

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

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

JEREMY VILLANUEVA,  
Plaintiff,  
v.  
PROTERRA INC., et al.,  
Defendants.

Case No. 23-cv-03519-BLF

**ORDER APPOINTING CYRESS JAM  
AS LEAD PLAINTIFF AND LEVI &  
KORSINSKY AS LEAD COUNSEL**

[Re: ECF No. 17, 21, 24, 25, 32, 36]

United States District Court  
Northern District of California

Before the Court are six motions for appointment of lead plaintiff and approval of selection of lead counsel. ECF Nos. 17, 21, 24, 25, 32, 36. For the reasons stated below, the Court GRANTS Plaintiff Cyress Jam’s motion at ECF No. 21 and DENIES the remaining motions at ECF Nos. 16, 24, 25, 32, and 36.

**I. BACKGROUND**

On July 14, 2023, Jeremy Villanueva filed this putative securities class action lawsuit against Defendants Proterra Inc., Gareth T. Joyce, and Karina Franco Padilla (collectively “Defendants”). See ECF No. 1 (“Compl.”). Proterra designs and manufactures zero-emission electric transit vehicles and electric vehicle solutions for commercial applications. *Id.* ¶ 2. The complaint alleges that between August 2, 2022 to March 15, 2023, Defendants issued false and/or materially misleading statements and omissions about Proterra’s balance sheet and gross margins. *Id.* ¶¶ 25–37. The complaint alleges that when Proterra released its quarterly earnings for the fourth quarter of 2022, which reflected a net loss of \$81 million and a gross loss of \$20.3 million, the company’s stock price fell from \$2.51 to \$1.16. *Id.* ¶¶ 35–37. As a result of Defendants’ actions, the complaint alleges that “Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws.” *Id.* ¶ 42. As a result, Villaneuva filed this

1 lawsuit for violations of the Securities Exchange Act of 1934 on behalf of all persons who  
2 purchased Proterra securities during the Class Period. *Id.* ¶ 51.

3 About six weeks after the complaint in this case was filed, another securities fraud suit was  
4 filed against Proterra alleging substantially the same facts and legal theory. *See Tirado v.*  
5 *Proterra, Inc.*, No. 5:23-cv-04528-BLF. On October 23, 2023, the Court ordered that *Tirado* is  
6 related to this case. ECF No. 56. Jam’s motion to appoint lead plaintiff and lead counsel has  
7 adopted the broader Class Period identified in *Tirado*: August 11, 2021 to August 7, 2023. *See*  
8 ECF No. 21 at 6 n.1.

9 On the date that the complaint in this case was filed, July 14, 2023, a Private Securities  
10 Litigation Reform Act of 1995 (“PSLRA”) early notice was issued advising potential class  
11 members of the claims alleged in the action and the 60-day deadline for class members to move to  
12 be appointed as lead plaintiff. *See* ECF No. 21-4 at 2–3. On September 12, 2023, six plaintiffs  
13 filed a motion for appointment as lead plaintiff and approval of selection of counsel: (1) Michael  
14 and Linda Wade, ECF No. 17; (2) Cyress Jam, ECF No. 21; (3) Ernesto Hachey, ECF No. 24;  
15 (4) Melih Karamikoglu and Ilker Karakaya, ECF No. 25; (5) Harold Weber, ECF No. 32; and  
16 (6) Luong Du, ECF No. 36. Between September 20 and September 26, 2023, all plaintiff movants  
17 with the exception of Jam withdrew their motions or filed statements of non-opposition to the  
18 Court appointing the lead plaintiff movant with the largest financial interest. *See* ECF No. 42  
19 (Du); ECF No. 43 (Hachey); ECF No. 44 (the Wades); ECF No. 45 (Weber); ECF No. 46  
20 (Karamikoglu and Karakaya).

## 21 **II. LEGAL STANDARD**

### 22 **A. Lead Plaintiff**

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

28 The PSLRA “provides a simple three-step process for identifying the lead plaintiff.” *In re*

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

7       Second, the court must identify the presumptive lead plaintiff. To do so, the court “must  
8 compare the financial stakes of the various plaintiffs and determine which one has the most to gain  
9 from the lawsuit.” *Cavanaugh*, 306 F.3d at 730. In calculating financial stakes, “the court may  
10 select accounting methods that are both rational and consistently applied.” *Id.* at 730 n.4. The  
11 court must then determine whether the individual with the largest financial stake, “based on the  
12 information he has provided in his pleadings and declarations,” satisfies the requirements of  
13 Rule 23(a), “in particular those of ‘typicality’ and ‘adequacy.’” *Id.* at 730. If the plaintiff with the  
14 largest financial interest satisfies these requirements, he or she becomes the “presumptively most  
15 adequate plaintiff.” *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Finally, the other plaintiffs  
16 must have “an opportunity to rebut the presumptive lead plaintiff’s showing that [he or she]  
17 satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*, 306 F.3d at 730. Unless a  
18 member of the purported plaintiff class provides proof that the presumptive plaintiff “(aa) will not  
19 fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that  
20 render such plaintiff incapable of adequately representing the class,” the court must appoint the  
21 presumptively most adequate plaintiff as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *see*  
22 *also Cavanaugh*, 306 F.3d at 732.

### 23       **B. Lead Counsel**

24       Under the PSLRA, 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).

### 2 **III. DISCUSSION**

#### 3 **A. Request to Consolidate Cases**

4 All six of the lead plaintiff movants also moved for the Court to consolidate this action  
5 with *Tirado*. The PSLRA provides that “[i]f more than one action on behalf of a class asserting  
6 substantially the same claim or claims arising under this subchapter has been filed,” the Court  
7 shall not make the determination of the most adequate plaintiff until “after the decision on the  
8 motion to consolidate is rendered.” 15 U.S.C. § 77z-1(a)(3)(B)(ii). “As soon as practicable after  
9 [the consolidation] decision is rendered, the court shall appoint the most adequate plaintiff as lead  
10 plaintiff for the consolidated actions.” *Id.*

11 “If actions before the court involve a common question of law or fact, the court may . . .  
12 consolidate the actions.” Fed. R. Civ. P. 42(a)(2). District courts have “broad discretion under  
13 [Rule 42(a)] to consolidate cases pending in the same district.” *Investors Research Co. v. U.S.*  
14 *Dist. Court for Cent. Dist. of California*, 877 F.2d 777, 777 (9th Cir. 1989). “In determining  
15 whether or not to consolidate cases, the Court should weigh the interest of judicial convenience  
16 against the potential for delay, confusion and prejudice.” *Bodri v. Gopro, Inc.*, 2016 WL  
17 1718217, at \*1 (N.D. Cal. Apr. 28, 2016) (quotation marks omitted) (quoting *Zhu v. UCBH*  
18 *Holdings, Inc.*, 682 F.Supp.2d 1049, 1052 (N.D. Cal. 2010)).

19 This case and *Tirado*, which are both pending before the Court, present similar factual and  
20 legal issues, as they each involve the same subject matter and are based on the same alleged  
21 wrongful course of conduct. *Compare* Compl., with *Tirado* ECF No. 1 (“*Tirado* Compl.”). Both  
22 cases bring claims under the Securities Exchange Act of 1934 and SEC Rule 10b-5 against  
23 Proterra, Gareth Joyce, and Karina Franco Padilla. In addition, *Tirado* raises these claims against  
24 Amy E. Ard. *Tirado* Compl. ¶ 15. Although *Tirado* defines the class using a broader time period,  
25 both cases arise from the same set of facts and circumstances (namely, public statements about  
26 Proterra’s balance sheet and gross margins), involve the same subject matter, and the same class  
27 (persons who purchased Proterra stock during the class period). As such, the same discovery and  
28 similar class certification issues will be relevant to both actions. Accordingly, the Court finds that

1 *Tirado* is related to this action and CONSOLIDATES this case with *Tirado*.

2 **B. Procedural Requirements**

3 Pursuant to the PSLRA, Levi & Korsinsky published notice of the pending action on July  
4 14, 2023, the same date the complaint was filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i); ECF No. 21-4  
5 at 2–3. The notice announced the pendency of this action, listed the claims, specified the class  
6 period, and advised putative class members that they had 60 days from the date of the notice to file  
7 a motion to seek appointment as lead plaintiff in the lawsuit. *Id.* Thus, the notice complied with  
8 the PSLRA’s requirements. *See* 15 U.S.C. § 78u-4(a)(3)(A). All six plaintiffs filed motions for  
9 appointment as lead plaintiff on September 12, 2023, the last day within the 60-day deadline. All  
10 plaintiffs have met the statutory notice requirements.

11 **C. Greatest Financial Loss**

12 In considering which movant for lead plaintiff appointment in a securities class action has  
13 the greatest financial interest, courts generally consider a four-factor test: “(1) the number of  
14 shares purchased during the class period; (2) the number of net shares purchased during the class  
15 period; (3) the total net funds expended during the class period; and (4) the approximate losses  
16 suffered.” *Perlmutter v. Intuitive Surgical, Inc.*, No. 10-CV-03451-LHK, 2011 WL 566814, at \*7  
17 (N.D. Cal. Feb. 15, 2011) (citations omitted). Courts place the most emphasis on the final  
18 factor—the approximate losses suffered. *See id.*

19 Jam has submitted a “loss chart” setting forth calculations of his alleged losses, totaling  
20 approximately \$1,093,258.16 under a LIFO and *Dura* LIFO analysis. ECF No. 21-3 at 2.  
21 Because Jam’s motion is unopposed, Jam is necessarily the prospective lead plaintiff with the  
22 greatest financial interest in the litigation. *See* ECF No. 42 (Du Notice of Non-Opposition); ECF  
23 No. 43 (Hachey Withdrawal of Motion); ECF No. 44 (the Wades Notice of Non-Opposition); ECF  
24 No. 45 (Weber Notice of Non-Opposition); ECF No. 46 (Karamikoglu and Karakaya Notice of  
25 Non-Opposition); *see also City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align*  
26 *Tech., Inc.*, No. 12-CV-06039-LHK, 2013 WL 2368059, at \*3 (N.D. Cal. May 29, 2013)  
27 (“Without access to financial information from other parties, the Court is constrained to conclude  
28 that the [proposed plaintiff’s] alleged loss best qualifies it to serve as lead plaintiff.”) (quoting

1 *Bassin v. Decode Genetics, Inc.*, 230 F.R.D. 313, 316 (S.D.N.Y. 2005))).

2 **D. Rule 23 Requirements**

3 Upon determining the movant with the largest financial interest, the court “must then focus  
4 its attention on *that* plaintiff and determine . . . whether he [or she] satisfies the requirements of  
5 Rule 23(a).” *Cavanaugh*, 306 F.3d at 730; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule  
6 23(a) requires satisfaction of four factors to serve as a class representative:

7 (1) the class is so numerous that joinder of all members is  
8 impracticable; (2) there are questions of law or fact common to the  
9 class; (3) the claims or defenses of the representative parties are  
10 typical of the claims or defenses of the class; and (4) the  
representative parties will fairly and adequately protect the interests  
of the class.

11 Fed. R. Civ. P. 23(a). The typicality and adequacy requirements of Rule 23 are the main focus of  
12 this determination. *See Cavanaugh*, 306 F.3d at 730. Examination of the remaining requirements  
13 is deferred until the lead plaintiff moves for class certification. The movant with the largest  
14 financial interest “need only make a prima facie showing [of its] typicality and adequacy.” *Veal v.*  
15 *LendingClub Corp.*, No. 18-cv-02599-BLF, 2018 WL 5879645, at \*4 (N.D. Cal. Nov. 7, 2018)  
16 (citing *Cavanaugh*, 306 F.3d at 731).

17 In determining whether typicality is satisfied, the Court inquires “whether other members  
18 have the same or similar injury, whether the action is based on conduct which is not unique to the  
19 named plaintiffs, and whether other class members have been injured by the same course of  
20 conduct.” *In re Twitter Inc. Sec. Litig.*, 326 F.R.D. 619, 629 (N.D. Cal. 2018) (quoting *Hanon v.*  
21 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). In this case, like all other members of  
22 the purported class, Jam purchased Proterra stocks during the Class Period, when Proterra’s stock  
23 prices were allegedly artificially inflated by Defendants’ misrepresentations and/or omissions, and  
24 Jam allegedly suffered damages when those misrepresentations and/or omissions came to light.  
25 *See* ECF No. 21 at 8. Jam’s claims thus appear to be typical, if not identical, to the claims of other  
26 members of the putative class.

27 In determining whether the lead plaintiff will adequately represent the class, the Court  
28 must resolve two questions: “(1) do the named plaintiffs and their counsel have any conflicts of

1 interest with other class members and (2) will the named plaintiffs and their counsel prosecute the  
2 action vigorously on behalf of the class?” *In re Twitter*, 326 F.R.D. at 626 (quoting *Ellis v. Costco*  
3 *Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011)). In this case, there are no indications of  
4 conflicts of interest between Jam and other class members. The Court is also satisfied that Jam  
5 will prosecute this action vigorously. Jam is motivated to prosecute the case due to his large  
6 financial interest. *See* ECF No. 21-3 at 2; ECF No. 21 at 9. Jam also an experienced investor in  
7 securities. He is the sole owner of Star Alliance, LLC, an investment vehicle used for his personal  
8 investments. ECF No. 21-5 ¶ 2. Jam has also invested in securities for twenty-four years. *Id.* ¶ 3.  
9 Finally, Jam has experience hiring and overseeing attorneys because he has had attorneys on  
10 retainer for personal and business matters for the last thirty years. *Id.* The Court also notes that  
11 Jam has been diligent in seeking appointment as lead plaintiff. Therefore, the Court concludes  
12 that Jam will adequately represent the class.

13 The Court must then “give other plaintiffs an opportunity to rebut the presumptive lead  
14 plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*,  
15 306 F.3d at 730 (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)). The presumption of adequacy “may  
16 be rebutted only upon proof . . . that the presumptively most adequate plaintiff” does not satisfy  
17 the adequacy or typicality requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II);  
18 *Cavanaugh*, 306 F.3d at 729 n.2. Other plaintiffs have been afforded an opportunity to rebut  
19 Jam’s showing that he as the presumptive lead plaintiff satisfies Rule 23’s typicality and adequacy  
20 requirements. However, Jam’s motion is unopposed, and no member of the purported plaintiff  
21 class has provided proof that Jam “will not fairly and adequately protect the interests of the class”  
22 or that Jam “is subject to unique defenses that render [him] incapable of adequately representing  
23 the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

24 Accordingly, the Court APPOINTS Jam to serve as Lead Plaintiff.

25 **E. Lead Counsel**

26 No parties have objected to Jam’s selection of Levi & Korsinsky LLP as counsel. The  
27 Court has reviewed the firm’s resume, ECF No. 21-6, and is satisfied that Jam has made a  
28 reasonable choice of counsel. *See also* ECF No. 21 at 10. Accordingly, the Court APPROVES

1 Jam's selection of Levi & Korsinsky as Lead Counsel.

2 **IV. ORDER**

3 For the foregoing reasons, IT IS HEREBY ORDERED that:

4 1. *Villanueva v. Proterra Inc.*, No. 23-3519, and *Tirado v. Proterra Inc.*, No. 23-4528,  
5 are CONSOLIDATED. All future filings in the consolidated action will be filed in *Villanueva*.

6 The Court ORDERS that the Clerk of the Court administratively close *Tirado*.

7 2. Cyress Jam is APPOINTED as Lead Plaintiff;

8 3. Levi & Korsinsky LLP is APPOINTED as Lead Counsel; and

9 4. All other Motions to Appoint Lead Plaintiff and Lead Counsel are DENIED.

10 5. Lead Plaintiff shall advise the Court whether he intends to file a consolidated  
11 amended complaint.

12  
13 Dated: October 23, 2023

14   
15 \_\_\_\_\_  
16 BETH LABSON FREEMAN  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California