

1 BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
2 ALAN SCHULMAN (Bar No. 128661)
ROBERT S. GANS (Bar No. 214420)
3 BLAIR A. NICHOLAS (Bar No. 178248)
TRACEY WORTHINGTON (Bar No. 140802)
4 12544 High Bluff Drive, Suite 150
San Diego, CA 92130
5 Tel: (858) 793-0070
Fax: (858) 793-0323

6 -and-
DOUGLAS M. McKEIGE
7 1285 Avenue of the Americas
New York, NY 10019
8 Tel: (212) 554-1400
Fax: (212) 554-1444

9 Attorneys for The Teachers' Retirement
10 System of Louisiana, The Louisiana Municipal
Police Employees' Retirement System, and
11 Proposed Lead Counsel for the Class

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 YEHUDAH TOIV, on behalf of himself and
16 all others similarly situated,

17 Plaintiff,

18 v.

19 RAMBUS, INC., GEOFF TATE, WILLIAM
DAVIDOW, BRUCE DUNLEVIE, P.
20 MICHAEL FARMWALD, MARK
HOROWITZ, CHARLES GESCHKE,
21 DAVID MOORING, and GARY
HARMON,

22 Defendants.

Case No. C-01-3112-MMC

CLASS ACTION

Date: November 16, 2001
Time: 9:00 a.m.
Courtroom: 2
Judge: Hon. Maxine M. Chesney

23
24
25 NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN
26 SUPPORT OF THE MOTION OF THE TEACHERS' RETIREMENT SYSTEM OF
LOUISIANA AND LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT
27 SYSTEM TO BE APPOINTED LEAD PLAINTIFFS PURSUANT
TO §21D(a)(3)(B) OF THE SECURITIES EXCHANGE ACT OF 1934
28 AND TO APPROVE PROPOSED LEAD PLAINTIFFS' CHOICE OF COUNSEL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. PROCEDURAL BACKGROUND 4

III. SUMMARY OF PENDING ACTIONS 5

IV. ARGUMENT 7

 A. The Louisiana Retirement Funds Should Be Appointed Lead Plaintiff 7

 1. The Louisiana Retirement Funds Are Institutional Investors With A Large Financial Stake In The Relief Sought By The Class 7

 2. The Louisiana Retirement Funds Are Qualified Under Rule 23 9

 a. The Louisiana Retirement Funds’ Claims Are Typical Of The Claims Of The Class 10

 b. The Louisiana Retirement Funds Will Fairly And Adequately Represent The Interests Of The Class 11

 B. This Court Should Approve The Louisiana Retirement Funds’ Choice Of Lead Counsel 12

V. CONCLUSION 13

TABLE OF AUTHORITIES

1

2 *Blackie v. Barrack*,

3 524 F.2d 891 (9th Cir. 1975) 10

4 *Bowman v. Legato Systems, Inc.*,

5 195 F.R.D. 655 (N.D. Cal. 2000) 3, 8

6 *Gluck v. CellStar Corp.*,

7 976 F. Supp. 542 (N.D. Tex. 1997) 3, 8, 9

8 *Greebel v. FTP Software*,

9 939 F. Supp. 57 (D. Mass. 1996) 3

10 *Hanon v. Dataproducts Corp.*,

11 976 F.2d 497 (9th Cir. 1992) 10

12 *In re Cirrus Logic Sec.*,

13 155 F.R.D. 654 (N.D. Cal. 1994) 10

14 *In re Computer Memories Sec. Litigation*,

15 111 F.R.D. 675 (N.D. Cal. 1986) 11

16 *In re Conseco, Inc. Sec. Litig.*,

17 120 F. Supp. 729 2d (S.D. Ind. 2000) 3, 8

18 *In re McKesson HBOC, Inc. Sec. Litig.*,

19 79 F. Supp. 2d 1146 (N.D. Cal. 1999) 3, 8

20 *In re Network Assoc. Sec. Litig.*,

21 76 F. Supp. 2d 1017 (N.D. Cal. 1999) 3, 8

22 *In re Telxon Corp. Sec. Litig.*,

23 67 F. Supp. 2d 803 (N.D. Ohio 1999) 8

24 *In re United Energy Corp. Solar Power Modules*
Tax Shelter Investment Sec. Litigation,

25 122 F.R.D. 251 (C.D. Cal. 1988) 10

26 *Piven v. Sykes Enters.*,

27 137 F. Supp. 2d 1295 (M.D. Fla. 2000) 8

28 *Ravens v. Iftikar*,

 174 F.R.D. 651 (N.D. Cal. 1997) 7

Sakhrani v. Brightpoint, Inc.,

 78 F. Supp. 2d 845 (S.D. Ind. 1999) 8

Sherleigh Assocs. LLC v. Windmere-Durable Holdings, Inc.,

 184 F.R.D. 688 (S.D. Fla. 1999) 7, 8

Switzenbaum v. Orbital Sciences Corp.,

 187 F.R.D. 246 (E.D. Va. 1999) 8

1	<i>Weinberger v. Thornton</i> ,	
	114 F.R.D. 599 (S.D. Cal. 1986)	11
2		
3	<i>Weiss & Beckerman</i> ,	
	104 Yale L.J. at 2108	8
4	<i>Wenderhold v. Cylink Corp.</i> ,	
	188 F.R.D. 577 (N.D. Cal. 1999)	8
5		
6	<i>Yousefi v. Lockheed Martin Corp.</i> ,	
	70 F. Supp. 2d 1061 (C.D. Cal. 1999)	8
7	<u>Statues, Rules & Regulations</u>	
8	15 U.S.C.	
	§78j(b)	5, 9
9	§78t(a)	5
	§78u-4(a)(3)(A)(I)	3, 5
10	§78u-4(a)(3)(B)	1, 13
	§78u-4(a)(3)(B)(iii)(I)	4, 7
11	§78u-4(a)(3)(B)(iii)(I)(cc)	9
	§78u-4(a)(3)(B)(iii)(II)(aa)	12
12	§78u-4(a)(3)(B)(v)	11, 12
	§78u-4(e)	9
13		
	Federal Rules of Civil Procedure	
14	Rule 23	9
	Rule 23(a)	10
15	Rule 23(a)(3)	10
	Rule 23(a)4	11
16		
	<u>Secondary Authorities</u>	
17		
18	House Conference Report No. 104-369,	
	104 th Cong. 1 st Sess. at 34 (1995)	
	1995 WL 709276	2
19		
20	<u>Let the Money Do the Monitoring: How Institutional</u>	
	<u>Investors Can Reduce Agency Costs in Securities Class Actions.</u>	
21	Elliott J. Weiss & John S. Beckerman,	
	104 Yale L.J. 2053, 2095 (1995)	3
22	Report on the Private Securities Litigation Reform Act of 1995	
	Senate Report No. 104-98	2, 3, 8
23		
24		
25		
26		
27		
28		

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 16, 2001, at 9:00 a.m. in Courtroom 2 of the
3 above-entitled Court located at 450 Golden Gate Avenue, San Francisco, California, 94102, the
4 Teachers' Retirement System of Louisiana ("Louisiana Teachers") and the Louisiana Municipal Police
5 Employees' Retirement System ("Louisiana Municipal") (collectively the "Louisiana Retirement
6 Funds") respectfully move this Court pursuant to §21D(a)(3)(B) of the Securities Exchange Act of
7 1934, for entry of an Order appointing the Louisiana Retirement Funds as lead plaintiffs in this Action
8 and all Actions consolidated herewith, and approving their choice of lead counsel.

9 I. INTRODUCTION

10 The Louisiana Retirement Funds respectfully submit this Memorandum of Points and
11 Authorities in support of their motion for (1) appointment as lead plaintiffs in this Action and all
12 actions consolidated herewith; and (2) approval of their selection of lead counsel.¹ The Louisiana
13 Retirement Funds are public pension funds with combined losses in excess of \$3.3 million from
14 purchases of 143,050 shares of Rambus, Inc. ("Rambus" or the "Company") common stock.² As set
15 forth in the Joint Affidavit of William T. Reeves, Esq., General Counsel of Louisiana Teachers and
16 R. Randall Roche, Esq., General Counsel of Louisiana Municipal ("Joint Affidavit"), annexed hereto
17 as Exhibit E to Nicholas Dec., the Louisiana Retirement Funds understand the applicable provisions
18 governing the appointment of lead plaintiff in securities class actions under the Private Securities
19 Litigation Reform Act of 1995 (the "Reform Act"), are committed to their fiduciary responsibilities

21 ¹ The federal securities laws specifically authorize class members, regardless of whether
22 they filed a complaint, to move for appointment as lead plaintiff. *See* 15 U.S.C. §78u-4(a)(3)(B).

23 ² The Louisiana Retirement Funds purchased Rambus common stock during the period
24 from January 18, 2000 through May 9, 2001 (the "Class Period."); Louisiana Teachers suffered a loss
25 of \$2,299,031.70 from the purchase of 92,900 shares of Rambus common stock during the Class
26 Period. Louisiana Municipal suffered a loss of \$1,009,538.80 from the purchase of 50,150 shares of
27 Rambus common stock during the Class Period. A copy of Louisiana Teachers' certification and a
28 chart summarizing its losses are attached hereto as Exhibits A and B, respectfully, to the Declaration
of Blair A. Nicholas ("Nicholas Dec.") in support of the Motion of the Teachers' Retirement System
of Louisiana and the Louisiana Municipal Police Employees' Retirement System to be Appointed
Lead Plaintiffs. A copy of Louisiana Municipal's certification and chart summarizing its losses are
attached hereto as Exhibits C and D to Nicholas Dec.

1 to the Class, possess the sophistication, expertise, and resources to effectively supervise the litigation
2 and counsel, and have taken affirmative steps to ensure that they have the authority and responsibility
3 to direct counsel throughout the course of the litigation at a reasonable cost to the class.

4 Further, the Louisiana Retirement Funds have developed a close and cooperative working
5 relationship preceding this litigation. The Louisiana Retirement Funds actively collaborate on
6 legislation pertaining to employee issues such as benefits and funding, before the Louisiana State
7 Legislature. Joint Affidavit at ¶8.³ The Louisiana Retirement Funds are located in close proximity
8 to one another in Baton Rouge, Louisiana, and representatives of the Louisiana Retirement Funds
9 often meet to discuss common issues impacting their pensioners. *Id.* at ¶8. Accordingly, the
10 Louisiana Funds have a strong working relationship and are capable of effectively managing the
11 prosecution of this action on behalf of the Class.

12 The Louisiana Retirement Funds are precisely the type of institutional investors with a large
13 financial stake in the litigation that Congress sought to encourage to serve as lead plaintiffs in class
14 actions brought under the federal securities laws. Congress envisioned that the Reform Act would
15 “increase the likelihood that institutional investors will serve as lead plaintiffs” because among other
16 reasons, institutional investors with large amounts at stake “will represent the interests of the plaintiff
17 class more effectively than members with small amounts at stake.” House Conference Report No.
18 104-369, 104th Cong. 1st Sess. at 34 (1995), 1995 WL 709276 at 30. Similarly, the Senate Report
19 on the Reform Act states:

20 The Committee believes that increasing the role of institutional investors in class
21 actions will ultimately benefit the class and assist the courts.

22 Institutions with large stakes in class actions have much the same interests as the
23 plaintiff class generally.

24 Report on the Private Securities Litigation Reform Act of 1995, Senate Report No. 104-98 at 11
(hereinafter “S. Rep.”).

25 Numerous courts also have recognized that when Congress enacted the Reform Act it

27 ³ Unless otherwise stated, “¶____” and “¶¶____” refer to specific paragraph(s) of the Joint
28 Affidavit annexed hereto as Exhibit E to Nicholas Dec.

1 envisioned that institutional investors would take control of securities class action litigation and
2 actively manage the litigation. As Judge Fogel recently recognized in *Bowman v. Legato Systems,*
3 *Inc.*, 195 F.R.D. 655 (N.D. Cal. 2000), a large pension fund is “exactly the type of lead plaintiff
4 envisioned by Congress when it instituted the lead plaintiff requirements,” since the Reform Act was
5 “intended to create a new model for securities fraud litigation, under which the district court would
6 appoint a strong lead plaintiff who would actively manage the litigation on behalf of the class.” *Id.*
7 at 657-58. *See also, In re McKesson HBOC, Inc. Sec. Litig.*, 79 F. Supp. 2d 1146 (N.D. Cal. 1999)
8 (“The framers of the Reform Act envisioned that established institutional investors would take control
9 of securities litigation”); *In re Network Assoc. Sec. Litig.*, 76 F. Supp. 2d 1017, 1020 (N.D. Cal.
10 1999) (“Congress expected that the lead plaintiff would normally be an institutional investor with a
11 large stake in the outcome.”) This presumption is rooted in Congress’ belief that increasing the role
12 of institutions in securities class actions would “benefit both injured shareholders and the courts.”
13 *Greebel v. FTP Software*, 939 F. Supp. 57, 63 (D. Mass. 1996). *See also, In re Conseco, Inc. Sec.*
14 *Litig.*, 120 F. Supp. 2d 729, 734 (S.D. Ind. 2000) (“Congress has expressed a preference for
15 institutional investors to be appointed lead plaintiff.”); *Gluck v. CellStar Corp.*, 976 F. Supp. 542,
16 548 (N.D. Tex. 1997) (“through the PSLRA, Congress has unequivocally expressed its preference
17 for securities fraud litigation to be directed by large institutional investors”). In reaching this
18 conclusion, Congress reasoned that:

19 [i]nstitutions’ large stakes give them an incentive to monitor, and institutions have or
20 readily could develop the expertise necessary to assess whether plaintiffs’ attorneys
are acting as faithful champions for the plaintiff class.

21 *See Elliott J. Weiss & John S. Beckerman, Let the Money Do the Monitoring: How Institutional*
22 *Investors Can Reduce Agency Costs in Securities Class Actions*, 104 Yale L.J. 2053, 2095 (1995)
23 (“Weiss & Beckerman”). *See also* S. Rep. at 11 n.32 (noting that Weiss & Beckerman provided “the
24 basis for the most adequate plaintiff provision.”).

25 To implement this Congressional goal, the Reform Act sets forth a detailed procedure for the
26 selection of lead plaintiff to oversee class actions brought under the federal securities laws.
27 Section 21D(a)(3)(A)(I) of the Exchange Act provides that, within 20 days after the date on which
28

1 a class action is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated
2 national business-oriented publication or wire service, a notice advising members of the purported
3 plaintiff class:

4 (I) of the pendency of the action, the claims asserted therein, and the
5 purported class period; and

6 (II) that, not later than 60 days after the date on which the notice is
7 published, any member of the purported class may move the court to serve as lead
8 plaintiff of the purported class.

9 *See* 15 U.S.C. §78u-4(a)(3)(A)(I).

10 Further, Section 21D of the Exchange Act directs the Court to consider any motions brought
11 by plaintiffs or purported class members to appoint lead plaintiffs filed in response to any such notice
12 by not later than 90 days after the date of publication, or as soon as practicable after this Court
13 decides any pending motion to consolidate any actions asserting substantially the same claim or
14 claims. This provision further directs the Court to appoint the “most adequate plaintiff” to serve as
15 lead plaintiff and, in making this determination, to presume that the “most adequate plaintiff” is the
16 entity that, among other things, has “the largest financial interest in the relief sought by the class.”

17 *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

18 As large public pension funds, the Louisiana Retirement Funds possess the financial
19 sophistication and expertise to ensure that this litigation is conducted in the best interests of the
20 members of the Class. Having suffered a collective loss in excess of \$3.3 million, on behalf of their
21 pensioners, the Louisiana Retirement Funds believe they have “the largest financial interest in the
22 relief sought by the Class,” as generally required for appointment as lead plaintiff under the Reform
23 Act. Therefore, the Louisiana Retirement Funds respectfully request that the Court grant their
24 motion to be appointed lead plaintiffs and approve their selection of lead counsel.

25 II. PROCEDURAL BACKGROUND

26 At the present time, the Louisiana Retirement Funds are aware of eight related class action
27 securities lawsuits pending in this District against Rambus. They include the following:
28

	<u>Abbreviated Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
1			
2	1. <i>Toiv v. Rambus, Inc. et al.</i>	C-01-3112 WDB	8/10/01
3	2. <i>Schwartz v. Rambus, Inc., et al.</i>	CV-01-03132	8/14/01
4	3. <i>Greenblatt v. Rambus, Inc. et al.</i>	C-01-03131 BZ	8/14/01
5	4. <i>Will v. Rambus, Inc. et al.</i>	C-01-3140 EDL	8/15/01
6	5. <i>Arefi v. Rambus Inc. et al.</i>	CV-01-3146	8/15/01
7	6. <i>Murphy v. Rambus, Inc. et al.</i>	C-01-3150	8/15/01
8	7. <i>Zia v. Rambus, Inc., et al.</i>	CV-01-03196	8/20/01
9	8. <i>Baker v. Rambus, Inc. et al.</i>	CV-01-20833	8/20/01

10 These actions allege claims for violations of Section 10(b) and 20(a) of the Exchange Act and
11 Section 10b-5 promulgated thereunder, on behalf of investors who purchased or otherwise acquired
12 shares of Rambus' common stock in the open market during essentially the same class period. The
13 complaints filed in these Actions are highly similar and arise from the same facts. Accordingly, the
14 Court should consolidate these actions.

15 The Exchange Act requires the prompt publication of a notice advising class members of their
16 right to move to be appointed lead plaintiff within sixty days of the publication. On August 10, 2001,
17 plaintiff in the *Toiv* action published a notice of pendency of this action via the Primezone Media
18 Network. See Exhibit F to Nicholas Dec. That notice advised class members of the existence of the
19 lawsuit and described the claims asserted. This motion is timely filed within sixty days from the
20 publication of that notice. 15 U.S.C. §78u-4(a)(3)(A)(I).

21 III. SUMMARY OF PENDING ACTIONS

22 These class actions allege that, throughout the Class Period, the defendants engaged in a
23 fraudulent scheme to misstate the Company's revenues and artificially inflate its stock price by
24 misrepresenting to the marketplace the enforceability of patents that Rambus had deceptively and
25 fraudulently obtained from competitors on SDRAM computer memory chips.

26 Rambus, headquartered in Los Altos, California, describes itself as an intellectual property
27 company that purportedly designs, develops and licenses high-bandwidth chip-connection technology

28

1 which enables semiconductor memory devices to keep pace with faster generations of processors and
2 controllers. Founded in 1990, Rambus was initially responsible for designing a particular DRAM
3 memory chip that was known as “RDRAM,” for Rambus DRAM. The DRAM is a memory chip that
4 allows for interfacing for personal computers, video games and other electronic systems. However,
5 in 1992, Rambus recognized the threat of a competing technology being developed by other
6 chipmakers known as synchronous DRAM, or SDRAM. Accordingly, throughout the Class Period,
7 defendants employed an aggressive strategy to not only compete with the SDRAM technology, but
8 also to fraudulently obtain patent rights to critical elements of the SDRAM technology and then
9 capitalize on those patents once other chipmakers began commercially producing the SDRAM chips
10 in volume.

11 By 1999, the bulk of Rambus’ SDRAM patents, which were based almost entirely on
12 information and technology it had deceptively obtained as a member of the Joint Electron Device
13 Engineering Council (hereinafter “JEDEC”), were issued by the U.S. Patent and Trademark Office.
14 With the fraudulently obtained patents in hand, defendants then set forth on a fraudulent scheme to
15 convince the investing public that the Company’s SDRAM patents would be a huge source of
16 revenue. For example, on June 15, 2000, Rambus announced that it had entered into a license
17 agreement with Toshiba Corporation (“Toshiba”) wherein Toshiba would pay Rambus royalties for
18 use of Rambus SDRAM patents. Immediately following this announcement, Rambus’ share price
19 skyrocketed by \$25 per share – or over 45%. Shortly thereafter, Rambus announced that several
20 other chipmakers signed similar licensing agreements with the Company to license the SDRAM
21 technology.

22 Despite defendants’ knowledge that the SDRAM patents had been fraudulently obtained and
23 were therefore unenforceable, Rambus continued to misrepresent its intellectual property business
24 model to the investing public. As a result of these misrepresentations, by June 22, 2000, the price
25 of Rambus’ shares skyrocketed to a Class Period high of \$137 per share, enabling the Company’s
26 Chief Executive Officer, the Company’s President, and the Company’s Chief Financial Officer, to
27 collectively sell over 650,206 shares of Rambus common stock for proceeds of approximately \$37
28

1 million.

2 Following these insider sales, Rambus continued to misrepresent to the investing public that
3 its SDRAM related patents were enforceable. However, on May 9, 2001 a jury in the United States
4 District Court for Eastern District of Virginia determined that Rambus had committed fraud in
5 obtaining many of its SDRAM related patents, an undisclosed material fact that defendants knew
6 throughout the Class Period. As a result, the price of Rambus common stock plummeted to
7 approximately \$12 per share, down almost 93% from the Class Period high of \$137 per share. As
8 a result, the Louisiana Retirement Funds and other members of the Class who purchased Rambus
9 common stock during the Class Period suffered substantial losses.

10 IV. ARGUMENT

11 A. The Louisiana Retirement Funds Should Be Appointed Lead Plaintiff

12 1. The Louisiana Retirement Funds Are Institutional Investors
13 With A Large Financial Stake In The Relief Sought By The Class

14 The Reform Act provides that this Court:

15 shall appoint as lead plaintiff the member or members of the purported plaintiff class
16 that the court determines to be most capable of adequately representing the interests
17 of class members (hereafter in this paragraph referred to as the “most adequate
18 plaintiff”) in accordance with this subparagraph.

18 Moreover, the statute directs the Court to adopt a rebuttable presumption that:

19 [T]he most adequate plaintiff in any private action arising under this title is the person
20 or group of persons that -

21 * * *

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

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

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

28 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

The Congressional goal in enacting these provisions was to encourage large, sophisticated

1 institutional investors to direct securities class actions, thereby supplanting the prior regime of
2 “figurehead plaintiffs who exercise no meaningful supervision of litigation.” *Ravens v. Iftikar*, 174
3 F.R.D. 651, 661 (N.D. Cal. 1997). Congress reasoned that the empowerment of institutional
4 investors would result in the appointment of lead plaintiffs that “can best prosecute the claims” and
5 are “best able to negotiate with and oversee counsel.” *Sherleigh Assocs. LLC v. Windmere-Durable*
6 *Holdings, Inc.*, 184 F.R.D. 688, 691 (S.D. Fla. 1999).

7 Indeed, Judge Fogel specifically noted in a recent decision that a large institutional investor
8 was “exactly the type of lead plaintiff envisioned by Congress when it instituted the lead plaintiff
9 requirements,” as the Reform Act was “intended to create a new model for securities fraud litigation,
10 under which the district court would appoint a strong lead plaintiff who would actively manage the
11 litigation on behalf of the class.” *Bowman v. Legato*, 195 F.R.D. 655, 657-58 (N.D. Cal. 2000). *See*
12 *In re Network Associates, Inc.*, 76 F. Supp. 2d at 1020 (“Congress expected that the lead plaintiff
13 would normally be an institutional investor with a large stake in the outcome.”); *Gluck v. CellStar*
14 *Corp.*, 976 F. Supp. at 548 (noting that “[t]he legislative history of the [PSLRA] is replete with
15 statements of Congress’ desire to put control of such litigation in the hands of large, institutional
16 investors”).

17 Accordingly, courts have uniformly appointed a single institutional investor or small group
18 of institutional investors as lead plaintiff, recognizing that appointment of a random assemblage of
19 unrelated individuals generally undermines the remedial purpose of the Reform Act.⁴ Notably, the
20 law review article cited in the legislative history of the Reform Act as “provid[ing] the basis for the
21 ‘most adequate plaintiff’ provision,” S. Rep. at 11, n.32, suggests that Congress used the “group of
22 institutions” language in the lead plaintiff provisions of the Reform Act because “if several institutions

23
24 ⁴ *See, e.g., Sakhrani v. Brightpoint, Inc.*, 78 F. Supp. 2d 845 (S.D. Ind. 1999); *In re*
25 *McKesson HBOC, Inc. Sec. Litig.*, 79 F. Supp. 2d 1146; *Yousefi v. Lockheed Martin Corp.*, 70 F.
26 Supp. 2d 1061, 1067-71 (C.D. Cal. 1999); *In re Telxon Corp. Sec. Litig.*, 67 F. Supp. 2d 803, 809-16
27 (N.D. Ohio 1999); *Wenderhold v. Cylink Corp.*, 188 F.R.D. 577, 583-87 (N.D. Cal. 1999);
28 *Switzenbaum v. Orbital Sciences Corp.*, 187 F.R.D. 246, 248-51 (E.D. Va. 1999). These concerns
are especially critical where the proposed lead plaintiffs were targets of “recruiting efforts” by law
firms, and have little understanding of the duties and responsibilities of a lead plaintiff. *See Sherleigh*
Assocs., 184 F.R.D. at 694 n.4.

1 were interested in becoming involved, they could either compete to become lead plaintiff or agree to
2 work together.” *Weiss & Beckerman*, 104 Yale L.J. at 2056. *See Piven v. Sykes Enters.*, 137 F.
3 Supp. 2d 1295 (M.D. Fla. 2000) (appointing two pension funds as lead plaintiff); *In re Conseco, Inc.*
4 *Sec. Litig.*, 120 F. Supp. 2d 729 (appointing two retirement funds as lead plaintiff). Here, as outlined
5 in the Joint Affidavit, Louisiana Teachers and Louisiana Municipal have agreed to work together as
6 lead plaintiffs to provide fair and adequate representation and to work actively with class counsel to
7 obtain the largest recovery for the proposed class. Indeed, the Louisiana Retirement Systems have
8 worked together in the past apart from joining together to prosecute this Action.

9 The Louisiana Retirement Funds actively collaborate on legislation pertaining to employee
10 issues such as benefits and funding, before the Louisiana State Legislature. *Id.* at ¶8. The Louisiana
11 Retirement Funds are located in close proximity to one another in Baton Rouge, Louisiana, and
12 representatives of the Louisiana Retirement Funds often meet to discuss common issues impacting
13 their pensioners. *Id.* at ¶8. Accordingly, the Louisiana Funds have a strong working relationship and
14 are capable of effectively managing the prosecution of this action on behalf of the Class.

15 Accordingly, the Louisiana Retirement Funds are ideally situated to serve as lead plaintiff in
16 the present case. As public pension funds with collectively over \$11 billion in assets under
17 management, and having suffered a loss in excess of \$3.3 million,⁵ appointment of the Louisiana
18 Retirement Funds as lead plaintiffs would advance one of the Reform Act’s primary goals – to
19 encourage institutional investors with large financial stakes in the outcome to assume control over
20 securities class actions. Indeed, the Louisiana Retirement Funds have affirmatively committed to
21 “actively represent the class” and “drive the litigation” to ensure that the class obtains the best
22

23 ⁵ Section 21D(e) of the Exchange Act, 15 U.S.C. §78u-4(e), provides a formula for
24 computing a Class member’s damages for violations of Section 10(b), which includes separate
25 calculations as to securities that have been sold and securities that are still held. For purchasers who
26 continue to hold their securities, damages are measured by comparing the purchase price of the
27 security with its mean trading price during the 90 day period following the corrective disclosure by
28 the Company. Louisiana Municipal continues to hold 14,700 shares of Rambus common stock. To
compute losses on retained shares, Louisiana Municipal utilized the mean trading price during the 90
day period following the corrective disclosure by Rambus (May 10, 2001 through and including
August 8, 2001) which is \$10.272.

1 recovery possible. *Gluck*, 976 F. Supp. at 549. *See also* Joint Affidavit ¶¶3-5.

2 2. The Louisiana Retirement Funds Are Qualified Under Rule 23

3 Section 21D(a)(3)(B)(iii)(I)(cc) of the Exchange Act, as amended by the Reform Act,
4 provides that the lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the
5 Federal Rules of Civil Procedure.” *Id.* With respect to the qualification of a class representative,
6 Rule 23(a) requires generally that its claims be typical of the claims of the class and that the
7 representative fairly and adequately protect the interests of the class. As detailed below, the
8 Louisiana Retirement Funds satisfy the typicality and adequacy requirements of Rule 23(a), and
9 should therefore be appointed as Lead Plaintiffs.

10 a. The Louisiana Retirement Funds’ Claims
11 Are Typical Of The Claims Of The Class

12 The typicality requirement of Rule 23(a)(3) is satisfied when the named plaintiffs have (1)
13 suffered the same injuries as the absent class members; (2) as a result of the same course of conduct
14 by defendants; and (3) their claims are based on the same legal issues. *Hanon v. Dataproducts Corp.*,
15 976 F.2d 497, 508 (9th Cir. 1992); *In re Cirrus Logic Sec.*, 155 F.R.D. 654, 657 (N.D. Cal. 1994).
16 The questions of law and fact common to the members of the Class which predominate over
17 questions that may affect individual Class members include the following:

18 (1) whether defendants issued false and misleading statements during the Class
19 Period relating to its business and intellectual property;

20 (2) whether defendants acted knowingly or with deliberate recklessness in issuing
21 false and misleading statements;

22 (3) whether the market price of Rambus common stock was artificially inflated
23 during the Class Period because of the defendants’ conduct complained of herein; and

24 (4) whether the members of the Class have sustained damages and, if so, what is
25 the proper measure of damages.

26 These questions apply equally to the Louisiana Retirement Funds as to all other members of
27 the proposed Class. The Louisiana Retirement Funds and all of the members of the Class acquired
28

1 Rambus' common stock in the open market, at prices allegedly artificially inflated by defendants'
2 fraudulent misrepresentations and omissions, and were damaged thereby. Because the Louisiana
3 Retirement Funds' claims are based on the same legal theories and arise "from the same event or
4 course of conduct giving rise to the claims of other class members," typicality is satisfied. *In re*
5 *United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litigation*, 122 F.R.D. 251, 256
6 (C.D. Cal. 1988); *accord Blackie v. Barrack*, 524 F.2d 891, 902-03 & n.19 (9th Cir. 1975).

7 b. The Louisiana Retirement Funds Will Fairly And
8 Adequately Represent The Interests Of The Class

9 Prior to the enactment of the Reform Act, Courts within this Circuit routinely held that the
10 adequacy requirements of Rule 23(a)(4) were satisfied under a dual pronged analysis requiring:

- 11 (1) that the interests of the class representative coincide with those of the class, and
12 (2) that the representative be able to prosecute the action vigorously. [citation
13 omitted.] To make the first showing, a class representative must demonstrate that
14 there is no antagonism among the claims of the various (named or absent) plaintiffs.
15 To make the second showing, the representative must demonstrate adequacy of
16 counsel.

17 *Weinberger v. Thornton*, 114 F.R.D. 599, 604-605 (S.D. Cal. 1986). *Accord, In re Computer*
18 *Memories Sec. Litigation*, 111 F.R.D. 675, 682 (N.D. Cal. 1986) ("the focus of the adequacy
19 determination has been on the competency of counsel and the absence of antagonistic interests
20 between class representatives and class members"). The enactment of the Reform Act slightly
21 changed this analysis, however, by directing the Court to limit its inquiry to the existence of any
22 conflicts between the interests of the proposed representatives and the members of the Class, and then
23 allow the lead plaintiff or plaintiffs to retain lead counsel to represent the Class, "subject to the
24 approval of the court." *See* 15 U.S.C. §78u-4(a)(3)(B)(v).

25 The interests of the Louisiana Retirement Funds are clearly aligned with the members of the
26 Class and there is no evidence of any antagonism between its interests and those of the Class
27 members. As detailed above, the Louisiana Retirement Funds share substantially similar questions
28 of law and fact with the members of the Class and its claims are typical of the members of the Class.
Further, as substantial institutional investors the Louisiana Retirement Funds have a significant and

1 compelling interest in prosecuting this Action to its conclusion, based upon the substantial financial
2 loss that they have incurred as a result of the wrongful conduct alleged herein. This motivation,
3 combined with the Louisiana Retirement Funds' common interest with the members of the Class,
4 militates in favor of granting the instant motion.

5 B. This Court Should Approve The Louisiana
6 Retirement Funds' Choice Of Lead Counsel

7 The Reform Act vests authority in the lead plaintiff to select and retain counsel to represent
8 the class, subject to this Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). Thus, this Court
9 should not disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests of
10 the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa).

11 The Louisiana Retirement Funds have retained the law firm of Bernstein Litowitz Berger &
12 Grossmann LLP ("Bernstein Litowitz") to serve as Lead Counsel for the Class. Bernstein Litowitz
13 possesses extensive experience litigating complex actions such as this one and has successfully
14 prosecuted numerous securities fraud class actions on behalf of injured investors. *See* Bernstein
15 Litowitz Berger & Grossmann LLP's firm resume attached hereto as Exhibit G to Nicholas Dec.

16 The Louisiana Retirement Funds have jointly negotiated a fee agreement with Bernstein
17 Litowitz which allows Bernstein Litowitz to apply for a specific percentage of the funds recovered
18 based on a sliding scale of the amount of the recovery and the stage of the litigation at which the
19 recovery is obtained. *See* ¶11 Joint Affidavit. Under the Reform Act, the lead plaintiff is supposed
20 to both "select and retain" lead counsel subject to the approval of the Court. *Id.* at ¶11. The
21 Louisiana Retirement Funds believe that they have a duty to seek improvement from the recoveries
22 that are often obtained in securities class action litigation and one of the ways they have sought to do
23 so is to lower the legal fees. *Id.* at ¶11. As such, Bernstein Litowitz has agreed to be compensated
24 as lead counsel in this action based on percentages significantly below what is typically awarded in
25 a case of this type. *Id.* at ¶11. The Louisiana Retirement Funds further understand that when this case
26 is ultimately resolved that the attorneys' fees and expenses are subject to approval of the Court after
27 notice to the class. *Id.* at ¶11.

1 As demonstrated in the Joint Affidavit, the Louisiana Retirement Funds are sophisticated
2 institutional investors that carefully selected their counsel at a reasonable fee in the best interest of
3 the members of the Class. Accordingly, the Louisiana Retirement Funds respectfully request that the
4 Court approve their selection of counsel.

5
6 V. CONCLUSION

7 For all the foregoing reasons, the Louisiana Retirement Funds respectfully requests that this
8 Court: (1) appoint the Louisiana Retirement Funds as lead plaintiff pursuant to Section 21D(a)(3)(B)
9 of the Exchange Act; (2) approve the Louisiana Retirement Funds' selection of lead counsel for the
10 class; and (3) grant such other and further relief as the Court may deem just and proper.

11 Dated: October 8, 2001

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

12
13
14
15 _____
BLAIR A. NICHOLAS

16 ALAN SCHULMAN
17 ROBERT S. GANS
18 BLAIR A. NICHOLAS
19 TRACEY WORTHINGTON
12544 High Bluff Drive, Suite 150
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323

-and-

20 DOUGLAS M. McKEIGE
21 1285 Avenue of the Americas
22 New York, NY 10019
23 Tel: (212) 554-1400
24 Fax: (212) 554-1444

25 Attorneys for The Teachers' Retirement
26 System of Louisiana, The Louisiana Municipal
27 Police Employees' Retirement System, and
28 Proposed Lead Counsel for the Class

MEMO Supporting Appointment of Lead Counsel_v2.WPD