

As of 2/18/2009

Guidelines for Preliminary Approval of Class Action Settlements

The Court requires that all papers in support of the application be filed and a courtesy copy delivered directly to Dept. 17 at least five court days before the hearing.

In order to enhance the likelihood of receiving approval of any proposed settlement at the initial hearing on the application, the parties are directed to study carefully and to incorporate their responses to the following issues in their applications.

Issues to Be Addressed in Application for Preliminary Approval of Class Settlements

1. Size of settlement class and manner in which size was determined.
2. Whether the proposed settlement will be a fixed common fund settlement or a claims made settlement; and if the former, the manner in which excess funds will be distributed, i.e., have the parties provided for a *cy pres* distribution, and if so, the *cy pres* beneficiaries should be identified.
3. Value of settlement to the class—this should clearly identify the proposed monetary value to the class and any non-monetary benefit to the class. If the proposed settlement contemplates the use of coupons or vouchers, the parties should provide data on the value/cost of the coupons and vouchers and how the value/cost has been determined. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116.
4. The scope of the release provisions contemplated by the proposed settlement and the extent to which the claims released correspond to, or expand on, the claims asserted in the operative complaint. Counsel should specifically identify any tort claims (i.e., personal injury or wrongful termination claims) that are proposed to be released by the release provisions of the settlement agreement.
5. The amount of any incentive/bonus payments proposed to be paid to class representatives. Class representative should provide a declaration in which they explain in detail their effort on behalf of the class and identify any similar cases pending in other courts or jurisdictions in which they are a party.
6. The extent of any affirmative duties or obligations the proposed settlement places on class members.
7. Method of Notice to Class and how the parties have arrived at the proposed method of notice. In discussing notice issues, the parties should, at a minimum, address the following:

- a. The anticipated effectiveness of the proposed notice—information regarding the anticipated response rate and the total number of class members to whom notice will be given may be helpful.
- b. Alternative methods of notice that may be available.
- c. Any limitations on the ability of class counsel or representative plaintiffs to provide greater notice to class members than contemplated by the notice provisions of the settlement and the justification for such limitations.
- d. Pro forma notices and envelopes (if notice by mail is proposed) should be provided—counsel are encouraged to use “plain language” as required by FRCP, Rule 23(c)(2)(b). Copies of actual notices intended to be sent to class members or published should be provided with the application for preliminary approval.

In appropriate cases, declarations of experts in the fields of communication and/or statistics may be useful in assisting the Court in evaluating notice issues.

8. Claim procedures and forms should be clearly explained. The Court’s preference is for “plain language” claims forms and procedures that are not burdensome or likely to discourage participation in the class settlement. When the amount of each class member’s distribution can be determined from defendant’s records and/or a distribution formula, the Court prefers eliminating the need for class members to submit claims.
9. Tax consequences of any class settlement payments to class members and any proposed allocation of tax liability of class members or the defendant contained in the proposed settlement.
10. The estimated cost of administration and the basis for the estimate. A declaration from the proposed administrator may be appropriate.
11. Any agreement concerning the payment of attorneys’ fees and costs incurred by class counsel; recognizing that all such agreements are subject to court approval and the court’s independent determination of the reasonableness of the fees and costs awarded. Applications for attorneys’ fees and costs should be supported by contemporaneous time records and task-based billing summaries. When attorneys from multiple practices seek to join in the fee award their declarations should indicate steps that have been taken to minimize or eliminate unnecessary duplication of effort, to assure that tasks are performed by attorneys at appropriate levels of experience, and to exercise appropriate “billing partner” discretion in reviewing the bills before submission to the Court.
12. The effect of the proposed settlement on any cases pending in other jurisdictions in which similar class claims are asserted.

13. Any other issues and counsel's proposed resolution of those issues that may be unique to the case.