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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re LinkedIn Advertising Metrics
Litigation.

Case No. 20-cv-08324-SVK

**ORDER DENYING PLAINTIFFS'
MOTION FOR APPOINTMENT OF
INTERIM CO-LEAD CLASS COUNSEL**

Re: Dkt. No. 53

Before the Court is the motion of Plaintiffs TopDevz LLC and Noirefy, Inc. (the “moving Plaintiffs”) for appointment of Keller Lenkner LLC and Romanucci & Blandin, LLC as interim co-lead class counsel. Dkt. 53. Non-moving Plaintiff Synergy RX PBM LLC supports the moving Plaintiffs’ motion. Dkt. 54. Defendant LinkedIn Corporation opposes the motion. Dkt. 58. All parties have consented to the jurisdiction of a magistrate judge. Dkt. 10, 13, 52. Pursuant to Civil Local Rule 7-1(b), the Court deems this matter suitable for determination without oral argument. For the reasons that follow, the Court **DENIES WITHOUT PREJUDICE** the motion to appoint interim co-lead class counsel.

I. BACKGROUND

This case began as two separate suits against LinkedIn: *TopDevz, LLC and Noirefy, Inc. v. LinkedIn Corp.*, Case No. 20-cv-8324 (filed November 25, 2020), and *Synergy RX PBM LLC v. LinkedIn Corp.*, Case No. 21-cv-00513 (filed January 21, 2021). The Court related the cases. Dkt. 48. Upon stipulation of the parties, the Court then consolidated the cases for all purposes, and Plaintiffs filed a consolidated complaint. Dkt. 52, 55.

II. DISCUSSION

Under Federal Rule of Civil Procedure 23(g)(3), the district court may appoint interim counsel to act on behalf of a putative class before determining whether to certify a class. This rule

1 “authorizes [a] court to designate interim counsel during the pre-certification period if necessary to
2 protect the interests of the putative class.” *Azpeitia v. Tesoro Refining and Marketing Co. LLC*,
3 No. 17-cv-00123-JST, 2017 WL 4071368, at *1 (N.D. Cal. Sep. 14, 2017) (citation omitted). The
4 appointment of interim class counsel is discretionary and is particularly suited to complex actions:

5 If the lawyer who filed the suit is likely to be the only lawyer seeking appointment
6 as class counsel, appointing interim class counsel may be unnecessary. If,
7 however, there are a number of overlapping, duplicative, or competing suits
8 pending in other courts, and some or all of those suits may be consolidated, a
9 number of lawyers may compete for class counsel appointment. In such cases,
10 designation of interim class counsel clarifies responsibility for protecting the
11 interests of the class during precertification activities ...

12 *See In re Google Assistant Privacy Litig.*, No. 19-cv-04286-BLF, 2020 WL 7342713, at *1 (N.D.
13 Cal. Dec. 14, 2020) (quoting Manual of Complex Litig. (Fourth) § 21.11 (2004)). The
14 commentary to Rule 23 also notes that “[i]n some cases ... there may be rivalry or uncertainty that
15 makes formal designation of interim counsel appropriate.” Advisory Committee Note to Fed. R.
16 Civ. P. 23 (discussing former subd. G(2)(A), now renumbered as (g)(3)).

17 This case does not warrant appointment of interim class counsel at this time. As discussed
18 above, this case originated as two separate cases, which the Court related. The parties stipulated
19 to consolidation of the cases for all purposes, and at present there is only one consolidated action
20 with one consolidated complaint. *See* Dkt. 55. The attorneys for all Plaintiffs successfully
21 worked together to bring about consolidation and have continued to cooperate since the cases were
22 consolidated. The parties have not identified any other related lawsuits or the potential for
23 additional attorneys to enter the fray. Nor does there appear to be “a gaggle of law firms
24 jockeying to be appointed class counsel.” *Parrish v. Nat’l Football League Players Inc.*, No. C
25 07-00943 WHA, 2007 WL 1624601, at *9 (N.D. Cal. June 4, 2007). Two of the firms involved in
26 the case seek appointment as interim co-lead class counsel, and counsel for the non-moving
27 Plaintiff supports their motion. *See* Dkt. 54. The fact that two firms seek appointment as interim
28 co-lead class counsel actually detracts from their motion because “greater efficiency and clarity
can only be realized if the Court appoints *one* firm as interim class counsel.” *In re Nest Labs
Litig.*, No. 5:14-cv-01363-BLF, 2014 WL 12878556, at *2 (N.D. Cal. Aug. 18, 2014) (emphasis in

1 original). Under the circumstances of this case, the Court sees no danger to the interests of the
2 putative class that appointment of interim counsel will remedy. Thus, “[t]his action as it currently
3 stands ... does not present special circumstances warranting the appointment of interim class
4 counsel.” *Id.* at *1 (quoting *Donaldson v. Pharmacia Pension Plan*, No. CIV. 06-3-GPM, 2006
5 WL 1308582, at *1-2 (S.D. Ill. May 10, 2006) (noting that typical situation requiring appointment
6 of interim class counsel is one “where a large number of putative class actions have been
7 consolidated or otherwise are pending in a single court”)); *see also Kristin Haley v. Macy’s, Inc.*,
8 No. 15-CV-06033-HSG, 2016 WL 4676617, at *3 (N.D. Cal. Sep. 7, 2016) (denying appointment
9 of interim class counsel because “at present, there is only one consolidated action with one
10 consolidated complaint”).


11 The Court is not persuaded by the moving Plaintiffs’ assertion in the reply brief that
12 interim class counsel should be appointed “to ensure that there is no rivalry or competing interests
13 among the firms,” especially in light of their acknowledgment that “the firms have worked
14 amicably to achieve consolidation and avoid unnecessary delay to date.” Dkt. 60 at 1. The Court
15 welcomes the parties’ continued cooperation and “does not wish to invite future parties to
16 manufacture conflict in an attempt to get an early bite at the apple for motions for the appointment
17 of lead plaintiff and selection of lead counsel.” *See In re Google Assistant Privacy Litig.*, 2020
18 WL 7342713, at *2.

19 **III. CONCLUSION**

20 The Court, in its discretion, concludes that appointment of interim class counsel is not
21 necessary at this time to protect the interests of the Plaintiffs or the class. Accordingly, the
22 moving Plaintiffs’ motion is **DENIED WITHOUT PREJUDICE** to renewal of the motion if
23 there is a material change in circumstances.

24 **SO ORDERED.**

25 Dated: April 23, 2021

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27 _____
28 SUSAN VAN KEULEN
United States Magistrate Judge