

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Seret Ishak v. WM Technology, Inc.

Ishak · No. 2:24-cv-08959-ODW (PVCx) · Decided March 11, 2025

SUMMARY

The United States District Court for the Central District of California determined which movant should serve as lead plaintiff in a putative securities class action against WM Technology, Inc. and related individual defendants. The court found that Jay Kang had the greatest financial interest and made a prima facie showing of typicality and adequacy under the PSLRA, and it rejected challenges to his appointment. The court appointed Kang as lead plaintiff and approved The Rosen Law Firm as lead class counsel, subject to class certification.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Otis D. Wright, II
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 11, 2025
DOCKET	2:24-cv-08959-ODW (PVCx)
DISPOSITION	other
PROCEDURAL POSTURE	Putative securities-fraud class action in which three shareholders moved for appointment as lead plaintiff and for approval of their proposed counsel as lead class counsel under the PSLRA.
STANDARD OF REVIEW	At the lead-plaintiff stage, the movant need make only a preliminary showing of Rule 23(a)'s typicality and adequacy requirements; the court then applies the PSLRA's rebuttable presumption and competing movants bear the burden of presenting evidence to rebut it.
PRECEDENTIAL VALUE	unpublished

TOPICS

- class actions
- securities fraud
- civil procedure
- commercial litigation
- corporate law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Which movant had the largest financial interest and therefore qualified for the PSLRA's rebuttable presumption of being the most adequate lead plaintiff?
2. Whether Kang made the required preliminary showing of typicality and adequacy under Rule 23(a).
3. Whether Jaramillo rebutted the presumption in favor of Kang by showing that Kang was inadequate or subject to unique defenses.
4. Whether Kang's selection of The Rosen Law Firm as lead class counsel should be approved.

HOLDINGS

1. Kang had the greatest financial interest in the relief sought because, although the competing movants' approximate losses were treated as roughly equivalent, Kang purchased and retained substantially more shares and expended slightly more net funds.
2. The court did not need to choose between FIFO and LIFO because Kang's and Jaramillo's losses were roughly equivalent under either method.
3. Kang made a prima facie showing of typicality because his claims arose from the same alleged misrepresentations and omissions and involved the same alleged injury as the claims of the putative class.
4. Kang made a prima facie showing of adequacy because the record showed no conflict or antagonism with the putative class and his proposed counsel possessed the requisite qualifications, experience, and resources.
5. Jaramillo failed to rebut the presumption that Kang was the most adequate plaintiff because his arguments concerning Kang's calculations did not establish inadequacy, unique defenses, or disqualifying errors.
6. The court approved The Rosen Law Firm as lead class counsel because Kang selected the firm and the court found it capable of effectively representing the class without conflicts.

KEY QUOTATIONS

"The court must appoint as lead plaintiff the member "most capable of adequately representing the interests of class members." (at 3)

"There is a rebuttable presumption that the "most adequate plaintiff" is the movant who (1) files the complaint or made a motion in response to the notice of action, (2) holds "the largest financial interest in the relief sought by the class," and (3) otherwise satisfies the requirements of Rule 23(a), "in particular those of 'typicality' and 'adequacy.'" (at 3)

"Potential class members can rebut this presumption by providing proof that the presumed lead 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." (at 12)

FACTUAL BACKGROUND

WM Technology was formed through a 2021 merger and operated an online cannabis marketplace whose stock traded on NASDAQ. The complaint alleged that WM repeatedly inflated and misreported its monthly active user metric in SEC filings, and that the stock price declined after disclosures concerning the metric. Kang, Jaramillo, and Melchior, each a WM shareholder, sought appointment as lead plaintiff in the resulting securities-fraud class action.

PROCEDURAL HISTORY

Seret Ishak filed a putative securities class action on October 17, 2024. Jay Kang, Lawrence M. Jaramillo, and Vanderlei Melchior separately moved for appointment as lead plaintiff, and each proposed counsel as lead counsel. The court granted Kang's motion, denied Jaramillo's and Melchior's motions, designated Kang as lead plaintiff, and approved The Rosen Law Firm as lead class counsel subject to class certification.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- In re Cavanaugh, 306 F.3d 726, 730, 739 (9th Cir. 2002)
- In re Mersho, 6 F.4th 891, 899, 901 (9th Cir. 2021)
- In re Sonthalia, 2022 WL 3445815, at *1 (9th Cir. Aug. 17, 2022)
- Knox v. Yingli Green Energy Holding Co. Ltd., 136 F. Supp. 3d 1159, 1163, 1165 (C.D. Cal. 2015)
- Richardson v. TVIA, Inc., 2007 WL 1129344, at *3-*4 (N.D. Cal. Apr. 16, 2007)
- In re Olsten Corp. Sec. Litig., 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998)
- Lax v. First Merchants Acceptance Corp., 1997 WL 461036, at *5 (N.D. Ill. Aug. 11, 1997)
- McGee v. Am. Oriental Bioengineering, Inc., 2012 WL 12895668, at *3 (C.D. Cal. Oct. 16, 2012)
- City of Evanston v. N. Ill. Gas. Co., 381 F. Supp. 3d 941, 952 (N.D. Ill. 2019)
- Williams v. Condensed Curriculum Int'l, Inc., 2020 WL 6700492, at *2 (N.D. Cal. Nov. 13, 2020)
- Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 279 (9th Cir. 1979)
- Perlmutter v. Intuitive Surgical, Inc., 2011 WL 566814, at *9-*10 (N.D. Cal. Feb. 15, 2011)
- Tenneson v. Nikola Corp., 2024 WL 905244, at *5 n.5 (D. Ariz. Feb. 29, 2024)
- Kaplan v. Gelfond, 240 F.R.D. 88, 93 (S.D.N.Y. 2007)
- Westchester Putnam Cntys. Heavy & Hwy. Laborers Loc. 60 Benefit Funds v. Brixmor Prop. Grp., 2016 WL 11648466, at *1-*2 (S.D.N.Y. Nov. 29, 2016)
- Maeshiro v. Yatsen Holding Ltd., 2023 WL 4684106, at *5 (S.D.N.Y. July 21, 2023)
- Arias v. Bird Glob., Inc., 2023 WL 3814040 (C.D. Cal. June 2, 2023)
- Owens v. FirstEnergy Corp., 2020 WL 6873421, at *9 (S.D. Ohio Nov. 23, 2020)

- Vignola v. FAT Brands, Inc., 2018 WL 6356109, at *3 (C.D. Cal. Nov. 16, 2018)
- Hanan v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992)
- Zhu v. UCBH Holdings, Inc., 682 F. Supp. 2d 1049, 1053 (N.D. Cal. 2010)
- Staton v. Boeing Co., 327 F.3d 938, 957 (9th Cir. 2003)
- Armour v. Network Assoc., Inc., 171 F. Supp. 2d 1044, 1054 (N.D. Cal. 2001)
- Camp v. Qualcomm, Inc., 2019 WL 277360, at *3-*4 (S.D. Cal. Jan. 22, 2019)
- Query v. Maxim Integrated Prods., Inc., 558 F. Supp. 2d 969, 972, 974 (N.D. Cal. 2008)
- Micholle v. Ophthotech Corp., 2018 WL 1307285, at *9 (S.D.N.Y. Mar. 13, 2018)
- Nager v. Websecure, Inc., 1997 WL 773717, at *1 n.1 (D. Mass. Nov. 26, 1997)

OPINION

Seret Ishak v. WM Technology, Inc.

PER CURIAM.

O 1 2 3 4 5 6 7 8 United States District Court 9 Central District of California 10 11 SERET ISHAK, Case № 2:24-cv-08959-ODW (PVCx) 12 Plaintiff,

ORDER APPOINTING LEAD

13 v.

PLAINTIFF AND CLASS COUNSEL

14 WM TECHNOLOGY, INC. et al., [12, 16, 24] 15 Defendants. 16

17 I. INTRODUCTION

18 Plaintiff Seret Ishak brings this putative class action for securities fraud under
19 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Securities
20 Exchange Act”) against Christopher Beals, Arden Lee, Douglas Francis, Susan Echerd, 21
Mary Hoitt, Scott Gordon, William Healy, and Gregory M. Gentile (“Individual 22 Defendants”) and WM Technology, Inc. (“WM”). (Compl., ECF No 1.) Movants Jay 23 Kang, Lawrence M. Jaramillo, and Vanderlei Melchior each seek appointment as lead 24 plaintiff and their respective counsel as lead counsel. (Jaramillo Mot., ECF No. 12; 25 Kang Mot., ECF No. 16; Melchior Mot., ECF No. 24.) 26 27 28 1 For the reasons discussed below, the Court GRANTS Movant Kang’s Motion for 2 Appointment and DENIES Movants Jaramillo’s and Melchior’s Motions for 3 Appointment.1

4 II. BACKGROUND2

5 On June 16, 2021, WM Holding Company, LLC and Silver Spike Acquisition 6 Corp. merged, forming WM. (Compl. ¶¶ 9–10.) WM is an eCommerce software 7 technology company that operates an online cannabis marketplace. (Id. ¶ 7.) It trades 8 on the NASDAQ exchange under the ticker symbol “MAPS”. (Id. ¶ 8.) 9 Prior to the merger, on May 25, 2021, WM filed its fourth Amended Registration 10 Statement under Form S-4 with the SEC. (Id. ¶ 25.) On May 26, 2021, WM filed its 11 Form Schedule 14A definitive proxy statement with the SEC to solicit votes for its 12 June 10, 2021 special meeting to approve the merger between WM Holding Company,

13 LLC and Silver Spike Acquisition Corp. (Id. ¶ 26.) In both forms, WM inflated its 14 monthly active user (“MAU”) metric and did not accurately represent the true number 15 of MAUs. (Id. ¶ 28.) 16 Thereafter, from August 13, 2021, through August 8, 2024, WM filed eleven 17 Form 10-Q quarterly reports containing false and misleading statements inflating its 18 MAU metric. (Id. ¶¶ 29–30, 33–49.) Between February 25, 2022, and August 8, 2024, 19 WM filed three Form 10-K annual reports with the SEC covering fiscal years 2021 20 through 2023. (Id. ¶¶ 31, 37, 45.) Five Individual Defendants who were WM 21 executives at some point during the relevant period—Beals, Lee, Francis, Hoitt, and 22 Echard—each signed certifications attached to at least one of the quarterly and annual 23 reports attesting to the report’s accuracy, to WM’s implementation of adequate internal 24 controls over financial reporting, and to the disclosure of all fraud. (Id. ¶¶ 31, 33, 35, 25 37, 39, 41, 43, 45–46, 48.) These certifications were false because, by inflating its MAU 26 1 Having carefully considered the papers filed in connection with the Motion, the Court deemed the 27 matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. 28 2 The facts are drawn from Plaintiff’s Complaint and the Court accepts as true for this motion all well-pleaded allegations. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). 1 metric, WM failed to maintain adequate internal controls over financial reporting. (Id. 2 ¶¶ 32–49.) 3 On August 9, 2022, in WM’s Form 8-K and Form 10-Q for the quarter ending on 4 June 30, 2022, WM disclosed that its board of directors had received an internal 5 complaint regarding “the calculation, definition, and reporting of [its] MAUs.” (Id. 6 ¶ 50.) WM’s stock price subsequently dropped over 25%, from \$3.46 a share to \$2.59 7 a share. (Id. ¶ 52.) 8 On September 24, 2024, the SEC issued a litigation release in which it announced 9 charges against WM, Beals, and Lee for negligently misrepresenting WM’s MAU 10 metric in their public reporting. (Id. ¶ 53.) Additionally, following a related SEC 11 administrative proceeding, WM agreed to pay a civil penalty of \$1,500,000 and to the 12 entry of a cease-and-desist order prohibiting further violations of the Securities 13 Exchange Act. (Id. ¶¶ 54–56.) WM’s stock price subsequently dropped 1.9%, closing 14 at \$0.92 on September 25, 2024. (Id. ¶ 57.) 15 Ishak is a WM shareholder. (Id. ¶ 6.) On October 17, 2024, Ishak filed this 16 putative class action asserting securities violations against WM with the class period 17 defined as May 25, 2021, through September 24, 2024. (Id. ¶¶ 1, 6.) Kang, Jaramillo, 18 and Melchior—each a WM shareholder—now separately move to be appointed lead 19 plaintiff and have their attorneys appointed lead counsel. (Jaramillo Mot.; Kang Mot.; 20 Melchior Mot.) The motions are fully briefed.³

21 III. LEGAL STANDARD

22 The Private Securities Litigation Reform Act of 1995 (the “PSLRA”) provides 23 the process for appointing the lead plaintiff in a securities class action. 15 U.S.C. 24 25 26 3 (See Mem. ISO Jaramillo Mot. (“Jaramillo Mem.”), ECF No. 13; Mem. P. & A. ISO Kang Mot. (“Kang Mem.”), ECF No. 17; Mem. P & A. ISO Melchior Mot. (“Melchior Mem.”), ECF No. 25; 27 Non-Opp’n Vanderlei Melchior (“Melchior Non-Opp’n”), ECF No. 29; Opp’n Jay Kang (“Kang 28 Opp’n”),

ECF No. 36; Opp'n Lawrence M. Jaramillo ("Jaramillo Opp'n"), ECF No. 37; Reply Jay Kang ("Kang Reply"), ECF No. 38; Reply Lawrence M. Jaramillo ("Jaramillo Reply"), ECF No. 39.) 1 § 78u-4(a)(3)(B). Any member of the purported class may move to serve as lead 2 plaintiff within 60 days after notice of action is published. Id. § 78u-4(a)(3)(A)(i)(II). 3 The court must appoint as lead plaintiff the member "most capable of adequately 4 representing the interests of class members." Id. § 78u-4(a)(3)(B)(i). There is a 5 rebuttable presumption that the "most adequate plaintiff" is the movant who (1) files 6 the complaint or made a motion in response to the notice of action, (2) holds "the largest 7 financial interest in the relief sought by the class," and (3) otherwise satisfies the 8 requirements of Rule 23(a), "in particular those of 'typicality' and 'adequacy.'" In re 9 Cavanaugh, 306 F.3d 726, 730 (9th Cir. 2002); see 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). 10 A party may rebut the presumption by showing that the presumed most adequate 11 plaintiff "will not fairly and adequately protect the interests of the class" or "is subject 12 to unique defenses that render such plaintiff incapable of adequately representing the 13 class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); In re Mersho, 6 F.4th 891, 899 (9th Cir. 14 2021). 15 Once selected, the lead plaintiff "shall, subject to the approval of the court, select 16 and retain counsel to represent the class." 15 U.S.C. § 78u-4(a)(3)(B)(v).

17 IV. DISCUSSION

18 All movants timely filed Motions for Appointment within 60 days of the 19 published notice. See § 78u-4(a)(3)(A)(i)(II). With timeliness not at issue, the Court 20 must determine which movant has the largest financial interest to be presumed the most 21 adequate plaintiff, whether the movant satisfies the requirements of Rule 23(a), and 22 whether any challenging movant can rebut the presumption. 23 Because Melchior concedes she does not have the largest financial interest, 24 (Melchior Non-Opp'n 1), the Court DENIES Melchior's Motion for Appointment at 25 the outset and considers only Kang's and Jaramillo's Motions. 26 A. Largest Financial Interest 27 The movant with the largest financial interest is deemed the presumptive lead 28 plaintiff. Cavanaugh, 306 F.3d at 730. The PSLRA does not specify how to assess 1 which movant has the largest financial interest, and the Ninth Circuit has left it to the 2 district courts to "select accounting methods that are both rational and consistently 3 applied" in making this determination. Id. at 730 n.4; see also In re Sonthalia,

4 No. 22-70044, 2022 WL 3445815, at *1 (9th Cir. Aug. 17, 2022) ("The PSLRA does 5 not provide a specific method for this calculation."). 6 District courts typically apply the Olsten-Lax factors ("Lax factors") to determine 7 which movant has the largest financial interest: "(1) the number of shares purchased 8 during the class period; (2) the number of net shares purchased during the class period; 9 (3) the total net funds expended during the class periods; and (4) the approximate losses 10 suffered." Knox v. Yingli Green Energy Holding Co. Ltd., 136 F. Supp. 3d 1159, 1163 11 (C.D. Cal. 2015); see Richardson v. TVIA, Inc., No. C 06 06304 RMW, 2007 WL 12 1129344, at *3 (N.D. Cal. Apr. 16, 2007) (first quoting In re Olsten Corp. Sec. Litig., 13 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998); and then citing Lax v. First Merchants 14 Acceptance Corp.,

No. 97 C 2715, 1997 WL 461036, at *5 (N.D. Ill. Aug. 11, 1997)); 15 see also *McGee v. Am. Oriental Bioengineering, Inc.*, No. 2:12-cv-05476-SVW (SHx), 16 2012 WL 12895668, at *3 (C.D. Cal. Oct. 16, 2012) (“Courts in this District and others 17 within the Ninth Circuit have looked to four factors in making this [lead plaintiff] 18 determination.”). 19 The following chart reflects Kang’s and Jaramillo’s respective financial interests 20 regarding the Lax factors: 21

Movant	Total Net Shares	Net Funds FIFO	LIFO	Shares Purchased	Expended	Approximate
Kang	90,559	73,000	\$334,049.874	\$350,571.27	\$286,301.00	
Jaramillo	20,000	20,000	\$326,934.00	\$307,026.88	\$307,026.88	

26 27 4 Kang provides \$444,793.95 as his net funds expended. (Kang Reply 3, 6.) However, the Court 28 agrees with Jaramillo’s assertion that all of Kang’s proceeds from selling shares during the class period—including shares acquired prior to the commencement of the class period—should be netted 1 (Decl. Laurence M. Rosen ISO Kang Mot. (“Rosen Decl. ISO Kang Mot.”) Ex. 3 2 (“Kang’s Loss Chart”), ECF No. 18-3; Decl. Charles H. Linehan ISO Jaramillo Mot. 3 (“Linehan Decl. ISO Jaramillo Mot.”) Ex. C (“Jaramillo’s Loss Chart”), ECF No. 14- 4 3.) 5 1. Weighing the Lax Factors 6 Some courts consider the fourth factor, approximate losses suffered, the “most 7 determinative in identifying the plaintiff with the largest financial [interest].” *Knox*, 8 136 F. Supp. 3d. at 1163 (quoting *Richardson*, 2007 WL 1129344, at *4) (collecting 9 cases). In the absence of binding case law expressly directing courts to prioritize certain 10 factors, it is inherent in the very definition of factors that their relative weight will vary 11 according to the circumstances of each case. See *City of Evanston v. N. Ill. Gas. Co.*, 12 381 F. Supp. 3d 941, 952 (N.D. Ill. 2019) (weighing of factors “not mathematical in 13 nature”); cf. *Williams v. Condensed Curriculum Int’l, Inc.*, No. 4:20-cv-05292-YGR, 14 2020 WL 6700492, at *2 (N.D. Cal. Nov. 13, 2020) (weighing of factors “‘best left to 15 the discretion’ of the Court” (quoting *Commodity Futures Trading Comm’n v. Savage*, 16 611 F.2d 270, 279 (9th Cir. 1979))). Accordingly, the degree to which the fourth Lax 17 factor is given greater weight in comparison to the first three must be determined on a 18 case-by-case basis. 19 When faced with competing movants whose claimed losses are roughly equal, 20 courts treat those losses as equivalent and look to the other three Lax factors to 21 against his expenses during the class period. (See Jaramillo Reply 4.); *Perlmutter v. Intuitive Surgical, Inc.*, No. 10-cv-03451-LHK, 2011 WL 566814, at *9 (N.D. Cal. Feb. 15, 2011) (“[Net funds expended] is calculated by looking at the total cash outlays on [the] stock during the Class Period and 23 subtracting any cash receipts during the same period.”); *Tenneson v. Nikola Corp.*, No. CV-23-02131- PHX-DJH(DMF), 2024 WL 905244, at *5 n.5 (D. Ariz. Feb. 29, 2024) (“[N]et funds expended equals 24 ‘the difference between the amount spent to purchase shares and the amount received for the sale of 25 shares during the class period.’”) (quoting *Kaplan v. Gelfond*, 240 F.R.D. 88, 93 (S.D.N.Y. 2007)). 26 Using this methodology, Jaramillo argues that \$334,078 is Kang’s net expenditure. (Jaramillo Reply 4.) The Court finds this amount is miscalculated because subtracting Kang’s profits 27 (\$110,774.08) from his expenses

(\$444,793.95) returns a net expenditure amount of \$334,049.87. (See 28 Kang's Loss Chart.) Accordingly, the Court applies the \$334,049.87 amount for Kang's net expenditure. 1 determine which movant has the largest financial interest. See, e.g., *Westchester 2 Putnam Cntys. Heavy & Hwy. Laborers Loc. 60 Benefit Funds v. Brixmor Prop. Grp.*, 3 No. 16-cv-02400 (AT)(SN), 2016 WL 11648466, at *1–2, (S.D.N.Y. Nov. 29, 2016) 4 (noting a 16% difference in claimed losses and finding in favor of movant with lower 5 claimed losses where other three factors “overwhelmingly favor[ed]” the movant). As 6 “static markers [are] set in stone during the class period,” the other three factors—shares 7 purchased, net shares purchased, and funds expended—“provide a more objective 8 assessment of a movant's financial interest than the losses suffered . . . [which] may be 9 subject to future changes in the price per share.” *Id.* at *2. 10 2. Kang's and Jaramillo's Approximate Losses 11 The PSLRA limits losses to the difference between the net amount the movant 12 paid for securities during the Class Period and the value of the securities retained 13 through the end of the Class Period, using the ninety-day mean trading price of the 14 security beginning on the day the corrective information is disseminated to the market. 15 15 U.S.C. § 78u-4(e)(1). On this point, Kang and Jaramillo are not in dispute. (See 16 Kang's Loss Chart; Jaramillo's Loss Chart) (both reflecting a 90-day average price of 17 \$0.9954.) 18 Kang and Jaramillo disagree on whether the Court should calculate losses using 19 the First-In-First-Out (“FIFO”) or Last-In-First-Out methodology (“LIFO”). (Compare 20 Kang Reply 3–5 (favoring FIFO approach), with Jaramillo Opp'n 3–4 (favoring LIFO 21 approach).) “Under FIFO, the stocks that were acquired first are assumed to be sold 22 first for loss calculation purposes; under LIFO, the last stocks acquired are assumed to 23 be the first sold.” *McGee*, 2012 WL 12895668, at *3. “[U]nlike FIFO, [LIFO] takes 24 into account gains that might have accrued to plaintiffs during the class period due to 25 the inflation of the stock price.” *Id.* (internal quotations omitted); see also *Perlmutter*, 26 2011 WL 566814, at *10. 27 In this case, the Court need not determine which methodology should be used 28 because Kang's and Jaramillo's losses are roughly equal regardless of whether the Court 1 uses FIFO or LIFO. Kang's FIFO losses are \$350,571.95, whereas Jaramillo's are 2 \$307,026.88—a difference of 12.42%. (Kang Reply 6.) Under LIFO, Jaramillo's losses 3 remain \$307,026.88, and Kang's decrease to \$286,301—an even smaller difference of 4 7.24%. (See Jaramillo Opp'n 4.) Therefore, the Court deems Kang's and Jaramillo's 5 losses to be roughly equal. See *Westchester*, 2016 WL 11648466, at *1–2; *Maeshiro v. 6 Yatsen Holding Ltd.*, No. 22-CV-8165 (JPC) (BCM), 2023 WL 4684106, at *5 7 (S.D.N.Y. July 21, 2023) (“[W]hen courts rely on Lax/Olsten factors other than the 8 largest financial loss, it is typically because the LIFO losses among competing movants 9 are ‘roughly equivalent.’”). 10 Turning to the first three Lax factors to determine which movant has the largest 11 financial interest, the Court finds that Kang emerges ahead. Indeed, Kang purchased 12 and retained more than three times the number of shares that Jaramillo did (Kang 13 purchased 90,559 and retained 73,000 shares compared to Jaramillo's 20,000 purchased 14 and retained). Kang also expended more net funds overall (\$334,049.87 compared to 15 Jaramillo's \$326,934.00).

Considering these figures, that Jaramillo leads Kang in LIFO 16 losses by 7.24% is not enough to outweigh Kang's weighty advantage in the first three 17 factors. See *Arias v. Bird Glob., Inc.*, No. 2:22-cv-08406-ODW (AGRx), 2023 WL 18 3814040 (C.D. Cal. June 2, 2023) (weighing the first three factors when calculation 19 methods proposed by movants resulted in loss differentials ranging from 21% to 1%); 20 see, e.g., *Owens v. FirstEnergy Corp.*, No. 2:20-CV-03785, 2020 WL 6873421, at *9 21 (S.D. Ohio Nov. 23, 2020) (“[S]everal courts [] choose to consider all four Olsen-Lax 22 factors . . . and they typically involve loss differentials of \$20,000 or less.”) (collecting 23 cases); see also *Westchester*, 2016 WL 11648466, at 2 (finding that a lead plaintiff 24 candidate incurring a \$20,884 larger loss did not outweigh the first three factors). Under 25 either proposed approach in a Lax factors analysis, Kang emerges as the movant with 26 the greatest financial interest in the case. 27 28 1 B. Typicality and Adequacy Under Rule 23 2 Having determined that Kang holds the greatest financial interest between the 3 two competing movants, the Court next considers whether Kang makes a prima facie 4 showing of adequacy and typicality under Rule 23. See *Cavanaugh*, 306 F.3d at 730, 5 739. “This analysis need not be as complete as would a similar determination for the 6 purpose of class certification.” *Knox*, 136 F. Supp. 3d at 1165. At this stage, a lead 7 plaintiff “need only make a preliminary showing that it satisfies the typicality and 8 adequacy requirements of Rule 23.” *Id.*; see *Vignola v. FAT Brands, Inc.*, No. 2:18-cv- 9 07469-PSG (PLAx), 2018 WL 6356109, at *3 (C.D. Cal. Nov. 16, 2018) (“The 10 typicality and adequacy requirements are the main focus, and examination of the 11 remaining requirements is deferred until the lead plaintiff moves for class certification.” 12 (cleaned up)). 13 In the PSLRA context, “[t]he test of typicality ‘is whether other members have 14 the same or similar injury, whether the action is based on conduct which is not unique 15 to the named plaintiffs, and whether other class members have been injured by the same 16 course of conduct.’” *Richardson*, 2007 WL 1129344, at *4 (quoting *Hanon v. 17 Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). Here, Kang's claims arise 18 from the same conduct as the claims of every other putative class member. Like all 19 class investors, Kang purchased WM securities when the stock prices were artificially 20 inflated because of Defendants' alleged misrepresentations and omissions. (See Kang

21 Mem. 1–3.) Accordingly, Kang makes a prima facie showing of typicality. See

22 *Vignola*, 2018 WL 6356109, at *3 (finding typicality satisfied in analogous fraud-on- 23 the-market securities class action). 24 The adequacy requirement in this context “is met if there are no conflicts between 25 the representative and class interests and the representative's attorneys are qualified, 26 experienced, and generally able to conduct the litigation.” *Zhu v. UCBH Holdings, Inc.*, 27 682 F. Supp. 2d 1049, 1053 (N.D. Cal. 2010) (citing Fed. R. Civ. P. 23(a)(4)); see also 28 *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) (examining whether class 1 representatives and their counsel have conflicts with other members and will “prosecute 2 the action vigorously”). Here, there is no evidence of any antagonism between Kang's 3 interests and the interests of the proposed class members. (See Kang Mem. 7.) 4 Furthermore, Kang's proposed

class counsel, The Rosen Law Firm, is a reputable class 5 action firm whose attorneys appear to possess the skills, experience, and resources 6 necessary to prosecute this action. (See Rosen Decl. ISO Kang Mot. Ex. 4 (“Rosen 7 Resume”), ECF No. 18-4.) Accordingly, Kang makes a prima facie showing of 8 adequacy. 9 C. Rebuttable Presumption 10 Having made a sufficient prima facie showing of typicality and adequacy under

11 Rule 23, Kang successfully establishes a rebuttable presumption that he is the most 12 adequate plaintiff. See 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Potential class members can 13 rebut this presumption by providing proof that the presumed lead plaintiff “will not 14 fairly and adequately protect the interests of the class” or “is subject to unique defenses 15 that render such plaintiff incapable of adequately representing the class.” Id. 16 § 78u-4(a)(3)(B)(iii)(II); see Cavanaugh, 306 F.3d at 730 (“At the third stage, the 17 process turns adversarial and other plaintiffs may present evidence that disputes the lead 18 plaintiff’s prima facie showing of typicality and adequacy.”). Assertions based on 19 speculation alone will fail to rebut the lead plaintiff presumption. See *Armour v. 20 Network Assoc., Inc.*, 171 F. Supp. 2d. 1044, 1054 (N.D. Cal. 2001) (finding a 21 competing movant’s rebuttal arguments failed because they were based on pure 22 speculation). 23 Under the PSLRA, it is the opposing parties’ burden to obtain and present rebuttal 24 evidence; it is not the movant’s burden to present evidence to extinguish every 25 suggestion of inadequacy made by an opponent. See 15 U.S.C. § 78u-4(a)(3)(B)(iii); 26 *Mersho*, 6 F.4th at 901 (reversing district court’s appointment of lead plaintiff where 27 court improperly “penaliz[ed]” certain movants by “le[aving] the burden on [them] to 28 prove adequacy at step three even though the burden should have shifted to the 1 competing movants to show inadequacy”). 2 Bearing this burden, Jaramillo attempts to rebut the presumption by arguing that 3 Kang’s methods for calculating his net expenditure and estimated losses are 4 disqualifying. (See *Jaramillo Reply* 3–4.) 5 In the cases Jaramillo relies upon, the courts found that movants failed to satisfy

6 Rule 23’s requirements because of significant errors and discrepancies in the putative 7 lead plaintiff’s submissions. See, e.g., *Camp v. Qualcomm, Inc.*, No. 18-cv-1208-AJB- 8 BLM, 2019 WL 277360, at *3–4 (S.D. Cal. Jan. 22, 2019) (finding that significant 9 errors in transaction records and loss calculations, as well as questions surrounding the 10 movant’s typicality, disqualified him under Rule 23). In contrast to the cases he cites, 11 Jaramillo’s assertion that Kang has made “repeated errors inflating his financial 12 interest,” (*Jaramillo Reply* 4), is based largely upon Kang’s use of FIFO, which is a 13 recognized and accepted method for calculating approximate losses suffered, see, e.g., 14 *Query v. Maxim Integrated Prods., Inc.*, 558 F. Supp. 2d 969, 972, 974 (N.D. Cal. 15 2008). 16 Moreover, as described above, even after the Court corrects the calculation of 17 Kang’s net funds expended from \$444,793.95 to \$334,049.87, that factor still favors 18 Kang as lead plaintiff. Because this adjustment derives from a difference in the method 19 of calculation used and not from any outright inaccuracy in the figures Kang provided, 20 it is distinguishable from cases in which courts have found movants inadequate due to 21 overt errors

in their reported data. Cf. *Micholle v. Ophthotech Corp.*, No. 17-CV-1758 22 (VSB), 2018 WL 1307285, at *9 (S.D.N.Y. Mar. 13, 2018) (“[T]he prices [the movant] 23 claims to have paid do not fall within the high and low range listed.”); *Nager v. 24 Websecure, Inc.*, No. CIV.A. 97-10662-GAO, 1997 WL 773717, at *1 n.1 (D. Mass.

25 Nov. 26, 1997) (finding a movant had reported purchases at \$17.50 per share on a day 26 when shares were sold at \$9.50 per share). Jaramillo offers no additional evidence or 27 facts to cast doubt on Kang’s adequacy and, thus, fails to rebut the presumption. See 28 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). 1 Accordingly, the presumption stands, and the Court appoints Kang as lead plaintiff in this matter. Lead Counsel 4 Once a lead plaintiff is selected, that plaintiff “shall, subject to the approval of 5|| the court, select and retain counsel to represent the class.” 1S □□□□□ 6 || § 78u-4(a)(3)(B)(v). Kang has selected The Rosen Law Firm to represent him and the 7|| class. Having reviewed the firm’s resume, the Court is satisfied that the firm will 8 | effectively represent the interests of the class and finds no conflicts in this record. (See 9 || Rosen Resume.) No party has challenged the adequacy of this firm to serve as lead 10 || counsel. Therefore, the Court approves The Rosen Law Firm as lead counsel.

11 Vv. CONCLUSION

12 For the reasons discussed above, the Court GRANTS Kang’s Motion for 13 | Appointment, (ECF No. 16), and DENIES Jaramillo’s and Melchior’s Motions for 14 | Appointment, (ECF Nos. 12, 24). 15 It is hereby ORDERED that Jay Kang 1s designated as lead plaintiff in the action, 16 || and that The Rosen Law Firm is designated as lead class counsel, subject to the Court’s 17 | granting of a Motion for Class Certification. 18 19 IT IS SO ORDERED. 20

21 March 11, 2025 oo

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4 OTIS D. WRIGHT, II

05 UNITED STATES DISTRICT JUDGE

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