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15-CV-U

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Advisory Committee on Civil Rules
Thurgood Marshall Building
Administrative Office of the United States Courts
One Columbus Circle NE
Washington, DC 20544
delivered via email: rules_support@ao.uscourts.gov

To the Members of the Advisory Committee on Civil Rules and the Rule 23 Subcommittee:

I have enclosed an article I recently published entitled, *Cy Pres in Class Action Settlements*, 88 S. CAL. L. REV. 97 (2014) (available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2413951), which I hope will be useful to you as you consider whether to propose an amendment to Rule 23 to address class action settlements that contemplate *cy pres* distributions.

Here's the summary paragraph from the abstract: "To minimize over-reliance on *cy pres* distributions and to tailor them to serve the best interests of the class, the article makes four pragmatic recommendations. First, to align the interests of class counsel and the class, courts should presumptively reduce attorneys' fees in cases in which *cy pres* distributions are made. Second, to ensure that class members, potential objectors, and courts have the information they need to assess the fairness of a settlement that contemplates a *cy pres* distribution, class counsel should be required to make a series of disclosures when it presents the settlement for judicial approval. Third, to inject an element of adversarial conflict into the fairness hearing and to ensure that the court receives the information needed to scrutinize the proposed *cy pres* distribution, the court should appoint a devil's advocate to oppose the settlement in general and the *cy pres* distribution in particular. Finally, the court should be required to make written findings in connection with its review of any class action settlement that contemplates a *cy pres* distribution."

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rhonda Wasserman".

Rhonda Wasserman
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