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11 [Proposed] Lead Counsel for [Proposed] Lead Plaintiff

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 In re ZOOM SECURITIES LITIGATION) Case No. No. 2:20-cv-02353-JD

16 This Document Relates To:)
17 ALL ACTIONS.) NOTICE OF MOTION AND MOTION FOR
18) APPOINTMENT AS LEAD PLAINTIFF
) AND APPROVAL OF LEAD PLAINTIFF'S
) SELECTION OF LEAD COUNSEL;
) MEMORANDUM OF LAW IN SUPPORT
) THEREOF

19 DATE: July 16, 2020
20 TIME: 10:00 a.m.
21 CTRM: 11, 19th Floor
22 JUDGE: Hon. James Donato
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1 **NOTICE OF MOTION AND MOTION**

2 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

3 PLEASE TAKE NOTICE that on July 16, 2020, at 10:00 a.m., or as soon thereafter as the
4 matter may be heard in Courtroom 11 of the United States District Court for the Northern District of
5 California, 450 Golden Gate Avenue, San Francisco, CA, 94102 before the Honorable James
6 Donato, class member Adam M. Butt will and hereby does move this Court pursuant to the Private
7 Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(a)(3)(B), for an order: (1)
8 appointing Mr. Butt as lead plaintiff, and (2) approving Mr. Butt’s selection of Robbins Geller
9 Rudman & Dowd LLP as lead counsel. In support of this Motion, Mr. Butt submits herewith a
10 Memorandum of Points and Authorities and the Declaration of Danielle S. Myers (“Myers Decl.”).

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 The above-captioned consolidated securities fraud class action was filed on behalf purchasers
14 of Zoom Video Communications, Inc. (“Zoom” or the “Company”) securities between April 18,
15 2019 and April 6, 2020, both dates inclusive (the “Class Period”).¹ This action was brought pursuant
16 to §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§78j(b)
17 and 78t(a), and Securities and Exchange Commission (“SEC”) Rule 10b-5, 17 C.F.R. §240.10b-5.

18 Pursuant to the PSLRA, the Court “shall appoint the most adequate plaintiff as lead
19 plaintiff.” See 15 U.S.C. §78u-4(a)(3)(B)(ii). The lead plaintiff is the member “of the purported
20 plaintiff class that the court determines to be most capable of adequately representing the interests of
21 class members.” 15 U.S.C. §78u-4(a)(3)(B)(i). Mr. Butt should be appointed as lead plaintiff
22 because he: (1) timely filed this Motion; (2) has a substantial financial interest in the outcome of this
23 litigation; and (3) will typically and adequately represent the class’s interests. See 15 U.S.C. §78u-
24 4(a)(3)(B)(iii). In addition, Mr. Butt’s selection of Robbins Geller to serve as lead counsel should be
25 approved because the firm possesses extensive experience prosecuting securities class actions and

26 ¹ On May 18, 2020, the Court consolidated the following two related securities class actions:
27 *Drieu v. Zoom Video Communications, Inc.*, No. 20-cv-02353-JD, filed on April 7, 2020; and *Brams*
28 *v. Zoom Video Communications, Inc.*, No. 20-cv-02396-JD, filed on April 8, 2020. See ECF No.
15.

1 will adequately represent the interests of all class members. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii); *see*
2 *also* Myers Decl., Exs. B-D.

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

4 1. Whether the Court should appoint Mr. Butt as Lead Plaintiff pursuant to 15 U.S.C.
5 §78u-4(a)(3)(B).

6 2. Whether the Court should approve Mr. Butt’s selection of Robbins Geller as lead
7 counsel.

8 **III. STATEMENT OF FACTS**

9 Zoom provides a video communications platform application (“app”) that allows users to
10 interact with each other primarily in the Americas, Asia Pacific, Europe, Middle East, and Africa.
11 Zoom’s cloud-native platform enables face-to-face video experiences and connects users across
12 various devices and locations in a single meeting.

13 The consolidated action alleges that throughout the Class Period, defendants made false
14 and/or misleading statements and/or failed to disclose that: (i) Zoom had inadequate data privacy and
15 security measures; (ii) contrary to Zoom’s assertions, the Company’s video communications service
16 was not end-to-end encrypted; (iii) as a result, users of Zoom’s communications services were at an
17 increased risk of having their personal information accessed by unauthorized parties, including
18 Facebook; (iv) usage of the Company’s video communications services was foreseeably likely to
19 decline when these facts came to light; and (v) as a result, the Company’s public statements were
20 materially false and misleading at all relevant times.

21 The truth about the deficiencies in Zoom’s software encryption began to come to light as
22 early as July 2019. However, due in large part to Zoom’s obfuscation, it was not until the COVID-
23 19 pandemic in March and April of 2020, with businesses and other organizations increasingly
24 relying on Zoom’s video communications software to facilitate remote work activity during
25 government shelter-in-place orders, that the truth was more fully disclosed.

26 For example, on March 26, 2020, *Motherboard* reported that Zoom’s “privacy policy do[es]
27 [not] make clear . . . that the iOS version of the Zoom app is sending some analytics data to
28 Facebook, even if Zoom users don’t have a Facebook account” and that “Zoom is not forthcoming

1 with the data collection or the transfer of it to Facebook.” ECF No. 1 at ¶49. Then, following a
 2 series of subsequent disclosures regarding Zoom’s privacy issues, on April 6, 2020, New York City
 3 announced that it had banned the use of Zoom in the city’s classrooms, and it was reported on
 4 *Yahoo! Finance* that, “[o]n April 1st, an actor in a popular dark web forum posted a link to a
 5 collection of 352 compromised Zoom accounts,” which “included email addresses, passwords,
 6 meeting IDs, host keys and names, and the type of Zoom account,” and that “one belonged to a
 7 major U.S. healthcare provider, seven more to various educational institutions, and one to a small
 8 business.” *Id.* at ¶¶64-65.

9 As a result, as it became clear through a series of disclosures that Zoom had significantly
 10 overstated the degree to which its video communications software was encrypted, and organizations
 11 consequently prohibited its employees from utilizing Zoom for work activities, the price of Zoom
 12 stock fell significantly from the Company’s Class Period high.

13 **IV. ARGUMENT**

14 **A. Mr. Butt Is the “Most Adequate Plaintiff” and Should Be Appointed 15 Lead Plaintiff**

16 The PSLRA establishes the procedures for the appointment of a lead plaintiff in “each private
 17 action arising under [the Exchange Act] that is brought as a plaintiff class action pursuant to the
 18 Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i).
 19 First, the pendency of the action must be publicized in a widely circulated national business-oriented
 20 publication or wire service not later than 20 days after filing of the first complaint. 15 U.S.C. §78u-
 21 4(a)(3)(A)(i). Next, the PSLRA provides that the Court shall adopt a presumption that the most
 22 adequate plaintiff is the person that:

23 (aa) has either filed the complaint or made a motion in response to a notice . . . ;

24 (bb) in the determination of the court, has the largest financial interest in the relief
 sought by the class; and

25 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 Procedure.

26 15 U.S.C. §78u-4(a)(3)(B)(iii)(I); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002). Mr. Butt
 27 meets each of these requirements and should be appointed Lead Plaintiff.
 28

1 **1. This Motion Is Timely**

2 The statutory notice of the first-filed *Drieu* action was published on April 8, 2020, advising
3 class members of: (1) the pendency of the action; (2) the claims asserted therein; (3) the proposed
4 Class Period; and (4) the right to move the Court to be appointed as lead plaintiff within 60 days of
5 April 8, 2020, or by June 8, 2020. Myers Decl., Ex. A. Because this Motion is being filed on April
6 8, it is timely and Mr. Butt is entitled to be considered for appointment as lead plaintiff.²

7 **2. Mr. Butt Has A Substantial Financial Interest in the Relief
8 Sought by the Class**

9 As evidenced by his PSLRA Certification, Mr. Butt expended more than \$979,000
10 purchasing 6,261 shares of Zoom securities, suffering approximately \$209,500 in losses as a result of
11 defendants' alleged misconduct. *See* Myers Decl., Exs. B, C. Therefore, Mr. Butt has a substantial
12 financial interest in the relief sought by the class.

13 **3. Mr. Butt Is Typical and Adequate of the Putative Class**

14 In addition to possessing a significant financial interest, a lead plaintiff must also “otherwise
15 satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-
16 4(a)(3)(B)(iii)(I)(cc). Rule 23 requires that “the claims or defenses of the representative parties are
17 typical of the claims or defenses of the class; and [that] the representative parties will fairly and
18 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(3)-(4); *Cavanaugh*, 306 F.3d at
19 730 (focusing “in particular” on typicality and adequacy at the lead plaintiff stage); *Bodri v. GoPro,*
20 *Inc.*, 2016 WL 1718217, at *5 (N.D. Cal. Apr. 28, 2016) (same).

21 “Typicality asks whether ‘the claims or defenses of the representative parties are typical of
22 the claims or defenses of the class.’” *Id.* (quoting Fed. R. Civ. P. 23(a)(3)). The adequacy
23 requirement “inquires whether ‘the representative parties will fairly and adequately protect the
24 interests of the class.’” *Id.* (quoting Fed. R. Civ. P. 23(a)(4)).

25 Here, as to typicality, Mr. Butt purchased Zoom securities and suffered the same injury as
26 absent class members when defendants' alleged misconduct was revealed. *See* Myers Decl., Exs. B,

27 ² Sixty days after April 8, 2020 was June 7, 2020, a Sunday; thus, pursuant to Fed. R. Civ. P.
28 6(a)(1)(C), the “next day that is not a Saturday, Sunday, or legal holiday,” is June 8, 2020.

1 C. As to adequacy, Mr. Butt's substantial stake in the outcome of the case indicates he has the
2 requisite incentive to vigorously represent the class's claims. Moreover, Mr. Butt is not aware of
3 any conflicts between his claims and those asserted on behalf of the putative class and is not subject
4 to any unique defenses. Finally, Mr. Butt also submitted with his motion a declaration further
5 demonstrating his adequacy to represent the class in this case. Myers Decl., Ex. D.

6 As such, the Court should find that Mr. Butt has made the requisite showing of typicality and
7 adequacy.

8 **B. The Court Should Approve Mr. Butt's Selection of Counsel**

9 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to
10 the Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should not disturb the lead
11 plaintiff's choice of counsel unless it is necessary to protect the interests of the class. *In re Cohen*,
12 586 F.3d 703, 711-12 (9th Cir. 2009); *Cavanaugh*, 306 F.3d at 732-35. Mr. Butt has selected
13 Robbins Geller as lead counsel in this case.

14 Robbins Geller possesses the experience and resources necessary to successfully prosecute
15 this large and complex action for the benefit of the class. With more than 200 attorneys in offices
16 nationwide, including within this District, Robbins Geller possesses substantial experience in
17 complex securities litigation.³ District courts in this District, and throughout the nation, have noted
18 Robbins Geller's reputation for excellence, resulting in the appointment of Robbins Geller to lead
19 roles in hundreds of securities class actions and other complex litigations. *See, e.g., In re Stitch Fix*,
20 *Inc. Sec. Litig.*, No. 3:18-cv-06208-JD, ECF No. 80 (N.D. Cal. Aug. 9, 2019) (Donato, J.)
21 (appointing Robbins Geller as lead counsel); *In re LendingClub Sec. Litig.*, No. 3:16-cv-02627-
22 WHA, ECF No. 383 (N.D. Cal. Sept 24, 2018) (finalizing the \$125 million settlement Robbins
23 Geller achieved – a settlement that ranks among the top ten largest securities recoveries ever in the
24 Northern District of California.). Indeed, Robbins Geller has obtained the largest securities fraud

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26
27 ³ For a detailed description of Robbins Geller's track record, resources, and attorneys, please
28 see <https://www.rgrdlaw.com>. A hard copy of the Firm's resume is available upon the Court's
request, if preferred.

1 class action recovery in the Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits.⁴ And, while
2 trials in shareholder class actions are rare, Robbins Geller has tried several cases to verdict, most
3 recently a February 2019 trial in *HsingChing Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865-
4 AG-JCG (C.D. Cal.), where the jury returned a verdict for plaintiff, finding that defendants Puma
5 Biotechnology, Inc. and its CEO committed securities fraud.

6 Thus, the Court can be assured that by approving Mr. Butt's choice of Robbins Geller as lead
7 counsel the putative class will receive the highest caliber of representation.

8 **V. CONCLUSION**

9 Mr. Butt has satisfied each of the PSLRA's requirements for appointment as lead plaintiff.
10 As such, Mr. Butt respectfully requests that the Court appoint him as Lead Plaintiff and approve his
11 selection of counsel.

12 DATED: June 8, 2020

Respectfully submitted,

13 ROBBINS GELLER RUDMAN
14 & DOWD LLP
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22 ⁴ See *In re Enron Corp. Sec. Litig.*, No. 4:01-cv-03624 (S.D. Tex.) (\$7.3 billion recovery is
23 largest securities class action recovery in U.S. history and in the Fifth Circuit); *In re Cardinal*
24 *Health, Inc. Sec. Litig.*, No. 2:04-cv-00575-ALM (S.D. Ohio) (\$600 million recovery is the largest
25 securities class action recovery in the Sixth Circuit); *Lawrence E. Jaffe Pension Plan v. Household*
26 *Int'l Inc.*, No. 1:02-cv-05893 (N.D. Ill.) (\$1.575 billion recovery is the largest securities class action
27 recovery following a trial as well as the largest securities class action recovery in the Seventh
28 Circuit); *In re UnitedHealth Group Inc. Sec. Litig.*, No. 0:06-cv-01691-JMR-FLN (D. Minn.) (\$925
million recovery is the largest securities class action recovery in the Eighth Circuit); *In re Qwest*
Comm'n's Int'l, Inc. Sec. Litig., No. 1:01-cv-01451-REB-KLM (D. Colo.) (\$445 million recovery is
the largest securities class action recovery in the Tenth Circuit); *In re HealthSouth Corp. Sec. Litig.*,
No. 2:03-cv-01500-KOB-TMP (N.D. Ala.) (\$671 million recovery is the largest securities class
action recovery in the Eleventh Circuit).

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 8, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Danielle S. Myers
DANIELLE S. MYERS

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Mailing Information for a Case 3:20-cv-02353-JD Drieu v. Zoom Video Communications, Inc. et al

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Manual Notice List

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- (No manual recipients)