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--- F.R.D. ---, 2008 WL 2721806 (S.D.N.Y.)

2008 WL 2721806 (S.D.N.Y.)

Page 1

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In re Monster Worldwide, Inc. Securities Litigation
S.D.N.Y., 2008.

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United States District Court, S.D. New York.

In re MONSTER WORLDWIDE, INC. SECURITIES LITIGATION.

No. 07 Civ. 2237(JSR).

July 14, 2008.

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Brian A. Herman, John Shin, Morgan, Lewis & Bockius LLP, New York, NY, for Myron Olesnyckyj.

Joshua Aaron Goldberg, U.S. Attorney's Office, New York, NY, for United States of America.

OPINION AND ORDER

JED S. RAKOFF, District Judge.

*1 This is a private securities fraud action brought on behalf of a putative class of investors. The two named plaintiffs, the Middlesex County Retirement System ("Middlesex") and the Steamship Trade Association-International Longshoremen's Association Pension Fund ("STA-ILA"), allege that the three defendants-Monster Worldwide, Inc. ("Monster"), Andrew J. McKelvey (former CEO and Chairman of Monster), and Myron Olesnyckyj (former Gener-

al Counsel, Senior Vice President, and Secretary of Monster)-violated sections 10(b), 20(a) and 20A of the Securities and Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78t(a), and 78t-1. Plaintiffs have moved for class certification and for appointment of Middlesex and STA-ILA as class representatives. For the reasons stated herein, the motion is granted except as to the appointment of STA-ILA as a class representative.

As to class certification, Rule 23, Fed.R.Civ.P., provides that a party seeking to certify a class must satisfy the familiar requirement of Rule 23(a), commonly referred to as numerosity, commonality, typicality and adequacy of representation, and must also satisfy at least one of the alternative requirements of Rule 23(b), here, the requirement of Rule 23(b)(3) that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." It is now settled, moreover, that "(1) a district judge may certify a class only after making determinations that each of the Rule 23 requirements has been met; (2) such determinations can be made only if the judge resolves factual disputes relevant to each Rule 23 requirement and finds that whatever underlying facts are relevant to a particular Rule 23 requirement have been established and is persuaded to rule, based on the relevant facts and the applicable legal standard, that the requirement is met; (3) the obligation to make such determinations is not lessened by overlap between a Rule 23 requirement and a merits issue, even a merits issue that is identical with a Rule 23 requirement." *In re Initial Pub. Offering Sec. Litig.* ("In re IPO"), 471 F.3d 24, 41 (2d Cir.2006).

With respect to the requirements of Rule 23(a), defendants do not contest that the putative class of Monster shareholders is so numerous that "joinder of all members is impracticable," Fed.R.Civ.P. 23(a); indeed, Monster stock traded on NASDAQ,

