

Hearing Date: June 30, 2021 at 11:00 a.m. Eastern Time
Objection Deadline: June 23, 2021 at 4:00 p.m. Eastern Time

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Counsel to the Lead Securities Plaintiffs

Counsel to the Reorganized Debtors

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

	X	
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , ¹	:	Case No. 20-12212 (MEW)
	:	
Debtors.	:	Jointly Administered
	:	
	X	

**NOTICE OF AMENDED JOINT MOTION FOR CLASS TREATMENT OF LEAD
SECURITIES PLAINTIFFS' PROOF OF CLAIM AND RELATED RELIEF**

PLEASE TAKE NOTICE that on the date hereof, Garrett Motion Inc. and its affiliated reorganized debtors (collectively, the "Debtors"), and The Gabelli Asset Fund, The Gabelli Dividend & Income Trust Fund, The Gabelli Value 25 Fund Inc., and GAMCO Asset Management, Inc. (the "Lead Securities Plaintiffs" and, together with the Debtors, the "Parties") filed the *Amended Joint Motion for Class Treatment of Lead Securities Plaintiffs' Proof of Claim and Related Relief* (the "Motion").

PLEASE TAKE FURTHER NOTICE that the Motion seeks entry of an order, pursuant to Fed. R. Bankr. P. 7023, 9014(c), and 9019:

¹ The last four digits of Garrett Motion Inc.'s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, which are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kcellc.net/garrettmotion>. The Debtors' corporate headquarters is located at La Pièce 16, Rolle, Switzerland.



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(1) Authorizing class treatment of Lead Securities Plaintiffs' proof of claim against GMI (the "Class Claim") to permit pursuit of claims on behalf of a putative class of GMI securities holders consisting of, irrespective of whether individual proofs of claim were filed with the Bankruptcy Court as required by the Securities Claims Bar Date:

All Holders of Claims against Garrett Motion Inc. classified in the Debtors' confirmed Plan as Class 10 – Section 510(b) Claims arising from rescission of a purchase or sale of common stock of GMI or for damages arising from the purchase or sale of common stock of GMI from October 1, 2018 through September 18, 2020, but not including Claims for reimbursement or contribution by current or former directors and officers (the "GMI Securities Claims Class");

(2) Modifying the Plan injunction set forth in Section 11.11 of the Debtors' confirmed Plan to enable the assertion, adjudication and liquidation of the Class Claim in the currently pending consolidated securities litigation captioned *In re Garrett Motion Inc. Securities Litigation*, Case No. 1:20-cv-07992 (JPC) (S.D.N.Y.) (the "District Court Action"); and

(3) Limiting recoveries by or on behalf of the proposed GMI Securities Claims Class members on account of any Allowed Section 510(b) Claims to the Debtors' available Insurance Policy limits.

PLEASE TAKE FURTHER NOTICE that none of the relief requested in the Motion affects the rights of any Holder of Section 510(b) Claims to opt-out from the proposed GMI Securities Claims Class as permitted in the District Court Action under non-bankruptcy law, and no class is being certified by the Bankruptcy Court;

PLEASE TAKE FURTHER NOTICE that the undersigned counsel will present the Motion to the Honorable Michael E. Wiles, United States Bankruptcy Court for the Southern District of New York (the "Court") at a hearing to be held on **June 30, 2021 at 11:00 a.m. (Eastern Time)** (the "Hearing").

PLEASE TAKE FURTHER NOTICE that any responses or objections (the “Objections”) to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the Southern District of New York and shall be filed with the Court in accordance with the customary practices of the Court and General Order M-399. Objections must be filed and received no later than **June 23, 2021 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”) and must be served on the following parties: and must be served on the following parties:

(a) counsel to the Debtors, Sullivan & Cromwell LLP, Attn: Brian D. Glueckstein (gluecksteinb@sullcrom.com); (b) counsel to the Lead Securities Plaintiffs, Entwistle & Cappucci LLP, Attn: Andrew J. Entwistle (aentwistle@Entwistle-Law.com); (c) the Office of the United States Trustee for the Southern District of New York, Attn: Benjamin Higgins, Esq. (Benjamin.J.Higgins@ust.doj.gov); and (d) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that only those objections that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection may result in the entry of an order granting the relief requested in the Motion without further notice. Failure to attend the Hearing in person or by counsel may result in relief being granted or denied upon default. In the event that no objection to the Motion is timely filed and served, the relief requested in the Motion may be granted without a hearing before the Court.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained from the Court's website, <https://ecf.nysb.uscourts.gov>, for a nominal fee, or obtained free of charge by accessing the website of the Debtors' claims and noticing agent, <http://www.kcellc.net/garrettmotion>.

Dated: June 9, 2021
New York, New York

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Counsel to the Lead Securities Plaintiffs

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**UNITED STATES BANKRUPTCY COURT
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**AMENDED JOINT MOTION FOR CLASS TREATMENT OF LEAD
SECURITIES PLAINTIFFS' PROOF OF CLAIM AND RELATED RELIEF**

¹ The last four digits of Garrett Motion Inc.'s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, which are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors' corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

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Pursuant to Rule 9014(c), Rule 7023, and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Garrett Motion Inc. (“GMI”) and its affiliated reorganized debtors (collectively, the “Debtors”), and The Gabelli Asset Fund, The Gabelli Dividend & Income Trust Fund, The Gabelli Value 25 Fund Inc., and GAMCO Asset Management, Inc. (the “Lead Securities Plaintiffs” and, together with the Debtors, the “Parties”) hereby file this *Amended Joint Motion for Class Treatment of Lead Securities Plaintiffs’ Proof of Claim and Related Relief* (the “Motion”). In support of the Motion, the Parties respectfully state as follows:

Preliminary Statement

1. The Debtors and Lead Securities Plaintiffs have reached a mutually beneficial agreement to class treatment of the Lead Securities Plaintiffs’ proof of claim to permit the assertion, adjudication, and, if necessary, liquidation of Section 510(b) Claims against GMI on a class-wide basis in the pending consolidated securities litigation, *In re Garrett Motion Inc. Securities Litigation*, Case No. 1:20-cv-07992 (JPC) (S.D.N.Y.) (the “District Court Action”). In return, the Lead Securities Plaintiffs and their counsel have agreed that any recovery by or on behalf of members of the proposed GMI Securities Claims Class (as defined below) on account of such members’ Allowed Section 510(b) Claims under the Plan² shall be limited to the Debtors’ available Insurance Policy limits.

2. Addressing these securities claims against GMI, which substantially overlap with the claims pending in the District Court Action against current and former officers

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Plan”) [D.I. 1160, Ex. A]. The Plan defines “Section 510(b) Claims” as “any Claim against GMI arising from or related to Existing Common Stock having the same priority as Existing Common Stock pursuant to section 510(b) of the Bankruptcy Code.”

and directors, through Lead Securities Plaintiffs' Class Claim in the District Court Action eliminates the need for the Debtors and the Court to incur the cost and burden of attempting to liquidate the more than approximately 1,200 individual Section 510(b) Claims that were filed against GMI in connection with the established Bar Dates. Proceeding in this manner will enable all securities claims related to GMI to be litigated once together in the District Court Action, thereby promoting judicial efficiency and eliminating the possibility of inconsistent results.

3. Critically, as a condition to consenting to the class treatment of the Lead Securities Plaintiffs' proof of claim, the Debtors also obtain certainty that they will not pay out-of-pocket on account of Section 510(b) Claims of the GMI Securities Claims Class members because any recoveries on those claims is limited to any available insurance proceeds. The rights of all putative class members to seek to opt-out of the class under non-bankruptcy law are fully preserved and unaffected by the agreement to cap recoveries on claims against GMI to any available insurance proceeds.

4. To facilitate this efficient structure, on April 22, 2021, the Parties submitted a joint letter seeking an abatement of the schedule in the District Court Action while the Parties pursue this Motion. U.S. District Court Judge Cronan granted the request, holding the motion deadlines in that action in abeyance pending this Court's ruling on the Motion and being advised whether the Lead Securities Plaintiffs will file a Second Amended Complaint in the District Court Action to add the Section 510(b) Claims against GMI.³

³ A copy of Judge Cronan's April 22, 2021 order is attached hereto as Exhibit B. A subsequent order, dated May 25, 2021, attached hereto as Exhibit C, continued the abeyance of deadlines to permit the Court's consideration of this amended Motion.

5. As a result, the Debtors and Lead Securities Plaintiffs respectfully request that the Court enter the Proposed Order attached hereto as Exhibit A, which the Parties submit is in the best interests of the Debtors, their creditors, and all other parties in interest.

Background

6. On September 20, 2020, GMI and each of its affiliated Debtors filed with the United States Bankruptcy Court for the Southern District of New York (the “Court”) a voluntary petition for relief under title 11 of the Bankruptcy Code. Each Debtor managed its assets as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code through the Chapter 11 Cases. The Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Related Chapter 11 Cases* [D.I. 27] entered by the Court on September 21, 2020.

7. On October 5, 2020, Lead Securities Plaintiffs filed a purported class action complaint in the Southern District Court of New York commencing the District Court Action, naming current and former officers and directors of GMI as defendants, and alleging breaches of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5. *See Gabelli Asset Fund v. Lu*, Case No. 20-cv-8296 (JPC) (S.D.N.Y.). Other similar class actions were also filed and ultimately consolidated into one class action on January 21, 2021 by U.S. District Judge Cronan, who, on an evidentiary record, also appointed the Lead Securities Plaintiffs as lead plaintiffs of the purported plaintiff class and Entwistle & Cappucci LLP as their lead counsel (“Lead Counsel”). *In re Garrett Motion Inc. Securities Litigation*, Case No. 20-cv-7992 (S.D.N.Y.), Opinion and Order, dated January 21, 2021 [D.I. 27] (the “District Court Order”, attached hereto as Exhibit D).

8. Judge Cronan observed that that the Lead Securities Plaintiffs are the presumptive lead plaintiff under the Private Securities Litigation Reform Act (“PSLRA”) and have

the largest financial interest in the case among the available plaintiffs. (District Court Order at 6-7.) The District Court further concluded that the Lead Securities Plaintiffs “otherwise satisfy the typicality and adequacy requirements of Rule 23” because, among other reasons, they (i) “appear to seek the relief and advance the same course of events” as other class members; (ii) “there is nothing in the record that suggests the Gabelli Entities have conflicts with other class members”; and (iii) “they are institutional investors who have an allegedly large financial stake in the outcome of the case.” (*Id.* at 7.)

9. The District Court also appointed Lead Counsel as counsel to represent the class at the request of the Lead Securities Plaintiffs, observing that “class counsel appears competent and experienced” and, following a review of Lead Counsel’s credentials, concluded that “Entwistle & Cappucci is well qualified to serve as lead counsel in this matter.” (District Court Order at 8.)

10. On December 17, 2020, the Court entered an order establishing a deadline of March 1, 2021 for filing securities proofs of claim (“Securities Claims Bar Date”) against the Debtors with respect to GMI common stock. [D.I. 560.] On March 1, 2021, the Lead Securities Plaintiffs filed a class proof of claim against GMI on behalf of investors who purchased or otherwise acquired common GMI stock from October 1, 2018 to September 18, 2020 and allegedly suffered losses from the conduct alleged in the consolidated amended complaint filed in the District Court Action (the “Class Claim”). [Claim No. 2037.]

11. More than approximately 1,200 other individual securities proofs of claims asserting Claims classified as Class 10 – Section 510(b) Claims under the Plan were filed in connection with the Securities Bar Date and the other Bar Dates set by the Court.

12. On April 23, 2021, the Court confirmed the Debtors' Plan, and on April 26, 2021, entered the *Findings of Fact, Conclusions of Law and Order Confirming the Debtors' Amended Joint Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Confirmation Order") [D.I. 1161]. The Effective Date of the Plan occurred on April 30, 2021, at which time the Debtors successfully reorganized and emerged from bankruptcy.

13. Section 4.3.10 of the Plan provides that Holders of Section 510(b) Claims, except to the extent that a Holder agrees to less favorable treatment, shall be entitled to receive "(x) its Pro Rata share of the aggregate Cash payments received or recoverable from any Insurance Policies on account of any Section 510(b) Claims and (y) solely to the extent that such payments are less than the amount of its Allowed 510(b) Claim, payment in full of the remaining amount of its Allowed 510(b) Claim, at the option of the Reorganized Debtors, in Cash or a number of shares of GMI Common Stock at a value of \$6.25 per share." (Plan § 4.3.10.)

14. The Parties now jointly request that the Court exercise its discretion under Bankruptcy Rule 9014 to authorize class treatment and application of Bankruptcy Rule 7023 to the Class Claim, and to modify the Plan's injunction provision to allow the filing of an amended complaint to name GMI as a defendant to pursue claims against GMI on behalf of the putative GMI Securities Claims Class (as defined below), and thereafter adjudication and any necessary liquidation of those Section 510(b) Claims. Consideration of the Lead Plaintiffs' request to certify the putative GMI Securities Claims Class will occur in the District Court Action. The adjudication of the Class Claim, or any settlement thereof, would effectively resolve most, if not all, of the Section 510(b) Claims.

15. The Parties' agreement to proceed with class treatment of the Class Claim and adjudication in the District Court Action is contingent on this Court also approving the

consensual agreement to cap the Debtors' exposure to available insurance proceeds for those Section 510(b) Claims of Holders included in the proposed GMI Securities Claims Class and covered by the Class Claim. Notice of this Motion has been provided to all known members of the putative class.

Jurisdiction

16. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicate for the relief requested herein are Bankruptcy Rules 7023, 9014, and 9019, and section 105 of the Bankruptcy Code.

Relief Requested

17. By this Motion, the Parties jointly seek entry of the Proposed Order, pursuant to Bankruptcy Rules 9014, 7023, and 9019 (i) authorizing class treatment of Lead Securities Plaintiffs' Class Claim against GMI on behalf of the putative GMI Securities Claims Class; (ii) modifying the Plan injunction set forth in Section 11.11 of the Plan to enable the assertion, adjudication and liquidation of the Class Claim in the District Court Action; and (iii) limiting recoveries by or on behalf of proposed GMI Securities Claims Class members to the Debtors' available Insurance Policy limits.

Basis for Relief

I. The Court Should Exercise its Discretion Under Rule 9014(c) to Apply Rule 7023 to the Class Claim

18. Bankruptcy Rule 9014(c) provides that "[t]he Court may at any stage in a particular matter direct that one or more of the rule in Part VII (of the Federal Rules of Bankruptcy Procedure) shall apply." This includes directing the application of Bankruptcy Rule 7023, which

imports Rule 23 of the Federal Rules of Civil Procedure concerning class proceedings and class certification.

19. A party may move the Court to exercise its discretion to apply Rule 7023 “any time after the chapter 11 case [is] filed.” *In re Ephedra Prods. Liab. Litig.*, 329 B.R. 1, 8 (Bankr. S.D.N.Y. 2005). Three factors inform the Court’s decision as to whether to extend the application of Rule 23 of the Federal Rules of Civil Procedure to a proof of claim, including “(1) whether the class was certified pre-petition; (2) whether the members of the putative class received notice of the bar date; and (3) whether class certification will adversely affect the administration of the [estate].” *In re Musicland Holding Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007) (internal quotation marks and citations omitted).

20. The third factor, whether class treatment will adversely affect the administration of the estate is the principal consideration afforded the greatest weight, and is dispositive here. *See In re The Connaught Grp., Ltd.*, 491 B.R. 88, 98 (Bankr. S.D.N.Y. 2013) (holding that “the principal consideration must be the effect of the class certification on the administration for the estate”); *see also In re PG&E Corp.*, 2020 WL 5626038, at *2 (Bankr. N.D. Cal. Feb. 24, 2020) (denying Rule 7023 motion and reasoning, in part that “[t]he third factor is of particular importance to this bankruptcy—it is unclear at this point whether class certification will adversely affect administration of the estate”).

21. This factor is often invoked by debtors in opposition to class treatment of a claim. The facts and circumstances of these Chapter 11 Cases present the unique circumstances where it is in the best interests of *all* parties-in-interest to apply Bankruptcy Rule 7023 and permit the Class Claim to proceed on the terms of the Parties’ agreement. The Parties have agreed that

the Lead Securities Plaintiffs will pursue Section 510(b) Claims against GMI through the Class Claim in the District Court Action on behalf of :

All Holders of Claims against Garrett Motion Inc. classified in the Debtors' confirmed Plan as Class 10 – Section 510(b) Claims arising from rescission of a purchase or sale of common stock of GMI or for damages arising from the purchase or sale of common stock of GMI from October 1, 2018 through September 18, 2020, but not including Claims for reimbursement or contribution by current or former directors and officers (the "GMI Securities Claims Class").

22. The Debtors support entry of the Proposed Order and have filed this Motion jointly with counsel for the Lead Securities Plaintiffs because application of Bankruptcy Rule 7023 to the Class Claim will permit the securities claims against GMI, which substantially overlap with the securities claims pending against current and former officers and directors of GMI, to be adjudicated and, if necessary, liquidated, in the pending District Court Action. The relief requested in this Motion is supported by the Plan Sponsors. Moreover, the same insurance policies also cover both sets of claims. Therefore, having all claims pending in the same forum will streamline not only adjudication of all securities claims relating to GMI, but also potential resolution with the insurance carrier if that becomes necessary.

23. The Debtors are not agreeing to permit class treatment of the Class Claim in a vacuum. Rather, their agreement to proceed with class claim treatment with respect to the securities claims against GMI and to adjudicate that class claim in the District Court Action is contingent on the Lead Securities Plaintiffs and Lead Counsel agreement that any recovery by or on behalf of the proposed GMI Securities Claims Class members on account of Section 510(b) Claims, including by settlement or judgment, shall be limited to the Debtors' available Insurance Policy limits, subject to any individual claimant's right to opt-out of the proposed class in the District Court Action under non-bankruptcy law. Therefore, the Debtors are protected with the certainty that no member of the GMI Securities Claims Class shall seek to collect on account of

any Section 510(b) Claim from GMI or any source other than the Debtors' available Insurance Policy limits. This is important protection for the Debtors as they emerge from bankruptcy and embark on their post-chapter 11 operations.

24. In addition, the Debtors, their stakeholders, and the Court all benefit from not having to incur the cost and burden of attempting to liquidate the more than approximately 1,200 individual Section 510(b) Claims that were filed against GMI in connection with the Bar Dates established by this Court. Needing to both administer and adjudicate the merits of each individual Section 510(b) Claim would also present a potentially insurmountable hurdle in engaging the Debtors' insurance carriers to resolve all of those Claims, and could lead to inconsistent results with the related claims (for which the Debtors have indemnification obligations) already pending and proceeding in the District Court Action. By authorizing a class claim and modifying the Plan injunction in Section 11.11 to permit liquidation of that Class Claim through the District Court Action, both the Debtors and the Holders will benefit from having most, if not all, of the Section 510(b) Claims resolved efficiently in a single action.

25. Individual members of the proposed GMI Securities Claims Class will still retain the right to opt out of the putative class and any settlement, to the extent permitted in the District Court Action in accordance with applicable non-bankruptcy law. The Parties do not anticipate that many (if any) would elect to opt out, given the ability to have their claims liquidated in the District Court Action as part of a class and the modification of the Section 11.11 Plan injunction. To the extent a claimant does opt out, however, the claimant shall be subject to Section 11.11 Plan injunction, and any Section 510(b) Claim of that claimant will have to be adjudicated and liquidated in this Court.

26. Although the Debtors did set a Securities Claims Bar Date upon notice to potential members of the GMI Securities Claims Class, that factor should not weigh against the relief requested based on the facts and circumstances here. *Cf. In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 22 (Bankr. E.D. Pa. 1995) (“[I]f the putative unnamed class members have clearly received actual or constructive notice of the bankruptcy case and the bar date, denial of the . . . class proof of claim device appears advisable”). Rather, the significant number of individual securities claims filed against GMI in connection with the Bar Dates demonstrate the need for an orderly, consolidated, and efficient adjudication of the facts and legal issues upon which those claims are based.

27. The pending District Court Action—which will proceed in any event—provides both a venue and an efficient process to resolve the Section 510(b) Claims of the proposed GMI Securities Claims Class members, and the Class Claim should be authorized.⁴

II. The Cap on Recoveries Against GMI to Available Insurance is Reasonable

28. The Parties have agreed that in return for the Debtors’ agreement to permit class treatment of the Class Claim and adjudication of those claims in the District Court Action, the Lead Securities Plaintiffs agreed to limit recoveries on account of any Allowed Section 510(b) Claims on or on behalf of GMI Securities Claims Class members to the Debtors’ available Insurance Policy limits. This limitation was an important consideration for the Debtors in agreeing to consent to class treatment of the Class Claim and to permit the Lead Securities Plaintiffs to pursue claims against GMI in the District Court Action on behalf of the putative GMI Securities Claims Class.

⁴ The final *Musicland* factor, whether a class was certified pre-petition, is not relevant where, as here, the need for a “class [is] created by the bankruptcy itself.” *In re MF Global Inc.*, 512 B.R. 757, 763 (Bankr. S.D.N.Y. 2014).

29. At the May 18, 2021 hearing to consider the Parties' original motion, the Court expressed its view that the limitation on recoveries constituted a partial settlement of claims to which members of the putative class are entitled to receive notice. (May 18, 2021 Hr'g Tr. at 18:6-9, 18:20-19:1) [D.I. 1225]. The Debtors have provided notice of this Motion to all identified potential Holders of Section 510(b) Claims who are members of the proposed GMI Securities Claims Class.

30. To satisfy Bankruptcy Rule 9019, the Court should determine that a proposed settlement—here only a partial settlement of the Class Claim—is fair and equitable, reasonable, and in the best interests of the Debtors' estate. *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd* 17 F.3d 600 (2d Cir. 1994) (citing *Protective Comm. for Indep. Stockholders of TMI Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)). The Second Circuit long-ago established that a bankruptcy court, in determining whether to approve a compromise, is not required to decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (internal citations omitted).

31. The Parties' agreement, including the partial settlement limiting recoveries against GMI to available insurance proceeds, is fair and falls well within the range of reasonableness. As detailed above, the Debtors and all Holders of Section 510(b) Claims benefit from procedural and judicial efficiencies from litigating the Class Claim against GMI in the pending District Court Action. In addition, the Debtors agreement to class treatment of the Class Claim permits all proposed class members—not only those who filed individual Section 510(b) Claims on or prior to the Securities Bar Date—to potentially recover through the Class Claim from

available Insurance Policy proceeds that, if subsequently certified in the District Court Action, is proposed to include in the GMI Securities Claims Class:

All Holders of Claims against Garrett Motion Inc. classified in the Debtors' confirmed Plan as Class 10 – Section 510(b) Claims arising from rescission of a purchase or sale of common stock of GMI or for damages arising from the purchase or sale of common stock of GMI from October 1, 2018 through September 18, 2020, but not including Claims for reimbursement or contribution by current or former directors and officers.

32. The limitation on recoveries against GMI to available Insurance Policy limits is plainly in the Debtors' interests, and an appropriate compromise in return for permitting the Class Claim to proceed with class treatment. The Debtors have negotiated at arm's-length for the certainty that no member of the putative GMI Securities Claims Class shall seek to collect from GMI or any source other than the available Insurance Policy limits. This limitation is clearly in the Debtors' interests because it eliminates any existing uncertainty as to whether the Debtors might be required to satisfy Allowed Section 510(b) Claims against GMI beyond insurance proceeds, in accordance with the terms of the Plan.

33. Moreover, in addition to receiving notice of this Motion and the specific limitation on Section 510(b) Claims recoveries being sought, this Court is not being asked to certify a class at this time and therefore all members of the putative GMI Securities Claims Class retain the right to seek to opt-out from the class (and thus the Class Claim) under non-bankruptcy law if and when class certification is presented for consideration in the District Court Action.

Notice

34. Notice of this Motion has been provided to all identified potential Holders of Section 510(b) Claims who are members of the putative GMI Securities Claims Class, including, but not limited to, (i) claimants who purported to file securities proofs of claim in accordance with any of the Court's Bar Dates at the notice addresses provided in such proofs of

claim, (ii) all registered holders of common stock of GMI as of December 2020, (iii) all registered holders that purchased or otherwise acquired common stock of GMI from October 1, 2018 through the Petition Date, and (iv) all beneficial holders of common stock as of December 2020 through the holders' respective brokers and agents. Notice also has been provided to: (a) the Office of the United States Trustee for the Southern District of New York, Attn: Benjamin Higgins, Esq; (b) counsel to Honeywell International Inc., Kirkland & Ellis LLP, Attn: Nicole L. Greenblatt, P.C., Mark McKane, P.C. and Joseph M. Graham; (c) counsel to Oaktree Capital Management, L.P. and Centerbridge Partners, L.P., as Plan Sponsors, Milbank LLP, Attn: Dennis F. Dunne, Andrew M. Leblanc and Andrew C. Harmeyer; (d) counsel to the Additional Investors, Jones Day, Attn: Anna Kordas, Bruce Bennett, Joshua M. Mester and James O. Johnston; and (e) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. The Parties submit that, in light of the nature of the relief requested, no other or further notice need be provided.

Conclusion

35. WHEREFORE, for the reasons set forth herein, the Parties respectfully request that the Court (a) grant the Motion and enter the Proposed Order substantially in the form attached hereto as Exhibit A; and (b) grant such other and further relief as is just and proper.

Dated: June 9, 2021
New York, New York

/s/ Brian D. Glueckstein

Andrew G. Dietderich
Brian D. Glueckstein
Alexa J. Kranzley
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Counsel to the Reorganized Debtors

/s/ Andrew J. Entwistle

Andrew J. Entwistle
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Email: jporter@entwistle-law.com

Counsel to the Lead Securities Plaintiffs

EXHIBIT A

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

_____	X	
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , ¹	:	Case No. 20-12212 (MEW)
	:	
Debtors.	:	Jointly Administered
	:	
_____	X	

**ORDER GRANTING AMENDED JOINT MOTION FOR CLASS CLAIM TREATMENT
OF LEAD PLAINTIFFS' PROOF OF CLAIM AND RELATED RELIEF**

Upon the amended joint motion (the "Motion")² of Garrett Motion Inc. ("GMI") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), and The Gabelli Asset Fund, The Gabelli Dividend & Income Trust Fund, The Gabelli Value 25 Fund Inc., and GAMCO Asset Management, Inc. (collectively, the "Lead Securities Plaintiffs"), for entry of an order (this "Order"), (i) authorizing class treatment of Lead Securities Plaintiffs' proof of claim against GMI, (ii) modifying the Plan injunction as set forth in Section 11.11 of the Plan to enable the assertion, adjudication and liquidation of the Class Claim in the District Court Action, and (iii) limiting recoveries by or on behalf of proposed GMI Securities Claims Class members to the Debtors' available Insurance Policy limits; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter

¹ The last four digits of Garrett Motion Inc.'s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, which are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors' corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

² Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and therefore no other or further notice is necessary; and any objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Lead Securities Plaintiffs' Proof of Claim [claim no. 2037] is authorized as a class claim (the "Class Claim").
3. The Debtors and the Lead Securities Plaintiffs have agreed, and it is so ordered, that any recovery by or on behalf of the proposed GMI Securities Claims Class members on account of any Allowed Section 510(b) Claims, including by settlement or judgment, shall be limited to the Debtors' available Insurance Policy limits.
4. The injunction set forth in Section 11.11 of the Plan is modified for the limited purposes of permitting the Lead Securities Plaintiffs, (i) to file an amended class action complaint naming GMI as a defendant and to assert claims against GMI in *In re Garrett Motion Inc. Secs. Litig.*, Case No. 20-cv-7992 (S.D.N.Y.) (the "District Court Action") on behalf of the proposed GMI Securities Claims Class; and (ii) to adjudicate and, if necessary, liquidate Section

510(b) Claims asserted by or on behalf of the proposed GMI Securities Claims Class members through the Class Claim in the District Court Action.

5. Nothing in this Order shall preclude any individual proposed member of the proposed GMI Securities Claims Class from opting out of the class or any settlement in connection therewith, to the extent permitted in the District Court Action in accordance with applicable non-bankruptcy law, *provided, however*, that absent further order of this Court, any opt-out claim shall be subject to the injunction set forth in Section 11.11 of the Plan and shall be adjudicated and liquidated in this Court.

6. The Debtors are authorized and empowered to take all actions necessary to implement and effectuate the relief granted in this Order.

7. The requirements set forth in Local Rule 9013-1(b) are satisfied.

8. This Court shall retain jurisdiction with respect to any and all matters, claims, rights or disputes arising from or related to the Motion, this Order, or the implementation of this Order. This Court also shall retain jurisdiction with respect to the Section 510(b) Claims, including to adjudicate and liquidate such Claims to the extent not resolved in the District Court Action.

Dated: _____, 2021
New York, New York

The Honorable Michael E. Wiles
United States Bankruptcy Judge

EXHIBIT B

ENTWISTLE & CAPPUCCI LLP
230 Park Avenue, 3rd Floor
New York, NY 10169

QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington, D.C. 20005

April 22, 2021

VIA ECF AND EMAIL

The Honorable John P. Cronan
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1320
New York, NY 10007

Re: *In re Garrett Motion Inc. Securities Litigation*, Case No. 1:20-cv-07992 (JPC)

Dear Judge Cronan:

The undersigned counsel write to request a brief abatement of the briefing schedule on defendants' motion(s) to dismiss in order to resolve issues regarding related claims in the Garrett Motion Inc. ("GMI" or the "Debtor") bankruptcy pending before Judge Wiles in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

Lead Plaintiffs and the Debtor have agreed to jointly seek from the Bankruptcy Court: (1) relief from the automatic stay under 11 U.S.C. § 362(a)(1) and the injunction contained in the Debtor's plan of reorganization (as each may be applicable), so that Lead Plaintiffs can add Debtor GMI as a defendant in this action; (2) an order to certify securities claims filed in the bankruptcy against GMI and preserved under the current plan of reorganization (so-called "Section 510(b) claims") as a class under Fed. R. Bankr. P. 7023 (with Lead Plaintiffs as a class representative and lead counsel as class counsel); and (3) authorization to adjudicate the Section 510(b) Claims (which substantially overlap with the claims presently before this court and which include class and individual claims filed by Lead Plaintiffs and other putative class members in the bankruptcy) through Lead Plaintiffs' class action before your Honor. This will enable all securities claims related to GMI to be litigated in this class action, thereby promoting judicial efficiency, and eliminating the possibility of inconsistent results.

The parties expect this motion to be heard by the Bankruptcy Court in mid-May and, if granted, Lead Plaintiffs will file their amended complaint adding GMI as a defendant within twenty (20) days of that order. Defendants will then file their motion to dismiss against the complaint within twenty (20) days.

Once the Bankruptcy Court grants the relief, the parties will provide the Court with an updated proposed scheduling order that uses the same briefing intervals as in the existing schedule proceeding from the filing of the motion(s) to dismiss as noted above. In the event the Bankruptcy Court denies the motion, the parties will immediately update the Court and prepare to proceed with briefing which Defendants will file within 14 days of such order.

Hon. John P. Cronan
April 22, 2021
Page 2 of 2

We are available to answer any questions the Court may have.

Respectfully submitted,

/s/ Andrew J. Entwistle
Entwistle & Cappucci LLP

*Counsel for Lead Plaintiffs The
Gabelli Asset Fund, The Gabelli
Dividend & Income Trust, The
Gabelli Value 25 Fund Inc. and
GAMCO Asset Management Inc.*

/s/ Michael Carlinsky
Quinn Emanuel Urquhart
& Sullivan, LLP

*Counsel for Olivier Rabiller,
Alessandro Gili, Peter Bracke,
Sean Deason, Russell James,
Carlos Cardoso, Maura Clark,
Courtney Enghausen, Susan Main,
Carsten Reinhardt, Scott Tozier
and Garrett Motion Inc.*

cc. Rachel Fritzler, Kirkland & Ellis LLP
(Counsel for Defendant Su Ping Lu)

The parties' request is granted. The briefing deadlines for Defendants' motion to dismiss are held in abeyance pending the Bankruptcy Court's decision. The parties are directed to file a status letter within 14 days of the Bankruptcy Court's decision, apprising the Court as to whether Plaintiffs will be filing a Second Amended Complaint and including a proposed updated briefing schedule for Defendants' motion to dismiss.

SO ORDERED.

Date: April 22, 2021
New York, New York


JOHN P. CRONAN
United States District Judge

EXHIBIT C

ENTWISTLE & CAPPUCCI LLP
230 Park Avenue, 3rd Floor
New York, NY 10169

QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington, D.C. 20005

May 25, 2021

VIA ECF AND EMAIL

The Honorable John P. Cronan
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1320
New York, NY 10007

The parties' request is granted. The abeyance of the briefing deadlines for Defendants' motion to dismiss shall be continued. The parties are directed to file a status letter with this Court within 14 days of the Bankruptcy Court's decision.

SO ORDERED.

Date: May 25, 2021

New York, New York



JOHN P. CRONAN
United States District Judge

Re: *In re Garrett Motion Inc. Securities Litigation*, Case No. 1:20-cv-07992 (JPC)

Dear Judge Cronan:

Undersigned counsel write to provide an update pursuant to the Court's March 26, 2021 Order (the "Order") (ECF No. 36) concerning the May 18, 2021 hearing before Judge Wiles in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on the joint motion filed by Lead Plaintiffs and debtor Garrett Motion, Inc. ("Garrett") seeking, among other things, to lift the automatic stay under 11 U.S.C. § 362(a)(1) to allow Lead Plaintiffs to adjudicate securities claims against Garrett as part of the above-captioned class action (the "Motion").

At the hearing, Judge Wiles continued the Motion until June 30, 2021. Accordingly, undersigned counsel respectfully request the abatement of the schedule in the Court's March 26, 2021 Order be continued. The parties will further update the Court following the June 30, 2021 hearing before the Bankruptcy Court.

We are available to answer any questions the Court may have.

Respectfully submitted,

/s/ Andrew J. Entwistle
Entwistle & Cappucci LLP

Counsel for Lead Plaintiffs The Gabelli Asset Fund, The Gabelli Dividend & Income Trust, The Gabelli Value 25 Fund Inc. and GAMCO Asset Management Inc.

/s/ Michael Carlinsky
Quinn Emanuel Urquhart
& Sullivan, LLP

Counsel for Olivier Rabiller, Alessandro Gili, Peter Bracke, Sean Deason, Russell James, Carlos Cardoso, Maura Clark, Courtney Enghauser, Susan Main, Carsten Reinhardt, Scott Tozier and Garrett Motion Inc.

cc. Rachel Fritzler, Kirkland & Ellis LLP
(Counsel for Defendant Su Ping Lu)

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

STEVEN HUSSON, *individually and on behalf of all*
others similarly situated,

Plaintiff,

-v-

GARRETT MOTION INC., OLIVIER RABILLER,
ALLESANDRO GILI, PETER BRACKE, SEAN
DEASON, and SU PING LU,

Defendants.

-----X

-----X

THE GABELLI ASSET FUND, THE GABELLI
DIVIDEND & INCOME TRUST, THE GABELLI
VALUE 25 FUND INC., THE GABELLI EQUITY
TRUST INC., SM INVESTORS LP and SM INVESTORS
II LP, *on behalf of themselves and all others similarly*
situated,

Plaintiffs,

-v-

SU PING LU, OLIVIER RABILLER, ALESSANDRO
GILI, PETER BRACKE, SEAN DEASON, CRAIG
BALIS, THIERRY MABRU, RUSSELL JAMES,
CARLOS M. CARDOSO, MAURA J. CLARK,
COURTNEY M. ENGHAUSER, SUSAN L. MAIN,
CARSTEN REINHARDT, and SCOTT A. TOZIER,

Defendants.

-----X

OPINION
AND ORDER

20-CV-7992 (JPC)

20-CV-8296 (JPC)

	X	
	:	
JOSEPH FROEHLICH, <i>individually and on behalf of all</i>	:	
<i>others similarly situated,</i>	:	
	:	
Plaintiff,	:	
	:	
-v-	:	20-CV-9279 (JPC)
	:	
OLIVIER RABILLER, ALLESANDRO GILI, PETER	:	
BRACKE, SEAN DEASON, and SU PING LU,	:	
	:	
Defendants.	:	
	:	
	X	

JOHN P. CRONAN, United States District Judge:

Presently before the Court are motions to consolidate three putative class actions brought under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5, to appoint lead plaintiff, and to approve the selection of lead counsel. For the reasons stated below, the Court consolidates these actions, grants The Gabelli Asset Fund and related entities’ motion to be appointed lead plaintiff, and grants their motion for approval of lead counsel.

I. Background

The three related actions here are: *Husson v. Garrett Motion Inc.*, No. 20 Civ. 7992 (JPC) (“*Husson*” or the “*Husson* action”); *Gabelli Asset Fund v. Lu*, No. 20 Civ. 8296 (JPC) (“*Gabelli*” or the “*Gabelli* action”); and *Froehlich v. Rabiller*, No. 20 Civ. 9279 (JPC) (“*Froehlich*” or the “*Froehlich* action”). Although there are minor differences in the pleadings, the complaints filed in all three actions allege the same basic facts. Plaintiffs allege they purchased or obtained shares of Garrett Motion Inc. (“Garrett”), a company formed in October 2018 as a spin-off of Honeywell International Inc. *Husson*, Dkt. 1 (“*Husson* Complaint”) ¶¶ 1-2; *Gabelli*, Dkt. 1 (“*Gabelli*

Complaint”) ¶¶ 1-2; *Froehlich*, Dkt. 1 (“*Froehlich* Complaint”) ¶¶ 1-2. The complaints allege that Garrett, and several of the company’s representatives, made false or misleading statements and omissions relating to the company’s agreement to indemnify Honeywell for asbestos-related liabilities. *Husson* Complaint ¶ 8; *Gabelli* Complaint ¶ 4; *Froehlich* Complaint ¶ 8. This agreement allegedly made it impossible for Garrett to sustain its business and thus doomed the company from the start. *Husson* Complaint ¶ 8; *Gabelli* Complaint ¶ 4; *Froehlich* Complaint ¶ 8. Each complaint alleges violations of §§ 10(b) and 20(a) of the Securities Exchange Act and Rule 10b-5. *Husson* Complaint ¶¶ 64-78; *Gabelli* Complaint ¶¶ 183-96; *Froehlich* Complaint ¶¶ 64-78.

Steven Husson filed the *Husson* Complaint, individually and on behalf of all others similarly situated, against Garrett and five Garrett executives on September 25, 2020. *Husson* Complaint ¶¶ 15-20. On October 5, 2020, The Gabelli Asset Fund and related entities filed the *Gabelli* Complaint, on behalf of themselves and all others similarly situated, against the five executives named in the *Husson* Complaint as well as nine other individuals who served in leadership roles at Garrett. *Gabelli* Complaint ¶¶ 25-38. Finally, Joseph Froehlich filed the *Froehlich* Complaint, individually and on behalf of all others similarly situated, against the same five executives named in the *Husson* Complaint on November 5, 2020. *Froehlich* Complaint ¶¶ 16-20.

On November 24, 2020, four individuals or groups of individuals or entities filed motions in the *Husson* action for appointment as lead plaintiff and approval of their selection of lead counsel: (1) David Buchholz; (2) a group of six individuals that referred to themselves as the “Investor Club”; (3) The Gabelli Asset Fund, The Gabelli Dividend & Income Trust, The Gabelli Value 25 Fund Inc., and GAMCO Asset Management Inc. (collectively, the “Gabelli Entities”); and (4) Stanislav Vrabel. *Husson*, Dkts. 10, 12, 15, 18. Three of these motions also sought consolidation of the three actions. *Husson*, Dkts. 12, 15, 18. The Gabelli Entities filed similar motions in the

Gabelli and *Froehlich* actions as well. *Gabelli*, Dkt. 11; *Froehlich*, Dkt. 8. On December 7, 2020, Buchholz withdrew his motion for appointment as lead plaintiff. *Husson*, Dkt. 23. And on December 8, 2020, the Investor Club, the *Gabelli* Entities, and Vrubel filed a joint proposed stipulation that stated that the Investor Club and Vrubel withdrew their motions for appointment as lead plaintiff and agreed that the Court should appoint the *Gabelli* Entities as lead plaintiff. *Husson*, Dkt. 24 at 3; *see also Husson*, Dkt. 25. Thus the only motions that remain are those filed by the *Gabelli* Entities in each of the three actions.

II. Consolidation

A. Legal Standard

Federal Rule of Civil Procedure 42(a) provides that a court may consolidate “actions before the court” if they “involve a common question of law or fact.” Courts have “‘broad discretion’ to determine whether to consolidate actions.” *Breakwater Trading LLC v. JPMorgan Chase & Co.*, No. 20 Civ. 3515 (PAE), 2020 WL 5992344, at *2 (S.D.N.Y. Oct. 9, 2020) (quoting *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (2d Cir. 1990)). In determining whether to consolidate actions, courts may consider “judicial economy,” which favors consolidation, but must ensure that consolidation will not jeopardize “a fair and impartial trial.” *Johnson*, 899 F.2d at 1285.

B. Discussion

Consolidation is appropriate here because the three actions involve common questions of law and fact. *See* Fed. R. Civ. P. 42(a). All three complaints allege that statements from Garrett officers and directors made between October 1, 2018 and September 18, 2020 were false or misleading in violation of the same federal securities laws, particularly with respect to Garrett’s agreement to indemnify Honeywell for asbestos-related liabilities. *Husson* Complaint ¶¶ 1, 8; *Gabelli* Complaint ¶ 2; *Froehlich* Complaint ¶¶ 1, 8. The Court finds that any prejudice that would

result from consolidating these actions is outweighed by the benefits of judicial economy. Additionally, at least three of the four parties that moved for appointment as lead plaintiff are in favor of consolidation, and no party has objected. *See Husson*, Dkt. 24 at 4. Although Defendants have not appeared yet, the Gabelli Entities represented to the Court that “[c]ounsel for Defendants have also advised [the Gabelli Entities’] counsel that they consent to the . . . consolidation of the [a]ctions” *Husson*, Dkt. 26 at 1. Thus, the Court grants the Gabelli Entities’ motion to consolidate these actions, pursuant to Rule 42(a).

III. Appointment of Lead Plaintiff

A. Legal Standard

The Private Securities Litigation Reform Act (“PSLRA”) directs the Court to “appoint as lead plaintiff 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). There is a rebuttable presumption that “the most adequate plaintiff” to serve as lead plaintiff is the person or group that (1) “filed the complaint or made a motion in response to a notice” that informed members of the purported class about the action; (2) “has the largest financial interest in the relief sought by the class”; and (3) “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *Id.* § 78-u4(a)(3)(B)(iii)(I)(aa)-(cc).

With regard to the second requirement, the PSLRA does not indicate how to calculate which plaintiff has the “largest financial interest.” *In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 436 (S.D.N.Y. 2008). In order to make this calculation, many courts in this District look to the factors that make up the so-called *Olsten-Lax* Test: “(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) total net funds expended during the class period; and (4) the approximate losses suffered.” *Id.* at 437; *see also In re Olsten*

Corp. Sec. Litig., 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998); *Lax v. First Merchs. Acceptance Corp.*, No. 97 Civ. 2715, 1997 WL 461036, at *5 (N.D. Ill. Aug. 11, 1997). Many courts place “the most emphasis on the last of the four factors.” *In re Fuwei Films*, 247 F.R.D. at 437 (internal quotations and citation omitted).

As for the third requirement, Rule 23 enumerates four prerequisites for a class: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). “Of the four prerequisites to class certification, only two—typicality and adequacy—directly address the personal characteristics of the class representative.” *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. LaBranche & Co.*, 229 F.R.D. 395, 412 (S.D.N.Y. 2004). “Consequently, in deciding a motion to serve as lead plaintiff, the moving plaintiff must make only a preliminary showing that the adequacy and typicality requirements under Rule 23 have been met.” *Id.* (alteration adopted) (internal quotations and citation omitted).

The presumption that the plaintiff with the largest financial interest will serve as lead plaintiff may be rebutted upon a showing that the presumptive lead plaintiff “will not fairly and adequately protect the interests of the class” or “is subject to unique defenses that render such plaintiff incapable of adequately representing the class.” *Id.* § 78-u4(a)(3)(B)(iii)(II).

B. Discussion

The Gabelli Entities are the presumptive lead plaintiff under the PSLRA. First, they filed the complaint that began one of the actions here and moved to be appointed lead plaintiff within sixty days of the published notice. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa). Second, they have

the largest financial interest in this case. *See id.* § 78u-4(a)(3)(B)(iii)(I)(bb). Based on the lower of two calculations, the Gabelli Entities allegedly purchased 1,015,091 shares (596,952 net shares), allegedly expended \$8,854,002 in net funds, and allegedly suffered \$7,105,464 in losses. *Husson*, Dkt. 16 at 8. The Court is unaware of any other person or entity that may have a larger financial interest, and no parties have argued they do. Although three other individuals or groups initially filed motions to be appointed lead plaintiff, all have withdrawn their motions and seem to agree that the Gabelli Entities have the largest financial interest in this litigation. *See* Dkt. 24 at 3. A review of the filings in support of the withdrawn motions confirms this. *See Husson*, Dkt. 11 at 5 (alleging \$30,173 in losses); *Husson*, Dkt. 14-3 at 2 (alleging six individual losses totaling \$7,042,162.94); *Husson*, Dkt. 20 at 7 (alleging \$210,474 in losses).

Third, the Gabelli Entities otherwise satisfy the typicality and adequacy requirements of Rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). “Typicality is satisfied if 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.” *In re Fuwei Films*, 247 F.R.D. at 436. The Gabelli Entities appear to seek the same relief and advance the same legal theories as other class members. No parties have argued otherwise. Adequacy means that “there should be no conflict between the interests of the class and the named plaintiff nor should there be collusion among the litigants,” “the parties’ attorney must be qualified, experienced, and generally able to conduct the proposed litigation,” and “the lead plaintiff should have a sufficient interest in the outcome to ensure vigorous advocacy.” *Id.* (internal quotations and citations omitted). There is nothing in the record that suggests the Gabelli Entities have conflicts with other class members. Their class counsel appears competent and experienced. And they are institutional investors who have an allegedly large financial stake in the outcome of this case. Thus, the Gabelli Entities have made a “preliminary

showing that the adequacy and typicality requirements under Rule 23 have been met.” *In re Fuwei Films*, 247 F.R.D. at 436.

No member of the purported plaintiff class has offered evidence to rebut the presumption that the Gabelli Entities will be appointed lead plaintiff. And the Court is aware of no facts that would rebut the presumption. Accordingly, the Court appoints the Gabelli Entities as lead plaintiff in this action.

IV. Approval of Selection of Lead Counsel

Pursuant to the PSLRA, the lead plaintiff “shall, subject to the approval of the court, select and retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v); *Pirelli*, 229 F.R.D. at 420. The Gabelli Entities have selected Entwistle & Cappucci and seek the Court’s approval of this selection. *Husson*, Dkt. 16 at 11.

Andrew J. Entwistle of Entwistle & Cappucci submitted a declaration in support of appointment as well as his firm’s resume. *Husson*, Dkt. 17, Exh. E. The resume sets forth Entwistle & Cappucci’s experience in securities class actions and other complex litigation, and references more than twenty actions in which the firm served as the lead plaintiff’s counsel, co-lead counsel, or institutional plaintiff’s counsel in class and direct securities actions. *Husson*, Dkt. 17-5 at 3, 8; *see also Husson*, Dkt. 16 at 12. The resume also provides detailed descriptions of the experiences and educational backgrounds of each of the attorneys practicing in the firm’s securities litigation practice group. *Id.* at 16-33. Having reviewed these materials, the Court concludes that Entwistle & Cappucci is well qualified to serve as lead counsel in this matter, and, accordingly, approves the Gabelli Entities’ selection of Entwistle & Cappucci as lead counsel.

V. Conclusion

For the reasons stated above, the Gabelli Entities' motion to consolidate the *Husson*, *Gabelli*, and *Froehlich* actions is GRANTED. Future filings in any case herein consolidated shall be filed and docketed only under Case Number 20 Civ. 7992 (JPC). The Clerk of Court is respectfully directed to change the caption of Case Number 20 Civ. 7992 (JPC) to "*In re Garrett Motion Inc. Securities Litigation*." The Gabelli Entities' motion for appointment as lead plaintiff is GRANTED, and the Gabelli Entities' motion for approval of selection of lead counsel is GRANTED. The Clerk is respectfully directed to terminate the motion pending at Docket Number 15 in Case Number 20 Civ. 7992.

The respective parties withdrew the motions pending at Docket Numbers 10, 12, and 18 in Case Number 20 Civ. 7992. The Clerk of Court is thus respectfully directed to terminate the motions pending at Docket Numbers 10, 12, and 18 in Case Number 20 Civ. 7992.

The Clerk of Court is also respectfully directed to terminate the motions pending at Docket Number 11 in Case Number 20 Civ. 8296 and Docket Number 8 in Case Number 20 Civ. 9279. In light of the consolidation of these actions, the Clerk of Court is respectfully directed to close Case Number 20 Civ. 8296 and Case Number 20 Civ. 9279.

The Court grants Lead Plaintiff Gabelli Entities leave to file a consolidated amended complaint by February 25, 2021. Defendants shall answer or otherwise respond to the consolidated amended complaint by April 12, 2021.

SO ORDERED.

Dated: January 21, 2021
New York, New York



JOHN P. CRONAN
United States District Judge