866, at *2 (N.D. Ill. Aug. 6, 1997).

B. MOVANT SATISFIES THE LEAD PLAINTIFF REQUIREMENTS OF THE PSLRA

1. Movant Has Complied With The PSLRA, Is The Most Adequate Plaintiff Under the PSLRA, And Should Be Appointed Lead Plaintiff

Movant's instant application is filed within the time period in which class members may move to be appointed Lead Plaintiff in this case, under 15 U.S.C. § 78u-4(a)(3)(A) and (B), which expires on May 12, 2008. Movant has reviewed the allegations in the instant action against SG and is willing to serve as a representative party on behalf of the Class. *See* Bronson Decl., Ex. A (Certification of the New Jersey Funds Group). In addition, Movant has selected and retained highly experienced and competent counsel to represent it and the Class. *See* Bronson Decl., Exs. D and E (attaching firm résumés of Milberg and Gardy & Notis).

Accordingly, the New Jersey Funds Group has satisfied the individual requirements of 15 U.S.C. § 78u-4(a)(3)(B) and its application for appointment as Lead Plaintiff, and its selection of Milberg and Gardy & Notis as Co-Lead Counsel, should be approved by the Court.

2. Movant Has the Requisite Financial Interest in the Relief Sought by the Class

According to 15 U.S.C. § 78u-4(a)(3)(B)(iii), the Court shall appoint as Lead Plaintiff the Class member who represents the largest financial interest in the relief sought by the action. *See In re Cavanaugh*, 306 F.3d. at 730 ("[T]he district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit."); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 262 (3d Cir. 2001) (identification of the most adequate plaintiff, "begins with the identification of the movant with 'the largest financial interest in the relief sought by the class.'") (*quoting* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb)).

The PSLRA, however, does not provide a method for determining the relative financial interests of lead plaintiff movants and courts are generally divided on how relative financial

interest should be determined. Some courts have adopted the "FIFO" (First-In-First-Out) methodology. Under this methodology, first-purchased shares (even if purchased before the class period) are offset against first-class period sales. *See, e.g., Goplen v. 51job, Inc.*, No. 05 Civ. 0769, 2005 U.S. Dist. LEXIS 15059, at *8 (S.D.N.Y. July 26, 2005).

During the Class Period, as evidenced by, among other things, the accompanying signed Certifications and chart showing Movant's Class Period transactions (*see* Bronson Decl., Exs. A and B), the New Jersey Funds Group has purchased 105,360 SG American Depository Receipts (ADRs) representing ownership in SG shares trading on U.S. financial markets, at prices artificially inflated by the materially false and misleading statements issued and/or lack of material disclosures by defendants, and were injured thereby. In addition, the New Jersey Funds Group incurred a substantial FIFO loss of approximately $1,409,263 on its transactions in SG stock.

Moreover, the New Jersey Funds Group incurred an identical loss under the "LIFO" (Last-In-First-Out) methodology, which other courts have adopted. Under this methodology, last-purchased shares are offset against first-class period sales and any remaining shares sold during the class period are generally offset against shares held at the beginning of the class period. For purchase transactions that are not matched to sell transactions that occurred during the Proposed Class Period, the 90-day average hold price is applied. In this case, Movant did not have any pre-Class Period SG holdings. As such, the LIFO analysis yields the same financial interest from that calculated using the FIFO analysis, a loss of approximately $1,409,263.

As demonstrated herein, Movant has a large financial interest in this case during the Class Period and under the FIFO and LIFO methodologies:

Movant	**Losses** (FIFO or LIFO)
New Jersey Funds Group	($1,409,263.74)

Therefore, Movant satisfies all of the PSLRA's prerequisites for appointment as Lead Plaintiff in this action and should be appointed Lead Plaintiff pursuant to 15 U.S.C. § 78u4(a)(3)(B). *See* Bronson Decl., Ex. B.

3. Movant Otherwise Satisfies Rule 23

According to 15 U.S.C. § 78u-4(a)(3)(B), in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must also "'otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.'" *See In re Cavanaugh*, 306 F.3d. at 730. Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

> (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.

Fed. R. Civ. P. 23(a).

Of the four prerequisites to class certification, only two -- typicality and adequacy -- directly address the personal characteristics of the class representative. Consequently, in deciding a motion for Lead Plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a), and defer examination of the remaining requirements until the

motion for class certification. *See id.*; *see also Lax v. First Merchs. Acceptance Corp.*, 997 U.S. Dist. LEXIS 11866, at *20; *Fischler v. Amsouth Bancorporation*, No. 96-1567-CIV-T-17A, 1997 U.S. Dist. LEXIS 2875, at *7-8 (M.D. Fla. Feb. 6, 1997); *Pirelli Armstrong Tire Corp.*, 229 F.R.D. at 412. As detailed below, Movant satisfies both the typicality and adequacy requirements of Rule 23, thereby further justifying its appointment as Lead Plaintiff.

a. Movant Fulfills the Typicality Requirements

Under Rule 23(a)(3), the claims or defenses of the representative parties must be typical of those of the class. Typicality exists where the plaintiffs' claims arise from the same series of events and are based on the same legal theories as the claims of all the class members. *See Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985); *see also Rossini v. Ogilvy & Mather, Inc.*, 798 F.2d 590, 598 (2d Cir. 1986); *Pirelli Armstrong Tire Corp.*, 229 F.R.D. at 412; *Babcock v. Computer Assocs. Int'l*, 212 F.R.D. 126, 130 (E.D.N.Y. 2003). The requirement that the proposed class representative's claims be typical of the claims of the class does not mean, however, that the claims must be identical. *See Pirelli Armstrong Tire Corp.*, 229 F.R.D. at 412; *Philips v. Joint Legislative Comm. on Performance & Expenditure Review*, 637 F.2d 1014, 1024 (5th Cir. 1981). Typicality does not require that there be no factual differences between the class representatives and the class members because it is the generalized nature of the claims asserted that determines whether the class representatives are typical. *See Priest v. Zayre Corp.*, 118 F.R.D. 552, 555 (D. Mass. 1988) ("With respect to typicality under Rule 23(a)(3), plaintiffs need not show substantial identity between their claims and those of absent class members, but need only show that their claims arise from the same course of conduct that gave rise to the claims of the absent [class] members") (citation omitted). Since the plaintiffs seek to prove that defendants "committed the same unlawful acts in the same method against an entire class . . . all members of this class have identical claims . . . . [t]herefore, the certification of the suit as a class action

satisfied the requirements of Rule 23(a)(3)." *Kennedy v. Tallant,* 710 F.2d 711,717 (11th Cir. 1983).

Movant seeks to represent a class of purchasers of SG securities that have virtually identical, non-competing and non-conflicting interests. Movant satisfies the typicality requirement because, as with all other Class members, it: (1) purchased or otherwise acquired SG securities during the Class Period; (2) purchased or otherwise acquired SG securities at artificially inflated prices as a result of the same allegedly materially false and misleading statements and/or omissions; and (3) suffered economic loss thereby when the price of SG stock declined upon the revelation of the misrepresentations made to the market, and/or the information alleged in the complaint to have been concealed from the market, removing the inflation from SG's stock price. Thus, Movant's claims are typical of those of other Class members since its claims and the claims of other Class members are identical or substantially similar and arise out of the same course of events.

b. Movant Fulfills the Adequacy Requirement

Under Rule 23(a)(4), the representative parties must fairly and adequately protect the interests of the class. The PSLRA directs this Court to limit its inquiry regarding the adequacy of Movant to represent the Class to the existence of any conflicts between the interest of Movant and the other members of the Class. Thus standard for adequacy is met if it appears that (1) the named plaintiff has interests in common with, and not antagonistic to, the class' interests; and (2) the plaintiff's attorneys are qualified, experienced and generally able to vigorously conduct the litigation. *See, e.g., Kirkpatrick v. J. C. Bradford & Co.*, 827 F.2d 718, 726 (11th Cir. 1987); *see also In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 800 (3d Cir. 1995); *Babcock*, 212 F.R.D. at 131 (citation omitted).

As detailed above, Movant is an adequate representative of the Class because it shares common questions of law and fact with the members of the Class and its claims are typical of the claims of other Class members. As evidenced by the injury suffered by Movant, who acquired 105,360 shares of SG stock during the Class Period at prices artificially inflated by defendants' materially false and misleading statements and/or omissions, the interests of Movant are clearly aligned with the interests of the members of the Class, and there is no evidence of any antagonism between Movant's interests and those of the other members of the Class.

Further, Movant has already taken significant steps demonstrating that it has protected and will continue to protect the interests of the Class: it executed a Certification detailing its Class Period transactions and expressing its willingness to serve as Lead Plaintiff; it moved this Court to be appointed as Lead Plaintiff in this action; and it retained competent and experienced counsel who, as shown below, will be able to vigorously conduct this complex litigation in a professional and efficient manner. *See generally Lax*, 1997 U.S. Dist. LEXIS 11866, at *21-25.

4. The New Jersey Funds Group Is An Institutional Investor With The Largest Financial Interest In The Relief Sought

The New Jersey Funds Group is a classic example of the sort of Lead Plaintiff envisioned by Congress in its enactment of the PSLRA -- a sophisticated institutional investor with a real financial interest in the litigation. *See* H.R. Conf. Rep. No. 104-369, at 34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733 (explaining that "increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist the courts by improving the quality of representation in securities class actions").

The legislative history of the PSLRA demonstrates that it was intended to encourage institutional investors, such as the New Jersey Funds Group, to serve as lead plaintiff. The explanatory report accompanying the PSLRA's enactment specifically states that:

> The Conference Committee seeks to increase the likelihood that institutional investors will serve as lead plaintiffs by requiring courts to presume that the member of the purported class with the largest financial stake in the relief sought is the "most adequate plaintiff."
>
> * * *
>
> The Conference Committee believes that . . . in many cases the beneficiaries of pension funds - small investors - ultimately have the greatest stake in the outcome of the lawsuit. Cumulatively, these small investors represent a single large investor interest. Institutional investors and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.

H.R. Conf. Rep. No. 104-369, at 34 (1995), *reprinted in*, 1995 U.S.C.C.A.N. 730, 733.

Courts around the country have noted a Congressional preference to appoint institutional investors. *See, e.g., In re Faro Techs. Sec. Litig.*, No. 6:05-CV-1810-ORL-22 (DAB), 2006 U.S. Dist. LEXIS 235007, at *8-9 (M.D. Fla. Apr. 26, 2006) (favoring proposed institutional investor lead plaintiff); *Burke v. Ruttenberg*, 102 F. Supp. 2d 1280, 1331 (N.D. Ala. 2000) (noting aim of PSLRA was to encourage institutional investors to control securities class actions); *Gluck v. CellStar Corp.*, 976 F. Supp. 542, 548 (N.D. Tex. 1997) ("through the PSLRA, Congress has unequivocally expressed its preference for securities fraud litigation to be directed by large institutional investors"); *Schulman v. Lumenis, Ltd.*, No. 02 Civ. 1989 (DAB), 2003 U.S. Dist. LEXIS 10348, at *9-10 (S.D.N.Y. June 17, 2003) (one purpose behind the PSLRA is "to ensure that 'parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel'") (citation omitted). "Congress believed that this could best be achieved by encouraging institutional investors to serve as lead plaintiffs." *Id.* at *10. *See also*

In re Cendant Corp. Litig., 264 F.3d at 244 (Congress "anticipated and intended that [institutional investors] would serve as lead plaintiffs.")[6]

Indeed, Congress deemed institutional investors "presumptively most adequate to serve as lead plaintiffs in securities class actions." *Greebel*, 939 F. Supp. at 63. Furthermore, Congress believed that "increasing the role of institutional investors in class actions would ultimately benefit shareholders and assist courts by improving the quality of representation in securities class action." *In re Baan Co. Sec. Litig.*, 186 F.R.D. 214, 221 (D.D.C. 1999); *Ravens v. Iftikar*, 174 F.R.D. 651, 661 (N.D. Cal. 1997) (stating that Congress wanted to encourage large, sophisticated institutional investors to direct securities class actions, thereby supplanting the prior regime of "figurehead plaintiffs who exercise no meaningful supervision of litigation"). Congress reasoned that the empowerment of institutional investors would result in the appointment of lead plaintiffs that can best prosecute the claims and are best able to negotiate with and oversee counsel. *See In re Razorfish Inc. Sec. Litig.*, 143 F. Supp. 2d 304, 309 (S.D.N.Y. 2001) (stating that Congress intended that "institutional plaintiffs with expertise in the securities market and real financial interests in the integrity of the market would control the litigation . . . ."); *Gluck*, 976 F. Supp. at 548 ("The legislative history of the Reform Act is replete with statements of Congress' desire to put control of such litigation in the hands of large, institutional investors").

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[6] *See also Bowman v. Legato Sys., Inc.*, 195 F.R.D. 655, 657 (N.D. Cal. 2000) (institutional investors are "exactly the type of lead plaintiff envisioned by Congress when it instituted the [PSLRA] lead plaintiff requirements . . ."); *In re Network Assocs. Sec. Litig.*, 76 F. Supp. 2d 1017, 1020 (N.D. Cal. 1999) ("Congress expected that the lead plaintiff would normally be an institutional investor . . . .").

This presumption is rooted in Congress' belief that "increasing the role of institutional investors in class actions will ultimately benefit the class and assist the courts." S. Rep. No. 10498, at 11 (1995). In reaching this conclusion, Congress reasoned that:

> Institutions' large stakes give them an incentive to monitor, and institutions have or readily could develop the expertise necessary to assess whether plaintiffs' attorneys are acting as faithful champions for the plaintiff class.

Elliot J. Weiss & John S. Beckerman, *Let The Money Do The Monitoring: How Institutional Investors Can Reduce Agency Costs In Securities Class Actions*, 104 Yale L.J. 2053, 2095 (1995) ("Weiss & Beckerman"). *See also* S. Rep. No. 104-98, at 11 n.32 (noting that Weiss & Beckerman provided "the basis for the most adequate plaintiff provision").

The New Jersey Funds Group is ideally suited for the lead plaintiff role. The New Jersey Funds Group has purchased more than 105,360 SG ADRs and experienced approximately $1,409,263 in losses during the Class Period. As a large institutional investor with significant resources dedicated to overseeing and supervising the prosecution of the litigation, the New Jersey Funds Group will be able to actively represent the class and "drive the litigation" to ensure that the Class obtains the best recovery possible. *See Gluck*, 976 F. Supp. at 549 (citation omitted).

Movant has the largest known financial interest, which gives it "an incentive to prosecute the case vigorously." *Ferrari v. Gisch*, 225 F.R.D. 599, 607 (C.D. Cal. 2004). Accordingly, Movant, in addition to having the largest financial interest, also *prima facie* satisfies the typicality (Rule 23(a)(3)) and adequacy (Rule 23(a)(4)) requirements of Rule 23 of the Federal Rules of Civil Procedure and, therefore, satisfy all elements of the Exchange Act's prerequisites for appointment as Lead Plaintiff in this action pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(iii).

III. THE COURT SHOULD APPROVE MOVANT'S CHOICE OF CO-LEAD COUNSEL

Movant's choice of Co-Lead Counsel satisfies the requirements of the PSLRA. 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. The Court should not disturb the Lead Plaintiffs choice of counsel unless it is necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). *See also In re Cavanaugh*, 306 F.3d 726. Movant has selected and retained Milberg[7] and Gardy & Notis to serve as Co-Lead Counsel for the Class. Milberg and Gardy & Notis both possess extensive experience litigating securities class actions and have both successfully prosecuted numerous securities class actions on behalf of injured investors. *See* Bronson Decl., Exs. D and E. Thus, the Court may be assured that by approving the New Jersey Fund's Group choice of lead counsel, the class will receive the highest caliber of legal representation.

CONCLUSION

For the reasons stated above, Movant satisfies the requirements of the PSLRA and is the most adequate plaintiff in this action, and should be appointed Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B). As the most adequate plaintiff, Movant respectfully requests that the Court: (1) consolidate the related actions; (2) appoint Movant as Lead Plaintiff pursuant to the PSLRA; (3) approve Movant's selection of Milberg and Gardy & Notis as Co-Lead Counsel in this action and in any subsequently filed and/or related cases; and (4) grant such other and further relief as the Court may deem just and proper.

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[7] Movant has been advised that Milberg, and three former named partners (who are no longer with the firm) were indicted, the nature of the charges, and the status of those proceedings.

Dated: May 12, 2008

Respectfully submitted,

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