

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-cv-02351-REB-KLM

IN RE CROCS, INC., SECURITIES LITIGATION

**MOTION TO APPOINT CAROL PROCHASKA AS LEAD PLAINTIFF AND TO
APPROVE LEAD PLAINTIFF'S SELECTION OF CO-LEAD AND LIAISON COUNSEL**

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Carol Prochaska ("Prochaska") hereby moves this Court for an order granting her motion to be appointed lead plaintiff and for approval of lead plaintiff's choice of co-lead and liaison counsel (the "Motion") in the securities class action pending in this district against Crocs, Inc. ("Crocs") and certain of its executives and officers. This Motion is brought pursuant to Section 21D of the Securities Exchange Act of 1934 (the "Exchange Act") on the grounds that Prochaska has timely filed this motion and is the "most adequate plaintiff" pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA").¹ Prochaska also seeks the Court's approval of her selection of Kaplan Fox & Kilsheimer LLP ("Kaplan Fox") and Schiffrin Barroway Topaz & Kessler, LLP ("Schiffrin Barroway") as co-lead counsel and the Shuman Law Firm as liaison counsel for the proposed class.

I. INTRODUCTION

Prochaska submits this memorandum in support of her motion for (1) appointment as lead plaintiff; and (2) approval of her selection of co-lead and liaison counsel. Prochaska should be appointed lead plaintiff because she incurred losses of approximately \$647,917 in Crocs during the period July 27, 2007 through October 31, 2007 (the "Class Period").² To Prochaska's knowledge, her loss represents the largest financial interest in

¹ Pursuant to D.C. Colo. L. Civ. R. 7.1, counsel for Prochaska has conferred with defense counsel, who take no position at this time on this Motion.

² Filed herewith are Exhibits to this Motion. Exhibit A is a Lead Plaintiff Movant Declaration signed by Prochaska that sets forth her transactions in Crocs common stock during the Class Period. Exhibit B is a chart of Prochaska's transactions and estimated losses in Crocs common stock. Using either the Last-In, First-Out ("LIFO"), methodology, or the First-In, First-Out ("FIFO") methodology, Prochaska's losses are approximately \$647,917.

the relief sought by the class. See 15 U.S.C. §78u-4(a)(3)(B)(iii). Prochaska also satisfies the requirement of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") because her claims are typical of the claims of the class, she will fairly and adequately represent the interests of the class and she has retained counsel who are highly experienced in prosecuting securities class actions. See *In re Ribozyme Pharms. Sec. Litig.*, 192 F.R.D. 656, 658-59 (D. Colo. 2000).

Accordingly, Prochaska is "the most adequate plaintiff," as defined by Section 21D(a)(3)(B) of the Exchange Act, and should be appointed lead plaintiff with approval of her choice of Kaplan Fox and Schiffrin Barroway as co-lead counsel and the Shuman Law Firm as liaison counsel.

II. SUMMARY OF THE PENDING ACTIONS

During the Class Period, Crocs portrayed itself as a Company with continuing growth in demand for its products that was expanding its business into Europe, Asia and South America. However, unknown to investors, the Company was experiencing the following material adverse trends during the course of its expansion of its business: (a) the Company was experiencing material distribution problems in Europe, as it had moved distribution facilities to the Netherlands, and, in addition, was experiencing distribution problems in Japan with a third-party distributor. As a result of these problems, the Company had lost at least \$35 million dollars in sales during the quarter ended September 30, 2007; (b) that the Company's sales were being negatively impacted by seasonal conditions as consumers materially reduced purchases of the

Company's products in Europe; and (c) that the Company's inventory levels were materially building far beyond historic levels.

On October 31, 2007, after the close of trading, Crocs issued a press release announcing its financial results for the quarter ending September 30, 2007. For the quarter, the Company disclosed an increase in inventory of approximately 300% and disclosed for the first time certain material difficulties in opening its Netherlands distribution center and certain other material difficulties in product distribution.

The following day, Crocs shares declined from a closing price on October 31, 2007 of \$74.75 per share, to close at \$47.74 per share, a decline of \$27.01 per share or approximately 36%. On January 4, 2008, Crocs shares closed at \$32.75 per share.

III. PROCEDURAL BACKGROUND

The plaintiffs in this proposed class action each allege violations of Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5, on behalf of investors who purchased Crocs securities during the Class Period. Section 21D of the Exchange Act requires early notice of the first-filed action to advise class members of their right to move the court to be appointed "lead plaintiff" and provides that any member of the class may so request appointment as lead plaintiff within 60 days of publication of the notice. *Ribozyme*, 192 F.R.D. at 657-58. On November 8, 2007, notice was published in *Business Wire* (see Exhibit C), and Prochaska now timely moves the Court to appoint her as lead plaintiff and

approve her choice of co-lead and liaison counsel.³ Prochaska now seeks to represent all persons injured by defendants' violations of federal securities laws.

IV. ARGUMENT

A. Prochaska Is the Most Adequate Plaintiff

The "most adequate plaintiff" provision of the Exchange Act provides that a court shall appoint as lead plaintiff the member 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). Moreover, the Exchange Act provides for a presumption that the most adequate plaintiff in any private action arising under this chapter is the person that:

(aa) has either filed the complaint or made a motion in response to a notice ...;

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii)(I); *Ribozyme*, 192 F.R.D. at 658.

1. Prochaska Has the Largest Financial Interest in the Relief Sought by the Class

During the Class Period, Prochaska purchased 23,000 shares of Crocs common stock at prices artificially inflated by defendants' false and misleading statements and has

³ Section 21D(a)(3)(B) also requires that any related cases be consolidated prior to entry of an order appointing lead plaintiff. On December 19, 2007, the Court entered an order consolidating the then existing related actions into Civil Action No. 07-cv-02351-REB-KLM.

suffered losses of approximately \$647,917 as a result thereof. See Exhibit A and B. To her knowledge, Prochaska has the largest approximately financial interest in the relief sought in the outcome of this litigation. See *Ribozyme*, 192 F.R.D. 659-61.

2. Prochaska Is Qualified Under Rule 23

The Exchange Act provides that the lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Rule 23(a) requires that the claims of the class representative be typical of the claims of the class and that it will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Ribozyme*, 192 F.R.D. at 658. Prochaska satisfies both of these requirements.

The typicality requirement of Rule 23(a)(3) is satisfied when a named plaintiff has (1) suffered the same injuries as the absent class members; (2) as a result of the same course of conduct by defendants; and (3) their claims are based on the same legal issues. See, e.g., *Schwartz v. Celestial Seasonings*, 178 F.R.D. 545, 551 (D. Colo. 1998).

Here, there is a well-defined community of interest in the questions of law and fact involved in this case.⁴ Prochaska is typical because she purchased Crocs stock at prices

⁴ The questions of law and fact common to the members of the class that predominate over questions that may affect individual class members include the following: (1) whether the federal securities laws were violated by defendants; (2) whether defendants omitted and/or misrepresented material facts; (3) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; (4) whether defendants acted with scienter; (5) whether the price of Crocs securities was artificially inflated during the Class Period; and (6) the extent of damage sustained by class members and the appropriate measure of damages.

inflated by defendants' misrepresentations and omissions and was damaged thereby. Typicality exists here, then, because the claims asserted by Prochaska are based on "the same alleged course of conduct and are based on the same theories as those of the absent class members." *Schwartz*, 178 F.R.D. at 552. See also *In re Intelcom Group Sec. Litig.*, 169 F.R.D. 142, 149 (D. Colo. 1996).

Prochaska is also adequate because her interests are clearly aligned with the members of the proposed class and there is no antagonism between the interests of those individuals and the proposed class members. Prochaska has also demonstrated her adequacy as class representative by signing a declaration filed with the Court that states her willingness to serve as and assume the responsibilities of a class representative. See Exhibit A. In addition, Prochaska has selected counsel highly experienced in prosecuting securities class actions such as this to represent her.

B. The Court Should Approve Prochaska's Choice of Co-Lead and Liaison Counsel

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to Court approval. See 15 U.S.C. Section 78u-4(a)(3)(B)(v). Thus, the Court should not disturb the lead plaintiff's choice of counsel unless necessary to protect the interests of the plaintiff class. Prochaska has selected the law firms of Kaplan Fox and Schiffrin Barroway as co-lead counsel and the Shuman Law Firm as liaison counsel for the class. These firms possess extensive experience in the area of securities litigation and have successfully prosecuted numerous securities fraud class actions on behalf of injured investors. See Exhibits D-F. Thus, the Court may be assured that, in the event this Motion

is granted, the members of the class will receive the highest caliber of legal representation available.

V. CONCLUSION

For all the foregoing reasons, Prochaska respectfully requests that the Court (1) appoint Prochaska as lead plaintiff in the above-captioned action, pursuant to 15 U.S.C. § 78u-4(a)(3)(B); and (2) approve her choice of Kaplan Fox and Schiffrin Barroway as co-lead counsel and the Shuman Law Firm as liaison counsel for the class.

Dated: January 7, 2008

Respectfully submitted,

s/ Kip B. Shuman
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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2008, I electronically filed the foregoing **MOTION TO APPOINT CAROL PROCHASKA AS LEAD PLAINTIFF AND TO APPROVE LEAD PLAINTIFF'S SELECTION OF CO-LEAD AND LIAISON COUNSEL** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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