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*7/18/97
Not posted as
of 3/2/98*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 JAMES C. NEVIUS and WILLIAM MOLAIR, On) Case No. C-97-20454-RMW
15 Behalf Of Themselves and All Others Similarly)
16 Situated,) CLASS ACTION
17 Plaintiffs,) Date: August 29, 1997
18 v.) Time: 9:00 a.m.
19 READ-RITE CORPORATION, CYRIL J.) Place: Courtroom of The
20 YANSOUNI, and FREDERIC SCHWETTMANN,) Honorable Ronald M. Whyte
21 Defendants.)

21 PLAINTIFFS' NOTICE OF MOTION, MOTION AND
22 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
23 MOTION FOR APPOINTMENT OF LEAD PLAINTIFFS AND
24 APPROVAL OF PLAINTIFFS' SELECTION OF LEAD COUNSEL

1 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN

2 NOTICE IS HEREBY GIVEN that on August 29, 1997, at 9:00 a.m., or soon
3 thereafter as this motion may be heard before the Honorable Ronald Whyte, Courtroom
4 Number 6, located at 280 South First Street, San Jose, California, plaintiffs James C. Nevius,
5 William Molair, Peter Gans, Arthur Pruiksma, Scott Tolzmann, Edwin Zimmer, Sherwin
6 Reiff, Jack Abramowitz and Jared Rogers ("Proposed Lead Plaintiffs"),^{1/} who collectively
7 purchased over 5,500 shares of Read-Rite Corporation ("Read-Rite" or the "Company")
8 securities between March 2, 1996 and June 19, 1996, inclusive (the "Class Period"), move this
9 Court pursuant to §21D(a)(3)(B) of the Private Securities Litigation Reform Act of 1995
10 ("PSLRA"), for their appointment as lead plaintiffs and pursuant to §21D(a)(3)(B)(v) to
11 approve their chosen counsel, Berger & Montague, P.C. and Gold Bennett & Cera LLP as
12 Co-Lead Counsel for the class.

13 This motion is made on the grounds that Proposed Lead Plaintiffs collectively
14 comprise the most adequate plaintiffs, as provided in the PSLRA. In sum, they have a
15 substantial financial interest in the relief sought by the class, they meet the requirements of
16 Rule 23 of the Federal Rules of Civil Procedure in that their claims are typical of the claims
17 of the class, and the Proposed Lead Plaintiffs will fairly and adequately represent the interests
18 of the class. Further, the Proposed Lead Plaintiffs have selected Berger & Montague, P.C.
19 and Gold Bennett & Cera LLP, firms with substantial experience in the area of securities
20 litigation, to serve as Co-Lead Counsel for the class.

21 This motion is based upon this notice of Motion and Motion, Memorandum of
22 Points and Authorities and the Declaration of Solomon B. Cera filed concurrently herewith, as
23
24

25 ^{1/} Peter Gans, Arthur Pruiksma, Scott Tolzmann, Edwin Zimmer, Sherwin Reiff, Jack
26 Abramowitz and Jared Rogers are purchasers of Read-Rite securities who were not named
27 plaintiffs in the complaint ("Nevius Action"), but seek to be designated as Lead Plaintiffs in
28 accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The
certifications of each of the Proposed Lead Plaintiffs are filed concurrently herewith. See
Declaration of Solomon B. Cera ("Cera Declaration"), Exhibit A.

1 well as the complete files and records in the actions and such other evidence as the Court may
2 consider at the hearing on this motion.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 I. INTRODUCTION

5 This motion is brought by the Proposed Lead Plaintiffs pursuant to §21D(a) (3)
6 (B) of the PSLRA for their appointment as lead plaintiffs and to approve their selection of
7 Berger & Montague, P.C. and Gold Bennett & Cera LLP as Co-Lead Counsel for the class.
8 The Proposed Lead Plaintiffs know of no other plaintiffs or persons seeking appointment as
9 lead plaintiffs.^{2/} In addition, the Proposed Lead Plaintiffs meet all the requirements of the
10 PSLRA.

11 Another action is pending, In re Read-Rite Corporation Securities Litigation,
12 C-97-20059-RMW, which arises out of different facts, involves different claims, different
13 defendants and assert different class periods. See Cera Declaration, Exhibit B. Lead
14 plaintiffs in In re Read-Rite Corporation Securities Litigation do not intend to assert claims
15 for the March 2, 1996 to June 19, 1996 class period asserted in the Nevius Action. See Cera
16 Declaration, Exhibit B.

17 II. SUMMARY OF THE NEVIUS ACTION

18 The Complaint in the Nevius Action alleges that during the period March 2,
19 1996 to June 19, 1996, Read-Rite and two of its officers and directors, Cyril J. Yansouni
20 (Chairman of the Board and Chief Executive Officer) and Frederic Schwetmann (President,
21 Chief Operating Officer and a Director) violated Sections 10(b) and 20(a) of the 1934 Act and
22 Rule 10b-5 promulgated thereunder by issuing false and misleading statements and omitting
23 material facts regarding the Company's products, operations and financial performance.

24 Among other things, the Complaint alleges that on April 18, 1996, Read-Rite
25 stated that the Company had completed its transition to the Tripad 2 recording head and had
26

27 ^{2/} Pursuant to this Court's Order of May 27, 1997 in In re Read-Rite Corporation Securities
28 Litigation, C-97-20059-RMW, any opposition by the defendants to this motion is properly limited
to a facial challenge to the motion.

1 completed its development of the Tripad 3 recording head. In fact, three months later the
2 Tripad 3 was still in final design stages. On October 31, 1996, more than six months later
3 and after the Class Period, Read-Rite admitted that it was not until then that it was in full
4 transition to volume production of its Tripad 2 and Tripad 3 recording heads.

5 Also, the Complaint alleges that shortly before the beginning of the Class
6 Period, Read-Rite learned that to participate in certain customer programs, the Company's
7 new generation of Tripad recording heads would have to incorporate a new technical feature,
8 known as an "undershoot reduction" which the Company had not yet begun to develop. The
9 development of the necessary processes for incorporation of this new feature in Read-Rite
10 products, did not even begin until the quarter ending March 31, 1996, and the need to
11 incorporate the new technical feature delayed the introduction of these advanced products by
12 many months. Instead, the Company represented during the Class Period that it had
13 completed development of these products when in fact, it had barely begun to develop the
14 new technical feature. This highly material fact, however, was not disclosed to the investing
15 public until the Company filed its Annual Report on Form 10-K for its 1996 fiscal year
16 ending September 30, 1996, well after the end of the Class Period.

17 Further, the Complaint alleges that at the beginning of the Class Period,
18 Defendant Yansouni said, "we're being designed into some Conner products right now that
19 survived Seagate's rationalization of its product line after the merger." It was later admitted
20 by the Company after the end of the Class Period that consistent with Read-Rite's earlier
21 expectations, Conner/Seagate was unlikely to be a customer at the September 30, 1996 end of
22 the Company's 1996 fiscal year. Following the Class Period the Company further admitted
23 that delays in the introduction of the Tripad 2 and 3 products "materially and adversely
24 affected both the company's revenues and gross profit margins."

25 By issuing these allegedly false and misleading statements, defendants
26 artificially inflated the market price of Read-Rite stock throughout the Class Period. As a
27 result of the defendants' violations, the market price of Read-Rite stock during the Class
28 Period was as high as \$26.875, and fell to as low as \$12.625 per share in the weeks following

1 the Class Period. Plaintiffs seek to recover the damages suffered by the class members as a
2 result of the defendants' misconduct.

3 III. ARGUMENT

4 A. The Procedure Required By The PSLRA

5 On December 22, 1995, Congress amended the Exchange Act via the enactment
6 of the PSLRA. Section 21D of the Exchange Act sets forth the procedure for the selection of
7 lead plaintiffs to oversee class actions brought under the federal securities laws.

8 First, newly enacted §21D(a)(3) provides that, within 20 days after the date on
9 which a class action is filed under the PSLRA,

10 the plaintiff or plaintiffs shall cause to be published, in a widely
11 circulated national business-oriented publication or wire service,
12 a notice advising members of the purported plaintiff class -- (I)
13 of the pendency of the action, the claims asserted therein, and
14 the purported class period; and (II) that, not later than 60 days
after the date on which the notice is published, any member of
the purported class may move the court to serve as lead plaintiff
of the purported class.

15 15 U.S.C §78u-4(a)(3)

16 Here, the Nevius Action was filed on May 19, 1997. A press release notifying
17 the class members of their right to file a motion for appointment as lead plaintiff was issued
18 through the Business Wire on May 22, 1997. See Cera Declaration, Exhibit C.^{3/} This
19 motion is filed within the 60-day period set forth in the PSLRA.

20 Second, the PSLRA directs the Court to consider any motions by purported
21 class members to serve as lead plaintiff(s) in response to any such notice by the later of (i) 90
22 days after the date of publication or (ii) as soon as practicable after the court decides any
23 pending motion to consolidate any actions asserting substantially the same claim or claims.

24 15 U.S.C. §78u-4(a)(3)(B)(i),(ii). In appointing the lead plaintiff, the Court is to presume that
25 the "most adequate plaintiff" to serve as lead plaintiff is the person or group of persons who:

26
27
28 ^{3/} Issuance of a press release on the Business Wire satisfies the PSLRA's publication
requirement. See Greebel v. FTP Software, Inc., 939 F. Supp. 57, 62-64 (D. Mass. 1996).

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

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

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

7 15 U.S.C. §78u-4(a)(3)(B)(iii).

8 The Proposed Lead Plaintiffs collectively purchased 5,530 shares of Read-Rite
9 during the Class Period for consideration in excess of \$117,000 and have incurred damages in
10 excess of \$39,000.^{4/} See Cera Declaration, Exhibit D. Moreover, the Proposed Lead
11 Plaintiffs are the most adequate lead plaintiffs under the PSLRA.

12 B. The Proposed Lead Plaintiffs Are
13 The Most Adequate Plaintiffs Under the PSLRA

14 1. The Proposed Lead Plaintiffs Have The Largest
15 Financial Interest In The Relief Sought By The Class

16 The "most adequate plaintiff" provision of the PSLRA provides that a court:
17 shall appoint as lead plaintiff the member or members of the
18 purported plaintiff class that the court determines to be most
19 capable of adequately representing the interests of class members
20 (hereafter in this paragraph referred to as the "most adequate
21 plaintiff") in accordance with this subparagraph.

22 15 U.S.C. §78u-4(a)(3)(B)(i) (emphasis added). Moreover, the PSLRA directs courts to adopt
23 a rebuttable presumption:

24 that the most adequate plaintiff in any private action arising
25 under this title is the person or group of persons that --

26 * * *

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

29 ^{4/} The Proposed Lead Plaintiffs have estimated losses totalling \$39,246.30. Each plaintiff's loss
30 is calculated using the FIFO method for those shares sold during the Class Period or the 90-day
31 settle out period (if any) and the difference between the actual cost of the shares purchased and
32 not sold and a sales figure of \$12.07 per share (the average price of Read-Rite common stock
33 during the period June 19, 1996 through September 17, 1996.

1 15 U.S.C. §78u-4(a)(3)(b)(iii)(I) (emphasis added).

2 Thus, the statutory language provides that a "member or members" of a class or
3 a "person or group of persons" may aggregate their financial interests to constitute "the largest
4 financial interest" and thereby jointly serve as the "most adequate plaintiff." See May 27,
5 1997 Order in In re Read-Rite Corporation Securities Litigation, C-97-20059-RMW; In re
6 Cephalon Sec. Litig., 1996 WL 515203 (E.D. Pa. 1996) ("Clearly, the Act does not preclude
7 appointing more than one lead plaintiff").

8 During the Class Period, the Proposed Lead Plaintiffs collectively purchased
9 5,530 shares of Read-Rite securities at prices artificially inflated by defendants false and
10 misleading statements and collectively have incurred damages estimated at approximately
11 \$39,000. See Cera Declaration, Exhibit D. In the aggregate, the Proposed Lead Plaintiffs
12 have a significant financial interest in this case. Moreover, the Proposed Lead Plaintiffs know
13 of no other person or group of persons who have moved or plan to move for appointment of
14 lead plaintiff. Thus, the Proposed Lead Plaintiffs are the most adequate plaintiffs. 15 U.S.C.
15 §78u-4(a)(3)(B)(iii)(I).^{5/}

16 2. The Proposed Lead Plaintiffs Are Qualified Under Rule 23

17 Section 21D(a)(3)(B)(iii) of the Exchange Act further provides that, in addition
18 to possessing the largest financial interest in the outcome of the litigation, the lead plaintiff or
19 plaintiffs must also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of
20 Civil Procedure." Rule 23(a) provides that a party may serve as a class representative only if
21 the following four requirements are satisfied:

22 (1) the class is so numerous that joinder of all members is impracticable, (2)
23 there are questions of law or fact common to the class, (3) the claims or
24 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.

25 Of the four prerequisites to class certification, only two -- typicality and
26 adequacy -- directly address the personal characteristics of the class representative. See

27 _____
28 ^{5/} Only class members who have filed a complaint or made a motion pursuant to §21D(a)(3)(B),
are eligible to be appointed lead plaintiff. See 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(aa).

1 Fed.R.Civ.P. 23(a)(3), (4). The remaining prerequisites would apply equally to all members
2 of the class seeking to be lead plaintiff. Consequently, in deciding a motion to serve as lead
3 plaintiff or plaintiffs, the Court should limit its inquiry to the typicality and adequacy prongs
4 of Rule 23(a), and defer examination of the remaining requirements until the lead plaintiff or
5 plaintiffs move for class certification.^{6/2} As set forth below, the Proposed Lead Plaintiffs
6 satisfy the typicality and adequacy requirements of Rule 23(a), thereby justifying their
7 appointment as lead plaintiffs.

8 a. The Claims Of The Proposed Lead Plaintiffs
9 Are Typical Of The Claims Of The Class

10 The typicality requirement of Rule 23(a) (3) is satisfied when the named
11 plaintiffs "claims arise from the same event or course of conduct that gives rise to claims of
12 the other class members and the claims are based on the same legal theory.'" Shields v.
13 Smith, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶97,001 (N.D. Cal. 1992)(citations
14 omitted). See also In re Activision Sec. Litig., 621 F. Supp. 415, 428 (N.D. Cal. 1985).

15 The claims asserted by the Proposed Lead Plaintiffs are typical of the claims of
16 the members of the class. Each of the complaints alleges that defendants violated applicable
17 securities laws by publicly disseminating a series of false and misleading statements
18 concerning the Company's products, operations and financial performance, including
19 misrepresentations about demand for the Company's products and the status of development
20 of the Company's new products, specifically the Tripad 2 and Tripad 3 recording heads.
21 Each of the Proposed Lead Plaintiffs, as did all members of the proposed class, acquired
22 Read-Rite securities at prices inflated by defendants' misrepresentations and were damaged
23 thereby. Thus, typicality is satisfied, since the claims asserted by the Proposed Lead Plaintiffs
24 arise from the same event or course of conduct that gives rise to claims of other class
25

26 ^{6/} This interpretation is supported by Section 21D(a)(3)(B)(iii)(II) of the Exchange Act, which
27 provides that the presumption in favor of the most adequate plaintiff may be rebutted only upon
28 proof that this individual or group "(aa) will not fairly and adequately protect the interests of the
class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately
representing the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II).

1 members and the claims are based on the same legal theory. See In re United Energy Corp.
2 Solar Power Modules Tax Shelter Inv. Sec. Litig., 122 F.R.D. 251, 256 (C.D. Cal. 1988).

3 b. The Proposed Lead Plaintiffs Will Fairly
4 And Adequately Represent The Interests Of The Class

5 The standards of Rule 23(a)(4) are met if it appears that (1) plaintiffs' interests
6 are not antagonistic to those of other members of the class they seek to represent and (2)
7 plaintiffs' attorneys are qualified, experienced and generally able to conduct the litigation.
8 See Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978); In re
9 Computer Memories Secur. Litig., 111 F.R.D. 675, 681 (N.D. Cal. 1986).

10 The Proposed Lead Plaintiffs meet this standard. The interests of the Proposed
11 Lead Plaintiffs are aligned with the members of the class, and there is no evidence of any
12 antagonism between the interests of these individuals and the class. As detailed above, the
13 Proposed Lead Plaintiffs share substantially similar questions of law and fact with the
14 members of the class, and their claims are typical of the members of the class. Further, each
15 Proposed Lead Plaintiff has already demonstrated a commitment to the class by signing a
16 certification, filed with the Court, stating that each of them is willing to assume the
17 responsibilities of a class representative. See Cera Declaration, Exhibit A. Moreover, as
18 discussed below, the Proposed Co-Lead Plaintiffs' counsel are highly experienced in securities
19 class action litigation and qualified to conduct this litigation.

20 c. This Court Should Approve The Proposed Co-Lead Counsel

21 The recent amendments to the securities laws vest authority in the Lead
22 Plaintiffs to select and retain lead counsel, subject to court approval. See §21D(a)(3)(B)(v).
23 Thus, the Court should not disturb the Lead Plaintiffs' choice of counsel unless "necessary to
24 protect the interest of the plaintiff class." See Statement of Managers -- The "Private
25 Securities Litigation Reform Act of 1995," Conference Report. H. Rept. No. 104369, at 62
26 (Nov. 28, 1995), attached hereto as Exhibit E. In this case, the Proposed Lead Plaintiffs have
27 selected and retained the law firms of Berger & Montague, P.C. and Gold Bennett &
28 Cera LLP.

1 The Proposed Plaintiffs' Co-Lead Counsel possess extensive experience in the
2 area of securities litigation and have successfully prosecuted numerous securities fraud class
3 actions on behalf of injured investors. See Cera Declaration, Exhibits F and G, which are
4 resumes of each of the proposed Co-Lead Counsel firms, demonstrating their expertise and
5 experience in prosecuting securities class actions. Thus, the Court may be assured that, in the
6 event this motion is granted, the members of the class will receive the highest caliber of legal
7 representation available.

8 IV. CONCLUSION

9 For all the foregoing reasons, the Proposed Lead Plaintiffs respectfully requests
10 that the Court: (i) appoint the Proposed Lead Plaintiffs as lead plaintiffs, pursuant to
11 §21D(a)(3)(B); (ii) approve the Proposed lead plaintiffs' choice of Berger & Montague, P.C.
12 and Gold Bennett & Cera LLP as Co-Lead Counsel for the class.

13
14 Dated: July 18, 1997

BERGER & MONTAGUE, P.C.

15
16 By Sherrie R. Savett
17 Sherrie R. Savett /ssc

18 - and -

19 Dated: July 18, 1997

GOLD BENNETT & CERA LLP

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21 By Solomon B. Cera
22 Solomon B. Cera

23 Attorneys for Plaintiffs
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