IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FAZZINO INVESTMENTS, LP for itself and all others similarly situated,	§	
PLAINTIFFS	§	
V.	§	**CASE NO. 6:25-CV-0001-ADA-DTG**
BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT,	§	
DEFENDANT	§	

PLAINTIFF'S REPLY RE: MOTION TO APPOINT INTERIM CLASS COUNSEL

Defendant doth protest too much, methinks.

William Shakespeare, Hamlet, act 3, sc. 2

In a rather atypical move in a routine class action, Defendant submitted a law review article opposing Plaintiff's Motion to Appoint Interim Co-Lead Class Counsel ("Motion"). But the standard is not what's best for Defendant and its lawyers. Rather, the standard is what's best for the proposed class and promoting the efficient prosecution of the litigation.

If it were up to Defendant, appointment of interim class counsel is only appropriate in complex national class actions involving multiple claims, multiple defendants, multiple competing law firms, and multiple procedural problems. *See* Defendant's entire Response. But Rule 23(g)(3) does not impose such arbitrary restrictions. It simply says that "[t]he court may designate *interim* counsel to act on behalf of a putative class before determining whether to certify the action as a class action." (emphasis added).

Defendant also repeatedly argues that the appointment of interim class counsel at this juncture is inappropriate (Response at 3; 4); is unnecessary (*id*. at 2; 3; 5; 12); is premature (*id*. at 2; 3; 12; 13); is prejudicial to the parties (*id*. at 1); would confuse the parties (*id*. at 4; 12; 13);

and "give rise to uncertainty and ineffectiveness for the putative class" (*id*. at 3). But simply saying these words over and over again does not make them true.

Defendant's "inappropriateness" and "unnecessary" arguments seem to be based on its repeated observation that Plaintiff's counsel are already working cooperatively, cohesively, and harmoniously. Response at 3; 4; 5; 12. But that's not a reason not to appoint interim class counsel. In fact, seasoned class action litigators would agree that that's precisely who should be appointed interim class counsel. Defendant also seems to argue that such an appointment is inappropriate and unnecessary because this case is not a complex national class action involving multiple claims, multiple defendants, multiple competing lawyers, and multiple problems. But again, that's not a reason not to make the appointment. Nor does Rule 23(g)(3) contain such restrictions. The Court clearly has the discretion to make the appointment now.

Defendant's "premature" argument is a head scratcher. Premature as to what? Or why? Nowhere in its Response does Defendant answer these questions. Again, this is not a reason not to make the appointment now. Early appointments of interim class counsel are not an aberration.

Defendant's "prejudicial to the parties" argument is also a head scratcher. Prejudicial in what way? Plaintiff would not be prejudiced. How would Defendant be prejudiced? Defendant's Response provides no answer.

Defendant's "confusion of the parties" argument is confusing. There are only two parties here. Plaintiff is not confused about the appointment since Plaintiff is the party making the request. So, Defendant must be the confused party. But nowhere in its Response does Defendant explain why and/or about what it's confused.

Defendant also argues that appointment of interim class counsel would "give rise to uncertainty and ineffectiveness for the putative class." Defendant's Response again raises several

unanswered questions. Uncertainty as to what? Ineffectiveness in what way? Substantively? Procedurally? Both? Again, just because Defendant says it does not make it true. Nor is this unexplained word salad a reason not to appoint Plaintiff's counsel interim co-lead class counsel.

That said, Plaintiff's Motion should be granted for the following four (4) reasons.

1. Defendant's academic musing about the alleged difference between "appointing" interim co-lead class counsel versus "designating" interim co-lead class counsel (Response at 1 n.1) is much ado about nothing and, in fact, opens the door to explain precisely why Plaintiff's Motion should be granted. Thus, we turn to the instructive procedural history of the October 17, 2024, order *appointing* (not designating) co-lead class counsel for the non-converter seller purchaser class (aka the indirect purchaser class) in the *PVC Pipe Antitrust Litigation*; No. 1:24-cv-07639 (N.D. Ill.)[1] (ECF No. 164) ("October 17 Order"), which is attached as Ex. 1 to Defendant's Response.

The October 17 Order is an amended order *appointing* (not designating) co-lead class counsel for the indirect purchaser class (as is typical in antitrust class action litigation, there are at least two different classes in the *PVC Pipe Antitrust Litigation*: indirect purchasers (*i.e.*, the

[1] Defendant's flippant explanation of the procedural history of the *PVC Pipe Antitrust Litigation* (Response at 10-11 and n.4) reveals that Defendant does not understand what happened there. The PVC Pipe case is not a complex case procedurally. It started as an indirect purchaser class action. Five weeks later, three firms were appointed interim co-lead class counsel for the indirect purchaser class. Then, Kaplan Fox filed a direct purchaser class action and was appointed interim class counsel for the direct purchaser class shortly thereafter. This happens all the time in antitrust class actions. There's nothing complicated here.

A simple review of the PVC Pipe case docket in Pacer will confirm that Kaplan Fox's case, in fact, was the only direct purchaser case on file at the time Kaplan Fox was appointed class counsel for the direct purchasers. *See* Motion at 4-5 (citing Exhibit D). The fact that afterwards, another plaintiff lawyer filed a competing direct purchaser case and now seeks appointment as direct purchaser class counsel is irrelevant to the fact that Kaplan Fox's case was the only direct purchaser class action on file at the time Kaplan Fox was appointed class counsel.

non-converter seller purchasers) and direct purchasers). Here's why the October 17 Order and its September 30, 2024, predecessor, are orders *appointing interim* co-lead class counsel.

The indirect purchasers commenced the *PVC Pipe Antitrust Litigation* by filing their original class action complaint on August 23, 2024 (ECF No. 1). On September 26, 2024, a scant month after they filed the original class action complaint, counsel for the indirect purchasers filed their motion to *appoint* (not designate) co-lead class counsel (ECF No. 110), which, interestingly, defendants did not oppose. The court granted the motion on September 30, 2024 (ECF No. 122)—*before* the consolidated class action complaint (ECF No. 179) was filed and, more importantly, *before* defendants' motions to dismiss were filed. In fact, defendants have yet to file their motions to dismiss. Nor is there a scheduling order in place setting the deadline to file motions for class certification.

Later, the court entered the October 17 Order (ECF No. 164), amending the caption of the September 30, 2024, order *appointing* (not designating) co-lead class counsel for the non-converter seller purchaser class solely as a housekeeping matter to distinguish the non-converter seller purchaser class (*i.e.*, the indirect purchaser class) from the newly filed direct purchaser class. *See* ECF No. 162. The substance of the original September 30, 2024, order *appointing* co-lead counsel for the indirect purchaser class (ECF No. 122), however, was not changed.

The key takeaways from this *PVC Pipe Antitrust Litigation* procedural analysis applicable here are: (i) the September 30, 2024, order *appointing* (not designating) co-lead class counsel for the non-converter seller purchaser class (ECF No. 122) was originally entered a little over a month after the case was filed, (ii) it is an order *appointing* (not designating) *interim* co-lead class counsel since, for example, the deadline for filing class certification motions had not been (and still has not been) established by the court, (iii) the word "appoint" and its derivations

appear six (6) times in the order, (iv) the word "designate" and its derivations appear zero (0) times in the order (except to give co-lead class counsel the power to designate), (v) the order *appointing* (not designating) *interim* co-lead class counsel is not premature to anything, and (vi) the notion that plaintiff's counsel in the *PVC Pipe Antitrust Litigation* sought to be appointed as *interim* co-lead class counsel to secure the clandestine certification of the indirect purchaser class, which defies comprehension, was not even a remote consideration.

2. Nowhere in its Response does Defendant dispute that Plaintiff's counsel meet the requirements for appointment as interim co-lead class counsel, including their (i) work to identify and investigate potential claims, (ii) experience in handling class actions and the types of claims asserted in this case, (iii) knowledge of the applicable law, (iv) available resources, and (v) ability to work well as a team, with opposing counsel, and with the Court. FED. R. CIV. P. 23(g)(1)(A)(ii); (iii). In fact, the reverse is true. Defendant repeatedly lauds Plaintiff's counsel for "working in unity, cohesively and harmoniously." *See, e.g.,* Response at 3. Defendant's suggestion that it may possibly challenge Plaintiff's counsel's qualifications in the future out of faux concern for not burdening the Court now (Response at 12) does not constitute a challenge.

3. Defendant does not dispute that Plaintiff's counsel have performed substantial work to date identifying, investigating, and litigating the claims. FED. R. CIV. P. 23(g)(1)(A)(i).

4. Defendant does not dispute that Plaintiff's counsel have, and will commit, the resources necessary to fairly and adequately represent the Class. FED. R. CIV. P. 23(g)(1)(A)(iv).

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Defendant asserts that "Plaintiff does not argue or explain *why* interim counsel designation is appropriate, beneficial, or necessary to protect the putative class's interest." Response at 8-9. Not true. Appointing Plaintiff's counsel as interim co-lead class counsel will (i)

protect the interests of the proposed class, (ii) promote efficiency for the Parties and the Court (*id*.), and (iii) foster the orderly assimilation of any subsequently filed cases into the litigation. *See* Motion at 17 and the Proposed Order. Making the appointment now will institute a formal, orderly game plan that will provide tremendous value to both the Court and the proposed class.

Here's another benefit. The barrier to entry is low. Appointing Plaintiff's counsel interim co-lead class counsel may very well deter other plaintiff lawyers sitting on the sidelines waiting to see how the case plays out from filing multiple copycat cases—which would only sap the Court's and the parties' time and resources. This commonly happens in class action litigation.

Accordingly, Plaintiff respectfully requests the Court to appoint Marvin W. Jones and C. Brantley Jones of Sprouse Shrader Smith PLLC, and Richard L. Coffman of The Coffman Law Firm, as interim co-lead class counsel.

Date: May 5, 2025

Respectfully submitted,

/s/ *Richard L. Coffman*

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Attorneys for Plaintiff and the Putative Class

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2025, I served the Plaintiff's Reply re Motion to Appoint Interim Class Counsel on all pertinent counsel of record, via electronic mail and/or the Court's electronic filing system.

/s/ *Richard L. Coffman*
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