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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

HOWARD WELGUS,
Plaintiff,
v.
TRINET GROUP, INC., et al.,
Defendants.

Case No. [15-cv-03625-BLF](#)

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

[Re: ECF 17]

Before the Court is Plaintiff Howard Welgus’ unopposed Motion for Appointment as Lead Plaintiff and Approval of Selection of Counsel. ECF 17. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for submission without oral argument and hereby VACATES the hearing scheduled for December 10, 2015. For the reasons stated herein, the Court GRANTS Plaintiff’s motion.

I. BACKGROUND

On August 7, 2015, Plaintiff Howard Welgus (“Welgus”) filed this putative securities class action lawsuit against Defendants TriNet Group, Inc. (“TriNet”), Burton M. Goldfield, and William Porter (collectively, “Defendants”). Compl., ECF 1. Welgus alleges that, from May 5, 2014 to August 3, 2015 (“Class Period”), Defendants issued materially false and misleading statements and concealed material adverse facts regarding TriNet’s financial condition and growth prospects. Compl. ¶¶ 1, 7, 8, 33, 42. Welgus alleges that, as a result of these misrepresentations and omissions, “TriNet common stock traded at artificially inflated prices during the Class Period, reaching a high of \$37.88 per share on March 3, 2015.” *Id.* ¶ 9. Welgus alleges that, after the misrepresentations and omissions became apparent, the prices “fell precipitously,” reaching a low of \$16.33 per share on August 4, 2015. *Id.* ¶¶ 45, 46. As a result, Welgus filed the instant lawsuit

United States District Court
Northern District of California

1 for violations of the Securities Exchange Act of 1934 on behalf of all persons who purchased or
2 otherwise acquired TriNet common stock during the Class Period. *Id.* ¶ 1.

3 On October 6, 2015, Welgus filed this motion seeking appointment as lead plaintiff and
4 approval of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as lead counsel for the
5 class. No other plaintiffs have sought to be named lead plaintiff, and no other law firms have
6 sought to be named lead counsel.

7 **II. LEGAL STANDARD**

8 **A. Lead Plaintiff**

9 The Private Securities Litigation Reform Act of 1995 (“PSLRA”) governs the procedure
10 for selection of lead plaintiff in all private class actions under the Securities Exchange Act of
11 1934. 15 U.S.C. § 78u-4(a)(3). Pursuant to the PSLRA, the court shall appoint as lead plaintiff
12 “the member or members of the purported plaintiff class that the court determines to be most
13 capable of adequately representing the interests of class members,” also referred to as the “most
14 adequate plaintiff.” *Id.* at § 78u-4(a)(3)(B)(i).

15 The PSLRA “provides a simple three-step process for identifying the lead plaintiff.” *In re*
16 *Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). First, the pendency of the action, the claims made,
17 and the purported class period must be publicized in a “widely circulated national business-
18 oriented publication or wire service.” *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). This notice
19 must be published within 20 days of the filing of the complaint. *Id.* It must also alert members of
20 the purported class that they have 60 days to move for appointment as lead plaintiff. 15 U.S.C. §
21 78u-4(a)(3)(A)(i)(II).

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

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

8 **B. Lead Counsel**

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

15 **III. ANALYSIS**

16 **A. Procedural Requirements**

17 Pursuant to the PSLRA, Welgus published a notice of the pending action on August 7,
18 2015, the same date that he filed the complaint in this case. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i); *see*
19 *also* O’Mara Decl. Exh. C, ECF 18-3. The notice announced the pendency of this action, listed the
20 claims, specified the class period, and advised putative class members that they had 60 days from
21 the date of the notice to file a motion to seek appointment as lead plaintiff in the lawsuit. *Id.* Thus,
22 the notice complied with the PSLRA’s requirements. *See* 15 U.S.C. § 78u-4(a)(3)(A).

23 As noted above, Welgus then filed this motion on October 6, 2015, the last day within the
24 60 day deadline. Welgus has therefore met the statutory notice requirements.

25 **B. Financial Interest**

26 The Court must next determine whether Welgus qualifies as the most adequate plaintiff.
27 To make this determination, the Court must first consider Welgus’ financial interest in the relief
28 sought. *See Cavanaugh*, 306 F.3d at 730.

1 Welgus has submitted a sworn certification establishing that he made seven purchases,
2 totaling 1,453 shares, of TriNet stock over the Class Period. *See* O’Mara Decl. Exh. A, ECF 18-1.
3 Welgus also made four sales, totaling 520 shares. *Id.* Welgus’ loss over the Class Period amounted
4 to \$3,574.72. *Id.*; *see also* O’Mara Decl. Exh. B, ECF 18-2.

5 Because Welgus was the only movant for appointment as lead counsel and the motion is
6 unopposed, Welgus is necessarily the prospective lead plaintiff with the greatest financial interest
7 in the litigation. *See* Notice of Non-Opposition, ECF 23 at 1. *See also City of Dearborn Heights*
8 *Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 WL 2368059,
9 at *3 (N.D. Cal. May 29, 2013) (quoting *Bassin v. Decode Genetics, Inc.*, 230 F.R.D. 313, 316
10 (S.D.N.Y.2005)) (“Without access to financial information from other parties, the Court is
11 constrained to conclude that the [proposed plaintiff’s] alleged loss best qualifies it to serve as lead
12 plaintiff.”).

13 **C. Rule 23 Requirements**

14 Having determined that Welgus is the prospective lead plaintiff with the greatest financial
15 stake in this litigation, the Court must next consider whether Welgus satisfies the typicality and
16 adequacy requirements of Rule 23(a).¹ “When the court makes [this] initial determination, it must
17 rely on the presumptive lead plaintiff’s complaint and sworn certification; there is no adversary
18 process to test the substance of those claims.” *Cavanaugh*, 306 F.3d at 730. As such, Welgus
19 need only make a *prima facie* showing that he satisfies the Rule 23 requirements of typicality and
20 adequacy. *See id.* at 731.

21 In determining whether typicality is satisfied, a Court inquires “whether other members
22 have the same or similar injury, whether the action is based on conduct which is not unique to the
23 named plaintiffs, and whether other class members have been injured by the same course of
24 conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). In this case, like all

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¹ Federal Rule of Civil Procedure 23(a) sets forth four requirements for class certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. Fed. R. Civ. P. 23(a). At the appointment of lead plaintiff stage, courts need only consider typicality and adequacy, as the failure to satisfy numerosity or commonality would preclude certifying a class action at all. *Cavanaugh*, 306 F.3d at 730 n.5.

1 other members of the purported class, Welgus purchased TriNet stocks during the Class Period,
2 when TriNet's stock prices were allegedly artificially inflated by Defendants' misrepresentations
3 and/or omissions, and Welgus allegedly suffered damages when those misrepresentations and/or
4 omissions came to light. Welgus' claims thus appear to be typical, if not identical, to the claims of
5 other members of the putative class.

6 The test for adequacy asks whether the lead plaintiff and his counsel "have any conflicts of
7 interest with other class members" and whether the lead plaintiff and his counsel will "prosecute
8 the action vigorously on behalf of the class." *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir.
9 2003). Here, there is no indication of conflicts between Welgus and other class members and
10 Welgus' diligence in seeking appointment as lead plaintiff suggests that he and his counsel will
11 prosecute this action vigorously. Thus, Welgus has made a *prima facie* showing of typicality and
12 adequacy, as required at this stage, and the Court finds that Welgus qualifies as the presumptively
13 most adequate plaintiff under the PSLRA.

14 **D. Opportunity to Rebut**

15 Welgus' motion is unopposed and no member of the purported plaintiff class has provided
16 proof that Welgus "will not fairly and adequately protect the interests of the class" or that Welgus
17 "is subject to unique defenses that render [him] incapable of adequately representing the class." 15
18 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Accordingly, the Court APPOINTS Welgus to serve as lead
19 plaintiff.

20 **E. Lead Counsel**

21 No parties have objected to Welgus' selection of Robbins Geller as counsel. The Court
22 has reviewed the firm's resume, O'Mara Decl. Exh. D, and is satisfied that Welgus has made a
23 reasonable choice of counsel. Accordingly, the Court APPROVES Welgus' selection of Robbins
24 Geller as lead counsel.

25 **IT IS SO ORDERED.**

26 Dated: December 3, 2015

27 
28 BETH LABSON FREEMAN
United States District Judge