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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6
7 JULIE CARLSON and ROBERT
8 STARK,

9 Plaintiffs,

10 v.

11 ANKA BEHAVIORAL HEALTH,
12 INC.,

13 Defendant.

NO. C10-3914 TEH

ORDER FOR SUPPLEMENTAL
BRIEFING AND ORDER
CONTINUING HEARING ON
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

14 This matter is scheduled for hearing on Plaintiffs' unopposed motion for preliminary
15 approval of class action settlement on November 19, 2012. After reviewing the papers, the
16 Court has serious questions, including the following, about the proposed settlement:

- 17 1. How can the Court evaluate the proposed settlement when the parties have
18 presented no estimation of the value of Plaintiffs' claims if they were to prevail at trial?
- 19 2. What evidence or calculations support counsel's assertion that the approximately
20 200 workers making up "the core of the settlement class," Mallison Decl. ¶ 32, are expected
21 to receive as much as "several thousand dollars per employee," Mot. at 9?
- 22 3. If the remaining approximately 80% of the estimated 1000 class members receive
23 only approximately one hundred dollars on average, is the proposed settlement fair to them?
- 24 4. Why is it reasonable for class members to wait up to two years to receive a
25 settlement check? If it is reasonable to wait that long, how will the order of distribution be
26 decided? Will counsel receive any payments, and will the proposed class representatives
27 receive their proposed incentive payments, before all settlement shares have been
28 distributed?

1 5. Is it overbroad to require the release of all claims that “could have been pled,”
2 Settlement at 9 (Ex. 1 to Mallison Decl.)? Likewise, does the release violate the Fair Labor
3 Standards Act, which allows only for opt-in collective actions under 29 U.S.C. § 216(b)?

4 6. The proposed timeline runs afoul of the requirement that class members must have
5 an adequate opportunity to evaluate Plaintiffs’ motion for attorneys’ fees before the deadline
6 for filing objections. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir.
7 2010).

8 7. The class notice should not be on pleading paper, nor should it bear the signature
9 of the Court. As written, it also appears to contain too much legalese to be comprehensible
10 to the average class member.

11 8. Has Defendant complied with the notice requirements of 28 U.S.C. § 1715(b)?

12 The parties shall address these issues in a joint filing to be submitted on or before
13 **November 26, 2012**. The November 19, 2012 hearing is continued to **December 10, 2012,**
14 **at 10:00 AM**. If, as a result of conferring on the Court’s questions, the parties decide to
15 renegotiate the proposed settlement, then Plaintiffs shall file a notice withdrawing their
16 motion for preliminary approval. Such withdrawal would be without prejudice to filing a
17 subsequent motion for approval of a different settlement agreement.

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19 **IT IS SO ORDERED.**

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21 Dated: 11/14/12



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT