

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

MICHAEL YELAPI, et al.,

Plaintiffs,

v.

Case No. 8:01-CV-787-T-EAJ

**ST. PETERSBURG SURGERY
CENTER, LTD., et al.,**

Defendants.

ORDER

The parties' **Joint Motion for Approval of the Parties' Second Amended and Restated Class Settlement Procedure Agreement and Consent Decree** (Dkt. 121) is before the court. The parties seek to amend their settlement agreement to reflect that certain Defendant facilities are no longer owned, leased, or operated by Defendant HealthSouth Corporation ("HealthSouth").¹ The parties also seek to correct scrivener's errors in their first agreement and to amend it to improve the facility inspection and modification process (Dkt. 121 at 1).

Although the Special Master's work is still ongoing (Dkts. 123, 125), based on the current record it appears appropriate to enter the relief sought in the motion.

The named Defendants in this action include HealthSouth, several wholly owned subsidiaries of HealthSouth, and other entities in which HealthSouth or one of its subsidiaries owns an interest ("Affiliated Defendants") (*Id.* at 2).² Since the parties entered into their first agreement,

¹ The court approved the parties' first settlement agreement (*see* Dkt. 95).

² HealthSouth "operated" the Affiliated Defendants' facilities because it (or one of its subsidiaries) either held controlling interests in the Affiliated Defendants, was the managing member or general partner, or managed the facility under a management agreement (Dkt. 121 at 2).

HealthSouth has sold its interest in subsidiaries that in turn held an interest in Affiliated Defendants. HealthSouth has also directly sold its interest in Affiliated Defendants. As a result of this divestiture, HealthSouth no longer owns, leases, operates, or otherwise has the ability to make modifications to the facilities subject to the divestiture (Id. at 3).

It was the parties' intent, due to HealthSouth's divestiture, to release the Affiliated Defendants from the terms of the parties' settlement (Id. at 4). This is not clear from the first agreement, however. Thus, the parties move to amend the agreement to clarify their intent that only those facilities over which HealthSouth has operational control are subject to its terms (Id.).³ The parties also request that only HealthSouth remains as Defendant. These requests are submitted jointly and are therefore approved.

The court also approves the parties' request to amend Section 5(g) of the agreement (see id., Ex. B at 9-10). The Accessibility Compliance Reports ("ACRs") for a particular state may be submitted all at one time, rather than piecemeal. Thus, the ACR expert may visit a particular state only once (Dkt. 121 at 4-5). Additionally, the parties' request to amend Section 5(b) of the agreement is approved: the requirement to provide a sworn declaration of ownership status (rather than written notice) to class counsel is eliminated with the parties' consent, with the limitation that, upon request, HealthSouth will provide class counsel a copy of the operative lease, purchase agreement, or other record showing final disposition of any facility at issue (see id., Ex. B at 7-8).

Finally, the parties ask the court to approve the correction of a scrivener's error in Section


³ The parties agree that successors or purchasers who affirmatively opt into this action are also subject to the Consent Decree's terms; the parties do not indicate whether any such entities have opted in.

8(d)(ii) in the amount of a certain portion of the class counsel's fee (Dkt. 121 at 5).⁴ The court's review of the documents confirms the accuracy of the new amount, and the request is approved.

Accordingly, the parties' **joint motion** (Dkt. 121) is **granted** as follows:

- (1) the Second Amended and Restated Class Settlement Procedure Agreement and Consent Decree (Dkt. 121, Ex. A) is approved; and
- (2) HealthSouth Corporation remains a Defendant in this case; all other Defendants are dismissed without prejudice.

DONE and **ORDERED** in Tampa, Florida on this 8th day of July, 2009.


ELIZABETH A JENKINS
United States Magistrate Judge

⁴ A subtraction error in Section 8(d)(ii) resulted in the incorrect class counsel fee of \$313,128.67. The correct amount is \$940,505.00 minus \$626,376.33, or \$314,128.67 (see Dkt. 121, Ex. B at 15).