

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 11-05379 MMM (AGR_x) Date November 1, 2011

Title *In re ConAgra Foods, Inc.*

Present: The Honorable MARGARET M. MORROW

ANEL HUERTA

Deputy Clerk

N/A

Court Reporter

Attorneys Present for Plaintiffs:

None

Attorneys Present for Defendants:

None

Proceedings: Order Appointing Interim Lead Counsel[35][43][44]

I. FACTUAL AND PROCEDURAL BACKGROUND

On October 6, 2011, the court consolidated five cases alleging that defendant ConAgra had deceived consumers by labeling and advertising Wesson Oils products as “100% Natural.”¹ The court directed the parties to file a stipulation and proposed order designating interim class counsel.² On October 11, 2011, the parties filed a stipulation asking that Milberg LLP and Wolf Haldenstein Adler Freeman & Herz LLC be appointed interim lead counsel for the putative class.³

On October 14, 2011, the court consolidated *Phyllis Scarpelli v. ConAgra Foods, Inc.*, No.

¹Order Taking Off Calendar and Denying as Moot Motion of Plaintiffs Briseno and Toomer to Consolidate Related Actions and Designate Interim Class Counsel; Consolidating Cases (“Consolidation Order”), Docket No. 33 (October 6, 2011). The consolidated cases were *Robert Briseno v. ConAgra Foods, Inc.*, No. CV 11-05379-MMM (AGR_x); *Christi Toomer v. ConAgra Foods, Inc.*, No. CV 11-05379-MMM (AGR_x); *Kelly McFadden v. ConAgra Foods, Inc.*, No. CV 11-06402-MMM (AGR_x); *Janeth Ruiz v. ConAgra Foods, Inc.*, No. CV 11-06480-MMM (AGR_x); and *Brenda Krein v. ConAgra Foods, Inc.*, No. CV 11-07097-MMM (AGR_x).

²*Id.*

³Stipulated Case Management Order, Docket No. 35 (October 11, 2011).

CV 11-08513-MMM (AGRx), with the other cases pending against ConAgra.⁴ On October 27, 2011, all of the named plaintiffs except for *Scarpelli* plaintiffs moved to appoint Milberg and Wolf Haldenstein as interim class counsel.⁵ The same day, the *Scarpelli* plaintiffs moved to appoint Bursor & Fisher, P.A., Milberg and Wolf Haldenstein as interim lead counsel.⁶ The court subsequently determined that it had consolidated the *Scarpelli* case in error, and vacated its October 14 order.⁷

II. DISCUSSION

Because the *Scarpelli* plaintiffs, whose suit was consolidated with the remaining actions in error, were the only parties to object to the appointment of Milberg and Wolf Haldenstein as interim class counsel, the court will enter an order on the parties' October 11, 2011 stipulation, rather than decide the competing motions for appointment of interim class counsel. Under Rule 23(g)(3), a court "may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." Although Rule 23(g)(3) provides no guidance for courts selecting interim class counsel, Rule 23(g)(1) identifies factors the court should consider in choosing class counsel *Levitte v. Google, Inc.*, Nos. C 08-03369 JW, C 08-03452 JW, C 08-03888 JW, C 08-04701 JW, 2009 WL 482252, *2 (N.D. Cal. Feb. 25, 2009). Under Rule 23(g)(1), "[i]n appointing class counsel, the court must consider: 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." FED.R.CIV.PROC. 23(g)(1)(A); see also *In re California Title Ins. Antitrust Litigation*, No. 08-01341 JSW, 2008 WL 4820752, *1 (N.D. Cal. Nov. 3, 2008). Additionally, the court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." FED.R.CIV.PROC. 23(g)(1)(B).

Applying these factors, the court concludes that Milberg and Wolf Haldenstein are appropriate interim lead counsel. The firms have performed significant work to identify and investigate potential claims in the action.⁸ The court, moreover, is satisfied that Milberg and Wolf Haldenstein are

⁴Consolidating Cases, Docket No. 38 (October 14, 2011).

⁵Plaintiffs Robert Briseno, Christi Toomer, Kelly McFadden, Janeth Ruiz, Lil Marie Virr and Brenda Krein's Motion for Designation of Interim Class Counsel, Docket No. 44 (October 27, 2011).

⁶Plaintiffs' Notice of Motion and Motion to Appoint Co-Lead Interim Class Counsel Pursuant to Fed. R. Civ. P. 23(g)(3), Docket No. 43 (October 27, 2011).

⁷Vacating Order re Consolidation, Docket No. 47 (October 28, 2011).

⁸Plaintiff Robert Briseno's and Christi Toomer's Motion for Consolidating Related Actions and Designating Milber LLP and Wolf Haldenstein Adler Freeman & Herz LLC as Interim Class Counsel, Docket No. 8 (August 4, 2011) at 12-13.

capable of serving competently as interim lead counsel, as both firms specialize in representing consumers in putative class actions and have extensive experience litigating actions similar to this one.⁹ The firms' experience also demonstrates that they are capable of committing the necessary capital, personnel, and time to a class action such as this.

Given that all the named plaintiffs are in agreement regarding the appointment of the firms and that ConAgra has not taken a position on the appointment of interim lead counsel,¹⁰ the court concludes that Milberg and Wolf Haldenstein will fairly and adequately represent the interests of the class.

III. CONCLUSION

For the reasons stated above, the court enters this order on plaintiffs' stipulation, appointing Milberg and Wolf Haldenstein as interim class counsel. In light of this ruling, the pending motions for appointment of interim class counsel (Docket Nos. 43 and 44) are denied as moot. The hearing on the motions set for November 7, 2011 at 10:00 a.m. is vacated. The hearing on ConAgra's motion to dismiss the complaint in the *Briseno* action will go forward as scheduled.

⁹Westerman Declaration In Support of Motion to Consolidate, Docket No. 11 (Aug. 5, 2011), Exh. K (Milberg resume); Exh. L (Wolf Haldenstein resume).

¹⁰Defendant ConAgra Foods, Inc.'s Response to Motion for Consolidating Related Actions, Docket No. 31 (October 3, 2011) at 1, 3.