

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:26-cv-01102-AB-DFM

Date: June 10, 2026

Title: *Simranjit Burnell v. BlackRock TCP Capital Corp. et al*

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Evelyn Chun
Deputy Clerk

N/A
Court Reporter

Attorney(s) Present for Plaintiff(s):
None Appearing

Attorney(s) Present for Defendant(s):
None Appearing

Proceedings: [In Chambers] ORDER GRANTING ZULIANI MOVANTS’ MOTION FOR APPOINTMENT OF LEAD COUNSEL AND LEAD PLAINTIFF [Dkt. No. 19] AND DENYING BURNELL AND ECHINLIN MOVANTS’ MOTIONS FOR APPOINTMENT OF LEAD COUNSEL AND LEAD PLAINTIFF [Dkt. Nos. 14, 16, 19]

Pending before the Court are three motions: (1) Motion for Appointment of Counsel and Appointment as Lead Plaintiff (“Burnell Motion,” Dkt. No. 14) filed by Movants Cory Burnell, BP Investment LLC, and Blueprint Moderate Portfolio LP (collectively, “Burnell Movants”); (2) Motion for Appointment of Counsel and Appointment as Lead Plaintiff (“Echlin Motion,” Dkt. No. 16) filed by Movants Michael Echlin and Dianne Echlin (collectively, “Echlin Movants”); and (3) Motion for Appointment of Counsel and Appointment as Lead Plaintiff (“Zuliani Motion,” Dkt. No. 19) filed by Movants Matthew Zuliani and Thea Zuliani (collectively, “Zuliani Movants”). Oppositions and Replies were filed. The Court heard oral argument on May 8, 2026 and took the Motions under submission. *See* Fed. R. Civ. P. 78; Local Rule 7-15. For the following reasons, the Zuliani Motion is **GRANTED** and the Burnell and Echlin Motions are **DENIED**.

I. BACKGROUND

This is a putative class action brought on behalf of persons and entities that purchased or otherwise acquired BlackRock TCP securities between November 6, 2024 and January 23, 2026, inclusive (the “Class Period”), asserting claims under the Securities Exchange Act of 1934. Compl. ¶ 1. Plaintiff alleges that BlackRock TCP is a business development company that raises investor capital to make loans to small and midsize businesses and generates returns through interest payments, fees, and, to a lesser extent, equity appreciation. *Id.* ¶ 2. The Company’s investments are primarily in middle-market companies with enterprise values between \$100 million and \$1.5 billion. *Id.*

Investors allegedly rely on key financial metrics such as net asset value (“NAV”) to assess the Company’s financial condition and make investment decisions. *Id.* ¶ 3. NAV reflects the value of the Company’s assets minus liabilities and depends on the Company’s valuation of its underlying investments. *Id.* ¶ 4. The Company represented that its investments were valued at least quarterly, and reported a NAV per share of \$11.90 as of December 31, 2023. *Id.* ¶¶ 4–5.

On February 27, 2025, the Company announced financial results for fiscal year 2024, disclosing significant portfolio deterioration, including an increase in non-accrual investments and a 22.44% decline in NAV to \$9.23 per share, alongside sharply increased losses. *Id.* ¶ 6. Despite these disclosures, the Company maintained that its NAV was accurate and that most of its portfolio continued to perform well. *Id.* Following this announcement, the Company’s stock price fell 9.64% to close at \$8.44 per share. *Id.* ¶ 7.

On January 23, 2026, the Company disclosed that its NAV per share as of December 31, 2025 had declined further to between \$7.05 and \$7.09. *Id.* ¶ 8. The Company’s stock price subsequently fell 12.97% to close at \$5.10 per share on January 26, 2026. *Id.* ¶ 9. Plaintiff alleges that throughout the Class Period, Defendants made materially false or misleading statements and failed to disclose adverse facts regarding the Company’s valuation practices, portfolio quality, and financial condition, resulting in inflated NAV and investor losses. *Id.* ¶¶ 10–11.

II. LEGAL STANDARD

The Private Securities Litigation Reform Act of 1995 (“PSLRA”) establishes that the Court “shall appoint the most adequate plaintiff as lead plaintiff.” *See* 15

U.S.C.A. § 78u-4(a)(3)(B)(ii). The statute creates a rebuttable presumption that the most adequate plaintiff is the person or group of persons that has the largest financial interest in the relief sought and otherwise satisfies the requirements of Federal Rule of Civil Procedure (“Rule”) 23. *Z–Seven Fund, Inc. v. Motorcar Parts & Accessories*, 231 F.3d 1215, 1217–18 (9th Cir.2000). This presumption can be rebutted by a showing that the presumptive candidate for appointment cannot fairly or adequately represent the class, or is subject to unique defenses. *Id.* (citing 15 U.S.C. § 78u–4(a)(3)(B)(iii)(II)). Once a movant demonstrates the largest financial interest, it need only make a prima facie showing of typicality and adequacy. *In re Cavanaugh*, 306 F.3d 726, 730–31 (9th Cir. 2002). The Ninth Circuit has emphasized that “[i]f the presumption is not rebutted, the presumptively most adequate plaintiff must be selected as lead plaintiff.” *In re Mersho*, 6 F.4th 891, 899 (9th Cir. 2021) (citing 15 U.S.C. § 78u-4(a)(3)(B)(i)).

The Ninth Circuit strictly construes the presumption in favor of the plaintiff with the largest financial stake. *See id.* In *In re Mersho*, the Ninth Circuit held that “just because the presumption is rebuttable does not mean that it may be set aside for any reason that the court may deem sufficient.” *Id.* (citing *In re Cavanaugh*, 306 F.3d at 729 n.2). Rather, the PSLRA “requires proof that the presumptive lead plaintiff is not adequate.” *Id.* Other plaintiffs may rebut the presumption by showing that the presumptive lead plaintiff cannot fairly or adequately represent the class or is subject to unique defenses. *In re Diamond Foods, Inc., Sec. Litig.*, 281 F.R.D. 405, 409 (N.D. Cal. 2012).

Although the PSLRA uses only the word “adequate,” it actually requires that a lead plaintiff be both adequate and typical as defined in Rule 23. *Averza v. Super Micro Computer, Inc.*, 788 F. Supp. 3d 1060, 1072 (N.D. Cal. 2025) (citing *In re Cavanaugh*, 306 F.3d at 730); *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa)–(bb). The typicality and adequacy requirements are “key factors for a court’s lead plaintiff determination.” *Armour v. Network Assocs., Inc.*, 171 F. Supp. 2d 1044, 1051 (N.D. Cal. 2001). The Court “must also consider whether the proposed lead plaintiff satisfies Rule 23 and will therefore carry out the fiduciary duties that a class representative owes to the represented class.” *Id.* at 1048.

The PSLRA provides that “the most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.” 15 U.S.C.A. § 78u-4(a)(3)(B)(v). The Ninth Circuit has held that although the power to select lead counsel “is subject to court approval and is therefore not absolute, it plainly belongs to the lead plaintiff.” *Cohen v. U.S. Dist. Ct. for N. Dist. of California*, 586 F.3d 703, 709 (9th Cir. 2009) (citing 15 U.S.C. § 78u–4(a)(3)(B)(v)). Accordingly,

district courts do not have authority to select lead counsel themselves; rather, they must review the lead plaintiff's choice using appropriate deference. *See id.*

“Selection of lead counsel is one of the most important decisions a lead plaintiff makes. In making the counsel selection, the lead plaintiff must seek to vindicate the interests of the class, to whom he owes a fiduciary duty.” *In re Quintus Sec. Litig.*, 201 F.R.D. 475, 482 (N.D. Cal. 2001) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549 (1949)).

III. DISCUSSION

A. Burnell Movants Have Largest Financial Interest

The PSLRA requires that courts adopt the rebuttable presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). Courts in the Ninth Circuit generally consider four factors when making this determination, often known as the *Olsten-Lax* factors: “(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.” *Richardson v. TVIA, Inc.*, No. C 0606304 RMW, 2007 WL 1129344, at *3 (N.D. Cal. Apr. 16, 2007) (quoting *In re Olsten Corp. Sec. Litig.*, 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998)). Courts typically give the greatest weight to the final factor. *See Pace v. Quintanilla*, No. SACV 14-2067-DOC (RNBx), 2014 WL 4180766, at *2 (C.D. Cal. Aug. 19, 2014).

The Burnell Movants argue they have the largest financial interest in the litigation and therefore should be appointed Lead Plaintiff under the PSLRA. Burnell Mot. at 5–6.¹ Specifically, they contend they suffered approximately \$410,854.12 in losses, which they identify as the most significant factor under the *Olsten-Lax* framework and the controlling emphasis on approximate losses. *Id.* The Burnell Movants further assert that they also rank highest on the remaining financial-interest metrics, including 315,442 net shares purchased and approximately \$1,741,634 in net funds expended during the Class Period. Dkt. No.

¹ The Echlin Movants assert a significantly smaller financial interest relative to both Burnell and the Zuliani Movants, and their claimed losses are not competitive under any of the *Olsten-Lax* factors. *See* Echlin Mot. at 7. Accordingly, because the Echlin Movants do not contend they possess the largest financial interest, the dispute for lead plaintiff appointment is effectively limited to the Burnell and Zuliani Movants.

24 (“Burnell Opp’n”) at 4. On this basis, they argue that across all three *Olsten-Lax* factors, they are the strongest candidate for Lead Plaintiff appointment.

The Zuliani Movants likewise contend they possess the largest financial interest, but their calculation yields materially different results depending on methodology. Zuliani Mot. at 7–8. Under their primary calculation, the Zuliani Movants report losses of approximately \$726,028.54 using a last-in-first-out (LIFO) methodology, along with \$1,405,338.45 in net funds expended and 180,448 net shares purchased. *Id.*; Dkt. No. 25 (“Zuliani Opp’n”) at 7–8. The Burnell Movants, by contrast, calculate the Zuliani Movants’ losses at a lower figure of approximately \$354,889, thereby placing them below Burnell in the financial-interest ranking. Burnell Opp’n at 4. Thus, each side contends it occupies the top position depending on which loss methodology is applied and how transactions are treated across the Class Period.

The divergence between the parties’ financial-interest rankings stems primarily from methodological disagreement regarding loss causation and the treatment of intra-Class Period trading. The Zuliani Movants calculate losses using a LIFO approach that results in a higher net loss figure of \$726,028.54, whereas the Burnell Movants apply a methodology that excludes or discounts losses associated with shares sold prior to corrective disclosures on the theory that such losses are not attributable to the alleged fraud. Burnell Opp’n at 4. In particular, Burnell argues that “much of that loss is not recoverable because [it includes] substantial losses from shares they purchased and then sold in the middle of the class period, before any corrective disclosure,” and that under *Dura Pharmaceuticals*, such losses must be excluded from recoverable damages. *Id.*; *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005). On that view, Burnell contends its \$410,854.12 loss figure more accurately reflects cognizable, fraud-related damages.

Finally, the Burnell Movants further contend that even if the Court were to credit the Zuliani Movants’ higher gross loss calculation, *Dura* nonetheless supports giving greater weight to retained shares rather than inflated gross loss totals, because retained holdings more directly reflect potential recovery tied to the alleged corrective disclosures and resulting price declines. Burnell Opp’n at 4. Accordingly, while both movant groups assert the “largest financial interest,” the dispute turns not on the raw transactional data itself, but on competing applications of loss methodology—particularly LIFO treatment, the inclusion of interim sales, and the extent to which claimed losses are properly attributable to the alleged fraud under governing securities-loss principles.

In sum, the Court recognizes that both the Burnell Movants and the Zuliani Movants have demonstrated substantial financial interests in the litigation. Even under the Burnell Movants' more conservative methodology, the Zuliani Movants' alleged losses remain significant and not markedly behind Burnell's asserted losses. Nonetheless, based on the record before it and the competing calculations presented, the Court finds that the Burnell Movants come out slightly ahead under the *Olsten-Lax* factors, particularly with respect to recoverable losses. Accordingly, the Burnell Movants are entitled to the PSLRA's rebuttable presumption of being the most adequate plaintiff. The Court therefore next considers whether that presumption has been rebutted.

B. Burnell Presumption Rebutted

Although the Burnell Movants are entitled to the PSLRA's presumption based on their financial interest, the Court finds that presumption is rebutted by evidence bearing on adequacy and the potential for unique defenses. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *Z-Seven Fund, Inc.*, 231 F.3d at 1217–18.

First, the record raises concerns regarding Burnell's ability to serve as a fiduciary for the absent class members. A lead plaintiff "is a fiduciary for the absent class members," and must demonstrate the honesty and trustworthiness necessary to fulfill that role. *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 46 (S.D.N.Y. 1998); *Pirelli Armstrong Corp. Retiree Med. Benefits Tr. v. LaBranche & Co.*, 229 F.R.D. 395, 416 (S.D.N.Y. 2004). Here, the Zuliani Movants identify prior regulatory issues involving Burnell and affiliated entities, including findings by regulators that resulted in a consent order requiring compliance with corporate securities laws and the imposition of sanctions. Zuliani Opp'n at 10. The alleged misconduct underlying that action includes, among other things, recommending unsuitable high-risk investments, failing to maintain required client agreements, maintaining deficient financial records, commingling funds, and failing to meet regulatory requirements governing discretionary authority. *Id.* at 11. These issues bear directly on the type of judgment, diligence, and compliance expected of a fiduciary charged with representing a class of investors.

Second, these regulatory and compliance issues create a risk that Burnell would be subject to unique defenses that could distract from or undermine the claims of the class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Courts have recognized that a proposed lead plaintiff may be inadequate where it is vulnerable to "unique

defenses” that threaten to become the focus of the litigation. *Id.* Here, Defendants could reasonably be expected to probe Burnell’s prior conduct, investment practices, and regulatory history, potentially shifting the litigation toward individualized issues concerning Burnell’s credibility, sophistication, or compliance with applicable standards. Such issues are not shared by the class as a whole and weigh against a finding of adequacy.

Taken together, these issues are sufficient to rebut the PSLRA presumption. The Court does not find, at this stage, that any single issue alone would necessarily disqualify Burnell. However, the combination of prior regulatory findings and the risk of unique defenses collectively demonstrate that Burnell may not “fairly and adequately protect the interests of the class” within the meaning of Rule 23(a)(4). Accordingly, the presumption in favor of the Burnell Movants is rebutted, and the Court turns to the remaining movants to determine the most adequate plaintiff.

C. Zuliani Movants Next Most Adequate Plaintiffs

Having concluded that the Burnell presumption is rebutted, the Court next considers whether the Zuliani Movants satisfy the requirements of the PSLRA. The Court finds that they do. The Zuliani Movants have made the requisite prima facie showing of typicality under Rule 23. Their claims arise from the same alleged course of conduct as those of the putative class—namely, Defendants’ alleged misstatements and omissions regarding BlackRock TCP’s financial condition and net asset value. Like other class members, the Zuliani Movants purchased BlackRock TCP securities during the Class Period at allegedly inflated prices and suffered losses when the truth was revealed. Because their claims are based on the same legal theories and arise from the same alleged misconduct, they are sufficiently “reasonably coextensive” with those of the class and satisfy Rule 23’s typicality requirement. Zuliani Mot. at 9.

The Zuliani Movants also satisfy Rule 23’s adequacy requirement. The record reflects that their interests are aligned with those of the class, and there is no indication of any conflict or antagonism that would impair their ability to represent absent class members. The Zuliani Movants have submitted sworn certifications and supporting declarations demonstrating their willingness to serve as fiduciaries and to oversee the litigation. *Id.* at 10. They further represent that they have substantial investment experience, having managed their own investments for approximately thirty years, which supports their ability to monitor counsel and participate meaningfully in the prosecution of this action. *Id.* On this record, the Court finds that the Zuliani Movants will fairly and adequately protect the interests

of the class.

D. Approval of Lead Counsel

Having appointed the Zuliani Movants as Lead Plaintiffs, the Court next considers their selection of lead counsel. The Zuliani Movants have selected Faruqi & Faruqi, LLP (the “Faruqi Firm”) as Lead Counsel and have submitted materials detailing the firm’s qualifications and experience. *See Zuliani Mot. Exh. E.* Those materials reflect that the Faruqi Firm has substantial experience litigating complex securities class actions and has achieved significant recoveries on behalf of investors. The firm also demonstrates that it possesses the resources necessary to prosecute this action effectively. Based on the record before it, the Court is satisfied that the Faruqi Firm will represent the class competently and vigorously. Accordingly, the Court approves the Zuliani Movants’ selection of lead counsel.

IV. CONCLUSION

For the foregoing reasons, the Zuliani Motion is **GRANTED** and the Burnell and Echlin Motions are **DENIED**. The Court finds that the Zuliani Movants are fit to serve as lead plaintiff pursuant to PSLRA requirements. Accordingly, it is therefore ordered that:

1. Pursuant to 21D of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), the Zuliani Movants are appointed as Lead Plaintiffs for the putative Class.
2. Pursuant to Section 21D of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B)(v), Faruqi & Faruqi, LLP is approved to serve Lead Plaintiffs and the Class as Lead Counsel.
3. 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 spokesperson at all

- pretrial conferences;
- e. to call meetings of the 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.
4. With respect to scheduling and/or procedural matters, defendants' counsel may rely upon all agreements with Lead Counsel.
5. 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.
6. Counsel in any related action that is consolidated with this action shall be bound by this organizational structure.
7. With respect to any documents that are not subject to electronic filing as specified in the Court's electronic filing rules and procedures, defendants shall effect service of papers on Lead Plaintiffs by serving copies on Lead Counsel by overnight delivery service, telecopy, hand delivery or electronic mail. With respect to any documents that are not subject to electronic filing as specified in the Court's electronic filing rules and procedures, Lead Plaintiffs shall effect service of papers on defendants by serving copies on each of their counsel by overnight delivery service, telecopy, hand delivery, or electronic mail. Courtesy copies of all filings so delivered shall be sent by telecopy to Lead Counsel, or defendants' counsel, as applicable.

8. Every pleading filed in the Action shall bear the following caption:

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF
CALIFORNIA

IN RE BLACKROCK TCP CAPITAL
CORP. SECURITIES LITIGATION

Case No. 2:26-cv-01102-AB-DFM

9. All related actions subsequently filed in, or transferred to, this District shall be consolidated into the Action and subject to this order.

10. This Order is entered without prejudice to the rights of any party to apply for severance of any claim or action with good cause shown.

IT IS SO ORDERED.