

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 21-cv-2770-WJM-SKC

EL PASO FIREMEN & POLICEMEN'S PENSION FUND, SAN ANTONIO FIRE &
POLICE PENSION FUND, AND INDIANA PUBLIC RETIREMENT SYSTEM,
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

INNOVAGE HOLDING CORP.,
MAUREEN HEWITT,
BARBARA GUTIERREZ,
J.P. MORGAN SECURITIES LLC,
BARCLAYS CAPITAL INC.,
GOLDMAN SACHS & CO. LLC,
CITIGROUP GLOBAL MARKETS INC.,
ROBERT W. BAIRD & CO. INCORPORATED,
WILLIAM BLAIR & COMPANY, L.L.C.,
PIPER SANDLER & CO.,
CAPITAL ONE SECURITIES, INC.,
LOOP CAPITAL MARKETS LLC,
SIEBERT WILLIAMS SHANK & CO., LLC, and
ROBERTS & RYAN INVESTMENTS, INC.,

Defendants.

**ORDER GRANTING MOTION OF THE TEXAS AND INDIANA PENSION FUNDS FOR
APPOINTMENT AS LEAD PLAINTIFF AND FOR APPROVAL OF
SELECTION OF COUNSEL**

This matter is before the Court on the El Paso Firemen & Policemen's Pension Fund, San Antonio Fire & Police Pension Fund, and Indiana Public Retirement System's (collectively, the "Texas and Indiana Pension Funds") Motion for Appointment as Lead Plaintiff and for Approval of Selection of Counsel ("Motion"). (ECF No. 6.) For the reasons set forth below, the Motion is granted.

I. SELECTION OF LEAD PLAINTIFF

Randy McLeod filed this proposed securities class action lawsuit pursuant to Sections 11 and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k and 77o, on October 14, 2021. (ECF No. 1.) Under the Private Securities Litigation Reform Act (“PSLRA”) McLeod was required,

[n]ot later than 20 days after the date on which the complaint [was] filed, [to] cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

15 U.S.C. § 77z-1(a)(3)(A)(i). McLeod’s counsel’s law firm published the required notice in *Business Wire* on the same day the suit was filed, announcing that lead plaintiff motions were due no later than December 13, 2021. (ECF No. 6-2.)

The PSLRA establishes a presumption that the potential lead plaintiffs with the largest financial interest should be appointed as lead plaintiffs, assuming they timely move for appointment and otherwise meet the requirements of Federal Rule of Civil Procedure 23. See 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I). On December 13, 2021, four groups of potential lead plaintiffs filed motions seeking appointment as such in the instant action:

- The Texas and Indiana Pension Funds filed the instant Motion, claiming total investment losses of \$2,121,667 (ECF No. 6 at 5);

- The Alameda County Employees' Retirement Association filed a motion, claiming total investment losses of \$1,024,846 (ECF No. 7 at 6);
- McLeod and Siddharth Rasoni filed a motion, claiming total investment losses of \$29,410.79 (ECF No. 8; ECF No. 8-3 at 2); and
- The Oklahoma Municipal Retirement Fund filed a motion, claiming total investment losses of \$120,184 (ECF No. 9 at 9).

Thereafter, the Alameda County Employees' Retirement Association, McLeod and Rasoni, and the Oklahoma Municipal Retirement Fund withdrew their respective motions for appointment as lead plaintiff on the basis that they did not have the largest financial interest in the relief sought by the class. (ECF Nos. 13, 22, 24.)

The Court finds that in addition to timely moving for appointment, the Texas and Indiana Pension Funds appears to have the greatest financial interest in the relief sought by the case and are therefore the presumptive choice for lead plaintiff pursuant to § 77z-1(a)(3)(B)(iii)(I). That presumption can be rebutted:

only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 77z-1(a)(3)(B)(iii)(II). No party has attempted to rebut this presumption; to the contrary, the other movants seemingly concede that the presumption applies by withdrawing their respective motions for appointment as lead plaintiff. (ECF Nos. 13, 22, 24.) Moreover, the Court has thoroughly reviewed the Texas and Indiana Pension Funds' filings and has concluded that they have adequately demonstrated that they meet the typicality and adequacy requirements of Rule 23(a). (ECF No. 6 at 12–15.).

Accordingly, the Court will appoint the Texas and Indiana Pension Funds as Lead Plaintiffs.

II. APPOINTMENT OF SELECTED LEAD COUNSEL

The PSLRA also allows the lead plaintiff to select and retain lead counsel, subject to the Court's approval. 15 U.S.C. § 77z-1(a)(3)(B)(v). The Texas and Indiana Pension Funds have selected Cohen Milstein Sellers & Toll PLLC to serve as lead counsel and Fairfield and Woods, P.C. to serve as liaison counsel for the class. (ECF No. 6 at 5, 16.)

The Court has reviewed the Texas and Indiana Pension Funds' various filings and finds that their choice of counsel is qualified to prosecute this securities class action. Therefore, the Court approves the selection of Cohen Milstein Sellers & Toll PLLC to serve as lead counsel and Fairfield and Woods, P.C. to serve as liaison counsel for the class.

III. CONCLUSION

For the reasons set for above, the Court ORDERS as follows:

1. The Motion of the Texas and Indiana Pension Funds for Appointment as Lead Plaintiff and for Approval of Selection of Counsel (ECF No. 6) is GRANTED;

2. The El Paso Firemen & Policemen's Pension Fund, San Antonio Fire & Police Pension Fund, and Indiana Public Retirement System are hereby APPOINTED as Lead Plaintiffs in this action;
3. Cohen Milstein Sellers & Toll PLLC is APPOINTED as Lead Counsel and Fairfield and Woods, P.C. is APPOINTED as Liaison Counsel; and
4. The Clerk's Office and the parties are DIRECTED to update the case caption to reflect the newly-designated Lead Plaintiffs, as shown in the caption of this Order.

Dated this 11th day of April, 2022.

BY THE COURT:



William J. Martinez
United States District Judge