

1 ROBBINS GELLER RUDMAN
& DOWD LLP
2 DARREN J. ROBBINS (168593)
DANIELLE S. MYERS (259916)
3 655 West Broadway, Suite 1900
San Diego, CA 92101
4 Telephone: 619/231-1058
619/231-7423 (fax)
5 darrenr@rgrdlaw.com
dmyers@rgrdlaw.com

6 [Proposed] Lead Counsel for Plaintiff
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 HAROLD ENG, Individually and on
Behalf of All Others Similarly Situated,)

11 Plaintiff,)

12 vs.)

13 EDISON INTERNATIONAL, et al.,)

14 Defendants.)
15

Case No. 3:15-cv-01478-BEN-JMA

CLASS ACTION

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

1 **I. INTRODUCTION**

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

11 The City of Fort Lauderdale General Employees’ Retirement System (the
12 “Retirement System”) respectfully submits that it should be appointed as lead plaintiff
13 because it: (1) timely filed this motion; (2) to its counsel’s knowledge, has the largest
14 financial interest in the relief sought by the class; and (3) will fairly and adequately
15 represent the interests of the class. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii); §III.A., *infra*.
16 In addition, the Retirement System’s selection of Robbins Geller Rudman & Dowd
17 LLP as lead counsel for the class should be approved. *See* 15 U.S.C. §78u-
18 4(a)(3)(B)(v); §III.B., *infra*.

19 **II. STATEMENT OF FACTS**

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

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

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

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

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

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

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

8 **III. ARGUMENT**

9 **A. The Retirement System Should Be Appointed Lead Plaintiff**

10 The PSLRA establishes the procedure for the appointment of a lead plaintiff in
11 “each private action arising under [the Exchange Act] that is brought as a plaintiff
12 class action pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-
13 4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i). First, the pendency of the action must
14 be publicized in a widely circulated national business-oriented publication or wire
15 service not later than 20 days after filing of the first complaint. 15 U.S.C. §78u-
16 4(a)(3)(A)(i). Next, the PSLRA provides that the Court shall adopt a presumption that
17 the most adequate plaintiff is the person or group of persons that –

18 (aa) has either filed the complaint or made a motion in response to a
19 notice . . . ;

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

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

22 15 U.S.C. §78u-4(a)(3)(B)(iii); *see also In re Cavanaugh*, 306 F.3d 726 (9th Cir.
23 2002). The Retirement System meets each of these requirements and should therefore
24 be appointed as Lead Plaintiff.

25 **1. This Motion Is Timely**

26 The notice published in this action on July 6, 2015 advised class members of
27 the pendency of the action, the claims asserted therein, the proposed class period, and
28

1 the right to move the Court to be appointed as lead plaintiff within 60 days from July
2 6, 2015, or by September 4, 2015. *See* Declaration of Danielle S. Myers in Support of
3 Motion for Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection
4 of Lead Counsel ("Myers Decl."), Ex. A. As this motion is being filed timely, the
5 Retirement System is entitled to be considered for appointment as lead plaintiff.

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

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

14 **3. The Retirement System Otherwise Satisfies the Rule**
15 **23 Requirements at This Stage**

16 In addition to possessing a significant financial interest, a lead plaintiff must
17 also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil
18 Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Rule 23 requires that "the claims
19 or defenses of the representative parties are typical of the claims or defenses of the
20 class; and [that] the representative parties will fairly and adequately protect the
21 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).

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

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

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

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

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

17 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel,
18 subject to the Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should
19 not disturb the lead plaintiff's choice of counsel unless it is necessary to "protect the
20 interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see also Cavanaugh*,
21 306 F.3d at 732-33; *In re Cohen*, 586 F.3d 703 (9th Cir. 2009).

22 Robbins Geller, a 200-lawyer firm with offices in this District and nationwide,
23 is actively engaged in complex litigation, particularly securities litigation. *See* Myers
24 Decl., Ex. D. District courts throughout the country have noted Robbins Geller's
25 reputation for excellence, which has resulted in the appointment of Robbins Geller
26 attorneys to lead roles in hundreds of complex class action securities cases. *See, e.g.,*
27 *In re Novatel Wireless Sec. Litig.*, 2010 U.S. Dist. LEXIS 49543, at *22 (S.D. Cal.
28 2010) (Huff, J.) (finding that Robbins Geller "is experienced in securities fraud class

1 action and can prosecute this action vigorously”); *In re Enron Corp. Sec.*, 586 F.
2 Supp. 2d 732, 797 (S.D. Tex. 2008) (Harmon, J.) (commenting that the “experience,
3 ability, and reputation of the attorneys of [Robbins Geller] is not disputed; it is one of
4 the most successful law firms in securities class actions, if not the preeminent one, in
5 the country”).

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

10 **IV. CONCLUSION**

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

15 DATED: September 4, 2015

Respectfully submitted,

16 ROBBINS GELLER RUDMAN
17 & DOWD LLP
18 DARREN J. ROBBINS
DANIELLE S. MYERS

19 s/ Danielle S. Myers

20 DANIELLE S. MYERS

21 655 West Broadway, Suite 1900
22 San Diego, CA 92101
23 Telephone: 619/231-1058
619/231-7423 (fax)

24 [Proposed] Lead Counsel for Plaintiff
25
26
27
28