

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MYO THANT,
Plaintiff,
v.
RAIN ONCOLOGY INC., et al.,
Defendants.

Case No. [5:23-cv-03518-EJD](#)

**ORDER APPOINTING LEAD
PLAINTIFF AND LEAD COUNSEL**

Re: ECF Nos. 19, 22

The Court received two motions to appoint lead plaintiff and select lead counsel in this securities class action governed by the Private Securities Litigation Reform Act of 1995 (“PSLRA”). After the two opening motions were filed, one movant filed a statement of non-opposition to the competing motion for appointment as lead counsel. ECF No. 25. Accordingly, there is only one unopposed movant for lead plaintiff: Dr. Myo Thant.

Having reviewed the parties’ submissions, the Court GRANTS Dr. Thant’s Motion for Appointment as Lead Plaintiff and Approval of its Selection of Lead Counsel. All other competing motions for appointment of lead plaintiff are DENIED.

I. BACKGROUND

A. Factual Background

Defendant Rain Oncology, Inc. (“Rain”) is a biopharmaceutical company that develops oncology therapeutics, specifically an oral small-molecule inhibitor known as milademetan or RAIN-32. Compl. ¶ 19. Defendant Avanish Vellanki is Rain’s founder, chairman, and chief executive officer. *Id.* ¶ 11. Defendant Richard Bryce is Rain’s executive vice president and chief medical officer. *Id.* ¶ 12.

1 Around September 2020, Rain represented that Phase 1 clinical trial results indicated that
 2 milademetan demonstrated meaningful anti-tumor activity for certain solid tumors. Based on the
 3 Phase 1 data, Rain skipped additional clinical testing and proceeded to a Phase 3 MANTRA trial,
 4 which began on July 20, 2021. *Id.* ¶¶ 20–21, 24. Rain frequently announced the benefits of
 5 proceeding directly to a Phase 3 trial in a short period of time. *Id.* ¶¶ 21, 26–36.

6 On May 22, 2023, Rain announced that milademetan had failed to meet its primary
 7 endpoint of progress-free survival in the MANTRA study and that the dosing schedule had not
 8 been optimized before commencing the study. *Id.* ¶¶ 22, 37. When the news was announced,
 9 Rain’s price dropped from \$9.93 to \$1.22 over the course of the next trading day. *Id.* ¶¶ 23, 41.

10 **B. Procedural History**

11 On July 14, 2023, Plaintiff Myo Thant brought this first-filed action for violations of
 12 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a).
 13 ECF No. 1. On the same day, Dr. Thant’s counsel, Levi & Korsinsky, also published a notice on
 14 *Globe Newswire* announcing that a securities class action had been initiated against Defendants.
 15 *See* Decl. Adam M. Apton (“Apton”), Ex. C, ECF No. 19-4.

16 On September 12, 2023, the Court received two motions to appoint lead plaintiff and lead
 17 counsel—one from Dr. Thant and one from Mr. Tony Serrano. ECF Nos. 19, 22. On September
 18 26, 2023, Mr. Serrano filed a statement of non-opposition to competing motions for lead plaintiff.
 19 ECF No. 25. The Court subsequently took the motions for lead plaintiff under submission without
 20 oral argument. ECF No. 30.

21 **II. LEGAL STANDARD**

22 Pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §
 23 78u-4(a)(3)(B)(ii), the Court “shall appoint the most adequate plaintiff as lead plaintiff” in a
 24 consolidated action. There is a rebuttable presumption that the most adequate plaintiff is a person
 25 or group of persons who:

- 26 aa. has either filed the complaint or made a motion in response to a notice under
 27 subparagraph (A)(i);

1 bb. in the determination of the court, has the largest financial interest in the relief
sought by the class; and

2 cc. otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
3 Procedure.

4 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

5 Accordingly, there is a “simple three-step process” to identify a lead plaintiff. *In re*
6 *Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). “The first step consists of publicizing the
7 pendency of the action, the claims made and the purported class period.” *Id.* Next, the Court
8 considers which plaintiff has the highest financial stake. *Id.* at 729–30. Finally, “[t]he third step
9 of the process is to give other plaintiffs an opportunity to rebut the presumptive lead plaintiff’s
10 showing that it satisfies Rule 23’s typicality and adequacy requirements.” *Id.* at 730. The
11 presumption may be rebutted only upon proof that the most adequate plaintiff “will not fairly and
12 adequately protect the interests of the class” or “is subject to unique defenses that render such
13 plaintiff incapable of adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

14 **III. DISCUSSION**

15 Given that Dr. Thant’s motion is the only unopposed motion in this matter, the Court will
16 limit its analyses primarily to Dr. Thant’s motion.

17 **A. Lead Plaintiff**

18 As the only unopposed movant in this case, Dr. Thant satisfies the foregoing criteria for
19 appointment as the lead plaintiff. First, Dr. Thant timely filed the instant motion and submitted
20 the requisite sworn certification. ECF Nos. 19, 19-2. Second, Dr. Thant alleges that he purchased
21 about 258,538 net shares and lost almost \$2 million. Apton Decl., Ex. B (“Loss Chart”). This was
22 the highest financial stake of any movant by a significant margin. *See* ECF No. 22-3
23 (documenting loss of approximately \$9,595 from Plaintiff Serrano). Third, Dr. Thant satisfies the
24 requirements of Federal Rule of Civil Procedure 23, specifically the typicality and adequacy
25 requirements. *In re Cavanaugh*, 306 F.3d at 730. Dr. Thant represents that his securities claims
26 are typical of—and indeed identical to—those of the class, and his interests are also aligned with
27 those of the proposed class. Decl. Myo Thant ¶¶ 2–3, ECF No. 19-5.

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ORDER APPOINTING LEAD PLAINTIFF AND LEAD COUNSEL

1 Accordingly, Dr. Thant has satisfied the preliminary showing under the PSLRA and is
2 entitled to the presumption as the most adequate plaintiff in this PSLRA action. The Court has
3 also received no opposition or attempts to rebut this presumption. Accordingly, the Court
4 GRANTS Dr. Thant’s Motion for Appointment as Lead Plaintiff.

5 **B. Lead Counsel**

6 Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), the “most adequate plaintiff shall, subject to the
7 approval of the court, select and retain counsel to represent the class.” A court generally will
8 accept the lead plaintiff’s choice of counsel unless it appears necessary to appoint different
9 counsel to “protect the interests of the class.” *Kim v. Advanced Micro Devices, Inc.*, 2018 WL
10 2866666, at *2 (N.D. Cal. June 11, 2018).

11 No parties have objected to Dr. Thant’s selection of Levi & Korsinsky, LLP as lead
12 counsel for the putative class, nor is the Court aware of any need to appoint different counsel to
13 protect the interests of the class. The Court has reviewed the firm’s and attorneys’ resumes and is
14 satisfied with Dr. Thant’s selection of counsel. *See* ECF No. 19-6. Accordingly, the Court
15 APPROVES Dr. Thant’s selection of Levi & Korsinsky as Lead Counsel.

16 **IV. CONCLUSION**

17 Based on the foregoing reasons, the Court GRANTS Dr. Myo Thant’s Motion as follows:

- 18 1. Dr. Myo Thant is APPOINTED as Lead Plaintiff;
- 19 2. Levi & Korsinsky, LLP is APPOINTED as Lead Counsel; and
- 20 3. All other Motions to Appoint Lead Plaintiff and Select Lead Counsel are DENIED.

21 Additionally, the Court INCORPORATES into this Order the obligations set forth in
22 Plaintiff Thant’s proposed order, attached as a supplement to this Order.

23 **IT IS SO ORDERED.**

24 Dated: November 1, 2023

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EDWARD J. DAVILA
United States District Judge

LEVI & KORSINSKY, LLP
Adam M. Apton (SBN 316506)
Adam C. McCall (SBN 302130)
1160 Battery Street East, Suite 100
San Francisco, CA 94111
Tel: (415) 373-1671
Email: aapton@zlk.com
Email: amccall@zlk.com

Attorneys for Plaintiff Dr. Myo Thant

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MYO THANT, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

RAIN ONCOLOGY INC., AVANISH
VELLANKI, and RICHARD BRYCE,

Defendants.

Case No.: 5:23-cv-03518-EJD

**[PROPOSED] ORDER GRANTING
MOTION OF DR. MYO THANT FOR: (1)
APPOINTMENT AS LEAD PLAINTIFF;
AND (2) APPROVAL OF SELECTION OF
COUNSEL**

Date: October 19, 2023
Time: 9:00 a.m.
Courtroom: 4-5th Floor
Judge: Hon. Edward J. Davila

1 Having considered the papers filed in support of the Motion of Dr. Myo Thant (“Plaintiff”) for:
2 (1) Appointment as Lead Plaintiff; and (2) Approval of Lead Counsel pursuant to the Private Securities
3 Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. § 78u-4(a)(3)(B), and for good cause shown,
4 the Court hereby enters the following Order:

5 **I. APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL**

6 1. Plaintiff has moved this Court to be appointed as Lead Plaintiff in the Action and to
7 approve the counsel he retained to be Lead Counsel.

8 2. Having considered the provisions of Section 21D(a)(3)(B) of the PSLRA, 15 U.S.C.
9 § 78u-4(a)(3)(B), the Court hereby determines that Plaintiff is the most adequate plaintiff and satisfies
10 the requirements of the PSLRA. The Court hereby appoints Plaintiff as Lead Plaintiff to represent the
11 interests of the Class.

12 3. Pursuant to Section 21D(a)(3)(B)(v) of the PSLRA, 15 U.S.C. § 78u-4(a)(3)(B)(v),
13 Plaintiff has selected and retained the law firm Levi & Korsinsky, LLP (“L&K”) to serve as Lead
14 Counsel. The Court approves Plaintiff’s selection of Lead Counsel for the Action.

15 4. Lead Counsel shall have the following responsibilities and duties, to be carried out either
16 personally or through counsel whom Lead Counsel shall designate:

- 17 a. to coordinate the briefing and argument of any and all motions;
- 18 b. to coordinate the conduct of any and all discovery proceedings;
- 19 c. to coordinate the examination of any and all witnesses in depositions;
- 20 d. to coordinate the selection of counsel to act as spokesperson at all pretrial conferences;
- 21 e. to call meetings of the plaintiff’s counsel as they deem necessary and appropriate from
22 time to time;
- 23 f. to coordinate all settlement negotiations with counsel for defendants;
- 24 g. to coordinate and direct the pretrial discovery proceedings and the preparation for trial
25 and the trial of this matter, and to delegate work responsibilities to selected counsel as
26 may be required;
- 27 h. to coordinate the preparation and filings of all pleadings; and
- 28

1 i. to supervise all other matters concerning the prosecution or resolution of the claims
2 asserted in the Action.

3 5. No motion, discovery request, or other pretrial proceedings shall be initiated or filed by
4 any plaintiffs without the approval of Lead Counsel, so as to prevent duplicative pleadings or discovery
5 by plaintiffs. No settlement negotiations shall be conducted without the approval of the Lead Counsel.

6 6. Service upon any plaintiff of all pleadings, motions, or other papers in the Action, except
7 those specifically addressed to a plaintiff other than Lead Plaintiff, shall be completed upon service of
8 Lead Counsel.

9 7. Lead Counsel shall be the contact between plaintiff's counsel and defendants' counsel,
10 as well as the spokespersons for all plaintiff's counsel, and shall direct and coordinate the activities of
11 plaintiff's counsel. Lead Counsel shall be the contact between the Court and plaintiff and his counsel.

12 **II. NEWLY FILED OR TRANSFERRED ACTIONS**

13 8. When a case that arises out of the subject matter of this action is hereinafter filed in this
14 Court or transferred from another Court, the Clerk of this Court shall:

- 15 a. file a copy of this Order in the separate file for such action;
16 b. deliver a copy of this Order to the attorneys for the plaintiff(s) in the newly filed or
17 transferred case and to any new defendant(s) in the newly filed or transferred case; and
18 c. make the appropriate entry on the docket for this action.

19 9. Each new case that arises out of the subject matter of the action that is filed in this Court
20 or transferred to this Court shall be consolidated with the Action and this Order shall apply thereto,
21 unless a party objecting to this Order or any provision of this Order shall, within ten (10) days after the
22 date upon which a copy of this Order is served on counsel for such party, file an application for relief
23 from this Order or any provision herein and this Court deems it appropriate to grant such application.

24 10. During the pendency of this litigation, or until further order of this Court, the parties
25 shall take reasonable steps to preserve all documents within their possession, custody or control,
26 including computer-generated and stored information and materials such as computerized data and
27 electronic mail, containing information that is relevant to or which may lead to the discovery of
28 information relevant to the subject matter of the pending litigation.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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