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6 UNITED STATES DISTRICT COURT
 7
 8 NORTHERN DISTRICT OF CALIFORNIA

9 GUOFENG MA, Individually and On Behalf of
All Others Similarly Situated,

10 Plaintiff,

11 v.

12 WELLS FARGO & COMPANY, CHARLES W.
13 SCHARF, and JOHN R. SHREWSBERRY,

14 Defendants.

Case No. 3:20-cv-03697-RS

**MOTION OF WINSTON P. KUO
 FOR APPOINTMENT AS LEAD
 PLAINTIFF AND APPROVAL OF
 LEAD COUNSEL; AND
 MEMORANDUM AND POINTS OF
 AUTHORITIES**

Date: September 10, 2020
 Time: 1:30 p.m.
 Courtroom: 3-17th Floor
 Judge: Hon. Richard Seeborg

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16
17 **NOTICE OF MOTION AND MOTION**

18 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE, that on September 10, 2020 at 1:30 p.m., or as soon as counsel
 20 may be heard, the undersigned will move before the Honorable Richard Seeborg at the United States
 21 District Court for the Northern District of California, San Francisco Courthouse, Courtroom 3 on
 22 the 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, pursuant to Rule 23 of the
 23 Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995, for an
 24 Order:

- 25 1. Appointing Winston P. Kuo (“Movant”) as Lead Plaintiff;
 26 2. Approving Movant’s choice of Levi & Korsinsky, LLP (“Levi & Korsinsky”), as
 27 Lead Counsel; and

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3. Granting such other and further relief as the Court may deem just and proper.

Movant respectfully submits the following memorandum in support of his motion for: (a) appointment of Movant as Lead Plaintiff; and (b) approval of Levi & Korsinsky as Lead Counsel.

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MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

I. SUMMARY OF ARGUMENT..... 1

II. STATEMENT OF ISSUES TO BE DECIDED 1

III. STATEMENT OF FACTS..... 2

IV. ARGUMENT 3

 A. Movant’s Appointment as Lead Plaintiff Is Appropriate. 3

 1. The Procedure Required by the PSLRA..... 3

 a. Movant Is Willing to Serve as Class Representative..... 5

 b. Movant Has the Largest Financial Interest in the Relief Sought by the Class. 5

 2. Movant Satisfies the Requirements of Rule 23(a) of the Federal Rules of Civil Procedure..... 6

 a. Movant’s Claims Are Typical of the Claims of All Class Members. 6

 b. Movant Will Adequately Represent the Class..... 7

 B. Approval of Movant’s Choice of Counsel Is Appropriate. 8

V. CONCLUSION 9

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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Cases

Booth v. Strategic Realty Trust, Inc.,
 No. 13-cv-04921-JST, 2014 U.S. Dist. LEXIS 10501 (N.D. Cal. Jan. 27, 2014)..... 5

Crawford v. Honig,
 37 F.3d 485 (9th Cir. 1994) 8

Deinnocentis v. Dropbox, Inc.,
 No. 19-cv-06348-BLF, 2020 U.S. Dist. LEXIS 8680 (N.D. Cal. Jan. 16, 2020)..... 9

Ferrari v. Gisch,
 225 F.R.D. 599 (C.D. Cal. 2004)..... 7

Francisco v. Abengoa, S.A.,
 No. 15-cv-6279 (ER), 2016 U.S. Dist. LEXIS 68145 (S.D.N.Y. May 24, 2016)..... 9

Gen. Tel. Co. of the Southwest v. Falcon,
 457 U.S. 147 (1982) 7

Gold v. Lumber Liquidators, Inc.,
 323 F.R.D. 280 (N.D. Cal. 2017) 7

Hanlon v. Chrysler Corp.,
 150 F.3d 1011 (9th Cir. 1998) 7

Haung v. Acterna Corp.,
 220 F.R.D. 255 (D. Md. 2004) 6

Hessefort v. Super Micro Computer, Inc.,
 317 F.Supp.3d 1056 (N.D. Cal. 2018)..... 6

In re Cavanaugh,
 306 F.3d 726 (9th Cir. 2002) 1, 5, 6

In re Drexel Burnham Lambert Grp.,
 960 F.2d 285 (2d Cir. 1992) 7

In re LendingClub Sec. Litig.,

1 282 F.Supp.3d 1171 (N.D. Cal. 2017)..... 7

2 *In re Milestone Sci. Sec. Litig.*,

3 183 F.R.D. 404 (D.N.J. 1998) 6

4 *In re Oxford Health Plans, Inc. Sec. Litig.*,

5 182 F.R.D. 42 (S.D.N.Y. 1998)..... 7

6 *In re Sundial Growers Inc. Sec. Litig.*,

7 No. 1:19-cv-08913-ALC (S.D.N.Y. Dec. 20, 2019) 9

8 *In re Tesla, Inc. Sec. Litig.*,

9 No. 18-CV-04865-EMC, 2018 U.S. Dist. LEXIS 212238 (N.D. Cal. Dec. 17, 2018) 9

10 *Isaacs v. Musk*,

11 No. 18-CV-04865-EMC, 2018 U.S. Dist. LEXIS 200717 (N.D. Cal. Nov. 27, 2018), 9

12 *Johnson v. OCZ Tech. Grp.*,

13 2013 U.S. Dist. LEXIS 1610 (N.D. Cal. Jan. 4, 2013)..... 1, 4

14 *Levin v. Res. Capital Corp.*,

15 No. 15-cv-7081 (LLS), 2015 U.S. Dist. LEXIS 162377 (S.D.N.Y. Oct. 5, 2016)..... 9

16 *Pope v. Navient Corp.*,

17 No. 17-cv-8373 (RBK/AMD), 2018 U.S. Dist. LEXIS 17340 (D.N.J. Feb. 2, 2018) 9

18 *Robidoux v. Celani*,

19 987 F.2d 931 (2d Cir. 1993) 7

20 *Veal v. LendingClub Corporation*,

21 2018 WL 5879645 (N.D. Cal. Nov. 7, 2018) 6

22 *Zhang v. Valaris PLC, et al.*,

23 No. 1:19-cv-07816-NRB (S.D.N.Y. Dec. 23, 2019) 9

24 **Statutes**

25 15 U.S.C. § 78u-1(a)(3)(A)(i)(II) 4

26 15 U.S.C. § 78u-4(3)(B)(iii)(I) 8

27 15 U.S.C. § 78u-4(a)..... 4

1 15 U.S.C. § 78u-4(a)(3)(A) 4

2 15 U.S.C. § 78u-4(a)(3)(B)..... 1, 4, 6, 8

3 15 U.S.C. § 78u-4(a)(3)(B)(i)..... 4

4 15 U.S.C. § 78u-4(a)(3)(B)(ii)..... 3

5 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)..... 4, 8

6 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa) 8

7 15 U.S.C. § 78u-4(a)(3)(B)(v)..... 8

8 **Rules**

9 Fed. R. Civ. P. 23(a) 1, 6, 7, 8

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1 **I. SUMMARY OF ARGUMENT**

2 Presently pending before the Court is the above-captioned securities class action (the
3 “Action”) brought on behalf of all persons who purchased or otherwise acquired the securities of
4 Wells Fargo & Company (“Wells Fargo” or the “Company”) between April 5, 2020 and May 5,
5 2020, inclusive (the “Class Period”). Plaintiff in the Action alleges violations of the Securities
6 Exchange Act of 1934 (the “Exchange Act”) against the Company and certain of its officers
7 and/or directors.

8 The Private Securities Litigation Reform Act of 1995, as amended (the “PSLRA”),
9 15 U.S.C. § 78u-4(a)(3)(B), provides for the Court to appoint as lead plaintiff the movant that has
10 the largest financial interest in the litigation that has also made a *prima facie* showing that he, she,
11 or it is an adequate class representative under Rule 23 of the Federal Rules of Civil Procedure.
12 *See generally In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002). Winston P. Kuo (“Movant”) lost
13 approximately \$27,885.95 in losses recoverable under *Dura Pharm., Inc. v. Broudo*, 544 U.S.
14 336, 338 (2005) using a last-in-first-out (“LIFO”) analysis. *Johnson v. OCZ Tech. Grp.*, No. 12-
15 cv-05265-RS, 2013 U.S. Dist. LEXIS 1610, at *7 (N.D. Cal. Jan. 4, 2013).¹ Moreover, Movant
16 satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure in that his claims are
17 typical of the claims of the Class, and he will fairly and adequately represent the interests of the
18 Class.² As such, Movant meets the requirements of the PSLRA for appointment as Lead Plaintiff.

19 Accordingly, Movant respectfully requests that: (1) he be appointed Lead Plaintiff; and
20 (2) his selection of Levi & Korsinsky, LLP (“Levi & Korsinsky”) be approved as Lead Counsel.

21 **II. STATEMENT OF ISSUES TO BE DECIDED**

- 22 1. Whether the Court should appoint Movant as lead plaintiff under the PSLRA; and
23 2. Whether the Court should appoint Movant’s selection of Levi & Korsinsky as lead
24 counsel for the proposed Class.

25 _____
26 ¹ Movant’s certification identifying his transactions in Wells Fargo, as required by the PSLRA, as
27 well as a chart identifying his losses, are attached to the accompanying Declaration of Adam C.
28 McCall (“McCall Decl”), as Exhibits A and B, respectively.

² The “Class” is comprised of all persons who purchased or otherwise acquired securities of Wells
Fargo during the Class Period.

1 **III. STATEMENT OF FACTS³**

2 Wells Fargo is a diversified financial services company that provides banking, investment,
3 mortgage, and consumer and commercial finance products and services to individuals, businesses,
4 and institutions in the U.S. and internationally. ¶ 2.

5 On April 5, 2020, Wells Fargo announced that it had received strong interest in the
6 Paycheck Protection Program (“PPP”), a program under the Coronavirus Aid, Relief, and
7 Economic Security Act (the “CARES Act”), and was targeting to distribute a total of \$10 billion
8 to small business customers under the requirements of the PPP. ¶ 3.

9 On April 8, 2020, the Federal Reserve announced that it would allow Wells Fargo to
10 exceed the asset cap that it had imposed on Wells Fargo in 2018 after revelations that the
11 Company had opened millions of accounts in customers’ names without their permission, a
12 change which would allow Wells Fargo to make additional small business loans as part of the
13 PPP. ¶ 4.

14 That same day, Wells Fargo issued a press release stating, in relevant part, that, “beginning
15 immediately, in response to the actions by the Federal Reserve, [Wells Fargo] will expand its
16 participation in the [PPP] and offer loans to a broader set of its small business and nonprofit
17 customers subject to the terms of the program.” ¶ 5.

18 Throughout the Class Period, Defendants made materially false and misleading statements
19 regarding the Company’s business, operational and compliance policies. Specifically, Defendants
20 made false and/or misleading statements and/or failed to disclose that: (i) Wells Fargo planned
21 to, and did, improperly allocate government-backed loans under the PPP, and/or had inadequate
22 controls in place to prevent such misallocation; (ii) the foregoing foreseeably increased the
23 Company’s litigation risk with respect to PPP allocation, as well as increased regulatory scrutiny
24 and/or potential enforcement actions; and (iii) as a result, the Company’s public statements were
25

26 ³ Citations to “¶ ___” are to paragraphs of the Class Action Complaint for Violations of the Federal
27 Securities Laws (the “Complaint”) filed in the first-filed Action captioned *Ma v. Wells Fargo &*
28 *Company, et al.*, 3:20-cv-03697-RGS (N.D. Cal. Jun. 4, 2020) (the “*Ma Action*”). The facts set
forth in the Complaint are incorporated herein by reference.

1 materially false and misleading at all relevant times. ¶ 6.

2 On April 19, 2020, reports emerged that Wells Fargo may have unfairly allocated
3 government-backed loans under the PPP. ¶ 7. Specifically, *USA Today* reported that “[t]he lawsuit
4 filed on behalf of small business owners on Sunday alleges that Wells Fargo unfairly prioritized
5 businesses seeking large loan amounts, while the government’s small business agency has said
6 that PPP loan applications would be processed on a first-come, first-served basis.” *Id.* According
7 to the lawsuit, “[t]he move by Wells Fargo meant that the bank would receive millions more
8 dollars in processing fees,” and, “[m]aking matters worse, Wells Fargo concealed from the public
9 that it was reshuffling the PPP applications it received and prioritizing the applications that would
10 make the bank the most money.” *Id.*

11 Following this news, Wells Fargo’s stock price fell more than 5% over two trading days
12 to close at \$26.84 per share on April 21, 2020. ¶ 8.

13 Finally, on May 5, 2020, Wells Fargo filed a quarterly report on Form 10-Q with the SEC,
14 disclosing, in addition to multiple PPP-related lawsuits initiated against the Company, that Wells
15 Fargo had “received formal and informal inquiries from federal and state governmental agencies
16 regarding its offering of PPP loans.” ¶ 9. Following this news, Wells Fargo’s stock price fell by
17 more than 6% over two trading days from its closing price on May 4, 2020, closing at \$25.61 per
18 share on May 6, 2020. ¶ 10.

19 As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the
20 market value of the Company’s securities, Plaintiff and other Class members have suffered
21 significant losses and damages.

22 **IV. ARGUMENT**

23 **A. Movant’s Appointment as Lead Plaintiff Is Appropriate.**

24 **1. The Procedure Required by the PSLRA**

25 The PSLRA mandates that the Court decide the lead plaintiff issue “[a]s soon as
26 practicable.” 15 U.S.C. § 78u-4(a)(3)(B)(ii). The PSLRA establishes the procedure for
27 appointment of the lead plaintiff in “each private action arising under [the Exchange Act] that is
28

1 brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. §§
2 78u-4(a) and (a)(3)(B).

3 The plaintiff who files the initial action must publish notice to the class within 20 days
4 after filing the action, informing class members of their right to file a motion for appointment of
5 lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A). The PSLRA requires the Court to consider within 90
6 days all motions filed within 60 days after publication of that notice by any person or group of
7 persons who are members of the proposed class to be appointed lead plaintiff. 15 U.S.C. §§ 78u-
8 1(a)(3)(A)(i)(II) and (a)(3)(B)(i).

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

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

17 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). The presumption may be rebutted only upon proof by a class
18 member that the presumptively most adequate plaintiff “will not fairly and adequately protect the
19 interests of the class” or “is subject to unique defenses that render such plaintiff incapable of
20 adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *Johnson*, 2013 U.S. Dist.
21 LEXIS 1610, at *4 (describing the Ninth Circuit’s three-part test to determine the most adequate
22 plaintiff under the PSLRA).

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

1 **a. Movant Is Willing to Serve as Class Representative.**

2 On June 4, 2020, counsel in the first-filed action caused a notice (the “Notice”) to be
3 published pursuant to Section 21D(a)(3)(A) of the Exchange Act, which announced that a
4 securities class action had been filed against Wells Fargo and the Individual Defendants, and
5 which advised putative Class members that they had 60 days to file a motion to seek appointment
6 as a lead plaintiff in the Action.⁸

7 Movant has reviewed the complaint filed in the pending Action and has timely filed his
8 motion pursuant to the Notice. *Johnson*, 2013 U.S. Dist. LEXIS 1610, at *6.

9 **b. Movant Has the Largest Financial Interest in the Relief Sought by**
10 **the Class.**

11 The Court shall appoint as lead plaintiff the movant or movants with the largest financial
12 loss in the relief sought by the Action. As demonstrated herein, Movant has the largest known
13 financial interest in the relief sought by the Class. *See* McCall Decl, Ex. B. The movant who has
14 the largest financial interest in this litigation and meets the adequacy and typicality requirements
15 of Rule 23 is presumptively the lead plaintiff. *Booth v. Strategic Realty Trust, Inc.*, No. 13-cv-
16 4921, 2014 U.S. Dist. LEXIS 10501, at *3-4 (N.D. Cal. Jan. 27, 2014) (citing *In re Cavanaugh*,
17 306 F.3d at 726-30).

18 Within the Class Period, Movant purchased Wells Fargo shares in reliance upon the
19 materially false and misleading statements issued by Defendants and was injured thereby.
20 Movant suffered a substantial loss of approximately \$27,885.95 under a LIFO and *Dura* LIFO
21 analysis. *See* McCall Decl, Ex. B. Movant thus has a significant financial interest in the outcome
22 of this case. To the best of his knowledge, there are no other applicants who have sought, or are
23 seeking, appointment as lead plaintiff that have a larger financial interest and also satisfy Rule
24 23.

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26
27 ⁸ The Notice was published over *Globe Newswire*, a widely circulated national business-oriented
28 wire service. A copy of the Notice is attached as Exhibit C to the McCall Decl.

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

3 According to 15 U.S.C. § 78u-4(a)(3)(B), in addition to possessing the largest financial
 4 interest in the outcome of the litigation, the lead plaintiff must also “otherwise satisf[y] the
 5 requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party
 6 may serve as a class representative if the following four requirements are satisfied:

7 (1) the class is so numerous that joinder of all members is impracticable; (2) there
 8 are questions of law or fact common to the class; (3) the claims or defenses of the
 9 representative parties are typical of the claims or defenses of the class; and (4) the
 10 representative parties will fairly and adequately protect the interests of the class

11 FED. R. CIV. P. 23(a).

12 Of the four prerequisites to class certification outlined in Rule 23, only two – typicality
 13 and adequacy – are recognized as appropriate for consideration at this stage. *See Hessefort v.*
 14 *Super Micro Computer, Inc*, 317 F.Supp.3d 1056, 1060-61 (N.D. Cal. 2018); *Veal v. LendingClub*
 15 *Corporation*, 2018 WL 5879645, *4 (N.D. Cal. Nov. 7, 2018); *See also Cavanaugh*, 306 F.3d at
 16 730, n.5, 732. Furthermore, only a “preliminary showing” of typicality and adequacy is required
 17 at this stage. *See USBH Holdings, Inc.* 682 F. Supp.2d at, 1053. Consequently, in deciding a
 18 motion to serve as Lead Plaintiff, the Court should limit its inquiry to the typicality and adequacy
 19 prongs of Rule 23(a) and defer examination of the remaining requirements until the Lead Plaintiff
 20 moves for class certification. *See Cavanaugh*, 306 F.3d at 732; *see also Haung v. Acterna Corp.*,
 21 220 F.R.D. 255, 259 (D. Md. 2004); *In re Milestone Sci. Sec. Litig.*, 183 F.R.D. 404, 414 (D.N.J.
 22 1998).

23 As detailed below, Movant satisfies both the typicality and adequacy requirements of
 24 Fed. R. Civ. P. 23, thereby justifying his appointment as Lead Plaintiff.

25 **a. Movant’s Claims Are Typical of the Claims of All Class Members.**

26 Under Rule 23(a)(3), typicality exists where “the claims . . . of the representative parties”
 27 are “typical of the claims . . . of the class.” Movant plainly meets the typicality requirement of
 28

1 Rule 23 because his claims result from: (i) the same injuries as the absent class members; (ii) the
2 same course of conduct by Defendants; and (iii) are based on the same legal issues. *See In re*
3 *Twitter, Inc. Sec. Litig.*, 326 F.R.D. 619, 629 (N.D. Cal. 2018); *see also Ferrari v. Gisch*, 225
4 F.R.D. 599, 607 (C.D. Cal. 2004); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998);
5 *Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1993); *In re Oxford Health Plans, Inc. Sec.*
6 *Litig.*, 182 F.R.D. 42, 50 (S.D.N.Y. 1998) (typicality inquiry analyzes whether plaintiffs’ claims
7 “arise from the same conduct from which the other class members’ claims and injuries arise”).
8 Rule 23 does not require that the named plaintiff be identically situated with all class members.
9 It is enough if their situations share a common issue of law or fact. *See In re LendingClub Sec.*
10 *Litig.*, 282 F. Supp. 3d 1171, 1179 (N.D. Cal. 2017) (citing *Hanlon*, 150 F.3d at 1020). A finding
11 of commonality frequently supports a finding of typicality. *See Gold v. Lumber Liquidators, Inc.*,
12 323 F.R.D. 280, 288 (N.D. Cal. 2017) (citing *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S.
13 147, 158 n.13 (1982) (noting that the typicality and commonality requirements tend to merge)).

14 In this case, the typicality requirement is met because Movant’s claims are identical to,
15 and neither compete nor conflict with the claims of the other Class members. Movant, like the
16 other members of the Class, acquired Wells Fargo securities during the Class Period and was
17 damaged thereby. Thus, Movant’s claims are typical, if not identical, to those of the other
18 members of the Class because the losses Movant seeks to recover are similar to those of other
19 Class members and his losses result from the defendants’ common course of conduct.
20 Accordingly, Movant satisfies the typicality requirement of Rule 23(a)(3). *See In re LendingClub*,
21 282 F. Supp. 3d at 1179; *see also In re Drexel Burnham Lambert Group*, 960 F.2d 285, 291 (2d
22 Cir. 1992).

23 **b. Movant Will Adequately Represent the Class.**

24 Moreover, Movant is an adequate representative for the Class. Movant is currently
25 employed as the Chief Technology Officer and Head of Business Development at CloudHealth
26 Genomics . He resides in Poughkeepsie, New York, and possesses several degrees including a
27 DDS, MS, DMS in Dentistry, and a CS in Computational Biology. Movant considers himself to

1 be a sophisticated investor, having been investing in the stock market for at least 20 years. Under
2 Rule 23(a)(4), the representative party must “fairly and adequately protect the interests of the
3 class.” The PSLRA directs the Court to limit its inquiry regarding the adequacy of the movant to
4 whether the interests of the movant are clearly aligned with the members of the putative Class
5 and whether there is evidence of any antagonism between the interests of the movant and other
6 members of the Class. 15 U.S.C. § 78u-4(a)(3)(B); *see Crawford v. Honig*, 37 F.3d 485, 487
7 (9th Cir. 1994) (citation omitted).

8 Movant’s interests are clearly aligned with those of the other members of the Class. Not
9 only is there no evidence of antagonism between Movant’s interests and those of the Class, but
10 Movant has a significant and compelling interest in prosecuting the Action based on the large
11 financial losses suffered as a result of the wrongful conduct alleged in the Action. This motivation,
12 combined with Movant’s identical interest with the members of the Class, demonstrates that
13 Movant will vigorously pursue the interests of the Class. In addition, Movant has retained counsel
14 highly experienced in prosecuting securities class actions and will submit his choice to the Court
15 for approval pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v). Therefore, Movant will prosecute the
16 Action vigorously on behalf of the Class.

17 Accordingly, at this stage of the proceedings, Movant has made the preliminary showing
18 necessary to satisfy the typicality and adequacy requirements of Rule 23 and, therefore, satisfies
19 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). In addition, because Movant has the largest financial interest
20 in the outcome of the Action as a result of the defendants’ alleged wrongdoing, he is, therefore,
21 the presumptive lead plaintiff in accordance with 15 U.S.C. § 78u-4(3)(B)(iii)(I) and should be
22 appointed as such to lead the Action.

23 **B. Approval of Movant’s Choice of Counsel Is Appropriate.**

24 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject
25 to Court approval. 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should interfere with the lead
26 plaintiff’s selection of counsel only when necessary “to protect the interests of the class.” 15
27 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

1 Movant has selected and retained Levi & Korsinsky as the proposed Lead Counsel for the
2 Class. The members of Levi & Korsinsky have extensive experience in successfully prosecuting
3 complex securities class actions such as these and are well-qualified to represent the Class.
4 Moreover, Levi & Korsinsky has often been appointed as lead counsel in similar actions in this
5 Circuit and across the country arising under the federal securities laws on behalf of investors. *See*
6 *Deinnocentis v. Dropbox, Inc.*, No. 19-cv-06348-BLF, 2020 U.S. Dist. LEXIS 8680, at *13 (N.D.
7 Cal. Jan. 16, 2020); *Zhang v. Valaris PLC, et al.*, No. 1:19-cv-07816-NRB (S.D.N.Y. Dec. 23,
8 2019); *In re Sundial Growers Inc. Sec. Litig.*, No. 1:19-cv-08913-ALC (S.D.N.Y. Dec. 20, 2019);
9 *Isaacs v. Musk*, No. 18-CV-04865-EMC, 2018 U.S. Dist. LEXIS 200717, at *20 (N.D. Cal. Nov.
10 27, 2018), *reconsideration denied sub nom. In re Tesla, Inc. Sec. Litig.*, No. 18-CV-04865-EMC,
11 2018 U.S. Dist. LEXIS 212238 (N.D. Cal. Dec. 17, 2018) (noting Levi & Korsinsky “is
12 experienced in securities fraud litigation and has been appointed Lead Counsel in other securities
13 class actions.”); *Pope v. Navient Corp.*, No. 17-cv-8373 (RBK/AMD), 2018 U.S. Dist. LEXIS
14 17340, at *13–14 (D.N.J. Feb. 2, 2018) (appointing Levi & Korsinsky as lead counsel as it “is
15 clearly capable of handling this matter—the firm has extensive experience in private securities
16 litigation and has received numerous favorable judgments in its past representations.”); *Francisco*
17 *v. Abengoa, S.A.*, No. 15-cv-6279 (ER), 2016 U.S. Dist. LEXIS 68145, at *21 (S.D.N.Y. May 24,
18 2016) (noting that given “Levi & Korsinsky’s track record, the Court, like many others in this
19 Circuit before it, concludes that the firm is qualified to serve as lead counsel of the class”); *Levin*
20 *v. Res. Capital Corp.*, No. 15-cv-7081 (LLS), 2015 U.S. Dist. LEXIS 162377, at *4 (S.D.N.Y.
21 Oct. 5, 2016) (appointing Levi Korsinsky as lead counsel and noting that it is “a firm which is
22 well qualified and has successfully served as lead counsel or co-lead counsel in numerous
23 complex securities class actions”). Thus, the Court may rest assured that by granting Movant’s
24 motion, the Class will receive the highest caliber of legal representation possible. *See also* McCall
25 Decl, Ex. D (the firm résumé of Levi & Korsinsky).

26 **V. CONCLUSION**

27 For the foregoing reasons, Movant respectfully requests that this Court: (1) appoint

1 Movant as Lead Plaintiff for the Class in the action; (2) approve Levi & Korsinsky as Lead
2 Counsel for the Class; and (3) grant such other and further relief as the Court may deem just and
3 proper.

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5 Dated: August 3, 2020

Respectfully submitted,

6 **LEVI & KORSINSKY, LLP**

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28 *Attorneys for Movant Winston P. Kuo and
Proposed Lead Counsel for the Class*