

CHECKLISTS FOR APPROVAL OF CLASS ACTION SETTLEMENTS

San Bernardino County Superior Court Complex Litigation Program

**Judge David Cohn
Department S-26**

**Judge Janet Frangie
Department S-29**

I

MOTIONS FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

A motion for preliminary approval of a class action settlement should contain the following information:

1. A table listing the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (attorney fee, litigation costs, settlement administrator fee, incentive fee, and all other deductions), whether exact or in a “not to exceed” amount, and the net settlement amount.
2. A copy of the settlement agreement signed by all parties (not only counsel).
3. A declaration by counsel addressing how the settlement was reached, that the settlement was negotiated at arms-length, whether a mediator assisted in reaching the settlement terms, and why the settlement is fair, adequate, and reasonable for the class.
4. The definition of the class, the class period, the estimated number of class members, and, if settlement shares are to be paid on a “weeks worked” or other periodic basis, the number of such periods.
5. A summary of the case, including the causes of action, the legal and factual basis for the claims, the discovery conducted to date, counsel’s investigation of the merits of the claims, the anticipated recovery if the case were to proceed to trial, and counsel’s assessment of any impediments to such recovery.
6. The total settlement amount, including any non-cash consideration (and the value of any such non-cash consideration).

7. Whether the settlement is a fixed common-fund amount, to which defendants hold no further rights (i.e., “non-reversionary”); or whether the settlement amount is dependent upon the number and amount of claims made by class members, with the remainder reverting to defendants (i.e., “reversionary”).
8. Whether the settlement provides for a *cy pres* distribution of excess funds and, if so, a declaration demonstrating the propriety of the *cy pres* recipient and distribution under Code of Civil Procedure section 384. (When there are uncashed checks, the court routinely approves appropriate *cy pres* organizations or payment to the State’s Unclaimed Property Fund in the name of the intended recipient.)
9. The estimated average amount that class members will receive as their share of the settlement distribution. In class actions alleging Labor Code violations (“Wage & Hour Cases”), the total number of work weeks (or pay periods) and the estimated amount each class member will receive per work week (or pay period).
10. The proposed fee award to class counsel, including an analysis why the fee is appropriate.
11. Whether the attorney fee (or other costs or reimbursements) will be paid directly by defendants as part of the settlement, or whether the fee award (or other costs or reimbursements) will be paid out of the “common fund” of settlement proceeds.
12. A declaration by class counsel addressing the lawyer’s knowledge and experience handling class actions and related complex litigation.
13. The amount of any proposed reimbursement of costs to class counsel, including an itemized detail of the costs incurred to date and the estimated future costs.
14. Any proposed “incentive” or “service” award to the named plaintiff or plaintiffs, i.e., any payment to representative plaintiffs in addition to their proportionate share of the settlement, including an analysis why the proposed amount is appropriate, as compared to the amounts that absent class members will receive from the settlement.
15. Declarations from each class representative stating what the representative specifically did as services to the class and participation in the litigation, including the approximate amount of time spent on the case.
16. What claims are being settled, including any claims which were not specifically alleged in the class action complaint, and the scope of the release provisions which will bind the class members and the defendants.
17. Any affirmative duties or obligations that the proposed settlement places upon class members.
18. In “Wage and Hour” cases, the percentage of the net settlement that is characterized as wages for income tax purposes, and whether the defendant will be paying “employer-side” payroll taxes on the wages portion separately from the gross settlement amount. If the employer-side payroll taxes are deducted from the gross settlement amount, the estimated amount of the deduction, which should also be listed in the table (see item no. 1).

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19. If there are related cases pending in other jurisdictions, what effect, if any, this settlement will have on the other actions.
20. A copy of the proposed written class notice, and a discussion of the procedures to be used for providing notice to the class.
21. Whether the language of the class notice has been agreed to by counsel for the parties, or which portions are in dispute and need to be ruled upon by the court.
22. Whether the class notice will be served by first-class mail, e-mail, publication, or other method, including an explanation why the chosen method is the best means available to reach the greatest number of class members.
23. Whether the class notice adequately informs the class about the claims, the terms of the settlement, the release of claims, their anticipated distribution, the amount of fees and expenses being requested by class counsel, the amount of any incentive award to the class representatives, the opportunity to object and the requirements for objections, the date and place of the final approval hearing, and any opportunity to opt-out of the settlement and the procedure for requesting exclusion.
24. Whether class notice and receipt of any objections or opt-outs will be handled by counsel or by a third party administrator.
25. Whether defendants have produced the class list (i.e., the names and addresses of class members) to plaintiffs' counsel or a third-party administrator, or when the class list will be ready and produced.
26. The anticipated costs of class notice, including printing, mailing, searches to update the class list, handling telephone calls from class members, etc.
27. If a claim form is being sent along with the class notice, a copy of the proposed claim form, and a discussion of procedures for sending, receiving, and processing claims.
28. A proposed order granting preliminary approval of the class settlement which includes:
 - a. A copy of the Class Notice attached as exhibit and incorporated by reference.
 - b. If sent with Class Notice, a copy of any Claim Form attached as exhibit and incorporated by reference.
 - c. Findings that the settlement is fair, adequate, and reasonable, and in the best interests of the absent class members.
 - d. Approval of any third-party administrator.
 - e. The procedures and schedule for any objections, requests for exclusion, or claims submission by class members.

- f. A briefing schedule and hearing date for final approval of settlement, including filing of supplemental declarations by counsel and third-party administrators verifying proper service of class notice, and receipt and filing of written objections, and setting a schedule for any written response to objections, and submission of declarations and briefs in support of the requested fee award.

II

MOTIONS FOR FINAL APPROVAL OF SETTLEMENTS

A motion for final approval of a proposed class action settlement should include the following information:

1. A table listing the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (the requested attorney fee, litigation costs, settlement administrator fee, incentive fee, and other deductions) in exact amounts, the net settlement amount, the number of class members, the number of opt-outs, and the number of objections.
2. A declaration by counsel from each law firm representing the class in support of the fee award and reimbursement of costs and expenses setting forth:
 - a. The name of each attorney who worked on the case, and the lawyer's status (e.g., partner, associate, of-counsel, etc., including the years of experience).
 - b. The hourly billing rate for each attorney who worked on the case, and a statement that this is the reasonable and usual hourly rate charged by that attorney for services.
 - c. The total number of hours worked by each attorney on the case.
 - d. The specific tasks performed on the case on behalf of the named plaintiffs and the class, and the hours spent on each task.
 - e. If fees are sought for services of paralegals, verification that each paralegal meets the requirements of Business & Professions Code section 6450 *et seq.*, including qualifications and continuing education.
 - f. Itemized details of expenses and costs for which reimbursement is sought, including expenses incurred since preliminary approval of the settlement. Counsel is advised that the court views fees for Lexis or Westlaw as an item of overhead, not as reimbursable costs. Additionally, absent extraordinary circumstances, the court typically does not award photocopying costs in excess of \$0.06 per page. Costs for meals are generally not recoverable. Counsel should also summarize costs by category (e.g. filing fees, mediation fees, expert fees, court reporter fees, photocopying, etc.)
 - g. Copies of time records or billing statements, or other records documenting the work performed and time spent.

3. A memorandum of points and authorities supporting the award of fees, costs, and incentive payments, including briefing on the propriety of the amount of fees sought, including the following:
 - a. If fees are based upon a percentage of the settlement, facts and law supporting an award at the percentage rate requested.
 - b. If fees are based upon a percentage of the settlement, whether the amount is reasonable in comparison with a lodestar calculation.
 - c. If fees are based upon a lodestar, facts and law supporting any requested multiplier or enhancement of the lodestar amount.
4. Declarations of class counsel or the settlement administrator verifying the timely sending of class notice, efforts to find class members with bad addresses, the number of objections from class members (including copies of the objections), the number of opt-outs from class members (including copies of the requests for exclusion, or a list of the names of the class members opting-out), and the final expenses incurred for providing class notice.
5. If claim forms were sent to class members, declarations of class counsel or the claims administrator verifying the timely sending of the claim forms, efforts to obtain corrected claim forms on defective claims, the number of claims submitted, the amount of anticipated settlement distribution pursuant to the claims, the number of untimely claims and whether they will or will not be included in the settlement distribution, and any other remaining claims procedures which have not yet been completed, and the final expenses incurred for processing of class claims.
6. If claim forms were not previously sent to class members, a proposed claim form and proposed order setting forth procedures for submission of claims and distribution of the settlement to class members.
7. If there were objections to the settlement, a brief by class counsel responding to the objections.
8. A proposed Order Granting Final Approval of Settlement, and a proposed Judgment, including retaining jurisdiction over implementing the terms of the settlement, such as requiring the filing of a final report on distributions made to the class members.