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WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

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Jessica Zeldin
Rosenthal, Monhait & Goddess, P.A.
919 N. Market Street, Suite 1401
P.O. Box 1070
Wilmington, DE 19899

Brian D. Long
Rigrodsky & Long, P.A.
919 N. Market Street, Suite 980
Wilmington, DE 19801

James P. McEvilly, III
Faruqi & Faruqi, LLP
20 Montchanin Road, Suite 145
Wilmington, DE 19807

Martin S. Lessner
Kathaleen St. J. McCormick
Paul J. Loughman
Young Conaway Stargatt & Taylor, LLP
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899

William M. Lafferty
Morris, Nichols, Arsht & Tunnell LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

Stephen P. Lamb
Meghan M. Dougherty
Joseph L. Christensen
Paul, Weiss, Rifkind, Wharton & Garrison LLP
500 Delaware Avenue, Suite 200
P.O. Box 32
Wilmington, DE 19899

Re: *Nierenberg v. CKx, Inc., et al.*, Civil Action No. 5545-CC
VanWhy v. CKx, Inc., et al., Civil Action No. 6519-CC
Leone v. CKx, Inc., et al., Civil Action No. 6524-CC

Dear Counsel:

This is my ruling on plaintiff Harry C. VanWhy, Jr.'s Motion for Consolidation and Appointment of Co-Lead Counsel (the "VanWhy Motion"), and on plaintiffs Dr. Richard H. Nierenberg and Joseph Leone's joint opposition to that

motion and Cross Motion to Appoint Co-Lead Plaintiff and Co-Lead Counsel (the "Nierenberg/Leone Motion").

Plaintiffs' counsel all support consolidation of these cases.[1] There are now three substantially similar shareholder class actions pending in this Court challenging the proposed acquisition of CKx, Inc. ("CKx") by Apollo Global Management, LLC, brought on behalf of the public stockholders of CKx against essentially the same defendants.[2] The most recent complaint in *Nierenberg v. CKx, Inc.* was filed in this Court on May 19, 2011. *Leone v. CKx, Inc.* was originally filed in the Supreme Court for the State of New York under the caption *Leone v. Banks, et al.*, Index No. 650538/2010. The most recent complaint in that case, in the New York action, was filed on May 19, 2011. The complaint in *VanWhy v. CKx, Inc.* was filed in this Court on May 25, 2011.[3] Defendants, not wanting to litigate identical claims in multiple jurisdictions, filed motions in both the New York and Delaware courts asking the judges to confer and allow the litigation to proceed in one jurisdiction only, and requesting that litigation in the other jurisdiction be dismissed or stayed (the "Savitt motion"). In light of the Savitt motion, a conference call in the Nierenberg action was held on May 25, 2011. Following the call, I spoke with Justice Ramos, who was handling the New York action. We agreed that these cases should be consolidated and move forward in one forum.[4] Leone's counsel in New York then reached an agreement with defendants and voluntarily agreed to a stay of the New York action subject to certain provisions and court approval, which the New York court granted on May 26, 2011 (the "Order"). Leone has since re-filed his complaint in this Court, captioned *Leone v. CKx, Inc., et al*.

The Order stayed the New York action pending resolution of the Delaware actions—provided that plaintiff in the New York action (Leone) be given "the same document and deposition discovery" as well as "an opportunity to litigate equally with" plaintiffs in Delaware.[5] Specifically, the Order stated that plaintiff Leone

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[1] VanWhy Motion 5; Nierenberg/Leone Motion 8.
[2] VanWhy Motion 2; Nierenberg/Leone Motion 2, 3.
[3] VanWhy initially filed his complaint in this Court earlier but it was rejected by the Register in Chancery. VanWhy did not re-file his complaint until May 25. His earlier attempt to file a complaint was disclosed in CKx's 14D-9 filing on May 18, 2011. He thus argues that defendants and plaintiff Nierenberg were aware of his litigation efforts well before May 25. His failure to re-file his complaint or file any other papers in this Court, however, led plaintiff Nierenberg to believe that he was no longer pursuing his claims.
[4] *See* Letter from Court to Counsel (May 25, 2011).
[5] Order at 3.

shall coordinate with the Delaware plaintiffs so that they may "litigate on an equal and coordinated basis."[6]

The VanWhy Motion proposes a leadership structure in which counsel for VanWhy—Rigrodsky & Long, P.A.—is appointed co-lead counsel along with counsel for Nierenberg—Abbey Spanier Rodd & Abrams, LLP ("Abbey Spanier")—and appointing the law firm of Rosenthal Monhait & Goddess, P.A. ("Rosenthal Monhait") as plaintiffs' liaison counsel. The VanWhy Motion does not include plaintiff Leone or his counsel, Faruqi & Faruqi, LLP ("Faruqi").

The joint Nierenberg/Leone motion proposes a leadership structure whereby Abbey Spanier and Faruqi shall serve as co-lead counsel, Rosenthal Monhait shall be appointed liaison counsel, and Rigrodsky & Long shall serve as a member of the Committee of the Whole.

No one disputes that these three cases should be consolidated—they are related class actions, on behalf of the same class, involving common questions of fact or law. Accordingly, under Court of Chancery Rule 42(a), these cases shall be consolidated under the caption *In re CKx, Inc. Shareholders Litigation*, Consol. C.A. No. 5545-CC.

As for selection of lead counsel, or co-lead counsel as the case may be, the Nierenberg/Leone Motion is granted, and the VanWhy Motion is denied. Abbey Spanier and Faruqi are appointed co-lead counsel in the consolidated action, and Rosenthal, Monhait is appointed liaison counsel. Rigrodsky & Long is appointed a member of plaintiffs' committee.

This outcome is supported by an application of the well-known *Hirt* factors.[7] I have no doubt that all counsel are competent, qualified and capable of litigating this matter, and would vigorously do so. The relative economic stakes of plaintiffs are not sufficient to significantly affect their ability or incentive to monitor counsel and the course of the litigation.[8] On the quality of the pleadings, Nierenberg's

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[6] *Id.* at 4.

[7] *Hirt v. U.S. Timberlands Serv. Co., LLC*, 2002 WL 1558342, at *2 (July 3, 2002). These factors include (1) the quality of the pleadings, (2) the relative economic stakes of the competing plaintiffs, (3) the willingness and ability of counsel to vigorously litigate plaintiffs' claims on behalf of the class, (4) competence of counsel, (5) the absence of conflict between larger and smaller stockholders, (6) the enthusiasm and vigor with which counsel has prosecuted the lawsuit. *Id.*

[8] Nierenberg, Leone, and VanWhy are all individual stockholders of CKx, and none owns a particularly large stake sufficient to distinguish him from the others. *See In re Revlon, Inc.*

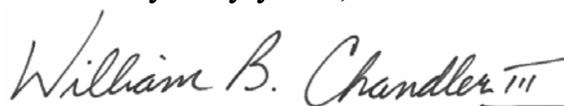
complaint, in my opinion, is marginally more detailed than the others, but they all make substantially similar well-pled allegations. Neirenberg and Leone name Sillerman as a defendant, who has consented to jurisdiction in Delaware. This weighs in their favor, as does the fact that (although VanWhy attempted to file his complaint earlier), they both have been litigating their claims longer than VanWhy.

Moreover, in the interests of comity, efficiency, and the avoidance of duplicative proceedings, the New York action was stayed and Leone re-filed his complaint in Delaware on the assumption and understanding that he would litigate on an equal footing with Delaware plaintiffs. The Nierenberg/Leone Motion provides for that, giving Leone's counsel co-lead status, and allowing VanWhy's counsel to play a role, albeit a smaller role, in the litigation as well.

This case serves as a positive example of the process envisioned by *Allion*[9]—that is, plaintiffs acting in a cooperative manner to consolidate duplicative cases and work together towards a resolution of their claims, while defendants are able to defend against those claims only once, in a single jurisdiction. This Court appreciates the cooperation of plaintiffs' counsel, both in Delaware and New York, as well as the assistance of Justice Ramos in New York in assuring that this litigation goes forward conveniently in one forum.

IT IS SO ORDERED.

Very truly yours,



William B. Chandler III

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S'holders Litig., 990 A.2d 940, 955 (Del. Ch. 2010). There are no large institutional stockholder plaintiffs or any plaintiffs alleging to have competing interests here.

[9] *In re Allion Healthcare Inc. S'holders Litig.*, 2011 WL 1135016, at *4 & n.12 (Mar. 29, 2011).