

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Donald Clauson, *individually and on behalf
of all other similarly situated,*

Case No. 24-cv-0131 (JMB/LIB)

Plaintiff,

v.

ORDER

Arrowhead Regional Computing Consortium,

Defendant.

Matthew Horsch, *individually and on behalf
of all others similarly situated,*

Case No. 24-cv-143 (JMB/LIB)

Plaintiff,

v.

ORDER

Arrowhead Regional Computing Consortium,

Defendant.

Klowie Fields and Ryan O’Connell, *on behalf
of themselves and all others similarly
situated,*

Case No. 24-cv-249 (JMB/LIB)

Plaintiff,

v.

ORDER

Arrowhead Regional Computing Consortium,

Defendant.

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636 and upon

Plaintiffs’ “Unopposed Motion to Consolidate Related Cases and Appoint Co-Lead Class Counsel.” [Docket No. 12]. The Court took Plaintiffs’ Motions under advisement on the written submissions. (Order [Docket No. 30]).

For the reasons discussed herein, Plaintiffs’ “Unopposed Motion to Consolidate Related Cases and Appoint Co-Lead Class Counsel,” [Docket No. 16], is **GRANTED** in part and **DENIED** in part.

I. Background

Plaintiffs in each of the above-captioned cases seek to bring a purported class action against Arrowhead Regional Computing Consortium based on Defendant’s alleged failure to secure and safeguard confidential, personally identifiable information including the full names, Social Security Numbers, Health Insurance Information, and Medical Information from at least 65,010 consumers.¹ Defendant is a Minnesota company that provides payroll services and student information to school districts in Minnesota. (Compl. [Docket No. 1] ¶ 20).

Plaintiffs’ Complaints allege that on or around February 6, 2023, a targeted cyberattack occurred which allowed an unauthorized third-party access to Defendant’s network. Through this unauthorized access, the third-party was able to exfiltrate files and records from Defendant that contained Plaintiffs’ sensitive personal information. On December 7, 2023, Defendant determined that information accessed on its systems may have included names, health insurance information, medical information, and Social Security Numbers. The Defendant only notified the victims on January 11, 2024, that its system had been subject to a data breach.

¹ In Clauson v. Arrowhead Regional Computing Consortium, 24-cv-131 (JMB/LIB), Plaintiff Donald Clauson represented by the law firms of Chestnut Cambronne PA and Markovits Stock & DeMarco LLC. In Matthew Horsch v. Arrowhead Regional Computing Consortium, 24-cv-143 (JMB/LIB), Plaintiff Matthew Horsch is represented by the law firms of Hellmuth & Johnson, PLLC; Chestnut Cambronne PA; and Milberg Coleman Bryson Phillips Grossman PLLC. In Fields et al. v. Arrowhead Regional Computing Consortium, 24-cv-249 (JMB/LIB), Plaintiffs Klowie Fields and Ryan O’Connell are represented by the law firms of Hellmuth & Johnson, PLLC; and Cafferty Clobes Meriwether & Sprengel LLP.

As a result of the alleged data breach, Plaintiffs aver that they have suffered irreparable harm, which cannot be sufficiently ameliorated by simple credit monitoring alone. Included among these alleged harms are Plaintiffs' allegations that they are subject to an increased risk of identity theft requiring additional security measures to minimize the risk of identity theft.

On the basis of the allegations in their Complaints, each Plaintiff raises substantially similar negligence claims against Defendant. On the basis of these similar allegations, some of the Plaintiffs also raise claims for violations of various state consumer protection laws, invasion of privacy, unjust enrichment, and negligence per se. Plaintiffs also each seek to represent a national class of similarly situated individuals who were similarly harmed by Defendant, and several Plaintiffs also wish to represent different subclasses of similarly situated individuals based on violations of state consumer protection laws.

Plaintiffs have now filed a Joint Motion to Consolidate Cases, [Docket No. 12], by which they seek to consolidate the above caption cases into a single consolidated action for all purposes.

II. Plaintiff's "Unopposed Motion for Consolidation of Related Cases and Appoint Co-Lead Class Counsel." [Docket No. 12].

Through their Motion to consolidate, Plaintiffs seek an Order of this Court consolidating all of the above-captioned actions, as well as, any later-filed, related action into a single consolidated action and request the Court's permission to file their consolidated amended complaint. (See Plf.'s Mot. [Docket No. 12]; Plf.'s Memo. [Docket No. 17]). Plaintiffs also move to establish an interim co-lead class counsel structure, appointing Bryan L. Bleichner of Chestnut Cambronne PA and Nathan D. Prosser of Hellmuth & Johnson PLLC as interim co-lead class counsel. (Id.). Although Defendant has not responded to the present Motion to consolidate, Plaintiffs' counsel affirmatively represents that Defendant "stated during the meet

and confer that it does not oppose consolidation of the above-captioned actions under Fed. R. Civ. P. 42(a).” (Meet and Confer Statement [Docket No. 14]).

Rule 42(a) of the Federal Rules of Civil Procedure provides that a court may, in its discretion, order consolidation of pending actions involving common questions of law or fact to avoid unnecessary costs or delay. Enterprise Bank v. Saettele, 21 F.3d 233, 235 (8th Cir. 1994); Fratzke v. IC System, Inc., No. 5-cv-1115 (JRT/RLE), 2007 WL 1114155, at *2 (D. Minn. Apr. 13, 2007). In considering consolidation, the Court should thoughtfully weigh:

[W]hether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Chill v. Green Tree Fin. Corp., 181 F.R.D. 398, 405 (D. Minn. 1998) (quoting Cantrell v. GAF, 999 F.2d 1007, 1011 (6th Cir.1993)); see, Kramer v. Boeing Co., 134 F.R.D. 256, 258 (D. Minn. 1991). Consolidation is not appropriate “if it leads to inefficiency, inconvenience, or unfair prejudice to a party.” EEOC v. HBE Corp., 135 F.3d 543, 551 (8th Cir. 1998).

In the present case, the Court’s consideration of the relevant factors, including the agreement of all parties on the issue of consolidation, finds that the factors weigh in favor of consolidating the above-captioned actions into one single consolidated action (hereinafter the “Consolidated Action”) for the purposes of conducting discovery and non-dispositive pretrial motion practice.² First, it does not appear that any party will suffer prejudice because of this limited consolidation, and all parties, including Defendant, have, in fact, agreed to consolidation. Second, the above-captioned actions all contained substantial common questions of law and fact. Specifically, the Plaintiffs all raise negligence claims based on the same alleged data breach and

² The Court leaves the determination of whether to consolidate this action for all other purposes, such as class certification, appointment of permanent lead class counsel, and trial, to the discretion of the presiding trial judge.

the Defendant's response thereto. Further, the Plaintiffs who raise other claims also base those claims on the same underlying alleged action or lack of action by Defendant.

Also, as noted above, each Plaintiff in the three identified cases seeks to represent not only herself or himself but also a class of similarly situated persons. No such class has yet been certified pursuant to Federal Rule of Civil Procedure 23.

Rule 23 of the Federal Rules of Civil Procedure governs class actions. See Fed. R. Civ. P. 23. Pursuant to Rule 23(g)(3), “[t]he court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). This appointment of interim counsel can take several forms, including the appointment of lead or co-lead counsel; the appointment of lead counsel with liaison counsel; the appointment of lead counsel with the concurrent appointment of an executive committee; or any combination thereof as determined to be necessary in the Court’s discretion. See, e.g., Peterson v. Agri Stats, Inc., 19-cv-1129 (JRT/HB), Order [Docket No. 68] (D. Minn. Aug. 6, 2019); In re: Resideo Technologies, Inc. Securities Litigation, 19-cv-2863 (WMW/KMM), Order [Docket No. 38] (D. Minn. Jan. 27, 2020); In re: DPP Beef Litigation, 20-cv-1319 (JRT/HB), Order [Docket No. 71] (D. Minn. Sept. 4, 2020); In re: Pork Antitrust Litigation, 18-cv-1776 (JRT/HB), Orders [Docket Nos. 149, 150, 151] (D. Minn. Oct. 15, 2018). Whether or not to appoint interim counsel and the structure of said interim counsel are both decisions within the Court’s discretion; however, in cases where all plaintiffs agree to the appointment and structure of counsel, Courts often acquiesce to the decision of the parties, absent some finding of unfairness or inefficiency. See, e.g., Peterson v. Agri Stats, Inc., 19-cv-1129 (JRT/HB), Order [Docket No. 68] (D. Minn. Aug. 6, 2019); In re: Resideo Technologies, Inc. Securities Litigation, 19-cv-2863 (WMW/KMM), Order [Docket No. 38] (D. Minn. Jan. 27, 2020); In re: DPP Beef Litigation, 20-cv-1319

(JRT/HB), Order [Docket No. 71] (D. Minn. Sept. 4, 2020); In re: Pork Antitrust Litigation, 18-cv-1776 (JRT/HB), Orders [Docket Nos. 149, 150, 151] (D. Minn. Oct. 15, 2018).

In the present case, all Plaintiffs have agreed on the proposed appointment of interim co-lead counsel. Specifically, Plaintiffs collectively seek to appoint Bryan L. Bleichner and Nathan D. Prosser as interim co-lead counsel.

The Court concludes that interim co-lead counsel should be appointed as agreed upon by Plaintiffs, and without objection by Defendant, in order to achieve efficiency and economy in this litigation, and fairness to the parties will not be jeopardized.³ The Court's review of Plaintiffs' submitted materials finds that the proposed interim co-lead counsel are sufficiently well-credentialed and experienced so as to fairly and adequately represent the interest of the putative class in the present matters. (See Plf.'s Exs. A & B [Docket No. 13-1]).

Accordingly, the Court **GRANTS**, in part, and **DENIES**, in part, the Plaintiffs' unopposed motion to consolidate. The above-captioned actions, and any subsequently filed actions arising out of the same operative factual circumstances, will be consolidated for the purposes of discovery, non-dispositive pretrial motion practice, and the appointment of interim co-lead counsel. However, insofar as the Plaintiffs request an order from this Court to consolidate the above-captioned actions for the purposes of class certification, appointment of permanent lead class counsel, dispositive pretrial motions, or trial, that request is denied at this time without prejudice because such issues are best reserved for the presiding District Judge.

³ Assuming solely for the sake of this footnote that a class is ultimately certified in the present case, the appointment of interim co-lead counsel here does not guarantee that the same counsel or counsel structure will be utilized as class counsel if a Rule 23 certification is sought and granted.

Hereafter, pretrial matters related to scheduling, discovery, and other non-dispositive matters shall be filed in Case No. 24-cv-131 (JMB/LIB), as the consolidated file.⁴

III. Conclusion

Therefore, for the foregoing reasons, and based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. Plaintiffs' "Unopposed Motion to Consolidate of Related Cases and to Appoint Interim Co-Lead Class Counsel," [Docket No. 16], is **GRANTED** in part and **DENIED** in part as set forth herein;
2. The actions of Clauson v. Arrowhead Regional Computing Consortium, 24-cv-131 (JMB/LIB); Horsch v. Arrowhead Regional Computing Consortium, 24-cv-143 (JMB/LIB); and Fields et al. v. Arrowhead Regional Computing Consortium, 24-cv-249 (JMB/LIB), are consolidated for scheduling, discovery, and all other non-dispositive pretrial purposes before the Honorable Jeffery M. Bryan, District Court Judge for the District of Minnesota, and the undersigned Magistrate Judge;
3. The first filed action, 24-cv-131 (JMB/LIB), shall serve as the lead case for this limited consolidation;
4. All future filings related to scheduling, discovery, and other non-dispositive pretrial matters shall be filed in the lead case and shall be considered filed in the relevant related cases—such subsequent consolidated filings should not be separately docketed in the related cases and all previous filings in the related cases need not be re-filed in the lead case;

⁴ Any attorney who has already received permission to proceed pro hac vice in any of the above-captioned actions may continue to appear pro hac vice in the Consolidated Action. Such an attorney need not submit another application to proceed pro hac vice. Further, all counsel of record in 24-cv-131, 24-cv-143, and 24-cv-249 shall be granted CM/ECF electronic access to Court File 24-cv-131.

5. The Clerk of Court is directed to grant all counsel of record from the related cases access to CM/ECF on the lead case 24-cv-131—all pro hac vice admissions in the related cases are valid for the lead case as well;
6. Any later-filed, related action, in which the Plaintiff or Plaintiffs agree to consolidation will be similarly consolidated into the lead case subject to this Order;
7. Bryan L. Bleichner (Chestnut Cambronne PA), and Nathan D. Prosser (Hellmuth & Johnson PLLP), are appointed as interim co-lead counsel;
8. Interim co-lead counsel shall assume responsibility for the following duties:
 - A. Coordinating the work of preparing and presenting all of Plaintiffs' claims and otherwise coordinating all proceedings, including organizing and supervising the efforts of Plaintiffs' counsel in a manner to ensure that Plaintiffs' pretrial preparation is conducted effectively, efficiently, expeditiously, and economically;
 - B. Delegating work responsibilities and monitoring the activities of all Plaintiffs' counsel in a manner to promote the orderly and efficient conduct of this litigation and to avoid unnecessary duplication and expense;
 - C. Serving as the primary contact for all communications between Plaintiffs and Defendant, and acting as spokespersons for all Plaintiffs vis-à-vis Defendant and the Court;
 - D. Initiating and conducting discussions and negotiations with counsel for Defendant on all matters, including settlement;
 - E. Initiating, coordinating, and conducting all discovery on Plaintiffs' behalf and ensuring its efficiency; and

- F.** Performing such other duties as are necessary in connection with the prosecution of this litigation or as may be further directed by the Court;
- 9.** Any discussions of a settlement of this litigation shall be conducted by interim co-lead counsel and any counsel designated by interim co-lead counsel;
- 10.** This Order applies to all claims included in the above-captioned consolidated matters and all subsequently consolidated actions;
- 11.** Interim co-lead counsel must promptly serve a copy of this Order and all future orders in the lead cease on counsel for Plaintiffs in each subsequently filed related action not yet consolidated in this proceeding to the extent that interim co-lead counsel is aware of any such action(s).

Dated: May 3, 2024

s/Leo I. Brisbois
Hon. Leo I. Brisbois
U.S. MAGISTRATE JUDGE