

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE KIRKLAND LAKE GOLD LTD.
SECURITIES LITIGATION

20-CV-4953 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

Before the Court is a motion to appoint two lead plaintiffs and co-lead counsel in a putative securities class action proceeding. For the reasons set forth below, the Court appoints Stephen Brahms as lead plaintiff and Lowey Dannenberg, P.C. as lead counsel.

I. Background

This action was commenced by Brahms on June 29, 2020, with the filing of a securities class action complaint against Kirkland Lake Gold Ltd. and its CEO and President Anthony P. Makuch. (Dkt. No. 1.) That same day, in accordance with the requirements of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4, Brahms caused to be published a notice in *Globe Newswire* advising putative class members of the pendency of this action. (Dkt. No. 18 at 6.)

On July 17, 2020, Dean Paul Mitzel TTEE DGI Holdings 401K (“Mitzel”) filed a complaint against Kirkland Lake Gold and Makuch, which was assigned Docket Number 20-CV-5505. This second-filed complaint copied the pleadings of the Brahms complaint nearly verbatim. On August 28, 2020, the Court, pursuant to a stipulation, consolidated the Brahms and Mitzel cases. (*See* Dkt. No. 15.) That same day, Brahms and Mitzel moved to be appointed lead plaintiffs and for their respective counsel to be designated as co-lead counsel. (Dkt. No. 32.)

II. Discussion

Under the PSLRA, the Court is to appoint as lead plaintiff the member or members of the putative class that is or are the “most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA establishes a presumption that the “most adequate plaintiff” is the “person or group of persons” that (1) “has either filed the complaint or made a motion in response to a notice,” (2) “in the determination of the court, has the largest financial interest in the relief sought by the class,” and (3) “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *Id.* § 78u-4(a)(3)(B)(iii)(I)(aa)–(cc). At this stage of litigation, Rule 23 demands only that “a moving plaintiff . . . make a preliminary showing that the adequacy and typicality requirements have been met.” *Freudenberg v. E*Trade Fin. Corp.*, No. 7-CV-8538, 2008 WL 2876373, at *5 (S.D.N.Y. July 16, 2008). Typicality is met if the plaintiff’s claims “arise . . . from the same course of events” as the claims of other class members. *In re Drexel Burnham Lamber Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992). And adequacy is met if “(1) class counsel is qualified, experienced, and generally able to conduct the litigation; (2) there is no conflict between the proposed lead plaintiff and the members of the class; and (3) the proposed lead plaintiff has a sufficient interest in the outcome of the case to ensure vigorous advocacy.” *Foley v. Transocean Ltd.*, 272 F.R.D. 126, 131 (S.D.N.Y.2011).

Although the PSLRA contemplates the appointment of joint lead plaintiffs, courts within this Circuit have interpreted the PSLRA to “discourage[] appointment of joint lead plaintiffs” when doing so “avoid[s] lawyer-driven litigation.” *Hung v. iDreamSky Technology Ltd.*, No. 15-cv-2514, 2016 WL 299034, at *5 (S.D.N.Y. Jan. 25, 2016) (citation and internal quotation marks omitted); *see also Glauser v. EVCI Career Colls. Holding Corp.*, 236 F.R.D. 184, 190 (S.D.N.Y. 2006). Relatedly, the appointment of co-lead counsel warrants “a detailed

justification,” based on factors like the complexity of the case. *In re Baan Co. Securities Litigation*, 271 F. Supp. 2d 3, 10 (D.D.C. 2002).

Here, Brahms and Mitzel jointly seek appointment as lead plaintiffs and seek the designation of their respective counsel as co-lead counsel. At first blush, the group of two satisfies the demands of § 78u-4(a)(3)(B)(iii)(I)(aa)–(cc): both Brahms and Mitzel filed complaints and the motion at issue, have suffered representative financial losses, have no evident conflicts, and have retained competent counsel. However, upon consideration of the size and scope of this relatively simple stock-drop case, as well as the nature of Mitzel’s second-filed complaint, the Court worries that appointment of multiple lead plaintiffs and co-lead counsel would unnecessarily “risk[] duplication of effort.” *In re Petrobras Securities Litigation*, 104 F. Supp. 3d 618, 622 (S.D.N.Y. 2015). Moreover, allowing these “unrelated plaintiffs to band together . . . ensures that the lawyers, who are invariably the matchmakers behind such marriages of convenience, are the true drivers of the litigation.” *Id.* at 621–22.

Considering the movants as individuals, Brahms has the larger financial interest, alleging a loss of \$139 relative to Mitzel’s \$113. More important, Brahms filed the first complaint in this litigation and caused to be published the notice of the litigation. This evidences that Brahms has a “sufficient interest in the outcome of the case,” as required by Rule 23 and notwithstanding his *de minimis* losses. The steps undertaken by Brahms to prepare and file this action far outstrip those undertaken by Mitzel in filing his parallel litigation with a duplicate complaint.

Accordingly, Brahms is named lead plaintiff. His choice of counsel, Lowey Dannenberg, P.C., is experienced with securities litigation and is designated as lead counsel. (Dkt. No. 19-6 at 2.)

III. Conclusion

Brahms's and Mitzel's motion is GRANTED in part and DENIED in part. The Clerk of Court is directed to close the motion at Docket Number 16.

SO ORDERED.

Dated: September 24, 2020
New York, New York



J. PAUL OETKEN
United States District Judge