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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Singh Family Revocable Trust U/A Dated
10 2/18/2019,

No. CV-25-04416-PHX-KML

11 Plaintiff,

ORDER

12 v.

13 Sprouts Farmers Market Incorporated, et al.,

14 Defendants.

15 The Private Securities Litigation Reform Act (“PSLRA”) requires all motions
16 seeking appointment as lead plaintiff be filed “not later than 60 days after the date on
17 which” notice of a pending class action is published. 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). In
18 this case, that 60-day deadline was January 26, 2026. Putative class member Peter
19 Robinson filed his motion on that date, but another putative class member—the Lovingier
20 Family Trust—filed a competing motion the following morning. The parties disagree
21 whether the court can or should excuse the untimely filing. Assuming the statutory deadline
22 can be extended in these circumstances, which is doubtful, the Lovingier Family has not
23 met the demanding standard for doing so. Robinson is appointed as lead plaintiff.

24 **I. Background**

25 This is a securities fraud action brought against defendants Sprouts, its Chief
26 Executive Officer, and its Chief Financial Officer. The allegations involve the CEO making
27 overly-optimistic public statements regarding Sprouts’ future business prospects. After
28 more information was revealed, Sprouts’ stock dropped approximately “26.11% in the span

1 of just a single day.” (Doc. 1 at 19.) The complaint was filed on November 24, 2025, and
 2 notice of this suit was published on November 26, 2025. (Docs. 1, 17-3.) That publication
 3 date meant motions to be appointed lead plaintiff were due on January 26, 2026.

4 On January 26, 2026, putative class member Peter Robinson filed a motion to be
 5 appointed lead plaintiff. (Doc. 18.) Also on January 26, 2026, lead counsel for putative
 6 class member the Lovingier Family sent its local counsel a finalized motion to have the
 7 Lovingier Family appointed as lead plaintiff. (Doc. 26-1 at 2.) Local counsel attempted to
 8 file that motion on January 26, 2026, but was unable to do so because his “paralegal had
 9 not previously utilized [the attorney’s] CM/ECF and/or PACER account(s) with
 10 Multifactor Authentication to make a filing.” (Doc. 26-1 at 2.) The paralegal needed to
 11 speak with the attorney to complete the filing but for unexplained reasons could not reach
 12 him that evening. (Doc. 26-1 at 2.) The paralegal and local counsel “connected via
 13 telephone early in the morning on January 27, 2026,” and the motion on behalf of the
 14 Lovingier Family was filed at 7:27 a.m. on January 27, 2027. (Doc. 22.) Other putative
 15 class members also filed timely motions to be appointed lead plaintiff. (Docs. 16, 20.) One
 16 of those motions was withdrawn (Docs. 16, 23), and the other resulted in that putative class
 17 member concluding Robinson—not the Lovingier Family—was the “presumptive ‘most
 18 adequate plaintiff’” (Doc. 27 at 2).

19 **II. Analysis**

20 It is undisputed the Lovingier Family suffered a loss of \$259,313.88 while Robinson
 21 suffered a loss of \$188,976.61. (Doc. 28 at 10.) Because the largest loss is a significant
 22 factor in evaluating the appropriate lead plaintiff, determining who should be appointed
 23 largely comes down to whether the court should consider the Lovingier Family’s motion
 24 timely filed.

25 **A. Timeliness of Lovingier Family’s Motion**

26 As relevant here, the PSRLA requires two events at the beginning of a securities
 27 class action. First, within 20 days of the complaint being filed, notice must be provided to
 28 the putative class. 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). And second, “not later than 60 days

1 after the date on which the notice is published, any member of the purported class may
 2 move the court to serve as lead plaintiff of the purported class.” 15 U.S.C.
 3 § 78u-4(a)(3)(A)(i)(II). The Lovingier Family argues this 60-day deadline can be extended,
 4 Robinson argues it cannot. Neither side has provided Ninth Circuit authority and district
 5 courts across the country are split.

6 Some district courts have adopted an absolute rule that “the deadline for motions
 7 for appointment as lead plaintiff is unequivocal and allows for no exceptions.” *Bender v.*
 8 *Vertex Energy, Inc.*, No. 4-24-CV-290, 2024 WL 588445, at *6 (S.D. Tex. Feb. 1, 2024)
 9 (citing cases). Other district courts have concluded they “have discretion to consider
 10 untimely motions for appointment as lead plaintiff in some circumstances.” *Id.* at *10
 11 (citing cases). The Lovingier Family invokes the latter line of authority, but many of those
 12 cases did not involve the statutory deadline. For example, two cases involved a movant
 13 who failed to comply with a court-imposed deadline, but the motion still complied with the
 14 statutory 60-day deadline. *Waterford Twp. Police v. Mattel, Inc.*, No.
 15 17CV04732VAPKXSX, 2017 WL 10667732, at *4 (C.D. Cal. Sept. 29, 2017) (filed after
 16 4:00 p.m. court deadline but still on date motion was due based on statutory deadline);
 17 *Ferreira v. Funko, Inc.*, No. 2:20-CV-02319-VAP-PJWX, 2020 WL 3246328, at *4 (C.D.
 18 Cal. June 11, 2020) (same). In permitting those motions, the courts were extending their
 19 own deadlines instead of the statute’s. Another case cited by the Lovingier Family involved
 20 unique circumstances where a motion was timely filed, but the movant used the incorrect
 21 case number. *GGCC, LLC v. Dynamic Ledger Sols., Inc.*, No. 17-CV-06779-RS, 2018 WL
 22 1388488, at *3 (N.D. Cal. Mar. 16, 2018); *see also Bender*, 2024 WL 58845, at *2, *6
 23 (movant timely filed notice in a different district). There are no similar circumstances here.

24 There are a limited number of cases involving an extension of the statutory deadline
 25 of the sort the Lovingier Family seeks. Those courts have concluded they have discretion
 26 to extend the statutory deadline but do not identify that discretion’s source. *See Peters v.*
 27 *Jinkosolar Holding Co.*, No. 11 CIV. 7133 JPO, 2012 WL 946875, at *10 (S.D.N.Y. Mar.
 28 19, 2012) (not identifying legal basis for extension); *Montesano v. Eros Int’l PLC*, No.

1 CV1914125JMVJAD, 2020 WL 1873015, at *9 (D.N.J. Apr. 14, 2020) (same). *Bender*
2 provides the clearest explanation in concluding the 60-day deadline is a “claims-processing
3 rule[.]” that is “subject to equitable principles unless Congress clearly provides otherwise.”
4 2024 WL 588445, at *10 (simplified). The Lovingier Family relies on this portion of *Bender*
5 to argue for an extension. (Doc. 30 at 5.) Assuming equitable tolling of the 60-day period
6 is available—which is the minority view, and is doubtful given the statute’s clear text—
7 the Lovingier Family has not established it applies here.

8 A party “seeking equitable tolling bears the burden of establishing two elements:
9 (1) that he has been pursuing his rights diligently, and (2) that some extraordinary
10 circumstance stood in his way and prevented timely filing.” *Smith v. Davis*, 953 F.3d 582,
11 588 (9th Cir. 2020) (simplified). The diligence prong requires the party seeking tolling to
12 “show that he has been reasonably diligent in pursuing his rights not only while an
13 impediment to filing caused by an extraordinary circumstance existed, but before and after
14 as well, up to the time of filing.” *Id.* at 598–99.

15 The Lovingier Family’s motion for appointment provided no explanation for the
16 untimely filing. (Doc. 22-1.) Quite the opposite, it misstated that the Lovingier Family
17 “ha[d] timely filed his motion within the 60-day period following publication of [the]
18 Notice.” (Doc. 22-1 at 3.) The Lovingier Family then waited nearly two weeks, until its
19 response to the timely motions was due, to provide *any* explanation of what happened. (*See*
20 Doc. 26-1 at 2.) And neither that explanation, nor the response accompanying it, recognized
21 the Ninth Circuit’s standard for equitable tolling or provided facts to meet that standard.

22 The court assumes the last-minute difficulties with electronic filing could qualify as
23 an “extraordinary circumstance” sufficient to meet the second element of the equitable-
24 tolling test. But as to the first prong, the Lovingier Family would need to provide evidence
25 that it “acted diligently but had not been able to file earlier.” *Id.* at 601. In other words, the
26 Lovingier Family would need to explain its behavior leading up to the last-minute filing
27 difficulties. The Lovingier Family’s belated explanation lacked sufficient detail regarding
28 counsel’s diligence on the date of the filing—for example, the paralegal’s mysterious

1 inability to reach counsel for hours remains unexplained (Doc. 26-1 at 2)—and provided
 2 no evidence of its behavior leading up to the deadline. Because the Lovingier Family has
 3 not carried its burden of establishing equitable tolling, the 60-day statutory deadline bars
 4 the court from considering its motion.

5 **B. Robinson as Lead Plaintiff**

6 The PSLRA requires a “three-step process for the selection of lead plaintiff.” *In re*
 7 *Mersho*, 6 F.4th 891, 899 (9th Cir. 2021). The first step of requiring notice has already
 8 occurred. The second step requires the court “determine which movant is the most adequate
 9 plaintiff, which is defined as the plaintiff most capable of adequately representing the
 10 interests of class members.” *Id.* (simplified). This requires the court identify “which
 11 movant has the largest alleged losses and then determine whether that movant has made a
 12 prima facie showing of adequacy and typicality.” *Id.* That movant is presumptively the lead
 13 plaintiff. Once a presumptive plaintiff is identified, step three allows other potential
 14 plaintiffs the “opportunity to rebut the presumptive lead plaintiff’s showing that it satisfies
 15 [the] typicality and adequacy requirements.” *In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir.
 16 2002). This “presumption may be rebutted only upon proof by a member of the purported
 17 plaintiff class that the presumptively most adequate plaintiff . . . will not fairly and
 18 adequately protect the interests of the class; or [] is subject to unique defenses that render
 19 such plaintiff incapable of adequately representing the class.” *In re Mersho*, 6 F.4th at 899
 20 (simplified).

21 As the only remaining timely movant, Robinson has the “largest loss,” meaning the
 22 court need only evaluate whether he “has made a prima facie showing of adequacy and
 23 typicality.” *Id.* This determination “is not adversarial” and “should be based on only the
 24 movant’s pleadings and declarations.” *Id.*

25 Beginning with “adequacy,” the court must evaluate “two questions: (1) do the
 26 movant and its counsel have any conflicts of interest with other class members and (2) will
 27 the movant and its counsel prosecute the action vigorously on behalf of the class?” *Id.* at
 28 899–900 (simplified). There is no evidence of conflicts of interest with other class

1 members, and both Robinson and his counsel appear willing and able to prosecute this
2 action vigorously. Robinson has made a prima facie showing of adequacy.

3 “The test for typicality asks whether other members have the same or similar injury,
4 whether the action is based on conduct which is not unique to the named plaintiffs, and
5 whether other class members have been injured by the same course of conduct.” *Borteanu*
6 *v. Nikola Corp.*, 562 F. Supp. 3d 174, 181 (D. Ariz. 2021) (simplified). Robinson argues
7 his claims are typical because he “purchased the Company’s securities at prices artificially
8 inflated due to Defendants’ misrepresentations and omissions, and was damaged thereby.”
9 (Doc. 18 at 7.) The present evidence shows Robinson suffered the same type of injuries
10 based on the same conduct as other class members, so the requirement of typicality is met.

11 Robinson has made a sufficient showing of adequacy and typicality, so he is
12 presumptively the lead plaintiff. The final step is to assess whether the Lovingier Family
13 has shown by “the preponderance of the evidence” that Robinson should not be appointed.
14 *In re Crain Walnut Shelling, LP*, 175 F.4th 1069, 1079 (9th Cir. 2026). The Lovingier
15 Family ventures two arguments in support of its position. First, Robinson allegedly did not
16 provide sufficient biographical information to allow the court to assess his adequacy.
17 Second, Robinson’s decision to retain three law firms to act as counsel establishes he is not
18 adequate. Neither argument is convincing.

19 Robinson “lives in Rochester, New York and has been investing for 15 years.” (Doc.
20 18 at 7.) He describes himself as working “in the real estate industry” (Doc. 18 at 7) and
21 states he is “willing to serve as a representative party on behalf of a Class of investors . . .
22 including providing testimony at deposition and trial, if necessary” (Doc. 18-4 at 2). The
23 Lovingier Family argues Robinson’s failure to provide additional biographical
24 information, such as his “educational background,” should preclude his appointment as
25 lead plaintiff. (Doc. 26 at 11.) The Ninth Circuit has rejected the idea that a court can
26 engage in a “freewheeling comparison of the parties competing for lead plaintiff,” such as
27 “questioning [each plaintiff] about their business acumen.” *In re Cavanaugh*, 306 F.3d at
28 732. There is no requirement that Robinson provide more detailed information and the

1 Lovingier Family's first argument fails.¹

2 The Lovingier Family's other argument attempting to rebut the presumption is that
3 Robinson retained three law firms to pursue this case. Although not entirely clear, the
4 Lovingier Family appears to believe its retention of two law firms was reasonable, but
5 Robinson's retention of three law firms establishes he should not be appointed lead
6 plaintiff. The Lovingier Family's argument again misapplies controlling Ninth Circuit
7 authority.

8 The court "has no authority to select for the class what it considers to be the best
9 possible lawyer or the lawyer offering the best possible fee schedule. Indeed, the district
10 court does not select class counsel at all." *Id.* The court's task is "only to determine whether
11 the presumptive lead plaintiff's choice of counsel is so irrational, or so tainted by self-
12 dealing or conflict of interest, as to cast genuine and serious doubt on that plaintiff's
13 willingness or ability to perform the functions of lead plaintiff." *Id.* Here, Robinson has
14 selected The Rosen Law Firm, P.A. and the Schall Law Firm as "Co-Lead Counsel," and
15 Martin & Bonnett P.L.L.C. as "Liaison Counsel." (Doc. 18 at 2.) The Rosen Law Firm and
16 the Schall Law Firm have extensive experience in securities litigation, and Martin and
17 Bonnett routinely litigate matters in the District of Arizona. The Lovingier Family does not
18 provide any evidence showing Robinson's choice to retain three firms, or these three firms
19 in particular, comes close to "irrational." Vague arguments that hiring three firms instead
20 of two should preclude Robinson's appointment are not convincing. The Lovingier Family
21 has not rebutted the presumption.

22 Accordingly,

23 **IT IS ORDERED** the Motions to Appoint Lead Plaintiffs (Doc. 20, 22) are
24 **DENIED.**

25 ¹ The Lovingier Family cites a case from the Southern District of California that faulted a
26 movant for not including adequate biographical information when seeking appointment as
27 the lead plaintiff. *Camp v. Qualcomm Inc.*, No. 18-CV-1208-AJB-BLM, 2019 WL 277360,
28 at *3 (S.D. Cal. Jan. 22, 2019). In that case, the movant did not provide "any basic details
about himself, including where he lives or who he is specifically." *Id.* That movant also
made false statements and "significant errors" in calculating his losses. *Id.* The present
situation is different in that Robinson has identified where he lives and there are no
"significant errors" in his filings.

