

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DANIEL LUNA,  
Plaintiff,  
  
v.  
  
MARVELL TECHNOLOGY GROUP LTD,  
et al.,  
  
Defendants.

Case No. 15-cv-05447-RMW

**ORDER GRANTING MOTION FOR  
APPOINTMENT AS LEAD PLAINTIFF  
AND APPROVAL OF SELECTION OF  
COUNSEL**

Re: Dkt. No. 33, 45

In this securities action, plaintiff Plumbers and Pipefitters National Pension Fund has moved for appointment to serve as lead plaintiff and for approval of its selection of Robbins Geller Rudman & Dowd LLP as lead counsel. Dkt. Nos. 33, 45. Plumbers & Pipefitters’ motion is unopposed. Pursuant to Civil Local Rule 7-1(b), the court finds the motion appropriate for determination without oral argument. The court grants Plumbers & Pipefitters’ motion.

**I. BACKGROUND**

On September 11, 2015, plaintiff Daniel Luna filed suit in the Southern District of New York, alleging that defendants Marvell Technology Group, Ltd., Sehat Sutardja, Michael Sashkin, and Sukhi Nagesh violated federal securities laws. Dkt. No. 1. This case was consolidated with two similar actions on November 3, 2015. Dkt. No. 8. On November 10, 2015, Plumbers & Pipefitters filed a motion for appointment as lead plaintiff and for approval of its selection of lead

1 counsel. Dkt. Nos. 17. Four other parties also moved for appointment as plaintiff. Dkt. Nos. 11,  
2 14, 20, 23.

3 The case was transferred from the Southern District of New York to the Northern District  
4 of California on November 27, 2015. Dkt. No. 30. On December 4, 2015, Plumbers & Pipefitters  
5 re-noticed its motion for appointment as lead plaintiff in the Northern District of California. Dkt.  
6 No. 33. Two motions for appointment as lead plaintiff were withdrawn. Dkt. Nos. 29, 37. The  
7 other two motions were not re-noticed.

8 This case was related to Saratoga Advantage Trust Technology & Communications  
9 Portfolio v. Marvell Technology Group, Ltd. et al, No. 5:15-cv-04881-RMW and transferred to  
10 this court on December 22, 2015. Dkt. No. 41. On December 28, 2015, Plumbers & Pipefitters re-  
11 noticed its motion for hearing on January 29, 2016. Dkt. No. 45. There are no competing motions  
12 for appointment as lead counsel pending, and Plumbers & Pipefitters' motion is unopposed.

13 **II. ANALYSIS**

14 Under the Private Securities Litigation Reform Act, the court must appoint “the member or  
15 members of the purported plaintiff class that the court determines to be most capable of adequately  
16 representing the interests of class members” as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). “The  
17 Reform Act provides a simple three-step process for identifying the lead plaintiff pursuant to these  
18 criteria.” In re Cavanaugh, 306 F.3d 726, 729 (9th Cir. 2002)

19 First, the pendency of the action, the claims made, and the purported class period must be  
20 publicized in a “widely circulated national business-oriented publication or wire service” within  
21 20 days of the filing of the complaint. 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). This notice must advise  
22 members of the purported class that “any member of the purported class may move the court to  
23 serve as lead plaintiff of the purported class” within 60 days of the notice. 15 U.S.C. § 78u-  
24 4(a)(3)(A)(i)(II).

25 Second, the court must identify the presumptive lead plaintiff. To do so, the court “must  
26 compare the financial stakes of the various plaintiffs and determine which one has the most to gain  
27 from the lawsuit.” Cavanaugh, 306 F.3d at 730. The court must then determine whether that

1 individual, “based on the information he has provided in his pleadings and declarations,” satisfies  
2 the requirements of Rule 23(a), “in particular those of ‘typicality’ and ‘adequacy.’” Id. If the  
3 plaintiff with the largest financial interest satisfies these requirements, he becomes the  
4 “presumptively most adequate plaintiff.” Id.; see also 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

5 Third, other plaintiffs must have “an opportunity to rebut the presumptive lead plaintiff’s  
6 showing that it satisfies Rule 23’s typicality and adequacy requirements.” Cavanaugh, 306 F.3d at  
7 730.

8 **A. Procedural Requirements**

9 On September 11, 2015, the same day the complaint was filed, a notice of the pendency of  
10 this action was published on Business Wire. See Dkt. No. 45-2 at 5-6. This noticed identified the  
11 claims asserted in the action, as well as the purported class period. See 15 U.S.C. § 78u-  
12 4(a)(3)(A). It also advised putative class members that they had 60 days from the date of the notice  
13 to file a motion to seek appointment as lead plaintiff. See *id.* Plumbers & Pipefitters filed is motion  
14 within 60 days of the publication of the notice. Dkt. No. 17. Therefore, the statutory procedural  
15 requirements are met.

16 **B. Presumptive Lead Plaintiff**

17 **1. Financial Interest**

18 The Court must next determine whether Plumbers & Pipefitters qualifies as the most  
19 adequate plaintiff. To make this determination, the Court must first consider Plumbers &  
20 Pipefitters’ financial interest in the relief sought. See Cavanaugh, 306 F.3d at 730. Plumbers &  
21 Pipefitters has submitted a chart that summarizes its transactions involving Marvell shares. See  
22 Dkt. No. 45-2 at 2. This chart shows an estimated total loss of \$1,167,268.83. Dkt. No. 45-2 at 8.

23 Because Plumbers & Pipefitters was the only movant for appointment as lead counsel and  
24 the motion is unopposed, Plumbers & Pipefitters is necessarily the prospective lead plaintiff with  
25 the greatest financial interest in the litigation. See *City of Dearborn Heights Act 345 Police & Fire*  
26 *Ret. Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 WL 2368059, at \*3 (N.D. Cal. May  
27 29, 2013) (quoting *Bassin v. Decode Genetics, Inc.*, 230 F.R.D. 313, 316 (S.D.N.Y.2005)

1 (“Without access to financial information from other parties, the Court is constrained to conclude  
2 that the [proposed plaintiff’s] alleged loss best qualifies it to serve as lead plaintiff.”)).

3 **2. Rule 23 Requirements**

4 Having determined that Plumbers & Pipefitters is the prospective lead plaintiff, the court  
5 must next consider whether Plumbers & Pipefitters satisfies the typicality and adequacy  
6 requirements of Rule 23(a).<sup>1</sup> In making this determination, the court “must rely on the  
7 presumptive lead plaintiff’s complaint and sworn certification; there is no adversary process to test  
8 the substance of those claims.” Cavanaugh, 306 F.3d at 730. As such, Plumbers & Pipefitters need  
9 only make a prima facie showing that it satisfies the Rule 23 requirements of typicality and  
10 adequacy. See id. at 731.

11 In determining whether typicality is satisfied, a Court inquires “whether other members  
12 have the same or similar injury, whether the action is based on conduct which is not unique to the  
13 named plaintiffs, and whether other class members have been injured by the same course of  
14 conduct.” Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (quotation omitted).  
15 Plumbers & Pipefitters alleges that it has been injured by the same course of conduct in that it  
16 purchased Marvell stock during the relevant time period, was adversely affect by defendants’ false  
17 and misleading statements, and suffered damages as a result. See Dkt. No. 45-2 at 10-12; Dkt. No.  
18 45-1 at 6.

19 The test for adequacy asks whether the class representative and his counsel “have any  
20 conflicts of interest with other class members” and whether the class representative and his  
21 counsel will “prosecute the action vigorously on behalf of the class.” Staton v. Boeing Co., 327  
22 F.3d 938, 957 (9th Cir. 2003). There is no indication of conflicts between Plumbers & Pipefitters

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24 <sup>1</sup> Federal Rule of Civil Procedure 23(a) sets forth four requirements for class certification: (1)  
25 numerosity, (2) commonality, (3) typicality, and (4) adequacy. “At the appointment of lead  
26 plaintiff stage, courts need only consider typicality and adequacy, as the failure to satisfy  
27 numerosity or commonality would preclude certifying a class action at all.” Welgus v. Trinet Grp.,  
28 Inc., No. 15-CV-03625-BLF, 2015 WL 7770222, at \*2 n.1 (N.D. Cal. Dec. 3, 2015) (citing  
Cavanaugh, 306 F.3d at 730 n.5.).

1 and other class members, nor is there any indication that will not prosecute the action vigorously  
2 on behalf of the class. Moreover, Plumbers & Pipefitters’ “diligence in seeking appointment as  
3 lead plaintiff” suggests that it will prosecute this action vigorously.” Welgus, 2015 WL 7770222,  
4 at \*3 (N.D. Cal. Dec. 3, 2015).

5 **C. Opportunity for Rebuttal**

6 Because it has the greatest financial stake and satisfies the Rule 23(a) requirements,  
7 Plumbers & Pipefitters is presumptively the most adequate plaintiff to represent the class. This  
8 presumption may be rebutted only upon proof by a member of the purported plaintiff class that  
9 Plumbers & Pipefitters either (1) “will not fairly and adequately protect the interests of the class,”  
10 or (2) “is subject to unique defenses that render [it] incapable of adequately representing the  
11 class.” 15 U.S.C. § 78u-4(a)(3)(3)(B)(iii)(II). No purported class member has come forward with  
12 such rebuttal evidence.

13 **D. Lead Counsel**

14 Under the PLSRA, the lead plaintiff has the right, subject to court approval, to “select and  
15 retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). “[T]he district court should  
16 not reject a lead plaintiff’s proposed counsel merely because it would have chosen differently.”  
17 Cohen v. U.S. Dist. Court, 586 F.3d 703, 711 (9th Cir. 2009) (citation omitted); see also  
18 Cavanaugh, 306 F.3d at 734 n.14 (confirming that choice of counsel belongs to lead plaintiff).  
19 “[I]f the lead plaintiff has made a reasonable choice of counsel, the district court should generally  
20 defer to that choice.” Cohen, 586 F.3d at 712 (citations omitted).

21 Plumbers & Pipefitters has chosen the law firm of Robbins Geller Rudman & Dowd LLP.  
22 No parties have objected to Robbins Geller. The Court has reviewed the firm’s resume. See Dkt.  
23 Nos. 45-3:6. The court is satisfied that the lead plaintiff has made a reasonable choice of counsel.

24 **III. CONCLUSION**

25 For these reasons, the court appoints Plumbers & Pipefitters as lead plaintiff and approves  
26 the Plumbers & Pipefitters’ selection of Robbins Geller Rudman & Dowd LLP as lead counsel.

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**IT IS SO ORDERED.**

Dated: February 8, 2016

  
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Ronald M. Whyte  
United States District Judge