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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 In re LYFT SECURITIES LITIGATION

Case No. [19-cv-02690-HSG](#)

8 **ORDER GRANTING KEINER'S**
9 **MOTION FOR APPOINTMENT AS**
10 **LEAD PLAINTIFF AND DENYING**
11 **THE REMAINING MOTIONS FOR**
12 **LEAD PLAINTIFF**

Re: Dkt. Nos. 9, 12, 20

13 On May 17, 2019, Plaintiff Matias Malig, as Trustee for the Malig Family Trust, filed the
14 first of two securities class action lawsuits bringing claims individually and on behalf of others
15 who acquired common stock of Lyft, Inc. (“Lyft” or “the Company”) traceable to Lyft’s Initial
16 Public Offering (“IPO”) on March 28, 2019. Dkt. No. 1 (“*Malig Compl.*”).¹ The complaint
17 asserts a claim under Section 11 of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C.
18 § 77k. Compl. ¶¶ 91–98. The complaint names as Defendants the Company, eleven individual
19 defendants who served in executive positions for the Company or on the Company’s Board, and
20 twenty-nine underwriters who were “instrumental in soliciting and making the stock offered in the
21 IPO available to the investing public.” *Id.* ¶ 30.

22 Four competing motions for appointment as lead plaintiff, approval of lead counsel, and
23 consolidations of securities class action cases were filed: (1) a motion by Rick Keiner (“Keiner”)
24 seeking appointment as lead plaintiff and approval of Block & Leviton as lead counsel, Dkt. No.
25 9; (2) a motion filed by Harold Tholen, Danilo Nunez, and Rakesh Khanna (collectively, “Lyft
26 Investor Group”) seeking appointment as lead plaintiffs and approval of Levi & Korsinky, LLP as

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28 ¹ The Court subsequently related, and later consolidated, a second class action brought by Plaintiff Kevin Lewis. *See* Dkt. No. 7 (order relating Case No. 19-cv-3003-YGR), 47 (order consolidating the two actions).

1 lead counsel, Dkt. No. 12; (3) a motion by Deep Dinesh Patel (“Patel”) seeking appointment as
 2 lead plaintiff and approval of The Rosen Law Firm, P.A. as lead counsel, Dkt. No. 16; and (4) a
 3 motion by Terry S. Bradford (“Bradford”) seeking appointment as lead plaintiff and approval of
 4 Pomerantz LLP as lead counsel, Dkt. No. 20. Subsequently, Patel withdrew his motion. *See* Dkt.
 5 No. 50. On July 30, 2019, Keiner and the Lyft Investor Group filed briefs in opposition to the
 6 competing motions for appointment of lead plaintiff. Dkt. Nos. 51, 52. On August 6, 2019,
 7 Keiner filed a brief in further support of his initial motion. Dkt. No. 54. On the same day, the
 8 Lyft Investor Group also filed a brief in further support of their initial motion. Dkt. No. 55.

9 Having carefully considered the relevant filings and authorities, the Court **GRANTS**
 10 Keiner’s motion (Dkt. No. 9) and **DENIES** the remaining unwithdrawn motions (Dkt. Nos. 12,
 11 20).²

12 I. BACKGROUND

13 Lyft is a rideshare company that sought to revolutionize transportation by
 14 launching its peer-to-peer marketplace for on-demand ridesharing. *Malig* Compl. ¶ 4. In order to
 15 “establish a solid foothold in the bikeshare market and offer access to new transportation options
 16 on the Lyft Platform,” Lyft acquired Bikeshare Holdings LLC’s technology and corporate
 17 functions in November 2018. *Id.* ¶ 5.

18 On March 28, 2019, Lyft offered 32.5 million shares to the public through an IPO at a
 19 price of \$72.00 per share, generating total proceeds of \$2.34 billion. *Id.* ¶ 6. In the Registration
 20 Statement and Prospectus filed in connection with the IPO, Lyft estimated that its ridesharing
 21 marketplace “is available to over 95% of the U.S. population, as well as in select cities in
 22 Canada.” *Id.* ¶ 7. The Company also represented that its “U.S. ridesharing market share was 39%
 23 in December 2018, up from 22% in December 2016.” *Id.*

24 Defendants allegedly made materially false, misleading, or incomplete statements in these
 25 filings “because they failed to disclose, among other things, that: (1) Lyft’s claimed ridesharing
 26 position was overstated; (2) more than 1,000 of the bicycles in Lyft’s rideshare program suffered

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 28 ² The Court finds this matter appropriate for disposition without oral argument and the matter is
 deemed submitted. *See* Civ. L.R. 7–1(b).

1 from safety issues that would lead to their recall; (3) Lyft’s drivers were becoming disincentivized
 2 from driving for Lyft; and (4) Lyft failed to warn investors that a labor disruption could affect its
 3 operations.” *Id.* ¶¶ 9, 75.

4 When the purported truths were revealed, Lyft’s stock price fell and the putative class
 5 members—who purchased stock traceable to the IPO—suffered financial losses. *Id.* ¶¶ 11–12.
 6 For example, after the market closed on April 11, 2019, Uber, Lyft’s competitor, filed with the
 7 SEC its Form S-1, which “claimed a market share of greater than 65% in the United States and
 8 Canada, a claim that further undermined Lyft’s purported claim of 39% market share.” *Id.* ¶¶ 77–
 9 78. Several days later, the New York Times reported that Citi Bike was taking 1,000 bicycles out
 10 of service in New York, and more in Washington, D.C. and San Francisco, in the wake of dozens
 11 of reported injuries and safety concerns. *Id.* ¶ 79. “In response to these revelations, the
 12 Company’s shares fell sharply to under \$57.00.” *Id.* ¶ 80.

13 **II. APPOINTMENT OF LEAD PLAINTIFF**

14 The Private Securities Litigation Reform Act (“PSLRA”) “instructs district courts to select
 15 as lead plaintiff the one ‘most capable of adequately representing the interests of class members.’”
 16 *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (quoting 15 U.S.C. § 78u-4(a)(3)(B)(i)).
 17 “The ‘most capable’ plaintiff—and hence the lead plaintiff—is the one who has the greatest
 18 financial stake in the outcome of the case, so long as he meets the requirements of Rule 23.” *Id.*
 19 The Ninth Circuit interprets the PSLRA as establishing “a simple three-step process for
 20 identifying the lead plaintiff pursuant to these criteria.” *Id.*

21 **A. Notice Requirement**

22 Step One consists of meeting the PSLRA’s notice requirement. *Id.* “The first plaintiff to
 23 file an action covered by the [PSLRA] must post this notice ‘in a widely circulated national
 24 business-oriented publication or wire service.’” *Id.* (quoting 15 U.S.C. § 78u-4(a)(3)(A)(i)). The
 25 notice must be published within 20 days of the complaint’s filing. 15 U.S.C. § 78u-4(a)(3)(A)(i).
 26 The notice must also alert putative class members “(I) of the pendency of the action, the claims
 27 asserted therein, and the purported class period; and (II) that, not later than 60 days after the date
 28 on which the notice is published, any member of the purported class may move the court to serve

1 as lead plaintiff of the purported class.” *Id.*

2 Here, notice was published in *Globe Newswire* on the same day that the complaint was
 3 filed. *Compare* Compl. with Dkt. No. 13–3. This complied with the PSLRA’s 20-day filing
 4 deadline, and *Globe Newswire* is a “widely circulated [inter]national business-oriented news
 5 reporting service,” as required. *Cavanaugh*, 306 F.3d at 729 (quoting 15 U.S.C. § 78u-
 6 4(a)(3)(A)(i)). The notice specifically announced the filing of the action against Lyft, described
 7 the asserted claim under the Securities Act, described the class as encompassing those who
 8 “purchased Lyft shares pursuant and/or traceable to Lyft’s registration statement and prospectus,”
 9 and notified putative class members that any motion to be appointed lead plaintiff must be filed no
 10 later than July 16, 2019. Dkt. No. 13-3. Accordingly, Step One’s requirements are met.

11 **B. Largest Financial Stake in the Litigation**

12 Step Two consists of identifying the presumptive lead plaintiff. *See Cavanaugh*, 306 F.3d
 13 at 729–30. There is a rebuttable presumption that the “most adequate plaintiff” is the one who
 14 “(aa) has either filed the complaint or made a motion in response to a notice under subparagraph
 15 (A)(i); (bb) in the determination of the court, has the largest financial interest in the relief sought
 16 by the class; and (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 17 Procedure.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Thus, once the filing requirement of subsection
 18 (a)(3)(B)(iii)(I)(aa) is met, “the district court must compare the financial stakes of the various
 19 plaintiffs and determine which one has the most to gain from the lawsuit.” *Cavanaugh*, 306 F.3d
 20 at 730. Keiner, the Lyft Investor Group, and Bradford all filed their motions to be appointed lead
 21 plaintiff(s) on July 16, 2019, satisfying subsection (aa).

22 The Court must then determine who has the largest financial interest in the litigation.
 23 Keiner argues that he has the highest total losses: \$223,049.76. Dkt. No. 49.³ Lyft Investor Group

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 25 ³ Lyft Investor Group argues that the Court should not accept Keiner’s amended certification
 26 because it was filed on July 29, 2019, after the deadline to move to be appointed lead plaintiff.
 27 Dkt. No. 52 at 13. While it is true that the amended certification was filed later, Keiner timely
 28 filed his motion on July 16, 2019, and upon noticing the scrivener’s errors in his certification,
 submitted the amended certification prior to any notification of these errors by other movants.
 Keiner’s motion was timely, and the Court will consider the amended certification. *Accord In re*
Solar City Corp. Sec. Litig., No. 16-CV-04686-LHK, 2017 WL 363274, at *6 (N.D. Cal. Jan. 25,
 2017) (“[T]he error made when transferring stock prices from Plaintiff’s brokerage account to

1 argues that Keiner overstates his losses because he includes unrecoverable losses due to shares that
 2 were sold prior to any disclosure of the misstatement. Dkt. No. 52 at 7. They argue that Keiner’s
 3 “actual financial interest in the litigation is only \$50,407.90 based on the 7,700 shares that he
 4 purchased and held at the time at least one of the alleged corrective disclosures entered the market
 5 to proximately cause his losses.” Dkt. No. 52 at 9. Lyft Investor Group alleges a loss of
 6 \$163,481.24 (of which \$91,050.00 is attributable to Harold Tholen, \$40,673.00 is attributable to
 7 Rakesh Khanna, and \$31,758.24 is attributable to Danilo Nunez), Dkt. No. 13-2, and Bradford
 8 alleges a loss of \$8,335, Dkt. No. 21-1. Underlying the movants’ disagreement is the
 9 methodology used to calculate the largest financial interest.

10 “The Ninth Circuit has declined to endorse a particular method” to calculate which movant
 11 has the largest financial stake in a securities class action. *Nicolow v. Hewlett Packard Co.*, No.
 12 12-cv-05980-CRB, 2013 WL 792642, at *4 (N.D. Cal. Mar. 4, 2013). Instead, district courts
 13 “may select accounting methods that are both rational and consistently applied.” *Cavanaugh*, 306
 14 F.3d at 730 n.4. Courts in this district primarily have relied on two methods: “[m]ethods in the
 15 first category equate financial interest with actual economic losses suffered. In contrast, a second
 16 category of methods equates largest financial interest with potential recovery.” *Perlmutter v.*
 17 *Intuitive Surgical, Inc.*, No. 10-CV-03451-LHK, 2011 WL 566814, at *3 (N.D. Cal. Feb. 15,
 18 2011) (internal citations omitted).

19 Within the first category, courts have used the *Lax-Olsten* four-factor test to approximate
 20 economic losses. *See e.g., Melucci v. Corcept Therapeutics Inc.*, No. 19-CV-01372-LHK, 2019
 21 WL 4933611, at *3 (N.D. Cal. Oct. 7, 2019) (noting the “four factors that were first introduced in
 22 *Lax v. First Merchants Acceptance Corp.*, 1997 WL 461036, at *5 (N.D. Ill. Aug. 11[,] 1997), and
 23 *In re Olsten Corporation Securities Litigation*, 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998).”). These
 24 four factors are “(1) the number of shares purchased during the class period; (2) the number of net
 25 shares purchased during the class period; (3) the total net funds expended during the class period;
 26 and (4) the approximate losses suffered during the class period.” *In re Olsten*, 3 F. Supp. 2d at
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 Fish’s motion was clearly an inadvertent error,” and not one to be held against the movant).

1 295. Courts then consider the totality of these factors in order to determine an approximate loss
2 for each movant. Many courts consider the fourth factor, approximate loss, the most important.
3 *See Markette v. XOMA Corp.*, No. 15-CV-03425-HSG, 2016 WL 2902286, at *5 n.4 (N.D. Cal.
4 May 13, 2016); *Bodri v. Gopro, Inc.*, No. 16-CV-00232-JST, 2016 WL 1718217, at *4 (N.D. Cal.
5 Apr. 28, 2016); *In re Diamond Foods, Inc., Sec. Litig.*, 281 F.R.D. 405, 408 (N.D. Cal. 2012).

6 Other courts in this district have applied a different method that looks to the shares
7 purchased during the class period and retained at the end of the class period and calculates the
8 total net loss considering only those securities. *See Mulligan v. Impax Labs., Inc.*, No. C-13-1037-
9 EMC, 2013 WL 3354420, at *6 (N.D. Cal. Jul. 2, 2013) (citing *Eichenholtz v. Verifone Holdings,*
10 *Inc.*, No. C 07-6140-EMC, 2008 WL 3925289, at *10–14 (N.D. Cal. Aug. 22, 2008)). The
11 advantage of this “retained shares” method is that it “look[s] to losses experienced due to the
12 shares that the plaintiff was holding at the time the fraud was disclosed, and thus focus[es] on
13 losses caused when stock purchased at artificially inflated prices decreases in value due to the
14 disclosure of the fraud. This metric thereby excludes losses caused by normal market fluctuations
15 prior and unrelated to the disclosure of the fraud.” *Id.* The reason for this method is intuitive:
16 “[o]ne’s ‘interest’ in a litigation is rather directly tied to what one might recover.” *In re McKesson*
17 *HBOC, Inc. Sec. Litig.*, 97 F. Supp. 2d 993, 997 (N.D. Cal. 1999).

18 But courts have noted that the retained shares method works best where there is a
19 “relatively constant fraud premium through the class period.” *Mulligan*, 2013 WL 3354420 at *7.
20 In other words, it will most accurately calculate net loss where there are not multiple partial
21 disclosures that reveal the purported fraud during the class period. *See Melucci*, 2019 WL
22 4933611, at *3 (“[C]ourts have . . . explained that a measure of net shares purchased and a retained
23 shares calculation are less useful analytical tools where gradual disclosures are involved, because
24 those methods assume a constant fraud premium throughout the class period.”) (internal citation
25 omitted); *Markette*, 2016 WL 2902286, at *6 (finding the retained shares method accurately
26 calculates the loss amount where “Plaintiff’s complaint alleges that a single disclosure revealed
27 Defendants’ purported fraud and does not suggest that any partial disclosures occurred during the
28 class period.”).

1 Lyft Investor Group argues that Keiner’s alleged loss “significantly overstates his financial
2 interests in the outcome of the lawsuit” because it includes shares sold prior to any corrective
3 disclosure, and losses from such sales are not recoverable. Dkt. No. 52 at 2. Lyft Investor Group
4 essentially argues that the Court should calculate the largest financial interest using a retained shares
5 method in order to determine recoverable losses. The Court disagrees with this approach.

6 The economic loss method most accurately determines the greatest financial interest on the
7 facts presented here. The complaints filed in both actions allege that a series of disclosures corrected
8 misstatements in the Offering Documents. *See* Dkt. No. 1 (“*Malig Compl.*”), Case No. 19-cv-03003,
9 Dkt. No. 1 (“*Lewis Compl.*”). Minimally, the complaints allege a disclosure after April 11, 2019 of
10 Uber’s market share in its Form S-1, *Malig Compl.* ¶ 78, *Lewis Compl.* ¶ 35; a disclosure on April
11 15, 2019 that 1,000 bicycles were being removed from Lyft’s rideshare program, *Malig Compl.*
12 ¶ 79, *Lewis Compl.* ¶ 37; and a disclosure on May 5, 2019 of a labor disruption, *Malig Compl.* ¶ 81,
13 *Lewis Compl.* ¶ 40. These partial disclosures during the class period suggest that there likely was
14 not a constant fraud premium, such that a retained shares approach would not result in the most
15 accurate loss calculation in this case. It would be very difficult for the Court to assess the effect of
16 a non-constant fraud premium in determining loss. This reality is confirmed by Lyft Investor
17 Group’s own argument, which calculates a purported loss based on Keiner’s shares held at the time
18 of the first disclosure, but fails to account for the remaining partial disclosures. *See* Dkt. No. 52 at
19 9. This assessment may end up being complex, and almost certainly will require evaluation of the
20 parties’ damages experts at a later stage of the proceedings. *Accord McKesson*, 97 F. Supp. 2d at
21 997–98 (noting the infeasibility of conducting a damages inquiry at the lead plaintiff appointment
22 stage).

23 Having found that applying the economic loss method is appropriate in this case, the Court
24 finds that Keiner is presumptively the most adequate plaintiff. Applying the *Lax-Olsten* factors for
25 the three movants results in the following calculations:

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Movant	(1) Shares Purchased	(2) Net Shares Purchased	(3) Net Funds Expended	(4) Approximate Loss
Keiner	121,352	200	\$331,607 ⁴	(\$223,049)
Lyft Investment Group	9,244	9,244	\$687,168	(\$163,796)
Harold Tholen	5,000	5,000	\$360,000	(\$91,050)
Rakesh Khanna	2,800	2,800	\$201,600	(\$40,673)
Danilo Nunez	1,744	1,744	\$125,568	(\$31,758)
Bradford	533	533	\$37,005	(\$8,335)

The fourth factor, approximate loss, is generally given the most weight in the analysis, as noted above. Here, Keiner's approximate loss is nearly \$60,000 more than Lyft Investor Group and over double that of the largest shareholder in Lyft Investment Group, Harold Tholen.⁵ The Court accordingly finds that Keiner has the largest financial interest.

C. Keiner's Typicality and Adequacy

Next, a presumptive lead plaintiff has the burden of setting forth a prima facie case that he can satisfy the class representative requirements of Rule 23(a), typicality and adequacy. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d at 730. Competing movants can rebut this showing by setting forth evidence that the presumptive lead plaintiff "will not fairly and adequately protect the interests of the class" or "is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Keiner represents that he is unaware of any conflicts between his claims and those asserted on behalf of the putative class, or of any unique defenses, that would render him atypical or unable to adequately protect the interest of the class. Dkt. No. 9 at 9. The Court agrees that Keiner's injuries, stemming from the purchase of Lyft shares at artificially high prices after the Company's alleged misstatements in the offering documents, are typical of the § 11 claims alleged in the complaints. Further, as explained further below, the Court does not find Keiner susceptible to unique defenses that would make him inadequate to represent the class in this action.

⁴ The Court was not provided this information, and calculated it based on Keiner's amended certification. See Dkt. No. 49-1. As such, this figure is an estimate that may contain some rounding error since the share prices were provided only to two decimal places.

⁵ Because Keiner's approximate loss is greater than the aggregate loss of the Lyft Investor Group, the Court need not address Keiner's argument that only the individual with the highest approximate loss should be considered instead of the entire group. See Dkt. No. 51 at 3.

1 Lyft Investor Group presents several arguments against Keiner’s typicality and adequacy.
2 It first argues that Keiner would be an atypical and inadequate lead plaintiff because he sold most
3 of the shares he purchased throughout the class period, potentially making him subject to an
4 affirmative defense of negative causation. Dkt. No. 52 at 10. They allege that “[w]hether or not
5 these issues will in fact be raised during the litigation is unknown; however, the critical point is
6 that they may be raised and if so, will bec[o]me a distraction to the litigation and jeopardize the
7 Class’s recovery.” *Id.* at 13. “[N]egative causation” is an affirmative defense under § 11 that
8 requires a defendant to show “that the depreciation in value of a plaintiff’s stock resulted from
9 factors other than the alleged material misstatement.” *Hildes v. Arthur Andersen LLP*, 734 F.3d
10 854, 860 (9th Cir. 2013) (quotations and citations omitted). Lyft Investor Group points out that
11 Keiner sold many shares prior to the first alleged partial disclosure, and argues that he therefore
12 cannot recover any losses from those sales.

13 While this could end up being true, it does not show that Keiner is atypical or inadequate
14 to serve as lead plaintiff. Importantly, Keiner held shares throughout the period: at least 7,700
15 shares (as alleged by Lyft Investor Group) before the initial partial disclosure, a fluctuating
16 number of shares between partial disclosures, and 200 shares at the end of the class period. There
17 likely are many class members who sold shares prior to any partial disclosure or in between partial
18 disclosures who are similarly susceptible to a negative loss causation defense. Moreover, this is a
19 highly fact-intensive affirmative defense, and the Court is not aware of any case in which a court
20 has tried to definitively resolve its applicability at this stage of the proceedings. On balance, the
21 Court does not find that the potential application of this defense down the road makes Keiner
22 atypical or inadequate for purposes of choosing a lead plaintiff. *Accord In re Lendingclub Sec.*
23 *Litig.*, 282 F. Supp. 3d 1171, 1181 (N.D. Cal. 2017) (certifying a class and finding typicality
24 despite lead plaintiff’s susceptibility to an affirmative defense of negative loss causation); *Levine*
25 *v. AtriCure, Inc.*, 508 F. Supp. 2d 268, 272–73 (S.D.N.Y. 2007) (noting that “[b]ecause an
26 analysis of causation is often fact-intensive, negative causation is generally established by a
27 defendant on a motion for summary judgment or at trial,” not at the motion to appoint lead
28 plaintiff stage).

1 Lyft Investor Group also cites *Reinschmidt v. Zillow, Inc.*, where the court denied an “in-
2 and-out” trader and day trader’s motion for appointment as lead plaintiff because it would open
3 the movant up to unique affirmative defenses. No. C12-2084-RSM, 2013 WL 1092129, at *4
4 (W.D. Wash. Mar. 14, 2013). While the Court recognizes that Keiner’s trading activity could be
5 read to suggest day trading, courts have based the denial of lead plaintiff status in such situations
6 on the difficulty of showing reliance, a required element under §§ 10(b) and 20(a) of the Securities
7 Exchange Act of 1934. *See, e.g., Reinschmidt*, 2013 WL 1092129 at *4 (explaining that “trading
8 on market volatility belies any true reliance on company reports or even on the integrity of the
9 stock price itself”); *In re Silicon Storage Tech., Inc.*, No. C 05-0295-PJH, 2005 U.S. Dist. LEXIS
10 45246, at *25–26 (N.D. Cal. 2005) (noting that it would be difficult to show reliance if the movant
11 sells much of the stock before any corrective disclosure). Importantly, reliance is not an element
12 of a § 11 claim, such that the rationale advanced by Lyft Investor Group does not apply here.

13 Finally, Lyft Investor Group argues that the Keiner is inadequate due to errors in his filings
14 and certificates. *See* Dkt. Nos. 52 at 10–14. Lyft Investor Group alleges that Keiner failed to
15 include some transactions that resulted in substantial gains that could alter the economic loss
16 calculations bearing on his adequacy to represent the class. Dkt. No. 52 at 11 (chart indicating
17 specific sales). Importantly, Lyft Investor Group points to Keiner’s initial certification, not the
18 amended certification which identifies each of the sales that Lyft Investor Group argues were not
19 included. *See* Dkt. No. 49-1 at 3, 5. As noted in footnote 2 above, Keiner’s inadvertent clerical
20 error does not preclude the Court from considering the amended certification, especially where
21 these transactions were included in Keiner’s initial filing’s loss chart. Keiner further certified, at
22 the Court’s request, that the amended certification and loss chart display the same underlying data
23 other than minor differences due to rounding, and use the IPO price to calculate approximate loss
24 consistent with 15 U.S.C. § 77k(e). *See* Dkt. No. 63. Lyft Investor Group also argues that Keiner
25 failed to include the sale of 200 shares on May 20, 2019. Dkt. No. 52 at 12. However, as Keiner
26 notes, the *Malig* complaint was filed on May 17, 2019, and sales made after the end of the class
27 period need not be included. The Court further disregards as trivial movants’ arguments that
28 typographical errors in their competitors’ motions or certificates are meaningfully indicative of

1 inadequacy.

2 Lyft Investor Group alternatively asks the Court to allow limited discovery into Keiner’s
 3 adequacy to be lead plaintiff. Dkt. No. 52 at 14 (citing 15 U.S.C. § 77z-1(a)(3)(B)(iv), which
 4 allows for discovery “only if the [challenger] first demonstrates a reasonable basis for a finding
 5 that the presumptively most adequate plaintiff is incapable of adequately representing the class”).
 6 Because Lyft Investor Group fails to demonstrate a reasonable basis to find Keiner incapable of
 7 adequately representing the class, the Court denies this request.

8 **III. APPOINTMENT OF LEAD COUNSEL**

9 Keiner has moved for approval of its selection of Block & Leviton LLP as lead counsel.
 10 Mot. at 9–10; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(v) (“The most adequate plaintiff shall, subject
 11 to the approval of the court, select and retain counsel to represent the class.”). The Court defers to
 12 Keiner’s choice of lead counsel because his choice is not “so irrational, or so tainted by self-
 13 dealing or conflict of interest, as to cast genuine and serious doubt on [his] willingness or ability to
 14 perform the functions of lead plaintiff.” *Cavanaugh*, 306 F.3d at 733; *see also id.* at 739 n.11
 15 (noting that “Congress gave the lead plaintiff, and not the court, the power to select a lawyer for
 16 the class”). Block & Leviton LLP has extensive experience as counsel in securities class actions.
 17 *See* Dkt. Nos. 9-2, Ex. D (firm resume). The Court thus approves Keiner’s selection of counsel.

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United States District Court
Northern District of California

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IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Keiner’s motion. *See* Dkt. No. 9.⁶ All pending unwithdrawn motions are **DENIED**. *See* Dkt. Nos. 12, 20. Keiner is appointed as lead plaintiffs for the putative class. Block & Leviton LLP is further approved as lead counsel for the putative class.

The Court further sets an initial case management conference on March 31, 2020 at 2:00p.m. in Oakland, Courtroom 2, 4th Floor. The Court directs the parties to meet and confer and submit a joint case management statement by March 24, 2020.

IT IS SO ORDERED.

Dated: 3/4/2020


HAYWOOD S. GILLIAM, JR.
United States District Judge

⁶ Keiner also moved for consolidation of related actions. That aspect of his motion is moot in light of the Court’s July 25, 2019 order. *See* Dkt. No. 47.