

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WELTONIA HARRIS

Plaintiff,

vs.

U.S. PHYSICAL THERAPY, INC., *et al.*,

Defendants.

2:10-cv-01508-JCM -VCF

ORDER

**(Remand from District Judge: Final Fairness
Hearing #54)**

Before the court is the matter of *Harris v. U.S. Physical Therapy, Inc., et al* (Case No. 2:10-cv-01508-JCM -VCF).

Background

On May 31, 2012, plaintiff Weltonia Harris filed a motion for preliminary approval of class action settlement and related orders. (#47 and #48). In plaintiff’s motion, she asked this court to take the following steps in the settlement approval process: (1) grant preliminary approval of the settlement agreement, including the settlement relief to the class and the fees and costs payment to plaintiff’s counsel; (2) provisionally certify the proposed settlement class and appoint Weltonia Harris as settlement class representative; (3) appoint as class counsel the law firm of Caddell & Chapman; (4) approve the proposed notice plan and the forms of settlement notice and order provision of such notice; and (5) schedule the final fairness hearing and related dates as proposed by the parties. (#48). On June 14, 2012, defendant U.S. Physical Therapy, Inc, filed a response to plaintiff’s motion, stating that it “agrees that the relief sought on [p]laintiff’s [motion] is appropriate” and joins in her request. (#52).

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3 On July 18, 2012, the undersigned Magistrate Judge issued a report and recommendation
4 (hereinafter “R&R”) finding that the settlement is reasonable, fair, and adequate, and recommending
5 granting the relief sought in plaintiff’s motion (#47 and #48). (#53). The R&R recommended that the
6 District Judge grant preliminary approval of the proposed settlement and certify the class. *Id.* The R&R
7 also recommended that the District Judge order notice of settlement be distributed in accordance with
8 the terms of the settlement agreement (#51-1 Exhibit 1) and schedule a final fairness hearing “for a date
9 that would provide class members enough advance notice to be able to attend if they desire.” *Id.* Any
10 objection to the R&R was due by July 18, 2012. *Id.* No objection was filed.

11 On August 9, 2012, the District Judge issued an order adopting the R&R and granting the motion
12 for preliminary approval of class action settlement and related orders (#47 and #48), thereby (1)
13 granting preliminary approval of the settlement agreement (#51-1 Exhibit 1), including settlement relief
14 to the class members of \$1,000, an incentive award to plaintiff Harris of \$1,5000, and a fee payment to
15 plaintiff’s counsel of \$85,977.50, plus reasonable and necessary expenses and costs estimated to be no
16 more than \$8,608.42¹, (2) certifying the proposed class of 47 members and appointing plaintiff Harris as
17 settlement class representative, (3) appointing the law firm of Caddell & Chapman as class counsel, and
18 (4) approving the proposed notice plan (#51-1 Exhibit 1 Section (3)) and the proposed form of
19 settlement notice (#51-2 Exhibit A). (#54). The District Judge also remanded the final fairness hearing
20 and the scheduling therefor to the undersigned Magistrate Judge. *Id.*

21 **Remand for Distribution of Notice and Scheduling Final Fairness Hearing**

22 The Manual for Complex Litigation describes a three-step procedure for approval of class action
23 settlements: (1) preliminary approval of the proposed settlement at an informal hearing; (2)
24 dissemination of mailed and/or published notice of the settlement to all affected class members; and (3)
25 a “formal fairness hearing” or final settlement approval hearing, at which class members may be heard

¹ Plaintiff’s counsel must submit an application for attorneys’ fees with the motion for final approval.

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2 regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and
3 reasonableness of the settlement may be presented. MANUAL FOR COMPLEX LITIGATION
4 (FOURTH) § 21.632 (2008) (hereinafter “MANUAL”).

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6 **A. Preliminary Approval**

7 As the District Judge adopted the R&R and granted the preliminary approval of the proposed
8 settlement, the first step is satisfied. (#54); *See* MANUAL §13.14 (stating that a formal hearing is not
9 required at the preliminary approval stage, and the court may grant the parties’ motion upon an informal
10 request by the settling parties).

11 **B. Dissemination of Mailed Notice**

12 In accordance with Rule 23(e)(1)(B), step two requires “the court to ‘direct notice in a reasonable
13 manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or
14 compromise’ regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3).”
15 MANUAL §§ 21.312 and 21.632. Rule 23(e)(1)(B) requires notice in a reasonable manner to “all class
16 members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” *Id.*
17 “[I]ndividual notice is required, where practicable, in Rule 23(b)(3) actions.” *Id.* “In an order
18 preliminarily approving the settlement under Rule 23(e), the judge sets the date for providing notice of
19 the proposed settlement. This order, as well as the notice, should establish the time and place of a public
20 hearing on the proposed settlement and specify the procedure and timetable for opting out, filing
21 objections, and appearing at the settlement hearing.” *Id.*

22 The “notice should announce the terms of a proposed settlement and state that, if approved, it will
23 bind all class members. If the class has been certified only for settlement purposes, that fact should be
24 disclosed. Even though a settlement is proposed, the notice should outline the original claims, relief
25 sought, and defenses so class members can make an informed decision about whether to opt out.” *Id.*

Plaintiff attached the proposed form of notice of the settlement to the settlement agreement, which

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2 complies with the requirements outlined above. (#51-2 Exhibit A). The proposed form of notice was
3 approved by the District Judge. (#54). As the fairness hearing and the scheduling thereof was
4 remanded to the undersigned Magistrate Judge, and § 21.312 requires the judge to set the date for
5 providing notice and “the time and place of the public hearing on the proposed settlement and specify
6 the procedure and timetable for opting out, filing objections, and appearing at the settlement hearing,”
7 the undersigned orders that notice be distributed as follows:

- 8 (1) On or before September 21, 2012, defense counsel must provide the law firm of
9 Caddell & Chapman with updated contact information from its personnel files for
10 each of the 47 class members.
11 (2) On or before September 26, 2012, the law firm of Caddell & Chapman must send
12 each class member, by First Class Certified Mail, the court approved notice of the
13 settlement (#51-2 Exhibit A)² providing the time and place of the final fairness
14 hearing and providing for an objection date of October 15, 2012, and an opt-out
15 and intention to appear date of November 7, 2012.
16 (3) On or before November 15, 2012, the law firm of Caddell & Chapman must
17 respond to any class member objections or inquiries regarding the settlement, the
18 terms thereof, and/or the final fairness hearing.

19 **C. Scheduling Final Approval Hearing**

20 Step three requires that a “formal fairness hearing” or final settlement approval hearing, at which
21 class members may be heard regarding the settlement, and at which evidence and argument concerning
22 the fairness, adequacy, and reasonableness of the settlement may be presented,” be scheduled for a date
23 that would provide class members enough advance notice to be able to attend if they desire. MANUAL
24 § 21.632. The final fairness hearing is scheduled for December 7, 2012, at 1:30 p.m. in Courtroom 3A.
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² As the undersigned will be conducting the final fairness hearing, paragraphs 18 and 19 on page 8 of the notice of settlement (#51-2 Exhibit A) must be amended to read “Judge Ferenbach” in place of “Judge Mahan.”

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2 The court finds that, in accordance with § 21.632, this date provides class members enough advance
3 notice to be able to attend if they desire. *Id.*

4 Accordingly, and for good cause shown,

5 IT IS HEREBY ORDERED that the notices of settlement (#51-2 Exhibit A) must be distributed
6 as outlined above.

7 IT IS FURTHER ORDERED that a final fairness hearing is scheduled for December 7, 2012, at
8 1:30 p.m. in Courtroom 3A.

9 DATED this 18th day of September, 2012.

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12 CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
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