

1 Benjamin Heikali SBN 307466
2 **FARUQI & FARUQI, LLP**
3 10866 Wilshire Boulevard, Suite 1470
4 Los Angeles, CA 90024
5 Telephone: 424-256-2884
6 Facsimile: 424-256-2885
7 E-mail: bheikali@faruqilaw.com

8 Richard W. Gonnello (*pro hac vice* forthcoming)
9 **FARUQI & FARUQI, LLP**
10 685 Third Avenue, 26th Floor
11 New York, NY 10017
12 Telephone: 212-983-9330
13 Facsimile: 212-983-9331
14 E-mail: rgonnello@faruqilaw.com

15 *Attorneys for Proposed Lead Plaintiff Lawrence Jarnes*

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE ZOOM SECURITIES LITIGATION

Case No. 3:20-cv-02353-JD

**NOTICE OF MOTION AND MOTION
OF LAWRENCE JARNES FOR (1)
APPOINTMENT AS LEAD PLAINTIFF
AND (2) APPROVAL OF LEAD
COUNSEL; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

CLASS ACTION

Judge: Hon. James Donato
Date: July 16, 2020
Time: 10:00 a.m.
Courtroom: 11 – 19th Floor

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION 1
- II. FACTUAL BACKGROUND..... 3
- III. ARGUMENT 4
 - A. Jarnes Is Entitled To Be Appointed Lead Plaintiff For The Class..... 4
 - 1. The PSLRA’s Provisions Concerning the Appointment of a Lead Plaintiff 4
 - 2. Under the PSLRA, Jarnes Is Entitled To Be Appointed Lead Plaintiff 5
 - a. Jarnes Filed a Timely Motion 5
 - b. Jarnes Has the Largest Financial Interest in the Relief Sought by the Class 5
 - c. Jarnes Meets Rule 23’s Typicality and Adequacy Requirements... 6
 - B. The Court Should Approve Jarnes’s Selection Of The Faruqi Firm As Lead Counsel 8
- IV. CONCLUSION..... 10

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases	Page(s)
<i>Apple v. LJ Int’l, Inc.</i> , No. CV 07-6076 GAF, 2008 WL 11343371 (C.D. Cal. Feb. 8, 2008).....	7
<i>In re Cavanaugh</i> , 306 F.3d 726 (9th Cir. 2002)	2, 4,
<i>In re Century Aluminum Co. Sec. Litig.</i> , No. C 09-1001 SI, 2009 WL 2905962 (N.D. Cal. Sept. 8, 2009).....	7
<i>In re China Mobile Games & Entm’t Grp., Ltd. Sec. Litig.</i> , 68 F. Supp. 3d 390 (S.D.N.Y. 2014).....	8
<i>City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.</i> , No. 5:11-CV-04003-LHK, 2012 WL 78780 (N.D. Cal. Jan. 9, 2012)	6
<i>In re Diamond Foods, Inc.</i> , 281 F.R.D. 405 (N.D. Cal. 2012).....	6
<i>In re Heritage Bond Litig.</i> , No. 02-ML-1475 DT, 2004 WL 1638201 (C.D. Cal. July 12, 2004).....	6, 7
<i>Herrera v. LCS Fin. Servs. Corp.</i> , 274 F.R.D. 666 (N.D. Cal. 2011).....	6
<i>Hodges v. Akeena Solar, Inc.</i> , 263 F.R.D. 528 (N.D. Cal. 2009).....	5, 6
<i>Lloyd v. CVB Fin. Corp.</i> , No. CV 10-06256 MMM, 2011 WL 13128303 (C.D. Cal. Jan. 21, 2011).....	5
<i>Query v. Maxim Integrated Prods.</i> , 558 F. Supp. 2d 969 (N.D. Cal. 2008)	6
<i>Weisz v. Calpine Corp.</i> , No. 4:02–CV–1200, 2002 WL 32818827 (N.D. Cal. Aug. 19, 2002).....	7
<i>Zak v. Chelsea Therapeutics Int’l, Ltd.</i> , 780 F.3d 597 (4th Cir. 2015)	9
Statutes	
15 U.S.C. §§ 78u-4(a).....	<i>passim</i>
Other Authorities	
Rule 23(a)(4).....	7

NOTICE OF MOTION AND MOTION

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that on July 16, 2020, at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable James Donato, in Courtroom 11, 19th Floor, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Lawrence Jarnes (“Jarnes”) will move this Court for an order (1) appointing him as Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u- 4(a)(3)(B); (2) approving his selection of Faruqi & Faruqi, LLP (the “Faruqi Firm”) as Lead Counsel; and (3) granting such other relief as the Court may deem just and proper. In support of his motion, Jarnes respectfully submits a Memorandum of Law and the Declaration of Benjamin Heikali.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether Jarnes should be appointed as Lead Plaintiff.
2. Whether Jarnes’s selection of Faruqi Firm as Lead Counsel should be approved.

MEMORANDUM OF POINTS AND AUTHORITIES

Movant Jarnes, on behalf of himself and the putative Class defined herein, respectfully submits this memorandum of law pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (“Exchange Act”), as amended by the PSLRA, 15 U.S.C. § 78u- 4(a)(3)(B), in support of his motion for the entry of an order (1) appointing Jarnes as Lead Plaintiff and (2) approving Jarnes’s selection of the Faruqi Firm as Lead Counsel.¹

I. INTRODUCTION

Presently pending in this District is the above-captioned consolidated securities class action brought on behalf of a putative class (the “Class”) of persons other than Defendants who purchased or otherwise acquired the publicly traded securities of Zoom Video Communications, Inc. (“Zoom” or the “Company”) between April 18, 2019 and April 6, 2020, both dates inclusive (the “Class

¹ All internal citations and quotations are omitted, and all emphases are added unless otherwise noted.

1 Period”), seeking to pursue remedies under the Exchange Act.² In connection therewith, various
2 movants may seek to be appointed Lead Plaintiff and approval of their selection for Lead Counsel.

3 With respect to the appointment of a lead plaintiff to oversee the Consolidated Action,
4 Congress established a presumption in the PSLRA that requires the Court to appoint the movant
5 who demonstrates the “largest financial interest” in the litigation and who also satisfies Rule 23’s
6 typicality and adequacy requirements for class representatives. 15 U.S.C. § 78u-4(a)(3)(B)(iii); *see*
7 *generally In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002).

8 With total losses of \$135,452.49, Jarnes, to the best of counsel’s knowledge, has the largest
9 financial interest in the litigation of any movant. Jarnes also satisfies Rule 23’s typicality and
10 adequacy requirements. Jarnes’s claims are typical of the Class’s claims because he suffered losses
11 in his Zoom investments as a result of the defendants’ false and misleading statements. Further,
12 Jarnes has no conflict with the Class and will adequately protect the Class’s interests given his
13 significant financial stake in the litigation and his conduct to date in prosecuting the litigation,
14 including his submission of the requisite certification and his selection of experienced class counsel.
15 Accordingly, Jarnes is the presumptive Lead Plaintiff.

16 Lastly, if appointed Lead Plaintiff, Jarnes is entitled to select, subject to the Court’s
17 approval, Lead Counsel to represent the putative Class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). Jarnes
18 has engaged the Faruqi Firm for this purpose. The Faruqi Firm is an appropriate selection to serve
19 as Lead Counsel because it is a highly experienced plaintiffs’ firm with substantial securities class
20 action experience.

21 For the reasons summarized above and those explained more fully below, Jarnes’s motion
22 should be granted in its entirety.

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25 ² On May 18, 2020, the Court consolidated the following actions: (1) *Drieu v. Zoom Video*
26 *Communications, Inc.*, No. 20-cv-02353-JD (“*Drieu*”), which was commenced on April 7, 2020;
27 and (2) and *Brams v. Zoom Video Communications, Inc.*, No. 20-cv-02396-JD (“*Brams*”), which
28 was commenced on April 8, 2020. *See Drieu*, ECF No. 24; *Brams*, ECF No. 15. The *Drieu* and
Brams cases were consolidated into the lowest number docket, *i.e.*, *Drieu*, which was
recaptioned *In re Zoom Securities Litigation*, No. 20-cv-02353-JD (the “Consolidated Action”).
Consolidated Action, ECF No. 24.

II. FACTUAL BACKGROUND

Zoom is incorporated in Delaware and Zoom's principal executive offices are located at 55 Almaden Boulevard, 6th Floor, San Jose, California, 95113. *Drieu*, ECF No. 1 ("*Drieu* Compl.") at ¶15; *Bram*, ECF No. 1 ("*Bram* Compl.") at ¶14. Zoom's stock trades on the NASDAQ under the ticker symbol "ZM." *Drieu* Compl. ¶15; *Bram* Compl. ¶14. Zoom provides a video communications platform that allows users to connect through frictionless video, voice, chat, and content sharing. *Drieu* Compl. ¶22; *Bram* Compl. ¶20.

The complaints filed in the Consolidated Action allege that defendants knowingly and/or recklessly made false and/or misleading statements and/or failed to disclose the following facts: (1) Zoom had inadequate data privacy and security measures; (2) contrary to Zoom's assertions, the Company's video communications service was not end-to-end encrypted; (3) as a result of all the foregoing, users of Zoom's communications services were at an increased risk of having their personal information accessed by unauthorized parties, including Facebook; (4) usage of the Company's video communications services was foreseeably likely to decline when the foregoing facts came to light; and (5) as a result, the Company's public statements were materially false and misleading at all relevant times. *Drieu* Compl. ¶34; *Bram* Compl. ¶38.

The truth began to emerge through a series of disclosures, revealing, *inter alia*, that Zoom had significantly overstated the degree to which its video communication software was encrypted, resulting in organizations prohibiting its employees from using Zoom for work activities, and the Company's stock price plummeted, damaging investors. *Drieu* Compl. ¶¶49-66; *Bram* Compl. ¶¶58-84.

Through the Consolidated Action, Jarnes seeks to recover for himself and absent class members the substantial losses that were suffered as a result of the defendants' fraud.

1 **III. ARGUMENT**

2 **A. Jarnes Is Entitled To Be Appointed Lead Plaintiff For The Class**

3 **1. The PSLRA's Provisions Concerning the Appointment of a Lead**
4 **Plaintiff**

5 The PSLRA governs the appointment of a lead plaintiff for “each private action arising
6 under the [Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of
7 Civil Procedure.” 15 U.S.C. §§ 78u-4(a)(1), 78u-4(a)(3)(B)(I). It provides that within 20 days of
8 the filing of the action, the plaintiff is required to publish notice in a widely circulated business-
9 oriented publication or wire service, informing class members of their right to move the Court,
10 within 60 days of the publication, for appointment as the lead plaintiff. *Cavanaugh*, 306 F.3d at
11 729 (citing 15 U.S.C. § 78u-4(a)(3)(A)).

12 Under 15 U.S.C. § 78u-4(a)(3)(B)(i), the Court is then to consider any motion made by class
13 members and is to appoint as the lead plaintiff the movant that the Court determines to be “most
14 capable of adequately representing the interests of class members.” Further, the PSLRA establishes
15 a rebuttable presumption that the “most adequate plaintiff” is the person that

16 (aa) has either filed the complaint or made a motion in response to a notice
17 [published by a complainant]; (bb) in the determination of the court, has the
18 largest financial interest in the relief sought by the class; and (cc) otherwise
satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

19 *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d at 730 (describing the PSLRA’s two-
20 step competitive process for determining the “most adequate plaintiff”).

21 Once it is determined who among the movants seeking appointment as lead plaintiff is the
22 presumptive lead plaintiff, the presumption can be rebutted only upon proof by a class member that
23 the presumptive lead plaintiff: “(aa) will not fairly and adequately protect the interests of the class;
24 or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing
25 the class.” 15 U.S.C. § 78u- 4(a)(3)(B)(iii)(II); *see also Cavanaugh*, 306 F.3d at 730.

1 **2. Under the PSLRA, Jarnes Is Entitled To Be Appointed Lead Plaintiff**

2 As discussed below, Jarnes should be appointed Lead Plaintiff because all of the PSLRA's
3 procedural hurdles have been satisfied, Jarnes holds the largest financial interest of any movant, and
4 Jarnes otherwise satisfies Rule 23's typicality and adequacy requirements.

5 **a. Jarnes Filed a Timely Motion**

6 Pursuant to 15 U.S.C. § 78u-4(a)(3)(A)(i), the plaintiff filing the initial complaint was
7 required to publish notice of the complaint within twenty (20) days of its filing. Counsel for first-
8 filed plaintiff Michael Drieu published notice of the lead plaintiff deadline via *Globe Newswire* on
9 April 8, 2020.³ *See* Ex. 1.⁴ Consequently, any member of the proposed Class in the Actions was
10 required to file a motion seeking to be appointed Lead Plaintiff within 60 days after publication of
11 the notice (*i.e.*, on or before June 8, 2020).⁵ *See* 15 U.S.C. § 78u-4(a)(3)(A)(i). Thus, Jarnes's
12 motion is timely filed. Additionally, pursuant to Section 21D(a)(2) of the Exchange Act, Jarnes
13 timely signed and submitted a certification with his motion, identifying all of his relevant
14 transactions in Zoom securities during the Class Period, and detailing his suitability to serve as
15 Lead Plaintiff. *See* Ex. 2. The PSLRA's procedural requirements have therefore been met.

16 **b. Jarnes Has the Largest Financial Interest in the Relief Sought**
17 **by the Class**

18 The PSLRA instructs the Court to adopt a rebuttable presumption that the "most adequate
19 plaintiff" for lead plaintiff purposes is the person with the largest financial interest in the relief
20 sought by the class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

21 Although the PSLRA is silent as to the methodology courts are to use in determining which
22 movant has the largest financial interest in the relief sought, courts in this Circuit typically look to

23 ³ Publication by *Globe Newswire* is an adequate means for meeting the PSLRA statutory
24 requirement that notice be published in a widely circulated national business-oriented wire service.
25 *See, e.g., Hodges v. Akeena Solar, Inc.*, 263 F.R.D. 528, 531 (N.D. Cal. 2009) (considering
publication in *Globe Newswire* to be sufficient to satisfy the PSLRA's notice requirement).

26 ⁴ All references to Exhibits are references to the exhibits annexed to the Declaration of
Benjamin Heikali filed in support hereof.

27 ⁵ Given that the 60th day fell on Sunday, June 7, 2020, Fed. R. Civ. P. 6(a)(1)(C) extends
28 the deadline to Monday, June 8, 2020.

1 four factors in the inquiry: (1) the number of shares purchased by the movant during the Class
2 Period; (2) the number of net shares purchased by the movant during the Class Period; (3) the total
3 net funds expended by the movant during the Class Period; and (4) the approximate losses suffered
4 by the movant. *See Query v. Maxim Integrated Prods.*, 558 F. Supp. 2d 969, 973 (N.D. Cal. 2008).
5 Courts have placed the most emphasis on the last of the four factors: the approximate losses
6 suffered by the movant. *In re Diamond Foods, Inc.*, 281 F.R.D. 405, 408 (N.D. Cal. 2012) (“The
7 fourth factor, approximate loss, is generally considered the most important factor.”); *City of Royal*
8 *Oak Ret. Sys. v. Juniper Networks, Inc.*, No. 5:11-CV-04003-LHK, 2012 WL 78780 (N.D. Cal. Jan.
9 9, 2012) (“Courts applying the *Olsten* test generally place the greatest emphasis on the last of these
10 factors[,]” *i.e.*, approximate losses.).

11 Overall, during the Class Period, Jarnes purchased 5,000 net and total Zoom shares,
12 expended \$750,152.50 in net funds, and suffered losses of \$135,452.49 when calculated using a last
13 in, first out (“LIFO”) methodology. *See* Ex. 3. Jarnes is presently unaware of any other movant
14 with a larger financial interest in the outcome of this litigation.

15 **c. Jarnes Meets Rule 23’s Typicality and Adequacy Requirements**

16 In addition to possessing the largest financial interest in the outcome of the litigation, the
17 PSLRA also requires that the lead plaintiff satisfy Rule 23 of the Federal Rules of Civil Procedure.
18 *See* 15 U.S.C. § 78u-4(a)(3)(B). When assessing a potential lead plaintiff, only Rule 23(a)’s
19 typicality and adequacy requirements are relevant. *See, e.g., Cavanaugh*, 306 F.3d at 730; *see*
20 *Hodges*, 263 F.R.D. at 532 (“At this stage, the focus is primarily on the typicality and adequacy of
21 representation requirements and only a preliminary showing is necessary.”).

22 When assessing a movant’s typicality, courts in this Circuit consider whether the other class
23 members “have the same or similar injury, whether the action is based on conduct which is not
24 unique to the [movant], and whether other class members have been injured by the same course of
25 conduct.” *Hodges*, 263 F.R.D. at 532. However, a movant’s “claims are typical if they are
26 reasonably co-extensive with those of absent class members; they need not be substantially
27 identical.” *Herrera v. LCS Fin. Servs. Corp.*, 274 F.R.D. 666, 678 (N.D. Cal. 2011); *In re Heritage*
28

1 *Bond Litig.*, No. 02-ML-1475 DT, 2004 WL 1638201, at *7 (C.D. Cal. July 12, 2004) (“Courts
2 have held that if the claims of the named plaintiffs and putative class members involve the same
3 conduct by the defendant, typicality is established regardless of the factual differences.”).

4 Jarnes’s claims are clearly typical of the Class’s claims. Jarnes purchased Zoom common
5 stock during the Class Period, suffered damages as a result of the Company’s false and misleading
6 statements, and, as a result, possesses claims against Zoom and its officers under the federal
7 securities laws. Because the factual and legal bases of his claims are similar, if not identical, to
8 those of the Class’s claims, Jarnes necessarily satisfies the typicality requirement. *Apple v. LJ Int’l,*
9 *Inc.*, No. CV 07-6076 GAF (JWJx), 2008 WL 11343371, at *5 (C.D. Cal. Feb. 8, 2008) (finding
10 movant’s claims typical of the class where movant purchased stock during the class period when
11 the value was inflated due to defendants’ alleged misrepresentations).

12 With respect to adequacy, Rule 23(a)(4) requires that the representative party will “fairly
13 and adequately protect the interests of the Class.” Adequate representation will be found if able and
14 experienced counsel represent the movant, the movant has no fundamental conflicts of interest with
15 the class as a whole, and the action is not likely collusive. *See Weisz v. Calpine Corp.*,
16 No. 4:02–CV–1200, 2002 WL 32818827, at *9 (N.D. Cal. Aug. 19, 2002) (“The Ninth Circuit has
17 held that representation is ‘adequate’ when counsel for the class is qualified and competent, the
18 representative’s interests are not antagonistic to the interests of absent class members, and it is
19 unlikely that the action is collusive.”).

20 Based on the representations in Jarnes’s certification, his interests are perfectly aligned
21 with—and by no means antagonistic to—the interests of the Class. *See In re Century Aluminum*
22 *Co. Sec. Litig.*, No. C 09-1001 SI, 2009 WL 2905962, at *4 (N.D. Cal. Sept. 8, 2009) (movant’s
23 certification evidenced adequacy to serve as the lead plaintiff). Moreover, Jarnes has also selected
24 and retained highly competent counsel to litigate the claims on behalf of himself and the Class. As
25 explained in Section III.B below, the Faruqi Firm is highly regarded for its experience, knowledge,
26 and ability to conduct complex securities class action litigation. *See Ex. 4.* Consequently, Jarnes is

1 more than adequate to represent the Class and has every incentive to maximize the Class's
2 recovery.

3 In light of the foregoing, Jarnes respectfully submits that he is the presumptive Lead
4 Plaintiff and should be appointed Lead Plaintiff for the Consolidated Action.

5 **B. The Court Should Approve Jarnes's Selection Of The Faruqi Firm As Lead**
6 **Counsel**

7 Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), the Lead Plaintiff is entitled to select and
8 retain Lead Counsel for the Class, subject to the Court's approval. Jarnes has selected the Faruqi
9 Firm to be Lead Counsel for the Class. The Faruqi Firm is a minority-owned and woman-owned
10 law firm, and, as reflected in the firm's resume, possesses extensive experience successfully
11 litigating complex class actions on behalf of plaintiffs, including securities class actions. *See Ex.*
12 *4; see also In re China Mobile Games & Entertainment Group, Ltd. Sec. Litig.*, 68 F. Supp. 3d
13 390, 401 (S.D.N.Y. 2014) (appointing the Faruqi Firm as sole lead counsel and noting: "Faruqi
14 & Faruqi has extensive experience in the area of securities litigation and class actions. The
15 firm's resume indicates that it has litigated more than ten prominent securities class actions since
16 its founding in 1995. Faruqi & Faruqi achieved successful outcomes in many of these cases.").
17 For example, the Faruqi Firm has previously obtained significant recoveries for injured investors.
18 *See, e.g., Larkin v. GoPro, Inc.*, No. 4:16-cv-06654-CW (N.D. Cal. 2019) (where, as sole lead
19 counsel, the firm obtained final approval of \$6.75 million settlement); *In re Avalanche*
20 *Biotechnologies Sec. Litig.*, No. 3:15-cv-03185-JD (N.D. Cal. 2017) (appointed as sole lead
21 counsel in the federal action, and together with lead counsel in a parallel state action, obtained
22 final approval of a \$13 million global settlement); *Rihn v. Acadia Pharms., Inc.*, No. 3:15-cv-
23 00575-BTM-DHB (S.D. Cal. 2017) (where, as sole lead counsel, the Faruqi Firm obtained final
24 approval of a \$2.925 million settlement); *In re Geron Corp., Sec. Litig.*, No. 3:14-CV-01424
25 (CRB) (N.D. Cal. 2017) (where, as sole lead counsel, the Faruqi Firm obtained final approval of
26 a \$6.25 million settlement); *In re Dynavax Techs. Corp. Sec. Litig.*, No. 12-CV-02796 (CRB)
27 (N.D. Cal. 2016) (where, as sole lead counsel, the Faruqi Firm obtained final approval of a \$4.5
28

1 million settlement); *McIntyre v. Chelsea Therapeutics Int'l, LTD*, No. 12-CV-213-MOC-DCK
2 (W.D.N.C. 2016) (where, as sole lead counsel, the Faruqi Firm secured the reversal of the district
3 court's dismissal of the action at the Fourth Circuit, *see Zak v. Chelsea Therapeutics Int'l, Ltd.*,
4 780 F.3d 597 (4th Cir. 2015), and obtained final approval of a \$5.5 million settlement); *In re*
5 *L&L Energy, Inc. Sec. Litig.*, No. 13-CV-06704 (RA) (S.D.N.Y. 2015) (where the Faruqi Firm as
6 co-lead counsel, secured a \$3.5 million settlement); *In re Ebix, Inc. Sec. Litig.*, No. 1:11-CV-
7 02400-RWS (N.D. Ga. 2014) (where the Faruqi Firm, as sole lead counsel for the class, secured
8 a \$6.5 million settlement); *Shapiro v. Matrixx Initiatives, Inc.*, No. CV-09-1479-PHX-ROS (D.
9 Ariz. 2013) (where the Faruqi Firm, as co-lead counsel for the class, secured a \$4.5 million
10 settlement); *In re United Health Grp. Inc. Deriv. Litig.*, Case No. 27 CV 06-8065 (Minn. 4th Jud.
11 Dt. 2009) (where the Faruqi Firm, as co-lead counsel, obtained a recovery of more than \$930
12 million for the benefit of the Company and negotiated important corporate governance reforms
13 designed to make the nominal defendant corporation a model of responsibility and transparency);
14 *In re Tellium Inc. Sec. Litig.*, No. 02 CV-5878 (FLW) (D.N.J. 2006) (where the Faruqi Firm, as
15 co-lead counsel, recovered a \$5.5 million settlement); *In re Olsten Corp. Sec. Litig.*, No. 97-CV-
16 5056 (E.D.N.Y. 2005) (where the Faruqi Firm, as co-lead counsel, recovered \$24.1 million for
17 class members); *Ruskin v. TIG Holdings, Inc.*, No. 98-CV-1068 (S.D.N.Y. 2002) (where the
18 Faruqi Firm, as co-lead counsel, recovered \$3 million for the class); and *In re Purchase Pro Inc.*
19 *Sec. Litig.*, No. CV-C-01-0483-JLQ (D. Nev. 2001) (where the Faruqi Firm, as co-lead counsel
20 for the class, secured a \$24.2 million settlement).

21 The Faruqi Firm is also currently litigating several prominent securities class actions.
22 *See, e.g., Attigui v. Tahoe Resources, Inc.*, No. 2:18-cv-01868-RFB-NJK (D. Nev.) (appointed as
23 sole lead counsel for the class); *DeSmet v. Intercept Pharmaceuticals Inc.*, No. 1:17-cv-07371-
24 LAK (S.D.N.Y.) (appointed as sole lead counsel for the class); *Khanna v. Ohr Pharmaceutical*
25 *Inc.*, No. 1:18-cv-01284-LAP (S.D.N.Y.) (appointed as sole lead counsel for the class); *Lee v.*
26 *Synergy Pharmaceuticals, Inc.*, No. 1:18-cv-00873-AMD-VMS (E.D.N.Y.) (appointed as co-
27 lead counsel for the class); *Smith v. CV Sciences, Inc.*, No. 2:18-cv-01602-JAD-PAL (D. Nev.)

1 (appointed as sole lead counsel for the class); *Sharma v. Amarin Corp., plc*, No. 3:19-cv-06601-
2 BRM-TJB (D.N.J.) (appointed as co-lead counsel for the class); *Miranda v. Ideanomics, Inc.*,
3 No. 1:19-cv-06741-GBD (S.D.N.Y.) (appointed as sole lead counsel for the class); *Malhotra v.*
4 *Sonim Technologies, Inc.*, No. 3:19-cv-06416-MMC (N.D. Cal.) (appointed as sole lead counsel
5 for the class).

6 **IV. CONCLUSION**

7 For the foregoing reasons, Jarnes respectfully requests that the Court (1) appoint Jarnes as
8 Lead Plaintiff; (2) approve his selection of the Faruqi Firm as Lead Counsel; and (3) grant such
9 other relief as the Court may deem just and proper.

10 Dated: June 8, 2020

Respectfully submitted,

11 By: /s/ Benjamin Heikali
12 Benjamin Heikali

13 **FARUQI & FARUQI, LLP**
14 Benjamin Heikali SBN 307466
15 10866 Wilshire Boulevard, Suite 1470
16 Los Angeles, CA 90024
17 Telephone: 424-256-2884
18 Facsimile: 424-256-2885
19 E-mail: bheikali@faruqilaw.com

20 Richard W. Gonnello (*pro hac vice* forthcoming)
21 685 Third Avenue, 26th Floor
22 New York, NY 10017
23 Telephone: 212-983-9330
24 Facsimile: 212-983-9331
25 E-mail: rgonnello@faruqilaw.com

26 *Attorneys for Proposed Lead Plaintiff*
27 *Lawrence Jarnes and Proposed Lead*
28 *Counsel for the putative Class*

CERTIFICATE OF SERVICE

I hereby certify 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 denoted on the Electronic Mail Notice List.

By: /s/ Benjamin Heikali
Benjamin Heikali

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