

[TENTATIVE] RULINGS/ORDERS RE: MOTION FOR CONSOLIDATION OF CASES
AND APPOINTMENT OF LEAD COUNSEL AND LIAISON COUNSEL

Orellana v. Planned Parenthood Los Angeles, Case No.:
21STCV44106

Plaintiffs Maria Orellana, Jane Doe, and T.S.'s Motion to Consolidate and to Appoint Lead and Liaison Counsel is **GRANTED**.

The seven related actions are consolidated for all purposes.

The Court appoints Daniel S. Robinson of Robinson Calcagnie, Inc. and Adam E. Polk of Girard Sharp LLP as co-lead counsel and Abbas Kazerounian of Kazerouni Law Group, APC as liaison counsel.

By **May 2, 2022**, co-lead counsel and liaison counsel must lodge a [Proposed] Order regarding guidelines to minimize costs and expenses in this consolidated action. The guidelines must address attorney and support personnel staffing practices, travel expense protocols, and time recording and reporting requirements.

The Court sets a **Non-Appearance Case Review for May 9, 2022, 8:30 AM, Department 9**.

I.
INTRODUCTION

This is a putative consumer class action. Plaintiff Maria Orellana alleges that Defendant Planned Parenthood of Los Angeles suffered a data breach where unauthorized parties obtained personally identifiable information (PII) and protected health information (PHI) for approximately 400,000 of Defendant's patients, including Plaintiff and putative class members. Plaintiff alleges that Defendant failed to maintain adequate security measures to protect Plaintiff's and the class members' PII/PHI from unauthorized access. As such, Defendant's acts exposed Plaintiff and the putative class members to a heightened risk of identity theft, fraud, and financial harm.

On December 3, 2021, Plaintiff filed her class action complaint asserting the following causes of action: (1)

violation of the Confidentiality of Medical Information Act; (2) negligence; (3) violation of the Consumer Legal Remedies Act; (4) violation of the Unfair Competition Law; (5) violation of the Consumer Records Act; (6) breach of contract; (7) unjust enrichment; and (8) invasion of privacy.

The following cases were related to Plaintiff's case:

Case Name	Case Number	Date Filed
<u>Jane Doe [1] v. Planned Parenthood Los Angeles</u>	21STCV45028	December 9, 2021
<u>A.K. v. Planned Parenthood Los Angeles</u>	21STCV46072	December 17, 2021
<u>Jane Doe [2] v. Planned Parenthood Los Angeles</u>	21STCV46178	December 20, 2021
<u>T.S. v. Planned Parenthood Los Angeles</u>	21STCV46384	December 20, 2021
<u>Lauren Danchick v. Planned Parenthood Los Angeles</u>	21STCV46871	December 23, 2021
<u>Michelle Garza v. Planned Parenthood Los Angeles</u>	21STCV47357	December 28, 2021

On March 7, 2022, counsel for Plaintiff, T.S., and Jane Doe [1] (Moving Parties) filed the pending motion to consolidate and appoint lead and liaison counsel.

II. DISCUSSION

A. Motion to Consolidate

A court may consolidate separate lawsuits if they are pending in the same court and involve common questions of law or fact. Code Civ. Proc., § 1048(a). The purpose of consolidation is to promote judicial efficiency, to avoid unnecessary duplication of evidence and procedures, and to avoid the substantial danger of inconsistent rulings. Todd-Stenberg v. Dalkon Shield Claimants Trust (1996) 48 Cal.App.4th 976, 979. Section 1048(a) provides for two types of consolidation: a consolidation for purposes of trial only, where the two actions remain otherwise separate; and a complete consolidation or consolidation for all purposes, where the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment. Hamilton v. Asbestos Corp., Ltd. (2000) 22 Cal.4th 1127, 1147.

Each of the related cases involves common questions of law and fact arising from Defendant's data breach. Each of the complaints alleges substantially similar facts and causes of action. As such, the Court finds that consolidation of these cases would promote judicial efficiency, avoid unnecessary duplication of evidence and procedures, and avoid the substantial danger of inconsistent rulings. Defendant supports consolidation. Danchick's and Jane Doe [2]'s counsel also support consolidation. No other plaintiffs objected to consolidation.

Accordingly, the Court will consolidate these actions for all purposes. The court asks the parties to address if consolidation for only pretrial or trial would make more sense. The Court understands that the parties are mediating on June 20, 2022.

B. Motion to Appoint Lead Counsel and Liaison Counsel

1. Applicable Law

Although this is not a Judicial Council coordinated proceeding, the relevant Rules of Court for such proceedings provide guidance for appointing liaison counsel. Rule 3.506(a) provides that "[a]n assigned judge may at any time request that the parties on each side of the included or coordinated actions select one or more of the attorneys of record on that side for appointment as liaison counsel, and may appoint liaison counsel if the parties are unable to agree."

Rule 3.501(12) defines "liaison counsel" as:

An attorney of record for a party to an included action or a coordinated action who has been appointed by an assigned judge to serve as representative of all parties on a side with the following powers and duties, as appropriate:

(A) To receive on behalf of and promptly distribute to the parties for whom he or she acts all notices and other documents from the court;

(B) To act as spokesperson for the side that he or she represents at all proceedings set on notice before trial, subject to the right of each party to present individual or divergent positions; and

(C) To call meetings of counsel for the purpose of proposing joint action.

Although the Rules of Court expressly provide only for the appointment of liaison counsel, they do not prohibit courts from appointing "lead counsel" or groups of firms to manage complex coordinated actions. The Court is vested with wide discretion to manage complex litigation. McGhan Medical Corp. v. Superior Court (1992) 11 Cal.App.4th 804, 812.

Whenever California authority is lacking, California courts follow the procedures set forth under Federal Rule of Civil Procedure (FRCP) 23 for class actions. City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 453. Under FRCP 23(g)(3), a "court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action."

If . . . there are a number of overlapping, duplicative, or competing suits pending in other courts, and some or all of those suits may be consolidated, a number of lawyers may compete for class counsel appointment. In such cases, designation of interim counsel clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement. In cases involving overlapping, duplicative, or competing suits in other federal courts or in state courts, the lawyers may stipulate to the appointment of a lead interim counsel and a steering committee to act for the proposed class. . . . Absent a stipulation, the court may need to select interim class counsel from lawyers competing for the role and formally designate the lawyer selected.

Ann. Manual Complex Lit. (4th ed. 2020) § 21.11.

In appointing class counsel, a court must consider the following factors:

- (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). A court may also "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). "Class counsel must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(4). Courts have held that these standards also apply to interim counsel. See, e.g., *Parkinson v. Hyundai Motor America* (C.D. Cal., Aug. 7, 2006) 2006 WL 2289801, at *2.

2. Lead Counsel

The Court appoints Daniel S. Robinson of Robinson Calcagnie, Inc. and Adam E. Polk of Girard Sharp LLP as co-lead counsel in this consolidated action. The Court addresses each of the FRCP 23(g)(1)(A) factors below.

a. The Work Counsel Has Done in Identifying or Investigating Potential Claims in the Action

Each of the firms seeking to be appointed lead interim counsel has done significant work identifying and investigating potential claims in their respective cases. Moving Parties' counsel were the first to file their complaint. Since then, they have also led discussions with Defendant and counsel in the related actions regarding the parties' Initial Status Conference Report, and ensured the selection of an electronic service provider. As Moving Parties' counsel also note, they have scheduled a mediation with Defendant for June 20, 2022. Joint Decl., ¶ 5. To prepare for mediation, Moving Parties' counsel served discovery on Defendant and kept other plaintiffs' counsel apprised of the upcoming mediation. Moving Parties' counsel represent that they will continue coordinating with all to ensure uniformity of position at the mediation and in further proceedings. Id.

b. Counsel's Experience and Knowledge of the Applicable Law

Moving Parties' counsel, Robinson Calcagnie and Girard Sharp, have shown that together they have experience in approximately 23 large data breach/privacy class actions. Robinson Decl., Exh. 1; Polk Decl., Exh. 1; Joint Decl., ¶¶ 7-8. In comparison, Danchick's counsel, Lowey Dannenberg and Ronald A. Marron, APLC, cite involvement in approximately 16 data

breach/privacy class actions. Wood Decl., Exhs. 1, 2. Jane Doe [2]'s counsel, HammondLaw, P.C., is very experienced in wage-hour class actions, yet cite only 5 data breach/privacy actions where they are/were class counsel. Hammond Decl., ¶ 6; Exh. 1.

Accordingly, the Court finds that Moving Parties' counsel have the most experience in handling data breach/privacy class actions and the types of claims asserted in this consolidated action. Moving Parties' counsel also represent that they are "committed to proceeding with this litigation on an inclusive basis, and intend, subject to Court approval, to call on other lawyers involved in the case to contribute where appropriate." Reply at 5 fn.2.

c. Resources That Counsel Will Commit to Representing the Class

Moving Parties' counsel are prepared to devote all resources necessary to bring this matter to a favorable outcome. Joint Decl., ¶ 11. They have prepared a timekeeping protocol for this case, under which only time and expenses expressly authorized in advance by interim lead counsel may be considered as potentially compensable. Joint Decl., ¶ 4, Exh. A. As Moving Parties' counsel note, this protocol will promote efficiency, avoid duplicative work, and ensure there will be no surprises at the end of the case when class counsel's fee application is filed. Id.

Despite Danchick's counsel's concerns, Moving Parties' counsel are not proposing a leadership structure that is much larger than the competing proposals. Danchick Resp. at 2, 10. All competing applicants contemplate a co-lead structure: Danchick also proposes appointment of two co-lead firms, and Hammond seeks appointment as interim co-lead counsel. The proposed liaison counsel will not be a third lead co-counsel, but will instead handle mostly administrative matters. Ann. Manual Complex Lit. (4th ed. 2020) § 10.221 (explaining that liaison counsel is "[c]harged with essentially administrative matters".)

Furthermore, Moving Parties' counsel's keeping other attorneys on standby to contribute where appropriate is a far cry from an "unnamed committee of 'other' firms" and is in the best interests of the class members. Danchick Resp. at 11. Lowey Dannenberg and Marron contend that they offer a diverse group of lawyers that mirrors the class of affected women in this case. Danchick Resp. at 2-3, 12. Yet Moving Parties'

counsel have similarly assembled a diverse group that includes young, female attorneys who will meaningfully contribute to the litigation. Joint Decl., ¶ 6. For instance, Kimberly Macey and Jessica Cook of Girard Sharp have already contributed substantially by spending many hours on the phone with class members affected by the data breach. Id. In addition, a third of the partners at Robinson Calcagnie are women, many of whom have dedicated their careers to protecting women from the negligence of corporations, and whose skills may be called upon in this case. Id. Kazerouni Law also has many experienced women attorneys, such as Mona Amini, who has already substantially contributed to this case. Id.

3. Liaison Counsel

As the Court is adopting Moving Parties' proposal, the Court will appoint Abbas Kazerounian of Kazerouni Law Group, APC as liaison counsel to perform such tasks as those set forth in Rule of Court 3.501(12), and other administrative tasks as needed.

III. CONCLUSION

Based upon the foregoing, the Court orders that:

1) Plaintiffs Maria Orellana, Jane Doe, and T.S.'s Motion to Consolidate and to Appoint Lead and Liaison Counsel is GRANTED.

2) The seven related actions are consolidated for all purposes.

3) The Court appoints Daniel S. Robinson of Robinson Calcagnie, Inc. and Adam E. Polk of Girard Sharp LLP as co-lead counsel and Abbas Kazerounian of Kazerouni Law Group, APC as liaison counsel.

4) By May 2, 2022, co-lead counsel and liaison counsel must lodge a [Proposed] Order regarding guidelines to minimize costs and expenses in this consolidated action. The guidelines must address attorney and support personnel staffing practices, travel expense protocols, and time recording and reporting requirements.

5) The Court sets a Non-Appearance Case Review for May 9, 2022, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: April 15, 2022

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT