

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DONALD W. FINCH, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

iANTHUS CAPITAL HOLDINGS, INC.,
GOTHAM GREEN PARTNERS,
HADLEY C. FORD, JULIUS JOHN
KALCEVICH, and JASON ADLER,

Defendants.

Case No. 1:20-cv-03135-LAK

PETER L. CEDENO, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

iANTHUS CAPITAL HOLDINGS, INC.,
GOTHAM GREEN PARTNERS,
HADLEY C. FORD, JULIUS JOHN
KALCEVICH, and JASON ADLER,

Defendants

Case No. 1:20-cv-03513-PGG

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF ROBERT AND SHERRI
NEWBLATT FOR CONSOLIDATION OF RELATED ACTIONS, APPOINTMENT AS
LEAD PLAINTIFF, AND APPROVAL OF LEAD COUNSEL**

Robert and Sherri Newblatt (together, “Movants”) respectfully submit this memorandum of law in support of their motion pursuant to the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, *et seq.* (the “PSLRA”) for an Order: (1) consolidating the above-captioned related actions; (2) appointing Movants as Lead Plaintiff under 15 U.S.C. § 78u-4(a)(3)(B); (3) approving Movants’ selection of Glancy Prongay & Murray LLP as Lead Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v); and (4) granting such other relief as the Court may deem to be just and proper (the “Motion”).

I. PRELIMINARY STATEMENT

This is a class action on behalf of persons who purchased or otherwise acquired iAnthus Capital Holdings, Inc. (“iAnthus” or the “Company”) securities between May 14, 2018 and April 6, 2020, inclusive (the “Class Period”).

Pursuant to the PSLRA, the person or group of persons with the largest financial interest in the relief sought by the class who satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure is presumed to be the “most adequate plaintiff” – the plaintiff most capable of adequately representing the interests of class members. The PSLRA provides that the Court shall appoint the most adequate plaintiff as lead plaintiff.

Movants believe that they are the “most adequate plaintiff” as defined by the PSLRA and should be appointed as lead plaintiff based on their financial losses suffered as a result of defendants’ wrongful conduct as alleged in this action. In addition, for purposes of this motion, Movants satisfy the relevant requirements of Rule 23 of the Federal Rules of Civil Procedure, as their claims are typical of other class members’ claims, and they are committed to fairly and adequately representing the interests of the class. Thus, pursuant to the PSLRA’s lead plaintiff provision, Movants respectfully submit that they are presumptively the most adequate plaintiff and should be appointed as lead plaintiff for the class.

Additionally, Movants' selection of Glancy Prongay & Murray LLP as lead counsel for the Class should be approved because the firm has substantial expertise in securities class actions, and the experience and resources to efficiently prosecute this action.

II. FACTUAL BACKGROUND

iAnthus is a holding company that purportedly provides shareholders "with diversified exposure to best-in-class licensed cannabis cultivators, processors, and dispensaries." Heavily leveraged, the Company is dependent upon equity and debt financing to fund its aggressive expansion plans.

In May 2018, the Company entered into a \$50 million 2018 Debenture Agreement with Gotham Green Partners ("GGP"), which, among other things, provided for the withholding and escrow of \$5,722,222.22 from the 2018 Debenture proceeds to pay one year's interest on the 2018 Debentures in the event of default.

On September 30, 2019, iAnthus and GGP entered into an amended agreement which provided an additional \$20 million to the Company.

On April 6, 2020, iAnthus disclosed that it did not make the applicable interest payments to GGP due to "decline in the overall public equity cannabis markets, coupled with the extraordinary market conditions that began in Q1 2020 due to the novel coronavirus."

On this news, the Company's stock price fell \$0.29, or 62%, to close at \$0.179 per share on April 6, 2020, on unusually high trading volume.

The complaints in the above-captioned action allege that Defendants failed to disclose that they had the ability to withhold use of the interest payment escrow or that the interest escrow payment was exhausted, diminished, or otherwise unavailable to satisfy the Company's March 31, 2020 interest payment obligations.

III. PROCEDURAL HISTORY

On April 15, 2020, Plaintiff William Riback commenced a securities fraud action against iAnthus and certain of its officers in this District, captioned *Riback v. iAnthus Capital Holdings, Inc.*, Case No. 1:20-cv-03044 (the “*Riback* Action”). On April 20, 2020, the *Riback* Action was voluntarily dismissed without prejudice.

On April 20, 2020, Plaintiff Donald W. Finch filed a securities fraud action against iAnthus and certain of its officers in this District, captioned *Finch v. iAnthus Capital Holdings, Inc.*, Case No. 1:20-cv-03135 (the “*Finch* Action”). This action makes substantially similar allegations and against the same defendants as the *Riback* Action.

On May 5, 2020, Plaintiff Peter L. Cedeno filed a securities fraud class action against iAnthus and certain of its officers in this District, captioned *Cedeno v. iAnthus Capital Holdings, Inc.*, Case No. 1:20-cv-03513 (the “*Cedeno* Action” and together with the *Finch* Action, the “*Related Actions*”). This action makes substantially similar allegations as the *Riback* and *Finch* Actions.

IV. ARGUMENT

A. The Related Actions Should Be Consolidated

Consolidation pursuant to Federal Rule of Civil Procedure 42(a) is proper when actions involve common questions of law and fact. *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (2d Cir. 1990).

Each of the Related Actions presents similar factual and legal issues, as they all involve the same subject matter and present the same legal issues. Each action alleges violations of the Exchange Act, each presents the same or similar theories for recovery, and each is based on the same allegedly wrongful course of conduct. Because these actions arise from the same facts and circumstances and involve the same subject matter, consolidation of these cases under Federal

Rule of Civil Procedure 42(a) is appropriate. *See Pipefitters Local No. 636 Defined Ben Plan v. Bank of America Corp.*, 275 F.R.D. 187, 192 (S.D.N.Y. 2011) (Consolidation is appropriate “if the cases present sufficiently common questions of fact and law, and the differences do not outweigh the interests of judicial economy served by consolidation.”).

B. Movants Should be Appointed Lead Plaintiff

The PSLRA provides the procedure for selecting a lead plaintiff in class actions brought under the federal securities laws. The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to a published notice of class action by the later of (i) 90 days after the date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA provides a “rebuttable presumption” that the “most adequate plaintiff”—*i.e.*, the plaintiff most capable of adequately representing the interests of the Class—is the class member 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)(I).

The presumption in favor of appointing a movant as lead plaintiff may be rebutted only upon proof “by a purported member of the plaintiff class” that the presumptively most adequate plaintiff:

(aa) will not fairly and adequately protect the interest 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(a)(3)(B)(iii)(II).

As set forth below, Movants satisfy all of the PSLRA criteria and have complied with all of the PSLRA's requirements for appointment as lead plaintiff. Movants have, to the best of their knowledge, the largest financial interest in this litigation and meet the relevant requirements of Federal Rule of Civil Procedure 23. In addition, Movants are not aware of any unique defenses Defendants could raise against them that would render them inadequate to represent the Class. Accordingly, Movants respectfully submit that they should be appointed lead plaintiff. *See Varghese v. China Shenghuo Pharm. Holdings, Inc.*, 589 F. Supp. 2d 388, 397 (S.D.N.Y. 2008).

1. Movants Filed a Timely Motion

Movants have made a timely motion in response to a PSLRA early notice. On April 15, 2020, pursuant to Section 21D(a)(3)(A)(I) of the PSLRA, notice was published in connection with *Riback* action. *See* Declaration of Gregory B. Linkh ("Linkh Decl.") Ex. A. Therefore, Movants had sixty days (until June 15, 2020) to file a motion to be appointed as lead plaintiff. As purchasers of iAnthus securities during the Class Period, Movants are members of the proposed class and have hereby timely filed a motion for appointment as lead plaintiff within sixty days of the notice, in compliance with the PSLRA. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa).

Additionally, as set forth in Movants' PSLRA certification, Movants attest that they have reviewed the complaint, adopt the allegations therein, and are willing to serve as a representative of the class. Linkh Decl., Ex. B. Accordingly, Movants satisfy the first requirement to serve as lead plaintiff for the class.

2. Movants Have the Largest Financial Interest

The PSLRA requires a court to adopt the rebuttable presumption that "the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii). At the time of this filing, Movants believe that they have the largest financial interest among Class members who filed timely

applications for appointment as lead plaintiff and are presumed to be the “most adequate plaintiff.”

Movants acquired iAnthus securities during the Class Period at values alleged to be artificially inflated by Defendants’ misstatements and omissions and, as a result, suffered financial harm. *See* Linkh Decl., Ex. C, Ex. D. To the best of their knowledge, Movants are not aware of any other Class member that has filed a motion for appointment as lead plaintiff who claims a larger financial interest. As such, Movants believe they have the “largest financial interest in the relief sought by the Class,” and thus satisfy the second PSLRA requirement to be appointed as lead plaintiff for the Class. *See Varghese*, 589 F. Supp. 2d at 396.

3. Movants Satisfy the Requirements of Rule 23 of the Federal Rules of Civil Procedure

The PSLRA further provides that in addition to possessing the largest financial interest in the outcome of the litigation, a lead plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *See In re Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001). Rule 23(a) generally provides that a class action may proceed 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 interest of the class.

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

In making its determination that a lead plaintiff candidate otherwise satisfies the requirements of Rule 23, “typicality and adequacy of representation are the only provisions [of Rule 23] relevant to the determination.” *City of Monroe Employees’ Ret. Sys. v. Hartford Fin. Svcs. Group, Inc.* 269 F.R.D. 291, 296 (S.D.N.Y. 2010). At the lead plaintiff stage of the

litigation, a movant need only make a preliminary showing that they satisfy Rule 23's typicality and adequacy requirements. *Id.* at 296-97 (citing *In re eSpeed, Inc. Sec. Litig.*, 232 F.R.D. 95, 102 (S.D.N.Y. 2005); *Kuriakose v. Federal Home Loan Mortg. Co.*, No. 1:08-cv-7281 (JFK), 2008 WL 4974839, at *5 (S.D.N.Y. Nov. 24, 2008).

a) Movants' Claims Are Typical

The Rule 23(a) typicality requirement is satisfied when a plaintiff's claims arise from the same event, practice or course of conduct that gives rise to other class members' claims, and plaintiff's claims are based on the same legal theory. *See Kuriakose*, 2008 WL 4974839, at *4. Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Id.*

Movants' claims are typical of the claims asserted by the proposed members of the Class. Like all members of the Class, Movants allege that Defendants' material misstatements and omissions concerning iAnthus' business, operations, and financial prospects violated the federal securities laws. Movants, like all members of the Class, acquired iAnthus securities during the class period and were damaged thereby. Accordingly, Movants' interests and claims are "typical" of the interests and claims of the Class.

b) Movants Are Adequate Representatives

"The adequacy requirement is satisfied where: (1) class counsel is qualified, experienced, and generally able to conduct the litigation; (2) there is no conflict between the proposed lead plaintiff and the members of the class; and (3) the proposed lead plaintiff has a sufficient interest in the outcome of the case to ensure vigorous advocacy." *City of Monroe*, 269 F.R.D. at 297.

Movants have demonstrated their adequacy by retaining competent and experienced counsel with the resources and expertise to efficiently prosecute this action, and their financial losses ensure that they have sufficient incentive to provide vigorous advocacy. *See Linkh Decl.*, Ex. C. Movants are not aware of any conflict between their claims and those asserted on behalf

of the Class. Moreover, Movants submit herewith a joint declaration attesting to their adequacy to represent the class. *See* Linkh Decl., Ex. D. As such, Movants are well-equipped to represent the class.

C. The Court Should Approve Lead Plaintiff's Choice of Counsel

The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only to approval of the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *In re Cendant Corp.*, 264 F.3d at 274. Thus, the Court should not disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). Here, Movants have retained Glancy Prongay & Murray LLP as lead counsel to pursue this litigation on their behalf and will retain the firm as the Class's lead counsel in the event they are appointed lead plaintiff. Glancy Prongay & Murray LLP possesses extensive experience in securities class actions and have successfully prosecuted numerous securities fraud class actions on behalf of injured investors, as reflected by the firm's résumé attached to the Linkh Declaration as Exhibit E. Thus, the Court may be assured that, by granting the Motion, the Class will receive the highest caliber of legal representation.

V. CONCLUSION

For the foregoing reasons, Movants respectfully request that the Court grant their Motion and enter an Order (1) consolidating the Related Actions; (2) appointing Movants as Lead Plaintiff; (3) approving Movants' selection of Glancy Prongay & Murray LLP as Lead Counsel for the Class; and (4) granting such other relief as the Court may deem just and proper.

Respectfully submitted,

DATED: June 15, 2020

GLANCY PRONGAY & MURRAY LLP

By: /s/ Gregory B. Linkh

Gregory B. Linkh (GL-0477)

230 Park Ave., Suite 530

New York, NY 10169

Telephone: (212) 682-5340

Facsimile: (212) 884-0988

glinkh@glancylaw.com

-and-

GLANCY PRONGAY & MURRAY LLP

Robert V. Prongay

Charles H. Linehan

Pavithra Rajesh

1925 Century Park East, Suite 2100

Los Angeles, CA 90067

Telephone: (310) 201-9150

Facsimile: (310) 201-9160

*Counsel for Movants and Proposed Lead Counsel
for the Class*

PROOF OF SERVICE

I, the undersigned say:

I am not a party to the above case and am over eighteen years old.

On June 15, 2020, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of New York, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 15, 2020, at New York, New York.

/s/ Gregory B. Linkh
Gregory B. Linkh