

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

SANDRA HUNTER, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ELANCO ANIMAL HEALTH  
INCORPORATED, JEFFREY N.  
SIMMONS, and TODD S. YOUNG,

Defendants.

Case No. 1:20-cv-01460-SEB-DML

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF SANDRA HUNTER FOR  
APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL**

Sandra Hunter (“Movant”) respectfully submits this memorandum of law in support of her 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) appointing Movant as Lead Plaintiff under 15 U.S.C. § 78u-4(a)(3)(B); (2) approving Movant’s selection of Glancy Prongay & Murray LLP as Lead Counsel and Katz Korin Cunningham. PC as Liaison Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v); and (3) 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 Elanco Animal Health Incorporated (“Elanco” or the “Company”) securities between January 10, 2020 and May 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.

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

Additionally, Movant’s selection of Glancy Prongay & Murray LLP (“GPM”) as lead counsel and Katz Korin Cunningham, PC (“KKC”) 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**

Elanco is an animal health company that develops, manufactures, and markets products for companion and food animals. Its four primary categories are: Companion Animal Disease Prevention, Companion Animal Therapeutics, Food Animal Future Protein & Health, and Food Animal Ruminants & Swine.

On May 7, 2020, before the market opened, the Company announced its first quarter 2020 financial results, reporting revenue of \$657.7 million and earnings per share of -\$0.12, reflecting “a reduction of approximately \$60 million in channel inventory.” Elanco attributed the disappointing results to “distributor performance,” among other things, and stated that the Company planned “to tighten [its] approach across many facets of [its] distributor relationships.”

On this news, the Company's share price fell \$3.05, or over 13%, to close at \$19.88 per share on May 7, 2020, on unusually heavy trading volume.

Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts concerning the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (i) that, after consolidating its distributors from eight to four, the Company increased the amount of inventory, including companion animal products, held by each distributor; (ii) that Elanco's distributors were not experiencing sufficient demand to sell through the inventory; (iii) that, as a result, the Company's revenue was reasonably likely to decline; (iv) that, as a result of the foregoing, Elanco would reduce its channel inventory with respect to companion animal products; and (v) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

### **III. ARGUMENT**

#### **A. Movant 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, Movant satisfies all of the PSLRA criteria and has complied with all of the PSLRA’s requirements for appointment as lead plaintiff. Movant has, to the best of her knowledge, the largest financial interest in this litigation and meets the relevant requirements of Federal Rule of Civil Procedure 23. In addition, Movant is not aware of any unique defenses Defendants could raise against her that would render her inadequate to represent the Class. Accordingly, Movant respectfully submits that she should be appointed lead plaintiff. *See Winn v. Symons Int’l Grp., Inc.*, 2001 WL 278113, at \*3 (S.D. Ind. Mar. 21, 2001).

### **1. Movant Filed a Timely Motion**

In addition to filing the complaint that commenced this action, Movant has made a timely motion in response to a PSLRA early notice. On May 20, 2020, pursuant to Section 21D(a)(3)(A)(I) of the PSLRA, notice was published in connection with this action. *See* Declaration of Offer Korin (“Korin Decl.”) Ex. A. Therefore, Movant had sixty days (until July 20, 2020) to file a motion to be appointed as lead plaintiff. As a purchaser of Elanco securities during the Class Period, Movant is a member of the proposed class and has 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 Movant’s previously filed PSLRA certification, Movant attests that she has reviewed the complaint, adopts the allegations therein, and is willing to serve as a representative of the class. *See* [ECF No. 1](#), Ex. A. Accordingly Movant satisfies the first requirement to serve as lead plaintiff for the class.

**2. Movant Has 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, Movant believes that she has 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.”

Movant purchased Elanco securities during the Class Period at prices alleged to be artificially inflated by Defendants’ misstatements and omissions and, as a result, suffered financial harm. *See* Korin Decl., Ex. B. To the best of her knowledge, Movant is 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, Movant believes she has the “largest financial interest in the relief sought by the Class,” and thus satisfies the second PSLRA requirement to be appointed as lead plaintiff for the Class.

**3. Movant Satisfies 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).

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. *Winn*, 2001 WL 278113, at \*5 (“[C]ourts examine only typicality and adequacy from the list of prerequisites to a class action set forth in Rule 23(a).”) (internal quotation marks omitted).

**a) Movant's Claims Are Typical**

The Rule 23(a) typicality requirement is satisfied “when a plaintiff's claims arise from the same event or practice or course of conduct that gives rise to the claims of other class members.” *Maiden v. Merge Techs., Inc.*, 2006 WL 3404777, at \*4 (E.D. Wis. Nov. 21, 2006) (citing *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Movant's claims are typical of the claims asserted by the proposed members of the Class. Like all members of the Class, Movant alleges that Defendants' material misstatements and omissions concerning Elanco's business, operations, and financial prospects violated the federal securities laws. Movant, like all members of the Class, purchased Elanco securities in reliance on Defendants' alleged misstatements and omissions and were damaged thereby. Accordingly, Movant's interests and claims are “typical” of the interests and claims of the Class.

**b) Movant Is an Adequate Representative**

Rule 23(a)(4) requires the proposed lead plaintiff to demonstrate that it will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “A lead plaintiff meets the adequacy requirement if (1) its claims are not antagonistic or in conflict with those of the class; (2) it has sufficient interest in the outcome of the case to ensure vigorous advocacy; and (3) it is represented by competent, experienced counsel who will be able to prosecute the litigation

vigorously.” *In re Groupon, Inc. Sec. Litig.*, 2012 WL 3779311, at \*3 (N.D. Ill. Aug. 28, 2012).

Movant has demonstrated her adequacy by retaining competent and experienced counsel with the resources and expertise to efficiently prosecute this action, and her financial losses ensure that she has sufficient incentive to provide vigorous advocacy. *See* Korin Decl., Ex. B. Movant is not aware of any conflict between her claims and those asserted on behalf of the Class. As such, Movant is well-equipped to represent the class.

**B. 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, Movant has selected GPM as lead counsel for the class and KKC as liaison counsel. The firms have successfully prosecuted numerous securities fraud class actions on behalf of injured investors. As reflected by the firms’ résumés, *see* Korin Decl., Exs. C & D, the Court may be assured that in the event this Motion is granted, the members of the class will receive the highest caliber of legal representation. Accordingly, the Court should approve Movant’s selection of counsel.

**IV. CONCLUSION**

For the foregoing reasons, Sandra Hunter respectfully requests that the Court grant her Motion and enter an Order (1) appointing Movant as Lead Plaintiff; (2) approving Movant’s selection of Glancy Prongay & Murray LLP as Lead Counsel and Katz Korin Cunningham, PC as

Liaison Counsel for the Class; and (3) granting such other relief as the Court may deem just and proper.

Respectfully submitted,

DATED: July 20, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on **July 20, 2020**, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's ECF. Parties may access this filing through the Court's system:

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