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DENIED

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA -
WESTERN DIVISION**

MICHAEL H. RESH, *et al.*,
Plaintiff,
v.
CHINA AGRITECH, INC. *et al.*,
Defendants.

Case No. CV 14-05083-RGK (PjWx)

**[PROPOSED] ORDER
GRANTING MOVANT CAGC
INVESTOR GROUP'S MOTION
FOR APPOINTMENT AS LEAD
PLAINTIFF AND APPROVING
ITS SELECTION OF LEAD
COUNSEL**

DATE: October 6, 2014
TIME: 9:30 a.m.
ROOM: 850
JUDGE: Hon. R. Gary Klausner

1 The CAGC Investor Group, comprised of investors in defendant China
2 Agritech, Inc. ("China Agritech") William Schoenke, Heroca Holding B.V., and
3 Ninella Beheer B.V., has moved this Court for appointment as Lead Plaintiff and for
4 approval of its selection of counsel as Co-Lead Counsel for the proposed class. This
5 Court, having considered the provisions of Section 21D(a)(3)(B) of the Private
6 Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(3)(B),
7 the Motion of the CAGC Investor Group for Appointment as Lead Plaintiff and for
8 Approval of Selection of Counsel, the Memorandum of Points and Authorities and
9 the Declaration of Betsy C. Manifold, with exhibits, submitted in support thereof, as
10 well as any opposition and reply papers, hereby orders as follows:

11 Pursuant to Section 21D(a)(3)(B) of the PSLRA, the CAGC Investor Group is
12 the "most adequate plaintiff" and otherwise satisfies the requirements of § 21D of the
13 PSLRA. The PSLRA specifically provides, *inter alia*, that the most-adequate
14 plaintiff to serve as lead plaintiff is the person or group of persons to: (1) timely file a
15 motion in response to a notice; (2) have the largest financial interest in the relief
16 sought by the proposed class; and (3) make a *prima facie* showing which satisfies the
17 pertinent requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* 15
18 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

19 Here, the CAGC Investor Group timely filed its motion on September 3, 2014,
20 sixty days after the notice of pendency of action was published on July 5, 2014. *See*
21 15 U.S.C. § 78u-4(a)(3)(A)(i). In addition, the CAGC Investor Group has calculated
22 its losses under the guidelines of the United States Supreme Court's decision in *Dura*
23 *Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005) by disregarding transactions that are
24 opened and closed that do not straddle a corrective disclosure and the losses resulting
25 from any such transactions. *Id.* at 342-43. *See also Brown v. China Integrated*
26 *Energy, Inc.*, No. 11-02559, 2011 U.S. Dist. LEXIS 151131, at *41-42 (C.D. Cal.
27 Aug. 29, 2011); *Schueneman v. Arena Pharms., Inc.*, No. 10-1959, 2011 U.S. Dist.
28 LEXIS 87373, at *13 (S.D. Cal. Aug. 8, 2011). Based on these calculations, the

1 CAGC Investor Group has the largest financial interest in this litigation. In addition,
2 the Court finds appointment of this small cohesive group of investors, of which the
3 principles of the entities are business partners unrelated to this litigation, appropriate
4 under Ninth Circuit law. *See, e.g., Petrie v. Elec. Game Card, Inc.*, No. 10-0252,
5 2010 U.S. Dist. LEXIS 56283, at *7 (C.D. Cal. June 4, 2010) (allowing a group of
6 three investors to aggregate their losses); *Leevan v. Credit Suisse Int'l*, No. 13-2783,
7 2013 U.S. Dist. LEXIS 172414, at *11 (N.D. Cal. Dec. 5, 2013) (appointing a group
8 of three investors); *In re Versata Inc. Sec. Litig.*, No. 01-1439, 2001 U.S. Dist.
9 LEXIS 24270, at *22 (N.D. Cal. Aug. 17, 2001) (appointing a group of three
10 unrelated investors and noting that “under appropriate circumstances small groups,
11 whether or not they have any pre-litigation relationship, can aggregate their financial
12 losses.”).

13 The Court additionally finds that the CAGC Investor Group has satisfied each
14 of the other requirements of the PSIRA by providing the requisite signed
15 certifications of each member of the group under oath with regard to their
16 transactions and responsibilities, and making the required *prima facie* showing that
17 they are adequate and typical members of the proposed class. *See* 15 U.S.C. § 78u-
18 4(a)(2)(A)(i-vi) and 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). *See also In re*
19 *Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002); *Hannon v. Dataproducts Corp.*, 976
20 F.2d 497, 508 (9th Cir. 1992).

21 Here, like all proposed class members, the CAGC Investor Group allegedly
22 suffered damages from purchases of China Agritech stock during the relevant time
23 period while Defendants made false and misleading representations concerning the
24 Company in violation of Sections 10(b) and 20(a) of the Exchange Act, and Rule
25 10b-5 promulgated thereunder, such that the CAGC Investor Group’s interests are
26 aligned with those of the members of the proposed class, and there is no evidence of
27 any antagonism between the two. As such, the CAGC Investor Group’s claims are
28 typical of the claims of the Class within the meaning of Rule 23(a)(3), and they will

1 fairly and adequately represent the interests of the Class under Rule 23(a)(4). See
2 *Yanek v. Staar Surgical Co.*, No. 04-8007, 2004 U.S. Dist. LEXIS 30953, at *15,
3 *16, *20 (C.D. Cal. Dec. 15, 2004).

4 Therefore, the Court hereby grants the CAGC Investor Group's Motion and
5 appoints it to be Lead Plaintiff in this action and to represent the interests of the
6 proposed class.

7 Pursuant to Section 21D(a)(3)(B)(v) of the PSLRA, 15 U.S.C. § 78u-
8 4(a)(3)(B)(v), the Lead Plaintiff has selected and retained the law firms of Wolf
9 Haldenstein Adler Freeman & Herz LLP and Brower Piven, A Professional
10 Corporation to serve as Co-Lead Counsel. The Court therefore approves the CAGC
11 Investor Group's selection of Co-Lead Counsel.

12 Co-Lead Counsel shall have the following responsibilities and duties, to be
13 carried out personally:

- 14 a. to coordinate the briefing and argument of any and all motions;
15 b. to coordinate the conduct of any and all discovery proceedings;
16 c. to coordinate the examination of any and all witnesses in depositions;
17 d. to coordinate the selection of counsel to act as spokesperson at all
18 pretrial conferences;
19 e. to call meetings of the plaintiffs' counsel as they deem necessary and
20 appropriate from time to time;
21 f. to coordinate all settlement negotiations with counsel for defendants;
22 g. to coordinate and direct the pretrial discovery proceedings and the
23 preparation for trial and the trial of this matter and to delegate work
24 responsibilities to selected counsel as may be required;
25 h. to coordinate the preparation and filings of all pleadings; and
26 i. to supervise all other matters concerning the prosecution or resolution of
27 the action.
28

1 No motion, discovery request or other pretrial proceedings shall be initiated or
2 filed by any plaintiffs without the approval of Co-Lead Counsel, so as to prevent
3 duplicative pleadings or discovery by plaintiffs. No settlement negotiations shall be
4 conducted without the approval of Co-Lead Counsel.

5 Co-Lead Counsel shall have the responsibility of receiving and disseminating
6 Court orders and notices.

7 Co-Lead Counsel shall be the contact between plaintiffs' counsel and
8 defendants' counsel, as well as the spokesperson for all plaintiffs' counsel, and shall
9 direct and coordinate the activities of plaintiffs' counsel.

10 Lead Plaintiff shall effectuate service of papers on defendants by serving
11 copies on each of their counsel by overnight delivery service, electronic mail or hand
12 delivery.

13 Each attorney not a member of the Bar of this Court who is acting as counsel
14 for a plaintiff or defendant herein shall be deemed admitted pro hac vice to practice
15 before this Court in connection with these proceedings.

16 Lead Plaintiff shall file an amended complaint no later than 30 days from the
17 date of the entry of this Order, unless otherwise agreed between the parties or ordered
18 by the Court. All defendants shall have 30 days after the filing and service of the
19 amended complaint to answer or otherwise respond, unless otherwise agreed to
20 between the parties and approved by the Court.

21 **IT IS SO ORDERED.**

22 DATED: **OCT 17 2014**

*Denied without prejudice to be
determined at time of certification*

HONORABLE R. GARY KLAUSNER
UNITED STATES DISTRICT COURT JUDGE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

DENIED

IT IS SO ORDERED

OCT 17 2014

Dated

Jay Klausner

United States District Judge

28 CHINAAGRITECH:21134.PROP.ORDER