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In Case No. C-01 20852 PVT
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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
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15 _____
16 In re Clarent Corporation
Securities Litigation.

17 _____
This Document Relates To:
18 ALL ACTIONS
19 _____
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Master File No. C-01-3361 CRB
(consolidated action)
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)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION TO APPOINT SACHIO**
) **SEMMOTO AS LEAD PLAINTIFF**
) **PURSUANT TO SECTION**
21D(a)(3)(B) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND TO
APPROVE LEAD PLAINTIFF'S
CHOICE OF COUNSEL

22 DATE: Friday, December 14, 2001
23 TIME: 10:00 AM
24 COURTROOM: 8, Ninth Floor
25 JUDGE: The Honorable Charles R. Breyer
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1 **I. INTRODUCTION**

2 Dr. Sachio Semmoto (“Semmoto” or “Movant”) who has suffered approximately \$500,000
3 in unrealized losses from open market purchases of Clarent Corporation (“Clarent” or the
4 “Company”) common stock,¹ submits this Memorandum of Points and Authorities in support of his
5 motion, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange
6 Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of
7 1995 (the “PSLRA”), for an order: (a) appointing Sachio Semmoto as lead plaintiff in this action
8 and in any consolidated related action; and (b) approving his selection of Wolf Popper LLP as Lead
9 Counsel.²

10 In class actions filed under the Exchange Act, the PSLRA requires that courts appoint as lead
11 plaintiff a member or members of the putative class that satisfy certain procedural requirements and
12 also constitute the “most adequate representative” of the prospective class. As set forth below,
13 Sachio Semmoto satisfies all of the criteria and should be appointed as Lead Plaintiff.

14 Sachio Semmoto also respectfully requests that the Court approve his selection of lead
15 counsel, in accordance with the PSLRA. The law firm selected by Semmoto, Wolf Popper LLP, has
16 extensive experience in securities class action litigation and is well-qualified to represent the
17 interests of all Class members.

18 **II. STATEMENT OF FACTS**

19 These actions are brought on behalf of persons who purchased or otherwise acquired Clarent
20 common stock³ during the period April 26, 2000 through and including August 31, 2001 (the “Class
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22 ¹ The certification of Sachio Semmoto is annexed as Exhibit 1 to the accompanying
Declaration of James A. Harrod (“Harrod Decl.”).

23 ² There are seven related class actions brought against Clarent arising from the same facts and
24 circumstances. The parties to these actions have executed a Stipulation of Consolidation and
25 Movant has been informed by defense counsel that they have presented it for entry to the Court. This
26 stipulation would, among other things, consolidate the seven related actions presently before the
Court. The related actions have been consolidated under the caption that appears on the first page
and Master File Number C-01-3361 CRB, The Stipulation of Consolidation also provides for the
admission *pro hac vice* of counsel for all parties involved in this consolidated action.

27 ³ Clarent purports to design, market and manufacture integrated hardware and software for “IP
28 telephony,” used to allow voice, faxes and data to be transmitted over IP networks.

1 Period”).⁴ The complaints allege that Clarent share prices were artificially inflated during the Class
2 Period because the Company issued highly misleading information to the market concerning its
3 financial performance and results.

4 During the Class Period defendants materially misrepresented Clarent’s financial results and
5 performance for the Company’s 2000 fiscal year, ended December 31, 2000 and the first two
6 quarters of the Company’s 2001 fiscal year, ended March 31, 2001 and June 30, 2001, respectively.
7 On September 4, 2001, the purported discovery of certain improper accounting practices caused
8 Clarent to issue a press release announcing that it: (i) would restate its previously reported financial
9 results for the first and second quarters of fiscal 2001, including reported revenue, income and
10 certain balance sheet items, (ii) had formed a special committee to investigate the transactions
11 bringing rise to the improper accounting, and (iii) had placed three executives on leave, including
12 Defendant Chang, Clarent’s Chairman. In response to the September 4, 2001 press release
13 NASDAQ halted trading in Clarent’s shares, pending further information from the Company.
14 Clarent shares have not traded since August 31, 2001.

15 On October 23, 2001 Clarent issued a press release updating the status of its internal
16 investigation, first announced on September 4, 2001. This update indicated that the Company’s
17 fiscal 2000 financial results were implicated by the impropriety announced on September 4, 2001
18 and that the Company’s auditors, Ernst & Young, had “notified the company that its previously
19 issued report on the company's financial statements for the year ended December 31, 2000 should
20 no longer be relied upon.”

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23 ⁴ The Class Period in the first complaints filed against Clarent included all purchases of
24 Clarent common stock between April 26, 2001 and August 31, 2001. On October 23, 2001 Clarent
25 issued a press release updating the public on the status of its internal investigation and indicated that
26 “financial irregularities that materially affect the previously reported results for fiscal year 2000, as
27 well as the first two quarters of fiscal year 2001” were uncovered. Moreover, Clarent announced that
28 its auditor had notified the Company that the audit report for the Company’s Fiscal Year 2000
financial results should not be relied on. As a result, a complaint has been filed which broadens the
defined Class Period to include all persons or entities that purchased Clarent securities from April
26, 2000 through August 31, 2001. This amended Class Period reflects the fact that the Clarent’s
first misleading statement was issued on April 26, 2000.

1 It is expected that if the Company's shares resume trading they will experience an enormous
2 decline in value and that as a result the vast majority of the investments made by the public
3 shareholders of Clarent will be worthless.

4 **III. ARGUMENT**

5 **A. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF**

6 **1. Sachio Semmoto Satisfies The
7 Procedural Requirements Set Forth in the PSLRA**

8 Plaintiffs who commence securities class actions must publish a notice to the class, within
9 twenty days of filing the action, informing class members of the pendency of the action and their
10 right to file a motion for appointment as lead plaintiff. See 15 U.S.C. §78u-4(a)(3)(A)(i). Within
11 sixty days after that publication of notice, any person or group of persons who are members of the
12 proposed class may apply to the Court to be appointed as lead plaintiff. Id.

13 On September 5, 2001, the first of the actions against defendants was filed in the United
14 States District Court for the Northern District of California. On September 5, 2001, the initial notice
15 of the pendency of the action was published and disseminated over the *Business Wire*, a widely
16 circulated, international, business-oriented wire service. A copy of this notice is attached as Exhibit
17 2 to the Harrod Declaration. The notice advised members of the proposed Class of their right to
18 move the Court by November 5, 2001 (sixty days after publication of the notice), to serve as lead
19 plaintiffs. Id. Sachio Semmoto's motion, which is being submitted to the Court by November 5,
20 2001, is timely.

21 **2. Sachio Semmoto Is The "Most Adequate Plaintiff"**

22 The PSLRA mandates that a court shall appoint as lead plaintiff(s) the member(s) of the class
23 that the court determines to be most capable of adequately representing the interests of class
24 members. 15 U.S.C. §78u-4(a)(3)(B)(i). Under the PSLRA, such persons are referred to as the
25 "most adequate plaintiffs." Id. The statute directs that courts consider that the most adequate
26 plaintiff:

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is the person or group of persons that:

- (aa) has either filed the complaint or made a motion in response to a notice . . . ;
- (bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Sachio Semmoto is entitled to this presumption, and is demonstrably the most adequate plaintiff.

a. Sachio Semmoto Has Made a Motion for the Appointment of Lead Plaintiff

Sachio Semmoto has fulfilled the first prong of the test for determining the most adequate plaintiff by signing a certification attesting to his willingness to serve as the class representative, and making his motion for appointment as lead plaintiff. See Harrod Decl., Exh. 1.

b. Sachio Semmoto Has the Largest Financial Interest In the Relief Sought By the Class

Sachio Semmoto believes that he has “the largest financial interest in the relief sought by the Class.” Sachio Semmoto made an aggregate investment of approximately \$500,000 in Clarent; as a result of the fraud perpetrated by defendants Semmoto is presumed to have lost nearly his entire investment. For a calculation of Semmoto’s investment in Clarent, See Harrod Decl., Exhibit 3. Clarent was traded on the NASDAQ National Market System, an efficient market.

In this case, where the proposed lead plaintiff has made a substantial investment in the securities of the defendant corporation, will incur a very large loss relative to other class members, has stepped forward to seek lead plaintiff status, and satisfies the PSLRA’s prerequisites for appointment as lead plaintiff, he should be so appointed.

c. Semmoto Satisfies Fed. R. Civ. P. 23

The PSLRA requires that the proposed lead plaintiff must also “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” To satisfy Rule 23, plaintiffs seeking class certification must demonstrate that: the number of class members is so large that joinder of all class members is impracticable; common issues of law and fact exist and predominate

1 over individual questions; the class representative is typical of class members; the class
2 representative will fairly and adequately protect the interests of the class; and a class action is
3 superior to individual actions. See Fed. R. Civ. P. 23(a) and (b)(3).

4 Section 21D (a)(3)(B)(iii) (II) of the Reform Act provides that the presumption in favor of
5 the most adequate plaintiff may be rebutted only upon proof that this individual or group:

6 (aa) will not fairly and adequately protect the interest of the class; or

7 (bb) is subject to unique defenses that render such plaintiff incapable
8 of adequately representing the class.

9 Id. Consequently, in deciding a motion for appointment of lead plaintiff, inquiry should be limited
10 to the typicality and adequacy prongs of Rule 23(a). E.g., Lax v. First Merchants Acceptance Corp.,
11 Civ. Action No. 97 C 2716, 1997 U.S. Dist. LEXIS 12432, at * 20 (N.D. Ill. Aug. 6, 1997); Fischler
12 v. AmSouth Bancorporation, 1997 U.S. Dist. LEXIS 2875 at *7-8 (M.D. Fla., Feb. 6, 1997).

13 (1) **Semmoto Fulfills**
14 **The Typicality Requirement**

15 The typicality requirement of Rule 23(a)(3) is satisfied when class members suffer injuries
16 similar to those of the absent class members, their claims arise from the same course of conduct by
17 defendants, and the claims are based on the same legal issues. Blackie v. Barrack, 524 F.2d 891,
18 902-03 (9th Cir. 1975). Sachio Semmoto suffered monetary damages as a result of the materially
19 false and misleading statements issued by or on behalf of Clarent during the Class Period, in
20 violation of the federal securities laws.

21 Semmoto seeks to represent a class of persons who purchased Clarent common stock at
22 artificially inflated prices during the Class Period and were damaged. Semmoto satisfies the
23 typicality requirement because he: (i) purchased Clarent common stock during the Class Period; (ii)
24 at prices that were artificially inflated as a result of the materially false and misleading statements
25 issued by defendants during the Class Period; and (iii) suffered damages thereby. Thus, typicality
26 is satisfied because the claims asserted by Sachio Semmoto are based on the same legal theories and
27 arise “from the same event or practice or course of conduct that gives rise to the claims of other class
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1 members.” In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig., 122 F.R.D.
2 251, 256 (C.D. Cal. 1988). Accord Blackie v. Barrack, 524 F.2d 902-903.

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4 **(2) Sachio Semmoto Will Fairly and**
5 **Adequately Represent the Interests of the Class**

6 Under Rule 23(a)(4), a representative party must fairly and adequately protect the interests
7 of the class. This requirement is met if it appears that (1) the named plaintiff has interests in
8 common with, and not antagonistic to, the class’ interests; and (2) the plaintiff’s attorneys are
9 qualified, experienced and generally able to conduct the litigation. The PSLRA directs the Court to
10 limit its inquiry under the adequacy prong to the existence of any conflicts between the interests of
11 the proposed representatives and members of the Class, and then allow the lead plaintiff to retain
12 lead counsel to represent the class, “subject to the approval of the court.” See §21D(a)(3)(B)(v) of
13 the Exchange Act.

14 Here, the interests of Dr. Semmoto are clearly aligned with the members of the Class, and
15 there is no evidence of any antagonism between his interests and the Class. Sachio Semmoto shares
16 virtually identical questions of law and fact with the members of the Class, and his claims are typical
17 of the claims of other class members.

18 Dr. Semmoto is a victim of the same fraud as all other class members, and his claims raise
19 similar questions of law and fact as those of all class members. To further his own interests,
20 Semmoto will necessarily have to advance the interests of all class members. Semmoto has already
21 demonstrated his commitment to vigorously prosecuting claims on behalf of the class by retaining
22 counsel experienced in complex class litigation and by executing a certification attesting to his
23 willingness to serve as class representative. These facts amply demonstrate that Sachio Semmoto
24 will adequately represent the interests of the Class.

25 **B. THE COURT SHOULD APPROVE SEMMOTO’S**
26 **CHOICE OF LEAD COUNSEL**

27 The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject to court
28 approval. See 15 U.S.C. §78u-4(a)(3)(B)(v). Consistent with congressional intent, a court should
not disturb the lead plaintiff’s choice of counsel, unless “necessary to protect the interest of the

1 plaintiff class.” See Statement of Managers -- The “Private Securities Litigation Reform Act of
2 1995,” 141 Cong. Rec. H13691-08, at H13700, H. R. Conf. Rpt. No. 104-369, at 62, 104th Cong.
3 1st Sess. (Nov. 28, 1995). The proposed lead plaintiff has selected the law firm of Wolf Popper LLP
4 as lead counsel to prosecute the action. Wolf Popper LLP has been highly successful in prosecuting
5 securities fraud class action litigation, as outlined in the firm’s resume annexed as Exhibit 4 to the
6 Harrod Decl. Thus, the Court may be assured that by granting this motion, the members of the class
7 will receive the highest caliber legal representation available.

8 **IV. CONCLUSION**

9 For all of the foregoing reasons, Dr. Sachio Semmoto respectfully requests that the Court
10 appoint him lead plaintiff. Sachio Semmoto further requests that the Court approve his choice
11 of Wolf Popper LLP as lead counsel for the Class.

12 Dated: November 2, 2001

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon the following counsel of record in the seven related actions consolidated by the Stipulation of Consolidation, by United States mail, first class postage prepaid this 2nd day of November 2001:

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