

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

DARYL TEBLUM, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

Case No.: 2:19-cv-403-MRM

PHYSICIAN COMPASSIONATE  
CARE LLC,

Defendant.

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**JUDGMENT IN A CIVIL CASE**

**Decision by Court.** This action came before the Court and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** pursuant to this Court's Order of August 24, 2022: 1) Plaintiff's Unopposed Renewed Motion for Final Approval of Class Settlement is GRANTED in part and DENIED in part as set forth below: a) the Settlement Agreement is APPROVED, under Federal Rule of Civil Procedure 23(e), as a fair, reasonable, and adequate settlement in the best interests of the settlement class, in light of, inter alia, (a) the uncertainty about the likelihood of the settlement class's ultimate success on the merits; (b) the range of the settlement class's possible recovery; (c) the complexity, expense, and duration of the litigation; (d) the substance and amount of opposition to the Settlement Agreement; (e) the state of proceedings at which the Settlement Agreement was achieved; (f) all written submissions, declarations, and arguments of counsel; and (g) only after notice and a hearing, b) the settlement class, defined below, is CERTIFIED solely for purposes of the Settlement

under Federal Rule of Civil Procedure 23(b)(3). The settlement class is defined as: All persons within the United States who (1) were sent a text message; (2) by or on behalf of Defendant; (3) on their mobile telephone; (4) from June 14, 2015 through the date of final approval; (5) using the text messaging platform provided by Twilio to send text messages like the one Plaintiff received, c) excluded from the settlement class are: (i) the district judge and magistrate judge presiding over this case, the judges of the United States Court of Appeals for the Eleventh Circuit, their spouses, and persons within the third degree of relationship to either of them; (2) individuals who are or were during the class period agents, directors, employees, officers, or servants of Defendant or of any affiliate or parent of Defendant; (3) Plaintiff's counsel and their employees, and (4) all persons who file a timely and proper request to be excluded from the settlement class in accordance with Section III(D) of the Settlement Agreement, d) Plaintiff Daryl Teblum is APPOINTED as the class representative of the settlement class, e) Manuel S. Hiraldo of Hiraldo P.A., Ignacio J. Hiraldo, of IJH Law, and Michael Eisenband of Eisenband Law P.A., who are suitable and competent counsel, are APPOINTED as class counsel under Federal Rule of Civil Procedure 23(g), f) the motion is DENIED to the extent that it seeks any greater or different relief; 2) Plaintiff's Unopposed Second Amended and Renewed Motion for Attorneys' Fees and Service Award for Class Representative and Motion to Find Notice and Administrative Costs Reasonable and Authorized (Doc. 80) is GRANTED in part and DENIED in part as set forth below: a) Class counsel is AWARDED attorney's fees in the total amount of \$184,135.50. This amount must be paid within the time period and in the manner set forth in the Settlement Agreement, b) Plaintiff's request for a \$5,000 Service Award is DENIED, c) the Settlement Administrator is AWARDED its final costs and expenses up to \$46,158.75, d) the motion is DENIED to the

extent that it seeks any greater or different relief; 3) The Court DECLINES to retain jurisdiction over this action. Accordingly, this action, including all individual and class claims, is DISMISSED WITH PREJUDICE, without fees or costs to any party except as otherwise provided herein.

August 25, 2022

ELIZABETH M. WARREN,  
CLERK

s/jlk, Deputy Clerk

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
  - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
  - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
  - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
  - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
  - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
  - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
  - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
  - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
  - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
  - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).