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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 WASA MEDICAL HOLDINGS,
11 individually and on behalf of all others
12 similarly situated,
13
14 Plaintiff,
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16 v.
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18 SORRENTO THERAPEUTICS, INC.,
19 HENRY JI, and MARK R.
20 BRUNSWICK,
21
22 Defendants.

No. 3:20-cv-00966-AJB-DEB

MEMORANDUM OF POINTS AND
AUTHORITIES: (1) IN FURTHER
SUPPORT OF MOTION OF JING LI FOR
CONSOLIDATION, APPOINTMENT AS
LEAD PLAINTIFF AND APPROVAL OF
COUNSEL; AND (2) IN OPPOSITION
TO COMPETING MOTIONS

DATE: September 3, 2020
TIME: 2:00 p.m.
JUDGE: Anthony J. Battaglia
CTRM: 4A (4th Floor – Schwartz)

23 JEANNETTE CALVO, Individually
24 and On Behalf of All Others
25 Similarly Situated,
26
27 Plaintiff,
28
29 v.
30
31 SORRENTO THERAPEUTICS, INC.,
32 HENRY JI, and MARK R.
33 BRUNSWICK,
34
35 Defendants.

No. 3:20-cv-01066-JAH-WVG

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14 **Rules**

15
16 Federal Rules of Civil Procedure Rule 23*passim*

1 Movant Li¹ respectfully submits this Memorandum of Law in further support of her
2 motion for consolidation of the Related Actions, appointment as Lead Plaintiff, and
3 approval of her selection of Pomerantz as Lead Counsel (Dkt. No. 10); and in opposition
4 to the competing motions of (i) Jonathan Hirsch, Abraham Robenzadeh, Randy Rodriguez,
5 and Fraidon Sarkis (collectively, the “SRNE Investor Group”) (Dkt. No. 5); (ii) Andrew
6 R. Zenoff (“Zenoff”) (Dkt. No. 9); and (iii) Guiyun Qin (“Qin”) (Dkt. No. 6).²
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9 **I. PRELIMINARY STATEMENT**

10 The Related Actions are putative class action securities fraud lawsuits on behalf of
11 investors in Sorrento securities. As with all federal class action securities fraud lawsuits,
12 a lead plaintiff must be appointed. The PSLRA governs that process and, pursuant to the
13 PSLRA, the Court should appoint as Lead Plaintiff the movant with the greatest financial
14 interest in the outcome of the action; and who satisfies the requirements of Rule 23 of the
15 Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).
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19 Here, that movant is Li, having suffered approximately **\$454,341** in losses in
20 connection with her purchases of Sorrento securities as a result of the Company’s alleged
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24 ¹ All capitalized terms herein are defined in Li’s moving brief, unless otherwise indicated. *See* Dkt.
25 No. 10-1.

26 ² Three other putative class members initially filed competing motions: (i) Thomas Hammond (Dkt.
27 No. 8); (ii) Mike Nguyen (Dkt. No. 7); and (iii) Dean Roller (Dkt. No. 4). Each of the foregoing
28 movants subsequently filed a notice of non-opposition to the competing motions. *See* Dkt. Nos. 13-14,
17.

malfeasance. The foregoing table compares Li's losses to those of the other movants before the Court:

Movant	Loss
Li	\$454,341
SRNE Investor Group	\$382,238
<i>Jonathan Hirsch</i>	\$75,226
<i>Abraham Robenzadeh</i>	\$67,017
<i>Randy Rodriguez</i>	\$61,664
<i>Fraidon Sarkis</i>	\$177,002
Zenoff	\$195,500
Qin	\$170,196

Li's loss is more than \$70,000 larger than the aggregate loss of the four members of the SRNE Investor Group, the movant with the second-largest loss, and more than twice the magnitude of the respective losses of Zenoff and Qin. As such, Li clearly has the greatest financial interest within the meaning of the PSLRA of any putative Class member seeking appointment as Lead Plaintiff. *See, e.g., Knox v. Yingli Green Energy Holding Co. Ltd.*, 136 F. Supp. 3d 1159, 1163 (C.D. Cal. 2015) (equating financial interest with monetary loss); *Richardson v. TVIA, Inc.*, C 06 06304 RMW, 2007 WL 1129344, at *4 (N.D. Cal. Apr. 16, 2007) (same).

Li also satisfies the typicality and adequacy requirements of Rule 23. Li, like all members of the Class, purchased Sorrento securities at prices artificially inflated by Defendants' misrepresentations or omissions, and was damaged upon the disclosure of those misrepresentations or omissions. These shared claims, which are based on the same legal theory, and arise from the same events and course of conduct as the Class claims,

1 satisfy the requirements of Rule 23. *Vataj v. Johnson*, 19-CV-06996-HSG, 2020 WL
 2 532981, at *3 (N.D. Cal. Feb. 3, 2020). Li’s significant losses give her a sufficient stake
 3 in this litigation’s outcome to ensure vigorous prosecution; Li is aware of no conflict
 4 between her interests and those of the putative Class; and in Pomerantz, Li has retained
 5 qualified and experienced class counsel.³ *Karinski v. Stamps.com, Inc.*, CV 19-1828-R,
 6 2019 WL 8013753, at *1 (C.D. Cal. June 5, 2019); *Harari v. PriceSmart, Inc.*, 19-CV-958
 7 JLS (LL), 2019 WL 4934277, at *3 (S.D. Cal. Oct. 7, 2019). Li has further demonstrated
 8 her adequacy by the submission of a detailed declaration attesting to, *inter alia*, her identity
 9 and background, her reasons for seeking appointment as Lead Plaintiff, and her readiness
 10 to monitor the progress of this litigation and to supervise class counsel. Courts in the
 11 Ninth Circuit have found such declarations to demonstrate a lead plaintiff movant’s
 12 adequacy within the meaning of Rule 23. *See, e.g., Armour v. Network Assocs.*, 171 F.
 13 Supp. 2d 1044, 1052 (N.D. Cal. 2001); *Casden v. HPL Techs., Inc.*, C-02-3510 VRW,
 14 2003 U.S. Dist. LEXIS 19606, at *17 (N.D. Cal. Sept. 29, 2003).

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22 ³ Due to a clerical error, the signature block of The Schall Law Firm (the “Schall Firm”), additional
 23 counsel for Li, was inadvertently omitted from the signature pages of Li’s notice of motion and motion
 24 brief. *See* Dkt. Nos. 10, 10-1. Anticipating a potential argument by competing movants, Li respectfully
 25 submits that the Court should reject any attempt to mischaracterize the omission as evidence of Li’s
 26 inadequacy or as an effort to conceal the Schall Firm’s role in this litigation. Rather, the Schall Firm’s
 27 signature block appears as a matter of course on filings in cases in which its clients seek appointment
 28 as lead plaintiffs. *See, e.g., Clynes v. Hebron Technology Co. Ltd. et al.*, 1:20-cv-04420 (S.D.N.Y.);
Uddin v. Conn’s, Inc. et al., 4:20-cv-01705 (S.D. Tex.); *Cohen v. Luckin Coffee, Inc. et al.*, 1:20-cv-
 01293 (S.D.N.Y.); *Shi v. Paysign, Inc. et al.*, 2:20-cv-00553 (D. Nev.). These examples underscore the
 fact that the omission of the Schall Firm from the signature pages in Li’s motion papers was an
 unintended departure from standard practice as the result of a clerical error.

1 By contrast, separate and apart from its lacking the largest financial interest in this
2 matter, the SRNE Investor Group’s motion must also be denied because the group’s papers
3 demonstrate its inadequacy. The group appears to be nothing more than an unwieldy
4 composite of four unrelated investors, the only evident commonality among whom
5 appears to be shared counsel. Courts in the Ninth Circuit generally decline to appoint as
6 co-lead plaintiffs investor groups consisting of individuals “who had no pre-existing
7 relationship with one another, and whose relationship and group status were forged only
8 by [its] lawyer[s].” *In re Stitch Fix, Inc. Sec. Litig.*, 393 F. Supp. 3d 833, 835 (N.D. Cal.
9 2019) (denying motion by artificial grouping of individuals). Indeed, “ignoring the basis
10 of the group formation and appointing a group of unrelated investors,” like the Investor
11 Group here, “undercuts the primary purpose of the PSLRA: to eliminate lawyer-driven
12 litigation.” *Eichenholtz v. Verifone Holdings, Inc.*, 2008 WL 3925289, at *8 (N.D. Cal.
13 Aug. 22, 2008).

14 For the reasons set forth herein, Li respectfully submits that her motion should be
15 granted in its entirety, and that the competing motions should be denied.

16 **II. ARGUMENT**

17 **A. Li Should Be Appointed Lead Plaintiff**

18 The PSLRA creates a strong presumption that the Lead Plaintiff is the “person or
19 group of persons” that “has the largest financial interest in the relief sought by the class”
20 and “otherwise satisfies the requirements of Rule 23.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

1 The movant that has the largest financial interest need only make a *prima facie* showing
2 at this stage that he or she satisfies the adequacy and typicality requirements of Rule 23.
3 *In re Cavanaugh*, 306 F.3d 726, 730-31 (9th Cir. 2002). Once this presumption is
4 triggered, it may be rebutted upon proof that the presumptive Lead Plaintiff will not fairly
5 represent the interests of the Class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Here, the most
6 adequate class representative is Li.
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8

9 **1. Li Has The Largest Financial Interest In The Relief Sought**
10 **By The Class**

11 The PSLRA requires a court to adopt a rebuttable presumption that “the most
12 adequate plaintiff . . . is the person or group of persons that . . . has the largest financial
13 interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). While the
14 PSLRA itself does not provide any guidance concerning the method of calculating which
15 plaintiff has the “largest financial interest,” courts recognize that the amount of financial
16 loss is the most significant factor to be considered. *See, e.g., Knox*, 136 F. Supp. 3d at
17 1163; *Richardson*, 2007 WL 1129344, at *4.
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21 Under the foregoing analysis, no movant seeking appointment as lead plaintiff in
22 the Related Actions has alleged a larger financial interest in the litigation than Li. The
23 following chart summarizes Li’s substantial financial interest compared to those of the
24 competing movants:
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Movant	Loss
Li	\$454,341
SRNE Investor Group	\$382,238
<i>Jonathan Hirsch</i>	\$75,226
<i>Abraham Robenzadeh</i>	\$67,017
<i>Randy Rodriguez</i>	\$61,664
<i>Fraidon Sarkis</i>	\$177,002
Zenoff	\$195,500
Qin	\$170,196

As shown above, Li suffered a loss of roughly \$454,341 in connection with the Defendants' alleged malfeasance. By comparison, this equates to a loss roughly 18% larger than the aggregate loss incurred by the SRNE Investor Group, the movant with the next-largest financial interest. Li's loss is also equivalent to approximately 232% of Zenoff's loss and 267% of Qin's loss. As such, Li clearly has the greatest financial interest in this litigation within the meaning of the PSLRA.

2. Li Satisfies The Requirements Of Rule 23

In addition to possessing the largest financial interest in the relief sought by the Class, Li has also made the requisite *prima facie* showing that she satisfies the typicality and adequacy requirements of Rule 23. *See Cavanaugh*, 306 F.3d at 730-31. First, Li's claims satisfy the typicality requirement of Rule 23(a)(3) because her claims in the Related Actions are based on the same legal theory and arise from the same events and course of conduct as the Class's claims—specifically, that Li, like other Class members, purchased Sorrento securities at prices artificially inflated due to Defendants' false and misleading statements and was damaged when the price of those securities fell upon the revelation of

1 Defendants' alleged malfeasance. *See, e.g., Vataj*, 2020 WL 532981, at *3. Second, Li
2 satisfies the adequacy requirement of Rule 23(a)(4) because she has a sufficient stake in
3 the outcome of this litigation to ensure vigorous advocacy on behalf of the class. *See, e.g.,*
4 *Karinski*, 2019 WL 8013753, at *1; *Harari*, 2019 WL 4934277, at *3. Li has further
5 demonstrated her adequacy by the submission of a detailed Declaration in which Li attests
6 to her identity and background (Dkt. No. 10-6 ¶ 1) and further attests, *inter alia*, under
7 penalty of perjury:
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- 10 • “Prior to filing my Lead Plaintiff motion: (a) I understood that the Lead
11 Plaintiff role includes evaluating the strengths and weaknesses of the case
12 and prospects for resolution of this matter; (b) I understood that it is the
13 Lead Plaintiff’s responsibility to direct counsel with respect to this
14 litigation, after receiving the benefit of counsel’s advice; (c) I approved
15 Pomerantz LLP (‘Pomerantz’) as my designated lead counsel; and (d) I
16 have discussed this case with my counsel via telephone.” *Id.* ¶ 2;
- 17 • “I am committed to ensuring the litigation is litigated as zealously and
18 efficiently as possible, in accordance with my duties under the PSLRA.”
19 *Id.* ¶ 4;
- 20 • “If appointed Lead Plaintiff, I will satisfy my fiduciary obligations to the
21 class by, among other steps, conferring with my counsel regarding
22 litigation strategy and other matters, attending court proceedings,
23 depositions, any settlement mediations, and hearings as needed, and
24 reviewing and authorizing the filing of important litigation documents.
25 Through these and other measures, I will ensure that Sorrento securities
26 litigation will be vigorously prosecuted consistent with the obligations of
27 a Lead Plaintiff under the PSLRA and in the best interests of the class, and
28 will seek to obtain the greatest possible recovery for the class.” *Id.* ¶ 5;
and
- “I understand and appreciate the Lead Plaintiff’s obligation under the
PSLRA to select Lead Counsel and to monitor the action to ensure it is

1 prosecuted efficiently. . . . I will continue to supervise counsel and actively
2 oversee the prosecution of the action for the benefit of the Class by, among
3 other things, reviewing pleadings, instructing counsel, and/or attending
hearings, as necessary.” *Id.* ¶¶ 6-7.

4 Courts in the Ninth Circuit routinely consider such declarations as evidence of a lead
5 plaintiff movant’s adequacy within the meaning of Rule 23. *See, e.g., Network Assocs.*,
6 171 F. Supp. 2d at 1052 (appointing lead plaintiff movant that submitted a declaration
7 attesting that movant “understands it fiduciary obligations and that it is willing to perform
8 those duties”, including “its commitment to remain informed as to all aspects of the
9 litigation, consult with counsel regarding major litigation decisions, and direct counsel's
10 actions with respect to such decisions.); *HPL Techs.*, 2003 U.S. Dist. LEXIS 19606, at
11 *17 (assessing movant’s adequacy with reference to information provided in declaration).
12 Here, given Li’s detailed attestations with respect to her understanding of a Lead Plaintiff’s
13 responsibilities and her readiness to shoulder those responsibilities on behalf of the Class,
14 her fitness as a class representative cannot reasonably be questioned.

15 Moreover, anticipating a potential argument from competing movants, Li
16 respectfully submits that her showing with respect to adequacy is equivalent to that of
17 Zenoff, who filed a substantively similar declaration attesting to the same points as Li in
18 support of his own motion. *See generally* Dkt. No. 9-6. Zenoff’s declaration contains,
19 *inter alia*, the following statements:

- 20 • “I suffered substantial losses as a result of my transactions in Sorrento
21 Therapeutics, Inc. securities during the Class Period. As a result, I am

1 motivated to seek to obtain the best possible result for myself and the
2 class.” *Id.* ¶ 7.

- 3 • “I understand that a lead plaintiff acts on behalf of and for the benefit
4 of all potential class members and oversees and directs counsel
5 throughout the litigation.” *Id.* ¶ 8.
- 6 • “I am aware that, as lead plaintiff, I will interact with and direct counsel,
7 review and comment on important documents in the case, attend
8 important court hearings if my attendance is requested or required by
9 the Court, participate in discovery, participate in settlement
10 discussions, attend trial, if necessary, and authorize any potential
11 settlement on behalf of the class. I am willing to perform all of these
12 duties on behalf of the class members.” *Id.* ¶ 9.

11 The foregoing statements from Zenoff’s declaration are virtually identical in substance to
12 the statements excerpted from Li’s declaration *supra* at pp. 7-8. Zenoff thus cannot
13 credibly question Li’s showing of adequacy without equally undermining his own motion.
14

15 To overcome the strong presumption entitling Li to appointment as Lead Plaintiff,
16 the PSLRA requires “*proof*” that the presumptive Lead Plaintiff is inadequate. 15 U.S.C.
17 § 78u-4(a)(3)(B)(iii)(II) (emphasis added). No such proof exists in this case and any
18 speculative arguments to the contrary should be flatly rejected.
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21 Finally, as discussed in greater detail below, Li has further demonstrated her
22 adequacy by selecting Pomerantz—counsel highly capable and experienced in prosecuting
23 securities cases and managing complex litigation efficiently—to serve as Lead Counsel
24 for the Class.
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B. The SRNE Investor Group Is Inadequate Within The Meaning Of Rule 23

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2 Even if the SRNE Investor Group did possess the largest financial interest in this
3 litigation (and as discussed above, the group does not), the PSLRA would still mandate
4 denial of the group’s motion because the group is inadequate within the meaning of Rule
5 23. Specifically, the SRNE Investor Group appears to be nothing more than a group of
6 four individuals with no evident relationship, cobbled together in hopes of assembling the
7 largest aggregate loss in this litigation. Courts in the Ninth Circuit routinely deny motions
8 by such groups, finding them inadequate within the meaning of Rule 23. *See, e.g., In re*
9 *Network Assocs., Inc., Sec. Litig.*, 76 F. Supp. 2d 1023, 1025 (N.D. Cal. 1999)
10 (“allow[ing] lawyers to designate unrelated plaintiffs as a “group” and aggregate their
11 financial stakes would allow and encourage lawyers to direct the litigation”), contravening
12 Congress’s intention to appoint “a single, strong lead plaintiff to control counsel and the
13 litigation.”); *Isaacs v. Musk*, 2018 WL 6182753, at *2 (N.D. Cal. Nov. 27, 2018) (“courts
14 have also been skeptical of ‘artificial’ groups”); *Bodri v. Gopro, Inc.*, 2016 WL 1718217,
15 at *4 (N.D. Cal. Apr. 28, 2016) (“courts have generally found that ‘appointing a group of
16 unrelated investors undercuts the primary purpose of the PSLRA: to eliminate lawyer-
17 driven litigation.”); *In re Netflix, Inc., Sec. Litig.*, 2012 WL 1496171, at *4 (N.D. Cal.
18 Apr. 27, 2012) (“the courts of this circuit uniformly refuse to aggregate the losses of
19 individual investors with no apparent connection to each other aside from their counsel”);
20 *Eichenholtz*, 2008 WL 3925289, at *7 (“courts have uniformly refused to appoint as lead
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1 plaintiff groups of unrelated individuals, brought together for the sole purpose of
2 aggregating their claims in an effort to become the presumptive lead plaintiff”).

3 Here, while the SRNE Group has submitted a Joint Declaration, this submission
4 fails to mitigate the foregoing concerns. The Joint Declaration confirms that these
5 individuals had no pre-litigation relationship and were introduced by counsel. While the
6 Joint Declaration attests to having procedures for communication in place, given the
7 unwieldiness of the group—consisting as it does of unrelated and geographically dispersed
8 individuals—Li respectfully submits that the group’s capacity to productively
9 communicate and manage this litigation will likely be significantly more limited in
10 practice than the Joint Declaration contemplates. As such, the group’s showing falls short
11 of the requisite *prima facie* showing of adequacy within the meaning of Rule 23.
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16 **C. Li’s Selection Of Counsel Should Be Approved**

17 The PSLRA vests authority in the Lead Plaintiff to select and retain lead counsel,
18 subject to the approval of the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should
19 interfere with Lead Plaintiff’s selection only when necessary “to protect the interests of
20 the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa); *see also Osher v. Guess?, Inc.*, CV 01-
21 00871 LGB (RNBx), 2001 U.S. Dist. LEXIS 6057, at *15 (C.D. Cal. Apr. 26, 2001).
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24 Here, Li has selected Pomerantz as Lead Counsel for the Class. As its resume
25 reflects, Pomerantz is highly experienced in the areas of securities litigation and class
26 actions and has successfully prosecuted numerous securities litigations and securities
27

1 fraud class actions on behalf of investors. In 2018 alone, Pomerantz secured a settlement
2 of nearly \$3 billion on behalf of investors in the securities of Petróleo Brasileiro S.A.—
3 Petrobras—the largest securities class action settlement in a decade—and an \$80 million
4 settlement on behalf of Yahoo Inc. investors. *See generally* Dkt. No. 10-7. Thus, the
5 Court may be assured that by approving Li’s selection of counsel, the members of the class
6 will receive the best legal representation available.
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9 **III. CONCLUSION**

10 For the foregoing reasons and for the reasons set forth in Li’s moving brief (Dkt.
11 No. 10-1), Li respectfully requests that the Court issue an Order granting Li’s motion in
12 full and denying the competing motions.
13
14

15 Dated: August 11, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2020, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court’s CM/ECF System.

/s/ Jennifer Pafiti
Jennifer Pafiti