IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA ROE 1; RHONDA ROE 3; RHONDA ROE 4; RHONDA ROE 5; AND RHONDA ROE 6,
Appellants,
vs.
LILY SHEPARD; JANE DOE DANCER I; JANE DOE DANCER II; JANE DOE DANCER III; JANE DOE DANCER IV; JANE DOE DANCER V, INDIVIDUALLY, AND ON BEHALF OF CLASS OF SIMILARLY SITUATED INDIVIDUALS; AND SHAC, LLC,
Respondents.

No. 85605

FILED
NOV 28 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court final judgment approving a settlement in a class action matter involving minimum wage claims. Eighth Judicial District Court, Clark County; Elham Roohani, Judge.[1]

Respondent Lily Shepard and Doe respondents (collectively, Shepard) are class representatives in the underlying minimum-wage class action lawsuit against respondent SHAC, LLC (collectively with Shepard, respondents). Shepard's counsel and SHAC's counsel negotiated a settlement and sought district court approval. Appellants (collectively, Roes) are five class members who objected to the proposed settlement.[2] The

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

[2]Although Rhonda Roe 1 and Rhonda Roe 6 are listed as appellants, they are not actually members of the class and are not proper parties to this appeal. As explained in our contemporaneous resolution of their writ petition in Docket No. 86448, the district court was within its discretion in denying their request to intervene in the underlying litigation.

district court approved the settlement over Roes' objections, and they now appeal, contending that the district court's resultant order should be reversed on various grounds. As explained below, we disagree and affirm.

Roes primarily contend that reversal is warranted because the class-notification procedure failed to comport with due process, in that not enough class members received notice of the proposed settlement. We disagree. *Cf. Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1043 (9th Cir. 2019) ("[W]e review a district court's rulings regarding notice de novo." (internal quotation marks omitted)[3]; FRCP 23 advisory committee note (1966) (recognizing that FRCP 23's notice provisions are "designed to fulfill requirements of due process to which the class action procedure is of course subject"). Here, the district court ordered SHAC and Shepard to provide notice to the 897 class members by mail at the members' last-known address. The record demonstrates that roughly 81 percent of the members (722 out of 897) received the notice and that only 51 members returned a claim form, exclusion, or objection.

Although Roes rely on *Roes, 1-2*, 944 F.3d at 1047, for the proposition that respondents should have been required to engage in some sort of social media outreach, we are not persuaded. Namely, we share the district court's skepticism that spending those additional resources would have appreciably increased the number of class members who responded to the class action. This is evidenced by Roes' counsel's own social media postings regarding the class action, which generated only seven responses.

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[3]Roes and respondents dispute the applicable standard of review to evaluate a district court's notice-related decisions. Because we agree that the district court's notice-related decisions in this case comported with due process, we need not address whether an abuse-of-discretion standard of review would be more appropriate.

Thus, in the district court's words, respondents "could have gone to the ends of the earth to try to find [all the class members]," but we agree that mailing the notices was "reasonably calculated" under the circumstances to afford the class members notice and thus satisfied due process. *See Grupo Famsa v. Eighth Jud. Dist. Ct.*, 132 Nev. 334, 337, 371 P.3d 1048, 1050 (2016) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950))); *cf. Roes 1-2*, 944 F.3d at 1046 n.7 (recognizing that "neither due process nor Rule 23's standard necessarily require actual notice").

Roes also contend that reversal is warranted because the notices themselves failed to provide sufficient information regarding the settlement's terms, thereby violating due process and NRCP 23.[4] *Cf. In re Cement & Concrete Antitrust Litig.*, 817 F.2d 1435, 1440 (9th Cir. 1987) ("Although [FRCP 23(e)] gives a court broad discretion, both the form and content of the notice must satisfy constitutional due process requirements."), *reversed on other grounds in Cal. ARC Am. Corp.*, 490 U.S. 93 (1989). In particular, Roes observe that the notices failed to explain (1) the amount of attorney fees to which Shepard's counsel would be entitled and (2) the minimum amount of damages each class member might receive. Roes, however, did not cite any authority in district court to support the

[4]The only potentially applicable provision in NRCP 23 regarding the contents of a proposed settlement notice is NRCP 23(d)(3). Roes do not dispute that the notices in this case contained the information set forth in that provision, and Roes' reliance on NRCP 23 is otherwise unclear.

proposition that due process or NRCP 23 require that degree of specificity in a proposed settlement notice.[5] Here, the notice contained a paragraph with a bold heading entitled "**How will the lawyers be paid?**" That paragraph also explained that Shepard's counsel would be paid from the "Settlement Fund" for counsel's work on the case, and the notice invited class members to contact the case's claims manager to review a copy of the settlement. Relatedly, the notice contained a paragraph with a bold heading entitled "**How are settlement amounts calculated?**" That paragraph explained that class members who submitted a claim "will receive their share of the Net Settlement Fund" based on a "formula [that] takes into account the number of hours [each class member] has performed at Sapphire." And as noted, the notice explained how an interested class member could review the settlement. In sum, we agree with the district court that the notices provided sufficient information regarding the settlement's terms so as to comport with due process and NRCP 23.

Roes next contend that the settlement's terms were not fair, reasonable, and adequate. *Cf. Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975) ("Under Rule 23(e) the district court acts as a fiduciary who must serve as a guardian of the rights of absent class members. The court cannot accept a settlement that the proponents have not shown to be fair, reasonable, and adequate." (internal citations omitted)). As a threshold matter, we note that the "fair, reasonable, and

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[5]For the first time on appeal, Roes rely on 3 Newberg & Rubenstein on Class Actions § 8.22 (6th ed.), for the proposition that a proposed settlement notice must explain the amount of attorney fees to which class counsel is entitled under the settlement. We do not read the relied-upon portion of that treatise to require the level of specificity that Roes are seeking in this case nor are we bound by that treatise.

adequate" standard arises from FRCP 23(e)(2) and that NRCP 23 has no such counterpart. *Compare* FRCP 23(e)(2) (providing that a court may only approve a proposed settlement upon "finding that it is fair, reasonable, and adequate"), *with* NRCP 23(f) (merely requiring "approval of the court" before "[a] class action [may] be dismissed or compromised"). But in any event, the district court made detailed factual findings at both the May 12, 2022, hearing and in its September 28, 2022, final judgment analyzing the factors espoused in *Churchill Village v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004). Having reviewed the record and Roes' arguments on appeal, we discern no abuse of discretion in the district court's decision to approve the settlement.[6] *See Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 286, 163 P.3d 462, 467 (2007) (reviewing a district court's approval of a class-action settlement for an abuse of discretion).

Roes next contend that Shepard's counsel was "conflicted" and "incompetent," such that this court should reverse the district court's order approving the settlement and appoint Roes' counsel as new class counsel on remand. However, we conclude that the district court was within its discretion in finding that the alleged "conflict" had no bearing on the settlement's fairness. *Id.* Likewise, in its order approving the settlement, the district court made detailed findings regarding the competence of Shepard's counsel, none of which Roes meaningfully refute. Consequently,

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[6]In this, we conclude that the district court was within its discretion in excluding from the class those individuals that were involved in the *Terry* case. *Cf. generally Terry v. Sapphire Gentlemen's Club*, 130 Nev. 879, 336 P.3d 951 (2014) (recounting the circumstances of previous litigation related to the underlying matter). We express no opinion on the due process concerns that may be implicated by those individuals in the *Terry* case who did not receive actual notice of that case's settlement.

we are not persuaded that the settlement should be reversed on these grounds, much less that Roes' counsel should be appointed as new class counsel.

Roes next take issue with the arbitration agreements that SHAC entered with proposed class members before the district court entered its April 2018 order certifying the proposed class. In particular, Roes contend that SHAC waived its right to enforce those arbitration agreements—and thereby exclude those proposed members from the class—because SHAC did not raise the arbitration agreements as a basis for excluding those proposed members in SHAC's initial motion to dismiss the underlying action. However, Roes did not raise this argument in district court, so we decline to consider it on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Although Roes observe on appeal that *Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022), supports their arbitration/waiver argument, they have not explained why they were unable to make arguments similar to those asserted by the *Morgan* plaintiffs in district court.

Roes finally contend that the district court erred in awarding Shepard's counsel $100,000 in costs because counsel did not submit sufficient documentation supporting those costs. We disagree. As a threshold matter, Roes did not include any documentation in their appellate appendices indicating that they objected in district court to the award of costs. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (observing that it is an appellant's responsibility to provide an adequate record for this court's review and that when a portion of the record is missing, "we necessarily presume that the missing portion supports the district court's decision"). In any event, Shepard and SHAC

agreed in the settlement that Shepard's counsel would be entitled to $100,000 in costs, such that the district court properly made that award without requiring documentation. Moreover, we note that Roes were not prejudiced by this award, monetarily or otherwise, because the settlement provided for such an award separate and apart from the pool of money that was allocated for settling the class members' claims.

Consistent with the foregoing, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Lee, J.
Lee

cc: Chief Judge, Eighth Judicial District Court
Department 11, Eighth Judicial District
Leon Greenberg Professional Corporation
Greenberg Traurig, LLP/Las Vegas
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Bighorn Law/Las Vegas
Lewis Roca Rothgerber Christie LLP/Las Vegas
Eighth District Court Clerk