

GUIDELINES FOR APPROVAL OF CLASS ACTION SETTLEMENTS & PAGA SETTLEMENTS

**Judge Melissa R. McCormick
Department CX105**

I. MOTIONS FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

A motion for preliminary approval of a class action settlement should generally comply with the following procedures and include the following information:

A. MOTIONS AND SUPPORTING INFORMATION

1. **Noticed motion:** Pursuant to California Rule of Court 3.769(c), preliminary approval of a class action settlement must be obtained by way of regularly noticed motion.
2. **Litigation summary:** A general summary of the litigation, including the identity of the parties and a brief procedural history.
3. **Copy of settlement agreement:** A copy of the settlement agreement signed by all parties (not only counsel).
4. **Total settlement amount:** The total settlement amount, including any non-cash consideration (and the value of any such non-cash consideration).
5. **Non-reversionary/reversionary settlement:** 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 depends on the number and/or value of claims made by class members, with the remainder reverting to defendants (i.e., "reversionary").
6. **Explanation for reversionary settlement:** For a reversionary settlement, the court requires the parties to (1) explain why that type of settlement is appropriate; (2) explain why the claims process is not so burdensome that relief would be inaccessible to putative class members; (3) describe what actions class counsel will take to encourage claims submission; and (4) provide an estimate of the anticipated claims rate or explain why such estimate cannot be provided.
7. **Financial terms:** A detailed description of the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (attorneys' fees, litigation costs, settlement administration fees and costs, enhancement awards, and all other deductions), whether exact or in a "not to exceed" amount, and the net settlement amount.

8. **Taxes:** In employment wage-and-hour cases, the percentage of the net settlement that is characterized as wages for income tax purposes, and whether defendants 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 parties must: (1) provide the estimated amount of the deduction; and (2) explain why that deduction from the gross settlement amount is appropriate as the employment tax obligation is generally the employer’s responsibility.
9. **Duties/obligations of class members/class counsel:** Any affirmative duties or obligations the proposed settlement places on class members or class counsel and the reason(s) for those duties or obligations.
10. **Class definition and information:** The definition of the class, the class period, the estimated number of class members, and, if settlement shares will be paid on a “weeks worked” or other periodic basis, the number of such periods. The motion must also provide sufficient information and argument for the court to conclude that the class certification prerequisites have been met. *See* Cal. R. Ct. 3.769; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-27; *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.
11. **Claims, investigation and settlement process summary:** A summary of the claims being settled, the legal and factual basis for the claims, the discovery conducted to date, counsel’s investigation of the merits of the claims, and how the settlement was reached, including whether a mediator assisted the parties.
12. **Release:** Discussion of the scope of the release provisions which will bind the class members and defendants. The release must be fairly tailored to the claims that were or reasonably could have been asserted in the lawsuit based on the facts alleged in the operative complaint (and, in PAGA cases, the notice letter to the LWDA). *See, e.g., Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-39 (“Releases must be appropriately tethered to the complaint’s factual allegations”; “a court cannot release claims that are outside the scope of the allegations of the complaint”). The release and its effective date should be set forth with precision. If the release will be effective before settlement funds are paid, explain why this is in the best interests of the class. If the class and release periods extend beyond the date of preliminary approval, explain why this is appropriate. In addition, while the court typically does not conceptually object to a waiver by a named plaintiff of the protection of Civil Code section 1542, a section 1542 waiver by absent class members is generally inappropriate in the class settlement context.
13. **Consideration for release:** Specific information sufficient for the court to evaluate whether the consideration being received for the release of class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.

This discussion should specify the maximum realistic recovery on each claim asserted in the operative complaint, defenses asserted by defendants, a summary of the risks, expenses and duration of further litigation if the settlement is not approved, and any other relevant factors justifying the settlement amount.

14. **PAGA settlement:** A summary of any PAGA settlement, including the manner in which it was valued, the release associated with that settlement, and how the settlement meets the standards set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56. The settlement and notice to class members should state that an aggrieved employee may not opt out of the PAGA settlement. In addition, counsel must provide a copy of plaintiff's notice letter(s) to the LWDA and evidence that the settlement agreement and the motion papers were served on the LWDA.
15. **Defendants' financial situation:** If the settlement is predicated on a payment plan or on defendants' financial situation, admissible evidence of defendants' financial situation should be provided, including appropriate financial documents such as balance sheets, cash flow statements, and profit and loss statements.
16. **Allocation:** If approval of a settlement of class claims is sought together with approval of a settlement of non-class claims (e.g., PAGA claims), discuss why the amount allocated to non-class claims is fair to those affected. *See Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.
17. **Class member and plaintiff payments/work weeks:** The estimated high, low and average amount that class members will receive as their share of the settlement distribution, and the expected amount to be received by plaintiff (excluding any enhancement award). In class actions alleging Labor Code wage-and-hour violations, the parties should also provide the total number of work weeks (or pay periods), and the estimated amount each class member will receive per work week (or pay period).
18. **Cy pres:** The parties should address whether the settlement provides for a cy pres distribution and, if so, the parties should provide a declaration identifying the cy pres recipient and demonstrating the propriety of the cy pres recipient and distribution under Civil Procedure Code section 384. The parties should explain why a cy pres distribution fulfills the purposes of the lawsuit or is otherwise appropriate. *See State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722. The parties and their counsel must also declare whether they have an interest in the cy pres recipient, including in its governance.
19. **Settlement administration:** The parties should address the claims administration and class notice process and procedures, as discussed more specifically below in "Class Notice Administration" and "Class Notice." The proposed settlement administrator must be identified, including information regarding its level of experience. Where calculation of an individual's award is subject to possible dispute, a dispute resolution process should be specified. The court will not approve the amount of a costs award to the

settlement administrator until the final approval hearing, at which time admissible evidence to support the request must be provided. The court also generally prefers to see a settlement term that funds allocated but not paid to the settlement administrator will be distributed to the class pro rata. The settlement should also typically provide that the settlement administrator will conduct a skip trace not only on returned mail, but also on returned checks.

20. **Proposed fee award:** The court will not approve the amount of attorneys' fees until the final approval hearing, at which time sufficient evidence supporting the proposed fee award to class counsel, including an analysis of why the fee is appropriate, must be presented. A lodestar analysis can be deferred until final approval. The court will not award attorneys' fees without reviewing information about counsel's hourly rate(s) and the time spent on the case, even if the parties have agreed to the fees. *See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 573-75. At the final approval hearing, counsel must disclose whether counsel has any fee-splitting arrangement with any other counsel, or confirm none exists. *See Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b). Further information regarding fee approval is set forth below in the court's Guidelines for Final Approval of Class Action Settlements.
21. **Proposed costs award:** The amount of any proposed reimbursement of costs to class counsel, including an itemized detail of the costs incurred to date and estimated future costs. Costs sought for "expert consulting fees" or similar expenses should be supported by an invoice(s).
22. **Proposed enhancement award to plaintiff:** The court will not decide the amount of any enhancement award until the final approval hearing, at which time evidence regarding any proposed enhancement award to the named plaintiff, i.e., any payment to a representative plaintiff in addition to the plaintiff's proportionate share of the settlement, including an analysis of why the proposed amount is appropriate, as compared to the amounts absent class members will receive from the settlement, must be provided. Counsel must explain why an enhancement award is reasonable and what the representative plaintiff did beyond the expected service of a representative plaintiff. In addition, the representative plaintiff shall state in a declaration filed with the court what the representative plaintiff specifically did as services to the class and participation in the litigation, including the approximate amount of time spent on the case. General statements of "countless hours," "potential stigma," or "potential risk" are insufficient. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-07. Specific to PAGA-only settlements, explanations should be provided as to why an enhancement award is appropriate. A declaration from counsel alone is insufficient.
23. **Concurrent pending cases:** The declaration(s) filed in support of the motion must inform the court as to whether the parties, after making reasonable inquiry, are aware of any class, representative or other collective action in any other court that asserts

claims similar to those asserted in the action being settled. If any such actions are known to exist, the declaration shall also state the name and case number of any such case and the procedural status of that case, and describe the impact of the settlement on that case.

B. CLASS NOTICE ADMINISTRATION

24. **Settlement administrator:** The parties should identify the settlement administrator, and address how the settlement administrator's services were obtained and why the settlement administrator's bid is fair to the class. Counsel must provide the settlement administrator's qualifications and experience, including evidence that the settlement administrator has procedures in place to protect the security of class data, and sufficient insurance in the event of a data breach or mishandling of the settlement funds.
25. **Anticipated cost of class notice:** The anticipated costs of class notice, including printing, mailing, searches to update the class list, handling telephone calls from class members, etc. should be provided.
26. **Class list/undeliverable notices/remailed notices:** The parties should discuss how and when the settlement administrator will receive the class list and whether the list will be updated by the settlement administrator before the initial mailing. State how notices returned as undeliverable will be handled, as well as any remailed notices.
27. **Deadline for initial notice:** Identify the deadline for the initial issuance of notice to class members.
28. **Notice by publication:** If publication notice will be given, identify the timing, locations and manner by which notice will be disseminated.
29. **Payment processing:** State how and when payments will be processed.
30. **Settlement website:** State whether there will be a settlement website and, if so, provide the URL.
31. **Notice of final judgment:** State how notice of final judgment will be given to the class. Cal. R. Ct. 3.771(b).

C. CLASS NOTICE

32. **Copy of class notice/notice procedures:** A copy of the proposed written class notice must be provided, and discussion of the procedures to be used for providing notice to the class. The procedure of notice by first-class mail followed by resending any returned mail after a skip trace is usually acceptable. Whatever notice method is selected (e.g., first-class mail, email, publication, etc.), explain why the chosen method(s) is the best means to reach the greatest number of class members.

The notice should include the deadlines and procedures regarding objection, opting out, claim forms (if applicable), disputes (if applicable), and cashing a settlement check. The court prefers no less than a 60-day exclusion/opt-out/dispute period, and a 180-day check cashing period; the parties will be required to justify shorter periods. Class members who receive remailed notice should be given an extension of all relevant deadlines.

33. **Text of class notice:** Whether the parties have agreed on the text of the notice or, if not, which portions are in dispute and require resolution by the court.
34. **Language of class notice:** Whether the notice should be translated into any language other than English or, if not, why English-only is appropriate.
35. **Content of class notice:** The content of the notice should comply with California Rule of Court 3.766(d). For wage-and-hour cases, the notice must state the specific amount the class member will receive, and how that amount was calculated. For PAGA cases, the notice must include a separate breakdown of PAGA payments, and state that an aggrieved employee may not opt out of the settlement with respect to any PAGA claims.

In addition, the court understands there can be a trade-off between precise and comprehensive disclosures and easily understandable disclosures; the court is generally willing to err on the side of understandable disclosures. By way of illustration, the parties should either follow, or at least be familiar with, the formatting and content of the Federal Judicial Center's "illustrative" Forms of Class Action Notices available on the Federal Judicial Center's website.

The notice should always provide: (1) contact information for class counsel to answer questions; (2) a URL to a website, maintained by the settlement administrator or plaintiff's counsel, that has links to the notice and key case documents; and (3) for persons who wish to review the court's docket for the case, the court's URL.

The notice must adequately inform the class about the claims, the terms of the settlement, the release of claims, anticipated distributions to class members, the amount of fees and costs being requested by counsel and the settlement administrator, the amount of any enhancement award to the class representative(s), the opportunity to object and any requirements to do so, the opportunity to opt out and the procedure to do so, and the date, time and place of the final approval hearing. The class notice should be consistent with the terms of the settlement agreement, and should avoid any commentary on the merits of the settlement.

36. **Handling objections/opt-outs/disputes:** The notice should state how objections, opt-outs, and disputes will be addressed. The settlement administrator may make the initial decision regarding claim disputes, but the court may review any decision made by the settlement administrator regarding a claim dispute.

37. **Exclusions and objections:** The court prefers that the notice be accompanied by a form to be completed by a class member seeking to be excluded, and a separate form to be completed by a class member wishing to object.

The notice need only instruct class members who wish to exclude themselves to send a letter to the settlement administrator setting forth their name and a statement that they request exclusion from the class and do not wish to participate in the settlement. It should not include or solicit extraneous information not needed to effect an exclusion. The same applies to the contents of the form, if used.

Objections should also be sent to the settlement administrator (not filed with the court or served on counsel). Thereafter counsel should file a single packet of all objections with the court. The court is unlikely to approve blanket statements that objections will be waived or not considered if not timely or otherwise compliant. In addition, do not include language stating that class members may only be heard at the final approval hearing if they have complied with objections procedures. Generally, the court will hear from any class members who attend the final approval hearing and ask to speak regarding an objection, irrespective of whether the class member submitted a written objection in advance.

38. **Claim form:** If a claim form is used, a copy of the proposed claim form should be submitted to the court, and the parties should advise the court the procedures for sending, receiving and processing claims. A claim form should not repeat voluminous information from the notice, such as the entire release. The claim form should contain only that which is necessary to elicit the information necessary to administer the settlement.

D. PROPOSED ORDERS

39. **Contents and exhibits:** A proposed order granting preliminary approval of a class settlement shall include:
- a. Findings that the settlement is fair, adequate and reasonable, and in the best interests of the class members;
 - b. Approval of any third-party settlement administrator and clear instructions to the settlement administrator;
 - c. The procedures and schedule for objections, exclusions, claims submission and/or disputes;
 - d. A copy of the settlement agreement attached as an exhibit;
 - e. A copy of the class notice and any other forms (in all necessary languages) attached as an exhibit; and

- f. Proposed dates for all future events contemplated therein, including a proposed date for the final approval hearing.

II. MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

A motion for final approval of a class action settlement should generally comply with the following procedures and include the following information:

1. A summary of the key financial terms of the settlement, including the gross settlement amount, each specific deduction from the gross settlement amount (e.g., attorneys' fees, litigation costs, enhancement awards, settlement administrator fees and costs, and other deductions), the net settlement amount, the number of class members, and the average amount that will be paid to each participating class member.
2. A declaration from counsel for each law firm representing the class in support of the requested attorneys' fees and litigation costs that includes:
 - a. The name of each attorney who worked on the case, the lawyer's position (e.g., partner, associate, etc.), and the lawyer's years of practice, experience in class action litigation, and experience in litigation of the type at issue in the case;
 - b. The hourly billing rate for each attorney who worked on the case, and statement that the hourly rate is the reasonable and usual hourly rate charged by that attorney for similar services;
 - c. The total number of hours worked by each attorney on the case;
 - d. The specific tasks performed on the case and the time spent on each task;
 - e. If fees are sought for paralegals, verification that each paralegal meets the requirements of Business & Professions Code section 6450 *et seq.*, including qualifications and continuing education. Hourly billing rates and hours worked shall be included for paralegals, as well as a statement that the hourly rate is the reasonable and usual hourly rate charged for similar services by the paralegal;
 - f. Itemized details of expenses and costs for which reimbursement is sought, including expenses incurred since preliminary approval of the settlement. Counsel should summarize costs by category (e.g., filing fees, mediation fees, court reporter fees, etc.), and should not include costs for overhead items or nonrecoverable costs (e.g., postage);
 - g. Copies of time records, billing statements, or other records contemporaneously documenting the work performed and time spent.
 - h. Counsel must disclose whether counsel has any fee-splitting arrangement with any other counsel, including the exact percentages, or confirm none exists. *Barnes*,

Crosby, Fitzgerald & Zeman, LLP v. Ringler (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b).

3. A memorandum of points and authorities supporting the award of fees, costs, and enhancement awards, including briefing on the propriety of the amount of fees sought, including the following:
 - a. If fees are based on a percentage of the settlement, facts and law supporting an award at the percentage requested;
 - b. If fees are based on a percentage of the settlement, whether the amount is reasonable in comparison to a lodestar calculation; and
 - c. If fees are based on a lodestar, facts and law supporting any requested multiplier or enhancement of the lodestar amount.
4. In order for the court to determine the appropriate amount of any enhancement awards at final approval, plaintiff(s) should submit a declaration addressing the factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272 and *Clark v. American Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation.
5. Declarations of class counsel and/or the settlement administrator attesting to the timely sending of class notice, efforts to find class members with invalid addresses, the number of objections from class members (including copies of the objections), the number of opt-outs (including copies of the exclusion requests), the number of disputes (including copies of the disputes, the evidence submitted, and the resolution of the disputes), and the final expenses incurred for providing class notice. Admissible evidence supporting a request for a costs award to the settlement administrator should be provided.
6. If claim forms were sent to class members, declarations of class counsel and/or the settlement administrator attesting to 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 claims.
7. If there were objections to the settlement, a memorandum of points and authorities from class counsel addressing the objections.
8. For all settlements that include a distribution to class members, a final accounting hearing must be set, which requires the submission and approval of a final accounting status report after completion of the distribution process. The accounting hearing will be scheduled when final approval is granted, so the moving papers should include a

suggested range of dates for this purpose. The final accounting status report must be filed at least 9 court days before the final accounting hearing.

9. In light of the requirements of California Rule of Court 3.769(h), all final approvals must result in entry of judgment, and the words "dismissal" and "dismissed" should be avoided not only in proposed orders and judgments, but also in settlement agreements.
10. To ensure appropriate handling and processing by court staff, the court prefers use of a combined "order and judgment," clearly captioned as such (e.g., "Order of Final Approval and Judgment" or "Order and Judgment of Final Approval"). All proposed orders and judgments should include the requisite "recital," "finding," "order" and "judgment" language in a manner that clarifies the distinctions between those elements, and care must be taken that all terms that require definition are either defined in the proposed order and judgment itself, or that definitions found elsewhere in the record are clearly incorporated by reference. The proposed order and judgment should also include the final accounting hearing information, including suggested dates, discussed above. No proposed order and judgment should be submitted until after review by counsel for each settling party.
11. If the actions being settled are included in Judicial Council Coordinated Proceedings, termination of each included action by entry of judgment is subject to California Rule of Court 3.545(b) and (c), and proposed orders and judgments must so reflect. Language must also be included to the effect that compliance with California Rule of Court 3.545(b)(1) and (2) shall be undertaken by class counsel, and that a declaration shall be filed confirming such compliance.
12. If the settlement administrator will maintain a website for the case, the proposed order and judgment should state that the settlement administrator will post a copy of the order and judgment on the website for 180 days.

III. MOTIONS FOR APPROVAL OF PAGA SETTLEMENTS

Pursuant to Labor Code section 2699(s)(2), "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." While the court will review every such motion for approval on its own merits, the court requires at a minimum that the settlement and/or any proposed order and/or judgment in connection with a settlement contain at least the following:

1. A comprehensive definition of the group of aggrieved employees represented by plaintiff in the action.
2. A definition of the PAGA claims encompassed by the settlement, premised on the facts alleged in the operative complaint.

3. The total consideration being provided by defendant(s) for the settlement ("gross settlement amount"), and a description of each allocation of the consideration, such that all of the total consideration is accounted for. This description must include:
 - a. A description of all consideration being received by plaintiff, including for plaintiff's individual claims and PAGA claims;
 - b. A description of all consideration being received by the aggrieved employees including, as applicable, civil penalties and/or unpaid wages;
 - c. A statement of the amount of consideration that will be subject to, as applicable, the 75%-25% allocation required by former Labor Code section 2699(i) or the 65%-35% allocation required by Labor Code section 2699(m);
 - d. The amounts sought for attorneys' fees, attorney costs, and settlement administration fees and costs;
 - e. Any amount sought as a plaintiff's enhancement award; and
 - f. A description of any other amount(s) being deducted from the gross settlement amount.
4. An explanation as to how the amount payable to each aggrieved employee will be calculated.
5. An explanation as to why the attorneys' fees and costs sought are reasonable within the meaning of Labor Code section 2699(k)(1).
6. A description of the tax treatment of any of the payments to plaintiff and/or aggrieved employees.
7. A provision setting forth the disposition of unclaimed funds, i.e., checks uncashed within a stated period of time after being sent to aggrieved employees.
8. A provision that the proposed settlement be submitted to the Labor and Workforce Development Agency at the same time it is submitted to the court. *See* Labor Code § 2699(s)(2).
9. A provision that the court will retain jurisdiction to enforce the settlement pursuant to Civil Procedure Code section 664.6.
10. A notice to aggrieved employees that will accompany the payment to them. A copy of such notice must be provided to the court for approval along with the motion seeking approval of the settlement. The notice should (i) provide an explanation of PAGA; (ii) describe the factual allegations of the operative complaint; (iii) describe the scope of the released claims; (iv) state the gross settlement amount, net settlement amount, and the portions allocated to the LWDA and the aggrieved employees; (v) explain how the individual payments will be calculated; (vi) describe the recipient's responsibility for any

taxes payable on the amount received; and (vii) notify the aggrieved employees that they cannot opt out of the settlement and that, even if they do not cash their checks, they will be bound by the release.

11. If an enhancement award is sought, an explanation of why an enhancement award is appropriate should be provided.
12. Releases should not include Civil Code section 1542 releases for aggrieved employees other than plaintiff.
13. Releases for aggrieved employees other than plaintiff should not release more than the civil penalties available under PAGA based on the facts alleged in the operative complaint and the notice letter(s) to the LWDA.
14. Counsel's declaration(s) in support of the motion must state whether the parties (plaintiff(s) and defendant(s)) know of any other cases that may be impacted by the settlement.
15. The moving papers must include a copy of all written notices to the LWDA pursuant to Labor Code section 2699.3(a)(1)(A).
16. Counsel must provide evidence the settlement agreement and the motion papers were served on the LWDA.