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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

David Shapiro, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

Matrixx Initiatives, Inc., et al.,

Defendants.

No. CV-09-01479-PHX-ROS

ORDER

Before the Court is Movant Axel Alegre de La Soujeole’s (“Movant”) Motion for Appointment as Lead Plaintiff and Approval of Selection of Co-lead and Local Counsel (Doc. 26), which will be granted.

BACKGROUND

On July 17, 2009, Plaintiff filed a Complaint alleging Defendants violated sections 10(b) and 20(a) of the Securities and Exchange Act, and Securities and Exchange Commission (“SEC”) Rule 10b-5, by disseminating false and misleading information and failing to disclose information, such that the price of Matrixx securities was artificially inflated. Defendant Matrixx Initiatives, Inc. (“Matrixx”) is the manufacturer of Zicam Cold Remedy Products. Plaintiff alleges Matrixx failed to adequately disclose reports that users of the Zicam Cold Remedy Products were experiencing serious adverse health effects, including a loss of the sense of smell.

1 Plaintiff purports to initiate this action on behalf of a class of all individuals who
2 purchased or otherwise acquired Matrixx common stock between December 22, 2007 and
3 June 15, 2009. Movant Axel Alegre de La Soujeole moves to be appointed the lead plaintiff,
4 and to approve Saxena White P.A. and Faruqi & Faruqi, LLP as co-lead counsel, and Tiffany
5 & Bosco, P.A. as local counsel. No responses in opposition to the Motion have been filed.

6 DISCUSSION

7 The Private Securities Litigation Reform Act, Pub. L. 104-67, 109 Stat. 737 (codified
8 in various sections of Title 15 of the U.S.C.) (“PSLRA”), sets forth the procedures that must
9 be followed to initiate a class action under the federal securities laws. The PSLRA requires
10 that not later than 20 days after the date on which the complaint is filed, the plaintiff or
11 plaintiffs shall publish a notice advising members of the purported class of the pendency of
12 the action, and that not later than 60 days after such notice is published, any member of the
13 purported class may move the court to serve as lead plaintiff of the purported class. 15 U.S.C.
14 § 78u-4(a)(3)(A)(I). On July 17, 2009, Plaintiff published the required notice. (Doc. 26, Ex.
15 A). Movant filed a motion to be appointed as lead plaintiff within the required time period.

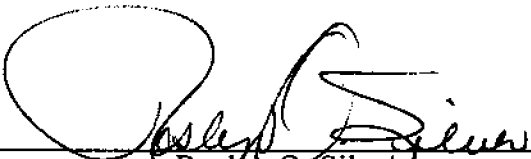
16 Under the PSLRA, the Court adopts a rebuttable presumption that the most adequate
17 plaintiff in securities fraud class action is the person who: (1) has either filed the complaint
18 or made a motion in response to a notice; (2) in the determination of the court, has the largest
19 financial interest in the relief sought by the class; and (3) otherwise satisfies the requirements
20 of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii). Movant
21 is the only party to file a motion in response to the notice, and has submitted evidence that
22 he has the largest financial interest in the litigation; he thus satisfies the first two
23 requirements. Under Rule 23, a party is an adequate class representative if his claims or
24 defenses are typical of the claims or defenses of the class, and he will fairly and adequately
25 protect the interests of the class. *Armour v. Network Associates, Inc.*, 171 F.Supp.2d 1044,
26 1051-52 (N.D. Cal. 2001) (Noting that of the Rule 23 requirements, only the typicality and
27 adequacy requirements are involved when determining the lead plaintiff). Movant meets the
28 typicality requirement because he seeks to represent a class of purchasers of Matrixx stock

1 with identical claims. He also meets the adequacy requirement, as evidenced by the fact that
2 he has a large financial interest in the litigation, his interests are aligned with other members
3 of the class, and he has taken significant steps to protect the interests of the class by moving
4 to be appointed lead plaintiff and retaining experienced counsel. The Court therefore
5 presumes that Movant is the most adequate plaintiff. Because no oppositions have been filed
6 to challenge this presumption, the Court will grant the Motion to appoint Movant as lead
7 plaintiff.

8 Under the PSLRA, the lead plaintiff shall select and retain counsel to represent the
9 class. 15 U.S.C. § 78u-4(a)(3)(B)(v). Movant has selected the law firms of Saxena White
10 P.A. and Faruqi & Faruqi, LLP to serve as co-lead counsel and Tiffany & Bosco, P.A. to
11 serve as local counsel. Movant submits evidence that these firms also have substantial
12 experience litigating securities actions and securities class actions in particular. Accordingly,
13 the Court approves Movant's selection of counsel.

14 **IT IS ORDERED** Movant's Motion for Appointment as Lead Plaintiff and Approval
15 of Selection of Co-lead and Local Counsel (Doc. 26) **IS GRANTED.**

16 DATED this 27th day of July, 2010.

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20 Roslyn O. Silver
21 United States District Judge
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