

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

Annemarie Tarara, et al.)	Case No: 16 C 10632
)	
v.)	
)	Judge Samuel Der-Yeghiayan
)	
Treehouse Foods, Inc. et al.)	

ORDER

Public Employees’ Retirement System of Mississippi’s motion for appointment as lead plaintiff [32] is granted. City of North Miami Beach Police Officers’ and Firefighters’ and General Employees’ Retirement Plans’ and Ivan Barenbaum’s motions for appointment as lead plaintiff [24] [28] are denied. Dave Duff’s motion to withdraw his motion for appointment as lead plaintiff [39][19] is granted.

STATEMENT

This matter is before the court on Plaintiffs’ motions for appointment as lead plaintiff and approval of lead counsel. Plaintiff Annemarie Tarara brought the instant action on behalf of herself and is alleging violations of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78a *et seq.* The Exchange Act provides the following in regard to an appointment of a lead plaintiff in an Exchange Act case:

(B) Appointment of lead plaintiff

(i) In general

Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and 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 (hereafter in this paragraph referred to as the ‘most adequate plaintiff’) in accordance with this subparagraph.

...

(iii) Rebuttable presumption

(I) In general

Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that--

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(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.

(II) Rebuttal evidence

The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff--(aa) will not fairly and adequately protect the interests of the class; or(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(B). The Exchange Act further provides that “[t]he 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(3)(B)(v).

In the instant action, motions for appointment as lead plaintiff and approval of lead counsel have been brought by Public Employees’ Retirement System of Mississippi (PERS), City of North Miami Beach Police Officers’ and Firefighters’ and General Employees’ Retirement Plans (NFGRP), and Ivan Barenbaum (Barenbaum). PERS contends, and no other parties have disputed, that PERS purchased 212,957 shares during the class period for approximately \$20.5 million. PERS indicates that it retained 211,892 of those shares at the end of the class period and suffered losses of \$5,439,420. NFGRP asserts that it purchased 8,158 shares and suffered approximately \$222,000 in losses. Barenbaum indicates that he purchased 55 shares and suffered \$918.69 in losses. The record thus reflects that PERS has the largest financial interest in this matter.

The motion brought by PERS is timely and PERS has satisfied the requirements of Federal Rule of Civil Procedure 23. The court concludes that based upon a consideration of all the pertinent factors that PERS is the appropriate choice for the lead Plaintiff. PERS requests that the court approve the selection of Wolf Popper LLP as lead counsel and Robinson Curley & Clayton P.C. as liaison counsel. PERS has shown that such counsel have extensive experience in the area of securities litigation and class actions and would be appropriate counsel in this case. Therefore, PERS motion for appointment as lead plaintiff is granted and motion for approval of lead counsel and liaison counsel is granted. NFGRP’s motion for appointment as lead plaintiff and Barenbaum’s motion for appointment as lead plaintiff are denied.

Date: 1/25/17


Samuel Der-Yeghiayan
United States District Court Judge