UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SERGEY CHERNYSH, on behalf of himself and all others similarly situated, Plaintiff, v. CHEMBIO DIAGNOSTICS, INC., RICHARD L. EBERLY, and GAIL S. PAGE, Defendants.	Case No. 2:20-CV-02706-ARR-ARL
JAMES GOWEN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CHEMBIO DIAGNOSTICS, INC., RICHARD L. EBERLY, and GAIL S. PAGE, Defendants.	Case No. 2:20-CV-02758-ARR-ARL

[Caption continues on next page]

ANTHONY BAILEY, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. CHEMBIO DIAGNOSTICS, INC., RICHARD L. EBERLY, GAIL S. PAGE, and NEIL A. GOLDMAN, Defendants.	Case No. 2:20-CV-02961-ARR-ARL

BENJAMIN WALLACE'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR (1) CONSOLIDATION; (2) APPOINTMENT AS LEAD PLAINTIFF; AND (3) APPROVAL OF LEAD COUNSEL

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Benjamin Wallace ("Wallace") respectfully submits this memorandum of law pursuant to § 21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA") in support of his motion for the entry of an order (1) consolidating the above captioned actions (the "Actions")[1]; (2) appointing Wallace as Lead Plaintiff for the consolidated Actions; and (3) approving Wallace's selection of the law firm of Faruqi & Faruqi, LLP (the "Faruqi Firm") as Lead Counsel.

PRELIMINARY STATEMENT

The above-captioned securities class Actions presently pending before this Court are brought on behalf of a putative class of persons and entities who purchased Chembio Diagnostics, Inc. ("Chembio" or the "Company") during the class period.

As an initial matter, the Court must decide whether to consolidate the Actions. *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii). Pursuant to Rule 42(a)(2) of the Federal Rules of Civil Procedure, the Court may consolidate the actions before it that involve a common question of law or fact.

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[1] The following three Actions are pending before this Court: (1) *Chernysh v. Chembio Diagnostics, Inc., et. al.,* No. 2:20-cv-02706-ARR-ARL (E.D.N.Y.), which was filed on June 18, 2020 ("*Chernysh*"); (2) *Gowen v. Chembio Diagnostics, Inc., et. al.,* No. 2:20-cv-02758-ARR-ARL (E.D.N.Y.), which was filed on June 22, 2020 ("*Gowen*"); and (3) *Bailey v. Chembio Diagnostics, Inc., et. al.,* No. 2:20-cv-02961-ARR-ARL (E.D.N.Y.), which was filed on July 3, 2020 ("*Bailey*"). The Actions allege different class definitions and class periods. The *Chembio* Action is brought "on behalf of a class of all persons and entities who purchased the publicly traded common stock of Chembio during the period April 1, 2020 through June 16, 2020, inclusive." *Chernysh*, Class Action Complaint at ¶ 1, ECF No. 1 ("*Chernysh* Compl."). The *Gowen* Action is brought "on behalf of a class of all persons and entities who purchased the publicly traded common stock of Chembio during the period March 12, 2020 through June 16, 2020, inclusive." *Gowen*, Complaint For Violation Of The Federal Securities Laws at ¶ 1, ECF No. 1 ("*Gowen* Compl."). The *Bailey* Action is brought "on behalf of a class consisting of all persons and entities other than Defendants who purchased or otherwise acquired Chembio securities between April 1, 2020, and June 16, 2020, both dates inclusive[.]" *Bailey*, Class Action Complaint at ¶ 1, ECF No. 1 ("*Bailey* Compl.").

Fed. R. Civ. P. 42(a)(2). The Actions may be consolidated as they allege violations of §§ 10(b) and 20(a) of the Exchange Act and Securities and Exchange Commission ("SEC") Rule 10b-5, promulgated thereunder. The Actions also allege claims involving substantially similar facts against the Company and certain of its officers. As the Actions raise common issues of fact and law, and consolidation will be more efficient for the Court and the parties, the Actions should be consolidated.

With respect to the appointment of a lead plaintiff to oversee the Actions, Congress established a presumption in the PSLRA that requires the Court to appoint the "most adequate plaintiff" as the lead plaintiff for the Action. 15 U.S.C. § 78u-4(a)(3)(B)(i).[2] The "most adequate plaintiff" is the person who has the "largest financial interest" in the litigation and who also satisfies Rule 23's typicality and adequacy requirements for class representatives. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

With losses of $192,750.00, *inter alia*, Wallace, to the best of counsel's knowledge, has the largest financial interest in the litigation of any movant. Wallace also satisfies Rule 23's typicality and adequacy requirements. Wallace's claims are typical of the Class's claims because he suffered losses on his Chembio investment as a result of the defendants' false and misleading statements. Further, Wallace has no conflict with the Class and will adequately protect the Class's interests given his significant stake in the litigation and his conduct to date in prosecuting the litigation, including his submission of the requisite certification and selection of experienced class counsel. Accordingly, Wallace is the presumptive Lead Plaintiff.

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[2] Unless stated otherwise, the following conventions apply: (1) all internal citations are omitted; (2) all emphases are added; and (3) all "Ex. _" references are to the exhibits attached to the Declaration of Richard W. Gonnello filed herewith.

Lastly, if appointed Lead Plaintiff, Wallace is entitled to select, subject to the Court's approval, lead counsel to represent the Class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). Wallace has engaged the Faruqi Firm for this purpose. The Faruqi Firm is an appropriate selection to serve as Lead Counsel because it is a highly experienced firm with substantial securities class action experience.

For the reasons summarized above and those explained more fully below, Wallace's motion should be granted in its entirety.

FACTUAL BACKGROUND

Chembio is incorporated in Nevada and its current principal executive offices are located at 555 Wireless Boulevard, Hauppauge, New York 11788. *Chernysh* Compl. at ¶ 15; *Gowen* Compl. at ¶ 14; *Bailey* Compl. at ¶ 16. Chembio purports to be a leading point-of-care diagnostics company focused on detecting and diagnosing infectious diseases. *See Chernysh* Compl. ¶ 2; *Gowen* Compl. ¶ 2; *Bailey* Compl. ¶ 2. Chembio claims its patented Dual Path Platform (DPP) technology platform, which uses a small drop of blood from the fingertip, provides high-quality, cost-effective results in approximately 15 minutes. *See Chernysh* Compl. ¶ 2; *Bailey* Compl. ¶ 24.

The Actions allege that the defendants made false and/or misleading statements because they failed to disclose, *inter alia*: (i) Chembio's DPP COVID-19 test did not provide high-quality results and there were material performance concerns with the accuracy of the Company's DPP COVID-19 test; (ii) the Company's DPP COVID-19 test generates a higher than expected rate of false results and higher than that reflected in the authorized labeling for the device, and was not effective in detecting antibodies against COVID-19; (iii) accordingly, it was not reasonable to believe that the test may be effective in detecting antibodies against COVID-19

and, as a result, there was a material risk to public health from the false test results; (iv) all the foregoing, once revealed, was foreseeably likely to have a material negative impact on the Company's financial results; and (v) as a result, the Company's public statements were materially false and misleading at all relevant times. *See Chernysh* Compl. ¶ 31; *Gowen* Compl. ¶ 33; *Bailey* Compl. ¶ 37.

The truth first emerged after market close on June 16, 2020, when the United States Food and Drug Administration ("FDA") issued a press release disclosing that it had revoked Chembio's Emergency Use Authorization ("EUA") for the Company's DPP COVID-19 Igm/IgG System. *See Chernysh* Compl. ¶ 32; *Gowen* Compl. ¶ 34; *Bailey* Compl. ¶ 38.

Then, on June 17, 2020, Chembio filed a Current Report on Form 8-K with the SEC that acknowledged receipt of the FDA's June 16, 2020 letter. *See Chernysh* Compl. ¶ 9; *Gowen* Compl. ¶ 35; *Bailey* Compl. ¶ 39.

As a result of disclosure of the FDA letter, Chembio shares declined from a closing price of $9.93 per share on June 16, 2020 to close at $3.89 per share on June 17, 2020, a decline of $6.04 per share, or over 60%, on unusually heavy trading volume. *Chernysh* Compl. ¶ 33; *Gowen* Compl. ¶ 36; *Bailey* Compl. ¶ 40.

After markets closed on June 17, 2020, Bloomberg published a report titled "FDA Reversal on Chembio Antibody Test Sends Stock Down 63%" that noted that, in light of the FDA revocation of the Company's EUA, five analysts downgraded Chembio stock. *Chernysh* Compl. ¶ 11; *Gowen* Compl. ¶ 37; *Bailey* Compl. ¶ 41.

Through the Actions, Wallace seeks to recover for himself and absent class members the substantial losses that were suffered as a result of the defendants' fraud.

ARGUMENT

I. THE ACTIONS SHOULD BE CONSOLIDATED FOR ALL PURPOSES

The PSLRA provides that, "[i]f more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed," the court shall not determine the most adequate plaintiff "until after the decision on the motion to consolidate is rendered." 15 U.S.C. § 78u-4(a)(3)(B)(ii) (the PSLRA advises courts to make the decision regarding the appointment of the lead plaintiff for the consolidated action "[a]s soon as practicable after [the consolidation] decision is rendered").

Consolidation is appropriate when the actions before the court involve a common question of law or fact. *See* Fed. R. Civ. P. 42(a); *Malcolm v. Nat'l Gypsum Co.,* 995 F.2d 346, 350 (2d Cir. 1993) (citing *Johnson v. Celotex Corp*., 899 F.2d 1281, 1284-85 (2d Cir. 1990)); *In re Tronox, Inc. Sec. Litig.,* 262 F.R.D. 338, 344 (S.D.N.Y. 2009) (consolidating securities class actions); *Blackmoss Invs., Inc. v. ACA Capital Holdings, Inc.,* 252 F.R.D. 188, 190 (S.D.N.Y. 2008) (same). Differences in causes of action, defendants, or the class period do not render consolidation inappropriate if the cases present sufficiently common questions of fact or law, and the differences do not outweigh the interest of judicial economy served by consolidation. *Kaplan v. Gelfond*, 240 F.R.D. 88, 91 (S.D.N.Y. 2007); *see In re GE Sec. Litig.,* No. 09 Civ. 1951 (DC), 2009 WL 2259502, at *2-3 (S.D.N.Y. July 29, 2009) (consolidating actions asserting different claims against different defendants over different class periods).

The Actions at issue here clearly involve common questions of fact ***and*** law. The Actions assert claims under the Exchange Act and allege substantially the same wrongdoing, namely that the defendants issued materially false and misleading statements that artificially inflated the price of Chembio securities and subsequently damaged the Class when the Company's stock price crashed as the truth emerged. Consolidation of the Actions is therefore

appropriate. *See Kaplan*, 240 F.R.D. at 91-92 (finding consolidation appropriate despite differing class periods where the actions are all "securities fraud claims that arise from a common course of conduct[]").

II. WALLACE IS ENTITLED TO BE APPOINTED LEAD PLAINTIFF FOR THE CLASS

A. The PSLRA's Provisions Concerning the Appointment of a Lead Plaintiff

The PSLRA governs the appointment of a lead plaintiff for "each private action arising under the [Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." *See* 15 U.S.C. § 78u-4(a)(l); *see also* 15 U.S.C. § 78u-4(a)(3)(B). It provides that within 20 days of the filing of the action, the plaintiff in that action is required to publish notice in a widely circulated business-oriented publication or wire service, informing class members of their right to move the Court, within 60 days of the publication, for appointment as lead plaintiff. *See Baughman v. Pall Corp.*, 250 F.R.D. 121, 125 (E.D.N.Y. 2008) (citing 15 U.S.C. § 78u-4(a)(3)(A)).

Under the PSLRA, the Court is then to consider any motion made by class members and is to appoint as lead plaintiff the movant 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). Further, the PSLRA establishes a rebuttable presumption that the "most adequate plaintiff" is the person that:

> (aa) has either filed the complaint or made a motion in response to a notice [published by a complainant]; (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); *see also Baughman*, 250 F.R.D. at 125 (describing the PSLRA's process for determining the "most adequate plaintiff"); *Tronox,* 262 F.R.D. at 343-44 (same).

Once it is determined who among the movants seeking appointment as lead plaintiff is the presumptive lead plaintiff, the presumption can be rebutted only upon proof by a class member that the presumptive lead 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(a)(3)(B)(iii)(II); *see also Baughman,* 250 F.R.D. at 125.

B. Under The PSLRA, Wallace Should be Appointed Lead Plaintiff

As discussed below, Wallace should be appointed Lead Plaintiff because all of the PSLRA's procedural hurdles have been satisfied, Wallace holds the largest financial interest of any movant, and Wallace otherwise satisfies Rule 23's typicality and adequacy requirements.

1. Wallace Filed a Timely Motion

Pursuant to the PSLRA, the first plaintiff to file a complaint in the action was required to publish notice within twenty (20) days of its filing. 15 U.S.C. § 78u-4(a)(3)(A)(i). Counsel for first-filed plaintiff Sergey Chernysh published notice of the lead plaintiff deadline via *Globe Newswire* on June 18, 2020. *See* Ex. A; *see also In re Millennial Media, Inc. Sec. Litig.,* 87 F. Supp. 3d 563, 567 (S.D.N.Y. 2015) (finding publication in Globe Newswire sufficient to satisfy the PSLRA's notice requirement). Consequently, any member of the proposed Class was required to seek to be appointed lead plaintiff within 60 days after publication of the notice, *i.e.*, on or before August 17, 2020. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i). Thus, Wallace's motion is timely filed.

Additionally, pursuant to 15 U.S.C. § 78u-4(a)(2), Wallace timely signed and submitted the requisite certification, identifying all of his relevant Chembio trades during the class period, and detailing Wallace's suitability to serve as Lead Plaintiff in this case. *See* Ex. B. The PSLRA's procedural requirements have therefore been met.

2. Wallace Has the Largest Financial Interest in the Relief Sought by the Class

The PSLRA instructs the Court to adopt a rebuttable presumption that the "most adequate plaintiff" for lead plaintiff purposes is the person with the largest financial interest in the relief sought by the class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

Although the PSLRA is silent as to any definitive methodology courts are to use in determining which movant has the largest financial interest in the relief sought, courts in this Circuit have typically looked to the following four factors in the inquiry: (1) the number of shares purchased by the movant during the class period; (2) the number of net shares purchased by the movant during the class period; (3) the total net funds expended by the movant during the class period; and (4) the approximate losses suffered by the movant. *See Baughman*, 250 F.R.D. at 125; *In re Olsten Corp. Sec. Litig.*, 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998); *Topping v. Deloitte Touche Tohmatsu CPA, Ltd.*, 95 F. Supp. 3d 607, 616 (S.D.N.Y. 2015); *GE*, 2009 WL 2259502, at *4. Courts have placed the most emphasis on the last of the four factors: the approximate loss suffered by the movant. *See, e.g.*, *Baughman*, 250 F.R.D. at 125; *GE*, 2009 WL 2259502, at *5.

Overall, during the class period, Wallace purchased 30,000 net and 30,000 total Chembio shares, expended $309,450.00 in net funds and suffered losses of $192,750.00 attributable to the fraud. *See* Ex. C. Wallace is presently unaware of any other movant with a larger financial interest in the outcome of this litigation.

3. Wallace Meets Rule 23's Typicality and Adequacy Requirements

The PSLRA also requires that, in addition to possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* 15 U.S.C. § 78u-4(a)(3)(B). When assessing a potential

lead plaintiff only Rule 23(a)'s typicality and adequacy requirements are relevant. *See, e.g.*, *Pompano Beach Police & Firefighters' Ret. Sys. v. Comtech Telecomms. Corp.*, No. CV 09-3007 (SJF) (AKT), 2010 WL 3909331, at *2 (E.D.N.Y. Sept. 29, 2010); *see also Blackmoss*, 252 F.R.D. at 191 (S.D.N.Y. 2008) ("At this stage of the litigation, the moving plaintiff must only make a preliminary showing that the adequacy and typicality requirements have been met.").

Typicality is established where each class member's claim "arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Blackmoss*, 252 F.R.D. at 191 (quoting *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)). "However, a lead plaintiff's claims need not be identical to the claims of the class in order to satisfy the preliminary showing of typicality." *Topping*, 95 F. Supp. 3d at 623.

Wallace's claims are clearly typical of the Class's claims. Wallace purchased Chembio shares during the class period, suffered damages as a result of the Company's false and misleading statements, and therefore possesses claims against Chembio and certain of its officers under the federal securities laws. Because the factual and legal bases of Wallace's claims are similar to those of the Class's claims, Wallace necessarily satisfies the typicality requirement. *See Quan v. Advanced Battery Techs., Inc.*, No. 11 Civ. 2279 (CM), 2011 WL 4343802, at *3 (S.D.N.Y. Sept. 9, 2011) (finding movant typical where "he suffered losses as a result of [the company's] false and misleading statements during the same period as the other movants, plaintiffs, and potential class members, and [] he is alleging violations of the same provisions of the [Exchange Act], against the same defendants as the other parties").

With respect to adequacy, Rule 23(a)(4) requires that the representative party will "fairly and adequately protect the interests of the class." Adequate representation will be found if able

and experienced counsel represent the proposed representative, and the proposed representative has no fundamental conflicts of interest with the interests of the class as a whole. *See Pipefitters Local No. 636 Defined Benefit Plan v. Bank of Am. Corp.*, 275 F.R.D. 187, 190 (S.D.N.Y. 2011) ("In considering the adequacy of a proposed lead plaintiff, a court must consider: (1) whether the lead plaintiff's claims conflict with those of the class; and (2) whether class counsel is qualified, experienced, and generally able to conduct the litigation."); *GE*, 2009 WL 2259502, at *5 (Plaintiff "satisfies the adequacy requirement because its interests are aligned with those of the putative class, and it has retained competent and experienced counsel").

As evidenced by the representations in his certification, *see* Ex. B, Wallace's interests are perfectly aligned with—and by no means antagonistic to—the Class. *See Kokkinis v. Aegean Marine Petroleum Network, Inc.*, No. 11 Civ. 0917 (BSJ) (JCF), 2011 WL 2078010, at *2 (S.D.N.Y. May 19, 2011) (movant's certification evidenced adequacy to serve as lead plaintiff); *see also Blackmoss*, 252 F.R.D. at 191 (same).

Wallace has also selected and retained highly competent counsel to litigate the claims on behalf of himself and the Class. As explained below in Section III, the Faruqi Firm is highly regarded for its experience, knowledge, and ability to conduct complex securities class action litigation. *See* Ex. D. Consequently, Wallace is more than adequate to represent the Class and has every incentive to maximize the Class's recovery.

In light of the foregoing, Wallace respectfully submits that he is the presumptive Lead Plaintiff and should be appointed Lead Plaintiff for the Action.

III. WALLACE'S SELECTION OF THE FARUQI FIRM AS LEAD COUNSEL SHOULD BE APPROVED

Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), the Lead Plaintiff is entitled to select and retain Lead Counsel for the Class, subject to the Court's approval. Wallace has selected the

Faruqi Firm to be Lead Counsel for the Class. The Faruqi Firm is a minority-owned and woman-owned law firm, and, as reflected in the firm's resume, possesses extensive experience successfully litigating complex class actions on behalf of plaintiffs, including securities class actions. *See* Ex. D; *see also In re China Mobile Games & Entertainment Group, Ltd. Sec. Litig.*, 68 F. Supp. 3d 390, 401 (S.D.N.Y. 2014) (appointing the Faruqi Firm as sole lead counsel and noting: "Faruqi & Faruqi has extensive experience in the area of securities litigation and class actions. The firm's resume indicates that it has litigated more than ten prominent securities class actions since its founding in 1995. Faruqi & Faruqi achieved successful outcomes in many of these cases."). For example, the Faruqi Firm has previously obtained significant recoveries for injured investors. *See, e.g.*, *Larkin v. GoPro, Inc.*, No. 4:16-cv-06654-CW (N.D. Cal. 2019) (where, as sole lead counsel, the firm obtained final approval of $6.75 million settlement); *In re Avalanche Biotechnologies Sec. Litig.*, No. 3:15-cv-03185-JD (N.D. Cal. 2017) (appointed as sole lead counsel in the federal action, and together with lead counsel in a parallel state action, obtained final approval of a $13 million global settlement); *Rihn v. Acadia Pharms., Inc.*, No. 3:15-cv-00575-BTM-DHB (S.D. Cal. 2017) (where, as sole lead counsel, the Faruqi Firm obtained final approval of a $2.925 million settlement); *In re Geron Corp*., *Sec. Litig.*, No. 3:14-CV-01424 (CRB) (N.D. Cal. 2017) (where, as sole lead counsel, the Faruqi Firm obtained final approval of a $6.25 million settlement); *In re Dynavax Techs. Corp. Sec. Litig*., No. 12-CV-02796 (CRB) (N.D. Cal. 2016) (where, as sole lead counsel, the Faruqi Firm obtained final approval of a $4.5 million settlement); *McIntyre v. Chelsea Therapeutics Int'l, LTD*, No. 12-CV-213-MOC-DCK (W.D.N.C. 2016) (where, as sole lead counsel, the Faruqi Firm secured the reversal of the district court's dismissal of the action at the Fourth Circuit, *see Zak v. Chelsea Therapeutics Int'l, Ltd*., 780 F.3d 597 (4th Cir. 2015), and obtained final approval of a $5.5

million settlement); *In re L&L Energy, Inc. Sec. Litig.,* No. 13-CV-06704 (RA) (S.D.N.Y. 2015) (where the Faruqi Firm as co-lead counsel, secured a $3.5 million settlement); *In re Ebix*, *Inc. Sec. Litig*., No. 1:11-CV-02400-RWS (N.D. Ga. 2014) (where the Faruqi Firm, as sole lead counsel for the class, secured a $6.5 million settlement); *Shapiro v. Matrixx Initiatives, Inc*., No. CV-09-1479-PHX-ROS (D. Ariz. 2013) (where the Faruqi Firm, as co-lead counsel for the class, secured a $4.5 million settlement); *In re United Health Grp. Inc. Deriv. Litig*., Case No. 27 CV 06-8065 (Minn. 4th Jud. Dt. 2009) (where the Faruqi Firm, as co-lead counsel, obtained a recovery of more than $930 million for the benefit of the Company and negotiated important corporate governance reforms designed to make the nominal defendant corporation a model of responsibility and transparency); *In re Tellium Inc. Sec. Litig.*, No. 02 CV-5878 (FLW) (D.N.J. 2006) (where the Faruqi Firm, as co-lead counsel, recovered a $5.5 million settlement).

The Faruqi Firm is also currently litigating several prominent securities class actions. *See, e.g.*, *Attigui v. Tahoe Resources, Inc.*, No. 2:17-cv-01868-RFB-NJK (D. Nev.) (appointed as sole lead counsel for the class); *DeSmet v. Intercept Pharmaceuticals Inc.*, No. 1:17-cv-07371-LAK (S.D.N.Y.) (appointed as sole lead counsel for the class); *Khanna v. Ohr Pharmaceutical Inc.*, No. 1:18-cv-01284-LAP (S.D.N.Y.) (appointed as sole lead counsel for the class); *Lee v. Synergy Pharmaceuticals, Inc.*, No. 1:18-cv-00873-AMD-VMS (E.D.N.Y.) (appointed as co-lead counsel for the class); *Smith v. CV Sciences, Inc.*, No. 2:18-cv-01602-JAD-PAL (D. Nev.) (appointed as sole lead counsel for the class); *Sharma v. Amarin Corp., plc*, No. 3:19-cv-06601-BRM-TJB (D.N.J.) (appointed as co-lead counsel for the class); *Miranda v. Ideanomics, Inc.*, No. 1:19-cv-06741-GBD (S.D.N.Y.) (appointed as sole lead counsel for the class); *Malhotra v. Sonim Technologies, Inc.*, No. 3:19-cv-06416-MMC (N.D. Cal.) (appointed as sole lead counsel for the class).

CONCLUSION

For the foregoing reasons, Wallace respectfully requests that the Court (1) consolidate the above-captioned actions; (2) appoint Wallace as Lead Plaintiff; (3) approve his selection of the Faruqi Firm as Lead Counsel for the putative Class; and (4) grant such other relief as the Court may deem just and proper.

Dated: August 17, 2020

Respectfully submitted,

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