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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ISLAM ABEED,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION,
et al.,

Defendants.

Case No. 2:24-cv-05284-FLA (MAAx)

**ORDER GRANTING DR.
PRAFULCHANDRA PATEL’S
MOTION FOR APPOINTMENT AS
LEAD PLAINTIFF AND APPROVAL
OF SELECTION OF COUNSEL AND
DENYING AZIZ ASARIA AND
AKBER ALI ASARIA’S MOTION
FOR APPOINTMENT AS CO-LEAD
PLAINTIFFS AND APPROVAL OF
CHOICE OF COUNSEL
[DKTS. 14, 16]**

1 **RULING**

2 Before the court is Dr. Prafulchandra Patel’s (“Patel”) Motion for Appointment
3 as Lead Plaintiff and Approval of Selection of Counsel (“Patel Motion”). Dkt. 14.
4 (“Patel Mot.”). Also before the court is Aziz Asaria and Akber Ali Asaria’s (the
5 “Asaria Brothers”) Motion for Appointment as Co-Lead Plaintiffs and Approval of
6 Choice of Counsel (“Asaria Motion”). Dkts. 16, 17 (“Asaria Mot.”).

7 On September 17, 2024, the court found these matters appropriate for
8 resolution without oral argument and vacated the hearings set for September 20,
9 2024. Dkt. 38; *see also* Fed. R. Civ. P. 78(b); Local Rule 7-15. For the reasons
10 stated herein, the court GRANTS the Patel Motion, APPOINTS Patel as lead
11 plaintiff, APPROVES LEVI & KORSINSKY, LLP as lead counsel, and DENIES the
12 Asaria Motion.

13 **BACKGROUND**¹

14 This is a putative securities class action against Defendants Toyota Motor
15 Corporation (“Toyota”), Koji Sato, Yoichi Miyazaki, Akio Toyoda, and Kenta Kon
16 (collectively, “Defendants”). Dkt. 1 (“Compl.”). Toyota is a Japanese car
17 manufacturer. *Id.* ¶ 8.

18 On June 3, 2024, Toyota filed with the Securities and Exchange Commission
19 (“SEC”) a Form 6-K report and stated that, on January 26, 2024, Toyota was
20 instructed by Japan’s Ministry of Land, Infrastructure, Transport and Tourism to
21 investigate Toyota’s testing and certification of vehicles. *Id.* ¶ 34. Pursuant to its
22 investigation, Toyota determined seven vehicle models were tested using methods that
23 “differed from the government standards[.]” *Id.* Toyota further admitted it used
24 “inadequate data” in pedestrian and occupant protection tests for three models, and it
25 erred “in crash tests and other test methods” for four discontinued models.” *Id.*

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27 _____
28 ¹ The court includes the following allegations from the Complaint for context, but does not make any findings of fact relating thereto.

1 That same day, *The New York Times* and the Associated Press published articles
2 about Toyota’s report. *Id.* ¶¶ 35–37 (“The wide-ranging fraudulent testing at Japan’s
3 top automaker involved the use of inadequate or outdated data in collision tests, and
4 incorrect testing of airbag inflation and rear-seat damage in crashes. Engine power
5 tests were also found to have been falsified.”). Also that day, Toyota’s American
6 Depository Shares declined by 2.45%.² *Id.* ¶ 38.

7 According to the Complaint, Toyota made false and misleading statements in
8 two annual reports filed with the SEC on June 23, 2022 (“2022 Annual Report”) and
9 June 30, 2023 (“2023 Annual Report”). *Id.* ¶¶ 19–33. The statements were allegedly
10 false and misleading because they “understated” Toyota’s malfeasance regarding
11 certification of its cars and overall legal compliance. *Id.* ¶¶ 19–33.

12 On June 24, 2024, the Complaint was filed “on behalf of persons or entities
13 who purchased or otherwise acquired publicly traded Toyota securities between June
14 23, 2022 and June 2, 2024” (the “Class”). *Id.* ¶ 1. On August 23, 2024, the Patel
15 Motion and Asaria Motion were filed. Patel Mot.; Asaria Mot. On September 6,
16 2024, the Asaria Brothers filed a notice of non-opposition to the Patel Motion. Dkt.
17 25.

18 **LEGAL STANDARD**

19 The Private Securities Litigation Reform Act (the “PSLRA”) sets forth the
20 requirements of securities class actions brought pursuant to the Federal Rules of Civil
21 Procedure. 15 U.S.C. § 78u-4(a)(1). In particular, subdivision (a)(3) outlines the
22 statutory requirements for a district court’s appointment of lead plaintiff. “The Act
23 instructs district courts to select as lead plaintiff the one ‘most capable of adequately
24

25 ² American Depository Shares are negotiable certificates issued by a United States
26 depository institution, such as a bank, that represent a beneficial interest in, but not
27 legal title of, specific shares of a non-U.S. company. *Stoyas v. Toshiba Corporation*,
28 896 F.3d 933, 940 (9th Cir. 2018). They “allow U.S. investors to invest in non-U.S.
companies and give non-U.S. companies easier access to U.S. capital markets.” *Id.*
(citation omitted).

1 representing the interests of class members.” *In re Cavanaugh*, 306 F.3d 726, 729
2 (9th Cir. 2002) (quoting 15 U.S.C. § 78u-4(a)(3)(B)(i)). “The ‘most capable’
3 plaintiff—and hence the lead plaintiff—is the one who has the greatest financial stake
4 in the outcome of the case, so long as he meets the requirements of [Fed. R. Civ. P. 23
5 (‘Rule 23’)].” *Id.* The court should follow a “three-step process for identifying the
6 lead plaintiff pursuant to these criteria.” *Id.*

7 First, the plaintiff who files the lawsuit must cause notice of the suit to be
8 published in a widely circulated national business-oriented publication or wire service,
9 advising members of the purported plaintiff class of the pendency of the action, the
10 claims asserted therein, the purported class period, and that “any member of the
11 purported class may move the court to serve as lead plaintiff of the purported class.”
12 *Id.* (citing 15 U.S.C. § 78u-4(a)(3)(A)(i)). Second, the court must consider any
13 motion made by a class member in response to the notice requirement and appoint as
14 lead plaintiff the member(s) of the purported plaintiff class that the court determines
15 to be most capable of adequately representing the interests of class members.
16 15 U.S.C. § 78u-4(a)(3)(B)(i). Third, the court must “give other plaintiffs an
17 opportunity to rebut the presumptive lead plaintiff’s showing that it satisfied Rule 23’s
18 typicality and adequacy requirements.” *Cavanaugh*, 306 F.3d at 730 (citing 15 U.S.C.
19 § 78u-4(a)(3)(B)(iii)(II)).

20 DISCUSSION

21 **I. Published Notice**

22 On June 24, 2024, Plaintiff Islam Abeed, through his counsel, published a
23 notice in *Business Wire*, announcing that a securities class action had been filed
24 against Defendants, and advising purchasers or acquirers of Toyota’s securities that
25 they had 60 days from the date of publication of the notice to file a motion to be
26 appointed lead plaintiff. *See* Dkt. 14-5. This publication satisfies the notice
27 requirement. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i) (requiring notice “be published, in a
28 widely circulated national business-oriented publication or wire service”).

1 **II. Most Adequate Plaintiff**

2 The court evaluates the second and third steps together to determine who is the
3 most adequate plaintiff. There is a rebuttable presumption that “[t]he ‘most capable’
4 plaintiff—and hence the lead plaintiff—is the one who has the greatest financial stake
5 in the outcome of the case, so long as he meets the requirements of Rule 23.”
6 *Cavanaugh*, 306 F.3d at 729; 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

7 In other words, the district court must compare the financial stakes of
8 the various plaintiffs and determine which one has the most to gain
9 from the lawsuit. It must then focus its attention on *that* plaintiff and
10 determine, based on the information he has provided in his pleadings
11 and declarations, whether he satisfies the requirements of Rule 23(a),
12 in particular those of “typicality” and “adequacy.” If the plaintiff with
13 the largest financial stake in the controversy provides information that
14 satisfies these requirements, he becomes the presumptively most
15 adequate plaintiff. If the plaintiff with the greatest financial stake
16 does not satisfy the Rule 23(a) criteria, the court must repeat the
17 inquiry, this time considering the plaintiff with the next-largest
18 financial stake, until it finds a plaintiff who is both willing to serve
19 and satisfies the requirements of Rule 23.

20 *Cavanaugh*, 306 F.3d at 730 (emphasis in original) (footnotes omitted).

21 Here, Patel alleges the largest financial interest in the litigation (\$1,336,440.43).
22 Patel Mot. at 6. The Asaria Brothers acknowledge Patel has the largest financial
23 interest in the action and, thus, is the most adequate plaintiff. Dkt. 25 at 2. No other
24 plaintiff has claimed a financial interest larger than Patel. Accordingly, Patel has
25 established a rebuttable presumption to serve as lead plaintiff.

26 With respect to the Rule 23 typicality and adequacy requirements, only a
27 “*prima facie* showing” is necessary at this stage. *Cavanaugh*, 306 F.3d at 731. “If the
28 plaintiff with the largest financial stake in the controversy provides information that
satisfies these requirements, he becomes the presumptively most adequate plaintiff.”
Id. at 730. “At this step, the process is not adversarial, so the Rule 23 determination

1 should be based on only the movant’s pleadings and declarations.” *In re Mersho*, 6
2 F.4th 891, 899 (9th Cir. 2021).

3 The “test of typicality is whether other members have the same or similar
4 injury, whether the action is based on conduct which is not unique to the named
5 plaintiffs, and whether other class members have been injured by the same course of
6 conduct.” *Knox v. Yingli Green Energy Holding Co. Ltd.*, 136 F. Supp. 3d 1159, 1165
7 (C.D. Cal. 2015). Here, Patel asserts that the injury he suffered and the injuries the
8 Class suffered are the same or similar because he and the Class “acquired Toyota
9 securities during the Class Period at prices artificially inflated by Defendants’
10 materially false and misleading statements.” Patel Mot. at 7; *see also* Dkt. 14-5
11 (notice to Class Members). The court agrees and, therefore, finds that Patel has made
12 a *prima facie* showing that his claims are typical of the Class.

13 The “adequacy requirement is met if there are no conflicts between the
14 representative and class interests and the representative’s attorneys are qualified,
15 experienced, and generally able to conduct the litigation.” *Knox*, 136 F. Supp 3d
16 at 1165. As noted, Patel has a substantial financial stake in the litigation, giving him
17 incentive and motivation to litigate the case vigorously on behalf of the Class. *See*
18 Patel Mot. at 8. Patel also avers that “there is no evidence of antagonism between
19 [his] interests and those of the Class.” *Id.* Further, his counsel is experienced in
20 prosecuting securities class actions. *Id.* As such, the court finds that Patel has made a
21 *prima facie* showing that he will adequately represent the Class.

22 In sum, Patel has shown that he is the most adequate plaintiff because he has
23 the largest financial interest in the litigation, his claims are typical of the Class, and he
24 can adequately represent the Class.³ The court, therefore, GRANTS the Patel Motion
25 on this basis and APPOINTS Patel as lead plaintiff. The Asaria Motion is DENIED.

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27 ³ The PSLRA requires that other plaintiffs have the opportunity to rebut the lead
28 plaintiff’s showing that he satisfied the typicality and adequacy requirements.

1 **III. Lead Counsel**

2 Pursuant to the PSLRA, “[t]he most adequate plaintiff shall, subject to the
3 approval of the court, select and retain counsel to represent the class.” 15 U.S.C.
4 § 78u-4(a)(3)(v). “[I]f the lead plaintiff has made a reasonable choice of counsel, the
5 district court should generally defer to that choice.” *Cohen v. U.S. Dist. Court for N.*
6 *Dist. of Cal.*, 586 F.3d 703, 712 (9th Cir. 2009) (noting the district court does not have
7 the authority to choose lead counsel).

8 Ultimately, a district court may only approve or disapprove a lead plaintiff’s
9 choice of counsel, and disapproval is only warranted when there is evidence that
10 suggests a lack of a good faith selection and negotiation process between lead plaintiff
11 and lead counsel. *See id.* A court should not disturb a lead plaintiff’s choice of
12 counsel unless it is necessary to protect the class, because the PSLRA has a strong
13 presumption that a properly selected lead plaintiff is most capable of selecting lead
14 counsel. *Cavanaugh*, 306 F.3d at 734 n. 14.

15 Here, Patel has selected LEVI & KORSINSKY, LLP as lead counsel. Patel Mot.
16 at 2, 9–10. The firm has substantial experience litigating securities class actions. *Id.*;
17 *see also* Dkt. 14-7. No evidence undermining the firm’s ability to represent
18 effectively the putative class has been presented. The court, therefore, APPROVES
19 LEVI & KORSINSKY, LLP as Lead Counsel.

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27 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). This requirement is satisfied here because the
28 Patel Motion is now unopposed. *See* Dkt. 25.

CONCLUSION

For the foregoing reasons, the court GRANTS the Patel Motion, APPOINTS Patel as lead plaintiff, APPROVES LEVI & KORSINSKY, LLP as lead counsel, and DENIES the Asaria Motion.

IT IS SO ORDERED.

Dated: January 6, 2025



FERNANDO L. AENLLE-ROCHA
United States District Judge

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