

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

STEVEN LEVENTHAL,  
Plaintiff,  
v.  
CHEGG, INC., et al.,  
Defendants.

Case No. [5:21-cv-09953-EJD](#)

**ORDER GRANTING KBC ASSET  
MANAGEMENT NV AND THE  
POMPANO BEACH POLICE &  
FIREFIGHTERS' RETIREMENT  
SYSTEM'S MOTION FOR  
APPOINTMENT AS LEAD PLAINTIFF  
AND APPROVAL OF SELECTION OF  
LEAD COUNSEL**

Re: Dkt. Nos. 20, 36, 40, 52, 60, 67

1. Before the Court in this securities class action are six motions to appoint lead plaintiff and select lead counsel. Having reviewed the papers and heard oral argument on August 29, 2022, the Court **GRANTS** KBC Asset Management and The Pompano Beach Police & Firefighters' Retirement System's Motion for Appointment as Lead Plaintiff and Approval and Selection of Lead Counsel. *See* Dkt. No. 40. All competing motions for the appointment of lead plaintiff and lead counsel are **DENIED**.

**I. BACKGROUND**

Plaintiff Steven Leventhal brings this securities fraud class action pursuant to §§ 10(b) and 20(a) of Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a), and Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. § 240.10b-5, individually and on behalf of all other purchasers of Chegg, Inc. ("Chegg") common stock between May 5, 2020 and November 1, 2021 ("Class Period").

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1 Defendant Chegg is a learning platform that provides educational resources and online  
2 research tools to its subscribers, including online tutoring, study materials, textbook rentals, and  
3 other educational products. Compl., Dkt. No. 1 ¶¶ 2, 18. During the Covid-19 pandemic, Chegg  
4 experienced a substantial increase in subscribers, growth, and revenue. *Id.* ¶¶ 21, 22. Plaintiff  
5 asserts that Chegg’s stock price artificially inflated and Chegg allegedly took advantage of these  
6 inflated prices to sell more than \$1 billion in common stock for \$102 per share at a second  
7 offering in February 2021. *Id.* ¶ 4.

8 The Complaint alleges that Chegg made materially false and misleading statements during  
9 the Class Period about the primary contributors to the company’s significant success. *Id.* ¶¶ 2, 23.  
10 Chegg allegedly attributed its growth at this time to its strong business model and business  
11 acumen rather than to the Covid-19 pandemic and subsequent increase in remote learning. *Id.* On  
12 November 1, 2021, Chegg released its financial results, which revealed a 50% stock price  
13 plummet from \$62 per share to \$32 per share. *Id.* ¶ 5. This class action followed.

14 On February 22, 2022, nine motions for appointment of lead plaintiff and approval of  
15 selection of counsel were filed. *See* Dkt. Nos. 20, 26, 30, 36, 40, 51, 52, 60, 67. Three movants  
16 subsequently withdrew their motions. Dkt. Nos. 74, 77, 80. Presently, there are six motions before  
17 the Court filed by: (1) the Ohio Carpenters Pension Fund (“Ohio Carpenters”); (2) Nicolas Reiter;  
18 (3) KBC Asset Management NV and the Pompano Beach Police & Firefighters’ Retirement  
19 System (“KBC and Pompano P&F”) (“KBC-Pompano Motion”); (4) David Kennedy; (5) North  
20 Atlantic States Carpenters Pension Fund and Guaranteed Annuity Fund (“North Atlantic Funds”)  
21 (“NAF Motion”); and (6) Randy Myles. Movants Ohio Carpenters (Dkt. No. 78), Kennedy (Dkt.  
22 No. 79), and Reiter (Dkt. No. 83) have filed notices of non-opposition to competing motions for  
23 appointment of lead plaintiff and approval of lead counsel.

24 The two movants with the largest financial interests, KBC and Pompano P&F and North  
25 Atlantic Funds, have filed briefs in opposition to competing lead plaintiff motions. *See* Dkt. Nos.  
26 82, 84, 87, 88.

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## II. LEGAL STANDARD

Pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(B)(ii), the Court “shall appoint the most adequate plaintiff as lead plaintiff” in a consolidated action. There is a rebuttable presumption that the most adequate plaintiff is a person or group of persons who:

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

Accordingly, there is a “simple three-step process” to identify a lead plaintiff. *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). “The first step consists of publicizing the pendency of the action, the claims made and the purported class period.” *Id.* Next, the Court considers which plaintiff has the highest financial stake. *Id.* at 729–30. Finally, “[t]he third step of the process is to give other plaintiffs an opportunity to rebut the presumptive lead plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements.” *Id.* at 730.

## III. DISCUSSION

### A. Approval of Lead Plaintiff

#### 1. PSLRA Requirements

First, Plaintiffs must meet the procedural requirements of the PSLRA. The plaintiff in the first-filed action must publish notice of the complaint in a widely circulated business publication within twenty days of the filing of the complaint. 15 U.S.C. § 78u-4(a)(3)(A)(i). The notice must include a description of the claim, identify the class period, and notify prospective class members that they may move within 60 days of the notice to be named lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i) (I)-(II). Once applications for lead plaintiff status are closed, the district court must determine which movant for lead plaintiff status is the “most capable of adequately representing

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1 the interests of the class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i).

2 To aid the court in its determination, each movant must submit a sworn statement  
 3 certifying that “(a) they have reviewed the original Complaint and have adopted its allegations; (b)  
 4 they did not purchase security that is the subject of this litigation at the direction of Plaintiff’s  
 5 counsel or in order to participate in any private action arising under the federal securities laws; (c)  
 6 they are willing to serve as representative parties on behalf of a class, including providing  
 7 testimony at deposition and trial, if necessary; (d) in the past three years, they have not sought to  
 8 serve, and have not served, as a representative party on behalf of a class in any private federal  
 9 securities action; and (e) they will not accept any payment for serving as a representative party on  
 10 behalf of the class beyond their pro rata share of any recovery, with the exception of the  
 11 reasonable costs and expenses that relate to their representation of the class.” *Gerin v. Aegon*  
 12 *USA, Inc.*, No. 6-CV-05407-SBA, 2007 WL 108451, at \*3 (N.D. Cal. Jan. 10, 2007); 15 U.S.C. §  
 13 78u-4(a)(2)(A)(i)-(vi). Here, the parties do not dispute that notice has been published and KBC  
 14 and Pompano P&F satisfies the procedural requirements. Dkt. Nos. 41-1, 41-4.

15 Second, the plaintiff with the largest stake and who otherwise satisfies the Rule 23  
 16 requirements is presumptively the most adequate plaintiff. *In re Cavanaugh*, 306 F.3d at 730.  
 17 The Court compares: “(1) the number of shares purchased during the class period; (2) the number  
 18 of net shares purchased during the class period; (3) the total net funds expended during the class  
 19 period; and (4) the approximate losses suffered during the class period.” *City of Royal Oak Ret.*  
 20 *Sys. v. Juniper Networks, Inc.*, No. 11-CV-04003-LHK, 2012 WL 78780, at \*4 (N.D. Cal. Jan. 9,  
 21 2012) (quotations omitted) (quoting *In re Olsten Corp. Sec. Litig.*, 3 F.Supp. 286, 295  
 22 (E.D.N.Y.1998)). KBC and Pompano P&F collectively sustained the largest financial loss of all  
 23 the moving plaintiffs with a total loss of \$6,067,129.00 using the last-in, first-out (“LIFO”)  
 24 accounting method. KBC-Pompano Mot. at 6–7. KBC and Pompano P&F also purchased the  
 25 most shares of Chegg, totaling 119,510 shares, and expended over \$5.4 million in net funds in  
 26 Chegg stock during the Class Period. KBC-Pompano Opp., Dkt. No. 82 at 5. Accordingly, as the

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1 movants with the largest financial stake, KBC and Pompano P&F are the “presumptive” plaintiff.

2 Third, the Rule 23(a)(3) typicality requirement is satisfied when a proposed class  
 3 representative “has suffered the same injuries as other class members as a result of the same  
 4 conduct by defendants and has claims based on the same legal issues.” *Westley v. Oclaro, Inc.*,  
 5 No. 11-CV-02448-EMC, 2011 WL 4079178, at \*3 (N.D. Cal. Sept. 12, 2011) (quoting *In re SLM*  
 6 *Corp. Sec. Litig.*, 258 F.R.D. 112, 116 (S.D.N.Y. 2009)). Movants need only make a “prima facie  
 7 showing of typicality and adequacy” at the lead plaintiff selection stage. *Deinnocentis v.*  
 8 *Dropbox, Inc.*, No. 19-CV-06348-BLF, 2020 WL 264408, at \*4 (N.D. Cal. Jan. 16, 2020). KBC  
 9 and Pompano P&F have made prima facie showing of typicality because it alleged loss as a result  
 10 of purchasing Chegg securities during the Class Period at prices that were “artificially inflated” by  
 11 Defendant’s materially false and misleading statements or omissions, and the inflated stock prices  
 12 fell after Defendant made corrective disclosures. KBC-Pompano Mot. at 8.

## 13 2. Rebuttal of Presumptive Lead Plaintiff

14 For the final step, other plaintiffs are given an opportunity to rebut the presumptive lead  
 15 plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements. *In re*  
 16 *Cavanaugh*, 306 F.3d at 730.

17 North Atlantic Funds asserts that KBC and Pompano P&F cannot be appointed lead  
 18 plaintiff because it is subject to a “standing defenses which preclude the prima facie finding of  
 19 typicality and adequacy.” NAF Opp., Dkt. No. 84 at 1 (citing *In re Mersho*, 6 F.4th 891, 898–99  
 20 (9th Cir. 2021)). KBC Asset Management NV (“KBC”) is an investment management company  
 21 for KBC Eco Fund NV and KBC Equity Fund NV (collectively, the “Funds”) that is based in  
 22 Brussels, Belgium. Elst-Connell Decl., Dkt. No. 41-3.<sup>1</sup> North Atlantic Funds contends that KBC  
 23 does not have financial interest in this securities class action because the assignment of the Funds’  
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25 \_\_\_\_\_  
 26 <sup>1</sup> KBC is a sophisticated institutional investor that manages over \$100 billion in assets. Dkt. No.  
 82 at 2; Elst Connell Decl. ¶ 2.

1 claims on which it relies is potentially invalid. NAF Opp., Dkt. No. 84 at 7. Therefore, it argues  
 2 that KBC is asserting the loss of “two distinct legal entities whose funds KBC manages” which  
 3 could subject it to standing defenses in the future. *Id.* at 1.

4 Here, KBC and Pompano P&F exhibited a declaration of assignment of claims to KBC  
 5 executed in Belgium, which gives KBC the authority to file a motion for lead plaintiff in the  
 6 current action against Chegg and to pursue the lawsuit and act on behalf of the Funds.<sup>2</sup> Dkt. No.  
 7 41-5. Under sworn declaration, KBC’s counsel represents that the signatories of the assignment  
 8 are authorized signatories of the Funds. KBC-Pompano Reply at 11–12; Lest Decl., Dkt. No. 89-2  
 9 ¶ 4. North Atlantic Funds has failed to provide evidence contesting the validity of the assignment;  
 10 its speculation about the validity is insufficient to rebut the lead plaintiff presumption. *Doherty v.*  
 11 *Pivotal Software, Inc.*, No. 19-CV-03589-CRB, 2019 WL 5864581, at \*6 (N.D. Cal. Nov. 8, 2019)  
 12 (“The PSLRA requires ‘proof’ to overcome the presumption entitling the plaintiff with the largest  
 13 financial interest in the litigation to appointment as lead plaintiff; speculative assertions are  
 14 insufficient.”).

15 In consideration of the parties’ submissions and oral argument, the Court finds that Funds’  
 16 assignment of its claims to KBC in this matter is facially valid. Accordingly, the Court **GRANTS**  
 17 KBC and Pompano P&F’s motion for appointment of lead plaintiff.

### 18 **B. Approval of Lead Counsel**

19 KBC and Pompano P&F has made a sufficient showing of adequacy. To determine  
 20 adequacy, “a court must consider whether: (1) the lead plaintiff’s claims conflict with those of the  
 21 class; and (2) class counsel is qualified, experienced, and generally able to conduct the litigation.”  
 22 *Westley*, 2011 WL 4079178 at \*3 (quoting *In re SLM Corp. Sec. Litig.*, 258 F.R.D. at 112). A  
 23 court should only disturb the lead plaintiff’s counsel choice if it is necessary to protect the  
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25 \_\_\_\_\_  
 26 <sup>2</sup> KBC and Pompano P&F also submitted a declaration from Professor Storme, an attorney and  
 27 Belgian law expert, explaining that the assignments are valid under Belgian Law. Storme Decl.,  
 28 Dkt. No. 89-3 ¶¶ 5-6

1 interests of the class. *In re Cohen*, 586 F.3d 703, 711–12 (9th Cir. 2009).

2 KBC and Pompano P&F selected Motley Rice LLC and Saxena White P.A. to jointly serve  
 3 as lead counsel for the class. These firms are both highly qualified and experienced in securities  
 4 class litigation. KBC-Pompano Mot. at 12–13 (citing *In re Twitter, Inc. Sec. Litig.* (unpublished),  
 5 No. 16-CV-05314-JST, Dkt. No. 658 (N.D. Cal.) (preliminarily approving over \$809 million in  
 6 settlement with Motley Rice as co-counsel); *In re Wilmington Tr. Sec. Lit.* (unpublished), No. 10-  
 7 CV-00990-ER (D. Del.) (securing \$210 million recovery for the investor class with Saxena White  
 8 as co-lead counsel)); Firm Resumes, Dkt. Nos. 41-6, 41-7. Furthermore, Motley Rice has  
 9 previously served as lead counsel in securities class actions in this district with KBC as lead  
 10 plaintiff. *See* Shenwick, 2016 WL 10672428, at \*2.

11 Accordingly, the Court **GRANTS** KBC and Pompano P&F’s motion for appointment of  
 12 lead counsel.

#### 13 **IV. CONCLUSION**

14 2. For the foregoing reasons, the Court appoints KBC Asset Management and The  
 15 Pompano Beach Police & Firefighters’ Retirement System as lead plaintiff and appoints the law  
 16 firms of Motley Rice LLC and Saxena White P.A. to serve as lead co-counsel in this action. All  
 17 competing motions for the appointment of lead plaintiff and lead counsel are **DENIED**.

18 3. Plaintiff’s Lead Counsel shall have the following responsibilities and duties, to be  
 19 carried out either personally or through counsel whom Lead Counsel shall designate:

- 20 a) to coordinate the briefing and argument of motions;
- 21 b) to coordinate the conduct of discovery proceedings;
- 22 c) to coordinate the examination of witnesses in depositions;
- 23 d) to coordinate the selection of counsel to act as a spokesperson at pretrial  
 24 conferences;
- 25 e) to call meetings of the plaintiff’s counsel as they deem necessary and appropriate  
 26 from time to time;

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- 1 f) to coordinate all settlements negotiations with counsel for defendants;
- 2 g) to coordinate and direct the pretrial discovery proceedings and the preparation for
- 3 trial and the trial of this matter and to delegate work responsibilities to selected
- 4 counsel as may be required;
- 5 h) to cost effectively manage the litigation including maintaining work assignments
- 6 and billing logs that would be reported to the Court as requested; and
- 7 i) to supervise any other matters concerning the prosecution, resolution or settlement
- 8 of the Consolidated Action.

9 4. No motion, request for discovery, or other pretrial proceedings shall be initiated or  
10 filed by any plaintiff without the approval of Lead Counsel, so as to prevent duplicative pleadings  
11 or discovery by plaintiffs. No settlement negotiations shall be conducted without the approval of  
12 Lead Counsel.

13 5. Counsel in any related action that is consolidated with this action shall be bound by  
14 this organization of plaintiffs' counsel.

15 6. Lead Counsel shall have the responsibility of receiving and disseminating Court  
16 orders and notices.

17 7. Lead Counsel shall be the contact between plaintiffs' counsel and defendants'  
18 counsel, as well as the spokesperson for plaintiffs' counsel, and shall direct and coordinate the  
19 activities of plaintiffs' counsel.

20 8. Defendants shall effect service of papers on plaintiffs by serving a copy of same on  
21 Lead Counsel by overnight mail service, electronic or hand delivery. Plaintiffs shall effect service  
22 of papers on defendants by serving a copy of same on defendants' counsel by overnight mail  
23 service, electronic or hand delivery.

24 9. During the pendency of this litigation, or until further order of this Court, the  
25 parties shall take reasonable steps to preserve all documents within their possession, custody, or  
26 control, including computer-generated and stored information, and materials such as computerized

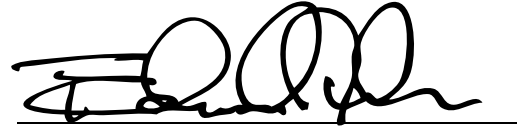
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1 data and electronic mail, containing information which is relevant or which may lead to the  
2 discovery of information relevant to the subject matter of the pending litigation.

3 **IT IS SO ORDERED.**

4 Dated: September 7, 2022



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7 EDWARD J. DAVILA  
United States District Judge  
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