

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAI JOCHIMS, Individually and on Behalf of	:	Civil Action No. 1:21-cv-06360-AKH
All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
OATLY GROUP AB, TONI PETERSSON,	:	
CHRISTIAN HANKE, FREDRIK BERG,	:	
STEVEN CHU, ANN CHUNG, BERNARD	:	
HOURS, HANNAH JONES, MATTIAS	:	
KLINTEMAR, PO SING (TOMAKIN) LAI,	:	
ERIC MELLOUL, BJÖRN ÖSTE, FRANCES	:	
RATHKE, YAWEN WU, and TIM ZHANG,	:	
	:	
Defendants.	:	

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FRANCESCA BENTLEY, Individually and on	:	Civil Action No. 1:21-cv-06485-AKH
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
OATLY GROUP AB, TONI PETERSSON,	:	
CHRISTIAN HANKE, FREDRIK BERG,	:	
STEVEN CHU, ANN CHUNG, BERNARD	:	
HOURS, HANNAH JONES, MATTIAS	:	
KLINTEMAR, PO SING (TOMAKIN) LAI,	:	
ERIC MELLOUL, BJÖRN ÖSTE, FRANCES	:	
RATHKE, YAWEN WU, and TIM ZHANG,	:	
	:	
Defendants.	:	

[Caption continued on following page.]

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CONSOLIDATION OF
RELATED ACTIONS, APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF
LEAD PLAINTIFF’S SELECTION OF LEAD COUNSEL

ANTHONY KOSTENDT, Individually and on : Civil Action No. 1:21-cv-07904-UA
Behalf of All Others Similarly Situated, :
 : CLASS ACTION
 :
Plaintiff, :
 :
vs. :
 :
 :
OATLY GROUP AB, TONI PETERSSON, :
CHRISTIAN HANKE, FREDRIK BERG, :
STEVEN CHU, ANN CHUNG, BERNARD :
HOURS, HANNAH JONES, MATTIAS :
KLINTEMAR, PO SING (TOMAKIN) LAI, :
ERIC MELLOUL, BJÖRN ÖSTE, FRANCES :
RATHKE, YAWEN WU, and TIM ZHANG, :
 :
Defendants. :
 :

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	2
III. ARGUMENT	3
A. This Court Should Consolidate the Related Actions	3
B. Hayden and Hipple Should Be Appointed Lead Plaintiff.....	3
1. Hayden and Hipple’s Motion Is Timely	4
2. Hayden and Hipple Have a Substantial Financial Interest in the Relief Sought by the Class	4
3. Hayden and Hipple are Typical and Adequate of the Purported Class	5
C. The Court Should Approve Hayden and Hipple’s Selection of Counsel.....	6
IV. CONCLUSION.....	8

TABLE OF AUTHORITIES

	Page
CASES	
<i>HsingChing Hsu v. Puma Biotechnology, Inc.</i> , No. 8:15-cv-00865-AG (C.D. Cal.)	8
<i>In re Am. Realty Capital Props., Inc. Litig.</i> , No. 1:15-mc-00040-AKH (S.D.N.Y. Jan. 21, 2020)	6, 7
<i>In re Cardinal Health, Inc. Sec. Litig.</i> , No. 2:04-cv-00575-ALM (S.D. Ohio)	8
<i>In re Enron Corp. Sec. Litig.</i> , No. 4:01-cv-03624 (S.D. Tex.)	8
<i>In re HealthSouth Corp. Sec. Litig.</i> , No. 2:03-cv-01500-KOB-TMP (N.D. Ala.).....	8
<i>In re Qwest Commc’ns Int’l, Inc. Sec. Litig.</i> , No. 1:01-cv-01451-REB-KLM (D. Colo.)	8
<i>In re UnitedHealth Group Inc. Sec. Litig.</i> , No. 0:06-cv-01691-JMR-FLN (D. Minn.).....	8
<i>In re Valeant Pharm. Int’l, Inc. Sec. Litig.</i> , No. 3:15-cv-07658-MAS-LHG (D.N.J.).....	7
<i>Jones v. Pfizer, Inc.</i> , No. 1:10-cv-03864-AKH (S.D.N.Y. July 30, 2015)	7
<i>Lawrence E. Jaffe Pension Fund v. Household Int’l Inc.</i> , No. 1:02-cv-05893 (N.D. Ill.)	8
<i>Lopez v. CTPartners Exec. Search Inc.</i> , 2015 WL 2431484 (S.D.N.Y. May 18, 2015)	5, 7
<i>NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.</i> , No. 1:08-cv-10783 (S.D.N.Y. May 2, 2016)	7
<i>Smilovits v. First Solar, Inc.</i> , No. 2:12-cv-00555-DGC (D. Ariz.).....	7

STATUTES, RULES AND REGULATIONS

15 U.S.C.

§78u-4(a)(1)	3
§78u-4(a)(3)(A)(i).....	4
§78u-4(a)(3)(B)(i).....	1, 3
§78u-4(a)(3)(B)(ii).....	1, 3
§78u-4(a)(3)(B)(iii).....	1
§78u-4(a)(3)(B)(iii)(I).....	4
§78u-4(a)(3)(B)(iii)(I)(cc).....	5
§78u-4(a)(3)(B)(v)	1, 6

Federal Rules of Civil Procedure

Rule 23	4, 5
Rule 42(a).....	1, 3

I. INTRODUCTION

The above-captioned cases are putative securities class actions on behalf of investors who purchased or otherwise acquired Oatly Group AB (“Oatly” or the “Company”) securities between May 20, 2021 and July 15, 2021 (the “Class Period”) alleging violations of the Securities Exchange Act of 1934 (the “1934 Act”) against defendants.¹ Pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the Court must decide whether to consolidate the Related Actions before selecting a movant to lead this litigation on behalf of the putative class. *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). As discussed below, the Related Actions should be consolidated pursuant to Rule 42(a) because they each involve virtually identical legal and factual issues.

Additionally, the PSLRA states that the Court “shall appoint the most adequate plaintiff as lead plaintiff.” *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). The lead plaintiff is the “member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members.” 15 U.S.C. §78u-4(a)(3)(B)(i). Mark D. Hayden and Bruce R. Hipple respectfully submit that they are the presumptively most adequate plaintiff in this case because they filed a timely motion in response to a notice, have the largest financial interest in the outcome of this litigation, and will typically and adequately represent the putative class’s interests. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii). In addition, Hayden and Hipple’s selection of Robbins Geller Rudman & Dowd LLP as lead counsel for the putative class is reasonable and should be approved. *See* 15 U.S.C. §78u-4(a)(3)(B)(v).

¹ The Related Actions are *Jochims v. Oatly Group AB*, No. 1:21-cv-06360 (filed on 7/26/2021); *Bentley v. Oatly Group AB*, No. 1:21-cv-06485 (filed on 7/30/2021); and *Kostendt v. Oatly Group AB*, No. 1:21-cv-07904 (filed on 9/22/2021).

II. FACTUAL BACKGROUND

Founded in 1994 and organized under the laws of Sweden, Oatly describes itself as the world's original and largest oatmilk company. Oatly held its initial public offering in the United States on or around May 20, 2021, raising \$1.4 billion for the Company. Oatly's American Depository Shares ("ADSs") are listed and trade on the NASDAQ Global Market under the ticker OTLY.

The complaints allege that throughout the Class Period, defendants made false and misleading statements and failed to disclose that: (i) Oatly overinflated its gross margins, revenue, capital expenditure, and market share financial metrics; (ii) Oatly overstated its sustainability practices and impact; (iii) Oatly exaggerated its growth in China; and (iv) as a result, Oatly's statements about its operations, business, and prospects were misleading during the Class Period.

On July 14, 2021, short seller Spruce Point Capital Management issued a report entitled, "Sour on an Oat-lier Investment" (the "Report"). Spruce Point brought to light a number of improprieties at Oatly, including that Oatly has wrongfully overstated a number of its financial metrics including revenue, gross margin, capital expenditures, and market share; its sustainability practices and impact; and its growth story in China, among other things. That same day and on the following day, July 15, 2021, a number of media outlets provided more coverage on the Report and its allegations about Oatly. For example, CNBC published a story entitled, "Oatly accused of overstating revenue and greenwashing by activist short Spruce Point" and highlighted how the Report had "observe[d] periods of large divergence in revenue and accounts receivable growth rates at Oatly. . . . This is a classic sign of potential accounting shenanigans and is often cited as a top red flag to predict accounting scandals." *Jochims*, ECF No. 1 at ¶52; *Bentley*, ECF No. 1 at ¶52; *Kostendt*, ECF No. 1 at ¶52. Similarly, *Fortune* published an article entitled, "Wild Oats? Inside

Spruce Point’s 124-Page Attack Alleging Mismanagement And False Claims At Oatly” and described the Report as “the results of an extensive investigation into Oatly.” *Jochims*, ECF No. 1 at ¶55; *Bentley*, ECF No. 1 at ¶55; *Kostendt*, ECF No. 1 at ¶55. On this news, the price of Oatly securities declined, damaging investors.

As a result of defendants’ wrongful acts and omissions, Hayden, Hipple, and other Oatly investors have suffered substantial losses.

III. ARGUMENT

A. This Court Should Consolidate the Related Actions

The PSLRA requires the Court to consolidate the Related Actions before appointing a lead plaintiff. *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). Consolidation pursuant to Rule 42(a) is proper when actions involve common legal and factual questions. Fed. R. Civ. P. 42(a).

The Related Actions present virtually identical factual and legal issues, alleging the same violations of the 1934 Act against the same defendants during the same Class Period. Because these Related Actions are based on the same facts and legal issues, the same discovery will pertain to the different cases. Thus, consolidation is appropriate here.

B. Hayden and Hipple Should Be Appointed Lead Plaintiff

The PSLRA establishes the procedure for the appointment of a lead plaintiff in “each private action arising under [the 1934 Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i). First, “[n]ot later than 20 days” after the complaint is filed, a notice must be published “in a widely circulated national business-oriented publication or wire service” advising members of the purported plaintiff class “of the pendency of the action, the claims asserted therein, and the purported class period” and that “not later than 60 days after the date on which the notice is published, any member

of the purported class may move the court to serve as lead plaintiff.” 15 U.S.C. §78u-4(a)(3)(A)(i). The statutory notice in this case was published on July 26, 2021. *See* Declaration of David A. Rosenfeld in Support of Motion for Consolidation of Related Actions, Appointment as Lead Plaintiff, and Approval of Lead Plaintiff’s Selection of Lead Counsel, Ex. 1 (“Rosenfeld Decl.”).

Next, the PSLRA provides that the Court shall adopt a presumption that the most adequate plaintiff is the person or group of persons 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). Hayden and Hipple meet these requirements and should be appointed Lead Plaintiff.

1. Hayden and Hipple’s Motion Is Timely

The July 26, 2021, statutory notice published in this case advised purported class members of the pendency of the action, the claims asserted, the proposed class period, and the right to move the Court to be appointed as lead plaintiff by September 24, 2021. *See* Rosenfeld Decl., Ex. 1. Because Hayden and Hipple’s motion has been filed by the statutory deadline, they are eligible for appointment as lead plaintiff.

2. Hayden and Hipple Have a Substantial Financial Interest in the Relief Sought by the Class

As reflected in their Certifications, Hayden and Hipple have a significant financial interest stemming from Hayden’s purchase of 2,730 Oatly call options and Hipple’s purchase of 11,992 Oatly ADSs during the Class Period, resulting in approximately \$862,837 in losses as a result of defendants’ alleged violations of the 1934 Act. *See* Rosenfeld Decl., Exs. 2, 3. To the best of

Hayden and Hipple's counsel's knowledge, there are no other plaintiffs with a larger financial interest.

3. Hayden and Hipple are Typical and Adequate of the Purported Class

In addition to possessing a significant financial interest, a lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). At this early stage of litigation, only typicality and adequacy are pertinent. *See Lopez v. CTPartners Exec. Search Inc.*, 2015 WL 2431484, at *2 (S.D.N.Y. May 18, 2015) (Engelmayer, J.).

“A lead plaintiff’s claims are typical where ‘each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.’” *Id.* (citation omitted). “A lead plaintiff is adequate where he ‘does not have interests that are antagonistic to the class that he seeks to represent and has retained counsel that is capable and qualified to vigorously represent the interests of the class that he seeks to represent.’” *Id.* (citation omitted).

Hayden and Hipple satisfy the typicality requirement as they seek to represent a class of similarly situated purchasers of Oatly securities and suffered a loss as a result of defendants’ alleged misconduct. Indeed, like all other class members, Hayden and Hipple: (1) purchased Oatly securities during the Class Period; (2) were adversely affected by defendants’ false and misleading statements and omissions; and (3) suffered damages thereby. In other words, Hayden and Hipple’s claims arise from the same alleged misconduct and are based on the same legal theory as the claims of other class members.

Hayden and Hipple also satisfy the adequacy requirement. Hayden is a sophisticated investor with 20 years of investing experience. *See Rosenfeld Decl.*, Ex. 4 at ¶2. He is a recently retired college administrator and is familiar with selecting and overseeing lawyers. *Id.* Hipple has nearly

45 years of investing experience and is also familiar with selecting and overseeing lawyers. *Id.* at ¶3. Hipple is a business owner, having founded his first company (a retail shoe store) in 1974. *Id.* Finally, as further detailed below and in their Declaration, Hayden and Hipple retained qualified and experienced proposed lead counsel to vigorously prosecute the case on behalf of the class. *Id.* at ¶4.

Because Hayden and Hipple filed a timely motion, have a large financial interest in the relief sought by the class, and demonstrated their typicality and adequacy, the Court should adopt the presumption that they are the “most adequate plaintiff.”

C. The Court Should Approve Hayden and Hipple’s Selection of Counsel

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to this Court’s approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). Hayden and Hipple have selected Robbins Geller to serve as lead counsel in this case.²

Robbins Geller, a 200-attorney nationwide law firm with offices in New York, regularly practices complex securities litigation. The Firm’s securities department includes numerous trial attorneys and many former federal and state prosecutors, and utilizes an extensive group of in-house experts to aid in the prosecution of complex securities issues. Courts throughout the country, including this Court, have noted Robbins Geller’s reputation for excellence, which has resulted in the appointment of Robbins Geller attorneys to lead roles in hundreds of complex class action securities cases. *See, e.g., In re Am. Realty Capital Props., Inc. Litig.*, No. 1:15-mc-00040-AKH, ECF No. 1316 at 55 (S.D.N.Y. Jan. 21, 2020) (Hellerstein, J.) (concerning Robbins Geller’s role as sole lead counsel in recovering \$1.025 billion for the class in a securities case, stating “the role of lead counsel was fulfilled in an extremely fine fashion by [Robbins Geller]. At every juncture, the

² For a detailed description of Robbins Geller’s track record, resources, and attorneys, please see <https://www.rgrdlaw.com>. An electronic or paper version of the Firm’s resume is available upon the Court’s request, if preferred.

representations made to me were reliable, the arguments were cogent, and the representation of their client was zealous.”); *Jones v. Pfizer, Inc.*, No. 1:10-cv-03864-AKH, ECF No. 502 at 42-43 (S.D.N.Y. July 30, 2015) (Hellerstein, J.) (commending Robbins Geller for its work in achieving \$400 million settlement on the eve of trial: “Without the quality and the toughness that you have exhibited, our society would not be as good as it is with all its problems. So from me to you is a vote of thanks for devoting yourself to this work and doing it well. . . . You did a really good job. Congratulations.”); *Lopez*, 2015 WL 2431484, at *3 (“Having reviewed [Robbins Geller’s] submissions as to its pertinent background and experience, including its experience litigating securities class actions, the Court finds that it is well qualified to serve as lead counsel.”); *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, No. 1:08-cv-10783, ECF No. 243 at 10-11 (S.D.N.Y. May 2, 2016) (Preska, J.) (concerning Robbins Geller’s role as sole lead counsel in recovering \$272 million for the class of MBS purchasers, stating: “Counsel, thank you for your papers. They were, by the way, extraordinary papers in support of the settlement,” and acknowledging “plaintiffs’ counsel’s success in the Second Circuit essentially changing the law. I will also note what counsel have said, and that is that this case illustrates the proper functioning of the statute. . . . Counsel, you can all be proud of what you’ve done for your clients. You’ve done an extraordinarily good job.”).

Notably, in 2020, Robbins Geller recovered more than \$1.4 billion on behalf of investors as sole lead counsel in securities class action cases, including \$1.02 billion in *Am. Realty* and \$350 million in *Smilovits v. First Solar, Inc.*, No. 2:12-cv-00555-DGC (D. Ariz.). And, in 2021, Robbins Geller, as sole lead counsel, has secured final approval of a \$1.21 billion recovery in *In re Valeant Pharm. Int’l, Inc. Sec. Litig.*, No. 3:15-cv-07658-MAS-LHG (D.N.J.). Robbins Geller attorneys have obtained the largest securities fraud class action recovery in the Fifth, Sixth, Seventh, Eighth,

Tenth, and Eleventh Circuits, as well as a 2019 PSLRA class action trial victory in *HsingChing Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865-AG (C.D. Cal.), where the jury returned a verdict for plaintiff, finding that defendants Puma Biotechnology, Inc. and its CEO committed securities fraud.³

As such, Hayden and Hipple's selection of Robbins Geller as lead counsel is reasonable and should be approved.

IV. CONCLUSION

The Related Actions are virtually identical and should be consolidated. In addition, Hayden and Hipple have satisfied each of the PSLRA's requirements for appointment as lead plaintiff. Accordingly, Hayden and Hipple respectfully request that the Court grant their motion.

DATED: September 24, 2021

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
DAVID A. ROSENFELD

s/ David A. Rosenfeld
DAVID A. ROSENFELD

³ See *In re Enron Corp. Sec. Litig.*, No. 4:01-cv-03624 (S.D. Tex.) (\$7.3 billion recovery is largest securities class action recovery in U.S. history and in the Fifth Circuit); *In re Cardinal Health, Inc. Sec. Litig.*, No. 2:04-cv-00575-ALM (S.D. Ohio) (\$600 million recovery is the largest securities class action recovery in the Sixth Circuit); *Lawrence E. Jaffe Pension Fund v. Household Int'l Inc.*, No. 1:02-cv-05893 (N.D. Ill.) (\$1.575 billion recovery is the largest securities class action recovery ever following a trial as well as the largest securities class action recovery in the Seventh Circuit); *In re UnitedHealth Group Inc. Sec. Litig.*, No. 0:06-cv-01691-JMR-FLN (D. Minn.) (\$925 million recovery is the largest securities class action recovery in the Eighth Circuit); *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, No. 1:01-cv-01451-REB-KLM (D. Colo.) (\$445 million recovery is the largest securities class action recovery in the Tenth Circuit); *In re HealthSouth Corp. Sec. Litig.*, No. 2:03-cv-01500-KOB-TMP (N.D. Ala.) (\$671 million recovery is the largest securities class action recovery in the Eleventh Circuit).

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 24, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ David A. Rosenfeld

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