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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HAROLD ENG, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. EDISON INTERNATIONAL, et al., Defendants.	Case No. 3:15-cv-01478-BEN-JMA <u>CLASS ACTION</u> MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL DATE: October 19, 2015 TIME: 10:30 a.m. CTRM: 5A (Schwartz) JUDGE: Hon. Roger T. Benitez

I. INTRODUCTION

Presently pending in this district is a securities class action lawsuit (the "Action") on behalf of all purchasers of Edison International ("Edison" or the "Company") securities between July 31, 2014 and June 24, 2015 (the "Class Period") against the Company and two senior executive officers for alleged violations of the Securities Exchange Act of 1934 (the "Exchange Act"). In securities class actions, the Private Securities Litigation Reform Act of 1995 ("PSLRA") requires district courts to appoint as lead plaintiff the "member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members." 15 U.S.C. §78u-4(a)(3)(B)(i).

The City of Fort Lauderdale General Employees' Retirement System (the "Retirement System") respectfully submits that it should be appointed as lead plaintiff because it: (1) timely filed this motion; (2) to its counsel's knowledge, has the largest financial interest in the relief sought by the class; and (3) will fairly and adequately represent the interests of the class. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii); §III.A., *infra*. In addition, the Retirement System's selection of Robbins Geller Rudman & Dowd LLP as lead counsel for the class should be approved. *See* 15 U.S.C. §78u-4(a)(3)(B)(v); §III.B., *infra*.

II. STATEMENT OF FACTS

Edison, through its subsidiaries, generates and supplies electricity through hydroelectric, diesel, natural gas, nuclear and photovoltaic generation.

The Complaint alleges that defendants issued false and misleading statements during the Class Period regarding the Company's business and operational and compliance policies. Specifically, defendants made false and misleading statements that Edison's *ex parte* contacts with decision makers at the California Public Utilities Commission ("CPUC") were more extensive than the Company had reported to the CPUC, and that belated disclosure of Edison's *ex parte* contacts with CPUC personnel would jeopardize the Company's $3.3 billion San Onofre Nuclear Generating Station

("SONGS") settlement. As a result of these false and misleading statements and/or omissions, Edison securities traded at artificially inflated prices during the Class Period, with its stock price reaching more than $66 per share.

On February 9, 2015, Edison's largest subsidiary, Southern California Edison ("SCE"), submitted a notice to the CPUC disclosing that a previously unreported *ex parte* contact between Stephen Pickett, then an executive vice president at SCE, and Michael Peevey, then president of the CPUC, had occurred at an industry conference on March 26, 2013. At that time the SONGS settlement negotiations were ongoing, and Pickett and Peevey's conversation concerned the future of SONGS and a possible resolution of the CPUC's investigation. The Company's failure to timely report the *ex parte* meeting between Pickett and Peevey represented a possible violation of CPUC rules governing *ex parte* contact between CPUC decision makers and interested parties.

Prompted by SCE's belated disclosure, and amidst growing public criticism of the relationship between the CPUC and California's utilities, the CPUC ordered SCE to turn over additional communications regarding the SONGS settlement negotiations which it did on April 29, 2015. After reviewing the additional SCE documents, an attorney for the Utility Reform Network ("TURN"), a consumer advocacy group and party to the SONGS settlement, stated that the documents showed "a number of unreported ex parte contacts and that Edison violated the rules by not reporting those communications." On May 4, 2015, an article published by SFGate reported that SCE's newly released documents revealed a previously unreported May 2014 meeting between Peevey and SCE executives at which the parties discussed donating millions of dollars to a UCLA institute at which Peevey held an advisory post. On this news, shares of Edison declined $2.87 per share over two days of trading.

On June 22, 2015, the law firm Strumwasser & Woocher released an independent report commissioned by the CPUC in connection with a review of *ex parte* meetings between utility lobbyists or executives and CPUC decision makers (the

"Strumwasser Report"). The Strumwasser Report described such *ex parte* meetings as "frequent, pervasive, and at least sometimes outcome-determinative," and recommended banning them altogether in rate cases. Then on June 24, 2015, in response to the Strumwasser Report and SCE's earlier disclosures in February and April, TURN filed an application with the CPUC that charged SCE with "fraud by concealment" and urged the CPUC to set aside the SONGS settlement and reopen its investigation. On this news, shares of Edison declined $1.56 per share.

III. ARGUMENT

A. The Retirement System Should Be Appointed Lead Plaintiff

The PSLRA establishes the procedure for the appointment of a lead plaintiff in "each private action arising under [the Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i). First, the pendency of the action must be publicized in a widely circulated national business-oriented publication or wire service not later than 20 days after filing of the first complaint. 15 U.S.C. §78u-4(a)(3)(A)(i). Next, the PSLRA provides that the Court shall adopt a presumption that the most adequate plaintiff is the person or group of persons that –

> (aa) has either filed the complaint or made a motion in response to a notice . . .;
>
> (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); *see also In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002). The Retirement System meets each of these requirements and should therefore be appointed as Lead Plaintiff.

1. This Motion Is Timely

The notice published in this action on July 6, 2015 advised class members of the pendency of the action, the claims asserted therein, the proposed class period, and the right to move the Court to be appointed as lead plaintiff within 60 days from July 6, 2015, or by September 4, 2015. *See* Declaration of Danielle S. Myers in Support of Motion for Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection of Lead Counsel ("Myers Decl."), Ex. A. As this motion is being filed timely, the Retirement System is entitled to be considered for appointment as lead plaintiff.

2. The Retirement System Has the Largest Financial Interest in the Relief Sought by the Class

During the Class Period, the Retirement System purchased 15,100 shares of Edison stock at artificially inflated prices and suffered more than $137,000 in harm as the price of Edison stock fell during the Class Period. *See* Myers Decl., Exs. B, C. To the best of its counsel's knowledge, there are no other plaintiffs with a larger stake in the outcome of the litigation. Therefore, the Retirement System satisfies the PSLRA's prerequisite of having the largest financial interest.

3. The Retirement System Otherwise Satisfies the Rule 23 Requirements at This Stage

In addition to possessing a significant financial interest, a lead plaintiff must also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Rule 23 requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class; and [that] the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(3)-(4); *Cavanaugh*, 306 F.3d at 730 (focusing "in particular" on typicality and adequacy at the lead plaintiff stage).

The test of typicality "'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). The adequacy requirement is met if no conflicts exist between the representative and class interests and the representative's attorneys are qualified, experienced and generally able to conduct the litigation. Fed. R. Civ. P. 23(a)(4);

Staton v. Boeing Co., 327 F.3d 938, 957 (9th Cir. 2003). The Retirement System satisfies these requirements at this stage of the litigation.

The Retirement System has submitted a sworn certification confirming its willingness and qualifications to serve as lead plaintiff. *See* Myers Decl., Ex. B. Like all class members, the Retirement System purchased Edison stock during the Class Period at allegedly inflated prices and suffered damages when defendants' alleged misconduct came to light. *Id.* The Retirement System's significant financial interest indicates it possesses the requisite incentive to vigorously represent the claims of the class. Moreover, the Retirement System is not subject to unique defenses and is not aware of any conflicts between its claims and those asserted by the class.

Finally, as discussed below, the Retirement System has selected qualified counsel experienced in securities litigation. The Retirement System's common interests shared with the class, substantial financial interest and selection of qualified counsel demonstrates its satisfaction of the Rule 23 requirements at this juncture.

B. The Court Should Approve the Retirement System's Selection of Counsel

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to the Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should not disturb the lead plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see also Cavanaugh*, 306 F.3d at 732-33; *In re Cohen*, 586 F.3d 703 (9th Cir. 2009).

Robbins Geller, a 200-lawyer firm with offices in this District and nationwide, is actively engaged in complex litigation, particularly securities litigation. *See* Myers Decl., Ex. D. District courts throughout the country have noted Robbins Geller's reputation for excellence, which has resulted in the appointment of Robbins Geller attorneys to lead roles in hundreds of complex class action securities cases. *See, e.g.*, *In re Novatel Wireless Sec. Litig.*, 2010 U.S. Dist. LEXIS 49543, at *22 (S.D. Cal. 2010) (Huff, J.) (finding that Robbins Geller "is experienced in securities fraud class action and can prosecute this action vigorously"); *In re Enron Corp. Sec.*, 586 F. Supp. 2d 732, 797 (S.D. Tex. 2008) (Harmon, J.) (commenting that the "experience, ability, and reputation of the attorneys of [Robbins Geller] is not disputed; it is one of the most successful law firms in securities class actions, if not the preeminent one, in the country").

As such, the Court may be assured that the members of the putative class will receive the highest caliber of legal representation available from Robbins Geller if this Motion is granted. Accordingly, the Retirement System's selection of counsel should be approved.

IV. CONCLUSION

The Retirement System has satisfied each of the PSLRA's requirements for appointment as lead plaintiff. As such, the Retirement System respectfully requests that the Court appoint it as Lead Plaintiff, approve its selection of counsel and grant such other relief as the Court may deem just and proper.

DATED: September 4, 2015

Respectfully submitted,

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