

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Pace v. Omni Family Health

Pace v. Omni Family Health · No. 1:24-cv-01277-JLT-CDB · Decided February 27, 2025

SUMMARY

The document contains findings and recommendations recommending that the court grant Plaintiffs’ unopposed motion to appoint interim class counsel under Federal Rule of Civil Procedure 23(g) in consolidated litigation arising from a data breach involving Omni Family Health. The magistrate judge recommends appointing Adam E. Polk of Girard Sharp, LLP, and M. Anderson Berry of the Arnold Law Firm, APC, based on their investigative work, experience, legal knowledge, and available resources.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 27, 2025
DOCKET	1:24-cv-01277-JLT-CDB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved, without opposition, for appointment of interim class counsel under Federal Rule of Civil Procedure 23(g)(3). The assigned district judge referred the motion to the magistrate judge for findings and recommendations under 28 U.S.C. § 636(b)(1)(B).
STANDARD OF REVIEW	The court applied the factors in Federal Rule of Civil Procedure 23(g)(1)(A) and (B) to determine whether appointment of interim class counsel was appropriate.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ellen Pace and other named plaintiffs v. Omni Family Health

TOPICS

- class actions
- civil procedure
- medical records privacy
- health law
- consumer protection

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Adam E. Polk and M. Anderson Berry should be appointed interim counsel for the putative class under Federal Rule of Civil Procedure 23(g)(3).
2. Whether the proposed counsel satisfied the Rule 23(g)(1)(A) factors concerning work performed, experience, knowledge of applicable law, and available resources, together with any other pertinent considerations under Rule 23(g)(1)(B).

HOLDINGS

1. The court recommended granting Plaintiffs' unopposed motion and appointing Adam E. Polk of Girard Sharp, LLP, and M. Anderson Berry of the Arnold Law Firm, APC, as interim counsel for the putative class.

KEY QUOTATIONS

“Rule 23(g)(3) authorizes courts to “designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.”” (at 2)

“In determining whether to appoint class counsel, the Court considers the following factors outlined in Rule 23(g)(1)(A): (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.”” (at 2)

FACTUAL BACKGROUND

A cyberattack and data breach discovered on August 7, 2024, allegedly resulted in unauthorized disclosure of personally identifiable information and protected health information belonging to current and former Omni Family Health patients. Numerous related individual and putative class actions were filed concerning the same breach and were consolidated into this lead action. Proposed counsel investigated the breach, interviewed affected consumers, researched claims, drafted pleadings, coordinated with other counsel, and briefed a motion to remand.

PROCEDURAL HISTORY

Ellen Pace filed a putative class and collective action arising from a cyberattack and data breach affecting Omni Family Health patients. Other related individual and class actions were filed in federal and state court, and the cases were consolidated with Pace as the lead case. Plaintiffs then moved for appointment of interim class counsel; the magistrate judge recommended that the unopposed motion be granted, subject to district-judge review and the parties' opportunity to object.

DISPOSITION

other

CASES CITED

- Levitte v. Google, Inc., No. C 08-03369 JW, 2009 WL 482252, at *2 (N.D. Cal. Feb. 25, 2009)
- Smith v. Kaye-Smith Enters., Inc., No. 3:22-cv-01499-AR, 2023 WL 11959471, at *2 (D. Or. Jan. 6, 2023)
- Razo v. AT&T Mobility Serv., LLC, No. 1:20-cv-00172-NONE-HBK, 2021 WL 4847834, at *6 (E.D. Cal. Oct. 15, 2021)
- Melgar v. Zicam, LLC, No. 2:14-cv-00160-MCE-AC, 2014 WL 5486676, at *2 (E.D. Cal. Oct. 29, 2014)
- Boone v. Amazon.com Servs., LLC, No. 1:21-cv-00241-ADA-BAM, 2023 WL 3720996, at *3 (E.D. Cal. May 30, 2023)
- Haro v. Walmart, Inc., No. 1:21-cv-00239-ADA-SKO, 2023 WL 2242158, at *3 (E.D. Cal. Feb. 27, 2023)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

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