

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

JEFFREY MAURER, Individually
and on Behalf of All Others
Similarly Situated,

Plaintiff,

v.

1:17cv00216

ARGOS THERAPEUTICS INC.,
JEFFREY ABBEY, LORI HARRELSON
and RICHARD KATZ,

Defendants.

**ORDER APPOINTING CO-LEAD PLAINTIFFS
AND APPROVING SELECTION OF CO-LEAD COUNSEL**

This is a securities class action that is before the court on two parties' motions to serve as lead Plaintiff and to appoint lead counsel. Those two parties have filed a stipulation that they serve as co-lead Plaintiffs and jointly appoint co-lead counsel. (Doc. 25.) For the reasons that follow, the motions will be granted as outlined in the stipulation.

Plaintiff Jeffrey Maurer alleges that Defendant Argos Therapeutics, Inc., a pharmaceutical company, misrepresented the state of a clinical trial and made false and misleading statements on its U.S. Securities and Exchange Commission ("SEC") filings. (Doc. 1 at 20, ¶ 44.) Maurer brings this action on behalf of all individuals who acquired securities in Argos between February 7,

2014, and February 21, 2017, seeking remedies under the Securities Exchange Act of 1934. (Id. at 1-2, ¶ 1.) Two groups of Argos investors, the Hoey Family Trust U/A DTD 08/22/1992 and the Hoey Trust U/A DTD 11/19/1993 (collectively the "Hoey Trusts") and the "Argos Investor Group," comprising David S. Kim, Stephen Lomax, Johnny R. Morgan, Steven A. Payne, and Dung Thi Kim Le, filed competing motions to serve as lead Plaintiff. (Doc. 14; Doc. 17.) Those two groups later stipulated that upon court approval, they would serve as co-lead Plaintiffs. (Doc. 25.)

The Private Securities Litigation Reform Act of 1995 ("PSLRA") provides that in a securities class action, "the court . . . shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members . . . in accordance with" a number of provisions. 15 U.S.C. § 78u-4(a)(3)(B)(i). Among these are certain notice requirements, id. § 78u-4(a)(3)(A), and a presumption in favor of a plaintiff who satisfies those requirements, has the largest financial interest in the relief sought by the class, and satisfies the requirements of Federal Rule of Civil Procedure 23. Because the two groups of investors satisfy all these requirements, the court will approve their stipulation and appoint them co-lead Plaintiffs.

The court finds the following:

1. The PSLRA requires the plaintiff who files the action to publish notice to the class within twenty days of filing the action informing class members of their right to file motions for appointment as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A).

2. Counsel for Plaintiff Jeffrey Maurer filed this action on March 14, 2017. (Doc. 1.) On March 15, 2017, counsel published a notice via GlobeNewsWire informing class members of their right to file motions for appointment as lead Plaintiff (Doc. 16-1), satisfying the requirements of 15 U.S.C. § 78u-4(a)(3)(A). See Simmons v. Spencer, No. 13 CIV. 8216 RWS, 2014 WL 1678987, at *2 (S.D.N.Y. Apr. 25, 2014) (stating that GlobeNewsWire is "a widely circulated national business-oriented publication or wire service" for § 78u-4(a)(3)(A)'s purposes).

3. The PSLRA allows any member of the putative class to file a motion to serve as lead plaintiff no later than sixty days after the notice is published. 15 U.S.C. § 78u-4(a)(3)(A)(i)(II).

4. On May 15, 2017, sixty days after notice was published, the Hoey Trusts and the Argos Investor Group filed competing motions to serve as lead Plaintiff. (Doc. 14; Doc. 17.)

5. The PSLRA provides that no more than ninety days after notice is published, the court will consider the pending motions and appoint a lead plaintiff it "determines to be most capable of

adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). More than ninety days have passed since the notice was published.

6. In determining which person or group is most capable of leading the class, the court must presume that the most adequate plaintiff is the person or group who (a) has filed the complaint or made a motion in response to the notice; (b) has the largest financial interest in the relief sought; and (c) otherwise satisfies the requirements of Federal Rule of Civil Procedure 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

7. As to the first requirement, both groups timely moved to serve as lead Plaintiff. (Doc. 14; Doc. 17.)

8. As to the second requirement, the Hoey Trusts and the Argos Investor Group allege losses of \$975,503.40 and \$1,324,688.15, respectively. (Doc. 16-3; Doc. 19-2.) The only other Plaintiff of whom the court is aware, Jeffrey Maurer, alleges losses of only \$4,225.52. (Doc. 1-1 at 3.)

9. As to the third requirement, “[a] presumptive lead plaintiff need make only a prima facie showing that it can satisfy the typicality and adequacy requirements of Rule 23 to be appointed. The typicality requirement of the rule requires that a lead plaintiff suffer the same injuries as the class as a result of the defendant’s conduct and has claims based on the same legal

issues. Adequate representation requires a finding that the purported class representative and its attorney are capable of pursuing the litigation and that neither has a conflict of interest with other class members.” In re Cree, Inc., Sec. Litig., 219 F.R.D. 369, 372 (M.D.N.C. 2003) (citing Sosna v. Iowa, 419 U.S. 393, 403 (1975)); see also In re Cendant Corp. Litig., 264 F.3d 201, 263 (3d Cir. 2001); Weiss v. York Hosp., 745 F.2d 786, 810 n. 36 (3d Cir. 1984).

10. As to typicality, both groups purchased Argos securities during the class period and claim that they did so based on the same allegedly misleading statements. (Doc. 16-2; Doc. 19-3 at 3-4, ¶¶ 2-6.)

11. As to adequacy, the groups and their attorneys are willing and able to pursue the litigation. The trustee for both Hoey Trusts and each individual in the Argos Investment Group have certified that they are willing to participate in this litigation and will represent the class’s interests actively and zealously. (See generally Doc. 16-2; Doc. 19-3.) The court is unaware of any conflicts of interest or antagonism among the proposed lead Plaintiffs or between the proposed lead Plaintiffs and the rest of the class. As discussed below, both groups have retained experienced, able counsel.

12. The court is aware of no evidence that might rebut the presumption raised by the foregoing. See 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

13. "The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class." 15 U.S.C. § 78u-4(a)(3)(B)(v). In their stipulation, the parties select the law firms of Wolf Haldenstein and Levi & Korsinsky to serve as co-lead counsel. (Doc. 25 at 3, ¶ 2.) Both firms are experienced in the area of securities actions. (See generally Doc. 16-4 at 10-16; Doc. 19-5 at 7-8.)

Having found the foregoing, the court will grant the parties' request to serve as co-lead Plaintiffs and will approve their choice of counsel. The court will leave it to the parties and their lawyers to monitor the costs of litigating this action. Counsel are cautioned, however, that should they succeed, their fees "shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. § 78u-4(a)(6). "Therefore, there shall be no duplicative services rendered or concomitant increase in attorney's fees arising out of the use of more than one law firm to represent the class members." Johnson v. Pozen Inc., No. 1:07CV599, 2008 WL 474334, at *3 (M.D.N.C. Feb. 15, 2008); see also In re Cree, Inc., Sec. Litig., 219 F.R.D. at 372 (denying a request to appoint co-

lead plaintiffs on the basis that “[a] single lead plaintiff could reduce expenses and facilitate the control and prosecution of this litigation”).

IT IS THEREFORE ORDERED that the Hoey Trusts and the Argos Investor Group are hereby appointed co-lead Plaintiffs for the class.

IT IS FURTHER ORDERED that the co-lead Plaintiffs’ selection of the law firms of Wolf Haldenstein and Levi & Korsinsky is approved.

 /s/ Thomas D. Schroeder
United States District Judge

June 23, 2017