

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Marcia S. Krieger**

Civil Action No. 15-cv-00679-MSK-KMT

RONALD LORUSSO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

BOULDER BRANDS, INC.;
STEPHEN B. HUGHES;
JAMES B. LEIGHTON; and
CHRISTINE SACCO,

Defendants.

**OPINION AND ORDER GRANTING MOTION TO CONSOLIDATE AND APPOINT
LEAD PLAINTIFF**

THIS MATTER comes before the Court pursuant to the Oklahoma Police Pension & Retirement System's ("OPPRS") Motion to Consolidate (# 29) this action with *Insider Asset Management, LLC v. Boulder Brands, Inc.*, D.C. Colo. Civ. Case No. 15-cv-01043-CBS.

OPPRS also requests that it be appointed as Lead Plaintiff in the consolidated case and that its counsel be designated as lead counsel. No party or other person opposes OPPRS' motion.¹

This is a securities class action brought by shareholders of Defendant Boulder Brands, Inc. ("BB") alleging that BB and its officers made material misrepresentations about BB's anticipated earnings and related matters in 2014. Mr. LoRusso, a BB shareholder, commenced this action alleging securities fraud and control person claims under the Securities Act of 1934.

¹ Simultaneously with OPPRS' motion, Donna Johnson, another shareholder, moved (# 28) to consolidate the two cases and to have herself appointed Lead Plaintiff. Ms. Johnson's motion was denied (# 32) on procedural grounds, and Ms. Johnson did not refile it. Thereafter, Ms. Johnson indicated (# 34) that she does not oppose OPPRS' motion.

Separately, a shareholder named Insider Asset Management, LLC, commenced another action in this Court, making essentially the same allegations against the same Defendants. *Id.*

OPPRS then filed the instant motion, seeking: (i) to consolidate the *Insider Asset Management* case with this action; (ii) to appoint OPPRS as the Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B); and (iii) to appoint OPPRS' selected counsel as lead counsel for the consolidated action.

15 U.S.C. § 78u-4(a)(3)(B)(i) provides that the court “shall appoint as lead plaintiff the member or members of the purported plaintiff class that the Court determines to be the most capable of adequately representing the interest of class members.” The statute establishes a rebuttable presumption that “the most adequate plaintiff” to be appointed to lead a consolidated action is the person or entity that “has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(III)(I)(bb). The Court finds that OPPRS has the largest holding of BB's stock during the relevant time period, at least among those persons whose holdings are identified in the record.

Accordingly, the Court **GRANTS** OPPRS' Motion (# 29). The *Insider Asset Management* case, D.C. Colo. Civ. Case No. 15-cv-01043-CBS is **CONSOLIDATED** into this action. The Clerk shall note such consolidation and, because there will be no further proceedings in this action, shall close that case. The Court appoints OPPRS as the Lead Plaintiff in this action and grants OPPRS 30 days in which to file a Consolidated Class Action Complaint that will thereafter guide this litigation. The Court declines to affirmatively appoint or approve any particular “lead counsel.” OPPRS is entitled to select, retain, and, if appropriate, terminate counsel qualified to litigate this case, and the Court assumes that OPPRS has done so and will continue to do with the same degree of care that any litigant would exercise. At this point in

time, no party or class member has suggested that OPPRS' current counsel is unfit to continue to represent the class, and in the absence of such a suggestion, the Court will not question existing counsel's suitability.

Dated this 2d day of March, 2016.

BY THE COURT:



Marcia S. Krieger

Marcia S. Krieger
Chief United States District Judge