

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 21-2989-MDL-ALTONAGA/Torres

In re:

**JANUARY 2021 SHORT SQUEEZE
TRADING LITIGATION**

**THIS DOCUMENT RELATES TO
ALL ACTIONS.**

**APPLICATION TO REPLACE DENNIS S. ELLIS WITH MATTHEW L. VENEZIA ON
PLAINTIFFS' STEERING COMMITTEE**

Browne George Ross O'Brien Annaguey & Ellis ("BGR"), by and through its partners Dennis S. Ellis and Matthew L. Venezia, counsel for Robert Days in *Days v. Robinhood Markets, Inc.*, Case No. 1:21-cv-21310-CMA, hereby requests that Mr. Ellis be replaced by Mr. Venezia on the Plaintiffs' Steering Committee ("PSC").

BGR and Mr. Ellis are appreciative of the Court's consideration of Mr. Ellis for an interim lead counsel position in this litigation, and Mr. Ellis's ultimate appointment on the PSC. However, Mr. Ellis's application was specific in that Mr. Ellis sought a lead counsel position—a position for which Mr. Ellis was prepared to devote a great deal of time, believing he could provide substantial value to the classes in a leadership role consistent with his regular practice. BGR understands that the nature of the PSC appointment would require Mr. Ellis to be readily available and responsible to both the appointed leads and the PSC committee chair, requiring a large personal commitment. Mr. Ellis typically reserves that level of commitment to acting in a first-chair capacity in high-stakes commercial litigation matters, and for that reason, must respectfully decline the appointment.

As an alternative, BGR proposes that Mr. Venezia replace Mr. Ellis on the PSC. Mr. Venezia is ready and willing to devote a significant amount of time to the case, and would be excited for the opportunity to serve on the PSC. While BGR understands that leadership may still wish to seek Mr. Ellis's thoughts and insights on strategic matters, Mr. Ellis would remain as a resource, with the entire BGR team behind Mr. Venezia.

BGR detailed its credentials at the firm level and included Mr. Venezia's law firm bio in connection with Mr. Ellis's original application, and does not wish to retread old ground. See Dkt No. 243-2, 5-6; Dkt. No. 248-6. However, BGR does wish to highlight Mr. Venezia's prior involvement in this case and some of his recent accomplishments.

In that regard, Mr. Venezia has been involved in this litigation since its inception. He drafted the *Days* complaint and BGR's MDL briefing. Mr. Venezia also coordinated with counsel for other plaintiffs from the beginning of this case, thus having already developed working relationships with a majority of the appointed leadership and much of the PSC. Collaboratively with Mr. Ellis, Mr. Venezia worked to develop a strategy for the consolidated complaints, and how to get these cases through class certification, that BGR hopes to incorporate with the thoughts of the other counsel appointed to leadership and PSC roles.

Moreover, particularly for an attorney of his age, being only 34 years old, Mr. Venezia is developing a notable track record of litigation successes against the top firms in the country. Some highlights from just the past few years include:

Ironhawk Technologies v. Dropbox. BGR represents Ironhawk Technologies, a small technology company, in connection with its trademark infringement claims against Dropbox, seeking significant damages and injunctive relief against Dropbox's use of Ironhawk's SmartSync® trademark. Mr. Venezia headed the discovery process, took the majority of the

depositions, including Dropbox's CEO and 30(b)(6) designee, and drafted dispositive and pre-trial motions. When Ironhawk's claims were dismissed on summary judgment, Mr. Venezia spearheaded the appeal, and obtained a complete reversal from the Ninth Circuit in a published opinion, available at 994 F.3d 1107. (Dropbox was represented by Morrison & Foerster and Covington & Burling.)

Nexus Pharmaceuticals v. Central Admixture Pharmacy Services (CAPS). BGR defended CAPS against unfair competition claims premised upon the argument that one of its products was sold in violation of the federal statute governing pharmacy compounding. Mr. Venezia drafted the motion to dismiss that resulted in Nexus Pharmaceutical's claims being dismissed in their entirety on preemption grounds. Decision is available at 2020 WL 6867069. (Nexus Pharmaceuticals was represented by Schiff Hardin.)

PennyMac Loan Services v. Black Knight. BGR defended Black Knight against antitrust claims brought by PennyMac alleging that Black Knight sought to monopolize the market for mortgage servicing software. Mr. Venezia drafted the transfer motion which resulted in the transfer of PennyMac's claims from its home forum, the Central District of California, to Black Knight's home forum, the Middle District of Florida. Decision is available at 2020 WL 5985492. (PennyMac was represented by Kirkland & Ellis and Manatt, Phelps & Phillips.)

Allergan v. Imprimis. BGR took over the defense of Imprimis, after prior counsel lost a motion to dismiss, against unfair competition and false advertising claims stemming from allegations that Imprimis violated the federal statute governing pharmacy compounding. Mr. Venezia took the lead in preparing summary judgment briefing and pre-trial motions, obtaining a key ruling that Imprimis did not violate the law so long as it complied with interim FDA policy, and the exclusion of Allergan's damages expert. Following these rulings, while Allergan sought

\$7.2 million in lost profits and as much as \$54 million in disgorged profits at trial, the jury ultimately awarded Allergan just \$48,500 for lost profits and zero dollars for disgorged profits. (Allergan was represented by King & Spalding.)

In summary, Mr. Venezia has served in a prominent role in this MDL from its inception, and has demonstrated an ability to achieve favorable results in highly-contested litigation against the largest firms, like those opposing the classes' claims here. Mr. Venezia is also excited to commit a large amount of time in performing the PSC role, and BGR thus respectfully requests that Mr. Ellis be replaced by Mr. Venezia on the PSC.

Dated: May 20, 2021

/s/ Dennis S. Ellis
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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2021, a true and correct copy of the foregoing document was served on all counsel of record by the CM/ECF system.

Date: May 20, 2021

/s/Matthew L. Venezia
Matthew L. Venezia