

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BANDOL LIM, <i>et al.</i> ,)	
)	CASE NO. 4:23CV1454
Plaintiff,)	
)	JUDGE BENITA Y. PEARSON
v.)	
)	<u>ORDER APPOINTING LEAD</u>
EDWARD HIGHTOWER, <i>et al.</i> ,)	<u>PLAINTIFFS, LEAD COUNSEL, AND</u>
)	<u>LIAISON COUNSEL</u>
Defendants.)	[Resolving ECF Nos. 19 and 20]

Pending in this putative private securities class action are:

The RIDE Investor Group’s Motion for Appointment as Lead Plaintiff and Approval of its Selection of Lead Counsel ([ECF No. 19](#)), and

Andrew Strickland and Joshua Strickland’s (the “Stricklands”) Motion for Appointment as Lead Plaintiffs and Approval of Lead Counsel and Liaison Counsel ([ECF No. 20](#)).

The Court has been advised, having reviewed the record, the parties’ briefs, and the applicable law. The Court has also considered the Declarations of Scott D. Simpkins (ECF Nos. [19-2](#) and [21-1](#)) and the exhibits attached thereto, and the Declarations of John C. Camillus (ECF Nos. [20-1](#) and [22-1](#)) and the exhibits attached thereto. For the reasons that follow, the Court appoints the Stricklands as Lead Plaintiffs and approves their selection of Faruqi & Faruqi, LLP (the “Faruqi Firm”) and Law Offices of John C. Camillus, LLC (the “Camillus Firm”) to be Lead Counsel and Liaison Counsel for the Class, respectively.

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I.

Plaintiff Bandol Lim¹ brings this action on behalf of a purported class of shareholders of Lordstown Motors Corporation (“Lordstown”) securities seeking redress for the defendants’ alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, [15 U.S.C. §§ 78j\(b\), 78t\(a\)](#), and SEC Rule 10b-5, [17 C.F.R. § 240.10b-5](#), promulgated thereunder. The proposed class consists of all persons or entities that purchased or otherwise acquired publicly-traded securities of Lordstown during the period from August 4, 2022 through and including June 26, 2023 (the “Class Period”). Defendants Edward Hightower and Adam Kroll were Lordstown’s two most senior officers during the Class Period.² According to Plaintiff, “[d]uring the Class Period, Defendants repeatedly made and/or caused Lordstown to make false and/or misleading statements about Lordstown’s relationship with [Hon Hai Technology Group (“Foxconn”)] suggesting, or in some instances, representing that Foxconn

¹ Bandol Lim, Nico Gatzaros, and Richard Dowell are the “RIDE Investor Group.” The Private Securities Litigation Reform Act of 1995 (“PSLRA”), [15 U.S.C. § 78u-4, et seq.](#) explicitly permits a “group of persons” to serve as lead plaintiff. *See* [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)\(iii\)\(I\)](#).

² Lordstown was not named as a defendant because the company filed for protection under Chapter 11 of the U.S. Bankruptcy Code prior to this action being filed. *See* [In re: Lordstown Motors Corp., No. 23-10831 \(MFW\) \(Bankr. D. Del.\) \(filed June 27, 2023\)](#). It is worth noting that absent a bankruptcy carveout for the benefit of the putative class, there apparently are provisions within the proposed bankruptcy plan that would discharge all claims against Lordstown’s current and former directors and officers, including Defendants. *See* Memorandum in Support of the RIDE Investor Group’s Motion ([ECF No. 19-1](#)) at PageID #: 115 n. 6; *see also* Modified First Amended Joint Chapter 11 Plan of Lordstown and Its Affiliated Debtors ([Doc 657](#)), filed on November 1, 2023, at Article VIII.C on Page 53, Article I.A ¶¶ 122 and 123 on Page 18, and Article VIII.D on Page 53-54.

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was working cooperatively with Lordstown when in fact, the partnership had stalled soon after the execution of [a joint venture agreement (the “JV Agreement”)] and quickly soured.” Class Action Complaint ([ECF No. 1](#)) at PageID #: 3, ¶ 5.

The PSLRA governs the lead plaintiff appointment process in this case. On July 26, 2023, Plaintiff published a notice via *Business Wire* ([ECF No. 19-3](#)) alerting investors, including the Stricklands, to the pendency of the case at bar and the claims asserted therein, and informing class members of their right to move the Court, within 60 days of the publication, for appointment as lead plaintiff. See [15 U.S.C. § 78u-4\(a\)\(3\)\(A\)](#) see also [Corwin v. ViewRay, Inc., No. 1:19CV2115, 2019 WL 6914774, at *2 \(N.D. Ohio Dec. 19, 2019\)](#) (discussing lead plaintiff appointment procedure).

II.

Given their timely motions, the Court must decide whether the RIDE Investor Group or the Stricklands are the most adequate plaintiffs. The RIDE Investor Group is comprised of three unrelated individuals living in Ohio and Michigan. See Joint Declaration of Bandol Lim, Nico Gatzaros, and Richard Dowell ([ECF No. 19-7](#)) at PageID #: 139-40, ¶¶ 2-4, 7, and 9. The Stricklands are brothers that reside in Plano, Texas. See Declaration of the Stricklands ([ECF No. 20-1 at PageID #: 466, ¶¶ 3, 5, and 9](#)). The PSLRA, [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)\(iii\)](#), provides, *inter alia*, that the “most adequate plaintiff” to serve as lead plaintiff is the person or group of persons that has either filed a complaint or has made a motion in response to a notice, has the “largest financial interest” in the relief sought by the class, and satisfies the requirements of [Fed. R. Civ. P. 23](#). The Stricklands believe they (1) have the largest financial interest in the relief

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sought by the Class based on the losses they incurred as a result of their trading in Lordstown securities during the Class Period in the case at bar and, (2) *prima facie* satisfy the typicality and adequacy requirements of [Rule 23](#). See [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)\(iii\)\(I\)](#); see also [Boynnton Beach Firefighters' Pension Fund v. HCP, Inc., No. 3:16CV1106, 2017 WL 5759361, at *8 \(N.D. Ohio Nov. 28, 2017\)](#) (at the lead plaintiff selection stage of litigation, movants “need only make a *prima facie* showing that they meet the typicality and adequacy prerequisites.”).

“The PSLRA does not provide a definitive method for determining the largest financial interest in securities class actions, but most courts employ a four-factor inquiry called the *Olsen-Lax* test.”³ [Owens v. FirstEnergy Corp., Nos. 2:20-cv-03785, 2:20-cv-04287, 2020 WL 6873421, at *5 \(S.D. Ohio Nov. 23, 2020\)](#). Under this test, courts consider: “(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered.” [La. Sheriffs' Pension & Relief Fund v. Cardinal Health, Inc., No. 2:19-cv-3347, 2020 WL 3396660, at *5 \(S.D. Ohio June 19, 2020\)](#). Of these factors, courts in the Sixth Circuit often place the most emphasis on movants’ losses. [Owens, 2020 WL 6873421, at *11](#). To calculate these losses, courts prefer the last-in first-out (“LIFO”) accounting method because it reveals whether parties experienced net gains during the class period, thereby rendering the other three factors less useful. [Id. at *10](#). During the Class Period, the Stricklands suffered losses of \$840,413.19 on their investment in Lordstown options and common stock on a LIFO basis. See

³ [Lax v. First Merchs. Acceptance Corp., Nos. 97 C 2715, 97 C 2716, 97 C 2737, 97 C 2791, 97 C 3767, 97 C 4237, 97 C 4013, 97 C 4236, 1997 WL 461036, at *5 \(N.D. Ill. Aug. 11, 1997\)](#).

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Revised Loss Chart (Exhibit 1 to Declaration of John C. Camillus ([ECF No. 22-2](#)) at PageID #: 649).⁴ Whereas, the RIDE Investor Group suffered total Class Period investment losses of \$348,058.57, when losses are calculated on a LIFO basis. *See* Exhibit F to Declaration of Scott D. Simpkins ([ECF No. 19-8](#)) at PageID #: 147. The Stricklands fully understand the lead plaintiff's obligations to the class under the PSLRA and are willing and able to undertake those responsibilities to guarantee vigorous prosecution of this litigation. *See* Declaration of Andrew Strickland and Joshua Strickland ([ECF No. 20-1](#)) at PageID #: 467, ¶ 14.

The RIDE Investor Group argues that most of the Stricklands' losses are not recoverable under *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336 (2005).⁵ *See* Response to the Strickland's Motion ([ECF No. 21](#)) at PageID #: 518-20. This argument, however, focuses only on the Stricklands' common stock purchases and ignores their options purchases. Moreover, "[t]he

⁴ The Stricklands accurately reported all of their transactions in Lordstown securities. Due to a computational error, however, they underreported their total LIFO losses to be \$664,049.66 in their opening Lead Plaintiff Motion. *See* [ECF No. 20 at PageID #: 216-17](#); Loss Chart (Exhibit C to Declaration of John C. Camillus ([ECF No. 20-1](#)) at PageID #: 462-63)). The Stricklands subsequently submitted the Revised Loss Chart reflecting the calculation of their LIFO losses to be \$840,413.19 using the corrected inputs and based on the same transactions initially reported. *See* The Stricklands' Memorandum in Opposition ([ECF No. 22](#)) at PageID #: 552 n. 3; *see also* [Reitan v. China Mobile Games & Ent. Grp., Ltd.](#), 68 F. Supp.3d 390, 399 (S.D.N.Y. 2014) ("The goal of the PSLRA was not to select individuals for lead plaintiff who make no mistakes[.]"); [Hansen v. Ferrellgas Partners, L.P.](#), Nos. 16-cv-7840 (RJS), 16-cv-8850 (RJS), 16-cv-9294 (RJS), 2017 WL 281742, at *5 (S.D.N.Y. Jan. 19, 2017) (courts are "extremely reluctant to impose a rule that would force lead plaintiff movants to choose between leaving mistakes in their filings uncorrected or correcting the mistake and being summarily disqualified").

⁵ *Dura* held that, at the pleading stage, an allegation that the price on the date of purchase was inflated because of misrepresentation was insufficient to meet the loss causation element of a claim under [§ 10\(b\) of the Exchange Act](#). *Id.* at 342-43.

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Supreme Court did not suggest that a court should guess about the effect of [] as-yet-unknown factors in selecting a lead plaintiff, nor did it consider the issue.” [In re WatchGuard Sec. Litig., No. C05-678JLR, 2005 WL 8188936, at *4 n. 6 \(W.D. Wash. July 13, 2005\)](#). Consequently, courts are understandably cautious of excluding in-and-out transactions at the lead plaintiff stage as “the appropriateness of employing *Dura* analysis at the lead plaintiff stage is subject to considerable dispute.” [Cook v. Allergan PLC, Nos. 18 Civ. 12089 \(CM\), 18 Civ. 12219 \(CM\), 2019 WL 1510894, at *3 \(S.D.N.Y. March 21, 2019\)](#); [Owens, 2020 WL 6873421, at *7](#) (“Most courts in the Sixth Circuit do not adopt the *Dura* analysis to calculate financial interest at the lead plaintiff stage.”).

When there are multiple partial corrective disclosures alleged, “ostensible ‘in and out’ transactions are compensable, even under *Dura*.” [Allergan, 2019 WL 1510894, at *3](#). This is because multiple partial corrective disclosures “suggest that the fraud premium,” *i.e.*, “the amount by which the stock is inflated because of the alleged misrepresentations or omissions,” “may have varied throughout the Class Period[.]” [Id. at *3 and n. 3](#). Given the three partial corrective disclosures alleged in the Class Action Complaint ([ECF No. 1](#)), it would not be prudent to exclude the Stricklands’ in-and-out transactions at this time.

Pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)](#), as amended by the PSLRA, the Stricklands are appointed as Lead Plaintiffs in this putative private securities class action as they have the largest financial interest in this litigation and otherwise satisfy the typicality and adequacy requirements of [Fed. R. Civ. P. 23](#). This determination, however, shall in no way prejudice Defendants’ right to challenge

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certification of a class pursuant to [Rule 23](#) at a later stage of this litigation. The Court determines that the Stricklands, whom are members of the purported plaintiff class, are the most capable of adequately representing the interests of class members. *See* [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)\(i\)](#).

III.

Furthermore, the Court approves Lead Plaintiffs' choice of counsel. [Ohio Pub. Emps. Ret. Sys. v. Fannie Mae, 357 F. Supp.2d 1027, 1034 \(S.D. Ohio 2005\)](#) (“Courts typically do not disturb a lead plaintiff’s choice of counsel unless doing so is necessary to protect the interests of the class.”). The Faruqi Firm, a minority-owned and woman-owned law firm, is respected for its experience, knowledge, and ability to conduct complex securities class actions. *See* Exhibit E to Declaration of John C. Camillus ([ECF No. 20-1](#)) at PageID #: 470-99; *see also* [Schwartz v. Sparton Corporation, No. 1:17CV1663 \(N.D. Ohio filed Aug. 8, 2017\)](#). The Columbus, Ohio based Camillus Firm also specializes in litigation and has substantial class action experience. *See* L. Offices of John C. Camillus, LLC, <https://www.camilluslaw.com/> (last visited Nov. 15, 2023). Accordingly, the Faruqi Firm is appointed to serve as Lead Counsel for the Class, and the Camillus Firm is appointed to serve as Liaison Counsel for the Class. *See* [15 U.S.C. § 78u-4\(a\)\(3\)\(B\)\(v\)](#) (“The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.”).

1. Within 30 days of the date of this Order, Lead Plaintiffs may file an amended complaint, which would serve as the operative complaint, and which Defendants may then timely move to dismiss. *See* [15 U.S.C. § 78u-4\(b\)\(3\)](#); Order Approving Stipulation ([ECF No. 18](#)) at PageID #: 96.

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2. Lead Counsel shall have the following responsibilities and duties, to be carried out either personally or through counsel whom Lead Counsel shall designate as appropriate:

- a. to coordinate the briefing and argument of any and all motions;
- b. to coordinate the conduct of any and all discovery proceedings;
- c. to coordinate the examination of any and all witnesses in depositions;
- d. to coordinate the selection of counsel to act as a spokesperson at all pretrial conferences;
- e. to call meetings of Plaintiffs' counsel as they deem necessary and appropriate from time to time;
- f. to coordinate all settlement negotiations with counsel for Defendants;
- g. to coordinate and direct the pretrial discovery proceedings and the preparation for trial and the trial of this matter and to delegate work responsibilities to selected counsel as may be required;
- h. to coordinate the preparation and filings of all pleadings; and
- i. to supervise all other matters concerning the prosecution or resolution of the action.

3. With respect to scheduling and/or procedural matters, Defendants' counsel may rely upon all agreements with Lead Counsel.

4. No pleadings or other papers shall be filed or discovery conducted by any plaintiff in the action except as directed or undertaken by Lead Counsel.

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5. With respect to any documents that are not subject to electronic filing as specified in the Court's [Electronic Filing Policies and Procedures Manual](#), counsel shall effect service in accordance with the applicable Federal Rules of Civil Procedure and the Local Rules for filing and service of non-electronic documents.

IV.

The Stricklands' Motion for Appointment as Lead Plaintiffs and Approval of Lead Counsel and Liason Counsel ([ECF No. 20](#)) is granted. The Ride Investor Group's Motion for Appointment as Lead Plaintiff and Approval of its Selection of Lead Counsel ([ECF No. 19](#)) is denied.

IT IS SO ORDERED.

November 16, 2023
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge