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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 KEVIN KNIGHT,
8 Plaintiff,

9 v.

10 CYTOMX THERAPEUTICS, INC., et al.,
11 Defendants.

Case No. 20-cv-03432-BLF

**ORDER GRANTING PLAINTIFF
MICHAEL MARGIOTTA'S MOTION
FOR APPOINTMENT AS LEAD
PLAINTIFF AND APPROVAL OF
SELECTION OF COUNSEL**

[Re: ECF 22]

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14 Before the Court is Plaintiff Michael Margiotta's ("Mr. Margiotta") unopposed Motion for
15 Appointment as Lead Plaintiff and Approval of Selection of Counsel ("Motion"). See Mot., ECF
16 22. Pursuant to Civil Local Rule 7-1(b), the Court determined this motion was suitable for
17 decision without oral argument on October 23, 2020, and vacated the hearing on Mr. Margiotta's
18 Motion scheduled for November 5, 2020. See Order, ECF 32. For the reasons stated herein, the
19 Court GRANTS Plaintiff's Motion.

20
21 **I. BACKGROUND**

22 On May 21, 2020, Plaintiff Kevin Knight ("Mr. Knight") filed this putative securities class
23 action lawsuit against Defendants CytomX Therapeutics, Inc. ("CytomX"), Sean A. McCarthy,
24 Carlos Campoy, and Debanjan Ray (collectively, "Defendants"). See Compl., ECF 1. CytomX
25 operates as an oncology-focused biopharmaceutical company in the U.S. and develops a novel
26 class of investigational antibody therapeutics for the treatment of cancer. Id. ¶ 2. Mr. Knight
27 alleges that, from May 17, 2018 to May 13, 2020 (the "Class Period"), Defendants issued
28 materially false and misleading statements and/or failed to disclose that CytomX downplayed

1 issues with its products’ efficacy and safety in clinical trials. See *id.* ¶¶ 1, 5–8. When CytomX
2 made abstracts for its clinical presentations available, Mr. Knights avers that “CytomX’s stock
3 price fell \$5.21 per share, or 36.08%.” *Id.* ¶¶ 6–7. Mr. Knight alleges that, as a result of these
4 misrepresentations and the “precipitous decline” in the market value of CytomX’s securities,
5 “Plaintiff and other Class members have suffered significant losses and damages.” *Id.* ¶ 8. As a
6 result, Mr. Knight filed the instant lawsuit for violations of the Securities Exchange Act of 1934
7 on behalf of all persons who purchased or otherwise acquired CytomX’s securities during the
8 Class Period. *Id.* ¶ 1.

9 On the same day the complaint was filed, May 21, 2020, a Private Securities Litigation
10 Reform Act (“PSLRA”) early notice was issued advising potential class members of the claims
11 alleged in the action and the 60-day deadline for class members to move to be appointed as lead
12 plaintiff. See Mot. 3; see also Ex. 1 to Decl. of Laurence M. Rosen (“Rosen Decl.”), Notice, ECF
13 24-1. On July 20, 2020, Mr. Margiotta filed this Motion seeking appointment as lead plaintiff and
14 approval of The Rosen Law Firm, P.A. (“Rosen Law”) as lead counsel for the class. See Mot. 4.
15 On the same day, Mr. Knight also filed a motion to appoint himself as lead plaintiff and
16 Pomerantz LLP as lead counsel. See Mot. of Kevin Knight 1, ECF 27. However, on August 3,
17 2020, Mr. Knight filed a notice of non-opposition to Mr. Margiotta’s Motion that basis that Mr.
18 Margiotta possesses the “largest financial interest” in this matter within the meaning of the
19 PSLRA. See Notice of Non-Opposition, ECF 31. Mr. Knight’s motion was terminated as moot on
20 October 23, 2020. See Order. Mr. Margiotta’s Motion is thereby unopposed.

21 22 **II. LEGAL STANDARD**

23 **A. Lead Plaintiff**

24 The Private Securities Litigation Reform Act of 1995 (“PSLRA”) governs the procedure
25 for selection of lead plaintiff in all private class actions under the Securities Exchange Act of
26 1934. 15 U.S.C. § 78u-4(a)(3). Pursuant to the PSLRA, the court shall appoint as lead plaintiff
27 “the member or members of the purported plaintiff class that the court determines to be most
28 capable of adequately representing the interests of class members,” also referred to as the “most

1 adequate plaintiff.” Id. at § 78u-4(a)(3)(B)(i).

2 The PSLRA “provides a simple three-step process for identifying the lead plaintiff.” In re
3 Cavanaugh, 306 F.3d 726, 729 (9th Cir. 2002). First, the pendency of the action, the claims made,
4 and the purported class period must be publicized in a “widely circulated national business-
5 oriented publication or wire service.” Id.; see also 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). This notice
6 must be published within 20 days of the filing of the complaint. Id. It must also alert members of
7 the purported class that they have 60 days to move for appointment as lead plaintiff. 15 U.S.C.
8 § 78u-4(a)(3)(A)(i)(II).

9 Second, the court must identify the presumptive lead plaintiff. To do so, the court “must
10 compare the financial stakes of the various plaintiffs and determine which one has the most to gain
11 from the lawsuit.” Cavanaugh, 306 F.3d at 730. The court must then determine whether that
12 individual, “based on the information he has provided in his pleadings and declarations,” satisfies
13 the requirements of Rule 23(a), “in particular those of ‘typicality’ and ‘adequacy.’” Id. If the
14 plaintiff with the largest financial interest satisfies these requirements, he becomes the
15 “presumptively most adequate plaintiff.” Id.; see also 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

16 Finally, the other plaintiffs must have “an opportunity to rebut the presumptive lead
17 plaintiff’s showing that [he] satisfies Rule 23’s typicality and adequacy requirements.”
18 Cavanaugh, 306 F.3d at 730. Unless a member of the purported plaintiff class provides proof that
19 the presumptive plaintiff “(aa) will not fairly and adequately protect the interests of the class; or
20 (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing
21 the class,” the court must appoint the presumptively most adequate plaintiff as lead plaintiff. 15
22 U.S.C. § 78u-4(a)(3)(B)(iii)(II); see also Cavanaugh, 306 F.3d at 732.

23 **B. Lead Counsel**

24 Under the PLSRA, the lead plaintiff has the right, subject to court approval, to “select and
25 retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). “[T]he district court should
26 not reject a lead plaintiff’s proposed counsel merely because it would have chosen differently.”
27 Cohen v. U.S. Dist. Court, 586 F.3d 703, 711 (9th Cir. 2009) (citation omitted). “[I]f the lead
28 plaintiff has made a reasonable choice of counsel, the district court should generally defer to that

1 choice.” Id. at 712 (citations omitted).

3 **III. DISCUSSION**

4 **A. Procedural Requirements**

5 Pursuant to the PSLRA, Pomerantz LLP published a notice of the pending action on May
6 21, 2020, the same date that Mr. Knight filed the complaint in this case. See 15 U.S.C. § 78u-
7 4(a)(3)(A)(i); see also Notice. The notice announced the pendency of this action, listed the claims,
8 specified the class period, and advised putative class members that they had 60 days from the date
9 of the notice to file a motion to seek appointment as lead plaintiff in the lawsuit. Id. Thus, the
10 notice complied with the PSLRA’s requirements. See 15 U.S.C. § 78u-4(a)(3)(A).

11 As noted above, Mr. Margiotta then filed this Motion on July 20, 2020, one day before the
12 last day of the 60-day deadline. See Mot. Mr. Margiotta has therefore met the statutory notice
13 requirements.

14 **B. Financial Interest**

15 The Court must next determine whether Mr. Margiotta qualifies as the most adequate
16 plaintiff. To make this determination, the Court must first consider Mr. Margiotta’s financial
17 interest in the relief sought. See *Cavanaugh*, 306 F.3d at 730. Mr. Margiotta has submitted a “loss
18 chart” setting forth calculations of his alleged losses, totally approximately \$4,087.00. Ex. 3 to
19 *Rosen Decl.*, Loss Chart, ECF 24-3; see also Mot. 6. Because Mr. Margiotta’s Motion is
20 unopposed, Mr. Margiotta is necessarily the prospective lead plaintiff with the greatest financial
21 interest in the litigation. See Notice of Non-Opposition; Order; see also *City of Dearborn Heights*
22 *Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 WL 2368059,
23 at *3 (N.D. Cal. May 29, 2013) (“Without access to financial information from other parties, the
24 Court is constrained to conclude that the [proposed plaintiff’s] alleged loss best qualifies it to serve
25 as lead plaintiff.” (quoting *Bassin v. Decode Genetics, Inc.*, 230 F.R.D. 313, 316 (S.D.N.Y.
26 2005)).

27 **C. Rule 23 Requirements**

28 Having determined that Mr. Margiotta is the prospective lead plaintiff with the greatest

1 financial stake in this litigation, the Court must next consider whether Mr. Margiotta satisfies the
2 typicality and adequacy requirements of Rule 23(a). Federal Rule of Civil Procedure 23(a) sets
3 forth four requirements for class certification: (1) numerosity, (2) commonality, (3) typicality, and
4 (4) adequacy. Fed. R. Civ. P. 23(a). At the appointment of lead plaintiff stage, courts need only
5 consider typicality and adequacy, as the failure to satisfy numerosity or commonality would
6 preclude certifying a class action at all. *Cavanaugh*, 306 F.3d at 730 n.5. “When the court makes
7 [this] initial determination, it must rely on the presumptive lead plaintiff’s complaint and sworn
8 certification; there is no adversary process to test the substance of those claims.” *Id.* at 730. As
9 such, Mr. Margiotta need only make a prima facie showing that he satisfies the Rule 23
10 requirements of typicality and 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) (citation omitted),
15 superseded by statute on other grounds, *Berger v. Ludwick*, No. C-97-0728-CAL, 2000 WL
16 1262646 (N.D. Cal. Aug. 17, 2000). In this case, like all other members of the purported class, Mr.
17 Margiotta purchased CytomX stocks during the Class Period, when CytomX’s stock prices were
18 allegedly artificially inflated by Defendants’ misrepresentations and/or omissions, and Mr.
19 Margiotta allegedly suffered damages when those misrepresentations and/or omissions came to
20 light. See Mot. 7. Mr. Margiotta’s claims thus appear to be typical, if not identical, to the claims of
21 other members of the putative class.

22 The test for adequacy asks whether the lead plaintiff and his counsel “have any conflicts of
23 interest with other class members” and whether the lead plaintiff and his counsel will “prosecute
24 the action vigorously on behalf of the class.” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir.
25 2003). Here, there is no indication of conflicts between Mr. Margiotta and other class members
26 and Mr. Margiotta’s diligence in seeking appointment as lead plaintiff suggests that he and his
27 counsel will prosecute this action vigorously.

28 Thus, Mr. Margiotta has made a prima facie showing of typicality and adequacy, as

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1 required at this stage, and the Court finds that Mr. Margiotta qualifies as the presumptively most
2 adequate plaintiff under the PSLRA.

3 **D. Opportunity to Rebut**

4 Other plaintiffs have been afforded an opportunity to rebut Mr. Margiotta’s showing that
5 he as the presumptive lead plaintiff satisfies Rule 23’s typicality and adequacy requirements, as
6 evidenced by Mr. Knight’s opposition. See Mot. of Kevin Knight. However, Mr. Margiotta’s
7 Motion is now unopposed and no member of the purported plaintiff class has provided proof that
8 Mr. Margiotta “will not fairly and adequately protect the interests of the class” or that Mr.
9 Margiotta “is subject to unique defenses that render [him] incapable of adequately representing the
10 class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); see also Notice of Non-Opposition. Accordingly, the
11 Court APPOINTS Mr. Margiotta to serve as lead plaintiff.

12 **E. Lead Counsel**

13 No parties have objected to Mr. Margiotta’ selection of Rosen Law as counsel. See Notice
14 of Non-Opposition; Order. The Court has reviewed the firm’s resume, Ex. 4 to Rosen Decl., Firm
15 Resume, ECF 24-4, and is satisfied that Mr. Margiotta has made a reasonable choice of counsel.
16 See also Mot. 8. Accordingly, the Court APPROVES Mr. Margiotta’s selection of Rosen Law as
17 lead counsel.

18
19 **IV. CONCLUSION**

20 For the foregoing reasons, Mr. Margiotta’s Motion for Appointment as Lead Plaintiff and
21 Approval of Selection of Counsel is GRANTED.

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23 Dated: November 18, 2020



24
25 **BETH LABSON FREEMAN**
United States District Judge

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