

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

KEVIN MURPHY, Individually and On  
Behalf of All Others Similarly Situated,

Case No. 3:16-cv-00521-SB

Plaintiffs,

**FINDINGS AND  
RECOMMENDATION**

v.

PRECISION CASTPARTS CORP., MARK  
DONEGAN, and SHAWN R. HAGEL,

Defendants.

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**BECKERMAN, U.S. Magistrate Judge.**

AMF Pensionsförsäkring AB (“AMF”) and the Oklahoma Firefighters Pension and Retirement System (“Oklahoma Firefighters”) (collectively “Lead Plaintiffs”) filed an amended class action complaint on behalf of all persons or entities who purchased or otherwise acquired the publicly traded securities of Precision Castparts Corporation (“PCC”) between May 9, 2013 and January 15, 2015, seeking to pursue remedies under the Securities Exchange Act of 1934 (“Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”). (ECF No. 61.) Specifically, Lead Plaintiffs brought this action against PCC, a manufacturer of complex metal components, Mark Donegan, the Chairman and Chief Executive

Officer of PCC, and Shawn R. Hagel, the Executive Vice President and Chief Financial Officer of PCC (collectively, “Defendants”), alleging violations of sections 10(b) and 20(a) of the Exchange Act and Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder.

Lead Plaintiffs filed a Motion for Class Certification and Appointment of Class Representatives and Class Counsel (“Motion to Certify”) (ECF No. 134). Defendants filed a Statement of Qualified Non-Opposition to Lead Plaintiffs’ Motion for Class Certification (ECF No. 140), taking no position on Lead Plaintiffs’ Motion to Certify, but reserving “the right to challenge at later stages of this litigation any of Plaintiffs’ claims in this matter . . . .” (Defs.’ Resp. 1-2.) For the reasons that follow, the district judge should grant Lead Plaintiffs’ Motion to Certify.

### LEGAL STANDARD

Rule 23 governs class certification and permits a class action if:

(1) [T]he class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). In addition to satisfying the Rule 23(a) criteria of numerosity, commonality, typicality, and adequate representation, a class action may be maintained only if one of the Rule 23(b) criteria is met. Here, Lead Plaintiffs rely on Rule 23(b)(3), asserting “that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

Lead Plaintiffs bear the burden of demonstrating each of Rule 23's requirements. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979-80 (9th Cir. 2011). Rule 23 "is not a mere pleading standard," and a party seeking class certification "must affirmatively demonstrate compliance with the Rule." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011).

## DISCUSSION

Lead Plaintiffs move to certify the following class of investors ("Class"):

All individuals or entities who purchased or otherwise acquired common stock of Precision Castparts Corporation ("PCC Common Stock") during the proposed class period of May 9, 2013 through January 15, 2015, inclusive ("Class Period") and were damaged thereby.

(Pls.' Mot. Certify 2.)

### I. NUMEROSITY

The proposed class must be "so numerous that joinder of all members is impracticable." *Fed. R. Civ. P. 23(a)(1)*. Although there is no threshold for numerosity, courts generally find the requirement satisfied with classes comprising 40 or more members. *See Jordan v. Los Angeles Cty.*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, *Fowler v. Tucker*, 459 U.S. 810 (1982). "In assessing the number of potential class members, the court need only find an approximation of the size of the class, not an exact number of putative class members." *Howard v. Liquidity Serv. Inc.*, 322 F.R.D. 103, 117 (D.D.C. 2017) (quotations and citations omitted); *see also In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 250-51 (N.D. Cal. 2005) ("Where the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied." (internal quotations and citation omitted)).

Lead Plaintiffs have submitted under seal an expert report calculating the number of outstanding shares of PCC Common Stock, as well as the trading volume, during the Class

Period. Although the precise number of Class members has not been determined, the proposed Class is well over 40. Accordingly, Rule 23(a)(1)'s numerosity requirement is satisfied.

## II. COMMONALITY

Class certification is only appropriate when the case presents “questions of law or fact common to the class.” *Fed. R. Civ. P. 23(a)(2)*. The commonality requirement is to be construed permissively, and class members need not be identical in all respects. *Ellis, 657 F.3d at 981*. Class members’ claims must “depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes, 564 U.S. at 350*. Courts often find commonality “in securities class actions where investors sue for misrepresentations or omissions that had an impact on stock price.” *Howard, 322 F.R.D. at 118*; *see also In re VeriSign, Inc. Sec. Litig., No. 02-cv-2270, 2005 WL 7877645, at \*5 (N.D. Cal. Jan. 13, 2005)* (“Commonality is easily met in cases where class members all bought or sold the same stock in reliance on the same disclosures made by the same parties, even when damages may vary.” (internal quotations and citation omitted)).

Lead Plaintiffs contend that common questions of law and fact arise from PCC’s alleged “publicly-disseminated material misstatements and omissions which artificially inflated the price of PCC Common Stock.” (*Pls.’ Mot. Certify 12* (citing *Amend Compl. ¶¶ 122-189*)). In particular, common questions include:

- (i) whether Defendants violated the federal securities laws;
- (ii) whether Defendants’ Class Period statements misrepresented or omitted material facts concerning, among other things, PCC’s reliance on the undisclosed and unsustainable practice of pulling in sales, the long-term, negative effect that destocking by PCC’s customers had on

the Company, and PCC's ability to achieve its FY16 EPS Target;

- (iii) whether those misstatements and/or omissions were material;
- (iv) whether Defendants acted with the requisite state of mind in issuing such misstatements;
- (v) whether Defendants' material misstatements and omissions caused the price of PCC Common Stock to be artificially inflated during the Class Period; and
- (vi) whether Defendants' conduct resulted in damages to the Class, and the appropriate measure of such damages.

(Pls.' Mot. Certify 12-13.) The Court finds that these questions are class-wide and will involve common proof. Accordingly, Rule 23(a)(2)'s commonality requirement is satisfied.

### III. TYPICALITY

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); *see also Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) ("Rule 23(a)(3) requires that the claims or defenses of the representative parties are typical of the claims or defenses of the class." (quotations omitted)). In evaluating whether Rule 23(a)(3)'s typicality requirement is satisfied, courts apply a permissive standard and find that "representative claims are typical if they are reasonably coextensive with those of absent class members." *Parsons*, 754 F.3d at 685 (quotations and citation omitted).

The Lead Plaintiffs' and Class members' claims are based on the same legal theory—that by making material misstatements and omissions, PCC violated sections 10(b) and 20(a) of the Exchange Act. Specifically, Lead Plaintiffs and the Class members all purchased shares of PCC's stock during the Class Period, relied on PCC's alleged misstatements and omissions, and

suffered damages when PCC's stock prices fell after the discovery of the alleged fraud. Thus, proof of the Lead Plaintiffs' claims will also be proof of the Class members' claims.

Accordingly, Rule 23(a)(3)'s typicality requirement is satisfied.

#### **IV. ADEQUACY**

Rule 23(a)'s final requirement is that the class representative "fairly and adequately protect the interests of the class." [Fed. R. Civ. P. 23\(a\)\(4\)](#). Adequate representation is measured by class counsel's ability to litigate class interests and the lack of antagonism among the class members' interests. *See Stanton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) ("To determine whether the representation meets this standard, we ask two questions: (1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?").

With regard to a conflict of interest between the representatives and the Class members, Lead Plaintiffs contend that their claims arise from the same set of facts as the Class members' claims. In particular, both Lead Plaintiffs and the Class members were allegedly injured by PCC's misstatements and omissions that resulted in both groups purchasing PCC's Common stock at an artificially inflated price. Thus, Lead Plaintiffs' and the Class members share a common objective to obtain the maximum monetary recovery. In addition, the litigation record before this Court to date demonstrates that the Lead Plaintiffs are diligently pursuing the prosecution of this action. *See Murphy, et al. v. Precision Castparts Corp., et al.*, No. 3:16-cv-00521-SB (D. Or. Mar. 25, 2016) (Docket Report). The Court is satisfied that Lead Plaintiffs' interests are not antagonistic to the interests of the Class members.

Finally, having reviewed the résumés of Kessler Topaz Meltzer & Check, LLP, Labaton Sucharow LLP, and Garvey Schubert Barer, it appears that Lead Plaintiffs’ proposed counsel for the Class is qualified and competent. (Russo Decl. Exs. 13-15.) The Court further finds upon review of Per-Erik Karlsson’s (Head of AMF Legal Department) and Chase Rankin’s (Executive Director of Oklahoma Firefighters) declarations that the Lead Plaintiffs will vigorously prosecute this action on behalf of the Class. (Russo Decl. Exs. 11-12.) Accordingly, the Court finds that Rule 23(a)(4)’s adequacy requirement is satisfied.

## V. PREDOMINANCE AND SUPERIORITY

The predominance and superiority elements of Rule 23 were added “to cover cases ‘in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.’” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23(b)(3) Adv. Comm. Notes to 1966 Amend.). Rule 23(b)(3) requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “Considering whether questions of law or fact common to class members predominate begins, of course, with the elements of the underlying cause of action.” *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011). To establish liability under sections 10(b) and 10b-5, a plaintiff must prove “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Amgen Inc. v. Connecticut Ret. Plans and Tr. Funds*, 568 U.S. 455, 459-63 (2013).

The question of predominance “in a securities fraud action often turns on the element of reliance.” *Halliburton*, 563 U.S. at 810.

To establish predominance, Lead Plaintiffs rely on two presumptions: the fraud-on-the-market-presumption established by the Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), and the *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972) presumption of reliance. (Pls.’ Mot. Certify 17.) The fraud-on-the market theory “is based on the hypothesis that, in an open and developed securities market, the price of a company’s stock is determined by the available material information regarding the company and its business . . . . Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements . . . .” *Basic*, 485 U.S. at 241-42. The *Affiliated Ute* rule applies a presumption of reliance in circumstances involving a “failure to disclose.” *Affiliate Ute*, 406 U.S. at 153-54.

Lead Plaintiffs contend that common questions of reliance predominate because “each alleged misrepresentation was a public statement addressed to the marketplace[,] . . . . Plaintiffs and all other Class members purchased PCC Common Stock” during the relevant time period, and “the market for PCC Common Stock was efficient throughout the Class Period.” (Pls.’ Mot. Certify 18.) In addition, Lead Plaintiffs argue that common issues concerning damages predominate because “damages are demonstrated on a class-wide basis using the event study methodology.” (Pls.’ Mot. Certify 26.) Lead Plaintiffs maintain that they have proposed a “methodology for determining class-wide damages that is consistent with their theory of liability.” (Pls.’ Mot. Certify 27.) Based on Lead Plaintiffs’ arguments and submissions, the Court concludes that common questions of fact and law predominate over individual questions.

As such, the only question remaining is whether class resolution is “superior to other available methods for the fair and efficient adjudication of the controversy.” [Fed. R. Civ. P. 23\(b\)\(3\)](#).

In the absence of a class action, it is likely that many of the individual plaintiffs would forgo prosecution of their claims based on a cost/benefit calculus. In addition, the court would experience a greater burden created by hundreds of individual complaints, and such piecemeal litigation raises the risk of inconsistent outcomes. Under the circumstances, the Court finds that class resolution is indeed superior here. Accordingly, the Court finds that Rule 23(b)(3)’s predominance and superiority requirements are satisfied.

### **CONCLUSION**

For the reasons stated, the district judge should GRANT Lead Plaintiffs’ Motion for Class Certification and Appointment of Class Representatives and Class Counsel ([ECF No. 134](#)).

### **SCHEDULING ORDER**

The Court will refer its Findings and Recommendation to a district judge. Objections, if any, are due within fourteen (14) days. If no objections are filed, the Findings and Recommendation will go under advisement on that date. If objections are filed, a response is due within fourteen (14) days. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 6th day of June 2018.



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STACIE F. BECKERMAN  
United States Magistrate Judge