

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

PATRICK MCDERMID, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

INOVIO PHARMACEUTICALS, INC., and  
J. JOSEPH KIM,

Defendants.

**Civil Action: 2:20-cv-01402-GJP**

**[PROPOSED] ORDER APPOINTING LEAD PLAINTIFF  
AND APPROVING SELECTION OF COUNSEL**

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

The terms of this Order shall not have the effect of making any person, firm or corporation a party to any action in which he, she or it has not been named, served or added as such in accordance with the Federal Rules of Civil Procedure.

**Newly Filed or Subsequently Filed or Transferred Actions**

If a securities fraud action related to the same subject matters as this Action is hereafter filed in this Court or transferred here from another Court, the Clerk of this Court shall:

File a copy of this Order in the separate file for such action;

1. Notify all counsel of record of the filing or transfer of such action;
2. Make an appropriate entry in the Master Docket;

3. Mail to counsel of record in the newly filed or transferred case a copy of this Order; and

4. Upon the first appearance of any new defendant, mail to the attorneys for the defendant in such newly filed or transferred case a copy of this Order.

All counsel shall assist the Clerk of the Court by calling to the attention of the Clerk the filing or transfer of any case that might properly be consolidated with this Action.

This Order shall apply to each securities fraud action that is subsequently filed in or transferred to this Court that arises out of or is related to the same facts and claims alleged in the complaints in the Action, unless a party objecting to the consolidation of such case or to any other provision of this Order shall, within ten (10) days after the date upon which a copy of this Order is mailed to counsel for such party, file an application for relief from this Order or any provision herein and this Court deems it appropriate to grant the application. The provisions of this Order shall apply to such action pending the Court's ruling on the application.

Unless a plaintiff in a subsequently filed or transferred case is permitted by the Court to utilize a separate complaint, defendant shall not be required to answer, plead, or otherwise move with respect to the complaint in any such case. If a plaintiff in any such case is permitted to utilize a separate complaint, each defendant shall have thirty (30) days within which to answer, plead, or otherwise move with respect to any such complaint.

**Appointment of Lead Plaintiff**

Movant Baumeister is hereby appointed lead plaintiff pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934. This appointment is without prejudice to Defendants' right to challenge the adequacy, typicality, or ability of Movant Baumeister to represent the absent class members in this Action or the propriety of this case being certified as a class action.

**Organization of Plaintiffs' Counsel**

Lead plaintiff's selection of Gainey McKenna & Egleston as lead counsel ("Lead Counsel") and the Donovan Litigation Group, LLC as liaison counsel ("Liaison Counsel") for all plaintiffs and the Class in this Action is approved.

Lead Counsel is hereby vested by the Court with the following responsibilities and duties in connection with this Action:

1. To direct and coordinate the briefing and arguing of motions;
2. To direct and coordinate the initiation and conduct of discovery proceedings, including, but not limited to, requests for production of documents and/or third-party subpoenas;
3. To direct and coordinate the examination of witnesses in depositions and oral interrogatories;
4. To act as spokesperson at pretrial conferences;
5. To call meetings of plaintiffs' counsel as appropriate or necessary from time to time;
6. To direct the preparation for a trial of this matter and to delegate work responsibilities to selected counsel as may be required in such a manner as to lead to the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort;
7. To direct and coordinate the conduct of pre-trial, trial and post-trial proceedings;
8. To consult with and employ experts;
9. To coordinate and collect monthly time and expense reports from all plaintiffs' attorneys in this Action;

10. To initiate and conduct all settlement negotiations with counsel for defendant; and

11. To perform such other duties as may be expressly authorized by further order of the Court.

No motion, request for discovery, or other pre-trial proceedings shall be initiated or filed by any plaintiff except through Lead Counsel.

Defendants' counsel may rely upon all agreements made with Lead Counsel, and such agreements shall be binding on all plaintiffs in this Action.

Lead Counsel is hereby designated as the counsel for plaintiff upon whom all notices, orders, pleadings, motions, discovery, and memoranda may be served and defendant shall affect service of papers on plaintiffs by serving Gainey McKenna & Egleston, 501 Fifth Avenue, 19<sup>th</sup> Floor, NY, NY 10017.

If Defendants file a single pleading or other paper directed to all plaintiffs in this Action, the response on behalf of plaintiffs shall be made in a single pleading or other paper to be served by Lead Counsel. All plaintiffs in this Action shall be bound by that pleading or paper.

The organizational structure established by this Order shall bind counsel for plaintiffs in this Action or any subsequently filed cases consolidated therewith.

Movant Baumeister, through Lead Counsel, shall file an amended class action complaint (the "Amended Complaint") within 60 days of the entry of this Order.

Defendants shall answer or otherwise respond to the Amended Complaint within 45 days after its service.

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2020

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United States District Judge

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

PATRICK MCDERMID, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

INOVIO PHARMACEUTICALS, INC., and  
J. JOSEPH KIM,

Defendants.

**Civil Action: 2:20-cv-01402-GJP**

**MOTION OF MICHAEL A. BAUMEISTER  
TO BE APPOINTED AS LEAD PLAINTIFF  
AND FOR APPROVAL OF HIS SELECTION OF COUNSEL**

Class member Michael Baumeister (“Movant”), by his counsel, hereby moves this Court for an Order (submitted herewith): (i) appointing him as lead plaintiff in the above-captioned action pursuant to § 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4; (ii) approving his selection of the law firm of Gainey McKenna & Egleston to serve as Lead Counsel and the Donovan Litigation Group, LLC to serve as Liaison Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v) and (iii) granting such other and additional relief as the Court may deem just and proper.

This motion is made on the grounds that Movant has timely filed this motion, suffered the most significant financial loss resulting from Defendants’ alleged misconduct and qualifies as the “most adequate” plaintiff under § 21D of the Exchange Act.

In support of this motion, Movant submits herewith a memorandum of law, the Declaration of Gregory M. Egleston, the pleadings and other files herein and such other written or oral arguments as may be permitted by the Court.

Dated: May 12, 2020

Respectfully submitted,

**DONOVAN LITIGATION GROUP, LLC**

By: /s/ Michael D. Donovan

Michael D. Donovan

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***Proposed Liaison Counsel***

**GAINEY McKENNA & EGLESTON**

Thomas J. McKenna

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Email: [gegleston@gme-law.com](mailto:gegleston@gme-law.com)

***Proposed Lead Counsel***

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 12, 2020.

/s/ Michael D. Donovan

Michael D. Donovan



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

PATRICK MCDERMID, individually and on  
behalf of all others similarly situated,

Plaintiff,

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INOVIO PHARMACEUTICALS, INC., and  
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Defendants.

**Civil Action: 2:20-cv-01402-GJP**

**MEMORANDUM OF LAW IN SUPPORT OF MICHAEL BAUMEISTER'S  
MOTION TO BE APPOINTED AS LEAD PLAINTIFF  
AND FOR APPROVAL OF HIS SELECTION OF COUNSEL**

**PRELIMINARY STATEMENT**

Presently pending before the Court is a securities class action lawsuit (the "Action"). The Action is brought on behalf of purchasers of the common stock of Inovio Pharmaceuticals, Inc. ("InoVio" or the "Company"), who purchased or otherwise acquired Inovio securities between February 14, 2020 and March 9, 2020, inclusive ("Class Period"). The Action seeks to pursue remedies against Defendants under §§ 10(b)-5 and 20(a) the Securities and Exchange Act of 1934.

Class member Michael Baumeister (the "Movant") hereby moves this Court, pursuant to Section 21D(a)(3)(B) of the Exchange Act, as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(3)(B), for an order (a) appointing Movant as lead plaintiff in the Action and (b) approving Movant's selection of Gainey McKenna & Egleston as Lead Counsel and the Donovan Litigation Group, LLC as Liaison Counsel to serve the Class.

Movant suffered substantial losses resulting from his investment – approximately \$119,666 – and believes that he has the largest financial interest in the Action.

### **STATEMENT OF FACTS**

Headquartered in Plymouth Meeting, Pennsylvania, the Company purports to be a “biotechnology company focused on rapidly bringing to market precisely designed DNA medicines to treat, cure and/or protect people from . . . infectious diseases.” During the Class Period, the defendants capitalized on widespread COVID-19 fears by falsely claiming that the Company had developed a vaccine for COVID-19. First, on February 14, 2020, the Company’s Chief Executive Officer (“CEO”) J. Joseph Kim (“Kim”) appeared on Fox Business News with Neal Cavuto and stated that the Company had developed a COVID-19 vaccine “in a matter of about three hours once we had the DNA sequence from the virus” and “our goal is to start phase one human testing in the U.S. early this summer.” In response, the Company’s stock price rose more than 10% over the next few trading days, on enormous trading volume. ¶ 4.<sup>1</sup>

Following a well-publicized March 2, 2020 meeting with President Trump to discuss the COVID-19 outbreak, Defendant Kim again claimed that the Company had developed a COVID-19 vaccine, stating “we were able to fully construct our vaccine within three hours . . . . Our plan is to start [U.S. based COVID-19 trials] in April of this year.” The market responded favorably to Kim’s statement and the Company’s stock price more than quadrupled from \$4.28 per share on February 28, 2020, and continued to increase in the following weeks, reaching an intra-day high of \$19.36 on March 9, 2020. ¶ 5.

However, in truth, the Company had not developed a COVID-19 vaccine. On March 9, 2020, before trading commenced, *Citron Research* (“*Citron*”) exposed Defendants’

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<sup>1</sup> Citations to “¶\_\_” are to paragraphs of the complaint entitled *McDermid v. Inovio Pharmaceuticals, Inc., et al.*, 2:20-cv-01402-GJP (E.D. Pa.).

misstatements, calling for an SEC investigation into the Company’s “ludicrous and dangerous claim that they designed a [COVID-19] vaccine in 3 hours.” In response to the news, the Company’s stock price plummeted from its March 9 opening price of \$18.72 per share to close at \$9.83. The following day, March 10, 2020, the Company’s stock price fell from its \$9.30 per share opening price to close at \$5.70 per share. The two-day drop wiped out approximately \$643 million in market capitalization for the Company, marking a 71% decline from its Class Period high. In a message to shareholders that same day, the Company attempted to blunt the *Citron* revelations but only highlighted its own misstatements, admitting that it had not developed a COVID-19 vaccine but rather had merely “designed a vaccine construct” – *i.e.*, a precursor for a vaccine – and that it believed it had a “viable approach to address the COVID-19 outbreak.” ¶ 6.

## **ARGUMENT**

### **I. THE COURT SHOULD APPOINT THE MOVANT AS LEAD PLAINTIFF**

#### **A. The Procedure Required By The PSLRA**

The PSLRA establishes the procedure for appointment of the lead plaintiff in “each private action arising under [the Exchange Act or Securities Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.” Sections 21D(a)(1) and 21D(a)(3)(B), 15 U.S.C. §§ 78u-4(a)(1) and (a)(3)(B).

First, the plaintiff who files the initial action must publish notice to the class within twenty (20) days after filing the action, informing class members of their right to file a motion for appointment of lead plaintiff. Section 21D(a)(3)(A)(i), 15 U.S.C. § 78u-4(a)(3)(A)(i). The PSLRA requires the court to consider within ninety (90) days all motions, filed within sixty (60) days after publication of that notice, made by any person or group of persons who are members

of the proposed class to be appointed lead plaintiff. Sections 21D(a)(3)(A)(i)(II) and 21D(a)(3)(B)(i), 15 U.S.C. §§ 78u-4(a)(3)(A)(i)(II) and (a)(3)(B)(i).

The PSLRA provides a presumption that the most “adequate plaintiff” to serve as lead plaintiff is the “person or group of persons” that:

- (aa) has either filed the complaint or made a motion in response to a notice;
- (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

Section 21D(a)(3)(B)(iii)(I), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). The presumption may be rebutted only upon proof by a class member that the presumptively most adequate plaintiff “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.” Section 21D(a)(3)(B)(iii)(II), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

As set forth below, Movant satisfies the foregoing criteria and is not aware of any unique defenses that Defendants could raise against it. Therefore, Movant is entitled to the presumption that it is the most adequate plaintiff to represent the Class and, as a result, should be appointed lead plaintiff in the Action.

**1. Movant Is Willing To Serve As Class Representative**

On March 13, 2020 a notice (the “Notice”) was published pursuant to Section 21D(a)(3)(A)(i), which announced that a securities class action had been filed against Inovio (and certain officers), and which advised putative class members that they had sixty (60) days, or until May 12, 2020, to file a motion to seek appointment as a lead plaintiff in the action. *See* Declaration of Gregory M. Egleston in Support of the Motion of Michael Baumeister to be

Appointed as Lead Plaintiff and for Approval of His Selection of Lead Counsel (“Egleston Decl.”), at Ex. A. Pursuant to that Notice, Movant now moves for appointment as lead plaintiff and shows that he has sustained substantial financial losses from its transactions in Inovio securities. *Id.* at Ex. B and C.

## **2. Movant Has the Largest Financial Interest**

The PSLRA requires the Court to adopt a rebuttable presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class.” Section 21D(a)(3)(B)(iii)(I)(bb), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

Movant believes that he has the largest financial interest of any shareholder in the Action. During the Class Period, Movant suffered combined losses of approximately \$119,666. *See* Egleston Decl. at Ex. B and C. These losses are significant enough to ensure that Movant has a sufficient financial stake to remain an active participant in the Action and oversee the vigorous prosecution of the Action by counsel. *See In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 436 (S.D.N.Y. 2008). Accordingly, Movant satisfies the largest financial interest requirement to be appointed as lead plaintiff in the Action. Section 21D(a)(3)(B)(iii)(I)(bb), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

## **3. Movant Satisfies the Requirements of Rule 23(a) of the Federal Rules of Civil Procedure**

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA also states that at the outset of the litigation, the lead plaintiff must also “otherwise satisf[y] . . . the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u 4(a)(3)(B)(iii)(I)(cc). Only typicality and adequacy are relevant for purposes of a motion for lead plaintiff. *See, e.g., In re Lernout & Hauspie Sec. Litig.*, 138 F. Supp. 2d 39, 46 (D. Mass. 2001); *In re Cendant Corp. Litig.*, 264

F.3d at 265. As discussed below, Movant satisfies the typicality and adequacy requirements under Rule 23(a) and the PSLRA.

The claims asserted by Movant are typical of those of the Class. Movant, like the members of the Class, purchased Inovio securities during the Class Period at prices artificially inflated by Defendants' materially false and misleading statements, and was damaged thereby. Thus, his claims are typical, if not identical, to those of the other members of the Class because Movant suffered losses similar to those of other Class members and Movant's losses result from Defendants' common course of conduct. *See In re Waste Mgm't., Inc. Secs. Litig.*, 128 F. Supp. 2d 401, 411 (S.D. Tex. 2000). Accordingly, Movant satisfies the typicality requirement of Rule 23(a)(3).

Movant is also an adequate representative for the Class. There is no antagonism between Movant's interests and those of the Class. Moreover, Movant has retained counsel highly experienced in prosecuting securities class actions and will submit its choice to the Court for approval pursuant to Section 21D(a)(3)(B)(v), 15 U.S.C. § 78u-4(a)(3)(B)(v). *See Waste Mgmt.*, 128 F. Supp. 2d at 414.

Accordingly, at this stage of the proceedings, Movant has made the preliminary showing necessary to satisfy the typicality and adequacy requirements of Rule 23 and, therefore, satisfies Section 21D(a)(3)(B)(iii)(I)(cc), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc).

## **II. MOVANT'S SELECTION OF COUNSEL SHOULD BE APPROVED**

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to court approval. Section 21D(a)(3)(B)(v), 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should interfere with the lead plaintiff's selection of counsel only when necessary "to protect the

interests of the class.” Section 21D(a)(3)(B)(iii)(II)(aa), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).  
*See also Lernout & Hauspie*, 138 F. Supp. 2d at 46-47.

Movant has selected and retained Gainey McKenna & Egleston as the proposed Lead Counsel and the Donovan Litigation Group, LLC to serve as Liaison Counsel for the Class. Gainey McKenna & Egleston and the Donovan Litigation Group, LLC have extensive experience prosecuting complex securities class actions, such as this one, and are well qualified to represent the Class. *See* Egleston Decl. Exs. D and E. Therefore, the Court may be assured that if it grants this motion, the Class members will receive high-caliber representation by skilled, experienced counsel.

### **CONCLUSION**

For the foregoing reasons, Movant respectfully requests that this Court: (1) appoint Movant as lead plaintiff for the Class in the Action and any subsequently-filed, related actions; and (2) approve Movant’s selection of Gainey McKenna & Egleston as Lead Counsel and the Donovan Litigation Group, LLC as Liaison Counsel to represent the Class.

Dated: May 12, 2020

Respectfully submitted,

**DONOVAN LITIGATION GROUP, LLC**

By: /s/ Michael D. Donovan

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*Proposed Liaison Counsel*

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***Proposed Lead Counsel***



**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 12, 2020.

/s/ Michael D. Donovan  
Michael D. Donovan