

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE HERALD, PRIMEO, AND THEMA
FUNDS SECURITIES LITIGATION

ECF Case

Case No. 09 Civ. 0289 (RMB) (HBP)

**PARTIAL OBJECTION OF LEAD PLAINTIFF NEVILLE SEYMOUR DAVIS
TO THE OCTOBER 5, 2009 ORDER APPOINTING LEAD COUNSEL**

Lead Plaintiff Neville Seymour Davis partially objects to the Court's October 5, 2009 Order (the "Order") and respectfully requests the appointment of Johnson Bottini, LLP as Lead Counsel as follows:

I. BACKGROUND

1. In the Order, the Court appointed Mr. Davis as Lead Plaintiff in *Perrone v. Benbassat*, No. 09 Civ. 2558 (RMB) (HBP).

2. The Court also appointed Mr. Davis's proposed Liaison Counsel, Murray, Frank & Sailer LLP, as Lead Counsel in the *Perrone* action on the basis that "only one lead attorney is necessary." Dkt. No. 60 at 17.¹

3. Mindful of the fact that Mr. Davis had requested that Johnson Bottini, LLP be appointed Lead Counsel, the Court granted him leave to make objections regarding counsel appointment. *See id.* n.11.

4. After having carefully reviewed the Order, Mr. Davis has decided to (a) withdraw his previous request to appoint Murray, Frank & Sailer LLP as Liaison Counsel; and (b) request that the Court approve his selection of Johnson Bottini, LLP as sole Lead Counsel.

¹ All citations to the docket refer to *Repex Ventures S.A. v. Madoff*, No. 09 Civ. 0289 (RMB) (HBP).

5. In support of his request, Mr. Davis submits (a) a Declaration dated October 9, 2009, attached to this partial objection as Exhibit A; and (b) a proposed order attached as Exhibit B.

II. ANALYSIS

6. The Court should grant Mr. Davis's request for three reasons.

7. First, as the Court recognized (Dkt. No. 60 at 6), Mr. Davis is entitled to "select and retain counsel to represent the class," subject to the Court's approval. 15 U.S.C. § 78u-4(a)(3)(B)(v).

8. Second, in similar cases, this Court has approved lead plaintiffs' choices of lead counsel based on the chosen law firms' qualifications, regardless of whether they are headquartered in New York. *See, e.g., Caijafa v. Sea Containers Ltd.*, Nos. 06 Civ. 2565 (RMB) *et al.*, 2006 U.S. Dist. LEXIS 57776, at *8 (S.D.N.Y. Aug. 14, 2006) (Berman, J.) (approving lead plaintiff's choice of a Philadelphia-based law firm as lead counsel). And as demonstrated in its firm resume, Johnson Bottini, LLP has in-depth experience in litigating securities class actions and has played a leadership role in numerous complex cases across the country, including cases in this District. *See* Dkt. No. 40 Ex. E.

9. Here, approval of Mr. Davis's selection of lead counsel is particularly appropriate because, as demonstrated in his October 9, 2009 Declaration (Ex. A) and his May 15, 2009 declaration (Dkt. No. 50), he has been working closely with attorneys at Johnson Bottini, LLP on this litigation and established a protocol to (a) manage counsel; and (b) "ensure that the attorneys' fees and expenses in this litigation will be fair and reasonable." Dkt. No. 50 ¶ 7.

10. Third, Mr. Davis makes this request because he shares the Court's concern over the potential inefficiency resulting from appointing multiple law firms as co-lead counsel. Ex. A ¶¶ 2-4.

III. CONCLUSION

11. The Court should grant Mr. Davis's request and amend the Order to reflect its approval of his selection of counsel. *See McNally v. Port Auth. of N.Y. & N.J.*, 414 F.3d 352, 381 (2d Cir. 2005) (stating that district courts have "the authority, as with any interlocutory order, 'to revise its order at any time before the entry of final judgment'").

12. Accordingly, Mr. Davis respectfully submits for the Court's signature a proposed order appointing Johnson Bottini, LLP as sole Lead Counsel in the *Perrone* action (Ex. B).

Dated: October 12, 2009

Respectfully submitted

JOHNSON BOTTINI, LLP

s/ Albert Y. Chang

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