

DOCKET NO.: (X06) UWY-CV25-6084708S: SUPERIOR COURT
OLIVIA LEARY, ET AL. : COMPLEX LITIGATION DOCKET
v. : AT WATERBURY
KENT SCHOOL CORPORATION :
d/b/a KENT SCHOOL : MARCH 9, 2026

**MEMORANDUM OF DECISION
RE: MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL (#115)**

The plaintiffs seek an order certifying the following proposed class: “All current or former students of [Kent School Corporation] who had personal information stored on an electronic device, including photographs, videos, and email communications that was accessed, transferred, copied, retained or utilized at any time by Daniel Clery, without their knowledge or consent from September 2016 through February 2023.” Docket Entry No. 115.

For the following reasons, I shall grant the motion in part and certify a class action limited to certain liability issues necessary to resolve the plaintiffs’ claims for negligence, recklessness, and violation of the Connecticut Unfair Trade Practices Act (“CUTPA”).

I

This civil action is one of four cases consolidated on this court’s docket in which former students and employees of Kent School Corporation allege that Daniel Clery, a former IT department employee, unlawfully accessed their personal electronic devices and gained access to private files, including intimate photographs and videos. The plaintiffs contend that Kent School failed to implement reasonable security

measures for its IT environment in general. They further allege that Kent School failed to investigate or take corrective action after a female employee reported, in the spring or summer of 2022, that Clery had improperly accessed her personal photographs. Kent School allegedly waited eight months—until the female employee reported a second incident of such behavior by Clery—before commencing an internal investigation. It hired an information and cybersecurity firm to examine Clery’s work computers and Kent School’s servers. The investigation revealed that between September 2016 and February 2023, Clery had accessed and copied personal files, including images and video files, of over eighty Kent School community members, including seventy current and former students.

Although the plaintiffs allege several different claims against Kent School, the principle claim sounds in negligence. They also assert claims for invasion of privacy, computer crimes, recklessness, negligent infliction of emotional distress, and violation of CUTPA.¹

II

A

A motion for class certification requires a court to follow a two-step process. “First, a court must ascertain whether the four prerequisites to a class action, as specified in Practice Book § 9-7, are satisfied. These prerequisites are: (1)

¹ Although the complaint in the present action does not include a CUTPA claim, the complaints in two of the consolidated cases do. The plaintiffs intend to file a consolidated amended complaint. Accordingly, I consider the CUTPA claim in this ruling.

numerosity—that the class is too numerous to make joinder of all members feasible; (2) commonality—that the members have similar claims of law and fact; (3) typicality—that the [representative] plaintiffs’ claims are typical of the claims of the class; and (4) adequacy of representation—that the interests of the class are protected adequately.” (Internal quotation marks omitted.) *Collier v. Adar Hartford Realty, LLC*, 349 Conn. 822, 385, 322 A.3d 1041 (2024).

If the § 9-7 prerequisites are satisfied, the trial court must then determine whether the requirements of Practice Book § 9-8 are satisfied. “These requirements are: (1) predominance—that questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) superiority—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. ... Because our class certification requirements are similar to those embodied in rule 23 of the Federal Rules of Civil Procedure, and our jurisprudence governing class actions is relatively undeveloped, we look to federal case law for guidance in construing the provisions of Practice Book §§ 9-7 and 9-8.” (Footnote omitted; internal quotation marks omitted.) *Id.*

The party moving for class certification bears the burden of establishing that the Practice Book requirements have been met. *Id.*, 385-86. The trial court must conduct a “rigorous analysis” that ensures that class certification is appropriate. *Id.*, 386. “In applying the criteria for certification of a class action, the [trial] court must take the substantive allegations in the complaint as true, and consider the remaining pleadings, discovery, including interrogatory answers, relevant documents, and

depositions, and any other pertinent evidence in a light favorable to the plaintiff. However, a trial court is not required to accept as true bare assertions in the complaint that class-certification prerequisites were met. ... Class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action. ... Consequently, a rigorous analysis frequently entail[s] overlap with the merits of the plaintiff's underlying claim. ... In determining the propriety of a class action, [however] the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of [the class action rules] are met." (Internal quotation marks omitted; internal citations omitted.) *Standard Petroleum Co. v. Faugno Acquisition, LLC*, 330 Conn. 40, 49–50, 191 A.3d 147 (2018). "Although a trial court has broad discretion in determining whether to certify a class action, it should resolve all doubts regarding the propriety of class certification in favor of certification." (Internal citations omitted.) *Collier v. Adar Hartford Realty, LLC*, supra, 349 Conn. 836.

"Even if certification is granted, the trial court is authorized to monitor developments bearing on the propriety of its class certification orders, and to amend those orders in light of subsequent developments. ... In the event that evidence later demonstrates that [an] alleged conflict exists, the trial court may then revisit the issue." (Internal quotation marks omitted.) *Standard Petroleum Co. v. Faugno Acquisition, LLC*, supra, 330 Conn. 50–51.

Notably, Practice Book § 9-9 provides for partial class actions, including class actions “with respect to particular issues. . . .” This provision is particularly relevant to the present motion.

B

I first address the Practice Book § 9-7 requirements.

“[A]s few as [forty] class members should raise a presumption that joinder is impracticable.” *Town of New Hartford v. Connecticut Resource Recovery Authority*, 291 Conn. 433, 475, n. 35, 970 A.2d 592 (2009) (quoting *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993)). Here, Clery allegedly accessed private information of at least eighty-one members of the Kent School community.

Kent School argues that the actual size of the class is speculative and unascertainable because plaintiffs “make no effort to account for the number of students whose claims would survive the applicable limitations periods or to identify how many students would actually satisfy the criteria set out in the proposed class definition.” Defendant Kent School’s Objection to Plaintiffs’ Motion for Class Certification (“Kent School Obj.”), Docket Entry No. 119, p. 28. I am not persuaded. “[Courts] have been reluctant to deny class action status because affirmative defenses might be available against different class members as long as the defenses do not overshadow the primary claims.” *Collins v. Olin Corp.*, 248 F.R.D. 95, 105 (D. Conn. 2008).

I conclude that Kent School’s affirmative defenses, particularly statute of limitations, do not overshadow the plaintiffs’ primary claims. I also conclude that, at

this juncture in the case, any doubts regarding the ability to identify students who actually satisfy the class criteria and definition should be resolved in favor of granting class certification. Admittedly, it may prove difficult to identify students, beyond those already identified by Kent School's internal investigation, whose personal data Clery actually accessed without their knowledge or consent. But discovery is ongoing and may yield new information. Moreover, Practice Book § 9-9 (b) provides that a court's class certification orders "may be altered or amended at any time." Thus, the definition of the class that the court approves in this opinion is subject to amendment.

Accordingly, Kent School has met its burden of satisfying the numerosity requirement.

The commonality requirement "is easily satisfied because there need only be one question common to the class. . . ." *Standard Petroleum Company v. Faugno Acquisition, LLC*, supra, 330 Conn. 54. See *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 324, 880 A.2d 106 (2005) ("The commonality requirement is satisfied as long as the members of the class have allegedly been affected by a general policy of the defendant, and the general policy is the focus of the litigation."). The plaintiffs list twenty-one allegedly common questions of law and fact, including whether Kent School owed a duty of care to the plaintiffs and the class, whether Kent School was negligent in failing to put appropriate security measures in place, and whether Kent School negligently supervised Clery's actions. Memorandum of Law in Support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel ("Pl. Mem."), Docket Entry No. 116, pp. 9–10. I conclude that many of the listed issues

relevant to Kent School's potential *liability* are common to all named plaintiffs and potential class members, e.g., whether Kent School owed the plaintiffs a duty of care, the nature and scope of any duty of care, and whether Kent School breached that alleged duty. Thus, the plaintiffs have satisfied the commonality requirement for the purpose of certifying an issue class.

The next question is whether the plaintiffs' claims are typical of the claims of the proposed class. Kent School disputes typicality. It argues that statute of limitations defenses render most plaintiffs' claims atypical, the plaintiffs' damages claims are not representative of the class, and the plaintiffs' claims arise from individual and fact-specific circumstances. Kent School Obj., Docket Entry No. 119, pp. 29–31.

I agree with Kent School that the plaintiffs' damages claims are not representative of the class. But the plaintiffs only seek class certification as to liability, with damages to be addressed in individual hearings. Plaintiffs' Reply Memorandum of Law in Support of Class Certification ("Pls. Reply"), Docket Entry No. 126, p. 5, n. 1. Given the limited scope of the plaintiffs' motion, whether Kent School owed the plaintiffs a duty of care, whether it was negligent (or reckless) in failing to have security measures in place to prevent or deter Clery from engaging in the type of conduct at issue, and whether it was engaged in trade or commerce and committed unfair or deceptive trade practices are questions that are typical of all class member's claims. The typicality requirement is satisfied.

Lastly, the named plaintiffs must persuade the court that they will fairly and adequately represent the interests of the class. Kent School does not dispute that the plaintiffs satisfy this requirement.

In sum, the plaintiffs have satisfied each Practice Book § 9-7 requirement.

C

The plaintiffs must also satisfy the requirements of Practice Book § 9-8 (3).

As to the plaintiffs' negligence, recklessness, and CUTPA claims, I conclude that common questions of law or fact predominate insofar as liability is concerned. If the Practice Book did not permit certification of partial class actions, the highly individual nature of each Plaintiff's damages claim would preclude class certification. Yet, as previously noted, Practice Book § 9-9 provides for partial class actions, including class actions "with respect to particular issues. . . ." And, as also noted, the plaintiffs only seek class certification as to liability. Accordingly, I conclude that the plaintiffs have met their burden of showing that common questions of law or fact predominate over individual questions with respect to critical components of Kent School's potential liability for negligence, recklessness, and CUTPA. Certification of an issue class is appropriate to resolve certain liability elements of those claims.

I reach a very different conclusion insofar as the plaintiffs request class certification to resolve liability issues concerning their additional claims for invasion of privacy, computer crimes, and negligent infliction of emotional distress. I conclude that common questions of law or fact do not predominate over individual questions as to those claims. Therefore, I will not certify even an issue class as to those claims.

Lastly, certifying an issue class to resolve key liability elements of the plaintiffs' negligence, recklessness, and CUTPA claims is superior to adjudicating those issues on a case-by-case basis.² In particular, an issue class will promote judicial efficiency and economy and avoid potentially inconsistent rulings on these critical, threshold liability issues.

III

The plaintiffs also move the court to appoint Faxon Law Group, LLC, and Silver, Golub & Teitell LLP, as co-lead class counsel. I have considered the mandatory and permissive criteria set forth in Practice Book § 9-9 (d).³ The qualifications and experience of both firms to serve as lead class counsel are undisputed and well known. I shall grant the motion to appoint them as co-lead class counsel.

² I have considered each factor set forth in Practice Book § 9-8 (3), i.e., "(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of class action."

³ Practice Book § 9-9 (d) provides: "(1) In appointing class counsel, the court must consider: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class. (2) The court may: (i) consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class; (ii) direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorneys fees and nontaxable costs; and (iii) make further orders in connection with the appointment."

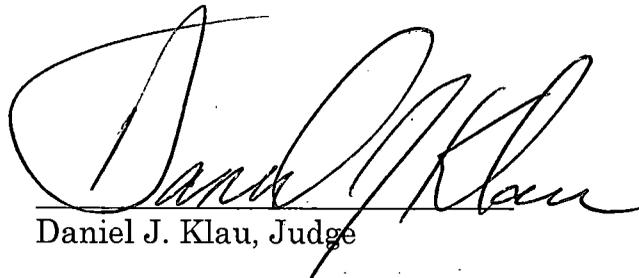
IV

For all of the foregoing reasons, the motion for class certification is GRANTED in part and DENIED in part. The court enters the following orders pursuant to Practice Book § 9-9 (a) (1) (b):

1. The certified class is defined to include all current or former students of Kent School who had personal information stored on an electronic device, including photographs, videos, and email communications that were accessed, transferred, copied, retained or utilized at any time by Daniel Clery, without their knowledge or consent from September 2016 through February 2023.
2. The named plaintiffs are hereby appointed and shall serve as class representatives.
3. The class action is limited to the following claims, issues or defenses:
 - a. As to Count One (Negligence), (i) whether Kent School owed the plaintiffs a duty of care during two time periods: (1) September 2016 to Spring/Summer 2022, and (2) Spring/Summer 2022 through February 2023, (ii) the nature and scope of any such duty of care, and (iii) whether Kent School breached any such duty;
 - b. As to Count Four (Recklessness), if Kent School owed the plaintiffs a duty of care and breached such duty, whether Kent School acted recklessly;
 - c. As to the CUTPA claim, (i) whether Kent School was engaged in trade or commerce with respect to its alleged negligence concerning Daniel

Clery; and (ii) whether Kent School's alleged conduct in employing Clery, giving him access to the plaintiffs' computers and electronic devices, failure to maintain reasonable cybersecurity protocols for a school environment, and failure to act to protect the plaintiffs' information once it knew of the breach constitutes unfair and/or deceptive trade practices under CUTPA.

4. Faxon Law Group, LLC and Silver, Golub & Teitel LLP are appointed as co-lead class counsel.
5. On or before March 23, 2026, co-lead counsel shall serve on Kent School and file with the court a proposed form of notice to class members that comports with the requirements of Practice Book § 9-9 (a) (2) (B).
6. Except as set forth above, the motion for class certification is DENIED.



Daniel J. Klau, Judge

Ferraro, Ronald

From: Ferraro, Ronald
Sent: Monday, March 9, 2026 4:10 PM
To: 'dlschwartz@daypitney.com'; 'lmccarthy@daypitney.com'; 'hfetner@daypitney.com'; 'dgolub@sgtlaw.com'; 'jgoldstein@sgtlaw.com'; jsclar@sgtlaw.com
Subject: UWYCV256084708S LEARY, OLIVIA V. KENT SCHOOL CORPORATION A/K/A KENT SCHOOL
Attachments: UWY CV25-6084708 O'Leary v Kent School Memo of Decision motion for class certification 115 3-9-26.pdf

Counsel,

Judge Klau has issued his memorandum of decision on the class certification motion in this case. The decision is in the file at #141 and I have attached a PDF copy to this email.

Do not hesitate to contact me with any questions or issues.

Thanks
Ron