UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:22-cv-01524-RGK-Ex – Lead case 8:22-cv-0444-RGK-Ex 8:22-cv-00829-RGK-Ex	Date	July 1, 2022
Title	***Charles Larry Crews, Jr. v. Rivian Automotive, Inc., et al***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Motions to Consolidate Cases and Appoint Lead Plaintiff [DEs 36, 40, 42, 50, 54, 56, 61, 62]**

I. INTRODUCTION

On March 7, 2022, Plaintiff Charles Larry Crews, Jr. ("Crews") filed a securities class action lawsuit, bringing claims individually and on behalf of others who purchased the common stock of Rivian Automotive, Inc. ("Rivian") traceable to Rivian's Initial Public Offering ("IPO") on November 10, 2021. (ECF No. 1.) Crews alleges violations of Section 11 of the Securities Act of 1933 (The "Securities Act").[1] The Complaint names Rivian, its officers and board members, and the IPO's underwriters as defendants.

Soon thereafter, two substantially similar lawsuits were filed against the same defendants, which included the same Section 11 claims as well as alleged violations of Section 15 of the Securities Act and Sections 10(b) and 20(a) of the Securities Exchange Act (the "Exchange Act").[2] *See Albert Nicholas Horvath v. Rivian Automotive, Inc., et al*, Case No. 8:22-cv-0444-RGK-E (*Horvath*); *Grayson Smith v. Rivian Automotive, Inc., et al*, Case No. 8:22-cv-00829-RGK-E (*Smith*).

Twelve competing motions to consolidate the cases and appoint the movant as lead plaintiff pursuant to the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(a), were then filed. Three movants have since withdrawn their motions, and six others have filed notices of non-opposition. (*See* ECF Nos. 68, 72, 73, 76, 81, 82, 84, 88, 90.) Crews filed one of the twelve motions and never filed a motion of withdrawal or non-opposition. (*See* ECF No. 62.) He also, however, never filed an opposition. Accordingly, Crews is deemed to have consented to denial of his motion. *See* C.D. Cal.

[1] 15 U.S.C. § 77k.
[2] 15 U.S.C. § 78j; 15 U.S.C. § 78t.

L.R. 7-12 ("The failure to file any required document . . . may be deemed consent to the granting or denial of the motion.")

Thus, only two competing motions to consolidate and for appointment as lead plaintiff remain. The first was filed by a group of state-run investment funds, comprised of the Connecticut Retirement Plans and Trust Funds, the New Mexico State Investment Council, and the Indiana Public Retirement System (the "State Systems"). (ECF No. 54.) The second was filed by Sjunde Ap-Fonden ("AP7"), a Swedish public pension. (ECF No. 56.) For the following reasons, the Court **GRANTS** both Motions to Consolidate. The Court then **GRANTS** AP7's Motions and **DENIES** the State Systems' Motions for Appointment as Lead Plaintiff and Appointment of Class Counsel.

II. FACTUAL BACKGROUND

The following facts are alleged in the *Crews*, *Horvath*, and *Smith* Complaints, unless otherwise noted.

Rivian is a Delaware corporation headquartered in Irvine, California, that develops, designs, and manufactures electric vehicles. Rivian's first electric vehicles were unveiled to the public in 2018: the R1T electric pickup truck and the R1S electric sport utility vehicle. Rivian began offering the vehicles for preorder in September 2021 and December 2021, respectively. As of October 31, 2021, Rivian stated that it had received 55,400 combined preorders, and it planned to produce 1,225 vehicles by the end of the year. Rivian informed consumers that it intended to fulfill the remainder of its backlog by the end of 2023.

On October 1, 2021, Rivian filed a registration statement for its IPO, which was ultimately declared effective on November 9, 2021. Rivian issued the IPO prospectus on the same day. Pursuant to its IPO, Rivian offered 175.95 million shares of common stock at $78.00 per share, resulting in proceeds of more than $13.7 billion.

By late November, Rivian stock was trading at $119.76. But on December 16, 2021, Rivian informed customers that it would not meet its goal of producing 1,225 vehicles by the end of 2021. Rivian's CEO, Robert Scaringe, also hinted that Rivian may increase the prices of the vehicles its customers had preordered. Upon this disclosure, Rivian stock declined more than 10%. The stock plummeted another 13% after another disclosure on March 1, 2022, wherein Rivian confirmed that it was raising prices on its vehicles—including those that had already been preordered—by 17% (for the R1T) and 20% (for the R1S). At this point, Rivian had only produced 1,000 vehicles, despite promising more than 1,200 by the end of 2021.

After significant consumer backlash, Rivian retracted portions of its price increases, stating that any preorders made before March 1, 2022, would not be subjected to the new pricing. This disclosure resulted in yet another stock decrease of 5%. The next blow came on March 10, 2022, when Rivian announced poor financial results for Q4 2021, and a production delay that would result in only 25,000 vehicles being completed in 2022—after initial projections of 40,000 completed vehicles. This disclosure caused yet another 7% fall. Plaintiffs allege that Rivian's senior executives knew prior to the IPO that production and pricing issues were impending, but intentionally misrepresented or concealed those problems until after the IPO.

By the time the *Crews* lawsuit was filed, Rivian shares were trading at $42.43 per share—a significant decrease from the IPO price of $78 and the late November price of $119.76.

III. DISCUSSION

AP7 and the State Systems request: (1) consolidation of the three related actions; (2) appointment as lead plaintiff for the putative class; and (3) appointment of their choice of class counsel. The Court addresses each in turn.

A. Motions for Consolidation

Complaints may be consolidated if they involve a common question of law or fact, and whether to consolidate complaints is within the "broad discretion" of the district court. *Garity v. APWU Nat'l Labor Org.*, 828 F.3d 848, 855–56 (9th Cir. 2016). When determining whether to consolidate, "the Court should weigh the interest of judicial convenience against the potential for delay, confusion, and prejudice." *Zhu v. UCBH Holds., Inc.*, 682 F. Supp. 2d 1049, 1052 (N.D. Cal. 2010).

Here, each action presents similar legal and factual issues—whether identical defendants, during an identical class period, made material misstatements that caused loss to the plaintiffs. All three complaints present similar legal theories. Although *Crews* alleges fewer claims than *Horvath* or *Smith*, this is no bar to consolidation where "the claims alleged in [*Crews*] and the remaining actions are based on the same alleged course of conduct." *Weisz v. Calpine Corp.*, 2002 WL 32818827, at *2 (N.D. Cal. Aug. 19, 2002). Because all three lawsuits involve common questions of law and fact, the Court finds that consolidating them would promote judicial convenience.

Further, no defendant has opposed any of the Motions to Consolidate. Accordingly, the defendants are deemed to have consented to them. C.D. Cal. L.R. 7-12. Non-opposition aside, the Court finds no risk of prejudice to the defendants from consolidation, particularly since consolidation avoids a risk of inconsistent jury verdicts.

For these reasons, the Court **GRANTS** the Motions to Consolidate the instant case with *Horvath* and *Smith* for all purposes.

B. Motions Seeking Appointment of Lead Plaintiff

Having consolidated the three actions, the Court must now determine the appropriate lead plaintiff for the putative class action, as between AP7 and the State Systems. *See* 15 U.S.C. § 77z-1(a)(3)(B)(ii); 15 U.S.C. § 78u-4(a)(3)(B)(ii).

The PSLRA sets out specific rules for appointment of lead plaintiffs in a securities class action, which are designed to protect businesses from lawyer-driven lawsuits. *In re Cavanaugh*, 306 F.3d 726, 738 (9th Cir. 2002). The Court's process for approving the lead plaintiff requires three steps: (1) a class member must publish notice of the action in a widely circulated national business-oriented publication; (2) the Court must determine the presumptive lead plaintiff, *i.e.*, the plaintiff with the greatest financial stake in the case's outcome; and (3) the presumptive lead plaintiff must make a *prima facie* showing that it satisfies Federal Rule of Civil Procedure ("Rule") 23(a)'s typicality and adequacy requirements, and other plaintiffs must be given an "opportunity to rebut the presumptive lead plaintiff's showing that it satisfies" those requirements. *Id.*, 306 F.3d at 729–30. The Court analyzes each step below.

1. Notice

To properly notify prospective class members, a class member must publish notice within twenty days after the complaint is filed in a "widely circulated national business-oriented publication." 15 U.S.C. § 78u-4(a)(3)(A)(i). The notice should include the claims asserted in the complaint and the purported class period. 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). Sixty days after notice is published, any member of the purported class may make a motion before the Court to serve as lead plaintiff. 15 U.S.C. §78u-4(a)(3)(A)(i)(II).

Here, notice was published in *Globe Newswire* on the same day that the *Crews* Complaint was filed—March 7, 2022. (*See* Larson Decl. Ex. C, ECF No. 56-5.) *Globe Newswire* is a "widely circulated national business-oriented publication," as required by the PSLRA. *See In re Lyft Secs. Litig.*, 2020 WL 1043628, at *2 (N.D. Cal. March 4, 2020). The notice summarized the claims of the complaint, described the putative class, and gave notice of the sixty-day deadline (May 6, 2022) to seek appointment as lead plaintiff. (Larson Decl., Ex. C at 8.) Finally, both AP7 and the State Systems filed their Motions on May 6, before the expiry of the deadline. (*See* ECF Nos. 56, 58.) Accordingly, the first step of the analysis is satisfied.

2. Largest Financial Stake

The PSLRA requires district courts to select as lead plaintiff the party "most capable of adequately representing the interests of class members." 15 U.S.C. § 78u-4(a)(3)(B)(i). There is a rebuttable presumption that the most adequate plaintiff is one who, after either filing the complaint or a motion seeking appointment as lead plaintiff, has the "largest financial interests in the relief sought by the class" and "otherwise satisfies the requirements" of Rule 23. *Cavanaugh*, 306 F.3d at 730. The Ninth Circuit has not described a specific method to determine which movant has the largest financial interest in the action. Instead, it has allowed the district courts discretion to select accounting methods that are both rational and consistently applied in order to determine which movant "has the most to gain from the lawsuit." *Id.* at 730.

District courts tend to rely on two alternative methods of determining the largest financial interest. The first method "equate[s] financial interest with actual economic losses suffered," without regard for possible recovery. *Perlmutter v. Intuitive Surgical, Inc.*, 2011 WL 566814, at *3 (N.D. Cal. Feb. 15, 2011). In this category, courts use the *Lax-Olsten* four-factor test to approximate economic losses: "(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered during the class period." *In re Olsten Corp. Secs. Litig.*, 3 F. Supp. 2d 286, 296 (E.D.N.Y. 1998). These factors are not equally valued: "[t]he weight of authority puts the most emphasis on the competing movants' estimated losses, using a last in, first out ("LIFO") methodology." *Nicolow v. Hewlett Packard Co.*, 2013 WL 792642, at *4 (N.D. Cal. March 4, 2013).

The second method, called the "recoverable loss" calculation, equates largest financial interest with a plaintiff's potential damages under the applicable statutes. *See Perlmutter*, 2011 WL 566814, at *3. Courts that opt to use the "recoverable loss" method attempt to carve out losses that were likely not caused by the defendant's misrepresentations, because "[o]ne's interest in a litigation is rather directly tied to what one might recover." *In re McKesson HBOC, Inc. Sec. Litig.*, 97 F. Supp. 2d 993, 997 (N.D. Cal. 1999).

AP7 argues that it has the largest financial interest, having suffered $17,441,020 in overall economic losses during the class period in connection with its Rivian common stock transactions. (AP7's Mot. at 8, ECF No. 56-1.) AP7 also acknowledges that its losses under the Securities Act alone would be capped at $7.8 million. (AP7's Opp'n at 7, ECF No. 92.) The State Systems, on the other hand, claim $12,931,082.46 in overall losses, including $11,665,959.19 in losses "pursuant to the Securities Act." (State Systems' Mot. at 5–6, ECF No. 54-1.) Because the State Systems cannot argue that they have the largest overall economic loss, they proffer three alternative methodologies:

- First, the State Systems ask the Court to focus solely on the claimed Securities Act losses, which they argue are less speculative than an overall loss estimation. But there does not appear to be any sound reason for limiting loss calculation to Securities Act losses, as "[n]othing in the Ninth Circuit's guidance, or in any other case . . . suggests that a movant's losses should be considered only as to [certain] claims." *Hoang v. ContextLogic, Inc.*, 2022 WL 1539533, at *5 (N.D. Cal. May 16, 2022).

- Second, they argue that the Court should use the "recoverable loss" method of calculating financial interest, because that method more accurately encompasses what each party is likely to recover in this case. But the "recoverable loss" methodology is most accurate in cases with only one corrective disclosure, and is typically not appropriate in cases (such as this one) involving multiple disclosures. *See Lyft*, 2020 WL 1043628, at *4. In a case like this, assessment of recoverable loss "may end up being complex, and almost certainly will require evaluation of the parties' damage experts at a later stage of the proceedings." *Id.* Accordingly, the Court declines the State Systems' invitation to apply the "recoverable loss" method.

- Finally, the State Systems argue that if the Court uses the economic loss method, that it should weigh the first three *Lax-Olsten* factors—shares purchased, net shares retained, and net funds expended—more heavily than the fourth, approximate economic loss. The reason is that the three State System plaintiffs, aggregated together, purchased more shares, retained more shares, and expended more funds than AP7 during the class period. But courts in this Circuit put "the most emphasis on the competing movants' estimated losses," and this Court sees no reason to deviate from the "weight of authority" in this instance, especially where AP7's estimated loss—approximately $17 million—significantly outweighs the State Systems', which is just shy of $13 million.[3] *Nicolow*, 2013 WL 792642, at *4. Further, an analysis of shares purchased and retained "has limited usefulness . . . where disclosures are made gradually and have multiple impacts on share price." *Melucci v. Corcept Therapeutics Inc.*, 2019 WL 4933611, at *3 (N.D. Cal. Oct. 7, 2019). Accordingly, the Court is not convinced that the State Systems' superiority in the first three *Lax-Olsten* factors outweighs AP7's in the most important factor—overall losses sustained.

[3] AP7's losses also dwarf those of each individual plaintiff that comprises the State System plaintiff group: The Connecticut Retirement Plans and Trust Funds allege losses of $7 million; the New Mexico State Investment Council alleges losses of $4.2 million; and the Indiana Public Retirement System alleges losses of $1.6 million.

Therefore, applying the economic loss method, the Court finds that AP7 has the largest financial interest in this case, and therefore becomes the presumptive lead plaintiff in the consolidated class action.

3. AP7's Typicality and Adequacy

As presumptive lead plaintiff, AP7 must now make a threshold showing that it satisfies the typicality and adequacy requirements of Rule 23(a). 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Opposing movants can rebut such a showing by providing evidence that the presumptive lead plaintiff "will not fairly and adequately present 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).

Rule 23's typicality requirement is satisfied when the presumptive lead plaintiff shows it has: (1) suffered the same injuries as the absent class members; (2) as a result of the same course of conduct; and (3) has claims based on the same legal issues. *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Here, AP7 asserts that it "seeks recovery for the losses on its investments in Rivian common stock that [it] incurred as a result of Defendants' misrepresentations and omissions." (AP7's Mot. at 9.) These injuries are the same as those alleged by the class and are based upon the exact same conduct. AP7 has met the typicality requirement.

The adequacy requirement is satisfied if the interests of the class representative coincide with those of the class, and the representative has the ability to prosecute the action vigorously through the services of competent counsel. *In re Computer Memories Sec. Litig.*, 111 F.R.D. 675, 682 (N.D. Cal. 1986). AP7 has certified that it will "provide fair and adequate representation and work . . . to ensure that the largest recovery for the class . . . is obtained." (Larson Decl., Ex. A at 2, ECF No. 56-3.) Further, AP7 has hired Kessler Topaz as lead counsel, a firm with extensive experience in securities class actions. (Larson Decl., Ex. D, ECF No. 56-6.) Finally, no party has raised the issue of, and the Court has not identified, any unique defenses that would render AP7 inadequate.

While opposing plaintiffs all had an opportunity to oppose AP7's claims to typicality and adequacy, none decided to do so.[4] The Court thus finds that AP7 has satisfied its burden to show that it is the appropriate lead plaintiff for this matter. AP7's Motion to be appointed lead plaintiff is **GRANTED**, and the State Systems' motion is **DENIED**.

[4] The State Systems' vigorous challenge to AP7 was based entirely on which party had the larger financial stake in the action, rather than on typicality or adequacy grounds.

C. Approval of Class Counsel

Having determined that AP7 is the appropriate lead plaintiff, the Court finally turns to the selection of class counsel. The lead plaintiff "shall, subject to the approval of the court, select and retain counsel to represent the class." 15 U.S.C. § 78u-4(a)(3)(B)(v). The Ninth Circuit has instructed district courts to defer to the lead plaintiff's choice of counsel unless their choice is "so irrational, or so tainted by self-dealing or conflict of interest, as to cast genuine and serious doubt on [their] willingness or ability to perform the functions of lead plaintiff. *Cavanaugh*, 306 F.3d at 733; *see also id.* at 739 n.11 ("Congress gave the lead plaintiff, and not the court, the power to select a lawyer for the class."). As previously discussed, AP7 has selected Kessler Topaz as lead counsel, a firm with extensive experience in securities class actions. AP7 has also retained Larson LLP as local counsel, a firm that also has extensive class action experience. (*See* Larson Decl., Ex. E, ECF No. 56-7.) The Court finds no reason to believe that these choices are irrational or "tainted by self-dealing." *Id.* at 733. Accordingly, AP7's motion for approval of counsel is **GRANTED**.[5]

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** AP7 and the State Systems' Motions to Consolidate. The Court also **GRANTS** AP7's Motions for Appointment as Lead Plaintiff and Appointment of Counsel, and **DENIES** the State Systems' Motions for the same. Furthermore, the Court also **DENIES** all motions filed by other plaintiffs that subsequently filed notices of non-opposition. The Court **ORDERS** as follows:

- *Charles Larry Crews, Jr. v. Rivian Automotive, Inc., et al*, Case No. 2:22-cv-01524-RGK-E, shall be the lead case, and is hereby consolidated with *Albert Nicholas Horvath v. Rivian Automotive, Inc., et al*, Case No. 8:22-cv-0444-RGK-E, and *Grayson Smith v. Rivian Automotive, Inc., et al*, Case No. 8:22-cv-00829-RGK-E, for all purposes including trial. All parties are directed to make further filings only to the docket for the lead case;

- AP7 is appointed lead plaintiff for the putative class;

- Kessler Topaz is appointed lead counsel for the putative class;

[5] Because the Court has denied the State Systems' Motion for appointment as lead plaintiff, the Court **DENIES as moot** their motion for Approval of Class Counsel.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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- Larson LLP is appointed local counsel for the putative class.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer jre/a