UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MITCHELL WAX, Individually and on behalf of All Others Similarly Situated, Plaintiff, v. CROSS RIVER BANK, Defendant	Case No. 2:24-cv-09510-BRM-JRA **MITCHELL WAX'S RESPONSE IN FURTHER SUPPORT OF MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF LEAD COUNSEL** **Motion Date: January 6, 2025**

Lead Plaintiff Movant Mitchell Wax ("Movant") hereby submits this Response in Further Support of his Motion for Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel, and states as follows:

I. INTRODUCTION

On December 2, 2024, Movant timely filed his Motion for Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel (the "Motion") (ECF No. 9), pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), seeking appointment as Lead Plaintiff and approval of his selection of Rosca Scarlato LLC and Berger Montague PC as Lead Counsel on behalf of a class consisting of all persons and entities that purchased or otherwise acquired the securities of Sunlight Financial Holdings, Inc. f/k/a Spartan Acquisition Corp. II (collectively, "Sunlight" or the "Company") between January 25, 2021 and October 31, 2023, inclusive (the "Class Period"). *See* ECF No. 9-1 at 1.

No other putative Class member filed a lead plaintiff motion in this Action, timely or otherwise. Accordingly, because Movant satisfies the requirements of the PSLRA, the Motion should be granted.

First, the PSLRA states that the movant with the "largest financial interest" that is otherwise adequate and typical shall be appointed as lead plaintiff. 15 U.S.C. §78u–4(a)(3)(B)(iii)(I). As the only Sunlight investor seeking to be appointed Lead Plaintiff, Movant Wax has the largest financial interest in this Action. To be sure, as Movant has incurred a sizable loss of **$606,375.51** on a LIFO basis on his Class Period transactions in Sunlight securities, Movant has a substantial interest in the outcome of this litigation and is more than sufficiently motivated to obtain the best possible result for the Class.

Second, in addition to having the "largest financial interest" in the litigation, Movant satisfies the typicality and adequacy requirements under Federal Rule of Civil Procedure 23(a). Movant is typical of the other Class members insofar as he purchased Sunlight securities during the Class Period and was damaged in the same manner as all other Class members, and he does not have any interests adverse to the Class. Likewise, Movant is an adequate representative of the interests of the proposed Class, as he is an experienced and sophisticated investor committed to obtaining the best possible outcome for the Class. His 35 years of investment experience, as well as his retention of highly qualified counsel, render him well-qualified to serve as Lead Plaintiff on behalf of the proposed Class. ECF No. 9-1 at 8-9.

With the largest financial interest in the outcome of the action and having made the preliminary showing of typicality and adequacy, Movant Wax is entitled to the presumption of being the "most adequate plaintiff." 15 U.S.C. §78u-4(a)(3)(B)(iii). This presumption may be rebutted only by "proof" that the presumptively most adequate plaintiff "will not fairly and adequately protect the interests of the class" or "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 Montesano v. Eros Int'l PLC*, No. 19-CV-14125 (JMV) (JAD), 2020 WL 1873015, at *10 (D.N.J. Apr. 14, 2020). As there are no other competing movants that can rebut this presumption with proof that Movant is somehow atypical or inadequate – which he is not – Movant is entitled to be appointed as the lead plaintiff. 15 U.S.C. §78u-4(a)(3)(B)(iii)(II).

Accordingly, for these reasons Movant respectfully requests that the Court grant its motion in its entirety.

II. ARGUMENT

A. The Lead Plaintiff Procedure Under the PSLRA

The PSLRA sets forth the procedure for the selection 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)(1). Following the required notice announcing the class action, class members interested in serving as lead plaintiff are required to file a motion seeking appointment within 60 days thereafter. 15 U.S.C. §78u-4(a)(3)(A)(i)(II) and (a)(3)(B)(i). From the movants that file timely motions, the presumptive "most adequate plaintiff" is the "person or group of persons" that "has the largest financial interest in the relief sought by the class" and "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).

After a presumptively most adequate plaintiff is identified, the Court must then determine if the presumption has been rebutted through "proof" by a member of the purported plaintiff class that the presumptively most adequate plaintiff "will not fairly and adequately protect the interests of the class" or "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). If the presumption is not rebutted, the presumptively most adequate plaintiff should be appointed as lead plaintiff.

B. Movant Possesses the "Largest Financial Interest"

According to 15 U.S.C. §78u-4(a)(3)(B)(iii), the Court shall appoint as Lead Plaintiff the movant or movants with the largest financial loss in the relief sought by the action. Movant Wax is entitled to that presumption because there are no other competing movants and therefore his losses are the greatest. Movant incurred a loss of $606,375.51 (LIFO) on his Class Period transactions in Sunlight securities. ECF No. 9-1 at 7. As the sole Lead Plaintiff movant, he holds the "largest financial interest" in the Action and is, therefore, presumptively the "most adequate plaintiff" for purposes of serving as Lead Plaintiff here. 15 U.S.C. §78u–4(a)(3)(B). *See Sinai Roth v. Knight Trading Group*, 228 F. Supp. 2d 524 (D.N.J. 2002).

C. Movant Satisfies the Typicality and Adequacy Requirements of Rule 23

In addition to possessing the largest financial interest, Movant satisfies the adequacy and typicality requirements of Rule 23. At the lead plaintiff selection stage, all that is required to satisfy Rule 23 is a preliminary showing that the lead plaintiff's claims are typical and adequate. *See Sklar v. Amarin Corp. PLC*, No. 13-CV-06663 (FLW) (TJB), 2014 WL 3748248, at *6 (D.N.J. July 29, 2014). Here, Movant satisfies both requirements.

Typicality is met 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 In re Merck & Co., Inc. Sec. Derivative & ERISA Litig.*, No. 05-CV-1151 (SRC), 2013 WL 396117, at *5 (D.N.J. Jan. 30, 2013). Here, Movant Wax's claims are typical of those of other class members because, like other class members, he purchased Sunlight securities during the Class Period, and his claims are based on the same legal theory and arise from the same events and course of conduct as the Class' claims. ECF No. 9-1 at 7-8.

Movant also makes the necessary *prima facie* showing of "adequacy" under Rule 23. Adequate representation is found if the representative has: (a) retained able and experienced counsel; and (b) the representative has no fundamental conflicts of interest with the interests of the class as a whole. *See In re Nice Sys. Sec. Litig.*, 188 F.R.D. 206, 219 (D.N.J. 1999). Here, Movant clearly meets this standard, as he is a retired business owner who has been investing for 35 years, he is motivated to pursue recovery against the defendants – and in that regard his interests are aligned with those of the absent Class members – and he has retained in Rosca Scarlato LLC and Berger Montague PC highly experienced counsel with an extensive record of prosecuting securities class actions. Nor is there any indication, much less evidence, that Movant Wax is subject to unique defenses that impair his ability to represent the Class. ECF No. 9-1 at 8-10.

Accordingly, Movant has made a preliminary showing that he satisfies the adequacy and typicality requirements of Rule 23.

D. No Proof Exists to Rebut the Presumption in Favor of Movant's Appointment as Lead Plaintiff

As Movant has the largest financial interest in this litigation, the PSLRA establishes a rebuttable presumption that he is the most adequate plaintiff to represent the Class. This presumption may only be rebutted by "***proof***" that the presumptively most adequate plaintiff "will not fairly and adequately protect the interests of the class" or "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) (emphasis added); *see also Montesano v. Eros Int'l PLC*, 2020 WL 1873015, at *10. As no other Class member has filed a motion seeking appointment as Lead

Plaintiff, no proof has been offered – and none exists – which would rebut the presumption in favor of Movant Wax.

E. Movant's Selection of Lead Counsel Should Be Approved

Lastly, the PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to the court's approval. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *In re Cendant Corp. Litig.*, 264 F.3d 201, 276 (3d Cir. 2001) (stating that "the [PSLRA] evidences a strong presumption in favor of approving a properly-selected lead plaintiff's decisions as to counsel selection and counsel retention"). Consistent with Congressional intent, a court should not disturb the lead plaintiff's choice of counsel unless it is "necessary to protect the interests of the plaintiff class." H.R. Conf. Rep. No. 104-369, at 35 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 730, 734.

Here, Movant has selected the law firms of Rosca Scarlato LLC and Berger Montague PC. As set forth in Movant's opening brief, both firms have extensive experience representing investors in securities class actions, and they have the skill and resources to do so in this Action. ECF No. 9-1 at 10.

III. <u>CONCLUSION</u>

For the foregoing reasons and for the reasons set forth in his opening Motion, Movant Wax respectfully requests that the Court grant his Motion and enter an Order: (i) appointing Movant as Lead Plaintiff; (ii) approving Movant's selection of Rosca Scarlato LLC and Berger Montague PC as Lead Counsel for the Class; and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: December 23, 2024

Respectfully submitted,

<u>/s/ Paul Scarlato</u>

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Counsel for Movant Mitchell Wax and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2024, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Paul J. Scarlato
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