UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

SARAH VON COLDITZ, Derivatively on Behalf of EXXON MOBIL CORPORATION, Plaintiff, v. DARREN W. WOODS, ANDREW P. SWIGER, DAVID S. ROSENTHAL, JEFFREY J. WOODBURY, STEVEN S. REINEMUND, MICHAEL J. BOSKIN, SAMUEL J. PALMISANO, KENNETH C. FRAZIER, URSULA M. BURNS, HENRIETTA H. FORE, WILLIAM C. WELDON, REX W. TILLERSON, WILLIAM W. GEORGE, LARRY R. FAULKNER, DOUGLAS R. OBERHELMAN, and PETER BRABECK-LETMATHE, Defendants, -and- EXXON MOBIL CORPORATION, a New Jersey corporation, Nominal Defendant.	Case No. 3:19-cv-01067-K Judge Ed Kinkeade Demand for Jury Trial

[Caption continues on next page]

SAMUEL MONTINI, Derivatively on Behalf of EXXON MOBIL CORPORATION, Plaintiff, v. DARREN W. WOODS, ANDREW P. SWIGER, DAVID S. ROSENTHAL, JEFFREY J. WOODBURY, STEVEN S. REINEMUND, MICHAEL J. BOSKIN, SAMUEL J. PALMISANO, KENNETH C. FRAZIER, URSULA M. BURNS, HENRIETTA H. FORE, WILLIAM C. WELDON, REX W. TILLERSON, WILLIAM W. GEORGE, LARRY R. FAULKNER, DOUGLAS R. OBERHELMAN, and PETER BRABECK-LETMATHE, Defendants, -and- EXXON MOBIL CORPORATION, a New Jersey corporation, Nominal Defendant.	Case No. 3:19-cv-01068-K Judge Ed Kinkeade Demand for Jury Trial

PLAINTIFF SAMUEL MONTINI'S MOTION FOR CONSOLIDATION AND APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL

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Pursuant to Federal Rule of Civil Procedure 42(a) and Local Rule 7.1, proposed lead plaintiff Samuel Montini ("Plaintiff" or "Montini") respectfully submits this motion for an order: (i) consolidating the above-captioned shareholder derivative actions; (ii) appointing Montini as "Lead Plaintiff" in the consolidated derivative action; and (iii) approving Montini's selection of Johnson Fistel, LLP ("Johnson Fistel") as lead counsel ("Lead Counsel").[1]

I. SUMMARY OF ARGUMENT

On May 2, 2019, two separate but related actions were brought derivatively on behalf of nominal defendant Exxon Mobil Corporation ("Exxon" or the "Company") in the Northern District of Texas, Dallas Division. The "Montini Action" was filed by Plaintiff Montini, a shareholder of the Company. The "Von Colditz Action" was filed by Sarah Von Colditz ("Von Colditz"), also a holder of Exxon common stock. The Montini Action and the Von Colditz Action are collectively referred to herein as the "Derivative Actions" and proposed "Consolidated Derivative Action".

Courts have long recognized that consolidation of shareholder actions alleging similar facts can be beneficial to the court and the parties by expediting pretrial proceedings, avoiding duplication and minimizing expenditure of time and money. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (the power to consolidate related actions falls within the broad authority of every court "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"). The Derivative Actions present substantially identical issues,

[1] Counsel for Plaintiff Montini have conferred with Defendants' counsel regarding the relief requested in this Motion. Defendants' counsel confirmed that Defendants support consolidation and appointment of a lead counsel and a lead plaintiff but take no position on who should be appointed. Defendants also stated that their consent was subject to a reservation of rights to challenge the adequacy of any proposed representative at a later stage of the Consolidated Derivative Action.

transactions and occurrences and relate to whether certain former and current Exxon directors and officers breached their fiduciary duties owed to Exxon and its shareholders. Accordingly, the Derivative Actions have the same motion practice, discovery, and trial issues, making consolidation a logical step to maximize judicial economy and justice.

Next, a court may appoint a plaintiff leadership structure to coordinate the prosecution of complex litigation. *See City of Pompano Beach Gen. Emps. Ret. Sys. v. Synovus Fin. Corp.*, No. 1:09-cv-01811-JOF, 2009 U.S. Dist. LEXIS 112014 (N.D. Ga. Dec. 1, 2009). Here, the Derivative Actions are sufficiently complex to warrant the appointment of a lead plaintiff to protect the interests of Exxon and its shareholders, and Montini is qualified, able, and willing to fulfill this role.

Finally, Montini's selection of lead counsel should be approved. A court may appoint counsel to direct, manage, and prosecute a complex case, such as a shareholder derivative action. *See Ramirez v. J.C. Penney Corp.*, No. 6:14-CV-601, 2014 U.S. Dist. LEXIS 198780, at *3-4 (E.D. Tex. Aug. 20, 2014) (citing *MacAlister v. Guterma*, 263 F.2d 65, 68-69 (2d Cir. 1958)) (recognizing the "benefits of appointing lead counsel include eliminating duplication and repetition."). The proposed Lead Plaintiff's selection of proposed Lead Counsel, Johnson Fistel, has distinguished itself in the area of complex shareholder litigation over many years and is well-equipped to lead this litigation. *See* Johnson Fistel's resume (attached as Exhibit A to the Appendix of Exhibits in Support of Plaintiff Samuel Montini's Motion for Consolidation and Appointment of Lead Plaintiff and Lead Counsel ("App.")).

Accordingly, for the reasons discussed herein, the Court should grant the motion, consolidate the Derivative Actions, and appoint Montini and his counsel, Johnson Fistel, as Lead Plaintiff and Lead Counsel, respectively.

II. BACKGROUND

A. Factual Background

Exxon is the world's largest oil company and one of the ten largest companies in the world. Exxon has three primary business segments: (i) an upstream segment, which includes its exploration and production operations; (ii) a downstream segment, which includes its refineries and retail operations; and (iii) a chemicals segment, which includes the manufacturing and sale of various petrochemicals.[2] Exxon's upstream business segment was historically responsible for the majority of the Company's profits, but this trend reversed dramatically in 2016. ¶ 73.

The Complaint alleges the Defendants caused or knowingly permitted Exxon to make improper statements, which artificially inflated the Company's stock price.[3] Specifically, Defendants made or knowingly allowed the Company to make improper statements concerning the value and profitability of Exxon's reserve assets and the specific actions certain defendants were supposedly taking to protect those assets from the risks posed by climate-related policies and declining commodity prices. ¶¶ 179-309.

These improper statements included misrepresentations concerning the methods Exxon purportedly used to value and evaluate its reserves, and omissions regarding the significant impact historic price declines had on some of the Company's key operations, thereby portraying Exxon's

[2] ¶ 72. All references to "¶ __" refer to Plaintiff Montini's Verified Shareholder Derivative Complaint (the "Complaint") filed on May 2, 2019 in this District. *See* ECF No. 1.

[3] The Derivative Actions name the following "Individual Defendants": Darren W. Woods, Andrew P. Swiger, David S. Rosenthal, Jeffrey J. Woodbury, Steven S. Reinemund, Michael J. Boskin, Samuel J. Palmisano, Kenneth C. Frazier, Ursula M. Burns, Henrietta H. Fore, William C. Weldon, Rex W. Tillerson, William W. George, Larry R. Faulkner, Douglas R. Oberhelman, and Peter Brabeck-Letmathe. Collectively, Nominal Defendant Exxon and the Individual Defendants are referred to herein as the "Defendants."

reserves as far more valuable than they actually were. For example, certain defendants told the market that Exxon "address[ed] the potential for future climate-related controls, including the potential for restriction on emissions," through the use of a singular tool: a "proxy cost of carbon." ¶¶ 5, 10. Defendants further stated that this same proxy cost was aimed at "quantify[ing]" potential costs to "investment opportunities" and was required to be used by "all business units" in "evaluating capital expenditures and developing business plans." ¶ 123. In truth, however, Exxon actually used a separate, undisclosed set of proxy costs for its internal planning purposes that was significantly lower than the proxy costs described in defendants' representations. Moreover, for certain assets, Exxon used no proxy costs at all in connection with its investment, impairment and valuation processes. Indeed, defendants' undisclosed practices allowed them to portray Exxon's reserves as safer and more valuable than they were. ¶¶ 16-18, 128-137.

In addition to misleading the market about Exxon's use of proxy costs in formulating business and investment plans, the Complaint alleges Exxon made additional improper statements by failing to: (i) recognize an impairment of its Rocky Mountain dry gas operations in 2015, despite a number of red flags arising in 2015 that indicated Exxon's Rocky Mountain dry gas operations were impaired; (ii) disclose that Exxon's Canadian Bitumen Operations operated at a loss for three months; and (iii) inform or sufficiently warn investors of the high likelihood that the Company's Kearl Operations would be de-booked by year-end 2016. ¶¶ 20, 48, 317, 339. The truth was revealed through a series of partial disclosures, ultimately compelling Exxon to de-book nearly 20% of its proved reserves and record an astounding $3.3 billion pre-tax impairment charge on its dry gas operations. ¶ 11.

This wrongdoing ultimately wasted Exxon's assets, caused it to needlessly expend substantial sums of money, and caused the Company to incur substantial damage. ¶¶ 338-43. The Complaint alleges that the improper statements have: devastated Exxon's credibility as reflected by the Company's almost $14.9 Billion, or 4.14%, market capitalization loss (¶ 339); impaired its ability to raise equity capital or incur debt on favorable terms (¶ 340); caused the expenditure of significant sums of money for government and private investigations and litigation (¶ 341); decreased its credit rating (¶342); and wasted compensation on the Individual Defendants. ¶ 342.

B. Procedural Background

The Derivative Actions were filed on May 2, 2019 on behalf of nominal defendant Exxon against certain of its current and former officers and directors and subsequently transferred to this Court. The Derivative Actions allege that the Individual Defendants breached their fiduciary duties to the Company and seek damages and other relief on Exxon's behalf, as well as corporate governance reforms to prevent the recurrence of similar misconduct. Prior to filing their complaints, both plaintiffs in the Derivative Actions made a shareholder demand upon the Company's directors (the "Board") and more than 90 days have expired since such demands. ¶¶ 318-322.

A related securities class action was filed on behalf of a proposed class of harmed investors ("Related Securities Class Action") and a Consolidated Complaint for Violations of the Federal Securities Laws was filed on July 26, 2017. On August 14, 2018, this Court issued its Memorandum Opinion and Order in the Related Securities Class Action (Dkt. No. 62 in Civil Action No. 3:16-cv-03111-K) finding the lead plaintiff adequately pleaded securities fraud claims

under Section 10(b), Rule 10b-5, Section 20(a) against Exxon, Tillerson, Defendant Andrew P. Swiger, and David S. Rosenthal, and under Section 20(a) against Jeffrey J. Woodbury. ¶¶ 19-21.

III. ARGUMENT

A. Consolidation Is Appropriate As The Derivative Actions Raise Common Questions Of Fact And Law

Plaintiff Montini requests consolidation of the Derivative Actions pursuant to Federal Rule of Civil Procedure 42(a), which states, "if actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." The power to consolidate related actions falls within the broad authority of every court "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis*, 299 U.S. at 254.

Courts consider several factors when determining whether consolidation is appropriate, including: "(1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law or fact, (4) whether there is risk of prejudice or confusion if the cases are consolidated, and if so, whether the risk is outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, and (5) whether consolidation will conserve judicial resources and reduce the time and cost of trying the cases separately." *Pfeffer v. HAS Retail, Inc.*, No. 11 Civ. 959 (XR), 2012 U.S. Dist. LEXIS 14698, at *2-3 (W.D. Tex. Feb. 6, 2012).

The courts have also recognized that "[t]he concern is to avoid duplication, possibly conflicting rulings, and piecemeal resolution of issues . . . where related cases are pending before two judges in the same district." *United States Football, Inc. v. Robinson*, No. 03 Civ. 4858 (NFA),

2004 U.S. Dist. LEXIS 28089, at *4-5 (S.D. Tex. Feb. 3, 2004) (*citing Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 950 (5th Cir. 1997)). Moreover, "when consolidation is appropriate, the Court has the discretion to order the consolidation of subsequently-filed or transferred cases that allege similar facts as those alleged in the current shareholder derivative suits." *Horn v. Raines*, 227 F.R.D. 1, 2 (D.D.C. 2005).

Here, consolidating the Derivative Actions will undoubtedly serve the interests of judicial economy and overall efficiency by reducing repetition, duplication, and inconsistent rulings. Currently, the Derivative Actions, as well as the Related Securities Class Action, are pending in this Court.[4] The Derivative Actions present substantially identical issues and relate to whether Exxon's directors and certain senior officers breached their fiduciary obligations to the Company concerning the value and profitability of Exxon's reserve assets and the specific actions certain defendants were supposedly taking to protect those assets from the risks posed by climate-related policies and declining commodity prices. As a result, these cases will involve essentially the same motion practice, discovery, and trial considerations.

Moreover, no "substantial rights" of any party will be prejudiced by consolidation. In fact, the rights of the parties to a speedy discovery process, consistent adjudications, and cooperative discovery efforts will enhance all parties' rights to a fair and equitable adjudication of their dispute.

[4] Although consolidation of the related Derivative Actions is appropriate under Fed. R. Civ. P. 42(a), these actions are not suitable for consolidation with the Related Securities Class Action. *See, e.g., Molever v. Levenson*, 539 F.2d 996, 1003 (4th Cir. 1976) (holding that consolidation of a securities action, a derivative action, and a defamation action did not comport with the aim of Fed. R. Civ. P. 42(a), and the effects of the consolidation were "severely harmful and so serious as to require vacation of the verdicts and reversal of the judgments in this segment of the litigation").

Indeed, all parties will benefit from the efficiencies, coordination of effort, and consistency of adjudication that consolidation of the related Derivative Actions will bring. *See In re Enron Corp., Securities Litigation*, 206 F.R.D. 427, 438 (S.D. Tex. 2002) (finding that consolidation, at least for pretrial purposes, would serve to promote an orderly progression of very complex litigation, particularly because discovery necessarily involved overlapping defendants and a common core of facts and legal issues that all related to the same purported scheme and course of conduct); *see Fla. Marine Transporters, Inc. v. Barberich*, No. 07 Civ. 3604, 2008 U.S. Dist. LEXIS 12249, at *4 (E.D. La. Feb. 15, 2008) (agreeing that judicial efficiency and economy, as well as the interests of justice, would be served by consolidating the actions and ordering the cases to be consolidated).

For the foregoing reasons, consolidation of the related Derivative Actions is appropriate.

B. Plaintiff Montini Should Be Appointed As Lead Plaintiff For The Consolidated Derivative Action

Shareholders who lead a derivative suit (perhaps because of the statutory requirement that the shareholder must "fairly and adequately" represent the corporation's interests) occupy a position "of a fiduciary character," in which "[t]he interests of all in the redress of the wrongs are taken into his hands, dependent upon his diligence, wisdom and integrity." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549 (1949). As stated by one Fourth Circuit court:

> In a shareholder's derivative action, Federal Rule of Civil Procedure 23.1 states a lead plaintiff must "fairly and adequately represent the interest[s] of the shareholders . . . in enforcing the right of the corporation or association." *Horn v. Raines*, 227 F.R.D. 1, 3 (D.D.C. 2005) (second alteration in original) (quoting Fed. R. Civ. P. 23.1).

Wright v. Krispy Kreme Doughnuts, Inc., 232 F.R.D. 528, 530 (M.D.N.C. 2005).

While statutory authority does not require the appointment of lead plaintiff(s) in a shareholder

derivative action, "[t]he court should seek appropriate leadership structure to coordinate the litigation and avoid duplication." *In re Doral Fin. Corp. Sec. Litig.*, No. 05 MDL 1706 (RO), 2006 U.S. Dist. LEXIS 24647, at *8–9 (S.D.N.Y. Apr. 27, 2006) (*citing MacAlister v. Guterma*, 263 F.2d 65, 68–69 (2d Cir. 1958)); *Pompano Beach*, 2009 U.S. Dist. LEXIS 112014 (same).

Here, appointing a lead plaintiff is appropriate in the Consolidated Derivative Action. The transactions and occurrences forming the heart of the related Derivative Actions (including misconduct related to Exxon's purported use of a proxy cost of carbon to evaluate and value its business decisions and assets) are vast and complex. The harm to Exxon arises, in part, from the government and private investigations and lawsuits filed against Exxon in response to the Defendants misconduct, including the Related Securities Class Action and the New York Office of the Attorney General's investigation and lawsuit. Accordingly, the appointment of a lead plaintiff will allow the Company's shareholders to speak with a unified voice and advance Exxon's claims against the alleged wrongdoers in the most efficient way possible.

To serve as a lead plaintiff, a shareholder must "fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association." Fed. R. Civ. P. 23.1. "Analyzing a plaintiff's fitness to be lead plaintiff is determined under various factors including (1) whether the plaintiff held shares during the relevant time period; (2) whether the plaintiff is represented by capable counsel; and (3) whether the plaintiff is subject to unique defenses that would make appointment problematic." *Wright*, 232 F.R.D. at 530 (internal citations omitted).

Plaintiff Montini has a strong financial interest in ensuring the Consolidated Derivative Action is vigorously prosecuted and that Exxon's interests are adequately protected. For example, Montini has expressly represented to this Court, *inter alia*: (1) when he first acquired his Exxon

shares (since 1993) and that he has continuously held Exxon shares since that time; (2) that he will retain his "Exxon shares throughout the duration of the Derivative Actions"; (3) that he will "place the Company's best interests ahead" of his own personal interests "at all times"; (4) that he acknowledges his "fiduciary duties with respect to the Company" as a derivative plaintiff; and (5) that he is "interested in the Derivative Action" to "protect the long-term value of Exxon for the benefit of its shareholders." *See* Declaration of Samuel Montini in Support of the Motion for Consolidation and Appointment of Lead Plaintiff and Lead Counsel (App., Exhibit B).

Significantly, Plaintiff Von Colditz supports the appointment of Montini as Lead Plaintiff and his selection of Johnson Fistel as Lead Counsel. *See* Declaration of Sarah Von Colditz in Support of the Motion for Consolidation and Appointment of Lead Plaintiff and Lead Counsel (App., Exhibit C).

Given the complexities of the allegations asserted in the Derivative Actions, along with the size and complications of the anticipated coordinated litigation, the appointment of a lead plaintiff to oversee and manage the prosecution of the Consolidated Derivative Action is appropriate to protect the interests of Exxon and its shareholders.

C. Johnson Fistel Should Be Appointed As Lead Counsel

Plaintiff Montini proposes that the Court exercise its discretion to approve his proposed selection of Johnson Fistel as Lead Counsel and Ron Wells as Local Counsel for the Consolidated Derivative Action. Together, Johnson Fistel and Ron Wells will promote the efficient and orderly prosecution of the derivative claims asserted in the Consolidated Derivative Action for the benefit of Exxon and its shareholders.

It is well-established that a court may appoint counsel to direct, manage, and prosecute a complex case, such as a shareholder derivative action. *See In re Wells Fargo Wage & Hour Emp't Practices Litig.*, 2011 U.S. Dist. LEXIS 159953, at *11 (S.D. Tex. Dec. 19, 2011) (courts have "a great deal of flexibility with regard to appointing representative counsel; for instance, one attorney may serve as lead, liaison, and trial counsel, or the function of lead attorney may be split among several attorneys."). Indeed, many courts recognize the "benefits of appointing lead counsel include eliminating duplication and repetition." *Ramirez*, 2014 U.S. Dist. LEXIS 198780, at *3 (citing *MacAlister v. Guterma*, 263 F.2d 65, 68-69 (2d Cir. 1958)); *see also Manual For Complex Litigation*, Fourth ("MCL 4th") §10.22 ("[m]ore often, however, the court will need to institute procedures under which one or more attorneys are selected and authorized to act on behalf of the other counsel and their clients with respect to specified aspects of the litigation.").

The *Manual for Complex Litigation* recognizes the benefits of appointing lead counsel in complex, multiparty litigation:

> Complex litigation often involves numerous parties with common or similar interests but separate counsel. Traditional procedures in which all papers and documents are served on all attorneys, and each attorney files motions, presents arguments, and examines witnesses, may waste time and money, confuse and misdirect the litigation, and burden the court unnecessarily. Instituting special procedures for coordination of counsel early in the litigation will help to avoid these problems.

MCL 4th § 10.22.

1. Proposed Lead Counsel Has Sufficient Experience In Shareholder Derivative Litigation And The Resources Necessary To Litigate The Consolidated Derivative Action

Plaintiff Montini has selected Johnson Fistel to serve as Lead Counsel. Although no statutory authority exists setting the criteria to select lead counsel for derivative actions, courts in

the Fifth Circuit and throughout the country commonly consider the factors outlined in Fed. R. Civ. P. 23(g) when appointing lead counsel in complex litigation. *See Ramirez,* 2014 U.S. Dist. LEXIS 198780, at *4 ("courts consider: '(1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class.'").

Other considerations for selecting lead counsel in complex litigation "may include: '(1) the quality of the pleadings; (2) the vigorousness of the prosecution of the lawsuits; and (3) the capabilities of counsel.'" *Ramirez*, 2014 U.S. Dist. LEXIS 198780, at *4 (quoting *In re Comverse Tech., Inc. Derivative Litig.,* Case No. 06-cv-1849 (NGG) (RER), 2006 U.S. Dist. LEXIS 94235, 2006 WL 3761986, at *2-3 (E.D.N.Y. Sept. 22, 2006)). Finally, in making a leadership appointment for a complex action, courts can determine whether counsel "'[is] qualified and responsible, ... [whether] they will fairly and adequately represent all of the parties on their side, and ... [whether] their charges will be reasonable.'" *Id.* at *4 (quoting *In re Bear Stearns Co., Inc. Securities, Derivative, & Employee Retirement Income Security Act (ERISA) Litig.*, 08 M.D.L. No. 1963 (RWS), 2008 U.S. Dist. LEXIS 106327, 2009 WL 50132, at *11 (quoting Manual for Complex Litigation § 10.22)).

Here, the factors weigh strongly in favor of appointing Johnson Fistel as Lead Counsel. Johnson Fistel, a national law firm with offices located in California, Georgia, and New York, has a long-standing track record of achieving excellent results in litigation on behalf of corporations and their shareholders. *See* App., Exhibit A (Johnson Fistel Firm Resume). The firm's litigation practice areas include: (i) securities class and direct actions in federal and state courts;

(ii) corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; (iii) mergers and acquisitions and transactional litigation; (iv) civil rights and employment discrimination; (v) consumer class actions; and (vi) antitrust litigation.

Notably, the firm has been retained not only by shareholders, but also by publicly-traded companies, to pursue former directors for breaches of fiduciary duty in a number of matters. For example, in February 2012, Johnson Fistel filed a derivative action on behalf of Powerwave Technologies, Inc. ("Powerwave") in California, where the company is based. When the company went into bankruptcy, Johnson Fistel, based upon its track record of success, was retained by the U.S. Chapter 7 Trustee of Powerwave, and approved by the U.S. Bankruptcy Court for the District of Delaware in *In re Powerwave Technologies, Inc.*, Case No. 13-10134 (MFW). In that role, Johnson Fistel secured a $5.5 million settlement for the estate.

The Powerwave matter followed on the heels of a similar matter where the U.S. Chapter 7 Trustee of Artes Medical, Inc. ("Artes") in San Diego retained Johnson Fistel to pursue claims for breach of fiduciary duty against Artes' former officers and directors. After years of hard-fought litigation on behalf of the estate in bankruptcy, Johnson Fistel negotiated a multi-million-dollar settlement, which the bankruptcy court approved. In finding that "[t]here's no question in my mind that this settlement is in the best interest of this Estate," the Honorable Laura S. Taylor stated that, "I want to compliment Mr. Johnson, and I want to compliment on the successful recovery for the Estate. The creditors thank you, and I thank you."

Because of its experience representing *both* shareholders *and* corporations, Johnson Fistel stands apart from other plaintiffs-side securities firms in this arena. Indeed, Johnson Fistel has a sterling reputation in the field of shareholder litigation, with a long track record of success in

derivative actions, like this one, and has the resources to litigate the Consolidated Derivative Action to trial, if necessary.

Johnson Fistel's recent successes in shareholder derivative cases include *Bagot and Steinberg v. Bracken*, Case No. 11C5133 (Tenn. Cir. Ct., 6th Cir.), where, serving as sole lead counsel in a case brought against certain current and former officers and directors of HCA Holdings, Inc. ("HCA"), the largest private hospital chain in the country, Johnson Fistel secured a settlement which included a payment of $19 million to the company, the appointment of a new independent director, and implementation of significant corporate therapeutics. In *In re MannKind Corporation Derivative Litigation*, Lead Case No. 11-cv-05003-GAF-SSx (C.D. Cal.), after two years of litigation, Johnson Fistel was able to resolve the case on favorable terms with the implementation of significant corporate therapeutic changes, including the creation of a new Board-level Disclosure & Controls Committee and significant enhancements to financial reporting requirements. Yet another example includes *Singh v. Hsu*, Case No. 1-13-cv-243247 (Cal. Super. Ct. Santa Clara Cnty.), where Johnson Fistel secured a significant settlement on behalf of Impax Laboratories, Inc. requiring the implementation of corporate governance reforms, significantly enhancing reporting and oversight at the Board, officer, and employee level.

Johnson Fistel has also had success in a derivative action adjudicated before this Court, where your Honor noted that the "quality of representation by the Derivative Plaintiffs' Counsel [Johnson Fistel] was witnessed first hand by this Court through their articulate, high quality, and successful pleadings. Moreover, as shown by their excellent efforts in this case, Derivative Plaintiffs' Counsel are dedicated to vindicating the rights of shareholders." *In re Heelys, Inc.*

Derivative Litigation, Case No. 3:07-CV-1682 (N.D. Tex.) (granting final approval of a settlement agreement that required the company to implement sweeping improvements to its governance).

Moreover, Johnson Fistel was recently appointed lead counsel in the following shareholder derivative actions: (i) *In re United States Steel Corporation Derivative Litig.* No. 2:17-cv-01005-CB (W.D. Pa.); (ii) *In re TrueCar, Inc. S'holder Derivative Litig.* No. 1:19-cv-617 (D. Del.); (iii) *In re Costco S'holder Derivative Litig*., No. 19-2-04824-7 (Wash. Super. Ct., King Cnty.); (iv) *In re HD Supply Holdings, Inc. Derivative Litig.*, No. 1:17cv-02977-MLB (N.D. Ga.); (v) *Whitten v. Fleetcor Technologies, Inc., et al.*, No. 1:17-cv-02585-LMM (N.D. Ga.); and (vi) *In re Southern Company S'holder Derivative Litig.*, No. 1:17-cv-00725-MHC (N.D. Ga.).

These are but a few of Johnson Fistel's most recent lead counsel appointments and successes. The vast experience and success of Johnson Fistel demonstrates the competence of the firm to help lead this litigation. In sum, Johnson Fistel possesses the financial resources, personnel, and substantive expertise necessary to litigate the Consolidated Derivative Action vigorously and effectively and will be in close communication with the Court and all parties as necessary.

2. Proposed Lead Counsel Has Demonstrated A Commitment To Identifying And Investigating Potential Claims

With respect to the first 23(g) factor, Johnson Fistel has already taken substantial steps in prosecuting the Consolidated Derivative Action, such as by conducting an investigation into the facts of the case, which included, *inter alia*, a review of the Company's financial statements, press releases, SEC filings, and investor communications. Johnson Fistel has filed a thorough, well-researched complaint on behalf of Exxon. Based on their extensive experience in bringing and pursuing derivative claims such as those asserted in the Derivative Actions, Johnson Fistel fully

understands the substantial investment of time and resources necessary to properly pursue and lead the Consolidated Derivative Action and are fully committed to such investment here.

3. The Record of Proposed Local Counsel Ron Wells

Proposed Local Counsel Ron Wells is a Dallas Trial Lawyer with over 35 years of trial experience. Mr. Wells has prosecuted and defended literally thousands of cases, both small and complex. He has represented hundreds of clients, from CEOs, CFOs, attorneys, doctors, securities brokers, real estate brokers, office managers, advertising executives, business owners, and people from every walk of life. Mr. Wells has tried hundreds of cases including 85 jury trials. He began his career as a prosecutor in the Dallas County District Attorney's Office under legendary District Attorney Henry Wade. Mr. Wells was licensed in 1980 by the Texas Supreme Court and is admitted to the Eastern and Northern Districts of Texas Federal Courts. He is rated A.V. by *Martindale Hubbell* and was listed in the "Bar Register of Preeminent Lawyers."

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the attached [Proposed] Order Consolidating Related Derivative Actions, Appointing Lead Plaintiff, and Appointing Lead Counsel.

Dated: May 31, 2019

JOHNSON FISTEL, LLP

/s/ Michael I. Fistel, Jr.

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Attorneys for Proposed Lead Plaintiff Samuel Montini and Proposed Lead Counsel

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Plaintiff Montini conferred with counsel for Plaintiff Von Colditz and counsel for Defendants on the merits of this motion and will be filing this motion unopposed. Moreover, counsel for Defendants confirmed that while they support consolidation and appointment of a lead (or co-lead) counsel, they take no position on who should be appointed.

Dated: May 31, 2019

/s/ Michael I. Fistel, Jr.
MICHAEL I. FISTEL, JR.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on May 31, 2019.

Dated: May 31, 2019

/s/ Michael I. Fistel, Jr.
MICHAEL I. FISTEL, JR.