

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 21-MD-02994-RAR

In re:

**MEDNAX SERVICES, INC.,
CUSTOMER DATA SECURITY BREACH LITIGATION**

This Document Relates to All Actions

**ORDER GRANTING PLAINTIFFS' MOTION TO APPOINT M. ANDERSON BERRY
TO PLAINTIFFS' STEERING COMMITTEE**

THIS CAUSE comes before the Court on Plaintiffs' Motion to Appoint M. Anderson Berry to Plaintiffs' Steering Committee [ECF No. 94] ("Motion"). Plaintiffs move under Fed. R. Civ. P. 23(g) to add M. Anderson Berry of the law firm of Clayeo C. Arnold, A Professional Law Corp., to the Plaintiffs' Steering Committee ("PSC") as a replacement for Robert J. Kuntz of Devine Goodman Rasco & Watts FitzGerald, LLP. *See* [ECF No. 94].

Plaintiffs filed their initial consolidated application for leadership on July 2, 2021. [ECF No. 41]. This Court granted the Majority Group's Application for Leadership on July 6, 2021. [ECF No. 43]. In the Majority Group's Application for Leadership, the Majority Group proposed creating a PSC which would include "one law firm from each filed case." [ECF No. 41-9], § I.B. In its Order Appointing Leadership, this Court adopted the Majority Groups' proposed leadership structure, including the creation of the PSC. The Court appointed the following five law firms to the PSC: "(i) Morgan & Morgan (John A. Yanchunis); (ii) Devine Goodman Rasco & Watts FitzGerald LLP (Robert J. Kuntz); (iii) Fell Law, PC (Bibianne U. Fell); (iv) Law Office of Kenneth E. Berger LLC (Elizabeth M. Dalzell); and (v) Bonnett Fairbourn Friedman & Balint PC (Elaine A. Ryan)." [ECF No. 43], ¶ 5.

Since the creation of the PSC, Robert J. Kuntz of Devine Goodman Rasco & Watts-FitzGerald LLP, has withdrawn from this matter, and Devine Goodman Rasco & Watts-FitzGerald, LLP has been discharged of all further responsibilities in these proceedings. [ECF No. 90]. The same rationales for including one law firm representing each of the underlying filed cases on the PSC—namely, the “strong need to assure oversight and Plaintiff involvement while not causing an administrative burden or needless duplication”—still apply. *See* [ECF No. 41-9], § I.B. Clayeo C. Arnold is the sole remaining law firm that was attorney of record in the underlying filed case that included Devine Goodman Rasco & Watts-FitzGerald, LLP (*Cohen v. Mednax Services, Inc.*, Case No. 1:31-cv-20375-JEM).

As evidenced by Plaintiffs’ exhibits containing Mr. Berry’s resume, he is experienced in class action litigation and data breach related class action litigation in particular. This experience includes serving as Class Counsel and Co-Lead Counsel in multiple recent matters, including both ongoing and settled matters. Additionally, this Court recently appointed Mr. Berry to the Plaintiffs’ Executive Committee in another data breach class action case, *Desue, et al. v. 20/20 Eye Care Network Inc., et al.*, Case No. 0:21-cv-61275-RAR [ECF No. 29].

Although neither the federal rules nor the advisory committee notes expressly so state, it is generally accepted that the considerations set forth in Rule 23(g)(1)(A), which governs appointment of class counsel once a class is certified, apply equally to the designation of interim class counsel before certification and their replacements. *See, e.g., In re: Disposable Contact Lens Antitrust*, No. 15-MD-2626, 2015 WL 10818781, at *1 (M.D. Fla. Oct. 7, 2015) (factors for appointing class counsel under Rule 23(g)(1)(A) apply “equally to the appointment of interim lead counsel before certification.”) (citations omitted); *Bowers v. Sioux Honey Coop. Ass’n*, No. 12-21034, 2012 WL 12865846, at *2 (S.D. Fla. Dec. 14, 2012); *In re Wells Fargo Wage & Hour*

Emp't Practices Litig. (No. III), No. 11-2266, 2011 WL 13135156, at *3 (S.D. Tex. Dec. 19, 2011). Those factors include the work counsel has done in identifying or investigating potential claims in the action; counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; counsel's knowledge of the applicable law; and the resources counsel will commit to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A).

After considering Plaintiffs' Motion in light of the foregoing factors, the Court is satisfied that Mr. Berry has sufficient experience handling class actions, complex litigation, and claims of the type asserted in this action, as well as knowledge of the applicable law, to serve on the PSC. Therefore, based on the Court's review and consideration of the Motion, it is

ORDERED AND ADJUDGED that Plaintiffs' Motion [ECF No. 94] is **GRANTED**. The Court appoints M. Anderson Berry of the law firm of Clayeo C. Arnold, A Professional Law Corp., to the Plaintiffs' Steering Committee as a replacement for Robert J. Kuntz of Devine Goodman Rasco & Watts FitzGerald, LLP.

DONE AND ORDERED in Fort Lauderdale, Florida, this 18th day of February, 2022.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE