UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YI XIANG, et al.,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	16-CV-4923 (VM)
	:	
INOVALON HOLDINGS, INC. et al.,	:	**DECISION AND ORDER**
	:	
Defendants.	:	

VICTOR MARRERO, United States District Judge.

Lead Plaintiff Roofers Local No. 149 Pension Fund moved to certify a class of purchasers of Defendant Inovalon Holdings, Inc.'s securities traceable to its Initial Public Offering on the basis of alleged violations of Section 11, Section 12(a)(2), and Section 15 of the Securities Exchange Act of 1933. Defendants opposed class certification largely on the basis that Plaintiff cannot demonstrate predominance given the need for individualized inquiries into investor knowledge. For the reasons discussed below, Plaintiff's motion for class certification is granted, as modified herein, except as to the Section 12(a)(2) claim, which is dismissed on standing grounds.

I. BACKGROUND

Lead Plaintiff Roofers Local No. 149 Pension Fund[1] ("Lead Plaintiff" or "Plaintiff" or "Roofers"), individually and on behalf of all others similarly situated, filed a complaint ("Consolidated Complaint," Dkt. No. 66) against sixteen defendants: Inovalon Holdings, Inc. ("Inovalon"); six of Inovalon's officers and directors: Keith R. Dunleavy, Thomas R. Kloster, Denise K. Fletcher, André S. Hoffmann, Lee D. Roberts, and William J. Teuber Jr. (collectively, "Individual Defendants"); and nine financial services companies that acted as underwriters for Inovalon's Initial Public Offering ("IPO"): Goldman Sachs & Co., Morgan Stanley & Co. LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith, Incorporated, UBS Securities LLC, Piper Jaffray & Co., Robert W. Baird & Co. Incorporated, Wells Fargo Securities, LLC, and William Blair & Company, L.L.C. (collectively, "Underwriter Defendants," and together with Inovalon and the Individual Defendants, "Defendants"). At Defendants' request, and because they were not named in the Consolidated Complaint, the following four Underwriter

[1] By Order dated September 20, 2016, Roofers Local No. 149 Pension Fund was appointed Lead Plaintiff, and Robbins Geller Rudman & Dowd LLP was appointed Lead Counsel. (See Dkt. No 63.)

Defendants were dismissed from the action as of August 2, 2017: Piper Jaffray & Co., Robert W. Baird & Co. Incorporated, Wells Fargo Securities, LLC, and William Blair & Company, L.L.C. (See Dkt. No. 89.)

The Consolidated Complaint alleges that Inovalon negligently included untrue statements of material fact and omitted material facts from the Registration Statement and Prospectus (collectively, the "Registration Statement") issued in connection with Inovalon's IPO. Specifically, the Consolidated Complaint alleges that Defendants failed to disclose that Inovalon derived significant revenues from New York-based customers, and that Inovalon would be subject to substantially increased taxes in New York State and New York City, resulting in a material increase in its effective tax rate and a significant decrease in Inovalon's earnings. Lead Plaintiff asserts three causes of action on behalf of the putative class: (1) violation of Section 11 of the Securities Exchange Act of 1933 (the "1933 Act"), 15 U.S.C. § 77k, against all Defendants; (2) violation of Section 12(a)(2) of the 1933 Act, 15 U.S.C. § 771(a)(2), against all Defendants; and (3) violation of Section 15 of the 1933 Act, 15 U.S.C. § 77o, against Inovalon and the Individual Defendants. Lead Plaintiff seeks damages, attorneys' fees and costs,

rescission or rescissory damages, and other equitable relief. By Order dated May 23, 2017, the Section 12(a)(2) claims against the Individual Defendants were dismissed. (See Dkt. No. 69.)

On January 22, 2018, Lead Plaintiff moved to (1) certify a proposed class consisting of "[a]ll persons who purchased or acquired Inovalon common stock pursuant or traceable to the Company's February 12, 2015 IPO" (the "Proposed Class"); (2) appoint Roofers as class representative; and (3) appoint Robbins Geller Rudman & Dowd LLP ("Robbins Geller") as class counsel. (See "Class Cert. Motion," Dkt. No. 100 at 8-9.)

Plaintiff argues that the Proposed Class meets the requirements of Federal Rule of Civil Procedure 23(a). First, Plaintiff argues that the class, consisting of all persons who purchased or acquired Inovalon common stock issued pursuant or traceable to the Registration Statement, likely "number[s] in the thousands," and therefore is sufficiently numerous to warrant class treatment. (Id. at 15-16.) Second, Plaintiff argues that the putative class members' claims share common questions of law and fact, including: (1) whether the Registration Statement contained material misstatements or omissions; (2) whether Defendants violated Securities and Exchange Commission ("SEC") Regulation S-K Items 303 and 503,

which require, respectively, disclosures related to material events and uncertainties affecting future operating results, and disclosures related to risky or speculative aspects of the offering; (3) whether Defendants controlled Inovalon or other violators of Section 11 or Section 12(a)(2); and (4) whether Defendants' conduct violated the 1933 Act. (Id. at 16-17.) Third, Plaintiff argues that the proposed class representative's claims are "typical of, if not identical to, the claims of all other class members" in that both Lead Plaintiff and the class members: (1) purchased Inovalon common stock pursuant or traceable to the Registration Statement; (2) assert that the Registration Statement misrepresented and/or omitted the same material facts, and (3) assert the same claims against the same Defendants. (See id. at 18.) Fourth, Plaintiff argues that it will fairly and adequately protect the interests of the class because Lead Plaintiff asserts the very same claims as all absent class members, and moreover has "demonstrated a willingness and ability to take an active role in, and control of, this litigation to protect the interests of the class." (Id. at 19-20.) Additionally, Plaintiff argues that its choice of counsel, Robbins Geller, is qualified to conduct this class

action, and that their retention demonstrates adequacy of representation. (See id. at 21-22.)

Plaintiff also argues that the case meets the requirements of Federal Rule of Civil Procedure 23(b)(3). First, Plaintiff argues that common questions of law, capable of classwide resolution -- such as (1) whether the Registration Statement contained a material misstatement or omission, (2) whether Defendants' statements and/or omissions were material, and (3) whether certain Individual or Underwriter Defendants were control persons -- will predominate over any questions affecting only individual class members. (Id. at 22-25.) Second, Plaintiff contends that a class action is superior to other available methods for fairly and efficiently adjudicating this controversy because, as with other securities suits, the only alternatives are no recourse for aggrieved stockholders or a multiplicity of suits throughout the United States resulting in an excessively greater volume of litigation and potentially inconsistent judgments. (See id. at 25-26.)

Defendants opposed class certification on February 12, 2018. (See "Opposition," Dkt. No. 109.)

First, Defendants argue that Plaintiff cannot demonstrate predominance given the need for individualized

inquiries into investor knowledge. In the Opposition, Defendants initially argued that Plaintiff must show lack of knowledge to recover on its Section 11 claim (see Opposition at 18-19), but by letter dated March 6, 2018, Defendants withdrew reliance on that argument in light of the Court of Appeals for the Second Circuit's ruling in In re Initial Public Offering Securities Litigation, 483 F.3d 70 (2d Cir. 2007). (See Dkt. No. 138.) Conceding that knowledge is an affirmative defense to a Section 11 claim, Defendants nonetheless maintain that, because investors had "varying levels of knowledge concerning the Company's effective tax rate depending on the timing of their stock purchase in relation to Inovalon's numerous public disclosures and to any other diligence or analysis they may have undertaken with respect to Inovalon," individualized issues predominate over common questions. (Opposition at 19.)

Second, Defendants argue that Lead Plaintiff is an "inadequate class representative because it has abdicated all control of this lawsuit to its attorneys." (Id. at 25.) In fact, Defendants argue, "[t]his litigation has been entirely driven by Plaintiff's counsel since its inception, and Plaintiff has given its lawyers full discretion." (Id. at 27.)

Third and finally, Defendants argue that the definition of the Proposed Class is overbroad in two respects: (1) Plaintiff does not have standing to bring a Section 12(a)(2) claim because Plaintiff did not purchase any of its shares in Inovalon directly in the IPO; and (2) the class definition extends beyond May 8, 2015, the date that Inovalon publicly disclosed that "unfavorable state legislative changes" had contributed to an increase in Inovalon's effective tax rate for the first quarter of 2015. (Id. at 29-31.)

Plaintiff replied in further support of class certification on February 26, 2018. (See "Reply," Dkt. No. 113.)

First, Plaintiff argues that it has established that common questions predominate over individual inquiries. Plaintiff asserts that Defendants' purported defense based on investor knowledge is "procedurally improper and factually incorrect" because proof of materiality is not a prerequisite to class certification, and because this Court "already rejected" the knowledge-based argument when it held that Inovalon's public statements between the IPO and August 5, 2015 "did not reveal the falsity of the Registration Statement to investors." (Id. at 8.) Moreover, Plaintiff argues that

neither public knowledge of the tax laws nor Defendants' "generic statements" between the IPO and August 2015 revealed the "particularized and substantial impact" of these laws on Inovalon's business. (Id. at 9.)

Additionally, Plaintiff argues that the actual knowledge argument advanced by Defendants is a defense to a Section 11 claim, and, as such, does not compel a finding that individual issues predominate over common questions. (Id. at 9-10.) Moreover, even if that were not the case, Plaintiff asserts that Defendants have failed to adduce any evidence to support the actual knowledge defense: nothing, according to Plaintiff, indicates that Lead Plaintiff or its investment manager, Baron Capital Management, Inc. ("Baron Capital"), knew of the alleged misstatements and omissions in the Registration Statement. (Id. at 10.)

Second, Plaintiff reiterates that Roofers is an adequate class representative under Federal Rule of Civil Procedure 23(a)(4) in that it is deeply familiar with and substantially involved in the action. (See id. at 11-14.)

Third, Plaintiff contends that it may represent class members asserting Section 12(a)(2) claims even if Lead Plaintiff does not have standing to bring a Section 11 claim because the same course of conduct gives rise to Defendants'

liability under both Section 11 and Section 12(a)(2). (See id. at 14-15.)

On March 8, 2018, Lead Plaintiff submitted a supplemental declaration in support of the Class Cert. Motion. (See "Supplemental Declaration," Dkt. No. 115.) As an exhibit to the Supplemental Declaration, Plaintiff submitted a July 17, 2015 email (the "July 17 Email") from then-CFO Thomas R. Kloster ("Kloster") to CEO Keith R. Dunleavy ("Dunleavy"), which, according to Plaintiff, "confirm[s] that Lead Plaintiff and the proposed class could not have known the truth of the alleged misrepresentations and omissions." (Id. at 3-4.) In the July 17 Email, Kloster wrote that the "primary driver" of the increase to the tax expense was an "internal error in not factoring in a NY state rate change which was announced on April 1, 2015 but was to be effective January 1, 2015." (Id. at 4.)

On March 20, 2018, Defendants responded to the Supplemental Declaration. (See Dkt. No. 124.) In their supplemental declaration, Defendants acknowledge that actual knowledge is an affirmative defense to a Section 11 claim, but argue that it can nonetheless undercut predominance where, as Defendants allege is the case here, investor knowledge increases over time. (See id. at 3-4.) According to

Defendants, the July 17 Email, read in its proper context, is consistent with this position.

By letter dated June 28, 2018, Defendants informed the Court that testimony by the investment manager for Lead Plaintiff, Baron Capital -- to whom Lead Plaintiff delegated complete investment authority -- conflicts with Lead Plaintiff's allegations and claims. (See Dkt. No. 133-1.) Defendants argue that Baron Capital's deposition shows that (1) Baron Capital disagrees with the core allegations in the Consolidated Complaint, including whether Inovalon's disclosures were misleading; (2) Baron Capital did not view the changes to Inovalon's effective tax rate as material; (3) Baron Capital knew, at the time it purchased Inovalon securities, that Inovalon derived substantial revenue from its business in New York State and New York City; and (4) Baron Capital rejected Lead Plaintiff's assertion that the disclosure of a change to Inovalon's effective tax rate in August 2015 caused a decline in the price of Inovalon's stock. (See id. at 3-6.) These facts, Defendants contend, show at a minimum that Lead Plaintiff is an inadequate class representative. (See id. at 7.)

By letter dated July 2, 2018, Plaintiff responded, arguing that Defendants effectively abandoned their actual

knowledge argument in favor of an argument that Baron Capital would not have considered the information regarding the New York State and New York City tax provisions or their financial implications to be material. Plaintiff also argues that Defendants ignore the fact that Supreme Court precedent precludes resolution of materiality at the class certification stage because materiality is susceptible of classwide proof and therefore does not defeat predominance.

With respect to the deposition testimony at issue, Plaintiff argues that Baron Capital's testimony actually shows that (1) Baron Capital did not know whether the Registration Statement was materially false; (2) Baron Capital learned of the impact of the tax reforms on August 5, 2015 along with the rest of the market; and (3) Defendants' omission of the tax reforms and their impact from the Registration Statement was material.

By letter dated July 6, 2018, Defendants responded, reiterating their arguments that (1) predominance is defeated by varying levels of investor knowledge, and (2) Baron Capital's testimony makes clear that the alleged misstatements were not material. (See Dkt. No. 133-2.)

On August 3, 2018, Defendants filed a second supplemental declaration attaching their letters dated June

28, 2018 and July 6, 2018, along with relevant portions of the 30(b)(6) deposition of Baron Capital. (See Dkt. No. 133.)

By Order dated September 5, 2018 the Court denied Defendants' request to file an early summary judgment motion on the basis that (1) the statute of limitations has run on Plaintiff's claims, and (2) Plaintiff had actual knowledge of the alleged misrepresentations and omissions in the Registration Statement. (See Dkt. No. 139.)

II. LEGAL STANDARD

To certify the Proposed Class, Plaintiff must prove the four elements of Federal Rule of Civil Procedure 23(a) ("Rule 23(a)") by a preponderance of the evidence: (1) numerosity; (2) commonality; (3) typicality; and (4) adequate representation. See Fed. R. Civ. P. 23(a).

Additionally, Federal Rule of Civil Procedure 23(b)(3) ("Rule 23(b)(3)") requires that the plaintiff demonstrate, by a preponderance of the evidence, that the action is maintainable as a class action because "questions of law or fact common to class members predominate over any questions affecting only individual members" (the "Predominance Requirement"). See Fed. R. Civ. P. 23(b)(3). "The [P]redominance [R]equirement is satisfied 'if resolution of some of the legal or factual questions that qualify each class

member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.'" In re U.S. Foodservice Inc. Pricing Litig., 729 F.3d 108, 118 (2d Cir. 2013) (quoting UFCW Local 1776 v. Eli Lilly & Co., 620 F.3d 121, 131 (2d Cir. 2010)). "While the predominance inquiry is more demanding than the commonality determination required by Rule 23(a), predominance does not require a plaintiff to show that there are no individual issues." Public Emps.' Ret. Sys. v. Merrill Lynch & Co., 277 F.R.D. 97, 111 (S.D.N.Y. 2011) (citing In re NYSE Specialists Sec. Litig., 260 F.R.D. 55, 75 (S.D.N.Y. 2009)). "Instead, 'a court's inquiry is directed primarily toward whether the issue of liability is common to members of the class,' taking into account 'both affirmative claims and potential defenses.'" Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co., 301 F.R.D. 116, 136 (S.D.N.Y. 2014) (quoting In re IndyMac Mortg.-Backed Sec. Litig., 286 F.R.D. 226, 236 (S.D.N.Y. 2012)).

Rule 23(b)(3) also requires that the plaintiff demonstrate, by a preponderance of the evidence, that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P.

23(b)(3). To determine whether class treatment is the superior form of adjudication, a court may consider: (1) the interest of the class members in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation already commenced by or against class members; (3) the desirability of concentrating the litigation in a particular forum; and (4) the difficulties likely to be encountered in the management of a class action. See id.

Trial courts are given "substantial discretion" in determining whether to grant class certification because "'the district court is often in the best position to assess the propriety of the class and has the ability . . . to alter or modify the class, create subclasses, and decertify the class whenever warranted.'" See In re Nigeria Charter Flights Contract Litig., 233 F.R.D. 297, 301 (E.D.N.Y. 2006) (quoting In re Sumitomo Copper Litig., 262 F.3d 134, 139 (2d Cir. 2001)). The "Second Circuit has directed district courts to apply Rule 23 according to a liberal rather than a restrictive interpretation," In re Blech Sec. Litig., 187 F.R.D. 97, 102 (S.D.N.Y. 1999), and "[d]oubts concerning the propriety of class certification should be resolved in favor of class certification." Fraticelli v. MSG Holdings, L.P., No. 13 Civ.

6518, 2015 WL 8491038, at *8 (S.D.N.Y. Dec. 10, 2015) (citing Levitt v. J.P. Morgan Sec., Inc., 710 F.3d 454, 464 (2d Cir. 2013) (noting that on appellate review less deference is given to decisions denying class certification than to decisions granting certification)).

Moreover, class action treatment is "particularly appropriate when plaintiffs seek redress for violations of the securities laws" as it is "well recognized that private enforcement of these laws is a necessary supplement to government regulation." See Blech, 187 F.R.D. at 102 ("[W]hen a court is in doubt as to whether or not to certify a class action, the court should err in favor of allowing the class to go forward."); see also Dura-Bilt Corp. v. Chase Manhattan Corp., 89 F.R.D. 87, 99 (S.D.N.Y. 1981) ("[I]ndividual issues will likely arise in this as in all class action cases. But, to allow various secondary issues of plaintiffs' claim to preclude certification of a class would render the rule an impotent tool for private enforcement of the securities laws."). In particular, "[a]s several courts have observed . . . suits alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act [of 1933] are 'especially amenable' to class action certification and resolution." New Jersey Carpenters Health Fund v. DLJ Mortg. Capital, Inc., No. 08

Civ. 5653, 2014 WL 1013835, at *4 (S.D.N.Y. Mar. 17, 2014) (quoting IndyMac, 286 F.R.D. at 232 & n.40); see also Amchem Prods., Inc. v. Windsor, 521 U.S. 592, 625 (1997) ("Predominance is a test readily met in certain cases alleging . . . securities fraud."); Merrill Lynch, 277 F.R.D. at 101 ("As courts have repeatedly found, suits alleging violations of the securities laws, particularly those brought pursuant to Sections 11 and 12(a)(2), are especially amenable to class action resolution.").

III. ANALYSIS

A. STANDING

In their Opposition, Defendants assert that Plaintiff lacks standing to bring a Section 12(a)(2) claim against any Defendant because Plaintiff did not purchase any of its Inovalon securities directly in the IPO. (See Opposition at 29-30.) Additionally, Defendants assert that certification must be rejected because Roofers, as the only named plaintiff in this action, lacks standing to assert Section 12(a)(2) claims on behalf of the Proposed Class. (See id. at 30-31.)

"[W]hile both Sections 11 and 12 require similar showings, unlike a Section 11 claim which may be brought by any purchaser of the relevant security who 'can trace their shares to an allegedly misleading registration statement,'"

a Section 12(a)(2) plaintiff "must establish that it purchased the security directly from defendants through the public offering at issue." In re CitiGroup Inc. Bond Litig., 723 F. Supp. 2d 568, 585 (S.D.N.Y. 2010) (quoting DeMaria v. Andersen, 318 F.3d 170, 178 (2d Cir. 2003)); see also In re Alcatel Sec. Litig., 382 F. Supp. 2d 513, 530 (S.D.N.Y. 2005) (only plaintiffs who purchased shares pursuant to the IPO have standing to bring a Section 12(a)(2) claim).

Plaintiff does not dispute that Roofers lacks standing to bring a Section 12(a)(2) claim, but instead argues that a single class can contain plaintiffs who have Section 11 and Section 12(a)(2) claims. (See Reply at 14-15.) Plaintiff asserts that because the "'same course of conduct gives rise to liability under both [S]ections [11 and 12(a)(2)],'" Lead Plaintiff "'can represent class members with [S]ection 12(a)(2) claims despite the fact that it has only Section 11 claims.'" (Id. at 15 (quoting New Jersey Carpenters Health Fund v. Residential Capital, LLC, 272 F.R.D. 160, 166 (S.D.N.Y. 2011), aff'd sub nom. New Jersey Carpenters Health Fund v. Rali Series 2006-QO1 Tr., 477 F. App'x 809 (2d Cir. 2012)).)

The Second Circuit recently addressed the issue of class standing in NECA-IBEW Health & Welfare Fund v. Goldman Sachs

& Co., 693 F.3d 145 (2d Cir. 2012), concluding that in a putative class action, a plaintiff has "class standing" if "he plausibly alleges (1) that he personally has suffered some actual . . . injury as a result of the putatively illegal conduct of the defendant, and (2) that such conduct implicates the same set of concerns as the conduct alleged to have caused injury to other members of the putative class by the same defendants." Id. at 162 (internal citations and quotation marks omitted).

In a recent decision, the Honorable Judge Katherine B. Forrest addressed the precise issue presented here. Stadnick v. Vivint Solar, Inc. presented the question of whether a lead plaintiff, who lacked standing to bring a Section 12(a)(2) claim against the underwriter defendants, could maintain the Section 12(a)(2) claims on behalf of unnamed class members. Judge Forrest found that he could not, and dismissed the Section 12(a)(2) claims. See No. 14 Civ. 9283, 2015 WL 8492757, at *18 (S.D.N.Y. Dec. 10, 2015), aff'd, 861 F.3d 31 (2d Cir. 2017).

Judge Forrest elaborated that NECA-IBEW "does not stand for the sweeping proposition that an individual may represent absent class members with regard to claims as to which he or she has no individual standing . . . ." Id. at *17. That case

instead addressed the different issue of "whether the claims of a present class member with standing were sufficiently close to the claims of absent class members' claims to maintain the action on a representative basis." Id. (emphasis in original). Here, as in Stadnick, Lead Plaintiff does not have statutory standing in its own right to pursue a claim under Section 12(a)(2). As a result, the same conclusion applies equally here: "[r]ather than expanding from his own statutory standing to represent a class of people with the same set of concerns, plaintiff instead asserts merely that the similarity between claims under § 11 and claims under § 12(a)(2) is enough. It is not, and plaintiff's lack of statutory standing for a § 12(a)(2) claim is dispositive." Id. at *18.

Thus, while a lead plaintiff who does not have standing to sue on every claim may not defeat typicality or adequacy of representation under Rule 23, it is still the case that "there must be a named plaintiff sufficient to establish jurisdiction over each claim advanced." Police & Fire Ret. Sys. v. IndyMac MBS, Inc., 721 F.3d 95, 112 (2d Cir. 2013) (citing Hevesi v. Citigroup Inc., 366 F.3d 70, 82-83 (2d Cir. 2004)); see also Hevesi, 366 F.3d at 82-83 ("[J]ust as a class representative can establish the requisite typicality under

Rule 23 if the defendants committed the same wrongful acts in the same manner against all members of the class, so too can lead plaintiffs." (internal citations and quotation marks omitted)). Indeed, the Second Circuit has more than once held that "'[t]o establish Article III standing in a class action . . . for every named defendant there must be at least one named plaintiff who can assert a claim directly against that defendant, and at that point standing is satisfied and only then will the inquiry shift to a class action analysis.'" See NECA-IBEW, 693 F.3d at 159 (quoting Central States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C., 504 F.3d 229, 241 (2d Cir. 2007)).

Because Roofers is the only named plaintiff in this action (see Opposition at 30), and Plaintiff does not dispute that Roofers does not have standing to sue on the Section 12(a)(2) claim, the Section 12(a)(2) claim is dismissed. See Goldberger v. Bear, Stearns & Co., No. 98 Civ. 8677, 2000 WL 1886605, at *1 (S.D.N.Y. Dec. 28, 2000) ("If the named plaintiffs have no cause of action in their own right, their complaint must be dismissed, even though the facts set forth in the complaint may show that others might have a valid claim.").

B. CLASS DEFINITION

In their Opposition, Defendants argue that Plaintiff's proposed class definition is impermissibly broad because it extends beyond May 8, 2015, the date that Inovalon publicly disclosed that "unfavorable state legislative changes" contributed to an increase in Inovalon's effective tax rate. (Opposition at 31.)

Plaintiff does not specifically respond to this argument in its Reply, though, according to the Consolidated Complaint, it was not until August 5, 2015 when Inovalon disclosed the full extent of the negative impact of the New York City and State tax reforms on Inovalon's earnings. (See Consolidated Complaint ¶ 41.)

It is true that, as a result of the "'implied requirement of ascertainability,'" Brecher v. Republic of Argentina, 806 F.3d 22, 24 (2d Cir. 2015) (quoting In re Initial Pub. Offerings Sec. Litig., 471 F.3d 24, 30 (2d Cir. 2006)), "a class definition ordinarily should have temporal limitations." Royal Park Investments SA/NV v. Deutsche Bank Nat'l Tr. Co., No. 14 Civ. 4394, 2017 WL 1331288, at *5 (S.D.N.Y. Apr. 4, 2017). Moreover, the Court has authority sua sponte to modify a proposed class definition. See Fed. R. Civ. P. 23(c)(4); Vincent v. Money Store, 304 F.R.D. 446, 453

(S.D.N.Y. 2015) ("[A] district court may carve out a narrower class from an overbroad class proposed in the Complaint." (citing Lundquist v. Sec. Pac. Auto. Fin. Servs. Corp., 993 F.2d 11, 14 (2d Cir. 1993))); see also Robidoux v. Celani, 987 F.2d 931, 937 (2d Cir. 1993) ("A court is not bound by the class definition proposed in the complaint and should not dismiss the action simply because the complaint seeks to define the class too broadly.").

The Court is persuaded that it is appropriate to temporally limit the class to: "All persons who purchased or acquired, **prior to August 5, 2015**, Inovalon common stock pursuant or traceable to the Company's February 12, 2015 Initial Public Offering." On that date, according to the Consolidated Complaint, Inovalon issued a release which "finally disclosed the negative impact the State of New York and N.Y.C. corporate tax reforms had on Inovalon's FY15 earnings and lowered the Company's 2015 earnings forecast accordingly." (Consolidated Complaint ¶ 41.) Thus, even according to Plaintiff's own allegations, putative plaintiffs purchasing or acquiring Inovalon stock after that date would have actual knowledge of Inovalon's purported misrepresentations and omissions. See, e.g., In re Smart Techs., Inc. Shareholder Litig., 295 F.R.D. 50, 58-59

(S.D.N.Y. 2013) (finding that "the class definition should affirmatively exclude those individuals who purchased" the securities after November 9, 2010 given that the complaint "alleges November 9, 2010 as the only corrective disclosure").

C. RULE 23(A) REQUIREMENTS

1. Numerosity

Rule 23(a)(1) requires that the class be so large that joinder of all members would be impracticable. Fed. R. Civ. P. 23(a)(1). The Second Circuit has observed that "numerosity is presumed at a level of 40 members," Consolidated Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995), though plaintiffs need not provide evidence of an exact class size to establish numerosity. See Robidoux, 987 F.2d at 935.

Plaintiff asserts that the class members here "likely number in the thousands and reside across many states." (Class Cert. Motion at 16.) Defendants do not dispute numerosity, and therefore have not overcome the presumption. The Court finds that the Proposed Class satisfies the requirement of Rule 23(a)(1) that the numerosity of the class would cause joinder of each member to be impracticable.

2. Commonality

Rule 23(a)(2) requires that the putative class members' claims share common questions of fact and law (the "Commonality Requirement"). Fed. R. Civ. P. 23(a)(2). The Commonality Requirement has been characterized as a "'low hurdle.'" McIntire v. China MediaExpress Holdings, Inc., 38 F. Supp. 3d 415, 424 (S.D.N.Y. 2014) (quoting In re Sumitomo Copper Litig., 194 F.R.D. 480, 482 (S.D.N.Y. 2000)). Commonality requires only a showing that Plaintiff's claims "depend upon a common contention . . . [that is] 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." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011).

Plaintiff argues that "virtually all of the questions of law or fact at issue are common between Lead Plaintiff and all other[] absent class members" including (1) whether the Registration Statement contained material misstatements or omissions; (2) whether Defendants violated Items 303 and 503; (3) whether Defendants controlled Inovalon or other violators of the 1933 Act; and (4) whether the 1933 Act was violated by

Defendants' alleged misconduct. (See Class Cert. Motion at 17.)

Defendants dispute predominance, but do not raise objections specific to commonality in their Opposition.

In a case brought pursuant to Section 11 of the Securities Act, "[l]iability attaches to a security's issuer, its underwriter, and certain other statutorily enumerated parties . . . if 'any part' of the operative registration statements 'omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.'" In re ProShares Tr. Sec. Litig., 728 F.3d 96, 101 (2d Cir. 2013) (quoting 15 U.S.C. § 77k(a)). To state a claim under Section 11, the plaintiff must allege that: "'(1) she purchased a registered security, either directly from the issuer or in the aftermarket following the offering; (2) the defendant participated in the offering in a manner sufficient to give rise to liability under [S]ection 11; and (3) the registration statement contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.'" Tsereteli v. Residential Asset Securitization Tr. 2006-A8, 283 F.R.D. 199, 210-11

(S.D.N.Y. 2012) (quoting In re Morgan Stanley Info. Fund Sec. Litig., 592 F.3d 347, 358-59 (2d Cir. 2010)).

"The common questions presented by this case -- essentially, whether the [Registration Statement] w[as] false or misleading in one or more respects -- are clearly susceptible to common answers." Merrill Lynch, 277 F.R.D. at 106; see also Tsereteli, 283 F.R.D. at 207 ("[T]he central issue is whether the Offering Documents contain material misstatements or omissions, an issue that is common to all class members. The issue of the materiality of the allegedly untrue statements and omissions likewise is similar for all members of the class."). While Defendants challenge whether common issues predominate (see Opposition at 18-25), they do not contest that there are common questions of law or fact shared by the class. Accordingly, the Court finds that the Commonality Requirement is satisfied. See, e.g., Fort Worth, 301 F.R.D. at 132; see also Korn v. Franchard Corp., 456 F.2d 1206, 1210 (2d Cir. 1972) (The Commonality Requirement is "plainly satisfied" in a securities case where "the alleged misrepresentations in the prospectus relate to all the investors, and the existence and materiality of such misrepresentations obviously present important common issues.").

3. Typicality

Rule 23(a)(3) requires that Lead Plaintiff's claims be typical of the Proposed Class (the "Typicality Requirement"). Fed. R. Civ. P. 23(a)(3). The Typicality Requirement is satisfied when "each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." Robidoux, 987 F.2d at 936 (citing In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 291 (2d Cir. 1992)).

The Typicality Requirement "is 'not demanding.'" Tsereteli, 283 F.R.D. at 208 (quoting In re Prestige Brands Holdings, Inc., No. 05 Civ. 6924, 2007 WL 2585088, at *3 (S.D.N.Y. Sept. 5, 2007)). "Typicality 'does not require factual identity between the named plaintiffs and the class members, only that the disputed issues of law or fact occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class.'" Dodona I, LLC v. Goldman, Sachs & Co., 296 F.R.D. 261, 267 (S.D.N.Y. 2014) (quoting Pennsylvania Ave. Funds v. Inyx Inc., No. 08 Civ. 6857, 2011 WL 2732544, at *4 (S.D.N.Y. July 5, 2011)).

Plaintiff argues that its claims are "typical of, if not identical to, the claims of all other class members" in that

Lead Plaintiff and all absent class members (1) "purchased Inovalon common stock pursuant or traceable to the Registration Statement"; (2) "assert that the Registration Statement misrepresented and omitted the same material facts"; and (3) "assert the same claims against the same Defendants." (See Class Cert. Motion at 18.)

Defendants do not dispute that Lead Plaintiff's claims are typical of the Proposed Class, except as discussed above concerning the Section 12(a)(2) claim in the context of standing. That claim is now dismissed, and Defendants do not argue that Lead Plaintiff's Section 11 and Section 15 claims are not typical of the class.

Lead Plaintiff can establish the requisite typicality under Rule 23 if Defendants committed the same wrongful acts in the same manner against all members of the class. See Hevesi, 366 F.3d at 82-83. Indeed, the Second Circuit has explicitly noted that "in the context of claims alleging injury based on misrepresentations, the misconduct alleged will almost always be the same: the making of a false or misleading statement." See NECA-IBEW, 693 F.3d at 162.

That is the case here where Lead Plaintiff alleges that Inovalon negligently included untrue statements of material fact and omitted material facts from the Registration

Statement issued in connection with the Company's IPO. See IndyMac, 286 F.R.D. at 235 ("The commonality, typicality, and adequacy requirements may be met in a securities class action based on something as simple as a commonly alleged disregard of underwriting guidelines. Whether or not investors' knowledge levels varied does not change the fundamental nature of the claims in the [complaint] that the [o]ffering [d]ocuments were materially misleading." (internal citations and quotation marks omitted)); New Jersey Carpenters, 272 F.R.D. at 166 ("The question whether the offering documents were materially misleading will be answered the same way regardless of the varying knowledge levels, risk levels, and loss levels of purchasers of different tranches. The nature of [p]laintiffs' claims, if not the specific facts from which they arise, is typical of the class."); In re WRT Energy Sec. Litig., No. 96 Civ. 3610, 2006 WL 2020947, at *3 (S.D.N.Y. July 13, 2006) ("[F]or the purposes of this motion, [p]laintiffs have shown that [the class representatives] and the rest of the class were affected by the same alleged conduct (misstatements in the WRT registration statement).").

For the reasons discussed above, the Court finds that typicality is satisfied because Lead Plaintiff's claims are typical of those of the proposed class.

4. Adequacy of Representation

Finally, Plaintiff must show that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Generally, adequacy of representation entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 60 (2d Cir. 2000) (citing Drexel Burnham, 960 F.2d at 291). The adequacy inquiry, like other Rule 23(a) requirements, is intended to ensure the efficiency and fairness of class certification but with a particular focus on "uncover[ing] conflicts of interest between named parties and the class they seek to represent." See Amchem, 521 U.S. at 625.

Under Rule 23(g), a court's appointment of lead class counsel must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class . . . ." Fed. R. Civ. P. 23(g)(1)(A). Additionally,

a court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class . . . ." Fed. R. Civ. P. 23(g)(1)(B).

a. Class Representatives

Defendants argue that Roofers is an inadequate class representative because it lacks personal knowledge of the facts of the case and lacks independent oversight of proposed class counsel, Robbins Geller. More specifically, Defendants argue that "Plaintiff has demonstrated an unwillingness to control this litigation, and instead has delegated that role entirely to its attorneys." (Opposition at 26.) To that end, Defendants argue that deposition testimony by Darris Garoufalis ("Garoufalis"), the Fund Administrator for Roofers, contradicts his averments in his January 22, 2018 Declaration submitted in support of class certification (see "Garoufalis Declaration," Dkt. No 102), and demonstrates Roofers's inadequacy as a class representative because: (1) Plaintiff learned of Inovalon for the first time when Plaintiff's counsel presented a draft complaint against Inovalon at a March 14, 2016 Board of Trustees meeting; (2) it was Plaintiff's counsel -- not Plaintiff -- that first identified Roofers's claims in this action; (3) Garoufalis met his attorneys of record for the first time on January 24,

2018, one day prior to his deposition, and spoke with them by telephone for the first time only in December 2017, after the suit was filed; (4) Garoufalis did not review court papers in this case prior to their filing, but reviewed only certain court papers in January 2018 to prepare for his deposition; (5) Garoufalis does not know how much time his lawyers have spent on this case, nor does he know how much money in fees his lawyers have incurred; (6) Garoufalis reviewed Inovalon's Registration Statement only the day before his deposition, and has not reviewed any other disclosure documents referenced in the Consolidated Complaint; and (7) Garoufalis could not remember any of Plaintiff's claims beyond the Section 11 claim. (See Opposition at 27-29.)

Plaintiff disputes these allegations and argues that both the Garoufalis Declaration and Garoufalis's deposition testimony demonstrate that Roofers is involved in the litigation, deeply familiar with the case, and both willing and capable of fulfilling its duties as class representative. (See Reply at 12.) In particular, Plaintiff argues that Garoufalis's deposition testimony demonstrates that Roofers (1) has reviewed and approved the pleadings in this action; (2) received detailed regular updates on the litigation; (3) searched for and produced responsive discovery; (4) made

available a prepared witness for a Rule 30(b)(6) deposition; and (5) "demonstrated a command of the claims and facts at issue," including knowledge of the claims and the parties, as well as the misconduct alleged. (See id. at 12-13.) Additionally, Plaintiff argues that Roofers's past successful recovery of more than $150 million on behalf of aggrieved shareholders further shows its adequacy, and moreover, that Roofers's "reliance on experienced counsel to litigate and pursue the alleged claims demonstrates good judgment and does not adversely impact adequacy." (See id. at 12, 14.)

It is true that "class representative status may properly be denied 'where the class representatives have so little knowledge of and involvement in the class action that they would be unable or unwilling to protect the interests of the class against the possibly competing interests of the attorneys.'" Baffa, 222 F.3d at 61 (quoting Maywalt v. Parker & Parsley Petroleum Co., 67 F.3d 1072, 1077-78 (2d Cir. 1995)). However, the Supreme Court has "expressly disapproved of attacks on the adequacy of a class representative based on the representative's ignorance." Id. (citing Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 370-74 (1966)).

Although Lead Plaintiff's representative "might not have known or understood every detail about the instant

litigation," it is clear that Roofers is "not so ignorant of the facts of this case that it is 'unable or unwilling' to protect the interests of the class.'" See New Jersey Carpenters Health Fund v. DLJ Mortg. Capital, Inc., No. 08 Civ. 5653, 2011 WL 3874821, at *4 (S.D.N.Y. Aug. 16, 2011), amended in part, No. 08 Civ. 5653, 2014 WL 1013835 (S.D.N.Y. Mar. 17, 2014).

Roofers is "an institutional investor of the type unequivocally preferred as lead plaintiff by the Private Securities Litigation Reform Act." See In re MF Global Holdings Ltd. Inv. Litig., 310 F.R.D. 230, 237 (S.D.N.Y. 2015) (internal quotation marks omitted) (citing In re Oxford Health Plans, Inc. Sec. Lit., 182 F.R.D. 42 (S.D.N.Y. 1998)). Roofers is monitoring the progress of the litigation, regularly confers with counsel concerning the litigation, and is familiar with the allegations in the Consolidated Complaint. (See Garoufalis Declaration ¶¶ 3-4; see also Reply at 12-14.) Indeed, "in complex actions 'named plaintiffs are not required to have expert knowledge of all the details of the case . . . and a great deal of reliance on expert counsel is to be expected.'" In re TCW/DW N. Am. Gov't Income Trust Sec. Litig., 941 F. Supp. 326, 341 (S.D.N.Y. 1996) (quoting County of Suffolk v. Long Island Lighting Co., 710 F. Supp.

1407, 1416 (E.D.N.Y. 1989), aff'd, 907 F.2d 1295 (2d Cir. 1990)); see In re Turkcell Iletisim Hizmetler, A.S. Sec. Litig., 209 F.R.D. 353, 356-57 (S.D.N.Y. 2002) (approving class representative where proposed representative did not speak English, but understood "the basic nature of the lawsuit, and, while he d[id] not grasp the nuances of a class action, his interests are clearly aligned with the class members whom he represents").

Therefore, the Court finds that proposed Lead Plaintiff Roofers is an adequate representative under Rule 23(a)(4). See DLJ Mortg. Capital, 2011 WL 3874821, at *4; see also MF Global, 310 F.R.D. at 237 (appointing class representative over objections by defendants that proposed lead plaintiff lacked oversight of proposed class counsel and personal knowledge of the facts of the case, as demonstrated by the fact that lead plaintiff's corporate representative testified that his "understanding of the complaint's allegations comes only from [p]roposed [c]lass [c]ounsel").

b. Lead Counsel

Proposed class counsel Robbins Geller is experienced in securities class action litigation and qualified to conduct this lawsuit. Robbins Geller has "previously been deemed qualified in similar litigation." See Fort Worth, 301 F.R.D.

at 135; see also Billhofer v. Flamel Techs., S.A., 281 F.R.D. 150, 158 (S.D.N.Y. 2012) ("[C]ourts within this Circuit have repeatedly found Robbins Geller to be adequate and well-qualified for the purposes of litigating class action lawsuits."); Sgalambo v. McKenzie, 268 F.R.D. 170, 174 (S.D.N.Y. 2010) (characterizing Robbins Geller as a "highly competent plaintiffs' firm[] with substantial securities class action experience"). Moreover, Robbins Geller has demonstrated knowledge of the applicable law, committed significant resources to the representation of Lead Plaintiff, and vigorously pursued Plaintiff's claims to date, including defeating -- almost in its entirety -- Defendants' motion to dismiss. See MF Global, 310 F.R.D. at 237.

Defendants do not dispute that Robbins Geller can fairly and adequately represent the class's interests.

For the reasons discussed above, the Court finds that proposed class counsel Robbins Geller is an adequate representative under Rule 23(a)(4).

D. RULE 23(B)(3) REQUIREMENTS

1. Superiority

Plaintiff argues that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy here because, as with other securities suits, the

only alternatives are no recourse for aggrieved stockholders or a multiplicity of suits throughout the United States resulting in potentially inconsistent judgments. (See Class Cert. Motion at 25-26.)

Defendants do not dispute superiority. Having reviewed the parties' submissions on the Class Cert. Motion and other materials in the record of this action, the Court agrees that superiority is satisfied.

"'In general, securities suits . . . easily satisfy the superiority requirement of Rule 23.'" Lapin v. Goldman Sachs & Co., 254 F.R.D. 168, 187 (S.D.N.Y. 2008) (quoting In re Merrill Lynch Tyco Research Sec. Litig., 249 F.R.D. 124, 132 (S.D.N.Y. 2008)); see also Blech, 187 F.R.D. at 107-08. Here too the factors set forth in Rule 23(b)(3) weigh in favor of a finding of superiority. Requiring each putative class member to proceed individually would be costly and inefficient. See Merrill Lynch, 277 F.R.D. at 120. Moreover, "even if some members of the putative class have instituted their own actions or are capable of doing so, others may have suffered losses too small for an individual action to be worthwhile or may lack the resources to pursue litigation." New Jersey Carpenters Health Fund v. Royal Bank of Scotland

Grp., PLC, No. 08 Civ. 5310, 2016 WL 7409840, at *11 (S.D.N.Y. Nov. 4, 2016).

There are "clear advantages to concentrating litigation in this forum," namely that this action is the earliest-filed of which the Court is aware, has been ongoing since 2016 and is therefore familiar to the Court. See id. Courts in this district are also "well known to have expertise in securities law." In re Marsh & McLennan Cos., Inc. Sec. Litig., No. 04 Civ. 8144, 2009 WL 5178546, at *12 (S.D.N.Y. Dec. 23, 2009) (quoting Albert Fadem Tr. v. Duke Energy Corp., 214 F.Supp.2d 341, 344 (S.D.N.Y. 2002)).

Proposed class counsel has moreover "engaged in significant discovery and resolved a motion to dismiss, with no difficulties arising from the management of the Proposed Class." See MF Global, 310 F.R.D. at 239 (granting motion for class certification). "If insurmountable management problems were to develop at any point, class certification can be revisited at any time under Fed. R. Civ. P. 23(c)(1)." Blech, 187 F.R.D. at 108.

Thus, the Court finds that class action treatment is superior to any other available method for the fair and efficient adjudication of this case.

2. Predominance

The Predominance Requirement is satisfied if "resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." Moore v. PaineWebber, Inc., 306 F.3d 1247, 1252 (2d Cir. 2002). The Predominance Requirement does not prescribe that every issue be subject to classwide proof, but only that common questions predominate over questions affecting only individual class members. See Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 467 (2013). This inquiry requires examining the elements of the claims and defenses to be litigated to determine whether generalized evidence can prove the elements or if individualized proof will be necessary and predominate over common issues. See Johnson v. Nextel Commc'ns Inc., 780 F.3d 128, 138 (2d. Cir. 2015). Moreover, "[a]lthough a defense may arise and may affect different class members differently," this does not "compel a finding that individual issues predominate over common ones." Brown v. Kelly, 609 F.3d 467, 483 (2d Cir. 2010) (citations and internal quotation marks omitted). Indeed, "[a]s long as a sufficient constellation of common issues

binds class members together, variations in the sources and application of a defense will not automatically foreclose class certification under Rule 23(b)(3)." Id. (citations and internal quotation marks omitted). "Ultimately, the court must decide whether classwide resolution would substantially advance the case, examining whether certification will reduce the range of issues in dispute and promote judicial economy." Johnson, 780 F.3d at 138 (internal citations and quotation marks omitted).

Plaintiff argues that predominance is readily met in this case because a Section 11 plaintiff need only show a material misstatement or omission to establish a prima facie case. (See Class Cert. Motion at 22-23.) Thus, according to Plaintiff, because Plaintiff need not allege scienter, reliance, or loss causation, "whether the Registration Statement contained a material misstatement or omission will be the predominant issue in the case and is susceptible to common answer." (Id. at 23.) Materiality, Plaintiff argues, likewise is a common question susceptible of classwide proof. (Id. at 23-24.) Similarly, Plaintiff contends that the issue of whether certain Individual or Underwriter Defendants were control persons presents common questions which will predominate in this litigation. (Id. at 24.)

Defendants dispute that the Predominance Requirement is met in this case because individualized inquiries into investor knowledge will be necessary as a result of (1) Inovalon's public disclosures during the putative class period, and (2) Baron Capital's research regarding Inovalon. (See Opposition at 18-25.) With respect to Inovalon's public filings, Defendants assert that not only were New York's tax reforms a matter of public knowledge, but "Inovalon disclosed in its Registration Statement a number of significant New York-based customers." (Id. at 21.) Additionally, Defendants assert that "information relevant to Inovalon's actual and estimated effective tax rate was publicly disclosed by Inovalon on no less than eight occasions via SEC filings, press releases, and conference calls between March 2015 [and] August 2015." (Id.) Thus, Defendants conclude, putative class members had "different levels of knowledge of the purported impact of the New York state and city tax reforms on Inovalon's financial results and forward-looking estimates," which will require individualized inquiries that defeat predominance. (See id. at 22.)

Additionally, Defendants assert that investors -- notably, Baron Capital -- conducted independent research concerning Inovalon throughout the putative class period,

which raises individual questions as to investors' knowledge of Inovalon's actual or estimated effective tax rates prior to their purchase of the security. (See id. at 22-23.) More specifically, Defendants contend that Baron Capital's "independent and exhaustive research on Inovalon" included: (1) attending three "roadshow" events for Inovalon's IPO; (2) participating in three conference calls with Inovalon, including to discuss the results of the first quarter of 2015; (3) attending an on-site meeting at Inovalon's headquarters; (4) holding a meeting with Inovalon at Baron Capital's New York office; and (5) exchanging "multiple emails and phone calls" with Inovalon on "various topics such as requests for Inovalon's customer contacts." (Id. at 24-25.) Thus, Defendants conclude, independent research conducted by investors in the putative class, including sophisticated investors like Baron Capital, necessitates individualized inquiries into investor knowledge that defeat predominance.

Section 11 claims are subject to a knowledge defense if the purchaser of a "security issued pursuant to a materially false registration statement" is shown to have "kn[own] about the false statement at the time of acquisition." DeMaria, 318 F.3d at 175; see 15 U.S.C. § 77k(a). Thus, as Defendants concede (see Dkt. No. 138), actual knowledge is an affirmative

defense to -- and not a required element of -- a Section 11 claim. See IndyMac, 286 F.R.D. at 238. As a result, the burden of establishing the knowledge defense is on the Defendants. See Tsereteli, 283 F.R.D. at 212 n.106 (citing In re IPO, 483 F.3d at 73 n.1). Moreover, the statutory defense requires the defendant to "'show the purchaser's actual knowledge of the specific untruth or omission.'" Fort Worth, 301 F.R.D. at 138 (quoting New Jersey Carpenters, 477 F. App'x at 813).

In order to defeat predominance on the basis of an actual knowledge defense, "defendants must provide evidence that certain class members had differing levels of knowledge regarding the misleading nature of the statements or omissions when they invested sufficient to outweigh common issues." IndyMac, 286 F.R.D. at 238. Indeed, allegations of investor knowledge appropriately defeat predominance only where there is evidence of "'specific statements by certain class members demonstrating specific individual knowledge of the underlying loans and underwriting guidelines set forth in the relevant offering documents.'" See Royal Bank of Scotland, 2016 WL 7409840, at *8 (quoting Fort Worth, 301 F.R.D. at 138). Additionally, that the actual knowledge defense may affect different class members differently does

not compel a finding that individual issues predominate over common questions. See Brown, 609 F.3d at 483.

As a result, "numerous other courts in this district [] have rejected like concerns" regarding investor knowledge. See Royal Bank of Scotland, 2016 WL 7409840, at *8. The facts here do not rise to the level of those in cases where investor knowledge was found to defeat predominance. Indeed, "in those cases where common issues failed to predominate because of individual investor knowledge, certain putative class members either participated in or had knowledge of the alleged conduct." Pub. Employees' Ret. Sys. v. Goldman Sachs Grp., Inc., 280 F.R.D. 130, 139 (S.D.N.Y. 2012) ("The balance in those cases was not struck on the likelihood of knowledge alone . . . ."); see, e.g., New Jersey Carpenters, 272 F.R.D. at 168-69 (finding predominance is not satisfied where, among other considerations, defendants had "mustered a good deal of documentary evidence" imputing knowledge of the misconduct to plaintiff's investment advisor). That is not the case here. See, e.g., Merrill Lynch, 277 F.R.D. at 117-19 (finding predominance is satisfied where, among other things, defendants had failed to identify any evidence that (1) any class member participated in the misconduct alleged in the

complaint or (2) plaintiffs or their money managers "knew of false statements in the [o]ffering documents").

In particular, this case stands "in contrast" to New Jersey Carpenters -- a case heavily relied on by Defendants in their Opposition -- "where the district court found what it felt were specific statements by certain class members, many of whom were sophisticated investors, demonstrating specific individual knowledge of the underlying loans and underwriting guidelines set forth in the relevant offering documents." See Tsereteli, 283 F.R.D. at 213 (citing Jersey Carpenters, 272 F.R.D. at 169-70). For example, the New Jersey Carpenters court stated that defendants "asserted among other things that certain purchasers had knowledge that the loan originators were 'loosening and lowering' underwriting guidelines." 272 F.R.D. at 168.[2] Defendants in this case have not offered evidence that class members "either participated in or had knowledge of the alleged conduct." See Goldman Sachs, 280 F.R.D. at 139.

[2] It is worth noting that while the Second Circuit affirmed the denial of class certification in New Jersey Carpenters, it noted that even on the record in that case -- including two classes composed primarily of sophisticated investors, as well as evidence of knowledge on the part of some of those members of the structuring and formation of the offerings at issue -- "it was possible that 'another inference could have been drawn' and that it was not 'allowed to second-guess the trial court's choice between permissible competing inferences.'" Tsereteli, 283 F.R.D. at 213 (quoting New Jersey Carpenters, 477 F. App'x at 813).

Nor do Defendants put forth any particularized evidence that this putative class is "comprised entirely of a narrow and identifiable group of sophisticated investors." See New Jersey Carpenters, 272 F.R.D. at 170. Defendants do argue that Baron Capital was "a large investor in Inovalon" who "touted its extensive and rigorous research as an important part of its investment philosophy." (Opposition at 23.) But "[i]nvestor sophistication does not alone defeat a finding of predominance in a class action." IndyMac, 286 F.R.D. at 239. Moreover, the fact that certain investors, like Baron Capital, have greater expertise or sophistication "usually will not lead to individual inquiries in the absence of any showing that particular members of the class had actual knowledge of the issues specific to the [o]ffering [d]ocuments in th[e] case." See Fort Worth, 301 F.R.D. at 139 (citing IndyMac, 286 F.R.D. at 239).

Similarly, the "fact that purchasers of different types of loans received different materials does not give rise to individualized questions as to whether certain class members knew of the allegedly false statements at the time of acquisition." Id. at 140 (finding that difference in marketing materials and due diligence did not defeat predominance). Additionally, to the extent that Defendants

cite to news stories and other publicly available information discussing the New York City and State tax rate changes, this evidence raises issues of "knowledge, actual or constructive, subject to generalized proof." See IndyMac, 286 F.R.D. at 239; Royal Bank of Scotland, 2016 WL 7409840, at *8 ("Defendants rely on news reports and other publicly available information, none of which suggests that any putative class member had unique knowledge as to the alleged misstatements in the [o]ffering [d]ocuments. To the extent those news reports are relevant to a statute of limitations or knowledge, they are subject to generalized proof and thus do not militate against the certification of a class.").

For the reasons discussed above, the Court finds that individual inquiries into investor knowledge will not predominate over issues common to the class.

The supplemental briefing submitted by both parties regarding a July 17, 2015 email (the "July 17 Email") between then-CFO of Inovalon Thomas R. Kloster and CEO Keith R. Dunleavy does not alter the above analysis. According to Plaintiff, that email "confirm[s] that Lead Plaintiff and the proposed class could not have known the truth of the alleged misrepresentations and omissions" because Kloster notes that the "primary driver" of the increase to the tax expense was

an "internal error in not factoring in a NY state rate change which was announced on April 1, 2015 but was to be effective January 1, 2015." (Supplemental Declaration at 3-4.)

Defendants, in a supplemental declaration of their own (see Dkt. No. 124), assert that the "internal error" referred to by Kloster concerns a June 2015 "flash" report that did not incorporate only the April 1, 2015 New York ***City*** tax law change, and that this "flash" report was "prepared months after the IPO and has nothing to do with Inovalon's preparation of the Registration Statement." (See id. at 5.) Defendants argue that "Inovalon had already disclosed to investors information concerning its New York-based customers and an increase in its effective tax rate . . . driven in part by New York State tax law changes months before the July 17 Email," and thus, individual issues regarding investor knowledge preclude predominance and defeat class certification. (See id. at 6.) Moreover, Defendants argue, the July 17 Email actually undermines Plaintiff's theory of the case insofar as Kloster and Dunleavy's purported lack of knowledge regarding the impact of the tax law changes conflicts with Plaintiff's claim that, at the time of the IPO, Defendants knew that Inovalon would be subject to

substantially increased taxes as a result of changes to the New York State and City tax laws. (See id.)

But one single email, susceptible of more than one interpretation, does not rise to the level of a "good deal of documentary evidence" imputing knowledge to Plaintiff or its agents. See New Jersey Carpenters, 272 F.R.D. at 168-69. As discussed above, the balance in the cases finding that individual inquiries into investor knowledge defeated predominance "was not struck on the likelihood of knowledge alone . . . ." Goldman Sachs, 280 F.R.D. at 139.

The merits of Defendants' actual knowledge defense (or the July 17 Email's bearing on that defense), moreover, is not the subject of this motion. See New Jersey Carpenters, 477 F. App'x at 813 (distinguishing between "the merits question of whether defendants have shown purchasers' knowledge" and "the certification question of whether common liability issues predominate over individual knowledge defenses").

For the reasons discussed above, the Court is persuaded that the July 17 Email does not alter the conclusion that individual issues regarding investor knowledge will not predominate over common issues in this action. See, e.g., In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D.

332, 346 (S.D.N.Y. 2015) ("[I]t has been noted in this District that 'individual issues will likely arise in this case as in all class action cases, and to allow various secondary issues of plaintiffs' claims to preclude certification of a class would render the rule an impotent tool for private enforcement of the securities laws.'" (quoting Merrill Lynch, 277 F.R.D. at 111)).

E. ADDITIONAL BRIEFING ON THE 30(B)(6) DEPOSITION OF BARON CAPITAL

By letter dated June 28, 2018, Defendants informed the Court of recent testimony by the investment manager for Roofers, Baron Capital -- to whom Lead Plaintiff has delegated "complete investment authority," and who made the investments in Inovalon on Lead Plaintiff's behalf -- which purportedly "conflicts with Lead Plaintiff's allegations and claims in a number of respects." (See "June 28 Letter," Dkt. No. 133-1.) More specifically, Defendants argue that (1) there was no effort made to confirm the accuracy of the Consolidated Complaint's allegations with Baron Capital prior to filing; (2) Baron Capital testified that Inovalon's disclosures prior to August 2015 regarding the effective tax rate were not misleading; (3) Baron Capital testified that the changes to Inovalon's effective tax rate were not material; (4) Baron

Capital knew, at the time it purchased Inovalon securities for Lead Plaintiff, that Inovalon derived substantial revenues from New York State and New York City; (5) Baron Capital took notice of Inovalon's updated effective tax rate and built the changes announced in May 2015 into its financial model; and (6) Baron Capital testified that the decline in the price of Inovalon's stock was not attributable to the disclosure of a change to Inovalon's effective tax rate in August 2015.

By letter dated July 2, 2018 (the "July 2 Letter"), Plaintiff responded to the June 28 Letter. First, Plaintiff argues that Defendants "abandon[]" their actual knowledge argument in favor of arguing that Baron Capital would not have considered the impact of the changes to the New York City and State tax laws to be material. But, Plaintiff argues, Baron Capital's "contemporaneous communications and testimony evidences the importance of the omitted tax information." In particular, Plaintiff asserts that Baron Capital's representative -- who, Plaintiff notes, is not the factfinder in this litigation -- testified that he did not know whether Inovalon's disclosures were false or misleading leading up to August 2015, and moreover that he has not formed an opinion about the merits of the Consolidated Complaint. Further,

Plaintiff asserts that Baron Capital learned of the impact of the tax reforms on August 5, 2015, along with the rest of the market. Additionally, Plaintiff argues, Defendants' omission of the tax reforms and their impact was material as a substantive matter. Nonetheless, Plaintiff asserts, the materiality inquiry is objective, and because it will prevail or fail in unison, it should not defeat class certification.

By letter dated July 6, 2018 (the "July 6 Letter"), Defendants responded that the July 2 Letter does not fairly describe the Rule 30(b)(6) deposition of Baron Capital. (See "July 6 Letter," Dkt. No. 133-2.) First, Defendants argue that they have not abandoned their argument that investor knowledge increased throughout the putative class period, which means predominance cannot be satisfied. To the contrary, Defendants argue, Baron Capital admitted at its deposition that (1) Baron Capital knew Inovalon derived substantial revenue from New York; (2) Baron Capital took note of the increased tax rate in May 2015 and incorporated that rate change into its financial model; and (3) the increased tax rate was not important to Baron Capital's investment decision. Second, Defendants argue not that there are individualized questions of materiality, but that the lack of materiality -- as evidenced by Baron Capital's

deposition testimony -- is dispositive of the case. Moreover, Defendants contend, the conflict between Baron Capital's testimony and Plaintiff's allegations is not limited to materiality, demonstrating that this litigation is "lawyer-driven," and that Lead Plaintiff is an inadequate class representative.

Defendants subsequently submitted a second supplemental declaration dated August 3, 2018, which attaches the June 28 and July 6 Letters, as well as excerpts of the 30(b)(6) deposition of Neal Rosenberg ("Rosenberg"), a research analyst and assistant portfolio manager at Baron Capital. (See Dkt. No. 133.)

These additional arguments do not change the above analysis. Defendants' arguments regarding Rosenberg's deposition testimony concern (1) the adequacy of Roofers as class representative, (2) the merits of Plaintiff's Section 11 claim -- i.e. whether the statements made by Inovalon were in fact misleading, (3) the materiality of Inovalon's purported misstatements, and (4) Defendants' actual knowledge defense.

Defendants' arguments regarding the typicality of Lead Plaintiff's claims as well as the adequacy of Roofers as class representative have been considered and addressed at length

above. The same is true of Defendants' actual knowledge defense. See, e.g., IndyMac, 286 F.R.D. at 235 ("The commonality, typicality, and adequacy requirements may be met in a securities class action based on something as simple as a commonly alleged 'disregard of underwriting guidelines.' Whether or not investors' knowledge levels varied does not change the fundamental nature of the claims in the [complaint] that the [o]ffering [d]ocuments were materially misleading." (quoting New Jersey Carpenters, 272 F.R.D. at 167)).

That Baron Capital purportedly took notice of the Company's updated effective tax rate and built the tax rate changes announced in May 2015 into its financial model likewise does not change the conclusion that individual issues of investor knowledge do not predominate over common issues here. Plaintiff argues not only that "few -- if any -- in the investment community took notice of the increase in the Company's reported effective tax rate for the 1Q15" as a result of Inovalon's May 8, 2015 SEC filing, but also that "the Company had not yet explained the extent of the corporate tax rate increases or disclosed that due to those corporate tax rate increases, the Company was cutting its FY15 earnings and earnings per share [] guidance." (Consolidated Complaint ¶ 40.) Again, the fact that some class members may have had

knowledge of certain of the alleged misstatements or omissions does not rise to the level of the concrete and particularized evidence of knowledge of misconduct found in cases where predominance was defeated. See, e.g., DLJ Mortg. Capital, 2011 WL 3874821, at *7 & n.1 (predominance was satisfied where there was no "explicit evidence . . . that a potential plaintiff had knowledge of the misstatements or omissions at issue"); see also In re IPO, 471 F.3d at 43 ("The claim that lack of knowledge is common to the class is thoroughly undermined by the [p]laintiffs' own allegation as to how widespread was knowledge of the alleged scheme."). Moreover, the fact that one defense may affect different class members differently does not overcome the numerous common issues that bind class members together here, including whether or not Inovalon's disclosures were misleading, and whether or not they were material. See Brown, 609 F.3d at 483.

Indeed, the core of the rest of Baron Capital's testimony that Defendants put before the Court relates to issues that may be proven on a classwide basis, such as whether or not the disclosures made by Inovalon were materially misleading. But, as discussed above, the merits of Plaintiff's Section 11 claim are not appropriately considered at the class

certification stage. What is relevant now is whether or not the claims are susceptible of classwide proof. The Court finds that they are. See, e.g., Tsereteli, 283 F.R.D. at 214 ("Where 'the liability issues' arising from Securities Act claims are 'common to the class, common questions are held to predominate over individual questions.'" (quoting Dura-Bilt Corp., 89 F.R.D. at 93)).

With respect to materiality, while Plaintiff must ultimately prove materiality to prevail on the merits, proof of materiality "is not a prerequisite to class certification." See Amgen, 568 U.S. at 459. Indeed, "[b]ecause materiality is judged according to an objective standard, the materiality of [Defendants'] alleged misrepresentations and omissions is a question common to all members of the class." Id.; see also IndyMac, 286 F.R.D. at 241-42 (rejecting defendants' arguments that individualized issues of materiality defeat predominance because materiality "can be proven on a class-wide basis" and so "[w]hether a misstatement or omission was material therefore presents a common rather than an individual issue" (internal citations and quotation marks omitted)). Because the Proposed Class is cohesive as to materiality, predominance is not defeated on this basis either. See Amgen, 568 U.S. at 459-60.

For the reasons discussed above, the issues raised by Baron Capital's 30(b)(6) deposition testimony are susceptible to classwide proof, and this additional evidence therefore does not defeat class certification here. See, e.g., MF Global, 310 F.R.D. at 238 (finding that predominance was not defeated by defendants' arguments regarding the individualized knowledge of lead plaintiff's investment manager because the proffered testimony "fail[ed] to prove that [lead plaintiff] had private knowledge about omissions or misstatements contained" in the offering documents); see also Louisiana Mun. Police Emps. Ret. Sys. v. Dunphy, No. 03 Civ. 4372, 2008 WL 700181, at *5 (D.N.J. Mar. 13, 2008) (certifying class over defendants' arguments that plaintiff's "investment manager contradicts the allegations in its complaint").

IV. ORDER

For the reasons stated above, it is hereby

ORDERED that the motion of Lead Plaintiff Roofers Local No. 149 Pension Fund to certify the class, appoint class representative, and appoint class counsel ("Motion for Class Certification," Dkt. No. 99) is **GRANTED**, except as to the Section 12(a)(2) claim, which is **DISMISSED**.

The Court certifies the following class, subject to the exclusions enumerated in the Motion for Class Certification: "All persons who purchased or acquired, **prior to August 5, 2015**, Inovalon Holdings, Inc. common stock pursuant or traceable to the Company's February 12, 2015 Initial Public Offering."

SO ORDERED.

Dated: New York, New York
18 September 2018

Victor Marrero
U.S.D.J.