

IN RE: CENTRASTATE HEALTHCARE DATA-
SECURITY INCIDENT LITIGATION

This Document Relates To: Tornese v.
CentraState, MON-L-504-23

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

Master File No.: MON-L-000504-23

(CBLP)

**ORDER ON MOTION TO CONSOLIDATE CASES
AND APPOINT INTERIM CLASS COUNSEL**

WHEREAS, on February 17, 2023, Plaintiff Natalie Tornese, individually and on behalf of all others similarly situated, filed a putative class action in this Court against Defendant CentraState Healthcare System;

WHEREAS, on February 20, 2023, Plaintiff Rita Sorrentino-Poggi, individually and on behalf of all others similarly situated, filed a putative class action in this Court against Defendant CentraState Healthcare System;

WHEREAS, on February 23, 2023, Plaintiff Barbara Corrente, individually and on behalf of all others similarly situated, filed a putative class action in this Court against Defendant CentraState Healthcare System;

WHEREAS, on March 7, 2023, Plaintiff Rita Lisa Surowiec, individually and on behalf of all others similarly situated, filed a putative class action in this Court against Defendant CentraState Healthcare System;

WHEREAS, on March 8, 2023, Plaintiff Melissa Connolly, individually and on behalf of all others similarly situated, filed a putative class action in this Court against Defendant CentraState Healthcare System;

WHEREAS, on March 13, 2023, Plaintiff Dhalia Valle, individually and on behalf of all others similarly situated, filed a putative class action in this Court against Defendant CentraState Healthcare System;

WHEREAS, on March 21, 2023, Plaintiff Frederick Dawes, individually and on behalf of all others similarly situated, filed a putative class action in this Court against Defendant CentraState Healthcare System;

WHEREAS, through its undersigned counsel, Defendant agrees to accept service of the complaints filed by Natalie Tornese and Rita-Sorrentino-Poggi as of February 22, 2023 (without waiving any defenses), although as noted below, the Parties agree that Defendant need not respond until after the filing of a Consolidated Amended Complaint;

WHEREAS, Plaintiffs in the above-referenced cases and Defendant agree that consolidation of the actions is appropriate because both arise out of the same data security incident as described in letters they received from CentraState dated February 8, 2023 and involve common questions of fact and law;

WHEREAS, to streamline the consolidation process, the Parties have met and conferred, and agree to consolidation in accordance pursuant to R. 4:38-1;

NOW THEREFORE, it is hereby **ORDERED**:

1. The *Tornese* and other actions set forth in paragraph 4, which are currently pending in this Court, and any other action arising out of the same or similar operative facts now pending or hereafter filed in or transferred to this Court shall be consolidated before the Honorable Mara Zazzali-Hogan (hereafter the “Consolidated Action”) pursuant to R. 4:38-1.

2. All papers filed in the Consolidated Action shall be filed under Case MON-L-000504-23 and shall bear the following caption:

**SUPERIOR COURT OF NEW JERSEY LAW
DIVISION: MONMOUTH COUNTY**

IN RE: CENTRASTATE HEALTHCARE
DATA-SECURITY INCIDENT LITIGATION

Master File No. MON-L-000504-23
(CBLP)

This Document Relates To:

3. The case file for the Consolidated Action will be maintained under Master File No. MON-L-000504-23. When a pleading is intended to apply to all actions to which this Order applies, the words "All Actions" shall appear immediately after the words "This Document Relates To:" in the caption described above. When a pleading is not intended to apply to all actions, the docket number for each individual action to which the paper is intended to apply and the last name of the first-named plaintiff in said action shall appear immediately after the words "This Document Relates To:" in the caption identified above, for example, "MON-L-123456-78." Also, because this matter has been assigned to the Complex Business Litigation Program because of the complexities concerning the data-security incident, all pleadings shall contain the reference to (CBLP) in the caption as set forth above. Likewise, the parties are required to familiarize themselves with and adhere to the CBLP Rules set forth at R. 4:102-1 et seq.

4. The Clerk is directed to administratively close the *Sorrentino-Poggi* matter (L-535-23); the *Corrente* matter (L-549-23); the *Surowiec* matter (L-698-23); the *Connolly* matter (L-728-23); the *Valle* matter (L-788-23); and the *Dawes* matter (L-883-23).

5. The Court hereby appoints James E. Cecchi, Esq., of Carella, Bryne, Cecchi, Olstein, Brody & Agnello, P.C., Linda P. Nussbaum, Esq., of the Nussbaum Law Group, P.C., and Todd Garber, Esq., of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, as Interim Class

Counsel to act on behalf of the Plaintiffs and the putative Class with the responsibilities set forth below:

- a. Determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Plaintiffs on all matters arising during pretrial proceedings;
- b. Coordinate the initiation and conduct of discovery on behalf of Plaintiffs and the Class consistent with the requirements of the New Jersey Rules of Court;
- c. Convene meetings amongst Plaintiffs' counsel, which shall include a meeting regarding the feasibility of Mr. King serving as Committee Counsel for California plaintiffs as discussed during oral argument;
- d. Conduct settlement negotiations on behalf of Plaintiffs and the putative Class;
- e. Delegate tasks to other plaintiffs' counsel as needed and appropriate in a manner to ensure that pretrial preparation for Plaintiffs and the putative Class is conducted efficiently and effectively;
- f. Negotiate and enter into stipulations with opposing counsel as necessary for the conduct and efficient advancement of the litigation;
- g. Monitor the activities of all counsel for Plaintiffs to ensure that schedules and litigation deadlines are being met and unnecessary expenditures of time and funds are avoided;
- h. Ensure that all counsel for Plaintiffs comport with the billing and expense protocol being used by the leadership team and that will be submitted to the Court for approval **within 14 days**;
- i. Perform such other duties as may be incidental to the proper coordination of Plaintiffs' pretrial activities or authorized by further order of this Court;
- j. Serve as the primary contact for communications between the Court and other plaintiffs' counsel;

- k. Ensure that all notices, orders, and material communications are properly distributed (to the extent that they are not otherwise served on Plaintiffs' counsel via the Court's electronic filing system);
- l. Communicate with defense counsel as necessary to promote the efficient advancement of this litigation; and
- m. Performing all other duties or tasks as are necessary to the prosecution of this matter on behalf of the putative Class.

6. Unless otherwise ordered by the Court upon a showing of good cause, this Order shall apply to the above-captioned matters, any action filed in or transferred to this Court which relates to the subject matter at issue in this case. Interim Class Counsel are to serve a copy of this Order and all future orders on counsel for plaintiffs in any related action that they become aware of which is not yet consolidated into this consolidated proceeding. If the Court determines that another case appropriately consolidated into this Action, the clerk shall:

- a. file a copy of the consolidation order with the deputy clerk of the Superior Court in each county from which an action is being transferred in accordance with R. 4:38-1(c) after the respective Assignment Judges have met and conferred;
- b. serve on plaintiffs' counsel in the new case a copy of this Order;
- c. direct that this Order be served upon defendants in the new case; and
- d. make the appropriate entry in the Master Docket.

7. Plaintiffs in the Consolidated Action shall file an operative Consolidated Amended Complaint ("CAC") **within 30 days of the entry of this Order.**

8. Defense counsel shall accept service of the CAC and need not respond to any of the previously filed complaints in the Related Actions.

9. Defendant will answer, move, or otherwise respond to the operative CAC within 30 days after it is filed.

10. If Defendant files a motion in response to the CAC, the return date shall be the first motion day at least 56 days after the filing of the motion. Plaintiffs will then have until 28 days before the return date to file an opposition, and Defendant will then have until 7 days before the return date to file a reply.

IT IS SO ORDERED.

Dated: August 24, 2023

/s/ Mara Zazzali-Hogan J. S. C.
HONORABLE MARA ZAZZALI-HOGAN, J.S.C.

***See attached statement of reasons.**

**STATEMENT OF REASONS PURSUANT TO R. 1:6-2(f)
CONSOLIDATING CASES AND APPOINTING INTERIM CLASS COUNSEL**

NATALIE TORNESE,

v.

CENTRASTATE HEALTHCARE SYSTEM.

DOCKET NO.: MON-L-504-23

This matter arises out of a data breach of confidential personally identifiable information (PII) and protected health information (PHI) that occurred at CentraState Healthcare System and affected approximately 617,000 people. Seven complaints have been filed by different counsel in this court. One of the plaintiffs has moved to consolidate the matters pursuant to Rule 4:38-1, which nobody opposes. Three different teams of plaintiffs' counsel, however, are asking the court to appoint them as interim class counsel pursuant to Rule 4:32-2(g). No New Jersey case law exists regarding the appointment of interim counsel, making it a matter of first impression.

I. Motion to Consolidate

Rule 4:38-1 provides that “[w]hen actions involving a common question of law or fact arising out of the same transaction or series of transactions are pending in the Superior Court, the Court on a party's or its own motion may order the actions consolidated.” “A trial court's decision to grant or deny a party's motion to consolidate actions is discretionary.” Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015).

Indeed, these cases have common questions of law and fact arising out of the same transaction or series of transactions against the same defendant, CentraState. Specifically, the parties have filed claims for negligence, breaches of fiduciary duty and implied contract, unjust

enrichment and violations of the Consumer Fraud Act, based upon a data breach that was detected on December 29, 2022. Therefore, the court **grants** the motion to consolidate all of these dockets under Docket No.: MON-L-504-23 (CBLP) in the manner set forth in the corresponding order.

II. Motion to Appoint Interim Class Counsel

Although class counsel is often appointed at the time of class certification when the court must consider the adequacy of the representation pursuant to R. 4:32-2, circumstances may require the court to appoint interim class action prior to certification. See R. 4:32-2(g)(2)(A). For example, interim class counsel may be appropriate when there are overlapping, duplicative or competing lawsuits, and the attorneys are not in agreement about who lead counsel should be, as is the case here. In those circumstances, it becomes necessary to clarify the attorneys' general responsibilities to protect the interests of current and potential class members. There are three overlapping methods that courts utilize to select interim counsel including private ordering, where the attorneys basically agree or stipulate to lead counsel; judicial selection; and competitive bidding, which includes a proposal for the fee arrangement. The applicable court rule favors judicial selection.

Regardless of timing, counsel must "represent fairly and adequately" the interests of the class. R. 4:32(g)(1)(C). When more than one attorney is seeking appointment, the court must determine which applicant is "best able to represent the interests of the class." R. 4:32-2(g)(2)(B). The factors to be considered when deciding whether to appoint interim counsel are: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. See R. 4:32-2(g)(1)(C). Courts are also permitted to consider

any other matter pertinent to counsel's ability to represent fairly and adequately the interests of the class. Id.

Each set of attorneys has argued why they are best suited to serve as interim class counsel pursuant to those factors. The arguments are generally the same except that the Tornese and Sorrentino-Poggi attorneys attempt to distinguish themselves by asserting that they should be appointed because they were the first two plaintiffs to file a lawsuit for the CentraState data breach in state court. They fail, however, to cite to any case law to support that argument. In response, counsel for other plaintiffs have asserted that they are best suited for the position and raised concerns about the Tornese and Sorrentino-Poggi attorneys engaging in a reverse auction. Essentially, that concept involves a defendant's efforts to identify the lowest bidder among competing attorneys, which can subordinate the interests of the class members by that plaintiff's counsel agreeing to a lesser amount for the class members to ensure counsel receives fees.

1. Work related to identification and investigation of claims

The Tornese and Sorrentino-Poggi attorneys contend that prior to commencing litigation, they expended significant time and resources identifying or investigating potential claims and defendant's potential defenses. They have also reviewed public information regarding the breach including, but not limited to, media reports and CentraState's public statements; researched CentraState's corporate structure; interviewed "multiple potential clients" although there appear to be only two plaintiffs for these cases; formed private ordering with each other; investigated the adequacy of named plaintiffs to represent the putative class; and communicated with counsel for CentraState.

Meanwhile, the attorneys for the twenty-four (24) Dawes plaintiffs contend that they have already extensively litigated their claim and done so efficiently and effectively by (1) obtaining

jurisdictional representations from defendants; (2) acting on those representations and bringing their claims to the appropriate forum; (3) drafting and filing a consolidated class action complaint on behalf of dozens for putative class members; (4) creating an effective leadership structure that is inclusive of every action previously filed in federal court; and (5) maintaining consistent communications with the court in the interests of transparency.

Lastly, counsel for Connelly argues that Anthony L. Parkhill of Barnow and Associates, P.C. should be appointed lead counsel because he has substantial experience to effectively lead this litigation in an efficient and professional manner on behalf of the class. Connelly's attorney also argue that he has "diligently investigated" the breach and its cause, CentraState's response and how the breach was reported in the media.

Concededly, all of the attorneys have researched their claims and other issues related to this matter. The attorneys for the Dawes plaintiffs, however, have already demonstrated a proven track record in addressing jurisdictional issues, coordinating the case with other attorneys, communicating with the court and its class counsel "competition," and synthesizing the estimated ten actions that included twenty-four plaintiffs and were originally filed in federal court into a single complaint here in state court. Of significant weight is the fact that the Tornese and Sorrentino-Poggi plaintiffs have not been as transparent by, for example, sharing discovery already received and because they have filed motions without forewarning or discussing them with other attorneys, including the motion to certify the class. The other attorneys were not aware of that development until the court heard oral argument on this motion. That motion was filed the next business day. Consequently, the work completed by counsel for Dawes demonstrates they are the most qualified based upon what they have achieved to date and how they have done so with consistent collaboration and transparency with all attorneys and the court.

2. Experience in class actions, including data breach cases

Counsel for the Tornese and Sorrentino-Poggi plaintiffs have provided their general experience, proposing that Ahdoot & Wolfson, PC and the Shub Law Firm, LLC be appointed lead counsel. A&W was founded in 1998 and has been appointed lead counsel in numerous consumer class actions addressing privacy and data breach issues alleged against Zoom, Google, insurance companies, restaurants, major stores, student health centers, financial institutions, and Ring-like devices for doorbells and telephones. One of those cases “affected nearly 15 million class members,” and another case secured a settlement valued at over \$150 million. They also have secured prospective relief such as credit monitoring and injunctive relief. Although Bradley King of the A&W firm has practiced for approximately ten years and is attempting to build the practice, he has only served as appointed counsel in one case. Meanwhile, the class counsel experience of Andrew Ferich of the A&W firm, who has been practicing for eleven years, is not provided. Their certifications only generally refer to A&W’s collective experience, listing four privacy class actions and six data breach class actions. At oral argument, Mr. King clarified that he is no longer based in California where he practiced for many years but rather, in New York. Although he advised the court that he is “based and barred” in New Jersey, his office is actually in in New York.

As for the Shub Firm’s experience, Samantha Holbrook has been a class action litigator for over a decade. She lists three cases in which she provided “substantial assistance” in the prosecution of class actions, but it appears that only one case involved a data breach.

Turning to the Dawes attorneys, James E. Cecchi of the Carella Byrne firm has served as lead counsel, co-lead counsel and committee member of approximately twelve cases in the federal court for the District of New Jersey. None of those cases appears to involve data breaches. One of those cases resulted in a settlement of \$100 million. Meanwhile, Linda P.

Nussbaum of the Nussbaum Law Group, P.C. notes that she has served as co-lead counsel in numerous class actions including four data breach cases, three of which involved medical records. In terms of the size of the class actions and some of the results, one of the class actions involved a proposed class of 10 million patients, and another resulted in a settlement valued at \$60 million. Finally, Todd Garber of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP has successfully represented plaintiffs in approximately twelve data breach class actions throughout the country involving confidential medical information and has also lectured on the topic. One of those cases involved 23 million victims, and in another, he secured a settlement valued at more than \$42 million.

As for the Connolly attorneys, Mr. Parkhill has been appointed as a committee member of class counsel in approximately nine dozen data breach cases and has been involved with approximately six other class actions. He practices at a “legendary firm in the data breach litigation field” and has been described by his colleague as “one of the nation’s most accomplished and experienced young data breach practitioners.” The biggest case with which he was involved consisted of 209,000 class members, and the largest settlement was approximately \$444 million. He has been practicing for approximately nine years. It is unclear how many cases his firm has been involved with.

In light of the foregoing, although no specific attorney has experience in being lead counsel in a New Jersey class action in state court involving a data breach, the three attorneys for the Dawes plaintiffs combine to establish the most significant depth of experience.

3. Counsel’s knowledge of the applicable law

It is also imperative that lead counsel understand procedural and substantive issues concerning initial class certification and final approval as well as a general understanding of

medical data breaches, data hacking, data privacy and industry standards under New Jersey law. To the extent there may be nuances regarding the law in other jurisdictions, experience in New Jersey is clearly an asset. No one, however, has listed any experience in state court. In fact, at oral argument, one of the attorneys was unaware that the proper method of pursuing fees in these cases is the lodestar rather than the proportionality method.

The experience of the A&W firm's attorneys does not involve any New Jersey cases. It appears that among the data breach and privacy cases it has litigated, only one appears to involve medical data. Mr. Shub references one case that was venued in New Jersey although it did not involve medical data.

Mr. Cecchi and his firm, who are co-counsel for the Dawes plaintiffs, are located in Roseland, New Jersey. He lists ten class actions in which his firm was involved within New Jersey. Although four of them involved breaches in sales or marketing practices in the health care industry, none is related to any breach regarding medical data. Ms. Nussbaum has been involved in one case in New Jersey involving patient PII and PHI. The third attorney, Mr. Garber, has not been involved with any New Jersey cases, although approximately one dozen of the cases he cites involve medical data.

According to Connolly counsel, Mr. Parkhill's knowledge of the applicable law is stellar. He adds that his experience with jurisdictional disputes is invaluable. He contends he has been involved with four medical data breach cases although none was venued in New Jersey. Based upon the respective attorneys' experiences, the Dawes attorneys are the most well-rounded because of experience in New Jersey, knowledge of the relevant substantive and procedural law and proven successes in other class actions including data breaches.

4. Resources Counsel Will Commit to Representing the Class

Counsel for Tornese and Sorrentino-Poggi assert that they are willing and able to expend the resources necessary to ensure the vigorous prosecution of plaintiffs' claims. They rely on their experience in class actions, research already performed for this case and their ability to cooperate with multiple attorneys. Their websites, respectively, list a total of nineteen attorneys.

Likewise, the Dawes attorneys have devoted significant time in investigating, drafting pleadings, performing client intake, obtaining and reviewing discovery, and creating a leadership structure among other attorneys in the related actions. They have also pledged their willingness and ability to continue to ensure that the class is well capitalized. Their respective firms collectively consist of fifty-four attorneys according to their firms' websites.

The Connolly attorneys list a total of eight attorneys on their respective websites. Based upon the number of attorneys at their respective firms, the Dawes attorneys have the most attorneys on staff. Presumably, they also have the corresponding resources in addition to those set forth above. Therefore, the Dawes attorneys have more resources to devote to the class.

5. Other factors

There is no guidance in the Court Rules or New Jersey case law regarding what other factors a court should assess. Based upon federal jurisprudence, however, the court finds that here, geography, diversity of counsel and the presence of a potential reverse auction are worthy of consideration.

a. Geography

Of the 617,000 potential class members, 90% of the individuals who received notices of the breach are residents of New Jersey. Defendant CentraState is also located in Monmouth

County, New Jersey where these cases are venued. With modern technology, geography is not necessarily an insurmountable challenge if the attorneys and class members are not in the same state. And in fact, all of these lawyers and their firms have themselves litigated class actions throughout the country.

Nonetheless, for purposes of client interaction, travel costs, depositions and in-person court appearances, it is more practical and cost-efficient if the attorneys are located in New Jersey. Although Ms. Holbrook (for the Tornese plaintiffs) was located in Haddonfield, she is now in Pennsylvania. None of the Sorrentino-Poggi or Connolly attorneys (except for Mr. Parkhill) has an office in New Jersey. Cecchi (for the Dawes plaintiffs), however, has an office in New Jersey where the main office of that firm is located. Based upon the foregoing, the Dawes attorneys' office location favors their appointment as lead counsel.

b. Diversity of Counsel

Although no one referred to ethnicity or race in assessing diversity, two sets of the attorneys emphasized that women were leading their respective cases. For example, the Nussbaum Law Firm (for the Dawes plaintiffs) is a female-led firm while Ms. Holbrook (for the Tornese Plaintiffs) is a junior partner who is also a female. The Dawes plaintiffs, however, appear to have the more senior counsel (Nussbaum) while the other two sets are younger with less experience. Overall, this factor favors counsel for the Dawes plaintiffs.

c. Reverse Auction

The attorneys for the Dawes plaintiffs allege that counsel for Tornese and Sorrentino-Poggi are not well suited because have already engaged in a reverse auction. Alleging that an attorney has engaged a reverse auction has a negative connotation. It implies that the attorneys, in their effort to jockey for the position as lead class counsel, may have cut a deal with the

defendant or may have undercut or undersold the plaintiffs' claims and improperly eliminated potential claims against the defendant. See, e.g., In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig., 55 F.3d 768, 788 (3d Cir. 1995); see also Drazin v. Horizon Blue Cross Blue Shield of N.J., Inc., 832 F. Supp.2d 432 (D.N.J. 2011), aff'd 528 Fed. Appx. 211 (3d Cir. 2013) (stating that counsel was maligned when it was accused of engaging in a reverse auction and that "the use of the term is an illustration of the sound and fury that has plagued these cases, in those instances where the inter-firm battle eclipsed the duty of service to clients and the profession").

One of the attorneys in this matter expressed concerns at oral argument about potential conflicts while unequivocally making clear that no attorneys in this matter should be maligned for their work to date, stating as follows:

I would bristle at the suggestion that anyone in this courtroom acted improperly. . . I have worked with [other attorneys in this litigation] and I believe that they likely did what they believed was in the class's best interest. But there's a problem. And the problem with competing applications for leadership, there's this unavoidable problem of taking a litigation risk discount, even subconsciously, for the risk that they would not be appointed, for that any of the other highly experienced. Attorneys in this room would be appointed. And counsel for the defense, who I've also worked with, and is great, and I don't think [they] did anything improper, [and] know that they are negotiating from this relatively compromised position of weakness in negotiating the settlement. And I think that that procedural posture or that background for a settlement, even if it's not a reverse auction, I don't, you know, I don't think that anyone was trying to do anything improper, or to sell out the class. But they negotiated from a position of weakness. And the only way to solve that problem is to appoint lead counsel.

While this court declines to find that any of the attorneys engaged in improper conduct in attempting to secure the position as interim class counsel, the court cannot ignore the potential hazards of approving a settlement so early in the litigation as counsel for the Tornese and Sorrentino-Poggi plaintiffs have requested. In fact, they filed a motion to certify the class one business day after this motion was argued. Specifically, through no malfeasance, there exists a strong possibility that fiduciary responsibilities of class counsel or class representatives may have

been compromised by the desire to be lead counsel and ultimately, benefit from attorneys' fees. Even some courts' successful use of this mechanism to secure settlements recognize that negotiations prior to class certification can be fraught with peril. See, e.g., Ace Heating & Plumbing Co. v. Crane Co., 453 F.2d 30, 33 (3d Cir. 1971) (stating that court must be doubly careful where negotiation occurs before certification and designation of a class counsel).

Parenthetically, the court recognizes that defendant advocated for the Tornese and Sorrentino-Poggi attorneys to be designated as interim class counsel because of their prior experience working with them. Their preference, however, is not persuasive because they too may have incentive to settle in their clients' best interest, not the class members' best interests. Consequently, for the reasons set forth above, the court hereby appoints counsel for Dawes as lead interim counsel, and therefore, the other attorneys' request for that appointment is **denied**. As discussed during oral argument, however, the court directs counsel to explore the possibility of designating Mr. King as committee counsel for California plaintiffs given his experience practicing in California and the number of California plaintiffs.

/s/ Mara Zazzali-Hogan J. S. C.
HONORABLE MARA ZAZZALI-HOGAN, J.S.C.