

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

COUNTY OF MONMOUTH, NEW
JERSEY, on behalf of itself and all others
similarly situated,

Plaintiff,

vs.

FLORIDA CANCER SPECIALISTS,
P.L.; and DR. WILLIAM N. HARWIN,

Defendants.

Case No. 2:18-cv-201-SDM-MRM

**JOINT NOTICE REGARDING
RECOMMENDATION FOR FINAL APPROVAL**

On February 21, 2020, Magistrate Judge Mac R. McCoy filed a Report and Recommendation in which he recommended, among other things, that the Court grant Plaintiff's unopposed motion for final approval of the class settlement and plan of allocation, "subject to further modification of the allocation plan" as described therein. (Doc. 102 at 1). Judge McCoy provided parties with "fourteen days from [February 21, 2020] to file written objections to the Report and Recommendation's factual findings and legal conclusions." (Doc. 102 at 31). He also stated that "[t]he parties are, of course, free to expediate the [Court's] consideration of this Report and Recommendation by filing a written notice stating that they do not object." *Id.* No objections were filed on the docket in the allotted fourteen days, and Plaintiff and Defendants (the "Parties") now submit this joint notice affirming that they do not object to the Report and Recommendation.

In the Report and Recommendation, the Magistrate Judge took “slight issue” with language in the plan of allocation that states that “if a balance remains in the settlement fund after initial distributions and the void date has passed, the class representative *may* request approval from the Court to distribute the balance to ‘charities or other appropriate beneficiaries.’” *Id.* at 19 (citing Doc. 92-1 at 2). Judge McCoy was concerned with the apparently permissive nature of that language, and therefore recommended that the Court approve “the settlement agreement subject to ordering the parties to submit a modified plan of allocation *requiring* Court approval to distribute any remaining balance of the settlement fund to charities or other appropriate beneficiaries.” (Doc. 102 at 30) (emphasis in original).

The Parties confirm that they have always “intend[ed] that if—after funds have been distributed to class members and fees and costs paid—there is a residual amount in the Settlement Fund that is too small for another distribution to be economically viable, the Parties will seek the Court’s approval to pay that amount to a suitable charity” (Doc. 83 at 8, n.8). Consistent with this, the Parties now submit for the Court’s consideration a proposed Amended Plan of Allocation that they hope will resolve Judge McCoy’s concerns (attached hereto as Exhibit A). Specifically, the provision at issue has been amended to read:

If, after the initial distributions from the Net Settlement Fund have been made and the Void Date has passed, a balance remains in the fund that is too small for a further distribution to be economical, the Class Representative will request the Court for its approval to distribute that balance to charities or other appropriate beneficiaries.

The Parties respectfully request that the Court adopt the Magistrate Judge's Report and Recommendation together with the Amended Plan of Allocation.

Dated: March 11, 2020

Respectfully submitted,

/s/ Lawrence A Farese

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PROOF OF SERVICE

I hereby certify that, on March 11, 2020, a copy of the foregoing response and this proof of service were served upon all counsel of record via CM/ECF.

Dated: March 11, 2020

Respectfully submitted,

By: /s/ Lawrence A. Farese

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