



August 8, 2022

VIA ELECTRONIC FILING

The Honorable Katherine Polk Failla
United States District Court for the Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square, Room 2103
New York, New York 10007

MEMO ENDORSED

Re: *Dinosaur Financial Group LLC et al. v. CUSIP Global Services et al.*, No. 22 Civ. 1860 (KPF) (“Dinosaur”); *Hildene Capital Management, LLC v. American Bankers Association et al.*, No. 22 Civ. 1929 (KPF) (“Hildene”)

Subject: Plaintiffs’ Response to the August 1, 2022 Minute Entry

Dear Judge Failla:

We write in response to the Court’s Minute Entry from August 1, 2022 permitting counsel to provide additional information regarding the proposal in our July 25, 2022 letter requesting that the Court appoint Wollmuth Maher & Deutsch LLP (“WMD”), Competition Law Partners PLLC (“CLP”) and Kaplan, Fox & Kilsheimer LLP (“Kaplan Fox,” and together with WMD and CLP, “Counsel”) as interim class counsel.¹ We understand the Court’s concern over duplication of work, and the Court’s requirement that a single firm for plaintiffs serve as liaison counsel, or spokesperson, with the Court. We address the Court’s concerns below and provide further explanation for why the appointment of WMD, CLP and Kaplan Fox as interim class counsel is appropriate here and we believe in the best interests of the putative class (the “Class”).

The genesis of the *Dinosaur* and *Hildene* actions. Lawyers at CLP, who are counsel for Plaintiffs Dinosaur Financial Group LLC and Swiss Life Investment Management Holding AG, have been investigating defendants’ alleged wrongdoing for years and spent substantial time and resources developing the claims in the *Dinosaur* Action. CLP introduced Kaplan Fox to the legal theories of their case and eventually Kaplan Fox began working with CLP to refine the *Dinosaur* complaint. Meanwhile, WMD began investigating the issues in this case when Hildene Capital Management, LLC contacted WMD about defendants’ attempts to coerce Hildene to enter a “license agreement” for the use of CUSIP numbers. WMD spent substantial time and resources investigating defendants’ alleged wrongdoing to Hildene and the proposed class and developing

¹ Counsel is happy to submit further information about the qualifications of each law firm if the Court requests.

the claims in the *Hildene* Action. The *Dinosaur* Complaint was filed on Friday, March 4, 2022, and the *Hildene* Complaint was filed on Monday, March 7, 2022. While both complaints focused on misconduct concerning CUSIP numbers by the same defendants, the complaints included different theories and causes of action. Counsel were unaware of each other's separate investigations and complaints prior to their filing. Each complaint was the product of each counsel's independent investigation concerning harm inflicted on their clients and the class by defendants.

Counsel's collaborative efforts to merge the complaints and prepare a consolidated class action complaint. Since the Court's June 29, 2022 Order consolidating the *Dinosaur* and *Hildene* actions, Counsel have worked together to combine the different theories in the two actions to create a consolidated class action complaint. This has been a collaborative process and Counsel have worked together efficiently. We believe the end product of our collective efforts is a consolidated complaint that will produce the best result for our clients and the injured members of the Class. Our collaboration on the consolidated complaint makes it clear to us that our interim class counsel proposal is workable and appropriate as discussed below.

Our co-lead counsel proposal is in the best interest of the Class. We believe that our interim class counsel proposal is appropriate and sensitive to the Court's articulated concerns because each law firm will provide unique contributions to this action for the benefit of the Class. WMD and CLP will have responsibility for the overall claims analysis, and WMD will have primary responsibility for fact discovery (with appropriate assistance from co-lead counsel as needed). WMD has over 60 attorneys in its litigation department and regularly handles large, complex, discovery-intensive cases for its clients as both plaintiffs and defendants, including several recent complex cases before Your Honor. Many of WMD's litigation partners, including those that will work on this case, began their careers at international law firms or have served as federal or state prosecutors. CLP attorneys have robust antitrust and litigation experience (including experience at the Antitrust Division of the United States Department of Justice and as partners at major international law firms) and regularly handle large, complex, discovery-intensive cases for its clients, including clients in the largest MDL antitrust case currently pending in the federal courts. Kaplan Fox has 40 years of experience in antitrust actions in this District and elsewhere and has recovered billions of dollars for clients in class and private actions. Also, one of its partners served as an attorney at the DOJ Antitrust Division. Given its extensive expertise working with antitrust experts and econometricians, Kaplan Fox will have principal responsibility for working with expert witnesses and on class certification issues.

We note that three different law firms, Gibson, Dunn & Crutcher LLP, Jones Day, and Constantine Cannon LLP, represent defendants. Given the stakes in this case, we expect that defendants and their counsel will aggressively litigate every aspect of the case. Here, there are three law firms willing to represent the Class, place their time and resources at risk for the benefit of the Class, and share any fees awarded.²

² If the case is successful and there is ultimately a fee awarded for Counsel, we submit it likely will be based on a percentage of the judgment or settlement achieved for the Class. Thus, based on our prior experience in other cases, we would expect the fee award to be the same (or similar) regardless of whether there is a single or multiple law firms representing the Class.

Counsel is committed to avoid duplication of work and has allocated responsibilities to achieve that goal. We understand the Court's concern that the involvement of three firms could result in duplicative efforts. Our proposed division of work among Counsel, as described above, will minimize the risk of duplication of effort. Additionally, we will employ the following measures to avoid duplication of work:

- For any tasks that do not squarely fall into the division of labor discussed above, we will designate one firm to have primary responsibility;
- Only one attorney will address the Court at any conference or hearing absent approval from the Court;
- Kaplan Fox will maintain a litigation fund for expenses in the litigation to which each firm will contribute;³ and
- As stated at the August 1, 2022 hearing, Counsel have agreed to exchange time records quarterly to ensure that there is no unnecessary work. The records will be edited as necessary to eliminate inefficient effort.

Counsel will designate a liaison counsel. In response to the Court's direction that a single firm be designated as the spokesperson for plaintiffs, WMD will serve as liaison counsel and serve in the role as spokesperson with the Court on behalf of the plaintiffs.

Finally, if the Court rejects our private ordering of interim class counsel, we request that each law firm be permitted to submit a three-page letter request to be appointed lead counsel within two business days of any Court order rejecting our proposal.

We appreciate Your Honor's consideration of this supplemental letter in support of our interim class counsel proposal and are available at Your convenience.

Respectfully submitted,

/s/ Ronald J. Aranoff

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/s/ Robert N. Kaplan

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³ Kaplan Fox's office manager is tasked with running the litigation fund and preparing periodic accountings and does not bill for this time.

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Application GRANTED.

Under Federal Rule of Civil Procedure 23, the Court "may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." Fed. R. Civ. P. 23(g)(3). "Candidates for interim class counsel are evaluated under the same rubric as potential counsel for certified classes." *Deangelis v. Corzine*, 286 F.R.D. 220, 223 (S.D.N.Y. 2012); see also *Baker v. Saint-Gobain Performance Plastics*, 2016 WL 4028974, at * 4 (N.D.N.Y. 2016) (same analysis). In selecting counsel for a class, Rule 23 requires a court to consider: "[i] the work counsel has done in identifying or investigating potential claims in the action; [ii] counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; [iii] counsel's knowledge of the applicable law; and [iv] the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

While interim class counsel need not be appointed in every case, here, the above firms have demonstrated that these important interests would be well served by such an appointment. The above firms have cataloged their extensive experience handling similar complex actions, and have apprised the Court of a sensible division of labor in line with their comparative strengths. Further, each firm appears to have undertaken significant work investigating and developing the claims related to the separate actions prior to their consolidation. The firms have persuaded the Court that synergies may be achieved through combining these efforts through appointment as interim class counsel. Finally, the Court has been assured that appointment of interim class counsel is in the best interests of the putative class, given the firms' commitments regarding potential fee-sharing and avoidance of duplicative work.

Accordingly, pursuant to Federal Rule of Civil Procedure 23(g)(3), the firms noted above are hereby designated interim class counsel for this consolidated action.

The Clerk of Court is directed to also file this endorsement in 22 Civ. 1929.

Dated: August 10, 2022
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE