

76-2408 II
AC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

OLLIE CARRUTHERS, et al.,
Plaintiffs,

vs.

Case No. 76-6086 CIV-WMH

RON COCHRAN, et al.,
Defendants.

PLAINTIFFS' MOTION TO CORRECT OR AMEND ORDER APPROVING SETTLEMENT

The parties entered into Stipulation for Entry of a Consent Decree. On January 20, 1995, a fairness hearing was held to determine compliance with Federal Rule of Civil Procedure Rule 23(e). At that time the Court heard argument as to the appropriateness of the settlement and indicated approval pending review of comments and objections received from class members. The Stipulation provides, in Paragraph 26 as follows:

Upon Court approval of the stipulation the terms of this agreement shall be incorporated into the Consent Decree. The defendants shall be permanently enjoined from violating the terms of the Consent Decree. Defendants' obligations regarding ACA compliance shall terminate upon defendant's achieving ACA accreditation. The court shall retain jurisdiction to enforce the terms and conditions of the consent Decree.

On January 27, 1995, an order titled "Order Approving Settlement Agreement and Dismissing Case" was signed and subsequently filed with the Clerk on January 31, 1995 and forwarded to the undersigned. The order contains clerical errors resulting in inconsistency between the Stipulation and the order in the following particulars: the order does not enter a consent judgment, does not provide for permanent injunctive relief, and modifies the retention of jurisdiction to "a reasonable period of time". Further, the subject order dismisses the case as opposed to entering the agreed judgement. The court approved notice of settlement provided to

the class neither mentioned nor contemplated dismissal of the action as opposed to entry of a consent judgment.

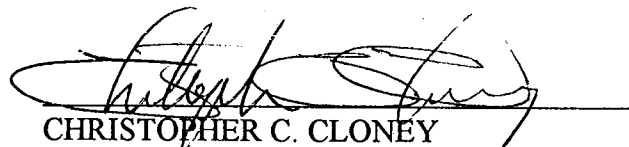
It appearing that the variance between the subject order and the Stipulation approved by the court is a clerical mistake subject to correction under Rule 60 of the Federal Rules of Civil Procedure, a corrective order entering a consent judgment incorporating the Stipulation should be entered.

Alternatively, if the subject order is construed as a judgment, relief is appropriate under Rule 59 of the Federal Rules of Civil Procedure by entry of an amended judgment conforming to the terms of the Stipulation.

WHEREFORE, the plaintiff requests appropriate amendment or correction of the subject order to specifically provide for the agreed permanent injunctive relief and retention of jurisdiction to enforce the terms of the settlement agreement.

I HEREBY CERTIFY that a true copy of the foregoing was mailed to the persons shown on the attached mailing list this 6th day of February, 1995.

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