

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUCID ALTERNATIVE FUND, LP,
Plaintiff,
v.
FIVE9, INC., et al.,
Defendants.

Case No. 24-cv-08725-PCP

**ORDER GRANTING LUCID
ALTERNATIVE FUND, LP’S MOTION
FOR APPOINTMENT AS LEAD
PLAINTIFF AND APPROVAL OF
SELECTION OF COUNSEL**

Re: Dkt. No. 13

Before the Court is plaintiff Lucid Alternative Fund, LP’s unopposed motion for appointment as lead plaintiff and approval of selection of counsel. For the reasons stated herein, the Court grants Lucid Alternative’s motion.

BACKGROUND

On December 4, 2024, Lucid Alternative filed this class action lawsuit against Five9, Inc., a company that provides software for a cloud-based contact center enabling its clients to manage customer interactions through various channels, including voice, email, chat, and social media. Lucid Alternative alleges that Five9 and certain of its senior officers violated federal securities laws by misrepresenting the strength of the company’s net new business bookings and visibility into its installed customer base from June 4, 2024, through the close of trading on August 8, 2024 (the “class period”), causing the class to purchase Five9 securities at artificially inflated prices.

On February 3, 2025, Lucid Alternative filed a motion for appointment as lead plaintiff and for approval of its selection of lead counsel. There are no competing motions for appointment as lead counsel pending, and Lucid Alternative’s motion is unopposed.

LEGAL STANDARD

The Private Securities Litigation Reform Act of 1995 (“PSLRA”) governs the procedure

1 for selection of lead plaintiff in all private class actions under the Securities Exchange Act of
2 1934, like this case. 15 U.S.C. § 78u-4(a)(3). Under the PSLRA, a district court “shall appoint as
3 lead plaintiff the member or members of the purported plaintiff class that the court determines to
4 be most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-
5 4(a)(3)(B)(i).

6 The PSLRA “provides a simple three-step process for identifying the lead plaintiff.” *In re*
7 *Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). First, the pendency of the action, the claims made,
8 and the purported class period must be publicized in a “widely circulated national business-
9 oriented publication or wire service.” *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). This notice
10 must be published within 20 days of the filing of the complaint. *Id.* It must also alert members of
11 the purported class that they have 60 days to move for appointment as lead plaintiff. 15 U.S.C.
12 § 78u-4(a)(3)(A)(i)(II).

13 Second, the court must identify the presumptive lead plaintiff. To do so, the court “must
14 compare the financial stakes of the various plaintiffs and determine which one has the most to gain
15 from the lawsuit.” *Cavanaugh*, 306 F.3d at 730. The court must then determine whether that
16 individual, “based on the information he has provided in his pleadings and declarations,” satisfies
17 the requirements of Rule 23(a), “in particular those of ‘typicality’ and ‘adequacy.’” *Id.* If the
18 plaintiff with the largest financial interest satisfies these requirements, he becomes the
19 “presumptively most adequate plaintiff.” *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

20 Finally, the other plaintiffs must have “an opportunity to rebut the presumptive lead
21 plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*,
22 306 F.3d at 730. Unless a member of the purported plaintiff class provides proof that the
23 presumptive plaintiff “(aa) will not fairly and adequately protect the interests of the class; or (bb)
24 is subject to unique defenses that render such plaintiff incapable of adequately representing the
25 class,” the court must appoint the presumptively most adequate plaintiff as lead plaintiff. 15
26 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *see also Cavanaugh*, 306 F.3d at 732.

27 Once the determination of lead plaintiff is made, “[t]he most adequate plaintiff shall,
28 subject to the approval of the court, select and retain counsel to represent the class.” 15 U.S.C.

1 § 78u-4(a)(3)(B)(v). “[I]f the lead plaintiff has made a reasonable choice of counsel, the district
 2 court should generally defer to that choice.” *Cohen v. U.S. Dist. Ct. for N. Dist. of Cal.*, 586 F.3d
 3 703, 712 (9th Cir. 2009).

4 ANALYSIS

5 **I. The Court appoints Lucid Alternative as lead plaintiff.**

6 **A. The procedural requirements are satisfied.**

7 Pursuant to the PSLRA, Lucid Alternatives published a notice of the pending action on
 8 December 4, 2024, the same date that it filed the complaint in this case. *See* 15 U.S.C. § 78u-
 9 4(a)(3)(A)(i). The notice announced the pendency of this action, listed the claims, specified the
 10 class period, and advised putative class members that they had 60 days to file a motion to seek
 11 appointment as lead plaintiff in the lawsuit. Thus, the notice complied with the PSLRA’s
 12 requirements. *See* 15 U.S.C. § 78u-4(a)(3)(A).

13 Lucid Alternative filed this motion within the statutory period specified in 15 U.S.C.
 14 § 78u-4(a)(3)(A).¹ Lucid Alternative has therefore met the statutory procedural requirements.

15 **B. Lucid Alternative has the largest financial interest.**

16 The Court must next determine whether Lucid Alternative qualifies as the most adequate
 17 plaintiff by first considering Lucid Alternative’s financial interest in the relief sought. *See*
 18 *Cavanaugh*, 306 F.3d at 730.

19 Lucid Alternative has submitted a sworn certification listing several Five9 transactions
 20 during the class period. Lucid Alternative estimates that it incurred a loss of approximately
 21 \$286,000 (FIFO) / \$287,000 (LIFO) on its investments in Five9 securities during the class period.

22 “Because [Lucid Alternative] was the only movant for appointment as lead counsel and the
 23 motion is unopposed, [Lucid Alternative] is necessarily the prospective lead plaintiff with the
 24 greatest financial interest in the litigation.” *Welgus v. Trinet Grp., Inc.*, No. 15-CV-03625-BLF,
 25 2015 WL 7770222, at *2 (N.D. Cal. Dec. 3, 2015) (collecting cases).

26
 27 ¹ Sixty days from December 3, 2024, was Sunday, February 2, 2025. Lucid Alternative timely
 28 filed its motion on Monday, February 3, 2025. *See* Fed. R. Civ. P. 6(a)(1)(C) (providing that “if
 the last day [of a statutory time period] is a Saturday, Sunday, or legal holiday, the period
 continues to run until the next day that is not a Saturday, Sunday, or legal holiday”).

1 adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Accordingly, the Court
2 appoints Lucid Alternative to serve as lead plaintiff.

3 **II. Bleichmar Fonti & Auld LLP is a reasonable choice for class counsel.**

4 Having been appointed lead plaintiff, Lucid Alternative must “select and retain counsel to
5 represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). Lucid Alternative has selected Bleichmar
6 Fonti & Auld LLP, which has significant prior experience representing plaintiffs in similar class
7 action securities fraud lawsuits. Because Lucid Alternative has made a facially “reasonable choice
8 of counsel” and no other party has suggested that choice is unreasonable, the Court will defer to
9 Lucid Alternative’s selection of counsel and appoint Bleichmar Fonti & Auld LLP as lead counsel.
10 *Cohen*, 586 F.3d at 712.

11 **CONCLUSION**

12 For the foregoing reasons, the Court appoints Lucid Alternative as lead plaintiff and
13 Bleichmar Fonti & Auld LLP as lead counsel.

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15 **IT IS SO ORDERED.**

16 Dated: March 18, 2025

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19 P. Casey Pitts
20 United States District Judge
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