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2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF CALIFORNIA

4 JEFF RIHN, Individually and on  
5 Behalf of all Others Similarly  
6 Situated,

Plaintiff,

7 v.

8 ACADIA PHARMACEUTICALS  
9 INC., ULI HACKSELL and  
STEPHEN R. DAVIS,

Defendants.

Case No: 15cv575 BTM(DHB)

**ORDER GRANTING MOTIONS  
TO CONSOLIDATE CASES;  
GRANTING MOTION OF PAUL  
AND SHARYN LEVINE FOR  
APPOINTMENT AS LEAD  
PLAINTIFF; GRANTING  
LEVINES' MOTION FOR  
APPROVAL OF CLASS  
COUNSEL**

10  
11 STEVE A. WRIGHT and VICKI G.  
12 WRIGHT, Individually and on  
Behalf of all Others Similarly  
Situating,

Plaintiff,

13  
14 v.

15 ACADIA PHARMACEUTICALS  
16 INC., ULI HACKSELL and  
STEPHEN R. DAVIS,

17 Defendants.

Case No: 15cv593 BTM(DHB)

18  
19 The following parties have filed motions to consolidate these actions, to be  
20 appointed lead plaintiff, and for approval or lead counsel: (1) Daniel P. Fay and  
Teresa L. Fay ("Fays"); (2) Paul and Sharyn Levine ("Levines"); (3) Russ and

1 Johnathan Belden (“Beldens”) (4) Ahmad Ahmad; (5) the Pries, Hancock,  
2 Monderer Group (“PHMG”); and (6) Warren Regent.<sup>1</sup> For the reasons discussed  
3 below, the Court **GRANTS** the motions to consolidate the actions, **GRANTS** the  
4 Levines’ motion to be appointed Lead Plaintiffs, **GRANTS** the Levines’ motion for  
5 approval of their selection of Lead Counsel, and **DENIES** the competing motions  
6 to be appointed lead plaintiff and for approval of lead counsel.

## 7 8 **I. BACKGROUND**

9 Both of these actions are brought by a putative class of investors who  
10 purchased the publicly traded securities of Acadia Pharmaceuticals Inc. (“Acadia”)  
11 between February 26, 2015 and March 11, 2015 (the “Class Period”). Plaintiffs  
12 allege that they were damaged because Defendants artificially inflated the price of  
13 Acadia securities by the dissemination of false and/or misleading information and  
14 the failure to disclose material facts regarding its New Drug Application for  
15 NUPLAZID and its business operations.

16 Acadia is a biopharmaceutical company focused on the development and  
17 commercialization of medicines to address unmet medical needs in neurological  
18 and related central nervous system disorders. One of Acadia’s most prominent

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19  
20 <sup>1</sup> Oklahoma Firefighters Pension & Retirement System also filed a motion but  
subsequently withdrew it.

1 product candidates is NUPLAZID, a drug that is in Phase III development as a  
2 treatment for Parkinson’s disease psychosis.

3 On February 26, 2015, Acadia announced in a press release that it  
4 anticipated submitting its New Drug Application (“NDA”) in the First Quarter of 2015  
5 and that it was “on track” to meet this timetable. However, on March 11, 2015,  
6 Acadia announced that it would not meet its timetable to submit the NDA in the  
7 First Quarter of 2015 and was delaying submission of the NDA to sometime in the  
8 second half of the year. That same day, Acadia announced the retirement of  
9 Acadia’s CEO and director, Uli Hacksell. After these announcements, Acadia’s  
10 common stock dropped \$9.94 per share to close at \$34.82 per share on March 12,  
11 2015, a one-day decline of 22%.

12 The complaints filed in these actions name as defendants Acadia, Hacksell,  
13 and Chief Financial Officer, Executive Vice President, and Chief Business Officer  
14 Stephen R. Davis. Both complaints allege violations of §§ 10(b) and 20(a) of the  
15 Exchange Act and SEC Rule 10b-5.

## 17 **II. DISCUSSION**

### 18 A. Consolidation

19 Consolidation is appropriate when there is a “common question of law or fact  
20 . . . pending before the Court.” Fed. R. Civ. P. 42(a). Class action shareholder

1 suits in particular are “ideally suited to consolidation because their unification  
2 expedites proceedings, reduces duplication, and minimizes the expenditure of time  
3 and money by all concerned.” Mohanty v. BigBand Networks, Inc., 2008 WL  
4 426250, at \*3 (N.D. Cal. Feb. 14, 2008).

5 Consolidation of these actions is appropriate. These actions present the  
6 same factual and legal issues. Each action alleges violations of federal securities  
7 laws, including §§ 10(b) and 20(a) of the Exchange Act and Rule 10b-5. Each  
8 action also names the same defendants and alleges substantially the same  
9 wrongdoing (materially false and misleading statements that artificially inflated the  
10 price of Acadia’s securities). Therefore, the Court grants the motions to  
11 consolidate the actions.

## 12

13 B. Lead Plaintiff

### 14 1. Governing Law

15 Under the Private Securities Litigation Reform Act (“PSLRA”), no later than  
16 20 days after filing a class action securities complaint, a private plaintiff or plaintiffs  
17 must publish a notice advising members of the purported plaintiff class of the  
18 pendency of the action, the claims asserted, and that any member of the purported  
19 class may move the court to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i).  
20 Not later than 60 days after the date on which the notice is published, any member

1 of the purported class may move the court to serve as lead plaintiff of the purported  
2 class. Id.

3         Within 90 days after publication of the notice, the Court shall consider any  
4 motion made by a class member to serve as lead plaintiff. 15 U.S.C. § 78u-  
5 4(a)(3)(B)(i). If more than one action on behalf of a class asserting substantially  
6 the same claims has been filed and any party has sought to consolidate those  
7 actions, the court shall not make the lead plaintiff determination until after the  
8 decision on the motion to consolidate has been rendered. 15 U.S.C. § 78u-  
9 4(a)(3)(B)(ii).

10         The Court shall appoint as lead plaintiff “the member or members of the  
11 purported plaintiff class that the court determines to be most capable of adequately  
12 representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The  
13 presumptively most adequate plaintiff is the one who “has the largest financial  
14 interest in the relief sought by the class” and “otherwise satisfies the requirements  
15 of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-  
16 4(a)(3)(B)(iii)(I). “In other words, the district court must compare the financial  
17 stakes of the various plaintiffs and determine which one has the most to gain from  
18 the lawsuit. It must then focus its attention on that plaintiff and determine, based  
19 on the information he has provided in his pleadings and declarations, whether he

1 satisfies the requirements of Rule 23(a), in particular those of ‘typicality’ and  
2 ‘adequacy.’” In re Cavanaugh, 306 F.3d 726, 730 (9th Cir. 2002).

3 The presumption that a plaintiff is the most adequate lead plaintiff may be  
4 rebutted only upon proof by a member of the purported plaintiff class that the  
5 plaintiff will not fairly and adequately protect the interests of the class or is subject  
6 to unique defenses that render such plaintiff incapable of adequately representing  
7 the class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). If the district court determines that  
8 the presumptive lead plaintiff does not meet the typicality or adequacy  
9 requirement, the court must then proceed to determine whether the plaintiff with  
10 the next lower stake in the litigation has made a prima facie showing of typicality  
11 and adequacy. Cavanaugh, 306 F.3d at 731. If so, that plaintiff becomes the  
12 presumptive lead plaintiff and other plaintiffs must be given the opportunity to rebut  
13 that showing. Id.

14 A straightforward application of the statutory scheme “provides no occasion  
15 for comparing plaintiffs with each other on any basis other than their financial stake  
16 in the case.” Cavanaugh, 306 F.3d at 732. Once the Court identifies the plaintiff  
17 with the largest stake in the litigation, “further inquiry must focus on that plaintiff  
18 alone and be limited to determining whether he satisfies the other statutory  
19 requirements.” Id.

20

1           2. Lead Plaintiff Analysis

2           Motions to be appointed lead plaintiff were filed by the Fays, Levines,  
3 Beldens, Ahmad Ahmad, Warren Regent, and PHMG. After all of the motions were  
4 filed, Ahmad Ahmad, the Beldens, and PHMG filed papers conceding that they  
5 were not the movant with the largest financial interest. As discussed below, among  
6 the remaining movants, the Court finds that the Levines have the largest financial  
7 interest. The Court also finds that the Levines satisfy the requirements of Rule  
8 23(a) and therefore grants their motion to be appointed Lead Plaintiffs.

9  
10           a. Financial Interest

11           There is no prescribed method for determining which movant has the largest  
12 “financial interest.” The Ninth Circuit notes that “the court may select accounting  
13 methods that are both rational and consistently applied.” Cavanaugh, 306 F.3d at  
14 730 n. 4.

15           Previously, this Court sided with the courts that equate financial interest with  
16 potential recovery, as opposed to actual economic losses suffered, using either  
17 the “retained share” or “net shares purchased” methodology. See Schueneman v.  
18 Arena Pharm., Inc., 2011 WL 3475380 (S.D. Cal. Aug. 8, 2011); Ruland v.  
19 Infosonics Corp., 2006 WL 3746716 (S.D. Cal. Oct. 23, 2006). The “retained  
20 share” methodology looks to the number of shares purchased during the class

1 period that were retained as of the last day of the class period. See Eichenholtz  
2 v. Verifone Holdings, Inc., 2008 WL 3925289, at \* 2 (N.D. Cal. Aug. 22, 2008).  
3 Under the “net shares purchased” analysis, courts subtract the number of shares  
4 sold by a movant from those purchased during the class period. In re Network  
5 Assoc. Inc., Sec. Lit., 76 F. Supp. 2d 1017, 1027 (N.D. Cal. 1999).

6 The difference between net shares and retained shares can be significant  
7 where a movant held a large number of shares before the class period, sold them  
8 all during the class period, then purchased a large number of shares during the  
9 class period and retained them until the end of the class period. See Mulligan v.  
10 Impax Lab., Inc., 2013 WL 3354420, at \* 7 (N.D. Cal. July 2, 2013). The retained  
11 share methodology would not take into account gains from the sale of these shares  
12 at an inflated price. In contrast, the “net shares purchased” methodology, which is  
13 premised on a uniform “fraud premium” throughout the class period, focuses on  
14 the net number of shares bought and sold during the class period. In re Network  
15 Assoc., Inc., 76 F. Supp. 2d at 1027.

16 Here, the Fays allege losses of \$314,050<sup>2</sup> based on 32,499 retained shares.  
17 However, on March 10, 2015, the Fays sold 30,732 shares that were purchased  
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20 <sup>2</sup> The Fays revised their loss calculation in their Omnibus Opposition [Doc. 21 at 4.]



1 before the Class Period. (Ex. B to Abadou Decl.) The Fays do not account for the  
2 gains from the sale of these shares, which certainly would have been significant.

3 The Levines claim losses of \$143,595 based on 15,000 net shares  
4 purchased and retained.

5 Warren Regent claims a loss of \$1,546 based on the purchase of 400 shares.

6 Here, there are no allegations of partial disclosures throughout the Class  
7 Period. Therefore, it appears that the “fraud premium” was constant throughout  
8 the Class Period. Given the uniform fraud premium and the large number of shares  
9 purchased by the Fays before the Class Period but sold during the Class Period,  
10 the Court finds that the net shares approach more accurately reflects the movants’  
11 potential damage recovery.

12 The net shares purchased by the Fays totals 1,767. In contrast, the Levines  
13 purchased 15,000 net shares. Thus, under the net shares calculation, the Levines  
14 have the largest financial stake in the litigation.<sup>3</sup>

15  
16 b. Typicality and Adequacy

17 Claims are “typical” under Rule 23 if they are “reasonably co-extensive with  
18 those of absent class members; they need not be substantially identical.” Hanlon

19 \_\_\_\_\_  
20 <sup>3</sup> The Court does not reach the issue of whether the Fays properly calculated their losses under the PSLRA’s 90-day bounce back rule, 15 U.S.C. § 78u-4(e)(2).

1 v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). The Levines' claims arise  
2 out of the same events and are based on the same legal theories as the claims of  
3 the other class members – i.e., the Levines claim that they purchased Acadia  
4 common stock during the Class Period and suffered damages as a result of  
5 Defendants' false and misleading statements. Accordingly, the Levines satisfy the  
6 "typicality" requirement.

7 Representation is "adequate" when the interests of the plaintiffs and their  
8 counsel do not conflict with the interests of other class members, and the plaintiffs  
9 and their counsel will prosecute the action vigorously on behalf of the class.  
10 Hanlon, 150 F.3d at 1020. It appears that the Levines' interests are aligned with  
11 those of the other class members, and that the Levines are willing and able to  
12 serve as Lead Plaintiffs. (Ex. B to Bower Decl.) As discussed in greater detail  
13 below, the Levines' retained counsel, the Faruqi firm, is experienced in the area of  
14 complex securities class litigation and is clearly capable of representing the  
15 interests of the Class. Therefore, the Levines are the presumptive Lead Plaintiffs  
16 under the PSLRA.

17 The presumption that the Levines are the most adequate Lead Plaintiffs may  
18 be rebutted only upon proof by a member of the purported plaintiff class that the  
19 Levines will not fairly and adequately protect the interests of the class or are  
20 subject to unique defenses that render them incapable of adequately representing

1 the class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). No movant has come forward with  
2 such proof. Accordingly, the Court appoints the Levines as Lead Plaintiffs.<sup>4</sup>

3  
4 c. Lead Counsel Analysis

5 Under the PSLRA, once the court has designated a lead plaintiff, that plaintiff  
6 “shall subject to the approval of the court, select and retain counsel to represent  
7 the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). If the lead plaintiff has made a  
8 reasonable choice of counsel, the district court should generally defer to that  
9 choice. Cohen v. U.S. Dist. Court, 586 F.3d 703, 712 (9th Cir. 2009).

10 The Levines ask the Court to approve their selection of Faruqi & Faruqi, LLP  
11 as lead counsel. It appears that the Faruqi firm has devoted a substantial portion  
12 of its practice to class action securities fraud litigation and has obtained significant  
13 recoveries for injured investors in many cases. (Ex. D to Bower Decl.) In light of  
14 the firm’s extensive experience in securities class action litigation, the Court  
15 approves the Levines’ choice of counsel and appoints Faruqi & Faruqi, LLP as  
16 Lead Counsel.

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<sup>4</sup> Although the Beldens concede that they do not have the largest financial interest, they ask that if a sub-class for Acadia options becomes warranted, the Court appoint them as lead plaintiffs for the sub-class. The Beldens’ request is premature. The Beldens may seek appointment as lead plaintiffs if and when such a sub-class is created.

1 **III. CONCLUSION**

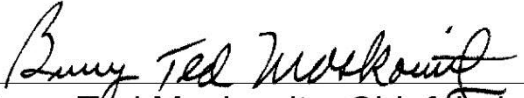
2 For the reasons discussed above, the motions to consolidate these actions  
3 are **GRANTED**. The Court **CONSOLIDATES** Case Nos. 15cv575 BTM(DHB) and  
4 15cv593 BTM(DHB). The caption page on all future filings should contain all of  
5 the captions, and all future docketing will be done in Case No. 15cv575, which  
6 shall be the main file.

7 The Court **GRANTS** the Levines' motion to be appointed Lead Plaintiffs. The  
8 Court appoints Paul and Sharyn Levine as Lead Plaintiffs in the consolidated Class  
9 Actions. The Court also **GRANTS** the Levines' motion for approval of lead  
10 counsel. The Court appoints Faruqi & Faruqi, LLP as Lead Counsel in the  
11 consolidated Class Actions.

12 The Court **DENIES** the competing motions for appointment as lead plaintiff  
13 and for approval of lead counsel.

14 **IT IS SO ORDERED.**

15 Dated: September 8, 2015

16   
17 Barry Ted Moskowitz, Chief Judge  
18 United States District Court  
19  
20