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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

OKLAHOMA FIREFIGHTERS PENSION  
AND RETIREMENT SYSTEM, Individually  
and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

FORTINET, INC., KEN XIE, MICHAEL XIE,  
KEITH JENSEN, and CHRISTIANE  
OHLGART,

Defendants.

Case No. 3:25-cv-08037-AMO

CLASS ACTION

**NOTICE OF MOTION AND MOTION  
OF UNION ASSET MANAGEMENT  
HOLDING AG FOR APPOINTMENT AS  
LEAD PLAINTIFF, APPROVAL OF ITS  
SELECTION OF LEAD COUNSEL, AND  
CONSOLIDATION OF RELATED  
ACTIONS; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: March 5, 2026

Time: 2:00 p.m.

Dept.: Courtroom 10, 19th Floor

Judge: Hon. Araceli Martínez-Olgún

*Caption continued on next page*

STATE OF RHODE ISLAND OFFICE OF  
THE GENERAL TREASURER ON BEHALF  
OF THE EMPLOYEES' RETIREMENT  
SYSTEM OF THE STATE OF RHODE  
ISLAND, on Behalf of Itself and All Others  
Similarly Situated,

Plaintiff,

vs.

FORTINET, INC., KENNETH XIE, KEITH  
JENSEN, and CHRISTIANE OHLGART,

Defendants.

Case No. 3:25-cv-08888-AMO

CLASS ACTION

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that at 2:00 p.m. on March 5, 2026, or on a date and at a time set by the Court, before the Honorable Araceli Martínez-Olguín at the United States District Court for the Northern District of California, located at the San Francisco Courthouse, 450 Golden Gate Avenue, Courtroom 10, 19th Floor, San Francisco, California, Union Asset Management Holding AG (“Union”) will respectfully move this Court for the entry of an Order, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”): (1) appointing Union as Lead Plaintiff in the above-captioned securities class actions<sup>1</sup>; (2) approving Union’s selection of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) to serve as Lead Counsel for the Class; (3) consolidating the Related Actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure (“Rule 42(a)”); and (4) granting any such further relief as the Court may deem just and proper.

This Motion is made on the grounds that Union believes it is the “most adequate plaintiff” under the PSLRA and is therefore entitled to be appointed Lead Plaintiff. Specifically, Union believes that it has the “largest financial interest” in the relief sought by the Class in this action by virtue of, among other things, the substantial losses that it incurred on its purchases of Fortinet, Inc. (“Fortinet” or the “Company”) common stock between November 8, 2024, and August 6, 2025, inclusive (the “Class Period”). Union also satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) because its claims are typical of other Class members’ claims and because it will fairly and adequately represent the interests of the Class.

This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities in support thereof, the Declaration of Jonathan D. Uslander filed herewith

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<sup>1</sup> There are two related securities class actions pending before this Court: *Oklahoma Firefighters Pension and Retirement System v. Fortinet, Inc.*, No. 3:25-cv-08037-AMO (N.D. Cal.) (“*Oklahoma Firefighters*”) and *State of Rhode Island Office of the General Treasurer on Behalf of the Employees’ Retirement System of the State of Rhode Island v. Fortinet, Inc.*, No. 3:25-cv-08888-AMO (N.D. Cal.) (“*Rhode Island*”) (collectively, the “Related Actions”). All emphasis is added and all internal citations are omitted unless noted.

(the “Uslaner Decl.”), the pleadings and other filings herein, and such other written or oral argument as may be permitted by the Court.

WHEREFORE, Union respectfully requests that the Court: (1) appoint it as Lead Plaintiff in this action pursuant to the PSLRA; (2) approve its selection of Bernstein Litowitz to serve as Lead Counsel for the Class; (3) consolidate the Related Actions; and (4) grant any such further relief as the Court may deem just and proper.

### **STATEMENT OF ISSUES**

1. Whether Union is the “most adequate plaintiff” pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(i).

2. Whether to approve Union’s selection of counsel, Bernstein Litowitz, pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

3. Whether the Related Actions should be consolidated pursuant to Rule 42(a).

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. PRELIMINARY STATEMENT**

The Related Actions allege that Fortinet and certain of its current and former senior executives (collectively, “Defendants”) violated Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5. Specifically, the Related Actions allege that, throughout the Class Period, Defendants made material misrepresentations to investors concerning the business impact from a purportedly massive number of customers that would be compelled to upgrade their previously purchased Fortinet products because the services the Company provided for those products were set to expire in 2026. Fortinet investors, including Union, incurred significant losses after the Company admitted that this customer upgrade cycle was not nearly the opportunity that Defendants had represented.

The PSLRA instructs this Court to appoint the “most adequate plaintiff” to serve as Lead Plaintiff. 15 U.S.C. § 78u-4 (a)(3)(B)(i). The PSLRA creates a presumption that the “most adequate plaintiff” is the movant that has the “largest financial interest” in the relief sought by the Class in this litigation and that also makes a *prima facie* showing that it meets the typicality and

adequacy requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Union is the “most adequate plaintiff” by virtue of, among other things, the over \$75.5 million in losses, as calculated on a last-in, first-out (“LIFO”) basis, that it incurred on its purchases of more than 2.1 million shares of Fortinet common stock during the Class Period—a substantial financial interest that will ensure the vigorous prosecution of investors’ claims.<sup>2</sup>

In addition to asserting a substantial financial interest, Union satisfies the relevant requirements of Rule 23 because its claims are typical of those of all members of the Class, and it will fairly and adequately represent the interests of the Class. Indeed, as a highly sophisticated institutional investor that manages over 525 billion euros in assets, Union is the prototypical investor envisioned by Congress to serve as lead plaintiff under the PSLRA, and its appointment would therefore fulfill this critical legislative purpose. *See* H.R. Conf. Rep. No. 104-369, at \*34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733 (1995) (explaining that “increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions”).

Further, Union fully understands the Lead Plaintiff’s obligations to the Class under the PSLRA, and is willing and able to undertake the responsibilities of the Lead Plaintiff to ensure the vigorous prosecution of this action. Union’s familiarity with the PSLRA is informed by its years of experience serving as a lead plaintiff in numerous securities class actions, through which it has achieved combined recoveries of approximately \$1.75 billion on behalf of investors. Union also benefits from the resources and dedicated personnel of an in-house legal staff that ensures close oversight of outside counsel retained by Union to handle securities class action litigation. As Lead Plaintiff in this action, Union will bring those resources and experiences to bear on behalf of the Class. As such, Union possesses the capability, resources, and experience to oversee this litigation and guarantee the vigorous prosecution of the claims against Defendants.

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<sup>2</sup> Union’s PSLRA-required Certification is provided as Exhibit A to the Uslander Decl. In addition, a chart providing calculations of Union’s losses is provided as Exhibit B to the Uslander Decl.



1 Union has further demonstrated its adequacy by selecting Bernstein Litowitz to serve as  
2 Lead Counsel for the Class. Bernstein Litowitz is a nationally recognized securities litigation firm  
3 that has recovered more than \$40 billion for defrauded investors and is eminently qualified to  
4 prosecute this case.

5 Based on Union's significant financial interest in the relief sought by the Class in this  
6 litigation, and its ability to oversee counsel, Union respectfully requests that the Court appoint it  
7 as Lead Plaintiff and otherwise grant its Motion.

## 8 **II. SUMMARY OF THE ACTION**

9 Headquartered in Sunnyvale, California, Fortinet is a cybersecurity company whose  
10 flagship products are its FortiGate firewalls—hardware appliances that monitor, filter, and control  
11 incoming and outgoing network traffic to protect against cyber threats. The FortiGate firewalls  
12 have a limited support lifecycle that varies by model, but lasts at least five years from the date of  
13 sale. When a firewall reaches the end of its service life, it continues to function, but Fortinet stops  
14 providing software updates and hardware support for the product, increasing its exposure to  
15 cybersecurity risks. As a FortiGate approaches the end of its service life, customers are prompted  
16 to “refresh” their products with newer models that have enhanced features and access to ongoing  
17 updates for protection against the latest cybersecurity threats. Occasionally, many FortiGates  
18 simultaneously reach the end of their service life and require an upgrade—a situation that Fortinet  
19 refers to as a “refresh cycle.”

20 The Related Actions allege that, throughout the Class Period, Defendants made material  
21 misrepresentations concerning the business impact of an upcoming customer upgrade of a large  
22 swath of five different FortiGate models that would all reach the end of their service life at the end  
23 of 2026.<sup>3</sup> Specifically, throughout the Class Period, Defendants told investors that this “record”  
24 upgrade cycle, which consisted of approximately 650,000 FortiGates, was “by far the largest we’ve  
25 seen probably ever,” and claimed that the Company was poised to reap significant benefits.

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27 <sup>3</sup> Union has reviewed the complaints and adopts the allegations set forth therein. *See* Civil L.R.  
28 23-1(c).

Fortinet repeatedly represented that the customer refresh would generate “around \$400 million to \$450 million in product revenue” over 2025 and 2026. The Company also pitched the refresh to investors as a strong “billings event,” as customers would be compelled to purchase the Company’s newer firewall offerings to ensure their adequate cybersecurity protection. Fortinet claimed that this created significant opportunities for the Company to cross-sell customers other products and services that would drive additional revenue. Defendants also repeatedly represented that the refresh cycle would “gain momentum” in the second half of 2025 and continue to materialize throughout 2026. As a result of these misrepresentations, Fortinet common stock traded at artificially inflated prices throughout the Class Period.

The truth emerged on August 6, 2025, when Fortinet revealed that, as of the end of the second quarter of 2025, the 2026 refresh cycle was already 40%-50% complete, and had occurred without a material impact on revenues. The fact that the refresh was already halfway complete by the end of June 2025 severely undermined it as a driver of revenue growth in the second half of 2025 and throughout 2026. The Company also disclosed that the refresh largely involved very old firewalls that were sold more than a decade ago and constituted only a small portion of its business. Indeed, contrary to prior statements touting the outsized customer upgrade opportunity, Fortinet now said that the 2026 refresh cycle represented “such a small percentage of the overall business” that even if all the products upgraded, it would “still not [provide] much business impact.” Further, Fortinet admitted that it lacked visibility into the true number of customers that would refresh their firewalls, particularly those with lower-end models, and indicated there could be “excess capacity from prior years” that customers already used to replace their devices, thereby removing the need for an upgrade. As a result of these disclosures, the price of Fortinet common stock declined by \$21.28 per share, or 22%.

### **III. ARGUMENT**

#### **A. Union Is The Most Adequate Plaintiff And Should Be Appointed As Lead Plaintiff**

The PSLRA sets forth the procedure that governs the appointment of a lead plaintiff in securities class actions and establishes a presumption that the “most adequate plaintiff” is the

1 movant that “has the largest financial interest in the relief sought by the class” and “otherwise  
 2 satisfies the requirements of Rule 23.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also In re*  
 3 *Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002) (describing the process for selecting a lead  
 4 plaintiff under the PSLRA). As set forth below, Union believes that it is the “most adequate  
 5 plaintiff” and should be appointed as Lead Plaintiff.

### 6 **1. Union’s Motion Is Timely**

7 The PSLRA allows any class member to seek appointment as lead plaintiff within 60 days  
 8 of the publication of notice that the first action has been filed. *See* 15 U.S.C. § 78u-  
 9 4(a)(3)(A)(i)(II). On September 22, 2025, Oklahoma Firefighters Pension and Retirement System  
 10 filed the first of the Related Actions. That same day, counsel for Oklahoma Firefighters Pension  
 11 and Retirement System published a notice on *ACCESS Newswire*, alerting investors to the  
 12 pendency of the action and informing them of the 60-day deadline to seek appointment as Lead  
 13 Plaintiff, which is November 21, 2025. *See Oklahoma Firefighters*, ECF No. 7-1. On October 16,  
 14 2025, the *Rhode Island* action was filed in this District, asserting allegations substantially similar  
 15 to those in *Oklahoma Firefighters*. That same day, counsel for the plaintiff in *Rhode Island*  
 16 published a notice on *Business Wire*, alerting investors to the pendency of that action and  
 17 reiterating the November 21, 2025 deadline to seek appointment as Lead Plaintiff. *See Rhode*  
 18 *Island*, ECF No. 8-1. The subsequently filed complaint in *Rhode Island* does not disturb the  
 19 deadline to move for appointment as Lead Plaintiff set by the publication of notice of the first-filed  
 20 *Oklahoma Firefighters* action. *See* 15 U.S.C. § 78u-4 (a)(3)(A)(ii) (“If more than one action on  
 21 behalf of a class asserting substantially the same claim or claims . . . is filed, only the plaintiff or  
 22 plaintiffs in the first filed action shall be required to cause notice to be published.”). Accordingly,  
 23 Union’s motion is timely.

### 24 **2. Union Has The Largest Financial Interest In The Relief Sought By** 25 **The Class**

26 Union should be appointed Lead Plaintiff because it has the “largest financial interest in  
 27 the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). Union suffered losses of  
 28 over \$75.5 million, as calculated on a LIFO basis, on its Class Period purchases of more than 2.1

1 million shares of Fortinet common stock. *See* Uslaner Decl., Exs. A-B. To the best of Union’s  
 2 knowledge, there is no other applicant seeking Lead Plaintiff appointment that has a larger  
 3 financial interest in this litigation. Accordingly, Union has the largest financial interest of any  
 4 qualified movant seeking Lead Plaintiff status and is the presumptive “most adequate plaintiff.”  
 5 15 U.S.C. § 78u-4 (a)(3)(B)(iii)(I).

### 6 **3. Union Satisfies The Requirements Of Rule 23**

7 In addition to possessing the largest financial interest in the outcome of the litigation, a  
 8 lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23.” 15 U.S.C. § 78u-  
 9 4(a)(3)(B)(iii)(I)(cc). On a motion to serve as lead plaintiff, a movant “need only make a prima  
 10 facie showing of its typicality and adequacy.” *Hessefort v. Super Micro Comput., Inc.*, 317 F.  
 11 Supp. 3d 1056, 1060-61 (N.D. Cal. 2018). At this stage, “the process is not adversarial, so the  
 12 Rule 23 determination should be based on only the movant’s pleadings and declarations.” *In re*  
 13 *Mersho*, 6 F.4th 891, 899 (9th Cir. 2021). Union satisfies the typicality and adequacy  
 14 requirements.

15 Union’s claims are typical of the claims of other Class members. “The test of typicality is  
 16 whether other members have the same or similar injury, whether the action is based on conduct  
 17 which is not unique to the named plaintiffs, and whether other class members have been injured  
 18 by the same course of conduct.” *Super Micro Comput.*, 317 F. Supp. 3d at 1061; *see also Ali v.*  
 19 *Intel Corp.*, 2018 WL 2412111, at \*3 (N.D. Cal. May 29, 2018) (typicality satisfied where  
 20 proposed lead plaintiff’s “claims arise out of the same events and are based on the same legal  
 21 theories as the claims of other class members”).

22 Union and all other Class members suffered the same injuries, their claims arise from the  
 23 same course of events, and their legal arguments to prove Defendants’ liability are nearly identical.  
 24 Like all other Class members, Union (1) purchased Fortinet common stock during the Class Period,  
 25 (2) at prices allegedly artificially inflated by Defendants’ materially false and misleading  
 26 statements and/or omissions, and (3) was harmed when the truth was revealed. *See Lamontagne*  
 27 *v. Tesla, Inc.*, 2023 WL 4353146, at \*2 (N.D. Cal. July 5, 2023) (Martínez-Olguín, J.) (finding  
 28 typicality requirement met when proposed lead plaintiff “purchased or otherwise acquired

1 [defendant corporation] stock during the Class Period; (ii) at prices allegedly artificially inflated  
2 by Defendants' materially false and misleading statements and/or omissions; and (iii) suffered  
3 damages as a result"). Accordingly, Union satisfies Rule 23's typicality requirement.

4 Union also satisfies the adequacy requirement of Rule 23. Under Rule 23(a)(4), the  
5 representative party must "fairly and adequately protect the interests of the class." Fed. R. Civ. P.  
6 23(a)(4). "The test for adequacy is whether the class representative and [its] counsel have any  
7 conflicts of interest with other class members and whether the class representative and [its] counsel  
8 will prosecute the action vigorously on behalf of the class." *Super Micro Comput.*, 317 F. Supp.  
9 3d at 1061. Union satisfies these elements because its substantial financial stake in the litigation  
10 provides it with the incentive to vigorously represent the Class's claims. Union's interests are  
11 aligned with those of the other Class members and are not antagonistic in any way. There are no  
12 facts to suggest any actual or potential conflict of interest or other antagonism between Union and  
13 other members of the Class.

14 Union has extensive experience serving as a lead plaintiff in securities class actions and  
15 supervising the work of outside counsel, including proposed Lead Counsel, Bernstein Litowitz.  
16 Union has repeatedly demonstrated its ability to serve as an effective advocate on behalf of  
17 investors by successfully prosecuting numerous securities class actions, including in this District,  
18 which have resulted in combined recoveries of approximately \$1.75 billion for investors. *See, e.g.*,  
19 *Hefler v. Wells Fargo & Co.*, No. 16-cv-5479 (N.D. Cal.) (recovering \$480 million with Bernstein  
20 Litowitz as lead counsel); *In re Kraft Heinz Sec. Litig.*, No. 19-cv-1339 (N.D. Ill.) (recovering  
21 \$450 million with Bernstein Litowitz as co-lead counsel); *In re Equifax Inc. Sec. Litig.*, No. 17-  
22 cv-3463 (N.D. Ga.) (recovering \$149 million with Bernstein Litowitz as lead counsel); *In re*  
23 *Allergan Generic Drug Pricing Sec. Litig.*, No. 16-cv-9449 (D.N.J.) (recovering \$130 million with  
24 Bernstein Litowitz as co-lead counsel); *In re Cognizant Tech. Sols. Corp. Sec. Litig.*, No. 16-cv-  
25 6509 (D.N.J.) (recovering \$95 million with Bernstein Litowitz as lead counsel); *Minneapolis*  
26 *Firefighters' Relief Ass'n v. Medtronic, Inc.*, No. 08-cv-6324 (D. Minn.) (recovering \$85 million  
27 with Bernstein Litowitz as co-lead counsel); *Hill v. State Street Corp.*, No. 09-cv-12146 (D. Mass.)  
28 (recovering \$60 million with Bernstein Litowitz as co-lead counsel); *In re Boston Sci. Corp. Sec.*

1 *Litig.*, No. 20-cv-12225 (D. Mass.) (recovering \$38.5 million with Bernstein Litowitz as lead  
2 counsel); *City of Sunrise Firefighters' Pension Fund v. Oracle Corp.*, No. 18-cv-4844 (N.D. Cal.)  
3 (recovering \$17.5 million with Bernstein Litowitz as lead counsel). Based on that prior experience,  
4 Union fully understands the Lead Plaintiff's obligations under the PSLRA to oversee and supervise  
5 the litigation, and has submitted a sworn Certification attesting to its willingness, commitment,  
6 and ability to fulfill those duties in this action. *See* Uslander Decl., Ex. A.

7 In addition to possessing the largest financial interest and satisfying the requirements of  
8 Rule 23, Union—a sophisticated institutional investor that manages assets of over 525 billion  
9 euros—is exactly the type of investor Congress sought to empower, through the enactment of the  
10 PSLRA, to lead securities class actions. Indeed, many courts have recognized a strong preference  
11 for institutional investors to be appointed as lead plaintiff in securities class actions. *See, e.g., In*  
12 *re Versata, Inc. Sec. Litig.*, 2001 WL 34012374, at \*6 (N.D. Cal. Aug. 20, 2001) (finding that a  
13 movant's "institutional status is given great weight in assessing its adequacy as a plaintiff").  
14 Congress reasoned that increasing the role of institutional investors, which typically have a large  
15 financial stake in the outcome of the litigation, would be beneficial because such investors are  
16 more apt to effectively manage complex securities litigation. *See* H.R. Conf. Rep. No. 104-369,  
17 at \*34, *reprinted in* 1995 U.S.C.C.A.N. at 733. Union is well suited to fulfill this Congressional  
18 intent. Moreover, Union has a dedicated staff of professionals, including in-house legal staff, who  
19 will ensure the effective oversight of counsel and this litigation. These personnel are highly  
20 experienced in conducting and supervising complex litigation and have repeatedly demonstrated  
21 their ability to oversee counsel and successfully prosecute securities class actions under the  
22 PSLRA.

23 Further, Union has standing to assert these claims. Union is an institutional asset manager,  
24 which manages investment assets through separate funds and is authorized to bring legal action on  
25 their behalf. Union purchased Fortinet common stock during the Class Period through several  
26 investment funds established under either German or Luxembourgian law, which are managed by  
27 three Union subsidiaries. While the investment funds are considered separate estates, they are not  
28 independent legal entities and do not have legal capacity to sue in, or be brought before, courts of

1 law. Instead, the Union subsidiaries that manage those investment funds are vested with authority  
2 to sue in their own name for damages suffered by those funds that they manage. Prior to seeking  
3 appointment as Lead Plaintiff, Union obtained valid assignments of the funds' claims from the  
4 Union subsidiaries that manage those funds. *See* Uslander Decl., Ex. C (Declarations of  
5 Assignment); *see also Minneapolis Firefighters' Relief Ass'n v. Medtronic, Inc.*, 2009 WL  
6 1458234, at \*2 (D. Minn. May 26, 2009) (appointing Union as lead plaintiff and noting that it had  
7 standing because it "received effective assignments of claims"); *Weston v. DocuSign, Inc.*, 2022  
8 WL 1301770, at \*5 (N.D. Cal. Apr. 18, 2022) (appointing a Luxembourgian asset manager as lead  
9 plaintiff where the asset manager had the exclusive authority to bring the claims and whose "funds  
10 have no legal authority . . . to pursue such claims on their own"); *In re Nike, Inc. Sec. Litig.*, 2024  
11 WL 4579499, at \*7 (D. Or. Oct. 25, 2024) (appointing a German asset manager as lead plaintiff  
12 where the asset manager demonstrated "(1) a close relationship to the injured part[ies]" and "(2) a  
13 barrier to the injured part[ies'] ability to assert [their] own interests") (alterations in original);  
14 *Bricklayers' & Allied Craftworkers Loc. #2 Albany, NY Pension Fund v. New Oriental Educ. &*  
15 *Tech. Grp. Inc.*, 2022 WL 1515451, at \*4 (S.D.N.Y. May 13, 2022) (appointing a German asset  
16 manager as lead plaintiff after finding it qualifies for the "prudential exception" and has standing  
17 to assert claims on behalf of its fund); *Boynton Beach Firefighters' Pension Fund v. HCP, Inc.*,  
18 2017 WL 5759361, at \*4 (N.D. Ohio Nov. 28, 2017) (appointing a German asset manager as lead  
19 plaintiff after finding it has standing because it "falls within the prudential exception to  
20 constitutional standing and may bring these claims on behalf of its funds" and, alternatively,  
21 because it also obtained valid assignments of claims).

22 Union has further demonstrated its adequacy through its selection of Bernstein Litowitz as  
23 Lead Counsel to represent the Class in this action. As discussed below, Bernstein Litowitz is  
24 highly qualified and experienced in securities class action litigation and has repeatedly  
25 demonstrated its ability to conduct complex securities class action litigation effectively.  
26 Accordingly, Union satisfies Rule 23's adequacy requirement.



**B. The Court Should Approve Union’s Selection Of Lead Counsel**

The PSLRA vests authority in the lead plaintiff to select and retain counsel for the class, subject to court approval. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *see also Cavanaugh*, 306 F.3d at 732 n.11 (“Congress gave the lead plaintiff, and not the court, the power to select a lawyer for the class.”). Courts generally defer to the appointed lead plaintiff’s choice of counsel. *See Cohen v. U.S. Dist. Ct. for N. Dist. of Cal.*, 586 F.3d 703, 712 (9th Cir. 2009) (“[I]f the lead plaintiff has made a reasonable choice of counsel, the district court should generally defer to that choice.”).

Union has selected Bernstein Litowitz to serve as Lead Counsel for the Class. As detailed in its firm résumé, Bernstein Litowitz is among the preeminent securities class action law firms in the country and has extensive experience serving as lead counsel in securities class actions, including actions before this Court and other courts in this District. *See Uslander Decl., Ex. D.* (Bernstein Litowitz’s Firm Résumé). For example, Bernstein Litowitz served as lead counsel in *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.), in which settlements totaling over \$6 billion—one of the largest recoveries in securities class action history—were obtained for the class. Bernstein Litowitz also secured a \$2.425 billion recovery for the class in *In re Bank of America Corp. Securities, Derivative & ERISA Litigation*, No. 09-md-2058 (S.D.N.Y.), a \$1.06 billion recovery for the class in *In re Merck & Co., Inc. Securities, Derivative & “ERISA” Litigation*, No. 05-cv-1151 (D.N.J.), and a \$1 billion recovery for the class in *In re Wells Fargo & Co. Securities Litigation*, No. 20-cv-4494 (S.D.N.Y.).

Significant examples in which courts in this District have recognized Bernstein Litowitz as adequate and qualified class counsel in securities class actions include: *In re McKesson HBOC, Inc. Securities Litigation*, No. 99-cv-20743 (N.D. Cal.) (recovering \$1.05 billion for investors, the largest recovery ever in a securities class action in this District); *Hefler v. Wells Fargo & Co.*, No. 16-cv-5479 (N.D. Cal.) (recovering \$480 million for investors); *In re 3Com Corp. Securities Litigation*, No. 97-cv-21083 (N.D. Cal.) (recovering \$259 million for investors); *In re Maxim Integrated Products, Inc. Securities Litigation*, No. 08-cv-832 (N.D. Cal.) (recovering \$173 million for investors); *In re Wells Fargo Mortgage-Backed Certificates Litigation*, No. 09-cv-1376 (N.D. Cal.) (recovering \$125 million for investors); *In re RH, Inc. Securities Litigation*, No. 17-



cv-554 (N.D. Cal.) (recovering \$50 million for investors); *In re Splunk Inc. Securities Litigation*, No. 20-cv-8600 (N.D. Cal.) (recovering \$30 million for investors); *In re Clarent Corp. Securities Litigation*, No. 01-cv-3361 (N.D. Cal.) (conducting a four-week trial and obtaining a favorable jury verdict finding the CEO and former auditor of the defendant company liable, leading to a recovery of millions of dollars for investors); *In re SVB Financial Group Securities Litigation*, No. 23-cv-1097 (N.D. Cal.) (ongoing); *In re Doximity, Inc. Securities Litigation*, No. 24-cv-2281 (N.D. Cal.) (ongoing); and *In re Super Micro Computer, Inc. Securities Litigation*, No. 24-cv-6147 (N.D. Cal.) (ongoing). Bernstein Litowitz also currently serves as lead counsel in *In re Meta Platforms, Inc. Securities Litigation*, No. 21-cv-8812 (N.D. Cal.), which is pending before this Court.

Thus, the Court may be assured that by granting this Motion, the Class will receive the highest caliber of legal representation. Accordingly, the Court should approve Union's selection of Bernstein Litowitz as Lead Counsel for the Class.

### C. The Related Actions Should Be Consolidated

There are two related securities class actions currently before this Court:<sup>4</sup>

Caption	Civil No.	Date Filed
<i>Oklahoma Firefighters Pension and Retirement System v. Fortinet, Inc.</i>	3:25-cv-08037-AMO	September 22, 2025
<i>State of Rhode Island Office of the General Treasurer on Behalf of the Employees' Retirement System of the State of Rhode Island v. Fortinet, Inc.</i>	3:25-cv-08888-AMO	October 16, 2025

Rule 42(a) permits consolidation where "actions before the court involve a common question of law or fact." Fed. R. Civ. P. 42(a). The "district court has broad discretion under this rule to consolidate cases pending in the same district." *Shenwick v. Twitter Inc.*, 2016 WL 10672428, at \*1 (N.D. Cal. Dec. 22, 2016). "Courts have recognized that class action shareholder suits are particularly well suited to consolidation pursuant to Rule 42(a) because unification

<sup>4</sup> On November 5, 2025, the Court entered an order finding that the *Rhode Island* action is related to the *Oklahoma Firefighters* action. See *Oklahoma Firefighters*, ECF No. 22; *Rhode Island*, ECF No. 14.

1 expedites pretrial proceedings, reduces case duplication, avoids the need to contact parties and  
2 witnesses for multiple proceedings, and minimizes the expenditure of time and money for all  
3 parties involved.” *Super Micro Comput.*, 317 F. Supp. 3d at 1060.

4 Consolidation of the Related Actions is appropriate. The Related Actions present  
5 substantially similar factual and legal issues because they each allege the same claims under  
6 Sections 10(b) and 20(a) of the Exchange Act against overlapping defendants and are premised on  
7 substantially similar alleged misrepresentations and omissions made during the same Class Period.  
8 While *Oklahoma Firefighters* asserts claims against an additional defendant, Michael Xie, courts  
9 have routinely held that such a minor difference does not render consolidation inappropriate. *See*,  
10 *e.g.*, *Lloyd v. CVB Fin. Corp.*, 2011 WL 13128303, at \*3 (C.D. Cal. Jan. 21, 2011) (“Neither Rule  
11 42 nor the PSLRA demands that actions be identical before they may be consolidated.”); *In re*  
12 *Bank of Am. Corp. Sec., Derivative & Emp. Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260,  
13 268 (S.D.N.Y. 2009) (“[d]ifferences in causes of action, defendants, or the class period do not  
14 render consolidation inappropriate if the cases present sufficiently common questions of fact and  
15 law, and the differences do not outweigh the interests of judicial economy served by  
16 consolidation”) (alteration in original).

17 In addition, the interests of judicial economy and efficient prosecution of the litigation  
18 weigh heavily in favor of consolidating the Related Actions given the substantial overlap of  
19 common questions of law and fact between them. *See City of Harper Woods Emps. Ret. Sys. v.*  
20 *AXT, Inc.*, 2005 WL 318813, at \*3 (N.D. Cal. Feb. 7, 2005) (finding that consolidating securities  
21 class actions “would expedite pretrial proceedings and reduce case duplication, thereby conserving  
22 judicial resources”). Accordingly, the Court should consolidate the Related Actions.

### 23 CONCLUSION

24 For the reasons discussed above, Union respectfully requests that the Court: (1) appoint it  
25 as Lead Plaintiff; (2) approve its selection of Bernstein Litowitz as Lead Counsel for the Class; (3)  
26 consolidate the above-captioned Related Actions; and (4) grant any such further relief as the Court  
27 may deem just and proper.

1 Dated: November 21, 2025

Respectfully submitted,

2 **BERNSTEIN LITOWITZ BERGER**  
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