IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re URBAN OUTFITTERS, INC., SECURITIES LITIGATION	:	**CIVIL ACTION**
	:	
	:	
	:	**NO. 13-5978**
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ORDER

AND NOW, this 29th day of February 2016, upon consideration of the Lead Plaintiff's David A. Schwartz's Motion for Class Certification (ECF Doc. No. 41), Defendants' Opposition raising three challenges to class certification (ECF Doc. No. 48), Lead Plaintiff's Reply (ECF Doc. No. 53) and following an extensive oral argument reviewing all of the parties' arguments, it is **ORDERED** Plaintiff's Motion (ECF Doc. No. 41) is **GRANTED** and:

1. We preliminarily certify this action to proceed as a class action for securities fraud under Fed. R. Civ. P. 23 on behalf of:

> **All persons or entities who, between March 12, 2013 and September 9, 2013 ("Class Period"), purchased or otherwise acquired stock of Defendant Urban Outfitters, Inc. ("Urban Outfitters") and held its stock until at least September 9, 2013 excluding stock held by Urban Outfitters, its officers and directors at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns or any entity in which Urban Outfitters has a controlling interest (the "Class");**

2. **Class Findings**. The Court preliminarily finds the Plaintiff satisfies prerequisites for a class action under Fed. R. Civ. P. 23(a), (b)(3) and Defendants' three challenges do not preclude certification[1]:

a. The large number of class members renders joinder of all members impracticable;

b. Urban Outfitters' conduct, including representations made on March 11, May 20 and August 19, 2013 regarding Urban Outfitters' business and financial performance in the preceding Quarters as alleged in the Amended Class Action Complaint (ECF Doc. No. 11 at ¶ 5 and *seriatim)*, affects all Class members;

c. There are questions of law and fact common to the Class including claims and defenses regarding whether:

i. Defendants omitted and/or misrepresented material facts regarding Urban Outfitters' business and financial performance in publicly disseminated press releases and statements during the Class Period;

ii. Defendants failed to correct previously disseminated material facts regarding Urban Outfitters' business and financial performance during the Class Period;

iii. Defendants participated in or pursued a fraudulent scheme to misrepresent or conceal Urban Outfitters' business and financial performance during the Class Period;

iv. Defendants acted willfully with knowledge or severe recklessness in omitting or misrepresenting material facts regarding Urban Outfitters' business and financial performance during the Class Period;

v. Defendants' material nondisclosures and/or misrepresentations regarding Urban Outfitters' business and financial performance during the Class Period artificially inflated its stock price;

vi. Class members sustained damages calculated through a uniform methodology which can define, on a class wide basis for both individual and institutional

investors, a monetary value representing the inflated value of Urban Outfitters' stock during the Class Period;

vii. Urban Outfitters' representations properly disclosed material facts regarding its business and financial performance during the Class Period;

viii. Defendants, individually or collectively, violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and

ix. Defendants Richard A. Hayne, Frank J. Conforti and/or Tedford G. Marlow violated Section 20(a) of the Exchange Act;

d. Lead Plaintiff's claim based on his purchase of Urban Outfitters' stock on August 6, 2013 is typical of the claims of the Class he seeks to represent during the Class Period as he specifically pleads a series of representations and indicia of Defendants' knowledge as part of a scheme to conceal and misrepresent material information concerning the results for each of Urban Outfitters' brands throughout the Class Period and Defendants' challenges are uniform as to Lead Plaintiff and other Class members[2];

e. Lead Plaintiff is an adequate representative who, as shown in his deposition testimony and filed Declaration, will fairly and adequately protect the Class' interests[3];

f. Lead Plaintiff has retained experienced securities class action counsel who will fairly and adequately protect the Class interests: Robbins Geller Rudman & Dowd LLP as Lead Class Counsel and Kaufman, Coren & Ress, P.C. as Liaison Counsel;

g. The quantitative and qualitative components of the questions of law and fact common to the members of the Class including common reliance based on a fraud-on-the-market theory predominate over valid questions on loss causation not considered at this stage but

subject to cross-examination and rebuttal experts, affecting individual and institutional Class members[4]; and,

h. A Fed.R.Civ.P. 23 (b)(3) action is superior to other available methods such as hundreds of small trials on inflated share value to fairly and efficiently resolve this controversy under Fed.R.Civ.P. 1 and, as the identity of the Class Members can be determined through their registered shares, the Class members are readily ascertainable.

3. **Class Representative**. We preliminary find and conclude under Fed. R. Civ. P. 23, Plaintiff David A. Schwartz is an adequate representative of the Class and certify him as the Class representative.

4. **Class Counsel**. Lead Plaintiff's counsel Robbins Geller Rudman & Dowd LLP is authorized to act on behalf of the Class, along with Liaison Counsel Kaufman, Coren & Ress, P.C. with respect to all acts required by, or necessary to be taken under, the Rules of Civil Procedure and this Court's Orders and Policies.

5. **Class Notice.** Counsel shall, as soon as practicable, confer regarding appropriate notice to the Class. As soon as possible and no later than **March 18, 2016,** Plaintiff's counsel shall submit a joint motion under our Policies, including describing both parties' position on any remaining irreconcilable objection to the negotiated notice, to approve a form and protocol for notice to the Class to satisfy the terms and due process spirit of Rule 23.

KEARNEY, J.

[1] Defendants made three arguments: Lead Plaintiff is not a typical or adequate representative under Rule 23 (a)(3),(4); and, questions concerning reliance and damages preclude a finding the questions of law or fact common to the class members predominate over the reliance and damages questions under Rule 23(b)(3).

[2] Defendants challenge Lead Plaintiff as atypical because he is an individual investor while a majority of the class members are institutional investors and his August 6, 2013 stock purchase is not typical of class members purchasing after him including those relying on Defendants' August 19, 2013 representations. We find neither reason renders Mr. Schwartz atypical. As Defendants conceded at oral argument, they could not find authority finding a plaintiff is atypical simply because he is an individual investor and most of the class is institutional. We are not aware of any requirement for the plaintiff to be from the identical constituency and we regularly certify classes with institutional lead plaintiffs when the class consists of individual investors as well. We also find the timing of Mr. Schwartz's purchase does not preclude him from representing the Class for nondisclosures and misrepresentations before the September 10, 2013 disclosures. Plaintiff's complaint survived Judge Restrepo's exacting scrutiny (ECF Doc. No. 30) by detailing an alleged common scheme of failing to disclose Urban Outfitters' true financial and business performance during the Class Period. While some language differs in the representations from March 11 to May 20 to August 19, the same nondisclosure is alleged. Agreeing with Defendants would require lead plaintiffs for each representation even when they are essentially similar or we would need a lead plaintiff for each day of the class period or the last day of the class period. *In re BP P.L.C. Securities Litigation*, MDL No. 10-2185, 2013 WL 6388408, *9 (S.D. Tex. Dec. 6, 2013)(citing *Feldman v. Motorola, Inc.*, No. 90-5887, 1993 WL 497228, *6 (N.D.Ill. Oct. 14, 1993)). We also find *Winer Family Trust v. Queen*, 503 F.3d 319 (3d Cir. 2007) inapposite because the lead plaintiff could not allege any pre-purchase representations as a matter of law thus leaving him with a fraud claim based entirely on representations after his purchase. Mr. Schwartz specifically pleads representations and nondisclosures before and after his August 6, 2013 purchase. (ECF Doc. No. 30).

[3] Defendants initially challenged Mr. Schwartz' adequacy as the class representative based on his candid assessment of the job effect of spending the entire trial time in our Court and he is not adequately involved in the case. Mr. Schwartz does not need to have a complete understanding of the legal basis for his claims. *In re Resource Am. Secs. Litig.*, 202 F.R.D. 177, 187 (E.D.Pa. 2001) (rejecting adequacy challenge where defendants alleged plaintiff only became involved after an advertisement, did not read the complaint before signing the certification, only skimmed the complaint and seemed unaware of the underlying facts). We find Mr. Schwartz is adequate after reading his declaration, additional deposition testimony and the uncontested willingness to serve as representative plaintiff.

[4] Defendants' last challenge to certification asks us, under the predominance test, to apply the Supreme Court's reasoning in evaluating a class damages model based on four theories of antitrust liability when the district court found only one viable liability theory. *See Comcast Corp. v. Behrend*, --U.S.--, 133 S.Ct. 1426 (2013). As Defendants candidly concede, our Court of Appeals rejected this argument and district courts in this Circuit have followed its reasoning. *Neale v. Volvo Cars of N. Am.*, 794 F.3d 353, 374-75 (3d Cir. 2015); *In re Wilmington Trust*

Secs. Litig., 310 F.R.D. 243, 245-46 (D. Del. 2015); *City of Sterling Heights General Employees' Retirement Sys. v. Prudential Financial, Inc.*, No. 12-5275, 2015 WL 5097883, at *13 (D.N.J. Aug. 31, 2015). We read the court of appeals' analysis in *Neale* to allow for class treatment even if damages are required to be calculated post-trial on a uniform claims administration process based on the jury's determination of an artificially inflated stock price during the Class Period. While Defendants did not specifically challenge manageability, Lead Plaintiff demonstrated through expert review of a proof paradigm for the inflated stock price applicable to all Class members regardless of when they purchased Urban Outfitters' stock or the size and nature of their holdings. (ECF Doc. No. 42-3); *See City of Sterling Heights*, 2015 WL 5097883, at *13. While we do not presently require a specific trial plan in this stock drop fraud case, we reviewed Judge Guzman's post-verdict damages plan (*Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.,* 756 F. Supp. 2d 928 (N.D. Ill. 2010) (attached to Plaintiff's Reply at ECF Doc. No. 53-1)) and can, at this preliminary perspective, expect to review Plaintiff's trial plan following the close of discovery or upon a jury verdict.