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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 *IN RE F21 OPCO LLC DATA BREACH*
12 *LITIGATION*

Case No.: 2:23-CV-07390-MEMF-AGR

13 **ORDER GRANTING AND DENYING**
14 **MOTIONS TO APPOINT INTERIM CO-**
15 **LEAD CLASS COUNSEL [ECF NOS. 24, 37]**
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20 Before the Court in this consolidated class action is a Motion to Appoint Interim Co-Lead
21 Counsel. ECF Nos. 24. For the reasons stated herein, the Court GRANTS the Motion. The Court will
22 appoint Samantha E. Holbrook, Gregory Haroutunian, and John J. Nelson as interim co-lead counsel.
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1 **I. Background**

2 **A. The Consolidated Action**

3 This is a consolidated class action brought by employees and former employees of Defendant
 4 F21 OPCO LLC d/b/a Forever 21 (“F21”). *See* ECF No. 1 ¶¶ 3, 13, 20.¹ F21 allegedly failed to
 5 protect the Personally Identifiable Information (“PII”) and Protected Health Information (“PHI”) of
 6 approximately 539,207 current and former employees, including names, Social Security numbers,
 7 dates of birth, bank account numbers, and information regarding employee health plans. *See id.* ¶ 1.
 8 F21 allegedly discovered this in March of 2023, and then waited until August of 2023 to inform the
 9 impacted individuals. *See id.* ¶¶ 4–6.

10 There are currently seven class actions against F21 that have been consolidated into one. *See*
 11 ECF Nos. 21, 43 (consolidation orders). By lead plaintiff, the seven cases are:

- 12 1. Qudsiyyah Ishaq, Case No. 2:23-cv-07390-MEMF-AGR;
- 13 2. Kyra Robinson, Case No. Case No. 2:23-CV-07398-MEMF-AGR;
- 14 3. Brittnay Moll, Case No. 2:23-cv-07418-MEMF-AGR;
- 15 4. Erin Scott, Case No. 2:23-cv-07596-MEMF-AGR;
- 16 5. Akhiria Muldrow, Case No. Case No. 2:23-cv-07794-MEMF-AGR;
- 17 6. Victoria Rosas, Case No. 2:23-cv-07804-MEMF-AGR;
- 18 7. Chyna Taylor, Case No. 2:23-cv-08651-MEMF-AGR.

19 Qudsiyyah Ishaq filed the first action on September 6, 2023. *See* ECF No. 1. The Court
 20 granted a stipulation to consolidate the first six cases listed above on February 27, 2024. *See* ECF
 21 No. 21. In granting the stipulation and consolidating the cases, the Court ordered that any attorney
 22 could file a motion for appointment as interim class counsel within ten days of the consolidation
 23 order. *See id.* at 5. The Court granted a stipulation to consolidate the final case listed above, the
 24 *Chyna Taylor* action, on April 3, 2024.

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27 ¹ Cites to an “ECF No.” without a specific case number are to the docket in the lead case, *Qudsiyyah Ishaq v.*
 28 *F21 OpCO LLC*, Case No. 2:23-cv-07390-MEMF-AGR. To the extent that the Court cites the dockets of the
 other cases that have been consolidated, the Court will note the case number in the citation.

B. The Instant Motion

On March 7, 2024, Plaintiffs Qudsiyyah Ishaq, Kyra Robinson, Brittnay Moll, Erin Scott, Akhiria Muldrow, and Victoria Rosas (the “Ishaq Plaintiffs”) filed the first Motion for Appointment of Interim Co-Lead Class Counsel along with a Memorandum of Points and Authorities and Exhibits. *See* ECF No. 24 (“Motion” or “Mot.”); ECF No. 24-1 (“MPA”). The Motion requests that attorneys Samantha E. Holbrook (“Holbrook”), Gregory Haroutunian (“Haroutunian”), and John J. Nelson (“Nelson”) be named co-lead counsel.² On April 17, 2024, the Court continued the hearing on the Motion and ordered that “Any opposition or objection to the Motion for Appointment of Counsel, or any alternative Motion for Appointment of Counsel by another party must be filed by no later than April 26, [2024].” ECF No. 36.

On April 26, 2024, Plaintiff Chyna Taylor (“Taylor”) filed a second Motion for Appointment of Interim Co-Lead Class Counsel along with an Exhibit. *See* ECF No. 37 (“Second Motion” or “Second Mot.”). The Second Motion requested that attorney Paul Doolittle (“Doolittle”) be named interim class counsel, or in the alternative, be appointed a member of Plaintiffs’ Executive Committee.³ *See id.*

The Ishaq Plaintiffs filed a Reply in support of the Motion on May 3, 2024.

The Court set a hearing on the Motion and Second Motion for May 15, 2024. Prior to the hearing, Taylor withdrew the Second Motion. *See* ECF No. 43. In light of the withdrawal, the Court determined that the Motion could be decided without oral argument and took the Motion under submission. ECF No. 46.

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² Holbrook represents Plaintiff Kyra Robinson. Haroutunian represents Plaintiff Qudsiyyah Ishaq, the first plaintiff who filed suit, as well as Plaintiff Akhiria Muldrow. Nelson represents Plaintiff Brittnay Moll.

³ Doolittle represents Plaintiff Chyna Taylor.

1 **II. Applicable Law**

2 A “court that certifies a class must appoint class counsel.” Fed. R. Civ. P. 23(g)(1). Courts
3 may appoint interim class counsel to act on behalf of the putative class “before determining whether
4 to certify the action as a class action.” Fed. R. Civ. P. 23(g)(2). In determining whether to appoint an
5 attorney as class counsel, a court “must consider” the following:

- 6 (i) the work counsel has done in identifying or investigating potential claims in the action;
- 7 (ii) counsel’s experience in handling class actions, other complex litigation, and the types of
8 claims asserted in the action;
- 9 (iii) counsel’s knowledge of the applicable law; and
- 10 (iv) the resources that counsel will commit to representing the class

11 Fed. R. Civ. P. 23(g)(1)(A).⁴ A Court also “may consider any other matter pertinent to counsel’s
12 ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B).

13 **III. Discussion**

14 Here, the Court finds that the relevant considerations weigh in favor of appointing Holbrook,
15 Haroutunian, and Nelson as interim lead co-counsel. Thus, the Court will grant the Motion.

16 First, the “work counsel has done in identifying or investigating potential claims in the
17 action” supports appointing Holbrook, Haroutunian, and Nelson. *See* Fed. R. Civ. P. 23(g)(2)(i).
18 Haroutunian filed the first action on behalf of Plaintiff Qudsiyyah Ishaq on September 6, 2023. *See*
19 ECF No. 1. Holbrook, Haroutunian, and Nelson represent that as soon as the data breach became
20 public in August of 2023, they began investigating the facts, drafting pleadings, and organizing
21 plaintiffs. *See* MPA at 10–11. The record as to this factor points in favor of appointing Holbrook,
22 Haroutunian, and Nelson.

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26 ⁴ Federal Rule of Civil Procedure 23(g) does not explicitly define what a court should consider in appointing
27 *interim* class counsel, and only defines this in the context of appointing class counsel after certification.
28 Courts considering the appointment of interim class counsel apply the same analysis. *See, e.g., Azpeitia v.*
Tesoro Ref. & Mktg. Co. LLC, No. 17-CV-00123-JST, 2017 WL 4071368, *2 (N.D. Cal. Sept. 14, 2017);
Paraggua v. LinkedIn Corp., No. 5:12-CV-03088 EJD, 2012 WL 3763889, *1 (N.D. Cal. Aug. 29, 2012); *In*
re IndyMac ERISA Litig., No. CV0804579DDPVBKX, 2008 WL 11343122, *2 (C.D. Cal. Oct. 7, 2008).

1 Second, “counsel’s experience” handling class actions and “counsel’s knowledge of the
2 applicable law” support appointing Holbrook, Haroutunian, and Nelson. *See* Fed. R. Civ. P.
3 23(g)(2)(ii)–(iii). Holbrook, Haroutunian, Nelson, and their respective law firms all have extensive
4 experience litigating class actions. *See* ECF Nos. 24-2, 24-3, 24-4. Further, all have experience with
5 class actions in the data breach context specifically. *See id.* These two factors favor appointing
6 Holbrook, Haroutunian, and Nelson.

7 Third, Holbrook, Haroutunian, Nelson, and their respective firms have adequate resources
8 with which to represent the class. *See* Fed. R. Civ. P. 23(g)(2)(iv).

9 Fourth, the Court finds it appropriate to consider two other factors that are not listed in
10 Federal Rule of Civil Procedure 23(g). The Court “may consider any other matter pertinent to
11 counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P.
12 23(g)(1)(B). By grouping together, Holbrook, Haroutunian, and Nelson have shown an ability to
13 cooperate in order to better represent class members, and have consolidated their resources. This
14 shows some degree of initiative. The Court also notes that appointing Holbrook, Haroutunian,
15 Nelson would result in lead counsel that better reflects the diversity of the bar and likely diversity of
16 the class, providing an additional reason to appoint Holbrook, Haroutunian, Nelson.

17 In sum, the Court’s analysis of relevant considerations leads to the conclusion that Holbrook,
18 Haroutunian, and Nelson are qualified to represent the class. The Court will grant the Motion.

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