

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PRECEDENTIAL VALUE	nonprecedential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

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)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 ELLEN PACE, et al., Case No. 1:24-cv-01277-JLT-CDB 12 Plaintiffs,
FINDINGS AND RECOMMENDATIONS TO 13 v. GRANT PLAINTIFFS’ MOTION FOR
APPOINTMENT OF INTERIM CLASS 14 OMNI FAMILY HEALTH, COUNSEL 15 Defendant.
(Doc. 15) 16 14-DAY DEADLINE 17 18 Pending before the Court is the unopposed motion of
Plaintiff Ellen Pace and other named 19 plaintiffs in these consolidated individual and class
actions (“Plaintiffs”) for appointment of 20 interim class counsel under Federal Rule of Civil
Procedure 23(g).

(Doc. 15). For the reasons set 21 forth below, the undersigned will recommend that Plaintiffs’
motion be granted. 22 I. Background 23 On October 20, 2024, Plaintiff Ellen Pace filed this class
and collective action, individually 24 and on behalf of all others similarly situated, asserting
numerous causes of action against Omni 25 Family Health (“Defendant”) arising out of a
cyberattack and data breach discovered on August 7, 26 2024 (the “data breach”), resulting in
unauthorized disclosure of personally identifiable information 27 (“PII”) and protected health
information (“PHI”) of Defendants’ current and former patients.

(Doc. 28 1 1 at 2). 2 After Plaintiff Pace filed her action, numerous other Plaintiffs filed separate
individual and 3 class actions in both federal and state court, asserting causes of action arising out
of the same data 4 breach. (Doc. 8).

On January 9, 2025, the separate Plaintiffs of the then-commenced actions and 5 Defendant
stipulated to consolidate the cases. (Doc. 9). On January 15, 2025, the Court granted 6 the
stipulated request and consolidated all cases against Defendant arising from the data breach, 7 with

the instant action as the lead case, and with all further filings in the consolidated action to be 8 made in the lead case.

(Doc. 12). Numerous other related actions against Defendant arising from 9 the data breach and commenced following entry of the Court's consolidation order also have been 10 consolidate with this lead case. 11 Plaintiffs filed their motion for appointment of interim counsel on January 22, 2025. (Doc. 12 15). Defendant did not file any opposition thereto. Plaintiffs filed a reply on February 12, 2025, 13 noting the lack of opposition.

(Doc. 21). Thereafter, the motion was referred to the undersigned 14 by the assigned district judge for appropriate disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and 15 Eastern District of California Local Rule 302. (Doc. 27). 16 II. Discussion 17 a. Legal Standard 18 Rule 23(g)(3) authorizes courts to "designate interim counsel to act on behalf of a putative 19 class before determining whether to certify the action as a class action." In determining whether to 20 appoint class counsel, the Court considers the following factors outlined in Rule 23(g)(1)(A): (i) 21 "the work counsel has done in identifying or investigating potential claims in the action;" (ii) 22 "counsel's experience in handling class actions, other complex litigation, and the types of claims 23 asserted in the action;" (iii) "counsel's knowledge of the applicable law;" and (iv) "the resources 24 that counsel will commit to representing the class." *Levitte v. Google, Inc.*, No. C 08-03369 JW, 25 2009 WL 482252, at *2 (N.D.

Cal. Feb. 25, 2009). The Court may further consider "any other 26 matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." 27 Fed. R. Civ. P. 23(g)(1)(B). Designating interim class counsel "clarifies responsibility for 28 protecting the interests of the class during precertification activities, such as making and responding 1 to motions, conducting any necessary discovery, moving for class certification, and negotiating 2 settlement.'" *Smith v. Kaye-Smith Enters., Inc.*, No. 3:22-cv-01499-AR, 2023 WL 11959471, at 3 *2 (D.

Or. Jan. 6, 2023) (quoting Manual for Complex Litigation (Fourth) § 21.11 (2004)). 4 b. Analysis 5 The undersigned has reviewed Plaintiffs' motion for appointment of interim class counsel 6 and supporting documentation, including the declarations by Plaintiffs' two attorneys (see Doc. 7 15-1 ("Polk Decl.") and Doc. 15-5 ("Berry Decl.")), and finds that designation of Adam E. Polk 8 of Girard Sharp, LLP, and M. Anderson Berry of the Arnold Law Firm, APC (collectively, 9 "proposed counsel") as interim class counsel in this case is appropriate.

10 Rule 23 (g)(1) sets forth the factors for the Court's consideration in determining whether 11 to appoint counsel. Turning to the first factor, the undersigned finds that proposed counsel has 12 done significant work identifying and investigating the claims at issue here. See, e.g., *Razo v. 13 AT&T Mobility Serv., LLC*, No. 1:20-cv-00172-NONE-HBK, 2021 WL 4847834, at *6 (E.D.

Cal. 14 Oct. 15, 2021). 15 This case was initiated in this Court over four months ago and since then proposed 16 counsel has actively engaged in the following: investigation of the facts surrounding the data 17 breach, interviewing numerous consumers harmed by the data breach, researching legal claims, 18 drafting initial pleadings, serving as interface between counsel for all Plaintiffs and Defendant, 19 and briefing Plaintiffs' coordinated motion to remand.

(Polk Decl., ¶ 7; Berry Decl., ¶ 2; Doc. 15 20 at 10). Proposed counsel will seek entry of a protocol governing time and expenses in this action. 21 (Polk Decl., Ex. 2; Doc. 15 at 10). 22 As for the next two interrelated factors, namely counsel's experience and knowledge, it is 23 undisputed that proposed counsel have experience handling class actions, other complex 24 litigation, and most importantly, the types of claims asserted in this litigation.

(See Polk Decl., 25 Ex. 3; Berry Decl., ¶¶ 3-7; Doc. 15 at 11-15). The declarations also evidence that counsel are 26 knowledgeable of the law applicable to this case. See, e.g., *Melgar v. Zicam, LLC*, No. 2:14-cv- 27 00160-MCE-AC, 2014 WL 5486676, at *2 (E.D. Cal. Oct. 29, 2014) ("Given counsel's 28 experience litigating not only high-stakes class actions, but also actions concerning allegations 1 very similar to those before the Court here, [c]ounsel has also demonstrated the requisite 2 knowledge of the applicable law.").

3 As an example, Mr. Polk and his firm serve or have served as co-lead counsel on 4 numerous data breach class actions in the district courts of the Ninth Circuit, including cases 5 concerning large data breaches from the federal government, healthcare organizations, 6 universities, and entertainment companies. (Polk Decl., Ex. 3; Doc. 15 at 11-13). Mr. Berry 7 previously worked as an Assistant United States Attorney in the Eastern District, in the 8 Affirmative Civil Enforcement unit, handling a wide variety of complex cases and, at his current 9 firm, has handled more than 100 class action cases across the country involving data breaches and 10 other privacy matters.

(Berry Decl., ¶¶ 3-7, Ex. 1; Doc. 15 at 13-15). 11 Lastly, the record demonstrates that Girard Sharp, LLP, and the Arnold Law Firm, APC, 12 both are well-established and well-regarded firms that have demonstrated their capacity to handle 13 the particulars of this litigation and can commit the requisite resources to doing so. See (Polk 14 Decl., Ex. 3; Berry Decl., Ex. 1; Doc.

15 at 15). Counsel have invested substantial time and 15 resources gathering evidence and litigating on behalf of their clients and the work already 16 completed by these two firms will likely allow them to efficiently litigate this action throughout 17 the remainder of the proceedings. See, e.g., *Boone v. Amazon.com Servs., LLC*, No. 1:21-cv- 18 00241-ADA-BAM, 2023 WL 3720996, at *3 (E.D.

Cal. May 30, 2023), report and 19 recommendation adopted, 2023 WL 6929531 (E.D. Cal. Oct. 18, 2023). Counsel have already 20 worked together on other data breach class actions and are currently doing so in other matters, as 21 well. Counsel represent that they have a good working

relationship, allowing them to facilitate 22 cooperative and efficient litigation of this case, particularly in regards to the challenges of 23 communicating with numerous attorneys.

(Doc. 15 at 15-16). 24 Based on the foregoing, the undersigned recommends that Plaintiffs' motion for 25 appointment of interim class counsel be granted and that Adam E. Polk of Girard Sharp, LLP, and 26 M. Anderson Berry of the Arnold Law Firm, APC, be appointed as interim counsel for the 27 putative class in this case. See *Haro v. Walmart, Inc.*, No. 1:21-cv-00239-ADA-SKO, 2023 WL 28 2242158, at *3 (E.D.

Cal. Feb. 27, 2023) (finding appointment as interim lead counsel was 1 | appropriate given counsel's work on the case, familiarity from work on similar complex class 2 | action cases, and having the resources to continue litigating the case). 3 II. Conclusion and Recommendation 4 Accordingly, the undersigned RECOMMENDS that Plaintiffs' unopposed motion to 5 || appoint interim class counsel (Doc.

15), namely Adam E. Polk of Girard Sharp, LLP, and M. 6 | Anderson Berry of the Arnold Law Firm, APC, be GRANTED. 7 These Findings and Recommendations will be submitted to the United States District Judge 8 || assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(B). Within 14 days 9 | after being served with these Findings and Recommendation, any party may file written 10 | objections with the Court.

The document should be captioned "Objections to Magistrate Judge's 11 | Findings and Recommendations." The parties are advised that failure to file objections within the 12 | specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 13 | 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14 | IT IS SO ORDERED. | Dated: February 27, 2025 | br 16 UNITED STATES MAGISTRATE JUDGE 17 18 19 20 21 22 23 24 25 26 27 28