

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SREERAM ARSHANAPALLY, Derivatively
on Behalf Of Nominal Defendant, LIHUA
INTERNATIONAL, INC.,

Plaintiff,

-against-

JIANHUA ZHU, DAPHNE YAN HUANG,
YAYING WANG, SIU KI "KELVIN" LAU,
AND JONATHAN P. SERBIN,

Defendants,

and

LIHUA INTERNATIONAL, INC.,

Nominal Defendant.

No. 14-cv-3543-RA

ORDER

WILLIAM PECK, Derivatively on Behalf of
Nominal Defendant, LIHUA
INTERNATIONAL, INC.,

Plaintiff,

-against-

JIANHUA ZHU, DAPHNE YAN HUANG,
YAYING WANG, ROBERT C. BRUCE,
JONATHAN P. SERBIN, SIU KI "KELVIN"
LAU, TIAN BAO WANG AND MING
ZHANG

Defendants,

and

LIHUA INTERNATIONAL, INC.,

Nominal Defendant.

No. 14-cv-6540-RA

RONNIE ABRAMS, United States District Judge:

Pending before the Court are Plaintiffs William Peck's and Sreeram Arshanapally's joint motion to consolidate the above-captioned cases and for appointment of Faruqi & Faruqi, LLP ("Faruqi and Faruqi") and The Brown Law Firm, P.C. ("The Brown Law Firm") as interim co-lead counsel for Plaintiffs. Defendants do not oppose consolidation and take no position regarding appointment of interim co-lead counsel. Both motions are granted.

A. Consolidation

"Rule 42(a) of the Federal Rules of Civil Procedure empowers a trial judge to consolidate actions for trial when there are common questions of law or fact to avoid unnecessary costs or delay." Johnson v. Celotex Corp., 899 F.2d 1281, 1284 (2d Cir. 1990). "In the exercise of discretion, courts have taken the view that considerations of judicial economy favor consolidation." Id. at 1285.

Consolidation is appropriate here. The actions involve similar allegations arising from a substantially similar set of facts. Specifically, both complaints allege, among other causes of action, breaches of fiduciary duties related to Defendants' issuance of false or misleading statements about Lihua International, Inc.'s business operations and financial results, as well as Defendants' involvement in a self-dealing related party transaction. While the allegations, relevant time period, and named defendants in each action are not identical, "[d]ifferences in causes of action, defendants, or the class period do not render consolidation inappropriate if the cases present sufficiently common questions of fact and law, and the differences do not outweigh the interests of judicial economy served by consolidation." In re Bank of America Corp. Sec., Derivative and ERISA Litig., 258 F.R.D. 260, 268 (S.D.N.Y. 2009) (consolidating derivative actions that were

“not identical”) (internal quotation omitted). Moreover, all parties have consented to consolidation, suggesting that consolidation will not prejudice any party.

B. Appointment of Interim Co-Lead Counsel

An order consolidating cases “may also set a leadership structure for the consolidated proceedings.” Brautigam v. Rubin, No. 11 Civ. 2693 (TPG), 2011 WL 6314208, at *1 (S.D.N.Y. Dec. 15, 2011) (citing MacAlister v. Guterma, 263 F.2d 65, 68 (2d Cir.1958)). “Appointment of lead counsel serves to prevent ‘overlapping duplication in motion practices and pre-trial procedures occasioned by competing counsel representing different plaintiffs in separate stockholder derivative actions.’” Id. (citing MacAlister, 263 F.2d at 68). In appointing lead counsel, a court may consider “the capabilities of counsel to effectively litigate a shareholder derivative case such as this.” In re Comverse Tech., Inc. Derivative Litig., No. 06 Civ. 1849 (NGG) (RER), 2006 WL 3761986, at *3 (E.D.N.Y. Sept. 22, 2006), objections overruled, No. 06 Civ. 1849 (NGG) (RER), 2006 WL 3511375 (E.D.N.Y. Dec. 5, 2006)

Plaintiffs have requested that Faruqi & Faruqi and The Brown Law Firm be appointed interim co-lead counsel. Both Faruqi & Faruqi and Timothy W. Brown of The Brown Law Firm have demonstrated ample experience litigating shareholder derivative suits and/or securities class actions. The Court finds both counsel to be capable and qualified to represent Plaintiffs in this matter and designates Faruqi & Faruqi and The Brown Law Firm as interim co-lead counsel provided that there is no duplication of attorneys’ services, and the use of co-lead counsel does not in any way increase attorneys’ fees and expenses. See In re Donnkenny Inc. Sec. Litig., 171 F.R.D. 156, 158 (S.D.N.Y. 1997).

C. Conclusion

Accordingly, it is hereby ordered that:

1. The above-captioned actions are consolidated for all purposes (the “Consolidated Action”). This Order shall apply to the Consolidated Action and to each case that relates to the same subject matter that is subsequently filed in or transferred to this Court, and is consolidated with the Consolidated Action.
2. A Master File is established for this proceeding. The Master File shall be Case No. 14-cv-3543. The Clerk of this Court is directed to close Case No. 14-cv-06540.
3. Every filing in the Consolidated Action shall be captioned

In re Lihua International, Inc.
Shareholder Derivative Action

Case No. 14-cv-3543

4. The Court requests assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case that may properly be consolidated as part of the Consolidated Action.
5. When a case that arises out of the same subject matter as the Consolidated Action is hereinafter filed in this Court or transferred from another court, the Clerk of this Court shall:
 - A. File a copy of this Order in the separate file for such action;
 - B. Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly-filed or transferred case, and to any new defendant(s) in the newly-filed case; and
 - C. Make the appropriate entry in the Master Docket for the Consolidated Action.
6. Each new case that arises out of the subject matter of the Consolidated Action which is filed in or transferred to this Court, and which may be properly consolidated with this proceeding, shall be consolidated with the Consolidated Action. This Order shall apply thereto, unless a party objects to consolidation (as provided for herein), or to any provision of this Order, within ten (10) days after the date upon which a copy of this

Order is served on counsel for such party by filing an application for relief, and this Court deems it appropriate to grant such application. Nothing in the foregoing shall be construed as a waiver of Defendants' right to object to the consolidation of any subsequently-filed or transferred related action.

7. Co-lead counsel for Plaintiffs for the conduct of the Consolidated Action shall be:

The Brown Law Firm, P.C.
127 A Cove Road
Oyster Bay Cove, New York 11771
Tel: (516) 922-5427

and

Faruqi & Faruqi, LLP
369 Lexington Avenue, 10th Floor
New York, New York 10017
Tel: (212) 983-9330
Fax: (212) 983-9331

and

101 Greenwood Avenue, Suite 600
Jenkintown, Pennsylvania 19046
Tel: (215) 277-5770
Fax: (215) 277-5771

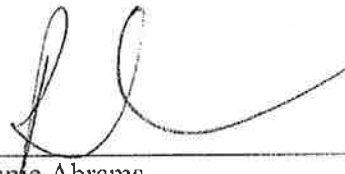
8. Plaintiffs' co-lead counsel shall have authority to speak for Plaintiffs in matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work assignments in such manner so as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.
9. Plaintiffs' co-lead counsel shall be responsible for coordinating all activities and appearances on behalf of Plaintiffs and for the dissemination of notices and orders of this Court. No motion, request for discovery, or other pre-trial or trial proceedings shall be initiated or filed by any Plaintiffs except through Plaintiffs' co-lead counsel.

10. Defendants' counsel may rely upon all agreements made with Plaintiffs' co-lead counsel or other duly authorized representative of Plaintiffs' co-lead counsel, and such agreements shall be binding on all plaintiffs.

11. Defendants need not respond to the complaint previously filed in the Peck action. The filing of any Consolidated Amended Complaint and any briefing schedule in connection with Defendants' motion to dismiss or other response shall be in accordance with the Court's Order entered in the Arshanapally action on July 29, 2014.

SO ORDERED.

Dated: October 29, 2014
New York, New York

A handwritten signature in black ink, appearing to read 'Ronnie Abrams', is written over a horizontal line.

Ronnie Abrams
United States District Judge