

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

MAYKOL POZO and MICHAEL  
BUTLER, individually, and on behalf of  
all others similarly situated

Plaintiffs,

v.

Case No: 2:17-cv-170-FtM-99MRM

DIRECT HEATING & COOLING,  
INC. and MITZIE FOX-LERNER,

Defendants.

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**OPINION AND ORDER**<sup>1</sup>

This matter comes before the Court on review of United States Magistrate Judge Mac R. McCoy's Report and Recommendation ([Doc. 20](#)), recommending that the parties' Joint Motion to Approve Settlement and Dismiss With Prejudice ([Doc. 19](#)) be denied without prejudice. No objections have been filed and the time to do so has expired.

A district judge "may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge." [28 U.S.C. § 636\(b\)\(1\)](#). The district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* And "[t]he judge

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may also receive further evidenced or recommit the matter to the magistrate judge with instructions.” *Id.*

The Settlement Agreement and General Release (Doc. 19-1) was not recommended for approval based on the presence of a waiver and general release without evidence of any additional consideration, and the failure of the parties to include or discuss liquidated damages and attorneys’ fees. After conducting an independent examination of the file and upon due consideration of the Report and Recommendation, the Court accepts the Report and Recommendation.

Accordingly, it is now

**ORDERED:**

(1) The Report and Recommendation (Doc. 20) is accepted and adopted and its findings incorporated herein.

(2) The parties’ Joint Motion to Approve Settlement and Dismiss With Prejudice (Doc. 19) is **DENIED WITHOUT PREJUDICE** to the parties exercising one of the two options provided in the Report and Recommendation, **on or before August 18, 2017**.

**DONE** and **ORDERED** in Fort Myers, Florida this 2nd day of August, 2017.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record