

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CODY WILHITE, Individually and On  
Behalf of All Others Similarly Situated,

3:23-cv-1784-JR

Plaintiff,

ORDER

v.

EXPENSIFY, INC., DAVID BARRETT,  
RYAN SCHAFFER, BLAKE BARTLETT,  
and ROBERT LENT,

Defendants.

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RUSSO, Magistrate Judge:

Plaintiff, Cody Wilhite, brings this action on behalf of himself and all others similarly situated alleging defendants Expensify, Inc., its Chief Executive and Financial Officers, and two of its Directors violated the Securities Act. The proposed class consists of:

all persons other than Defendants who purchased or otherwise acquired Expensify securities in its IPO or purchased Expensify securities thereafter in the stock market pursuant and/or traceable to the Offering Documents issued in connection with the IPO and were damaged thereby.

Complaint at ¶ 47 (ECF 1).

Three proposed class members: Angel Cifuentes Morales, Aleem Kanji, and Rob Rosenfeld move to be appointed as lead plaintiff.<sup>1</sup>

The Private Securities Litigation Reform Act (PSLRA) governs the selection of a lead plaintiff in private securities class actions. In Re Fusion-io, Inc., 2014 WL 2604991, at \*3 (ND Cal. June 10, 2014). The lead plaintiff is the “most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). A three-step process determines the lead plaintiff. In re Cavanaugh, 306 F.3d 726, 729 (9th Cir. 2002). First, the plaintiff who filed the earliest action governed by the PSLRA must publicize the pendency of the action, the claims made, and the purported class period “in a widely circulated national business-oriented publication or wire service.” 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). This notice must also alert the public that “any member of the purported class may move the court to serve as lead plaintiff.” 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). Notice was timely and movants moved for appointment within 60 days of the notice.

Second, the court selects the presumptive lead plaintiff. See In Re Cavanaugh, 306 F.3d at 729-30 (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)). In order to determine the presumptive lead plaintiff, “the district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit.” Id. at 730 (footnote omitted). After the court identifies the plaintiff with the most to gain, the court determines whether that plaintiff, based on the information he or she provides, “satisfies the requirements of Rule 23(a) [of the Federal Rules of Civil Procedure], in particular those of ‘typicality’ and ‘adequacy.’” Id. If that plaintiff satisfies the requirements of Rule 23(a), that plaintiff becomes the presumptive lead

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<sup>1</sup> Named plaintiff Cody Wilhite also states he is “willing to serve as a representative party on behalf of a Class of investors.” See Certification and Authorization of Plaintiff attached to complaint at Ex 1, p.1, ¶ 4. (ECF 1).  
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plaintiff. [Id.](#) If not, the court selects the plaintiff with the next-largest financial stake and determines whether that plaintiff satisfies the requirements of Rule 23(a). [Id.](#) The court repeats this process until it selects a presumptive lead plaintiff. [Id.](#)

Plaintiff Wilhite has not alleged a precise amount of damages, but the complaint indicates approximately \$9,737.88 in damages: Wilhite purchased 228 shares at a share price of \$44.54 each and alleges the share price dropped to \$1.83 after Expensify’s alleged wrongful conduct. [See](#) Certification and Authorization of Plaintiff attached to complaint at Ex 1, p.3. (ECF 1) (initial purchase price); Complaint at ¶ 44 (ECF 1) (share price dropped to \$1.83 by November 8, 2023). Movant Morales asserts financial losses of \$8,767.46 in connection with his purchase of Expensify securities. (ECF 10 at p. 7). Movant Kanji asserts losses of \$24,580 (ECF 12 at p. 8), and Movant Rosenfeld asserts losses of \$16,231 in connection with his purchase of Expensify stock. (ECF 14 at p. 7). Rosenfeld, however, concedes he does not have the largest financial interest in this litigation and therefore does not oppose the competing motions of appointment of lead plaintiff. (ECF 17).

Third, those plaintiffs not selected as the presumptive lead plaintiff may rebut the presumptive lead plaintiff’s showing that he satisfies Rule 23’s typicality and adequacy requirements. [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)\(iii\)\(II\)](#). This is done by showing that the presumptive lead plaintiff either “will not fairly and adequately protect the interests of the class” or “is subject to unique defenses that render such plaintiff incapable of adequately representing the class.” [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)\(iii\)\(II\)\(aa\)-\(bb\)](#). If the court determines that the presumptive lead plaintiff does not meet the typicality or adequacy requirements, then it must return to step two, select a new presumptive lead plaintiff, and again allow the other plaintiffs to rebut the new presumptive lead plaintiff’s showing. [In Re Cavanaugh](#), 306 F.3d at 731. The court repeats this process until all

challenges have been exhausted. [Id.](#) Although Movant Morales does not have the largest financial interest, he contends Movant Kanji is inadequate because of “potential” conflicts which may harm the class.

The court's typicality and adequacy analysis is far more rigorous at the class certification stage than at the lead plaintiff stage. Here, the party moving for lead plaintiff need make only a preliminary showing that he satisfies the typicality and adequacy requirements of Rule 23. [Studen v. Funko, Inc.](#), 2023 WL 5306005, at \*3 (W.D. Wash. Aug. 17, 2023). The test of typicality is “whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” [Hanon v. Dataproducts Corp.](#), 976 F.2d 497, 508 (9th Cir. 1992). Kanji establishes that like the named plaintiff and other proposed class members, he purchased Expensify stock traceable to the IPO and his claims are based on the same legal theory, arising from the same events and course of conduct, as the class claims.

The test for adequacy is whether there are no conflicts between the representative and class interests, and that the representative's attorneys are qualified, experienced, and generally able to litigate the case. [Studen](#), 2023 WL 5306005, at \*4. Morales asserts Kanji is on the city of Toronto’s lobbying portal and regularly lobbies in Toronto and that this lobbying may present conflicts over the course of this litigation.<sup>2</sup> However, Morales presents no actual conflicts. Kanji asserts he has no conflicts with other class members nor any antagonism between his interests and those of the class. This presumption may be rebutted only upon proof that the presumptively most adequate plaintiff will not fairly and adequately protect the interests of the class. 15 U.S.C.A. § 78u-

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<sup>2</sup> Movant Morales also takes issue with Kanji’s failure to challenge the unique defenses Movant Rosenfeld would be subject to if he were chosen as lead plaintiff. However, unlike Morales, Kanji has a greater financial stake in this litigation than Rosenfeld and thus does not need to rebut any presumption in favor of Rosenfeld as the lead plaintiff.

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4(a)(3)(B)(iii)(II)(aa). Speculative assertions such as potential conflicts are insufficient to rebut the lead plaintiff presumption in this case. [Armour v. Network Assocs., Inc.](#), 171 F. Supp. 2d 1044, 1054 (N.D. Cal. 2001). Kanji further indicates:

My employment does not interfere with my ability to serve as the lead plaintiff in this action. My lobbying firm does not do any business in the United States. The majority of our work is performed within Canada in connection with local municipalities and provincial entities. For example, our clients include labour unions. We do not service financial services companies.

My lobbying firm is selective with our clients and has never had a conflict arise between them. Based on my firm's past engagements, I do not foresee any chance of a conflict arising that would prevent me from serving as the lead plaintiff. My objective has been and will remain to secure the best possible recovery in this lawsuit for myself and the class at large.

Supplemental Declaration of Akeem Kanji (ECF 22) at ¶¶ 2-3.

Accordingly, Movant Kanji is appointed as the lead plaintiff.<sup>3</sup>

Under the PSLRA, the lead plaintiff is given the right, subject to court approval, to “select and retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). “[T]he district court should not reject a lead plaintiff's proposed counsel merely because it would have chosen differently.” [Cohen v. U.S. Dist. Court](#), 586 F.3d 703, 711 (9th Cir. 2009) (citation omitted). “[I]f the lead plaintiff has made a reasonable choice of counsel, the district court should generally defer to that choice.” [Id.](#) at 712. Here, lead plaintiff has selected Levi & Korsinsky to serve as Lead Counsel and Black Helterline to serve as Liaison Counsel on behalf of the Class. Movant Kanji's supporting papers demonstrate proposed counsel possess the experience necessary to prosecute this securities fraud case. Accordingly, the Court approves lead plaintiff Kanji's selection of class counsel.

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<sup>3</sup> The moving papers also demonstrate that Kanji is ready, willing, and able to oversee this litigation and has years of investing experience with a master's degree in economic development.

CONCLUSION

Movant Kanji's motion for appointment as lead plaintiff (ECF 12) is granted and the remaining motions for appointment of lead plaintiff (ECF 10 and 14) are denied. The Court appoints Levi & Korsinsky to serve as Lead Counsel and Black Helterline to serve as Liaison Counsel for the putative class as requested by the lead plaintiff. Lead plaintiff and the defendants shall meet and confer and file a joint status report that proposes a schedule for the filing of an amended complaint, any answer to the amended complaint or motion to dismiss the same, any motion for class certification, and any associated discovery deadlines by no later than March 26, 2024. All discovery related deadlines are stayed pending a Rule 16 conference.

DATED this 11<sup>th</sup> day of March, 2024.

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/s/ Jolie A. Russo  
Jolie A. Russo  
United States Magistrate Judge