

United States District Court
For the Northern District of California

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUA-CHEN JENNY LIN and JONATHAN) Case Nos. 13-cv-3791 SC
W. DIAMOND, individually and on) 13-cv-3849 SC
behalf of all others similarly) 13-cv-4579 SC
situated)

Plaintiffs,)

v.)

ECOTALITY, INC., H. RAVI BRAR,)
SUSIE HERRMAN,)

Defendants.)

ORDER CONSOLIDATING CASES,
APPOINTING LEAD PLAINTIFF, AND
APPROVING SELECTION OF LEAD
COUNSEL

INTRODUCTION

Now pending before the Court are three related actions brought on behalf of the purchasers of the common stock of ECotality, Inc. Lin v. ECotality, Inc., Case No. 13-cv-3791 SC, Cohen v. ECotality, Inc., 13-cv-3840 SC, Fleming v. Brar, 13-cv-4579 SC (collectively, the "Related Cases"). All three actions allege that Defendants issued false and misleading statements that artificially inflated the price of ECotality's stock, and that the stock price plummeted when the truth was eventually revealed. On August 15, 2013, Business Wire published a notice of the pendency of these actions.

1 Since that time, six putative class members have moved for
2 appointment as lead plaintiff and approval of their selection as
3 lead counsel.¹ These individuals also move the Court to
4 consolidate the Related Cases.

5
6 **CONSOLIDATION OF RELATED CASES**

7 As the Related Cases involve common questions of law and fact,
8 the motions to consolidate are GRANTED. The Related Cases are
9 hereby consolidated into Civil Action No. 13-cv-3791 SC for
10 pretrial proceedings before this Court. The consolidated action
11 shall be captioned: "In re ECotality, Inc. Securities Litigation."
12 All related actions that are subsequently filed in or transferred
13 to this District shall be consolidated into this action for
14 pretrial purposes. This Order shall apply to every such related
15 action, absent order of the Court. A party that objects to such
16 consolidation, or to any other provision of this Order, must file
17 an application for relief from this Order within thirty (30) days
18 after the date on which a copy of this Order is mailed to the
19 party's counsel. This Order is entered without prejudice to the
20 rights of any party to apply for severance of any claim or action,
21 for good cause shown.

22
23 **APPOINTMENT OF LEAD PLAINTIFF**

24 The Private Securities Litigation Reform Act (PSLRA) states
25 that district courts "shall appoint as lead plaintiff the member or
26 members of the purported plaintiff class that the court determines

27
28 ¹ ECF Nos. 17 ("Sarnoff Mot."), 18 ("Hoffman Mot."), 22 ("Marcha
Mot."), 24 ("Dixon Mot."), 27 ("Bishop Mot."), 29 ("Vale Mot.").

1 to be most capable of adequately representing the interests of
2 class members." 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA
3 sets forth a three-step procedure for identifying a lead plaintiff
4 using this standard. The first step consists of publicizing the
5 pendency of the action, the claims asserted therein, and the
6 purported class period, along with notice that any class member may
7 move to serve as lead plaintiff within sixty days. Id. § 78u-
8 4(a)(3)(A). The notice published in Business Wire satisfies these
9 criteria and the pending motions were timely filed.

10 In step two, the district court adopts the presumption that
11 the most adequate plaintiff is the person who has "the largest
12 financial interest in the relief sought by the class," and who
13 otherwise satisfies the requirements of Federal Rule of Civil
14 Procedure 23. Id. § 78u-4(a)(3)(B)(iii)(I). Here, Joseph W. Vale
15 has the largest financial stake in this litigation since his
16 claimed losses are larger than the losses claimed by the other
17 class members moving to be appointed lead plaintiff. The Court
18 also finds that Mr. Vale otherwise satisfies the typicality and
19 adequacy requirements of Rule 23.

20 "The third step of the process is to give other plaintiffs an
21 opportunity to rebut the presumptive lead plaintiff's showing that
22 it satisfies Rule 23's typicality and adequacy requirements." In
23 re Cavanaugh, 306 F.3d 726, 730 (9th Cir. 2002) (citing 15 U.S.C. §
24 78u-4(a)(3)(B)(iii)(II)). None of the other plaintiffs have
25 challenged Mr. Vale on this issue. Accordingly, the Court finds
26 that step three has also been met.

27 Therefore, the Court appoints Joseph W. Vale as the lead
28 plaintiff in this action.

SELECTION OF LEAD COUNSEL

1
2 With respect to the selection of lead counsel, the PLSRA
3 provides: "The most adequate plaintiff shall, subject to the
4 approval of the court, select and retain counsel to represent the
5 class." 15 U.S.C. § 78u-4(a)(3)(B)(v). "If the lead plaintiff has
6 made a reasonable choice of counsel, the district court should
7 generally defer to that choice." Cohen v. U.S. Dist. Ct., 586 F.3d
8 703, 712 (9th Cir. 2009). Here, Mr. Vale has chosen the law firm
9 of Robbins Geller Rudman & Dowd LLP ("Robbins Geller") to represent
10 the proposed class. As Robbins Geller has been appointed lead
11 counsel in hundreds of other securities class actions, the Court
12 finds Mr. Vale's choice reasonable. Accordingly, Mr. Vale's
13 selection of Robbins Geller as lead counsel for the proposed class
14 is hereby APPROVED.

CONCLUSION

15
16
17 For the foregoing reasons, the Court (1) consolidates the
18 Related Actions, (2) appoints Joseph W. Vale as lead plaintiff in
19 this consolidated action, and (3) approves Mr. Vale's selection of
20 Robbins Geller Rudman & Dowd LLP as lead counsel for the proposed
21 class. The motions to appoint lead plaintiff and lead counsel
22 filed by Paul Sarnoff, Marvin Hoffman, Edgar D. Marcha, George
23 Dixon III, and Thomas J. Bishop are DENIED.

24
25 IT IS SO ORDERED.

26
27 Dated: December 13, 2013

28

UNITED STATES DISTRICT JUDGE